

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
JANUARY 30, 2019**

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

**Also present:** Ralph Souza, Building Commissioner  
Jeffrey Blake, Town Counsel  
Brian R. Corey, Attorney for Connolly

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(f) – Meeting being recorded.

**Sean J. Connolly - Petitioner filed an Administrative Appeal, seeking a declaration that the land in question remains buildable for residential purposes per Zoning Bylaw 7.0. The property is vacant land located at 28 Rock Street and is shown on Assessor's Map 7, Lots 119-124 (formerly Lots 119, 120, 127, 128).**

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

**Also Present:** Ralph Souza, Building Commissioner  
Attorney Jeffrey Blake, Town Counsel  
Attorney Brian R. Corey, 519 American Legion Highway,  
Westport, MA – Attorney for Petitioner Connolly

**Abutter Present:** Shawn Borges, 41 Jiggs Street

Chairman Menard called the continued hearing to order at 7:03 p.m. with the reading of the Public Hearing Notice. He also read the letter from the Building Commissioner in which the Building Commissioner stated that lots are held in common ownership and, in his opinion, have merged with abutting lots and are considered not buildable.

Chairman Menard commented that if anyone wished to speak on this petition, to state their name and address for the record.

Attorney Corey stated that the petitioner is requesting that the Zoning Board determine that the land is buildable. He noted that:

- The property in question was created in approximately 1912. The land was eventually taken by the Town of Westport for unpaid taxes. The parcels were transferred in 1953.
- The lots in question meet Title V requirements and perked successfully. There are no wetlands as part of these lots and has a successful well test.
- These lots have been historically vacant and have remained in common ownership.
- The parcel in question has remained in common ownership with the abutting parcels and have been transferred by deed and no new parcels have been acquired.
- Zoning Bylaw 7.0 states that "Provisions of this Article 7.0 shall not apply to any existing lot, which complies with previously approved intensity regulations as to the area and frontage if such lot was recorded in the Registry of Deeds at the effective date of this regulation". Said regulation being adopted in 1957. Attorney Corey stated the intensity regulations for what was then zone 'A' at that time was 4,000 square feet. These lots are all 50 x 100 feet (5,000 square feet) so they exceeded the minimums at that time.
- The four lots remain buildable and that the doctrine of merger does not apply in this case, citing the Dalbec vs. Westport Zoning Board of Appeals case.

Attorney Corey then provided a detailed summary of the Dalbec case and the judge's decision.

Chairman Menard stated that Town Counsel is present to answer questions of the Board and to assist the Board in making a determination.

Mr. Coutinho noted that the lots indicated on the notice were inconsistent with those on the Assessor's Map.

Attorney Corey stated that the original plans are deteriorated and the lot numbers were provided to him by the Assessor's Office.

Attorney Jeffrey Blake, Town Counsel, stated that he agreed with Attorney Corey's determination and his research shows that the facts of this case fall squarely with the Dalbec decision. The zoning by-laws have exempted some lots from the concept of merger even if held in common ownership. His research has some differences in the ownership timeline, but they are all prior to 1957. He agrees with Attorney Corey that the lots are buildable even if under common ownership. In order to grant the relief sought, 4 of the 5 Board members must vote in favor.

Mr. Coutinho asked if the 4 lots were going to be combined into a single lot. Attorney Corey replied that the four lots would be combined into a single lot.

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

Shawn Borges, 41 Jiggs Street, asked why prior owners of lots in the area could not build. He said he had to add 5 acres to his property so that his son could build a house.

Mr. Coutinho stated that it is be a question of when the prior owner purchased the land and then subdivided.



Attorney Corey said that he would be willing to discuss the issue with Mr. Borges after the meeting.

Motion made by Mr. Coutinho to close the hearing at 7:32 p.m. Seconded by Ms. Pontolilo. The Board voted unanimously in favor.

Discussion by the Board ensued.

Chairman Menard stated that there seemed to be no issue with this property, that it is essentially grandfathered.

Mr. Coutinho noted that he thought it was a clear cut matter, that the land had not been previously been developed, and that Town Counsel recommended that the Board approve this petition.

Vote taken.

**Motion** made by Ms. Pontolilo to approve Administrative Appeal, seeking a declaration that the land in question remains buildable for residential purposes with the merger of the four (4) lots. Seconded by Mr. Borden.

The Board voted unanimously in favor.

Chairman Menard advised that there is a 20 day appeal period.

**Robert S. Sykes and Daphne Brown – RE: Application request for a variance from Zoning Bylaws, Article 7.6.1.1.2, Intensity Regulations (frontage) for property located at 0 Drift Road, near the intersection of Drift Way (Riverside Street), Westport, MA and is shown on Assessor's Map 56A, Lot 62.**

Members present: Roger Menard, Chairman  
Gerald Coutinho, Vice Chairman  
Peter Borden  
Constance Gee  
Barbara Pontolilo

Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer  
Attorney Jeffrey Blake, Town Counsel  
Robert J. Sykes, representative for the Petitioners.

Abutters Present: Olivia & Jonathon Thompson  
Attorney Mark Deshaies (representing Olivia & Jonathon Thompson)

Chairman Menard opened the hearing at 7:36 p.m. with the reading of the Public Hearing Notice and asked that if anyone wished to speak on this petition, to state their name and address for the record. He also stated that the meeting was being recorded.

Chairman Menard read the letter from the Building Commissioner/Zoning Enforcement Officer in which the Building Commissioner determined that the lot in question is not buildable due to

frontage not meeting the minimum front yard width requirement of Zoning By-Laws Article 7.6.1.1.2.

Robert Sykes stated that he was appearing on behalf of the Petitioners, who are his father and father's sister. He said that he understood that the lot was non-conforming because of a lack of frontage. In support of the application, he stated that the land consists of 2 acres and meets all other zoning requirements. The parcel was created in 1946 making it a pre-existing non-conforming lot. There is a 20 foot right of way that was granted in 1946. The parcel and right-of-way are similar to surrounding properties. The lot was created prior to the zoning act with the intention of creating a single family home and has been in the family for over 70 years.

Coordination has been completed with the Fire Department and the Planning Board. The applicants are seeking approval for the variance request.

Chairman Menard then noted that this is a legal matter that has been referred to Attorney Blake, Town Counsel.

Attorney Blake, Town Counsel, noted that the right of way was created by deed in 1940, however, we could not find a deed which created the actual lot until 1979. Previously the town had adopted zoning making this lot non-conforming. The original deed for the right of way did not include the Sykes' parcel (which is landlocked). He also stated that there is an issue of the Petitioners' providing proof that the lot was created before 1957 or was conforming after 1957. The lot in question therefore never enjoyed the grandfather protection. Attorney Blake also said that the stringent criteria to meet the approval for a variance would require site specific justifications based on shape, soil conditions, and topography of the lot and show that there is a hardship. It does not appear that the Petitioner has put any of this information before the Board. In his opinion, the Petitioner has not met the criteria for a Variance.

Chairman Menard stated that the Board would entertain a motion to continue, if the Petitioners thought they needed more time to gather more information and documents. He asked if the public would like to comment.

Attorney Mark Deshaies, 115 Orchard Street, New Bedford, MA addressed the Board, stating that he represents Olivia and Jonathan Thompson, who are direct abutters, own property at 1398 Drift Road and reside in Pennsylvania. He stated that the Thompsons had traveled from Pennsylvania for this hearing. He noted that the lot has no frontage whatsoever. Zoning Bylaws required frontage to a street or public way. The property in question has no frontage on a street or public way. The lot in question is similar to abutting lots so there is nothing unique to its shape. Attorney Deshaies noted that the lot is landlocked and has no frontage and insufficient frontage cannot be used as a hardship. Based on this the Petitioner does not meet the criteria for a Variance. He believes that delaying the hearing will not change the circumstances and he asked that the Board act on the petition tonight.

Attorney Blake agreed that if the petitioner could find a deed for the parcel prior to 1957, the lot could be grandfathered in, however the property does not have the required frontage. The right-of-way does not likely count to satisfy the frontage requirement. He noted that the Board could: (1) deny the petition; or (2) allow the Petitioners to withdraw the petition without prejudice, allowing them an opportunity to come back before the Board without waiting two years if they are able to provide further documentation.



Mr. Coutinho indicated that in cases like this, the Zoning Board usually recommends that the Petitioners get professional counseling to give them an opportunity to research and then return before the Board with new evidence of frontage.

Robert Sykes made an oral request to withdraw the petition without prejudice.

Olivia McCullough, 1404 Drift Road, addressed the Board. She said that she believed the right of way is 9 feet wide, not 20; that there has been tree removal and regrading; there is a water runoff from the property; it would not be ecologically practical to develop; and that she sympathizes with the Petitioners, but agrees with counsel.

Chairman Menard stated that the Board would require a formal, written request to withdraw the petition without prejudice.

Mr. Sykes wrote a request to withdraw the petition without prejudice and provided to the Zoning Board of Appeals.

Mr. Coutinho read Mr. Sykes' written request to withdraw the petition without prejudice.

**8:09 p.m.**

**Motion** made by Ms. Pontolilo to close the hearing. Second by Chairman Menard. The Board voted unanimously in favor.

Motion made by Ms. Pontolilo to accept the request to withdraw without prejudice. Second by Chairman Menard.

The Board voted unanimously in favor.

**Action Items** – The Board reviewed and discussed the minutes of the meeting of January 16, 2019. **Motion** made by Chairman Menard to approve the minutes of the meeting of January 16, 2019. Second by Mr. Coutinho. The Board voted unanimously in favor. Chairman Menard will have the minutes posted to the Town web site.

**Correspondence** – Mr. Coutinho stated that the Board had received three (3) requests from the Planning Board for comment, approval or disapproval on three (3) separate petitions, namely: 136 Old Pine Hill Road for a solar project that has no prior Zoning Board action; 11-lot subdivision on Rita Lane that does not affect the Zoning Board; and 2 lots at 136 Old Pine Hill Road/82 White Oak Run. The Board did not issue any comment on these petitions.

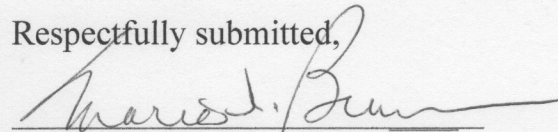
**Other business** – The Board discussed revisions to the application form. Town Counsel reviewed the proposed revisions and offered suggestions as to the revisions.

**8:40 p.m.**

**Motion** made by Mr. Coutinho to adjourn the meeting. Second by Ms. Pontolilo. The Board voted unanimously in favor.

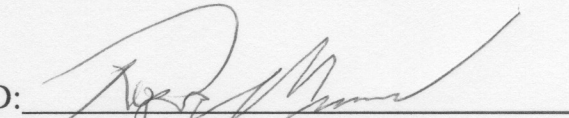
Adjournment.

Respectfully submitted,



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

APPROVED:



Roger Menard, Chairman

RECEIVED

FEB 13 2019

WESTPORT ZONING  
BOARD OF APPEALS