



**Town of Tyngsborough**  
**Zoning Board of Appeals**  
Town Hall-25 Bryants Lane  
Tyngsborough, MA 01879-1003  
(978) 649-2300, Ext. 115

**TYNGSBOROUGH ZONING BOARD OF APPEALS MINUTES**  
**February 11, 2016**  
**APPROVED**

Attachments:

1. Meeting Agenda
2. 6 Cummings Rd. ZBA Application – 12/14/2015
3. Tyngsborough Town Department Comments for 6 Cummings Rd.
4. 206 Massapoag Rd. ZBA Application – 12/15/2015
5. Tyngsborough Town Department Comments for 206 Massapoag Rd.
6. Adjudicatory Hearing Certification for Harvey Miller – 2/11/16
7. Adjudicatory Hearing Certification for Charles Doughty – 1/20/16
8. Blatman, Bobrowski, Mead & Talerman Memo regarding potential conditions for 111 & 115 Middlesex Rd. – 2/11/2016
9. List of Requested Exceptions for 111 & 115 Middlesex Rd.
10. Draft Finding & Decision for Modification to Comprehensive Permit at 125 & 135 Middlesex Rd.
11. Modification Plan for 125 & 135 Middlesex Rd. – 2/10/2016
12. Town Counsel email regarding signature authorization – 1/19/2016

Members Present: Joe Polin, Chairman  
Robb Kydd  
Adriana Gioumbakis  
Chaz Doughty  
Harvey Miller  
Pamela Berman, Administrative Assistant

**6:30pm** Meeting was called to order by Chairman J. Polin

**Hearing #1**

**6 Cummings Rd., dba Dana Wallboard** – Request by Barlo Signs, applicant for a Variance from Section 2.12.50 (Maximum Building Height) of the Tyngsborough Zoning By-Laws for the installation of a 120' flag pole in an I-1 Zone. *Advertised in the Lowell Sun Thursday December 31, 2015 and Thursday January 7, 2016. Continued from January 14, 2016.*

Abutters list present and complete

R. Kydd recused himself from this hearing as he is a direct abutter to this property.

**C. Doughty:** Motion to waive the reading of the abutters list and legal notice

**H. Miller:** 2<sup>nd</sup> the motion

**In Favor: 4 Opposed: 0**

**Passes: 4-0**

No challenges to the legal notice

Applicant Steve Abbey, and Barlo Sign representative Paul Martin appeared before the Board. Mr. Abbey explained that he was interested in putting up a 120' flagpole that would be visible from Route 3. The pole is designed to withstand 85 mph winds, and the fall zone would be well away from the power lines and neighboring homes. There would be lights shining on the pole at the base 24 hrs. a day, 7 days a week.

The Board noted that the maximum height in this district is 45'. At 120', the flagpole is well above the allowed height. In addition, Chairman J. Polin indicated that the by-laws restrict types of variances allowed on conforming lots. This particular variance request is outside of the ZBA's purview and should be a request for a Special Permit through the Board of Selectmen. The applicant was advised to their right to withdraw the application, or to continue with a vote from the ZBA. There were no abutters present to speak for or against this project.

**C. Doughty:** Motion to close the public portion of the hearing.

**A. Giombakis:** 2<sup>nd</sup> the motion

**In Favor: 4 Opposed: 0**

**Passes: 4-0**

The applicant requested to withdraw the application without prejudice at this time.

**A. Giombakis:** Motion to accept the applicant's request to withdraw this application without prejudice.

**H. Miller:** 2<sup>nd</sup> the motion

**In Favor: 4 Opposed: 0**

**Passes: 4-0**

## **Hearing #2**

**206 Massapoag Rd.** – Request by Kimberly P. Craven, applicant for a Variance from Section 2.12.50 (lot area, frontage, side & rear yard setbacks), and a Special Permit under Section 2.15.22 & 2.15.24 of the Tyngsborough Zoning By-Laws to raze an existing structure and re-build a 35' x 24.5' single family dwelling in an R-1 Zone. *Advertised in the Lowell Sun Thursday December 31, 2015 and Thursday January 7, 2016.* **Continued from January 14, 2016.**

### **Abutters list present and complete**

**R. Kydd:** Motion to waive the reading of the abutters list and legal notice

**H. Miller:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

### **No challenges to the legal notice**

Atty. Peter Nicosia, engineer Jeff Hannaford, and applicant Kim Craven appeared before the Board. Atty. Nicosia explained that this is a small depressed parcel that is in need of rehabilitation. The applicant intends to raze the existing home and re-build it on the same footprint. The new home will fit into the aesthetics of the neighborhood and improve on property values. The lot pre-dates zoning, therefore a special permit is required for this project. In addition, due to the non-conforming size of the lot, they are seeking relief from, lot area, frontage, and side & rear setbacks.

Allen Chaney spoke on behalf of abutter Eugene Chaney and asked about the asbestos removal from the existing home. Atty. Nicosia said that they are aware of the asbestos and will take the necessary steps to remove it correctly. There were no other abutters present to speak for or against this project.

**R. Kydd:** Motion to close the public portion of the hearing.

**A. Gioubakis:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Review Notes/Comments on Application from other Tyngsborough Departments

Assessor: No adverse comments. Please note that the abutting common use parcel has a recorded declaration and the common area is used by 7 abutting parcels.

Board of Health: The Board of Health requires a two (2) bedroom deed restriction.

Conservation Commission: Please file a Request for Determination of Applicability with Conservation.

Building Inspector: No adverse comments at this time.

Fire Dept.: OK

Highway Dept.: No Comment

Tax Collector: Taxes are current

Planning Board: No Comments

Sewer Dept.: No Comment

The Board felt that this project would be a positive improvement to the neighborhood, and asked that the free standing propane tank that is encroaching the abutting property, be re-located on the property.

**R. Kydd:** Motion to approve a variance from the requirements of Section 2.12.50 for 206 Massapoag Rd. for the following:

**House:**

1. Minimum lot area to 4,487 s.f.
2. Frontage to 50 ft.
3. Side Yard Setback to 7.8 ft.
4. Rear Yard Setback to 4.8 ft.

**Garage:**

5. Side Yard Setback to 0.4 ft.

**A. Gioubakis:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**A. Gioubakakis:** Motion to approve a Special Permit for 206 Massapoag Rd. to raze the existing structures and re-build a single family dwelling and detached garage with the following conditions:

1. A two bedroom Deed Restriction must be filed with the Board of Health.
2. The existing free-standing propane gas tank must be relocated or re-styled in order to remove the current encroachment on the abutting O'Brien property.

**R. Kydd:** 2<sup>nd</sup> the motion  
**In Favor: 5 Opposed: 0**  
**Passes: 5-0**

### **Hearing #3**

**111 & 115 Middlesex Rd. -** Request by Middlesex Land Holdings, LLC & Tyngsboro Crossing, LLC, applicant for a Comprehensive Permit pursuant to Chapter 40B of the Massachusetts General Law, and the Tyngsborough Zoning By-Laws Section 1.13.23 for the development of 120 townhouse style duplex units in 60 buildings on 14.1 acres of land, to be known as "Tyngsborough Crossing". *Advertised in the Lowell Sun Thursday August 27, 2015 and Thursday September 3, 2015. Continued from January 14, 2015.*

Chairman J. Polin announced that members C. Doughty and H. Miller had missed the last evidentiary hearing held on January 14, 2016. As such, both members have certified that they have reviewed all evidence heard during that hearing and have submitted the appropriate certification form pursuant to M.G. L. Chapter 39, Section 23D.

Atty. Melissa Robbins, engineer Doug Lees, and applicant Dave Trahan appeared. Engineer Doug Lees reported that they filed an Environmental Notification Form with MEPA, had the site walk, and are now waiting for MEPA's ruling. In addition, the Conservation Commission has just issued their approvals.

Board Atty. Adam Costa reviewed the exception/waiver list, which contained the standard waivers from the local bylaws and subdivision rules and regulations. The Board emphasized that there would be NO FEES WAIVED for this project. The Board felt that most if not all of the outstanding issues have been addressed and Atty. Cost could work with Atty. Robbins to draft a proposed decision to be ready for the next meeting.

**R. Kydd:** Motion to continue this hearing to March 10, 2016 at or around 6:30pm.  
**A. Gioubakakis:** 2<sup>nd</sup> the motion  
**In Favor: 5 Opposed: 0**  
**Passes: 5-0**

## **Hearing #4**

**125-135 Middlesex Rd.** – Request by Middlesex Land Holdings, LLC & Tyngsboro Crossing, LLC, applicant for the modification to the approved “Tyngsborough Crossing” (to now be known as Merrimac Commons) Comprehensive Permit, dated February 25, 2015 to convert 60 homeownership units to rental units. **Continued from January 14, 2016.**

Atty. Robbins explained that this modification request would change the current 60 “home ownership” units to “rental” units. It should be noted that all 60 of the units within the development will be counted on Tyngsborough’s affordable housing inventory, up from the currently permitted 15 units. In addition, the applicant proposes to change the name of the development from the currently named “Tyngsboro Crossing”, to “Merrimac Commons”. All other components and conditions will remain the same. Atty. Robbins went on to say that she has written a draft modification to the decision for review by Board counsel, and asked for a continuance to the next meeting in March.

Board attorney Adam Costa summarized the draft decision that essentially replaces all “home-ownership” language to “rental”. Atty. Costa will further review the documents that the Board can finalize at the next meeting.

**A. Gioumbakis:** Motion to continue this hearing until March 10, 2016 at or around 6:30pm

**C. Doughty:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

## **ENGINEER REPORTS**

Tyng Village: Board engineer David Sanderson noted that the foundations have started to go in and the building will commence shortly.

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## **ADMINISTRATIVE**

### **Minutes**

The January 14, 2016 minutes were not ready for approval at this time.

**R. Kydd:** Motion to approve the minutes for December 10, 2015 as written

**C. Doughty:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

### **New Business**

- 1. Payroll Signature Designee – M.G.L. C. 41 Section 41:** P. Berman briefed the Board on new procedures issued by the Town Accountant with regards to payroll. The Board is now responsible for approving payroll, therefore, a signature authority must be designated.

**J. Polin:** Motion to designate Harvey Miller and Robb Kydd as signature authorities for the purposes of approving payroll.

**A. Gioumbakis:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

2. **ZBA Town Meeting Warrant Article:** The Board discussed submitting a warrant article at the Annual Town Meeting for an “inclusionary housing bylaw”. This bylaw secures that the Town’s stock of affordable housing is not diluted by the creation of additional market-rate units. R. Kydd and J. Polin are working with Assistant Town Administrator Matt Hanson who is familiar with this subject.

**8:10pm**

**C. Doughty:** Motion to adjourn

**H. Miller:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Minutes respectfully submitted by  
Pamela Berman, ZBA Administrative Assistant