

**TOWN OF DEERFIELD**  
**ZONING BOARD OF APPEALS**

**June 2, 2005**

**MINUTES**

**I. Hearing continuance convened at 7:05 p.m., Main Meeting Room, Municipal Offices, 8 Conway Street, So. Deerfield, MA**

Present: F. Olszewski (Chair), R. Bohonowicz, G. Friary, R. Sadoski, S. Barrett,

Abstained: L. Grybko, Sr.

Absent: R. Calisewski

**II. Chair Olszewski opened the hearing on the continuance of Greg Gardner for a special permit, variance or whatever relief is required to remove more than 50 yards of top soil from lots 81, 85, 89 Mill Village Road, South Deerfield, MA**

Mr. Olszewski asked for new information to be presented.

Mr. Greg Gardner presented some calculations with regards to what he has hauled in for the displacement of driveways, septic systems, and cellar holes. He has hauled in about 2,000 yards of materials between backfill, driveway and septic. He gave the Board receipts to back up his statement. There will be more receipts since he is not done yet. He stated that he's trying to be upfront with the Town.

He came before the Board because the bylaws state that he needed to do so – for removing over 50 yards of topsoil requires a permit. He feels that no one else has ever done that in the past. As far as Mr. Herb Marsh goes, Mr. Gardner states he has done all that he can to try to resolve Mr. Marsh's issues. He states that he is doing all that he can to keep the water off of Mr. Marsh's land.

According to Mr. Gardner's attorney, he doesn't have to do all that he has already done since his property is not a subdivision and it has less than 5 lots. Mr. Gardner stated that he is trying to be a good person and do what is right.

Mr. Gardner stated that on more than one occasion, Mr. Marsh has publicly stated that he doesn't know what he is doing and that he is not doing right by Mr. Marsh. These statements are upsetting to Mr. Gardner. Mr. Gardner feels that he has done over and beyond what he has to do in this situation.

Mr. Gardner also stated that water used to run towards the south culvert and that is exactly where he's going to send it back to. It just takes time to get things done as Mr. Gardner stated.

Mr. Bohonowicz points to the plan on the table and asked Mr. Marsh "if this pipe is put in, will you be happy – yes or no?" Mr. Marsh responded "yes, but". Mr. Marsh states that if the driveway is tilted a little bit so that the water runs into the grass that will go a long way towards bringing the runoff down to what it was pre-development and perhaps even less. Mr. Marsh added that tilting doesn't cost much money.

Mr. Gardner reiterates to Mr. Marsh that his word is good. He states that he told Mr. Marsh on day 1 that he'll make it right and he's doing it.

Mr. Marsh accepts this plan if the driveway is tilted.

Mr. Bohonowicz read two documents into the record. The first is from SVE Associates to Mr. Herb Marsh and the second is from Mr. Brien Laporte, Building Commissioner to Mr. Greg Gardner.

#1: from Mr. Nicholas M. Balboni, SVE Associates to Mr. Herb Marsh

"Dear Mr. Marsh:

Upon your request, I have reviewed the proposed Drainage Plan prepared by MacLeay Associates, dated June 1, 2005 and offer the following comments.

- The revised plan shows a modest increase (4%) in post-development peak flow leaving the northern culvert for the 25-year storm. This is a significant reduction from the 39% increase as originally proposed.
- The grading design will maintain the proposed watershed boundaries but it can be further enhanced by cross sloping the proposed driveway of lot 5. A cross slope that drains the runoff to the south will prevent runoff crossing the driveway and ultimately into the northern culvert. This will even further reduce the peak discharge from the northern culvert.

The Drainage Plan, as designed and with the one modification detailed above, will reduce the peak discharges to pre-development conditions.

For more information on the drainage conditions, please see the Drainage Investigation, prepared by SVE Associates, dated April 12, 2005. If you have any further question or comments, I can be reached at 413-774-6698."

#2: from Mr. Brien Laporte, Building Commissioner to Mr. Greg Gardner

"Subject: Removal of excess topsoil from construction site

Dear Mr. Gardner:

You have received two building permits thus far for the construction of two homes and the future continuation of the site with two additional dwellings ahead.

The Zoning Bylaw, Section 4500 allows for removal of (50) cubic yards per premises per (12) month period. In my opinion, a premise is a parcel or lot. The two loam piles are a product of four parcels.

The following are two criteria you can follow without a special permit.

1. You may remove 200 cubic yards per (12) month period.
2. You may remove excess topsoil (loam) from the two piles at will incidental construction under valid building permits. This could amount to as much as 600 cubic yards that could be removed. (I recommended this amount to be calculated professionally).

In any event, you need to provide proper cover for all parcels of a minimum of 4 inches or more."

Peter LaBarbera submitted calculations regarding the market value of loam. The figures were prepared by Mr. Herb Marsh and reviewed by Mr. LaBarbera who concurs with the figures provided.

According to this document, the loam being removed is worth approximately \$113,000.

Steve Barrett asked Mr. LaBarbera the following questions: "Are you now or have you in the past been in the employ of Mr. Marsh either compensated or uncompensated? Are you representing him in this or are you representing yourself or the Planning Board? Are you working for Herb?"

Mr. Barrett continued "When this came before the Planning Board, were you at any time representing Mr. Marsh?"

Mr. LaBarbera stated that the matter came before the Planning Board and there was a big piece of information missing with the topography of the receiving landscape which Mr. LaBarbera prepared subsequent to the matter being heard by the Planning Board and this was done on an uncompensated basis as a matter of public information and he provided that to Mr. Marsh.

Mr. LaBarbera stated that loam is a very valuable commodity.

Mr. Marsh wants to make the point that if the ZBA grants permission to sell this loam, he feels it will set a precedent in a sense that people who own a significant amount of land are suddenly going to consider selling loam stripped from their land.

Roger Sadoski pointed out that the quantity and quality of loam is not the same on each piece of land but this topic is way off the subject anyway.

Mr. Marsh is very concerned about the precedent being set here if the removal of this quantity of topsoil is allowed. According to Mr. Marsh's calculations, the 5.5 acres of land x 18" of topsoil = 6400 square yards. Mr. Marsh received some figures of \$15-\$18 per square yard x 6400 square yards = \$96,000 - \$115,000 worth of loam (delivered price).

Mr. Bohonowicz stated these figures for the record only.

Mr. Olszewski closed the hearing to public comment in order to discuss this case in an attempt to render a decision.

As pointed out by Chair Olszewski, Greg Gardner was good enough to come to the Board for a permit in the first place. No one else has come in for a permit even though they had stripped off more topsoil than Mr. Gardner. Ms. Friary feels that we are setting a precedent. She feels that we are weakening the agriculture industry in this town. She feels that people would give anything for our Town's soil. Ms. Friary states that it has been documented; the soil in Deerfield is second in richness only to the soil of the Nile Valley.

Mr. Bohonowicz has been closer attention to Mr. Gardner property and feels that he has improved the conditions over there vs. actually making it more detrimental by flattening it out he slowed down the perk and he's willing to make changes to the culvert

No one wants to see the topsoil stripped but it is going to happen. Once the land is sold, it is not farmland anymore.

After the Board members spoke their peace, a motion was made.

Mr. Barrett made a motion was made to grant a special permit to remove more than 50 square yards of topsoil from lots 81, 85, 89 Mill Village Road (Assessors Maps 111 lots 3,2,1) as per the plan dated June 1, 2005, which will include a drain pipe to southeast direction and a tilted driveway on lot 5 to minimize run-off to the north.

Motion was seconded. Vote was (4-1) in favor of granting the special permit to Greg Gardner. Roger Sadoski: yes; Steve Barrett: yes; Grace Friary: no; Ron Bohonowicz: yes; Fran Olszewski: yes.

Hearing adjourned.

### III. Other Business

Mr. Grybko shows the other Board members two documents that he received from the Selectmen's Office. The documents are from the Commonwealth of Massachusetts Superior Court regarding the Magical Wings case and the Gochinski case. Mr. Grybko stated that "in his estimation, the documents are not worth the paper they are written on". He feels that these are not legal documents. It was suggested that the Board seek advice from the town counsel regarding the validity of these documents. Mr. Grybko also feels that the Board needs their own counsel since, in his opinion, our town counsel represents the Board of Selectmen not the Zoning Board of Appeals. Mr. Grybko is upset that decisions are being made "in the back room instead of on top of the table". Mr. Grybko wants the Judge's rendering to be signed by the Judge instead of by attorneys for both sides. Mr. Grybko feels that the Board should have been formally informed these decisions and they have not been. Chair Olszewski stated that he will call Town Counsel, Edward Pepyne. The Board would like to invite Mr. Pepyne to the next ZBA meeting.

The next topic is the Humane Society project. A letter written by Brien Laporte is read into the record.

Letter from Brien Laporte, Bldg Commissioner to Pioneer Humane Society dated 3/17/05

"RE: Request for Zoning Interpretation for Map 15 Parcel 3 and Parcel 5

SUBJ: Interpretation Findings

To whom it may concern:

After careful review of the request, I have found the proposal to be accurate, precise, direct and factual.

I have investigated the referenced laws and pertinent information related to the issue and has found a direct correlation and factual date, court case litigation etc to aid me in my decision.

The interpretation is as follows and providing that MGL 40A Section 3 applies:

1. The proposed use is for educational purposes.
2. The proposed use is a not-for-profit entity.
3. The animal care portion of the facility is considered to be an agricultural entity and is also a not-for-profit organization.

All three of these key factors lead me to decide that the use is exempt from the zoning bylaws except for the following.

Two parcels #3 and #5 on map, page 132 within the C-III Zoning District. The Pioneer Valley Humane Society will submit a plan of the proposed site per zoning regulations, section 5400, to include 5411, 5412, 5413 and follow 5420 procedures.

Submittals per 5421 and pertinent information taken from the interpretation request as you see fit.

In my opinion, the use is allowed subject to:

1. Approval of site plan by Planning Board (only to do with additional conditions if any) (submit 12 copies of site plan).
2. Approved engineered septic design from Board of Health.
3. Approved waste disposal for animal's feces plan from Board of Health.
4. Approved feedback from Police, Fire, Highway Department and Conservation Commission.
5. Approved curb cut from MA D.O.T. for Routes 5 & 10.
6. Approved submittal and final building permit.
7. Successful completion of the building and issuance of a certificate of occupancy.

This completes the zoning determination."

Letter from Brien Laporte, Bldg Commissioner to George Marchacos dated 5/27/05

"RE: Sign Bylaw, 3200, paragraph 3213 – Violation at 209 Greenfield Road

SUBJ: Decorative Banners shall exceed total 8 sq/ft in area. In Zoning, Section 3200, Sub-Section, 3213

Dear Mr. Marchacos:

You have exceeded the total area allowed in the Sign Bylaw by a considerable amount of area. I counted approximately (72) or more Triangular Banner Flags.

Without knowing the exact amount, it appears that even by considering .05 sq/ft per banner, you would be allowed to have (16) banners maximum.

If you disagree with this letter, please discuss it with me. In the meantime, please remove all excess signage by calculating up to 8 sq/ft of material or 16 pieces."

Letter from Brien Laporte, Bldg Commissioner to Planning Board dated 6/1/05

"RE: Dr. Spooky's Museum

Dr. Spooky's Animal Museum building has a net useable floor space of 4,224 sq/ft after deducting the space utilized by fixed objects and/or non-walkable floor space. This is 2,376 sq/ft down from the 6,600-sq/ft footprint of the building. This useable footage is standing/walking space for the museum at 3 sq/ft per person, which calculates to 1,408 occupants. This is non-feasible building code allowance.

Obviously, the building will never have 1,400 people inside. The letter to the Zoning Board of Appeals on May 24, 2005 is much more representative of actual possible occupant load, based on the parking lot scenario.

With the addition of the retail business, the new "Yankee Postman", the eight spaces at 222 Greenfield Road, New England Candle Company will not be available or needed for the museum at this point in time. My opinion is to allow for 250 customers and 6 or so employees."

The Board concludes that they need to obtain a copy of the final Notice of Decision as well as to review the February 17, 2005 minutes and tape of the hearing.

Meeting adjourned at 8:00 p.m.

Respectfully submitted,

Patricia Kroll  
Clerk to the Zoning Board of Appeals