

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
JUNE 21, 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.

Michael & Carolyn Rocha – RE: Continued Public Hearing on an application request for a Special Permit to allow for a detached accessory apartment. The property is located at 284 Sanford Road, Westport, MA and is shown on Assessor's Map 16, Lot 654.

Members Present: Christopher Graham, Gerald Coutinho, Gary Simmons, Roger Menard and Peter Borden
Also Present: Ralph Souza (Zoning Enforcement Officer/Building Commissioner)
Attorney Jennifer P. Heald, representing petitioner
Abutters Present: None

Chairman Graham called the continued hearing to order at 7:05 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 Heald stated she was representing Mr. & Mrs. Rocha who originally came before this Board on appeal of a denial of an occupancy permit. Attorney Heald stated she is here following up on the appeal, following a site visit and the creation of a Deed Restriction signed by Mrs. Rocha. Attorney Heald stated that Mrs. Rocha was not present this evening but could be reached by phone or be in attendance if the Board so wished. Attorney Heald then gave a background on the case with a very detailed presentation.

Attorney Heald stated there was an onsite visit to the property, during which Mr. Harkins (Chairman of the Board of Health), Mr. Schwartz (BOH Agent), Mrs. Rocha and herself were present. The onsite included a walk-through of the main structure (house) observing the narrow passageways and narrow doorway to the one bathroom on the first floor; there is one bedroom and one discontinued bedroom on the second floor, rendering two bedrooms in the main structure; the onsite then continued to the detached structure (garage) noting that the second floor had no bedrooms due to the outside stairway and no access to the first floor; the first floor containing a large bathroom with a shower and a very large access door for anyone with mobility issues, an area with a kitchen sink and cabinets and also a complete open space. Mr. Schwartz, upon looking at the area stated he did not think this was a bedroom; it was a gray area because there was a lack of privacy. Attorney Heald stated, this can be confirmed with Mr. Souza, anytime you discontinue a bedroom is to take away the privacy by removing the door; for Board of Health purposes, a bedroom has two egresses and is of a certain size with a door. Mr. Schwartz was of the opinion that the first floor did not have a bedroom and for Board of Health purposes, this was not a bedroom due to the privacy issue. Attorney Heald stated the concern of the Board of Health in terms of

the septic issues was that the property was always considered three-bedrooms, which is how they count and determine septic usage; since there is a discontinued bedroom in the main structure (leaving only two bedrooms) and seeing no bedrooms in the detached structure, this was now considered as two bedrooms.

Mr. Harkins's concern however was for the future with a new owner making alterations rendering some of the rooms into bedrooms. Attorney Heald stated there was discussion onsite on how to restrict in the future; so, a deed restriction was agreed upon that in the future, the entire property (main structure and detached unit) could have no more than three bedrooms. Attorney Heald stated she drafted a deed restriction with input from Mr. Souza, who wanted additional language inserted besides the restriction of three bedrooms to reflect that the property, at the time of sale, shall and must pass all town and state inspections by the Board of Health, Building Department and Zoning Board and be compliant with their respective regulations; no change in the footprint and no increase in flow to the system is permitted. Attorney Heald stated the restriction was approved by Mr. Harkins and signed by Mrs. Rocha. Attorney Heald stated the restriction will be filed with the Registry of Deeds. Attorney Heald then referred to her exhibits that were submitted:

Exhibit A – Letter from Social Security Disability Income Benefits

Exhibit B – Detailed letter of onsite visit to the property

Exhibit C – Deed Restriction

Exhibit D – Accessory Apartment Description

Exhibit E – Zoning Regulations for Special Permit.

Mr. Graham noted the Deed Restriction has the Board of Health as the Enforcement Agent. Attorney Heald stated the Deed Restriction was in reference to the septic issue but at time of sale, all three departments will have jurisdiction as requested by Mr. Souza. Mr. Souza stated that he or his predecessor, will be able to enter the house to ensure all the regulations are being followed. Mr. Souza stated that is why he is requesting plans for the existing house and detached unit; the Board of Health has one set of codes and the Building/Zoning Department has one set of codes; both being different from each other. Mr. Souza stated he is looking at this as a home (as a detached independent unit) for Mr. Rocha in the future because this will suit his needs and allow him to remain on his property. Discussion ensued with Mr. Souza as to the development of this structure.

Mr. Simmons asked if the third bedroom of the main house would be discontinued and would now be counted in the detached unit. Mr. Souza stated yes, that is why he was requesting floor plans showing the existing conditions showing that one of the bedrooms is being converted to a TV/sitting room; this will limit the property to three bedrooms.

Mr. Coutinho asked for a clarification of the site visit because the Zoning Board mention a site visit at their last meeting but did not conduct one. Attorney Heald stated the onsite was with the Board of Health, owner and herself only.

Mr. Coutinho asked for clarity, whether the applicant still contends this is not a detached accessory apartment assuming because it does not have a bedroom as a defined by the Board of Health and yet further in the presentation, it is referred to as a detached accessory apartment. Mr. Coutinho explained his request for clarity due to the legal notice. Discussion ensued. Attorney Heald stated all criteria has been met under the Zoning Bylaw for a Special Permit and asked that the Board of Appeals grant the Special Permit for a detached accessory apartment with a Deed Restriction being recorded at the Registry of Deeds.

At this time, Mr. Harkins (Chairman of the Board of Health) joined the hearing. Mr. Coutinho mentioned, and this was his own opinion, he would be very reticent as a property owner to go forward with a Deed Restriction that used the wording “in perpetuity” regarding number of bedrooms because the future may present better solutions for septic choices, including town sewer availability. Discussion again ensued regarding the language of the restriction and the use of the second floor of the accessory structure. Atty.

Heald indicated that she would like to discuss with the Board of Health revising the wording of the Deed Restriction. Mr. Harkins stated the language of the restriction could be discussed with the Agent and the BOH. Mr. Souza stated the Board could condition the Special Permit regarding the use of the second floor.

Discussion

Mr. Coutinho asked Board members if the Special Permit should be made personal to the owners. Mr. Coutinho stated at first thought, Special Permits can be but in rethinking it, what difference would it be. Mr. Coutinho stated we are only doing this because it meets the bylaw and not just because of a handicap. Mr. Graham stated he would rather make it to the property.

8:05PM

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

Vote Taken:

Motion made by Mr. Menard to approve the Special Permit with the condition that the Deed Restriction, as negotiated with the Board of Health either as presented or revised, is recorded at the Registry of Deeds; and as per the existing and proposed plans being part of the record. Second by Mr. Coutinho. The Board voted unanimously in favor. The hearing is closed at 8:06PM.

Action Items – None.

Correspondence

1. Mr. Souza stated the matter of Westport Stone & Sand, 536 Old County Road is before the Conservation Commission at this time and he will be doing a follow-up. No action is required of the Board at this time.

Other business – None.

Approval of Minutes

1. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of September 14, 2016. Second by Mr. Graham. The Board voted 4 in favor, 1-abstention (Borden), 1-absent (Lambert).
2. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of September 22, 2016. Second by Mr. Simmons. The Board voted 4 in favor, 1-abstention (Borden), 1-absent (Lambert).

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

8:12PM

Motion made by Mr. Simmons to adjourn the Zoning Board of Appeals Meeting. Second by Mr. Menard. The Board voted 5 in favor, 1-absent (Lambert).

Adjournment.

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

APPROVED: Christopher Graham, Chairman