**MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS**

**Date of Meeting: April 11, 2018**

1. **CALL MEETING TO ORDER**

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

1. **ROLL CALL**

Members Present: Nazih Elkallassi, Chairman

Jim Eacobacci, Clerk

Karl Baptiste, Sr.

Jan Kendrick

Wilma Engerman

Jake Morrison, associate member

Also present: Ken Buckland, Town Planner

Charles Rowley, Town Review Engineer

David Riquinha, Building Commissioner

Peter Teitelbaum, Selectman

Paul Haverty

**III. PRELIMINARY BUSINESS**

1. **Approve meeting minutes: February 28, 2018**

**Mr. Elkallassi recommends reviewing the minutes at the next hearing.**

1. **PUBLIC HEARINGS**

**A. #3-18 –Lenord Cubellis – 4 Union Avenue**

Present before the Board: Lenord Cubellis

Jamie Souza

The applicant is requesting to change the use of three business suites into residential units and turn the mixed-use building into a residential apartment. Mr. Cubellis states the Union Villa building has been a monument in Onset. The top four floors are all residential, which are rented successfully. The garden level does not have space to create handicapped access and have been rented as commercial spaces, with little success. Mr. Cubellis feels it would be a benefit to the property and the neighborhood to turn these units to residential.

Mr. Elkallassi asks what is in the office space. Mr. Cubellis states that the Onset Bay Association had held one of the suites and has recently moved. That space is now vacant. One is contractor storage space and the third suite is a plumbing subcontractor’s storage space.

Mr. Riquinha states that to change this use Mr. Cubellis must comply with zoning. This number of units requires 15,000 s.f. of land. There is 8,029 s.f. of land currently, which is why the application requires a Variance.

Mr. Elkallassi asks what size the units would be. Mr. Cubellis states the first unit is proposed to be 630 s.f., the second unit would be 450 s.f., and the third unit would be 675 s.f. Mr. Elkallassi states that would be another Variance because each unit should be at least 650 s.f. in size and he believes that the 650 s.f. minimum requirement does not include space for bathrooms or closets. Mr. Riquinha states he does not believe the By-Law addresses the space requirement for bathrooms.

Ms. Kendrick states that solely due to the change of use is the requirement for the increase of square footage. Ms. Kendrick states the motive for this is there is not space for handicapped access. Mr. Cubellis states there is not access

Present before the Board: Geff Gourmand

Mr. Gourmand states that he has lived in Onset for 20 years and that Mr. Cubellis had just improved his neighborhood in Point Independence. Since then, Mr. Gourmand states he has seen Mr. Cubellis transform a number of dilapidated buildings in Onset into beautiful, successful rentals.

Present before the Board: David Heard

Mr. Heard asks if there is sufficient parking for anyone moving in to the neighborhood. Mr. Elkallassi states Onset does not have a multitude of parking. Mr. Cubellis states they are fortunate that this is one area where there is off-street parking in the rear of the building.

Present before the Board: Dominic Cammarano

Mr. Cammarano states that Onset Village is a quaint village and feels that removing the commercial ground level in Onset would be a shame because that is something Onset Village is known for and having residential units on the ground floor is unappealing for the area. Mr. Cammarano feels if they allow Mr. Cubellis to do this then others will want to follow.

Present before the Board: Bill Bachant

Mr. Bachant states he would much rather see a residential use there than vacant buildings.

Mr. Eacobacci reads a letter into the record from James Coolie. Mr. Coolie feels that Mr. Cubellis has done beautiful work and is in full support of the project.

Mr. Elkallassi states he has a problem with the size of the proposed units.

Ms. Engerman states she is opposed to the number of units going in. The units proposed are too small. Mr. Elkallassi asks if the applicant transformed the units to two units if she would be in favor. Ms. Engerman states she has concerns about the parking.

Mr. Eacobacci does not have any objections to the project as presented. Ms. Kendrick states she is not opposed to the change in use, but she is concerned with the size of the units.

Mr. Riquinha states he misspoke earlier, that the 650 s.f. requirement does exclude closets and bathrooms. Mr. Riquinha also states the parking is improved with the change of use.

Mr. Baptiste states that if he were to vote for this project he would not vote for more than two units.

Mr. Eacobacci states it is difficult to lease to a commercial use in that area.

**MOTION: Mr. Eacobacci moves to continue the public hearing until April 25, 2018. Ms. Kendrick seconds.**

**VOTE: (5-0-0)**

**B. #7-18 – Lenord Cubellis – 197 Onset Avenue**

Present before the Board: Lenord Cubellis

Jamie Souza

The applicant is proposing to construct an addition to an existing non-conforming structure. Mr. Cubellis states they had previously requested to construct an addition to this property on both floors. Mr. Cubellis states they are currently requesting to expand only the first floor of the building. Due to the odd shape of the lot and the unique shape of the building they are requesting a Variance. Mr. Cubellis states that at the previous hearing concerns of a view easement were brought up, but this property is not subject to the view easement. Mr. Cubellis is requesting that the Board re-consider the revised project.

Ms. Engerman states the proposed project is too close to the property line.

Mr. Eacobacci has no objections. Ms. Kendrick has no objections.

Mr. Baptiste asks if this will be an apartment. Mr. Cubellis states that this will be an expansion of commercial space, there will be no apartment.

Present before the Board: Thomas (name indiscernible)

Thomas states that he feels this bar never should have been allowed to have Plexiglas windows in this location right on the sidewalk where children can walk by and see people drinking.

Present before the Board: Nancy Miller

Ms. Miller states she would like to voice an opinion of a large number of people who are against this project. Ms. Miller states that there should be a copy of the deed in the file about not blocking Ms. Dean’s property and view. Ms. Miller states that Onset has a family environment and that there are drunks walking around Wareham. Mr. Elkallassi states that at the last hearing it was proven that the view easement does not apply to this property. Ms. Miller states it does apply to this property. Ms. Kendrick states that matter is out of their purview. Ms. Miller states that this matter has been before the Board for years. Mr. Elkallassi states that there was never a lawyer present, or a letter from a lawyer, to prove the view easement did pertain to this property. Unless a lawyer certifies the view easement it is heresy. Mr. Elkallassi states that people drink at bars and Mr. Cubellis cannot be held responsible for that.

Present before the Board: Bill Bachant

Mr. Bachant states that they are trying to expand an ice cream store that does wonders for Onset.

Mr. Baptiste states he would approve the project with the condition that the expansion is for the ice cream store only and that Quahog Republic will not expand.

Mr. Cubellis states for the record that Quahog Republic has been great for Onset Village, the manager runs a very tight ship, and it is not a place where people are allowed to get drunk. That is not what the owners want for their business. Mr. Cubellis states that Quahog Republic has no plans to expand right now. Mr. Cubellis does hope that at some point they would like to open on a year-round basis. Mr. Cubellis states that Ms. Souza’s office is in the back of the ice cream parlor and they would be making this expansion for her office.

Mr. Eacobacci reads a letter into the record from Winna Dean stating that they are opposed to the project and opposed to any changes to the bluffs. Ms. Dean is opposed to her view being obscured.

Mr. Rowley asks if he could ask a few questions. Mr. Rowley states it looks as though the proposed addition is only 3 inches from the property line. How will a foundation be dug without encroaching on Town property? Mr. Rowley asks if the applicant has requested a temporary easement to perform the construction. Mr. Rowley asks what the roof overhang is and what happens to the runoff. Mr. Cubellis states there is a gutter on the building that will redirect the runoff. Mr. Cubellis states he understands he would need permission from the Town for the construction of the addition. Mr. Rowley asks how they will maintain the gutter. Mr. Cubellis states he would speak with the Town regarding that. Mr. Cubellis states as an architect there are ways to construct up to a property line.

Mr. Rowley states some sort of permanent easement that allows access to that side of the site would be needed. Mr. Elkallassi states he agrees an easement would be required for this project. Mr. Rowley recommends making the Variance conditional upon the receipt of the easement. Mr. Cubellis states since that Town property is public property that he is unsure he would need a permanent easement to maintain his property.

Present before the Board: John Cornish

Mr. Cornish states that he would like to point out to the Board that he has run into the same arguments to improve his own property. Mr. Cornish states that the outcome is that healthy, viable business are a benefit to Onset and he feels that anyone who is willing to invest their money into the Town should get fair consideration.

Present before the Board: Alan Slavin, Selectmen

Mr. Slavin states that the Town of Wareham does not own the land adjacent to the property, the Town is the Trustee. Mr. Slavin states for Mr. Cubellis to get an easement would be extremely difficult as the Town does not have the authority to grant the easement as a Trustee.

Mr. Eacobacci recommends further study or discussion on the matter.

**MOTION: Mr. Eacobacci moves to continue the public hearing until April 25, 2018. Ms. Kendrick seconds.**

**VOTE: (5-0-0)**

**C. #4-18 – Mike Giancola – 72 Minot Avenue**

The applicant is requesting to add a new building on an undeveloped portion of their lot and also requesting a Special Permit to clear 50,000 s.f.

Mr. Elkallassi states as a matter of interest he must excuse himself and Mr. Eacobacci will act as chair.

Present before the Board: Leonard Bello, Attorney

Michael Giancola, Giancola Minot, LLC

Mr. Bello states that the existing lot housed a pre-existing commercial building. The lot consists of 4.58 acres. The existing building uses about half of the lot, while the remaining lot is woodlands. The lot is located in an MR-30 Zoning District, however, previous Zoning Decisions have shown that this lot has held a continuous non-residential use since 1973, at which time the Lot was in a Commercial District. In 2014 the Zoning Board of appeals approved a Special Permit and Change of Use for this property. At that time the Zoning Board specified certain business uses that would be allowable on the site such as: educational non-exempt, oceanographic engineering research offices, laboratory research offices, service establishments not involving manufacturing on the premises, wholesale business, retail sale of marine equipment and supplies, not including fish products or food, manufacturing of products on the premises, light manufacturing, or storage facilities. The Board found this would increase tax revenue and increase employment opportunities in Town. Mr. Giancola is proposing to construct a second building on the site similar to the one that currently exists. The proposed building meets all setbacks and parking requirements of today’s current zoning. Mr. Bello states that Mr. Giancola would be more than willing to comply with the allowed uses from the previous Zoning Board decision, however, he feels it would be more sensible to list the prohibited uses for the property rather than listing the allowed uses. Mr. Bello states they are requesting the Special Permit to clear 50,000 s.f. or more.

Mr. Baptiste states that since they do not know who the tenant will be they do not know the traffic impact this is going to have. Mr. Giancola states he assumes that the use will be similar to the existing building, which are not retail uses and do not generate a lot of traffic.

Mr. Elkallassi states that he would like landscaping to be well done on the site.

Present before the Board: Alan Slavin

Mr. Slavin states that Mr. Giancola did a project on Route 6 and 28 that is clean and well taken care of and shows the quality of work that he does. The landscaping is very well done. Mr. Slavin states that matching a current building is a low impact and low cost to the Town and would have a positive impact. Mr. Slavin states that he does believe the Special Permit for the clearing is actually to be granted by the Planning Board and not the Zoning Board. Mr. Elkallassi states he believes once the applicant is before the Zoning Board for a Special Permit or Variance they then also become the Special Permit Granting Authority for the project, including the clearing. Mr. Bello states he believes Mr. Elkallassi is correct. Mr. Riquinha states in his opinion the Zoning Board does have authority over this. Mr. Rowley states that he is unsure if the building that was there in 1950 and is unsure if that makes any difference to the Special Permit modification. Mr. Rowley asks if Mr. Giancola might consider having a single entrance for both buildings to lessen the curb cuts. Mr. Eacobacci states they don’t want to restrict the site too much.

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

**VOTE: (5-0-0)**

**MOTION: Mr. Baptiste moves to approve the Special Permit modification subject to Site Plan Review and also to approve the Special Permit to clear 50,000 s.f. or more.**

**VOTE: (4-1-0)**

Mr. Bello asked if they could continue to the second meeting in June to discuss the Site Plan Review.

**MOTION: Motion is made to continue the Site Plan Review until June 20, 2018. Motion is seconded.**

**VOTE: (5-0-0)**

**D. #5-18 – Linda & Tom Hanon – 62 West Boulevard**

Present before the Board: Bill Lockwood, Lockwood Architects

Linda & Tom Hanon

The applicant is requesting to raze the existing single-family dwelling and construct a new, less non-conforming structure. Mr. Lockwood states he feels this reconstruction will be more suitable in the neighborhood as well. Ms. Kendrick asks what the slight increase in non-conformity. There is no increase in non-conformity. On the southerly side it is currently 4.4 feet from the property line and is proposed to be 4.8 feet from the property line. On the rear it is currently complying at 24 feet and the right side is complying as well. Mr. Eacobacci asks what the square footage of the new building will be. Mr. Lockwood states it is proposed to be 1,600 s.f.

Present before the Board: Denise Hickson

Ms. Dickson is asking how the two homes compare. Mr. Lockwood states that the existing house is about 20 and a half feet high, the new structure will be about 6 feet higher.

Ms. Hickson also states there will be a fair amount of excavation on the project and wanted to know if there would be adverse impact to abutters concerning water table and water flow. Mr. Lockwood states that they are the lowest property on the street, the water would not be going uphill to abutting properties. Mr. Lockwood also states there will be hay bales surrounding the property during the work.

Ms. Hickson also asks where the retaining walls will be. Mr. Lockwood states there are retaining walls on site that will not be proposed to be changed. Ms. Hickson states she is concerned this is essentially a three story structure in a neighborhood that is primarily one-story homes. Ms. Hickson is concerned the height will impact the view, light, and air flow. Mr. Elkallassi states that the applicant is entitled to that height if the Board allows it.

Present before the Board: Linda Sharf

Ms. Sharf states that when she reviewed the plans the height appeared to be 35 feet in height. Mr. Lockwood states that 35 feet is the maximum height allowed and the house will be under 35 feet. Mr. Lockwood states that due to the slope of the site the house is measured from the average grade to the mean of the principle roof line and will be at about 26 feet. Mr. Riquinha states that according to the By-Law the height is measured to the top height of the roof, and states he will need to certify building height in order to issue a building permit.

Ms. Sharf asks where the building will be changed on the property to understand if her view will be changed. Mr. Lockwood states the view should be enhanced with the new construction with the change of the roof line.

Ms. Engerman asks how old the house is. Mr. Lockwood states it was constructed over 75 years ago and they have been through the historic commission to demolish the house.

**MOTION: Mr. Eacobacci moves to close the public hearing. Mr. Baptiste seconds.**

**VOTE: (5-0-0)**

**MOTION: Ms. Kendrick moves to allow the project as a Special Permit on the grounds that the plan does not result in a substantial increase in non-conformity and is not detrimental to the neighborhood. Mr. Eacobacci seconds.**

**VOTE: (5-0-0)**

**MOTION: Mr. Eacobacci moves to approve the project subject to the structure not exceeding 35 feet in height and standard conditions and according to plans drafted by J.C. Engineering dated January 22, 2018 and by plans by Lockwood Architects dated February 10, 2018. Ms. Kendrick states that she would not like the building to be built to 35 feet. Mr. Elkallassi states there will be a condition for the building height to not exceed 27 feet. Ms. Kendrick seconds.**

**VOTE: (5-0-0)**

**E. #6-18 – Richard J. Smith – 35 & 39 Priscilla Avenue**

Present before the Board: Richard J. Smith

Brad Bertolo, JC Engineering

Ms. Kendrick has excused herself from this case, Mr. Morrison will vote in lieu of Ms. Kendrick. Mr. Smith must present the case otherwise Mr. Elkallassi cannot sit on the case.

The applicant is requesting to raze the existing structure and seeking to construct a larger residential structure. Mr. Smith states that years ago he purchased 39 and 35 Priscilla Avenue on White Island Pond. 39 Priscilla Avenue is currently still in existence and still standing. 35 Priscilla Avenue was razed. Mr. Smith would like to raze and reconstruct 39 Priscilla Avenue. Mr. Bertolo states this project has been before the Conservation Commission. The existing footprint of the dwelling and deck is shown to sit 3.1 feet from the property line. The proposed setback was pulled away from the pond at the rear of the property line to be 15.3 feet from the rear property line. The house is proposed to be 20 feet from the side property line and 20.3 feet from the front property line. The property is 100 feet deep and the zoning requirement is 100 feet of frontage, so it is impossible for the setback to be met. Mr. Bertolo feels this is not detrimental to the neighborhood.

Mr. Riquinha states the right and front lot lines the setbacks will become more non-conforming, but the left and rear lot lines are lessening. Mr. Rowley asks is the existing gravel driveway will maintain. Mr. Smith states it will be maintained. The plan shows a paved driveway but the Conservation Commission stated they would not like any impervious surface. Mr. Rowley asks if there will be any kind of facilities that bound the perimeter of the paved surface and the runoff that comes off of that. Mr. Smith states there is rip-rap there now and it does not cause an issue now. Mr. Bertolo states Conservation had no issue with this. The retaining wall is to be removed and replaced.

**MOTION: Mr. Eacobacci moves to close the public hearing. Mr. Baptiste seconds.**

**VOTE: (5-0-0)**

**MOTION: Mr. Eacobacci moves to approve this application as a Special Permit with standard conditions with plans by JC Engineering, Inc. dated February 7, 2018 and the architectural plan by Cornerstone Design Services.**

**VOTE: (5-0-0)**

**F. #8-18 – Bachant Builders – 17 Washburn Court**

Present before the Board: Bill Bachant

Mr. Eacobacci will have to recuse himself from voting, Jake Morrison will vote in lieu of Mr. Eacobacci.

The applicant is requesting for relief on a height restriction for a building that was constructed ten years ago. Mr. Riquinha states that this project was permitted years ago and has changed hands multiple times. There have been a lot of open violations and failed inspections at this property. This building has not yet had tenants. Mr. Bachant has purchased the house and would like to complete the house, sell the property, and enhance the neighborhood. Whoever built the structure initially built it too high, and Mr. Bachant is requesting an after the fact Variance. Mr. Eacobacci comments he feels this property is currently a blight on the neighborhood and he would like to see it fixed.

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

**VOTE: (5-0-0)**

**MOTION: Mr. Baptiste moves to grant the Variance as presented. Mr. Morison seconds.**

**VOTE: (4-1-0)**

**G. #9-18 – Anthony & Barbara Leone – 13 Seventh Street**

Present before the Board: Chris Ellis

The applicant is requesting to construct a 14’x10’ kitchen addition. Mr. Riquinha states that the building meets all current setbacks, but is increasing the lot coverage, which is currently non-conforming.

Present before the Board: Dominique Cammaron

Mr. Cammaron states the owners before these owners had a fence installed which is currently dilapidated and asks the Board if they could require the applicant to fix the fence.

Mr. Ellis states that on behalf of the Leone’s how does he know it is their fence.

Mr. Eacobacci asks Mr. Cammaron if he would pay for the fence if the applicant agreed to install the fence. Mr. Cammaron says he would not.

Mr. Elkallassi states this will not be a condition of approval but asks Mr. Ellis to ask the applicants if they would consider reconstructing the fence.

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

**VOTE: (5-0-0)**

**MOTION: Mr. Eacobacci moves to grant as a Special Permit subject to standard conditions. Mr. Baptiste seconds.**

**VOTE: (5-0-0)**

1. **CONTINUED PUBLIC HEARINGS**

**A. 46-17 – Ramos Realty Trust – 300 Glen Charlie Road – Requested continuance**

The applicant has requested a continuance.

**MOTION: Mr. Eacobacci moves to continue the public hearing until May 9, 2017. Mr. Baptiste seconds.**

**VOTE: (5-0-0)**

**B. 2-18 – Comprehensive Permit – Dakota Properties – 3102 Cranberry Highway**

**MOTION: Mr. Eacobacci moves to continue the public hearing until April 25, 2018. Mr. Baptiste seconds.**

**VOTE: (5-0-0)**

1. **ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS**
2. **Correspondence**
   1. See correspondence sent via email and/or in packets.
3. **Certificate of Completion – Mike Harrington – 0 Squirrel Island Road**

No one is present at this time.

1. **Request for minor modification – James Caporiccio - 5 Albatross Avenue**

Present before the Board: Bill Lockwood, Lockwood Architects

Faith and James Caporiccio

Mr. Lockwood states that they had a Special Permit granted in the fall to construct a new home. Conservation stated the house could not be built in the footprint. Mr. Lockwood states they had to redesign the home to fit in the available lot area. While it is a major change in design, the footprint is massively decreased due to the Conservation restrictions imposed on the property, but feel it is a minor modification and is less non-conforming. The height of the building has changed, it has gone from a single-story to a two-story residence. The previous attached garage will now be a garden level garage underneath the house.

**MOTION: Mr. Eacobacci moves to grant the minor modification based on new plans from JC Engineering, Inc. dated March 7, 2018. Mr. Baptiste seconds.**

**VOTE: (5-0-0)**

1. **Upcoming Hearings:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **April 25, 2018** | **#10-18** | **Variance/Special Permit** | **Timothy & Christine Smith** | **83 Pinehurst Drive** |
| **April 25, 2018** | **#11-18** | **Variance/Special Permit** | **Debra Becky** | **13 Onset Bay Lane** |
| **May 9, 2018** | **#1-18** | **Use Variance** | **J. Donegan** | **2419 & 2417 Cranberry Highway and Seth F. Tobey Road** |

1. **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** |
| **Special Permit – March 27, 2018**  **Variance – April 6, 2018** | **#46-17** | **Special Permit/Variance** | **Ramos Realty Trust** | **300 Glen Charlie Road** |
| **Variance – April 20, 2018** | **#1-18** | **Variance** | **J Donegan Company** | **2419 & 2417 Cranberry Highway and 4 Seth F. Tobey Road** |
| **Comprehensive Permit – August 27, 2018** | **#2-18** | **Comprehensive Permit** | **Dakota Properties** | **3102 Cranberry Highway** |
| **Variance – July 18, 2018** | **#3-18** | **Variance** | **Lenord Cubellis** | **4 Union Avenue** |
| **Special Permit – July 10, 2918**  **Variance – July 20, 2018** | **#4-18** | **Variance/Special Permit** | **Mike Giancola** | **72 Minot Avenue** |
| **Special Permit – July 10, 2918**  **Variance – July 20, 2018** | **#5-18** | **Variance/Special Permit** | **Linda & Tom Hannon** | **62 West Boulevard** |
| **Special Permit – July 10, 2918**  **Variance – July 20, 2018** | **#6-18** | **Variance/Special Permit** | **Richard J. Smith, Tr.** | **35 & 39 Priscilla Avenue** |
| **Special Permit – July 10, 2918**  **Variance – July 20, 2018** | **#7-18** | **Variance/Special Permit** | **Lenord Cubellis** | **197 Onset Avenue** |
| **Variance – July 20, 2018** | **#8-18** | **Variance** | **Bachant Builders** | **17 Washburn Court** |
| **Special Permit – July 10, 2918**  **Variance – July 20, 2018** | **#9-18** | **Variance/Special Permit** | **Anthony & Barbara Leone** | **13 Seventh Street** |

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

**VIII. ADJOURNMENT**

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

**VOTE: (5-0-0)**

Date signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

James Eacobacci, Clerk

WAREHAM ZONING BOARD OF APPEALS

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