

MINUTES
ZONING BOARD OF APPEALS
MARCH 6, 2008

The meeting was held in Stow Town Building and opened at 10:00 a.m. Board members present were John Clayton, Edmund Tarnuzzer, Michele Shoemaker, Charles Barney (associate) and William Byron (associate). Also present were Ernest Dodd of the Planning Board, Robert Wilber and others representing the Snow Property Implementation Team.

Discussion ensued regarding the application of the Board of Selectmen for special permit under Section 3.2.2.4 of the Zoning Bylaw to allow creation of a municipal recreational facility off Old Bolton Road, the so-called Snow Property. Mr. Byron felt that vehicle parking will be an issue as well as that of access. He noted the close proximity of an existing residence on the westerly side and felt there should be screening and protection as best as can be accomplished. It was acknowledged there is no real plan in place at this time. It would seem desirable to move the parking access from Old Bolton Road to the other side of the parcel.

Chair Shoemaker asked for discussion concerning Section 9.9 of the Zoning Bylaw that appears to exempt the Town from the use of land in any district for any municipal purpose, with the exception of a refuse disposal area. Is this the controlling factor for this application and in accordance with the intent and purpose of Chapter 40A? Mr. Clayton felt that the words, "Nothing in this Bylaw shall be construed to limit or prohibit the use of land in any district....." eliminates the Zoning Bylaw. Therefore Chapter 40A applies. The Board can assume the word "nothing" does not exist. A special permit would not be required under Section 9.9. He could see justification in ignoring 9.9 and in considering a special permit.

Ms. Shoemaker saw a conflict between 9.9 and 3.2.2.4. The Board could decide on the conservative side and act on the application under 3.2.2.4. Mr. Tarnuzzer advised he had been in contact with Town Counsel Jonathan Witten. This board could approve with a decision turning the matter over the Planning Board for site plan approval with mandatory findings under 9.2.6 and 9.2.7. Mr. Tarnuzzer did not feel the Board had enough information under 9.2.6 (mandatory findings by Special Permit Authority). He would favor granting a special permit for the use with findings and conditions that the Planning Board is to make the mandatory findings based on a final site plan to expire December 31st, 2008.

Mr. Clayton felt that a special permit with mandatory findings should be subject to an expiration date, and there should be evidence to this Board that the mandatory findings have been complied with. He did not favor an extension of the expiration date, but rather another hearing. He reminded of the repetitive petition provision of Chapter 40A. Mr. Dodd advised that a draft copy of the Planning Board's site plan approval decision could be forwarded to the ZBA for review and comment. The Board was agreeable to the suggestion.

Mr. Tarnuzzer felt the major problem is that there is not enough evidence as to compliance with Zoning Bylaw provisions.

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Mr. Tarnuzzer moved to grant a special permit for the non-commercial municipal recreational use in a residential district on the Snow parcel. Second by Mr. Clayton.

The request is for a special permit under Section 3.2.2.4, Residential District Uses. The subject parcel is within that district and abuts an industrial use (Bose). The Board is aware of the language of Section 9.9 but believes it is bypassed by the requirements of Sections 9.2.6 and 9.2.7 as regards the special permit granting authority, as well as Chapter 40A. It was believed that the exemption under 9.9 would derogate from the intent and purpose of the Zoning Bylaw. There is not sufficient evidence that the 11 items under 9.2.6, nor the 14 under 9.2.7, have been met. The Planning Board is required to issue a site plan approval for the parcel with mandatory findings.

Mr. Clayton read from his notes. The word "nothing" in Section 9.9 violates the intent and purpose of the zoning bylaw and that of Chapter 40A. The ZBA should determine that a special permit is required and that the exemption in 9.9 does not exist. To issue a special permit requires a mandatory finding that all of the requirements of 9.2.6 and 9.2.7 have been met by the applicant. That has not been met. To ensure that all of the conditions are properly met, this Board should affirm that the site plan special permit to be issued by the Planning Board is received by the ZBA prior to the expiration of the ZBA's special permit.

Mr. Byron noted that certain requirements of 9.2.7 may require variance from the Zoning Bylaw. Mr. Clayton added that parking requirements are rather strict and may not be able to be met.

Mr. Wilber said that this proceeding is a start. The RFP will be going out this day, and it is expected to have a consultant in place within the next three to four weeks. It was felt that a termination date of December 31st would be acceptable.

Ms. Shoemaker called for a vote on Mr. Tarnuzzer's motion to grant a special permit under Section 3.2.2.4. The vote was unanimous in favor. Messrs. Tarnuzzer and Clayton were to collaborate on the draft of a decision to be distributed for review and signature.

The meeting was adjourned at 10:30 a.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board