

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: July 11, 2018

I. CALL MEETING TO ORDER

The meeting was called to order at 6:30 P.M.

II. ROLL CALL

Members Present: Nazih Elkallassi, Chairman
Jim Eacobacci, Clerk
Karl Baptiste
Jan Kendrick
Wilma Engerman
Jacob Morrison, Associate Member

Also present: Ken Buckland, Town Planner
Charles Rowley, Town Review Engineer
David Riquinha, Building Commissioner
Paul Haverty, Attorney

I. PRELIMINARY BUSINESS

A. Approve meeting minutes: June 13, 2018

There are no minutes to review at this time.

B. #19-16 -- Walmart -- 2919 & 2427 Cranberry Highway -- Storage Containers

Walmart has requested to return before the Board and is seeking a date.

MOTION: Mr. Eacobacci moves to hear Walmart on August 8, 2018. Ms. Kendrick seconds.

VOTE: (5-0-0)

C. #20-16 -- Keith Amado -- 312 Onset Avenue -- Request for Extension

The applicant is requesting an extension due to pre-construction matters. The applicant has asked to come before the Board to discuss their extension.

MOTION: Mr. Eacobacci moves to continue this until July 25, 2018. Ms. Kendrick seconds.

VOTE: (5-0-0)

II. PUBLIC HEARINGS

A. #23-18 -- Anthony Grosso -- 1 Rae Avenue -- Special Permit/Site Plan Review

Present before the Board: Jeff Unquis, Outback Engineering

The applicant is requesting to create a new auto sales establishment at 1 Rae Avenue. Mr. Eacobacci must recuse himself from this hearing and Mr. Morrison will vote for him.

Mr. Unquis states that this site has 38,066 s.f. with a single-family home on site. They are requesting a Special Permit for multiple uses. There will be 28 parking spaces. There is an existing carport that will be turned into a showroom and the breezeway will be turned into an office. The applicant is requesting a Variance to the road width requirements.

Mr. Elkallassi states that they will require a Site Plan and will require floor drains in the garage as well. Mr. Elkallassi asks if they can return with a Site Plan. Mr. Unquis states they can return with a Site Plan.

Present before the Board: Deb Budrow

Ms. Budrow wonders where the cars on the lot will be placed. Mr. Unquis states the cars will be in the front of the lot. Ms. Budrow states she heard there was a septic system on the site and was wondering if it were safe to have that number of cars over the septic. Mr. Unquis states that the septic is on the other side of the site. Mr. Elkallassi states these questions will be answered with the Site Plan.

Present before the Board: Ken Healey

Mr. Healey states that 9 years ago he was before the Board requesting his used car permit. Mr. Healey states he is not in favor or against the project and has a few questions. Mr. Healey states he had a lot of questions regarding parking, parking for employees and parking for customers. Mr. Elkallassi states these questions will also be answered by the Site Plan. Mr. Healey states he was also not notified of the hearing. Mr. Elkallassi states he was further than abutter to abutter within the 300'.

MOTION: Mr. Baptiste moves to continue the public hearing until August 8, 2018. Ms. Kendrick seconds.

VOTE: (5-0-0)

B. #24-18 – Charles & Cynthia Allen – 205 Lake Avenue – Variance/Special Permit

Present before the Board: Frank Westgate, surveyor

The applicant is requesting to construct a 19'x17' rear addition to an existing dwelling. Mr. Westgate states they do not meet the 25' side setback, with the addition and the bulkhead it would be 15' from the side lot line. The applicant is requesting the addition for additional storage in the house. Mr. Westgate states that the zoning has changed since the house was originally constructed. Ms. Engerman states there is a well in the rear of the property. Mr. Westgate states the well has been abandoned, the house is on Town water.

MOTION: Mr. Eacobacci moves to close the public hearing. Ms. Kendrick seconds.

VOTE: (5-0-0)

MOTION: Mr. Eacobacci moves that this project is a Special Permit because he does not feel that the non-conformity is substantial to the neighborhood.

Ms. Kendrick states she feels that this is a Variance because she feels a 19 foot increase in the non-conformity is a substantial increase. Mr. Elkallassi states that he feels the change of zoning created

difficulties with lots that were pre-existing and that if this were based on pre-existing zoning this would not be a substantial increase.

Mr. Elkallassi states Mr. Eacobacci moved to view this as a Special Permit and asks if there is a second.

Mr. Baptistes seconds Mr. Eacobacci's motion.

VOTE: (4-1-0) Ms. Engerman votes against

MOTION: Mr. Eacobacci moves to grant the Special Permit. Mr. Baptiste seconds. Ms. Engerman moves to condition the Special Permit to be used solely as storage as the applicant stated and not as living space.

VOTE: (5-0-0)

C. #26-18 – 18 Burgess Point Road Realty Trust & John Decas – 18 Winship Avenue - Appeal

Present before the Board: Peter Balzarini

The applicant is appealing the Building Commissioners Denial to take enforcement action on property located at 18 Winship Avenue. The public hearing notice was advertised as CS when it is R-60 zone. Mr. Elkallassi states the intent of the letter is an appeal and does not believe the zoning matters. Mr. Riquinha agrees, the map and parcel are accurate on the public hearing advertisement.

Mr. Balzarini states that he represents 18 Burgess Point Road Realty Trust as well as John Decas. Mr. Balzarini states that they have filed a complaint with the Building Commissioner that from 2011 and on Winship, LLC has converted what was listed on the Assessors Database as a boat shed into a livable dwelling. Mr. Balzarini states that no permit for any construction was ever pulled to perform this conversion. Mr. Balzarini states they felt this matter should have gone before the Conservation Commission as well as the Zoning Board of Appeals to establish a plot plan or layout for the new dwelling. No building, wiring, or plumbing permits were issued. Mr. Balzarini states some after-the-fact permits were pulled for plumbing and electrical permits. There was no Title V compliance record received for this conversion as well. Mr. Balzarini states that a Title V inspection is required at any time after the transfer of the property. Mr. Balzarini states that the property was once a shed assessed at \$2,300.00 and as a fully functioning guest house is still assessed at \$2,300.00 and are shirking their tax responsibilities. Mr. Balzarini states he believes Winship, LLC will claim that this boat house was always a guest house, and regardless, a Title V inspection has never been completed for this dwelling. Mr. Balzarini states there was a bee-hive type structure installed on the site that they assume is for the septic. Mr. Balzarini states they feel there should be a cease and desist issued on the property as any livable use and all permits and procedure for the conversion of this house should be applied for as if it were not in existence. Mr. Balzarini also states that any claims that this boat house has always been a guest house he states its listing as a shed on the Assessors Database proves otherwise. Mr. Balzarini states there is a deck attached to the unit, and the main concern is the installed septic system that is leaking nitrogen into the bay where people swim and shellfish is their main concern, because they cannot fathom where else the nitrogen is being leached to.

Mr. Elkallassi states that the matter of the septic system and leaching field must go before the Board of Health and Conservation as it is out of the Boards jurisdiction. Mr. Elkallassi states they will discuss this from a zoning standpoint.

Present before the Board: Ron Enos, 18 Burgess Point Road Realty Trust

Mr. Enos re-iterates the claims made by Mr. Balzarini.

Mr. Elkallassi asks if the concern is the use of the building or that they feel it was achieved without permits.

Mr. Enos states he is concerned with both.

Present before the Board: David Riquinha, Building Commissioner

Mr. Riquinha states this complaint had come in a long while ago and has viewed this extensively. Mr. Riquinha states he feels the only item the Board can comment on is if the use of the structure is allowed. Mr. Riquinha states it meets rear and side setbacks. The use is what Mr. Riquinha feels is in question. Mr. Riquinha states there have been no permits for this conversion. Mr. Elkallassi asks if the owners are using this as a guest house or a rental. Mr. Riquinha states this is being used as an accessory dwelling unit. Mr. Riquinha states that the deck has been on this property over ten years, which makes this unenforceable under MGL even though permits on the property were never pulled. Mr. Riquinha states he does not have enough definitive evidence to prove that this unit was not a dwelling unit prior to ten years ago or not. Mr. Riquinha states that he did ask the owner to come in and pull electrical and plumbing permits because building code is not treated the same and is not unenforceable after 10 years. There is no grandfathering for unpermitted construction. Mr. Riquinha states he has no proof that this building was not used as a guest house 10 years ago. Mr. Riquinha states that based on google earth photographs it does appear that the deck has been enlarged, but was previously in existence. The burden of proof is on the appellant.

Present before the Board: Jeffrey Angley, Attorney

Mr. Angley states he represents 18 Winship, LLC which is the owner of the property. Mr. Angley states the appellants are misinformed about the property. Mr. Angley present to the Board an affidavit by Mr. Clemey and a memorandum going through the lawful use of this beach house. Mr. Angley states that Mr. Clemey purchased the property in 2004. At the time of purchase of the property the property included a beach house, not a shed. The beach house included a living room, a kitchenette, a wrap-around deck and an outdoor shower. Mr. Angley states google earth photographs show the deck as far back as 2001. Mr. Angley states the beach house is not currently being used as a dwelling. It is being used by the owners occasionally as part of the recreational activity at the waterfront. There are no bedrooms in this structure and no one has lived in this structure since 2004. This structure is in lawful existence as a residential structure, as an allowed use. There is a stamped plan by Carlton Garby from 1980 shows what is labeled by the surveyor as a beach house near the water's edge which is the structure in question. The deck has never been expanded, but has been replaced. There is anecdotal evidence from Mr. Clemey stating this had been used as a fishing shack. In 2005-2007 the Clemey's permitted a large dock into Onset Bay. In 2007 renovations were done on the beach house in anticipation of the proposed dock. The renovations included flooring, siding, roof, doors, windows, and the bathroom plumbing. At the time of the purchase of the property this building was serviced by an underground water and power line extended from the main house. All work done on the beach house occurred in 2007. There was no work done past this year. The applicant has provided exhibits of receipts from contractors that had completed the work in 2007. Mr. Angley states the claim is that the owner had illegally converted this shed into a guest house. Mr. Angley states this building was not a shed and is not currently a dwelling, it was and is a boat house. The allegation that this use has occurred illegally is inaccurate according to Mr. Angley. Mr. Angley addresses the use and structure that are considered pre-existing non-conforming structure if it had been in existence for 10 years or more. Mr. Angley states this structure is a lawful pre-existing non-conforming structure. Mr. Angley states they did apply for Building Permits to ensure they follow Massachusetts Building Code requirements. Mr. Angley re-iterates that Title V inspections, Conservation concerns, Fire Department reviews and Health Inspections are not the purview of this Board.

Present before the Board: William Clemey, Trustee of 18 Winship, LLC

Mr. Clemey states he would like to point out Exhibit 7, which is a picture of the property. In 2007 the Clemey's had sent out a letter to the Conservation Commission and Harbormaster stating that the dock would be constructed. In the image there is no dock in the background, which shows the boat house was in existence before the dock was constructed. Mr. Clemey states in 2008 there was a connection from the dock to the boat house. Mr. Clemey points to exhibit 9 a photograph dated on July 4 where you can see the building with the pipe coming out of it, the building was in existence, the pipe currently existed. Mr. Clemey points out further exhibits which show the building in question showing it as "Cabin 2" on the Assessors Database. In 2004 the Assessors Database shows the building listed as "Cabin 2", not as a shed. Mr. Eacobacci states there are multiple structures on the property and asks how they know the Assessors Card is referring to the beach house and not the guest house. Mr. Anglely states there is a miniature map on the Assessors Card that show which building was in question. Mr. Eacobacci feels there is a field card missing relating to the structures on the property. Mr. Clemey states the Assessors Card in exhibit 2 shows the main house, has the reference for the beach house on the second page. Mr. Clemey states on the description on the Assessors Card states the description of the boat house. Mr. Eacobacci states he recalls the previous owners who lived on the property and does recall a boat house on the property.

Present before the Board: Michelle Fitzgerald

Ms. Fitzgerald states she feels the proof required is the existence of the bathroom on the site. Ms. Fitzgerald states she feels there should be a cease and desist for any use regarding this building. Ms. Fitzgerald states that she believes that they are leaching sewerage less than 100' from Onset Bay. Mr. Eacobacci states that is an issue for the Board of Health. Mr. Eacobacci states he would like to discuss the use of the building. Mr. Elkallassi states that a bathroom could be installed in a shed and if it were a shed people could congregate there, so people are stressed by the use of the building, but even if the building were a shed it could still be used.

Mr. Elkallassi recommends the appellants go to the Board of Health regarding the septic. Mr. Elkallassi states he believes the appellant should also go to the Conservation Commission regarding the deck being too close to the property. Mr. Elkallassi states it is not the purview of the Board to state if he may or may not have a bathroom in this building. If there is a bedroom and this building is being used as a dwelling unit then the Board may handle the issue.

Mr. Baptiste asks if the applicant has the original photograph shown on Exhibit 3. Mr. Clemey states he will provide the original photograph.

Mr. Enos states that there has been a lot of talk about the deck in question on the site. Mr. Enos states that he has maps from DEP showing the deck has been enlarged dramatically. Mr. Elkallassi states that is not a zoning issue and must be taken up with the Conservation Commission. Mr. Enos states that the picture from DEP also shows there is no pipe from the top of the structure.

Mr. Clemey states no bee-hive type structure was ever installed on this property. Mr. Clemey also states that in the 2007 photograph distinctly shows the building in existence before the dock was constructed. Mr. Clemey states the photograph is from Google Earth and the question of the buildings existence should not be a question. Mr. Clemey states that the abutters also cannot see the property from their own lots. Mr. Clemey states the work commenced before the neighbors even owned their abutting lots.

Mr. Elkallassi states again it is the use that matters. Mr. Elkallassi states his concern is if the structure is being used as a dwelling or being rented.

Mr. Angley states that the allegation is an illegal conversion, but all of the proof shows that since 1980 the structure has been used as a beach house.

Mr. Riquinha states an accessory structure is allowed to have a bathroom.

Mr. Balzarini asks if it is allowed to have an accessory structure is allowed to have a bathroom, doesn't the accessory structure have to meet Title V requirements. Mr. Elkallassi states that is an issue for the Board of Health. Mr. Balzarini states as far as the Board is concerned there isn't a lot of proof pertaining to the zoning and use of the building. Mr. Balzarini states his main concern is the septic and the leaching field and is aware he must go before the Board of Health.

Present before the Board: Fred Fuller

Mr. Fuller asks for a copy of the Exhibits and Memorandum presented to the Board. Mr. Fuller is given a copy of the documentation.

Mr. Elkallassi would like Town Counsel to review the documentation presented by Winship LLC as well as Burgess Point Road Realty Trust and David Riquinha's denial letter regarding the zoning and use of the building.

MOTION: Mr. Eacobacci moves to continue the public hearing until August 22, 2018. Mr. Baptiste seconds.

VOTE: (5-0-0)

III. CONTINUED PUBLIC HEARINGS

A. #22- 18 – Enterprise Rent-A-Car – 1 Express Drive – Request for continuance to July 25, 2018

The meeting of July 25, 2018 is over-booked and will be continued until August 8, 2018.

MOTION: Mr. Eacobacci moves to continue the public hearing until August 8, 2018. Motion is seconded.

VOTE: (5-0-0)

IV. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS

A. Correspondence

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

B. Upcoming Hearings:

July 11, 2018	#23-18	Variance/Special Permit	Anthony Grosso	1 Rae Avenue
July 11, 2018	#24-18	Variance/Special Permit	Charles & Cynthia Allen	205 Lake Avenue
July 11, 2018	#26-18	Appeal	18 Burgess Point Road Realty	18 Winship Avenue

			Trust	
July 25, 2018	#22-18		Enterprise Rent-A-Car	1 Express Drive
July 25, 2018	#4-18	Site Plan Review	Giancola Minot Properties	72 Minot Avenue
July 25, 2018	#14-18	Major Modification	Afif El Baba	3070 Cranberry Highway
July 25, 2018	#17-18	Special Permit/Variance	RMRM Realty, LLC	3035 Cranberry Highway
July 25, 2018	#2-18	Comprehensive Permit	Dakota Partners	3102 Cranberry Highway
July 25, 2018	#27-18	Variance/Special Permit	Donald McMullen	16 Wareham Avenue
July 25, 2018	#28-18	Variance/Special Permit	Ramos Realty Trust	300 Glen Charlie Road
August 8, 2018	#13-18		Wareham Family Dental	43 & 45 Sandwich Road

C. Decision Deadlines

Comprehensive Permit – 8/27/18	#2-18	Comprehensive Permit	Dakota Properties	3102 Cranberry Highway
Site Plan Review – 7-24-18	#4-18	Site Plan Review	Giancola Minot Properties	72 Minot Avenue
N/A	#14-18	Major Modification	Afif El Baba	3070 Cranberry Highway
Special Permit – 9/11/18; Variance – 9-21-18	#17-18	Special Permit/Variance	RMRM Realty, LLC	3035 Cranberry Highway

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

VI. ADJOURNMENT

MOTION: Mr. Eacobacci moves to adjourn. Ms. Kendrick seconds.

VOTE: (5-0-0)

Date signed: 8-8-2018

Attest: James Eacobacci
James Eacobacci, Clerk
WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: _____

RECEIVED

AUG 20 2018

TOWN OF WAREHAM
TOWN CLERK