

**Town of Wareham  
Zoning Board of Appeals  
Minutes – November 10, 2021**

- I. **CALL MEETING TO ORDER:** Chairperson, Nazih Elkallassi opened the meeting at 6:31 p.m. via Zoom.
- II. **ROLL CALL:** Present: Chairman, Nazih Elkallassi, Clerk, James Eacobacci, Richard Semple, Troy Larson, and Veronica DeBonise and Chris Contie.

**Absent:** Jacob Morrison

Assistant Planning Director, Mr. Sheehan was also in attendance.

**III. PRELIMINARY BUSINESS:**

1. **2-21 TGCI EMNACA, LLC – 40b Comp Permit – Settlers Glen, 3128 Cranberry Highway – Changing application from privately owned units to rental units**

Mr. Elkallassi explained to this project that they want to switch to all rental units. He said if the board thinks that's a substantial change, they have to redo a Public Hearing; if not, he said they can vote on it. He explained what a 40B is. He said if they go to the Housing Board in Boston it will probably be a

Board member, Chris said he read the laws on it and he believes they fall under a significant change. Ms. DeBonise said the same.

Mr. Eacobacci said he feels they are stuck between a rock and a hard place. He said he wants the applicant to know that he is not happy about it. He asked if they changed to a rental unit, if they mean in the future it has to be a rental unit vs. for-sale units. He said he'd rather see it as 'for sale' units for the neighborhood.

The applicant's attorney said he has twenty days to go to the housing appeal for a substantial change. He said if this is a disagreement about where the rental units are located that is fair, however, he said that the regulations for the for-sale units to rental unit is not; as the regulations would be more extreme if it was the other way around. He said the right management company would take care of rental units as well as for-sale units.

Mr. Buckland reviewed the units going across the street as well as these twenty proposed.

Mr. Eacobacci made a Motion to close the Public Hearing. However, Mr. Elkallassi said it was not a public hearing. A resident was yelling from the back of the room to speak. Mr. Elkallassi stated that if the board decides it's a major change that will force another meeting from the ground up that will allow the residents to speak.

Mr. Semple closed the public input. The motion passed unanimously.

Mr. Eacobacci made a Motion to treat this as a minor modification. There was no second.

Mr. Eacobacci made a Motion to treat this as a major modification and was seconded by Mr. Semple. The Motion passed 4-0-1, with Mr. Eacobacci abstaining.

Mr. Eacobacci explained that this is a major change and will come back for a public hearing.

## **2. Discussion and vote to hold an additional meeting on December 15, 2021**

Mr. Elkallassi asked the board if they wanted an additional meeting on December 15, 2021.

Mr. Eacobacci made a Motion to have an additional meeting on December 15, 2021, and was seconded by Ms. DeBonise. The Motion carried, 4-1-0 with Chris abstaining.

Mr. Elkallassi asked for members to recant the vote. Mr. Eacobacci made a Motion to rescind the motion as two members would not be able to be present. Ms. DeBonise seconded the Motion and it passed unanimously.

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

### **1. 39-20 First Hartford Realty Corp. – Special Permit, Variance & Site Plan Review – 3005/3013 Cranberry Hwy – Map 12, Lot(s) B & LC1 – Reign Car Wash – Motor Vehicle Service**

Doug Correy and Curtis.. and Matthew of VHV – present for the applicant.

Ms. DeBonise said she would review the minutes and the tape so she will be eligible to vote.

The applicants stated this was first started on August 11, 2021.

Mr. Correy stated the last time they were here in October was to render a decision on a site plan. He said they had a discussion on the fire department regarding a fire access plan; he said they reached out and on October 21, 2021, they stated they were satisfied with the plan. He said they also had a discussion on whether the stormwater can be resolved within the buffer, and it was determined it can be. He said they have had discussions with the Town parties. He said the board also discussed additional plantings within the infiltration basins and has revised their plans. He said the board also requested the construction moved off of Cranberry Highway. He said the board also asked for test pits and they provided those test pits and they provided the results on October 27, 2021.

Curt from VHV was present and spoke briefly about the updated landscape plan. He said they looked at the basins and recommended appropriate plantings in the basins of 60 plantings of evergreens and shrubs. He named the different plantings that would be put there. He said in respect to the soil test pits they confirmed the information they were using, there were no particular surprises. He said they have agreed with Mr. Rowley that the organic material would be removed. He said they believe they have closure on the groundwater discussion they had previously.

Mr. Rowley was present and stated he felt satisfied. He said there were two pits in the back that they need to review at the time of construction.

Mr. Conti asked about how they are handling the snow removal on the lot.



Mr. Correy said if it needs to be piled somewhere they would do it on the lot and if it gets too hard to be manageable they would have to take it off site.

Ari – universal property management said that the snow removal wouldn't really be accumulated on the north or the west side of the building and would melt any ice or snow buildup. He explained the 3 pay lanes, cash or credit close to the building; or unlimited member lane is the second lane.

Discussion with Mr. Rowley on the building of the basin prior to construction.

Ms. DeBonise asked about the distraction of traffic along with the lights and asked where there was left.

Mr. Rowley stated there would be no flashing lights outside of the building per the Zoning regulations. He didn't think it was clear inside the building.

Mr. Correy said there were no flashing lights in/out of the building. He said they are in compliance with the zoning bylaw.

Ms. DeBonise stated her concern was the effect on the traffic on the outside of the building.

Mr. Semple stated there was another car wash down the road with flashing lights and wondered why one could have it but not this applicant.

Mr. Elkallassi stated the bottom line is the lighting plan.

The applicants stated that there is no difference in the lighting in this car wash than others. He said that they have standard equipment as others.

Mr. Elkallassi opened it up for public comment. He stated that for the record, Mr. Alan Slavin a select board member, who has a finance committee tonight and couldn't be present wanted it to be said he is in favor of this project.

Attorney Jillian Morton was present they submitted a traffic report and she asked them to review the footnote on the traffic study. She said in further opposition is the traffic and amounts of traffic that will go into this site. She said they received late today, the stormwater management report. She expressed concerns about traffic and the volume going in/out of this site. She shared concern about endmen domain for the taking of their lots on Cranberry Highway. She said she is having a hard time under the variance that there is a hardship.

Ms. Morton said the plan site review with the Planning Board comments should be reviewed. She said one of the comments were that other agencies comments need to be reviewed.

The applicants' traffic study expert, Matt – was present. He said they based their trip generation to the number of wash tunnels as well as the building area. He said they were based on a Saturday. They assumed 50 in 50/out and they came up with 80 during the evening, and 208 total on Saturday midday peak hour. He said the projections did not take into consideration pass-by trips, internal capture trips and assumed all trips were 'new trips' to the area. He said the traffic study showed no impact on an impact day.

Attorney Morton stated they were concerned about the flooding on the property as well.

Mr. Rowley stated a combination system is in play, the infiltration system for the stormwater as well as the infiltration system on the side and in the back that discharges to a pond area in the back. He said the system needs to be verified that they can discharge to the back whereas it is not their property. He said he would review the stormwater management plan.

Mr. Elkallassi stated that if the applicant doesn't want to give them an extension the board would need to act tonight.

Mr. Correy stated that his engineers are here tonight and to continue one more time is ridiculous.

Mr. Eacobacci made a Motion to close the public comment.

The board provided their straw poll vote. Ms. DeBonise said she was against the variance as this is a new purchase and new development, so she does not believe there is a hardship. Mr. Morrison stated he was for the project but depending on the wording of the variance with special conditions he may be in favor of it.

Mr. Semple seconded the Motion and it passed unanimously.

Mr. Elkallassi asked for discussion on the variance. He said it was for the turn-around only. He said it would be conditioned for the whole lot. He said you can't separate the two, either you allow it to be built with a variance or not.

Mr. Eacobacci made a Motion to grant the variance as presented, 39-20, 3005-3013 Cranberry Highway and was seconded by Mr. Semple. The variance carries, 4-1-0 with Ms. DeBonise in opposition.

Mr. Eacobacci made a Motion to grant the Special Permit as presented with standard conditions on 39-20, 3005-3013 Cranberry Highway and was seconded by Mr. Semple. The Motion passed unanimously.

Mr. Eacobacci made a Motion to approve the site plan review as presented and was seconded by Mr. Semple. The Motion passed unanimously.

**2. 55-21 Mannix – Special Permit, Variance and Site Plan Review – 238 & 240 Sandwich Road – Map 133, Lot(s) 1100A & 1101A – Crossroads Care Center**

Mr. Elkallassi opened the continued public hearing. Attorney Morton was present for the applicant along with Mr. Mannix and from JC Engineering, Brian Wallace. She stated they are looking for final side review. Attorney Morton stated it was not a Special Permit per the By-law use table, as it is an allowed use.

Mr. Elkallassi said they would only be voting on site plan review.



Attorney Morton stated they have a letter from the Fire Department as they are satisfied with the plan. She said that members have said this is too big for the sight, general statements and common theme and she doesn't believe they should vote no if they believe that as this is a by right use.

Mr. Rowley stated that he was of the opinion that the requirements of site plan review that has nothing to do with the variance. He said the height is only the vote for the variance. He said the scope and the size of the building and other features of the building is reviewed with site plan review.

Mr. Rowley stated previously he stated that the building was too large for the area. He said that he has reviewed all plans in accordance to what was submitted. He stated they have made modifications to the basement floor as well as a stair to an egress. He identified what major changes were made on the plans. He said that he believes the building is too big for the site. He said he did put a letter together for state approval curb cuts and the sewer line.

Mr. Mannix stated the switch gear for the location is substantial and is located where it needs to be. He said the state has a lot of requirements for the facility and he has brought those responses for their review.

Mr. Eacobacci asked what the advantage of bringing the generator closer to the switch gear.

The generator is 200-250 kw gas generator. Mr. Mannix identified where the generator was going to be located at the site. He said this was a long-term care facility by the state and there is quite a few laws from the state that are required in the facility.

Mr. Elkallassi said that anything inside the building should not be discussed as it is not under their jurisdiction. He said he would advise to grant the site plan under the intermediate care use only. He said they are not professionals and not concentrate on the inside of the building.

Mr. Rowley said that parking has been located below the building and restricts that area. He said that he believes that the parking needs to be considered that may have issues regarding the clearance. He said the applicant should state they have the clearance at the building for the parking. Mr. Rowley stated he has given his reports and the board needs to make their decision.

Mr. Elkallassi said the board members are not experts and they don't understand it. He said the building will be under the prevue of the correct enforcers, building codes and etc. He said they have to comply per the building codes. Mr. Elkallassi said they cannot give a variance on the building code.

Mr. Buckland stated he believes this is whether or not they will have the parking spaces to accommodate the use so the board can condition the Special Permit to have those spaces. He said they need not worry about the interior or the building code for the building.

Mr. Mannix stated that the entrance is not blocked per Mr. Rowley's findings as well as he wouldn't be building a parking garage they cannot use. He said the building size meets all the requirements of the codes of the Wareham bylaws.

Mr. Elkallassi stated the site plan needs to be voted for this use only.

Brian Wallace of JC Engineering was present for the applicant. Mr. Wallace said the residents would not be walking on Route 6 as previously discussed. He said that was the main reason why they didn't put the extension on Route 6.

Mr. Mannix said the site plan approval process is depending on the use per the regulations by the state. He said that Mr. Rowley is advising him to get the licenses from the state prior to the site plan review here. Mr. Elkallassi stated that he heard Mr. Rowley say that has to be done, but not prior to their review.

Mr. Eacobacci asked Mr. Mannix to keep the discussions to the proposed plan and not deflect on other plans.

Mr. Elkallassi asked Mr. Wallace if JC Engineering can certify that these plans were based on an intermittent care facility. He asked if they reviewed a site plan review book for this facility.

Mr. Wallace said no they did not. When asked further why not. Mr. Wallace stated per a site plan review isn't exactly what they review. He said they plan the site review off of standard engineer practice and the bylaws of the Town.

Mr. Elkallassi stated that they rely on professional engineers to advise them of the standards that are required for this facility and other facilities. He said that restaurants and intermittent care facilities are different in engineering and building requirements. He said they wouldn't know that and rely on the engineering, professional organization.

Mr. Elkallassi said they only care about the stamp on the plans and the engineers that stand behind their stamp.

Ms. DeBonise asked about what they are discussing and what recourse would they have if it's not built appropriately.

Attorney Morton said that the ZBA is not liable for future code issues if any.

Mr. Mannix said the licensing requirements are from the State and have to be set according to the State, not the building commissioner.

Ms. Debonise said there are things she would like to see for the outside of the building that she doesn't see on the plans, for example the sidewalk.

Mr. Elkallassi said he would suggest that Mr. Wallace go back to his firm and do research on an intermittent care facility and provide stamped plans that reflect those requirements. He said they would then come back to the next meeting and vote accordingly.

Mr. Eacobacci asked what they would gain by continuing.

Ms. Debonise said she would like to see a few things on the plans that aren't on currently. Mr. Elkallassi stated the details can be conditioned.

Mr. Conti read from 15-21 of the building code. He said the building does not fit in that environment.



Mr. Eacobacci said he doesn't need to hear any more bickering or any other information as he is ready to vote tonight.

Ms. DeBonise said she would like to have more clarity.

A motion was made that wasn't on the recording – perhaps to close the public hearing?

Mr. Elkallassi made a motion to rescind the vote and was seconded by Mr. Semple. (3-2). Board members were confused about what was rescinded.

Mr. Semple made a Motion to Reopen the Public Hearing and was seconded by Mr. Eacobacci. The Motion passed (3-2).

Attorney Morton clarified there was a motion to deny that was dead on the floor, but that doesn't mean that the site plan review is dead. (That motion was not heard on the video from the recording secretary listening and providing these minutes).

Ms. DeBonise said she is open to clarity. She said they just seem to keep going back and forth.

Mr. Elkallassi said they will check with Town Counsel if their process is correct.

Subject to the opinion of Town Counsel, Mr. Eacobacci made a Motion to continue to December 8, 2021, and was seconded by Mr. Semple. The Motion passed 3-2, with Ms. DeBonise and Mr. Conti in opposition.

## **V. PUBLIC HEARINGS:**

### **1. 56-21 Doobie – Special Permit and Site Plan Review -4 Recovery Road Assessors Map 108, Lot 1006/B – Marijuana Establishment**

Mr. Eacobacci read the advertisement for the record.

Attorney Mackey was present for the applicant. Joseph Reuben and Justin Kennedy were present as applicants.

Attorney Mackey reviewed the project on Kendrick/Recovery Road. He said they have entered into a lease with the Town. They are not proposing any construction on the outside of the building only cosmetic and not structurally. He said this will be a delivery of marijuana use only. He said no public is invited to this site. He said employees are only on-site. He says they are present for Special Permit only. He said the Board of Selectman has agreed with them. He said they want to go through a site plan review at this time for the parking space review.

Attorney Mackey stated they can put 17 parking spaces at the location. He said the business needs nine. He said they need a site plan review because they wanted to add an additional two vehicles eventually.

Mr. Elkallassi stated if they are requesting a site plan review then they need to come in with a site plan to be reviewed.

Attorney Mackey stated they will withdraw the site plan review.

Mr. Elkallassi stated they would need to go back to the Building Commissioner to change the parking numbers as it stands before them, they need a site plan review per the parking. He said they need to act on what's before them.

Mr. Conti asked how many employees on the site. They responded with three and two deliveries.

Attorney Mackey stated that people call or order online and they will deliver it. They said they purchase from other vendors around the state and then deliver it.

Mr. Elkallassi asked for public comment.

Attorney Richard Berg, representing the Fielding Family who live at 2432 Cranberry Highway. He said the Fielding Family is across the road and is opposed to this facility. He said they are concerned about traffic in that area as well as how it's going to affect their property. He said they haven't heard anything about signs or security and would like to know more. He said his clients would like to see selling the marijuana out from their next agenda item at 10 Little Brook Road. He asked that if they do issue the Special Permit to the applicant that they condition they can never have a walk-in retail store.

Mr. Elkallassi stated that there are three dispensaries in Wareham for retail currently and all the licenses are used up.

Discussion of how many trips a day they would possibly have for this type of service. Ms. DeBonise asked how many deliveries are done in a timely fashion.

Mr. Reuben stated they had no plans to add signage to the property. They hope to load the vehicles with orders that are usually done in advance and not go back and forth with traffic.

Mr. Eacobacci made a Motion to continue to December 8, 2021 and was seconded by Mr. Semple. The Motion passed unanimously via roll call vote.

**2. 57-21 Doobie – Special Permit and Site Plan Review – 10 Little Brook Road – Map 89, Lot 2/E – Marijuana Establishment**

Attorney Mackey explained this project. He said this is going to also not be a retail facility to the public. He said there will be ten employees.

Mr. Eacobacci made a motion to continue 57-21 Doobie to December 8, 2021, and was seconded by Mr. Semple. The Motion passed unanimously.

**3. 58-21 Reed – Variances – 26 Highland Road – Map 61, Lot 1142 - Raze and Reconstruct of Dwelling**

Mr. Eacobacci read the advertisement for the record.

Mr. and Mrs. Reed were present. Bob Rogers from GAF Engineering was present for the applicant.



Mr. Reed stated they were planning to demolish the existing dwelling. It's about 110 years old to make a more modern building and user-friendly, a little bigger and more amenities.

Mr. Rogers stated there was a nice explanation included in the packet. He said the non-compliance is the floor area compliance and the total building coverage. He said they feel it is a hardship if they had to keep to the floor ratio and building coverage. They said they would be building a 2-story house.

Mr. Eacobacci said he didn't like the bylaw regarding the floor ratio because it should be per square footage, not stories. He said he would be inclined to grant relief.

Mr. Elkallassi asked what size square footage the Reeds' wanted to build. Mr. Rogers said he did not have those measurements.

Mr. Reed said he tried to keep up with the neighborhood houses in that area.

Mr. Semple had no other questions.

Mr. Curran of 23 Highland Road was present to say he was in favor of their neighbors. A few other residents also spoke in favor of the project.

Mr. Elkallassi asked if there were any abutters not in favor who wanted to speak. There were none.

Ms. Debonise said that there have been concerns in the past about the floor area ratio but states this is a different situation regarding density. She said there is a lot of good support from the neighbors for this home and is also in support of the project.

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

Mr. Eacobacci made a Motion to approve the variance for 58-21, 26 Highland Road that the applicant has shown hardship and will not be detrimental to the neighborhood and was seconded by Mr. Semple. The Motion passed unanimously.

**4. 59-21 Rams – Special Permit – 41 Wareham Lake Shores Drive – Map 120, Lot 95 – Home Office**

Mr. Eacobacci read the advertisement for the record.

Ann Rams was present. Don Rams was also present.

Ms. Rams stated she started a business in Rochester that teaches mounted archery and horseback riding. She said the home office would be for office/paperwork only.

Mr. Eacobacci read in the email/letter for the record from the East Over Farms in Rochester.

Ms. DeBonise asked if there would be any employees. Ms. Rams said no.

Mr. Eacobacci stated he was fine with the home office business. Mr. Semple stated he had no issues with the home office.

Mr. Elkallassi opened it up for public comment in favor.

A resident stated that he was in favor of the home office and that it would not create any more traffic.

Mr. Elkallassi asked for anyone in opposition.

Cathleen Shannon stated she was against based on if the property ever changed hands if something happened.

Mr. Elkallassi stated that if the business certificate was the same business that she does and it changed hands it could stay with the premises.

Assistant Town Planner, Mr. Sheehan said if it was a different business owner with a different use would have to reapply.

Mr. Elkallassi advised the Special Permit goes with the land, not the person. He said if it changed hands the new owners would have to do exactly what is being done under the Special Permit.

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

Mr. Eacobacci made a Motion to grant the Special Permit, 59-21 Rams Home Office citing that it is not detrimental to the neighborhood and with the standard conditions, with two special conditions; one being no signage and the second condition that the house number be put on the house. And was seconded by Mr. Semple. The Motion passed unanimously. (5-0).

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

In other business, Mr. Eacobacci stated he didn't like that someone who wants to open a small business in their home, they have to go through hoops. He said he would like to suggest a citizen's petition to allow people to come to the ZBA for no fee to give them relief. He said it's ridiculous what a business certificate process cost is in Wareham, and they are preventing growth in Wareham.

Mr. Eacobacci made a Motion to adjourn and was seconded by Mr. Semple. The meeting was adjourned.

Respectively,  
Patricia A. Pacella

Date signed: 7-13-2022

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

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

WAREHAM TOWN CLERK  
2022 JUL 14 PM 1:10