

MINUTES OF MEETING OF WAREHAM ZONING BOARD OF APPEALS

Date of Meeting: January 14, 2015

I. CALL MEETING TO ORDER

The meeting was called to order at 6:38 P.M.

II. ROLL CALL

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

NOTE: Mr. Secher noted he will not be available for the January 28, 2015 meeting.

III. PRELIMINARY BUSINESS

A. Approval of meeting minutes: November 12, 2014.

MOTION: A motion was made & seconded to approve the meeting minutes of November 12, 2014.

VOTE: Unanimous (5-0-0)

B. Vote designee to sign bills, invoice, etc.

MOTION: A motion was made & seconded to have either the Chair (Mr. Ferreira) or the Clerk (Ms. Scarsciotti) sign all bills & invoices.

VOTE: Unanimous (5-0-0)

C. Vote & sign bills, invoices, etc.

1. Invoice from Isotrope, LLC in the amount of \$3,689.10 re: project at 2 Warr Avenue.
2. Invoice from Charles L. Rowley, PE, PLS in the amount of \$570.00 re: Walmart project inspections.
3. Invoice from Charles L. Rowley, PE, PLS in the amount of \$1,163.75 re: peer review of site plan for Giancola Properties Minot LLC.

MOTION: A motion was made & seconded to approve & sign the following invoices:

1. Invoice from Isotrope, LLC in the amount of \$3,689.10 re: project at 2 Warr Avenue.
2. Invoice from Charles L. Rowley, PE, PLS in the amount of \$570.00 re: Walmart project inspections.
3. Invoice from Charles L. Rowley, PE, PLS in the amount of \$1,163.75 re: peer review of site plan for Giancola Properties Minot LLC.

VOTE: Unanimous (5-0-0)

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

Discussion ensued re: re-positioning the stop sign, installing a "stop ahead" sign, remove stop sign at east bound side, & remove stop sign on the Fearing Hill side.

MOTION: A motion was made & seconded to ask Mr. Pichette, Interim Town Planner to contact Walmart, the Chief of Police, & the Road Commissioners to coordinate the following:

- a. Re-position the Stop sign at the Main Street end of Tobey Road so that it is more visible clearing away the brush.
- b. Install a "Stop Ahead" sign approx. 200 ft. before the Stop sign on Tobey Road at the Main Street end.
- c. Remove the Stop Sign on the east bound side of Main Street (near the bridge).
- d. Remove the Stop Ahead sign on the Fearing Hill side of the bridge on Main Street.

VOTE: (4-1-0)

E. Discussion: Request for sign modification – Rosebrook Business Park – A.D. Makepeace.

Discussion ensued re: the sign modification proposed. There seemed to be some confusion w/ the proposal.

MOTION: A motion was made & seconded to approve the sign modification for Rosebrook Business Park – A.D. Makepeace w/ the condition that the addition be toward the Rosebrook property & NOT toward Cranberry Highway.

VOTE: Unanimous (5-0-0)

F. Discussion: Potential Town Meeting article re: affordable housing (mobile homes).

Present before the Board: Selectman Alan Slavin, BOS

Mr. Slavin explained the potential Town Meeting article that deals w/ counting manufactured homes (mobile homes in mobile home parks) as affordable housing. Discussion ensued.

MOTION: A motion was made & seconded for the Board to support a potential Town Meeting article re: mobile homes being considered affordable housing.

VOTE: Unanimous (5-0-0)

IV. PUBLIC HEARINGS

A. Petition #35-14 – 7 Ocean Avenue – Dawn Tenney

The public hearing notice was read into the record.

Present before the Board: Shawn Gilmore, Shawn Gilmore Contracting & Architectural Services

Mr. Gilmore presented an explanation of the existing conditions & details of the proposed new dwelling. In a letter dated October 21, 2014, the Building Commissioner stated he reviewed the plot plans for the reconstruction of a dwelling at 7 Ocean Avenue. He noted due to the fact that the applicant is rebuilding on a new foundation & it is an existing non-conforming structure will require a Special Permit for Section 1335 of the Zoning Bylaws. Discussion ensued.

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

Discussion ensued re: the project.

The Board found that razing & rebuilding a single-family dwelling as proposed per plans presented, create no new non-conformity, improves side & rear setbacks to be in compliance w/ requirements in the OV-1 district, & improves building coverage by 1% & impervious surface coverage by 10%. The Board also found that the project will not be more detrimental than the existing structure & use to the neighborhood, & all adequate & appropriate utilities are in place, including off-street parking appropriate for a single family dwelling.

MOTION: A motion was made & seconded to grant a Special Permit for Petition #35-14 – 7 Ocean Avenue – Dawn Tenney w/ the following conditions:

1. Reconstruction is to be per plan identified as "Proposed House Location Plan" prepared by Maddigan Land Surveying, LLC dated October 22, 2014.

2. All adequate & appropriate off-street parking to serve a single-family dwelling is to be w/in the subject property bounds.
3. The existing shed in the backyard will remain.
4. Upon completion, an "As-Built" plan is to be submitted to the Building Department.

VOTE: Unanimous (5-0-0)

B. Petition #36-14 – 3077 Cranberry Highway – Clear Channel Outdoor

The applicant has requested a continuance to January 28, 2015.

The Board agreed to the continuance requested, but due to possible scheduling conflicts, this hearing may be continued again. A signed letter to extend the time is expected by Attorney Bello.

C. Petition #37-14 – 780 County Road – Joyce Reed

The applicant has requested a withdrawal of the application without prejudice.

MOTION: A motion was made & seconded to approve the request of Petition #37-14 – 780 County Road – Joyce Reed to withdraw the application w/out prejudice.

VOTE: Unanimous (5-0-0)

D. Petition #38-14 – 3137-3139 Cranberry Highway – Dollar General

Present before the Board: Heather Dudko, National Sign

The proposed project is to install a 150 sq. ft. internally lit wall sign at the property.

Ms. Dudko presented details of the proposed sign & included several documents.

There were no letters of support or opposition to the applicant's plan. A member of the audience spoke in opposition to the applicant's plans.

As proposed, the applicant's plan for an internally illuminated wall sign at 50 sq. ft. & projecting 8 inches from the surface of the building significantly exceeds the maximum allowed by the Zoning Bylaw. During the hearing, the applicant did have an alternative 97 sq. ft. sign proposal that was offered for consideration, though it also exceeds the maximum allowed under the Bylaw. The principle concern stated was to assure customers would be able to identify the business on Rte. 6/28.

MOTION: A motion was made & seconded to grant a Variance for Petition #38-14 – 3137-3139 Cranberry Highway – Dollar General.

VOTE: (3-2-0)

NOTE: The motion failed to receive the necessary approval based on the vote. Thus, the Variance was denied.

E. Petition #39-14 – 16 Repose Lane – Kelly Ferranti

MOTION: A motion was made & seconded to continue the public hearing for Petition #39-14 – 16 Repose Lane – Kelly Ferranti to January 28, 2015.

VOTE: Unanimous (5-0-0)

F. Petition #40-14 – 25 Camp Street – William Bachant

Present before the Board: Bill Bachant
Attorney Leonard Bello

Attorney Bello presented details to support the request for a dimensional Variance to allow building a duplex-style residential dwelling. Several documents were submitted.

Attorney Bello explained that Mr. Bachant had purchased the two parcels, both were created before zoning was enacted & each lot would, as of right, have been a legal lot for a single family home to be built. In combining the two undersize lots, a single more conforming lot is created containing 9,025 sq. ft. though still less than 10,000 sq. ft. minimum lot size required under zoning in the OV-2 zoning district & neither lot, individually, would qualify for a small lot exemption under MGL chapter 40A, Section 10.

Attorney Bello described the hardship a denial would impose not only a financial hardship on the application, but a hardship is also imposed on the land by rendering the land un-buildable. He further noted that the courts have held that the inability to use a lot for any building purpose is relevant to whether discretion should be exercised in favor of granting a Variance.

No-one in the audience spoke in favor of or objected to the applicant's plans. One abutter's letter objecting to the applicant's proposal was read into the record.

As proposed, the applicant's plan is to build a new duplex style residential dwelling on a new foundation. Two family dwelling area allowed in the OV-2 zoning district. The proposed new dwelling will be built to meet front, side & rear setbacks as required in the OV-2 zoning district.

The Board found that there are circumstances that support allowing the dimensional Variance to build a duplex residential dwelling, as two-family residential dwellings are allowed in the OV-2 zoning district & multi-family homes on very small lots are not uncommon in the neighborhood. The Board finds that desirable relief may be granted w/out substantial detriment to the public good. The Board also found that relief may be granted w/out nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw. Except the lot size, the dwelling can be built in full compliance w/ all other dimensional requirements in the OV-2 zoning district. Granting the dimensional relief requested will not be substantially detrimental to the neighborhood.

The Board found that a literal enforcement of the provisions of the Bylaw would involve substantial hardship to the applicant & to the land by rendering it un-buildable, as the court ruled in Chater vs. Board of Appeals of Milton.

The site has all adequate & appropriate utilities available & off street parking appropriate for a two family dwelling will be provided.

MOTION: A motion was made & seconded to grant a Variance for Petition #40-14 – 25 Camp Street – William Bachant w/ the following conditions:

1. The new duplex style residential dwelling, is to be built according to the plan identified as "Proposed Site Plan" prepared by CSN Engineering dated 6/18/13 & is to include two residential dwelling units built on a new foundation w/ each dwelling unit having three (3) bedrooms, approx. 1,600 sq. ft. of living space, a rear deck, a single car garage built under the living space, & a paved driveway. The plan shows that the proposed new dwelling will be built to meet front, side, & rear setbacks as required in the OV-2 zoning district.
2. All details, dimensions, & setbacks shall be constructed as shown on the plan.
3. All adequate & appropriate utilities & off-street parking to serve the duplex residential dwelling are available.
4. Upon completion, an "As Built" plan is to be submitted to the Building Dept. w/ a copy provided to the Board of Appeals.

VOTE: Unanimous (5-0-0)

V. ANY OTHER BUSINESS/DISCUSSIONS/UPCOMING HEARINGS

A. Discussion: Fees to appeal decision of Building Inspector.

Discussion ensued re: fees to appeal a decision of the Building Inspector.

MOTION: A motion was made & seconded to revise the ZBA application to include the fee to appeal a decision of the Building Inspector to be that (same) as a Variance fee for commercial or residential properties.

VOTE: Unanimous (5-0-0)

B. Upcoming Hearings/Discussions.

2/11/15	#01-15	3166 Cranberry Highway	Richard Mann Jr. Trustee of 3166 Cranberry Highway Realty Trust	Special Permit/Site Plan Review
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VI. NEW BUSINESS

There was no new business.

VII. ADJOURNMENT

MOTION: A motion was made & seconded to adjourn the meeting at 9:25 P.M.

VOTE: Unanimous (5-0-0)

Date signed: 3-11-2015

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

Date copy sent to Town Clerk: 3/12/15

A TRUE COPY
ATTEST

Mary Ann Schi.
TOWN CLERK