

MINUTES OF BOARD OF APPEALS MEETING OF JUNE 14, 2012: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

Chairman Peter DeTerra – Opened the meeting at 6:00 p.m.

Quorum/Attendance

Members Present – Chairman Peter DeTerra, Vice-Chairman Joseph Borelli, Francis J. Cox, Peg Cook, Rene Fleurent, Jr. (Assoc.), Kenneth Kendall (Assoc.), Assistant Building Commissioner Andrew Bobola

Absent – Daryl Manchester, Al Silva (Assoc.) and Joseph Morra (Assoc.)

Minutes: Mr. Cox motioned for the minutes of June 5, 2012 to be accepted. Mr. Kendall seconded. The vote was unanimous.

Bills: None

II. PUBLIC HEARING:

1. Petitioner: Donna McKenna, Arsene Street, Plat 28, Lots 8, 8A & 9; Book 1490, Page 201 and Book 3326, Page 266; Administrative Appeal: Administrative Appeal of building permit for wind turbines.

This is a continued hearing from June 5, 2012. Mr. Borelli removed himself from the hearing. Town Counsel Thomas Crotty was present. Mr. Cox motioned to open the hearing. Mr. Fleurent, Jr. seconded. The vote was unanimous.

Attorney DesNardis, New Bedford, represented the petitioner. Attorney DesNardis believes there is a conflict of interest for Attorney Crotty to be advising the Board. The objection is noted. A history of the petition was given. Attorney DesNardis presented a true copy of the construction site plan signed October 21, 2011. The building permit was issued on July 21, 2011. The original building permit application is dated October 29, 2010 though no plans were submitted prior to December 21, 2010. There are many discrepancies. On an application dated November 21, 2011 the lots indicated are lot 9 and 8A. The permit dated July 21, 2011 state the property to be lots 8 and 9. The building permit was issued erroneously. The wind turbine by-law noise requirements mandate an engineered sound study reviewed by engineering peers with input by the Board of Health. This was not done. The application should have been denied. The original application was submitted on October 29, 2010 and should have been acted upon within 30 days, yet the permit was issued on July 11, 2011. The building permit should be voided. When this petition started the turbines were yet to be constructed; now they are operational. The letter of complaint initially submitted by the petitioner should have stopped the construction process but the complaint was denied by the building commissioner. The issue of setback was reviewed. Attorney DesNardis stated that the tip of the blade to the nearest property line is less than the by-law required 600'. Using the plan, the attorney delineated the setback for the Board.

Rene Fleurent, Jr. stated he is on the Planning Board and is knowledgeable of this by-law. The intent of which is to measure from the base of the tower and not the blades. Attorney DesNardis took exception stating the by-law is not specific to this point and a turbine is the blades for without the blades you just have a pole. Mr. Fleurent stated he is sure of the intent of the by-law and the measure is from the base of the tower. Chairman DeTerra stopped the discussion at this point stating that engineering issues must be addressed by an engineer. Attorney DesNardis objected stating anyone can use a ruler to make the determination. The Chairman stated the objection was noted.

Attorney DesNardis argued that the lots are singular and thus the turbines are in conflict of the by-law because there is not 10 acres as required. The by-law requires 10 acres per turbine.

Mr. Cox stated that lots owned in common ownership are considered one lot or a parcel. This is the basis of the by-law and many of the petitions that are before the Board. Attorney Crotty concurred. Attorney DesNardis objected. Attorney Crotty stated that most of the eight points of contention in the petition are Building Code issues and must be heard by the Building Code Board of Appeals which is not the Zoning Board of Appeals. The Board must restrict its discussion to the zoning by-law only. Attorney DesNardis objected.

Mr. Fleurent, Jr. made a motion to approve the Administrative Appeal. Mr. Cox seconded. Chairman DeTerra stated that a yes vote in favor of the Administrative Appeal would void the building permit and a no vote would confirm the building permit. Many in attendance at the hearing objected loudly.

Board members voting to approve the Administrative Appeal: None
Board members voting to deny the Administrative Appeal: Mr. Kendall, Mr. Fleurent, Jr., Mr. DeTerra and Mr. Cox.
Four members voting.

The Chairman asked Attorney DesNardis to leave a set of plans that had been presented at this hearing. The attorney refused. The Chairman stated the law requires a set be part of the permanent record. The attorney again refused. The Chairman asked for a copy of the plans. There was no response. (As corrected by vote of the Board July 3, 2012.)

Mr. Fleurent, Jr. motioned for a short recess at 6:37 PM. Mr. Cox seconded. Vote was unanimous.
Mr. Fleurent, Jr. motioned to re-open the hearing at 6:42 PM. Mr. Kendall seconded. Vote was unanimous.

2. Petitioner: Scott Hyman, 54 Bayview Avenue, Plat 28A, Lot 439; Certificate 22146;
198-22: Short 5' of the required 5' setback for an accessory structure in a RA District.
198-18: 10% over the maximum allowed building coverage of 30% in a RA District.

This is a continued hearing from June 5, 2012. Ms. Cook removed herself from the hearing. It was determined that Mr. Fleurent, Jr. does not have a conflict of interest with the request. Leurent, Jr. identified himself as a member of the Fairhaven Planning Board. (As corrected by vote of the Board July 3, 2012.) The petitioner reviewed the circumstances as presented at the last hearing. His house does not have a basement and there is no storage area. He needs the shed for storage.

Mr. Fleurent, Jr. asked how the shed foundation will be constructed with the shed on the property line. Chairman DeTerra stated it is a building department issue and not for the Board to discern.

Mr. Cox motioned to grant the Variance. Mr. Fleurent, Jr. seconded. The motion passed 5-0.

III. OTHER BUSINESS: None

ADJOURNMENT

Mr. Fleurent, Jr. moved to adjourn the meeting. Mr. Kendall seconded. The vote was unanimous. The meeting was adjourned at 6:50 PM.

Respectfully Submitted,
Patricia Fowle, Secretary
To the Board of Appeals