



MASHPEE ZONING BOARD OF APPEALS
MAY 25, 2016
MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, May 25, 2016, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Board Members Jonathan D. Furbush, William A. Blaisdell, Ronald Bonvie, Scott Goldstein, and Associate Members, Brad Pittsley and Norman J. Gould were present. Building Commissioner, Michael Mendoza was also present. Board Member, Dom DeBarros was absent.

PLEGE OF ALLEGIANCE

NEW HEARINGS

43 Waterline Drive South: Steven and Susan Bozkurtian request a Written Finding under §174-17 of the Zoning Bylaws to raze and replace a single-family dwelling on property located in an R-3 Zoning District (Map 120 Parcel 148), Mashpee, MA. Owner of record: 43 Waterline LLC. (*Continued until June 8, 2016 hearings at the request of the attorney*).

Mr. Bonvie made a motion to accept the request for continuation. Mr. Blaisdell seconded. All were in favor to accept the continuation until the hearings dated Wednesday, June 8, 2016.

90 Captains Row: Owner, Kathleen A. Impey requests a Special Permit under §174-25.I (9) of the Zoning Bylaws to allow for construction of a dock, pier, ramp and float extending more than 70 feet of coastal beach, coastal bank, salt marsh or bordering vegetated wetlands, on property located in an R3 Zoning District, (Map 96 Parcel 11), Mashpee, MA.

Mr. Matt Costa with Cape & Islands Engineering represented the petitioner for the dock project. He said a special permit from the ZBA and order of conditions from Conservation were issued back in January, 2013, but the work was not completed and therefore expired. He reapplied to Conservation and they issued a new order of conditions on May 12, 2016. The previously approved plan depicted a 97 foot pier that extended beyond the mean high water, and requires a special permit because it extends over the coastal beach area, and is classified as wetlands.

Mr. Bonvie asked if he obtained permission from the Harbormaster and Shell Fish Warden.

Mr. Costa said; yes, notification to those departments is required. He said that this application has a Chapter 91 License in place.

Chairman Furbush read the Conservation Comments into the record; “The project was approved by the commission on May 12, 2016. “No issues.” There were no comments from Board of Health.

MASHPEE ZONING BOARD OF APPEALS
MAY 25, 2016
MINUTES

Chairman Furbush read the Inspection Department comments into the record; “The area is zoned R3 and is within the Pre-contact Archaeology Sensitivity area – listed as “Moderate”. The applicant is seeking a Special Permit under §174-25 I (9) regarding the construction of a dock, pier, ramp and float extending more than 70 feet of coastal beach, coastal bank, salt marsh or bordering vegetated wetlands.”

Mr. Bonvie made a motion to issue a special permit for the application. He referenced the following conditions; The Board has determined that the applicant meets all the conditions of a Special Permit under Mass General Law 40A Section 9. A Plot Plan: Revised Nov. 9, 2012, Revised Nov. 3, 2012, Float Stops Note Revised To Maintain 2’ Clearance Per Notification By Mr. York, Nov. 3, 2012, Revised Nov. 1, 2012 Decrease Total Length By 12’ Float Stops Note, Revised Oct. 17, 2012, Proposed Pier, Ramp & Float, Located In Mashpee, Mass. Prepared For Kathleen Impey, Date: Oct. 12, 2012, File: 167ma, Scale: 1’ = 20’ Captrow90, Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, Mass 02649 508-477-7272, Signed By: David Sanicki 28085 Professional Engineer. Also referencing the Inspection Department and Conservation comments. Mr. Goldstein, seconded. Mr. Furbush, yes, Mr. Blaisdell, yes, Mr. Bonvie, yes, and Mr. Pittsley, yes. All were in favor to issue a special permit for the dock, pier, ramp and float.

154 Wheeler Road: Owner, Denise A. Dorado requests a Variance under §174-31 to vary the side yard setbacks and lot size requirements to allow for construction of a deck and stair addition on property located in an R-5 Zoning District, (Map 49 Parcel 7), Mashpee, MA.

Mr. Matt Costa with Cape & Islands Engineering represented the application. The property is located on 154 Wheeler Road and borders Ashumet Pond. The deck structure will run the length on the back of the dwelling. The lot was created in 1947, and at that time was approximately 54,000 sq. ft. lot and was revised in 1957 down to a 26,000 sq. ft. lot. In 1988 a road taking was done, and reduced a portion of the property reducing it further by approximately 1,500 square feet. The total area now is about 26,387 sq. ft. in an R-5 zone. The dimension on the north side of the existing structure and garage is about 15.6 ft. at the closest point to the existing structures. The relief would be 16.5 ft. so the deck will not be any closer than what currently exists. The existing garage is about 12.2 ft. off the property line which is even closer. He said they received approval from Conservation, and are required to put a mitigation plan together along the property line.

Mr. Blaisdell wanted to confirm the requested relief to be 8.5 ft. from the property line.

Mr. Goldstein noticed that the lot coverage on the plan showed the same 6.7% for existing and proposed. Mr. Costa said the existing lot coverage is 6.7%, and the proposed is under 10%. Mr. Costa will provide a revised plan showing the corrected lot coverages and revision date which Chairman Furbush will sign.

MASHPEE ZONING BOARD OF APPEALS

MAY 25, 2016

MINUTES

Mr. Furbush read the Board of Health, Inspection Department and Conservation Comments into the record.

The Board had a discussion for the record stating that the lot size for current day standards in an R-5 zone is 80,000 square feet. Mr. Costa thought the lot size was 60,000 and didn't realize the lot size had changed since 1987. The actual lot size is 26,387.

Mr. Bonvie made a motion to issue a Variance in the amount of 8.5 ft. on the side yard which is 25 ft. minus 16.5 ft., and the amount of 53,613 square feet in the actual area of the lot. Also, based on the following conditions; The Board has determined that the applicant meets all the conditions of a Variance under Mass General Law 40A Section 10. A Site Plan: Owner of Record: Denise A. Dorado, 154 Wheeler Road in Mashpee, MA. Applicant: Denise A. Dorado, 154 Wheeler Road, Mashpee, MA. Project: Site Plan 154 Wheeler Road in Mashpee, MA. Sheet No.: 1 of 1, Dated: 3/2/16, DWG File: Wheeler 154, Scale: As Noted, Approved by: CC, Checked by: MC, Drawn by: WD, Prepared by: Cape & Islands Engineering, Summerfield Park, 800 Falmouth Road, Suite 301C, Mashpee, MA 02649, Drawing Title: Site Design Plan, Assessors Information: Parcel ID 49-7-0. **Revision date 5/26/16** Added Proposed Lot Coverage Calculations by: MC and APPR MC. Signed by Matthew C. Costa No. 52282 Professional Land Surveyor. Mr. Gould, seconded. Mr. Furbush, yes, Mr. Blaisdell, yes, Mr. Goldstein, yes, Mr. Bonvie, yes, and Mr. Gould yes. All were in favor of a Variance for the deck structure.

Mr. Costa provided a revised plot plan the next business day which Chairman Furbush signed and dated.

OTHER BUSINESS

Mashpee Commons: To discuss the Tesla Company requesting to occupy the retail space at 11 Central Square (Building 8) in Mashpee Commons. The Board to determine if a full Zoning Board hearing is required for the "use" of the retail space.

Attorney Mike Ford represented Mashpee Commons. Also present was Tom Feronti and John Renz of Mashpee Commons. Mr. Ford stated that for the last 12 years, the space has been occupied as retail for the sale of merchandise. The property has the benefit of a number of permits, the most important dating back in 1973 when a commercial variance was issued for this property to allow for a shopping center at the time was zoned residential.

Attorney Ford said the operative permit for the purpose of this discussion is the 1986 special permit. Under this special permit, three phases were authorized and consisted of retail, restaurant, theater, residential, and office use. There have been an excess of 40 decisions issued by the Zoning Board of Appeals and were modified under this special permit.

Attorney Ford mentioned that Condition #5 of the 1986 special permit specially requires that when a new building permit is issued for any new buildings or construction that has been authorized, not only requires design/review but also approval by Board of Appeals.

MASHPEE ZONING BOARD OF APPEALS

MAY 25, 2016

MINUTES

He said that the space in building 8 is governed by that special permit. The current tenant (Tesla) is hoping to know what the zoning relief may or may not be in order to achieve the scope of use they would like to make of that space.

Attorney Ford gave a brief description of Tesla who is the manufacturer of electric vehicles based in California. He said there are currently three locations in Massachusetts with full dealerships that sell, service and repair these vehicles. The closest location is Hingham, MA. Currently through cooperation with the Building Department, Tesla has been allowed to occupy the Building 8 space through the issuance of a Building Permit and is very specific that it's for "display only". What is going to be conducted under this permit is a gallery description where there will be a display of technology, to learn about electric vehicles through demonstrations using one complete car inside the space itself, and one chaise. No vehicles will be for sale or rent out of the space. If someone is interested in a purchase they will be directed to one of the other stores where permits were obtained for this.

It was specifically noted on the building permit that the space is actually 1,501 sq. ft. for Tesla Motors. No orders, no rentals, long term leases or cars to be sold through this location.

Tesla would like to be able to have two additional items. They would like to be able to actually assign someone to sell a Tesla at this location to make transactions. No one drives out with a Tesla. A transaction of an order is completed which are customer ordered, and the car is then delivered in many cases to their house. Tesla would like to have the option of the delivery to Mashpee Commons for someone to pick up. It would be for sale and long term lease. They would like someone to be able to test drive the vehicle that is there. They would also like to have 3 or 4 charging stations/spaces at the Mashpee Commons and would not be exclusively for Tesla, but for anyone who has an electric car. These 3 or 4 spaces are over and above the special permit.

The Board had a discussion about the specific conditions that would be listed under the special permit, if issued. Chairman Furbush would like to review the number of parking spaces. Mr. Goldstein would like to know how many parking spaces would be occupied, and where the designated spaces will be located. The specific concern is where the sale and/or leased cars will be parked. He said "he does not want to see five Tesla cars parked in front of Port Cargo." This will have to be written as a condition in the special permit. Chairman Furbush said he likes the idea of a gallery for sales, long term leasing and test drives, but wants to know more about Tesla's business expansion plans.

Attorney Mike Ford said that in addition to zoning relief, the application requires a Class 1 License will be required under Chapter 140 Section 58 which requires approval from Board of Selectmen.

Mr. John Renz stated that other Tesla locations are at the Natick Mall, Derby Street Shops in Hingham, and in Boston that have sales and leasing. The service center is at Legacy Place in Dedham, MA.

MASHPEE ZONING BOARD OF APPEALS

MAY 25, 2016

MINUTES

Mr. Mendoza stated that he had spoken with the Building Commissioner in Natick, and said Tesla has a special permit from the ZBA as well as from the Planning Board. Mr. Mendoza stated that his position is that the applicant requires a Special Permit because this use would require a license, insurance, and to be able to sell a vehicle would require a Class 1 license from Board of Selectmen. In his opinion, this use is not listed under the original special permit and feels that the Zoning Board has to determine if this falls under a special permit or not. The Zoning Board of Appeals also has the ability to keep this special permit exclusively for Tesla and is not transferable.

Attorney Ford said that he reviewed the 40 plus decisions issued by the Board of Appeals and could not find anything that suggests the sales of automobiles was contemplated. The main reason for the proposal is to get some direction for this project to get done. He anticipates the filing would be a very narrow special permit for just the use. This is not a dealership. He asked the Board if there's an issue applying for the license with the Board of Selectmen, and special permit with the ZBA at the same time. He said he would plan that the licensing hearing came after the Board's decision, so the licensing board had the benefit of the ZBA special permit.

Chairman Furbush agrees that the application would fall under F2 of the Zoning Bylaws and would require a Special Permit. The other Board members agreed with Chairman Furbush. The Chairman stated that he would like to see the plans with all the specifics listed, especially where the charging stations will be located.

Mr. Mendoza said that he issued a building permit for the unit to show a vehicle and will be issuing a certificate of occupancy by the end of the week.

Mr. Feronti said that the charging spaces will have to be located near an electrical source.

Attorney Ford, Mr. Feronti, and Mr. Renz thanked the Board for taking the time to discuss the Tesla proposal.

Approve May 11, 2016 meeting minutes

Mr. Gould made a motion to approve the meeting minutes. Mr. Goldstein seconded. All were in favor to approve the meeting minutes dated May 11, 2016.

Mr. Pittsley made a motion to adjourn. Mr. Blaisdell seconded. All were in favor. The meeting adjourned at 7:15 pm.

Respectfully submitted,

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals