

WAREHAM ZONING BOARD OF APPEALS
Special Permit Decision
Wareham Marketplace
2419 & 2427 Cranberry Highway, 4 Seth F. Tobey Road

I. Proposal

This decision concerns an application by J. Donegan Company, 1760 Reston Parkway, Suite 210, Reston, VA 20190, for approval of a Special Permit to construct a commercial shopping center consisting of five new buildings which will include a shopping market, retail stores, restaurant(s) and bank located on 8.45 acres at the intersection of Cranberry Highway and Seth F. Tobey Road, Assessors' Map 85, Lots 1004A, 1004D and 1006.

The Project is depicted on a 14-sheet site plan set entitled "Wareham Marketplace, Site Development Plans for J Donegan Company dated April 11, 2016 and revised through July 25, 2016. Architectural sketches of the proposed buildings are shown on a set of 8 sheets entitled "Wareham Marketplace, Wareham, MA, Schematic Design dated July 13, 2016 by Bignell Watkins Hasser, Architects, P.C.

II. Jurisdiction

This application was made and this decision has been issued by the Wareham Zoning Board of Appeals pursuant to Article 3, Use Regulations, Section 361, Multiple Principle Uses and Article 15, Site Plan Review, and other provisions of the Wareham Zoning By-Laws (the "By-Laws") as they existed on July 27, 2016, the date on which this Special Permit decision was approved. Where reference is made to the By-Laws, it shall refer to the provisions thereof as they existed on July 27, 2016.

III. Chronology

Application for this Special Permit was made with the Town Clerk on April 21, 2016. The following list of materials was filed with certain responses.

- Plans have been submitted entitled "Wareham Marketplace Site Development Plans" prepared by Bohler Engineering, revised July 25, 2106. The following have also been submitted:
 - Drainage Report for "Wareham Marketplace", prepared by Bohler Engineering, dated April 11, 2016.
 - Traffic Impact and Access Study, prepared by Vanasse & Associated, Inc., dated March 2016.
- The Board's consulting engineer, Charles L. Rowley, filed letter reports with findings dated May 8, 2016, July 6, 2016 and July 12, 2016, as well as a letter recommending approval dated July 27, 2016.
- Bohler Engineering provided letters in response to the Zoning Board of Appeals's consulting engineer's letter reports dated July 7, 2016 and July 18, 2016 (revised July 25, 2016) which included the following documents:
 - Building Elevations, prepared by Bignell Watkins Hasser Architects, dated July 7, 2016.
 - Truck Simulation Exhibits, prepared by Bohler Engineer, dated July 7, 2016.
 - Test Pit Logs, prepared by Whitestone Associates, Inc., dated February 19, 2016, signed and stamped on June 21, 2016.
 - Schematic Design 3D Renderings, prepared by Bi Bignell Watkins Hasser Architects, dated July 13, 2016.
 - Groundwater Recharge and Water Quality Calculations, prepared by Bohler Engineering, revised July 18, 2016.
 - Fire Truck Simulation Plan, prepared by Bohler Engineering, dated July 25, 2016.

A public hearing was opened before the Wareham Zoning Board of Appeals on May 11, 2016 at 6:30 p.m. Notice of this hearing was duly given to abutters in accordance with Massachusetts General Laws Chapter 40A and the Zoning Board of Appeals Special Permit and Site Plan Regulations under section 1510 of the Wareham Zoning Bylaws. The notice was posted with the Town Clerk on April 28, 2016. Notice was also given by publication in Wareham Weekly, a newspaper of general circulation in the Town of Wareham on April 21 and April 28, 2016.

On May 9, 2016, the plans were reviewed by the Wareham Planning Board at a regularly scheduled meeting.

On July 27, 2016, the Zoning Board of Appeals closed the public hearing and voted to make the following findings and grant a Special Permit and Site Plan Review authorizing the project, with the conditions enumerated below. The members of the Zoning Board of Appeals were recorded as follows: Members Wilma Engerman, James Eacobacci, Nazih Elkallassi, Karl Baptiste and Jan Kendrick were recorded as voting in favor of the decision. No members were recorded as voting against.

IV. Findings

1. The subject Property, consisting of approximately 8.45 acres developed with an existing business establishment is located within the Strip Commercial (CS) zoning district as depicted on the Town of Wareham Zoning Map. The By-Laws allow the proposed use of the Project that proposes multiple buildings on the same lot by Special Permit from the Zoning Board of Appeals.
2. The Property is owned by Beaton Nominee Trust, 2417 Cranberry Highway, Wareham, MA 02571 and Bayside Agricultural, Inc., 2417 Cranberry Highway, Wareham, MA 02571.
3. As shown on the plans, the Project consists of the removal of existing buildings and other related improvements and the redevelopment of the site into a market, retail, restaurant and bank uses. The five separate buildings are of a common architectural theme and occupy a total building area of 46,300 square feet. The buildings are variable in height but consist of one story each.
4. The Project site is not in an area mapped by the Massachusetts Natural Heritage & Endangered Species Program (NHESP) as "Priority Habitat of Rare Species" and "Estimated Habitat of Rare Wildlife" under the Massachusetts Endangered Species Act (MGL c.131A) and its regulations (321 CMR 10.00).
5. The Project was approved by the Conservation Commission, with conditions, at its meeting on August 3, 2016.
6. The Project is located at the intersection of Cranberry Highway, a State Highway and Seth F. Tobey Road a town way. There have been numerous traffic mitigation measures applied along Cranberry Highway and Seth F. Tobey Road including an anticipated intersection of the main Project driveway with the main driveway for Walmart, on the opposite side of Seth F. Tobey Road. The owner of the land had previously allowed for takings of land at the intersection as part of the Walmart development mitigation. Additional points of access and egress have been provided on Seth F. Tobey Road with a possible right turn in/right turn out only intersection on Cranberry Highway located east of the intersection with Seth F. Tobey Road.
7. Traffic impacts were presented in a separate report by Vanasse & Associates, Inc., Transportation Engineers & Planners of Andover, MA. The Board of Appeals accepted the Traffic Impact and Access Study that was filed with the application but with the provision that

the applicant pursue a new right turn in lane on Cranberry Highway with The Massachusetts Department of Transportation (MassDOT). The applicant agreed to submit the appropriate information and a request with MassDOT to all for the construction of the added lane.

8. The applicant proposes handicapped access including ADA-compliant handicapped parking spaces and ADA-compliant wheelchair ramps connecting various portions of the project all as shown on the site plans.
9. The applicant proposes to include new lighting on the property consisting of individual and double light fixtures on 28' high light poles. The lighting plan shows that there is no spillover of lighting onto abutting properties.
10. Application of the Zoning By-Law's parking requirements of Article 9 based on a bank, neighborhood convenience store, restaurant and retail space of greater than 1000 square feet calls for 1 space per 200 square feet for the bank, 1 space per 150 square feet for neighborhood convenience store, 1 space for every restaurant seat and 1 space per 300 square feet for retail uses.
Based on the square footage shown on the plans, the project requires a minimum of 255 spaces. For a 4200 s.f. bank 21 spaces are required. For an 18,500 s.f. neighborhood convenience store 123 spaces are required. For a 250 seat restaurant, 50 spaces are required and for 18,200 s.f. of retail space 61 spaces are required for a total of 255 spaces, minimum. The plans show 312 spaces. For more than 300 spaces but not more than 400 spaces, 8 handicapped accessible spaces are required. A total of 10 spaces are shown on the plans.
11. The Project will be connected to the Town of Wareham sewer system with new lateral lines to Seth F. Tobey Road. Written evidence has been received from the Wareham Wastewater Treatment Facility Director, Guy Campinha, which indicates that adequate capacity is available for the estimated 11,650 gallons per day sewer flow.
12. The project will be connected to the water system of the Wareham Fire District. Correspondence has been received from the Wareham Water Department and the Wareham Fire Department that the water mains, fire hydrants and related fixtures are compliant with regulations.
13. The Project plans were reviewed by the Zoning Board's Consulting Engineer, Charles Rowley and found to be compliant with generally accepted engineering practice. The proposed drainage facilities design and stormwater projections were found to be satisfactory and in compliance with the objectives of Article 1541, for the preservation of natural features. Site design is in compliance with generally accepted engineering practice for access and egress to and from Seth F. Tobey Road with limited right turns in and right turns out only onto and from Cranberry Highway.
14. Based on the foregoing findings, the Zoning Board of Appeals hereby further finds that the Project, as conditioned below, is consistent with applicable state and town regulations, statutes, bylaws and plans, will not adversely affect public health or safety, will not cause excessive demand on community facilities, will not significantly decrease surface or groundwater quality or air quality, will not have a significant adverse impact on wildlife habitat, estuarine systems, traffic flow, traffic safety, waterways, fisheries, public lands or neighboring properties, will not cause excessive levels of noise, vibrations, electrical disturbance, radioactivity or glare, will not destroy or disrupt any species listed as rare, endangered or threatened by the Massachusetts Natural Heritage Program or any known historic or archaeological site, will not produce amounts of trash, refuse or debris in excess of the town's landfill and waste disposal capacities, will properly dispose of stumps, construction debris, hazardous materials and other waste, will

provide adequate off-street parking, will not cause excessive erosion or cause increased runoff onto neighboring properties or into any natural river, stream, pond or water body and will not otherwise be detrimental to the town or the area.

V. Conditions

APPROVED PLANS

Construction of the Project shall be done only in accordance with the following plans hereby approved by the Zoning Board of Appeals: 1) A set of 14 sheets entitled "Wareham Marketplace, Site Development Plans for J Donegan Company dated April 11, 2016 and revised through July 25, 2016 and 2) Architectural sketches of the proposed buildings are shown on a set of 8 sheets entitled "Wareham Marketplace, Wareham, MA, Schematic Design dated July 13, 2016 by Bignell Watkins Hasser, Architects, P.C.

1. Only those general uses shown on the plans; neighborhood grocery store, restaurant, bank and retail are allowed under this Special Permit. No motor vehicle sales, repair or services are allowed under this Special Permit.
2. The Zoning Boards of Appeals will determine whether any modifications to the Approved Plans are substantial or insubstantial. Substantial modifications shall not be approved until confirmed by a majority vote of the Zoning Board of Appeals after a public meeting.
3. The MGL c.44 sec.53G peer review account shall be replenished for construction and site inspections in an amount approved by the Zoning Board of Appeals, prior to issuance of a Building Permit.
4. The project shall comply with all applicable building, fire safety and health codes.
5. A pre-construction conference with Town departments and the town's consulting engineer shall be held prior to the commencement of demolition of existing structures and the beginning of new construction.
 - a. The schedule of construction inspections shall be provided by the Owner/Contractor for review and approval.
 - b. Emergency and owner's representative names and contact numbers shall be submitted to the Planning office.
 - c. A Construction Management Plan shall be submitted detailing construction access, signage, fencing and dust control.
6. Site security shall be the responsibility of the Owner.
7. Construction activities shall not customarily take place in connection with this project (i) before 7 a.m. or after 6 p.m. Monday through Saturday, or (ii) on Sundays or holidays.
8. No de-icing chemicals other than a mixture of sand and calcium chloride or sand alone shall be used on any roadways, driveways or other impervious surfaces of the Project.
9. All conditions of this decision shall run with the land and are binding on the Applicant and its successors and assigns in title.
10. No building or occupancy permits may be issued while there exists any substantial violation of the conditions of this Special Permit unless the Zoning Board of Appeals, by a favorable vote of four members at a regular meeting, should allow such issuance.
11. Prior to the issuance of any building permit for the Project, the applicant shall provide the Zoning Board of Appeals and the Wareham Building Inspector with copies of this Special Permit decision as recorded with the Plymouth County Registry of Deeds, showing the Book and Page where it is recorded or its recordation number. This decision shall not take effect, and no work may be commenced on construction of this project until this decision has been so recorded.

12. The applicant shall provide the Board with a copy of the recorded Order of Conditions for the project that is issued by the Wareham Conservation Commission.
13. The Zoning Board of Appeals and its agents may enter onto the property to view and inspect the property during regular business hours, subject to applicable safety regulations.
14. Upon completion, "As Built" plans are to be submitted to the Building Department with a copy provided to the Zoning Board of Appeals.
15. No temporary or final certificate of occupancy shall be issued unless all infrastructure, common improvements, landscaping, lighting and traffic controls have been installed. Exceptions may be granted by the Zoning Board of Appeals, after proper security and a schedule of completion has been approved by the Zoning Board of Appeals.
16. The property shall be connected to the public water and sewer lines. Curb cuts and utility connections shall be approved by the respective town agency prior to issuance of a Building Permit.
17. The applicant shall notify the Board with respect to the approval of MassDOT to allow the construction of a right turn deceleration lane on Cranberry Highway easterly of the Seth F. Tobey Road/Cranberry Highway intersection for the proposed right turn in/right turn out access shown on the plans. The Applicant will coordinate with the Town to notify and include a representative, if desired, at any coordination meetings with MassDOT. If the proposed dedicated right turn lane in is denied by MassDOT, the curb cut shall operate as a right in and right out only as shown on the Site Development Plans revised July 25, 2016.
18. The design and construction of all proposed buildings shall conform to the general depiction and theme for style and color as shown on the building sketches provided and approved at the public hearing. Any deviation from the general style and colors shown shall be presented to the Board for review.
19. The size, style, and dimensions of all free standing signs and proposed signs used on the facades of buildings shall comply with all provisions of Article 11, Signs of the Zoning By-Law.
20. The final design and location of free standing signs shall be presented to the Zoning Board of Appeals for review.
21. No temporary or permanent outdoor products for sale shall be permitted.
22. Spaces for storage of shopping carts shall be identified and be submitted to the Zoning Board of Appeals prior to construction. Any reduction in parking spaces that are the result of the shopping cart storage areas shall be deducted from the total shown on the plans. The calculation for uses allowed under this Special Permit shall then be determined by the total number of spaces that are left.
23. Appropriate receptacles for smoking, trash, and recyclable materials shall be installed.
24. All regular deliveries and trash pickup shall be made during off-peak hours as defined by ITE guidelines.
25. The area shown to the rear of the proposed market building as covered with bark mulch shall be changed to cement concrete. The area covered extends from the easterly end of the island east of the loading dock to the concrete surface north and west of the dumpster enclosure.
26. Any changes or modification of uses or structures authorized by this Special Permit shall not be allowed unless an application in the appropriate form is filed with the Zoning Board of Appeals, and the Board approves of the change or modification after proper public notice and public hearing has been held in accordance with the provisions of Section 1451 of the Wareham Zoning By-Law.

VI. Expiration, Extension or Modification

Pursuant to Massachusetts General Law, Chapter 40A, Section 9 and Article 14, Section 1451.4 of the Wareham Zoning By-Law, this Special Permit shall lapse within 2 years, which shall not include such time required to pursue or wait the determination of any appeal from the grant hereof, if a substantial use hereof is not sooner commenced except for good cause.

The applicant shall require a specific determination of good cause by a favorable vote of four members of the Zoning Board of Appeals if claiming an extension of the 2-year period, except to wait the determination of any appeal from the grant hereof.

VII. Signature and Filing

This Special Permit decision document, which incorporates by reference herein all attachments and plans, has been approved on this _____ day of _____, 2016. A copy of same shall be filed with the Town Clerk in accordance with applicable law.

Wareham Zoning Board of Appeals - Duly Authorized Member

Commonwealth of Massachusetts

Plymouth, ss

On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, a member of the Wareham Zoning Board of Appeals, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires: _____

A copy of this decision and the accompanying plans endorsed by the Zoning Board of Appeals has been duly filed on _____ with the Town Clerk of Wareham.

Town Clerk

Notice of this decision was mailed on _____ to the applicant, to the parties in interest designated in Massachusetts General Law, Chapter 40A, Section 11 and all persons at the hearing who requested such notice. Any appeal should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws 20 days after the date of such filing.

I, Mary Ann Silva, Town Clerk of the Town of Wareham, hereby certify that a copy of this decision and the accompanying plans endorsed by the Board of Appeals were filed with the office of the Town Clerk on _____ and that no appeal of that decision was filed within 20 days thereafter.

Town Clerk

Date: _____

Upon expiration of the statutory appeal period with no appeal having been filed, this Special Permit decision has been endorsed by the undersigned members of the Wareham Zoning Board of Appeals on _____ and may be recorded.

