



TOWN OF WARE

Planning & Community Development

126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

Zoning Board of Appeals

Meeting Minutes from

September 28, 2022

Select Board Room, Town Hall

Zoning Board Members Present:

Lew Iadarola, Chairman
Jodi Chartier, Vice Chairwoman
Chuck Dowd
Greg Eaton
Phil Hamel
David Skoczylas, Alternate
SK Robinson

Zoning Board Members Absent:

Staff Present:

Rob Watchilla, PCD Department Director
Anna Marques, Building Commissioner/Zoning Officer
Kristen Jacobsen, PCD Dept. Admin. Assistant (remote)

Public in Attendance:

Julie Burton (18 Prospect St, Ware MA 01082)

PLEDGE OF ALLEGIANCE

Chairman L. Iadarola called the meeting to order at 7:00pm and, at the Chairman's request, P.Hasmel led the Pledge of Allegiance.

Public Hearings

- a. V-2022-02 (Antroy Cleghorn) – 14 Prospect St
 - i. Applicant is requesting Variance relief from a density requirement in order to allow for three dwelling units when the maximum is 2 units. Site Location: 14 Prospect Street. Deed recorded in the Hampshire County Registry of Deeds, Book 14466, Page 262. Assessor's Parcel 61-0-229. Zoned: Downtown Residential (DTR).

J. Chartier read the legal notice

R. Watchilla explained the nature of the variance sought by A. Cleghorn and read comments from Geoff McAlmond (DPW Director) which raised concern for the continuous pavement and Deputy Fire Chief Jim Martinez which raised concerns about the installation of a sprinkler system and upgraded alarm system.

A.Marques distributed a memo citing Zoning Bylaws 1.9.2 - Nonconforming Structures through Article 6 - 7.3.3

L. Iadarola asked if R. Watchilla would clarify the density aspect and what direction (whether Special Permit or Variance) should be taken. R. Watchilla spoke clarifying the two different ways this may be addressed the first would be with a dimensional variance, but the application would need to be affected by one of four conditions (topography, shape of parcel, soil conditions, and financial hardship). The other route would be by Special Permit; however, it is unclear which board it should go to, it is assumed to go to the ZBA since the building is nonconforming, but the lot and use conform to zoning. The dilemma is whether the Special Permit route would be more appropriate since the applicant is extending a use, even though the building is not currently being used as such. The Special Permit would not be to allow for the use but, for the building to exceed the cap that it currently has.

L. Iadarola discussed the different approaches and the processes with the applicant.

SK. Robinson asked for elaboration as to why the dimensional variance might not be applicable in this situation. L. Iadarola stated that the dimensions of the building essentially weren't changing. However, there are additions being made to it that could be considered an expansion and could be an example of it not complying with the original intent.

A neighbor (individual did not sign in) spoke about her concern for the building and the lack of privacy she will encounter since her back yard abuts the property. They added concerns about other multi family buildings in the area and that their yard was being used as an access to those buildings.

L. Iadarola asked A. Cleghorn to review his plans for 14 Prospect Street with the group.

A.Cleghorn presented his plan for the building and stated originally they had planned for 5 units to be constructed in the building, but, determined that 3 units might fit the neighborhood better and they will be sold as condominium units.

The Zoning Board of Appeals and A. Cleghorn reviewed the plans presented for 14 Prospect Street. L. Iadarola stated when he reviewed the plan there were 13 bedrooms, 14 bathrooms, 5 kitchens, 5 living rooms. A. Cleghorn explained that the plans presented to the Zoning Board of Appeals was a previous plan which was drawn to create 5 units withing the property.

L. Iadarola expressed discomfort voting when they did not have accurate plans for the project. A. Cleghorn explained the plans would remain the same except for the removal of units 4 &5. A. Marques stated that by decreasing the size of the building and technically the floor plan would be changing.

R. Watchilla stated that A. Cleghorn did not need the official/finalized plans until he gets the building permit, but the Zoning Board of Appeals could require stamped or finalized site plans. L. Iadarola stated he would prefer to know what it would look like with three units. A. Cleghorn said the only change in the building would be the removal of the warehouse building which would have contained 2 units.

J. Chartier inquired if there would be greenspace for children to play in, A. Cleghorn confirmed there would be greenspace for the children.

R. Watchilla inquired if L. Iadarola would be more comfortable seeing renderings of the building with 3 units. L. Iadarola confirmed that he would. A. Cleghorn agreed to have the 3-unit plan drawn up for the board to see.

A. Marques asked if there would be any accessibility for persons with disabilities. A. Cleghorn said it would drive up the cost.

L. Iadarola asked if A. Cleghorn was aware of the fire code requirements. A. Cleghorn confirmed that he was.

A. Marques asked if he know how much square footage was being removed. A. Cleghorn stated it would be 2,780-square feet that would be removed from the 8,000- square foot building.

He board and A. Cleghorn discussed options for fire suppression systems and the background of the building.

L. Iadarola stated the board would like to work with A. Cleghorn, but, would like to see the 3-unit plan. He proposed continuing the hearing at the next meeting after the plans have been received.

R. Watchilla reminded the board that they were still on the Variance hearing and asked if he would like to give A. Cleghorn the choice of continuing with the Variance or applying for a Special Permit. L. Iadarola stated he could do both and felt this project falls between the requirements of both. R. Watchilla added that if A. Cleghorn would like to do that they would need to push the meeting off until October 26th because there needed to be adequate time to advertise the Special Permit.

The board continued to discuss with A. Cleghorn the next steps to take and the timeframe to do so.

The board and A. Cleghorn decided to have hearings for both the Variance and the Special Permit on Thursday October 26, 2022 at 7pm.

L. Iadarola stated he would like to hear from the members of the public who attended the meeting.

A neighbor (did not sign in) stated he was in favor of A. Cleghorn's project.

A. Cleghorn stated they originally proposed a 5-unit building. A. Marques stated it was the size of the lot which limited the number of lots allowed. A. Marques and A. Cleghorn discussed the amount of parking and impervious surface covering the lot.

P. Hamel inquired about the deck plans and the amount of privacy. A. Cleghorn stated the second floor needed a deck for entertaining. J. Chartier added that it would be desirable to have some degree of screening and yet be able to maintain the views from the property. A. Marques stated that because it's a second-floor egress there would need to be landing there anyway. A. Cleghorn said not having a deck would affect the sale price of the unit.

L. Iadarola asked if anyone else had comments or concerns. J. Burton spoke of her concerns regarding the privacy of her home. L. Iadarola responded and asked what she was planning to do and J. Burton mentioned building a fence, but, remained concerned about the second floor of 14 Prospect St. overlooking her property. L. Iadarola stated that hasn't changed since she purchased her property. J.

Burton stated that she was not in favor of 5-units and explained that she did not feel there was enough parking.

Motion made by P. Hamel to continue the Public Hearing for V-2022-02 (Antroy Cleghorn – 14 Prospect St) on October 26, 2022, to coincide with the Public Hearing for the Special Permit to be filed by Antroy Cleghorn. **Seconded** by G. Eaton.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye, Alternate
SK Robinson	Aye, Alternate

All in favor. Approved 7/0/0.

Deborah Denitis stayed and spoke with the board. J. Chartier encouraged her to attend the next meeting and continue the discussion then.

ADMINISTRATIVE

Introduction of new Zoning Board of Appeals member S.K. Robinson

Approval of minutes from Wednesday, August 24, 2022.

Motion made by J. Chartier to table minutes from August 24, 2022 and edit to add ‘set by state or federal government for guidelines’ to page 8. **Seconded** by C. Dowd. There was no additional discussion.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye, Alternate
SK Robinson	Aye, Alternate

All in favor. Approved 7/0/0.

L. Iadarola questioned the document presented by A. Marques. There was discussion that the wording in the document differed from the current bylaws. R. Watchilla reviewed the document and found the information presented by A. Marques and cited that the information is accurate. The information presented by A. Marques can be found on page 6 of the zoning bylaw.

OLD BUSINESS

N/A

NEW BUSINESS

R. Watchilla reviewed the zoning amendments which will presented at the fall town meeting.

1)RB District Boundary Alteration

L. Iadarola inquired if it constitutes as spot zoning. R. Watchilla responded that it does not constitute as spot zoning and only would if only that specific parcel was rezoned, since this was a redrawing of the boundary line it does not fall under spot zoning.

L. Iadarola mentioned that two neighboring lots came up for business use a number of years ago and it was turned down because it was desired to keep the area suburban residential and now it is being changed to accommodate a business. R. Watchilla responded that the parcel is already zoned for the Rural Business district, the use is allowed by right, they are seeking to alter where the district boundary line is located within the parcel to accommodate the building.

L. Iadarola stated that by changing the zone of the rear of the parcel it was spot zoning. R. Watchilla responded that it does not fit the definition of spot zoning.

L. Iadarola asked why only a portion of the property is being altered and not the entire parcel. A. Marques responded saying that is not the only parcel like that Janine's Frosty which has two zones on the parcel. R. Watchilla stated there were mixed feelings about it and a petition of fifty signatures however, the proponent has had gatherings and the public sentiment seems to be changing.

J. Chartier cited the need for a traffic light at the location due to the challenging traffic situations on Route 32. R. Watchilla stated it would need a site plan review before the Planning Board.

P. Hamel inquired if this was the proposed location for The Tractor Supply Co. and questioned how if the parcel was split between two zones. R. Watchilla confirmed it was and the parcel was split in half by two districts. A. Marques mentioned that part of the land is wetlands and therefore is unbuildable.

J. Chartier inquired if it would be problematic to change the parcel now when we hadn't changed it for previous owners. A. Marques stated the previous owners had the same rights and they didn't come forward to change the boundary.

2) RRB Overlay District

R. Watchilla explained the proposed Rural Business Overlay District which would fall along the Route 9 corridor.

J. Chartier questioned why some of the larger parcels were not included. R. Watchilla explained that they are agricultural parcels and are exempt from the district in order to preserve the rural characteristic of the area according to the Master Plan. R. Watchilla continued stating that other parcels had been left out for preservation reasons.

L. Iadarola asked why oil farms were excluded. R. Watchilla answered saying they have a greater chance of polluting the environment than propane which is less impactful to the ground water and aquifer supply. L. Iadarola said there was an oil company there. R. Watchilla responded that Chrabasz is a preexisting nonconforming use in that area and Canadian Tree Experts is allowed by Special Permit.

P. Hamel stated propane dumped on the ground clears extremely quickly.

J. Chartier stated in her opinion this seemed like spot zoning and that the entire district is being changed to accommodate one business. J. Chartier continued stating that it was discriminatory against the properties that could use it commercially and that by pinpointing that Canadian Tree could have it was in her opinion the definition of spot zoning. R. Watchilla explained that historically the rule has been altering parcels greater than 5 acres does not constitute spot zoning and the point have a wider benefit to the public overall. J. Chartier asked if the other included parcels had come forward to develop their property. R. Watchilla responded saying they have been contacted and have been invited to attend the public hearing. J. Chartier restated that this change was sought by one property.

L. Iadarola spoke saying his concern was bypassing Industrial Subdivision requirements. He continued by stating that the subdivision requirements for those sites take care of many of the problems and it might be better to enhance the Industrial zones in that area. R. Watchilla stated that the overlay district would only allow for light industrial uses and refining uses would not be included with the district.

J. Chartier asked for the number of parcels that would be affected. R. Watchilla responded that approximately 20% percent. J. Chartier responded stating that would alter the rural character of the area and would go against the Master Plan. She continued that it was desired to keep that corridor rural, scenic, and she does not agree with the change and feels it is spot zoning.

J. Chartier asked of town counsel had been consulted and if they had specified whether it was spot zoning or not. R. Watchilla stated they read former case law which suggests that it has a public purpose, and the affected area is greater than 5-acres.

J. Chartier stated the change is based on one business. R. Watchilla responded that it was a business which proposed it.

L. Iadarola asked what would be required if someone wanted to put light manufacturing in that area. R. Watchilla stated they would need a site plan review and a special permit, as both are required for the uses listed.

A. Marques spoke saying that technically as per the case law that they saw the single parcel is large enough to not be labeled as spot zoning. And the idea of expanding the overlay district to cover more parcels was to give others the opportunity to expand.

R. Watchilla spoke saying the proponents pointed out it was an existing commercial corridor which existed there and some of the uses included in that district have been included in the overlay district.

L. Iadarola asked why the others were included and does not see how it will add any benefit to the town.

R. Watchilla said they should voice their concerns at town meeting.

J. Chartier stated it is discrimination. R. Watchilla explained it was not discrimination as state law prohibits the amount that can be built on agricultural land, and it would also go against the master plan.

The board and R. Watchilla discussed why certain properties were or were not included in the overlay district.

J. Chartier questioned the setback requirements and that there are state requirements.

L. Iadarola asked if the board would like to make a motion. R. Watchilla stated they are unable propose changes during this meeting but, they are welcome to submit a letter and/or attend the meeting.

“The overlay districts as laid out don’t offer equal development opportunities to all land owners over 5 acres in the route 9 corridor. The motivation appears to be individually driven and may not be in the best interest of the town. The overlay district does not concur with the master plan”

SK Robinson requested that the phrase ‘The motivation appears to be individually driven’ be removed as he feels it does not benefit what the Zoning Board is trying to accomplish.

Motion made by L. Iadarola to send a letter to the Planning Board citing their concerns for the Rural Business Overlay District. Seconded by J. Chartier. There was no additional discussion.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye, Alternate
SK Robinson	Aye, Alternate

All in favor. Approved 7/0/0.

3) Urban Fill

R. Watchilla read the section regarding urban fill to the Zoning Board.

L. Iadarola asked if this would prohibit the town from filling potholes. R. Watchilla added that it would not impede the filling of potholes.

R. Watchilla and the board discussed if the paving of back roads with oil and stones would be affected. R. Watchilla stated it would not.

ADJOURN

Motion made by J. Chartier to adjourn at 8:57 pm. Seconded by P. Hamel. No additional discussion.

L. Iadarola Aye
J. Chartier Aye
C. Dowd Aye
G. Eaton Aye
P. Hamel Aye
D. Skoczylas Aye, Alternate
SK Robinson Aye, Alternate

All in favor. Approved 7/0/0.

Minutes from September 28, 2022

Respectfully submitted by,

Kristen Jacobsen
Administrative Assistant
Planning & Community Development

Minutes Approved on:

Iadarola	
Chartier	
Hamel	
Dowd	
Eaton	
Skoczylas	
Robinson	