

**Members Present:** S. Woodworth Chittick, Chairman  
Benjamin Lacy  
Charles Higginson  
Peter Goedecke  
Kathleen A. Hunter, Clerk

**Member Absent:** Susan Kent

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

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

**Board Business**

**25 Ripley Road** – (Wilmarc Charles). Comprehensive Permit, pursuant to Chapter 40B, sections 20-23, as well as a Special Permit under §5.3, File #08.12.15b. A letter was filed with the Board on January 6, 2009 from the applicant’s Attorney, Robert J. Barrett, requesting the application be withdrawn without prejudice. **Chairman Chittick moved to accept the withdrawal without prejudice. Mr. Charles Higginson seconded the motion and the vote was unanimous.**

**438 Beechwood Street** (Herbert L. Marsh). Seeks to build a single family home. VARIANCE §5.3.1. File #08.12.15a. The applicant has requested a continuance. **Mr. Higginson moved to continue the hearing. Mr. Lacy seconded the motion and the vote was unanimous.**

**Minutes** – Mr. Higginson moved to approve the **October 7, 2008, November 5, 2008 and December 3, 2008 minutes as amended. Chairman Chittick seconded the motion and the vote was unanimous.**

**HEARINGS**

**357 Atlantic Avenue (Applicant Carr, Lynch and Sandell, land owner Janice Reiter). Seek to build a guest house. SP §§§9.6, 9.11, 8.7.2 – File #08.09.12.**

This is a continued hearing. Submissions were filed throughout the month of December from both the applicant and her advisors and an abutter, Mr. John McNary (355 Atlantic Avenue) and his advisors. Chairman Chittick asked that those presenting not reiterate the issues that have been covered in past hearings, but instead focus on the key points of the submissions. Mr. Sandell, of Carr, Lynch and Sandell and Mr. John Cavanaro, of Cavanaro Associates addressed the Board on behalf of the Applicant. Mr. Cavanaro reviewed, in great detail, the mapping questions that had been asked to be clarified by Attorney Ohrenberger (attorney for Mr. McNary). Mr. Cavanaro explained the methodology he used to arrive at the flood plain and velocity zonedeterminations. He reviewed what the difference between a flood zone and a velocity zone.. He stated that engineers make an on the ground survey and overlay the FEMA map (which determines flood plains and velocity zones), as well as aerial photographs, to line up the flood zone lines on the actual earth as closely as possible (the FEMA maps do not include survey details) . Mr. Cavanaro said the Board needs to be concerned from the perspective of elevationscoupled with the wave action and the possible effectst from a structural point of view, as well as compliance with building code etc. Further discussion was had on how these determinations were made. Mr. Cavanaro stated it was a difficult task but that he felt confident with his findings. He stated that Mr. Neil Murphy, the engineer for 355 Atlantic came up with a different overlay and that Cavanaro Associates

tried to simulate it and that he could not get it to line up with the topography as represented by the survey and the aerial photographs. Mr. Sandell then had his associate, Mr. Jim Rissling, review the submissions that addressed the foundation plan design. Mr. Rissling stated that the house would be built on 18 piers that trace the footprint; there would also be steel columns and two segments of wall from which stair treads will be cantilevered. The house is designed to resist wave action in a velocity zone of 22. It was clarified that velocity zone 26 would require the structure be built up an additional 4 feet. Mr. Lacy asked about the break away walls that had been presented before. Mr. Sandell stated that since the crawl space had since been eliminated the walls had also been eliminated since they were no longer necessary. He added that only 140 square feet will be in the velocity zone. Attorney Richard Henderson then came before the Board and reviewed his submission which addressed the zoning concerns of 355 Atlantic Avenue. He does not feel that this application should fall under a Variance, but that it meets all of the requirement under §8.7.2.

Attorney Ohrenberger, Attorney Da Lisi and Engineer Neil Murphy then addressed the Board. Mr. Murphy feels there should be a FEMA velocity zone determination and that it should be a condition of the decision. He stated that the methodology to come to what zone a property is in is difficult for anyone to figure out. He stated that in his opinion the guest house location lies to the east of (the 26' side of) the velocity zone but was unable to clearly delineate that the velocity zone line extends to and through the location. He then reviewed his methodology for the Board using mapping that he brought to the meeting (these were stamped in). Attorney Ohrenberger then spoke. He stated that the reason they feel a Variance is necessary is because the lot is nonconforming. He feels the proposed structure is a new use, not an extension of an existing nonconformity. He feels the application should be considered under §§9.7 and 9.11 and that there should be a FEMA determination as his client feels his property is in danger.

The Board asked the applicants advisors if they had anything they wanted to clarify. Mr. Cavanaro stated that there have been many FEMA determinations in that area. He added that there are also many velocity zones at 355 Atlantic Avenue. He feels they have provided sufficient evidence and that they do not agree with Mr. Murphy's findings.

Owner of 355 Atlantic Avenue, Mr. Doug McNary, addressed the Board. He was very concerned about another structure being built 30 feet from his house and six feet off of his lot line. He stated that it is all subjective as to what is harmonious or detrimental, but he is concerned about his home.

**After a brief discussion, Mr. Lacy moved to close the hearing, Mr. Higginson seconded the motion and the vote was unanimous.**

**8 Highland Court (Carr, Lynch and Sandell on behalf of land owner, Rebecca H. Behenna). Seeks to build an addition. §§8.1 and 8.7.2. File #08.12.15a.**

Mr. and Mrs. Behenna, along with Mr. Jim Sandell of Carr, Lynch and Sandell addressed the Board. There was a brief discussion determining where the parcel had its frontage. It was determined the frontage is on Highland Court. The Board will consider Highland Court a street. Where Highland Court is its frontage, all of the measurements submitted will work except for the frontline. Mr. Sandell then reviewed the proposed addition for the Board. He stated that they will be building over the existing deck and then putting a "friendship" stair in front of the proposed. Mr. Lacy stated that the stairs are what would pose a problem. The Board reviewed the proposed steps and walkway to determine if there would be an intrusion into the front lot. The Board will need further measurements to see if there

would be. Mr. Lacy then asked Mr. Sandell to address what seems to be an immense increase in height. The side of the house is only 4-5 feet from the lot line and the proposed would be a huge mass so close to it. Mr. Sandell stated that they are increasing the Square footage of the house from 1,830 to just over 3,000 square feet; the height is needed to get the space they need on the second floor. Mr. Lacy stated that they are below the allowed 35 foot height requirement, but the proposed would be much higher than the existing. Chairman Chittick stated that there have been many cases where the Board did not grant such a large extension in height. Mr. Sandell stated that they had reviewed the plans with the Roths, the neighbor that would be impacted the most, and they have approved the plans. The Board further reviewed the measurements of the gables etc. Mr. Steve Bjorkland, who was sitting in the audience, suggested the Board read Goldhirsh v. McNear which addressed a vertical extension within the setback. Chairman Chittick stated that he would feel more comfortable if the Board reviewed similar past decisions they have written. He would also like something in writing from the Roths. After further discussion, **Mr. Lacy moved to continue the hearing, Mr. Goedecke seconded the motion and the vote was unanimous.**

#### **DELIBERATIONS**

**124 Atlantic Avenue (Paul and Michele Antico). Seek to build a garage/multi-purpose room. SP §8.7.2. File #08.11.10a.**

**After a brief discussion, Chairman Chittick moved to approve the decision as amended granting the special permit under §8.7.2. Mr. Higginson seconded the motion, and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Higginson).**

**90 Whitehead Road (Carmen Hudson of Cavanaro Associates, on behalf of builder Jay Graham) seeks to replace the existing garage and build a new, expanded garage. SP §9.11. File #08.11.13.**

**After a brief discussion, Mr. Lacy moved to approve the decision as amended granting a special permit under §9.11. Mr. Lacy seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Lacy and Mr. Higginson).**

**Chairman Chittick moved to adjourn the meeting. Ms. Hunter seconded the motion and the vote was unanimous.**

Meeting adjourned at 10:19PM.

Respectfully submitted,  
Jennifer Brennan Oram  
Assistant Clerk