

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
FEBRUARY 13, 2019**

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

**Also present:** Ralph Souza, Building Commissioner

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.

**Mario F. Cipollini - Petitioner applied for a special permit for a detached in-law unit, pursuant to the allowances found in Westport Zoning By-Law 4.0.1.D, 13., and a variance approving such detached in-law unit to be approximately 90 square feet in excess of the allowed 750 square feet as defined in 4.0.1.D,13. The property is located at 30 Old Farm Road, Westport, MA and is shown on Assessor's Map 68, Lot 23J.**

Members Present: Menard, Coutinho, Borden, Gee and Pontolilo  
Also Present: Ralph Souza, Building Commissioner  
Mario & Jill Cipollini, petitioners

Abutters Present: None

Chairman Menard called the hearing to order at 7:02 p.m. with the reading of the Public Hearing Notice and read the letter from the Building Commissioner. The letter from the Building Commissioner included the statement "After review of the submitted building permit application with construction documents. The conversion of the unfinished upper level into a 1 bedroom 840 square foot detached accessory apartment would require a special permit issued by the Board of Appeals. The square footage of the proposed unit exceeds the allowed (750) seven hundred fifty by (90) ninety square feet. A variance would need to be granted by the Board of Appeals. Therefore your application is hereby denied due to the Westport Zoning By-laws Article 4D #13".

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

Petitioner, Mario F. Cipollini, addressed the Board. He stated that:

- He resides at 30 Old Farm Road, Westport, MA with his wife and 2 children.
- The Cipollini's purchased the property in October 2013, at which time, the property was advertised as having a detached garage that contained an unfinished in-law apartment on the second floor.

- He said that, at that time, it was not a priority to finish the garage although it had already been roughed-in from the previous owner. They thought of finishing the 2<sup>nd</sup> floor of the garage and using it as a pool house, guest house, or as an in-law apartment.
- He also said that his mother's health has deteriorated, which has prompted the Cipollini's to consider renovating the garage to utilize it as an accessory apartment where his mother would reside. His mother currently lives in Westport.
- His siblings live nearby and will contribute to the mother's caretaking needs. They have become concerned about her health. Having his mother live with them will allow them to help her since she is home alone by herself. His mother liked the idea of moving in with his family, and having her own living space.
- He and his wife decided to finish the 2<sup>nd</sup> floor of the garage and have his mother move-in. When he and his wife opted to renovate the second floor of the garage as an accessory apartment, they consulted with the Building Commissioner. They wanted to make sure they complied with the letter of the law.
- There is currently 840 square footage of livable space, which will be dedicated for the in-law apartment.

Ralph Souza, Building Commissioner, stated that the former owner had taken a building permit for the garage back in 2005, however, did not finish the renovations, and the permit expired. The garage was unfinished at the time of the sale to the Cipollini's.

Ms. Gee asked whether the downstairs of the garage would be considered part of the square footage. Mr. Souza stated that it would not be, as that area would not be considered livable space. She also asked about the prior permit that had issued for a 28' x 30' space. Mr. Souza stated that he visited the property a short time ago to inquire as to the status of the building permit that had issued in 2005 and, when he visited the property, he learned that the Cipollini's now owned the property.

Mr. Cipollini submitted a plan entitled "Proposed In-Law Suite Within Existing Structure, 30 Old Farm Road, Westport, MA 02790." He further explained that:

- The plan is for a one-bedroom in-law apartment, similar to what the prior owner had intended to construct.
- The apartment would be a full, year-round space with its own heat and air conditioning.
- There would be full plumbing for a kitchen and bathroom.
- There is a small foyer on the ground floor of the garage, with a staircase leading to the second floor, in-law apartment.
- Not only will there be an exit available down the staircase and out the first floor, but there will also be a second exit through the deck area.
- There is a concrete slab off the rear of the garage.
- His mother is not handicapped at this time, however, he would construct the apartment with some handicapped accommodations including installation of a chair lift, if needed.



Mr. Coutinho stated that at the time of the original construction the town did not allow detached apartments, however a few years ago the town changed the by-laws to allow detached accessory apartments.

Mr. Coutinho asked about the square footage on the second floor. He noted that the bylaw allows for 750 square feet for livable space and that, with handicapped living, allows for greater square footage. Also, constructing a shower that allows for mobility would create a need for added square footage. Mr. Cipollini answered that he is open to making any changes to allow for handicap living. His mother currently does not require handicap assistance but may require handicap assistance in the future, including a chairlift.

Mr. Coutinho asked Mr. Souza if the stairway should be considered for square footage and Mr. Souza answered that the hallway/stairway should not be considered. Mr. Coutinho commented that the zoning by-laws encourage the board to facilitate handicapped access. The zoning by-law also requires that the homeowner live in either the main house or the accessory apartment.

Chairman Menard said that if some of the space is dedicated to mobility reasons, the bylaw would allow for greater than 750 square feet and, therefore, the only determination required by the Board would be for a special permit. These types of situations are exactly the intention of the zoning by-law, to allow for care of elderly so they still have quality of life.

Mr. Cipollini stated that he had consulted the contractor to possibly enlarge the shower stall and the bathroom door to allow for handicapped access.

Mr. Souza also informed the Board that any space that cannot be accessed because of a wall is not considered livable space when calculating square footage. He also stated that the stairway is not a consideration when measuring livable square footage.

Mr. Coutinho noted that, if the owners intend to construct the in-law apartment with handicapped accommodations, the bedroom and bathroom doors should be at least 36 inches wide. He also said that the back deck stairway, which currently calls for 3' 6" could be widened for emergency purposes.

Chairman Menard asked if anyone would like to address the Board. There was no public comment made.

Motion made by Mr. Coutinho to close the hearing at 7:30 p.m. Seconded by Ms. Pontolilo. The Board voted unanimously in favor.

Discussion by the Board ensued.

Chairman Menard stated that the board should first vote on the special permit. Depending upon the determination of the special permit, they may or may not need a variance. He applauded the petitioners since this is exactly what the town proposed when the accessory apartment by-law was adopted. He therefore said that he had no problem with voting to allow the special permit. He also said that the square footage of the stairway can be deducted from what is considered livable space for the apartment and that the petitioners may want to think about installing a laundry on the second floor.

Mr. Coutinho said that he believed that the intent of the bylaw was covered; that the space for mobility purposes should be constructed now and not later; he would vote to allow the special permit with conditions; he was not concerned with counting the washer and dryer area on the first floor; and he is not concerned about whether there is a door at the top of the staircase, as the staircase is not considered livable space.

Vote taken.

**Motion** made by Chairman Menard to approve the petition for a special permit for a detached accessory apartment, pursuant to the allowances mandated in 4.0.1.D,13, such detached accessory apartment to contain no greater than 840 square feet as defined in 4.0.1.D,13. The property is located at 30 Old Farm Road, Westport, MA and is shown on Assessor's Map 68, Lot 23J, with the following conditions:

1. The Board accepts the plan as submitted and identified, specifically plan entitled "Proposed In-Law Suite Within Existing Structure, 30 Old Farm Road, Westport, MA 02790."

2. Construction of the accessory apartment shall include, but be not limited to, handicapped-accessible bathroom shower and bathroom & bedroom doorways.

3. The special permit for the construction of an accessory apartment takes into account the square footage of the stairway making a variance unnecessary.

4. Gross floor square footage shall not be greater than 840 square feet.

Second by Ms. Gee.

The Board voted unanimously in favor.

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

7:43 p.m. - Chairman Menard read an e-mail received from Attorney Levin regarding the administrative appeal filed by David P. Sunderland, pertaining to property located at 1346 Main Road, Units E, F, G and H. Attorney Levin stated "Thank you for returning my call today. Pursuant to our conversation, I am confirming that Attorney Mello, representing the petitioner, and my client, R.L. Development, have agreed to continue the hearing scheduled this evening before the Zoning Board of Appeals of Westport at 7pm. The parties agreed to waive the statutory limitation for the Board to make a decision on this matter due to the postponements requested by the petitioner and the respondent.

The parties wish to inform the board that they have been working toward resolving the issues in the petition and due to the inability of my client to obtain a flight due to the weather yesterday, the parties agree to continue the matter until a Wednesday in March. The parties suggest that a hearing be held on March 13, 2019 or any Wednesday thereafter that month. Hopefully we will be able to resolve the issues and have the matter withdrawn."

Motion made by Mr. Coutinho to continue this matter to Wednesday, March 20, 2019 at 6:30 p.m.  
Seconded by Mr. Borden.

The Board voted unanimously in favor.

**Paul and Cheryl Hamel – RE: Application request for a finding and/or variance for the demolition of the existing single-story house and approval to build a new two-story residence. This property being in a flood plain zone AE12 and located at 16 Deacon Road, Westport, MA and is shown on Assessor's Map 91, Lot 78.**

Members present: Menard, Coutinho, Borden, Gee and Pontolilo.

Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer.

Paul & Cheryl Hamel, petitioners

Gale Goff, architect for the petitioners



Chairman Menard opened the hearing at 7:45 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. The letter from the Building Commissioner denied the application for a building permit at 16 Deacon Rd. The letter included the following statements "After review of the submitted application with plans to demolish and remove the existing one level 1188 square foot dwelling and replace it with a two level 2917 square foot dwelling on a 10,000 square foot sub-standard lot at the above referenced property for the following reason: Pursuant to the Westport Zoning By-Laws Article 4.1.3 a pre-existing non-conforming structure or use may be altered providing 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 Building Commissioner also noted that the property is in flood zone AE 12 per FEMA map 25005C0464F dated July 07, 2009.

Chairman Menard also noted that the Zoning Board makes no determination regarding any potential flood zone issue as that issue is not within the jurisdiction of the Zoning Board.

Mr. Souza confirmed that, in his letter to the petitioners dated January 20, 2019, he advised that any issue of flood zone is a Building Code issue, not a zoning issue.

Chairman Menard read a portion of a letter from Town Counsel Jeffrey Blake, stating that, "In my opinion, the 16 Deacon Road lot is nonconforming at only 10,000 square feet, rather than the required 60,000 square feet, and 100 feet of frontage, rather than the required 150 feet. The lot, however, appears to predate the Zoning Bylaw, making it a lawfully pre-existing nonconforming use. Assuming that is the case, any proposed change to the existing home is governed by Section 4.1. Therefore, in my opinion, any change to the existing nonconforming structure requires a finding by the Board that the change will not be substantially more detrimental than the existing non-conforming use of the lot. The Hamels have addressed this issue in their application. The Board can and should determine whether the requested finding is appropriate for the proposed change in this particular neighborhood.

In addition, the lot is located in Flood Zone AE, which is subject to the requirements for the Flood Plain District. Although Section 6.5 prohibits reconstructing an existing structure within its existing footprint within the Flood Plain District, 16 Deacon Road is exempted under Section 6.5.7 as a lawfully pre-existing use. In my opinion, any other considerations for construction with the Flood Plain District are not before the Board of Appeals for determination; the Building Commissioner will determine whether any applicable requirements are satisfied when deciding whether to grant a building permit".

Chairman Menard also read a letter from Attorney Brian R. Corey, 519 American Legion Highway, Westport, MA, who represents Map East LLC owners of property at 48 Cherry & Webb Lane and are lawful abutters to the application filed by Paul and Cheryl Hamel. Attorney Corey states that "My client reports that they are in full support of their neighbor's application and request that the Board approve the Hamel's application and allow the construction of the new two story dwelling as proposed".

Petitioners, Paul and Cheryl Hamel, addressed the Board, stating that:

- They have owned the property since 1963 and have always considered it as a gathering place for family.
- They spend time at the property, which lies behind Baker's Beach, during the summer months, and reside in Tucson, Arizona during winter months.
- They intend upon taking a very old pre-fab structure originally sitting on cinder blocks and enlarge the structure with a second floor.

- They intend to enlarge the space on the first floor and construct a second floor, decreasing the footprint, changing the shape of the residence but otherwise meeting setback requirements. There will be an attached screened-in porch with mahogany decking, measuring 14' x 12' and is included in the footprint.
- They have hired Gail Goff, architect, who is present at the meeting, to address any concerns the Board may have.
- They understand that the property is in a flood zone and may require approval from the State.
- There are currently 6 other structures that exist in the neighborhood with second floors.
- The first floor elevation will be increased from 12.5' to 14'.
- The property was originally on cinder blocks which was changed to concrete piers.
- The shed roof will not create any water runoff to the neighbors. In the future, they may consider installing solar panels on the shed roof.

Mr. Souza stated that there are no other building issues, so it is proper to demolish.

Chairman Menard stated that he viewed the property and believed that the second floor will not block anyone's view and there is no view of the water or beach.

Mr. Hamel stated that the only view that may be affected is the neighbor's view of the sunset, that some of the neighbors, who have larger properties, reside there year-round.

Chairman Menard asked if they are proposed changes to the footprint of the house. Gale Goff responded they are not using any of the existing house. The new two story house will be built at the same location and that they are actually decreasing the footprint.

Constance Gee asked if there is any problem with water runoff from the roof. Gale Goff answered that they will manage the runoff.

Mr. Hamel noted that the age and condition of the current building made it uneconomical to modify. The structure is not properly insulated and not energy efficient, therefore, requiring demolition. The new dwelling will remain a two bedroom house.

#### **8:10 p.m.**

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

Ms. Pontolilo stated that she believed the new structure would be attractive and modernize the neighborhood and finds this project to be appropriate.

Chairman Menard agreed, stating that he did not find any negative impact and not detrimental to the neighbors and there would be no additional water runoff from the shed roof. He also noted that the petitioners would be required to comply with State flood zone regulations.

Mr. Coutinho stated he had no problem with the project.



**Motion** made by Mr. Borden to approve the petitioners' application that a pre-existing non-conforming structure or use may be altered and the Board of Appeals determined that such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood. This property being in a flood plain zone AE12 and located at 16 Deacon Road, Westport, MA and is shown on Assessor's Map 91, Lot 78. The Board's approval is granted with the following conditions:

1. The finding issued by the Zoning Board is based on photographs and plans submitted by the Petitioners at this meeting as drawn by Gail Goff Architect, entitled "Hamel Cottage, 16 Deacon Road, Westport, MA."

2. The property lies in Flood Plain Zone AE12 and the owners must comply with State regulations pertaining to flood zone.

Second by Ms. Pontolilo. The Board voted unanimously in favor.

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

**Action Items** – The Board reviewed and discussed the minutes of the meetings of January 23, 2019 and January 30, 2019.

**Motion** made by Mr. Coutinho to approve the minutes of the meeting of January 23, 2019 as presented. Second by Ms. Gee. The Board voted unanimously in favor.

**Motion** made by Mr. Coutinho to approve the minutes of the meeting of January 30, 2019 as presented. Second by Ms. Gee. The Board voted unanimously in favor.

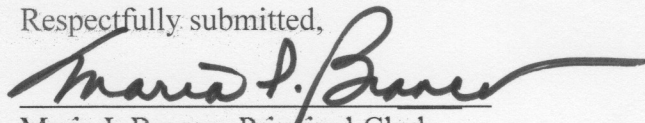
Chairman Menard stated that he will work on uploading audio tapes of the meetings on the web site; and will discuss with Lucy Tabit to upload the Board's decisions on the web site as well.

8:30 p.m.

**Motion** made by Ms. Pontolilo to adjourn the meeting. Second 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