

Town of Wareham
Zoning Board of Appeals
Wednesday, July 27, 2022

- I. **CALL MEETING TO ORDER:** Mr. Elkallassi opened the Zoning Board of Appeals meeting at 6:30 p.m.

- II. **ROLL CALL:**

Present: Nazhi Elkallassi, Jim Eacobacci, Veronica DeBonise (6:31 p.m.), Troy Larson and Richard Semple

Absent: Jacob Morrison

Town Planner, Ken Buckland was in attendance via Zoom.
Assistant Town Planner, Monique Baldwin was also in attendance.

Independent Engineer Consultant for the Town, Mr. Charlie Rowley was also in attendance.

- III. **PRELIMINARY BUSINESS:**

1. **Approval of Meeting Minutes:** 1/8/2020, 2/12/20, 3/11/20, 4/27/22 & 7/13/22

Mr. Eacobacci made a Motion to approve the minutes with a few minor modifications and was seconded by Richard Semple. The Motion passed unanimously. (5-0-0)

2. **Woodland Cove – Review of Compliance with Special Permit (40B) Conditions**

Attorney Peter Freeman & Herman/Dakota. Mr. Freeman stated he understood the board did a site visit.

Mr. Elkallassi stated that there was a Cease & Desist put on today by the Building Commissioner.

Attorney Freeman stated that had nothing to do with why they were here tonight. He said they have had discussions with the Building Commissioner and the Fire Department and today was the first time they reviewed their letter. He said the Cease & Desist is not a zoning issue, but rest assure they will be resolving the issues with said parties. He stated they were present this evening to discuss and comment on the letter they received from Mr. Buckland a couple of weeks ago on things they were not in compliance. Mr. Freeman reviewed those items with the board.

Mr. Elkallassi said there was confusion when the road and the temporary cul-de-sac was supposed to be built first.

Mr. Rowley stated that he remembered it as the original plans to have the buildings on the left and the cul de sac in the back was temporary with the road stopping there initially.

He said it would be helpful for a detailed plan to show the different phases on the detailed plan, and what it is now. He said he was not privy to some of the changes that took place.

Mr. Eacobacci said the cul de sac in the original plan is no longer necessary as he remembered. He said they are coming all the way in from Red Brook so the cul-de-sac is no longer needed.

Samuel from Dakota said the cul-de-sac is still necessary, as it is just flipped around.

Mr. Eacobacci asked when the motel was being razed. The applicant said that the holdup is coordinating with the gas company.

Mr. Buckland said he was satisfied and asked them to send the cost estimate and plans should be directed to Mr. Rowley for the bond to be done.

Mr. Rowley said he would complete the review of the cost estimate for the base number. He said he is a custom to value the bond, usually at a 35% higher than cost estimate, and asked if that was the figure he should be working with.

Mr. Elkallassi stated that the Zoning Board usually does a 50% increase on the baseline cost.

Mr. Buckland stated that the comprehensive permit also had special conditions that needed to be completed as well, prior to the Certificate of Occupancy being issued.

3. 2-21 Settler's Glen – 3128 B Cranberry Highway, Map 8, Lot 107C – Appeal of Comprehensive (40B) Permit issued for Red Brook Road; MGL 30A sec 21; 40B – Settler's Glen, Red Brook Rd., Request for Insubstantial Change Regarding Water Utility System

Attorney, Michael O'Shaugnessy and his client, Ian Cole was present.

Mr. O'Shaugnessy updated the board where they left off at the previous meeting. He said they were coming back to see what the results of the conversation with the Town Attorney had been.

Mr. Elkallassi stated it is not going anywhere with the Water Department and that the Superintendent of the Onset Water Department didn't agree with the Boards recommendation.

Board members agreed to stick with what they already voted on. Mr. Eacobacci said he believes that he they should stick with their original decisions.

Mr. O'Shaugnessy stated that they have given the approval but they are asking for an order to agree with certain conditions so they can then move forward to go to water department and then if they don't want to work with them – they can then take the next step.

Mr. Elkallassi reviewed what they can do and what they cannot. He said they can't make any changes, even if it's for one dollar without a public hearing as it would be a substantial change. He said they will only provide the order to what they approved previously voted on.

Mr. Larson agreed. Ms. DeBonise said she didn't know why they were going to vote again if a decision by the Board was already made.

Mr. O'Shaugnessy stated that he is pitching it as an 'order' which is stronger than just the 'approval'.

Mr. Eacobacci stated that he understood the Onset Water Department was a separate entity, but said they weren't completely separate from Wareham. He said they will probably be going to end up in housing court because of it.

Mr. Semple stated he didn't feel that they need to deal with Onset, as we don't have jurisdiction over them and they don't have jurisdiction over us. He said he doesn't feel the board should be making any further "order", as they have already made their decision. He said he is tired of the applicant's coming back to this board and requesting this information, putting the ZBA in the middle of their fight.

Mr. O'Shaungenssy reviewed the three-page order with the board.

The board took a few minutes to review the proposed order.

Mr. Ecobacci asked a question regarding #8 as it read, "held a meeting on Jan 12th, "establishing a fee" to require the LLC water line through Cranberry Highway. He said he didn't believe the board established a fee but recommended a fee.

Mr. Eacobacci stated he was not comfortable as they didn't establish the fee however, that they are enforcing the fee that the Onset board established.

Mr. Elkallassi reviewed what lines in the 'order' they wanted stricken.

When asked of his opinion, Mr. Rowley said not knowing the board's jurisdiction over any other entity in Town, he said he wouldn't be happy signing anything if he sat on the board.

Mr. Elkallassi stated that with any permitting for a 40B, the Zoning Board does have authority to give water and sewer connection fees and or to waive those fees. He said he was comfortable with the decision the Zoning Board previously made. He said they made their decision and now it was up to the applicant to go through the process with the Water Department and if they chose not to allow them to connect to the water, then that was a separate issue that they would have to go to housing court to resolve.

Mr. Semple wasn't sure why they were even voting on anything more. He says his vote is to deny the request.

The applicant, Mr. Cole stated there was a financial reason they were asking for the waiver of fees, as it was the water department that was delaying the connection that has cost them money.

Ms. DeBonise made a motion to close the discussion and was seconded by Mr. Eacobacci. The Motion passed unanimously. (5-0-0)

Mr. Eacobacci, for point of discussion said that all boards had an opportunity to provide comment on this project as every other project that came before this board. He says in one instance, he sees the applicant's point, but they have made their decision and shouldn't need to vote again or put an "order" together so the water department can resolve something. He says he doesn't know what happened with the water department, however the ZBA has done their job and made a decision and should stick by it.

Mr. Elkallassi said they either have to have a 'no' vote or they have to give an order of enforcement.

Ms. DeBonise said they have made their decision and she is not comfortable signing another 'order.' Ms. DeBonise made a Motion to deny the request for an order for 2-21 Settler's Glen, 3128 Cranberry Highway and was seconded by Mr. Semple. Via roll call vote, the board voted with Mr. Larson in favor of the denial; Ms. DeBonise in favor of the denial, Mr. Eacobacci in favor of the denial and Mr. Semple in favor of the denial. Mr. Elkallassi was opposed to the denial. The Motion was granted to deny the 'order' request. (4-1-0).

IV. CONTINUED PUBLIC HEARINGS

- 1. 16-22 2180 Boston Providence Tpke Associates – Site Plan Review/Variance – 4 Tow Road – Assessors Map 108, Lot 3A**

John Shelby was present and stated there were three issues left and that his engineer, and Mr. Rowley worked out things today. He said they are going to hire a surveyor for the grade to be measured.

Mr. Elkallassi explained that once the board made the approval, the issues had to be resolved within the twenty-day appeal period.

Mr. Rowley reviewed the results on the July 22nd soil report and stated there was nothing wrong with the soil. He said the sketch plans did not indicate the location of the soil test pits, nor the elevation and he had requested that specifically. He explained how he had requested the entrance to Tow Road to be designed, the high point on the gutter line. He said that he and the engineer did come to a resolution today and the agreements were understood. He said if everything is done within the twenty-day appeal, the issues would be worked out.

Mr. Shelby said he was fine with that.

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

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

Mr. Eacobacci made a Motion to grant 16-22 2180 Boston Providence Tpke Associates with the conditions as suggested by Mr. Rowley and to be completed within the twenty-day appeal window and was seconded by Mr. Larson. The motion passed unanimously, with one abstaining. (4-0-1).

2. 21-22 Sharon Cates – Variance – 240 Onset Avenue – Assessors Map, 1; Lot 532

Ms. Cates, 174 Packard Street in Plymouth was present as the owner of 240 Onset Avenue. Michael Cates from Buzzards Bay was also in attendance.

Mr. Elkallassi reviewed the application and stated this was in the Onset Village 1.

Building dept gave the denial letter per the applicant.

Mr. Elkallassi stated they are working from a 2007 Zoning Map, when they should be looking at the 2017 Zoning map. He said that what the applicant wants to do is by-right, so at this point the board just needs to overturn the Commissioner's decision; as the applicant did not need to come before the board.

Mr. Elkallassi asked board members for their comments. Mr. Larson said he was all set, especially if it was by-right applicant. Ms. DeBonise questioned why the Building Commissioner was looking at an old zoning map. Mr. Elkallassi said he is new but that he'll speak to him and make sure he has an updated map.

Ms. Baldwin stated the district was OV-1 per GIS online.

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

Mr. Eacobacci made a Motion to overturn the Building Commissioner's letter for 21-22 Sharon Cates, 240 Onset Avenue as it is a by right and based in Onset Village, 1 Zoning District no variance is needed. The Motion was seconded by Mr. Semple and passed unanimously. (5-0-0).

V. PUBLIC HEARINGS:

1. 23-22 John F Keating – Special Permit & Variance – 18 Highland Road – Assessors Map 61, Lot 1140

Mr. Elkallassi opened the public hearing. Mr. Eacobacci read the advertisement in for the record.

Attorney Dennis Conroy was present for the applicant.

Proposing to create a 4th dwelling – converting garage – Wareham village #2

Attorney Conroy gave a brief overview of the project. He said this was for a Special Permit and Variance to convert an existing structure (garage). He said that Mr. Keating has owned the three family since 1986, and lives on the 3rd floor with his two adult children. He explained in 2003, two of the bays were converted to a rec room and at that time a bathroom was installed as well, and electric and water was brought into the building. He said currently it is used to only store miscellaneous stuff.

Attorney Conroy explained that his client wanted to keep the building the same but to use it as a one-bedroom apartment, perhaps for one of his grown children. He said that he needs a Special Permit under the Zoning Bylaw to add a fourth unit dwelling and a variance for the dimensional request.

Mr. Conroy stated he believed this was consistent with town's intent to develop housing and without significant impact to environment. He said it has no impact to the sewer/water as it is already on Town water/sewer

Mr. Elkallassi asked what the hardship is. He said in the Wareham Village the size lot requirement was 15,000 and this property is already at 14,710 sq feet with three units already; so, it's already an existing non-conforming lot.

Mr. Conroy stated the structure can't be used to any significant degree.

Mr. Elkallassi stated he understood the need, but already by right it's allowed for two units and it currently has three. He said that it's up to the applicant to determine the hardship per the regulation under 40a.

Mr. Conroy said the applicant was paying taxes on it and not using it. Mr. Elkallassi stated that wasn't a hardship

Mr. Elkallassi opened it up for the board's comment.

Mr. Larson had no questions at this time.

Ms. DeBonise stated she understood it was pre-existing non-conforming. She said the fact that there is a structure in place already is a plus, but she wasn't sure there was a proven hardship.

Mr. Eacobacci stated he felt it was not a hardship. However, on the same token, is it a hardship on the neighborhood, whereas it doesn't appear as there is any opposition. He said they may tend to allow leniency as it is in a part of the town where there is enough parking and that would be off street.

Mr. Semple stated he went out and looked at the building and it does look like it needs some work. However, he too agreed there isn't a hardship in his opinion.

Mr. Elkallassi asked if there was anyone present or on zoom that wanted to speak in favor or against the project, there was none.

Mr. Conroy reiterated the square footage lot requirements (bldg. inspector needs 21,000 sq feet to build by right) as well as that the benefit outweighs the detriment. He said when someone can't use or develop their property it could be certainly be a hardship to them. This building needs work and if he can build a residential unit in there, he's going to make it look nice. Improve property and not be detrimental to the neighborhood.

Mr. Semple asked if they could condition to only having family members live there. Mr. Elkallassi stated once they grant it there is no guarantee that would happen and who would be monitoring it.

There was a discussion of how many existing bedrooms were in each unit and if it would initiate a parking requirement. Applicant, Mr. Keating stated that each apartment had two bedrooms each, unlike the field card from the Assessors office that stated three bedrooms each.

Mr. Elkallassi stated he didn't see it as a financial hardship and would like to do a site visit.

Mr. Eacobacci made a Motion to reconsider this applicant and continue to August 10, 2022 and was seconded by Mr. Semple. The Motion passed unanimously. (5-0-0).

2. 24-22 Sandra M. Stowe – Variance – 9 Beach Plum Lane – Assessors Map 27, Lots M-4B & M-5

Mr. Elkallassi opened the public hearing. Mr. Eacobacci read the advertisement in for the record.

Architect, Mr. Lockwood was present on behalf of the applicant. He stated they are proposing to construct a one-story, 120' addition to an existing structure in a R60- residential zone. He said they are partially in the flood zone. The addition would solely be used for a study. He said they are seeking relief for setbacks and believes they comply under a small lot exemption. He said it's an unusual situation per the shape of the lot. He said the existing setback from the corner is 7.5' and they were looking to reduce that to 6'.

Mr. Eacobacci clarified which house it was and where the addition was being added. Mr. Lockwood stated opposite the water side, north side of the house was where it was being proposed.

Mr. Elkallassi brought to Mr. Lockwood's attention a typographical error that the front setback should say 60' not 20'.

Mr. Elkallassi opened it up for public comment, there was none. He asked Board members if they had concerns. There were no concerns from the members.

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 relief as requested and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0).

VII. ANY OTHER BUSINESS/DISCUSSIONS:

Ms. Baldwin reviewed the Planning Board input on the Zoning By-laws. She reviewed the changes of the Zoning Board members compared to what the Planning Board members changed or amended.

Ms. Baldwin although the Planning Board appreciated the sentiments of the Zoning members, they said it was complicated to read in some parts and/or some of the 'wording' changes would have to be made throughout the by-law as a whole and that was out of their focus for this upcoming Town Meeting.

The zoning members reiterated that the bylaw should be more explicit in detail regarding the wording for "each additional dwelling", versus 'each additional unit, each additional use or 3+'.

Mr. Elkallassi argued that currently the way some of the bylaw reads as a developer he could put as many housing units on his properties as he wants. He said that he would like the Planning Board to reconsider the changes as they are making it very inconsistent, especially on the commercial unit interpretations.

Ms. Baldwin stated that the Planning Board would be happy to meet with the zoning members and their next meeting is on August 8, 2022.

Mr. Elkallassi stated he would be attending as well as Mr. Eacobacci.

Mr. Eacobacci made a motion to adjourn and was seconded by Mr. Semple. The Motion passed unanimously via roll call vote at 8:33p.m.

Respectfully,
Patricia A. Pacella
Recording Secretary

Date signed: 8-22-2022

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

WAREHAM TOWN CLERK
2022 AUG 15 PM 3:23

Date copy sent to Town Clerk: _____