

WAREHAM ZONING BOARD OF APPEALS
Wednesday, November 30, 2022
6:30 P.M.

I. CALL MEETING TO ORDER

II. ROLL CALL:

Present: Nazih Elkallassi, Jim Eacobacci, Veronica DeBonise, Richard Semple and Jacob Morrison

Absent: Troy Larson

III. PRELIMINARY BUSINESS:

1. Approval of Minutes: 11/9/22

Mr. Eacobacci stated he reviewed the minutes via email and made a correction. Mr. Eacobacci made a motion to approve with amendments and was seconded by Mr. Semple. The motion was seconded by Mr. Semple and passed unanimously. (6-0-0)

IV. CONTINUED PUBLIC HEARINGS:

1. 29-22 Joshua DeOlim – Special Permit – 2618 Cranberry Highway, Map 110 Lot 1051

Mr. Eacobacci stated they received a letter to continue to December 28th or a January meeting and date for board to act.

Mr. Christopher Conti was present to speak as an abutter. He wondered when the site review would take place as a direct abutter, he hadn't received any information as of yet.

Mr. Eacobacci stated Mr. Conti should follow the proceedings for the second meeting in December if they continue to that meeting.

Mr. Conti asked if they can still operate their business. Mr. Elkallassi said they can for right now. Mr. Eacobacci stated there was no cease and desist.

Mr. Eacobacci made a motion to continue 29-22 DeOlim Special Permit to December 28, 2022, per the applicant's request and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

V. PUBLIC HEARINGS:

1. 37-22 New England Center for Psychiatric Addiction Disorders – Variance – 118 High Street – Map 47, Lot 1022A

Mr. Elkallassi opened the public hearing. Mr. Eacobacci read the advertisement in for the record. Attorney Mike McVeigh was present with the applicant, the Doctor from New England Center for Psychiatric Addiction Disorders.

Attorney McVeigh stated they had gone to the previous building commissioner to add an apartment on the second floor and was told they could proceed. He said the apartment is nearly 99%

renovated when they received a stop work order from the current commissioner, advising they would have to go to Zoning Board for an approval of an apartment in a mixed-use district; with a home occupation business.

Mr. Elkallassi stated this address was in Wareham Village 2 where a one or two-family dwelling can be done by right and a home occupation business is an allowed use.

For the record, Mr. Eacobacci stated that Attorney McVeigh had contacted him when they got the stop work order and he had done his own research. He said he thought the commissioner was using Article 3 as a preference to act on the stop work order. He said his research led him to believe that in the mixed-use district, home occupation is allowed.

Ms. DeBonise stated she also reviewed it as a home occupation and wondered if the person living there had to have a connection with the occupation.

Dr. stated it would be her groundskeeper/maintenance person that would be living there.

Mr. Eacobacci reviewed this extensively and believes they should approve this request.

Mr. Elkallassi asked for public comment which was none.

Ms. DeBonise said that she believes it's just an overturn of the Building Commissioner's letter because it's not a variance, as it is an allowed use. She asked if they would be able to rent to anyone that is not related to the home occupation business in the future.

Mr. Elkallassi said they could condition it as an office and one residential.

Attorney McVeigh stated he would like the board to look at this application as a mixed-use.

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

Mr. Eacobacci made a motion to approve the variance to a mixed-use with the stipulation that the business/office remain on the first floor and not become a retail space. And that it be allowed one residential unit on second floor. The motion was seconded by Mr. Semple and passed unanimously. (5-0-0).

2. 38-22 Richard & Anita Padula – Appeal of Building Permit – 9 Murphy Street – Map 50B, Lot 1/3

Mr. Elkallassi opened the public hearing. Mr. Eacobacci read the advertisement in for the record.

Attorney Jillian Morton was present for the applicant to ask for an appeal of the building permit that was approved by previous Building Commissioner of 9 Murphy Street.

Mr. Elkallassi stated he has a conflict with this application and would moderate for the board but cannot vote. He asked Ms. Morton if she would still like to proceed.

Ms. Morton stated she would like the hearing to be opened and let the audience be heard.

Ms. Morton stated that she represents the abutters of 9 Murphy Street who received a building permit to construct a two-family duplex structure on a lot at 9 Murphy Street on a 1939 plan subdivision. She explained the parcels where the duplex is going and the prior 3.3 acres, they are including the other parcels in the building permit. She stated the roads were part of the 1939 plan. She said they spoke with the current building commissioner who said it was the Zoning Board they had to go before to appeal. She said the builder has started to build and they are looking for a cease and desist order.

Mr. Eacobacci stated he has reviewed the application. He said the petitioner is saying that they would need a variance. He said that this is land courted land and the roads are not continuous. He said that the applicant's argument would stand. He said he heard through grapevine, the real basis is across this land at some point, lot 68 (on the waterfront); Columbia Street, that the neighbors put their boats there and have been told to get them off the property. He said he thinks if the neighbors were allowed to keep their boats there, they wouldn't be before them tonight.

He thinks that if a discussion can be had through the property owners and the neighbors then they wouldn't have to be in front of the board. He said he likes it when neighbors can work it out themselves.

Mr. Padula said he has lived here for forty years. He said they had an 8' path down on Columbia Street for the last forty years. He said they want access there like they always have had.

Mr. Eacobacci asked where the path was on Columbia they've used all this time, whether illegal or legally.

Mr. Padula explained where the access was down on Columbia. He said they go left about 100', across the owner's land to get to their dingies and water.

Mr. Eacobacci stated he sees both sides to the argument. He says public streets are passable by anyone. He said he'd like to see the owner of the house that he's building and the neighbors try and come to an agreement about getting an access.

There were no other comments from board members. Mr. Elkallassi stated the board should concentrate on the Special Permit. He said that 9 Murphy Street should've come before the board for a variance.

Michael Marzullo, owner of 9 Murphy Street was present and stated he would like the neighbors to speak their peace before he comments.

Resident, Tony Petrusi stated he has never heard about a two family and doesn't understand how it came about.

Mr. Elkallassi stated that whoever wants to speak in favor of the petitioner should speak first.

Amy Carr said she was approached and yelled at in an aggressive manner by the owner's wife who asked why they were on their property. Ms. Carr said she had no idea that was someone's land, she thought it was marsh. She said the neighbors would be happy to speak to the land owners.

Another current resident stated he doesn't believe there will be a positive communication process with the owner's. He said they are just looking for access to their boats, which they've had all this time.

Another abutter, Michael Carr asked if the streets or the owner's land could be marked, the neighbors would be satisfied and work around where they can get access.

Mr. Elkallassi said when someone applies for a Building Permit they have to stake out their land. He said what is in front of the board is the by-law of the variance.

Ms. Padula said the back of her house is on Murphy Street. She said her boats are at the end of the lot on Murphy Street and have not heard anything about this house being built there.

Chris Oliveira asked about the roads in/or around the property that go to the water.

Mr. Eacobacci suggested the neighbors hire a surveyor to review the roads and confirm if they were public and how they could then access them.

Mr. Marzullo stated his parents are building the house on this property. He said he hears the neighbors say they were surprised, but his parents were also surprised. He said the home to be built is for his parents and the family to enjoy. He said that his parents are not awful people and that they just want to build a second home to enjoy.

Mr. Padula said that his wife walked down an access path and was told she was going to be arrested. He said they want to have an access path, as they always have.

Stuart Weeks also spoke and asked if the builder was responsible for surveying the land.

Dennis Sullivan, abutter also spoke about Columbia Street and running to the water as it has always been public access.

Mr. Marzullo said he had to defend his wife as she doesn't act like some of the neighbors are complaining about. He said that she has had a few conversations with neighbors about the property.

Mr. Eacobacci read the November 21, 2022 letter from Mr. Marzullo to the Zoning Board for the record.

Mr. Elkallassi suggested a continuance. He said that he owns lots 1, 2, 19 and 20 in that area. He said he will give these lots to Mr. Marzullo if he deeds the lot to the neighbors for the public access. He said the land is in his trustee's name and he'll deed it over to Mr. Marzullo for the public access. He said the neighbors are very nice in that area and they should all get along.

Mr. Elkallassi stated he tried to give the lots to the Town, but it was a very long process for them to accept and wouldn't had been cost efficient for him. He said that he would give lots 1, 2 and 20; to swap for three lots and one of the lots would be deeded to Mr. Padula, for a dollar and everyone could live in harmony.

The parties agreed to discuss this in the hallway.

Attorney Morton and Mr. Mazzula returned to the meeting room. Ms. Morton asked for a continuance to December 28, 2022.

Mr. Eacobacci made a motion to continue to December 28, 2022, and was seconded by Mr. Semple. The motion passed unanimously. (4-0-0).

3. 39-22 Clear Channel Outdoor – Sign Variance – 3077 Cranberry Hwy – Map 10, Lot(s) 1001A & 1001B

Mr. Elkallassi opened the hearing. Mr. Eacobacci read the advertisement in for the record.

Mr. Elkallassi stated they had a right to be heard by a five-member board and there was only four members present at this time. He asked if they wanted to continue forward at this time.

Attorney Morton stated she wanted to open the hearing and be heard. Mr. Elkallassi explained the Mullin Rule. Attorney Morton then asked for a continuance.

Mr. Eacobacci made a motion to continue 39-22 Clear Channel Outdoor Sign Variance to December 14, 2022, per the applicant's request. The motion was seconded by Mr. Semple and passed unanimously. (4-0-0).

4. 40-22 Kaushal Bhalt – Variance – 47 Sandwich Road – Map 45, Lot 1014

Mr. Elkallassi opened the public hearing. Mr. Eacobacci read the advertisement in for the record.

Jacob Morrison had to leave on an emergency. Mr. Elkallassi stated they had a right to be heard by a five-member board and there was only four members present at this time. He asked if they wanted to continue or move forward.

Mr. Bhalt stated they wanted to move forward. He stated they were trying to convert a 3-unit office building into a 3-unit residential building. The total lot is shy of 10,000 sq feet.

Mr. Elkallassi said they would need a variance for the square footage and the variance

Mr. Bhalt stated they have ample parking spaces and reduce the traffic pattern. He said the hardship is to be conducive to the current layout is without floor plan reconfiguration.

Mr. Elkallassi stated he didn't think there was a hardship.

Ms. DeBonise said that she understood they are not adding any more square footage as it exists with three units currently as a commercial building.

Mr. Bhalt stated there were three separate entries to the building.

Mr. Elkallassi opened it for public comment.

Markum Scott, as an abutter said he was concerned about the effect on him. He said he lives behind them and is concerned about how it'll impact his life.

Mr. Elkallassi said there were four variances that needed to be reviewed. He said frontage, square footage, side and the variance for the change of use.

Ms. DeBonise asked why the current use was allowed in MR-30, if it was already a 3-unit. She asked if there were variances already on the property for three units.

Mr. Elkallassi referred her to looking in the past, as it was first built it was a three unit. The applicant said it was built in the 1980s. Mr. Eacobacci said the zoning has been changed in that area three different times.

The applicant stated they would be willing to put a fence to help the neighbor with any light issues.

Mr. Elkallassi stated he would like to be reviewed without a quick answer as there are too many variances to grant.

The applicant stated they'd also put a deed restriction in place to make it only affordable housing.

Mr. Semple made a motion to continue to December 14, 2022, and was seconded by Mr. Eacobacci. The motion passed unanimously. (4-0-0).

5. 41-22 Mylia Crabb – Special Permit – 16 Fir Street – Map 38, Lot 27

Mr. Elkallassi opened the public hearing and Mr. Eacobacci read the advertisement in for the record.

Mr. Elkallassi stated they had a right to be heard by a five-member board and there was only four members present at this time. He asked if they wanted to continue forward at this time.

Frank Westgate was present with the applicant. Mr. Westgate stated he wanted to be heard as it was a pretty straightforward project. Mr. Westgate stated they need a Special Permit because of the 5' setback, as they are building a small addition. He said they were extending the bathroom and putting in a new master bedroom. Mr. Westgate said that the existing dwelling does not conform to the 5' setback.

Mr. Elkallassi said this was a special permit for dimensional requirements.

There were no questions from the board members.

Mr. Eacobacci made a motion to close the public hearing and was seconded by Mr. Semple. The motion passed unanimously. (4-0-0).

Mr. Eacobacci made a motion to grant the Special Permit 41-22 Mylia Crabb with standard conditions being not detrimental to the neighborhood. Mr. Semple seconded the motion and it passed unanimously. (4-0-0).

VI. COMMENTS FROM BOARD MEMBERS:

Mr. Semple stated he had already forwarded the signed harassment application back to Mr. Buckland previously. Mr. Eacobacci asked everyone to sign and forward it back to Ms. Sonia Raposo.

Mr. Elkallassi stated he spoke to the building commissioner regarding the highway is nearly done and the permits that were granted for landscaping and maintenance, he said they need to start addressing the landscaping and maintenance needs to take place at these locations. Mr. Elkallassi stated that the Planning Board is as well cracking down on these businesses. Board members agreed.

Mr. Semple also voiced concerns over the solar fields.

Mr. Eacobacci made a motion to adjourn and was seconded by Mr. Semple. The motion passed unanimously. (4-0-0).

Date signed: 12-14-2022

Attest: James D. Eacobacci

James Eacobacci, Clerk
WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: _____

WAREHAM TOWN CLERK
2022 DEC 19 AM 10:34