

MINUTES
ZONING BOARD OF APPEALS
DECEMBER 7, 2006

The meeting was held in Stow Town Building and was opened at 4:00 p.m. Members present were Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate) and Lee Heron (associate).

Richard & Marilou Bonetti - Mr. Tarnuzzer presented a draft decision outlining the Board's attempt to arrive at a determination that a 25% increase in non-conformity would amount to 4,000 square feet, based on a 16,000-square foot non-conformity baseline, as determined by the Board. The applicant has not furnished the information needed to define a 25% expansion. The figure of 25,810 square feet said to have been the non-conforming use on the original 41,000-square foot lot had not been supported by a plan indicating how that figure was compiled.

There was uncertainty as to what existed when the original business was operated from the property. Mr. Tarnuzzer estimated the limit as the 20'x20' shed shown on the plan. Mr. Clayton noted that if the decision is to deny, some status would have to be given to the 16,000-square foot baseline and how it fits in. He pointed out that the applicant asked for a 25% increase, but there is no indication on what that figure is based. The Board at its last meeting devoted much time in attempting to determine that figure, therefore coming up with 16,000 square feet.

The Board was in receipt of a document indicating the business, R & M Earthwork & Landscape, is currently being operated by a non-resident. Mr. Clayton suggested that an affirmative decision could include a condition that the owner-operator should reside on the property.

Minutes of the previous hearing sessions were reviewed. There is no definition of a "contractor yard" in the zoning bylaw, therefore, the Board felt it would have to furnish its own definition for the purpose of this situation. It appeared that "contractor yard" includes much more than space for maneuvering. Complaints from neighbors were noted of noise and other activity.

Mr. Tarnuzzer moved to grant a 25% increase of the Board's calculated number of 16,000 square feet, or an increase of 4,000 square feet to be adjacent to the original rear lot line, to be defined by a surveyed plan. There was no second. Mr. Clayton stated he could not support the motion. Mr. Tarnuzzer asked if the rear yard was required to be used for vehicle parking, if it could also be used for the nursery business. Vehicle operation is associated with a nursery that is permitted in the residential district by right. It was Mr. Clayton's opinion that the nursery operation should be considered, rather the contractor yard. Again, there is no information as to the pre-existing, nonconforming use, nor where the requested expansion would occur on the property. The Board does not have what is necessary to make a decision. Mr. Lowden agreed there is no way to pin this down.

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Mr. Clayton moved to deny the request for special permit on the basis of insufficient facts and the inability of the Board to determine the extent of the requested 25% increase. Second by Mr. Barney. The vote was unanimous in favor.

With regard to the appeal of the Building Inspector's action in ordering that a special permit be sought, or a cease and desist order will be issued, the Board found that an application for special permit had been submitted. The business could continue but with no expansion outside the original lot.

There was unanimous agreement that Mr. Tarnuzzer would draft decisions with assistance of the Building Inspector and, if necessary, with Town Counsel.

The meeting was adjourned at 4:55 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board