

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
AUGUST 19, 2020**

RECEIVED

SEP 2 2020

**Members Present:** Roger Menard, Chairman  
Gerald Coutinho  
Constance Gee  
Peter Borden (via Google Meet)  
Barbara Pontolilo  
Raymond Elias

WESTPORT ZONING  
BOARD OF APPEALS

Also present: Ralph Souza, Building Commissioner

Chairman Menard called the Zoning Board of Appeals meeting to order at 6:30 p.m. with the reciting of the Pledge of Allegiance.

**Chairman's Announcement** - Under MGL Chapter 30A, Section 20(f) - Meeting being recorded.

**Governor Charlie Baker's Mandate**

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 should meet and hear matters on their agenda.

Chairman Menard noted that the meeting was being conducted live, as well as remotely, by accessing Google Meet. Anyone wishing to comment could call into the conference telephone number.

Chairman Menard advised that the Petitioners would present their case first; the Board would ask questions; the public would be provided an opportunity to comment or ask questions; and the meeting would be closed.

1. Chairman Menard read the public hearing notice on the application of Dionne Melo and Michael DeMello for a Special Permit to install and use an accessory apartment, with bathroom and kitchen, consisting of 524 square feet in an existing detached garage, as mandated by Zoning Bylaw Article 4, Section 4.0.1.D.13. The subject property is located at 41 Bentley Lane and is shown on Assessor's Map 5, Lot 22C.

Chairman Menard read the denial letter from Ralph Souza, Building Commissioner and Zoning Enforcement Officer. In that letter Mr. Souza stated: "As per the Westport Zoning Bylaws Article 4 #13 "The Zoning Board of Appeals may issue a special permit authorizing the installation and use of a detached accessory apartment in a detached structure on a lot containing a single-family dwelling provided conditions are met as listed in the zoning bylaws."

Dionne Melo and Michael DeMello, Petitioners, were present. They stated that:

1. They purchased the property four (4) years ago, which included a one-floor detached garage that had been built in 2010.

2. The detached garage contains 524 square feet and will not be expanded.

3. A bathroom and kitchen will be installed, as well as new windows and garage doors.

4. The accessory apartment will also contain a common area that can be used as bedroom/living room space.

5. They reside in the main house.

6. The property is supported by a four-bedroom septic system.

7. At this time, the accessory apartment will be primarily used for entertaining purposes, but will be available for future use as an accessory apartment, if needed.

Ralph Souza, Building Commissioner and Zoning Enforcement Officer stated that, when the Petitioners applied for a building permit to install a kitchen, he advised the Petitioners that a special permit would be required from the Zoning Board for use of an accessory apartment. He also noted that, although he has not been inside the main house, the Assessor's records indicate the main house as having three (3) bedrooms. Therefore, the septic system will support both the house and the accessory apartment. Mr. Souza also said that the Board of Health will be required to sign off on the building permit prior to its issuance.

Chairman Menard recited the conditions mandated by the bylaw for accessory apartments and the Petitioners agreed to comply with those conditions.

Ms. Pontolilo made a motion to close the hearing at 6:50 p.m. Mr. Elias seconded the motion and was unanimously voted by the Board.

Ms. Pontolilo stated that she did not believe the accessory apartment would be detrimental to the neighborhood and had no issue with the project going forward.

Chairman Menard agreed, stating that the project does not affect the character of the neighborhood. He said he was supportive of the project, so long as all conditions under the bylaw are complied with.

Other Board members were in agreement as well.

Chairman Menard made a motion to grant the Special Permit for an accessory apartment, with the condition that the Petitioners comply with Zoning Bylaw Article 4, Section 4.0.1.D.13. Ms. Pontolilo seconded the motion and the Board voted unanimously to grant the Special Permit.

Chairman Menard advised of the 20-day appeal period after filing of the decision with the Town Clerk.

The hearing concluded at 6:53 p.m.

2. Chairman Menard read the public hearing notice on the application of Jacob Talbot, and Bruce Clarke and Karen Clarke, Owners, for a finding to demolish an existing 2-bedroom dwelling and constructing a new 3-bedroom dwelling, which 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 263-273 Brayton Point Road and is shown on Assessor's Map 88, Lot 54.

Chairman Menard read the denial letter from Ralph Souza, Building Commissioner and Zoning Enforcement Officer. In that letter Mr. Souza stated: "After review of the submitted permit application to demolish the existing 1976 sq. ft. 2 bedroom dwelling and construct a new 6941 sq. ft. dwelling which includes an attached garage, porch, and deck. There is a total

of (3) three dwellings on the property that is located on 40 acres of area, which makes this property pre-existing. As per Westport Zoning Bylaws Article 4.1.3 "Pre-existing nonconforming 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".

In attendance:

Attorney Richard P. Desjardins, attorney for the Petitioners, 791 Main Road, Westport, MA.

Bruce and Karen Clarke, Petitioners, 263 Brayton Point Road, Westport, MA.

Jacob Talbot Homebuilding, Contractor, 7 Main Street, Little Compton, RI.

Attorney Desjardins addressed the Board, stating that he represented the Clarkes and believed the petition to be fairly straightforward.

Mr. Clarke addressed the Board, stating that:

1. He and his wife purchased the property 7 years ago for purposes of retirement.

2. He and his wife restored the corn field, hay field and the farmhouse.

3. Approximately 12 acres of the property is considered farmland under Chapter 61A, where corn is grown for use by cattle.

4. There are three (3) single-family dwellings on the property: restored farmhouse; garage with small apartment; and barn dwelling.

5. The intent is to demolish the barn dwelling and construct a single-family home containing three (3) bedrooms.

6. Currently, there is one well that supports all dwellings; however, a second well is to be installed within the coming months.

7. There has been installation of rooftop solar panels on the garage.

8. The height of the new construction will not change the elevation and will virtually be the same height as the current structure, except for the additional height of the cupola.

9. A major portion of the farmland is actually situated in Rhode Island.

10. The cupola, which will replicate the original cupola, will be the only portion of the dwelling visible from the road.

Attorney Desjardins explained that, historically, the property had been utilized to include three (3) residential dwellings and the project will not increase the non-conformity of the property.

Jacob Talbot Contractor's representative stated that the new cupola is the same size as the cupola currently on the structure, and the total height will be approximately 25 to 26 feet.

Ralph Souza, Building Commission and Zoning Enforcement Officer stated that the reason the Clarkes were before the Board was due to a pre-existing non-conformity, whereby three (3) dwellings exist on one lot, which is pre-zoning. He also said that no variance will be required as there is more than ample space (approximately 40 acres) to allow for construction of the new dwelling and will have its own footprint. Mr. Souza also noted that the Board of Health and Conservation Commission will be required to sign off on the project prior to issuance of a building permit.

Chairman Menard was concerned about demolishing a non-conforming dwelling and building a new dwelling at a different location than the original dwelling. Chairman Menard requested an opinion from Town Counsel Jeffrey Blake. Chairman Menard read into the record an e-mail that the Board had received from Town Counsel, Jeffrey Blake in which Mr. Blake stated: *"In my opinion, the proposed razing and reconstruction of the residential structure can be authorized pursuant to a Section 6 finding, notwithstanding the fact that the proposed building will be in a different location, so long as the proposed building does not create any additional or new nonconformities to the property"*.

The Board discussed the language in the e-mail, which members found to be a bit confusing; however, the end result was that the finding could be granted by the Board, so long as the Board found that the project is not substantially more detrimental to

the neighborhood. Chairman Menard said that, when he discussed this matter with Town Counsel, granting the finding did not seem to be an issue of concern. He noted that because the property was so vast, that the project would not affect even the nearest neighbor.

Once the Board had discussed the petition, Chairman Menard opened the meeting up to anyone wishing to comment.

Peter Parker, 234 Brayton Point Road was present at the meeting and stated that he lives across the street from the Clarkes, that he supports the project and appreciates that the Clarkes plan to maintain the farmland. He said that, when the property was placed on the market for sale, that it was marketed heavily to developers and was happy to learn that the Clarkes intended to keep the property as is.

Mr. Coutinho commented that the Clarkes, or any future owner, could still develop the land.

Curtis and Margaret Mock, 278 Brayton Point Road was present via Google Meet, inquired about the septic system and whether the new structure would affect the water quality going forward.

Mr. Clarke said the existing septic system is west of the barn and on a big ridge and, even if there were a problem, it would run off into the Rhode Island area. In any event, the Clarkes are working with Len Potter to expand the systems, if necessary.

Chairman Menard stated that any septic issues will be handled by the Board of Health prior to the issuance of a building permit.

Susan Clare, 234 Brayton Point Road was present via Google Meet. She mirrored the comments made by her husband, Peter Parker, and said that she enjoyed the vast land.

Alexander Chen, 300 Brayton Point Road was present via Google Meet, and had no comment.

Alexander Bok, 183 Brayton Point Road was present via Google Meet, and had no comment.

Ms. Pontolilo made a motion to close the hearing at 7:31 p.m. and, then, retracted her motion. Mr. Coutinho said that he wanted to ensure that everyone had had an opportunity to make comments.

After all information had been presented to the Board, Ms. Pontolilo made a motion to close the hearing at 7:33 p.m. Mr. Coutinho seconded the motion and the Board voted unanimously in favor.

Chairman Menard stated that he believed that the project was straightforward, and met the requirements under the bylaw. His only issue was that the new structure would not occupy the same footprint as the demolished structure.

Mr. Coutinho stated that the Board would obtain clarification from Town Counsel as to his opinion, however, that clarification would not affect the Board's decision tonight.

Ms. Gee had no further comment and seemed like a straightforward project.

Chairman Menard made a motion to grant the finding that the demolition of an existing 2-bedroom dwelling and constructing a new 3-bedroom dwelling 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. Mr. Elias seconded the motion and the Board voted unanimously to grant the finding.

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

Attorney Desjardins thanked the Board members for their service.

The hearing concluded at 7:38 p.m.

#### **Administrative Items**

1. Minutes of August 5, 2020 - Mr. Coutinho made a motion to approve the minutes. Ms. Pontolilo seconded the motion and the Board voted unanimously to approve the minutes of the August 5, 2020 meeting.

2. Board members discussed the possibility of accessing opinions from Town Counsel in advance of the meeting.

3. Chairman Menard said that the Board had received a request from the Planning Board for comment as to property on Soules Way for a proposed solar farm.

4. Mr. Coutinho stated that the Board had not received a request for a variance since 2007 from anyone intending to place a trailer on a small lot, for which the petitioners would be required to obtain a permit from the Board of Selectmen. He said that 49 permits were granted during the years 1976 through 2007.

The next meeting of the Board is on Wednesday, September 2, 2020 at 6:30 p.m. at the Town Hall.

**7:48 p.m.**

**Motion** made by Ms. Pontolillo to adjourn the meeting. Mr. Elias seconded the motion to adjourn. The Board voted unanimously in favor.

**Adjournment.**

Respectfully submitted,



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

APPROVED:

  
Roger Menard, Chairman