

Members Present: S. Woodworth Chittick
Benjamin H. Lacy
Charles Higginson
Peter Goedecke
Susan Kent

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

Chairman S. Woodworth Chittick called the meeting to order at 7:00PM.

Board Business

Approval of June 1, 2010 minutes – Mr. Benjamin Lacy moved to approve the June 1, 2010 minutes as amended. Mr. Charles Higginson seconded the motion and the vote was unanimous.

Executive Session – for the purposes of discussing pending litigation:

Mr. Lacy moved that the Board go in to Executive Session for the purposes of discussion 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. Ms. Susan Kent seconded the motion.

Ms. Higginson – Aye
Mr. Goedecke – Aye
Ms. Kent – Aye
Mr. Lacy – Aye
Chairman Chittick – Aye

The Board returned to open session at 7:30PM.

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 home at 25 Ripley Road. Chapter 40B sections 20-23, SP §5.3. File #10.06.23.

Chairman Chittick opened the hearing stating that where this hearing is a remand, he would like the applicant to review what he has submitted in conjunction with the order, what he filed that is new and to explain the scope of the project. Attorney James F. Creed addressed the Board on behalf of his client, Wilmarc Charles. Attorney Creed stated that they filed additional documents on June 23, 2010 that addressed the remand, which was within the required time limit. Attorney Creed stated that their Engineer, Neil Murphy, had taken ill just before the meeting was to begin and that not having Mr. Murphy present will hamper their testimony.

Chairman Chittick stated that the Board was confused on what the number of bedrooms would be for the project. Mr. Wilmarc Charles stated that they were going for 14 (fourteen) bedrooms. Chairman Chittick asked if they could show where the 14 bedrooms were on the plans. The Board and the applicant counted the bedrooms out and Mr. Charles stated that each unit would have 2 (two) bedrooms. It was determined that two sets of architectural drawings exist and that the Board should be

referring to the plans with the ZBA date stamp of March 13, 2009. Chairman Chittick stated that the site plan the Board has been given do not sync with the plans drawn by Moscow Linn Architecture, Inc. Attorney Creed stated that the Board could condition an approval on the fact that the Building's footprint on the site plan agrees with the final architectural drawings. Attorney Creed stated that he would like to add that he does not want his client to go to the additional expense of creating new plans if the Board is then going to deny the special permit based on items not being submitted on time. Chairman Chittick stated that the Board's request for consistent plans would not be a reason to deny the application, and that it was far too soon so say that the application would be denied. He stated that he would find it very difficult to approve a project with plans that don't match precisely and that they would not do this for any project in town nor would they make it a condition. Chairman Chittick showed on the plans that the way the site plan is drawn, and if you overlay it on the Moscow drawings, two parking spaces would be eliminated. He stated that presently only 14 spaces are being proposed for a 14 bedroom project which is minimal. Attorney Creed stated that Mr. Murphy will have to address this issue. Mr. Charles asked the Chairman if going back to an eleven bedroom project would resolve the parking issue. Chairman Chittick stated that he would be reluctant to get into design recommendations. He added that the proposed parking spaces are narrower and shorter than what the bylaw requires and he is not sure if this is a requirement the Board could waive. Attorney Creed stated that the Board has the inherent power to waive what they want. Chairman Chittick stated that he did not think that the Housing Appeals Committee would want safety issues waived.

The Board and Mr. Creed agreed that either a new site plan or architectural plans need to be filed with the Board so that the project is clear to the Board. They then reviewed each item in the order of remand:

Item A. Septic plans for fourteen (14) bedrooms to be filed with the Board of Health (BOH). Attorney Creed stated that there is nothing before the Board of Health and they(BOH) can therefore not deny something that is not before them [Attorney Creed is referring to a letter submitted to the Board from the BOH dated July 16, 2010 that was drafted after reviewing the submission of the applicant filed on June 23, 2010]. Mr. Peter Goedecke suggested that this issue wait until Mr. Murphy is in attendance and that perhaps in the meantime, Attorney Creed can go before the Board of Health and determine if their proposed plans would support 14 bedrooms v. 11. Mr. Charles stated that what was before the Board presently is a 14 bedroom project. Attorney Creed then stated that he felt a 14 room denial would not be as good as an 11 room approval and that he and his client will guide their decision as needed.

Item B: Drainage Calculations and plans to be reviewed by the Stormwater Agent (specifically how overflow will impact abutters and whether the detention plan can accommodate storm surges). Chairman Chittick stated that he did not think the drainage plans had been revised. Attorney Creed stated that he felt the order did not require them to file a new drainage plan. He stated that they did receive a revised site plan, but just because a site plan is revised, it does not mean that the drainage plans would change. Mr. Lacy would like the drainage plans explained which will have to wait until Mr. Murphy can be present.

Item C: New Site Plans: The Board reviewed the plans and looked for the updates required in the remand in regard to parking setbacks, fencing, screening, landscaping, lighting, building dimensions and a list of desired waivers of any local requirements. The Board reviewed what they could, but felt this needed to wait until Mr. Murphy was in attendance. Chairman Chittick asked Counsel to address the letter from National Grid dated July 1, 2010. Attorney Creed stated that the only quote for the cost of

the moving of the pole he received was verbally and was for \$100,000 to relocate the pole and gain an easement form the Town. He stated that this would be uneconomic and that he could not recommend this to his client. Chairman Chittick asked for a letter stating that they will not pay to move the pole. They then addressed the ADA requirements. Attorney Creed stated that he could not comment on this as he is not Mr. Murphy. Mr. Goedecke stated that they would need drawings showing the rooms that were ADA compliant.

Item D: List of Waivers of local bylaws and regulations – Attorney Creed submitted a memo from Mr. Neil Murphy dated July 20, 2010. The Board reviewed it. Chairman Chittick explained that it was incumbent upon the applicant to review this memo and see it is rewritten in a comprehensible manner and that the math is confirmed to be correct. Attorney Creed agreed to do so. Chairman Chittick then asked why they were requesting so many parking waivers. Attorney Creed stated that according to Mr. Murphy they needed these waivers to meet the bylaws. Chairman Chittick asked that they speak to these parking waivers in regard to a matter of public safety. Attorney Creed stated that he did not think the list of waivers would impact public safety. Chairman Chittick stated that the Police and Fire Departments would tend to disagree. He said that the Fire Department had stated that the turn around for the fire truck would be difficult, and the police had asked for angled parking and that the parking area be changed from two-way to one way traffic. Attorney Creed stated that they have provided the Board with their list of waivers. Ms. Kent stated that the basically because Mr. Murphy is ill the Board really can't go through the documents and the waivers at this time. Attorney Creed agreed.

Item E: Contractor's Name and Credentials as Required by the Project Eligibility Letter: Chairman Chittick read an excerpt form the Mass Housing Project Eligibility Letter dated November 17, 2008. In the letter, on page 3, the letter states "The Municipality is concerned with the level of development experience you have. You have indicated that you will work with an experienced contractor and experienced developer. Please be prepared to discuss in detail at the public hearing who those individuals are and what level of experience they have". The applicant filed documents via email on July 19th 2010 which the Assistant Clerk of the Zoning Board of Appeals printed and submitted to the Board on July 20, 2010. The packet of information included photo copies of names and some resume information of people Mr. Charles stated is part of his team. Mr. Charles asked for the builder to speak for himself. Mr. Amilcar Barros of 259 Winter Street, Brockton, MA addressed the Board. Ms. Kent asked Mr. Barros to describe the largest project he has worked on. Mr. Barros stated that he is presently doing a gut rehab of a four condo unit located at 130 School Street in Waltham. Mr. Goedecke asked if he was the General Contractor on the job. Mr. Barros stated he was not, that he was the Supervisor and that presently the job is on hold. Mr. Higginson asked Mr. Barros if he had ever put in an elevator. He said no, but that he would hire a subcontractor to do that sort of work. Mr. Goedecke asked if Mr. Barros is hiring the subcontractors on the job in Waltham. He said he is not bringing them all in. Mr. Goedecke asked who's name is on the project in Waltham at City Hall. Mr. Barros stated it was Mr. Jeff Austria. Mr. Goedecke asked if Mr. Barros was bondable and if so for how much. Mr. Barros stated that he was not [bondable]. Chairman Chittick asked if there were any further questions for Mr. Barros. There were none. Mr. Goedecke stated that the Board could take a look at 130 School Street and contact Mr. Austria. Chairman Chittick asked the applicants if they could provide more information about Chenet Sam, an additional name listed in the packet. Attorney Creed stated that he would provide more information at a future hearing.

Chairman Chittick then stated that they had a lot to discuss and that the timeline seemed tight with the 60 (sixty) day deadline starting from the opening of this hearing. Attorney Jan Gould of Town Counsel's

Office and Mr. Creed agreed to file a joint motion to request an extension. Chairman Chittick confirmed that Attorney Creed would remain the main point of contact for this process.

Chairman Chittick then asked if anyone would like to speak in the audience. Ms. Kimberly McGowen of 154 North Main Street stated that it was her and her neighbor's understanding that with the permitting of Avalon that the Town has reached their affordable housing percentage of 10%. She asked that if that were the case, then why would this project need to be considered at all. Attorney Gould stated that this application is measured from the time of filing and therefore the Town does not have the argument to deny the project on that basis. In addition, Avalon will not count toward the Town's inventory until occupancy permits are issued.

Mr. Higginson moved to continue the hearing until Tuesday, September 7, 2010. Mr. Goedecke seconded the motion and the vote was unanimous.

Executive Session – Ms. Kent moved the Board go into Executive Session for the purposes of discussion 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 for deliberations. Chairman Chittick seconded the motion.

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

The Board returned to open session at the conclusion of the executive session.

DELIBERATIONS

SPECIAL PERMIT – Filed by Helen and Kevin Tarpey, to build an addition over the existing garage at 4 Bayberry Lane. §8.7.2. File #10.06.11a.

After a brief discussion, **Chairman Chittick moved that the Board grant a Special Permit to build the proposed addition at 4 Bayberry Lane. Mr. Lacy seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Higginson, 3-0).**

REMAND SPECIAL PERMIT – Filed by Attorney Richard Henderson on behalf of landowner, Janice Reiter – Remand of previously granted Special Permit under §§ 9.7.8 and 8.7.2 to build a guest house at 357 Atlantic Avenue. File #10.06.11a.

This vote will be moved to August 3, 2010.

SPECIAL PERMIT – Filed by John Cavanaro of Cavanaro Associates on behalf of landowners Richard Ford and Tabitha Teller, to build a deck at 53 Windy Hill. §8.7.2. File #10.06.11b.

After a brief discussion, **Ms. Kent moved the Board grant a Special Permit with conditions to the applicants to build a deck at 53 Windy Hill. Chairman Chittick seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Ms. Kent, 3-0).**

SPECIAL PERMIT – filed by Heidi Condon of H.C. Designs on behalf of landowners, William and Elizabeth Allard, to build a new guest house to replace existing, non-conforming barn at 143 Atlantic Avenue. §5.3 and §9.1, File #10.05.07b.

After a brief discussion Chairman Chittick moved the Board grant a Special Permit with conditions to the applicants to build a guest house at 143 Atlantic Avenue. Mr. Goedecke seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Goedecke, 3-0).

Chairman Chittick moved to adjourn the meeting. Mr. Lacy seconded the motion and the vote was unanimous. Meeting adjourned at 10:30PM.

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

F E M I N A L