

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
WEDNESDAY, May 12, 2004

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

Absent: Marge Cooney

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 of the April 28, 2004 open session meeting were tabled until the Board's next meeting. The minutes for the April 28, 2004, executive session meeting were reviewed.

Motion: to approve the second draft of minutes for the April 28, 2004, executive session meeting and to hold them in confidence, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

CORRESPONDENCE

There was none.

G. Peabody explained that the Board was a seven member Board and that there were only five members present. She noted that any applicants present for a special permit would need a super majority "yea" vote by the Board for their request to be granted. Hearing this, the Abrams' agreed they would like to proceed.

PUBLIC HEARING CONTINUATION – 01-14-04-1 – SPECIAL PERMIT – ABRAMS, GREGORY – TO PERMIT THE CONSTRUCTION OF A 750 SQUARE FOOT ADDITION TO THE SECOND FLOOR OF THE RESIDENTIAL DWELLING AND ENCLOSE ITS FIRST FLOOR PORTICO AT 43 ABRAMS DRIVE

At 7:05 PM G. Peabody recognized Greg and Erin Abrams who presented the Board with a letter from Jalbert Engineering, Inc. addressing the concern of the former Building Inspector as to the soundness of the existing structure's foundation. This letter stated that the foundation with the exception of the front screen porch would support the proposed addition and that any modifications to the foundation of the existing screened porch could be done within the confines of the porch.

M. Blanchard asked for the total square footage, including the portico and R. Cornoni questioned the number of supports used for the portico with the second story. G. Abrams stated that the base measured 1,384 square feet and three additional sona tubes would provide support for the portico. R. Cornoni was satisfied with the explanation.

G. Peabody asked if there was any one wishing to speak from the public. There were none.

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

Motion: to grant a special permit to Gregory Abrams for the construction of a 750 square foot addition to the second floor of the residential dwelling and enclose its first floor portico for the property located at 43 Abrams Drive, Assessor's map #24, lot 43, recorded in Worcester District Registry of Deeds Book # 28807, page 279, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

G. Peabody reminded the applicants there was a twenty day appeal period.

REQUEST FOR DETERMINATION – 05-12-04-2D – EGAN, JAMES & MARION, 25 WELLS PARK RD

James Egan was present to make the request for determination for property located at Wells Park Road. This request was to permit the construction of an eight foot by fourteen foot deck to his existing home. The property was nonconforming in that it lacked sufficient frontage and size. He stated that the deck would not be in the setback. M. Blanchard asked if the lots in this area had been laid out prior to zoning. J. Egan believed they were.

Motion: to grant a determination to James and Marion Egan since the request did not intensify or create any new non-conformities and that they may apply for a building permit for the construction of an eight foot by fourteen foot deck addition to the house as shown on the attached survey, by M. Blanchard
2nd: R. Cornoni
Discussion: None
Vote: All in favor

G. Peabody mentioned that she and N. Campbell attended a workshop regarding Writing Defendable Decisions. She noted the importance of each member contributing their reasons for or against a petition in writing. P. Jeffries and M. Cooney had attended a Central Massachusetts Federation of Planning and Zoning meeting on Chapter 40B regulations. Both were disappointed to learn that the topic was not addressing the changes soon to take effect, but the present regulations. M. Blanchard reminded members of the May 20th workshop at Greenfield Community College on Conflict of Interest Laws.

PUBLIC HEARING– 05-12-04-1 – SPECIAL PERMIT/VARIANCE – MICHAEL & KRISTEN LEO – TO PERMIT THE DEMOLITION OF THE EXISTING STRUCTURE AND ALLOW THE CONSTRUCTION OF A SINGLE FAMILY DWELLING APPROXIMATELY 40 FEET BY 23 FEET ON AN UNDERSIZED LOT WHICH HAS FRONTAGE MEASURING APPROXIMATELY 65 FEET; AND TO ALLOW THE DWELLING TO ENCROACH ABOUT 16.4 FEET INTO THE FRONT SERACK AND A RETAINING WALL INTO THE SIDE SETBACK TO THE NORTHERN PROPERTY LINE WITH A LOT COVERAGE OF APPROXIMATELY 16.5%

G. Peabody opened the public hearing at 7:20 PM and R. Cornoni read the legal notice. Leonard Jalbert, of Jalbert Engineering, Inc., presented the plans as follows:

- The existing dwelling is a single family residential home with a walkway which extended to the deck on the southern side of the property. A portion of this walkway encroached into the side setback.

- The retaining wall, which zoning bylaws states is a structure, was proposed for the northerly portion of the property would require a variance as it extended to the property line.
- The proposed dwelling would be basically within the footprint and confines of the existing dwelling.
- The property was serviced by town sewer.
- The proposed 22 foot by 39-40 foot dwelling would be on basically the same footprint. The difference was that the rear portion (north) of the proposed dwelling would use the footprint of the existing retaining wall along Shore Road. Because the zoning bylaws considered a retaining wall a structure, it was L. Jalbert's opinion that the proposed dwelling would not encroach any further into the front setback.
- The proposed retaining wall would match the grade of an existing stepped retaining wall which reached from Shore Road to the lake.
- Total lot coverage of the proposed dwelling would be 16.5%, an increase of approximately .7 of 1% and would include the deck, the dwelling and all other structures on the lot.
- The plans had been approved by the Conservation Commission.
- L. Jalbert addressed the Building Inspector's letter regarding the foundation's mean elevation of the walls measuring greater than 4.5 feet making the proposed dwelling three stories and not meeting the requirements for a building permit. L. Jalbert stated the town uses an average elevation, not a mean elevation and the ceiling of the basement determined the measurement, not the foundation. L. Jalbert noted that the grading would be done in order to conform to the 4.5 feet.
- The non-conformities of the property – 1) frontage area and 2) front setback. L. Jalbert again stated he felt the existing encroachment of the front setback would not change because an existing structure (retaining wall) and the proposed structure (dwelling) were the same distance from the road.

G. Peabody stated she felt this was a "tough" lot. She disagreed with L. Jalbert's statement that the proposed dwelling would stay within the same footprint. Between the existing retaining wall and the existing dwelling there was a strip of green space and the proposed plans would disturb this area. She added that the configuration was changing. L. Jalbert said there were two reasons for this change –

- 1) the confines of the existing retaining wall would be maintained eliminating the drop-off by the house
- 2) if the proposed dwelling was located on the property to conform with zoning's setback it would violate the Conservation Commission's 50 foot no build zone.

The Board had the following questions -

- What as the length and width of the existing and the proposed house - L. Jalbert answered the existing - 31 feet long and proposed – 39.5; no change to the width. R. Cornoni noted the house was increasing 8.5 feet
- The height of the windows appeared to be at the level of the retaining wall - the windows would be raised to accommodate the elevation.
- Would the walls support the house – L. Jalbert said the concrete would be replaced.
- Reference points on the existing and proposed plan were not consistent and needed clarification.

G. Peabody and R. Cornoni expressed their concerns with the 8.5 foot increase to the proposed dwelling intruding into the front setback. G. Peabody felt that a retaining wall intruding into a setback was much different than a dwelling intruding into that same setback. M. Blanchard did not have a problem with this issue and agreed with L. Jalbert. She also felt this helped address a safety issue. R. Cornoni agreed. There was more discussion on the Building Inspector's third story comments, but the Board recognized this was not relative to the applicant's petition.

G. Peabody asked if there was anyone from the public wishing to be heard.

- Stan Rose, Ridge Way – stated he was the owner of the vacant lot that the retaining wall would be abutting and that he had no problem with the plan.

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

Comments from the Board –

M. Blanchard – originally not comfortable with the special permit request, but upon learning that a retaining wall was a structure she did not have a problem with it; the small increase in lot coverage did not derogate from the intent of the bylaw; the structure would enhance the neighborhood and it improved a safety issue.

G. Peabody – a tough piece of property; the new retaining wall would be tremendous; felt the proposal was too big for the lot; was not comfortable intruding into the green space between the existing structure and retaining wall and would not have a problem if the plan stayed within the same footprint of the existing dwelling.

P. Jeffries – agreed it was a tough lot; not concerned with the proposed dwelling coming out to the existing retaining wall footprint and did not object to the increase in lot coverage.

R. Cornoni – first impression was the applicant asked for “alot” for the existing conditions; must look at lakefront properties one at a time; this instance had the retaining wall with the structure which mellowed the first impulse as to why the proposed dwelling was being extended.

T. Beaudry – moving the proposed structure back was a great safety factor by eliminating the stairways.

Motion: to grant a special permit to Michael and Kristen Leo for the demolition of the existing structure and allow the construction of a single family dwelling approximately 40 feet by 23 feet on an undersized lot which has frontage measuring approximately 65 feet, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: In favor – M. Blanchard, P. Jeffries, R. Cornoni and T. Beaudry
Opposed – G. Peabody

G. Peabody noted that the petition for the variance by the same applicants was now a moot point. The Board concurred.

The Board took a short recess at 7:55 PM and resumed the meeting at 8:05 PM at which time it briefly discussed the Building Inspector’s chart diagramming examples of potential request for determination and special permit scenerios. The Board agreed to take final action when M. Cooney returned.

REQUEST FOR DETERMINATION – 05-12-04-3D – JOHN O’CONNOR, 51 STREETER ROAD

John O’Connor was present to make his request to allow a 26 foot by 28 foot garage with an addition on his undersized lot that measured .92 acre, .08 acre under the required one acre. He stated the addition would not violate any other zoning regulations. R. Cornoni asked how far away the leach field was from the addition. J. O’Connor noted it was approximately 40 feet. The Board had no concerns with the request.

Motion: to grant a determination to John O’Connor since the request did not intensify or create any new non-conformities and that he may apply for a building permit for the construction of a 26 foot by 28 foot addition measuring approximately 728 square feet, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

OLD BUSINESS

There was none.

NEW BUSINESS

There was none.

Motion: to adjourn, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

Adjournment at 8:15 PM