

Wareham Zoning Board of Appeals
Wednesday, April 26, 2023 – 6:30 p.m.

WAREHAM TOWN CLERK
2023 MAY 22 PM5:01

 Draft Minutes

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

I. CALL MEETING TO ORDER

Mr. Elkallassi called the meeting to order at 6:34p.m.

II. ROLL CALL

Present: Nazih Elkallassi, Jim Eacobacci, Richard Semple, Veronica DeBonise and Troy Larson

Absent: Mr. Morrison

Assistant Town Planner, Jonathan Dickinson was also present.

III. PRELIMINARY BUSINESS

1. Approval of Meeting Minutes: 3/22/23 & 4/12/23

Mr. Eacobacci made a motion to approve the minutes for March 22, 2023, and April 12, 2023, and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

2. Robert L. Perry, JD and JC Engineering – Informal Conference for 3090 Cranberry Hwy

Present before the Board: Attorney Perry and Brad Bertolo, JC Engineering

Attorney Perry asked for guidance on this project located at 3090 Cranberry Highway.

Mr. Elkallassi said this was a triangular shape lot and should be made clearer with lot lines.

Mr. Bertoldo said that all the lots there are owned by one person; he said the lot is a non-conforming lot that is connected to a conforming lot.

Mr. Eacobacci said that he thought the parcel that the client will lease will occupy all of one lot and some of a second. He thought if they redrew the lot lines, they would have two remaining conforming lots. He said the leased lot would be a conforming lot. Mr. Eacobacci said he spoke to the applicant directly and stated what they were looking for.

Attorney Perry said they would have to go to the Planning Board for Form A.

Mr. Eacobacci said it would be for more than nine cars and they would need to return for a Special Permit and site plan review.

Board members agreed that they should go through a site plan review.

3. 30-22 Family Pantry – Damien’s Place Corp – Discussion and Possible Vote – Minor Modification to Approved Site Plan Review – 242 Marion Road – Map 56, Lot 1000B

Present before the Board: Bill Madden, from GAF Engineering

Mr. Madden stated this was approved back in November 2022. He stated condition #7 was to come back if there was a change modification. He said there are some changes that are relatively insignificant. Mr. Madden stated that above the loading dock there were overhead doors that existed. He said they had to raise the building a couple of feet and in doing so, the gradings were elevated, but no more than two feet. He explained the other change was the insulation of perimeter lighting. He said there are 7-pole lights to the plan around the perimeter. He showed the conduit on the plans. He said on the key sheet there are detailed infiltration will be constructed. He said they had to change the elevation of the basins for the infiltration.

Board members agreed with the changes presented.

Motion to approve as insignificant change: Mr. Eacobacci made a motion to accept the changes as insignificant which was seconded by Mr. Larson. The motion passed unanimously. (5-0-0)

Motion to approve: Mr. Eacobacci made a motion to grant the changes as discussed and was seconded by Mr. Semple. The motion passed with Mr. Elkallassi abstaining. (4-0-1)

4. 64-21 Scott Green c/o Jillian Morton, Esq – Request for Determination of a Minor or Major Modification to Approved Variance – 17 Murphy St., Map 50B, Lot 1-41

Present before the Board: Attorney Jillian Morton for the Applicant.

Attorney Morton explained the modifications for 17 Murphy Street. She explained the lot has an old foundation near the water. The ZBA had issued a variance. Ms. Morton said they had to go through Conservation for a few meetings and then it was approved on March 23, 2023, with special conditions. Ms. Morton said the change is that the building shifted toward the pathway near the beach, which doesn’t meet the setback. She said they have a right of way and the exact same footprint as it was just moved a bit toward the gravel road. The variance was previously granted for lot size.

Mr. Elkallassi said they would need another variance.

The Board discussed that the setback is 7.1, within a 20’ setback requirement.

Mr. Larson had no questions. Ms. DeBonise said she thinks it’s a major modification as it requires a variance. Mr. Eacobacci said because Conservation requested the move over he does believe they will need a variance.

Building Commissioner, Paul Turner was present. Mr. Turner said he would like them to apply for the variance.

Mr. Elkallassi asked for public comment, there was none, but as he stated this wasn't advertised as a public hearing.

Mr. Eacobacci made a motion that this was a major modification for the lot setback and to direct the applicant to come back for a variance. Mr. Larson seconded the motion and it passed unanimously. (5-0-0).

IV. CONTINUED PUBLIC HEARINGS:

1. 42-22 Francis Ellis, Jr. – 7 Mattos Avenue – Map 110, Lot 9B

Present before the Board: Attorney Jillian Morton & Brad Bertolo

Ms. Morton stated they were before the ZBA previously for this project. Originally it was denied, however, they got information to reconsider. She said the septic already exists and the client would like to build a single-family dwelling.

Mr. Elkallassi said it was from a continued public hearing because the board rescinded their vote to hear it again.

Mr. Semple stated he heard that the abutters would like to see a house at the property.

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

Motion to grant: Mr. Eacobacci made a motion to grant relief for a single-family dwelling at the property at 7 Mattos Avenue, 42-22 Francis Ellis Jr. and was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0)

2. 4-23 True Storage LLC – Site Plan Review – 2400-2402 Cranberry Highway, Map 108 Lot 1002B1, 1002B2, 1002D

Present before the Board: Attorney Dennis Conroy, on behalf of True Storage. Engineer, Sean McDonnell.

Attorney Conroy stated this is continued since March 22, 2023. He said they reviewed the plans and the board had questions and the engineer was busy making significant changes in the site plan.

Sean McDonnell was present to review the redesign plans, lighting, and landscaping plan.

Mr. Elkallassi explained that the buffer was not needed as the zoning had changed in that area.

Town Engineer Phil Cordeiro was present. Mr. Cordeiro said they reviewed the revised plans and found them satisfactory.

Mr. McDonnell stated he gave a revised plan. He presented the board with a letter from the Fire Chief that things were completed to their satisfaction.

Mr. Cordeiro said the lighting plan was sufficient on the sight, as well as the landscaping plan.

Mr. Elkallassi spoke about parking, and he said they will not have any retail or truck rental at the location.

The applicant stated they do sell tape and boxes. Mr. Elkallassi said he would be fine with that. Mr. Semple said he was good with the changes. Board members agreed.

Mr. Elkallassi asked for public comment, to which there was none.

Mr. Elkallassi stated no variance was needed as they were in the commercial zone not industrial and didn't need the buffer, which was the space between the road and the unit.

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

Motion to Grant: Mr. Eacobacci made a motion to grant as presented the project for 4-23 True Storage, LLC and was seconded by Mr. Semple. The motion passed unanimously via roll call vote. (5-0-0).

3. 5-23 6 Chapel Lane, LLC – Comprehensive Permit/40B – 6 Chapel Lane – Map 43, Lot 1036, 1037A, 1039, 1040A & 1041A

Present before the Board: Brian Grady, GAF Engineer, Stephen Beauchemin

Mr. Grady stated that they would probably need to continue as Ms. Sweet couldn't make it but would be present at the next meeting.

Mr. Grady stated that the Fire Department was fine with it. The DPW said he was fine with a stop sign but not 'no parking' signs.

Mr. Cordeiro said they received plans from GAF Engineering this morning. He said they did make the changes as requested and have satisfied the engineering.

There was no comment from the board members.

Abutter, Mr. Smith from Chapel Lane discussed his concerns about parking on the street. He said he doesn't want a stop sign at the end of Chapel Lane.

Mr. Grady said they gave two parking areas per unit and there are a few adjacent lot areas for parking. He said there was plenty of parking.

Mr. Smith said it's a rarity that people park on the street, they use a neighbor's property.

Mr. Semple said if the DPW didn't want the parking signs then so be it.

Mr. Smith said that he believes a trash dumpster needs to be on the property. Mr. Smith wanted to share his concerns that grinder pumps should be in all buildings.

Tony Gomes, 243 Sandwich Road was present and stated he has lived in the area for sixty years. Mr. Gomes said he has seen a lot of negative changes on Depot Street. He said the buildings in the area will be good for the area.

Mr. Cordeiro said that an updated list of waivers needs to be sent by the applicant and the ZBA needs to review it, he suggested leaving the public portion open.

Motion to continue: Mr. Eacobacci made a motion to continue application 5-23, 6 Chapel Lane to May 10, 2023, and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0).

V. PUBLIC HEARINGS

1. 12-23 Onset Bay, LLC (F/K/A BODM, Inc) – Special Permit – 18 Green St – Map 3, Lot 1014

Mr. Eacobacci read the advertisement for the record.

Attorney Steve Guard; Greg Glavin and Tom Z (Merrill Engineers)

Attorney Guard explained the project was a pre-existing nonconforming rack in existence for 40 years and has met the end of its life. The rack location is within the residential district to the South (Maple Ave). He explained they wanted to raze and reconstruct; moving it about 10' away, to be less non-conforming, and also do other site improvements.

Mr. Tom Z. reviewed the other improvements that will be made in the area.

Mr. Larson said he had no issue with the project other than the email from a neighbor.

Attorney Guard said these racks will be tighter and boats won't sway. He said there is 35' high and stacked on top.

Mr. Z said there won't be boats on top of each other. He said they will be going up to 45' high.

Mr. Elkallassi said the rear setback would require a variance with the extension of the height. Ms. DeBonise said they would be extending the non-conformity.

Attorney Guard said he disagreed with their assessment. He said the non-conforming is the setback. He said the height is at a conforming height and the new extension will be to the conforming height.

Mr. Elkallassi explained that in the by-law they can extend the non-conformity of a structure; however, Sec. 1350, if the board feels it is detrimental, they can act as if it is a variance.

Mr. Eacobacci said the argument is not the height; however, anything from the existing height to the new height is an extension of the non-conformity on the setback of the sideline.

Mr. Elkallassi stated the South side doesn't need a variance because they have the 40'.

Mr. Semple said it sounds like they're cleaning up and going in a good direction. He said the non-conformity seems to be the issue.

Mr. Elkallassi asked for public comment.

Timothy, 25 Prospect Street said these people are wonderful to work with and he saw the top boat fly off and had some issues with the height of the racks.

Tom Z. said these new racks have more capabilities to tie the boats down and are much more stout than what is there presently.

Frank Petrolli, 1 Maple Avenue. He said he had not been notified for this project as an abutter and believed he was within the 300' to be notified.

Discussion ensued on the Assessor's office sending out the abutter notification per the property address.

Assistant Town Planner, Jonathan Dickinson, stated that the address listed is the 300' radius, not where the racks are located. He said the assessor was correct in where they sent the abutter notices.

Mr. Petrolli said some of his neighbors were notified but not all the neighbors.

Mr. Dickinson confirmed the address given was 18 Green Street, not where the racks were located (as it is a different address).

Mr. Petrolli asked that a continuance so that all abutters can be notified of the project of the racks.

Mr. Larson said he feels that everyone should be notified correctly; and board members agreed. Mr. Eacobacci said that the mailings should be redone.

Mr. Elkallassi said that abutters need to be notified. Ms. DeBonise requested that they table the discussion until all abutters are notified from the rack address.

Attorney Guard said they would like to continue and allow the notification of all abutters from where the racks are.

Mr. Tom Z said the list is correct as he is looking at GIS. He said they went through the same thing with Conservation, and they gave the correct address. He said he believes this is a continuance to confirm they gave the correct address for the abutter list.

Mr. Eacobacci stated it is not the applicant's error.

Ms. DeBonise said she would like to hear from the Building Commissioner about the non-conformity on the height.

Mr. Turner said the board is correct, per Section 1352, number 1.

Attorney Guard stated they would present a resolution.

Ms. DeBonise asked for pictures of the rack system if they were able to.

Mr. Eacobacci made a motion to continue to application 12-23, Onset Bay LLC to May 24, 2023 and was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0)

2. 13-23 Michael Cloutier c/o Timothy Sicard – Variance – 241 Blackmore Pond Rd, Map 68, Lot 1009-A

Mr. Eacobacci read the advertisement for the record.

Present before the Board: Mr. Cloutier was present. The contractor, Tim Sicard was present.

Mr. Sicard described the project as a 24x30' free-standing building.

Mr. Cloutier said the difference is 7' in height.

Mr. Sicard said they want to build a wood hobby building with a second floor. He said they are asking for a variance for the second-floor height.

The board had no questions. Mr. Cloutier said the roof height of the home is 30'.

There will be no plumbing in the accessory structure, just electrical.

Mary Cloutier stated she was in favor.

Motion to close: Mr. Eacobacci made a motion to close the public hearing and was seconded by Mr. Larson. The motion passed unanimously. (5-0-0).

Motion to approve: Mr. Eacobacci made a motion to grant relief for the 3' in height for 13-23, 241 Blackmore Pond Road. Mr. Elkallassi said he would add a special condition that there be no plumbing added to this building and there be no living space above and/or in the garage. Mr. Semple seconded the motion and it passed unanimously. (5-0-0).

3. 14-23 Andrew Topoulos – Variance – 12 Highland Rd – Map 61, Lot 1133

Mr. Eacobacci read the advertisement in for the record.

Present before the Board: Attorney Jillian Morton was present for the applicant.

Attorney Morton explained the project, which has been owned for a number of years. She said they have a one-car garage and found out that it has been encroaching 18" on the neighbor's property. She said they are looking to raze the structure, put it back on their property line and are requesting a setback variance. She said they have abutters' letters in favor of the variance.

There were no questions from the Board. Mr. Elkallassi asked for any public comment, there was none.

Mr. Elkallassi asked Building Commissioner, Mr. Turner what section he was referring to when he requested the variance.

Mr. Turner explained that the previous Building Commissioner put it through as a variance because they were going to increase the foot by two feet. He said they could agree to a Special Permit.

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

Motion to the findings: Mr. Eacobacci made a motion that this was not detrimental to the neighborhood and will act on it as a Special Permit. The motion was seconded by Mr. Larson. The motion passed unanimously. (5-0-0).

Motion to approve: Mr. Eacobacci made a motion to grant 13-23 Michael Cloutier, 241 Blackmore Pond Road as presented as a Special Permit, with the findings that it is not detrimental to the neighborhood and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0).

4. 15-23 Lynelle Butterfield – Appeal – 12 Great Neck Rd, Map 17- Lot 1008

Mr. Eacobacci read the advertisement for the record.

Attorney Greg Hartwell was present for the applicant, Ms. Butterfield. Mr. Hartwell stated he felt this was covered under the Dover Amendment and explained the agricultural use for the size of the lot.

Mr. Hartwell handed out a letter from the State addressed to Peace for Ponies to be licensed. He read the letter in for the record. He said there are five structures on the property at this time and were not permitted prior.

Mr. Elkallassi asked how the state can issue a license when the Town wouldn't allow a permit for more than three dogs. Mr. Hartwell said they do not need a permit under Section 40a; as they fall under the Dover Amendment.

Mr. Elkallassi read the Town's by-laws in regard to this use.

Mr. Turner explained the violation of this property

Mr. Eacobacci stated the response regarding the violation was rescinded by the Commissioner and then pointed out that there are seven buildings on the property that were not remedied. He read that the animals should've been removed from a February 23rd letter and an application be submitted for the seven buildings.

Mr. Turner said there was an application submitted on March 14, 2023, and the seven buildings were not located on the plot plan or identified. He said he responded to them on March 15th with instructions to move forward with the corrected plans.

Mr. Hartwell said he had called Mr. Turner on several occasions to meet and has been told he wasn't going to meet with him. He said that he would like to ask for a continuance and ask the Board to reach out to their counsel for their opinion. He asked for a sixty-day continuance.

Mr. Elkallassi asked in the MR30, how many animals can be located in that area for 5 or less acreage. Mr. Elkallassi asked about the pig on the property.

Mr. Hartwell said the pigs are under the purview of the Board of Health.

Ms. DeBonise read the Dover Amendment to state that there must be an educational use applied to be considered under that amendment.

Mr. Hartwell again asked the board to reach out to their Town Counsel as there are a few different uses under the Dover Amendment. He asked for a continuance.

Mr. Elkallassi read from the Town bylaws regarding agricultural use.

Mr. Semple stated that the applicant hasn't cooperated at all and now they are asking for a continuance. He said it is very 'unneighborly' to continue what they are doing. He said they are not abiding by the rules of the Town of Wareham.

Mr. Eacobacci suggested they uphold the Building Commissioner's violation decision and deny the request for a continuance and if be it, the applicant can go to Superior Court or they can comply with the Building Commissioner's request. Mr. Eacobacci stated that this violation exists and that a fine can be given on a daily basis as long as there is a violation that continues to exist at \$300/day. Mr. Semple seconded the opinion.

Mr. Hartwell asked why they should all take on the additional expenses when they could just talk to the Town's attorney.

Mr. Eacobacci said the matter has been before them enough times and it further is an inconvenience whereas the applicant doesn't want to address the violations.

Mr. Hartwell referred to Mr. Semple's complaint about the smell, stating that the Board of Health had been out there two weeks before and said there was no founding of such smell.

Mr. Semple stated that was the first thing that came before the Town from the neighbors.

Mr. Hartwell is asking for the Board to have their Town Counsel review the application.

Joanne Cooney, abutter asked why the pig is still on the property; explained the animals that are currently at the address, and asked why she is not complying with the pets and rescues of the animals.

Mr. Semple asked whether it was Peace for Ponies

Mr. Hartwell stated it is currently Peace for Ponies, but the property in the back is Peace for All Animals and has land that is allowed by right. He said they are trying to get all the animals to the back of that property.

Ms. Theresa A., stated there was a letter from the state that Peace for All Animals is not included in the rescue of the animals. She said she thought it was unfair to the neighbors to have more than four times what a permit allows.

Mr. Hartwell objected to Ms. Theresa's testimony.

Ms. DeBonise said she thought the applicant put themselves in this position for a higher judgment as they have failed to act.

Mr. Hartwell asked for an extension and asked that they be able to speak to Town Counsel.

Motion to close: Mr. Jim Eacobacci made a motion to close the public hearing for 15-23 Lynelle Butterfield – Appeal – 12 Great Neck Rd, Map 17- Lot 1008 and it was seconded by Mr. Richard Semple. Chairperson, Nazih Elkallassi called for a roll call vote, and it was passed unanimously. (5-0-0)

Motion to Deny: Mr. Jim Eacobacci made a motion to deny the request to overturn the appeal and to uphold the Building Commissioner's decision. The motion was seconded by Mr. Richard Semple. Per roll call vote: Troy Larson, Yes; Veronica Debonise, Yes; Jim Eacobacci, Yes; Richard Semple, Yes and Chair, Nazih Elkallassi, Yes. The motion passed unanimously. (5-0-0).

In other business, Mr. Elkallassi and Mr. Eacobacci were served for 0 Squirrel Island Road, through Attorney Robert Perry for an upcoming court case on May 1, 2023. Mr. Elkallassi asked Mr. Dickinson to refer it to Town Counsel.

Mr. Eacobacci made a motion to adjourn and was seconded by Mr. Semple. The Motion passed unanimously. (5-0-0).

Date signed: 5-10-2023

Attest: James Eacobacci

James Eacobacci, Clerk

WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: _____

WAREHAM TOWN CLERK
2023 MAY 22 PM5:00