

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
APRIL 19, 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 7:02 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.

**Gerald S. & Vivian C. Coutinho – RE: Continued Hearing - Petitioner is seeking a Finding to amend, change, alter and/or delete the special permit(s) of August 22, 1984 and May 01, 1992 and May 27, 1992 and November 23, 1992. The property is located at 4 Main Road, Westport, MA and shown on Assessor's Map 51, Lot 8.**

Members Present: Graham, Simmons, Lambert, Menard and Borden  
Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer  
Gerald S. Coutinho, petitioner  
Abutters Present: Terri S. Babcock, 12 Main Road  
Debra J. Silvia, 22 Main Road

Chairman Graham called the continued hearing to order at 7:03 PM with the reading of the Public Hearing Notice and asked that if anyone wished to speak on this petition, to state their name and address for the record.

Mr. Coutinho stated at the last hearing, there was a question of the legal position of the Board; a legal opinion dated April 17, 2017 has been received from Town Counsel which basically reiterates what was stated at the last meeting, that when these Findings were made from the various years to the non-conforming use which would not be substantially more detrimental to the neighborhood, and the Board, at that time, had put the decision under a Special Permit. Mr. Coutinho stated, as all know, he has been involved in the ZBA for many years but was not a member of the Board at the time of the 1984 application. Mr. Coutinho stated almost never has the ZBA made these decisions personal to the applicant. Mr. Coutinho stated therefore, he would like to have the “personal” part removed. Mr. Coutinho stated he wanted to be very clear, he was not here to contest against the Special Permit, he was only here to request that it not be made “personal” to his wife and him.

At this time, the legal opinion was reviewed by the Board and the applicant. Mr. Coutinho noted that the courts have held all along, that zoning is related to the land and not to a person. Mr. Coutinho also noted that Town Counsel opined that the Board has the right to grant the requested relief. Mr. Graham asked Mr. Coutinho if he would be opposed to a periodic review if the “personal” is removed. Mr. Graham stated he did not think that would be legal to do according to Town Counsel. Ms. Lambert asked will we back here with someone else if we impose that condition. Mr. Coutinho stated we could be back here with Mr. Coutinho or the new owners. Ms. Lambert asked would someone be looking to overturn our decision. Mr. Menard stated if the property was sold and the businesses on the approved list stayed the

same, there should be no problem; but if the businesses changed, it would have to come back to this Board whether a new owner or the present owner; and it would have to go before any other Boards that would have to be involved. Ms. Lambert questioned whether the approved uses could be grandfathered and then if there was any future change of use would have to come back before the Board. Mr. Graham stated that a lot of the approved uses would have to be reviewed by other Boards; the issue the Board is looking at is the removal of the “personal”. Ms. Lambert stated this is not the first time this Board has issued a Special Permit specific to a person. Mr. Coutinho stated yes, it has been done a couple of times but the Attorney has opined that it was done in error and it is too late to appeal that decision but the Board may entertain and allow a request for relief. Mr. Coutinho stated he understood that if the Board denied this, he could not appeal the decision to a court.

Ms. Babcock stated that many years ago, when these findings were done, she should have attended the hearings, complaining more; the list of uses has expanded. Ms. Babcock again stated she lives right next door and she does not know who will be coming in. Mr. Coutinho stated that many on the list of approved uses would have to go through other boards; our only issue is have the “personal” being removed. Ms. Babcock stated she is concerned for her neighborhood; presently, she has no issues with the hours but she is worried about the future. Ms. Babcock stated any business on that list could come in and not have to come before this Board. Mr. Souza stated if an applicant were to go before him, he could possibly deny the application and be sent to the ZBA.

Ms. Silvia stated she was concerned about the late hours, a drive-thru window and someone purchasing the property that does not live in Town. Ms. Silvia stated she has lived in her home since 1983 with no problems; she wants to keep the neighborhood the way it is.

**Motion** made by Ms. Lambert to close the hearing at 7:30 PM. Second by Mr. Simmons. The Board voted unanimously in favor.

Discussion by the Board ensued.

Mr. Menard stated the legal opinion has shed a lot of light on this matter, which shows it is particular to the land and not the person; change is inevitable and something with that land will change; we have enough controls on this, so it is not detrimental to the neighborhood; the Board just has to plan and manage it, like what would be done with approving, managing and controlling any other business. Mr. Menard stated the Board just has to make sure it does not become detrimental. Ms. Lambert asked Mr. Coutinho if there were any residence on the property presently; Mr. Coutinho stated yes, there is an apartment upstairs.

Vote taken.

**Motion** made by Mr. Menard to approve the request of the Special Permit by removing the names (Gerald S. and Vivian C. Coutinho) on all previous decisions particularly those dated August 22, 1984, May 01, 1992, May 27, 1992 and November 23, 1992 and to remove from those particular decisions, wherever noted, the following “will expire when such persons are no longer responsible for the operations of these premises” and with the Board noting, that the zoning is particular to the use of the land and not individuals. Second by Mr. Simmons.

The Board voted unanimously in favor.

The hearing is closed at 7:33 PM.

**Brian Tomlinson – RE: An application request for a variance from Zoning Bylaws, Article 7.6.2 for side yard setbacks for the proposed construction of a two level detached garage. The property is located at 133 Pettey Lane, Westport, MA and is shown on Assessor's Map 73, Lot 19.**

Members Present: Graham, Coutinho, Simmons, Menard and Borden

Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer  
Brian Tomlinson, petitioner

Abutters Present: Roseanne Somerson, 111 Pettey Lane

Chairman Graham opened the hearing at 7:30 PM with the reading of the Public Hearing Notice and asked that if anyone wished to speak on this petition, to state their name and address for the record.

Due to Ms. Lambert having to leave the meeting, Mr. Coutinho had to sit on this hearing. Mr. Coutinho stated for the record, Mr. Tomlinson is one of his neighbors. Mr. Coutinho stated he can't see his house but he is in the area. Mr. Coutinho disclosed he does not have any financial or other interest in the outcome of this hearing.

Mr. Tomlinson presented a packet of pictures to the Board. Mr. Tomlinson stated his property is a uniquely "L" shaped lot with the portion of the bottom "L" running north and south and it is roughly 30ft x 120ft long and it is a challenge to do anything on this lot. Mr. Tomlinson stated he is proposing to build a garage (24ft wide x 30ft deep). The northerly neighbor is approximately 200 ft. away from the proposed garage and the easterly neighbor is approximately 80 ft. away. This area is a heavy wooded thicket. Mr. Tomlinson stated he needs the storage space. Mr. Tomlinson stated he contemplated building two sheds (10ft x 20ft) which would give him 400 sq.ft. but this more efficient garage would give him 720sq.ft. and it would not look like chicken coops.

Mr. Graham questioned a cleared out area at the end of the stone driveway. Mr. Tomlinson stated a spot has been cleared out of all the solid woody vegetation in order to have a place to store his boat; hopefully, that is where he would like to place the garage.

Discussion ensued regarding the guy-wire and electrical pole.

Mr. Simmons questioned a well shown in the pictures. Mr. Tomlinson stated that it was his well and it is located on his property.

Mr. Tomlinson stated he has a unique situation where his lot climbs up with a 30ft high to a low topography variance. Mr. Tomlinson stated his hardship is due to the shape and topography of the proposed garage area. Mr. Tomlinson stated he will not be blocking anyone's view, the surrounding area is extreme vegetation, the location will not infringe upon the immediate abutters and the design of the garage will be consistent with the neighborhood.

Mr. Menard questioned why two stories. Mr. Tomlinson stated his contractor said I could have storage space up high without adding cost. The peak of the garage won't change, basically he is just adding dormers. Discussion ensued.

Mr. Coutinho asked what is the width of the land jog; Mr. Tomlinson stated 30ft. Mr. Coutinho stated Mr. Tomlinson wants to put a garage with a 24ft width (2-car garage) which is not unreasonable; to make use of the area would either be the 10ft wide chicken coop arrangement or a reasonable looking garage. Mr. Coutinho stated with the area being only 30ft wide, you will need some kind of variance to put a structure there other than a shed.

Mr. Souza stated he was denied basically due to the setbacks; the only other question he would have is the use of the second floor. Mr. Tomlinson stated it was for storage only.

Mr. Graham asked if a non-permanent structure could be constructed there. Mr. Souza stated a non-permanent would be a 400sq.ft. structure but the structure still has to meet the setbacks. Mr. Souza stated no matter if a structure needs a permit or not, it still has to meet the setbacks. Mr. Souza stated that anything 400sq.ft. and under does not require a permit but it does have to meet setbacks.

Mr. Graham called for any public comment.

Roseanne Somerson, 111 Pettey Lane asked what is the point of the setbacks if someone can build within two feet of my land; also, the whole area is wetlands and was recently marked out. Ms. Somerson stated that she was just trying to build a path but because of the wetlands, she had to go through Conservation, so she is wondering about that wetlands piece and lastly, when she looks out at her property all she sees is woodlands and nature but with a two-story garage within two feet of her property the views and maybe the value of her property will change. Ms. Somerson stated she is sympathetic in wanting to assist a neighbor but the setbacks are for a reason. Ms. Somerson asked to look at the pictures and the plans.

Mr. Graham stated in response to the setback question, the setbacks are addressed under the Zoning Bylaws and this Board is allowed to grant relief. As for the wetlands issue, that is the jurisdiction of the Conservation Commission. Mr. Souza stated the applicant will have to go to Conservation to get approval. Ms. Somerson stated she was told there is a 200ft setback from the wetlands and that the houses that are there now are grandfathered. Mr. Coutinho stated the only 200ft setback is from the river and that is Conservation, that 200ft has nothing to do with zoning. Mr. Tomlinson stated his proposed garage is well in excess of 200ft from the river. Mr. Tomlinson stated as for her view, the garage is located almost directly between our two houses, so he did not see where the view would be disrupted. Discussion ensued. Mr. Coutinho suggested that if there was any question on the view, he would suggest an onsite. Ms. Somerson asked why this was rejected before and is now in appeal. Mr. Graham stated the building permit was denied due to the side setbacks. Discussion again ensued regarding the side setback and view of the abutter.

Mr. Souza stated if this variance is approved, he will issue the building permit.

Mr. Coutinho stated to Mr. Tomlinson, in the application you are requesting a 9ft variance on the west side; is there any reason why you don't centered the garage on the property. Mr. Tomlinson stated it does not really matter; he was trying to center it with the road due to the pole being there.

Mr. Coutinho stated for the purposes of maintaining your property, 2ft may be a problem; it maybe in your best interest to make the variances 3ft and 3ft. Mr. Tomlinson stated he was amenable to any suggestion.

Mr. Tomlinson stated he did speak with his neighbor Mr. Mayall, a while ago on his proposal and he did not have any problems with this. Mr. Graham stated Mr. Mayall was notified as an abutter.

Mr. Coutinho asked if the Board had established a hardship. Mr. Graham stated yes, due to the shape and topography of the property.

### **8:00 PM**

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

### **Discussion by the Board:**

Mr. Menard stated he thought this was a large structure on a small piece of property and bringing it down to 2ft is stretching it and will be hard to maintain (whereas we require 10ft). This could affect the value of two properties. This is a large variance.

Mr. Coutinho stated he has the advantage of living there and seeing this property so perhaps an onsite would give the Board members the flavor of it. In concept, he agrees it is a large structure but there is also the topography. Mr. Coutinho stated he would not want it to be a detriment to the Somerson's house either but he is not certain without actually being there and observing it, that it would be a detriment. Mr. Simmons stated he agreed with Mr. Coutinho.

**Motion** made by Mr. Coutinho to hold an onsite visit for 133 Pettey Lane on Saturday, April 29, 2017 at 9:00 AM. Second by Mr. Simmons. The Board voted unanimously in favor.

**Motion** made by Mr. Coutinho to continue this hearing to Wednesday, May 17, 2017 at 7:00 PM in the Town Hall. Second by Mr. Simmons. The Board voted unanimously in favor.  
Matter is concluded at 8:10PM.

**Action Items** – None.

**Correspondence** – None.

**Other business** – None.

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

**Approval of Minutes** – None.

**8:11 PM**

**Motion** made by Mr. Menard to adjourn the meeting. Second by Mr. Simmons. The Board voted unanimously in favor.

**Adjournment.**

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

APPROVED: Christopher Graham, Chairman