

## **MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS**

**Date of Meeting: January 25, 2017**

### **I. CALL MEETING TO ORDER**

The meeting was called to order at 6:35 P.M.

### **II. ROLL CALL**

Members Present: Nazih Elkallassi, Chairman  
James Eacobacci, Clerk  
Jan Kendrick  
Karl Baptiste  
Ernie Alden, Associate Member  
Jake Morrison, Associate Member

Member Absent: Wilma Engerman

Also present: Kenneth Buckland, Director of Planning  
Rich Bowen, Town Counsel

### **I. PRELIMINARY BUSINESS**

#### **A. Approve meeting minutes December 14, 2016**

**MOTION:** Ms. Kendrick moved to approve the minutes of December 14, 2016 as written. Mr. Eacobacci seconded.

**VOTE: Unanimous (4-0-0)**

### **II. PUBLIC HEARINGS**

### **III. CONTINUED PUBLIC HEARINGS**

#### **A. Petition #38-16 – Patricia Moncey – 41 Oak Street**

Present before the Board: Patricia Moncey  
Robert Moore, Attorney for Ms. Moncey  
Lefki Aevazelis  
Mr. Lang, Attorney for Mrs. Aevazelis

It was explained that after reviewing the previous decision with Town Counsel, the appeal of the Occupancy Permit to the Zoning Board was defective. The Board has called the meeting to overrule their decision as it was null and void. Town Counsel will explain the process further.

Attorney Moore stated he is opposed to the hearing and does not feel the Board has the right to call the hearing. He stated Ms. Moncey's second appeal was filed when the Building Commissioner who issued the Certificate of Occupancy and although they have asked for the recall of that, the basis of the appeal still stands. He believes the Certificate of Occupancy was issued despite the fact that the requisites for the issuance were not met. The hearing on the first appeal had not been completed yet and he claims the meeting in September 14, 2016 was not a full hearing. The first appeal was denied. The second appeal was granted due to the heat pumps infringing on the side setback area.

Mr. Elkallassi stated the Board did grant the appeal, however, the Board did not have jurisdiction to grant the appeal.

Attorney Bowen stated this matter was presented to him when the appeal was made to Superior Court. He felt that it would be in everyone's best interest to appear in Superior Court with the least amount of confusion as possible. At the initial beginning of the hearing, there was improper notice on the hearing, which is one causation of the hearing this evening. The other two issues are issues of substance and jurisdiction. The concern is that the appeal of the Occupancy Permit should have been appealed to the State Building Code Board of Appeals and not the Zoning Board. The decision stated the appeal was denied and in the conditions, it was stated the Board did find that the heating pump was a structure, but also stated the Board made no decision on the appeal of the Occupancy Permit as this was a State Building Code issue.

Attorney Bowen asked the Board if there were any facts presented at the second hearing that were not presented at the first. The Board stated there were no new facts that they could recall.

**MOTION: Mr. Elkallassi moved to accept and incorporate the papers and proceedings of hearings #1 and #2 into the records of this hearing. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

Attorney Bowen asked if the letter issuing occupancy from the Building Inspector stated the Board has the authority to overturn the decision. The Board members stated the letter of occupancy was not written as such in Wareham.

Attorney Lang asked if Ms. Moncey had received a copy of the Occupancy Permit (CO) when it was issued. The Board members stated it is not general practice for the Building Inspector to present copies of the CO to the abutters.

Attorney Lang stated he was present on the meeting of September 14, 2016 and it was a full hearing. He stated the CO was discussed on the first petition and the appeal was denied and the exact same matter was presented at the second hearing, but a different finding was made at the second hearing. The appeal by Mrs. Aevazelis was made because the decision was unreasonable for the occupant. The decision was to move the heating pump, however, the entire house was hooked up to it and construction was already complete, which made moving the heat pump unreasonable.

Attorney Bowen stated since the appeal was for the CO and the decision did not revoke the CO, then conditions #1 and #2 should be unenforceable dicta.

Attorney Bowen recommended the Board make different votes. The first vote recommended would be if the Board was presented new information between the first hearing and the second hearing. The second vote recommended would be if the Board meant to overrule its first decision by making the second decision and if the Board had the right to make a different decision on the second appeal after a decision that was already made on the first appeal.

Attorney Moore asked if the Board has the right this evening to go back and change a decision that was previously made. If so, he questioned why wouldn't the Board have had that right with the hearing on the second appeal as well. Attorney Bowen stated since there was a notice issue on the second hearing, which Attorney Moore does not agree with, this hearing was called to rectify the public notice issue.

Attorney Moore stated the Board had determined the heat pump to be a fixture and that fixtures should not be in the setback.

Attorney Bowen asks the Board to consider three questions: 1. Did the facts change between hearing #1, #2 or #3? 2. Does the ZBA now believe it was appropriate to revisit the decision from hearing #1? 3. Does the Board assert jurisdiction over the appeal of a Certificate of Occupancy?

**MOTION: A motion was made & seconded that the facts did not change between the three hearings.**

**VOTE: (3-0-1)**  
**Jan Kendrick abstained**

**MOTION: Mr. Eacobacci moved that is was inappropriate for the Board to hear the second hearing. Mr. Alden seconds.**

**VOTE: (3-0-1)**  
**Jan Kendrick abstained**

**MOTION: Mr. Eacobacci moved the Board does not have jurisdiction to appeal the Certificate of Occupancy. Mr. Alden seconded.**

**VOTE: Unanimous (4-0-0)**

It was stated these motions are subsidiary findings. The final motion before the Board would be to uphold or deny the appeal of the Certificate of Occupancy.

Attorney Moore stated this was not the only concern Ms. Moncey wanted the Board to address. The other issue was they were asking that the home be made to comply with the By-Law and move the heat pumps out of the setback.

**MOTION: Mr. Eacobacci moved to deny the appeal. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**B. MOTION: Mr. Eacobacci moved to close the public hearing for Petition #38-16 – Patricia Moncey – 41 Oak Street. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**C. Petition #44-16 – Steven Seidel & Adria Steinberg – 3 Acorn Street**

Present before the Board: Bill Lockwood, Lockwood Architects

The applicant is proposing an addition. At the last hearing, an additional plan was requested. Mr. Lockwood stated they are requesting a 9% increase on the lot, which is very un-substantive. The Variance is requesting relief from the restriction of lot coverage.

Present before the Board: Gary Lerner, Abutter

Mr. Lerner stated he is in favor of the project.

**MOTION: Mr. Eacobacci moved to close the public hearing for Petition #44-16 – Steven Seidel & Adria Steinberg – 3 Acorn Street. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**MOTION: Mr. Eacobacci moved & Ms. Kendrick seconded to grant a Variance under MGL Chapter 40A, Section 622 of the Wareham Zoning Bylaws to construct an addition for Petition #44-16 – Steven Seidel & Adria Steinberg, c/o Lockwood Architects – 3 Acorn Street, Onset finding the following:**

- **The increased area of the addition will not create any new non-conformity.**
- **The proposed project will not be detrimental to the public good & will be in keeping w/ the character of the existing neighborhood.**
- **Variance shall not nullify or substantially derogate from the intent of the Bylaw.**

**Further, the granting of this Variance is subject to the following conditions:**

- **Project to be built per plan entitled “Proposed Conditions Plan at 3 Acorn Street, Onset, MA” dated December 27, 2016**
- **Standard conditions apply.**

**VOTE: Unanimous (4-0-0)**

**D. Petition #45-16- Lenord Cubellis – 197 Onset Avenue**

Present before the Board: Bill Madden, G.A.F. Engineering, Inc.  
Leonard Cubellis  
Jamie Souza  
Larry McGrath, Attorney  
Laura Lyons, Abutter

Mr. Madden stated when he had spoken with Ken Buckland, Town Planner, the decision that had been reached was the Board should focus on the Variance aspect of the application before any discussions were made concerning abutter issues relative to the use of the land. He would like to discuss the Variance first. The request for the Variance is based on the building. The house was built in the 1930's, the lot was recorded at the registry in 1948 and zoning in Wareham came into effect in 1951, so the building is a pre-existing non-conforming to zoning. The lot was created in virtue of the structure that was existing. He noted that unusual lot lines were created.

Attorney McGrath stated the applicant could use the lot more appropriately with architectural changes. He stated the lot has more room on the front of the lot and he believes the addition, as proposed, would be a detriment to the character of the neighborhood.

Present before the Board: Sandra Wheeler, 25 South Boulevard, Onset

Ms. Wheeler stated she is opposed to the project.

Present before the Board: Paul Chickadelli, 28 Cedar Street,

Mr. Chickadelli stated he is opposed to the project. He works with the Band Shell on a regular basis. The area behind the Band Shell is a useful area for them. He feels to relieve the hardship of the applicant, would force the hardship onto the Band Shell.

Mr. Chickadelli believes the proposed addition would encroach on public property, it would inhibit the ability to bring in vans with heavy equipment, and it would leave only four feet between the building. Mr. Elkallassi stated it is private property and the project will not be encroaching on public property.

Present before the Board: Marleen Decosta, 11 Riverside Drive

Mrs. Decosta stated she is opposed to the project.

Present before the Board: Richard Wheeler, 25 South Boulevard

Mr. Wheeler stated he is opposed to the project.

Present before the Board: Jovina Dean, 6 Union Avenue

Ms. Dean stated she is opposed to the project.

Present before the Board: Patricia Chickadelli, 14 8<sup>th</sup> Avenue

Ms. Chickadelli stated she is opposed to the project.

Attorney McGrath stated he does not see the hardship of the Variance. He read from the Creed of the property of Ms. Lyons stating that the waterfront view shall not be blocked. He also read from the By-Law to interpret that views shall not be blocked as they may reduce property value.

Mr. Baptiste stated he is not in favor of the Variance. Mr. Eacobacci feels the Board does not have the jurisdiction to make decisions on views or deeds because it does not pertain to zoning. Ms. Kendrick does not feel that a hardship has been proven. She agrees the lot and building are a peculiar shape, but she does not see how that has created a hardship for the applicant. Mr. Eacobacci believes the addition could be designed differently. Mr. Cubellis stated he designed the addition the way it is to leave the shape and character of the building as it is, but feels the addition as it is proposed, would not even be noticed by the public.

**MOTION: Mr. Eacobacci moved to close the public hearing for Petition #45-16- Lenord Cubellis – 197 Onset Avenue. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**MOTION: Mr. Eacobacci moved to grant a Variance. No second to the motion was made.**

**NOTE: The motion had no second thus, a Variance was not granted.**

**E. Petition #27-16 – Boone Ferri – 3127 Cranberry Highway**

Present before the Board: No one was present at this time.

The applicant has requested a continuance to February 22, 2017.

Present before the Board: John McGonnell, Abutter

Mr. McGonnell asked the Board to consider dismissing the project either with or without prejudice, since this is the fifth hearing that has been continued.

**MOTION: Mr. Eacobacci moved to close the public hearing for Petition #27-16 – Boone Ferri – 3127 Cranberry Highway. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**MOTION: Mr. Elkallassi moved to deny with prejudice the request for a Special Permit for Petition #27-16 – Boone Ferri – 3127 Cranberry Highway to sell used motor vehicles based on excessive continuances & no engineered plans. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**F. Petition #03-17 – Joe Gomes, c/o John DeFaria – 24 Shangri-La Boulevard**

It was stated there isn't a quorum for this hearing.

**MOTION: Mr. Eacobacci moved to continue the public hearing for Petition #03-17 – Joe Gomes, c/o John DeFaria to February 8, 2017. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**G. Petition #05-17 – ERR Realty Trust, c/o New England Coastal Contractors, LLC – 9 Stockton Shortcut**

Present before the Board: Brian Grady, G.A.F. Engineering, Inc.  
Wayne Tirrel, New England Coastal Contractors

The applicant is requesting a Special Permit seeking to remove an existing greenhouse attached to a dwelling and replace it with an addition. The greenhouse has already been removed and there was a pre-existing foundation. The lot conforms to the area and frontage requirements. The proposed addition will be 1.5' further from the setback. The purpose of the addition is to move the master bedroom downstairs.

**MOTION: Mr. Eacobacci moved to close the public hearing for Petition #05-17 – ERR Realty Trust, c/o New England Coastal Contractors, LLC – 9 Stockton Shortcut. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**MOTION: Mr. Eacobacci moved to consider the application as a Special Permit. Ms. Kendrick seconded.**

**VOTE: Unanimous (4-0-0)**

**MOTION: Mr. Eacobacci moved & Mr. Baptiste seconded to grant a Special Permit to remove an existing greenhouse attached to a dwelling & replace it w/ an addition for Petition #05-17 – ERR Realty Trust, c/o New England Coastal Contractors, LLC – 9 Stockton Shortcut w/ the following findings:**

- The proposal will not substantially increase the non-conforming nature of the structure.
- Special Permit is granted for relief under Section 1335 of the Wareham Zoning Bylaws.

**Further, the Special Permit is granted w/ the following conditions:**

- To be constructed per plan dated August 26, 2016 revised through October 13, 2016 as submitted by G.A.F. Engineering, Inc.
- Standard conditions apply.

**VOTE: Unanimous (4-0-0)**

#### **H. Petition #06-17 – Afif El Baba – 3070 Cranberry Highway**

Present before the Board: Afif El Baba

At the last hearing, the applicant was requested to return with a plan, which he has done. The Board feels the project is acceptable, but the Board would like to see more detailed plans done by an engineer or surveyor. The engineer would also need to review the drainage, landscape, signage, and lighting on the plan presented since the plan is a few years old. The Board needs to ensure it meets the standards of the current By-Law. The Board will continue the hearing.

**MOTION: Mr. Eacobacci moved to continue the public hearing for Petition #06-17 – Afif El Baba – 3070 Cranberry Highway to February 8, 2016. Mr. Alden seconded.**

**VOTE: Unanimous (4-0-0)**

#### **IV. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS**

##### **A. Correspondence**

1. See correspondence sent via email and/or in packets.

##### **B. Upcoming Hearings:**

<b>February 22, 2017</b>	<b>#01-17</b>	<b>Patrick Sheehan</b>	<b>30 Pine Tree Drive</b>
<b>February 22, 2017</b>	<b>#02-17</b>	<b>Philip Sheridan, Tr.</b>	<b>104 Pinehurst Drive</b>
<b>February 22, 2017</b>	<b>#08-17</b>	<b>Charles L. McHugh</b>	<b>9 Sippican Road</b>

- ##### **V. NEW BUSINESS (This time is reserved for topics that the Chairman did not reasonably anticipate.**

#### **III. ADJOURNMENT**

**MOTION: A motion was made & seconded to adjourn the meeting.**

**VOTE: Unanimous (4-0-0)**



Date signed: \_\_\_\_\_

Attest: \_\_\_\_\_

James Eacobacci, Clerk

WAREHAM ZONING BOARD OF APPEALS

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