

ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
April 7, 2021
(Conducted via Google Meet)

RECEIVED

MAY 18 2021

WESTPORT ZONING
BOARD OF APPEALS

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

Also present: Ralph Souza, Building Commissioner and Zoning Enforcement Officer.

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 advised 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. Chairman Menard read the public hearing notice on the petition of Jason B. Vagliano for a Special Permit to convert the ground

level of the existing barn into a detached one-bedroom accessory apartment, as allowed by Recodified Zoning Bylaw Article 9, Section 9.5.2. The subject property is located at 94 Cross Road and is shown on Assessor's Map 49, Lot 5.

Chairman Roger Menard read the letter from Ralph Souza, advising that the Petitioner would need a Special Permit from the Zoning Board of Appeals to construct the detached accessory apartment.

The Petitioner, Jason B. Vagliano, addressed the Board, stating that:

1. He has owned the property since November 2020.
2. The previous owners had renovated the barn and remains a classic-type New England barn, and contains approximately 1,008 square feet.
3. He would like to convert the ground floor into an accessory apartment for his father or, in the future, as a rental.
4. He is requesting to construct an accessory apartment with 1,008 of livable square footage.
5. He does not intend to build walls within the ground floor of the barn, as he would like to preserve the current building, including the classic barn doors with installation of glass sliding doors behind them.
6. The second floor of the barn, a hay loft, will be maintained as a storage area and contains 730 square feet.
7. The first floor of the barn is fully insulated with electricity and a water connection. The prior owners utilized this space for recreational purposes. It also contains a propane stove.
8. The main house has two (2) bedrooms on the second floor and, therefore, it is not ideal for people requiring handicapped mobility.
9. The barn contains what was previously a tack room, which is a separate area.
10. The three (3) bedroom septic system was installed in 2019 and accommodates both the main house and the barn. The Board of Health has approved the system for both buildings.

Chairman Menard inquired about the tack room, in that, it would be a separate area from the accessory apartment. He also asked Mr. Vagliano whether he had reviewed Sections (a) through (j) of the Zoning Bylaw, which are requirements mandated for detached accessory apartments.

Mr. Vagliano stated that he understood the requirements of the Bylaw, however affirming his request to not install any other walls and keep the area as it currently is.

Chairman Menard then read through each of the requirements for an accessory apartment. Mr. Vagliano answered each requirement indicating that he would comply with each requirement with the exception of the 750 square foot maximum living space requirement.

Chairman Menard stated that the request is for a greater amount of square footage than what is allowed by the Bylaw (i.e. 750 square feet). He also noted that the Board has allowed more livable space for handicapped accessibility purposes. The staircase is not considered livable space and, therefore, it is not counted in the 750 square feet. He pointed out that there are no dimensions on the plan to show the square footage.

Mr. Vagliano stated that the electricity is derived from the main house and runs underground. Water will also be run from the main well. There are no kitchen or bathroom in the barn at this time.

Mr. Coutinho asked whether the electricity was installed under a permit, which Mr. Vagliano stated it was. Mr. Coutinho also inquired about the tack room, which has its own roof and juts out from the barn.

Mr. Vagliano explained that the tack room is approximately 21 feet wide (north/south dimension) and 11.9 feet (east/west dimension).

Mr. Coutinho noted that the second floor being accessible from the first floor is concerning, in that it could easily be converted into a second bedroom, which is not allowed by the Bylaw. It should, therefore, have its own access from the outside and not from the first floor of the barn.

Installing exterior access to the second floor would be expensive and alter the exterior of the barn.

Ms. Gee also expressed a concern with the access to the second floor. She asked what the ceiling height was on the second floor.

Mr. Vagliano stated that the height of the second floor ceiling is slightly more than 6 feet in the middle; that the space has no windows, no insulation and sloped ceilings. It would be used as storage because the first floor has minimal closet space.

Ms. Gee asked Mr. Souza what the legal height of a ceiling is. Mr. Souza said that Building Code calls for the height of a ceiling must be at least seven (7) feet.

Mr. Elias asked whether the loft area can be utilized for utilities. Mr. Vagliano stated that the ground floor has a utility closet, with heat pump, and the propane stove for heat with thermostat.

Mr. Coutinho stated that he would entertain comments by the public. However, the file is incomplete, in that the plans are inadequate, do not show specific measurements of the rooms that are requested. Also, Mr. Coutinho suggested that Board members, possibly two (2) members at one time, visit the site. Mr. Vagliano agreed to have the Clerk provide his telephone number and e-mail address to the Board members so that they can contact him to schedule a date to view the site.

Chairman Menard stated that the square footage being requested (1,008 square feet) is substantially in excess of the maximum allowed by the Bylaw, i.e. 750 square feet, and there is no mention of handicapped accessibility being part of the livable space.

Ms. Pontolilo asked why the application was requesting 1,008 square feet. Mr. Vagliano stated that he wanted to maintain and preserve the inside of the building and did not intend to construct any walls on the first floor.

Mr. Borden asked about the small building located at the entrance of the property, across the driveway. Mr. Vagliano said that that area is considered 90 Cross Road, where a shed had been previously demolished.

Hearing no further questions from the Board members, Chairman Menard opened the hearing to public comment.

Andre Vagliano, 1 Old Horseneck Road, Westport, MA addressed the Board. He said that he is the Petitioner's father and appreciated the efforts by the Board as he, too, is a former Zoning Board member elsewhere. He stated that he plans to move to the accessory apartment in the future and understands the Board's concerns. He agreed that a site visit would be a good idea, and that the Board

should receive more definitive plans for review at the next hearing. Mr. Vagliano also noted that by having this area as an apartment increases the housing units for the Town.

Mr. Coutinho said that accessory apartments are not including in the State calculation of affordable housing units.

The Clerk confirmed that no other correspondence had been received regarding this matter.

Accordingly, at 7:37 p.m., Mr. Coutinho made a motion to continue the hearing to Wednesday, May 19, 2021 at 6:30 p.m. Mr. Elias seconded the motion, which passed by unanimous vote with each individual member voting aye in a roll call vote.

2. Chairman Menard opened the hearing on the second matter before the Board at 7:38 p.m. by reading the public hearing notice on the petition of Sidney J. Sundheimer and Elizabeth Gelfand for a Special Permit/Finding to allow change of use from single-family dwelling to a detached accessory apartment, as allowed by Recodified Zoning Bylaw Article 9, Section 9.5.2. The subject property is located at 135K Cadman's Neck Road (a/k/a Sunrise Ave) and is shown on Assessor's Map 50A, Lot 42.

Chairman Roger Menard read the letter from Ralph Souza, advising that the Petitioners would need a Special Permit from the Zoning Board of Appeals to construct the detached accessory apartment, as well as a finding that the construction of the building containing the accessory apartment would not be more detrimental to the neighborhood.

Attorney Dorothy F. Paull, 1968 Main Road, Westport Point, MA, Petitioners' attorney, addressed the Board, stating that:

1. The Petitioners purchased 135L Cadman's Neck Road in 2000 and purchased 135K Cadman's Neck Road in 2020. As a result, the lots are considered merged and in common ownership.

2. The Petitioners submitted plans and photographs with their application.

3. The intent is for 135K Cadman's Neck Road to be reconstructed, in that, the current dwelling will be reconstructed in the same footprint. The dwelling will then become an accessory apartment.

4. A finding will also be required for change of the non-conforming use.

5. The height of the building will be comparable to the height of the main house at 135L Cadman's Neck Road. No other additional measurements will be made and, in fact, the accessory apartment building will be several feet set back from that of the main house.

6. The first floor will contain a work shop, small bathroom and 3-season porch. The second floor will contain the bedroom, kitchen/living/dining area and full bathroom.

7. There are other dwellings within the neighborhood with two (2) floors.

Chairman Menard noted that he drove by the property and the proposed building will be extremely small. He is concerned about the 3-season porch as it has the ability of becoming a second bedroom; or if finished and converted to a 4-season porch, it would then become livable space.

There was discussion regarding the livable space being proposed, including access to the second floor. Chairman Menard outlined Sections (a) through (j) of the Bylaw, which delineate the requirements with which the Petitioners must comply in order for the Board to approve the accessory apartment.

Mr. Sundheimer answered each of the special permit requirements indicating he would comply with all requirements with the exception of the maximum 750 square foot living space requirement.

Mr. Sundheimer stated that the floor print is 38 feet x 14 feet. Since the livable space on the second floor is under 750 square feet, then the porch on the first floor could be included as livable space.

There was discussion about the work shop's possibility of being converted into livable space. Mr. Sundheimer suggested calling that area a garage; however, Chairman Menard reiterated that what it is called is immaterial, and it is how that space can be converted is the issue. The Petitioners are requesting 1,000 square feet of livable space, which is substantially more than the allowed 750 square feet. The issue then becomes, if the property is sold in the future, what the owners then do with that space.

Mr. Coutinho noted that there is no mention of 135L Cadman's Neck Road, the main house, on the application and, from a legal standpoint, there should be one deed that includes all the lots for purposes of considering common ownership and merging lots.

Chairman Menard suggested that this matter be continued to a further date, at which time, the Petitioners can submit revised plans and a new deed. The hearing was opened to the public for comment.

Robin Alt, 135F Cadman's Neck Road, Westport, MA, asked about the height of the new structure.

Mr. Sundheimer stated that the height would be the same as the main house.

David West, 135G and 135H Cadman's Neck Road, Westport, MA, expressed his support for the project. He noted that the building has been abandoned for many years and he fully supports the Petitioners' request.

Hearing no further comment, at 8:23 p.m., Ms. Pontolilo made a motion to continue the hearing to Wednesday, May 12, 2021 at 6:30 p.m. Mr. Elias seconded the motion, which passed by unanimous vote with each individual member voting aye in a roll call vote.

3. Chairman Menard opened the hearing of the third matter before the Board at 8:25 p.m. by reading the public hearing notice of the petition of Mary Thornton for a variance or other appropriate relief from the setback requirement under Recodified Article 7, Section 7.7.2, to install a ground mount solar array at .3 feet from Fox Lane. The subject property is located at 1579 Drift Road, Westport MA and is shown on Assessor's Map 57, Lot 22.

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

Also present was Ralph Souza, Building Commissioner and Zoning Enforcement Officer.

Petitioner Mary Thornton was not present; however, Arthur Leonard of Reliable Solar Solutions attended the meeting by teleconferencing via Google Meet.

At the outset, Mr. Coutinho stated that a variance from the setback requirement had been granted on June 30, 2020 and, therefore, he

questioned whether or not the Board had authority to legally act on this petition. The Petitioner had the right to appeal the Board's decision of June 30, 2020 and failed to do so. It would seem that this petition is actually an appeal of that decision and, therefore, would the Petitioner need to wait two (2) years to reapply.

Mr. Leonard addressed the Board, stating that the original request was for a setback variance to 11.1 feet from Fox Lane. He said that he could not actually explain the error in placement, other than to say that the installation was "pulled from the wrong line" and it was after the array was installed, that he realized that it was not in compliance with the Board's decision.

Mr. Coutinho recollected that, during the hearings in 2020, Mr. Leonard had stated to the Board that he was unable to place the solar array other than that particular spot because of shade trees. However, Mr. Coutinho said that, when he drove by the site, he saw a whole area where there were no trees where the array could be placed.

Mr. Leonard stated that because of the elevation of the garage, there would be too much shade. Chairman Menard responded that, even with some shade during various times of the day, it still could be a viable location.

Mr. Coutinho noted that, if the Petitioner does not intend to place the array in another location, the array will need to be removed and, then, wait two (2) years from the original date of the Board's decision (June 30, 2020) to reapply for a new variance.

Mr. Souza stated that the location of the array was to be 11' 1" from the Fox Lane setback. When he received a complaint from a neighbor who resides on Fox Lane, he requested an as-built plan, which showed .3 feet. He also said that, since the location of the array is in violation of the Board's decision, it must be removed.

Chairman Menard noted that the Board has no authority to reverse a prior decision for a variance. He further said that, in fact, he was not in favor of the original variance.

Mr. Coutinho stated that, perhaps, a site visit by the Board prior to granting the original variance would have avoided the error. However, since the array has been installed in violation of the Board's decision, and there is an aggrieved neighbor, the array should be removed and relocated.

Ms. Gee stated that she had driven by the property and thought the array was a stand-alone installation and could be easily moved. Although the array does not appear offensive, there is a neighbor who has made a complaint and, therefore, she stands by the Board's original decision.

Chairman Menard suggested that, if the Petitioner withdrew the application without prejudice, she could reapply at any time otherwise she would have to wait for a two-year period (i.e. June 30, 2022). In the meantime, the Petitioner must comply with the original decision and move the array to comply with the original decision.

Hearing no further comment from the Petitioner's representative, Chairman Menard made a motion to deny the request. There was discussion as to whether the hearing should be continued to a further date to allow the Petitioner to address the error and report back to the Board. Chairman Menard stated that the Board cannot legally reverse the original decision and repeated the motion to deny. Ms. Gee seconded the motion to deny.

Mr. Leonard stated that, as the representative of and on behalf of the Petitioner, he would request the matter be withdrawn without prejudice. He said he would e-mail a written request to withdraw without prejudice to the Clerk.

Chairman Menard made a motion to allow the Petitioner's request to withdraw the application without prejudice. Mr. Coutinho seconded the motion. The Board voted as follows: Mr. Coutinho, aye; Mr. Borden, aye; Ms. Gee, aye; Ms. Pontolilo, aye; and Chairman Menard, aye.

Christopher Bednarz, 8 Fox Lane, Westport, MA addressed the Board, stating that he notified the Building Commissioner when he noticed that the array had been installed improperly. He also inquired as to the timeframe within which the array must be removed.

Mr. Souza advised that he will send a letter to the Petitioner that the array must be moved/removed within thirty (30) days.

Correspondence:

1. Request for comment from the Planning Board regarding an application for Special Permit of Randy S. and Patricia Mayall to construct a solar energy system of approximately 5.26 megawatts on

property containing 45 acres, located on the west side of Horseneck Road between 1227-A and 1143 Horseneck Road, shown on Assessor's Map 76, Lot 69S. The Zoning Board had no comment to report, and asked the Clerk to notify the Planning Board of the three (3) prior decisions handed down by the Zoning Board regarding this property.

2. Letter from Zoning Enforcement Officer dated March 2, 2021 to Casey Amaral regarding violation of Condition #1 of the Board's decision of April 12, 2018, as he has not removed the kitchen from 581C Drift Road. The Clerk informed the Board of her discussion with Mr. Amaral and that he wanted to petition the Board to remove that condition from the decision. The Clerk further noted that Mr. Amaral implied that he was not inclined to remove the kitchen. The Board asked that Mr. Souza follow through with enforcing the decision and to take court action, if necessary. Mr. Souza said he would send another letter and seek relief through the court if Mr. Amaral does not comply.

Next meeting is scheduled for May 12, 2021 at 6:30 p.m.

9:04 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,



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

APPROVED:



Roger Menard, Chairman