

**MINUTES
ZONING BOARD OF APPEALS
JULY 6, 2015**

The meeting was held in Stow Town Hall and opened at 7:30 p.m. Board members present were Edmund Tarnuzzer, Charles Barney, William Byron, Bruce Fletcher and Mark Jones (associate).

Michael Rego on Behalf of Jeffrey Huff: At 7:30 p.m. a public hearing was held on the petition for variance under Section 4.4 of the Zoning Bylaw, "Table of Dimensional Requirements", for side yard setback variance of approx. six (6) feet to allow addition of a 28'x20' two-car garage at **65 Peabody Drive**. The property contains 27,791 sq. ft. and is shown on Stow Property Map R-6 as Parcel 153.

Board members present: Edmund Tarnuzzer, Charles Barney, William Byron, Bruce Fletcher, Mark Jones (associate)

Mr. Tarnuzzer chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on June 18 and June 25, 2015. The hearing notice had been forwarded to all abutters by certified mail, return receipt. Abutter Elizabeth Stepp of 67 Peabody Drive was present. Mr. Tarnuzzer recited the criteria to be met for grant of variance.

Michael Rego represented Mr. Huff and explained the proposal to construct a 28'x20' garage, offset from the existing dwelling. Due to the position of the dwelling on the lot, the front dimension of the garage will be 28 feet, while the rear dimension will be 20 feet. The garage will be square with the side lot line with a six-foot setback. The garage will feature two overhead doors to allow space for car doors to be opened inside without hitting an adjacent vehicle. Board members had visited the site prior to the hearing and acknowledged there appears no other location for the garage on the small lot. There are other garages in the neighborhood.

Direct abutter Elizabeth Stepp had no objection to the proposal and felt the garage would provide a level of privacy for her property.

The hearing was closed at 7:50 p.m.

Following close of the hearing, Mr. Tarnuzzer recommended grant of the requested variance. He noted the proposed garage will be in keeping with the neighborhood, and there is no other practical place for it on the lot. Mr. Barney moved to grant the requested six-foot side yard setback variance; second by Mr. Fletcher. The vote was Tarnuzzer, Barney, Byron and Fletcher in favor; Jones opposed. Motion to grant carried.

Robert Albright – Crow Island: At 7:55 p.m. a public hearing was held on the Appeal From Unfavorable Action of the Building Commissioner concerning a cease and desist order related to the existing landing field at **Crow Island off Track Road**. The property contains 1,299,394.8 sq. ft. and is shown on Stow Property Map R-23 as Parcel 3.

Board members present: Edmund Tarnuzzer, Charles Barney, William Byron, Bruce Fletcher, Mark Jones (associate)

Mr. Tarnuzzer chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on June 18 and June 25, 2015. The hearing notice had been forwarded to all abutters by certified mail, return receipt.

Present was George Morey. Applicants Robert and Annette Albright were also in attendance, as were Town Counsels Jonathan Witten and Barbara Huggins.

The applicant was represented by Attorney Julie Barry of Prince Lobel who began by referring to the application for appeal. She noted the inclusion of a number of letters from people who have used the Crow Island facility. It is a 35-acre property within the Recreation-Conservation District. Electricity is provided via solar power and a manmade pond provides water. It is the largest privately-owned piece of property in Stow. Crow Island has been used for non-commercial recreational aircraft, i.e., ultralights, at least since 1978. Other activities are boating, camping and swimming, enjoyed by many others.

The issue at hand is the Building Commissioner's cease and desist order that claims no evidence of the use prior to the 1982 amendment to the Zoning Bylaw that eliminated the use as allowable. Prior to the amendment, the Recreation-Conservation District allowed non-commercial uses. The amendment took away landing fields, private aircraft and airports. Crow Island is not a commercial airport. It has been used by pilots who also use Minute Man Air Field. The use was continued and not abandoned in any period since 1978. The lawful use was acknowledged by the Board of Selectmen in a letter dated February 14, 1984, a copy of which is included in the application. Attorney Barry pointed out that the use runs with the land and is grandfathered. The request for a building permit to construct a hanger does not subject Crow Island to the bylaw. No site plan approval is required as there will be no traffic impact or issues concerning emergency vehicles. The prior bylaw required site plan approval only for certain specified uses. There is no evidence that the construction of a hanger constitutes a change or extension of a non-conforming use. It is requested the Board find that this is pre-existing, non-conforming use and overturn the cease and desist order.

Mr. Jones inquired if there are fees involved for use. Attorney Barry did not believe that would define a commercial use. The owner is lending his property. Mr. Albright said he had filed 19 years of financial records with the Planning Board. The operation is non-profit and barely breaks even. Incorporation for tax and liability purposes does not make Crow Island a commercial activity. Mr. Albright took issue with that discussion and reminded he is here only as regards the cease and desist order.

Ms. Barry said the cease and desist prevents all operation of aircraft. With the new hanger, there will be no increase in intensity or use of the property. Any change is not more substantially detrimental to the Town. This is a request for a storage hanger/hut. The Building Commissioner did not make any other comment in that regard.

Town Counsel Witten said this is a fact matter. The applicant needs to document to the Board the use since 1978 and that it was not withdrawn, abandoned or changed. It is permissible to ask any relevant questions related to the cease and desist. The purpose of the public hearing is to develop a record to allow the Board to determine if the Building Commissioner had the right. Ms. Barry repeated that since 1978, there has been no lapse of the pre-existing use.

Mr. Rogers of Pine Point Road expressed concern that the use issue is being grouped with that of Collings. They are separate issues. The island offers people a place to enjoy.

Deb Woods of Great Road encouraged the Board to overturn the cease and desist. The issue is the operation has been in existence since 1978, and now it is decided it is in violation of the bylaw. Move forward and not look back.

Several other people spoke to the 1978 pre-existence, citing use of the property for aircraft.

Having heard the comments of attendees, Mr. Tarnuzzer proposed the hearing be continued to Monday, July 13th at 7:30 p.m. No further comments will be received from the public at that time.

At 8:40 p.m., by unanimous vote, the hearing was continued to Monday, July 13th at 7:30 p.m.

The Collings Foundation – Robert and Caroline Collings: At 8:45 p.m. a public hearing was held on the Appeal From Unfavorable Action concerning denial of a request for reconsideration of a cease and desist order and denial of a request for stay of a cease and desist order as related to the existing airport and landing field at **137 Barton Road**. The property contains 2,208,000 sq. ft. and is shown on Stow Property Map R-25 as Parcels 16A, 16B and 17.

Board members present: Edmund Tarnuzzer, Charles Barney, William Byron, Bruce Fletcher, Mark Jones (associate)

Mr. Tarnuzzer chaired and read the notices of hearing as they had appeared in the *Beacon Villager* on June 18 and June 25, 2015. The hearing notice had been forwarded to all abutters by certified mail, return receipt. A sign-in sheet (copy attached) was passed around in lieu of reading off the long list of abutters. Robert Collings was present with his attorney Thomas Mullen. Also in attendance, were Town Counsels Jonathan Witten and Barbara Huggins.

Attorney Mullen opened his remarks by requesting combining the two separate appeals, i.e., request for reconsideration of a cease and desist order and denial of a request for stay of the cease and desist. The applications indicate there are two owners of the property, 75 acres by the Foundation and 90 acres by the Collings. The property is zoned residential and supports a museum, a 24,000-sq. ft. hanger and a 250 ft. long airstrip. It has been used by ultra-lights and for take-offs and landings prior to 1982. They own and operate vintage aircraft, nine of which are airworthy and flown for the benefit of the public. There are no modern or personal aircraft on the premises. The facility is open to private groups, and here are 25 events annually. The airfield is used to allow aircraft to land after going out to events offsite. An event is planned for July 25th to provide revenue with 9,000 persons expected to attend.

Bylaw Section 9.9: The Collings Foundation was organized as a non-profit educational entity in 1977. Use of the airfield has been educational and non-profit. The principal use of the hanger is for the museum. The airfield is an accessory use. Mr. Mullen addressed the 2003 appeal of Zarrow that involved the determination of the former Building Inspector that the landing area was not in violation of the bylaw. The ZBA at that time upheld the inspector's decision. The Zarrow complaint was dismissed by the court. The Collings had the right to use the airfield and nothing has changed since.

Mr. Collings took the floor and said that following receipt of the cease and desist order he met with Building Commissioner Craig Martin and provided him with information and documentation covering seven major issues he had not addressed. There is use prior to 1982 of the landing area. Those materials were provided to Mr. Martin with the request to take them into account and reconsider the cease and desist. The non-profit educational component was established in 1977. Mr. Collings addressed the matter of MAC approval of local bylaws regarding aircraft and said the bylaw amendment had not been approved by MAC and is therefore invalid. It was approved by the Attorney General, however. A cease and desist order was issued in 1985 by a former building inspector, but not pursued. MAC has granted a private airfield registration that since has been renewed and approved. Stow zoning bylaws permit private recreational use. The Zarrow complaint was dismissed by the court confirming that a private recreational landing area is allowed.

Town Counsel Witten noted that the request for an injunction to stay the cease and desist order was rejected by the court. As concerns MAC approval of zoning bylaw amendment, there are two land court

decisions that affirm that such bylaws do not need approval of MAC. The Dover amendment is currently before the Planning Board and requires site plan review. There is much information before that board, and that hearing continues. There is no statute of limitation as relates to use not permitted by the zoning bylaw. The Zarrow case was a stipulation of dismissal. Mr. Witten did not believe the ZBA has the power to issue a stay. There would have to be proof that the Building Commissioner was in error, and the applicant has not.

Mr. Mullen responded that the court did not rule on any zoning matters; that is up to the ZBA. It is true that one Land Court judge ruled that a non-commercial airfield can be regulated by a town. That was only an opinion by a single judge. The MAC has determined it has power to approve regulations. The statute of limitation argument relates to a building permit. A hanger cannot be used without an airfield. Related to the Zarrow case, the ZBA did not hear evidence of use prior to 1984.

Mr. Tarnuzzer noted that MAC has not approved the zoning bylaw amendment of 1982, although the Attorney General has approved. Mr. Mullen replied that two approvals are required – MAC and AG. Mr. Witten said the law was just decided by the Land Court. The Town does not need MAC approval. Mr. Mullen countered it is not the law of the State until in trial court.

Robert Albright of Boxboro Road said he had flown over the private property since 1978. Deb Woods of Great Road urged the Board to overturn the ruling of the Building Commissioner. There had been a bylaw in place that no one chose to enforce. Another resident supported the cease and desist. That rules were ignored over the years does not matter. A resident took issue with this proceeding that the matter was decided at the June 1st hearing and subsequent decision. Linda Cornell of 212 Barton Road said there was no permit for an airfield, only for a barn for raising cattle that never appeared. The quality of life in the neighborhood has been destroyed over the years due to activity on the property.

Mr. Tarnuzzer recommended continuance of the hearing until Monday, July 13th. Mr. Witten reminded there are two appeals before the Board that were consolidated with a decision to include both. He noted that an appeal of the Board's decision after the June 1st hearing is pending in Land Court.

At 10:00 p.m. the hearing was adjourned to be continued on Monday, July 13th at 8:15 p.m.

Adjournment: The meeting was adjourned to be continued on Monday, July 13th at 7:30 p.m. for hearings concerning the Albright and Collings appeal petitions.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board