

**Minutes of the Board of Appeals Meeting of February 28, 2008**

Members present:	Sherry Gould, Chair William Farnsworth, Vice-Chair John Cantino, Assistant Clerk Jeff Yates	Members absent: Julia Adam, Clerk
Alternates present:	Cheryl Hollinger Rod Stewart Marc Saucier	Alternates absent: Matt Field

*accepted April 17, 2008*

At 6:33 p.m. Chair Ms. Gould opened the meeting of the Board at **3 Baron Way**, Littleton. A site visit was conducted. Ms. Gould stated that no testimony would be taken during the site visit. The property consists of a wood frame structure containing a main entry door into a type of great room with a sofa/sitting area, a corner office arrangement and an “L” shaped alcove with small kitchen but no cook stove. There is a Reiki or hands on therapy room, approximately 12 x 12, with one therapy or massage type table for a single client, a single practitioner and one chair. There are bathrooms and a closet on this main floor. There are stairs leading up one half flight to a single room at mid-level which is approximately 10 x 12 and contains a round table with 5 chairs, referred to by the attorney for the applicant as a “small classroom.” At the upper level, there is a “waiting room” approximately 10 x 10 in size containing two chairs, and another Reiki Room, approximately 10 x 10 with a therapy/massage table for a single client. The meeting was adjourned to Room 230 at the Town Hall, 37 Shattuck St.

At 7:02 p.m. Chair Ms. Gould re-opened the continued hearing for 3 Baron Way. Voting members are Ms. Gould, Mr. Farnsworth, Mr. Cantino, Mr. Yates and Ms. Cowley-Hollinger. Present but not voting are Mr. Stewart and Mr. Saucier. All present attended the site visit. Ms. Gould reviewed the history of this appeal. The Rosses, operating the Aquarius Sanctuary, had recently incorporated as a non-profit educational organization, and requested of the building inspector that they be allowed to conduct their practice/operation in a residential zone, citing the Dover Amendment. The Building Inspector, Mr. Bernier, denied their request, stating that the request had provided no information that the uses associated with the corporation are “for educational purposes”. He reaffirmed his earlier decision that they should “restrict activities at 3 Baron Way to the residents of the dwelling and one additional employee,” that being the limitation for home occupation. The Petitioners appealed this decision.

Attorney Ray Lyons, for the petitioners, then presented information to the Board. He stated that the organization had recently registered with the Secretary of State’s office as a non-profit educational organization. Furthermore, he stated, the current Littleton Bylaws allow educational use in a residential zone, and that the structure at 3 Baron Way meets all zoning requirements, as to setbacks and parking. Mr. Lyons then named several accredited institutions of higher learning which offer reiki, including Harvard University Schools of Divinity and Medicine, the Cambridge Center for Adult Education, and the Theosophical Institute. Brochures from these institutes with course selections were made available to the Board. He stated that courses offered are metaphysical in nature and offer people a better state of health through alternative methods. Atty. Lyons argued that, similarly, the courses and individual healing sessions offered at Aquarius Sanctuary, involved educating a patron to achieve a better state of health and wellbeing. It was acknowledged that much of the activity at the sanctuary involves individual therapy sessions. Atty. Lyons stated that he had thought about whether the Aquarius Sanctuary might be a religious use as well. Atty. Lyons then stated that he had completed his presentation but would be happy to take any questions from the Board. He also reserved his right to speak after other comments.

When asked for a reply, Mr. Bernier reiterated that his ruling still stands. Atty. Christopher Heep, Town Counsel, was asked if he had any questions or comments. He answered that he had no information to add beyond a legal opinion which he submitted, generally stating that the Board should consider whether the primary or dominant use of the Aquarius Sanctuary was educational.

Ms. Gould reviewed the previous variance granted to the Rosses at 3 Baron Way. A prior variance was requested to allow an accessory structure to be used for a home occupation of a reiki practice, notwithstanding that it was located forward of the rear line of the primary dwelling. When granted, that variance was conditioned upon meeting the home occupation requirements of not more than one employee and prohibiting parking on the private way. At the site walk it was noted that three buildings exist on the property – a residence, a garage and the accessory building. There is one new septic system on the property, which has design flow for a four-bedroom residence and 2,700 sq. ft. for the accessory building. Baron Way is a narrow one lane private or shared residential driveway, which serves more than 4 dwelling units. Subsequent to the granting of the earlier variance, the Rosses acquired additional land and altered the shared driveway without Planning Board Review. The Sanctuary grew and began to advertise. It began to conduct business with many individual practitioners offering therapy and healing. These practitioners began to offer their services on site, including individual therapy and massage as well as several group sessions offering crafts, activities, lectures and decorating ideas. The Building Inspector had previously cited the applicant for

violations of the conditions of the Home Occupation bylaw and the earlier variance, specifically that there was more than one employee and that parking was occurring on the private way. As a result of those violations, and an unsuccessful appeal of his decision to this Zoning Board, Aquarius re-incorporated as a non-profit educational institution and commenced this pursuit. Mr. Farnsworth reminded the Board that the pending appeal is strictly confined to whether the use is education or not. The Chair noted for the record that since Mr. Lyons had stated that, with the relocated driveway, 3 Baron Way now meets all zoning regulations, the information relative to the relocation of the driveway was pertinent and the history of the variance and the use should be part of the record.

Abutters were asked for any questions or comments. Ms. Melanie Moore, representing her parents, direct abutters for several years, read two letters, one from Tom Moore (her father) and the other from Melissa Moore (her sister and attorney for the Moores). These letters objected to the petitioners' request to appeal the Commissioner's ruling, stating that their privacy and quality of life were being adversely impacted by the activity at the Aquarius Sanctuary. They stated that they had always enjoyed a peaceful, residential tranquility in their lakeside surroundings. They stated that the relocation of the driveway was done over their objection and the traffic from the Aquarius Sanctuary now is frequently routed directly to their home. They stated that there are many nights a week when activities and sessions are scheduled for more than 10 persons and patrons will ring their doorbell to find the Sanctuary. They stated that cars are parking on their property and in the private way. They submitted internet ads showing that the activities and sessions offered were identical before and after the incorporation as a non-profit educational institute and that the Sanctuary offers both individual healing sessions and conducts numerous meetings during the month, citing 22 in January, 28 in February, etc., and "much more". Mr. Farnsworth said again that the key issue was the use, regardless of the parking. The Moores argued that the Aquarius Sanctuary has been operating identical to its current operations for almost three years, in violation of the home occupation bylaw and without qualifying itself as an educational institute and has incorporated as a non-profit entity merely to circumvent the zoning bylaw and the earlier cease and desist order for violation of the home occupation use. Ms. Moore further stated that in her opinion the primary purpose of the Sanctuary is to "make money".

The Board continued discussions, inviting comments from abutters and members. Mr. Farnsworth referred to the list of courses at other institutions and questioned how the courses offered were educational, to which Mr. Lyons responded that people were learning things, conveying information, and enhancing their personhood. Mr. Yates asked how this sanctuary was different from the "Little Gym" or the Kung Fu Academy, which had recently opened, and what had changed once the business was converted to a non-profit educational organization. Mr. Lyons responded that he had received a reiki treatment and had learned things he had never known before. Mr. Yates queried Town Counsel whether there were any examples of case law similar to this case and a review of the case law was discussed generally but town counsel knew of no specific case deciding whether reiki and healing practices were educational. The chair again asked whether any parties had any new or additional information to present and there being no request by any parties to present new information, upon motion duly made and seconded, **the hearing was closed.**

Deliberations began. Mr. Farnsworth noted that the courses offered by Aquarius were varied and went beyond just the study of reiki. The Board reviewed the Aquarius brochure advertising that practitioners see "clients by appointment" and that workshops and readings are offered in metaphysical subjects. Mr. Stewart contended that in his opinion people were going to Aquarius to buy therapies or services, as opposed to attending classes designed to "fill their heads with knowledge." He also commented that the access road was not adequate for the kind of traffic and parking generated by the activities. Ms. Cowley-Hollinger sympathized with the abutters, the Moores and wanted to better define "educational". Mr. Cantino shifted the focus to consider whether this was an attempt to circumvent the Home Occupation bylaw and reminded the Board that the number of people had far exceeded the one employee allowed. Ms. Gould reviewed a court case which discussed whether an entity which confers no diplomas or grades is a school. When asked for clarification, Atty. Heep, Town Counsel, stated that he was satisfied that the corporate entity was registered properly, and noted the applicant can reorganize by right and that anyone can register a corporation as a non-profit educational entity without any proof of use or intent, but the second part was to document that education is the primary activity happening on the site. Ms. Cowley-Hollinger asked town counsel to define the "educational purpose" of reiki. Atty. Heep stated that he had found no definition of reiki, and that the closest use he could discover was that of a halfway house in which people are taught living strategies. Ms. Gould stated that a residential group home offering lifeskills differed from this type of use offering a menu of events and activities with no certification or degree goals. After lengthy discussion of the facts, the hearing was closed.

**It was moved (Mr. Farnsworth) and seconded (Mr. Yates) to deny the application for an appeal to the September 17, 2007 order of the Building Inspector and uphold the opinion of the Building Inspector on the**

**grounds that the board concurred with the building inspector that there was no information to support a finding that the primary purpose of the Aquarius Sanctuary is educational. Aye, 4, Nay, 1, Hollinger.**

At 8:15 the continued hearing for Lexington Place, Lot 1 was opened. The Board reviewed the possible confusion over continuation dates and **It was moved (Ms. Cowley-Hollinger) and seconded (Mr. Cantino) to continue the hearing for Lexington Place, Lot 1 to March 20, 2008 at 7:30 p.m. to afford the applicant an opportunity to be present.** Aye, 5, unanimous

At 8:20 p.m. the hearing for a special permit for an addition at **36 Robinson Rd.** was opened. Marc Saucier was appointed as the alternate to hear this petition. Mr. Joseph Cataldo, owner and applicant, stated that this is his personal residence. The lot had been legally subdivided in 1998 from his business. The lot is L-shaped and non-conforming for a front setback. He showed construction plans to the members, stating that he wished to live all on one floor. The proposed addition would extend but not increase the front setback non-conformity. There were no abutters present.

**The hearing was closed.** There was no further discussion.

**It was moved (Mr. Yates) and seconded (Mr. Farnsworth) to grant a Special Permit to 36 Robinson Rd. for front setback under 173-10(b)(1), as shown on the GPR plan, finding that the proposed expansion was not substantially more detrimental than the existing non-conformity. Aye, 5, unanimous**

Discussion ensued on various matters. Mr. Cataldo stated that he would e-mail the lottery materials for the Village on the Common to the Board. Ms. Gould stated that the cable contact for this project is Mark Crory at the Town Hall. The Subsidized Housing Inventory was reviewed. Affordable units within a 40B project are counted when the Comprehensive Permit is issued; Over-55 units are counted after the building permits are issued.

At 8:35 p.m. Ms. Gould stepped down because she is the petitioner on the next variance. Mr. Farnsworth assumed the Chair. Mr. Farnsworth opened the hearing for **4 Cedar Rd. for a variance as to lot size.** Members voting are Mr. Cantino, Mr. Yates, Mr. Farnsworth, Mr. Saucier, and Mr. Stewart. Present but not voting is Ms. Cowley-Hollinger. Ms. Gould presented her petition for a variance. 4 Cedar Rd., formerly 47 Lakeshore Drive, is currently made up of Parcels 65, 66, and 67. Parcel 64, abutting Parcel 65 and the same size, is known as 49 Lakeshore Dr., contains only 2720 square feet and is improved with a dwelling. Ms. Gould is seeking a variance under 173-27(b) to convey the vacant parcel #65 (containing 4400 s.f.) from 4 Cedar Rd. to be joined with Parcel #64. This would allow additional square footage for an expanded septic system at 49 Lakeshore Drive, and would still leave 4 Cedar Road with a lot size of 21,000 square feet, a size larger than most of the properties in the neighborhood. The parcels are unique in that the elevations of Parcels 64 and 65 form one contiguous level lot and the septic system on Parcels 66, together with the house on Parcel 67 creates a much higher elevation. The hardship is to 49 Lakeshore if it is prevented from expanding or replacing a failed septic system at a later date. Mr. Yates asked if Ms. Gould planned to expand the dwelling on Parcel 64 onto Parcel 65, and she responded, that the owner could expand if it conforms to zoning, but the grades would likely not allow expansion which would impact any other lot's views of the lake. There were no abutters present.

**The hearing was closed.** There was no more discussion.

**It was moved (Mr. Cantino) and seconded (Mr. Stewart) to grant a variance to 4 Cedar Rd. to change the lot dimensions under 27B by conveying Parcel 65 to be joined with Parcel 64 to make one continuous lot, finding that the lot is unique and there would be hardship to the abutter if not allowed, and that there is no substantial derogation from the intent and purpose of the zoning bylaw.**

**Aye, 5, unanimous**

At 8:50 p.m. the Chair began a discussion with Attorney Kevin Eriksen and Marilyn Alwan of Housing Resources Group LLC on the selection of Ms. Alwan as the Lottery Agent for Mannion Place. Mr. Eriksen submitted a copy of the marketing plan, and stated that they would answer any questions the Board may have. Discussion ensued on the various means of publicizing the lottery, and the how the local preference candidates would be selected. It was suggested that there also be an announcement on the town website. Ms. Gould requested that the candidates for the defunct Charles Ridge be solicited as well, and that Michael Borsuk of the Littleton Housing Authority be involved. Ms. Gould suggested that, when banks are listed for financing, that the local North Middlesex Bank be contacted. Mr. Yates asked what documents help verify a claim. Mr. Saucier asked how the actual lottery is conducted.

**It was moved (Mr. Farnsworth) and seconded (Mr. Cantino) to appoint Marilyn Alwan of Housing Resources Group LLC as the lottery agent for the Village at Dell Dale farm (i.e., Mannion Place).**

**Aye, 5, unanimous**

At 9:03 p.m. Ms. Gould opened the hearing for a sign variance for **9 Beaver Brook Rd.** Ms. Cowley-Hollinger was the alternate chosen to hear the petition. Mr. Lee Anderson from Divine Signs attended this meeting in place of Mr. Fonzo who had filed the application. He explained to the Board that the requested sign is planned to be 18 sq. ft. larger than the 50 sq. ft. allowed. It is not illuminated and would not face anyone's property. The building complex will be the flagship offices of the Covidian Company. Assessors' records were used to clarify the difference in street numbers on the application and on the certified list of abutters. Mr. Alfred Watson of 14 Beaver Brook Rd. rose in opposition to the sign variance and submitted a letter to the Board.

Board members felt that information was lacking in this petition. Mr. Anderson was instructed to return with more information and show substantial hardship in order to obtain a sign variance.

**It was moved (Mr. Farnsworth) and seconded (Mr. Cantino) to continue the hearing to March 20, 2008 at 7:50 p.m. Aye, 5, unanimous**

Mr. Anderson was asked to have additional information to the ZBA office at least one week prior to the meeting. If the petition were to be withdrawn, the applicant needs to attend the next meeting to state that as well.

The minutes of January 17, 2008 were approved as presented. The minutes of September 20, 2007 and August 16, 2007 were approved as amended.

The Board discussed the upcoming Charles Ridge foreclosure on March 6, 2008. Ms. Gould asked members to prepare for a special meeting for the new owners to come before the Board.

Board members discussed the Tahattawan Rd. (Allens) court appeal.

The meeting was adjourned.

Respectfully submitted,

Beverly Cyr, ZBA Secretary