

**STURBRIDGE ZONING BOARD OF APPEALS**  
**MINUTES OF**  
**WEDNESDAY, July 14, 2004**

**Present:** Theophile Beaudry  
Mary Blanchard  
Marge Cooney  
Robert Cornoni  
Ginger Peabody, Chairman  
Bruce Sutter

**Absent:** Pat Jeffries

**Also in Attendance** Nancy Campbell, Clerk

G. Peabody opened the meeting at 7:00 PM and read the agenda. The Board members introduced themselves after welcoming new member, Bruce Sutter. The minutes of the June 9, 2004 were reviewed. M. Blanchard asked that L. Jalbert's words "After some initial misgivings..." not be struck from the original draft minutes as it added to the intended compliment relative to J. Bonja. There were no objections from the Board.

**Motion:** to approve the minutes for the June 9, 2004, as amended, by M. Blanchard  
**2<sup>nd</sup>:** M. Cooney  
**Discussion:** None  
**Vote:** In favor – M. Cooney, M. Blanchard, G. Peabody, R. Cornoni and T. Beaudry  
Abstain – B. Sutter

**CORRESPONDENCE**

Kopelman & Paige – June 14, 2004 – RE: pending litigation

**PUBLIC HEARING – 07-14-04-1V – VARIANCE – COTTONE, ROBERT & DENISE – TO PERMIT AN EXISTING 32 FOOT BY 24 FOOT GARAGE WITH ATTACHED DECK AND STAIRS TO ENCROACH INTO THE REAR SETBACK AT 53 CARON ROAD**

G. Peabody opened the public hearing at 7:05 PM and M. Cooney read the legal notice. Attorney Edmund Neal was present on behalf of the petitioners. He stated the following as a brief review –

- R. Cottone purchased the property in 1988.
- A plan drawn in 1976 (WDRD Book 427, page 103) showed Cedar Pond Road bisecting the .31 acres parcel.
- Denise's name was added to the deed in 1998.
- R. Cottone obtained a building permit for the construction of the garage presently located on the property in June 1997.
- The location of the well and septic system were so noted indicating that the present site of the garage was the only option.
- A mortgage survey done by Jalbert Engineering was performed in 1998 showing that the garage conformed to zoning regulations and an occupancy permit was granted.

- A second mortgage survey was done for the purpose of refinancing in March 1999 which showed that the garage was within the boundaries of the lot with the comment "... structures and lot predate zoning."
- The abutter, Cedar Lake LLC, contracted Jalbert Engineering to survey their property in November 2001 - this showed the garage encroached onto their property line.
- R. Cottone contracted Para Land Surveying to survey his property in January 2004 – this showed the garage to be located 4.2 feet at the closest point and 5.6 feet from the furthest point from the property line.
- The location of the garage was appropriate given the locations of the well, the septic system, the bisecting right of way, the pre-existing structures, the slope of the land and the wetland constraints.
- Since there are no neighbors to the rear of the property given the slope, there was no derogation from the intent of the bylaws.

The Board had the following question/comments –

G. Peabody felt that the discrepancies in the Jalbert /Para surveys were an issue for land court and not the Zoning Board.

M. Cooney asked 1) if any of the above surveys were instrument surveys - Atty. Neal noted that the Jalbert November 2001 and Para January 2004 surveys were both instrument surveys, as was the Racicot survey of 1976; 2) if any monuments such as cross marks in stones or boulders were found on the site - only iron pins were referenced; 3) if other properties were bisected by the right of way - Five area residents confirmed their properties had a similar situation.

She commented that the stairs shown on the plan were one foot from the property line – Atty. Neal noted that the applicant had an obligation to minimize the encroachment to 4.2 feet by removing the stairway.

R. Cornoni asked if the rear property lines agreed on the surveys by Jalbert Engineering and Para Land Surveying – Atty. Neal explained they did not.

G. Peabody recognized Attorney Arthur Snell who spoke on behalf of Cedar Lake LLC stating that there was no substantial hardship for this variance. A different design of construction for the garage could have been built which would have conformed to the setback requirements. He felt that if the Board granted this variance it would be derogating from the intent of the bylaws by eliminating the buffer provided by a setback, that the applicants had created their own hardship and asked the Board not to grant the request as it was a detriment to his client's ownership interest in their property.

There was no one from the public wishing to speak for or against the request.

**Motion:** to close the public hearing, by M. Blanchard  
**2<sup>nd</sup>:** M. Cooney  
**Discussion:** None  
**Vote:** All in favor

G. Peabody reviewed that all three requirements for a variance must be met to grant the request and felt it was a self imposed hardship. M. Blanchard agreed adding that other roads within the Town divided the property. B. Sutter asked for clarification should the Board deny the variance. M. Cooney felt that more accuracy should have taken to ensure the location of the boundary lines and that the hardship was self imposed.

**Motion:** to deny the variance to Robert and Denise Cottone for 53 Caron Road to permit an existing 32 foot by 24 foot garage with attached deck and stairs to encroach into the rear setback where the encroachment would provide for a distance of approximately four feet from the garage corner to the lot line and a separation of approximately one foot from the deck and stairs, by M. Blanchard

**2<sup>nd</sup>:** T. Beaudry

**Discussion:** None

**Vote:** All in favor

**PUBLIC HEARING– 07-14-04-2V – VARIANCE – COURNOYER, DONALD C., GEORGE, LOUIS AND MARK – TO ALLOW A LOT WITH A REGULARITY FACTOR OF .30 WITHIN A PROPOSED DIVISION OF THE PARCEL INTO THREE LOTS FOR PROPERTY PRESENTLY KNOWN AS 246 FISKE HILL ROAD**

G. Peabody opened the public hearing at 7:53 PM and M. Cooney read the legal notice. Attorney Michael Morrill, of Southbridge, was present for the petitioners and stated the following –

- The Commonwealth of Massachusetts had taken 13 acres of land abutting Route 20 from the petitioners in 1969 which represented 2,200 feet of frontage. The State then determined there was no access to that land.
- The entire parcel consisted of 39 acres – the division would provide for sufficient frontage and area for the three lots.
- The shape of the property was a hardship and the use did not derogate from the intent of the zoning bylaw. The neighborhood would not suffer from the granting of this variance.

G. Peabody stated that if the variance was granted it would create a self imposed hardship to Lot #3 and an additional variance would be needed to build on this lot. She pointed out that the petitioners could obtain a building permit for the site as it existed and that it was not the role of the Board to maximize a property owner's profit. Louis George agreed that presently there was no access to lot #3 due to the wetlands crossing and that he was looking only to build on lot #1 and #2. He felt that the State had created the hardship through the taking of the 13 acres and the loss of potentially 15 lots and it was his opinion that the stream on lot #3 had been created by a culvert installed by the State on Route 20. G. Peabody suggested asking to get the land back from the State. L. George said he had made that inquiry and that the State would not discuss the subject. He added that the State had taken other properties from his family.

M. Blanchard stated it was not the role of the Board to grant a variance to maximize a property owner's land use and the lot was buildable in its present configuration.

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

- Chip Silvestri, 16 Beaudry Road – felt the State was not responsible for the wetlands on the petitioner's property since a 1952 topographic map showed the stream; concerned that the transfer station coming online from Spencer would result in the State changing the design of the intersection; felt the request could lead to drainage problems previously addressed by the Conservation Commission and that people should conform to the zoning bylaws.

L. George commented that decisions could not be based on what the State may or may not do in the future.

G. Peabody concurred.

**Motion:** to close the public hearing, by M. Blanchard

**2<sup>nd</sup>:** M. Cooney

**Discussion:** None

**Vote:** All in favor

G. Peabody felt the request did not meet the criteria of a variance. The proposed division of land created a self imposed hardship. M. Blanchard agreed that the State had originally created a hardship for the property owners, but added that by dividing the land the property owners were increasing that hardship. M. Cooney agreed.

**Motion:** to deny the variance to Donald Cournoyer and Louis and Mark George to allow a regularity factor of .30 within a proposed division of the parcel into three lots for property presently known as 246 Fiske Hill Road, by M. Blanchard

**2<sup>nd</sup>:** M. Cooney

**Discussion:** None

**Vote:** All in favor

**PUBLIC HEARING– 07-14-04-1SP – SPECIAL PERMIT – DR. ROBERT H. AUDET – TO PERMIT THE USE OF THE SECOND FLOOR AS DENTAL OFFICE SPACE AT 22 MAIN STREET**

G. Peabody opened the public hearing at 8:20 PM and M. Cooney read the legal notice. G. Peabody noted that only six members were present and asked R. Audet if he would like to continue or postpone his request. He chose to proceed.

R. Audet explained his request to change the use of the second floor from apartment use to dental office space. He noted that the Building Inspector had reviewed the proposed plans; that there were adequate parking spaces; changes would be made to the windows and interior, but not to the footprint; handicapped client needs would be addressed on the first floor and the same services, including cosmetic dental work, would be offered on the first and second floor.

M. Cooney reminded R. Audet he must go before the Planning Board for Site Plan Review. G. Peabody asked if there were further questions. There were none.

**Motion:** to close the public hearing, by M. Blanchard

**2<sup>nd</sup>:** M. Cooney

**Discussion:** None

**Vote:** All in favor

Members of the Board felt that the request was an expansion of the present use.

**Motion:** to grant a special permit to Dr. Robert Audet for the expansion of use to the second floor as a dental office for his property at 22 Main Street, Assessor's map 39 and lot 22 as per his request, by M. Blanchard

**2<sup>nd</sup>:** M. Cooney

**Discussion:** None

**Vote:** All in favor

**REQUEST FOR DETERMINATION – 07-14-04-1D – MATTHEW LINCOLN, 126 WESTWOOD DRIVE**

Matthew Lincoln presented the request for determination for property located at 126 Westwood Drive. This request was to remove the existing roof and permit the construction of a second floor and enclose the existing deck for a sunroom. The lot was nonconforming in that it did not have frontage on Westwood Drive, but instead had two deeded right of ways. M. Lincoln explained that the Town had moved the location of the road circle so that it no longer touched his property. G. Peabody asked if there were any changes to the footprint of the structure. M. Lincoln stated it did not. There were no other questions from the Board.

**Motion:** to grant a determination to Matthew Lincoln since the request did not intensify or create any new non-conformities and that he may apply for a building permit for 126 Westwood Drive as per the application, by M. Cooney

**2<sup>nd</sup>:** R. Cornoni

**Discussion:** G. Peabody felt that more information should be included in motions made by the Board granting requests for determination. She noted that applications could be destroyed once a year had lapsed after the Board's decision, but the minutes must be maintained permanently. N. Campbell noted that the Board's decision, once rendered, was recorded on the original application and would become a permanent record. M. Cooney suggested removing the dashed line separating the decision portion from the application. N. Campbell would make that change.

**Vote:** All in favor

It was noted that there was no 20-day appeal period for a Request for Determination.

#### **REQUEST FOR DETERMINATION – 07-14-04-2D – TIMOTHY & KIMBERLY QUINN, 94 WESTWOOD DRIVE**

Kimberly Quinn presented the request for determination for property located at 94 Westwood Drive. This request was to remove the existing roof and permit the construction of a second floor with a balcony over an existing deck. The lot was nonconforming in that it lacked sufficient area and frontage. M. Cooney questioned the height of the right side elevation on the plan design stating that it appeared to exceed the 35 feet allowed under Chapter Nineteen, Intensity Regulations. She was concerned that the request would be overpowering and infringe on the view of an abutter. G. Peabody recognized Steven Comtois, the builder, who reviewed the dimensions with the Board. The Board allowed K. Quinn to change the height figure on the application from 30.4 feet to 35 feet. She initialed and dated the application. R. Cornoni questioned the changes made to the deck. S. Comtois noted that the requested change was within the existing footprint.

**Motion:** to grant a determination to Timothy and Kimberly Quinn since the request did not intensify or create any new non-conformities and that they may apply for a building permit for 94 Westwood Drive to remove the existing roof and add a second story with a balcony over an existing deck as per the application, by M. Blanchard

**2<sup>nd</sup>:** M. Cooney

**Discussion:** None

**Vote:** All in favor

#### **REQUEST FOR DETERMINATION – 07-14-04-3D – RICHARD TAYLOR, 6 CRICKET DRIVE**

Richard Taylor presented the request for determination for property located at 6 Cricket Drive. This request was to permit a 14 foot by 20 foot addition with a 12 foot by 14 foot deck and a 10 foot by 16 foot shed. The lot was nonconforming in that it lacked sufficient area and frontage. R. Taylor stated that there were

no violations to the setback areas, the lot coverage would increase, but not exceed 15% and that his neighbors did not object to the request.

**Motion:** to grant a determination to Richard Taylor since the request did not intensify or create any new non-conformities and that he may apply for a building permit for 6 Cricket Drive for the construction of a 14 foot by 20 foot addition with a 12 foot by 14 foot deck and a 10 foot by 16 foot shed as per the application, by M. Blanchard

**2<sup>nd</sup>:** M. Cooney

**Discussion:** None

**Vote:** All in favor

## OLD BUSINESS

G. Peabody mentioned that in 1999 William Babineau was granted a variance and the document recorded with the Worcester District Registry of Deeds referenced the incorrect Book and page number. (Reference was made to 165 Charlton Road and not 149 Charlton Road.) She requested that the Board authorize her to sign a letter providing the proper Book and page reference, so that W. Babineau's attorney might correct the error. M. Blanchard noted that an incorrect date of April 15, 2999 was used on the decision. N. Campbell stated that the proper date was indicated on the later portion of the document.

**Motion:** to authorize the Chairman to sign a letter which would reference the correct Book and page number for the property at 149 Charlton Road, owned by William Babineau, by M. Blanchard

**2<sup>nd</sup>:** T. Beaudry

**Discussion:** None

**Vote:** All in favor

## NEW BUSINESS

THE ZONE, A Newsletter for Massachusetts ZBAs reviewing Comprehensive Permits – G. Peabody had emailed Richard Heaton requesting that he conduct a free seminar for the Board. She felt that since the Chapter 40B project, Windgate, was coming before the Board, it would be beneficial to schedule the meeting soon.

The Board agreed to meet on

August 4<sup>th</sup> for the purpose of a comprehensive permit seminar

August 11<sup>th</sup> for a regularly scheduled meeting

August 18<sup>th</sup> for the opening of the Windgate public hearing, if approved by the applicant.

Windgate working subcommittee – G. Peabody requested that the Board set up a subcommittee to meet with department heads, the applicant and the Town Planner to refine issues for the Windgate submittal in an attempt to expedite the public hearing process. M. Blanchard was not in favor of a subcommittee because she felt all discussion should be held at a public meeting for the public. T. Beaudry felt a working subcommittee had aided the Board in the past to hear more information in a shorter amount of time. B. Sutter stated that the subcommittee could determine the best options and then present them to the public and the decision makers. He felt the atmosphere of a public hearing was not creative and better alternatives may come out of a subcommittee. He was concerned that the Board as a whole would not have enough hours to dedicate to the project. M. Cooney agreed. R. Cornoni agreed a subcommittee would be beneficial, but wanted to see notes recorded and presented to the Board for decision. G. Peabody said any notes should be informal only.

G. Peabody asked for a vote of the Board in favor of a subcommittee – B. Sutter, M. Cooney, G. Peabody and R. Cornoni. M. Blanchard and T. Beaudry were against a subcommittee

G. Peabody asked for volunteers for the subcommittee to meet during the work day. M. Blanchard suggested the Board await P. Jeffries return. M. Cooney agreed to serve, G. Peabody would ask P. Jeffries to serve and if she was not available G. Peabody would accompany M. Cooney.

Chapter 40B Technical Assistant – G. Peabody asked if the Board should be making application for technical assistance from Massachusetts Housing Partnership. N. Campbell would call to make application and reminded the Board that both the Chairman of the Board of Selectmen and the Zoning Board must sign the completed application.

**Motion:** to authorize the Chairman to sign the application for technical assistant on behalf of the Board, by M. Blanchard

**2<sup>nd</sup>:** M. Cooney

**Discussion:** None

**Vote:** All in favor

**Motion:** to adjourn, by M. Blanchard

**2<sup>nd</sup>:** M. Blanchard

**Discussion:** None

**Vote:** All in favor

**Adjournment at 9:25 PM**