

RICHARD & MARILOU BONETTI
APPLICATION FOR SPECIAL PERMIT
APPEAL FROM UNFAVORABLE ACTION
OCTOBER 2, 2006
(Continued from August 7, 2006)

The public hearings continued from August 7, 2006 were reconvened in Stow Town Building at 7:33 p.m. on the application filed by **Richard and Marilou Bonetti, 425 Taylor Road, Stow** for Special Permit under Section 3.9.6 of the Zoning Bylaw, "Changes of Use and Limitation on Intensity and Size of Use", to allow extension by 25% of a pre-existing, non-conforming use (contractor's yard) on portions of the property at said address, and on the Appeal from Unfavorable Action and the letter of the Building Commissioner dated March 2, 20-06 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 at Parcel 115.

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

Mr. Lowden chaired and read the notices of hearing as they had originally appeared in the *Beacon Villager*. Notice of the continued hearings had been forwarded to all abutters. Abutters in attendance: John Beusch, 416 Taylor Road; Peter and Marilyn Crafts, 422 Taylor Road; William and Kathleen Joss, 437 Taylor Road; David Cannistraro, 431 Taylor Road; Zerzy Zieba, 413 Taylor Road; Arthur and Laurie Larson, 435 Taylor Road; Michael and Anabella Taylor, 433 Taylor Road. Mr. Lowden recited the criteria to be met for grant of special permit under Chapter 40A and Section 9.2.6 of the Zoning Bylaw and the findings for the appeal from unfavorable action.

Also present was Attorney Steven Graham, representing the Taylors, who noted that continuation of the appeal petition had not been referenced at the previous session.

The applicants were in attendance and were represented by Attorney Edward Woll. The Board was presented a plan or sketch of a proposed parking scheme on the subject property. Also submitted was a listing of "vehicles that may be parked", identified by type and registration number. The list also included other vehicles/equipment used primarily for the nursery operation: backhoe, Bobcat and mini-excavator. The applicants have a personal pick-up truck and John Deere tractor. Also on site are a couple of trailers used for Lions Club activities.

Mr. Woll said that the square footage of the property was compiled in steps, with the original lot and contractor yard in the mid-1960's. The contractor yard portion uses about 26,000 sq. ft. of the original lot. It is proposed to use that portion for contractor yard vehicles. The rear, or second lot area, is proposed for landscape or nursery parking and maneuvering area. Total space: 5,340 sq. ft. Mr. Woll said the property has been used in this manner for as long as can be remembered. A history of vehicles involved in the operation was said to have been furnished the Building Inspector for the period 1967 to 2002. It had been determined the operation is a non-conforming use. Mr. Woll said the issue brought forth on appeal was that of the earth screener, and it was resolved. The original use of contractor yard was on the first (front) portion. The applicant has filed for special permit to expand that use for the nursery operation to the rear.

Mr. Clayton pointed out that the reason for continuing the hearing was that the Board did not have a dimensioned plan. The plan presented does not satisfy that. He would like to see side yard setbacks indicated. Mr. Tarnuzzer added that at some point, the Building Inspector will become involved

when there are inquiries into compliance. The Board wishes specifics as to the locations of what is requested on a plan large enough for clarity and understanding. Comment was made that it would have been better if the plan had been submitted much earlier to allow review prior to this evening. Mr. Clayton said he was inclined to close the hearing this evening and await receipt of a new plan. Attorney Graham felt there may be a procedural issue as regards the submittal of new evidence. Attorney Woll did not wish such an issue to be brought forth and would prefer the hearing be continued.

Mr. Tarnuzzer moved the hearing be continued, but only for the purpose of receiving a revised plan to be considered and discussed at the next meeting on November 6th. He would consider accepting a plan without an engineer's stamp so long as it was clear with dimensions clearly indicated. Mr. Heron seconded the motion. The vote was unanimous in favor of continuing the hearing to November 6, 2006.

Abutter Kathleen Joss questioned the statement that the number of vehicles is fewer than before, and asked if there was evidence to back up that. Mr. Clayton responded that the Board has received a list but has not had an opportunity for review. The Board does not have a list of previous vehicles. Mrs. Joss believed there should be an explanation of that. She said it had been asked at the previous hearing if loam was being removed from the property, and Mr. Bonetti had replied in the affirmative. As to the resolution of grandfathering, she did not believe that was fact unless there is paperwork for verification. Mr. Woll assumed that any information filed with the Building Inspector is available to the Board. Mr. Barney indicated he had a list of vehicles through 2002.

Abutter William Joss commented it was said that the issue of the screener had been resolved. The Board acknowledged it issued a decision in that regard. Attorney Woll said there was a judgment from Superior Court.

Abutter Zerzy Zieba questioned the number of vehicles in 1968 and commented if the property was good enough to support those vehicles, then why the request for extension.

Ellen Cataldo of 507 Taylor Road said she had been a resident for 35 years and felt the trucks were no problem. She related how Mr. Bonetti had been helpful with assistance to her in time of need.

Abutter Peter Crafts, a 33-year resident, commented that the presence of equipment is much less than previously, perhaps 40 to 50% less. The operation is not a problem to him, and the Bonettis have been fine neighbors.

Abutter David Cannistraro said the only extra equipment in the neighborhood is that of Mr. Zieba.

Abutter Laurie Larson asked if one can have as much equipment on his property as he wants. Mr. Lowden said that is to be determined and the subject of this proceeding. Mr. Clayton added that the Board is attempting to learn where and how on the property is the 25% expansion.

Attorney Graham said that resolution had not occurred in 2002. The Board's decision addressed only use of the earth screener. The settlement referred to by Mr. Woll was based strictly on the use of the screener. This board has not made a decision on the use of the property. Some of the abutters believe the non-conforming use of the property had ceased for some time, therefore, there is no right to extend a non-conforming use. The Board has not ruled on a pre-existing use and needs proof from the applicant that the business was continual. Mr. Graham felt that is the basis on which the Board must rule, and if not, there will be an appeal of the decision. In response, Mr. Woll said the issue of non-conforming use has

not been challenged. The Building Inspector did not issue enforcement to cease and desist the operation in 2002, only use of the screener. That was not appealed by abutters, and that issue has been decided. The court judgment dealt only with the screener.

Abutter Linda Sapienza of One Fieldstone Drive said she had lived there since 1986 and that there was no impact on her. Dorett Hope of 402 Taylor Road, a 34-year resident, said the applicants have been good neighbors. Willard Parks of 475 Taylor Road commented that all of the equipment is down back and that the property looks better than that of the house next door.

At 8:26 p.m. the hearing was continued to Monday, November 6, 2006 for the purpose of receipt of a specific plan with appropriate information as regards the request for special permit. Also continued was the hearing on appeal from unfavorable action.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board