

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
MAY 17, 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.

**Brian Tomlinson – RE: Continued public hearing on 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  
Donna Lambert, Zoning Member  
Brian Tomlinson, petitioner  
Abutters Present: None

Chairman Graham opened the hearing at 7:00 PM with the reading of the continued Public Hearing Notice. It was noted that no input would be taken whereas the hearing has been closed.

**Discussion by the Board based on the site visit:**

Mr. Simmons stated it does not meet the side setbacks, not even close; there is plenty of land in length and he has the height; perhaps it can be moved forward.

Mr. Menard stated without modification, a one-stall garage (10ft wide) can be installed and it would be able to meet all setbacks. The 10ft wide garage could, without a variance, could be 40ft tall with a depth only limited to the 100ft property.

Mr. Borden stated there is wetlands behind it too. Mr. Menard stated even if this is granted, it will have to go to the Conservation Commission due to the wetlands being so close. Mr. Souza agreed.

Mr. Coutinho asked if there was any concern about the height. Mr. Menard stated he did not believe they had jurisdiction over the height. Mr. Simmons stated he does not exceed the height requirement. Mr. Coutinho stated he was looking at the concern of the abutter and maybe to reduce the height a little, which would be the more unobtrusive thing for the abutter. Mr. Coutinho stated he thought a person should be allowed but no one has the right to a garage or a three-bedroom house, or whatever, so we have to work around that and use some common sense. Mr. Coutinho stated it is almost necessary for some people and it is better for the neighborhood to not have people's junk, boats, etc. out in the open, instead it is better to have an inside storage area; we should try to compromise in this situation without a problem to the abutter. Mr. Coutinho stated he was not in favor of the width of the garage, maybe we can do something like a 4ft variance on one side and a 2ft on the river side; maybe narrowing the garage down by 6ft but not bringing it down to a 10ft wide garage, because you can't move in it and it is not practical. Maybe the height can be limited to a single story with a ½ story above. Mr. Coutinho stated the applicant

is looking for a 30ft depth; but he can go back as far as the maximum sq.ft. that he was seeking or whatever the Conservation Commission allows for, whichever is less.

Mr. Menard stated he was comfortable with a 16ft wide garage; this would allow for a single car garage and still have 7ft of setback on each side; this would allow for off-street storage of boats, etc without being obtrusive to the neighbors and much less obtrusive than a 10ft wide, 40ft tall, 80ft long garage that is allowed by current zoning. Mr. Coutinho stated there is also the constraint of the shape of the lot. Mr. Menard stated a 16ft wide garage was a reasonable size. Mr. Simmons stated he agreed but Conservation will still have to look at this. Mr. Coutinho stated we could vary it more on the hill side. A lengthy discussion ensued.

**Vote of the Board:**

**Motion** made by Mr. Simmons to allow a garage (16ft wide and whatever depth is allowed by the Conservation Commission), with a maximum height of 20ft; and to grant a variance to have an 8ft side setback on the west side (river side) and to have a side setback of 6ft on the east side. The hardship determined was the size, shape and topography of the lot. Second by Mr. Menard. The Board voted 4 in favor, 1-opposed (Graham). Hearing is closed at 7:37PM.

**Michael & Carolyn Rocha – RE: 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, Donna Lambert, Roger Menard and Peter Borden

Also Present: Ralph Souza (Zoning Enforcement Officer/Building Commissioner)  
Carolyn Rocha, petitioner

Abutters Present: None

Chairman Graham called the hearing to order at 7:38 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.

Mrs. Rocha stated she obtained permits to begin remodeling her garage, which is just one floor because her husband, who has always been an outdoors man, starting having trouble with stairs due to his illness. Mrs. Rocha stated her house is almost 100 years old and it's stairs have become a problem for her husband whose disease is progressing. Mrs. Rocha stated by remodeling the garage it would give her husband space to be during the day, enjoying the outdoors and there would be no stairs to climb. Mrs. Rocha stated she wanted the garage to be a sitting room for him with a handicap bathroom and a small kitchen; the second floor is for storage only. Mrs. Rocha stated the garage structure has not changed except for where the garage door was, it is now a regular door. Mrs. Rocha stated she would like the garage to be an accessible apartment.

At this time, Mr. Graham read into the record a letter dated April 5, 2017 from the Building Commissioner to the petitioner. Mr. Graham also read into the record a letter (email) received from the Westport Board of Health dated May 16, 2017 to the Board of Appeals concerning this application.

Mr. Souza stated the application was for an accessory building to accommodate Mr. Rocha because he is becoming more handicapped; it was supposed to be a sitting room with a handicap accessible bathroom. Mr. Souza stated he did allow for a bar sink only. Mr. Souza stated when he went to do a final inspection he found a full kitchen, bathroom and closet; which can be construed to be living quarters.

Mr. Coutinho asked Mr. Souza, at the time of application, was it for an accessory apartment under the new detached in-law/accessory apartment bylaw. Mr. Souza stated this was applied for as a renovation of an existing space. Mr. Souza stated he spent time with the applicant and gave them the option of an accessory apartment and specified they should come to this Board under that bylaw. Mr. Souza stated it was presented, as the drawings show, to him as a sitting area for which he did allow a bar sink and handicap bathroom. Mr. Coutinho stated to Mr. Souza, when the applicant first came to you, you made them aware of this new bylaw that now allows for a detached accessory apartment. Mr. Souza stated that is correct. Mr. Souza stated the petitioner chose instead to go with just the renovations to the existing structure.

Mrs. Rocha stated when she started this project, her husband was not to the extent of his disease as he is now; over six months he has developed problems with the stairs and walking, and even getting out of a chair. Mrs. Rocha stated this, as she calls it "tiny house" has evolved since she first started; it was not her original intent. Mrs. Rocha stated that when her husband starting having trouble with the stairs in their own home, she realized he would not be able to get in or out of their home eventually, so the garage would be an area that he would allow him to remain at home.

Mr. Coutinho asked what the square footage is, without the second floor. Mr. Souza stated is it approximately 400 sq.ft. Mr. Coutinho stated with that size, it would fall within the detached unit requirement. Mr. Coutinho stated there is a concern on the part of the Board of Health, which is a separate thing from this Board because the Zoning Board does not handle Board of Health matters but we are concerned about it. Mr. Coutinho asked what would stop the applicant from having this as a detached accessory unit, right now, if we can get rid of the second floor. Mr. Souza stated she can apply for it and at that point, I now know it is a detached unit and it will be forwarded to the Board of Health. Mr. Souza stated it was not sent originally to the Board of Health because the application was for a renovation only. Mr. Souza stated that bathrooms do not trigger a Board of Health response, bedrooms do.

Mr. Coutinho asked if there was a bedroom on the first floor of the garage. Mrs. Rocha stated no. Mr. Coutinho questioned the fact that Mrs. Rocha stated this was being built for her husband, how was he going to do the stairs to the second floor. Mrs. Rocha stated he could not do stairs, she would put a hospital bed on the first floor in the sitting room when the time came.

Mr. Coutinho stated Mrs. Rocha said this structure was a garage, assuming built with permits. Mr. Coutinho asked approximately, how long ago was the garage built. Mrs. Rocha asked which garage. Mr. Graham asked how many garages do you have. Mrs. Rocha stated there are two on the property. Mr. Coutinho stated we are referring to the garage that is under renovation. Mrs. Rocha stated the garage was built with permits before she owned the property; according to her grandfather, her family lived in the garage while building the main house. Mr. Coutinho asked what the second floor was used for. Mrs. Rocha stated the second floor was put on after she owned the property and it was always used for storage. Mr. Menard asked if the plumbing and electrical were done in the garage. Mr. Souza stated yes, permits were pulled for this recent work. Mr. Menard asked if there are GF outlets in the kitchen area; Mr. Souza stated yes. Mr. Souza explained he does the rough inspection for the framework and insulation; it is when he did the final inspection that he found all this work done and gave the applicant the option of a Special Permit rather than a renovation.

Mr. Menard asked why a Special Permit. Mr. Souza stated because it falls under the bylaw for a detached accessory apartment. Mr. Souza stated that is not what was applied for but it fits because you can cook, have food storage, a sitting area, a bathroom and sleep in there, all the elements of an apartment. Mr. Coutinho asked Mr. Souza, when the plumbing inspector goes and does an inspection and sees a full kitchen, do they know that it was not supposed to be a full kitchen. Mr. Souza stated they don't know that it was not to be a full kitchen, they are just approving what they see; they do not see the original application. Mr. Souza stated it is caught when he goes to do the final inspection. Mr. Simmons questioned the pictures submitted by Mr. Souza. Mr. Souza stated that is a closet on the first floor. Mrs. Rocha stated it is used for a hot water heater.

Mr. Graham asked what are our options. Mr. Coutinho stated he would like consideration for continuing the hearing for a period of time to be able to get a little deeper into the situation and to get a copy of the original building application for this project. Mr. Coutinho stated he did not know what could be done to make this fall within the allowed bylaw for a Special Permit by the Zoning Board as a detached accessory unit but not with the bedrooms, at the size we are talking about because there is a limit in the bylaw. Mr. Souza stated the bylaw calls for 750 sq.ft. with one bedroom. Mr. Coutinho said it is stated specifically in the bylaw, in the case of a disabled or handicapped person, the Zoning Board can make reasonable exceptions to the size requirement to allow for mobility equipment, etc. Mr. Coutinho stated he would also like to allow the applicant the opportunity to go to the Board of Health, even though that is not preliminary to the Zoning Board because this Board can make decisions without the Board of Health but it would be really silly for the applicant to go through our process and then go to the Board of Health and the Board of Health say no, it can't be done. Mr. Coutinho stated that if it is approved by the Board

of Health, he would like to have an onsite because there seems to be complications with two garages, house, etc.

Mr. Graham asked would it be better to allow the applicant to request a withdrawal without prejudice.

Mr. Coutinho stated we could, but it would cost the applicant to have to apply again to the Zoning Board, that is why he is suggesting a continuance within a reasonable time.

Mr. Menard asked what it would take for the applicant to change her plans to a detached apartment. Mr. Coutinho stated that basically, it would be the applicant working with Mr. Souza to get it within the bylaw requirements or to consider under the bylaw, an increase due to the handicap accessibility. Mr. Menard stated the applicant could change the building plans into a detached apartment for a Special Permit. Mr. Coutinho stated she could, as long as the resulting size fits into that category. Mr. Simmons stated the applicant has already exceeded the building permit that was issued. Mr. Souza stated he could deal with that later if this Board approves it. Mr. Coutinho stated there is a definite concern over the second floor and what it could potential become. Mr. Menard asked if there is a closet on the second floor. Mr. Souza stated he believes there is but the second floor is accessed only by an outside stairway; if you are in the first floor, there is no access to the second floor. Mr. Souza stated the second floor is not considered part of it, it is considered two separate spaces; the second floor is a wide open room with a closet; the Board could condition the second floor to be used as storage only with no access from the first floor. Mr. Souza stated the second floor could be construed as a bedroom but Mr. Rocha is handicapped and is not going to make it up those stairs. Mr. Coutinho stated it looks like we have the potential for a legal detached apartment under the bylaw through Special Permit. Mr. Menard stated it certainly fits the intent. Discussion ensued.

At this time, Mr. Harkins, Board of Health Chairman was recognized in attendance. Mr. Harkins stated it does appear this is being done appropriately; he was willing to meet with Mr. Souza to review the plans on record and go over the details to see if there is any cause for the Board of Health to go over any septic issues. Mr. Coutinho asked Mr. Harkins for a time frame that the Board of Health may be able to address this matter, in order for the Zoning Board to set a possible continuation date. Mr. Harkins stated within a month.

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

**Motion** made by Mr. Coutinho to continue this hearing to Wednesday, June 21, 2017 at 7:00PM in the Westport Town Hall. Second by Mr. Menard. The Board voted unanimously in favor.

Mr. Coutinho advised Mrs. Rocha to work with Mr. Souza and the Board of Health before coming back before this Board. This matter is closed at 8:05PM.

**Discussion – RE: Clarification of some of the conditions of Special Permit issued to BWC Connecticut River, LLC located at 0 Adirondack Lane, Westport, MA and shown on Assessor's Map 1, Lots 13 & 14.**

April Sampson was present and representing Sampson Farm Partnership, 52 Old Bedford Road. Ms. Sampson referred to a letter dated May 5, 2017 and spoke on the Finding by the Board of Appeals in regards to the conditions imposed on the Special Permit issued to BWC. Ms. Sampson stated these kinds of restraints are contentious; we are allowed to be commercial farmers.

Mr. Coutinho stated he had spoken with Ms. Sampson prior to tonight's meeting and the biggest concern was the definition of the property in the decision; he believe this was in reference to the leased portion of the property. Mr. Coutinho stated he did not believe it was the intention of this Board to stop any farming except for the buffer zone.

A lengthy discussion ensued regarding what was presented to the Board during the hearing and a review of the decision was done.

Following the discussion, the applicant stated they would go to the Planning Board for removal or clarification of the area and once completed, they would come back to the Zoning Board with an application for a minor modification of the original decision. Discussion ended at 8:37PM.

**Action Items** – None.

**Correspondence** – None.

**Other business** – None.

### **Approval of Minutes**

1. **Motion** made by Mr. Menard to approve the Regular Meeting Minutes of June 29, 2016 – July 20, 2016 – August 3, 2016 and August 24, 2016. Second by Mr. Simmons. The Board voted unanimously in favor.

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

### **8:40 PM**

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

**Adjournment.**

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

APPROVED: Christopher Graham, Chairman