

**MINUTES
ZONING BOARD OF APPEALS
NOVEMBER 5, 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), Bruce Fletcher (associate) and Ruth Sudduth (associate).

Valeria Petry & Lucinha Almeida – The public hearing was held in Stow Town Building and opened at 7:30 p.m. on the application filed by **Valeria Petry and Lucinha Almeida, 219/221 Taylor Road, Stow** for rewording of a restriction within the Special Permit granted by the Board of Appeals and filed with the Town Clerk on July 2, 1996 concerning said address. The property is shown on Stow Property Map R-7 as Parcel 33.

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

Mr. Tarnuzzer chaired and read the notice of hearing as it had appeared in the *Beacon-Villager* on October 18 and 25, 2012. The hearing notice had been forwarded to all abutters by certified mail, return receipt. Douglas and Sharon Hoover of 225 Taylor Road were present. Mr. Tarnuzzer recited the requirements to be met for special permit.

Valeria Petry was present with Andrea Bonaldi of Coldwell Realtors. Ms. Bonaldi said that the restriction written into the 1996 decision that "*the legal property owner or owners must occupy the existing dwelling as his/her/their principal place of residence*" imposes an extreme hardship in that Ms. Petry, or any subsequent owner, is unable to move out and rent the property. As the 1996 decision stands, no financial institution is willing to provide financing.

The applicant proposes that the following wording be added to the restriction: "*however, the property owner does not need to occupy said dwelling if the property owner rents the property as a one-family dwelling*".

It was noted there exists two separate and complete living units. If the dwelling was to be modified to single family, what assurance would the Town have that the owner would not bring in a tenant? Ms. Bonaldi replied there can be no financing if the owner is not allowed to move out. As it stands, the owner cannot move out and rent as a single-family. The property is being marketed as a single-family. The lower level does not qualify as an accessory apartment due to its large size.

Mr. Fletcher noted that according to the 1996 decision, the dwelling is a two-family. Under the current bylaw, Section 3.2.2.3, the "owner occupied" provision does not apply, and that is the issue. Do we care if it is owner occupied or not?

It was determined the property was constructed as a two-family, although the Building Department records reveal the permit was for a one-family dwelling. The 1996 decision was intended to create a legal two-family, and for some reason the Board imposed the restriction. Now that restriction presents a problem with obtaining a mortgage.

Ms. Shoemaker observed that the best solution would be to remove the 1996 restriction. It was noted there had been an application and hearing in June to remove the restriction. That resulted in a denial as there was not a unanimous vote of the four members present to grant the request. Mr. Tarnuzzer pointed out that, at this time, the Board can act only on the application before it concerning adding wording to the existing restriction.

Asked if the suggested language addition had been considered by the Building Inspector, Ms. Bonaldi replied it had not.

Abutter Douglas Hoover believed the property would be rented as a two-family eventually and questioned assurances to the contrary. Ms. Bonaldi said the intent is to obtain a conventional mortgage. The property does not appraise as a two-family.

The hearing was closed at 8:12 p.m.

Following the close of hearing, Board members Tarnuzzer, Shoemaker, Barney, Fletcher and Sudduth discussed the matter. Ms. Shoemaker noted that Section 3.2.2.3 does not require owner occupancy for a two-family conversion. There should not be a restriction. She moved to remove the owner-occupy restriction in its entirety. There was no second.

Mr. Tarnuzzer reminded the Board can only consider the application before it, and that is to add language to the existing restriction. Further discussion ensued.

Mr. Fletcher moved to accept the language addition as proposed by the applicant: "*however, the property owner does not need to occupy said dwelling if the property owner rents the property as a one-family dwelling*". Second by Mr. Barney. The vote was Tarnuzzer, Barney, Fletcher and Sudduth in favor. Ms. Shoemaker opposed. Motion carried to accept the additional language as proposed by the applicant.

Linear Retail Stow #1 – Members Tarnuzzer, Barney, Byron, Fletcher and Sudduth reviewed a draft decision as had been discussed and voted following the public hearing on October 1st. Gordon Whitman was present for the applicant. It was noted that several suggestions by the Planning Board had not been included. The decision addresses only the variances requested to allow the two new signs. Other matters are not within its jurisdiction. It was unanimously voted to accept the decision as drafted with a slight change.

Adjournment – The meeting was adjourned at 8:45 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board