

ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
APRIL 27, 2022

RECEIVED

MAY 11 2022

WESTPORT ZONING
BOARD OF APPEALS

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

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

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.

Chair Menard explained the procedure that would be followed at this hearing, namely: the petitioners would present their 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.

1. The first matter on the agenda is the petition of Paul Eastwood and Linda Eastwood for a finding that the proposed construction of a two-stall garage with mud room, and expand/alter the first floor is not substantially more detrimental to the neighborhood as mandated by Zoning Bylaw Article 5, Section 5.2.3; and for a variance to reduce the front-yard setback from 18.3 feet to 14.3 feet, instead of 25 feet, pursuant to Zoning Bylaw Article 7, Section 7.7.1. The subject property is located at 235 Beeden Road, Westport, MA and is shown on Assessor's Map 34, Lot 43D.

Chair Menard read a letter from Ralph Souza, the Zoning Enforcement Officer, which prompted the matter coming before the Board. The letter stated, in pertinent part, that:

"After review of the building permit application to construct a (2) two-stall garage with mud room and expand/alter the existing single family dwelling, the existing dwelling's front yard setback is now 18.3 feet, after the dwelling is altered and added to, the new front yard setback will be 14.3 feet.

As per the Westport zoning By-Laws Article 5.2.3, 'Pre-existing non-conforming structures or uses may be altered provided there is a finding by the Board of Appeals that such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.'

Also a new setback to the front property line would be established, which would be 14.8 feet and would require a variance."

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

Chair Menard stated that the petition requests a finding, which requires a simple majority of Board members voting in favor; and a variance, which requires four (4) out of five (5) members voting in favor.

Paul Eastwood addressed the Board, stating that:

1. He and his wife, Linda Eastwood, reside at the subject property.

2. They would like to build a two-car garage, connected to the house by a six (6') foot mud room.

3. They want to extend the den on the first floor about eight (8') feet, to be utilized as a larger-sized bedroom with built-in closet, relocating the bedroom from the second floor to the first floor. This would warrant a variance from the setback requirement. A wall will be broken down to enlarge the bedroom.

4. It is not possible to extend the bedroom to the side property line, and the septic system is at the rear of the house, which prevents anything being built upon it.

5. They want to extend a six-foot farmer's porch on the front of the house, which will have railing around it and covered by a roof. The porch will not be built upon a foundation.

6. The plot plan and architectural plans have been submitted with the application.

7. To the rear of the house is a three-season room, measuring approximately 12' by 14', which is not insulated and not heated, and has a small deck joined to it.

8. The house currently contains two (2) bedrooms and the septic system accommodates three (3) bedrooms.

9. The two-car garage will contain a second floor, which will be unoccupied and used for storage. The peak of the roof of the garage will be identical to that of the house.

Chair Menard stated that, in reviewing the plans, it seemed that the garage was set back farther than the house. Mr. Eastwood confirmed that to be accurate.

Building Commissioner Ralph Souza noted that it would not be possible to build at the rear of the house, not only because of the placement of the septic system, but because of wetlands in that area.

There was much discussion regarding the area of the leaching field and the reasons that the expansion could not be accomplished in the rear of the house to avoid the need for a variance. In reviewing the plans for the proposed bedroom, Chair Menard stated that there are no setback issues with the sides of the house, and that the proposed garage will be 11' 7" from the property line. Chair Menard also noted that, perhaps, it would be possible to expand the bedroom to the right of the house in order to avoid the necessity of a variance.

Mr. Eastwood said that the leaching field with its distribution box and piping are located in that area, approximately 50 feet

on the other side of the stone wall that runs off the deck. There are also wetlands beyond the leaching field, and, therefore, prohibiting any construction for the bedroom.

Vice-Chair Coutinho noted that the placement of the leaching field is not indicated on the plot plan and, therefore, it is not possible to determine the exact placement of the septic system with measurements.

Mr. Eastwood said that the plot plan shows that the leaching field is about sixteen (16') feet from the property line. He also stated that the well is about fifteen (15') feet from the property line and twenty-five (25') feet back from the road.

Chair Menard stated that there are 18.3 feet from the road to the front of the stairs. Mr. Souza indicated that the setback requirement is from the road to any structure, not necessarily the foundation and, therefore, the stairs would be considered a structure under the meaning of the bylaw.

Chair Menard indicated that he does not find that a hardship exists to warrant a variance for purposes of enlarging the den.

Vice-Chair Coutinho agreed, noting that other houses in the neighborhood do not encroach on setbacks and, therefore, the petitioners are unable to utilize the 250-foot rule to support their request for a variance. He also asked Mr. Eastwood what his grounds for a hardship were.

Chair Menard explained that a hardship would include the topography of the land, something with the land that would prevent construction, such as a stream running through the land or a very large boulder that would be impossible to remove. Personal hardship or financial hardship would not be enough to warrant a variance.

Mr. Eastwood said that the intent is to relocate to the bedroom downstairs so that he and his wife can avoid climbing the stairs to the second floor; but, otherwise, there is no issue with the land that would support a hardship in the manner explained to him.

Again, Chair Menard stated that he supports the approval of a finding as the renovations will enhance the value to the

neighborhood; however, he believed that the more difficult decision would be whether or not to be in favor of granting the variance as requested because the renovation of the den is being done for convenience purposes and does not comply with the requirements of the bylaw for the issuance of a variance.

Vice-Chair Coutinho again noted that the project is encroaching only on the front setback requirement. The side setback requirements are not at issue.

Ms. Pontolilo inquired as to whether the existence of the septic system and the well that are to the rear of the property be considered a hardship, since the extension of the bedroom must then be placed at the front of the house.

Chair Menard said that those issues are not reasons for a variance from zoning as mandated by the bylaw. He also noted that other properties in the neighborhood are not similarly situated, which would support the variance for this property.

Mr. Eastwood said that one neighbor's property does have a farmer's porch, but he is not aware of the setback measurement from the road at that property.

Vice-Chair Coutinho said that, in 1973, the zoning bylaw existed that mandated the front setback requirement at twenty-five (25') feet from the road, although it is not known how the stairs were built in that manner.

Ms. Gee said that it seems that the neighbor's property, which was also built during the same time period as the Eastwood property, does not conform to the zoning bylaw pertaining to the required front setback requirement.

Ms. Gee also noted that, if the Board were to grant the variance, it would not impinge on the neighbors' setbacks or cause a major impact to anyone else. However, as Chair Menard, stated, it would be a violation of the zoning bylaw.

Mr. Watterson expressed a concern with setting a precedent, if the Board were to grant this variance, and, then, the Board would be in a precarious position in the future to then make decisions on other applications that ask for a variance without the proper reasons under the bylaw.

Again, Chair Menard believed that eight (8') feet could be added to the side or the back, to avoid needing a variance at the front of the house.

Vice-Chair Coutinho said that the Zoning Board's decisions do not set a precedent, in that, each application for relief is met with independent discussion and evidence. Further, the plot plan is not clear on the location of the septic tank, the well, distribution box or the leaching field. In his opinion, Vice-Chair Coutinho said that relocating a septic system to accommodate construction would be considered a hardship.

Mr. Eastwood said that the septic system is about 10 or 12 years old. He also stated that, at the rear of the house are the family room, kitchen and bathroom. To place the bedroom in the family room would require people to travel through the kitchen and bathroom to get to the bedroom and it was not feasible to do it this way. Accordingly, expanding the den at the front of the house was the only logical way to accomplish relocation of the bedroom to the first floor from the second floor.

There being no further discussion by the Board, Chair Menard asked if there was any public input by anyone in the audience and there was none.

Chair Menard advised the petitioner of his options prior to closing the hearing, namely:

First, the hearing is closed and the Board votes on the approval of the finding and granting of the variance. It is important that both the finding and the variance must be granted in order for this project to move forward.

Second, if the Board were to reject either the finding or the variance, it would be a two-year waiting period before the petitioners could reapply for other relief to continue with this project.

Third, the petitioner could withdraw his application without prejudice, which would allow revision of the plans and to reapply to the Board within the two-year period.

Fourth, the petitioner could request a continuance of the hearing for purposes of reviewing the project and make revisions to the plans.

Chair Menard stated again that, if the Board declines to grant either a finding or a variance, then there is a two-year waiting period before reapplying for further relief to continue with the project.

Mr. Eastwood stated that he wished to continue with the application as it is, as he had expended substantial funds for the architect and the plans.

Vice-Chair Coutinho stated that, again, the Board does not have sufficient information as to the location of the septic system, leaching field, distribution box and the well and the measurements on the plot plan at the rear of the house. However, the Board does have sufficient information that the kitchen and bathroom are located before entering into the family room; therefore, not allowing for the bedroom to be located there without major relocation of the kitchen and bathroom. These factors may be taken into consideration when making a determination as to the validity of the variance, which is for four (4') feet -- from 18.5 feet to 14.5 feet -- and, technically, 10.5 feet within the 25-foot setback requirement.

Hearing no further comments, Mr. Elias made a motion to close the hearing. Ms. Gee seconded the motion and the Board voted unanimously to close the hearing at 7:01 p.m.

First, the Board discussed whether any member had an issue with granting the finding. No member did. Chair Menard stated that this project would be the typical reason for approval of a finding; the addition of a garage would not be a negative impact to the neighborhood; and the garage meets all the setback requirements.

Chair Menard made a motion to grant the finding that the proposed construction of a two-stall garage with mud room, and expand/alter the first floor is not substantially more detrimental to the neighborhood. Ms. Gee seconded the motion and the Board voted unanimously to grant the finding.

Chair Menard stated at the outset that he was not in favor of granting the variance on the ground that -- as conceded to by the petitioner -- the expansion of the bedroom as presented to the Board was being done strictly out of convenience for himself and his wife, which is not a valid reason to sidestep the zoning bylaw.

Mr. Elias stated that a hardship could be considered in the fact that the kitchen and/or bathroom would need to be relocated in order to place the bedroom at the rear of the house.

Chair Menard reiterated that a hardship under the bylaw is concerned with the land itself, a hardship pertaining to the land that would prohibit placement of the bedroom in that particular area. He believed the hardship, as required by the zoning bylaw, does not exist here.

Ms. Pontolilo stated that she believed that the existence of a properly working septic system would be considered a hardship if it were required to be relocated to construct the bedroom.

Chair Menard disagreed, stating that the septic system is not considered a hardship within the meaning of the bylaw.

Vice-Chair Coutinho explained that the issue is not whether the septic system needs to be relocated, but, rather, whether it is necessary to add a bedroom in that location. He also stated that, although the project does not meet the criteria for the granting of a variance, he did not consider a four (4') foot variance -- or, technically, a six (6') foot variance -- to be so detrimental that the variance should not be granted. Vice-Chair Coutinho also said that there has been no opposition lodged by neighbors, abutters or the public to this request, and being a proponent of living spaces being located on the first floor of a house, he would be supportive of granting the requested variance.

Mr. Watterson, although not a voting member in this matter, posed a possible alternative, inquiring as to whether the bedroom could be built behind the newly-constructed garage portion, avoiding the septic system. Ms. Pontolilo noted, however, that placing the new bedroom far away from the bathroom may pose a hardship for the owners in the future, as they will

most likely need to have access to the bathroom closer to their bedroom. Mr. Watterson agreed that the expense of placing the bathroom and bedroom in close proximity would not be feasible at the rear of the house.

Chair Menard reiterated that the Board is required to vote on the application and the plans that have been submitted for review this evening.

Vice-Chair Coutinho indicated that an on-site visit may be required so that the Board can review other options for placement of the bedroom.

Mr. Eastwood said that locating the bedroom near the garage was not an option that he and his wife thought of and, in fact, his architect was tasked with the job of making the best determination with the existing structure.

Chair Menard said that, although that may be the best option in the architect's view, it does not take the zoning bylaws regarding setback requirements into consideration.

Mr. Elias and Ms. Pontolilo did not believe the option of locating the bedroom near the mud room or garage would be a viable one.

Mr. Eastwood said he would welcome the Board to do an on-site visit.

Chair Menard said that the hearing has been closed and no further evidence can be considered.

Mr. Eastwood said that he and his wife are at an age that it would be difficult to put the bedroom to the rear of the garage without having to construct a bathroom as well.

Ms. Gee made a motion to grant the variance to reduce the front-yard setback from 18.3 feet to 14.3 feet on the ground that a variance is warranted due to the existing hardship, specifically: the configuration of the septic system, leaching field and the well located in the rear of the house does not allow for further construction in that area; and the location of the existing bathroom, kitchen and family room does not allow for further construction at the rear of the house. Therefore,

the bedroom must be located to the front of the house. Vice-Chair Coutinho seconded the motion, with the condition being that the construction must comply with the plans dated December 5, 2021, said plans having been submitted by the petitioners with this application, as well as the evidence presented to the Board at this hearing, all having been considered by the Board in making its determination. The vote to grant the variance was passed by a vote of 4 to 1 as follows: Gerald Coutinho, Constance Gee, Barbara Pontolilo and Ray Elias voting in favor of granting the variance and Roger Menard voting as not being in favor of granting the variance.

Chair Menard said that, although he did not believe the reasons for placing the bedroom in that location warranted a variance, he did commend the petitioners for relocating their living space to the first floor.

Chair Menard advised of the 20-day appeal period from the date of filing the decision with the Town Clerk.

2. The next matter on the agenda is the petition of Nelson Robles, Jr., Applicant, and Robles & Seeley Investments, LLC, LLC, Owner, for a Special Permit to construct a one-level detached, one-bedroom accessory apartment not greater than 750 square feet, as allowed by Zoning Bylaw Article 9, Section 9.5.2. The subject property is located at 844 Sanford Road, Westport, MA and is shown on Assessor's Map 30, Lots 17-18C&H.

Chair Menard noted that the members voting on this application would be Gerald Coutinho, Constance Gee, Barbara Pontolilo, Ray Elias and himself, Roger Menard.

Chair Menard read a letter from Ralph Souza, the Zoning Enforcement Officer, which prompted the matter coming before the Board. The letter stated, in pertinent part, that:

"After review of the building permit application to convert a detached accessory structure into a 660 square foot detached accessory apartment, the application is denied.

As per the Westport Zoning By-Laws Article 9.5.2, Detached Accessory Apartment, 'The Zoning Board of

Appeals may issue a special permit authorizing the installation and use of a detached accessory apartment in a detached structure on a lot containing a single-family dwelling . . ."

Chair Menard noted that the existence of an accessory apartment requires a special permit and so long as the petitioner can comply with the requirements of Sections (a) through (j) of the bylaw, the special permit may be considered by the Board.

Chair Menard reiterated the procedure that would be followed at this hearing, namely: the petitioners would present their 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.

Mr. Nelson Robles, Jr. addressed the Board, stating that:

1. He is the owner of 844 Sanford Road and plans to reside at the property once construction is completed as his primary residence. The main house will be demolished and new construction on the existing footprint.

2. He purchased windows in January, however, delivery has been delayed at this time.

3. Once all the renovations are complete, his grandparents or his mother will reside in the apartment.

4. He intends to retain the current footprint of the structures, including the garage.

5. The main house contains four (4) bedrooms and two (2) full bathrooms, with installation of new utilities and bringing the structure up to code. This structure was formerly an upholstery business.

6. The detached structure currently has a foundation that extends farther to the rear with approximately 1,100 square

feet. He plans to reduce the foundation utilized to accommodate the current zoning bylaw of maximum of 750 square feet.

6. The two-car garage will be renovated with new windows and doors and outside trimming.

7. A new septic system will be installed to accommodate the extra bedroom in the accessory apartment, for a total of five (5) bedrooms.

8. He is in the process of having a perc test performed, perhaps in May or June, to determine the type of septic system to be installed.

9. The previous owner subdivided the lot and the new lot to the south side is being sold for a single-family home with a perc test being conducted at some time in the near future as well.

Chair Menard recited Sections (a) through (j) of the bylaw and asked if the petitioner intends to comply with these requirements.

Mr. Robles said that his intent is for his grandparents or his mother to reside in the apartment; the apartment shall contain one (1) bedroom, bathroom, kitchen and living room; the apartment will not be occupied by more than two (2) persons; he will reside in the main house once all construction has been completed and will reside there prior to construction of the apartment; there is sufficient off-street parking for both the main house and the apartment with a newly-paved driveway; the apartment will be a one-level structure; the septic system will be updated and approved by the Board of Health; and no further subdivision of the property unless said subdivision meets all zoning requirements.

Chair Menard said that the Board would typically require a plot plan showing there on the lot the accessory apartment will be constructed; however, since the structure will be built on the existing footprint, the Board can review the property on the GIS system to see where, on the lot, the apartment will be located.

Vice-Chair Coutinho said that it seems obvious that the setback requirements are being met with the current footprint.

Chair Menard asked whether the petitioner would be willing to agree to adding a restriction in the deed, whereby the owner must reside in one of the structures -- either the main house or the accessory apartment. Mr. Robles said that, in the future, his plan is to construct a new home on another lot and rent out the main house here. Chair Menard said that the intent of the zoning bylaw governing accessory apartments is that either the main house or the apartment is rented out; and, therefore, the owner of the property must reside in the structure that is not being rented.

Vice-Chair Coutinho asked whether the petitioner intended to provide handicap accessibility within the accessory apartment.

Mr. Robles said that his grandparents had asked for easier mobility in the bathroom, i.e. stand-up shower.

Vice-Chair Coutinho said that the Board typically advises petitioners to construct accessory apartments with handicap accessibility and mobility accommodations.

Mr. Watterson noted that, at Town Meeting, a new article would be considered, whereby the maximum of 750 square feet for a detached accessory apartment would be increased to 900 square feet.

The Board discussed the options available to the petitioner, in that, he could withdraw his current application without prejudice and reapply to have the 900 square feet considered.

Chair Menard said that the petitioner could request a continuance of the hearing for purposes of submitting revised plans.

Vice-Chair Coutinho reminded the Board that the current application is under the current zoning bylaw; and, if the new bylaw is approved at Town Meeting for 900 square feet, the

petitioner would be required to resubmit a new application with new plans. Also, if the new bylaw is approved, the Board would not be in a position to act on a new application until such time as the new bylaw is approved by the Attorney General's Office, which could be in August.

Mr. Robles said he would consider withdrawing and resubmitting until Town Meeting as Vice-Chair Coutinho noted that Mr. Robles could continue with the construction of the main house and, then, move onto demolition of the existing structure to reconstruct the accessory apartment.

Chair Menard stated that, once the hearing is closed the Board vote on the special permit with the submitted plans. If the Board rejects the current application, then the petitioner cannot reapply for two (2) years. He also noted that Mr. Robles can withdraw his application without prejudice and that would afford him the opportunity to reapply with revised plans under the new zoning bylaw.

Vice-Chair Coutinho said that, should the petitioner not want to make a decision this evening, that he could ask that the Board continue the hearing until after Town Meeting, at which time, he would inform the Board of his decision to reapply under the new zoning bylaw or go forward with the current application.

Mr. Robles asked if he could continue the hearing until May 11, 2022. Chair Menard said that the Board would require a written request to continue the hearing to May 11, 2022, at which time, Mr. Robles would inform the Board as to his intention with the current application.

Chair Menard asked if there was anyone in the audience who had a comment or question about the project.

Carlos Almeida, 849 Sanford Road, Westport, MA inquired about the driveway to access the apartment. He was also concerned about who would be residing in the apartment, as it is a quiet neighborhood and would not want to see noisy neighbors living there.

Karen Almeida, 849 Sanford Road, Westport, MA asked about the footprint of the apartment and the intent as to the remainder of the foundation. Mr. Robles said he would leave the remainder of the foundation as a patio. However, should Town Meeting approve the increased square footage, he would then extend the apartment structure with a smaller patio. Ms. Almeida also asked about whether the septic system would need to accommodate all the three (3) bathrooms, as well as the two (2) kitchens. Chair Menard said that the septic considers bedrooms number of bedrooms. Mr. Robles also said that the well will be to the rear of the main house with the septic system, both of which will accommodate the apartment.

Vice-Chair Coutinho said that the Board can make a decision, contingent upon conditions, which would include that the construction of the apartment be as the plans that have been submitted by the petitioner.

The neighbors support the project as the current structure has been vacant for a long time.

Vice-Chair Coutinho made a motion to grant the petitioner's request to continue the hearing to Wednesday, May 11, 2022 at 6:30 p.m. with agreement to extend the decision deadline. Mr. Elias seconded the motion, which was voted unanimously. At the May 11, 2022 hearing, Mr. Robles is to advise the Board that he intends to move forward with the current application; or whether he will reapply under the new bylaw, and will submit plans to accompany that new application.

An administrative item on the agenda was taken out of order. Chair Menard asked Ralph Souza, Building Commissioner and Zoning Enforcement Officer, for a status of the violation of Casey Amaral, 581C Drift Road.

Mr. Souza said that he has asked permission of the Town Administrator to consult with Town Counsel to move forward. He said that fines can be imposed, however, it necessitates Town Counsel to file an action in court. Mr. Souza said he intends to discuss this matter with Town Counsel to determine the options going forward.

[Note: Constance Gee left the meeting at this time].

3. The next matter on the agenda is the petition of Larry Culpepper for a finding that the proposed construction of a two-level single-family dwelling after demolition of existing structure is not substantially more detrimental to the neighborhood as mandated by Zoning Bylaw Article 5, Section 5.2.3; and for a variance from the 25-foot setback requirement on corner lots, to be reduced to an 11-foot setback at the front yard on a 20-foot private way, as required by Article 7, Section 7.7.1.1.3. The subject property is located at 71B Sylvia's Lane, Westport, MA and is shown on Assessor's Map 72, Lots 70 and 71.

Chair Menard noted that the members voting on this application would be Gerald Coutinho, Barbara Pontolilo, Ray Elias, James Watterson and himself, Roger Menard.

Chair Menard read a letter from Ralph Souza, the Zoning Enforcement Officer, which prompted the matter coming before the Board. The letter stated, in pertinent part, that:

"After review of your building permit application to demolish and remove the existing 924 square foot, one-level dwelling and replace it with a new two-level single family dwelling approximately 2,650 square feet, not including decks and porches, it has been determined that this would require a finding by the Board of Appeals as per the Westport Zoning By-Laws Article 5.2.3, Alteration, 'Pre-existing, non-conforming structures or uses may be altered provided there is a finding by the Board of Appeals that such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.'"

Chair Menard said that the petitioner is also requesting a variance because of the impingement upon the setback requirements.

Chair Menard again noted that the procedure that would be followed at this hearing, namely: the petitioners would present their 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.

Joseph Combs of Studio hearth Architecture + Design, 202 Park Street, Stoneham, MA addressed the Board. He stated that:

1. He is the architect for the project at 71B Sylvia's Lane, Westport, MA.

2. The project will require a finding due to the lot's existing non-conformance, as well as a variance because of the setback requirements that are being impacted, specifically from the private way that is currently not used.

3. Many of the homes in the neighborhood do impinge on the setback from the private way.

4. About 10 years ago, the neighbor at 71A Sylvia's Lane was granted similar relief from the front-yard setback from the private way.

Vice-Chair Coutinho stated that he had been informed about the neighbor's house being built, however, that matter never came before the Zoning Board for a variance or any other relief. He asked for an explanation regarding the neighbor's structure.

Larry Culpepper, the petitioner, who resides at 90 Sylvia's Lane, addressed the Board, stating that he has the documents pertaining to 71A Sylvia's Lane, which was issued a building permit but did not appear before the Zoning Board at that time.

Vice-Chair Coutinho said that Mr. Combs mentioned that the neighbor was granted relief, meaning that the Zoning Board had considered that property.

Mr. Culpepper said that:

1. 71B Sylvia's Lane is being built for his daughter and granddaughter, who are moving to Westport.

2. The neighborhood consists of four (4) lanes -- a main lane and three (3) side lanes -- as well as the private way, which provided access as a "right of way" to the neighborhood, and which is a grass way to the river.

3. He was surprised to see that this way was being considered a private way, when it had always been a grass way.

4. The neighbor at 71A Sylvia's Lane placed gravel on part of the grass way to accommodate a driveway for himself, as well as constructing a basketball court on the way.

5. The other properties along the way are similarly situated with the structures being about 10 feet back from the way.

Mr. Souza said he would have to review the file regarding 71A Sylvia's Lane to determine the reason for the granting of the building permit.

Chair Menard said, when he visited the property, it looked like a road, but not definite because of the gravel that had been placed there.

Vice-Chair Coutinho said that, as a practical matter, the manner in which 71A Sylvia's Lane was built or any other work performed thereafter is not of relevance with the petition that is before the Board this evening.

Sean Leach, Northeast Engineers & Consultants, 6 Valley Road, Middletown, RI addressed the Board. He stated that:

1. He completed the surveying of this property and, although there were structures on the subdivision as far back as 1938, the subdivision was approved by the Planning Board in July of 1956, as one of the first subdivisions approved by the Town of Westport.

2. The finding being requested is due to the non-conformance of the lot.

3. One of the issues is the size and slope of the lot and the placement of the septic system and the well.

4. The private way is steep and the elevation of the property is 102 feet with a 100-foot drop going down to the river.

5. The issue is that, if there is a house on a corner lot on a private way, the setback requirements must be met for both the way and the corner lot setback. The contention is that, there is only one (1) roadway, running north and south, in front of the lot and that the requirement for setback from the road is met under the Derelict Fee statute that allows the owner to own to the center of the road, allowing 21 feet from the property line and 11 feet from the private way.

6. Several houses in the neighborhood do not meet the setback requirements and, also, there is a house in the neighborhood that is closer -- only four (4') feet off the sideline.

7. Here, the 10-foot side-yard setback is being met. The only variance being requested here is the eleven (11') feet to the private way, to the south of the property. All other requirements are met.

8. The way is currently being utilized by the neighbor as a driveway and will most likely never be paved as a street, causing legal issues for the neighbor, who has a basketball court and gravel driveway on the way.

9. The driveway for this property will be utilized from the road that is actually in existence as a roadway.

10. The only place for the leaching field is in the front of the house; the septic system is to the rear. For these reasons, the petitioner is limited as to where to locate the house on the lot.

Vice-Chair Coutinho asked whether Mr. Leach would know whether the 20-foot private way could be developed through the neighbor's property to the back.

Mr. Leach said he did not believe so because the only people who have rights to the private ways are the owners of the subdivision lots under the Derelict Fee statute. The larger lot to the other side of the subdivision would not be allowed to utilize the private way as it is not part of the subdivision.

Mr. Watterson posed the question of whether the petitioner and other land owners in the neighborhood could petition the Land Court to eliminate the private way, thereby not requiring a variance from the Zoning Board.

Mr. Leach agreed, but going the Land Court route would take several years to come to a conclusion. The question is whether 71B Sylvia's Lane is located on a corner lot, in the sense that it sits on two (2) roadways, used as roadways. Mr. Leach said it could be argued that, if the road is considered a paper street, then the setback requirement of a corner lot would not be needed.

Chair Menard asked about 71C Sylvia's Lane. Mr. Leach said that the garage is very close to the property line as well.

Vice-Chair Coutinho said he sees no issue with the variance being requested. It is clear that the lot is constrained by its size, the topography of the lot with a house already on the lot.

Chair Menard said that the new construction will not meet the setback requirements, as the current house does.

Mr. Watterson suggested that a covenant be filed by the lot owners that the private way would not be developed in the future.

Mr. Leach said that it is a private way, would not be legally developed and could not be done so without permission from the lot owners. The lot owners could, collectively, legally abandon the private way.

Mr. Culpepper said he has been the secretary of what the neighborhood calls a homeowners' association for the past 20 years. The association is not considered a legal entity and it would be a complicated process to be established in that manner and to determine who would have access to pass through the right of way.

Chair Menard said that, from granting a finding, he sees no issue as the lot is clearly non-conforming, and any construction on the property will not be more detrimental to the neighborhood.

Mr. Culpepper said that the septic plan has been approved and the new well has been installed.

Vice-Chair Coutinho noted that the Board did not have before it the proposed site plan. Mr. Leach said that the plan titled "site plan" is the proposed site plan. He also noted that, at the time that the site plan was drawn, the septic system was in the process of being approved and, therefore, the septic system is not shown on the site plan.

Vice-Chair Coutinho said that, unfortunately, with the septic system and well not noted on the site plan, the hardship for their location on the lot cannot be used as a supportive argument for the issuance of the variance.

Chair Menard said that an argument could be made in granting the variance that the lot is similarly situated as the other lots in the neighborhood. He further noted that it supports the petitioner's request if there are other properties in the neighborhood within 250 feet that have similar conditions.

Mr. Leach said that the aerial plan shows other lots with similar issues. The term "offsets" in the zoning bylaw regarding similarly-situated lots within 250 feet is ambiguous, particularly in this situation and it was more practical to bring this petition before the Zoning Board for a determination. In any event, the petitioner required a finding from the Zoning Board.

Vice-Chair said that the 250-foot rule need not be relevant here; but, rather, the Board should consider the hardship element of the variance requirement. He also said that, showing the site plan with the inclusion of the location of the septic system and the well, would strengthen the argument for a variance.

Mr. Watterson asked whether other houses in the neighborhood are as large (2,600 square feet) as proposed for this house.

Mr. Leach said that there are a few of the houses with similar square footage and the one behind this property is larger. The houses may be similar in footprint, but some of them have two or even three levels, with decks and patios.

Mr. Watterson said that a hardship cannot be self-created and, therefore, instead of a three-bedroom, three-bathroom house, why not construct a two-bedroom, two-bathroom house, with a smaller septic system and the house could be placed to comply with the setback requirements.

Mr. Pontolilo noted that this is a two-bedroom house.

Mr. Watterson said it is proposed with an office and a sunroom.

Mr. Culpepper clarified that his daughter and granddaughter will be living in the house. His daughter intends to conduct a virtual professional practice from home. The two (2) bedrooms and bathrooms are on the first floor, with a half-bath on the second floor, together with the living room and kitchen on the second floor as well.

Mr. Leach said that Title V requires that new septic systems be installed as three-bedroom systems. The only way to be permitted to install a two-bedroom system is to apply for a variance from the Board of Health, together with a deed restriction. Mr. Leach said that Mr. Culpepper did place a deed restriction on the property that the house cannot contain three (3) bedrooms in the future. The leaching area requires 400 square feet, which takes up a significant amount of land. Mr.

Leach said that, initially, when designing the house, it was with the corner lot consideration.

Mr. Watterson said he was concerned with setting a precedent, that there will be other applications in the future with similar requests.

Mr. Leach said he understands the concern, however, this lot is not the typical lot. The entry-deck leads into the house with no parking on the private way as the entrance to the house will be from the main road.

Chair Menard asked why the house could not be moved in a northerly direction another ten (10) feet.

Mr. Leach stated that the neighbor's garage is closely-situated in that area. Mr. Combs noted that the location of the well would be affected, as it is required to be situated at least ten (10) feet from all property lines. Also, by moving even six (6) feet to the north would eliminate a significant portion of the back yard.

Mr. Watterson reiterated his concern that the architectural plans do not comply with all zoning restrictions and that the footprint of the house creates the hardship.

Mr. Culpepper responded that it was only recently that he learned that there may be a corner lot issue, requiring a greater setback requirement. Prior to that, the design was for a two-bedroom house, with larger houses in the neighborhood.

Chair Menard said there is no issue with constructing a two-level house.

Ms. Pontolilo noted that the view of any other neighbor, whether water view or otherwise, is not a consideration when the Board is making a determination on any petition.

Chair Menard asked whether the petitioner would want to continue the hearing to make a further review of the plans and come back to the Board with revised plans, to include the location of the

septic system and the well, and, perhaps, making other adjustments.

Mr. Leach said he would revise the plans as requested by the Board, with the contention that the new construction meets the setbacks consistent with the offsets considered by the other lots in the subdivision.

Chair Menard said that he is in agreement with Mr. Watterson's analysis that the plans could have been drafted to be in compliance as much as possible: for example, the placement of the shed in the rear of the house and the space taken up by the porch.

Mr. Combs said that he understands the Board's concerns. He was trying to conserve as much of the yard for his client as possible, and with the support of the fact that no one in the neighborhood meets the setback requirements. Mr. Combs suggested a seventeen (17') foot setback and that would be in line with other lots that are even less than that to the private way.

Mr. Leach agreed and asked for a continuance of the hearing. Chair Menard said that, at the next meeting, the petitioner can submit new plans or go forward with the same plans.

Mr. Leach submitted a written request by the petitioner for a continuance of the hearing to Wednesday, May 11, 2022 at 6:30 p.m. and agreed to an extension of the decision deadline.

Vice-Chair Coutinho made a motion to grant the request for a continuance of the hearing to Wednesday, May 11, 2022 at 6:30 p.m. Ms. Pontolilo seconded the motion and the Board voted unanimously to grant the request.

Administrative Items:

1. Approval of the minutes of the regular meeting of March 30, 2022. Chair Menard made a motion to approve the minutes of the regular meeting of March 30, 2022. Mr. Elias seconded the motion and the Board voted unanimously

to approve the minutes of the March 30, 2022 regular meeting.

2. Approval of the minutes of the Executive Session of March 14, 2022. Chair Menard made a motion to approve the minutes of the Executive Session of March 14, 2022. Mr. Elias seconded the motion and the Board voted unanimously to approve the minutes of the March 14, 2022 executive session.

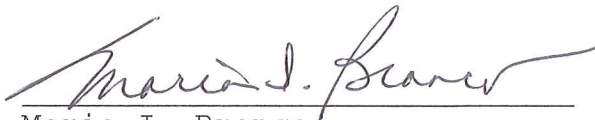
3. Chair Menard said that the Planning Board had requested that the article being considered by Town Meeting regarding the accessory apartment be revised, to include two (2) bedrooms in the accessory apartment, instead of one (1) bedroom. He said that he responded to the Planning Board that he would not agree to the revision. The Board discussed this issue and there were concerns that allowing two (2) bedrooms would allow potential two (2) single-family homes on one lot, which is not allowed. Chair Menard said that the original intent of the bylaw was to allow for in-laws, elderly or disabled persons to reside near their family in the main house; or to allow the owner to receive income from rent of the apartment. It was suggested that this specific issue be considered through public hearings and discussion to possibly be continued to next year's Town Meeting. Vice-Chair Coutinho said he was surprised at the Planning Board's request at this late time, in that the article had already been approved by the Moderator and was ready to be presented to Town Meeting. There was also discussion about whether petitioners coming before the Zoning Board for approval of an accessory apartment should have approval from the Board of Health for the supporting septic system.

There being no further business before the Board, Ms. Pontolilo made a motion to adjourn the meeting at 9:16 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 May 11, 2022 at 6:30 p.m., and will be conducted in person, unless otherwise determined.

Adjournment.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Maria I. Branco", written over a horizontal line.

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

APPROVED:

A handwritten signature in dark ink, appearing to read "Roger Menard", written over a horizontal line.
Roger Menard, Chair