

COHASSET TOWN MINUTES

**DATE:** WEDNESDAY, APRIL 21, 2010  
**TIME:** 7:00 P.M.  
**PLACE:** COHASSET TOWN HALL – BASEMENT MEETING ROOM  
41 HIGHLAND AVENUE, COHASSET, MA 02025

**Board Members Present:** Alfred S. Moore, Jr. – Chairman  
Stuart W. Ivimey, Vice Chair  
Jean Healey-Dippold, Clerk  
Charles A. Samuelson  
Clark H. Brewer

**Board Members Absent:**

**Recording Secretary Present:** Jo-Ann M. Pilczak, Town Administrator

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**Meeting called to order at: 7:05 P.M.**

**7:00 P.M. DISCUSSION - 8.7.1** - Woody Chittick, ZBA; Building Inspector Robert Egan and Town Counsel Richard Hucksam in attendance for this discussion. Chittick handed out summary as background for the discussion: **[Present 8.7.1, 1987] An existing nonconforming building or structure may be extended, altered, or enlarged so long as the extension, alteration, or enlargement complies in all respects with the Area Regulations as set forth in Section 5.3.1 and, (emphasis added).**

- One of 5.3.1's area regulations concerns minimum lot size.
- For the past 20+ years, we have excluded undersized lots when considering if a structure "complies in all respects with the Area Regulations..." even though a strict reading of 8.7.1 dictates that lot size must be in conformity with current lot size minimums.

Two recent SJC decisions (Bransford & Bjorkland) have concluded that in the absence of exclusionary language, Towns cannot pick-and-choose which area regulations to apply and which to ignore.

- Because so many of our dwellings are on undersized lots, strict interpretation eliminates the "as of right" applicability of 8.7.1 in most cases when building permits are applied for.
- Instead, most building permits should be coming to the ZBA for an 8.7.2 hearing, after the requisite filing fee (etc) even when the conclusion is foregone (i.e. when alterations conform).
- Town Counsel emphatically agrees and is urging us to amend 8.7.1 to (a) restore common sense discretion to Bob Egan and (b) avoid a costly, unnecessary and burdensome bureaucratic nightmare for many citizens.
- Rich's recommendation entirely agrees with editorial comments made by Mark Bobrowski in his 2009 Supplement to his *Mass. Zoning Handbook*.

Town Counsel has drafted an amendment to delete 8.7.1 and replace it to read as follows (changes in italics):

**[Proposed 8.7.1] An existing nonconforming *single or two-family residential building or structure may be extended, altered, or enlarged as long as the extension, alteration, or enlargement complies in all respects with the Area Regulations as set forth in Section 5.3.1 other than minimum required lot area;***

It was agreed that, to avoid future confusion over the intention of the bylaw, "reconstruct" and "reconstruction" should be specifically included. Proposed bylaw was thus amended to read as follows:

**[Proposed 8.7.1] An existing nonconforming *single or two family residential building or structure may be extended, altered, reconstructed or enlarged so long as the extension, alteration, reconstruction or enlargement complies in all respects with the Area Regulations as set forth in Section 5.3.1 other than minimum required lot area;***

**MOTION:** By Member Brewer to submit this article to the Board of Selectmen for inclusion in the June, 2010 STM warrant as discussed and amended at this meeting.

**SECOND:** Member Ivimey

**VOTE:** 5 – 0 MOTION CARRIES

**7:25 P.M. QUESTION OF WHETHER ARTIFICIAL TURF FIELD SHOULD BE CONSIDERED A "STRUCTURE"**

(not on agenda) Application had been filed in Building Department for the construction of one indoor and one outdoor turf field at 34 Crocker Lane. Member Moore had requested Town Counsel opinion as to whether this should be considered a "structure" thereby requiring a SPR. As described by Building Inspector Egan, this is basically a "flat area with a turf rug on it". Town Counsel advised that this would not be considered a "structure" unless the plans became more elaborate to include bleachers, construction on a raised platform, drainage structures etc. Member Brewer suggested that under 12.6.11, perhaps the Town should request a SPR filing so the Town could make recommendations that were advisory in nature. Town Counsel indicated that 12.6.11 still references "buildings" or "structures" so this would need a finding that the proposal is a building or a structure and, that ultimately this is Building Inspector Egan's decision.

**7:30 P.M. 380/400 CJC HWY. (STOP & SHOP PLAZA) SITE PLAN REVIEW - CONTINUED PUBLIC HEARING. APPL: COHASSET ASSOCIATES. Filed on December 22, 2009**

Jack O'Leary, Merrill Associates and Attorney Charles Humphreys in attendance to represent application. Applicant had not accomplished all goals for this meeting – does not yet have architectural, traffic report, landscape design or Norfolk Ram report. Jack O'Leary reviewed changes that have been made since the last meeting:

- improvements to traffic flow including widened lanes for the PFD, reconfiguration of parking & landscaping to create a dedicated crosswalk for continuous pedestrian access throughout the plaza as suggested by the DRB
- water service (fire protection, domestic) changed to come in off CJC Hwy via entrance to the plaza – hydrants placed in front of the building
- moving work outside the buffer area has eliminated the need for ConComm conditions
- working with BOH to make some minor changes to septic
- changes to front of bldg. to allow plantings along the front

Will look into adding cisterns to capture rainwater for irrigation use as suggested by Member Ivimey.

Member Moore brought up the 30' green strip area from the residential property line which, according to 5.4.10, they cannot do anything to. O'Leary confirmed that there is a corner of the soil absorption system within the 30'. Moore suggested that this should be resolved before moving too much further. Humphreys suggested that a fair reading of that is not that you cannot put anything underground but that it must be maintained as a green belt as a buffer and as a surface protection. Member Ivimey also inquired whether the soil absorption system is a building or structure (a "tunnel" as included in the definition of structure?) which, according to 5.4.9, should not be built within 100 feet of the residential line. ***Town Counsel to look into this and 5.4.9 and 5.4.10 for next meeting.*** Attorney Humphreys suggests that the subsurface is not the same. Member Moore reiterated that he would like this resolved before the hearing goes too much further. Member Brewer suggested that re-engineering the corner of the soil absorption system might eliminate the issue.

Member Moore also brought up the covenant between Mrs. Cook and Mr. Staszko stressing that he wants to make sure nothing that might be approved in the plan violates this agreement. Humphreys stated that they have the obligation to maintain, replant and restore - the landscape engineer will show how it will look when it is done. Member Brewer mentioned that when cars are stopped at Sohier St., trying to exit onto CJC Hwy. there is a curve in the road and the view south is blocked by a low bush. Brewer suggests that the bush be removed to increase the view corridor and enhance public safety. Brewer also suggested that the applicant consider installing a sidewalk to connect the parking area in front of Feng Shui to the crosswalk on the corner of Sohier St. and CJC Hwy. that crosses to Whitney Woods. This would then connect the proposed sidewalk that Avalon plans to construct on the Whitney Woods side of CJC Hwy. and enhance public safety.

John Modzelewski reviewed his comments as outlined in his 04/20/10 letter. Major new comments included:

- loading dock on eastern side of building infringes on aisle width – a 24 ft. aisle width should be provided – might have to lose a few parking spaces and rethink this dock
- loading dock is very visible on S side of building – should be shielded so not able to be viewed from street
- sketch should be submitted showing PFD vehicle turning radii
- soil absorption system #1 appears to be within 30 ft. of the residence district near the Cook Estate – 5.4.10 appears to require this land be "unused".
- it appears the site as designed is just below the 65% the maximum coverage allowed, but is above the 40% that requires a special permit application with the ZBA as it is in the water resource district.
- Water Resource district contains a "Zone A" (14.2.A). Applicants should submit a written explanation as to why they do not think they are in the Zone A. This could impact septic tank location – should be vetted.

- discussion about the adequacy of the width of the fire lane, whether it can be used as a fire lane if loading/unloading is occurring and the fact that the doors from the building open into the fire lane. Member Brewer added that he does not think fire lane is required for this building based on construction type and the fact that building is equipped with sprinklers. O'Leary noted that the PFD requires 18' width and this fire lane is actually 20' wide and that the fire lane provides a second means of egress from the building. O'Leary also noted that the PFD seems to consider the fire lane adequate but he will ask the PFD about the door swing into the fire lane. Richard Henderson, representing Abbott Development, owners of the Cook Estate - regarding the 30' green belt - requested that the Board be respectful of those people who have purchased homes to be constructed on the Cook Estate site and reiterated that the agreement clearly refers to the greenbelt as unused and unbuilt upon. Henderson also noted that the agreement goes one step further and uses the word "improvements", not structures, and that it should be looked at the way it was written - to protect the residents of the Cook Estate - in the same way the Town required distance and landscape plantings to protect the rights of the Fair Oakes owners from commercial development at the former KoKo Island site at 154/156 King St.

Design Review Board suggested that the building be considered a four sided building, the back of which the residents of the Cook Estate will be looking at. In consideration of those residents, the back of the building should be considered as much as the front side and mechanical screening to those residents should be considered.

**MOTION:** By Member Ivimey to continue this public hearing to May 19, 2010 at 7:30 PM

**SECOND:** Member Samuelson

**VOTE:** 5 - 0 MOTION CARRIES

#### **8:15 P.M. ZBA RECOMMENDATIONS**

• **217 SO. MAIN ST. - SPECIAL PERMIT APPLICATION - APPL: JULIANA TIRYAKI ON BEHALF OF OWNERS WILLIAM & MELISSA TIERNEY** Can Tiriyaki and owner William Tierney in attendance.

Member Ivimey recused himself from discussion and vote as he represents an abutter in another matter.

Applicant proposes renovation project to improve the outside appearance of the home and the interior functionality of the home. The project proposes to:

- Extend existing non-conforming front porch around corner of the house. The 7' dimension of the porch will remain the same. The corner of the turned porch will extend existing non-conformity of porch on front setback. A glass entrance vestibule will be added. The siding and window trim will also be upgraded at some point.

- The 2<sup>nd</sup> floor master bedroom by approx. 11'6" X 7'3" and improve functionality master bedroom. Tiriyaki feels this will improve the massing of rear of the building by eliminating the multiple, staggered masses on the rear that lack coordination. This will continue (in the vertical) an existing non-conformity on the side setback.

- Add a pergola, patio on the rear of house which will also improve the massing of the rear of the building.

**MOTION:** By Member Samuelson to recommend that the ZBA approve this special permit application.

**SECOND:** Member Brewer

**VOTE:** 4 - 0 MOTION CARRIES

• **618 JERUSALEM RD. - SPECIAL PERMIT APPLICATION - APPL: CAVANARO CONSULTING ON BEHALF OF OWNER KENDALL DELONG** - John Cavanaro in attendance to represent application.

Property is a long, narrow pre-existing non-conforming lot that lacks sufficient lot width. Existing structure is a decrepit building that sits on Rattlesnake Run. Applicant proposes to remove existing structure and full basement and reconstruct a building that will be completely flood compliant and, conform with side yard setbacks. House footprint will be similar to existing footprint. Applicant also proposes to construct a detached garage on rear of property to compensate for space lost with removal of basement. New basement will be a crawl space that is flow through basement. Applicant seeks relief to work in flood plain. Will be going before Conservation Commission and Stormwater Management Review. Neighbors are very enthusiastic about having this property improved.

**MOTION:** By Member Ivimey to recommend that the ZBA approve this special permit application.

**SECOND:** Member Brewer

**VOTE:** 5 - 0 MOTION CARRIES

#### **8:30 P.M. ADMINISTRATION**

• **VOTE TO APPROVE APRIL 7, 2010 MEETING MINUTES**

**MOTION:** By Member Brewer to approve the April 7, 2010 minutes with the inclusion of the words "lack of" in line 4 on page 2.

**SECOND:** Member Jean Healey Dippold

**VOTE:** 4 - 0 MOTION CARRIES (Member Ivimey abstained as he was not at the April 7, 2010 mtg.)

• **LEED FOR NEIGHBORHOOD DEVELOPMENT WEBINAR – DISCUSSION** - Member Brewer introduced the purpose of this webinar discussion as being for considering ways the subdivision regulations might be modified to include LEED information and to consider whether a showing should be arranged for the public.

Member Moore asked if the LEED for ND concept is applicable to Cohasset.

Member Ivimey thought the webinar raised some interesting green development ideas that could be encouraged in Cohasset, but was not sure how to go about encouraging those ideas. Ivimey is not sure that the Town wants mini-communities are developed (large acreage probably will not become available in Cohasset). These mini-communities might not be a direction Cohasset wants to go – our economic development should be on Rt. 3A and the village business district. Ivimey continued that a dialogue needs to occur between the Town, BOS and the EDC about moving aggressively to keep the village business district viable. The projects featured in the webinar also dealt with shopping malls and large box stores that have gone out of business and then were reused for these developments – Ivimey thought the area in Cohasset most like these webinar areas is the former Chevy dealership on Rt. 3A and, that certainly is neither large enough or close to other business areas in Cohasset. Ivimey thought the most value of the webinar was in asking what can be done to make construction more environmentally friendly – what and how can the Board encourage since they cannot mandate? High efficiency utilities, cistern systems, purchase of building materials locally to reduce transportation carbon footprint, recycling construction & debris material, reuse of older buildings, environmental repair, avoiding phasing of projects such as subdivisions. Ivimey suggested these are all good ideas, but asked how they can be implemented.

Member Brewer suggested such things as: implementation of bonus density as a reward for doing something else; encouraging use of better and healthier materials. Member Moore suggested that offering to change setbacks as a density bonus incentive is not the correct approach – if the setbacks are not correct, they should be changed, not used as a carrot. Member Healey Dippold pointed out that the Village Business district has a density bonus.

Assoc. Member Hannon suggested that there are more problems with the Village than the density bonus – one of the biggest problems is that it is not pedestrian friendly – does not encourage strolling and foot traffic.

Discussion ensued about the current status of and the viability of the Village Business district. Member Ivimey suggested that wider sidewalks in the Village – which developers could be required to install - could be an example of what could be done as part of comprehensive planning to improve the Village. This could be a good, realistic, tangible goal that would be a step in the right direction for the viability of the Village. Member Moore disagreed citing Watch Hill, RI which enjoys a robust business, tourism type traffic, despite terrible parking and sidewalks – there is something else that brings them to the area. Assoc. Member Hammond suggested that the atmosphere has to be created and then the people will come. Member Samuelson added that the harbor (and perhaps the beach) is a reason to come to Cohasset, but it is not accessible. Member Brewer summarized that the Board is not going to solve the economic problems of the village but that the discussions of tonight are a good healthy start.

Regarding showing LEED webinar to the public. Could be made available to the public on individual basis or, advertise and have a public showing. Member Moore does not think there would be a large turnout at a public showing. But agreed that the Board could have the public showing and then let the public know it can also be viewed individually. Board will try to view the webinar together (posted as a meeting) and then decide what to do with the public viewing. Member Moore will check with Town Counsel to see if it is allowable to have the viewing at Member Samuelson's house as a posted meeting.

• **TOWN MEMBER INDIVIDUAL LIST OF 5 TOWN POLICY POSITION IDEAS, TOPICS OR ISSUES**

- Member Moore's interpretation of the Town duties according to law is that they "shall from *time to time*, study needs and potential of the Town and *where necessary*, prepare plans and submit report to the Selectmen..." meaning, this is only one of many duties of the Board and is done as necessary. Moore thinks that with the staffing in this Town, we are often driven by necessity to only get done what is immediately necessary. Member Brewer suggested setting aside one meeting a month or so when the only agenda item is planning – Moore thought this might have some merit. Regarding a master plan, Moore agreed that we do not have one at this point in time and the Board should probably work to that end. The five areas Moore thought the Board should be involved in are: development & construction; historic preservation; open space; transportation; environmental protection.

Member Healey Dippold felt that the Board does not have the discretion to not do a Master Plan – the statute cites that the Board "shall" do a master plan. Assoc. Member Hannon suggested that the Collins Center at UMASS McCormick Center might be able to provide a graduate students to help create a survey that would provide statistical reliability and validity. Member Ivimey quoted "the Town ... shall make a master plan of such city or Town or such part or parts thereof *as the Board may deem advisable ...*" suggesting that if the Board does not deem it advisable, the Board does not have to do a master plan. Ivimey would therefore challenge the premise that the

Board has to have a master plan – the statute does not say that. Ivimey added that the Board needs to proceed very slowly and very carefully. A lot of bylaw changes have happened in recent years – none of those changes that deal with the village, Rt. 3A and development have come to fruition because of the problems with the economy and we don't know how those are going to play out – making deep changes based on variables with unknown values could be unwise. If the Board is going to proceed with a master plan, they should focus on: 1. Do no harm – do not inadvertently disrupt or change the quality of life in this Town, the high property values and the residential tax base in this Town. 2. Rather than think about changes to be made, understand that conservation of what we have might be more important – preservation of Town character and residential values – bring economic viability to the Town – that will do the most value for the Town. That is all we should do. Ivimey added that this Town is great and if it not broken, don't try to fix it with revolutionary changes. Ivimey also suggested that it is in the best interest of this Town to discourage increased residential development – this brings children to the schools that the Town cannot afford. Ivimey also believes the Town should stop thinking about sewerage the entire Town - this opens the Town to tremendous residential development. Member Samuelson thinks the Planning Board should lead the discussion for the Town to see where it wants to go (without presupposing the answer). Member Ivimey asked to what extent a bylaw can be written that gives a Board the discretion to reject a project – even if it meets zoning – if the Board doesn't like the proposal. Member Moore suggested that the Board add another meeting to continue this discussion – meeting date set as May 12, 2010. Each member should come to the meeting with the two most important items he/she sees as needs to be addressed.

• **PLANNING BOARD REORGANIZATION –**

Some discussion about changing chair members yearly to familiarize all members with the various functions.

**MOTION:** By Member Ivimey to nominate Al Moore as Chair

**SECOND:** Member Samuelson

**VOTE:** 3 – 2 MOTION CARRIES

Some discussion centered around Member Brewer's suggestion that the Vice Chair could focus on planning issues and chair those meetings or parts of meetings that address planning issues

**MOTION:** By Member Healey Dippold to nominate Clark Brewer as Vice Chair

**SECOND:** Member Moore

**VOTE:** 2 - 3 MOTION DOES NOT CARRY

**MOTION:** By Member Healey Dippold to nominate Stuart Ivimey as Vice Chair

**SECOND:** Member Samuelson

**VOTE:** 3 – 1 MOTION CARRIES (Healey Dippold abstained)

**MOTION:** By Member Brewer to nominate Jean Healey Dippold as Clerk

**SECOND:** Member Ivimey

**VOTE:** 5 – 0 MOTION CARRIES

**MOTION:** By Member Brewer to adjourn at 11:10 P.M.

**SECOND:** Member Healey Dippold

**VOTE:** 5 – 0 MOTION CARRIES

**NEXT REGULAR MEETING:** WEDNESDAY, MAY 5, 2010 AT 7:00 P.M.

**MINUTES APPROVED:** JEAN HEALEY DIPPOLD

**DATE:** MAY 5, 2010