

**TOWN OF DEERFIELD
ZONING BOARD OF APPEALS
October 2, 2008**

MINUTES

Meeting convened at 7:00 p.m. in the Main Meeting Room, Municipal Offices,
8 Conway Street, South Deerfield, MA

Present: Stephen Barrett, Ronald Bohonowicz (acting Chair), William McGoldrick, Fran Olszewski,
Jamie Hartwright

Absent: Dick Calisewski

7:00 Hearing – Magic Wings, Inc.

Mr. Barrett offered to recuse himself from participating in any aspect of this hearing since he is the Chair of the Conservation Commission. No person present felt that it was necessary to do so.

Mr. Miller began by saying that back on June 22, 2000; the abutting farmers were asked if they had any concerns about the building setbacks. At that time, they had no comment.

Mr. Miller's proposed building will have solar panels on the roof and is proposed to be located behind the glass houses. From where the building is proposed to go to the edge of the swale is 121 feet. Mr. Miller told the Board that the engineer, being conservative, took out the existing parking areas and came up with 109 feet (from 121 feet). That eliminates the buffer zone problems. Mr. Miller explained that any water coming from this proposed building will not be going in the direction of Mr. Kolakoski's property. He emphasized that there is absolutely NO water going west. The proposed building would be about 12 feet from the property line. The setback requirement is 25 feet. Mr. Miller's building is too close to the back property line thus the need for a variance from the Zoning Board of Appeals.

On July 16, 2008, a building permit was issued. Mr. Miller stated that there were no complaints at that time and anyone having a problem had 30 days to appeal it. Work started on this particular job on September 3, 2008 (well beyond the 30 day appeal period). Mr. Miller referred to Section 3 of the M.G.L. Mr. Miller stated that since September 3, 2008, he has had \$150,000 in expenditures. By having a building permit, Mr. Miller continues, he feels that he is legally permitted to continue with the job. He proceeded with the job, not trying to hide anything. There were large machines on site in plain view. The hole was dug. The hole was finished. Then came the complaint.

Mr. Miller stated that Magic Wings has done a ton of research. Experts from all over the country and Europe were consulted with, in order to find out ways to (1) reduce his carbon footprint (2) go as green as possible and (3) having been in town for 10 years now, Mr. Miller feels that he has been a good neighbor, a good attraction for the Town of Deerfield, and has contributed his fair share plus to the economy of Deerfield. He insists that he is only trying to do good things here. This investment is going to be a half million dollars by the time all is said and done.

The purpose of the new building is to house alternative heating systems. There will not be any public access to the building. He estimates that he will save \$90,000 (at \$3/gallon) - \$110,000 (at \$4/gallon) on fuel. Mr. Paciorek is completely in favor of this project.

Attorney Allen Sewall from Amherst who is representing Mr. & Mrs. Kolakoski stated that his understanding is that a swale needs to be between the two properties and it is not there. He feels that Mr. Miller has not proven the need for this variance by having a hardship. He also stated that

this is not an agricultural use. The proposed building will house a wood chip boiler and rooftop solar panels. The hole in the ground is too close to the property line.

Mr. Bohonowicz asked Attorney Sewall if his client is willing to offer any kind of compromise. The answer is no. Attorney Sewall explained that his client's concerns include the additional water run-off caused by adding another roof surface. Mr. Bohonowicz stated that having the building moved 25' from the line does not decrease the run-off.

Attorney Sewall stated that Mr. Miller still hasn't completed the requirements of earlier permits before starting something new.

Mr. Kolokoski had no way of knowing what Mr. Miller was planning to do. As he stated, it isn't as though Mr. Kolakoski was notified that the building permit was issued. It wasn't until Mr. Miller began digging that Mr. Kolakoski knew anything. Mr. Kolakoski called the Building Inspector and the Conservation Commission as soon as he saw the back-hoe. He claims that it took 2 days before anyone from the town did anything.

Mr. Kolakoski said that building permit should not have been issued because the conservation requirements had not been met.

Mr. Miller stated that the building is proposed to be located where it is because of the location of the boilers and also to not decrease the amount of parking. Mr. Miller said that the water will run across the road into the culvert. Mr. Miller stated that the property isn't even close to having an impervious surface, even with the building on it.

Mr. Miller said that Magic Wings did not cause the wetness in the middle of the corn field. How could it have when Magic Wings is lower? An unidentified woman said that there was never any water problem in the field until Magic Wings was built. Now it is always flooded. Her husband raised corn in that field since 1960. It was never wet. They had no trouble with the Candlelight people.

The hearing was closed to public comment for ZBA discussion.

Mr. Barrett stated that he is uncomfortable voting on this issue. He is not certain that he can be completely objective. Mr. Olszewski made a motion to postpone the vote until after the Conservation Commission issues have been resolved. The Board has 100 days. The Board decided to continue the hearing until after the other town boards are satisfied (within 100 days). The vote to continue this hearing to 7:00 p.m. on October 30, 2008 was unanimous.

Meeting adjourned at 7:55 p.m.

Respectfully submitted,

Patricia Kroll
ZBA Secretary