

**MINUTES  
ZONING BOARD OF APPEALS  
MAY 11, 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, Charles Barney (associate) and Bruce Fletcher (associate).

**Andrew Martin** - The public hearing was held in Stow Town Building and was opened at 7:30 p.m. on the petition filed by **Andrew Martin, 101 Sudbury Road, Stow** for rear yard setback variance of approximately twenty-two (22) feet under Section 4.4 of the Zoning Bylaw, "Table of Dimensional Requirements", to allow a lean-to addition to the existing pole barn 18 feet from the lot line 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, Charles Barney (associate), Bruce Fletcher (associate).

Ms. Shoemaker chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on April 23 and 30, 2009. The hearing notice had been forwarded to all abutters by certified mail, return receipt. Ray and Cynthia Frost of 149 Whitman Street were in attendance.

Andrew Martin of Honey Pot Hill Orchards was present. It was explained that this petition for variance is a redraft of that heard on April 6th as there had been a misinterpretation by the petitioner of the Zoning Bylaw as relates to side yard versus rear yard. Mr. Martin was under the impression that the side yard setback applied in this instance.

Ray Frost advised that the lot line in question abuts his side line. He said that the barn should have been set further back from the lot line when it was constructed, as the setback is only thirty feet when it should have been forty feet. In effect, there has already been a ten-foot variance, and now there is needed an additional twelve feet to construct the lean-to. His property is for sale and this could have an effect on the value. There is concern that with the storage of hay wagons there will be much noise and activity. He believed that an old tree will have to be removed to accommodate the lean-to.

Mr. Frost questioned the hardship. Mr. Fletcher pointed out there is a wetlands setback issue on the other side of the barn. Mr. Martin said there may be much acreage with the orchard, but no real other place to store the wagons. In response to Mrs. Frost's comment that the orchard is a seven-day-a-week operation, Mr. Martin reminded that the most activity is during three to four weeks in the fall. Often the wagons are left out overnight unless there will be rain predicted. Otherwise, the lean-to is for storage for the rest of the year.

The Board planned a site visit for Thursday, May 14th. Mrs. Frost invited the members to view the lot line from her property on Whitman Street. The hearing was closed at 7:50 p.m.

**Stow Recreation** - The public hearing was held in Stow Town Building and was opened at 7:51 p.m. on the petition of Michael Busch on behalf of the **Town of Stow Recreation Commission** under Section 7.7.4.1 of the Zoning Bylaw, "Off-Street Parking and Loading Area Design Requirements", for variance to allow elimination of a fence and plantings as screening for the parking area and along the street frontage of the recreational facility to be created at **60 Old Bolton Road**. The property contains approximately 13 acres and is shown on Stow Property Map R-3 as Parcel 18.

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

Ms. Shoemaker chaired and read the notice of hearing as it has appeared in the *Beacon Villager* on April 23 and 30, 2009. The hearing notice had been forwarded to all abutters by certified mail, return receipt. Those abutters present were Leonard Golder, 67 Old Bolton Road; Albert Scansaroli, 49 Old Bolton Road; Mary Algeo, 75 Old Bolton Road; Steve Mong, 70 Old Bolton Road; Consuelo Ottowitz, 66 Old Bolton Road; Karen Cummings, 74 Old Bolton Road. Ms. Shoemaker recited the criteria for grant of variance.

Michael Busch and James Henry represented the petitioner. It is proposed to remove and eliminate from the plan 270 feet of six-foot high stockade fencing at the edge of the parking area closer to Old Bolton Road. Mr. Busch explained that the bylaw requires fencing when a recreational facility is located within a residential district. The Police Department has concern for public safety in not being able to view the property from the road if blocked by fencing and dense plantings. The concern is for possible vandalism and more serious criminal activity. This proposal has the support of several youth recreation groups such as Little League, Stow Soccer and SAPN. Sgt Timothy Lima, who had brought this situation to the attention of the Selectmen, was present and spoke of concern for loitering, public drinking, vandalism and predatory activity.

Mr. Tarnuzzer asked if there was a plan for a gate across the driveway entrance. Mr. Fletcher inquired into sound reduction and if any thought had been given to a compromise to deaden sound but allow looking in when driving by. Mr. Busch said that existing trees will be left.

Leonard Golder who resides opposite the field said he was as concerned as anyone about possible crime, but he also had concerns about noise. There will be existing barriers from the road. There are other areas in town that require the police to travel inside to patrol such as Bradley Lane and Pine Bluff off Sudbury Road.

Counselo Ottowitz said she had conversation with Mr. Busch and Robert Wilber about screening on the sides of the property. Mr. Wilber was present and reported that the matter is in process of costing out a change from hardwood trees to evergreen. Ms. Shoemaker reminded that this hearing concerns only the front fencing. Ms. Ottowitz then asked if the police would drive into the property. Sgt. Lima replied they would have keys to the gates.

Steve Mong said he favored the elimination of fencing and believed it would make the parking lot quieter. If there is unacceptable noise, a neighbor will call the police. He pointed out that the field will be empty more than half the time. In addition a fence would block the view of the wide open field beyond.

Ms. Shoemaker noted a memo from the Planning Board asked for an opportunity to discuss the matter of fencing with the Police Department. That Board had granted site plan approval that would have to be amended if the fence were to be eliminated.

Mary Algeo had concern about safety issues but also with noise. She would like to see some method of muffling the sound. Mr. Golder said the purpose of the fence is for noise abatement. Karen Cummings noted that the fence could reflect rather than absorb sound. She suggested some type of living fence with a height to allow looking in. Mr. Golder thought a fence with plantings would be better. Eric Bachtell commented that the field would be used in daytime and there is need for safety considerations. Mr. Golder felt that fencing would be effective in keeping balls from going onto the road.

The hearing was closed at 8:25 p.m.

**Richard Nelson** - The public hearing continued from April 6, 2009 was held in Stow Town Building and was opened at 8:26 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, Bruce Fletcher (associate). Ms. Shoemaker noted the absence of William Byron who participated at the initial hearing and asked if Mr. Nelson wished to continue with four members. He had no objection.

Ms. Shoemaker chaired and read the notice of hearing as it had originally appeared in the *Beacon Villager* on March 19 and 26, 2009. Notice of the continued hearing had been forwarded to all abutters. Unlike the first hearing, there were a number of abutters present at this session filling almost all of the chairs.

Mr. Nelson stated that he was not asking for a variance or a special permit, but the status of Sudbury Road. It was noted he had purchased the 0.6-acre parcel in 2007. Ms. Shoemaker was unsure if the status of Sudbury Road is relative to whether the parcel is a buildable lot or not. The Board has the ability to determine whether a building permit was denied for reason. It is not a buildable lot due to the fact that the Town owns Sudbury Road. Regardless, the Board cannot determine that Sudbury Road is part of the lot. What Mr. Nelson is asking is not what the Board can do. The Board can only back up the Building Inspector. A building permit was requested and was denied.

Mr. Nelson did not believe it was the Building Inspector's right to deny. Mr. Tarnuzzer commented that, in viewing the deed, the parcel is adjacent to Sudbury Road which is what was purchased. It is not up to the Board to determine if the Town owns the road. Mr. Fletcher noted that it is the job of the Building Inspector to determine the Zoning Bylaw. Mr. Nelson said that the Building Inspector "changed his lot lines" which he did not believe he had the right to do. To Mr. Tarnuzzer it seemed Mr. Nelson was looking for grandfather status of the lot. It looks like there were changes as time went along, but it does not meet the bylaw requirement for a buildable lot. This Board can only rule on if the Building was justified or not. It seemed to the Board that the fact Mr. Nelson, as a registered land surveyor, made his own survey was a bit out of the ordinary.

William Jones of 6 Blueberry Court said the survey was drawn to make the lot conform to the Zoning Bylaw. If this was allowed, other people would use the roadway to add to their property. He said that 50 of the 58 householders in Wildlife Woods were not aware this parcel could be a buildable lot. From discussion with the developer, it was felt to be a continuation of the open space within the subdivision.

Jonathan Magasanik of 10 Blueberry Court said he is the second owner of the property and was told the parcel in question is unbuildable. There is an easement for a walking trail to the rear. Henry Fisher of 14 Woodpecker Court chose his lot because of the open space and also understood the parcel is unbuildable. Steven Bonadio of 13 Woodpecker Court echoed the comments. There were similar comments from residents of Foxglove Lane and Cricket Lane.

It appeared to the Board that Mr. Nelson's request as regards Sudbury Road is not permitted under case law.

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

**Next Meeting** - The Board planned a site visit to Boon Road on Thursday, May 14th, and to thereafter return to the Town Building for discussion.

**Adjournment** - The meeting was adjourned at 9:00 p.m.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board