

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

Members Absent: Charles Higginson
Kathleen Hunter

Others Present: Jennifer Oram, Recording Secretary
Attorney Richard Henderson
Attorney Lisa Hewitt
Jeff Barker, 124 Westfield Street, Dedham, MA
Janet Barker, 812 Avalon Drive, Hull, MA
Kristie Henrickson, 2 Jerusalem Lane, Cohasset
Bruce Henrickson, 143 Hampstead Way, Marshfield
Tom Fallon, 2 Jerusalem Lane
Attorney Dennis Ditelberg, 4 Longfellow Place, Boston
K & P Park 294 Jerusalem Road

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

HEARINGS

19 Atlantic Ave.(Barker) – (Appeal of the Building Inspector’s Decision) or SP - #06-04-18. Sitting - wc bl bp pg

This was a continued hearing that the Board has had on its agenda since September of 2005. Chairman Chittick reviewed where the case stood at this point, stating that they have heard a lot of testimony, and are in receipt of much documentation and correspondence provided by the applicant’s attorney, Richard Henderson, as well as the applicant’s abutters’ attorney, Daniel McKinnon. Mr. and Mrs. Westcott, the aforementioned abutters, are no longer represented by Attorney Daniel McKinnon, but are now represented by Attorney Lisa Hewitt. Attorney Hewitt had asked for a continuation at the last hearing to allow her to submit a brief, and to get acquainted with the case.

Attorney Hewitt addressed the Board and informed them that the Westcotts were not in attendance, as they did not want to complicate the issue further. She stated that her clients had tried to do a land swap with the applicants, and had also offered to purchase the lot from the applicants. Mr. Lacy asked Attorney Hewitt to review the Bransford vs. Edgartown Case. At that moment, Attorney Hewitt could not locate the case as it was in a packet provided by Attorney McKinnon, but she stated she would locate it and get it to the Board. Chairman Chittick then asked Attorney Hewitt to review some points from her brief. He stated that in her brief, she refined on abandonment and asked her to review this for the Board. Attorney Hewitt stated that there had been several lapses of more than three years since the home was destroyed by fire. She stated that the idea that the sewer

would be coming, did not give the applicants the right to hold off on building. She went on to say that even after they were granted a sewer hook-up, there was a lapse of nearly four years. There was then a lengthy conversation discussing the payment of taxes and whether or not the payment of taxes showed intent to build. Attorney Hewitt stated that one has to pay the taxes, or they would lose the land. Mr. Goedecke pointed out that if that were the case, then the Barker's could have asked for an abatement. Attorney Hewitt stated that she does feel that after the home was destroyed, the Barker's had the right to build; however she feels that their right was lost to time. She stated that she knows that the Board has a difficult decision to make, but that she feels that if you look at the Bylaws of the Town, the Board will see that §8.9 is not relevant, and that the Board should instead focus on §8.3.

The applicant, Janet Barker, then addressed the Board and explained that after she was given the right to sewer, it took quite some time to get a house plan, get the land appraised, buy out her cousin etc. She stated that when she applied for the Special Permit, it was Building Commissioner Robert Egan that told her to apply under section 8.3, and that she did not understand what that meant at the time. Attorney Henderson then addressed the Board and reiterated certain cases in Town that he felt the Board should once again consider when deciding this case. Chairman Chittick stated that Attorney Henderson and Attorney Hewitt had provided the Board with plenty of documentation. Attorney Hewitt was also able to locate the Bransford vs. Edgartown case and submitted it to the Board. **Chairman Chittick then moved to close the hearing, Vice-Chairman Lacy seconded it, and the vote was unanimous. Mr. Chittick and Mr. Lacy will draft the decision.**

224 South Main Street (Sturdy) - §8.7.2 (construct an addition and replace garage) – SP #06-05-15 – Sitting wc bl bp pg

This was a continued hearing from the previous month. The applicants, Mr. and Mrs. Sturdy, would be speaking on their own behalf, as their architect could not be present. The Board did not find issue with the proposed addition to the main house, they did however, ask if the garage plans could be altered to make the structure conforming. Mr. Sturdy presented the Board with new plans that put the new garage 6 feet from the side setback, and 100+ feet from the front line. Mr. Sturdy stated that the new garage meets all of the required setbacks, and that the new garage is about 20-30 feet bigger than the existing garage to accommodate today's larger vehicles. Chairman Chittick stated that the Board had received two letters that were against the proposed construction. One letter, from neighbors Robert and Logan Bernstein, addressed the size of the construction and the nonconforming issues. Mr. Chittick stated that some of this had been addressed with the new plans for the garage. The other letter, from Mr. and Mrs. Fitzpatrick, the Sturdy's other neighbors, reviewed the water issues they had been dealing with since October of 2005. The Bernstein's letter also addressed a concern about drainage in the area. Mr. Sturdy explained that the PVC pipe that comes out of his garage has been there since before he purchased the house. He stated that the Bernstein property is downhill from his, and the Fitzpatrick property is up hill from him. He stated water drains downhill, so there really is not a lot he can do. If he blocks the PVC pipe, there will be

ponding. He stated that he will make sure that all of the water that is caused by his construction is directed to the Town Drainage (with approval) and that his gutters and sump-pumps will be directed correctly. Chairman Chittick asked Mr. Sturdy that if the Board decides to grant relief for the construction, would he be willing to follow conditions regarding drainage. Mr. Sturdy agreed to address the water issues that he felt he was causing. He stated there was not a lot he could do about the PVC pipe, except to block it up.

Mrs. Fitzpatrick then addressed the Board and explained that she has been to several Boards, including the Board of Health, asking for help with this water issue. There was then a lengthy conversation about where the PVC pipe came from and what should be done about it. Mr. Sturdy stated that when the new garage is built, he would make sure the pipe continued to drain the water and that he would not block it up. The Board suggested that Mrs. Fitzpatrick go to the Conservation Commission for help, and they also suggested that the neighbors should meet and come up with a plan that would make it fair to everyone involved. Mr. Lacy stated that where the pipe was pre-existing, the pipe issue would most likely not fall under zoning. Mr. Chittick stated that Mr. Sturdy could build, as long as he does not make the situation worse. **Chairman Chittick moved to close the hearing, Vice Chairman Lacy seconded it, and the vote was unanimous. Mr. Goedecke will draft the decision.**

Lot 9 on Jerusalem Lane (Henrikson) - §8.3.3 (Appeal of the Building Inspector's Decision) - #06-05-17 – Sitting wc bl bp pg

Attorney Dennis Ditelberg addressed the Board upon the behalf of client, Mr. Richard Henrikson. Attorney Ditelberg stated that he was before the Board seeking approval to build a single family home on this lot. He then reviewed the history of the lot, explaining that it was one of 9 lots that were part of a sub-division plan that was recorded with the Norfolk County registry of deeds on December 10, 1954. This was prior to the passing of the Zoning Bylaws in July of 1955. After the passing of the Bylaws, the lot became non-conforming as it was 20,000 square feet, and not 35,000 square feet as required in that area of Town. Attorney Ditelberg stated that he felt that under §8.3.3, his client was allowed a single lot exemption. He feels that the lot conforms to §8.3.3 and that the lot was in conformity of the area with the Zoning Bylaws that were in effect at the time. He feels that where there were no Zoning Bylaws at the time, then, in his opinion, none would be applicable to the lot. Mr. Lacy then pointed out to Mr. Ditelberg that the applicant's proposed plan for the lot showed a structure with 15-foot setbacks in an area that required 30-foot setbacks. Mr. Lacy went on to say that a single lot exemption under §8.3 gives you a pass on everything except setbacks and coverage, and the proposed plans do not comply with the setback requirements. Mr. Chittick then explained that while the Board agreed with Attorney Ditelberg's argument that §8.3.3 allows his client to construct a dwelling on his lot, his client must put a conforming house on the lot. Given that the plans submitted depict a nonconforming house, the Board cannot uphold the appeal by ordering the building inspector to approve an illegal structure. Due to this fact, Mr. Chittick explained to Attorney Ditelberg that the appeal would be denied. **Attorney Ditelberg then asked if he could withdraw his application without**

prejudice. Mr. Chittick moved to approve the withdrawal without prejudice, Mr. Lacy seconded it, and the vote was unanimous.

380 Chief Justice Cushing Highway (Cohasset Realty Trust/Sovereign Bank) - §6.5.1 (place an illuminated sign on side of building) – Variance - #06-06-02 – Sitting wc bl bp pg

The applicant was not present for this hearing. Mr. Lacy moved to continue the hearing to August, Mr. Goedecke seconded the motion, and the vote was unanimous.

DELIBERATIONS

257 Atlantic Ave. (Davis) - §8.7, 9.6 and/or 9.7 (renovate and enlarge home) – SP - #06-05-17 – Sitting wc bl bp pg – Higginson

Mr. Higginson was not in attendance and therefore Chairman Chittick moved to continue the hearing to August, Mr. Lacy seconded the motion, and the vote was unanimous.

Chairman Chittick moved to close the hearing, Mr. Lacy seconded the motion and the vote was unanimous.

Meeting adjourned at 9:45PM

Next Meeting

The next meeting of the Zoning Board of Appeals will be held Tuesday, August 1, 2006 at 7:30PM.

Respectfully submitted,

Barbara M. Power
Clerk