

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

**Date of Meeting: April 12, 2017**

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

The meeting was called to order at 6:45 P.M.

### **II. ROLL CALL**

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

Members Absent: Ernie Alden

Also present: Kenneth Buckland, Director of Planning  
David Riquinha, Building Commissioner

### **III. PRELIMINARY BUSINESS**

**Approve meeting minutes: March 22, 2017**

The minutes were tabled and not re-addressed.

### **IV. PUBLIC HEARINGS**

#### **A. Petition #13-17 – Joseph Freehling & Cynthia Gustofon – 17 11<sup>th</sup> Street**

Present before the Board: Tim Chiffone

The applicant is requesting to exceed the 20% lot coverage allowed in the OV2 District; in total 22.6%. The applicant is requesting to construct a walkway between the rear and front deck, 28'x13'7" in size. This house had been built before the lot was created which is the cause of the hardship.

The Board discussed the addition & they concurred that the addition does not substantially increase the non-conformity and is not substantially more detrimental to the neighborhood.

**MOTION: Mr. Eacobacci moved to close the public hearing for Petition #13-17 – Joseph Freehling & Cynthia Gustofon. Ms. Kendrick seconded.**

**VOTE: Unanimous (5-0-0)**

**MOTION: Mr. Eacobacci moved & Mr. Baptiste seconded to grant a Variance for a ground level wooden walkway for Petition #13-17 – Joseph Freehling & Cynthia Gustofon – 17 Eleventh Street finding the following:**

- The proposal meets the four criteria for a Variance under the MA General Law statute.
- The proposal will not be detrimental to the neighborhood.
- Literal enforcement of the Bylaw would be a substantial hardship on the applicant.
- Hardship was demonstrated properly by counsel finding the topography & soil of the property was sufficient to prove a hardship.

Further, the Variance is granted w/ the following conditions:

- Standard conditions apply.

**VOTE: Unanimous (5-0-0)**

**B. Petition #14-17 – Peter Ellis – 22 Scheffler Drive**

Present before the Board: Peter Ellis

The applicant is requesting a Special Permit to construct a 22'x26' addition to an existing single family dwelling. Mr. Ellis stated the addition would not conform to the front setbacks; however, the proposed setback would be equal to or greater than those of the abutters.

The Board discussed the addition and concurred that the addition does not substantially increase the non-conformity and is not substantially more detrimental to the neighborhood.

**MOTION: Mr. Eacobacci moved to close the public hearing for Petition #14-17 – Peter Ellis – 22 Scheffler Drive.**

**VOTE: Unanimous (5-0-0)**

**NOTE: After discussion, the Board concurred that this project falls under a Special Permit and not a Variance.**

**MOTION: Ms. Kendrick moved to apply this project to the Special Permit process. Mr. Eacobacci seconded.**

**VOTE: (4-1-0)**

**Ms. Engerman is opposed.**

**MOTION: Mr. Eacobacci moved & Ms. Kendrick seconded to grant a Special Permit to construct an addition for Petition #14-17 – Peter Ellis – 22 Scheffler Drive finding the following:**

- The addition is not a substantial increase to any existing non-conformity.
- The addition will not be substantially more detrimental to the existing neighborhood.

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

- To be built per plan from JC Engineering, Inc. dated November 2, 2016.
- Standard conditions apply.

**VOTE: (4-1-0)**

**Ms. Engerman is opposed**

**C. Petition #15-17 – Jacqueline Lukk – 152 Lake Avenue**

Present before the Board: Jacqueline Lukk

The applicant is seeking to extend an existing, non-conforming deck. The property does not meet the required setbacks. The Board discussed the extension of the deck & concurred that the extension does not substantially increase the non-conformity and is not substantially more detrimental to the neighborhood.

**MOTION: Mr. Eacobacci moved to close the public hearing for Petition #15-17 – Jacqueline Lukk – 152 Lake Avenue. Ms. Kendrick seconded.**

**VOTE: Unanimous (5-0-0)**

**MOTION: Mr. Eacobacci moves to apply this project to the Special Permit process and not the Variance process. Mr. Baptiste seconded.**

**VOTE: Unanimous (5-0-0)**

**MOTION: Mr. Eacobacci moved & Mr. Baptiste seconded to grant a Special Permit to extend a deck for Petition #15-17 – Jacqueline Lukk – 152 Lake Avenue with the Board finding the following:**

- The existing deck is pre-existing & non-conforming & the proposed extension will not be a substantial increase to the non-conforming nature of the deck.
- The proposal is not substantially more detrimental to the existing neighborhood.

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

- To be built per plan from JC Engineering, Inc. dated March 8, 2017.
- Standard conditions apply.

**VOTE: Unanimous (5-0-0)**

**D. Petition #16-17 – Francis Ellis – 7 Mattos Avenue**

Present before the Board: Francis Ellis

The applicant is requesting a Use Variance to raze an existing single family dwelling and construct a new two-family dwelling in a GC Zoning District.

Discussion ensued. The Board members expressed difficulty in finding just cause to grant a Use Variance for this project. The applicant did not put forth any arguments for any hardships or support for any of the Variance criteria.

**MOTION: Mr. Eacobacci moved to close the public hearing for Petition #16-17 – Francis Ellis – 7 Mattos Avenue. Mr. Baptiste seconded.**

**VOTE: Unanimous (5-0-0)**

**MOTION:** Ms. Engerman moved & Mr. Elkallassi seconded to deny the application for Petition #16-17 – Francis Ellis – 7 Mattos Avenue to raze an existing single family dwelling & construct a new two-family dwelling w/ the Board finding the following:

- The petition did not meet statutory requirements of a Variance as specified in MGL, Chapter 40A, section 10.

**VOTE: Unanimous (5-0-0)**

**V. CONTINUED PUBLIC HEARINGS**

**VI. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS**

**A. Correspondence**

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

**NOTE:** Attorney Len Bello approached the Board and stated he had sent a letter of reconsideration to the Board and he assumed his matter would be on the agenda this evening. He asked if the Board would allow the applicant to re-advertise and have another public hearing on the matter. The reason is because the petition was to build a garage on a lot that requires 100' of frontage and the applicant was denied because he did not meet the frontage requirements and didn't find the setback to be an adequate hardship. He noted the Board has approved numerous projects since the denial with regard to finding the setback requirements sufficient hardship. He asked the Board for reconsideration on the application due to the circumstances.

**MOTION:** Mr. Eacobacci moved to reconsider Petition #43-16 - Christopher McIntosh on May 24, 2017. Ms. Kendrick seconded.

**VOTE: Unanimous (5-0-0)**

**B. Request for modification to Special Permit – Afif El Baba – 3070 Cranberry Highway**

Present before the Board: No one was present.

**NOTE:** Mr. Baptiste departed the meeting at this time (8:10 P.M.).

It was stated that Mr. Morrison will be voting in place of Mr. Baptiste on this matter.

It was stated that the applicant had previously had an approved Special Permit for a used car lot for 25 cars. The applicant then applied for a Class II used car dealer license through the Board of Selectmen and was granted a license for 50 cars. Mr. El Baba is requesting a modification to the Special Permit to have 50 used cars instead of 25 and also to allow car washing on the site. Mr. Elkallassi believes this is a major modification. The Board concurred.

**MOTION:** Ms. Kendrick moved the Board considers the request for a modification to a Special Permit a major modification and will require a new public hearing. Ms. Engerman seconded.

**VOTE: Unanimous (5-0-0)**

**C. Upcoming Hearings:**

April 26, 2017	#11-17 (CONT.'D.)	Karen Welch	2667A Cranberry Highway
April 26, 2017	#17-17	JNJ Holdings, LLC	2371 Cranberry Highway
April 26, 2017	#18-17	CTG Properties, LLC	3067 Cranberry Highway
April 26, 2017	#19-17	Laurence R. Ricardo	3 Galavotti Avenue
April 26, 2017	#20-17	Joseph C. Sauro	4 First Avenue

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

**VIII. ADJOURNMENT**

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

**VOTE: Unanimous (5-0-0)**

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

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

James Eacobacci, Clerk  
WAREHAM ZONING BOARD OF APPEALS

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