



TOWN OF WAREHAM
Department of Inspectional Services

54 Marion Road
Wareham, Massachusetts 02571
(508) 291-3100 Ext. 3190 * F 508-291-3510
inspections@wareham.ma.us * www.wareham.ma.us

TO: Zoning Board of Appeals

FROM: Paul E. Turner

SUBJECT: **12 Great Neck Rd – ZBA Appeal # 2-23**
Information for meeting scheduled for 2/22/2023

DATE: February 22, 2023

Enclosed please find several documents for your review and information for this evenings meeting.

Enclosed are the following documents:

- Letter from Law Offices of Jessica Clarke, PC dated December 20, 2022
- Notice of Violation, dated August 24, 2022
- Notice of Violation Revised, dated September 22, 2022
- 3rd Notice of Violation, dated November 21, 2022
- Peace for Ponies Mission Statement
- Peace for Ponies Homepage Statement
- MA General Law, Chapter 128 – Agriculture Definition

Thank you.

PET/jd

Enclosures

The Law Offices of Jessica Clarke, PC

200 Main St, Wareham, MA 02571 | PHONE: (978)697-5572 | CHartwell@jessicacларkelaw.com

December 20th, 2022

via Hand and Email

Wareham Zoning Board of Appeals
54 Marion Road
Wareham, MA 02571

Re: MGL Chapter 40A §15 Appeal of Building Inspector Notice of Violation

Dear Wareham Zoning Board of Appeals:

Please be advised that this office represents Lynelle Butterfield and Peace for Ponies of 12 Great Neck Road, Wareham, MA 02538 (the "Property"). On November 21st, 2022, the Building Commissioner sent a Notice of Violation for the Property and ordered Ms. Butterfield and tenants (Peace for Ponies) to "Bring the total number of animals on site to three as per the Special Permit dated December 26, 2012 by January 1, 2023." In accordance with MGL Chapter 40A §15, we are appealing that Notice of Violation.

FACTUAL BACKGROUND

This Appeal is concerning the property at 12 Great Neck Road in Wareham, Massachusetts (the "Property"). The Property is located on Wareham Assessor's Map 17 on Lot 1008 and is in the R30 Zoning District. In addition to the agricultural uses allowed by right in the R30 Zoning District, on December 26, 2012, the Town of Wareham Board of Appeals issued a decision "to grant a Special Permit under use definitions, Section 352 animal related uses, veterinary hospital, & further with the following conditions: 1. Not to exceed three (3) animals at one time. 2. Approval of all other pertinent boards, committees, and/or commissions." (the "Special Permit")

** PLEASE SEE LETTER #1 WITH TWO PARAGRAPHS EXPLAINING THE VIOLATION*

On August 24th, 2022, the Building Commissioner, without any evidence of a violation of the Special Permit, sent the first Notice of Violation claiming that the Property was in violation of Condition 1 of the Special Permit. On September 22, 2022, the Building Commissioner sent a "Notice of Violation REVISED September 22, 2022" reflecting his discussions with counsel and acknowledging the exceptional efforts made by Ms. Butterfield and Peace for Ponies to acquire two additional parcels to the rear of the Property to address the concerns of the neighbors. In light of these efforts, which will continue into the new year, The Building Commissioner allowed "one hundred and eighty (180) days for the organization to bring 12 Great Neck Road into compliance, three (3) or less animals on site as per condition 1 of the Special Permit."

On November 21, 2022, the Building Commissioner issued a "3rd Notice of Violation" stating, "I'm rescinding that letter due to the fact that there is very little effort in my opinion to reduce the infraction but it seems that the operation is expanding at the 12 Great Neck Road location regardless of any progress of permitting Uses to the land in the rear of the property."

This letter was also sent without any supporting documentation or facts as to the alleged extent or even location of the violation of the Special Permit, other than a reference to pictures on Facebook, but without including those pictures.

FACE BOOK POSTINGS ARE PUBLIC INFORMATION

On December 14th, 2022, I met with Paul Turner, the Building Commissioner, to explain the current state of conditions of the Property, as well as the uses allowed by right in the zoning district. He stated that he hadn't been to the Property, but would "get back to me." After not hearing back from Mr. Turner, on December 20th, 2022, I called and spoke with him over the phone and was informed that the animals on the site do not meet *his* definition of Agriculture and that I would have to appeal.

This appeal subsequently followed.

Legal Standard and Issues

Massachusetts General Laws Chapter 40A § 7 grants the Building Commissioner (Zoning Enforcement Officer), with the initial responsibility for interpreting and enforcing zoning regulations and those interpretations and enforcement decisions reflect and constitute the zoning law of the municipality unless and until they are successfully appealed. The Zoning Enforcement Officer bears the burden of proving that the use or structure violates local zoning regulations.

We are appealing the 3rd Notice of Violation, which ordered the following: "Remedy: Bring the total number of animals on site to three as per the Special Permit dated December 26, 2012 by January 1, 2023."

Discussion

The Property is located in the R30 Zoning District. The Table of Principal Use Regulations allows "Agricultural uses upon tracts less than 5 acres" by right in the R30 Zoning District. The Property is less than 5 acres and is used for *agricultural uses*, which are defined in the Wareham Zoning Bylaws, § 340.1:

Agricultural Uses

Includes the use of land for *agriculture*, horticulture, floriculture, or viticulture; and, the use, expansion, or reconstruction of existing structures thereon for the primary purpose of *agriculture*, horticulture, floriculture, or viticulture. *Wareham Zoning Bylaws, § 340.1*

Agriculture is not defined by the Wareham Zoning Bylaws, but it is further defined by Massachusetts General Laws Chapter 128, § 1A:

Section 1A: "Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market. *Massachusetts General Laws Chapter 128, § 1A*

The current use of the Property for the keeping of animals is an Agricultural Use as defined in the Wareham Zoning Bylaws and Massachusetts General Laws and is allowed by right.

In addition to the Agricultural Uses allowed by right at the Property, the 2012 Special Permit also granted them the right to use the Property for a Veterinary Hospital, with the pertinent condition being that the hospital not exceed 3 animals at one time. A Veterinary Hospital is defined by the Wareham Zoning Bylaws in Section 340.2:

Veterinary Hospital

A **building** providing for the diagnosis and treatment of ailments of animals other than human, including facilities for overnight care. *Wareham Zoning Bylaws, § 340.2*

* Contrary to the Notice, there is no evidence of a **building on the property that is being used for the diagnosis and treatment of ailments of animals with more than three animals therein. There is no other violation alleged as to the keeping of animals on the Property.**

Keeping of animals for adoption/therapy is not in the definition of Agriculture. 1a Great Neck Rd is an Animal/Rescue Shelter. It should be classified as:

"Service Establishment not involving manufacture on premise"

Not Allowed in R-30

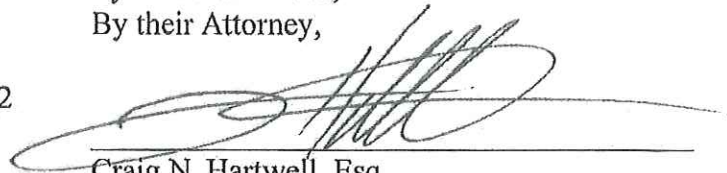
REQUESTED RELIEF

Ms. Butterfield requests that this Board grant the following relief:

1. Grant this Appeal of the Building Commissioner's 3rd Notice of Violation, dated November 21, 2022, including all previous and related Notices;
2. Make a finding that the keeping of animals at the Property is an Agricultural Use, which is allowed by right in the Town of Wareham R30 Zoning District, but that any building used as a Veterinary Hospital shall have no more than 3 animals therein; and
3. Any further relief available at the discretion of the Board.

Lynelle Butterfield,
By their Attorney,

DATED: December 20th, 2022



Craig N. Hartwell, Esq.
The Law Offices of Jessica Clarke, PC
PO Box 468
Wareham, MA 02571
Phone: 978-697-5572
Email: CHartwell@jessicacarkelaw.com



TOWN of WAREHAM
Massachusetts
BUILDING DEPARTMENT

Paul E. Turner
Director of Inspectional Services

Lynelle Butterfield
12 Great Neck Road
East Wareham, Massachusetts, 02538

August 24, 2022

RE: 12 Great Neck Road

Notice of Violation

Dear Ms. Butterfield,

On August 4 and 17, 2022, I investigated a complaint at 12 Great Neck Road in Wareham, MA, a building which you own and/or are in control of. The complaint was regarding the number of animals being stabled at your property based off the Special Permit 25-12 issued to you by the Town of Wareham Board of Appeals. The Board voted to grant a Special Permit under use definitions, Section 352 animal related uses, veterinary hospital, and further with the following conditions: 1. Not to exceed three (3) animals at one time. 2. Approval of all other pertinent boards, committees, and /or commissions. The property is in violation of condition 1 of the Special Permit.

On August 4, 2022 I responded to 12 Great Neck Road in response to a complaint of more than three animals being stabled at the site. I was meet at the door of the house by Kendra Bond, who runs an animal sanctuary at your property called Pease for Ponies. After identifying myself and explaining why I was on site she invited me to tour the rear of the property where the animals are stabled. I was shown the animals and was told there was three adult donkeys and three "babies". I could only distinguish one smaller animal, the other five looked to be the same size. There was a large pig and four or five chickens also. She stated two of the donkeys' were to be relocated in mid-September.

On August 17, 2022 I responded to 12 Great Neck Road in response to a complaint of more than three animal being stabled at the site. Again I was meet at the door by Kendra Bond. Again I identified myself and explained why I was on site. I explained that the Special Permit allows for three animals only, regardless of age. I asked Ms. Bond if she had more than three animals on site and she said yes. I asked Ms. Bond if more animals were on their way to the site from Texas and she said yes.

Remedy: You must have your animal count to three on site as per condition 1 of the Special Permit within 30 days of the receipt of this letter.

Violation #1

Violation #2



TOWN of WAREHAM
Massachusetts
BUILDING DEPARTMENT

Paul E. Turner
Director of Inspectional Services

It is the owners' responsibility to check with other departments, i.e. Health, and conservation, etc. to ensure full compliance.

ARTICLE 14: Administration of the Town of Wareham Zoning Bylaws, PROSECUTION OF VIOLATION 1442.1; any person, firm, or corporation violating any of the provisions of the By-law shall be liable for a fine of not more than three hundred dollars (\$300.00) for each violation. Each day the violation exists shall constitute a separate offense.

In accordance with the provisions of MGL chapter 40A §§ 15, you may apply to the Zoning Board of Appeals for the above noted relief within thirty (30) days of receipt of this letter.

Your immediate attention to this matter is appreciated.

Respectfully,

Paul E. Turner
Building Commissioner
Zoning Enforcement Officer



TOWN of WAREHAM
Massachusetts
BUILDING DEPARTMENT

Letter
#2

Paul E. Turner
Director of Inspectional Services

**CERTIFIED MAIL/
REGULAR MAIL**

September 22, 2022

Lynelle Butterfield and Tenant(s)
12 Great Neck Road
East Wareham, Massachusetts, 02538

RE: 12 Great Neck Road

Notice of Violation REVISED September 22, 2022

Dear Ms. Butterfield, and Tenant(s)

On August 4 and 17, 2022, I investigated a complaint at 12 Great Neck Road in Wareham, MA, a building which you own and/or are in control of. The complaint was regarding the number of animals being stabled at your property based off the Special Permit 25-12 issued to you by the Town of Wareham Board of Appeals. The Board voted to grant a Special Permit under use definitions, Section 352 animal related uses, veterinary hospital, and further with the following conditions: 1. Not to exceed three (3) animals at one time. 2. Approval of all other pertinent boards, committees, and /or commissions. The property is in violation of condition 1 of the Special Permit.

On August 4, 2022 I responded to 12 Great Neck Road in response to a complaint of more than three animals being stabled at the site. I was meet at the door of the house by Kendra Bond, who runs an animal sanctuary at your property called Peace for Ponies. After identifying myself and explaining why I was on site she invited me to tour the rear of the property where the animals are stabled. I was shown the animals and was told there was three adult donkeys and three "babies". I could only distinguish one smaller animal, the other five looked to be the same size. There was a large pig and four or five chickens also. She stated two of the donkeys' were to be relocated in mid-September.

On August 17, 2022 I responded to 12 Great Neck Road in response to a complaint of more than three animal being stabled at the site. Again I was meet at the door by Kendra Bond. Again I identified myself and explained why I was on site. I explained that the Special Permit allows for three animals only, regardless of age. I asked Ms. Bond if she had more than three animals on site and she said yes. I asked Ms. Bond if more animals were on their way to the site from Texas and she said yes.



TOWN of WAREHAM
Massachusetts
BUILDING DEPARTMENT

Paul E. Turner
Director of Inspectional Services

Remedy: It has been brought to my attention that Attorney Jessica Clarke will be representing you and your organization, Peace for Ponies in regard to the above described violation. Ms. Clarke has stated to me that the organization has received a donation of land to the rear of 12 Great Neck Road. The two parcels are known as 388 and 390 Onset Avenue. Ms. Clarke stated that the excess animal housing and the excess animals would be relocated from 12 Great Neck Road, which would put 12 Great Neck Road in compliance, to the parcel known as 390 Onset Avenue, which is zoned Commercial Strip, allowing by right "Riding stable less than five acres" and "Veterinary hospital less than five acres". Also stated was the fact that the Organization has engaged JC Engineering to survey the donated property and has been in contact with the Town of Wareham Conservation Agent, David Pichette. With this new information, I am allowing one hundred and eighty (180) days for the organization to bring 12 Great Neck Road into compliance, three (3) or less animals on site as per condition 1 of the Special Permit.

This letter supersedes the letter known as "Notice of Violation" dated August 24, 2022 sent to Lynelle Butterfield, 12 Great Neck Road, East Wareham, Massachusetts via US mail and certified US mail.

Your immediate attention to this matter is appreciated.

Respectfully,

Paul E. Turner
Building Commissioner
Zoning Enforcement Officer

It is the owners' responsibility to check with other departments, i.e. Health, and conservation, etc. to ensure full compliance.

ARTICLE 14: Administration of the Town of Wareham Zoning Bylaws, PROSECUTION OF VIOLATION 1442.1; any person, firm, or corporation violating any of the provisions of the By-law shall be liable for a fine of not more than three hundred dollars (\$300.00) for each violation. Each day the violation exists shall constitute a separate offense.

In accordance with the provisions of MGL chapter 40A §§ 15, you may apply to the Zoning Board of Appeals for the above noted relief within thirty (30) days of receipt of this letter.



TOWN of WAREHAM
Massachusetts
BUILDING DEPARTMENT

Letter
#3

Paul E. Turner
Director of Inspectional Services

CERTIFIED MAIL/
REGULAR MAIL/
HAND DELIVERED

November 21, 2022

Lynelle Butterfield and Tenant(s)
12 Great Neck Road
East Wareham, Massachusetts, 02538

RE: 12 Great Neck Road

3rd Notice of Violation

Dear Ms. Butterfield, and Tenant(s)

It has come to the attention of the Building Department via a posting on the Peace for Ponies Facebook page, that as of November 20, 2022, there was at a minimum of seven animals on site. I have received two complaints from an abutter. The Building Department has received two Building Permit Applications for two more out buildings.

I issued a revised letter of Violation dated September 22, 2022 in good faith, with an extremely liberal length of time to bring the Special Permit issued to 12 Great Neck Road, dated December 26, 2012, into compliance.

I'm rescinding that letter due to the fact that there is very little effort in my opinion to reduce the infraction but it seems that the operation is expanding at the 12 Great Neck Road location regardless of any progress of permitting the Use to the land in the rear of the property.

Remedy: Bring the total number of animals on site to three as per the Special Permit dated December 26, 2012 by January 1, 2023.

Your immediate attention to this matter is appreciated.

Respectfully,

Paul E. Turner
Building Commissioner
Zoning Enforcement Officer

54 Marion Road. Wareham, MA 02571
Tel: (508) 291-3100 ext. 3190 Fax: (508) 291-3116



TOWN of WAREHAM
Massachusetts
BUILDING DEPARTMENT

Paul E. Turner
Director of Inspectional Services

It is the owners' responsibility to check with other departments, i.e. Health, and conservation, etc. to ensure full compliance.

ARTICLE 14: Administration of the Town of Wareham Zoning Bylaws, PROSECUTION OF VIOLATION 1442.1; any person, firm, or corporation violating any of the provisions of the By-law shall be liable for a fine of not more than three hundred dollars (\$300.00) for each violation. Each day the violation exists shall constitute a separate offense.

In accordance with the provisions of MGL chapter 40A §§ 15, you may apply to the Zoning Board of Appeals for the above noted relief within thirty (30) days of receipt of this letter.

Help us with Amazon Smile. It's So Easy!

The logo for Amazon Smile, featuring the word "amazon" in a bold, lowercase font with a curved arrow underneath it, and the word "smile" in a lighter, lowercase font to its right.

You shop. Amazon gives.

Amazon will donate a percentage from every purchase you make on Amazon when you select us as your favorite charity. Click the button below and then search for Peace for All Animals, Inc. Then, every time you shop, go to smile.amazon.com and it will go to your same account, but will also donate money to help us with every purchase - at no cost to you!

[CLICK HERE TO SIGN UP](#)

Our Mission

- To continue sinking roots into our land and community
- To grow and expand our organization to help as many animals and people as possible
- To facilitate the rescue of any and all kinds of baby animals in need
- To support our animal's emotional, physical, and mental healing and continued wellbeing
- To transform the sick and weak into Therapy Animals through love and compassion
- To find animals their Forever Homes as Therapy Animals, and continue to follow their journey
- To create opportunities for people to connect with animals in mindful ways
- To educate others to be a part of the change
- To create a safe space where community members can come and find balance, seek growth, and experience healing through animal caretaking

[CLICK HERE TO SEE THOSE WE HAVE SAVED](#)

~ ANIMAL RESCUE + SHELTER



Peace For Ponies is a humane, no kill animal rescue, foster placement and adoption shelter ^{donate} in East Wareham, MA - Serving the South Coast, South Shore ~~and~~ Cape Cod Massachusetts area.

Part I ADMINISTRATION OF THE GOVERNMENT**Title XIX** AGRICULTURE AND CONSERVATION**Chapter 128** AGRICULTURE**Section 1A** FARMING, AGRICULTURE, FARMER; DEFINITIONS

Section 1A. "Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.