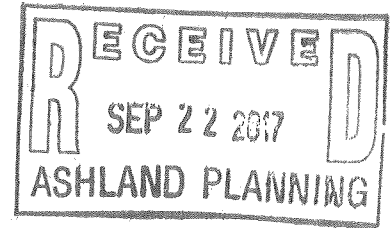


# *From the Law Office of Terrence P. Morris, Esq.*

## *Memorandum*

**To:** Planning Board  
**From:** Terrence P. Morris, Esq.  
**Cc:** Josh Chase, Ass't Town Planner  
**Date:** September 22, 2017  
**Re:** 10 Waushakum Ave



Please accept this memorandum along with supporting documentation in response to remarks, oral and written, that were presented to the Board at its last hearing on September 14, 2017. On behalf of my client we are deeply appreciative of the opportunity, not simply to rebut, but more importantly to affirmatively state our case. We are confident that upon review of the material, the Board will be able to find that any putative adverse effects of the proposed use will not outweigh its beneficial impacts to the Town and the neighborhood, in view of the particular characteristics of the site and of the proposal in relation to the site. In support of that position we offer the following analysis of the six criteria set forth in the Zoning By-law.

### **9.3.2 Criteria 1 – “Community needs served by the proposal”**

**Statement:** *“Granting the submitted special permit to construct a house that is substantially larger than most of those in the neighborhood and therefore considerably higher cost violates Ashland stated objectives and removes modest priced housing from Town housing stock.”*

**Response:** No amount of romanticizing will convince the objective observer that this 1940s era 200 sf mobile home with 136 sf addition, is going to attract Ashland’s aging population or younger first-time homebuyers. Its removal from the housing stock and replacement with a modest-sized home by today’s Ashland standards is far more in keeping with the Town’s vision statement. The worthwhile goal of creating a full range of housing does not envision the segregation of neighborhoods by size or age of home any more than it would by income. The suggestion that the introduction of a 1,983 sf home is out of place because the average size of homes on Waushakum Avenue is 1,227 sf *[sic]* enforces a static rigidity that is contrary to the goal of a diversified housing stock Town-wide. In 2015 the Town approved an age-restricted (age 55+) special permit 93-unit development on Lantern Way, ostensibly for Ashland’s aging population. The permit did not allow the size of the units to exceed 2,000 sf. In fact, one-third of the units were approved at 1,958 sf, a seemingly appropriate size to serve an aging population and address the goal of a diversified housing stock.

### **9.3.2 Criteria 2 – “Traffic flow and safety including parking and loading”**

**Statement:** *“No off-street parking area shall be maintained within 10 feet of a street”.*

**Response:** Both the architectural site plan and the proposed conditions plan (**See Exhibit A**) have been revised to eliminate this condition ensuring that the new home will be contributing to the improved safety and aesthetics of concern to the neighborhood. Accordingly, there is sufficient evidence for the Board to find that the change or extension of the structure shall not be substantially more detrimental than the existing nonconforming structure.

### 9.3.2 Criteria 3 – “Adequacy of utilities and other public services”

**Statement:** *“Clearly the case has been made that Ashland lacks an adequate supply of public water. Granting of a special permit to build a structure larger than planned for by zoning has a very high probability of negative impact on water supply since the number people who can reside in the proposed structure could far surpass the number people who will be able to live in the current 336 square foot home, thus likely having a much greater water usage.”*

**Response:** it is a fact that Ashland draws water from several wells and has historically relied on the MWRA only for sewage disposal. The severe water shortages in 2007 and 2013 were a result of climactic conditions not usage. As reported in the Boston Globe on December 8, 2013, **(See Exhibit B)** *“Lower than normal rainfall has led to lower water levels in Ashland’s wells this year.”* In 2013 the National Oceanic and Atmospheric Administration put the total rainfall in the area as 10 inches below normal. According to the DPW Director water levels in 2013 were similar to 2007, which is why the Town sought the temporary connection. In seeking the emergency connection to the MWRA that year, the Town requested access to an average of 200,000 gallons of water per day with the peak of amount of 750,000 gallons. Despite this capacity the town manager stated that there was no guarantee that Ashland will have to tap into the MWRA supply. The Town’s response to both of these situations underscored the root causes of the shortage in addition to rainfall. Changes were made in the water system: the Town switched the type of water pump it used, making it easier to control the rate at which water is drawn from the wells, which ultimately helped conserve some water. There were also efforts to fix water leaks. None of these causes or responses stemmed from new construction or any increase in the number of persons residing in town.

It is counter-intuitive and a serious overreach to suggest a *“very high probability of negative impact on the water supply”*, a supply that has a peak demand of 750,000 gallons per day, for the construction of a single-family home that is clearly below the average size for new construction of single-family homes in Ashland.

### 9.3.2 Criteria 4 – “Neighborhood character and social structures”

**Statement:** *“The size and scale of the proposed houses is not consistent with the density established by zoning nor with the neighborhood character. Allowing the special permit for building an oversized house on an undersized lot can only be construed as detrimental to the neighborhood if not the entire town.”*

**Response:** Much has been made of the size and scale of the proposed new home and whether it is consistent with the neighborhood character. That there is a certain incongruity between the existing zoning (Commercial Highway) and what exists on the ground, is undeniable. How else do you explain a minimum lot size requirement of 30,000 sf and a minimum frontage of 150 feet that none of the homes in the greater neighborhood meet. This is a neighborhood that was laid out 100 years ago largely as 4,500 sf lots. Even with the subsequent merger of lots, there is a disconnect with the zoning.

Most zoning by-laws or ordinances regulate the spatial relationship of buildings to the land on which they are situated using standard dimensional controls such as setbacks, lot coverage, open space, height (in feet/stories) and floor area ratio (FAR) that are variable according to the zoning district. Perhaps the most useful tool in regulating the size or volume of a building is FAR. Yet it is noticeably absent in the Ashland Zoning By-law. Instead we find in section 4.1.2 Dimensional note #3, a blanket cap on single and two family homes of 4,500 square feet without distinction as to lot size or zoning district. This limitation, such as it is, is further expanded when you are allowed 3 stories and 35 feet in height for dwellings. While the predominance of a single-family homes by their very nature/use define the social structure, the discordance of the metric factors make it extremely difficult to establish an objective consensus on what constitutes neighborhood character.

One approach is to evaluate how much of a variance is there between what is on the ground and what is in the By-law. We have already seen that compliance with the minimum lot size and frontage is non-existent. What about the 30' front setback requirement. Let's use the tangible "eye" test. If one picture is worth a 1,000 words...

A photo array of the street (see **Exhibit C**) indicates eight of the fifteen homes (other than the subject property) on Waushakum Avenue do not comply with the 30' front setback requirement, and most of those are setback less than the pre-existing 21' proposed for the subject lot. How significant is compliance with, or variance from, this standard? Section 4.1.5 of the Bylaw recognizes the importance of averaging setbacks to the consonance of the streetscape, which consonance contributes to the physical character of the neighborhood (that is technically at odds with the metric of the By-law). By that measure the proposed new home contributes to the character of the neighborhood as defined by what is actually present on the street.

The streetscape is further defined in section 5.1.3 of the By-law which contains a prohibition on parking within ten (10) feet of the street presumably for neighborhood safety and aesthetics. Once again neighborhood photos show that at least four of the 15 homes on the street park within 10' of the street largely because they have little choice. But then again such is the character of the neighborhood. At the southerly end of the street as it approaches Route 126 the commercial nature of the CH district intrudes into the neighborhood with the sterile commercial building at 5 Waushakum and the de-facto parking lot that serves as streetscape for 8 Waushakum, immediately adjacent to the subject site.

Finally we see that the physical character of the neighborhood, which is after all, the one thing that the Zoning By-law is intended to protect, is so much more than the product of fine-tuned statistical calculations of house and lot sizes. Statistics can be massaged and sometimes miscalculated. In this case the average house size for all houses on the street (including the sole 2-family and excluding the locus) is actually 1,303 square feet (not 1,227 sf). Yet averages are not always conclusive. What appear to be statistical outliers can have intrinsic value. **Exhibit D** shows a number of homes that are significantly closer in size to the proposal than the average. Moreover, where does one draw the line in defining neighborhood? At the northerly end of Waushakum Avenue there two adjacent homes at 25 and 29 Lakeside Drive, which are directly comparable to what is being proposed (see **Exhibit E**). House #25 contains 2,176 sf and is situated on a 5,036 sf lot, while House #29 contains 3,436 sf on a 4,669 sf lot. Given their orientation next to one another in full view at the end of Waushakum Ave, who is to say that they do not contribute to the character of the street/neighborhood?

### 9.3.2 Criteria 5 – "Impacts on the natural environment"

**Statement:** *"it is well documented that rise in impervious surfaces has negative environmental impacts and the proposed project at 10 Waushakum increases significantly the impervious surface compared to the current home driveway."*

**Response:** This comment as it relates to the current petition fails to account for the beneficial environmental impacts to be achieved through the installation of a subsurface drainage system. As part of the building permit design process the applicant proposes to install a storm-tech system to actually control and reduce the current volume and rate of run-off from the site. The system will include roof leader tie-ins of the gutters and downspout to the underground retention chambers and catch basins with 4-foot sumps located in the driveway to capture/control sediments and potential pollutants (see **Exhibit F**). In light of these facts, there is sufficient evidence for the Board to find that the change or extension of the structure shall not be substantially more detrimental than the existing nonconforming structure.

**9.3.2 Criteria 6 – “Potential fiscal impact, including impact on town services, tax base and employment”**

**Statement:** *“Residential property has a negative fiscal impact on the town budget as residential services as a whole cost more than received in taxes per property. Therefore, allowing a much larger home than currently exists, that can readily house many more people has an even greater negative fiscal impact.”*

**Response:** This is a general statement that omits/ignores the word “Potential” which renders the outcome uncertain at best and rushes to a predetermined “negative” conclusion unsupported by the facts in this case. We would argue that the impact of a single home, albeit larger than the current home, is no more than fiscally neutral in the absence of hard evidence to the contrary. It is undisputed that the new home will pay more in taxes than the current property and thereby expand the tax base. The number of residents in the property in no way increases the frequency of trash collection or snow removal or other municipal services. The house will be built according to current building standards which should reduce the likelihood of a fire hazard that is more likely presented by the existing structure that is, in part, more than 75 years old. These facts shift the burden of proof to those who would assert otherwise. To the contrary there is sufficient evidence for the Board to find that the change of extension or the structure shall not be substantially more detrimental than the existing nonconforming structure.

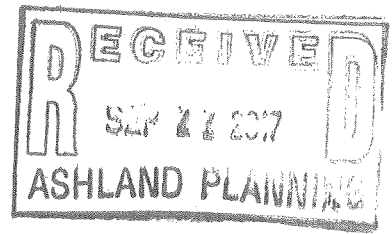


EXHIBIT A

UNDERGROUND SEWER  
**WAUSHAKUM AVENUE**  
 (PUBLIC - 40' WIDE - WAY)  
 UNDERGROUND SEWER

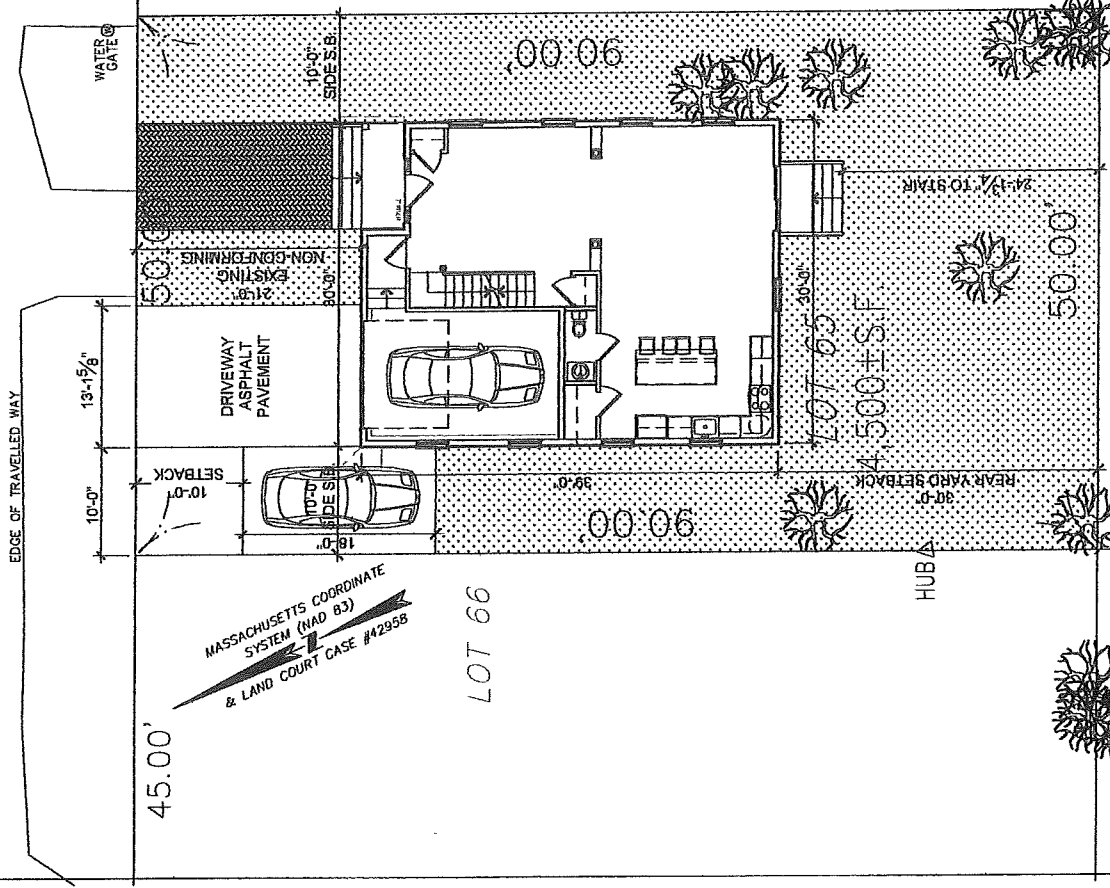
SECTION IV: DIMENSIONAL REGULATIONS

PROPERTY	10 WAUSHAKUM AVENUE
ZONING DISTRICT:	HIGHWAY COMMERCE CH
PARCEL ID:	0141016-0-0139-0000-0
LOT AREA:	44,500 SQUARE FEET

ALLOW PRINCIPAL BUILDING OR USE:	SINGLE-FAMILY DWELLING
MINIMUM LOT SIZE:	30,000 SQ. FT.
MINIMUM LOT FRONTAGE:	44- 4,500 SQ. FT.
MINIMUM FRONT YARD SETBACK:	150 FEET
MINIMUM SIDE YARD SETBACK:	30 FEET
MINIMUM REAR YARD SETBACK:	21 FEET (PRE-EXISTING)
MAX. HEIGHT & STORIES/FT.	10 FEET
No. OF PARKING SPACE:	30 FEET
	3 STORIES/35 FEET
	2-1/2 STORY/28 FEET - 5 INCH
	2 SPACE

BUILDING AREA

BASEMENT FLOOR:	888 SQ. FT. (STORAGE)
FIRST FLOOR:	888 SQ. FT.
SECOND FLOOR:	1,116 SQ. FT.
ATTIC FLOOR:	525 SQ. FT. (STORAGE)
<b>1,983 SQ. FT. LIVING AREA</b>	



#8  
 1.5 STORY  
 W/F

LAND COURT  
 CASE 42958A  
 LOT 72

1 SITE PLAN  
 39'-7" x 1'-0" 1 STORY

General Notes



STAMPED BY: JIM CHIEN, AIA, NCARB  
 2 PLANS REVISION 10/10/02  
 1 SETBACK REVISION 8/7/07



SINGLE RESIDENCE  
 NEW CONSTRUCTION  
 10 WAUSHAKUM AVENUE  
 ASHLAND, MA 02019

Project No. 0718  
 Date 03/02/07  
 Scale L-1

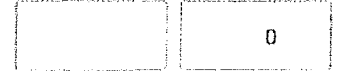
These drawings and specifications are the property and copyright of J.C. Architect and shall not be used in whole or in part, or shall be assigned to a third party without the express written permission of J.C. Architect.



**EXHIBIT B**

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# Fearing water shortage, Ashland seeks link to MWRA



By **Rebecca Kagle** | GLOBE CORRESPONDENT DECEMBER 08, 2013

Lower than normal rainfall has led to lower water levels in Ashland's wells this year, and prompted town officials to seek an emergency connection to the Massachusetts Water Resources Authority system to guard against potential shortages this winter and spring.

State environmental officials determined that Ashland residents face a potential water emergency, and the MWRA advisory board on Wednesday voted to support the town's request for a six-month emergency connection to the regional water system. An MWRA spokeswoman said the agency's board of directors is expected to approve the request during its Dec. 18 meeting.

The MWRA provides drinking water from the Quabbin and Wachusett reservoirs to 51 Eastern Massachusetts communities, but Ashland relies on the agency only for sewage disposal, drawing its water from several wells in town.

Town Manager Tony Schiavi said a lack of rain has left water levels low in town. Though there is no guarantee that Ashland will have to tap into the MWRA supply, Schiavi said, getting the emergency

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The town's Department of Public Works director, David Manugian, said rainfall was particularly low this fall.

"The well levels are down, and we're concerned that we may run into a situation midwinter where we can't provide enough water," Manugian said.

The National Oceanic and Atmospheric Administration puts total rainfall in the area as 10 inches below normal at this time of year, and calls the conditions in Ashland a moderate drought, he said.

The area generally sees 45 inches of rainfall per year, Manugian said.

Ashland has requested access to an average of 200,000 gallons of water per day, with a peak amount of 750,000 gallons, said Manugian. The MWRA water would be provided through a connecting pipe from Southborough.

The six-month emergency supply will cost the town around \$5,000 according to Schiavi, and an additional rate depending on the amount of water used.

Ashland faced similar drought conditions in 2007, when the town submitted its first request, and received emergency water from the MWRA.

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Water levels this year are similar to those in 2007, said Manugian, which is why the town is seeking the backup. <sup>Comments</sup>

Because this is Ashland's second request, the cost will be prorated based on the town's emergency usage in 2007, according to MWRA spokeswoman Ria Convery.

Although it is not certain that Though there is no guarantee that the town will need the emergency connection, Schiavi said, said local town officials are "trying to get all the pieces in place."

Manugian said that the likelihood of Ashland needing MWRA water is high enough to warrant setting up the contingency plan .

"We recognize that it's a process to get a connection, and we wanted to have that prep work done," he said.

The process includes gaining approval from the MWRA advisory board, which has representatives from all of its member communities.

Convery said the MWRA does not receive emergency requests often, "maybe one every couple of years," but they are generally approved. The Quabbin Reservoir holds about a six-year supply of water, and recharges very quickly from rainfall, she said.

Manugian said the town has not stood still since 2007 in the face of yet another potential water emergency. Some changes have been made in the water system: The town has switched the type of water pump it uses, making it easier to control the rate at which water is drawn from the wells, which ultimately helps conserve some water.

Schiavi said that the town has made efforts to fix water leaks, imposed water restrictions in the summer, and instituted a ban on outdoor watering last month.

But even with water usage controls, concern remains.

Snowfall can contribute to the long-term water supply, through melting, Manugian said, but supply: "If we don't have the rain, we don't have as much water as we'd like."

water as we'd like." Comments

Manugian said that in 2007 Ashland began looking at having a permanent connection with the MWRA, and searching for additional well sites.

Such long-term plans to manage the town's water continue. The DPW has identified two likely well sites, and conducted preliminary research and finished a conceptual design for a water connection, said Manugian. But progress was slowed by the recent economic downturn.

Manugian said town officials are hopeful that, with last week's advisory board vote backing the interim arrangement, progress on a long-term solution will continue.

*Rebecca Kagle can be reached at [rkagle13@gmail.com](mailto:rkagle13@gmail.com).*

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