

MINUTES
ZONING BOARD OF APPEALS
SEPTEMBER 10, 2007

The meeting was held in Stow Town Building and began at 1:00 p.m. Board members present were Arthur Lowden, John Clayton, Edmund Tarnuzzer, Donald Dwinells and Michele Shoemaker (associate). Planning Board member Ernest Dodd was in attendance.

Membership Status - Prior to the meeting, Susan McLaughlin, Administrative Assistant to the Selectmen, advised that the Selectmen had voted on August 29th to change the status of Associate Michele Shoemaker to regular member and member Donald Hyde to Associate. The five-year appointments will end June 30, 2012. In addition, the Selectmen will vote on September 11th to appoint a sixth associate to the Board.

Assabet Water Company - The purpose of the meeting was to discuss the petition for variance filed by **Assabet Water Company, Inc., Robert E. Maynard, President, 6 South Street, Grafton, Mass.** under Section 3.9.6.1 of the Zoning Bylaw, "Non-Conforming Uses and Structures", and Section 4.4, "Table of Dimensional Requirements", to allow construction of a 250,000-gallon pedestal water storage reservoir **off Dunster Drive**, as replacement for two existing water storage tanks. The property contains 12,787 sq. ft. and is shown on Stow Property Map R-5 as Parcel 53A. The hearing opened on August 6th was closed on August 20th.

Also to be discussed was the application for special permit under Section 3.9 to allow the proposed construction, that hearing being held and closed on July 2nd. Associate William Byron had participated in the variance hearing, but was not present at this meeting. Ms. Shoemaker had participated in the special permit hearing.

The Board considered the criteria to be met for grant of variance. Mr. Tarnuzzer commented that the subject site off Dunster Drive is small. However, the Board cannot suggest another site than what was presented. The petitioner, Mr. Maynard, is under a mandate to supply water to the Harvard Acres subdivision. Another site will cost more and those costs would be passed along to resident customers through higher rates. Mr. Tarnuzzer was of the opinion there is a case for doing what is best for the most number of people as more will benefit from improved water supply. Another site will cause a delay in Mr. Maynard meeting the order of DEP.

The matter of Fire Department hydrant requirements is not known as well as any DEP requirement in that regard. Mr. Dwinells pointed out that the Planning Board special permit decision concerns the Dunster Drive site and refers to DEP requirements. Mr. Lowden noted that at the August 20th meeting Mr. Maynard had talked about an alternative being the current well site off Adams Drive.

At this point, it appeared to Mr. Clayton that the discussion was centered on the special permit request and not the variance petition. He did not believe that the proposal complies with the Zoning Bylaw as to detriment and derogation. The construction phase will be very disruptive to the neighborhood during that anticipated five-month period. If the variance is denied, can DEP overrule this board? It appeared that an appeal would be likely.

Mr. Tarnuzzer understood the concern as to disruption, but asked if there had been similar concern with other matters before the Board as regards construction in neighborhoods. Mr. Clayton pointed out that this site is a small lot with greater than average construction that will impact neighbors due to its scale. Ms. Shoemaker noted that easements will be required from neighbors to provide access

to the lot, and there will be much tree-cutting. It did not appear restrictions could be imposed to minimize the neighborhood impact. There is only 3/10ths of an acre with a residence within 45 feet.

Mr. Tarnuzzer suggested it might be possible that certain sections of the tower could be assembled off-site and then brought to the subject site. A question arose as to where the parts would be stored while awaiting assembly. The use of a helicopter to position the tank was mentioned.

It was noted that if the variance were granted, neighbors could appeal that decision. Mr. Tarnuzzer noted that the existing water system is over twenty years old and that an increase in pressure could cause problems in some areas.

Mr. Clayton suggested a finding for Assabet as regards the special permit but a denial of variance. The five-month construction phase will be accompanied with much noise. He referred to Section 10 of Chapter 40A which he did not believe could be complied with. Mr. Tarnuzzer felt there was no hardship demonstrated as Mr. Maynard had mentioned another approach. The best place is the higher elevation of Dunster Drive, but getting there is a problem. The lot is too small to support this construction.

Mr. Clayton moved to deny the variance on the basis that desirable relief will cause substantial detriment to the public good and derogate from the intent and purpose of the Bylaw. Second by Mr. Lowden. The vote of members Lowden, Clayton, Tarnuzzer and Dwinells was in favor of the motion.

Ms. Shoemaker pointed out that, as regards the special permit request, the applicant cannot comply with Section 3.9.6.1 due to the denial of variance. Mr. Clayton suggested a tie-in of the special permit decision with the variance decision, conditioned on compliance with 3.9.6.1. Ms. Shoemaker moved to grant the special permit on the condition of compliance with Section 3.9.6.1 of the Zoning Bylaw. Second by Mr. Clayton. The vote of members Lowden, Clayton, Tarnuzzer, Dwinells and Shoemaker was in favor of the motion.

At this point, Mr. Tarnuzzer moved for reconsideration of the vote to deny the variance. Second by Mr. Clayton. All in favor of reconsideration. Mr. Tarnuzzer then moved to deny the variance *without prejudice*. Second by Mr. Clayton. The vote of members Lowden, Clayton, Tarnuzzer and Dwinells was in favor of the motion to deny the variance without prejudice.

Mr. Tarnuzzer was to draft the variance and special permit decisions based on the findings of this meeting and to circulate the drafts among the members for review. Thereafter, the review and advice of Town Counsel Witten was to be sought.

Adjournment - The meeting was adjourned at 2:25 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board