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ZONING BOARD OF APPEALS

Meeting Minutes
September 20, 2007

Pursuant to a written notice posted by the Town Clerk and delivered to all Board members the Zoning Board of Appeals held a meeting, on Thursday, September 20, 2007 at 7:30 p.m. in Room A at the Town Hall. Members attending were Chairman Robert Gambale, Benjamin Fierro, Kevin Lombard, Timothy Perkins and Administrative Assistant, Marie Rodgers. Also, Associate Members Robert Bodwell and Robert Tragert. Code Enforcement Officer, Jim Sperber was not present. Roger LeBlanc arrived 8:20

Citizen Queries:

Public Hearings:

15 & 31 Locust Road and 30 & 34 Town Farm Road - Mr. Scott Green is the Petitioner requesting a Comprehensive Permit Application under Chapter 40B, to construct forty condominium units of which ten units would be affordable. This hearing was continued from January, February, March, April, May, June, July and August meetings. Member Perkins recused himself and sat with those assembled.

Chairman Gambale read the legal notice and re-opened the public hearing at 7:40 p.m. Attorney Lisa Mead of Blatman, Bobrowski & Mead, LLC representing the Board. The Petitioner and his Attorney William Studzinski were present.

Jonathan Markey, P.E. Meridian Engineering reviewed the revised layout as outlined in a report dated 9/20/07 (hereby incorporated by reference).

The redesign incorporates a series of smaller vegetated rain gardens; all have emergency outlet pipes directed to the existing wetlands; impervious surfaces were decreased and improved traffic flow.

Chairman Gambale questioned impact on the existing home with changes from the previous plan. Mr. Green explained that the Russell prefer this layout and the existing vegetation will remain.

Chairman Gambale noted the lower right corner duplex #19 & #20 facing private property and unit #1 will have its own driveway.

Mr. Markey explained that a small depression, not designed to hold water will replace two wet detention ponds, to treat temporary storage of storm water. It would not support wetlands plants and is expected to dry out in the summer months.

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Continue - 15 & 31 Locust Road and 30 & 34 Town Farm Road -

Mr. Lombard questioned the percentage of upland and wetland; Mr. Markey did not know the answer, but will provide it at the next meeting.

Mr. Lombard initiated discussion regarding the status of the proposed water and sewer lines. Mr. Green described his agreement with the neighbors to provide a gravity fed sewer line. The easement will run through #17 and gravity feed to the pump station.

Applicant agreed to provide the easement agreement with the neighbors for reference in the decision. Landscape plan pending.

Chairman requested that the applicant provide an account of his experience as a developer and cite previous projects at the next meeting.

Applicant will provide information regarding his experience and previous developments.

Millie Hulbert 3 Fowlers Lane questioned the water department's position on the status of the water line.

Chairman Gambale said Tim Henry has been in agreement and the issue of the water line remains under review.

Ron Cameron 64 Town Farm Road expressed his concern for the traffic study and apprehension for accuracy.

Chairman Gambale responded that at the next meeting there will be a full review of the traffic report.

Mr. Fred Ford PE Cammett Engineering reviewed the revised plan as outlined in his report dated 9/20/07 (hereby incorporated by reference).

John Clauson Town Farm Road asked if anyone has taken into consideration the flow of water down from Town Hill, In the Spring it flows across Town Farm Road and is a flood area.

Chairman Gambale explained the opportunity for review and comment from various Town departments and action will be taken in response to protect abutters.

The workshop will be scheduled at the next meeting. As there were no further comments or discussion the Chairman continued the hearing to October 18, 2007 at 7: 30 p.m. same place.

6 Peabody Street, William S. Parisi Jr. requests a **Variance** under sections XI.K to expand the existing deck by 20 square feet; continued from the August meeting.

Chairman Gambale read the legal notice and re-opened the public hearing at 8:15 p.m.

Petitioner explained his proposal to expand the width of the deck by four feet upstairs and down. Expansion would bring the corner of the deck nine feet to the property line.

These are the new condos built on the old church property; other three units have decks larger than what is proposed. The existing is 6' x 10'. Discussion was held regarding the criteria needed for a Variance.

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Continue – **6 Peabody Street, William S. Parisi Jr.** requests a **Variance**

This property was previously subject to a Variance. Mr. LeBlanc arrives 8:25 p.m.

The Petitioner expressed his willingness to reduce the deck by one foot.

The Board determined the Petitioner met the criteria for a Special Permit in that the deck would be located no closer than ten feet to the side/rear property line.

Discussion took place regarding the definition of rear lot line; in-town district applies to the structure; it was surmised that the Building Inspector must have considered it was a side line, structure is two years old and technically, if that were a rear lot line, the existing structure would need relief. It was determined that the deck could be located no closer than five feet to the property line.

There were no abutters or others.

Mr. LeBlanc moved that the Board grant a Special Permit to allow the deck to be built no closer than nine feet to the side lot line, with the condition that the Building Inspector confirms that the line is a side lot line, as submitted on a plan dated 6/6/06. Mr. Lombard seconded, the motion passed unanimously.

61 Mitchell Road, 61 Mitchell Road Condo Association requests a Variance under sections VI – Dimensional Regulations for a 32' reduction of the rear yard setback from 50' to 18' for the existing building; continued from August meeting. Chairman Gambale read the legal notice and re-opened the public hearing at 8:35 p.m.

Attorney Kallman was present on behalf of the Petitioner. John Mastranzi Trustee of the Association and Kurt Benson of American Land Survey

Four unit condo building built by Ken Hamilton in 2005, built pursuant to a site plan approval obtained five years earlier by Jim Brady, two owners prior to Ken Hamilton there was a site plan approval for two, six thousand square foot buildings at the end of Mitchell Road - #59 and #61. Mr. Brady never built; he sold the property to Tim Ford, who then sold it to Ken Hamilton who built the building according to site plan approval, issued by the Planning Board. The building went up according to a survey that was done for Mr. Brady in 2000 by the now deceased Robert Smith, it's recorded at the registry of deeds, and it's the survey engineers have been relying on for years. All along no one was aware of any issues and the building went up. At some point the land behind the building was cleared, an abutter Mr. Peter Kloub complained to the Building Inspector that it didn't look right, and a new surveyor was brought in - Kurt Benson did detailed research and discovered the building was off considerably – it was a three acre parcel according to the Smith survey, it is now a two and one-half acre parcel. Mr. Kloub requested a fence at the back of a property line –because it was a site plan approval decision, the Association went before the

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Continue - 61 Mitchell Road, 61 Mitchell Road Condo

Planning Board last week and a six foot fence was approved and was erected. Screening has been provided for the one person, Mr. Kloub, that was affected, and he is now satisfied.

Mr. Perkins disclosed that he previously owned all the land behind the area; he does not own it now. Discussion was held regarding re-location of the parking, the solid wood fence is on the property line, the area is all scrub. Attorney Kallman shows the Board the sub-division plan, and recites testimony of how this request meets the Variance criteria.

Mr. Fierro cited case law that holds that a survey error is not alone a basis for granting a Variance. Attorney Kallman returned that the topography would not allow for re-location of the building cannot move closer to the wetlands. If the Board denies this request the Petitioner would still have to come back and request a Variance for proximity to the lot line.

Discussion took place regarding who was responsible for placing the building on the lot – the foundation was staked by Mr. Ford, and Mr. Hamilton built it.

Mr. LeBlanc noted that the site plan was dated prior to the ANR plan. Discussion took place concerning the status of the Certificate of Occupancy (CO).

There is a temporary CO because the Planning Board has not issued a final CO, as the two condos require an as-built. Mr. Mastranzi said that the Building Inspector was ready to issue a permanent CO, but then Mr. Kloub spoke to him and the that issuance was halted.

Chairman Gambale indicated that he was not ready to vote; he would need more information and would confer with the Town Planner and Building Inspector.

Equity should provide relief tied by statute for Variance; however the Board would feel more comfortable to have all the facts.

Discussion was held regarding process and procedure and the dilemma of a missing piece of land. Attorney Kallman requested to continue to the next meeting.

Mr. Fierro moved to continue the public hearing until October 18, 2007 at the request of the applicant. Mr. LeBlanc seconded, the motion passed unanimously.

215 High Street, Tom Rice requests a **Special Permit** pursuant to section XI (J) to demolish an existing single story two bedroom dwelling (26' X 26') and construct in its place a two story three bedroom dwelling (27.6' X 30') on nearly the same footprint. Chairman Gambale read the legal notice and re-opened the public hearing . Mr. LeBlanc recused himself and left the room. Mr. Rice was present to explain his proposal and he needs 4 feet +- on the side yard set back relief. Presently, the side yard is 43.9 feet and seeking 32'. It's non-conforming. No trees will be removed.

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Continue - 215 High Street, Tom Rice requests a Special Permit

No abutter or other citizens were present.

The house will still be slightly segued the setbacks on the left will increase as he plans to move it forward toward the street.

It was determined that the 36-feet to 32-feet and the 34-feet goes to no closer than 29-feet. It's a non-conforming lot, seeking less than 50% reduction side set back, in foot note 2 section VI; the Petitioner meets all the criteria set forth for a Special Permit relative impact on traffic, safety, utilities, compatibility with the neighborhood.

Mr. Perkins moved that the Board grant the relief and that the right hand side of the building shall be located no closer than 29-feet from the front, and 32-feet from the rear, and the left hand side of the building shall be located no closer than 14-feet and 11- feet as shown on the plan submitted with the application dated 9/20/07. Mr. Bodwell seconded. The motion passed unanimously.

1 Bunker Hill Road, Ronald and Joanne Lennon requests a Variance pursuant to Section XI.K and VI Table of Dimensional and Density Regulations for reduction of setbacks to re-construct a deck. Chairman Gambale read the legal notice and re-opened the public hearing. The Petitioners explained the deck is not attached to the house, it does not look pleasing and needs to be re-done; they would like to extend around the house, currently it is 8'x20' and they proposed to extend it and wrap it around 10'x33' and angle it at the corner. Discussion took place regarding the criteria for Variance; the only way to build this deck as proposed is with a Variance, creating this deck may be construed as a self created hardship. It was determined that the lot was non-conforming and both streets are considered frontage. Discussion was held regarding the criteria for a patio, setbacks, options and procedures. The Board suggested the Petitioner take note of the proximity and setbacks of neighboring decks, and speak with the Building Inspector to discuss the dimensional requirement of footnote one, on page thirty.

The Petitioner requested to continue until next month.

Chairman Gambale moved to grant the Petitioner's request to continue to the next meeting in October 18, 2007. Mr. LeBlanc seconded, the motion passed unanimously.

41 Turkey Shore Road, Aaron Sturgis requests a Special Permit pursuant to sections XI (J) - VI(B) Table of Dimensional & Density Regulations(footnote 2) for reduction of side set back by no more than 50% of the required setback to re-construct an 21'x23' accessory barn. Chairman Gambale read the legal notice and opened the public hearing at 10:01. Aaron Sturgis of Preservation Timber Framing represented the owners Dr. and Mrs. Thomas Schutte. It is a first period house on the National Register. It has an easement by Historic New England and is opened to the public one a year; it is a museum property. He explained the re-construct a 21'x23' accessory barn. He explained the layout and configuration of the adjoining buildings, based on historical research on first period house.

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Continue **41 Turkey Shore Road, Aaron Sturgis** requests a **Special Permit**

He submitted and discussed three letters of support: the first from the original owners of the barn Brian F. O'Neill and Robert A. English in which the history of this barn is disclosed dated 9.20.07. It was once located on 38 County Road. (hereby incorporated by reference).

The second letter dated 8.21.07 from Rudy J. Favretti, Fellow – American Society of Landscape Architects citing the importance of the authenticity of first period settlement recreated landscape design (hereby incorporated by reference).

The third letter from Joseph Cornish, Senior Stewardship Manager Historic New England which holds the easement on the property; their standards are rigorous to allow do anything on the property, and they have given one hundred percent backing.

Discussion took place regarding the district in which this property is located, the Assessor's field card reads In-Town residence; it was determined it was in RRA.

Brian O'Neil 25 Upper River Road related the history of the 18th century English barn and gave his support. Marjorie Robie spoke on behalf of the Historic Commission endorsed the petition and spoke in support.

Abutter John Sears 43 Turkey Shore Road expressed his objection because he would look out his window at the barn. He said it was proposed too close to his house, all the buildings are situated densely on the large lot.

It was noted that the barn would be located further from the property line than the garage Mr. Sears owns, and the height (12') would be lower than his garage; additionally it was noted that Mr. Sears has his property for sale.

Bill McCarthy 45 Turkey Shore Road indicated that he is nervous because the previous barn was constructed larger than proposed he's not opposed to the re-construction; he looks at trees anyway- as long as it's within the bylaw.

Mr. Sturgis reviewed the reasoning for locating the barn as proposed; it would maintain a sightline directly to the rear of the property, along with maintenance of the historical landscape.

The barn will be required to meet the building code; electric proposed, no plumbing, used for storage and a workshop to restore antiques.

Mr. Sturgis responded in the affirmative to Pat Sears 44 Turkey Shore Road inquiry would the barn be located in the same place if there was no addition.

It was confirmed that no trees will be removed.

Pat Sears 44 Turkey Shore Road complained that the only place where there is no vegetation is where their looking. Discussion took place regarding screening. Mr. Sturgis said he was willing to talk with the owners.

Mr. Sturgis expounded on the position of the barn, if it was turned and placed along the property line, he would not have had to come before this Board, but would put the abutters line of site into the long wall of the barn. The proposed position narrows the line of site and maintains line of site for both houses and is in keeping with the historic landscape.

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Continue - **41 Turkey Shore Road, Aaron Sturgis** requests a **Special Permit**

Bill McCarthy expressed his concern for roots disturbing the utility easement that is along the fence, if trees were planted.

The Board discussed Special Permit criteria and specific relief needed; the barn is proposed three feet closer to the property line.

Mr. Fierro reviewed, Petitioner has been met the criteria under footnote 2 under the table of Dimension Regulations, a non conforming lot, the relief request is less than 50% from the side set back, in order to make a decision for a Special Permit must look to specific criteria – heard substantial evidence and testimony to the historic value and importance, that no doubt serve the community – no negative impact on town services, tax base no impact on traffic flow and safety, with a single electric hook up there is no issue of adequacy of municipal utility or public services, the building and grounds are compatible with the surrounding neighborhood and character and there no negative impact on the natural environment.

Mr. Fierro moved that the Petitioner has met the criteria and grant the Special Permit to allow the barn to be located closer than seventeen feet to the side lot line, facing the building it would be rear left side of the property. Mr. Perkins seconded, the motion passed unanimously.

110 High Street, Mathew Cummings requests a **Special Permit** pursuant to Sections IIB – IX.J and XI.J, and a **Variance** of requirement set forth in VI.B and IX.J.2.h. relative to rear yard set back requirement and a maximum footprint requirement, respectively, to create an Accessory Apartment. Chairman Gambale read the legal notice and opened the public hearing at 10:53 p.m. Mr. Perkins abstained. Matt Cummings Architect was present representing the owner Heidi Wonson who was present with her mother. He explained the proposal.

Relief sought is the rear setback for the Accessory Apartment is 6.1 feet and the footprint of 594 square feet. The attached screen porch is approximately 150 square feet, there is no other place for it to go.

Discussion took place questioning the rear lot line, the bylaw states a rear lot line cannot intersect a street, and any lot line that intersects with front line shall be considered a side lot line, thus making it a side lot line.

Attorney Kallman testified that the Board determined it was a side lot line, in a previous decision, dated August 16, 2001, to move a shed onto the property.

The Board determined the relief requested to reduce the side set back no more than 6.1 feet, less than 50% reduction of the required setback, does not require a Variance, but a Special Permit.

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Continue - 110 High Street, Mathew Cummings requests a Special Permit

Discussion was held regarding the second Special Permit request from the requirements for footprint because of the attached porch.

LeBlanc noted that a two family is a permit by right use in this district. Mr. Cummings replied with his reasoning for not choosing that course.

The total square footage of the Accessory Apartment and one half of the square footage for the porch equal 508 square feet; the screened in porch is not heated and not counted at living space.

Mr. Fierro cited the bylaw, if the dwelling is located on a lot that does not conform to the dimensional requirements of the bylaw, then the alterations shall not expand the footprint or the envelope of the building as it existing on the effective date of this bylaw by not more than 25% or 2,500 square feet whichever is greater; this request was 94- square feet over the requirement for a two story addition with screen porch.

Discussion took place regarding the proposal exceeding the total square footage allowed for an Accessory Apartment. The screen porch will be used by primary resident and the occupant of the Accessory Apartment.

The Board could grant the relief for the Accessory Apartment with the remainder of square footage of the screen porch could go with the principal dwelling.

The Accessory Apartment is 900 square feet and the footprint is 440 square feet.

Section XI.J Special Permit for Accessory Apartments, subsection h speaks to how much greater can you expand but is limited and that is 500 square feet or 25%.

With that said, Mr. Cummings revised the plan with the assistance of the owner, and moved the access door; consequently, the Accessory Apartment would have no physical access to the screen porch, the residence can only access the porch from the main residence.

Chairman confirmed that with this revision the screen porch is not an intricately part of the request for an Accessory apartment.

The applicant affirmed the seventeen conditions for an Accessory Apartment.

For the record Mr. Perkins abstained; voting members were Gambale, Fierro, Lombard, LeBlanc, and Bodwell.

Chairman Gambale moved to grant the Special Permit for an Accessory Apartment under Section XI J. in accordance with the plan dated 8.21.07 Mr. Lombard seconded, the motion passed unanimously. The motion was amended by Chairman Gambale that the side set back for the Accessory Apartment be located no closer than 8 feet 6 inches to the side lot line, as show on plan dated 8.6.07. Mr. LeBlanc seconded, the motion passed unanimously.

Plan submitted with the application was modified this evening showing access to the porch only from the principal dwelling.

Chairman Gambale moved to grant the Special Permit for the screen porch for the principal dwelling for relief from the side setback, no closer than five feet to the side lot line, as shown on plan dated 8.21.07. Mr. Lombard seconded, the motion passed unanimously.

For the record, the Board determined that the lot line referred to was indeed a side lot line, as determined in a decision dated 8.16.01 for a shed

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New Business

45 Mile Lane - Special Permit Extension Request - Sarah Player and her mother Rita Player, were present to request an extension of Variance that will expire September 28, 2007. She explained that it took twelve months to sell her house, before they could start the project; the house was sold in August. The Board discussed the request was submitted prior to the expiration date by eight days; the length of time for extension is six months; the applicant will be required to exercise the Variance within this extended period of time.

Moved by Mr. Gambale and seconded by Mr. LeBlanc it was unanimously voted to grant the extension of Variance six months to March 28, 2008.

Rita Player pointed out an error on the original Variance dated 9/28/07, it should read **parcel 5B**; it will be noted correctly in the extension.

Approval of Minutes

- Mr. Fierro moved to approve the minutes of August 23, 2007. Mr. Lombard seconded, the motion passed unanimously.

It was moved, seconded and unanimously voted to adjourn 11:47 p.m.

Respectfully submitted,
Marie Rodgers
Administrative Assistant