

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

Others Present: Jennifer Oram, Recording Secretary
Attorney Richard Henderson

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

Board Business

Benjamin Lacy moved to approve the minutes of September 4, 2007. Chairman Chittick seconded the motion, and the vote was unanimous.

Chairman Chittick asked that Attorney Tom Callahan be contacted about 16 & 22 Depot Court coming back in before the Board to discuss their “as-built” dimensions.

Appeal – applicant is Eileen Craven of 6 Nichols Road. Appealing the opinion/decision of the building inspector allowing a portion of the property at 198 Jerusalem Road be allowed to be used as a staging area for the municipal sewer system project. File #07-10-15b.

This is a continued hearing. Benjamin Lacy recused himself from this hearing as he is a close neighbor. Chairman Chittick stated that the Board was in receipt of two new documents, both of which were submitted the day of the hearing. The first item was a submission of an opinion written by Attorney Richard Hucksam Jr. of Deutsch/Williams (DW) and addressed to John Beck, the Vice-Chairman of the Sewer Commission. Daniel Coughlin of Coughlin Environmental Services, and Principal Engineer to the Sewer Project, speaking on behalf of the Town addressed the Board and reviewed the opinion from Attorney Hucksam. He stated that the DW opinion essentially supports the argument that both he and the Sewer Commission have already presented to the ZBA, namely that the property located in a residential district which was leased by the Contractor LM Holdings to be used as a staging area for a Town utility project, does fall under §4.2 of the Zoning Bylaws, and that it is an allowed use. Attorney Hucksam also concurs that the Contractor, L&M Holdings, acted within its rights to use residential property as as a staging area for the project as they are acting as agents for the Town of Cohasset. Sewer Commissioner Raymond Kasperowicz then addressed the Board. He stated that no matter what, the job needs to be done, and that sewer jobs are always messy. He said that the current contractor underbid all of the other bidders by one million dollars. If it is ruled that the area needs to be relocated, the contractor will be delayed and these additional expenses, including legal bills, will most likely be passed on to those being sewered by this project. Mr. Kasperowicz said that it is his understanding that the applicants are concerned that the owners of 198 Jerusalem Road profited from the use of their land, and he feels that this should have nothing to do with this hearing. Board member Barbara Power asked Mr. Kasperowicz if it were true that none of the neighbors were notified. Mr. Coughlin interjected that notices were put in the newspaper, but direct abutter notification was not given. Kathleen Hunter then asked Mr. Coughlin a series of questions concerning the documentation used by DW to come to their

opinion. She asked if the Town or any of its agents gave a copy of the utility project contract to Attorney Hucksam for his review before writing his opinion that LM Holdings was an agent for the Town for this project. She stated that one of the main arguments being presented by both him and the Sewer Commission is that the Town is the operator of the staging area acting through its agent LM Holdings. Mr. Coughlin stated that DW negotiated the project contract between the Town and LM Holdings and therefore they already had a copy of the contract. He did not know if Attorney Hucksam reviewed the contract before writing his opinion. She stated that she needs to see the contract to establish what the relationship is between the contractor, LM Holdings and the Town. Mr. Coughlin reiterated that he and the contractor are working as agents for the Town and that he would provide her with a copy of the contract between LM Holdings and the Town of Cohasset.

Mr. Robert Sturdy, of 270 Jerusalem Road, then spoke against the location of the staging area. He said that he also feels the location is very unsafe as large 18 wheeler trucks back up and unload into the staging area, and have also, at times, parked in the street itself, blocking traffic. He feels that this staging area has a large impact on the value of the homes in the area, and that it is not just a NIMBY (Not in My Back Yard) situation: he feels that people pay a lot of money to live in the area and deserve a minimum of disruption. He suggested that the area be moved to the Avalon site (off of 3A). Mr. Wayne Sawchuck of Beechwood Street then addressed the Board. He stated that he felt the Building Inspector had the right to approve this use. He stated that he was asked to investigate locations for the staging area for the Sewer and Water Commissions and that the present location is the best option. He read some excerpts of the lease agreement between the Jenkins and L&M Holding. (A copy of which he will submit for the record to the ZBA). There was then a discussion about what sort of legal discussion should be covered in this hearing, and if Town Counsel should attend.

Attorney Richard Henderson then addressed the Board. He stated that he did not agree with anything that had been presented during this evening's hearing. He feels that where there is no public contract available is a violation of procurement laws. Chairman Chittick then asked Attorney Henderson if he felt his client(s) had standing. Attorney Henderson stated that yes, if someone is aggrieved, or suffers something different than others do not, then they have the right to appeal. Chairman Chittick asked Attorney Henderson to elaborate on his client's standing and to submit it to the Board. Attorney Henderson also stated that he had not seen Town Counsel's opinion that the Town has ultimate operational control over this site. He will be given a copy. Attorney Henderson also submitted a letter to the Board summarizing his position, a copy of which will be given to the Sewer Commission. The Board asked Attorney Henderson for a letter extending the 100 day appeal period; he agreed to do so. **Chairman Chittick then moved to continue the hearing. Mr. Higginson seconded the motion, and the vote was unanimous.**

13 (15) Hill Street (Curt Dukeshire), Seeks to build a two car garage. §8.7.2 – File #07-11-09.

Mr. Dukeshire addressed the Board and explained that when he purchased the property, it had two addresses. He uses the number 13, however the Board will be addressing the property as number 15. Mr. Dukeshire explained that after renovating the entire property, and razing the garage, he is now looking to replace the garage. He would like to build a two car garage further back on the property than the previous garage location. Also, the previous garage sat directly on the lot line whereas the proposed would be moved away from the side line by three feet. Even though the proposed structure would be pushed back from the front lot line, it would still be nonconforming as it sits in the 15 foot sideline setback. Mr. Lacy asked if Mr. Dukeshire knew when the garage was built. He said that the house was

built approximately around 1940, but he was not sure about the garage. Mr. Lacy also pointed out that although the application shows the proposed garage would be three feet off of the lot line, the plans do not reflect this. Ms. Hunter asked if the applicant could possibly build the garage in a different location. Mr. Dukeshire stated that it could be possible, but that to do so, he feels, would interrupt the flow of the house. He also feels that to put it where it was before would not be practical, and he did feel he was pushing it back quite a bit. Peter Goedecke asked how far it would be from the front lot line, and Mr. Dukeshire said that it would be approximately 55 feet. Mr. Goedecke said that if he pushed it back another 20 feet, it would be conforming. He asked if Mr. Dukeshire would consider this. Mr. Dukeshire said he would, but that the garage would be too far from the kitchen, and even closer to the neighbor's house. Mr. Lacy looked at the plans and stated that it appeared that the proposed site is already more than 64 feet from the front lot line, and if it were moved back another 10 feet or so, he would not need relief from the Board. The other option would be to move the proposed one inch from the sideline and rebuild on the footprint. Chairman Chittick stated that if the Board should have time, they would deliberate on this matter later in the evening. **Chairman Chittick moved to close the hearing. Mrs. Barbara Power seconded the motion, and the vote was unanimous.**

88B Beach Street (Mark Ellis), Seeks to raze the existing structure and construct a new single family dwelling. §8.7 – File #07-11-13.

Architect Mark Ellis of 85 Nichols Road addressed the Board. He reviewed the proposed plans for the Board, along with consulting engineer, John Cavanaro of Cavanaro Associates. Mr. Ellis stated that the gross floor area of the existing building is 2,500 square feet. They plan to demolish this and replace it with a proposed new structure of 3,159 sq. ft (GFA). They seek relief because both the lot size and the set backs are nonconforming and they are building in a flood plain. The property is located on a spit of land that goes into Little Harbor; its narrowest point being 44 feet. He stated that they had gone before the Conservation Commission the previous week and that the Commission will be granting them approval to build with no special conditions. Mr. Cavanaro addressed the Board and the issue of lot size. He stated that Engineer Neal Murphy did a complete topographic study of the parcel. Then his firm came out and did a survey on top of Mr. Murphys' and the results were basically the same. Mr. Cavanaro did say that his survey was more detailed in the edge cropping, and that the results show the buildable lot area to be less than 20,000 square feet. Mr. Cavanaro then detailed how they determine the overall coverage calculation, using several variables. In the end, they lose 9,000 square feet, which is shown with the strong dashed line on the site plan. Where there is an issue with coverage, the proposed structure can't be much larger than what exists. He stated that Mr. Ellis has done a great job working with the plans.

Chairman Chittick asked if they were moving out one foot on each side and thus increasing the encroachment, which would then require the applicant to seek a Variance? Mr. Ellis explained that they are trying to shift the structure to make it work. Mr. Cavanaro added that he did feel this was the case as the lot is "funky", and that they are not getting any closer to the front lot line. There was then a discussion about shimmying or shifting the structure to get it more into conformance. Chairman Chittick suggested that the applicant should come in the next month with one of two options: new plans shifting the structure into compliance, or a request for a Variance with present plans.. There was then further discussion about various sub-sections that may or may not take the application away from the need of a Variance. After further discussion, the applicant seemed to be leaning towards going for the Variance. If so, the applicant will submit a revised application which would be re-advertised as such. Attorney Henderson explained that he represented the estate which presently owns the property, and that there

was somewhat of a sense of urgency to get this completed. The Board stated that they envision this being closed after the January hearing, and Attorney Henderson agreed that would be fine. Paulina A. Cowen of 88A Beach Street spoke in favor of the application, stating that she felt the plans were remarkable and she gives her full support. **Chairman Chittick moved to continue the hearing. Mr. Lacy seconded the motion, and the vote was unanimous.**

1 Jerusalem Lane (Heidi Condon, Arch. Designer), Seeks to construct two additions. File #07-11-15.

Chairman Chittick recused himself and left the room. Architect, Heidi Condon, addressed the Board on behalf of her clients, David and Lori Dali.

Ms. Condon reviewed the site plan for the Board. She explained that there are five issues that make the lot nonconforming; the lot area and lot width are both nonconforming. The West setback is 11 feet whereas the minimum requirement is 20 feet. The lot coverage is being increased by steps and a small addition. She believes that these additions are conforming. The second floor addition is the reason they are seeking relief. They are trying to put this addition on while causing the least amount of impact. The current square footage of the house is 2,387, and they are proposing to add 818. The house is currently a ranch style home. The proposed second floor would be over half of the existing first floor. On the side setback where it measures 11.1 feet, she is proposing to add a gutter, so the setback would then be 11.1 minus the gutter. She is also turning the gable. This would make the rear and side elevations, the only nonconformances. The footprint would be increasing by seven feet with a roof deck extending over it. Ms. Condon once again stated that they are before the Board this evening to seek relief in regard to lot coverage. She explained that the present lot coverage is 21.9%, and they would be increasing to 22.8 %, a total increase of only 1%. Mr. Lacy asked if there was anyone in the audience that wished to speak. Mr. Thomas Fallon, of 2 Jerusalem Lane, stated that the addition would adversely affect his view. Ms. Condon stated that Mr. Fallon is up higher than the subject property. Her client, and the land owner, Mr. Dali, then added that he had spoken to all of the neighbors about his plans, even the owner of 3 Jerusalem Lane which is located directly behind them. He stated that Mr. Fallon has his home for sale. There was then a discussion amongst the Board as to why an extension of lot coverage would not make this application require seeking a Variance. Ms. Condon explained that she is proposing to increase building coverage, not structure. The structure on the second floor won't be increasing anything as it is being built on top of the existing house. If the Board feels she needs to remove any part of the proposed plans, she would be willing to do so to avoid having to go for a Variance. **Mr. Higginson moved to close the hearing. Mrs. Power seconded the motion, and the vote was unanimous.**

DELIBERATIONS

42 Atlantic Avenue – Chairman Chittick led a discussion about the matter. He then moved to grant the appeal, overturning the Building Inspector's decision not to grant a building permit. Mr. Lacy seconded the motion, and the vote was unanimous (WC, CH and BP are the voting members on this decision).

66 Nichols Road – Chairman Chittick led a discussion about the matter. He then moved to deny a Special Permit to the applicants. Mr. Higginson seconded the motion, and the vote was unanimous (WC, BP and CH are the voting members on this decision).

609 Jerusalem Road – Ms. Hunter led a discussion about the matter. She then moved grant a Special Permit with conditions. Mr. Higginson seconded the motion, and the vote was unanimous (KH, CH and PG are the voting members on this decision).

Mr. Lacy moved to adjourn the meeting, Chairman Chittick seconded the motion, and the vote was unanimous.

Meeting adjourned at 11:30PM.

Respectfully submitted,

Barbara M. Power
Clerk