

**Town of Wareham
Zoning Board of Appeals
Minutes – January 26, 2022**

I. Call Meeting to Order: Chairperson, Mr. Elkallassi opened the meeting at 6:30 p.m. The meeting was held via Zoom.

II. Roll Call: Present: Nazih Elkallassi, James Eacobacci, Jacob Morrison, Veronica DeBonise, Richard Semple, and Troy Larson

Absent: Alan Slavin and Tricia Wurts (Associated Members)

III. Preliminary Business:

1. Settler's Glen – Enforcement of Water Department Requirements

Mr. Eacobacci stated he reviewed the paperwork and it looks like Mr. O'Brien wants to work with the Onset Water Department.

Mr. O'Brien was present and stated he has not come to terms with the water department. He said he put together a letter for the Zoning Board to consider. He said they hold to not having to work with the ZBA as they are an independent department. Mr. O'Brien stated they are looking to the ZBA to make a ruling and reissue the permit with the fees.

Mr. Elkallassi asked about the line going to the trailer park and asked if it was an 8" line.

Mr. O'Brien stated that was a condition with the fire department who asked they add that 6" line to the fire hydrant.

Mr. Elkallassi stated he reviewed it and he realizes the fees are harsh, however, he feels the connection fee to loop the water (\$3571. Per unit should be paid). However, he suggests that they pay for an eight-inch inch tap and do the construction. He said the water department doesn't have to agree with it.

Mr. Eacobacci stated he didn't think it was up to them to mitigate the situation, he said he thinks it's between the Water Department and the developer.

Mr. Elkallassi stated they do have input. Mr. Eacobacci said they are not engineers and they shouldn't be mitigating the project.

The Attorney for Mr. O'Brien, Attorney Shaugnessy stated that the plans that the ZBA approved did not show a loop, it only showed the main ending at the cul-de-sac. He said the looping is an ad-hoc requirement of the Onset Water Department that they can not locate in their regulations. He said the ZBA has the authorization under the regulations to set the fees.

Mr. Elkallassi agreed they set the plans, but they approve the water connection only. He said they cannot advise adding a loop or other.

The attorney agreed however and said that if the loop connection was in the regulations then the plans would've shown the loop connection in the plans when they first came before the ZBA. He said it is not in their regulations.

Mr. Candaice was present of the Onset Water Department. He said they never received notice of the approval from the Zoning Board to them regarding this project, he said that was before he started to work there, but he has confirmed with Ms. Sonia Raposo of the Wareham Zoning Department that fact.

Mr. Candaice said they have been updating their rules and regulations and that Mr. O'Brien was aware of the loop. He said they have no water agreement as of yet, and Mr. O'Brien is only in the preliminary stages. He said there has not been a discussion of fees as they have not received any plans for the design of the loop. He said he understands there is confusion, however, they are only in the preliminary stage. He also stated that the board is advising without current rates. The rate is \$4500 per unit, not \$3500.

Mr. O'Brien stated the application was submitted in September and that the ZBA approved the plans back in May 2021. He said concerning the fees, that the Zoning Board absolutely has the discretion and has taken it previously.

Mr. Eacobacci stated he feels this argument should've happened before this development was approved. He said if the town did not inform the water department of our approval then perhaps the Town owns some of this responsibility.

Mr. Semple stated he is having a hard time that the ZBA has to make a decision and he believes it is all hearsay. He said they approved the plans and they don't have any jurisdiction over the Onset Water Department. He said it is very frustrating and he agrees with Mr. Eacobacci.

Mr. Larson said he agrees with the previous members. He says he understands the fees were different in May, however it is what it is.

Mr. Elkallassi stated he agrees that the Water Department did not receive a certified letter stating the plans were approved by us.

David Halberstadt, commissioner in the water department. He said he has been a commissioner for two years June. He said in October of 2021, someone from Settler's Glen came before them. He said Mr. Candaice shared the information with them in October and Mr. Harvelstaff was appointed as the liaison between the water department and Settler's Glen. He said that Mr. O'Brien stated he was not going to put a water loop in from the beginning of this project. He said the water department is willing to work with them but they have to submit their plans accordingly.

Again, Attorney Shaugnessy for Mr. O'Brien stated that according to the ZBA approval it says that the documents were submitted to the Onset Water Department. He said by the terms of their

decision they say they have the authority. He said this plan here did not show a loop main water system, and he said this was an after-the-fact request.

Mr. Elkallassi said he would like to move on if the two parties are not willing to negotiate and figure it out together, and if needed then Mr. O'Brien can take it up with Mass Housing.

Mr. Elkallassi asked if they continue it one more meeting, they can add it to the plans and have that discussion with the water department on the rates and then come back to us if there is a need.

Mr. Candaice stated he wasn't sure why they would have to come back one more time to the Zoning Board. He said it was up to Settler's Glen to put it on the plans and have a discussion with the Onset Water Department to finalize the agreement.

Mr. Elkallassi reminded Mr. Candaice that under Chapter 40A it is their decision, but under 40B it can fall under the Zoning Board. He said he is willing to work with the Onset Water Department and the developer and asked if Mr. Candaice is also willing.

Mr. Candaice said that he is as long as they show the loop system on the plans. He said they will not waive the fees, as they don't do that for anyone else.

Ms. DeBonise stated she was reviewing the fees for 2019 but wondered why they didn't have the new water fees.

Mr. Elkallassi stated they did not have it.

Mr. Candaice stated November 1st, the new fees were put on their website.

Ms. DeBonise said it was her opinion that the fees that applied when the plan was approved in May, should apply. She said they approved it in May in good faith and the fees should be at that time.

Mr. Elkallassi asked about the loop. He said that the loop was not approved on the plans that the zoning board approved in May.

Ms. DeBonise said if they are being forced to change it to a loop then the Onset Water Department should be coming up with why they need to change it to a loop with an engineer or someone. She said if an engineer is saying it is unnecessary then a regulation needs to be written to that fact.

Mr. Candaice said the water main loop is necessary and they are doing their due diligence to write it in the rules and regulations. He confirmed again that the Onset Water Department was not aware that the approval had taken place, by no fault of their own.

Ms. DeBonise asked Mr. Candaice asked about the size of the developments currently in Onset that have the loop and what are the dates of those developments.

Mr. Candaice answered that some go back four to five years and others are brand new. He said some our as small as seven homes.

Ms. DeBonise stated that if the last water superintendent met with the developer formally or informally that the Town should own some responsibility that the correct information wasn't passed on to the new superintendent.

Mr. Candaice stated he has gone through every map at Onset Water and had there been any formal discussion with the previous superintendent then the plan would've been there. He said that if the engineer, Mr. O'Grady can say publicly say that he, met with someone from the Onset Water Department it would show some levity, however, he said that engineers can not make a false statement (as much as lay people, attorneys, or others can).

Mr. Ecobacci asked if they could ask the applicant to draw up the plan as they don't have to agree with the plan.

Mr. Jacob Morrison did arrive at 7:10 p.m.

Mr. Eacobacci made a motion to close this argument and was seconded by Ms. DeBonise. It was closed.

Ms. DeBonise asked Mr. Elkallassi to repeat what he suggested in the beginning.

Mr. Elkallassi stated that he would suggest that they design the loop on the plans and pay the fees from 2019 and not have to provide the tap on Cranberry Highway.

Ms. DeBonise made a Motion that the loop be drawn on the plans and the fees reflect from 2019 with a fire hydrant at Cranberry Highway for the future for the Fire Department. The Motion was seconded by Mr. Eacobacci. The motion passed 4-1 with Mr. Semple abstaining.

IV. Continued Public Hearings:

1. 67-21 John C. Decas – Appeal of Building Commissioner's Action on a Special Permit – 20 Burgess Point – Map 22, Lot 2

Mr. Elkallassi opened up the continued public hearing and had the announcement read in for the record.

Mr. John Decas was present of Burgess Point. He thanked the board for the opportunity to be present. He asked if board members received the written summary. Mr. Elkallassi stated they did not receive it. The Zoning office did receive it, as it was dated January 19, 2022 and was listed on the website. Mr. Semple stated he did receive it and reviewed it. Ms. DeBonise stated she received emails with more information, but not necessarily the summary Mr. Decas was talking about.

Mr. Ecobacci stated that he felt this didn't give the board an option on what to do, other than overturn Mr. Riquinha's decision.

Ms. Nora Vicky was present. She stated that they submitted a letter to the department on January 19, 2022, and asked for it to be distributed to all members. She stated this was a difficult appeal to fill out on the application. She said the issue was that the Planning Board was very clear that the order of conditions was never met and they turned it over to the enforcement agent, which was Mr. Riquinha. She said they had many meetings with the Planning Board and they advised that the conditions were not met.

Ms. Vicky stated that Mr. Riquinha stated the order of conditions was not enforceable however that did not make sense as the Planning Board wouldn't have written an order of conditions that were not enforceable.

Ms. Vicky stated they did not think that the ZBA nor the Planning Board would authorize a Special Permit to cut down 50,000 sq feet of trees to simply create an open field. She quoted Section 12 of the Zoning Bylaws that stated to 'promote site development'. She said in 2018 the land owners were advised to go back to the Planning Board with a site plan and that has never happened. She said the land was cleared to become a dumping ground. She said Mr. Clement said that he was going to put one to four homes on the property and never did. She said they are in violation of Section 12.

Mr. Elkallassi stated although he agrees with Ms. Vicky; Mr. Riquinha did do a site visit and the stumps were removed and approved. Mr. Elkallassi said that Mr. Clement submitted a letter to the Planning Director (or a receipt) whereas the stumps were removed properly, so Mr. Riquinha had no option but to approve the condition. Mr. Elkallassi stated that Mr. Clement met with Mr. Buckland and Mr. Riquinha for condition number four and that was met. Mr. Elkallassi reviewed all the conditions and supporting documents that the conditions were met and reviewed by Mr. Riquinha.

Mr. Riquinha was present. He said after all these years that he is bothered that this case is still being beaten to death. He said there is a lot of misinformation that continues to come out. He said that he is never said that the conditions were never met. He said he has never said there was no site plan, in fact, the Planning Board did approve a site plan for this property. He said he cannot enforce opinions, emails or hearsay. He can not enforce conversations that happened behind closed doors. He said he can only approve conditions that were written. He said there are site plans in place. He said the hay bales have not been maintained, however, the Conservation Commission said it was no longer required. He said Mr. Clement has the grass and the hole in the road has been repaired. He asked what he could do differently, as the conditions are written to change the outcome.

Mr. Semple stated he took time out of his day to walk the site. He said it appeared that someone took trees, and stumps down and put rubble/debris on the lot. He said the hay bales are still there and wood chips. He said he sees a lack of cooperation with the land owner and he owes the neighborhood a sense of appreciation that he cleared the land. He said he doesn't think someone did anything with that land.

Ms. Vicky said as the article says that she believes that clearing that amount of land is to develop the land, not keep it as an open field.

Mr. Riquinha asked Mr. Semple if he knew what the lot looked like previously. He said he is not claiming that the lot is perfect, however, per the order of conditions, those have been met. He said he has been involved with this project since day one. He cut down all the trees and was issued a violation. He received an after-the-fact Special Permit from the Planning Board after cutting down the trees.

Mr. Riquinha said there have been made conversations with Mr. Clement, and many arguments, and they have come to a compliance order. He said the fact is that the Planning Board came to a conclusion with a written order of conditions; and that the lot was completed per the order of conditions as written.

Mr. Clement, the land owner was present. He said that the Planning Board never took a vote on whether the order of conditions was met. He said a few had their opinion but they never took a formal vote. He said they did take a vote to turn the matter over to the enforcement agent, which is David Riquinha.

Mr. Clement said there is nothing in the Zoning By-Laws that says I can not put wood chips on my land. He said he can not see that this Board of Appeals wouldn't support the experience and working building commissioner in his daily duties.

Mr. Semple asked if everyone on the board reviewed the site. Members stated they did.

Ms. DeBonise stated Mr. Ecobacci's first question tonight never got answered, what is the applicant looking for this board to do. She reviewed the conditions with the applicant, Ms. Vicky. About the first condition, site visits, Ms. Vicky felt that the grading was not done and there was no record of those meetings/approvals. She said she requested those records and nothing was given to them. Per the second, tree stumps were removed appropriately. Ms. DeBonise asked about the holes being fixed, and Ms. Vicky said yes, other than the one in the road.

Per the stumps being dumped appropriately, Ms. Vicky stated that they were not approved to an approved site. Ms. DeBonise said approved could've meant an 'after the fact' approval. Ms. DeBonise continued the review of the conditions.

Mr. Elkallassi stated that the Planning Board stated that the grading not be changed. Ms. Vicky stated she would like to see it graded to four inches of soil. Mr. Riquinha said there is no requirement written that says there have to be four inches of grading and that is hearsay. Mr. Riquinha confirmed the Planning Board said they do not want it to be graded.

Ms. Vicky said the four inches of soil says it is the Zoning By-law.

Mr. Riquinha said that it reads, "may require" per the Planning Board; and the Planning Board did not require it. He said that she can not change the order of conditions.

They continued to review the conditions. Ms. DeBonise asked for a written determination from Mr. Riquinha that condition number six has been approved. He said that he will get a determination from the Conservation Commission, Mr. Frechette.

Mr. Elkallassi asked if they have a certificate of compliance that was issued. He said that the hay bales belong with Conservation and not Zoning, and asked for them to skip on speaking it.

Per the seventh condition, Ms. Vicky said she did not feel it was met per the Town Administrator and Mr. Buckland's requirements.

Mr. Elkallassi said this is a gravel road and needs to be graded monthly.

Ms. DeBonise said her comment on the seventh condition is that it says, "it should be repaired" and not specific to how.

Mr. Decas said the order of conditions clearly states that any stump that was pulled that caused damage to the road had to be repaired. He said the hole has never been repaired per the Town's conditions. He said to this day it is not meant.

Mr. Decas said that Mr. Riquinha just lied by saying that the Conservation Commission authorized the cutting of those trees. He said that ConCom only authorized delineating of the wet lines.

Mr. Riquinha argued that he did not say that, per a point of order.

Mr. Elkallassi called the meeting to order.

Mr. Ecobacci made a motion to close the public hearing and Ms. DeBonise seconded the motion. The motion passed 4-1 with Mr. Semple abstaining.

Mr. Ecobacci made a Motion to deny the application with prejudice and was seconded by Ms. DeBonise. The Motion passed unanimously, 5-0.

Mr. Decas asked to speak on the record. He said, "the signature on the application is his and as he was going to give his presentation he was denied to speak on countering the lies that Mr. Riquinha sold, that were several and I can prove them. And I was denied that opportunity and I want the record to show that."

Mr... no hole in the road. I have a photo that shows the grassy area.

Mr. Elkallassi thanked him however comments have been closed.

V. PUBLIC HEARINGS:

1. 70-21 Christine & Barry Klaver – Special Permit/Variance – 6 Ash Street – Map 38, Lot 75

The Planning Office read the advertisement for the record.

Barry Klaver was present. He said they were hoping to put a bedroom addition on the home of 6 Ash Street which is their permanent residence. He said they are not impeding on any lot lines and add a bit more space. It was originally a cottage and needs a little bit more. He said the existing dwelling doesn't meet the standard of the lot line; he said they are not looking to encroach anymore. He wants to add a 12x14 master bedroom and add a covered porch to the existing lot line.

Mr. Elkallassi asked what the frontage is. It is an existing non-conforming lot. He said it requires 5,00 sq feet and a 10' setback.

Adam in the Planning Office shared his screen to show the plans.

Mr. Klaver stated the letter from the Building Commissioner stated the existing complies with floor area and front and rear setbacks. It does not on the sides.

Mr. Elkallassi said that if the board doesn't find it detrimental to the neighborhood they can approve it.

Mr. Semple had no comment. Mr. Larson said he was okay with the plans and if not impeding on the neighbors, shouldn't be an issue. Mr. Ecobacci stated it was not detrimental per his review. Ms. DeBonise said she had no issues.

Mr. Elkallassi opened it up for the public, there was no comment.

Mr. Ecobacci made a motion to close the public hearing and was seconded by Mr. Semple. The motion passed unanimously.

Mr. Ecobacci made a motion to treat this as a Special Permit and approve it as presented. Mr. Semple seconded the motion. The motion was approved unanimously.

Mr. Ecobacci made a motion to approve the variance as it is not detrimental to the neighbors with standard conditions as requested and was seconded by Mr. Semple. The motion carried unanimously.

Mr. Klaver stated that Ms. Lad was present for High Street and not able to connect via zoom, he was just passing the information along.

2. 71-21 108 High Street Realty Trust – Special Permit/Variance – 108 High Street Map 47, Lot 123/A

Mr. Elkallassi opened the public hearing. Mr. Elkallassi recused himself as he has a conflict.

The advertisement was read in for the record.

Engineer, Mr. Grady was present on behalf of the applicant. He said he was here for a variance to construct a duplex dwelling at the site, detached; and they exceed the 20% building coverage. He said this is in the Wareham 2 district which requires 20% building coverage, they have 23.6% which is an additional 800 sq feet of the building beyond the 20% building coverage. He said they are not detrimental to the neighborhood and Wareham village looks for density. He said the duplex is an allowed use in this zone and can have more than one principal building on a lot.

Mr. Eacobacci asked for a share screen of the renderings. He asked if the duplex could be constructed right in this district.

Mr. Grady stated that was correct. He reviewed the renderings/plans where the garage will be constructed. He is looking for a small increase to build a conventional garage on the property.

Mr. Eacobacci opened it up to the board members for comments.

Mr. Semple had no comment. Mr. Morrison had no comment.

Ms. DeBonise asked if there was a hardship on this. She stated she believed they were looking for a variance and a Special Permit.

Mr. Grady stated that Mr. Riquinha said it would be a Special Permit.

Ms. DeBonise read the letter from the Building Commissioner stating the Special Permit was asked for the construction of the building and variance for 23.6% of the increase.

Mr. Grady stated the Special Permit was for the duplex per the letter and then the variance for coverage of the new non-conformity.

Mr. Lawson had no further questions. Mr. Morrison had no issue.

Mr. Eacobacci opened it up for public comment and there were no comments at this time. He did read a letter from a neighbor, dated January 11, 2022, from 75 High Street for the record.

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

Mr. Semple stated they did not hear from the one woman that had been at the building.

Ms. DeBonise made a motion to continue this hearing to have that person present; however, she felt that she wish she thought of that earlier. The public hearing was already motioned to be closed.

Mr. Ecobacci stated they had two things in front of them, the Special Permit as well as a variance.

Ms. DeBonise made a motion to treat as a Special Permit that it is not detrimental to the neighborhood and was seconded by Mr. Morrison. The motion passed unanimously.

Mr. Lawson made a motion to grant the Special Permit for the duplex portion of this applicant and was seconded by Mr. Ecobacci. The motion passed unanimously. (5-0-0)

Mr. Semple made a motion to grant the variance portion of this project and was seconded by Mr. Lawson. The motion passed 4-1 with Ms. DeBonise abstaining.

3. 1-22 Anna Haluch – Variance – 43 High Street – Map 1118, Lot 47

Mr. Elkallassi took this out of order so that perhaps anyone who wanted to speak on High Street could zoom in.

Adam from the Planning department read in for the record the advertisement to open the public hearing.

Monica Haluch from ProSign to present for Southcoast/Tobey Hospital and requested approval for a few signs. Ms. Haluch asked for front elevation channel letter signs. She said it was approximately 104 sq feet on the top of the building, and 43.4 square feet on the bottom of the hospital. She said it was 148 sq feet of channeling lettering variance. Another variance they are requesting is a directional post and panel. They are asking for approval for 2.78 square feet for the logo. The last variance is for the main pylon sign. The height has been designed for an additional 3', and 15' above grade for the "emergency" section for better visibility.

She said she is looking for the board's approval for three different variances for the signage.

Ms. DeBonise had no comment. Mr. Ecobacci had no additional comment. Mr. Semple asked how bright it was going to be on the neighbors.

Ms. Haluch stated only the letters will be illuminated and for the channel set, which will dim out the light glare. It is not pure white, she said.

Mr. Morrison had no further questions.

Mr. Elkallassi opened it up for public comment, there were none.

Mr. Ecobacci made a motion to close the public hearing and was seconded by Mr. Semple. The motion passed unanimously.

Mr. Ecobacci made a motion to grant the variances as presented in granting the variance per Chapter 40a, Section 10, and was seconded by Mr. Semple. The motion passed unanimously via roll call vote.

Mr. Semple made a motion to adjourn and was seconded by Ms. DeBonise. The motion passed unanimously.

Date signed: 7-13-2022

Attest: James D. Eacobacci
James Eacobacci, Clerk
WAREHAM ZONING BOARD OF APPEALS

WAREHAM TOWN CLERK
2022 JUL 14 PM 1:11

Date copy sent to Town Clerk: _____