

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

Others Present: Jennifer Oram, Assistant Clerk

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

HEARINGS

APPEAL – Filed by Attorney Kevin F. Hampe, on behalf of Ellen Gibbons of 379 Atlantic Avenue, of the Building Commissioner’s denial of enforcement action at 373 Atlantic Avenue (property owners George and Marlena Alex). File #10.04.23.

This hearing is continued as requested by the appellant at the June 2010 hearing. Attorney Kevin Hampe addressed the Board on behalf of his client Ellen Gibbons of 379 Atlantic Avenue and was joined by their engineer, John Cavanaro of Cavanaro Consulting. Attorney Hampe explained the background on the appeal he filed stating that it stems from a letter mailed to the Building Commissioner on March 7, 2010. In that letter, they sought for enforcement of what he and his client feels are violations of the existing Special Permit for 373 Atlantic Avenue granted by the ZBA on June 14, 2000. After they did not receive any response from the Building Commissioner, they filed this appeal. Attorney Hampe then had Mr. Cavanaro review some of the violations they listed in their complaint for the Board. Mr. Cavanaro stated that there has been a history of the air condition condensers being located in the setback. Another issue is the side yard. In the original application that came before the Board, the house was not going to exceed more than 15.5 feet into the side yard setback. During the hearing process he stated that the Board deliberated whether there needed to be a Variance as the plans showed a substantial overhang. He stated that in the decision, the Board asked that a more detailed plan be filed prior to the issuance of a building permit being issued that detailed the overhang and the foundation in the flood plain. An additional site plan was filed in May of 2000 that showed more dimensions but showed nothing about the overhang. Mr. Cavanaro stated that with the work in the area, they’ve been able to determine that the rear corner of the Alex’s house is 15.1 feet from the sideline and the front is at 16.2; what is notable he stated is that the overhang is 1.5 closer to the side line putting them at less than 13.3 feet from the property line. In addition, the front porch has been enclosed and this he states is a violation of the Special Permit as well. There is a retaining wall that they was constructed at the time of the addition which they feel encroaches and should comply with all setbacks. They also feel the swing set is in violation as it is constructed in the rear of the property within a setback. Chairman Chittick asked what relief they are seeking. Attorney Hampe stated that they would like the violations corrected. Chairman Chittick asked if there had been any settlement negotiations. Attorney Hampe said there had, but he was not hopeful of a settlement. Chairman Chittick asked to hear from Building Commissioner Robert Egan. Mr. Egan addressed the Board and stated that he remembers there being a history of a lot line dispute. He did send a letter years ago to the Alex’s regarding the AC compressors asking them to be moved. He stated that if they have not been moved, that is an issue as he considers the compressors as part of the building. Some of the other complaints however, were a surprise to him. He said the filling in under the porch is for storage like a shed and although it may violate the special permit, he does not feel it violates it in spirit as it is not a living space. He feels the Alex’s are the victims of a larger neighborhood dispute and that his writing a letter of enforcement would not solve

the issues. He added sometime inaction is action and often that leads to people working things out. As for the overhang, the Board did make this a condition and it is a matter of substance. However, you can appeal a Building Permit for six years and it has been nearly ten. Chairman Chittick asked what Mr. Egan thought of the parking issue and the swing set. Mr. Egan stated that there was supposed to be a shared driveway on the south side, but that did not happen. As for the swing set, unless it gives support or shelter, he has never considered a swing set a structure. The Board was then shown the plans that were submitted to the Board and the Building Commissioner; an overhang is present in the plans.

Chairman Chittick asked if anyone wished to speak on behalf of the Alex's. Attorney Richard Henderson addressed the Board. He stated that this appeal is not properly before them because the action was not filed first with the registry of deeds. He stated that to enforce a removal of a structure that appeal needs to take place before six years. He said there may in fact be some violations, however the action is procedurally defective based on the way it was filed. He then addressed each complaint. He stated that the AC compressors will be moved. In regard to the overhang, the building permit was issued and it has been constructed and they had six years to appeal it. As for the porch and issue of coverage in the flood plain, the structure, including the sonitubes equals 219 square feet, which is below the required 300 square feet. As for the retaining wall, Attorney Henderson asked Mr. Alex to address the Board. He showed the Board a photo of the wall and testified that the wall has been there since 1947. Mr. Alex said they just repaired it and put in stairs. Attorney Henderson then finished his review of the complaints. He said that he does not feel the driveway is a structure and he will not address the swing set. Attorney Henderson stated that the Building Permit brings in the six year statute of limitations. He would like to file a memo with the Board as he was just brought onto this filing. Attorney Hampe then rebutted and stated that this is a special permit case where the conditions were clearly violated. As for the recording with the registry of deeds, he stated that the Building Commissioner did not take action and so they are asking the Board to order him to take action. Once that occurs, he would then file with the registry of deeds. **Chairman Chittick then moved to continue the hearing. Mr. Lacy seconded the motion and the vote was unanimous.**

SPECIAL PERMIT – Filed by Herb Kuendig of Kuendig Design on behalf of landowner, James Campbell, to construct a new single family home at 44 Joy Place. §9.6. File#10.05.07a.00.

This is a continued hearing. Mr. Kuendig and Mr. Campbell addressed the Board. Chairman Chittick asked if the lot is 24,145 square feet (according to the site plan filed on June 25, 2010 and prepared by Neil J. Murphy Associates, Inc) how much of that square footage is wetlands? Chairman Chittick stated that he is not an engineer, but after pacing it out himself he would guess that more than half of the lot is wetlands. Mr. Kuendig said that the new calculation is 9,587.5 square feet is wetlands. Chairman Chittick then stated that the existing house is 576 square feet. Under §9.11.2 the allowed increase in size would be an additional 300 square feet. Mr. Kuendig asked the Board to look at A3 in the plans which show the revised foundation plans which include piers now supporting the structure and break away doors in the garage. The Board then reviewed what under §9 the applicant complies with and what the Board feels he may not meet. Chairman Chittick stated that he seemed to comply with 9.10. Mr. Goedecke stated that he is not sure if they satisfy 9.7.8 section b as the lot does seem to be near tidal waters. Mr. Campbell stated that his family has had the property since the 1800s and he does not recall any water coming up in to the wetlands except for maybe in 1978 and 1991. Mr. Lacy asked the applicant to make a case that he complies with 9.11 and that he is not increasing the structure anymore than the 300 square feet. Mr. Kuendig stated that the proposed increase in square footage is 268.25. Mr. Higginson also expressed concerns about the plans depicting the wetlands. Chairman Chittick stated that the applicant will have to get through the Conservation Commission before he can get a building

permit. Much of the Board's concerns lie with the wetlands and that is really Conservation's jurisdiction. The applicant also stated that the present house has a cesspool but he will be tying into sewer. Chairman Chittick asked if anyone in the audience wished to speak. Mr. Andrew Astley of 40 Joy Place asked questions about section 9. Chairman Chittick said that the real issues for this application are with Conservation. **Mr. Lacy moved to close the hearing. Mr. Goedecke seconded the motion and the vote was unanimous.**

APPEAL – Filed by Richard Henderson on behalf of Richard Cate and Barbara Wallner of 40B Nichols Road, of the Building Inspector's denial of enforcement action at 42 Nichols Road (property owners Winthrop and Marilyn Minot). File #10.05.11.

Mr. Goedecke recused himself for this hearing and left the room. Chairman Chittick stated that the Board has received Attorney Henderson's memo at the beginning of the hearing and that the Board will not be able to address it as they just received it. Attorney Henderson then addressed the Board and the letter dated July 1, 2010 from Attorney Adam Brodsky, representing the Minots, in which attorney Brodsky disagrees that the planters and the platform are a structure by definition, but instead landscaping. Attorney Henderson disagrees and states that the planters are in fact a combination of materials and has nothing to do with plants. He then referred to the plan provided to the Board. Attorney Henderson stated that this is the plan filed by the Minot's to the Conservation Commission. On it, the planter in question is identified as "Existing Planter Platform" he thinks it is quite clear and that the structure should not be there and it should be removed. The Board asked Mr. Egan to speak. Mr. Egan stated that he met with Mr. Cate and went out to the site. He stated it was then that he found out about the animosity between the two neighbors. It was his hope that the neighbors could work it out. Ms. Kent asked if the planters could be considered a screening fence. Mr. Egan stated that the current height is about 7 feet and would need to be cut down to 6 feet or they could plant a row of trees. Attorney Henderson stated that yes, the Minots could plant a row of trees, but that is not what they did.

The Board then asked Attorney Brodsky to speak. Attorney Brodsky addressed the Board and stated that his clients, Mr. and Mrs. Minot, were also present. He asked the Board to review the letter filed by his clients to give them background on the situation. He stated that they will see that it is a neighbor dispute that has unfortunately made its way into Town Hall. Attorney Brodsky made mention to the plan submitted by Attorney Henderson and stated that he does not feel the word platform was used intentionally. He said that the entire purpose of the planters are for screening which is a landscaping feature. He said that if the Board does order the removal of the planters then he does not feel the interpretation of the bylaw is reasonable and the Board will have to begin regulating planters all over town. Attorney Brodsky stated that the intent of the planters was to screen the ugly side of the fence which the Cates put up and that all of this is fundamentally a neighbor dispute. Chairman Chittick stated that the Board has had issues before them where planters on top of structures do add to the height and that the Board needs to continue to be consistent on this issue. Chairman Chittick then offered a chance for rebuttal to Attorney Henderson. Attorney Henderson stated that he does not feel it is a landscape issue. He feels that it is a structure and that is the zoning issue. Mr. Richard Cate then addressed the Board and stated that it is aesthetics but they look at a 13-14 foot high monstrosity throughout the year and much of the year they are covered in burlap bags. They feel it is a structure and should be removed. After a brief discussion, **Mr. Higginson then moved to continue the hearing. Ms. Kent seconded the motion and the vote was unanimous.**

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.

Chairman Chittick opened the hearing and stated that the Planning Board has recommended the Board grant this special permit. Mr. and Mrs. Tarpey addressed the Board and reviewed their proposed plans to build a bedroom and bathroom over the existing garage. In their neighborhood, most people do not have garages except for Lauren and Joseph Curley who live at 163 Pond Street. The Curleys built over their garage as well. There have also been two major additions and renovations to two other properties located near the Tarpeys. The Tarpeys plan to put a second story on the garage which will increase the height from the existing 19 feet to a proposed 26 feet. The addition will also remain within the footprint of the existing home. A letter of support was received from Mr. and Mrs. Curley and Mr. John Cavanaro of 29 Arrowwood Street spoke in favor of the project. **Chairman Chittick moved to close the hearing. Mr. Lacy seconded the motion and the vote was unanimous.**

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.

Attorney Henderson reviewed the agreement made between Ms. Reiter and Mr. McNary. Attorney Henderson will draft a decision for the Board to sign. **Chairman Chittick moved to close the hearing. Mr. Goedecke seconded the motion and the vote was unanimous.**

SPECIAL PERMIT – Filed by John Cavanaro of Cavanaro Associates on behalf of landowners Richard Ford and Tabitha Teller, to build a deck at 54 Windy Hill. File #10.06.11b.

Chairman Chittick opened the hearing. Mr. John Cavanaro and Mr. Ford addressed the Board. Mr. Cavanaro reviewed the history of the plans explaining that the project is presently under the jurisdiction of the Conservation Commission due to the buffer zone. They have removed a deck and will be relocating it but essentially replacing what was originally there. The house is nonconforming in lot size as well as the side yard set back (require 20' has 4.1'). The new open-air deck is going to be 14X10 feet, but is being pushed closer to the nonconforming lot line. They have an order of conditions from the Conservation Commission that has allowed construction to take place over the existing structure only. However, the framework was placed for the deck before they realized they needed to seek relief from the ZBA. Chairman Chittick asked if anyone would like to speak. Mr. Joseph McElroy of 59 Windy Hill stated that he does not have any problem with the construction however he would like additional screening between his property and the deck. Mr. Ford said he would look in to getting a landscaper in to look at the site. **Mr. Lacy moved to close the hearing. Mr. Higginson seconded the motion and the vote was unanimous.**

DELIBERATIONS

VARIANCE – SPECIAL PERMIT – Filed by Grady Consulting, LLC, on behalf of the landowners of 17 Ox Pasture Lane, Edward Coveney and Melissa R. Coveney, seeks to construct a swimming pool and accessory building at 17 Ox Pasture Lane and 75 Ox Pasture Lane. §8.7 and §9. File #10.05.07b.

After a brief discussion, **Mr. Lacy moved the Board grant a Special Permit to 17 Ox Pasture Lane and a Special Permit to 75 Ox Pasture Lane. Ms. Susan Kent seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Higginson, 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 lengthy deliberation regarding the project and structures height, it was decided to continue the deliberation to Tuesday, July 20, 2010. **Chairman Chittick moved to continue the deliberation until July 20, 2010. Mr. Higginson seconded the motion and the vote was unanimous.**

Chairman Chittick moved to adjourn the meeting. Mr. Lacy seconded the motion and the vote was unanimous. Meeting adjourned at 10:35PM.

Respectfully submitted,

Jennifer Brennan Oram

Assistant Clerk, Zoning Board of Appeals