

**Zoning Board of Appeals  
January 26, 2012 Regular Meeting**

**Location** Meeting Room #1  
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

**6:44 p.m.** William Cargill called the meeting to order

**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** Thomas J. Cassidy, Sr. (contractor)  
Ronald Cooper

**Plans Supplied** Revised and dated 1/18/12 (5 pgs. prepared by TNT Build Consultant/Designer)

This case was continued from the November 17, 2011 hearing and an extension form filed continued from the December 15, 2011 hearing.

Robert Conroy read aloud the Planning Board recommendation from their January 18, 2012 meeting with a unanimous vote to grant the Special Permit.

It was noted that the plan that was originally submitted at the November hearing has been amended and submitted to the file with a gable roof in place of a gambrel. The footprint will remain the same. The upper story is for storage. There will be no commercial use and no water in the proposed garage. Currently on the property is a three (3) bay attached garage and this will be a three (3) bay detached structure totaling six (6) bays on the property for garage space.

There was no one in the public to speak in favor or against the application. Board members had no further questions and stated it was a pretty straight forward case.

**Motion** Robert W. Conroy— close evidence

**Second** Paula Lia Fitzsimmons

**Unanimous vote**

**Motion** Paula Lia Fitzsimmons – grant the request for a Special Permit to construct a 32x36 garage which will yield garage space for more than three (3) automobiles on the property from Article III, §196-13 (B) (11) (h) of the zoning bylaw for the premises located at 335B Middleton Road upon a finding there is no detriment to the neighborhood, and that it conform with the plans submitted and further that it be used strictly for storage.

**Second** Robert W. Conroy

**Unanimous vote**

**6:54 p.m. 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.

This case was continued from the December 15, 2011 hearing. The Applicant updated Board members on the application stating it is a 30x36 detached barn structure proposed for storage and technically it could fit four (4) additional automobiles on the property. Currently there is a two (2) stall garage. There is no intended commercial use and no water or heat. The barn will meet the required setbacks with the closest rear setback of 20.8. The Planning Board requested that the Applicant note on the plan that the proposal shall not be used to house animals as it does not meet the required fifty (50) foot setback. The Applicant stated it would be no problem since there is no intention of housing animals. William Cargill said that we should note in the conditions of the Special Permit. John Morin said there will be a concrete floor in the barn.

Robert Conroy read aloud the Planning Board recommendation from their December 21, 2011 meeting with a unanimous vote to grant the Special Permit provided the plan is revised to include a note that it will not be used to house animals.

**Motion** Robert Conroy – close evidence

**Second** Paula Lia Fitzsimmons

**Unanimous vote**

There was no one in the public to speak in favor or opposition of the application and the Board had nothing further for discussion.

**Motion** Paula Lia Fitzsimmons – grant the Special Permit to construct a detached storage barn which results in garage space for more than three (3) automobiles from Article III, §196-13 (B) (11) (H) of the zoning bylaw for the premises located at 407 Main Street with the condition that it be noted the structure is not to be use for barnyard animals because it does not meet the fifty (50') foot setback and that the structure be constructed according to the submitted plans and further based upon a finding that it is not a detriment to the neighborhood and conforms to development regulations Section 196-25.

**Second** Robert Conroy

**Unanimous vote**

Paula Fitzsimmons will write the decision.

**7:04 p.m. 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 the November 17, 2011 hearing and an extension form filed continued from the December 15, 2011 hearing.

The Applicant reminded the Board members of the first hearing stating the proposal is for an attached four (4) stall garage to a new single family dwelling roughly fifty-two (52') feet wide x twenty-eight (28') feet deep. The lot was created in 2007 and consists of 2.35 acres and meets all current setback requirements. There is currently a foundation, which was constructed by the previous owner and the current owner is planning to remove the existing foundation and construct new. It is a permitted use with Special Permit according to regulations in the above noted section of the bylaw for more than three (3) automobiles.

Robert Conroy read aloud the Planning Board recommendation with a unanimous vote from their December 21, 2011 meeting. The Planning Board did however question the applicant to investigate the need for filing for a driveway permit pursuant to Section 196-29.

Board members discussed and said this section of the bylaw does not apply in this case. The Special Permit for the shared driveway was issued in November 2007; a maintenance agreement was recorded at the Registry of Deeds for Lots 2 and 3 and construction of the driveway began prior to the 2008 bylaw Section 196-29. A building permit was issued for the construction of a new home and the current owner purchased both lots with a foundation already built on Lot 2 (aka #9A).

**Motion** Robert Conroy – close evidence  
**Second** Paula Lia Fitzsimmons  
**Unanimous vote**

There was no one in the public to speak in favor or opposition of the application and the Board had nothing further for discussion.

**Motion** Paula Lia Fitzsimmons – grant the application of Kevin E. Kontos special Permit to construct a residential dwelling with garage space for more than three (3) automobiles from Article III, §196-13 (B)(11)(h) of the zoning bylaw for the premises located at 9A Rock Brook Way upon a finding it is not a detriment to the neighborhood and that it is in conformance with the plans submitted.  
**Second**  
**Unanimous vote**

Robert Conroy will write the decision.

**7:15 p.m. Informal – Case #667 Habitech, Inc.  
45A Crooked Pond Drive**

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

Mr. Morin stated that back in May 2002 the ZBA issued a Special Permit for a shared driveway for Lots 1 and 2 Crooked Pond Drive. At that time it was a horseshoe configuration. The Fire Chief issued a letter after stating that he had objections to that design. In August of 2002 the ZBA modified their permit to show the current driveway with one entrance only coming in off Crooked Pond Drive and spurs going to each lot. Original plan was a “U” shaped and the fire department didn’t like the two curb cuts on the same lot. They cleared and rough graded all the way to Lot 2, probably 80 feet shy of the lot line. Mr. Morin showed an “as built plan” of the existing driveway.

In compliance with original Special Permit, the curb cut is in the same spot but the spur heading to Lot 2 – driveway running over the septic system. Conservation Commission was concerned- the gravel drive was not approved under their jurisdiction; however once this as built plan came the Conservation Commission has determined it is outside their jurisdiction. The Board of Health and the Fire Chief both had concerns with regards to the driveway running over the septic system and needed verification of an H20 wheel load going over the driveway. Hayes Engineering who originally did their septic as built put together a letter and proved with calculations that with a foot of stone cover it would handle a H20 wheel loader with no harm to the septic lines. They recommended putting additional stone in the area where it was lacking. The Fire Chief had an

issue with the turning radius and said it was too sharp of a turn for their equipment. They since have modified the curve in the drive and also installed the additional stone that the Fire Chief had concerns with.

William Cargill said that he felt uncomfortable amending the decision because it is too much of a deviation and said that they should go through the public hearing process and file a new application. Paula Fitzsimmons asked if the current driveway fully complies with the new driveway bylaw. William Cargill said that there is enough new material change to warrant a new submission. So much time has gone by and there has been a new bylaw which passed in 2008. Paula Fitzsimmons agreed that it is constructed so far off from where it was permitted and stated it may be an existing driveway but it is still new and was concerned that it should meet the current bylaw. John Morin said that he thought the only part of the new bylaw it might not pass would be with the increased rate of runoff- originally it was permitted for a paved driveway, which is less impervious material than gravel; which is what it now consists of. After much discussion the Board members agreed that there should be a new filing for the shared driveway.

*Reed Williams* identified himself from the audience stating he was the potential buyer for the home and is currently in a purchase and sales agreement. They were supposed to close on December 30, 2011 and they only have a few weeks left in their current home. He wanted to advise the Board that there is a buyer under contract and is looking to get the Building Inspector to release the occupancy permit so that he can close on the property. The issues that have arisen have been addressed with Conservation, the Board of Health and the Fire Chief have been corrected and will be signed off – the only issue that remains would be the filing of a new Special Permit which will be time sensitive. Mr. Morin will file an application on Monday 1/30/12 and go before the Planning Board 2/15/12 prior to the next Zoning Board hearing of 2/23/12 to speed up the process and the ZBA would have a recommendation when they open the hearing. He asked if the Board could have the Building Inspector issue an occupancy permit contingent upon the buyer being aware there are no guarantees and that if these permits is not granted he will know up front that it would have consequences and have to be rebuilt or moved. Bob Camacho, Inspector of Buildings was also present and the Chair asked if he would be agreeable to issuing an occupancy permit based on the discussion and he said he would as long as it is understood by all parties that it still needs to be approved with a Special Permit process by the Zoning and Planning Board. Paula Fitzsimmons said that the biggest issue is having a title insurance policy written so that he should check with his closing attorney.

**7:52 p.m. Informal – Bob Camacho  
427A Ipswich Road**

The Building Inspector has requested an interpretation of the zoning bylaw, specifically §196-25 Accessory Structures and is asking if it applies to chicken coops. He stated that it's a relatively small structure with a pen attached for birds to run around, although a permit is not required, it is technically a structure and he would like to know if it has to meet the fifty (50') foot setback requirements. It is a sixteen (16 sf) square foot structure. William Cargill and Robert Conroy both said that they would consider chickens as an animal and not poultry. Paula Fitzsimmons read aloud the section of the bylaw pertaining to Permitted Uses which reads as follows;

**§ 196-13. R-A Residence-Agricultural District.**

*A. A Residence-Agricultural District is intended as a district of single-family homes and for continuance of agricultural and accessory buildings customarily incidental for residential and agricultural uses upon one lot. [Amended 5-12-1982 ATM, Art. 32]*

*B. Permitted uses. The following shall be permitted uses in the R-A Residence-Agricultural District:*

- (3) Raising and keeping of farm animals and poultry for use of residents on the property and primarily not for profit, with barns, stables, chicken houses and similar buildings; on parcels of five acres or more, commercial greenhouses, the raising or keeping of horses, cattle, pigs, rabbits, fur-bearing animals or poultry for profit or other than for the use of the occupants of the residence. [Amended 5-11-2004 ATM, Art. 28]*

Paula asked if it is an accessory structure – Bob Camacho said it is accessory to the principal dwelling and does not require a building permit because of the size but thinks it should meet setbacks. Accessory structures are twenty (20') feet or the height of a building, whichever is greater and if it houses animals is fifty

(50') feet. Mr. Camacho explained that he did get a complaint that the chicken coop had been placed too close to the abutting property probably no closer than fifteen (15') to twenty (20') feet but the real issue is that it has been covered with a large orange tarp probably 40x60 and given the condition of the properties the tarp is way out of place. The tarp is bright orange and some of the orange is covered, but the rest is dark brown right adjacent to driveway and from the neighbors house is a visual concern that is not very pleasing. Considering the size of the property the chicken coop is on it probably could be placed in another area of the lot.

Bill Cargill said that Section 196-25 is very clear that any structure housing animals should be placed fifty (50') feet. Paula Fitzsimmons said that it is not a structure though and not 200 square feet. Bob Camacho explained that the size whether it is 200 square feet or 1000 square feet isn't what is used in the definition of a structure in the zoning bylaws. Bob Conroy agreed that it is considered a structure.

Bob Camacho said that the abutter put up a fence so it is no longer visible and the issue is now moot but he is requiring the Board to determine what their views are on the intent of the bylaw. Both Bob Conroy and Bill Cargill agreed that no matter what the size of a structure is and it houses chickens; they are considered animals and should meet the fifty (50') foot setback from all property lines. Bill Cargill said that if the owners would like to come before the Board then they will make a decision to see if all members agree; however, since this issue is moot and there is no application before the Board then there is nothing further to discuss. Both parties have done something to remedy the situation. Bob Camacho agreed that he considers it a structure no matter what size and that chickens are animals.

**8:05 p.m. Review draft calendar for 2012 for ZBA hearings and deadlines.**

**Motion** Paula Fitzsimmons approve proposed ZBA 2012 calendar as submitted by Paula Meagher  
**Second** Robert Conroy  
**Unanimous vote**

**FEMA maps and floodplain bylaw**

There was a letter distributed to town officials from FEMA (Federal Emergency Management Agency) in regards to flood maps and special flood hazard areas stating the FIRM (Flood Insurance Rate Maps) for our community has been completed and there are additional requirements which must be met prior to the effective date of changes on July 3, 2012. One of the requirements is to amend the existing regulations by adopting all the standards into one comprehensive set of regulations.

Communities that fail to enact regulations will be suspended from participation in the NFIP (National Flood Insurance Program)

Ross Povenmire forwarded information in an email with a suggested bylaw and sent to the state for review and guidance. Bob Camacho stated that once Ross gets further into the regulations and necessary criteria with the state he will come before this Board to explain in detail and have a draft bylaw for review prior to the Planning Board holding a hearing for annual town meeting.

Bill Cargill said that he would like to table and have Ross come to the next meeting if available or soon to advise members of all the details and the facts.

**8:15 p.m. Discuss – Murphy 23 Partridge Lane**

Bob Camacho said that the ninety (90) days have passed for the owner to comply with a letter that was sent in regards to the options of removing a foundation or applying for a building permit for an existing foundation, which is designed to hold a structure. The foundation is still there and he has come in once or twice but there is currently no application on file and he believes he is reaching his deadline and he was given two options and both require permits. He has failed to correct the violation in place.

Board members discussed and all agreed it has gone on too long; therefore, if he does not come into compliance within the ninety (90) day period, then to start fining. Bob Camacho said that he would follow up

with a letter and we can do on a non-criminal basis and issue tickets and if he doesn't appeal, then it becomes a criminal violation.

**8:17 p.m. Discuss – 31 Lake Shore Road (Letter from John Mulcahy)**

Paula Fitzsimmons said that she would have to recuse from this discussion for reasons in which she cannot disclose. Bob Conroy said that this letter is not new information and that he recalled this complaint over the last couple of years. Bill Cargill read the letter aloud which was the most recent letter dated November 27, 2011 requesting review of the property in question with what he feels is in violation of our zoning bylaws; specifically Section 196-13 (8) Customary Home Occupation. He states that the situation has only gotten worse since his original letter of April 29, 2010.

Bob Camacho said that Mr. Mulcahy is accurate and that other neighbors that aren't as close are also complaining. He also said the owner was fined a couple of times previously and he backs off a little and that the problem is defining what he can use for his personal use versus a business. It has escalated and he has asked the police to go by to see what happens and it appears that the workers show up in the morning, load their trucks, leave for the day and what he is doing at home is legal. He has asked for the owner to come before the Board to discuss. When he goes there the commercial vehicles are not always there. It appears to be a landscaping business and there is not another location though in which to store the vehicles.

Bill Cargill said that in his opinion it sounds like he is operating a landscaping business on his property and asked Bob Camacho if he has issued a cease and desist and he has not. Bill Cargill said if it is a violation, the building inspector has the authority to stop the violation so it does not need to come before the Board. Bob Camacho said that the problem is that if he has to go before a judge he has not seen actual violations and would have to depend on neighbors testifying. It was stated that the Zoning Board has no investigating authority but just regulatory and the Building Inspector has the authority to enforce the bylaws. The Board is not the enforcer for zoning violations, there is currently a process in place and the owner can appeal if he is aggrieved and feels he is not in violation. If people are in clear violation of a bylaw you have to enforce for the other residents of the town. Bob Camacho said that he would do first thing Monday morning.

**8:30 p.m. Minutes** Review draft minutes 9/22/11, 11/7/11, 11/8/11, 11/17/11, 11/17/11 executive session, 11/29/11 executive session, 12/1/11 executive session, 12/9/11 executive session and 12/15/11.

**Motion** Robert Conroy –approve as submitted 9/22/11  
**Second** Paula Lia Fitzsimmons  
**Unanimous vote**

**Motion** Robert Conroy – approve as submitted 11/7/11  
**Second** Paula Lia Fitzsimmons  
**Unanimous vote**

**Motion** Paula Lia Fitzsimmons – approve as submitted 11/8/11  
**Second** Robert Conroy  
**Unanimous vote**

**Motion** Paula Lia Fitzsimmons – approve as submitted 11/17/11  
**Second** Robert Conroy  
**Unanimous vote**

**Motion** Robert Conroy – approve as amended 11/17/11 executive session  
**Second** Paula Lia Fitzsimmons  
**Unanimous vote**

**Motion** Paula Lia Fitzsimmons – approve as submitted 11/29/11 executive session  
**Second** Robert Conroy  
**Unanimous vote**

**Motion** Robert Conroy – approve as amended 12/1/11 executive session  
**Second** Paula Lia Fitzsimmons  
**Unanimous vote**

**Motion** Robert Conroy – approve as submitted 12/9/11 executive session  
**Second** Paula Lia Fitzsimmons.  
**Unanimous vote**

**Motion** Robert Conroy – approve as submitted 12/15/11  
**Second** Paula Lia Fitzsimmons  
**Unanimous vote**

**Motion** Paula Lia Fitzsimmons – adjourn 9:03 p.m.  
**Second** Robert Conroy  
**Unanimous vote**

*Respectfully submitted,  
Paula Meagher*

APPROVED AS AMENDED 3/22/12