



# Town of Mashpee

# Planning Board

16 Great Neck Road North  
Mashpee, MA 02649

**Meeting of the Mashpee Planning Board  
Wednesday, September 6, 2023; 7:00 PM**

**Waquoit Meeting Room  
Mashpee Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649**

**\*Broadcast Live on Local Channel 8\***

**\*Streamed Live on the Town of Mashpee Website: <https://www.mashpeeema.gov/channel-8>\***

## Call Meeting to Order

- Pledge of Allegiance

## Approval of Minutes

- Review of Meeting Minutes from August 16, 2023

## Public Hearings

**7:10 PM**

To review the following zoning articles proposed for action at the October 16, 2023 Town Meeting:

- **Warrant Article 2:** To see if the Town will vote to amend the Zoning Bylaws by adding new subsections into Article XI: Floodplain Zone Overlay District.
- **Warrant Article 3:** To see if the Town will vote to amend Section 174.45.4: Accessory Apartments Subsection A of the Mashpee Zoning Bylaw.
- **Warrant Article 4:** To see if the Town will vote to amend Section 174.45.4: Accessory Apartments Subsection C of the Mashpee Zoning Bylaw.
- **Warrant Article 5:** To see if the Town will vote to amend Section 174.45.4: Accessory Apartments Subsection I of the Mashpee Zoning Bylaw.
- **Warrant Article 11:** To see if the Town will vote to amend Section 174-24(C)(9)(g) Special Permit Use of the Mashpee Zoning Bylaw.

**7:30 PM (Continued from 08/02/2023)**

**Applicant:** Southworth Mashpee Properties LLC  
**Location:** 275 Quinaquisset Avenue (Map 69 Block 32)  
**Request:** Applicant proposes to modify the Willowbend Country Club Special Permit to construct a 14-unit single family cottage community immediately contiguous to the Willowbend Golf Course. With these changes the total unit count for the Willowbend project would be increased to 287 if the Board authorizes the annexation of 275 Quinaquisset into the Willowbend Special Permit as allowed. 287 dwelling units is the maximum number of dwelling units authorized under the Special Permit. All units will be connected to and served by the existing privately owned wastewater treatment plant which serves the entire Willowbend project.

MASHPEE TOWN CLERK  
AUG 31 '23 PM1:40



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**7:40 PM (Continued from 08/02/2023)**

**Applicant:** Southworth Mashpee Properties LLC  
**Location:** Willowbend Permit Area  
**Request:** Applicant proposes to modify the Willowbend Special Permit by amending the condition limiting the number of bedrooms allowed in the project. Currently Willowbend is allowed 853 bedrooms. Willowbend proposes to remove this condition or increase the maximum allowance.

## New Business

- Discussion and possible vote relative to cancelling the October 4, 2023 meeting

## Old Business

- N/A

## Board Engineer Report

- Project Reviews and Inspections

## Chairwoman's Report

- Water Quality Issues

## Town Planner Report

- Harbor Management Planning Committee Update
- Housing Production Plan Update

## Board Member Committee Reports

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

## Correspondence

- Correspondence from Tom McNabb (58 Blue Castle Drive)
- July 2023 Discharge Monitoring Report for South Cape Village – N = 3.2
- Town of Falmouth Notices
- Town of Falmouth Notice of Public Hearing for proposed Zoning Articles Under Consideration
- Town of Sandwich Notices
- DEP Notice of License Application

## Additional Topics (not reasonably anticipated by Chair)

## Adjournment

MASHPEE TOWN CLERK  
AUG 31 '23 PM1:40



# *Town of Mashpee*

## *Planning Board*

*16 Great Neck Road North  
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### **Mashpee Planning Board**

#### **Minutes of Meeting**

**Wednesday, August 16, 2023 at 7:00PM**

**Mashpee Town Hall - Waquoit Meeting Room**

**16 Great Neck Road North**

**Mashpee, Ma 02649**

**Broadcast Live on Local Channel 18**

**Call-in Conference Number: (508)-539-1400 x 8585**

**Streamed Live on the Town of Mashpee website**

**<https://www.mashpeema.gov/channel-18>**

**Present:** Chair Karen Faulkner, Mary Waygan, Dennis Balzarini, Mike Richardson, Dale Oakley, Robert (Rob) Hansen

**Also Present:** Evan Lehrer – Town Planner

#### **CALL TO ORDER**

Chairwoman Faulkner called the meeting of the Planning Board to order at 7:00P.M. The Pledge of Allegiance was recited.

#### **APPROVAL OF MEETING MINUTES – August 02, 2023**

No comments were made regarding the meeting minutes for August 02, 2023.

#### **MOTION:**

**Mr. Richardson made a motion to approve the meeting minutes for August 02, 2023.**

**Seconded by Ms. Waygan. All in favor.**

#### **PUBLIC HEARING**

**7:10PM**

**Applicant:** Pleasantwood Homes, LLC

**Location:** 20 Tudor Terrace (Assessor's Map 29 Parcel 198)

**Request:** Applicant proposes to divide the subject parcel comprised of approximately 6.024 acres into three building lots for single family home construction while preserving 3.021 acres as protected open space.

Ms. Faulkner commented that she received correspondence dated August 14, 2023 from Christopher Kirrane, Attorney for Pleasantwood Homes, LLC. He requested the Public Hearing be continued to September 6, 2023 as the applicant is unavailable on the August 16, 2023. Due to the meeting on the 6<sup>th</sup> having a busy schedule with zoning articles and



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Southworth, September 20, 2023 was proposed for 7:20P.M. Mr. Kirrane also requested the 90 day extension for the 120 day time period for definitive subdivisions.

### **MOTION:**

**Mr. Richardson made a motion to continue this matter on Pleasantwood Homes, LLC for approval of a special permit for a cluster subdivision at 20 Tudor Terrace be held on September 20, 2023 at 7:20P.M. Seconded by Ms. Waygan. All in favor.**

**7:15PM**

**Applicant:** Pleasantwood Homes, LLC  
**Location:** 20 Tudor Terrace (Assessor's Map 29 Parcel 198)  
**Request:** Applicant is seeking approval of a Definitive Subdivision Plan of land that would create three new 40,000 sq. ft. building lots by dividing the 6.024 acre subject property. The remaining land area totaling approximately 3.021 acres is proposed for open space as required by the Mashpee Zoning Bylaw. The three lots proposed obtain frontage via an extension of the existing public way called Tudor Terrace.

### **MOTION:**

**Ms. Waygan made a motion to continue this matter to September 20, 2023 at 7:25P.M. for the approval of the definitive subdivision. Seconded by Mr. Oakley. All in favor.**

### **MOTION:**

**Ms. Waygan made a motion to grant the application request for 90 day extension of 120 day time period that the Board has to file the application decision with the Town Clerk. Seconded by Mr. Balzarini. All in favor.**

### **NEW BUSINESS**

**Discussion of proposed amendments to Tree Bylaw and possible vote to accept those changes for submission to Select Board**

Mr. Lehrer commented prior to he and Ms. Faulkner's presentation to the Select Board going over general plans, he received some questions from the DPW Director. It provided a number of opportunities to find clarity in defining intent. He provided a memo and an updated draft dated August 7<sup>th</sup>. Since this was the Planning Board article he wanted to present changes to the Board with hopes the Board would agree that they are prudent changes to consider. None of the proposed changes to the article alter the scope, it just provides clarity to certain questions.





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Ms. Laurent asked him what building activity meant. It was opted to remove any reference to building activity in the applicability sections and make the definition robust. She further noted to measure the diameter of a tree caliber with the intent for consistent references to caliber. This is diameter at breast height. Caliber has been removed and replaced with diameter at breast height (DBH).

It would be incumbent of the property owner and arborist to define a hazardous tree and seek permission for removal through the Planning Department. Ms. Laurent asked about the tree protection definition. Mr. Lehrer established a list of species native to our region on page 5. It comes from the Cape Cod plant list often used for conservation. Any species of tree on said list, 6 inches or larger, is a protected tree.

Ms. Laurent also questioned applicability, for example, do we want to make this solely connected to building activity or a regular property that wants to remove a tree. She further identified a loophole where we established a timeframe of within 12 months. However, some property owners would clear cut a lot three years prior. Homeowners with building activity would be exempt. Someone could get a tree preservation plan, clear the lot, build the home, and the Planning Department would be monitoring the yard for one year prior to an occupancy permit where their tree plan was approved. After 12 months of no building activity someone could go in and clear the lot. This won't be a likely outcome but he wants to note the possibility. Ms. Laurent expressed concerns about municipal tree work, she wanted an exemption. She noted a waiver section where there was a provision in the event of a storm provision so properties can remove damages.

Under terminology, the Tree Save Area is the area around the Critical Root Zone that has to be protected during construction. The tree fund is being contemplated, the Finance Director would set up a fund. The Mashpee Town Accountant reached out to the Department of Revenue questioning the ability to monitor this account in a revolving fund. Both Concord and Lynnfield do this so it is possible. He will be awaiting this answer, but as Mr. Lehrer stated previously, the changes would not alter scope of the article.

Mr. Lehrer included the Tree Yard as being minimum building setbacks 15ft. X 15ft. and 40ft. of the zoning bylaw. Under cluster subdivisions, there is unique criteria prudent to consider in the article for any residential lot pursuant to a cluster subdivision development. Further, we proposed providing an exemption for any lot to be approved for conservation. Conservation is regulating trees already and collecting mitigation, exempt wetland property owners to do this twice.

Ms. Waygan asked about page 7, where table 3 has is an asterisk. She looked for the corresponding asterisk above, she would like it in the title Tree Yard.



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Mr. Hansen commented that Figure 1 is a little inconsistent discussing caliber and diameter at breast height.

Ms. Faulkner noted this language with math and calculations is not pertinent for them to know, calculations will be the duty of the arborist.

Mr. Lehrer clarified the DBH at 4.5ft. is above grade. Figure 1 is trying to calculate Critical Root Zone, so it should say refer to Table 1.

Ms. Faulkner read criteria for if a Tree Bylaw applies to you with a picture of a Tree Yard.

1. Does this apply to you, the owner of a lot or parcel of land? If yes, go to 2.
2. Will there be work performed on your lot defined as building activity by the tree bylaw? If yes, go to next question. Building activity is defined.
3. Do you have a tree or trees in the Tree Yard? The Tree Yard is 40ft. in the front and 15ft. on the sides and back yard. This is in R5 and R3. The tree has to have a diameter of 6 inches or greater at breast height.
4. Are you intending to have the trees in the Tree Yard cut down?
5. Do you want to replace protected trees with new trees rather than pay into the tree fund? If yes, go to number 6.
6. Measure 4.5ft up the tree and take the circumferences divided by 3.14, which will give you diameter at breast height (DBH). The Bylaw says one half inch is needed to mitigate for each inch of breast height protected trees proposed for removal. For example: If a tree has a 20 inch diameter at breast height we are saying one half inch of DBH is needed.  $(.5 \times 20 = 10\text{DBH})$  If someone were to purchase, every tree would have a DBH of 2 inches. We need any combination to total 10DBH. If you pay into the fund its dollar for dollar. The homeowner would go to the landscaper and pick out trees that are 2 inch DBH or more, get a cost, and bring it back to the Town Planner.

Ms. Faulkner noted they can cut down an over story tree that presents as danger or clean up after a storm. It is more financially sound to plant your own trees.

Mr. Balzarini asked if you plant something and it dies, would it need to be replanted. He asked if the town was going to hire a Tree Warden. He also wanted to know who would be managing the funds.

Mr. Lehrer commented the planted trees would be monitored for a year. Within one year of permit or occupancy, there will be monitoring of this program, and to ensure the tree is kept alive.



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Ms. Waygan said the oversight could be delegated to the Planning Board.

Mr. Lehrer noted the tree fund function within the DPW for street tree planting. Tree fund questions are still outstanding. He also clarified to purchase and install the tree would be 50% of costs that would be paid into the tree fund.

### **MOTION:**

**Ms. Waygan made a motion to approve the changes made to the Tree Bylaw absent the vehicle for the tree fund. The Planning Board authorizes the Chair to work with the Town Planner to finalize the language regarding the town tree fund account. Seconded by Mr. Balzarini. All in favor.**

### **OLD BUSINESS**

**Declaration of Default – Ockway Highlands Tripartite Agreement dated March 20, 2019**

***Note: Developer has satisfied all obligations secured by the Tripartite Agreement as of 8/10/2023.***

Ms. Faulkner saw the radar sign was purchased which fulfills completion of the agreement.

Mr. Lehrer has proof of purchase and he is working with the Mashpee PD to figure out how to transfer. There are still outstanding issues at the subdivision, but the agreement is satisfied. Measurements were taken of the driveways. Mr. Pesce and Lawrence Lynch met with property owners to discuss how to rectify this issue and agreements were made to mitigate driveway problems. There were reports of a newly installed drain that was not performing and the volume of water was immense and ponding in a neighboring yard again. Evidence showed in substantial downpour the drain did not appear to be performing.

Ms. Faulkner commented that rain was extreme. Is it expected to perform in such torrential volume?

Mr. Lehrer will continue to pay attention. He got calls all day about floods over town. He noted there was also a site visit with the Building Commissioner to evaluate the excess materials left behind. They need to look into what is connected to building on the site. They will try to take action and have some items removed. The dirt pile is not all gone, but we are continuing to monitor.

Mr. Balzarini went up during the rain, and he noted they need to clean those drains.

Ms. Waygan stated there were a couple of spots the neighborhood felt were critical for the speed sign. It is portable so it can be put up for a while, then it gets moved when things calm



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down, and then moved back when it ramps up again. The Special Permit identifies the two areas the homeowners want the sign located.

### **CHAIRWOMAN'S REPORT**

#### **Water Quality Issues**

Ms. Faulkner commented that PFAs is in the family of 14,000 other chemicals. MA set a limit of 20 parts per trillion, which is much lower than the US standard of 70 parts per trillion. We have 98% in our body and blood. Where is it coming from? Food packaging, anything that has a stain repellant, water repellant, or flame retardant. It flakes off and goes into the landfill, air, and waters. The chemical manufacturers have phased out PFAs about 10 years ago, compounds are still existing in our waters. Down the road it will get costly for water. Biden got some money for building filters into the water systems, but not nearly enough money. Mashpee has 100 parts per million. The gray area around Boston shows no data collection, which means it could be really high.

Ms. Waygan noted Mashpee's is all from JBCC.

### **TOWN PLANNER REPORT**

#### **Harbor Management Planning Committee update**

Mr. Lehrer stated he and the DNR Director are going to the Historical Commission meeting at 4:00P.M. in the Archives Building on August 17<sup>th</sup> to discuss a hopeful collaboration with historical and preservation within the Tribe to begin research in establishing and reaffirming town access to ancient landings and access to water ways. The Wampanoag Historic Preservation Office has been asked to consider anything missing for ancient ways and entry to water. The Historical Commission will participate in the research of deeds.

Ms. Waygan was at a meeting where Ashley Fisher was discussing ways to establish access and there would have to be land acquisitions for trail heads and parking lots. If you see a situation where land may have to be acquired to make this happen, the CPC funds can be used for that. Don't let a budget issue get in the way.

#### **Housing Production Plan update**

Mr. Lehrer wrapped up interviews with local businesses and service providers, they were very successful. He is looking to set up additional discussions with folks who were not available. In looking towards September, the first public workshop will be held on Tuesday, September 19, 2023 at the Mashpee Public Library Events Room at 6:30P.M. The AHC plans to have the agenda for the day solidified in early September. A draft survey has been submitted and a number of questions and comments have been provided so it is being diligently worked on and is in the editing phase.



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Ms. Faulkner went to a Zoom where Selectman Cotton and a Cape Cod realtor in town were discussing the benchmarks for affordable housing. Mashpee is at 4.6% towards the 10% affordable housing stock. It was said that to be on track we have to produce 37 units a year. The new developments are all \$1.4Million+. There are no new construction of homes going up for under \$800,000. Some people are moving around between Air BnB's to live. MA law can limit property size. You need a max of 3 acres to build a 3,500s.f. house in Chilmark. People are realizing they need to shrink these houses.

### **PUBLIC COMMENT**

**Lynne Barbee-** She thinks the Tree Bylaw is wonderful. She didn't catch all of the details. She asked about the premise of building activity. If the answer is no for building activity, can someone just go and clear-cut like what was done on Algonquin? That lot is great for Affordable Housing.

Ms. Faulkner pointed to the last item on the building activity list. Mr. Lehrer confirmed that an undisturbed vacant lot, buildable or not, cannot be clear cut.

Mr. Balzarini brought attention to the Cape Cod Coffee and distillery parking lot. Cars are parking on the green space. We had a problem with the health center behind Roche Brothers for parking on the green space. We gave permission, but he noticed today the cars are killing all the grass, and there are two drain systems right there.

Ms. Waygan asked if they should send Mr. Pesce over there. When you don't park on asphalt the drainage goes into the ground.

Mr. Lehrer stated there is not an enforceable development agreement any longer. Since he's been here all projects were approved by the ZBA. Mr. Phelan was concerned they were parking on the hydrant. He will speak with the property owner.

### **BOARD MEMBER COMMITTEE REPORTS**

#### **Cape Cod Commission-**

No Meeting

#### **Community Preservation Committee-**

No meeting, there may be one soon. The Agenda item to reduce CPC funding from 2% to 1%. She asked Chair Russell to call a meeting. There is a Public Hearing September 14<sup>th</sup> at 6:30p.m.

#### **Design Review-**

Best Buy Beverage, sign issue so it was relocated. Everything was proper but it has to be moved due to drivers on Rt. 130. The other



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review was Sublime Cannabis going onto Rt.  
28 with a beautiful sign.

**Plan Review-**  
**Environmental Oversight Committee-**  
**Historic District Commission-**

No Meeting  
No Meeting  
No Meeting

**Next Meeting:** Wednesday, September 06, 2023 @ 7:00P.M.

### **ADJOURNMENT**

#### **MOTION:**

**Mr. Balzarini made a motion to adjourn the meeting of the Planning Board at 8:03P.M.  
Seconded by Mr. Richardson. All in favor.**

Respectfully Submitted,

Christine M. MacDonald  
Board Secretary

### **LIST OF DOCUMENTS**

***Additional documents may be available in the Planning Department.***

- Town of Falmouth Notices
- Town of Sandwich Notices
- Cape Rail Inc. Letter 7/27/23
- DEP Notice of License Application John A & Maria Rousou and Amy Emily Nominee Trust 8/4/23

## PUBLIC HEARING 7:10 - ZONING ARTICLES





# Town of Mashpee

## Planning Board

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Mashpee, MA 02649

### MASHPEE PLANNING BOARD PUBLIC HEARING NOTICE

**\*Broadcast Live on Local Cable Channel 18\***

**\*Streamed Live on the Town of Mashpee Website: <https://www.mashpeema.gov/channel-18>\***

Pursuant to Massachusetts General Laws, Chapter 40A, Section 5 the Mashpee Planning Board will hold a public hearing on Wednesday, September 6, 2023 at 7:10 p.m. from the Mashpee Town Hall, 16 Great Neck Road North in the Waquoit Meeting Room to review the following zoning articles proposed for action at the October 16, 2023 Town Meeting.

**Warrant Article \_\_\_\_:**

*To see if the Town will vote to add the following new subsection into Article XI: Floodplain Zone Overlay District*

This Article would require that new construction or redevelopment of homes/structures in the Floodplain Zone Overlay District utilize more flood safe construction methods by prohibiting the use of fill material to raise the first floor elevation of a structure to above base flood levels. This Article would require the use of solid wall foundations with flood vents or pilings for new construction or redevelopment. This Bylaw further proposes to require the installation of Innovative/Alternative septic systems as required by Board of Health Regulation. This Bylaw does not propose to remove the rights of any property owner to build or re-build on their property however seeks to encourage more flood safe and environmentally sensitive construction methods.

**Warrant Article \_\_\_\_:**

*To see if the Town will vote to amend Section 174.45.4: Accessory Apartments Subsection A of the Mashpee Zoning Bylaw*

This Bylaw would allow property owners who construct accessory apartments to live in their accessory apartment and rent their principal dwelling to tenants. Current Bylaw language restricts a property owner from residing in the accessory apartment while renting their principal dwelling.

**Warrant Article \_\_\_\_:**

*To see if the Town will vote to amend Section 174.45.4: Accessory Apartments Subsection C of the Mashpee Zoning Bylaw*

This Article clarifies the allowed size of an accessory apartment to within a defined range. Currently, the Bylaw allows accessory apartments to be not less than three hundred and fifty (350') square feet and may not exceed 40% of the gross floor area of any principal dwelling. The 40% calculation has proven to be a confusing regulatory mechanism to control size and thus this Article would place a firm minimum size and maximum size of any accessory apartment to be not less than four-hundred fifty (450') square feet and not more than nine hundred (900') square feet.



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### **Warrant Article \_\_\_\_:**

*To see if the Town will vote to amend Section 174.45.4: Accessory Apartments Subsection I of the Mashpee Zoning Bylaw*

This Article would require that any accessory apartment that is created be rented year-round. Current Bylaw states that accessory apartments MAY be rented. This Article would require that they be rented. Additionally, the current rental restriction prohibits rentals of accessory apartments of less than 30 days. This would require property owners with accessory apartments rent wither the principal dwelling or the accessory apartment for a period of not less than 12 months to be more consistent with the purpose and intent of Section 174-45.4.

### **Warrant Article \_\_\_\_:**

*To see if the Town will vote to amend Section 174-24(C)(9)(g) Special Permit Use of the Mashpee Zoning Bylaw*

This Article proposes to modify the language of the Zoning Bylaw to clarify that if a special permit use is to be expanded to cover additional land area, than the uses, dimensions, and other aspects of any proposed development must comply with the most recently effected Zoning Bylaw. This Article was submitted by petition.

The full text of these Articles may be reviewed in the Office of the Town Manager/Select Board and Planning Department.

Submitted by:

Karen D. Faulkner, Chair

**Mashpee Planning Board**

Publication dates:     Friday, August 18, 2023  
                                 Friday, August 25, 2023

MASHPEE TOWN CLERK  
AUG 16 '23 AM 10:08



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The full text of these Articles may be reviewed in the Office of the Town Manager/Select Board and Planning Department.

Submitted by:

Karen D. Faulkner, Chair

**Mashpee Planning Board**

Publication dates:      Friday, August 18, 2023  
Friday, August 25, 2023

MASHPEE TOWN CLERK  
AUG 16 '23 AM 10:08

**TOWN OF MASHPEE  
MASHPEE HIGH SCHOOL  
500 OLD BARNSTABLE ROAD  
MASHPEE, MA 02649  
ANNUAL TOWN MEETING  
MONDAY, OCTOBER 16, 2023**

Barnstable, ss:

Greetings to the Constables of the Town,

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and summon the inhabitants of the Town of Mashpee who are qualified to vote in the elections to meet at the Mashpee High School on Monday, the 16th day of October 2023 at 7:00 p.m. for the following purposes:

To act on the articles contained in the following Warrant:

**Article 1**

To see if the Town will vote to appropriate the sum of \$7,500,000 for the planning and design of wastewater collection, treatment and effluent recharge initiatives in the Town of Mashpee, and all costs and expenses incidental and related thereto, including costs relating to the acquisition of necessary easements and other interests in real property; and to meet this appropriation, the Treasurer, with the approval of the Select Board, be authorized to borrow said amount under M.G.L. Chapter 44, sections 7 and/or 8 or any other enabling authority and to issue such bonds or notes as may be necessary for such purpose; provided, however, that this appropriation and debt authorization shall be contingent upon passage of a Proposition 2<sup>1</sup>/<sub>2</sub>, so-called, debt exclusion ballot question exempting from the provisions of said Proposition 2<sup>1</sup>/<sub>2</sub> the amounts required to pay the principal and interest on bonds, notes or certificates of indebtedness issued for this purpose pursuant to General Laws Chapter 59, §21C(k), or take any other action relating thereto.

Submitted by the Select Board and the Sewer Commission

**Explanation:** This article would appropriate funds and authorize the borrowing thereof, contingent upon the successful passage of a debt exclusion ballot question, for the planning and design of wastewater collection, treatment and effluent recharge initiatives in the Town of Mashpee and costs/ expenses incidental and related thereto, including costs relating to the acquisition of necessary easements and other interests in real property. This project is the next step approved by the Sewer Commission and the Select Board in implementing the Town's Watershed Nitrogen Management Plan/CWMP.

***(Note that for this Article to become effective authorization of the debt exclusion by ballot question is also required.)***

**2/3 Vote Required**

**The Select Board recommends approval of Article 1 by a vote of 4-0**

**The Finance Committee does not recommend approval of Article 1 by a vote of 5-0**

## **Article 2**

To see if the Town will vote to amend the Zoning Bylaws by adding the following new subsections into Article XI: Floodplain Zone Overlay as follows:

### **§174-67 Prohibitions**

The purpose of this section is to encourage use of more resilient, safer, and more environmentally beneficial construction methods in the Floodplain Zone Overlay District. It is not intended to otherwise restrict or prevent construction of a new or redeveloped dwelling or other allowable structure.

No person shall fill, place or dump in any flood hazard area within the Floodplain Zone Overlay District any soil, loam, peat, sand, gravel, rock or other material substance, refuse, trash, rubbish, debris or dredged material for the purposes of raising their first floor elevation to be at or above the base flood elevation. Solid wall foundations with flood vents or pilings are the only acceptable construction methods within the Floodplain Zone Overlay District.

No Letters of Map Revision based on Fill (LOMR-Fs) or Letters of Map Amendment Based on Fill (LOMA-F) will be permitted.

Conventional Title V Septic System technologies shall not be permitted within the Floodplain Zone Overlay District and a Board of Health approved Innovative/Alternative septic system is required pursuant to Board of Health Regulations.

### **§174-67.1 Exceptions to Prohibitions of the Use of Fill in Any Flood Zone**

Landscape material up to two feet in depth at the foundation and tapered to meet grade within ten feet (10) of the foundation shall not be calculated towards grade plane and shall not be considered fill as regulated in §174-67 of this Bylaw.

The use of rock for the purposes of reconstructing a revetment or groin shall not be considered fill as regulated by §174-67 of this Bylaw. The reconstruction of such structures shall require all permits and approvals required by applicable local, state, and/or federal laws.

The use of dredged material for beach re-nourishment shall not be considered fill as regulated in §174-67 of this Bylaw but shall require all permits as required by applicable local, state, and/or federal laws.

Any material: soil, loam, peat, sand, gravel, rock or other material substance required for the installation of a Board of Health approved Innovative/Alternative Septic System shall not be considered fill as regulation in §174-67 of this Bylaw.

Submitted by the Planning Board

**Explanation:** This article would require new construction or redevelopment of homes in the Floodplain Zone Overlay District utilize either a solid-wall foundation with flood vents or pilings for new homes or redeveloped homes. Further it requires that properties touched by the Floodplain install Innovative/Alternative septic systems unless served by a public or private wastewater treatment facility. This Bylaw does not propose to remove the rights of any property owner to build or re-build a new dwelling on lots in the Floodplain Zone Overlay District. If your lot is buildable today, it will remain buildable following the passage of this Article.

**2/3 Vote Required**

**The Select Board recommends approval of Article 2 by a vote of 4-0**

**The Finance Committee recommends approval of Article 2 by a vote of 6-0**

**Article 3**

To see if the Town will vote to amend Section 174.45.4 Subsection A of the Mashpee Zoning Bylaw to read as follows:

- A. In order for an accessory apartment to be permitted, in addition to meeting all of the requirements under subsections B-M, the principal dwelling unit or the proposed accessory apartment must be occupied by the property owner identified on the latest recorded or registered deed. The property owner may reside in either the accessory apartment or in the principal dwelling and rent the other unit to a tenant, but may not under any circumstances rent both the principal dwelling and the accessory apartment to tenants concurrently. For purposes of this Bylaw, the term "property owner" shall include: each person who alone or jointly or severally with others: a) has legal title of record to any building, structure, or property subject to this Bylaw, or; b) has care, charge, or control of any such building, structure, or property in any legal capacity, including but not limited to agent, executor, administrator, member or owner of a limited liability company, trustee or guardian of the estate of the record holder of legal title; or c) is a lessor under written agreement; or d) is the mortgagee in possession; or e) is the recognized agent, trustee or other person claiming rights under the record title holder with care, charge, or control of the property as a matter of law or as appointed by the courts. On an annual basis coinciding with the initial date of issuance of the Building Permit, the property owner shall submit to the Building Inspector sufficient evidence to demonstrate the property owner's occupancy of the principal dwelling unit or the accessory apartment.

Submitted by the Planning Board

**Explanation:** This Article would allow property owners who construct accessory apartments to live in their accessory apartment and rent their principal dwelling to tenants. Current Bylaw language restricts a property owner from residing in the accessory apartment while renting their principal dwelling.

**2/3 Vote Required**

**The Select Board recommends approval of Article 3 by a vote of 5-0**

**The Finance Committee recommends approval of Article 3 by a vote of 6-0**



## **Article 4**

To see if the Town will vote to amend Section 174.45.4 Subsection C of the Mashpee Zoning Bylaw as follows:

### **C. Unit Size**

The design, installation and use of an accessory apartment shall be secondary and incidental to the principal use of the structure as the owner's home. An accessory apartment may be located within the same structure as said home or constructed within a new or pre-existing detached structure. The gross floor area of the accessory apartment shall be not less than three-hundred and fifty (350') square feet and shall not exceed nine hundred (900') square feet.

Submitted by the Planning Board

**Explanation:** This Article clarifies the allowed size of an accessory apartment to within a defined range. Currently, the Bylaw allows accessory apartments to be not less than three hundred (300') square feet and may not exceed 40% of the gross floor area of any principal dwelling. The 40% calculation is confusing and thus this Article is intended on placing a firm minimum and maximum unit size of not less than three-hundred and fifty (350') square feet and not more than nine hundred (900') square feet.

### **2/3 Vote Required**

**The Select Board recommends approval of Article 4 by a vote of 4-0**

**The Finance Committee recommends approval of Article 4 by a vote of 6-0**

## **Article 5**

To see if the Town will vote to amend Section 174.45.4 Subsection I of the Mashpee Zoning Bylaw as follows:

I. An accessory apartment shall not be used for boarding and lodging, or other commercial use. Either the accessory apartment or the principal dwelling to which it is accessory must be rented for periods of at least 12 consecutive months at a time, with a signed lease on file, and are prohibited from any use as rental units on a weekly, daily, or monthly basis. Property owners who fail to comply with this requirement shall be subject to a three hundred dollar (\$300) fine each day that this violation persists.

Submitted by the Planning Board

**Explanation:** This Article would require that any accessory apartment that is created be rented year-round. Current Bylaw states that accessory apartments MAY be rented. This Article requires that they be rented. Additionally, the current rental restriction prohibits rentals of accessory apartments of less than 30 days. This Article proposes requiring property owners to rent to tenants occupying either the principal dwelling or accessory apartment for a period not less than 12 months to be more consistent with the purpose and intent of this section.

### **2/3 Vote Required**

**The Select Board recommends approval of Article 5 by a vote of 4-0**

**The Finance Committee does not recommend approval of Article 5 by a vote of 5-1**

## Article 6

To see if the Town will vote to add new Chapter 175: Tree Preservation Bylaw to the Mashpee General Bylaw as follows:

### **CHAPTER 175: MASHPEE TREE PRESERVATION BYLAW**

#### **§175-1 PURPOSE & INTENT**

The Mashpee Tree Preservation Bylaw encourages the preservation and protection of certain trees on residential, commercial and industrial lots during building activities as defined in this Bylaw and monitors for their survival after construction. The preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment and aesthetic character of the Town of Mashpee and its citizens. Trees serve a variety of functions that this Bylaw intends to protect and enhance. These valuable functions include but are not limited to reducing energy consumption, providing shade, improving air quality, providing vital wildlife habitat, erosion control, reducing stormwater runoff, buffering noise pollution, increasing property values, and positively contributing to the visual character of the Town. This Bylaw defines which trees are of preservation value ("Protected Trees") and designates the area(s) of a lot or parcel where those trees should be protected ("Tree Yard").

This Bylaw does not prohibit a landowner's right to remove any protected tree. Removal of protected trees will be authorized so long as the property owner undertakes one of the mitigation options set forth herein. This Bylaw incentivizes the preservation of protected trees by requiring property owners to compensate for any Protected Trees that are removed, either by planting new ones or by contributing to the Tree Bylaw Revenue Account that supports the Town's tree planting and maintenance efforts.

This Bylaw does not discourage the removal of hazardous trees (as defined herein) for reasons of public health and safety nor does this Bylaw discourage the removal of a tree(s) that by size or otherwise is not subject to the protections set forth herein.

#### **§175-2 DEFINITIONS**

The following words, terms, and phrases, when used in this Bylaw, shall have the meaning ascribed to them in this section:

**AGGREGATE DIAMETER:** The combined diameter of a multiple-trunk tree measured at breast height.

**BUILDING ACTIVITY:** One of the following types of work performed on a lot:

- Work performed pursuant to a special permit (as defined in MGL Ch. 40A Sec. 9 and the Mashpee Zoning Bylaw);
- Work performed pursuant to site plan approval (as defined in the Mashpee Zoning Bylaw);
- Construction of a new dwelling (including after razing an existing dwelling);
- Construction of a subdivision;

- Construction of a structure or addition that increases the gross floor area of a residential, commercial, or industrial structure by 50% or more;
- Demolition of a structure(s) with a footprint of 250 square feet or greater;
- Construction of any accessory structures requiring a building permit including but not limited to sheds greater than 200 square feet, detached garages, pools, retaining walls with a height of four feet or greater; or
- Clearing, grading, or other site preparation work performed prior to undertaking any of the above.

**CERTIFICATE OF EXEMPTION:**

Formal permission granted to proceed with building activity without the need for a tree permit.

**CERTIFIED ARBORIST:**

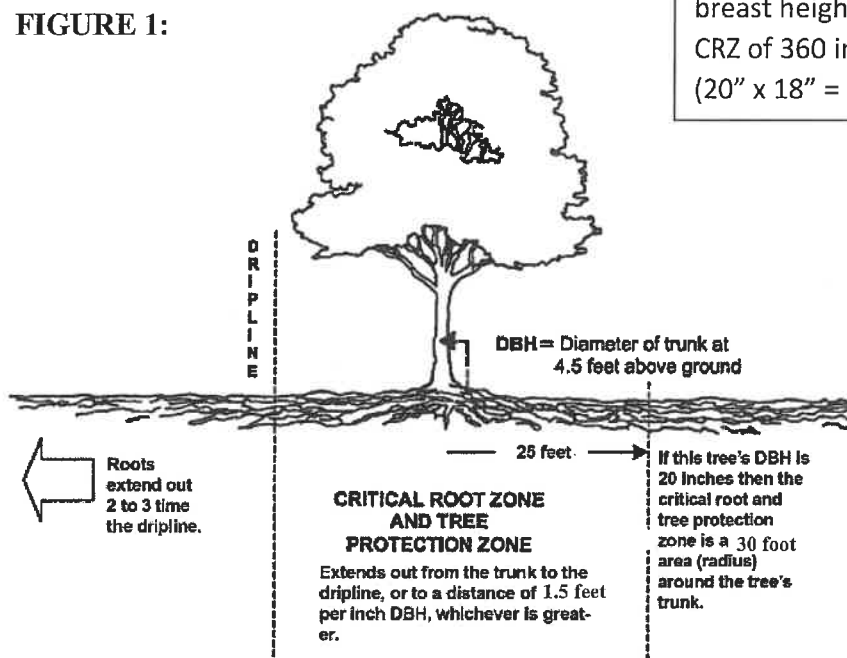
An arborist certified by the Massachusetts Arborists Association or International Society of Arboriculture, or any successor organization.

**CRITICAL ROOT ZONE (CRZ):**

The minimum area beneath the tree canopy of a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ is represented by a circle centering on the tree's trunk and extending outwards towards the tree's drip line. The minimum radius of the CRZ shall be determined by multiplying the tree's diameter at breast height in inches by 18 (1.5 feet per inch DBH). See Figure 1 below.

**CRITICAL ROOT ZONE**

**FIGURE 1:**



Example: A tree with a diameter at breast height of 20 inches shall have a CRZ of 360 inches or 30'.  
(20" x 18" = 360")

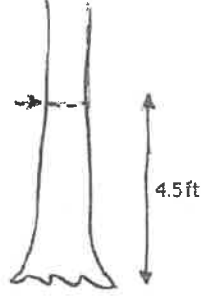
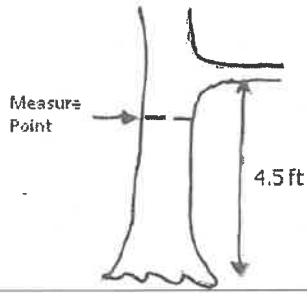
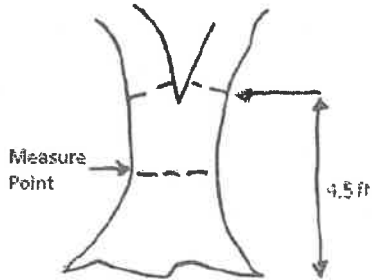
### Calculating the CRZ:

- First you need to calculate the tree's Diameter at Breast Height (DBH). DBH can be measured using a caliper measuring tool, or for trees that are too large, DBH can be measured by dividing the tree's circumference by pi ( $\pi$ ).  
Diameter = circumference /  $\pi$  (3.14)
- The Critical Root zone extends from the trunk of the tree to its drip line, or to a distance of 1.5 feet per inch DBH, whichever is greater.

### DIAMETER BREAST HEIGHT (DBH):

CRZ = Diameter \* 1.5 feet (18 inches)

The diameter of the trunk of a tree 4.5 feet above the existing grade at the base of the tree. For trees that have branches or swelling at 4.5' above grade that interferes with measurement or for multi-stemmed trees refer to Table 1 below.

TABLE 1: HOW TO MEASURE DIAMETER AT BREAST HEIGHT (DBH)	
<b>Standard Tree</b>  For those trees on a site that are at least 6 inches in diameter at a height of 4.5 feet above the existing grade at the base of the tree. For trees on a slope, measure on the uphill side of the tree.	
<b>Tree has branches or swelling at 4.5'</b>  Measure DBH below the branch or swelling immediately below where branches cease to affect diameter of the stem. Record the height at which the diameter was measured.	
<b>Multi-stemmed Trees</b>  If a tree splits into multiple trunks below 4.5' above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.	

- HAZARDOUS TREE:** A tree that is dead, diseased, injured and/or that is dangerously close to existing structures, utilities, streets, sidewalks or other existing improvements or is causing disruption of public utility service, or poses a threat to pedestrian or vehicular safety, or drainage or passage issues upon right-of-way and/or that is harming the health or condition of other trees on the same site.
- INVASIVE SPECIES:** Any tree that is listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture.
- OVERSTORY TREE:** A tree that will generally reach a mature height of more than 40 feet.
- PROTECTED TREES:** Any tree with a diameter at breast height (DBH) of six-inches (6") or greater of any one of the species listed in Table 2 below:

<b>Table 2: List of Tree Species that are Protected Trees</b>	
<b>Overstory Species</b>	<b>Understory Species</b>
<i>Atlantic White Cedar (Chamaecyparis thyoides)</i>	<i>American Holly (Ilex opaca)</i>
<i>Black tupelo (Nyssa sylvatica)</i>	<i>Sassafras (Sassafras albidum)</i>
<i>Gray Birch (Betula populifolia)</i>	<i>Eastern Red Cedar (Juniperus virginiana)</i>
<i>River Birch (Betula nigra)</i>	<i>Shadbush (Amelanchier Canadensis)</i>
<i>White Ash (Fraxinus americana)</i>	<i>Flowering Dogwood (Cornus florida)</i>
<i>Green Ash (Fraxinus pennsylvanica)</i>	<i>Cockspur Hawthorne (Crataegus crus-galli)</i>
<i>Red Maple (Acer rubrum)</i>	<i>Sweetbay Magnolia (Magnolia virginiana)</i>
<i>Willow, various species (Salix spp.)</i>	<i>Ironwood (Ostrya virginiana)</i>
<i>Atlantic White Cedar (Chamaecyparis thyoides)</i>	<i>American Hornbeam (Carpinus caroliniana)</i>
<i>Pitch Pine (Pinus rigida)</i>	
<i>White Oak (Quercus alba) and other Quercus species</i>	
<i>Hackberry (Celtis occidentalis)</i>	
<i>American Beech (Fagus grandifolia)</i>	
<i>Tulip Poplar (Liriodendron tulipifera)</i>	
<i>White Spruce (Picea glauca)</i>	
<i>Black Spruce (Picea mariana)</i>	
<i>American basswood (Tilia Americana)</i>	
<i>Black Gum/Sourgum (Nyssa sylvatica)</i>	
<i>Black Cherry (Prunus serotina)</i>	

Removal of Protected Trees shall require a permit before being removed, encroached upon, or in some cases, pruned. Invasive or likely invasive species as defined in this Bylaw are not protected trees.

**REMOVE, REMOVED,  
REMOVAL or REMOVING:**

The cutting down of any Protected Tree and all other acts that directly or indirectly result in the death of a Protected Tree prior to any building activity or within two years thereafter, as determined by a certified arborist based on arboricultural practices recommended by the International Society of Arboriculture, including, but not limited to, damaging, poisoning, excessive pruning or other direct or indirect actions.

**TREE BYLAW**

**REVENUE ACCOUNT:**

An account established by the Town Accountant to deposit mitigation funds collected under this chapter to be appropriated via a town meeting vote and expended for the purposes of maintaining, acquiring and/or installing trees to beautify the Town and preserve and enhance the character of the community.

**TREE YARD:**

A defined area along the perimeter of a lot which is equal to the minimum setbacks defined in Section 175-31 of the Mashpee Zoning Bylaw.

**TREE PERMIT:**

Formal permission granted to proceed with any building activity that affects a Protected Tree(s).

**§175-3 APPLICABILITY**

All lots in the Town of Mashpee are subject to the Tree Preservation Bylaw unless specifically exempted under Section 175-3(A) below and the project involves at least one building activities as defined in this chapter:

No person shall commence building activity on any lot without first obtaining a Tree Preservation Permit or a Certificate of Exemption from the Planning Department via the Town Planner or his/her designee.

**A. EXEMPTIONS**

- (1) Properties that are pre-disturbed or previously developed may remove protected trees in the Tree Yard of their property without connection to a building activity. Applicability of this bylaw applies only to those Building Activities as defined.
- (2) Any lot or lots located within wetlands jurisdiction whereas any building activity that may impact protected trees will be subject to the review and approval of the Conservation Commission
- (3) Any building activity not within the definition of "building activity" (i.e., demolition of a shed that is less than 250 square feet).

- (4) If a Certificate of Exemption has been issued by the Planning Department, no Tree Preservation Permit shall be required. The granting of exemption shall be at the discretion of the Town Planner or his/her designee and shall be based on whether the building activity could potentially harm a Protected Tree. If the proposed building activity does not have the potential to harm a Protected Tree, the Town Planner or his/her designee shall issue a Certificate of Exemption.
- (5) Dead, Diseased, or otherwise hazardous Trees - If a Protected Tree is deemed to be imminently hazardous because it is dead, or infested with a disease or pest of a permanent nature or is an immediate danger to the public health, safety or welfare or shall cause an immediate disruption of public services, the tree may be removed without delay. An oral authorization from the Town Planner or his/her or designee to remove the tree shall be permitted and followed up with a written report. In the event that the emergency condition does not allow time to seek prior authorization then the emergency removal of the tree shall proceed with notification to the Town Planner sent by email or U.S. mail within 24 hours of said removal.
- (6) Pruning: A tree permit is not required for pruning of Protected Trees. However, excessive pruning may constitute tree removal.
- (7) Any building activity conducted by the Town or on behalf of the Town of Mashpee.

**Waiver:** During a period of a bona fide emergency declaration resultant of a significant weather event and/or natural disaster by local or other Act of God, state and/or federal authorities, requirements of this Bylaw shall be waived.

#### **§175-4 IDENTIFYING PROTECTED TREES**

The Bylaw defines the Tree Yard to be equal to the minimum front, side, and rear yard setbacks as specified in Table 1 and §175-31 of the Zoning Bylaws of the Town of Mashpee. Any tree with a Diameter at Breast Height (DBH) of 6" or greater as calculated in accordance with Table 1 and within the Tree Yard is considered to be a Protected Tree. Any Protected Trees located within the Tree Yard are to be adequately protected and any Protected Trees located in the Tree Yard proposed for removal shall require adequate mitigation plantings and/or payment to the Mashpee Tree Bylaw Revenue Account.

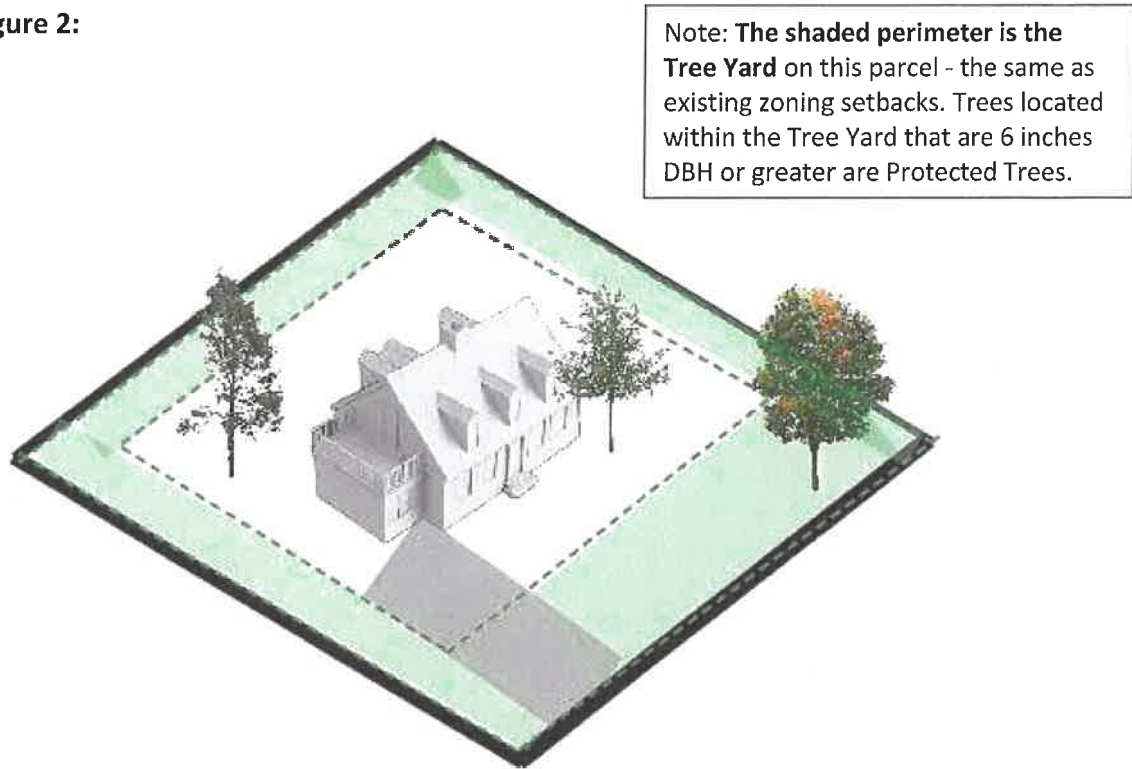
**Table 3: Tree Yard Locations in Each Zoning District**

Zoning District	Minimum Tree Yard (feet)*		
	Front Setback	Side Setback	Rear Setback
R-3	40	15	15
R-5	40	15	15
C-1	40	20	40
C-2	75	20	20
C-3	75	20	20
I-1	75	30	50

**\*For residential parcels subject to a special permit for a cluster development, the tree yard shall be consistent with the applicable setbacks as defined in the recorded special permit decision.**



**Figure 2:**



**§175-5 SUBMISSION REQUIREMENTS FOR A TREE PROTECTION AND MITIGATION PLAN**

An approved Tree Protection and Mitigation Plan is required before commencement of any applicable building activity. The Tree Protection and Mitigation Plan is intended to define the Tree Yard and the location(s) of Protected Trees within it and define how the method with which the property owner intends on mitigating for any Protected Trees that are proposed for removal. This Plan may be part of a landscape plan or a separate plan.

All submitted plans must be drawn to a uniform scale (preferably 1"= 10', 1" =20', or 1"=30') and shall be a minimum size of 11" x 17" (preferred) and a maximum size of 24" x 36", with 3/4" borders. Font sizes on plans should be no smaller than 1/8". All Tree Protection and Mitigation Plans shall be prepared, stamped, dated and signed by a Registered Land Surveyor. If a plan is submitted by a Registered Landscape Architect, the plan must also be stamped by a Registered Land Surveyor.

At a minimum, the Tree Protection and Mitigation Plan shall include the following elements:

- a) Boundaries of the subject property, including all property lines, easements, and right-of-way of public and private ways;
- b) The location of all existing buildings, driveways, retaining walls and other improvements, with an indication of those features to be retained or removed/demolished;
- c) The location of all planned buildings, driveways, retaining walls and other improvements;
- d) The location of the Tree Yard for projects located in the subject zoning district; and
- e) The location, height, DBH, and species of all existing Protected Trees and all Protected Trees that were removed within 12 months prior to application with an indication of those Protected Trees to be removed and those to be retained, if applicable.

**§175-6 ADDITIONAL REQUIREMENTS TO BE SUBMITTED**

**A. If Protected Trees are intended to be preserved, protected, and retained, the following elements must be added to the Plan:**

1. The Critical Root Zone and Drip line shall be shown for all Protected Trees to be retained. **(See Figure 1 above in definitions section).**
2. Submitted plans shall specify the tree protection measures to be installed around the Critical Root Zone.
3. Prior to the commencement of construction, written documentation prepared, stamped, dated and signed by a Certified Arborist must be submitted to the Planning Department confirming the protection measures have been installed correctly and in accordance with any approved plans.
4. Projects that encroach within the CRZ require a maintenance plan which shall be submitted for such trees, prepared, stamped, dated and signed by a Certified Arborist; at a minimum, the maintenance plan shall identify the course of action that will be taken to maintain the tree in good health for a period of no less than 24 months from the date of Final Inspection or issuance of Certificate of Occupancy.

**B. If Protected Trees are intended to be removed and compensated for on-site by replanting new trees, the following additional elements must be added to the Plan:**

1. The location, DBH, species, and planting schedule of trees to be replanted to mitigate the removal of a Protected Tree(s). New trees of one -half (0.5) inch DBH is needed to mitigate for each one-inch at breast height of Protected Trees proposed for removal. Example: The removal of a 20 inch DBH Protected Tree shall require 10, 2 inch DBH replacements.
2. Each new tree must have a minimum DBH of 2 inches.
3. Replanting must be complete prior to Final Inspection or the issuance of a Certificate of Occupancy.
4. Applicants have the ability to plant on land abutting the applicant's land, with the express written approval of the abutting property owner.
5. Over story Tree species, if removed, must be replaced with an Overstory Tree species.
6. Invasive tree species as defined in this Bylaw shall not be replanted to mitigate the removal of a Protected Tree and no invasive species will be accepted as mitigation toward the removal of a Protected Tree.

**C. If Protected Tree removal is permitted but replanting trees as defined above is not the preference of the property owner, then mitigation may be effected through contribution into the Town of Mashpee Tree Bylaw Revenue Account as follows:**

1. The Town Planner or his/her designee shall determine the amount of the contribution based upon the cost to purchase and install trees. An applicant who has been granted a Tree Permit may choose, in lieu of replanting onsite, to make a contribution to the Tree Bylaw Revenue Account in an amount equal to planting replacement tree(s). The applicant shall provide to the Board price quotes/estimates from a garden center/nursery for the purchase of trees to establish the required dollar amount as well as from a qualified landscape professional for installation.

2. All sums deposited into the Tree Bylaw Revenue Account shall be used for the sole purpose of buying, planting and maintaining trees on public property in Mashpee, and for no other purpose whatsoever.
3. At least once a year the Town Accountant shall audit the receipts and expenses of the Tree Bylaw Revenue Account to ensure accuracy and propriety of its transactions.

**§175-7 COMBINATION OF OPTIONS**

Any combination of Tree Retention, Tree Replanting or Tree Removal with contribution to the Tree Bylaw Revenue Account can be used. Tree mitigation for those trees removed must be clearly identified either on the submitted plan or in a written document accounting for each DBH of Protected Trees removed and the mitigation proposed. This is not required for tree retention of all trees in the Tree Yard.

**§175-8 ADMINISTRATION OF BYLAW**

The Town Planner or his/her designee shall administer, implement and enforce this Bylaw and any rules and regulations adopted thereunder. Any powers granted to or duties imposed upon the Town Planner may be delegated to its agents under the Board's direct supervision.

**§175-9 AUTHORITY**

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes.

**§175-10 RULES AND REGULATIONS**

The Planning Board may promulgate rules and regulations to effectuate the purposes of this Bylaw. Such rules may prescribe the size, form, contents, style and number of copies of plans for determining final compliance with these regulations. The adoption or amendment of rules and regulations shall be after a public hearing to receive comments on the proposed or amended rules and regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

**§175-11 NOTICE OF VIOLATION**

Any person who violates any of the provisions of this Bylaw shall be notified by the Town Planner or his/her designee of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and the date by which the Protected Tree(s) is to be mitigated, by planting a replacement tree(s) or payment to the Tree Bylaw Revenue Account, for purposes of computing the "per diem" violation rule. Any notice of violation shall also be transmitted to the Mashpee Building Commissioner.

#### **§175-12 STOP WORK ORDER**

Upon notice from the Town Planner or his/her designee that work on any lot on which a Protected Tree is located is being performed contrary to the provisions of this Bylaw, a written Stop Work Order shall be given to the owner or agent or the person performing work on the property by the Building Commissioner. The Stop Work Order shall state the conditions under which work will be permitted to resume. Upon receipt of the Stop Work Order all work on the subject property that might affect any Protected Trees must cease while a stop work order is pending.

A person, having been served with a stop work order, may be directed to perform work on the said Protected Tree property to remove a violation or unsafe condition.

#### **§175-13 SUSPENSION OR REVOCATION**

The Town Planner or his/her designee may suspend or revoke the applicant's Tree Permit at any time if the permit holder has failed to comply with either the Bylaw or the conditions of the permit. Notice may be made via certified or registered mail, return receipt requested, or hand delivered. The notice must provide the applicant an opportunity to correct the non-compliance. This may include remediation or other requirements identified by the Town Planner or authorized monitoring agent, such as the Code Compliance Inspector. Once the project is returned to compliance or remediation completed, if practicable, the applicant may apply for a renewal of the tree permit.

#### **§175-14 IRREPARABLE DAMAGE**

If the Town Planner or his/her designee determines that the applicant damaged a tree approved for Retention and Protection during construction to an extent that may significantly compromise its survival and future health, the Town Planner or his/her designee may require the applicant to provide mitigation per the terms of the Bylaw.

#### **§175-15 NON-CRIMINAL FINES**

If the Town Planner or authorized monitoring agent, such as the Code Compliance Inspector, identifies any issues of non-compliance, fines will accrue per the Bylaw if not corrected within 30 days. Each consecutive day the non-compliance continues is considered a separate offense.

#### **§175-16 FINES AND PENALTIES**

The following actions shall cause the Planning Department to issue a fine to the applicant:

- A. A Protected Tree has been removed without a Tree Permit: The fine shall be in addition to the required payment for the replacement of the tree(s).
- B. Failure to replace trees or make payment to the Tree Bylaw Revenue Account as required: Each failure to replace a tree or make a payment to the Tree Bylaw Revenue Account constitutes a separate violation of this Bylaw, subject to a fine. Each day such violation continues after the compliance date specified by the Planning Department in its notice of violation shall constitute a separate offense.

- C. Failure to comply with a condition of the Tree Permit: Each instance of failure to comply with a condition in the Tree Permit shall constitute a violation of this Bylaw which shall be subject to a fine. Each day such violation continues shall constitute a separate offense.
- D. Failure to comply with a condition in a Stop Work Order: Each instance of failure to comply with a condition in a Stop Work Order shall constitute a violation of this Bylaw which shall be subject to a fine. Each day such violation continues shall constitute a separate offense.
- E. Fines for the above violations are as follows:
  - First offense = \$100 per day
  - Second Offense = \$200 per day
  - Third Offense = \$300 per day
- F. Fines assessed pursuant to this Section shall be enforced and collected in accordance with applicable provisions of law, including the provisions of G.L. c.40, §21D providing for noncriminal disposition of bylaw violations, as implemented by Article III, §1-3 of these Bylaws

**§175-17 SEVERABILITY**

The provisions of this Bylaw are severable. If any section, provision or portion of this Bylaw is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this Bylaw shall continue to be valid.

**§175-18 CONFLICT OF LAWS**

This Bylaw shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87, and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special-permit procedures and to the extent that any provision hereof conflicts with said special-permit procedures, such provision shall not be valid.

**§175-19 COMPLIANCE WITH ALL STATE AND LOCAL REGULATIONS**

Complying with the terms of this Bylaw shall not relieve the owner of the subject property from complying with any other pertinent regulation, including but not limited to all state and local wetlands-protection regulations.

**§175-20 ENFORCEMENT**

The Town Planner or his/her designee is hereby authorized to enforce all provisions of the Mashpee Preservation Tree Bylaw and may designate monitoring and enforcement agents to include but not be limited to the Code Compliance Officer, the Town Planner, the Conservation Agent, Building Inspector/Commissioner.

**§175-21 APPEALS**

Any person who has been aggrieved by refusal, order, or decision of the Town Planner or his/her designee, may appeal to the Planning Board within 20 days from the date of such refusal, order or decision.

Submitted by the Planning Board

**Explanation:** This Article would establish a program intended to incentivize the protection of certain trees on residential, commercial, and industrial lots in the Town of Mashpee. It would require, prior to any building activities as defined in this article, the submission of an application and plan to the Planning Department that identifies trees that qualify as “Protected Trees” as defined in this Article. This Article does not prohibit any property owner from removing any tree, protected or not, from their property, however if a protected tree is proposed for removal, it will require either a payment into a Town Tree Bylaw Revenue Account to be created or replacement of the protected tree with a suitable species in accordance with this chapter. This would eliminate the ability for property owners to “clear-cut” their lot prior to a building activity and or/without connection to any building activity. The Article is intended to encourage the preservation of existing trees for their environmental benefits and positive impact on the character of the community.

**The Select Board recommends approval of Article 6 by a vote of 4-0**

**The Finance Committee recommends approval of Article 6 by a vote of**

## **Article 7**

To see if the Town will vote to reserve from the FY 2024 estimated Community Preservation revenues pursuant to the provisions of M.G.L. Chapter 44B, §6 the following amounts:

\$127,946	10% for Open Space/Recreational Purposes
\$127,946	10% for Historic Preservation Purposes
\$127,946	10% for Affordable Housing Purposes
\$855,615	to the FY 2024 Community Preservation Fund Budgeted Reserve

as recommended by the Community Preservation Committee, or take any other action relating thereto.

Submitted by the Community Preservation Committee

**Explanation:** This article is required annually to set aside the 10% Reserves of the estimated Community Preservation Funds for Open Space/Recreation Purposes, Historic Preservation Purposes and Affordable Housing Purposes and to fund the Budget for Appropriation Reserve.

The Community Preservation Committee voted to approve this article to set aside the 10% Reserves and Budget for Appropriation Reserve to be available for use in fiscal year 2024 as certified by the Finance Director and reflected in the FY 2024 CP-1. The total FY24 appropriation to the 10% Reserves and Budget for Appropriation Reserve is \$1,239,453.

The Community Preservation Committee recommends approval of Article 7 by a vote of 6-0.

**The Select Board recommends approval of Article 7 by a vote of 5-0**

**The Finance Committee recommends approval of Article 7 by a vote of 6-0**

## Article 8

To see if the Town will vote to appropriate and transfer from the Community Preservation Fund 10% Historic Reserve in accordance with the provisions of M.G.L. Chapter 44B, §5, the sum of \$73,640 for the purpose of funding the Ancient Burying Grounds Restoration project as follows; Avant Burial Ground, Main Street; Map 47, Parcels 7 & 7A; Attaquin Burial Ground, Main Street, Map 27, Parcel 41; Pocknett Burial Ground, Meetinghouse Road, Map 45, Parcel 12 including necessary costs and expenses related thereto, as recommended by the Community Preservation Committee, or take any other action relating thereto.

**SEE MAPS (3) IN APPENDIX A**

Submitted by the Community Preservation Committee

**Explanation:** The goal of the Ancient Burying Ground project sponsored by the Mashpee Historical Commission will restore and rehabilitate the historic sites adhering to the citizens of the Town of Mashpee by vote of Town Meeting on January 29, 1975, Article 29 and at the May 2, 2022 Town Meeting, Article 13 to protect and preserve all Ancient Cemeteries and Burial Grounds. As Ancient Cemeteries they would be eligible for placement on the state and national historic register.

The Community Preservation Committee recommends approval of Article 8 by a vote of 8-0.

**The Select Board recommends approval of Article 8 by a vote of 5-0**

**The Finance Committee recommends approval of Article 8 by a vote of 6-0**

## Article 9

To see if the Town will vote to authorize and empower the Select Board to prepare a plan laying out and defining Godfrey Road and Barbary Circle to accomplish said purpose and for expenses related thereto, the Town vote to appropriate and transfer from revenue available for appropriation \$20,000 to the Godfrey Road and Barbary Circle Roadways Account, or take any other action relating thereto.

**SEE MAP IN APPENDIX A**

Submitted by Petition  
(Lead Petitioner – Steven J. Votta)

**Explanation:** This article authorizes the Town to layout and define Godfrey Road and Barbary Circle and to appropriate funding for this purpose.

**The Select Board makes no recommendation of Article 9 by a vote of 4-0**

**The Finance Committee does not recommend approval of Article 9 by a vote of 5-0**

## Article 10

To see if the Town will vote to; authorize the Select Board to convey, grant and/or release to the Mashpee Wampanoag Tribe of Mashpee, Massachusetts (the "Tribe" the Town's title, rights, or interest in the following described parcels of real property, to file such petitions with the Massachusetts General Court as may be necessary to effect this conveyance, grant or release, and to execute any and all instruments necessary to convey, grant and/or release the Town's title, interest or rights, upon such terms and conditions as the Select Board shall deem to be in the interest of the Town) Map 68: Parcels: 13B, 14 & 16 (1.63 Acres) for the purpose of expanding the Old Indian Cemetery and support placing this parcel into trust on behalf of the Mashpee Wampanoag Tribe, or take any other action relating thereto.

**SEE MAP IN APPENDIX A**

Submitted by Petition  
(Lead Petitioner – Brian Weeden)



**Explanation:** In 2008 at Town Meeting the “Town” authorized the Selectmen release title to the “Tribe” for “Old Indian Cemetery”. This article will authorize the Select Board release parcel (Map 68 Block 13B, 14 & 16) to The Mashpee Wampanoag Tribe for the purpose of expanding the current cemetery.

This Article will help to expand the Old Indian Cemetery located on the Mashpee Wampanoag Tribe’s Reservation located at 410 Meetinghouse Rd and support placing the parcel into trust on behalf of the Mashpee Wampanoag Tribe for future generations of Mashpee Wampanoag Tribal Citizens and families.

**The Select Board recommends approval of Article 10 by a vote of 3-0-1**

**The Finance Committee recommends approval of Article 10 by a vote of 5-1**

### **Article 11**

To see if the Town will vote to amend the Zoning Bylaws on Special Permit Use §174-24(C)(9)(g) to strike the words “(g) A modification under (b) or (c) above may expand the land area covered by said Special Permit; provided that all uses, dimensions and other aspects of proposed development within the expanded area are in conformance with the provisions of the zoning bylaw applicable to the land at the time of approval of said modification, and provided that the original Special Permit granting authority has authority to approve said proposed uses and development under the provisions of the zoning bylaw applicable to the expanded land area at the time of approval of said modification,” and replace with the words “(g) A modification under (b) or (c) above may expand the land area covered by said Special Permit; provided that all uses, dimensions and other aspects of proposed development within the expanded area are in conformance with the provisions of the current zoning bylaw applicable to the land at the time of application for said expansion, and provided that the original Special Permit granting authority has authority to approve said proposed uses and development under the provisions of the current zoning bylaw applicable to the expanded land area at the time of application for said expansion,” or take any other action relating thereto.

Submitted by Petition  
(Lead Petitioner – Arden Russell)

**Explanation:** Several large-scale developments were permitted decades ago by special permit. Several important zoning bylaw changes have occurred since then. This article would require that when a development expands its land area via special permit, the expansion must comply with current zoning bylaws.

**The Select Board makes no recommendation of Article 11 by a vote of 4-0**

**The Finance Committee does not recommend of Article 11 by a vote of 5-0**

## **Article 12**

To see if the Town will vote to convey Parcel No: 28-2-0 (35 Lake Avenue), 36-80-0 (409 Main Street), 28-3-0 (415 Main Street) to the Tribe for historical, educational, and cultural uses to construct a true replica of a Wampanoag Village to accurately depict daily life and complement the adjacent Tribal historic sites within the Town's existing Historical District, or take any other action relating thereto.

**SEE MAP IN APPENDIX A**

Submitted by Petition  
(Lead Petitioner – Talia Landry)

**Explanation:** This article approves transfer of Town Parcels to the Tribe to recreate an accurate Wampanoag home site (circa 1700s) to traditionally educate the Tribal community and general public on Wampanoag history through interactive pre-contact exhibits. Such traditional structures support cultural preservation and conservation efforts encouraged by the Town's planning efforts.

**The Select Board makes no recommendation of Article 12 by a vote of 2-2**

**The Finance Committee makes no recommendation of Article 12 by a vote of 5-0**

**THIS CONCLUDES THE BUSINESS OF THE ANNUAL TOWN MEETING**

And you are hereby directed to serve this Warrant by posting up attested copies thereof, one at the Town Hall, one at the Post Office, and one each on the bulletin boards, thirty days at least before said meeting.

Hereof fail not and make return of this Warrant with your doings thereon to the Town Clerk at the time and place of said meeting.

Given under our hands this 28th day of August in the year two thousand and twenty-three.

Per Order of,  
**Select Board**

John J. Cotton, Chair

Thomas F. O'Hara, Vice-Chair

Carol A. Sherman, Clerk

David W. Weeden

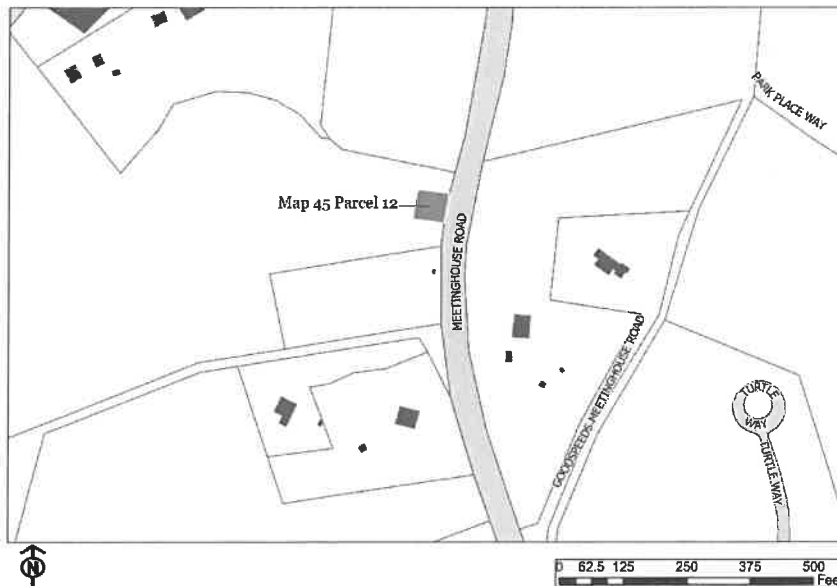
Michaela Wyman-Colombo

**APPENDIX A (page 1 of 3)**

**OCTOBER 16, 2023 TOWN MEETING ARTICLE 8 MAP 1**



**OCTOBER 16, 2023 TOWN MEETING ARTICLE 8 MAP 2**

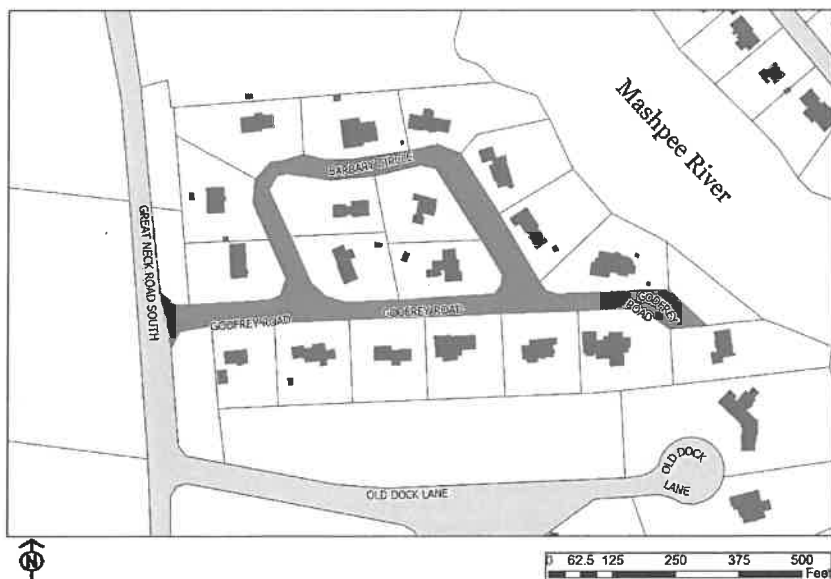


**APPENDIX A (continued - page 2 of 3)**

**OCTOBER 16, 2023 TOWN MEETING ARTICLE 8 MAP 3**

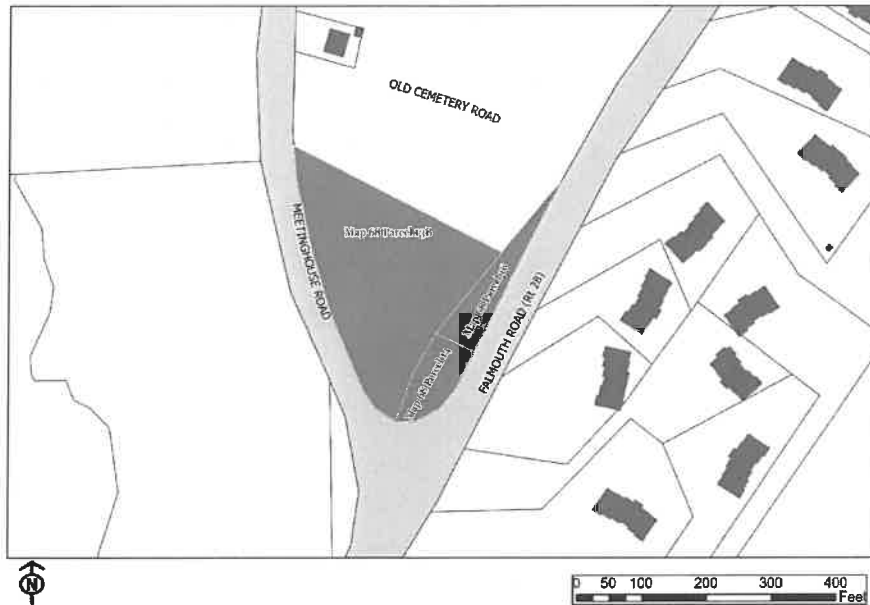


**OCTOBER 16, 2023 TOWN MEETING ARTICLE 9**

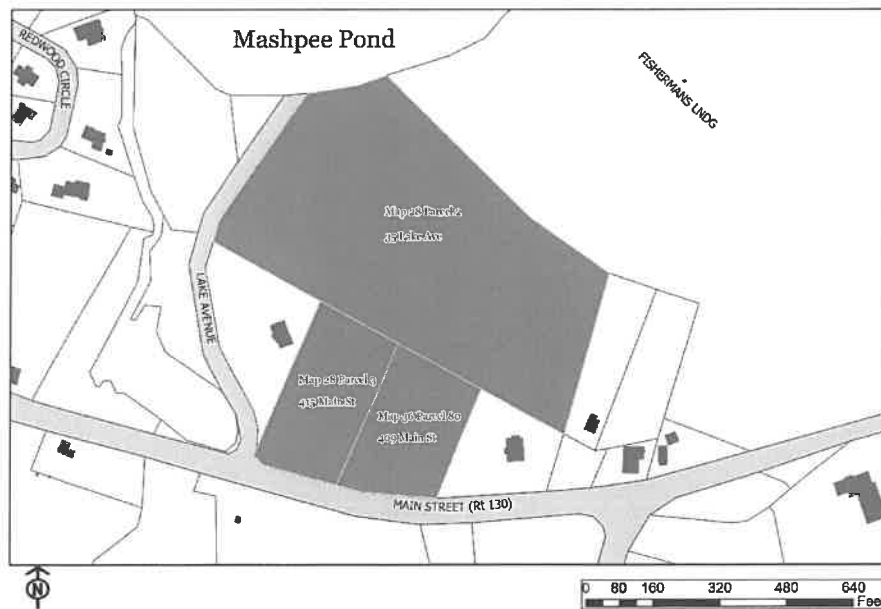


**APPENDIX A (continued - page 3 of 3)**

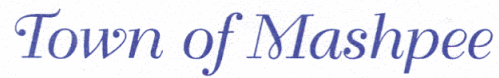
**OCTOBER 16, 2023 TOWN MEETING ARTICLE 10**



**OCTOBER 16, 2023 TOWN MEETING ARTICLE 12**



PUBLIC HEARING 7:30 - SOUTHWORTH  
275 QUINAQUISSET AVENUE



16 Great Neck Road North  
Mashpee, Massachusetts 02649

# Mashpee Planning Board Public Hearing Notice

Pursuant to Massachusetts General Laws, Chapter 40A Section 11, the Mashpee Planning Board will hold a public hearing on Wednesday, March 1, 2023 at 7:10PM at the Mashpee Town Hall, 16 Great Neck Road North, to consider an application from Southworth Mashpee Properties LLC, property owner, to modify the Willowbend Country Club Special Permit. The applicant proposes to construct a 14-unit single family cottage community immediately contiguous to the Willowbend Golf Course at 275 Quinaquisset Avenue (Map 69 Block 32). The existing single-family dwelling is proposed for demolition. With these changes the total unit count for the Willowbend project would be increased to 287 if the Board authorizes the annexation of 275 Quinaquisset into the Willowbend Special Permit as allowed. 287 dwelling units is the maximum number of dwelling units authorized under the Special Permit. All units will be connected to and served by the existing privately owned wastewater treatment plant which serves the entire Willowbend project.

Submitted by:

Mary E. Waygan  
Mashpee Planning Board

Publication dates: Friday, February 10, 2023  
Friday, February 17, 2023



**JACK McELHINNEY**

**Attorney at Law**

63 Shore Road, Suite 23  
Winchester, MA 01890  
jmcclhin@aol.com

Office: 781.729.7299  
Cell: 617.816.4092

September 5, 2023

Mashpee Planning Board  
Mashpee Town Hall  
16 Great Neck Road  
Mashpee, MA 02649

Attn: Evan Lehrer, Town Planner

Re: Southworth Mashpee Properties – Request for Continuance

Dear Mr. Lehrer:

Southworth Mashpee Properties LLC, respectfully requests that both of the public hearings relating to its Special Permit modifications currently scheduled for September 6, 2023 be continued to the October 18<sup>th</sup> meeting.

Thank you for your attention to this matter.

Sincerely yours,

  
Jack McElhinney, Esq.

Cc: Troy Miller  
Matt Eddy

PUBLIC HEARING 7:40 - SOUTHWORTH  
WILLOWBEND PERMIT AREA



# *Town of Mashpee*

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*16 Great Neck Road North  
Mashpee, Massachusetts 02649*

## **Mashpee Planning Board Public Hearing Notice**

Pursuant to Massachusetts General Laws, Chapter 40A Section 11 and the Town of Mashpee Zoning Bylaws Section 174-24(C)(9), the Mashpee Planning Board will hold a public hearing on Wednesday, June 21, 2023 at 7:20 PM at the Mashpee Town Hall, 16 Great Neck Road North, to consider an application from Southworth Mashpee Properties LLC, property owner, to modify the Willowbend Country Club Special Permit. This application requests that the existing condition in the November 1991 Special Permit modification decision affirming the limit of the total number of bedrooms within the Willowbend project area to 853 be amended

Submitted by:

Mary E. Waygan  
Mashpee Planning Board

Publication dates:     Friday, June 2, 2023  
                                 Friday, June 9, 2023

**JACK McELHINNEY**

**Attorney at Law**

63 Shore Road, Suite 23  
Winchester, MA 01890  
jmcclhin@aol.com

Office: 781.729.7299  
Cell: 617.816.4092

September 5, 2023

Mashpee Planning Board  
Mashpee Town Hall  
16 Great Neck Road  
Mashpee, MA 02649

Attn: Evan Lehrer, Town Planner

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Thank you for your attention to this matter.

Sincerely yours,

  
Jack McElhinney, Esq.

Cc: Troy Miller  
Matt Eddy

## CORRESPONDENCE

August 18, 2023

Mashpee Planning Board  
Attention: Evan Lehrer

Hi Evan,

Can you please share this letter and attachments with the other members of the Planning Board.

As a resident of the "Ockway Highlands Cluster Subdivision on Blue Castle Drive", I would like to request written feedback on the Planning Board's Outcome decision (discussed at the end of this letter) relative to the **road maintenance of Blue Castle Drive, between Great Neck Road South and the Project (Ockway Highlands Cluster Subdivision)** as it relates to the regulations set forth in the attached excerpt pages from the "Mashpee Planning Board Special Permit Decision" document dated 06-11-2014.

More specifically, in section "9. Public Safety Mitigation", this Mashpee Planning Board document specifies: ***"... the Applicant (Jacques Morin) shall upgrade and maintain the portion of Blue Castle Drive between the Project (Ockway Highlands Cluster Subdivision) and Great Neck Road South by re-grading Blue Castle Drive in its current location ... so that it constitutes an all-weather surface roadway, constructed by any combination and manipulation of soils, with or without admixtures, which produce a firm mass capable of supporting fire apparatus in all weather conditions and having an improved surface width of at least sixteen (16) feet and a cleared width of twenty (20) feet as shown on the plan submitted by the Applicant entitled "Existing Road Improvement Plan", Sheet 11 of 11, dated 5/1/14, prepared by Costa Associates..."***. See attached plan.

As a point of reference, and as of this writing, I believe there to only be 7 of the 14 (50%) lots that have Occupancy Permits. This low (50%) percentage of occupants, in conjunction to so many other open Applicant issues (junk yard & dirt mountain elimination on Carriage Lane, approval for previously discussed sidewalk elimination (\$100k? Applicant cost savings?) throughout the development, water drains functionality & runoff issues into resident driveways & working(?) swales, missing stop signs, missing radar speed signs, this open road maintenance issue, etc.) makes it far too early to transfer responsibility from the Applicant (Jacques Morin) to a Homeowner's Association.

As Howard Rosen and I presented at the May 3, 2023 Planning Board Meeting, the Applicant never disclosed to any of the Ockway Highlands Cluster Subdivision residents of any entire Blue Castle Drive maintenance obligations between the Project and Great Neck Road South. This was a complete surprise to all of us as we only recently discovered when we tracked down the above document in trying to figure out why the road was in such terrible shape and who was responsible for maintaining it.

Over the past 3 years that I have been affiliated with building a home in the Ockway Highlands Cluster Subdivision, and likely due to the significantly increased volume of commercial and construction vehicles working on the Project, I have seen nothing but road degradation, no visible sign of maintenance to speak of, sharp jagged road edges, numerous large potholes, no water runoff swales between the Project and Great Neck Road South, and several sections where the partially paved road surface is barely wide enough for 1 vehicle. The road is a safety hazard and I would hate for any town emergency vehicle to endure the punishment of driving up it at night. The following photos are just a few examples of the un-safe and un-maintained road between the Ockway Highlands Cluster Subdivision and Great Neck Road South.

**Bottom of Blue Castle Drive – near Great Neck Road South**



**Middle of Blue Castle Drive – between Great Neck Road South and Project**





**Top of Blue Castle Drive – heading toward paved road in Project**



I would encourage the original 06-11-2014 document stakeholders (members of the Planning Board, the Police & Fire Departments, the Town Manager, the Department of Public Works) and anyone else that you recommend to actually drive on Blue Castle Drive between the Project and Great Neck Road South, and witness the road condition to see if all of you feel the road meets the intent of the **06-11-2014 Planning Board document** and associated ***“Existing Road Improvement Plan”, Sheet 11 of 11, dated 5/1/14, prepared by Costa Associates”*** and *is considered safe for town emergency vehicles*. Upon your review, I would anticipate one of the following outcomes:

**Outcome #1:** The Planning Board feels that the Blue Castle Drive conditions between the Project and Great Neck Road South **DO** fully meet the 06-11-2014 Planning Board Document, which establishes an acceptable “baseline” of road maintenance condition once the HOA is formally transferred to the residents at some point in the future. The residents of the Ockway Highlands Cluster Subdivision would then not be expected to do anything further to improve the existing road condition – only to maintain what the road looks like today, as accepted by the Planning Board. Personally, I think it is hard to justify that the road has even remotely been maintained or even remotely meets the intent of the Planning Board document, including the Costa road plan, but that is a Planning Board decision.

**Outcome #2:** The Planning Board feels that the Blue Castle Drive conditions between the Project and Great Neck Road South do **NOT** meet the 06-11-2014 Planning Board Document, which would require having the Applicant (Jacques Morin) fulfil his obligations and repair the road to whatever degree the Planning Board deems fit. As a thought, if the Planning Board approves eliminating the mandate for sidewalks in the Project, this seemingly large amount of un-spent Applicant money (\$100k?) could be used to bring the road between the Project and Great Neck Road South up to a more suitable and safer condition, even if the Planning Board decides that the road no longer needs to fully comply with the original Costa plan.



**Outcome #3:** The Planning Board informs us residents that there is another document and/or agreement that supersedes the 06-11-2014 document. In this case, we would request a copy of the document in order to understand its content.

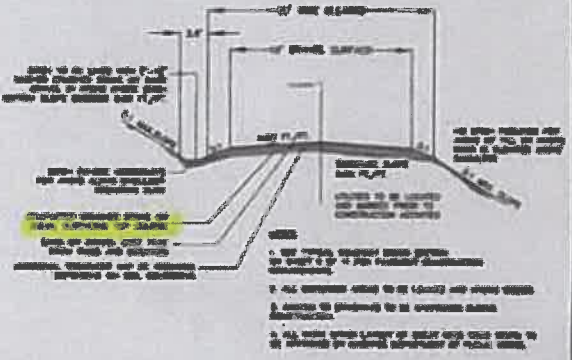
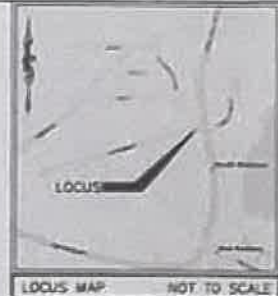
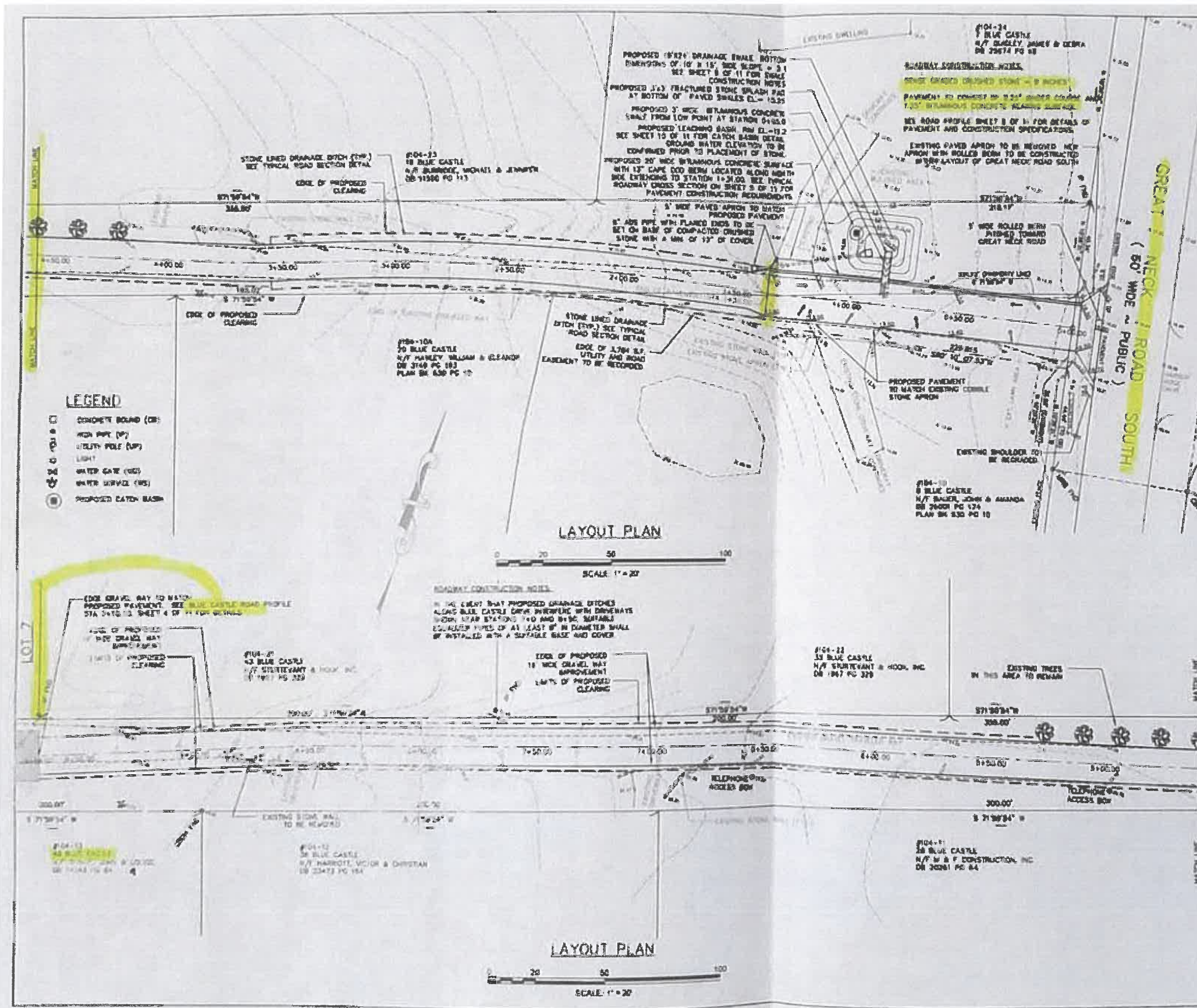
**Outcome #4:** The Planning Board feels that the 06-11-2014 Planning Board Document no longer applies to the Blue Castle Drive conditions between the Project and Great Neck Road South, and the applicable road reference sections are therefore **null and void**. This would then mean that both the Applicant and residents would not have exclusive responsibility for road maintenance.

Again, once the Planning Board and other critical town department stakeholders have a chance to review the Blue Castle Drive condition, between the Project and Great Neck Road South, please let us residents formally (in writing) know which above Outcome you decide on, so that we know how to proceed.


Thank you and best regards,

Tom McNabb  
58 Blue Castle Drive  
Mashpee, MA 02649

f.thomas.mcnabb@gmail.com



TYPICAL GRAVEL ROAD SECTION DETAIL

SCALE: 1" = 10'	
REVISION	DATE
1	5/7/14
EXTENDED PAVEMENT AND ADDED DITCH NOTE	WC MC
DESCRIPTION	BY APPR
APPLICANT: BCDM LLC	
10 CHARLES STREET, SUITE 210	
DARTON, MA 02114	
OWNER OF RECORD: BCDM LLC	
10 CHARLES STREET, SUITE 210	
DARTON, MA 02114	
PROJECT: ROAD IMPROVEMENT	
BLUE CASTLE DRIVE	
DARTON, MASSACHUSETTS	
SHEET NO. 11 OF 11	DATE: 04/01/14
SCALE: As Shown	FILE: BLUECASTLE.DWG
DRAWN BY: MC	CHECKED BY: CHRISTOPHER COSTA, PLS
PREPARED BY:	
 <b>Costa Associates, Inc.</b> CIVIL ENGINEERING • LAND SURVEYING • ENVIRONMENTAL CONSULTING 800 FAYHUNT ROAD, SUITE 201C      508-542-0414 • FAX: 508-542-0310 MASHPEE, MA 02543      838-748-0310 FAX      www.costaassociates.com	
DRAWING TITLE: EXISTING ROAD IMPROVEMENT PLAN	
ASSESSOR'S INFORMATION: N/A	





# Town of Mashpee

Bk 28196 Pg 307 #25192  
06-11-2014 @ 03:12p

16 Great Neck Road North  
Mashpee, Massachusetts 02649

- SIDEWALKS TO NOWHERE - PG. 10
- APPROVED PLANS - PG. 12
- ROAD UPGRADE - PG. 14
- ROAD MAINTENANCE - PG 14, 15

## MASHPEE PLANNING BOARD

### Special Permit Decision

BCDM, LLC

### **"Ockway Highlands" Cluster Subdivision**

### **Blue Castle Drive / Degress Road**

#### **I. Proposal**

This decision concerns an application by BCDM, LLC, 66 Charles Street, Suite 215, Boston, MA 02114 (the Applicant) to allow for the development of a cluster subdivision (hereafter, the "Project") located on an approximately 12.09 acre undeveloped parcel of land situated on Blue Castle Drive (an unpaved private road), with additional frontage on Degress Road (a paved Town road) (hereafter, the "Property"). The Property is shown on Mashpee Assessor's Map 104 as Lots 14, 20 and 28.

As submitted, the Project was depicted on a 10-sheet plan set entitled "Proposed Subdivision of Land, "Ockway Highlands" in Mashpee, Massachusetts" prepared by Costa Associates, Inc., issued on June 1, 2013. The original proposal was for 16 lots, which was later reduced to 15 lots, including one lot to be donated for affordable housing.

#### **II. Jurisdiction**

This application was made and this Decision has been issued by the Mashpee Planning Board pursuant to Sections 174-24.C, 174-47, and other provisions of the Mashpee Zoning By-Laws (the "By-Laws") as they existed on May 7, 2014, the date on which this Special Permit decision was approved. Where reference is made to the By-Laws, it shall refer to the provisions thereof as they existed on May 7, 2014.

#### **III. Chronology**

Application for this Special Permit was made with the Town Clerk on June 17, 2013. A public hearing was opened by the Planning Board on August 21, 2013 at 7:10 p.m. Notice of this hearing was duly given to abutters, the Planning Boards of adjoining towns and the Cape Cod Commission (mailed on July 19, 2013) in accordance with Massachusetts General Laws Chapter 40A and the Planning Board's Special Permit Regulations. Notice was also given by publication in The Mashpee Enterprise, a newspaper of general circulation in the Town of Mashpee on August 2 and 9, 2013. The hearing was continued on September 18, October 2, November 20, December 4 and December 20, 2013 and February 5 and 19 and March 5 and 19, and April 2 and 16 and May 5, 2014. Planning Board member Waygan was not present for the October 2 meeting, but has filed a Certification pursuant to MGL c. 39, Section 23D that she reviewed all the evidence introduced at that hearing session, including a review of the video recording of the session.



shall 1) pay for any costs associated with installing four-way stop signs at the intersections of Degraass Road with Tracy Lane and with Gia Lane, provided that said four-way stop signs are approved by the Mashpee Board of Selectmen upon petition of said residents, and 2) contribute \$3000 to a donation account to be held by the Town under MGL c.44, Section 53A for the specific purpose of acquisition and installation by the Town of a portable radar speed sign, such as a Traffic Logix Corp. SP 100 with Solar Panel and 3-Cell Battery back-up, with a universal mounting bracket and pole plates, as described in an email dated February 27, 2014 to the Town Planner from Joanna Van Der Veen of Traffic Logix, or a similar portable radar speed sign, along with any necessary post and installation, to be used on Degraass Road to help slow cut-through traffic in the neighborhood, but which may also be used as appropriate by the Town on occasion in other locations. Any remainder in said donation account after purchase and installation of said portable radar speed sign shall be returned to the Applicant.

#### PUBLIC SAFETY MITIGATION

9. Based on the recommendations of the Plan Review Committee, which includes representatives from the Police and Fire Departments, the Town Manager and the Mashpee Department of Public Works, the previously-noted memo from Capt. Scott Carline of the Mashpee Police Department, the concerns expressed by residents of Blue Castle Drive and other abutters at the public hearings, and to avoid an effective "dead-end" in excess of 800 feet as prohibited by the Planning Board's Rules and Regulations Regarding the Subdivision of Land, and to satisfy the requirement of Subsection 174-24.C.2. of the Zoning By-law that the Project not adversely affect public health or safety, the Applicant shall upgrade and maintain the portion of Blue Castle Drive between the Project and Great Neck Road South by re-grading Blue Castle Drive in its current location, subject to obtaining whatever right, title or interest to do so is necessary from any landowners where said location lies outside the recorded layout of Blue Castle Drive, including, but not limited to, an easement from the owner of 8 Blue Castle Drive, so that it constitutes an all-weather surface roadway, constructed by any combination and manipulation of soils, with or without admixtures, which produce a firm mass capable of supporting fire apparatus in all weather conditions and having an improved surface width of at least sixteen (16) feet and a cleared width of twenty (20) feet as shown on the plan submitted by the Applicant entitled "Existing Road Improvement Plan", Sheet 11 of 11, dated 5/1/14, prepared by Costa Associates, Inc., P.O. Box 128, 465 East Falmouth Highway, East Falmouth, Massachusetts 02536. All of said work shall be completed prior to the issuance of any occupancy permit for any residence within the subdivision, except for the required affordable house on Lot 15. This requirement for reconstruction and / or re-grading of a portion of Blue Castle Drive is not, and should not be interpreted as, a finding by the Planning Board that said section of roadway is approved by the Planning Board as a principal means of adequate access to abutting property, that said section of roadway constitutes a "Street" under the provisions of Section 174-3 of the Mashpee Zoning By-law or a finding under Section 174-12 of the Mashpee Zoning By-law that a building permit may be issued on any lot abutting said section of roadway.

10. Per the Applicant's agreement to do so, the portion of Blue Castle Drive between the Project and Great Neck Road South shall be maintained on an annual basis at the

THIS WAS NEVER DISCLOSED TO HOMEOWNERS & NOT IN ANY PROVIDED DOCUMENTATION





expense of the Applicant, or the proposed "Ockway Highlands Homeowner's Association, Inc." once it is established, by grading so as to preserve the crown of the road and the swales on each side as depicted in the cross section detail shown on the approved plans, so that it continues to provide the roadway capable of supporting fire apparatus in all weather conditions as specified in the previous Condition. Maintenance of Blue Castle Drive also includes inspection and cleaning as necessary of the drainage facilities located on the northerly side of Blue Castle Drive near the intersection with Great Neck Road South.

#### WATER QUALITY MITIGATION

11. The Applicant's Water Quality Report indicates that, even with its projected benefit from reduction in lawn size from a theoretical 5000 sq. ft. down to 2500 sq. ft. and inclusion of a provision in the Project association's Covenants and Restrictions requiring that all lawns and all lawn maintenance shall comply with the "Lawn Standards" issued by the Mashpee Conservation Commission, the Project will increase nitrogen loads to Ockway Bay by 81.55 kg/yr, primarily due to the 62.07% of the Project's nitrogen load originating from the Project's proposed Title 5 septic systems. In order to mitigate that negative impact on estuarine water quality the applicant shall either 1) install denitrifying on-site or cluster septic systems, approved by the Mashpee Board of Health, for all residences in the Project except the one lot to be deeded for affordable housing or 2) contribute \$14,000 to a donation account, to be held by the Town under MGL c.44, Section 53A, for the specific purpose of the planting by the Mashpee Shellfish Department of quahog shellfish seed in an appropriate location in Ockway Bay (480,000 1/4 inch little neck quahog seeds at 2.8¢ each plus approximately \$600 for protective netting to minimize predation, totaling approximately \$14,000 per the estimate by the Mashpee Shellfish Constable mentioned previously), as an alternative to on-site or clustered denitrifying septic systems.
12. The subdivision must apply for and obtain an approved nitrogen aggregation plan from the Mashpee Board of Health and the Massachusetts Department of Environmental Protection Division of Wastewater management to obtain three-bedrooms per lot. Said approval shall be required before the issuance of building permits for any residences in the Project. The required aggregation plan shall include the required affordable housing lot, so that it is permissible for a three-bedroom house.
13. Lawn size shall be limited to 2500 square feet and all lawn maintenance shall comply with the "Lawn Standards" issued by the Mashpee Conservation Commission. Only organic fertilizers may be used within the development and any pesticides used shall be of a type approved by the Town of Mashpee Board of Health and applied by licensed applicators. Use of fertilizers and pesticides shall be minimized and the use of natural pest control methods is encouraged.

#### GENERAL CONDITIONS

14. Construction activities shall not customarily take place in connection with this project (i) before 7 a.m. or after 6 p.m. Monday through Saturday, or (ii) on Sundays or holidays.
15. No de-icing chemicals other than a mixture of sand and calcium chloride or sand alone shall be used on any roadways, driveways or other impervious surfaces of the Project.
16. The applicant shall require that all construction personnel working on the project shall be familiar with, and comply with, the provisions of MGL c. 38, Section 6(b) regarding the discovery of human remains.
17. All conditions of this Special Permit shall be binding not only on the Applicant but also on all successors in interest and assigns of the Applicant.
18. No building or occupancy permits may be issued while there exists any substantial violation of the conditions of this Special Permit unless the Board, by a favorable vote of four members at a regular meeting, should allow such issuance.
19. Within sixty (60) days of the Board's endorsement of this decision, the applicant shall provide the Board and the Mashpee Building Inspector with copies of this Special Permit decision as recorded with the Barnstable County Registry of Deeds, showing the Book and Page at which it is recorded or its recordation number. This decision shall not take effect, and no work may be commenced on construction of this project until this decision has been so recorded.

#### **VI. Expiration, Extension or Modification**

Pursuant to Massachusetts General Law, Chapter 40A, Section 9 and Article IX, Subsection 174-47.C.(5) of the Mashpee Zoning Bylaw, this Special Permit shall lapse within 2 years, which shall not include such time required to pursue or wait the determination of any appeal from the grant hereof, if a substantial use hereof is not sooner commenced except for good cause. Initiation of construction of the proposed roadways shall constitute "substantial use" for these purposes.

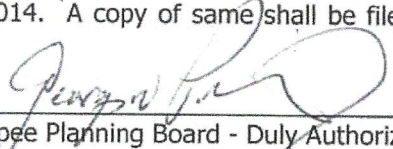
The applicant shall require a specific determination of good cause by a favorable vote of four members of the Planning Board if claiming an extension of the 2-year period, except to wait the determination of any appeal from the grant hereof.

Any further modifications of this special permit decision and accompanying plans shall require approval by the Board pursuant to the provisions of Section 174-24.C.(9) of the Zoning Bylaw.



## VII. Signature and Filing

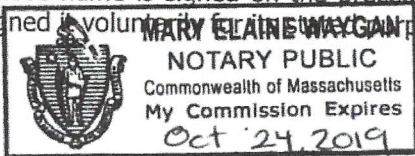
This Special Permit decision document, which incorporates by reference herein all attachments and plans, has been approved on this 7th day of May, 2014. A copy of same shall be filed with the Town Clerk in accordance with applicable law.

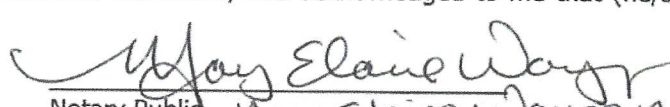
  
Mashpee Planning Board - Duly Authorized Member

Commonwealth of Massachusetts


Barnstable, ss

On this 1th day of May, 2014, before me, the undersigned notary public, personally appeared George Petersen, a member of the Mashpee Planning Board, proved to me through satisfactory evidence of identification, which were personally known to me, 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 the purpose.



  
Notary Public Mary Elaine Waygan  
My Commission Expires: Oct 24, 2019

A copy of this decision and the accompanying plans endorsed by the Planning Board has been duly filed on May 8, 2014 with the Town Clerk of Mashpee.

  
Town Clerk

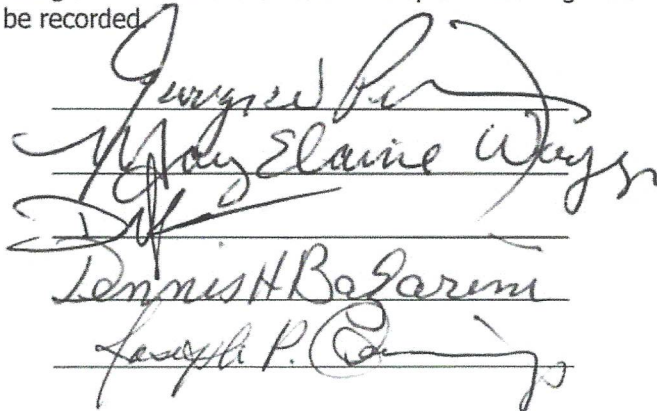
Notice of this decision was mailed on MAY 9, 2014 to the applicant, to the parties in interest designated in Massachusetts General Law, Chapter 40A, Section 11 and all persons at the hearing who requested such notice. Any appeal should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws 20 days after the date of such filing.

I, Debra Dami, Town Clerk of the Town of Mashpee, hereby certify that a copy of this decision and the accompanying plans endorsed by the Planning Board were filed with the office of the Town Clerk on May 8, 2014 and that no appeal of that decision was filed within 20 days thereafter.

  
Town Clerk

Date: June 2, 2014

Upon expiration of the statutory appeal period with no appeal having been filed, this Special Permit decision has been endorsed by the undersigned members of the Mashpee Planning Board on JUNE 4, 2014 and may be recorded.





Massachusetts Department of Environmental Protection

## **eDEP Transaction Copy**

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Here is the file you requested for your records.

To retain a copy of this file you must save and/or print.

Username: **EBELAIR**

Transaction ID: **1593788**

Document: **Groundwater Discharge Monitoring Report Forms**

Size of File: **1693.94K**

Status of Transaction: **Submitted**

Date and Time Created: **8/17/2023:3:47:40 PM**

**Note:** This file only includes forms that were part of your transaction as of the date and time indicated above. If you need a more current copy of your transaction, return to eDEP and select to "Download a Copy" from the Current Submittals page.





## Groundwater Permit

### DISCHARGE MONITORING REPORT

668
1. Permit Number
2. Tax identification Number
2023 QUARTERLY 3
3. Sampling Month & Frequency

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



## A. Facility Information

### 1. Facility name, address:

SOUTH CAPE VILLAGE		
a. Name		
672 FALMOUTH ROAD/RTE. 28		
b. Street Address		
MASHPEE	MA	02649
c. City	d. State	e. Zip Code

### 2. Contact information:

MYLES OSTROFF	
a. Name of Facility Contact Person	
6174311097	myles@chartweb.com
b. Telephone Number	c. e-mail address

### 3. Sampling information:

7/12/2023	RI ANALYTICAL
a. Date Sampled (mm/dd/yyyy)	b. Laboratory Name
BRENT PLANT	
c. Analysis Performed By (Name)	

## B. Form Selection

### 1. Please select Form Type and Sampling Month & Frequency

Discharge Monitoring Report - 2023 Quarterly 3	▼
--	---

☐ All forms for submittal have been completed.

2. ☐ This is the last selection.

3. ☐ Delete the selected form.



Groundwater Permit  
DISCHARGE MONITORING REPORT

668

1. Permit Number

2. Tax identification Number

2023 QUARTERLY 3

3. Sampling Month & Frequency

D. Contaminant Analysis Information

- For "0", below detection limit, less than (<) value, or not detected, enter "ND"
- TNTC = too numerous to count. (Fecal results only)
- NS = Not Sampled

1. Parameter/Contaminant	2. Influent	3. Effluent	4. Effluent Method
Units			Detection limit
TOTAL PHOSPHORUS AS P		6.0	0.010
MG/L			
ORTHO PHOSPHATE		6.2	0.020
MG/L			



## Groundwater Permit

### MONITORING WELL DATA REPORT

668
1. Permit Number
2. Tax identification Number
2023 QUARTERLY 3
3. Sampling Month & Frequency

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



## A. Facility Information

### 1. Facility name, address:

SOUTH CAPE VILLAGE		
a. Name		
672 FALMOUTH ROAD/RTE. 28		
b. Street Address		
MASHPEE	MA	02649
c. City	d. State	e. Zip Code

### 2. Contact information:

MYLES OSTROFF		
a. Name of Facility Contact Person		
6174311097	myles@chartweb.com	
b. Telephone Number	c. e-mail address	

### 3. Sampling information:

7/18/2023	RI ANALYTICAL
a. Date Sampled (mm/dd/yyyy)	b. Laboratory Name
KRISTIN PHELAN	
c. Analysis Performed By (Name)	

## B. Form Selection

### 1. Please select Form Type and Sampling Month & Frequency

Monitoring Well Data Report - 2023 Quarterly 3	▼
--	---

☐ All forms for submittal have been completed.

2. ☐ This is the last selection.

3. ☐ Delete the selected form.



Groundwater Permit  
MONITORING WELL DATA REPORT

668

1. Permit Number

2. Tax identification Number

2023 QUARTERLY 3

3. Sampling Month & Frequency

C. Contaminant Analysis Information

- For "0", below detection limit, less than (<) value, or not detected, enter "ND" <
- TNTC = too numerous to count. (Fecal results only)
- NS = Not Sampled
- DRY = Not enough water in well to sample.

Parameter/Contaminant	P-1	P-2	P-4	P-6		
Units	Well #: 1	Well #: 2	Well #: 3	Well #: 4	Well #: 5	Well #: 6
NITRATE-N	1.7	DRY	3.2	ND		
MG/L						
TOTAL NITROGEN(NO3+NO2+TKI	6.6	DRY	10.2	ND		
MG/L						
TOTAL PHOSPHORUS AS P	1.1	DRY	1.9	2.1		
MG/L						
ORTHO PHOSPHATE	ND	DRY	1.3	2.0		
MG/L						



## Groundwater Permit

DAILY LOG SHEET

668
1. Permit Number
2. Tax identification Number
2023 JUL DAILY
3. Sampling Month & Frequency

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



### A. Facility Information

1. Facility name, address:

SOUTH CAPE VILLAGE

a. Name

672 FALMOUTH ROAD/RTE. 28

b. Street Address

MASHPEE

c. City

MA

d. State

02649

e. Zip Code

2. Contact information:

MYLES OSTROFF

a. Name of Facility Contact Person

6174311097

b. Telephone Number

myles@chartweb.com

c. e-mail address

3. Sampling information:

7/31/2023

a. Date Sampled (mm/dd/yyyy)

WHITEWATER

b. Laboratory Name

JAMIE STEWART

c. Analysis Performed By (Name)

### B. Form Selection

1. Please select Form Type and Sampling Month & Frequency

Daily Log Sheet - 2023 Jul Daily

☐

All forms for submittal have been completed.

☐

2. This is the last selection.

☐

3. Delete the selected form.



**Groundwater Permit**  
DAILY LOG SHEET

668
1. Permit Number
2. Tax identification Number
2023 JUL DAILY
3. Sampling Month & Frequency

**C. Daily Readings/Analysis Information**

Date	Effluent Flow GPD	Reuse Flow GPD	Irrigation Flow GPD	Turbidity	Influent pH	Effluent pH	Chlorine Residual (mg/l)	UV Intensity (%)
1	9637							
2	9637							
3	12780					7		
4	12780							
5	12487					6.8		
6	12876					7		
7	11131					7.1		
8	11131							
9	11131							
10	12336					7.1		
11	10475					7.6		
12	10494					7.6		
13	12568					7.6		
14	11328					7.6		
15	11328							
16	11328							
17	11499					7.3		
18	12510					7.4		
19	10299					7.4		
20	12448					7.4		
21	11176					7.3		
22	11176							
23	11176							
24	10394					7.5		
25	10530					7.5		
26	10414					7.4		
27	14526					7.5		
28	9045					7.5		
29	9044							
30	9045							
31	8446					7.4		



## Groundwater Permit

### MONITORING WELL DATA REPORT

668  
1. Permit Number  
2. Tax identification Number  
2023 JUL MONTHLY  
3. Sampling Month & Frequency

## A. Facility Information

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Facility name, address:

SOUTH CAPE VILLAGE

a. Name

672 FALMOUTH ROAD/RTE. 28

b. Street Address

MASHPEE

c. City

MA

d. State

02649

e. Zip Code

2. Contact information:

MYLES OSTROFF

a. Name of Facility Contact Person

6174311097

b. Telephone Number

myles@chartweb.com

c. e-mail address

3. Sampling information:

7/18/2023

a. Date Sampled (mm/dd/yyyy)

WHITEWATER

b. Laboratory Name

JAMIE STEWART

c. Analysis Performed By (Name)

## B. Form Selection

1. Please select Form Type and Sampling Month & Frequency

Monitoring Well Data Report - 2023 Jul Monthly

☐

All forms for submittal have been completed.

☐

2. This is the last selection.

☐

3. Delete the selected form.



Groundwater Permit  
MONITORING WELL DATA REPORT

668

1. Permit Number

2. Tax identification Number

2023 JUL MONTHLY

3. Sampling Month & Frequency

C. Contaminant Analysis Information

- For "0", below detection limit, less than (<) value, or not detected, enter "ND"
  - TNTC = too numerous to count. (Fecal results only)
  - NS = Not Sampled
  - DRY = Not enough water in well to sample.
- <

Parameter/Contaminant	P-1	P-2	P-4	P-6		
Units	Well #: 1	Well #: 2	Well #: 3	Well #: 4	Well #: 5	Well #: 6
PH	6.3	DRY	6	6.2		
S.U.						
STATIC WATER LEVEL	18.5	DRY	476	50.7		
FEET						
SPECIFIC CONDUCTANCE	786	DRY	658	NS		
UMHOS/C						





## Groundwater Permit

### DISCHARGE MONITORING REPORT

668
1. Permit Number
2. Tax identification Number
2023 JUL MONTHLY
3. Sampling Month & Frequency

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



## A. Facility Information

### 1. Facility name, address:

SOUTH CAPE VILLAGE

#### a. Name

672 FALMOUTH ROAD/RTE. 28

#### b. Street Address

MASHPEE

#### c. City

MA

#### d. State

02649

#### e. Zip Code

### 2. Contact information:

MYLES OSTROFF

#### a. Name of Facility Contact Person

6174311097

#### b. Telephone Number

myles@chartweb.com

#### c. e-mail address

### 3. Sampling information:

7/12/2023

#### a. Date Sampled (mm/dd/yyyy)

RI ANALYTICAL

#### b. Laboratory Name

KRISTIN PHELAN

#### c. Analysis Performed By (Name)

## B. Form Selection

### 1. Please select Form Type and Sampling Month & Frequency

Discharge Monitoring Report - 2023 Jul Monthly

☐

All forms for submittal have been completed.

☐

### 2. This is the last selection.

☐

### 3. Delete the selected form.



**Groundwater Permit**  
DISCHARGE MONITORING REPORT

668
1. Permit Number
2. Tax identification Number
2023 JUL MONTHLY
3. Sampling Month & Frequency

**D. Contaminant Analysis Information**

- For "0", below detection limit, less than (<) value, or not detected, enter "ND"
- TNTC = too numerous to count. (Fecal results only)
- NS = Not Sampled

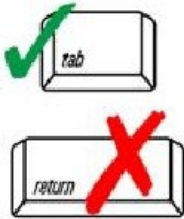
1. Parameter/Contaminant	2. Influent	3. Effluent	4. Effluent Method
Units			Detection limit
BOD	160	ND	3.0
MG/L			
TSS	220	ND	2.0
MG/L			
TOTAL SOLIDS	750		
MG/L			
AMMONIA-N	22		
MG/L			
NITRATE-N		0.60	0.050
MG/L			
TOTAL NITROGEN(NO3+NO2+TKN)		3.2	0.50
MG/L			
OIL & GREASE		0.60	0.50
MG/L			



## Groundwater Permit

668  
1. Permit Number  
2. Tax identification Number

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



Any person signing a document under 314 CMR 5.14(1) or (2) shall make the following certification

If you are filing electronic-ally and want to attach additional comments, select the check box.



### Facility Information

SOUTH CAPE VILLAGE  
a. Name  
672 FALMOUTH ROAD/RTE. 28  
b. Street Address  
MASHPEE MA 02649  
c. City d. State e. Zip Code

### Certification

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

ELIZABETH BELAIR 8/17/2023  
a. Signature b. Date (mm/dd/yyyy)

### Reporting Package Comments

FACILITY WAS IN FULL COMPLIANCE WITH ALL PERMIT REQUIREMENTS FOR THE MONTH

In accordance with the provisions of M.G.L. Chapter 40A, Section 5, and Section 1.1D of the Falmouth Zoning Bylaw, the Falmouth Planning Board shall conduct a public hearing on Tuesday, September 12, 2023 at 6:30 pm, at the Falmouth Town Hall, 59 Town Hall Square, Falmouth, MA, 02540, on the Zoning Articles proposed for the Warrant at the Annual Town Meeting to be held November 13, 2023.

The following summarizes the Zoning Articles that will be considered at the Public Hearing:

**Article:** To see if the Town will vote to amend Chapter 240 – Zoning – of the Code of Falmouth in the following manner for the purposes of correcting previously made errors and omissions:

1. Add “Research and philanthropic institutions” to the Agricultural Districts Use Table (Section 240-6.1B) as a Special Permit (“SP-Z”) from the Zoning Board of Appeals in all Agricultural Districts.
2. Add the word “Residential” to the density limitation sentence in Section 240-7.7B(4) Density Limitations and renumber that subsection as item #5. The new sentence will read: “The following residential density restrictions shall apply within the WRPOD.”
3. Add the words “See the Special Permit section of this Business Use Table below for more information on multifamily use allowed by special permit” in the Business Districts Use Table (Section 240-6.2B) Three-family dwelling standards section.
4. Change the reference in Section 240-7.2B(3)a. from “all development proposals listed in § 240-7.2B(2)b. must file an analysis of development...” to “all development proposals listed in § 240-7.2B(2) must file an analysis of development.
5. Insert an “Accessory Apartment – Attached” use, showing a “Y” for the Agricultural AA, Agricultural A, and Agricultural B districts in the Agricultural Districts Use Table (Section 240-6.1B) and change the existing “Accessory Apartment” use to an “Accessory Apartment – Detached” use showing a “SP-Z” for all Agricultural Districts. Repeat this action for the Residence Districts, except that a “N” will remain in the General Residence in both the attached and detached cases.
6. Add the following language to Section 240-14.1I Parking Area Design and Location:
  - (6) Parking shall be provided as per Section 240-14.1 Parking of the Zoning Bylaw. All parking shall be located in side or rear yards behind the front facade line of the building, the exact location to be determined by the Planning Board under site plan review. However, the number of the required parking spaces may be altered by the Planning Board under site plan review for uses allowed as a matter of right, or by the special permit granting authority for uses allowed by special permit in the following manner:
    - a. Number of spaces: may be reduced for mixed use developments at the discretion of the Planning Board based on the number of uses that are complementary in days and hours of operation. Parking may also be reduced if pedestrian amenities both on-site and between properties and the street line

are incorporated into the site planning. In no case shall parking be reduced below fifty percent (50%) that is required pursuant to Article XXII unless by special permit; the Board of Appeals allows for such pursuant to § 240-107B.

- b. Location of spaces: Parking may be located off premises if shared parking between businesses or uses can be demonstrated via long-term agreements, leases, and licenses of five (5) years or more and to the satisfaction of the Planning Board or Board of Appeals as the case may be. Shared parking shall not be allowed that is more than three hundred (300) feet from the property line.
7. Replace the current language in the Standards column of the Multi-family use in the Residence Districts Use Table (Section 240-6.6B) with “no more than three units if at least one unit is affordable.”
8. Delete the “1988” after “National Geodetic Vertical Datum” in the two sentences in Section 240-11.7B(1).
9. Replace the following values found in the Fresh Ponds Table (Section 240-11.7B(2)) as indicated below:
  - Crooked Pond Elevation – replace “12” with “32”
  - Flax Pond – replace “Flax Pond” with “Flax Pond (in Quissett)” and replace “21” with “13”
  - Insert “Miles Pond in Sippewissett” and insert “10” for the elevation
  - Remove the right parentheses at the end of “Unnamed Pond in the Coonamessett Valley below Sandwich Road
  - Rename “Trout Pond (near Chester street, formerly Flax Pond)” to “Trout Pond (near Chester Street formerly called Flax Pond)”
  - Rename “Round Pond near Coonamessett Pond” to “Round Pond (near Coonamessett Pond)”
10. Change the “No” in the Stable Use in the LI-B District Use Table (Section 240-6.3B) to “N”.
11. Change the “Y” to an “N” for a Class IV Restaurant in the B-2 District in the Business District Use Table (Section 240-6.2B).
12. Change the “SP-Z” to an “N” for a Class III Restaurant in the B-2 District in the Business District Use Table (Section 240-6.2B).
13. Change the reference in Section 240-6.6B under Special Permit Uses, Accessory Apartment, Item #6 (Monitoring), first paragraph from “3(b)” to “3(c)”.
14. Delete Section 240 – 1.1D Amendments and replace with the following:
  - (1) AMENDMENT PROCESS – An amendment to this Zoning Bylaw shall only be made by a two-thirds vote of Town Meeting except where state law provides a lesser quantum of

vote, and only after the zoning article is properly submitted to, and a public hearing is held by, the Planning Board in accordance with the procedures of G.L. c. 40A, § 5.

15. Delete the "Multiple Uses" use from the Business Districts Use Table (Section 240-6.2B) and the Industrial Districts Use Table (Section 240-6.3B).
16. Add the words "Any combination of community service, business, and commercial uses permitted by right or by special permit, together with multifamily use with a density greater than six (6) units per acre but not to exceed eight (8) units per acre" into the standards column of the "Residential and Commercial mixed-use" use in the Business Districts Use Table (Section 240-6.2B), renumber as item #3, and insert a "N" for the B1 district, "N" for the B2 district, "N" for the B3 district, and "SP-Z" for the BR district.
17. Add a "SP-P" in the Light Industrial A (LI-A) and Light Industrial B (LI-B) for the Waste Disposal use in the Industrial Districts Use Table (Section 240-6.3B).

Or do or take any other action on this matter. On behalf of the Planning Board.

**Article:** To see if the Town will vote to amend Chapter 240 – Zoning – of the Code of Falmouth by 1) deleting the Standards language from the Accessory Apartments use found in the Agricultural Districts Use Table (Section 240-6.1B) and the Residence District Use Table (Section 240-6.6B), 2) adding the following new section to Article 9 Special Regulations, and 3) renumbering the sections within Article 9 accordingly:

## **240 – 9.1 Accessory Apartments**

### **240 – 9.1A Purpose**

- (1) **PURPOSE** – The purpose of the accessory apartment section is to: broaden the range of housing choice in Falmouth by increasing the number of small dwelling units available for rent; encourage greater diversity of population with particular attention to young adult citizens and to allow for "Aging in Place" for our senior citizens; and promote more economic and energy efficient use of the town's housing supply. All this while maintaining the appearance and character of the town's single-family neighborhoods.

### **240 – 9.1B Definition**

**ACCESSORY APARTMENT** – Notwithstanding Sections 240-11.2A(2), and 240-11.5B(2), this is an additional dwelling unit, subordinate in size and accessory to the principal dwelling unit on the lot, located in either the principal dwelling or an accessory structure on the lot. An accessory apartment shall be constructed so as to maintain the appearance and essential character of a single-family dwelling or accessory structure thereto located on the lot.

### **240 – 9.1C Requirements**

- (1) Only one accessory apartment shall be allowed per lot.
- (2) The lot size shall be no less than 7,500 square feet (7,000 square feet minimum in sewer service areas).

- (3) Either the principal dwelling or accessory apartment must be owner-occupied for a period of 7 months in every calendar year, or owned by a nonprofit organization or government authority whose purpose is to provide affordable housing.
- (4) Either the principal dwelling or accessory apartment may be rented, but not both. The owner-occupied dwelling cannot be rented while owner is absent. Rental periods shall be not less than 6 months and weekly/monthly rentals (so called "summer rentals") are expressly prohibited. Neither the principal dwelling nor accessory apartment shall be used as commercial accommodations at any time.
- (5) The accessory apartment shall have no more than 2 bedrooms and a maximum of 800 square feet of floor area, or 40 percent of the floor area of the principal dwelling, whichever is less as measured using the exterior side of the first floor outside wall, plus the following: finished attic space, 50% of the first floor; finished ½ story, 75% of the first floor; ¾ story (gambrel), 90% of the first floor; 2nd floor colonial, 100% of the first floor; 3rd story colonial, 100% of the first floor.
- (6) The footprint of a new detached accessory dwelling unit cannot exceed that of the principal dwelling.
- (7) An existing dwelling in excess of 4 bedrooms may convert 2 of the existing bedrooms into one accessory unit.
- (8) The total number of bedrooms on the lot shall not exceed 4 where the lot contains less than 20,000 square feet. A property that has a preexisting bedroom count that exceeds 4 bedrooms per 20,000 square feet of lot area can maintain that number of current bedrooms but cannot increase that number.
- (9) Whether allowed as of right or by special permit, accessory apartments located on lots subject to the provisions of the Water Resource Protection Overlay District or the Coastal Pond Overlay District, the total number of bedrooms shall not exceed one bedroom per 10,000 square feet of lot area. Properties that preexist with a density greater than one bedroom per 10,000 square feet in a Coastal Pond Overlay District can maintain their existing bedroom count but cannot increase that count.
- (10) Owners of properties in a Coastal Pond Overlay District that want to increase the number of bedrooms beyond the density outlined in § 240-9.1C(9) can only do so provided that:
  - a. Both the principal dwelling and accessory apartment are connected to the municipal sewer system, and only to the extent allowed within the applicable sewer district bylaw or regulation; or
  - b. An on-site septic system with enhanced nitrogen removal approved by the Board of Health is installed on the property.

#### 240 – 9.1D Design Standards

- (1) DESIGN STANDARDS – Accessory apartments, whether a part of new construction, reconstruction, alteration, change to a single-family residence, or within an attached or detached accessory structure, shall maintain the following standards:

- a. The architectural effect, as the result of the accessory apartment being constructed within the principal dwelling, shall be that of a single-family residence consistent in its exterior character.
- b. The architectural effect, as the result of the accessory apartment being constructed as a detached accessory structure shall be incidental to a single-family structure and in the same character and period of architecture as the primary resident.
- c. Parking for the accessory apartment shall be provided on site.

#### 240 – 9.1E Procedures

- (1) An accessory apartment constructed within an existing single-family dwelling or an existing accessory structure attached thereto: Prior to the issuance of a building permit, Site Plan Review (Design Review), pursuant to § 240-12.2, shall be conducted by the Planning Board, taking into account the design standards, requirements and purposes of this accessory apartment bylaw. The application for Site Plan Review shall include the information contained in § 240-12.2D, unless waived by the Planning Board.
- (2) An accessory apartment constructed within an existing detached accessory structure or within a new detached accessory structure (not attached to a single-family dwelling): In addition to the site plan review requirements above, a special permit from the Zoning Board of Appeals shall also be required. In addition to the design standards, requirements, and purposes of this accessory apartment bylaw, the Zoning Board of Appeals shall take into account the standards found in § 240-12.1E(1), a. through i. of this Zoning Bylaw.

#### 240 – 9.1F Monitoring

- (1) An affidavit shall be submitted annually to the Building Commissioner, signed by the property owner, attesting that the principal dwelling or accessory apartment has been owner-occupied for a period no less than 7 months and not otherwise rented as set forth in § 240-9.1C(3). The Building Commissioner may allow a property owner to be absent during this 7-month period for cause, such as military assignment, work related issues, health issues, academic sabbatical, or a similar circumstance.

#### 240 – 9.1G Enforcement

- (1) Upon a written determination and notice by the Building Commissioner that the property owner has failed to comply with these provisions, the owner shall bring the accessory apartment into compliance within 90 days of such notice. Failing compliance, the property shall be restored to single-family dwelling status within 90 days of the failure determination, in a manner that complies with all State Building Code requirements and other local regulations or bylaws.

Or do or take any other action on this matter. On behalf of the Planning Board.

**Article:** To see if the Town will vote to amend Chapter 240 – Zoning – of the Code of Falmouth for the purpose of creating convenience and ease of use with respects to its Definitions by 1) alphabetizing the general definitions section of the code and 2) removing section specific



definitions from the general definitions section, placing them within their specific sections, and renumbering said sections accordingly.

Paper copies of the full article are available for public inspection at the Falmouth Town Clerk's Office and the Falmouth Planning Board's Office, both located at 59 Town Hall Square, Falmouth Massachusetts 02540, Monday through Friday 8:00 am to 4:30 pm. Additionally, a digital version of the full article can be found on the Planning Board's webpage at the following web address: <https://www.falmouthma.gov/342/Planning>.

Or do or take any other action on this matter. On behalf of the Planning Board.

Publications: 8.25.23, 9.1.23

TOWN OF FALMOUTH  
PLANNING BOARD  
PUBLIC HEARING NOTICE

APPLICANT: Michael Galasso

LOCATION: 545 Main Street  
Map# 47B 04 012 003

PROPOSAL: Reopening of the public hearing for the Special Permit application for parking within 5 feet of a property line

DATE & TIME: Tuesday, August 29, 2023 at 6:30pm

PLACE: Falmouth Town Hall  
59 Town Hall Sq  
Falmouth, MA 02540

Documents may be viewed online at:  
<https://www.falmouthma.gov/1327/Applications-Currently-Under-Review>

By Order of the Planning Board

Paul Dreyer  
Clerk/Secretary

PUBLISHING DATE:  
8.11.23  
8.18.23

TOWN OF FALMOUTH  
PLANNING BOARD  
PUBLIC HEARING NOTICE

APPLICANT: Geoffrey Nickerson for Conserv Goup, Inc.

Location: 81 Technology Park Drive  
Map# 15 04 027A 084

PROPOSAL: Special Permit application to allow parking within 5 feet of a property line

DATE & TIME: Tuesday, August 29, 2023 at 6:30pm

PLACE: Falmouth Town Hall  
59 Town Hall Sq  
Falmouth, MA 02540

Documents may be viewed online at:  
<https://www.falmouthma.gov/1327/Applications-Currently-Under-Review>

By Order of the Planning Board

Paul Dreyer  
Clerk/Secretary

Publishing Date:  
8.11.23  
8.18.23



# ***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:

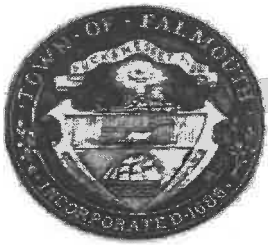
**Application #066-23 John F. and Heidi L. Gugliotta, 219 Great Bay Street, East Falmouth, MA.:**  
Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-10.2A of the Code of Falmouth to raze and reconstruct the existing, non-conforming, single-family dwelling on subject property known as 219 Great Bay Street, East Falmouth, MA.

Map 46A Section 17 Parcel 000 Lot(s) 108

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on  
**Thursday, September 7, 2023 at 6:30PM**  
You are invited to be present.

By Order of the Board of Appeals,  
Chairman, James T. Morse

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:

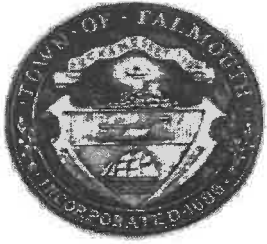
**Application #064-23 Stephen F. and Donna M. Foley, 13 Union Street, Charlestown, MA.:** Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-6.6 B. of the Code of Falmouth to allow a third garage bay on subject property known as 265 Walker Street, Falmouth, MA.

Map 47 Section 04 Parcel 022 Lot(s) 017

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on **Thursday, September 7, 2023 at 6:30PM**  
You are invited to be present.

By Order of the Board of Appeals,  
Chairman, James T. Morse

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:

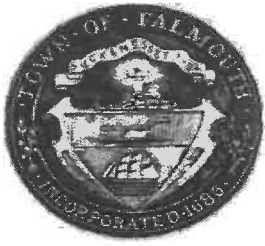
**Application #067-23 Joseph and Kristin Palomba, 102 Woodsmuir Court, Palm Beach Gardens, FL.:** Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-10.2A. and 240-11.3A(4) of the Code of Falmouth to raze and rebuild the existing, non-conforming dwelling exceeding 20% lot coverage by structures on subject property known as 19 Santuit Road, North Falmouth, MA.

Map 13 Section 08 Parcel 000 Lot(s) 015

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on **Thursday, September 7, 2023 at 6:30PM**  
You are invited to be present.

By Order of the Board of Appeals,  
Chairman, James T. Morse

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**

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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 #063-23 Lisa M. Colombo, 58 Stanhope Road, East Falmouth, MA.:** Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-11.3A(4) of the Code of Falmouth to install a plunge pool, exceeding 20% lot coverage by structures on subject property known as 25 Clam Lane, East Falmouth, MA.

Map 33 Section 16 Parcel 002C Lot(s) 005

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on **Thursday, September 7, 2023 at 6:30PM**

You are invited to be present.

By Order of the Board of Appeals,  
Chairman, James T. Morse

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>



## Falmouth Planning Board

59 Town Hall Square, Falmouth, MA 02540

Telephone: 508-495-7440 Fax: 508.495.7443 email: [planning@falmouthma.gov](mailto:planning@falmouthma.gov)

RECEIVED  
AUG 30, 2023 PM 1:38  
TOWN CLERK

August 30, 2023

Michael Palmer, Town Clerk  
Falmouth Town Hall  
59 Town Hall Square  
Falmouth, Massachusetts 02540

**Re: Special Permit Decision – Conserv Group, Inc.  
71 Technology Park Drive – 15 04 027A 091**

Dear Michael,

At its meeting on August 29, 2023, the Planning Board voted to approve the application of Conserv Group, Inc., under Article 14 – General Regulations and GRANT a Special Permit pursuant to Section 240-14.11(5)b. of the Zoning Bylaw to allow parking within 5 feet of a property line as part of the construction of a two (2) story, 28,681 square foot building for use as a Municipal Police Training Facility located at 71 Technology Park Drive, as depicted on the plan entitled: *"Site Development Plan Municipal Police Training Facility 71 Technology Park Drive in Falmouth, Massachusetts"(C-1)*, prepared by McKenzie Engineering Group, scale 1"=40', dated June 9, 2023 with most recent revision date of August 28, 2023 with the following:

### FINDINGS:

The applicant, Conserv Group, Inc., is applying to the Planning Board for a Special Permit under Section 240-14.11(5)b. of the Zoning Bylaw to allow parking within 5 feet of a property line at the subject property.

The undeveloped 134,586 square foot lot is located in the Light Industrial B (LIB) zoning district as well as in the Coastal Pond (West Falmouth Harbor) Overlay District and the Wildlife Corridor Migration Area.

On May 23, 2023, the Planning Board endorsed an ANR plan that divided 81 Technology Park Drive into two separate parcels ("Parcel A" and "Parcel B"). The proposed project will be constructed on "Parcel B", which is now known as "71 Technology Park Drive" (Parcel #15 04 027A 091), while the existing office building, located on "Parcel A" or "81 Technology Park Drive" (Parcel #15 04 027A 092), will remain in place.

The applicant is proposing to construct a two (2) story, 28,681 square foot Municipal Police Training Facility with a 64-space asphalt parking area, associated stormwater infrastructure, a private septic system, and minor landscaping improvements.





## **Falmouth Planning Board**

59 Town Hall Square, Falmouth, MA 02540

Telephone: 508-495-7440 Fax: 508.495.7443 email: [planning@falmouthma.gov](mailto:planning@falmouthma.gov)

The proposed building will be accessed using the existing 20' wide driveway located on the northwest side of the parcel and the parking will be located in southern portion of the property. The Fire Department did not raise any issues regarding circulation on the site.

Altogether, the proposed plan includes a total of sixty-four (64) parking spaces that comply with Section 240-14.1 of the Zoning Bylaw. Three (3) of the sixty-four (64) are accessible spaces that conform to the requirements set forth by the Massachusetts Architectural Access Board (521 CMR 23).

### **FINDINGS specific to Section 240-12.1E of the Zoning Bylaw**

#### **A. Adequacy of the site in terms of size for the proposed use**

The Planning Board finds the size of the site to be adequate. The 134,586 square foot lot can easily accommodate the proposed 28,681 square foot building, the associated parking, and the required open space.

#### **B. Suitability of the site for the proposed use**

The Planning Board finds the site suitable for the proposed use. The proposed Municipal Police Training Facility will be located within an Industrial area adjacent to similar uses within the Falmouth Technology Park.

#### **C. Impact on traffic flow and safety**

The Planning Board finds the impact on traffic flow and safety to be acceptable. All proposed driveways allow for safe, convenient, and efficient access and egress to and from the property and circulation within the site.

#### **D. Impact on neighborhood visual character, including views and vistas**

The Planning Board finds no impact on neighborhood visual character, including views and vistas. The proposed building is set back at the rear of the property and is complimentary to the surrounding uses.

#### **E. Adequacy of method of sewage disposal, source of water and drainage**

The Planning Board finds the method of sewage disposal, source of water, and drainage to be acceptable. The applicant is pursuing a shared septic system with the nearby office building (81 Technology Park Dr.), the property will be served by town water, and a Stormwater Management Permit from the Town's Engineering Division will be required.

#### **F. Adequacy of utilities and other public services**

The Planning Board finds the site to have adequate utilities and other public services. The property is served by municipal electric, telephone, cable and internet infrastructure.



## **Falmouth Planning Board**

59 Town Hall Square, Falmouth, MA 02540

Telephone: 508-495-7440 Fax: 508.495.7443 email: [planning@falmouthma.gov](mailto:planning@falmouthma.gov)

### **G. The effect of the proposed project on the adequacy of the supply of affordable housing in the Town**

The Planning Board finds no effect on the supply of affordable housing in Town.

**THEREFORE**, given the above and the conditions to be imposed below, the Planning Board finds the application for a Special Permit to allow parking within 5 feet of a property line will be in harmony with the general purpose and intent of this chapter and that the proposal will not have adverse effects which overbalance its beneficial effects on either the neighborhood or the Town.

#### **CONDITIONS:**

1. The plan shall be constructed as approved. Any changes shall be reviewed by the Planning Board to determine if a modification of this decision is necessary. Pursuant to §240-2.1C(2) of the Zoning Bylaw, no permit for full or partial occupancy shall be issued until the Planning Board is satisfied that the conditions of this approval and predecessor approvals have been met.
2. Construction of this project shall follow the Town's "Soil Erosion & Sediment Control Standard Conditions" document. References to the "Department of Public Works Engineering Division" shall be replaced with the "Planning Board" who is the permitting authority for this project.
3. The applicant shall obtain an approved Stormwater Permit prior to the issuance of a building permit or the start of construction.
4. The applicant shall record easements for the parking areas and lighting which are located over the property lines of the two lots and shall provide copies of which to the Planning Department prior to the issuance of occupancy permits.
5. Pursuant to Section 240-12.1I of the Zoning Bylaw, this Special Permit shall lapse three years from the date it is granted if a substantial use thereof has not sooner commenced except for good cause.

Ms. Harris	Yes	Mr. Druley	Yes
Ms. Kerfoot	Yes	Ms. Harting-Barrat	Yes
Mr. Dreyer	Yes	Mr. Fox	Yes
Mr. Leary	Yes		

**NOTE: Any appeal from this decision of the Planning Board can be made only to the Court and must be made pursuant to Section 17, Chapter 40A (MGL) as amended,**



## **Falmouth Planning Board**

59 Town Hall Square, Falmouth, MA 02540

Telephone: 508-495-7440 Fax: 508.495.7443 email: [planning@falmouthma.gov](mailto:planning@falmouthma.gov)

**and must be filed within twenty (20) days after the date of filing of this decision with the Town Clerk.**

Sincerely,

A handwritten signature in black ink, appearing to read "Jed C Cornock". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jed Cornock, AICP  
Town Planner

cc: Applicant



**TOWN OF FALMOUTH  
MASSACHUSETTS**

**BOARD OF APPEALS**

**Notice of Decision**

Notice is hereby given that the Board of Appeals of the Town of Falmouth has made a decision on a petition by John E. Geraghty, 32 Cove Street, East Falmouth, MA.

(Map 46 Lot 163) under 240-10.2A of the Zoning By-Law, as amended to **grant** the special permit to raze and rebuild the existing, non-conforming dwelling.

Appeals, if any, shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after **August 29, 2023** which is the date the Decision was filed in the office of the Town Clerk.

Please contact Noreen Stockman at 508-495-7460  
or [Noreen.stockman@falmouthma.gov](mailto:Noreen.stockman@falmouthma.gov) if you have any questions or comments  
full text of decision available at <http://www.falmouthmass.us>



**TOWN OF FALMOUTH  
MASSACHUSETTS**

**BOARD OF APPEALS**

**Notice of Decision**

Notice is hereby given that the Board of Appeals of the Town of Falmouth has made a decision on a petition by Anthony J. Jr. and Elaine Aveni, 42 Squibnockett Drive, East Falmouth, MA. (Map 32 Lot 011) under 240-10.2A of the Zoning By-Law, as amended to grant the special permit to expand the existing 2<sup>nd</sup> second floor and to make minor modifications to include a porch and new stairs.

Appeals, if any, shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after **August 25, 2023** which is the date the Decision was filed in the office of the Town Clerk.

Please contact Noreen Stockman at 508-495-7460  
or [Noreen.stockman@falmouthma.gov](mailto:Noreen.stockman@falmouthma.gov) if you have any questions or comments  
full text of decision available at <http://www.falmouthmass.us>



# ***TOWN OF FALMOUTH***

## **ZONING BOARD OF APPEALS**

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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 #069-23 Michael and Patricia Tor, 4 Otis Street, Framingham, MA.:** Applied to the Zoning Board of Appeals for a modification of special permit No.90-79 pursuant to section(s) 240-10.2A of the Code of Falmouth to allow alterations to the existing, non-conforming dwelling to include an addition, expansion of the second floor and porch / deck additions. The subject property is 10 Melrose Avenue, Falmouth, Ma.

Map 46B Section 03A Parcel 010 Lot(s) 010

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on **Thursday, September 14, 2023 at 6:30PM**  
You are invited to be present.

By Order of the Board of Appeals,  
Chairman, James T. Morse

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 #071-23 Mario Kula and Josephine D'Angelo, 7 Marshall Avenue, Natick, MA.:**

Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-10.2A and 240-11.3A(4) of the Code of Falmouth to raze and rebuild the existing, non-conforming, single family dwelling on subject property known as 9 Sycamore Street, Teaticket, MA.

Map 46A Section 04 Parcel 000 Lot(s) 026

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on

**Thursday, September 14, 2023 at 6:30PM**

You are invited to be present.

By Order of the Board of Appeals,  
Chairman, James T. Morse

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 #068-23 Jessica Kate Martin and Neil Whiting Cross, 31 Leland Street, Jamaica Plain, MA.:** Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-11.3A(4) of the Code of Falmouth to construct a single-family dwelling, exceeding 20% lot coverage by structures on subject property known as 0 Stowers Street (lot 202), Teaticket, MA.

Map 39 Section 11 Parcel 006 Lot(s) 202

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on **Thursday, September 14, 2023 at 6:30PM**  
You are invited to be present.

By Order of the Board of Appeals,  
Chairman, James T. Morse

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 #070-23 Jean F. Clark, Trustee, 35A North Main Street, Falmouth, MA.:** Applied to the Zoning Board of Appeals for a modification of special permit No.1737 pursuant to section(s) 240-10.2A and 240-6.2B of the Code of Falmouth to convert the existing 3-family into a duplex and construct a new duplex structure. The subject property is 711 West Falmouth Highway, West Falmouth, MA.

Map 24 Section 17 Parcel 002 Lot(s) 000

A public hearing will be given on this application, in the Select Board's Meeting Room, Town Hall, on

**Thursday, September 14, 2023 at 6:30PM**

You are invited to be present.

By Order of the Board of Appeals,  
Chairman, James T. Morse

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 Sandwich**  
THE OLDEST TOWN ON CAPE COD



**Planning Board**

100 Route 6A  
Sandwich, MA 02563  
Phone: 508-833-8001  
Fax: 508-833-8006  
Email: [planning@sandwichmass.org](mailto:planning@sandwichmass.org)

The Planning Board of the Town of Sandwich hereby gives notice that it will hold a Public Hearing on proposed amendments to the Sandwich Protective Zoning By-Law.

**Date and Time: September 19, 2023 at 6 p.m.**

**Location: Sand Hill School Community Center, 16 Dewey Avenue, Sandwich, MA**

**Proposed Amendments:**

- Proposed amendment to Article II Section 2200 Use Regulations for the purpose of adding a semi-permanent makeup use.
- Proposed amendment to Article II Section 2540.c. for the purpose of amending the affordability ratio and including an affordable income percentage.
- Proposed amendment to the Definitions Section for the purpose of adding a semi-permanent makeup definition.
- Proposed amendment to the Definitions Section for the purpose of amending the Livestock or Fowl definition by clarifying the meaning of pets.

Full text of the proposed Zoning Amendments, along with the current Protective Zoning By-Law and current Zoning Map may be viewed in the following ways:

1. Request a PDF from the Office of Planning & Development at [planning@sandwichmass.org](mailto:planning@sandwichmass.org)
2. Visit the Office of Planning & Development at 100 Route 6A, Sandwich, MA.
3. Call (508) 833-8001 if other accommodations are needed.

Jennifer Reisig, Chair  
Sandwich Planning Board  
Publication: Sandwich Enterprise  
Publication Dates: September 1, 2023 and September 8, 2023

**TOWN CLERK  
TOWN OF SANDWICH  
AUG 30 2023  
11 H 03 M A M  
RECEIVED & RECORDED**



**TOWN OF SANDWICH  
PUBLIC HEARING NOTICE  
BOARD OF APPEALS**

The Sandwich Board of Appeals will hold a Public Hearing on the application of John & Janeth Eby, Property Owners & Applicants, for a Variance under Sections 1321 & 2600 of the Protective Zoning By-Law for property located at 8 Birchwood Lane, Sandwich, MA Map 9, Parcel 293 for the purpose of obtaining a side yard setback variance. The Public Hearing will be held on September 12, 2023 at the Sand Hill School Community Center, 16 Dewey Ave, Sandwich, MA at 6:00 p.m. The public record information can be viewed at the Planning & Development office.

James Killion, Chair  
Sandwich Board of Appeals  
Publication: Sandwich Enterprise  
Publication Dates: August 25 & September 1, 2023



**TOWN OF SANDWICH  
PUBLIC HEARING NOTICE  
BOARD OF APPEALS**

The Sandwich Board of Appeals will hold a Public Hearing on the application of Walter and Susan Spigelman, Property Owners, and Walter and Susan Spigelman c/o Christopher J. Kirrane, Esq., Applicants, for a Special Permit under Section 4350 (2) of the Sandwich Protective Zoning By-Law for property located at 53 Pine Road, Sandwich, MA Assessor's Map #70, Parcel #33 for the purpose of construction over 301 s.f. in the floodplain. The Public Hearing will be held on August 22, 2023 at the Sand Hill School Community Center, 16 Dewey Ave, Sandwich, MA at 6:00 p.m. The public record information can be viewed at the Planning & Development office, 100 Route 6A, Sandwich, MA, Monday-Friday 8:30 a.m. to 4:30 p.m.

James Killion, Chair  
Sandwich Board of Appeals  
Publication: Sandwich Enterprise  
Publication Dates: August 4 and August 11, 2023

**Town of Sandwich**  
THE OLDEST TOWN ON CAPE COD



**Board of Appeals**

100 Route 6A  
Sandwich, MA 02563  
Phone: 508-833-8001  
E-mail: [planning@sandwichmass.org](mailto:planning@sandwichmass.org)

**VARIANCE DECISION**  
**Certificate of Approval**

**Petition #** 23-14  
**Current Property Owner(s):** Walter and Susan Spigelman  
**Applicant:** Walter and Susan Spigelman  
**Property Address:** 53 Pine Road  
**Map, Parcel** 70-33  
**Book, page:** 30343,118

TOWN CLERK  
TOWN OF SANDWICH

AUG 09 2023

3 H 35 M P M SL  
RECEIVED & RECORDED

On August 8, 2023, the Board of Appeals voted to approve a variance from Sections 1321 of the Sandwich Zoning By-law for property located at 53 Pine Road, as shown on Assessor's Map 70, Parcel 33, for the purpose of constructing an addition.

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to approve a variance and that copies of said decision, and of all plans referred to in the decision, have been filed with the Board of Appeals and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 provides that no variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering. A copy of that registered decision shall be returned to the Planning & Development office as proof of filing.

Any person aggrieved by this decision may appeal to the Superior Court or Land Court as in Section 17 of Chapter 40A, M.G.L. by filing a NOTICE OF ACTION AND COMPLAINT with the Town Clerk within twenty (20) days of the date of filing of this decision.

\_\_\_\_\_  
Board of Appeals Member

AUGUST 9, 2023  
\_\_\_\_\_  
Date

## **PROCEDURAL HISTORY**

1. An application from section 1321 of the Zoning By-Law for property located at 53 Pine Road was filed on June 23, 2023.
2. After proper notice was given the public hearing was opened on July 25, 2023 and closed on August 8, 2023.
3. The application was accompanied by a Site Plan entitled:  
Site Plan showing a proposed addition  
53 Pine Road, Sandwich Massachusetts  
Dated: June 12, 2022
4. The Board reviewed the application and all other materials submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing.
5. The following members attended the public hearing:

James Killion  
Christopher Neeven  
Erik Van Buskirk  
Chase Terrio

## **FINDINGS**

The Zoning Board of Appeals finds that:

1. The Board of Appeals finds that this application meets the requirements of Section 9, M.G.L. Chapter 40A.
2. Subject property is located within the R2 Zoning District and within the floodplain overlay district.
3. The property consists of 42,854 s.f. with 0 ft. of frontage on Pine Road.
4. The lot was divided through the Approval Not Required process in 1988. The division of land created the current non-conformities and as such requires variance relief.
5. The applicant requests a variance of 4.7ft. from the southerly setback, 6.1 ft. from the easterly setback and 200ft. for the frontage.
6. The applicant cites a hardship due to the uniquely shaped lot and the wetland resource areas.
7. The Board of Appeals finds that:
  - a) A literal enforcement of the provisions of this bylaw involves a substantial hardship, financial or otherwise,
  - b) The hardship is owing to circumstances relating to the soil conditions, shape, or topography of such land or structures but not affecting generally the zoning district in which it is located.

- c) Desirable relief may be granted without substantial detriment to the public good, or nullifying or substantially derogating from the intent or purpose of this by-law.

Motion: I, James Killion, move to adopt these findings as the findings of the Board of Appeals.

Second: Chase Terrio

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes

### **CONDITIONS:**

At the public hearing, the Board of Appeals considered potential conditions of approval for this variance. The Board of Appeals voted that the following conditions of approval shall be imposed upon any approval of a variance and that these conditions are reasonable and that the applicant and its successor-in-interest shall be bound by these conditions:

1. Failure to comply with all the conditions set forth in this decision shall terminate the grant of this variance.
2. The variance shall not take effect until it is recorded at the Barnstable County Registry of Deeds and a copy of the recorded Variance is provided to the Board of Appeals.

Motion: I, James Killion, move to impose the above conditions of approval upon any approval of the variance.

Second: Chase Terrio

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes

### **DECISION:**

Motion: I, James Killion, move to approve the variance application.

Second: Chase Terrio

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes

Chase Terrio

Yes



**Town of Sandwich**  
THE OLDEST TOWN ON CAPE COD



**Board of Appeals**

100 Route 6A  
Sandwich, MA 02563  
Phone: 508-833-8001  
Fax: 508-833-8006  
E-mail: [planning@sandwichmass.org](mailto:planning@sandwichmass.org)

**Special Permit  
Certificate of Approval**

<b>Petition #</b>	23-17
<b>Current Property Owner(s):</b>	Town of Sandwich
<b>Applicant:</b>	Sandwich Arts Alliance
<b>Property Address:</b>	130 Main Street
<b>Map, Parcel:</b>	73-187
<b>Book and Page:</b>	6802,303

TOWN CLERK  
TOWN OF SANDWICH

AUG 09 2023

3 H 35 M P MSZ  
RECEIVED & RECORDED

On August 8, 2023, the Board of Appeals voted to approve a special permit from Section 1330 & 2200 of the Sandwich Zoning By-law for property located at 130 Main Street, as shown on Assessor's Map 73, Parcel 187, for the purpose of operating a gift shop accessory to a cultural institution.

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to approve a special permit and that copies of said decision, and of all plans referred to in the decision, have been filed with the Board of Appeals and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering. A copy of that registered decision shall be returned to the Planning & Development office as proof of filing.

Any person aggrieved by this decision may appeal to the Superior Court or Land Court as in Section 17 of Chapter 40A, M.G.L. by filing a NOTICE OF ACTION AND COMPLAINT with the Town Clerk within twenty (20) days of the date of filing of this decision.

  
Board of Appeals Member

August 9, 2023  
Date

## **PROCEDURAL HISTORY**

1. Application from Section 1330 & 2200 of the Zoning By-Law for property located at 130 Main Street was filed on July 18, 2023.
2. After proper notice was given the public hearing was opened on August 8, 2023 and closed on August 8, 2023.
3. The application was accompanied by a parking plan showing the existing parking.
4. The Board reviewed the application and all other materials submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing.
5. The following members attended the public hearing:

James Killion  
Christopher Neeven  
Erik Van Buskirk  
Chase Terrio  
Kevin Kirrane

## **FINDINGS**

The Zoning Board of Appeals finds that:

1. The Board of Appeals finds that this application meets the requirements of Section 9, M.G.L. Chapter 40A
2. Subject property is located within the R1 Zoning District.
3. Subject property consists of 8712 s.f. with 48 ft. of frontage on Main Street.
4. The property was previously used as Sandwich's Town Hall.
5. The proposed retail space will be located on the first floor and is approximately 400 s.f.
6. Applicant is proposing hours of operation as Tuesday – Saturday 11 a.m. – 4 p.m.
7. Per section 3120 a retail store must have one space per 200 square feet of gross floor area. Historically parking has been limited to surrounding public parking. One handicap accessible space is provided.
8. Section 1330 requirements:
  - a) The Board of Appeals does not find that there are conditions peculiar to this case but not generally true for similar permitted uses on other sites in the same district;
  - b) The Board of Appeals finds that nuisance, hazard or congestion will not be created;
  - c) The Board of Appeals finds that there will not be substantial harm to the neighborhood;

- d) The Board of Appeals finds that there is no derogation from the intent of the bylaw such that the districts' objectives will be satisfied.

Motion: I, James Killion, move to adopt these findings as the findings of the Board of Appeals.

Second: Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes
	Kevin Kirrane	Yes

### **CONDITIONS:**

At the public hearing, the Board of Appeals considered potential conditions of approval for the special permit. The Board of Appeals voted that the following conditions of approval shall be imposed upon any approval of a special permit and that these conditions are reasonable and that the applicant and its successor-in-interest shall be bound by these conditions:

1. Failure to comply with all the conditions set forth in this decision shall terminate the grant of this special permit.
2. Pursuant to the requirements of Sandwich Protective Zoning By-law Section 1330, the grant of special permit shall expire upon:
  - (a) Transfer of ownership, prior to initiation of substantial construction on or occupancy of the site unless such transfer is authorized in this permit, or
  - (b) If no substantial construction or occupancy takes place within (3) three years of special permit approval, excluding such time required to pursue or await the determination of an appeal referred to in MGL C 40A, Section 17.
3. The special permit shall not take effect until it is recorded at the Barnstable County Registry of Deeds and a copy of the recorded special permit is provided to the Board of Appeals.

Motion: I, James Killion, move to impose the above conditions of approval upon any approval of the special permit.

Second: Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes
	Kevin Kirrane	Yes

### **DECISION:**

After reviewing the application, the plan and other materials submitted and after giving due consideration to testimony given at the public hearing, the Board hereby approves the special permit application for property located at 130 Main Street, as shown on Assessor's Map 73, Parcel 187, for the purpose of operating a gift shop accessory to a cultural institution.

Motion: I, James Killion, move to approve the special permit application.

Second: Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes
	Kevin Kirrane	Yes

**Town of Sandwich**  
THE OLDEST TOWN ON CAPE COD



**Board of Appeals**

100 Route 6A  
Sandwich, MA 02563  
Phone: 508-833-8001  
E-mail: [planning@sandwichmass.org](mailto:planning@sandwichmass.org)

**Special Permit  
Certificate of Approval**

**Petition #** 23-15  
**Current Property Owner(s):** Walter and Susan Spigelman  
**Applicant:** Walter and Susan Spigelman  
**Property Address:** 53 Pine Road  
**Map, Parcel** 70-33  
**Book, page:** 30343,118

TOWN CLERK  
TOWN OF SANDWICH

AUG 09 2023

3 H 35 M P M *SW*  
RECEIVED & RECORDED

On August 8, 2023 the Board of Appeals voted to approve a special permit from Sections 1330 & 2420 of the Sandwich Zoning By-law for property located at 53 Pine Road, as shown on Assessor's Map 70, Parcel 33, for the purpose of constructing an addition.

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to approve a special permit and that copies of said decision, and of all plans referred to in the decision, have been filed with the Board of Appeals and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering. A copy of that registered decision shall be returned to the Planning & Development office as proof of filing.

Any person aggrieved by this decision may appeal to the Superior Court or Land Court as in Section 17 of Chapter 40A, M.G.L. by filing a NOTICE OF ACTION AND COMPLAINT with the Town Clerk within twenty (20) days of the date of filing of this decision.

  
Board of Appeals Member

AUGUST 9, 2023  
Date

## **PROCEDURAL HISTORY**

1. An application from sections 1330 & 2420 of the Zoning By-Law for property located at 53 Pine Road was filed on June 23, 2023.
2. After proper notice was given the public hearing was opened on July 25, 2023 and closed on August 8, 2023.
3. The application was accompanied by a Site Plan entitled:  
Site Plan showing a proposed addition  
53 Pine Road, Sandwich Massachusetts  
Dated: June 12, 2022
4. The Board reviewed the application and all other materials submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing.
5. The following members attended the public hearing:

James Killion  
Christopher Neeven  
Erik Van Buskirk  
Chase Terrio

## **FINDINGS**

The Zoning Board of Appeals finds that:

1. The Board of Appeals finds that this application meets the requirements of Section 9, M.G.L. Chapter 40A.
2. Subject property is located within the R2 Zoning District and the floodplain overlay district.
3. The property consists of 42,854 s.f. with 0 ft. of frontage on Pine Road.
4. The proposed addition increases the non-conforming nature of the structure by 36%.
5. The extension and alteration of the pre-existing non-conforming structure is not substantially more detrimental to the neighborhood than the existing nonconforming structure.
6. Section 1330 requirements:
  - a) The Board of Appeals does not find that there are conditions peculiar to this case but not generally true for similar permitted uses on other sites in the same district;
  - b) The Board of Appeals finds that nuisance, hazard or congestion will not be created;
  - c) The Board of Appeals finds that there will not be substantial harm to the neighborhood;

- d) The Board of Appeals finds that there is no derogation from the intent of the bylaw such that the districts' objectives will be satisfied.

Motion: I, James Killion, move to adopt these findings as the findings of the Board of Appeals.

Second: Chase Terrio

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes

**CONDITIONS:**

At the public hearing, the Board of Appeals considered potential conditions of approval for the special permit. The Board of Appeals voted that the following conditions of approval shall be imposed upon any approval of a special permit and that these conditions are reasonable and that the applicant and its successor-in-interest shall be bound by these conditions:

1. Failure to comply with all the conditions set forth in this decision shall terminate the grant of this special permit.
2. Pursuant to the requirements of Sandwich Protective Zoning By-law Section 1330, the grant of special permit shall expire upon:
  - a) Transfer of ownership, prior to initiation of substantial construction on or occupancy of the site unless such transfer is authorized in this permit, or
  - b) If no substantial construction or occupancy takes place within (3) three years of special permit approval, excluding such time required to pursue or await the determination of an appeal referred to in MGL C 40A, Section 17.
3. The special permit shall not take effect until it is recorded at the Barnstable County Registry of Deeds and a copy of the recorded special permit is provided to the Board of Appeals.
4. Erosion controls must be in place prior to construction and maintained throughout.

Motion: I, James Killion, move to impose the above conditions of approval upon any approval of the special permit.

Second: Chase Terrio

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes

**DECISION:**

After reviewing the application, the plan and other materials submitted and after giving due consideration to testimony given at the public hearing, the Board hereby approves the special permit application for property located at 53 Pine Road, as shown on Assessor's Map 70, Parcel 33, for the purpose of constructing an addition.

Motion: I, James Killion, move to approve the special permit application.

Second: Chase Terrio

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes



**Town of Sandwich**  
THE OLDEST TOWN ON CAPE COD



**Board of Appeals**

100 Route 6A  
Sandwich, MA 02563  
Phone: 508-833-8001  
Fax: 508-833-8006  
E-mail: [planning@sandwichmass.org](mailto:planning@sandwichmass.org)

**Special Permit  
Certificate of Approval**

<b>Petition #</b>	<b>23-16</b>
<b>Current Property Owner(s):</b>	<b>Mark &amp; Kate Corliss</b>
<b>Applicant:</b>	<b>Mark &amp; Kate Corliss</b>
<b>Property Address:</b>	<b>5 Meadow Spring Drive</b>
<b>Map, Parcel:</b>	<b>50-001</b>
<b>Book, Page:</b>	<b>34489, 313 &amp; 345</b>

TOWN CLERK  
TOWN OF SANDWICH

AUG 09 2023

3 H 35 M P MSZ  
RECEIVED & RECORDED

On August 8, 2023, the Board of Appeals voted to approve a special permit from Section 1330 & 2540 of the Sandwich Zoning By-law for property located at 5 Meadow Spring Drive, as shown on Assessor's Map 50, Parcel 001, for the purpose of constructing a second principal dwelling on a lot.

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to approve a special permit and that copies of said decision, and of all plans referred to in the decision, have been filed with the Board of Appeals and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering. A copy of that registered decision shall be returned to the Planning & Development office as proof of filing.

Any person aggrieved by this decision may appeal to the Superior Court or Land Court as in Section 17 of Chapter 40A, M.G.L. by filing a NOTICE OF ACTION AND COMPLAINT with the Town Clerk within twenty (20) days of the date of filing of this decision.

  
Board of Appeals Member

August 9, 2023  
Date

## **PROCEDURAL HISTORY**

1. Application from Section 1330 & 2540 of the Zoning By-Law for property located at 5 Meadow Spring Drive was filed on July 10, 2023.
2. After proper notice was given the public hearing was opened on August 8, 2023 and closed on August 8, 2023.
3. The application was accompanied by a plan entitled:  
Plan of Land in East Sandwich  
Prepared for Mark & Kate Corliss  
Dated March 14, 2022
4. The Board reviewed the application and all other materials submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing.
5. The following members attended the public hearing:

James Killion  
Christopher Neeven  
Erik Van Buskirk  
Chase Terrio  
Kevin Kirrane

## **FINDINGS**

The Zoning Board of Appeals finds that:

1. The Board of Appeals finds that this application meets the requirements of Section 9, M.G.L. Chapter 40A
2. Subject property is located within the R-2 Zoning District.
3. Subject property has 10.83 acres with 465.34 ft. of frontage on Meadow Spring Drive.
4. Subject properties complies with the requirements of Section 2540.
5. Applicant is proposing to construct a second principal dwelling.
6. Section 1330 requirements:
  - a) The Board of Appeals does not find that there are conditions peculiar to this case but not generally true for similar permitted uses on other sites in the same district;
  - b) The Board of Appeals finds that nuisance, hazard or congestion will not be created;
  - c) The Board of Appeals finds that there will not be substantial harm to the neighborhood;
  - d) The Board of Appeals finds that there is no derogation from the intent of the bylaw such that the districts' objectives will be satisfied.

Motion: I, James Killion, move to adopt these findings as the findings of the Board of Appeals.

Second: Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes
	Kevin Kirrane	Yes

### **CONDITIONS:**

At the public hearing, the Board of Appeals considered potential conditions of approval for the special permit. The Board of Appeals voted that the following conditions of approval shall be imposed upon any approval of a special permit and that these conditions are reasonable and that the applicant and its successor-in-interest shall be bound by these conditions:

1. Failure to comply with all the conditions set forth in this decision shall terminate the grant of this special permit.
2. Pursuant to the requirements of Sandwich Protective Zoning By-law Section 1330, the grant of special permit shall expire upon:
  - a) Transfer of ownership, prior to initiation of substantial construction on or occupancy of the site unless such transfer is authorized in this permit, or
  - b) If no substantial construction or occupancy takes place within (3) three years of special permit approval, excluding such time required to pursue or await the determination of an appeal referred to in MGL C 40A, Section 17.
3. The special permit shall not take effect until it is recorded at the Barnstable County Registry of Deeds and a copy of the recorded special permit is provided to the Board of Appeals.
4. Erosion controls must be in place prior to construction and maintained throughout.

Motion: I, James Killion, move to impose the above conditions of approval upon any approval of the special permit.

Second: Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes
	Kevin Kirrane	Yes

**DECISION:**

After reviewing the application, the plan and other materials submitted and after giving due consideration to testimony given at the public hearing, the Board hereby approves the special permit application for property located at 5 Meadow Spring Drive, as shown on Assessor's Map 50, Parcel 001, for the purpose of constructing a second principal dwelling on a lot.

Motion: I, James Killion, move to approve the special permit application.

Second: Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Erik Van Buskirk	Yes
	Chase Terrio	Yes
	Kevin Kirrane	Yes

**Town of Sandwich**  
THE OLDEST TOWN ON CAPE COD



**Board of Appeals**

100 Route 6A  
Sandwich, MA 02563  
Phone: 508-833-8001  
Fax: 508-833-8006  
E-mail: [planning@sandwichmass.org](mailto:planning@sandwichmass.org)

**Special Permit  
Certificate of Approval**

<b>Petition #</b>	23-18
<b>Current Property Owner(s):</b>	Walter and Susan Spigelman
<b>Applicant:</b>	Walter and Susan Spigelman
<b>Property Address:</b>	53 Pine Road
<b>Map, Parcel</b>	70-33
<b>Book, page:</b>	30343,118

**TOWN CLERK  
TOWN OF SANDWICH**

**AUG 23 2023**

*12 H 36 M P M R*  
**RECEIVED & RECORDED**

On August 22, 2023, the Board of Appeals voted to approve a special permit from Sections 1330 & 4350 of the Sandwich Zoning By-law for property located at 53 Pine Road, as shown on Assessor's Map 70, Parcel 33, for the purpose of constructing an addition in the flood zone.

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to approve a special permit and that copies of said decision, and of all plans referred to in the decision, have been filed with the Board of Appeals and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering. A copy of that registered decision shall be returned to the Planning & Development office as proof of filing.

Any person aggrieved by this decision may appeal to the Superior Court or Land Court as in Section 17 of Chapter 40A, M.G.L. by filing a NOTICE OF ACTION AND COMPLAINT with the Town Clerk within twenty (20) days of the date of filing of this decision.

  
\_\_\_\_\_  
Board of Appeals Member

*August 23, 2023*  
\_\_\_\_\_  
Date

## **PROCEDURAL HISTORY**

1. Application from sections 1330 & 4350 of the Zoning By-Law for property located at 53 Pine Road was filed on August 1, 2023.
2. After proper notice was given the public hearing was opened on August 22, 2023 and closed on August 22, 2023.
3. The application was accompanied by a Site Plan entitled:  
Site Plan showing a proposed addition  
53 Pine Road, Sandwich Massachusetts  
Dated: June 12, 2022
4. The Board reviewed the application and all other materials submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing.
5. The following members attended the public hearing:

James Killion  
Christopher Neeven  
Chase Terrio  
Mary Foley

## **FINDINGS**

The Zoning Board of Appeals finds that:

1. The Board of Appeals finds that this application meets the requirements of Section 9, M.G.L. Chapter 40A.
2. Subject property is located within the R2 Zoning District and the Floodplain Overlay District.
3. The property consists of 42,854 s.f. with 0 ft. of frontage on Pine Road.
4. Applicant is proposing a 20 X 24 ft. addition.
5. The lot is located in the FEMA ZONE AE elevation 14.
6. Section 4350 (2) requirements:
  - a) The Board of Appeals finds that susceptibility of the proposed facility and the contents to flood damage and the effect of such damage upon the site and surrounding property is minimal.
  - b) The Board of Appeals finds that there are not alternative locations for the proposed use which are not subject to flooding or erosion.
  - c) The Board of Appeals finds necessity to the facility of a waterfront location.
  - d) Board of Appeals finds that the relief requested is the minimum necessary.
7. No changes to the existing grade are proposed.
8. There shall be no increase in the number of bedrooms.
9. The Board of Appeals approved Special Permit 23-15 and Variance 23-14 for the subject property on August 8<sup>th</sup>, 2023.

Motion: I, James Killion, move to adopt these findings as the findings of the Board of Appeals.

Second: Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Chase Terrio	Yes
	Mary Foley	Yes

**CONDITIONS:**

At the public hearing, the Board of Appeals considered potential conditions of approval for the special permit. The Board of Appeals voted that the following conditions of approval shall be imposed upon any approval of a special permit and that these conditions are reasonable and that the applicant and its successor-in-interest shall be bound by these conditions:

1. Failure to comply with all the conditions set forth in this decision shall terminate the grant of this special permit.
2. Pursuant to the requirements of Sandwich Protective Zoning By-law Section 1330, the grant of special permit shall expire upon:
  - a) Transfer of ownership, prior to initiation of substantial construction on or occupancy of the site unless such transfer is authorized in this permit, or
  - b) If no substantial construction or occupancy takes place within (3) three years of special permit approval, excluding such time required to pursue or await the determination of an appeal referred to in MGL C 40A, Section 17.
3. The special permit shall not take effect until it is recorded at the Barnstable County Registry of Deeds and a copy of the recorded special permit is provided to the Board of Appeals.
4. Erosion controls must be in place prior to construction and maintained throughout.

Motion: I, James Killion, move to impose the above conditions of approval upon any approval of the special permit.

Second: Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Chase Terrio	Yes
	Mary Foley	Yes

**DECISION:**

After reviewing the application, the plan and other materials submitted and after giving due consideration to testimony given at the public hearing, the Board hereby approves the special permit application for property located at 53 Pine Road, as shown on Assessor's Map 70, Parcel 33, for the purpose of constructing an addition in the flood zone.

Motion:        I, James Killion, move to approve the special permit application.

Second:       Christopher Neeven

Vote:	James Killion	Yes
	Christopher Neeven	Yes
	Chase Terrio	Yes
	Mary Foley	Yes



**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WATERWAYS REGULATION PROGRAM**

**Notice of License Application Pursuant to M. G. L. Chapter 91  
Waterways License Application Number 23-WW01-0059-APP  
NJCJ LLC**

**NOTIFICATION DATE: AUGUST 4, 2023**

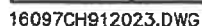
Public notice is hereby given of the Waterways application by NJCJ LLC to reconstruct, maintain, and expand a pier, ramp, float, and boat lift at 21 Metacomet Road in the municipality of Mashpee, in and over the waters of Great River. The proposed project has been determined to be water-dependent.

The Department will consider all written comments on this Waterways application received within thirty (30) days subsequent to the "Notification Date". Failure of any aggrieved person or 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, to submit written comments to the Waterways Regulation Program by the Public Comments Deadline will result in the waiver of any right to an adjudicatory hearing in accordance with 310 CMR 9.13(4)(c).

Project plans and documents for the Waterways application are on file for public viewing electronically at: <https://eeaonline.eea.state.ma.us/EEA/PublicApp/> (enter "21 Metacomet Road" in the Search Page as the Location Address). If you need assistance, please contact [brendan.mullaney@mass.gov](mailto:brendan.mullaney@mass.gov) or if you do not have access to email, please leave a voicemail at (508) 946-2707 and you will be contacted with information on alternative options.

Written comments must be addressed to: Brendan Mullaney, Environmental Analyst, DEP Waterways Regulation Program, 20 Riverside Drive, Lakeville, MA 02347 or [brendan.mullaney@mass.gov](mailto:brendan.mullaney@mass.gov).

**REGISTERED PROFESSIONAL ENGINEER**

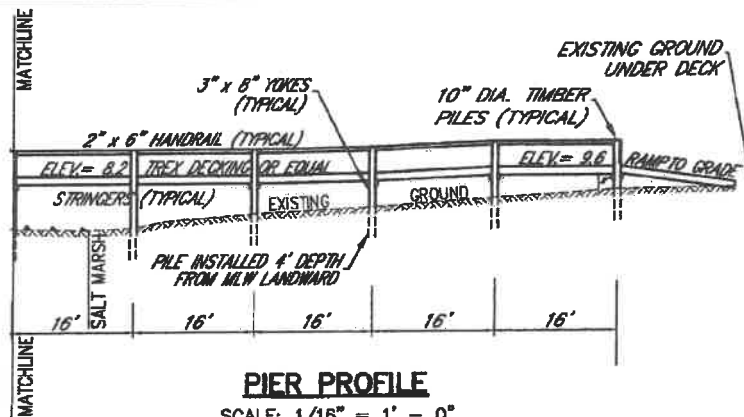


I CERTIFY THAT THIS PLAN WAS MADE IN ACCORDANCE  
WITH THE RULES AND REGULATIONS OF THE REGISTERS  
OF DEEDS.

4-20-23

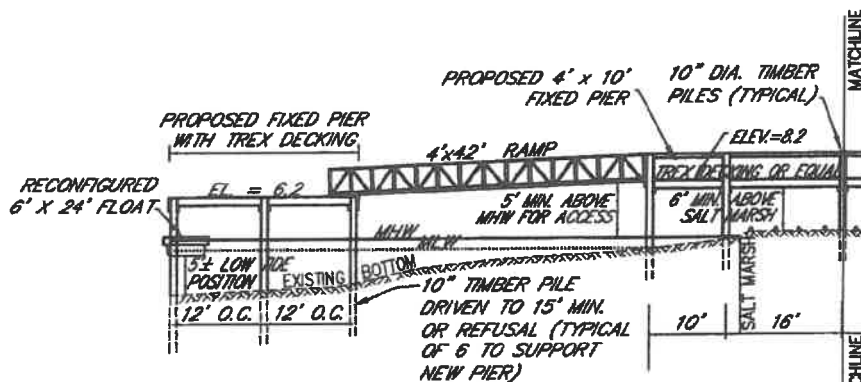
DATE

REGISTERED PROFESSIONAL ENGINEER



**PIER PROFILE**

SCALE: 1/16" = 1' - 0"



**PIER PROFILE**

SCALE: 1/16" = 1' - 0"



SCALE: 1/16 INCH = 1 FEET

**DATUM:**

BASED ON NAVD88 DATUM

PURPOSE: PRIVATE RECREATIONAL USE

PLAN ACCOMPANYING PETITION OF  
NJC LLC, 21 METACOMET ROAD  
PLAN OF PROPOSED PIER  
IN GREAT RIVER  
MASHPEE, BARNSTABLE COUNTY, MA

PLAN BY:



17 ACADEMY LANE, SUITE 200  
FALMOUTH, MA 02540  
508.465.1225

DATE: APRIL 19, 2023

SHEET: 2 OF 3



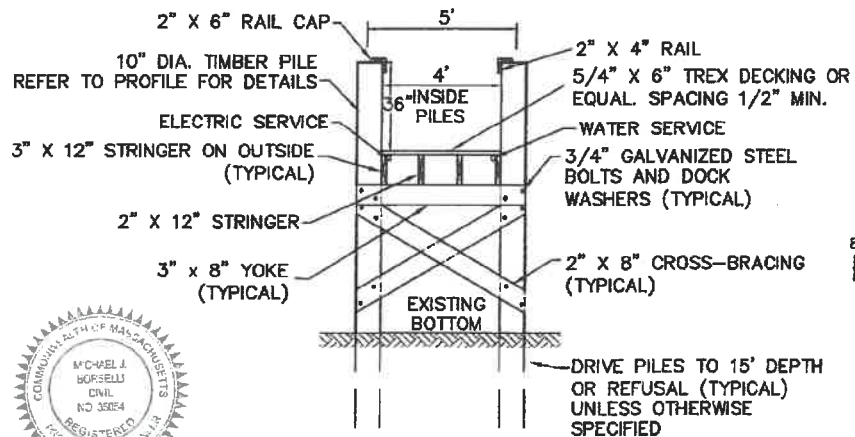
I CERTIFY THAT THIS PLAN WAS MADE IN ACCORDANCE  
WITH THE RULES AND REGULATIONS OF THE REGISTERS  
OF DEEDS.

4-20-23

DATE

*[Signature]*

REGISTERED PROFESSIONAL ENGINEER



**TYPICAL PIER CROSS-SECTION**

SCALE: 1/2" = 1' - 0"



**DATUM:**

BASED ON NAVD88 DATUM

**PURPOSE:** PRIVATE RECREATIONAL USE

PLAN ACCOMPANYING PETITION OF  
NJCJLLC, 21 METACOMET ROAD  
PLAN OF PROPOSED PIER  
IN GREAT RIVER  
MASHPEE, BARNSTABLE COUNTY, MA

PLAN BY:



17 ACADEMY LANE, SUITE 200  
FALMOUTH, MA 02540  
508.495.1225

DATE: APRIL 19, 2023

SHEET: 3 OF 3