

RECEIVED

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
NOVEMBER 6, 2019**

DEC 11 2019

WESTPORT ZONING
BOARD OF APPEALS

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

Also present was Ralph Souza, Building Commissioner and Zoning Enforcement Officer.

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 of Wilton Ribeiro/WR Construction & Design for a finding that the proposed construction of a 26' x 38' second-floor addition will not be substantially more detrimental to the neighborhood than the existing non-conforming use, as mandated by Zoning Bylaw Article 4, Section 4.1.3. The subject property is located at 259E Tickle Road and is shown on Assessor's Map 20, Lot 89.

Chairman Menard called the hearing to order at 6:35 p.m. with the reading of the Public Hearing Notice. He also stated that the petitioner would present her evidence, the Board would then ask questions. At that point the discussion would be open to the public. Anyone wishing to speak on the petition should state their name and address.

Chairman Menard read a letter issued by the Building Commissioner. The following is a summary of that letter:

"After review of the submitted application to construct a second-floor addition to the existing single-family dwelling. The dwelling in question is located on a 9,500 square foot lot that has 37.5 feet frontage on an un-named way.

As per Westport Zoning By-Laws article 4.1.3 alteration "Pre-existing non-conforming structures or uses 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."

The petitioner, Marta Ribeiro, addressed the Board, stating that:

1. She and her husband, Wilton Ribeiro recently purchased the subject property.

2. The existing structure, which has been vacant for about 2 years, contains approximately 988 square feet.

3. She and her husband are requesting that they be allowed to construct a second floor, with the same square footage, and following the same footprint.

4. She and her husband have three (3) children and the house, as it currently exists, is not sufficient for the family to live comfortably.

5. Currently, there are 3 bedrooms and 1-1/2 bathrooms in the structure. The half bath is in the basement, which the family will not utilize.

6. The proposed second floor will consist of 3 bedrooms and 1 bathroom. The bathroom on the first floor will remain.

7. The septic system will not be affected; in that it has the capacity to withstand (three) 3 bedrooms.

8. There is 37.5 feet of frontage, which is identical to a neighboring property (279F Tickle Road), which also has a second floor.

9. The Ribeiros were required to grant an easement to the abutting property because the structure on the abutting property encroaches upon the Ribeiro property.

10. She submitted various photographs of the property, as well as other similarly situated properties, in the neighborhood with a second floor.

11. The Ribeiros' engineer inspected the structure to assure that the foundation would withstand the construction of a second floor.

12. The bump-out at the side of the structure is an entrance leading to the basement.

13. The power lines are very low and will be an issue with which they will contend at the time of construction.

14. The second floor will be built up from the existing deck as well.

Ralph Souza, Zoning Enforcement Officer, said that no variance is required because the construction will be a second floor going straight up from the existing first floor; and that the Tickle Road area is very congested. He also said that, prior to issuance of the building permit, the Board of Health will be required to sign off on the project. Mr. Souza also noted that the bump-out entrance to the basement is part of the footprint.

Chairman Menard said that he drove by the property to view the structure and the neighborhood.

Having received no other correspondence, Chairman Menard opened the hearing to the audience for comment.

Denise Cadieux, 259D Tickle Road, stated that her concern is the water runoff that will affect her property with the increase in bathrooms. She noted that, in 2006, she attended a meeting before the Board of Health for approval of the septic system. She said that she and the Ribeiros have been discussing the issue and will continue to remain in contact because there are trees that overhang onto the Ribeiro property.

Chairman Menard stated that the Zoning Board does not rule on Board of Health matters (i.e. water runoff, wells or septic issues) and that the Board of Health will address that issue. He also said that the number of bedrooms, not the number of bathrooms, is what designates the type of septic system to be utilized. However, the Ribeiros have stated that the current septic system is sufficient to withstand a three-bedroom house.

6:52 p.m. - After hearing all the evidence, Mr. Coutinho made a motion to close the hearing. Motion was seconded by Ms. Pontolilo and the Board voted unanimously to close the hearing.

Discussion:

The Board was in agreement that the project would be a major improvement, not only to the structure, but to the neighborhood; and that the construction of a 26' x 38' second-floor addition will not be substantially more detrimental to the neighborhood than the existing non-conforming use. Mr. Coutinho made a motion to approve the request for a finding with the following conditions:

1. No variance is required per the Zoning Enforcement Officer.

2. Construction of the property will be done in accordance with the plans submitted with the petition for finding and filed with the Town Clerk on September 27, 2019.

3. The structure will consist of no more than three (3) bedrooms.

4. There will be no further encroachments on setback requirements.

Ms. Pontolilo seconded the motion and the Board voted unanimously to approve the petition for finding.

The hearing concluded at 6:56 p.m.

Chairman Menard read the Public Hearing Notice regarding the second matter before the Board, namely: the application of CBRE (Frank J. Cefali) for a variance to install a walk-up ATM kiosk to be located 9.3 feet from State Road in an underutilized area of the shopping center parking lot, the location of such ATM to be within the 25-foot front yard setback; as well as installation of additional parking, bringing the total to 55 parking spaces on site, in violation of the setback requirements under Zoning Bylaw 7.6.1. The subject property is located at 655 State Road and is shown on Assessor's Map 24, Lot 1C.

Chairman Menard advised everyone in the room that the petitioner would address the Board. The Board would then ask questions of the petitioner. The discussion would then be open to the public and, after hearing all the evidence, the hearing would be closed.

At the outset, Mr. Coutinho stated that he would recuse himself from hearing and voting on this matter as he is a member of the

Board of Directors of the Westport Federal Credit Union, a direct abutter of the proposed project.

Chairman Menard stated that the remaining five (5) members would hear and vote on this petition; and that a variance required a super-majority for approval (i.e. 4 out of 5 members must vote in favor of the variance).

Chairman Menard read the denial letter from the Zoning Enforcement Officer into the record. The following is a summary of the denial letter:

"After review of the submitted permit application, to install a 5' x 11.5' kiosk for Bank of America at 655 State Rd. The application and, the set of plans submitted for a building permit indicate a 9.5' set back from the street.

As per Westport Zoning By-Laws article 7.6.1 Front yards "There shall be a front yard setback of at least 25 feet clear depth from the street line or lines to be part of such building or structure closest to the street."

Also I question the number of parking spaces that will be replaced by the kiosk, you must seek a variance from the Board of Appeals."

Jake Modestow, Civil Engineer of Stonefield Engineering & Design, addressed the Board, stating that:

1. He represents the applicant, who is requesting a variance to install a stand-alone, walk-up ATM for Bank of America within the 25-foot front yard setback.

2. The proposed ATM would be 9.3 feet from State Road.

3. The kiosk would be 5' in width, by 11' in depth, with 9.5' in height and acts more like a sign.

4. Currently, there are 86 parking spaces on the entire property. The proposal is to utilize two (2) parking spaces already in the lot and add a space for handicapped accessibility. The existing spaces will be reduced in area to accommodate the three (3) spots. Two (2) parking spaces will be designated as 15-minute spaces, specifically for ATM use.

5. It is the petitioner's contention that the 30'-grade change of the ground interferes with the line of sight for prospective customers. He asserts that this fact, as well as

the lot size, are appropriate grounds to meet the hardship criterion for a variance.

6. Bank of America recently closed down its branch on Route 6 and will be leasing the space from the current owner at 655 State Road.

7. There will be lighting pursuant to Bank of America standards and monitored security in place.

8. The kiosk is similar to a sign in the sense that the kiosk may be properly placed within the setback requirement.

9. The Westport Federal Credit Union would benefit from the extra spaces.

10. Bank of America has a team that researches viable sites throughout the country.

11. The petitioner stated that he believed that the Zoning Board, in 2017, allowed a variance for placement of a shed at property on State Road that was closer to the street.

Chairman Menard stated that just because the public is unable to see the kiosk from the street if it is not within the requested setback, does not support the hardship requirement. In order to grant a variance, the applicant must identify a hardship related to the topography of the land.

The Board expressed a series of concerns, mainly:

1. The kiosk would be right at the entrance to the shopping mall, creating a potential safety hazard.

2. The kiosk traffic would interfere with other businesses in the mall.

3. The kiosk is a major safety issue at the proposed site.

4. The traffic is a concern because of cars entering to utilize the kiosk and exiting at the far end of the lot where the Westport Federal Credit Union conducts its business.

5. The Bank should consider placing the kiosk closer to the post office, where there is ample space and away from main traffic.

6. The ATM kiosk is not a sign and should not be considered as such.

Chairman Menard read into the record an e-mail that the Board received from Cindi A. Assad, who resides at 24 East Briggs Road, opposing the project.

Attorney Michael Harrington, 190 William Street, New Bedford, MA addressed the Board. He stated that:

1. He represents the Westport Federal Credit Union, which owns the east-side half of the 655 State Road plaza.

2. The Westport Federal Credit Union opposes the granting of the variance.

3. The petitioner's preference as to where to put a sign is not a hardship as required by the Zoning Bylaw.

4. An ATM kiosk is not a sign, in that it is a large building.

5. The ATM kiosk will require the installation of a concrete pad within the setback requirement.

6. The ATM kiosk will require the installation of lighting towers within the setback requirement.

7. Lot has 2 acres of land, where there is ample space to relocate the kiosk.

8. The deed designates common use clause for all parking spaces on the property, including for use by the Westport Federal Credit Union.

9. Page C3 of the plan proposes to make the sizes of the parking spaces smaller.

10. When the parking lot at the post office is full, the overflow of parking comes into the plaza parking lot.

11. The parking lot is never underutilized and the businesses in that plaza generate substantial patronage and traffic.

12. Up until June of 2019, Bank of America had a presence in Westport, and decided to close that branch. There

is no reason why it could not find another place to put its kiosk that would benefit its customers and not be such a safety concern.

13. The petitioner has failed to show a hardship within the meaning intended by the Zoning Bylaw for issuance of a variance.

Ralph Souza, the Zoning Enforcement Officer, stated that the parking lot is continuously congested due to business conducted by the various businesses in the plaza.

Veronica Beaulieu, 316 Old County Road, Westport, Chairman of the Westport Housing Authority, which is located directly across the highway (Route 6) from the proposed location. She addressed various concerns that the Housing Authority has with this project, specifically for the safety concerns of the elderly people who reside at the 48-unit apartment development, who frequent the plaza. This kiosk would present a safety hazard for elderly people walking into the parking lot.

Antonio Cestodio, Adamsville Road, Westport, MA, stated that he is the Chairman of the Board of Directors of the Westport Federal Credit Union. As a retired police officer, he understands the traffic and safety issues, in particular the substantial traffic generated by the post office, employees' parking, pedestrian traffic, and that vehicles typically exit easterly through the Credit Union driveway, where the drive-thru is situated for the Credit Union. Mr. Cestodio also stated that, as a police officer, he investigated many vehicle accidents emanating primarily from post office traffic.

Gerald Coutinho, 110C Pettey Lane, Westport, MA noted a correction to a comment made by Mr. Modestow, in that the Bylaw considers the average of the frontages within 250 feet. Further, he stated that there was no mention by the petitioner that there are lesser frontages within the area of 655 State Road. If the average setback of property within 250 ft of 655 State Rd is consistent with the requested 9.5' setback then the Zoning Enforcement Officer might have approved the project. The 25-foot setback requirement under the Bylaw therefore remains intact.

After hearing all the evidence, Ms. Gee made a motion to close the hearing at 7:36 p.m. Motion was seconded by Mr. Elias and the Board voted unanimously to close the hearing.

Chairman Menard stated that he did not find that a hardship existed as mandated by the bylaw. He also noted that there is traffic and safety concerns, including what could be seen as lines of traffic on Route 6, waiting for traffic to the ATM, potentially blocking the entrance to the plaza.

Chairman Menard again reiterated that a super majority of 4 out of 5 members would be required to vote to approve the variance.

Mr. Borden stated that the project should be relocated closer to the post office, where there is ample space and away from main traffic.

Mr. Modestow asked what the procedures were if the petition were approved or denied. Chairman Menard stated that, if the petition were to be approved, the petitioner would be required to seek a permit from the Building Department, as well as approval from other Boards. If the variance were to be denied, the petitioner would be required to wait two (2) years before reapplying to the Board for a similar variance. Mr. Menard also noted that if the petitioner were to withdraw the petition, without prejudice, the petitioner could reapply at any time. Mr. Modestow then requested whether the petition could be withdrawn to further address some of the Board's concerns.

Chairman Menard stated that if the petition is withdrawn without prejudice, the applicant can reapply at a later date.

Mr. Modestow submitted a request in writing to withdraw the petition without prejudice.

Chairman Menard read the request into the record.

Ms. Pontolilo made a motion to accept the request to withdraw the petition without prejudice. Motion was seconded by Mr. Borden and the Board voted unanimously to accept the request.

Chairman Menard advised of the 20-day appeal period.

The hearing closed at 7:43 p.m.

Action Items - The Board reviewed and discussed the minutes of the October 23, 2019 meeting. Motion was made by Ms. Pontolilo to approve the minutes of the meeting of October 23, 2019 meeting. Motion was seconded by Mr. Elias. The Board voted unanimously in favor.

The next meeting of the Board is Wednesday, December 11, 2019 at 6:30 p.m. There are two (2) petitions on the schedule for that meeting.

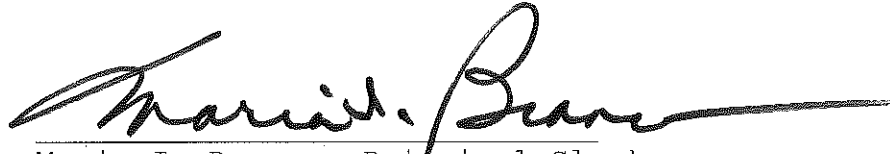
Mr. Coutinho stated that the zoning recodification informational meeting would be held on Thursday, November 7, 2019 at the Library at 6:00 p.m. and he encouraged the public to attend. He said that this would be a good opportunity for residents to listen to the proposed revisions to the Zoning Bylaws and to take part in the discussion.

7:46 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