

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

Members Absent: Benjamin H. Lacy
Kathleen A. Hunter

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

Board Business

Minutes – Mr. Charles Higginson moved to approve the minutes of August 4, 2009 as amended. Mr. Peter Goedecke seconded the motion and the vote was unanimous.

HEARINGS

APPEAL – Filed by Susan Sturdy of 374 Atlantic Avenue, appeal of the Building Commissioner’s Decision to not rescind the building permit to the owners of 379 Atlantic Avenue. File #09.07.07.

Attorney Jeffrey A. DeLisi, Esquire of Ohrenberger Associates addressed the Board on behalf of Susan Sturdy. Ms. Sturdy lives across the street from 379 Atlantic Avenue. She is appealing the issuance of the Building Permit as she feels that the proposed project needs a Special Permit due to the lot being nonconforming. Presently the owners of 379 Atlantic have obtained a building permit to allow them to raze the existing structure and build a new, larger structure on the lot. Ms. Sturdy also has concerns about the existing fence and one of the sheds on the property. Attorney De Lisi stated that it is their opinion that the fence is taller than the allowed 6 feet. Attorney De Lisi stated that the Building Inspector denied enforcement on both the fence and the shed as he felt they were not a part of the application for the building permit for the main structure. Chairman Chittick stated that the Board would need to deal with the fence and shed separately and should first focus on the appeal of the building permit issued. Attorney De Lisi then quoted various case law that he feels the Board needs to address under this appeal; he referred to both Bransford v. Zoning Board of Appeals of Edgartown and Bjorkland v. the Board of Appeals of Norwell. Mr. Goedecke stated the Board is very familiar with both cases. Chairman Chittick also pointed out that there may be a statute of limitations on both the shed and the fence. Attorney De Lisi would like the shed considered as part of this appeal. Susan Sturdy joined Attorney De Lisi before the Board to address the fence. She stated that the panels alone were 6 feet tall.

Attorney Humphreys then addressed the Board on behalf of the landowners, Conrad and Ellen Gibbons. Attorney Humphreys submitted a brief to the Board entitled “Opposition of Ellen Gibbons, Owner, to the Appeal of Susan Sturdy”. Attorney Humphreys reviewed his submission for the Board. As part of the submission, Attorney Humphreys presented to the Board plans for construction on the subject from 1985 which shows the shed. He added that the present house was built in 1920. It is Attorney Humphrey’s opinion that the bylaw changes that occurred in 1985 in regard to lot size in that zone grandfather the lot in regard to lot size requirement. That zone became the R-C zone and the lot requirements went from 30,000 to 60,000 square feet. He states that this is under section 5.3.2.b the lot is allowed to be nonconforming by a matter of right. Attorney Humphreys also raised issue with standing. He stated that although the law is developing, the abutter needs to show that she is subject to

particularized harm and that a general concern is not enough. Mr. Gibbons then addressed the Board and stated that they have been before the Planning Board and have had a large home review. They also worked with an architect to design the new home. There was then a lengthy conversation about the fence and its height. Attorney Humphreys stated that Engineer John Cavanaro measured the fence and the panels are the standard 5 foot 11 inches, with finials and caps every eight feet. Attorney De Lisi then spoke and stated that he will need to read the brief and write a rebuttal. In his brief he will ask his client to address the shed and the fence. Ms. Sturdy addressed the Board and submitted photos of the fence. She stated that on July 4th she measured the fence and that from the ground it was 81.5 and 75.5 inches tall. She added that during the previous weekend mulch had been delivered and spread. Chairman Chittick stated that it was the burden of the appellant to prove she has been harmed. Ms. Sturdy stated that the fence blocks her view and that it decreases the value of her home. Chairman Chittick stated that views are not a protected right.

Mr. Gibbons stated that the fence is higher to protect it from the lawn mowers and that the fence has been there 10-12 years. He added that the Town records will show the shed has been there since 1998. Attorney Humphreys added that his client is on a deadline and has rented a house for the period of construction. He stated that he did not think Attorney De Lisi needed time to respond to the brief that he submitted at this evening's hearing. Chairman Chittick stated that the Board needs to review what has been submitted and this would allow for further briefs to be filed before the next hearing. Attorney Humphreys and Attorney De Lisi agreed. Attorney De Lisi also agreed to grant the Board and extension of the appeal to November 30, 2009. **Chairman Chittick moved to continue the hearing. Mr. Higginson seconded the motion and the vote was unanimous.**

32 Elm Court – (Can Tiryaki of Tiryaki Design, on behalf of the land owners, Kimberly and Michael Reilly). Seeks to build an addition. Special Permit 09.8.17.

Chairman Chittick recused himself from this hearing and left the room. Mr. Higginson will act as Chairman. Mr. Tiryaki reviewed the proposed additions to the house. The house is similar to others in the neighborhood in that it sits very close to the right of way. He stated that the house presently sits unoccupied and that these additions will make the house habitable. They are proposing two additions one in the rear and one in the front. The rear addition complies with zoning. The front addition does not and is why they are seeking relief. The house is nonconforming in the front and side setback. They are going to rebuild the concrete front and the front porch will be replaced as it is rotted. This will put them only slightly further into the front setback. The bump out on side will still keep them in the side setback, but about 4 feet less into the setback than they are presently. He added that they took into account the massing and used architecture and windows where they could to lessen that affect. The height of the proposed will also be under the existing height of the gable of 25 feet. In regard to lot coverage, they would be increasing this by only 3.1% to a total of 15.1% (30% allowed). Mr. Goedecke asked if they considered a design without the bump out. Mr. Tiryaki said they did, but that they wanted to be able to maintain the stairs and to keep the front entrance to the house where it is. The stairs would allow access to the mudroom and the powder room. Mr. Higginson asked if anyone would like to speak from the audience. Mr. Gary Barrow, the nephew of a neighbor, expressed his Aunt's concern about construction and an existing electric pole. Building Inspector, Robert Egan, stated that where the additions will be exceeding 500 square feet, the Stormwater Bylaw will be triggered. **Mr. Higginson moved to close the hearing. Mr. Goedecke seconded the motion and the vote was unanimous (Mr. Higginson, Mr. Goedecke and Ms. Kent).**

Discussion – Letter from Strekalovsky Architecture re: §11.2.4 – Architect Vcevoid Strekalovsky of Strekalovsky Architecture Inc. and Engineer John Cavanaro of Cavanaro Associates asked to meet with the Board to discuss the Board’s decision for the Special Permit granted with conditions for 140 Beach Street, File #09.06.12. The permit was granted with a condition that “given the requirements of Section 11, the Board requires that , with the respect to the proposed garage: that 1: No more than ten cubic yards of material may be removed from the site during the course of construction in any 365 day period. And 2. All stone quarried from the site and used in the construction of the garage or other site improvements must be shaped or worked on the premises”. Mr. Strekalovsky sent a letter to Chairman Chittick dated August 18, 2009 that stated they had reviewed the decision and ‘discussed it with John Cavanaro and Bob Egan; [and] our opinion is that the rock removal from the site is an “Exempt Operation” under Section 11.2.4 as it is related to building excavation, not quarrying’. Chairman Chittick asked them to explain why they feel they are exempt. Mr. Cavanaro explained that it is their interpretation that the grade is not just what it below the footprint of the structure. He stated that as long as you have a lawfully permitted structure, you can excavate below that as much as you need/want, but you can’t go outside of the footprint. For example, you are exempt of taking the material out if you are making a road. The Board asked how Mr. Cavanaro would define “finished grade”. He stated that he feels that anything being excavated would be below finished grade. The removal of any earth would be below that, what lies on the top is the finished grade. Mr. Strekalovsky added that anything that lies around the building is finished grade and even that varies on each side of the structure. Chairman Chittick and Mr. Goedecke both understand their point. There was a brief discussion regarding the bylaw and that its intention was most likely to address quarrying. The language could probably be updated but that process falls to the Planning Board. Chairman Chittick would like the Vice Chairman, Benjamin Lacy, to hear further discussion on this matter. The Board will reopen the hearing for discussion in October.

DELIBERATION

52 Stockbridge Street (Mark and Abigail Alves). Seek to build an addition within the front setback. Special Permit under §8.7.2. File #9.06.15. After a brief discussion, **Chairman Chittick moved the Board grant the request for a Special Permit. Mr. Higginson seconded the motion and the vote was unanimous (Chairman Chittick, Mr. Higginson and Mr. Goedecke).**

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

Meeting adjourned at 10PM.
Respectfully submitted,
Jennifer Brennan Oram
Assistant Clerk, Zoning Board of Appeals