

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: September 26, 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: Kenneth Buckland, Town Planner
Charles Rowley, Town Review Engineer

I. PRELIMINARY BUSINESS

A. Approve meeting minutes: September 12, 2018

MOTION: Mr. Eacobacci moves to approve the minutes as presented. Mr. Baptiste seconds.

VOTE: (3-0-2) Ms. Engerman and Ms. Kendrick abstain

II. PUBLIC HEARINGS

A. #34-18 -- Steven Yurasha -- 9 Jordan Road

Present before the Board: Steven & Cheryl Yurasha

The applicants are seeking to construct an accessory apartment in an R-130 zoning district. Mr. Yurasha states they are requesting to construct an in-law apartment for his mother-in-law who is ill. Mr. Yurasha states he had purchased the house with the intent of constructing an apartment downstairs. There are two access points to the basement.

Mr. Eacobacci has a letter he reads into the record from an abutter, Berenice Keiser, who is opposed to the in-law apartment. Ms. Keiser states that she has been harassed by the Yurasha's and had purchased her house with the belief that the development would be single family homes only.

Mr. Eacobacci states that he does not wish to give support for this project. Mr. Eacobacci states that if their mother-in-law is as ill as they say then he does not see the benefit of having a second kitchen.

Mrs. Yurasha states that they had constructed the home with the intent of having an in-law apartment. There was additional construction done for the in-law apartment, bedrooms were left out of the construction in order to make room for the in-law apartment.

Mr. Eacobacci states if the applicant would like to table the hearing or continue the hearing he would entertain that. Mrs. Yurasha states that she has neighbors in support of the project who are on the way now.

The hearing is tabled at 6:46 PM.

The hearing is continued at roughly 7:20.

Mr. Buckland reads the denial letter from the Building Commissioner into the record. The letter essentially states the applicant is applying for a Use Variance.

Ms. Kendrick states that in the past the Board has fairly consistently granted Use Variances for in-law apartments.

Present before the Board: Dave Westcott, 6 Jordan Road

Mr. Westcott states they support what the applicant is proposing to do and have no concerns whatsoever.

Present before the Board: Matt Cunha, 8 Jordan Road

Mr. Cunha states he supports the project fully.

Present before the Board: Suzanne Gothier, 8 Jordan Road

Ms. Gothier states she supports the project fully.

Present before the Board: Skip Sarnelli, 11 Longmeadow Drive

Mr. Sarnelli states he has known the couple for a long time and he is in full support of the project. Mrs. Sarnelli states she knows the couples mother that they are trying to help and she is in full support of this project.

Ms. Engerman states she doesn't feel there should be an apartment allowed in an R-130 district.

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

VOTE: (5-0-0)

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

VOTE: (2-2-1)

Ms. Engerman and Mr. Morrison oppose, Mr. Baptiste abstains

Ms. Kendrick asks the Board if anyone would reconsider their vote if there were conditions that the apartment cannot be rented at any time.

III. CONTINUED PUBLIC HEARINGS

A. #4-18 -- Giancola Minot Properties -- 72 Minot Avenue

Mr. Elkallassi recuses himself. Mr. Morrison will vote in Mr. Elkallassi's place.

Present before the Board: Leonard Bello, Attorney
Bill Madden, G.A.F. Engineering, Inc.
Mike Giancola, Owner

Mr. Bello states this project had been heard previously, and a Special Permit and Variance have been granted. The applicant is before the Board for the Site Plan Review. Mr. Bello states he believes the concerns of Mr. Rowley have been met, and revised plans have been provided to the Board. Mr. Rowley states that most of his recommendations have been met with few exceptions. There was a recommendation to break up the façade of the building, recommendations regarding drainage on the site, as well as the recommendation to install a fire hydrant on-site. That is not a requirement, the Fire Department has approved the site of the fire hydrant, but Mr. Rowley recommends having a hydrant on-site so traffic on the road would not be blocked if there were a fire. Mr. Baptiste states that the road would be blocked in the event of a fire anyhow. Mr. Eacobacci asks if the sprinkler line

Mr. Baptiste states that he feels that is a large expense incurred by installing another hydrant across the street.

Mr. Madden states that he is concerned that he is concerned if they add an additional hydrant it will reduce the pressure from the hydrant, and that the 500' between the hydrant is what is required from the state for optimum effectiveness.

Mr. Bello states he would like to add to Mr. Baptiste's comment, that regardless of where a fire hydrant is that Minot Forest would be closed if there were a fire at the building.

Mr. Bello reviews the proposed conditions of the draft decision. The first change he requests is that Mr. Elkallassi should not be listed as a voting member. Under Section C #1B creates an issue for the applicant. The applicant is looking at potential renters such as a supply company who does perform retail sales even though that is not the primary purpose for their business. Mr. Bello states that was an allowed use previously.

Mr. Giancola states that the uses he had in the first building he would like to have allowed in the second building as well.

The Board agrees to have Mr. Bello and Mr. Buckland revise the decision to make the proposed changes.

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

VOTE: (5-0-0)

MOTION: Mr. Baptiste moves to grant the Site Plan Review as presented with the approved modifications of the decision. Ms. Engerman seconds.

VOTE: (5-0-0)

B. #17-18 – RMRM Realty, LLC – 3035 Cranberry Highway

No one is present at this time. The petitioner has requested a continuance until October 10, 2018.

MOTION: Mr. Eacobacci moves to continue the public hearing until October 10, 2018. Ms. Kendrick seconds.

VOTE: (5-0-0)

C. #32-18 – Steven Beauchemin – 20 Depot Street

Mr. Elkallassi recuses himself from this hearing. Mr. Morrison will vote in his place.

Present before the Board: Leonard Bello, Attorney

The applicant is requesting to raze a single-family dwelling and construct a two-family dwelling. The structure has already been razed, legally, via permit. The lot is conforming for a single-family home but does not meet lot-size requirements for a two-family home. The house that had been existing had been an eyesore in the neighborhood for a length of time and they feel this will be an improvement to the neighborhood.

Present before the Board: Anthony Motagne, 43 Tyler Avenue

Mr. Montagne is a neighbor across from the lot and feels he has done a spectacular job with the property and should be allowed to construct the two-family.

Present before the Board: Irvin Russels, 21 Depot Street

Mr. Russels states he is a neighbor to a current development that was done and maintained by Mr. Beauchemin and states he is a wonderful neighbor and is in favor of this projects, especially since he is giving veterans preference.

Present before the Board: Patrick Sullivan, 38 Tyler Avenue

Mr. Sullivan states he is pleased with what Mr. Beauchemin has done with this project at this time, but Mr. Sullivan is concerned with traffic and drugs in the neighborhood and adding more housing. They have Union Pond down the street and two other housing facilities in the area and is concerned with multiple units and prefers to see the housing remain single family houses. Mr. Sullivan is also concerned with the size of the building being close to his lot.

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

VOTE: (5-0-0)

MOTION: Mr. Baptiste moves to grant the application as presented. Mr. Morrison seconds.

VOTE: (4-1-0)

D. #33-18 – Ninety Six, LLC – Fearing Hill Road

Present before the Board: Robert Perry

Mr. Perry states that he is requesting that the Board overturn the Building Commissioners decision that this was not a buildable parcel, or to grant a Variance to build on this 31,000 s.f. lot. Mr. Perry states this lot pre-existed the zoning for the area, and due to the position of Squirrel Island Road, this parcel cannot be combined with any other parcel. Mr. Perry states he feels this is a grandfathered lot. Mr. Perry states he went before David Riquinha again, at the suggestion of the Board, to discuss the fact that Squirrel Island Road was an ancient way and that the lot is a grandfathered lot. Mr. Riquinha did not agree that the lot is grandfathered because he feels the lot was held in common ownership at the time the zoning was put in place.

Mr. Elkallassi states that according to Mr. Riquinha states this lot was not formally divided into Lot A until 2016. Mr. Elkallassi asks if the lot was divided from common ownership. Mr. Perry states he does not believe the lot was in common ownership.

Mr. Buckland states the lot was separated in 2016. Mr. Perry states the lot was secluded since the construction of Squirrel Island Road.

Mr. Elkallassi asks if there are any other plans of Lot A before the 2016 plan. Mr. Perry states there is not a plan pre-existing the 2016 plan.

Mr. Buckland states that it is the purview of the Building Commissioner that the parcel of land was created when it was shown on a plan in 2016. Mr. Rowley states a parcel of land can exist before a plan was created and should be mentioned on a deed. Mr. Perry states that the parcel was not in contiguous ownership since the mid 1800's.

Mr. Elkallassi states he feels that the lot is grandfathered if it was not held in common ownership when the zoning went into place in the 1960's.

Mr. Buckland asks why G.A.F. Engineering, Inc. had noted that this was not a buildable lot on the Form A plan. Mr. Perry states that he instructed G.A.F. Engineering, Inc. to put that note on the plan.

Mr. Elkallassi states he would like to have Town Counsel review the legalities of the lot.

Mr. Perry states he could go forward with the Variance if that would be more feasible. Mr. Elkallassi doesn't recommend going for a Variance. Mr. Rowley states that he feels that Mr. Perry should have the Form A plan revised to not state that Parcel A is not a buildable lot or it could cause future complications if the Building Commissioners decision is overturned.

Mr. Elkallassi asks if they can continue the public hearing until October 10, 2018.

MOTION: Mr. Eacobacci moves to continue the public hearing until October 10, 2018. Ms. Kendrick seconds.

VOTE: (5-0-0)

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

Present before the Board: Peter Freeman
Dominic Rinaldi
Roberto Arista, Dakota Properties

Mr. Freeman has handed out a revised draft decision to the Board reflecting changes that had been made from the town as well as changes from Dakota Partners. The changes requested from Dakota Partners are redlined and states he feels they should review the decision point by point.

Mr. Elkallassi states he knows there are comments to be made from Onset Water and the Sewer Department and asks the Boards to come forward.

Present before the Board: Ben Hughes, Onset Water Department

Mr. Hughes stated there were some changes in the draft decision that he strongly objects to. It looks as though H8i of the decision were stricken through, which discusses monitoring wells. Mr. Hughes encourages the Board to add the language back in. If the water becomes contaminated the Town will be responsible for assessment and remediation unless the Town can convince DEP with evidence the contamination is coming from Woodland Cove, which would grant a down gradient property status. Down gradient is a difficult and costly process which will require the Town to hire an LSP (Licensed Site Professional).

Mr. Eacobacci states what if the developer is not the cause of the contamination? The language states that the developer would pay for the testing and remediation. Mr. Freeman states that if contamination is found he feels language should be placed in that states if any samples are found to exceed allowable limits all investigation and remediation's that should be required she be carried out in accordance with the MA Contingency plan. Mr. Hughes states that is down gradient remediation. Mr. Hughes feels as construction continues he is concerned contamination could arise.

Mr. Hughes has concerns with the re-phrasing of where the monitoring wells shall be placed, "or where otherwise agreed to," and feels the changing of that languages leaves the possibility of not installing the well. Mr. Freeman states that is not the purpose of the language modification. Ms. Kendrick states she feels it is well advised to write in some flexibility based on agreement.

There is discussion regarding the phrasing of monitoring wells for the duration of construction or up to five years after the completion of Phase I in case other phases are not constructed. Mr. Eacobacci states he understands the Water Departments concerns that if Phase II begins more than 5 years after the completion of construction of Phase I what happens to monitoring the wells.

Mr. Hughes states that he still feels the Board should not strike the language regarding the monitoring wells in H8i. Mr. Freeman states he could keep the original language, but to add a comma and the language that states as long as the applicant is the responsible party under applicable law.

Present before the Board: Guy Campinha

Mr. Campinha states that under H9i it states if requested by the applicant alternatives to all approvals are subject to sewer superintendent and should say to the sewer commissioners.

Present before the Board: Sandy Slavin, Sewer Commissioner

Ms. Slavin states to the Board that she is before the Board as an individual only, not as a representative of any Board she is on. Ms. Slavin has questions on the 9-20-18 draft decision. Ms. Slavin is concerned that the apartments are not wired for cable or wifi. Mr. Elkallassi states that the apartments are wired for these services but it is for each renter to pay for. Ms. Slavin states she is surprised there is no work-out equipment in the common room, no community garden, and no water available for a community garden. Mr. Elkallassi states he is opposed to a community garden because people argue over available space, if someone left the water on, etc.

Ms. Slavin states she is also concerned that there was not a dumpster at each building and there are no turn-arounds in the parking lot. The applicant states it works better in their experience to have one dumpster on site that is emptied multiple times a week rather than multiple dumpsters emptied less times per week. Mr. Elkallassi states he agrees, that the issue is people walking too far to the dumpster from the furthest building and recommends adding another dumpster to the other side of the site. The applicant states they can make the current dumpster location smaller and add a location at the northeast corner for another dumpster. Mr. Elkallassi recommends having concrete walls and pad around the dumpsters. Mr. Rinaldi states those will be installed.

Mrs. Slavin states she is concerned that in Phase I there is only access from Cranberry Highway, and you cannot take a left into or out of the complex, but people are likely to make those turns on Route 6 until the state performs their construction installing the median. Ms. Slavin feels there should be access to Redbrook Road for Phase I. Mr. Rowley and the Board agree with Mrs. Slavin that is dangerous. Mr. Rowley states there is an opportunity to create a temporary entrance for Phase I. Mr. Freeman states it would be the applicants burden to request access through that property since the applicant will not have purchased that property at that time. Mr. Freeman states he believes it is a reasonable condition. There is not a definitive solution at this time.

Mrs. Slavin states it indicates that the applicant would like to use stone dust and not concrete on the pathways. Mrs. Slavin recommends that all walkways be asphalt or concrete for stability. Mr. Freeman states this item was discussed and at the time of the discussion he felt they reached consensus that stone dust was agreeable. Mr. Eacobacci states there are multiple pathways to the community building, one is paved and others are stone dust.

Mrs. Slavin also recommends that there be handicapped parking next to the community building. Mr. Freeman states it does still show a driveway with four parking spaces will be constructed to the community building. Mr. Elkallassi asks if the parking spaces could be marked handicapped. Mr. Freeman states it may be physically impossible with space to make all of the parking spaces handicapped. Mr. Rinaldi states they could have three handicapped parking spaces in lieu of the four parking spaces currently proposed.

Ms. Slavin states she is also concerned that there is no irrigation on site for the landscaping. Mrs. Slavin also asks who determines if the plants are diseased or dead. Mr. Elkallassi states he supposes that the landscaper would make that determination. Mr. Arista states that they would like to plant native plants that do not require irrigation.

Present before the Board: Richard Hadley

Mr. Hadley is concerned with the traffic at Redbrook Road and Cranberry Highway. Mr. Hadley states he feels that the traffic review had found an issue with the traffic report. Mr. Hadley is also concerned if the state doesn't approve the curb cut. Mr. Elkallassi states if there isn't a curb cut then there won't be left turn access and the project might not go forward.

Mr. Freeman goes over other points of the decision, such as the division of the lot and appropriate phasing. Condition A8 Mr. Freeman had crossed out that the Board would receive notice if there is change of partners at Dakota. Mr. Freeman reviews other smaller changes made to the conditions that do not alter the intent of the conditions. Discussion was held that Dakota Partners shall be referred to as "applicant" and not "developer" throughout the decision. Mr. Freeman states that he requests that the Board close the public hearing, review the decision over the next two weeks, and vote on the decision at the next hearing.

Mr. Buckland states that the requested waivers had not been discussed. Mr. Freeman states that is true, but he didn't believe there was anything contentious in the waiver requests. Mr. Buckland recommends that the Board does not accept two waiver, the one for signage and the one for lighting. Mr. Freeman states they request the waiver so they are not bound to exact requirements of the sign by-law. Ms. Kendrick asks if they could add to the extent of the lighting plans. The language for that waiver is to be revised.

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

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:

October 10, 2018	#35-18	Major Modification	JNJ Holdings	2371 Cranberry Highway
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C. Decision Deadlines

40 days after the close of the public hearing	#2-18	Comprehensive Permit	Dakota Properties	3102 Cranberry Highway
60 from close of the public hearing	#4-18	Site Plan Review	Giancola Minot Properties	72 Minot Avenue
Special Permit – 9/11/18; Variance – 9-21-18	#17-18	Special Permit/Variance	RMRM Realty, LLC	3035 Cranberry Highway
October 9, 2018	#23-18	Special Permit/Site Plan Review	Anthony Grosso	1 Rae 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. Eacobacci moves to adjourn. Ms. Kendrick seconds.

VOTE: (5-0-0)

Date signed: 10-11-2018

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

Date copy sent to Town Clerk: _____

RECEIVED

OCT 29 2018