

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

**Member Absent:** Peter Goedecke

**Others Present:** Jennifer Brennan Oram, Assistant Clerk

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

**Board Business**

**July 6, 2010 Minutes** – Chairman Chittick moved to approve the minutes of July 6, 2010 as amended. Mr. Benjamin Lacy seconded the motion and the vote was unanimous.

**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).**

This is a continued hearing. Attorney Hampe addressed the Board and reviewed his submission dated July 26, 2010. The submission addressed their issues of the appeal. Attorney Hampe stated that there are three items which they would like to dismiss from their original appeal. They are the swing set as the Building Commissioner has given testimony that he does not consider it a structure, the wall, there was testimony and given that the wall was there prior to construction and was only repaired and stairs added. It is also his understanding that the Alexs’ have agreed to move the air conditioner compressors to the other side of the house. Attorney Hampe stated that this leaves them with the enclosure and the sonitubes; although there has been testimony that the coverage on the ground is 196 square feet under the enclosure, he still feels there was a condition that did not allow the area to be enclosed. Where the area is now enclosed they cannot tell what the coverage is and no plans were ever filed showing the square footage of coverage with the Building Department. However, he feels the main issue is the overhang which through engineering on the proposed Gibbons dwelling and other structures in the area, looks to be approximately 13.3 feet from the property line. It was conditioned in the Special Permit that it not be “less than 15.13 feet”. They feel that the enclosure and the overhang are in breach of the Special Permit conditions. Attorney Hampe then reviewed why he feels the 10 (ten) year statute of limitations applies and not the 6 (six) year. Mr. Lacy asked why there was not any case law in the brief filed to back up this argument that the 10 year statute of limitations applied as opposed to the six year statute of limitations. Attorney Hampe stated that Richard Henderson, Attorney for the Alexs’ did not cite supporting cases either. Attorney Hampe stated that he feels the 10 year statute applies because the building permit has a Special Permit attached to it, and because the structure does not comply, it invalidates the building permit. He feels the commencement of the violation is when the frame was signed off on some time after September 7, 2000. Mr. Lacy asked why Attorney Hampe has not filed the notice of appeal with the registry of deeds. Attorney Hampe stated that he cannot take such action of 40A’s only the Building Inspector can. Mr. Charles Higginson then stated that the Board cannot address a lot line issue [an issue brought up in previous discussions] and asked what lot line was used to determine the overhang measurement. Attorney Hampe and Engineer John Cavanaro stated that they used the Alexs’ lot line to get the figure of 13.3 feet. Mr. Higginson asked if this was a major

violation. Mr. Cavanaro stated that the Board's decision from 2000 stated that they were not to get closer than 15.3 feet and that if the Board conditioned it, it must have been important. There was then a lengthy conversation about the violation and what the measurements were from the back of the house to the front. At the front of the house on the corner, the overhang is about 1.5 feet beyond the 15.13 line and decreases as it reaches the back of the house.

Chairman Chittick asked if Attorney Henderson would like speak and stated to Attorney Henderson that Attorney Hampe had taken some of the alleged violations off of the table. Attorney Henderson stated that he could not add any more than what he had written in his submission to the Board (dated July 27, 2010). He briefly reviewed the four cases he cited in his brief. Attorney Henderson stated that he feels that where a building permit was issued, the 6 year statute applies. He argues this based on the case law he presented in his brief and from his own experiences in court. He also feels that the case should be dismissed as the applicant did not file with the registry of deeds before an administrative action. Chairman Chittick asked if a Special Permit was issued in the Welfleet, MA case he cited in his brief. Attorney Henderson said there was not. Chairman Chittick stated that in this case there is a Special Permit. Attorney Henderson stated that this may be the case but that he feels the 6 year statute applies. He also feels that if anyone were aggrieved they had plenty of time to take action before now. Mr. Lacy stated that he is concerned that a condition of the Special Permit has been violated. Chairman Chittick stated that the Building Permit does refer to the plans submitted on 8.15.00 and it also refers to the Special Permit #00-03-16; if the plans are inconsistent than that is the issue. Attorney Henderson stated he feels the practice and case law are clear. Mr. Lacy does not feel the case law is clear. Mr. Alex, owner of 373 Atlantic Avenue asked to speak. He thanked the Board for taking their time and stated that when they built the house they thought they were complying. He feels that the plans that were submitted were built and that it was not a conscious decision to violate the permit as they used professional builders and an architect. He added that the violation does diminish quite a bit towards the back of the house and that he hopes the Board dismisses the case. Chairman Chittick stated that there was no plan showing the sonitubes under the house. Mr. Alex said he could have someone come out [to make one]. Mr. Lacy asked when the enclosure was done under the porch. Mr. Alex stated it was done at the time of building the house. Original plans belonging to the Building Office were then brought up before the Board and reviewed. There was a foundation plan amongst them showing the sonitubes. Attorney Henderson stated that it was built in compliance with the permit and the plans. Mr. Cavanaro disagreed. Chairman Chittick stated that it was difficult to see how close the building wall comes to the sideline. Attorney Henderson then confirmed that the AC compressors will be moved. The Board asked Attorney Hampe for an additional 30 day extension to September 21, 2010 to which he agreed and will mail a letter of confirmation. **Chairman Chittick moved to close the hearing. Mr. Lacy seconded the motion and the vote was unanimous.**

**APPEAL – Filed by Attorney 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.**

This is a continued hearing. Chairman Chittick asked if Attorney Henderson would like to address the Board. Attorney Henderson stated that he had nothing more to add than his original letter he submitted with the application (letter dated April 1, 2010). He feels the planter platform is a structure as he cited this in that letter.

Chairman Chittick asked if Adam J. Brodsky, Attorney for Winthrop and Marilyn Minot, would like to address the Board. Attorney Brodsky stated that he had addressed the Board's questions from the

previous hearing in a submission to the Board dated July 27, 2010. He added that his clients, the Minots, also submitted a letter dated July 26, 2010. Chairman Chittick stated that the Board had received quite a lot of information, but would like to keep the focus of the hearing to the structure issue. Attorney Brodsky agreed and stated that if his clients could plant screening, they would have, but the area is mostly ledge. The Board had also asked for dimensions. Attorney Brodsky stated that the planter's dimensions are 40 inches wide and 169 inches long. The planter is on a slope, on its up hill eastern end its 26" tall and at its lowest end at the downward slope, it is 82". On top are five planters and in each planter is a trellis that is 5 feet 8 inches tall. Mr. Brodsky stated that it was difficult to measure grade at this location and that he feels the Cates are only concerned with aesthetics and think the planters are ugly. He feels that this is not a public safety issue and suggested that the photos submitted by the Cates do not depict where the fence is located. Attorney Brodsky stated that the fence actually blocks most of the planters. He does not feel the Board should begin regulating planters as they are not structures because they do not support human habitations. He feels there have been more substantial things that have been put in setbacks in Town. He cited a case that had been before the Board at 17 Sohier Street and stated that he does not think that case set a precedent as it was a retaining wall in question and a retaining wall is clearly defined as a structure in the bylaws. He stated that Attorney Henderson had seized on the work "structure" and its definition, but feels that the definition came from the State Building Code and that this platform [supporting the planters] is not a platform as defined in the State Building Code. In addition, the plan submitted by Attorney Henderson was drawn by a wetlands expert who did not appreciate the use of that word on the plan. There was then a lengthy discussion regarding the height of the planters. Mr. Minot then addressed the Board and reiterated that the planters were done for screening and that he does not think the Board would want to regulate such things. Chairman Chittick stated that the Board does regulate fence height and if you add the 5.8 feet of the trellis and the 82 inches of the platform, they are well over the height limitations. After a brief rebuttal from Attorney Henderson, Chairman Chittick asked if he would agree to an extension. Attorney Henderson agreed to extend whatever dates the Board needs. **Mr. Lacy moved to close the hearing. Mr. Higginson seconded the motion and the vote was unanimous.**

**VARIANCE – Filed by Attorney Richard Henderson on behalf of applicant/landowner Crocker Lane Realty, LLC for the construction of structure (Light Poles) greater than 45 feet in height at 215 Chief Justice Cushing Highway. File #10.07.09.**

Attorney Henderson addressed the Board along with Andrew Dyjak of Musco Sports Lighting, John Cavanaro of Cavanaro Consulting and property owner Robert Schwandt. Mr. Cavanaro reviewed the site plan in great detail showing the four light locations they are seeking relief for. He then reviewed the location of the site and the properties that surround it. He stated that the lot is oddly shaped and that the frontage is on Chief Justice Cushing Highway (CJCH); the poles are approximately 800 feet from CJCH. The applicant's have converted a truck storage facility into a sports facility. The building on the site houses a sports field, and outside is a turf field. The use for such a facility is allowed however the allowed height for lighting is 45 feet. For many reasons they are seeking relief for these poles to be 70 feet high. Chairman Chittick asked them to speak to the neighbors and how visible the lighting would be to them. Mr. Cavanaro referred to the site plan once again showing that the subject property is fairly remote and far from CJCH. He stated that their lighting expert will address the visibility question. Ms. Susan Kent asked if there were any other lights in Town that were comparable to the ones they are requesting. They believe the closest would be the High School but they will have to pull records to see how that was granted. It is believed it may have been a constructive grant. Mr. Lacy stated he felt the property most affected would be the pending Avalon development. Attorney Henderson then asked Mr. Dyjak to address the Board. Mr. Dyjak reviewed the history of his company stating that have been

around for many years and have partnerships with Little League to the Olympics. They provide the lights to Gillette Stadium as well as most sport lighting around the world. Mr. Dyjak gave an extensive power point presentation and reviewed why the lights need to be above the allowable height of 45 feet. He explained that with the height and the type of hood lamps they put on the lights, they are able to direct the light exactly where they want. This avoids spill lighting outside of the designated area and reduces the glare; the shorter the pole the more offsite glare is given off, thus making it hard for the players to see. This becomes a safety issue and increases the chance of injuries to the players. The Board then asked a series of questions. Ms. Kent asked how far away you could see the lights from the property. Mr. Dyjak said that you would be able to see the lights from CJCH but the light will not be a nuisance and there will not be any glare or spill off of light. Mr. Higginson asked how often they would be using the lights during the year. Mr. Schwandt said they don't have a definitive calendar, but think that the nighttime games would take place during the spring and fall, but not during the months of December – possibly March. Mr. Higginson asked how late at night the lights would be on and if they were easy to shut off. Mr. Schwandt stated that the use would depend on the demand, but probably no later than 11PM. Mr. Dyjak stated that the lights are easy to turn off and can be done both on site and remotely. There was further discussion regarding the height and why the applicant wants the lights to be 70 feet high. Attorney Henderson asked Mr. Dyjak if hypothetically speaking a client wanted to do 40-50 feet high lights for a field like this, what the company would do. Mr. Dyjak stated that his company would probably not do the design as it would affect the playability of the field. Attorney Henderson told the Board that he will be submitting a brief before the next hearing addressing the tests of a Variance. He briefly reviewed some of the items he would be including. He stated that it would be dangerous to not have the lights and that the use of the property would be inhibited. Mr. Lacy asked if Attorney Henderson will cite cases and he stated he would. Chairman Chittick stated that, looking at each side of the argument, if they didn't put in lights, they could be creating a dangerous situation. Attorney Henderson stated that it was an allowed right in that district for his client to do so. Attorney Henderson stated that what is allowed could be hazardous and therefore makes the need unique thus needing a Variance. He stated that if they follow the bylaw, someone could get hurt and although Variances are sparingly given, they are there for a reason. Chairman Chittick asked that in his submission if Attorney Henderson could submit information from an independent organization showing that 70 feet is the needed height. Chairman Chittick asked if anyone in the audience would like to speak. Mr. Paul Barry of 20 Hobart Lane spoke in favor of the project stating that it was going to bring a great business to the Town and asked the Board to be open minded about the request. The Board then reviewed what they would like in the submission including all of the cited cases, hours of operation and supporting documents regarding the height from an independent organization. **Chairman Chittick then moved to continue the hearing. Mr. Lacy seconded the motion and the vote was unanimous.**

#### DELIBERATIONS

**REMAND – SPECIAL PERMIT - Filed by Attorney Richard Henderson on behalf of landowner, Janice Reiter – Remand of a 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.**

After a brief discussion, Chairman Chittick moved to approve the Special Permit as modified at 357 Atlantic Avenue. **Ms. Susan Kent seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Higginson).**

**SPECIAL PERMIT – filed by Herb 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. (Goedecke).** After a brief discussion, it was decided to continue the deliberation until the next month.

**Chairman Chittick moved to close the meeting. Mr. Lacy seconded the motion and the vote was unanimous. Meeting adjourned at 10:45PM.**

Respectfully submitted,

Jennifer Brennan Oram

Assistant Clerk, Zoning Board of Appeals