

**MINUTES  
ZONING BOARD OF APPEALS  
NOVEMBER 29, 2005**

The meeting was held in Stow Town Building and began at 4:00 p.m. Board members present were Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (Associate), Donald Dwinells and William Byron (Associate).

The meeting had been called by acting chair Arthur Lowden to review and discuss proposed amendments to Section 3.9 of the Zoning Bylaw, "Non-Conforming Uses and Structures", to be presented at a special town meeting on December 12th. This past summer there had been a joint meeting of the Board and Planning Board with Town Counsel Jonathan Witten to discuss possible amendment. Middlesex District Attorney Martha Coakley had earlier ruled that any change to a use or structure on a property non-conforming to the current Zoning Bylaw (65,340 square feet in Stow) would require a special permit from the Board of Appeals. That has resulted in an unprecedented number of applications before the Board.

It appeared to members that the Building Inspector would become more involved in non-conforming issues, but not be held to the same standards as the ZBA. His involvement would center around dimensional requirements and not how the proposed alteration or change may fit into the neighborhood, or perhaps be more detrimental to the neighborhood.

The proposed new Section 3.9.6.2 contained guidelines for review directed to the Board of Appeals for determining relative impacts upon the town and neighborhood. There was language that the Board shall encourage extensions, alterations or changes toward greater conformance with the Zoning Bylaw to reduce the degree of non-conformity. The members felt it not within its authority to either encourage or discourage changes, being a quasi-judicial body. Applications are judged on their merits as presented, and either approved or disapproved. It was the opinion that this section, if adopted, should be directed toward the Building Inspector in his review of an application for building permit.

Proposed Section 3.9.6.3 entitled, "Table of Presumptively Not More Detrimental Extensions, Alterations or Changes to Pre-Existing Non-Conforming Uses and Structures", was felt to be confusing and unnecessary.

Information was that Mr. Witten had drafted the amendments and changes had been made by the Planning Board. The members felt that further discussion toward amendment was necessary to create a document acceptable to all. On motion of Mr. Tarnuzzer, second by Mr. Clayton, it was voted unanimously to forward the comments of the ZBA to the Planning Board with the recommendation that "no action" be moved at the special town meeting. A letter in that regard was to be drafted for the Planning Board's public hearing on December 6th.

The meeting was adjourned at 5:15 p.m.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board