

ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
JULY 28, 2021

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

Also present was 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.

Chairman Menard advised that the Board would be conducting in-person meetings in accordance with the CDC's guidelines that persons who have not been fully vaccinated against COVID-19 are requested to wear masks or face coverings while attending the meetings.

Chairman Menard noted that 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 hearing on the petition of Edward Silvia, Jr. and Jeannine E. Pacheco 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, and for a variance from Recodified Zoning Bylaw 7, Section, 7.1 because, after the proposed consolidation of lots, the square footage of 18 South Breault Street will be less than the required 60,000 square feet. The subject properties are located

at 33 and 0 South Berryman Street, Westport, MA and are shown on Assessor's Map 27, Lots 19-20.

Chairman Menard stated that the members sitting and voting on this matter would be Gerald Coutinho, Peter Borden, Constance Gee, Barbara Pontolilo and himself.

Attorney James W. Marsh, 128 Union Street, New Bedford, MA addressed the Board. He stated that:

1. He represents both Edward Silvia, Jr. and Jeannine E. Pacheco in this matter, both of whom have signed a conflict of interest waiver. He also represents both parties in the sale of the Pacheco property to the Estate of Annie Silvia.

2. Lots 10 and 19 are owned by the Estate of Annie Silvia. Lot 20 is owned by Kenneth and Jeannine Pacheco. Mr. Silvia learned a few months ago that a portion of the house (currently in the Estate of Annie Silvia) was partially situated on the Pacheco lot (Lot 20). Also on the Pacheco lot is the septic system that services the Silvia house. The property is 33 South Berryman Street.

3. As a result, Pacheco has agreed to transfer Lot 20 to Silvia, which would then cause Lot 11 to become more non-conforming, with less than the required 60,000 square feet of land.

4. The finding requested is to rectify the error in property lines with Lots 19 and 20; and, as a result of the property transfer, a variance would be required as to Lot 11, in that the lot contains less than the required 60,000 square feet to comply with Zoning Bylaws.

5. The transfer of Lot 20 to Silvia is contingent upon the Board's approval and granting of the finding and variance.

6. The shed that is currently situated on Lots 10 and 19 will remain in the Estate of Annie Silvia and common ownership with the other lots.

7. The Freelove property (Lot 21) will not be affected by either the finding or the variance.

Mr. Coutinho stated that he drove to the site and Mr. Pacheco, who was on the property at the time, showed him the lot lines. He also noted that he is in favor of granting the relief requested, especially where there is an important need to do so to rectify the discrepancy with the property lines. Mr. Coutinho also requested that the deed contain all three (3) lots as being in common ownership as a new parcel.

Attorney Marsh stated that the Estate of Annie Silvia currently owns Lots 10 and 19. Once the Pachecos transfer title of Lot 20 to the Estate, Mr. Silvia will be looking to sell the entire parcel as he does not currently reside there.

Mr. Souza requested that, once the deed has been recorded, that he receive a revised plan, showing the entire lot.

Hearing no further questions from the Board or abutters, Ms. Pontolilo made a motion to close the hearing at 6:51 p.m. Mr. Borden seconded the motion, and the motion passed with a unanimous vote.

Chairman Menard commented that he was in favor of granting the finding as the neighborhood would not be changed as a result. He noted that all of the lots in the neighborhood are non-conforming and, therefore, the transfer of Lot 20 to Silvia would not be substantially more detrimental to the neighborhood.

Mr. Coutinho stated that granting the requested relief would correct errors from the past.

The Board not having further discussion, Mr. Coutinho made a motion to approve the variance as to the non-conformity of Lot 11 on the condition that Lots 10, 19 and 20 are reconfigured as one lot on a new deed. Further, the granting of the variance is warranted due to the severe problem with property lines, as the main house is currently situated on both Lots 19 and 20. Ms. Pontolilo seconded the motion, with all members voting in favor of the variance by unanimous vote.

Mr. Coutinho then made a motion to approve the finding that the consolidation of Lots 19 and 20 will not be substantially more detrimental to the neighborhood. Chairman Menard seconded the motion, with all members voting in favor of the finding by unanimous vote.

Chairman Menard advised of the 20-day appeal period.

The hearing concluded at 6:55 p.m.

2. Chairman Menard opened the hearing on the petition of James Karam, Trustee for a variance and/or finding and/or determination on administrative appeal that the proposed alteration of the building as a reduction in use does not increase the existing non-conforming use and is not substantially more detrimental to the neighborhood, as mandated by Recodified Zoning Bylaw Article 5, Section 5.2.3. The subject property is located at 1216 Drift Road, Westport, MA and is shown on Assessor's Map 55, Lot 70.

Chairman Menard stated that the members voting on this petition would be Gerald Coutinho, Peter Borden, Constance Gee, Raymond Elias and himself. Ms. Pontolilo is recused from hearing and voting on this matter as she is an abutter to the subject property.

Chairman Menard read the letter from the Building Commissioner, denying the building permit on the ground that the structure is a pre-existing non-conforming structure and can only be altered by approval of a finding by the Zoning Board.

Attorney Brian R. Corey, Jr., 519 American Legion Highway, Westport, MA addressed the Board. He stated that:

1. He represents James Karam, Trustee, the Applicant.
2. The garage structure formerly contained bunkspace of two (2) bedrooms and one (1) bathroom. Mr. Karam seeks a reduction in use to a one-bedroom and recreational space.

3. The existing structure has garage doors and is approximately 150 to 200 feet from the main house.

4. Historically, the property contained structures that had been abandoned and condemned. The cottage (three-family home) was condemned and demolished, and the Karams rebuilt a single-family house.

5. The garage was built in the 1940s and prior to any zoning code being in effect, and was the only structure that was salvageable.

6. The garage structure is unfinished with a bathroom on the first floor. The Karams are requesting to renovate the detached structure as a recreational space/bunkhouse with one (1) bedroom and one (1) bathroom. No kitchen is being installed.

7. The Applicant had previously applied for a special permit to construct a one-bedroom accessory apartment in the detached garage structure. That application was later withdrawn.

8. The five-bedroom septic system on the property services the garage as well, and has been approved by the Board of Health.

9. Windows have been installed, new garage doors, flooring on the second floor, and the outside of the garage has been resided to match the exterior of the main house. These improvements have been inspected by the Building Commissioner. The remaining work to be done contains the interior walls, the bathroom, and the Juliet balcony.

10. The utilities are underground.

11. Bunkhouses and recreational spaces are normally approved by the Zoning Board.

12. The Applicant has no intention to install a kitchen in the garage structure.

Ms. Gee asked if there was a floor plan, showing the prior existence of the bathroom and bedrooms.

Attorney Corey said that the Board of Health approved the septic system, which would include service to it by the bathroom. Otherwise, there were two (2) full bedrooms, with a bathroom on the first floor. Attorney Corey reiterated the intent of the Applicant, which is to maintain a one-bedroom recreational space with a bathroom.

Ralph Souza, Building Commissioner, confirmed that:

1. The original main house was in extreme disarray and collapsing. A demolition permit was issued and the structure was demolished.

2. He issued a building permit for installation of windows and to remodel the outside of the garage structure.

2. The first floor of the garage contains a bathroom.

3. For years, the second floor had been used for storage of miscellaneous items.

4. Any further alteration requires a finding by the Board.

Chairman Menard inquired as to the changes to the exterior. Attorney Corey stated that there would be no changes to the exterior facing north, and any other changes have already been made.

Attorney Daniel Perry, 388 County Street, New Bedford, MA addressed the Board. He submitted a letter and affidavit to the Board. He stated that:

1. He represents James and Nina Hunt of 1214 Drift Road, and Arthur and Carolyn Parker of 1200 Drift Road, abutters to the subject property, who oppose the request for relief.

2. The renovations would cause more noise, light and less privacy to the Hunts.

3. He did not find in the Town records where building or septic permits were issued for this property; therefore, the original structure had been built unlawfully.

4. If allowed to construct a bedroom and bathroom, the Karams could then install a kitchen without the Town's knowledge.

5. The Karams' residential use rights have been abandoned.

6. Mr. Hunt has consulted with a real estate agent, who confirmed that any renovation by the Karams would result in a substantial reduction in valuation of the Hunts' home.

7. There is misinformation being presented to the Board by the petitioner, that bedrooms existed on the second floor because there were mattresses there; and that the buildings were not built in the 1940s.

8. This is a new use as there is nothing to prove that there was a lawful home on the property. Therefore, a variance is required and there has been no showing of hardship.

Attorney Corey disputed the allegations in Mr. Hunt's affidavit. He stated that:

1. The materials that were demolished were shown to have been manufactured in the 1940s.

2. The Karam property may be five (5) feet from the property line, not from the Hunt residence.

3. Many years ago, the Board of Health did not maintain records of septic systems or permits. Therefore, that is likely the reason why Attorney Perry did not find any in the record.

4. Mr. Hunt had discussions with the prior owner regarding the dire condition of the structures.

5. The Hunts appreciated that the Karams rebuilt the house.

6. The building that Mr. Hunt contends was open to the elements and harboring rabid animals has been demolished. The current garage structure is intact, other than a staircase leading to the second floor that had fallen off.

7. There was never an order of condemnation or order of demolition on the garage structure.

8. If the Board does not approve the finding, he said that the structure can be used as open recreational space and be renovated without the bedroom.

9. He does not believe that a garage with a bedroom on the second floor will substantially reduce the value of the Hunts' property.

10. Although construction can be disruptive, the changes that were made and contemplated will increase the property's value.

Hearing no further questions from the Board, Chairman Menard asked whether anyone attending the hearing would like to comment.

Nina Hunt, 1214 Drift Road, Westport, MA, showed pictures of the garage from the viewpoint of her kitchen. She expressed concerns about people on the second floor of the garage or on the balcony being able to see inside her home; that the balcony will bring the property closer to her home; and she is concerned for her privacy. Mrs. Hunt also noted that, when the Karams cleaned up the lot, they cut too many trees, causing silt to run off. She said that the Conservation Commission and Board of Health are aware of the silt issue. Mrs. Hunt did, however, agree that the Karams have renovated and built a beautiful and expensive property.

James Hunt, 1215 Drift Road, Westport, MA said that he has lived in his home for 43 years. He said he remembers contacting the police because of rabid animals living in the abandoned building. He also was concerned about his privacy.

Attorney Corey showed an aerial view of the Hunt home and the garage, noting that the properties are not as close as what the Hunts are alleging.

Mr. Coutinho stated that he was concerned with the full installation and use of a bathroom; however, he believed that the Board had no authority to disallow it.

Ms. Gee asked whether there was a drawing of the north side of the building.

Attorney Corey said the north side of the building will remain the same. The exterior of the building is complete.

If the Board were to approve the finding, Mr. Souza noted that any further renovation or alteration by the Karams would require authorization and permitting by him.

Mr. Coutinho noted that the Hunts had submitted correspondence, an affidavit and other documents to the Board that day; however, members were unable to properly review those documents prior to the hearing. Neither Mr. Hunt nor Attorney Perry responded as to the lateness of the filing of these documents.

Hearing nothing further, Mr. Elias made a motion to close the hearing at 7:53 p.m. Ms. Gee seconded the motion with all members voting in favor by unanimous vote.

Chairman Menard started the deliberations, stating that he understands everyone's positions. He drove by the site and noted how beautiful the property was. He also said that the Building Commissioner had observed a bathroom on the first floor. As always, the Board would rather that people do things lawfully, by applying for permits and coming before the Board for relief, as opposed to just going ahead and making changes to the property without the proper permits. Concerning the loss of

privacy, even without the approval of this petition, the petitioners could legally use the second floor for parties, etc, all of which could impact the Hunt's privacy.

Ms. Gee -- stating that the issue of the square footage of the structure is not at issue because the relief being requested is not for an accessory apartment -- did find that the Juliet balcony could be an issue; and that the bathroom seems substantial for an area that is not being utilized as an apartment. She also expressed a concern about the future of the structure.

Mr. Coutinho agreed that he is also concerned with the size of the bathroom and the possibility of installation of a kitchen without a permit. He also noted that the balcony faces the river side, the back side of the property. Mr. Coutinho further stated that he did not consider some of the renovations to be an additional non-conformity.

Mr. Elias said that he viewed the site and considered the property to have been improved dramatically.

Mr. Souza stated that to convert an unfinished use to be habitable -- heated and insulated, for example -- requires Board approval. He also said that it was his understanding that the Board of Health has approved the septic system plan for the property.

Mr. Coutinho made a motion to approve the finding, pursuant to the plans as presented dated March 25, 2021, that the proposed renovations to the garage structure will not be substantially more detrimental to the neighborhood. Mr. Elias seconded the motion with Mr. Coutinho, Mr. Elias, Mr. Borden and Chairman Menard voting in favor and Ms. Gee opposed to granting the finding. The motion passed by a 4 to 1 vote in favor.

Chairman Menard advised of the 20-day appeal period.

The hearing concluded at 8:08 p.m.

Administrative Items:

1. Minutes of May 12, 2021 - Mr. Elias made a motion to approve the minutes. Ms. Gee seconded the motion and the Board voted unanimously to approve the minutes of the May 12, 2021 meeting.

2. Minutes of Minutes of June 23, 2021 - Ms. Gee made a motion to approve the minutes. Mr. Elias seconded the motion and the Board voted unanimously to approve the minutes of the June 23, 2021 meeting.

3. Discussion ensued regarding prospective amendments to the application form (i.e., payment of consultant fees advisory, inserting the subject property on the first page of the application). Also to be reviewed are procedural rules and regulations of the Board. Chairman Menard said that, in order for the public to be more aware of the processes of the Zoning Board of Appeals, he suggested posting this document on the Zoning Board's web page of the Town's web site. He said he would have the members review the application, as well as the rules and regulations, and provide comments. These matters would be revisited by the Board at the August 25, 2021 meeting. Chairman Menard said that, once the final draft has been prepared, he will then forward it to Town Counsel for further review.

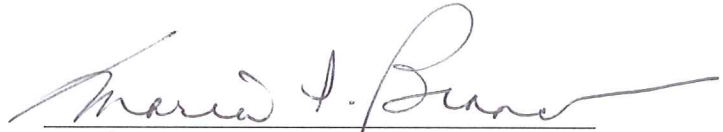
4. There was brief discussion about the Zoning Board's hiring of a consultant for the cell tower matter, which is scheduled for Wednesday, August 4, 2021. Chairman Menard said he was hoping to receive the consultant's report this week and would send it to the members for review prior to next week's hearing.

5. Election of officers will be held on August 25, 2021.

At 8:29 p.m., Ms. Pontolilo made a motion to adjourn the meeting. Ms. Gee seconded the motion, with all members voting in favor by unanimous vote.

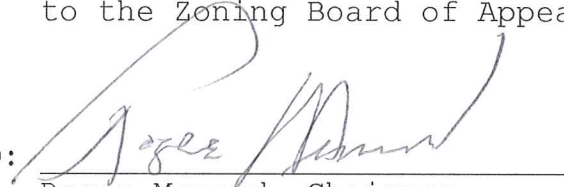
Adjournment.

Respectfully submitted,



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

APPROVED:



Roger Menard, Chairman