

## MINUTES OF BOARD OF APPEALS MEETING OF August 6, 2013: 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, Fran Cox, Jr., Joseph Borelli, Peg Cook, Rene Fleurent, Jr. (Assoc.), and Jaime DeSousa (Assoc.)

Minutes: Chairman DeTerra asked for a motion to accept the minutes of July 2, 2013. Mr. DeSousa motioned to accept the minutes. Mr. Cox, Jr. seconded. The vote was unanimous.

### II. PUBLIC HEARING:

1. Petitioner: Peter Huckabee, Manomet Street, Plat 43, Lot 170-172, Book 10405 and Page 335; 198-22  
Accessory Buildings: Accessory Buildings must be on the same lot as the principal building.

The petition was read and there were 27 abutters notified. The petitioner was represented by Deborah & Margaret Huckabee who stated they need a storage shed for lawn mowers, tools and the like. The present plastic shed blows away in storms. Mr. Fleurent, Jr. asked why the shed cannot be placed on the same lot as the house and was informed the house lot is small and the shed will not fit.

No one spoke in favor or against the petition.

Mr. Cox, Jr. motioned to grant the Special Permit; Mr. DeSousa seconded.

Members voting to grant the Special Permit: Mr. Borelli, Ms. Cook, Mr. Cox, Jr., Mr. DeSousa and Mr. Fleurent, Jr.  
Members voting not to grant the Special Permit: None

The Special Permit is GRANTED with a vote of five (5) in favor and none (0) opposed.

2. Robert D. & Charlene A. Conway, 4 David Drown Boulevard, Plat 28, Lot 22E, Book 3091 and Page 41.  
Request an Administrative Appeal of a denial by the Building Commissioner of a Sign Permit Application dated May 15, 2013.

The petition was read and there were 36 abutters notified. The petitioner was represented by Attorney Paul F. Cavanaugh of Daly Cavanaugh LLP, Wellesley. Attorney Cavanaugh presented a written memorandum on appeal of the denial of a sign permit application which is part of this record. The attorney also stated there are two errors in the application 1) the structure is located in a B zone and not a RA zone as written and, 2) the size of the building is 100' x 221' and not 100'x195' as written. Attorney Cavanaugh reviewed the memorandum along with the Board. The memorandum represents the petitioners understanding of the by-law in relation to their request. The petitioners want to paint the front of the structure and in four separate places place the wording "enter", "birthday parties", "roller skating" and "Carousel Family Fun Center with Carousel logo". The Building Commissioner's interpretation is that the use of the façade of the building as such is a sign and is therefore not in compliance with the by-law due to size of the sign. Attorney Cavanaugh noted that the Commissioner's denial is based on Town Counsel Mike Kennefick's response from over a year ago. Additionally it appears Town Counsel's main concern was the painting of the building and not the lettering. The painting is separate from the lettering. There is no reference to painting in the By-Law. The Board therefore must review only the lettering and placement on the façade. The lettering is less than the required percentage of the façade as per the By-Law even if the building is 100'x195' and not the noted 100'x221'.

Speaking in favor of the petition:

Eleanor Crowell, Cathy Melanson, Christiana Dankle, Terry Perreira, Frank Belcher, Francis Budryk.

Speaking against the petition:

Richard Heroux, Margaret McQuilkin and Dave Mitchell

Attorney Cavanaugh presented photos of other businesses in Town that did not have equal scrutiny by the Building Commissioner such as Dunkin Donuts, Pizza Hut, Jiffy Lube, Capeway Veterinary Hospital, Taco Bell, Vlaco Gas and many others with a painted façade and lettering. These should have been reviewed in the same manner but were not. The request is in keeping with the By-Law and should not be denied.

Wayne Hayward stated he was the chair of the sign by-law committee which was called the “building location by-law”. The By-Laws were reviewed and adopted by Town Meeting and reviewed by the Attorney General. He asked if the current interpretation of the by-law is thrown out how it will affect other applications in the future. He believes the proposal is a mural. As to the color requirements Mr. Hayward stated there are none in the By-Law.

Discussion with the Board:

Ms. Cook asked if the lettering was placed on separate signs and hung on the building would that help. The response was that it would be too costly and would compromise the structure.

Mr. Borelli noted the errors on the application and recommended the request be reviewed by Town Counsel again.

Mr. DeSousa referred to the By-Law sections and noted the individual lettering is within the size requirements and nothing is mentioned about paint or color. He noted Town Counsel reviewed the application as the paint scheme being part of the sign but after having read through the By-Law it is apparent it is not.

Mr. Fleurent, Jr. read the By-Law section aloud and noted that it states the each wording is considered separately.

Mr. Cox, Jr. asked who would determine the actual building dimensions? Is it 100’x221’ or 100’x195’? Attorney Cavanaugh stated the owners measured the building recently and even if the structure is 100’x195’ the proposed signs still meet the size requirements.

Owner Ms. Conway spoke and noted their 20 years in business. This request was made over two years ago and has now cost not only delay but thousands of dollars. It should have been approved years ago. She questioned if the intent is to impede businesses. She stated she is a conscientious owner and maintains her property not only for her own business but also for surrounding businesses and the condominiums across the street. She believes the request is in keeping with the By-Law.

Attorney Cavanaugh stated case law favors the petitioners. The four signs are separate and do not make one large sign. The proposal is in keeping with the By-Law and should be allowed.

Motion to grant the Administrative Appeal was made by Mr. Fleurent, Jr.; seconded by Mr. DeSousa.

Chairman DeTerra explained that a vote in favor of the motion would grant the petitioners’ request. A vote against the motion would deny the petitioners’ request and the ruling of the Building Commissioner would stand.

Members voting to Grant the Administrative Appeal: Ms. Cook, Mr. Borelli, Mr. Cox, Jr., Mr. Fleurent, Jr. and Mr. DeSousa.

Members opposed: none

The Administrative Appeal is GRANTED by a vote of five (5) in favor and none (0) opposed.

2. Caroline Percy Marcoux, 114 Balsam Street and Lots 27-28, Plat 43A , Lot 26 (house) and Lots 27-28 (vacant land), Certificate # 22705 for Lot 26 and Certificate #20293 for Lots 27-28.  
(Lot 26) 198-18: Short 19’ of the required 20’ side setback, short 10’ of the required 30’ front setback and short 16,680 sq ft of the required 30,000 sq ft in a RR District.  
(Lots 27-28) 198-18: Short 20’ of the required 140’ frontage in a RR District.

The petition was read and there were 38 abutters notified. Mr. Borelli removed himself from the discussion. The petitioner stated the family has owned the parcels since the 1960s and she and her husband inherited it in 1986. It has been a split property of one lot with the house on it and two vacant lots since 2005. For the past number of years she and her husband have wanted to sell the house on its lot and build a new house on the two lots. She has spent tens of thousands of dollars hiring a structural engineer, a septic engineer, an architect, surveyors and has gone to Conservation and Board of Health and other town departments. In 2009 the Board of Appeals denied the request because the three lots were held in common ownership. They put the house up for sale in 2010 when the recession hit. She went to Land Court and combined the two vacant lots into one lot. The parcels now have two separate deeds. Potential buyers want to buy the house lot or the vacant lots but are told at town hall neither can be done. She was told by the Building Commissioner to file again for a Variance from the Board of Appeals because the lots do

not conform to the requirements. She has two deeds: one for the house lot and one for the vacant lot. Copies of the deeds were presented and are part of this record. Tax bills are separate. She would like to separate the two and get on with her life.

Speaking in favor of the petition:

Christiana Dankle, Terry Perreira, Kathleen Hartman, Louise Merrick, Mr. Howland.

Four letters in favor of the proposal were read and are part of this record:

Emily Capozzi, Barbara & Gary McLacklan, Lawrence & Linda Stafford, Paul & Deborah Casey

Speaking against the petition:

Charles Caron

Board discussion:

Mr. Fleurent, Jr. stated before the lots became common ownership the Board could have allowed the request.

However, the request now would make non-conforming lots into even more non-conforming lots.

Ms. Cook asked if in December 2011 the deed was only in her husband's name. Yes. Ms. Cook explained that multiple lots held in common ownership are considered one lot. The addition of Ms. Marcoux onto the deed negated this. Ms. Marcoux said they did this in case something happened to either her husband or herself. Ms. Cook stated she understood however, in doing so it created the problem and the Board cannot make two more non-conforming lots than the original lot was.

Mr. DeSousa stated the Assessor's showing two deeds and two tax bills is incorrect and should be corrected.

Ms. Marcoux said she was told to combine the two lots in order to sell at a better price and bring about a resolution in effecting a sale.

Mr. Fleurent, Jr. stated the Board can grant variances but it is not allowed to subdivide which is what is being asked here. This is one lot.

Mr. DeSousa requested Town Counsel review the issue and offer an opinion.

Motion to seek an opinion on the matter from Town Counsel and to continue the hearing to the next meeting of September 3, 2013 was made by Mr. Cox, Jr.. Mr. DeSousa seconded.

Chairman DeTerra asked the petitioner if she was in agreement to continue the hearing to September 3, 2013. She stated yes. Mr. DeTerra asked that she send a letter stating so.

Members voting to seek Town Counsel's opinion on the matter and to continue the hearing to September 3, 2013:

Mr. Fleurent, Jr. Ms. Cook, Mr. Cox, Jr., Mr. DeSousa and Mr. DeTerra.

Opposed: none (0)

The hearing is continued to September 3, 2013, to seek an opinion from Town Counsel by a vote of five (5) in favor and none (0) opposed.

### **III. OTHER BUSINESS:**

#### **ADJOURNMENT**

Mr. DeSousa moved to adjourn the meeting. Mr. Cox, Jr. seconded. The vote was unanimous. The meeting was adjourned at 7:45 PM.

Respectfully Submitted,  
Patricia Fowle, Secretary