

**Town of Wareham
Zoning Board of Appeals
Minutes – January 12, 2022**

I. **Call Meeting to Order:** Chairperson, Mr. Elkallassi opened the meeting at 6:35 p.m. The meeting was held via Zoom.

II. **Roll Call: Present:** Nazih Elkallassi, James Eacobacci, Jacob Morrison, Veronica DeBonise, Richard Semple, and Troy Larson

Absent: Alan Slavin and Tricia Wurts (Board of Selectmen Liaison)

III. **Preliminary Business:**

1. **Meeting Minutes – June 9, 2021; June 23, 2021; July 14, 2021, and September 22, 2021**

Mr. Semple stated he didn't have an opportunity to read them. Ms. DeBonise stated she read June 9th and June 23rd but didn't see the other two come through.

Mr. Adam (from Ken Bran's office) stated only June 9th and June 23rd were the two that had to be approved this evening.

Mr. Eacobacci made a Motion to approve the minutes of June 9, 2021, and June 23, 2021 and was seconded by Mr. Semple. The Motion passed unanimously.

2. **Woodland Cove – Notice of Project Change: Change in Subsidy Program – Choice of Substantial or Insubstantial and Approval necessary**

Mr. Elkallassi read the project in for the record, he stated Attorney Freeman was on the Zoom call to speak on behalf of the project.

Attorney Peter Freeman was present representing the applicant. He explained this was a 40B project. He said the second phase is ready to start and approved by the Zoning Board back on January 6, 2021. He said the plans stated Phase two and Phase three were approved at that time. Attorney Freeman stated that the 40B regulations required them to come back to the Zoning Board if the finance changed. He stated that Phase one was low-income finance and this phase would be financed through the Mass Save Mixed-Income financing rental financing program. He said that was the only chance and the regulations state that this is an insubstantial change that still requires Zoning to approve the change of the financing. He said it is up to the purview of the board if they find it a substantial change then a public hearing would need to be had; if they found it insubstantial, then they would just move for a Motion tonight to accept the change. Board member, Ms. DeBonise asked if the finance charge would change any of the phase development. Attorney Freeman stated it would not they are ahead.

There were no other questions from Board members.

Mr. Eacobacci made a Motion that Woodland Cove, change in subsidy program is not a substantial change and was seconded by Ms. DeBonise. The Motion passed unanimously via roll call vote.

IV. Continued Public Hearings:

1. 64-21 Scott Green – Variance – 17 Murphy Street – Map 50B, Lot 1-41

Mr. Elkallassi reopened the continued public hearing.

For the petitioner, Attorney Jillian Morton was on the Zoom platform. She stated she was here with a revised plan, regarding the height of the new construction. She stated they took back feedback from the board and the public and were able to bring the height down to under 35', which did not need a variance. However, they still needed a variance on the lot size, which they are under. She stated the lot size requirement in this district is 30,000 square feet and their lot is 20,500 square feet.

Mr. Elkallassi opened up for comments from the board.

Ms. DeBonise asked if this is the Swift Beach Area.

Ms. Morton stated yes, it is home right on the water. She stated there was a concern previously by the neighbors regarding beachfront access. She stated this would not impede the beachfront access as they would still be able to walk down the public way to the beachfront.

Mr. Elkaallassi agreed that people walk on the public sandy road.

Mr. Semple asked if the home on the first floor had break-away walls as he didn't think the rendering looked like it was on stilts.

Ms. Morton stated that the homeowner was present on the call and would explain.

Mr. Green stated the home was going to be built on stilts with break-away walls on the first floor.

Board member, Mr. Morrison stated his initial concern was the height; however as they have changed it he is fine with it and had no further questions.

Mr. Elkallassi called upon a resident, Mr. Frechette who wanted to speak.

Mr. Frechette stated he had some concerns about the high-hazard flood zone for this construction on a non-buildable lot. He said this could be a problem if a high storm came it could be damaging to neighboring properties.

Ms. DeBonise asked about the ownership history of this property.

Attorney Morton stated that an affidavit was given to the board members in a previous package. She said Mr. Medeiros' grandparents owned it previously but have since passed. She said there was a house on the lot and then Hurricane Bob hit and it was no more.

Attorney Alan Medeiros was present. He explained the previous owner of his grandparents owned the property. He said neither grandparent was able to restore the home because of their health, and then they went to probate and he is now the owner.

Mr. Elkallassi opened it up for public comment.

Resident, Mr. Elliott Eichenholz stated he was happy to see the height lowered. He said he had no further objections to the project. He thanked the board and told the new owner he had his support.

Resident, Meg Arsenault also spoke who is the property owner of 20 Murphy Street. She said that she was most concerned about the height but that seems to be addressed so she is okay with the project moving forward.

Mr. Elkallassi stated when you own property on the water you need to design and construct it for that. He said that the applicant will have to go to Conservation Commission to address other things.

Mr. Eacobacci made a Motion to close the public hearing which was passed unanimously through a vote of the board members.

Mr. Eacobacci made a Motion to grant the variance as requested. On the question, Ms. DeBonise stated there was a letter that brought up a few points on the property that suggested restrictions and she wanted to make sure they did provide restrictions on the approval.

Ms. DeBonise requested a restriction for no pool on the property and Mr. Elkallassi stated a restriction would be that the maximum height of the house would be no more than 35'.

Mr. Eacobacci amended the Motion to include the two restrictions. Mr. Elkallassi stated the finding is that the project met the requirement of Zoning under Chapter 40a, Section 10. The Motion passed unanimously via roll call vote.

V. Public Hearings

1. 67-21 John C. Decas – Appeal of Building Commissioner's Action on a Special Permit – 20 Burgess Point – Map 22, Lot 2

Mr. Elkallassi opened up the public hearing and had the announcement read in for the record.

Mr. Decas was present to speak at the public hearing. He said it was not just an appeal on his behalf but a few neighbors are listed as well. He stated a package was put together for board members before this meeting and asked if everyone had a chance to look at it.

Mr. Elkallassi stated he did receive it and was able to read through the material.

Ms. DeBonise stated she did not receive the package. Mr. Semple did a review. Mr. Larson did not receive or review and Mr. Morrison did receive and review.

Mr. Decas said it was a very complex situation. He stated Nora Vicky was present via zoom and would be speaking on behalf of the action. Mr. Decas stated they didn't realize they had to come before the Zoning Board, he thought they would be only going to Planning Board for the appeal process.

Mr. Decas stated this started six years ago with the destruction of five acres of forest illegally without notice to the Town and/or neighbors. Mr. Decas stated a stop-work order was put on the clear-cut that day, but in the end, it resulted in the stop-work order being lifted because the property owner had indicated that he had an agricultural exemption from the State. There was some discussion, he stated that he believed there was a Town bylaw that prevented clear-cutting. He said no one in the Town could confirm that and the owner did clear-cut five acres of tree forest on that property. Mr. Decas asked why the owner was clear-cutting and there was no answer at that time. He said that the Planning Board did issue an order of conditions (nine, he believed) to try and fix up the situation.

Mr. Elkallassi stated that the Building Commissioner is the only one that has the authority to approve or not approve conditions in the Town. He clarified what Mr. Decas and the neighbors exactly want from the Board of Appeals. Is it that they want the ZBA to say if they comply with the Building Commissioner to overturn and say they are not?

Mr. Decas replied that they have a right to appeal his original decision and the Zoning Board has a right to look at the decision. Mr. Decas said he thought the Town Administrator would also be able to weigh in and give his opinion.

Mr. Elkallassi reminded him that the only committee or board in town that can overturn the Building Commissioner's ruling on something is the Zoning Board of Appeals and not the Town Administrator, or the Supreme Court if an appeal is filed.

Ms. Nora Vicky was also in attendance and spoke on the matter. She stated they asked the Building Commissioner to enforce the order of conditions at the property in question on October 8, 2022, and he sent a letter on October 18, 2022, to decline to enforce the order. She stated that is what they are appealing to as they believe the conditions have never been enforced.

Mr. Elkallassi stated he read the order of conditions and needed proof of what the actual Building Commissioner didn't enforce.

Ms. Vicky read a statement that she has prepared and it will be available per public record attached to these minutes. In summary, Ms. Vicky read the dates and the order of conditions that the Planning Board outlined; as well as specifically what the response of the Building Commissioner was in viewing the conditions or whereas the Building Commissioner, Mr. Riquinha stated that he didn't see any specific finding.

Ms. Vicky stated that Mr. Decas had requested documents from the Building Commissioner and that the documents received were those from conditions number 4 and 5 only.

Ms. Vicky stated there are certain conditions in her opinion that can certainly be measured per the zoning Board requirements of the Zoning By-law.

Building Commissioner, David Riquinha was present via zoom. He said the timeline that Mr. Decas landed out was a bit off. He said it was a call that came into his office that trees were being clear clear-cut was an investigation and then a letter was sent out and a notice of violation issued. He said the only way to correct the violation was through a Special Permit through the Planning Board. He said because the work had been completed there was approval after the fact from the Planning Board. He said there was correspondence through Mr. Buckland and him. He said he couldn't enforce hearsay or what people discuss after the fact. He said he went out at the request of the Planning Board. He received a request from Mr. Decas for legal enforcement. He said he would have to consider conditions on-site and the letter from the Planning Board. He said he was unable to verify the cleaning of the road. He said there were a lot of emails regarding conditions that were not in the actual decision so therefore he can not enforce them.

Mr. Elkhassi asked if Mr. Decas and Ms. Vicky could return to the Planning Board to ask for a compliance certificate.

Planning Board director, Ken Buckland was also on via zoom. Mr. Buckland stated there was no certificate of compliance that the Planning Board can issue, he said that is through Conservation. He said it ends with a certificate of occupancy through a building permit based on a Special Permit.

Mr. Elkhassi said that he is aware that Planning Board can sign off on the project as in Form C.

Mr. Buckland stated there was no special condition of a final sign-off on this special permit. Mr. Elkhassi said he would like to hear from the Planning Board whether this Special Permit complies or not.

Board member, Mr. Semple stated he was overwhelmed by the situation. He said he doesn't understand why he's continuing to do something to the land. He said he didn't understand why the ZBA was being involved at this time.

Mr. Troy Lawson stated he also didn't understand "why now".

Ms. DeBonise said she agreed with board members. She started her general comment regarding Mr. Riquinha's comment about the specific conditions that he couldn't enforce. She said that

wasn't very clear. Ms. DeBonise said because it is not clear then his opinion should be able to tell if these conditions were completed or not. Reading from the conditions, Ms. DeBonise said answers should be able to come forth from the conditions themselves; and perhaps Mr. Riquinha could verify if the conditions comply or not.

Ms. DeBonise said that regarding the clear-cutting and only having to put down seed, he got off quite easily. She said they should've required him to plant trees.

Mr. Ecobacci said he didn't understand why this matter was in front of the Planning Board and not Conservation. He said he doesn't understand why there isn't a drawn plan and whether or not 50 sq feet was cut or not. He said he has since aerial photographs but would've liked to see a drawn plan. He said he doesn't want to make objective decisions. He said he doesn't know what's been put in front of him and he doesn't know what people want this board to do.

Peter Balzarini, 3 Burgess Point Road an abutter spoke. He read a brief statement that stated the property owner made direct zoning in fracture by clear-cutting his property. He said the owner was brought before the Planning Board to address the violation and was never asked to bring in an engineered plan. He stated that an order of conditions was issued by the Planning Board and the conditions have never been addressed by the Building Commissioner.

Mr. Bill Clement, the land owner said there was no Conservation issue. He said they went through the Special Permit, got a permit; got conditions, and moved forward. He said they have worked with Mr. Buckland in the last two to three years and then Mr. Buckland turned it over to Mr. Riquinha as the enforcement officer. He said they then worked with Mr. Riquinha. He said that no one has had prevue to every conversation he has had with the enforcement officer and/or Mr. Buckland. He believes he has gone through the requirements, provided the data that was requested, and did what he was asked to do. He said it took them three to four attempts to get things right but he did those things and this should be a moot point.

Mr. Decas said he would like to work with the Town to have this resolved.

Resident, Ron Enos, 7 Burgess Point Road said the only thing he could add was that the conditions have not been met and it proves that mistakes were made at the Town level. He said the applicant has done this many times and including the boards; in addition, most recently has been added to a pier without permitting. He said it is time to hold the applicant accountable.

Bruce Marcel, 36 Burgess Point Road. Mr. Marcel said it's been a nice piece of property and it's a really pretty meadow that deer graze at.

Ms. DeBonise asked if this property's order of conditions has been met per the Special Permit then the project is approved. She asked for clarification of what their role is in determining the appeal.

Discussion ensued on where the stump from the property went and how Mr. Riquinha felt about how he was going to enforce the removal or it being brought back when he wasn't employed by the Town at that time. He stated he made decisions by reading the actual Order of Conditions,

visiting the site, and talking to Town employees. He said there was no enforcement taken on a few things because it wasn't under his prevue, as well as the interviews he had with Town officials. He said there were a lot of emails that went back and forth that had a lot of "hearsay" but were not official Order of Conditions.

Mr. Decas stated this property was supposed to be cleaned up and he wondered if people are acting in good faith. He said Mr. Clement has been using this property as a dumping site with debris, grass clippings, and seaweed.

Mr. Elkhassi asked if they would like to continue at this point as it has been going on for a while. Mr. Elkhassi said that people are working in good faith and they have to move on.

Mr. Decas stated he spoke to the Town Administrator and that he (Mr. Decas) has given advice on how to proceed from this point. Mr. Decas said his proposition would say that Mr. Clement should come up with a plan and present it to the Planning Board, whatever it is; a horse pasture and/or a development.

Mr. Elkhassi requested a continuance to January 26, 2022.

Mr. Ecobacci stated he would make that motion; however, he wanted to interject that he believes there has been a plan presented. He said if a new plan needs to be presented that the people who are trying to prove something (Mr. Decas, Mr. Enos, and others) perhaps the burden needs to fall on them. Mr. Ecobacci said that the Zoning Board needs to clarify exactly what our role is in this.

Mr. Eccobacci made a Motion to continue this hearing to their next meeting, January 26, 2022. The motion was seconded by Mr. Larson. The motion passed unanimously via roll call vote.

Mr. Elkhassi asked all board members to visit the site and asked if any of the abutters and/or Mr. Clement had a plan that they drop it off for that meeting.

2. 68-21 Bay State Hemp – Use Variance – 3065 Cranberry Hwy – Map 11, Lot 1000-B

Mr. John Nathan was present for this project.

The advertisement was read for this Use Variance for the record.

Mr. Nathan said he was a Hemp Facility and was looking to move their facility to 3065 Cranberry Highway from Plymouth. He said the area is zoned commercial. He said they are requesting a use variance for light manufacturing.

Mr. Ecobacci asked to identify what the building was previously used for.

Mr. Semple stated it is the old Ocean Spray building across from Dunkin Donuts.

Mr. Elkhassi stated that marijuana is designated for that zone, growing or selling. The Board discussed the difference between marijuana to his.

Mr. Nathan explained the difference between the two plants. He said they do not work with THC which is in the marijuana. He said they do not fall under the Marijuana laws and are strictly considered under industrial agriculture. He said they are federally and legally legal.

Ms. DeBonise asked if the location had current growth. Mr. Elkhassi stated no, it's just a space. She asked what the change of use would be.

Mr. Elkhassi stated that manufacturing would be the change of use. He said manufacturing is the used in that area. He said that the use in that area is the manufacturing of marijuana and this is hemp.

Mr. Nathan said they are not marijuana.

Mr. Elkhassi stated it should be in their by-law that hemp can be manufactured anywhere in Town as it is federally legalized.

Mr. Nathan stated he works with dried product and turns it into hemp (CBD), that's what's being manufactured. He said they've been operating out of Plymouth for two years and have a great report with Massachusetts.

Mr. Lawson stated he has no questions.

Mr. Semple stated he had no comment at this time.

Superintendent for the Onset Water Department, David Candaice stated he is not for or against; it but believes that the owner of the property needs to update the backflow water supply device of the building.

Mr. Semple made a Motion to close the public hearing and was seconded by Ms. DeBonise. The Motion passed via roll call vote 4-1 (with Mr. Eacobacci obtaining, as he was not on the zoom at this moment).

Ms. Debonise made a Motion to approve this project as presented with the standard conditions and a special condition to have the backflow device installed by the property owner. The Motion was seconded by Mr. Semple. The motion passed 4-1, with Mr. Eacobacci not on the zoom at this time.

3. 69-21 YouCanBeCo – Special Permit – 3059 cranberry Hwy – Map 11, Lot 1000-B

The advertisement was read in for the record.

Mr. Elkhassi opened the Public Hearing.

Mr. Bill Lockwood was present on behalf of the applicant of Lockwood Architects. Mr. Lockwood stated a marijuana processing plant was wanted with 1600 sq feet inside the building at 3059 Cranberry Highway. He said they would be manufacturing products and wholesaling. He said they would not be doing retailing. He stated there was a preliminary plan for the space that was sent in. He stated this is an allowed use in this area.

Mr. Elkhassi stated that Mr. Eacobacci is not on the zoom call at this moment and Mr. Lockwood would need all four members to approve the Special Permit (a Special Permit requires five board members, so all four would have to vote in the positive). Mr. Elkhassi asked if Mr. Lockwood wanted to proceed with the four members at this time.

Mr. Lockwood stated he would like to see Mr. Eacobacci return.

Mr. Semple asked if Mr. Candeais would require a device as well at this location of the water backflow preventer.

Mr. Candeais stated they would require a device to be installed at the point of entry for the water use supply so if there was an incident it wouldn't backflow into the water flow.

Mr. Morris stated he doesn't have an issue with it.

Mr. Semple stated he was okay with it and make sure they dot their I's.

Mr. Ecobacci stated he was okay with this moving forward.

Mr. Elkhassi asked about the production part of things.

Mr. Lockwood stated there was no growing, simple manufacturing.

Michelle Hanson, owner of the manufacturing business. She stated they are manufacturing only and not a growing facility. She said they would either sell to other manufacturers or make their products and sell to wholesalers.

Resident, Ms. Brenda Eckstrom, asked about this allowed under Special Permit. She asked if this use was allowed in all commercial areas.

Mr. Bucknell advised where the marijuana district was, from Depot Street to the Bridge.

Ms. Eckstrom stated that Wareham is now known as "Weed-ham"; and it seems that business owners are coming from other towns to manufacture in Wareham.

Mr. Elkhassi stated that it was the people of the Town that voted for marijuana in 2016, and wasn't up to the Town Planner to decide.

Ms. DeBonise said she was not opposed to the project. She asked for the hours of the facility.

Ms. Hanson said it was 9-5 Monday through Friday.

Mr. Eacobacci made a Motion to close the Public Hearing and was seconded by Mr. Troy Lawson. The Motion passed unanimously.

Mr. Eacobacci made a Motion to approve the Special Permit as presented with the standard order of conditions.

On the question, Ms. DeBonise asked if Mr. Candeais expected the internal water backflow to be installed in the building. Mr. Elkhassi stated he thought it would be a good idea if they wanted to install it but it was not a requirement. Mr. Semple stated if they had the option he would like to see them install it.

Mr. Elkhassi stated they can add the special condition that the internal backflow is installed.

The motion passed unanimously with standard conditions as well as special conditions.

VI. Any other business/Discussions:

Mr. Eacobacci asked about the two different public hearings that were presented. However, he was not on the zoom call for the second one, 68-21 Bay State Hemp.

Jim O'Brien was on the zoom call regarding, "Woodland Cove", a 40B, and its' issues with the water department and looping of the lines in this development. He stated they approached the water department in late July about paperwork and application. In August, Mr. O'Brien heard back that they would need to post a \$10,000 bond and fill out an ability to serve request; with also install a water meter loop at the end of a cul-de-sac and land they don't own. He said he had a comprehensive plan in place that didn't require the water main installation. He stated the superintendent of the Water Department informed him that he wouldn't be given water if he didn't install the water main as requested. He told him he would have to file with the EPA accordingly. He asked to speak to the Water Commission and the first meeting was canceled with no date certain. He filed with the water department in September. Per the water regulations, an answer should've been forthcoming within thirty days, Mr. O'Brien stated he has not heard from them at all. He met with the water commission finally and then discussed a different option.

Mr. O'Brien referred to the regulations and read the different regulations to the Board members. He said he was told to pay an additional \$71, 400; and the cap fee across Cranberry Highway for an additional \$312,000 to connect 20 units to water.

Mr. Semple asked if they were talking with the Wareham Water Department or the Onset Water Department.

Mr. O'Brien continued to give testimony of what occurred with the regulations and the water department.

Mr. Elkhassi stated that developers would pay for their tapping of the water.

Mr. Candeias stated a one-inch water line cost is \$4,500 per connection. He said the rules and regulations were updated on November 1, 2021.

Mr. Elkhassi explained what the regulations of the Zoning Board of Appeals about a 40B are. He said the water and sewer need to be given. He said the Wareham ZBA can not override the water department regulations.

Mr. Candeias stated Mr. O'Brien was referring to the service line. He said Mr. O'Brien was informed of the loop and there is a process through DEP. He said the fee structure has been updated and the construction specs, and says no dead ends in the system. He said he is in the pre-submittal phase and it shows the development of Cranberry Highway that they can't move forward. He said this is the standard procedure. Mr. Candeias reviewed the infrastructure associated with this development.

Mr. Elkhassi opened it up to the board for discussion.

Ms. DeBonise stated she wasn't aware of the rate changes and or the Onset's Water regulations. But she believes it is up to each department to determine their rates and see how things are done.

Mr. Lawson agreed that they have to go with what Onset's Water Department's rates are at this time.

Mr. Semple reviewed what he heard and asked when they found out that Onset needed to be informed when they were going to tap into the water. He said it sounds like they didn't realize what water department they were working with.

Mr. Elkhassi stated they could appeal to Mass Housing but it's not up to the zoning board to determine or change the regulations.

Mr. Ecobacci asked what was the matter before us.

Mr. O'Brien stated that he wanted the ZBA to approve the fee schedule that was in place when they filed the preliminary permit which was in September. He said they bought this property with the approval of the Zoning Board of Appeals. He said they understand that other departments have input and they went through that process and design. He said they did their due diligence and there was no loop main in that design and now they want that added.

Mr. Candeias stated that they are currently in pre-submittal and will not move forward until all applications are filed accordingly.

Mr. Elkhassi stated his recommendation was to follow the rules of the water department and then appeal to the housing authority if need be.

Mr. Ecobacci says he sees both sides of the argument. He said he thinks it's important to continue and have them resolve it within the next two weeks.

Mr. Lawson said he agrees with Mr. Ecobacci and feels they should come back, but he's not going against the Onset Water Department.

Mr. Semple said "it is what it is" and he won't go against the Onset Water Department.

Ms. DeBonise asked if we have any authority to issue the permit or the authority to waive the fees. Mr. Elkhassi said they do not have the authority to issue the permits, but they could waive the fees under the 40B; however, it sounds like the board members do not want to do that.

Ms. Eckstrom asked if the Onset Water Department said they were never notified of what would then happen. If there was any recourse.

Mr. Elkhassi stated the abutters were notified.

Mr. Ecobacci made a motion to continue to January 26, 2022, and was second by Mr. Lawson. The motion passed unanimously.

Ms. Eckstrom advised that Superior Court took up a lawsuit regarding a Solar company and Waltham. She said the Superior Court took it out of the Zoning Boards and ask for local ZBA's, Selectboard, and other committees to express their opinion. Ms. Eckstrom asked if she could get a drafted letter to the Board and asked them to support it if they can.

Ms. DeBonise made a motion to adjourn and was seconded by Mr. Semple. The motion passed unanimously.

Respectively,

Patricia A. Pacella
Recording Secretary

Date signed: 7-13-2022

Attest: James D. Ecobacci
James Ecobacci, Clerk
WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: _____

WAREHAM TOWN CLERK
2022 JUL 14 PM1:11