

ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
FEBRUARY 12, 2020

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

Also present:

Jeffrey Blake, Esquire, Town Counsel  
Ralph Souza, Building Commissioner/Zoning Enforcement Officer.  
Mary Ferry, petitioner  
Attorney Daniel Perry, 388 County Street, New Bedford, MA

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(e) - Meeting being recorded.

Chairman Menard opened the hearing at 6:31 p.m. with the reading of the Public Hearing Notice on the petition of Mary Ferry/Bruce Sylvia, Jr. d/b/a Absolute Martial Arts for a finding that the proposed use of the front building as a martial arts studio will not be more detrimental to the neighborhood than its former non-conforming use as a tractor sales and repair facility under Zoning Bylaw Article 4, Section 4.1.2. The subject property is located at 287-289 Gifford Road, Westport MA and is shown on Assessor's Map 31, Lot 5A.

Chairman Menard stated that this was a continuation of the hearing held on January 29, 2020, giving the petitioner some time to research and present further evidence to the Board. He also said that the Board would hear evidence from the petitioner; open the hearing to anyone in the audience wishing to comment; and then close the hearing.

Attorney Daniel Perry, 388 County Street, New Bedford, MA addressed the Board. He stated that:

1. He represents the applicant, Mary Ferry, who intends to rent the space to Bruce Sylvia, Jr., d/b/a Absolute Martial Arts.

2. At the previous hearing, the Board was concerned with whether or not Goldstein's existed prior to 1973, when the Zoning Bylaws went into effect.

3. The property was built in 1953.

4. Relying on documents he found from years ago, he submitted documentation to the Board, indicating that, in 1957, no zoning restrictions existed.

5. Goldstein's was already an established business at the property prior to 1957 and, therefore, a non-conforming use existed as a result.

6. Articles of Organization for Goldstein's were submitted, which he read into the record.

7. Mr. Sylvia resides on the property, renting a house from Mrs. Ferry, and that will assure the Board that the business will comply with any conditions the Board imposes.

8. Other than the martial arts studio, there will be no other business conducted between the front building and the street.

9. Other tenants occupy buildings in the rear of the property.

10. Since the Cease and Desist Order of November 7, 2017, Mrs. Ferry has evicted tenants who were the subject of the order; as well as cleaned up the property to comply with the Order.

11. If the Board were to grant the use for the martial arts studio, he would coordinate with the Zoning Enforcement Officer for purposes of managing the tenants at the rear of the property and take whatever action necessary to legalize or be rid of those businesses.

Chairman Menard inquired as to whether or not Mrs. Ferry would stipulate that the martial arts studio will be the sole commercial business at the property. He also referenced various concerns by the neighbors about past businesses that were not lawfully in existence at the property, causing noise and other issues for the neighbors.

Mr. Coutinho said that if there are any other businesses on the property, the owner of the property and business owners are required to come before the Board for approval.

All the Board members expressed concerns about other businesses at the property and would consider imposing strict conditions if this finding were to be approved.

Mary Ferry, the petitioner, who resides at 17 Sandy Lane, Bristol, RI, addressed the Board. She stated that:

1. She does not reside at the property.
2. She rents other space at the rear of the property to others, namely: one tenant who owns and repairs cranes; and another tenant owns and repairs vehicles. She said she is not unaware of whether the tenants are conducting a business. [Note: At one point during the discussion, Mrs. Ferry stated that one tenant repairs and sells cars].

Mr. Coutinho stated that, although Articles of Organization were filed, that did not prove that a business was established at that time. He also said that, since the application pertains to the entire property, the Board should consider imposing conditions that will take into account all of the so-called businesses in the rear of the building. He expressed an interest in conducting a site visit so as to view the tenants' areas in the rear of the property to verify their lawful existence.

Ralph Souza, Zoning Enforcement Officer, said that he has attempted to view the site, specifically the tenants in the rear of the property, but was told to leave by someone who was on the site. Mr. Souza did not know who that person was but has not been able to do a complete site review. He asked whether he could have authority from Mrs. Ferry and Attorney Perry to go onto the site and perform his review. Attorney Perry said that he would provide a written authorization to Mr. Souza, allowing him on the property.

Town Counsel, Jeffrey Blake, said that, in his opinion:

1. The applicant had provided the Board with sufficient documentation and information for the Board to make an informed determination as to the prior non-conforming use (i.e. Goldstein's).

2. It is proper for the Board to acknowledge that Goldstein's was in existence prior to and as of 1973, and that the business

was being conducted for several years prior to the promulgation of the Zoning Bylaws.

3. There is only one business at issue here and the Board may grant that use of the property for the martial arts studio.

4. The crane business and vehicle repair business are invalid uses and subject to a cease and desist order by the Zoning Enforcement Officer.

5. Once the use for a martial arts studio is granted, Mrs. Ferry and owners of any other businesses wanting to conduct business on the property would be required to come before the Board for use variances.

Attorney Perry said he understood the Board's and the neighbors' concerns with other businesses that may be conducted on the property. He suggested that the Board consider imposing conditions.

Chairman Menard stated that he drove by the property, which consists of rear buildings, front building and parking lots.

Chairman Menard asked if anyone in the audience wished to make a comment.

Clayton Harrison, 278 Gifford Road, addressed the Board. He stated that he is a direct abutter to the subject property. He said that he and his neighbors always considered Mrs. Ferry to be a good, hard-working, neighbor when she resided at the property. Mr. Harrison said he supported the martial arts studio and would appreciate if the Board would impose conditions in its decision, taking into account the entirety of the property, which is what is indicated on the application and what was published. He said that both the Fire Department and Police Department have many reports as to calls received regarding the various activity at the property over the years. Mr. Harrison stated further that the space that is rented for crane repair employs other people, and that it is basically a body shop to repair and fix vehicles and other machinery for resale.

Mr. Souza stated that, if approved, the owner would be required to obtain a change of use building permit, at which time, the Board of Health would review and sign off on as well. He also said that, with the building being occupied, there would be added fire protection. He noted that there have been unregistered vehicles, water trucks, dump trucks and other issues with the property in

the past. The only permit that he has issued in the past is for installation of a roof.

Judith Souza, 292 Gifford Road, said she lives across the street from the property. She believes that the Town is unaware of the activity of the tenants in the rear buildings. She said that if Mr. Souza is not being allowed to view the property by one of the tenants, then it should be an alarm to Mrs. Ferry that there is something illegal being conducted at her property.

David Borges, 286 Gifford Road, expressed a concern that because the owner does not reside on the property, she is unaware of the activity that he believes has worsened since the November 2017 cease and desist order.

Bethany Borges, 286 Gifford Road, said she is not concerned with the martial arts studio; but her concerns are with the vehicles, motorcycles that speed and are garaged on the property.

At 7:30 p.m., after hearing all comments by audience members, Chairman Menard made a motion to close the hearing. Ms. Gee seconded the motion, which was voted unanimously by the Board.

Mr. Coutinho stated that he has no issue with granting the application for the martial arts studio. He reiterated his interest in conducting a site visit. He said that, in his opinion, the Board should be certain that no other businesses will be conducted on the property, other than the martial arts studio.

Attorney Perry again assured the Board that he and Mrs. Ferry will discuss this issue and come to the Board in the future, if necessary.

Chairman Menard was in agreement, stating that one of the conditions imposed would be that the martial arts studio is the sole business to be conducted on the property. He also requested that the Zoning Enforcement Officer conduct a site visit, write a report and forward that report to the Board. He also said that, if needed, a cease and desist order should be issued as well.

Ms. Pontolilo said that having the Sylvias living on the property should give some assurance to the neighbors that the business will be conducted properly and in accordance with any conditions imposed by the Board.

Ms. Gee agreed and said that this would help a young couple with their business. She would be amenable to a site visit, if the Board determined it was needed.

Mr. Elias stated that he has always supported youth sports and supports this use.

Chairman Menard asked if Mr. Sylvia could address the Board regarding his intentions as to the studio.

Bruce Sylvia, Jr. addressed the Board and stated that:

1. He resides on the property with his wife and rents a house from Mrs. Ferry.

2. His proposed hours of operation would be Monday, Wednesday and Friday from 4:15 p.m. to 8:30 p.m.; Tuesday and Thursday from 4:00 p.m. to 8:30 p.m.; and on Saturday from 8:30 a.m. to 12:00 p.m.

3. He has no intention of expanding the hours of operation.

4. He has no intention to expand his class schedule.

5. He has no intention to conduct tournaments on the property. His students attend tournaments at other facilities.

6. He will not have any advertising signs or any signs that light up.

7. The only lighting are solar lights in the parking lot area. There is currently 10 parking spaces allocated to the studio.

Mr. Coutinho made a motion to conduct a site visit and come back at a later date to make a determination.

Discussion ensued. Attorney Blake said that, from a legal standpoint, the Board can make a determination without an onsite visit. He said that the Zoning Enforcement Officer will conduct an onsite investigation; however, those other uses, if found, are not relevant to this particular application for a martial arts studio. To that end, the Board may find that:

1. The evidence presented by the applicant is sufficient to show that the business known as Goldstein's existed in 1973 and, therefore, deemed to be a prior non-conforming use.

2. The use of a martial arts studio will not be more detrimental to the neighborhood than the former non-conforming use.

3. The granting of the finding will be made with specific conditions as to hours of operation, signage, parking and noise.

Decision:

Ms. Gee made a motion to grant the application for a finding that the proposed use of the front building as a martial arts studio will not be more detrimental to the neighborhood than its former non-conforming use (i.e. as a tractor sales and repair facility), with the following conditions:

1. The martial arts studio known as Bruce Sylvia, Jr. d/b/a Absolute Martial Arts will be the sole business being conducted on the property.

2. The hours of operation for the martial arts studio shall be restricted as follows:

Monday through Friday - 4:00 p.m. to 9:00 p.m.

Saturday - 8:00 a.m. to 12:00 p.m.

3. Mr. Sylvia shall submit a parking plan to the Building Department.

4. There will be no lighted signs on the property. The only sign allowed will be one that measures no larger than six (6) square feet and can be placed on the building.

Mr. Coutinho seconded the motion and the Board voted unanimously to grant the finding.

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

The hearing in this matter concluded at 7:55 p.m.

Administrative Items

1. Minutes of January 29, 2020 - Ms. Pontolilo made a motion, seconded by Ms. Gee, and the Board voted unanimously to approve the minutes of the January 29, 2020 meeting.

2. The Board discussed a request by the Planning Board for comment with regard to the property located at 549 American Legion Highway, where a stand-alone donut shop with drive-thru, a stand-alone 3-unit commercial unit, including a café and drive-thru, and stand-alone self-storage building are proposed. Mr. Coutinho made a motion to inform the Planning Board that the Zoning Board comments with modifications as follows: applicant must petition the Zoning Board for the drive-thru portion of the application and must maintain all setbacks in accordance with the Zoning Bylaws. Chairman Menard seconded the motion and the Board voted unanimously.

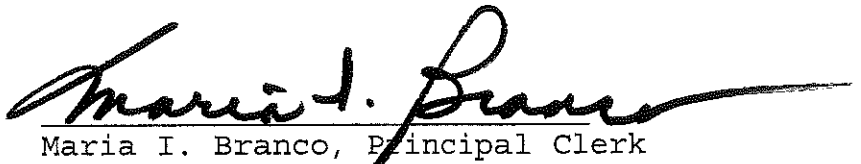
3. The Board discussed the letter of the Zoning Enforcement Officer dated February 12, 2020 that was issued to Matthew Grosshandler regarding a possible violation of the Board's decision of October 15, 2019, namely: converting a crawl space into a full basement without prior approval of the Board. Mr. Souza stated that the foundation is in place; however, the plans that were submitted to him do not comport with the measurements and intent of the foundation that is currently in place. Mr. Souza advised Mr. Grosshandler that, in order to proceed further, Mr. Grosshandler would need to request a further finding from the Board.

8:04 p.m.

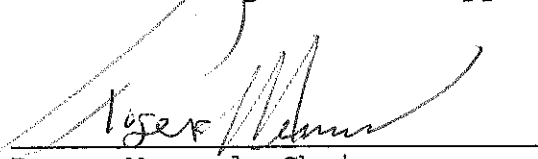
Motion made by Ms. Pontolilo to adjourn the meeting. Seconded by Mr. Coutinho. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,

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

APPROVED:

  
Roger Menard, Chairman