

ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
MARCH 30, 2022

RECEIVED
MAY 5 2022
WESTPORT ZONING
BOARD OF APPEALS

Members Present: Roger Menard, Chair
Gerald Coutinho, Vice-Chair
Constance Gee
Barbara Pontolilo
Raymond Elias
James Watterson
Cynthia Kozakiewicz

Chair Menard called the meeting of the Zoning Board of Appeals meeting to order at 6:30 p.m. with the reciting of the Pledge of Allegiance.

Chair's Announcement - Under MGL Chapter 30A, Section 20(f) - Meeting being recorded.

1. The first matter on the agenda is a continued hearing on the petition of Steven Gianlorenzo for a finding and administrative appeal that the lot located at 6 Beaulieu Street a/k/a 0 Beaulieu Street, Westport, MA may be built upon and utilized for a single-family residential structure; and that the Board find that the lot is grandfathered as a matter of right as mandated by Recodified Zoning Bylaws 7.0-7.8 and is shown on Assessor's Map 14, Lot 47.

Chair Menard stated that the members voting on this matter would be Gerald Coutinho, Barbara Pontolilo, Constance Gee, Raymond Elias, and himself, Roger Menard.

Chair Menard read a letter from Ralph Souza, the Zoning Enforcement Officer. The letter stated, in pertinent part, that:

'Lot 47 of Assessor's Map 14 contains 10,170 square feet with 100 feet frontage on William Street. The Town of Westport Zoning By-Laws Article 7 requires a minimum of 20,000 square feet of area with 100 feet frontage. Therefore this lot does not meet the area requirement and is not considered a buildable lot.'

Chair Menard explained the procedure that would be followed at this hearing, namely: the Applicant would present its evidence; Board would ask questions and discuss the information submitted; the Board would open up the hearing to the public for comment or questions; the Board would close the hearing; and the Board would deliberate and render a determination.

Chair Menard stated that the Board had received a legal opinion from Town Counsel Jeffrey Blake, which states in pertinent part:

'You have requested an opinion regarding a request for a building permit for the lot located at 6 Beaulieu Street a/k/a 0 Beaulieu Street. Specifically, in 2000, the then Building Commissioner denied a request for a building permit for Assessors Map 14 Lot 47 claiming that lots 47 and 48 were commonly owned and therefore considered merged such that Lot 47 was not a separate buildable lot. In my opinion, the Building Commissioner's determination did not have the benefit of a Court interpretation of Article 7.1 which found that the Zoning Bylaw protected pre-existing non-conformation lots even if held in common ownership. In my opinion, based on the information provided to me, the lot in question was a buildable lot prior to the adoption of zoning in the Town and therefore, has protections pursuant to G.L. c. 40A s6 whether it was held in common ownership or not.

I have been provided with deeds and other documentation that establish that the lot in question was created in 1946, that it contained 10,170 square feet and had approximately 94 feet of frontage on Beaulieu Street and 100 feet of frontage on William Street. I understand that the 1957 Town Meeting adopted zoning for the area which required a lot area of 20,000 square feet and 150 feet of frontage. In my review of the deeds and documents, I conclude that the lot dimensions never changed and the lot remained the same as it was originally created in 1946. Therefore, in my opinion, because the lot in question was created before the adoption of zoning and contained at least 5,000 square feet in lot area and had at least 50 feet of frontage, the lot qualified for protection under 40A, s6 as outlined above. Whether the lot was held in common ownership, while normally a consideration in this type

of analysis, because the Town's Bylaw has been interpreted to protect individual lots irrespective of common ownership, in my opinion, that analysis is not necessary; although I note that there is no evidence of common ownership.'

Attorney Brian R. Corey, Jr., 519 American Legion Highway, Westport, MA stated that the Board Clerk had sent him a copy of Town Counsel's e-mail. He also requested that based on the statement from Attorney Blake, the Board should grant the finding and overturn the Zoning Enforcement Officer's determination.

Vice-Chair Coutinho stated that he believes that Town Counsel's statement that, in 1957, the required frontage was 150 feet is incorrect and that the Board should confirm that fact prior to ruling on any future applications with similar relief.

Chair Menard opened the discussion to the public; however, there was none.

Mr. Elias made a motion to close the hearing at 6:37 p.m. Ms. Pontolilo seconded the motion, which was passed unanimously by seated members.

Chairman Menard noted that the information provided by Attorney Blake clearly identifies the petitioner's lot as being grandfathered.

The Board discussed whether the determination should be for a finding or administrative appeal.

Attorney Corey stated that he had requested both a finding and that the Board overturn the Zoning Enforcement Officer's determination. He also suggested that Town Counsel's opinion be forwarded to the Zoning Enforcement Officer for future use.

Chair Menard stated that each case may be different therefore any future determinations will be addressed by the Board separately and individually as to the lots' particular circumstances. He also noted that the Zoning Enforcement Officer will be provided with a copy of Attorney Blake's letter, however it is not his duty to investigate the circumstances for each petition.

Motion was made by Chair Menard to grant the request for a finding and administrative appeal, that the lot may be built upon and utilized for a single-family residence structure, and the Board finds that the lot is grandfathered as a matter of right. Mr. Elias seconded the motion, which was voted unanimously by the seated members.

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

2. The next matter on the agenda is the continued hearing on the application of Capeway Roofing Systems, Inc. and Dion Calheta for a finding that the existing office and construction of an addition of fewer than 1,000 square feet at 664 Sanford Road will not be substantially more detrimental than the existing non-conforming use, as mandated by Recodified Zoning Bylaw 5.2.3. and is shown on Assessor's Map 30, Lot 36.

Chair Menard stated that voting on this petition would be Gerald Coutinho, Constance Gee, Barbara Pontolilo, Ray Elias and himself, Roger Menard.

Chair Menard explained the procedure that would be followed at this hearing, namely: the Applicant would present its evidence; Board would ask questions and discuss the information submitted; the Board would open up the hearing to the public for comment or questions; the Board would close the hearing; and the Board would deliberate and render a determination.

Dion Calheta, Vice-President of Capeway Roofing Systems, Inc., 664 Sanford Road, Westport, MA, addressed the Board. He stated that:

1. The building is 40 years old and Capeway Roofing Systems has been in the building for 30 years.

2. The plan is to upgrade the building, namely: update the heating system; update insulation; modify the layout to make it more efficient; construction an addition of 8 to 9 feet at the rear of the building, to include two (2) additional offices.

3. Currently, there are 13 full-time office employees. Some employees carpool to work.

4. There are no parking spaces being added at the rear of the building. The plan is to add 8 parking spaces at the north side of the parking lot.

5. Mulch and a bed of trees will be added as a buffer between the parking lot and the neighbor.

6. The main entrance will remain at the right corner of the building.

7. The front of the building is being updated with stone veneer, metal panel roofing, new windows, with 3 small alcoves that are ornamental in nature.

Vice-Chair Coutinho noted that there is no setback requirement issue with this property.

Ms. Gee asked about the debris at the rear of the property.

Mr. Calheta said that the structural beams at the garage needed to be replaced immediately. He asked Ralph Souza for permission to replace the beams that were deteriorating. The repairs have been made and the debris has since been removed.

Chair Menard expressed a concern with the additional parking spaces being close to the neighbor.

Mr. Calheta said he would eliminate the parking there, if the Board so determines.

Chair Menard stated that the standard for granting a finding is that the changes to the property must be deemed not substantially more detrimental to the neighborhood. The additional parking spaces could be deemed more detrimental.

Vice-Chair Coutinho said that, by putting additional parking spaces at the north side of the parking lot, would move the business closer to the neighbor.

Chair Menard expressed a few concerns, namely: that there were no dimensions on the plans that had been submitted to the Board; the parking on the north side would eliminate a buffer for the neighbor; and he was not comfortable voting at this time because of lack of measurements and dimensions on the plans.

Vice-Chair Coutinho agreed.

Ms. Kozakiewicz said that there was no site plan to show that the property had been surveyed.

Mr. Calheta said that a few people had called the business to discuss the details of the purpose for the finding.

Chair Menard stated that the Board could vote tonight or continue the matter to another date, to provide the applicant to provide more specific plans and come back with solutions to the concerns that have been addressed by the Board.

Mr. Calheta said he would return at a later hearing with answers and updated plans for the Board.

Chair Menard reiterated that the Board will expect to see the plans with measurements, showing the proposed additional parking spaces and as much information as possible so that the Board can make an informed decision.

Mr. Calheta submitted a written motion to continue the hearing to Wednesday, May 11, 2022 at 6:30 p.m. with an extension of the decision deadline date. He will provide the revised plans prior to the hearing.

Chair Menard made a motion to grant the motion to continue the hearing to May 11, 2022 at 6:30 p.m. Ms. Gee seconded the motion, which was voted unanimously by the Board.

3. The third matter on the agenda is the continued hearing on the petition of Silverback Construction, Inc. and Michael DeMello, Applicant, and Cheryl Ann DeMello, LLC, Owner, for a Special Permit to construct a two-story commercial building with parking lot and screened storage area in the Aquifer Protection District as

mandated by Zoning Bylaw Article 6, Section 6.2.4C at property located at 2 Cheryl's Way, Westport MA, shown on Assessor's Map 28, Lot 17C.

Chair Menard opened the hearing at 7:10 p.m. with the reading of the Public Hearing Notice.

Chair Menard explained the procedure that would be followed at this hearing, namely: the petitioner would present its evidence; the Board would ask questions and discuss the information submitted; the Board would open up the hearing to the public for comment or questions; the Board would close the hearing; and the Board would deliberate and render a determination.

Steven Gioiosa of SITEC, Inc addressed the Board. He stated that:

1. He had submitted a memorandum to the Board on March 22, 2022, as well as a technical data sheet, that addressed the Board's concern regarding the releasing agents that will be used to clean the forms in the graveled storage area.

2. Any chemicals, as well as unused chemicals, will be stored inside the building at all times.

3. The chemicals are water-based and biodegradable, and are release agents for the forms stored in the storage area outside of the building. These are typical of the chemicals used near rivers and other waterways, and on navy docks and piers.

4. The outside storage area will contain wood forms only.

5. The acronym VOC is defined as volatile organic compound. No VOCs are contained in the materials being used on the site.

6. The property will be inspected annually pursuant to State and federal regulations.

7. The property will be used primarily as a storage facility of trucks and forms.

Chair Menard noted that the memorandum advised that any chemicals would be stored in sealed containers inside the building.

Mr. Gioiosa said that is correct; no chemicals to be stored outside the building.

Vice-Chair Coutinho stated that, although the chemicals are biodegradable, he did not believe that the concern as to the chemicals used remains valid; however, he had no issue with the information that was submitted to the Board.

Mr. Watterson noted that, if the chemicals are stored inside the building and leak out, he believes -- from the information and documents presented -- that those will be drained into a holding tank. He also stated that he is concerned with any chemicals in the Aquifer District and inquired as to whether the Board could restrict the products to be used in this sensitive area.

Chair Menard stated that the Applicant had done a very good job with ensuring that any leaking or other runoff from the parking lot and building will be accommodated; he said the focus was the outside storage area the potential for seepage. The issue is any chemicals utilized on the forms that could seek into the aquifer.

Vice-Chair Coutinho stated that the Board does not have enough knowledge to understand the full effect of the chemicals. He suggested that, if the permit were to be granted, it should contain conditions. He also noted that, perhaps, the Board would request a peer review.

Ms. Kozakiewicz stated that the Army Corps of Engineers adheres to certain protocols that might be considered as a condition; that the products used meet or exceed the standards typically used in the Aquifer District.

Chair Menard asked if anyone of the public would have a question or comment. There was none.

Mr. Gioiosa suggested submitting an inventory of the products to the Board, if necessary. He also said that the Applicant would abide by any conditions placed on the special permit.

Vice-Chair Coutinho made a motion to close the hearing at 7:43 p.m. Mr. Elias seconded the motion, which was voted unanimously by the Board.

Chair Menard stated that he believed the project was a good one and the Applicant's engineer did a great job of ensuring that the Aquifer District would be protected from chemicals in the parking lot and building. He said that the storage area can be properly maintained with conditions.

Mr. Watterson agreed.

Mr. Watterson made a motion, which was seconded by Ms. Gee to grant the Special Permit with the following conditions:

1. Only chemicals that are certified to be safe for use in Aquifer Protection District will be allowed in the exterior storage area.

2. The Board approves the plans of record as submitted, dated July 19, 2021, and made part of the decision.

3. Applicant to report back to the Zoning Board a list of chemicals utilized on the site and leaching through the site.

4. Applicant shall submit, no later than May 31, 2025, an up-to-date list of all chemicals being utilized on the site including release agent chemicals for the forms, at which time, the Board may determine that an onsite visit is required, and further decide whether a hearing will be warranted for further review.

5. The outside storage area will be used exclusively for placement of wood forms, and the chemicals used as release agent on the form and to clean the forms must be appropriate and certified for use in an Aquifer Protection District.

6. Any change of use or materials will require a new petition to be filed with the Zoning Board for a special permit.

The Board voted unanimously to grant the Special Permit with the conditions as stated.

Chair Menard advised of the 20-day appeal period.

Administrative Items:

1. Approval of the minutes of the regular meeting on March 9, 2022. Chair Menard made a motion to approve the minutes of the regular meeting on March 9, 2022. Ms. Kozakiewicz seconded the motion and the Board voted unanimously to approve the minutes of the March 9, 2022 regular meeting.

2. The Board discussed the non-compliance of Casey Amaral regarding the unauthorized detached accessory apartment that exists on the property located at 581C Drift Road. The Board Clerk stated that she had discussed this matter with the Zoning Enforcement Officer earlier in the day, who advised that he has started the legal process, whereby he will impose a \$300 daily fine for each day Mr. Amaral does not comply with the bylaw, namely: to remove the kitchen in the accessory apartment on the property. This matter will be put on the agenda for further discussion at the next meeting of the Board on April 27, 2022.

There being no further business before the Board, Ms. Pontolilo made a motion to adjourn the meeting at 8:13 p.m. The motion was seconded by Mr. Elias, and the Board voted unanimously in favor.

The next meeting at the Town Hall is scheduled for April 27, 2022 at 6:30 p.m., and will be conducted in person, unless otherwise determined.

Adjournment.

Respectfully submitted,



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

APPROVED:


Roger Menard, Chair