

**MINUTES  
ZONING BOARD OF APPEALS  
APRIL 6, 2009**

The meeting was held in Stow Town Building and began at 7:30 p.m. Board members present were John Clayton, Edmund Tarnuzzer, Michele Shoemaker, William Byron (associate) and Bruce Fletcher (associate).

**Shirley Rothwell** - The public hearing was held in Stow Town Building and opened at 7:30 p.m. on the application for special permit filed by Michael E. Katin, Esq., 103 Great Road, Acton, Mass. on behalf of **Shirley Rothwell, 210 Barton Road, Stow** under Section 3.9.7 of the Zoning Bylaw, "Non-Conforming Uses and Structures", to allow replacement of the existing dwelling at **214 Barton Road** with another on the same footprint. The property contains 12,800± sq. ft. and is shown on Stow Property Map U-2 as Parcel 32.

Board members present: John Clayton, Edmund Tarnuzzer, Michele Shoemaker, William Byron (associate), Bruce Fletcher (associate).

Ms. Shoemaker chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on March 19 and 26, 2009. The hearing notice had been forwarded to all abutters by certified mail, return receipt. Susan Ormond of 3 O'Connell Way was present. Ms. Shoemaker recited the requirements for grant of special permit.

Attorney Michael Katin represented the applicant and was accompanied by representatives of Beauchemin Engineering, Inc. Mr. Katin displayed Mylar plans of existing conditions and another with the location of the proposed new dwelling. When placed atop one another, he stated the footprint will change slightly but will not increase the non-conformity. The closest distance to the side yard as shown on the "existing" plan is 6.5 feet. As proposed, the closest distance will be 6.6 feet, therefore, Mr. Katin did not believe a variance is required. The new structure will not substantially change the non-conformity of the use of the property. The "proposed" plan showed a dotted bump-out that he explained is a bay window that may extend into the side yard in accordance with Section 4.3.1.1 that applies to eaves, sills, cornices, etc., which "may project up to two feet into the required yard".

Mr. Katin said that the applicant owns the adjoining property at 210 Barton Road and plans to reside in the new dwelling. The design will be that of a modernized cape style in keeping with the majority of other dwellings in the neighborhood and very little changed from the existing structure. It will have two floors with a ridge line height of 32'8" as that existing. It will not block the lake view from neighboring properties.

Ms. Susan Ormond called attention to the letter submitted to the Board by Karen and John-Paul Benoit of 15 O'Connell Way that questioned the right of way to the lake as shown on the plan as being three feet. Copies of deeds seemed to indicate the right of way is ten feet. Mr. Katin responded this is a matter of title and not for concern by the Board. The previous owner (O'Connell) had a 10-foot wide right of way across Barton Road. It was deeded out to the Foleys in 1946 with ten-foot wide easement to the roadway and a three-foot wide easement to pass from the roadway to the lake. Mr. Katin provided a copy of the report of Applewood Survey of Holliston that explains the changes in ownership and the easement. He did not believe this matter had impact on the use of the property.

Mr. Byron noted that the new dwelling will be closer to the roadway by four feet, but within the setback requirements. Mr. Katin acknowledged that and said the structure will be further away from the

lake by four feet. Mr. Fletcher noted this lot and that of the applicant are in common ownership as Shirley Rothwell 2000 Trust. Mr. Katin pointed out that the trustees are different for each parcel.

The Board members planned a site visit for April 9th.

The hearing was closed at 7:53 p.m.

**Richard Nelson** - The public hearing was held in Stow Town Building and was opened at 7:56 p.m. on the Appeal From Unfavorable Action filed by **Richard Nelson, 28 Woodland Way, Stow** concerning denial by the Building Inspector of "grandfather status" for a parcel of land on **Sudbury Road** purported to contain 40,858 sq. ft. (0.94 ac.). The lot is shown on Stow Property Map R-25 as Parcel 1A containing 0.60 ac.

Board members present: John Clayton, Edmund Tarnuzzer, Michele Shoemaker, William Byron (associate), Bruce Fletcher (associate).

Ms. Shoemaker chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on March 19 and 26, 2009. The hearing notice had been forwarded to all abutters by certified mail, return receipt. There were no abutters in attendance. Dorothy Sonnichsen was present as an interested observer.

Mr. Nelson began his presentation by stating that he is a registered land surveyor in Massachusetts and Maine. The subject is a small parcel on Sudbury Road. The plot plan submitted with an application for building permit and for this hearing shows the boundaries of the parcel extending across Sudbury Road to the State-owned land opposite. Mr. Nelson's contention is that Sudbury Road is not a Town-owned way, however, it has a fee interest to that land. The Building Inspector dismissed that claim and refused to issue a permit. The Town Clerk's office lists Sudbury Road as a town way, however, Mr. Nelson said that list cannot be used to determine the status of private and public ways. Sudbury Road probably has a prescriptive easement. He believed the subject parcel was once part of the larger military reservation created in 1941, now a State wildlife/conservation area. According to him, the Assessors' office was unsure of the owner, the parcel having come to light with the survey and sale of the former Dawes property to Bentley Builders for the Wildlife Woods Subdivision. Mr. Nelson said he purchased the parcel from Nancy Ousley about a year ago.

Mr. Nelson plans to construct a small house. Prior to the adoption of the current Zoning Bylaws in 1968, the bylaw stated one could not use the property under a road for lot area. There is no similar reference in the current bylaw. The zoning at that time allowed a buildable lot of at least 40,000 sq. ft. with 150-foot frontage. Mr. Fletcher asked where road frontage would be if the subject parcel extended to the other side of the road. Mr. Nelson responded that if the property is on both sides of the road, the center line of the road would determine the frontage. Comment was made that would then alter the total area.

Mr. Tarnuzzer asked if he would bar people from using that portion of Sudbury Road if, indeed, he owns it. He did not believe he could do that. There is an easement in play that could not be interrupted. This portion is really not a road, but an easement. Mr. Fletcher commented that town ways are easements granted in perpetuity. If discontinued, the land reverts to abutters. Mr. Nelson believes Sudbury Road is a public way over private property and that the parcel is a buildable lot. Ms. Shoemaker noted he has not owned the property since the 1965 zoning bylaw he referred to. He did not feel that should matter.

The Board noted that copies of documents, letters, plans, etc., referred to and displayed had not been submitted with the application for hearing. Ms. Shoemaker reminded that the Board can consider and rule only on what is before it, just as a court of law. Mr. Nelson said he would provide the Board with those copies within a day or so. Mr. Byron suggested that this hearing be continued to another date. Mr. Fletcher moved to continue the hearing to May 11th, second by Mr. Clayton. Vote was unanimous in favor of the motion to continue the hearing to May 11th.

The hearing was adjourned at 8:35 p.m. to be continued to May 11, 2009.

**Andrew Martin** - The public hearing was held in Stow Town Building and was opened at 8:36 p.m. on the petition filed by **Andrew Martin, 101 Sudbury Road, Stow** for rear yard setback variance of approximately seven (7) feet under Section 4.4 of the Zoning Bylaw, "Table of Dimensional Requirements", to allow a lean-to addition to the existing pole barn on the **Boon Road** site. The property contains 5.21 acres and is shown on Stow Property Map R-14 as Parcel 4.

Board members present: John Clayton, Edmund Tarnuzzer, Michele Shoemaker, William Byron (associate), Bruce Fletcher (associate).

Ms. Shoemaker chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on March 19 and 26, 2009. The hearing notice had been forwarded to all abutters by certified mail, return receipt. No abutters were in attendance.

Andrew Martin of Honey Pot Hill Orchards was present with his father, Richard Martin. He explained that the existing pole barn was constructed about ten years ago for the purpose of storing tractors and other farm implements. Over the years the number of those had increased, and more storage space is needed. The addition will be to the rear and away from Boon Road and public view. It will be within 18 feet of the abutting property of Ray Frost on Whitman Street. The lean-to will be open on three sides to provide drive-through and be of similar construction to the existing pole barn.

Consideration had been given to another structure in another location on the property, but nothing suitable could be found. With this, the equipment would be kept together in one place. Mr. Martin noted the presence of a nearby stream and the desire to not build within 100 feet of that. The zoning district is residential, however, Richard Martin pointed out a provision of Chapter 40A that exempts agriculture and horticulture.

The hearing was closed at 8:50 p.m.

**Bruce & Diane Bleau** - The public hearing was held in Stow Town Building and opened at 8:51 p.m. on the application for special permit filed by Bruce St. Jean, 288 Mulpus Road, Lunenburg, Mass. on behalf of **Bruce and Diane Bleau, 70 Pine Point Road, Stow** under Section 3.9 of the Zoning Bylaw, "Non-Conforming Uses and Structures", to allow addition of a 13-ft. wide dormer to the west side of the existing roof and replacement of a 18-ft. by 12-ft. sundeck with a 18-ft. by 12-ft. screen porch and a 5-ft. by 8-ft. deck at **70 Pine Point Road**. Also filed was a petition for side yard setback variance of approximately two and one-half (2.5) feet under Section 4.4, "Table of Dimensional Requirements", to allow the deck addition approximately 22.5 feet from the lot line. The property contains 5,044 sq. ft. and is shown on Stow Property Map U-1 as Parcel 25.

Board members present: John Clayton, Edmund Tarnuzzer, Michele Shoemaker, William Byron (associate), Bruce Fletcher (associate).

Ms. Shoemaker chaired and read the notices of hearing as they had appeared in the *Beacon Villager* on March 19 and 26, 2009. The hearing notices had been forwarded to all abutters by certified mail, return receipt. No abutters were in attendance. Ms. Shoemaker recited the requirements for grant of special permit and criteria for grant of variance.

Mr. and Mrs. Bleau were present with building contractor Bruce St. Jean. Mr. St. Jean explained there is an existing sundeck at the rear (lakeside) of the dwelling. It is proposed to replace it with a screen porch on the same 18'x12' footprint. It is also proposed to add a 5'x8' deck to the porch to accommodate a grille. The deck will be 22.5 feet from the side lot line at its closest point therefore a variance of 2.5 feet is requested. The porch and deck will be above grade by 7.5 feet. There will be no stairway or steps from the porch/deck to grade. The new construction will be supported by footings in accordance with building regulations.

The addition of the 13-ft. wide roof dormer on the westerly side of the dwelling will provide more living space and create a second bedroom on the second floor.

A site visit was planned for Thursday, April 9th.

The hearing was closed at 9:10 p.m.

**Member Donald Hyde** - The Board members were saddened to learn of the passing of long-time member Donald Hyde, having first been appointed to the Board in 1968. He also served the Town as Moderator from 1970 to 1995. His experience and knowledge will be missed.

**Adjournment** - The meeting was adjourned at 9:15 p.m.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board