

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: July 13, 2011

I. CALL MEETING TO ORDER

The meeting was called to order at 7:00 P.M.

II. ROLL CALL

Members Present: Ken Ferreira, Chairman
Mike Martin, Vice Chairman
Mary Scarsciotti, Clerk
Richard Secher
David Sharkey
Wilma Engerman, Associate Member
John Cronan, Associate Member

Also Present: Miles Burke, Director of Inspectional Services

III. PRELIMINARY BUSINESS **(NONE)**

IV. PUBLIC HEARINGS

A. #29-11 – William Hallisey – 189 Marion Road

The public hearing notice was read into the record.

Present before the Board: Attorney Len Bello
William Hallisey

Attorney Bello made the following presentation. The petition is for a Special Permit/Variance for Lot B on Assessors Map 60 which has a street address of 189 Marion Road.

The petitioner seeks to construct a 6080 sq. ft. commercial building which is intended to be the new location of the liquor store and bottle redemption center which currently operates its business in the plaza about a quarter of a mile down Marion Rd. known as Brown's Liquor Store.

Relief is required from this Board as the lot in question is in the MR-30 district.

The Building Inspector's denial letter advised the applicant that he may need either a Special Permit under Article 13, Section 1330 or a Variance from Article 3, Use

Regulation Table 320 or seek to amend the existing Special and Variance Permit #19-99, a copy of which has been provided w/ the application packet.

It is, however, the undersigned's understanding that this application, in a slightly different form, was previously presented to this Board by the applicant's engineer, John Churchill. Mr. Churchill, following the Building Inspector's remarks, believed only an extension of the existing Special Permit was required and based his presentation accordingly. The Board however, was then of the opinion that it would be more appropriate to require a Variance. The Board also addressed its concerns w/ the plan as submitted. The application was allowed to be withdrawn without prejudice following the Board's input to allow the applicant to refine the project and amend the plan.

The plan has now been revised, the scope of the project has been cut back, and each of the concerns raised by the Board has been addressed. In light of the Board's previous comments, Attorney Bello stated he has focused his presentation on the more stringent requirements needed for a Variance, but still leave open for the Board's consideration the other options referenced by the Town Building Inspector in the denial letter.

What makes this lot unique, as compared to the zoning district in general, is that the lot is already subject to a Special Permit/Variance which was granted to a previous owner in or about June of 1999 and allows for a specific commercial use, for example, the display and sale of shrubbery and landscape materials. The other unique characteristic about this particular lot, aside from its rectangular shape is that is burdened by an easement which benefits the abutting lot on which lot there exists a rather substantial and active commercial enterprise, for example, the Wareham Country Market and Dunkin Donuts.

The location and configuration of Marion Road (a four lane roadway) along with its speed of travel make it far more desirable and compatible with commercial uses than a residential community. This probably explains why so many commercial enterprises have been developed along Marion Road. Locals are familiar with the various retail businesses which line the roadway, like the Wareham Shopping Plaza, the local marine storage facility, which was previously an automobile dealership, Secret Intimate Apparel, hair salon, two automobile service stations, Wareham Country Store, Sullivan Plaza which has its own liquor store, Braman Engineering, China Garden, & Cranberry Cottage. In light of the above, allowing the petition cannot be said to be in violation of the intent of the zoning Bylaw nor detrimental to the existing neighborhood. Surely, the highest and best use of this lot is for a commercial, rather than residential use. There is most definitely a financial hardship to be incurred by the petitioner should the Board limit the lot's use of what is undesirable and unrealistic. The proposed use is more in line with the neighborhood than that which is permitted by the current Special Permit and the business which is now in operation at this location pursuant to that permit.

In essence, the petitioner is simply requesting to have an existing business cease doing business at its present location, take with it its current license and move a quarter of a mile down the street and continue its business in a new similarly sized and more aesthetically pleasing building.

As mentioned, the Board's comments and suggestions as relayed by Mr. Churchill have been taken into account and addressed. The size of the building has been scaled back to 6080 sq. ft. & plans for additional rental space or further expansion have been abandoned: the Country Market's easement is no longer infringed upon in any way, the traffic flow has been revised, and more attention has been given to where and how deliveries are made. A letter has been submitted by the Town's Police Dept. which states that there is no anticipated negative impact in regard to traffic if the application were to be granted.

The applicant's request is reasonable and should not be brushed aside because of competing business interests which exist in this same neighborhood solely as a result of their obtaining the same type of relief from the Board as this applicant now seeks. The intended result is not to add a new liquor store, but simply to allow an existing liquor store to relocate in the same neighborhood.

Discussion ensued re: the property. It was stated that there was a Special Permit granted in 1999 for the sale of nursery products on this property. This was the applicant's grandparent's property. In 2006, the applicant purchased the property from the grandparent's. From 2006 to 2010, nothing was being operated at the property & an attempt was made to sell the property. Discussion ensued re: if the property is still being utilized for something.

The ZBA argued the point that the Special Permit ran out because it was not used for two years. The applicant wants to change the property over to be utilized for a liquor store. This would constitute a change of use. Discussion ensued re: the need for a site plan because it is a change of use, there will be a business there, parking will be needed, etc. The plan submitted has a building & some markings, but it isn't adequate.

Mr. Ferreira noted the easement the Country Market is using was a parking lot. Brief discussion ensued re: parking.

The Board concurred to continue this hearing.

MOTION: A motion was made & seconded to continue the public hearing for petition #19-99 – William Hallisey – 189 Marion Road to August 10, 2011.

VOTE: Unanimous (5-0-0)

V. CONTINUED PUBLIC HEARINGS

A. #22-11 – Wal-Mart – Intersection of Tobey Road & Rte. 28.

This meeting was cancelled.

VI. ANY OTHER BUSINESS

(NONE)

VII. ADJOURNMENT

MOTION: A motion was made & seconded to adjourn the meeting at 9:00 P.M.

VOTE: Unanimous (5-0-0)

Date signed: 8-10-11

Attest: Mary Scarsciotti
Mary Scarsciotti, Clerk

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Date copy sent to Town Clerk: 8/11/11

