

MINUTES
ZONING BOARD OF APPEALS
MARCH 12, 2012

The meeting was held in Stow Town Building and began 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. *This is a re-hearing of the application heard on February 6, 2012.*

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 February 23rd and March 1st. 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 and Mark Jones, 203 Boxboro Road. The requirements to be met for grant of special permit were recited.

Mr. Tarnuzzer explained that this is a rehearing of the application for special permit heard on February 6th. The Board members subsequently met on February 13th to discuss the application. At that time it was the opinion that the Board could not act on the application because the two-year time period had not expired. The vote was to deny the special permit without prejudice. However, the Board sought the opinion of Town Counsel as to its action. The question was, can the Board grant a special permit when, as in this case, the two-year period following discontinuance or abandonment of a non-conforming residential use has not lapsed.

Town Counsel’s response: “If the two-year period pursuant to the Bylaw and G.L. c.40A, s.6 has not lapsed, the Board would be able, provided you deemed it consistent with the Bylaw and statute, to issue a special permit under Section 3.9.3. Once that two-year period has passed, neither the Bylaw nor the statute allow the Board to review the structure as a lawfully pre-existing non-conforming structure or use. Once the two-year period has expired, the protections otherwise available to the structure/use are lost absent receipt of a variance or change to the Zoning Bylaw.”

Harry Blackey represented the applicant. He stated that nothing has changed since the last hearing. 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 after March 30th.

Warren Nelson of 213 Boxboro Road stated his opinion that the structure is not habitable and should be torn down. He asked if there is a time period under which it can be demolished as it is an eyesore. Mr. Tarnuzzer responded that once the property is sold the structure could be taken down and replaced with another in conformance with the Bylaw. Mr. Blackey said they are trying to sell to someone for residential purposes. It is the decision of the new owner if the structure will be demolished. It was noted that it is not within this Board's authority to order the structure to be taken down, rather that rests with the Building Inspector and/or the Board of Health.

Mark Jones felt the parcel could provide an affordable housing opportunity. Again, the Board cannot direct a property owner in that regard. Mr. Nelson's preference was a single-family house and not a designated affordable unit.

Mr. Tarnuzzer reviewed the request before the Board: to grant a special permit to continue a non-conforming, pre-existing residential use before the expiration on March 30th of the two-year period.

The hearing was closed at 7:55 p.m.

Following the hearing the members briefly discussed the application and the advice of Town Counsel concerning grant of a special permit prior to lapse on March 30th of the two-year protection.

Ms. Shoemaker moved to grant a special permit to allow the use as non-conforming residential in the Industrial District beyond the two-year period of abandonment or discontinuance. Second by Mr. Barney. The vote was unanimous in favor of the motion.

Adjournment – The meeting was adjourned at 8:00 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board