

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

Member Absent: Barbara Power

Others Present: Robert Scarpello, Esq.
Stephen Bjokland, 150 N. Main Street
Kimberly and Chris McGowen, 154 N. Main Street
Rita and Al Kuolas, 140 N. Main Street
Barbara Wipf, 3 Ripley Road
Patrick Gallagher, 40 Jerusalem Road
Barbara Henderson, 140 N. Main Street
James B. Murray 137 N. Main Street
Christine and John Whoriskey, 6 Ripley Road
Roger Crafts, 156 N. Main Street
Geoffrey Filbey, 134 N. Main Street

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

150 North Main Street (Kuolos and McGowan) - §12.2.3 (Appeal of the Building Inspector’s Letter) #06-06-16 – Sitting w/ bl ch kh pg – Appeal – continued.

Attorney Richard Henderson addressed the Board on behalf of the applicants, Almis and Danguole Kuolas, of 140 N. Main Street, and Christopher and Kimberly McGowan of 154 North Main Street. The applicants are appealing a letter written by Building Commissioner, Robert Egan. In a letter written to Mr. Egan dated May 16, 2006, the Kuolas’ stated that they felt a Zoning violation had occurred in regard to the lot size and multi-family use of the property. They asked that Mr. Egan enforce the Zoning Bylaws under §12.2.2, requiring the property to be used as a single-family residence. Mr. Egan responded in a letter dated May 17, 2006 stating that the Zoning Board granted relief to the owners of 150 N. Main Street under §8.8, which allows the Board to permit the change of a non-conforming use to a specific use “not substantially different in character (or its effect on the vicinity) provided it finds that such change shall not be substantially more detrimental than the existing non-conforming use to the neighborhood”. Mr. Egan went on to say that he felt that although the applicant’s objections were genuine, they were now moot due to the fact that they did not file an appeal to the Superior Court within the 20-day period

Attorney Henderson agreed that the Board duly filed the December 3, 2003 decision. However, he felt that not all issues were addressed, and because of this, the applicant’s had the right to another hearing. Attorney Henderson stated that the applicants still have the right to raise issues and facts that were not brought before the Board at the previous hearings. He stated that a Special Permit couldn’t increase the dimensional allowances.

He also stated that bringing this issue before the Board now is a matter of law, and that it is not barred by the December 2003 decision where it was not part of the decision. He is asking the Board to have a hearing to see if the dimensional requirements have been met.

Mr. Benjamin Lacy stated that he was very troubled by the unfairness that this poses to the owner. He stated the owner followed the procedures correctly, and carried out the changes in the building in good faith reliance on the Special Permit and the resulting Building Permit.

The owner of the property, Mr. Stephen Bjorkland, and his Attorney, Michael Hayes, then addressed the Board. Mr. Bjorkland expressed his concern about this happening now, some 850 days after the decision had been filed. Attorney Hayes then addressed the Board. He said that for the applicants to ask Mr. Egan to enforce zoning at this point was quite frankly a joke.

The Board then heard from several abutters, all of who were against the current state of the property.

Mr. Lacy reiterated that he felt it would be unfair to ask the Board reverse a decision that people relied had upon. Mr. Lacy went on to say that he did not feel the real issue is whether §8.8 was a comprehensive legal basis for granting the Special Permit, or whether §5.3.1 imposes additional dimensional requirements. Attorney Henderson responded by stating that he felt the issue is the scope of what was decided, not the timing.

Mr. Lacy asked Attorney Hayes to speak of the scope of the bylaw. Attorney Hayes stated that the applicants needed to prove that they have been aggrieved by the decision of the Building Inspector. He does not feel that this is the case here. He stated that a Building Permit can be appealed if there are issues with the building not being up to code, but the applicants do not have any standing to bring the present appeal.

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

DELIBERATIONS

7 Border Street (Toomey) §8.7.2 – (construct a second story addition over carport) - #06-07-14 – Sitting wc bl bp ch pg – SP – Goedecke

Mr. Goedecke reviewed his decision. He stated that he wished the Board had required the applicants to come back before the Board with better plans. Chairman Chittick suggested that a condition be added to the decision, which would require that a building permit not be issued until engineer stamped plans are filed with the Building Commissioner and the Board, showing that the proposed second story addition not extend any closer than five feet to the northern side lot line. **Mr. Lacy moved to approve the application under §8.7.2 with conditions, Ms. Hunter seconded the motion, and the vote was unanimous.**

149 King Street (Omnipoint Communications, Inc.) –(seeking to install and operate a wireless communications facility with antennas and cables) §06-07-24 – Sitting wc bp ch pg kh – SP – Chittick

Chairman Chittick reviewed his draft decision. He stated that Mrs. Power had remembered that there were conditions in place from the 1997 decision for when the original tower was built. In the '97 decision, it stated that no building permit would be issued until the abandoned/junk cars on the lot were removed. Chairman Chittick stated that he had gone up to the antennae site and that there were at least five junk cars still left on the lot. The Board agreed that a condition be put into this decision to have Omnipoint work with Sprint and the land owner to move the cars within 90 days, or a Building Permit would not be issued. **Chairman Chittick moved to grant the Special Permit with conditions, Mr. Goedecke seconded the motion, and the vote was unanimous.**

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

Mr. Higginson reviewed his draft decision and stated that he was very happy with the evidence the applicants presented to the Board. He also alerted the Board that in 1995, the ZBA had denied the same application for the bank that owned the same location at that time. However, where the Board had since allowed many other businesses in Town to have two signs, he felt they should grant the Variance. **Chairman Chittick moved to approve the decision as drafted, Mr. Goedecke seconded the motion, and the vote was unanimous.**

48 Stockbridge Street (Mathew and Anna Smith) - §8.7.2 (seeking to construct a second floor addition) - #06-08-14 – Sitting wc bp ch pg kh – SP - Chittick –

Mr. Chittick reviewed his draft decision. After a brief discussion, **Mr. Higginson moved to approve the draft decision granting a Special Permit under §8.7.2. Mr. Goedecke seconded the motion, and the vote was unanimous.**

150 North Main Street (Kuolos and McGowan) - §12.2.3 (Appeal of the Building Inspector's Letter) #06-06-16 – Sitting wc bl ch kh pg – Appeal – continued.

The Board had a brief discussion in regard to this case. Ms. Hunter asked that when the decision is written, that whomever writes it should focus on procedure. The Board agreed. They also agreed to refer to books they have on file, instead of asking for Town Counsel's help. They decided to further deliberate at the next hearing in November.

MINUTES

Chairman Chittick moved to approve the minutes for August 1, 2006. Mr. Lacy seconded the motion, and the vote was unanimous.

The next meeting of the Board of Appeals will be held on Wednesday, November 8, 2006 at 7:30PM.

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

Meeting Adjourned at 9:55PM.

Respectfully submitted,

Barbara M. Power
Clerk