

Wareham Zoning Board of Appeals
Wednesday, November 8, 2023 – 6:30 p.m.
Minutes

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. Eacobacci called the meeting to order at 6:30 p.m.

II. ROLL CALL

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

Mr. Elkallassi announced Mr. Morrison moved out of town, so is no longer on the board and they are in need of an associate member. He stated Mr. Larson was now a full member.

Building Commissioner, Paul Turner was present.
Sonia Raposo was present from the Planning Office.
Planning Director, Ken Buckland was on via Zoom.

III. PRELIMINARY BUSINESS

1. **Approval of Meeting Minutes: 10/25/2023** – Mr. Eacobacci motioned to approve as presented and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

2. **49-21 TJP Realty LLC – Insubstantial Modification Request – 14 Over Jordan**
Attorney Jillian Morton was present for the applicant. She explained they were seeking a minor modification on 14 Over Jordan, 2' closer over the second floor, because of the built and it won't change the footprint.

Mr. Elkallassi stated he didn't see how it could be minor because it was a variance.
Ms. DeBonise asked for clarification if it was ever conforming.

Mr. Eacobacci made a motion to grant a minor modification with 2' closer to the front setback which it was seconded by Mr. Semple. The motion passed with Mr. Elkallassi in opposition. (4-1-0).

IV. CONTINUED PUBLIC HEARINGS:

1. **21-23 Angela McKeowen – Site Plan Review/ Special Permit/Variance – 386 Main Street**

Attorney Jillian Morton was present along with Sam Elliot, JC Engineering. Ms. Morton reviewed the project.

Mr. Elkallassi asked if they sorted out the ~~one-way~~ with the abutter's attorney. Ms. Morton stated they talked but didn't sort it out and she was going to present case law.

Ms. Morton reviewed the standard of why they have the right-of-way to use the existing driveway. She showed the title information of the "T" driveway and explained their right of way of the back parcel. She reviewed her opinion of the legal issues.

Mr. Elkallassi stated they received the memorandum this evening and now to act on it puts a difficulty on them to understand it completely.

Ms. DeBonise said this may be a ^{case 9E. court 2E.} court for the case, but they should stick to the zoning issues. Mr. Eacobacci agreed that the task on hand is to review the parcel per the zoning by-laws.

Mr. Elkallassi opened it up for public comment.

Counsel for the abutters, Mark Deshaies was present. He said per his title research, his client Mr. Robinson and another abutter had a one-third interest in the "t" property. He said the property was not neglected in the foreclosure deed. He said he can see this going to land court.

Mr. Elkallassi said he had difficulty with the easement. Mr. Larson said he sees both sides but feels it may have been overburdened with six units.

Ms. DeBonise said she felt this was adequate access for the use of the right-of-way. Mr. Eacobacci said he wasn't sure what the granting access language was 'planned' from the beginning was. He said he's not sure what would qualify as overburdened.

Mr. Semple said they have to get through their property, and they can't do it from Main Street.

Ms. Morton reviewed the zoning by-law, regarding topography, hardship, and relief of substantial detriment to the public. She shared the property, the 't' shaped driveway is in tax title.

Attorney DeShaies read the language of the easement on the deed that said 'homestead', which he identifies as one, not any number four to ten. He explained this is in a village two district to advance moderate density. He argued the standards and the Wareham by-laws. He said he believed that they couldn't meet the standards of a variance using the by-laws.

Mr. Eacobacci stated they received an email from the town engineer.

Mr. Phillip Cordeiro was present, and he said he sent an email today; he said they addressed all the technical matters on the plans. He said two items are outstanding, they would need to issue conditions if approved tonight; verification of the soil and elicit discharge statement from the applicant/owner.

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

In the discussion, Mr. Eacobacci stated there is less density in that area and that could put more units than they are seeking by right.

Mr. Eacobacci made a motion to grant the variance with plans presented per the requirement by MGL Chapter 40a, Section 10 which was seconded by Ms. DeBonise. Troy Larson, yes;

Veronica DeBonise, yes, Jim Eacobacci, yes. Richard Semple, abstain; and Mr. Elkallassi, abstain due to the gray easement. (3-0-2). Both Mr. Semple and Mr. Elkallassi stated for the record that their abstaining was due to the gray area of the easement not of the variance and or project. The variance failed due to a simple majority.

Mr. Eacobacci stated they just received a memo that evening that if a property has 10% of its availability as an affordable unit, they would need a simple majority vs. a super majority.

2. 38-23 Forrest Divine – Variances - 303-305 Plymouth Ave

Mr. Elkallassi stated he signed a statement under the Mullins Rule to participate in the meeting at the Town Clerk office.

Attorney Jillian Morton was present along with Mr. Madden of GAF Engineering.

Ms. Morton reviewed the project, a pre-existing non-conforming cottage on the water that they wants to shift back. She said the Conservation Commission has already approved.

Mr. Madden said he submitted a letter to the board in October regarding the buffer zone and how and where the house is located.

Mr. Elkallassi explained there is a house and cottage on the lot and he reviewed the building commissioner's letter of denial. He felt that it wasn't a cottage per the kitchen, bathroom facilities not being in the cottage.

Ms. Morton explained there is bathroom facilities and a kitchenette in/on the cottage.

Mr. Elkallassi stated he felt it was a shed and not a cottage. Ms. Morton explained how they review the dwellings on the property. She said the owners want to use it as a retirement home. She reviewed the topography and soil conditions of the property.

Mr. Larson stated he had no issue. Ms. DeBonise said she had concerns about Mr. Turner, the building commissioner's denial letter. Mr. Eacobacci stated he did a site visit and looked at the existing conditions. He said he understood there was a septic system that was installed for both properties. He said he saw two separate dwellings but did not go into the dwellings and can't confirm if one was a shed/cottage or other. Mr. Semple asked if in fact they needed the garage as it may be a great leap to add to the property.

Mr. Elkallassi stated he didn't think it met the standards of habitable space. He said the means of cooking needed to assist in the Massachusetts regulations.

Ms. Morton reviewed the kitchen appliances and cook top in the cottage.

Ms. DeBonise asked if the assessor's field card said it was a shed or cottage. Mr. Turner said it lists as a cottage. Mr. Semple asked about how many cottages are hooked up to a septic system.

Mary Mais, the owner of the property stated there is a full fridge and stove top; convention oven. She explained the property.

Mr. Turner said there was no oven when he visited and when asked if they had a shower, the owner said no. He said there was no heat source either.

There was no public comment.

Mr. Eacobacci made a motion to close the public hearing and was seconded by Ms. DeBonise. The motion passed unanimously.

The board discussed the garage unit that wanted to be added.

Mr. Eacobacci made a motion to overturn the building commissioner's denial letter as it is a Special Permit and not a variance to tear down the house and build the second dwelling. The motion was seconded by Mr. Semple and passed unanimously. (5-0-0)

Mr. Eacobacci made a motion to grant the Special Permit to build the house that the findings are not determinantal and are per the conditions of MGL 40a and was seconded by Mr. Semple. The motion passed with Mr. Elkallassi in denial. (4-1-0)

Mr. Eacobacci made a motion to grant the variance to build the garage in the front of the property per MGL 40a, Section 10 due to topography of the soil and was seconded by Mr. Larson. The motion passed with Ms. DeBonise abstaining. (4-0-1)

**3. 39-23 Wareham Cranberry, LLC - Use Variance – 3020 Cranberry Highway
(Request to Cont. to the ZBA meeting on December 13, 2023 received**

Attorney Jillian Morton was present and asking for a continuance to December 13, 2023.

Mr. Semple made a motion to continue per the applicant's request to December 13, 2023 and was seconded by Mr. Eacobacci. The motion passed unanimously. (5-0-0)

V. PUBLIC HEARINGS:

4. 44-23 Wareham Housing Authority –Variance(s) – 57 Sandwich Rd.

Mr. Eacobacci read the advertisement in for the record.

Attorney Jillian Morton was present with Mr. Sam Elliott, Engineer. She said they are looking for the variance for the lot area.

Mr. Elliott explained it would be a 4 unit, 2 duplexes. He explained the project from a site overview.

Marcus Scott stated he didn't receive any information by mail and asked where on the property it was going.

Susan M, 26 Indian Neck Road. She is a property owner as well as a Land Trust Member and she said she understand the needs of expansion and is in favor of the project.

Beth Ellis, 62 Sandwich Road stated she lived across from the housing. She says she is worried about the increase of traffic

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

Mr. Eacobacci made a motion to grant the variance per MGL 40a, Section 10 and was seconded by Mr. Larson. The motion passed with Ms. DeBonise abstaining. (4-01-).

5. 45-23 Joshua DeOlim – Special permit, Comprehensive Permit or Variance, SPR – 2613 Cranberry Hwy

Mr. Eacobacci read the advertisement in for the record.

Attorney Perry was present with the applicant, Joshua DeOlim. Sam Elliott from JC Engineering was also present. Mr. Perry reviewed the application. He said there is a single-family dwelling on the property but will remain in tact. He said that his client is seeking a class 2 license. He described the property and what they were seeking.

Mr. Elliott explained the project, to pave the front portion of the property; and leave travel area as gravel. He said they are providing fencing and arborvitaes on the side of property line. He said they are providing drainage and decorative landscaping and a sign out front.

Mr. Turner reviewed his denial letter. He stated the rear property is not permitted; he reviewed the building permit that Mr. DeOlim had and said the property was for personal use only.

Mr. Elkallassi stated the applicant needs a site plan review. The board discussed.

Resident, Antonio DeOlim spoke in favor of the project as the applicant's father.

Mr. Conti spoke in opposition of the project. He read in his letter that will be attached to the minutes.

Ms. DeBonise said she felt there's quite a few issues with the property.

Mr. Semple made a motion to continue to December 27, 2023, and was seconded by Mr. Eacobacci and passed unanimously. (5-0-0).

6. 46-23 Brett Bussiere – Special Permit/Variance – 13 Tarpaulin Way

Mr. Eacobacci read the advertisement for the record.

Mr. Bussiere was present along with Sam Elliott from JC Engineering.

Mr. Elliott reviewed the project and stated they would like to construct a second story above as well as a single story to the right with a farmer's porch. He said that they meet the side footprint, it will remain a single family and three bedroom.

Board members had no concerns. Ms. L stated she wanted to just make sure it would stay as a single family and she was in favor of the project.

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

Mr. Eacobacci made a motion to approve with plans from July 14, 2023 to grant as a Special Permit and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0).

Mr. Eacobacci made a motion to approve and was seconded by Mr. Larson. The motion passed unanimously. (5-0-0).

VI. ANY OTHER BUSINESS/DISCUSSIONS

VII. COMMENTS FROM BOARD MEMBERS

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

Date signed: _____

12-13-2023

Attest: _____

James H. Eacobacci

James Eacobacci, Clerk
WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: _____