

**MINUTES
ZONING BOARD OF APPEALS
FEBRUARY 6, 2012**

The meeting was held in Stow Town Building and opened at 7:30 p.m. Board members present were Edmund Tarnuzzer, Michele Shoemaker, Charles Barney (associate), William Byron (associate) and Andrew DeMore (associate).

Ridgewood, LLC – The public hearing was held in Stow Town Building and opened at 7:30 p.m. on the application for Special Permit filed by **Ridgewood, LLC, 5 Faxon Drive, Stow** under Section 3.9.3 of the Zoning Bylaw, “Non-Conforming Uses and Structures”, to allow re-establishment of the discontinued or abandoned non-conforming residential use in the Industrial District at **218 Boxboro Road**. The property contains 116,330 sq. ft. and is shown on Stow Property Map R-7 as Parcel 22B-3B.

Board members present: Edmund Tarnuzzer, Michele Shoemaker, Charles Barney (associate), William Byron (associate), Andrew DeMore (associate).

Mr. Tarnuzzer chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on January 19th and January 26th. The hearing notice had been forwarded to all abutters by certified mail, return receipt. Abutters present were Donald McPherson, representing Minute Man Realty Corp.; Warren Nelson, 213 Boxboro Road; Cortni Frecha, 203 Boxboro Road. Mr. Tarnuzzer recited the requirements to be met for grant of special permit.

Harry Blackey represented the applicant. The request for special permit concerns a non-conforming residential use in the Industrial District for a lot that includes a single-family dwelling. The request is to allow the residential use to continue. Mr. Blackey referred to the Zoning Bylaw that provides that a non-conforming use that is discontinued or abandoned for a period of two or more years may be re-established upon a special permit granted by the Board of Appeals.

The house was constructed in 1940, according to Assessors’ records. Zoning was enacted in 1969. The lot in question was part of a larger parcel that was zoned industrial due to Minute Man Air Field. All properties in the vicinity are zoned residential. In 2006 the Planning Board approved a plan that separated this lot. In 2009 the Planning Board approved a plan for development of 66 units of age restricted housing. There will be a buffer between the air field and this lot. In 2010 the house was vacated and a new tenant was to make some improvements. Interior demolition was begun but not completed, therefore, the structure was made uninhabitable. The Board of Health then determined the house was not livable. The owner obtained a building permit to make required improvements. Cost estimates were high, and it was decided to put the property on the market.

Mr. Blackey said the application for special permit was submitted on advice from the Building Inspector. It is possible to construct a new structure on the property in conformance with setbacks and frontage as there are 2.67 acres. The owner wishes to sell to someone interested in pursuing that option. The zoning issue makes it difficult to market the property. Residential use is in harmony with the neighborhood. Continuation of industrial zoning could be considered spot zoning.

Ms. Shoemaker asked if the Board of Health had revoked an occupancy permit. Mr. Blackey responded that board declared on March 30, 2010 that the house could not be occupied.

Warren Nelson of 213 Boxboro Road had no objection to the application. He preferred to see a single family occupancy and commented that the existing structure has to be taken down. Mark Jones of

203 Boxboro Road asked if it was possible for the Planning Board to propose rezoning of the parcel to residential.

Mr. Byron asked what a purchaser might do with the property. Mr. Blackey said that any type of house could be built as long as it conforms to the zoning bylaws and building code. The owner is currently seeking a purchaser as an owner-occupant. The type and style of house would be the decision of the purchaser.

Ms. Shoemaker questioned if a dwelling with more than the current three bedrooms might be considered an expansion of a non-conforming use.

Mr. Blackey said it would be helpful if the Board was able to act before the end of March.

It was not felt that a site visit was necessary. The hearing was closed at 8:15 p.m.

Stow Elderly Housing Corp. – The Board met with Stephen Dungan and Jeffrey Smith, representing Stow Elderly Housing Corp., concerning the appeal by an abutter of the Plantation I and II Chapter 40B Comprehensive Permits granted in 2010. The Town Administrator is seeking to have paid from the applicant's review fee balance the invoices of Town Counsel Witten. There is currently a \$1,700 charge from Mr. Witten who feels it can be paid from the review fee. Further billings from Mr. Witten during the course of the appeal process are unknown. Mr. Tarnuzzer commented that Mr. Witten had drafted the decisions in a manner that could be defended.

Mr. Smith advised that SECH is represented by the law firm of Goulston & Storrs and would like to work with Town Counsel to minimize expense. Ms. Shoemaker asked if the two legal teams could get together to determine which will handle what. At this point that type of cooperation is unknown. Mr. Witten's role could be oversight.

In a recent e-mail the Town Administrator had suggested the Board of Appeals prepare an article for the annual town meeting seeking funds to pay for Mr. Witten's legal services in this regard. The Board members did not feel that was their responsibility. The Legal Services budget should be able to cover the cost of the Town's defense.

After further discussion, Mr. Tarnuzzer agreed to contact the Town Administrator to discuss the matter and the general feeling of the Board members.

Adjournment – The meeting was adjourned at 8:50 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board