

Zoning Board of Appeals
Minutes
February 15, 2018

A meeting of the Zoning Board of Appeals (ZBA) was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts on February 15, 2018 at 7:00 pm.

Members Present: Edmund Tarnuzzer, Charles Barney and William Byron

Associate Member, Mark Jones

Absent: Bruce Fletcher and Associate Members: Andrew DeMore, Ruth Kennedy Sudduth and Lee Heron

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

Minutes

Minutes of the February 5, 2018 Open Session Meeting

Charles Barney moved to approve minutes of the February 5, 2018 open session meeting as amended. The motion was seconded by Bill Byron and carried by a unanimous vote (Ed Tarnuzzer, Charles Barney and Bill Byron and Associate Member Mark Jones).

Minutes of February 8, 2018 meeting

Charles Barney moved to approve minutes of the February 8, 2018 meeting as amended. The motion was seconded by Mark Jones and carried by a vote of three in favor (Ed Tarnuzzer, Charles Barney and Bill Byron) and one abstention (Associate Member Mark Jones who was not present at the meeting).

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

Members discussed the proceedings and documents on record for the Chapter 40B Comprehensive Permit Application filed by Habitat for Humanity.

Members discussed the request for exception from the requirements of Section 3.10.1.1 and 3.10.1.2 (Table of Principle Uses), which requires Site Plan Approval by the Planning Board for duplex dwellings. It was agreed that, if the Comprehensive Permit is granted, the decision should include a condition that a Site Plan, including the components as described in Sections 4.4 through 4.17 of the Planning Board Site Plan Approval Rules and Regulations, should be submitted to the Zoning Board of Appeals and reviewed by the Board's engineering consultant for compliance.

A copy of the Planning Board Site Plan Approval Regulations should be included in the record of proceedings with a copy to Town Counsel, Barbara Carboni.

Members discussed the requested exceptions from Section 4.4 (Table of Dimensional Requirements) of the Zoning Bylaw. The Applicant's request was for exceptions from the requirements of the front and

side yard setback requirements. Members discussed whether the exception, if granted, should refer to the Plan. Town Counsel, Barbara Carboni recommended that the decision should relate to actual numbers rather than “as shown on the plan”. Members reviewed the Plan and determined that it does not clearly define the setbacks and appears to be inconsistent with the specific requested exceptions.

The requested exception states:

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

Although the Plan does not clearly label dimensional setbacks it appears that the plan shows the following:

25 foot setback from Sudbury Road (Required setback is 30 feet).
10 foot setback from Pine Point Road (Required setback is 30 feet).
22.5 foot setback from side yard (Required setback is 25)

It was agreed that, if the Comprehensive Permit is granted, it should include a condition requiring the Plan to be modified to show property line setback dimensions.

Members discussed the requested exception from the Local Board of Health Requirement for the Leaching Area to be 150% of Estimated Title 5 Flow. The Applicant proposes to comply with the Title 5 requirement of 100% of Estimated Title 5 Flow.

Ed Tarnuzzer said he doesn't think the Board would be setting a precedent on granting the requested exception from the Local Board of Health Requirement.

Members noted that it would be the homeowners' responsibility if a problem with the septic system arises.

Town Counsel, Barbara Carboni stated that James Garreffi of Nashoba Associated Boards of Health was clear that he would not recommend waiving the local bylaw requirement. She further noted that the Board would need good reason why they would be going against what the Town's consultant recommends.

Ed Tarnuzzer said the Board can't require more, but can require compliance with the Board of Health regulations. It was noted that the 150% was based on additional flow created for the potential of installation of garbage grinders. It was noted that the Applicant suggested prohibition of the use of garbage grinders. Bill Byron said he doesn't think concern about garbage grinders is the sole reason for the 150% requirement. He feels it is also a safety concern for small lots.

Town Counsel, Barbara Carboni noted that, during the public hearing, the Applicant's counsel noted that if this exception is not granted, their option could be to appeal the decision to the Housing Appeals Court as they will comply with Title 5 and the local Board of Health regulation would cost prohibitive.

Bill Byron noted it is not real clear where the reserve area will be located.

Mark Jones said his independent observation is that proposals for additional bedrooms could be another reason for the 150% requirement.

Bill noted that the applicant could have proposed something between the Title 5 100% requirement and local Board of Health 150% requirement.

Ed Tarnuzzer said he is inclined to go along with what the consultant recommends. He would feel terrible if granted something less than required and something happens.

Charles Barney moved that the Board DENY the requested exception and to require compliance with the Local Board of Health requirement for the Leaching area to be 150% of the estimated Title 5 flow.

Bill Byron noted that the Applicant's engineer said the 150% requirement would necessitate more fill and higher retaining wall.

The motion was seconded by Mark Jones.

Mark Jones said he feels that a prohibition of garbage grinders could be one step to argue in support of the requested exception. Ed Tarnuzzer said even if the requested exception is denied, garbage grinders should still be prohibited.

Ed Tarnuzzer is not in favor of granting the requested exception. He may feel different on another lot but this is a difficult lot.

Bill Byron asked if there is any opportunity to ask the Board of Health as to what the real purpose of the 150% requirement is. Town Counsel said the Board is allowed to consult with town boards and staff after the hearing is closed. However, asking for the reason for a bylaw could be stretching it.

Town Counsel, Barbara Carboni said she would be really concerned if board doesn't follow the Town consultant's recommendation. She is mindful of the fact that the Plantation comprehensive Permit was overturned because the Town did not follow local regulation.

Mark Jones noted that the Plantation issue was based, in part, on the analysis submitted by the abutter's consultant. Barbara agreed but noted the court determined the regulation should not have been waived.

Mark Jones said he could be persuadable to grant the requested exception.

The motion carried by a vote of four in favor (Ed Tarnuzzer, Charles Barney and Bill Byron and Associate member Mark Jones.

Bill Byron noted that this is probably one of the only organizations who will work with the Stow Municipal Affordable Housing Trust to get something built in town. He is hopeful that this process does not turn them away from doing anything in Stow. Town Counsel, Barbara Carboni noted that her advice is to have defensible decision and is not based on an opinion of the applicant.

Ed Tarnuzzer said he doesn't think the Board should base its decision on the financial aspects. It should be based on the right way to design the project.

Mark Jones noted that concern about sight lines was raised during the public hearing. It was noted that the application included a sight distance analysis which indicated adequate sight lines. It was noted that there was a question raised by an abutter about sight lines from Pine Point Road. The Board reviewed the Plan and did not see a concern about sight lines. Ed Tarnuzzer noted that he doesn't see an arguable traffic issue that this Board would have authority over.

Town Counsel, Barbara Carboni advised that the Board take a good look at the issues raised by Attorney Hill concerning potential impact to abutting wells. The Board should decide if there is anything to be addressed and determine if those issues were addressed by James Garreffi of Nashoba Associated Boards of Health Comments. Ed Tarnuzzer said he wonders if there is a valid concern in this particular instance. He noted that most homes in this area are on smaller lots, and when he posed question of whether there are instances with contamination, he did not hear anyone say their well has nitrogen contamination. It was noted the Perisho well is only 13 feet deep. Ed Tarnuzzer said he would have liked to have seen water analysis in order to have a baseline. It was noted that, given shallowness of well, it is likely water is coming from Lake Boon being filtered by the sand. It was noted that the Perisho well is 120-130+ feet from the proposed septic system which exceeds Title 5 and Local setback requirement, and is further away than the applicant's proposed well. Ed Tarnuzzer said he doesn't know what the flow is but he would think more than 50 should be adequate, but with slope like this site, he doesn't know.

Bill Byron said when he had to put a new well in, he had to do a survey and met 100' setback from septic systems. Later, his neighbor had to replace system, which brought it closer to his well. He was told that it was a local upgrade required by Title 5 and they were not concerned about impact to his well. Town Counsel Barbara Carboni said the Board can only make a decision based on information in the record. The Board must look at evidence and decide if there was sufficient evidence to grant a permit.

Mark Jones noted there was an argument that there was a significant amount of surficial water passing along down the downward path. Ed Tarnuzzer said he is not sure what the geology is from down gradient.

Town Counsel Barbara Carboni said the Board should review materials submitted and concerns raised by abutters and consultants.

Bill Byron said it seems that the drift of most of the letters was nitrogen loading and the analysis is not a requirement of title 5. Members reviewed the January 18, 2018 memo from James Gareffi of Nashoba Associated Boards of Health, where he reviewed the Scott Horsley Report. In that Memo, James Gareffi states that the Plan meets the nitrogen loading of title 5 and there is no need for additional standards to be met.

Members discussed documents submitted by Janet Stiles:

- Boons Pond Diagnostic/Feasibility Study, dated April 1979-July 1980, prepared by Massachusetts Department of Environmental Quality Engineering Division of Water Pollution Control Water Quality and Research (Specific reference was made to pages 16 and 17).
- Letter dated February 5, 2018.

Karen Kelleher will scan the Boones Pond report for members and Town Counsel.

Bill Byron noted that there are many septic systems in that area, however the argument was this is a new proposal. It was noted that the study focused primarily on the quality of pond and how it is impacted by surrounding uses.

Members discussed ongoing maintenance of the septic and groundwater system which will be the responsibility of the homeowners. Mark Jones noted that Habitat for Humanity said there will have to be appropriated funds by the condominium association as part of the mortgage.

Ed suggested that each member look through file and see if they any additional concerns to be addressed at a future meeting have. Town Counsel, Barbara Carboni suggested specifying a date for future deliberations. The Board agreed to meet on March 8th to continue deliberations.

Meeting Schedule:

February 27, 2018 – Joint Executive Session with Board of Selectmen

March 5, 2018 – Zoning Board of Appeals Meeting

- Public Hearing – 323 Great Road
- Public Hearing – 84 Peabody Drive (to be continued without testimony)
- Public Hearing – Plantation Apartments II comprehensive Permit
- Executive Session – Current Zoning Board of Appeals litigation and Executive Session Minutes

March 8, 2018, 7:00 pm - Deliberations – Habitat for Humanity Comprehensive Permit Application

Adjournment

At 9:30 pm Charles Barney moved to adjourn the meeting. The motion was seconded by Mark Jones and carried by a unanimous vote of four in favor (Ed Tarnuzzer, Charles Barney and Bill Byron and Associate member Mark Jones).

Respectfully submitted,
Karen Kelleher, Secretary