

## Great Barrington Zoning Board of Appeals

Minutes of 7.28.15 Meeting

Attending the meeting at Town Hall were Chairman Ron Majdalany, Vice Chairman Carolyn Ivory, Clerk Kathy Kotleski and Alternates Don Hagberg and John Katz.

The chairman opened the public hearing for **Claudia Shapiro's** appeal of a decision of the building inspector at 7:35 p.m. The secretary read the notice and stated it was properly advertised and posted.

Town Counsel Brian J. Winner of Kopelman & Paige said he represented the town in litigation brought by the appellant and the case is now on remand from Superior Court. The matter dates from Aug. 19, 2013, when the appellant wrote Building Inspector Edwin May alleging an "illegal car show held with no permit and the Fly-In Wheels & Wings Bike and Fly." May replied Aug. 21, 2013, that he found no standing for the complaint. "I find that the Great Barrington Airport enjoys a pre-existing status and exempt by M.G.L. 40A §6 from some zoning encumbrances that they are entitled to, i.e. operate an aviation field in an R-4 District." Mr. Winner said Ms. Shapiro attempted to appeal Mr. May's decision to the Great Barrington Zoning Board of Appeals. The matter ended up in Superior Court. The parties agreed to return the matter of the challenge to Mr. May's ruling to the ZBA to a public hearing. Mr. Winner said that as an appeal of Mr. May's order, it needs four votes out of five of the seated ZBA members. He said the board must determine if sufficient evidence has been presented to overturn or modify the building inspector's order or decision.

Ms. Shapiro said she wanted Mr. May to make a presentation. Mr. Winner said it is the applicant's burden to provide evidence against his 2013 decision. Ms. Shapiro made a remark about the way things are done in Great Barrington, objected to the wording of the legal notice, said it was not properly advertised and the proceedings were not legal. She described herself as an "aggrieved land abutter," "personally, financially and politically severely aggrieved having had our land abutting property to this airport stripped to 'strictly residential' in 2010 by the Great Barrington building commissioner and upheld by this Board even though we own the end of the runway." A copy of her written material is in the ZBA file.

The thrust of her presentation, supplemented by Daniel Bell, was that the airport has no special permit and that a fly-in and particularly an automobile show are beyond customary incidental and subordinate uses of the property. She said she is not disputing the fly-in in this appeal, but any extra presence of automobiles. She suggested the airport has become a de facto commercial operation in a residential zone, whereas action was taken against a "mom-and-pop" auto body/restoration shop.

Building Inspector Edwin May was at the meeting. His counsel, Richard Dohoney, said Mr. May stands by statements made in his letter of August 2013. Mr. Dohoney said he heard nothing that questions the pre-existing nonconforming status of the airport, and aviation and accessory uses are permitted at the site. The request for enforcement was denied. Airplanes fly in and out in its use as an airport. The only issue here is use.

Ms. Shapiro said the proceedings were not taking the proper format. Daniel Bell without asking took the podium and for 40 minutes read pages of information, including some purporting to be a timeline of air field activities, pointing out deeds never mention an airport. A copy of his written material is in the ZBA file.

Mr. Dohony said Zoning Board of Appeals members need to focus on the issue of enforcement, not whether or the not the airport holds various permits. He said the issue is not about hangars and buildings, it's about aviation use of the property.

A letter from Town Manager Jennifer Tabakin, dated July 28, 2015, indicated the Selectmen the previous day had voted 3-0 to ask the ZBA to support the building inspector's ruling.

At 8:30 p.m., Ms. Ivory moved to close the hearing, Ms. Kotleski seconded and the vote was unanimous. After discussion, Ms. Ivory moved to support the building inspector's decision. Ms. Kotleski seconded and they and members Majdalany, Hagberg and Katz all voted in the affirmative. Mr. Winner said detailed findings need to be filed with 14 days and he would write a decision for the board's consideration.

The board at 8:31 p.m. opened **Zachary Culbreth's** special permit hearing to rebuild a non-conforming garage at 170 Taconic Avenue. The secretary said the meeting had been properly advertised and notices given. Member Madonna Meagher. The chairman asked Mr. Katz to sit in for member Michael Wise, who is on the property's list of abutters. Mr. Culbreth said the house was built in 1935, according to the Assessors' property card. The garage at its closest is 2.5 feet from the property line with 168 Taconic Ave. The garage was likely built between then and 1950. He said the town's 1932 zoning bylaw is silent on accessory buildings, so it was legal at the time. Town Planner Chris Rembold confirmed this information. He said the bylaw didn't address setbacks for accessory buildings until 1960. Mr. Culbreth said he would like to demolish the garage and built a new one, slightly further (5 feet) from the line.

The Board of Health, Board of Selectmen and Planning Board all sent letters in support of the application. Dave Whitbeck of 168 Taconic Ave. wrote in support. Their letter was not read at the meeting, but Janice Kittner and Elwood Smith also wrote in favor of moving the garage.

Ms. Kotleski at 8:45 p.m. moved to close the hearing, Mr. Katz seconded and all were in favor. Chairman Majdalany said the board needed to determine if the new garage would be substantially more detrimental than the old one. Board members all said no, as the new structure will be moved slightly inward. Under the criteria of 10.4.2, all members individually and unanimously voiced in the positive that the applicant's proposal meet the town's social needs; would not increase traffic hazard – in fact might improve it; would not drain utilities; would not be out of character for the neighborhood; would not harm the natural environmental and would not detract from the town's fiscal position. Ms. Meagher moved to approve the special permit, Mr. Katz seconded, all were in favor. Ms. Kotleski said she would write the decision.

Board members on a motion by Ms. Kotleski, seconded by Mr. Katz, unanimously approved the minutes of July 15, 2015.

Members selected Sept. 9, 2015, at 7:30 p.m. as the hearing date for two new applications, the Tracy/Hoddy SP for a deck at 224 North Plain Road and KSNS Stockbridge Road realty Trust to add 20 rooms (third floor) to Holiday Inn Express, 415 Stockbridge Road. Site visits will be at 5:30 and 5:45 p.m. respectively at those sites.

The meeting adjourned at 8:55 p.m.

Respectfully submitted

Bernard A. Drew, Secretary

