

**Members Present:** S. Woodworth Chittick, Chairman  
Benjamin H. Lacy  
Charles Higginson  
Peter Goedecke  
Susan Kent  
David McMorris

**Others Present:** Attorney Jan Gould, Town Counsel’s Office  
Jennifer Brennan Oram, Assistant Clerk, ZBA

Chairman S. Woodworth Chittick called the meeting to order at 7:30PM.

**Zoning Board Business**

**Minutes – Mr. Benjamin Lacy moved to approve the minutes of November 2, 2010 as amended. Mr. Peter Goedecke seconded the motion and the vote was unanimous. Mr. Goedecke moved to approve the minutes of December 7, 2010 as amended. Mr. Lacy seconded the motion and the vote was unanimous.**

**SPECIAL PERMIT - Filed by Neil J. Murphy Associates, Inc. on behalf of landowner Thomas D. Sullivan, seeks to raze and reconstruct a single family home in the flood plain and watershed district at 82 Whitehead Road. §9.7. File# 10.11.10. Continued.**

This is a continued hearing. Board member Charles Higginson recused himself from this hearing and moved to a seat in the audience. Contractor David Drake and Engineer Neil Murphy addressed the Board. Mr. Murphy reviewed the documents he submitted to the Board prior to this hearing dated December 20, 2010. Mr. Murphy reviewed the elevations on the site showing that they are over 10 feet. Mr. Murphy then addressed the Board’s questions from the last hearing about the driveway. Mr. Murphy showed on the Assessors map that the driveway is long and goes from the house to Atlantic Avenue. Mr. David McMorris asked if this gave them frontage. Mr. Murphy stated that it did not but did give them access to the lot. There was then a brief discussion about the 10 foot contour. Mr. Lacy asked if the Board should be concerned about the velocity zone. Chairman Chittick stated only if it was to violate the conditions in §9.7.8. Mr. Murphy also provided the Board, in this same packet, a copy of the land court map showing where the two houses are located on the lot(s). One house was built in 1930 the other in 1940; both pre-dating zoning. The house in question was built in 1940. Mr. Murphy continued reviewing the submission including a sheet that addressed the nonconforming uses in Chapter 40A as well as the definition of subdivision. He stated that in chapter 41, if you have a road accepted by the Planning Board you can build on it and the subdivision control law is applied. He cited “or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town, in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision”. Mr. Murphy stated that everyone he has spoken to has stated that the lot is legal. Chairman Chittick stated that the lot may be legally subdivided but zoning still prevails. Chairman Chittick asked Mr. Murphy to explain why he should get relief under §8.7.2. Mr. Murphy stated that the house is conforming except for the fact that there is no frontage. There was then a conversation about the grade. Mr. Murphy stated they will still have to go before the Conservation Commission. The Board then reviewed the proposed foundation with the Architect, Mr. Andrew P. Digiammo. The proposed foundation is essentially a large concrete box with the house/structure cantilevered on the top. The only portion touching the ground will be the

cement; which will go down four feet beyond the frost line. He stated that his engineers have done all of the calculations and that the only part that could be subject to flooding would be the box. Chairman Chittick then reviewed what relief the applicant(s) are seeking. Mr. Murphy stated that he is seeking relief under §8.7.2, and that there is no real change in what exists and that the proposed structure is less than 300 square feet larger. They are enlarging the lot to make it work and moving the house to the West. The structure appears to be in an AO zone, not a velocity zone and Mr. Murphy does not feel the house is subject to flood action. Mr. Lacy stated that he felt they did need to look at the coverage and compare what is there and what is proposed. After a brief discussion, it was agreed that those calculations would be provided to the Board before they deliberated. The Board then reviewed §9.7.8 addressing the five tests and stated that they seemed to meet them all. Mr. Goedecke requested a paragraph be submitted describing the foundation to the Board. Chairman Chittick then asked if anyone in the audience wished to speak. Mr. Charles Higginson, an executor of his sister's estate which is near the property, asked about a registered right of way his sister (and several other abutters) had to the footpath that presently goes across the property. After a brief discussion it was determined that a mutual agreement could be made about the relocation of the foot path. Mr. Michael Connolly of 90 Whitehead Road asked questions regarding the proposed location and the height of the structure. The Board reviewed the height calculations and explained that the structure is moving West on the lot. Presently the house is nonconforming but will become conforming in all aspects except for frontage. The Board then reviewed the additional documents they want submitted to the Board. **Chairman Chittick moved to close the hearing accepting the documents to be filed at a later date. Mr. Goedecke seconded the motion and the vote was unanimous.**

**Chairman Chittick moved that the Board go in to Executive Session for the purposes of discussing pending litigation and that such discussion, if held in open session, could compromise the ZBA's strategic position with respect to litigation. The Board will come out for open session. Mr. Goedecke seconded the motion.**

**Ms. Higginson – Aye  
Mr. McMorris – Aye  
Ms. Kent Aye  
Mr. Lacy - Aye  
Mr. Goedecke – Aye  
Chairman Chittick – Aye**

**The Board returned to open session at 9PM.**

**Order of Remand of the application for a COMPREHENSIVE PERMIT / Chapter 40B – Filed by Wilmarc Charles seeking to build 7 (seven) residential units in the existing single family residence at 25 Ripley Road. Chapter 40B sections 20-23, SP §5.3. File #10.06.23. Continued.**

Mr. Wilmarc Charles, Engineer Neil Murphy and Attorney Jay Creed addressed the Board. Chairman Chittick stated that this evening they would like to address a few issues, including an update on when the Board would be receiving the plans that are still pending that relate to the Order of Remand and also , if they have a project engineer. Attorney Creed stated that they have provided the Board with a Parking Plan. He stated that Mr. Murphy would be revising the site plan and that the proposed parking plan was a revision of the existing site plan. He stated that the Board did not give them any input on the parking plan until Town Counsel stated that there could not be any parking in the right of way. Now that they have the input they can complete it and Mr. Murphy will be doing the revision. Chairman Chittick

asked that Mr. Murphy stamp the new site plan with an engineering stamp, not a surveyor stamp as he has done in the past. Chairman Chittick also asked that dimensions and drawings of the proposed trash enclosure be provided. Attorney Creed stated that the Board made it “real clear” that they wanted angled parking and that they just learned on January 7, 2011 what the Board wanted on the parking plan. They will need time to make those adjustments. Chairman Chittick stated that the Board will need to have its engineer to review the new plans and to be present at a future hearing to ask questions of Mr. Murphy; to do so; the Board will need additional funds from the applicant. Attorney Creed stated that there were questions on accounting from the work the engineer did previously. Attorney Jan Gould has provided Attorney Creed with the invoice. Chairman Chittick stated that once Attorney Creed has reviewed the accounting, it will be up to him and his client to submit the additional funds. Attorney Creed agreed. Chairman Chittick asked if the Board has been provided preliminary drawings showing the project is ADA compliant. Attorney Creed stated that he believed the entire project is ADA compliant. Chairman Chittick asked if they could show on the plans anywhere that it is certified as ADA compliant. He added that there are some questions about if the original architect, Keith Moscow, is standing behind the drawings. (Mr. Charles began to review the plans to look for the ADA certification). Attorney Creed stated that Moskow Architects are not working on the project any longer but that their plans were submitted as part of the original application. Attorney Creed added that in regard to the site plans being owned by Sitec, Sitec has lost proprietary rights as the funds owed were discharged in Mr. Charles’ bankruptcy. Attorney Creed stated that any alterations that have been made to either set of plans were at the request of the Board so the architectural would agree with the site plan. He stated a new architectural and site plan would be done after. Chairman Chittick stated that the Board needs someone that can attest to the plans. They need someone they can talk to and have the Board’s engineer talk to; otherwise the Board is in limbo. Chairman Chittick then asked if Mr. Charles had any luck locating the ADA compliance signature. He had not. There was then an extensive conversation about the plans and the various sets the Board had reviewed in the past. Attorney Creed stated they should be referring to the plans that say 2/11/08; the date the plans were created. There continued an extensive conversation about stairwells and other items that were supposed to be removed or are located where they should not be. After the extensive review, Chairman Chittick stated that the plans presently do not depict what is there. Mr. Charles stated that to clarify, only two staircases and an elevator will remain; all of the other anomalies will be removed. Mr. Charles then read a statement off on the front of the plans, under General Notes, that says “All work to be performed in strict accordance with the requirements of all governing codes and ordinances. Including but not limited to, the Massachusetts state building codes Massachusetts fuel, gas and plumbing codes, Massachusetts electrical code, OSHA regulations, ordinances of the city of Cohasset and the requirements of the Cohasset Fire Department”. Chairman Chittick stated that the statement Mr. Charles read aloud is not what the HAC has requested. He stated that the HAC stated, in its Order of Remand, that the “developer shall also provide preliminary drawings depicting compliance with the American Disabilities Act, a federal, not local requirement”. Mr. Charles said that he would get a statement of compliance from Mr. Moskow. Chairman Chittick stated that the compliance has to be in the form of drawings not in a statement. Chairman Chittick stated that he hoped all of these issues could be resolved by the next meeting so there could be a fruitful discussion.

Chairman Chittick then asked if anyone in the audience wished to speak. Attorney Daniel C. Hill addressed the Board. Attorney Hill represents several abutters and neighbors of the proposed project at 25 Ripley Road. Attorney Hill addressed two letters he has written and submitted regarding this project; one letter was sent to MassHousing and the other to the Cohasset ZBA. Attorney Hill reviewed his points contained in both letters. In his letter to the Board, Attorney Hill has made recommendations to the Board to address his clients concern that this application is incomplete and that the developer has

not, in their opinion, come close to complying with the HAC requirements issued in the Order of Remand. Attorney Hill asked that the Board request of the Board of that its Health agent review the project for Title V compliance. He stated that he does not believe this project is an 11 bedroom project; he feels it is a 15 bedroom project. He stated that MassHousing clearly stated in their approval letter that the wastewater issue be fully explored during the public hearing process. Attorney Hill is also concerned about both the site plan and the architectural plans. He stated that Engineer Neil Murphy signed and stamped plans that he did not prepare and he states that this is against Massachusetts State Rules of Professional Responsibility governing the licensing of Civil Engineers (250 CMR 4.03(2)). The architectural plans were also altered, this time by Johan-Ellen Creed, and she is not a licensed architect. Further, Attorney Hill feels that where the applicant requested a waiver from local stormwater management requirements it is his feeling that the applicant must provide engineered stormwater management plans and supporting calculations. He would also like the applicant to follow the dumpster regulations with the Board of Health. If however, the applicant has not requested a waiver for this, then Attorney Hill feels that the applicant should file for a dumpster permit. He also feels there should be full peer review of the septic and drainage plans to comply with the HAC order. He stated that the Zoning Board has given the applicant more than enough time to comply with both the requests of the Board and the HAC's Remand Order and that at some point the Board will have to say there is not enough information and deny the permit. Attorney Hill then raised his concerns regarding the economics and the inflation of costs. He feels the Board could do a *pro forma* review of the project. Attorney Hill then addressed Mr. Charles bankruptcy. He stated that he had never seen a funding agency move forward with these types of financial issues. He did not see how the applicant could now qualify for the two million dollar construction or even comply with 40B. He stated that the eligibility letter was obtained in 2008 when the applicant represented he had never been in bankruptcy. That is not true anymore and Attorney Hill wondered if Mass Housing had the right to go forward at all on the project or if this process is a waste of time. Attorney Hill encouraged the Board to ask Mass Housing for their opinion on this. Mr. Charles stated that the project is not a two million dollar project that it is a million dollar project. Mr. Charles went on to say that Attorney Hill asks the Board to deny the project as it has been before the Board for seven months. He said that it has been four years. Chairman Chittick and Mr. Lacy stated that Attorney Hill was referring to the remand. Mr. Charles stated that he did not file for his bankruptcy until April of 2010. Ms. Kent stated that Attorney Hill was showing that Mr. Charles' situation has changed. Mr. Charles stated that he has been in Cohasset for ten years and he and his family call Cohasset home. He stated that he will make it a beautiful project. Mr. Charles then read a letter of support from Mr. Stephen K. Lucitt of 579 Jerusalem Road.

Chairman Chittick stated that at this point it seems the process should start moving at a higher speed. Attorney Creed stated that Attorney Hill raised his issues but that he and his client would not be addressing them this evening. Chairman Chittick stated that they have some lead time until the next hearing and so the sooner the Board can engage its engineer then there will be a productive hearing. Chairman Chittick then reviewed the items the Board has requested the applicant submit. A new site plan showing 14 parking spaces and depicting the areas of concern as well as the plan for the trash receptacle that needs to be in compliance with Board of Health Regulations. Chairman Chittick suggested that they file Title V plans with the Board of Health as there are items they have asked for waivers for that need to be peer reviewed. Attorney Creed stated that he had a letter from the Board of Health that showed that 11 bedroom project complies. Chairman Chittick stated that things have changed since that submittal and that it would make sense to get things up to date with the Board of Health. Chairman Chittick went on to say the Board would also like coverage calculations submitted, demonstration that the suggestions of the Police and Fire will be implemented, and an explanation of how they plan to remove snow off the site. Attorney Creed stated that they plan to truck the snow off

site. Chairman Chittick asked that be put into a letter to the Board. Chairman Chittick then stated that what was submitted as a lighting plan left the Board confused. Attorney Creed stated that whether the Board approves or denies the application, the lights are remaining the same. Chairman Chittick stated that it would be useful to get a detail of existing conditions, what the wattage of the bulbs are etc. to tell the Board what is there so they know things don't change. He also stated that the Board does not have a consistent landscaping plan and would like one, also they would like a photo of the proposed 6 foot stockade fence, and a depiction of what the trash enclosure will look like; the Board also needs the ADA plan and site plan depicting parking they discussed earlier in the evening.

Chairman Chittick asked if anyone else wished to speak. Mr. Markus Charles, son of the applicant addressed the Board. Mr. Charles asked if this was the normal length of time to get an approval for an application such as this as it has taken four years. Chairman Chittick stated that it has not been four years and that the Board met last year for the original application. The Remand was not an approval or an overturning of the Board's previous decision; but an acknowledgement that the Board needed additional information from the applicant. This application has been before the Board for six months and the sooner the Board receives the information requested the better. Mr. Wilmarc Charles then addressed the Board. He stated that he said it has been four years because he had purchased the property in 2007 and met with Clark Brewer of the Housing Trust to discuss the project at 25 Ripley Road. Mr. Charles stated that Mr. Brewer said that this was a great project, that it would be done in six months and that it was a "slam dunk". Chairman Chittick stated that he understands that it seems like a long time, but that Mr. Charles needs to realize that the Remand has been before the Board for six months and the Board is still waiting on basic information. A tenant of Mr. Charles, Ms. Mackawe (sp) asked why there cannot be overflow parking at the library. Chairman Chittick stated that the trustees have stated that they do not want residential parking at the library and they run the library. Captain Sean Curry of 580 Jerusalem Road addressed the Board stating that he is in support of 40B and feels that Mr. Charles is an honorable man and that he has done his due diligence. He added that the process that Mr. Charles had with the Cohasset Housing Partnership was disingenuous and that they backed off due to the neighborhood being against the project. He feels this would be a great project for Cohasset. **Chairman Chittick moved to continue the hearing Monday, February 7, 2011. Mr. Lacy seconded the motion and the vote was unanimous.**

**Chairman Chittick moved that the Board go in to Executive Session for the purposes of discussing pending litigation and that such discussion, if held in open session, could compromise the ZBA's strategic position with respect to litigation. The Board will come out for open session. Mr. Higginson seconded the motion.**

**Ms. Higginson – Aye  
Mr. McMorris – Aye  
Ms. Kent Aye  
Mr. Lacy - Aye  
Mr. Goedecke – Aye  
Chairman Chittick – Aye**

**The Board returned to open session at 11PM.**

**DELIBERATION**

**SPECIAL PERMIT – Field by Paul Sheerin on behalf of Kendall Village Cohasset Builders, LLC, seeks to raze the existing four unit structure and reconstruct a three unit condominium structure at 150 North Main Street. §8.7.2. File #10.10.06.**

After a lengthy deliberation, the Board decided to continue the deliberation to the next meeting of the Board. **Chairman Chittick moved to continue the deliberation of 150 North Main Street. Mr. Goedecke seconded the motion and the vote was unanimous.**

**Mr. Goedecke moved to adjourn the meeting. Mr. Lacy seconded the motion and the vote was unanimous.** Meeting adjourned at 11:20PM.

Respectfully submitted,  
Jennifer Brennan Oram  
Assistant Clerk, Zoning Board of Appeals

**Documents:**

**82 Whitehead Road**

Submission dated from Engineer Neil Murphy dated December 20, 2010

**25 Ripley Road**

Letter from Attorney Daniel Hill to MassHousing dated December 20, 2010

Letter from Attorney Daniel Hill to the Cohasset ZBA dated December 22, 2010

Letter from Stephen K. Lucitt of 579 Jerusalem Road