

MINUTES
ZONING BOARD OF APPEALS
JUNE 7, 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), Andrew DeMore (associate) and Ruth Sudduth (associate).

Stow Fire Department – Fire Chief Michael McLaughlin was present. Members Tarnuzzer, Shoemaker, Barney, DeMore and Sudduth had heard the application for special permit and petition for variance concerning a replacement communication tower at the Fire Station. Drafts of decisions were reviewed by the members. Fencing six feet high, rather than eight feet, will be required around the cement pad base. The 120-foot height will accommodate the Fire Department radio signals when the band is changed to UHF. The Chief was awaiting information from FAA regarding a lighted beacon. If required, during daylight hours there would be a white light and at night a red light, to be shielded from the ground.

Mr. DeMore moved to grant the special permit and variance as the decisions were drafted; second by Ms. Sudduth. The vote was unanimous in favor.

Valeria Petry & Lucinha Almeida – Members Tarnuzzer, Barney, Byron and Sudduth participated in the discussion. The applicants had requested removal of a restriction from a special permit granted in 1996 to the previous owner of the two-family house at 219/221 Taylor Road: "The legal property owner or owners must occupy the existing dwelling as his/her/their principal place of residence". Mr. Tarnuzzer had contacted Town Counsel and the Building Inspector. He learned that the dwelling in question had not been constructed as a two-family, but had been converted to that use by the previous owner. Town Counsel's opinion was that the restriction could be removed as it does not conform to the Zoning Bylaw Section 3.2.2.3. The bylaw does not require that the owner occupy the dwelling.

Mr. Byron did not agree. It seemed to him there had been only a single potential purchaser of the property whose lender had a problem with the restriction. He had talked with a lending officer at a bank who appeared to indicate that a loan could be made in spite of the restriction.

Mr. Tarnuzzer noted there are other such cases in town where it was not required that the owner live in one of the units. A copy of the 2000 Klempler decision re 185 Gleasondale Road under the same section was cited. As the special permit in question is written, the entire dwelling must be occupied by the owner, not just a single unit. If the condition was written that the owner must live in one of the units, that might be acceptable. The language of Section 3.2.2.3 does not require that the two-family be owner-occupied.

Mr. Tarnuzzer had drafted a decision, based on Town Counsel's opinion, to remove the restriction. Four members had heard the application and that requires a unanimous vote, one way or another. The applicant was informed of that and agreed to go forward with the hearing.

Discussion continued. Removal of the restriction would not be in conflict with the Zoning Bylaw Section 3.2.2.3. Mr. Byron felt that all avenues for a mortgage lender had not been explored by a potential purchaser. Members reminded that the financial market is much changed since 1996 when the applicants purchased the property. The restriction poses a risk to the lender(s) when reselling the note.

Ms. Sudduth moved to grant the request to remove the restriction from the special permit; second by Mr. Barney. The vote was Tarnuzzer, Barney, Sudduth in favor; Byron opposed. The motion did not carry as there was not the required unanimous vote of the four members hearing the matter.

Star Tower – Mr. Tarnuzzer advised that the Planning Board and Town Counsel will meet in executive session on Tuesday, June 12th to discuss a possible settlement of the appeal of the Board's decision to deny a variance to allow a cell tower on the Wedgewood Pines Country Club property off Harvard Road. Mr. Tarnuzzer will represent the Board.

Adjournment – The meeting was adjourned at 8:40 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board