

**MINUTES
ZONING BOARD OF APPEALS
JANUARY 8, 2007**

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).

Omnipoint Communications - T-Mobile USA - The public hearing continued from December 4, 2006 was reconvened at 7:30 p.m. in Stow Town Building 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 continued as chair and reread the notice of hearing as it had appeared in the *Beacon Villager* on November 16 and 23, 2006.

Attorney Brian Grossman of Prince, Lobel, Glovsky & Tye, LLP represented the petitioner. He explained that since the December hearing he has attempted to obtain input from Town Counsel Jonathan Witten with regard to the appropriateness of relief. Just recently there was contact by telephone. Mr. Grossman advised it is Mr. Witten's understanding there is a mechanism through the Planning Board for this wireless installation to go forward. It appeared to Mr. Grossman to be the preferred path, however, there is need to discuss this further with Town Counsel as concerns a special permit from the Planning Board and variance from the ZBA. At this point, because of the uncertainty as to the opinion of Town Counsel, Mr. Grossman is requesting a further continuation of this hearing to allow an opportunity to obtain that opinion. He wishes to make sure that any relief is full and final as to legality.

Mr. Grossman plans a pre-application conference with the Planning Board. If it is determined that board can grant the relief necessary to move forward, that will be the path to be followed. Mr. Clayton asked if there was any good reason for this hearing to be kept open. Mr. Grossman replied the reason would for receipt of information from Town Counsel that may require further discussion with this board, plus the uncertainties of that information. The request for continuance of this hearing will require the grant of an extension of the date for filing the Board's decision with the Town Clerk. Mr. Grossman indicated that, depending on conferences with the Planning Board, it may become necessary to request a further continuation of the hearing.

The members voiced no objection to continuation. On motion of Mr. Barney, second by Mr. Tarnuzzer, it was voted unanimously to continue this hearing to Monday, February 5, 2007 at 7:30 p.m. Mr. Grossman was to submit a letter granting an extension of the date for filing the Board's decision with the Town Clerk from the current January 31st.

The hearing was adjourned at 7:40 p.m. to be reconvened on Monday, February 5, 2007 at 7:30 p.m.

Cingular Wireless - A request dated December 18, 2006 was received from Anderson & Kreiger, LLP on behalf of Cingular Wireless to extend for six months the variance granted by the Board following the December 5, 2005 public hearing and recorded with the Town Clerk on December 27, 2005. Variances had been granted from Section 3.11, "Wireless Service Facility", i.e., 3.11.7.2 - Setbacks; 3.11.7.1.a - Height; 3.11.4.2.d - Location of Facilities, to allow extension of a chimney at **501 Gleasondale Road**. The applicant had applied for a special permit from the Planning Board, but was denied. That denial is under appeal, therefore, the applicant has been unable to exercise the variance within the statutory one-year period. On motion of Mr. Tarnuzzer, second by Mr. Barney, it was voted unanimously under Mass. General Laws Chapter 40A, Section 10 to grant a six-month extension of the variance filed with the Town Clerk on December 27, 2005.

Red Rover Dogs - Lynn & Matthew Marx - A memo was received from the Planning Board with regard to the petition for variance and application for special permit to allow the property at **485 Great Road** to be used for a dog care facility. It noted that Section 3.2.2.5, which allows such facilities by special permit from the ZBA, requires a building setback of 100 feet from all property lines. Also, Chapter 40A, Section 10 states that no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located. Town Counsel Jonathan Witten had been contacted by Mr. Tarnuzzer and responded via e-mail. The opinion was that the requirement of building setbacks of at least 100 feet from lot lines constitutes a "use" of the property. This condition cannot be interpreted to suggest the distance requirement is merely a dimensional one that could be eligible for a variance. It was recommended that the special permit be denied as the application fails to conform to the requirements of Section 3.2.2.5 and that the variance also be denied as the Zoning Bylaw does not permit the grant of use variances.

Matthew Marx was present during the discussion and asked if it might be possible to use the existing structure as corporate offices and build a new structure in compliance with the setback requirements further back on the property. The Board could not respond, however, it was suggested that a denial without prejudice would allow the applicants to return to the ZBA with a new proposal and avoid the two-year bar to repetitive applications, but with Planning Board approval.

On motion of Mr. Tarnuzzer, second by Ms. Shoemaker, it was voted unanimously to deny, without prejudice, the special permit. On motion of Mr. Tarnuzzer, second by Mr. Heron, it was voted unanimously to deny, without prejudice, the requested variance.

Scott Himmelmann - The public hearing was held in Stow Town Building and opened at 8:00 p.m. on the application for special permit filed by **Scott Himmelmann, 69 Kingland Road, Stow** under Section 3.9 of the Zoning Bylaw, "Non-Conforming Uses and Structures", to replace the existing dwelling with a new dwelling on a different footprint at **63 Kingland Road**. Also filed was a petition for westerly side yard variance of fifteen (15) feet and easterly side yard variance of eight (8) feet under Section 4.4, "Table of Dimensional Requirements", with regard to the proposed new construction. The property contains 7,048 sq. ft. and is shown on Stow Property Map U-4 as Parcel 72.

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 December 21 and 28, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt. Present were Ernest Dodd, representing Kenneth Pauley; Doris Pickering, owner of the subject property, and her daughter. Mr. Clayton recited the requirements for grant of special permit and the criteria to be met for grant of variance.

Scott and Terrill Himmelmann were present. It was explained they have entered into an agreement to purchase the subject Pickering property. The existing structure was described as a typical

summer cottage with no foundation, insulation, etc. The current 26'-4" x 48'-6" structure would be replaced with a year-around 31' x 48' three-bedroom dwelling, not including a rear deck. The new dwelling would not be centered on the lot in order to preserve a stand of pine trees on the easterly side. A new well will be installed. The septic system was said to have been upgraded in 2001 for three bedrooms. The slope of the land toward the lake will allow for a walk-out basement where two bedrooms are proposed.

Mr. Tarnuzzer referred to property map U-4 and inquired into the access to Kingland Road. Mr. Himmelmann replied there is a right of way along the lot line of the adjacent Parker property to the east for access to Nos. 63, 65 and his current address at 69.

Mr. Tarnuzzer inquired into the height of the existing structure. The plan for the replacement dwelling showed an 18-foot height at the front and 35 feet on the rear lake side. Mr. Himmelmann was to provide the height of the current structure.

Mrs. Pickering and her daughter were very supportive of the proposal for the property that has been in the family for a number of years.

A site visit was planned for Friday, January 12th at 9:00 a.m. Survey stakes were said to be in place.

The hearing was closed at 8:17 p.m.

Villages at Stow - Ernest Dodd of the Planning Board was present and noted that the Board's decision granting the Chapter 40B project off Great Road requires that each of the twenty-four Affordable Units be sold with a deed rider that the affordability component be preserved in perpetuity. However, there is no such specific language as regards the six Moderate Income Units. Mr. Tarnuzzer, who chaired the hearings, was to contact principals of the developer, Habitech, to discuss the apparent omission and a possible remedy.

Adjournment - The meeting was adjourned at 8:25 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board