

Wareham Zoning Board of Appeals
Wednesday, January 10, 2024 – 6:30 p.m.
Minutes

WAREHAM TOWN CLERK
2024 JAN 30 PM4:41

Location: Wareham Multi-Service Center, 48 Marion Road, Wareham, MA, Room 320.

The following record pertains to a meeting held by the Zoning Board of Appeals at 6:30 PM local time. A video recording of this meeting is available for viewing. The record of the proceedings includes the videotape of the meeting, the resolutions passed, and any document presented during the course of the meeting.

I. CALL MEETING TO ORDER

Mr. Elkallassi called the meeting to order at 6:37 p.m.

II. ROLL CALL

Present: Chairperson, Nazih Elkallassi, Jim Eacobacci, Richard Semple, Troy Larson and Veronica DeBonise

Building Commissioner, Paul Turner was present.
Sonia Raposa, Department Planning Board Assistant was present.
Planning Director, Ken Buckland was on via Zoom.

III. PRELIMINARY BUSINESS

1. Approval of Meeting Minutes: 12/27/2023

Mr. Semple thought there was confusion on one of the votes, the board discussed and figured it out. Mr. Semple said he was satisfied with the discussion.

Mr. Eacobacci made a motion to approve the December 27, 2023 minutes which was seconded by Mr. Larson. The motion passed unanimously. (5-0-0).

IV. CONTINUED PUBLIC HEARINGS:

1. 45-23 Joshua DeOlim – Special Permit and Variance(s) – 2613 Cranberry Highway

Attorney Bob Perry was present with the applicant and from JC Engineering, Sam Iamele was also present. Attorney Perry stated they have changed their model of the business to be under nine vehicles.

Mr. Eacobacci motioned to extend 45-23 Joshua DeOlim per the applicant's request to January 24, 2024 which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Attorney Perry has granted the decision-making to March 2024.

2. 47-23 New Cingular Wireless – Special Permit – 25 Brown Street

The attorney stated he changed it to a variance. He reviewed the project for the 10' extension for the tower would encroach to a neighboring lot, they changed their request to a variance. He stated he spoke to the Town's attorney thru Mr. Buckland and that's why the application was amended. He said the ITW Realty Trust owns the property and it's a 25-year lease.

Mr. Eacobacci stated he read through the correspondence between Attorney Bowen and Mr. Buckland. Mr. Elkallassi asked for an engineered letter, which the attorney stated is attached to their amended application.

Mr. Semple asked if they could put a condition for plantings as the property is an eyesore. The attorney said he can't agree to it as he had to speak to the client.

Mr. Eacobacci made a motion to close the public hearing which was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0)

Mr. Eacobacci made a motion to approve the request for the variance on the condition that a letter from the engineer stating that the tower would fall on itself be submitted and a condition for greenery, 6', 5' apart. Ms. DeBonise seconded the motion and it passed unanimously. (5-0-0)

3. 49-23 Kelsey McKenna & Jonathan Dallmeyer – Appeal – 504 Main Street

Attorney Jillian Morton was present and stated they are working with the abutter and asked for a continuance; she asked that the public hearing be kept open. Attorney Morton stated she would issue a letter to extend the hearing to April 10, 2024.

There was no public comment.

Mr. Eacobacci motioned to continue to April 10, 2024, which was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0)

5. Discussion and possible vote – Rules & Regulations for SPR & Special Permit

Mr. Eacobacci motioned to table until the end which was seconded by Ms. DeBonise and passed unanimously. (5-0-0)

Mr. Buckland said he made some substantial changes, and he will send to them for discussion at their next meeting.

Mr. Eacobacci made a motion to continue the discussion at their next meeting which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0).

4. 51-23 Karen DiMichele – Appeal – 43 South Blvd

Attorney Morton stated they wanted to submit more information about the privacy bamboo and curtains on the property. She said they are still pursuing the appeal and our thinking of arborvitaes. She said the curtains were not up in the winter and provided pictures. She said it will not grow higher than it is currently as there is a mesh underneath that will prevent the growth. She explained the canopy as well on the property. She said they are looking at alternate structures and shared pictures of what they are looking at. She said they would be looking to continue the appeal until the Spring when they could do something more.

Mr. Elkallassi said he did a site-walk on the property and said he is against stockade high fences in that area. He recommended 10' arborvitaes. He said in Onset the houses are closer to each other and the bamboo structure doesn't look good at the property.

Mr. Eacobacci concurred with the Chair and he is not in love with having this issue continue between neighbors.

There was no public comment.

Mr. Eacobacci reviewed what they agreed to the last meeting, which was to give the applicant more time.

Attorney Morton stated they were asking for time to the Spring because they need to identify what they are going to put up at that time. She said it's not just a privacy issue but it's also criminal and there is litigation currently occurring.

Mr. Semple asked the board to consider extending the request for the application and be able to use the canvas until such time that it's extended.

Attorney Morton asked for an opinion from the board regarding the gazebo.

Mr. Eacobacci made a motion to close the public hearing which was seconded by Mr. Larson. The motion passed unanimously. (5-0-0).

Mr. Eacobacci made a motion to uphold the Commissioner's letter and that the posts be taken down and the canvas is not used any longer. Mr. Eacobacci withdrew his motion.

Mr. Semple made a motion to extend the hearing to July 20, 2024, to make a solution or everything comes down. Ms. DeBonise said they should make a motion whether or not they are upholding or overturning the Commissioner's letter. Mr. Eacobacci said they could withhold the Commissioner's letter but give them the opportunity to do something else.

Motion: Mr. Semple made a motion to withhold the Commissioner's letter that there is a violation and then extend the public hearing to July 20, 2024 to cure the violation and if not down, the applicant will be in violation. The motion was seconded by Mr. Larson and passed unanimously. (5-0-0).

V. PUBLIC HEARINGS:

1. 21-23 Angela McKeowen – Reconsideration of former Application – 386 Main Street

Mr. Eacobacci read the advertisement in for the record.

Attorney Morton was present for the applicant. Ms. Morton reviewed the vote was 3-0-2 (abstaining), so it failed. Ms. Morton reviewed the tape and stated the two abstaining were to question of the easement. Ms. Morton stated it has been vetted through the Town Engineer and extensive peer review. She said they are looking to pursue the three duplexes. She reviewed a letter from the Building Commissioner on the main house and they are working with an engineer to address that letter.

Mr. Elkallassi asked if under MGL 40a, Section 16 there were substantial changes. He asked if the substantial change is that they own the property now.

Attorney Morton stated she received an opposition letter – she said they filed all the notices to make sure it was procedurally correct. She stated they have evidence that they own the easement and have made the payments on the back taxes. The main concern was who owned the “T” shaped parcel and she says they have the evidence that they own it.

Mr. Elkallassi asked about the cease and desist on the property. Ms. Morton stated there was work done on the third floor (a unit) that was unpermitted.

Attorney Morton stated the cease and desist is a separate issue.

Ms. DeBonise said per the letter, they would be adding a unit because they already have it; which would be eleven not ten. She said the cease and desist letter does bring in something addition to this matter.

Mr. Eacobacci stated that he is within the distance of the property as an abutter and is stating that if anyone feels he should recuse himself, neighbor or board member believes he should; he will. He said that with this new information they are making a decision on eleven units because of the cease and desist letter that was presented.

An abutter, Mr. Robinson said he did not receive any notification of the meeting. He said at the first meeting he had roadway construction issues. He said that the tenants should use Main Street to enter/exit.

Attorney Morton read the name and address that the notification was sent to.

Attorney Marc Deshaies was present and stated that procedurally this can't be heard that this evening as it doesn't follow MGL 40a, Section 16. He said once an unfavorable action taken has to go through if there is a substantial and material change in the conditions. He said there is an innuendo that there is a change in the conditions but there is not. He said it would have to go through the Planning Board to submit consent to be considered. He read from the law. He explained there is a right of way and there is nothing at the registry of deeds indicating they have acquired anything new. Attorney Deshaies said that the matter was closed on their website and that the Zoning Board has no authority over this matter this evening.

Mr. Elkallassi asked if the substantial change can come back with a new applicant or application. He said that the ZBA is the granting authority for a variance, and it stops with the ZBA.

Mr. Buckland, via Zoom, said per MGL 40a, Section 16 does not say that the Planning Board have to take action on this matter.

Mr. Deshaies argued the 'comma' in the law and the word, "unless".

Mr. Eacobacci suggested that this application be withdrawn and return with a major substantial change.

Mr. Deshaies argued the second part of Section 17, withdraw by prejudice prior to the public hearing. He said it wasn't withdrawn before the public hearing.

Attorney Morton asked the board to allow a continuance and she just received the argument this evening and it needs to be researched. She said they believe that they have substantial change.

Mr. Elkallassi said the board needs to do their own research with the town attorney. He thanked Mr. Deshaies for his comments. Mr. Elkallassi said there is a major problem with the cease and desist now being on the property.

David Ward, 184 High Street was present. He said he received tonight's notification but not previous meetings. He asked what the main issue of the application is. Mr. Eacobacci stated in general the board found in favor of the project but the project was oppose because of the access and the board members were unable to make a decision and did not vote in favor or oppose; so there was no vote in favor or opposed.

Motion to continue: Mr. Eacobacci made a motion to continue to February 28, 2024 which was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0)

Motion to request Town Legal Counsel: Mr. Eacobacci made a motion to request assistance from town counsel for this matter and that the chairman be allowed to speak to the Selectboard to have this assistance request to Town Counsel. The motion was seconded by Mr. Larson. The motion passed unanimously. (5-0-0)

**2. 55-23 Jeffrey Johnson & Amanda Kut – Special Permit and/or Variance – 16
Widow's Cove Lane**

Mr. Eacobacci read the advertisement for the record.

Brad Bertolo was present for the applicant as well as Mr. Johnson the property owner. Mr. Bertolo passed out some visuals. Mr. Bertolo reviewed the project of house renovations. He said they are looking for a second-floor expansion and looking for a special permit on the height of the second-floor addition; and additional footprint that includes within the 64' front setback. He said they are also looking for an accessory structure in the front yard, which would require a variance. He said the property is unique to Onset Bay and within velocity and flood zones; a septic system that is located northerly of the house.

Board members had no comments on the house. There was no public comment.

Mr. Elkallassi asked why they couldn't put the shed in the rear of the property; Mr. Bertolo stated there were a lot of flood zones.

The board discussed the shed variance and had no issue.

Mr. Eacobacci made a motion to close the public hearing which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Motion to grant: Mr. Eacobacci made a motion to grant the variance to build the shed located as shown on plan 16 Widow Cove Lane dated December 6, 2023, with the condition that the foliage block the view of the shed which follows under MGL 40a, Section which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Mr. Eacobacci made a motion to grant as a Special Permit as its not detrimental to the neighborhood and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Motion to grant: Mr. Eacobacci made a motion to grant the Special Permit as presented on the December 6, 2023, plan; not detrimental to the neighborhood with standard conditions which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

**3. 56-23 Jennifer C. Noyce & Douglas C. Eifert – Special Permit and/or Variance – 24
East Boulevard**

Mr. Eacobacci read the advertisement in for the record.

Bill Madden was present with Mr. Warden the contractor for the project. Mr. Madden said they received a letter regarding the wrap-around porch and work was done before permitting. He said it's a 1904 structure. He said they did not increase any non-conformity and the porch is in the same footprint. He said there were side steps that are not going to be constructed but be built off the front of the house. He said they are removing the non-conformity with the removal of the steps.

Mr. Semple asked if a new foundation is under the house. Mr. Madden stated he believed there was not a new foundation.

Dana Warden, said he went there for a repair but the deck was so detrimental that he didn't want anyone to get hurt; so he pulled it off.

Mr. Elkallassi explained the bylaw regarding the removal of a non-conforming and any replacement needed to appear in front of the zoning board.

Board members had no additional comments. There was no public comment.

Mr. Eacobacci made a motion to close the public hearing which was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0).

Mr. Eacobacci made a motion to grant as a Special permit, which was seconded by Mr. Larson. The motion passed unanimously. (5-0-0).

Motion to grant: Mr. Eacobacci made a motion to grant the Special Permit with the standard conditions plans dated December 6, 2023, by GAF Engineering which was seconded by Mr. Larson. The motion passed unanimously. (5-0-0).

VI. ANY OTHER BUSINESS/DISCUSSIONS

VII. COMMENTS FROM BOARD MEMBERS

Ms. DeBonise asked questions about the Marina and what the attorney was arguing and if the height increase would increase the non-conformity. Mr. Eacobacci stated the board restricted something that they had the right to do.

Mr. Turner reviewed what the height increase non-conformity entails. Discussion occurred.

Mr. Eacobacci made a motion to adjourn which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Clerk's Signature:

James D. Eacobacci

Date:

1-29-2024

WAREHAM TOWN CLERK
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