

## Zoning Board of Appeals Minutes 12/10/2014

### MASHPEE ZONING BOARD OF APPEALS DECEMBER 10, 2014 MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, December 10, 2014, 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, James Reiffarth, Associate Members Domingo K. DeBarros and Scott Goldstein were present. Also present was Building Commissioner, Michael Mendoza. Board Member, Richard Jodka was absent.

Mr. Furbush announced the meeting was being televised live on local Mashpee television.

**Gregory S. Bush, Trustee:** Requests a Written Finding under §174-17 & §174-20 of the Zoning By-laws to raze and replace a single-family dwelling located on property in an R-5 Zoning District at **55 Santuit Lane**, (Map 30 Parcel 2), Mashpee, MA. (Requests a continuance until January 14, 2015).

Mr. Furbush made a motion to accept Greg Bush's request for continuance dated December 2, 2014 for his project at 55 Santuit Lane until January 14, 2014. Mr. Blaisdell seconded, yes, Mr. Bonvie, yes, Mr. Reiffarth, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes.

**Cotuit Solar:** Request a Variance under §174-31 of the Zoning By-laws for setback relief requirements of a residential structure located in a C2 Zone at **36 Savannas Path**, (Map 62 Parcel 68B), Mashpee, MA. (Continued from October 22, 2014 Hearings at the request of the Attorney).

**Cotuit Solar:** Request a Special Permit under §174-24, §174-25 D (1) and §174-41F for construction of a solar warehouse and meet adequate parking requirements located in a C2 Zone at **36 Savannas Path**, (Map 62 Parcel 68B), Mashpee, MA. (Continued from October 22, 2014 Hearings at the request of the Attorney).

This is a continuance since the August 27, 2014 hearing.

Attorney Kevin Kirrane, represented Cotuit Solar who applied for a Special Permit and Variance relief to construct a warehouse and renovate an existing two story building for a solar energy business.

The request for variance relief is 75 feet from the front yard setback and 50 feet from the rear yard setback because the property abuts a residential zone located to the West of the subject property.

The solar energy business will be utilizing the existing building for office and a warehouse building will be used for storage. The customer business will be conducted off-site at their customer locations and will become a high traffic facility.

The plot plan depicts a request for a 4 foot variance from the wetlands indicating the building will be situated 96 feet. The plan also includes a request for gravel parking on the south side of the barn instead of required pavement. The Board requested that a vegetative buffer be planted as indicated under the Bylaw Section 174-41 (K) and (L). The distance of the gate is 97 feet from the furthest southern corner of the property.

Savannas Path is currently a dirt road only and a portion of the path is going to be improved pursuant to Planning Board approval.

Charlie Rowley addressed the Board and finalized the plans with CSN Engineering as indicated in his letter dated December 10, 2014. He also provided the Storm Water Management Report, dated May 14, 2014, revised December 1, 2014 by Linda J. Pinto, Registered Civil Engineer. He briefly addressed the following that would need to be discussed during the hearing;

- The height of the building was addressed because of run-off issues.
- The parking area issue would include the run-off up to an including the 100 year storm.

- The drawing does not include a third drainage pit, but was based upon the Board requesting pavement instead of gravel.
- In his opinion, there is no issue with the fire trucks turning around. There is no "T" Indicated on the plan.
- The solar pipe has been removed from the definitive plan.
- Page 2 is more detailed showing the parking and leaching pit.

John Bartlett, an abutter that resides at 28 Sampsons Mill Road addressed the Board and indicated he would like the following conditioned in the Board's decision.

- The lock box on the gate.
- Limiting the access of construction vehicles through Savannas Path.
- Downward lighting.
- Vegetative boarder.

He also requested that public notification be sent on any future changes in zoning.

Mr. Furbush read an email from Drew McManus, Conservation, dated Tuesday, October 7, 2014 "Natural Heritage has approved the Cotuit Solar project".

Mr. Furbush read an email from Glen Harrington dated, October 17, 2014 "Septic inspection performed. Warehouse and office use allowed and existing septic has enough capacity for change in use."

Mr. Furbush stated that Charlie Rowley's letter dated December 10, 2014, titled Site Plan Review for Cotuit Solar Trinity Place be included into the record.

Mr. Furbush read an email from Charlie Rowley, dated December 10, 2014 "Mary Ann and Joel: The Planning Board approved the construction of pavement that is next to the proposed barn on the Cotuit Solar property. There is also a turnaround easement for that purpose. So If vehicles need to turn around they can enter onto the easement for turning purposes without encroaching onto private property. It also shows up on the site plan for the new barn that is before the ZBA and is labeled as such. Between the pavement of Trinity Place, and what is on the site itself there should be plenty of room for even the tower to get turned around. It may take some backing and filling but it would have to do that even if it was just a "T" at the end of the road. Hope this helps."

This approval is conditioned on the following conditions:

- Sampson's Mill Road is not to be used as access for any construction vehicles or private vehicles.
- The gate, with an approved lock – by the Fire and Police Department must be installed within thirty days from the date of this approval, and will be 97 feet from the southernmost point of the lot as shown on the plan, dated December 10, 2014

Hours of operation are to be in compliance with the Town of Mashpee established hours of operation for construction and the operation of a business.

Lighting is to remain on site. No lighting shall be on the side of the storage building which faces the home at 28 Sampson's Mill Road.

- The parking area, facing the residential district must, have a buffer as outlined under §174-41 K and or L prior to the issuance of an Occupancy Permit.
- Apply for all necessary building permits within sixty (60) days after the approval.
- As stated by the Town Planner (email dated September 19, 2014), no building permits can be issued on the property until a "Release of Covenant" has been signed by the Planning Board and recorded at the Registry of Deeds.
- That the Storm water Management Report prepared by Linda Pinto, PE, Oceanside Septic, Inc., Engineering Division dated May 14, 2014, revised December 1, 2014 to be incorporated in its entirety.
- The lights are to be as noted on the accompanying specification sheet. In the case of isolated post mounted lights, the posts are to be a maximum of 10 feet in length.
- That the applicant and/or contractor responsible for all site work make appropriate provisions for timely inspections of

construction with at least 24 hours' notice for at least the following:

- Establishment of limits of work and erosion control measures in place.
- Stockpiling of topsoil or other materials to be used on the site.
- Preparation of drainage areas, structures and pipe prior to backfilling.
- Placement of base material prior to paving or stone for surfacing.
- Fine grading and placement of bituminous asphalt for parking areas.
- Landscaping, final grading and loam and seed and area lighting.

Final Inspection.

Attorney Kirrane asked the Board that the plantings around the parking area does not require a full filing with the Conservation Commission. The intent would be to provide plantings within the 100 foot buffer zone.

Mr. Bonvie stated the plantings would be required unless Conservation Commission requires a submission for a Notice of Intent.

Mr. Furbush stated no building construction and/or vehicles allowed to use Savannah's Path from Sampson's Mill Road. The only access allowed is for reconstruction of Savannah's Path.

Mr. Bonvie made a motion to issue a Variance under 174-31 and 174-41 of the Zoning Bylaws for setback relief requirements and the non-requirements to not pave eight (8) parking spaces of a residential structure located in a C-2 zone at **36 Savannahs Path**, (Map 62 Parcel 68B), Mashpee, MA. Also making this motion would require the applicant or any future owners of the property who chooses to pave any of the eight (8) parking spaces, that a third drainage pit be required and an engineer would be required to review the location of that pit. Any change in use of the existing office and proposed warehouse would require applying to the Zoning Board of Appeals for review and approval. Referencing a set of site plans, (two sheets) prepared by CSN Engineering, PO Box 201, Brewster, MA, stamped by Linda J. Pinto, Revised 12/10/2014: Revised Gravel Parking, Added Spot Grades and Catch Basins, Removed Air Intake Pipe, Revised Barn Elevation, Lighting Note. Prepared for Conrad Geyser, Route 28, Cotuit, MA, Also referencing the "Narrative" prepared by Cotuit Solar, General project description:, Road Layout and Drainage Plans Approved by Planning Board". (Removed "Proposed Warehouse Structure").

Bill Blaisdell, seconded, yes, Mr. Furbush, yes, Mr. Bonvie, yes, Mr. Reiffarth, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Mr. Bonvie made a motion to issue a Special Permit under §174-24, §174-25 D (1) and §174-41F for construction of a solar warehouse and meet adequate parking requirements located in a C2 Zone at **36 Savannahs Path**, (Map 62 Parcel 68B), Mashpee, MA. Adding to the motion the specific reference to the Variance of the eight (8) parking spaces, and the specific use to be as small office space and warehouse only.

Also making this motion the proposal shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood and that there is adequate land area to provide sufficient parking and setbacks as may be required. Also, does not adversely affect public health, safety concerns, will not cause excessive or community facilities, will not adversely impact ground water or surface water quality, wildlife habitat, traffic flow, traffic safety, and will not otherwise be a detriment to the public good, the Town or the neighborhood. All other conditions and documents read into the record are part of this motion.

Bill Blaisdell, seconded, yes, Mr. Furbush, yes, Mr. Bonvie, yes, Mr. Reiffarth, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

**Jeffrey M. and Elaine Wiesen:** Request a Written Finding under §174-17 of the Zoning By-laws to raze and replace a detached single-car garage and replace it with a new 24' x 24' detached two car garage on property located in an R3 Zoning District at **30 Wheelhouse Lane**, (Map 120 Parcel 162), Mashpee, MA.

Attorney, Kevin Kirrane, represented the petitioners to modify their one car garage to a two car garage. The garage is less than 30 feet from the road way which is the setback for this cluster subdivision, and is considered a non-conforming free standing structure and proposing to move it closer to Wheelhouse Lane, making it 24' x 24' versus a 16' x 20', The proposed structure will still be 10 feet from the road way which should provide adequate distance for access and egress, and also provide the neighboring properties for any traffic flow.

Mr. Furbush read an email from Drew McManus, Conservation Department dated December 5, 2014, stating “30 Wheelhouse Lane is on the December 11<sup>th</sup> Agenda”. Mr. Furbush noticed that the garage is not going closer to the wetlands.

Mr. Furbush read an email from Glen Harrington, Board of Health dated December 3, 2014; “30 Wheelhouse Lane – The increase in the size of the septic appears to reduce the required setback of 10 feet to 5 feet, as scaled on the plan. A variance from the board is required to reduce the required setback. A septic inspection would also be required due to the change in footprint of the on-site structure. The plan scaled correctly at 1”=30’ even though the title block says the scale is 1”=40’. The plan scale must have been altered when copied.”

The plot plan provided is not acceptable and must be corrected. The Board noticed the engineer stamped and signed the wrong plot plan.

Mr. Bonvie made a motion to issue a Written Finding to Jeffrey M. and Elaine Wiesen under §174-17 of the Zoning By-laws to raze and replace a detached single-car garage and replace it with a new 24’ x 24’ detached two car garage on property located in an R3 Zoning District at 30 Wheelhouse Lane, (Map 120 Parcel 162), Mashpee, MA. The applicant must seek and obtain Board of Health approval, Conservation approval, and must have the plot plan corrected by Terry A. Warner, P.L.S. dated October 16, 2014 titled “Plot Plan Showing Proposed Addition in Mashpee, MA” and must be signed and stamped by the engineer. Also included in this motion are plans provided by Harold Capone Residential Design, 5 Spinnaker Street, Sandwich, MA, A-1 and A-2, dated 10/27/2014. Also included in this motion, the proposal shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood and that there is adequate land area to provide sufficient parking and setbacks as may be required.

Mr. Blaisdell, seconded yes, Mr. Furbush, yes, Mr. Bonvie, yes, Mr. Reiffarth, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes.

**SBK Realty Trust:** Request a Variance under §174-31 of the Zoning By-laws to vary the lot size requirements on property located in an R-3 Zoning District at **36 Fells Circle**, (Map 122 Parcel 219), Mashpee, MA. (Shirley Bernstein Katz as Trustee of SBK Realty Trust).

Attorney Mark Gildea represented the petitioner and owner of 36 Fells Circle. Also present were the beneficiaries of the Trust, Rhonda Lassner and Steve Waldstein who are brother and sister. The property along with an adjoining property at 42 Fells Circle were owned by Shirley Bernstein back in 1972. She acquired 36 Fells Circle in May of 1980. Exhibit 1 in the package is a plan from the registry of deeds, lot 18 A which is 36 Fells Circle. This lot has 12,569 sq. ft. and frontage is 146.63 feet.

Attorney Mark Gildea explained to the Board that the frontage was incorrectly listed at 100 feet on the application, it is 146.63 feet. The second page of the package was an approved subdivision by the Planning Board. The required lot frontage is 150 feet and the requested variance is less than half a foot. The required lot size is 40,000 square feet in an R-3 zone. Exhibit 2 shows the Special Permit area of New Seabury, and depicts 36 Fells Circle highlighted in “pink” and is outside the New Seabury Special Permit. Exhibit 3 refers to the entire neighborhood surrounding Fells Circle. All the lots in the neighborhood have been developed. To the North of the 36 Fells Circle is vacant land and was formerly owned by the Cotuit Cranberry Company and is presently subject to Conservation restrictions and cannot be developed. The lot size of 36 Fells Circle is consistent with the surrounding neighborhood and is clearly intended buildable and can be developed. Exhibit 4 shows the lot sizes and lot frontage of Fells Circle properties and Fells Pond Road properties, and all the parcels are smaller in size than 36 Fells Circle. The Town Accessing Records are Exhibit 5 and shows 36 Fells Circle is considered developable land. Exhibit 6 shows the increase in the Assessed Value. The lot is not considered buildable until approved by the ZBA under the current circumstances.

The plot plan depicted a proposed dwelling. The Board stated that Conservation approval is required because of the location and would require the applicant to return to the ZBA for final approval.

Mr. Mendoza addressed the Board and stated the only relief the applicant is requesting is frontage and lot size. The applicant would be required to return to the Zoning Board of Appeals.

Chad Hoffman, an abutter that resides at 19 Fells Pond Circle wanted to know the owner’s intent of the lot.

Mr. Gildea stated that Mr. Waldstein would like to build a house if approved. Mr. Waldstein addressed the Board and stated he wanted to determine if the Board will allow him to build a house or if not allowed to build, he would request to have the lot reassessed as not buildable.

Mr. Bonvie stated that the house depicted on the plan would require relief from the Zoning Board of Appeals. The distance from the wetlands is 37.1 feet and a distance of 12.6 feet from a coastal bank. Please understand that if the Board makes a motion to move forward and approve, the applicant cannot receive any relief and cannot build. He stated he will not approve of any future application

for relief.

Mr. Gildea stated that Down Cape Engineering reviewed the matter and put the proposed dwelling on the plan for informational purposes, and indicated that they can meet the requirements from the Conservation Commission.

Mr. Bonvie made a motion to issue a variance under §174-31 of the Zoning By-laws to vary the lot size requirements on property located in an R-3 Zoning District at **36 Fells Circle**, (Map 122 Parcel 219), Mashpee, MA. (Shirley Bernstein Katz as Trustee of SBK Realty Trust). In making this motion, the variance lot size is 27,431 square feet, and 3.37 feet of frontage, and approval of the dimensional requirements only, and not depicting any improvements to the house, leach fields, setbacks wetlands, by erasing the house and leach field from the plan that was presented to this Board. Referencing a site plan titled; 36 Fells Circle, Mashpee, MA, prepared for Steve Waldstein, by Down Cape Engineering, Inc., dated February 7, 2014, November 13, 2014 (updated flood zoned), Scale: 1" = 20', stamped by Daniel A. Ojala, Professional Engineer, on 11/13/2014. Also referencing Board of Health comments dated December 10, 2014, "36 Fells Circle – Vacant parcel. No perks or engineering yet. Property is in Zone II so 12,569 SF area get one bedroom with conventional Title V system. There is not enough land area for a denite system to give enough credit for a second bedroom." Also stating the Board has notified the applicant of the concerns and inability to fit any residence of any size on this lot and meet any requirements under zoning.

Mr. Blaisdell, seconded, yes, Mr. Bonvie, yes, Mr. Goldstein, yes, Mr. DeBarros, yes. Mr. Furbush, no. Vote: 4-1.

#### OTHER BUSINESS

**Robert M. Valletta:** Requests a minor modification to the already approved construction of a second story deck on property at **112 Captains Row**, (Map 96 Parcel 17), Mashpee, MA.

Mr. Ed Shea, the Contractor represented the petitioner stating the application is not for the second story deck, but rather to modify the pre-approved raising of the roof to the right of the property and adding an additional dormer in the front section. The dormer will not exceed the roof line of what was already approved. The reason he came back to the Board is he gave the wrong plan to the Building Department.

Mr. Bonvie made a motion to issue a minor modification request to Robert M. Valletta to the already approved construction of a second story deck on property at 112 Captains Row, (Map 96 Parcel 17), Mashpee, MA. In making this motion, referencing the plan depicting the added cupola and an "A" roof to the existing already approved building and is within the confines of the existing foot print.

Mr. Blaisdell, seconded, yes, Mr. Bonvie, yes, Mr. Furbush, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

**Paul C. Trane:** Requests a minor modification to the already approved front setback on property located at **124 Summersea Road**, (Map105 Parcel 53), Mashpee, MA

Mr. Tim Luff, of Archi-Tech Associates, represented the petitioner and stated that the foundation was poured, and the contractor asked for the certified as-built. BSS stamped the plan, the contractor brought the as-built to the Building Inspector, and the plans did not match the as-built. The reason the plans did not match is because the foundation plan was edited to a red line process, and the bay window bump-out in the front was altered to make a roof line work, and the person who altered the plans didn't realize he actually pushed the bay window 6 inches closer to the street. The plan that was approved was 18 feet and the as-built is 17.6 feet.

Mr. Luff stated that under the Bylaw Table of Contents for §714-31 Land Space Requirements Table, Footnote 6; "A dwelling need not be setback more than the average of the setbacks of dwellings on the lots adjacent to either side." The plan from the previous file shows the adjacent homes, the left side is 23.7' and 3.7 setbacks. The math would be an average setback of 15.55.

Mr. Bonvie made a motion to issue a minor modification to the already approved front setback on property located at 124 Summersea Road, (Map 105 Parcel 53), Mashpee, MA. It was previously approved as an 18 feet setback straight line to the front of the house, and approving the alteration to 17.6. Referencing a plot plan, titled "Certified Plot Plan" at 124 Summersea Road, Mashpee, MA, prepared for Paul Trane, scale: 1" = 20', dated November 18, 2014, drawn EJP, job number 14117, drawing number P20-63.

Mr. Blaisdell, seconded, yes, Mr. Bonvie, yes, Mr. Furbush, yes, Mr. Reiffarth, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Attorney, Kevin Kirrane asked the Board if he could have an informal discussion regarding raze and replace at 50 Spoonrift Lane that was presented at the hearing back in August 2013. The plot plans presented the night of the hearing showed a proposed wood deck,

ground level, around the pool. The Board asked BSS to put a dimension on the plan of 30 feet from the pool to the wetland. BSS forgot to put a note on the plan stating it was a proposed wood deck. As a result, the Building Inspector could not approve the plan or issue a permit.

Mr. Mendoza recommended that the building permit be issued but stating on the application that the deck cannot be addressed until after a formal meeting of a Written Finding is presented. The Contractor can at least install the foundation before a hard frost. Mr. Mendoza was not aware that the house is already under construction and will review the project and plans. It needs to be confirmed if this is considered a structure.

As advised by Mr. Mendoza, he suggested the Board address this request under "other business" as a modification. The Board will need to determine if it's a major or minor modification at the hearing dated either January 14, 2015. Mr. Kirrane will need to provide the details of the deck and submit an updated plan.

Mr. Furbush made a motion to approve November 12, 2014 Meeting Minutes. All were in favor. Mr. Reiffarth made a motion to adjourn. All were in favor.

Respectfully submitted,

Mary Ann Romero  
Administrative/Secretary  
Zoning Board of Appeals