

**Members Present:** S. Woodworth Chittick, Chairman  
Peter Goedecke  
Barbara Power, Clerk

**Members Absent:** Benjamin Lacy  
Charles Higginson  
Kathleen Hunter

**Others Present:** Jennifer Oram, Recording Secretary

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

**Zoning Business**

**Wind Energy Bylaw** – Mr. Michael Bliss of the Alternative Energy committee addressed the Board. He explained that the committee has been before the Selectmen (no recommendation made as of yet), as well as the Advisory Committee (who voted in favor of recommendation unanimously). The Planning Board will be holding a public hearing on this bylaw on March 3, 2008. Mr. Bliss is here before the Board this evening to request any comments, suggestions or deletions to the bylaw. Chairman Chittick stated that he had only one comment, and that was about the setbacks. He is concerned that the present setback requirement may not provide enough protection to abutters should a wind turbine fall over. He asked that a calculation be considered to increase the setback enough to cover the height of the turbine as well for an allowance should the device lurch during the fall. Chairman Chittick does feel that this is a safety issue and should be considered. Other than that, Chairman Chittick stated the Board is in favor of the bylaw and hopes that some form of the Bylaw will pass at town meeting.

**Minutes** – Chairman Chittick moved to approve the minutes of November 6, 2007 as amended. Mr. Peter Goedecke seconded the motion, and the vote was unanimous.

**Approval of amended Cohasset Zoning Board of Appeals Policies and Procedures** - Chairman Chittick moved to approve the amended policies and procedures. Mrs. Barbara Power seconded the motion, and the vote was unanimous.

**Assistant Clerk** – Chairman Chittick moved to appoint Recording Secretary Jennifer Oram as the Assistant Clerk. Mr. Goedecke seconded the motion, and the vote was unanimous.

**10 Beach Street (Heidi Condon, Architectural Designer/Land Owner Christina J. Brown). Seeks to add a dormer to rear of existing garage. SP File# 07-12-14.** The applicant has asked to withdraw this application without prejudice. Chairman Chittick moved to approve File#07-12-14 be withdrawn without prejudice. Mrs. Power seconded the motion, and the vote was unanimous.

**Appeal – applicants are Michael and Barbara Mullin of 14 Lamberts Lane. They are appealing the Building Inspector’s Decision to deny their request to rescind the building permit issued to 20-22 Lambert Lane (Kimberly and Angeline Luker owners). File#07-11-19.**

This is a continued hearing. Chairman Chittick reviewed the case and stated that the Board had received a submission from each side the day of the hearing. Attorney Richard Henderson then addressed the Board on behalf of his clients, the appellants, Michael and Barbara Mullin. Attorney Henderson stated

he would first review why his clients were appealing the granting of the Building Permit, and he would then address the issues brought forth at the previous hearing by the land owner's attorney, Attorney Jeffrey A. De Lisi. Attorney Henderson stated that he feels that if you change the nonconformity you lose your right. He said that in this case, the use remains the same, but the lot and the structure are completely different. He added that even if he is incorrect that they don't lose the right, how can they raze the structure, change the lot line and build another house without needing any relief from the Zoning Board? He said that that he does not understand how they got the building permit in the first place. Chairman Chittick asked what Attorney Henderson felt they land owners' could do with the dwelling by right. He stated that he felt they could renovate it and enlarge it in a way that would not impact the setbacks – but he still feels they would need relief under §8.7. Attorney Henderson also addressed Attorney De Lisi's concern in regard to the appellants standing and the timing of their filing. Attorney Henderson stated that his clients were aggrieved and that their rights have been affected by allowing a new nonconforming structure for a two family house in a single family neighborhood. The appellants are concerned about nuisance, diminution of property value and the maintenance value of their neighborhood. Chairman Chittick pointed out that the neighbors which the Mullins testified about at the previous hearing are now gone. As far as the timing of the filing, Attorney De Lisi stated at the previous hearing that he felt the appeal was filed on the 32<sup>nd</sup> day. Attorney Henderson does not agree, and cited the case of Masterpiece Kitchen & Bath v. Gordon to support his reasoning.

Attorney Di Lisi then addressed the Board. Attorney Di Lisi reviewed his brief that was in response to Attorney Henderson's brief written on February 11, 2008. Attorney De Lisi stated that what the Luker's have is a two family use, which will remain the same, and a nonconforming side-yard setback that would be completely eliminated. He stated that the two family house predates the advent of zoning, and therefore is a legal nonconforming use that may be continued without expansion. In addition, the reconstructed structure will comply with all current dimensional requirements of the Zoning Bylaws. He added that the courts want people to reduce their nonconformities [on their properties]. He feels the Cohasset Zoning Bylaws separates use from dimensional use on purpose. Attorney De Lisi then addressed the issue of the appellants being aggrieved. He feels that the reasons cited by Attorney Henderson are not supported by credible facts. As far as the timing issue, he feels that the Mullins did not file the appeal in time, and because of this, the Board does not have the jurisdiction to sit on this matter. He too cites case law in his submission. In summary, Attorney De Lisi stated that his client is the owner of the property and plans on living on the property with her grandmother. He feels that none of the issues that the appellants have cited are credible. He then reviewed his points again for the Board.

Building Inspector, Robert Egan, then addressed the Board and explained why he issued the building permit. He states what the land owners propose to do now meets all of the dimensional requirements, the building is now complying and the use remains the same. It is for these reasons he issued the Building Permit.

Chairman Chittick asked if there was anyone in the audience who wished to speak for or against the application. Cheryl Cox, Kimberly Luker's mother, spoke in favor of the application. She stated that she can't understand why anyone would oppose the plans. Mr. William Polito, of 26 Lamberts Lane, and direct abutter to the subject property spoke in favor of the proposal. Appellant, Barbara Mullin, stated that she did not understand why the land owners couldn't build where the current dwelling is.

Where the submissions from both sides were received the day of the hearing, **Chairman Chittick moved to continue the hearing. Mrs. Power seconded the motion, and the vote was unanimous.**

**Chairman Chittick moved to go into Executive Session for the purposes of discussing litigation. Mr. Goedecke seconded the motion. Chairman Chittick stated that the Board would come out of Executive Session only for the purposes of assigning decisions and adjourning the meeting.**

**Peter Goedecke - Aye  
Barbara Power - Aye  
Chairman Chittick – Aye**

**Chairman Chittick moved to adjourn the meeting. Mrs. Power seconded the motion, and the vote was unanimous. Meeting adjourned at 10:30PM.**

The next meeting of the Zoning Board of Appeals will be held on Tuesday, March 4, 2008.

Respectfully submitted,  
Jennifer B. Oram  
Assistant Clerk