

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
SEPTEMBER 30, 2020**

RECEIVED

NOV 24 2020

WESTPORT ZONING  
BOARD OF APPEALS

**Members Present:** Roger Menard, Chairman  
Gerald Coutinho  
Constance Gee  
Peter Borden  
Barbara Pontolillo  
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 an e-mail that the Board had received from Attorney Brian Corey, Jr., attorney for the Petitioners, requesting a continuance on the grounds that the Petitioners were unable to provide the requested documents to the Board and, therefore, could not go forward this evening.

Mr. Coutinho made a motion to continue this hearing to Wednesday, November 18, 2020 at 6:30 p.m. Ms. Pontolilo 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 into the record an excerpt the opinion of Town Counsel, that:

" . . . a single family home is pre-existing nonconforming as to front yard setback (i.e. the structure is too close to the street). The homeowner proposes to extend the structure closer to the street, but will not introduce an additional or new **category** of nonconformity to the property. Therefore, the extension of the structure may be permitted with simply a Section 6 finding."

Accordingly, the Board need only determine whether a finding is appropriate and a variance is not required. Chairman Menard stated that the Board would hear evidence from the Petitioners and would then open the matter for discussion by any abutters or members of the public before closing the hearing and deliberating on a decision.

Mark Bouchard, Petitioner, addressed the Board, stating:

1. He is requesting a finding for purposes of constructing an attached two-car garage.

2. Originally, the request was for a variance of eight (8') feet; however, the current plan is to build the garage an extra two (2') feet from the street line (total of ten (10') feet). By doing so, the garage will be an extra two (2') feet out of line with the existing dwelling.

3. Because of the placement of the existing dwelling, the well and septic system, there is no other possible location for the garage.

4. His neighbors are supportive of the project.

Chairman Menard drove by the property before the prior meeting and noted that the barn on the property will also become non-conforming.

Mr. Coutinho stated that he still had a concern about the language used by Town Counsel that he thought was confusing and that he thought the Board should, at a future date when Town Counsel is at a meeting, to clarify some of the language he used (i.e. intensify, extension, and additional).

Hearing no further comments, Ms. Pontolilo made a motion to close the hearing. Mr. Borden seconded the motion and the Board voted unanimously to close the hearing at 6:45 p.m.

Chairman Menard stated that he drove by the property and, based on the advice of Town Counsel, he did not find the proposed construction to be substantially more detrimental to the neighborhood.

Ms. Pontolilo agreed, as did Ms. Gee, who asked whether there was a body of water at the end of the hill. Mr. Bouchard said that there are wetlands at the end of his property, but was not aware of any standing water.

Mr. Coutinho made a motion that the Board grant a finding that the proposed two-car garage is not substantially more detrimental to the neighborhood; and that the structure will be constructed pursuant to the plan submitted to the Board this evening dated September 28, 2020. Ms. Pontolilo seconded the motion and the Board voted unanimously in favor.

The hearing concluded at 6:48 p.m. with Chairman Menard advising the Petitioner of the 20-day appeal period.

3. Chairman Menard read the public hearing notice regarding the application of Daniel Gardikis and Nicole Gardikis for Special Permit to construct a detached accessory apartment and garage, with 2 bathrooms, exceeding the allowed amount of square footage to facilitate access and mobility for disabled individuals as mandated by Zoning Bylaw Article 4, Section 4.0.1.D.13. The subject property is located at 244 Pine Hill Road and is shown on Assessor's Map 41, Lot 5.

Nicole Gardikis, Petitioner, addressed the Board, stating that:

1. She and her husband are requesting that the Board grant a Special Permit to build a detached, single-story, accessory apartment for the husband's parents.

2. The structure will include two (2) bathrooms, one larger than the other for her mother-in-law, who requires a larger bathroom to accommodate her medical issues.

3. The structure will allow for handicapped accessibility, and will contain 1,049 square feet, in accordance with the plan submitted to the Board dated August 22, 2020. (Note: the Petitioners' original plan filed with their application did not accommodate for handicapped accessibility. The Petitioners determined that it would be in the in-laws' best interest to anticipate their future needs and, therefore, the plan dated August 22, 2020 is the correct plan for this project).

4. The mother-in-law's bathroom contains 130 square feet and the entire dwelling will have doorways, bedroom, living room, laundry and kitchen that will be accessed with a wheelchair, if necessary.

5. The structure will be built about a quarter mile down the driveway and will not be seen from the main road.

6. The structure will have its own septic system and well; will be fully functioning independent of the main house.

Chairman Menard recited the requirements mandated by Zoning Bylaw 4.0.1.13.D, which must be complied with by the Petitioners, as follows:

1. The purpose and intent of permitting an accessory apartment is to; provide older homeowners with a means of obtaining rental income companionship, security; develop housing units that are appropriate for households at a variety of stages in their life cycle; provide housing for persons with disabilities; or protect stability, property values and the residential character of the neighborhood.
2. The detached accessory apartment will be complete with a kitchen/living room, a bathroom, and a maximum of 1 bedroom.
3. There shall be no more than 2 persons residing in the accessory apartment.

4. The owner must occupy one of the two dwelling units.
5. Off-street parking shall meet the zoning requirements.
6. Any new construction shall be in accordance with current height and setback requirements.
7. The septic system must meet the requirements of the Board of Health and State Sanitary Code.
8. The property shall not be further divided unless all zoning requirements are met.
9. The detached accessory apartment will not impair the integrity or character of the neighborhood.
10. There shall be no more than one accessory apartment on the property.

Ms. Gardikis acknowledged they will fully comply with the requirements under the Bylaw.

Mr. Coutinho stated that he tries to advocate for the petitioner to be forward-thinking and the Petitioners have done so in this case. He said that he was at the Town Hall when Ms. Gardikis filed the application and was able to discuss the project with her. He thought that, although the two (2) bathrooms should not be an issue, he did think that the structure did not accommodate for the future, at a time when the in-laws would require handicapped accessibility, especially since the mother-in-law currently had medical issues. Mr. Coutinho advised the Petitioner that one condition of issuing the Special Permit should be that no future dimensional changes to the structure can be made without first requesting such relief from the Zoning Board.

Ms. Gee inquired about the garage and the possibility of building a second bedroom. The Petitioner stated that there is a two-car garage proposed and it would not be possible to install a second bedroom, in light of the square footage required for handicapped accessibility. Mr. Souza stated that the Petitioners would need to apply for another permit for a second bedroom.

Mr. Coutinho stated that the structure will be in a remote area with plenty of land and will not affect the neighbors or be seen from the road.

Ms. Pontolilo agreed with the project.

Chairman Menard said that some of the excess square footage is taken up by the second bathroom; and there is no effect to the neighborhood.

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 7:02 p.m.

Chairman Menard stated that the project is exactly that which is intended by the Bylaw: an accessory apartment for in-laws. He said that, although the apartment will contain more than the typical square footage, that the increase is to facilitate access and mobility which is allowed under the Zoning Bylaws. He supports the project.

Mr. Coutinho made a motion to approve the Special Permit for the construction of an accessory apartment with the following conditions:

1. The accessory apartment is to be constructed pursuant to the plan submitted to the Board by the Petitioners dated August 22, 2020.
2. If there are any further changes to the dimensions of the dwelling, the Petitioners must request such relief from the Board of Appeals.
3. The petitioner shall comply with all requirements of Zoning Bylaws section 4.0.1.D.13.

Chairman Menard advised of the 20-day appeal period.

The hearing concluded at 7:04 p.m.

4. Chairman Menard read the public hearing notice regarding the application of Francisco Vargas and Shawna Vargas for a variance from the front setback requirement, to allow the setback to be 17 feet, and not 25 feet from the street line, as mandated by Zoning Bylaw Article 7, Section 7.6.1. The subject property is located at 79 Gidley Lane and is shown on Assessor's Map 76, Lot 79.

Frank Vargas, Petitioner, addressed the Board, stating that:

1. He and his wife do not currently reside in the property as the structure needs substantial repair and renovation.

2. The existing deck is currently 8 feet x 18 feet, but he would like to expand it to 16 feet x 18 feet.

3. The property is located near wetlands and there is a major issue with mosquitos, which is the main reason why the porch should be screened in.

4. The property abuts a paper street.

5. The Board of Health has been consulted as to placement of the septic system, which will be installed in the front of the dwelling; and because the area is noted for failed wells, the well is to be installed in the rear of the dwelling.

Chairman Menard noted that were the cost of renovations exceed 50% or more than the value of the dwelling, the Petitioners may need to comply with flood plain regulations.

Ralph Souza, Building Commissioner, said that he has had discussions with Mr. Vargas about the phases of construction. He said that the first phase should be installation of windows, siding and roof. Once this is accomplished, the value of the dwelling will have increased and, therefore, further repairs and renovations can take place without affecting the 50%-threshold. Once the first phase is accomplished, Mr. Vargas can apply for a building permit for renovations of the interior of the dwelling.

Mr. Coutinho asked whether there was a time limit within which the Petitioner must complete the first phase. Mr. Souza said there is no deadline, as he will get one permit for windows, siding and roof; and the second phase will require a different permit. Mr. Coutinho also stated that he approves of the project, that it will enhance the value of the neighborhood, and the Town will benefit through real estate taxes paid by the owners.

Chairman Menard agreed, except he thought the Petitioner would need to explain the hardship for the variance.

Mr. Vargas explained that because of where on the property the septic system and the well are to be installed, the porch must be placed on the side of the unnamed street. He also said that, because of the mosquito issue, and he has family who plan to enjoy the property, the only way to do it is in a screened-in porch. Mr. Vargas said that the variance would not affect the traffic lane (unnamed street). He noted that the porch is being extended, not moved to another location.

Chairman Menard and other members drove by the house to look at the property. It was evident that the location of the house causes issues with the placement of the septic system and the well, leaving only the porch to be constructed closer to the unnamed street.

Mr. Coutinho stated that, perhaps, at some point, the house will need to be lifted in the future to comport with flood plain regulations. He also stated that, should the Petitioners require a variance waiver by the Board of Health, they would need to test their neighbors' well water every three (3) years.

Douglas Davis, John Reed Road, Westport, MA stated that he is a neighbor of the Vargas property and he does not oppose the project.

Hearing no further information, Ms. Pontolilo made a motion to close the hearing. Mr. Coutinho seconded the motion and the Board voted unanimously to close the hearing at 7:31 p.m.

The Board discussed the hardship criterion for granting a variance. Members agreed that the project will enhance the neighborhood and, although there is no absolute hardship, due to the makeup of the land, marshy area with insects and mosquitos, it is difficult to place the porch anywhere else on the property; that the screened-in porch will protect the family, including children, from the marshy environment. The eight (8') foot variance will still be less than some of the houses that are directly on the beach in town.

Ms. Pontolilo made a motion to grant the variance from 25 feet to 17 feet. In seconding the motion, Mr. Coutinho added that hardship had been found due to the size and topography of the lot; the screened-in porch is to be constructed in accordance with the plan submitted to the Board with the petition for a variance and discussed at this hearing. The Board voted unanimously to grant the variance. The Petitioners shall provide an as-built plan to the Building Department to verify the measurements, specifically indicating that the porch will not be greater than seventeen (17') feet from the unnamed street.

Chairman Menard advised of the 20-day appeal period.

The hearing concluded at 7:41 p.m.



### Administrative Items

1. Minutes of September 2, 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 September 2, 2020 meeting.

2. The Board discussed a request by the Planning Board to comment on the proposed project for a marijuana dispensary on State Road, near the bowling alley. After discussion, the Board will make no additional comment as there is no zoning issue.

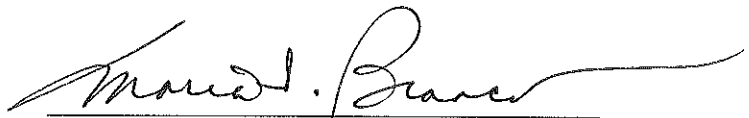
The next meeting of the Board is on Wednesday, November 18, 2020 at 6:30 p.m. at the Town Hall and on Google Meet.

7:44 p.m.

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

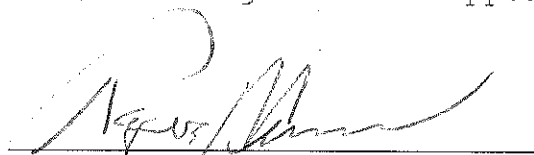
**Adjournment.**

Respectfully submitted,



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

APPROVED:



Roger Menard, Chairman