

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
JANUARY 13, 2021
(Conducted via Google Meet)**

RECEIVED
MAR 3 2021
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's guidelines regarding the congregation of people at the Town Hall and the manner in which municipal boards should meet and hear matters on their agenda. The Board of Selectmen had, a week ago, distributed a memorandum to all Town Departments and Boards that the Town Hall would be closed to the public as of Monday, November 16, 2020 and, therefore, this hearing would be conducted remotely.

Chairman Menard also noted that Town Departments and Boards had received a recent mandate from the Governor regarding deadlines within which the Board would be required to make determinations as to land use applications.

Chairman Menard noted that the meeting was being conducted remotely by accessing Google Meet. A roll call of the members' votes will be conducted for each motion. The Board would receive information and documents from the petitioners and, then, accept comments from anyone in attendance before closing the hearing and making a decision.

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 the letter issued by Ralph Souza, the Building Commissioner, which prompted the filing of the administrative appeal. The following is an excerpt from that letter:

"After review of assessors records in regard to lots 171-189 of assessors Map 7. The lots in question are held in common ownership and are considered a single lot with an existing dwelling".

Chairman Menard stated that the Board, after several attempts to inquire of Attorney Brian Corey, the Board had not received the information and documentation it had requested several months ago from the Petitioners. He said that the options for the Board at this time would be to (1) continue this hearing to a date in the future; or (2) to deny the petition due to the lack of response and activity on the part of the Petitioners.

Mr. Coutinho inquired, and the Clerk confirmed that the Board had not received the requested documents from Attorney Corey or the Petitioners. The Clerk also noted that she tried to reach Attorney Corey via e-mail, and phone with no response. Accordingly, Mr. Coutinho made a motion to close the hearing at 6:36 p.m. Chairman Menard seconded the motion, which passed by unanimous vote with each individual member of the Board voting aye in a roll call.

After brief discussion, Mr. Coutinho made a motion to deny the petition on the grounds that: (1) the Board does not have sufficient information to proceed and make a determination in this matter: (2) several meetings have been continued since August 2020 due to the Petitioners or Petitioners' attorney's failure to provide the information and documentation requested by the Board and (3) the Zoning Board of Appeals clerk has made several attempts to contact the petitioner and the petitioners lawyer requesting the required documentation as well as identifying potential options without response from either the petitioner or the petitioners lawyer. Chairman Menard seconded the motion, which passed by unanimous vote with each individual member of the Board voting aye in a roll call. The Petitioners may appeal this denial within 20 days after the filing of the

decision with the Town Clerk. The petition can be re-filed after a two-year waiting period.

2. Chairman Menard read the public hearing notice regarding the application of Mark C. Towers for a variance from the Zoning Bylaw Article 7, Intensity Regulations, and that the Zoning Board determine that the lot in question is considered buildable, having 48,055.5 square feet of area and frontage of 150 feet. The subject property is located at 86 Watuppa Road and is shown on Assessor's Map 19, Lot 20G.

Chairman Menard stated that Ms. Gee would be recused from deciding this matter. He asked the Petitioner to address the Board, providing as much information as possible so that the Board can make an informed decision on the request for a variance.

Chairman Menard read the letter of denial issued by Ralph Souza, Building Commissioner and Zoning Enforcement Officer. The following is an excerpt from that letter:

"After review of the Town records in regards to Lot 20G of Assessors Map 19. The lot in question is found on a plan of land dated March 20, 2020.

It does not comply with Article 7 Intensity Regulations, only having 48,055.5 square feet of area in which is required to have 60,000 square feet of area. The plan indicates "An unbuildable lot as configured". Therefore, the lot in question is considered unbuildable".

Sean Leach of Northeast Engineers and Consultants, Middletown, Rhode Island, provided several engineered plans pertaining to this property. He stated that:

1. He is familiar with the details of this matter and was asked by the Petitioner to address the Board.

2. The property was purchased by Mr. Towers in 2007, specifically Lot 4 on the plan endorsed by the Planning Board in 2005, creating four (4) separate lots. Originally, Lot 4 contained 60,014 square feet, more or less.

3. There was extensive litigation by Mr. Towers and other buyers of the lots against the developer, Paul D. Adler, Amelia's Crossing Realty Trust for fraudulent conveyances. The

description in the deed to Mr. Towers was erroneous and there were various discrepancies in the property lot lines.

4. A few years into the litigation, he was asked to review and survey the property. As a result, the property contained less than originally thought and less frontage.

5. Out of the four (4) lots, only one (1) was conforming, not Mr. Towers' lot.

6. Lots 1 through 3 currently have houses built on them. Lot 4, the Towers lot, is a wooded lot at this time.

7. The roads are in their proper spots pursuant to the plans.

8. At the time that building permits were acquired by the owners of the other 3 lots, the Town, relying on the original plan, agreed that those lots were, in fact, buildable lots.

9. After spending hundreds of thousands of dollars in litigation, the owners of Lots 1 and 2 withdrew from the lawsuit and their property lines are unresolved.

10. The plan dated March 20, 2020 shows the current property lines, in that Mr. Towers deeded a portion of his property to his neighbor and the neighbor, in turn, deeded a portion to Mr. Towers. Mr. Towers' lot, however, contains 48,055.5 square feet, which falls short of the zoning requirement of 60,000 square feet to be determined a buildable lot.

11. The error was caused by the developer and, therefore, Mr. Towers is requesting that the Board now determine the lot to be buildable.

Ralph Souza, Building Commissioner and Zoning Enforcement Officer, stated that, as a result of the error caused by the developer, Lot 4 does not comply with zoning requirements and, therefore, is considered a non-buildable lot. Mr. Souza also indicated that when Mr. Towers bought the property, the property was determined to be buildable. It was only after the lots were re-surveyed that the lot did not meet zoning bylaws.

Chairman Menard stated that he reviewed the GIS map for the area and also drove by the neighborhood. He said there are houses on the other 3 lots and that some of the lots in the area are

small, which is not uncommon for that the area in Westport. The fact that the property lines do not concur with Town records is also not unusual. If the Board were to allow the variance, then all the lots would be buildable.

Ms. Pontolilo asked about the property to the right of Lot 4. Mr. Leach said that there is a house on that lot and the property extends to the pond.

Mr. Elias inquired as to whether the Board has, in the past, decided an issue similar to this one. Chairman Menard said that, obviously, this situation is unique; however, the Board has been asked in the past to make determinations due to erroneous property lines.

Mr. Towers address the Board, stating that he is undecided at this time whether he will be building on the lot or selling it.

Mr. Borden asked if the Board had received any comments from abutters. The Clerk stated that she had spoken with one abutter a couple of weeks ago, who was familiar with the situation and was very sympathetic to the plight of the owners of those lots.

Mr. Coutinho said that he was very much in favor of granting the variance. The issue lies, he stated, in determining whether there is enough evidence to support the requirements under the bylaw to grant a variance. In support, Mr. Coutinho stated that (1) this lot is not buildable due to surveyor/developer error, whether intentional or not; there has been significant amount of litigation over the years to resolve this issue; the variance would not inconvenient or impose an issue to abutters; and there was a significant financial hardship with legal fees.

Chairman Menard agreed, stating that the Board would be correcting erroneous property lines.

Hearing no further comments from the Board or the public, Mr. Elias made a motion to close the hearing at 7:09 p.m. Ms. Pontolilo seconded the motion, which passed by unanimous vote with each member of the Board voting aye in a roll call.

Chairman Menard made the following findings:

1. Although the Town was unaware of the errors caused by the developer and the surveyor, the Town nevertheless is as culpable as it approved the plan showing erroneous property lines.

2. These buyers have been in contentious litigation for about 14 years.

3. He drove by the neighborhood and Lot 4 looks like a perfectly fine lot for building a house.

4. He supports the granting of the variance and determine that Lot 4 is a buildable lot.

Mr. Coutinho made a motion to grant the application for a variance based on all the information and documents submitted to the Board; the errors in lot lines were not the fault of the Petitioner or the abutting owners; the Petitioner purchased the lot with the understanding that the lot was a buildable lot; and the hardship was the direct cause of the surveyor and/or developer. Chairman Menard seconded the motion, which passed by unanimous vote with each member of the Board voting aye in a roll call.

Chairman Menard advised the Petitioner of the 20-day appeal process.

Mr. Towers expressed his appreciation to the Board.

Administrative Items

1. Minutes of November 18, 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 November 18, 2020 meeting, with each member voting aye on a roll call.

2. The Board received a request from the Planning Board for comments regarding a proposed subdivision on Fisher Road applied for by Ronald Oliveira. None of the members expressed a concern with this project and, therefore, it was decided that the Board would have "no comment" regarding this proposed subdivision. The Clerk will relay the Board's comment to the Planning Board.

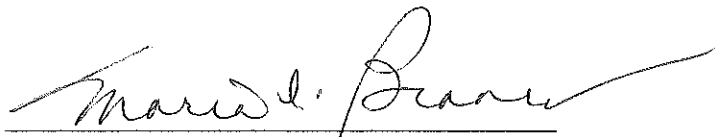
As of right now, there are no future meetings scheduled.

7:23 p.m.

Motion made by Ms. Pontolilo to adjourn the meeting. Seconded by Ms. Gee, with each member voting aye on a roll call. The Board voted unanimously in favor.

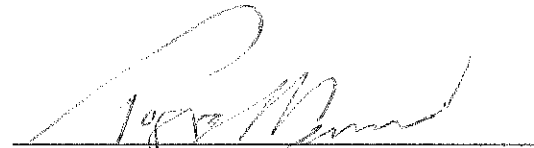
Adjournment.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Maria I. Branco", written over a horizontal line.

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

APPROVED:

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

Roger Menard, Chairman