

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
OCTOBER 23, 2019**

RECEIVED

NOV -6 2019

Members Present: Roger Menard, Chairman
Gerald Coutinho, Vice Chairman
Peter Borden
Constance Gee
Barbara Pontolilo
Raymond Elias

WESTPORT ZONING
BOARD OF APPEALS

Also present: Jeffrey Blake, Town Counsel
Ralph Souza, Building Commissioner
Present on behalf of the petitioner were
Attorney Philip Beauregard, 32 William Street, New
Bedford, MA and Attorney Peter Paull, 32 William
Street, New Bedford, MA. Petitioner, Brenda
Figueroa, was also present.

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.

Chairman Menard read the Public Hearing Notice regarding the
application for a variance/finding filed by Brenda Figueroa for
change in use to allow a 200-member club, operating a non-
intensive addition to the Inn's business, limited to the hours
mandated by the alcohol license. Said use is sought pursuant to
a finding from the Board, or alternatively as amendment to
present permit and/or variance that adds the use described. The
subject property is located at 2056 Main Road and is shown on
Assessor's Map 58, Lot 4.

Chairman Menard advised everyone in the room that the petitioner
would present evidence on the petition, then Board members would
ask questions. After the Board has completed all questions, the
discussion would be open to the public; and, after hearing all
the evidence, the hearing would be closed. Chairman Menard also
noted that anyone wanted to speak on this petition must identify
their name and address.

Attorney Beauregard addressed the Board, stating that:

1. Attorneys Peter Paull, who specializes in real estate law, as well as Attorney Dorothy Tongue were present, if the Board needed them to answer any questions.

2. He presented copies of the three (3) variances/decisions that had been rendered by the Board, namely: November 3, 1986, January 13, 1989 and August 18, 2011.

3. The petitioner is not pursuing a finding but, rather, is pursuing a variance or amended variance.

4. The property was designated residential zone in 1972 and was used as a single-family residence.

5. The variances issued in 1986 and 1989 were for specific uses and were recorded at the Registry of Deeds. The 2011 decision was not recorded.

6. Court litigation reduced the number of bedrooms to six (6).

7. The 2011 decision added uses to the 1986 and 1989 decisions regarding events, parking, number of bathrooms, etc.

8. Recently, the ABCC, with the recommendation of the Board of Selectmen issued an all-alcohol liquor license for a club with limited hours.

9. The Zoning Enforcement Officer advised the petitioner that she would need to apply to the Zoning Board for a change of use.

10. The petitioner is requesting that there be an added provision to include the all-alcohol license.

11. The clientele to be served will be limited to the residents of Westport Point and their guests.

12. There should be no issue with parking, as the residents will most likely be walking, not driving, to the Inn. Therefore, the parking will not complicate the abutting properties.

13. The petitioner believes that the abutter, Robert Haines, will permit parking on his property for anyone visiting the Inn.

14. The clear nature of the structure meets the hardship criterion for granting a variance. It is in dire need of repair and upgrading. The change of use would allow funds to be generated so as to upgrade the historical building.

15. The property is currently listed for sale; however, once the real estate listing contract expires in about a month, it will be taken off the market.

16. The petitioner is allowed 44 persons in the room where alcohol is served.

17. At present, food to be served is limited to breakfast only; however, the petitioner plans to apply for a variance to serve food (i.e. appetizers and desserts).

18. The best way to describe the petitioner's intent is to use it as a "club" but not to collect dues. It should be designated as "club-like."

19. There is a 100-guest maximum, including events taking place outside.

Petitioner, Brenda Figuerido, advised the Board that:

1. The Inn is limited to serving alcohol to 44 persons, under the current liquor license, and is currently operated as a bed and breakfast.

2. The business of a bed and breakfast is not generating enough revenue to maintain the building.

3. Anyone holding an event at the Inn is responsible for providing a shuttle to and from the Inn due to the limited parking spaces.

4. A state-of-the-art septic system was installed in 2000.

5. If there is an event at the Inn, which will consist of more than 40 persons, there would be a port-a-john at the premises.

6. Instead of using the word "club," would rather use "pub" for the purposes that she is seeking to expand the use, since it connotes a neighborhood spot to socialize.

7. Would like to serve appetizers and desserts and will apply for a permit or variance in the future.

8. The property is on the market for sale but intends to terminate the contract once it expires (most likely in about 2 weeks).

9. She would manage the compliance and enforcement of any conditions that the Board may place on the variance.

Attorney Dorothy Tongue, 1968 Main Road, Westport Point, stated that she represented Ms. Figuerido at the meeting of the Board of Selectmen. She said that it was relayed to the Board of Selectmen that the intent was for a club-type operation with some sort of membership to visit the Inn.

Ralph Souza, Zoning Enforcement Officer, stated that:

1. The maximum capacity for the entire building is 44 persons.

2. If the petitioner intends to apply in the future for a permit to serve appetizers and desserts (or any other type of food other than breakfast), she will be required to apply to the Building Department, at which time, the Board of Health will need to sign off on the permit before one is issued.

3. Parking is at a minimum in that area and there is no recent parking plan filed with the Building Department.

Mr. Coutinho inquired of Ms. Figuerido regarding various issues, specifically, if she has complied with the conditions of the variance for which she is seeking amendment. Specifically, he asked about who would enforce any conditions which may be approved; the relief being requested at the hearing is above and beyond the relief originally requested and advertised; the issue of the petitioner requesting a "club" liquor license of the Board of Selectmen; parking issue for patrons and those renting boat moorings; and the faxed correspondence of June 2002 from the Department of Environmental Protection to the local Board of Health addressing violations regarding impact of events on the septic system.

Other questions by the Board included: parking issue; definition of a "club-like"; and the manner in which the petitioner will manage the water and septic issues with more demand than is typically utilized.

Chairman Menard asked how the petitioner believed that the hardship criterion was being met for purposes of granting a variance.

Attorney Beauregard said that the state of the building, which requires major maintenance and repair, as well as it not being sustained if a change of use is not granted to generate more revenue, is a proper basis to meet the hardship factor.

Chairman Menard stated that the state of the building is not a hardship, and that the hardship relies on the land, (i.e. topography, soil, and shape).

Attorney Blake read into the record the criteria that must be met to satisfy the hardship requirement, that it must be pertaining to the land, not the structure itself.

Ms. Gee expressed her support for the granting of the amendment to the variance, stating that the building has historical significance, and the condition of the building requires substantial revenue to repair and maintain.

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

Henry Swan, 1958 Main Road, stated that he supports the petitioner. He said that he and his wife sometimes walk in the winter and are able to walk in the middle of the road because of light traffic. He is concerned that if the relief sought is not granted, the building will deteriorate. He believed that residents of the Point would welcome a place where they can meet and socialize.

Kristen Fennelly, owner of Westport Sea Farms Oyster Bar, and residing at 2065 Main Road, stated that she is concerned with the language of "pub" or "club". She also noted that, since the building is for sale, the variance will be forever attached to the property.

After hearing all the evidence, Ms. Pontolilo made a motion to close the hearing at 7:49 p.m. Motion was seconded by Ms. Gee and the Board voted unanimously to close the hearing.

Discussion:

The Board was primarily supportive of the Inn being revitalized and repaired. There were concerns noted, however, regarding a variety of issues:

1. The Bylaws specifically prohibit the existence of a private club within a residential zone.

2. Parking and traffic issues, especially in the summer months; the petitioner did not submit a parking plan. There should be one and should include parking for those renting the 10-12 boat dock spaces.

3. Serving of food without the proper permits and/or not allowed by Zoning Board of Appeals conditions.

4. Enforcement of the zoning and health conditions has proven to be difficult and will continue to be, as it will place a major burden on the Zoning Enforcement Officer and Town/State departments

Chairman Menard stated that, although there are six (6) members hearing this petition, only five (5) will vote; for a variance to be granted, the vote must be at least 4 members voting in favor of the amendment to the 2011 variance.

Each of the members commented on the petition. Chairman Menard stated that, although he would like to see the Inn thrive, he is barred by the Bylaw that specifically mandates that a club is not allowed in a residential zone. He also noted that the concern is what a future owner will attempt to do with the property.

Mr. Coutinho stated that, although the written application petition states a 200-member club, that is not the relief verbally being requested of the Board tonight. The advertisement was worded as requesting a club for Westport Point residents, which is the relief asked for in the petition. He also suggested that the Board's decision be predicated on the petitioner's submission of a parking plan that also includes parking for the boat dock rentals. He believed, and the petitioner stated, that patrons and the petitioner would more

than likely want food served in the future; and, therefore, the petitioner should come before the Board at a later date with an application requesting all the relief being sought.

Chairman Menard stated his reservation regarding granting a permit for any form of club since it is specifically prohibited in residential areas and requires a Special Permit in a business district. He added that this is one of the few examples where a function is specifically not allowed.

Ms. Gee expressed her support for the petition. She said she was present at the meeting with the Board of Selectmen and the neighbors showed their support as well. She said the Inn is a beautiful building and she encouraged the Board to vote in favor of granting the relief being requested.

Ms. Pontolilo stated that she likes the project; but her hesitation revolves around the parking issue.

Mr. Souza stated that, originally, the Town had done some research on how to resolve the parking and property boundary issues in that area, but due to the lack of funding for the project, it was never followed through.

Mr. Coutinho commented that, if done properly, the Inn can be a great gathering spot; and that the Board would expect that the petitioner be diligent with complying with the conditions placed on the variance. He again suggested that the petitioner should return to the Board with a petition that requests everything that she wants to do with the Inn. This is critical, in that, once a variance is granted, it follows with any sale of the real estate into perpetuity, regardless of ownership.

Mr. Borden agreed with the comments made by Mr. Coutinho.

Attorney Beauregard had been out of the room conferring with his client. When he returned he briefly spoke to Attorney Blake. Attorney Blake stated to the Board that he had been advised by Attorney Beauregard that the petitioner requests the petitioner withdraw without prejudice, to potentially return to the Board with a revised petition in the future.

After brief discussion, Ms. Pontolilo made a motion to accept the petitioner's request to withdraw the petition without prejudice. Ms. Gee seconded the motion. Mr. Coutinho stated that the Board should require that, at the time of the filing of a new petition, a parking plan be submitted simultaneously.

Attorney Blake stated that there is no need to put as a condition that a parking plan be submitted because the petitioner is aware that parking is a major issue and she will need to address that at the next hearing.

Chairman Menard requested that the petitioner submit a request for withdrawal in writing, which Attorney Beauregard did.

The Board voted unanimously to accept the petitioner's request to withdraw the petition without prejudice.

The hearing concluded at 8:10 p.m.

Action Items - The Board reviewed and discussed the minutes of the following meetings:

October 2, 2019 - **Motion** made by Mr. Borden to approve the minutes of the meeting of October 2, 2019 as presented. Seconded by Ms. Pontolilo. The Board voted unanimously in favor. Mr. Coutinho was absent during this meeting and, therefore, did not vote on this motion.

November 28, 2018 - **Motion** made by Ms. Pontolilo to approve the minutes of the meeting of November 28, 2018 as presented. Seconded by Mr. Borden. The Board voted unanimously in favor.

October 24, 2018 - **Motion** made by Mr. Coutinho to approve the minutes of the meeting of October 24, 2018 as presented. Seconded by Ms. Gee. The Board voted unanimously in favor. Ms. Gee commented whether the Pereiras were complying with the permit and if the Animal Control Officer would be able to go to the property. Chairman Menard said that the Town Clerk records will show how many dogs are licensed at that property.

Chairman Menard raised the issue of language that should be included in the application form, specifically that the applicant agrees and understands that the fee being paid with the application is non-refundable. There was an issue recently with a petitioner requesting a refund after publication, processing and hearing. The Board will review language and possibly decide at the next meeting. Mr. Coutinho raised the issue of whether the Board can waive the payment of a filing fee; however, the Town would then be burdened with the cost of processing the application. He also stated that the application form should include some language to the effect that the Board

recommends that the applicant seek professional and/or legal advice.

Chairman Menard stated that the Board had received a request for comment from the Planning Board with regard to property located at 0 Route 88 (proposed West Street) owned by Pedro and Maria Texeira. Mr. Souza stated that the owners will require approval from the State because of their request for access off of Route 88. After discussion, the Board noted "No Comment" on the request.

Chairman Menard and Mr. Coutinho gave a status update regarding the recodification of the Zoning Bylaws effort. There will be a public meeting set for November 7, 2019 at the Westport Public Library; time to be determined. Some critical revisions will also be discussed, including abandonment for non-conforming uses. In the longer term, other bylaws will be presented to Town Meeting for approval.

8:30 p.m.

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

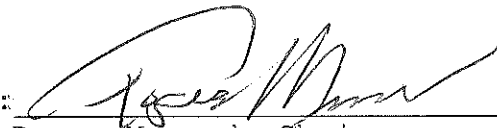
Adjournment.

Respectfully submitted,



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

APPROVED:



Roger Menard, Chairman