

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: November 12, 2014

I. CALL MEETING TO ORDER

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

II. ROLL CALL

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

III. PRELIMINARY BUSINESS

A. Discussion: Tobey Road & Main Street intersection stop signs.

Brief discussion ensued.

The Board members concurred to have this matter placed on the 12/10/14 ZBA agenda for discussion.

B. Extension Request – Larry Goldstein – “Hathaway Estates”.

Brief discussion ensued.

The Board members requested that the applicant provide a detailed letter re: the extension request for the ZBA’s consideration.

IV. PUBLIC HEARINGS

A. Petition #33-14 – 5 Wild Rose Avenue – Priscilla Fawcett

The public hearing notice was read into the record.

Present before the Board: Bill Lockwood, Lockwood Architects

Mr. Lockwood presented an explanation of the existing conditions & details of the proposed new dwelling w/ a plan entitled “Sewage Disposal System Design by G.A.F. Engineering, Inc. dated 9/29/14” & the architectural plan entitled “Renovation & Addition for Priscilla Fawcett at 5 Wild Rose Avenue, Onset, MA Project 1047 Drawing A1” w/ 9/1/14 latest date.

There were no letters in support or opposition to the applicant's plan & no members of the audience spoke in favor or objected to the applicant's plan.

The Building Inspector's letter dated 9/11/14 states that the proposed project on this parcel will require a Special Permit under section 1335 of the Wareham Zoning Bylaws. It is an alteration of a non-conforming structure, which will be built on a new foundation.

The Board proceeded to review & discuss the project.

The Board determined the following re: the project:

1. Creates no new non-conformity.
2. Will not be more detrimental than the existing structure & use to the neighborhood.
3. Has all adequate & appropriate utilities in place, including off street parking appropriate for a single family dwelling available.

MOTION: A motion was made & seconded to grant a Special Permit for Petition #33-14 - Priscilla Fawcett – 5 Wild Rose Avenue to allow alteration w/ additions to a non-conforming single family dwelling under Wareham Zoning Bylaws Article 13 Zoning Protection Sections 1334 & 1335, & Article 6 Density & Dimensional Regulations Section 620 Table of Dimensional Regulations w/ the following conditions:

1. The reconstruction is to be per plan identified as "Sewage Disposal System Design by G.A.F. Engineering, Inc., dated 9/29/14" & the architectural plant titled "Renovation & Addition for Priscilla Fawcett at 5 Wild Rose Avenue, Onset, MA Project 1047 Drawing A1" w/ 9/1/14 as the latest date. All details, dimensions, & setbacks shall be as represented as shown on the plan submitted & reviewed by the Board. The plan shows no new non-conformity is created.
2. All adequate & appropriate off street parking to serve a single family dwelling is to be w/in the subject property bounds. The Special Permit applies exclusively w/in the limits of the property bounds of the land owned by the applicant as shown on the plan & shall not in any manner authorize or approve any encroachment into any abutting properties that may exist.
3. A revised site plan, stamped by the engineer, is to be provided to the Planning Dept. for the Board's record & to the Building Dept. reflecting the "as is" & "as proposed" lot data, & Condition #2.
4. Upon completion, an "As Built" plan is to be submitted to the Building Dept.
5. Any relief not expressly granted hereunder is hereby denied.
6. For this decision to become effective, a copy of said decision & notice thereof must be filed w/ the Plymouth County Registry of Deeds & must bear the certification of the Town Clerk that twenty (20) days has elapsed & 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 w/ the Board of Appeals.

7. 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 if any interested person after notice & hearing. The Board hereby certifies that copies of this decision & all plans referenced to therein have been or shall be filed forthwith on the office of the Town Clerk.
8. If substantial use or construction permitted by this Special Permit has not commenced w/in two years from the date on which a copy of this decision is filed w/ the Town Clerk, excluding the amount of time required for an appeal period to expire & the amount of time required to pursue & 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 the risk that a court will reverse the permit & that of any construction performed under the permit may be ordered undone.
9. Any person aggrieved by this decision of the Zoning Board of Appeals may file an appeal pursuant to the provisions of MGL chapter 40A section 17 w/in twenty (20) days of the filing of this decision in the office of the Town Clerk. If no appeal is taken w/in the allotted time, the Clerk will so certify.

VOTE: Unanimous (5-0-0)

B. Petition #34-14 – 1 Cleveland Way – Mary Lee & Emerson Hasbrouck

The public hearing notice was read into the record.

Present before the Board: Bill Lockwood, Lockwood

Mr. Lockwood presented an explanation of the existing conditions & details of the proposed alteration & expansion w/ a plan entitled "Proposed Conditions at 1 Cleveland Way Buzzards Bay" prepared & stamped by Lockwood Architects on base plan prepared & stamped by JC Engineering, Inc. w/ an original date of September 15, 2014 & a revised date of October 25, 2014.

A letter from an abutter in support of the applicant's plan was read into the record. No-one in the audience spoke in favor of or objected to the applicant's plans.

The Building Inspector's letter dated 9/11/14 states that the proposed project on this parcel will require a Special Permit under section 1335 of the Wareham Zoning Bylaws. It is an alteration of a non-conforming structure, which will be built on a new foundation.

The Board proceeded to review & discuss the project.

The Board determined the following re: the project:

1. There are circumstances that support allowing the alteration & expansion of the dwelling as proposed per plan.
2. Literal enforcement of the provisions of the By-law would involve substantial hardship to the homeowner prohibiting requirements that make the building appropriately functional & accessible.
3. Relief may be granted w/out nullifying or substantially derogating from the intent or purpose of the Zoning By-law. The circumstances & building are unique. Allowing the expansion in the setbacks & lot coverage will not nullify the reasons for the By-law requirements. It will not result in undue density or an unsafe condition.
4. Desirable relief may be granted w/out substantial detriment to the public good. Granting the dimensional relief requested will not be substantially detrimental. Plans & supporting photos were introduced to show that the building historically had an existing porch that extended to the front lot setback. The Board finds that allowing the additions to the front & sides of the dwelling are consistent w/ the architecture of the building will provide improved access for the homeowner, will not adversely affect the neighborhood, & will not be detrimental to the public good. The design of the building additions are in keeping w/ the architecture of the homes & the area.
5. The site has all the adequate & appropriate utilities in place, including off street parking appropriate for a single family dwelling available.

MOTION: A motion was made & seconded to grant a Special Permit for Petition #34-14 - Mary Lee & Emerson Hasbrouck – 1 Cleveland Way for alteration & expansion of a non-conforming single family dwelling w/ the following conditions:

1. The alteration & expansion is to be per the plan as presented & identified as "Proposed Conditions at 1 Cleveland Way Buzzards Bay: prepared & stamped by Lockwood Architects on base plan prepared & stamped by JC Engineering, Inc. w/ an original date of September 15, 2014 & a revised date of October 25, 2014.
2. All details, dimensions, & setbacks shall be represented as shown on the Plan (See #1 above) as submitted & reviewed by the Board.
3. All adequate & appropriate utilities & off street parking to serve a single-family dwelling are available.
4. Upon completion, an "as built" plan is to be submitted to the Building Dept.
5. Any relief not expressly granted hereunder is hereby denied.
6. For this decision to become effective, a copy of said decision & notice thereof must be filed w/ the Plymouth County Registry of Deeds & must bear the certification of the Town Clerk that twenty (20) days has elapsed & 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 w/ the Board of Appeals.
7. 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 if any interested person after notice & hearing. The

Board hereby certifies that copies of this decision & all plans referenced to therein have been or shall be filed forthwith on the office of the Town Clerk.

8. If substantial use or construction permitted by this Special Permit has not commenced w/in two years from the date on which a copy of this decision is filed w/ the Town Clerk, excluding the amount of time required for an appeal period to expire & the amount of time required to pursue & 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 the risk that a court will reverse the permit & that of any construction performed under the permit may be ordered undone.
9. Any person aggrieved by this decision of the Zoning Board of Appeals may file an appeal pursuant to the provisions of MGL chapter 40A section 17 w/in twenty (20) days of the filing of this decision in the office of the Town Clerk. If no appeal is taken w/in the allotted time, the Clerk will so certify.

VOTE: Unanimous (5-0-0)

V. CONTINUED PUBLIC HEARINGS

A. Petition #24-14 – 2512 Cranberry Highway – Colbea Enterprises, LLC

NOTE: The Board received a letter from the applicant dated November 4, 2014 requesting to withdraw the application w/out prejudice.

MOTION: A motion was made & seconded to allow a withdrawal of the application with prejudice for Petition #24-14 – 2512 Cranberry Highway – Colbea Enterprises, LLC.

VOTE: Unanimous (5-0-0)

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

Present before the Board: Brian O’Hearne, Representative of Onset Water & Fire District
 David Albrecht, PE, Borrego Solar Systems, Inc.

Mr. O’Hearne & Mr. Albrecht presented a proposal to construct a ground mounted solar farm at 0 Rte. 25, Assessors Map 131, Lot 1003 & the adjacent parcel at 0 Off Red Brook Road, Assessors Map 131, Lot 1013A. The presentation included several documents & plans.

Mr. Albrecht identified the existing site conditions, proposed site access, & the construction of approx. 8,816 305 watt solar panels. He also provided additional information detailing environmental issue concerns re: protecting the Eastern Box Turtle,

the turtle habitat area, other utilities that may be installed as well as the Groundwater Protection Overlay District requirements.

Mr. Albrecht provided information on the following: utilities, solid waste, access, security & safety, environment, construction/post construction, & the Groundwater Protection Overlay District.

Mr. Albrecht stated the Onset Water & Fire District, the property owner, is a partner in an agreement w/ the applicant to lease 110 acres of land to construct the ground mounted solar system.

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

The Board determined the following re: the project:

1. The applicant has complied w/ the Board's rules, regulations, submissions, requirements & procedures.
2. The subject consists of a parcel located at 0 Rte. 25 & an adjacent parcel at 0 Red Brook Rd. The two parcels contain approx. 110 acres of sloping wooded land of which 21 acres will be cleared for use as shown on the project plan.
3. The applicant proposes to construct two ground mounted solar arrays. No buildings are proposed. A trailer & portable toilets will be utilized temporarily during construction. No water, sewage or gas services are proposed. Telephone wiring will be required. There will be some noise emitted b the inverters used during the day/ lighting and fencing will be installed.
4. Access to the project site is proposed via Sand Pond Road w/ no pedestrian access.
5. The subject property is located in the R-130 zoning district that is intended to preserve & protect groundwater & surface water resources. Public utility is an allowed use under this zoning district.
6. The lot positioning of the systems as proposed on each lot does not meet the required frontage or setbacks applicable to each lot. A waiver for the frontage & setbacks for each lot is sought.
7. The subject is w/in the Groundwater Protection Overlay District, the Special Permit Granting Authority shall make findings per Section 445 prior to granting a Special Permit in the Groundwater Protection Overlay District.
8. The Section 445 requirements of the Groundwater Protection Overlay District will be met. Property in the Groundwater Protection Overlay District is also protected under the jurisdiction of the MA DEP Wellhead Protection Areas (Zone 11, IWPA).

9. The Wareham Conservation Agent has confirmed that there are no State or Federal wetland resource areas w/in 500 ft. of the project limit of work area.
10. Concerns re: protecting the Eastern Box Turtle & the turtle habitat area will b addressed per the requirements of the MA Endangered Species Act.
11. The construction of the system is expected to take approx. four months of onsite work & once operating, the system will be monitored 24/7 w/ system maintenance anticipated to be one to two annual inspections & washing the modules.

MOTION: A motion was made & seconded to grant a Special Permit for Petition #32-14 – Rte. 25 – Borrego Solar Systems to construct ground mounted solar panel systems w/ the following conditions:

1. The construction shall be per plan & documents as presented & identified in the record.
2. All details, dimensions, & setbacks shall be represented as shown on the Plan as submitted & reviewed by the Board.
3. The Deed copies, as required, shall be provided to the Planning Office prior to applying for any building permits.
4. The Stormwater Management Report dated 9/22/14 as presented shall be accepted w/ corrections & incorporated as conditions of this approval. Corrections have no material impact on the facts, original intent, or context are for clarification only.
5. The name of the owner of the system & the contact information, under Section “5.0 Stormwater Management Standards Compliance in Standard 9”, shall be provided to the Town prior to applying for any building permits.
6. No permanent buildings are proposed for this project, nor allowed. One (1) temporary trailer & portable toilets shall be allowed during the construction period & shall be removed w/in 60 days of the date following the final inspection approval signature by any & all inspectors, including Federal, State, & local as may be required.
7. No water, sewage, or gas services are proposed, nor approved for this project. Telephone wiring & electrical connections as required for the operation of the system are approved per the plan.
8. Fencing & lighting for safety & security as proposed is approved.
9. Vehicular access to the project site is proposed via Sand Pond Road. Pedestrian access is not required, provided, nor approved.
10. The positioning of the system as proposed on each lot does not meet the required frontage or setbacks applicable to each lot. A waiver for the frontage & setbacks for each lot is sought. Granting the dimensional relief requested will not be substantially detrimental to the neighborhood & may be granted w/out nullifying or substantially derogating from the intent or purpose of the zoning Bylaw. Strict enforcement of the dimensional requirements would necessarily require expansion of the cleared areas needed for the construction site, thus, increasing the potential impact t the

natural topographies, soils, the existing trees & vegetation & reducing the natural buffer area designed to minimize the noise & light pollution impact on the abutting residences. Granting the dimensional relief provides conditions necessary to protect the public health, safety & welfare & to allow the building of structures that facilitate the collection of solar energy.

11. The Section 445 requirements of the Groundwater Protection Overlay District shall be met as stated.
12. Property in the Groundwater Protection Overlay District is also protected under the jurisdiction of the MA DEP Wellhead Protection Areas (Zone II, IWPA). All regulations & requirements as are applicable shall be met prior to applying for a building permit.
13. The Eastern Box Turtle & the habitat area shall be as protected required under the MA Endangered Species Act. Copies of the documentation will be provided to the Planning Office.
14. Construction of the system is expected to take approx. four months of onsite work & once operating, the system maintenance is anticipated to be one to two annual inspections & washing the modules. The system will be monitored 24/7 via the DAS & email notifications of drops in production are sent to Borrego Operations & Maintenance Division. Upon completion as "As Built" plan is to be submitted to the Building Dept.
15. This permit does not relieve the applicant from permitting obligations of any other Federal, State, or local board and/or commission as may be required.
16. Any relief not expressly granted hereunder is hereby denied.

VOTE: Unanimous (5-0-0)

VI. ANY OTHER BUSINESS/DISCUSSION/UPCOMING HEARINGS

A. Upcoming Hearings/Discussions

12/10/14	#35-14	7 Ocean Avenue	Dawn Tenney
12/10/14	#36-14	3077 Cranberry Highway	Clear Channel Outdoor
12/10/14	#37-14	780 County Road	Joyce Reed
12/10/14	#38-14	3137-3139 Cranberry Highway	Dollar General

B. Correspondence

See correspondence sent via email &/or in packets.

VII. NEW BUSINESS

There was no New Business.

VIII. ADJOURNMENT

MOTION: A motion was made & seconded to adjourn the meeting at 8:05 P.M.

VOTE: Unanimous (5-0-0)

Date signed: 1-14-15

Attest: Mary Scarsciotti
Mary Scarsciotti, Clerk

WAREHAM ZONING BOARD OF APPEALS

Date copy sent to Town Clerk: 1/15/15

A TRUE COPY

ATTEST

May Ann Schar
TOWN CLERK

NOV 21 2015