

RECEIVED

DEC 7 2022

WESTPORT ZONING
BOARD OF APPEALS

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
NOVEMBER 16, 2022**

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

Absent was James Watterson.

Chair Menard called the meeting of the Zoning Board of Appeals meeting to order at 6:33 p.m. with the reciting of the Pledge of Allegiance. He stated that the meeting is being conducted with a quorum present.

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

1. The first matter on the agenda was the continued hearing on the application of Derek R. Pacheco for a Special Permit to convert an existing structure into a one-level detached, one-bedroom accessory apartment not greater than 850 square feet, as allowed by Zoning Bylaw Article 9, Section 9.5.2. The subject property is located at 14 Miracle Lane, Westport, MA and is shown on Assessor's Map 33, Lot 2D.

Chair Menard read the notice of hearing into the record. He stated that the members voting on this matter would be Gerald Coutinho, Constance Gee, Barbara Pontolilo, Ray Elias and himself, Roger Menard.

Ana Pacheco addressed the Board. She stated that someone from the Board of Health had been at the house this afternoon to view the removal of casings and had approved the extra bedroom being decommissioned. She said she had not yet received the septic approval from the Board of Health and had difficulty contacting someone at the Board of Health.

Ms. Kozakiewicz stated that the Board of Health's records show that the property has four (4) bedrooms -- 3 in the house and 1 in the pool house -- with a 3-bedroom septic system.

Again, Ms. Pacheco stated that the Board of Health Agent had not provided any advice on how to proceed.

Chair Menard said that the most recent notes from the Health Agent stated that the Board of Health would most likely require a deed restriction, which is not comparable to a septic system approval.

Chair Menard again asked Ms. Pacheco if the Petitioner had received septic system approval from the Board of Health and Ms. Pacheco said no.

Chair Menard noted that this application was filed on June 16, 2022 with the first hearing having taken place on July 20, 2022; and, at the prior hearing on October 26, 2022, Ms. Pacheco had been advised that there would be no further continuances. Chair Menard also stated that the Petitioner had the option of withdrawing the application without prejudice and could return to the Board at any time after receiving an approval of the septic system from the Board of Health. He said that the alternative would be that the Board would vote on the application and if denied no further petitions could be filed for two (2) years.

Accordingly, Ms. Pacheco submitted a written request to withdraw the petition without prejudice. She said that she has a copy of the Zoning Bylaw Section 9.5.3 at home.

Chair Menard recited the subsections in Section 9.5.3 and stated that the Petitioner should ensure that he has complied with all of the requirements before filing a new application before the Board.

Vice-Chair Coutinho stated that the issue is the extra bedroom in the house, and the photographs taken by the Health Agent denote that the room could be reverted back into a bedroom without much difficulty.

Mr. Elias said he spoke with Paul Hebert, who had removed the jambs and casings from the doorway and the closet door.

Vice-Chair Coutinho made a motion to grant the Petitioner's request to withdraw the petition without prejudice. Ms. Pontolilo seconded the motion, which was voted unanimously.

Voting on the motion to withdraw without prejudice: Menard, Coutinho, Gee, Pontolilo and Elias.

The hearing concluded at 6:51 p.m.

2. The next matter on the agenda is the petition of Jay Raposa, Applicant, and Raposa Properties LLC, Owner, for a Special Permit to construct a one-level detached, one-bedroom accessory apartment not greater than 784 square feet, as allowed by Zoning Bylaw Article 9, Section 9.5.3. The subject property is located at 0 Wildberry Way, also known as 6 Wildberry Way, Westport, MA and is shown on Assessor's Map 35, Lots 12L.

Chair Menard said the voting members would be Gerald Coutinho, Constance Gee, Barbara Pontolilo, Ray Elias and, himself, Roger Menard.

Matthew Pike of Southcoast Engineering, 182 Drift Road, Westport, MA addressed the Board. He stated that:

1. He is the engineer on the project and is representing the Petitioners this evening. (Jay Raposa was not present).

2. The livable space of the accessory apartment is 750 square feet, with 764 square feet of outside dimensions.

3. The accessory apartment will be utilized by the Petitioner's son, who is also a shareholder of Raposa Properties LLC.

4. The 5-bedroom septic system has been approved by the Board of Health (4 bedrooms in the main house and 1 bedroom in the accessory apartment). A copy of the septic system approved plan will be provided to the Board.

5. The main house is currently being constructed.

6. He is authorized to speak on behalf of the Petitioner regarding all of the requirements mandated by Zoning Bylaw Section 9.5.3.

7. Deed restriction will be signed.

8. The property cannot be further divided.

Chair Menard read a letter from Ralph Souza, Zoning Enforcement Officer, which states, in pertinent part:

"After review of the submitted building permit application to construct a 784 square foot detached accessory apartment on the site, as per the 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 asked whether the Petitioner would meet the requirements under the Bylaw that need to be met for the Board to grant the Special Permit.

Mr. Pike agreed that all requirements will be complied with. He also said that there are at least four (4) parking spaces in front of the accessory apartment; with a horseshoe driveway in front of the main house that will accommodate six (6) vehicles. Chair Menard asked whether Mr. Pike had with him an approved septic system plan from the Board of Health.

Mr. Pike said he did not have a plan with him, although the Board of Health had approved the septic system for the entire project.

Ms. Gee asked whether there was any document showing the setback dimensions.

Ms. Kozakiewicz noted on the site plan the setback measurements, all of which meet the setback requirements.

Mr. Pike agreed that the project meets all setback requirements. The accessory apartment is 32 feet from the closest side property line; the rear of the house has a buffer zone that then leads to wetlands.

Vice-Chair Coutinho said that he viewed the site and was shown the property lines. He also stated that the notes provided to the Board by the Clerk indicate that the Health Agent confirmed approval of the 5-bedroom septic system -- 4 bedrooms in the main house and 1 bedroom in the accessory apartment.

Ms. Kozakiewicz noted that, since the owner is not present, would the Board be comfortable with Mr. Pike's assurances on behalf of the owner.

Chair Menard said the Board has two (2) options. The Board may approve the Special Permit on the condition that the Petitioner provides a septic system approval plan prior to the filing of the decision; or the Board could continue the hearing for purposes of reviewing the plan.

Ms. Kozakiewicz was concerned that, because neither structure is built currently, and the Petitioner's son will be residing in the accessory apartment, would the owner-occupied requirement be met.

Mr. Pike said that the son is part owner of Raposa Properties LLC, which is a family-owned business. Mr. Pike also requested that the Special Permit be granted on the condition that the septic system plan has been approved and the Petitioner will sign a deed restriction.

Vice-Chair Coutinho advised that a septic system approval plan must be submitted to the Board within a week.

Chair Menard asked if there were any further comments from the audience and there were none.

Hearing no further discussion by the Board or comment by the public, a motion was made by Ms. Pontolilo to close the hearing at 7:07 p.m. Seconded by Mr. Elias. The Board voted unanimously in favor.

Chair Menard said that he had no issue with granting the Special Permit with certain conditions, namely:

1. That the Zoning Board receives a copy of the septic system approval from the Board of Health, as well as the signed Deed Restriction to be filed with the Board's decision.

2. That the apartment shall be substantially constructed in accordance with the plan as submitted dated January 23, 2019, the undated site plan submitted with the application, and the testimony given at the hearing.

3. That the Petitioner sign a Deed Restriction.

Ms. Kozakiewicz added that there should be documentation showing that the son who will be residing in the apartment is an officer of the LLC.

4. That the Petitioner provide to the Board documentation that states that the son, who will be occupying the apartment, is a shareholder of Raposa Properties LLC.

Accordingly, Chair Menard made a motion to grant the special permit to construct a one-level detached, one-bedroom accessory apartment not greater than 784 square feet at the property located at 0 Wildberry Way -- now known as 6 Wildberry Way -- with Conditions 1 through 4 as outlined above.

Ms. Gee seconded the motion and the Board voted unanimously to grant the special permit.

Chair Menard advised that there is a 20-day appeal period from the date is filed with the Town Clerk.

The hearing concluded at 7:12 p.m.

3. The next matter on the agenda is the cell tower to be constructed at 67 Masquesatch Road. Chair Menard said that the Applicant, Municipal Communications LLC, is before the Board pursuant to the Agreement for Judgment dated August 4, 2022 filed with the United States District Court, for approval of plantings on the site.

Attorney Michael Dolan, Brown Rudnick, Providence, RI addressed the Board. He stated that:

1. He represents Municipal Communications LLC.

2. He is accompanied by Vincent Granese, who is an independent contractor for Municipal Communications LLC.

3. The plantings on the plans are known to be deer-repellant; non-invasive, 6-foot high green, giant arborvitae.

4. The fence will be an 8-foot high, wood stockade fence that will surround the entire compound.

5. The plantings will be maintained by the Applicant in the future.

6. AT&T, who is the lead carrier on the tower, is proposing a walk-in cabinet, not a shed, which complies with Section 1(h) of the Board's decision. AT&T will further address this structure at the time it applies for a building permit.

Mr. Granese stated that the walk-in cabinet will store radio equipment and will be placed on the site, not free-standing, so as not to be seen from the road.

Ms. Pontolilo said she had no issue with the plans as presented.

Chair Menard agreed.

Vice-Chair Coutinho asked which type of fuel would be used on the site.

Attorney Dolan said that the fuel source has not yet been decided by AT&T.

Chair Menard said that AT&T will be required to obtain approval from the Zoning Enforcement Officer as to the type of fuel to be used on the site.

Ms. Kozakiewicz noted that, if for whatever reason the fuel must be shut off due to a weather issue, the tower will remain operable.

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

Chair Menard made a motion to approve:

1. The proposed plantings plan in accordance with Section 1(g) of the above-referenced Agreement for Judgment, namely:

planting of non-invasive Thuja Plicata (green giant arborvitae);
and

2. The proposed walk-in cabinet, in lieu of a shed or shelter, satisfies the condition noted in Section 1(h) of the above-referenced Agreement for Judgment.

Gerald Coutinho added that the fencing and plantings shall be maintained by Municipal Communications LLC in perpetuity. Barbara Pontolilo seconded the motion, which was voted unanimously.

Mr. Granese said that, once the approval is received, AT&T will be in a position to apply for the building permit. Construction will commence as soon as is possible, weather permitting. Mr. Granese also stated that Verizon has signed a lease to be placed on the tower, together with AT&T.

The hearing concluded at 7:25 p.m.

Administrative Items:

1. Approval of the minutes of the regular meeting of October 26, 2022. Mr. Elias made a motion to approve the minutes of the regular meeting of October 26, 2022. Ms. Kozakiewicz seconded the motion, which was voted unanimously to approve the minutes of the October 26, 2022 regular meeting.

2. Chair Menard stated that, on November 14, 2022, he and Mr. Elias addressed the Select Board to discuss reclassification of the Clerk's position description.

3. Chair Menard also stated that, at the Select Board meeting, there was discussion regarding increasing the application fees. The Select Board suggested a fee for low-income residents and was otherwise supportive of the increase. The Board further discussed fees for cell towers, business districts, adult entertainment businesses and Chapter 40B projects. Also discussed was an assessment if hearings are continued at the request of the Applicant or if the Applicant is not ready to

proceed. Chair Menard made a motion to request that the Select Board approve an increase in the application fees as follows:

Application Fee for Administration Appeals, Variances, Findings and Special Permits* will be \$500.

Continuances of hearings requested by the Applicant, or due to the Applicant's inability to proceed with the hearing will be \$100 for each continuance.

*Special Permits for telecommunications towers, Chapter 40B projects or adult entertainment businesses shall be greater than \$500.

Ms. Pontolilo seconded the motion which was voted unanimously.

4. Election of Officers:

Secretary -- Mr. Elias nominated Barbara Pontolilo to the position of Secretary. Vice-Chair Coutinho seconded the nomination. Ms. Pontolilo accepted the nomination. The Board voted unanimously in favor.

Vice-Chair -- Mr. Elias nominated Gerald Coutinho to the position of Vice-Chair. Ms. Gee seconded the nomination. Mr. Coutinho accepted the nomination. The Board voted unanimously in favor.

Chair -- Ms. Gee nominated Roger Menard to the position of Chair. Mr. Elias seconded the nomination. Mr. Menard accepted the nomination until at least July 2023. The Board voted unanimously in favor.

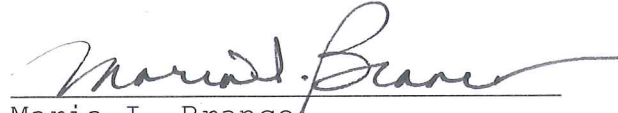
5. The Executive Session has been continued to December 7, 2022. The session may be opened to the public, to be decided at that time.

There being no further matters before the Board, Ms. Pontolilo made a motion to adjourn at 8:21 p.m. Ms. Gee seconded the motion, which was voted unanimously by the Board.

The next regular meeting of the Board is scheduled for December 7, 2022 at 6:30 p.m., and will be conducted in person, unless otherwise determined.

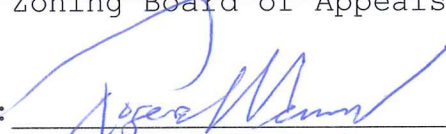
Adjournment.

Respectfully submitted,



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

APPROVED:



Roger Menard, Chair