



# Town of Mashpee

## Planning Board

16 Great Neck Road North  
Mashpee, Massachusetts 02649

**Meeting of the Mashpee Planning Board**  
**Wednesday, October 20, 2021**  
**Waquoit Meeting Room**  
**Mashpee Town Hall**  
**16 Great Neck Road North**  
**Mashpee, MA 02649**  
**7:00 PM**

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

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

### Call Meeting to Order

- Pledge of Allegiance

### Approval of Minutes

- Review of Meeting Minutes from October 6, 2021

### Public Discussion

### New Business

- Request by Longfellow Design Build to withdraw without prejudice its special permit application for a retail grocery store at 647 Falmouth Road / 9 Shellback Way.
- Vote to set public hearing date for an application made by Southworth Mashpee Properties LLC to modify its special permit and amend a definitive subdivision.

### Chairman's Report

- Miscellaneous updates

### Town Planner Report

- LCP Next Steps
- Potential Joint Meeting with Affordable Housing Committee
- Open Meeting Law Complaints

### Board Member Committee Reports

- Cape Cod Commission, Community Preservation Committee, Design Review, Plan Review, Environmental Oversight Committee, Historic District Commission, Military Civilian Advisory Council.

### Correspondence

- Town of Falmouth Notices
- Town of Sandwich Notices
- August 2021 Discharge Monitoring Report for South Cape Village – N= 2.6
- July 2021 Discharge Monitoring Report for South Cape Village – N=5.8
- June 2021 Discharge Monitoring Report for South Cape Village – N=2.7

### Additional Topics (not reasonably anticipated by Chair)

MASHPEE TOWN CLERK

### Adjournment

OCT 18 2021

RECEIVED BY: \_\_\_\_\_



# *Town of Mashpee*

# *Planning Board*

16 Great Neck Road North  
Mashpee, Massachusetts 02649

**Mashpee Planning Board  
Minutes of Meeting  
Wednesday, October 06, 2021 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:** Chairman John Fulone, Mary Waygan, Joseph Callahan, Dennis Balzarini, Robert (Rob) Hansen

**Also Present:** Evan Lehrer – Town Planner, Jack McElhinney – Attorney for Southworth Mashpee Properties, Robert Mills- Attorney for NextGrid, Daniel Server- Director of Land Development for NextGrid,

**Absent:** John (Jack) Phelan

## **CALL TO ORDER**

Chairman Fulone called the meeting of the Planning Board to order at 7:00PM. The Pledge of Allegiance was recited.

## **APPROVAL OF MINUTES – September 14, 2021**

Ms. Waygan noted to add her participation as remote. Also, on page 5, input that Chairman Fulone formally seated Rob Hansen to sit as alternate.

Secretary corrected the date of the meeting as it was held Tuesday not Wednesday.

## **MOTION:**

**Ms. Waygan made a motion to approve the minutes for September 14, 2021 with aforementioned edits. Mr. Balzarini seconded. All in favor.**

## **PUBLIC DISCUSSION**

**Public discussion intended for dialogue on matters that are not pertinent to duly advertised public hearings on the agenda.**

All Public Comment this evening was relative to Public Hearing.

## **PUBLIC HEARING – 7:10p.m.**

**To review the following zoning articles proposed for action at the October 18, 2021 Town Meeting**

The following articles are listed in the order they were moved by the Planning Board.



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

*To add new section 174-45.7: Solar Energy Systems to the Mashpee Zoning Bylaws (proposed solar overlay)*

Mr. Lehrer wanted to inform the Board that the purpose for taking this article first is because this is the primary article. If the recommendation is one way or the other, the other articles need to be approved to make this one function. It would only make sense to review the merits of this article because the others are administrative to ensure it's functional within the zoning bylaw itself.

Mr. Balzarini asked if this was drafted by a private person that got enough signatures to get it petitioned. He does not see the Town getting any benefits from this. He referenced other Towns like Falmouth receiving deeded conservation land. We are not getting anything from this developer, not even some electricity. He wants to look at this a little better, to get something for it.

Mr. Lehrer knows other towns are contemplating the end of life of the panels. The articles submitted are silent as far as what happens to the panels at the end of life. In terms of public benefit, there were recent amendments from the Department of Revenue that allows developers of solar to enter into more lucrative payments in lieu of tax structures. They are difficult to assess taxes for. New regulations relative to pilots are advantageous, but noted to the comment as to what happens at the end use of life of the panel.

Mr. Balzarini thought they could have some land to build affordable housing. He feels like they should get something if they are putting forth a new zoning article.

Ms. Waygan said this has been before the Board prior in different forms. She wants to reserve her comments until after Public Comment.

Attorney Robert Mills approached the podium and is representing his client, the proponent of the articles, NextGrid. He is present with their Director of Land Development, Daniel Server. These gentleman are not the signatories of the petition. NextGrid will be the ones to own, develop, and benefit from the zoning articles.

Ms. Waygan is asking if any of the ten signers are here tonight.

Mr. Mills said they are not and they are not represented, but he submitted the articles and gathered the signatures for his client. He is here to answer questions relating to zoning itself and Mr. Server is prepared to answer questions after his presentation. This is the meat of the five articles, really 6, but one is a standalone that doesn't relate to Solar Overlay District. If there are no questions specifically related to Solar Energy Systems Overlay District Warrant Article, he can turn it over to Mr. Server.

Mr. Hansen saw this notice submission online, and noted there are a number of building lots defined on the perimeter of the property. Will they be consumed in the solar farm?



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Mr. Mills noted there are several parcels on Algonquin Road and one on Rt. 151, and some on the rear of a paper route. It will all be one parcel, one 40 acre parcel with no residential.

Mr. Balzarini said he would like to see this pass but he was wondering if there was another opportunity to get a bite out of this, he would like to get something.

Mr. Lehrer stated if these articles pass at Town Meeting, if the zoning is activated, the petitioners client will be submitting a Special Permit to this Board. He asks that Board members avoid getting into site specific projects, keep it to zoning. If this is approved they will be back before this Board.

Ms. Waygan said she doesn't think there is anything in the zoning that would require an offset for open space, that would have to come from zoning, or affordable housing offset.

Daniel Server, Director of Land Development with NextGrid Inc. introduced himself. NextGrid is a renewable energy developer specializing in solar facilities and battery storage. They mostly use disturbed land such as sand pits, landfills, parking lots, and roof tops. The bulk of their business is on Cape Cod. They completed a large sand pit project in Chatham. Roof top and parking lot projects in Dennis, Yarmouth, Hyannis, Brewster, and Provincetown. They have fully permitted sand pit projects in Bourne, Brewster, and Harwich, all for solar energy development. They are currently in the process of purchasing this 40 acre site off of Rt.151, the address is 420 Nathan Ellis Highway.

If this passes and they acquire a special permit, they will be the sole owners going forward. What is the Town getting? This property from the 50's-2000's was an active sand pit, stripped of all top soil and used for sand and gravel mining. They are proposing to add a use to current zoning by way of Special Permit to add solar on site. It will add a substantial amount of money to the tax base while having little to no impact on the community. There will be no increase in traffic, no new impervious surface, and no impact on ground water, no new nitrogen, and no increase stress on school district, police, or fire. They won't be seen or heard by abutters or surrounding residents. To ensure it has no impact to abutters, they are committed to provide a 50 ft. natural wooded buffer with an additional row of evergreen to remain out of the line of site. There will be inverters more than 1000ft from any structure to ensure it remains silent. Under the panels they will plant New England pollinator mix creating a meadow of local flora and fauna. After construction, there will be an average of 3 vehicle trips yearly for maintenance.

They are trying to create value for the Town of Mashpee by developing a pilot program, which is payment in lieu of taxes, while working within the confines in the state of MA. Additionally, finding more ways to generate more income to the Town. The Town is in agreement to donate this parcel and with the reversion clause, get the parcel back and pay the lease to the Town for 20 years. The lease agreement proposed will be \$2 Million to the Town of Mashpee over a 20 year period. MA Smart Program, the mechanism in which we sell power back to Eversource, allows for community solar benefit. The Town and residents are allowed to opt in and get \$0.02 off a kilowatt for every kilowatt consumed. Based on average consumed, it would be 10-15% total savings. A Town this



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size with wastewater facilities mirrors other Towns that have saved somewhere between \$100,000 a year on power by opting into these programs. That is savings and income to the Town without adding hardship and low impact development. Mr. Server is planning a community information session on Saturday October 16<sup>th</sup> from 9a.m.-11a.m. at the Mashpee Senior Center. E-mail address for [solarenergymashpee@gmail.com](mailto:solarenergymashpee@gmail.com) for more information or any questions. He looks forward to working with the Town.

Mr. Hansen asked if the perimeter of the proposed area will have a security fence or will people be able to walk through at will. What are the security aspects in keeping people out?

Mr. Server stated there will be a natural wooded buffer of 50ft., essentially a line of trees, woods, and a 7ft. grounded fence that leaves 6in. under the fence for animals.

Mr. Balzarini asked if the trees on the outside lots will be cut. Trees help alleviate nitrogen and without the trees it will go into the water table.

Mr. Server reiterated the natural wooded buffer on all sides. Trees will have to be cut. He reminded everyone this is a C2 zoning and this is private land, so this could be developed in other ways in the future that may not be so environmentally friendly. He also reiterated the New England pollinator mix of grasses and flowers that will be planted underneath.

Mr. Callahan was seeking clarity by asking if the Mashpee program is 10-15% savings per household, he wanted to make sure he heard correctly, that is great.

Chairman Fulone also restated \$2 Million in revenue for the Town over 20 years.

Mr. Balzarini asked where the solar farm connects to.

Mr. Server stated it's connected to distribution lines off of Nathan Ellis Highway. The construction access will be off of Algonquin Rd.

Ms. Waygan brought everyone's attention to page 10, stating the majority of this land is zoned R5.

Mr. Server said there is a line down the middle showing north and south, north is C2 and south is R5. Everything not in those residential parcels could be developed as C2.

Mr. Lehrer stated the majority of the zoning is C2, southerly 25-30% is R5.

Ms. Waygan mentioned Mr. Server said something about a payment in lieu of taxes. What is that program?

Mr. Server explained it is an alternative to the normal tax the Town enters into, it's a negotiated amount of money they would pay the Town instead of a normal tax. In the early days of solar in MA, solar was not taxable. Sometimes towns would tax the fence or minor upgrades. DOER went in and



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mapped out how the towns could enter into these payments in lieu of taxes and would get the full amount of benefit of the solar.

Ms. Waygan repeated Mashpee would earn approximately \$2 Million over twenty years on page 13. She asked if that was in taxes.

Mr. Server noted the payment in lieu of taxes plus the land donation and lease.

Ms. Waygan asked if he had a signed agreement with the Town. Can he get a Memorandum of Agreement signed by the Town? She asked if he would have it for Town Meeting. That's a big problem for her.

Mr. Server said that's a good question, he does not have a signed agreement as he was waiting until this would gain approval. He hopes when this comes back for Special Permits the Board would have authority to make that a condition.

Ms. Waygan said no, not unless it is put in the zoning bylaw. If it is not in the zoning bylaw then there is no agreement with him. She is happy he is interested in Mashpee, she was not sure if she has heard of this company associated with this parcel before.

Mr. Lehrer stated it is new to him. He also wants to note the article submitted by petition is identical to the article submitted to the Selectmen. It proposed medium and large scale solar across all zoning districts on the premise the Town cannot unreasonably regulate solar energy systems. Currently, it is limited to industrial districts by Plan Review. The majority are small in size and can't sustain large scale or commercial solar. Upon submission of the article there is effective prohibition of the use, but they did not want to put it on the Warrant at that time. After meeting with Town Council, it was decided the Town is reasonably regulating use. Council felt the Town would be protected against any challenges in regards to denying Special Permits outside the confines of zoning.

Mr. Lehrer also stated when he and Ms. Waygan met with Council and the Board of Selectmen his takeaway was they do not want to incentivize the development of solar energy systems anywhere but disturbed parcels, areas like parking lots sand pits. That's why it was removed from consideration. Sometime thereafter, the property owner reached out to the Planning Board and asked if the Board would consider working with them to sponsor articles. As property owners are in power under the Zoning Act to submit articles, which is why we are here today. It is generally responsive to feedback from initial refusals where it's isolated from singular parcels, there are some trees, with relatively new growth but a large percent is sand. The performance and design standards are the same. One change that was submitted by petition was the ability for the Board in a Special Permit decision could set a unique lot coverage maximum because in C2 lot coverage maximum is 20%. This would mean you can only put panels on 20% of the parcel. The changes say there may be a need or want to exceed 20% to meet more solar access needs. It will be at the discretion of the Board to increase lot coverage by way of that proposal.





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Ms. Waygan said the owner brought back this proposed amendment to the zoning, but this is by citizen petition. Is the owner submitting these or it is by citizen's petition?

Mr. Lehrer clarified the property owner was the primary petitioner who got 10 signatories.

Ms. Waygan states that if it's submitted by owner it goes to the Board of Selectmen for consideration to be put on the Warrant. If it's by citizen petition it goes on the Warrant either way, Selectmen don't have a say. She reiterated it's not submitted by owner, it's a citizen's petition.

Mr. Fulone explained the owner is likely one of the citizens who signed the petition.

Ms. Waygan said last time this went from the Planning Board to the Board of Selectmen and they didn't put it on the Warrant. This came back to the Planning Board, and she informed the applicant to go back to the Selectmen and convince them to put it on the Warrant. She doesn't know what happened but now she is seeing it presented as a citizens petition.

Mr. Lehrer is claiming to have a different understanding of what transpired. He remembers submitting a letter in response to the Planning Boards motion of the day. It was pursuant to the MA Zoning Act, the property owner is in the power to submit articles to the Selectman. Again, that is the end of the process.

Ms. Waygan stated it is a citizen's petition, not owner. That is not the avenue it took. Her takeaway with Town Council was not that the Board wanted to target areas that were disturbed, that was not her takeaway. That was a while ago though and she does not have notes.

Mr. Fulone inquired what the next step is.

Mr. Lehrer said the Board can take a motion on the entirety of articles or it can be done individually. He advised the Board to take Public Comment prior to making any recommendation.

Matthew Haney- He is with MEZ Realty, owner of Lakeside Estates. They are the direct abutters. MEZ Realty used to lease a part of this area for Lakeside Estates. Wells were discontinued and the lease is over. Lakeside Estates supports it 100%. It will be developed one way or another. They prefer solar, no traffic, ground base, no noise, large buffer, no pollution, and the Town gets tax revenue. The law recently changed. The Town can assess taxes or payment in lieu of taxes as part of a pilot program. He had called up Falmouth to get more information on the systems. He noted you can't negotiate a payment in lieu of taxes until after the article is passed. The negotiation has to take place with the Board of Assessors. As an abutter, one directly impacted by this use, they are in full support, it's a great use for the Town.

Lynne Barbee- She has family that lives in Old Barnstable Road area. She saw this on the Warrant and went for a drive, she is very pro solar. She drove the Lakeside development and down Algonquin Road. All she saw was trees and then residences. Then she saw the R5 zoning, she thought they should be building housing not cutting down acres of trees to build solar farms. She



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likes solar, but she thinks this area is largely forested. She is curious if there was an environmental impact about wildlife, the pond, or the people who live across the street. Why don't we have housing? The presenter passed out a sheet that suggests it is better to go solar than housing and she disagrees. There is already housing there, right on RT. 151, she would much rather see that area be housing.

Mike Ronhock- He had a question on overlay, is it specific to only this property? Are there other properties or going forward, if someone else wanted to do this down the road will this affect that? Is this a spot zoning? Are there different qualifications if someone wants to propose something in R5, is this going to affect someone else doing something in an R5?

Mr. Lehrer said this proposal is in regard to specific parcels. It is specific to that collection of parcels. In terms of future amendments, the Town could modify to be inclusive of other parcels after some planning work. It would require additional zoning and a warrant article. Spot zoning issues are worked out in the courts, typically. There are a number of things the courts look to, first being the Town Meeting vote. They don't want to overturn home rule legislature. They will look at the district and size. It's a large parcel and due to the nature of other parcel size, it would never be able to develop large scale energy systems. The courts generally uphold decisions of Town Meeting. He doesn't think a spot zoning case would be substantiated enough for a court to uphold. This is a collection of parcels under singular control. A couple years ago the Town modified where it is inclusive of your roof, and everyone by right is allowed to do small scale. When it comes to medium large scale systems this won't affect that.

Arden Russell- There seems to be a lack of clarity about this parcel. Some people are saying its vegetated and some people are saying it's a sand pit. It seems to be the intent of the Town to be on previously disturbed parcels. Can somebody answer the question as to what percentage of this parcel is already disturbed?

Mr. Survey noted a major bulk of the property is a sand pit, about 1/4 of the site. The current satellite view is really ivy covered sand. Previously disturbed area is roughly 40% and they are leaving a good ring vegetated. To say it's completely disturbed is not what he is saying. Historically, it was industrially used as a sand pit.

Mr. Callahan asked what would be left undisturbed.

Mr. Survey said about 20% left undisturbed, he would look at the site plan.

Mr. Lehrer cautions against site specific technical questions.

Mr. Fulone asked for a motion to recommend it go to Town Meeting.

Mr. Lehrer suggested to vote on each article. He encouraged making a motion to recommend, to not recommend, or to take no action.





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## **MOTION:**

**Ms. Waygan makes a motion to not recommend Town Meeting approve 174-45.7: Solar Energy Systems to the Mashpee Zoning Bylaws. Seconded by Mr. Balzarini.**

## **Roll Call Vote:**

**Ms. Waygan- Yes, Mr. Callahan- No, Mr. Fulone- No, Mr. Balzarini- Yes**

NOTE: Above is the original motion. A second motion was then made without rescinding original motion, just rewording for consistency and clarity for Town Meeting.

Ms. Waygan suggested someone could make a motion to recommend.

This time Mr. Callahan said he would make a motion to take no action.

Mr. Lehrer said if the vote were to happen again, it would be the same outcome. He thinks its 2-2.

Ms. Waygan was concerned people would question why there was not a motion to recommend.

Mr. Lehrer noted it is more helpful to make the motion in the affirmative so people can vote no and there is no confusion.

## **MOTION:**

**Ms. Waygan makes a motion to recommend Town Meeting approve 174-45.7: Solar Energy Systems to the Mashpee Zoning Bylaws. Seconded by Mr. Balzarini.**

## **Roll Call Vote:**

**Mr. Fulone – Yes, Mr. Callahan –Default/Take No Action, Ms. Waygan – No, Mr. Balzarini – No**

Ms. Waygan wanted to reiterate neither one passes.

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

*To see if the Town will vote to amend Section 174-48.1 Subsection B (Plan Review Committee)*

Mr. Lehrer said this is not relative to Solar Energy Overlay. This was recommended to modify zoning to be inclusive of Town Engineer.

Ms. Waygan asked who put this on the warrant.

Mr. Lehrer stated this was discussed at a Plan Review Meeting. The Town Manager discussed with Board of Selectmen and Mr. Lehrer wrote a letter for it to be placed on the Warrant.

Ms. Waygan asked if this engineer is appointed to Plan Review in the zoning bylaw and Town bylaw.

Mr. Lehrer said department heads usually deal with code compliance related issues, a Town Manager can opt to not sit and appoint a designee, and this is a formal way to acknowledge the



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added value of engineers. All this means it to add Town Engineer with all the other titles into the article.

## **MOTION:**

**Ms. Waygan makes a motion to recommend Town Meeting approve to amend Section 174-48.1 Subsection B. Mr. Callahan seconded. All in favor.**

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

*To amend §174-31 Land Space Requirements Table by adding new special footnote*

Ms. Waygan asked Mr. Lehrer where does this apply to, Town wide?

Mr. Lehrer said it applies to any approved parking facility. The way structure is defined in the zoning bylaw, it's measured by cross section of any structure, an entire area of the panel itself. Today you could develop a solar car port. If you have a building with a large parking area and the building takes up maximum lot coverage then there is only small percentage of lot area to put additional structures. It is saying in approved parking areas, only in the parking lots, you can exceed the lot coverage maximum, this would be Town wide.

Ms. Waygan wanted to ensure it doesn't allow parking lots to be bigger.

Mr. Lehrer stated no it has to be in the approved parking areas.

## **MOTION:**

**Ms. Waygan makes a motion to recommend Town Meeting approve to amend §174-31 Land Space Requirements Table by adding new special footnote. Mr. Callahan seconded. All in favor**

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

*To amend §174-3 Terms Defined*

Ms. Waygan needs an explanation as to why this is in here.

Mr. Lehrer said these are housekeeping articles for Solar Overlay. Multiple sections of zoning, i.e. enumeration of zoning districts, definitions, use table, and land space requirements. This utilizes a number of definitions not currently defined in the zoning bylaw which will amend terms to be defined to maintain consistency. You can't just create a new special provision without amending other sections of the bylaw so they are functional, they need to communicate with other bylaws. The zoning bylaw is silent on solar energy systems and adequate definitions. If you're contemplating a larger use of solar energy systems the State encourages an update of the definitions.

Ms. Waygan said these definitions were submitted before, but they were never added.

Mr. Lehrer also wanted to add the approval of definitions does not approve a use.



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Mr. Fulone noted it approves ability to define.

**MOTION:**

**Mr. Callahan make a motion to recommend Town Meeting approve to amend §174-3 Terms Defined. Seconded by Mr. Balzarini. All in favor.**

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

*To amend §174-4 Enumeration of Districts*

Mr. Lehrer stated this article is housekeeping to make a potential overlay district function. All enumerated in text form.

Ms. Waygan said this is where she starts to have a conflict with the first vote that went back and forth.

Chairman Fulone stated this article is the enumeration of districts, the Town has to define in a text form how its districts are laid out. We also have a zoning map and they have to be consistent with one another.

Mr. Hansen would assume the same petitioners have signed all these petitions. Are the same 10 minimum signers of all these warrant items?

Mr. Lehrer said he cannot say with certainty but he would assume that is the case. For the remaining housekeeping, terms defined is harmless, it would make sense if you're going to recommend the creation of solar that these other zoning articles be needed. It wouldn't function without them. If you're not going to recommend it, he would say don't vote for these.

**MOTION:**

**Mr. Callahan makes a motion to recommend Town Meeting approve to amend §174-4 Enumeration of Districts. Seconded by Ms. Waygan.**

**Roll Call Vote:**

**Ms. Waygan – No, Mr. Callahan – Yes, Mr. Balzarini- Yes, Mr. Fulone- Yes**

NOTE: For the purposes of consistency with other articles, this motion was rescinded.

**MOTION:**

**Mr. Callahan makes a motion to rescind previous motion §174-4 regarding Enumeration of Districts. Seconded by Ms. Waygan. All in favor.**



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**MOTION:**

**Mr. Callahan makes a motion to recommend Town Meeting approve to amend §174-4 Enumeration of Districts. Seconded by Ms. Waygan.**

**Roll Call Vote:**

**Mr. Balzarini – No, Mr. Callahan – Yes, Ms. Waygan – No, Mr. Fulone – Yes**

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

*To amend §174-5 Establishment of Zoning Map by adding §174-5(H)*

Mr. Lehrer said same applies to this article in regards to voting.

Ms. Waygan voted no before so she will vote no again to be consistent.

**MOTION:**

**Mr. Callahan makes a motion to recommend Town Meeting approve to amend §174-5 Establishment of Zoning Map by adding §174-5(H). Seconded by Ms. Waygan.**

**Roll Call Vote:**

**Mr. Balzarini – No, Mr. Fulone – Yes, Ms. Waygan – No, Mr. Callahan – Yes.**

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

*To amend §174-25 (H)(12) of the Mashpee Zoning Bylaw*

Mr. Lehrer stated multiple sections of the bylaw need modification. Currently in the C2 and R5, the use is not permitted. If you have an overlay with C2 and R5 you need to alter the use table by defined in Overlay District as a use allowed by Special Permit. It is allowed only by Special Permit pursuant to 174-45.7

**MOTION:**

**Mr. Callahan makes a motion to recommend Town Meeting approve to amend §174-25 (H)(12) of the Mashpee Zoning Bylaw. Ms. Waygan seconded.**

**Roll Call Vote:**

**Mr. Balzarini – No, Mr. Fulone – Yes, Mr. Callahan – Yes, Ms. Waygan – No**

**MOTION:**

**Mr. Balzarini made a motion to close the Public Hearing. Seconded by Mr. Callahan. All in favor.**

**APPROVAL NOT REQUIRED**

**Applicant:** Mark and Donna Lopez

**Location:** 103 Meetinghouse Road (Parcel 45-50-0)

**Request:** Lot consists of 279,933 +/- sq. ft. upland area located on the west side of Meetinghouse Road and east of the Mashpee River. Purpose of the ANR is to create two building lots with frontage on an ancient way.



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Applicant is not present this evening so Mr. Lehrer will explain the background.

Mr. Lehrer stated about two years ago the applicant submitted a preliminary plan to create two building lots. That submission was contingent on a land swap between the Town of Mashpee Conservation Commission and the property owner. Subject property has frontage on Meetinghouse Road and a large lot on the space purchased by the Town using grant money. Applicant proposed swapping river front area in an equal swap with area on Meetinghouse Road. Because it was purchased open space with grant money, abutters, trustees, and Fishery and Wildlife didn't want the swap. The swap requires support from MA legislature. That swap was supported by the Conservation Commission but not the abutters, which was a requirement. The applicant has owned this property for a number of years it has been in his family. This was an ancient way. The roadway is an unnamed 10ft. wide dirt road compacted, maintained, and utilized daily by property owners for the number of houses on the lot.

This is shown on a public map from 1986 as a public way. They are asking the Board to find that the principle means of access is adequate access to abutting property. The Board will be making a determination on the frontage and the adequacy of the way. For a building permit there needs to be frontage on a street. Frontage on a street, street being defined as a subdivision roadway approved by Planning Board, a way approved by Selectmen, accepted by the Town as an easement taking, or as a way approved by the Planning Board as a principle means of adequate access to abutting property. They are seeking that finding to get a building permit. The way is public within a map on record. It is of suitable width, grade, and structure to pass a vehicle. Mr. Lehrer traveled it himself and said it is in good condition, utilized every day, and certainly passable. You will see the one lot carved into two, each with 150ft. of frontage minimum on that ancient way.

Ms. Waygan asked if the people who live on lot 1 use lot 2 to get to their home or if they use the ancient way.

Mr. Lehrer said they use the ancient way. They had to maintain adequate frontage on Meetinghouse Road to maintain compliance with the zoning bylaw and allow the Conservation to acquire the parcel.

## **Motion:**

**Mr. Balzarini makes a motion to accept the ANR. Ms. Waygan seconded. All in favor.**

Ms. Waygan, Mr. Fulone, Mr. Balzarini, and Mr. Callahan signed the ANR.

## **NEW BUSINESS**

**Review Open Meeting Law Complaints filed against the Planning Board on July 21, 2021 and September 24, 2021 by Meredith L.M. Kilpatrick and discuss the Board's response.**

Ms. Waygan asked in order to review them can the Chair summarize the complaints. She referenced the September one is not in the binder, it was a separate loose sheet.

Mr. Fulone notes the just of the complaint was the inability to provide Public Comment. An open meeting complaint was filed against the Mashpee Planning Board Chairman John Fulone for discouraging, limiting, and omitting the opportunity for public discussion, dated July 21, 2021. It should



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have been discussed and responded to within fourteen days and it was not. The second complaint is due to the Board's lack of response to the first complaint.

Ms. Waygan feels like these have been reviewed by everyone. She notes the first page of the complaint is instructions from the attorney general's office. The Chair must disseminate the complaint to the Board members before the public body meets and reviews within fourteen business days. The Board complied with one complaint but not the initial complaint in July. She then goes on to read the public body must respond to the complainant in writing and a description of any action the public body has taken to address it. At the same time, the Planning Board must send the attorney general a copy of their response. The public body may delegate this responsibility to its staff member or council after review. If a public body requires more time it may request an extension of time.

Ms. Waygan notes things are getting complicated.

## **MOTION:**

**Ms. Waygan makes a motion to recommend delegating the responsibility to respond to the complaint(s) to Town Council. Seconded by Mr. Balzarini. All in favor.**

Ms. Waygan asked if staff can facilitate getting this to Town Council. She also would like to thank the staff for getting the Open Meeting Law Guide, which she noted is online with the attorney general.

Chairman Fulone also wanted to specifically mention page 17, as it talks about public participation which relates to the complaint.

Ms. Waygan asked if there was a training every year?

Mr. Lehrer said yes and it can be taken any time and is due yearly. He will follow up with the link for the materials.

## **Review submitted road taking plans and vote on a recommendation to Town Meeting to accept the layouts.**

Mr. Lehrer stated there are two plans for the Planning Board to make recommendations on for Town meeting. There is no mylar to sign tonight, not until after Town meeting, if it's accepted. Submitted road taking plans are consistent with the road taking policy. During review he looks at the title block adequacy being consistent with the Town. All easements and drainage structures are shown on roadway plans. You can see drainage is shown with appropriate contours, the title block is pursuant to road taking policies set forth by the Board of Selectmen, as recommended by the Planning Board.

Mr. Lehrer noted Oldham Circle, then a plan with Ash Street, Devon Street, Gina's Way, and Cedar Street. Oldham Circle, to give the Board some education, this was a delay by the petitioners to get the engineering done. On the plan there are a number of timber edging, retaining walls, etc. that were of concern to the DPW. Those issues have been rectified with regard to the retaining wall and adequate security has been put in place. He is comfortable with recommending to the Board for the Town to





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accept these layouts pursuant to the DPW. The submitted road taking plans are consistent to form with the Towns adopted policy on road taking plans.

Ms. Waygan asked if they were both done by Matt Costa.

## **MOTION:**

**Ms. Waygan makes a motion to recommend acceptance of layouts of Ash, Devon, Cedar, and Gina's Way, and also of Oldham Circle. Seconded by Mr. Balzarini. All in favor.**

**Review and sign draft decision for the South Cape Village Special Permit Modification approved on 9/14/2021.**

Ms. Waygan is not sitting on this, it is continuation.

Mr. Hansen is seated on this.

Mr. Lehrer elaborated that the first stage is filing with the Town Clerk, then there is a 20 day appeal period, assuming there are no appeals it will come back to the Board for all signatures. Tonight he only needs one signature to effectuate the regulatory process. He has the final copy, it should be inclusive of all conditions and findings of modifications. Any recommendations or changes he would ask for them now and he can make edits before filing with the Clerk. There is no motion necessary either, he wants to open up a period for comment. He did receive updated sheets and revision dates are noted in the decision.

Mr. Fulone asked if everyone was okay with this. Mr. Fulone signed.

**Willowbend requests a Minor Special Permit Modification to allow the use of an already constructed shared driveway to serve three (3) homes on Teal Circle.**

Jack McElhinney is here as council for Southworth Mashpee Properties, also present is Scott Miller from New Bridge Construction, the developer at Willowbend. Tonight they are seeking Minor Modification of Special Permit to allow continued use of the common driveway that serves three lots, within the Shoestring Bay neighborhood at Willowbend. It is the southern end of Willowbend down towards the marina. This common driveway has been in existence for over 20 years. It's been serving one of the houses, 12 Teal Circle for well over a decade.

Mr. Miller and his partner applied for a building permit, and it doesn't look like a Special Permit for the common driveway was ever done, even though these road layouts and drains were approved by the Planning Board in the 90's during construction. Mr. Miller and his partner have these lots under agreement. There is adequate frontage on Simmons Narrows Road. This is largely a matter of convenience. As mentioned in the cover letter, the entire Shoestring Bay subdivision was acquired by a prior Willowbend developer in 1998, it was originally approved as a standard subdivision all 36 lots were to be served by septic systems. Willowbend acquired the entire subdivision and installed sewer lines to their own plant. The Planning Board granted a Special Permit Modification for that. This common easement was shown at that time.



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From the 1998 recorded plan at the Registry of Deeds, the driveway is in place at that time. Mr. McElhinney has strong suspicion after talking with Mr. Lehrer, when this requirement came into place, this was a simple oversight at the time. It's been serving an existing home for 15 years. Its 14ft. in width 150ft. long, paved with gravel beneath. He is happy to have the Fire Department come out and inspect. They would request it be a condition of the occupancy permit, as they would like to get going on the lot.

Mr. Balzarini asked if it has a turnaround for fire trucks.

Mr. McElhinney acknowledged it does not have a turnaround, it is straight and there is a hydrant. It is in close proximity to Teal Circle. These houses are going to be constructed very close to the common driveway, about 50 feet off of it. At most 150ft. away from an existing public way.

Ms. Waygan said she thinks there needs to be a vote on whether it's a minor modification or not.

### **MOTION:**

**Ms. Waygan would like to make a motion to consider this as a Minor Modification with no additional Public Hearing. Mr. Callahan seconded. All in favor.**

Ms. Waygan asked if there is a map in her packet. She is looking at lot 37, 38, and lot 19 is the one already constructed. She would like to know how to get to Teal Circle from these two lots. She asked if that is the piece that is 150 ft.

Mr. McElhinney stated there is an easement. The easement was created in the early 2000's. The Planning Board never officially approved it as a common driveway even though that was clearly the intent and an oversight on the developers' part. He noted yes, it starts at Teal Circle and ends at lot 37, that's roughly 150 ft.

Mr. Lehrer thinks the Board could make a motion to approve, but the comment Mr. Phelan made regarding compliance with the bylaw 174-32 will be a requirement of a building permit. Mr. Phelan's concern is the structure that is 200ft. or more from the nearest roadway needs to be compliant with 174-32, meaning it can support fire apparatus. If these houses are 200ft. or more from Teal Circle they would have to be conforming to 174-32. You can approve the use, but it will need to comply with that bylaw. His recommendation is conditional upon an inspection by the consulting engineer at the expense of the applicant. The surface needs to be able to sustain fire apparatus.

Mr. McElhinney said this will be used for construction and there will be heavy vehicles and machinery and there is a possibility it will need repair afterwards. He said it makes sense to meet with the Fire Department.

Mr. Lehrer stated the applicant requested a waiver for fees. It can either be granted and request the applicant to pay or you don't grant the waiver and we hold a check in escrow and pay the consulting engineer pursuant to his findings. Any funds not used by the Town would be returned to the applicant upon completion of the project.



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## **MOTION:**

**Ms. Waygan makes a motion to waive all but the actual expenses incurred to have the Planning Board Consulting Engineer work with applicant and inspect the site. Seconded by Mr. Callahan. All in favor.**

## **MOTION:**

**Ms. Waygan makes a motion to approve Modification of Special Permit on the condition that the proposed driveway from Teal Circle to lots 19, 37, and 38 are in compliance with Mashpee zoning bylaw 174-32 and required inspection of existing surface from consulting engineer is compliant. Seconded by Mr. Balzarini. All in favor.**

Mr. Lehrer will draft a decision and disseminate appropriately.

## **CHAIRMAN'S REPORT**

Nothing to report at this time.

## **TOWN PLANNER REPORT**

### **LCP Update**

We have a consultant. Contracts were completed this morning. He will be coordinating a series of kick off meetings with the consultant and there will be a lot more information to come. Procurement is done and now we are getting started on the LCP update.

### **Consultant Procurement**

RFQs were drafted and vetted by council. They have been disseminated to all firms that are in the market place. He is going to give a month for response, maybe less, then we will have proposals relative to the TIAS and Environmental Impact Study.

Ms. Waygan asked if Weston & Sampson was given one, Mr. Lehrer said he will send off.

### **Housing Production Plan**

Mr. Lehrer has been having some great conversations. He has asserted the housing issue is not a one size fits all. He wants to remind everyone of the Affordable Housing Production Plan and policies and goals that were defined before he was employed here. The strategies contained therein are not just pursuing 40B or Town sponsored but also considering modifying the zoning bylaw including expanding mixed use development in commercial areas. There were some questions regarding his recommendations following the buildout. They are not novel, they are already adopted and he is going off of previous avenues the Town has taken. It's a good time to remind ourselves of the work that we were already doing.

Ms. Waygan noted the Housing Production Plan should be online. The update is due in November.

Mr. Lehrer is seeking grant money and piggybacking off of the LCP update.

Ms. Waygan said it may not be updated until 2022 or later.



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Mr. Lehrer stated that was correct. When they were working on an update in 2021 going off what data may say based on assumptions, and also knowing we are going through a number of planning processes and the LCP update. Also, knowing we would have to update it again once the census came out, it seemed like a duplication of updates.

Ms. Waygan noted the Housing Production Plan took 4 months to procure for Yarmouth. The engineers are super busy. You can procure before you get the award of the DLTA money, and you just put in the procurement paperwork that it is contingent upon the town securing those funds. She is suggesting Mashpee does that. There are only six months to use the money and there is still no census data.

## **BOARD MEMBER COMMITTEE REPORTS**

**Cape Cod Commission -**

No Report

**Community Preservation Committee -**

2 Warrant Articles for Town Meeting.

1. Put aside 10% for Community Preservation funds. 2. \$420,000 for additional work on boat ramp

**Design Review -**

No Meeting

**Plan Review -**

No Meeting

**Environmental Oversight Committee -**

No Meeting

**Historic District Commission-**

Review of Certificate of Appropriateness for former Cape Cod Coffee building for signage and fencing. They intend to do more substantial modifications to rehab the building and will be back at some point.

**Military Civilian Advisory Council -**

No Report

## **ADJOURNMENT**

### **MOTION:**

**Mr. Balzarini made a motion to adjourn the meeting at 8:45p.m. Seconded by Mr. Callahan. All in favor.**

The meeting ended at 8:45p.m.

**Next Meeting:** Wednesday, October 20, 2021 at 7:00PM

Respectfully Submitted,

Christine M. MacDonald  
Board Secretary



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## **LIST OF DOCUMENTS**

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

- Town of Falmouth Notices
- Town of Sandwich Notices
- Waterways Application – Edward W. & Carolyn B. Allen – 52 Seconsett Point Road
- Waterways Application – Daniel R. Marie & Karen S. Joyce – 78 Popponeset Island Road
- August 2021 Discharge Monitoring Report for South Cape Village – N=2.6
- July 2021 Discharge Monitoring Report for South Cape Village – N=5.8
- June 2021 Discharge Monitoring Report for South Cape Village – N=2.7

DRAFT



Kevin M. Kirrane  
Brian F. Garner  
Christopher J. Kirrane  
Jessica C. Sommer

Patricia McGauley, *of Counsel*  
Elizabeth A. McNichols, *of Counsel*  
Michael A. Dunning, *of Counsel*

---

Nicole B. Norkevicius  
Christopher A. Veara

October 1, 2021

Sent via e-mail:

[planningboard@mashpeema.gov](mailto:planningboard@mashpeema.gov)  
[elehrer@mashpeema.gov](mailto:elehrer@mashpeema.gov)

Mr. Evan Lehrer  
Mashpee Town Planner  
16 Great Neck Road  
Mashpee, MA 02649


RE: 9 Shellback Way  
Mashpee, Massachusetts

Dear Mr. Lehrer:

It is requested that the applicants be permitted to withdraw their Application for a Special Permit without prejudice, at this time, as this property is the subject matter of a referral to the Cape Cod Commission.

Thank you in anticipation of your cooperation.

Very truly yours,

  
Kevin M. Kirrane

KMK:amb

cc: Lisa Dillon,  
Cape Cod Commission  
via facsimile (508) 362-3136 and  
Kimberly A. Bielan, Esquire  
via email: [kbielan@lawmtm.com](mailto:kbielan@lawmtm.com)









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LOUISON, COSTELLO, CONDON & PFAFF, LLP

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ALEXANDRA "SASHA" M. GILL  
ELIZABETH F. SCIAN  
DEVIN R. MCDONOUGH

\*ALSO ADMITTED IN ME  
\*\*ALSO ADMITTED IN RI

October 13, 2021

**(Via Electronic Mail and USPS)**

Meredith L. M. Kilpatrick  
P.O. Box 1481  
Mashpee, MA 02649  
[mlmkilpatrick@gmail.com](mailto:mlmkilpatrick@gmail.com)  
[mkilpatrick@kw.com](mailto:mkilpatrick@kw.com)

**Re: Open Meeting Law Complaints dated July 21, 2021 and October 24, 2021;  
Public Body: Town of Mashpee Planning Board**

Dear Ms. Kilpatrick:

Please be advised that I serve as Town Counsel for the Town of Mashpee. I submit the within supplemental response to your Open Meeting Law Complaints, dated July 21, 2021 and October 24, 2021, relative to the Mashpee Planning Board and its Chairman John Fulone pursuant to and in accordance with the delegation vote of the Planning Board at its October 6, 2021 meeting.

I will address your two Open Meeting Law Complaints separately.

The Complaint of July 21, 2021 asserts that the Mashpee Planning Board, by actions of its Chairman, John F. Fulone, violated the Open Meeting Law, G.L. c. 30A, §§18 -25, ("OML") during Planning Board meetings on June 30, 2021 and July 21, 2021. You assert that Mr. Fulone violated the OML by "discouraging, limiting and omitting the opportunity for Public Discussion" during said meetings, specifically, by limiting the time for individual public comment to 2 minutes at the June 30 meeting and by removing the "public comment" item from the July 21 agenda. You state that, by engaging in such actions, Mr. Fulone "is [acting] in violation of the spirit, content and outline of the Massachusetts Open Meeting Law by limiting and omitting Public Content".

Upon review of the allegations of the Complaint, it is the position of the Planning Board that the Complaint fails to establish any substantive violation of the OML. As Chairman Fulone noted in his September 27, 2021 correspondence to you (attached hereto), multi-member bodies are not *required* by law to allow public comment at all meetings. Pursuant to the Open Meeting Law, the public is entitled to attend meetings of public bodies, excluding an executive session called for a valid purpose listed in the law. However, with specific reference to the facts alleged

Meredith L. M. Kilpatrick  
October 13, 2021  
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in the Complaint, the Open Meeting Law does not *require* that a public body allow public participation in a meeting, but rather provides that “[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent.” G.L. c. 30A § 20(f). As such, the law gives the chair of a public body discretion to decide whether to permit public comment during a meeting. See OML 2020-114; OML 2017-189; OML 2014-23; OML 2012-78.

Although the regulation of public participation in a meeting falls within the chair’s discretion, we acknowledge that the Attorney General encourages public bodies to allow as much public participation in public meetings as time and circumstances may permit. Notwithstanding the Planning Board’s efforts to allow public comment during its highly contentious meetings regarding the proposed Mashpee Commons Expansion project, the Board contends that the Chairman’s discretionary imposition of a time limitation on individual comments and his removal of a public comment segment from a Board meeting agenda do not fall within the purview of the Open Meeting Law and, thus, do not constitute violations thereof.

It has been clearly established that the Division of Open Government’s review of OML complaints concerns compliance *only with the Open Meeting Law*, G.L. c. 30A, §§ 18-25. It will often decline to review, and will offer no opinion on, the issue of whether actions taken by a board or commission could be a violation of any other public hearing law or regulation. See OML 2014-31; OML Declination 1- 25-18 (Rowley Planning Board); OML Declination 1-29-15 (Holbrook Planning Board).

Notwithstanding the Planning Board’s position relative to the substantive basis of your Complaint, it does concede, as Chairman Fulone has noted in his September 27, 2021 correspondence, that the Chairman inadvertently and unintentionally failed to comply with the OML complaint procedure requiring dissemination of the Complaint to other Board members, convening a meeting of the Board to address the Complaint, and issuance of a response thereto within 14 business days of receipt thereof. The Board hereby acknowledges such non-compliance based on the unintentional oversight of its Chairman, and it will undertake the remedial measures noted below to assure that such procedural errors will not be repeated.

The second OML Complaint, dated September 24, 2021, alleges that as of said date no reply had been provided by the Planning Board to the above-referenced July 21, 2021 OML Complaint. As remedial action, you request that the Planning Board: “(1) compel immediate and future compliance with the open meeting law; (2) compel attendance at a training session authorized by the attorney general; (3) nullify in whole or in part any action taken at the meetings since 21JUL21, especially as they relate to the South Cape Village, Rte 28 unnamed grocery store design by Longfellow Builders and the Mashpee Commons Expansion Plan”.

On September 27, 2021, Chairman Fulone issued correspondence to you indicating that he “wasn’t aware” of the 14-business day period within which an OML complaint must be addressed by the Planning Board, and he apologized for his error. He indicated his intent to confirm that the Complaint was disseminated to Planning Board members and noted that it

Meredith L. M. Kilpatrick  
October 13, 2021  
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would be addressed at the Board's October 6, 2021 meeting. Chairman Fulone further provided a detailed summation of Planning Board discussions within the past few months regarding public comment at Board meetings and offered responses to your specific Complaint allegations.

The Planning Board did address both OML Complaints at its October 6, 2021 public meeting pursuant to the New Business agenda item "Review Open Meeting Law Complaints filed against the Planning Board on July 21, 2021 and September 24, 2021 by Meredith L.M. Kilpatrick and discuss the Board's response". At said meeting, the Board delegated the task of preparing its written response to Town Counsel.

In recognition of the Planning Board's unintentional failure to timely address and issue a response to the July 21, 2021 OML Complaint, which it acknowledges was a statutory requirement notwithstanding the Chairman's opinion that no substantive OML violation had occurred, Planning Board members and staff will engage in OML training provided by Town Counsel and/or the Office of the Attorney General/ Division of Open Government in order to assure immediate and future compliance with all OML requirements. In fact, my office has already prepared and issued OML Training Guidelines to the Town Manager for this purpose.

With respect to your request that the Board nullify all action it has taken at meetings since July 21, 2021, the Board respectfully declines to take such action due to the lack of any established noncompliance with, or violation of, any substantive requirement of the OML during these meetings. As noted above, the imposition by a board chair of limitations on public comment/ participation at meetings of public bodies is subject matter outside the scope of the OML and within the discretion of the chair. There have been no specific factual assertions supporting any allegation of violation of the OML with respect to the Planning Board's actions regarding matters addressed during its post-July 21, 2021 meetings. Accordingly, the Board deems nullification of its actions at said meetings to be detrimental to the interests of the parties to those proceedings and not in the public interest.

As you may be aware, pursuant to G.L. c. 30A, §23 and 940 CMR 29.05(7), if at least 30 days have passed after a complaint was filed with the public body and the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General.

Thank you for your attention to this matter.

Very truly yours,  
*/s/ Patrick J. Costello*  
Patrick J. Costello

cc: Planning Board  
Town Clerk  
Town Manager  
Division of Open Government, Office of the Attorney General

# Meredith L. M. Kilpatrick

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14OCT2021 – electronically and by USPS

Patrick J. Costello, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street  
Boston, MA 02110

RE: Town of Mashpee, Planning Board, Open Meeting Law Complaints 24SEP21 and 21JUL21

Dear Atty. Costello,

Thank You for your timely response and attention, as assigned delegate, to my Open Meeting Law (OML) Complaint dated 24SEP21. I appreciate your information on the OML complaint dated 21JUL21 which did not receive a formal response within the requisite timeframe. Kindly note, this delegated response is being submitted to the Attorney General's office noting it as **an unsatisfactory response** as it does not include a comprehensive consequential resolution.

As you know, the OML Complaint process is very specific. My understanding is that it allows for and encourages reporting of singular incidents. Upon my observations and research, it became evident the opportunity for Public Comment at all Planning Board meetings had been eliminated almost completely for approximately 2-3 years. Therefore, reporting multiple incidents would require starting with a simple singular incident, or Step 1, the 21JUL21 OML Complaint. Please note, I shared this intent with Select Board Member John Cotton in August. In his role as a Select Board representative to the Planning Board he occasionally and informally made himself available for questions and conversation.

Previous Mashpee Planning Board Chair and current member, Mary Waygan initiated these episodes of avoiding and eventually eliminating Public Comment at Planning Board meetings at some point in 2018/2019. I anticipated that my July 2021 complaint was always going to have a "Step 2" and I expected a true public conversation about the standards of Open Meeting and the need for consistent Public Comment resulting from its submittal.

This next step would more accurately offer a full outline and conversation of her(their) pattern of disallowing Public Comment for approximately 3 years at Planning Board meetings. This substantive, intentional plan of action by Mary Waygan and including John Fulone to allow "no response" to this July OML complaint along with her/their intentional omission of Public Comment from Planning Board meetings, clearly violated the Open Meeting Law, and the very spirit of Open Meetings.

Please note, John Fulone confirmed during his Chair Comments at the conclusion of the Planning Board meeting on 04AUG21 **"Prior to June 2, 2021 the Planning Board held 73 meetings where Public Comment was not included."**

In my persistent attempts to reopen Public Comment at the Planning Board meetings, I had a spirited and productive discussion at a coffee meeting with John Fulone in August. Based on this conversation, I hoped for positive, forward movement in correcting this repeated, gross error by the Planning Board.



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Mashpee Planning Board OML Complaints 2021

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However, in his subsequent proclamations in his 27SEP21 letter where he comments, “I wasn’t aware your complaint required....” along with “It’s time to stop this nonsense” he is offensive and dismissive. This ignorance of rules, process and accountability are not the qualities of a qualified Planning Board member. Furthermore, this reference to OML Complaints as “Nonsense,” results in an apology offered without merit.

Please note, John Fulone, Mary Waygan and Even Lehrer, Town Planner, were provided with the July complaint electronically earlier in the afternoon of 21JUL21. This complaint was also then hand delivered to each Planning Board member at the 21JUL21 meeting and **each packet contained the complete instructions for responding**. “I didn’t know” or “I wasn’t aware” meant, ‘I didn’t read, I didn’t care, I ignored, or I am intentionally not complying with the laws of Massachusetts.’ And not one Planning Board member spoke up as to the instructions provided to them individually.

Mary Waygan’s specific, intentional avoidance and misleading comments surrounding the OML over these last many months are even more abhorrent. Her comments at the Planning Board Meeting on 04SEP21 where John Fulone attempted to offer a new format of “Public Dialogue,” were intentional, obstructionist and planned with forethought and malice.

Your summation of the 06OCT21 Planning Board meeting is brief and accurate, however it is incomplete. While the OML Complaints were listed as an agenda item, there was no “discussion.” John Fulone quickly outlined the submission dates of OML Complaints, and commentary was immediately dominated by Mary Waygan with her bizarre rereading of the instructions as if she had received them for the first time. Her repeated obstructionist acts toward reopening Public Comment are petty and dishonorable.

At her request, the Planning Board, hastily avoided public revelation, public recording of the requirements of the OML complaint process and the contents of the complaints. She motioned for delegating the responsibility to you, Town Counsel and in what appeared to be a preplanned vote, it was hastily and unanimously accepted. Oddly, only 4 of the 5 Planning Board members were present and the Associate Member was not called upon to complete this 5 member board for activities that evening.

Mary Waygan and the entire Planning Board “kicking the can down the road” on the responsibility of allowing Public Comment represents a repeated intention to not act in good faith. Her specific actions are substantive as a both a current member, and especially in her previous role as Chair, who started this downward spiral to remove obligations of the Planning Board, by removing Public Comment. This removal created a substantive lack of transparency and accountability and are not in the best interests of the Mashpee citizens.

**I am requesting that both John Fulone and Mary Waygan be removed from the Planning Board immediately for their intentional, lengthy, and continued obstructionist actions disallowing Public Comment at Town of Mashpee Planning Board Meetings.**

# Meredith L. M. Kilpatrick

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Mashpee Planning Board OML Complaints 2021

Page 3

Additionally, Mary Waygan's "extra-curricular" behaviors are intentionally misleading, spread misinformation about town and state procedures or law, and encourage unwitting inappropriate reactions within the community. Her misuse of email, letters to the editor, social media, especially Facebook and her weekly, Sunday Zoom meetings using her husbands or other anonymous presence(s) to shield her own identity is a gross violation of the public trust and unacceptable behaviors for any public official.

Due to this knowingly intentional avoidance of standards and procedures required of a Planning Board member and Chair, I ask that with the removal of Mary Waygan and John Fulone from the Mashpee Planning Board, that **neither be allowed to hold any Mashpee Board or Committee position for a period of not less than 3 to 5 years.** They should immediately resign from any other town boards or committees at which they serve or be removed for cause post haste.

I'm confident both you and the Attorney General's office agree it is extreme gross negligence for any Municipal Board to eliminate Public Comment for a confirmed 73+ Public meetings. Also, whether intentional or simple, ignorant avoidance of responding to an OML Complaint, no response remains a violation. These types and severity of violations require consequences to be at least equivalent to the revelation of the elimination of public comment for 73+ Planning Board meetings.

Based on the Board's avoidance of standard procedure, and years of avoidance of Public Comment, along with their ignorance of information brought to their attention even in written correspondence, I am also submitting a complaint to the Barnstable Superior Court. This complaint against the Town of Mashpee Planning Board is being filed for their gross negligence in their approval of the Modification application on a now twice expired, still currently expired DRI for South Cape Village Special Permit. This modification application was negligently and carelessly approved at their meeting on 06OCT21.

This particular Modification application, along with its unique process and movement over these last few months is especially unusual in its preferential treatment by the Planning Board, and the Town Planner and requires attention. Their combined obfuscation of standard practices and procedures are substantive and represent a gross negligence of public duty. This modification application on the twice expired DRI, requires a resubmittal to the Cape Cod Commission for a formal, recorded approval PRIOR to it being presented to the Town of Mashpee Planning Board for review.

The planned, intentional lack of Public Comment, Public Questioning allowed for an unusual, hasty approval of Special Permit modification without full discussion, especially of its expired status. These Planning Board behaviors have resulted in and allowed for predatory behaviors of various applicants and their attorney representatives to be assured speedy, inappropriate approvals. This odd, preferential process without transparency or public comment defies the standards and responsibilities of our Planning Board to protect the interests of the Mashpee citizens.

# Meredith L. M. Kilpatrick

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Mashpee Planning Board OML Complaints 2021

Page 4

Per my 24SEP21 OML Complaint I am again requesting:

- (1) compel immediate and future compliance with the Open Meeting Law;
- (2) compel attendance at a training session authorized by the Attorney General;
- (3) nullify in whole or in part any action taken at the meetings since 21JUL21, especially as they relate to the South Cape Village, rte 28 unnamed grocery store design by Longfellow Builders and the Mashpee Commons Expansion Plan.

Per my 21JUL21 OML Complaint I am requesting now that both Planning Board Chair, John Fulone along with previous Planning Board Chair and current member Mary Waygan be removed from the Planning Board effective immediately and they be removed and not allowed to serve on any Town of Mashpee board or committee for a period of not less than 3 to 5 years. Their mutual disregard for community participation, ignorance of standard rules and practices, along with their apparent disrespect for the Massachusetts Open Meeting law are substantive and initiates the opportunity for a removal for cause.

It is my hope that the future Planning Board, and all boards and committees in the town of Mashpee will vigorously open their meetings to the public for inclusion, for dialog to encourage a path of transparency.

A “housekeeping” tidbit, please use only my mlmkilpatrick@gmail.com for all electronic correspondence.

I am available for any questions, confirmation of details or conversation which leads to reopening Public Comment at Town of Mashpee public meetings. Thank you again for your time and attention.

Kind Regards,

*Meredith L. M. Kilpatrick*, signed electronically 14OCT21

Meredith L. M. Kilpatrick

N.B. Individuals receiving this communication are:

- Mashpee Select Board Chair, Carol Sherman
- Mashpee Town Manager, Rodney Collins
- Mashpee Town Clerk, Deborah Dami
- Massachusetts Attorney General’s Office – Division of Open Government
- MA State Senator Julian Cyr, &-Office of MA
- Office of MA State Senator Cyr – Legislative Aide, Ashley Benson & Legal Counsel, Elizabeth Ganz



OCT 14 2021

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 Eel Pond Realty, LLC, 87 Water Street, Woods Hole, Massachusetts.

(Map 49A Lot 000) **under** 240-3 C., 240-18.1, 240-51 D. of the Zoning By-Law, as amended to **grant** the special permit to add a new walkway and steps to the rear, increase lot coverage by structures and add a restaurant without providing off-street parking.

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 **October 8, 2021** 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>



OCT 12 2021

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 David F. and Jacqueline B. Nolan, 140 Elm Road, Falmouth, Massachusetts. (Map 47 Lot 000E) **under 240-3 C.** of the Zoning By-Law, as amended to **grant** the special permit to raze and reconstruct the existing, nonconforming barn structure.

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 **October 7, 2021** 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>



OCT 12 2021

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 **Brent D. and Sally R. Harwood**, 4 Spinnaker Lane, Falmouth, Massachusetts. (Map 47C Lot 003) **under 240-3 C.** of the Zoning By-Law, as amended to **grant** the special permit to raze and rebuild the detached garage with habitable space above.

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 **October 7, 2021** 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**

OCT 05 2021

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:

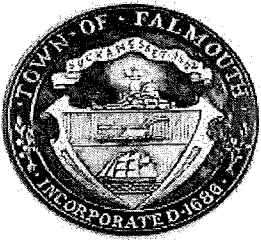
**Application # 074-21 Falmouth Boatyard, LLC, 18 Saint Mary's Street, Newton, Ma.:** Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 and 240-109 B. of the Code of Falmouth to construct a building to build boats on subject property known as 550 East Falmouth Highway, East Falmouth, Ma.

Map 33 Section 21 Parcel 009A Lot(s) 009B

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on **Thursday, October 21, 2021 at 6:30PM**  
You are invited to be present.

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

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at [http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA\\*](http://www.falmouthmass.us/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

OCT 05 2021

### **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:

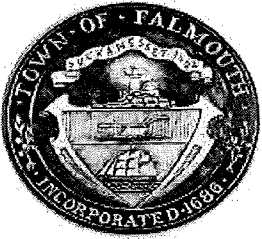
**Application # 079-21 Anna Michel, 137 Shore Street, Falmouth, Ma.:** Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-69 E. of the Code of Falmouth to allow a plunge pool; increasing lot coverage by structures on subject property known as 137 Shore Street, Falmouth, Ma.

Map 47A Section 16 Parcel 050 Lot(s) 000M

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on **Thursday, October 21, 2021 at 6:30PM**  
You are invited to be present.

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

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at <http://www.falmouthmass.us/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**

OCT 05 2021

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:

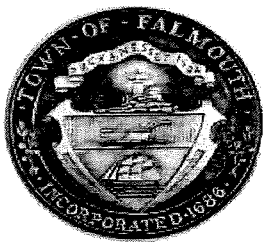
**Application # 077-21 Robert M. Schaub and Theresa Rivera-Schaub, 94 Stallion Trail, Brewster, NY:** Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze and reconstruct the existing non-conforming single family dwelling on subject property known as 48 Bywater Court, Falmouth, Ma.

Map 47 Section 05 Parcel 035 Lot(s) 039

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on **Thursday, October 21, 2021 at 6:30PM**  
You are invited to be present.

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

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM. \*Plans are available to review at <http://www.falmouthmass.us/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

OCT 05 2021

### **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 # 080-21 Robert J. Pasquale and Laura Keenan, 11 Harrington Street, Teaticket, Ma.:**

Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct an addition to the nonconforming single family dwelling, exceeding 20% lot coverage by structures on subject property known as 11 Harrington Street, Teaticket, Ma.

Map 39A Section 29 Parcel 000 Lot(s) 052

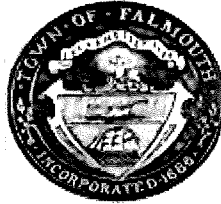
A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on **Thursday, October 21, 2021 at 6:30PM**

You are invited to be present.

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

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM. \*Plans are available to review at <http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA>\*

OCT 04 2021



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 **Village at Brick Kiln, LLC**, 511 Brick Kiln Road, West Falmouth, Ma.

(Map 26 Lot 000A) **under** MGL Ch. 40B of the Zoning By-Law, as amended to **grant** the comprehensive permit to construct 28 detached dwelling units; 7 of which will be affordable.

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 **September 28, 2021** 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>

OCT 04 2021



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 William T. and Lenore K. Freitas, Trustees, 150 Birch Lane, North Falmouth, Ma.

(Map 04 Lot 082) under 240-3 C. and 240-69 E. of the Zoning By-Law, as amended to **grant** the special permit to allow alterations, including a front porch, screened in porch and a second floor addition to the 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 **September 28, 2021** 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>





OCT 14 2021

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

The Sandwich Board of Appeals will hold a Public Hearing on the application of Patrick J. Martin, Applicant, and Philip R. Doherty Revocable Trust – 2008, Property Owner, for a Special Permit under Section 1340 of the Sandwich Protective Zoning By-Law for property located at 8 Victory Drive, Sandwich, MA Assessor's Map #28, Parcel #49, for the purpose of constructing an automotive service facility. The Public Hearing will be held on October 26, 2021, in the upper meeting room of the Human Services Building, 270 Quaker Meetinghouse Road, East Sandwich, MA at 6:00 p.m. The public record information can be viewed at the Planning & Development office, 16 Jan Sebastian Drive, Sandwich, MA, Monday-Friday 8:30 a.m. to 4:30 p.m.

Erik Van Buskirk, Chair  
Sandwich Board of Appeals  
Publication: Sandwich Enterprise  
Publication Dates: October 8 and October 15, 2021

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



**BOARD of APPEALS**  
16 Jan Sebastian Drive  
Sandwich, MA 02563  
Phone: 508 833 8001  
Fax: 508 833 8006  
E-mail: [planning@sandwichmass.org](mailto:planning@sandwichmass.org)

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

**OCT 14 2021**

The Sandwich Board of Appeals will hold a Public Hearing on the application of Donald A. and Cheryl K. Warner, Property Owners and Donald Warner, Applicant, for a Special Permit under Sections 4350.2 & 4390 of the Sandwich Protective Zoning By-Law for property located at 97 North Shore Boulevard, East Sandwich, MA Assessor's Map #70, Parcel #94, for the purpose of construction greater than 301 square feet in a flood zone. The Public Hearing will be held on October 26, 2021, in the upper meeting room of the Human Services Building, 270 Quaker Meetinghouse Road, East Sandwich, MA at 6:00 p.m. The public record information can be viewed at the Planning & Development office, 16 Jan Sebastian Drive, Sandwich, MA, Monday-Friday 8:30 a.m. to 4:30 p.m.

Erik Van Buskirk, Chair  
Sandwich Board of Appeals  
Publication: Sandwich Enterprise  
Publication Dates: October 8 and October 15, 2021

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



**BOARD of APPEALS**

16 Jan Sebastian Drive  
Sandwich, MA 02563  
Phone: 508 833 8001  
Fax: 508 833 8006  
E-mail: [planning@sandwichmass.org](mailto:planning@sandwichmass.org)

**OCT 04 2021**

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

The Sandwich Board of Appeals will hold a public hearing on the application of Brian J. Wall, Esq. authorized agent for the applicant, for a Special Permit under Section 1330 of the Sandwich Protective Zoning By-Law for property located at 327 Quaker Meetinghouse Road, East Sandwich, MA, Assessor's Map #33, Parcel #11 for the purpose of approving a contractor's yard, an accessory office and a 4-bedroom dwelling unit. The Public Hearing will be held on October 12, 2021, in the upper meeting room of the Human Services Building, 270 Quaker Meetinghouse Road, East Sandwich, MA at 6:00 p.m. The public record information can be viewed at the Planning & Development office, 16 Jan Sebastian Drive, Sandwich, MA, Monday-Friday 8:30 a.m. to 4:30 p.m.

Erik Van Buskirk, Chair  
Sandwich Board of Appeals  
Publication: Sandwich Enterprise  
Publication Dates: September 24 and October 1, 2021



OCT 04 2021

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

TOWN CLERK  
TOWN OF SANDWICH

SEP 29 2021

I H I M P K  
RECEIVED & RECORDED

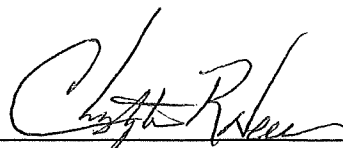
**Petition #** 21-18  
**Name of Applicant:** Robyn & Paul Carlucci  
**Address:** 19 Wood Avenue

On September 28, 2021 the Board of Appeals voted to approve a variance from Section 1321 of the Sandwich Zoning By-law for property located at 19 Wood Avenue, as shown on Assessor's Map 88, Parcel 183, for the purpose of obtaining a 10-inch variance from the front yard setback.

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

September 29, 2021  
Date

## **PROCEDURAL HISTORY**

1. Variance application from Section 1321 of the Zoning By-Law for property located at 19 Wood Avenue was filed by Paul Carlucci on September 1, 2021.
2. After proper notice was given the public hearing was opened on September 28, 2021 and closed on September 28, 2021.
3. The application was accompanied by a plan entitled:  
Certified PLOT PLAN  
19 Wood Ave.  
SANDWICH, MA  
Dated: June 2, 2021
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  
Robert Jensen  
Chase Terrio

## **FINDINGS**

The Zoning Board of Appeals finds that:

1. Subject property is located within the R-1 Zoning District.
2. Subject property was constructed in the Sandwich Beach Shores subdivision in 1949 and predates zoning.
3. The lot area is 4,792 square feet and has 50 feet of frontage on a street.
4. A 30-foot front yard setback is required.
5. The existing stoop and steps are non-conforming in that they are 27.2 feet from the lot line.
6. The proposed structure encroaches upon the front yard setback from a maximum 10-inches.
7. Under 2600 (c) the applicant would be entitled to a reduced setback to 26'6"
8. The applicant requests a setback of 24'9".
9. The applicant states that the addition of a covered porch will reduce the ice hazard from the roof.
10. 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, Robert Jensen, move to adopt these findings as the findings of the Board of Appeals.

Second: Chase Terrio

Vote:	Christopher Neeven	Yes
	James Killion	Yes
	Robert Jensen	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, Robert Jensen, move to impose the above conditions of approval upon any approval of the variance.

Second: Chase Terrio

Vote:	Christopher Neeven	Yes
	James Killion	Yes
	Robert Jensen	Yes
	Chase Terrio	Yes

**DECISION:**

Motion: I, Robert Jensen, move to approve the variance application.

Second: Chase Terrio

Vote:	Christopher Neeven	Yes
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James Killion	Yes
Robert Jensen	Yes
Chase Terrio	Yes



OCT 04 2021

**Special Permit  
Certificate of Approval**

TOWN CLERK  
TOWN OF SANDWICH

**Petition #** 21-20  
**Current Property Owner(s):** Adam and Maryellen Trayner  
**Applicant:** Jeremiah Ellis  
**Property Address:** 15 Jan Sebastian Drive Unit 3D  
**Map, Parcel** 27-33-03D

SEP 29 2021  
LH 17 M PMg  
RECEIVED & RECORDED

On September 28, 2021 the Board of Appeals voted to approve a special permit from Sections 1330, 1380 & 5000 of the Sandwich Zoning By-law for property located at 15 Jan Sebastian Drive Unit 3D, as shown on Assessor's Map 27, Parcel 33-03D, for the purpose of operating a motorcycle repair shop.

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

SEPTEMBER 29, 2021  
Date

## **PROCEDURAL HISTORY**

1. An application was filed on September 7, 2021 under sections 1330, 1380 & 5000 of the zoning bylaw for property located at 15 Jan Sebastian Drive Unit 3D.
2. After proper notice was given the public hearing was opened on September 28, 2021 and closed on September 28, 2021.
3. The application was accompanied by a Site Plan entitled:  
Proposed Site Plan  
Lot 24-25 / Jan Sebastian Drive  
Sandwich MA  
Dated: June 12, 1985
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  
Robert Jensen  
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. The Board of Appeals finds that the subject property lies within the Flexible (Flex) zoning district.
3. The Board of Appeals finds that the subject property is a condominium Unit at 15 Jan Sebastian Drive Unit 3D.
4. The Board of Appeals finds that the subject property has shared access frontage on Jan Sebastian Drive.
5. 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 not be satisfied.
6. The Board of Appeals finds that the proposed use is subject to section 5000 of the Zoning By-Law

7. Applicant stated that there will be no underground storage of hazardous materials.
8. Applicant states that no greater than 10 gallons of gasoline and 5 gallons of waste oil shall be stored on site. Waste oil shall be removed weekly.
9. Applicant states that all hazardous materials shall be stored in fire proof cabinet.
10. Applicant states that spill containment equipment be on site.
11. Applicant states there shall be retail sales of factory seal petroleum products.

Motion: I, Robert Jensen, move to adopt these findings as the findings of the Board of Appeals.

Second: Chase Terrio

Vote:	Christopher Neeven	Yes
	James Killion	Yes
	Robert Jensen	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. The applicant is to have a spill kit on site of adequate size to clean up a spill and maintain a spill with written procedures.
5. Any fuel storage is subject to meeting Fire Department regulations and any other applicable state/federal regulations.
6. Applicant shall submit a water quality certificate to the Health Department.

7. Applicant shall supply all necessary documentation to indicate compliance with Sections 1380, 1382 and 1390.

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

Second: Chase Terrio

Vote:	Christopher Neeven	Yes
	James Killion	Yes
	Robert Jensen	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 15 Jan Sebastian Drive, as shown on Assessor's Map 27, Parcel 33-03D, for the purpose of operating a motorcycle repair shop.

Motion: I, Robert Jensen, move to approve the special permit application.

Second: Chase Terrio

Vote:	Christopher Neeven	Yes
	James Killion	Yes
	Robert Jensen	Yes
	Chase Terrio	Yes