

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
SEPTEMBER 2, 2020**

RECEIVED

SEP 30 2020

WESTPORT ZONING
BOARD OF APPEALS

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

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.

1. Stating that this matter was on for a continued hearing, Chairman Menard read the public hearing notice on the Administrative Appeal filed by Niveria Rodrigues and Jeffrey Rodrigues, appealing the decision of the Building Commissioner that the lots in question are considered a single lot with an existing dwelling. The subject property is located at 45 Pine Street and is shown on Assessor's Map 7, Lots 171-189.

Chairman Menard read a letter that the Board had received from Attorney Brian Corey, Jr., attorney for the Petitioners, requesting a continuance on the grounds that the Petitioners were awaiting additional information from their site engineer and, therefore, could not go forward this evening.

Ms. Pontolilo made a motion to continue this hearing to Wednesday, September 30, 2020 at 6:30 p.m. Mr. Borden seconded the motion, which passed by unanimous vote.

2. Stating that this matter was on for a continued hearing, Chairman Menard read the public hearing notice on the application of Mark Bouchard for an eight (8') foot setback variance from the Taft Avenue layout for the proposed attached garage addition, as existing house front setback from the Taft Avenue layout is eight (8') feet, as mandated by Zoning Bylaw Article 7, Section 7.6.1. The subject property is located at 23 Taft Avenue and is shown on Assessor's Map 9, Lot 2-0.

Chairman Menard read an e-mail from the Petitioners, requesting that this matter be continued on the grounds that the Petitioners are preparing final plans that will be submitted to the Board and require additional time to do so.

Ms. Pontolilo made a motion to continue this hearing to Wednesday, September 30, 2020 at 6:30 p.m. Mr. Elias seconded the motion, which passed by unanimous vote.

3. Chairman Menard read the public hearing notice on the petition of Howayeck Beach House Trust for a finding that: elevating the existing structure to construct a new concrete pier foundation above the VE flood elevation; construct a new deck within setback requirements; and existing front yard setback to remain non-conforming, i.e. 21 feet, 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 28 First Street and is shown on Assessor's Map 76, Lot 15.

Also present:

Dan Aguiar, SITEC representing the petitioner.

Gary Michael, 19 Oakridge Lane, Westport, MA contractor for the petitioner.

Chairman Menard read the letter from Ralph Souza, the Building Commissioner/Zoning Enforcement Officer, which prompted the filing of the application for a finding. The letter read, in pertinent part:

"The property in question contains 7,405 square feet of area, with (75) seventy-five feet frontage on First Street. It is also in a flood zone VE Elevation 19, which would require a new structure floor system to be

a VE Elevation 21. The new structure violates the MA State Building Code for flood zone construction. . . . the lot in question is pre-existing, non-conforming . . . 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."

See Zoning Bylaw Article 4.1.3.

Dan Aguiar of SITEC, 449 Faunce Corner Road, Dartmouth, MA addressed the Board. He stated that:

1. He was addressing the Board on behalf of the Petitioner, Howayeck Beach House Trust.

2. The Petitioner had applied and received a building permit to make modifications to the structure, installation of windows and new roof.

3. After removing walls from inside the structure and while installing a new roof, the structure collapsed.

4. The collapse of the structure compelled reconstruction of a new structure.

5. The Petitioner has been granted a permit from the Conservation Commission to install concrete pilings.

6. The new construction will be on the same footprint as the former structure, with same roof pitch, and a deck within the setback requirement.

7. The Petitioner is requesting a finding that the new structure, which will be ten (10') feet higher than the former structure, will not be substantially more detrimental to the neighborhood.

8. The Petitioner owns the adjoining lot and, therefore, zoning laws mandate an automatic merge of both lots.

9. The Zoning Board could determine that the adjoining lots are properly merged; or that the Petitioner file an "Approval Not Required" plan be filed with the Planning Board. The extra lot will not be developed.

10. Originally, the Petitioner's intention was to expend less than the amount that would have required elevation of the structure.

11. The current setback of approximately twenty-one (21') feet for the deck will remain the same.

12. The contractor will utilize the plan engineered by Mark Boucher dated June 25, 2020, a copy of which was submitted to the Board.

13. The well shall be placed in the front yard; with the septic system in the rear, outside of the wetlands area.

Ms. Gee stated that, although the new structure is to be constructed on the same footprint, it looks different than the original. Mr. Aguiar stated that some of the wood from the old structure will be utilized in the new structure.

Chairman Menard noted that the Petitioner must now install pilings and inquired as to why the Petitioner did not install those pilings before constructing a new structure.

Mr. Souza stated that he had issued a building permit for renovations within the structure (new kitchen, new bathroom) as well as installation of a new roof. The original renovation was less than 50% of the value of the dwelling, therefore the renovation did not trigger the requirement to meet FEMA flood zone construction requirements. When he visited the property to review the work, he noticed that the former structure no longer existed and, in fact, a new structure had been constructed in the same footprint. As a result, the cost of the new construction exceeded the amount required by FEMA. Since the renovation now exceeds 50% of the value of the dwelling, the petitioner is now required to meet the flood zone construction requirements. Mr. Souza issued a cease and desist order and mandated that the Petitioner request relief from the Zoning Board because the structure would now require elevation above the flood plain.

Gary Michael, 19 Oakridge Lane, Westport, MA addressed the Board. He stated that:

1. He is the contractor for this project (Bristol Pacific Homes, 275 Martine Street, Fall River, MA).

2. The structure was on slab on grade and collapsed during renovations.

3. The structure will be moved to the side for purposes of installation of the new floor and pilings to comply with the flood zone requirements. Once that is accomplished, the structure will be placed back onto the pilings.

Anthony Balliro, 23 First Street, Westport attended the meeting via Google Meet. Chairman Menard explained the reason the Petitioner had applied for a finding; and that the Petitioner would be required to apply to other Town Boards for other relief (i.e. Conservation Commission, Board of Health).

Attorney Brian Corey, Jr., 519 American Legion Highway, Westport, attended the meeting via Google Meet. He stated that he represented the Petitioner; that there is no increase in the non-conforming status of the property; and requested that the Board issue a finding.

Hearing no further comments, Mr. Coutinho made a motion to close the hearing. Ms. Pontolilo seconded the motion and the Board voted unanimously to close the hearing at 7:11 p.m.

Ms. Pontolilo stated that she did not find the new structure with pilings to be substantially more detrimental to the neighborhood; that she believed the new structure to be an improvement, would stabilize the structure, and she approved of the project.

Chairman Menard said that he did not believe any other structure in the neighborhood was placed ten (10') feet above flood level.

Mr. Coutinho made a motion to find that the proposed project is not substantially more detrimental to the neighborhood, with the condition that the two (2) lots shall become legally merged. Ms. Gee seconded the motion and the Board voted unanimously to grant the finding.

The hearing closed at 7:13 p.m. with Chairman Menard advising the Petitioner of the 20-day appeal period.

Administrative Items

Minutes of August 19, 2020 - Ms. Pontolilo made a motion to approve the minutes. Mr. Coutinho seconded the motion and the Board voted unanimously to approve the minutes of the August 19, 2020 meeting.

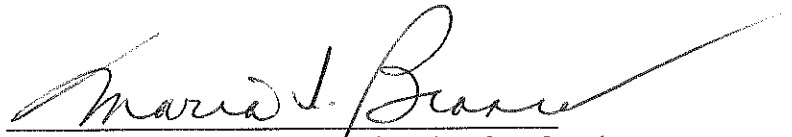
The next meeting of the Board is on Wednesday, September 30, 2020 at 6:30 p.m. at the Town Hall and on Google Meet.

7:15 p.m.

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

Adjournment.

Respectfully submitted,



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

APPROVED:


Roger Menard, Chairman