

**Town of Wareham  
Zoning Board of Appeals  
Minutes – September 28, 2022**

- I. **CALL MEETING TO ORDER:** opened the meeting at 6:30 pm.
- II. **ROLL CALL:** Present: Chairperson, Nazih Elkallassi, Clerk, James Eacobacci, Mr. Larson, Rick Semple, Jacob Morrison, and Veronica DeBonise (6:32 pm)

**Absent:**

Planning Director, Ken Buckland came to the meeting at 6:50 p.m.

III. **PRELIMINARY BUSINESS:**

1. **Approval of Meeting Minutes: 9/14/2022**

- a) Mr. Eacobacci made a motion to accept the minutes as presented and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0).

b) **Notice of Project Change – Comprehensive Permit, M.G.L. Chapter 40B – 815 Main Street**

Attorney Peter Freeman was present with Mr. John Scanlan, the developer. He said this was going to be on the edge of 808 Main Street. He said it is within the 40B regulations to see if the changes are unsubstantial. He said they submitted an overlay plan that shows the existing 815 Main and the parking and drainage that will benefit both projects.

Mr. Elkallassi asked if they wanted to modify 815 Main Street.

Mr. Freeman stated yes that is correct. He said if it's approved it'll take any concerns away about 801 Main Street and then presumably be okay with 815 Main Street.

Rick Tabaczynski, Engineer was also present.

Mr. Rowley stated they may want to take into consideration the drainage calculations have been done for a 25-year storm; the new project runoff will be in the existing project. He noted that the calculations have been done for a 25-year storm; however not for a 100-year storm. He suggested they resolve or add the added calculations.

Mr. Elkallassi stated that's what his concerns were in the beginning.

Rick Tabaczynski explained the as built for 815 Main Street. He said it was in the corner they would add the parking spaces to allow 808 Main Street. He said they would be only adding parking to the area and proposing a catch basin of the new parking area at the 815 Main Street side. He said that would handle half of the driveway for 815 Main Street. He said the catch basin and leach system would catch the new parking spaces where a portion of it would handle it. He said there are no other changes to the site. A fence will have to be removed in that small area as well. He said it's pretty insubstantial.

Mr. Tabaczynski said they ran the 25-year calculations for the piping subdivision regulations. He said it's caught by a low point with four leach pits in a row that would collect the drainage. He said they would have more capacity in the rear of the site. He said the 100-year may have a backup, but it would be hard to design to handle it. He said the excess would overflow the catch basin and flow downward.

Mr. Elkallassi stated they would have to get those calculations for the 100-year storm for Mr. Rowley.

Mr. Freeman asked if they'd be okay to approve it saying the change is insubstantial and notice of approval subject to the adjacent 801. He said they can't move forward with 815 until they get approval for 801.

Mr. Tabaczynski stated they are reviewing a plan from September 1, 2022. He said if they run the calculations they would have to add another leach pit and that would still be an insubstantial change.

Mr. Elkallassi asked the board members for comment as well as public comment. There was no public comment.

Mr. Morrison stated he was fine, and it was a minor change.

Ms. DeBonise said it seemed minor, but she doesn't remember being at the meeting when it was discussed. Other board members also agreed that it was a minor change.

Mr. Rowley said this is also drainage system calculations that have to be shown for stormwater and they have to decide whether it complies or not.

Mr. Freeman stated if they leave it simple as it is subject to the approval of any relation to 815.

Mr. Eacobacci asked about taking a few parking spots from 815 to 801.

Mr. Freeman stated they are not taking away parking spots. He said there are parking spots on 801 that will be used for 815.

Mr. Eacobacci made a motion Subject to the approval of conditions related to stormwater in the adjacent parking lot that the change is insubstantial and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

#### **c) Setting Bond Amount for Woodland Cove Driveway**

Attorney Freeman was present for the applicant, along with the developer from Dakota Properties. Mr. Freeman stated that the bond was reviewed by Town Counsel. He said the amount that was in question is the amount is \$403,971.25, which they believe is a fair amount.

Mr. Rowley explained his letter. He received a sketch plan and the bond estimate from a site engineer. They submitted a copy of the plan, and the SP says access for Phase 2 should be with a bond. He said they prepared the plan based on the driving piles from the roadway but left out paving, catch basin, lighting, a sewer manhole, and piping within the framing of construction. Mr. Rowley stated he needs clarification on whether it should have been included in all the parking spaces of paving. He asked if the intent was just for the driving aisles; or are all the paving included, if so, the plan is not up to date.



Mr. Eacobacci asked which phase this covers.

Attorney Freeman said Phase 2 and 3. He said the sequence of phase numbers was backward.

The representative from Dakota properties explained the different phases of the project.

Mr. Eacobacci said he believed the driving aisles are adequate now with this significant bond, and should they come back with another phase, more can be added later.

Mr. Buckland explained the driveway and the bond was to get access. He said the details in the decision say paving, landscape, and other details but it was up to the board to say what was appropriate for the phases.

Mr. Freeman said the language was a little vaguer. He said it was not unreasonable to do what they are proposing. He said it is likely that it'll be completed, and the Town would not be stuck with it. He said the bond amount is clearly substantial.

Mr. Elkallassi opened up comments from the board, but there were none.

Mr. Elkallassi opened it up for public comment and there was none.

Mr. Eacobacci made a motion to accept the bond amount of \$403,971.25 and two different forms accepted by Mr. Buckland and Town Counsel, Richard Bowen would be satisfactory. Jacob Morrison seconded. All in favor. 4-0-1 with Mr. Semple abstaining.

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

##### **1. 25-22 Villages 801 Main Street LLC – Comprehensive Permit, MLG Chap 40B – 801 Main Street – Assessors Map 88, Lot 1011A**

Attorney Freeman was present for the applicant. He stated they presented revised plans per Mr. Rowley's peer review. He gave an overview of the project changes per the peer review. He stated there was a letter addressing the Water Department comments and they included a drainage report

Mr. Freeman reviewed the other provisions in the requested waivers.

About adding a bedroom to the septic, Mr. Freeman stated that the Board of Health Agent stated that was no longer in effect. He said the new plans would pass by the building inspector who would review them as well.

Representing the architect, Yvette Perkins said she sent over the documents and new plans to the zoning office today. She did pass them out to the board members.

Mr. Elkallassi asked Mr. Rowley to give his opinion as this sounds more technical.

Mr. Freeman stated these are the plans that will be on the record, and he feels Mr. Tabacynski has addressed all of Mr. Rowley's concerns.

Mr. Rowley informed the board he had an opportunity to go through the questions and answers. He said his original review was the August 10, 2022, letter. He said there was a letter from August 11, 2022,

from the Water Department. He said that he issued a letter on September 3, 2022, questioning the parking spaces. He said it was unclear why they were providing three additional spaces when they have more than enough with sixteen spaces. He stated if they made the parking spaces conform at 9.5x19 they wouldn't need the added three.

Mr. Rowley said they would be asking for a waiver on the size of the parking spaces.

Opening it up to the board for questions, Ms. DeBonise asked how many extra spaces there would be.

Mr. Freeman stated three, but there are fifteen in total, with two per unit.

Ms. DeBonise said she thought it was good to have the extra spaces. The board members agreed to the parking space waiver.

Mr. Rowley discussed the grading; he said their response has been revised. He said he was concerned about the handicapped access to one of the buildings. Mr. Rowley also addressed the existing house and barn that would be redone. He said the access road was going to be widened to 12' for the septic truck, but there would be no place where the truck could turn around and drive out. He suggested they look at revising the plan to move back the septic system and then have a turning spot (hammerhead) beyond the three parking spaces so the driver would be able to turn around and get out.

Mr. Elkallassi agreed they needed to reconsider that option as he felt it would not be healthy to be backing up on Main Street.

Mr. Tabacynski had no objection, he said it would add more pavement to turn around in the back; but that one extra space could be used for that type of vehicle then.

Mr. Elkallassi said he thinks they need to design the hammerhead as suggested by Mr. Rowley

Mr. Eacobacci asked if they had a provision for a dumpster.

Mr. Tabacynski said they did not.

Mr. Eacobacci suggested they add a dumpster provision inside that hammerhead and would kill two birds with one stone.

Mr. Tabacynski confirmed that 815 had dumpsters on site.

Mr. Rowley stated he had more concerns with the finished floor and the sewer line going out of the building. He said it appeared very tight and would suggest a difference in separation of height. He said not knowing where the plumbing is inside, it appears tight.

Mr. Tabacynski said the leaching field is at the lowest point it can be. He said he will look into it once again before the final revisions take place.

Mr. Rowley shared concern about the pitch of the driveway and not adding more runoff to Main Street. Mr. Tabacynski stated it's a flat, flat surface. He said they could create some pitch to the back northeast corner.

Mr. Elkallassi asked how much pitch Mr. Rowley wanted to see.



Mr. Rowley said he'd like to see it beyond the fill of the driveway. He said without it the runoff would turn in and flow toward the curbing at that first space before it goes all the way down to the end where a catch basin lines. He said he is still waiting for the calculations on the 100-year storm.

Mr. Freeman stated they needed to review and make those suggested changes and requested to close the public hearing at this time.

Mr. Elkallassi stated he wasn't comfortable giving a yes without everything in hand. He said if the applicant was comfortable closing the public hearing that was fine, but if there were still any changes they wouldn't be able to put any discussion into them.

Mr. Freeman stated they were okay leaving the public hearing open to have another review from Mr. Rowley with completed revised plans.

Mr. Elkallassi asked for public comment, but there was none.

Mr. Eacobacci made a motion to continue 25-22 Villages of Main Street to October 12, 22 per the applicant's request and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Attorney Freeman asked if the board was okay if he started to create the final draft. Mr. Elkallassi stated that was fine and asked him to get a copy of the draft to Mr. Rowley.

## **2. 26-22 Dos Amigos Realty, LLC – Variance – 12 Larch Street – Map 38, Lot 512**

Mr. Eacobacci made a motion for October 12, 2022, per the applicant's request and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

## **3. 27-22 Carlton White, Jr. – Variance – 17 W. Central Avenue – Map 1, Lot 632**

Mr. Carlton White was present. He took images from the architectural plans of what the future house would look like in keeping up with the character of the house as well as the neighborhood; of course, gaining some space. He passed out those images to board members.

Mr. Elkallassi asked for any comments from Board members, but there were none. He said he liked the project himself and Mr. White did a great job in presenting it.

Mr. Eacobacci agreed that he liked the project.

Ms. DeBonise said she liked the project but did not like the F.A.R. She said it eased her mind that the applicant agreed to a deed restriction that the home cannot become a two-family dwelling in the future

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

Mr. Eacobacci made a motion to grant the appeal subject to the deed restriction that will be drafted and added to the decision that the home will remain a single family and that per the Atlantic Design plans dated September 27, 2022, the total F.A.R. is 41%. The motion was seconded by Ms. DeBonise and passed unanimously. (5-0-0).

#### **4. 28-22 Wareham PVI, LLC – Variance – 0 Route 25 – Map 115, Lot 1000**

Engineer, Sarah Ebaugh was present for Wareham PVI, LLC. Along with Betsy Mason via Zoom from Klavens Law Group and Lindsay Kester.

Ms. Ebaugh reviewed the previous meeting and the layout and the topography of the lot and the restraints of the topography.

Attorney Mason reviewed the project and the reason why they were in front of the board. She said this was an ongoing project with the Planning Board and they had suggested they come before the Board of Appeals for the unique circumstances of the land, which is a long narrow parcel as they are seeking a waiver of the 50' setbacks for solar. She said in the last meeting they were discussing substantial hardship and she believes that is directly out of the unique shape of the property. She reviewed the site layout comparison and the hardship it presents with the parcel they are using. She compared the project if it was proposed on a rectangular more typical layout of land that could accommodate 926 solar panels with access drive and setback requirements; compared to their lot with the shape of it, would accommodate 532 panels; both having the same acreage of 23.4.

Attorney Mason also touched on the third criterion of the bylaw which detrimental purpose of the bylaw. She stated the provisions of the 50' setback requirements are to protect residential abutters, but in their instance, they don't feel the setback applies to this project as there are no residential abutters within 50' of their project. She said there would be no harm as there are no residential abutters.

Mr. Elkallassi stated he was in favor of the project. He read from chapter 40A, "owing to the circumstances to the soil and shape conditions (which he noted exists) of such land, not effecting the zoning district, substantial hardship, financial or otherwise."

Mr. Elkallassi noted that the developer would make money regardless and it's not up to the board to say, well you're making money anyway. He referred to Mr. Semple's concern at the last meeting about the deer jumping over the highway, he said that this would be more protected as there would be two fences up. Furthermore, Mr. Elkallassi stated he believes it meets the intention of the bylaw.

Mr. Morrison had no questions.

Ms. Debonise stated she thought about it since their last meeting and although she is not opposed to the project itself, she believes there are setbacks in place for all parcels and she would consider some changes to the setback requirements, but not necessarily less than 20'.

Ms. Ebaugh. clarified there are only two locations that vary less than 20' as a setback. She pointed out the two locations on the plans.

Attorney Mason stated they are asking for a variance from the 50' setback but would agree to a condition that the if the variance is compromised, the proposal in front of the Planning Board would be for a site plan review. She said they are not proposing any setbacks but don't feel the 50' setbacks apply to this project on the merits already given.

Mr. Elkallassi stated that the bylaw is fairly new and hasn't been discussed, modified, changed, or challenged. He said the 50' setback is not just to the solar panels directly.



Mr. Eacobacci clarified that the 50' setback was supposed to be a visual screen so they wouldn't see the solar panels in that area.

Attorney Mason stated they are proposing to add a vegetated buffer in those areas as an olive branch to the Planning Board.

Mr. Semple had no comments.

Mr. Elkallassi opened it up for public comment.

Resident, Mr. Koshmere stated he spoke on behalf of fifteen citizens at the last meeting and tonight was speaking on behalf of twenty-five. He read from a presentation and stated in summary, that the board may be opening itself up to setting a precedent for any solar farm that commits to a lot in moving setbacks. He said that all solar farms should have to abide by the bylaw that is in place. Mr. Koshmere read from the zoning bylaw to the topography, soil, and others.

Mr. Elkallassi said he didn't appreciate him teaching the board what the requirements are for issuing a variance. He said they know exactly what they are and the decision solely lies on the Zoning Board's members to evaluate the zoning bylaw for each case; and that each case that comes before them is unique in nature. He said they can not discuss what would happen with "IFs" and what could come before them in the future.

Mr. Koshmere continued to read his memo about the different hardships – quoting different superior court outcomes.

Mr. Elkallassi stated that there is only one more parcel in the Town of Wareham that could be easily used for solar in the whole town; and that he believes the bylaw was written without consideration, input, and a personal agenda for some. He said this was his opinion only. He said that each project has its own merits and needs to be discussed at the time it is presented.

Mr. Eric Leintrde's addressed the board with concerns that this is yet another solar field and they should have to abide by the same setbacks as the other solar fields. He said he believes they are pushing the limits here.

Mr. Elkallassi stated he believes this project and its developer are being penalized by the Fearing Hill Road project, where most of the people who are concerned are from that area. And he said that is unfair to judge one solar farm based solely on that project and residents being upset that that project is continuing.

Mr. Leindre stated that he felt they are setting a precedent that other solar farms can come in and ask for setback relief.

Mr. Elkallassi stated it was only his opinion. He said that Mr. Leindre is coming in asking what the board would do if this, if that; and he can only comment on the project before him.

Mr. Eacobacci asked for a point of order and stated he feels that they are encouraging a debate. He asked that the board members allow residents to make their comments without a debate.

Resident Annie Hayes passed out to board members what she was going to say regarding the detrimental to the public view. Ms. Hayes's opinion will be a part of the meetings as attached as she did read from it.

Mr. Elkallassi stated if such is a huge issue then they shouldn't have any solar near residential homes.

Mary Horahan is speaking in opposition and stated who would purchase a lot of odd shapes on their admission and increase their project by 41%. She said it doesn't seem honest to her and she objects to the developer.

Attorney Mason addressed that they are not coming into this parcel with the setbacks in mind to reduce them; she said they commenting that the setbacks don't apply to this case because they do not have residents within 50' setbacks. The property is not abutted by residential homes.

Mr. Eacobacci asked if the applicant has purchased the parcel, and or leased it as of yet; and if it's committed to the parcel at this time.

Attorney Mason stated they have not purchased the parcel and they have the option to lease it. They are committed to the parcel.

Allyson Stewart via Zoom is not in favor of any more solar projects to solar projects in Wareham. The shape of the land is not the fault of the residents of Wareham. She said she bought her home to live in the beauty of Wareham.

Jeannine Lemmon via Zoom said she also is in opposition to the project.

Mr. Elkallassi turned it back to the board members for comment.

Mr. Morrison stated he was unsure.

Ms. Debonise said she thinks the opposition makes a strong case. She said the speakers made their point well.

Mr. Eacobacci stated he can't ignore the comments that were brought before the board tonight. He said he believes the applicant is between a rock and a hard place. He is one to think the solar panels have merit. He says he'd rather have twenty-one-acre monitored solar panels than twenty-one homes with solar on their roofs and no monitoring.

Mr. Elkallassi stated that he wishes there was one person who lived in the area of this property and not the Fearing Hill Road project that would speak. He said he stands by his opinion.

Mr. Semple stated he stands by what he previously voiced at a previous meeting.

At this juncture, Attorney Mason asked for a continuance to have an opportunity to address the board with a few comments that were made this evening. She said they are not going to reconsider their setbacks as they do not believe that the setbacks apply to their parcel. She said there is no precedent being set here as this is a single application as a single request, every project is unique and is not going to open the flood gates to all solar projects.



Mr. Rowley had a few comments. There are no residents that occupied that area and he stated that didn't matter. He read section 594.5.3 of the solar bylaw which reads regarding the setbacks. He said the property itself is in a residential district.

He said that in another matter near this project they made sure an abutting parcel stuck to the 50' buffer. He suggested the board do a site visit of the area and the abutting lot.

Mr. Elkallassi stated that the parcel Mr. Rowley was referring to there was no solar by-law at that time. Mr. Rowley and Mr. Elkallassi argued that it was in effect/was not.

Mr. Eacobacci made a motion to continue, per the applicant's request to October 12, 2022, and it was seconded by Mr. Larson. The motion carried to continue (3-2-0). Mr. Eacobacci, Mr. Elkallassi, and Mr. Larson voted to continue. Ms. Debonise and Mr. Semple denied the continuance.

**5. 29-22 Joshua DeOlim – Special Permit – 2618 Cranberry Highway – Map 110, Lot 1051**

Attorney Robert Perry was present for the applicant, Joshua DeOlim, and asked for a continuance. He said they agreed with the board that a complete site plan review was needed for this project.

Mr. Eacobacci made a motion to continue 29-22 per the applicant's request to November 23, 2022, and was seconded by Mr. Semple. The motion passed unanimously. (6-0-0)

**6. 30-22 The Family Pantry – Damien's Place Corp. – Site Plan Review – 242 Marion Road – Map 56 Lot 1000-B**

Mr. Eacobacci made a motion to continue to October 12, 2022, per the applicant's request and was seconded by Jacob Morrison. The motion passed unanimously. (6-0-0)

**V. PUBLIC HEARINGS:**

**1. 31-22 Ellen Thompson & Heidi Hampson – Special Permit/Variance – 2 Bush Street – Map 3A-5 Lot 9**

Mr. Eacobacci read the hearing in for the record proposing to construct a one-story addition at 2 Bush Street in the R40 district.

Bill Lockwood, Lockwood Architects representing the petitioners was present. He said they would like to construct a small addition in the northeast corner of the dwelling to add a bathroom to attach to an existing bathroom. He said the addition would be within the setbacks and no further encroachment on front and/or side setbacks. And would still be below the threshold of the F.A.R.

Mr. Elkallassi stated this is an existing non-conforming; adding the bathroom would extend the non-conforming.

Mr. Larson said he didn't believe it was adding too much to it. Ms. DeBonise was fine with it.

Mr. Eacobacci stated are they losing the ability to park off the street. The shell parking will remain the a.ked?

Mr. Lockwood stated they would have to reconfigure the parking area.

Mr. Semple stated he hadn't been able to review it online as it wasn't on the website. He said he didn't have an opportunity to look at it before this meeting.

Mr. Elkallassi asked for any public comment, but there were none. He said that being said he asked for a continuance.

Mr. Semple said he was comfortable moving forward, he just had concerns that it wasn't posted on the website, and he wondered why.

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

Mr. Eacobacci stated that Mr. Lockwood puts a good package together.

Mr. Eacobacci made a motion that this is not detrimental and can be treated as a Special Permit and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Mr. Eacobacci made a motion to grant relief to find favorably as what was presented for 31-22, 2 Bush Street, and was seconded by Mr. Morrison. The motion passed unanimously. (5-0-0).

In leaving, Mr. Lockwood asked if they always had a six-member board. Mr. Elkallassi explained that it takes five board members to vote but they had two alternatives who also sat on the board.

**VI. ANY OTHER BUSINESS/DISCUSSIONS:**

Mr. Semple stated they do a lot of continuances and asked if they could work through things to move them along; so as not to create such a huge workload.

Mr. Elkallassi stated that is the definition of 'volunteering'.

Ms. DeBonise asked that they have documents from meeting to meeting. Mr. Semple stated they need to review or have the paperwork continuously in front of them.

Mr. Eacobacci stated that the information can be redistributed because the paperwork stays in the box, and it would be up to the members to ask for the information.

Mr. Morrison made a motion to adjourn and was seconded by Ms. DeBonise. The motion passed unanimously. (6-0-0). Meeting adjourned at 9:06 p.m.

Respectfully submitted,  
Patricia A. Pacella

Date signed: 10-12-2022

Attest James H. Eacobacci  
James Eacobacci, Clerk  
WAREHAM ZONING BOARD OF APPEALS

WAREHAM TOWN CLERK  
2022 OCT 25 AM 11:47

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