

ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
SEPTEMBER 22, 2021

RECEIVED
OCT 29 2021
WESTPORT ZONING
BOARD OF APPEALS

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

Absent was Peter Borden.

Also present was 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.

Chairman Menard advised that the Board would be conducting in-person meetings in accordance with the Board of Health's mandate that all persons entering Town of Westport buildings must wear masks or face coverings.

Chairman Menard stated that the members voting on these petitions would be Roger Menard, Gerald Coutinho, Constance Gee, Barbara Pontolilo and Raymond Elias.

1. The first matter on the agenda was the continued hearing on the petition of Arlene F. Cloutier for a special permit to build a detached accessory apartment behind and attached to an existing 2-car garage, pursuant to Recodified Zoning Bylaw, Article 9, Section 9.5.2, on the property located at 1635 Drift Road, Westport, MA, shown on Assessor's Map 57, Lot 31A.

Ms. Cloutier addressed the Board, stating that:

1. She revised her plan in accordance with the Board's request at the last hearing.

2. The square footage was decreased from 896 square feet to 797 square feet, by decreasing the area in the hallway, and increasing the width to the bathroom and kitchen.

3. The architect said that it would be difficult to decrease the area any further.

4. All areas will be handicap accessible, as she intends to reside there indefinitely.

5. She noted that she is asking for more square footage than is allowed, however she is hoping the Board would approve it.

Mr. Souza noted that the areas that are not heated are not considered uninhabitable.

Ms. Gee commented that the Applicant had made a good effort to revise the dimensions of the apartment.

Ms. Pontolilo agreed.

Chairman Menard noted that 797 square feet is still 47 square feet more than what is mandated by the bylaw, which is 750 square feet. He also said that, in the prior hearing, the Applicant had agreed to comply with the bylaw, specifically, sections (a) through (j).

With no further questions by the Board and hearing no comments from the public, Mr. Elias made a motion to close the hearing at 6:38 p.m. Ms. Pontolilo seconded the motion, which was voted unanimously by the Board.

Chairman Menard stated that, in order for the Board to grant a special permit, the vote must be a supermajority, that is, four (4) members must vote in favor.

Ms. Pontolilo stated that she thought the extra 47 feet was appropriate, in that the plan was for the future.

Chairman Menard said he was not amenable to allowing the increase because the bylaw mandates a maximum of 750 square feet and this apartment was new construction.

Mr. Elias said he believed that the Applicant made a good faith attempt to reduce the area from 896 square feet to 797 square feet. He also indicated that the wider doors would allow handy capped access throughout the apartment.

Mr. Coutinho stated that he did not believe it was unreasonable to increase to 797 square feet. Although the extra square footage provides for handicap accessibility, he could not justify the extra area with this project. Mr. Coutinho also noted that, in the future, this issue should be brought before Town Meeting to increase the square footage for a detached accessory apartment.

Mr. Elias made a motion to grant the special permit with conditions:

(a) The construction shall be in accordance with the plan as submitted to the Board dated September 20, 2021; and

(b) The Applicant shall comply with all Building Code regulations and the requirements of Recodified Zoning Bylaw Article 9, Section 9.5.2., including Subsections (a) through (j) with the exception of the square footage requirement.

Ms. Pontolilo seconded the motion, which was passed with a 4 to 1 vote as follows: Mr. Coutinho, Ms. Gee, Ms. Pontolilo and Mr. Elias voting in favor of granting the special permit; and Chairman Menard voting no.

Voting on the Petition: Menard, Coutinho, Gee, Pontolilo, Elias.

Chairman Menard advised the Applicant of the 20-day appeal period.

The hearing concluded at 6:43 p.m.

2. The second matter on the agenda was the continued hearing on the application of Janet Kinnane and Conrad Smith for a finding that the new proposed home on the lot is not substantially more detrimental to the neighborhood than the existing house on the lot as mandated by Recodified Zoning Bylaw Article 5, Section 5.2.3,

as to property located at 325 Brayton Point Road, Westport, MA and shown on Assessor's Map 88, Lot 58.

Chairman Menard stated that the members voting on these petitions would be Roger Menard, Gerald Coutinho, Constance Gee, Barbara Pontolilo and Raymond Elias.

Erin Hunter, 202 Park Street, Stoneham, MA, is the architect for the project. Representing the Applicants, Ms. Hunter stated that:

1. After much discussion, the Applicants determined that the driveways would remain as is and there would be no deviation as to the property lines to the common driveways.

2. She researched the bylaws and there is no need to address the driveway issue with the Planning Board, so long as the driveways are not changed.

3. She submitted a revised plan dated September 22, 2021 to the Board.

4. The septic system will be installed in the front of the house.

5. There is no objection by the neighbors; a family member who lives on the south side -- Paul Kinnane, 327 Brayton Point Road, Westport, MA -- stated at the prior hearing that he supports the project. He said his driveway is partially on 325 Brayton Point Road and the driveways have existed in this manner for the past 60 years.

6. We have existing site plans signed and dated. There is also an older site plan from 2003 just to confirm that the common driveways have been in existence since at least 2003.

Chairman Menard asked if the new structure would meet all setback requirements. Ms. Hunter replied that the new structure would adhere to all setback requirements. Based on that Chairman Menard indicated that the only issue is if the new structure is more detrimental to the neighborhood. There are no Variances being requested.

Mr. Souza stated that he discussed this issue with Jim Hartnett, formerly of the Planning Department, who confirmed that there is no need to address this issue with the Planning Board since the driveways will not be changed.

Ms. Pontolilo stated that the homes in the neighborhood are similar in nature, in that they are all pre-existing, non-conforming, and are being renovated with not much parking.

Mr. Coutinho said he supports the project; however, he is very concerned that, if there is no easement in the deed or if the issue of the common driveways is not resolved, that the Board may be creating an issue for future owners. Mr. Coutinho also stated that the bylaws mandate that off-street parking be in existence for owners.

Chairman Menard stated that the only issue for the Board to decide at this time is whether a finding should be granted. He further noted that shared driveways are common. Also, the Board of Health will have authority over the septic system and the Board is not in a position to validate the driveway situation.

Ms. Gee agreed that the driveway issue was not something that required a determination by the Board.

MacKenzie Long, 113 Plymouth Boulevard, Westport, MA, who was in the audience (as he was the Applicant in the next matter on the agenda), addressed the Board. He is familiar with real estate law and indicated that it is not necessary to have an easement in the deed at this time as the driveways are most likely grandfathered (they have been in existence for decades).

After further discussion regarding the issue of the common driveway, Mr. Elias made a motion to close the hearing at 7:03 p.m. Ms. Pontolilo seconded the motion, which was voted unanimously by the Board.

Chairman Menard noted that the granting of a finding requires a majority vote.

Ms. Gee stated that she understands the concerns expressed by Mr. Coutinho and inquired as to whether recording an easement could be a condition of the granting of the finding.

Ms. Pontolilo said that the Board can make a recommendation, but cannot make it a condition.

Ms. Hunter stated that, the driveway on the south side of the house, at its initial edge at the street line, is most likely 10 feet and can accommodate a vehicle.

Mr. Coutinho said that he would support the project because the driveway on the south side allows for off-street parking.

Chairman Menard said he supported the granting of the finding, as the neighborhood would be enhanced by the completion of this project.

Hearing no further discussion, Ms. Gee made a motion to approve the finding that the construction of the property will not be substantially more detrimental to the neighborhood than the existing non-conforming use as mandated by Zoning Bylaw Article 4, Section 4.1.3. Mr. Coutinho seconded the motion and the Board voted unanimously to grant the finding with the condition that the house shall be constructed pursuant to the plan that was submitted and presented to the Board dated September 13, 2021.

Chairman Menard advised of the 20-day appeal period.

3. The third matter on the agenda was the petition of MacKenzie J. Long for a special permit to convert the existing cottage 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 113 Plymouth Boulevard, Westport, MA and is shown on Assessor's Map 18A, Lot 28.

Chairman Menard stated that the members voting on these petitions would be Roger Menard, Gerald Coutinho, Constance Gee, Barbara Pontolilo and Raymond Elias. A supermajority vote is required to grant the special permit.

Chairman Menard read into the record the letter from the Building Commissioner, denying the building permit and directing the Applicant to request a special permit from the Zoning Board.

MacKenzie J. Long, the Applicant, addressed the Board. He stated that:

1. He is the current owner of the property, which had been owned by the previous owner since 1940.

2. The existing cottage has 656 square feet in livable space and he does not intend to increase the area.

3. He is in the process of building a single-family, two-bedroom home on the property, in which he will reside. The foundation has been installed.

4. The new three-bedroom septic system will accommodate both the single-family home and the accessory apartment. The new well will also accommodate both structures.

5. The new construction will comply with setback requirements. However, the cottage does not currently comply with one setback requirement, as it is only 7.1 feet from the side property line.

6. The cottage is not visible from the street.

7. The lots in the neighborhood were utilized as campsites in the 1940s.

8. There will be no change to the footprint of the cottage.

Chairman Menard asked whether Mr. Long had read the Zoning Bylaw, in particular subsections (a) through (j) of Section 9.5.2.

Mr. Long responded to all the conditions, noting that:

1. There will be a kitchen, one (1) bedroom, and one (1) bathroom in the apartment.

2. There is ample off-street parking for both the new single-family home and the apartment.

3. The lot is too small to subdivide any further.

4. He will reside in the new home and will rent the apartment.

5. No more than two (2) persons will reside in the apartment.

Mr. Coutinho asked about setbacks. Mr. Long responded that the current cottage does not meet setback requirements however it is not being changed and was built in about 1940. The new structure would meet all setback requirements.

Hearing no further discussion by the Board or comment by the public, Ms. Pontolilo made a motion to close the hearing at 7:23 p.m. Mr. Elias seconded the motion, which was voted unanimously in favor.

Chairman Menard reiterated that this is a Special Permit which requires a supermajority of 4 votes to Grant the petition. He also said that the plan is straightforward, that the structure is not being changed, and meets all zoning requirements (other than the one setback deficiency on the side of the cottage).

Accordingly, Chairman Menard made a motion to grant the special permit with the following conditions:

1. The apartment shall be constructed in accordance with the plan dated January 13, 2021, as submitted and presented to the Board.

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

Ms. Pontolilo seconded the motion, which passed unanimously to grant the special permit.

Voting on the Petition: Menard, Coutinho, Gee, Pontolilo and Elias.

Chairman Menard advised of the 20-day appeal period.

Administrative Items:

1. Minutes of August 25, 2021 - 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 August 25, 2021 meeting.

2. The Board discussed the resignation of one of its members, Peter Borden, whose term as a regular member expires on June 30, 2023. Mr. Elias stated that, since he is currently an associate member, he would be willing to finish out the term left vacant by Mr. Borden's resignation. The Clerk will notify Town Administrator Jim Hartnett and Mr. Elias will also notify Mr. Hartnett of his request to be appointed as a regular member by the Select Board.

3. Ms. Gee stated that, although she will not be able to personally be in attendance at the next meeting of the Board, she will be available to hear the applications and vote telephonically.

4. Reorganization of the Board:

(a) Mr. Elias nominated Roger Menard as Chairman of the Zoning Board. Mr. Coutinho seconded the nomination, which was allowed by unanimous vote. Chairman Menard abstained from voting.

(b) Chairman Menard nominated Gerald Coutinho as Vice-Chairman of the Zoning Board. Ms. Gee seconded the nomination, which was allowed by unanimous vote. Mr. Coutinho abstained from voting.

(c) Chairman Menard nominated Barbara Pontolilo as Clerk of the Zoning Board. Mr. Coutinho seconded the nomination, which was allowed by unanimous vote. Ms. Pontolilo abstained from voting.

5. The Board discussed possible revision to the Zoning Bylaw governing accessory apartments and the disparity in the square footage maximums for attached and detached apartments. Mr. Elias suggested that the Zoning Board confer with the Planning Board and draft a bylaw that can then be presented to Town Meeting for

approval. It was decided that Chairman Menard and Mr. Coutinho would draft a bylaw and discuss with the Planning Board.

6. There was discussion regarding the application filing process with the Zoning Board; as well as the rules and procedures that have been drafted. Chairman Menard said he is still waiting to hear back from Town Counsel as to the revisions.

7. Chairman Menard notified the public that Municipal Communications, LLC had filed a civil complaint with the Superior Court, appealing the Zoning Board's decision to deny the application for a cell tower at 67 Masquesatch Road, Westport, MA. Chairman Menard read the complaint into the record.

There was brief discussion with Mr. Souza as to letters he is sending to owners regarding zoning violations and will report back to the Zoning Board.

The next meeting is scheduled for October 27, 2021 at 6:30 p.m. at the Town Hall.

Ms. Pontolilo made a motion to adjourn the meeting at 7:54 p.m. The motion was seconded by Ms. Gee, and the Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



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

APPROVED:


Roger Menard, Chairman