

## MINUTES OF BOARD OF APPEALS MEETING OF May 7, 2013: Town Hall Banquet Room

### I. ADMINISTRATIVE BUSINESS

Chairman Peter DeTerra – Opened the meeting at 6:00 p.m.

#### Quorum/Attendance

Members Present – Chairman Peter DeTerra, Francis Cox, Jr. Vice-Chairman, Daryl Manchester, Joseph Borelli, Peg Cook, Rene Fleurent, Jr. (Assoc.), Al Silva (Assoc.), Ken Kendall (Assoc.) and Jaime DeSousa (Assoc.)

Minutes: Chairman DeTerra asked for a motion to accept the minutes of March 5, 2013. Mr. Kendall motioned to accept the minutes. Mr. Cox, Jr. seconded. The vote was unanimous.

### II. PUBLIC HEARING:

1. Petitioner: Keri Dias Thatcher, 9 Blackburn Street, Plat 22A, Lot 4, Certificate #20938; 198-18: Short 20' of the required 30' front setback in a RA District.

The petition was read and there were 46 abutters notified. The petitioner or a representative was not present.

Mr. Fleurent, Jr. motioned to table the hearing. Mr. Cox, Jr. seconded. The vote was unanimous.

The petitioner then entered the meeting. Mr. Cox, Jr. motioned to re-open the hearing. Mr. Borelli seconded. The vote was unanimous.

The petitioner stated they would like to construct a bedroom for their daughter. There were no abutters present to comment.

Mr. Borelli asked the height of the addition. 16'6" was the response.

Mr. Cox, Jr. motioned to grant the Variance. Mr. Borelli seconded.

Members voting to grant the Variance: Ms. Cook, Mr. Borelli, Mr. DeTerra, Mr. Manchester and Mr. Cox, Jr.

Members opposed: None

The Variance is GRANTED with a vote of five (5) in favor and none (0) opposed.

2. Ford Family Real Estate Irrevocable Trust, 293 Mill Road, Plat 39, Lot 22C, Book 9260 and Page 157. Administrative Appeal on determination of a contractor's yard and unregistered vehicles exceeding the by-law allowance.

Chairman DeTerra removed himself from the meeting as he is an abutter. Vice-Chairman Cox, Jr. chaired the hearing. The petition was read and there were 15 abutters notified. The petitioner was represented by Attorney Shephard Johnson, New Bedford who stated the Building Commissioner issued a notice to remove unlicensed vehicles on the property that was being used as a contractor yard. The current matter is in Housing Court and it was agreed by the parties that the matter should be heard by the Board of Appeals. Mr. Ford, the owner, states the current use of the property is a continued use that predates existing zoning by-laws. The family has been on this property since the 1880's. This particular property is one of three parcels. Mr. Ford states that the complaint is related to vehicles and equipment that have been on the property for a long time. An uncle owned the property during World War II and used it much the same for agriculture. Many of the vehicles now have been there for a while and have been swapped out over time. The Building Commissioner did not view the property until April 13, 2013 after which he sent a letter to the parcel owner next door, Nancy Ford, Mr. Ford's mother, for having some of the unregistered vehicles on her property as well. Mrs. Ford is moving the vehicles to her son's abutting lot where they belong. The Assessors currently have classified the property as 61A for agricultural use and the petitioner asks to maintain the vehicles on site so that he can maintain the use. Some of the equipment is used on site and can be used off site by Mr. Ford. Affidavits from relatives and abutters are part of this package.

Abutter Richard Souza, 290 Mill Road, who has resided there for 33 years, stated the road is very narrow and he does not want to see a full business there with trucks up and down the road causing damage to the road. Mr. Ford replied nothing is going to change. He wants to continue to do what he has done for at least 25 years.

Questions from the Board:

Mr. Cox, Jr. asked if all the vehicles will be moved to Mr. Ford's lot. Attorney Johnson stated they are unaware of any complaints from abutters or others. They intend to remove some of the old vehicles. The activities predate zoning by-laws and are grandfathered. Mr. Cox, Jr. questioned what vehicles would be moved.

Mr. Fostin, Building Commissioner, offered pictures from the April 13, 2013 on site visit.

Mr. Fleurent, Jr. asked the purpose of the vehicles on site. Attorney Johnson stated they are hobby vehicles, parts vehicles, historically stored vehicles, wheeled trailers, dump trucks and loaders for use on the land for wood cutting and farm use. His uncle had many more vehicles. This is not a business.

Mr. Cox, Jr. questioned if this is not a business, how do you explain his digging holes? For friends? A fee? Attorney Johnson said he does not do business there but can go and do business off site.

Mr. DeSousa stated a contractor yard is used as part of the business. Is there a business here? Attorney Johnson said it is open to interpretation because the by-law is vague. Mr. DeSousa stated contractor vehicles are stored on the property therefore it is a contractor yard.

Mr. Fleurent, Jr. stated the by-law allows for one unregistered vehicle. He agrees with Mr. DeSousa's statement.

Mr. Fostin read the definition of a contractor yard. Mr. Ford advertises his business on line as 293 Mill Road and he has no Special Permit for a home occupation there.

Attorney Johnson stated the use predates the by-laws and it may continue as a grandfathered right. There are less vehicles there now than in the past.

Mr. Borelli noted that the petition application is for 293 and 295 Mill Road and questioned if there is a snow plowing business operating here. Attorney Johnson responded that 295 Mill Road is Mr. Ford's mother, Nancy Ford. The original application was for both lots and is now only for 293 Mill Road. Mr. Borelli asked if the property was purchased in 2009 how it could be grandfathered. Attorney Johnson stated the family trust was formed in 2009. The property was purchased from the uncle in 1989.

Mr. Manchester asked if housing court remanded the case to Board of Appeals. Attorney Johnson stated through housing court this action was agreed upon by both parties. If the Board of Appeals allows the administrative appeal then the property use will be considered grandfathered.

Mr. Fostin stated that the case was not yet heard in housing court. Town counsel recommended the administrative appeal as part of the process.

Mr. Fleurent, Jr. stated the by-laws were formed in the 1950's and amended in 1966. The referenced materials are all in the 1980's and not prior. Attorney Johnson stated the vehicles have always been on site since World War II with the same type of uses, with the same type of vehicles.

Mr. Fostin stated in 1991 the property was sold to Plaza, Inc. thus breaking the ownership. Mr. Ford repurchased the property in 1993 thus there are no grandfathered rights.

Mr. Ford stated that Plaza Inc. (Fairhaven Lumber), purchased the property in 1993 because Mr. Ford was building his home on the site and could not pay his bill. He sold the property to Plaza, Inc. (Fairhaven Lumber) as collateral until all the bills were paid. Mr. Ford stayed in the house through all that time and repurchased it after the bills were paid in 1993. He originally bought the property from his uncle for \$1.00.

Attorney Johnson hoped the Board would consider the property's long term use as evidenced through the affidavits and information presented.

Motion to grant the Administrative Appeal was made by Mr. Silva; seconded by Mr. Fleurent, Jr.

Members voting to grant the Administrative Appeal: None

Members voting Not to grant the Administrative Appeal: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. Fleurent, Jr. and Mr. DeSousa.

The Administrative Appeal is NOT GRANTED by a vote of None (0) in favor and five (5) opposed.

3. Jon daRosa, 14 Fishermans Road, Plat 43A, Lot 182, Certificate #22601. 198-18: Short 9' of the required 30' front setback (corner lot) and 23% over the maximum allowed lot coverage of 15% in a RR District.

The petition was read and there were 42 abutters notified. The petitioner would like to construct a garage to house his car and tools. The proposed single story garage is on a corner lot. He plans to remove the existing shed. There were no abutters present to comment.

Motion to grant the Variance was made by Mr. Borelli; seconded by Mr. Cox, Jr.

Members voting to Grant the Variance: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. Cox, Jr. and Mr. Fleurent, Jr.

Members voting not to grant the Variance: None

The Variance is GRANTED by a vote of five (5) in favor and none (0) opposed.

4. Leo R. Tremblay, 6 Karen Avenue, Plat 28, Lots 14C & 14E, Book 7757 and Page 142. 198-18: Short 3,000 Square feet of the required 15,000 square feet for a buildable lot in a RA District.

Mr. Borelli removed himself from the meeting because his brother is an abutter and former owner of the property. Mr. Fleurent, Jr. removed himself from the meeting. The petition was read and there were 29 abutters notified. The petitioner was represented by Steve Giosia, P.E., SITEC Engineering of Dartmouth. The lot contains 12,000 square feet and has 120' of frontage in a residential district in a commercially used area. The lot is assessed at \$125,000. All abutting lots are 6,000 square feet and the remaining land is developed. They are seeking relief from size only. The lot is unique to the area and was purchased as residential buildable by the owner 10 years ago. The proposed use is compatible with the use in the neighborhood and is not detrimental to the public good nor will it deviate from the intent of the by-law. Upon approval by the Board of Appeals, the petitioner will seek approval from the Planning Board for road improvements.

Abutter Brad Markey, Day Street, had concerns about surface water overflow from possible road grade buildup. Mr. Giosia stated there will be minimum road impact and will comply with Planning Board restrictions.

Mr. DeSousa asked if there were any building drawings available. Mr. Giosia responded no, just lot size request.

Motion to grant the Variance was made by Mr. Cox, Jr.; seconded by Mr. Kendall.

Members voting to grant the Variance: Ms. Cook, Mr. Manchester, Mr. Cox, Jr., Mr. Kendall and Mr. DeSousa.

The Variance is GRANTED by a vote of five (5) in favor and none (0) opposed.

5. David P. & Sandra Teves, 3 Judson Drive, Plat 31A, Lot 3A, Book 10501 and Page 82. 198-18: Short 23.13 feet of the required 100' frontage in a RA District.

Mr. Fleurent, Jr. disclosed that he heard the request through the Planning Board and has no prejudice in the matter. The petition was read and there were 37 abutters notified. The petitioner was represented by David Davignon, P.E. of Schneider & Associates, Inc. of Mattapoisett. The petitioner purchased the property in August 2012 with the intent to subdivide. The property is large enough for three lots however, the petitioners want only two. They have met with the Planning Board and a letter of explanation from the Planning Director is part of this record. They are seeking a 23' frontage variance from the Board of Appeals. The lot has a unique shape, is larger than most other lots in nearly all abutting property, has Town sewer and water and will include new infrastructure, a catchbasin, to alleviate flooding in the area. Mr. & Ms. Teves spoke in favor of the request stating they will construct a modest colonial home for sale.

Hillary Rotondo, 61 Gillette Road is in opposition because the house now under construction by the petitioners for their use is too large for the property and she questions the placement of the proposed driveway which will immediately abut her property. A letter from Mr. Rotondo, 61 Gillette Road, was read and is part of this record.

Mr. Fleurent, Jr. asked the Board to consider requiring changing the shape of the driveway to make it less unique. A gentleman representing Mangham Way Irrevocable Trust asked if the old barn on the property could remain while their property dispute with another party is underway. The old barn is s benchmark as a property bound.

Motion to grant the Variance was made by Mr. Cox, Jr.; seconded by Mr. Borelli.

Members voting to grant the Variance: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. Cox, Jr. and Mr. Silva.

The Variance is GRANTED by a vote of five (5) in favor and none (0) opposed.

6. EM & CM Family Limited Partnership, 17 Shore Drive. Appearing before the Board was Attorney Alvin Youman of New Bedford representing the owners of 17 Shore Drive. He requested the hearing of March 5, 2013, be reheard stating the petitioners did not receive notice of the hearing. Attorney Youman has filed a lawsuit in superior

court within the 30 day time limit of the decision of the Board but he will stop the lawsuit if the Board agrees to rehear the petition. The petitioner would like to be heard as was done by the Board for a petition recently on 35 Green Street. Mr. Manchester stated that the Green Street petitioner did not receive notice of the hearing because the owner of the property and the petitioner, who was a tenant of the property, has the same name and only the owner of the property was notified. In this situation the owners of the property and the petitioners are the same party and they were duly notified of the hearing. Mr. DeSousa stated he is not comfortable discussing this matter knowing a lawsuit has been filed. Mr. DeTerra stated there are two things the petitioners can do: wait two years and refile or file a repetitive petition with the Planning Board.

7. Daniel Gibbs, 58 Ocean Avenue. Appearing before the Board was Mr. Gibbs stating he recently purchased 58 Ocean Avenue from James Gilbert who was granted a variance by the Board for this lot on March 5, 2013. Mr. Gibbs submitted his house plans to the Building Commissioner and was informed that the variance granted was for a specific house and site plan and the proposed plans now do not conform. He is before the Board asking to be allowed to make minor changes to the roof line, not the footprint so that he may continue. The Building Commissioner stated that the house plans also show a full basement which was not part of the approved plan. Mr. Fleurent, Jr. stated he remembered making the motion for the petition to state the plans cannot be changed once the variance was granted. Mr. Gibbs was informed he must refile.

### **III. OTHER BUSINESS:**

The secretary stated the Town accountant is requiring a vote of the Board on the procedure used for the signing of payroll and invoices.

Motion was made by Mr. Cox, Jr. to continue to allow the chairman to sign payroll and to have a majority of the Board members sign all invoices; seconded by Mr. Silva. The vote was unanimous.

### **ADJOURNMENT**

Mr. Kendall moved to adjourn the meeting. Mr. Fleurent, Jr. seconded. The vote was unanimous. The meeting was adjourned at 7:35 PM.

Respectfully Submitted,  
Patricia Fowle, Secretary  
To the Board of Appeals