

Members Present: S. Woodworth Chittick, Chairman
Benjamin Lacy, Vice-Chairman
Charles Higginson
Peter Goedecke
Kathleen Hunter
Barbara Power, Clerk

Others Present: Jennifer Oram, Recording Secretary
Attorney Richard Hucksam, Town Counsel
Attorney Richard Henderson
Attorney Walter Sullivan
John Cavanaro, Engineer

Chairman S. Woodworth Chittick called the meeting to order at 7:40PM

Meeting with Town Counsel, Attorney Richard Hucksam

Attorney Hucksam met with the Board to review its policies and procedures. Listed below are the topics discussed and what Attorney Hucksam advised:

Executive Session – Attorney Hucksam stated that under Chapter 39: Section 23B. Open Meeting of governmental bodies, Executive Session should only be held for specifically stated purposes. He said that the meeting he and the Board was having this evening would not qualify under this law.

Associate Members – The Board asked Attorney Hucksam to clarify the role of an Associate Member, and to clarify their role on the Board. Attorney Hucksam referred to Chapter 40A: Section 12. Board of appeal; membership; rules. Attorney Hucksam said that he interprets this to allow Associate Members to participate actively in the hearing, i.e. asking questions during the hearing and the deliberation, until the vote. He does not feel you need to designate who will be participating in a specific case until it comes to the end of the hearing. At that point, you would want to have the three people voting be the members who have attended all of the hearings relative to the application, and those three are the only members that vote. When writing the decision, the names of those who sat and participated in the hearing can be listed if you wish, but those who took the vote should be listed, by name, at the end of the decision

Decisions – Attorney Hucksam provided a sample of a written decision to the Board. He stated that it is a bit longer than most, but that he feels it is a good way to organize the final decision. He reiterated that you want all members associated with the vote to have attended all of the meetings. A three member Board has to be unanimous, if it's a split vote, it's a denial. A Board member asked if one could recuse him or herself at the end of a hearing, before the vote. Attorney Hucksam stated that he had seen things such as this occur.

Mr. Lacy stated that the Board acts like a six member Board, and that they vote unanimously. Attorney Hucksam said that legally, this is fine. He suggests however, that the vote be taken by only those who have attended all of the hearings. If however, the issue can not be avoided, and a person has missed a hearing, but has listened to the tapes and read the file and the minutes of the case, he feels that person would qualify fine.

Conflict of Interest – Attorney Hucksam explained that this comes under Chapter 268A. He said that if a member of the Board is an abutter of a property that is coming before them, if they are within 300 feet of said property, they should recuse themselves. They should also leave the room completely. He feels that it is best to take the conservative approach. If you are friends with an applicant, this is usually fine, but that can be a decision the individual Board member can make.

Chairman Chittick asked what **submissions** can and can not be accepted after a hearing is closed. Attorney Hucksam encourages Boards to keep this as clear cut as possible. He does not suggest that the Board close a hearing and wait for a submission. He feels that if further evidence is required, the hearing should be kept open. He feels that it keeps it cleaner this way; the hearing should either be open or closed. There is a secondary benefit for the Board in treating the hearings and their deadlines this way in that you know all the submissions came in when the hearing was open. Also, by continuing hearings, you don't start the clock until it is closed. This is different in regard to Variances. If the applicants can not meet their burden of proof at the hearing, you know where the decision will go. Attorney Hucksam also suggests that all of the submissions and plans be stamped when they come in and be listed in the final decision; this helps with enforcement.

In regard to **conditions in a decision**, Attorney Hucksam feels that construction conditions are fine, however if you have a condition for an architect, in general, he feels this should be discussed when the hearing is still open; particularly if it is a substantive change.

Public Access – the Board asked if the public is allowed access to draft minutes and draft decisions. Attorney Hucksam feels they need to be looked at on a case by case basis. However, draft minutes are public documents, and the tape recordings of the meetings are available to the public as long as they exist.

As for the draft decisions, Attorney Hucksam recommends the Board not work with a written decision in the context of an open hearing at all. He stated that it's not required, and that they don't have to have a specific document to work from in an open meeting. This eliminates the draft issue. Attorney Hucksam said the author of the draft can email it around to the Board, and that this does not violate of the Open Meeting Law. Notes can be taken on that draft and the author can change the draft at home and can then be filed in its final version within 14 days of the vote.

The Board thanked Attorney Hucksam for his time, and asked that he review and update the Board's policies and procedures document. He stated he would and report back to the Board with the suggested changes.

Board members Kathleen Hunter and Barbara Power then left the meeting.

HEARINGS**429 King Street (Nancy and Timothy Garrison), Seek to demolish their existing barn and replace it with a guest house. §8.7.2 – File #07-08-06. Sitting WC, BL and CH.**

Applicants, Nancy and Tim Garrison, addressed the Board. Mr. Garrison explained that the existing barn sits on the corner of the lot and has deteriorated to the point that financially, it makes more sense to tear it down and replace it with a new structure. Mrs. Garrison stated that the guest house would be helpful for when extra family members came to visit. Mr. Garrison stated that his mother plans on staying in the home, and that it would be good to have the extra space for a care taker for in the future. Chairman Chittick reminded the applicants that 'guest house' in the Cohasset Bylaws has the term 'intermittent use' in the definition. In looking at the plans, Chairman Chittick stated that it looked like they were moving back on the front of the structure, while moving toward the rear of the lot within the side setback on one side and therefore they would be extending the nonconformity. Mr. Garrison agreed, saying that they would be pushing the proposed structure four feet back and the structure would be about three feet narrower than the existing. The existing structure is nonconforming, and the new structure would be less nonconforming on the front, but more nonconforming on the side. The rear extension is 12 feet and the height will be increasing by six inches. The Board asked for a rough estimate of the pre and post square footage of the dwelling. The current square footage is approximately 525 square feet, with the proposed being 714 square feet. Chairman Chittick asked the applicants about the possibility of moving the proposed guest house further away from the sideline. Mrs. Garrison explained that she would not want it closer to her screen porch. She added that several of her neighbors have come to her expressing their support and that they are eager to see the old structure removed. The Board was also sent a letter of support from neighbor Margaret Erdman, of 439 King Street. Chairman Chittick asked if anyone in the audience wished to speak for or against the application and there was not. **Mr. Lacy moved to close the hearing. Mr. Charles Higginson seconded the motion, and the vote was unanimous. Chairman Chittick will draft the decision.**

123 Atlantic Ave. (Robert Wilms and Jennifer Schneff). Seek to demolish the existing home and garage, and construct a new home and detached garage. §9.6. File #07-09-10. Sitting, BL, CH, Chairman Chittick recused himself, and appointed Associate Member, Peter Goedecke as the third voting member.

Architect Heidi Condon of AC Design addressed the Board along with Engineer John Cavanaro and Engineer Peter J. Falk. Ms. Condon explained that the current house and garage are nonconforming and that the entire lot is in the flood zone. The current garage is completely in the flood plane, and when it rains, the garage receives significant damage. Ms. Condon and the engineers recommend the clients raze the structures completely and construct a new home and separate garage. She stated that by doing so, the structures would then be conforming. Mr. Lacy pointed out that the lot is nonconforming, and these changes would increase this nonconformity. Mr. Cavanaro stated that they have to get to the highest point on the lot. He stated they are being conservative, and using an elevation level of 10. Ms. Condon showed the Board the plans showing the highest part of the house, measuring from the middle of the gable, is 34.6 feet. She went on to say that both of the new structures will be in compliance with building in the flood plane. The house is on pylons, and the garage has break-away panels. Mr. Falk, of Rivermore Engineering, explained that he used a formula provided by the Massachusetts state building code to calculate how many break-away doors the garage required. The panels need to be placed on separate walls, with a minimum of two panes, but they are putting in three. Mr. Cavanaro then addressed the Board and reviewed the additional drainage that has been added to the plans at the request of the neighbors. He stated that a drain will be put in on either side of the

house, and the water will be carried to the wetlands in the front as in the previously approved plans (File#07-05-14a). Mr. Lacy addressed the issue of the decrease in lot width. He stated that they are going from the current width of 110 feet, to 93 feet and thus would be intensifying a nonconformity. Ms. Condon agreed, but stated that they are decreasing the other nonconformities by a great deal. The Board then asked if there was anyone present that would like to speak for or against the application. The Board had previously received two letters of support, one from Mr. Marty Nee at 109 Atlantic Avenue, and the other from Mr. and Mrs. Ralph Dormitzer of 111 Atlantic Avenue. Both Mr. Nee and Mr. Dormitzer spoke in favor of the plans at the hearing as well. **Mr. Goedecke moved to close the hearing. Mr. Higginson seconded the motion, and the vote was unanimous. Mr. Goedecke will draft the decision.**

42 Atlantic Ave. (Peter A. Cundall and Ann C. Stenbeck). Appeal of the Building Inspector's decision that the lot does not have enough frontage. File #07-09-12. Sitting – WC, BL and CH.

This is new appeal. Attorney Richard Henderson addressed the Board and explained the history of his client's application. The previous appeal (#07-06-14b) was denied without prejudice because the Board did not accept the methodology Engineer John Cavanaro used to show the amount of frontage. In this previous decision, filed on September 14, 2007, the Board did determine that Newtonville Road was a street under the definition of "street" in the Town's Bylaws. That being said, this is a new hearing, and all issues are back for determination before the Board. Attorney Henderson reviewed the many interviews he has conducted with town officials, i.e. Finance Director Michael Buckley, DPW Superintendent Carl Sestito, as well as the Assessors office. All of this background, in his opinion, proves that Newtonville Road is a street in every sense of the bylaw, and he added the Board agreed in the previous decision. Earlier in the day, Attorney Henderson had a new plan stamped in at the ZBA office. This plan, Attorney Henderson submitted, shows over 50 feet of frontage; Engineer John Cavanaro feels it is closer to 81 feet. Mr. Cavanaro explained that he measured along the property line and on the edge of the right of way. He reviewed the history of the plan and the methodology he used to come to this calculation, stating that this plan is from 1987 (the original plan being from 1936), but was modified by the Perkins firm in 1999. He researched other plot plans in the area, including one across from 42 Atlantic Ave., the Brown property. This plan goes back to 1898. He also used the plans for 65 and 75 Meadow Lane, the Schramm property, and 1999 Perkins' plan; he stated that by putting them together, you are able to measure to the center of the right of way. He states that when doing this, he still comes to the same geometry and thus the outcome of 80.4 feet of frontage. Board member, Charles Higginson, told Mr. Cavanaro that he was impressed with his research and asked if the 1905 plan showed a delta. Mr. Cavanaro said that the delta was not really relevant; what is important is they hold the center line of Dean Road for the measurement.

Chairman Chittick then asked if anyone else wished to speak. Attorney Walter Sullivan addressed the Board on behalf of his client, abutters Mr. and Mrs. Tim Schramm. Attorney Sullivan stated that he had not seen the plans that were presented this evening by Attorney Henderson and John Cavanaro. He distributed a plan from 1903 to point out where the old right of way existed. He stated that the Schramms now gain access to their property on the new right of way which he states is shown on the 1917 plan (also distributed). He added that the 1917 plan shows the separation of the lots by what was the new road. He said that in 1917, the three owners of what is now the subject property and two neighboring properties agreed to all use the common driveway, which is 15 feet wide, and is shown on the 1917 plan. He feels this shows a pre-existing width. The Board and Attorney Sullivan then had a lengthy discussion reviewing these plans. After much review, members of the Board stated they felt the

plans depicted the area incorrectly. Attorney Sullivan went on to say that there was a deed to John and Elizabeth Dean that was inclusive of what is now the frontage of 42 Atlantic Ave. He feels that this widened the road, and by his interpretation of the bylaw, and by using the rule of the fifteen foot width, he feels it narrows the frontage and that this can be seen in the 1903 plan. The Board questioned this line of reasoning. Chairman Chittick stated that the applicants have filed a plan showing there is over 80 feet of frontage. Attorney Sullivan stated that he felt more research should be done. Chairman Chittick stated that Attorney Sullivan new what was being discussed this evening and could have provided the Board with plans supporting his argument. Mr. Cavanaro then again reviewed, at great length, how he came to the frontage figure. He stated that the 1936 plan was the most compelling. He added that the Perkins plan contains the most monumentation. After a very lengthy conversation about whether or not the hearing should be continued or closed. Attorney Sullivan requested a chance to look at the Cavanaro plans and to draw up his clients' own survey. Attorney Henderson stated that felt that this would be unfair and that the Board should close the hearing. Attorney Sullivan then went in to great detail as to why he feels this case is similar to the Meadow Lane cases that came before the Board previously. Chairman Chittick disagreed and stated that those cases had nothing to do with what is before the Board now. Ms. Stenbeck, the applicant, asked the Board to close the hearing as she felt the Schramms and their attorney knew what was on the agenda and should have presented compelling evidence this evening. She feels this issue has gone on long enough. Attorney Henderson also expressed his concern about how the previous hearing was handled. After further discussion it was decided that the next hearing of the ZBA would be held on November 6, 2007. Attorney Sullivan is to submit his own plans to Attorney Henderson ten (10) days prior to the next hearing. **Mr. Lacy then moved to continue the hearing. Chairman Chittick seconded the motion, and the vote was unanimous (WC, BL and CH).**

DELIBERATIONS

34 Bancroft Road (Vincent and Tracy Longo and Typhoon Realty Trust, LLC) – Order of Remand from the Massachusetts Land Court. File #07-08-13). Chairman Chittick drafted the decision. Chairman Chittick reviewed his draft decision with the Board. **Chairman Chittick moved to approve the draft decision. Mr. Higginson seconded the motion, and the vote was unanimous (WC, BL and CH).**

Chairman Chittick moved to go into Executive Session for the purposes of discussing litigation. They will re-open the hearing only for the purposes of adjournment. Mr. Lacy seconded the motion:

**Charlie Higginson – aye
Benjamin Lacy – aye
Chairman Chittick – aye**

Meeting reconvened and adjourned at 11:30PM.

Respectfully submitted,

Barbara M. Power

Clerk