

Zoning Board of Appeals
Minutes
February 5, 2018

A meeting of the Zoning Board of Appeals (ZBA) was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts on February 5, 2018 at 7:30 pm.

Members Present: Edmund Tarnuzzer, Charles Barney and William Byron
Bruce Fletcher attended the Executive Session meeting only

Associate Members: Mark Jones and Andrew DeMore

Absent: Associate Members: Ruth Kennedy Sudduth and Lee Heron

Public Hearing continued – Applications for Variance and Special Permit to allow a two-car garage at 84 Peabody Drive.

Members participating in this hearing: Ed Tarnuzzer, Charles Barney, Bill Byron and Associate Member Mark Jones;

At 7:30 pm Chairman Ed Tarnuzzer called the Public Hearing continuance to consider applications for variance and special permit to allow a two-car garage at 84 Peabody Drive to order.

Ed Tarnuzzer explained that the revised plan shows two additional variances that were not requested in the original application and public hearing notice. Therefore the Public Hearing must be re-noticed. Town Counsel Barbara Carboni advised that a new application for Variance and Special Permit should be filed so a new public notice can be issued with proper notice to all abutters. The concern is that some abutters may not be aware of the change in the plan that requires additional variances. Steve Jelinek, 88 Peabody Drive, noted that he and his wife Betsy Wisch are the most direct abutters and they are aware of the plan change. Board members noted that the house directly behind the property may not be aware and should be notified of a plan change that impacts the setback to their property.

Town Counsel Barbara Carboni further advised that the Board could take testimony from abutters and then continue the hearing to the date of the re-noticed hearing. Steve Jelinek suggested the Board make a site visit with current plan in hand. His primary concerns are about runoff; space between driveway and well; and that any change in elevation should be addressed.

Jesus Abelarde explained that the surveyor depicted the driveway as larger than intended. The goal is to not remove some of the trees and shrubs. He noted the Board of Health didn't have a problem with the proximity of their well to the proposed garage, and although the Board of Health did not comment on it, the abutting well is further back.

Jesus Abelarde asked if he needs to submit architectural plans for the garage interior. The Board said they don't need interior drawings. They do not need architectural construction plans but will need a plan that shows the garage with elevations, its location on the site, height of the structure, and setback dimensions to the property line.

The Board asked about the proposed use for the Garage. Jesus Abelarde said the garage will be used for storage only, as required by the Board of Health, due to the size of the septic system.

Mark Jones moved to continue public hearing to March 5, 2018. The motion was seconded by Andy DeMore and carried by a unanimous vote of four members eligible to vote on these applications (Ed Tarnuzzer, Bill Byron, Charles Barney and Associate member Mark Jones).

Public Hearing - Application for Special Permit filed by Brian and Catherine K. Smith for Special Permit to allow expansion of an existing dwelling and to correct structural issues with the framing of the house at 216 Barton Road.

Members participating in this Public Hearing: Ed Tarnuzzer, Charles Barney and Bill Byron and Associate members Mark Jones and Andrew DeMore.

At 7:50 pm Chairman Ed Tarnuzzer called the Public Hearing to consider and application for Special Permit ,to allow expansion of an existing dwelling and to correct structural issues with the framing of the house at 216 Barton Road, to order by reading the notice of Public Hearing.

Present: Catherine Smith, Applicant; Steve Poole, Lakeview Engineering; and Gary Cato, Builder.

Steve Pool said the area of the lot is just under an acre - including property on either side of Barton Road. The existing dwelling and septic system is located on the lake side and an existing garage and well is on the other side of Barton Road. He explained that the Applicant is proposing an 8' addition in the location of a portion of an existing deck. The roof will be rebuilt with the ridge line being shifted over resulting in the height of the roof to be increased approximately three to four feet. The proposed porch at the front of the dwelling will meet setback requirements and does not necessitate a variance. All of the work except the front porch will be on the same footprint of the existing dwelling/deck.

They have an Order of Conditions from the Conservation for the proposed work.

No abutter comments.

Charles Barney moved to close the Hearing the motion seconded by Mark Jones carried by a unanimous vote of 5 members present (Ed Tarnuzzer, Bill Byron, Charles Barney and Associate members Mark Jones and Andy DeMore).

Deliberation – 216 Barton Road

Members discussed the Application for Special Permit and public hearing proceedings.

Mark Jones moved to Grant Special permit to allow expansion of an existing dwelling and to correct structural issues with the framing of the house at 216 Barton Road with the finding the proposed work will not substantially increase the nonconformity of the structure and is in keeping with the neighborhood, and including a condition that the roof shall not be increased by more than 3 feet in height. The motion was seconded by Charles Barney.

Gary Cona noted that roof work may result in an increase in height of 3-5 feet and therefore would like some flexibility in the vote.

Bill Byron moved to amend the motion to change the condition to state the roof shall not be increased by more than 5 feet in height. The amended motion was seconded by Charles Barney and carried by a unanimous vote of five members (Ed Tarnuzzer, Bill Byron, Charles Barney and Associate members Mark Jones and Andy DeMore).

The main motion, as amended – “to Grant Special permit to allow expansion of an existing dwelling and to correct structural issues with the framing of the house at 216 Barton Road with the finding the proposed work will not substantially increase the nonconformity of the structure and is in keeping with the neighborhood, and a condition that the roof shall not be increased by more than 5 feet in height” carried by a unanimous vote of five members (Ed Tarnuzzer, Bill Byron, Charles Barney and Associate members Mark Jones and Andy DeMore).

Public Hearing - Application for Special Permit and Variance filed by the Town of Stow Conservation Commission and Recreation Commission to allow construction of municipal park and a variance to allow construction of a small gravel parking lot within 35 feet of the side lot line and relief from the requirement for 30 feet of screening between the parking lot and lot line.

At 8:10 pm Chairman Ed Tarnuzzer called the Public Hearings consider applications for Variance and Special Permit to allow construction of a municipal park and variance to allow construction of a small gravel parking lot within 35 feet of the side lot line and relief from the requirement for 30 feet of screening between the parking lot and lot line to order and announced that the Applicant requested that the Public Hearing be continued without testimony, as their representative is not available this evening.

Charles Barney moved to continue public hearing to March 5, 2018. The motion was seconded by Bill Byron and carried by a unanimous vote of five members present (Ed Tarnuzzer, Bill Byron, Charles Barney and Associate members Mark Jones and Andy DeMore).

Public Hearing continued – Application for Ch. 40B Comprehensive Permit filed by Habitat for Humanity at Pine Point Road and Sudbury Road.

Members participating in this hearing: Ed Tarnuzzer, Charles Barney and Bill Byron and Associate Members Mark Jones and Andrew DeMore.

Chairman Ed Tarnuzzer called the Public Hearing, continued from January 8, 2018, to consider a Comprehensive Permit at Pine Point Road and Sudbury Road to order.

Carolyn Reed of Habitat for Humanity noted that this hearing was continued at the Board’s request for additional information and input from Nashoba Associated Boards of Health. That information now been submitted.

Attorney O’Donnell, representing the Applicant noted this is a town project sponsored by the Stow Municipal Affordable Housing Trust. She said the Board has received input from Nashoba Associated Boards of Health. She did see Attorney Hill’s letter in response to Nashoba Associated Boards of Health input and sees no reason to respond to a non-engineer on this issue. She noted that Attorney Hill is comparing this project to another project that is significantly larger.

Attorney O'Donnell noted an email from Nashoba Associated Boards of Health indicating that they do not recommend a grant of the waiver request with regard to the size of the leach field on the basis to allow repair in the case of installation of an illegal garbage grinder. Attorney O'Donnell urged the Board to consider that risk vs. the need for affordable Housing and respectfully requested the waiver be granted with a condition that garbage grinders are prohibited.

Jim Garreffi 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 under Title 5.

Ed Tarnuzzer noted that the Board heard concerns about nitrogen loading and contamination of abutting wells. He said it seems there should be testing of those wells prior to installation of the system so there is a base line to determine the source of contamination in the future. Jim Garreffi said that is a fair assessment and it is always good to see status of existing wells.

Ed Tarnuzzer noted that most septic systems in this area are on non-conforming lots and he is not aware of wells being contaminated by sewage. Jim Garreffi said they have seen water tests on some properties. From time to time they see concerns, noting that unfortunately every system discharges into groundwater.

Town Counsel Barbara Carboni questioned if it is possible to meet the local bylaw requirement for a larger leach area if the waiver is not granted.

George Dimakarakos, of Stamski and McNary said that increasing leach field by 50% would make the project uneconomic noting that they have worked hard to get the system over good soils.

Attorney O'Donnell said increasing the leach field would be significantly be more expensive. She noted the Applicant is a non-profit organization, and the project requires subsidy on several fronts. Therefore she feels the requirement would be uneconomic. She also suggested that the concern about garbage grinders could be addressed through a condition that units have a prohibition as to garbage grinders.

Town Counsel Barbara Carboni asked, although they feel it is uneconomic, could the larger leach field be constructed if the waiver were not granted. George Dimakarakos said it would require a significant amount of additional fill and would require much higher retaining walls.

Attorney Hill asked if they are proposing an innovative septic system. George Dimakarakos said initially they were proposing a stone and pipe system. The only innovative aspect is that the leach field is comprised of plastic chambers. Attorney Hill asked if Title 5 requires that you also show a conventional plan if you are using an innovative system. George Dimakarakos responded yes and noted the reserve

field is in the trenches of the primary field. Jim Garreffo said you need to show a conventional and primary system. Attorney Hill said the plan does not show a Title 5 system. George Dimakarakos said they are only asking for a waiver from the local regulations and not asking from Title 5.

Attorney Hill said in his comment letter, Jim Garreffo was saying nitrogen loading analysis is not required under Title 5. Attorney Hill said this may be true, but they were not arguing Title 5 requirements. He said this may be under the radar of Title 5 but their analysis suggests a nitrogen concentration above 20 mg/liter. They are not saying it violates Title 5 and Law. However the Board must consider local concern vs affordable housing. Attorney Hill said they haven't seen any rebuttal evidence. They haven't seen a counter-analysis from applicant.

Attorney Hill stated this analysis is the same as what was shown on Plantation II resulting in a determination that protection of drinking water trumps affordable housing. He said they are not against housing or a 40B project on this property if it can protect wells. They are asking the Board to deny this project without prejudice so the Applicant can come back with different project.

George Dimakarakos said the Board has heard his opinion as professional engineer. He reviewed the analysis and feels it is not remotely correct. It is inadequate, grossly underestimated, and alludes to sewage flow more than title five assumes.

Ed Tarnuzzer asked if there are any known cases where drinking water wells were contaminated by septic systems. George Dimakarakos said he has only seen that situation where a drinking water well was extremely close to a failed cesspool. He is not aware of any such situation where the septic system is 100 feet from the well. Attorney O'Donnell they are only aware of situations with failed cesspools and don't have a base line to determine impact. She also noted that they cannot check private systems.

Mark Jones asked and Jim Garreffo confirmed that, with tweaks, the septic system can comply with Title 5. Jim Garreffo noted that the plan should show a full conventional primary system which is not on the plan. Mark Jones asked if the reserve area can be further up the hill. George Dimakarakos said it needs to be in an area with good soils, which are toward front of site.

Janet Stiles, 58 Pine Point Road, submitted the geology report that she referred to at the January 18th meeting. Her comments are on pages 16 and 17 of the Boones Pond report prepared by Massachusetts Department of Environmental Quality Engineering Division of Water Pollution Control. She also asked George Dimakarakos to mark on her copy of a sewage disposal plan all the sites that failed. George Dimakarakos said they are clearly shown on the plan submitted to the Board.

Janet Stiles noted at it was mentioned by applicant that there was overwhelming town approval. She disagrees with this statement noting that there were two town meetings. Only 1% of the town attended

the Town Meeting when the subject was to simply transfer of the property, with no information about the plan. The most recently town meeting only 2% of the entire town were in attendance.

Janet Stiles asked Ed Tarnuzzer if he is a member of the Stow Lions. He answered yes he is. She then asked if he was at the meeting where there was a dinner with Habitat for Humanity attendees. Janet Stiles said she submits to the assembly that considering Mr. Tarnuzzer was at that meeting it is inappropriate for him to sit as an official at this meeting as there is an appearance of a conflict of interest.

Town Counsel Barbara Carboni noted that she discussed this issue with the Chair. He did not believe it is a conflict and she agrees. On her advice, the chair filed a disclosure notice indicating he was at the meeting and did not discuss this application. Therefore the presumption is he can sit on this hearing.

Kent Seith, 11 Hale Road said that he heard at Town Meeting that if community doesn't feel in harmony Habitat will not go through with the project. Heard at town meeting heard won't go through. He said common sense says this project doesn't make sense on this site.

Mike Perisho, 249 Sudbury Road said Attorney Hill is representing him. He said his primary well is in question. It is a 13' well. He had it tested when he originally bought the property but not recently. He said the challenge is his well is sitting downhill from the proposed septic system. He has good water. If they put sewage on this site, sometime something will happen. Habitat started in 1988. His house was there since 1890. He said this is a new proposal and asked the Board to consider if they would want it if they lived downhill from this project.

Jim Olsen, 242 Sudbury Road, said he lives directly across street. He said there is a lot of traffic in this area. He questioned if there is enough area for parking as you don't know how many cars there will be for two units. He does not feel the site is a buildable lot. He said there is nothing wrong with Habitat for Humanity programs, but technically this is not a good site. There is not enough buildable area and there are proposing to put septic on a big hill.

Kelly Melcher, 239 Sudbury Road abutter has a quality of life concern. She said the last time she looked at the plan one of the units was proposed to be "accessible" unit. Therefore, she assumes there will be an "accessible" vehicle. She feels that an accessible van at this dangerous location is not appropriate. She said the Board should look at traffic patterns. She also noted that there is no playable yard space for children who will live there. She attended one of Habitat and SMAHT meeting and tried to have good conversation but they were very condescending toward her.

Laura Spear, Member of the Stow Municipal Affordable Housing Trust, said she is sorry she didn't see Kelly at one of their meeting and wish she had. Laura said that she is hearing this is a dangerous spot

but she sees that people park there and the school bus stop there and doesn't see why the people across the street use it if they think it is so dangerous.

Laura Spear noted that two abutters who spoke tonight have comparable sized housing and lots. She noted the house across the street is 3,996 sq. ft. and this is 2200 sq. ft.. It is not out of scale of neighborhood. She noted there is another lot that is .233 acres. She noted there may be problems already existing from abutters but doesn't understand why people think this will be a problem. People are making the issue bigger than it is. The Town needs affordable housing. She is tired of hearing that people want affordable housing but not in their backyard.

Kelly Melcher, 239 Sudbury Road, questioned what the buildable area of this lot is. She said they are cramming a lot on a small portion of the lot.

Janet Stiles said if Laura Spear is tired of hearing that finding a place for affordable housing is difficult, then why did she take fees in lieu from Arbor Glen rather than require the developer to build the units. She said all data from the Department of Water Quality and the Stow Master Plan advise against new units in this area. She also noted that the property across the street from this site was Hanson's beach. The current owners have greatly improved this property.

Jim Olson, 242 Sudbury Road, said he has lived in Stow in the same house for 55 years. When he first moved there two to three cars was a lot of traffic. He said he knows what he is talking about. He has two homes and plenty of parking in back of his yard. He has never parked his vehicles at this site. He said very few cars park there if they do, you don't see pollution.

Kelly Melcher, 239 Sudbury Road, said the bus stops at Lakewood not this site because it is too dangerous.

Attorney Hill said he heard you don't know what existing situation is. He reminded the Board that that is irrelevant. All the Board can determine is if this project causes incremental impacts. Ed Tarnuzzer said his concern is how you measure the impact without background information.

Kelly Melcher, 239 Sudbury Road, said that they just tested their well and it did not indicate nitrate levels. There is a high manganese level which means the proposed well will likely also need treatment system, which will be costly for the homeowners to maintain. Janet Stiles said she met with Jim Garreffi in January talked about how things like that (treatment system) would be paid for and she heard there would be condominium fees. She noted concern about affordability and noted that there have been foreclosures on condominiums for failure to pay fees.

Town Counsel Barbara Carboni suggested Board review waiver request before they close the hearing in case they have any questions or if they require clarification from the Applicant. She said the Board has to remember to listen to its consultant when considering waivers.

Town Counsel Barbara Carboni and Attorney O'Donnell discussed options for the decision when considering waivers that will not be granted. The Board could deny the waiver and the permit or deny the waiver and grant the permit

Members reviewed the list of exceptions.

General Bylaw – Wetlands

With regard to the requested exceptions from the Wetlands Bylaw, the Board noted that correspondence from the Conservation Commission indicated they have no jurisdiction and asked why the Applicant is requesting the waiver. George Dimakarakos said he was concerned about the 200 foot setback from Lake Boon. Town Counsel said she would have no objection to the Board seeking clarification from Town Staff that their initial memo applies to the most recent plan.

Board of Health Regulations

With regard to Board of Health setback from well, the applicant confirmed that it applies to their own well. The well will be 10 feet from their own foundation. George Dimakarakos said that a drilling rig will be able to access the well after the dwelling is up.

With regard to the Board of Health regulation for the leaching area requirement to be 150% of Title 5, the Board asked if the leach field would be easily accessible to repair. George Dimakarakos said it is accessible to repair and also noted that he feels strongly that it would be uneconomic to required 150% of Title 5, and would require more site disturbance.

The Board asked about the useful life for this septic system. George Dimakarakos said, if installed correctly, there is no reason for the useful life to be less than any other system. It would require pumping of a traditional tank.

Jim Garreffi said the life of a septic system could be 2 to 25 years it depends on maintenance. He was concerned that it would be difficult to get back in once installed. With regards to garbage grinders, you can have restrictions but it is not easily enforceable.

Attorney O'Donnell said DHCD limits number of occupants in affordable units.

Bill Byron noted concern about sustainability for owners. He is concerned about the pump for the septic system and possible failure. He wants to be sure people can afford what you're giving them. It was noted that Habitat holds the mortgage.

Attorney O'Donnell explained the condominium fees, which would include annual costs for common areas, including well and septic. Because both units are affordable, there will be no disconnect pricing. It will be based on the carrying cost. The Condominium entity would collect funds and establishes an account. In some programs the the lender would set up some funds, but that is not usual. It is hard to say what the condominium fees are until you know what you need.

Mark Jones asked how the Board deals with the final plan to Nashoba Associated Boards of Health. Town Counsel said she would recommend it be addressed as a condition of the Permit.

Charles Barney asked what is considered buildable area. George Dimakarakos said it depends on what you are building. An area could be buildable for some purpose and not others. In terms of steep slopes, it is typical to see a house sited on steep slopes; however that would be uneconomic for this project.

Members briefly reviewed Planning Board comments.

Janet Stiles said this is affordable housing. If you construct something that is not affordable, it is not right.

Jim Olson, 242 Sudbury Road, said he hears a lot of waivers. He said the Board should be judging this permit the same as any property. In his opinion, this is is not a buildable lot and the Board should not grant the permit.

Kelly Melcher, 239 Sudbury Road, noted that when she met with Habitat they said they couldn't build on other lots due to monetary reasons.

Cynthia Perkins said she heard concerns about the hill, water, lights shining in new neighbors windows, parking safety, contamination of water, contamination of lake, concern about families who won't be able to afford to live there, she is sure people are concerned there property values will be altered. She said it sounds like, from everything heard, this will be terrible situation. She said she worked on many Habitat projects and never experienced such opposition. She said that Habitat has gone the distance with this project and to requested waivers that comprehensive permits typically require and they are presenting something that is buildable and will be safe. Habitat would not put families in an unsafe situation. She said she is hearing concerns that the Board has to balance all concerns. She is in favor of going forward trusting that there is room on this site for two families and we can make safe substantial housing that will be value to the community.

Kelly Melcher, 239 Sudbury Road, said she finds it offensive for someone to think we have the inability to relate to families in affordable homes. She is a Peace Corps volunteer and AmeriCorps Alum. She would have no problem relating to families in affordable housing.

Mark Jones moved to close the hearing. The motion was seconded by Andy DeMore and carried by a unanimous vote of five members participating in the hearing (Ed Tarnuzzer, Bill Byron, Charles Barney and Associate members Mark Jones and Andy DeMore).

Members agreed to meet at 7:00 PM on Thursday, February 8th to deliberate on a decision.

Bruce Fletcher arrived at this point in the meeting.

Executive Session

The Chair announced the next item on the agenda is Ongoing Litigation, in particular, litigation between the ZBA and the Collings Foundation in the Appeals Court and Land Court. This item will be discussed in executive session under Purpose 3 under the Open Meeting Law, Chapter 30A, s. 21(a)(3). Purpose 3 is to discuss strategy with respect to litigation, where discussion in an open meeting may have a detrimental effect on the litigating position of the Board. He further stated that as Chair, he finds that discussion of this litigation in an open meeting would have a detrimental effect on the litigation position of the board. Accordingly, he asked for a motion for the Board to go into executive session to discuss litigation strategy in Collings Foundation v. Stow Zoning Board of Appeals.

Andy DeMore moved that the Board go into executive session to discuss litigation strategy in the Collings litigation. The motion was seconded by Charles Barney and carried by a unanimous roll call vote (Ed Tarnuzzer, Bill Byron, Charles Barney and Bruce Fletcher and Associate Members Andy DeMore and Mark Jones).

The Chair announced that the Board will reconvene in open session following the conclusion of executive session.

Minutes – Members agreed to review minutes at the meeting of February 8th.

Adjournment

At 10:50 pm, Charles Barney moved to adjourn. The motion was seconded by Mark Jones and carried by a unanimous vote (Ed Tarnuzzer, Charles Barney Bill Byron and Bruce Fletcher and Associate Members Andy DeMore and Mark Jones).

Respectfully submitted,
Karen Kelleher, Secretary