

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
JUNE 21, 2023**

RECEIVED

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WESTPORT ZONING  
BOARD OF APPEALS

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

Absent was: George Stelljes

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.

1. The first matter on the agenda is a continued hearing on the petition of Peter Johnson and Tanya Johnson for a Special Permit to construct a two-level, one-bedroom detached accessory apartment containing 644 square feet with two-car garage, as allowed by Zoning Bylaw Article 9, Section 9.5.3. The subject property is located at 7 Macomber Lane, Westport, MA and is shown on Assessor's Map 89, Lot 112.

Chair Menard explained the procedure that would be followed at this hearing, namely: the Petitioner would present his 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 noted that this was a continuation of the hearing from May 17, 2023 and that the only reason to meet this evening was to obtain an approval of the septic system from the Board of Health. Chair Menard read an e-mail that the Board had received from Matt Armendo, the Health Agent, stating that the septic system had been approved by the Board of Health to include the detached accessory apartment.

Ashley Sparks, Architect, AEsParks, Inc., 463 Long Highway, Little Compton, RI addressed the Board. She said that the owners resided in California, but that she would forward the Deed Restriction

form to the Johnsons for them to sign, notarize and return back to the Board as soon as possible.

Chair Menard advised that at least four (4) members must approve the granting of the Special Permit. He also said that the current plans that had been filed by Ms. Sparks showed the apartment complying with all setback requirements.

Chair Menard opened the discussion to anyone in the audience who wished to address the project and there were none.

Vice-Chair Coutinho made a motion to close the hearing at 6:34 p.m. Seconded by Mr. Elias. The Board voted unanimously in favor.

Chair Menard said that he thought the project to be straightforward and saw no issue with it, it complies with all setback requirements. The other Board members were in agreement.

There being no further discussion, Chair Menard made a motion to grant the Special Permit to construct a two-level, one-bedroom accessory apartment containing 644 square feet with two-car garage, as allowed by Zoning Bylaw Article 9, Section 9.5.3. The subject property is located at 7 Macomber Lane, Westport, MA and is shown on Assessor's Map 89, Lot 112, subject to the final plans dated April 11, 2023, that include Alternate Driveway Layout Plan and Carriage House Plans as filed with the Board, as well as the testimony presented to the Board at the hearings. Also, the owners shall execute a Deed Restriction that includes the requirements under the Zoning Bylaw, and shall be attached to the decision of the Board.

Mr. Elias 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 next matter on the agenda is the administrative appeal of 50 Spinnaker Way LLC from a cease and desist order of the Building Commissioner and the Building Commissioner's determination that a Special Permit by the Zoning Board of Appeals is required to conduct a bed and breakfast, under Zoning Bylaw Article XIV, Section 1.1. The subject property is located at 50 Spinnaker Way and is shown on Assessor's Map 22, Lots 2Y and 20K.

Chair Menard read the notice into the record, stating that the administrative appeal was prompted by a letter issued by the Building Commissioner, stating in pertinent part:

*"As per the Westport Zoning by Laws Table of Use, bed and breakfasts in an Agricultural/Residential district require a Special Permit issued by the Board of Appeals.*

*The dwelling in question has, since late January, early February of 2023, been rented every weekend with continuous traffic, per the neighbors. Therefore, this must be brought before the Board of Appeals for a Special Permit."*

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, Constance Gee, Ray Elias, 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 administrative appeal.

Also present were Attorney Jeff Blake, Town Counsel, and Ralph Souza, Building Commissioner and Zoning Enforcement Officer.

Addressing the Board for the Applicant was Attorney Robert Pelligrini, 63 Main Street, Bridgewater, MA, who stated that the Zoning Bylaw governing the use of a premises as a bed and breakfast mandates certain conditions under which the subject property does not fall. He stated that the owner does not reside on the premises and the premises are not being used as a bed and breakfast.

Attorney Pelligrini advised that he had brought with him a stenographer, Jessica Bisailon, of Merit Reporting, Westwood, MA, who would be recording the hearing.

Town Counsel Blake noted the Board had not been previously notified that a stenographer would be present.

Chair Menard stated the Board had read all the documents pertinent to this matter. He also said that the matter before the Zoning Board was the administrative appeal only, namely: did the Building Commissioner correctly administer the Zoning Bylaw.

Attorney Pellegrini stated that the owner of Spinnaker Way LLC, Brenda Hernandez, was present. Ms. Hernandez resides at 36 Jennings Way, Westport, MA. He said that, also present, were Roger Andrews and the real estate agent and friend of the Applicant.

Town Counsel Blake noted that Attorney Pellegrini had properly outlined the requirements under the Bylaw pertaining to a bed and breakfast and it is clear that the property does not meet the definition of a bed and breakfast. He also noted that the proper characterization of the current use is that of a short-term rental, which is not allowed in the Town of Westport.

Town Counsel Blake asked the following questions of Attorney Pellegrini, for the record:

Question: Is the property owner occupied?

Answer: It is not.

Question: Does the property have 1 to 3 guest rooms?

Answer: The rooms are not considered guest rooms, but, rather as bedrooms. Attorney Pellegrini also stated that the Town has visited the property and designated four (4) bedrooms in the house.

Question: Is it subordinate or incidental to the main use of the building or is the main purpose of the building to be rented out?

Answer: The main purpose of the building is to rent it out.

Question: Are they residents of the property? Do they live there?

Answer: No. They are residents of Westport, but not that property.

Vice-Chair Coutinho said that he was concerned with what the property was being used for and the answers from Attorney Pellegrini provided that information to him.

Chair Menard stated that the matter before the Zoning Board was the administrative appeal only.

Vice-Chair Coutinho said that the Board must determine whether the property meets the definition of the Zoning Bylaw as a bed and breakfast.

Chair Menard opened up the discussion to the audience.

Ana Silvia, 52A Spinnaker Way, Westport, MA addressed the Board. She stated that:

1. She and her husband, James Silvia, have owned 52A Spinnaker Way for seven (7) years. Their property uses a common driveway with 50 Spinnaker Way.

2. On May 13, 2023, she and her daughter returned home from an emergency vehicle and were unable to access the driveway because an unrecognizable vehicle was parked there. Ms. Silvia showed the Board a photograph of a red vehicle parked in the driveway.

3. She approached 50 Spinnaker Way to ask the owner of the vehicle to move it so she could go to her home. She rang the doorbell, but no one answered. After telling her husband that she would be calling the police, a man and woman came outside. The woman asked Ms. Silvia, "what is your f\*\*\*ing problem?" Ms. Silvia said that she was returning from the hospital with her daughter and the red car was blocking her access to her home. She was told to "get over yourself, b\*\*\*\*" and "go f\*\*\* yourself." They informed Ms. Silvia that they were at the property for a funeral. Ms. Silvia said she believed that the property had been rented out a while ago. The male guest told Ms. Silvia to "shut up, lady," blowing her kisses and said "f\*\*\* you," showed her the middle finger, and moved the vehicle.

3. Mr. Silvia came down the driveway and told his wife to call the police. She said she had already done so.

4. There were at least 6 or 7 vehicles parked on the driveway. The guests told her that they did not know where to park, were never told where they should park. Ms. Silvia said that there is a makeshift parking area at the property. Ms. Silvia suggested that the guests contact the owner, Brenda, and ask her where they should park. The male guest said "yeah, yeah, yeah."

5. While waiting for the police to arrive, there was a vehicle with a few male passengers. They exited the vehicle, saying "what is the f\*\*\*ing problem, what the f\*\*\* do you want?" Again, Mr. Silvia said to call the police.

6. That vehicle left the premises. The police arrived and said "they moved the car, there's nothing we can do." Ms. Silvia said that the police have been called on many occasions and the police say there is nothing they can do.

7. Ms. Silvia noted to the police that the guests are rude, swearing at her and her husband with the daughter in the car, music blaring at 6:30 a.m. on a Sunday morning, against the Town Bylaws. Police Officers Reed and Levesque said that they (the guests) have freedom of speech, and could speak to her however they wish. Ms. Silvia said that veterans of the military have freedom of speech, not people who come into the neighborhood for a couple of nights.

8. Ms. Silvia said that these people are not residents of the property; they stay a night or 2, and is being run as a business, a hotel.

9. The police suggested that neighbors contact the Town Hall. Ms. Silvia said she spoke with Ralph Souza several times. The police also suggested that the Silvias send a registered letter or hire an attorney.

10. She contends that the owner of 50 Spinnaker Way does not contribute in a positive way to the neighborhood. Ms. Silvia said that Ms. Hernandez had three (3) opportunities to purchase property in her own neighborhood (Ms. Hernandez resides at Jennings Way). The properties that were on the market were: 47 Davol Avenue, 27 Jennings Way and 31 Jennings Way. Ms. Silvia said that, more likely than not, Ms. Hernandez did not purchase any property closer to where she resides because she does not wish to have the business near where she lives.

11. The property had a "for sale" sign posted, however, the sign was removed shortly thereafter. When a neighbor contacted the real estate agent as to why the property was no longer for sale, she was informed that "she's booked for the summer, why you guys always bitching about it?"

12. On May 15, 2023, at 3:30 a.m. EMS was dispatched to her home. EMS would have not reached her home in a reasonable amount of time if the vehicles had been parked in the driveway.

13. Ms. Silvia believes that there are no background checks being conducted of renters.

14. Ms. Silvia said that the owners of those properties worked hard to be in that neighborhood, made those houses their homes. She said she does not take her infant daughter for walks around the neighborhood because she does not know the people who are at 50 Spinnaker Way, whether they are sex offenders or drug dealers.

15. Ms. Silvia showed a photograph of a vehicle that was taking videos of the neighborhood, someone she did not recognize and did not live in the neighborhood.

16. Ms. Silvia said she has been afraid that, at night when the guests are staying at 50 Spinnaker Way, that they will do damage to her vehicle or try to enter her home. Most of the vehicles are from out of state.

17. The guests drive recklessly and make expletive gestures towards her.

18. She and her neighbors display signs that say "Neighborhoods are for Neighbors." Guests have taken pictures of the signs and when asked by a resident "what's going on," they are told that "nothing, dog, everything's fine, dog."

19. At one point, there was a crew of construction workers staying at the property for 2 weeks.

20. Ms. Silvia said that when she learned that the property had been purchased by the Applicant, she introduced herself to Ms. Hernandez and Mr. Andrews and welcomed them to the neighborhood. She was not informed that the house would be used as a business.

21. The next day, all the neighbors were totally surprised to receive a letter from the owner with gifts. The flyer stated that the property would be an event center in a beautiful, quiet neighborhood, and was advertised for corporate events, bridal wedding parties, and other functions.

22. The neighbors all know each other, help each other and welcome any new owners to the neighborhood.

23. Ms. Silvia said that, at a previous meeting, neighbors met with Attorney Pellegrini and Mr. Andrews. Mr. Andrews inquired as to why the neighbors had not contacted him when there was an issue. Ms. Silvia said that it was not her property to monitor and that the owner had already received their money from the guests.

24. Ms. Silvia asked the Board members to put themselves in the shoes of the Spinnaker Way residents; what the owner has brought into the quiet neighborhood with nuisance, particularly on the weekends, and no quiet weekends for people who work at their jobs so hard to maintain their beautiful homes and cannot enjoy their weekends. She did note that, while she was on her way to the Town Hall for this meeting, there were guests pulling into the driveway at 50 Spinnaker Way.

Jennifer Keller, 46 Spinnaker Way, Westport, MA addressed the Board. She stated that she has resided at 46 Spinnaker Way for the past 19 years with her husband, John, and their 2 sons. Ms. Keller noted that she understands that the Board cannot discuss that the property is being utilized as a rental property.

Ms. Kozakiewicz stated that it was not that the Board did not want to discuss the property being used as a rental, but that the Board could not as it was an administrative appeal of the order that determined the property being used as a bed and breakfast.

1. Ms. Keller said the business being operated at the property is called Spinnaker Retreats. The letter sent to the neighbors stated that the property would be used as a small AirBnB and "wouldn't be a problem."

2. A week later, the owner had an "open house" with at least 50 people, where cars were parked on her lawn. The property was advertised on social media as being a 50-people event type of place, where you could have corporate events, parties, and weddings.

3. The neighbors contacted Mr. Souza and let him know how the property was being advertised and that functions were being scheduled at a house with a typical septic system. When Mr. Souza contacted the owner about these issues, the number of renters decreased, but then increased again shortly thereafter.

4. This matter was brought before the Board of Health, where a meeting was held. The Board of Health issued a letter, noting the violations, which have not been resolved.

5. Bachelor parties are being held at the property with intoxicated guests yelling at her children. Cars are being driven by guests in a fast manner without caring for the children who are outside.

6. She and the neighbors contact the police whenever they see suspicious behavior.

7. The owner has deceived the neighbors and, one example is that, on AirBnB, her advertisement states that the property is 3 miles from the beach.

8. Allowing the owner to continue conducting her business in this manner is allowing the owner to proceed without obtaining the proper permits or licenses.

9. The Town should address the issues with rental properties.

10. Ms. Keller said that the owner did not address her business plans with the Town; and, in fact, attempted to install a larger septic system.

11. The owner is not a good neighbor, nor does she care about the issues that her guests have caused. Ms. Keller said, at times, there are "scary" people renting the property and it is not a safe place for children and families who reside there.



12. Ms. Keller agrees that Mr. Souza has attempted to resolve the matter, but to no avail; and that the advertisements continue, even after the order to cease and desist was issued.

Anthony Grossi, 52 Spinnaker Way, Westport, MA stated that:

1. He shares a driveway with 50 Spinnaker Way and 52A Spinnaker Way.

2. He reiterates all the comments made previously by Ms. Silvia, with whom he shares a driveway. The vehicles parked in the driveway also prevent him from accessing his home.

3. He has addressed the parking issues with the guests, who informed him that the vehicle that was blocking the driveway had left the premises and would not be returning. The vehicle did return about a half hour later.

4. He had discussed this matter with Roger Andrews at a prior meeting. Mr. Andrews said he would evict them and revoke their deposit. However, after calling Ms. Hernandez and explaining the discussion he had had with Mr. Andrews, Ms. Hernandez said she was not aware of their discussion, but would talk with Mr. Andrews and get back to him. Neither Mr. Andrews, nor Ms. Hernandez ever called Mr. Grossi. Also at the prior meeting, Mr. Grossi provided Attorney Pellegrini with his e-mail address. Mr. Grossi said he was contacted once about having a meeting of the neighbors to discuss the property. Mr. Grossi said he wrote back to Attorney Pellegrini and said, yes, he and neighbors were very interested in meeting. However, no one has contacted any of the neighbors. Mr. Grossi said he would still be amenable to a meeting with Ms. Hernandez.

5. Because 3 properties have the same driveway access, the paperwork on record states that they are all responsible for maintaining the driveway. He recently purchased received an occupancy permit for his home a couple of months ago after building the home for over 1-1/2 years. He believed he was coming into a quiet neighborhood. He said that the property was put on the market for sale almost immediately after he approached the prior owner about discussing maintenance of the driveway.

Ms. Gee noted that she had read a copy of the Declaration of Restrictions that has been recorded with the Registry of Deeds, wherein the first restriction listed is that no business will be conducted in the neighborhood.

There was brief discussion regarding the subdivision and whether a homeowners' association exists that could enforce the deed restrictions.

Town Counsel Blake said that, without a homeowners' association, then everyone in the subdivision would be able to enforce the deed restrictions. However, this is not an enforceable condition by the Town and the neighbors would most likely need to hire an attorney.

Chair Menard reiterated the reason this matter was before the Zoning Bylaw.

Ms. Silvia asked the Board whether a cease and desist order compels the owner to stop. Chair Menard noted that the owner filed an administrative appeal and, until the Board makes a determination, the owner does not need to stop. Ms. Silvia said that the Board of Health requested that the owner clean the septic system, which she did. However, since that time, all the guests that have occupied that house are contributing to the issue with the septic system. Ms. Silvia thanked Mr. Souza for listening to the neighbors and issuing the cease and desist orders.

Ms. Pontolilo made a motion to close the hearing at 7:25 p.m. Mr. Elias seconded the motion and the Board voted unanimously in favor.

Chair Menard started the discussion, stating that he sympathizes with the neighbors and what they're experiencing; however, the determination to be made by the Zoning Board is whether or not the Building Commissioner was correct when he issued the order for the owner to cease the bed and breakfast at the property. He further added that, even if the Board determines that the Building Commissioner inaccurately issued the order, that does not mean that the owner is not in violation of any other Zoning Bylaw. The Building Commissioner can make a determination to that effect.

Chair Menard also advised the audience that short-term rentals are an important issue that the Zoning Board and Planning Board are working to draft a Zoning Bylaw for the Town. Currently, there is no Bylaw governing short-term rentals and anyone who would like to express comments or concerns should do so to the Planning Board and the Select Board.

Chair Menard noted that, since the property does not fall under the bed and breakfast Bylaw, as stated by Town Counsel Blake and Attorney Pellegrini, the Building Commissioner's order is, therefore, not enforceable. He stated that the Board is confined to making a decision

Mr. Elias said that he watched the hearings held by the Board of Health and the Planning Board, however, the Town has no existing bylaw that governs short-term rentals.

Ms. Gee encouraged the audience members to attend the meetings being conducted by the Planning Board, the first of which will be on Tuesday, June 27, 2023 at the Planning Board at 6:00 p.m. and to attend Town Meeting to make their votes count. She also suggested that the neighbors contact the Select Board and the Planning Board to express their views.

Vice-Chair Coutinho said that, two years ago, he and Chair Menard met several times with the Planning Board to review various Zoning Bylaws that required revisions. One of the issues discussed was the short-term rentals. He, too, encouraged people to attend the meetings and express their concerns.

There being no further discussion, Chair Menard made a determination to grant the administrative appeal of 50 Spinnaker Way LLC from the cease and desist order of the Building Commissioner that a Special Permit by the Zoning Board of Appeals is required to conduct a bed and breakfast, under Zoning Bylaw Article XIV, Section 1.1. The subject property is located at 50 Spinnaker Way and is shown on Assessor's Map 22, Lots 2Y and 20K, on the grounds that the property does not fit the definition of a bed and breakfast under the Zoning Bylaw. Mr. Elias seconded the motion, which was voted unanimously by the Board.

Chair Menard said there is a 20-day appeal period from the date of filing of this determination with the Town Clerk.

#### **Administrative Items:**

1. Approval of the minutes of the regular meeting of May 17, 2023. Chair Menard made a motion to approve the minutes of the regular meeting of May 17, 2023. Ms. Pontolilo seconded the motion, which was voted unanimously to approve the minutes of the May 17, 2023 regular meeting.

2. Chair Menard said that Ms. Kozakiewicz and Mr. Stelljes had been reappointed as Alternate Members until June 30, 2024. Ms. Pontolilo informed the Board that when her term ends on June 30, 2024, she will not be requesting reappointment.

3. The Board discussed the Open Meeting Law and the manner in which meetings must be conducted (i.e. whether time limitations should be placed when people expressing their opinions).

4. The final draft of the Rules and Procedures has been completed. Mr. Elias made a motion to approve the Rules and Procedures. Ms. Pontolilo seconded the motion, which was voted unanimously.

5. Vice-Chair Coutinho suggested that the Board receive a status report of those petitions that have not been completed.

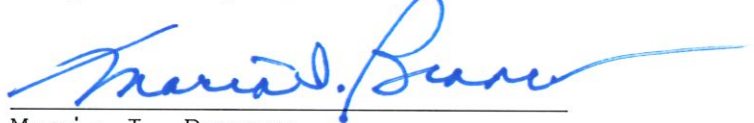
6. Vice-Chair Coutinho noted that, in Narragansett, RI, the fees to be permitted to have short-term rentals has increased so that those funds may be used to support the job of an inspector who will monitor those rentals.

The next meeting is scheduled for Wednesday, July 19, 2023.

There being no further matters before the Board, Mr. Elias made a motion to adjourn the meeting at 7:53 p.m. M. Pontolilo seconded the motion, which was passed unanimously.

**Adjournment.**

Respectfully submitted,



Maria I. Branco  
Zoning Board Administrator

APPROVED:

  
Roger Menard, Chair