

**MINUTES
ZONING BOARD OF APPEALS
DECEMBER 4, 2006**

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

Catherine & Glenn Hammill - The public hearing was held in Stow Town Building and was opened at 7:30 p.m. on the petition filed by **Catherine and Glenn Hammill, 35 Hale Road, Stow** for an eight-foot variance under Section 4.4 of the Zoning Bylaw, "Table of Dimensional Requirements", to allow placement of a chicken coop and pen seventeen (17) feet from the side lot line at said address. The property contains 20,473 sq. ft. and is shown on Stow Property Map U-5 as Parcel 12.

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

Mr. Clayton chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on November 16 and 23, 2006. The hearing notice was forwarded to all abutters by certified mail, return receipt. Abutters present were Joanne Johnson and Edward McIlhatten of 37 Hale Road. Mr. Clayton recited the criteria to be met for grant of variance.

Mr. and Mrs. Hammill were present and explained that the chicken coop is currently located at one side of the yard, to which the neighbors at 37 Hale Road have objected. The petitioners said they have worked with the Building Inspector, Board of Health and Conservation Commission to determine where it could be moved on the property. The proposal is to move to a place on the opposite side lot line. The closest abutter would be Linda Robbins at 21 Hale Road who was said to have no objection.

Abutter McIlhatten believes the coop is too close to his house and is upset with odor and noise. He is concerned about possible contamination of his well. He thought the new location would be over the Hammills' septic system and not a good idea. Additionally, he does not believe that a chicken coop is appropriate for the neighborhood. He presented photographs of existing conditions as viewed from his property behind and uphill of the subject property.

Mr. Heron asked how long the chicken coop has been in existence. Mrs. Hammill said it has been there for two years to accommodate nine chickens and is about 8'x12'. (There were originally ten hens.) They are kept penned but allowed to roam free when someone is home, but stay pretty close to the yard. It might be possible to completely fence in the property to keep them in.

Mr. McIlhatten said he had recorded a noise reading of 65 dbs one morning. This past summer he cancelled an outdoor gathering because of the odor. He has concern for runoff into the lake. Mrs. Hammill said she has worked with the Conservation Commission concerning construction of a berm to prevent runoff. Other neighbors appear to enjoy the hens, come for visits and purchase eggs. She said the hens are an important part of the family. A petition signed by six neighbors and abutters was presented in support of the petition for variance.

The Board planned to visit the property on Friday, December 8th.

The hearing was closed at 7:46 p.m.

Omnipoint Communications - T-Mobile USA - The public hearing was held in Stow Town Building and was opened at 7:50 p.m. on the petition filed by **Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc., 15 Commerce Way, Norton, Mass.** for variances to allow installation of three wireless telecommunications antennas within the existing belfry of **First Parish Church of Stow & Acton, 339 Great Road** under Sections 3.11.4.1 (not located in the Wireless Service Facility District); 3.11.7.2.a (setback from residential buildings less than 1,000 feet); 3.11.7.2.b (setback from municipal buildings less than 1,000 feet); and 3.11.7.1.d (height in excess of 35 feet). The property is shown on Stow Property Map U-10 as Parcel 34-1.

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

Mr. Clayton chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on November 16 and 23, 2006. The hearing notice was forwarded to all abutters by certified mail, return receipt. Abutter Carolynne Parchen of 330 Great Road was present. Representing First Parish Church were Robert Glorioso, Marcia Rising and another gentleman. Also present was Planning Board chair Ernest Dodd. Mr. Clayton recited the criteria to be met for grant of variance.

Representing the petitioner were Attorney Brian Grossman of Prince, Lobel, Glovsky & Tye, LLP and engineer David Ouellette. Mr. Grossman noted the petition is for a number of variances in the belfry of the church, also the location in which Sprint has antennas in the steeple. It is proposed to replace certain architectural features with fiberglass to match existing conditions. There will be three antennas located at a height of 53 feet, to be connected by coaxial cables to an 80-sq. ft. room to be constructed within the attic. The only external components would be a meter and an HVAC condenser. There will be a GPS antenna and a 911 antenna to comply with FCC regulations.

Mr. Ouellette said the church location was intended to provide coverage in the center of town. He displayed a map showing current coverage gaps and another showing the effect of coverage with the proposed facility.

Mr. Grossman said that variances are sought rather than a special permit. The new facility will be outside the overlay district, and the zoning bylaw does provide for modification of a pre-existing non-conforming use. Sprint could have applied for an additional carrier. Therefore, T-Mobile is applying for a use variance. Planning Board chair Ernest Dodd asked if other possible locations had been considered. Mr. Grossman said they had, however, the church is in the center of town where there is a volume of traffic. Other areas were not felt to be elevated enough for acceptable and reliable communication.

Mr. Dodd presented a memo pointing out several factors affecting a Board decision. Mass. General Laws Chapter 40, Section 10 states the ZBA cannot grant a use variance unless permitted by the zoning bylaws. The Planning Board is the special permit granting authority for wireless service facilities. The zoning bylaw requires a special permit from the Planning Board for modification of an existing facility. The height requirement can only be waived by a town meeting vote. It was believed the Planning Board can approve a special permit for the modification of this existing facility as its original decision required other users be permitted.

Mr. Grossman believed that requirements for variance have been met, given the circumstances and the present bylaw. He believed the Board had authority to grant the variances. There is substantial hardship. Subscribers could be lost. There are no alternative sites to provide coverage to the area. They need to be in relative proximity to the area to be covered. This is a less intrusive site not requiring a new tower nor added height. There will be no generator on site as the proposed facility will be battery operated in the event of power failure. There will be no odor, glare or fumes nor the requirement of town services. Once or twice a month there will be a visit for routine maintenance.

Ms. Shoemaker asked why application had not been made to the Planning Board. Mr. Grossman replied they had looked at the zoning bylaw and felt that because the site was not within the overlay district, variances would be required.

Mr. Dodd believed the Planning Board would support modification of the Sprint permit, but has a problem with the variance request. The zoning bylaw does not provide for use variances, and the height in excess of 35 feet would have to go before town meeting. He felt there were inconsistencies in the bylaw. He saw no problem with the requested dimensional variances. There will be consultation with Town Counsel. Mr. Tarnuzzer pointed out that the pre-existing Sprint facility has already been approved in excess of 35 feet. Mr. Dodd responded that Town Counsel will have to provide assistance in that regard. The existing Sprint decision may allow the Planning Board to approve T-Mobile. The ZBA could grant dimensional relief.

Mr. Grossman said he had attempted to gain direction from the Building Inspector and Planning Board. He believed that if the ZBA makes certain findings and there is no other way, it has authority under Federal law to grant the use variance. That has occurred previously under certain circumstances.

Abutter Carolynne Parchen expressed concern for health risks. Mr. Grossman assured compliance with the regulations of FCC, and the operation will be in accordance with guidelines.

Mr. Tarnuzzer was unsure of what direction this board should take. Therefore, continuation of the public hearing was proposed. On motion of Mr. Tarnuzzer, second by Ms. Shoemaker, it was voted unanimously to continue the public hearing to Monday, January 8, 2007 at 7:30 p.m.

The hearing was adjourned at 8:19 p.m. to be reopened on Monday, January 8, 2007 at 7:30 p.m.

Lynn Marx & Matthew Marx - Red Rover Dogs, Inc. - The public hearing was held in Stow Town Building and was opened at 8:20 p.m. on the application for special permit filed by **Lynn E. Marx and Matthew G. Marx of Red Rover Dogs, Inc., 53 Nason Hill Road, Sherborn, Mass.** under Section 3.2.2.5 of the Zoning Bylaw, "Residential District Uses", to allow establishment of a dog care, training and boarding service facility at **485 Great Road (formerly Whitney Homestead)**. Also filed was a petition for westerly side yard variance of approximately 61 feet under Section 3.2.2.5 to allow said facility approximately 39 feet from the lot line. The property contains 180,132 sq. ft. and is shown on Stow Property Map R-9 as Parcel 97.

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

Mr. Clayton chaired and read the notices of hearing as they had appeared in the *Beacon Villager* on November 16 and 23, 2006. Hearing notices were forwarded to all abutters by certified mail, return receipt. Abutters present: Dwight and Barbara Sipler, 493 Great Road; Mary Manning, 479 Great Road; Marcia Melone, 497 Great Road; Jeffrey Smith, 23 Hillcrest Avenue; Jill Ikens, 18 Whitney Road; Colby Fredette for Whitney Homestead owner Bonnie Fredette. Mr. Clayton recited the criteria to be met for grant of variance and the requirements for grant of a special permit.

Lynn Marx, Matthew Marx and Emily Marx were present. Lynn Marx began the presentation by saying that she has three AKC certified dogs and could not find a place to leave them when traveling. She then decided to look into beginning a small upscale facility to provide the service, and she attended dog training classes. Soon her son became interested.

Mr. Marx advised they have received investment for a single location at this time, and plans are to branch out across the country. They believe they have a new vision, and this will not be a typical dog boarding facility. The pet facility market is showing a lot of movement and is growing at a 6.5% annual pace. The proposal is for a lower volume, perhaps up to 20 dogs and with a high quality of boarding care for 50 to 75 dogs at a time. They would like to base headquarters in Stow. The development plan calls for retrofit of the existing structure for overnight and day care, basic training, grooming, spa, therapy, etc. Plans are to schedule speakers for pet owners. Under consideration is a coffee bar on the front porch to allow gatherings of owners and pets for socializing. Perhaps a pick up and delivery service might be added. Corporate offices would be on the third floor. There will always be someone on site with one caretaker for every 10 to 15 dogs. Other floors would accommodate play and sleep areas. The rear of the property would contain the outdoor play area. Only social dogs will be accepted.

Mr. Marx said there would be fencing around the entire property and landscape screening. Dogs that bark incessantly will not be accepted. If there is a barker, it will be kept inside. There will be some barking from the dogs playing and running around in the yard. It is planned to keep them active. Landscaping material may help keep noise levels down.

Mr. Heron inquired into the day care component. Mrs. Marx said there would be a maximum of 50 dogs, but more probably 30. Drop off would be between 7:00 and 8:00 a.m. with pick up by 6:00 p.m. Less than 100 visits a day. There are 17 parking spaces. Mr. Heron remarked that many spaces could be taken up by employees. It is not expected that people will park to stay. Mrs. Marx said that a back up plan is to create a shuttle for pick up.

Marcia Rising of the Board of Health inquired into disposal of dog waste. Mrs. Marx said there are nine bathrooms in the structure, and there has been discussion of using several for indoor waste disposal. A contracted disposal service would be sought for outdoor waste collection on a daily basis.

They would not want dogs running around outside in waste. There is currently no plan for a dog water system but that will be incorporated in the landscaping with perhaps a self-cleaning system. Everything will be filtered.

Barbara Sipler, the immediate westerly abutter, expressed delight with the plan. She commented there was much traffic in and out when the rest home was in operation. She was especially happy that the historic structure will be preserved.

Malcolm FitzPatrick of the Planning Board submitted written comments which, he said, had not been reviewed by the complete board. He said that all of the requirements of Section 9.2 have to be met and considered by the ZBA. He suggested a buffer of 20 feet between the subject property and the easterly neighbor to allow access to Marble Hill conservation land to the rear. He suggested a condition for periodic review of the special permit, if granted, to allow the public to have input.

Gregory Troxel of the Light Pollution Subcommittee asked that lighting related restrictions be made part of mitigating conditions in any board decision. Downward directed, low level lighting is permitted. He submitted a suggested list of conditions that represent proposed bylaw changes to be considered at the next town meeting.

A site visit was planned for Friday, December 8th.

The hearing was closed at 9:15 p.m.

Executive Session - Mr. Tarnuzzer moved to enter executive session for the purpose of discussing a matter of litigation. Second by Mr. Heron. On the roll call vote of the members present, it was voted unanimously to enter executive session at 9:18 p.m. for the purpose of discussing a matter of litigation. It was announced the meeting would return to open session at the close of the executive session.

Upon return to open session, it was voted unanimously at 9:25 p.m. to adjourn the meeting.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board