

Zoning Board of Appeals Minutes 04/23/2014

MASHPEE ZONING BOARD OF APPEALS APRIL 23, 2014 MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, April 23, 2014, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Board Members, Jonathan Furbush, William A. Blaisdell, James Reiffarth, Richard Jodka, Associate Members Domingo K. DeBarros and Scott Goldstein were present and acting throughout. Building Commissioner, Richard Morgan was also present.

Chairman, Jonathan Furbush opened the meeting at 6:05 p.m. and announced that the meeting was being televised live on local Mashpee television.

PLEDGE OF ALLEGIANCE

CONTINUED HEARINGS

Mashpee Commons Limited Partnership: Request modifications under Special Permit SP-86-04-024 to address actual built conditions, relocate certain square footage of building space and location of parking areas, and previously approved residential units on property located in a C-1 Zoning District, at 38 Nathan Ellis Highway, Unit 33, (Map 74 Parcel 20), Mashpee, MA. (Continued from April 9, 2014 Public Hearings at the request of the Petitioner).

Mashpee Commons Limited Partnership: Request a Variance under Article VII §174-31 (Land Space Requirements) of the Zoning By-laws to vary the building setback on property located in a C-1 Zoning District, at 38 Nathan Ellis Highway, Unit 33, (Map 74 Parcel 20), Mashpee, MA. (Rescheduled from March 26, 2014 Public Hearings with a full member Board). (Continued from April 9, 2014 Public Hearings at the request of the Petitioner).

Mr. Tom Feronti, representing Mashpee Commons announced that John Connell, Architect and Attorney, Mike Ford were also present. Mr. Feronti informed the Board of the proposed new building within Mashpee Commons that was originally shown on the master plan of the special permit. It's identified as Building 33 and located at the intersection of Route 28 and Steeple Street. The building will be a two-story building maintenance facility which will allow the three full-time maintenance personnel to consolidate equipment and storage from different locations into one building.

The existing maintenance shed is located at the southern boundary of the existing Mashpee Commons parcel on the property line of the 40B Project where they house equipment. There is a storage trailer which is used to move seasonal equipment, and another building for file storage, material storage, and a place for the maintenance personnel to "hang their hats". Mr. Feronti started to look at the 40B Project and realized the existing location of the maintenance shed is not convenient and is obstructing the site work for the first sub-phase of the 40B project. He said they started looking at other locations for the maintenance facility and decided the most sense to combine everything into one building to house all their equipment, material storage, file storage and themselves when they are not working.

There were a number of locations but settled on the intersection of Route 28 and Steeple Street that is shown on the site plan included with the application and subsequently revised. Tom stated that this building is the first step towards the eventual connection between multiple neighborhoods within Mashpee Commons. It's their desire to have connectivity between Mashpee Commons and East Steeple Street, and ultimately Trout Pond. The idea is bringing buildings tight to Route 28 so it is a "pedestrian friendly" environment for folks to walk from one neighborhood to another.

John Connell, Architect and Project Manager with Mashpee Commons stated that every building constructed on the edge of the Special Permit is important, and to look at the building in context of the other current and future buildings and plans as updated. Mashpee Commons continues to have mixed use residential as well as on the other side of Route 28. It's important for Mashpee Commons, and hopefully the community, that Route 28 not become a gigantic divide, but more a comfortable way for pedestrians to cross Route 28. He said after a conversation with Tom Fudala reviewing the master plan proposals that have been advanced, and then superseded for this parcel, it's an accepted fact in planning that buildings closer to roads produce slower traffic. As seen on the map layout, they anticipate reluctantly there will be additional lanes, but hopefully the bypass will provide alternative ways to avoid the rotary and provide a small village town impression.

Mr. Jodka asked if the building will be large enough when the time comes to develop the other side of Route 28 and seeking to move or expand it. Mr. Connell said that by the time all four corners of the intersection are planned, including the highway, this building might have to be replaced.

Mr. Furbush asked why they chose this location. Mr. Connell stated they looked at other locations and revised their plans three times.

Mr. Reiffarth asked if they considered putting the building on the corner of Common and Fountain Streets by the open space in the back corner behind the library. He thought that would be ideal.

Mr. Connell said their need for maintenance space is greater than retail space, and has other retail space for future demands.

Mr. Goldstein asked if they considered the parking area by the bank in the corner of the rotary. There seems to be plenty of space available.

Mr. Connell said there is not a building footprint in that location, so it is not permitted. Mr. Furbush said a variance was never submitted to change that.

Mr. Furbush mentioned questions from the March 18, 2014 Design/Review Committee meeting. He was not at the meeting, but there are two pages of unanswered questions from that meeting and not sure if they were answered. One of the statements from Tom Feronti; "the plan is for a maintenance barn, but if someone wanted to lease they would do that." Mr. Connell stated that they would prefer to build in a desirable location if a client came forward. The maintenance crew have been promised a building for seven years and it will provide a tremendous upkeep for the Commons. Mr. Furbush mentioned another comment there would be a loss of five parking spaces, if the building were situated at the desired location. There is still an excess of sixty three (63) extra parking spaces. Mr. Feronti stated if the building is kept at the 40 foot setback, they would lose 18 or 20 spaces versus five. One of the main considerations locating this building as shown on the footprint of the master plan, is to reduce the overall impact on parking. Part of the issue is storing the maintenance equipment and vehicles. There will be a garage door located at the termination of the drive. Moving the building to the 40 foot setback and aligning the garage door with the southern parking would lose parking spaces for trucks and power washers.

Mr. Furbush had a copy of the 2002 approved plan showing the right of way setback on the corner and how it will be connected directly across the street. Mr. Feronti said it was at a 75% level and hard to factor that road because it may or may not be considered in the future. The 21.9 foot setback that is being requested with the additional space needed for the right-of-way shows an additional 15 feet which brings the setback down to 6.9 feet. However, based on the existing conditions, there is roughly 10 feet between the right-of-way and the travel lane. If you assume that the 10 foot dimension is going to remain constant, the 6.9 foot setback is actually a 16.9 foot setback from the travel lane. If it remains at the 40 foot setback it would be approximately 35 feet when completed. We wanted to consider a pedestrian-driven situation and the 6.9 foot setback with 16.9 feet to the travel lane was a more comfortable distance for people walking from one neighborhood to another. The building will be constructed the same architecture that is currently in Mashpee Commons.

Jim Reiffarth asked if the top right door faces the parking lot. Tom Feronti said; "yes, on the western façade of the building". There are only four full parking spaces taken for the building, the fifth space is actually a partial space designated as a loading area for the maintenance staff to provide maneuverability.

Mr. Furbush asked how many buildings in Mashpee Commons are within 40 feet of Route 28. Mr. Feronti stated there are no buildings within 40 feet. Mr. Furbush said the Town Bylaw requires a 75 foot front setback from Route 28 for commercial zoning, but Mashpee Commons was allowed 40. Mr. Goldstein stated that on a busy traffic Saturday someone is likely to get into an accident if the building is situated at the proposed location.

Attorney, Mike Ford commented that in order to be entitled to a variance on this corner, they need to show some unique conditions relating to soil, typography, or shape under 40A Section 10. There may be a shape argument creating a hardship that you could rely on if you literally apply the bylaw. If assuming a shape issue is at an intersection with parking on both sides, and literally applying the required 40 feet setback, it results in the loss of 15-18 parking spaces. The building has a bump-out and as it moves back, it not only displaces more spaces that run parallel to Steeple Street, but the next row of spaces are displaced as well.

Tom indicated on paper, that Mashpee Commons still has an excess of 63 spaces over and above what is required under the bylaw, including back in 1986 that was authorized on a plan. As we know, there are times at Mashpee Commons there does not appear to be enough spaces, particularly in key areas and in key parking lots. The 1986 special permit indicates the 40 foot setback as long as they continue to exercise the zoning rights under the special permit. In addition to the 1986 special permit, there are two very important conditions that give you control.

Condition numbers 1 and 5, which require Design/Review and the ZBA for special permit modifications in order to proceed and allow conceptual phase plans. However, the variance is an integral part of this project because without the variance the building cannot be situated

in the location they are seeking with the special permit. To answer the concerns regarding setting a precedence, Mashpee Commons has a unique condition of the 40 foot setback requirement for a variance. These unique circumstances include the locational parking, the number of spaces that were displaced, what the use will be, and what is being achieved at the intersection in terms of tightening up the building. Mr. Ford said he understands that Mashpee Commons is not entitled to variances, and he respects the Boards decisions. However, from a design stand-point, there are conditions that could be applied and achieved tightening up those intersections, and the calming affects of traffic at the intersections, and the benefits for pedestrian movement across Route 28.

Mr. Ford said the question whether or not management has exhausted all the places for a utility shed may or may not be material to the criteria before this Board to grant. The variance relief is entirely discretionary.

Mr. Reiffarth asked if Mashpee Commons changes buildings do they recalculate the leasing of different entities into the spaces of buildings, i.e., restaurants, bowling allies, and so forth. Mr. Ford said; "yes, each time returning to the Board under Conditions 3 and 5 of the original 1986 Special Permit for any building brought online. It is required to update per the uses that are in those buildings at the time which may be different than first occupied. For example, if something has changed to a restaurant, than it's required to show the additional parking needed, the wastewater changes, and the square footage."

Mr. Ford requested a withdrawal of the Variance and Special Permit modification without prejudice. He stated that if decided to come forward it will be different thinking. Mr. Furbush made a motion to accept the withdrawal without prejudice of both the request for a variance and modification of the Special Permit. Mr. Reiffarth, seconded, Mr. Blaisdell, yes, Mr. Jodka, yes, Mr. Goldstein, yes. All were in favor. Mr. Morgan requested a letter of withdrawal from Mr. Ford.

Robert Roche: Request a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single-family dwelling on property located in an R-3 Zoning District at 37 Seconsett Point Road, (Map 124 Parcel 19), Mashpee, MA. (Owner of Record: Patricia O. Schmitt).

Attorney, Brian Wall represents the applicants who were present as well as Mr. Borselli, of Falmouth Engineering. Ms. Schmitt's son was also present. The request for a written finding under Section 174-17 of the zoning bylaw seeking permission to raze the existing structure and replace it with a new structure. The 8,700 square foot lot is relatively small in an R-3 zoning district on Seconsett Point Road and backing up to Waquoit Bay. The lot has been in existence since 1928 and is therefore non-conforming.

The property has currently improved with a single-family dwelling that was actually moved to property by Mrs. Schmitt's father in 1946 from another location. The house is closer to the wetlands than the 50 foot requirement, and is non-conforming under Section 174-33. It is also 4 feet off the southerly boundary and 4.6 feet off the northerly boundary. As a result is non-conforming as to the side setbacks. The Roches' would like to raze the existing structure and replace it with a new single-family dwelling. Under Section 174-17, he is permitted to seek a finding from the Board to allow this project as long as it is demonstrated to the Board's satisfactions that the project will not be substantially more detrimental than the existing non-conforming structure to the neighborhood. He introduced Mr. Borselli to discuss the technical aspects of the project.

Mr. Michael Borselli, of Falmouth Engineering stated he prepared the site plans and site design of the project. The lot known as parcel 19 is 8,700 square feet in total area has frontage on Waquoit Bay. The frontage on Waquoit Bay includes stone rip rap embankment. Towards the east of Seconsett Point Road is lawn area, the existing house and some landscaping and driveway.

It is completely developed for a single-family dwelling and the plan is to demolish the old house and construct a new house. The current house does not meet the setback zoning requirements, and also does not meet the FEMA standards for construction a flood zone. It includes a basement below space with a heating systems and storage that is not allowed under FEMA standards in a flood zone. The new home will not have a basement, it will be constructed and designed for compliance with FEMA standards; building code standards in Flood Zone A. There is a prediction of still water flooding with no wave energy to certain elevations so the first floor will be designed for the elevated one foot above the predicted base flood elevation and there will be no below grade space in this building.

The reconstruction of the house will include a lot of significant improvements than what currently exists today. The current septic system is less than 100 feet from wetland resources and the new septic system will be sighted so that all components in excess of 100 feet from wetlands. The current setbacks will double from the average 4 feet from the structure and will become 8 feet. There is currently no roof drainage system so there is potential for erosion from the roof runoff. There will be a dry well system incorporated into the new house design and most importantly from an environmental point of view, there is currently no native buffer between the structures and wetland resources, it's basically a lawn area. The new developed lot will have a significant area of native buffer between the house and the native resources.

The applicants have been in before the Board of Health and was approved for the setback relief from the components of the septic system. The Conservation Commission issued a notice of intent and granted an order of conditions approving this project on April 16, 2014. All the

work associated with razing and reconstruction of this house is an overall improvement environmentally to the neighborhood.

Mr. Wall returned and stated the standard to achieve approval from the Board is whether the proposed structure is not substantially more detrimental to the neighborhood than the existing structure. To make a case is to focus on the bylaw and the qualitative structure relative to the other structures in the neighborhood. The existing structure is less than 50 feet from the wetlands and therefore does not defy the Section 174-33 that the new structure will comply and become less non-conforming. The existing structure is non-compliant with the side setback requirements, as close on one side as 4 feet, and the other side 4.5 feet. The new structure will be nearly 10 feet; 9 feet on one and 8.5 feet on the other and as a result the non-conforming nature of the existing structure will improve a 100%, doubling the existing setback.

Mr. Borselli mentioned the existing structure has a basement and its living space is not elevated above the flood plain; Sections 174-59 through 174-63 has several provisions regarding construction in the flood plain and the existing structure does not comply. It's obviously grand-fathered but it doesn't comply. The new structure will be elevated above the flood plain with the mechanicals above and will have no basement, so it will become more conforming to the bylaw, less non-conforming and will comply with applicable building codes for development in flood zones.

The new structure lot coverage of 21.5%, and 130 square feet over the 20% limitation.

There is a couple of reasons for this. First, the lot coverage is being driven by the size of the lot. As mentioned earlier, it's a very small lot at 8,700 square feet, so dealing with lot coverage requirements small lots become much amplified, one foot makes a bigger difference. If this was a 20,000 square foot lot, this house would be under the lot coverage requirements.

Mr. and Mrs. Roche want to develop the lot appropriately with a house that would fitting for them and also fitting when attempting to sell it. They want to be able to build a house that is marketable to people that have the ability to afford waterfront property. The second issue is a very practical, without a basement in the new structure there is no storage allowed below ground and also the mechanicals such as the hot water heater, and furnace will have to be situated within the footprint of the living space in the house and will require extra space for this type of storage.

The 130 square foot request is relatively de minimis. It's the size of a 10 foot by 12 foot room and I think is appropriate under these circumstances articulated specifically because the side yard setbacks are getting better for the neighbors. So although the house is larger, it will be further away from the side lot lines, and other than the lot coverage, is completely compliant for zoning meeting the front setbacks. The structure will be designed within the height requirement and meets flood zone provisions. Mr. Wall provided photographs of the current homes in the neighborhood that were approved by the Zoning Board of Appeals in the past.

Mr. Furbush stated that 65 Seconsett Point Road is 13.5% lot coverage, 38 Seconsett Point Road is 15.5%, and 36 Seconsett Point Road is 20.2%. To the best of my knowledge, these are the only three homes that were approved.

Mr. Furbush stated an 11% lot coverage, and moving to 21.5%. He does not understand the reason to go over the 20%. He does not like the structure too close to the street. Mr. Goldstein stated this size lot is similar to Popponeset Beach and 20% is the maximum allowed in that area. The covered porch and landing is included in the square footage. The height of the structure needs to be confirmed by the architect who was unavailable.

Mr. Jodka read the Board of Health Comments into the record; "Septic design was approved March 20, 2014 with variances to Title V for an increase in bedrooms from 3 to 4. The abutters and their attorney argued that the house was too big. The board felt that the 100-foot setback from the wetlands resource was the defining factor with the septic system and the 6 feet of encroachment by the dwelling would not impact the operation of the system."

Mr. Reiffarth read the verbal comment from Conservation; "Concom passed 37 Seconsett Point Road at their March 27, 2014 meeting."

Mr. Goldstein read an email into the record dated April 15, 2014 from the abutters at 38 Seconsett Point Road, Neil and Maureen Ferris support the project.

Mr. Furbush read a letter dated April 9, 2014 from the abutters at 19 Seconsett Point Road, Manny and Faith Garcia that do not favor the allowance of any changes to the existing side yard and front setbacks.

Mr. Jodka read a letter dated April 16, 2014 from the abutter at 29 Seconsett Point Road, Gloria B. Henn objects to any variances.

Mr. Wall rebutted stating that the application is for a written finding, not a variance. Secondly, the unique area is what attracted his clients to the property and they do not want that to change. The front yard setback complies at 30 feet and the structure is at 38 feet. The rear is 50 feet from the wetlands and complies, the sides don't meet the current code at 15, but presently the current structure is 4 and 4.5 and is moving

close to 10 feet.

Attorney, Theodore A. Schilling, representing Mr. David Bernstein, the abutter at 33 Seconsett Point Road, and Gary and Lynn Laurino, the abutters at 43 Seconsett Point Road. He mentioned that Susan Howard, the wife of David Bernstein was also present. Mr. Schilling and Ms. Howard appeared at all the hearings regarding the petition and voiced their objection accordingly. Attorney Schilling handed the Board his written objection memo listing the points of Section 174-17, the foot print of the proposed dwelling and privacy issues of the neighboring homes.

Ms. Howard stated she and her husband reside at 33 Seconsett Point Road. She believes the proposed new dwelling is more detrimental to the neighborhood than the existing home. She passed out a computer generated aerial view of the current home on the lot and said it's too tight at the corners and believes it will be worse. She said the plan shows an 8 foot setback as opposed to a 10 foot setback. She provided a diagram of the lot showing the existing house as 930 square feet, and the proposed house showing 1,876 square feet. The existing house has a 10.5% lot coverage, the new house at 21.5% lot coverage and encroaches 507 square feet doubling the foot print. Ms. Howard also prepared an actual model of the existing and the proposed home. She is asking the request for the finding of the new home be denied.

Mr. Schilling commented that bylaw Section 174-17 does not protect the Town. He said there is not a floor ratio capacity as in Barnstable preventing this type of filing. He believes an 8,000 square foot vacant lot vacant that's been vacant for 40 years can be built on with the required setbacks. He doesn't believe that extending a non-conformity should be allowed. He stated his clients are not opposed to the re-building, his clients do not want a building that will obstruct the space and feel of the peninsula, and would like the Board to take this into consideration.

Mr. Jodka asked Mr. Wall if the third floor complies with the new home. Mr. Wall said he asked the Architect to comply with the bylaw. Mr. Morgan asked if the grade will be built up. Mr. Wall said; "no, it's the average grade." Mr. Borselli stated the average grade of the front about 9 feet, and is about 8 feet on the back side of the house. The calculation is above 8.5, which is the basis for the 35 feet to the ridge and also taking into account the design of the first floor at 1 foot above the flood base elevation according to the new FEMA maps.

Mr. Wall asked for a continuance until May 28, 2014 to consult with his clients regarding the setback issues. Mr. Furbush made a motion to accept the continuance, Mr. Blaisdell seconded, yes, Mr. Reiffarth, yes, Mr. Jodka yes, and Mr. Goldstein, yes. All were in favor.

Mr. Furbush made a motion to approve the April 9, 2014 meeting minutes, Mr. Reiffarth seconded, yes, Mr. Blaisdell, yes, Mr. Jodka, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Mr. Reiffarth made a motion to adjourn, Mr. Blaisdell, seconded, yes, Mr. Furbush, yes, Mr. Jodka, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes.

Respectfully submitted,

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals