

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

Member Absent: Barbara Power, Clerk

Others Present: Jennifer Oram, Recording Secretary

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

Board Business

Mr. Benjamin Lacy moved to approve the minutes of October 2, 2007 as amended. Chairman Chittick seconded the motion, and the vote was unanimous.

The Board agreed to vote on additional minutes, as well as the rules and procedures at the next meeting of the ZBA on Tuesday, February 12, 2008.

Forest Avenue Enforcement Action – Chairman Chittick reviewed the background of this issue. Building Inspector/Zoning Enforcement officer, Robert Egan, asked the Board to hear the case even though proper filing procedures were not followed by Mr. Charles’ attorney. Town Counsel advised against this. The Board discussed this briefly and decided not to hear the appeal as they did not want to set a precedent. Chairman Chittick will ask Mr. Egan to move forward with the enforcement action.

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

This is a continued hearing. Mr. Lacy recused himself and left the room. Chairman Chittick stated that the Town/Sewer Commission had submitted to the Board a document entitled “Memorandum of Agreement” which was signed by the Town, LM Holdings and the Jenkins, the lessors of the residential property being used as a staging area for the project. He asked that the people representing the Town address the Board. Mr. Daniel Coughlin, of Coughlin Environmental Associates and Principal Engineer on the Utility Project, addressed the Board. Mr. Coughlin stated that he had a copy of the full contract delivered to Board member Kathleen Hunter’s home. He went on to review what had been submitted thus far, and then explained what he believed the Memorandum of Agreement represented. He stated that he had the agreement drafted to clarify the intent of the parties involved in the residential property being leased and used as a staging area for the project. He went on to say that the staging area would not exist if there was no project. Ms. Hunter then addressed Mr. Coughlin. She asked why the Board had not seen the contract between the contractor, LM Holdings and the Jenkins. It was clarified that Mr. Wayne Sawchuck was supposed to have submitted this to the Board, but had not. Ms. Hunter then asked Mr. Coughlin many questions about the Memorandum of Agreement and how it differed from the Town/LM Holdings contract. There was then a very lengthy conversation amongst the members of the Board, led by Ms. Hunter about who had operational control over the staging area according to the Town/LM Holdings Contract. Ms. Hunter read portions of the Town/LM Holdings Contract which she believed could be interpreted to mean that the Contractor, LM Holdings was not an agent of the Town

on this Project. In particular, she read to the Board and the attendees of the hearing from the Town/LM Holdings Contract the following clause “Article 9: STATUS OF CONTRACTOR, 9.1 Contractor shall be regarded and shall act in the relation of an independent contractor to the Town, and Contractor is to have the entire charge, control and supervision of the Project in accordance with this Contract.” Ms. Hunter stated that if the Memorandum of Agreement differed from the Town’s and LM Holdings’ Contract regarding whether the Contractor LM Holdings was an agent for the Town and the Memorandum of Agreement contained a clause which stated that the Memorandum of Agreement did not amend the Town/LM Holdings Contract then the Memorandum of Agreement has no effect on the Town/LM Holding Contract. Mr. Goedecke, Mr. Chittick and Mr. Higginson stated that they did not agree. Chairman Chittick then asked Attorney Henderson to address the Board. Attorney Henderson stated that he felt the Memorandum of Agreement was useless. He said that he really didn’t have anything to add. Ms. Hunter then asked Mr. Higginson if he felt that the Memorandum of Agreement was an amendment to the Town/LM Holdings Contract. He stated that he did. There was then a lengthy conversation about whether this new document would amend the existing contract. Ms. Hunter stated that she had written many public construction contracts and that the Memorandum of Agreement did not change the terms or the meaning of the Town/LM Holdings Contract. Much more conversation was held about the Town/LM Holdings Contract, and how or if this amendment changes the situation.

Attorney Henderson then stated that he did not feel the contract violated the procurement laws. What he does feel is incorrect is that when they [the Sewer Commission] stated that it [the staging area] was operated by the Town. Mr. Coughlin reiterated that the staging area is required as part of the contract and that the contractor is compensated for the site by the Town. The appellant, Mrs. Craven, stated that when she had come to Town Hall asking questions, she was referred to L&M Holdings. She does not see how the Town has control if she couldn’t get any answers from the Town. Mr. Thomas Callahan, of 35 Hillside Drive, stated that he hoped as a tax payer, the Town is not liable for any incidences/accidents that may occur at the staging area site. He stated he wished this could all be worked out.

Chairman Chittick reviewed the points of the hearings. He stated that the Board needs to focus on who has operational control and if it’s a proper use, as those are the zoning issues. After further discussion, the Board reviewed what submissions would be coming in, and if they should close the hearing. Attorney Henderson added for the record, that the Memorandum of Agreement clearly states that LM Holdings has a contract with the Jenkins for the lease of the land. He said that this is a material change to the original contract, and that can’t happen. Mr. Jenkins then submitted a copy of his lease agreement between himself and the contractor to the Board. Attorney Henderson will submit his memo on standing. **Chairman Chittick moved to close the hearing. Mr. Higginson seconded the motion, and the vote was unanimous.**

Mr. Lacy rejoined the meeting for the balance of the hearings.

88B Beach Street (Mark Ellis), Seeks to raze the existing structure and construct a new single family dwelling. SP §8.7 and §9.11 – File #07-11-13 AND A Variance §5.3 File #07-12-17a.

This application was before the Board in December as a Special Permit. The Board decided a Variance was needed. The applicant re-filled for a Variance. The Board discussed the options of moving the house which would alleviate the need of a Variance. Mr. Steve Meyers, the applicant’s Architect, addressed the Board. Mr. Meyers reviewed for the Board a memo which had been submitted with the Variance application, which outlines his responses to the five conditions that are required to be met in review of a Variance. His responses are as follows: Condition a: the conditions of the lot are unique in

that there are no direct abutter's property to the East, North and West. Because of these "conditions", the property lines are defined by the high water mark and not a typical land mass. Condition b: to limit the new construction to only the existing set back foot print, would constrict the building placement in such a fashion as to restrict a reasonable circulation around the building perimeter on the West side. Also, due to the present function of the dwelling as a summer home, the size of the existing structure is undersized by comparison to a modernized, fully functioning, year-round family home. Condition c: The existing building was constructed in this location on the site by previous ownership. The conditions of the existing building and its placement on the site are defining the limitation of what any new construction parameters could be. Condition d: The construction of the home would not adversely affect the public health, safety, convenience or welfare of the inhabitants of Cohasset. It would not cause congestion in the streets or increase the risk of fire, panic or other dangers. It would not raise public health issues nor result in environmental harm as the property would be required to have a modern Title 5 system/sewer system and would be subject to the jurisdiction of the Conservation Commission, which has already indicated that it would approve the project. Condition e: No greater privilege is being bestowed upon this lot than on any other single family lot. The lot simply requires a minor variance to accommodate unusual topographical and wetland limitations which are unique to this site. After this presentation, the Board asked if anyone in the audience would like to speak. They did not. Attorney Henry Leven, who represents the Estate which owns the property, reiterated that at the previous meeting, the direct abutter, Mrs. Paulina Cowen, spoke in full support of the proposed plans. **Mr. Lacy moved to close the hearing. Mr. Higginson seconded the motion, and the vote was unanimous.**

Appeal – applicants are Michael and Barbara Mullin of 14 Lamberts Lane. They are appealing the Building Inspector's Decision to deny their request to rescind the building permit issued to 20-22 Lamberts Lane (Kimberly and Angeline Luker land owners). File #07-11-19. (2/26/08

Attorney Richard Henderson addressed the Board on behalf of the appellants, Mr. and Mrs. Mullin. Attorney Henderson explained why his clients want the building permit rescinded. He stated that the owners of 20-22 Lamberts Lane, Kimberly and Angeline Luker, plan on razing the existing structure, and replacing it with a new two family home at a different location of the property. He stated that the residents currently own a non-conforming lot with a two family structure on it. The owners of the property purchased additional land to increase their lot size. He stated that section 5.3 states that in order to have a multiple family dwelling for two families in an R-A zone, the applicant is required to have 24,000 square feet of land. The subject property is 19,726 square feet. The owner's argument is that they are exempt from the area requirements because of non-conforming status of the property with respect to a pre-existing two family house. However, Attorney Henderson feels that applicants, once they sought to expand or reconstruct the dwelling, had to comply with current dimensional requirements. Chairman Chittick then asked the Luker's Attorney, Attorney Jeffrey A. De Lisi, about the previous application regarding this property. The application was filed in April of 2007 (File #07-04-10), and withdrawn without prejudice at the June 6, 2007 hearing of the ZBA. Chairman Chittick pointed out in the letter requesting the withdrawal, submitted by Attorney De Lisi, the subject property is referred to as a single family dwelling. Attorney De Lisi stated that this was a typo, and that he did not appear before the Board in June. Attorney De Lisi also feels that this appeal was filed on the 32nd day, and therefore he does not feel this application is properly before the Board. He added that he also does not feel the Mullins are an aggrieved party. He asks that the Board look at both of these issues before the hearing continues. Attorney Henderson stated that his clients did have standing and that he was not sure if they would want to speak. Attorney De Lisi stated that if there were to be testimony, it should be with credible evidence, not the fact that the appellants have issues with past neighbors. Appellant,

Michael Mullin, answered questions from Attorney Henderson. He stated that presently, his house and the subject property sit side by side. If the new house is built as proposed, it would be behind his house, they would lose privacy and it would be up above them looking down. It is also the only two-family dwelling in the neighborhood. He said the owner's family lived in the house for years before, and the police were always out for certain issues. He stated that his kids were afraid to leave the house. Mrs. Barbara Mullin then spoke and stated that she felt the problems were even greater than what her husband described. She went on, in great detail, about drug issues at the house, and stated that raising her children next to it has been a nightmare. Attorney De Lisi stated that the testimony he has heard from the Mullins demonstrates definite concern about the use of that property in the past, but he has not heard anything compelling to change the use as he feels there are no dimensional nonconformities. Chairman Chittick asked Attorney De Lisi what the existing and proposed footprints are; the existing is 974 square feet, and the proposed is 1,320. Chairman Chittick asked him how he would respond to the word "conversion" in the bylaw. He stated that he had wrestled with this, but feels the bylaw is silent. He felt the conversion went to where dimensional requirements pertained, regardless of the issue of multi family structure. Chairman Chittick reminded Attorney De Lisi that although it may have been a typo, the burden of proof is on him to prove the structure has been a two family since before 1955. Ms. Luker then addressed the Board. She stated that her father and her Grandmother's niece both died of heroin overdoses. She stated that she is not proud of that fact, but that is not how she has lived her life. Her Grandmother will be on one side, and they would be on the other. She hopes to raise her family there. Mrs. Mullin interjected and stated that even if her best friend wanted to do this construction, she would be against it. She does not feel it is a good value to have two rental units in her neighborhood. Both Attorneys agreed to have briefs to each other before the next hearing. **Mr. Lacy moved to continue the hearing. Mr. Higginson seconded the motion, and the vote was unanimous.**

10 Beach Street (Heidi Condon, Associate Arch/Land Owner Christina J. Brown). Seeks to construct a dormer on the rear of the garage. SP File #07-12-17b.

Heidi Condon, Architect, addressed the Board with owner, Christina J. Brown. Ms. Condon reviewed the history of the garage, stating that in 2003, this garage was built to replace one that was more nonconforming. The proposed construction would put a dormer on the back, making the space usable by the new owner. Ms. Condon stated that the proposed construction is within the footprint of the existing structure and it can't be seen from the street. Only the direct abutter will be able to see the dormer. Mr. Lindsey Durant, of 16 Beach Street, stated that if the area is dormered, and they install 5 windows on the side that faces him, they will be able to look right into his second floor bathroom, and right down on his porch. He does not see how making a nonconforming garage larger, doesn't make it more nonconforming. He stated that he and his wife are opposed to the application. Ms. Condon stated that Ms. Brown is surprised by Mr. Durant's response as she thought she was in good favor with her neighbor. Ms. Condon stated that they would like to meet more with the neighbor to come to some form of agreement. **Chairman Chittick moved to continue the hearing. Mr. Lacy seconded the motion, and the vote was unanimous.**

16-22 Depot Court (Richard Brown) Re-Opening/modification and amendment of SP File #07-05-04.

This is a re-opening of a previous hearing. Attorney Thomas Callahan, and land owner, Richard Brown, addressed the Board. Attorney Callahan stated that the Board has plans in front of them, and that it should be noted that the Board had received the plans before a decision was rendered. Mr. Goedecke pointed out that when the changes were made to the back of the building go straight up, the building was also moved forward by four or five feet, and no one had been informed of that change, nor were

the plans adjusted accordingly. Chairman Chittick asked how the footprint changed, when all the Board had been asked was that the back of the building be built to go straight up? Attorney Callahan stated that even if the building did move forward, it complies with the setback. Chairman Chittick stated that very rarely, if ever, would you find that the plans on file do not reflect what has been built. Attorney Callahan concurred, and said that the site plan should have been updated. After further discussion, **Mr. Lacy moved to close the hearing. Mr. Chittick seconded the motion, and the vote was unanimous.**

92 Pleasant Street (Can Teryaki, Architect/land owner, Douglas and Karyn Ellinger). Chairman Chittick recused himself and left the room. Architect, Can Teryaki, addressed the Board on behalf of the applicants. He explained that the property is nonconforming. The plan is to add seven feet to the dining room, and the height would be 11 feet 10 inches. He added that they focused on making the design very modest so that it would fit with the character of the house. The house has gingerbread and a hipped roof. Mr. Lacy stated that he felt the house was beautiful as it is. He added that this would not deter him from approving the addition, but that he would like them to consider this. Mr. Teryaki said that the owner has spoken to all of the abutters, and the one neighbor that was concerned, Mr. Keith Conforti, is now fine with the project now that he has seen the plans. **Mr. Goedecke moved to close the hearing. Mr. Higginson seconded the motion, and the vote was unanimous.**

DELIBERATIONS

1 Jerusalem Lane (Heide Condon, Arch Designer), Seeks to construct two additions. File #07-11-15.
The Board discussed this, and asked Mr. Lacy to draft a decision for the next meeting.

Mr. Lacy moved to adjourn the meeting. Chairman Chittick seconded the motion, and the vote was unanimous. Meeting adjourned, 12:00AM.

Respectfully submitted,
Barbara Power
Clerk