

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: October 12, 2016

I. CALL MEETING TO ORDER

The meeting was called to order at 6:30 P.M.

II. ROLL CALL

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

Members Absent: Ernie Alden, Associate Member

I. PRELIMINARY BUSINESS

A. Approve meeting minutes of August 24, 2016.

MOTION: Mr. Eacobacci moved to approve the meeting minutes August 24, 2016. Ms. Kendrick seconded.

VOTE: Unanimous (5-0-0)

II. PUBLIC HEARINGS

A. Petition #42-16 – Caitlyn Elwood – 225 Charge Pond Road

Present before the Board: Caitlyn Elwood

The public hearing notice was read into the record.

The applicant is requesting a Variance to construct a two- car garage. According to the Building Commissioner's letter dated August 31, 2016, it appears that the construction of a garage will lack a side setback & require a Variance from section 621 of the Wareham Zoning Bylaws.

Ms. Elwood stated the proposed garage would be six feet within the side property line. Brief discussion ensued. Mr. Elkallassi proposed moving the garage to obtain a ten foot set back instead of a six foot setback.

MOTION: Mr. Eacobacci moved to close the public hearing for Petition #42-16 – Caitlyn Elwood – 225 Charge Pond Road. Ms. Kendrick seconded.

VOTE: Unanimous (5-0-0)

MOTION: Ms. Engerman moved to grant a Variance with a condition that no plumbing be allowed in the garage for Petition #42-16 – Caitlyn Elwood – 225 Charge Pond Road. Mr. Elkallassi seconded.

VOTE: (4-0-1)
The motion did not pass

MOTION: Mr. Eacobacci moved & Mr. Baptiste seconded to grant a Variance to construct a garage for Petition #42-16 – Caitlyn Elwood – 225 Charge Pond Road, finding that said request meets the statutes for a Variance, and further, the Variance is granted w/ the following conditions:

- Standard conditions apply.
- The garage addition to be reduced to meet the side yard setback of ten (10) feet.

VOTE: (4-1-0)
Ms. Kendrick opposed

B. Petition #43-16 – Christopher McIntosh – 22 High Dam Road

Present before the Board: Christopher & Brittany McIntosh

The public hearing notice was read into the record. According to the Building Commissioner's letter dated August 31, 2016, the proposed construction of a garage will lack a side setback & will require a Variance from section 621 of the Wareham Zoning Bylaws.

Discussion ensued.

MOTION: Mr. Eacobacci moved to close the public hearing for Petition #43-16 – Christopher McIntosh – 22 High Dam Road. Ms. Kendrick seconded.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Eacobacci moved to deny the request for a Variance for Petition #43-16 – Christopher McIntosh – 22 High Dam Road based on the fact that the Variance request did not meet the statute for a Variance under MGL 40A, section 10. Mr. Baptiste seconded.

VOTE: (3-2-0)
Ms. Engerman & Ms. Kendrick opposed

III. CONTINUED PUBLIC HEARINGS

A. Petition #32-16 – Alternate Power & Energy – 418 County Road

Present before the Board: Attorney Jan Wolverton

Attorney Wolverton announced that the applicant has requested to withdraw the application for a Variance.

MOTION: Mr. Eacobacci moved to close the public hearing for Petition #32-16 – Alternate Power & Energy – 418 County Road. Ms. Kendrick seconded.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Eacobacci moved to withdraw the application for Petition #32-16 – Alternate Power & Energy – 418 County Road, per the request of the petitioner. Ms. Kendrick seconded.

VOTE: Unanimous (5-0-0)

B. Petition #41-16 – Alternate Power & Energy – 418 County Road

Present before the Board: Attorney Jan Wolverton
Chris Piazza, Owner

The applicant is requesting a Special Permit to install/construct a solar photovoltaic array. The Board & the applicant discussed screening, plantings, the access gate, open space, etc.

MOTION: A motion was made and seconded to table the hearing for Petition #41-16 and return to it.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Eacobacci moved to re-open the public hearing. Ms. Kendrick seconded.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Eacobacci moved to close the public hearing for Petition #41-16 – Alternate Power & Energy – 418 County Road. Ms. Kendrick seconded.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Eacobacci moved to approve a Special Permit to construct a solar photovoltaic facility for Petition #41-16 – Alternate Power & Energy – 418 County Road finding that the proposal is in conformance w/ standards for issuance of a Special Permit, given the conditions of the property and the neighborhood and based on the public hearing record, further, the Special Permit is granted with conditions as discussed w/ the Town Engineer & to be placed in the final written decision. Ms. Kendrick seconded.

VOTE: Unanimous (5-0-0)

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

Present before the Board: Robert Moore, Attorney for Pat Moncey
Lefki & Demetrios Aevazelis

The petitioner is requesting to appeal a decision of the Building Inspector for the issuance of a Certificate of Occupancy re: 41 Oak Street.

Attorney Moore addressed the main issues/concerns Ms. Moncey has. The first concern being the “garage”. He stated there is no definition for “garage” in the Town of Wareham By-Laws or regulations. Ms. Moncey is still concerned that the garage will be turned into a guest house. The second issue Ms. Moncey has is the heat pumps. He stated heat pumps are not in the Zoning By-Laws and they (heat pumps) cannot be in the setback areas.

Attorney Moore stated the words “building, structure, lot shall be constructed outside the setbacks, and any portion thereof”. The heat pumps are considered a portion thereof. As such, the heat pumps should not be part of the setback area.

Mr. Elkallassi asked the Board for their input. Ms. Engerman feels if something is attached to the house, then it is a part of the house. Mr. Eacobacci asked if the homeowner’s move the heat pumps from the side of the house to the street side of the house, which would move the heat pumps out of the setback, if it would be a detriment to the homeowner. Ms. Kendrick asked what the Building Inspector’s input is on this. Mr. Elkallassi stated the Town doesn’t have a By-Law for heat pumps or condensers; however, it states in the By-Law that a fixture to the building must be out of the setback. Mr. Elkallassi stated the Board will have to vote if the heat pump is a fixture or not. The heat pump is five or six feet from the property line & the setback is ten feet.

Mr. Aevazelis stated the heat pump does not generate a large amount of noise. He added that they did not choose to put the heat pump there and that moving the heat pumps will not relieve the noise for Ms. Moncey. Attorney Moore stated since the homeowner’s have stated the heat pumps are hardwired into the house, this proves even further that it is a fixture to the house.

Mr. Elkallassi discussed the garage. Attorney Moore stated if there is not a definition in the By-Law, they must use Webster’s Dictionary under Article 16. He stated Ms. Moncey is afraid that eventually, the garage may become a guest house. Attorney Moore stated the applicant’s must be held to the Special Permit conditions and build a garage. He also stated the Building Inspector pointed out that it is not a garage, there is not an approach to it, the floor does not support a car, there is no garage door, and plumbing and sewer were tried to be tied to it. Mr. Elkallassi stated that forcing the owners to put a garage door on the garage does not make it remain a garage. Ms. Engerman stated she was on the Board when the applicant first came before the Board to request a guest house and the Board denied the use as a guest house, but they approved a garage. Ms. Kendrick stated there is no proof that the applicant is using the building as a guest house and that using the building as a shed or storage building, that is an allowed use. Mr. Baptiste asked Ms. Moncey if her garage is an apartment. Ms. Moncey stated she doesn’t

have a garage; the building is a house. Mr. Elkallassi stated the Board should also vote if the building is a garage.

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

VOTE: Unanimous (5-0-0)

MOTION: Ms. Kendrick moved that the Board concurs that the heat pumps are fixtures re: 41 Oak Street. Mr. Eacobacci seconded.

VOTE: (4-0-1)

MOTION: Mr. Eacobacci moved the ZBA overturn the Building Inspector's decision on the heat pumps alone for Petition #38-16 – Patricia Moncey – 41 Oak Street. Ms. Kendrick seconded.

VOTE: (4-0-1)

D. Petition #39-16 – David & Carolyn Westcott – 3-4 Tuckwood Place

Present before the Board: David Westcott

The applicant is requesting a Variance to combine two lots to make one buildable lot. According to the Building Commissioner's letter dated August 3, 2016, MGL Chapter 40A, Section 10, Paragraph 3 requires that a Variance be exercised w/in one year. Due to the fact that this was not done, the applicant needs to apply for a new Variance. The new request will need to seek a Variance from Section 621 to combine two lots to make one buildable lot which will lack land space.

Discussion ensued re: if the application meets the standards for a Variance.

MOTION: A motion was made & seconded to close the public hearing for Petition #39-16 – David & Carolyn Westcott – 3-4 Tuckwood Place.

VOTE: Unanimous (5-0-0)

MOTION: A motion was made & seconded to deny a Variance for Petition #39-16 – David & Carolyn Westcott – 3-4 Tuckwood Place to combine two lots to make one buildable lot finding that the Variance request does not meet the statutes of a Variance under MGL 40A, Section 10.

VOTE: Unanimous (5-0-0)

E. Petition #40-16 – Anthony & Bonnie Piazza – 9 Hammond Street

The applicant is requesting a Special Permit to demolish & rebuild a single family structure. According to the Building Commissioner's letter dated August 17, 2016, the project will require a Special Permit under Section 1335, subsection 4.

Discussion ensued.

MOTION: A motion was made & seconded to close the public hearing for Petition #40-16- Anthony & Bonnie Piazza – 9 Hammond Street.

VOTE: Unanimous (5-0-0)

MOTION: A motion was made & seconded to grant a Special Permit to demolish & rebuild a single family structure for Petition #40-16 – Anthony & Bonnie Piazza – 9 Hammond Street finding the request for a Special Permit under Section 1335, subsection 4 and further, with the following conditions:

- Standard conditions apply.
- Project to be built per plan dated August 22, 2016.

VOTE: (4-1-0)

IV. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS

A. Correspondence

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

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

III. ADJOURNMENT

MOTION: Mr. Eacobacci moved to adjourn the meeting. Ms. Kendrick seconded.

VOTE: (5-0-0)

Date signed: _____

Attest: _____

James Eacobacci, Clerk

WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: _____