

**Zoning Board of Appeals
December 15, 2011 Regular Meeting**

Location Conference Room #2
Town Hall
7A Spofford Road
Boxford, MA 01921

Present William R. Cargill, Jr., Chair
Paula Lia Fitzsimmons, Vice-Chair
Robert W. Conroy, Clerk
Paula Meagher, Secretary
Pat Canonica, Planning Board Liaison

6:35 p.m. William Cargill called the meeting to order

**Case #902 James & Mary Jo McCarthy
407 Main Street**

Special Permit to construct a detached storage barn which results in garage space for more than 3 automobiles from Article III, §196-13 (B)(11)(h) of the zoning bylaw.

Members Sitting William Cargill
Paula Fitzsimmons
Robert Conroy

Applicant Present John Morin, PE from the Neve-Morin Group, Inc.

Plans Supplied 3 pages plans dated 10/18/11 prepared by Circle B Barn Co.; Plan of Land dated 11/10/11 prepared by Jay Jarosz, PLS

John Morin stated they would like to build a detached 30x36 two stall barn/garage. There is currently an existing two stall garage on the property. Depending on what you put in it; could be two or four vehicles, it is designed that you could put four with the size of the building but too narrow for three across; however they are filing under Section 196-13 because it will yield more than 3 on the property. The lot is a Form A created in 1994 consisting of 2½ acres and 250 feet of frontage. The lot meets all the current zoning requirements. The proposed barn will be 20.8' from the side setback and 134+/- from the front. Currently zoning setbacks for outbuildings are twenty feet or the height of the building (which is 19.4' mean height between the plate and the ridge); therefore, exceeding the minimum setback.

They are proposing gas and electricity to the barn and no water. There will be no commercial use and is strictly for storage use for the residence. There will be no loft – it is all ground floor space and no second story. There will be trusses on the top.

There were no questions from the Board members. *Donna McArdle – 421 Main Street* spoke as an abutter to the property and asked if a variance was required. William Cargill explained that is only a Special Permit because it will have more than 3 automobiles on the property but meets all the setback requirements and would not require a variance. Ms. McArdle said she was concerned to see where the development would be and was glad to see it is on the other side of their property away from hers because of water runoff from down hill but it will not affect her.

Motion Robert Conroy – continue pending Planning Board review and recommendation to the January 25, 2012 hearing.

Second Paula Fitzsimmons

Unanimous vote

Case #900 Kevin E. Kontos

9A Rock Brook Way

Special Permit to construct a residential dwelling with garage space for more than 3 automobiles from Article III, §196-13 (B)(11)(h) of the zoning bylaw.

Members sitting William R. Cargill, Jr., Chair
Paula Lia Fitzsimmons, Vice Chair
Robert W. Conroy, Clerk

Applicant Present John Morin, PE from the Neve-Morin Group, Inc.

This case was continued from last hearing but is requesting a continuance because the Planning Board has not held a meeting since the last ZBA hearing. Mr. Morin is scheduled on the next agenda for the Planning Board on December 21, 2011. An extension form was signed for the upcoming January 26, 2012 hearing.

Motion Robert Conroy – continue pending Planning Board review and recommendation to January 26, 2012

Second Paula Fitzsimmons

Unanimous vote

**Case #901 Thomas J. Cassidy, Sr. for property owner Ronald Cooper
335B Middleton Road**

Special Permit to construct a 32'x36' garage which will yield garage space for more than 3 automobiles on the property from Article III, §196-13 (B)(11)(h) of the zoning bylaw.

Members Sitting William R. Cargill, Jr., Chair
Paula Lia Fitzsimmons, Vice Chair
Robert W. Conroy, Clerk

Applicant Present n/a

This case was also continued from last hearing and the applicant has not yet been before the Planning Board for a recommendation. Paula Meagher will have the petitioner sign an extension form.

Motion Robert Conroy – continue pending Planning Board review and recommendation to January 26, 2012

Second Paula Fitzsimmons

Unanimous vote

6:48 p.m. Informal – Mark Broussard –Freedom Renewable Energy

Mr. Broussard said that he hopes to erect a pole mounted solar array at 575 Main Street. He showed on his laptop an example of such an array. It takes energy from the sun and makes electricity. Oftentimes these are used when panels on a roof of a home won't work because of orientation of southern exposure or lack of room on a roof or a lot of trees that make shadows. Their hip roof will only hold eight panels and they would like to offset more of their electric bill.

The proposal would consist of ten panels generating 2.3 kw. The dimensions of the structure will be sixteen (16') feet tall by ten (10') feet wide. This array allows the family to set the tilt so that they can adjust for seasons – most are kept at a 55° angle and it also swivels. They are kept low to the ground and the applicant was asked if you could mow underneath and was told no, but probably a push mower. He said they believe they will hit ledge. They would anchor directly to a rock. He said that he checked with other departments in regards to setbacks from the water which is across the street and about forty- five (45') feet from the road.

William Cargill asked Mr. Broussard from where in the bylaw he feels that he can seek relief. Bob Camacho, Inspector of Buildings said that he asked them to come to this meeting seeking approval from this Board because he looked in the bylaw and could not find anything. Mr. Cargill said that he would agree that the

bylaw is silent; therefore, it is prohibited. Mr. Camacho said that he did a lot of research and would like to submit some information that he found while digging. He further stated he doesn't pull these decisions off the wall for a lot of legitimate reasons. He has a mailing list of about 200-300 building officials in the state and received about 2 dozen responses; about 18-20 are the same scenario as us – bylaw is silent. It is allowed in the state building code. He spoke with Tom Riley from the BBRS and it is allowable. He understands that because the bylaw is silent, the building code states that under the definition of a structure at the very least other towns and cities are taking the same position, that a structure should follow the setbacks according to other zoning regulations at a bare minimum.

We got a response from Town Counsel with regards to the stretch energy code which never passed; however, there was commentary on solar panels with that memorandum. He quoted MGL Chapter 40A Section 3 which states “*no zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.*” He said the building code does address roof mounted because they are concerned about modifying the snow load and they could become windborne as some point in time. He said he's not sure why an applicant would have to come before this Board because he's not sure what they would be discussing. But this Board does in the immediate future need to address solar panels and their placement for residential properties. Mr. Cargill explained that in fact is what needs to be done is pass legislation at town meeting to incorporate access and setbacks and build it into the bylaw. This Board could not grant a permit currently without the request of a variance. Mr. Camacho said they can't ask the board for a special permit where it's not listed in the bylaw and site plan review is not necessary for such a project either. This is an accessory structure and is an extension of the electrical system. It's not new- it is an expansion of the use. He has also previously issued a permit for a solar field in the past. In his search with other towns, there are only two that specifically have solar access in their bylaw. Most communities do not yet have in their bylaw. Because the bylaw is silent it creates undue hardship on homeowners that have a right to install them and he would be willing to work with the Board and do some research with other towns. Mr. Camacho said he cannot find anything that prohibits him from issuing a building permit.

Mr. Cargill said it could be the wave of the future and there may be a neighbor objecting so there should be legislation so that they can be regulated. The Planning Board would have to hold a hearing with a draft bylaw to be brought to town meeting and inserted into the zoning bylaw.

They spoke a little about this type of structure and costs and maintenance, etc. Typically, payback to the homeowner is 7-11 years. Mr. Broussard said that they would like to construct in compliance with what the town allows and not have any repercussions for the homeowner because they rushed into a decision.

Board members reiterated that the bylaw is silent; therefore, a variance is required since it is not specifically listed as a permitted right then it is prohibited. If a variance is granted conditions can be put on it – Chapter 40 says you cannot unreasonably regulate. Otherwise an ordinance needs to be drafted and accepted at town meeting to be incorporated into the zoning bylaws. That way there is a regulation process with hearings to protect abutters also. After a lengthy discussion, the Board told Mr. Broussard that if their client does not want to wait for the process of the town writing a bylaw; then they would need to come before the ZBA with a variance application. If the homeowner secures a variance before a bylaw is written then they are protected as long as it is property recorded and it runs with the land. Mr. Camacho asked if it was the Board's pleasure to gather as much information as possible from other towns and Mr. Cargill stated that it certainly would be helpful to the Planning Board since they are the board that would hold a public hearing for an amendment to a zoning bylaw and hold off any issuing any building permits for stand alone solar panels and only issue roof mounted units.

7:18 p.m. Nancy Rohlfs – 21 Cross Road

Ms. Rohlfs is before the Board requesting a seat as an alternate position on the Zoning Board of Appeals. There has been a vacancy for a while and she would like to help the town. She is currently on BTA BOLT, so there is some familiarity with a volunteer position and for three years was the secretary for the PTO. She said that she doesn't have a huge background in zoning, but would love to help so that people can have their cases heard and just recently sat in on numerous zoning board hearings with interest in the town library and learned

a little about zoning. She said she is good at reading and investigating and also is a fact finder prior to making decisions and generally doesn't jump to conclusions. She got involved originally doing research for drilled wells, manure, facts on barns and animals and did a lot of homework and wanted to investigate how things are done in other towns with regulations and setbacks, etc. She did find that Boxford is very unique.

Mr. Cargill explained that some of the best people that have come onto this Board as alternates are lay people and learn the position and the process just by sitting and listening to the cases. We are desperately in need of three alternates on the Board. He asked if she would consider herself in interpreting some of the bylaws more conservative or liberal. She said when she looks through zoning certain portions are clear cut such as setbacks, etc. but there are other portions such as discussing a driveway it 'drainage is adequate' it really doesn't define what is adequate and those type of bylaws are more subjective so she would most likely lean toward more conservative. Generally you cannot undo something that you made a mistake if you were to be too liberal.

There was discussion amongst Board members and William Cargill suggesting recommending Nancy Rohlfs to the Board of Selectmen to serve as alternate for the Zoning Board and thinks she would make a nice addition to the Board. Paula Fitzsimmons said that she would support also and Robert Conroy said there is nothing negative about her and would also agree to recommend.

Motion Robert Conroy – write memo to Board of Selectmen requesting to appoint Nancy Rohlfs as an alternate to the Zoning Board and to see if she can get on their agenda before our meeting of January 26, 2012.

Second Paula Fitzsimmons

Unanimous vote

Motion Paula Fitzsimmons – adjourn at 7:32 p.m.

Second Robert Conroy

Unanimous vote

*Respectfully submitted,
Paula Meagher*

APPROVED AS SUBMITTED 1/26/12