

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
JULY 12, 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: 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.**

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

Chairman Graham called the hearing to order at 7:00 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.

Attorney Corey stated as part of the packet tonight, there are several submissions made on behalf of the applicant. Attorney Corey stated the property was established in 1897, the records of the Town of Westport indicate that there was a structure on the property (known as the house) as early as 1921. This home ultimately served a double purpose as a store and a house. There was an additional structure on the property labeled as a barn, which according to the Assessor's records was taken down in 1935. The structures that were on the property pre-existed zoning, which took effect by Town Meeting vote in 1957. The size of the property is 10,706 sq.ft. with approximately 54ft. of frontage. Attorney Corey stated that in 2004, the property benefited from a Finding by the Westport Board of Health allowing for the repair of a non-conforming septic system for a single family home, due to the size of the lot, the future use of the home was limited to a one-bedroom unit by covenant and deed with DEP. The property can never be used for more than a one-bedroom home. Attorney Corey stated in the submitted documents, there is a plan that shows the proposed dwelling would be approximately 22ft. wide by 30ft. long. Attorney Corey presented the plans from the Board of Health showing the dimensions of the dwelling in 2004. Mr. Graham questioned the footprint of the proposed house. Attorney Corey stated it is approximately the same footprint size that existed. Attorney Corey stated this is not a two-story structure at this time. Attorney Corey stated the hope is that upon renovation, it will be a two-story. Attorney Corey stated the property at this point has been unused, waiting for renovation; although it has been unused and is

overgrown, it has never been abandoned. Mr. Graham asked when the last time the property was inhabited. Attorney Corey stated prior to 2002. Attorney Corey stated that by the pictures in the file, it is clear that it has not been inhabited or cleared in the past several years. Attorney Corey stated this was a family property and the owner was initially going to be moving into the property and renovating the house but due to financial reasons, did not do so at that time. Attorney Corey stated the property has been in the same extended family since 1963 and it came to my client in 2002. Attorney Corey stated the property in question was originally utilized by members of both families at that time, for both residential and commercial use and eventually slipped into weekend use.

Attorney Corey stated the issue before the Board tonight is a Request for Determination, which was requested from the Zoning Enforcement Officer but was not answered in a timely manner that it should have been. Attorney Corey stated that eventually, the file shows another and final decision from the ZEO, after this application was filed for a variance and/or determination, simply stating it can't be built upon because the property is not 20,000 sq.ft. Attorney Corey stated there is a pre-existing structure that the applicant hopes to rehabilitate and renovate based upon the allowances granted in the Westport Town Bylaws. Attorney Corey stated again, the property and the use of the property has never been specifically abandoned; throughout this period of time, the septic plan has been renewed, it was renewed again in 2014. Attorney Corey stated the property can only be determined to be abandoned, if the applicant has determined or made a determination that they no longer wish to utilize the property in the manner that it was intended.

Attorney Corey stated that Town Counsel has stated that pre-existing, non-conforming structures and uses may be extended or altered provided that no such extension or alteration shall be permitted unless there is a filing and the Board finds that it is not more detrimental than the existing non-conforming use to the neighborhood. Mr. Coutinho questioned Attorney Corey as to what he was reading from. Attorney Corey stated he was reading from an email from Town Counsel and continued to review the email. Attorney Corey stated the proposed renovation will not be substantially more detrimental and, if allowed, would actually be an asset to the neighborhood by bringing the property more into conformity. Attorney Corey stated the structure has fallen into disrepair and needs to be renovated. It is not subject to condemnation action by the Board of Health and is not the subject of any legal proceeds to take or condemn by the Town of Westport due to its state of disuse.

Attorney Corey stated his client has stated in his application, he has not abandoned his intent to use the non-conforming dwelling as a single-family dwelling. Attorney Corey reviewed litigation cases such as the Dalbec case, that dealt with 4,000 sq.ft., or more, lots in which the courts ruled in favor of the applicant for exemptions under Article 7.0. Attorney Corey stated the Court noticed the Town that 7.0 could be modified, but as of today, it has not been so the grandfathered rights stand. Attorney Corey stated his client was not looking for the full use of this property (commercial and residential) but simply stating the use was available at the time before zoning was passed in 1957. Attorney Corey stated so it has been shown under case law, that the allowances are there. Attorney Corey stated the neighborhood has experienced many changes over time and this proposal will be an improvement. Attorney Corey continued to review various decisions from land court. Attorney Corey stated that abandonment requires the intent to abandon and voluntarily conduct affirmative actions that carry out the implication of abandonment (MA Appeals court in 2016 – Wareham). Clearly, there was no intent to abandon and the Board of Health approved a one-bedroom septic system. In the past three years, money, time and effort on engineering fees, legal fees and application fees have been spent to bring or to gain the right to bring this property to use as a one-bedroom home. Regarding Town Counsel's opinion, this was not on a recorded plan of land but issued in a deed from 1897 and there is a clear chain of ownership in the Assessor's records.

Attorney Corey stated the Zoning Enforcement Officer failed to issue his opinion on this matter and issue a decision in a timely manner, so all testimony from the ZEO should not be taken in his official capacity but only as an interested party or a party subject to an order to provide testimony and/or evidence during

this meeting. The ZEO's ability to provide testimony and evidence at this hearing was prior to this hearing and prior to the three months that a request for determination was asked for. Attorney Corey stated if the Board were to decide solely on the decision that was rendered, he stated the fact that the lot is not 20,000 sq.ft. or more; it is irrelevant as it had a structure placed upon it prior to zoning.

Attorney Corey stated he was asking the Board to find that the property itself, although not conforming under current zoning at 10,706 sq.ft., has a structure on it and that the pre-existing nonconforming structures/uses maybe altered provided that there is a Finding by the Board that such alteration shall not be substantially more detrimental than the pre-existing non-conforming use to the neighborhood; that in light of that decision, rehabilitation, re-use and renovation of the structure in comportment with it's status as a pre-existing non-conforming structure be found; and the Administrative Decision of the Zoning Enforcement Officer be discounted and the Finding be entered. Attorney Corey stated in the alternative, he would state that grounds for a variance exist. Attorney Corey stated that if for some reason, the Board feels that adequate evidence exists of abandonment of the non-conforming uses, which has been issued by the Zoning Enforcement Officer, that a variance in the multi-prong test for a variance has been satisfied. Attorney Corey stated the nature of this land and unavailability of other land to bring it more to a conforming use creates hardship, the prior use of the property and the intent to use it as a single-family one-bedroom home conforms to the neighborhood and that it would not be a hardship or a more detrimental impact to the neighborhood through the use of the property which has the existing structure as a single-family home. Attorney Corey asked the Board to act favorably on this application and follow the advice of Town Counsel and the information that has been provided.

Mr. Simmons asked how much of the structure is still standing. Attorney Corey stated not much, the current home has a footprint similar to the one being shown in the pictures. Attorney Corey stated the addition is for a second floor, where the bedrooms will be placed.

Mr. Coutinho asked for clarification from Attorney Corey relating to not allowing the Zoning Enforcement Officer to testify and treating him as a resident due to a non-response within a certain amount of time. Mr. Coutinho also stated there is a lot of paperwork to be reviewed with this petition but the one thing he did not see was a building permit application. Attorney Corey stated that after back and forth with the ZEO, a letter was finally issued, which he read aloud to the Board. Mr. Coutinho asked again, was a building permit ever applied for. Attorney Corey stated no, the first step is to get a letter of determination. Mr. Graham stated a building permit was never denied. Attorney Corey stated there was no application just a request for determination. Mr. Coutinho asked again, if a legal request was written and submitted to the ZEO. Attorney Corey stated this letter was issued April 5, 2017; we gave the ZEO well over 3 months to respond. Discussion ensued with Attorney Corey explaining what had transpired with the ZEO. Mr. Coutinho stated he had never heard of an allowance of three months for a determination. Attorney Corey stated this request has dragged on with extensions by the ZEO. Mr. Coutinho again asked, what was the date of the first formal request that started this. Attorney Corey stated there was a formal request in June 2016 in writing that is different from the April 2017 request, which is the last request. Discussion ensued. Mr. Coutinho stated he was trying to determine the legality of Attorney Corey's request against the ZEO speaking at this hearing. Attorney Corey stated it is within the Board's purview to take whatever testimony they wish; this was only his personal request. Discussion ensued regarding input being received from ZEO Souza.

Mr. Graham asked Mr. Souza what the current value of the structure was. Mr. Souza stated there is no value; it is falling in on itself. A new building will have to be in full compliance and as for zoning, he could allow some grandfathering. The property is overgrown so he can't determine the setbacks.

Mr. Coutinho asked what the preference of Attorney Corey's client was, is it to renovate or demolish and build. Attorney Corey stated there is no preference; look at Town Counsel's opinion (4.1.3), it could be built and be more conforming. Discussion again ensued.

Ms. Williams stated she has resided in her home for the past 28½ years and no one has ever lived there. Ms. Williams stated a new construction is not allowed to have variances from the Board of Health. There has been a lot of back and forth with the DEP on this property; a variance was granted on a septic that does not exist. She would also ask that the Board review Town Counsel's entire opinion, not just the parts that Attorney Corey is pointing out.

Mr. Williams asked if the footprint is moved, would that be new construction. Mr. Souza stated the building would have to conform to present day building code and a definitive plan of existing and proposed would have to be submitted. Mr. Williams stated he has been living at his residence since 1989, this used to be a garden and he used to leave his hose on the fence so Mr. Sousa's father could water it because they had no water. Since his father passed away, the property has been neglected and no money has been put into that property.

Mr. Coutinho again stated, this is another example of where a weak bylaw for abandonment comes into play. We have been advised many times and the Planning Board has been advised many times to do something about it because under the current bylaw, the courts will consistently determine that unless you show intent to abandon, you got to forget it, as opposed to discontinuance, which is a different thing.

Mr. Coutinho asked Ms. Williams, right now you are living in a property near this deteriorated building and property, you say you are maintaining it so it looks pretty and it does not deteriorate further. Ms. Williams stated it grows towards our yard so we have to trim stuff down. Mr. Coutinho stated his question is, why would you not want to have this building fixed and looking nice and not devalue your property. Ms. Williams stated because it has been abandoned for so long and there is no septic there. Mr. Williams stated where will the rodents go when they knock that down. Mr. Sousa stated that has already been taken care of. Mr. Foster stated that one building has already collapsed on itself. Ms. Williams suggested that the whole Board go out and view the property.

Mr. Coutinho stated in all fairness to the Board, there is a lot of material to be reviewed. Attorney Corey stated he disagrees with parts of Town Counsel's opinion and explained why. Discussion again ensued.

Ms. Lambert stated she would like the opportunity for a site visit and time to review the material.

**Motion** made by Mr. Coutinho to conduct a site visit on Saturday, August 5, 2017 at 9:00 AM at 194 Sanford Road. Second by Mr. Simmons. The Board voted unanimously in favor.

#### **8:15PM**

**Motion** made by Mr. Coutinho to continue the hearing to Wednesday, August 9, 2017 at 7:00 PM. Second by Mr. Simmons. The Board voted unanimously in favor.

The hearing is concluded at 8:15PM.

**Action Items** – None.

**Correspondence** – None.

**Other business** – None.

#### **Approval of Minutes**

1. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of November 30, 2016. Second by Mr. Simmons. The Board voted 5 in favor, 1-abstention (Borden).
2. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of January 11, 2017. Second by Mr. Simmons. The Board voted 5 in favor, 1-abstention (Borden).
3. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of February 1, 2017. Second by Ms. Lambert. The Board voted 4 in favor, 2-abstentions (Graham, Simmons).

4. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of February 15, 2017. Second by Mr. Menard. The Board voted 5 in favor, 1-abstention (Simmons).
5. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of March 1, 2017. Second by Mr. Menard. The Board voted 4 in favor, 2-abstentions (Simmons, Lambert).
6. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of April 5, 2017. Second by Ms. Lambert. The Board voted 5 in favor, 1-abstention (Menard).
7. **Motion** made by Mr. Simmons to approve the Regular Meeting Minutes of April 19, 2017. Second by Mr. Menard. The Board voted unanimously in favor.

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

**8:30PM**

**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