

Zoning Board of Appeals  
Minutes  
January 8, 2018

A meeting of the Zoning Board of Appeals (ZBA) was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts on January 8, 2018 at 7:30 pm.

Members Present: Edmund Tarnuzzer, Charles Barney, William Byron and Bruce Fletcher

Associate Members: Mark Jones and Andrew DeMore

Absent: Associate Members: Ruth Kennedy Sudduth and Lee Heron

**Public Hearing – Special Permit Application – 168 Barton Road**

At 7:30 PM Chairman Edmund Tarnuzzer called the Public Hearing to consider a Petition for Special Permit filed by 168 Barton Road Realty Trust to order by reading the notice of public hearing.

Board Members participating in the Public Hearing: Edmund Tarnuzzer, Charles Barney, William Byron and Bruce Fletcher; and Associate Member Andrew DeMore.

Scott Hayes of Foresite Engineering, representing the Applicant, reviewed the Petition. The Applicant proposes to raze the existing dwelling, and to construct a new dwelling and a new 2-car garage. The existing garages are proposed to remain. He further explained that a Special Permit is required due to the non-conformity of the lot. A variance is not required because the proposed garage meets the setback requirements of the Zoning Bylaw and the new dwelling will not be more non-conforming than the existing dwelling.

Zoning Board of Appeals members noted that a previous application was withdrawn due to concerns about the location and potential use of the proposed garage with a bathroom.

ZBA members questioned the scale of the plan relative to the garage setbacks. Scott Hayes noted that the scale does appear to be incorrect but the setback will comply with the Zoning Bylaw Requirements.

Chad Atwell, 171 Barton Road, noted that the original plan was to replace the existing garage but it appears now that there will be a new garage with the existing structures to remain. He asked if it was the intent of the Board with the previous application to require that he keep the old structures. The ZBA members responded that was not the intent. The concern with the original plan was that the proposed garage extended into the footprint of the existing garage not in keeping with the old structure's non-conformity. The Applicant explained that they have chosen to retain the existing garages for storage.

Bruce Fletcher asked the Atwells if the proposed structure will obstruct their view of the lake. They responded that they do not currently have a view of the lake but will have a view of the new structures.

Amanda Atwell, 171 Barton Road said she understands previous proposal was out of conformance with the setback requirements; however it seems strange that there will be more frontage buildings under the new application.

Scott Hayes explained that siting of the proposed garage was determined by setback requirements. He said the original plan was to have a house and a two-car garage. The current plan is to have a house, a two-car garage, one existing garage, and an existing shed.

The ZBA questioned how much vegetation is in the front of the lot. Scott Hayes responded that the front is currently landscaped and maintained as a yard.

The ZBA asked if the Applicant considered combining the two existing driveways into one. Ron Ham noted that the garage is intended for storage. He said they would like to keep vehicular access to the garage but it wouldn't bother them if there was a condition to remove it. Mr. Ham said he would prefer keep the driveway to the new structure and eliminate the second driveway in order to add landscaping.

It was noted that the proposed garage will have a second story for storage in order to get equipment out of the weather and off the lot. No plumbing is planned.

***Andrew DeMore moved to close the public hearing, the motion was seconded by Charles Barney and carried by a unanimous vote of 5 members sitting on the hearing (Edmund Tarnuzzer, Charles Barney, William Byron and Bruce Fletcher, and Associate Member Andrew DeMore). Associate Member Mark Jones abstained.***

#### **Deliberation – Special Permit Application – 168 Barton Road**

Members discussed the application and input received during the public hearing.

***Charles Barney moved to find that the proposed structures will be no more non-conforming than the existing structures and to grant the Special Permit for 168 Barton Road with the conditions that the driveway to the existing garage be removed and no plumbing be installed in the proposed garage. The motion was seconded by Bruce Fletcher and carried by a unanimous vote of 5 members sitting on the hearing (Edmund Tarnuzzer, Charles Barney, William Byron and Bruce Fletcher, and Associate Member Andrew DeMore). Associate Member Mark Jones abstained.***

Ed Tarnuzzer will draft the Decision.

#### **Minutes – December 7, 2017**

Member reviewed minutes of the December 7, 2017 meeting.

***Charles Barney moved to approve minutes of the December 7, 2017 meeting minutes as amended. The motion was seconded by Bruce Fletcher and carried by a unanimous vote of 6***

***members present (Edmund Tarnuzzer, Charles Barney, William Byron and Bruce Fletcher, and Associate Members Andrew DeMore and Mark Jones).***

**Public Hearing Continuance from November 6, 2017– Application for Variance - 84 Peabody Drive**

At 8:10 PM Chairman Edward Tarnuzzer announced that the Applicant, Jesus & Maricris Abelarde, has requested that the Public Hearing to consider the Petitions for Variance and Special Permit to allow a two car garage at property located at 84 Peabody Road, be continued without testimony because they were unable to obtain the plot plan as requested at the November session of the public hearing.

***Charles Barney moved to continue the public hearing to February 5, 2018 at 7:30 PM. The motion was seconded by Bill Byron and carried by a unanimous vote of 6 members present (Edmund Tarnuzzer, Charles Barney, William Byron and Bruce Fletcher, and Associate Members Andrew DeMore and Mark Jones).***

**Public Hearing - Petitions Special Permit and Variance – 16 and 20 Davis Road**

At 8:15 PM Chairman Edmund Tarnuzzer called the Public Hearing to consider Petitions for a Special Permit and Variance, filed by William Gerecke & Kelly Pryor, to order by reading the notice of public hearing.

Board Members participating in the Public Hearing: Edmund Tarnuzzer, Charles Barney, William Byron and Bruce Fletcher; and Associate Member Mark Jones.

Greg Roy of Ducharme and Dillis, representing the Applicant, introduced the Applicants Bill Gerecke and Kelly Pryor and reviewed the Plan.

Greg Roy explained that the Applicants live at 20 Davis Road and recently purchased the abutting lot (16 Davis Road). They seek to combine the two lots and raze the dwelling at 16 Davis Road, and keep the deck structure to be used as a deck or patio area. They also propose an addition to the dwelling at 20 Davis Road.

They are requesting a Special Permit due to the proposed addition to the existing non-conforming structure. They propose to move and replace the existing deck, a 260 sq. ft. addition, and a 190 sq. ft. screen porch on the second level with a deck below.

Because the lots are in common ownership the only variance issue is for a rear yard setback. The property will go from two single family dwellings to one single family dwelling with a new septic system. They made a filing with the Board of Health and the Conservation Commission.

Bruce Fletcher questioned the status of the 2003 Special Permit for 20 Davis Road. The Applicant responded that it was for a second level addition and a variance for setback for the Chimney. The work was done according to the Plan as required by the Decision.

It was noted that both lots are in common ownership but have separate deeds. With the Plan as proposed, Massachusetts General Law Chapter 40A would recognize the lots as merged as a single lot.

Mark Jones asked if the applicant would have any objections to a condition that a plan showing the merger of lots to be filed with the Registry of Deeds in order to make it clear and avoid any confusion in the future. The Applicants stated they would have no objection to such a condition.

Mark Jones noted that the proposed addition is close to the lake and asked if they have had any discussion with the Conservation Commission. Greg Roy said they filed a Notice of Intent with the Conservation Commission and anticipate a dialogue with the Commission.

Greg Roy said the variance portion of the addition is the deck. They will need a 19 foot setback relief.

The Board asked if the proposed work is in an area that is already disturbed. Greg Roy said the area is already disturbed - there is an existing wall structure and a maintained landscape area. They will need to take some trees down.

Bill Byron asked, because there are two separate deeds, does that fact that they propose to remove a structure and install a new septic system mean that the lots automatically become merged as one lot. Town Counsel Barbara Carboni said the lots would be considered merged for zoning purposes but not for other regulations. The separate deeded lot for the house to be razed would not be considered to be a buildable lot and it could be a problem if they intend to sell the lot. She suggested the Applicant consult with counsel.

Bill Byron asked if the owners could, within two years; request that they put another house on the separate lot. Town Counsel, Barbara Carboni said they could not come back as the two lots would be considered merged for purposes of zoning. She said there are ways of ensuring that such as filing a Plan to erase the interior lot line.

Greg Roy noted that the existing septic system is for 7-bedrooms. The proposed Plan proposes one 4-bedroom single family home.

Mark Jones asked if there is any chance of moving tanks further away from the Lake. Greg Roy said it can't be moved because of topography.

Mark Jones asked if any thought was given to try to avoid the need for a variance. Greg Roy said he looked at other options but topography was an issue. He also noted there is currently a patio in the area where the addition is proposed now.

#### **Public Comment**

Theresa O'riorden, 12 Davis Road, asked how the outdoor space, where the house is to be razed, will be used. The Applicant stated it would be a patio or deck area. They will maintain footprint but not the structure. They will leave a foundation wall because of grading and will make a porous area at same level as basement floor. They might tie into the chimney to have outside fireplace.

Kent Seith, 11 Hale Road, said it sounds like a good project. He is a fan of the idea of reducing the number of dwellings, and the property, which is currently an eyesore, will look better.

Theresa O'riorden, 12 Davis Road, noted there will be a large drop where the house is to be razed and asked if there will be some sort of fall protection. She also noted she is worried about what it will look like. She hopes the decision will include a condition for timing of the demolition so that they will not be living with abandoned building.

Mark Jones noted the wall to be retained is an 8-foot wall and they will be required to follow building code. Greg Roy noted that demolition does not relate to the application. They would be required to follow building code. It would be a building department issue.

Barry Price, 166 North Shore Road, noted that reducing traffic and septic in this area is not a trivial matter.

***Charles Barney moved to close the Public Hearing. The motion was seconded by Bruce Fletcher and carried by a unanimous vote of 5 members sitting on the hearing (Edmund Tarnuzzer, Charles Barney, William Byron and Bruce Fletcher, and Associate Member Mark Jones), Associate Member Andrew DeMore abstained.***

#### **Deliberation - Petitions for Special Permit and Variance – 16 and 20 Davis Road**

Members discussed the application and input received during the public hearing.

***Bruce Fletcher moved to Grant a Special Permit and Variance for 16 and 20 Davis Road and to include conditions that the lots are to be merged into one, compliance with Board of Health and Conservation Commission conditions and requirements and the integrity of the retaining wall meet building code requirements to be defined by the Building Inspector. The motion was seconded by Charles Barney and carried by the unanimous vote of 5 members present at the Public Hearing. (Ed Tarnuzzer, Charles Barney, Bill Byron, Bruce Fletcher and Associate Member Mark Jones). Associate Member Andrew D'Amore abstained.***

#### **Public Hearing continued – Application for Ch. 40B Comprehensive Permit filed by Habitat for Humanity - Pine Point and Sudbury Roads**

*Zoning Board of Appeals Member Bruce Fletcher recused himself by leaving the table for this portion of the meeting.*

Chairman Edmund Tarnuzzer reconvened the Public Hearing from the December 4, 2017 session to consider the Application for Comprehensive Permit, filed by Habitat for Humanity for property located at Pine Point and Sudbury Roads.

Board Members participating in the Public Hearing: Edmund Tarnuzzer, Charles Barney, William Byron and; Associate Members Mark Jones and Andrew DeMore.

Carolyn Read of Habitat for Humanity explained that there were five issues to follow up on from the last session of the Public Hearing:

1. An updated list of exceptions – submitted to the Board of January 2, 2018.
2. Submission of a Stormwater Management Report and Erosion Control Plan - submitted to the Board on January 2, 2018.
3. Clarification regarding access to the site from Pine Point Road – Response included in a letter dated January 2, 2018 (received by the Board January 8, 2018)
4. Response to Attorney Hill's letter – response in a letter dated January 2, 2018 (received by the Board on January 8, 2018)  
Response to Attorney Hill's letter
5. Site Distance Analysis – Response included in a letter dated January 2, 2018, submitted to the Board on January 8, 2018)

Board of Health Review - The Applicant received comments from the Board of Health Agent this evening. (The Board has not received a copy)

George Dimakarakos, of Stamski and McNary, Inc., representing the Applicant reported that they did additional testing and submitted a revised plan, which was reviewed by Nashoba Boards of Health. Nashoba Boards of Health, provided review comments to him this evening which include four technical comments. The revised plan does not require any Title 5 waivers and is now boiled down to just a couple of local Board of Health regulations. He said there are now no objections from Nashoba Boards of Health.

Town Counsel, Barbara Huggins advised that the Board should have something, in writing, from Nashoba Associated Boards of Health directly to the Board rather than the applicant. Mark Jones said he would like to hold the hearing open until we have that document entered into the record.

George Dimakarakos noted that the abutter's consultant cited the Reynolds vs. Town of Stow case, which is not relevant. It would be like comparing apples to oranges. In the Reynolds case, that project requested a waiver from the Town's Water Resource Protection District. This project is not located within that district. He also stated that any further study that was done in that instance was in reference to MADEP guidelines for plans for community aggregation. This project is not comparable in that instance. This project is subject to Title 5 Regulations which does not require nitrogen loading analysis. He also noted that Nashoba Boards of Health did not request nitrogen loading analysis.

Attorney Dan Hill, representing Mr. Perisho, said they have a Hydrologist, Scott Horsley present to explain his analysis. He said this is not apples and oranges situation. The issues are the same as

Reynolds and Plantation II because the septic will generate elevated nitrogen levels. The sewage disposal system placed on a steep slope creates a situation where nitrogen from a 5-bedroom septic system has the potential of impacting two abutting wells as well as the proposed well. They are not suggesting that a mass balance analysis be provided. They are just saying it is good practice for the board to determine impact to neighbors. This application has a list of many waivers; one waiver is from the requirement to have a larger leaching field. It is the job of the ZBA to balance those waivers with the need for affordable housing. This proposal is for two units and at least two wells could be impacted.

Attorney Hill suggested making the project one unit rather than two and noted that perhaps the answer, in the Applicant's view, would be economic value. Attorney Hill said nitrate standards can't be met as designed. It is a bad site – there is no back yard; it has bad soils; and they are pumping septic uphill. According to the analysis, it is not good news. They asked for the type of septic proposed and just got the plans at 5:00 this afternoon.

Attorney Kathleen O'Donnell, representing the Applicant (Habitat for Humanity) said she respectfully suggests that Mr. Hill's comments are beyond board's interests. Nashoba Associated Boards of Health has reviewed the Plans and had no concern with nitrogen loading. The proposal is for a duplex and not comparable to other sites referenced. They are only asking for waiver on size of leach field and only from local bylaw - not state Title 5. Compliance with Title 5 could be a condition of the permit.

Ed Tarnuzzer asked if the abutter's consultant will submit a written report. He suggested the Board can accept the report and find a consultant to look it over to determine applicability. He doesn't think a presentation this evening will make an impression on the sitting board without the Board's consultant review.

Attorney Hill said it is basic Hydrology. He would like the Board to hear the presentation. He also noted that it would be great if the Board will ask Nashoba Associated Boards of Health to review the report. George Dimakarakos said he agrees that the presentation is inappropriate at this time as it will cause confusion. Town Counsel Barbara Carboni said she feels it is appropriate to hear from the abutter's consultant consistent with Applicant's consultant and the board can decide if it is relevant.

Scott Horsley, Water Resource Consultant, said that he submitted a written Report and brought extra copies. He outlined his credentials: He has a consulting firm and has been in business for 30 years; for 25 years he was consultant to EPA's Office of Drinking Water; he taught courses in 40 states; served on DEP committees with regard to water management and current Title 5 changes. He has a long time interest in private wells because he feels state regulations are sparse. He has worked on these issues on both sides of fence. He worked for housing organizations and has written local health regulations to provide better protection.

With regard to this project, Scott Horsely said this is not a single family home and the site does not have good hydrology. Stow's Board of Health Regulations, as do many other towns, exceeds DEP Regulations for a reason, to provide a buffer. Not only to make the system function better but to also to meet

nitrogen loading concerns. They are not asking the project to meet public drinking water supply standards. Because this is 5-bedroom project is for two families there will be more flow than a single family 5-bedroom dwelling. The site is glacial till and steep slopes with difficult material to work with resulting in a lower recharge rate.

Scott Horsley outlined his report and how he applied DEP's Mass Balance Analysis criteria to determine nitrogen impact to abutting wells. The analysis was based on the proposed sewage flow, diluted with the amount of recharge – he used glacial till rate and assumed a mounded system. Direction flow was plotted based on the five test pits. His analysis suggests a nitrogen concentration of 27 mg/liter and 29 mg/liter. He noted that the state drinking water standard is 10 mg/liter. He also noted that this is an indicator of other pollutants such as pathogens and viruses.. He suggested that Nashoba Associated Boards of Health do a nitrogen loading analysis.

George Dimakarakos noted that the report does not include the formulas.

Ed Tarnuzzer asked about the time delay from leach field to a point where gets to steady state. Scott Horsley said as moves downgradient is diluted, and then reaches steady state. Ed Tarnuzzer noted that the velocity of groundwater was not calculated and said there has to be some factor of dilution with groundwater and sewage flow. Scott Horsley said the rate tells you how fast. The concentrations won't change based on time of travel.

Attorney Kathrine O'Donnell asked if Scott Horsley is trying to suggest two units are going to create other pollutants such as pathogens. She asked where the data is that shows there are more residents in a duplex with 5-bedrooms than a 5-bedroom single family dwelling. She said it is a stretch to know what the occupancy would be. George Dimakarakos said you can't say it could be worse if you can't predict occupancy. It could be better. Scott Horsley said census data says on average would be more flow. George Dimakarakos said Title 5 doesn't look at census data. They look at number of bedrooms.

Charles Barney asked what the assumption of the number of people is. It was noted there is no particular assumption other than census – DEP goes by number of bedrooms. George Dimakarakos said DEP recognizes two people per bedroom.

George Dimakarakos said he feels he shouldn't be answering this proposal because it is inapplicable. He said the method Scott Horsley is asking you to believe is that there is one sliver of influence on that well. The dilution factor is grossly underestimated. He said he also has credentials. He has designed thousands of septic systems and has a master's degree. He has yet to hear of nitrate problem with a septic system 100 feet away. If this assumption was used anywhere in town, it would be impossible to meet. In fairness to applicant – they have to comply with Title 5, which they are.

Town Counsel Barbara Carboni suggested that, hearing from very qualified experts, the Board should have its consultant, Nashoba Associated Boards of Health, review all materials for one final review with specific questions from the Board.



Janet Stiles 58 Pine Point Road, said she has two documents to submit, a study of Boones Pond by MA Department of Environmental Engineers which shows soils severely limiting septic in the Lake Boon area and notes from a Stow Municipal Affordable Housing Trust meeting. She does not have copies but will submit them to the ZBA Secretary.

Ed Tarnuzzer suggested that rather than reading the documents, she submit them into the record. Janet Stiles argued that this is a public hearing and she should be heard.

Janet Stiles said the DEP study is a detailed study of Lake Boon. Although the study dated 1980, it is science. Like anatomy, it will not change. She said the Board has testimony, from applicant's engineer, who said soil is poor, and also statement from Habitat for Humanity expressing concern that the Pine Point site needs extensive site work. The key word she said was "unbuildable". She said these efforts should go into other properties such as the old fire station.

Janet Stiles noted that minutes from January 20, 2016 SMAHT (Stow Municipal Affordable Housing Trust) meeting, they discussed a project at last town meeting, where 323 Great Road was offered to them and the church asked to share septic system but it was turned down. Ed Tarnuzzer said this hearing is about the Pine Point Road site - not other parts of Town. He again urged Janet Stiles to submit her documents in writing. Janet Stiles said the burden of proof is on applicant to show no evidence that no other site is available. She said the applicant will not be harmed by following bylaw and the ZBA also has a duty to follow it.

Janet Stiles said she spent time on this and has a strong interest and doesn't feel welcome at this hearing. She has concern that this is not a fair hearing.

Janet Stiles noted a letter, dated December 6<sup>th</sup> from Cynthia Perkins that says they hope to break ground soon. She again strongly recommended that people have an opportunity to speak. She will give a reference to the DEP report to the secretary.

Attorney Hill asked if the septic design changed because there were perc tests that didn't pass. George Dimakarakos responded yes, and the locations are shown on the plan.

It was noted that the retaining wall next to the road is eight feet high at its tallest point.

Theresa O'riorden said she feels the lot is too small for two homes and feels the 8-foot retaining wall will be any eyesore.

Members discussed the need to continue the hearing so documents can be submitted to Nashoba Associated Board of Health for review. Kathleen O'Donnell requested that the continued hearing be for the limited purpose of receiving a report from Nashoba Associated Boards of Health. Town Counsel, Barbara Carboni would not recommend limiting discussion. Ed Tarnuzzer said the Board still needs to

act on the list of waivers. Barbara Carboni recommended the Board consider the waivers in the public hearing proceedings so that the Applicant will have the opportunity to respond to questions.

Kent Seith, 11 Hale Road, noted that the curve on Sudbury Road near Pine Point Road is dangerous. Ed Tarnuzzer said the Board has a traffic study to evaluate. Attorney Hill noted that the sight distance analysis was provided. Kent Seith asked if the analysis was done at the intersection of Pine Point and Sudbury Roads. George Dimakarakos said the analysis was done at the proposed driveway and the site distance was determined to be more than ASHTO safe stopping standards. Attorney Hill asked if the driveway would hinder the site line from Pine Point Road.

The Board will ask Places Associates to look at site distance from Pine Point Road.

Bill Byron said the elephant in room is nitrogen loading. He asked if the concern is that the Applicant's consultant has not done the study or is it not applicable because we are dealing with Title 5. He also questioned, if the Board ignores nitrogen issue, would it be defensible. Kathleen O'Donnell said, in her opinion, nitrogen loading would have been raised by Nashoba Associated Boards of Health if they thought it was an issue. She said because there is another hearing on February 5<sup>th</sup>, she asked that the Board have Nashoba Associated Boards of Health review both sides of the reports. She said nitrogen is not an issue for this particular project because we are only looking at two units. This is not something that would be asked for any other house in this area.

Attorney Hill said this is 40B with waivers and not a single family dwelling. This science is what the court agreed with in other cases. Bill Byron said he would guess that every septic system in this area requires a variance. Attorney Hill said that they are grandfathered.

***Mark Jones moved to continue to public hearing to February 5, 2018. The motion was seconded by Andrew DeMore and carried by a unanimous vote of 5 members sitting on the hearing (Ed Tarnuzzer, Charles Barney, Bill Byron, and Associate Members Andy DeMore and Mark Jones)***

#### **Adjournment**

***Andrew D'Amore moved to adjourn the meeting at 10:30 pm. The motion was seconded by Charles Barney and carried by a unanimous vote.***

Respectfully submitted,  
Karen Kelleher, Secretary