

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: April 26, 2017

I. CALL MEETING TO ORDER

The meeting was called to order at 6:45 P.M.

II. ROLL CALL

Members Present: Nazih Elkallassi, Chairman
Jim Eacobacci, Clerk
Wilma Engerman
Karl Baptiste
Jake Morrison, Associate member

Members Absent: Jan Kendrick
Ernie Alden, Associate member

Also present: Kenneth Buckland, Director of Planning
Charles Rowley, Town Review Engineer

I. PRELIMINARY BUSINESS

A. Approve meeting minutes: March 22, 2017 & April 12, 2017

MOTION: Mr. Eacobacci moved to accept the minutes of March 22, 2017 and April 12, 2017.

VOTE: Unanimous (5-0-0)

B. Re-affirm vote (with prejudice/without prejudice) for Petition #16-17 – Francis Ellis – 7 Mattos Drive & ZBA member signatures needed on decision.

At the previous meeting, this application was denied. The Board needs to clarify if the petition was denied with or without prejudice. The Board concurred that the project was denied with prejudice.

MOTION: A motion was made and seconded to clarify that the Board denied the project with prejudice.

VOTE: Unanimous (5-0-0)

C. Extension of Variance/Special Permit request for 4 Cameron Street – Christopher Timson.

Mr. Timson is requesting an extension for a Variance he was granted. The estate in question has five heirs and the estate is still being settled. Mr. Elkallassi recommended the Board grant a six- month extension until November 22, 2017.

MOTION: Mr. Eacobacci moved to grant an extension of time for a Variance issued to Christopher Timson to November 22, 2017. Mr. Baptiste seconded.

VOTE: Unanimous (5-0-0)

II. PUBLIC HEARINGS

A. Petition #17-17 – JNJ Holdings, LLC – 2371 Cranberry Highway

NOTE: Mr. Elkallassi excused himself from this hearing as he has a conflict of interest. Mr. Eacobacci presided as Chair pro tem for this hearing.

The applicant is requesting a Special Permit / Variance to create a used car lot, which was a previously existing abandoned use. The applicant has requested a continuance of the public hearing until the next available meeting. Mr. Eacobacci stated the next scheduled meeting is May 10, 2017.

MOTION: Mr. Baptiste moved to continue the hearing for Petition #17-17 – JNJ Holdings, LLC – 2371 Cranberry Highway to May 10, 2017. Ms. Engerman seconded.

VOTE: Unanimous (5-0-0)

NOTE: Mr. Elkallassi returned to the table to sit as Chair.

B. Petition #18-17 – CTG Properties, LLC – 3067 Cranberry Highway

The applicant is requesting a Special Permit /Variance and a Site Plan Review to construct a Sonic Restaurant with drive-in and related signage.

Present before the Board: Richard Staley, Applicant's attorney
Alexander Roman, BK AR Architect, Brockton, MA
Eric Dias, Registered Professional Engineer, Easton, MA
Phillip Viveros, Registered Professional Engineer, McMann Associates, Taunton, MA

Attorney Staley explained he has prepared a memo re: the project and would like to open the presentation. He stated the site is located on Map 10, Lot 1000 currently owned by CTG Properties. The parcel has 30,000 square feet and is currently a quick change oil shop. The applicant is aware that drive-thru's are not an allowed use, which Attorney Staley feels would quantify a hardship given the proposed use of the project. A traffic study has been conducted and the project is not estimated to be a significant impact on the area in terms of traffic. The soil conditions and land and topography are unique.

Mr. Elkallassi asked if the representatives are aware of the proposed MA DOT plans for this portion of Cranberry Highway. The representatives stated they have seen the MA DOT plan and the project plans have been designed around the taking from MA DOT. It was stated the site still maintains a five foot buffer from the highway. Mr. Elkallassi stated the requirement is more than five feet of frontage.

Mr. Elkallassi asked if the applicant has had time to respond to Mr. Rowley's engineer review. The representatives have not yet responded to the comments.

Mr. Rowley addressed the items that stand out the most is his review letter. The landscaping and buffer between the abutting properties do not meet the standard. The buffer to Cranberry Highway is not in compliance with the By-Law. There's a concern over the number of parking spaces; there seems to be double the number of the need required.

Mr. Rowley believes the lot must be reviewed as is if the taking from MA DOT has not yet occurred. Mr. Elkallassi stated they will need to look into the MA DOT taking and review of the site.

Mr. Rowley addressed the drainage. It seems the site is draining into the Main Avenue drainage system. Without approval from Municipal Maintenance and hydraulic calculations to show the pipe can take the additional flow, he cannot say that this will be authorized. He asked if a perc test has been done. Mr. Roman stated a perc test has not yet been done due to the fact that the site is a functioning site and they didn't want to dig it up. He stated they based their calculations on perc tests in the area. Mr. Elkallassi stated he does not believe the State will let them tie into the Main Avenue drain. Mr. Rowley stated it is important that they know what the soils are on the site.

Mr. Staley stated he has submitted a request for a waiver for landscaping, that loading is usually done at night, and that the parking can be discussed. Mr. Elkallassi explained the first task would be to see if the applicant meets the requirements of a Variance. Secondly, the Board should address the landscaping. He added that the parking should also be reviewed.

Mr. Roman addressed the parking on the site. He stated Sonic is slightly different due to the car stalls that cars can park in to eat, which is why there are more parking spaces than required on the site.

Present before the Commission: Sandy Slavin

Ms. Slavin is in favor of the Sonic restaurant. She feels it is a great change to the fast food restaurants in Town. She feels the amount of runoff will be reduced because they will be reducing the amount of impervious surface. She is satisfied with the soil testing on the site.

Present before the Board: Pam Gibbs

Ms. Gibbs expressed concern that this site was previously a gas station and she feels the gas tanks have not yet been removed. She believes the gas tanks had leaked at one point. She also expressed concern with the site being an oil change business & that the site will be contaminated.

Mr. Elkallassi stated a company that tests the soil will come and thoroughly test the soil.

Ms. Gibbs feels the site is a difficult location and there are already numerous accidents at the site.

Present before the Board: Jack Nolan

Mr. Nolan represents a company that owns a piece of property on the other side of the railroad tracks. He is not opposed or in favor of the project, but he is requesting a fence be installed to prevent trash and people from going over the tracks and the adjoining property.

Present before the Board: Harry Nickolaow, Owner of Charlie's Place

Mr. Nickolaow feels there is no reason the project shouldn't go forward, as long as all requirements are met. He would like to work with the applicant. He expressed concern with the parking and drainage. Mr. Roman stated currently, the groundwater treatment onsite is outdated and will be updated to be more efficient and will fix the existing runoff and pooling on the property.

Present before the Board: Abutter, name was indiscernible

The abutter would like to know if cars are coming into Sonic on Main Avenue or Cranberry Highway. Mr. Roman stated the main access will be from Main Avenue. The abutter also expressed concerned with traffic impacting her road. The abutter also requested a fence between her property & the proposed project.

Mr. Rowley stated he did mention fencing in his review letter. There is only about 12" between the face of the concrete curb and the lot line to the railroad. There will be a construction fence in place during construction and he is unsure if there is room to adjust that distance. He stated if a person misses the turn, where they would normally hit the curb, they will be hitting the fence instead.

Mr. Elkallassi asked if the fence is put on the property line, how much space is between the tire bumpers. Mr. Roman stated there is angled parking and installation of a wheel stop which would prevent people from hitting the fence as well.

Mr. Rowley asked Mr. Statey what he meant that the soil, topography and shape of the land are unique. Mr. Statey responded that the soil conditions are unique in that area. Mr. Rowley stated the soil in that area is the same as other properties in the area. Mr. Statey stated the shape of the lot itself is an irregular shape. He believes that not having a drive-thru would be a hardship to Sonic because it requires a drive-thru. He also believes there is no detriment to the neighborhood because it will improve the drainage on the site.

Mr. Eacobacci pointed out that zoning has changed and all of the drive-thru restaurants currently in place were allowed at the time.

Mr. Baptiste asked if there are cars parked in the stalls and there is a large cue of cars at the drive-thru, how will the cars get out. Mr. Roman stated the cars will have to wait if there is a large cue.

Mr. Roman also noted that due to the proximity in the parking lot, it will force people to enter and leave the site one at a time and will prevent multiple cars from leaving and entering the site at the same time.

Mr. Elkallassi asked what Variances the applicant is requesting. Mr. Statey pointed out the applicant is requesting a Variance for the drive-thru, relief from the groundwater protection overlay district, as well as the signs. Mr. Buckland explained the groundwater overlay district relief will be covered by Special Permit. The signage is requesting a stationary sign as well as an LED sign.

Mr. Elkallassi stated the hearing will be continued, but that the Board and applicant should focus first on the Variance, which is the most difficult to obtain.

The representatives addressed a few points re: parking, signage, access, and it was stated that Mr. Rowley's review letter will be addressed.

Ms. Engerman expressed concern if customers are coming in and out onto Cranberry Highway, people will be driving around the drive-thru to get in line causing more traffic.

Mr. Buckland asked if the applicant has contacted the Wareham Fire Department. The representatives have not yet been in contact with the Wareham Fire Department. Mr. Buckland recommended they do so.

Mr. Rowley asked if the sign overhangs the MA DOT layout. Mr. Roman stated they would have to review that to see if it does.

Mr. Rowley also stated if they moved the parking angle from 60° to 45°, the spaces could be reduced to 13' to create more space.

Mr. Elkallassi suggested continuing the hearing to May 10, 2017.

C. MOTION: Mr. Elkallassi moved to continue the public hearing for Petition #18-17 – CTG Properties, LLC – 3067 Cranberry Highway to May 10, 2017. Mr. Eacobacci seconded.

VOTE: Unanimous (5-0-0)

D. Petition #19-17 – Laurence R. Ricardo – 3 Galavotti Avenue

Present before the Board: Brad Bertolo, JC Engineering, Inc.
Paul Silva, Contractor

The applicant is requesting a Special Permit/Variance seeking modifications to an existing dwelling.

Mr. Elkallassi explained that due to a conflict he has with JC Engineering, Inc., if Mr. Bertolo presents the case then he cannot sit in on this hearing. He noted if Mr. Silva presents the case, he may sit in on it.

Mr. Silva stated some interior renovations began on the house and they were going to exceed the allowable limit on the renovations without raising the property over the flood plain. He stated the first floor is 18” below flood level. They are proposing to raise the structure approximately 2’.

Mr. Bertolo stated the elevation on the structure is 13.2 and the work being done exceeds 50% of the structure which requires elevating the structure to meet flood plain requirements. He added the house is being raised 3’. The first floor will be one foot above the flood plain. The footprint is not being increased at all. The raising of the structure is the increase of the non-conformity.

Ms. Engerman asked if a second floor is being added to the house. Mr. Silva stated they are not adding a second floor; they are doing renovations on the interior of the home.

MOTION: Mr. Eacobacci moved to close the public hearing for Petition #19-17 – Laurence R. Ricardo. Mr. Baptiste seconded.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Eacobacci moved the Board concurs that the project requires a Special Permit, not a Variance. Mr. Baptiste seconded.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Eacobacci moved & Mr. Baptiste seconded to grant a Special Permit for modifications to an existing dwelling for Petition #19-17 – Laurence Ricardo – 3 Galavotti Avenue with the Board finding the proposal is not substantially more detrimental to the existing neighborhood & further, the Special Permit is subject to the following conditions:

- To be built per plan from JC Engineering, Inc. dated March 23, 2017.
- To be built in the same/existing footprint.
- Standard conditions apply.

VOTE: (4-1-0)

Ms. Engerman is opposed

E. Petition #20-17 – Joseph C. Sauro – 4 First Avenue – (*This application has been withdrawn by the applicant*)

The applicant has requested to withdraw the application without prejudice.

MOTION: Mr. Eacobacci moved & Mr. Baptiste seconded to withdraw without prejudice Petition #20-17 – Joseph Sauro – 4 First Avenue, Wareham per request of the applicant.

VOTE: Unanimous (5-0-0)

III. CONTINUED PUBLIC HEARINGS

A. Petition #11-17 – Karen Welch – 2667A Cranberry Highway

Present before the Board: Karen Welch

The hearing was previously heard and continued due to an incorrect lot number being listed in the public hearing notice. The hearing notice was re-advertised with the correct lot number. The applicant is requesting to utilize an existing building as a dog daycare and install a fence around the property.

Ms. Engerman asked if cleaning the yard and washing it out will flow into the cranberry bog. Ms. Welch stated she doesn't believe the water would run that far. Mr. Elkallassi stated whatever is granted tonight, does not guarantee they will not have to go before the Conservation Commission.

MOTION: Mr. Baptiste moved to close the public hearing for Petition #11-17 – Karen Welch – 2667A Cranberry Highway. Mr. Eacobacci seconded.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Eacobacci moved & Mr. Baptiste seconded to grant a Special Permit to use an existing building for a dog daycare & to install a fence for Petition #11-17 – Karen Welch – 2667A Cranberry Highway w/ the Board finding the proposal is not substantially more detrimental to the existing neighborhood & further, the Special Permit is subject to the following conditions:

- To be built per plan from JC Engineering, Inc. dated February 7, 2017.
- If required by the Building Inspector, Conservation Commission approval to be sought.
- Standard conditions apply.

VOTE: Unanimous (5-0-0)

IV. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS

A. Correspondence

1. See correspondence sent via email and/or in packets.

B. Upcoming Hearings:

May 10, 2017	#21-17	Daniel Ruby	13 Pearl Avenue
May 10, 2017	#22-17	John A. Spinale, Jr.	9 Oak Hill Road

V. NEW BUSINESS (This time is reserved for topics that the Chairman did not reasonably anticipate.

III. ADJOURNMENT

MOTION: Mr. Eacobacci moved to adjourn the meeting. Mr. Baptiste seconded.

VOTE: Unanimous (5-0-0)

Date signed: _____

Attest: _____

James Eacobacci, Clerk

WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: _____