Members Present: S. Woodworth Chittick, Chairman
Charles Higginson
Peter Goedecke

Members Absent: Benjamin H. Lacy
Kathleen A. Hunter, Clerk
Susan Kent

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

SPECIAL PERMIT –Filed by Can Tiryaki of Tiryaki Designs on behalf of land owners Robert Leggat & Sara D'Eathe. Seeks to relocate the garage away from the lot line and add a second story to the garage at 21 Deep Run. File# 09.12.11a. Continued.

Chairman Chittick recused himself from the hearing and left the room. With Chairman Chittick recused, the Board did not have a quorum. However, land owner Robert Leggat addressed the Board and stated that the Applicants planned on requesting a continuance so that their engineering team can complete the plans they are working on. Mr. Charles Higginson and Mr. Peter Goedecke agreed to the continuance.

DELIBERATION

SPECIAL PERMIT – Filed by Donald T. and M. Kelly Conetta. Seek to build an addition and add a second floor at 173A Hull Street. File#09.12.11c.

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

SPECIAL PERMIT – Filed by Architect Steven J. Meyers, on behalf of land owner Paul Tedeschi. Seeks to demolish and reconstruct a single family home at 21 Sheldon Road. File# 09.12.11b. Continued

Architect Steven J. Meyers addressed the Board, along with Mr. and Mrs. Paul Tedeschi . Mr. Meyers reviewed the submission he had filed with the Board, which included Existing, North and East elevations. He also supplied the calculations for the existing and proposed volumes within the setback. Mr. Meyers also informed the Board that since the last hearing, he and the Tedeschis have re-designed the entire building and made it smaller; the height is also lower, with the ridge line now at 34 feet (previously proposed was 36). He explained that by decreasing the size of the building, the volume within the setback would now be less and they are able to pull the building back from the side lot line to 10.7 feet (the existing structure is 7.7 feet from the line). He stated that the changes to the proposed plans 'result {in] an overall reduction in the nonconformity to now be less than the existing conditions, in both the area and the volumetric calculations'.

Chairman Chittick asked if there was anyone in the audience that wished to speak. Ms. Kathryn Alphas-Richlen of 25 Sheldon Road stated that she understood the Zoning Bylaws to read that if someone tears down an existing home, they have to build something that is conforming. Chairman Chittick explained that if the owners wished to tear down and rebuild the nonconforming structure where it stands, they can do so by right. If however, they want to tear down and alter it in any way, they have to come before

the Board. Ms. Alphas-Richlen asked why the applicants couldn't pull the house further away from their property line. Mr. Meyers and Mr. Tedeschi reviewed the reasons for their proposed design, citing that the more they push over, the more it affects many other neighbors' views. Dr. Stephen & Alexandra Alphas also expressed their concern about the house being built so close to their property line. Chairman Chittick stated that the Board has to review whether the proposed reconstruction would be more detrimental than the existing. The Board has to do so under §8.7.2. Mr. Tedeschi then explained that they have chosen to build the garage in its proposed location to help move cars off of the street. He said that currently, the existing parking arrangement causes congestion, and that by having a small driveway and the garage, they can pull the cars off of the street. After a brief discussion, **Chairman Chittick moved to close the hearing contingent on Planning Board recommendations. Mr. Higginson seconded the motion and the vote was unanimous.**

<u>Appeal – Filed by Samuel Hassan of 61 Hull Street, of the Building Commissioner's denial of enforcement action at 59 Hull Street (property owner Mr. James V. Rosano). File #09.12.14</u>

This is a new hearing. Mr. Samuel Hassan, his Attorney Robert E. Kelley and Engineer Neil Murphy addressed the Board. Chairman Chittick requested the applicant review the reason for his appeal and to try and focus on zoning issues. Mr. Hassan is appealing what he views as a lack of enforcement by the Building Commissioner. Mr. Hassan reviewed the history of events, as outlined in his letter that accompanied his application. He stated that his neighbor, Mr. James Rosano, built a two bay garage in 1986 for which he did receive a building permit. Mr. Hassan stated that in 2000 Mr. Rosano added a third bay without a building permit, as well as a second story addition with a full apartment above. Mr. Hassan felt that this third bay addition was an encroachment on his lot line and hired Mr. Neil Murphy to survey his property. He stated that upon completion of the survey, it was discovered that the structure was actually on his property line and was actually a trespass. Mr. Hassan said Mr. Rosano also completed a survey, but that the lot lines do not agree. In 2007 Mr. Rosano removed a 4 foot portion of the structure and then constructed a new end to the building. Mr. Hassan complained to the Building Commissioner about the construction. Mr. Egan confirmed that he did issue a building permit for the demolition of the property. Mr. Hassan also feels that his property value has been negatively impacted by the 30 foot structure that sits within the setback, very near his lot line. Mr. Hassan also stated that he feels Mr. Rosano has an illegal apartment on the property, although he did say that no occupancy permit has been issued. He added that he feels that Mr. Rosano is running an illegal business in a residential neighborhood. Engineer Neil Murphy then addressed the Board and reviewed how he compiled his survey of the Hassan property. Attorney Kelley stated that he felt the Rosanos will not be able to provide any engineering work that is equivalent to the work Mr. Murphy has done. He feels that the work that their surveyor completed was solely to depict the location of the lot line. He added that he feels that Mr. Hassan has presented a very good case and that this is not a case just about a dispute of a lot line, but that there is still a setback violation with the structure.

Attorney Charles Humphreys then addressed the Board on behalf of his clients James and Mary Rosano of 59 Hull Street. He feels that this is a property line dispute and that the applicant is trying to expand the hearing to go beyond that. He feels this is not the forum for a lot line dispute. He then addressed the survey work that had been done for the Rosano property. He said there is a "Surveyor's Report" filed by the Associated Engineers of Plymouth Inc. addressing the determination of lot lines for 59 Hull Street completed in 2006. This was prepared by Peter E. Hale, a very highly regarded engineer, and the work done by Mr. Hale was exhaustive. He stated that the Rosanos hired Neponset Engineering as well. Attorney Humphreys stated that all of the surveys conflict and therefore this falls beyond the scope of the Board and should go to Land Court. Attorney Humphreys then addressed the other issues brought

forth in the appeal. Attorney Humphreys reviewed the history of the garage that was built stating that there was a building permit pulled for the original two bay garage. He stated that the third bay was constructed by 1995 as the apron was poured on August 31, 1995 and marked by Mr. Rosano's grandchildren. He stated he then removed the four foot encroachment which moved the structure back over the lot line determined by Mr. Murphy by over a foot. He feels that the structure has existed since 1995 and therefore the ten year statute of limitations has been exceeded. He also stated that even if no building permit was pulled at the time of the commencement of the construction, no appeal can be filed after a six year period. He feels that building issues are the only issues are the only issues properly before the Board. In regard to the apartment that Mr. Hassan states is above the garage, Attorney Humphreys testified that there is no kitchen, no heat and no hot water in the upstairs. In regard to the statement that Mr. Rosano is running an illegal business, Attorney Humphreys feels that this is not the case, that if anything Mr. Rosano's business would qualify as a home occupation. He stated that Mr. Rosano does all of his work off-site and any materials on the property are tailings of jobs that he has worked on.

Building Inspector, Robert Egan, then addressed the Board and stated that he had met with both sides and reviewed both surveys. In each case the surveys made sense. He stated that he does not have the authority nor the ability to resolve a lot line dispute. In regard to the permits, Mr. Rosano did have a permit for the original structure, but not for the third bay addition. Mr. Egan did address the encroachment and felt Mr. Rosano probably felt he had removed enough, however the only way to tell would be to settle the lot line dispute. In regard to the illegal business, Mr. Egan feels that the items on the property would be considered "incidental storage" similar to what a Lobsterman may do [with his traps]. As for the apartment, Mr. Egan has never been inside the building, so he could not testify to that fact. Members of the Rosano family then stated that there is no apartment and that members of the Board or Mr. Egan could take a look.

Mr. Anthony Emanuello of 75 Hull Street addressed the Board. He stated that he was the first cousin of Mr. Rosano and that he is aware of the history of the property. He stated that he has told Mr. Murphy of a boundary in the street and that if looked in to, could help with the case.

Chairman Chittick asked to hear from the applicant for a rebuttal. Attorney Kelley stated that he feels his client is before the Board properly. He asked the Board strike the survey work provided by Attorney Humphreys and the Rosanos as. Attorney Kelley feels it is a flawed body of work. In addition, Attorney Kelley stated that he has sent a letter to Mr. Hale stating that his work was a defamation of title. After further discussion, **Chairman Chittick moved to continue the hearing. Mr. Goedecke seconded the motion and the vote was unanimous.**

Special Permit – Filed by Heidi C. Condon, of HC Designs, on behalf of land owners, Martin M. and Maria L. Osborne. Seed to build an addition at **22 Spring Street**.

Chairman Chittick opened the hearing. The applicants are seeking relief under §§9.11 and 8.7 and wish to construct an addition. Ms. Heidi Condon addressed the Board and reviewed the history of the home. The applicants are proposing to remove the back portion of the home that is nonconforming, and replace it with an addition that will still be nonconforming, but less so. Mr. Goedecke asked about the elevation of the existing vs. proposed. Ms. Condon stated that the existing is at 14 feet plus and the proposed will be 13 feet. She has designed it so that it steps down, allowing more height inside. In regard to the Flood Plain, all of the living space would be at elevation 13. Anything below would be basement and utility space. There is no basement in the original, and remaining, front portion of the

home. Ms. Condon stated the total net increase will be 272 square feet. The Board asked Ms. Osborne about existing water problems. Ms. Osborne stated that they do have a sub pump, but that she has not seen any water issues (apart from a frozen pipe incident) in the year they have owned it. Ms. Condon filed four letters of support from the following direct abutters, Albert and Paula Meallo, 187 South Main Street, Robert and Jody Butman, 17 Spring Street, James and Kathleen Devaney, 7 Spring Street and Tanya and Joel Rasmussen owners of 18 Spring Street. Ms. Condon added that they go before the Conservation Commission this week, but from their discussions with the Conservation Agent, they feel the application will be approved. **Chairman Chittick moved to close the hearing. Mr. Goedecke seconded the motion and the vote was unanimous.**

Chairman Chittick moved to adjourn the meeting. Mr. Higginson seconded the motion and the vote was unanimous.
Meeting adjourned at 10:45PM.
Respectfully submitted,
Jennifer Brennan Oram
Assistant Clerk, Zoning Board of Appeals