

**Town of Wareham
Zoning Board of Appeals
Minutes – September 14, 2022**

- I. **CALL MEETING TO ORDER:** opened the meeting at 6:30 pm.
- II. **ROLL CALL:** Present: Chairperson, Nazih Elkallassi, Clerk, James Eacobacci, Mr. Larson, Rick Semple, and Veronica DeBonise (arrived at 6:32 p.m.)

Absent: Jacob Morrison

III. **PRELIMINARY BUSINESS:**

1. **Approval of Meeting Minutes: 5/27/2020 & 8/24/2022**

Mr. Eacobacci made a motion to accept the minutes as presented and was seconded by Mr. Semple. The motion passed unanimously. (4-0-0).

IV. **CONTINUED PUBLIC HEARINGS:**

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

Attorney Dennis Conroy was present on behalf of the applicant.

Mr. Elkallassi asked if there was new evidence of the hardship.

Attorney Conroy said he dropped off a memorandum with Ms. Raposo on Monday. He said the project has uniqueness. He said there is no definition for "hardship" in Chapter 40A nor the Town's bylaws. Mr. Conroy said it seemed the hardship relates to real property and the ability to use the property in a reasonable matter. He said he took it upon himself to read the board's decisions over the last few years on variances and referenced a few in his argument. In reference to 45 Longwood Avenue in 2021, that case had a small cottage on a small lot and they wanted to expand on it. (They wanted to triple the size of the dwelling; 600 sq feet to about 1300 sq feet). He said that the hardship for that project is "the existing building is small and there is a financial hardship if an addition is not allowed to have a year-round home." He referenced that the board found this a hardship.

Mr. Conroy referenced 52 Neman Street, 5000 sq ft lot and the owner wanted to demolish a small structure and replace it with a garage, 24x28; 640 sq ft building.

He said in his case, they are not asking to build something or enlarge a structure. He said there is a substantial structure on the property, a concrete floor and concrete foundation, and new roof. It is 800 sq feet. He said it has plumbing in it, a bathroom, and is connected to Town Sewer. He said and it was permitted bathroom. He said the building is sitting in the back of the lot collecting things. He said the applicant want to put it to good use. He said there appears to be no objection by the neighborhood.

He said that the Board of Appeals looks at the whole case and is not detrimental to the neighborhood.

Mr. Elkallassi stated these other cases come in as a variance. He said the by-law allows an extension of the non-conformity as a Special Permit and extends the variance. He said every case is different.

Mr. Elkallassi read from Chapter 40A what hardship means. He said that doesn't apply to this case and there is no hardship.

Mr. Conroy argued that they need to look at the structure that is already existing and he feels the structure is unique to this property.

Mr. Elkallassi stated he agreed it was unique, but there was no hardship.

Mr. Conroy read "not able to use a structure is considered a hardship" this sentence is from a 1972 case, Town of Wareham vs. Johnson.

Mr. Elkallassi explained he is creating another dwelling and there is no hardship to create it.

Mr. Elkallassi opened it up to the board members.

Ms. DeBonise said she did review it and that maybe another unit would cause congestion at that address. She said they were denied the fourth unit previously and it does not seem to be a unique property. She said she does not believe it is a hardship.

Mr. Semple stated he went by the house and if the owner wants to go through this to get an apartment out there and there are no objections from the neighborhood then it may be a good idea. He said he is for it. He said there are reasons to give him the variance.

Mr. Elkallassi asked for public comment, but there was none.

Mr. Conroy stated the site plan provides for off-street parking, so he doesn't see added congestion to the area. He said it would be a one-bedroom apartment only.

Mr. Eacobacci asked how many kitchens are on the property right now. He said if approved there would be four. He said this owner says it's all family, but in the future, it could be anyone and that was his concern.

Mr. Eacobacci stated if the board could grant the fourth unit if the owner would agree to a deed restriction that it be for family only.

Mr. Elkallassi stated it would be another filing completely for a deed right and that would be a different application.

Mr. Eacobacci made a motion to close the public hearing and was seconded by Mr. Semple. The motion passed unanimously. For the record, Mr. Elkallassi stated that Mr. Larson would be voting in Mr. Morrison's place.

Mr. Semple made a motion to grant the variance and was seconded by Mr. Eacobacci. The vote was as follows, Ms. DeBonise, no. Mr. Eacobacci, abstain; Mr. Semple, yes. Mr. Larson, yes. Mr. Elkallassi-no. The motion did not pass. (2-2-1).

2. 26-22 Dos Amigos Realty, LLC – Variance – 12 Larch Street – Map 38, Lot 512

Mr. Elkallassi recused himself from this hearing.

Attorney Jillian Morton was present for the applicant. Ms. Morton reviewed her variance. She stated her client purchased the property in 2006. She stated this parcel had been a part of a bigger parcel from a 1923 subdivision and the lots in the area are all around one acre each. She said the property in question is .8. She gave a history of the lots in the subdivision. She stated the lot in question was lot 512 and 513, but originally were part of 514 and 515 that got split and sold off. Ms. Morton stated the denial letter from the Building Commissioner was the lot was not buildable, but she feels it is because it was two merged lots and they should've never been merged. She explained that a merged lot is usually done to create a more conforming lot vs. a non-conforming one.

Mr. Eacobacci reiterated that all three were together, but parts of the two lots were sold with other lots. (514 and part of 515).

Ms. Morton stated there was never home on the parcel. She said there is a sewer hook-up on this lot. The proposal is for a 3-bedroom single-family home. She said this particular build will be like the others in this neighborhood; the average lot size is .2 acres, and this lot is .8. She reviewed the lot's square footage. She also stated it has frontage on two corners. Ms. Morton stated there is a hardship on both parties; owners and Dos Amigos Realty. The owners purchased it in 2006 and have paid taxes on it. She said it's been taxed as an accessory lot.

Mr. Eacobacci confirmed they've been taxed at \$9,000 for the lot.

Ms. DeBonise asked for clarification on the lots. Ms. Morton explained that lots 512 and 513 are the lots that makeup 12 Larch Street.

In reading the letter, it says lot 513 should've never been separated.

Ms. DeBonise stated that the owner has been paying taxes on a lot that says 'accessory' and he never questioned it previously that it was a non-buildable lot. Ms. DeBonise asked about an easement that she felt she read on the deed. Ms. Morton was unsure what that reference was to but would review it.

Mr. Eacobacci asked when that area of zoning went to 30,000 sq feet for lot size in that area. Ms. DeBonise said she thought it was 1979.

Mr. Eacobacci stated they owned the lot when it became 30,000 sq feet zoning and drew it and split the lots. He said he would want to see the taxes paid retroactively on it as a buildable lot; as he doesn't believe that it was ever a buildable lot. He said he can't explain why the town put a sewer hook-up there.

Ms. Morton said without the merger component and just reviewing the lot size and the lot sizes around it, she believes it could be a hardship.

Mr. Eacobacci said the lots were owned by the same owners and when to split off it was an intentional split to one day come before a stupid zoning board, which may consider a hardship. He says he believes it was very cleverly manipulated to call it a hardship and he doesn't buy into it. Mr. Eacobacci stated he does not see it as a hardship and because the lots were in common ownership, the current owner should've questioned when he bought it that it wasn't buildable, and they weren't paying taxes on a buildable lot.

Ms. Morton stated she respectfully disagrees. She said she'll review all the deeds and what was conveyed to each owner.

Mr. Eacobacci asked for public comment.

Abutters, Jennifer, and Ron McConnell were present and stated they lived down in that area and trail a boat in/out that area. They said they are concerned that there is only one way in/out with no formal barriers down there. They don't feel it is a practical lot to build a home on.

Attorney Morton requested a continuance.

Ms. DeBonise made a motion to continue per the applicant's request to September 28, 2022, and was seconded by Mr. Semple. The motion passed unanimously. (4-0).

Mr. Elkallassi returned to Chair of the meeting.

3. 27-22 Carlton White, Jr. – Variance – 17 W. Central Avenue – Map 1, Lot 632

Carlton White was present.

Mr. White stated he was present to appeal a denial of a building permit to raze and reconstruct his home. He said the denial was based on the F.A.R. (floor-to-area ratio). He said the new construction would be with a F.A.R. of 41%, which is more than the 30% allowed. He said the proposed first floor and porch are 27% of the whole lot size. He said his existing F.A.R is 26% and the actual footprint not changing much at all.

Mr. White explained that they wanted to add a second floor in the rear of the home to add two small bedrooms. He said they wanted to stay as much as they could within the footprint, as they like the open space around the home. He said they are looking to add a wrap-around porch from the front to the side. He said that building the second floor is what put him over the ratio. 2nd floor threw me over the ratio.

Mr. White reviewed the table he put together that is in the board members' packets. He reviewed homes on his street and compared the F.A.R; many of which are over his proposed home.

Mr. Elkallassi stated they need architectural plans to show the F.A.R. ratio.

Mr. White said he left the zoning department with a large set of plans. He said the application requested an 8x11 sheet, but he did include the large size of plans that were stamped.

Mr. Elkallassi asked if they were changing the current footprint of the home.

Mr. White stated the bulkhead in the back will change to go out 2' and then squared off. He said it would be about 2' bigger in the back. He said he has about 21% currently and looking for 40% F.A.R.

Mr. Elkallassi asked about building coverage stating they could not act as a Special Permit on the building coverage, but they can consider a variance for the F.A.R.

Mr. Eacobacci stated the commissioner only denied him on the F.A.R.

Ms. DeBonise asked for clarification on whether they wanted to add a second unit to the rear of the property. She was concerned, like most of the Onset that it is a congested area.

Mr. White clarified that they had no intention of adding a second unit. He said they just wanted to add two bedrooms on the second floor.

Ms. DeBonise stated she was happy to hear they were going to keep it as a single-family. She explained the by-law that in that district, anything over 1300 sq feet could be turned into a two-unit. She said she is agreeable to the proposal if allowed, her only concern would be if he sells in the future and then someone decides to turn the home into a second unit, which would be allowable. Ms. DeBonise said she would be okay with a restriction on the deed that it remain a single-family dwelling.

Mr. Eacobacci asked how he felt about that.

Mr. White said he's fine with that deed restriction.

As the board did not receive the large architectural plans that note the current and proposed F.A.R., Mr. Elkallassi asked the applicant to come back with those plans that identified the living space, and the proposed stairs for another meeting.

Mr. Larson said he liked the plans and had no questions.

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

Mr. Eacobacci thanked Mr. White for his well-put-together presentation. He said for him, it would be helpful to get a few photos of the home and the homes in that area.

Mr. Eacobacci made a motion to continue the hearing to September 28, 2022, and was seconded by Mr. Semple. The Motion passed unanimously. (5-0-0).

4. 28-22 Wareham PVI, LLC – Variance – 0 Route 25 – Map 115, Lot 1000

Present at the meeting was Hailey of long route energy. Via Zoom, Betsy Mason of Klavens Law Group was in attendance, as well as zoom, Sarah Ebaugh from the engineering company.

Ms. Mason gave a brief overview of the project. She stated that they have been going to the Planning Board for a solar project at this address for the last year or so. She said that the Planning Board had recommended they come before the Board of Appeals to ask for a variance of the setback requirements, as the Planning Board can not grant that type of variance.

Ms. Mason explained the 3.5-megawatt project on a piece of land that has a unique topography to it, and under that criterion and the other criteria that exist on the setback bylaw, she believes could be granted the variance for the setbacks.

Ms. Mason showed the plan with the uniqueness of the lot and where the solar panels are going. She said they show a vegetated buffer, but not the 50' setbacks

Ms. Mason reviewed how they satisfy the criteria. The first criterion is the topography of the parcel and its unique shape. For the second criteria, being a substantial hardship, financial or otherwise, Ms. Mason expressed that there is a hardship all the way around, from the Town (and taxes) to the land-owner as well as the project themselves as they have had to reduce the proposal from eight hundred panels to six hundred panels which is an impact to the megawatt capacity.

In the last criteria, "granting a variance without causing harm", Ms. Mason stated the property is in a very good location for solar although it is in a residential district, it is not adjacent to any residential use. She said there are cranberry bogs on one side and it's in an isolated location and not likely to cause obnoxiousness to the neighborhood.

Mr. Elkallassi agreed that the shape of the lot meets criteria and asked what the setbacks to the structure and panels were.

Ms. Mason explained that this was a point of disagreement with the Planning Board. She read from the bylaw that identified the front setback requirement. She said that the setback should not be less than 50' in a residential district, which the property is; however the bylaw reads that it should be 50' from other residential developments, to which in that area there is none, even though the parcel is in a residential zone.

Ms. Mason stated they are seeking the variance for the 50' setbacks from the vegetation all around the project.

Mr. Elkallassi opened up comments to the board members.

Ms. DeBonise had no comment at this time.

Mr. Eacobacci asked about where the property is located.

Mr. Semple stated he was concerned for the wildlife in that area, should the project move forward. He said he didn't think it was a hardship for the landowner, that could do something else there. He didn't like that Ms. Mason stated the taxes to the Town could be a potential hardship for the Town. Mr. Semple stated he thought Wareham had enough solar fields and

didn't need another. He said he wouldn't agree with any variances or the 50' setback in this situation.

Mr. Lawson had no comment at this time.

Mr. Elkallassi asked for public comment.

Darryl .. stated he would speak on behalf of himself and fifteen other residents that have signed a petition not to have this project move forward. He outlined a few issues with the project since it started. He read from a document (that will be included for the record). He added he felt the 50' setbacks were there for a reason, and that this applicant wanted to put in as many panels as they could.

Mr. Elkallassi stated the zoning board can only decide on the setback request, not anything else. He said that soil condition is not their jurisdiction and can not take anything but zoning up at their meeting.

Mr. Elkallassi stated he believes they have a textbook hardship with the shape of the lot as he read Chapter 40A about topography. He then turned it over to the board members for discussion.

Ms. Debonise stated she did not feel it was a hardship because they can still put the solar panels on the property and they just want to add more.

Mr. Eacobacci stated he was personally, an advocate of solar panels. He said he hopes they can reach a middle ground with this request.

Mr. Larson said he tended to agree with Ms. Debonise and Mr. Semple. He said if they keep changing the bylaw to every applicant, it's going to get confusing.

Mr. Elkallassi said the current solar bylaw was done unfairly and quickly just to get it done.

Discussion shape of the lot is not the hardship or is the hardship per the bylaw. Mr. Elkallassi stated the shape of the lot does create hardship. He said it wasn't about making more or less money for him, it was about the bylaw and the uniqueness of the lot, which creates the hardship.

Resident, Mr. Darryl stated the bylaw reads that there are three criteria and they need to meet all three to get the relief.

Resident, Annie Hayes of 52 Farmers Lane expressed her opinion about the land itself, the buffer, and the soil.

The owner of the property, David Fletcher was in attendance and stated he wanted to clarify something he heard. He said that this would be a hardship to him as the landowner.

Mr. Elkallassi explained that the hardship had nothing to do with a person, it had to do with the property in question.

Mr. Fletcher explained that where the solar panels are going on the property is quite lower than other properties in the area. He said it would sit 8' off the ground, and the ground is 8' less than other properties.

Mr. Elkallassi asked his board members to sleep on it and asked for a continuance.

In ending, Attorney Mason stated they are talking about a dimensional variance, not a use variance. She said the project needs to become practicable, not impossible.

Planning Director, Ken Buckland was in attendance via zoom. Mr. Buckland stated that the Planning Board has not made a decision yet as they were waiting for this decision and to finalize a plan.

Mr. Eacobacci made a motion to continue to September 28, 2022, and was seconded by Mr. Larson. The motion passed 4-1 with Ms. DeBonise in opposition. (4-1-0)

5. 29-22 Joshua DeOlim – Special Permit – 2618 Cranberry Highway – Map 110, Lot 1051

Attorney Robert Perry was present with the applicant, Joshua DeOlim.

Mr. Perry passed out additional information to the board. He explained that this young man has an automotive business and is looking for a Special Permit to conduct business at the property at 2618 Cranberry Highway. He said it's a tow truck business with towing on a small scale. It's just himself and customers. He said he has nine vehicles and needs a sales license to sell cars. He said he doesn't think it's detrimental to the neighborhood.

Mr. Elkallassi stated how many bays for the garage.

Mr. Perry stated there are two bays on the property when he bought it.

Mr. Elkallassi asked if it was a primary towing business or mechanical.

Mr. DeOlim stated he does the mechanics part of things for himself, but the business is a towing business.

Mr. Perry stated his father owns a shop next door.

Mr. Elkallassi asked again if the primary business is towing, and Mr. Perry said it was.

Mr. Elkallassi advised that per the bylaw, towing on a strip commercial is not allowed, and is only allowed in the industrial district. He said they are asking for a Special Permit.

Mr. Perry asked if they had to come back to ask for a variance and if they would have to republish it. He said they are not looking for salvage or junkyard.

Mr. Buckland stated in the user table that Motor Vehicle Service is a Special Permit from the Zoning Board.

Mr. Elkallassi agreed that auto repair is an allowed use but that towing is not permitted in this zone. He questioned whether the business could survive with nine cars and felt there would be

a lot more on the lot. Referring to pictures, he said you have about eleven cars just in this picture and that would require a site plan review.

Mr. Perry said that he turns cars out quickly.

Mr. Elkallassi stated he believed it required a site plan review.

Mr. Perry said they could condition the permit to nine vehicles and if he's in violation then so be it and he can get fined.

Mr. Elkallassi asked for comments from the board.

Ms. Debonise – asked how much parking was allotted for the residential parking.

Mr. Buckland stated it was two cars per unit.

Ms. DeBonise reiterated two cars for the house and nine for the business are eleven cars, which would trigger a site plan review.

Mr. Eacobacci asked the applicant what he does exactly. Is it that you're a mechanic or you just tow vehicles, he asked.

Mr. DeOlim explained his business that he basically gets a call and tows a car and sometimes he does mechanical repairs.

Mr. Semple gave a scenario to the applicant as if one night he got too many calls for cars what would he do? Would he take the vehicle to another shop, or the homeowners house. He believes he would probably take the business and may take it back to the property, even if it parked nine cars already.

Mr. DeOlim stated he was not a 24 hour business.

Mr. Semple agreed that a site plan is necessary.

Mr. Larson agreed with others and had no questions at this time.

Mr. Elkallassi reiterated that they have over eleven spaces in the back and he believes they need a site plan. He then asked the public for any comment.

Resident, Ms. Kelsey Fagan, 7 Hill Street stated Mr. DeOlim is a nice young man with good work ethics. She said her jeep has broken down several times and he's always been there to help. She vouched that he has been a long-time Wareham resident and doesn't believe there is a burden to residents or the neighborhood

Mr. Elkallassi stated the Zoning Board does not look at a person, but at the land they are trying to use for a business. He said, "I'm sure he is a fine young man."

Resident, Manuel Silva, 26 Osbourne Avenue also spoke in favor. He stated he didn't see how it could be detrimental to the neighborhood.

Antonio DeOlim was present and stated he was the applicant's dad. He said that he started his business years ago and now his son is doing the same as he is raising his family.

Mr. William Curtain spoke in favor of the project. Mr. Robert Éclair spoke in favor of the project. Ms. Fagan stated she was in favor of the project and supporting a young man in the Town of Wareham.

Mr. Glen Tavares spoke in favor of Mr. Josh DeOlim and stated he "helps a lot of people."

There were five more residents that spoke in favor of the project.

Mr. Chris Conti, who is a direct abutter to the right side spoke. Mr. Conti stated he was confused on how the application was written as it listed two properties, 2618 and 2620 Cranberry Highway. He asked if this was solely for 2618 or 2620 as well (which is the applicant's dad, and Mr. Conti stated he as well was working without a Special Permit to that business).

Attorney Perry stated it was just for the 2618 Cranberry Highway property. He said father and son may take cars from one side to the other.

Mr. Conti went on to explain that there are many violations on the property already. He said they are pressure washing and spraying vehicles outside. He said there is a junkyard in the back of the property. He said they sell cars with leaky gas tanks. He said no Title 5 has been done on the property since they bought it. He said they own anywhere from twelve to twenty junk cars in the yard, four flatbeds (2 which they recently have removed). Mr. Conti read from Section 15 of the by-laws and stated this requires a site plan.

Ms. DeBonise stated a site plan review is definitely needed. Mr. Conti did bring up some points regarding non-conformity, we do look at that and they need to be addressed.

Mr. Ecoabacci asked if when they say "site plan review are we talking about a full layout." Mr. Elkallassi said yes.

The applicant said he can work under the radar and not need a site plan review. Attorney Perry said he thinks they can work within the bylaw.

Mr. Semple agreed to the site plan. He said that many people who spoke in favor said he was a great mechanic and he here's for towing; so he believed that he is going to do both. Mr. Larson asked if there was a way to enforce the stipulation without a full blown site plan review.

Ms. DeBonise addressed the applicant by saying by getting this done now, he can add a lot more cards and it could open a lot of options for you in the future with your future business.

Mr. DeOlim asked why he couldn't start with the nine cars and then if he saw the business growing to come back in a year to ask for more.

Attorney Perry said they would refile if necessary and present the site plan if that's what the board was asking.

Ms. DeBonise also reiterated what had been spoken previously that the variance would be for towing only; and the repair would be under the site plan review; so she encouraged the applicant to make sure he was aware of the two options

Mr. Perry asked for a two-week continuance as he would speak to his client and decide what route they want to take.

Mr. Ecobacci made a motion to continue to September 28, 2022 and was seconded by Ms. DeBonise. The motion passed unanimously. (5-0-0).

V. PUBLIC HEARINGS:

1. 30-22 The Family Pantry – Damien’s Place Corp – Site Plan Review – 242 Marion Road – Map 56, Lot 1000-B

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

Mr. Bill Maddon from GAF engineering was present and reviewed the project. He explained the site plan for a neighborhood grocery store in the MR30 Zoning District. He said it’s not detrimental to the neighborhood. He explained where the grocery store would be. He said they are proposing municipal water from Swift Beach Road and is looking into tying into the sewer on the same. Mr. Maddon explained they need seventeen parking spaces, but our offering thirty-three.

Mr. Elkallassi asked if they received a letter from the Building Commissioner.

Mr. Maddon stated they did not. He said he had spoken to the previous Building Commissioner, who directed him to this process.

Mr. Maddon continued with his presentation describing the project and details. He said he has not received any comments from any departments as of yet. He reviewed the sheet flow drainage on the property. He reviewed the hours of the store.

Mr. Elkallassi stated they need to see architectural plans and wanted to make sure what is being presented tonight will also be on the architectural plans.

Mr. Maddon says they show no lighting in the parking lot.

Mr. Elkallassi stated that he thinks the lighting is required in the parking lot for site plan review. He said they can leave that up to Mr. Rowley to confirm.

Mr. Maddon reviewed there are no wetlands in area.

Mr. Elkallassi asked Mr. Maddon to make sure things are in place before he returns. He said to have him open the 53G Account with the Zoning Department, make sure he connects with the Fire Department, Water and Sewer Departments. He also asked for architectural plans, a visit to the Building Commissioner as well. Mr. Elkallassi recommended that they don’t put in to restrict their operating

hours, as if they want that change in the future, they are going to have to come back to amend the Special Permit.

Mr Eacobacci made a motion to continue to 30-22 The Family Pantry to September 28, 2022 and was seconded by Mr. Larson. The motion passed unanimously. (5-0-0)

VI. ANY OTHER BUSINESS/DISCUSSIONS

Mr. Eacobacci made the motion to adjourn, and it was seconded by Mr. Semple. The motion passed unanimously. Meeting adjourned at 10:26pm

Respectfully submitted,

Patricia A. Pacella

Date signed: 9-28-2022

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

Date copy sent to Town Clerk: _____

WAREHAM TOWN CLERK
2022 OCT 25 AM 11:48