

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

Member Absent: Susan Kent

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

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

Zoning Board Business

Chairman Chittick moved to approve the minutes of July 20, 2010 and August 3, 2010 as amended. Mr. Benjamin Lacy 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. Mr. David McMorris seconded the motion.

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

The Board returned to open session at 7:50PM.

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 #10.06.23. Continued.

Chairman Chittick stated that this is a continued hearing and that the Planning Board has asked that the Board not close the hearing until they have heard the presentation and can make their recommendation. Attorney Henderson stated that he really did not have any new arguments, but had submitted an extensive brief (filed on September 2, 2010 and corrected by a memo filed on September 8, 2010). Attorney Henderson reviewed the brief and cited two cases (Karias v. Board of Appeal of Cambridge and Cryan v. Board of Appeals of Salem) and stated that the key word in these cases is *shape* as applicant has a right to have a 45 foot high structure, but that height for that structure does not work for the permitted purpose. According to the organization that regulates lighting on playing fields (IES as stated in the brief dated September 3, 2010), a 45 foot height would violate their recommendations. Attorney Henderson then asked Andrew Dyjak of Musco Sports Lighting to speak. Mr. Dyjak reviewed the lighting classifications for the Board explaining that the proposed lighting plan for this project is

being engineered to what the industry standards are becoming. He explained that the height is still recommended at 70' however the candle power would be 50 candelas. He added that even if they were at 30 candelas they (Musco) would still recommend 70 foot high poles, the reason being that this keeps the light spill to zero. Mr. Lacy asked what people would see from 3A. Mr. Dyjak stated they would see cones of light from the fixture to the field. He added that the shorter the pole, the more the lights have to be angled, thus increasing spill and increased glare. Attorney Henderson stated that if the lights are built at the height that is permitted, it would be dangerous. He said that they are not asking to do anything they are not permitted to do, they are asking for a height that is not permitted. Mr. Lacy asked about hardship and that without the use of the lights would this present a hardship? Would they not be able to make money at the facility? Attorney Henderson stated that they can use the facility at night with lights that are 45 feet high, they are asking to do it at night with taller lights that experts say are safer. Chairman Chittick stated that the only issue he sees, where they can run the facility at night by right, is to grant the height so players will not be injured. Mr. Lacy feels the Town has a bylaw that says 45 feet and that the Board should not disregard that. Chairman Chittick stated that he feels safety trumps bright cones of light. Mr. McMorris asked if he was driving on 3A, would the lights look like Fenway Park? Mr. Dyjak said no, only cones of light shining down. Attorney Henderson stated that the lights would not impact anyone driving on 3A. Mr. Lacy asked if Attorney Henderson would like to speak to the conditions not being created by the applicant. Attorney Henderson stated that they would happy to build the lights at the allowable 45 feet, but they are running a business and want to have it run safely and to industry standards. After further discussion, Chairman Chittick asked if anyone in the audience would like to speak. The Board has been in receipt of an email from The McNamara Family of 17 Sanctuary Pond speaking against the project. Chairman Chittick asked if anyone from the McNamara family was present; they were not. After a brief discussion as to whether to close or continue the hearing, **Mr. Goedecke moved to close the hearing with the allowance of the Planning Board's recommendation being filed with the Board. Mr. Lacy seconded the motion and the vote was unanimous. Mr. Henderson granted an extension to November 30, 2010.**

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.

Attorney Creed, Engineer Neil Murphy and Contractor Larry Escobar addressed the Board. Chairman Chittick stated that this is a continued hearing and then reviewed the most recent submittals from the applicant dated August 31, 2010. The cover letter states that they have submitted architectural plans for 11 bedrooms (Plans are date stamped August 31, 2010 from the Cohasset Town Clerk) a reduction from the previously proposed 14 bedrooms. Mr. Goedecke pointed out that the plans show a study which he feels could be turned in to a bedroom. Attorney Creed stated that Board could make it a condition that the study could not be a bedroom. Attorney Creed also suggested the Board could make it a condition the applicants file the advertising showing the bedroom count.

Chairman Chittick then asked to meet the developer. Mr. Creed introduced Larry Escobar of First Columbus Realty LLC, Worcester, MA. Mr. Goedecke asked Mr. Escobar to review his experience. Mr. Escobar stated that he has built over 200 homes. He has renovated 150 units, thus building a million dollar company. His partner is his brother, he is a preferred developer and is approved to build 40B projects in Worcester. He stated that he is very interested in working in Cohasset and to develop this property. Mr. Goedecke asked if he would be the development manager on the project. Mr. Escobar stated that he hoped he would be the equity behind the project. Chairman Chittick confirmed that presently Mr. Escobar is a fee based development manager. Mr. Goedecke then asked if he could run

through a list of comparable projects. Mr. Escobar stated that he is presently working to build a 60,000 square foot charter school called “The Spirit of Knowledge”, he also listed several other locations in Worcester and that he also is presently working with on 40B project with the Catholic Church in Worcester. Mr. Escobar stated that he monitors the projects from permitting until they are built and that he is very hands on.

The Board then addressed the existing lighting plan. Chairman Chittick stated that he had a hard time understanding the plan that was submitted. He stated that when this application was first filed in 2009, an engineering fee was deposited along with the application. After the Board rendered a decision, the balance of that fee was returned to Mr. Charles (\$1,400.00). Chairman Chittick stated that he feels this should be resubmitted to the Board so that an engineer hired by the Town can review the lighting plan and other plans designated by the Board. Chairman Chittick asked if Attorney Creed or Mr. Murphy could walk the Board through the plan. After a brief review, Mr. Murphy stated that there is nothing being proposed. He stated that everything regarding lighting is on the plan. Chairman Chittick clarified and stated that whatever exists today [in regard to lighting] will not be replaced and nothing will be taken away. Attorney Creed stated that they are proposing nothing different than what is on the building today. They feel there is sufficient light in the parking area at night and invited the Board to walk the site. After a brief discussion, Chairman Chittick stated that he would feel more comfortable if a hired engineer reviews the plans for the Board.

The Board then reviewed the landscape plan with the applicant. In the most recent submission dated August 31, 2010 the applicants submitted a Landscaping Proposal and Plan. Upon reviewing the plan it was determined that the covered porch would be removed and in its place plantings would be put in. Attorney Creed confirmed that the porch would be removed and that the plan drafted by Leo’s Landscape Nursery, Inc. is where the plantings would be placed. Chairman Chittick stated he was concerned about the line of arbor vitae along Sohier. He stated that the Fire Department had expressed concern about emergency vehicles getting around the corner and that such plantings could interfere with the line of sight. Chairman Chittick would therefore like the police and fire departments to review the proposed landscape plan. Mr. Lacy asked if there would be any landscaping on the North side of the property. Chairman Chittick asked if a fence was still being proposed on that North side. Attorney Creed stated that it was. Chairman Chittick added that the applicants could not rely on the planting already there that belong to the neighbors.

They then addressed the parking plan. Chairman Chittick stated that last year the public safety agencies stated that they would prefer it if the entrance was on Ripley Road, with the exit was on Sohier and that it was one way. This would help avoid people cutting through from the Music Circus. He added that it was also agreed upon that the parking spaces would be angled. Chairman Chittick stated that all of this was agreed to yet none of the plans depict this. Mr. Murphy stated that the angled parking would be better as the applicants would not need as many waivers for parking. Mr. Murphy added that he did not prepare the existing site plan that it was actually done by Site Tec. Chairman Chittick asked Attorney Creed if angled parking would pose a problem. Attorney Creed stated that the project engineer, Mr. Murphy, stated that it can be done [so there was no problem]. Chairman Chittick then addressed the trash enclosure which looks to show a 10x6 foot fence around it which should solve any questions regarding the enclosure. Mr. Lacy stated that even with angled parking, it would seem that parking space #14 would also require a waiver.

The Board then reviewed the list of waivers. The first request is for a waiver of the **Multi-family dwelling in R-B zone, §4.2.** Attorney Creed is requesting a waiver of this as it would require a Special Permit in that zone.

Lot size requirements, §5.3.1 – Attorney Creed stated that a two family would require 88,000; the site is approximately 21,000 square feet. Chairman Chittick stated that the lot is significantly smaller than what is required. Attorney Creed stated that is why they are requesting a waiver and why there is 40B. Chairman Chittick asked if Attorney Creed felt there was any impact on the character of the neighborhood. Attorney Creed stated that until Avalon is built, the Town is at risk to have additional 40B proposals.

Lot Coverage Requirements – Attorney Creed stated that with adding the trash enclosure, they don't know the lot coverage. Mr. Lacy stated that he did not think the trash enclosure was an issue, but the paving would be. Mr. Murphy stated that he felt that it (the site) met the requirement of no more than 30% lot coverage. Mr. Goedecke stated it would be very hard to be under 30% and that it actually looked to be 60%. Chairman Chittick stated that the Board needs very specific numbers so they can be cited in the decision.

Building coverage requirements, §5.3.1 – Attorney Creed is not sure they need this waiver, but would like to leave it on the list until the new site plan is done.

Front yard setback, §5.3.1 (Ripley Road) – Mr. Murphy stated that they now meet this with the removal of the porch. Chairman Chittick stated that looking at the plan, it seems the step is still there and therefore the Board would still need a dimension. He stated these calculations along with the plantings can be clarified on the new site plan.

Trash enclosure requirements, §5.3.1 (if greater than 6' high) – Attorney Creed withdrew this waiver request stating they would not be exceeding 6 feet.

Large House Plan Review, §5.5 – this was withdrawn.

Driveway setback requirements, §7.2.13 – Mr. Goedecke stated there was no way around needing this waiver. Chairman Chittick reviewed the lot lines and asked why the applicant couldn't make the requirements. Mr. Lacy stated they may be able to with angled parking. Chairman Chittick stated that they are going to be providing a new plan showing parking; therefore this can be determined on that plan as well.

Parking and loading space standards, §7.2.9 – They will wait to review this until the site plan is revised.

Parking within 25' of street, §7.3.1a – Attorney Creed stated they would need a waiver on both sides, Ripley Road and Sohler Street, due to the requirement of 14 parking spaces.

Screened within 50' of the lot line of an abutting lot, §7.3.1b – Attorney Creed stated he felt they needed this on both sides. Mr. Goedecke pointed out that they are only screening parking and loading and that he did not think they needed a waiver.

Parking within 5' of a lot line, §7.3.2a – This may be eliminated with the angled parking.

Parking in required front yard, §7.3.2c – They will need this waiver otherwise they will not be able to configure the required number of parking spaces.

Backing onto street, §7.3.2d – The Board agreed that due to parking space #14, they may need a waiver. The requirement is that there be a minimum driveway distance of 150' from intersection, §7.3.3 (both driveways) – Mr. Murphy stated that they may not need the waiver as the driveway on Ripley is pre-existing. He does feel they would need it for the Sohier Street driveway.

Extension and alteration of non-conforming use – Attorney Creed stated that he feels they need a waiver because what they are proposing is intensification.

Sewage disposal and system requirements, §14.3.2d – The Board nor Attorney Creed are sure if this is needed.

Impervious area requirements, §14.3.2e – Mr. Lacy suggests that the Board's engineer look at these plans as well. Chairman Chittick stated that getting in to public health waivers could prove difficult.

The Board then asked Attorney Creed and his client to think about guest parking as they feel this is a safety issue. The area surrounding 25 Ripley Road is heavily trafficked and on street parking is not allowed.

The last requested waiver, requesting all Planning Board regulations be waived the Board does not feel applies. . Mr. McMorris then asked that Attorney Creed update the list of waivers as well.

Chairman Chittick then opened up for public comment. Ms. Kathy O'Malley of 56 Sohier Street stated that she is still concerned about there being 7 proposed units. She is concerned about the parking and safety issues. Ms. Mindy Evans of 36 Sohier Street asked if there would be a new rendering of what the building will look like that the neighbors could view. Chairman Chittick stated that updated plans have been discussed quite a bit this evening and asked Attorney Creed what they would be filing. Attorney Creed stated they would be filing architectural plans that would agree with the foundational footprint. Ms. Evans then stated that she was opposed to the project and felt it was too big for the neighborhood. Ms. Joslyn Peters of 12 Ripley Road expressed concern about the lighting.

The Board then agreed that new plans would be submitted before the next hearing. They asked that they be filed at least two weeks prior to the next hearing date to allow for abutters to review as well.

Chairman Chittick moved to continue the hearing until Tuesday, November 11, 2010. 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. Goedecke seconded the motion.

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

The Board returned to open session at 11PM.

DELIBERATIONS

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 (Chittick).

After a lengthy discussion Chairman Chittick moved the Board deny the appeal because appropriate notice has not been filed at the Registry of Deeds by the owners of 379 Atlantic Avenue. Mr. Lacy seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Higginson, 3-0).

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 (Higginson)

After a brief discussion Chairman Chittick moved the Board grant the Appeal in part by ordering the Building Inspector to require the Minots conform to the 6 foot height restriction that applies to fences and apply it to the planters. Mr. Higginson seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Higginson 3-0).

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. (Goedecke).

After a brief discussion Chairman Chittick moved the Board grant a Special Permit with conditions to the applicants to raze and reconstruct a single family home at 44 Joy Place. Mr. Lacy seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Higginson, 3-0).

Mr. Lacy moved to adjourn the meeting. Mr. Goedecke seconded the motion and the vote was unanimous. Meeting adjourned at 12:00AM.

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