

Town of Wareham  
Zoning Board of Appeals  
Wednesday, July 13, 2022

WAREHAM TOWN CLERK  
2022 JUL 28 PM5:33

- I. **CALL MEETING TO ORDER:** Mr. Elkallassi opened the Zoning Board of Appeals meeting at 6:30 p.m.

II. **ROLL CALL:**

**Present:** Nazhi Elkallassi, Jim Eacobacci, Veronica DeBonise, Troy Larson, and Jacob Morrison

**Absent:**

Town Planner, Ken Buckland was present via zoom.

Assistant Town Planner, Monique Baldwin was also in attendance.

Independent Consultant for the Town, Mr. Charlie Rowley was also in attendance.

III. **PRELIMINARY BUSINESS:**

1. **Approval of Meeting Minutes:** 8/11/21, 8/25/21, 9/8/21, 9/22/21, 10/13/21, 11/10/21, 12/8/21, 1/12/22, 1/26/22, 2/9/22, 2/23/22, 3/9/22, 3/23/22, 4/13/22, 5/11/22, 5/25/22, 6/8/22, 6/22/22 Executive Session & 6/22/22

Mr. Eacobacci made a Motion to approve the minutes as presented and was seconded by Nazhi Elkallassi. The Motion passed unanimously.

2. **Woodland Cove – Review of Compliance with Special Permit (40B) Conditions**

Mr. Elkallassi asked Mr. Rowley if he has been doing inspections on it and he said he has as they have requested them. Mr. Elkallassi stated that he would like to do a site visit.

Mr. Buckland stated there was a question on the Special Permit Conditions.

Mr. Buckland stated there were a few conditions that are not in compliance. He said there are items that they are not in compliance with, and a site visit is necessary.

Ms. DeBonise asked for clarification if they are not in compliance with the paperwork, perhaps they should get into compliance first with that paperwork, and then they should do a site visit.

Mr. Elkallassi agreed.

Ms. Baldwin stated the landscape plan was missing, the mitigation plan, and other things.

Mr. Elkallassi asked for Ms. Baldwin to coordinate a meeting at the site with at least two of the board members.

Mr. Buckland stated there were some decisions that the Board needed to make but they have to wait for the paperwork to be in compliance. (For example the road surety amount).

Peter Freeman attorney for the developer was on via zoom. He said that he doesn't believe there are that many things that are not in compliance. He said he would have a conversation with Mr. Buckland to get that information to get in compliance.

Mr. Eacobacci requested a tentative date for a site visit. The Board members agreed to Tuesday, July 19 at 9:00 a.m. for a site visit.

**3. Appeal of Comprehensive (40B) Permit issued for Settler's Glen, Red Brook Road; MGL 30A Sec 21; 40B – Settlers Glen, Red Brook Rd, Request for Insubstantial Change Regarding Water Utility System**

Michael O'Shaughnessy and Ivan Cole. He said he is here with an order to request that the ZBA have the Onset Water Department approve their plans. He said they are the permitting authority under Chapter 40B.

Mr. Elkallassi stated that they can't order them to provide the water; he said it becomes a civil matter.

Mr. O'Shaughnessy stated he is requesting a written order from the Board.

Mr. Eacobacci asked if this was something that they had approved and now asking for a change.

Mr. Elkallassi stated they approved them to connect to water with the previous fees.

Mr. O'Shaughnessy said they were asking for an order to connect to water as said on the plans. He said there was some discussion that the water department did not see the plans. He said this board extended the water line to the cul-de-sac to the edge of Cranberry Highway, related to the insubstantial change. And at that time they expended the fees. He said they have no approval from the water department and no cooperation from them. He said they started this process in August and the first correspondence from the water department was in October. He said the next time they heard from them was in April with a new set of comments that had more changes. He said they are trying to require them to go from the Cranberry highway edge to the middle of the road, and there are no requirements that state they have to do that. He said they are requiring a loop system.

Mr. Elkallassi said that the board made a determination to allow the water hook up at the rates as stated. He said if anything else has to be determined about the technicality of the water system that becomes a civil matter because the board members are not water technicians and can not make that determination.

Mr. O'Shaughnessy said again they are asking for a letter was written order from this board to approve the May 12, 2022 set of plans with all the changes they have incorporated as the Onset Water Department engineer had asked for. He said this is the insubstantial change that the board approved at the last hearing.



Mr. Elkallassi said he doesn't think they can do that because they are no water technicians. He said they are not an executive board.

Mr. Eacobacci asked where the plans are at this time. Mr. O'Shaungessy stated it's on file with the board of appeals.

Mr. Buckland said that what it comes down to is that Settle's Glen does not want to make the loop waterline and the Onset Water Department wants them to make the loop waterline. He said the Onset Water Department also wants the higher water fees and Settle's Glen doesn't want to pay those high fees. He said he's talking about the water connection at Red Brook Road, not the roof waterline as that is the sticking point.

In reviewing the conditions, Mr. Elkallassi read condition #8 that the ZBA approved. He said if they are going to make you loop the water connector, you have to do the work.

Mr. O'Shaungessy said they are not trying to do the work. He said he asked the Zoning Board to issue a written order to the Onset Water Department to have them issue the permit per the plans that were approved by this board.

Mr. O'Shaungessy asked then that the board deny his request to issue a written order to the Onset Water Department to have them issue the water permit per the plans dated May 12, 2022, with all insubstantial changes.

Mr. Eacobacci stated he would not vote on anything without having the plans in front of him.

Mr. Ian Cole stated they have spoken to Town Counsel Bowen, who agreed that this board has the authority to the order they are requesting.

Mr. Elkallassi said they did issue their permit and they are not going to deviate from it without a major public hearing.

Mr. Cole said that the plan that were agreed to with this board were to have the water line to the edge of Cranberry Highway. He said he believes they have bent more than enough. And what should be ordered is what the board decided on.

The water superintendent was present and answered a few questions per Mr. Elkallassi about the trailer park behind this development and to what size water lines were present. Mr. ... stated that he believes the confusion is that the applicant's last set of plans that were just sent to him digitally shows the main line connectay to Cranberry Highway. He said they only required them to show the loop main on the set of plans and the cost associated with them. He said they are in a pre-submittal plan phase. He said comment number eleven needs to be changed.

Mr. Elkallassi said that the Onset Water Department needs to follow the fees associated with the ZBA's approval. The water superintendent said that their Attorney Gay stated they can regulate the fees. Mr. Elkallassi warned them they would most likely be in HUD (Housing Urban Development) court and that's between them and the applicant.

Mr. Cole said to go to housing court they need to get that denial from this board of the order.

Mr. Elkallassi stated that he would not be voting and that they can surely ask for a vote tonight.

Mr. O'Shaugnessy said at one point they offered that the Town's consultant, Mr. Rowley look at the plans independently.

Mr. Elkallassi said if the water department is requiring it to be looped then they have to loop it. Mr. O'Shaugnessy said that if the board wants to change its mind that's fine.

Mr. Elkallassi stated they are not changing their mind. He said they can only approve what they can approve and that's already been done. He stated if the applicant doesn't want to move forward on the requirements of the Onset Water Department then he believes that becomes a civil matter.

Mr. O'Shaugnessy said that he is asking the board to order the water department to review the plans. He said that the loop regulation does not exist in writing and is trying to be set on this project and he has a hard time with that.

Mr. Eacobacci asked what the advantage was of having them order to approve something. He said he can vote to order them to review the plans, but to approve something under their prevue is up to them.

Mr. Cole said they are asking this board to order the water department to issue the water permit and approve the plans.

Mr. Elkallassi said they will issue the permit if they comply, and they have to comply with the loop if that is what the water department is saying.

Mr. Eacobacci said he cannot vote in the affirmative if the plan is not before them.

Many of the members were talking over each other and couldn't be heard.

Mr. Elkallassi and Mr. O'Shaugnessy continued with their opinions.

Mr. Eacobacci asked for the applicant to advise him of the dollar amount they are arguing over. He said he doesn't understand why they are arguing.

Mr. O'Shaugnessy said they haven't estimated what it would cost but they're figuring around one hundred thousand.

Mr. Elkallassi said he would not be giving the order.

Mr. O'Shaugnessy said that was fine and requested that a denial vote be issued then. Mr. Elkallassi stated that he was not going to make any votes until the Town Attorney was present.

Mr. O'Shaugnessy said they have spoken to Town Attorney Bowen and to move forward they need an appealed decision.

Mr. Elkallassi stated he would request them to move to July 27, 2022, the next meeting and so that they can speak to the Town Attorney.



Mr. Eacobacci made a Motion to continue Settler's Glen to July 27, 2022, to speak to Town Counsel and was seconded by Mr. Larson. The Motion passed unanimously.

#### **IV. CONTINUED PUBLIC HEARINGS**

1. 16-22 2180 Boston Providence Tpke Associates – Site Plan Review/Variance – 4 Tow Road – Assessors Map 108, Lot 3A

Attorney Robert Perry was present for the applicant. John Shelby and Lucas DiStefano, the engineer from Bohler Engineering. Mr. Perry stated that he believes the Fire Department is satisfied along with Mr. Rowley.

Mr. Elkallassi stated they need to talk to the sewer department.

Mr. Rowley stated his comments go back to June 16, 2022. He also had two conversations with Mr. DiStefano. He had concerns with the suspension of the stormwater. He reviewed the plans and requested the stormwater calculations. He said the sub-service system he is willing to accept reluctantly. He said it is an "out of sight, out of mind" system. He said they submitted a maintenance plan, and it was very detailed. He said one of the recommendations to the board was to special condition the maintenance plan for approval. He is speaking of the outside drainage.

Mr. DiStefano explained the system being used for stormwater management.

Mr. Elkallassi opened it up to the board there were no comments.

Mr. Elkallassi opened it up to the public for comment, there were none.

Mr. Eacobacci made a Motion to continue to July 27, 2022. However, two of the three persons for the applicant could not attend that date. The applicant said he could attend solely, so they agreed to the date. Mr. Morrison seconded the motion and it was approved unanimously. (5-0-0)

2. 18-22 Tyrone & Jenna Cardoza – Variance – 140 Minot Avenue - Assessors Map 43, Lot 106

Mr. Bertolo was present as the engineer for the applicant along with Ms. Cardoza.

Ms. Cardoza said she went back to the Building Commissioner. She said she received an updated denial letter on June 28, 2022. She said she spoke to the Planning Board, and they said to be here at the meeting. She said on July 7, 2022, an updated denial letter was written by the Building Commissioner to update the case to a variance, not a Special Permit.

Ms. Cardoza said the existing basement floor would be two, one-bedroom; the second floor would remain the same at two bedrooms and they were going to ask for the third floor to be two, one-bedrooms.

Ms. Cardoza stated that they would require ten parking spaces and received a Special Permit back in 2006 which they had the ten parking spaces.

Mr. Elkallassi stated he would be okay with granting the Special Permit for changing the use on the first floor from commercial units to two-one-bedroom units; however, he would not be in favor of granting either a variance or Special Permit for the third floor.

Mr. Elkallassi opened it up for the board for comment. He said that if they want the ten spaces, they would require a site plan.

Ms. Cardoza stated that they had to have ten spaces to build the home there. Mr. Elkallassi stated that it was so much about the parking as it was more units on the third floor on a small lot.

Ms. DeBonise said she thinks it's excessive for the size of the lot to have all the apartments.

Mr. Eacobacci stated that he would also be reluctant to approve the request for apartments on the third floor. However, he would be in favor of granting the Special Permit for the change of use on the first floor from commercial to residential.

Mr. Morrison had no additional comments.

Mr. Elkallassi opened it up to public comment there was none.

Engineer for the applicant, Mr. Bertolo stated the applicant had reached out to them to design the plan and at the time they were issued a letter for a Special Permit. He stated the reason for the SP was because of the building and the ten spaces. He said they reviewed the plan again for last night.

Mr. Elkallassi said they are over the threshold as it is for the size lot.

Mr. Cardoza asked about the minimum parking spaces they have now and the grandfathered spaces for the commercial units they are currently having. He asked for the board to come to a medium-happy with them.

Mr. Eacobacci explained the detail of how they would issue the Special Permit as they would right now and they can come back without prejudice in the future for the third floor.

Mr. Eacobacci made a Motion to close the public hearing and was seconded by Ms. DeBonise. The Motion passed unanimously.

Mr. Eacobacci made a Motion to grant relief for the change of use on the first floor from commercial to residential as a Special Permit with standard conditions for 18-22, 140 Minot Avenue and was seconded by Mr. Morrison. The Motion passed unanimously. (5-0-0).

## **V. PUBLIC HEARINGS:**

### **1. 19-22 John J Perrone & Kimberly A. Sullivan – Variance – 14 Fonseca Way – Assessors Map 94, Lot F3**

Mr. Eacobacci read the hearing in for the record.



Mr. Perrone and Ms. Sullivan were present for variance relief for a garage.

Robert Bertolo, Engineer was present on behalf of the applicant.

Mr. Bertolo gave an overview of the project to propose a detached garage, it would be forward to the front of the house. He said they would need a variance not to exceed the detached garage in the front of the house. He said the structure itself is greater than the 60' setback. He said putting the structure in the back would be a long driveway to be constructed and they would be closer to a 100' buffer in Conservation.

Mr. Sullivan said the height would be approximately 9-10' and then add an additional 6' to the ridge.

Mr. Larson said he had no comments. Ms. DeBonise said she would defer to the neighbors.

Mr. Eacobacci had no further comment he said it seemed cut and dry.

Mr. Elkallassi asked if anyone was for or against that wanted to speak from the public. There was no comment.

Mr. Eacobacci made a Motion to close the public hearing and was seconded by Mr. Morrison.

Mr. Eacobacci made a motion to grant the relief MGL 40a, section 10 has to be constructed by plan by JC Engineering, with no more than 16' to the ridge as presented with standard conditions. Mr. Morrison seconded the motion – all in favor. (5-0-0)

## **2. 20-22 Rhonda Finnerman – Variance – 18 Ocean Avenue – Assessors Map 1, Lot 124-B**

Mr. Eacobacci read the advertisement for the record.

Justin Wilson, the son of Ms. Finnerman. JS engineering, Matt Mahan was also present.

Anthi Frangiadis, Architect for Ms. Finnerman was on via zoom. She said this project requires a variance for a side setback as well as the lot F.A.R. (floor to area ratio) of the project. She reviewed the architectural plans for a wood frame cottage. She said they are proposing to add to the addition of the rear of the property. The side setback is to provide a set of a staircase to the back of the property. They would like to modernize the house while maintaining the character of the structure.

Mr. Mahan explained that the previous building commissioner, David Moore sent a letter stating that they would need the variance for the side setback as well as the ratio. He said lot is extraordinarily narrow. Easement for parking was granted on the south side of the lot. He said these conditions affect how the house can be built on. He said the hardship arises as the house is very narrow, at approximately 10' wide, and difficult to create a living space in this day and age. They are looking to extend out the building to make it useable. He identified a bulkhead that is on the side of the house where the bump is on the plans. He said it's a unique lot. He said it is in residential use and granted the variance won't be detrimental to the neighborhood.

Mr. Elkallassi said this was an existing non-conforming.

Ms. DeBonise asked about the lot coverage existing.

Mr. Mahan said that the existing lot coverage proposed is 22.56%. Mr. Elkallassi said the lot coverage requirement is 30%, so they are under.

Ms. DeBonise asked about the current F.A.R and which was 15.91 currently and proposed 43.

Ms. DeBonise asked to see what the similarities of F.A.R. of the neighborhood are.

Mr. Mann said he could make a guess, but they did not do a calculation of the neighborhood. He said he thinks it's 16.

Mr. Eacobacci stated he was okay with the proposed plans, however, he said that a year ago someone in the neighborhood wanted to do something and there was yelling and screaming to not have them do what they wanted and doesn't see anyone in the room with those same complaints. Sometimes personality comes into

Mary Downey, Attorney for Rhonda Finnerman was present if there were any questions via zoom.

Ms. DeBonise said the other side is non-conforming. Mr. Elkallassi said one side is conforming and

Ms. DeBonise said she does not like to exceed the F.A.R. She said the previous proposal last year she felt didn't have anything to do with personalities but the density of the proposed project.

She said the F.A.R. is important because of the density in a small village.

Mr. Elkallassi stated they wanted to change the by-law and unfortunately that died when the building commissioner

An abutter, Arthur wanted to know how far back it was going to go.

Mr. Elkallassi said it looks like 30' in the back.

Mr. Mann said it was about 80' in the back. He said the southernly lot line is 148' long.

Mr. Elkallassi brought to the boards' attention how big the houses are in that area.

Mr. Eacobacci made a Motion to close the public hearing and was seconded by Mr. Morrison. The Motion passed unanimously.

Mr. Eacobacci made a Motion to grant the variance as presented with standard conditions for the setback of 8.2' encroaching 1.8' and was seconded by Mr. Morrison. The motion passed unanimously. (5-0-0).

Mr. Eacobacci made a Motion to grant the F.A.R. seconded by Jake/denied by Ms. DeBonise – 5-1-1.



Ms. Debonise said that she believes that to extend the nonconformity on the south side to 6.4'. she made the motion, and Mr. Eacobacci seconded the motion. (5-0-0).

### **3. 21-22 Sharon Cates – Variance – 240 Onset Avenue, Assessors Map 1 Lot 532**

Mr. Eacobacci read the advertisement in for the record, proposing a new dwelling at the subject property.

Mr. Elkallassi opened the public hearing.

Sharon Cates, 174 Packard Street in Plymouth.

We Can Contracting were also present.

Ms. Cates stated she wanted to build a unit on the bottom floor for a mixed-use to house her dad. She said she has a business on the second floor. She said she has a dog grooming business.

Mr. Lawson said he doesn't have a problem with it.

Mr. Elkallassi stated that they need 10,000 sq feet to have a multi-unit.

Ms. Debonise asked if this is the fire station house.

Mr. Eacobacci stated why they couldn't do a change of use and an in-home business.

Ms. Cates said she bought the property in August of last year and has always housed a grooming business at the location.

Mr. Elkallassi asked for public comment there was none.

Ms. DeBonise said she had a question about parking in that area and how it would lay out. She said she would prefer an in-house business.

Ms. Cates said it was always a commercial building.

Mr. Elkallassi said it was an existing, non-conforming lot as commercial. He said he would like to talk to the building commissioner before he voted.

Mr. Eacobacci said he thought they'd be changing it to one unit and then saying it has a business.

Ms. Debonise said she would also like to get some clarification.

Mr. Eacobacci made a Motion to continue 21-22, Sharon Cates, to the next meeting to July 27, 2022, and was seconded by Ms. DeBonise. The motion passed unanimously.

#### **4. 22-22 Edward Pimental – Variance – 52 Nanumett Street – Assessors Map 3, Lot 11**

Mr. Eacobacci read the advertisement for the record proposing a variance to propose an attached structure as a garage in the MR 30 district.

Mr. Elkallassi opened the public hearing.

Mr. and Mrs. Edward Pimental were present.

Mr. Edward Pimental stated they want to build a garage to the existing house, a two-car garage.

Mr. Elkallassi asked how high the garage is.

Mr. Pimental said it would be a foot lower than the peak of the house currently.

Mr. Elkallassi asked how they were going to access the garage. Mr. Pimental said a door in the front and a door in the back.

Mr. Eacobacci asked about stepping forward so they could get more room.

Mr. Pimental said they own the property in the rear.

Joseph Nadeau, 54 Nanumett Street says he was in favor of the project and that he couldn't ask for better neighbors.

Louise Miller of 59 Nanomet Street says they too are in favor of the proposal.

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

Mr. Eacobacci made a motion to grant the variance for the building coverage for 22-22 Edward Pimental and was seconded by Mr. Morrison. The Motion passed unanimously. (5-0).

Mr. Eacobacci made a motion to state they would vote this proposal as a Special Permit that it is not detrimental to the neighborhood and was seconded by Mr. Morrison. The Motion passed unanimously. (5-0).

Mr. Eacobacci made a Motion to grant the special conditions with the standard conditions and was seconded by Mr. Morrison. The Motion passed unanimously. (5-0).

**VI. Appeal of Comprehensive [40B] Permit issued for Settler's Glen, Red Brook Road; M.G.L. 30A §21; 40B - Settler's Glen, Red Brook Rd, Request for Insubstantial Change Regarding Water Utility System.**



## **VII. ANY OTHER BUSINESS/DISCUSSIONS:**

### **1. Article 6 – Density and Dimension Regulations: By-law Change**

Ms. Baldwin reviewed the changes on Article 6, she said a lot of the changes are just to make the article more readable and a few grammar changes.

Ms. DeBonise asked for clarification on the zoning district as “other residential use”. She said it was very confusing to read.

Mr. Eacobacci also agreed that other residential use shouldn’t be there; as it says single, one-family dwelling, 2-family dwelling, and then (3) other residential use (multi-family). He said that there may be an assumption that doesn’t necessarily make sense. He said that the by-law is interpreted differently by someone who may read it.

Mr. Elkallassi said that it should read “each additional unit”.

Mr. Rowley said if you have more than a two-family unit or a 2-family unit you would go to three because as an additional unit requires an additional you add 30,000 sq feet.

Ms. Debonise asked what “other residential use” refers to.

Mr. Eacobacci stated it should be worded as “per additional dwelling units”.

Ms. Baldwin said she believes that it was existing and that’s why they left the wording.

Mr. Elkallassi stated in the Strip Commercial it should be “each additional unit 20,000”

Mr. Morrison had to leave at 9:00 p.m.

The board took a three-minute break.

Ms. Baldwin reviewed the changes that the board is requesting. The Board continued to review the proposed changes to the by-law.

Board members continued to advise they need clarification of the bylaw for the wording.

Mr. Elkallassi stated that he thought the Planning Board and the Zoning Board should meet in a workshop to correct and understand the re-working of these bylaws.

Mr. Eacobacci stated that Mr. Riquinha had previously gone to the Planning Board with some changes, and it wasn’t taken into consideration.

Ms. Baldwin recommended a joint meeting. The Board continued to discuss and said they would have to discuss at a further meeting to clarify.

Ms. DeBonise made a motion to adjourn and was seconded by Mr. Larson. The motion passed unanimously at 9:37 pm.

Respectively,  
Patricia A. Pacella  
Recording Secretary

Date signed: 7-27-2022

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

Date copy sent to Town Clerk: \_\_\_\_\_

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2022 JUL 28 PM5:33