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SEP 25 2019

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES**

WEDNESDAY

AUGUST 21, 2019

WESTPORT ZONING
BOARD OF APPEALS

Members present: Roger Menard, Chairman
Gerald Coutinho, Vice Chairman
Peter M. Borden
Constance Gee
Barbara Pontolillo

Chairman Menard called the Zoning Board of Appeals meeting to order at 6:30 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(f), meeting being recorded.

6:31 p.m.

246 HOWLAND SP, LLC/Matthew Grosshandler - RE: Application for a variance from the setback requirements under Zoning Bylaw 4.1.3, to allow the construction of a three-level single-family dwelling to contain 1,781 square feet of living space, including entry with cantilevered window seat and third-floor deck. The subject property is located at 246 Howland Road and is shown on Assessor's Map 88, Lot 150.

Members present: Roger Menard, Chairman, Gerald Coutinho, Vice Chairman, Peter M. Borden, Constance Gee and Barbara Pontolillo.

Also present:

Ralph Souza, Building Commissioner/Zoning Enforcement Officer, Town of Westport.

Matthew Grosshandler/246 Howland SP, LLC, 246 Howland Road, Westport, MA (Owner/Applicant).

Chairman Menard read the Public Hearing Notice, as well as the denial letter from Ralph Souza, the Building Commissioner. The following is an excerpt from Mr. Souza's letter:

I am in receipt of a building permit application to demolish, remove, and to construct a new three level single family dwelling at the above captioned property.

The present lot contains 8,796 sq. ft. of area with 100 feet frontage on Howland Road. The present dwelling is located on this site is a one level 768 sq. foot structure. The proposed new dwelling contains 1,781 sq. ft. of living space not including the proposed garage, porch and decks.

Pursuant to Westport Zoning By-Laws Article 4.1.3 "Pre-existing non-conforming structure or use may be altered provided there is a finding by the Board of Appeals that such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood".

Mr. Coutinho raised the issue that there is no applicant's name listed on the application. He asked the petitioner to clarify the owners' names and the signatures on the petition.

Mr. Grosshandler responded that he is both the applicant and the owner.

Chairman Menard asked the petitioner to explain the reasons he had applied for a variance of the setback requirement for the front stoop.

Mr. Grosshandler addressed the Board, stating that:

1. The owner of the property is 246 Howland SP, LLC, of which he is the Resident Agent and Principal of 246 Howland Road, Westport, MA. He and his wife are petitioning the Board at this time.

2. The house itself is within proper setbacks, with the front yard setback being 25 feet and the corners of the house are 25.1 feet and 25.2 feet.

3. The current front stoop is outside of the setback requirement, with a request for variance for purposes of constructing a landing in front of the door.

4. The current structure does not have a second level.

5. The septic system is up-to-date and conforms with the bedroom requirement.

6. When he purchased the property, he was aware of the 2-bedroom deed restriction.

Chairman Menard asked why the applicant had requested a variance for setback requirements and did not request a finding. The denial letter from Mr. Souza made no mention of any set-back issue requiring a variance.

Mr. Grosshandler was unsure of how to file but had been given advice to request a variance. He stated that he would be willing to amend his request.

Mr. Coutinho asked the Building Commissioner if the application that was filed would have required a variance because of the cantilever area. Mr. Souza said that the building permit was not denied on that ground. It was denied on the grounds that the size of the new structure was outside the bounds of the Zoning Bylaws.

Mr. Grosshandler stated that the plans will not be changed, and he was unsure as to whether or not the placement of the front stoop would require a variance from the setback requirement.

Mr. Coutinho reviewed the plans with the applicant, stating that the Zoning Bylaws do not allow for a third level on the new structure.

Mr. Grosshandler stated that the application was filed prior to receiving the denial letter from the Building Commissioner. He understood that the building permit would be denied and was attempting to get a hearing as soon as was possible.

Chairman Menard advised that the applicant must request the relief that is stated in the denial letter from the Building Commissioner. This is necessary since the letters that were mailed to the abutters identify the requested relief.

Mr. Coutinho suggested that the applicant might want to discuss this project with his neighbors, if he has not already done so, to get their feedback. Also, Mr. Grosshandler should indicate on the new application some information about the neighborhood, including photos of other structures, so that the Board is aware of the landscape of the neighborhood.

Chairman Menard explained the criteria that must be met for the Board to grant a variance includes identification of hardship based on the topography of the land. Chairman Menard also identified the criteria that must be met for the Board to issue

a finding, i.e. the grounds on which the new structure does not substantially affect the neighborhood.

Mr. Coutinho stated that the Board typically advises that the applicant seek legal counsel, if necessary. He also noted that all the information requested in the application should be provided for completeness.

Mr. Grosshandler stated that he would consult with the Building Commissioner and would intend to file a new application, based on the grounds stated on the denial letter.

Chairman Menard stated that the notice was published, posted and abutters notified as to the request for a variance and, therefore, an amendment to the application as filed would not be permissible. Mr. Grosshandler was notified that he could make a request that he be allowed to withdraw his petition, without prejudice, and, that way, he could file a new application. This would also allow time for the applicant to confer with the Building Commissioner and to file for the appropriate relief (e.g. variance and/or finding).

Chairman Menard asked if anyone in the audience would like to address the Board.

Sean Leach of SITEC, 449 Faunce Corner Road, Dartmouth, MA brought to the Board's attention that the plans show a discrepancy in the square footage of the structure. He indicated that the living space being requested is 1,781 square feet; however, the application notes 2,050 square feet of living space, excluding garage, deck and porch. He also noted that there is a deed restriction that allows the structure to contain only two (2) bedrooms because of the area of the lots in that area.

Carol Foster - 279 Howland Road, Westport, MA addressed the Board. She stated that she owns the water system that the applicant will utilize. She said she met with Mr. Grosslander and appreciates his willingness to abide by the regulations. Ms. Foster also stated that the neighborhood is in a nitrite zone and her concern is that, although he has two (2) bedrooms, he plans to construct three (3) bathrooms. The water system is old, fragile and grandfathered. The system does not meet current standards. Therefore, the Board of the Acoaxet Water Company, which owns the wells that supply the water, imposes restrictions on the use of the water system. She stated that

the Water Board discussed this project and would be looking for a 2-bedroom deed restriction in the future.

Mr. Borden noted that a Howland Road resident installed his individual well and wondered if that might work in the applicant's favor.

Mr. Souza indicated that the applicant would be constricted because Title V imposes restrictions due to the area of the lot.

Daniel Kraft, 3 Hillside Road, Westport, MA, Trustee of the Hillside Trust, stated that in July of 2018, the Board of Health voted unanimously to mandate the 2-bedroom deed restriction and he would advise that applicant to do so.

Mr. Grosshandler submitted a request to withdraw the application for a variance without prejudice.

Mr. Coutinho made a motion to accept the request to withdraw the application without prejudice. The motion was seconded by Ms. Pontolilo and the Board voted unanimously in favor.

Chairman Menard advised of the 20-day appeal period from the date the decision is filed with the Town Clerk.

The hearing on this matter concluded at 7:15 p.m.

Action Items:

Re: Administrative Items

Approval of Minutes

The minutes of the July 24, 2019 meeting had been previously reviewed by the Board and approved.

Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting

Re: 581 Drift Road, Westport, MA, variance granted by decision of the Board dated April 12, 2018. Chairman Menard stated that he had a discussion with Joan Casey-Amaral regarding Condition No. 3 in the decision, namely, "A separate driveway shall be provided for access to Lot 1." Ms. Casey-Amaral advised Chairman Menard that she is in the process of selling Lots 1 and 2 and it would be a substantial hardship for her if she were required to comply with this condition, in that the location of

the well does not allow the construction of a driveway, as well as the elevation of the property from the street.

Discussion ensued as to whether the Board had authority to amend its decision to remove Condition No. 3. Chairman Menard stated that he reviewed the original decision and watched the video of the meeting on April 3, 2018. He said that, according to Ralph Souza, Zoning Enforcement Officer, from a zoning standpoint, three (3) houses can share a common driveway. After reviewing the video of the previous meeting Chairman Menard noted that the Zoning Board of Appeals members were concerned about having a separate driveway for Lot 3, not Lot 1. The attorney for the petitioner identified that the petitioner also provides a separate driveway for Lot 1 rather than relying upon a common driveway for Lots 1 and 2.

Mr. Coutinho stated that he was unsure whether this matter required further publishing and notice to the public. Chairman Menard noted that Condition No. 3 was added in the decision at the request of the applicant's counsel, not because sharing one driveway created a zoning violation. He also noted that the current driveway supports Lots 1, 2, and 3. The previous decision required that "There shall be no driveway access or easements to Lot 3 through Lot 1 or Lot 2".

Chairman Menard stated that he believed the Board has authority to vote to amend the decision to remove Condition No. 3 and the applicant would then not be required to construct a new driveway; and, further, that there should be a deed restriction that the common driveway is to be shared and maintained by the owners of Lots 1 and 2.

Mr. Souza reiterated that current Zoning By-laws allow for a common driveway to service up to three lots and also stated that the owner has started constructing the driveway that will lead to the house on Lot 3 through the south property line as required by the original decision. He also said that the common driveway is located on both Lots 1 and 2 and the property line lies within that driveway.

Chairman Menard made a motion to amend the decision of April 12, 2018, to eliminate Condition No. 3 that required construction of a new driveway for access to Lot 1; in lieu thereof, the Board requires there be a condition in the deed that the shared driveway be maintained by the owners of Lots 1 and 2. The motion was seconded by Ms. Pontolillo and the Board voted unanimously in favor.

Chairman Menard advised of the 20-day appeal period, which begins on the date the decision is filed with the Town Clerk. Ms. Casey-Amaral is not to commence any work on the property until the 20-day appeal period has expired. Also, Ms. Casey-Amaral is to record the Board's decision with the Bristol County (S.D.) Registry of Deeds.

Other Business

Chairman Menard stated that he and Mr. Coutinho recently attended a meeting of the Steering Committee, which is working on the review and revisions of the Zoning Bylaws. He noted that they are still on schedule to complete the first phase of the process by September for consideration at Town Meeting in April 2020. He said that there will likely be several revised Bylaws, which will be submitted for approval at Town Meeting separately so that each Bylaw being revised will be considered on its own merit. This process may involve submission of revised Bylaws at several Town Meetings and may take a couple of years to complete.

7:37 p.m.

Motion made by Ms. Pontolilo to adjourn the Zoning Board of Appeals meeting. The motion was seconded by Mr. Borden and the Board voted unanimously in favor.

Adjournment.

Respectfully,



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

APPROVED:


Roger Menard, Chairman