

Zoning Board of Appeals  
Minutes  
March 12, 2018

A meeting of the Zoning Board of Appeals (ZBA) was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts on March 12, 2018 at 7:00 pm.

Members Present: Edmund Tarnuzzer, Charles Barney, William Byron

Associate Members: Mark Jones and Andrew DeMore

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

Also Present: Barbara Huggins

The meeting was called to order at 7:15 pm.

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

Members reviewed the draft Decision for the Chapter 40B Comprehensive Permit Application filed by Habitat for Humanity for property located at Pine Point and Sudbury Roads, prepared by Huggins and Witten.

**Section I – Background on Project Proposal**

Town Counsel Barbara Huggins described the purpose of Section I as being a description of the project; background on how it became under the control of the Stow Municipal Affordable Housing Trust; the use of Community Preservation Act Funds and the RFP process resulting in Habitat for Humanity being selected as the developer.

**Section II – Findings of” Project Eligibility”**

Town Counsel described Section II as mandatory finding the Board must make in order to determine the Applicant has satisfied the Project Eligibility requirements. The findings are based on information provided in the Application.

**Section III - Waivers**

Town Counsel described Section III as an introductory to the waivers (addressed in more detail in Appendix A – Decision on Waivers). This section is worded in a manner to show the Board took seriously its decision on the requested waivers.

**Section IV – (Grant) Denial of Permit)**

Town Counsel said this section includes language indicating the Board endeavored to insure the conditions do not render the project uneconomic, as required by 760 CMR. This section further requests that, if appealed by the Applicant to the Housing Appeals Committee and the Housing Appeals were to find that a particular condition(s) render the project uneconomic or is not consistent with local needs, such decision should be limited to those particular conditions and that all other conditions and aspects of the decision be confirmed.

ZBA Members questioned what would be considered uneconomic and if it would be based on the budget and proposed contingencies as stated in the application. It was further noted that the contingency seems to be modest at best for the complexity of the site. Town Counsel said the burden would be on the Applicant to prove that a condition is uneconomic. Town Counsel also noted that based on case law, a municipality doesn't have authority to question the pro forma budget, which is up to the subsidizing agency and the applicant.

Members discussed concern if the project doesn't get completed due to financial issues and whether the permit should include a condition for a bond. It was noted that the Applicant may ask for more Community Preservation Act funds if it is found that the budget is insufficient. It was also noted that, in addition to Community Preservation Act funds, Habitat for Humanity is doing fundraising. Town Counsel said the Board could impose a condition for a bond but, if appealed it probably would not be upheld.

#### **General Conditions**

Section 6. (Plan References) - Karen will provide the plan titles and dates.

#### **Regulatory Compliance: State, Federal and Local**

No comments or changes

#### **Two Dwelling Units; Initial Purchaser; Affordability in Perpetuity**

No comments or changes

#### **Conditions Precedent to Commencement of Project**

Members discussed the complexities of the site and whether the Applicant should be required to assign a Clerk of the Works to the project to provide status reports to the Board. Town Counsel noted that, in the draft they tried to restrict activities and plans that require inspection or review to the Building Commissioner or the ZBA's consultant. Town Counsel cautioned the Board that a Comprehensive Permit cannot impose conditions that would be greater than what would be imposed for a market rate project.

It was agreed that the introductory paragraph should include language to require the Applicant to designate the onsite contractor doing the work to demonstrate to the Building Commissioner that conditions 4-17 have been satisfied.

Sections 18-A, B, C, E and F – (requirements for plans/reports) Members agreed that the language in sections 18.A, B, C. E and F should be changed from “submitted for review and approval “s to “submitted for review **and approved by....**”. It was also discussed and agreed that the words “Board or its agent are appropriate as it would allow the Board to have a peer review done.

Section 18-D – (timeline for commencement of work) Members agreed to insert the word “reasonable” to read “The Applicant has submitted to the Board or its agent a **reasonable** timeline.....”

Sedition 18-F – (erosion control plan) - Members agreed this section should require language to require that the contractor shall comply with the approved Erosion Control Plan.

Section 18-H (document existing conditions of Pine Point and Sudbury Roads) - Members agreed that this section should include more detailed language as noted in the Peer Review letter from Places Associates. It was also agreed to consult with the Building Commissioner and Highway Department for their advice as to whether the requirement to document pre-existing conditions of Sudbury Road and Pine Point road is appropriate. Members also agreed to include language explaining the reason for this condition is due the complexity of the site.

### **Conditions Relating to Construction**

Section 19-B (person responsible for site work) - Members agreed to add the requirement for the Applicant to designate the onsite contractor doing the work to demonstrate to the Building Commissioner that conditions 4-17 have been satisfied.

Section 19-D – (strategy for controlling the site) - Members agreed to remove the word “must” and include the words “shall comply with the approved Erosion Control Plan and .....”

### **Administrative**

Section 20 – (fees for consultant review) - The Board agreed that a specified amount should be determined to establish a 53G account (fee deposit). Karen will contact the consultants for cost estimates.

### **Waivers**

Zoning Bylaw Section 3.8.1.9.3 – (standards related to drainage and erosion) – Members agreed to remove the words “as unnecessary” and include language that refers to the requirement for an erosion control plan as recommended by the Board’s consultant and referring back to the conditions related to the Erosion Control Plan.

Zoning Bylaw Sections 4.1.1, 4.3.1, 4.3.1.1, 4.3.2.6, 4.3.2.6.1, 4.3.2.6.2, 4.3.2.7, and 4.4 (Dimensional requirements) - Town Counsel recommended that the Board determine actual dimension setbacks

rather than simply referring to the plan which could be subject to interpretation. Members reviewed the plan and found it not to be clear as to all of the setbacks and agreed to include stating specific dimensional waivers to be granted:

|   |
|---|
| <p><b>Zoning Bylaw requirement</b><br/><b>4.1.1</b> - No BUILDING, STRUCTURE or land, or part thereof, may be constructed, altered, enlarged, repaired or moved, occupied and used for any purpose which violates any section of this Bylaw or any of the provisions of the bylaws of the Town of Stow.</p> <p><b>Request</b><br/>Relief from this provision which prohibits construction or use of land or building in violation of the Zoning Bylaw or any Town Bylaw.</p> <p><b>Waiver</b><br/>Granted in part as noted in specific waivers noted below in this table.</p>   |
| <p><b>Zoning Bylaw Requirement</b><br/><b>4.3.1</b> No BUILDING shall be ERECTED unless in conformity with the requirements on the Table, following, except: .....</p> <p><b>Request</b><br/>Relief from the requirement that no building be erected unless in conformity with the Table of Dimensional Requirements.</p> <p><b>Waiver</b><br/>Granted subject to specific waivers noted below in this table.</p>   |
| <p><b>Zoning Bylaw Requirement</b><br/><b>4.3.1.1</b> eaves, sills, cornices, belt cornices and window awnings may project up to two feet into the required YARD;</p> <p><b>Request</b><br/>Relief to allow eaves, sills, cornices, belt cornices and window awning to project greater than two-feet into the required yard.</p> <p><b>Waiver</b><br/>Granted subject to specific waivers noted below in this table.</p>  |
| <p><b>Zoning Bylaw Requirement</b><br/><b>4.3.2.6</b> Front YARDS - Front YARDS shall be the distance measured in a straight line between the LOT frontage and the nearest point of any BUILDING or STRUCTURE, excluding roof overhangs. Roof overhangs shall not extend further than two feet into the minimum required front YARD.</p> <p><b>Request</b><br/>Relief to allow roof overhangs to extend greater than two feet into the required yard.</p> <p><b>Waiver</b><br/>Granted to allow the roof overhangs to extend no more than 3 feet into the required yard as measured from the exterior of the building to the lot line.<br/>(see building setback waivers granted below)</p> |

**Zoning Bylaw Requirement**

**4.3.2.6 1)** A LOT having frontage on two or more STREETS shall have two or more front YARDS, each of which shall comply with the requirements of the front YARD provisions.

**Request**

Relief from the requirement that both Front Yards on a Corner lot comply with the Front Yard provision.

**Waiver**

Granted subject to specific waivers noted below in this table.

**Zoning Bylaw Requirement**

**4.3.2.6 2)** In no case shall any BUILDING or STRUCTURE be located closer to the sideline of a STREET than the minimum required front YARD.

**Request**

Relief to allow the building to be moved closer to the sideline of a Street than the minimum required Front Yard along both Front Yard along both Sudbury and Pine Point Road.

**Waiver**

Granted subject to specific waivers noted below in this table.

**Zoning Bylaw Requirement**

**4.3.2.7** Side and Rear YARDS - Side and rear YARDS shall be the distance measured in a straight line from the nearest point of any BUILDING or STRUCTURE to each side or rear LOT line, excluding roof overhangs. Roof overhangs shall not extend further than two feet into the minimum required SIDE or rear YARD.

**Request**

Relief to allow roof overhangs to extend greater than two-feet into the minimum required Side Yard.

**Waiver**

Granted to allow the roof overhangs to extend no more than 3 feet into the required yard as measured from the exterior of the building to the lot line.  
(see building setback waivers granted below)

**Zoning Bylaw Requirement**

4.4 Table of Dimensional Requirements These requirements shall be satisfied entirely within each district.

Residential District:

- Minimum LOT Area: 65,340 sq. ft.
- Minimum Lot Frontage: 200 ft.
- Minimum FRONT YARD: 30 ft.
- Minimum SIDE YARD: 25 ft.
- Minimum REAR YARD: 40 ft.

**Request**

Front Yard – Sudbury Rd.

- Sudbury Road  
30 required; 25 provided
- Pine Point Road  
30 required; 10 provided

Side Yard

25 required; 20 provided

**Waiver**

Based on the Board's review and interpretation of the Plan the following waivers are granted:

**Front Yard**

- Sudbury Road  
30 feet required;  
24 provided (as shown on the Plan)

**Waiver granted:**

**6 feet**

- Pine Point Road  
30 feet required;  
12 feet and 7 inches provided (as shown on the Plan)

**Waiver granted:**

**18'and 5 inches.**

**Side Yard (Northerly)**

25 feet required;  
22 feet, 3 inches provided (as shown on the plan)

**Waiver Granted:**

**2 feet, 9 inches**

***As noted above roof overhangs shall not extend more than 3 feet, as measured from the exterior of the building to the lot line.***

Zoning Bylaw Section 8.2.1 (General Requirements for Duplex Residential Uses) – Members agreed to include language to indicate the waiver is granted because the project provides for small scale affordable housing in keeping with the Town's Affordable housing policy.

Zoning Bylaw, Section 8.2.3 (General Requirements for Duplex Residential Uses) – Members agreed the term “two-family” should be changed to “duplex” to be consistent.

Article 9. Wetland Protection – Members agreed that this section should include more detail as stated in correspondence from the Conservation Commission as the reason for the finding that the waiver request is unnecessary.

Septic Regulations (Leaching Area Requirement) - Members agreed that this section should include language to indicate the requested waiver is denied given the topography and particular constraints of the site. It was also agreed to include a quote about concerns raised by Nashoba Associated Boards of Health that the system would be difficult to access for repair.

Members agreed to continue deliberations to April 5, 2018 in order that they will have an updated draft decision.

The chair asked for a sense of the meeting as to whether the draft should be written as an approval or disapproval in order to give Town Counsel direction in preparing an updated draft decision. Members Ed Tarnuzzer, Mark Jones, Charles Barney and Bill Byron noted that they are inclined to grant the permit with conditions. Andrew DeMore said that he is not prepared to voice an opinion this evening.

Town Counsel will update the draft decision based on discussion this evening for review and vote on April 5, 2018.

### **Adjournment**

At 10:19 pm, Andrew DeMore moved to adjourn the meeting. The motion was seconded by Bill Byron and carried by a unanimous vote (Ed Tarnuzzer, Bill Byron, Charles Barney, Mark Jones and Andrew DeMore.

Respectfully submitted,

Karen Kelleher  
Secretary