



**MASHPEE ZONING BOARD OF APPEALS  
MEETING MINUTES  
SEPTEMBER 14, 2016**

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, September 14, 2016, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Chairman, Jonathan D. Furbush, Board Members William A. Blaisdell, Ronald Bonvie, Dom DeBarros, Scott Goldstein, and Associate Members, Brad Pittsley and Norman J. Gould were present. Building Commissioner, Michael Mendoza was also present.

**PLEDGE OF ALLEGIANCE**

The meeting was not televised as originally scheduled.

**CONTINUED HEARINGS**

**67 Monahansett Road:** Owners, Jeanne M. Gallagher and Regina L. Lawson 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 and within the Popponesset Overlay District, (Map 123 Parcel 97), Mashpee, MA. (*Continued from July 13, 2016 hearings at the request of the Representative*).

Mr. Peter Lavoie, Civil Engineer with Guerriere & Halnon, Inc., Milford, MA representing the modular home project. Also present was Karen Orlandi, and Cary Orlandi, Associates with Millbrook Modular Homes. Mr. Lavoie provided a site development plan depicting the existing house and a portion of the proposed foundation. The lot is 11,000 sq. ft. and slopes in the along the existing tree line in the rear with a stone wall. The existing house is 800 sq. ft. with an “L”-shaped deck and outdoor shower. The existing septic system is located in the back with a dry well and cesspool.

The project consists of razing the existing house, with the foundation to remain, and expanding the foundation 5 ft. in the rear. The footprint will be increasing from 800 sq. ft. to 900 sq. ft. The wrap-around deck will remain and there will be a screened porch added. The septic system will be upgraded to Title V requirements, and the driveway will remain in the same area. The shrubs will be replaced after the work is completed. The red line on the plan depicted the erosion control, and will be presented to the Conservation Commission on September 22, 2016 as a determination.

Mr. Goldstein read the Conservation Department comments dated August 23, 2016 into the record basically stating that the “ZBA can move forward with their review”.

Chairman Furbush read Glen Harrington comments for the Board of Health dated September 13, 2016 into the record; “stating that the Title V plans were not yet approved”. He also would like the pocket door removed to meet the 6 ft. opening requirement.

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Mr. Cary Orlandi confirmed that the 6 ft. opening can be adjusted, and that the Zoning Board had the most recent house plans that included the elevations; i.e., “Rev. Final: 9/8/16.”

Mr. Bonvie asked Mike Mendoza if flood plain land can be used in calculating lot coverage in the Popponeset Overlay District. Mr. Mendoza said the maximum lot coverage is 20% in that district.

The Board had a discussion concerning the percent lot coverage depicted on the plan being 8.9% and would like it adjusted to 13%. They would also like the house plan adjusted regarding the pocket door, and 6 ft. opening as mentioned in comments submitted by Board of Health. Also contingent upon Conservation approval.

Chairman Furbush read the Inspection Department comments into the record. Mr. Mendoza told the Board that a Variance is not required because the foundation is remaining, and the plans were revised removing the plus/minus calculations.

Mr. Bonvie made a motion to issue a Written Finding with the following conditions. The Board has determined that the applicant meets all the conditions of a Written Finding under Mass General Law 40A Section 6. Also conditioned on the following;

**Site Development Plan:** 67 Monahansett Road, Mashpee, MA. Scale: 20 feet to one inch, Date: September 1, 2016, Rev. Date, Description, Prepared for: Regina Lawson & Jeanne Gallagher, 32 Millwood Circle, Norwood, MA 02061, Guerriere & Halnon, Inc., Engineering & Land Surveying, 333 West St., Milford, MA 01757, 508-473-6630, Mashpee Zone Popponeset Overlay District, Front Yard – 25’ Min, Side Yard – 15’ Min, Rear Yard – 15’ Min, Area: 6,000 S.F., Frontage: 60’, Note: #1. Assessor Map 123, Lot 97, #2. Deed Reference Book 58, Page 73. #3. Plan Reference LC Plan 11408-22. #4. Lot in R-3 District, 5. Existing Lot Coverage is 7.4%. #6. Proposed Lot Coverage is 8.9%. **(Revision dates depicted on the plan.)**

**House Plan:** Millbrook Homes/Galagher, Apex Homes of PA, 7172 Rte. 522, Middleburg, PA, Stage: S.T.F., Date: 7/27/16, Drawn by: SKB, Rev. Final: 9/1/16, Drawn by: KND, Rev. Final: 9/8/16, Drawn by: MS, Building Location: Need Street Address, Mashpee, MA 02649 Barnstable County, Seismic Design Category: B, Snow Zone: 30 PSF, Wind Zone: 110 MPH (3 Sec), Wind Load: 31 PSF, Scale: 3/16’ = 1’ – 0’, Layer: Front, File No: A16341(30), 2836 Custom Cape Front Elevation, Rear Elevation, Left Side Elevation, 1<sup>st</sup> Story Floor Plan, 2<sup>nd</sup> Story Elect. Plan, 1<sup>st</sup> Story Elect Plan, 2<sup>nd</sup> Story Floor Plan, Foundation Plan, **(Revision dates depicted on the plan.)**

Conditioned upon the Conservation Department approval and comments read into the record dated August 23, 2016, and Inspection Department comments read into the record.

Conditioned upon the Board of Health comments read into the record regarding revised building plans adjusting the 6 ft. opening, and a Title V plan submitted obtained and approved.

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The revised plot plan that provides clear indication of the lot coverage excluding the wetlands and flood plain, with pre and post dimensions. Also revised house plans as indicated.

Mr. Blaisdell seconded. All were in favor of the raze and replace project at 67 Monahansett Road.

**16 Papnomett Road:** Owner, Kathleen J. MacRoberts requests a Special Permit under §174-45.4 of the Zoning By-laws to allow for construction of an accessory apartment on property located in an R-5 Zoning District, (Map 61 Parcel 46), Mashpee, MA. (*Continued from August 10, 2016 hearings at the request of the Board*).

Mr. Joseph Butler, the builder returned to represent Kathleen MacRoberts who was also present for the Special Permit application. Mr. Butler updated the house plans as the Board requested at the last hearing. He reviewed the plans and spoke with Glen Harrington, Board of Health and Mike Mendoza, Building Commissioner.

Mr. Butler said that the accessory apartment is connected as a mud room with a roof that is attached to the houses. The accessory apartment is 38% floor space. The house has 3 bedrooms, and the leaching field will need to be increased for the additional bedroom. Mr. Butler also said that the breezeway will have a foundation underneath.

The Board had a discussion regarding the attic space in the main house to confirm that it is not a bedroom. Chairman Furbush reviewed the bylaw requirements with the applicant. He wanted clarification regarding the parking situation and would like to discuss the breezeway connecting the main house, whether it is considered an addition. Also, the lot coverage is not depicted on the plot plan. The Chairman would like to discuss the details of the bylaw and get clarification regarding the proposed breezeway with Town Counsel.

Mr. Mendoza believes that the breezeway connecting the house would make this an addition, and does not meet the bylaw requirements. He said it's the Board's decision.

Mr. Bonvie read the Board of Health comments into the record. A building permit cannot be issued until the revised plan is approved by the Board of Health.

Kathleen MacRoberts wanted to know why the Board couldn't make a motion contingent upon a revised plot plan. Chairman Furbush read the bylaw aloud to the audience and said that he does not have any issues, but wants to confirm the Board's questions with Town Counsel.

Mr. Butler asked the Board for a continuance to the September 28, 2016 meeting so that the Board could discuss the project with Town Counsel.

Mr. Bonvie made a motion to accept the applicant's request for an extension until September 28, 2016. Mr. Blaisdell seconded. All were in favor of the extension request.

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**NEW HEARINGS**

**79 Cayuga Avenue:** Petitioner, David J. Rivera requests a Variance under §174-31 from the front and side yard setbacks, and lot coverage requirements to allow for construction of a garage and porch on property located in an R-3 Zoning District, Map 58 Parcel 12, Mashpee MA. (Owner of Record: Kristen E. Ferguson).

David Rivera represented the project for the homeowner. He plans to purchase the home and would like to add a garage and bump out the second floor six feet, and the first floor will have a farmer's porch.

Chairman Furbush noticed a plastic 8' x 8' shed that was situated by the existing deck. Mr. Mendoza said that this does not affect lot coverage because it's not in a flood zone. If it was in the flood zone, it would be required to be secured. The lot coverage will need to be significantly reduced.

Chairman Furbush suggested that the proposed garage structure be reduced from 18 ft. to 14 ft. which will make it 9.8' off the side lot line.

The total proposed square footage for all the structures along with the proposed garage estimate to be 2,208 sq. feet. This will need to be changed to 2,049 sq. feet because the proposed garage would put it over the 20% lot coverage. By reducing the size of the proposed garage to 14 feet wide, it should reduce the lot coverage to exactly 20%.

The plan must indicate what the lot coverage will be when adding the proposed 14 foot wide garage to what is currently on the plan now. The Board requested a new plot plan showing the requested existing, and proposed dimensions, with 20% lot coverage. Also the plan should show a revision date, with the amended garage dimensions 18 ft. to 14 ft. Elevation on house plans. Building Department will need the house plans.

The Board requested a letter from the neighbor stating that they approve the project.

Board of Health (BOH) requires the entrance to study on first floor must be six-feet with a cased opening so it cannot be considered a bedroom, per our BOH regulations, DPW requires a curb cut permit.

Ron made a motion to continue the hearing until September 28, 2016. Bill seconded. All were in favor to continue the hearing for the garage and deck addition project.

**142 Fells Pond Road:** Owner, Edward Cohen and Reesa Cohen, Trustees request a Written Finding under §174-17 of the Zoning Bylaws to allow for construction of a three season sunroom on property located in an R-3 Zoning District, Map 122 Parcel 198, Mashpee, MA.

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Chairman Furbush announced that Board Member Scott Goldstein was stepping down from this hearing. Associate Member, Brad Pittsley will be sitting in with the regular Board Members.

Ms. Pat Sciuto, from Harbor Homes Building represented the homeowners for this project. Ms. Sciuto said the project consists of removing the existing deck with a sun room and meets the existing setbacks at 15.9 and was at 15.5 and will only increase by .4. The new structure will be on sono tubes and will include six sliders with 2' x 6 construction, and will not be heated.

Chairman Furbush read the Inspection Department comments into the record. He also read the Board of Health comments into the record. The Board had concerns with the location of the septic, and the plot plan showing the blue stone patio. The decking will be replaced. There will be no step-down from the sunroom to the deck. He also read the Conservation comments into the record.

Mr. Bonvie made a motion to approve the Written Finding with the following conditions;

The Board determined the project meets all conditions of a Written Finding under Mass General Law 40A Section 6. Also conditioned on the following;

The site plan needs to have a revision date, also depicting that the new blue stone patio language was removed and replaced with whatever decking will be installed. The new entry with the 3.5' covered entry was removed. One revision date with two revisions stated.

**Site Plan:** Prepared for SEJO Corporation of 142 Fells Pond Road, Mashpee, MA. J.E. Landers-Cauley, P.E., Civil Environmental Engineering, PO Box 364 West Falmouth, MA 02574, ASS. #122-198, Date: 4/23/15, Scale: 1"= 10', Drawn by: JDR, Job No. 2517, Sheet 1 of 1, Signed by John Landers Cauley, Registered Professional Engineer. **(To be revised as discussed).**

**Floor Plans:** New Addition/Remodeling For: Cohen Residence, 142 Fells Pond Rd., Mashpee, MA. By: Cotuit Bay Design, LLC, 43 Brewster Rd., Mashpee, MA. Scale: 1/4" = 1'0", Dated: 3/10/2016, Drawing No. A1, First Floor Plan, Drawing No: A2, Front Elevation, Rear Elevation, Left Elevation, Right Elevation. Drawing No: A3, Building Section @ Entry, Framing/Footing Plan, Roof Framing Plan, and Foot Plan.

Conditioned upon a letter/email from the Board of Health that the septic tank must remain accessible and there will never be any heat, and in perpetuity as noted by this Zoning Board or Building Inspector.

Mr. Blaisdell seconded. All were in favor of the sun room addition.

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**156 Waterway:** Owner, Jason Stone requests a Variance from the front yard setback under §174-31 of the Zoning Bylaws to raze and replace a single-family dwelling on property located in an R-3 Zoning District, Map 105 Parcel 238, Mashpee, MA.

**156 Waterway:** Owner, Jason Stone requests 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 105 Parcel 238, Mashpee, MA.

Attorney Kevin Kirrane representing Mr. Stone for the application. He stated that he would like to withdraw the Variance request. He provided the board a narrative, photos of the area and existing house projects, a revised plot plan and house plans.

The lot consists of 16,350 sq. ft. of upland area, has 100 ft. of frontage along Waterway and is bounded by Popponesset Creek. The existing 3 bedroom dwelling is situated on the lot, with an accessory float and dock complex. Currently the building conforms to the setback requirements of the side yard and the setback requirements from the front yard. It does not conform to the 50' ft. setback requirements to the wetlands, which was a bylaw adopted long after these house were constructed.

The proposal was to construct a new home that will consist of a 4 bedroom dwelling with an accessory pool, and keep the remaining accessory dock, and dismiss the front yard setback Variance for 29.4 ft. After filing the appropriate application it was discovered that the setbacks of the dwelling on either side of this property were situated from Waterway, and that the dwelling being 27.5 ft. off the front lot line is 26.3 ft. off the lot line. Section 174-31 #6 of the Bylaws states, and allows for front yard setbacks based upon the average front yard setback of the dwellings on either side. This allows for construction of the new dwelling to be within 27 feet of the front property line. The Variance is not necessary with the proposed 29.6 feet of the front lot line.

Chairman Furbush questioned the wall surrounding the fire pit that is approximately 2 ft. from the side lot line. Tom Bunker, with BSS Design confirmed that it's not a retaining wall, but is considered a landscape feature seating wall. Tim Luff said the wall is 18 inches high above the average grade.

Mr. Mendoza did not see fencing around the proposed in-ground pool. He said that the gate needed to be self-closing and self-locking.

Mr. Don Bliss, the builder for the project resides at, 129 Paddock Circle, in Mashpee approached the Board. Mr. Mendoza told him he will require engineering plans for the retaining wall upon permitting.

Chairman Furbush read the revised Board of Health comments submitted on September 14, 2016 regarding the revised architectural plans confirming his approval.

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Chairman Furbush read the Inspection Department and Conservation comments into the record. Conservation approved the project at their August 11, 2016 hearing.

Attorney Kirrane asked if the garage could be increased by 1 ft. Mr. Blaisdell said that would require a modification filing to the approved Written Finding.

Mr. Bonvie made a motion to approve the Written Finding. The Board has determined that the applicant meets all the conditions of a Written Finding under Mass General Law 40A Section 6. This is also conditioned upon the following;

**Plot Plan – Existing House** Prepared for Jason Stone, 156 Waterway, Mashpee, MA. BSS Design Engineering & Surveying, 164 Katharine Lee Bates Rd., Falmouth, MA. Scale: 1" = 10', Date: July 8, 2016, (Received Sept. 8, 2016), Drawn: EJP, TJB, Job Number: 15134, Revisions. Sheet 1 of 2, Title: Existing Conditions, Drawing Number: B23-70.

**Plot Plan - Proposed House and Subsurface Sewage Disposal System:** Prepared for Jason Stone, 156 Waterway, Mashpee, MA. BSS Design Engineering & Surveying, 164 Katharine Lee Bates Rd., Falmouth, MA, Scale: 1" = 10', Date: July 14, 2016, Drawn EJP, MRT, Checked: JER, Job Number: 15134, Revisions: Extended Deck. July 22, 2016 TJB. (Received: August 19, 2016), Sheet 2 of 2, Title: Site Plan and SSDS Profile, Drawing Number: B23-70. Revisions: Extended Deck. July 22, 2016, TJB, Corrected Upland Area, Changed Septic System Sept. 14, 2016, TJB.

Conditioned upon the Inspection Department comments, Board of Health comments, and Conservation comments.

Mr. DeBarros seconded. All were in favor of the raze and replace project.

Mr. Bonvie made a motion to accept the withdrawal of the variance request. Mr. Gould seconded. All were in favor of the variance withdrawal.

**65 Seconsett Point Road:** Owner, Katherine F. Lingamfelter requests to re-establish a Written Finding that was previously granted on February 5, 2014 (Finding-2013-61) to allow for construction of two new porches on property located in an R-3 Zoning District, Map 124 Parcel 14-0-R, Mashpee, MA.

Attorney, Brian Wall represented the homeowner to re-establish the Written Finding that was previously granted but lapsed because it went beyond two years. He provided a revised plan that shows a change in the shape of the dwelling by removing one of the porches. Mr. Wall said that it is approximately 2/3rds less than the original design.

The Board wanted clarification on the revised structure of the boat house. Attorney Wall said that he had a discussion with Mike Mendoza regarding the windows of the boat house, and was brought to the Board back in January for clarification. That conversation is not related to this present hearing.

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Chairman Furbush had questioned the current status of the construction within the wetlands. Attorney Wall said that an extension was filed for the wetlands permit that is still valid, and is valid for three years.

Mr. Mendoza wanted to know why a Variance was not filed for the 50 ft. buffer to the wetlands.

Attorney Wall said that the existing structure is within the 50 ft. buffer of the wetlands and that's the reason for the Written Finding under Section 174-17 to alter or change a pre-existing, non-conforming structure. The non-conformity is not getting any greater because there is nothing being built closer to the wetlands, and the porch is being built in the back of the existing structure.

The Board had a discussion about the proposed deck being built below the flood plain elevation. Attorney Wall said it's a pre-existing, non-conforming structure and the proposed screened porch is well below the 50% of the appraised value.

Mr. Bonvie made a motion to approve the Written Finding as previously granted. The application was changed by reducing the amount of porches.

The Board has determined that the applicant meets all the conditions of a Written Finding under Mass General Law 40A Section 6.

**Certified Plot Plan:** Prepared by Cape & Islands Engineering entitled; House No. 65 Seconsett Pt Rd., Proposed Site Plan located in Mashpee, Mass. prepared for Katharine & Brown Lingamfelter, Sheet No: 1 of 1, Date: 4/28/16, DWG File: Seconsettpoint\_65, Scale: as noted, Approved by: MC, Checked by: MC, Drawn by: WD. Assessors Information: Parcel ID: 124-14-0. Signed by Matthew Costa NO. 52282.

The original Plot Plan that was approved in 2013 is as follows: Plot Plan Prepared by Cape & Islands Engineering entitled; House No. 65 Seconsett Pt Rd., Proposed Site Plan located in Mashpee, Mass. prepared for Katharine & Brown Lingamfelter, dated January 17, 2012, Scale: 1' = 20' file: 143MA, Rev. June 8, 2012, Rev. September 20, 2013, Rev. October 20, 2013, remove boat house, title requirements with no additional flow, cottage additions only. Upland Lot Area = 33,500 SF, Existing Lot Coverage = 4.6%, and Proposed Lot Coverage = 7.2%, Flood Zone V18 EL 14, This Project is Not located in an area of critical environmental concern.

Mr. Blaisdell seconded. All were in favor of approving the revisions to the existing dwelling with the reinstated Written Finding.

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**13 Compass Circle:** Owners, Paul S. and Margaret K. Hovsepian request a Variance from the side-yard setback, and lot size requirements under §174-31 and §174-33 of the Zoning Bylaws to raze and replace a single-family home and garage on property located in an R-3 Zoning District, Map 105 Parcel 257-0-R, Mashpee, MA.

Chairman Furbush and Board Member, Scott Goldstein stepped down from this hearing. Mr. Blaisdell is acting Chairman along with the remaining Board members.

Attorney Brian Wall represented the homeowners for this project. Also present was Tom Bunker from BSS Design, Harry Capone, Architect and the homeowners. Mr. Wall stated that the homeowners would like to either modify the two existing variances, or the alternative, to have new variances issued because the existing structures that exist today were approved under the existing variances previously granted.

The lot was created back in 1963. It's non-conforming because it has 24,000 sq. ft. where 40,000 is required, and it has 75 ft. of frontage and 150 is required. The boundaries of the lot were changed back in 1988 by a land swap. He believes the land swap was done because an existing structure was built on the neighboring lot and was built right on the property line.

Mr. Bonvie asked if this lot was created by a Form A or a deed, and was the square footage reduced.

Mr. Wall said it was both a Form A and a deed; the Form A was to change the lot lines. The frontage remains the same and the lot area remained the same. It was a square footage swap one for one basically to provide the abutting property some land to create a setback and give equal land for both lots. The lot is non-conforming as to area and frontage. The changes to the lot lines do not change area or frontage.

The existing house was built in 1969, and complies with front, rear and side yard setbacks as well as lot coverage requirements. The house is closer to the wetland than 50 ft., and as a result the house does not comply with the 50 ft. setback. This was authorized back in 1987, and is included in the proposal.

The existing garage was built in 1995, it similarly complies with front and rear setbacks, but is only 7.4 ft. from the side lot line with does not comply with the 15 ft. side yard setback required by Section 174-31, but similarly was authorized by a Variance issued in 1995, and that was also included in the proposal.

They would like to raze the existing home and garage, and replace with same size structures in the same footprint. The existing setback is 39 ft. the proposed is 42 ft., but there is a cantilevered deck. The new structure will be elevated above the flood plain and will comply with flood hazard requirements. The existing elevation is 10.4 ft. and the new elevation will be 12.5 ft.

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Attorney Wall supplied a picture of the existing garage. In addition to building the new house, the homeowners would like to rebuild a new garage in the center of the lot, but will be closer to the lot line than permitted. The new garage will not be 15 ft. from the side yard setback, but will only be 8.4 ft.

Attorney Wall explained that the Board has an inherent authority to modify the existing variance subject to limitations as he stated in his proposal letter. "As long as the modification does not constitute a reversal of a conscience decision."

Mr. Bonvie would like proof of a Planning Board Form A. Attorney Wall does not believe it's a legal requirement.

Mr. David Stone, the abutter at 17 Compass approached the Board said that the land swap was done 15 years ago for a garage that his parents built. He has no problem with the project, but wants to know what the second floor of the garage will be used for either storage or living space.

Mr. Hovsepian, the homeowner, stated he currently plans to keep the garage unfinished, but would like to keep his future options open because it will affect the value of his home. Mr. Hovsepian had a discussion with his neighbor and both agreed if there were only two double-hung windows in the back of the garage that would be sufficient.

The Board had a discussion regarding the location of the garage on the plan and would prefer a new plan be submitted and also there were no elevations on the house plans. The Board also agreed that the advertisement in the newspaper was sufficient.

Mr. Bonvie made a motion to continue the hearing until September 28, 2016. Mr. Gould seconded. All were in favor to continue the hearing as noted.

**OTHER BUSINESS**

Mr. Gould made a motion to accept the August 24, 2016 meeting minutes. Mr. Blaisdell seconded. All were in favor.

Mr. DeBarros made a motion to adjourn. All were in favor and the meeting adjourned at 9:10 pm.

Respectfully submitted,

Mary Ann Romero  
Administrative Secretary  
Zoning Board of Appeals