Town of Mashpee

Planning Board

16 Great Neck Road North
Mashpee, Massachusetts 02649

Meeting of the Mashpee Planning Board
Wednesday, August 17, 2022
Waquoit Meeting Room
Mashpee Town Hall
16 Great Neck Road North
Mashpee, MA 02649
7:00 PM
Broadcast Live on Local Channel 18
Streamed Live on the Town of Mashpee Website: https://www.mashpeema.gov/channel-18

Call Meeting to Order

- Pledge of Allegiance

Approval of Minutes

- Review of Meeting Minutes from August 3, 2022

Public Hearings

7:10 Consideration of amendments to the Mashpee Rules and Regulations Governing the Subdivision of Land, Section XIII: Fee Schedule

The Planning Board will consider adding language to clarify that when the $5,000 peer review/inspections fee(s) defined in Section XIII is drawn down to a value of less than 50% the applicant shall be required to re-seed the fund to the full $5,000 value.

7:20 **Applicant:** Longfellow Design Build
Location: 647 Falmouth Road (f/k/a 9 Shellback Way)
Request: The applicant seeks approval of a Special Permit to construct a 12,500 s.f. commercial building to be used for retail grocery sales on a 4 acre +/- parcel addressed as 647 Falmouth Road located generally between Job's Fishing Road and Shellback way with frontage along Route 28. This application is made pursuant to Sections 174-24C (1) and under Section 174-25 E (1) and 174-25 E (2) of the Mashpee Zoning Bylaw. This proposal triggers a mandatory referral to the Cape Cod Commission for review as a Development of Regional Impact

7:30 (Continued from 07/20/22)
Applicant: Marcello Mallegni, Forestdale Road, LLC
Location: 532 Main Street (Map 26, Block 6)
Request: The applicant requests consideration for approval of a 9 lot definitive subdivision plan of land consisting of approximately 18.05 acres located on Main Street (Route 130) between Nicoletta's Way and Echo Road

New Business

- Consideration of amendments to the Mashpee Planning Board Special Permit Regulations, Section VII: Fee Schedule regarding consulting engineer fees

MASHPEE TOWN CLERK
AUG 10 2022
RECEIVED BY: JK 2:20PM

Town of Mashpee

16 Great Neck Road North
Mashpee, Massachusetts 02649

Old Business

- Request for Covenant Release at the Subdivision known as Casper Circle – Steven and Joyce Hynds
- Discussion of issues at the Ockway Highlands subdivision and conditions of the special permit relative to traffic.
- Local Comprehensive Plan Updates with Weston and Sampson
    - Assessments of 1998 Chapters on Human Services and Solid and Hazardous Waste Management
    - Draft Survey
    - Workshops and Focus Groups
        - August 24, 2022 Business Coffee Hour
        - September 11, 2022 2 PM Mashpee Wampanoag Tribal Council
        - Virtual Workshops
- Affordable and Workforce Housing
    - Coordination with Affordable Housing Committee
    - ADU Workshop
- Clean Water Initiative
    - Amendments to Zoning Bylaw (as suggested by DNR Director and Town Manager at 8/8/22 Select Board meeting

Chairman's Report

Town Planner Report

- Adequacy of Solar Zoning in consideration of MGL Chapter 40A Section 3

Board Member Committee Reports

- Cape Cod Commission, Community Preservation Committee, Design Review, Plan Review, Environmental Oversight Committee, Historic District Commission, Harbor Management Plan Committee

Public Comment

Correspondence

- Chapter 91 and 401 Water Quality Certification Public Notice – James C. Atkins and John J. Weltman, Ch. 91 Application No. W22-6115 and 401 WQC Transmittal No. X288661
- Town of Falmouth Notices
- Town of Sandwich Notices
- Town of Barnstable Notices
- June 2022 Discharge Monitoring Report for South Cape Village – N = 5.3
- May 2022 Discharge Monitoring Report for South Cape Village – N = 9.3
- April 2022 Discharge Monitoring Report for South Cape Village – N = 6.0

Additional Topics (not reasonably anticipated by Chair)

Adjournment

MASHPEE TOWN CLERK
AUG 10 2022
RECEIVED BY JK 2:20pm

Maashpee Planning Board

Public Hearing Notice

Pursuant to Massachusetts General Laws, Chapter 41 Section 81Q, the Mashpee Planning Board will open a public hearing on Wednesday, August 17, 2022 at 7:10 PM in the Waquoit Meeting Room, Mashpee Town Hall, 1st Floor, 16 Great Neck Road North, Mashpee, MA 02649 to consider an update to the Mashpee Rules and Regulations Governing the subdivision of land to clarify in the application fee schedule that when the $5,000 peer review/inspections fee is drawn down to a value of less than 50% the applicant shall be required to re-seed the fund to the full $5,000 value.

Submitted by:

Mary Waygan, Chair
Mashpee Planning Board

July 29, 2022
August 5, 2022

Evan Lehrer
Town Planner
(508) 539-1414
elehrer@mashpeema.gov

Planning Department
Mashpee Town Hall
16 Great Neck Road North
Mashpee, MA 02649

To: Mashpee Planning Board
From: Evan Lehrer, Town Planner
Date: August 10, 2022
Re: Subdivision Rules and Regulations Fee schedule amendment 2022

This proposed amendment is to further clarify the existing practice for the consulting engineer's peer review and inspection accounts. The intent is to ensure that applicants are fully aware of their obligation to keep these project specific inspections accounts funded for the duration of the project until the engineer certifies that construction has been completed in accordance with the Planning Board's approval. The proposed new text is bolded in red.

Section XIII

Fee Schedule

A. Application Fees:

Approval Not Required Plan

Filing fee: $20 per lot, minimum $100

Preliminary Subdivision Plan

Filing Fee: $20 per lot, minimum $200.

Review Fee: $150

Definitive Subdivision Plan

Filing Fee: $20 per lot, minimum $200

Fee for peer review and site inspections by Planning Board's Consulting Engineer: $5,000*

*This fee will be deposited with the Treasurer/Collector into an interest bearing account pursuant to the provisions of MGL Ch. 44 Section 53G. Funds will be drawn down at a rate of $160.00 an hour for peer review of submitted plans and site inspections by majority vote of the Planning Board upon review and consideration of submitted invoices by the Planning Board's Consulting Engineer at a public meeting. **When the account is drawn down to a value of less than $2,500 the Town Planner shall notify the applicant in writing of the account's status and cause to be collected a check to re-fund the account to 100% or $5,000**. At the conclusion of the project, any excess amount in the account attributable to a specific project, including any accrued interest, shall be repaid to the applicant or the to the applicant's successor in interest

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Mashpee Planning Board

Public Hearing Notice

Pursuant to Massachusetts General Laws, Chapter 40A Section 9, the Mashpee Planning Board will open a public hearing on Wednesday, August 17, 2022 at 7:20 PM in the Waquoit Meeting Room, Mashpee Town Hall, 1st Floor, 16 Great Neck Road North, Mashpee, MA 02649 to consider an application made by Longfellow Design Build to construct a commercial building to be used for retail grocery sales on a 4 acre +/- parcel (Map 81, Lot 132) located at property addressed as 647 Falmouth Road, Mashpee, MA 02649. This application is made pursuant to Sections 174-24C (1) and under Section 174-25 E (1) and 174-25 E (2) of the Mashpee Zoning Bylaw. This proposal triggers a mandatory referral to the Cape Cod Commission for review as a Development of Regional Impact and thus no deliberations will occur at this meeting nor will the Board receive public comment until the Cape Cod Commission refers the project back to the Planning Board for local review.

Submitted by:

Mary Waygan, Chair
Mashpee Planning Board

July 29, 2022
August 5, 2022

CAPE COD COMMISSION

Development of Regional Impact (DRI) Referral Form

This form is to be completed by the referring municipal agency's authorized representative. Please attach a copy of the municipal development permit application pending before the municipal agency, showing the date on which it was received. Application materials should be transmitted to the Commission sufficient to describe the project and support the referral. Receipt of this information via the U.S. Mail or delivered in person to the Cape Cod Commission constitutes a referral for purposes of the Cape Cod Commission Act and Regulations. Form continues on the back.

Referred by (Municipal Agency): Mashpee Planning Board

(X) Mandatory Referral ( ) Full Discretionary Referral ( ) Limited Discretionary Referral

Project Name: 647 Falmouth Road Retail Grocery

Project Location: 647 Falmouth Road (f/k/a 9 Shellback Way), Mashpee, MA 02649

Applicant Name: Longfellow Design Build

Contact Address: c/o Christopher Kirrane, Esq. P.O. Box 560, Mashpee, MA 02649

Email: ckirrane@dunningkirrane.com Telephone: 508-477-6500

Brief description of the project including, where applicable, gross floor area, lots, units, acres and uses (please use additional sheets as necessary): The project proposes a 13,229 s.f. commercial facility to be used as a retail grocery market. The subject property is a 3.97 acre +/- parcel with frontage along Massachusetts Route 28 and Shellback Way. There are 138 total onsite public parking spaces proposed with 2 spaces reserved for electric vehicle charging. This project triggers a manatory referral pursuant to Chapter A Section 3(e)(i) of the code of Cape Cod Cmmission Regulations of General Application as new construction with a GFA greater than 10,000 s.f.

List municipal agency(ies) before which a municipal development permit is pending or required for the project: (please use additional sheets as necessary): Mashpee Planning Board

Print Name of Authorized Referring Representative/Title

Signature

Date

Mail or Deliver to:
Cape Cod Commission Attention: Commission Clerk
3225 Main Street, PO Box 226
Barnstable, MA 02630

» CONTINUED ON REVERSE »

CAPE COD COMMISSION

Development of Regional Impact (DRI) Referral Form Continued

Prior to making any referral, the Commission recommends that the municipal agency contact Commission staff to confirm process and discuss other relevant issues under the Commission's regulations; and specific to limited discretionary referrals, this discussion might eliminate the potential for misunderstanding about the scope of Commission review under the particular Cape Cod Regional Policy Plan (RPP) issue areas requested.

For Mandatory Referrals: Please indicate the review threshold(s) the project meets/exceeds from Sections 2 and 3 of the Commission's Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact.

For Any Discretionary Referrals: A referring agency should provide support about why it believes a project, that does not otherwise meet or exceed a review threshold, has regional impact and thus should require Development of Regional Impact (DRI) review. A municipal agency making a discretionary referral may request DRI review for one or more, or all, the issue areas of the RPP under which the agency maintains that the project will have regional impact (the RPPs issue areas are set forth below). A "limited" discretionary referral is one that requests review under one or more but fewer than all the RPPs issue areas. If a limited discretionary referral is accepted for DRI review, the Commission will limit its RPP consistency review only to those issue areas specified by the referring agency and accepted for review by the Commission.

Please indicate below the RPP issues under which the municipal agency seeks DRI review:

NATURAL SYSTEMS

_____ Water Resources
_____ Ocean Resources
_____ Wetlands
_____ Wildlife & Plant Habitat
_____ Open Space

COMMUNITY SYSTEMS

_____ Cultural Heritage
_____ Economy
_____ Housing

BUILT SYSTEMS

_____ Community Design
_____ Coastal Resiliency
_____ Capital Facilities & Infrastructure
_____ Transportation
_____ Energy
_____ Waste Management
_____ Affordable Housing

Effect of referral on local board's time limitation to review an application: For mandatory DRIs, local review and the corresponding time periods for review are suspended immediately upon the Commission's receipt of the DRI referral and resume upon the Commission's decision to approve a project becoming final. In the case of any discretionary referral, local review and the corresponding time periods to review are not suspended unless and until the Commission votes to accept the referred project for DRI review.

Town of Mashpee

16 Great Neck Road North
Mashpee, Massachusetts 02649

Mashpee Planning Board
Public Hearing Notice

Pursuant to Massachusetts General Laws, Chapter 41 Section 81T and the Mashpee Rules and Regulations Governing the Subdivision of Land, the Mashpee Planning Board will hold a public hearing on Wednesday, April 6, 2022 at 7:20 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North, to consider an application by Marcello Mallegni of 80 Airport Road, Hyannis, MA 02601 for approval of 9 lot definitive subdivision plan of land consisting of approximately 18.05 acres located on Main Street (Route 130) between Nicoletta's Way and Echo Road and identified on the Mashpee Assessors Maps as Map 26 Block 6. This lot proposed for subdivision is within the C-3 Limited Commercial District, the I-1 Industrial District, and the R-5 Residential District.

Plans may be reviewed in the offices of the Town Clerk or Town Planner at Mashpee Town Hall.

Submitted by

John Fulone, Chair
Mashpee Planning Board

Publication dates: Friday, March 11, 2022
Friday, March 18, 2022

BOOK 3386 PAGE 067

TOWN OF MASHPEE

29984

Planning Board

MASHPEE, MASSACHUSETTS

COVENANT

The undersigned Anthony P. Umina, Trustee of Equestrian Trust

of Middlesex County, Massachusetts,

hereinafter called the "Covenantor", having submitted to the Planning Board of the Town of Mashpee, a definitive plan of a subdivision entitled Quashnet Valley Country Club, Area "B" - Plan of Land in Mashpee, Ma. for Equestrian Trust

made by Baxter & Nye, Inc. Dated 3/3/80, rev. 3/26/80

does hereby covenant and agree with said Planning Board and the successors in office of said Board pursuant to G.L. (Ter. Ed.) Chapter 41, Section 81A as amended, that:

1. The Covenantor is the owner of record of the premises.

2. This covenant shall run with the land and be binding upon the covenantor and the executor, administrators, heirs and assigns of the covenantor and their successors in title to the premises shown on said plan.

3. The construction of ways and the installation of municipal services shall be provided to serve any lot in accordance with the rules and regulations of said Board before such lot may be built upon or conveyed, other than by mortgage deed; provided that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell any such lot, subject to that portion of this covenant which provides that no lot shall be built upon until such ways and services have been provided to serve such lot.

4. Nothing herein shall be deemed to prohibit a conveyance by a single deed subject to this covenant, of either the entire parcel of land shown on said subdivision plan or of all lots not previously released by the Planning Board.

5. This covenant shall take effect upon the approval of said plan by the Planning Board.

6. Reference to this covenant shall be entered upon said plan and this covenant shall be recorded when said plan is recorded.

The undersigned, wife, husband of the covenantor hereby agrees that such interest as I may have in said premises shall be subject to the provisions of this covenant and insofar as is necessary I, we, release all rights of tenancy by the curtesy, dower, homestead and other interests therein.

WITNESS our hands and seals this 2nd day of October 1981

Anthony P. Umina, Trustee
Anthony P. Umina

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss: Oct 2 1981

Then personally appeared the above named and acknowledged the foregoing instrument to be his free act and deed, Before me.

John Hargun
Notary Public

My commission expires 12-3- 1987

RECORDED OCT 27 81

See Plan Book 358 Pages 23 & 24

Town of Mashpee
Planning Board
16 Great Neck Road North
Mashpee, Massachusetts 02649

RELEASE OF COVENANT AGREEMENT

FORM E

The undersigned, being a majority of the Planning Board of the Town of Mashpee, Barnstable County, Massachusetts, hereby releases

Lot(s) 1 - 9 (Parcel B) shown on a plan

entitled Quashnet Valley Area B Owned by Equestrian Trust

dated March 26, 1980, from the provisions of a covenant agreement dated

October 2, 1981. Record owner as of August 17, 2022
date

The Stopped Bus LLC
name of owner

Executed as a sealed instrument this 17th day of August, 2022.

Chairman _____
_____
_____
_____
_____

COMMONWEALTH OF MASSACHUSETTS

County of Barnstable

On this _____ day of _____, 20_____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

_____
Notary Public
Commonwealth of Massachusetts

My Commission expires _____, 20_____.

To: **Planning Board**

From: **Evan Lehrer, Town Planner**

Date: **August 1, 2022**

Re: **1998 and 2012 Human Services LCP Assessments**

Human Services Element– Present Status

Goals:

GOAL 1: TO PROTECT AND IMPROVE THE PHYSICAL, MENTAL, AND EMOTIONAL HEALTH OF ALL MASHPEE RESIDENTS

GOAL 2: ACCESS FOR ALL TOWN RESIDENTS TO A FULL CONTINUUM OF HEALTH AND HUMAN SERVICES INCLUDING SOCIAL AND LEISURE ACTIVITIES

GOAL 3: COLLABORATION AND COOPERATION BETWEEN THE PUBLIC, NON-PROFIT, AND PRIVATE SECTORS IN MASHPEE TO DEVELOP A COMMON UNDERSTANDING OF HEALTH AND HUMAN SERVICE NEEDS, PRIORITIES, AND APPROPRIATE RESOURCE ALLOCATION.

After providing a questionnaire soliciting responses from the Human Services Director Gail Wilson and meeting with the Mashpee Human Services Committee I have put my assessment of the Human Services element of the comprehensive plan in a more narrative format below. Many priorities carried over between the 1998 chapter and a 2012 update that was adopted by the Planning Board but never accepted by Town Meeting. The narrative below gives a bit of a history of the department and accomplishments.

In 1998 the Human Services Department was established by vote of Town Meeting and the Town hired its first Director of Human Services, Louise Patrick, shortly thereafter. Current Director Gail Wilson succeeded Ms. Patrick in October of 2008. Until 2015, the Department's offices were not located in Mashpee Town Hall. In the early years of the Human Services Department the officers were located along Falmouth Road (Summerfield Park?) and in 2008 the office was moved to a basement level office at a Cape Drive commercial building. After leaving the Cape Drive facility, the Human Services Director was moved to the Recreation Building before finding a home at Town Hall in 2015.

The Human Services Department maintains and regularly updated a directory of Health and Human Service Providers that is available on the Town's Human Services webpage. A goal of the Human Services director for upcoming years is the development of a Human Services Newsletters that can be sent electronically to residents.

The 1998 Human Services element of the Comprehensive Plan asked that the Human Services Department work with private property owners to provide space for service providers. While Director Wilson noted that this has not been a high priority for her in consideration of her other priorities and generally refers people to the Mashpee Library, the Town is now home to the Community Health Center off of Industrial Drive, and in 2016 Director Wilson established the Mashpee Drop-In night alongside a

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number of community partners that has leveraged space in private facilities before to get those struggling with substance abuse disorder in front of care providers.

The Human Services element sought to prioritize the re-establishment of a Mashpee Youth Committee. This has not been accomplished as far as Director Wilson can recall. She remembers that an offshoot of that goal was the establishment of a Violence Prevention Team run by Dan Patenaude at Mashpee High school along with other town agencies and Mashpee High Students.

The Town in 1998 wished to have a staff person appointed as a Domestic Violence Coordinator. Currently, a Mashpee Police officer serves in that capacity.

A critical focus of the Human Services 1998 action plan revolved around workforce preparedness and providing access to education and workforce training for those who may be more heavily impacted barriers to entry such as single mothers. Generally, programs are run in coordination with service providers with service contractors entered into between those providers and the Town. A goal of the 1998 element was to provide childcare and transportation services to residents attending workforce training or other education programs. The Town used to maintain a contract with Cape Cod Child Development who provided some of these services but since their closure, that needs gap has not been filled.

Contracts and funding levels to various service providers are reviewed by the Human Services Committee with the Human Services Director. Representatives from providers attend Human Service Committee meetings to discuss the services provided and needs gaps evaluated. Depending on the findings of those assessments contracts are re-evaluated accordingly. For example, upon closure of Cape Cod Child Development the Committee determined that the need for food access and financial assistance previously provided by Cape Cod Child Development could be filled with contract amendments increasing funding provided to St. Vincent De Paul and the Falmouth Service Center.

Service-related grants have not been heavily sought and received in the past. The only grant received recently was for the Substance Use Task Force, it was offered through Barnstable County Substance Use Coalition in FY 2020 for the SAPC mini-grant. The Department received funding for the Rental of the film, “If They Had Known,” the Clay Soper Story and for the “Reading Towards Recovery” Initiative, the purchasing of books for children whose parents struggle with Substance Use Disorder. Director Wilson noted that future funding opportunities that would assist with direct financial assistance to struggling residents would be prioritized.

The 1998 Element wanted to see the D.A.R.E. program expanded however it hasn’t been around since 1999. Education around substance use and prevention is ongoing between the Department and service providers.

The Town does not provide Child Care Vouchers. Vouchers are available to qualifying families through the Child Care Network. Demand for child care enrollment grows as facilities close however the number of vouchers provided does not grow. A Head Start program that was formerly run by Cape Cod Child Development is now run by the YMCA and the program has not been expanded.

Since starting in 2008, Director Wilson’s primary focus has been on counseling for the underinsured and uninsured. She currently provides mental health consultation and referral. Her department maintains a

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contract with the Visiting Nurses Association that is geared to providing wellness programming for seniors at the Senior Center.

No multiservice center that provides essential living needs such as food, furniture, clothing, etc. has ever been established.

The Department is involved with the Cape and Islands Suicide Prevention coalition only in that the Director used to service on the board. She still receives their newsletters and pertinent information. A goal of the Department is to continue community education around Suicide Prevention and the assistance and resources available.

The Hoarding Task Force, the first Hoarding Task Force on Cape Cod was started in approx. 2008 through 2015, by myself and Lynne Waterman, the members were: Glen Harrington, Darlene Perkins, Tara Carline, Tom Rullo, Jack Phelan, Ebony Steele, the Town Nurse and the VNA. We did develop a Hoarding Protocol for the Town

In 2014, the Human Services department developed a provider evaluation system that was revised in 2018.

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To: **Planning Board**

From: **Evan Lehrer, Town Planner**

Date: **August 1, 2022**

Re: **1998 Solid Waste LCP Assessments**

Solid and Hazardous Waste – Present Status

Goals:

GOAL 1: TO MINIMIZE THE PER-CAPITA VOLUME OF SOLID WASTE IN THE TOWN OF MASHPEE REQUIRING INCINERATION OR LANDFILL.

GOAL 2: TO ENSURE THAT SOLID WASTE DISPOSAL IN MASHPEE IS DONE IN AN ENVIRONMENTALLY SAFE AND COST-EFFECTIVE MANNER.

GOAL 3: TO ENSURE THAT HAZARDOUS MATERIALS AND WASTES GENERATED AND USED BY MASHPEE HOUSEHOLDS, BUSINESSES, AND INSTITUTIONS ARE USED, STORED, TRANSPORTED, AND DISPOSED OF IN AN ENVIRONMENTALLY SAFE MANNER.

*Insert Context

This memo was prepared in coordination with Department of Public Works Staff, primarily DPW Director, Catherine Laurent. Proposed actions are shown in bullets with the sub-bullets making reference to current status.

Regulatory/Procedural Recommendations ***CCC Contact – Patty Daley**

- **Increase the type of materials available for recycling.**
  - There are figures from the Transfer Station on the types of waste/recyclables being managed. The DPW estimates that about 25 percent of recyclable materials are processed.
  - There have been new materials added to the list of accepted recyclables at the Transfer Station since 1998 (list available online).
- **Increase availability of recycling facilities at Transfer Station.**
  - The Town provides access to the recycling facilities at the Transfer Station during the same hours of operation as the disposal facilities. There are no unique days for the acceptance of certain materials.
- **Develop educational and promotional programs.**
  - There have been general education programs done by the DPW to develop educational or promotional programming such as brochures and informational sheets available to the public.
  - Ultimately, recycling is not mandated and relies on voluntary action from the public.
  - Generally, people are well-informed about what materials are accepted and the staff ensure that there is appropriate disposal. There have been no issues regarding the rejection of loads due to recycling contamination.

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- **Develop Direct Economic Incentives for Recycling (Full Cost Accounting and Unit Pricing).**
    - There are Board of Health regulations in place to incentivize recycling, along with food waste composting opportunities and programs to make recycling more commercially viable.
    - The Town has tracked the cost-benefit of recycling as a means of demonstrating its value. The market conditions have continued to improve over time, making recycling more economically feasible. The DPW has provided its spreadsheets of recyclable material diverted from the waste stream for analysis.
    - There still remains capacity issues, as there are no viable landfill sites on the Cape and there is a substantial cost associated with hauling waste off-Cape.
- **Board of Health (Health Agent) part of proposed Staff Site Plan Review Committee.**
    - A Staff Site Plan Review Committee *has* been formed and includes the Health Agent.
- **Begin a planning process to consider barriers at ancient ways *as one method* to prevent illegal dumping.**
    - The Town has now gated most ancient ways to prevent illegal dumping, yet it has continued to occur in other places. There is a cost benefit to this as the restricted access has been effective at mitigating the issues of dumping but access to vehicles has bene removed.
- **Consider alternatives to the $300 fine for illegal dumping.**
    - There have been no other alternatives to the fine for illegal dumping explored. There remains a significant challenge of catching perpetrators of dumping.
- **Have the Town provide for the storage and collection of recyclables at Town-owned facilities.**
    - The Town has access to mixed-recycling receptacles at Town facilities.
- **Begin a planning process to get the Town's procurement officer to start buying some materials that are made from recycled materials.**
    - In 1997, the Selectmen adopted the following policy: For all purchases of printing and writing paper for in-house use or custom printed materials by professional printers, including copier paper, offset paper, forms, stationary, envelopes, tablets, notepads and file folders, the minimum content standards shall be no less than 20% post-consumer recycled materials. This minimum standard may be increased to 30% beginning December 31, 1998 to match federal standards
- **Adopt Local Hazardous Materials/Waste Regulations.**
    - The transfer station has adopted rules and regulations found on the Town's website here: https://www.mashpeema.gov/sites/g/files/vyhlif3426/f/uploads/transfer_station_regulations_1.pdf

Facilities and Program Recommendations

- **Have the day-to-day operations of the Transfer Station managed by a private contractor.**
    - The on-site staff at the Transfer Station are comprised of Town employees, while the collection services are contracted out.
- **Do not adopt annual waste limits in the renewal contract with SEMASS.**
    - There are no limits to waste under current contract. The DPW makes an effort to set the cost of dump stickers equal to the fees for managing the facilities.

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- **Consider undergoing a renovation and expansion of the Transfer Station by buildout.**
    - There have been no major renovations or expansions to the Transfer Station, aside from minor changes in receptacles and waste bins to accommodate the increase in accepted materials.
- **Evaluate the feasibility of expanding waste management services to accommodate greater curbside collection.**
    - There are currently no public curbside collection services other than for Town facilities, for which the Town has a contract.

<u>Coordination with Other Towns / County / Other Agencies</u>

- **Coordinate program changes / improvements to Household Hazardous Waste Collection Day with the Town of Falmouth.**
    - This need is currently being met via reciprocal collection services. The Town participates in a hazardous waste collection day with the rest of the upper cape and hosts one day at the Mashpee High School.
- **Continue to work closely with the Town of Sandwich to process our newspapers for recycling, along with other materials.**
    - There is no known cooperation with the Town of Sandwich in this regard, to the knowledge of the DPW Director.
- **Work with Otis on the proposed Regional Sludge Treatment Facility to ensure they can treat sludge generated from publicly owned septage and / or sewer treatment plants.**
    - No cooperation with Otis has occurred to treat sludge from publicly owned septage and/or sewer treatment plants.
- **Develop a lined landfill for difficult to manage waste following the closure of the Town landfill in 1998.**
    - It is prohibited by state law to develop such a landfill (see Master Plan for Solid Waste).
- **Work with the state to receive grants for continuing and developing waste management programs (e.g. home compost bins).**
    - Each year, the Town goes through the process of grant applications.

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2022 WL 1789794
Only the Westlaw citation is currently available.
Supreme Judicial Court of Massachusetts,
Suffolk.

TRACER LANE II REALTY, LLC
v.
CITY OF WALTHAM & another.[1]

SJC-13195
|
Argued March 7, 2022
|
Decided June 2, 2022

Synopsis

Background: Developer of proposed large-scale solar energy system brought action against city seeking declaration that city could not prohibit developer from building a road on its property in residential zone to access system, which was to be located in commercial zone of neighboring town. The Land Court Department, Middlesex County, Howard P. Speicher, J., 2021 WL 861157, granted summary judgment for developer. City appealed.

Holdings: In a case of first impression, the Supreme Judicial Court, Lowy, J., held that:

[1] statutory protections afforded to solar energy systems against local zoning regulations applied to access road, and

[2] city's arguably allowing solar energy systems in industrial zones did not preclude developer from laying road.

Affirmed.

West Headnotes (5)

[1] Judgment

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c).

[2] Appeal and Error

Supreme Judicial Court reviews a decision on a motion for summary judgment de novo and, thus, accords no deference to the decision of the motion judge.

[3] Zoning and Planning

Proposed road on developer's property in city's residential zone, to be used to access a planned large-scale solar energy system that was to be located in commercial zone of neighboring town, was part of the solar energy system, and thus the road had statutory protections afforded to such systems against local zoning regulation except when necessary to protect the public health, safety, or welfare, where the road would facilitate the primary system's construction, maintenance, and connection to electrical grid. Mass. Gen. Laws Ann. ch. 40A, § 3.

[4] Zoning and Planning

Statutory protection from local zoning regulation afforded to solar energy systems, "except where necessary to protect the public health, safety or welfare," provides municipalities with more flexibility than statutory protections for land use for education, religion, and child care, which allow only for reasonable regulations on such matters as bulk and height. Mass. Gen. Laws Ann. ch. 40A, § 3.

[5] Zoning and Planning

Statutory protections for solar energy systems against local zoning regulation except when necessary to protect the public health, safety, or welfare allowed developer to lay a road on its property in city's residential zone to access its planned large-scale solar energy system in commercial zone in neighboring town, even if city's zoning code allowed solar energy systems in industrial zones, where industrial zones encompassed only one to two percent of city's total land area, and code's ban on systems in

all but one to two percent of city restricted rather than promoted the legislative goal of promoting solar energy. Mass. Gen. Laws Ann. ch. 40A, § 3.

Renewable Energy. Zoning, By-law, Validity of by-law or ordinance, Accessory building or use, Permitted use.

Civil action commenced in the Land Court Department on June 12, 2019.

The case was heard by Howard P. Speicher, J., on motions for summary judgment.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Attorneys and Law Firms

The following submitted briefs for amici curiae:

Bernadette D. Sewell, Assistant City Solicitor, for the defendants.

David C. Fixler (John J. Griffin, Jr., & John F. Farraher, Jr., also present) Boston, for the plaintiff.

Thomas Melone, for Allco Renewable Energy Limited.

Ben Robbins & Daniel B. Winslow, for New England Legal Foundation.

Sander A. Rikleen, David A. Michel, Boston, & Stella T. Oyalabu, for First Parish in Bedford, Unitarian Universalist.

Michael Pill, Northampton, pro se.

Maura Healey, Attorney General, & David S. Frankel & Megan M. Herzog, Special Assistant Attorneys General, for the Commonwealth.

Margaret E. Sheehan & Jonathan Polloni, for Save the Pine Barrens, Inc., & others.

David K. McCay, Lauren E. Sparks, & Tatiana Tway, for town of Spa & another.

Kate Moran Carter, Charles N. Le Ray, & Nicholas P. Shapiro, for Real Estate Bar Association for Massachusetts, Inc., & another.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ. Renewable Energy.

Opinion

LOWY, J.

***1** Tracer Lane II Realty, LLC (developer), seeks to build a solar energy system centered in Lexington and an access road to the facility through Waltham. Although the solar energy system would be centered on property zoned for commercial use, the access road would be on property zoned for residential use. Waltham officials indicated to the developer that the developer could not construct the access road because the road would constitute a commercial use in a residential zone. However, a Land Court judge determined on cross motions for summary judgment that this prohibition was improper because G. L. c. 40A, § 3, ninth par., which protects solar energy systems from local regulation that is not "necessary to protect the public health, safety or welfare," allowed the developer to lay the access road. We affirm.[2]

Background. 1. Facts and procedural history. The following facts are undisputed. The developer owns land in Lexington and in Waltham. The Lexington property is in an area zoned for commercial and manufacturing use, whereas the Waltham property is in an area zoned for residential use. The developer intends to construct a one-megawatt solar energy system centered on the Lexington property that will cover an area of approximately 413,600 square feet and contribute solar energy to the electrical grid. To access the part of the solar energy system that is on the Lexington property, the developer intends to build an access road over its Waltham property. Construction vehicles would use the access road while the solar energy system was being built, and maintenance trucks would periodically use the access road thereafter. The access road would include overhead wires and utility poles connecting the structure in Lexington to the electrical grid.

Waltham officials indicated informally to the developer that the developer could not lay the access road because, according to Waltham, the road was not permitted in a residential zone. The developer then brought a complaint against Waltham and its building inspector in the Land Court pursuant to G. L. c. 240, § 14A, seeking a declaration that Waltham could not prohibit the developer from building the access road.[3] The parties cross-moved for summary judgment.

***2** A Land Court judge allowed the developer's motion and declared that any prohibition on constructing the access road was improper pursuant to G. L. c. 40A, § 3, portions of which are often referred to as the Dover Amendment. That section states, in relevant part: "No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare." G. L. c. 40A, § 3, ninth par.

Waltham and its building inspector appealed, and we transferred the case to this court on our own motion.

2. Waltham's zoning code. The parties dispute the extent to which Waltham's zoning code permits solar energy systems. According to the developer, the zoning code does not permit solar energy systems at all because, according to the code, "Any use of any building, structure or premises, not expressly permitted ..., is hereby prohibited." Because the zoning code does not mention solar energy systems, the developer argues, it prohibits them.

Waltham asserts that the zoning code expressly permits solar energy systems in industrial zones, which encompass approximately one to two percent of Waltham's total area.[4] According to the zoning code, industrial zones may include "[e]stablishments for the generation of power for public or private consumption purposes that are further regulated by Massachusetts General Laws."

Waltham also argues that the zoning code permits "accessory" solar energy systems in residential and commercial zones. The zoning code defines "accessory use" as the "[u]se of land, building or part of building that is customarily incidental and clearly subordinate to the principal use of the premises." The zoning code also defines accessory use as applied to residential and commercial zones.[5]

[1] **[2]** Discussion. 1. Standard of review and legal background. "Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Boelter v. Selectmen of Wayland, 479 Mass. 233, 237, 93 N.E.3d 1163 (2018), quoting Boazova v. Safety Ins. Co., 462 Mass. 346, 350, 968 N.E.2d 385 (2012). See Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002). "We review a decision on a motion for summary judgment de novo and, thus, 'accord no deference to the decision of the motion judge.' " Boelter, supra, quoting Drakopoulos v. U.S. Bank Nat'l Ass'n, 465 Mass. 775, 777, 991 N.E.2d 1086 (2013).

***3** The statute at issue here, G. L. c. 40A, § 3, "was originally enacted to prevent municipalities from restricting educational and religious uses of land, but the Legislature has expanded [the statute] over time to ensure that other land uses would be free from local interference" (citation omitted). Crossing Over, Inc. v. Fitchburg, 98 Mass. App. Ct. 822, 829, 161 N.E.3d 432 (2020). The Legislature demonstrated its intent to protect solar energy systems from local regulation when it passed "An Act promoting solar energy and protecting access to sunlight for solar energy systems." St. 1985, c. 637. See Berriault v. Wareham Fire Dist., 365 Mass. 96, 97, 310 N.E.2d 110 (1974) (statute's title evidence of legislative intent). That statute added a paragraph to G. L. c. 40A, § 3, that states: "No zoning ordinance or bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare." G. L. c. 40A, § 3, ninth par., inserted by St. 1985, c. 637, § 2. When interpreting this paragraph, we keep in mind that it was enacted to help promote solar energy generation throughout the Commonwealth. Cf. Watros v. Greater Lynn Mental Health & Retardation Assoc., Inc., 421 Mass. 106, 113-114, 653 N.E.2d 589 (1995) (interpreting G. L. c. 40A, § 3, second par., in light of Legislature's "overall intent ... to prevent local interference with the use of real property for educational purposes").

[3] 2. Whether the access road is governed by G. L. c. 40A, § 3, ninth par. The solar energy provision applies to "solar energy systems" and "structures that facilitate the collection of solar energy." G. L. c. 40A, § 3, ninth par.[6] Waltham acknowledges that the structure proposed to be built on the Lexington property is a "solar energy system." It argues, however, that the access road proposed to be built on the Waltham property is not governed directly by G. L. c. 40A, § 3, ninth par. We disagree.

Because we have not yet analyzed the ninth paragraph of G. L. c. 40A, § 3, we turn to the abundant case law interpreting that section's other paragraphs. See Rogers v. Norfolk, 432 Mass. 374, 377-378, 734 N.E.2d 1143 (2000) (looking to other paragraphs of G. L. c. 40A, § 3, for guidance when interpreting third paragraph for first time). In those cases, we have considered ancillary structures to be part of the protected use at issue. See Martin v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, 434

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Mass. 141, 149, 747 N.E.2d 131 (2001) (church steeple need not have independent religious function to be considered part of religious use); Watros, 421 Mass. at 113-114, 653 N.E.2d 589 ("No distinction is made by the statute regarding its applicability to 'principal' or 'accessory' buildings, and it is clear that the over-all intent of the Legislature was to prevent local interference with the use of real property for educational purposes"); Trustees of Tufts College v. Medford, 415 Mass. 753, 754-755, 763-764, 616 N.E.2d 433 (1993) (applying statute to college's parking garage). See also Henry v. Board of Appeals of Dunstable, 418 Mass. 841, 844, 641 N.E.2d 1334 (1994) ("the scope of the agricultural or horticultural use exemption encompasses related activities"). We reach the same conclusion here. Given the access road's importance to the primary solar energy collection system in Lexington -- it will facilitate the primary system's construction, maintenance, and connection to the electrical grid -- we conclude that the access road is part of the solar energy system. Cf. Beale v. Planning Bd. of Rockland, 423 Mass. 690, 694, 671 N.E.2d 1233 (1996) (access road in one zoning district leading to another zoning district "is considered to be in the same use as the parcel to which the access leads"). Therefore, G. L. c. 40A, § 3, ninth par., applies to the access road.

[4] 3. Whether G. L. c. 40A, § 3, ninth par., prohibits Waltham's decision. The solar energy provision provides that a municipality shall not "prohibit or unreasonably regulate the installation of solar energy systems ... except where necessary to protect the public health, safety or welfare." G. L. c. 40A, § 3, ninth par. That statutory language provides municipalities with more flexibility than statutory protections for land use for education, religion, and child care, which allow only for reasonable regulations on such matters as bulk and height. See G. L. c. 40A, § 3, second par. ("No zoning ordinance or by-law shall ... prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes ...; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements"), third par. ("No zoning ordinance or bylaw ... shall prohibit, or require a special permit for, the use of land or structures ... for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements").

***4** **[5]** The case law addressing these other protected uses is nevertheless helpful in deciding whether a prohibition or regulation of solar energy systems is valid. When evaluating an ordinance or by-law's facial validity under other sections of G. L. c. 40A, § 3, we have balanced the interest that the ordinance or by-law advances and the impact on the protected use. See Rogers, 432 Mass. at 379, 734 N.E.2d 1143 ("The proper test for determining whether the provision in issue contradicts the purpose of G. L. c. 40A, § 3, third par., is to ask whether the footprint restriction furthers a legitimate municipal interest, and its application rationally relates to that interest, or whether it acts impermissibly to restrict the establishment of child care facilities in the town, and so is unreasonable").

The interest that Waltham's zoning code presumably advances -- preservation of each zone's unique characteristics -- is legitimate. See Rogers, 432 Mass. at 380, 734 N.E.2d 1143 ("preservation of the residential character of neighborhoods is a legitimate municipal purpose to be achieved by local zoning control"). And, as just discussed, municipalities have more flexibility in restricting solar energy systems than they do, for instance, in the context of education, religion, or child care. Nevertheless, Waltham's zoning code unduly restricts solar energy systems.

Assuming Waltham is correct that the zoning code permits solar energy systems at all, it allows large-scale systems like the one at issue here in at most one to two percent of its land area. These standalone, large-scale systems, not ancillary to any residential or commercial use, are key to promoting solar energy in the Commonwealth. See Executive Office of Energy and Environmental Affairs, Massachusetts 2050 Decarbonization Roadmap, at 4, 59 n.43 (Dec. 2020) ("the amount of solar power needed by 2050 exceeds the full technical potential in the Commonwealth for rooftop solar, indicating that substantial deployment of ground-mounted solar is needed under any circumstance in order to achieve [n]et [z]ero [greenhouse gas emissions by 2050]").[7] Nothing in the record suggests that this stringent limitation is "necessary to protect the public health, safety or welfare." G. L. c. 40A, § 3, ninth par. Where Waltham has prohibited solar energy systems like the one here in all but one to two percent of its land area, its zoning code violates the solar energy provision.

Like all municipalities, Waltham maintains the discretion to reasonably restrict the magnitude and placement of solar energy systems. An outright ban of large-scale solar energy

systems in all but one to two percent of a municipality's land area, however, restricts rather than promotes the legislative goal of promoting solar energy. In the absence of a reasonable basis grounded in public health, safety, or welfare, such a prohibition is impermissible under the provision.

Conclusion. Because G. L. c. 40A, § 3, ninth par., prohibits Waltham from banning the solar energy system here, including its access road, from all but one to two percent of Waltham's land area, we affirm the judgment below.

Judgment affirmed.

All Citations

--- N.E.3d ----, 2022 WL 1789794

Footnotes

1 Inspector of buildings for Waltham.

2 We acknowledge the amicus briefs submitted by Allco Renewable Energy Limited; New England Legal Foundation; First Parish in Bedford, Unitarian Universalist; Michael Pill; the Commonwealth; Save the Pine Barrens, Inc., select board of Pelham, select board of Wendell, planning board of Buckland, planning board of Pelham, planning board of Shutesbury, planning board of Wendell, conservation commission of Wendell, Save Massachusetts Forests, Wareham Land Trust, Jones River Watershed Association, Concerned Citizens of Franklin County, and RESTORE: The North Woods; town of Charlton and town of Warren; and the Real Estate Bar Association for Massachusetts, Inc., and the Abstract Club.

We do not address in this opinion arguments made by amici that are not "sufficiently related" to the arguments raised by the parties. Police Dep't of Salem v. Sullivan, 460 Mass. 637, 640 n.6, 953 N.E.2d 188 (2011).

3 General Laws c. 240, § 14A, states, in pertinent part: "The owner of a freehold estate in possession in land may bring a petition in the land court against a city or town wherein such land is situated ... for determination as to the validity of a municipal ordinance, by-law or regulation ... which purports to restrict or limit the present or future use, enjoyment, improvement or development of such land ...."

4 The Waltham zoning map is in the record. To determine the percentage of Waltham that is in an industrial zone, we, like the Land Court judge, used the geographic information system version of the zoning map, available at https://webgis.city.waltham.ma.us/GPV51/Viewer.aspx [https://perma.cc/WDX3-4CS4?type=image]. See Bask, Inc. vs. Borges, Mass. Land Ct., No. 19 MISC 000529, 28 LCR 568, 575 n.48, 2020 WL 7688035 (Dec. 23, 2020) (where zoning map was in record, court took judicial notice of geographic information system version of map).

5 According to the zoning code, an accessory use in a residential zone is an "[a]ccessory use[ ] customarily incidental to any residential use permitted herein, provided that such use shall not include any activity conducted for gain, or any private walk or way giving access to such activity or any activity prohibited under this chapter." An accessory use in a commercial zone is an "[a]ccessory use[ ] customarily incidental to commercial uses allowed by this chapter, including but not limited to day care, cafeteria and health club facilities for employees only, and further including satellite dish antennas and similar transmission devices used for private business purposes of businesses located on the lot."

6 For purposes of G. L. c. 40A, § 3, ninth par., a "solar energy system" is "a device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating." G. L. c. 40A, § 1A.

7 Available at https://www.mass.gov/doc/ma-2050-decarbonization-roadmap/download [https://perma.cc/J593-CVNM].

End of Document

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
WETLANDS & WATERWAYS PROGRAM

Chapter 91 and 401 Water Quality Certification Public Notice
James C. Atkins and John J. Weltman
Chapter 91 Application No. W22-6115
401 WQC Transmittal No. X288661

Notification Date: August 24, 2022

Pursuant to M.G.L. c.91 and 33 U.S.C. 1341 and M.G.L. c. 21 §43, notice is given of a Chapter 91 and 401 Water Quality Certification Combined Application by James C. Atkins and John J. Weltman to perform improvement dredging of approximately 4,900 cubic yards at 80 Punkhorn Point Road, in the municipality of Mashpee, in and over flowed tidelands of Popponesset Bay. The proposed project has been determined to be water-dependent pursuant to 310 CMR 9.12(2)(a). Additional information regarding this application, including plans and associated documents, may be obtained by contacting the Waterways Regulation Program at (508) 946-2707 or brendan.mullaney@mass.gov.

Written comments regarding 401 Water Quality Certification issues must be sent within **twenty-one (21) days of this notice to:**

Department of Environmental Protection
Division of Wetlands and Waterways
Attn: Brendan Mullaney
20 Riverside Drive
Lakeville, MA 02347

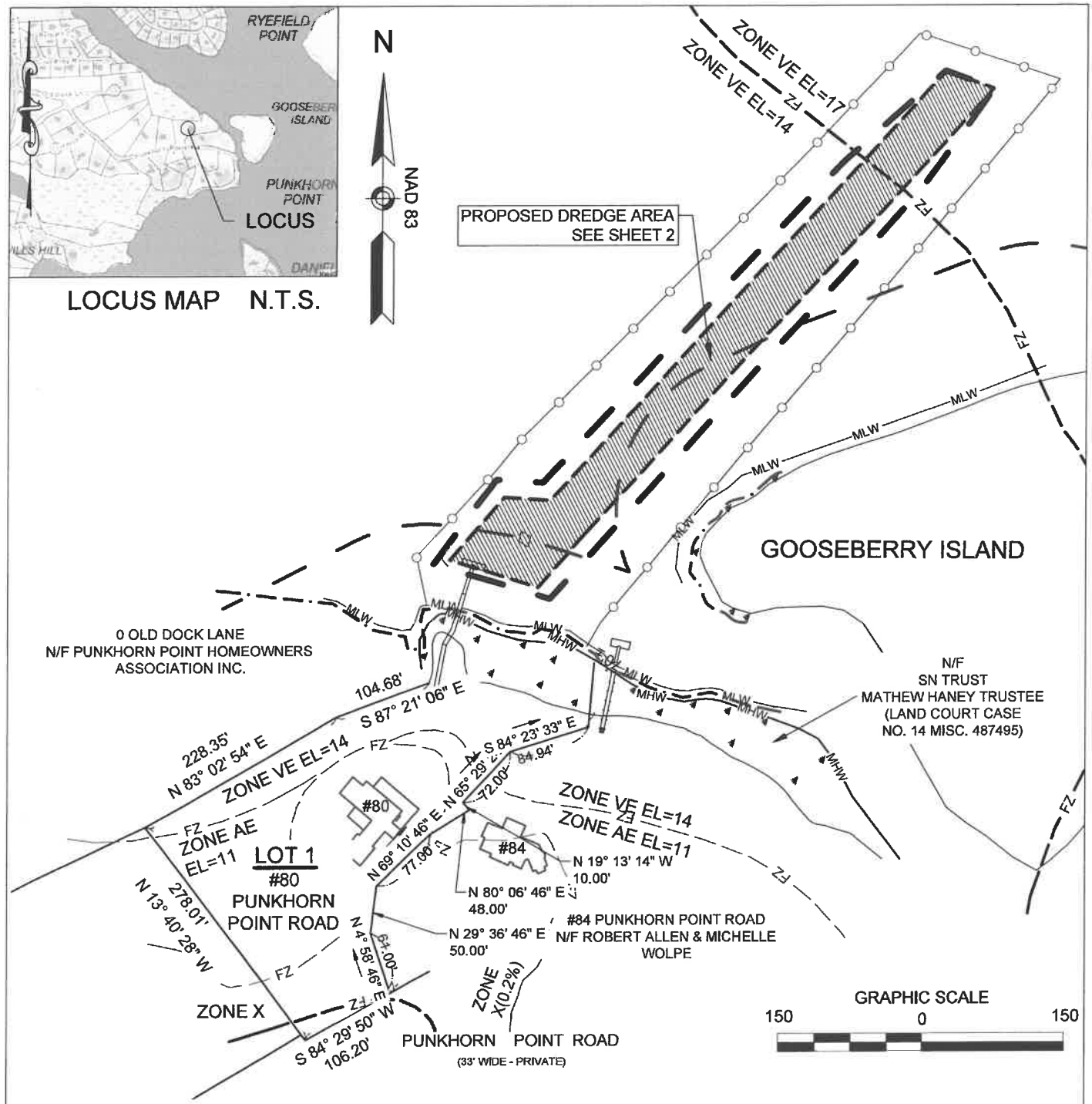
or: brendan.mullaney@mass.gov

Written comments regarding Chapter 91 dredging components of the project must be sent within **fifteen (15) days of this notice:**

Department of Environmental Protection
Division of Wetlands and Waterways
Attn: Brendan Mullaney
20 Riverside Drive
Lakeville, MA 02347

or: brendan.mullaney@mass.gov

Any group of ten citizens or more, with at least five of the ten residents residing in the municipality(s) in which the license or permitted activity is located, any aggrieved person, or any governmental body or private organization with a mandate to protect the environment who submits written comments may appeal the Department's Chapter 91 Permit/401 Water Quality Certification. Failure to submit written comments before the end of the public comment period may result in the waiver of any right to an adjudicatory hearing.



PROPOSED OVERALL DREDGE PLAN

PARCEL ADDRESS: 80 PUNKHORN POINT ROAD, MASHPEE, MA

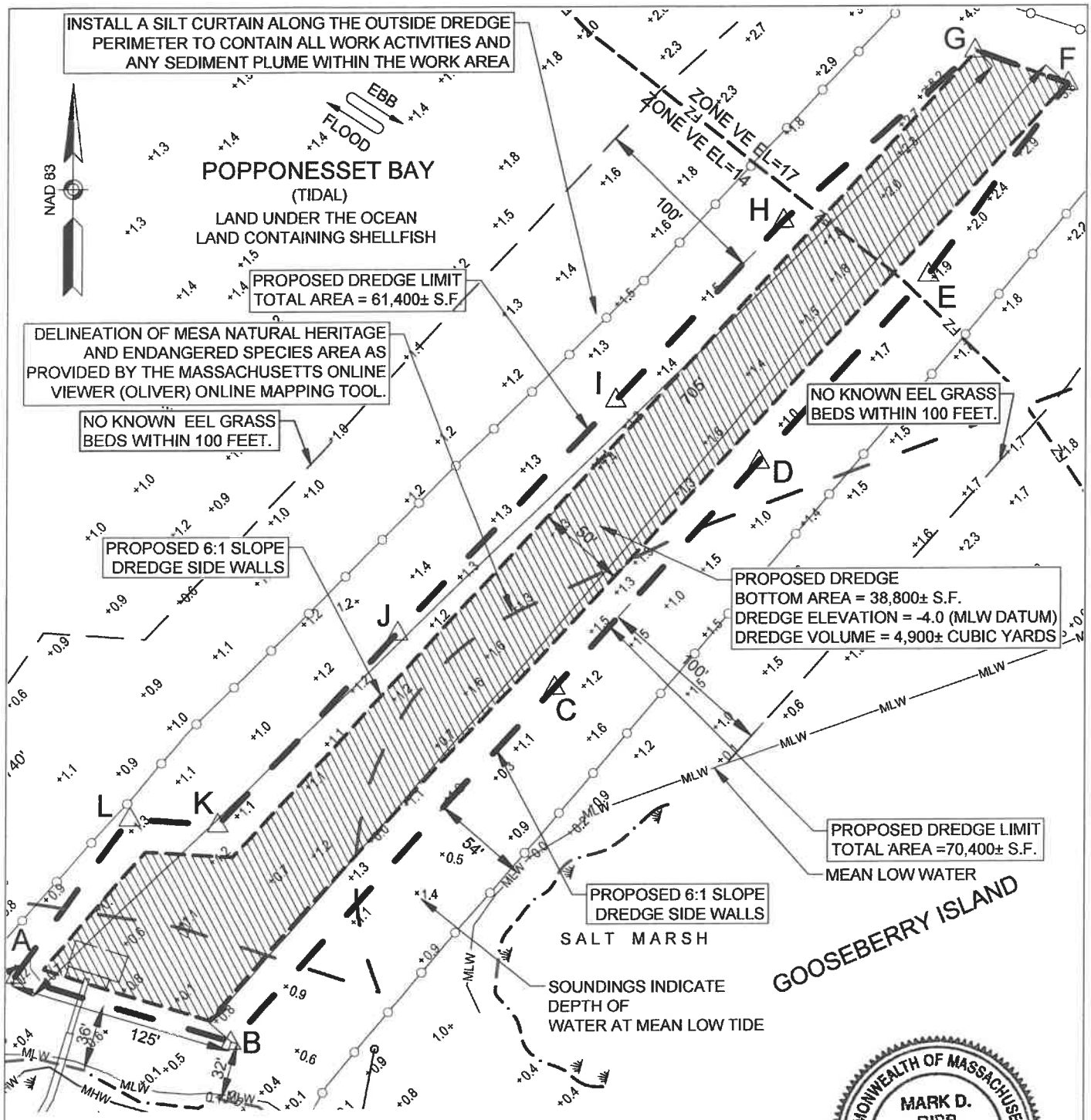
PLAN ACCOMPANYING PETITION OF
JAMES C. ATKINS & JOHN J. WELTMAN
TO PERFORM NEW DREDGING OF LAND UNDER THE OCEAN
IN AND OVER THE WATERS OF
POPPONESSET BAY, MASHPEE, MA.

DATUM: NAVD88 = 0.00 FT.
ELEVATIONS IN FEET

COMMONWEALTH OF MASSACHUSETTS
MARK D. DIBB
CIVIL
No. 45937
REGISTERED PROFESSIONAL ENGINEER

PLAN BY: CAPE & ISLANDS ENGINEERING, INC.
508.477.7272 DATE: AUGUST 31, 2021

SHEET 1 OF 3



PROPOSED DREDGE DETAIL PLAN

PARCEL ADDRESS: 80 PUNKHORN POINT ROAD, MASHPEE, MA

PLAN ACCOMPANYING PETITION OF
JAMES C. ATKINS & JOHN J. WELTMAN
TO PERFORM NEW DREDGING OF LAND UNDER THE OCEAN IN AND OVER THE WATERS OF POPPONESSET BAY, MASHPEE, MA.

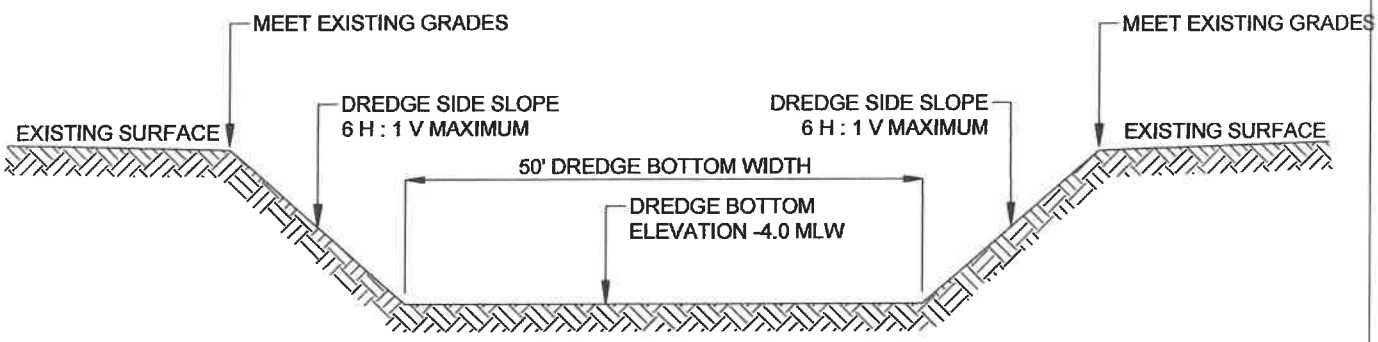
GRAPHIC SCALE
80 0 80

COMMONWEALTH OF MASSACHUSETTS
MARK D. DIEB
CIVIL
No. 45937
REGISTERED PROFESSIONAL ENGINEER

PLAN BY: CAPE & ISLANDS ENGINEERING, INC.
508.477.7272 DATE: AUGUST 31, 2021

DATUM: NAVD88 = 0.00 FT. ELEVATIONS IN FEET

SHEET 2 OF 3



TYPICAL DREDGE CROSS SECTION

NOT TO SCALE

PROPOSED DEDGE AREA COORDINATES		
POINT	NORTHING COORDINATE	EASTING COORDINATE
A	2679261.4478	938684.7920
B	2679181.0490	938780.5443
C	2679292.2628	939021.9244
D	2679363.0591	939175.5819
E	2679421.5719	939302.5789
F	2679488.2671	939415.5364
G	2679525.8006	939374.9990
H	2679480.7176	939239.8583
I	2679425.6984	939115.5423
J	2679354.4164	938954.4804
K	2679295.2986	938820.9035
L	2679317.3035	938778.1462

COORDINATES BASED ON MA-MAINLAND COORDINATE SYSTEM, DATUM: NAD 83

COMMONWEALTH OF MASSACHUSETTS
MARK D. DIBB
CIVIL
No. 45937
REGISTERED PROFESSIONAL ENGINEER

PROPOSED DREDGE IMPROVEMENT PLAN 3 OF 3

PARCEL ADDRESS: 80 PUNKHORN POINT ROAD, MASHPEE, MA

PLAN ACCOMPANYING PETITION OF
JAMES C. ATKINS & JOHN J. WELTMAN
TO PERFORM NEW DREDGING OF LAND UNDER THE OCEAN IN
AND OVER THE WATERS OF
POPPONESSET BAY, MASHPEE, MA.

PLAN BY: CAPE & ISLANDS ENGINEERING, INC.
508.477.7272 DATE: AUGUST 31, 2021

DATUM: NAVD88 = 0.00 FT. ELEVATIONS IN FEET

SHEET 3 OF 3

TOWN OF FALMOUTH
ZONING BOARD OF APPEALS

59 TOWN HALL SQUARE, FALMOUTH, MA 02540
508-495-7460 – FAX 508-495-7463

BOARD OF APPEALS
NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 056-22 Crystal and Erin Mello, 30 Alderberry Lane, East Falmouth, Ma.: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. of the Code of Falmouth to remove the existing deck and construct an addition to the nonconforming dwelling on subject property known as 30 Alderberry Lane, East Falmouth, Ma.

Map 17 Section 01 Parcel 033 Lot(s) 037

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on
Thursday, August 25, 2022 at 6:30PM
You are invited to be present.

By Order of the Board of Appeals,
Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.*Plans are available to review at https://www.falmouthma.gov/1113/Applications-under-review-by-the-ZBA

TOWN OF FALMOUTH
ZONING BOARD OF APPEALS

59 TOWN HALL SQUARE, FALMOUTH, MA 02540
508-495-7460 – FAX 508-495-7463

BOARD OF APPEALS
NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 057-22 Brad Hanley, 293 Hancock Street, Quincy Ma.: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-23 B. and 240-23 G.(1) of the Code of Falmouth to allow a conversion of the existing dwelling into four dwelling units, construct porch additions and a detached four(4) car garage on subject property known as 237 Old Main Road, North Falmouth, Ma.

Map 05A Section 05 Parcel 012 Lot(s) 000C

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on
Thursday, August 25, 2022 at 6:30PM
You are invited to be present.

By Order of the Board of Appeals,
Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.*Plans are available to review at https://www.falmouthma.gov/1113/Applications-under-review-by-the-ZBA

Town of Barnstable

Planning & Development Department

www.townofbarnstable.us/planninganddevelopment

Elizabeth Jenkins
Director

August 2, 2022

Department of Housing and Community Development
100 Cambridge Street, Suite 300 - Boston, MA 02114

Cape Cod Commission
P.O. Box 226 - 3225 Main Street (Route 6A) - Barnstable, MA 02630

Town of Sandwich, Planning Board
16 Jan Sebastien Drive - Sandwich, MA 02563

Town of Mashpee, Planning Board
16 Great Neck Road - Mashpee, MA 02649

Town of Yarmouth, Planning Board
1146 Route 28 - Yarmouth, MA 02664

Town of Barnstable, Zoning Board of Appeals
367 Main Street- Hyannis, MA 02601

Reference: Town of Barnstable Planning Board
Proposed Zoning Amendment – TC Item No. 2023-011

AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I, GENERAL ORDINANCES, CHAPTER 240 ZONING, ARTICLE V, SECTION 46, HOME OCCUPATION, AND ARTICLE III SECTION 14, RC-1 AND RF RESIDENTIAL DISTRICTS, SUBSECTION (C) CONDITIONAL USES, TO UPDATE REQUIREMENTS PERTAINING TO HOME OCCUPATIONS

The Barnstable Planning Board, acting under Chapter 40A, Section 5 of the General Laws of the Commonwealth of Massachusetts, will hold a public hearing on Monday, August 22, 2022, at 7:00 p.m. The purpose of this public hearing is to take comment on a proposal to amend the Code of the Town of Barnstable, Part I General Ordinances, Chapter 240 Zoning, Article V Accessory Uses, Section 46, Home Occupation, and Article III District Regulations, Section 14, RC-1 and RF Residential Districts, Subsection C. Conditional Uses to update requirements pertaining to home occupations.

The proposal is to amend Chapter 240 Zoning, Article V Accessory Uses, Section 46, Home Occupation by repealing and replacing the existing zoning ordinance to allow the residents of the Town of Barnstable to operate a home occupation throughout the Town of Barnstable within a dwelling or within an accessory structure located on the same lot subject to certain conditions. In addition, the proposal amends Article III District Regulations, Section 240-14 RC-1 and RF Residential Districts, by deleting in paragraph (1) of Subsection C. Conditional Uses, the words "Home occupation, subject to all the provisions of §240-46C, Home occupation by special permit" and inserting the word "Reserved" in their place.

A copy of the full text can be found on the Planning Board's webpage under "Meeting Materials".

NEW BUSINESS (First Reading Refer to Planning Board)

BARNSTABLE TOWN COUNCIL

ITEM# 2023-011
INTRO: 07/21/2022

2023-011 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I, GENERAL ORDINANCES, CHAPTER 240 ZONING, ARTICLE V SECTION 46, HOME OCCUPATION, AND ARTICLE III SECTION 14, RC-1 AND RF RESIDENTIAL DISTRICTS, SUBSECTION (C) CONDITIONAL USES, TO UPDATE REQUIREMENTS PERTAINING TO HOME OCCUPATIONS

ORDERED: That the Code of the Town of Barnstable, Part I General Ordinances, Chapter 240 Zoning be amended as follows:

SECTION 1
By amending Article V Accessory Uses, Section 46, Home Occupation by deleting Section 240-46 in its entirety and inserting the following new Section 240-46 in its place:

"§ 240-46 Home occupation.

A. Intent. It is the intent of this section to allow the residents of the Town of Barnstable to operate a home occupation within a dwelling, subject to the provisions of this section, provided that the activity shall not be discernible from outside the dwelling except as provided herein; there shall be no increase in noise or odor; no visible alteration to the premises which would suggest anything other than a residential use; no increase in traffic above normal residential volumes; and no increase in air or groundwater pollution.

B. A home occupation shall be permitted, in all zoning districts as of right subject to the following conditions:

(1) The activity is conducted by a permanent resident of a dwelling unit, located within that dwelling unit, or within an accessory structure located on the same lot, subject to the limitations herein.

(2) Such use is clearly incidental to and subordinate to the use of the premises or occupants for residential purposes.

(3) Such use occupies no more than 20% of the dwelling unit including office and storage areas combined unless relief is granted by Special Permit as provided by subsection (C)(1)a. below. Such use within an accessory structure shall occupy no more than 200 square feet unless relief is granted by Special Permit as provided by subsection (C)(1)f. below.

(d) The sale of retail or wholesale merchandise from the premises, with the exception of online or mail order sales. The storage of merchandise is included in the total area limits of the home occupation subject to B(3) above.
(e) The sale of antique or secondhand goods, with the exception of online or mail order sales. The storage of merchandise is included in the total area limits of the home occupation subject to B(3) above.
(f) Service or repair of vehicles, and gasoline or diesel powered machinery.
(g) Contractors storage yards. Contractor's storage yard includes the keeping of materials in trade outdoors, such as: lumber, granite, windows and other such bulk materials including but not limited to stone, gravel, mulch, firewood etc. beyond the limits of personal use.
(h) Veterinary services.
(i) The manufacture of goods using heavy machinery.
(j) Medical or dental practice.
(k) Fortune-telling or palm reading.

C. Home occupation by special permit. The Zoning Board of Appeals may allow by Special Permit, subject to the provisions of § 240-125C herein, a home occupation subject to the specific standards for such conditional uses as required in this section:

(1) Home occupations shall comply with all of the requirements of Subsection B(1) through (11) above, except the Zoning Board of Appeals may allow by Special Permit the following waivers from the requirements of Subsection B above.

a. The Zoning Board of Appeals may allow an activity to exceed 20% of a dwelling's gross floor area by special permit but at no time shall allow a home occupation to occupy more than 40% of a dwelling's gross floor area.

b. The Zoning Board of Appeals may allow one non-illuminated wall sign not exceeding two square feet in area by special permit.

c. The Zoning Board of Appeals may allow more than one non-resident employee to be employed on the premises of a home occupation but at no time shall a home occupation allow for greater than two non-residents of the household to be employed on the premise at the same time.

d. The Zoning Board of Appeals may allow the parking of one work vehicle capable of being operated under a Massachusetts Class B license related to the home occupation by special permit. All parking generated by the use by special permit shall be accommodated off-street, screened by a physical or natural barrier so not to be seen from a public way.

e. Home occupations shall not include the uses listed in Subsection B(15) above. However, The Zoning Board of Appeals may allow activities that may not be customary within a dwelling provided that the activity meets the intent as specified herein.

NEW BUSINESS (First Reading Refer to Planning Board)

SUMMARY

ITEM# 20223-011
INTRO: 07/21/2022

TO:	Town Council
FROM:	Mark S. Ells, Town Manager
THROUGH:	Elizabeth S. Jenkins, Director, Planning & Development Department
DATE:	June 19, 2022
SUBJECT:	Amending the Code of the Town of Barnstable, Part I General Ordinances, Chapter 240 Zoning to Update Regulations Pertaining to Home Occupations

BACKGROUND: This item proposes to amend the Zoning Ordinance to address provisions related to home occupations. The existing zoning ordinance strictly limits home occupations within certain areas of town and allows them only to occur in single-family homes, despite the fact that such uses must be clearly incidental to and subordinate to the use of a premises for residential purposes. Individuals looking to pursue a home occupation, even for rather benign uses, often discover that a rather extensive permitting process requiring relief by the Zoning Board of Appeals is necessary. People are regularly deterred by the necessary process and choose simply not to move forward.

ANALYSIS: The use known as a home occupation has evolved over the years. The Town of Barnstable has seen an influx of applications for home occupations since the pandemic as many embrace new opportunities for remote work and entrepreneurship.

The first section of the amendment proposes an opportunity to support home occupations throughout Town and develop a "by-right" process for those uses that create negligible impacts to the neighborhood. The revised ordinance establishes standards for "by-right" home occupations and then allows specific and limited exceptions to those standards with the grant of a Special Permit by the Zoning Board of Appeals.

The second section of the amendment proposes the deletion of the section referencing home occupation allowed by special permit only in RC-1 and RF Residential Districts and allows for the proposed home occupation amendment to be consistent throughout the Town of Barnstable.

On June 13, 2022, the Planning Board made a motion to recommend the proposed Home Occupation Zoning Amendment as presented to be submitted to Town Council. Zoning amendments are processed in accordance with Massachusetts General Law (MGL) Chapter 40A Section 5. Adoption or change of zoning ordinances may be initiated by the submission to the Town Council of a proposed zoning ordinance by different parties, including the Town Council itself or by other parties, including the Planning Board.

FISCAL IMPACT: There is no significant fiscal impact associated with this item.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, supports this item.