

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
WEDNESDAY, July 9, 2003

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

Also in Attendance Nancy Campbell, Clerk

G. Peabody opened the meeting at 7:00 PM and read the agenda. The Board members introduced themselves. The minutes for June 25, 2003 and the Executive Session minutes for June 11, 2003, were reviewed.

Motion: to accept the minutes of June 25, 2003, as written, by M. Blanchard
2nd: T. Beaudry
Discussion: None
Vote: All in favor

Motion: to accept the Executive Session minutes of June 11, 2003, as written, by M. Blanchard
2nd: T. Beaudry
Discussion: None
Vote: All in favor

M. Blanchard asked if Attorney Patricia Davidson had contacted G. Peabody regarding matters discussed at the Executive Session on June 11, 2003. G. Peabody said she had not heard from Atty. Davidson.

G. Peabody informed the Board that Attorney Mark Bobrowski would not be billing the Town for any technical assistant fees incurred from the Stallion Hill Village Chapter 40B project which had been withdraw without prejudice at its May 21st meeting. The funds which had been approved by MassHousing for the Board to use for technical assistance would be turned back into the State. These funds could be applied for again should the Board be presented with another Chapter 40B project.

7:05 PM G. Jeznach stepped off the Board.

PUBLIC HEARING – SPECIAL PERMIT – GARY AND PATRICIA JEZNACH – TO ALLOW THE CONSTRUCTION OF A 24 FOOT BY 44 FOOT ADDITION TO A SINGLE FAMILY DWELLING AT 12 CEDAR LAKE DRIVE

G. Peabody continued the public hearing at 7:05 PM and recognized Attorney James Burgoyne who was representing the applicants. He reviewed the submitted plans and commented that it was the Jeznach's intention to use this as their primary residence. He noted that the architectural plans were in the preliminary stage. If there were any concerns regarding an architectural aspect or the layout of the proposed addition on the property, the applicants were flexible and had alternative designs.

G. Peabody asked if there was anyone wishing to speak for or against the project.

- Sally Letendre, 34 Cedar Lake Drive – stated she would be happy to have the Jeznachs as her neighbor with this larger house.
- Gary Tremblay, 26 Cedar Lake Drive – liked what the Jeznachs were doing with the property and felt it was an advantage to have them in the neighborhood and make the improvements they were looking for.
- Edward Gilmore, 20 Cedar Lake Drive – had no objections with the building and felt it was a good development for the area and the Town.

G. Peabody asked for questions from the Board. There were none.

Motion: to close the public hearing, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

G. Peabody commented that this special permit came under the provisions of the “second except clause” in Chapter 40A, Section 6. She reviewed the language of this statute and clarified that the Board needed to determine if the proposed changes would be more detrimental to the neighborhood and to the Town’s Zoning Bylaws. M. Blanchard felt the lot coverage at 39% was not more detrimental to the neighborhood considering the property and its use. She felt that the 15% lot coverage in the Bylaws was low and maybe not a reasonable number. J. Bonja noted he did not like the high density, but given the nature of the law and that there was no negativity from the public opinion, he had no problem with the project. T. Beaudry concurred saying that the additions set in well with the existing buildings. P. Jeffries felt density was a problem on lakefront properties, but that it was an improvement to the property. R. Cornoni had a problem with the 39% lot coverage, but felt it fit in with the immediate area. He mentioned that maybe zoning decisions of the past needed to be considered. G. Peabody had a major problem with the amount of lot coverage regardless of past decisions. She felt that adding more did not make it better, it was compounding an error and that Sturbridge’s lakes must be protected from more density.

Motion: to grant a special permit to Gary and Patricia Jeznach for the 24 foot by 44 foot addition to the property at 12 Cedar Lake Drive, Assessor’s map 24, deed recorded in Book #26840, page 179 , by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: In favor – J. Bonja, M. Blanchard, P. Jeffries, R. Cornoni and T. Beaudry
Opposed – G. Peabody

G. Peabody reminded the applicant of the 20 day appeal period.

7:20 PM G. Jeznach stepped back onto the Board.

PUBLIC HEARING – VARIANCE - GEORGE DOWNING – TO CONSTRUCT ADDITIONS MEASURING APPROXIMATELY 1,640 SQUARE FEET WHICH WILL EXCEED THE LOT COVERAGE BY 1.9% AT 7 OLD FARM ROAD

G. Peabody opened the public hearing at 7:25 PM and J. Bonja read the legal notice. Joanne Teachout, project engineer with Jalbert Engineering, Inc., presented the plans for George Downing. She reviewed the application and noted that the increase in lot coverage had been reduced from 1.9% to 1.6% (breezeway removed from the original submittal to the Board) for a total of 16.6% (3,964 square feet.) The purpose for the addition was to house his ill, elderly parents. Most of the homes in the subdivision were built in 1973 with an average lot size of .57 to .59 acres, the Downing property measured at .55 acres (23,860 square feet.) She felt this proposal was not a detriment to the neighborhood.

G. Peabody noted that the plan submitted was a site plan and asked if a boundary survey had been done. J. Teachout said it had, adding that she had documentation from their surveyor who stated the iron pipes, in question, on the property had been found. The property boundaries were installed using four iron pipes. G. Peabody asked if the measurements had been tied into anything other than the iron pipes since pipes could be moved. J. Teachout could not verify that that had been done, but vouched for the land surveyor's reputation. She assumed he had tied it into other monumentation and offered to provide it to the Board.

The proposed addition was a separate dwelling using the same electricity and sewer tie-in. J. Teachout submitted architectural plans for the additions to the Board for its review. The addition did not have its own entrance and could not become a two-family dwelling in the future which was a concern to the Board. J. Teachout submitted a plan of a small portion of the original subdivision showing the Downing property. She believed this plan would have been referenced when doing the property line survey. This plan showed the iron pipes.

G. Peabody asked the Board if it had any questions.

J. Bonja pointed out that since this was an application for a variance and questioned if the applicant was aware that the requirements were different than those of a special permit. He explained that the Board needed to make three findings:

1) soil conditions, shape of the property or topography had to be unique to that property creating a hardship – in this case, he felt the shape of the property might apply, however the condition could not be self-created, as he felt this was.

2) lot size – not favored by the courts as a criteria to use for a variance.

3) not a substantial detriment to the public good or substantial derogation from intent and purpose of zoning bylaw - felt this was true, but all three criteria must be met.

He felt the zoning laws were black and white, in this case, and that the Board must find on these strict findings. It could not take into account the applicant's family size and its needs.

J. Bonja thought it might be worthwhile for G. Downing to consider a withdrawal without prejudice and reconsider all options. He suggested if G. Downing could find 300 square feet somewhere on his property, he would not need to come before the Board or if changes were made to the design to reduce the size of the garage or the large living area.

G. Peabody recognized G. Downing who stated he did not want to tear down anything that already existed on his property. He realized that if he destroyed his deck, he would not need the variance. However, he did not feel the deck was an imposition. He had considered J. Bonja's suggestions, but felt he was not building more than he needed to accommodate his family and family gatherings. It had been considered to build up, but structurally this was not possible and aesthetically it would not have looked good for the neighborhood. He questioned the Board regarding when the change in lot size from one half acre to three-quarter acre happened, before or after the setting of the 15% for lot coverage. G. Peabody believed it was more than five years ago and that the Board must abide by it.

P. Jeffries asked if G. Downing had considered a design that would reduce the lot coverage by 300 square feet. He responded that the original plans were much larger. His parent's current residence was quite large and the proposed addition had been downsized. G. Peabody felt that the Board would like to accommodate G. Downing, but that he did not meet all of the criteria of a variance.

G. Peabody asked if there was anyone from the public that would like to speak for or against the project.

- Blake Duzak, 1 Old Farm Road – lived next door and did not have a problem with the additions.

J. Teachout felt it was unfair for the homeowners who had lived in this area that their subdivision was subject to the zoning changes with regard to the lot size and coverage. G. Peabody pointed out that the bylaw changes come from the town residents at Town Meeting. G. Peabody expressed her frustration in this situation because she felt it was unfair. J. Bonja again explained the process of a withdrawal without prejudice and of a variance. G. Downing chose to have the Board vote on the variance application as submitted. J. Teachout asked the Board to consider allowing the 1.6% increase in lot coverage, in this case, as it was not detrimental to the neighborhood or to the "Commission."

Motion: to close the public hearing, by J. Bonja
2nd: P. Jeffries
Discussion: None
Vote: All in favor

Motion: to deny the variance for George Downing for the property at 7 Old Farm Road, Sturbridge, MA, Assessor's map 30, lot 7, Worcester Registry of Deeds Book #9299, page 46, by J. Bonja
2nd: No second
The motion failed.

Motion: to grant the variance for George Downing for the property at 7 Old Farm Road, Sturbridge, MA, Assessor's map 30, lot 7, Worcester Registry of Deeds Book #9299, page 46, as listed on plan submitted June 1, 2003, revised 07/08/03, drawing #03359, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: In favor – T. Beaudry, M. Blanchard and G. Jeznach
Opposed – J. Bonja, P. Jeffries and G. Peabody
Abstain – R. Cornoni

The motion did not carry, the variance was denied.

REQUEST FOR DETERMINATION – 07-09-03-1D – BELISLE, JACQUELINE, 517 MAIN STREET

Jacqueline Belisle was present to make the request for determination for her property located at 517 Main Street. She was hoping to tear down the building which had been destroyed by fire so that she could rebuild. There were minor adjustments to the rear of the building – the two porches would extend to the roofline squaring off the building.

Motion: to grant a request for determination to rebuild on the existing footprint as this did not intensify or create additional non-conformities on the property located on lot 517 Main Street, Assessor's map 23, by M. Blanchard
2nd: J. Bonja
Discussion: None
Vote: All in favor

Motion: to waive a formal boundary survey and let the supervising engineer submit a Certificate of Compliance and an AsBuilt when the project was completed, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

J. Belisle asked the Board's permission to put a deck on the back section of the house. The Board agreed that that would make the structure more non-conforming and did not approve the request.

The Board took a five minute break.

INFORMAL DISCUSSION – GRUDZIEN, PETER – 287 & 289 CLARK ROAD

Peter Grudzien was present regarding his property located at 287 & 289 Clark Road. Also present were Bill Grudzien, of 3 Douty Road and Ron Bachand, of Southbridge. The Board reviewed P. Grudzien's letter and submittals. This was an informal discussion concerning the merger of these two non-conforming lots. The properties, owned by P. Grudzien were purchased separately approximately eighteen years ago and he was now looking to build on both parcels. The Board heard P. Grudzien speak in support of why he should be able to build on both of these parcels. However, G. Peabody explained the State zoning laws (Section 7.4.1 *Merger of Substandard Lots*) stated that upon adoption of increased dimensional requirements, adjoining lots in common ownership would generally be deemed merged to satisfy the new regulations. P. Grudzien stated that he had paid taxes on two separate parcels, been denied an abatement from the Town and had two sewer stubs installed for the parcels which, in his opinion, did not indicate that the lots were merged. The Board explained that it did not have standing in this matter and that it did not have the authority to reverse the merger. There was discussion as to the options available to P. Grudzien to create conforming lots. After a lengthy discussion, the members agreed this was not an issue for the Zoning Board of Appeals.

Motion: to end the discussion, by G. Jeznach
2nd: J. Bonja
Discussion: None
Vote: All in favor

APPROVAL AND ENDORSEMENT OF DECISION – RRI – ADMINISTRATIVE APPEAL

The Board reviewed the draft decision which had been revised by Kopelman & Paige.

Motion: to accept the RRI Decision for administrative appeal, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

Next meeting date will be August 13, 2003.

OLD BUSINESS/NEW BUSINESS

There was none.

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

Adjournment at 9:17 PM