

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

Member Absent: Barbara M. Power, Clerk

Others Present: Jennifer Oram, Recording Secretary  
Attorney Richard Henderson  
Attorney Roberta Sawyer  
Attorney Eric Kupperstein

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

**22 and 34 Bancroft Road – (Vincent and Tracy Longo) §8.3 Appeal of Building Commissioner’s Decision - #06-10-26 – Sitting wc bl ch kh pg**

Attorney Richard Henderson addressed the Board and asked if he could continue the hearing. He stated that during the course of his preparation for the hearing, he discovered that he might be able to apply under §8.8 of the Zoning By-Laws. He stated that if the Board would allow him to continue, he would amend the application as such, and would provide the Board with a letter and a plan depicting the subdivision of the applicant’s property with three residential dwellings. **Mr. Benjamin Lacy moved to allow the continuance. Mr. Higginson seconded the motion, and the vote was unanimous.**

**Lot 5 on Otis Avenue (Philip and Mary Ayer/Attorney Roberta Sawyer) - §12 Appeal of the Building Commissioner’s decision - #06-11-01 – Sitting wc bl ch kh pg**

Attorney Roberta Sawyer addressed the Board on behalf of her client’s, Philip and Mary Ayer of 28 Otis Avenue. Attorney Sawyer began by reviewing the history of Lot 5 including the fact that on July 7, 2004, the owners of Lot 5 filed a plan with the Planning Board entitled “Plan of Land in Cohasset Prepared for Villa Lisa Realty Trust”. The Planning Board discussed the plan on July 14, 2004, and at that meeting, the Planning Board unanimously voted to deny the ANR endorsement because the lot did not have the required frontage on an appropriate way that could provide access to the lot. However, the Planning Board failed to file the denial of the plan with the Town Clerk’s office in the required time, and therefore the applicants (owners of Lot 5) were granted their ANR by default. Attorney Sawyer stated that she agreed with this result, but that she was at the proceedings this evening to appeal the Building Commissioner’s lack of enforcement of the Zoning By-Laws on Lot 5. Mr. Lacy then interjected and asked Attorney Sawyer to explain to the Board what Zoning By-Laws had been violated by the Building Commissioner. Attorney Sawyer stated that she asked the Building Commissioner to make a decision and enforce the Zoning By-Laws in regard to frontage requirements in Residence District B, where Lot 5 is located. Mr. Lacy stated that where the Building

Commissioner had not issued a Building Permit, did she and her clients really have any standing to be before the Board? He stated that the grounds to come before the Board would be if the Building Commissioner did something detrimental to the applicants. Attorney Sawyer stated that the owners of Lot 5 had begun making the necessary steps to develop the parcel. She stated that they had been granted a Sewer hook-up, so the next step would be to file for a permit. She stated that she had a right to be before the Board due to the fact that the Building Commissioner failed to act upon on her request for enforcement. Attorney Sawyer also stated that her clients have been aggrieved by a sign that has been displayed by the owner's of Lot 5 stating that it was a "Buildable Lot For Sale". She stated that the sign has scared away several potential buyers of her client's property. There was then again another lengthy discussion between Attorney Sawyer and the Board about whether or not her clients should be before the Board. The Board then asked Attorney Sawyer to present her case and to review the conveyances of the road itself. Attorney Sawyer then reviewed, in great detail, the history of the lot, going back to 1909. She reviewed the location of the street in relation to the lot, and stated that Otis Avenue did not meet the Cohasset Zoning By-Law definition of a "street". She stated that Otis Ave. was not a public way, but a private way and was not made for vehicular use. Therefore, she went on to say, Lot 5 could not be a buildable lot, as it did not meet the requirements of frontage on a "street".

The Board then asked the owner of Lot 5, Attorney Eric Kupperstein, to present his case. Attorney Kupperstein stated that he agreed with the Board that you have to be aggrieved to have the standing to come before the Zoning Board. He stated that he did not feel that the Ayers had been aggrieved. Mr. Lacy then asked Attorney Kupperstein if he felt that Otis Avenue was a "street" by definition of the Cohasset By-Laws. Attorney Kupperstein stated that he did, and that the ZBA also referred to it as such in two recent written decisions. He stated that historically speaking, there were two homes that were located beyond Gardner Road, and the Ayer's property, and people had to get to them via a street. Mr. Lacy pointed out that although people may have used that road to gain access to those houses, it could still be seen as a private way. Mr. Lacy also stated that in those previously written decisions, the author may have used the word "street", but meant to say "way". Either way, Attorney Kupperstein stated that he had an approved ANR and that the Ayer's had missed their time to appeal. He went on to say that the Zoning Board did not have the jurisdiction to hear the applicants' appeal, which is basically an appeal of the Planning Board's endorsement of the ANR plan. Attorney Kupperstein then listed cases that he felt supported this view.

Chairman Chittick then asked Building Commissioner, Robert Egan, what the situation would be if he wrote a letter with his opinion about the lot. Mr. Egan stated that if he wrote a letter giving reasons as to why the lot could or could not be buildable, it could either clear up the issue, or make it more confusing. Mr. Egan stated that the only question that he feels that is before the Board, besides the issue of whether anyone has been aggrieved, is the question of whether the lot has enough frontage to be considered buildable. He thought that it was important for both the applicants and the owners of lot 5 to have that answer, and that is the reason he referred them to the Board. However, Mr. Egan went on to say, if the Board feels that the only thing that would move this forward,

and would make it legitimate for this to be before the Board, is if a building permit were to be issued and then denied. With that being the case, it would be Mr. Kupperstein who would have to initiate that action. Chairman Chittick gave a hypothetical account of what would be the case if Mr. Kupperstein waited five years to apply for a building permit. Mr. Chittick asked Attorney Sawyer that if that happened, would she feel that her clients were still aggrieved? She answered that she would. Chairman Chittick stated that as Ms. Hunter had pointed out, the Ayers might be aggrieved in some other way, but no zoning violations have occurred. Attorney Sawyer stated that her client is in an impossible situation and that she is trying to enforce the provisions of the Zoning By-Laws and the provisions of Mass General Law because the Town's Planning Board failed to protect her client's rights. Attorney Sawyer said that she had consulted with Attorney Saillant, of Deutch/Williams, and that Attorney Saillant said that this was the best way for Attorney Sawyer to proceed. Attorney Sawyer went on to say that she felt that her clients had a right to receive a decision from the Zoning Board, and not one where the Board says that they cannot make a decision as no one has been aggrieved.

Mr. Lacy stated that the Board would need to deliberate on this case and that some sort of action should be taken. Attorney Kupperstein stated that he feels that the ANR endorsement stands and that he has a right to build. He went on to say that the Ayers do not own Otis Avenue, and therefore their legal rights have not been infringed upon. He stated that the Ayers have to show a legal instance where they are being aggrieved, and therefore he does not feel the issue can be referred to the ZBA without something being appealed. He said by doing so, it muddles up the appellate process. Board member, Kathleen Hunter, asked Attorney Kupperstein if he planned on applying for a building permit in the near future. He stated that he did not and that he felt forced to be before the Board.

Attorney Sawyer rebutted by saying that her clients have been in litigation with Attorney Kupperstein for over eight years over a parcel of land. This issue was settled in August of 2006, and the court ruled that the parcel did belong to the Ayers. She stated that right after the case was settled, Attorney Kupperstein put the sign up on his property. She stated that due to this, coupled with the fact that she feels Mr. Egan failed to enforce the Zoning Bylaws, she feels she and her clients have the right to be before the ZBA.

Chairman Chittick thanked both Attorneys for their submissions and stated that they both did an excellent job. **Mr. Lacy moved to close the hearing, Mr. Goedecke seconded it, and the vote was unanimous.**

**Chairman Chittick moved that the Board approve the minutes for the October 3, 2006 meeting as edited. Ms. Hunter seconded the motion, and the vote was unanimous.**

The Board set the next meeting date for Wednesday, January 3, 2007 at 7:30PM.

The Board then briefly deliberated on the hearing for Lot 5 on Otis Avenue. The Board wanted to decide first if the applicants had standing. Ms. Hunter suggested that the

Board focus on procedure, and stop at that. After a lengthy discussion, it was decided that Chairman Chittick would draft the decision with the opinion that there has been no appealable action.

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

Meeting adjourned at 10:30.

Respectfully submitted,

Barbara M. Power  
Clerk