

**Minutes of the BOXFORD ZONING BOARD OF APPEALS  
TOWN HALL, MEETING ROOM #1  
March 28, 2013 6:30PM**

**Present:**

*William R. Cargill, Jr., Chair  
Paula Lia Fitzsimmons, Vice-Chair  
Robert W. Conroy, Clerk  
Barbara Jessel, Alternate Member  
Paula Meagher, Secretary  
Patrick Canonica, Planning Board Liaison (7:00PM)*

*Absent: Robyn Kotarski, Alternate Member*

**6:33PM Meeting Opened**

William Cargill called the meeting to order.

**New Business:**

**6:35PM Case #918: Peter P. & Pauline E. Jenkins, 20 Laurel Hollow  
Special Permit §196-13(B)(11)(h)**

**Members Sitting:**

*William R. Cargill, Jr., Chair  
Paula Lia Fitzsimmons, Vice-Chair  
Robert W. Conroy, Clerk*

**Plans Submitted:**

- Conceptual Perspective View, Jenkins Barn  
Benjamin Nutter Architects, LLC, March 28, 2013
- Conceptual Perspective View, Jenkins Barn  
Benjamin Nutter Architects, LLC, February 13, 2013
- Plot Plan of Land, 20 Laurel Hollow Road, Boxford, Mass.  
Prepared by Sullivan Engineering Group, LLC, 2/11/13

**Applicant Present:** Peter Jenkins, representing himself

Robert Conroy, Clerk, read aloud the legal notices for Cases #916 and #917.

Special Permit to construct a 28'x42' barn with a cupola for storage which will yield garage space for more than three automobiles on the property, from Article III, §196-13(B)(11)(h) of the Zoning Bylaw for the property located at 20 Laurel Hollow Road.

46 Peter Jenkins, the applicant, appeared before the Board with updated plans to construct a two-  
48 story barn, with the first floor for storage for a small boat and garden equipment. The second  
floor will be used for a home office and gathering space, a “man cave” with a half bath and it  
will be heated. The Board had questions/comments as follows:

- 50 • **Cargill: What is the height of the building?** Jenkins advised it will be 27’2”, as shown  
on the plan.
- 52 • **Cargill: Will there be any vehicles parked in it?** Jenkins advised that there would not  
be vehicles, as he has a 3-car garage for those.
- 54 • **Jessel: Do you intend to change the driveway at all to access the barn?** Jenkins  
56 advised he has no plans right now for hot top, but will put in a gravel driveway to the  
barn.
- 58 • **Cargill: There will be no installation of a kitchen for living purposes?** Jenkins  
advised there are no plans for a kitchen, but he is envisioning a sink with a coffee pot,  
but no additional living space.
- 60 • **Cargill: No commercial use?** Jenkins confirmed there will be no commercial use.

62 **Abutter Input:**

- 64 • **John Schickling, 12 Laurel Hollow:** Robert Conroy, Clerk, read aloud a letter the  
Board of Appeals received from abutter John Schickling of 12 Laurel Hollow: Dated  
66 March 27, 2013:

*I'm in receipt of Notice #918, an application of Peter P. and Pauline E. Jenkins, for a  
68 Special Permit to construct a barn at 20 Laurel Hollow. As a neighbor and abutter I have  
several concerns regarding this application. When the subdivision was developed by Michael  
70 J. Kenny in the 1990s, Mr. Kenny took great pains to ensure that the subdivision preserved  
the values and amenities of the community. He implemented a document 'Protective  
72 Covenants for Laurel Hollow' (copy attached). With that in mind, here are my concerns:*

- 74 1. *The structure is identified as 'Barn, 28'x42'.'*

*Concern: The structure is too large; it will be visible from the street.*

- 76 2. *The stated use is this will be used for storage.*

*Concern: What could be stored that requires such a large barn? There's no  
mention of an upstairs entertainment room.*

- 78 3. *The storage appears to be for additional automobiles.*

*Concern: how many additional automobiles? And to whom are they registered?  
80 What else would be stored?*

*Protective Covenants Section 2A, Page 6, permits one garage, adapted for  
82 the storage of not more than three automobiles. The plan has almost 2000  
sq. ft. on the first floor, enough for four-five cars.*

- 84 4. *My review of the planned structure has a finished second floor, plumbing for  
toilets, heating/air conditioning and kitchen. And other indications of an easily  
86 adaptable planned residence.*

*Concern: Is it the intent to use this space as a residence, i.e., an in-law  
88 apartment?*

*Protective Covenants Section 2A, Page 6: No building or other structure  
90 of any kind shall be erected, placed, or allowed to stand on any lot except*

92 *one detached dwelling house designed and used as a residence for one*  
93 *family only.*

94 *I have talked to a few neighbors who have concerns similar to mine and I'm sure they can be*  
95 *documented if needed, but my concerns arise from the intent of the subdivision plan when I*  
96 *purchased the lot and built my house in 1996. In my opinion the value of my home is not*  
97 *enhanced by ignoring the Protective Covenants. I clearly made my home investment on that*  
98 *understanding. I would not support approval of this application in its current form and with*  
99 *my concerns as noted above. I have a previous commitment with my grandson so I will not be*  
100 *able to attend the meeting on Thursday. I would be available for any questions at any other*  
101 *time.*

102 *Sincerely,*  
103 *John J. Schickling*  
104 *12 Laurel Hollow*

105 Cargill advised that he felt the questions and concerns of Mr. Schickling were addressed  
106 tonight and noted that they have no jurisdiction over protective covenants. He added that they  
107 will not be closing the hearing tonight and invited any of the neighbors to attend the next  
108 meeting to voice their concerns.

109  
110 Jenkins advised that he hired Ben Nutter, an architect from Topsfield, because he is  
111 concerned with aesthetics and wanted to be sure the barn would fit in with the neighborhood.  
112 He did not think the neighbors would have issues with it. He spoke with those who would see it  
113 and he will be sure to speak with Mr. Schickling, because he wants to be a good neighbor.

- 114 • **Cargill: Could you fit a boat and an automobile?** Jenkins advised they would fit.
- 115 • **Fitzsimmons: Lot lines setbacks for a barn?** Meagher advised it is 50'.

116 Fitzsimmons advised that they should note that this can't be used for animals, as it does not  
117 meet the lot line setback for housing animals and that it can't be used as residential space.

- 118 • **Conroy: What are you using for electricity up there? I'm thinking of cooking.**  
119 Jenkins advised there are no plans for cooking facilities.

120 The Board continued a brief discussion and reminded the applicant that they will need to go  
121 before the Planning Board for a recommendation. After discussion, the Board took the  
122 following action:

123 On a **MOTION** made by **Conroy**, seconded by **Fitzsimmons**, the Zoning Board of  
124 Appeals **VOTED** unanimously to continue Case #918 to a date certain, April 25, 2013,  
125 pending a Planning Board recommendation.

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127  
128 **Continued Business:**

129 **6:59PM Continuation:**  
130 **Case #915: Christopher Melillo**  
131 **Special Permit: §196-6(B)**  
132 **For property owner David Murphy, 38 Glendale Road**  
133

138 **Members Sitting:**  
William R. Cargill, Jr., Chair  
140 Paula Lia Fitzsimmons, Vice-Chair  
Robert W. Conroy, Clerk  
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**Plans Submitted:**  
144 • Front Entry Addition, Murphy Home, 38 Glendale Road, Boxford, MA  
Drawn By: B.L. Michienzi, Sept. 20, 2012  
146 • Plot Plan of Land, 38 Glendale Street (sic), Boxford, MA 01921  
Prepared by Sullivan Engineering Group, LLC, 10/18/12  
148

Paula Meagher advised the Board that David Murphy is now representing himself, not  
150 Christopher Melillo. Cargill asked if they should take a vote on the change and the Board  
decided it was not needed.  
152

**Applicant Present:** David Murphy  
154

Special Permit to remove existing platform and construct 4x8 bump-out for front entry and 3x8  
156 roofed platform entry on the property from Article III §196-6(B) of the zoning bylaw for the  
premises located at 38 Glendale Road.  
158

Cargill advised the applicant that the Board had made a site visit and noted some concerns.  
160 Murphy provided the Board with a revised plan for them to review, noting that he is now only  
coming out 18". Cargill noted that the setback is now 51'1" and it will meet the 50' setback. It  
162 was determined that the variance is no longer needed. The Board continued a brief discussion  
and reminded the applicant that they will need to go before the Planning Board for a  
164 recommendation. After discussion, the Board took the following action:

On a **MOTION** made by **Conroy**, seconded by **Fitzsimmons**, the Zoning Board of  
166 Appeals **VOTED** unanimously to continue Case #915 to a date certain, April 25, 2013,  
pending a Planning Board recommendation.  
168

170 **7:06PM Continuation:**  
**Case #916: Richardson Green, Inc., Middleton Road**  
172 **Special Permit §196-6 (B) and §196-24 (B) (3)**  
  
174 **Case #917: Richardson Green, Inc., Middleton Road**  
**Variance §196-6 (B) and §196-24 (B) (3)**  
176

**Members Sitting:**  
178 William R. Cargill, Jr., Chair  
Paula Lia Fitzsimmons, Vice-Chair  
180 Robert W. Conroy, Clerk

182 **Applicant Present:** David Ankeles, representing the petitioner, Richardson Green, Inc.

184 Ankeles advised the Board that they did not fare well with the Planning Board, citing issues  
186 with the taxes and issues with the title. Cargill asked the Clerk to read the Planning Board  
decision:

188 Robert Conroy, Clerk, read aloud the Planning Board decision:

190 *Minutes of the public meeting held by the Planning Board, February 12, 2013, regarding ZBA  
cases #916 & #917, Lot 22 Middleton Road, Richardson Green:*

192 *The Board considered information received regarding the applicant's claim of Title to the  
194 property, payment by the applicant of property taxes on the parcel, a letter from Town Assessor  
Lauren Woekel to the applicant denying the applicant's request to abate the taxes, and the effect  
196 of past improvements to Middleton Road on the size and shape of the original parcel. The Board  
also considered a recorded notice of actions by the Essex County Commissioners, dated June 6,  
198 1967, Essex South Registry of Deeds, Book 548, Page 522, and report of deliberations by the  
Boxford Board of Selectmen, relating to the parcel described as "Owners unknown from #14.5 -  
200 #142.5 of old road." The County Commission's notice includes an offer of \$1061.50 in payment  
of damages for the taking of the Middleton Road right of way across the lot of "owners  
unknown."*

202 *Upon a motion duly made and seconded it was moved that the Board recommend to the ZBA a  
204 denial of the special permit and a variance for Cases #916 and #917, Lot 22, Middleton Road,  
40-122, because of the lack of documentation offered by the applicant relating to property Title  
206 and taxes and because an award of compensation was made available to the owner at the time of  
the taking. The motion also provided that even if the applicant were successful in proving his  
208 ownership of the property, the characterization of the property as a buildable lot by town  
employees was erroneous and non-binding by the Town.*

210 *The motion was approved by a unanimous decision.*

212 *Respectfully submitted,*

214 *Ross Povenmire*

216 *Planning Board Administrator*

218 Ankeles advised that regarding the award for land-taking, Mr. Richardson recalls that no one  
ever received any funds. Ankeles added that even if an award was made, it was for the land  
that was taken and not for the resulting unbuildable lot. Ankeles continued that the town was  
220 not able to do what the minutes said as far as preserving the lots as buildable. There is a  
variance for a similar lot down the street, a lot containing about 1.5 acres at Fuller Lane and  
222 Middleton Road, granted by the ZBA, dated 8/14/67. In spite of the fact that they were  
compensated for the land taking, the ZBA granted the variance for that parcel. Ankeles  
224 advised he was provided with additional minutes by the ZBA secretary and the Planning  
Administrator and it appears from those minutes that there was a proposed offer, but it wasn't  
226 given. A lengthy discussion ensued about historical discussions that took place among the  
Planning Board and ZBA in the '60s and '70s regarding offers and compensation for the land-  
228 taking. Both Cargill and Fitzsimmons were struggling with the concept that no compensation

230 was taken for the land-taking at the time. The Board strongly suggested to Ankeles that he  
232 provide a packet of information containing all the minutes cited, as well as any records of  
234 payments the Town may have made to landowners for land-takings at that time, for the Board  
to review. Ankeles will get the information together for the Board. Cargill advised that, even  
though they have a negative recommendation from the Planning Board, they would consider  
new evidence, if he was able to provide it.

236 Ankeles reviewed the steps he took in the title search, noting the land has been owned by the  
238 Richardson family since the early 1900s and that anyone would have a very difficult time  
claiming title to the property.

**Cargill: What have the taxes been on that property?** Richardson advised it is being taxed  
240 as a full lot. He applied for abatement and was denied, because it is a full lot.

**Cargill: You applied for abatement?** Richardson advised it was about five years ago and Len  
242 Phillips advised it was a full lot.

**Cargill: What prompted you to file for abatement?** Richardson advised he didn't want to  
244 pay the taxes he was being billed for. He thought it was too high.

246 **Chris DeoRocki, 297 Middleton Road:** DeoRocki advised that he wasn't satisfied with the  
248 property description or that they've proven that they own the property. He added that the  
property description is supplied any time the property is conveyed, adding that what's been  
250 supplied is not good enough. He said that the Planning Board could not find any indication that  
they've been paying taxes on the property, but Richardson countered that they've been paying  
252 taxes on it since 1903.

254 Discussion turned to how loosely written deeds were in the early 1900s. Fitzsimmons advised  
that the concerns of the abutter are valid and asked that they be addressed by the applicant at  
the next meeting.

256 At the conclusion of the discussion, Cargill asked the applicant to sign an extension, so they  
258 can have an opportunity to review the new evidence at the next meeting.

260 On a **MOTION** made by **Conroy**, second by **Fitzsimmons**, the Zoning Board of  
Appeals **VOTED** unanimously to continue Case #916 and Case #917 to a date certain,  
262 April 25, 2013, pending Counsel supplying the Board with a brief and documentation on  
both cases.

264 **Informal:**

266 **7:49PM**

**Interview: ZBA Alternate Position Candidate, Peter Angle**

268 Peter Angle appeared before the Board to discuss his interest in being appointed  
to the ZBA as an alternate. He provided the Board with his background  
information and credentials.

270 After Board members provided some information to the applicant about what the  
272 Zoning Board of Appeals does, and the candidate answered questions from the  
Board, the Board decided to put it on their April agenda to vote on a  
274 recommendation.

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**8:03PM Discussion: Draft Zoning Articles for the Warrant**

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The Board discussed the zoning articles scheduled to be included on the Annual Town Meeting warrant:

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1. Changing the Board from 3 members to 5 members
2. Removing the "O" District from the ZBA's jurisdiction

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Cargill advised that he has issues with both of these articles and articulated his reasons to the Board. A lengthy discussion ensued on the draft warrant articles, with all members taking issue with both articles. Jessel stated that she felt there might be some merit to having a decision made by 4 out of 5 members, rather than a unanimous decision, as it is with a 3-member board. The Board discussed attending the next Board of Selectmen's meeting to discuss the articles with them. They will ask to be put on their agenda.

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**8:28PM Discussion: Cummings House**

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The Board discussed possible uses for the Cummings House, as requested by the Cummings House Study Committee, if the Cummings House were no longer being used as part of the library. After a brief discussion, the Board decided they would send their thoughts to the Cummings House Study Committee, individually, rather than as a Board.

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**8:34PM Discussion: Colby House Property / Parking Lot**

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ZBA Secretary Paula Meagher advised the Board that DPW Superintendent/Town Engineer John Dold is looking for direction on whether the parking lot project would require a site plan review. The Board briefly discussed the options and decided that if there will be parking, it will require a site plan review. Meagher will notify John Dold to file an application.

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**8:39PM Discussion: Building Commissioner Robert Camacho Re: Solar Panels**

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The Board met with Building Commissioner Bob Camacho to discuss residential use of solar panels. Camacho advised the Board he had a resident approach him for a permit to install ground-mounted solar panels. He has surveyed several building commissioners throughout the state to see how they are handling the permitting of solar panel use. He's received a number of replies and as many different ways on how their use is being regulated and would like the Board's opinion on how to move forward, given that Mass. General Laws currently trump municipal bylaws prohibiting solar panel use. Cargill noted that Boxford's bylaws are silent on solar panel use and there was a lengthy discussion on whether there should be a guideline or bylaw to regulate their use in Boxford. Cargill added that while the bylaws are silent, it is a non-permitted use. Fitzsimmons

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322 suggested they have Town Counsel look at this issue for the Town, and advise  
324 them as to how to proceed, but the decision to issue a permit is up to the Building  
326 Commissioner for the time being. Camacho said he will permit it, but will advise  
328 the applicant to proceed with the installation at their own risk, as there may be  
330 repercussions down the road.

326 On a **MOTION** made by **Fitzsimmons**, second by **Conroy**, the Zoning  
328 Board of Appeals **VOTED** unanimously to request, through the Board of  
330 Selectmen, access and time with Town Counsel to discuss zoning bylaws  
332 and Massachusetts General Laws with respect to solar panels in the  
334 Town.

332 **Meeting Adjourned**

334 **9:10PM** On a **MOTION** made by **Fitzsimmons**, second by **Conroy**, the Zoning Board of  
336 Appeals **VOTED** unanimously to adjourn at 9:10PM.

338 Respectfully Submitted,

340 ***Judith A. Stickney***  
342 *Minutes Secretary*

Approved as Amended 7/25/13