

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: August 22, 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

Also present: Ken Buckland, Town Planner
Charles Rowley, Town Review Engineer
Paul Haverty, Attorney

I. PRELIMINARY BUSINESS

A. Approve meeting minutes: August 8, 2018

MOTION: Mr. Baptiste moves to approve the minutes from August 8, 2018. Ms. Kendrick seconds.

VOTE: (5-0-0)

B. #19-18 – Walmart 0 2919 & 2427 Cranberry Highway

Present before the Board: Paul Jandrow

Mr. Jandrow is before the Board to request 12 twenty-foot storage trailers on the rear right on the site for storage for extra materials from October through December. The storage containers will take up fifteen parking spaces on the rear of the site. Mr. Elkallassi states the applicant will need to return before the Board with plans showing the location of the storage containers proving they would still meet their minimum parking requirements.

MOTION: Mr. Baptiste moves to approve 12 twenty foot storage containers for October 1, 2018 through December, 2018 only until plans are provided to the Board of Appeals. Mr. Eacobacci seconds.

VOTE: (5-0-0)

II. PUBLIC HEARINGS

A. #28-18 – Ramos Realty Trust – 300 Glen Charlie Road

Present before the Board: Arlene Mason

Mr. Nagaswaran

The applicant is requesting to construct a rear home addition, deck addition, and detached garage. The applicant has appeared before the Board with the requested revised plans.

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

VOTE: (5-0-0)

MOTION: Ms. Kendrick moves that the Board consider this application as a Special Permit with the condition of receiving revised architectural plans. Mr. Eacobacci seconds.

VOTE: (5-0-0)

MOTION: Mr. Eacobacci moves to approve the project as a Special Permit. Ms. Kendrick seconds.

VOTE: (4-1-0)

B. #30-18 – John Cook Jr. – 10 Main Avenue

Present before the Board: John Cook, Jr.

The applicant is requesting to create a riding stable and paddock on less than 5 acres. Mr. Cook states this will be for only one horse, he does not plan to have any more horses after this horse, even though it is designated a riding stable, it will be a single stall. The lot is 14,000 s.f.

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

MOTION: Ms. Kendrick moves to approve the Special Permit. Mr. Elkallassi motions that the Special Permit is for the one horse. Mr. Eacobacci seconds.

VOTE: (4-1-0)

C. #31-18 – Dennis Sullivan – 1 Barnes Street

Present before the Board: Bill Lockwood, Lockwood Architects
Dennis Sullivan

The applicant is requesting to construct a new second floor addition on an existing structure. Mr. Lockwood states the existing home is one story and are requesting to add a second level on the existing structure. The second floor will be a second floor deck and living area. The house would remain under the height limits for the area.

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

VOTE: (5-0-0)

MOTION: Ms. Kendrick moves to approve this as a Special Permit that this project does not present a substantial increase in the non-conformity and the proposed plan does not present any detriment to the neighborhood. Mr. Eacobacci seconds.

VOTE: (4-1-0)

MOTION: Ms. Kendrick moves to approve the Special Permit based on the findings that this project does not present a substantial increase in the non-conformity and the proposed plan does not present any detriment to the neighborhood. Mr. Baptiste seconds.

VOTE: (4-1-0)

III. CONTINUED PUBLIC HEARINGS

A. #13-18 --Wareham Family Dental – 43 & 45 Sandwich Road

Present before the Board: Bill Madden, G.A.F. Engineering

Mr. Madden states at the last hearing architectural plans were requested. The Board has those plans to review. Mr. Madden states that the second floor would be used solely for storage. Mr. Rowley has approved the site plan.

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

VOTE: (5-0-0)

MOTION: Mr. Baptiste moves to grant the Special Permit/Site Plan Review as presented. Mr. Eacobacci seconds.

VOTE: (5-0-0)

B. #22-18 – Enterprise Rent-A-Car -- 1 Express Drive

Present before the Board: Tim Ciaffone
Doug Valerie
Amanda Dibiazio

Mr. Ciaffone states that Enterprise Rent-A-Car was seeking a Use Variance to have a truck rental operation in this area of town. The parking plan has been revised so they are parked partially on the angle to avoid hanging over the grass. Twelve parking spaces will be angled for the box trucks. The parking spaces were made for 30' box trucks but could house larger box trucks if necessary, although that is not the intent. Mr. Elkallassi

MOTION: Mr. Eacobacci moves to close the public hearing. Motion is seconded.

VOTE: (5-0-0)

MOTION: Mr. Eacobacci moves to approve the Use Variance. Mr. Baptiste seconds.

VOTE: (5-0-0)

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

Present before the Board: Peter Balzarini
John Decas

Mr. Balzarini states that at the last ZBA hearing they had listed the issues with the site. Mr. Balzarini states their main concern was the septic system on the site and have been advised this is not a ZBA issue and they have gone before the Board of Health. Mr. Balzarini states that it has been stated that the structure in question was only used as a day cabana. Mr. Balzarini asks the Board to condition that the structure only be used as a day cabana and that no overnight stays be allowed in the structure.

Mr. Decas states he has witnessed overnight stays in the cottage. Mr. Decas is concerned with the septic system and how close it is to the water.

Mr. Eacobacci states that the applicant is before the wrong Board in regard to the septic. The Zoning Board of Appeals cannot enforce action regarding a septic. The applicant must go to the Board of Health.

Ms. Kendrick states that she feels the applicant does have a zoning issue.

Mr. Decas asks if the neighbors should be getting a notification if the neighbor is doing anything. Mr. Elkallassi states that not every project requires notification of the neighbors.

Ms. Kendrick states she feels the issue is the dwelling structure is not allowed legally and the whole issue is when the boat house became a dwelling structure and if it is a dwelling structure.

Present before the Board: Jeffrey Anglely
 Bill Clemmey

Mr. Anglely states they have been through this procedure already regarding the structure. The structure was labeled a boat house on 1980. The structure is not a dwelling. Mr. Anglely states that they have pictures from 2001 of the deck already in existence. In 2007 the deck was replaced, permits were not applied for at the time. Mr. Anglely states they have since received permits and are currently in compliance. Mr. Anglely states this is a one room beach house. There are no beds inside. There is a small bathroom and a kitchenette.

Mr. Elkallassi reiterates that the applicant could at any time apply for a building permit to do work on that structure.

Mr. Clemmey states that in his family there are four children and a number of grandchildren do spend time at the property and at the beach house. There are people spending time there all hours of the day and night because the beach house is near the dock and they go swimming, sometimes very late at night. People do not live in the structure. Mr. Clemmey states that David Riquinha was satisfied with the information provided to him regarding the property which is why the enforcement was not upheld, because it could not be determined that anything was done illegally on the property.

Mr. Anglely states again in regards to if this is a lawful structure, this is a lawfully existing structure. This structure has been in existence for an extended period of time. Mr. Anglely states that regardless, the structure has been in existence for over a decade and violations are unenforceable after a decade.

Mr. Balzarini states that the building is still listed as a boat house/shed. Mr. Balzarini states no permits were ever applied for the structure or the deck.

Mr. Haverty speaks on the current matter. Mr. Haverty states that the Building Commissioner has deemed that the structure has been in existence for over 10 years and is now treated as a pre-existing non-conforming structure.

Mr. Baptiste asks if the Building Permit they received over the summer re-starts the timeline for the statute of limitations. Mr. Haverty states that it does not. Mr. Haverty states that there is no protection for use, only for the structure. The Building Commissioner ruled on the structures existence for over 10 years, not on the use of the structure. Mr. Angley states that the building is not listed on the Assessors record as a shed, it is listed as a cabin.

Mr. Decas states regarding the statute of limitations. Mr. Decas states that he believed when property changes hands is that the property requires a Title V inspection and asks why the town didn't do their job in assuring that the inspection was completed.

Mr. Baptiste asks if they can condition the decision that no over-night stays in the structure. Mr. Haverty states they cannot condition the decision. The Board can only vote to uphold or appeal the Building Commissioners decision.

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

VOTE: (5-0-0)

MOTION: Mr. Eacobacci moves to uphold the Building Commissioners decision. Mr. Baptiste seconds.

VOTE: (4-1-0)

Present before the Board: Carl Clemmey

Mr. Clemmey states that he would like to make a comment in regards to the hearing. Mr. Elkallassi states the public hearing is closed and they cannot hear any matter regarding it.

D. #2-18 – Dakota Partners – 3102 Cranberry Highway

Present before the Board: Peter Freeman
James O'Brien, Dakota Partners
Dominique Rinaldi, BSC Group

Mr. Freeman states they submitted revised plans that respond to the Board's requests. Mr. Freeman states they will review the proposed conditions again this evening regarding the revisions at the last hearing. Mr. Freeman states they are hoping the hearing could be closed this evening.

Mr. Elkallassi states the Board would like to know what the outcome between conversations with the Sewer and Water departments were.

Mr. Freeman states the sewer department had made the request that they have grinder pumps, which were agreed upon and placed as a condition in the decision.

Present before the Board: Guy Campinha, Water Pollution Control Facility

Mr. Campinha had stated they did agree on grinder pumps. Mr. Campinha stated he did want them wired in case of a power outage, which he had not seen at this time, that he would like this information to be present on the deed that there are grinder pumps on the facility, that there needs to be a maintenance plan for the grinder pumps, fees per each unit were discussed, phasing was discussed as well.

Mr. Elkallassi asks if the Board of Sewer Commissioners had agreed on these terms. Mr. Campinha states the Board did vote in support of this and are in agreement. These conditions have been submitted to the applicant. Mr. Freeman states that he did not include in the conditions that the grinder pumps be referred to in the deed, that he did not see that provision in the conditions. Mr. Freeman is not sure what the purpose of this in the deed would be.

Mr. Campinha states the purpose for having the reference in the deed is to ensure any future owners of the property are agreeing to the maintenance agreement.

Mr. Freeman states this would already run with the deed as part of the comprehensive permit. Mr. Elkallassi states he is not sure if this can be restricted on the deed. Mr. Campinha states that there is something in the by-law that requires this to be recorded with the deed. Mr. Haverty states that he believes that this is for individual home sales. Mr. Haverty states that the decision includes the grinder pumps and would be required to adhere to the conditions of the permit. Mr. Campinha concedes to this.

Mr. Rowley states he would like to hear more about the back-up power for the tanks to avoid over-flow. Mr. Freeman states that it should state in the condition that the back-up power be subject to review and approval of the sewer department. Mr. Freeman states that their plans are not at that level of detail at this point. Mr. Rowley states he is concerned with the type of generator. Mr. Rowley would like the generator to be hard-wired and automatic. Mr. Freeman states that the final plans will show these details, the location of the generators, etc.

Mr. Elkallassi states he would like to hear from the Water Department.

Present before the Board: Ben Hughes, Onset Water Department

Mr. O'Brien states they have agreed to two monitoring wells. Mr. O'Brien requests that the condition allow the applicant to come to an agreement with the Water Department as to the location of the wells and the monitoring. The Board is in agreement with the draft condition.

Mr. Rinaldi goes over the delivery and parking area. The parking area and curbing have been shifted to not interfere with the fire lane. The accessible parking spaces have been shifted closer to the building. Visitor spaces were designated on the site. Two bus shelters on the Redbrook Road side have been added to the site with concrete pads.

Ms. Engerman is concerned with the lighting on the sight. Mr. Rinaldi states that the parking area does meet state requirements for lighting in the parking lot. There is much less lighting on the interior of the site because this will be the yard for the residents and didn't want them looking out into a lit courtyard. There are lights by the community building. There are no lights on the walkways.

Ms. Engerman asks where the generator for the grinder pumps will be. Mr. Elkallassi states that will be shown in the final plan.

Mr. Rowley asks where the delivery truck will enter and park for Phase I. Mr. O'Brien states the deliveries will go to the management office in one of the units for Phase I until the community building is constructed. Mr. Rowley asks why there can't be a management office in each building for deliveries. Mr. O'Brien states that they do not have staff for every building or a program that allows that. Mr. Freeman states he has never seen a project with two management offices. Mr. Freeman states there is one central building where deliveries are made even in condominiums.

Mr. Rowley states he still has concerns with the management building, the deliveries, the parking for deliveries. Mr. Rowley states that there is no driveway to get to the community building so deliveries will

have to be carried to the community building and then carried by the residents to their respective units. Mr. Rowley feels that things are not being done for the convenience of the residents in mind. Mr. Freeman states the developer is concerned with the ease for the tenants. Mr. Freeman states they have already revised the delivery space. Mr. Freeman states that they are restricted with funds and space and on each project he has dealt with there is one drop-off and pick-up location for packages.

Ms. Kendrick asks if some ground lighting can be placed in the courtyard. Mr. O'Brien states that can be accommodated.

The Board concedes they are not concerned with the delivery lane and the space between the delivery lane and the community building. Mr. Rowley is concerned with a handicapped resident needing to pick-up a large package and not being able to carry it. Mr. O'Brien states that the site manager would help deliver a package to a handicapped individual and have 2-wheel loaders to help with large packages.

Present before the Board: Alan Slavin, Selectman

Mr. Slavin states they just received paperwork for this project yesterday and no Board has had time to read and respond the information. Mr. Slavin recommends continuing this until the other Boards have had time to respond. Mr. Elkallassi asks Mr. Freeman if they would mind granting a continuance. Mr. Freeman asks if they could assume all comments will be in before the next hearing and set to close for the next hearing. Mr. Elkallassi asked for a continuance until September 19th.

Present before the Board: Don Jepson

Mr. Jepson has brought with him documents for the estuary project and nitrogen reports as well. Mr. Jepson states that the nitrogen levels of Wareham River must be reduced in order to restore the river to its previous health. Mr. Jepson states that the Water Pollution Control Facility is the largest input of nitrogen to the Wareham River. Mr. Jepson states the only way to reduce the nitrogen level in Wareham River is to reduce the amount of waste taken in. Mr. Jepson reads from the report. Mr. Jepson asks what level of nitrogen the proposed project will produce. Mr. Elkallassi states that he believes the sewer department treats the nitrogen and developed a report that they have the capacity to handle this project. Mr. Jepson states that the fluids coming from the treatment plant are toxic. Mr. Jepson states any development over 10 units is supposed to be nitrogen zero.

Mr. Freeman states that he is empathetic to the need to preserve the estuary. Mr. Freeman states that he has not seen the document regarding the nitrogen output and that those types of goals, which are not regulation or enforceable at this point, sounds as though it is geared toward individual homes. Mr. Freeman states they don't create zero nitrogen or other nitrogen because there is no septic system, they are using the town sewer system for the sewer plant to treat it.

Present before the Board: Richard Hadley

Mr. Hadley asks what role MassDOT is going to play in the traffic situation at the intersection of Redbrook Road and Cranberry Highway. Mr. Elkallassi states the applicant will make that a two-way entrance unless MassDOT denies it. Mr. Hadley asks when this review will take place. Mr. Elkallassi states before the project begins construction the applicant must apply to MassDOT for a curb cut. Mr. Hadley asks how long the application takes. Mr. Elkallassi states MassDOT takes about 2-3 months to respond to the request. Mr. Hadley asks when the Zoning Board will decide on this matter. Mr. Elkallassi states they will decide on September 12, 2018.

Present before the Board: Alan Slavin, Selectmen

Mr. Slavin states that the Board has sent to Mr. Buckland the final layout of the road from MassDOT and it is up to MassDOT to allow or deny the curb cut. Mr. Elkallassi states the applicant may apply for a Building Permit without a curb cut.

Mr. Baptiste asks what happens if the applicant is denied a curb cut. Mr. O'Brien states they would return before the Board for a modification.

Mr. Rowley states he believes the MassDOT layout slope before the entrance to Redbrook Road and it is a curb cut from the Town, not MassDOT.

The applicant has not applied for their curb cut permit yet. Mr. Rowley states he would like the applicant to discuss with MassDOT the potential project.

Mr. Haverty states he is not available on September 12, 2018 and can send someone else instead if need be, or he can review the draft decision.

Mr. O'Brien will not be available either but would like to participate via teleconference.

MOTION: Mr. Eacobacci moves to continue the public hearing until September 12, 2018. Mr. Baptiste seconds.

VOTE; (5-0-0)

Present before the Board: Carl Clemmey

Mr. Clemmey makes a statement regarding John Decas.

IV. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS

A. Correspondence

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

B. Upcoming Hearings:

September 12, 2018	#4-18	Site Plan Review	Giancola Minot Properties	72 Minot Avenue
September 12, 2018	#17-18	Site Plan Review	RMRM Realty, LLC	3035 Cranberry Highway
September 12, 2018	#23-18	Special Permit/Site Plan Review	Anthony Grosso	1 Rae Avenue
September 12, 2018	#32-18	Variance	Steve Beauchemin	20 Depot Street
September 12, 2018	#33-18	Variance/Appeal	Ninety Six Realty, LLC	Parcel A, Fearing Hill Road

C. Decision Deadlines

Comprehensive Permit – 8/27/18	#2-18	Comprehensive Permit	Dakota Properties	3102 Cranberry Highway
60 from close of	#4-18	Site Plan Review	Giancola Minot	72 Minot Avenue

the public hearing			Properties	
August 21, 2018	#13-18	Special Permit/Site Plan Review	Wareham Family Dental	43 & 45 Sandwich Road
Special Permit – 9/11/18; Variance – 9-21-18	#17-18	Special Permit/Variance	RMRM Realty, LLC	3035 Cranberry Highway
October 6, 2018	#22-18	Variance	Enterprise Rent-A-Car	1 Express Drive
October 9, 2018	#23-18	Special Permit/Site Plan Review	Anthony Grosso	1 Rae Avenue
October 19, 2018	#26-18	Appeal	18 Burgess Point Road Realty Trust & John Decas	18 Winship Avenue
November 30, 2018	#32-18	Variance	Steve Beauchemin	20 Depot Street
November 30, 2018	#33-18	Variance/Appeal	Ninety Six Realty, LLC	Parcel A, Fearing Hill Road

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

VI. ADJOURNMENT

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

Date signed: 9-12-2018 VOTE: (5-0-0)

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

Date copy sent to Town Clerk: _____

RECEIVED

OCT 04 2018

TOWN OF WAVERHAM
TOWN CLERK