

MINUTES
ZONING BOARD OF APPEALS
MAY 8, 2006

The meeting was held in Stow Town Building and began at 7:30 p.m. Board members present were Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate) and Lee Heron (associate).

Edward J. Verock - The public hearing was held in Stow Town Building and was opened at 7:30 p.m. on the petition filed by **Edward J. Verock, 45 Hudson Road, Stow** for northerly side yard variance of five (5) feet under Section 4.4 of the Zoning Bylaw, "Table of Dimensional Requirements", to allow extension of the existing garage twenty (20) feet from the lot line at said address. The property contains 38,663 sq. ft. and is shown on Stow Property Map Sheet R-10 as Parcel 59.

Board members present: Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate), Lee Heron (associate).

Mr. Tarnuzzer chaired and read the notice of public hearing as it had appeared in the *Beacon Villager* on April 20 and April 27, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt. No abutters were in attendance. Mr. Tarnuzzer recited the criteria to be met for grant of variance.

Mr. Verock was present and presented plans of the proposed home renovation and expansion. The dwelling was constructed in 1965 with a single car garage. The owners wish to accommodate two cars in the garage, and that will cause encroachment into the side yard setback. The septic system and a swimming pool at the rear of the property do not allow expansion into that area. There is currently one and a half baths. Expansion will include relocation of the master bedroom over the extended garage and will add a second bath. The new construction will be no higher than that existing. The current garage roofline slopes to the rear. The new garage roofline will be raised to match the existing shed dormer to the rear. Mr. Verock said he had discussed plans with the northerly neighbor who had no objection. The lot line has been staked as well as the corners of the proposed construction.

The Board members planned a site visit for Thursday, May 11th at 8:30 a.m.

The hearing was closed at 7:43 p.m.

Derby Woods, LLC (f/k/a Landwest Development, LLC) - The public hearing was held in Stow Town Building and was opened at 7:45 p.m. on the application filed by **Derby Woods, LLC (formerly known as Landwest Development, LLC), 148 Park Street, North Reading, Mass.** under Section 9.2.8.1 of the Zoning Bylaw, "Special Permits", to allow a two-year extension of the Special Permit filed with the Town Clerk on June 11, 2004 in connection with development of **Derby Woods PCD Subdivision and Dunster Drive**. The property is shown on Stow Property Map R-5 as Parcels 80-22, 80-23, 80-24, 80-25, 80-26, 80-32 and 80-33, each containing from 27,722 to 37,310 sq. ft.

Board member present: Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate), Lee Heron (associate).

Mr. Tarnuzzer chaired and read the notice of public hearing as it had appeared in the *Beacon Villager* on April 20 and April 27, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt. No abutters were in attendance.

Richard Harrington, engineer with Stamski and McNary, represented the applicant. He explained that the subject lots are part of the cluster development know as Derby Woods. The special permit was granted in order to allow the generation of on-site sewage disposal exceeding 110 gallons per day per 10,000 sq. ft. of lot area within the Water Resource Protection District. Portions of the open land within the WRPD have been designated as "Credit Land". The named lots and the nitrogen credit easement within the WRPD will be restricted in perpetuity.

The phased growth development has begun with Sylvan Drive off Harvard Road. The Special Permit will lapse on June 11, 2006 before the applicant will be able to complete road construction of Dunster Drive (Phase 2) and to obtain building permits for the referenced lots. The Phase 2 lots have not begun due to the Phasing of Growth Schedule dictated by the Planning Board's decision. The twenty-one Phase 1 lots plus the seven referenced Phase 2 lots have a Phasing of Growth schedule of 3.11 years from the date of the first building permit issuance (December 21, 2005). It will take until February 2008 before the applicant will be able to obtain building permits to commence construction on Phase 2. The applicant believes a two-year extension to June 11, 2008 will allow adherence to the road construction phasing of the Planning Board decision, as well as compliance with the schedule of a maximum of nine dwelling units per year.

Mr. Harrington advised that the condition of the Board's Special Permit for approval by the Mass. Dept. of Environmental Protection of the Nitrogen Aggregation Loading Plan has been met, and that the finding is included in the submittal. Each lot will be restricted to the number of bedrooms and accounted for in the open land.

To sum up, the request for extension is due to the phased growth requirement. The application for hearing was received by the Town Clerk on April 10th and complies with the requirement of extension request at least sixty days prior to the lapse date.

The hearing was closed at 7:52 p.m.

Robert & Caroline Collings - The public hearing was held in Stow Town Building and was opened at 8:00 p.m. on the application filed by **Robert and Caroline Collings, 137 Barton Road,, Stow** for Special Permit under Section 5.1.1.7 of the Zoning Bylaw, "Flood Plain/Wetlands District", to allow construction of a dwelling on property felt to be included within said district through mapping error. The property, currently owned by Linda Cornell, contains 12.4 acres and is shown on Stow Property Map R-13 as Parcel 15.

Board members present: Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate), Lee Heron (associate).

Mr. Tarnuzzer chaired and read the notice of public hearing as it had appeared in the *Beacon Villager* on April 20 and April 27, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt. Abutters present were Linda Cornell, 222 Barton Road; Thomas Quinn, representing Maynard Sand & Gravel; Richard Martin, representing Honey Pot Hill Orchards; and Robert Collings, 137 Barton Road. Mr. Tarnuzzer recited the criteria to be met for grant of special permit. He also read to the gathering Section 5.1.1.7 to clarify the matter before the Board.

Mr. Collings was represented by Attorney Robert Dionisi, Jr. of Sudbury. It was stated that the applicant is making application to the Planning Board for a subdivision of four lots off Barton Road to be accessed by what has been known as Sunset Road. Mr. Dionisi said there had been plans by Maynard Sand & Gravel for a Chapter 40B development with perhaps as many as 250 units. Mr. Collings began

negotiations with Maynard Sand and with Linda Cornell. Agreement was reached with Ms. Cornell to exchange her 12.4-acre parcel with two of the proposed house lots. The intention is to proceed with the subdivision of four conforming lots with 200-foot frontage and 1.5 acres each.

The plan submitted with the application showed the subject parcel as located within the Recreation-Conservation zoning district as well as within the Water Resource Protection District overlay. The 100-year flood plain line was said to be at elevation 182 feet. The subject property was said to be at an elevation in excess of 200 feet. The applicant believes there is a flood plain mapping error as the property lies at least 18 feet above the 182 flood plain line. The proposed use will be above the flood plain elevation. Mr. Dionisi said the Recreation-Conservation District and the Wetlands Protection District overlay follow about the same zoning line, and he said there is a mapping error with both districts. It is his contention that the flood plain line is out of "sync" with the actual flood plain, as well as with the Recreation-Conservation District line. He is seeking a special permit and declaration that the mapping error also lies within the Recreation-Conservation District.

Mr. Clayton questioned access to the property. Mr. Dionisi said it would be via the former Sunset Road that has been in use for a number of years. The property would be designated a hammerhead lot connected to a 50-foot right of way to become part of that lot and an extension of the four-lot subdivision roadway.

Mr. Tarnuzzer questioned if this Board has authority to change zoning district lines. Attendee Thomas French of Barton Road said that this hearing involved wetland lines and not zoning lines. Mr. Dionisi said that Mr. Collings had a verbal response from the Building Inspector that a dwelling on that property is not a permitted use. However, the zoning bylaw allows the Board to make decisions with regard to mapping errors. He believed it also had authority with regard to districts overlaid. Mr. Tarnuzzer was not so sure. Mr. Collings felt the flood plain was the overriding consideration and is the controlling district. Mr. French disagreed and felt the Recreation-Conservation District was controlling.

Linda Hathaway of Crescent Street noted the entire parcel lies within the Recreation-Conservation District. Karen Kelleher of Barton Road pointed out that even if there is a mapping error with regard to the Wetlands-Flood Plain District, the property still lies within the Recreation-Conservation District. It was Board member Charles Barney's interpretation that zoning district lines can only be changed by town meeting. Mr. Dionisi believed the Board has authority to allow the Recreation-Conservation District line to change, and said that if the flood plain line is in error, then the Recreation-Conservation District line is also in error.

At this point, Mr. Tarnuzzer suggested the hearing be continued. Mr. French requested that his letter to the Board be forwarded to Town Counsel if his advice is sought.

Linda Cornell, owner of the property, said that it had been purchased several years ago with the intention of building a house, but she later felt development to be beyond her means. The agreement with Mr. Collings seemed to be the best option to preserve the property with the least amount of impact.

Mr. Martin of Honey Pot Hill Orchards said that many years ago he was considering selling development rights of the orchard property. At that time he said that considerable errors were found in the 100-year flood plain line, in that some areas did not comply with actual sites. He did not follow through toward adjustment and abandoned the idea of selling development rights.

On motion of Mr. Tarnuzzer, it was voted unanimously to continue the hearing to June 5th at a time to be determined.

The hearing was adjourned at 8:40 p.m. to reconvene on June 5, 2006.

Richard & Marilou Bonetti - The public hearing was held in Stow Town Building and was opened at 8:41 p.m. on the Appeal from Unfavorable Action filed by **Richard and Marilou Bonetti, 425 Taylor Road, Stow** and the letter of the Building Commissioner dated March 2, 2006 concerning operation of **R & M Earthwork & Landscape Co.** at said address. The property contains 111,510 sq. ft. and is shown on Stow Property Map R-6 as Parcel 115.

Board members present: Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate), Lee Heron (associate).

Mr. Tarnuzzer chaired and read the notice of public hearing as it had appeared in the *Beacon Villager* on April 20 and April 27, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt.

Before proceeding further, Mr. Tarnuzzer read to the gathering a FAX message from Mr. Bonetti's attorney Edward Woll, who was unable to attend this evening, requesting continuance of the hearing until the next meeting scheduled for June 5th. Mr. Bonetti was present and supported the request.

On motion of Mr. Lowden, second by Mr. Heron, it was voted unanimously to continue the hearing to June 5, 2006.

The hearing was adjourned at 8:45 p.m. to reconvene on Monday, June 5, 2006 at a time to be determined.

Derby Woods, LLC - The Board members discussed the application for a two-year extension of the special permit filed with the Town Clerk on June 11, 2004. It was felt the applicant has operated in good faith, but the phased growth requirement of the Planning Board has prevented work under the special permit. On motion of Mr. Clayton, second by Mr. Lowden, it was voted unanimously to grant a two-year extension of the special permit dated June 11, 2004, to expire June 11, 2008.

Adjournment - The meeting was adjourned at 8:55 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board