

Wareham Zoning Board of Appeals
Wednesday, March 13, 2024 – 6:30 p.m.
Minutes

WAREHAM TOWN CLERK
2024 APR 10 PM3:14

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 6:32 p.m.

II. ROLL CALL

Present: Chairperson, Nazih Elkallassi, Jim Eacobacci, Richard Semple, Troy Larson, and Veronica DeBonise (arrived 6:35 p.m.)

Building Commissioner, Paul Turner was present.
Sonia Raposo, Principal Department Assistant was present.
Conservation Agent: Joshua Faherty

III. PRELIMINARY BUSINESS

1. Approval of Meeting Minutes: 02/24/24

Mr. Eacobacci made a motion to accept the minutes of 2/24/24 which Mr. Semple seconded. The motion passed unanimously. (4-0-0)

IV. CONTINUED PUBLIC HEARINGS:

1. 21-23 Angela McKeowen – Reconsideration of Application – 386 Main Street

Attorney Jillian Morton was present for the applicant. She explained they left it last meeting with the board moving to speak to the Town Attorney. Ms. Morton stated she put information together, case law to reconsider her case as a reconsideration of substantial change.

Mr. Elkallassi said he spoke to Town Attorney Bowen, who referenced Section 16. He said he did his own research in reading the cases that cited section 16. He said it was still unclear if the Planning Board could approve or move it back to the ZBA. He said he felt the neighbor's attorney, Mr. Silverstein was right that the matter may have to go to the Planning Board.

Attorney Morton asked for a motion to refer to the Planning Board.

Mr. Eacobacci motioned to refer 21-23, Angela McKeowen, 386 Main Street to allow the applicant to get approval, which has to be a super majority from the Planning Board. On the question, Mr. Eacobacci asked exactly what the Planning Board was going to do, and Mr. Elkallassi advised.

Ms. Morton said she didn't believe that was the correct way to go but if the board wouldn't allow it any other way, she would go to the Planning Board.

Mr. Eacobacci read from MGL, Chapter 40a, Section 16 aloud.¹ Mr. Elkallassi said it was very unclear whether the Planning Board would endorse favorable action or send it back to the Zoning Board.

Mr. Eacobacci said they asked the town attorney's opinion and they should abide it. Mr. Elkallassi said the Town Attorney didn't make it clear. Mr. Eacobacci said he didn't think a reconsideration would make a difference.

In the previous motion made by Mr. Eacobacci, he added that they would keep the hearing open until May 22, 2024, and in the interim to refer this matter to the Planning Board. The motion passed unanimously. (5-0-0)

2. 39-23 Wareham Cranberry, LLC – Use Variance – 3020 Cranberry Highway

Mr. Eacobacci motioned to continue 39-23 Wareham Cranberry LLC to March 27, 2024 which Mr. Larson seconded. The motion passed four to one (with Ms. DeBonise abstaining). (4-0-1)

3. 54-23 Ezequiel Lacerda – Special Permit and SPR – 3090 Cranberry Highway

Attorney Robert Perry was present for the applicant. He said that Digsafe came in to have Mr. Bertolo stated that they didn't get the markings correct. He said they had no test pits out there as of yet, he has opened the 53G account. Attorney Perry asked for a continuance.

Mr. Eacobacci made a motion to continue to April 24, 2024, which Mr. Semple seconded. The motion passed unanimously. (5-0-0)

4. 45-23 Joshua DeOlim – Special Permit and Variance(s) – 2613 Cranberry Hwy

Attorney Perry was present for the applicant. He said he was on the phone with Town Bowen and doesn't have a bottom-line opinion as of yet.

Mr. Elkallassi stated that he believed Attorney Bowen said that MGL 40a, Section 16 is the bottom line and the case would have to be referred to the Planning Board.

Attorney Jillian Morton, on behalf of Mr. Conti. She said they she does not agree that this should go to the Planning Board. She said the case has been around for quite a few months and that the land is for sale.

Mr. Elkallassi said the applicant has the right to go to the Planning Board if he wishes. Ms. Morton stated she believes Attorney Bowen needs to put his opinion in writing.

Mr. Larson agreed that he should go to the Planning Board if he wishes. Ms. DeBonise said procedurally they can go to the Planning Board and an extension should be sent in for an approval to be made. Mr. Elkallassi said if the Planning Board sends it back to ZBA they can still deny it and don't need to approve.

Mr. Semple shared concerns about the sale of the property or house on the property. He said that the applicant needs to be truthful about what is happening at the property.

Attorney Perry said he wasn't aware.

Mr. Semple said that Town Counsel should be submitting something in writing to all board members.

¹ MGL Chapter 40A, Section 16

Ms. DeBonise said they don't have a say in whether the applicant wants to go to the Planning Board. Mr. Elkallassi stated that the applicant has a choice to go to the Planning Board or withdraw. Ms. DeBonise said she felt that the applicant has had ongoing issues, and she feels it's not a case that should move forward, they were previously denied and the board should sustain that denial.

Mr. Eacobacci stated they referred this case to the Town Counsel, and they should wait for his answer, as he hasn't been able to review it yet.

Attorney Perry said that he was willing to wait to hear from Town Counsel.

Mr. Eacobacci motioned to close the public hearing which Ms. DeBonise seconded. The motion passed unanimously. (5-0-0).

Ms. DeBonise motioned to deny without prejudice, which was seconded by Mr. Larson. (3-0-2). Mr. Eacobacci and Mr. Semple abstained from the vote. The motion carries to deny without prejudice.

5. 5-24 Walid Eldayba – Special Permit & Site Plan Review – 2544 and 2546 Cranberry Highway

Attorney Jillian Morton asked for a continuance. She said there is a current cease and desist for all operations. Mr. Elkallassi said they can vote to stay open for the site operation sticker only, no mechanical operations.

Mr. Eacobacci motioned to authorize a partial permit relating to Zoning to allow the MA State Inspection Bay at the property only keeping the public hearing open and continuing until March 27, 2024. The motion was seconded by Mr. Larson and passed unanimously. (5-0-0)

6. 6-24 TTR, LLC. – Special Permit & Variance – 3 Tow Road

Mr. Charles Morris was present as the owner of 3 Tow Road. He stated he submitted additional drawings for the project. He said they are not doing any site work on the property or the building and wasn't sure why they needed a site plan review.

Mr. Elkallassi stated that the change of use is changing, therefore triggering him to open the 53G account for Town Engineering to review.

Mr. Eacobacci explained the applicant needs to open a 53G account for a site plan review as stated at the last meeting.

Mr. Morris explained what type of work they do, as they work as a subcontractor for a general contractor.

Via Zoom, Jim Moniz of Cranberry Highway asked how much would need to be added to the 53G Account. He stated that the applicant had done a great job cleaning up the property.

Mr. Turner said they could relieve the zoning use for the interior, which is a variance for the 60% use of the building versus the 40% until he goes forward with the site plan review; this way he could use the inside of the building.

Mr. Turner stated that a letter was received dated March 11, 2024², of the architectural plans dated December 8, 2023.

Mr. Eacobacci motioned to grant the variance and the office for operations mirroring a letter that was received by the Building Commissioner dated March 11, 2024, of architectural plans dated December 8, 2023. Within this motion, it is noted that the applicant still needs to move forward with a site plan review as the board indicated by opening a 53G account. The motion also asked for a continuance until April 10, 2024, for the site plan review. The motion was seconded by Mr. Semple and passed unanimously. (5-0-0)

Mr. Turner confirmed to the applicant that tonight's vote is strictly for the zoning aspect, he would still need to apply for building permits and should come to his office to further a discussion.

V. PUBLIC HEARINGS

1. 7-24 Robert & Jeannine Perry – Special Permit or Variance – 4 Wareham Lake Shores Drive

Mr. Eacobacci read the legal notice for the record.

Mr. Elkallassi stated there was an issue with the abutter's notification. He said they would open the meeting and then continue it; with no discussion.

Mr. Eacobacci motioned to continue 7-24 Mr. and Mrs. Perry to April 27, 2024 which was seconded by Mr. Larson and passed unanimously. (5-0-0)

2. 8-24 Mallory Decas – Variance – 11 Tower Terrace

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

Attorney Morton was present for the applicant. She asked for a withdrawal.

Mr. Eacobacci motioned to close the public hearing which Mr. Larson seconded. The motion passed unanimously. (5-0-0)

Motion to withdraw: Mr. Eacobacci motioned to accept the motion to withdraw without prejudice, which was seconded by Mr. Larson. The motion passed unanimously. (5-0-0)

3. 9-24 Angeliki Decas – Appeal of Building Inspector Notice of Violation – 5 Tower Terrace

Mr. Eacobacci read the legal notice for the record.

Attorney Jillian Morton was present for the Decas Family. Ms. Morton explained the situation, a notice of violation by the Building Commissioner. She explained the violation was for a merger. She said Ms. Decas wants to build a single-family dwelling on a non-conforming lot. She explained there were two non-conforming lots, and they added a bit more to the land to make it conform.

² Letter from Mr. Charles Morris dated 3/11/24

Mr. Elkallassi who was familiar with the lots, reviewed the lots that were purchased by Mr. Decas in the 1960s. He explained that Ms. Mallory Decas purchased more pieces of the parcels to meet the 30,000-square-foot lot.

Ms. Morton stated that the building commissioner offered a few remedies.

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

Motion to grant variance: Mr. Eacobacci motioned to separate LC10 from LC17, to allow LC10 to be a stand-alone and approve the variance as a pre-existing non-conforming lot. The motion was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

4. ANY OTHER BUSINESS/DISCUSSIONS

Mr. Eacobacci stated that if they are going to refer something to Selectboard they should make that motion immediately, not wait for the end of the meeting.

5. COMMENTS FROM BOARD MEMBERS

Mr. Eacobacci made a motion to adjourn, which Mr. Semple seconded. The motion passed unanimously. (5-0-0)

Clerk's Signature: _____

Date: _____

James D. Eacobacci
3-27-24

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