

APPROVED MINUTES

COHASSET ZONING BOARD OF APPEALS

DATE: Tuesday, October 6, 2020
TIME: 7:30 PM
PLACE: COHASSET TOWN HALL
41 HIGHLAND AVENUE COHASSET, MA. 02025

Meeting Held Via Zoom Platform. Video uploaded to the Town's YouTube Channel.

Board Members Present:

S. Woodworth Chittick, Chairman (WC)
Peter Goedecke, Vice-Chairman (PG)
Charles Higginson, Member (CH)
Matthew Watkins, Associate Member (MW)
David McMorris, Associate Member (DM)
Lee Darst, Associate Member (LD)

Others Present:

Special Counsel, Cindy Amara, MHTL

Staff Present:

Jennifer Oram, Assistant Clerk, ZBA
Recording Secretary

Chairman Chittick opened the meeting at 7:30PM with a Roll Call Vote:

ROLL CALL VOTE: CHAIRMAN CHITTICK – AYE, PETER GOEDECKE – AYE, LEE DARST – AYE, MATTHEW WATKINS – AYE, DAVID McMORRIS - AYE & CHARLES HIGGINSON - AYE

BOARD BUSINESS

The Board agreed that November 10, 2020 and December 1, 2020 would be the next meeting dates of the Zoning Board of Appeals.

488 Jerusalem Road – Possible Change of Meeting Date – Discussion and Vote – the Board received extension letters from all parties. No change in date needed.

CONTINUED HEARINGS

APPEAL – Filed by Cavanaro Consulting on behalf of their client, NIWDA, LLC c/o Walter B. Sullivan and Comerford, appealing the Building Inspector's denial to issue a Building Permit for a single-family home, to be constructed at **35 Oak Street**. Appeal pursuant to §300-12.2. C. **File #20.06.18.**

In attendance to Present this Agenda Item: Attorney Walter Sullivan

Documents Used for this Item (on file in the Zoning Office):

- Town Meeting Vote of October 26, 1998
- Email from Jeffrey Craig of 20 Oak Street from September 27, 2020 (sent previously for August 4, 2020 Hearing)
- Letter Dated September 27, 2020 from Ann and Patrick McCusker of 41 Oak Street and signed by other neighbors

Chairman Chittick stated that he had reached out to Attorney Sullivan to alert him that the Board would be addressing the Sears v. Building Inspector of Marshfield case. The case had been forwarded to the Board by Jeffrey Craig of 20 Oak Street. Attorney Walter Sullivan then addressed the Board. He stated that it was his recollection that he presented this to

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the Board at a previous meeting. He added that the Marshfield case deals with a similar but different protection. In the Sears case, it protects lots that are 5,000 square feet and were located across the street from one another. The Court defers to Zoning Boards to interpret their own Zoning Bylaws. In this case, the Board would defer to §300-3b, plus the Board has the 36 Oak Street decision as precedent. The Sears decision is not the law of the land.

Associate Member McMorris said that the difference is not the size of the lot, the difference in this case is that it states that you cannot add the Square Footage from the derelict Fee Statute toward the lot for zoning purposes. He does not see a lot of wiggle room in this case. It is his opinion that the Sears case speaks very clearly to this case [35 Oak Street]. Mr. McMorris has read all three briefs on the case. Chairman Chittick and Associate Member Watkins agreed.

Special Counsel Cindy Amara stated that this was a unique situation, with the taking and was done to not hurt the landowners. She thinks the Board was correct in its interpretation for 36 Oak Street and if you look at the Sears decision, that case was confined to a very narrow set of facts.

Chairman Chittick asked if anyone in the audience wished to speak. Pat and Ann McCusker of 41 Oak Street stated that this case was not unique, and they could think of 5 other lots in the area that are subject to being built on.

Chairman Chittick suggested the hearing be continued. Vice Chairman Goedecke disagreed and suggested they close.

MOTION BY VICE CHAIRMAN GOEDECKE: TO CLOSE THE HEARING
SECONDED: ASSOCIATE MEMBER McMORRIS

ROLL CALL VOTE: MATTHEW WATKINS - AYE, CHAIRMAN CHITTICK – AYE, PETER GOEDECKE – AYE, DAVID McMORRIS– AYE & CHARLES HIGGINSON- AYE

5-0 MOTION CARRIES (MW, WC, PG, DM and CH)

Associate Member Darst returned

SPECIAL PERMIT – Filed by Adam J. Brodsky, Esq. of Drohan, Tocchio & Morgan, PC on behalf of their client, Leigh K. Schwartz, seeks to convert an existing barn/boathouse into a recreation room at **11 Sheldon Road**. Pursuant to § 300-8.7. File #20.06.22. **APPLICATION AMENDED** to request relief under M.G.L c. 40A, § 6, § 300-4.2 & § 300-8.7 for a Guesthouse/Recreation Room.

In attendance to Present this Agenda Item: Attorney Adam Brodsky

Documents Used for this Item (on file in the Zoning Office)

- Submission from Attorney Adam Brodsky dated September 14, 2020 – requesting to Amend the SP application and address other issues to the Board
- Letter from Tim Davis dated September 13, 2020
- Email from Susan B. Acton of 269 Atlantic Avenue dated September 21, 2020

Attorney Brodsky addressed the Board. He has nothing new to except for the brief that he submitted to the Board on September 14, 2020. He stated that the Board cannot restrict an allowed use in perpetuity, but Mr. Bobo could have stipulated that he would not have plumbing. He thinks that a is reasonable reading.

Attorney Brodsky added that he and Special Counsel Amara have talked and agreed that a Section 6 finding/Special Permit.

Chairman Chittick addressed Tim Davis letter and I read Susan Acton’s letter aloud into the record.

After further discussion:

**MOTION BY VICE CHAIRMAN GOEDECKE:
SECONDED:**

**TO CLOSE THE HEARING
ASSOCIATE MEMBER McMORRIS**

**ROLL CALL VOTE: CHAIRMAN CHITTICK - AYE, LEE DARST – AYE, MATTHEW WATKINS – AYE,
DAVID McMORRIS– AYE, PETER GOEDECKE - AYE & CHARLES HIGGINSON- AYE**

6-0 MOTION CARRIES (WC, LD, MW, DM, PG and CH)

SPECIAL PERMIT – Filed by Matthew Coser and Theodora Mara to construct a second story addition over the existing house’s first floor footprint at **75 Pleasant Street**. Special Permit per §300-8.7. B. **File #20.08.10**

Chairman Chittick is recused from this hearing and asked Vice Chairman Goedecke to Chair.

Mr. Goedecke asked if there was any additional information. There was none.

**MOTION BY ASSOCIATE MEMBER DARST:
SECONDED:**

**TO CLOSE THE HEARING
ASSOCIATE MEMBER McMORRIS**

**ROLL CALL VOTE: DAVID McMORRIS – AYE, MATTHEW WATKINS – AYE, LEE DARST– AYE &
PETER GOEDECKE - AYE**

4-0 MOTION CARRIES (DM, MW, LD and PG)

NEW HEARING

SPECIAL PERMIT – Filed by Architect Roger Hoit, on behalf of his clients, Randall & Andrea Steele, seeks to construct a new garage at **31 River Road**. Special Permit per §300-8.7. **File #29.09.14**

In attendance to Present this Agenda Item: Architect, Roger Hoit and Landowner, Randall Steele

Documents Used for this Item (on file in the Zoning Office):

- ZBA Application
- Site Plan prepared by Morse Engineering
- Letter of support from neighbor Chris and Nancy Oddleifson of 42 River Road

Chairman Chittick opened the hearing and asked the applicant to review the application. Architect Roger Hoit reviewed the plans. The property is 2.1 acres. There is an existing garage which they are planning to convert into a workshop. They are proposing to construct a new garage which will be connected to the workshop by a pergola. The construction will not impact the neighbors, there are plenty of trees and conservation land across the way. Their neighbors, Chris and Nancy Oddleifson of 42 River Road, submitted a letter of support. Chairman Chittick stated that the proposed garage does not look to be closer to the front but is more setback. Mr. Hoit stated that was the case and that the new garage would be connected by the pergola that does have a roof to keep them dry coming from the garage.

Landowner Randall Steele then addressed the Board and thanked them for their time and consideration. He stated that his parents lived in this home for 50 years. They have redone the home and the garage is the final piece of the project. He appreciates the support of their neighbor and hopes the Board will look upon the application favorably.

Associate Member McMorris stated that the proposal looks lovely but is creating a new nonconformity. Chairman Chittick asked if it is was new conformity or an extension of one? Vice Chairman Goedecke went to the site and would like to have the calculations. He is less concerned about the volume and is encouraged by the support letter. He would like to know how much façade they are adding in the setback. There was further discussion regarding the dimensions and what the Board would need. The Board had a similar decision on Gammon Road that they would like to look at. Mr. Goedecke would like the calculation of the existing façade within the setback and then the same calculations for the

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proposed structure(s), so the Board see what the combined calculations are. Then the Board will need to determine if it is more detrimental to the neighborhood.

**MOTION BY CHAIRMAN CHITTICK:
SECONDED:**

**TO CONTINUE THE HEARING
MEMBER HIGGINSON**

ROLL CALL VOTE: DAVID McMORRIS - AYE, CHAIRMAN CHITTICK – AYE, PETER GOEDECKE – AYE, MATTHEW WATKINS– AYE, CHARLES HIGGINSON - AYE & LEE DARST- AYE

6-0 MOTION CARRIES (DM, WC, PG, MW, CH and LD)

CONTINUED HEARING:

SPECIAL PERMIT – Filed by Adam J. Brodsky, Esq., on behalf of his clients, **CHI Elm Street Realty, LLC**. Special Permit per §300-9.6. The applicants seek a Special Permit in the Floodplain and Watershed Protection District in connection with a mixed-use development project at **124 and 87 Elm Street**. The proposed project is for twenty-nine (29) multifamily residential units and other public access points, including a waterfront public park, shoreline access, a view corridor and commercial spaces throughout the properties. **File #20.05.19**

Documents for this hearing:

- Letter dated October 2, 2020 from Drohan Tocchio & Morgan, P.C. requesting this hearing be continued.

**MOTION BY CHAIRMAN CHITTICK:
SECONDED:**

**TO CONTINUE THE HEARING TO NOVEMBER
10, 2020
MEMBER HIGGINSON**

ROLL CALL VOTE: DAVID McMORRIS – AYE, CHAIRMAN CHITTICK - AYE, MATTHEW WATKINS – AYE, LEE DARST– AYE, CHARLES HIGGINSON- AYE & PETER GOEDECKE

6-0 MOTION CARRIES (DM, WC, MW, LD, CH and PG)

DELIBERATIONS:

APPEAL – Filed by Cavanaro Consulting on behalf of their client, NIWDA, LLC c/o Walter B. Sullivan and Comerford, appealing the Building Inspector’s denial to issue a Building Permit for a single-family home, to be constructed at **35 Oak Street**. Appeal pursuant to §300-12.2. C. **File #20.06.18.**

There was an extensive deliberation on this application and the decision. Chairman Chittick reviewed who would be voting on this Appeal – it was determined it would be Chairman Chittick, Vice Chairman Goedecke and Associate Member McMorris.

After about thirty minutes of discussion:

**MOTION BY ASSOCIATE MEMBER McMORRIS:
SECONDED:**

**THE APPEAL OF THE BUILDING INSPECTOR
BE APPROVED
CHAIRMAN CHITTICK**

ROLL CALL VOTE: DAVID McMORRIS – NAY, CHAIRMAN CHITTICK - NAY & PETER GOEDECKE - AYE

**2-1 MOTION FAILS, BUILDING INSPECTOR UPHELD
(DM, WC and PG)**

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SPECIAL PERMIT – Filed by Adam J. Brodsky, Esq. of Drohan, Tocchio & Morgan, PC on behalf of their client, Leigh K. Schwartz, seeks to convert an existing barn/boathouse into a recreation room at 11 Sheldon Road. Pursuant to §300-8.7. **File #20.06.22. APPLICATION AMENDED** to request relief under M.G.L c. 40A, §6, §300-4.2 & §300-8.7 for a Guesthouse/Recreation Room.

After a brief deliberation:

MOTION BY VICE CHAIRMAN GOEDECKE: **TO ACCEPT THE DECISION AS AMENDED AND APPROVE THE RELIEF SOUGHT**
SECONDED: **ASSOCIATE MEMBER WATKINS**

ROLL CALL VOTE: CHAIRMAN CHITTICK – AYE, LEE DARST - AYE, DAVID McMORRIS – AYE, CHARLES HIGGINSON– AYE, PETER GOEDECKE- AYE & MATTHEW WATKINS - AYE

3-0 MOTION CARRIES (WC, PG and DM)

SPECIAL PERMIT – Filed by Matthew Coser and Theodora Mara to construct a second story addition over the existing house's first floor footprint at **75 Pleasant Street**. Special Permit per §300-8.7. B. **File #20.08.10**

Chairman Chittick is recused from this application. After a brief deliberation:

MOTION BY ASSOCIATE MEMBER McMORRIS: **TO ACCEPT THE DECISION AS AMENDED AND APPROVE THE RELIEF SOUGHT**
SECONDED: **ASSOCIATE MEMBER WATKINS**

ROLL CALL VOTE: LEE DARST - AYE, DAVID McMORRIS – AYE, MATTHEW WATKINS– AYE & PETER GOEDECKE- AYE

3-0 MOTION CARRIES (PG, LD & DM)

ADJOURNMENT:

MOTION BY VICE CHAIRMAN GOEDECKE: **TO ADJOURN THE MEETING AT 10:38PM**
SECONDED: **MEMBER HIGGINSON**

ROLL CALL VOTE: CHAIRMAN CHITTICK – AYE, MATTHEW WATKINS – AYE, LEE DARST – AYE, CHARLES HIGGINSON – AYE, PETER GOEDECKE - AYE & DAVID McMORRIS – AYE

6-0 MOTION CARRIES (WC, MW, LD, CH, PG and DM)

MEETING ADJOURNED AT 10:38PM