

**MINUTES**  
**ZONING BOARD OF APPEALS**  
**JULY 5, 2007**

The members met at Stow Town Building at 9:30 a.m. for the purpose of conducting a site visit to the Assabet Water Company water storage site off Dunster Drive that was the subject of a public hearing on Monday, July 2nd. Member present were Arthur Lowden, John Clayton, Edmund Tarnuzzer and Michele Shoemaker. They were accompanied by Ernest Dodd of the Planning Board and Robert Maynard, the applicant. Direct abutters Blake and Elizabeth Nelson joined the group at the site.

The two existing water storage tanks, resting on a high concrete foundation, were observed and appeared to have been lacking maintenance. It was difficult to determine the location of lot lines to the right of the tanks as the area contains a thick growth of trees and vegetation. As was mentioned at the hearing, there will be tree clearing in order to install the reservoir structure.

The members and Messrs. Dodd and Maynard returned to the Town Building at 10:22 a.m. and were joined by Building Inspector Craig Martin.

**Assabet Water Company** - Noting there was a hearing before the Planning Board for special permit, Mr. Tarnuzzer stated he would like to coordinate this board's action with that of the Planning Board. He believed the foundation and the new structure should be moved as far as possible from the direct abutter, the Nelsons.

Chair Michele Shoemaker noted the Board can act only on the petition for variance as was presented. She reported that advice from Town Counsel Jon Witten was that the request for variance should have been from the provisions of Section 3.9, "Non-Conforming Uses and Structures", rather than 4.4, "Table of Dimensional Requirements". It was suggested that the petition for variance under Section 4.4 be denied without prejudice. The petitioner would then resubmit with revised plans showing different setbacks from lot lines.

It appeared the request for special permit was rather benign, and the members had no problem in that regard. However, it was suggested that no action be taken at this time on the special permit request under Section 3.9, although there was believed to be enough information in that regard.

Section 3.9.6.1-1 of the Zoning Bylaw was reviewed which states: "...a lawfully pre-existing non-conforming use and/or structure .... may be reconstructed, altered or extended only if (1) said reconstruction, alteration or extension itself conforms with all the provisions of the Zoning Bylaw." This is the provision under which the petition for variance should have been submitted, as advised by Town Counsel.

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On motion of Mr. Tarnuzzer, second by Mr. Lowden, it was voted unanimously to deny, without prejudice, the request for variance under Section 4.4 on the basis that the request should have been submitted under Section 3.9.6.1-1, as the proposal does not conform to the provisions of the Zoning Bylaw.

Mr. Maynard expressed concern for the delay in approval of the special permit request. The Board believed the two matters are related and should be linked. It was noted the deadline for filing a special permit decision with the Town Clerk is September 28th. The applicant will be meeting with the Planning Board on July 10th. As this board's deadline for filing for the August 6th hearing is the same date, he asked how a new plan could be readied to reflect any changes that result from the Planning Board meeting. It was suggested that the variance petition request zero setbacks at the two further corners of the lot. A revised plan showing changes could be submitted at the August hearing.

After Mr. Maynard left the meeting, the Board met briefly with Building Inspector Martin. He advised there is a building permit application process that requires a certified plot plan showing lot line setbacks. After installation of the foundation, another certified plot plan is to be submitted to verify the setbacks. The Board noted there is no special permit in place from any town body to allow the project to commence, in spite of Mr. Maynard's desire to begin clearing trees.

**Board Members** - It was brought to the Board's attention that the sixth associate member position remains vacant. Mr. Clayton suggested that Bruce Fletcher, former Planning Board member, be approached to learn of his interest in filling that vacancy. Also, because of the ill health of Donald Hyde, it was suggested his status be changed from regular member to associate and that Michele Shoemaker be elevated to regular member. Mr. Clayton was to contact Mr. Fletcher. If there is agreement from him to join the Board, a letter will be drafted to the Board of Selectmen recommending the changes as discussed.

Donald Dwinells, who had participated in the Assabet Water hearing joined the meeting at 10:55 a.m. and was updated on the findings of the site visit and discussion.

**Adjournment** - The meeting was adjourned at 11:05 a.m.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board