

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
FEBRUARY 7, 2024**

RECEIVED

MAR 20, 2024

WESTPORT ZONING
BOARD OF APPEALS

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

Chair's Announcement - Under MGL Chapter 30A, Section 20(f) - Meeting being recorded. Chair Menard announced that due to medical reasons, he recuses himself from voting on the petitions unless the board objected. The board did not object.

1. The first matter on the agenda was the continued hearing on the application of Timothy Gillespie, Applicant, and Julia Krapf, Owner, for a Special Permit to convert a portion of the existing garage into a detached accessory apartment, containing 375 square feet, pursuant to Zoning Bylaw Article 9, Section 9.5.4. The property is located at 10 Hillside Road, Westport, MA and is shown on Assessor's Map 88, Lots 169 and 170.

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

The Applicant, Timothy Gillespie, addressed the Board. He stated that, since the last meeting, he has met with the Board of Health and Len Potter, who will be installing the new septic system with denitrification. Mr. Gillespie said that he is requesting a further continuance because he intends to get approval from the Board of Health in early March.

Chair Menard noted that, at the prior meeting, the Board had reviewed all of the requirements under the Bylaw and that the only requirement remaining was approval by the Board of Health of the septic system to accommodate the accessory apartment.

Mr. Gillespie submitted a written motion to continue the hearing, which he read into the record.

Ms. Gee made a motion to grant the Applicant's request for a continuance to Wednesday, March 20, 2024 at 6:30 p.m. Vice-Chair Coutinho seconded the motion, which was unanimously granted by the Board.

2. The second matter before the Board was the petition of Steven Carreiro, Applicant, and Curtis Mock and Margaret Mock, Owners, for a finding that the new construction of a single-family dwelling in compliance with setback requirements shall not be substantially more detrimental than the existing non-conforming use to the neighborhood as mandated by Zoning Bylaw Article 5, Section 5.2.3. The subject property is located at 278 Brayton Point Road and is shown on Assessor's Map 88, Lot 76.

Chair Menard stated that the members voting on this petition would be Vice-Chair Coutinho, Constance Gee, Barbara Pontolilo, Ray Elias and Cynthia Kozakiewicz.

Chair Menard stated that the reason that the Petitioners were before the Board was due to a denial letter issued by the Building Commissioner, which states, in pertinent part:

"After review of the submitted building permit application to demolish and reconstruct a new dwelling located at the above mentioned address, it has been determined that the lot in question contains 24,047 square feet of area with the existing dwelling including deck and porches consisting of 1260 square feet. . . .

. . . [T]he property is located in Flood Zone AE el 16 and will need to meet the requirements of the Massachusetts State Building Code.

. . . '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 stated that, in making a determination of whether or not to grant a finding, the Board should consider issues such as traffic patterns, safety and parking issues, not aesthetic concerns, such as the architecture of the structure.

Steven Carreiro, 11 Harbor Meadow Lane, Westport, MA addressed the Board, stating that:

1. He is the contractor on the project, including the demolition of the existing structure and reconstructing a single-family home on substantially the same footprint with the new construction being situated slightly from the footprint with a proposed height of 30' 11".

2. The setback requirements will be complied with, specifically, the structure will be constructed 30' from the north side setback, 23' from the south side setback, 200' from the rear setback and 26' or 27' from the front setback.

3. The driveway located to the south of the house will accommodate 4 to 5 cars with a small attached garage.

4. The new structure shall be in compliance with the flood zone regulations.

5. The Conservation Commission has approved the project.

6. The new septic system will include denitrification with the leeching field remaining unchanged.

7. The Board of Health has approved the 3-bedroom septic system.

8. The property will contain a stormwater management system.

9. The lot size contains 24,047 square feet.

The owners, who were present at the hearing, confirmed that they both signed the application for finding.

The Board discussed at length the possibility of a fourth bedroom in the new house, as the plans show a study on the second floor that could easily be converted into a bedroom as it contains a separate entrance, a door and closet. That would present an issue with the septic system being approved for only three (3) bedrooms.

Mr. Carreiro confirmed that dwelling will be a three-bedroom house with a three-bedroom septic system already approved by the Board of Health on September 15, 2023.

Chair Menard stated that the Board must find that the new structure will not be substantially more detrimental than the existing non-conforming use to the neighborhood. He further noted that, if the Board approves the finding, a condition could be placed in the decision that a fourth bedroom is prohibited. This would protect the Town if, in the future, other owners decide to utilize the study as a fourth bedroom.

Mr. Carreiro submitted a deed restriction signed by the owners that has been recorded with the Registry of Deeds that the property will remain a three- (3) bedroom dwelling. A copy of the Deed Restriction dated November 17, 2023 and recorded with the Bristol County (S.D.) Registry of Deeds in Book 14846, Page 157 is attached hereto and made a part of this decision.

Mr. Elias made a motion to close the hearing at 6:58 p.m. Ms. Pontolilo seconded the motion, which was voted unanimously.

There being no further discussion, Mr. Elias made a motion to approve the finding that the new construction of a single-family dwelling in compliance with setback requirements shall not be substantially more detrimental than the existing non-conforming use to the neighborhood as mandated by Zoning Bylaw Article 5, Section 5.2.3. The subject property is located at 278 Brayton Point Road and is shown on Assessor's Map 88, Lot 76. Vice-Chair Coutinho requested an amendment to the motion to include a notation to the Board of Health that the Zoning Board noted a room on the second floor defined as a study that could become a bedroom. Mr. Elias amended his motion to include the notation, as well as the approval of the finding is contingent upon the information and evidence submitted by the Petitioners, as well as pursuant to the plans drafted by Seacoast Modular Homes dated March 10, 2023 and incorporated herein. Vice-Chair Coutinho seconded the motion, which was voted unanimously.

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

3. The third matter on the agenda was the administrative appeal of Robert Branca, Trustee of ANC Nominee Realty Trust, seeking review and reversal of a stop work order issued by the Building Commissioner/Zoning Officer because the construction is not in compliance with the rules and regulations of the Westport Historical Commission. The subject property is located at 2015 Main Road, Westport, MA and is shown on Assessor's Map 83, Lot 18.

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

At the outset, Chair Menard noted that Town Counsel had reviewed the documents and opined that the Zoning Board of Appeals lacks authority to make a determination in this matter under § 2.5.3.1 of the Westport Zoning Bylaw because there has been no zoning issue presented in the petition on which the Board could consider. He further stated that he reviewed the documents and believes that

the Board has no jurisdiction to rule on or consider a stop work order issued by the Building Commissioner for non-compliance with G.L. c. 40C or the Historical Commission By-law (Article LIX of the Westport By-laws), in that, such a stop work order is not a zoning issue.

Chair Menard said that he would have the Petitioner or his representative address the Board as to the reasons for the administrative appeal and whether or not the Petitioner believes that the Board does have authority to hear this appeal.

Petitioner, Robert Branca, addressed the Board. He stated that:

1. He is the Trustee of ANC Nominee Realty Trust, owner of 2015 Main Road.

2. He filed the administrative appeal as a matter of administrative procedure in an effort to exhaust his administrative remedies.

3. He understood that the forum to appeal a stop work order would be with the Zoning Board.

Chair Menard said that refusals of building permits, for example, do not fall under the purview of the Board to review as there is no zoning bylaw at issue. Chair Menard also noted that the Board has no authority over decisions made by the Historical Commission.

Mr. Branca further stated that:

1. He understood if the Zoning Board determines it has no jurisdiction to consider the appeal of the stop work order, and he said he did not disagree with that determination.

2. A building permit was applied for and issued, and the contractor started the project.

3. He addressed the Westport Historical Commission regarding the grade and wall height and he is uncertain at this time how the Historical Commission will rule on the project.

There being no further discussion, and based on the opinion of Town Counsel, Chair Menard recommended to the voting members of the Board that the matter be dismissed for lack of jurisdiction.

Accordingly, Vice-Chair Coutinho made a motion to dismiss the administrative appeal from the stop work order issued by the Building Commissioner due to the fact that the Zoning Board of Appeals lacks jurisdiction. Further, this decision follows in

line with the opinion of Town Counsel that the Board lacks jurisdiction under § 2.5.3.1 of the Westport Zoning Bylaw because the Building Commissioner's stop work order is based on issues concerning historic preservation (G.L. c. 40C) rather than zoning (G.L. c. 40A). Mr. Elias seconded the motion with all five (5) Board members voting unanimously to dismiss the administrative appeal.

Administrative Items:

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

2. Approval of the minutes of the regular meeting of November 15, 2023. Ms. Pontolilo made a motion to approve the minutes of the regular meeting of November 15, 2023. Ms. Gee seconded the motion, which was voted unanimously to approve the minutes of the November 15, 2023 regular meeting.

3. Approval of the minutes of the regular meeting of December 6, 2023. Ms. Pontolilo made a motion to approve the minutes of the regular meeting of December 6, 2023. Ms. Gee seconded the motion, which was voted unanimously to approve the minutes of the December 6, 2023 regular meeting.

4. Chair Menard addressed the status of the Short-Term Rental Bylaw that was being drafted by the Short-Term Rental Committee. He said that the Board of Health and the Building Department do not have sufficient funds to hire the employees necessary to implement and regulate the bylaw once it goes into effect. The Planning Board will be holding a meeting to discuss this issue further on February 20, 2023.

5. The Board briefly discussed the proposed new district called the Gateway for the area of Route 6 to Route 88 being discussed by the Infrastructure Committee.

6. Vice-Chair Coutinho addressed the status of the Casey Amaral matter, at 581-C Drift Road. Chair Menard said he would e-mail the Building Commissioner for a status.

7. Vice-Chair Coutinho stated that the property at 50 Spinnaker Way has been sold.

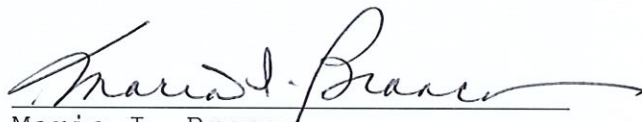
The next meeting is scheduled for Wednesday, March 20, 2024.

Chair Menard stated that the Board would resume in Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss and approve the minutes of Executive Session of November 15, 2023 and December 6, 2023, where discussion in open session will have a detrimental effect on the Town.

Vice-Chair Coutinho made a motion to go into Executive Session at 7:26 p.m. and not return to regular session. Mr. Elias seconded the motion. The roll call vote was as follows: Gerald Coutinho, yes; Barbara Pontolilo, yes; Constance Gee, aye; Ray Elias, aye; Cynthia Kozakiewicz, aye; and George Stelljes, yes. Chair Menard abstained from voting. The Board voted unanimously to go into Executive Session at 7:26 p.m.

Adjournment.

Respectfully submitted,



Maria I. Branco
Zoning Board Administrator

APPROVED: 

Roger Menard, Chair