

**MINUTES OF MEETING OF WAREHAM ZONING BOARD**

**Date of Meeting: February 8, 2023**

**I. CALL MEETING TO ORDER**

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

**II. ROLL CALL**

Members present: Nazih Elkallassi, Chairman (via Zoom)  
Jim Eacobacci, Acting Chairman this evening.  
Veronica DeBonise (arrived at 6:35p.m.)  
Troy Larson  
Jacob Morrison (via Zoom)  
Richard Semple

Also present: Kenneth Buckland, Town Planner

**III. PRELIMINARY BUSINESS**

**A. Meeting Minutes – January 11, 2023**

**MOTION:** Mr. Semple moves to approve the minutes for January 11, 2023. Mr. Larson seconded. Passed unanimously.

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

**IV. CONTINUED PUBLIC HEARINGS**

**A. 26-22 Dos Amigos Realty, LLC – Variance – 12 Larch Street – Map 38, Lot 512**

**Present before the Board:** Attorney Jillian Morton was present, along with Engineer, William Madden

Ms. Morton reviewed the project, which was continued from October 2022. She said it was a proposed build on a lot with a merger issue on the back title. She said the board requested they go to the Conservation Commission regarding the wetlands and erosion control, which they did and got approved there; with no concern from them.

Ms. Morton stated the lot had water and sewer connections, with a betterment on the property. She said she believes the property has a hardship.

Mr. Eacobacci stated he has reviewed this proposed variance and referenced bylaw regulation, Section 13.81. bylaws. He said he spoke to attorneys he knows in the Town and believes that the

lot, regardless of whether it exists legally or not legally, should perhaps be granted per the bylaw regulation.

Via Zoom, Mr. Elkallassi and Mr. Morrison had no comment.

Mr. Eacobacci asked for any public comment for or against the said project.

Resident, Jennifer Lovell shared concerns regarding clear-cutting.

Mr. Eacobacci stated that was a Conservation issue.

Ms. DeBonise said that it was not Conservation Commission's job to advise the Zoning Board if the lot is buildable or not. She said that the property has been transferred several times and the Building Commissioner, in his letter stated this was one single lot. She shared concerns that now the owners are saying they are looking to separate the lot to build a house. Ms. DeBonise stated she didn't feel it met the guidelines for a buildable lot.

Mr. Semple made a motion to close the public hearing and was seconded by Mr. Larson. The motion passed unanimously. (6-0-0)

Mr. Buckland confirmed the board can deliberate even with the public hearing closed.

The Board deliberated on what was being asked of them and what the Building Commissioner had denied. The variance in question was for the minimum lot size vs. the required lot size of 35,000 square feet.

Ms. DeBonise clarified what she had said earlier to the Board members that the change in common ownership changed in 1952 and then in 1979 one parcel sold to meet the 35,000-lot requirement.

Mr. Elkallassi stated he would not be voting, as he was not present for the first meeting.

**MOTION: Mr. Morrison made a motion to grant the variance and was seconded by Mr. Eacobacci. The motion was denied, via 2-3 vote; with Ms. DeBonise, Mr. Larson and Mr. Semple in opposition. Mr. Eacobacci and Mr. Morrison in favor.**

**VOTE: (2-3-0). Denied**

**V. PUBLIC HEARINGS:**

**A. 1-23 Rony's Realty, LLC – Special Permit – 3178 Cranberry Hwy., - Map 9, Lot(s) W19, W20, W24, W25**

Mr. Eacobacci opened the public hearing by reading the advertisement for the record.

Attorney Morton was present for the applicant. She said Mr. Madden was at another meeting in another town, but she wanted the meeting to go forward as she knew there were abutters present.

Ms. Morton presented the proposed project to the board. She said they are looking for a Special Permit for the use, of motor vehicle service. She said there is a U-Haul service there and they are looking for a new build at the property. They only need a use Special Permit for the project.

Mr. Eacobacci explained where the property was located and noted there were two residential properties at the site as well. Ms. DeBonise asked where parking would be located on the property.

There was a concern on parking at the site by several members.

Mr. Elkallassi said that he believed a site plan review would be needed.

Vincent (unknown last name), 19 Edgewood Place representing six residential families of the Edgewood Neighborhood working off a rendering he passed to board members. He explained the roadways in the area should not be constricted or blocked. He shared concerns regarding parking.

Engineer, Mr. Madden came in and reviewed parking on the property.

Mr. Eacobacci stated the board would most likely need a Site Plan Review. Mr. Madden said that Site Plan Review indicates nine or more parking spaces, that exclude residential use.

The board reviewed the bylaw and Mr. Eacobacci reviewed the parking at the resident's area thus far on the lot. Mr. Elkallassi asked about residential parking as well as how many employees would be parking at the business as well. He was concerned about congestion at that property, especially in an emergency on a challenging site.

Mr. Madden stated he will show the layout of the road and who the culprits are on the public way.

Mr. Simonite reiterated his disapproval of parking on the lot and encroachment in the street.

Ms. DeBonise made a motion to continue to March 8, 2023, at the applicant's request and was seconded by Mr. Semple. The motion passed unanimously. (6-0-0).

## **B. 2-23 Lynelle Butterfiled – Appeal – 12 Great Neck Road – Map 17, Lot1008**

Mr. Eacobacci read the advertisement for the record.

Attorney Craig Hartwell was present for the applicant, known as Peace for Ponies. He said they were there from an appeal from the Building Commissioner of a violation on the

property. He said there was a Special Permit issued in 2012 for additional use of the property for a veterinarian hospital and use of property.

He said they received the first violation on September 20, 2022, a second revised notice and then a third notice in November. He said he met with the Building Commissioner, Mr. Turner on December 14, 2022, regarding the right to the use of the property. He said that Mr. Turner, at that time stated that the activities on the property did not meet his definition of agricultural use; and the appeal was filed at that time.

Jo Cooney, abutter from 14-16 Great Neck Road was present and stated she was waiting for her attorney (of two years) to attend the meeting. She said she was requesting a continuance, so her attorney could attend.

Mr. Eacobacci said he wasn't sure they can continue for an abutter. He explained how appeals are usually heard in front of the board. Mr. Morrison agreed.

Mr. Morrison said he was confused why they got violations in the first place if they have been running the place of business for several years.

Ms. DeBonise said she would like to distinguish what is by-right and what was permitted by Special Permit.

Mr. Eacobacci said he reviewed the bylaws under agricultural use whether over or under five acres, he said there was no specific number of animals that could be kept at the property. He said they were granted the special permit for a veterinary hospital.

Attorney Hartwell said they don't have a building for the treatment and diagnosis of animals right now. He said that the agricultural use is allowed by right and that's what the violation is on specifically. He said the Special Permit received in 2012, would've allowed them to have a structure for the treatment and diagnosis of animals, which currently they do not have a building, but that permit would allow them to have one. He said the use of hosting animals at the property is the agricultural by-right use in the R30 district, where the property is located.

Mr. Semple said he wasn't sure why the Special Permit was issued for a veterinary hospital, but one was never built on put on the property. He said he did not get the agenda ahead of time so he could carefully review this project.

Attorney Hartwell said he was present to review the current violations not to review why or why not the building, the veterinary structure was put in 2012.

Mr. Eacobacci said there is no violation if they never put up the structure from 2012. He said the Special Permit stays with the property.

Mr. Morrison said he wasn't sure why this is present before us. He said it's a great facility to help ponies in the area and rescue, and rehab them. He said it was ridiculous they were before them.

Mr. Elkallassi stated he believes they should give the abutter the chance to have her attorney present. He said he feels they should not go forward and should continue the hearing.

Attorney Hartwell stated it is the burden of proof from the Building Commissioner to argue the violation, not an abutter. He said he would be reluctant to continue based on an abutter.

Mr. Elkallassi stated the abutter is a direct neighbor and received a notice. He said he believes they should continue to give the abutter and her attorney the opportunity to be there.

Mr. Eacobacci explained to the board what part of the hearing they were at. He explained the applicant filed the appeal against the Building Commissioner's violation; then the board asks questions, then the public is asked if they had any concern whether in opposition or in favor. He said it is really up to the applicant, the attorney to ask for a continuance not an abutter in a violation hearing.

Ms. DeBonise asked what the violation really is.

Attorney Hartwell said the building commissioner was not present and he is the one that has to show what he believes the violation is.

Mr. Eacobacci asked for public comment in favor or opposition.

Resident and immediate abutter, Joann Cooney stated the applicant has never complied with the Special Permit. Ms. Cooney said she has more animals and she herself has never complained out of the goodness of her heart because they are doing good things at the property. Ms. Cooney said it was a small piece of property with a lot of animals on it. She said that currently there are four donkeys, a pig, and a flock of chickens. She believes they have an excessive animal count.

Mr. Eacobacci stated he believes there is a misunderstanding present. He read from bylaws, in the R30 zone, agricultural uses upon less than 5 acres, Y-allowable (no bylaw that says she is in violation). He said there is nothing that limits the Special Permit as the permit was for the veterinarian hospital (the actual structure) and that specifically was limited to three animals in the structure. He said the complainant believes the applicant is in violation because they have more than three animals; however they are currently not using the Special Permit (not using, not having a structure on the property), so the Special Permit doesn't apply in this case.

Deb Hickey, a volunteer at Peace for Ponies said that the place is immaculate and they go above and beyond to help the animals in need.

Ms. Stephanie Leary said she adopted two animals from the applicant that were there for rehabilitation and she agrees it's a remarkable organization.

Ms. Cooney responded that she wanted to reiterate that they do take wonderful care of the animals on the property. However, she offered pictures of excessive manure at the property.

At this time, Ms. Clooney asked for a continuance so that her attorney can be present.

Mr. Semple reviewed agricultural term and how it relates to a pig on the property.

The attorney, Mr. Hartwell stated agricultural includes raising animals; piggery and that more than three pigs would be a violation.

Mr. Semple made a motion to continue the hearing to February 22, 2023 and was seconded by Mr. Larson. The motion passed unanimously. (6-0-0).

Mr. Elkallassi asked that they get clarification for the next meeting to what the Building Commissioner's violation is as it is not clear.

### **C. 3-23 Colin McNay – Variance – 31 Warren Point Road – Map 32, Lot 1006**

Mr. Eacobacci read the advertisement for the record.

Attorney Jim Marsh, 128 Union St in New Bedford was present for the applicant. He said they were seeking a variance for a variance of an accessory structure (in this case a paddle court) at the property in front of the home. He said there is a single-family dwelling on the property and the bylaw reads that accessory structures can only be in the rear to equal to the setback of the home.

Attorney Marsh said the applicant was seeking to build a 14x20 elevated court, deck, and warming hut in the front setback of the single-family dwelling. He said it would be detrimental to put the proposed structure in the rear as it is a sloped property that drops to the ocean. He said they want to put the structure near the current tennis courts.

Ms. DeBonise agreed that it made sense to have it near the tennis court.

Mr. Elkallassi said it meets the criteria of a variance for the topography of the land and the financial hardship.

Mr. Eacobbaci asked for any public comment to which there was none.

Ms. DeBonise made a motion to close the public hearing which was seconded by Mr. Larson. The motion passed unanimously. (6-0-0).

Ms. DeBonise made a motion to grant the variance due to the financial hardship and the topography of the land per the plans of November 23, 2022. The motion was seconded by Mr. Semple and passed unanimously. (6-0-0).

**VI. ANY OTHER BUSINESS/DISCUSSION**

**A. Possible discussion regarding Zoning Articles for Spring Town Meeting**

Ms. DeBonise brought attention to the service station on Main and Cranberry Highway and shared concern about the vehicles parking there. She said they should review the zoning article for parking at service stations.

Mr. Buckland told the board they needed to get any changes or updates to articles to the Planning Department and Selectboard as soon as possible.

Mr. Eacobacci recommended the word "minimum" to add to the parking space zoning article for garages. Ms. DeBonise said that the zoning article needs to be very specific to parking requirements.

Ms. DeBonise made a motion to recommend the change of the parking spaces from two to five parking spaces provision, per bay in the zoning regulation which was seconded by Mr. Semple. The motion passed unanimously.

Mr. Elkallassi stated they could always issue a variance to change the parking space.

In other business, Mr. Eacobacci referred to a Storage Facility plan for a site plan review that took place previously in front of the board. He said a letter was received by the board from the peer review from their Town engineer's firm who has done work with the applicant in the past. Mr. Eacobacci asked if anyone on the Board thought it was a conflict of interest or objection. Board members were okay with peer review and town engineer to review.

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

Date signed: 2-22-2023

Attest: James W. Eacobacci

James Eacobacci, Clerk

WAREHAM ZONING BOARD OF APPEALS

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

WAREHAM TOWN CLERK  
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