

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
MARCH 29, 2023**

**RECEIVED**  
**MAY 17 2023**  
**WESTPORT ZONING  
BOARD OF APPEALS**

Members Present: Roger Menard, Chair  
Gerald Coutinho  
Barbara Pontolilo  
Raymond Elias  
Cynthia Kozakiewicz  
George Stelljes

Absent: Constance Gee

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. 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.

At the outset, Chair Menard welcomed the Board's new Alternate Member, George Stelljes, to the Board.

1. The first matter on the agenda was the petition of Emily Powers for a Special Permit to construct a one-level, one-bedroom accessory apartment not greater than 897 square feet with deck and sunroom, as allowed by Zoning Bylaw Article 9, Section 9.5.3. The subject property is located at 273 Cornell Road and is shown on Assessor's Map 81, Lot 4C.

Chair Menard explained the procedure that would be followed at this hearing, namely: the Applicant would present her 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 then deliberate and render a determination.

Chair Menard stated that the members voting on this matter would be Gerald Coutinho, Barbara Pontolilo, Ray Elias, Cynthia Kozakiewicz and, himself, Roger Menard. He said that four (4) out of five (5) members would need to vote in favor of the granting of the Special Permit.

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

Chair Menard also noted that the Applicant would be required to comply with the conditions as enumerated in Zoning Bylaw 9.5.3.

Chair Menard stated that the Building Commissioner had recently denied the building permit, stating in pertinent part:

*"After review of the building permit application to construct an 897 square foot detached accessory apartment at 273 Cornell Road, the application is denied.*

*As per Westport Zoning By-laws Article 9.5.3, '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 provided the following conditions are met . . .'"*

Chair Menard also read an e-mail from the Health Department regarding the approved septic system.

Curt Dukeshire, 72 Scotland Street, Hingham, MA addressed the Board. He stated that:

1. He is the contractor/builder for this project.
2. The newly-constructed detached apartment will contain just under 900 square feet, namely: 897 square feet.
3. Len Potter is handling the septic system installation and approval by the Board of Health.
4. The new structure will meet all setback requirements.
5. The apartment will have an open floor plan with the living room having vaulted ceilings and many windows to allow for access to natural light.
6. The room considered to be an office has no closet, will be 8' x 12' with an arched doorway.

7. The sunroom is not heated and, therefore, not included in the square footage measurement.

8. He and Ms. Powers have reviewed the requirements under Zoning Bylaw 9.5.3 and agree to comply with them.

Chair Menard said that the Board always looks at spare rooms that can later be converted into a bedroom, which is not allowed by the Bylaw.

Chair Menard requested that the petitioner go through each of the provisions required to approve the Special Permit, identifying how the petitioner would comply.

Curt Dukeshire read each of the requirements for the accessory apartment Special Permit and discussed how the petitioner would be in compliance.

Ralph Souza, Building Commissioner and Zoning Enforcement Officer stated that with eliminating the closet and arched doorway, the room is not considered a bedroom.

Emily Powers, Applicant, stated that:

1. She has resided on the property since she was a child.
2. Her parents currently reside in the single-family home on the property.
3. This apartment will be a retirement home for herself and her husband.
4. A new septic system has been designed including a denitrification system.
5. Handicap accessibility may be considered, since it is possible that her parents reside in the apartment in the future.
6. The structure will be set back from the road behind an existing one-car garage. There may be a few trees removed, however, she plans to retain as much vegetation as possible.

7. Curt Dukeshire submitted new plans to the Board dated March 17, 2023 that show the same floor plan with minor changes being made to the outside of the structure. The floor plan and footprint are identical to the plans already submitted.

8. There are three (3) bedrooms in the main house and the new septic system will be expanded to four (4) bedrooms.

Mr. Coutinho suggested that the doorway into the bathroom be widened to accommodate a wheelchair for future purposes.

Chair Menard stated that widening a doorway is not an issue that requires further Zoning Board approval; however, a redesign or enlarging the structure in excess of 897 square feet would be because the Board is making its determination based on the plans that were submitted with the application.

Chair Menard noted that a Deed Restriction may be required to ensure that not only the current owner, but future owners of the property will abide by the Special Permit requirements, especially the requires for a single bedroom, no more than two people living in the apartment, and the owner living in either the main house of the accessory apartment.

Emily Powers answered that she would have no problem with a Deed restriction.

Chair Menard asked if anyone in the audience would like to make a comment and there were none.

There being no further discussion, Ms. Pontolilo made a motion to close the hearing at 6:56 p.m. Seconded by Mr. Elias. The Board voted unanimously in favor.

Mr. Elias said he has no problem with the project, that it is straightforward, complying with all the requirements under the Bylaw.

Mr. Coutinho agreed.

Ms. Pontolilo said that the lot large enough to accommodate the apartment with no setback issues.

Chair Menard said that he drove by the site and the new structure will be a substantial distance from the road. So long as the requirements under Zoning Bylaw 9.5.3 are complied with, he sees not issue with granting the Special Permit.

There being no further discussion, Mr. Elias made a motion to grant the Special Permit to construct a one-level, one-bedroom accessory apartment no greater than 897 square feet with deck and sunroom, as allowed by Zoning Bylaw Article 9, Section 9.5.3. The subject property is located at 273 Cornell Road with the conditions that the construction of the apartment complies with the plans submitted to the Board dated November 19, 2022 and March 17, 2023, the testimony presented to the Board at this hearing, and a signed Deed Restriction with the Board's decision.

Mr. Coutinho seconded the motion and the Board voted unanimously in favor.

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

2. The second matter on the agenda was the petition of David Maher for a finding that the demolition of the existing non-conforming structure and new construction of a single-family dwelling in compliance with setback requirements shall not be substantially more detrimental to the neighborhood than the existing non-conforming use, as mandated by Zoning Bylaw Article 5, Section 5.2.3. The subject property is located at 29 Fairway Drive and is shown on Assessor's Map 88, Lot 199.

Chair Menard explained the procedure that would be followed at this hearing, namely: the Applicant would present her 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 then deliberate and render a determination.

Chair Menard stated that the members voting on this matter would be Gerald Coutinho, Barbara Pontolilo, Ray Elias, Cynthia Kozakiewicz and, himself, Roger Menard. He also noted that the approval of a finding requires a simple majority vote of the members -- three (3) members must vote in the affirmative.

Also present was Ralph Souza, Building Commissioner.

Chair Menard read the letter from Ralph Souza, the Building Commissioner/Zoning Enforcement Officer, which prompted the filing of the application for a finding. The letter read, in pertinent part:

*"After review of the submitted building permit application . . . it has been determined that the setbacks comply with the Westport Zoning By-Laws Article 7.7, Yard and Set-Back Requirements.*

*. . .*

*. . . 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.'"*

At the outset, Chair Menard explained the standard under which the Board must rule in approving or denying a finding, namely, that the proposed demolition and new construction "shall not be substantially more detrimental than the existing non-conforming use to the neighborhood." A few of those reasons may be safety, traffic, substantial issues, rather than just simply architectural.

Attorney Richard P. Desjardins, 791 Main Road, Westport, MA addressed the Board. He stated that:

1. Fairway Drive (known as Russell Road on the subdivision plan) is located in a subdivision created in 1950 by Stephen Howland.

2. The subdivision abuts the Acoaxet Club.

3. At the time of subdivision development, Mr. Howland placed various private deed restrictions for any homeowner planning to construct a home on the lots, including stricter setback requirements than those mandated by the Zoning Bylaws, and not allowing stand-alone structures. The property owners have renewed the local restrictions so they are still enforced. The petitioner will comply with all requirements of the stricter local deed restrictions.

4. There are several reconstructed homes in the subdivision. Richard Riccio, Field Engineering, 11 Industrial Drive, Mattapoisett, MA stated that:

1. He is the civil engineer for the project.

2. He is currently working on getting the septic system approved by the Board of Health, which includes denitrification system.

3. The new structure will be built basically on the same footprint.

4. The Conservation Commission has issued an Order of Conditions.

5. The property is not in a flood zone.

6. The well is in the front of the lot. Leaching field will be located farther away than the existing field.

7. There is a stormwater management system in place.

Henry Ladd of Howland Company, South Dartmouth, MA stated that:

1. He is the contractor on the project.

2. Garage access will be from the left side.

3. The height of the structure will be 26.8 feet.

4. There will be no other accessory buildings on the property.

Mr. Souza stated that there is no issue with the driveway being on the left side of the house.

Vice-Chair Coutinho asked if each house in the subdivision has its own well and not connected to a singular water source.

Attorney Desjardins said the house has its individual well. He also noted that one of the deed restrictions is that the garage be attached to the main dwelling.

David Maher, Applicant, of 340 Rumstick Road, Barrington, RI said that the house has been used primarily as a summer home since he and his wife purchased it in late 2021. However, once the new construction is completed, he plans to reside there permanently. The subdivision abuts a golf course and a pond.

Chair Menard said that he drove by the site and thought the area was very pleasant abutting both the golf course and the pond. He also noted that there were other properties in the area that have been rebuilt with much larger houses. Since it is at an intersection, moving the garage access to the left of the house should reduce any impact to local traffic.

Chair Menard opened up the meeting to the audience for comments, but there were none.

Hearing no further comments, Mr. Elias made a motion to close the hearing. Ms. Pontolilo seconded the motion and the Board voted unanimously to close the hearing at 7:20 p.m.

Chair Menard said that he believed the project to be straightforward and had no problem with it.

Ms. Kozkiewicz stated that the new structure will be basically on the same footprint.

Ms. Pontolilo noted that the trend in town is for houses to be upgraded.

Vice-Chair Coutinho believed the original deed restrictions were good ones.

Motion made by Chair Menard to approve the finding that the demolition of the existing non-conforming structure and new construction of a single-family dwelling in compliance with setback requirements shall not be substantially more detrimental to the neighborhood than the existing non-conforming use, as mandated by Zoning Bylaw Article 5, Section 5.2.3. The subject property is located at 29 Fairway Drive, Westport, MA and is shown on Assessor's Map 88, Lot 199, with the condition that the project be constructed pursuant to the plans submitted to the Board dated February 21, 2023, Architectural Plans for "The Maher Residence" dated March 6, 2023, Plans by Choo & Company, Inc., Architects and Engineers, dated March 8, 2023, as well as the testimony provided to the Board this evening. Mr. Elias seconded the motion and the Board voted unanimously to grant the finding.

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

#### **Administrative Items:**

1. Approval of the minutes of the regular meeting of February 22, 2023. Mr. Elias made a motion to approve the minutes of the regular meeting of February 22, 2023. Chair Menard seconded the motion, which was voted unanimously to approve the minutes of the February 22, 2023 regular meeting.



2. Mr. Coutinho stated that he had come across a memorandum that had been written by the Ms. Branco in 2003 when she was the Recording Clerk for the Zoning Board.

3. Chair Menard said that he had e-mailed revisions to the Rules and Regulations to everyone for review. The Board discussed these at length. Chair Menard said he would revise the document and re-circulate to the members for further discussion at the Board's next meeting.

No future meeting has been scheduled at this time.


There being no further matters before the Board, Ms. Pontolilo made a motion to adjourn the meeting at 8:48 p.m. Chair Menard seconded the motion, which was passed unanimously.

**Adjournment.**

Respectfully submitted,



Maria I. Branco  
Zoning Board Administrator

APPROVED:   
Roger Menard, Chair