

WAREHAM ZONING BOARD OF APPEALS
Wednesday, December 28, 2022
6:30 P.M.

WAREHAM TOWN CLERK
2023 JAN 12 AM 11:09

I. CALL MEETING TO ORDER

II. ROLL CALL:

Present: Nazih Elkallassi, Jim Eacobacci, Troy Larson (Associate Member) Veronica DeBonise (was present via Zoom), Richard Semple and Jacob Morrison (was present via Zoom)

Absent:

Mr. Buckland was present via Zoom.

III. PRELIMINARY BUSINESS:

1. Approval of Minutes: 12/14/22

Mr. Eacobacci made a motion to accept with one correction which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

2. David Sergi – 8 & 10 Charge Pond Road – Minor Modification

Attorney Jillian Morton was present for the applicant. She said it was two minor modifications to have proposed gravel and a turnaround area, which is a landscaping company. She said it would be easier for gravel.

Mr. Eacobacci said he was okay with it but wants to hear a little bit more specifics. Mr. Larson had no questions. Mr. Elkallassi said he was uncomfortable with it. Mr. Semple said he was fine with it and just wanted more information on what was being done there. Mr. Morrison said he wasn't in favor of it. Ms. DeBonise said she would like to hear more information.

Ms. DeBonise arrived a little later and didn't vote on this modification.

Mr. Eacobacci made a motion to allow the minor modification as long as there is somewhat of a formal plan showing material. Mr. Semple seconded the motion. (3-2-0). The motion carried in the positive, with Mr. Elkallassi and Mr. Morrison voted in the negative.

IV. CONTINUED PUBLIC HEARINGS:

1. 29-22 Joshua DeOlim – Special Permit – 2618 Cranberry Highway – Map 110, Lot

Attorney Bob Perry asked for a continuance again as they are waiting for the final plans. He said they would like a continuance until March 8, 2023.

Christopher Conti was present as a direct abutter. He said this applicant keeps postponing without an end in sight. He said he understands a new site plan review application must be completed. He

said he doesn't understand why the continuance if they haven't submitted a new application for the site review.

Mr. Elkallassi said that engineers are two-three months out, and to be fair he thinks it's okay to give them the extension.

Mr. Eacobacci said that the board directed the applicant to do the site plan review and he did that.

Mr. Perry said that they are entitled to ask for a continuance without withdrawing the application. He said they have a right to amend their application.

Mr. Larson agreed with Mr. Eacobacci.

Mr. Semple stated that he understood what Mr. Conti was saying. He said the board did ask for a site plan review and a continuance should be done.

Ms. DeBonise said she agreed with Mr. Conti's point, and she doesn't understand the rules around the continuance or amendments. She said that the public should be made aware of any amendments, should they have any concerns.

Mr. Conti said he sent an email to Mr. Buckland who said the site plan review wouldn't take place until the application and material was forwarded to the board completely.

The board agreed to the amendment and asked the attorney to renotify the abutters.

Mr. Eacobacci made a motion to continue to April 12, 2023, with an abutter notification. On the question, Ms. DeBonise asked that the applicant send a written request for the continuance. The motion was seconded by Mr. Semple and passed unanimously for a continuance. (5-0-0).

2. 40-22 Kaushal Bhatt – Variance – 47 Sandwich Road – Map 45, Lot 1014

Mr. Elkallassi asked for public comment and there was none.

Ms. DeBonise said she has been thinking about this project and she started having a few reservations about the project. She said they need to revisit the project.

Mr. Larson said he reviewed what the applicant revised on the plan as to what the changes were sensed from the board, and he is fine with it.

Mr. Eacobacci said he wasn't sure why they were voting on it as the density is the question. He said it does look like they did what was asked; but he is also on the fence about the project.

Mr. Semple stated he also left with mixed emotions after the last meeting and the density is the concern. He said it's what they want to do in a small area.

Mr. Elkallassi said he also had reservations about the project.

The applicant stated they spent thousands of dollars to make the changes and he wasn't sure why they are going backwards.

Mr. Elkallassi said they do like to think about things and sleep on it.

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

Mr. Eacobacci made a motion to approve based on the new plans that have to be submitted with an architectural stamp for 47 Sandwich Road. There was no second. The motion didn't pass. (1-3-0)
Ms. Debonise, Mr. Elkallassi & Mr. Morrisson denied..

3. 38-22 Richard & Anita Padula – Appeal of Building Permit – 9 Murphy Street – Map 50B, Lot 1/3

Attorney Morton was present for the applicant. Mr. Elkallassi turned over the chair to Mr. Eacobacci.

Attorney Morton reiterated the case to say that this was the abutters and a building permit that was issued for a two-family and issued incorrectly based on all the lots. She said she is asking the board to remand back to the building commissioner for review.

Mr. Eacobacci said that he will support the building commissioner's permit to grant the two-family permit and stand in force. He said the neighbor's ability to get to the beach is a civil matter.

Ms. DeBonise said she lost sight of the facts of the two-family because, at the last meeting, there was a lot of discussion around the path to the beach from the abutters. She asked Attorney Morton for the facts to the overturn.

Attorney Morton said that the front lot where the two-family building permit will be housed does not have adequate square footage. She said so if the board upholds the building commissioner's decision for the building permit (the total lot size is 143,000 and change); the proposed two-family is currently on 32-33,000 square feet, so under the 45,000 sq foot. She said if allowed to move forward, it would be a non-conforming two-family on a small lot.

Ms. DeBonise said she agrees that this should go back to the building commissioner for review. She said there are a lot of paper streets in that area and the lots are separated by those paper streets.

Mr. Semple said that he agrees it may need to go back to the building commissioner for further review. He said there is a lot of paper roads in that area.

Attorney Morton said that she didn't want to speak for the owner but thought he wanted to go back to a single-family unit. She said the sewer was approved for a single-family only.

The owner was trying to speak but couldn't be heard. Mr. Eacobacci stated they would table it until the owner can possibly speak.

Mr. Elkallassi used his phone to call the applicant, as he still could not be heard via zoom.

Mr. Mike Mazzula said he sent an email response to Attorney Morton and copies to Mr. Elkallassi. He said the letter outlined the fact they decided to build a single-family dwelling on the same footprint. He said it's been reviewed by the building commissioner. He said the main reason was because of the cost factor and didn't want to be reversed in the future.

Mr. Eacobacci explained the petition before them and stated that the hearing would be moot as the permit holder has decided to surrender 2-family permit in exchange for a single-family permit.

Ms. Morton said the email was not formally sent to the board. She said she didn't think it would be a moot point; she said she would like to receive a ruling from the Zoning Board.

Mr. Eacobacci said he'd be inclined to extend it for two weeks to wait for the formal request for a single-family permit versus what is before them currently.

Ms. DeBonise said she would like to make a ruling on this and not leave it messy, and it wouldn't have to come back to them.

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

Ms. DeBonise made a motion to overturn the two-family building permit and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0).

4. 35-22 Nazih B. Elkallassi – Variance/Special Permit & Site Plan Review – 434 Main Street, Map 61 Lot 1057

Mr. Elkallassi recused himself and Mr. Eacobacci took over as chairperson.

Mr. Brian Grady was present for the applicant. He reviewed the project for 434 Main Street with revised plans. Mr. Grady reviewed the project, four units, eight apartments. He discussed building coverage at 26%, impervious has been reduced to 53.9%. He explained the easement area with deed restriction for impervious, which would reduce further the coverage and impervious. He explained what he was seeking from the zoning board.

Ms. DeBonise asked if they were asking for a 1% variance for coverage and if any other variances were requested. Mr. Eacobacci stated there would be a site plan review and this is a by-right project. Ms. DeBonise said it is not by-right, but it is a Special Permit.

Ms. DeBonise asked about the lot on High Street and if it was in conformance. Mr. Grady stated it was. She asked about the hardship.

Mr. Grady suggested the hardship would require more tweaks. He said if they would conform by changing the decks to patios.

Ms. DeBonise said she likes the new design. Mr. Morrison said it was a much better plan than before.

Mr. Semple said he wasn't sure how you turn one piece of property into little lots and then do an easement on the property you just made smaller. He said he was uncomfortable with that concept. He said he was happier with the design.

Mr. Larson agreed with Mr. Semple.

Ms. DeBonise asked further questions about the easement. Mr. Grady said it was a benefit to the project; he said the variance should be for the numbers not for the easement. Ms. DeBonise asked if there would be an engineer review as Mr. Rowley has retired.

Mr. Grady said Mr. Rowley did the initial review.

Mr. Semple made a motion to continue to February 22, 2023 and was seconded by Mr. Larson. The motion passed unanimously. (5-0-0)

V. PUBLIC HEARINGS:

1. 42-22 Francis Ellis, Jr. – Variance – 7 Mattos Avenue – Map 110, Lot 9B

Attorney Jillian Morton was present for the applicant.

Mr. Eacobacci read the advertisement for the record.

Ms. Morton stated this was an application for a variance, because of a denial from the Building Commissioner. She said the property was in the commercial district and a single-family dwelling is not allowed. She explained other homes in the area are residential and it is a unique area. She said there was a single-family dwelling there at one point.

Mr. Eacobacci stated it was a use variance and asked about the frontage requirement.

Mr. Elkallassi said it was a grandfathered lot and what was in front of them was the use variance.

Ms. Morton said the previous structure was removed in 2018. She said they came before this board in 2017 for a duplex and it was denied.

Ms. DeBonise said there is not a lot of Commercial zoning in Wareham, and she doesn't see a hardship. She said a commercial permit could be issued to the lot.

Mr. Eacobacci explained the property and stated if commercial would go in there it would be very small. He said he doesn't think that would be a better use for the area/property.

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

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

Mr. Eacobacci made a motion to grant as requested for a single-family dwelling and it was seconded by Mr. Semple. The motion failed 3-2-0; Mr. Elkallassi and Ms. Debonise denied.

2. 43-22 Richard E & Audrey Kradin – Special Permit – 24 Cove Street – Map 2, Lot 264.

Mr. Eacobacci read the advertisement in for the record.

Mr. Brad Bertolo was present as the engineer, for the applicant. He explained there was a single-family dwelling present. He said it was a non-conforming lot with non-conforming side setbacks and floor ratio. He said they'd like to construct two small additions in the front that square off the structure. He said the proposed expansion would require the Special Permit; he said its being denied because of Article 6 floor to ratio. He said he submitted pictures and renderings to the board.

Mr. Elkallassi said this was an existing non-conforming lot and the floor-to-ratio (FTR) was 20.6 and they want to move to 22.20%; which would require a Special Permit, not a variance. He said setbacks have no change.

Mr. Eacobacci said he was fine. Mr. Semple agreed as well as Mr. Elkallassi.

Ms. DeBonise asked the reason for the change.

Mr. Elkallassi asked for public comment and there were none.

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

Mr. Eacobacci made a motion to grant the Special Permit as presented, as it is not detrimental to the neighborhood and was seconded by Ms. DeBonise. The motion carried. (5-0-0).

3. 44-22 Diane Gorfinkle – Special Permit and a Variance – 12 Onset Bay Lane – Map 2, Lot 27

Mr. Eacobacci read the advertisement for the record.

The architect, Mr. Lockwood was present for the applicant. He explained the project. He said it's a very small lot with a small house and would like to build on three separate divisions, which will increase the FAR as well as building coverage. Currently, building coverage is existing non-conforming looking to increase it by 4%. Impervious coverage would increase to 39%; the variance portion is the F.A.R. They are seeking under 25% to about 28%, trying to get a little elbow room for an applicant who would like to retire here. He said the applicant is limited in what she can do.

Mr. Elkallassi stated it was an existing non-conforming, he said if they thought it was not detrimental to the neighborhood, they would give the Special Permit.

Ms. DeBonise asked what rooms would change with the addition.

Mr. Lockwood said one would increase living room space, increase the master bedroom and the last would increase the secondary bedroom (only 6' wide presently). He said the total size of the lot is 24440 sq feet; and they are increasing the size of house from 550 sq feet to 578 sq feet.

Mr. Elkallassi opened it for public comment.

Ms. Cynthia O'Neil from 10 Onset Bay Lane was present. She said they had an opportunity to speak to the applicant and their only concern was the builder would have to be on their property. She said their property would be impacted and wanted that noted.

Joel Greeman was present in favor of the project; he lives at a cross street from Onset Bay Lane.

Betty Cassidy, 14 Onset Bay Lane was also in favor.

Ms. DeBonise asked if the setbacks would encroach any more on the side of the resident to the neighborhood. Mr. Lockwood said it would make it a foot; he said it is currently .4'; he said the nearest they would be a foot.

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

Mr. Eacobacci made a motion to grant the Special Permit and variance as it is not detrimental to the neighborhood with the standard conditions. Mr. Semple seconded the motion, and it was passed with Ms. DeBonise abstaining. (4-0-1).

4. 45-22 Susan Thomassen – Special Permit – 13 Woodland Circle – Map 46A-1, Lot 139

Mr. Eacobacci read the advertisement.

Ms. DeBonise signed off the zoom *and back on. JG. 1-11-2012* It was noted that Mr. Morrison was not on the Zoom call.

Attorney Conroy was present for the applicant. He explained the two small dwellings on the property that have been there since 1930s. He said that work was started with a building permit that wasn't pulled from the building department. He said the building commissioner issued a denial letter and requested a visit to the ZBA for a special permit. Attorney Conroy explained the building coverage percentages and the floor to area ratio

Mr. Elkallassi stated they are extending non-conformance.

Mr. Eacobacci said there was a letter from a neighbor that should be considered, however, a name was not listed and for all intent purposes was anonymous. Mr. Elkallassi said that letter disagreed with surveyor and would need to hire their own surveyor.

There was no public comment.

Mr. Eacobacci made a motion to close the public portion of the hearing which was seconded by Mr. Semple. The motion passed unanimously. (5-0-0)

Mr. Eacobacci made a motion to grant the Special Permit for 45-22, 13 Woodland Circle as presented and seconded by Mr. Larson. The motion passed unanimously. (5-0-0).

5. 46-22 George Gakidis – Special Permit – 31 North Water Street – Assessors Map 2, Lot 170

Mr. Eacobacci read the advertisement for the record.

Engineer, Mr. Grady was present and reviewed the project for a 2-car garage. He stated the building commissioner issued a denial letter that they needed a Special permit from the zoning board. He said currently the lot is non-conforming for building coverage and F.A.R. He said both would increase per the proposed building. Existing building coverage is 23.8%, would be 32.9%; and the floor area ratio is currently 23.8%, proposed 32.9%.

Direct abutter, Chris Richard wrote a letter with no objection that was submitted for the record.

Mr. Grady said they were looking to add a garage with storage/study above with no plumbing.

Board had no additional questions.

Mr. Elkallassi opened it up for public comment. He asked who was in favor of the project.

Owners, Ed Lawson and Patricia Demaris were present and explained why they wanted to construct a garage.

Atty Robert Perry, representing neighbor, Janice Lathem across street stated he believed a variance should be in question, not a Special Permit as it is for a new building

Mr. Eacobacci stated he was confused about the objection. Ms. Lathem said she was objecting to the size of the structure.

Mr. Grady explained they are building under the height restriction – he said they are building the second floor for extra storage, a study space as a big open space. No bathroom, no livable space.

Mr. Larson asked if dormer could be built just on the back. Mr. Semple would need more time to do a site visit. Mr. Eacobacci said it was appropriate to continue but cautioned that he could redo the plans to increase the height and be a by-right.

Mr. Elkallassi made a suggestion that the owners meet with the neighbors who object.

Ms. Latham said she is not objecting to the garage but to the height.

Patricia Demaris of 31 N. Water Street said they have met with her for two hours and she said she just wanted it postponed. Mr. Elkallassi explained the consequences of an appeal and advised them to discuss it again.

Paul Moore, a neighbor stated his objection said the garage was too big for the neighborhood.

Mr. Edward Watson, owner of said property stated he grew up in this neighborhood. He said he was looking for storage and stairs inside. He said he doesn't want anything massive or big, he just wants a modern two car garage.

Mr. Eacobacci made a motion to continue to January 11, 2023 and was seconded by Mr. Semple. The motion passed unanimously. (5-0-0).

VI. COMMENTS FROM BOARD MEMBERS:

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

Date signed: 1-11-2022

Attest: James W. Eacobacci

James Eacobacci, Clerk

WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: _____

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