

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: November 8, 2017

I. CALL MEETING TO ORDER

The meeting was called to order at 6:35 P.M.

II. ROLL CALL

Members Present: Nazih Elkallassi, Chairman
Jim Eacobacci, Clerk
Karl Baptiste, Sr.
Jan Kendrick
Jacob Morrison, Associate

Members absent: Wilma Engerman

Also present: Charles Rowley
David Riquinha, Building Commissioner

III. PRELIMINARY BUSINESS

A. Approve meeting minutes: October 25, 2017

MOTION: Mr. Eacobacci moves to approve the minutes as presented. Mr. Baptiste seconds.

VOTE: (5-0-0)

B. Petition #02-16 – Judith Resendes – 20 West Central Avenue - Time Extension

Present before the Board: Phil Diruza, contractor

Mr. Diruza states that the applicant is requesting a time extension on a Special Permit and Variance. The Variance decision states that the Variance was granted for two years, Massachusetts General Law states Variances are only good for one year. Mr. Riquinha states this is a common problem with previous Variance decisions and does not oppose the extension.

MOTION: Mr. Baptiste moves to grant a time extension for the Special Permit and Variance. Mr. Eacobacci seconds. Mr. Elkallassi states the construction must begin on or before April 2, 2018.

VOTE: (5-0-0)

C. Petition #31-17 – Certificate of Occupancy – J. Donegan Co. – 2419 & 2427 Cranberry Highway and 4 Seth F. Tobey Road

Present before the Board: No one is present at this time.

Mr. Elkallassi tables the discussion.

The applicant has requested a continuance until December 13, 2017.

MOTION: Mr. Eacobacci moves to continue the public hearing until December 13, 2017. Mr. Baptiste seconds.

VOTE: (5-0-0)

D. Petition #22-11 – Walmart – Cranberry Highway & Seth F. Tobey Road – Request for modification

Present before the Board: Paul Jandrow, store manager
Liz Louis, co-manager

The applicant is requesting to house 6 seasonal storage containers on-site between October 1 and December 31 of each year. These storage containers are necessary to store the additional merchandise for the holiday seasons. Mr. Elkallassi states that this would require a modification of the Special Permit, but that he would allow it for this year, but the applicant would have to come back before the Board next year to discuss this in detail for the modification. Mr. Rowley states this would require a modification to the Special Permit. Mr. Eacobacci is in favor of allowing the containers for this year, but feels the applicant should return before the Board within the next six months.

MOTION: Mr. Eacobacci moves to allow the storage containers remain for this year, to be moved by December 31, 2017, and that the applicant returns before the Board by April 2, 2018 to apply for the modification with both the Planning and Zoning Board. Mr. Baptiste seconds.

VOTE: (5-0-0)

IV. PUBLIC HEARINGS

A. Petition #30-17 – Donna L. Petrone – 47 Swifts Beach Road

Present before the Board: Donna L. Petrone

Ms. Petrone is hoping to construct an apartment above the garage. Mr. Riquinha states that in her district the apartment is allowed as a third residential unit by Special Permit. Mr. Elkallassi states that the lot size does not meet the requirements for the third apartment, and may require a Variance. Mr. Riquinha states this is allowed by Special Permit in the Zoning By-Law. Ms. Kendrick states it is allowed under Special Permit by the Planning Board. Mr. Riquinha says that this application was before the Planning Board, and the Planning Board referred it to the Zoning Board as they did not feel it was under their purview. Mr. Riquinha also notes there is not a lot size requirement in the By-Law for each additional dwelling unit. What is existing now is a lawfully non-conforming lot. There is nothing that states there needs to be a lot size requirement for each additional dwelling unit. Mr. Elkallassi states he feels they should continue the public hearing. Ms. Petrone states that she will be in Florida and will not be able to attend a continued public hearing and would not return from Florida until May. Mr. Eacobacci asks if she would like it to be continued until May. Mr. Riquinha states that this has been going on since August. Mr. Baptiste states that is a long way away. Mr. Elkallassi states he feels that this requires a Variance. Ms. Kendrick states that it is a Special Permit as it is an additional dwelling unit, not a residential dwelling, which are defined separately in the By-Law. Mr. Elkallassi states he feels we should continue the public hearing. Mr. Baptiste states that this has been going on long enough, no one has come to the hearing to protest, and feels they should make a decision tonight. Ms. Kendrick states she feels comfortable deciding tonight.

MOTION: Mr. Eacobacci moves to close the public hearing. Ms. Kendrick seconds.

VOTE: (5-0-0)

MOTION: Mr. Baptiste moves to grant the Special Permit as presented. Mr. Eacobacci seconds.

VOTE: (4-0-1) Mr. Elkallassi abstains as he feels this is a Variance.

B. Petition #38-17 – David & Eldon Moriera – 33 Cleveland Avenue

Present before the Board: Tim McLank, Coastal Custom Builders
Jim Peterson, Alpha Survey Group
David Moriera

The applicant is seeking to re-construct an 8'x45' on a pre-existing non-conforming house. Tim states that the deck collapsed in 2015 during a snowstorm. Since it had been more than 2 years since the deck had collapsed the grandfathering had lapsed. Based on Article 13 Section 1322, it states that the deck can be reconstructed exactly as it was previously. Mr. Elkallassi states they will dismiss the application, a Special Permit or Variance is not required. Mr. Elkallassi recommends the applicant withdraw. The applicant withdraws the application..

MOTION: Mr. Eacobacci moves to allow the applicant to withdraw the application without prejudice. Mr. Baptiste seconds.

VOTE: (5-0-0)

C. Petition #39-17, #40-17, #41-17, #42-17 – BlueWave Solar – Off Charge Pond Road

Present before the Board: Richard Serkey, attorney
John Mancini, BlueWave
Lexi Barlow, BlueWave
Rich Riccio, Field Engineering

The applicant is seeking to construct 4 new ground mount solar photovoltaic arrays. The project is in four separate applications because there are four separate pieces of property and four different owners. The applicant is seeking a Special Permit and Site Plan Review of the four proposed solar fields.

Mr. Riccio states the project is located off of Charge Pond Road and Route 25 with four arrays referred to as Route 25 A, Route 25 B, Charge Pond Road A and Charge Pond Road B. The total power generated is about 12 megawatts DC the entire site, after construction, will be loamed and seeded and maintained as a grass surface. The facility itself will be accessed by the existing gravel access drive that is used for the cranberry bogs. The main entrance to the site is along the gravel access that is owned by the Town, however, the owners of the property have rights of access via an easement granted. It is required that the access roads be widened to 25' in width for emergency access. Each array will be fenced individually with 7' chain link fence. The fences will be raised 6" off the ground to allow for wildlife to Migrate through the arrays. The fences will be gated at the entrance to each array. Each entrance will be equipped with a Nox box for emergency access. The sites are unmanned and therefore do not require sewer or other municipal services on site. The power itself will be tied in to a dedicated feeder line in the existing Eversource easement up to the sub-station, about 1,500 feet north of the array. Mr. Riccio states that one of the requests Mr. Rowley made was to show more information on the right of way coming into the site. There is a 20' right of way coming off of Charge Pond Road to the site. This existing gravel easement is owned by the Town and the applicant would have to make an agreement of some type with

the Town to utilize this easement. The seed mixed used for the loam on the arrays are a low growth clover mix.

Mr. Eacobacci states in the chart it looks as though one of the parcels intercepts another parcel on the plan, but states that only a portion of the parcel looks to have the array. Mr. Riccio states this visual is to strictly show the separate parcels and not the limits of the array.

Charge Pond A array has panels on both sides of the gravel access road they are proposing. The existing gravel access road will need some improvements to meet the 25' width. Run-off runs down the site toward isolated wetlands and toward the cranberry bogs. To off-set the change in the ground cover for a portion of the site they are proposing a swamp grass depression to infiltrate some of the water. This site is approximately 6,000 panels 2.4 megawatts DC of power. Outside of the fence will be allowed as natural vegetation and shrubs. The applicant is also proposing to install bird boxes around the site.

Charge Pond B is currently an open ground area, operated as part of the cranberry bog. There is no change in grade proposed in all four arrays. This area will be loamed and seeded as well. There are proposed crushed stone edges to infiltrate the water and percolate before the water runs into the ditches for the cranberry bogs. All of the sites are well over 500' from any residential use or structure.

Route 25 A has no change in grades on the property. A grass depression area is proposed on the bottom of the property for water runoff. Shrubs are proposed around the perimeter of the site.

Route 25 B has a water feature on both sides of the array to infiltrate the runoff. There is a 20' access aisle around the fence of each array as a requirement of the Fire Department.

Mr. Riccio addresses Mr. Rowley's review letter. Mr. Riccio has addressed a number of the comments in his presentation. One of the concerns in Mr. Rowley's review letter was the rights of access from Route 25 and the rights to the easement. Mr. Riccio had presented deed research displaying the owner's rights to the easement. The other concerns were with site visibility from Route 25. Mr. Riccio has prepared a visual rendering which shows the existing trees that will be retained between the road and the fence line.

Mr. Serkey states he would like to underscore some points. The site is located over 500' from the closest residential use. Mr. Serkey states a solar array has minimum impact on surrounding areas, minimum traffic is created, and minimum noise is created. Mr. Serkey states the access roads will be 20' wide to all of the major equipment panels. During construction dumpsters will be placed on site for refuse disposal and the materials will be disposed of at approved locations. Following construction the only service vehicles that will visit the site should be small pick-up truck type vehicles and landscaping equipment. Best management practices and site design techniques and features have been incorporated into the project. The supplemental income of the project generated for the landowners will allow them to continue to maintain agricultural uses on the remaining portions on their land. There will be a source of tax revenue to the town because of the PILOT agreement with the town.

Present before the Board: Don Jepson, 15 Long Beach Road

Mr. Jepson asks how many trees will be removed to construct the arrays and who will pay for the lines and the poles that the electricity will be running to.

John Mancini states that the applicant will be paying for all of the upgrades to the lines.

Mr. Jepson states that Massachusetts invested a substantial amount of money into a company called Evergreen Solar, and the panels that were being produced are now being produced in China. Mr. Jepson asked where the panels and the materials for the array are coming from.

Mr. Elkallassi states that they do not have the purview to determine where the materials come from.

Mr. Jepson asked if the Board could require the applicant to give the work to local contractors.

Mr. Elkallassi states they could not make it a requirement, but could request that the applicant give local contractors the opportunity to do the work.

Present before the Board: Gary Buckminster, Harbormaster

Mr. Buckminster has questions about the acres of habitat that will be cleared. Mr. Riccio states they are not touching the priority habitat on the map. Mr. Buckminster states he is not concerned for the wildlife that is not on the habitat map. Mr. Buckminster states that this area is abutting priority habitat which stresses the concerns of removing such large amounts of habitats.

Mr. Elkallassi states that the Board is a volunteer board, they are not professionals, and that the Conservation Commission would be a better place to bring this up.

The Board asks Mr. Rowley his comments on the project.

Mr. Rowley begins by stating that solar projects are contradictory in nature. Mr. Rowley states that as far as the stormwater runoff on the site is not greatly impacted in a project like this. The main impact would be the trees are not on site to absorb as much water as before, however, the groundwater will still be absorbed into the ground and there is not a concern regarding the amount of runoff on the site.

Mr. Rowley states the access from Charge Pond Road and the visibility access from Route 25 are his main concern. Mr. Rowley states his original concern was right of access. The state made a taking of Charge Pond Road to access the properties, and in further research Mr. Rowley found there was no mention of the easement in each of the deeds, it is assumed to be a deed of necessity. Mr. Rowley's concern at this point is that the engineer stated the current road generally meets the 20' easement, but the Fire Department has requested that the road be widened to 25'. Mr. Rowley states if the road is widened they will be encroaching on Town property. Mr. Rowley would like the applicant tie the location of the easement into the Charge Pond Road layout and then to see a plan of substantial scale regarding the road to see if it will be encroaching on Town property. Mr. Rowley states that after submitting that plan the applicant will then know if they will be required to apply to the Board of Selectmen for additional easements that will need to be obtained to keep the road in proper condition. It is the requirement of the slopes along the sides of the roads that will require the easements.

Mr. Rowley asks if the easement could have blocks under gravel on the easement road. Mr. Rowley stated he would not recommend that.

Mr. Rowley feels the 25 feet of tree screening from Route 25 would not be enough to screen the solar array from the road.

Mr. Elkallassi states that in some areas there needs to be 50' setbacks on the site. Mr. Riccio states that some of the site the fence does go directly to the property line. Mr. Serkey states that the plans were created before the solar by-law was passed at Town Meeting and therefore does not meet some of the setback requirements.

Mr. Rowley is also concerned that the applicant put a cost of labor at \$25.00/hour which Mr. Rowley states sounds low. Mr. Rowley states that he has not had a chance to review these numbers, and there

should be a document in place for decommissioning. Mr. Rowley also recommends to review the cost for decommissioning every five years.

Mr. Rowley recommends speaking to the Fire Department about the 25' road width requirement to see if 20' would be adequate.

Mr. Elkallassi states he would like to discuss the view from Route 25 at the next hearing also, he would like the applicant to consider how many panels they would lose to move the array to improve the view from Route 25.

MOTION: Mr. Eacobacci moves to continue the public hearings for petitions #39-17, #40-17, #41-17, #42-17 until December 13, 2017. Mr. Baptiste seconds.

VOTE: (5-0-0)

D. Petition #43-17 – Spencer & Katherine Vachon – 225 Glen Charlie Road

Present before the Board: John Lamken, representing the owner, Matthew Lamken
Marlene Jones, realtor

The applicant is requesting to seeking to create a riding stable for horses. The owner is attempting to sell the property, which is under agreement at the moment, with the stipulation that a riding stable may be allowed on the property. The applicant is requesting to have two horses on the property. A Special Permit is required for this since the property is less than 5 acres.

Present before the Board: Craig Gordon

Mr. Gordon is speaking against the proposed project. Mr. Gordon is the abutter to the property and has a pond on his property and is concerned that having a riding stable would have negative effects on the property.

Mr. Elkallassi asks if the applicant is seeking to build a barn. Ms. Jones states they hope to have a barn on the property.

Mr. Riquinha states that this application is strictly for the use, and if the applicant proposed to put a structure on the property they would be required to apply for a Building Permit and would be required to obtain signatures from Conservation and Planning.

MOTION: Mr. Eacobacci moves to close the public hearing. Ms. Kendrick seconds.

VOTE: (5-0-0)

MOTION: Mr. Eacobacci moves to grant the Special Permit with the condition that permission from all other boards and departments must be received in order to construct the proposed barn. Mr. Baptiste seconds.

VOTE: (5-0-0)

E. Petition #44-17 – Heidi Dobbins-Morse – Spring Avenue

Present before the Board: No one is present

The applicant has requested to withdraw.

MOTION: Mr. Eacobacci moves to close the public hearing.

VOTE: (5-0-0)

MOTION: Mr. Eacobacci moves to accept the applicants' withdrawal without prejudice. Mr. Baptiste seconds.

VOTE: (5-0-0)

V. CONTINUED PUBLIC HEARINGS

A. Petition #31-17 – J. Donegan – 2419 & 2427 Cranberry Highway and 4 Seth F. Tobey Road

No one was present at this time.

VI. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS

A. Correspondence

1. See correspondence sent via email and/or in packets.

B. Upcoming Hearings:

November 22, 2017	NO MEETING			
December 13, 2017	#45-17	Special Permit/Variance	Richard McBrine	55 West Central Avenue
December 13, 2017	#46-17	Special Permit/Variance	Ramons Realty Trust	300 Glen Charlie Road
December 13, 2017	#47-17	Special Permit/Variance	Kelly & Chris Socha	6 Wareham Lake Shore Drive
December 13, 2017	#48-17	Special Permit/Variance	Deborah & Joseph McMullin	70 Longwood Avenue
December 13, 2017	#49-17	Special Permit/Variance	Leon Gaudette, Jr.	2 Benjamin Street

C. Decision Deadlines

60 Days from Close of Public Hearing	#31-17	Site Plan Review	J. Donegan Company	2419 & 2427 Cranberry Highway and 4 Seth F. Tobey Road
February 6, 2018	#30-17	Special Permit	Donna L. Petron	47 Swifts Beach Road
February 6, 2018	#38-17	Special	David & Eldon	33 Cleveland

Special Permit/February 16, 2018 Variance		Permit/Variance	Moriera	Avenue
60 Days from Close of Public Hearing	#39-17 #40-17 #41-17 #42-17	Site Plan Review	Blue Wave Solar	Off Charge Pond Road
February 6, 2018	#39-17 #40-17 #41-17 #42-17	Special Permit	Blue Wave Solar	Off Charge Pond Road
February 6, 2018 Special Permit/February 16, 2018 Variance	#43-17	Special Permit/Variance	Spencer & Katherine Vachon	225 Glen Charlie Road
February 6, 2018 Special Permit/February 16, 2018 Variance	#44-17	Special Permit/Variance	Heidi Dobbins-Morse	Spring Avenue

VII. NEW BUSINESS (This time is reserved for topics that the Chairman did not reasonably anticipate.

VIII. ADJOURNMENT

MOTION: Mr. Eacobacci moves to adjourn. Mr. Baptiste seconds.

VOTE: (5-0-0)

Date signed: 12-13-2017

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

Date copy sent to Town Clerk: _____

RECEIVED

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TOWN OF WAREHAM
TOWN CLERK