

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

Others Present: Jennifer Brennan Oram, Assistant Clerk

Chairman S. Woodworth Chittick called the meeting to order at 7:00PM.

HEARINGS

APPEAL – Filed by Susan Sturdy of 374 Atlantic Avenue, appeal of the Building Commissioner’s Decision to not rescind the building permit issued to the owners of 379 Atlantic Avenue. File #09.0707.

Attorney De Lisi addressed the Board on behalf of his client Susan Sturdy. He reviewed the brief he submitted to the Board on September 25, 2009. Attorney De Lisi does not agree with Attorney Humphreys position that the lot in question is legal due to §5.3.2b. Attorney De Lisi stated that he does not agree with this interpretation because the Board has not imposed this interpretation before [§5.3.2b] in other decisions the Board has made. Mr. Benjamin Lacy stated that if you read the Zoning Act, one of the first things it states is that grandfathered lots are legal lots. The Zoning Act goes on to say that those lots are then considered nonconforming. Mr. Lacy stated that when an applicant comes before the Board, they are there for many types of relief. It does not mean that the Board doesn’t consider §5.3.2b and many other sections of the bylaw [just because they are not cited in the decisions]. Mr. Lacy asked Attorney De Lisi if it made more sense for his argument to be that all of the requirements for the Building Permit have not been met. Attorney De Lisi said no, and wants the Board to be aware of a precedent they may set by denying an appeal based on §5.3.2b. Attorney De Lisi feels that the Bransford Case is relevant to this case. Attorney De Lisi feels that the project at 379 Atlantic Avenue requires a Special Permit. He feels the owners should file under §8.7 to raze and reconstruct, because if one isn’t obtained, it is his opinion the owners will lose the benefit of the exemption §5.3.2b. Attorney De Lisi then reviewed their issues with both the shed and the fence located on the property. Attorney De Lisi contends that when the fence was rebuilt in 2001, there was an opening that was relocated during the newer fences’ construction and then the fence blocked Ms. Sturdy’s view. Chairman Chittick asked Ms. Sturdy if the shed that is presently located in the side setback has always been in the same location. Ms. Sturdy could not say if the shed had always been in the same location on the property due to the fence obstructing it.

Mr. Lacy asked if Attorney De Lisi would like to speak to his client’s standing. Attorney De Lisi stated that Ms. Sturdy is presumed to have standing because she is a direct abutter. He feels she is aggrieved because the fence built in 2001 obstructed a view she once had. Ms. Sturdy feels that this lessens the value of her property. Chairman Chittick stated that views have not been protected rights in the Town of Cohasset. Attorney De Lisi cited Dimitrios S. Tsagronis & another v. Board of Appeals of Wareham & others which he feels supports that views are in fact a protected right.

Attorney Humphreys and his client, land owner of 397 Atlantic Avenue, Mr. Larry Gibbons, addressed the Board. He stated that he does not agree with Attorney De Lisi’s argument that the Board would be

setting a precedent by applying §5.3.2b. He agrees with Mr. Lacy in that all of the applicants/decisions listed in Attorney De Lisi's brief were seeking relief under other sections of the bylaw that would have flagged the building permit. Attorney Humphreys stated that he was involved in the redrafting of the 1969 bylaws in 1985. He stated that they were concerned about making pre-existing homes unlawful and that this exemption, §5.3.2b protected those who complied before the new lot area requirements were approved. Attorney Humphreys does agree that the exemption could be lost, but not by razing and rebuilding a structure, but possibly by abandonment after 3 years time. There was then a discussion regarding the shed and whether or not it being within the setback puts them out of compliance thus nullifying the exemption. Attorney Humphreys stated that he does not agree with that as the building permit is not for the lot but for the structure. There was further discussion on this and if the Building Inspector could grant a building permit if the lot was nonconforming. As for standing, Attorney Humphreys does not agree that a loss of view gives Ms. Sturdy standing being that there is a Superior Court finding that states that a view is not a protected right in the Town of Cohasset. His client has the right to put a fence on his property as it a lawful use of the property. He added that the fence is made of stock panels and finials, however if the finials exceed the allowed 6 feet they can take them off. He would like to point out however, that the town does allow for chimneys, cupolas etc.

After a brief discussion, the Board agreed to continue the hearing to allow further information to be filed about the shed, fence and anything else either side would like to file prior to the Board's next meeting. **Chairman Chittick moved to continue the hearing. Mr. Lacy seconded the motion and the vote was unanimous.**

140 Beach Street (Strekalovsky Architecture, Inc., on behalf of the land owner Solstice LLC). Seeks to consider the modification of the decision filed with the Town Clerk on August 6, 2009. File #09.06.12.

This is an advertised and noticed hearing to consider the modification of the existing Special Permit. The application was filed with the Zoning Board of Appeals on June 12, 2009 and the decision was filed with the Town Clerk on August 6, 2009. The applicants have asked to come back before the Board to include all of the provisions of 11.2.4 under the conditions. After an extensive conversation, both the Board and the applicants agreed to leave the decision as written.

DELIBERATIONS

32 Elm Court – (Can Tiryaki Design, on behalf of land owners, Kimberly and Michael Reilly). Seeks to build an addition. Special Permit 09.08.17.

After a brief discussion, **Mr. Higginson moved the Board grant the request for a Special Permit. Mr. Goedecke seconded the motion and the vote was unanimous (Mr. Higginson, Mr. Goedecke and Ms. Kent, 3-0).**

Chairman Chittick moved to adjourn the meeting. Mr. Lacy seconded the motion and the vote was unanimous. Meeting adjourned at 10:15PM.

Respectfully submitted,

Jennifer Brennan Oram
Assistant Clerk, Zoning Board of Appeals