

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
WEDNESDAY, August 28, 2002

Present: Theophile Beaudry
Mary Blanchard
Jeff Bonja
Lawrence Boniface
Robert Cornoni
Pat Jeffries
Ginger Peabody, Chairman

Also in Attendance Lawrence Adams, Town Planner
Nancy Campbell, Clerk

G. Peabody opened the meeting at 7:00 PM and read the agenda. The Board introduced themselves. The minutes for August 14, 2002 were reviewed.

Motion: to accept the minutes of August 14, 2002, as written, by M. Blanchard
2nd: J. Bonja
Discussion: None
Vote: All in favor

DISCUSSION – Joann Caron-Prescott and Suzanne E. Caron, as principal of Cedar Lake, LLC. – Administrative Appeal – Relief from a decision of the Building Inspector dated June 12, 2002, declining to take enforcement action against the setback violation and property encroachment by Robert Cottone

G. Peabody noted that the public hearing for the appeal had been closed at the August 14th meeting. The Board was to discuss the facts and findings of the appeal to a decision of the Building Inspector on an enforcement issue against a setback violation heard at that hearing. The Building Permit issued in 1997 was not the issue. The Building Inspector was correct to issue the permit. She stated it was the responsibility of the applicant to make sure that the building was in compliance with all zoning bylaws. The decision would be made at the Board's September 11, 2002 meeting. The deadline for a decision on the appeal was not until October 11, 2002.

The Board agreed that the rear setback for the town's Suburban Residential District was 15 feet. It also needed to determine where the rear property line was located. G. Peabody asked if the Board accepted the survey of Leonard Jalbert, Jalbert Engineering, dated 11-15-2001, drawing #01855. She referenced the Board's minutes for the meeting of August 14th, page 2, paragraph 4, which stated that the Prescott-Caron survey was an instrument survey done with a transit or an EDM...checked mathematically on computers and checked with abutting deed descriptions. The accuracy of the survey within a five-mile area could be in error a maximum of one foot. The Board had not received a survey from R. Cottone.

G. Peabody asked the Board members if they accepted the survey prepared by Leonard Jalbert as a determination for the rear boundary line. Members in agreement:

- L. Boniface – did accept the survey – felt that the building was in violation of the 15-foot setback and should be somehow brought back from the property line.
- J. Bonja – did accept the survey – felt that it was done with the accuracy of an instrument by a registered professional and the testimony showed no stipulations that there were any inaccuracies by either party. He did not have an issue with the pins that had been supposedly ignored.
- R. Cornoni – did accept the survey – felt that it was accurate and that a timeline would be helpful.

- G. Peabody – did accept the survey.
- T. Beaudry – did accept the survey – felt L. Jalbert was very experienced.

Members in disagreement:

- P. Jeffries – did not accept the survey – felt there were pins that had not been recognized at the time the survey was done.
- M. Blanchard - did not accept the survey – felt that the original decision to issue the building permit was based on information that the Building Inspector had at the time the permit to build was originally submitted. She felt the appeal was based on the building permit that had been granted. G. Peabody disagreed, offering that the appeal was based on the decision of the Building Inspector and whether or not the building was in violation. The appeal had nothing to do with the building permit that was issued.

G. Peabody explained that the building permit did come up even though it was not part of the appeal. The Building Inspector, Mark Lev, relied on the information given on the permit to build which stated the building would be located 15 feet from the rear line. As M. Lev wrote in his letter to the Caron's, he was not required to go to the property and check the measurement. G. Peabody felt it was the applicant's responsibility to submit accurate information on the application to build and not the job of the Building Inspector to question the accuracy of the figures.

G. Peabody asked the Board members their opinion regarding the appeal.

- T. Beaudry – felt the structure was a good size garage and it looked like there was going to be an apartment above it. G. Peabody commented that the building application indicated it was a one-story structure with a storage area. T. Beaudry felt the garage was too close to the lot line.
- R. Cornoni – felt there needed to be a determination on the survey.
- P. Jeffries – questioned if the Building Inspector made the determination that there was no violation by referencing the Jalbert 2001 survey. M. Blanchard noted the sequencing of correspondence between the Building Inspector (05-10-02; 6-12-02) and the Caron's (5-30-02) and said that in the Building Inspector's response on May 10, 2002, he had pulled his file to determine that there was not a violation. She also pointed out that he stated he was not authorized to make boundary or lot line determinations. Therefore, it seemed that the Building Inspector's decision had been based on the old drawings and not the Jalbert 2001 survey.
- M. Blanchard – felt it was a civil matter with a dispute between the two parties; since the issue seemed to be where the correct boundary line was, she did not think it was up to the Board to make that interpretation. She thought the decision should be made in Land Court.
- J. Bonja – did not feel there was evidence to support M. Blanchard's opinion because the Board had received as evidence two plans, one an interpretation (Cottone), and the other a calibration (Caron). There were not two registered documents to compare.
- G. Peabody – the Board had one survey before them; the property owner could have had his own survey done, but he chose not to; the property owner/applicant was questioned at the time as to whether or not the structure was within the setback area (08-14-02 minutes, page 2, paragraph 2 and 3). He took no action.
- L. Boniface – felt there was definitely a zoning violation and that the building was too big for the area.

G. Peabody asked the Board to make considerations for the possible remedies in the case.

- L. Boniface – felt that to move the building or tear it down should not be satisfactory to either party, there should be other ways to gain the 15 feet; that the owner be allowed a period of time to get the garage 15 feet away from the rear line.
- J. Bonja – agreed with L. Boniface, there was evidence to support that a zoning violation existed and as the Zoning Board of Appeals, members could not allow that violation to continue. He felt the Board could structure a remedy to mandate that the building be moved or removed within a sufficient time.

- M. Blanchard – felt it might be nice to come up with a solution that would be acceptable to both parties, but she did not think it was up to the Board to do that. She felt it would be expensive to move or tear the building down and that the Board was taking a long time to make a decision that would be appealed.
- P. Jeffries – felt that for the Board to come up with a solution was a reach. Though she knew the Board needed to supply a remedy for the situation, she was not comfortable with that responsibility.
- G. Peabody – felt the Board could come up with three or four suggestions for a remedy.
- R. Cornoni – felt a decision must be made based on the facts. A remedy would be difficult, but the Board should focus on the information that it had been given.
- T. Beaudry – felt it was a hard decision and he was still thinking about it.

G. Peabody asked L. Adams for his direction. He stated the Board must make a decision. The Caron’s appeal could not go to Land Court until all local remedies were exhausted. Without a decision there would be no mechanism for an appeal. He felt the Building Inspector acted in good faith basing his judgement and permit issuance on the facts submitted in good faith by the applicant. The question before the Board was whether or not construction violated the setback requirements and what were the real facts. To make that determination, the Board must find where the boundary line was. He added that the Building Inspector may make mistakes, but all other parties in the Town should not be bound to them. It was the Zoning Board of Appeals’ responsibility to provide a means to correct those mistakes. He advised that a remedy should be found by obtaining a balance of the interests of the abutter, the owner and the town bylaws. It is the Board’s function to be equitable in terms of serving those three elements and all others that had been denied by the Board in the past.

G. Peabody circulated a handout entitled Suggested Outline To Follow When Drafting a Zoning Decision in hopes that it would help the members with their decisions. She had found the draft on the UMASS website through CPTC (Citizen Planners Training Collaborative). The Board would take up the issue of the decision for the appeal at the September 11th meeting.

DISCUSSION OF SPECIAL PERMITS RULES & REGULATIONS AND FEE SCHEDULE

G. Peabody felt that it was necessary for the Board to have a system in place so that an applicant was clear as to the information required for a Special Permit Application. J. Bonja noted that in reviewing the document, it appeared to mirror that of the Chapter 40B Regulations previously adopted by the Board. The Special Permits Rules & Regulations would apply to all Special Permit Applications, however the Board could waive any of the rules they chose to, depending on the permitted use being sought. There was discussion among the Board as to how much control it should have in determining the conditions attached to a Special Permit.

L. Adams commented that no one had the right to a variance. However, there was a presumed right for a Special Permit with conditions, as long as it met the criteria in the Town’s Zoning Bylaws, Section 24.09, subsections A – F. The burden of proof to deny a Special Permit was with the Zoning Board of Appeals. However, the Board must state a reason found within the subsection A – F to support its decision. J. Bonja was concerned that the Rules & Regulations should be directed to building related Special Permits. He thought that other applicants might become frustrated with the involved form. G. Peabody suggested that L. Adams or the Board’s clerk help the applicant determine which items could be waived on their application or refer the applicant to the Chairman. L. Adams referenced Section 10.0, which mentioned waivers coming to the Board before an application was submitted and asked that that Section be added to the beginning of the document. He felt the Board should waive the regulations. The Board agreed it would be good to include Section 10.0 as a second paragraph to Section 3.0 (APPLICANT) and include in again as Section 10.0.

Also discussed was Section 5.02 Consultant Review Fee/Special Account, for clarification as to the purpose and use of the fees.

M. Blanchard referenced Section 4.02, subsection 3 – questioned L. Adams as to whether land surveyors were responsible for elevations as noted in line four. L. Adams said it was complicated as to what a surveyor and an engineer could do. It was his opinion that a surveyor could do elevations. He felt the language in this section was stating that the Board was looking for a first order survey. A surveyor should show only the location of existing buildings and not proposed buildings. An engineer was required in order to show a proposed building. L. Adams offered to make clarifications to the language.

Further discussion/adoption for the Special Permits Rules & Regulations was scheduled for the September 11th meeting.

OLD BUSINESS – None

NEW BUSINESS

Spaho Corp. Letter – G. Peabody read the letter (see attached). The Board noted that the application fee for a Special Permit was \$85.00 and not \$75.00 as indicated.

8:15 PM – M. Blanchard recused herself from the issue and stepped off the Board.

G. Peabody noted that the application submitted had been for the Park Place project, which would have been a very complex application. A gentlemen’s agreement between Mike Loin, Bertin Engineering and L. Adams had set the fee at \$800.00. She felt that since the application had been withdrawn without prejudice, she would like the Board to refund \$715.00 to Walter Regep. and write him explaining that the fee was \$85.00 and not \$75.00.

Motion: to refund Walter Regep \$715.00, by L. Boniface

2nd: P. Jeffries

Discussion: P. Jeffries asked if W. Regep reapplied for the Special Permit after new regulations had been adopted, would he be subject to the new fee structure. G. Peabody said he would be. L. Adams supported L. Boniface’s motion, but asked for a clarification – L. Adams had told M. Loin that Site Plan Approval did apply to this project, not that it did not and M. Loin asked if \$800.00 would be sufficient.

Vote: All in favor

8:19 PM – M. Blanchard stepped back onto the Board.

J & W Company, Inc. Letter – James Malloy, Town Administrator received a letter from Tyrone Jones (see attached) stating that he made his Notification of Eligibility Application for the Chapter 40B Stallion Hill Project. The Board has not received anything from the Mass Housing on the project. The letter was informational only.

Motion: to adjourn, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

Adjournment at 8:21 PM