

ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
JUNE 9, 2021
(Conducted via Google Meet)

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

Also present: Ralph Souza, Building Commissioner/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.

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 opened the continued hearing by reading 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 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.

Chairman Menard stated at the previous hearing on May 19, 2021, a motion had been made and seconded to approve the petition with conditions as follows:

1. Petitioner is to provide a revised drawing, identifying the removal of the stairwell and blocking off of access to the attic, except for a 22" x 24" opening.

2. Petitioner is to comply with all Building Code regulations and the requirements of Recodified Zoning Bylaw Article 9, Section 9.5.2., including Subsections (a) through (j).

3. The plans were to be finalized at this meeting.

Chairman Menard said that, subsequent to the hearing on May 19, 2021, there was a clarification made by the Building Commissioner that the access opening to the attic should be no smaller than 22" x 30" and, pursuant to that clarification, Mr. Vagliano submitted a revised plan to the Board, with pen-and-ink revisions, specifically noting that the existing stairs would be removed and access to the attic would be through a 22" x 30" space.

Mr. Vagliano stated that the floor plan remains unchanged. The access to the attic has been revised to 22" x 30" and the notation on the plan indicates that the existing stairs are to be removed. Also noted on the plan: the attic shall be unheated, not livable, and shall be used for storage only; the access opening shall be no greater than 22" x 30." He dated the plan June 7, 2021 and signed the plan, attesting to the pen-and-ink revisions. All other renderings remain unchanged.

Chairman Menard stated that since there had been a motion made and seconded at the prior hearing, and with the revisions made to the plan as requested by the Board, the conditions are updated as follows: Condition No. 1 shall be removed from the original conditions, as the Petitioner has made the appropriate revisions in the plan that will correct and comply with the

removal of the existing stairs. Accordingly, the final conditions of the granting of the Special Permit are as follows:

1. The accessory apartment will be constructed per the signed drawing of June 7, 2021 and access to the attic shall be constructed pursuant to the plan dated, signed and filed with the Board on June 7, 2021, which indicates removal of the existing staircase.

2. Petitioner is to comply with all Building Code regulations.

3. Petitioner is to comply with the requirements of Recodified Zoning Bylaw Article 9, Section 9.5.2., including Subsections (a) through (j) (which include, but are not limited to, that the Petitioner must reside in either the main house or the accessory apartment; there is a maximum of one (1) bedroom in the accessory apartment; and only two (2) persons may reside in the accessory apartment).

Mr. Vagliano addressed the inquiry of the type of stairs or ladder that would be installed to give access to the attic. He said that it may be a retractable ladder, but no permanent stairs.

Chairman Menard made a motion to approve the project and **GRANT** the Special Permit. Mr. Elias seconded the motion, which was voted unanimously by individual roll call votes, as follows: Chairman Menard, Ms. Pontolilo, Mr. Coutinho, Mr. Borden and Mr. Elias voting aye. Petitioner shall comply with the conditions as noted herein and incorporated in the decision granting the Special Permit.

Chairman Menard advised of the 20-day appeal period.

2. Chairman Menard opened the hearing on the second matter before the Board at 6:43 p.m. by reading the public hearing notice on the petition of Edward Silvia, Jr., Applicant, and Jeannine E. Pacheco, Owner, for a finding that the consolidation of two (2) lots into a single parcel of land will not be substantially more detrimental to the neighborhood as mandated by Recodified Zoning Bylaw Article 2, Section 2.5.3.4. The subject properties are located at 33 South Berryman Street and 0 South Berryman Street, Westport, MA and are shown on Assessor's Map 27, Lots 19-20.

Chairman Menard stated that the reason the Petitioners were before the Board was due to a denial letter they had received from the Building Commissioner dated April 16, 2021, advising that the granting of a finding and a variance would be required by the Zoning Board of Appeals.

Attorney James W. Marsh addressed the Board. He stated that:

1. He represents the Petitioner, Edward Silvia, Jr. of 33 South Berryman Street, Westport, MA.

2. The plan shows a common boundary line with the neighboring property owned by the Petitioner, Jeannine E. Pacheco, and Kenneth A. Pacheco of 18 South Breault Street, Westport, MA.

3. The Petitioner's house should be located on Lot 19 of Map 27 (33 South Berryman Street). However, while performing a title examination of the property, an error was discovered that the house is located mainly on old Lot 42, on the boundary line, and, therefore, a finding is required to correct the error.

4. There is a signed Purchase and Sale Agreement with the Pachecos to purchase Lot 20 of Map 27 (old Lots 40 and 42).

5. The boundaries for Lot 20 are not being changed. Lot 21 (old Lot 38) is currently owned by Jody Freelove.

6. The lots are similar in size.

7. There currently exists a shed on Lot 10, which is owned by Mr. Silvia, the shed encroaching on 33 South Berryman Street.

8. Lots 10 and 19 are currently owned by the same owner, Estate of Annie Silvia. Edward Silvia is the son and executor of the estate of his mother, Annie Silvia.

Ms. Gee asked about the location of the shed. Attorney Marsh said that the shed is on Lot 10, which is owned by the Estate of Annie Silvia.

Mr. Coutinho suggested there be a clarification as to whether it is the same owner. Otherwise, a variance may be necessary.

Ms. Gee asked whether the Board should request a new plan for the record. Mr. Coutinho stated that the Board would need a plan showing the correct boundary lines.

Attorney Marsh stated that Mount Hope Engineering is in the processing of preparing a new plan that will be referenced in the deed. He also noted that Lot 11 contains in excess of 17,000 square feet (160' x 107'), and confirmed that Lot 11 will not be more non-conforming.

Attorney Marsh confirmed that Lots 11 and 20 are owned by Kenneth Pacheco and Jeannine Pacheco; Lot 21 is owned by Jody Freelove; and Lot 19 is owned by the Estate of Annie Silvia.

Chairman Menard connected to the Westport GIS system and determined that combining the lots as requested would increase the non-conformity of the Pacheco property (Map 27 Lot 11).

Mr. Coutinho noted that any change to non-conformity would require a Variance as well as a finding.

Ralph Souza also noted that his letter to Attorney Walsh indicated that both a variance and a finding would be required.

Ms. Pontolilo and Mr. Coutinho suggested that the Board allow the Petitioners the opportunity to return to the Board with clarified plans.

Attorney Marsh inquired as to whether a variance can be requested at this time.

There was discussion regarding request for a finding and whether the Petitioner needs a variance.

Chairman Menard replied that since a variance is a more stringent category than a finding, the Zoning Board of Appeals could not include the variance on this petition since the abutters would not have been advised that a variance was required.

Mr. Coutinho also noted that since the petition involves non-conformity of property owned by Mr. Pacheco, he must also be involved in any discussion of a variance.

Chairman Menard advised that the Petitioner may withdraw the petition without prejudice and re-file a new petition requesting a finding and a variance. The new plans can be filed as a supplement subsequent to the filing of the new petition and in sufficient time prior to the hearing for the Board members to review.

Attorney Marsh asked whether it would be possible for the filing fee to be waived. Mr. Coutinho stated that he has asked Town Counsel about the Board's authority to waive a filing fee, in particular with regard to petitions filed by non-profit organizations; however, the Board does not have authority to waive the fee. If a variance had been requested and not finding, then the Board would have had the authority to make a determination as to a finding because a variance is the greater relief and the Board would have been able to work with the current application.

Accordingly, Attorney Marsh made a motion to withdraw the petition without prejudice.

Mr. Coutinho then made a motion to approve the request to withdraw the petition without prejudice. The motion was seconded by Ms. Pontolilo with the Board voting unanimously by a roll call vote Mr. Coutinho, Ms. Pontolilo, Ms. Gee, Mr. Borden and Chairman Menard voting aye. Attorney Marsh stated that he will e-mail the Clerk to put the motion in writing. The hearing will be scheduled as soon as is possible, considering statutory deadlines and requirements for publication and notices to abutters.

3. Chairman Menard opened the hearing of the third matter before the Board at 7:29 p.m. by reading the public hearing notice of the petition of Ross Forbes for a finding that the proposed addition to the existing house will not be substantially more detrimental to the neighborhood as mandated by Recodified Zoning Bylaw Article 2, Section 2.5.3.4. The subject property is located at 170 Cadman's Neck Road, Westport, MA and is shown on Assessor's Map 50A, Lot 64.

Present were Sean Leach, Northeast Engineers, representing the petitioner, as well as Ross Forbes, 46 Oak Street, Norton, MA, Petitioner.

Presenting a plan dated February 19, 2021 that had been submitted to the Board with the petition for a finding, Mr. Leach stated as follows:

1. Mr. Forbes owns the property on the loop (not on the water side) of Cadman's Neck Road.

2. The lot is one of the larger ones on Cadman's Neck Road, containing 13,945 square feet and is abutted by a right of way that is not constructed and, most likely, will not be constructed in the future.

3. There is enough frontage, however, not enough square footage for the lot to be conforming.

4. There is an existing cottage on the lot.

5. The proposed addition to be constructed adjoining the existing dwelling will be 12' x 27' and will be 11 feet off the layout line.

6. The existing dwelling is currently assessed as a four-bedroom house and was built in the early 1900s.

7. The septic system will be upgraded as shown on the plan and will comply with Title V.

8. Most of the lots in the area are non-conforming. This lot, in particular, is one of the larger lots in the neighborhood.

9. The addition will add to the value of the existing dwelling, as well as to the neighborhood.

10. The addition will be slightly farther back from Cadman's Neck Road than the house is currently and, therefore, not adding more non-conformity to the lot.

Chairman Menard stated that he drove by the property and sees no issue with the project. In fact, he noted that the lot is one of the larger lots in the neighborhood and the project will enhance the neighborhood with the addition and updated septic system. He also noted that since the proposed addition is further back from the front property boundary than the house, the addition does not constitute a new non-conformity.

Mr. Coutinho said that he thought that the project was a good proposal. He also noted that, although the project adds to the non-conformity, Town Counsel has advised that, so long as there is no new non-conformity to the lot, the Board may consider the proposal.

Hearing no further comments from the Board, Chairman Menard opened up the hearing to abutters or anyone wishing to make a comment.

There were no comments by anyone attending the hearing. Accordingly, Ms. Pontolilo made a motion to close the hearing. Mr. Borden seconded the motion and the Board voted unanimously to close the hearing at 7:37 p.m. by a roll call vote with Ms. Pontolilo, Mr. Borden, Mr. Coutinho, Mr. Elias and Chairman Menard voting aye.

Chairman Menard began the discussion by saying that he had no issue with the project, the he believed it would be a benefit to the neighborhood and there was sufficient land to support the project.

Ms. Pontolilo agreed, stating that the project will improve the neighborhood.

Motion made by Chairman Menard to grant a finding that the proposed addition to the existing house will not be substantially more detrimental to the neighborhood than the existing non-conforming use as mandated by Zoning Bylaw Article 2, Section 2.5.3.4. Mr. Elias seconded the motion and the Board voted unanimously to grant the finding by a roll call vote with Chairman Menard, Mr. Elias, Ms. Pontolilo, Mr. Borden and Mr. Coutinho voting aye. The plan dated February 19, 2021 submitted and presented to the Board is incorporated in this decision.

Chairman Menard advised of the 20-day appeal period.

Administrative Items:

1. Minutes of the May 19, 2021 meeting - Ms. Pontolilo made a motion to approve the minutes of the May 19, 2021 meeting. Mr. Elias seconded the motion, which passed unanimously with Members Menard, Coutinho, Borden, Pontolilo and Elias voting aye. Ms. Gee abstained from voting as she was not in attendance at the May 19, 2021 meeting.

2. The Board discussed inquiries made by a resident to Chairman Menard and Ms. Gee regarding the function and responsibilities of the Zoning Board of Appeals. Several topics were discussed as to how to disseminate information about the Board to the public. For example: placing an article in the Shorelines twice a year, bring the public up to date on the matters that had come before the Board; and explanations of the reasons for continuances. Mr. Coutinho stated that one misconception is that the Zoning Board has authority to formulate the Building Code. Also, some residents believe that enforcement of the Zoning Bylaws is a function of the Zoning Board of Appeals when it solely rests with the Building Commissioner/Zoning Enforcement Officer. Chairman Menard said he would draft an overview of the functions of the Board and distribute to the members for comment. Ms. Pontolilo suggested that the public and, particularly, those inquiring are invited to attend the hearings to get a better understanding of the process. Also, all Board meetings are recorded and uploaded to the Westport VIMEO web site, where anyone can access and view.

3. The Board discussed the manner in which motions to grant or deny relief should be framed. Chairman Menard said he discussed this issue with Town Counsel, who suggested that motions be made as approving the relief and, then, the members can agree or disagree with the motion. Specifically, Town Counsel suggested a motion be framed as follows: Motion to approve the special permit. The motion would be seconded and the Board may have a discussion. During a roll call vote, the members would then state he or she votes to reject the motion and state the reasons. Also, a supermajority is required to approve or reject relief (i.e. 4 out of 5 members must approve or reject the relief), when deciding petitions for variance, special permit, finding or administrative appeal. Mr. Coutinho noted that, in making a motion for relief, the findings and discussion should be stated and written with specificity in the event the matter is to be defended in the courts.

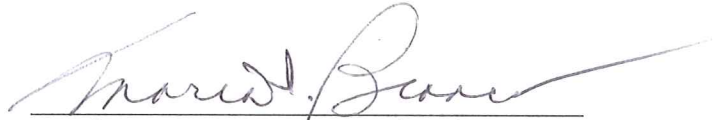
The next meeting is scheduled for Wednesday, June 23, 2021 at 6:30 p.m., which is slated to be an in-person meeting at the Town Hall. There is legislation being passed through the State Senate and State House of Representatives at this time, to extend the deadline for in-person meetings through the end of September 2021. The Governor is expected to sign that bill.

The Board having no further business, Ms. Pontolilo made a motion to adjourn the meeting at 8:02 p.m. The motion was

seconded by Ms. Gee, and the motion was passed unanimously with each member voting aye on a roll call vote.

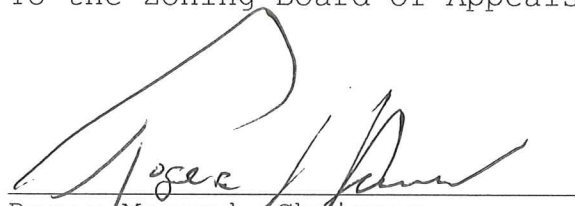
Adjournment.

Respectfully submitted,



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

APPROVED:


Roger Menard, Chairman