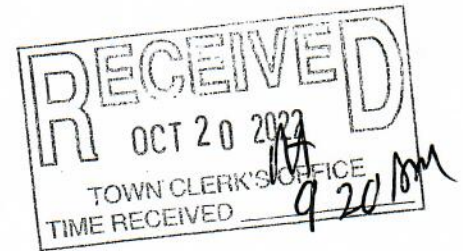


TOWN OF WARE
Planning & Community Development
126 Main Street, Ware, Massachusetts 01082
t. 413.967.9648 ext. 120 rwatchilla@townofware.com

**ZONING BOARD OF APPEALS
MEETING AGENDA
WEDNESDAY, OCTOBER 26, 2022**

Location: Selectboard Meeting Room
 126 Main Street, Ware, MA
Time: 7:00 p.m.

Virtual Participation:
Phone number: 929-205-6099
Meeting ID: 784 604 1861
Passcode: 01082



Instructions for call in option: Call the phone number above and when prompted enter the Meeting ID number and Passcode.
Join the Meeting Online: <https://zoom.us/join>

-
1. Pledge of Allegiance
 2. Administrative
 - a. Approval of Minutes
 - i. August 24, 2022
 - ii. September 28, 2022
 3. Public Hearings
 - a. 7:05pm SP-2022-09 & V-2022-02 [Continued] (Antroy Cleghorn – 14 Prospect Street)
 - i. Applicant is requesting a Variance & Special Permit 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).
 - b. 7:35pm A-2022-01 (Paul & Gail Moryl – 40 Fisherdict Road)
 - i. Administrative appeal filed against a "cease-and-desist" order from July 28, 2022 issued by the Zoning Enforcement Officer in regard to an Earth Processing Operation. Site Location: 40 Fisherdict Road. Deed recorded in the Hampshire County Registry of Deeds, Book 13857, Page 62. Assessor's Parcel 21-0-38. Zone: Rural Residential (RR).
 4. New Business
 - a. Any other matters that the Chair did not anticipate before the creation of this agenda.
 5. Adjourn

At the time of posting of this meeting, the agenda items listed above are what is reasonably anticipated by the Chairman to be discussed at this meeting. Other items not listed may be brought up for discussion to the extent permitted by law. The general public is invited to this and all meetings of the Ware Zoning Board of Appeals.



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

August 24, 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

Zoning Board Members Absent:

Staff Present:

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

Public in Attendance:

Claudia Kadra, Ware Historical Commission
Elizabeth Hancock, Town of Ware Planning Board (Alternate)
Donald Desjardins
Yasser Fares

PLEDGE OF ALLEGIANCE

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

[J. Chartier recused herself from the Public Hearing](#)

Public Hearings

- a. V-2022-01 (Yasser Fares – 30 Anderson Road)
 - i. Applicant is requesting Variance relief from a side yard setback in order to construct a car port for a primary residence. Site Location: 30 Anderson Road. Deed recorded in the Hampshire County Registry of Deeds, Book 12855, Page 30. Assessor's Parcel 10-0-123. Zoned: Rural Residential (RR).

R. Watchilla displayed a drawn map depicting the area that Y. Fares proposed building a carport and demonstrated the area where the proposed structure would encroach on the sideline set back. The carport would be 12'x23'.

L. Iadarola asked what type of flooring material would be used. Y. Fares answered that initially he would use stone (gravel) but hope to be able to pour a foundation in the future.

L. Iadarola asked why Y. Fares had chosen not to enclose the carport and turn it into a garage. Y. Fares responded that to do so would require more construction efforts and preferred to leave it open.

L. Iadarola requested comments in support or against the proposed structure. Y. Fares neighbor D. Desjardins spoke in favor of Y. Fares and mentioned that before Y. Fares purchased the property it was basically run down but after all of the upgrades Y. Fares had done it looks like a nice home.

L. Iadarola asked if that was D. Desjardins garage in one of the photos. D. Desjardins responded that it was. D. Desjardins spoke saying he did not believe that Y. Fares' carport would impinge on his views. D. Desjardins suggested to the board that there should be a stipulation or clause which would say "construction should make the drainage go away from the foundation of the home to prevent erosion".

L. Iadarola inquired if D. Desjardins would sell Y. Fares 12' of his property. D. Desjardins stated he would not as he did not wish to run the risk of a potential hardship in the future.

L. Iadarola asked if anyone else wanted to speak. No one added to the conversation. L. Iadarola closed the open portion of the meeting.

L. Iadarola spoke stating the bylaw states there must be a 30' side setback and stated there are many similar parcels in Ware. Without making a change to the bylaw it is extremely difficult to approve one and deny others. L. Iadarola continued by saying that is why they are exploring options for Y. Fares to build his desired structure and still abide by the bylaws.

D. Skoczylas inquired as to the measurements of the carport and the land.

D. Desjardins inquired why L. Iadarola asked Y. Fares if he had considered building a garage. L. Iadarola explained that he was trying to solve the issue by suggesting an alternative that would put the structure to the rear of Y. Fares' home, which would only need to abide by a 10' set back.

Y. Fares spoke saying he felt it would look odd. Y. Fares continued saying garage would close off the railing to his deck as well as block the access to the storage area underneath the deck. L. Iadarola suggested if it were a garage, he create an access door to the storage area under the deck.

Y. Fares stated he wanted the carport alongside of the house as a complement to the house. Y. Fares continued saying that there is a large swing set in the back yard, and he feels that if the carport is placed toward the rear of the home, he would lose the use of most of his property.

L. Iadarola stated that Y. Fares needed to work within the bylaws which require a 30' sideline setback.

D. Desjardins spoke saying he believed the carport would look more attractive if it were on the side of the house. L. Iadarola responded that it probably would look more attractive however, Y. Fares did not have the required setback to build there. L. Iadarola continued by saying the reason for the setback distance was because the town wanted to maintain a buffer zone between neighbors.

D. Desjardins stated he did not feel Y. Fares would encroach on his property.

D. Skoczylas asked if L. Iadarola had suggested the carport be built on the backside of the porch. L. Iadarola stated that if he had the setback, it could be attached to the deck. A. Marques asked if L. Iadarola was speaking of connecting the two structures with a door. L. Iadarola clarified that Y. Fares could connect the structure to the rear of his house maintaining the 40' rear and 30' side setback as D. Skoczylas suggested.

A. Marques responded stating that if the two structures are connected it then becomes a single structure and would need to abide by the sideline setbacks

D. Desjardins asked if 100% of the structure would need to be behind the house which L. Iadarola confirmed that it would.

P. Hamel inquired as to the location of the septic tank. L. Iadarola confirmed that it was in the back yard. P. Hamel suggested that if Y. Fares needed another parking space, he could make one but not the structure which L. Iadarola agreed with.

D. Skoczylas asked if it would be possible to build the structure off the back corner of the deck. L. Iadarola confirmed that it was possible and there was room.

D. Desjardins commented stating he thought Y. Fares' leach field was in the back corner of the yard. Y. Fares clarified that the leach field was behind the swing set.

Y. Fares stated he had previously reviewed that option and others with A. Marques. Y. Fares continued stating he felt if the structure was placed toward the rear of his property, he would be sacrificing the majority of his yard.

R. Watchilla asked Y. Fares how much yard he felt he'd be sacrificing if he placed the structure in the rear of his property. Y. Fares answered saying he felt it would take up a large portion of the yard, it would close off the deck railings and access to the storage area under the deck.

A. Marques spoke saying she recalled discussing what would be more aesthetically pleasing and that by placing the carport in line with the house would be more aesthetically pleasing.

L. Iadarola spoke saying that often the town has seen temporary structures that end up getting closed off and becoming permanent structures.

D. Desjardins spoke saying that one of his rear neighbors had built a shed on his (D. Desjardins') property and when the home was sold D. Desjardins had to sign a letter from an attorney stating he would not object to the shed being on his property.

D. Skoczylas asked Y. Fares if placing the structure in the rear of his yard would be a possibility for him. Y. Fares responded that it was not and felt it would look out of place there.

D. Desjardins spoke saying he felt it would look neater along the side of the house.

L. Iadarola stated that variances are permanently with the property.

Y. Fares asked if it was the same with grandfathered business. L. Iadarola clarified that the definition of grandfathered is misused and that it only applies if something was legal at the time of construction.

D. Skoczylas asked if Y. Fares felt any of the options presented by the Zoning Board would be a possibility. Y. Fares stated no, they were not.

P. Hamel asked if the roof of the proposed structure would be used as a patio or sitting area. Y. Fares stated that no it would not.

L. Iadarola stated that as much as the board would like to accommodate Y. Fares request, he felt there was no way to get around the bylaw. He Encouraged Y. Fares to consider any of the options presented to him.

Motion made by L. Iadarola to deny V-2022-01 (Y. Fares – 30 Anderson Road) on the basis that it conflicts with the sideline setback as there are viable alternatives which would abide by the bylaws. Seconded by P. Hamel

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

All in favor. Approved 5/0/0.

J. Chartier rejoined the meeting

ADMINISTRATIVE

Approval of minutes from Wednesday, June 1st, 2022.

Motion made by J. Chartier to approve minutes from June 1, 2022. 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

All in favor. Approved 6/0/0.

OLD BUSINESS

Continued discussion on pre-existing non-conformities

Discuss answers provided by Town Counsel at the June 1 meeting.

L. Iadarola spoke of receiving an email from Town Counsel providing clarification on the term ‘Grandfathering’. The email stated a building or use, and its non-conformities are only considered grandfathered if the non-conformity was legal at the time of construction or when the use started.

L. Iadarola spoke of RTs Welding. A Class III license was issued by the Selectmen after being rejected by Planning and Zoning Boards. L. Iadarola stated that A. Marques could now pursue that because the Select board had no basis to give them the license. A. Marques stated there was no official violation present.

S. Beckley stated that what L. Iadarola was proposing was the junk yard that is not legally allowed in that zone, therefore it is not a legal non-conforming business and therefore should not be allowed to exist. R. Watchilla stated it allegedly lacks the protections and RT welding believes it should be grandfathered.

L. Iadarola suggested that if A. Marques were to tackle it then she should have Town Council involved because of the complications with the issue. A. Marques stated that she is currently looking into it and asked what he felt the best way to approach that would be. L. Iadarola added he understands the frustrations of the neighboring properties.

D. Skoczylas asked when the license had been issued, L. Iadarola responded he believed it was issued in the early 2000’s.

A.Marques cited 1.9.3 in the Zoning Bylaw which states non-conforming uses may be extended by a Special Permit granted by the Zoning Board of Appeals as long as the extension or alteration shall not be substantially more detrimental to the neighborhood than the existing non-conforming use.

R.Watchilla stated that the Zoning Board of Appeals issued a Special Permit for Crescent Street and was not aware of a previous instance when a Special Permit for a non-conforming use had been issued.

L. Iadarola stated that Y. Fares could have also been issued a Special Permit to build his carport although he'd still require a variance

L. Iadarola asked if the changes to the bylaws had been submitted to the Attorney General. S. Beckley responded that it could take months to receive a response. L. Iadarola asked if that meant they could not be implemented until then. S. Beckley clarified that they exist from the time they were adopted at Town Meeting.

R. Watchilla added they could still be amended by the Attorney General and the amendments from March 2021 had taken until August of 2021 to receive the Attorney General's approval. R.Watchilla stated that the Zoning Bylaw changes were posted on the website for public viewing.

L. Iadarola proposed changing the bylaw for lakefront homes which would allow accessory structures to be constructed in front of homes. A. Marques asked if that meant they would keep the 5' or 10' set back depending on if it's a shed or a garage. L. Iadarola responded that he would keep the setback requirement and they should be allowed no further forward than the existing structure. A. Marques asked if that meant keeping the accessory structure in line with the house. L. Iadarola confirmed saying he felt it made sense and D. Skoczylas agreed. L. Iadarola asked A. Marques to draft something up for it and to circulate it.

R.Watchilla asked if L. Iadarola intended to have this ready for Fall or Spring Town meeting, cautioning that the Fall Town Meeting docket is full due to recent changes to the bylaw proposed by the Planning Board and that another meeting would be needed. L. Iadarola stated he felt his proposed changes were minor.

L. Iadarola asked what changes the Planning Board had proposed. R.Watchilla responded stating that one of the changes would be a redrawing of the RB district altering the property lines in one area. J. Chartier asked if that was for the Tractor Supply and R.Watchilla and S.Beckley confirmed the address.

L. Iadarola stated other changes of this nature had been discussed between the Zoning Board of Appeals and Planning Board.

J. Chartier spoke about the areas to be designated within the proposed Rural Business Overlay District. R.Watchilla clarified that it had existed previously as the Residential Business II District. J. Chartier said it had been put forward by the owners of Canadian Tree, adding they

want propane storage on their property. S.Beckley stated that it wasn't only for the purpose of propane storage but for additional uses for the property.

R. Watchilla stated it had been a commercial corridor which allowed commercial uses in that area. R.Watchilla added the overlay district would be for larger parcels (5- acres +), however the majority of the parcels are around 1 acre in size.

J. Chartier stated that as per the Town's Master Plan no development is expected in the areas near the Quabbin. When the Master Plan was created the residents wanted the area to stay rural residential and to not allow for other uses.

L. Iadarola proposed the Zoning Board of Appeals could draft a resolution to counter the overlay district.

S.Beckley stated the Zoning Board of Appeals members could attend the public hearing.

L. Iadarola said the Zoning Board of Appeals and Planning Board should work together on these issues. S.Beckley added both of these cases had been brought forth by property owners.

J. Chartier inquired if it would be possible for the Zoning Board of Appeals and the Planning Board to have a joint meeting. R. Watchilla responded that they could request a joint meeting for September 1, 2022, however, they could not alter what had been submitted to the Select Board. R. Watchilla added that they could attend the Public Hearing and discuss the changes there.

The Zoning Board of Appeals discussed the process in which the Planning Board submitted changes to the Select Board independently and voted on the presented matters as they deemed appropriate. S. Beckley stated that was the job of the Planning Board under Massachusetts General Law. The Zoning Board stated they desired greater communication between the two boards.

E. Hancock (Planning Board, Alternate) reiterated that the Planning Board would not have been involved if the issues had not been brought forward by property owners.

The Zoning Board discussed ways in which they could be notified. R.Watchilla stated the Planning Board Agenda is posted on the website and they meet on the first and third Thursday of every month. If the Zoning Board of Appeals desired a joint meeting he would only need two days' notice, after which he could draft an agenda and have the Town Clerk stamp it. J. Chartier stated that checking the Town's website was not always possible. E. Hancock proposed a notification email be sent out.

L. Iadarola stated to S. Beckley he felt Y. Fares could have taken a chance and constructed the structure hoping his neighbors would not complain and the structure would not be caught. S. Beckley responded that was the responsibility of the Building Inspector.

Discussion continued between the Zoning Board of Appeals and A. Marques clarifying the processes in which she is able to issue tickets for infractions and the differences between zoning and building permit infractions. A. Marques also clarified that it is in keeping with her training to respond to zoning issues based on registered complaints, however, if the infraction is due to a building permitting issue she is then able to immediately issue a ticket. A. Marques noted the differences between zoning and building permit infractions and stated they are dealt with separately.

L. Iadarola asked how A. Marques would respond to an illegal carport. A. Marques stated her response would depend on the nature of the infraction. If the infraction was of a zoning nature she would need to wait until a complaint was filed however, if it was of a building permit nature she could immediately issue a ticket. A. Marques also stated that those rules were set in place by her predecessor.

L. Iadarola asked if there was a bylaw mandating houses to face the street.

A. Marques responded that there was not. She cited two homes constructed during the time of her employment that were purposely built with their fronts facing away from the street. One had been built to take advantage of the scenic views and the other to take advantage of the quieter setting.

NEW BUSINESS

- a. Discussion on the role of the ZBA
 - ii. Address the role of the ZBA in regard to setting new zoning policy and influence, and its relation to the Planning Board and Building Commissioner.
- b. Discussion on burned buildings and its relation to the Zoning Bylaw
 - iii. Proposed discussion by Vice-Chair Jodi Chartier

The conversation over the role of the Zoning Board of appeals was addressed in the above conversation.

J. Chartier inquired if a bylaw she had heard of may be added to the Town of Ware bylaws to assist with burned homes. A. Marques clarified that it was not a bylaw but a code enforcement procedure. S. Beckley clarified that the town was attempting to copy that procedure and the situation is moving forward. R. Watchilla added that there is a section in the meeting packet containing information regarding building structures damaged by fire along with details on the process of rebuilding on a non-conforming lot and stipulations for temporary housing on the site where reconstruction is taking place.

A. Marques spoke of information she had received from the Building Inspector in Springfield MA. She was informed that Springfield had adopted processes from the state of FL who created the processes in hopes of quickening the pace of rebuilding after hurricanes. A. Marques said Ware is looking to adopt similar measure in a scale appropriate to the town.

iii: Proposed discussion by J. Chartier on Battery Storage Facilities

J. Chartier presented research she had conducted in regard to battery storage facilities. The research stated the tech is very new and as such there are no clear standards for the development of these structures **set by state or federal government guidelines**. Also, there should be additional considerations for safety, environmental hazards, noise, aesthetics, operations, maintenance, and decommissioning must also be addressed. J. Chartier brought forward conversation on the Moratorium and spoke of hoping to quicken the pace in which bylaws are created regarding these structures.

L. Iadarola questioned how scale was defined regarding these structures. R. Watchilla responded that the Zoning Bylaws use Kilowatts, but the values of the batteries themselves are not the same. R. Watchilla continued by saying the previous research he had conducted stated the value at capacity needed to be appropriate to the number of batteries that compliments anything larger than 100 kilowatts, however, there is not an exact number that can be found and cautioned if a number were to be imposed it would be unwise. R. Watchilla suggested more research needed to be conducted.

R. Watchilla spoke of a meeting with the Planning Board which discussed the grant given to the P.V.P.C to conduct research along with the towns of Belchertown and Monson. The towns would form a committee to discuss language which would create a document to be shared amongst the towns to use in their own bylaws before the moratorium expires.

J. Chartier stated she feared the process would go beyond the moratorium expiration and stated she would prefer having a bylaw written presently which could be amended at a later time. R. Watchilla responded saying there was time to have something prepared for the spring meeting.

L. Iadarola inquired about the size of existing solar facilities in town. R. Watchilla stated they were all over 100 kilowatts.

J. Chartier asked if the utility plans were still submitted or if they were withdrawn as they could no longer be located on the town website. R. Watchilla responded that the application was incomplete which S. Beckley attested to.

S. Beckley stated the solar facility on Upper Church Street was 1.4 megawatts.

E. Hancock stated that most of the free standing battery storage banks are EV batteries repurposed after they reach 70% capacity in automobiles. At that capacity they are no longer sufficient for use in cars however, they can still generate electricity. The batteries tend to become unstable as they age which leads to concern of fire and environmental damage. The expected life of one of these batteries at that stage is 10-11 years after which there is no current way to recycle or dispose of them.

J. Chartier suggested having them bonded which E. Hancock agreed. E. Hancock brought up the current issues happening with Medway Grid, LLC. The company is attempting to file a petition to receive an exemption from the towns zoning laws in Medway MA.

J. Chartier stated she believes that Ware with its hydro power and solar fields is currently creating enough power for itself and its neighboring towns. J. Chartier added she didn't feel she was dismissing them and that battery storage would still be acceptable for solar fields to store what the facility produces.

R. Watchilla spoke cautioning the board wasn't able to discuss the regulation of solar on personal property according to state law and believes batter storage on personal property also applies especially if it compliments solar on personal property.

R. Watchilla advised against rushing a bylaw as it would create a poor product and stated there is enough time to create a better policy before the moratorium expires.

L. Iadarola asked how the Historic Commission is able to regulate it and tell the property owners they aren't allowed.

C. Kadra stated they hadn't proposed anything disallowing battery storage, but they would be required to have a 200' setback on scenic roads under the proposed Scenic Road Bylaw.

R. Watchilla mentioned that there will be a Public Hearing for the Scenic Road Bylaw September 15, 2022.

L. Iadarola asked what other development would be allowed and if industrial uses would be allowed in the Historic District. C. Kadra responded saying the Scenic Road Bylaw would not contain considerations

for that as it pertained to preserving roads that offer scenic features. L. Iadarola asked if the set back meant that the number of trees able to be cut 200' back from the road was limited. C. Kadra clarified saying that the Scenic Road Bylaw hoped to make the setbacks for large battery storage facilities to 200'.

R. Watchilla stated the Scenic Road Bylaw did not involve zoning and its sole purpose was to protect stone walls and street trees that are in the public right of way. If either feature falls on private property they are not included in the bylaw.

L. Iadarola asked if it pertained to state roads. R. Watchilla responded that as per state law all state roads are excluded.

J. Chartier cited a passage in the Master Plan which recommended Walker Road be included in the Scenic Road Bylaw.

ADJOURN

Motion made by P. Hamel to adjourn at 8:23 pm Seconded by J. Chartier.

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

All in favor. Approved 4/0/2.

Minutes from August 24, 2022

Respectfully submitted by,

Kristen Jacobsen
Administrative Assistant
Planning & Community Development

Minutes Approved on: _____

Iadarola _____

Chartier _____

Hamel _____

Dowd _____

Eaton _____

Skoczylas _____



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 _____



TOWN OF WARE

Planning & Community Development

126 Main Street, Ware, Massachusetts 01082
t. 413.967.9648 ext. 120 rwatchilla@townofware.com

Notice of Public Hearing Ware Zoning Board of Appeals

LEGAL NOTICE

to be published in the *Ware River News*
issues 10/6/2022 and 10/13/2022

SP-2022-09

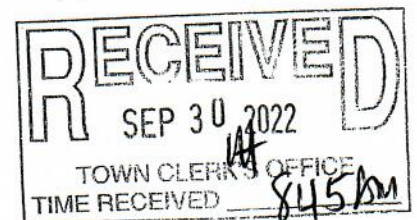
NOTICE is hereby given that the Ware Zoning Board of Appeals, per the powers given under M.G.L. Chapter 40A, will hold a Public Hearing on **Wednesday, October 26th, 2022 at 7:05 PM** on the application of Antroy Cleghorn for a Special Permit (SP-2022-09).

Applicant is requesting a special permit to exceed the maximum density requirement of 1.8 units to allow for 3 units, under Sections 5.1 & 7.2 of the Zoning Bylaw, and pursuant to MGL Chapter 40A. Pursuant to Chapter 22 of the Acts of 2022, this hearing will be conducted in person and via remote means, in accordance with applicable law. This means that members of the Zoning Board of Appeals, as well as members of the public, may access this meeting in person, or via virtual means. In person attendance will be held in the Selectboard Meeting Room, 126 Main Street, Town Hall, Ware, MA. It is possible that any or all members of the public body may attend remotely, with in-person attendance consisting of members of public. The meeting may be accessed remotely via zoom. Go to <https://zoom.us/join> or join by phone. Phone Number: 929-205-6099; Meeting ID: 784 604 1861; Password: 01082.

SITE LOCATION: 14 Prospect Street, Ware, MA. Deed recorded in the Hampshire County Registry of Deeds, Book 14466, Page 262. Assessor's Parcel 61-0-229. Zoned: Downtown Residential (DTR).

A complete copy of the application can be found at the Town Clerk's office and on the Planning & Community Development Department website under Recent Filings. Anyone interested or wishing to be heard on the application should appear at the time and place designated.

WARE ZONING BOARD OF APPEALS
Lewis Iadarola, Chairman



Planning Board
Zoning Board of Appeals

Robert A. Watchilla
Director of Planning &
Community Development

Town of Ware

Planning & Community Development

Application for Special Permit



126 Main Street
Ware, MA 01082
413.967.9648 ext. 120
www.townofware.com

SP-20 22 - 09

Applicant
Name of Applicant (primary contact): Antroy N Cleghorn
Address: 76 Highview Street, Norwood, MA
Phone: 857-320-9732 Cell: _____
Email Address: subboy_22@yahoo.com

Owner
Name of Owner (primary contact): Same as applicant
Address: _____
Phone: _____ Cell: _____
Email Address: _____

Request
Choose applicable Zoning Bylaw Section: 7.2
Will the project require a: **Site Plan Review:** ☐ Yes* ☒ No **Variance:** ☒ Yes* ☐ No *Explain in narrative

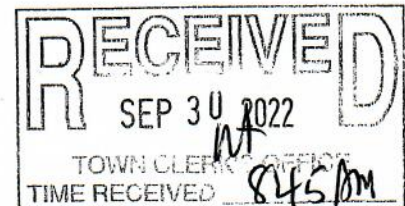
Property
Location of Property: 14 Prospect Street, Ware, MA 01082
Assessor's Tax Map/Parcel Number: 61-0-229
Deed Reference - Hampshire District Registry of Deeds Book/Page Number: 14466/262
Plan Reference - Hampshire District Registry of Deeds Book/Plan Number: N/A
Zoning District: Downtown Residential (DTR) Acreage: 0.2181
Check all that apply: ☐ Wetlands ☐ Floodplain ☐ Aquifer

Proposal
Brief description of the proposal: Turning a 8100 sqft building into three condominium units of 1600 sqft each, which will be available for lower income families.

Sign
Applicant's signature: [Signature]
Owner's signature: [Signature]
Date: 09/27/02

Official Use Only: Preliminary Review By: _____ Date: _____
Fee: \$ _____ Date Paid: _____ Check #: _____
Date of Public Hearing: _____
Decision of Board: _____
Date of Decision: _____ Expiration Date: _____

Town Clerk's stamp:



Zoning Board of Appeals

Robert A. Watchilla Director
of Planning & Community
Development

Town of Ware
Planning & Community Development
Application for Variance

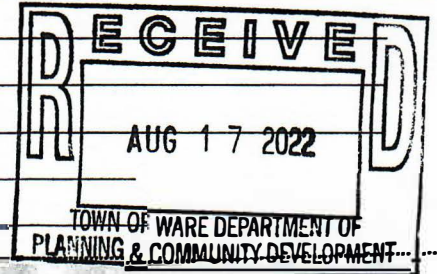


126 Main Street
Ware, MA 01082
413.967.9648 ext. 120
www.townofware.com

V 20 22 - 02

Applicant

Name of Applicant (primary contact): ANTROY N CLEGHORN
Company: NJD PAINTING
Address: 76 HIGHVIEW ST NORWOOD
Phone: 8573209732 Cell: 8573209732
Email Address: SUBBOU_22@YAHOO.COM



Owner

Name of Owner (primary contact): ANTROY N CLEGHORN
Address: 76 HIGHVIEW ST NORWOOD 02062
Phone: _____ Cell: 8573209732
Email Address: SUBBOU_22@YAHOO.COM

Request

Choose applicable Zoning Bylaw section: _____
Will the project require a: Site Plan Review: ☒ Yes* ☒ No Special Permit: ☒ Yes* ☒ No *Explain in narrative

Property

Location of Property: 14 PROSPECT ST WARE MASS 01082
Assessor's Tax Map/Parcel Number: 51-0-229
Deed Reference - Hampshire District Registry of Deeds Book/Page Number: 14466/262
Plan Reference - Hampshire District Registry of Deeds Book/Plan Number: _____
Acreage: 0.2181 Zoning District: Downtown Residential (DTR)
Constraints on the property; check all that apply: ☐ Wetlands ☐ Floodplain ☐ Aquifer

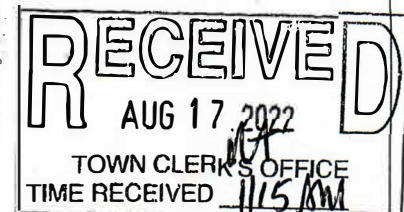
Proposed

Brief description of the proposal: Turn 8100 sqft building into ~~five~~ three condominium units of 1600sqft each, which will be available for lower income families

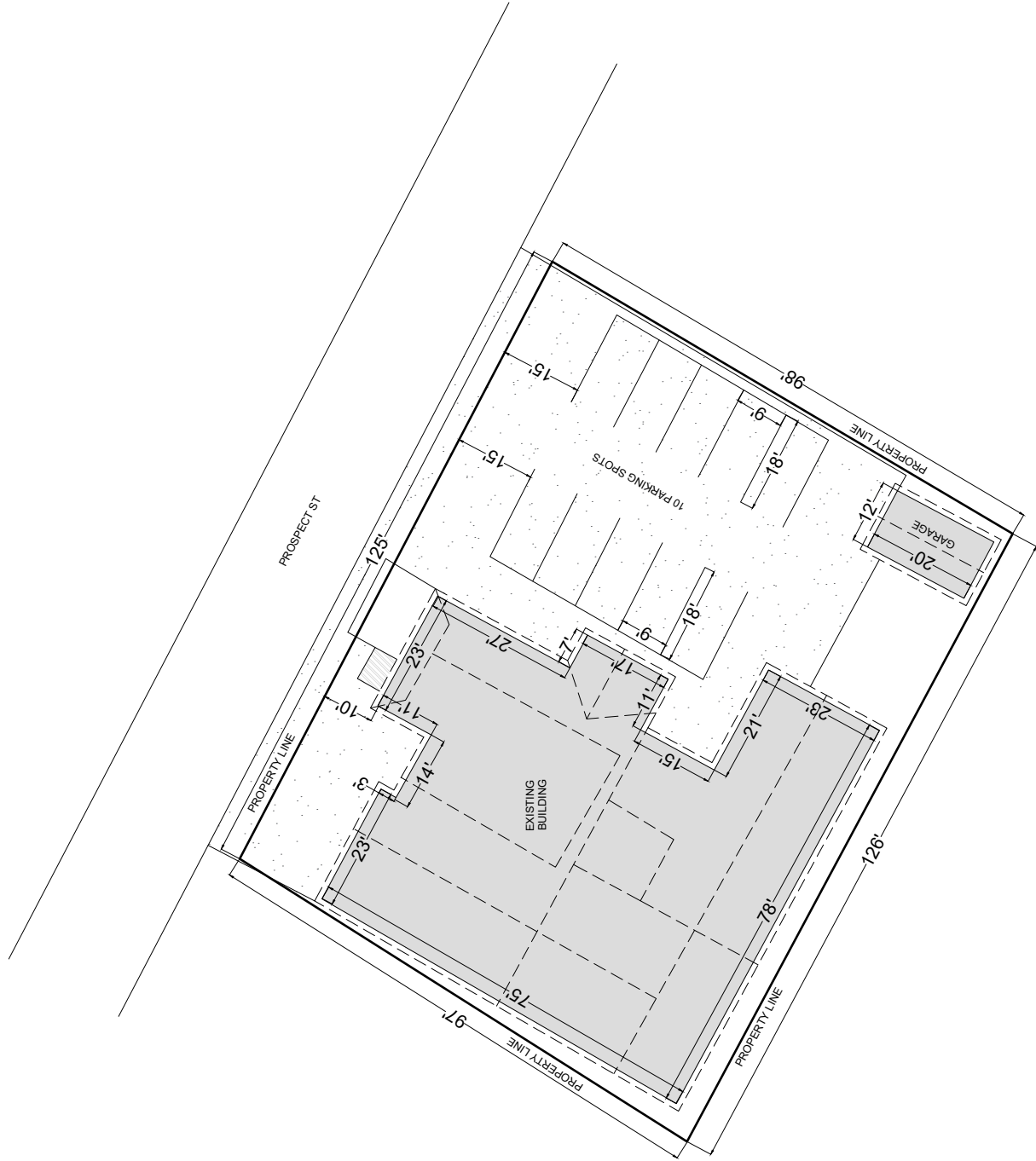
Sign

Applicant's signature: [Signature]
Owner's signature: [Signature]
Date: 8/5/22

Town Clerk's stamp:



Official Use Only: Preliminary Review By: RW Date: 8/17/2022
Fee: \$ 250.00 Date Paid: 8/17/2022 Check #: 1321
Date of Public Hearing: _____
Decision of Board: _____
Date of Decision: _____ Expiration Date: _____



NOTES:

ADDRESS:

14 PROSPECT ST
WARE, MA 01082

SITE PLAN

PARCEL ID: 61-0-229

LOT AREA: 0.22 ACRES

PLOT SIZE: 8.5" X 11"

DRAWING SCALE: 1"=30'



*NOTE: FOR THE SCALE TO
BE CORRECT SHEET MUST
BE PRINTED ON 11" x 17"*

NOTES:

PROPOSED FIRST FLOOR PLAN 2

ADDRESS:

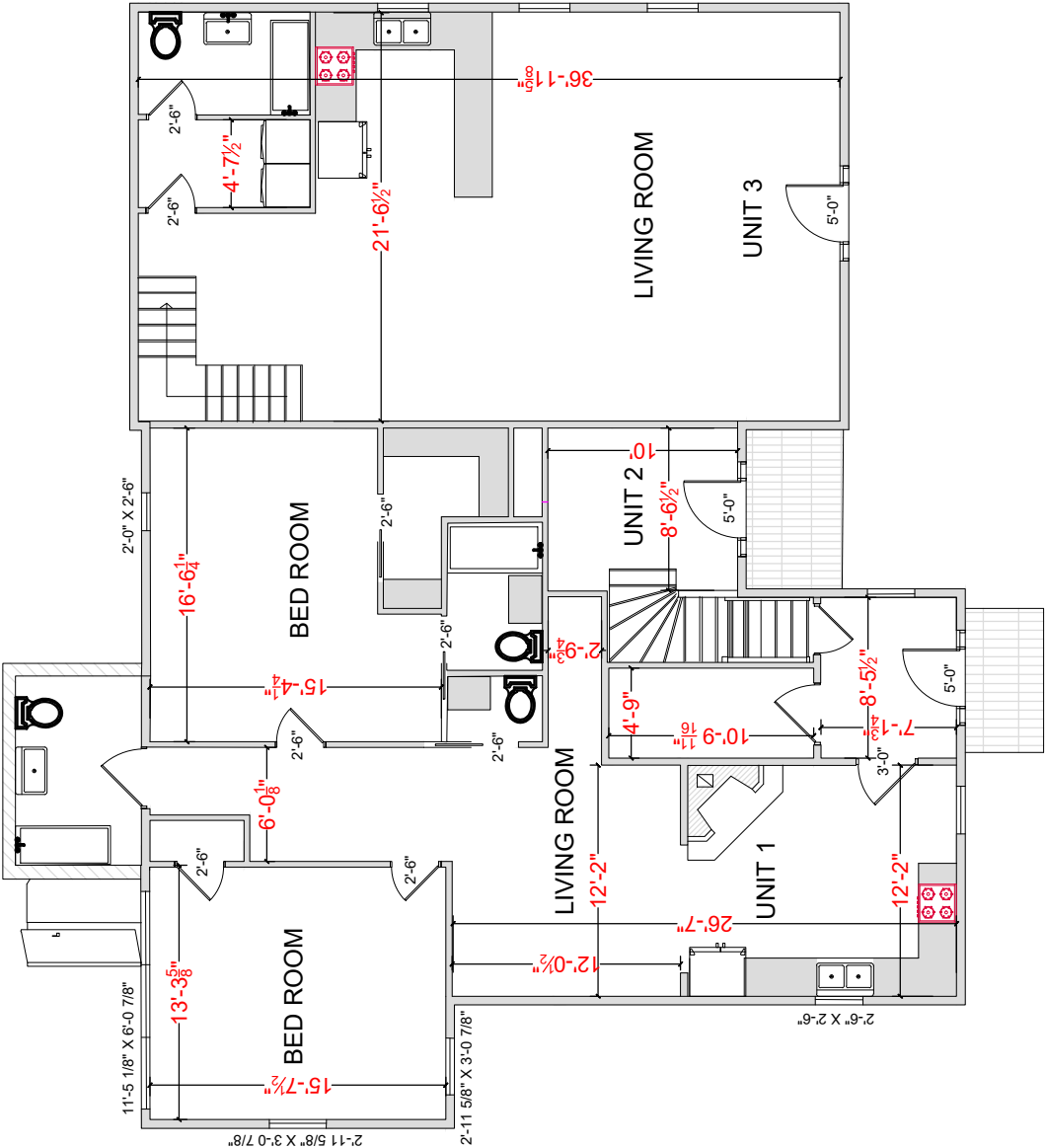
14 PROSPECT ST
WARE, MA 01082

PARCEL ID: 61-0-229

LOT AREA: 0.22 ACRES

PLOT SIZE: 11" X 17"

DRAWING SCALE: 1"=10'



*NOTE: FOR THE SCALE TO BE CORRECT SHEET MUST BE PRINTED ON 11" x 17"

NOTES:

PROPOSED SECOND FLOOR PLAN 2

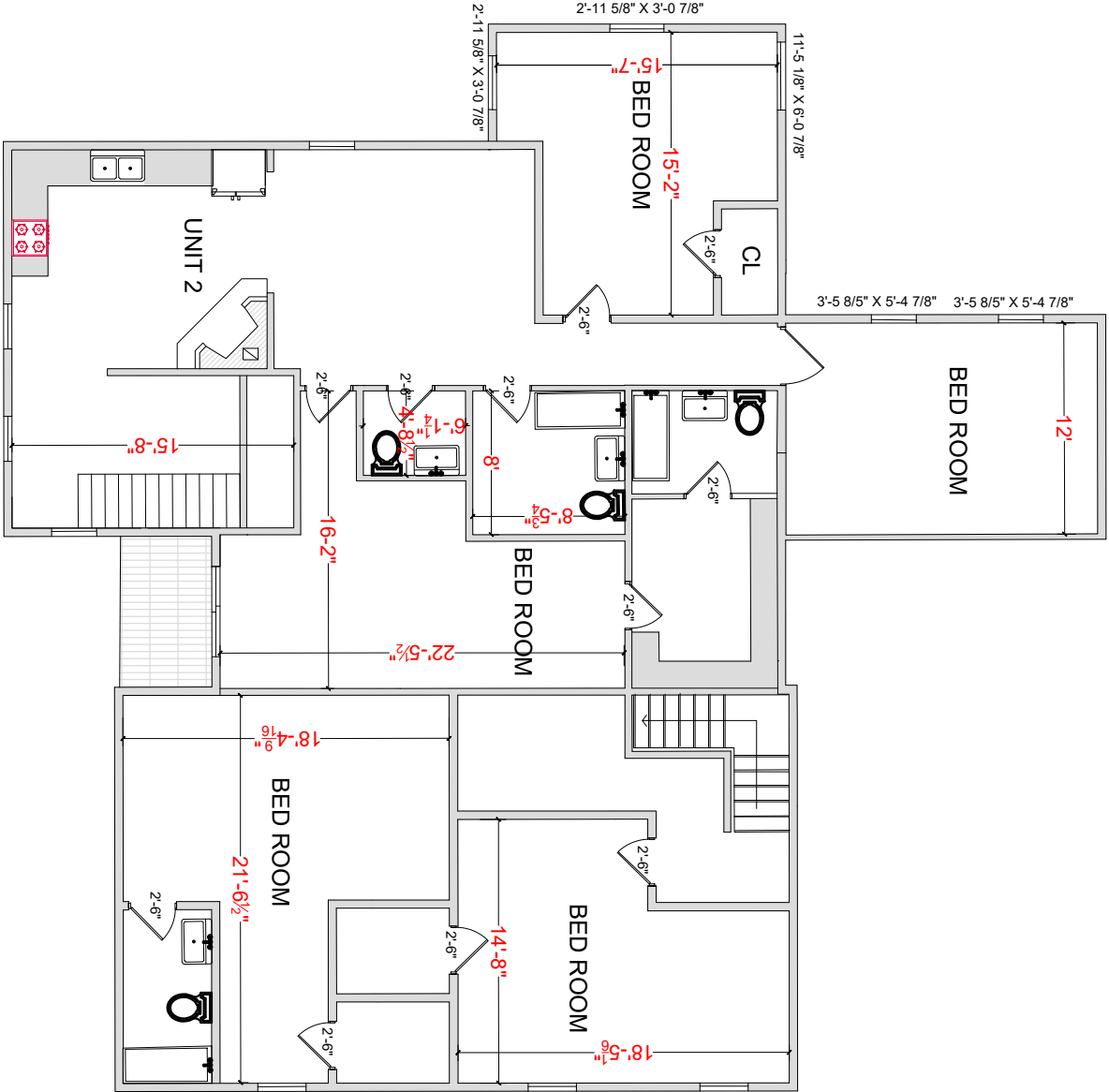
ADDRESS:
14 PROSPECT ST
WARE, MA 01082

PARCEL ID: 61-0-229

LOT AREA: 0.22 ACRES

PLOT SIZE: 11" X 17"

DRAWING SCALE: 1"=10'



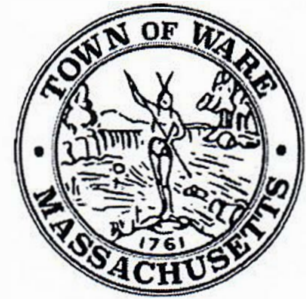
Planning Board
Zoning Board of Appeals

Robert Watohilla
Director of Planning &
Community Development

126 Main Street, Ware MA 01082
413-967-9648 ext. 186

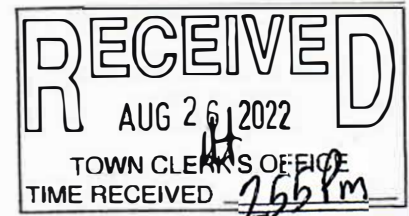
Town of Ware Planning & Community Development

Application for Administrative Appeal



Applicant	Name of Applicant (primary contact):	Paul A. Moryl & Gail F. Moryl, Trustees of Moryl Family Trust c/o Damien Berthiaume	
	Company:	Berthiaume & Berthiaume	
	Address:	4 Elm Street, PO Box 190, North Brookfield, MA 01535	
	Phone:	508-867-6885	Cell: 508-928-8252
	Email Address:	db@berthiaumelegal.com	
Owner	Name of Owner:	Paul A. Moryl & Gail F. Moryl, Trustees of Moryl Family Trust	
	Address:	40 Fisherdk Road, Ware, MA 01082	
	Daytime phone:	413-4 78-6900	
Property	Location of Property:	40 Fisherdk Road, Ware, MA 01082	
	Assessor's Tax Map/Parcel Number:	21-0-38	13857/62
	Deed Reference – Hampshire District Registry of Deeds Book/Page Number:		
	Plan Reference – Hampshire District Registry of Deeds Book/Plan Number:	N/A	
	Acres:	67.9974	Zoning district: RR
Request	Date of Decision:	7/28/22 <i>A copy of the decision being appealed MUST be filed with this application.</i>	
	Applicable Zoning Bylaw section(s):	7.1.3 A; 7.6	
Justification	Describe the relief you are requesting:	The Applicant requests that the ZBA overturn the Cease and Desist Order issued by the Zoning Enforcement Officer on July 28, 2022 on the basis that the Order lacks any legal basis. The Order recognizes that the subject activities constitute "Pre-Existing Non-Conforming Activities", which are protected by M.G.L. c. 40A sec. 6.	
	Provide reasons the ZBA should grant relief:	The Activities complained of are found by the Zoning Enforcement Officer to constitute "Pre-Existing Non-Conforming Activities". As such they are subject to the protections of M.G.L. 40A Section 6 and may be continued without the necessity of additional permits as suggested by the Zoning Enforcement Officer.	
	Applicant's signature:		
	Owner's signature:		
Sign	Date:	August 26, 2022	

Town Clerk's Stamp:



Official Use Only:

Fee: _____ Date Paid: _____ Check #: _____

Date of Public Hearing: _____

Decision of Board: _____

Date of Decision: _____ Expiration Date: _____



TOWN OF WARE

Planning & Community Development

126 Main Street, Ware, Massachusetts 01082
t. 413.967.9648 ext. 120 rwatchilla@townofware.com

Notice of Public Hearing Ware Zoning Board of Appeals

LEGAL NOTICE

to be published in the *Ware River News*
issues 10/6/2022 and 10/13/2022

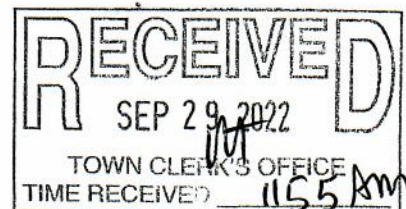
A-2022-01

NOTICE is hereby given that the Ware Zoning Board of Appeals, per the powers given under M.G.L. Chapter 40A, will hold a Public Hearing on **Wednesday, October 26th, 2022 at 7:35 PM** on the application of Paul A. & Gail F. Moryl for an Administrative Appeal (A-2022-01) filed against a "Cease-and-Desist" order issued by the Building Commissioner. The applicants claim that the order issued on July 28, 2022 has no legal basis and that the current activities on site are "pre-existing non-conforming". Pursuant to Chapter 22 of the Acts of 2022, this hearing will be conducted in person and via remote means, in accordance with applicable law. This means that members of the Zoning Board of Appeals, as well as members of the public, may access this meeting in person, or via virtual means. In person attendance will be held in the Selectboard Meeting Room, 126 Main Street, Town Hall, Ware, MA. It is possible that any or all members of the public body may attend remotely, with in-person attendance consisting of members of public. The meeting may be accessed remotely via zoom. Go to <https://zoom.us/join> or join by phone. Phone Number: 929-205-6099; Meeting ID: 784 604 1861; Password: 01082.

SITE LOCATION: 40 Fisherdick Road, Ware, MA. Deed recorded in the Hampshire County Registry of Deeds, Book 13857, Page 62. Assessor's Parcel 21-0-38. Zoned: Rural Residential (RR).

A complete copy of the application can be found at the Town Clerk's office and on the Planning & Community Development Department website under Recent Filings. Anyone interested or wishing to be heard on the application should appear at the time and place designated.

WARE ZONING BOARD OF APPEALS
Lewis Iadarola, Chairman





TOWN OF WARE

BUILDING DEPARTMENT

126 Main Street, Ware, MA 01082
413.967.9648

CEASE AND DESIST

July 28, 2022

Paul A. Moryl
PO Box 888
Ware, MA 01082

Mr. Moryl,

This is a notice to **CEASE AND DESIST** the current operations on your parcel 21-0-38, 40 Fisherdict Road.

Per MGL Ch. 40A Section 6, a Pre-existing Non-conforming Use may be Extended, Changed, or Altered After Finding by Granting Authority. Per Town of Ware Zoning Bylaw, Section 1.9.3, Non-conforming uses may be extended upon issuance of a Special Permit by the Zoning Board of Appeals provided the Board determines that such extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use.

A complaint was submitted on July 27, 2022 and investigated on the same day. The complaint identified the current activities to be Earth Processing activities. The investigation found the activities not to meet Earth Processing parameters but did recognize the activities to be Pre-existing and Non-conforming which may be extended by a Special Permit.

As of today, current operations of trucking in material for storing and processing loam may not continue until further notice. As the person aggrieved by this Order, you also have the right to appeal this decision per MGL Ch. 40A Section 8 & 15. The Appeal must be filed within thirty-days (30) of this Order and it must be filed with the Town Clerk and the Zoning Enforcement Officer.

Sincerely,

Anna S. Marques
Building Commissioner
Zoning Enforcement Officer
amarques@townofware.com
office: 413.967.9648 x114

cc: Town Manager, Planning and Community Development Department, Town Clerk
file

Memo: Cease and Desist on Nonconforming use,
Earth Processing , on parcel 21-0-38,
40 Fisherdk Rd.



To: Zoning Board of Appeals

From: Anna Marques, Building Commissioner / Zoning Enforcement Officer

Date: October 25, 2022

This memo is to provide a background to the investigation on the Cease and Desist Order issued on July 28, 2022 and is now being appealed to the ZBA.

The request to issue a Cease and Desist Order for Earth Processing operations was made on July 27, 2022. A site visit was made the same day. I did not observe loam being processed. The screener was not running. Vegetation was growing from some of the piles indicating that those piles have not been recently processed. They were located near the screener along with other piles that exhibited characteristics of the unprocessed gravel fill. This material came from 319 Palmer Road, a site currently under construction with limited storage area due to Conservation restrictions. It should be noted that 319 Palmer Rd had obtained site plan approval and if concerns existed over the site materials, they could have been addressed at that time.

For reference, the newly adopted section on Earth Processing is listed here:

4.3.27 Earth Processing (F-4) shall be defined as the processing of more than 1000 cubic yards of earth materials (soil, loam, peat, sand, gravel, stone, or compost) brought on site or brought in and stored for processing in any 12-month period, this includes gravel pits. Earth processing shall be allowed by special permit (see §7.2) in the Highway Commercial (HC), Commercial Industrial (CI) and Industrial (I) zoning districts. In addition to a special permit, earth processing operations shall warrant a site plan review by the Special Permit Granting Authority (SPGA). A special permit for earth processing may not be required if:

- Conducted on the site of an earth removal operation that was allowed by special permit (only applicable to earth materials generated on site),*
- Conducted on the site of a privately owned subdivision for the sole purpose of developing the private roadway,*
- Conducted on the site of, incidental to, and in connection with earth removal necessary for the construction of a principal or accessory structure permitted by the Zoning Bylaw.*

The request for the Cease and Desist Order was made on this newly adopted bylaw section, Earth Processing.

In my role, as ZEO, I recognized the potential preexisting nonconformity – materials brought in and stored but processing of these piles had not yet occurred.

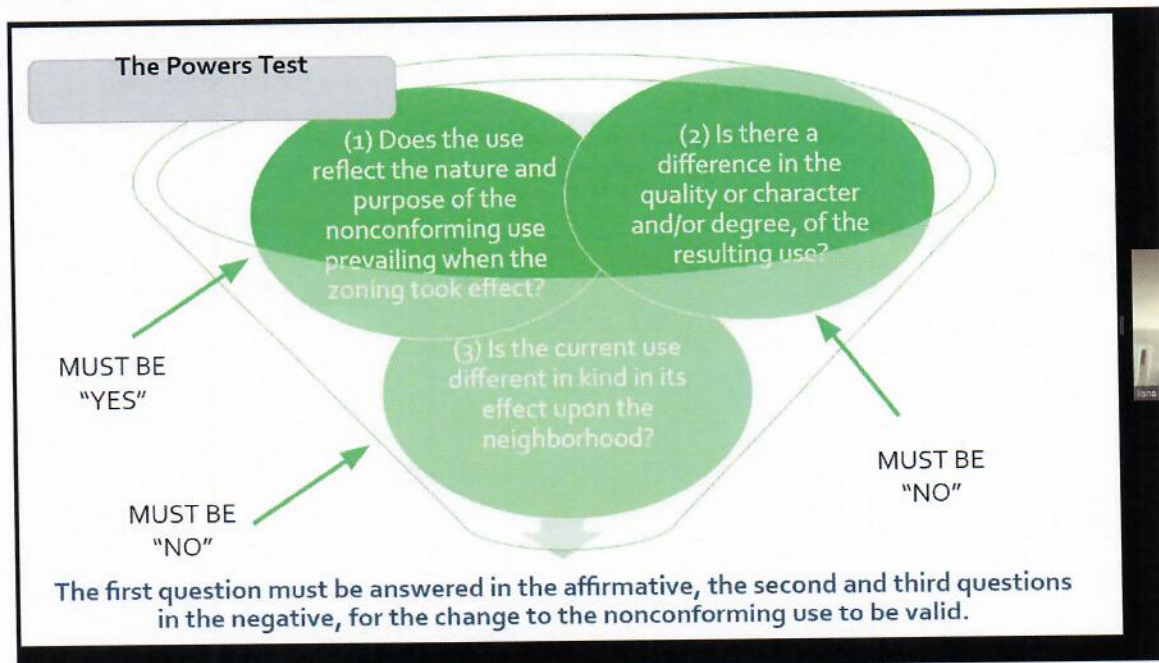
In the attempt to address the issue with the outcome of a Cease and Desist to be ordered as requested and with the intention to bring this ongoing issue to be addressed and solved officially, I made the order with the request for the owner on record to request a Special Permit to extend his preexisting nonconforming use.

1.10.3 Nonconforming Uses

A. Extension or Alteration. Nonconforming uses may be extended or altered upon issuance of a special permit by the Zoning Board of Appeals provided the Board determines that such extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. The Board of Appeals shall not allow an existing nonconforming use to be changed to a more intense nonconforming use than exists at the time of application, in terms of density or type of use.

In my report addressing the filed complaint on this property from last year, which was not presented due to the ZBA stating they did not have jurisdiction on the appeal of the decision made on a complaint; I provided evidence to the long established preexisting use. A copy of that report is included in this memo for your consideration and review as it is still pertinent and should not be dismissed.

In February of 2022, we had training on Vested Rights in regard to nonconformities. The following was shared in the guidance provided in the training:

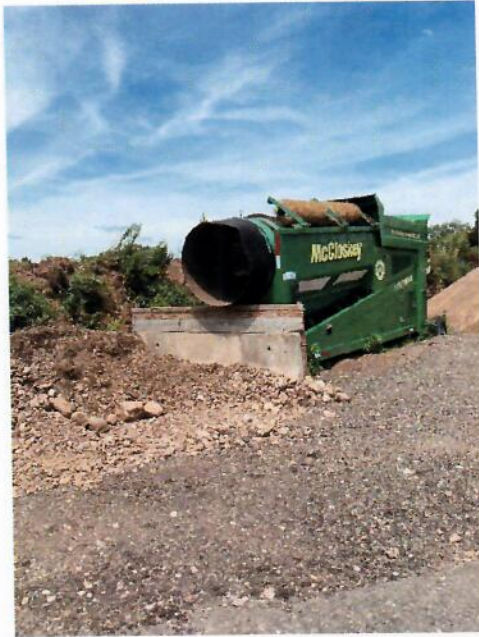


*Answers to 1 need to be yes, 2 and 3 need to be no. (print this out and display)

The Powers Test reflects the rights and addresses concerns for potential issues. It is the reasoning for enacting our bylaw section 1.10.3 (as shared above) and a Special Permit could be issued by the ZBA to allow the proven preexisting nonconformity to be extended (officially grandfathering). The process would allow review and conditions, as appropriate. With an issued Special Permit, future demands on actions taken on this property would be addressed as conditioned in the Special Permit decision findings by the Zoning Enforcement Officer.

Enc: 4 Photos from July 27, 2022

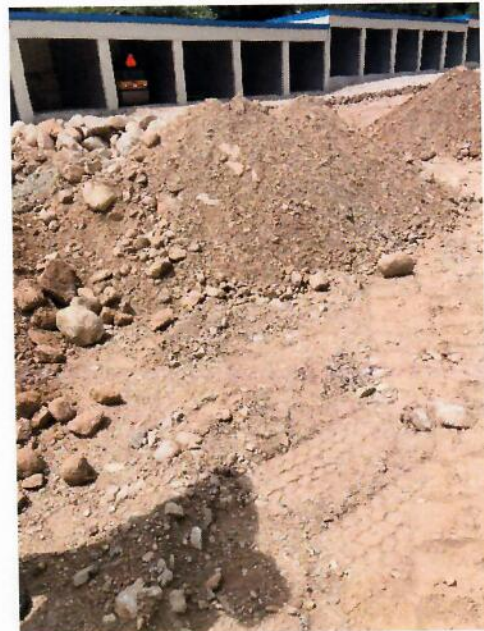
Distributed packet to the ZBA on October 28, 2021 including letter dated Sept. 23, 2021 written by Anna S. Marques with supporting documentation for the preexisting nonconforming use



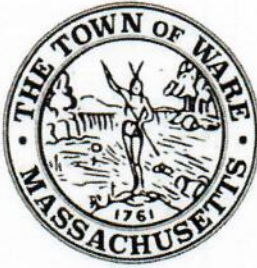
These two photos are of the screener currently on site at Fisherduck. (all 4 photos taken on 7/27/22)
(loam material)



This photo is of another pile on Fisherduck.
(both of these are unprocessed gravel)



This is a photo of a pile on Palmer Rd.



TOWN OF WARE

Building Department
126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 180

September 23, 2021

Stuart Beckley
Town of Ware
126 Main Street
Ware, MA 01082

RE: Loam on Fisherdict Rd., Parcel 21-0-38 (zone RR – Rural Residential)

Dear Mr. Beckley,

This letter is to address the complaint you had filed on behalf of neighbors. The complaint identified the processing of loam and the heavy equipment with the associated noise. Because of the processing, it was stated in your complaint that this use may not fit the description or the intent of:

- 1) Earth Removal (off-site processing)
- 2) Construction Trades (beyond storage)

1) Our current zoning bylaw makes mention of processing under *Earth Removal* by requiring a special permit if the earth processing is to be run on an exhausted earth removal site. That is the only mention of it in the Ware Zoning bylaw and it does not pertain to this situation. As for the off-site component, the land removed from the Palmer Road site was allowed due to the project having received site plan approval. (See previous email correspondence addressing an earlier complaint, attached.) The bylaw does not address stockpiles of earth material.

2) In regard to *Construction Trades*, the Ware Zoning bylaw addresses this use to be allowed in the zone RR by special permit. However, the use of this land predates zoning as WAS Farm had been in existence since 1926. The description of the business certificate for WAS Farm is listed. (See attached.) To the best of my knowledge, there had been a screening process in existence for both properties (Fisherdict Rd. and Palmer Rd.) for an established amount of time as part of the business. Attached is a photo of the current screener and there is also a copy of a receipt for the purchase of a screener in 2004. Prior to that, it was told to me that the owners would rent a screener when needed. The property on Fisherdict Road had been used as storage and operations for the construction equipment in the same manner for decades under the issued business certificates and to the best of my knowledge, that earth processing of stockpiles for loam was allowed before and would still be as part of the continuing use. As to the specific description of processing loam, I believe that associated activities were presumed and did not need to be specifically identified – I have not yet come across a specific allowance for processing loam from stockpiles. I have copies of continued business certificates going back to 2011 as retrieved from the Town's files. In my investigation, I have also learned that in the past, under previous owners of the WAS Farm, the construction trade operations were more frequent and

more evident than as currently present negating the concern that current operations are more detrimental.

I am not finding a violation as the operation in question, in my opinion, coincides with the intent of the business certificate issued for the property, which at the time served as the approval for the use. Any person aggrieved by this decision, or any officer or Board of the Town has the right to appeal this decision within 30 days to the Zoning Board of Appeals per 7.6.1 G. of the Town of Ware Zoning Bylaw.

Sincerely,

A handwritten signature in cursive script that reads "Anna S. Marques".

Anna S. Marques
Building Inspector, Zoning Enforcement Officer

Attachments:

Complaint submitted by Stuart Beckley via neighbors, dated Aug. 17, 2021
Email from Marques, Anna S. to Beckley, Stuart dated Aug. 7, 2021
Business Certificate 2020-51, Nov. 5, 2020
Business Certificate 80-16, Oct. 28, 2016
Business Certificate 14-11, Feb. 23, 2011
Photo of Current Screener (McCloskey)
Original purchased screener (Pro-Tough) Bill of sale, Feb. 20, 2004
Original purchased screener (Pro-Tough) Photo, with Lyrom logo

Cc:

File

Town Manager

ZBA

Town Clerk

Paul A. Moryl



TOWN OF WARE

126 Main Street
Ware, MA 01082

BUILDING DEPARTMENT
3648 ext.180



COMPLAINTS SUBMITTED TO THE BUILDING DEPARTMENT POLICY & PROCEDURE

- Building Official will investigate and report on all signed complaints.
- Investigations on signed complaints may result in enforcement action due to violations of the Town of Ware bylaws, or the State Building Code.
- If so requested by the complainant the Building Official may write a statement of finding that no violations exist which grant the complainant a right of appeal.
- Verbal complaints will be judged by the level of potential danger to public safety and be acted upon accordingly.
- Anonymous phone complaints regarding possible Zoning Bylaw violations may be acted upon by a Building Official if the possible violation can be easily observed from a public way. Once a Building Official confirms a zoning violation exists the Building Official then becomes the complainant.
- Anonymous phone complaints regarding possible zoning bylaw violations that cannot be readily observed from the public way may not be acted on.
- Violation notices shall be sent to the person occupying the property and to the property owner if different.
- Violation notices may be sent both by return receipt request and by regular mail.
- Violation notices shall outline bylaw or code section infraction, means of corrective action, consequences of inaction and a specific timeline to correct violation.
- Once a letter is mailed from the post office the Building Department will then consider this action as equal to being served.

Complaint Address 40 Fisharduck Rd

Nature of Complaint Loam is being brought to the site (field) from an approved construction site. The issue is that the loam is being processed, not just stored, on site. This involves heavy equipment and associated noise in a RR district.

Additional Comments on Reverse Side

Complainant Stuart Beckley via neighbors Phone # 413-967-9648 x106
Mailing Address 126 Main St Email sbeckley@townofware.com
Signature [Signature] Date 8/17/2021

Additional comments for Complaint: Because of the processing,
I don't believe this use fits the description
or intent of:

1. Earth Removal (off-site processing)
2. Construction Trades (beyond storage)

Thank you.

Action by Building Department: _____

Response to Complaint in letter to Stuart Beckley dated
September 23, 2021 - not finding violation
agm.

Marques, Anna S.

From: Marques, Anna S
Sent: Saturday, August 07, 2021 1:27 PM
To: Beckley, Stuart
Subject: Re: Loam operation

Hi Stuart,

There is a building permit application filed for 319 Palmer Rd. A foundation permit was issued. On the zoning end, under earth removal - there is an exemption that allows for the earth removal at the site of and in connection with the excavation and grading necessary for the construction of a principal or accessory structure with the approval of a site plan. This work did go through site plan review and was approved by the Planning Board.

-Anna

[Get Outlook for iOS](#)

From: Beckley, Stuart <sbeckley@townofware.com>
Sent: Saturday, August 7, 2021 12:52:14 PM
To: Marques, Anna S. <amarques@townofware.com>
Subject: Fwd: Loam operation

Sent from my iPhone

Begin forwarded message

From: "Kruckas, Keith" <kkruckas@townofware.com>
Date: August 7, 2021 at 9:52:12 AM EDT
To: "Beckley, Stuart" <sbeckley@townofware.com>, "Morrin, John" <jmorrin@townofware.com>, "Barnes, Trish" <trishbarnes@townofware.com>
Subject: Loam operation

Stuart: I am curious as to why the Morrys are hauling load after load of loam to there farm on fisherdyk red this am for processing at his screening plant. There has been trailer dumps and triaxels all morning non stop. I got a complaint this morn. Loaders running piling it. All while building inspector is in town in office. PERMIT for this operation?

The people would like an explanation. Keith

[Get Outlook for Android](#)

COPY

BUSINESS CERTIFICATE 2020-51

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF WARE

DATE November 5, 2020

In conformity with the provisions of Chapter One Hundred and Ten, Section Five of the Massachusetts General Laws, as amended, the undersigned hereby declare(s) that a business under the title of

Was Farm-Farming-Growing & Harvesting Hay-Equipment Repair-General
Contracting-Warehousing and-Storage and Livestock

is conducted at 41 Fisherdick Rd.

by the following named person(s).

FULL NAME

RESIDENCE

Paul A. Moryl

17 Westbrook Ave. Ware, MA

Signed

Paul A. Moryl

Notary Public completes here:

Then personally appeared before me the above named individual(s) to complete and sign form.

Ann Marie St Germain

Notary Signature

The Commonwealth of Massachusetts

April 11, 2025

Commission Expiration Information/Notary Seal

Hampshire

ss.

Date

10/30/2020

Personally appeared before me the above named

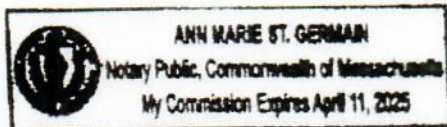
Paul A. Moryl

and made oath that the foregoing statement is true.

A certificate issued in accordance with this section shall be in force and effect for four (4) years from the date of issue and shall be renewed each four (4) years thereafter so long as such business shall be conducted and shall lapse and be void unless so renewed.

Expiration Date: November 5, 2024

Nancy J. Talbot
Nancy J. Talbot - Town Clerk of Ware, MA



BUSINESS CERTIFICATE 80-16

**THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF WARE**

DATE October 28, 2016

In conformity with the provisions of Chapter One Hundred and Ten, Section Five of the Massachusetts General Laws, as amended, the undersigned hereby declare(s) that a business under the title of Was Farm-Farming-Growing & Harvesting Hay-Equipment Repair-General Contracting-Warehousing and Storage, and Livestock

is conducted at 41 Fisherdict Rd., Ware, MA 01082

by the following named person(s).

FULL NAME

Paul A. Moryl

RESIDENCE

17 Westbrook Ave, Ware, MA 01082

Signed

Paul A. Moryl

The Commonwealth of Massachusetts

Hampshire

ss.

Date October 28, 2016

Personally appeared before me the above named Paul A. Moryl

and made oath that the foregoing statement is true.

A certificate issued in accordance with this section shall be in force and effect for four (4) years from the date of issue and shall be renewed each four (4) years thereafter so long as such business shall be conducted and shall lapse and be void unless so renewed.

Expiration Date: October 28, 2020

Nancy J. Talbot

Nancy J. Talbot - Town Clerk of Ware, MA

The Commonwealth of Massachusetts

14-11
BUSINESS CERTIFICATE

WARE

February 23, 2011 ~~2011~~

In conformity with the provisions of Chapter one hundred and two, Section five of the General Laws, as amended, the undersigned hereby declare(s) that a business under the title of WAs Farm-Fanning-Growing & Harvesting Hay-Equipment Repair-General Contracting- Warehousing and Storage

is conducted at

Number 41 Fisherdick Road, Ware, Ma 01062

Street

by the following named persons.

FULL NAME

RESIDENCE

Paul A. Moryl

17 Westbrook Ave., Ware, MA 01062

Signed

Paul A. Moryl

The Commonwealth of Massachusetts

Expire

February 23, 2011

19

Personally appeared before me the above named Paul A. Moryl

and made oath that the foregoing statement is true

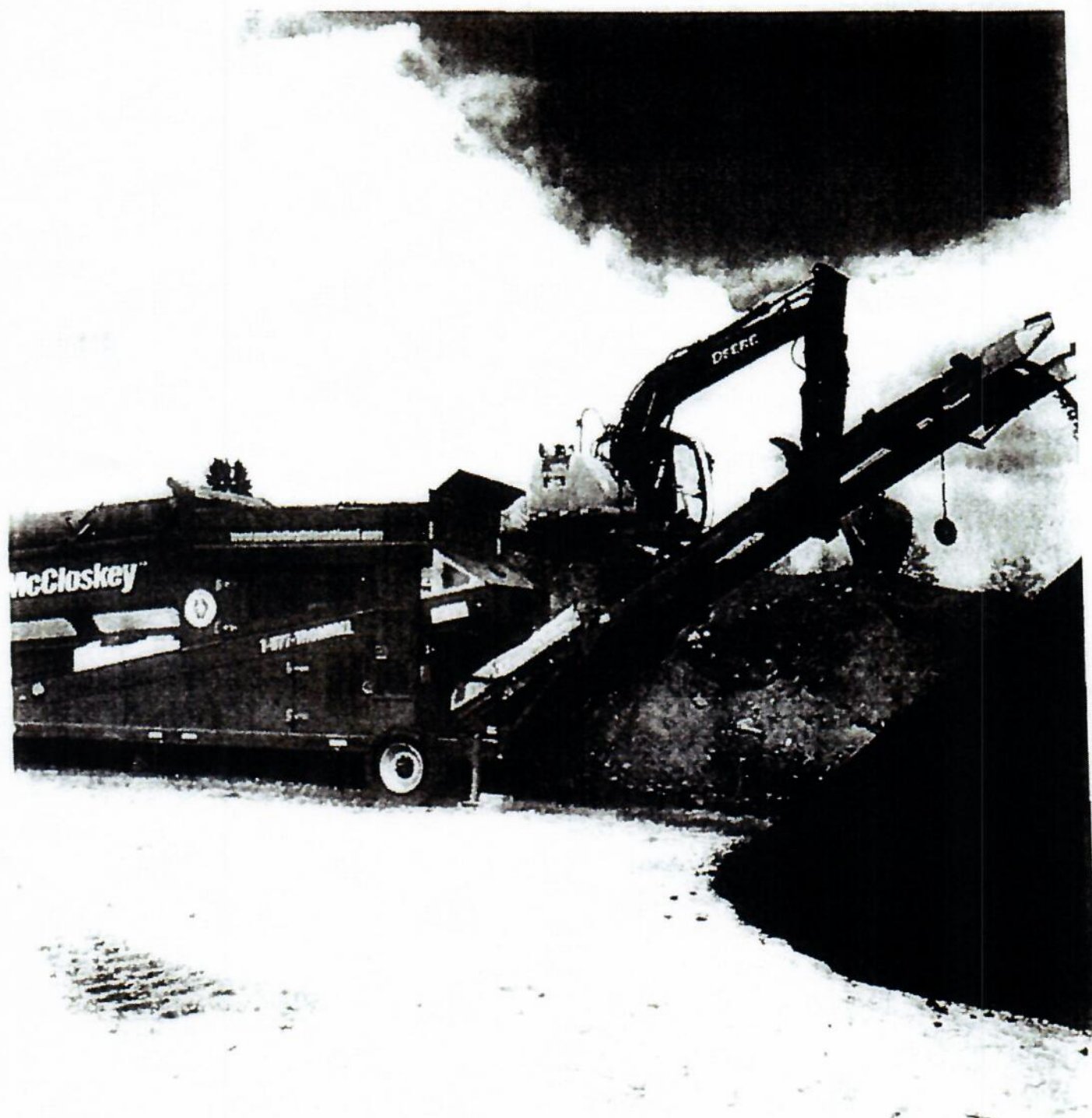
A certificate issued in accordance with this section shall be in force and effect for four years from the date of issue and shall be renewed each four years thereafter so long as such business shall be conducted and shall lapse and be void unless so renewed

Expiration Date February 23, 2015

Nancy J. Trebet

(Seal)

Town Clerk



Cell # 603-481-1111
Office 603-237-8500



Eddie Nash & Sons, Inc.

ROUTE 26 • RR #1 BOX 31
COLEBROOK, NEW HAMPSHIRE 03576
(603) 237-8857 OR (603) 237-8733
Fax (603) 237-5111



Skidders • Backhoes • Dozers
Payloaders and
Excavators (All Makes)
Tractors & Farm Machinery • Kubota Tractors
Bought • Sold • Traded

PURCHASER: Paul Mayle

ADDRESS: Lyron Landscaping

CITY: 313 Palmer Rd. 1 Rt. 32

STATE: Maine 10082

PHONE #: 1-413-967-5888

MAKE	MODEL	SERIAL NUMBER	PRICE
ProTough	Sweeper	547400001	

original screener (purchased)
prior to

SELLER: **EDDIE NASH & SONS, INC.**

BY

Paul Mayle

Paul Mayle

