

## **MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS**

**Date of Meeting: May 10, 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  
Jan Kendrick  
Wilma Engerman  
Karl Baptiste  
Jake Morrison, Associate member

Members Absent: Ernie Alden, Associate member

Also present: Kenneth Buckland, Director of Planning  
David Riquinha, Building Commissioner  
Charles Rowley, Town Review Engineer

### **III. PRELIMINARY BUSINESS**

#### **A. Approve meeting minutes: April 26, 2017**

**MOTION:** Mr. Eacobacci moved to approve the minutes of April 26, 2017. Mr. Baptiste seconded.

**VOTE: Unanimous (5-0-0)**

#### **B. Discussion: 418 County Road – Minor Modification**

Present before the Board: Roger Gaydou, Alternate Power and Energy

The applicant has a solar field plan that was approved by the Town in October 2016. The access road where Eversource equipment was shown on the plan has been moved on a revised plan to show the equipment on the opposite side of the field.

Mr. Eacobacci asked the applicant if the abutter is aware that equipment will be moved to his side of the site. Mr. Gaydou stated the abutter is aware and in compliance. He also stated they will be planting more trees than proposed and taller trees than proposed for screening purposes for the abutter.

Brief discussion ensued re: the proposed modification. Mr. Eacobacci believes this proposal to be a minor modification.

**MOTION: Mr. Eacobacci moved to accept the proposal for 418 County Road – Alternative Power & Energy as a minor modification. Mr. Baptiste seconded.**

**VOTE: Unanimous (5-0-0)**

#### **IV. PUBLIC HEARINGS**

##### **A. Petition #21-17 – Daniel Ruby – 13 Pearl Avenue**

Present before the Board: Daniel Ruby, Owner

The applicant is requesting a Special Permit seeking to enclose an existing porch and adjusting the porch to lay within the property lines. Mr. Ruby stated he had already begun the frame of the porch. The porch was over the property lines before he began the work, so the porch must be removed from the abutting property. He stated he would move the porch off of the abutting property.

Present before the Board: Cheryl Courtney

Ms. Courtney stated Mr. Ruby has improved the neighborhood by doing the work and improving the house.

**MOTION: Mr. Eacobacci moved & Mr. Baptiste seconded to grant a Special Permit for Petition #21-17 – Daniel Ruby – 13 Pearl Avenue finding the project is not a detriment to the neighborhood & further, w/ the followings conditions:**

- **Applicant shall alter the structure such that no portion encroaches the abutting property.**
- **The project shall meet State & local building codes.**
- **Standard conditions apply.**

**VOTE: Unanimous (5-0-0)**

##### **B. Petition #22-17 – John Spinale – 9 Oak Hill Road**

Present before the Board: John Spinale, Owner  
Brad Bertolo, JC Engineering, Inc.

The applicant is requesting a Special Permit to raze and reconstruct a single family dwelling on a non-conforming lot. The house is proposed to be 1,700 s.f.-1,800 s.f.

Mr. Spinale stated the proposed house meets all setbacks and building requirements, but the issue is lot coverage. He stated he is also reconstructing the parking and retaining walls. He has been to the Conservation Commission and did receive approval from the Commission.

Ms. Kendrick asked about the lack of the Building Commissioner's letter in the file. Mr. Riquinha stated he did not write a letter because the house meets all dimensional requirements of the By-Law. He explained the lot is what is non-conforming and the house is conforming. He does not believe it requires a Special Permit.

Mr. Elkallassi asked why Mr. Riquinha didn't approve the permit and then, if someone had a grievance, they could appeal. Mr. Riquinha stated the applicant has a right to apply for a Special Permit without his denial letter, which is the case in this instance.

Ms. Engerman stated the house will need to be constructed above the flood elevation.

Mr. Elkallassi asks to hear from the public.

Present before the Board: Sean McCaffrey, Abutter

Mr. McCaffrey stated he is an attorney and on the Zoning Board in his own town. He feels this application applies to Section 1335 of the Wareham Zoning By-Law as a non-conforming use. He stated Mr. Spinale doesn't meet the frontage or lot size requirements. He also stated all walkways have been removed from the property to reduce the building coverage on the lot. He doesn't see anything in the Wareham By-Law that allows this use. He stated the proposal doesn't meet the current requirements of the By-Law and he feels the house is going to be too large.

Mr. McCaffrey stated the largest part of the Board's consideration, in his opinion, is the way the project will impact the neighborhood view, which is in Section 1335 F of the By-Law. Mr. Elkallassi stated Section 1335 F is up to the discretion of the Board and the Board decides if a project is detrimental to the neighborhood. He stated in his opinion, he believes the reconstruction of the house will be an improvement to the neighborhood.

Mr. McCaffrey stated the house was bought for very little money and he is concerned the applicant may flip the house. Mr. Elkallassi stated that is entirely irrelevant to this case.

Ms. Kendrick asked what the building height of Mr. McCaffrey's house is. Mr. McCaffrey stated he didn't know, but felt that wasn't relevant. Ms. Kendrick believes it is relevant in deciding if the proposed house fits the character of the neighborhood.

Present before the Board: Ellen McCaffrey

Mrs. McCaffrey stated her family has owned her summer house for 40 years and has been in the community for 40 years.

Ms. McCaffrey stated she felt the applicant had to show the Board that the house is not a detriment to the neighborhood. Mr. Elkallassi explained no matter what the applicant presents, it is the Board's discretion. Mrs. McCaffrey brought up a case re: another house in the neighborhood that is on two lots and is 4,000s.f. She stated they don't enjoy the same size of a house, but at least it is on two lots.

**NOTE: Mr. Baptiste departed the meeting at this time. Mr. Morrison will sit in for Mr. Baptiste.**

Mr. Eacobacci asked how high the house is proposed to be. Mr. Bertolo stated the house will be under 28'. Mr. Eacobacci asked why the abutters are stating the height will be 35'. Mr. McCaffrey stated he has never seen the architectural drawings, but the application states the house may be up to 35'.

Present before the Board: David Talty, abutter

Mr. Talty stated this project is a great detriment to his family because the re-construction will completely destroy his view. Mr. Elkallassi believes the elevation from Mr. Talty's house is much higher than the elevation at Mr. Spinale's house.

Mr. Spinale feels the size of the house proposed is in character with the neighborhood.

Present before the Board: Ted Berguli, abutter

Mr. Berguli stated his family has been in the neighborhood since the 1920's. He feels the Board is changing the rules to allow this house to be built.

Mr. Berguli stated he is not allowed to plant a garden on his property due to the seawalls and the proximity to the water and he feels the Board is doing a disservice by allowing Mr. Spinale to build on this property. Mr. Elkallassi stated this is a Conservation issue and not addressed by the Zoning Board. Mr. Berguli stated Mr. Spinale's property is basically wetland and he asked how a house can be built on wetlands. Ms. Kendrick reiterated this is a Conservation issue and not something the Zoning Board deals with. Mr. Eacobacci feels there is confusion among the abutters. He stated the house is not in wetlands; it is in the flood zone and a house is allowed to be constructed in the flood zone.

Mr. Elkallassi asked Mr. Rowley if he has any comments. Mr. Rowley stated he had addressed an issue similar to this in Shangri-La where the proposed building was drawn with the existing houses to see if there was, in fact, an obstruction of view. Mr. Elkallassi feels the proposed house will minimally affect the abutter's views. He also stated, even if the applicant did produce those plans, who is to say what percentage of the view being disturbed is a detriment or not.

Mr. Riquinha stated he prefers to be consistent in his determinations. In regards to the view, he stated views are not protected by right in Massachusetts, unless there is a view easement. He stated it is in the By-Law as a consideration. He addressed a point made by Mrs. McCaffrey re: the 4,000s.f. house being on two lots. He explained even though the house is on two lots, it is still non-conforming. He addressed Mr. McCaffrey's reference to section 1335 F in the Zoning By-Law that states a non-conforming single or two resident structure may be allowed by right, if all other conditions meet the conditions of the By-Laws. He explained that this lot was created prior to when the Wareham Zoning By-Law was created and if there were not a structure on the lot, it would be grandfathered and the structure would be allowed to be built on it without a Special Permit. The current house on the lot is conforming to the By-Law. Mr. McCaffrey feels if the lot didn't have a house on it is irrelevant.

Mr. Spinale asked if he may address the issue of the abutter's view. He stated he is removing three trees that will improve their view, as well as removing a shed, replacing a retaining wall, and improving the existing house which will improve the view.

Mr. McCaffrey stated the tree that is to remain on the property is the largest tree. He pointed to the By-Law again stating that view is stated as a consideration for a detriment to the neighborhood.

Mr. Bertolo stated Section 1335 pertains to non-conforming structures. He believes this is not a non-conforming structure, but a non-conforming lot. He stated the house is being placed in the middle of the property where the abutter's views are off to the side of the house.

**MOTION:** Mr. Eacobacci moved & Ms. Kendrick seconded to have Section 1335 of the Wareham Zoning Bylaws read into the record for clarification for the public & secondly, to continue the public hearing for Petition #22-17 – John Spinale – 9 Oak Hill Road to May 24, 2017 to allow the Board the opportunity to visit the site. Ms. Kendrick seconded.

**VOTE:** Unanimous (5-0-0)

**NOTE:** Ms. Kendrick stated she will not be at the meeting on May 24, 2017.

Mr. Eacobacci stated from what he gathered from the public hearing, Mr. Riquinha could have issued a building permit without the Special Permit. The Special Permit was done out of consideration for the neighbors. He proceeded to read page 98 of Section 1335 with the heading "Procedures" for public record:

**"As provided for in Mass General Law Section Chapter 40 A Section 6 a non-conforming single or two family dwelling or structure accessory thereto may be altered, reconstructed, extended, or otherwise structurally changed provided that:**

- 1. The property alteration, extension, or structural change itself conforms to the requirements of the present By-Law and does not intensify any existing non-conformities or result in any additional non-conformities in which event the Building Inspector may issue a building permit and an application to the Board of Appeals need not be made.**
- 2. As provided below the Board of Appeals finds that**
  - i. There is no substantial increase in the non-conforming nature of said structure**
  - ii. Such reconstruction, alteration, or extension will not be substantially more detrimental to the neighborhood than the existing non-conforming structure or use.**

**Recognizing the need to provide guidelines for determining the meaning of the phrases 'increase the non-conforming nature of said structure' and 'substantially more detrimental to the neighborhood' the following shall apply to the review of applications subject to the provision to alter, reconstruct, extend, or structurally change a pre-existing non-conforming single and two-family residential structure:**

- A. An application must be made to the Board of Appeals to expand or change the structure.
- B. The Board of Appeals must make a determination as to the particular respects in which the existing structure or lot does not conform to the requirements of the present By-Law
- C. Should the Board of Appeals conclude that the proposed changes would substantially increase the non-conforming nature of the structure or lot the applicant will not be entitled to the issuance of a Special Permit
- D. If the Board of Appeals determines that the proposal will not substantially increase of the non-conforming nature of the structure or the lot the applicant will also be required to show that the change will not be substantially more detrimental than the existing non-conforming structure or use to the neighborhood.
- E. If the Board of Appeals determines that the proposal will be more substantially detrimental to the neighborhood the Special Permit sought will be denied unless the Board of Appeals determines that a Special Permit can be approved with conditions that would make the changes substantially not more detrimental in which case the Board of Appeals may approve a Special Permit with such conditions.
- F. For the purposes of this Section determination of substantially more detrimental to the neighborhood shall include consideration of the impacts to the general and immediate neighborhood from the resulting height, building coverage, impervious coverage, and width of the altered, re-constructed, extended, or structurally changed structure. Additionally, a determination whether an altered, re-constructed, extended, or structurally changed structure will be substantially more detrimental to the neighborhood shall include the resulting impacts to views and vistas from abutting properties and public and private ways, increase in traffic, noise, surface water runoff and related site planning issues”

## **V. CONTINUED PUBLIC HEARINGS**

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

**NOTE:** Mr. Elkallassi recused himself from the hearing at this time due to his relationship with the project. Mr. Eacobacci will be Chair Pro Tem for this hearing.

Present before the Board: Brian Grady, G.A.F. Engineering, Inc.

The applicant has requested a continuance to May 24, 2017.

**MOTION:** Ms. Kendrick moved to continue the public hearing for Petition #17-17 – JNJ Holdings, LLC – 2371 Cranberry Highway to May 24, 2017. Mr. Morrison seconded.

**VOTE:** Unanimous (5-0-0)

**NOTE:** Mr. Elkallassi returned to the table at this time.

**B. Petition #18-17 – CTG Properties, LLC – 3067 Cranberry Highway** (*Applicant has requested a continuance of the hearing to May 24, 2017*)

**MOTION:** Mr. Eacobacci moved to continue the public hearing for Petition #18-17 – CTG Properties, LLC – 3067 Cranberry Highway to May 24, 2017. Ms. Kendrick seconded.

**VOTE: Unanimous (5-0-0)**

**VI. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS**

**A. Correspondence**

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

**B. Upcoming Hearings:**

May 24, 2017	#23-17	Lisa Williams Cordeiro	28 Old Glen Charlie Road
May 24, 2017	#43-16 – Reconsideration of decision	Christopher McIntosh	22 High Dam Road

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

**VIII. ADJOURNMENT**

**MOTION:** Mr. Eacobacci moved to adjourn the meeting. Ms. Kendrick seconded.

**VOTE: Unanimous (5-0-0)**

Date signed: \_\_\_\_\_

Attest: \_\_\_\_\_

James Eacobacci, Clerk  
WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: \_\_\_\_\_