

STURBRIDGE ZONING BOARD OF APPEALS

MINUTES OF

WEDNESDAY, December 11, 2003

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

Also in Attendance Nancy Campbell, Clerk

G. Peabody opened the meeting in the Town Hall's first floor conference room at 7:00 PM and read the agenda. The minutes for November 12, 2003 and November 19, 2003 were reviewed.

Motion: to accept the minutes of November 12, 2003, as written, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

Motion: to accept the minutes of November 19, 2003, as written, by J. Bonja
2nd: M. Blanchard
Discussion: None
Vote: In favor – T. Beaudry, M. Blanchard, J. Bonja, R. Cornoni and P. Jeffries
Abstain – G. Peabody

CORRESPONDENCE

Kopelman and Paige, P.C. - dated December 8, 2003 – CONFIDENTIAL RE: Kenyon Oil Company, Inc. v. Adams, et al

REQUEST FOR DETERMINATION – 12-11-03-1D – ABRAMS, GREGORY, 43 ABRAMS DRIVE

Gregory and Erin Abrams were present to make the request for determination for property located at 43 Abrams Drive. This request was to tear down an existing garage measuring 19 feet by 30 feet and replace it with a garage measuring 24 feet by 30 feet. The property was nonconforming in that it lacked sufficient frontage. Board members questioned the applicant on the use of the garage, if it would be in the setback and if there were windows on the second floor. G. Abrams assured them that the garage would be used strictly for housing their vehicles and for storage, that it complied with all zoning apart from the lack of street frontage and that there were no windows proposed for the second floor, as shown on the submitted plans. G. Abrams submitted a copy of an agreement with Susan Starr, an abutter, stating she was not opposed to the construction.

M. Blanchard noted that the Tax Certification form signed by the Finance Director indicated that tax payments for the property were not "paid up to date." Before the Board could grant the determination, this issue would need to be resolved. N. Campbell would follow up with the appropriate department.

Motion: to grant Gregory Abrams a determination for the property at 43 Abrams Drive as depicted on the application for construction of a garage not to exceed 720 square feet, contingent upon clearance

from the Finance Director since the request did not intensify the existing nonconformities nor create additional ones and that the owner may apply for a building permit for the described activities as shown on the application and plan, by J. Bonja

2nd: M. Blanchard

Discussion: None

Vote: All in favor

OLD BUSINESS/NEW BUSINESS

Gary Jeznach Resignation - M. Blanchard wanted to recognize Gary Jeznach for the time he served on the Board and noted that any individual interested in filling the vacancy should submit a letter to the Town Administrator.

Request for Determination Fee - G. Peabody commented that there currently was no fee for Requests for Determination submitted to the Board. She felt a fee should be charged and asked members to consider what they thought would be an appropriate amount. The Board also discussed whether or not abutters should be notified in the case of a determination. J. Bonja felt a notification to abutters could create a legal issue and asked for Town Counsel's advice.

Kopelman & Paige, P.C. – dated December 8, 2003 – RE: Confidential – Kenyon Oil Company, Inc. v. Zoning Board of Appeals – M. Blanchard suggested the Board meet in Executive Session at its next meeting for discussion on this letter.

G. Peabody recused herself at 7:16 PM

GREEN MOUNTAIN REALTY CORP. – DISCUSSION

J. Bonja circulated and reviewed the following list of facts he perceived for this case.

- The proposed site was to be located in the Wireless Overlay District.
- The proposed site did not conflict with the Zoning Bylaws section 12.03(a) site on the St. Anne's water tank.
- There were currently only two active applicants for the proposed cell tower.
- The St. Anne's water tank would cover Route 20, but not the Massachusetts Turnpike.
- The T3 site would cover the Massachusetts Turnpike, but not Route 20.
- The T3 site was town property and might be available for development.
- The applicant had not approached the Town regarding the T3 site.
- The Town had not issued an RFP for the T3 site.
- The Town had not issued an RFP for the St. Anne's water tank, but was approached by an interested party without the presence of an RFP.
- The height of the tower (not to exceed 130 feet per Zoning Bylaws) could be determined by the Board based on facts presented.
- The general presence of the tower would be a detriment to the community due to visual impact. The visual impact was proportional to the height of the tower.
- The application allowed for transmitter locations at 130, 120, 110, 100 and 90 feet. The applicants would occupy the top two locations, but the bottom two locations were considered technically viable.
- The transmitter spacing did not have to be ten feet apart.
- The applicants signal models were valid, but did include a certain amount of uncertainty (could be to 10 dB's) due to limitations in assumptions.

- The difference in the signal quality between 130 feet and 100 feet for the two applicants could easily be within the uncertainty of the models and any specific low signal levels could only be resolved via detailed drive tests.
- Abutters appeared to feel less negative about a 100 foot tower.
- There was an alternative equivalent or an even superior technical solution through the combination of the T3 site and the St. Anne's water tank. The sum of the two locations would provide coverage for both Route 20 and the Massachusetts Turnpike, while also providing additional coverage above the single tower placement at the Clark Road location.

J. Bonja felt it was critical that the Board recognize there were other technically feasible alternatives for the applicant, that the maximum height for the tower should only support the two applicants and questioned why the proposed site was approved as a Wireless Overlay District at an Annual Town Meeting given the concern of the abutters. P. Jeffries suggested it had been a hasty decision in response to the federal Telecommunication Act of 1996 demanding municipalities develop wireless overlay districts. M. Blanchard referenced memorandums from Kopelman and Paige (April 25, 2001, specifically page 5 "...A municipality may also want to require the applicant to prove that there are no feasible alternative locations." and October 2, 2002) addressing past court cases dealing with this issue. She added that the adverse impact to the neighborhood, if supported by photographs and the written record, was a valid concern and should be considered by the Board. R. Cornoni felt it was unfortunate that the applicant would not conduct a balloon test without the foliage. He also questioned if the Board's focus should be the application itself, with the T3 site as a secondary location, or should it steer the applicant toward the T3 site. J. Bonja suggested that the Board could find that the application should not go forward because there was an alternative location and support that decision with evidence. M. Blanchard pointed out that the applicants had not looked at T3 as a potential site. J. Bonja cautioned the Board on faulting the applicant for this action, but offered that the Board did not have to grant the special permit as requested, that it could find for a tower of lesser height.

The Board agreed it needed to further review the written materials and then continue its discussion at the next scheduled meeting on January 14, 2004. A tentative meeting date for January 21, 2004 was scheduled.

Motion: to adjourn, by J. Bonja
2nd: M. Blanchard
Discussion: None
Vote: All in favor

Adjournment at 7:55 PM