

Zoning Board of Appeals  
Minutes  
February 8, 2018

A meeting of the Zoning Board of Appeals (ZBA) was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts on February 8, 2018 at 7:00 pm.

Members Present: Edmund Tarnuzzer, Charles Barney and William Byron

Associate Members: Andrew DeMore

Absent: Bruce Fletcher and Associate Members: Mark Jones, Ruth Kennedy Sudduth and Lee Heron

The meeting was called to order at 7:00 pm.

**Minutes**

January 8, 2018

***Andrew DeMore moved to approve minutes of the January 8, 2018 meeting as written. The motion was seconded by Charles Barney and carried by a unanimous vote of four members present (Ed Tarnuzzer, Charles Barney and William Byron, and Associate Member Andrew DeMore.***

January 29, 2018

***Charles Barney moved to approve minutes of the January 29, 2018 meeting as written. The motion was seconded by Andrew DeMore and carried by a unanimous vote of four members present (Ed Tarnuzzer, Charles Barney and William Byron, and Associate Member Andrew DeMore.***

**Deliberations – Chapter 40B Comprehensive Permit filed by Habitat for Humanity for property at Pine Point and Sudbury Roads.**

Members reviewed correspondence from the Planning Board, Board of Health and Places Associates Inc. and the requested exceptions filed with the Chapter 40B Comprehensive Permit Application for property at Pine Point and Sudbury Roads. It was agreed the purpose of the meeting is to get a sense of the board and that a formal vote will be made at a future date when Town Counsel and all members eligible to vote on the permit are present.

**REQUESTED EXCEPTIONS:**

Zoning Bylaw Section 3.2 – Residential District Uses

Section 3.2.3.2 - Request relief from the Special Permit process typically granted by the Planning Board for the proposed Duplex Residential Use in a Residential district in Section 8.2.

*Members agreed that this waiver request should be GRANTED. As recommended by the Planning Board, the intention of allowing duplex residential uses is to stimulate more affordable housing units.*

Zoning Bylaw Section 3.8 –General Use Regulations Pertaining to all Districts

Section 3.8.1.9.3 – Request relief from the requirement that Section 3.8.9.1 be met prior to the granting of a building permit, special permit or other approval for the proposed Duplex Use.

*Members agreed that this waiver request should be DENIED as it is not necessary. As recommended by the Planning Board, this requirement is intended to protect abutting property owners, rights of way and natural resources. The Applicant submitted a Stormwater Management Report and Grading Erosion Control Plan, which was reviewed by the Board’s Consulting Engineer, Places Associates, Inc.. Places Associates, Inc. found that the site design meets the DEP Stormwater Regulations and therefore recommended this requested exception may not be needed.*

Zoning Bylaw Section 3.10 – Table of Principle Uses (requires Site Plan Approval by the Planning Board)

Section 3.10.1 – Request relief to permit the land, Structure, and Building to be used for the proposed Duplex Dwelling Use without being subject to any conditions of limitations that are set forth in the Bylaw and in the Table of Principle Uses such as a Special Permit from the Planning Board and also being subject to the Site Plan Approval requirements as part of the special permit process as indicated in Note 3 of the Table.

*Members agreed that a waiver from the requirement to file a Special Permit and Site Plan Approval application to the Planning Board should be GRANTED. As recommended by the Planning Board, compliance with the Planning Board’s Site Plan Approval Rules and Regulations would protect the Zoning Board of Appeals, the Town and abutting land owners by ensuring that the components of Section 4.4 through 4.17 of the Site Plan Rules and Regulations are included in the Plans and that all aspects of the plan and related requirements have been adequately demonstrated and reviewed.*

*Members further agreed that submission of a site plan with the components as described in Sections 4.4 through 4.17 of the Site Plan Approval Rules and Regulations should be submitted to the Zoning Board of Appeals and reviewed by the Town’s Consulting Engineer for compliance, as a condition of the Comprehensive Permit.*

Section 3.10.1.1 - Request relief to permit the use without the granting of a special permit from the Planning Board with associated findings.

*Members agreed that this waiver request should be GRANTED as the Comprehensive Permit process supersedes the Zoning Bylaw Special Permit process.*

3.10.1.2 – Request relief to permit the use without being subject to the Site plan Approval requirements per Note 3 of the Table of Principle Uses.

*Members agreed that this waiver request should be DENIED. As recommended by the Planning Board, compliance with the Planning Board’s Site Plan Approval Rules and Regulations would protect the Zoning Board of Appeals, the Town and abutting land owners by ensuring that the*

*components of Section 4.4 through 4.17 of the Site Plan Rules and Regulations are included in the Plans and that all aspects of the plan and related requirements have been adequately demonstrated and reviewed.*

*Members further agreed that submission of a site plan with the components as described in Sections 4.4 through 4.17 should be a condition of the Comprehensive Permit.*

Zoning Bylaw Section 4.1 – Standard Dimensional Provisions

4.1.1 – Since requests have been made to vary from the required setbacks in section of the Zoning Bylaw, a relief from the requirement of this Section relative to the Building, structure or land shall not violate any section of the Zoning Bylaw or any of the provisions of the Town of Stow is requested.

*Members agreed that the waiver from the dimensional requirements of the bylaw should be GRANTED to **the extent that the setbacks shall be not greater than shown on the plan revised through December 28, 2017.** The Board further agreed that compliance with stormwater regulations is required.*

Zoning Bylaw Section 4.3 – Area, Frontage, YARD, and FLOOR AREA Requirements

*The Planning Board recommends that the requested waivers from the dimensional requirements of the Bylaw be granted*

Section 4.3.1 – Request relief from the requirement that No Building shall be erected unless in conformity with the requirements on the Table of Dimensional Requirements.

*Members agreed that this waiver request from the dimensional requirements of the bylaw should be GRANTED to **the extent that the setbacks shall be not greater than shown on the plan revised through December 28, 2017.***

Section 4.3.1.1 – Request relief from the requirement from this section to allow eaves, sills, cornices, belt cornices and window awning to project greater than two-feet into the required YARD.

*Members agreed that this waiver request from the dimensional requirements of the bylaw should be GRANTED to **the extent that the setbacks shall be not greater than shown on the plan revised through December 28, 2017.***

Section 4.3.2.6 – Request relief from this section to allow roof overhangs to extend greater than two-feet into the minimum required front YARD.

*Members agreed that this waiver request from the dimensional requirements of the bylaw should be GRANTED to **the extent that the setbacks shall be not greater than shown on the plan revised through December 28, 2017.***

Section 4.3.2.6.1 – Request relief from this section relative to the requirement that both Front Yards on a corner lot comply with the requirement of the front Yard provision since the Building encroaches within both front yards.

*Members agreed that this waiver request from the dimensional requirements of the bylaw should be GRANTED to **the extent that the setbacks shall be not greater than shown on the plan revised through December 28, 2017.***

Section 4.3.2.6.2 – Request relief from this section relative to allow the Building to be moved closer to the sideline of a Street than the minimum required front Yard along both Sudbury and Pine Point Road

*Members agreed that this waiver request from the dimensional requirements of the bylaw should be GRANTED to **the extent that the setbacks shall be not greater than shown on the plan revised through December 28, 2017.***

Section 4.3.2.7 – Request relief from this section to allow roof overhangs to extend greater than two-feet into the minimum required side Yard.

*Members agreed that this waiver request from the dimensional requirements of the bylaw should be GRANTED to **the extent that the setbacks shall be not greater than shown on the plan revised through December 28, 2017.***

Section 4.4 – Request relief from the Minimum Lot Area listed in the Table of Dimensional Requirements for the existing lot relative since it is deficient in area by 10,426± square feet (54,904 -65,340 = 10,436±)-

Minimum Lot Area (s.f.)	65,340 square feet required
	54,904 square feet provided

*The Board's Engineer, Places Associates, Inc., noted that this lot is a pre-existing non-conforming lot for area and therefore the waiver for the lot area might not be needed. The Board agreed that this waiver request should be GRANTED.*

Relief is also sought from the Minimum Front Yard and Minimum Side Yard setbacks listed in the Table of Dimensional Requirements for the proposed Duplex Building and appurtenances along both Streets as described below and dimensioned on the preliminary plan.

Minimum Front Yard	30' required	10' provided
Minimum Side Yard	25' required	20' provided

*Members agreed that this waiver request from the dimensional requirements of the bylaw should be GRANTED **the extent that the setbacks shall be not greater than shown on the plan revised through December 28, 2017.***

#### Zoning Bylaw Section 8.2 – Duplex Residential Uses

Section 8.2 – Request relief from the requirements of this section to obtain a special permit from the Planning Board for the proposed Use which is not within a lot within a proposed subdivision.

*Members agreed that this waiver request should be GRANTED.*

Section 8.2.1 – Request relief from the requirement to permit a Duplex Use on a lot that is not within a subdivision.

*Members agreed that this waiver request should be GRANTED.*

Section 8.2.2 – Request relief to allow the proposed Use to be constructed on a lot outside of a subdivision which does not meet the minimum dimensional requirements for lot size and “buildable” land.

*Charles Barney noted concern that “buildable” area is not defined.*

*Members agreed that this waiver request should be GRANTED*

Section 8.2.3 – Request relief to construct a two-family development outside of a proposed subdivision without a special permit and to omit the timeline requirements for commencement of construction following the issuance of the permit, including timeline for completion.

*Members agreed that the waiver request to construct a two-family development outside of a proposed subdivision without a special permit should be GRANTED. The Board further agreed that a condition of the Comprehensive Permit shall include submission of a timeline for commencement of construction and completion of the proposed duplex.*

Section 8.2.4.1 - Request relief from the requirement of the submittal of the application to the Planning Board for the Special Permit process.

*Members agreed that this waiver request should be GRANTED*

#### Zoning Bylaw Section 9.2 – Special Permits

9.2.1 - Request relief from this section which designates the Planning Board as the Special Permit granting authority for this Use.

*Members agreed that this waiver request should be GRANTED as the Comprehensive Permit process supersedes the Special Permit process of the Zoning Bylaw.*

9.2.3 – Request relief from the filing of a Petition with the Town Clerk and Special Permit Granting Authority for the Proposed Use.

*Members agreed that a waiver from the requirement to file a Petition with the Planning Board and to DENY the request for waiver from the filing of a Comprehensive Permit filing to the Town Clerk.*

#### Zoning Bylaw Section 9.3 – Site Plan Approval

9.3.3.6 – Request relief from the requirement that Site Plan Approval process is required because the proposed Use listed in the Table of Principle Uses indicates a Special Permit is required.

*Members agreed that a waiver from the requirement to file a Site Plan Approval application to the Planning Board should be GRANTED. As recommended by the Planning Board, compliance*

*with the Planning Board's Site Plan Approval Rules and Regulations would protect the Zoning Board of Appeals, the Town and abutting land owners by ensuring that the components of Section 4.4 through 4.17 of the Site Plan Rules and Regulations are included in the Plans and that all aspects of the plan and related requirements have been adequately demonstrated and reviewed.*

*Members further agreed that submission of a site plan with the components as described in Sections 4.4 through 4.17 should be a condition of the Comprehensive Permit.*

### **Town of Stow General Bylaw**

Article 9. Wetlands Protection – Request exception to additional jurisdiction areas subjected to site, along with the requirement of submittal of a written notice (Notice of Intent) to Conservation Commission for work within 200' of Lake Boon and or 100' within limit of Flood Plain.

Members discussed correspondence from the Conservation Commission advising that they have no jurisdiction with the proposed plan. Karen Kelleher reported that, as requested at the last meeting, she asked the Conservation Coordinator to confirm whether the most recent plan submittal is subject to the Conservation Commissions jurisdiction. The Conservation Coordinator confirmed verbally that the Conservation Commission has no jurisdiction over the most recent plan submittal, and further that Lake Boon is not subject to the Rivers Act 200 foot setback. The Conservation Coordinator will provide an updated written report.

*Members agreed that the requested waiver should be DENIED as being unnecessary.*

### **Town of Stow Board of Health Regulations**

#### **Private Well Setback Regulations**

##### **5.2.2 – Required Setback for Wells**

Structure with a foundation – 20' required    10' proposed

*Members discussed the Board of Health recommendation where James Garreffo of Nashoba Associated Boards of Health, acting on behalf of the Board of Health, noted that the purpose of the 20' setback from foundation is to allow the well to be serviced (access for a pump truck if the pump has to be changed and for a well rig if the well needed to be deepened). He further stated that ten feet seems tight on this lot given the house placement and topography but if a driller feels they can drill and service the well he has no objections to this waiver. During the Public Hearing, the Applicant's engineer stated that there is sufficient area to access the well.*

*Board members discussed concern that it may be difficult to access the well, however, based on Nashoba Associated Boards of Health recommendation and input from the Applicant's engineer during the public hearing, the Board agreed that this waiver should be GRANTED.*

Septic Regulations

Leaching Area Requirement	150% of Estimated Title 5 Flow Required 100% of Estimated Title 5 Flow Provided
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*Members discussed the Board of Health recommendation where James Garreffo of Nashoba Associated Boards of Health, acting on behalf of the Board of Health, indicated that he could not recommend granting this waiver. He noted that the additional leaching area requirement of the Stow regulations provides protection against individuals who install garbage grinders (often installed without the Board's knowledge). He further noted that the proposed system, an innovated/alternative leaching area, allows for a smaller leaching area than a conventional system and even with that reduction the proposed leaching area will be expensive to build given its location on the lot (high water table, sloping land and fill/retaining walls) but it will be even more challenging to replace if it should fail.*

Members also noted that during the public hearing, James Garreffo of Nashoba Associated Boards of Health, explained that his role is working for the Board of Health in reviewing the septic plan to determine if it can meet Title 5 requirements. He noted that although the plan is not there yet he believes it can get to the point where it is approvable.

*Members also discussed the fact that the Applicant recommended that the Board condition the permit prohibiting garbage grinders and statements made by the Applicant's Engineer during the public hearing where he stated that the 150% requirement would be uneconomic, would require a significant amount of additional fill, and would require much higher retaining walls.*

*The Board did not reach a consensus as to this request.*

**Conditions:**

Members agreed that the following conditions, as recommended by Places Associates, Inc., be included in the Comprehensive Permit:

1. A pre-construction meeting shall be held with Town Staff, the Town's consultant and the on-site contractor to review the construction schedule, coordination with town officials for parking and stockpile for materials, erosion control methodology and construction schedule.
2. The name of the person responsible for the site work (contractor) shall be provided to the town including an emergency phone number.
3. Additional erosion control materials must be readily available (either on site or adjacent sites) to allow replacement of measures as the project proceeds.
4. The contractor must develop a strategy for controlling the site in the event of an extreme weather event is predicted. This may require the presence of the contractor throughout the storm to guarantee that if normal erosion barriers are breached, no erosion products reach Lake Boon. (This strategy does not need to be approved by the Board but shall be verbally presented at the pre-construction meeting.)

5. The pre-existing conditions on Sudbury Road and Pine Point Road shall be documented with photos or video including the condition of the pavement, shoulders and any vegetation along the erosion control measures.
6. Roof gutters are required and should be noted in the Homeowners Association documents.
7. The operations and Maintenance plan for the drainage system should be included in the Homeowners Association documents and should be written for a lay person as it is likely that maintenance will be done by the property owners.
8. Trees along the periphery of the limit of work shall be evaluated and removed if they are likely to sustain drainage during construction (cut or filled root zone) or pose a hazard.

Members discussed concern about limited buildable area and noted this is not a perfect site for two families.

**Special Permit Decision – Brian & Catherine Smith, 216 Barton Road**

Members reviewed and approved the draft Special Permit Decision as drafted for Brian & Catherine Smith to allow expansion of an existing dwelling and to correct structural issues within the framing of the house at 216 Barton Road.

**Adjournment**

***At 9:06 pm, Andrew DeMore moved to adjourn the meeting. The Motion was seconded by Bill Byron and carried by a unanimous vote (Edmund Tarnuzzer, Charles Barney and William Byron, and Associate Member Andrew DeMore)***

Respectfully submitted,  
Karen Kelleher, Secretary