

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

Members Absent: Benjamin Lacy
Kathleen Hunter

Others Present: Attorney George Marlette, 9 Brook Street
Vince and Tracy Longo, 22 Bancroft Road
Betsy Keefe, 3 Stanton Road
J. Stephen Bjorkland, 15 Litchfield Lane, Scituate
John Monahan, 72 Sharp Street, Unit C-14, Hingham
Paul and Michael Antico, 124 Atlantic Ave.

Chairman Chittick called the meeting to order at 7:35PM.

HEARINGS

22 and 34 Bancroft Road (Vincent and Tracy Longo) - §8.3 (Appeal/Special Permit §8.8 of Building Inspector’s Decision). #06-10-26 – Sitting w/ ch pg.

This hearing was continued from the previous month at the request of the applicant’s attorney, Richard Henderson. Attorney Henderson addressed the Board and explained that he was there to appeal a “non-action” by Building Inspector, Bob Egan. The “non-action” was the decision if there were in fact three buildable lots on the applicant’s (the Longo’s) property. In his original application, Attorney Henderson had appealed that “non-action”, however, while he was doing research for the case, he came upon evidence which prompted him to amend the application and file it under a Special Permit under §8.8 and §8.7b which he felt gave the applicant’s the right to appeal the decision under those sections. Attorney Henderson reviewed the updated plans that he submitted along with the amended application. He explained that they were there to discuss the Longo’s 98,000 square feet of land, lots 22, 23 and 24, all of which are all located on Bancroft Road. All of the lots are locate in Zone R-B, which requires 35,000 square feet for a single-family home. Attorney Henderson then reviewed the history of the title in great detail. Attorney Henderson discovered that in 1947 Mr. Simeone deeded 50.3% of lot 23 to the Scott family. This means that they added half to one parcel, and the other half to the other parcel (22 and 24). By Mr. Simeone dividing this, it created two lots. The Simeones also owned lot 24. Attorney Henderson focused his argument on Lot 23, as that was the lot that held the two family residences. Attorney Henderson submitted the Town Report from 1954, which showed that both of these lots had single-family dwellings on them. In 1974, the Town records show a third adult living with the Simeone family, and they did so through the eighties. In 1981 there was report filed by an engineering firm with the building department, which certified that the septic system was

adequate enough to support a two-family dwelling. In January 1985, to present, the Town Reports show two surnames, and the Longo's are currently renting out both units on this property. The 2006 Assessor's records list the property as a legal two family dwelling. Attorney Henderson stated that this was important to note because between 1974 and 1985, there was a 20,000 square foot minimum requirement for a single-family home and for a conversion to a two family home, there was an additional 7,000 square foot requirement, for a total of 27,000 square feet. He explained to the Board that this lot actually had 43,092 square feet, which made it a legal two family dwelling up until April of 1985, when zoning changed and then required 35,000 square feet for a single-family residence, and 48,000 square feet for a two-family residence in this district. So today it is legal nonconforming two-family property. He stated this fact was also important to note because he is trying to expand, alter or change the nonconforming use of this property. He stated the Longo's currently own three lots, consisting of 98,734.30 square feet. In 2005, the Longo's submitted a plan to the Planning Board that created three separate lots on this property. The Planning Board approved the sub-division process. Attorney Henderson stated they are there tonight to see if in fact there are three buildable lots on this property. The breakdown of the proposed lots is as follows: lot 3 (the Longo's home), is made up of 35,000 square feet and is conforming. Lot 2 has a dwelling on it that will be razed, and a new building is proposed in the setbacks. Lot 2 is also 35,000 feet and conforming. It's the third lot, Lot 1, which is 28,000 square feet, that is non-conforming and the main reason they are seeking relief under a Special Permit. Based on all of the facts he has presented, Attorney Henderson does feel that it is a Special Permit application. He does not feel the proposed plan is detrimental to the neighborhood. He feels that it would raise the values in the neighborhood, and they would not affect parking nor traffic at all. The two existing structures are on sewer, and the third would hook-up, so there is no environmental concern. Chairman Chittick asked what the footprints and square footage would be for the new homes. Attorney Henderson explained that they did not have exact plans yet, and that they would probably be increasing in size, but he felt that the new homes would not only be more conducive to the neighborhood, but an improvement. Chairman Chittick responded that it's one thing to subdivide a lot, but it's another to subdivide and create a non-conformity. Board member Charles Higginson asked if Attorney Henderson would put his presentation in writing as it contained many facts. Attorney Henderson agreed to do so. **Chairman Chittick moved to close the hearing with conditions, Mr. Higginson seconded the motion, and the vote was unanimous.**

3 Stanton Drive – (Elizabeth M. Keefe) - §15 (Accessory Dwelling) – SP - #06-12-07
– Sitting wc ch pg – SP

Ms. Keefe addressed the Board and reviewed her plans for 3 Stanton Drive. She explained that she hoped to rent out a quarter of the house, and that she would occupy the other side of the home. Ms. Keefe explained that she has lived at the address for fourteen years while she took care of her mother. Ms. Keefe stated that adding an accessory dwelling would help financially, thus allowing her to continue living there. Peter Goedecke stated that the only item missing from her application was the elevations. Ms. Keefe explained that nothing was changing on the outside of the house, so elevations

were not necessary. She then reviewed the plans for the Board. Mr. Higginson asked where the tenant would park, to which Ms. Keefe explained that there was a two-car garage, and the tenant would receive one of those spaces. Ms. Keefe also presented the Board with letters of support from all of her abutters. **Chairman Chittick moved to close the hearing. Mr. Goedecke seconded the motion, and the vote was unanimous.**

75 Meadow Lane (applicants Raymond and Susan Tehranian of 132 Atlantic Ave.) (Appeal of the Building Inspector's decision to grant a building permit for 75 Meadow Lane). #06-12-05 – Sitting wc bp pg – Appeal

Attorney Bruce Issadore addressed the Board on behalf of the applicants, Raymond and Susan Tehranian, of 132 Atlantic Ave. Attorney Issadore stated that he also represented Julia Riihimaki, owner of 130 Atlantic Avenue, although she would not be present. Attorney Issadore explained that the land in question has been before the Board before when it was owned by John and Mia Dean. He explained that the Deans do not own the property any more, but when they did, they came before the ZBA in 1987, and asked for the their lot to be divided. He stated that they did not have enough land to be divided under Cohasset Zoning Laws however, they were able to avoid the sub-division control law on the basis that the cabin and the house (buildings) that were on the lot at that time, were pre-existing the establishment of the sub-division control law in Cohasset. Nothing was done with this ruling. Attorney Issadore presented the 1999 plans to show that the referral of the sub-division of lots is the same as the 1987 plan. He said that the difference was maybe 150,000 square feet for both lots. Now the current owner, GMR Trust, came along with another plan that was essentially the same division of the land. One lot of the land, actually the one in question, is 43,000 square feet, and the other is 63,000 square feet. He went on to say that Meadow Lane is a very private road, and that litigation had to occur to determine who could use the Lane. At the end of this litigation, the final decision of the Land Court stated that John Dean's use of the land had no recorded rights to use Meadow Lane to get to Atlantic Avenue. Mr. Dean was found to have a prescriptive easement to use the road. Attorney Issadore explained that Meadow Lane actually passes through the Tehranian property, as well as many other properties on Meadow Lane. In a later decision, Building Commissioner felt that Lot 3 was had no rights to use Meadow Lane, and because of this fact, Mr. Egan denied a building permit on this lot. Meadow Lane trust appealed the denial of the building permit, and they then came before the ZBA at which time the Board affirmed the denial, and indicated that Meadow Lane is not a street for purposes of frontage under the Zoning By-Laws. Attorney Issadore then explained the many reasons why he and his clients feel that it was improper for Mr. Egan to issue the permit. First, even if the Planning Board endorsed an ANR, it does not give the land Zoning or buildability status. He said that the plan approved in 1987 was not relevant as there is a new plan today. He also didn't understand how the Planning Board approved the ANR where he did not see enough land area or frontage requirements. The second item is in regard to the definition in the Cohasset Zoning By-Laws of "street". He stated that Meadow Lane is not a roadway that is commonly used for public way purposes. Chairman Chittick pointed out that the owner's of the land would have some sort of prescriptive right to access their land/house(s). Chairman Chittick then asked how frontage would play in to a right of

access. Attorney Issadore stated that with the 1987 plan, you would have had the same question about frontage, and you would also have to see if the lots could be divided. Chairman Chittick said that he thought the judgment in the case stated that the Dean's had a right to access both lots. Attorney Issadore said it was not clear, but that any use would put strain on the Tehranian property. Attorney Issadore then went into a lengthy description of what could happen if people could always divide their land. He felt that if this type of division were allowable, Mr. Dean would most likely have sold off these lots to get him out of the extensive debt that eventually forced him to lose his property. Finally, Attorney Issadore pointed out that he feels the current owners are not only creating a nonconformity, but he also feels that the land will not perk. He stated that GMR Trust is relying on Town Sewer to come down Atlantic Avenue. He said that no one has the right to bring Sewer down Meadow Lane.

Chairman Chittick then asked to hear from the owner of the land. Attorney Arnold Cohen addressed the Board on behalf of his client, Mr. Steven Ross. Attorney Cohen first submitted a copy of the Supreme Court decision that addressed the right to use Meadow Lane, and gave a copy to the Board. In that decision, Attorney Cohen stated that the court found an access through and easement to the two lots that are in the plan from 2006. Attorney Cohen then addressed two of the points that Attorney Issadore presented to the Board. One issue was the ANR plan that was approved by the Planning Board in 1987. Attorney Cohen stated that there has been additional form A plans in 1988, 1999 and then the most recent in 2006. The one from 2006 reconfigured the lots as they are now. Attorney Cohen had copies of the 1988 and 1999 ANR plans and according to those plans; they leave dwelling units on each parcel. On the most recent plan that Robert Egan approved takes the lots and puts two dwellings on Lot A. Attorney Cohen also alerted the Board that the cabin on Lot A has been placed under a seasonal use restriction. This restriction was recently placed on the cabin, and was at the request of the Sewer Commission. Attorney Cohen referred to the current plan and showed that it takes the existing house, that is nonconforming, as it does not meet the setbacks, and relocates it to now make it conforming. The lot is still nonconforming, but the dwelling would be conforming. Attorney Cohen submitted that given the fact that they are not adding any new homes, and that the new home they will be building is conforming, and the cabin is a guest-house, he feels there is no zoning violation. Attorney Cohen went on to say that he feels his client meets §5.4.4. He stated that there are three consecutive lots, all owned by the same person and under the same title. The total square footage of the lots is well over 180,000 square feet. So even if one of the lots is 44,000 square feet, he feels it is a complying lot under the provisions of the Cohasset Zoning Bylaws. There was then a lengthy discussion about the Planning Board and the granting of the ANR based on frontage. Attorney Cohen stated that he felt that frontage was a prerequisite for approving an ANR. In summary, Attorney Cohen asked to submit a memorandum and additional exhibits to address points brought up by Attorney Issadore. He went on to say that he felt the Building Commissioner had acted correctly by granting the building permit for this lot.

Chairman Chittick asked that both Attorneys to submit any additional briefs at least a week before the next hearing.

Attorney George Marlette addressed the Board on behalf of his clients, Paul and Michele Antico, who reside at 124 Atlantic Ave. He stated that he was there to monitor the proceedings and that he would like to go on record as supporting the position of Attorney Issadore and his clients. Mr. Jim Schramm of 28 Atlantic Avenue also addressed the Board. He explained that he was not an abutter, but a neighbor, and that he is concerned about the environment in that area. He stated that the area is full of wetlands and that he could not imagine a title 5 being approved. Building Commissioner, Bob Egan, then addressed the Board to give a historical account of the property. He said that when the Dean's went before the Planning Board in 1987, he did not believe that the Board put a lot of emphasis on the definition of frontage because they saw it not as an ANR plan where you would take a large piece of land and create conforming lots. Instead, he feels they looked at it as an existing lot with two houses and that it did not necessarily have to meet the definition of frontage in the Bylaw because the dwellings existed. He said he feels that the recent plan approved by the Planning Board looked at as a re-division of the lot lines. He suggested that the Board invite Al Moore and/or Bob Sturdy of the Planning Board to come in and give their recollection of what they approved. John Dean then addressed the Board. He stated that the Planning Board unwittingly approved a third lot. He went on to say that what is happening up on his former property is breaking his heart. **Chairman Chittick moved to continue the hearing. Mrs. Power seconded the motion, and the vote was unanimous.**

698 C Jerusalem Road (Carol Graham) - §8.7 (construct a second story addition) – SP - #06-12-11 – Sitting wc ch pg bp – SP

The applicant's husband, Mr. Jay Graham, addressed the Board. Mr. Graham explained that they had purchased this structure that was nonconforming, and that they hoped to build upward to expand the property to make it more livable. He explained that currently the home had two small bedrooms upstairs, a tiny bathroom and very steep, dangerous set of stairs that went up to the second floor. Mr. Graham explained that they were planning on staying with the existing footprint, but would build up, increasing the height from 20 feet to 24 feet. Mr. Graham also submitted a survey done by John Cavanaro showing the lot coverage at 18%. Mr. Graham stated that the neighbors were very happy to see the improvements as the house had fallen into such disrepair. Mr. Higginson asked that they make sure the front porch did not extend over where it already was. Mr. Graham agreed, and stated they were putting in a second door in that location to give the house to points of egress. **Mr. Higginson moved to close the hearing. Chairman Chittick seconded the motion, and the vote was unanimous.**

DELIBERATIONS

Lot 5 on Otis Avenue (Philip and Mary Ayer/Attorney Roberts Sawyer) - § (Appeal of the Building Commissioner's Decision) - #06-11-01 – Sitting wc bl ch bp kh pg – Appeal.

Chairman Chittick reviewed his draft decision. **Mr. Goedecke moved to approve the decision as amended. Mrs. Power seconded the motion, and the vote was unanimous.**

Minutes

Chairman Chittick moved to approve the minutes for November. Mr. Goedecke seconded the motion, and the vote was unanimous.

Chairman Chittick moved to adjourn the meeting. Mrs. Power seconded the motion, and the vote was unanimous.

Meeting adjourned at 11PM.

Respectfully submitted,

Barbara Power

Clerk

The next meeting of the ZBA will be held on Tuesday, January 30, 2007 at 7:30PM.