

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

Member Absent: Benjamin H. Lacy

Others Present: Jennifer Oram, Recording Secretary
Attorney Richard Henderson
Attorney Walter Sullivan

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

42 Atlantic Ave. (Peter A. Cundell and Ann C. Stenbeck). Appeal of the Building Inspector's decision that the lot does not have enough frontage. File #07-09-12.

This is a continued hearing. Chairman Chittick reviewed the case for the Board and the audience; reviewing both sides of the argument. Attorney Sullivan and his client, Mr. Goodwin T. Schramm of 28 Atlantic Avenue, addressed the Board. Mr. Schramm read aloud a statement expressing his apologies and reasons for opposing the application of his former neighbors, Mr. Cundell and Ms. Stenbeck. Copy of said letter is on file with the Zoning Board. Attorney Sullivan then addressed the Board and thanked them for having the proponents meet on October 26, 2007. He added that he had submitted a plan which he feels indicates that he has actually overstated the amount of frontage. In his original presentation, he stated that he thought there was 35 feet of frontage. He said that now he believes, with the extensive research done for the chain of title, he feels there is actually 25 feet of frontage. Attorney Sullivan then had their surveyor, Mr. Mirabito of J. D. Gibbs, to address the Board. Mr. Mirabito, reviewed in great detail, the research that had been done to get to this amount of frontage. He feels that it is important to note the locations of the triangle on the plans. He states in all cases, on all of the plans, the triangle has been conveyed out. He states that all of these plans were conveyed by the same person. He feels that this research does show that there is only 28.3 feet of frontage. He then reviewed the 1906 plan and stated that the line is the lot line and that it is also the center of the way. Attorney Sullivan then addressed the Board. He gave a lengthy overview of the evidence and discovery that he has presented throughout the hearing process. He stated that the evidence they have presented confirms that the lines of the intersecting ways, which dictate the length of the frontage, are the same on both the 1906 and the 1936 plan. He feels that the evidence he and Mr. Schramm have presented confirms that the ways which appear on the ground, are not supported by the chain of title documentation. He added that he feels that it was the applicant's duty to provide the Board proof that they have 50 feet of frontage; he feels they have failed to do this.

Attorney Henderson then addressed the Board. In response to Mr. Mirabito he stated that there is a gap in the deed history where the triangle is not conveyed. He added that the 1906 plan, which the opposition relies on so heavily, actually shows a 30 foot gap and does not close. He added that in addition to using the plans, they (the applicants) have done a field study. Engineer John Cavanaro and Registered Surveyor, Brendan Sullivan, also of Cavanaro Associates, then addressed the Board. Mr. Cavanaro stated that they could not disagree more about where Mr. Mirabito feels the property lines are. In addition, two different people did the surveys, Davenport did two plans, and Tower did the 1898

plan. He added that on those earlier plans, the line scale, called for in the deed, is a solid line, after that it becomes a dashed line. These, he stated, are tie lines, and the purpose is to tie down the area of surveyance. Mr. Cavanaro added that if you did run the meets and bounds around the property, you end up with a 30 foot gap. He said they gathered all of the information recorded, and unrecorded, ran a survey and located the nails along Dean Way, as well as the monumentation along the previous lot. In doing so, he said that they established the geometry. He added that one of the rules of land surveying is that 'what is on the ground, holds'. Mr. Cavanaro addressed the island in the road that Attorney Sullivan had referred to. He states that after 1917, the triangle is not on the plan and that shows the Newtonville land as a straight road, thus making the triangle irrelevant. With the island not there, the applicants own to the center of the road, to the center of the way. He then reviewed the plans used by the opposition. He stated that the 1906 plan does not work and could not be fitted to the ground. After another lengthy discussion, **Mr. Higginson moved to close the hearing. Mr. Chittick seconded the motion, and the vote was unanimous (Mr. Higginson, Chairman Chittick and Mrs. Power voted). Chairman Chittick and Mr. Lacy will be drafting a decision.**

66 Nichols Road (Pamela J. Ireland and Michael Mellone). Seek to construct an addition within the setback. File #07-10-09.

The applicants, Pamela J. Ireland and Michael Mellone, along with their architect, Rebecca O'Donnell, addressed the Board. Ms. O'Donnell explained that their intent with these plans is to replace a one car garage with a two car garage, with living space above, and a connection to the existing home. She stated that the garage presently sits on a lower elevation than the house, approximately half-way down from the first floor elevation, and is 9 feet from the sideline setback. The proposed addition is set back 9.6 to 10 feet from the sideline. The garage can't be [side by side ??], so it has to be straight in and there is not a basement, so this addition would provide additional living space and storage which the applicants could use. They explained that they have been working on the design for nearly five years. After further review of the plans, Mr. Peter Goedecke asked what the height of the proposed garage would be. Ms. O'Donnell stated that it is presently 9 feet at the midpoint, but would become 16 feet. She added that the average of the front of the house is 11 feet in height. Chairman Chittick asked why the new garage had to be put where proposed, and why it couldn't be pushed back. Ms. O'Donnell explained that the driveway is quite steep. Due to this steepness, she feels that if the addition is pitched at the proposed angle, and by elevating the slab, they may be able to mitigate some of the flooding issues that exist presently. Also, if they instead built off of the back, it would require blasting through the ledge, which would be cost prohibitive, plus they would also have to remove a septic system that is only five years old. In addition, she also feels that that if they did build off of the back, it would actually be more intrusive to the neighbors. Chairman Chittick read the recommendation of the Planning Board, which stated that they voted 3-1 to recommend the approval of the Special Permit. No one in the audience spoke for or against the application. **Chairman Chittick moved to close the hearing. Mr. Goedecke seconded the motion, and the vote was unanimous (Chairman Chittick, Charles Higginson and Mr. Goedecke voted unanimously; Mr. Lacy was not present for the hearing or vote). Mr. Higginson will draft the decision.**

609 Jerusalem Road (Heidi Condon, Architectural Designer). Seeks to build an addition to the existing home and demolish the existing barn, and construct a new garage. §5.3 and §9.6. File #07-10-15a.

Chairman Chittick recused himself from this hearing. Ms. Heidi Condon addressed the Board on behalf of the applicant, Mr. Ladd McQuade. Ms. Condon informed the Board that the scope of work has been

cut down drastically since filing the application. The applicant will not be demolishing the barn, but instead will be leaving the barn as is, but will renovate it. The applicant does hope to proceed with the planned addition to the existing home. Ms. Condon explained that the home is nonconforming in four areas: lot area, lot width, two setbacks and part of the house is in the flood plain. To improve on the flood plain, they will be putting in a concrete tiered foundation that will allow any flooding to go through. The proposed addition would be going on these concrete tiers and would make the construction compliant with construction in a flood plain. She added that none of the other nonconformities would be changed. It will be a minor adjustment to the existing structure, but with the same roof lines and the height will remain at 27.3 feet. They are proposing a little extra space on the first floor, which would actually improve the existing nonconformity slightly. She stated that the addition is really just a box off the back of the house. The elevation of the existing first floor is 14.5 feet, with a step down into the proposed addition of 14 inches. Ms. Condon added that there is a foundation plan in the packet filed with the application. Ms. Condon will file updated plans showing the slight changes to the existing home, and the removal of the plans for the garage with the Zoning Office. Mr. Higginson, asked if there was anyone in the audience who wished to speak for or against the application. No one came forward. Mr. Higginson then asked Mr. McQuade if he had spoken with his neighbors. He stated that he had, and one neighbor, Mr. Chisholm, was concerned about the work to the garage, but that is now not part of the application. **Mr. Goedecke moved to close the hearing. Mrs. Barbara Power seconded the motion, and the vote was unanimous (Mr. Higginson, Mr. Goedecke and Ms. Hunter voted unanimously; Mr. Lacy was not present at the meeting and Chairman Chittick is recused from this hearing). Mr. Goedecke will be drafting the decision.**

Appeal – applicant Eileen Craven of 6 Nichols Road. Appealing the opinion/decision of the building inspector allowing a portion of the property at 198 Jerusalem Road is used as a staging area for the municipal sewer project. File #07-10-15b.

Chairman Chittick first read a memo from the Planning Board which asked the ZBA to not take any action on the application until they have met with the applicant. Attorney Richard Henderson then addressed the Board on behalf of applicant, Eileen Craven, and neighbor Paula Becker of 185 Jerusalem Road. Attorney Henderson stated that Building Commissioner, Robert Egan, approved the staging area under §4.2 “Community Facilities” which states that the land can be used for “...wastewater treatment, water supply...[if] operated by a town or other governmental agency”. Attorney Henderson feels that the contractor negotiated the use of the property with the property owner and therefore he feels there is no municipal aspect to the contract. He added that he had asked to see the leases and was told that he could not have access to them. He was also told that because of how the lease was set up, no notice need be given to the abutters. Attorney Henderson then read the portion of the contract aloud that states that the Town will not provide a “lay down area”; it is the Contractor’s (L&M Holdings) responsibility to secure a site for their operations. Chairman Chittick asked if Mrs. Craven had standing being that she is not a direct abutter. Attorney Henderson stated that under the Supreme Court ruling 12.3.2 any person who feels they are aggrieved can request enforcement action. He went on to say that Mrs. Craven went to Mr. Egan for enforcement, and he explained to her that he felt it is an allowed use. Mr. Egan then addressed the Board and explained that is it standard practice for private contractors to obtain their own staging areas; particularly a job this large as the Town could not do the work itself. Chairman Chittick then asked if there was anyone in the audience who would like to speak. Mr. Daniel Coughlin, of Coughlin Environmental Services, addressed the Board. Mr. Coughlin explained that he is the Principal Engineer/Project Manager for the utility project. He explained that the staging area is created for him and the contractors; this location is ideally suited for the type and amount of materials

for the project. He added that the contractor in fact works for the Town. Ms. Hunter asked Mr. Coughlin if he thought a contract existed between the contractor and the land owner. Mr. Coughlin stated that he did feel one existed, but did not ask to see it. Mr. Higginson asked Mr. Coughlin if the contractor is supposed to supply him with an office. Mr. Coughlin stated that they do provide it, and that essentially, the trailer belongs to the Town. Ms. Paula Becker of 185 Jerusalem Road addressed the Board. She said that she had seen work being done to the land, then it was being paved and then there were trucks. She said she called Mr. Egan and he told her that it was a municipal project, and that because of this, they would not be given notice of the staging area being put in. She is very upset that she and the other abutters were not notified and that the owners of the property would not answer their questions either. Mrs. Jean White of 190 Jerusalem Road addressed the Board. She stated that Mrs. Jenkins, owner of 198 Jerusalem Road, did notify her about the area going in. Mrs. White said she did feel anxious at first about it, but was assured that at the end of the project, the pavement would be removed and the loam would be put back. She added that the staging area is literally in her back yard, but that she feels it is a convenient location for the contractors and the job. She feels that this is a necessary two year project and that Little Harbor needs to be sewerred. Lena Goldberg of 150 Nichols Road stated that she is very bothered by the fact that no permit was issued and that no notice was given to the abutters. Mr. Murray Campbell, of 217 Jerusalem Road, asked the people who are complaining about the location of the staging area to think of the others in Town. He stated that several hundred homes are going to be sewerred with this project, but if the staging area has to be moved and the job gets held up, it's going to cost everyone more money.

Mr. Coughlin then spoke again adding that this type of project is done through the procurement process and it involves a lot of different rules, including the access to a staging area. Before the job can go out to bid, it has to go through the State to ensure the Town is in full compliance with the procurement laws.

After further discussion, the applicant, Mrs. Craven added that as a property owner, that it just isn't fair. She feels that they must need some sort of Variance.

Sewer Commissioner, John Beck, and resident of 44 Nichols Road then spoke. He stated that he understands why people are angry, but this project needs to be done and it can't be done so without disturbance. He added that once the project is finished, the land will be restored to its prior condition. He encouraged people to call him with concerns and questions. He would like to meet with people to come up with options and how to improve the situation. Thus far he has only heard about how to get rid of it. Chairman Chittick stated that he had heard there was a weekend meeting requested with the neighbors. Mr. Beck said he would be glad to do this.

After further discussion, it was decided to continue the hearing so that the Board could wait for the Planning Board's additional input. The Board also wants to look into the legality issues as well.

Chairman Chittick moved to continue the hearing. Mr. Higginson seconded the motion, and the vote was unanimous.

DELIBERATIONS

429 King Street (Nancy and Tim Garrison). Seek to demolish their existing barn and replace it with a guest house. §8.7.2 – File #07-08-16. The Board discussed the decision to be drafted by Chairman Chittick. **Chairman Chittick moved to draft the decision as discussed, granting the Special Permit with conditions. Mr. Higginson seconded the motion, and the vote was unanimous (WC, CH and KH voted).**

123 Atlantic Ave. (Robert Wilms and Jennifer Schneff). Seek to demolish the existing house and garage, and construct a new home and detached garage. §9.6 – File #07-09-10. The Board discussed the decision to be drafted by Mr. Goedecke. Mr. Lacy not present, Chairman Chittick is recused, and Mrs. Power and Ms. Hunter did not sit in on the hearing. **Mr. Higginson moved to draft the decision as discussed, granting the Special Permit with conditions. Mr. Goedecke seconded the motion, and the vote was unanimous. (Mr. Higginson, Mr. Goedecke voted in favor, and Mr. Lacy who did sit on the hearing, but was unable to attend this evening, was polled before filing and also voted in favor of the decision as drafted).**

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

Meeting adjourned at 11:45PM.

Respectfully submitted,

Barbara M. Power
Clerk