

## **Topsfield Zoning Board of Appeals**

March 23, 2010

Chairman Moriarty called the meeting to order at 8:00 PM. Board members present were Bob Moriarty, Kristin Palace, Tony Penta and Scott Dow. Roberta Knight, Community Development Coordinator was also present as well as the applicants, their representatives and interested residents. See attendance sheets for specific public hearings.

**Release of Performance Bond for 49 Rowley Road:** Clerk Kristin Palace reviewed the paperwork confirming that the residential structure and septic system have been demolished and all debris removed from the property. Upon verification, Ms. Palace made the motion to release the Performance Bond- Secured By Deposit with interest since all conditions of the Bond have been met; seconded by Member Scott Dow; so voted 3-0.

Member Tony Penta joined the meeting.

**13 Prospect Street:** At 8:00PM, Chairman Moriarty called to order the public hearing to consider the application of David Longo for premises located at 13 Prospect Street requesting a variance from the required setback pursuant to Article IV, Section 4.06 Accessory Buildings to decrease the right side setback to 4.2 feet in order to expand a detached one-car garage to a two-car garage.

Chairman Moriarty informed the applicant that the Board could only grant a variance to the density and dimensional regulations based on the criteria that owing to the soil conditions, shape, or topography of the lot and the placement of the structures thereon which affects this lot but does not affect generally other lots in the zoning district, a literal enforcement of the Topsfield Zoning By-Law would cause substantial hardship to the applicant.

Upon review of the application, Chairman Moriarty noted the proposed addition to the garage would make the structure larger than what is required for a two-car garage which is the intent of the project and also larger than the existing residential structure located on this small lot.

Mr. Longo noted that he was proposing to add an additional bay without having to reconstruct the original structure since this proposal would be a cost savings.

Member Kristin Palace noted the addition would increase the non-conformity of the lot relative to the rear setback and rear density requirements. However, those issues were of less concern than the proposed intrusion into the 10 feet side setback.

After further discussion relative to the layout of the structures within the lot, the Board concurred that the request for a variance did not meet the established criteria. Clerk

Kristin Palace made the motion to deny the request for a side setback variance; seconded by Member Scott Dow; so voted 4-0.

Mr. Longo at this time requested that the Board reconsider its action relative to a re-submittal of a revised plan for a reduced sized two-car garage with no impact to the side setback. The Board took up the motion for reconsideration and voted to continue the hearing to allow him to submit revised plans.

**267 Rowley Bridge Road Re: Alfalfa Farm:** Richard Adelman, owner of Alfalfa Farm addressed the Board concerning his activities on the property regarding wine tasting events, educational classes, religious services and events classified under “agri-tourism”. Mr. Adelman referred to the packet of information that had been submitted for the Board’s review concerning the current event activities taking place at Alfalfa Farm.

Chairman Moriarty noted the Inspector of Building’s Cease & Desist Order concerning the types of events listed on the Farm’s website that require a special permit under the category of Conference and Event Facility. He also noted that “Agri-tourism” is not necessarily agriculture which is protected under state statute. Tourism activities, however, are not so protected. It is clear that wine tasting, open house tours of the winery are protected under M.G.L. Chapter 40A, § 3, but events such as rehearsal dinners as advertised on the website are not protected.

Mr. Adelman noted that the website had been changed relative to the type of events held at Alfalfa Farm. Ms. Knight had provided the Board a copy of the website as of March 8, 2010.

Member Kristin Palace noted that the property is located in the Outer Residential & Agricultural District and under the Zoning By-laws Mr. Adelman could apply for a conference facility and event special permit if he wished to continue “agri-tourism” events. The Board would review as part of the permitting process traffic and parking requirements that would be compatible with the neighborhood and the district. A site engineering and design plan would be required noting a parking plan with turnaround area, access & egress from the property and lighting. Hours of operation, number of people per building occupancy and septic requirements would also be addressed as part of the application. The Board’s charge is to approve a plan that would minimize the effect of operation on the neighborhood.

The Board then addressed the Cease & Desist Order issued by the Inspector of Buildings on February 2, 2010. Chairman Moriarty informed Mr. Adelman that the Board concurred with the Inspector of Building’s determination that agriculture and agricultural related activities such as the sale of wine, wine tasting events are protected uses, and that religious and education activities also share protection under statutory exemptions. However, these uses are still subject to site plan review. A site plan for these specific uses would require a limited review relative to parking, access, egress and lighting.

However, if a special permit is requested for other types of events then a more extensive site plan review process would be required. The septic system may be an issue.

Responding to the Board's inquiry relative to occupancy for the educational use by North Shore Community College and Church services, Mr. Adelman noted that there was one to zero classes per day with 12 to 14 people, and that the Church service on Sunday had approximately 40 people in attendance.

Chairman Moriarty referring to the Order informed Mr. Adelman that North Shore educational classes and church services could continue until the end of May, but a site plan application needed to be filed for June. Classes could not resume in September without site plan review for said activities.

Chairman Moriarty continued that procedurally the Board would consider this matter as an Appeal of the Inspector of Building's Cease & Desist Order, and affirmed said order.

**53 Main Street Re: Minor Modification to Special Permit:** Mr. Foti Qirjazi appeared before the Zoning Board of Appeals to request a minor modification to the original application and decision to increase the seating capacity for the limited service restaurant, know as Alex's Roast Beef" from 12 seats to 18 seats based on the January 28, 2010 Board of Health's decision to approve the reclassification of the septic system under Title V as "Restaurant – Fast Food" that allows for a per seat value of 20 gallons per day. As such, the seating capacity could be increased to a total of 18 seats. Engineer Jerry MacDonald of H.L. Graham Engineering, Inc, represented Mr. Qirjazi.

Mr. MacDonald informed the Board that the water usage since the restaurant opened has been significantly less than original design flow for 12 seats. DEP has a 20 gallon per day per seat category for "fast food" restaurants that utilize paper plates and 50% of the business is take-out. Based on the demonstrated usage, the Board of Health has approved the reclassification of the septic system plan as "Restaurant – Fast Food", therefore the seating capacity could be increased to a total of 18 seats. Mr. Qirjazi noted that he currently has six tables each with two seats. He would not increase the number of tables but only add additional seats to each table for a total of 18 seats.

The Board reviewed the initial decision and discussed the parking requirements under the current Zoning By-law for the site as well as other conditions in the original decision. Member Tony Penta noted that the first floor front windows did not meet the site plan design as approved by the Board. Mr. Qirjazi responded that he would address this matter and replace the windows. The Board noted that window grate inserts would be sufficient to rectify the matter.

Chairman Moriarty made the motion to approve a minor modification to original decision to allow a maximum of 18 seats; seconded by Clerk Kristin Palace; so voted 4-0.

**Minutes:** Member Scott Dow made the motion to approve the minutes of December 22, 2009 as written; seconded by Member Tony Penta; so voted 4-0.

The meeting was adjourned at 9:40 PM

Respectively submitted,  
Roberta M. Knight, Community Development Coordinator