

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

**Others Present:** Jennifer Oram, Recording Secretary  
Attorney Richard Henderson  
David Calhoun, 2 Sheldon Road  
Attorney Walter Sullivan  
Robert Egan, Building Commissioner

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

### **HEARINGS**

**187 Beechwood Street (Merope Dayos) – seeks to raze existing single-family dwelling and construct new two bedroom home. SP §8.7.2 and §12.4 - #07-05-13 – Sitting wc bl ch bp pg kh – Continued from July 10, 2007**

Attorney Charles Humphreys addressed the Board on behalf of the applicant, Merope Dayos. Engineer, Robert H. Griffin, also addressed the Board. At the previous hearing, the Board asked Attorney Humphreys to look into a few issues, and bring back the evidence back before the Board this evening. He stated he would now review each question in the order they were asked. The first topic discussed was the issue which Board member, Kathleen Hunter, brought to his attention, in regard to lot coverage and how the proposed driveway would affect the total percentage of lot coverage on this parcel. Attorney Humphreys submitted a plan this evening showing that the driveway will be made of gravel. He also pointed out a ledge outcrop on this drawing. The next issue was the issue of safety. Attorney Humphreys stated that the intersection of 3A and Beechwood is very open. He pointed out on the plan that the dot dash line is the property line, and the full line is the highway line and between that, there is vegetation. In addition, the septic system will be elevated on the south side of the property by approximately 2.5 feet, with a retaining wall on the easterly side of the property on the side that faces Beechwood Street. He feels that this provides the secondary purpose of an additional buffer from the traffic at this intersection. He also added that he felt the intersection was very open on this side and that there would very good sight lines. Members of the Board stated that their concern with safety was the reduction in that area of a four lane highway to two, as well as the resident of this property pulling in and out of the property. Attorney Humphreys felt the lights at the intersection would allow for the appropriate time and break in traffic to allow the resident to get in and out of the driveway. Engineer Robert Griffin concurred that both the lights and the stone wall offer safety to the lot. Attorney Humphreys also stated that that the driveway is on a state curb cut, so the state has allowed access to the property in the past. He felt that there should be some documentation showing this and that there should be a state highway layout and will get a copy of this to the Board. Another issue the Board wanted addressed was the building height and elevations and how they meet the bylaws. Attorney Humphreys showed a plan that showed the existing height of the structure at 11.58 feet. There was then a lengthy conversation about the height of the building, after which it was decided the proposed building would be 3 to 3.5 feet higher than what is existing. They also submitted

plans that show all of the elevations. The final issue that needed clarification is in regard to when the last time the building was occupied. Attorney Humphreys stated that it has been difficult to get this information. He did state that ‘a single family home in a single family residential neighborhood is a permitted use and cannot be abandoned as a matter of law’. He stated that the test should be if the building as proposed would be more detrimental to the neighborhood than what is there presently. He does not think so. In addition he feels that the property will be getting a title 5 system, which is an improvement upon the current cesspool. Mr. Griffin also stated that the Conservation Commission has given them an order of conditions. Mr. Lacy agreed that everything about the project is positive, but that he is still concerned about the issue of abandonment. Upon reviewing the definition, he feels that there is a nonconforming use of the building in this instance. Attorney Humphreys disagreed, and stated that it is a conforming residential use: while the lot is a nonconforming residential lot; such has no bearing on use of the building. There was then a lengthy discussion in regard to abandonment. Mr. Lacy feels that this is one of the only issues with the application; certainly there is need for relief because it is a nonconforming building. Attorney Humphreys agreed to deliver a list of when the building was occupied last and the date it could make things clearer in regard to abandonment. **Chairman Chittick moved to close the hearing, with the condition that submission showing occupancy and state highway curb cut are filed prior to the decision being drafted. Mr. Lacy seconded the motion and the vote was unanimous. Ms. Hunter will draft the decision.**

#### **DELIBERATIONS**

**31 Atlantic Ave. (Douglas and Maria Dubiel) seek to relocate driveway – SP §8.7.2 and §8.8. #07-06-14 – Sitting wc bl ch bp pg kh – Mr. Goedecke.**

Mr. Peter Goedecke reviewed the draft decision for the Board. After a brief discussion, **Mr. Benjamin Lacy moved to approve the draft decision as amended granting the Special Permit. Ms. Kathleen Hunter seconded the motion and the vote was unanimous.**

**42 Atlantic Ave. (Peter A. Cundall and Ann C. Stenbeck) – An Appeal of the Building Commissioner’s decision that the lot at 42 Atlantic Ave. does not have frontage. #07-06-14b. Sitting wc bl ch bp pg kh – Mr. Higginson to draft the decision.**

Mr. Charles Higginson stated that he went out to walk the site, with the updated plans updated by John Cavanaro and submitted by Attorney Henderson, and that he could not follow the engineering. He said that he tried to walk the part of the property in question and did not come out anywhere near 113 feet. He would like to understand how the engineer came to that measurement.

There was then a discussion amongst the Board about the area in question to determine where the edge of the right of way was. Mr. Higginson agreed with the Board’s point, and then brought their attention to a 1917 plan having an island. He stated that his draft decision concluded that Newtonville Road is in fact a “street”. Mr. Higginson then reviewed much of the evidence that was submitted. After another lengthy discussion regarding the submitted plans, the Board agreed they need firm evidence that there is in fact fifty-feet of frontage before a decision is drafted. Mr. Chittick suggested a new survey might have to be done if the measurement is ambiguous. Mr. Higginson agreed, but felt that the 1917 plan with the island should be considered, the board concluded that the 1917 plan was not relevant. The Board discussed whether or not the applicant should withdraw given the ambiguity over the amount of frontage and the methodology used. Attorney Henderson stated that he felt he provided the Board what was requested. Mr. Higginson felt he would have to write an opinion that

would deny the application. without prejudice. Attorney Henderson stated that he did not want to withdraw as that would open up the entire case again, and he feels that all of the evidence was in. After much more discussion, Chairman Chittick suggested that the Board deny the application without prejudice and have two decisions drafted (one in detail, by Ben Lacy and a more perfunctory version to be drafted by Charles Higginson). It was voted to continue the deliberation until Tuesday, September 4, 2007.

**2 Sheldon Road – (Kelli Calhoun) – Appeal of the Building Inspector’s Decision Appeal - §5.3 – #07-05-07 Sitting – wc bl ch bp pg kh – Chairman Chittick.**

Chairman Chittick reviewed his draft decision with the Board. **Mr. Lacy stated that he was satisfied with the decision as discussed and amended this evening and that he would like to move to approve the draft decision, as amended, denying the appeal. Ms. Hunter seconded the motion, and the vote was unanimous.**

A brief discussion was held confirming that the order of remand from the Massachusetts Land Court for the Longo decision will be filed and heard at the September hearing.

The next meeting of the Zoning Board of Appeals will be held Tuesday, September 4, 2007 at 7:30PM.

**Mr. Lacy moved to adjourn the meeting. Mr. Geodecke seconded the motion, and the vote was unanimous.**

Respectfully submitted,

Barbara M. Power  
Clerk