

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES**

**WEDNESDAY  
OCTOBER 24, 2018**

RECEIVED

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WESTPORT ZONING  
BOARD OF APPEALS

**Members Present:** Roger Menard, Chairman  
Gerald Coutinho  
Peter Borden  
Constance Gee  
Barbara Pontolilo

Chairman Menard called the Zoning Board of Appeals meeting to order at 7:00 p.m. 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.

Opening the meeting at 7:00 p.m., Chairman Menard stated that the first matter before the Board was the petition of Nelson Pereira and Jennifer Pereira for a Special Permit to keep more than three dogs, but fewer than seven, three months old or over for non-commercial/recreational purposes at the property located at 9 Mackady Court and shown on Assessor's Map 66, Lot 19C. He read the Public Hearing Notice.

Chairman Menard provided background on the reason for the Special Permit. The Town of Westport, under Zoning Bylaws Section 4.0.1 C, allows for keeping 3 dogs that are three months old or over in residential/agricultural zoned areas. Section 4.0.1 D.7 allows more than three dogs but less than seven (7) dogs over the age of three months by special permit only. Chairman Menard stated the procedures to be used during the hearing, including testimony by the petitioner, inquiries from Board members, and then open to the public for comment.

Petitioner, Jennifer Pereira, presented background on the request for the special permit. She stated that she and her husband currently have 7 adult working dogs and 2 puppies (age approximately 3 months). The working dogs are kept for recreational use only. In addition, there are also two house poodles. The working dogs' breed is Podengo and they are used for rabbit hunting. Hunting with dogs has been a family hobby for

many generations. All of the dogs have their required veterinary shots. Ms. Pereira provided copies of rabies shot certificates for all of the dogs.

Mr. Coutinho asked if any of the dogs have been for sale. Mr. Pereira said that the dogs are not for sale.

Chairman Menard reiterated that any single-family property, regardless of the size of the property, is allowed six (6) dogs by Special Permit. The two house poodles are included in the six-dog limit. The Board has the authority to allow up to six dogs in a single-family dwelling.

Mr. Coutinho asked how many of the dogs are registered with the Town for licenses. Ms. Pereira answered that they did not know that they were required to license the dogs with the Town and dogs have been on the property for the past 10 years. Chairman Menard commented that all dogs are required to be licensed with the Town. Ms. Pereira stated that, when they applied for the special permit, a clerk in the Town Clerk's office stated that, once it was determined how many dogs would be on the property, the Pereiras would need to get individual licenses for each of the dogs.

Chairman Menard asked if there have ever been any complaints regarding the dogs. Mr. Pereira answered that there has never been a complaint, and the neighbors were willing to come to the meeting to support them.

Mr. Coutinho said that he had talked to the Animal Control Officer (ACO). The ACO said that there was a barking dog complaint, but when she went to the residence she could not tell if it was Mr. Pereira's dogs or someone else's dogs that the complaint was about. He also noted that the Animal Control Officer (ACO) did not have any problems with Mr. Pereira's kennel.

Chairman Menard said that he visited the property a few weeks ago and talked to Mr. Pereira's brother. Mr. Pereira's brother allowed him to view the kennel and take pictures. Mr. Menard provided the pictures of the kennel. Mr. Menard also said that when he visited the kennel, there were about 14 dogs in the kennel. Mr. Pereira replied that, sometimes, there are additional dogs in the kennel that he is training. At times, Mr. Pereira's brother visits with his dogs as well.

Ms. Gee asked why they need 7 hunting dogs. Mr. Pereira responded that they go hunting for days at a time, so one set of dogs hunts for 8 hours; then the next day, he uses a different set of dogs.

Mr. Borden asked if he gets paid when he hunts. Mr. Pereira responded that he does not get paid, that it is a hobby, and has been a family tradition with his grandfather and father who hunted for many years. During the winter, the dogs are kept in their insulated, closed-up kennel and are well maintained and healthy.

Chairman Menard commented that looking at the property map, the area they live in is currently sparsely populated. He further noted that the Board must be concerned with not only the current layout, but what happens 5, 10, or 20 years from now when there are more houses in the neighborhood. The decision that Board makes must be based on what the potential is for the neighborhood, not just how the neighborhood is today. Ms. Pereira said that, when they purchased the property about 11 years ago, there were covenants placed on the deed, that no further construction or building on the remaining acreage.

Mr. Coutinho commented that the Board can only issue a special permit for up to 6 dogs. If the petitioners want more than 6 dogs, they need to get a kennel license, but that requires a commercial property. Mr. Coutinho said that he and the Assessor's staff checked and the property is several hundred feet from commercially-zoned property. The petitioners also could look into moving some of their dogs off of their property. Mr. Coutinho indicated that they might apply for a variance, but they would have to read the rules and regulations first, and the Board cannot advise the petitioners on legal matters.

Chairman Menard opened the discussion to the audience. No one responded.

Mr. Coutinho made a motion to close the hearing. Ms. Gee seconded the motion. The Board voted unanimously to close the hearing.

**Discussion by the Board:**

Mr. Coutinho started the discussion, saying that he had no problem with granting a special permit for up to 6 dogs with conditions (i.e., all dogs to be licensed and kept current with vaccinations and veterinary care).

Chairman Menard stated that the petitioners appear to genuinely care for their dogs.

Ms. Pontolillo commented that the Board only has the authority to grant a special permit allowing up to 6 dogs. Ms. Gee stated that, including the puppies (which will soon be over the age of 3 months), the petitioners have 9 hunting dogs and 2 house dogs,

which is well over the 6-dog limit. Mr. Coutinho noted that the Board will only be acting on the special permit for up to 6 dogs, and Mr. Pereira will have to decide how to handle the other dogs.

Chairman Menard commented that he would add a condition that the petitioners allow the Animal Control Officer access to the kennel.

**Decision of the Board:**

A motion was made by Mr. Coutinho and seconded by Ms. Pontolillo to grant a permit to allow the petitioners to have fewer than no more than six (6) adult dogs over the age of 3 months, for non-commercial recreational purposes only. This approval is subject to the following conditions:

1. All dogs must be registered annually with the Town and have their required health vaccinations.

2. Petitioners must allow the Animal Control Officer access to the dogs as needed.

The Board voted unanimously to grant the permit.

Chairman Menard advised the petitioners of the 20-day appeal period.

Chairman Menard stated that the second matter before the Board was the administrative appeal of David Sunderland with regard to the property located at 1346 Main Road, Units E, F, G and H and shown on Assessor's Map 56, Lots 10-5, 10-6, 10-7 and 10-8 known as Underwood Farm Development. He read the Public Hearing Notice in which Mr. Sunderland filed an Administrative Appeal from a determination of Building Commissioner/Zoning Enforcement Officer in conjunction with several requests for enforcement made by Mr. Sunderland with respect to the Underwood Farm Development project, Main Rd Westport MA.

Attorney Kenneth Mello, Somerset, MA, addressed the Board, stating that:

1. He represents the applicant, David Sunderland, who resides at 1360 Main Road, whose property abuts the subject property.

2. He presented copies of correspondence sent to Ralph Souza, Building Inspector and Zoning Enforcement Officer dated May 21, 2018, June 7, 2018 and June 12, 2018, requesting enforcement of zoning bylaws and variances on the property.

3. Mr. Souza denied every claim made by Mr. Sunderland regarding variance and zoning violations.

4. There are voluminous documents, plans, variances, etcetera regarding the property that he received today, which need to be reviewed.

5. Mr. Sunderland's primary concerns were not addressed by Mr. Souza, specifically the inclusion in the variance of requirement of pine tree buffer zone.

6. Mr. Sunderland requests that the Board do a walk-through of the subject property.

7. The way the construction was performed, the land is separated from the boundary line and there is no place to plant a pine tree buffer.

8. There are four (4) units with an open view of the Sunderland property; the pine tree buffer was made a condition in the variance to minimize noise, lighting and privacy issues.

9. As a result of the pine tree buffer not having been installed, the properties are visible by each other.

10. The flood lights shine onto the Sunderland property.

11. The sound of tires on the gravel is noisy, especially at night.

12. The construction of the driveway deviates from recorded plans.

13. The condition in the variance regarding the foundation height was not met; in that the pictures depict a foundation higher than what was mandated by the variance.

14. Submitted photographs that depict the violations.

15. Mr. Sunderland has made many complaints to Mr. Souza over the past several months.

16. Mr. Sunderland requested documents by the Building Department; however, the documents were not produced within the 10-day production period.

17. The recorded deed for the property is inaccurate.

18. Mr. Souza has continued to issue permits that violate variance conditions, even though conditions are attached to the permits.

19. Bathrooms and livable space on the second level (attic/loft) are in direct violation of the variance, in that the attic/loft is designated by the variance conditions as non-livable space. In fact, Unit 7 is advertized for sale with a finished loft area with excess livable space.

20. The crucial issue is that complaints of variance violations to the Zoning Enforcement Officer have gone unanswered or addressed.

Susan Brayton (Mr. Sunderland's girlfriend) was present and provided information to the Board as follows:

1. The 2009 variance was reversed by the Superior Court after an appeal was litigated.

2. The abutter who had appealed reached a settlement agreement with the owner.

3. The Zoning Enforcement Officer was asked several times to send cease and desist letters to the developer. He would not because his contention was that there were no violations.

4. The Zoning Enforcement Officer informed her that there were variances on the property with certain conditions, those conditions having been attached to the permits.

5. Under the deed, Unit 8 is being used by developer as an office as a model/show demo unit for display and uses it as his office, which is in violation of Zoning Bylaw.

Mr. Coutinho stated that it is the responsibility of the applicant to submit documents to be reviewed and considered by the Board. Originally, the property consisted of a house and motel. It was converted from transient use (visitors staying for one or two nights) to mini apartments. The original owners asked that the units be built as condominiums. One issue the Board had at the time was that the units become summer rental property; or for others coming and going who do not live there. There were not supposed to be large units because they were to be habitable by no more than two (2) persons. These small units were to replace small motel units. All conditions of the variance were specifically

ordered to keep the units small, especially in light of the fact that zoning requirements did not allow dense usage. The current Zoning Enforcement Officer (Ralph Souza) was not the Zoning Enforcement Officer at the time that the units were originally allowed by the variance. If what Mr. Sunderland is alleging is true, the developer is clearly ignoring the conditions of the variance and is in violation.

Attorney Mello stated that in Unit 10, there are 3 individuals living there in a one-bedroom unit. He also asked, once documented and catalogued, copies of the submitted documents be provided back to applicant with the Board's date stamp, denoting that they have been filed with the Board.

Attorney Mello also noted that there is a myriad of other less significant issues (i.e. retaining walls that were built and not noted on the plan; the as built shows 122.8' for Buildings 5, 6, 7 and 8, where it is supposed to be 115').

Ms. Gee asked if the builder is constructing these units without reviewing the conditions under the variance.

Attorney Mello said that he received various documents from Building Department today that were requested on August 13, 2018. He has not had an opportunity to review them. Once he does so, the information in the documents may be further grounds for a second Administrative Appeal.

Mr. Coutinho said there may be an issue as to legal notice being sent to all abutters as one unit may have been sold since last abutter list was provided.

Attorney Mello stated that Mr. Sunderland is requesting that the Board order enforcement of the conditions of variances.

Mr. Coutinho asked whether anyone else present had legal representation. He further noted that the Board's counsel is not present and he was unsure whether he notified the Zoning Enforcement Officer of this hearing, which may be why he is not present.

Attorney Mark Levin, Fall River, MA addressed the Board. He stated that he represents the owner of the subject property.

Mr. Coutinho suggested that, before taking in any further evidence, that this matter should be continued so that Town Counsel may be present to address what seem to be crucial issues. He also said

that he thought it would be a good idea for the Board to conduct a site visit.

Attorney Mello agreed and asked that the Board not close the evidentiary portion of the hearing. Mr. Coutinho stated that the Board would not be in a position to do that at this time because it requires legal direction from Town Counsel.

Ms. Gee inquired as to whether or not the Board would be in a position to issue a temporary cease and desist order.

Chairman Menard stated that the Board does not have authorization to issue a cease and desist order; however, the Board will ask Town Counsel as to the best direction in which the Board should proceed.

Attorney Mello stated that he would be willing to discuss these matters with Attorney Levin to possibly reach agreements or stipulations on the facts.

Chairman Menard said that because the matter is too complex, it would be necessary for Town Counsel to be present.

Mr. Coutinho stated that, even with a stipulation by the parties, the Board should still address the alleged violations and will look to Town Counsel for direction on how to go about doing this. He asked Attorney Levin to identify correct ownership of any units sold recently so as to notify proper abutters for legal notice.

Attorney Levin stated that, currently, Units 5, 6 & 7 are owned by R & L Development Corp, which received abutter notice.

Unit 8 is owned by Robert and Laurie Medeiros as of September 13, 2018 and was not on the prior abutter list. The Medeiroses were not present.

Attorney Levin said that, under Section 15 of the statute, the person filing an appeal is required to do so within 30 days and, therefore, any challenge to the building permit has expired. Connors v. Annino, 460 Mass. 790 (2011).

Mr. Coutinho inquired as to how would an abutter know that a building permit has been issued and, therefore, should file an appeal within 30 days. Attorney Levin said that Mr. Sunderland admitted he was aware of the issuance of a building permit and did not file a timely appeal. He also stated that the Zoning Enforcement Officer is required by law to provide notice to the



Zoning Board. Therefore, he said, since this was not done, this appeal should be dismissed for lack of jurisdiction.

Mr. Coutinho stated that, if true that the Board has no jurisdiction, then the Board should accept no further evidence until Town Counsel is present. It would seem that the procedures that Attorney Levin contends are those to be followed by this Board are in contrast to this Board's procedures for filing administrative appeals.

Attorney Levin stated that he is willing to meet with Attorney Mello and possible come to an agreement.

Mr. Coutinho again reiterated that, if it is determined that the Board has no jurisdiction to hear this matter, if allegations of violations are true, then the Board needs to address those violations.

Norman Belanger - Unit 9, Underwood Farm - advised the Board that he would not appreciate the site visit and walk-through the property be done with Mr. Sunderland but he had no objection to the Board's visiting the area.

Mr. Coutinho said that the Board should not entertain any further evidence if it is determined that the Board is not authorized to hear this matter.

Ms. Gee made a motion to continue this hearing to Wednesday, November 28, 2018 at 7:00 p.m. The motion was seconded by Mr. Borden and was voted unanimously by the Board.

The Board will seek legal from Town Counsel prior to the scheduling of a site visit.

Richard Leblanc, member/owner of 3 units, addressed the Board after the hearing and said that he was not using the 3 units as an office and everything is being done properly.

Chairman Menard will contact the Town Administrator for authorization to contact Town Counsel and have him present at the next meeting.

#### **Action Items:**

1. The Board discussed possible dates for scheduling 2 matters for hearing that are pending. It was decided that November

14, 2018 would be the date, with alternate dates of November 15, 2018, December 5, 12 or 19, 2018.

2. Chairman Menard stated that there will be one final attempt made to advertise the position for a Principal Clerk. He said that the advertisement will contain more specific duties and hours. The alternative will be to turn the vacancy issue to the Town Administrator to administer.

**9:10 p.m.**

**Motion** made by Ms. Pontolilo to adjourn the meeting. Seconded by Chairman Menard. The Board voted unanimously in favor.

**Adjournment.**

Respectfully submitted,



Maria I. Branco Principal Clerk  
to the Zoning Board of Appeals

APPROVED:

  
Roger Menard, Chairman