

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
APRIL 05, 2017**

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

Chairman Graham called the Zoning Board of Appeals meeting to order at 7:10 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.

Shawn Borges – RE: Continued hearing of applicant is seeking an Administrative Appeal of the Zoning Enforcement Officer's determination of abandonment under Zoning Bylaw Article 4.1.1; the applicant is requesting that the continued use of the property for residential/commercial and open space be affirmed by the Zoning Board of Appeals. Applicant is also requesting that a Special Permit under Zoning Bylaw 8.3.3B be issued allowing the use of the property, with a finding that it conforms with the requirements of the Aquifer Protection District. The property is located at 41 Jiggs Street and shown on Assessor's Map 7, Lots 98-105 and 106-108.

Members Present: Graham, Coutinho, Simmons, Lambert, Borden
Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer
Attorney Brian Corey, representing the petitioner
Shawn Borges, petitioner
Connie Torres, 45 Pine Street, abutter

Chairman Graham called the hearing to order at 7:11 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.

Attorney Corey stated subsequent to the last meeting, an affidavit from William Baraby of Baraby Electric, showing continuous use, with a copy of the deed from the Giguere's to Shawn Borges, has been filed with the Building Inspector and recorded at the Registry of Deeds.

Mr. Souza stated that a check of records with the Registry of Deeds showed the property was sold in 2015, so there was no break of use on this property; therefore, Mr. Souza stated he was rescinding his denial because the use of the property was not abandoned for more than four years.

Attorney Corey stated that based on testimony from Mr. Souza, he would respectfully request a positive finding by the Board for the use on that property.

Motion made by Mr. Coutinho to approve of the applicant's petition because it is an allowed use and can continue. Second by Ms. Lambert. The Board voted unanimously in favor.
The hearing is closed at 7:20PM.

Angela E. Nanni – RE: Petitioner is seeking a Finding by the Zoning Board of Appeals under Article 4.1.3. Petitioner wants to demolish and remove an existing one level, 768 sq.ft. dwelling and replace with a two level, 1,660 sq.ft. single family dwelling on an undersized, non-conforming, pre-existing lot; new residence will conform to all requirements for lot coverage, front, side and rear setbacks and building height. The property is located at 246 Howland Road and shown on Assessor's Map 88, Lot 150.

Members Present: Graham, Coutinho, Simmons, Lambert and Borden
Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer
Chris Wise, Architect for the petitioner
Attorney Richard E. Burke, Jr., representing the petitioner
Attorney Arthur DiSantis, representing Dan Kraft, abutter

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. Mr. Wise presented the proposal to the Board stating his client is proposing to do what others in the area have done, which is to replace a small existing cottage with a larger year round house. Mr. Wise stated the site plan shows in pink the outline of the existing house and deck, and the black line outlines the house his client is proposing to build. Mr. Wise stated there is a little confusion in the notice that was issued about the square footage of the house. Mr. Wise stated 1,660 sq.ft. is the footprint of the house, which is the only number we provided in terms of square footage in our application. Mr. Wise stated at 1,660 sq.ft., it is less than 20% of the lot size. Mr. Wise stated the actual habitable living space is 2,742 sq.ft.; there are two main stories and a loft space in the attic space, an unfinished basement with a walk-out and high windows that could not be used for a bedroom, that is not counted in the habitable square footage of the house. Mr. Wise presented plans and explained them. Mr. Wise stated presently, the house has a four-bedroom septic system, which was approved in 1998 and installed in 1999. Mr. Wise stated because the proposed house is somewhat larger than the existing house, in order to achieve proper setbacks, the septic is going to be modified again still as a four-bedroom septic system. Mr. Wise stated that plan was before the Board of Health back in the Fall of 2015 and approved. Mr. Wise stated Mr. Potter, who designed and will be installing the system was present tonight if the Board had any questions. Mr. Wise stated this is a non-conforming lot at only 9,100 sq.ft., whereas the bylaw requires 60,000 sq.ft. Mr. Wise stated his client is looking for approval from the Board to put a larger house on the lot. He stated this proposal meets all setback requirements for front, side, rear and setback requirements for the septic system and it meets the building height requirement. Mr. Wise stated he has met with Mr. Souza and Mr. Souza agrees that it does meet building height because under the bylaw, the height is measured from the average existing grade from the four corners of the lot, which we have measured and it comes out to about 40 ft. from that elevation. He stated because the house will have a larger area on the ground, in order to control runoff, dry wells will be installed for all the roof water; currently the roof water just runs onto the ground, so this way, it will be less runoff. The second floor will have a living room, great room and a den (which could be used as a fourth bedroom) and a deck will be 1,190 sq.ft., the first floor will have the entry, three bedrooms and garage for a total of 1,253 sq.ft. and the top level which has a loft space and small deck will be overlooking the great room. Mr. Wise stated this is a simple New England style Cape Cod home, which will have no impact on the neighborhood, it will be very similar to the other houses on the block and is very much in scale.

Mr. Coutinho asked what is the square footage of the unfinished basement. Mr. Wise stated he did not know, but would imagine it was very close to the size of the first floor. Mr. Coutinho stated it was indicated that the footprint was 1,660 sq.ft., now how does that differ from the first floor. Mr. Wise stated the garage and porch, which is not heated space.

Mr. Graham asked how many bedrooms were in the home presently. Mr. Wise stated two but the septic system has been designed for four. Mr. Graham stated the system was redesigned for four; Mr. Wise stated yes. Mr. Coutinho asked if the re-design of the re-design is still for four; Mr. Wise stated yes, it was approved and has been there since 1999 in anticipation of this project, it will be modified but will

still be a four-bedroom system there will be no change in size. Mr. Coutinho asked if this was in a flood plain; Mr. Wise stated no it was no where near the flood plain. Mr. Coutinho asked if there was anything preventing the walk-out basement from becoming finished habitable space. Mr. Wise stated no. Mr. Coutinho asked if the applicant would mind if that were to be made a condition. Mr. Wise stated he did not know, he would let the attorney answer that.

Mr. Simmons stated the proposal is to replace a one level home with a two level home. Mr. Wise stated it is a 2 ½ story house with two main levels, the basement is not a story because it is more than 50% below grade, and less than a ½ of a story in the attic space which meets the zoning bylaw. Mr. Souza stated this will be sitting on a 9,000 sq.ft. lot and in my opinion, this is a substantially larger house than what is presently there but the bylaw allows this. Mr. Souza stated there are plenty of 2.5 storied houses in this Town, because of a bylaw that has never been cleaned up; and some of those houses have a rec room in the attic. Mr. Souza asked if there was a stairway leading to the attic, if it does, it would count as habitable space unless it is unfinished. Mr. Wise stated there is a stairway and it was counted as habitable space.

Mr. Borden stated there are private wells in this area, what is the closet well to this property. Mr. Wise stated there are none closer than 100 feet from this septic system, which is why it is uniquely shaped.

Mr. Coutinho asked Mr. Souza, in the past, people were allowed to add additions and so forth, but typically, they have been kept to the footprint of the existing building. Mr. Souza stated it is expanded out on the site plan but it does overlap the existing house. Mr. Souza stated the site plan dated July 6, 2016, does shows the outline of the new house. Mr. Coutinho asked Mr. Souza, they do not have to stay within the footprint of the existing building. Mr. Souza stated no, as long as they meet all the setbacks. Mr. Coutinho stated that is the key issue; it does meet all required setbacks so no variances are being requested. Mr. Wise stated we are not looking for any variances.

Mr. Graham noted for the record, the Plan of Record dated July 6, 2016 and Revised as of December 15, 2016 were submitted as part of the application. Mr. Wise agreed.

Mr. Coutinho asked Mr. Souza what the basis of denial was. Mr. Souza stated the application was denied under Article 4.1.3 after reviewing the opinion from Town Counsel because this is not an alteration but a demolition and rebuild. Mr. Souza then reviewed the bylaw. Mr. Coutinho stated typically we deal with uses but in this case, it is a structure.

Mr. Coutinho asked if the existing building was going to be literally destroyed and started from scratch. Mr. Wise stated yes under the current plans. Mr. Coutinho stated if it is a pre-existing, non-conforming structure, the only issue he has is that right now, the structure there is conforming, to it's time. Mr. Souza agreed. Mr. Coutinho referred to the plan and asked if the existing pink line also met all setback requirements. Mr. Wise stated he did not think it did; it is about 3 inches too close to the front setback. Mr. Coutinho stated that could make a very distinct difference because that means the existing structure is non-conforming. Mr. Graham stated the new structure will be less non-conforming. Mr. Wise stated the only non-conformity is the lot and as long as the footprint of the structure does not exceed 20% of the lot, it is an allowable structure. Mr. Coutinho stated he would consider the fact that if it does not meet all setbacks currently, it is non-conforming; it is a structure not a use; the use is residential and that is not an issue. Mr. Coutinho stated he believed that Article 4.1.3 is applicable to the alteration. Mr. Graham stated that Mr. Souza, in his denial letter, touched on the elevation height. Mr. Souza stated in very small print on the stamped set of plans on page 806, the average elevation of the natural existing grade from the four corners is based on average height. Mr. Souza stated this lot is high in the front and then drops off; he then explained the measurements taken. Mr. Souza stated he was comfortable with this submission. Mr. Souza stated if the Board approves this application, he will be asking the applicant for a height certification.

Mr. Coutinho stated that if we are going by Article 4, we will need to find that this proposal is not substantially more detrimental to the neighborhood in terms of the types of house around there and so forth.

Attorney Burke stated this proposal will comply with all bylaw requirements with regards to lot coverage and front, rear and side yard setbacks and building height. Attorney Burke stated like all the other properties in the neighborhood, the lot does not conform to the current requirements of 150 ft. of frontage and 60,000 sq.ft. of area, so because the existing building is on a lot that is smaller and does not have the frontage of the bylaw, it is considered non-conforming as all the other buildings in the area. Attorney Burke stated he has researched the Building Department, Town Hall and Zoning Board records in regards to other building projects and expansions in the area. Attorney Burke referred to his memo, that was submitted to the Board, that shows six other houses in the neighborhood that have had substantial expansions in recent years. Attorney Burke stated based on our findings, none of these came before the Zoning Board for a finding, special permit or a variance and they are on lots that don't have the frontage or square footage. Attorney Burke stated in terms of the area that they were allowed to expand to, our proposal falls within the middle range of the other projects. Attorney Burke continued to review his memo and referenced court decisions that looked at expanding on a lot too small and whether it is conforming to the neighborhood. Attorney Burke stated this Board can't say this is detrimental to the neighborhood, when other people have been allowed to do the same thing. Attorney Burke stated the design has been done respectfully in keeping with the neighborhood and he would ask the Board to consider this as an improvement to the existing dwelling and the fact that it will mean additional tax revenue for the Town. Attorney Burke stated there was a concern that the notice stating the square footage was misleading; but as for the septic system, that is under the Board of Health's jurisdiction and they have approved the plan; this design will improve drainage and provide an improved septic system providing protection for existing wells.

Mr. Coutinho asked Attorney Burke, as asked earlier, would his client have a problem with a condition being imposed that the basement could not be converted in any way to habitable space. Attorney Burke stated his client would be agreeable to that condition.

Mr. Graham called for any input from the abutters.

Attorney DiSantis stated he was representing the direct abutter, Daniel Kraft residing at 3 Hillside Road. Attorney DiSantis stated as a preliminary matter, given the notice and what seems to be conceded as the inadequacy of the notice, does the Board and the Petitioner want to continue to proceed or would you care to re-notice the hearing. Attorney DiSantis stated the notice was entirely misleading. Attorney DiSantis stated the notice indicated it was a two-level with 1,660 sq.ft. of area, which is clearly misleading. Attorney DiSantis stated he was prepared to get into the merits of the issue but if the notice issue is something that can be dispensed of, do we want to take the time to get into the merits of the case now or will this be re-advertised.

Mr. Coutinho asked Attorney DiSantis, that because of the square footage (1,660) and the actual habitable area which is more than that, that this is an invalid notice. Attorney DiSantis stated yes, he felt the notice was suspect. Attorney DiSantis stated that one of the letters submitted by an abutter stated the notice was misleading. Mr. Coutinho stated that could become a legal issue, whether it is or isn't he was not sure because the primary piece does not say 1,660 sq.ft. of habitable space and if that footprint is 1,660 sq.ft. there may be some argument to that also; in addition to two-level vs. two and half level. Attorney DiSantis stated that is the merit of it.

Discussion ensued regarding the notice and the actual plans that were submitted. Attorney Burke stated the figure used (1,660) is lot coverage and not the square footage we are proposing. Attorney Burke stated he did not think the advertisement would be considered grounds for overturning any decision the Board would make; if the Board feels it would be better to re-advertise it, my client certainly does not want to have legal arguments if we don't have to have them. Attorney Burke stated he would defer this

matter to the Board; if the Board feels it is the appropriate thing to do, his client would be agreeable. Mr. Coutinho stated there is a discrepancy between the application and the advertisement. Mr. Coutinho stated his concern was unnecessary litigation; there may be some deficiency in the advertisement, but that would be up to the courts to decide, and according to Attorney Burke, it may not be enough to overturn our decision but do we want to take the chance. Mr. Coutinho stated in the future, we may not have to be so specific in our advertisement. Attorney Burke stated my client can certainly come back and make our presentation and arguments again.

Mr. Coutinho stated the applicant can withdraw without prejudice but they will have to submit a new application. Mr. Coutinho stated there is no doubt that notice did get to the abutters and them knowing what was happening; if it is withdrawn, it will take longer to hear this issue but it will avoid potential litigation. Mr. Wise stated he did not believe the submission is incorrect, it was the advertisement that was incorrect. Mr. Coutinho stated the information was drawn from the application.

Mr. Graham asked if there was any other input. None was received. Mr. Graham stated to everyone present, this Board received a lot of correspondence that raised a lot of issues but a lot had to do with the Conservation Commission and Board of Health, which is not the Zoning Board's jurisdiction. Mr. Graham asked that if anyone was submitting letters of opposition, to please make sure they pertain to zoning and not other boards such as Conservation and Board of Health.

Attorney Burke stated in light of the advertisement, his client would like to request a withdrawal without prejudice. Attorney Burke asked if the request could be submitted tomorrow. Chairman Graham stated emailing it would be acceptable.

Motion made by Ms. Lambert to allow the petitioner to withdraw without prejudice. Second by Mr. Simmons. The Board voted unanimously in favor.
The hearing is closed at 8:15 PM.

Action Items - None.

Correspondence

1. A letter was received from CHAPA update the Town on it's 40b projects. Mr. Coutinho read the letter into record. No action required.

Other business - None.

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

Approval of Minutes - None.

8:20 PM

Motion made by Ms. Lambert 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