



TEL: (508) 881-0100

**TOWN OF ASHLAND MASSACHUSETTS**  
OFFICE OF  
**ZONING BOARD OF APPEALS**  
101 MAIN STREET

RECEIVED  
TOWN CLERK  
ASHLAND, MA  
2018 JAN 24 PM 2:40  
*[Signature]*

John Trefethen, Chairman  
Josh Chase, Assistant Town Planner

**Special Permit**  
**10 Waushakum Avenue**  
**Map No.: 16, Parcel No.: 136**  
**January 9, 2018**  
**Case#: SP3-18**

**Applicant:** Waldir DaCosta  
8 Grant Street  
Natick, MA 01760

**BACKGROUND AND PROCESS**

1. The Zoning Board of Appeals (the "Board") received an Application for a Special Permit on November 30, 2017.
2. The application packet for a Special Permit, stamped in by the Town Clerk on December 4, 2017, contained:
  - a. Completed Application
  - b. Abutters list for 10 Waushakum Ave. dated June 14, 2017.
  - c. Copy of the Property Card for 10 Waushakum Ave.
  - d. Architectural Planset prepared by JC Architect of Quincy, MA titled "Single Residence New Construction", revised on August 7, 2017, August 10, 2017, September 21, 2017, October 13, 2017 and on October 30, 2017, 9 pages in total ("The Plans").
  - e. Plot Plan prepared by Denny Land Surveying and Engineering of Boston, MA, titled "Proposed Residence Certified Plot Plan" signed and stamped by David E. Denny, Professional Land Surveyor No. 41605, dated November 13, 2017.
  - f. A letter from VTP Associates, Inc. regarding a proposed subsurface drainage system, dated November 29, 2017.
3. The applicant previously applied to the Zoning Board of Appeals for a Special Permit 2017 for a 1,983 sq. ft. single family home on a non-conforming 4,500 sq. ft. lot in the Waushakum Park neighborhood. The application was ultimately denied on September 26, 2017. According to Commonwealth law, they are not allowed to reapply with the same application for the same permit for two years.

M.G.L. Chapter 40A Section 16 allows for parties to reapply with a similar application within those two years if the project has “specific and material changes” as deemed by both the Planning Board and the ZBA.

4. Additional Materials submitted before the January 9, 2018 meeting:
  - a. Submission by Terrence P. Morris, Esq. of a memorandum consisting of 2 pages, received on January 5, 2018.
  - b. Letter from Preston Crow, Chairman of the Ashland Planning Board, dated January 3, 2018 and received on January 8, 2018 stating that the Ashland Planning Board “...by a vote of 4-0-1 found that the new plan contains “*specific and material changes*” that differ from the original special permit application as required by M.G.L. Chapter 40A Section 16.”
5. Additional Materials submitted at the January 9, 2018 Public Hearing:
  - a. Spreadsheet of home and lot sizes in the neighborhood submitted by Terrence P. Morris, Esq.
  - b. Printout of Town of Ashland Zoning Map submitted by Terrence P. Morris, Esq.
  - c. 16 Google Maps printouts and property cards for properties in the neighborhood submitted by Terrence P. Morris, Esq.
  - d. Letter submitted by Catherine Jurczyk and Janet Platt of 11 Rodman Rd. dated September 12, 2017.
6. A Public Hearing was held by the Planning Board on December 14, 2017. The Planning Board voted to consent that the required standards in M.G.L. 40A Section 16 were met.
7. Two properly noticed Public Hearings were held consecutively before the Zoning Board of Appeals on January 9, 2018. The first hearing determined that the new application met the standards of M.G.L. Chapter 40A Section 16. The second Public Hearing was on a Special Permit application filed under Sections 3.3 and 4.1 of Chapter 282 of the Ashland Bylaws. The notice was as follows:

*Per M.G.L. Chapter 40A Section 16, Waldir DeCosta is seeking confirmation from the Ashland Zoning Board of Appeals that a new proposal for 10 Waushakum Avenue contains “specific and material changes” that differ from the original Special Permit application, SP1-18, which was denied by the Zoning Board of Appeals and then was stamped by the Town Clerk on October 11, 2017. The Public Hearing will be held at 7:05 PM on January 9, 2018 in the Board of Selectman’s Room located in Town Hall 101 Main St, Ashland MA.*

*The following Public Hearing will take place if the ZBA finds the application has the required “specific and material changes”.*

*Waldir DaCosta, owner, has applied for a Special Permit under Chapter 282 Sections 3.3 and 4.1, along with any other applicable sections of the Ashland Zoning Bylaws, to allow the reconstruction/replacement of a single-family residential structure on a substandard 4,500 sq. ft. lot with fifty (50) foot frontage. Petitioner seeks relief from the minimum 150 ft. frontage, 30,000 sq. ft. lot size, and to exceed the volume and footprint of the original structure. The property is located at 10 Waushakum Avenue in the Highway Commerce Zoning District. A public hearing will be held at 7:30 PM on January 9, 2018 in the Board of Selectmen’s Room located in Town Hall 101 Main St., Ashland MA.*

*Parties wishing to be heard on this matter should submit comments to the ZBA ahead of time and/or appear at the time and place indicated above.*

*Materials may be viewed at Town Hall during normal business hours or at [ashlandmass.com/543/projects](http://ashlandmass.com/543/projects).*

*John F. Trefethen, Chairman  
Ashland Zoning Board of Appeals*

Pursuant to Section 9.4.17 of the Zoning Bylaw, any appeal of this decision shall be made in accordance with M.G.L. c. 40A, § 17 within 20 days of the date this decision was stamped by the Town Clerk's Office.

### **HEARING**

Following the determination of the Section 16 Hearing by the Board, a second Public Hearing was held for an application to grant a Special Permit to construct a single family home at 10 Waushakum Avenue.

The Chairman opened the Public Hearing on January 9, 2018. Present at the Hearing on January 9 were John Trefethen, Chairman; Stuart Siegel, Member; Brian Forestal, Associate Member; and Martin Garvey, Associate Member; with Mr. Trefethen, Mr. Siegel, and Mr. Forestal sitting on this matter.

Atty. Morris, attorney for the applicant, while recognizing that the application will be held to the standards of Chapter 282 Section 3.3 of the Ashland Bylaws, referred to the criteria in Chapter 282 Section 9.3.2 as relevant and gave evidence that the proposed project meets favorably with those criteria. Atty. Morris discussed community needs, traffic safety and parking, adequacy of public services, stormwater impacts, fiscal impacts to the town, and neighborhood character. Specifically on the topic of neighborhood character, Atty. Morris submitted a zoning map, showing the split zoning between Commercial Highway and Residential B Zoning Districts of the neighborhood, and numerous photos, both aerial and street view, of several different properties in the neighborhood.

The Board and the applicant's counsel discussed the character of the surrounding neighborhood, the various uses, and how the size of the proposed structure fits into the fabric of the surrounding area.

The Applicant described a proposed subsurface drainage system the Applicant planned to construct on the property. This is referenced in a letter from VTP Associates, Inc.

Several residents voiced concerns about the scale of the proposed home, contending that the home would be substantially more detrimental to the neighborhood. They also objected to the process followed by the Planning Board and Zoning Board of Appeals.

### **FINDINGS**

After a presentation by the applicant's counsel, questions from the Board, and comments from the public, the Board found that:

1. The parcel, identified as Parcel 139 on Map 16, has an area of 4,500 square feet, or 0.10 acres, with 50 feet of frontage. The current structure is a mobile home with a small structure attached, a total of 336 square feet.
2. The neighborhood in question, Waushakum Park, was subdivided in 1909 into many undersized lots.
  1. The lots in the neighborhood vary in size from 2,011 to 18,255 square feet, with house sizes ranging from 336 to 3,436 square feet in size. Most of the parcels are located in the Residential B Zoning District, while some are located in the Highway Commerce Zoning District. Some of the lots in this neighborhood are split between the two zoning districts.
  3. The Parcel in question is located in the Highway Commerce (CH) Zoning District, and is also located in the Pond Street Overlay District. The dimensional requirements are as follows:
    - a. Lot Size: 30,000 Square Feet.
    - b. Frontage: 150 Feet.
    - c. Front and Rear Setbacks: 30 feet.
    - d. Side Setback: 10 feet.
  4. The lot size is undersized for the Highway Commerce Zoning District and does not have the required frontage.
  5. The current structure is located 21 feet from the front lot line, encroaching 9 feet into the required 30' front setback, and is 8.3 feet from the east side lot line, encroaching 1.7 feet into the required 10' side setback.
  6. The proposed structure conforms to all dimensional requirements, whereas the existing structure does not.
  7. The proposed structure has a footprint of 900 sq. ft.
  8. The living area of the proposed structure is 1,537 sq. ft.
  9. The height of the newly proposed structure is 26 feet.
  10. The newly proposed structure accommodates the second level into the roof line and will appear as a 1.5 story structure from the street. This is in keeping with the neighborhood.
  11. The average home size in the neighborhood is 1,373 square feet. The proposed structure is approximately 12% larger than the average home size. This increase is acceptable.
  12. The size and design of the proposed structure is in keeping with the neighborhood character.
  13. The proposed design "blends with the neighborhood," "is a clever way to make do," and was "significantly better as a fit for this neighborhood" than either the previous application or the current structure.
  14. The proposed subsurface drainage is an improvement to the current site.
  15. The new proposed structure is not substantially more detrimental to the neighborhood than the existing structure.

### **DETERMINATION AND DECISION**

In accordance with Chapter 282 § 3.3, § 4.1, § 9.2., and § 9.3 of the Ashland Zoning Bylaw, the Board concluded that the proposed single family home shown in The Plans above is in compliance with the Zoning Bylaw's Special Permit criteria.

Mr. Forestal put forth the motion to accept the plan as drawn, consider it not more detrimental to the neighborhood, and to grant a Special Permit to allow the reconstruction, extension, alteration, or change based upon a finding that the proposed modification will not be substantially more

detrimental than the existing nonconforming structure to the neighborhood. Mr. Siegel seconded the motion, and the motion passed 3-0-0.

A roll call vote was made as follows:

I, John Trefethen, vote to approve the granting of the Special Permit allowing the reconstruction, extension, alteration, or change in the proposed modification finding that it will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

I, Brian Forestal, agree with the vote made by Mr. Trefethen.

I, Stuart Siegel, approve the plan as stated by Mr. Trefethen.

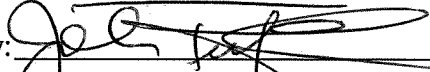
The approval granted is subject to the following conditions:

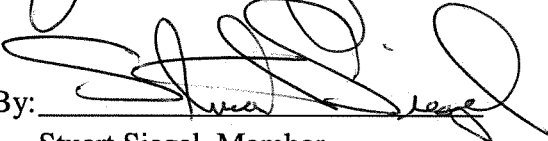
1. The applicant shall construct the project according to The Plans as submitted and identified as "Single Residence New Construction" last revised on October 30, 2017 and "Proposed Residence Certified Plot Plan of #10 Waushakum Avenue" dated November 13, 2017.
2. The applicant shall be required to install a subsurface drainage system as referenced in the November 29, 2017 letter from VTP Associates, Inc. submitted with the application materials.
3. During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust, and blocking of any roadways. The applicant shall at all times use all reasonable means to minimize inconvenience to nearby residences and businesses. Hours of construction shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday, with no construction on any Sunday or state or federal holiday. Hours of construction as aforesaid shall be enforced by the Ashland Police Department.
4. The applicant shall comply with any requirements of the Building Department and the Department of Public Works.
5. This approval shall be recorded at the South Middlesex Registry of Deeds. This Special Permit Approval shall not take effect until a copy of this Approval bearing the certification of the Town Clerk that twenty (20) days have elapsed after the Approval has been filed with the Town Clerk's Office that no appeal taken, or that if such appeal has been filed that it has been dismissed or denied, and the Approval is recorded. A copy of the first page of the recorded document bearing the date of recording and the book and page number shall be delivered to the Planning Department before any building permits are issued.
6. Prior to the issuance of an occupancy permit the applicant shall file two stamped as-built plans prepared by an engineer certifying the project was built substantially according to the approved documents. The as-built shall show all structures, all finished grades and the final construction layout of driveways, parking areas, drainage systems, utility installations, if any, in their true relationship to the lot lines as well as any location, size and depth and material of all public and private utilities on-site and their points of connection and all utilities which have been abandoned. The applicant shall also submit a georeferenced CAD file (MA State Plain NAD83 Feet) showing the completed structure.

In addition, the as-built plan shall be certified by a Massachusetts Registered Land Surveyor.

7. To the extent that the Project requires any other permits or approvals, whether as a result of any condition hereby imposed or otherwise, the applicant shall comply with any requirements of any other official, board, commission, or committee of the Town of Ashland to obtain the required permits or approvals.
8. Should the applicant fail to substantially commence use hereunder, except for good cause, the Special Permit herein granted shall expire twenty-four (24) months from the date this Decision is filed with the Town Clerk.

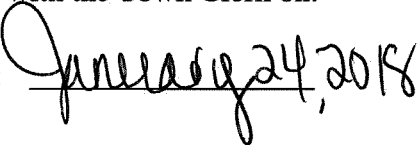
**Town of Ashland Zoning Board of Appeals**

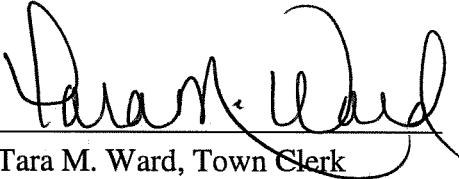
By:   
John Trefethen, Member

By:   
Stuart Siegel, Member

By:   
Brian Forestal, Associate Member

Filed with the Town Clerk on:

Date: 

  
Tara M. Ward, Town Clerk

I HEREBY CERTIFY THAT TWENTY DAYS HAVE ELAPSED FROM THE DATE THIS DECISION WAS FILED IN THE TOWN CLERK'S OFFICE AND THAT NO APPEAL HAS BEEN FILED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Tara M. Ward, Town Clerk