

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
AUGUST 09, 2017**

Members Present: Christopher Graham, Chairman
Gerald Coutinho, Vice Chairman
Gary Simmons
Donna Lambert
Peter Borden
Roger Menard
Also present: Ralph Souza, Building Commissioner

Chairman Graham called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance.

Pledge of Allegiance

Chairman's Announcement - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

Jose F. Sousa – RE: Continued Public Hearing on an application request for an Administrative Appeal of the Zoning Enforcement Officers determination on the viability of a lot as buildable; and a variance to allow the rehabilitation of the current dwelling structure, and/or allow for the demolition of the existing dwelling and construction of a single family one-bedroom home. The property is located at 194 Sanford Road and shown on Assessor's Map 16, Lot 76.

Chairman Graham called the continued hearing to order at 7:10 PM with the reading of the Public Hearing Notice. Mr. Graham asked that if anyone wanted to speak on the petition to state their name and address for the record.

Members Present: Christopher Graham, Gerald Coutinho, Gary Simmons, Roger Menard,
Donna Lambert and Peter Borden
Also Present: Ralph Souza, Zoning Enforcement Officer/Building Commissioner
Attorney Brian Corey, representing applicant
Jose F. Sousa, applicant
Abutters Present: George & Susan Foster, 196 Sanford Road
Craig & Nelia Williams, 190 Sanford Road

Attorney Corey stated he presented, at last meeting, his clients' request and would now summarize what transpired at that meeting. Attorney Corey stated this request is for an Administrative Appeal of the ZEO's determination.

Mr. Graham stated an onsite was conducted by the Board members. Mr. Graham asked the Board members for their thoughts of the onsite.

Mr. Menard stated the structure is in disrepair, which is a gross understatement; obviously there has been some work on the property because the submitted pictures showed it to be a forest. Attorney Corey stated it was done in anticipation of the onsite. There was a dug well in the structure and an outhouse in the back. Mr. Menard stated to Attorney Corey, that the applicant is requesting an Administrative Appeal, not a finding and that is what we are discussing. Discussion ensued regarding the letter from the Building Inspector/ZEO. Mr. Menard stated we will not be discussing a finding, we will only consider an Administrative Appeal, because that is what was applied for. Attorney Corey stated that ultimately the Board will render a decision as to whether this is a buildable lot. Mr. Menard stated we will render a decision whether or not Mr. Souza's determination is correct or not. Mr. Coutinho stated the applicant actually asked for three items, (a) an Administrative Appeal of Mr. Souza's determination of the viability

of the lot as buildable and (b) a variance to allow the rehab of the current dwelling structure and/or (c) to allow for the demolition of the structure. Mr. Menard stated nowhere in the application is a finding mentioned; normally, there is a process by way of application for Finding, Variance or Administrative Appeal. Attorney Corey stated that the Board needs to look at the application and how it was advertised.

Mr. Menard stated he has read all the information and this is not a habitable house. Attorney Corey stated that 40, 30, 27 years ago, people lived in it. The Board of Health, under Title V, made a determination that the outhouse, a non-conforming sewage system, is entitled to an upgrade and the Board of Health finding says it has to remain as a one-bedroom septic system.

Attorney Corey stated under the prior Building Inspector, this was not an issue but we now have a new Building Inspector, who stated in a letter after this application was submitted that because the lot was not 20,000 sq.ft., it was unbuildable. The Board tonight, under the bylaws, must make a determination as to whether this can be rehabilitated and whether it can become a one-bedroom house, in one way, shape or form. Attorney Corey stated he was throwing the ball into the Board's court saying, if you don't find on request 1 or 2, then we are seeking a variance because we have met the conditions of a hardship.

Mr. Coutinho asked Attorney Corey for clarification on dates; the application date to the ZBA was 05/31/17 and a letter from the Building Department was dated June, 2016 but Attorney Corey keeps saying the letter was after the application submission. Attorney Corey stated he has been referring to the letter dated June, 2017. This letter was not given to his client, it was submitted to your clerk. Discussion ensued regarding the letter. Mr. Menard stated that in 2003, the Board of Health determined this was not a dwelling because there were no persons in it and there was no plumbing and later, the State reiterated it and then the documentation paperwork does not seem as clear. Attorney Corey stated the only unambiguous thing might have been a missing word such as it is not a habitable building because it did not have plumbing, no interior bathroom, or up to date hard-wiring. What the State has said and the Town of Westport has said is this is entitled to a septic upgrade but it must adhere to the covenant that it will only be a one-bedroom dwelling, even though a two-bedroom septic may be built.

Mr. Coutinho stated that Mr. Foster had given him a packet of the history of the property over a period of time (14 page collection), which he has provided to the Board members also. Attorney Corey stated he has also provided copies of the Assessor's cards to the Board. Mr. Foster stated in speaking about the property being occupied, there are two elderly neighbors on the street, who have lived there since the 1950's and they have stated that no one has been living there in that time. Also, if you go to the Assessor's records, the older ones, there are comments about 1954 where they could not get into the property and they interviewed the neighbors. Mr. Coutinho asked Mr. Foster, did the Assessor's records have the structure as a house back then. Mr. Foster stated the information they got back then was from talking to the neighbors; this was probably for a reval. Mr. Coutinho stated a copy of the 2017 Assessor's records says three things: it was being assessed as a shed, it was assessed as a house up until January 1, 2011 and an inspection was done in September, 2011; and that is when it was changed back to a shed. Attorney Corey stated there was no request by the applicant to change the home to a shed in 2011. Mr. Coutinho stated it says the Assessors went to the property and did an onsite and decided it really was not a house. Attorney Corey stated in the packet, he provided information prior to 1954 with the chain of title.

Mr. Menard stated with the onsite that was conducted, in his personal opinion, the current state of the property is dangerous and he would hate to have a grandchild, getting into that lot and playing and then falling into the pit. Mr. Coutinho stated he also went into the structure and the interior was clearly more than a shed because he has never seen a shed with plastered walls or finished walls or trim around the door frame. Granted, he would not like to see someone living in it now but it does indicate that somewhere in the past, that was a place for people as opposed to a storage shed or something. Mr. Coutinho stated that it has not been presented as someone living in there permanently. Mr. Menard stated he read somewhere in the material, it was used as a summer/vacation place up until 1979; maybe not sleeping there but they did go to the property.

Mr. Coutinho stated at our last meeting, we had abutters make comments that they maintained the property. Mr. Coutinho stated he would like to hear from the abutters why they would prefer to have what is there and for the property to stay the way it is, which is quite a mess, rather than having a clear, clean property with a new small dwelling. Maybe the abutters want to see it condemned, torn down and have nothing on it. Mr. Simmons stated the lot definitely needs to be cleaned up from front to back. Mr. Coutinho stated he believed it was a condemnable structure. Ms. Lambert asked if it has been condemned by the Building Department. Mr. Souza stated it will be now after the site visit and seeing it up close. The property could not be seen before due to all the trees and brush.

Mr. Foster stated he would like it to stay the way it is, so he can't see it. The back shed has a stove in it. Mr. Foster stated before it was overgrown, it was used as a garden plot by the father back in 2001 and it was nice back then with grapes and corn and potatoes. The privy is caved in and in the winter, we can see the roof-line. Mr. Foster stated the situation is there is 5ft. between the property line and my house. My well is between the stonewall and my house. That is my concern, my well. In the Board of Health minutes of 09/22/2003, the Board of Health sought confirmation on the abutters wells and as-built plans and here we are 14 years later with hearing nothing. Mr. Simmons stated we can't speak for the Board of Health.

Jose F. Sousa stated he currently resides at 599 Tucker Street, Fall River, MA and owns 194 Sanford Road. Mr. Sousa stated the Board has heard a lot today about wells, etc but as it stands today, the septic has been designed and the land has been perced. The former Building Inspector Maltais gave the okay that the property was a buildable lot; 17 years later, it is now unbuildable. Mr. Coutinho stated we have nothing in our packet in writing from Mr. Maltais. Mr. Sousa stated that Mr. Foster is worried about his well but my septic design meets all the setbacks. This is a retirement house for me and my wife, nothing more and nothing less. Not being able to build will be a hardship. Mr. Coutinho asked Attorney Corey, based on what Mr. Sousa just said, there are no waivers from the Board of Health. Attorney Corey stated there are no waivers needed, it meets all setback, was approved and renewed. Discussion ensued regarding the size of the proposed house.

Discussion ensued regarding Town Counsel's opinion, paragraph 9. Attorney Corey stated this is not more detrimental to the neighborhood. This is similar in size to other lots in the neighborhood. Attorney Corey stated he disagreed with a comparison to the Dalbec case and explained why. Attorney Corey summarized Town Counsel's opinion. Attorney Corey stated his client wants to rehabilitate as it presently is. Attorney Corey stated if a variance is granted, the intent would be to knock down the home, push it back and meet the dimensional requirements; the original intent, under Mr. Maltais, was to build a 22' x 34' home, a very simple home; without the variance, Mr. Sousa would only be able to renovate on the existing footprint; the lot is 55 ft. wide.

Ms. Williams stated Town Counsel's opinion and the Building Commissioner's needs be taken into consideration. Mr. Souza stated the applicant will be bound by the Board's decision; the issue is the driveway and off-street parking. Mr. Coutinho stated if we don't grant, there will be overgrowth, minus the physical structures. Why would the neighbors prefer forest, even without structures. There will be no improvement to the neighborhood. Mr. Simmons stated this property is a serious fire hazard. Mr. Menard stated he is torn on this because of the comments from Town Counsel. On the other hand, after being on the property, he believes it is dangerous for this neighborhood. Mr. Menard stated he is tending to be in favor of renovating. Mr. Coutinho stated in using the Dalbec case as an example, the Board's decision, which we felt was legal, was overturned by the court, so you can't always rely on Town Counsel's opinion. Mr. Simmons stated he felt the applicant should have the right to build on it but the property does need to be totally cleared including the shed and outhouse. Mr. Coutinho stated he agreed because they are not needing or seeking any waivers or variances from the dimensional setbacks. They are meeting all the rules of the Town except for the size of the lot; from my point of view, it would be far more reasonable to have a small house there. It would be upgraded from what is there. Mr. Graham

stated the applicant is seeking an Administrative Appeal but do we also have to grant them a variance. Mr. Coutinho stated it may not be an appeal because the ZEO was right in what he did, what he sees is a variance, not of the side setback but of the 54ft vs 100ft and lower amount of lot footage vs the 20,000 sq.ft. Discussion ensued.

8:10 PM

Motion made by Mr. Menard to close the discussion. Second by Mr. Simmons. The Board voted unanimously in favor.

Mr. Graham stated there are three things before the Board:

- A. An Administrative Appeal of the ZEO determination of the buildability of the lot;
- B. A request for a variance to allow the rehabilitation of the current dwelling; and/or
- C. Allow for the demolition of the existing building and the construction of a new single family home.

Mr. Coutinho stated we have an inadequate opinion from Town Counsel due to a lack of information such as building plans and proposals etc. and by sending this specific information to Town Counsel, his opinion could change. Mr. Coutinho suggested seeking additional clarification from Town Counsel given newer and better information.

Mr. Menard stated given the conditions and the lot being in desperate need of something and being a safety hazard, even if condemning the property it is still a hazard and nothing the lawyer says will change that.

Mr. Coutinho stated if the shed is gone, it will go back to being like the Dalbec case. Knowing that new construction can be done that meets all Board of Health requirements without variances or waivers and our zoning rules without variances may very well change his opinion but the unsafe structures would require demolition. Now, the one remaining unsafe situation is the forest land beside two abutters, which they indicated that they are maintaining their side of the fence. Mr. Graham stated in the opinion, it refers to a Finding. Mr. Coutinho asked how that applies because everything there conforms and without clarification, we are flying blind. We were told they did not need any variances. Mr. Coutinho stated we need a more explicit Town Counsel opinion to avoid litigation. All we need is something stating that no variances are needed and there are no Board of Health required variances or waivers. Mr. Coutinho stated we need to continue this hearing in order to get that.

Mr. Graham asked Mr. Sousa if he would be willing to supply more detailed construction plans. Mr. Sousa stated yes. Mr. Coutinho stated we have to make a decision by September 8th. Mr. Coutinho stated we really don't need his plans, we only need to have is something that says whatever structure he builds would need no dimensional variances and no Board of Health variances or waivers and if that means a new perc test is needed, so be it. If the Board agrees and were to approve it and the Board of Health then says no, a new septic is needed and the perc test does not pass, then it doesn't happen because that is part of our decision. It has to meet the Board of Health requirements without any variances or waivers or requests for variances.

Motion made by Mr. Coutinho to provide additional information to Town Counsel, which Town Counsel has indicated he does not have; and to ask Town Counsel for further clarification to the point which the Board feels is adequate on the information presented to us. Second by Mr. Menard. The Board voted unanimously in favor.

Motion made by Mr. Coutinho to continue the hearing to Wednesday, August 23, 2017 at 7:00PM. Second by Ms. Lambert. The Board voted unanimously in favor.

Richard Mendes – RE: Public Hearing on an application request for a Finding, that the addition of a Class II Dealers License shall not be substantially more detrimental than the pre-existing, non-conforming use to the neighborhood. The property is located at 130 Plymouth Boulevard and shown on Assessor's Map 18A, Lot 37-38.

Members Present: Christopher Graham, Gerald Coutinho, Donna Lambert, Gary Simmons, Roger Menard and Peter Borden

Also Present: Ralph Souza (Zoning Enforcement Officer/Building Commissioner)
Richard & Sara Mendes (petitioner)

Abutters Present: Sotiris Pavlis, 129 Plymouth Boulevard
Leonard Reis, 126 Plymouth Boulevard
Richard Simonin, 159 Plymouth Boulevard
Joseph Medeiros, 133 Plymouth Boulevard

Chairman Graham called the hearing to order at 8:35 PM with the reading of the Public Hearing Notice and stated that if anyone wished to speak on this petition, to give their name and address for the record.

Mr. Mendes was present with his wife, Sara Mendes. Mr. Mendes gave the Board a history of the business (how he began working with his father and eventually taking over when his father passed) and the reason for his request to have a Class II License in addition to his Repair License.

Mr. Mendes stated his business is basically by word of mouth, and his repair vehicles are off the property as soon as they are repaired. Between the two licenses, he would like to have ten vehicles (five for repair and five for sales). Mr. Mendes stated he keeps his property very neat and clean. Mr. Mendes explained this business is his primary source of income and he is trying to be proactive by obtaining a Class II as an additional income due to his physical limitations caused by a vehicle accident.

Mr. Simmons questioned the two garages on the property. Mr. Mendes stated the property is one large piece (he owns both lots) located on a corner lot (Plymouth Boulevard and West Normandin Street). The garage in the front of the property is the service garage, the garage located in the back is his personal garage for all of his vehicles, etc.

Mr. Coutinho asked if this was Mr. Mendes primary source of income, his full-time job. Mr. Mendes stated yes. Mr. Coutinho stated his concern in reviewing the records, is that this is a residential/agricultural district, so businesses unless they existed before zoning affected that area, which could be anywhere from 1950-1970, would not be legal under the current day; however, there is a letter from 1983, when your father (Joseph Mendes) owned the property, from Vernon Whitehead, who was the Building Inspector at that time. Mr. Coutinho said in the letter, Mr. Whitehead states that evidence presented indicated a prior non-conforming use as a part-time, sporadic auto repair garage. Mr. Whitehead's opinion also stated that Mr. Mendes has a right to conduct the part-time, sporadic garage repair business but if Mr. Mendes intended to expand this business on a full-time basis, he would have to apply to the Board of Appeals for a Special Permit to expand. Mr. Coutinho asked if there is any record of any such application to the Board of Appeals. Mr. Mendes stated he did not have any. Mr. Mendes stated the Assessor's records has him listed as mixed-use. Mr. Coutinho referred to a letter dated June 2017 from the current Zoning Enforcement Officer Ralph Souza, which indicates there is a repair license limited to one vehicle, an engineered parking plan dated 2016, and that the pre-existing, non-conforming structure/use may be altered with a Finding by the Board of Appeals. Mr. Coutinho stated the Board has to satisfy the fact that the applicant has a legal, non-conforming use on the property right now and unless the applicant can present an approved appeal going from part-time to full-time, that is the bridge this Board has to cross.

Mr. Coutinho stated that Mr. Souza mentioned a lift in his letter; where is the lift located. Mr. Mendes stated he has two lifts, which are located inside of the front garage. Mr. Coutinho stated that Mr. Souza in remarking about the two lifts, stated that the intent was to conduct a commercial business; which is not definitive, so we need to establish what the legal non-conforming use is. Mr. Menard stated the opinion

from Mr. Whitehead stated he has a right to conduct the part-time, sporadic garage repair business, so that identifies the business. Mr. Coutinho stated now we have to see if allowing a full-time repair business with car sales would be more detrimental than a part-time, sporadic business; for which Mr. Mendes is saying full-time has become a necessity for him.

At this time, Mr. Mendes explained his plan to the Board, showing where parking would be. Mr. Souza said in his opinion, it is a pre-existing condition. Mr. Souza stated he and Lt. Holden perform inspections for the Board of Selectmen and this garage was inspected and it did pass. Mr. Souza stated that Mr. Mendes is kind of incognito, he is not trying to be an “in your face” type of business and he did not want signs posted but because of the laws, the name and hours of the business has to be posted. Mr. Souza stated Mr. Mendes' sign is approved.

Mr. Coutinho asked which garage was built in 2010. Mr. Mendes stated the garage in the back, which is for his personal use only – no business. Mr. Souza stated he did an annual inspection and there was no commercial use of the back garage, it was not part of his business.

Mr. Menard asked if there were any plans for any additional signage or lights. Mr. Mendes stated no, he would just be adding the words “auto sales” on his sign. Mr. Mendes stated there is only one light over the garage.

At this time, Mr. Graham reviewed four letters of support received from abutters: Cheryl Michel, 125 Plymouth Boulevard – Danielle Valcourt, Rochelle Street – Maurice Tremblay, 115 Plymouth Boulevard – Gregory & Mona Mello, 134 Plymouth Boulevard.

Mr. Menard asked how Mr. Mendes planned to accommodate the parking for repairs, sales and customers. Mr. Mendes stated he has plenty of room on the property and he is only looking for five spaces for sales and five for repair. Mr. Souza stated the engineered plan shows he has more than enough spaces to accommodate his request; he actually has excess.

At this time, Mr. Graham recognized abutters attending the hearing and called for any comments.

Mr. Pavlis, 129 Plymouth Boulevard stated he purchased his property in 1994. Richard Mendes was with his father before he passed away; now, Richard is there five, six days a week, full-time. Mr. Pavlis stated he has no problem with what he is trying to do because he is a very decent man and very clean and he just built a nice building. Mr. Pavlis stated he has no problem with this request.

Mr. Reis, 126 Plymouth Boulevard stated he has lived here for 30 years and knew Mr. Mendes' father, who was a full-time mechanic in Newport; this was only a part-time business; since his father has passed away, there is cars every place, he has put up a big addition on the garage and filled that with cars. Mr. Reis stated that people are dropping off and picking up cars all hours of the night. Mr. Reis stated Mr. Mendes wants to expand the business even more and with living across the street from this, his own property won't be worth selling. Mr. Reis stated he faces this property. Mr. Reis stated he has surveillance cameras because he is afraid with all the people coming and going. Mrs. Mendes, 660 Highland Avenue stated that most of the time, Mr. Reis has more cars in his driveway than we have in the shop. Mr. Mendes stated his mother lives on the property and does have friends over, it is not all repair vehicles.

Richard Simonin, 157-159-160 Plymouth Boulevard stated he has lived there for 50 years and Mr. Mendes has been a great neighbor; the property is spotless.

Joseph Medeiros, 133 Plymouth Boulevard stated Mr. Mendes fixes cars, he is an honest mechanic. There is no more than two cars there all day long; he fixes them and they are picked up. Mr. Mendes has been a great neighbor; and this area will not change with his request. Mr. Medeiros stated most of these car sales will be done through the internet.

Mr. Menard questioned the number of parking spaces required. Mr. Souza stated more than likely, the spaces are maxed out on the engineered parking plan but Mr. Mendes is not asking to utilize all the spaces and he will have to go to the Planning Board for site plan approval because there is nothing on record for this property.

Mr. Coutinho reminded everyone, that if this Board allows this, and a year from now, Mr. Mendes wants to sell the property, the new owners will have the right to do what has been allowed for Mr. Mendes. Mr. Mendes stated he has no intention on selling. Mr. Coutinho reminded everyone that zoning is to the land not the person so care must be taken in crafting the decision.

Mr. Graham called for any more input. None was received.

9:10 PM

Motion made by Mr. Simmons to close the hearing. Second by Mr. Menard. The Board voted unanimously in favor.

Discussion

Mr. Coutinho stated we should look at this and place conditions dealing with no towing, signage, parking, lights, buffer area (arborvitaes). Mr. Menard agreed that this should be managed as a residential area that happens to have a small business on it. Mr. Borden asked if increasing the number of vehicles on the license would be going against what the Selectmen granted. Mr. Coutinho stated no, when he applies to the Selectmen, they will make that decision; these are two separate areas (Zoning and Selectmen licensing) and each has their own rules. Mr. Graham asked if part of the decision should reference the stamped plan. Mr. Coutinho stated no, it is part of the presentation only but will be placed in the permanent file; but we can set conditions. Discussion ensued.

Vote taken by Graham, Coutinho, Lambert, Simmons, Menard

Motion made by Mr. Coutinho that the Board finds that the addition of a Class II Dealers License will not be substantially more detrimental than the pre-existing non-conforming uses to the neighborhood with the following conditions:

1. Hours of operation will be Monday to Saturday 7AM to 5PM – No Sundays;
2. Not to exceed 15 parking spaces for the business;
3. Lighting is to be in a downward position;
4. Signage – there will be no flashing or steady lighting; no banners or flags, etc.
5. Class II Auto Sales and Repair signs will be limited to 6 sq.ft. each;
6. A vegetated buffer (possible arborvitaes) on both sides of the entrance on Plymouth Boulevard;
7. This request must go before the Planning Board for site plan approval, at which time lights, signage and buffered area will be properly addressed;
8. Repairs are restricted to the garage closest to Plymouth Boulevard (same garage that houses the lifts); and
9. No continuous, major repairs are to be conducted outside of the garage.

Second by Mr. Simmons. The Board voted unanimously in favor.

The hearing is concluded at 9:48 PM.

Action Items – None.

Correspondence – None.

Other business – None.

Approval of Minutes

1. **Motion** made by Mr. Simmons to approve the Regular Meeting Minutes of June 21, 2017. Second by Ms. Lambert. The Board voted unanimously in favor.

Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting – None.

9:50PM

Motion made by Mr. Simmons to adjourn the Zoning Board of Appeals Meeting. Second by Ms. Lambert. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,
Diane Pelland, Principle Clerk
to the Zoning Board of Appeals

APPROVED: Christopher Graham, Chairman