

MINUTES OF MEETING OF WAREHAM PLANNING BOARD

Date of Meeting: December 11, 2017

I. CALL MEETING TO ORDER

The meeting was called to order at 7:00 P.M.

II. ROLL CALL

Members present: George Barrett
Mike Baptiste
John Cronan
Emmanuel Daskalakis
Marc Bianco
Alan Slavin, BOS Liaison

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

Members absent: Mike Baptiste

III. PRELIMINARY BUSINESS

A. Meeting Minutes:

- November 27, 2017

MOTION: Mr. Cronan moves to approve the minutes of November 27, 2017 as written.
Mr. Baptiste seconds.

VOTE: (5-0-0)

B. Bayside Agricultural – 77 Charlotte Furnace Road – Minor Modification

Present before the Board: No one is present at this time

The applicant is requesting to add three outside lights along the driveway, which would be a modification to the existing permit. Mr. Bianco states he would agree that this is a minor modification.

MOTION: Mr. Bianco moves to approve a minor modification for the installation for three additional lights as shown on the plan. The motion is seconded.

MOTION: (5-0-0)

IV. PUBLIC HEARINGS

A. Heidi Dobbins-Morse – Spring Avenue – Special Permit/Site Plan Review

Present before the Board: Brian Hebb, Hebb Builders
 Ed Gless, Civil Engineer
 Mark Hebb

The applicant is seeking to construct 5 duplex residential structures. Mr. Hebb states they are intending to perform site improvements, road improvements, Town Water, and gas. This is a Special Permit through the Planning Board. Mr. Buckland asks how they determined the density. Mr. Gless states that they calculated the density according to two-family standards. Mr. Baptiste asks if they will construct the rest of Spring Street and connect to Summer Street. Mr. Gless states that is what they are proposing. Mr. Cronan asks if Spring Road is a paved or dirt road. Mr. Hebb states it is paved until past Spruce Street. Mr. Hebb states that they would continue the water, electric, and gas access through the road so that other people may access it in the future. Mr. Hebb states that they are looking for direction from the Board before they are too far into the project.

Mr. Rowley asks if any soil expirations have been done on the site. Mr. Gless states that they have not. Mr. Rowley recommends that they do a groundwater test, that properties in the area have had stormwater issues and wouldn't recommend designing any homes with basements unless they complete a study. Mr. Rowley asks how many bedrooms are proposed. Mr. Hebb states that 20 bedrooms are proposed. Mr. Rowley says that is fairly substantial for a septic system, that there is no town sewer in that area and recommends making sure there is enough area for the main infiltration system as well as the secondary area. Mr. Rowley also states he doesn't see an area that might accommodate overflow parking, and recommends considering adding 3 or 4 overflow parking spaces. Mr. Rowley asks what the width of the pavement is. Mr. Gless states it is 24'. Mr. Gless has analyzed if a trench system could be put in, which is shown on the plan.

Mr. Hebb states that they are looking for a recommendation from the Board to determine if this is a project they may allow under Special Permit before they dedicate too much to the project.

Mr. Bianco asks if this project only works with 5 structures or if they could make it work with 4 structures instead. Mr. Hebb states he would like to work with the Town and that they would consider doing 4 buildings, but any less than that would not be financially reasonable.

Mr. Daskalakis states that 5 units seem crowded on the site.

Mr. Hebb states there is already water on site, but they would increase the size of the main.

Mr. Barrett asks if anyone from the public would like to speak.

Present before the Board: Dorothy Vicino, 3 Fall Street

Ms. Vicino states that the notices were confusing to her. Mr. Hebb states they were initially instructed to apply with the ZBA and then they were advised to withdraw and apply with the Planning Board. Mrs. Vicino states that she doesn't feel the notices should have been changed. Mr. Hebb states it changed because they were in front of a different Board. Ms. Vicino states that the lot behind her neighbor's house on Summer Street is constantly flooded. Ms. Vicino states that she also went to the Board of Health and that the septic system would be for a three bedroom and not a two bedroom. Mr. Barrett states that the Board of Health requires the septic system to be installed for one bedroom more than the dwelling would be. Ms. Vicino states that this will have negative traffic impacts on her street, Fall Street.

Present before the Board: Joel Tavares, Summer Street

Mr. Tavares states that there is a lot of water on the site. Mr. Tavares states his property abuts the proposed site. Mr. Tavares states that in 2005 he had attempted to put an addition on his house and was denied because that would have turned the property into a duplex. Mr. Tavares asked how they could allow multiple duplex units if they are not allowed in the zone. Mr. Buckland states that multi-family residences are allowed in that zone.

The applicant states they can return to the Board with revised plans showing the elevations the Board is requesting as well as apply to the Conservation Commission. The applicant signs an extension request to extend the amount of time the Board has to make a decision on the project.

MOTION: Mr. Cronan moves to continue the public hearing until January 8, 2017. Mr. Baptiste seconds.

VOTE: (5-0-0)

B. Workshop on changes to Bylaws and Subdivision Rules and Regulations:

- **Possible Articles for Town Meeting Warrant:**
 - **Additions - ZBL Article 3 Recreational Marijuana Establishments**
 - **Revisions - ZBL Article 13 Non-Conforming**
 - **Allowances - ZBL Article 3 Drive-Thru Restaurants**
 - **Revisions - ZBL Article 3, Board of Health, and Natural Resources; Dog Kennels and Horse Stables**
 - **Revisions - ZBL Article 7 Design Standards and Guidelines**
- **Revisions to Subdivision Rules and Regulations**

Mr. Buckland states that he would like to do is to go over some possible zoning By-Law amendments and see what the Board would like to take to Spring Town Meeting, and which items they would like to postpone. One of the items for review are recreational marijuana establishments. A marijuana moratorium was placed on marijuana establishments until June 30, 2018 and they will have to consider the marijuana establishments in upcoming town meetings. One option is to set the number of establishments, or also set the type of establishment. There can be set locations for the establishments and prohibit recreational marijuana which would require town meeting and a town ballot since the town voted to legalize it. The moratorium was done while waiting for regulations to be put into place. Mr. Buckland states another

consideration would be if there is an allowance of marijuana establishments, the law allowing the imposition for tax should be included in the town meeting warrant as well. Mr. Barrett asks if the Board of Selectmen will be the license issuing authority. Mr. Slavin states that the Cannabis Control Commission will be responsible for issuing licenses. Mr. Buckland states that the number of marijuana licenses may be limited to less than 20% of the package stores in town. There is also the option to extend the moratorium until a further date. Mr. Buckland states that they can provide to town meeting the option to go to a general ballot to vote for prohibition. Mr. Daskalakis states he feels the retailers should be in Wareham Crossing and Rosebrook Place. Mr. Bianco states that he feels they should all be outside of a 5 mile radius of any school. Mr. Bianco also states he is in favor of the moratorium so they can see what other towns are proposing. Mr. Bianco feels these should be stand-alone establishments, that they should not be in plazas. Mr. Barrett thinks they should set a limit to the number of retailers allowed and potentially a Special Permit with very specific criteria. Mr. Baptiste states he feels they should not restrict the retailers to certain buildings, but they should allow the Cannabis Council to decide where the retailers could be. Mr. Buckland states they could begin by restricting the number of retailers allowed at town meeting and take it from there.

Mr. Buckland talks about Article 13, non-conforming lots and uses, including pre-existing non-conforming. Mr. Buckland states that this drives the agenda of the Board of Appeals quite often, and impacts different neighborhoods differently. Mr. Buckland uses Shangri-La as an example under the R-130 Zoning District with substantially larger setbacks and lot size requirements than what has traditionally been developed in that area. With the difficulty in going through the pre-existing non-conforming Special Permit review it puts a cost and time burden on some projects that don't necessarily require that process. The intent is to provide some relief in those instances. Mr. Riquinha has produced a new draft for what he felt was appropriate for Article 13.

Present before the Board: David Riquinha, Building Commissioner

Mr. Riquinha states they reviewed Article 13 due to some persistent issues where a Special Permit is not always necessary. Mr. Riquinha states that almost every lot in the R-130 is under 10,000 s.f. At one point, around 1980, there was a zoning change to require 130,000 s.f. for a new lot in this district. However, the existing smaller lots are now required to go to the Board of Appeals for almost any change they make to their house. It adds a lot of cost, time and aggravation for homeowners. Mr. Riquinha states they tried to make some changes to allow for certain things to avoid going for Special Permits to erect or expand a deck, small additions, enclosing of existing porches, and occasionally reconstruction of an existing deck. Mr. Riquinha stated they tried to look at issues that are almost constant issues and be more flexible when necessary. Mr. Riquinha states this draft is a true rough draft. Mr. Barrett asks is grandfathering doesn't apply to these houses. Mr. Riquinha states that grandfathering essentially applies to the lot, and not the structure itself. Once a structure is on the grandfathered lot it becomes a lawfully non-conforming structure. Any changes made to the structure after that require a Special Permit, unless you're creating more non-conformity, then it would require a Variance. Mr. Buckland states the idea of putting on an unenclosed deck or a swimming pool, dormers that don't go any higher than the peak of the roof or further than the footprint of the building can currently be required to go to the Board of Appeals, which is the process they're trying to ease.

Mr. Riquinha states as an example on page 2, 1A of the draft Article 13 where it says “non-conforming structures, uses and lots”, essentially states that as long as the addition or extension itself meets current zoning requirements (ie. setback and coverage requirements) that it will be allowed as long as the non-conformance is due to the size of the lot. Mr. Riquinha states that there is case law that goes back and forth as to whether or not a lot is grandfathered after a structure is on the lot. Mr. Riquinha states the proposed changes in Article 13 will protect homeowners who have lawfully conforming lots when zoning changes so that they may expand their house as long as it meets all other dimensional requirements.

Mr. Barrett asked if this could be taken further to address setbacks, such as when a home is encroaching on the setback currently, would the owner be allowed to construct an addition as long as it did not go past the existing house line. Mr. Riquinha stated that would still be required to go to the Board of Appeals as the house would be non-conforming, and not the lot, and non-conforming structures require a Special Permit from the Board of Appeals.

Mr. Riquinha states that the draft Article 13 actually more restrictive with setbacks. Currently, if you have a lot that was established prior to 1951 there are no zoning requirements of the lot. People could build up to their property lines. The proposed draft is written so that if you have a lot that was created prior to 1951 that the owner must require to the first zoning requirement of that zoning district.

Mr. Rowley stated that he was only aware of two zoning changes in Shangri-Law. Mr. Rowley asks if it would make sense to maintain the current setbacks where lots conform to current zoning, which is 3 acres, but to grandfather anything under 3 acres back to 10' and 20' setbacks which were the setback requirements when the lots were zoned for 65,000 s.f. Mr. Riquinha states he had done a survey from every neighborhood in Town with smaller lots, and is proposing to do an FAR (Floor Area Ratio) and impose setbacks based on that, to allow relief for the smaller lots.

Mr. Buckland states that at least some portion of this should be taken to town meeting in the spring.

Mr. Buckland asks the Board if they would like to go forward with revisions for Article 13 for town meeting and the Board accedes.

Mr. Buckland states that the Board of Appeals had requested that drive-thru's be allowed in the same way that non-food businesses are allowed in the General Commercial District. One option would be to allow restaurant drive-thru's in all commercial districts where restaurants are allowed, the second option would be to allow restaurant drive-thru's only in the General Commercial District by Special Permit, and the third option would be to continue the prohibition of drive-thru's. The concern is that this would apply to West Wareham where all of the development is taking place. Mr. Barrett states that area is not General Commercial and it would therefore not be allowed. Mr. Barrett states he feels drive-thru's could be allowed at a signaled intersection or at a larger site. Mr. Rowley states he feels signaled intersections should be site specific. Mr. Bianco notes that there needs to be staggering between two turning points in order to avoid accidents.

Mr. Buckland stated that regulations regarding kennels and dogs have been an issue of concern with the Board of Appeals as well as the Board of Health. The intent is to make this consistent across all By-Laws and regulations as they are included in the general by-laws, zoning by-laws, and Board of Health regulations and they should be consistent throughout. The Board agrees that the requirements should be consistent across.

Mr. Buckland asks if this should be carried across to stables as well. Mr. Barrett states he feels there is an issue with stables. Mr. Riquinha states that riding stables require a Special Permit right now if the property has less than 5 acres. Mr. Bianco asks if this is a large problem. Mr. Riquinha states riding stables are not a common problem, the dog kennels were more of a problem. Mr. Bianco asked if this is strictly defined to horses or if livestock in general are the issue. Mr. Riquinha states it is livestock in general. Mr. Buckland states they will gather more information on this and can make a decision later whether or not to take this to town meeting.

Mr. Cronan leaves the public hearing.

Mr. Buckland speaks about design standards and guidelines and states one option would be to focus on architectural standards and generally revise the structure and content of the section and the other option is to make specific changes to the existing Village Commercial and Industrial standards such as addressing sheet metal buildings. Mr. Daskalakis states he feels all applicants should be providing much more detailed drawings with context including neighborhood. Mr. Daskalakis states that he feels the Planning Board does not have a lot of control over what happens in residential neighborhoods and recommends establishing a design review committee that every building goes to for approval. Mr. Rowley states that typically review committee's make recommendations to the Planning and Zoning Boards. Mr. Buckland states the office can ensure the context of the submittals is sufficient.

Mr. Buckland says the next to last item was the green communities. Mr. Buckland states that a solar by-law was proposed at last town meeting and was reviewed by SRPEDD and that SRPEDD recommended to alter the proposed by-law to conform to the green communities program. Mr. Buckland said they could do that or they could add a new alternative energy R&D facilities to the zoning by-law that would be allowed by right. Mr. Buckland does not recommend adding alternative energy R&D by right. Mr. Baptiste states that would be counterproductive to the Board's effort. Mr. Buckland states that if they meet the green community requirements the town would be eligible for a quarter of a million dollars per year for facility improvements. Mr. Daskalakis asks if that mean solar facilities would no longer come before the Board. Mr. Buckland states that addition to the by-law would not require solar to go before the Board. Mr. Bianco states that he feels it is too early in the stages of solar to give up control of the solar farms and that he feels the large solar farms will have negative effects on the ecosystems.

Mr. Buckland states the last item is Subdivision Rules and Regulations, which do not have to go before town meeting but does have to go to public meeting. Mr. Buckland asks if the Board would like to schedule a public meeting for this sooner rather than later. Mr. Barrett states that the Board needs to see the proposed changes before a public hearing is held.

Mr. Buckland states that recreational marijuana is something that needs to be decided on and presented to town meeting because of its time sensitive nature; non-conforming lots and structures is an important item that should be on for town meeting due to its impact on the town; drive-thru's should be simple to discuss for town meeting; kennels and stables should also be an easy topic for town meeting; design guidelines has a phase I of submittal requirements and a phase II which is to establish broader standards and guidelines; green communities will require further discussion.

V. CONTINUED PUBLIC HEARINGS

VI. REFERRALS

VII. ANY OTHER BUSINESS/DISCUSSION

VIII. NEW BUSINESS (This time is reserved for topics that the Chairman did not reasonably anticipate would be discussed)

IX. CORRESPONDENCE

A. See correspondence in packets.

X. EXECUTIVE SESSION

Mr. Barrett states for the purpose of discussing litigation specifically by 2384 Cranberry Highway, LLC and declares issues discussed in executive session would have a negative impact on items discussed outside of executive session.

MOTION: Mr. Baptiste moves to go into executive session. Mr. Bianco seconds.

Roll Call Vote:

- Marc Bianco – Yes**
- John Cronan – Yes**
- George Barrett – Yes**
- Mike Baptiste – Yes**
- Emmanuel Daskalakis – Yes**

A. McCarthy - MMDDJSAK – ANR
B. McCarthy - 2384 Cranberry Highway - ANR

XI. ADJOURNMENT

XII. DOCUMENTS

Date signed: 1/8/18 5-0-0

Attest: 
George Barrett, Chairman
WAREHAM PLANNING BOARD

Date copy sent to Town Clerk: _____

RECEIVED

JAN 23 2018

TOWN OF WAREHAM
TOWN CLERK