

MINUTES
ZONING BOARD OF APPEALS
FEBRUARY 13, 2012

The meeting was held in Stow Town Building and began at 7:00 p.m. Board members present were Edmund Tarnuzzer, Michele Shoemaker, Charles Barney (Associate) and William Byron (Associate).

Ridgewood, LLC – The members discussed the application for Special Permit 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**. It appeared to the members that the applicant is seeking to resolve a situation that has not yet occurred. The Board of Health had declared the dwelling as unfit for habitation on March 30, 2010, therefore the two-year term would not expire until March 30, 2012. A question arose if 3.9.3 was the applicable section of the bylaw in this instance – 3.9.6 or 3.9.7? It was noted the Board can only act on what is before it.

The abutting properties are residential and located within the Residential District. There appeared to be no objection to the subject property continuing as residential.

Other options could be explored such as seeking rezoning of the lot to remove the non-conformity. Another option, the Board could deny without prejudice and allow a new application after March 30th. Applicant Harry Blackey was present. He said he had talked with the Building Inspector, trying to find a way for the Board to grant a special permit. He felt it could be granted conditionally with the permit being valid as of March 31st if the dwelling was still not occupied. The Building Inspector believed that a building permit could be issued for a new house under Section 3.9.7.1. The members noted that the section refers to a structure and not to a use as in this case. The use is the non-conformity, not the structure.

Mr. Blackey was asked why he could not wait until after the two years had expired. He explained that the issuance of a building permit would extend the use, however, construction of a new structure would have to begin within six months with the owner forced to build a speculation dwelling. If the Board acts now, there is a two-year period in which to exercise the permit and allow time for sale of the property. The current zoning situation causes a problem for a sale. Rezoning at town meeting might not be easy, particularly if the Planning Board was not in support.

Mr. Tarnuzzer suggested denial without prejudice to allow a new application after March 30th as the timing is not right to act. Ms. Shoemaker moved to deny without prejudice; second by Mr. Tarnuzzer. The vote was unanimous in favor of the motion.

Stow Elderly Housing Corp. – The Board met with Gregory Jones and Stephen Dungan, representing Stow Elderly Housing Corp., concerning Town Counsel Jon Witten’s billings for services related to the appeal by an abutter of the Plantation I and II Chapter 40B Comprehensive Permits granted in 2010. The Town Administrator wants to pay these from the balance of the

review fee submitted with the applications and on account with the Town. Mr. Tarnuzzer advised the Board is not necessarily in favor of that approach. The Administrator suggested an article for the annual town meeting warrant requesting funds for this purpose as separate from the usual Legal Services article.

Mr. Dungan's understanding of rules and regulations limits use of the review fee. He cited 760CMR56.00(5)(a) – consultant review. He said SEHC is willing to have paid from the fee the \$1,700 bill as long as there is a warrant article for increasing the legal budget. Mr. Tarnuzzer recently learned current charges have increased to \$2,860. SEHC would like to see copies of the billings to determine if there is overlap between their attorneys and Mr. Witten. Getting the attorneys together in that regard made sense to both parties. It not seem fair for Town Counsel to perform a certain amount of work and then present a bill with no input in guiding his work. Mr. Jones believed their attorneys were carrying most of the load

It as agreed that Mr. Tarnuzzer would contact the Town Administrator to advise that a warrant article was jointly decided. A estimate from Mr. Witten is necessary for the anticipated legal fees through June 30, 2013. Copies of the bills to date will be requested. Also, the attorneys were to be encouraged to work closely together to minimize costs to the Town.

Ridgewood, LLC – Mr. Blackey returned to the meeting to ask if the Board could wait until April 2nd to vote on the special permit request. Again, the timeliness of the application was noted. The use had not expired at the time of the application filing. Mr. Barney moved to rescind the vote to deny without prejudice; second by Mr. Tarnuzzer. Ms. Shoemaker suggested that the vote be delayed until an opinion of Town Counsel can be obtained. Mr. Barney and Mr. Tarnuzzer withdrew the motion.

Adjournment – The meeting was adjourned at 8:05 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board