

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
JUNE 17, 2020**

RECEIVED

JUL 29 2020

**THIS MEETING WAS CONDUCTED AT THE TOWN HALL
AS WELL AS REMOTELY VIA GOOGLE MEET.**

WESTPORT ZONING
BOARD OF APPEALS

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

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

Chairman Menard called the Zoning Board of Appeals meeting to order at 6:30 p.m. 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 by reading the provisions mandated by Governor Charlie Baker regarding the congregation of people at the Town Hall and the manner in which municipal boards are to meet and hear matters on their agenda. Chairman Menard said that the Governor has enacted a law, whereby all Town governmental boards are relieved of the decisionmaking deadlines.

Chairman Menard noted that this meeting could be accessed by logging onto meet.google.com/gnn-hmgw-qpk or calling into the conference telephone number (567-275-2921, PIN 853437939#).

1. Chairman Menard read the public hearing notice on the petition of Matthew Grosshandler/246 Howland SP, LLC, for a finding that the proposed introduction of a door providing access to the crawl space that had been previously approved by the Zoning Board of Appeals on October 2, 2019 will not be inconsistent with the prior approval; said crawl space is not contiguous with the existing basement and will only have access

to the outside. The subject property is located at 246 Howland Road, Westport MA and is shown on Assessor's Map 88, Lot 150.

Petitioner Matthew Grosshandler was present.

Chairman Menard read the letter from the Building Commissioner, stating that the Petitioner would be required to request that the Zoning Board convert the crawl space to a full basement with access door, which had not been approved by the Board on October 2, 2019.

Chairman Menard noted that the Board intended that the Petitioner adhere to the plans that had been approved on October 2, 2019.

Mr. Grosshandler addressed the Board, stating that:

1. The access door to the crawl space should have been noted in the original plan, however, was inadvertently omitted.

2. The crawl space is not of full basement height and, in fact, is approximately 5-1/2 feet.

3. He was unable to find a definition of "crawl space" or height requirements in the Building Code.

4. He could raise the floor to avoid moisture and water from coming into the structure.

5. He has no intention of occupying what is intended to be the crawl space, but merely for storage of summer equipment (e.g. kayak or canoe).

6. At the October 2, 2019 meeting, the basement was discussed, but not that it would extend into the area at issue.

7. The issue of the access door became apparent at the time when the foundation was to be poured.

8. The grading and natural topography of the land on the east side of the house prohibits a full basement in that area of the house.

Mr. Souza discovered the full door in the structure at the time he conducted a site inspection. He stated that, in the original plan that had been approved by the Board, there was no notation of a door. The new plan (with the same date as the plan

previously approved) included an access door to a full basement, not a crawl space.

Mr. Coutinho said that he believes the relief requested (finding) is not appropriate here. He also stated that the Building Code has no information regarding crawl spaces, as a crawl space is not considered in the same light as a full-height basement. Accordingly, Mr. Coutinho suggested the relief should be for a variance, not a finding. Mr. Coutinho further stated that the basement was an issue fully discussed at the October 2019 hearing because of concerns expressed by the abutters.

Chairman Menard noted that any determination made by the Board tonight could be considered an amendment to the previous decision of October 2, 2019. No further publication would be required as the abutters have been notified of the relief being requested.

Mr. Elias asked whether there was anything currently above the crawl space and Mr. Grosshandler answered that there was nothing.

In response to Mr. Grosshandler's claim that there is no definition of a crawl space, Ms. Gee stated that the definition by architects certainly consider a crawl space to be a space that you cannot fully stand in and is primarily used for access to utilities. She also noted that the Building Commissioner's statement that the area shown on the plan is a basement is correct.

Mr. Souza said the issue is the height and that the Code mandates a minimum opening to the crawl space to be 18" x 24". He also said that, in his opinion, the Board must document that the basement cannot be finished in that area. In April, at his inspection of the house, Mr. Souza was able to stand straight in the "crawl space" area.

Ms. Gee said that she was surprised that the Petitioner, being a builder, or his architect would forget to include the crawl space and the access door on the original plan. Other Board members commented as well.

Mr. Grosshandler said that he always intended that space to be a crawl space, to be used for storage of summer equipment.

Chairman Menard read a letter into the record from Rene Vogel of Acoaxet Water Co., Inc., 279 Howland Road, Westport, MA, dated

March 12, 2020 regarding the water supply and the 2-bedroom deed restriction.

Mr. Grosshandler stated that he had provided a copy of the recorded deed restriction to the Board. The Clerk confirmed receipt of the recorded document.

Chairman Menard said that he was surprised that a 2-bedroom deed restriction had been imposed, in light of the fact that many homes utilizing the water supply had more than 2 bedrooms and, in fact, most had 3 and some had 4 and 5 bedrooms. This information was confirmed by the field cards at the Assessor's Office.

Mr. Souza said that the lot is less than 9,000 square feet, which might have been the reason for the deed restriction.

Ms. Pontolilo stated that the letter from the Acoaxet Water Company expresses a concern with the Petitioner building a third bedroom in the basement. Mr. Souza confirmed that this would be feasible if the common wall between the basement and the crawl space were removed.

Mr. Grosshandler stated that he will abide by whatever grade, height, size of access door that the Board determines.

Mr. Coutinho suggested that, when opening up the hearing to the public, comments should be restricted to the issue at hand, not rehashing the Board's prior decision of October 2, 2019.

Chairman Menard asked if anyone in the audience wished to speak on this matter, to address the Board by stating his/her name and address.

Daniel Kraft, 3 Hillside Road stated that he lives behind the subject property, and stated that the Petitioner does not need to install a door to the crawl space because he already has a window for access.

Chairman Menard raised the issue of ventilation. Mr. Souza said that a plastic tarp could be placed on the floor to allow for ventilation.

Ms. Pontolilo asked whether the window would be large enough to be used as an entry way for summer equipment; and it is not.

Carol Foster, 279 Howland Road, said she is the owner of the Water Company and that the reason the 2-bedroom deed restriction was put into effect was because of the location of the house.

John Foley, 19 Hillside Road, said that he recently purchased the property and he had no issue with the crawl space.

Diane Larson, 239 Howland Road stated that she would ask that the Board consider the deviation between the original plan and the plan currently before the Board.

The crawl space has an area of 441 square feet.

No comments from anyone through Google Meet.

Mr. Coutinho made a motion to close the hearing at 7:12 p.m. Ms. Pontolilo seconded the motion and the Board voted unanimously.

At the outset, Mr. Coutinho made a motion to deny the Petitioner's request and that he be held to the prior decision by the Board, as well as the plans that were approved on October 2, 2019.

The Board discussed various aspects of the crawl space: proper ventilation and air circulation; the opening to the space can be in the common wall with the existing basement; whether the space should be accessed from inside or outside; specific measurements of the access door; and a condition that there is not to be any potential in the future to convert that space into a third bedroom.

Mr. Souza stated that, currently, the window in the common wall is too small for purposes of utilizing for storage in the crawl space. Mr. Souza also asked that the decision delineate exact measurements for future reference, if needed.

Chairman Menard made a motion to approve the petition with the following conditions:

1. The floor is to be raised no more than five (5) feet from the bottom of the floor joist.

2. The access opening will be no greater than four (4) feet wide by four (4) feet in length.

3. The access opening will be installed on the east-facing wall.

Mr. Coutinho seconded the motion and the Board voted unanimously to approve the petition with conditions.

Chairman Menard advised of the 20-day appeal period, which runs from the date of filing of the decision with the Town Clerk.

The hearing ended at 7:38 p.m.

2. Chairman Menard opened the hearing at 7:40 p.m. by reading the public hearing notice on the petition of Mary Thornton for a variance from Zoning Bylaw Article 7 to install a ground mount solar array, to be 11' 1" setback from Fox Lane. The subject property is located at 1579 Drift Road, Westport MA and is shown on Assessor's Map 57, Lot 22.

Chairman Menard noted that this meeting could be accessed by logging onto meet.google.com/gnn-hmgw-qpk or calling into the conference telephone number (567-275-2921, PIN 853437939#).

Petitioner, Mary Thornton, was not present.

Artie Leonard of Reliable Solar Solutions, 1 Chace Road, East Freetown, MA appeared on behalf of the Petitioner. He addressed the Board by stating that:

1. The ground solar array will be installed on the south side of Fox Lane, a private roadway (driveway) for properties requiring access from Drift Road.

2. The ground solar array will not be visible by neighbors and cannot be seen from the road because of trees.

3. The solar array consists of 16 panels with measurements: 90 inches (7-1/2 feet) at low end; 10 feet at high end; and 25 feet wide.

4. The Thornton property occupies a corner lot.

5. The area for installation is the primary location for the array to get optimal usage. Therefore, Petitioner is requesting a variance of 14 feet from the required 25-foot setback.

6. The area for installation is more than 200 yards from Drift Road.

Chairman Menard expressed a concern that the property has potential of being developed in the future. He also questioned the hardship that must be required for a variance to be granted, as well as the cutting of trees that will be required for installation purposes.

Mr. Leonard stated that, to install the array elsewhere, would require several trees to be removed for the project.

Ms. Pontolilo said that she had no problem with the project.

Chairman Menard asked if anyone in the audience wished to comment, to please state his/her name and address.

Gretchen Whipple, 1569 Drift Road (Soules' Way), stated that she lives parallel to the Thornton property. Ms. Whipple's concern was as to whether or not the array would be visible from her property; as well as conservation of trees. Mr. Leonard said it would not and that the array will be hidden by the barn.

Larry Whipple, 1569 Drift Road (Soules' Way) said that the property goes through to Drift Road.

After discussion, the Whipples stated that they were not in opposition to the project.

Ms. Pontolilo made a motion to close the hearing at 7:58 p.m. Mr. Coutinho seconded the motion and the Board voted unanimously.

After brief discussion, Ms. Pontolilo made a motion to approve the variance, identifying the hardship that, if not approved, the environment would be altered by destruction and removal of trees; and the project would compromise the abutters' privacy. Mr. Coutinho seconded the motion by the following vote of the Board: Mr. Coutinho, aye; Mr. Borden, aye; Ms. Gee, aye; Ms. Pontolilo, aye; and Chairman Menard, nay. Chairman Menard announced that the variance was granted by a vote of 4 to 1; noting that he did not vote for approval of the variance because he was concerned with future development of the property and that the solar array would then be intrusive to neighbors.

Chairman Menard advised of the 20-day appeal period, which runs from the date of filing of the decision with the Town Clerk.

The hearing ended at 8:00 p.m.

3. Chairman Menard stated that a request had been made by Brookmeadow Westport, LLC/Robert Carrigg for a 12-month extension of "Commencement of Construction of the Project" pursuant to General Conditions, Number 27 of 2016 Brookmeadow Comprehensive Permit Modification dated April 6, 2016.

Neither Robert Carrigg nor any other Brookmeadow representative was present to address the Board. The Clerk stated that Paul Cusson had confirmed that he received the e-mail with the new date.

Mr. Souza stated that the developer has started to clear the land.

At the outset, Chairman Menard stated that the Petitioner has been notified of all continuance dates and that someone should have appeared before the Board to discuss this request. The Clerk said that she had received confirmation from Paul Cusson that he had been notified of tonight's hearing.

Chairman Menard also noted that he discussed this matter with Town Counsel, who said that any action taken by the Petitioner is considered "commencement of construction" under the law.

Ms. Gee noted that the Comprehensive Permit was granted on April 6, 2016 and it is to be completed by April 6, 2022.

Mr. Coutinho said that the request is considered to be not substantial and, therefore, can be granted. Accordingly, Mr. Coutinho made a motion to consider the one-year extension as being unsubstantial. Ms. Pontolilo seconded the motion and the Board voted unanimously to grant the one-year extension. The extension will expire on April 6, 2021.

Administrative Items

1. The Board discussed the granting of liquor licenses by the Board of Selectmen to Wetherlow Farms, in light of the Board's decision from a couple of years ago that any entertainment or functions were to be held in the barn only, and not outside.

Chairman Menard said that he discussed this matter with Town Counsel, who said that each Board has its own function and that,

although the Board of Selectmen has discretion to issue liquor licenses, those licenses do not supersede any decisions or restrictions made by the Zoning Board. In fact, it would be the duty of the Building Commissioner to advise Ryan Wagner of Wetherlow Farms that he is bound by the Zoning Board's decision to hold functions solely inside the barn.

Mr. Coutinho stated that he attended one of the Board of Selectmen's meetings regarding Wetherlow Farms and advised the Selectmen of the Zoning Board's prior decision.

2. Minutes of May 6, 2020 - Ms. Pontolilo made a motion to approve the minutes. Mr. Elias seconded the motion and the Board voted unanimously to approve the minutes of the May 6, 2020 meeting.

3. Minutes of May 13, 2020 - Ms. Pontolilo made a motion to approve the minutes. Ms. Gee seconded the motion and the Board voted unanimously to approve the minutes of the May 13, 2020 meeting.

4. Minutes of June 10, 2020 - Ms. Pontolilo made a motion to approve the minutes. Ms. Gee seconded the motion and the Board voted unanimously to approve the minutes of the June 10, 2020 meeting.

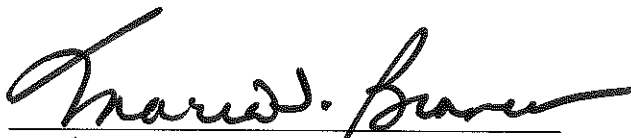
The next meeting of the Board is on Wednesday, June 24, 2020 at 6:30 p.m. at the Town Hall, as well as remotely via Google Meet.

8:28 p.m.

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

Adjournment.

Respectfully submitted,


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

APPROVED:

A handwritten signature in black ink, appearing to read "Roger Menard", written over a horizontal line.

Roger Menard, Chairman