

MINUTES
ZONING BOARD OF APPEALS
JULY 10, 2006

The meeting was held in Stow Town Building and began at 7:30 p.m. Board members present were Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate) and Lee Heron (associate).

Glenn A. Gershon - The public hearing was held in Stow Town Building and was opened at 7:30 p.m. on the petition filed by **Glenn A. Gershon, 76 Pine Point Road, Stow** for variances under Section 4.4 of the Zoning Bylaw, "Table of Dimensional Requirements". (1) For replacement deck: front yard variance of approx. ten (10) feet and easterly side yard variance of approx. twenty-one (21) feet. (2) For hot tub deck construction: rear yard variance from lake of approx. thirty-eight (38) feet and easterly side yard variance of approx. twenty (20) feet. The property contains approx. 3,400 sq. ft. and is show on Stow Property Map U-1 as Parcel 28.

Board members present: Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate), Lee Heron (associate).

Mr. Tarnuzzer chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on June 22 and June 29, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt. Rita Doering of 74 Pine Point Road was present. Mr. Tarnuzzer recited the criteria to be met for grant of variance.

Mr. Gershon was present and referred to the plan submitted with the petition. He advised the two structures were constructed without a building permit. A letter from the Building Inspector dated March 24th had been received by him in response to the March 22nd letter of Dan Doering, son of Rita Doering, that the new structures "seem overly close and large in scale". Following inspection of the property, the Building Inspector ordered either removal of both structures or application within fourteen days to the Board of Appeals for variances. Mr. Gershon's petition was received June 13th.

Mr. Gershon said the construction occurred toward the end of January and was completed in early February. The deck replaced a stairway landing entrance to the dwelling that was about as wide as that stairway. There were no measurements concerning the deck size on the plan, however, it appeared to be 12'x12'. The hot tub is on a raised patio deck, is free-standing and not attached to the dwelling. It was constructed on concrete footings and accommodates the descent to the lake shore.

Mrs. Doering, the immediate abutter, asked if any variance granted would allow the applicant to build higher or possibly close in the deck as a screened porch. Mr. Clayton responded that might be possible as long as height restrictions were met. Mr. Gershon said he had no intention of enclosing either deck.

Mr. Lowden observed the plan did not show the distance of Mrs. Doering's dwelling to the lot line. Scaling of the plan appeared to show a 25-foot to 30-foot side yard. Mrs. Doering felt both structures were too close to the lot line. She expressed willingness to favor the hot tub deck closer to the shore, as long as it is not enlarged. However, the deck appears to be very close to the lot line. Mr. Clayton pointed out that if a variance were granted, the Board could restrict any future enlargement.

A site visit was planned for Thursday, July 13th.

The hearing was closed at 7:52 p.m.

Robert & Caroline Collings - Discussion ensued concerning the Collings' application for special permit regarding a perceived flood plain mapping error on property off Barton Road. Mr. Collings was present with Attorney Robert Dionisi. Also present were several observers. Mr. Tarnuzzer began by stating he had been unable to contact any member of the Board since the last meeting. Town Counsel Jon Witten's opinion in his memo of June 3rd was that a permit could be granted if the proposed use is otherwise permitted in the underlying district, i.e., Recreation-Conservation. Single-family dwellings are not allowed in that district.

Mr. Tarnuzzer had prepared a "Collings Special Permit Fact & Question Sheet". Question: Does Section 5.1.1.7 give the Board of Appeals the authority to change a Flood Plain/Wetland District line that was created by the Department of the Army? Question: Does the Board of Appeals have the authority to change a Recreation-Conservation District line that has been approved by Town Meeting vote?

Mr. Tarnuzzer reported he had received a telephone call from the applicant saying that a special permit could be issued, based on information from Town Counsel. He suggested that if not approved, there could be a Chapter 40B application for the property. Mr. Collings denied he had said that; rather, there is another party that is contemplating such. Nevertheless, Mr. Tarnuzzer said he did not appreciate the call. There was also a statement that if things did not go the applicant's way, he would withdraw the application. At this point, Mr. Tarnuzzer did not believe the Board had authority to grant a special permit as single-family houses are not allowed in the Recreation-Conservation District underlying the Flood Plain/Wetlands District.

Mr. Dionisi said he had spoken to Town Counsel Witten earlier and asked if the Board could "pull back" the zoning district boundary line. Mr. Tarnuzzer said he was not convinced the two district boundary lines (Recreation-Conservation and Flood Plain/Wetlands) are identical. There could be soil or vegetation conditions that determine where the zoning district lines were drawn. He believed all advice from Town Counsel indicates the Board does not have authority to change the underlying zoning district line. Since the June 3rd memo, there were other discussions with Mr. Witten adding to that memo.

Mr. Dionisi insisted this is a case of first impression. The matter should be decided here. Mr. Clayton pointed out that the Board has not seen anything to substantiate the claim that there is a mapping error. A memo from the Conservation Commission suggested a formal review by FEMA is necessary. Access to the knoll in question would be through the Flood Plain/Wetlands District that does not allow structures (roads) or disturbance.

Mr. Collings suggested a continuance of the discussion until more information can be obtained. Mr. Dionisi felt confident that access to the knoll would be approved.

Mr. Tarnuzzer repeated that a dwelling is not allowed within the Recreation-Conservation District, which Mr. Clayton felt was vital to the issue at hand. Information from Town Counsel is that the Board cannot "peel back" the zoning district boundary line.

Mr. Dionisi claimed that the right question was not asked of Town Counsel. He suggested the public hearing be reopened. As far as Mr. Tarnuzzer was concerned, he had had a response from Town Counsel. Mr. Barney remarked that there appears to be an error in the flood plain map, but that does not affect the Recreation-Conservation District.

Mr. Tarnuzzer was not inclined to reopen the hearing. He felt there was information sufficient to come to a decision. Mr. Dionisi mentioned possible appeal of a decision to deny. Mr. Clayton advised the Board cannot make decisions on threat of appeal.

Several members were in agreement there is no authority for the Board to change the Recreation-Conservation District line. Mr. Clayton pointed out that the chair has been in discussion with Town Counsel on behalf of the Board. He felt there had been plenty of time for submittal of additional information from the applicant or otherwise. Mr. Tarnuzzer asked if it would make sense to meet with Town Counsel for further discussion. There is agreement there is an error in the flood plain line, but the Board cannot grant a special permit for a single-family dwelling, as requested, because of the prohibition of the underlying Recreation-Conservation District.

Mr. Dionisi claimed that the access to the knoll is grandfathered. Mr. Clayton replied that may be, but it is still within the Flood Plain/Wetland District.

With the agreement of the members, Mr. Tarnuzzer was to contact Town Counsel Jon Witten to arrange a meeting on Thursday, July 13th.

The meeting was adjourned at 8:50 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board