

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: October 22, 2014

I. CALL MEETING TO ORDER

The meeting was called to order at 6:45 P.M.

II. ROLL CALL

Members Present: Mary Scarsciotti, Clerk
David Sharkey
Richard Secher
Wilma Engerman, Associate Member

Member Absent: Ken Ferreira

III. PRELIMINARY BUSINESS

A. Approve meeting minutes: October 8, 2014.

MOTION: A motion was made & seconded to approve the meeting minutes of October 8, 2014.

VOTE: Unanimous (4-0-0)

**B. Announcement: November ZBA meeting dates: November 12, 2014
December ZBA meeting dates: December 10, 2014**

IV. PUBLIC HEARINGS

A. Petition #30-14 – 2785 Cranberry Highway – Vaughn's Towing

The public hearing notice was read into the record.

Present before the Board: Frank W. Westgate, Westgate Land Survey

Mr. Westgate presented an explanation of the existing conditions & details of the proposal to renovate an existing single family dwelling & reconstruct the demolished storage building w/ storage on the first floor & office space on the second floor for the purpose of operating a motor vehicle towing service.

Discussion identified the deteriorated building conditions at the location where the motor vehicle towing service currently operates. (The applicant is a tenant at the current location & has purchased the subject property as the proposed new location in order to continue to operate the business in the neighborhood). The proposed move is approx.

1900 ft. away from the existing location & motor vehicle service is an allowed use in the zoning district.

No members in the audience spoke in favor of the applicant's plans. One abutter sent an email stating some concerns that were read into the record. No-one at the hearing objected.

Following the discussion, the Board found the following facts.

1. The applicant has complied w/ the Board's rules, regulations, submissions, requirements, & procedures.
2. The subject property located at 2785 Cranberry Highway, Wareham, MA is in the Strip Commercial (CS) zoning district having frontage on Cranberry Highway. The parcel consists of two lots that have been merged under single ownership, containing 11,715 sq. ft. of land.
3. The existing 11,715 sq. ft. lot w/ 52' frontage lacks sufficient sq. footage & frontage to meet the current requirements in the CS zoning district. The CS zoning district requires 30,000 sq. ft. of land w/ 150' frontage. The subject is a legally grand-fathered preexisting nonconforming lot created prior to March 1951 adoption of zoning.
4. The subject neighborhood is mixed use & density. It is no uncommon for residential uses, commercial uses, & parcels w/ multiple uses to be adjacent along Cranberry Highway, a locally well traveled roadway.
5. The subject parcel has been improved w/ a three bedroom single family dwelling & is deemed a preexisting nonconforming structure that does not meet the front setback as currently required in the CS zoning district. Two sheds that the applicant said were very old, deteriorated, & had collapsed are shown on the Assessor's record.
6. The applicant's towing service is an existing business currently operating at 2747 Cranberry Highway approx. 1900 ft. away from the subject proposed relocation site at 2785 Cranberry Highway.
7. Adequate & appropriate utilities are in place w/ ample off street parking available.
8. The commercial districts are intended to provide for service businesses primarily served by vehicular traffic. Strip Commercial zoning districts (CS) states this district is intended to promote large scale retail & service development in defined areas along Cranberry Highway.

After consideration of the foregoing facts, including the documents, plans & testimony given during the public hearing, the Board determined that a Variance was not required; that the Bylaw requirements can be satisfied by granting a Special Permit for the applicant's request as proposed to establish more than one principal use on a lot, allowing a single family dwelling, rebuilding the storage shed/office & relocating the motor vehicle service business w/ conditions is based on the findings of fact & for the following reasons:

1. Per the Bylaw, the Strip Commercial zoning district provides for both single family residential dwellings & motor vehicle service business as allowed uses.
2. The Bylaw allows the Board to approve multiple principal uses on a lot pursuant to a Special Permit.
3. The Board finds the use table of allowed uses suggests compatibility w/ mixed uses.
4. The renovation of the single family dwelling improves the utility & comfort of the dwelling & having a single family dwelling occupied typically enhances a neighborhood.
5. Rebuilding the destroyed sheds for storage & office space to support an existing local business to continue to operate in the neighborhood retains an overall benefit to the Town.
6. The Board finds the proposed project w/ conditions, creates no substantial increase in the nonconforming nature or intensity of the use, nor will it be substantially more detrimental to the neighborhood than that which currently exists.

MOTION: A motion was made & seconded to grant a Special Permit for Petition #30-14 – Vaughn’s Towing Service – 2785 Cranberry Highway to allow the existing renovated single family dwelling to be occupied after renovation, to reconstruct the demolished storage building w/ a new building having storage space on the first floor & office space on the second floor for the purpose of relocating & continuing to operate a motor vehicle towing service, w/ the following conditions:

1. All details, dimensions, & setbacks shall be as represented as shown on the plan entitled “Site Plan to Accompany Application for Variance & Special Permit” dated September 8, 2014.
2. The reconstructed storage building w/ office;
 - a. Shall not be occupied as a residential dwelling,
 - b. Shall be sited w/in the fenced area (See condition #3),
 - c. Shall meet the required 10’ side yard setback requirement,
 - d. Shall not exceed the allowable Building Coverage – nonresidential use,
 - e. Shall not exceed the allowable Impervious Surface Coverage – non residential use,
 - f. Shall be no higher than Building A as shown o the plan,
 - g. Shall be no larger than 21.5’x25’ as shown on plan.
3. All motor vehicle storage shall be confined to the fence area located no closer than 125 ft. from the front property line.
4. All lighting shall be installed so as to remain exclusively w/in the subject property bounds.
5. Motor vehicle storage shall be limited to a maximum of 24 cars for a maximum of 20 days.
6. Motor vehicle repair or body work is not proposed & shall be expressly prohibited.

7. All adequate & appropriate utilities, including off street parking to serve the site & use are available.
8. Upon completion, an As Built plan is to be submitted to the Building Department.
9. The temporary travel trailer depicted on the plan shall be removed w/in 30 days of the date of the Certificate of Occupancy.
10. Special Note: No signage has been approved. The applicant has agreed to return to the Board for sign approval.
11. Any & all chemicals that are utilized in or that are the waste produce of the operation of the motor vehicle towing service business shall be handled in compliance w/ any & all Federal, State, & local regulations as are applicable.
12. Storage of any & all chemicals that are utilized in or that are the waste product of the operation of the motor vehicle towing service business is neither requested nor shall be allowed.
13. Application to the Board of appeals for a one year review is required. This shall occur 12 months following the date of the Certificate of Occupancy; a copy of which is to be provided to the Planning Office for the record.
14. This permit does not relieve the applicant from obligations required by any other local board or commission rules and/or regulations as are applicable

VOTE: Unanimous (4-0-0)

B. Petition #31-14 – 58 Ellis Avenue – Neil & Judith Westgate

The public hearing notice was read into the record.

Present before the Board: Paul Mattos, G.A.F. Engineering, Inc.

Mr. Mattos presented an explanation of the existing conditions & details of the proposed new dwelling.

A member of the audience spoke in favor of the applicant's plans. No-one at the hearing objected.

Following discussion, the Board found the following facts:

1. The applicant has complied w/ the Board's rules, regulations, submissions, requirements, & procedures.
2. Article 13, Section 1334 of the Bylaw addresses the alteration, reconstruction, extension, or structural changes to a pre-existing non-conforming single family dwelling or structure. Article 6 addresses density & dimensional regulations.
3. The subject property is located at 58 Ellis Avenue consisting of 12,000 sq. ft. of land improved w/ a single family dwelling & is a legally grandfathered pre-existing non-conforming lot & structure in the R-30 zoning district.
4. The subject neighborhood is in a dense sub-division said to have been originally laid out in 1884 w/ an existing single family dwelling said to have been built in

1920 prior to zoning. The neighborhood consists of similar legally grandfathered, pre-existing, nonconforming lots, & structures.

5. The subject improvement, is reported to have been build in 1920, is a single family dwelling having three bedrooms w/ 1233 sq. ft. of gross living area, an enclosed porch, & an open porch w/ a detached garage & shed.
6. The existing 12,000 sq. ft. lot size w/ 120 ' frontage lacks sufficient sq. footage & frontage to meet the requirements in the R-30 zoning district. The lot was created in 1884 in a subdivision plan that precedes zoning & is legally grandfathered. An encroachment exists in the 15.3' front setback which does not meet the R-30 zoning district 20' front setback requirement. The proposal for reconstruction is to increase the front setback to 20.5' & meet all other prescribed setbacks, thus decreasing the non-conformity.
7. Adequate & appropriate utilities are in place, serving the existing single family dwelling which records indicate has been in place since 1920. Off street parking adequate for the use is available.

MOTION: A motion was made & seconded to grant a Special Permit for Petition #31-14 – Neil & Judith Westgate – 58 Ellis Avenue for the demolition & reconstruction of a single family dwelling w/ the following conditions:

1. The reconstruction is to be per the plan titled "Site Plan to Accompany Zoning Board of Appeals Special Permit Application" prepared for Neil E. & Judith A. Westgate dated September 17, 2014. All details, dimensions, setbacks shall be as represented as shown on the plan as submitted & reviewed by the Board. The plan shows no new nonconformity is created & the existing non conformity in the front setback requirement is decreased.
2. All adequate & appropriate utilities including off street parking to serve a single family dwelling is available.
3. Upon completion an As Built plan is to be submitted to the Building Department.
4. Any relief no expressly granted hereunder is hereby denied.

VOTE: Unanimous (4-0-0)

C. Petition #32-14 – Rte. 25 – Borrego Solar Systems

The applicant requested that this hearing be continued in order for this application be heard by a full Board. The Board members present concurred.

MOTION: A motion was made & seconded to continue the public hearing for Petition #32-14 – Rte. 25 – Borrego Solar Systems to November 12, 2014.

VOTE: Unanimous (4-0-0)

V. CONTINUED PUBLIC HEARINGS

A. Petition #28-14 – Giancola Properties – 72 Minot Avenue

Present before the Board: Charles L. Rowley, PE, PLS – Engineering Consultant

Mr. Rowley reported the additional modifications have been addressed & the applicant has provided satisfactory responses to the Board presenting a plan titled "Site Development Plan" prepared for Giancola Properties Minot LLC w/ a third revision date of October 8, 2014 showing final revisions reflecting Mr. Rowley's recommendations & the Board's concerns.

The Board reviewed suggested conditions. The discussion identified the existing deteriorating conditions of the building & on the site. It was noted that the reports & recommendations of the consultant & the Board's concerns were satisfactorily addressed.

No-one in the audience spoke in favor of or in opposition to the applicant's plans. No written comments were received.

Following discussion, the Board found the following facts:

1. Prior existing Special Permit #49-73 dated December 26, 1973 w/ modification #42-02 dated July 8, 2002 allowed the nonconforming nonresidential use. The use has continued since 1973 & is not more detrimental as proposed than as it currently exists.
2. The proposed relief will neither expand nor increase the volume of activity in the intensity of use or the nature of the purpose of the use.
3. The proposed relief will have no demonstrable adverse impact on the abutting properties than the existing use.
4. The proposed relief will not negatively impact the Town's ground, coastal, or surface water bodies.
5. The guidelines & standards of Section 1332 have been met. Compliance under Section 1333 is required.
6. The proposal does not increase the existing overall percentage of ground cover.
7. No increase in height is proposed for the existing building.
8. As proposed, the parking plan is adequate & appropriate for the use.
9. The extension, alteration, or change meets the Section 1332 guidelines.
10. The proposed building renovation w/ site improvements, increases utility & function needed to attract new business, providing tax & employer benefits to the Town.
11. Allowing the proposed request to continue a nonconforming nonresidential use creates no substantial increase in the nature or intensity of the existing nonconforming use, nor will it be substantially more detrimental than that which currently exists.

MOTION: A motion was made & seconded to grant a Special Permit for Petition #28-14 – Giancola Properties – 72 Minot Avenue w/ the following conditions:

1. All building and site details shall be as shown on the plan titled "Site Development Plan" prepared for Giancola Properties Minot LLC originally dated July 17, 2014 with a third revision date October 8, 2014 (the Plan) that includes final revisions reflecting the Town Consulting Engineer's recommendations and the Board's concerns as reviewed and approved.

The Special Permit applies exclusively within the limits of the property bounds of the land owned by the applicant as shown on the Plan and shall not in any manner authorize or approve any encroachment into any abutting properties that may exist.

2. Concrete wheel stops shall be securely installed along the subject rear property line; one per designated parking space as shown on the Plan

Sheet 5 of 5. All concrete wheel stops shall be maintained at all times and if disturbed shall be relocated and secured in the original position within forty eight (48) hours; if damaged they shall be repaired or replaced within thirty (30) days.

3. The Owner or his tenant may conduct a business identified under such uses as: Educational, non-exempt; Oceanographic engineering research; Offices; Laboratory research office; Service establishments not involving manufacturing on premise; Wholesale business; Retail sale of marine equipment and supplies (not including fish products or food); Manufacturing of products on premises the major portion of which are sold on premises from produce to consumer; Light manufacturing, or Storage facilities.

4. The Owner or his tenant shall not conduct any business or operation that discharges or vents any material in any form to the atmosphere from the rented space or premises that does not fully comply with all Federal, State and Local emission standards regulations governing such emissions or discharges.

5. The Owner or his tenant shall not conduct any business or operation that stores or discharges any material in any form to the ground or sanitary sewer facilities from the rented space or premises that does not fully comply with all Federal, State and Local emission standards regulations governing such discharges.

6. All operations and/or business conducted on the premises or within

the rented spaces shall be done in a manner fully compliant with all Federal, State and Local standards and regulations as are applicable for noise pollution. Any operation requiring noise suppression devices in compliance with noise suppression standards shall provide documentation to the Town Inspectional Services Department that the devices have been properly installed prior to the commencement of the business operation.

7. Any and all devices or procedures required by Federal, State and Local regulations and standards as are applicable for control of materials and conditions as noted in # 4, 5, and 6 shall be installed, maintained and upgraded according to all Federal, State and local requirements for the duration of the term of business operation.

8. The Storm Water Operation and Maintenance Plan, as shown on Sheet 4 of 5 of the Plan shall be considered part and parcel to the Special Permit and shall be adhered to in all respects during and after the construction of the project as well as integral component for the duration of the occupancy of the premises and business operation of any portion of the site and or structure.

9. The Landscape Plan, as shown on the Plan Sheet 5 of 5 shall be implemented in all respects for the establishment and permanent maintenance of the plants and materials with a two (2) year guarantee on all plant material. If any required tree, shrub or plant dies within this period of time, it shall be replaced.

10. The easterly entrance to the site shall be provided with a fence and gate of the same or similar materials as presented and in the location shown on the Plan Sheet 5 of 5; identified as "sliding gate". Any modification to the fencing requirement may be considered by the Board, per condition #19.

11. All lighting shall be installed so as to remain within the subject property bounds; 'spill-over" onto the street is prohibited.

12. The sign shall be exactly as detailed on the Plan Sheet 5 of 5.

13. The exterior area designated as "existing storage area" as shown of the Plan shall be cleaned of all unused materials, unregistered vehicles, hazardous materials.

a) Materials, supplies and equipment required for the operation of the current tenant shall be allowed to be stored, shall not be visible from

the street, and shall be screened by fencing or sufficiently dense plantings.

b) The exterior storage area shall not be expanded, stored materials shall not be visible from the street; appropriate screening by fencing or sufficiently dense plantings is required and shall be permanently maintained.

c) Storage of any and all materials shall comply with all Federal, State and Local rules, regulations as are applicable.

d) Storage of unregistered vehicles, non-operating equipment, and any and all hazardous materials is prohibited.

14. The existing wooded area adjacent to the easterly entrance to the site shall be cleared of underbrush and trees pruned so as to provide improved sight distance to Minot Avenue, as noted on the Plan.

15. All damaged areas of the existing paved portions of the site at the rear of the building shall be repaired with new pavement placed on a suitable base. The base may be reclaimed asphalt, dense graded stone or gravel that complies with the Massachusetts Highway standard for road base material with 2" minus aggregate.

16. The bare soil area to the east of the existing chain link fence on the easterly end of the site shall be protected with a soil berm, suitably graded and shaped so as to contain any and all storm water runoff from that portion of the site. The berm shall be constructed and maintained in such a way that it will be stable and not subject to erosion.

17. In the event that an occupancy permit is requested prior to the completion of all site work authorized and required under this Special Permit; the owner shall provide the Board with a performance bond for the incomplete site work in compliance with the terms and requirements of the Zoning By-law, Section 1566.3.

18. The owner shall be responsible for calling and scheduling inspections by the Board's Consulting Engineer for all site work authorized and required under this Special Permit. Inspections shall include but not be limited to:

a) Storm water facilities and sanitary sewer connections,

b) Installation of base materials prior to paving, asphalt paving and berms, repairs to existing paved areas and installation of concrete wheel stops,

c) General site grading and landscaping,

- d) Exterior building improvements, lighting and fencing,
- e) Final inspection in anticipation of the issuance of any occupancy permit or inspection of work completed and submittal of security amounts for work yet to be completed.

19. Any change, alteration or deviation from the Plan, as approved by the Special Permit may be considered by the Board with a letter of request for such consideration having details of the requested change, alteration or deviation. A public hearing may be required if such request is determined to be major. The Board may waive the requirement for a public hearing if the change, alteration or deviation is determined by the Board to be minor in nature and would not significantly alter the scope or intent of the project as approved by vote of the Board. Any change, alteration or deviation which is made prior to receiving the Board's vote and approval may be subject to an order to be removed or undone.

20. Application to the Board of Appeals for a one year review is required. Upon issuance, a copy of each certificate of occupancy shall be provided to the Board for the files. The year review is to be scheduled twelve (12) months following the date of occupancy.

21. The granting of this Special Permit does not relieve the Applicant from obtaining any and all permits, certificates or requirements as may be required by rules and regulations of any other Board or Commission as are applicable.

22. The granting of this Special Permit does not relieve the Applicant from full compliance with any and all Federal, State or local requirement as are applicable in the operation of any business on or in the premises.

23. Any relief not expressly granted hereunder is hereby denied.

24. For this decision to become effective, a copy of said decision and notice thereof must be filed in the Plymouth County Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days has elapsed and no appeal has been filed, or that if such appeal has been filed that it has been dismissed or denied. A certified copy of said recording must be thereafter filed with the Board of Appeals.

25. The decision herein may be amended, revised or revoked by the Board, acting on its own motion or the motion of the Planning Board,

Director of Inspectional Services or of any interested person after notice and hearing. The Board hereby certifies that copies of this decision and all plans referenced to therein have been or shall be filed forthwith on the office of the Town Clerk.

26. If substantial use or construction permitted by this Special Permit has not commenced within two years from the date on which a copy of this decision is filed with the Town Clerk, excluding the amount of time required for an appeal period to expire and the amount of time required to pursue and await the determination of any such appeal then this Special Permit shall expire in so far as the foregoing statement is modified by Chapter 195 of the Acts of 1984. Any person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

27. Any person aggrieved by this decision of the Zoning Board of Appeals may file an appeal pursuant to the provisions of M.G.L. chapter 40A section 17 within twenty (20) days of the filing of this decision in the office of the Town Clerk. If no appeal is taken within the allotted time, the Clerk will so certify.

VOTE: Unanimous (4-0-0)

VI. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS

A. Upcoming Hearings/Discussions.

11/12/14	#33-14	5 Wild Rose Avenue	Priscilla Faucett
11/12/14	#34-14	Mary Lee & Emerson Hasbrouck	1 Cleveland Way
11/12/14	#24-14 (Cont'd.)	2512 Cranberry Highway	Colbea Enterprises, LLC
10/27/14	Town Meeting		

B. Correspondence.

See correspondence sent via email and/or in packets.

VII. NEW BUSINESS

There was no new business.

VIII. ADJOURNMENT

MOTION: A motion was made & seconded to adjourn the meeting at 9:15 P.M.

VOTE: Unanimous (4-0-0)

Date signed: 2-11-15

Attest: Mary Scarsciotti
Mary Scarsciotti, Clerk
WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: 2/18/15

ATRUE COPY
ATTEST

Mary Ann Schri.
TOWN CLERK

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