

Wareham Zoning Board of Appeals
Wednesday, February 14, 2024 – 6:30 p.m.
Minutes

WAREHAM TOWN CLERK
2024 FEB 29 AM 9:45

Location: Wareham Multi-Service Center, 48 Marion Road, Wareham, MA, Room 320.

The following record pertains to a meeting held by the Zoning Board of Appeals at 6:30 PM local time. A video recording of this meeting is available for viewing. The record of the proceedings includes the videotape of the meeting, the resolutions passed, and any document presented during the course of the meeting.

I. CALL MEETING TO ORDER

Mr. Elkallassi called the meeting to order at 6:30 p.m.

II. ROLL CALL

Present: Chairperson, Nazih Elkallassi, Jim Eacobacci, Richard Semple (via Zoom), Troy Larson, and Veronica DeBonise

Building Commissioner, Paul Turner was present.
Planning Director, Ken Buckland was on via Zoom.

III. PRELIMINARY BUSINESS

1. Approval of Meeting Minutes: 01/24/24

Mr. Eacobacci asked for an amendment on the minutes referring to DeOlim's hearing that it should read they would "not" have an apartment. He also asked for a correction on a misspelling and with those changes motioned to approve the January 24, 2024 minutes which Mr. Semple seconded. The motion passed unanimously. (5-0-0).

2. 56-21 DB Delivery MA, LLC dba Doobie – Minor Modification of Special Request – 4 Recovery Road

Mr. Eacobacci stated this seem to be a few minor changes. He explained that they asked for a delivery, and they were granted delivery with a Special Permit.

Erika & Justin Kennedy were present. Ms. Kennedy explained that they currently warehouse the product and deliver it. They are asking for a marijuana courier license and with that they wouldn't carry the product, but they would partner up with a dispensary and all the deliveries would happen through that avenue.

Mr. Elkallassi asked if the Special Permit would be connected to agriculture as well. He asked if the state required the two to be combined. Ms. Kennedy stated no they are two separate permits. She said they are only deliveries right now.

Ms. DeBonise asked about how many vehicles would be at the warehouse where they are the delivery only. Ms. Kennedy said they rent spaces from 1 Recovery Road for the vehicles. She said the operating hours are the same as currently. They have not found a partner currently. She said they are not retail for the public.

Mr. Elkallassi said he would like to continue to gain a bit more information. He said he is not sure it would be considered minor.

Ms. Kennedy stated they are named a “Marijuana Delivery Establishment only.”

Motion to continue: Mr. Semple made a motion to continue February 28, 2024, which was seconded by Mr. Eacobacci. The motion passed unanimously. (5-0-0)

IV. CONTINUED PUBLIC HEARINGS:

1. 1-23 Karen DeMichele – Appeal – 43 South Blvd (Reconsideration for procedural error)

Attorney Jillian Morton was present for the applicant. Ms. Morton stated the previous hearing was still open. She explained they were seeking to add different plantings to the landscape. She stated they spoke about the curtains being gone as of July.

Mr. Eacobacci said that he wants to know why something was closed but now open at a public hearing.

Ms. Morton stated there was a hearing conflict in scheduling and that’s why it came to this meeting tonight.

Attorney Gregory Fleming was present for the abutter, the Lawrences. He reviewed his petition that the appeal was not properly filed and asked for a denial of the appeal as it was not properly filed. Mr. Fleming stated the notice of violation happened in October 2023 and now the applicant is asking for something different to happen in July of this year. He said the notice of violation was an illegal structure and should be taken down immediately. He asked the board to uphold the violation and issue the fines as it was not permitted and should come down. He explained this was a zoning violation and that a neighbor dispute should not be taken into consideration regarding a zoning violation.

Ms. Morton submitted a letter to the board written by Ms. DeMichele.¹ She said the poles have been up, but the tarps/curtains have not been up since Thanksgiving.

Mr. Elkallassi stated he agreed that a neighbor dispute is not grounds for a zoning violation to continue until July. He said he was not comfortable with it.

Mr. Semple stated he feels they are trying to be a fair board and things don’t happen immediately as everyone knows. He said he believes the way they left it was they kept the hearing open allowing the applicant to return in July.

Mr. Eacobacci asked when the curtains go up and stay up.

Ms. Morton said it only goes up when they are at the home, it’s their second home; and then goes down when they are not home.

Ms. DeBonise said she agrees with Mr. Semple as they decided to allow them to go until July 20, 2024, to get things squared away. Mr. Larson said he agreed.

¹ Karen DeMichele letter read by her Attorney Jillian Morton in for the record.

Mr. Elkallassi asked the board to consider two special conditions if it is approved to wait until July 20th date. He asked that the conditions be that the curtains only be up when the applicants are at the home and that the planting be done prior to the July date.

Mr. Fleming said that the case in Superior Court is a trespassing case and that he speaks for fairness for his clients as well.

There was no further comment from the public.

Mr. Eacobacci stated he felt the July 20th date is very generous and doesn't think the curtains should be flopping in the wind when up.

Via Zoom, Ms. McDaniels tried to speak but was inaudible.

Mr. Eacobacci made a motion to close the hearing which was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0)

Mr. Eacobacci said he would be okay to give the applicant some relief and time. He said he would like to tighten up the language for the curtains to be well secured, neat and tidy and only when they are enjoying the backyard. He said he didn't think they had to be up twenty-four hours a day.

Mr. Elkallassi said they could continue the public hearing to think about it and come back and decide. He spoke about the forty-five days to render a decision after closing. He said he is not willing to issue a temporary variance.

Ms. DeBonise said she also believes they need to keep the meeting open and go by their first decision until July 20th. She said that would be giving them the time to rectify the situation.

Mr. Eacobacci made a motion to rescind the closed hearing vote and reopen the meeting which was seconded by Ms. DeBonise and passed unanimously. (5-0-0)

Mr. Elkallassi asked the board what happens if the applicant returns in July with no resolution what will happen. Ms. DeBonise said they would have to pay the fines from the violation date.

Mr. Semple agreed that if there is no resolution by the July date then they would be subject to fines by the violation date.

Ms. Morton stated he would write an extension to July 24, 2024, as a decision deadline. Mr. Elkallassi said they would have the hearing date to July 10, 2024, and if rectified before that the applicant would advise the Zoning Board.

Motion to continue: Mr. Eacobacci made a motion to continue the hearing until July 10, 2024, which was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0)

2. PUBLIC HEARINGS:

1. 1-24 Richard & Christine Wiggin – Special Permit or a Variance – 16 Turner Avenue

Mr. Eacobacci read the advertisement for the record.

Mr. and Mrs. Wiggin were present. Mr. Wiggin reviewed that they are doing the work on the property in phases. He said they would like to add an accessory bedroom to the existing building. He said there is a separate building with a full bath and kitchen.

Mr. Turner stated it was two independent houses. Ms. Wiggin explained that one of the accessory buildings, she believed, was a garage at one time. She said they receive two separate sewer bills.

Mr. Turner said the end product would be a single family to bring the two homes together.

Mr. Elkallassi stated there was a FAR issue, and side variance. He said they could act on it as a Special Permit. He said currently the FAR was at 46 and was increasing to 56.

Ms. DeBonise liked that they were connecting the two and said she was not on board with the size of the F.A.R. increase as it was going to be too big for the lot.

Mr. Wiggin stated that the structure is dormant and can handle a second floor.

Mr. Semple stated he was okay with it.

James Dube, abutter was present and stated that he was in favor of the project moving forward.

Ms. DeBonise said she would like to do a site visit. She said it looks big to her on the plans.

Ms. Wiggins said they also own the property across at 15 Turner Avenue with a shed and is considered an abutting lot because it is a private road. The Wiggins confirmed it's always been a single-family dwelling, a main house with a guest house on the property.

There was no public comment.

Ms. DeBonise appreciated the applicant's information that the FAR wasn't as bad as it looked on paper because the Wiggins owned the property in that area.

Mr. Eacobacci made a motion to close the public hearing which was seconded by Mr. Larson. The motion passed unanimously.

The board reviewed the green cards and abutter list to its accuracy.

Mr. Eacobacci motioned to act as a Special Permit which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Motion to approve: Mr. Eacobacci motioned to grant the Special Permit, not determinantal to the neighborhood with standard order of conditions which was seconded by Mr. Semple and passed unanimously. (5-0-0)

2. 2-24 Ryan Vlaco, Burkely Ryan Realty Trust – Variance(s) – 72B Burgess Point Road

Mr. Eacobacci read the advertisement in the record.

Attorney Morton was present for the applicant. She said they are looking for an accessory building variance from the front setback due to the topography of the land and hardship. She advised that in the zoning district, the size is 900 sq feet. She explained this as a 3-car garage (2400 sq feet) with storage space on the second floor. She stated the second floor would have a bathroom. She said this project has already been approved by the Conservation Commission.

Mr. Elkallassi asked about the large 'storage area' on the second floor. He asked if there was a height restriction.

Ms. DeBonise said she didn't see the reason for such a large structure or that there be the allotted space that large on the second floor, she said she didn't think they needed such a large storage space.

Mr. Eacobacci and Mr. Semple were fine with the project.

Mr. Eacobacci made a motion to close the public hearing which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Motion to grant: Mr. Eacobacci made a motion to grant as proposed the garage in the front which meets the statutory requirements, Ch. 40a Section 10; which was seconded by Ms. DeBonise and passed unanimously. (5-0-0)

Mr. Eacobacci motioned to grant the variance for the proposed size up to 2424 sq feet as proposed, which meets the requirement of Chapter 40a Section 10. Mr. Semple seconded the motion.

On the question, the board discussed the project. Ms. DeBonise argued there was no hardship in her opinion. Mr. Semple stated the hardship was the topography of the land. Ms. DeBonise said that hardship was more for the first variance, not the size. Mr. Semple stated he was fine with the size. Mr. Elkallassi asked if they would feel comfortable with no storage area. Ms. DeBonise said she would feel better if there was no second floor.

Motion to grant: On the vote, the board voted in favor with Ms. DeBonise in opposition. The project passed, 4-1-0.

3. 3-24 Richard Zine – Variance – 10 Charlie Avenue

Mr. Eacobacci read the legal advertisement in for the record.

Attorney Jillian Morton was present for the applicant. Ms. Morton said they were looking for a breezeway and an in-law apartment. She said the hardship is aging parents and Mrs. Zine is the full-time caregiver for Mr. Zine's mom. She said that the Commissioner said it was a second dwelling and the reason for the denial. Attorney Morton presented over twenty signatures in favor of the project. She stated there is a hardship and it will help the neighborhood.

Mr. Elkallassi asked if there was a site plan and Attorney Morton stated she did not have one.

Mr. Semple stated that he had to recuse himself as his daughter is married to the homeowner's son. Mr. Elkallassi asked Attorney Morton if she wanted to proceed with four members and she stated she did.

Mr. Elkallassi stated accessory dwelling is not allowed in that area. He asked why they didn't attach. He said they are not in favor of two dwellings on a lot. Attorney Morton said they could condition it to be lived by family only.

Mr. Larson stated he understands however would like to see it connected.

Ms. DeBonise asked if in the future it could be sold as two different homes because they could split the lots. Attorney Morton said she didn't think that could happen. Ms. DeBonise agreed that it should be connected.

Mr. Zine was present and stated the utilities were the problem with attaching the utilities and is why they are presenting the proposal as it is and that would be his hardship. He said that the utilities plumbs in underground and would be costly to move them. He said it could be on the same meter, but he thought it would be separate.

Mr. Eacobacci said he'd prefer to see a roof between the two structures.

Mr. Elkallassi recommended they continue and do a site visit. He also asked for a 2x3 site plan.

Motion to continue: Mr. Eacobacci motioned to continue the matter to February 28, 2024, which was seconded by Mr. Larson and passed unanimously. (4-0-0)

4. 4-24 James & Colleen Dube – Variance or a Special Permit – 16 Worrall Avenue

Mr. Eacobacci read the advertisement in for the record. Mr. and Mrs. Dube were present along with their engineer, Bob Rogers of GE Engineering.

Mr. Dube stated they have owned the property for sixteen years (it is a cottage) and they are looking to knock it down and rebuild a single-family dwelling. He said they have gone through Conservation and been approved, and it will become their full-time residence.

Mr. Rogers explained the project, the home is all in the velocity zone and needs to be elevated. He said it looked like a two-story home with breakaway walls underneath with a garage.

The board agreed it would not be detrimental to the neighborhood so they would seek a special permit.

Abutter, Jim Reardon, 21 Worrall Avenue stated he was in favor of the project. There were six people in the audience who raised their hand in favor of the project.

Mr. Eacobacci made a motion to close the public hearing which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Motion to approve: Mr. Eacobacci motioned to grant a Special Permit under 13.55, with standard conditions and it meets the requirements of the bylaw, not detrimental to the neighborhood. Mr. Semple seconded the motion and passed unanimously. (5-0-0).

3. ANY OTHER BUSINESS/DISCUSSIONS

The board discussed the return of the green cards for each project, which is the abutters notices. Mr. Semple stated when he goes through a packet, he verifies that the green cards are in the packet. He said it's distracting in the meeting and not very professional looking. He asked if it needs to be done at the board meeting to be on the record.

Mr. Elkallassi stated he would speak to the Planning office and see what could be done before the meeting to get the green cards/abutter list confirmed.

Mr. Eacobacci stated there was an email sent out regarding Settlers Glen who asked to be squeaked into the agenda per Mr. Eacobacci to speak to the board. Mr. Elkallassi said they need to be on the agenda to discuss anything.

4. COMMENTS FROM BOARD MEMBERS

Mr. Eacobacci stated he forwarded an email from the Selectboard regarding a new code of conduct policy that they need to sign off on. He said they are asking for an acknowledgment of receipt. He did say the policy is dated September 2023 and they are just receiving on February 14, 2024.

Mr. Eacobacci motioned to adjourn, which was seconded by Mr. Semple and passed unanimously. (5-0-0)

Clerk's Signature:

James D. Eacobacci

Date:

2-28-24

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