

## STURBRIDGE ZONING BOARD OF APPEALS

### MINUTES OF

Wednesday, April 12, 2006

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

**Also in Attendance** Jean M. Bubon, Town Planner  
Diane Trapasso, Administrative Assistant

G. Peabody opened the meeting at 7:00 PM and the Board members introduced themselves.  
G. Peabody welcomed Diane Trapasso as the new Administrative Assistant  
G. Peabody read the agenda.

### APPROVAL OF MINUTES

**Motion:** to approve the draft meeting minutes of March 8, 2006, as amended, by  
M. Cooney  
**2<sup>nd</sup>:** M. Blanchard  
**Discussion:** None  
**Vote:** All in favor

### CORRESPONDENCE

G. Peabody acknowledged the following correspondence:

A letter from Kopelman & Paige, Town Counsel, regarding pending litigation.

Green Valley Workshops

Letter from Steven Paquette, SPL Development Group providing a progress report on Crescent Gate at Sturbridge.

Crescent Gate will be having two informational meetings at Town Hall for the marketing of 18 affordable units. The meetings are May 17, 2006 and May 31, 2006 from 6:00 P.M. to 8:00 P.M. The lottery will be June 27, 2006 from 6:00 P.M. to 8:00 P.M. All information is provided by the Crescent Gate agent Ms. Epstein

Letter from Kopelman & Paige regarding the Windgate Comprehensive Permit Project regarding signatories. The Monitoring Services Agreement must be executed by the Board of

Selectmen, not the Zoning Board of Appeals, as the latter does not have the authority to enter binding contracts.

A memorandum from the Town Administrator regarding Town owned tax possessions.

Notice from Neal Law Office LLP that an Appeal of the Zoning Board of Appeals' decision upholding the decision of the Building Inspector denying the request for enforcement by Frances O'Connell and Edward St. John with regard to the use of property by Wetherbee & Wetherbee, LLC at 548 Main Street was filed with the Worcester Superior Court on March 29, 2006, pursuant to M.G.L. c. 40A, §17.

A letter dated March 12, 2006 from Judith Epstein of JTE Associates regarding the Revised Homebuyer's Affirmative Marketing & Buyer's Selection Plan. The revised document is attached with changes to the market rate range for the one bedroom units and the definition of veterans of armed forces has been added to reflect the intent of the Board.

Letter from Kopelman & Paige dated March 22, 2006 regarding the stabling of horses.

**PUBLIC HEARING CONTINUATION – 09-28-05-1SPV – SPECIAL  
PERMIT/VARIANCE – FREDERICK AND MARGARET GUNN – 36 & 38  
GOODRICH ROAD.**

At 7:05 p.m. G. Peabody opened the Public Hearing continuation of Frederick and Margaret Gunn, Inc. for a Special Permit and Variances from the Sturbridge Zoning Bylaw to demolish the existing structure, to permit the construction of a single family dwelling and allow it to encroach ten feet into the street setback on a lot that lacks required frontage at 36 & 38 Goodrich Road.

Mr. Jalbert stated that his client needs a continuance because he is still in Florida.

G. Peabody had no objection to this continuance but she could not support any further continuances.

**Motion:** to close the Public Hearing by M. Blanchard.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 -0

**Motion:** to grant a final continuation to May 10 at 7:05 P.M. with a letter to be provided by Jalbert Engineering requesting that date and time by M. Blanchard.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 - 0

**PUBLIC HEARING CONTINUATION – J.S. DRAGONFLY ENTERPRISES, INC. – 52 – 54 GOODRICH ROAD**

At 7:15 p.m. G. Peabody opened the Public Hearing continuation of J.S. Dragonfly Enterprises, Inc. for a Special Permit and Variances to construct an addition, retaining walls and cat walk on the property located at 52 & 54 Goodrich Road. Property owners are Sarah E. Greene and James Grubert.

Mr. Leonard Jalbert of Jalbert Engineering was present to represent the owners. Mr. Jalbert presented a revised plan eliminating the parking area on Goodrich Road, the retaining wall, the catwalk and the addition. He showed the two dormers within the footprint. The applicants agreed that they would not install windows in the dormer and the dormers would be only 10' high so they would not impose on the abutter's sight lines.

G. Peabody read Memorandums from G. Morse, DPW Director dated 3/24/06, and J. Bubon, Town Planner dated 3/27/06 neither had issues with the request.

Roger LeBlanc of 56 Goodrich Road stated that his concern was future expansions. G. Peabody stated the Board sets no precedent. The applicant would have to come back and ask permission for any future changes. With that response Mr. LeBlanc had no objections.

Diane LeBlanc of 56 Goodrich Road stated that her concern is the time frame of construction and the noise factor. G. Peabody asked Mr. Jalbert, if approved, when the project would start. Mr. Jalbert stated they could start immediately. G. Peabody said the Board can set conditions such as a time frame for construction and working hours during the day.

**Motion:** by Marge Cooney to close the Public Hearing  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 –0

**Motion:** by M. Blanchard to allow the applicant to withdraw without prejudice the request for variances for the addition, retaining walls and cat walk.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 –0

**Motion:** by R. Cornoni to approve the Special Permit for the construction of dormers requested for the property located at 52-54 Goodrich Road as shown on Drawing # 06024, Revision # 3, Dated 3/14/06, and with the conditions that the exterior be completed by June 1, 2006 and that all work be restricted to between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday.  
**2<sup>nd</sup>:** M. Blanchard  
**Discussion:** None  
**Vote:** 7-0

**PUBLIC HEARING – CHRISTINE KILGORE, 85 SHORE ROAD,  
STURBRIDGE, MA.**

The applicant is requesting an “After the Fact” Special Permit and several Variances for a shed constructed at 85 Shore Road. Plans submitted show an existing deck, sunroom and shed which were constructed recently. The applicant is proposing to remove the deck and sunroom, but requests the Special Permit and Variances to allow the shed to remain.

The Public Hearing on the application for Christine Kilgore, 85 Shore Road was opened at 7:25 p.m. and the legal notice was read by B. Sutter. Mr. David Roberts of Jalbert Engineering represented the homeowner. Mr. Roberts gave a brief history of the homeowner’s ordeals. Back in 2003, she hired a contractor #1, he did not do the work. Contractor #2 told the homeowner no permits or variances were needed and started the work on the deck and sunroom and shed. He did not finish the work because of back surgery. Contactor #3 told the homeowner she needed a Special Permit and Variances, which she is doing.

G. Peabody read the Memorandums from K. Kippenberger, Conservation Agent dated 4/10/2006, J. Bubon, Town Planner dated 4/5/2006 and H. Nichols, Building Inspector/Zoning Officer dated 3/23/2006. Each Memorandum outlined concerns with the proposal. The concern is the over coverage of the lot. The allowed coverage is 15% by the Zoning Bylaws. The existing coverage is 23.5%. There is a small corner of the shed in the A-1 Zone, which is in the 25’ buffer setback.

G. Peabody stated she had no sympathy for the owner, it should be known that a Building Permit is always needed for construction of buildings.

**Motion:** made by M. Blanchard to close the Public Hearing  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 –0

**Motion:** made by M. Blanchard for a continuation for a Special Permit and Variance for the shed to May 10<sup>th</sup> at 7:20 p.m. to make a decision.  
**2<sup>nd</sup>:** M. Cooney  
**Discussion:** None  
**Vote:** 7-0

**PUBLIC HEARING – JASON AND HEATHER LEMIEUX, P.O. BOX 435,  
WARREN, MA 01083**

The applicant is requesting a Special Permit and several Variances for the construction of a single family home at 12 Ridge Hill Road.

Public Hearing on the application for Jason and Heather Lemieux for the property located at 12 Ridge Road was opened at 7:40 p. m. and the legal notice was read by B. Sutter. Mr. Alfred Trifone of Trifone Design Associates spoke on behalf of the owners. The applicant received a Determination and a Building Permit for the construction of a single family home,

however it was found that there is an area subject to flooding on site. After a Public Hearing with ConCom, the property owners have reduced the size of the home by 15% and proposed moving the house into the front setback;; however, they must now request a variance to the front setback requirement to maximize the distance to the wetland area. Work has been placed on hold pending the outcome of the permit process.

G. Peabody read a letter from Jane E. Gauthier, whose parents owned the land and sold it to Mr. Thibodeau in the year 2000 through Coldwell Banker Realty. Mr. Thibodeau could not develop the land because it was determined that the property had wetlands and the lot was declared non-buildable. Questions had been raised about the property; primarily, the question of the wetlands that prevented Mr. Thibodeau from building in the first place.

B. Sutter wanted to know who determines a lot buildable. This lot was not on a sewer line before, now it is. The Conservation Commission requested that the proposed house and all other work be located as far from the wetland resource area as possible, being consistent with the 25-foot No-Touch and 50-foot No Permanent Structure buffer zones.

An abutter Mr. Al Ferrin who owns property on Main Street stated that the area has been wet since 1939 and he questioned what it meant to have wetlands recently discovered. Mr. Trifone stated that it had never been a mapped wetland until now. P. Jeffries stated that there have been some drought conditions that may have prevented the new owner from noticing the wetland. He was concerned with run-off onto his property. Mr. Trifone stated that the property slopes back up and the run-off would not leave this property.

John Warrington of 6 Ridge Hill Road was concerned that this development would aggravate seasonal flooding. He stated that the water generally accumulates about twenty feet from his foundation and he was concerned that this construction activity would worsen that problem. Mr. Trifone showed a detention pond on the plans and stated that all run-off will empty into the pond. There would be no more extra water to the wetlands.

**Motion:** made by M. Blanchard to close the Public Hearing at 8:18 p.m.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 –0

**Motion:** made by M. Blanchard to approve the Variances requested by Jason & Heather Lemieux for property located at 12 Ridge Hill Road as follows: a variance to allow the reduction of the front setback requirements from 30' to 15', a variance to allow the reduction in frontage from 125' to 120', and a variance to allow the reduction of the lot area requirement from  $\frac{3}{4}$  acre to 12,138 square feet. The property is shown on the Assessors Map 538/12 and recorded in the Worcester District Registry of Deeds Book 33672, Page 58 and Book of Plans Book 23, Plan number 79.

**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7-0

**Motion:** made by M. Blanchard to grant a Special Permit to Jason & Heather Lemieux to construct a single family home at 12 Ridge Hill Road as shown on the plans submitted dated 11/4/05 and with conditions as stated in the Memorandum from Greg Morse dated 3/17/06. The property is shown on the Assessors Map 538/12 and recorded in the Worcester District Registry of Deeds Book 33672, Page 58 and Book of Plans Book 23, Plan number 79.

**2<sup>nd</sup>:** P. Jeffries

**Discussion:** None

**Vote:** 7-0

**PUBLIC HEARING – ALFRED M. & BRYAN A. TRIFONE OF 55 CRANE STREET, SOUTHBRIDGE, MA 01550.**

The applicant is requesting a Special Permit and two Variances for the construction of a single family home at 16 Eastern Avenue.

The Public Hearing for Alfred and Bryan Trifone was opened at 8:21 p.m. and the legal notice was read by B. Sutter. Mr. Al Trifone of Trifone Design Associates represented himself. The owner wants to demolish the original house and garage and construct a new one.

G. Peabody read the Memorandums from G. Morse, DPW Director dated 3/17/2006, K. Kippenberger, Conservation Agent dated 4/10/2006, J. Bubon, Town Planner dated 4/5/2006 and H. Nichols, Building Commissioner dated 3/28/2006. All departments have issues this property. The home proposed is too large for the lot and the neighborhood.

G. Peabody read a letter with 17 signatures from abutters opposing the project.

Bruce Arsenault of 22 Long Ave. wanted clarification on the actual address and setback from Eastern Ave.

Rich Gremski of 24 Long Ave. stated that he did not put it in the letter but the garage shown on the plan is really a shed or a shack. It has never been a garage. He does not feel that the proposed house conforms with the neighborhood.

Lorraine Langevin of 26 Long Ave. stated that the wetlands will be aggravated. She stated that when it rains, water accumulates and she wondered what the applicant would do with the water. She stated that the water empties into an adjoining lot she owns.

Joanne Neal of 26 Long Ave. stated that they have wetlands in their backyards now, and they will not be able to enjoy their lots if this house is built.

G. Peabody stated that it was her sense that the plans as submitted would not be passed. She stated that the Board could close the hearing and vote to deny, or continue the hearing to allow new plans to be submitted showing a smaller home and addressing drainage issues.

Mr. Trifone stated that he would like time to draw a new plan that addressed stormwater concerns and that he would re-size the house and meet with the abutters. He would be willing to give a letter extending the time to act on this application.

**Motion:** made by M. Blanchard for continuation to June 14<sup>th</sup> at 7:05 p.m.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** Cornoni wants new plans that are clear in downsizing the house; that address the wetlands and drainage issues and abutters concerns. He thought that perhaps it should be a new application submitted.

**Motion:** by M. Blanchard to withdraw her first motion  
**2<sup>nd</sup>:** by P. Jeffries to withdraw the 2nd motion to motion  
**Discussion:** After discussion the Board agreed that it would be more appropriate if Mr. Trifone would withdraw his application without prejudice and re-submit a new application and re-advertise when he was ready with the new plans. The Board would waive the fees for re-submission. Mr. Trifone was in agreement

**Motion:** made by M. Blanchard to withdraw allow the applicant to without prejudice and waive the fee.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 –0

#### **PUBLIC HEARING-ARTHUR P. GODIN, 100 PARK TERRACE DRIVE # 143, STONEHAM MA 02180**

The applicant is requesting a Special Permit and four Variances for the construction of a single family home at 58 South Shore Drive.

The Public Hearing for Arthur P. Godin was opened at 9:00 p.m. and the legal notice was read by B. Sutter. Mr. Chase, the applicant's Attorney, spoke on behalf of the Mr. Godin. The applicant seeks approval to allow the demolition of the existing non-conforming structure and the construction of a new single family home. The plans show a two story cape with a porch, the dimensions of the house are 24'x30'

G.Peabody read Memorandums from K. Kippenberger, Conservation Agent dated 4/10/2006, H. Nachols, Building Commissioner/Zoning Officer dated 3/30/2006, G. Morse, DPW Director dated 3/17/2006 and J. Bubon, Town Planner dated 4/5/2006.

G. Peabody stated that the porch seemed like it was going to be an issue. The house would comply with the setbacks but the porch would not. Also the coverage would be exceeded. She asked the applicant if he would be willing to reduce the size of the porch.

Mr. Godin stated that he did not think that the porch was oversized and that he respectfully would not like to give up the porch.

P. Jeffries stated that the structure was large, 27 1/2 ' X 44', and she was sure it could be reduced to comply with zoning. M. Blanchard agreed stating that the home was 2316 square feet. B. Sutter stated that the existing home was only 1100 square feet so it was quite an increase and he thought the plans could easily be changed so that the home could comply.

Mr. Waz, the applicant's engineer stated that the applicant wanted to retire and live in this location year round. He stated that it should be noted that all other areas are in conformance with the setback requirement and that the area on the side of Schmidt is not a buildable lot. He has also met with the Conservation Commission and knows that they have to file, but they are not encroaching any further.

Mr. Alwin Schmidt stated that the property he owns with his siblings at 52 South Shore Drive is the one affected by this request. He read a prepared statement stating that he did not believe that the applicant has the required hardship for this approval. He stated that the new footprint comes closer to his property and will affect his privacy.

G. Peabody stated that she was getting the sense that the footprint was just too large. Mr. Waz asked if the screen porch was reduced to be within the setbacks would the plan then be acceptable. G. Peabody stated that would be an excellent step forward.

M. Blanchard asked Mrs. Bubon if the tax paid certificate was an oversight. Mrs. Bubon stated that she does have one that was signed by Mrs. Barry, but she had run photocopies for the Board before attaching the signed certificate.

**Motion:** made by M. Blanchard for a continuation to May 10<sup>th</sup> at 7:35 p.m. with new plans for a smaller house. Need letter for continuation.  
**2<sup>nd</sup>:** M. Cooney  
**Discussion:** None  
**Vote:** 7 -0

## **PUBLIC HEARING – GARY GALONEK, 164 LAKE ROAD STURBRIDGE.**

The applicant is requesting a Special Permit and a Variance for the construction of an attached two car garage and additional living space above the garage.

The Public Hearing for Gary Galonek was opened at 9:25 p.m. and the legal notice was read by B. Sutter. Mr. Galonek presented his plans to the Board showing the need for the garage and additional living space.

G. Peabody read the Memorandums from K. Kippenberger, Conservation Agent dated 4/10, 2006, H. Nichols, Building Inspector/Zoning Officer dated 4/5/2006 and G. Morse, DPW Director dated 3/24/2006.

Mr. Galonek explained his proposal to the Board. He stated that this was not a variance of convenience, it was one of necessity since he needs the storage area. He stated that he



recognized the in-appropriateness of asking for the world and that is why he is keeping the garage small. He stated that he owns an additional 60,000 square feet that is part of this lot, but it is located on the other side of the road. He also stated that the home needed a safe second means of egress and this would provide that since the second floor of the garage would be finished.

G. Peabody stated that Mr. Galonek had served on this Board and knew the criteria that had to be met relating to shape, soil and topography, and that it must be unique to the property. She stated that all the properties around the lake are the same.

Mr. Galonek asked where it said that it must be unique to the district. G. Peabody stated that not having a garage is not a hardship, he knew what the house and lot were when he purchased them. Mr. Galonek stated that there is a three story house across the lake.

M. Cooney stated that since he owned the land on the other side of the road, what precludes him from building there? Mr. Galonek stated that it would be a 300' walk and there is significant wetlands on that side. He stated that he owned 1.37 acres, but there are wetland issues. M. Cooney stated that it would seem he could find a 24" X 22.6' area somewhere on that side to build the garage. Mr. Galonek stated that he wanted the garage connected to the house for the second egress and the living area.

Mr. Galonek stated that it is the job of the ZBA to define hardship and if they looked at the way he was living they would see that he had a hardship. M. Cooney stated that he knew what he was buying. Mr. Galonek stated that he bought it so that he could live on the lake and that he needed the two car garage and living space.

Dennis Murphy of 162 Lake Road stated that he had reviewed the plans and thought they were reasonable.

M. Blanchard stated that she would not disagree that it appears reasonable but that this Board could not just keep granting variances.

G. Peabody stated that she did visit the site and had to go back to the fact that the three criteria have not been met, that having a garage is an inconvenience not a hardship.

B Sutter proposed making the garage one car.

**Motion:** by M. Blanchard to close the Public Hearing at 9:44 p.m.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 -0

**Motion:** by G. Peabody to deny a Special Permit and Variance  
**2<sup>nd</sup>:** B. Sutter  
**Discussion:** None  
**Vote:** 4 - 0- 3 with M. Blanchard, P. Jeffries and T. Beaudry abstaining

G. Peabody asked Mrs. Bubon what this vote meant. Mrs. Bubon stated that she would need to check with Kopelman & Paige, she would not want to guess, she wanted to get a legal opinion. As soon as she did that she would notify the Board.

### **OLD/NEW BUSINESS**

The reorganization of the Board will be done at the May meeting.

**Motion:** made by M. Cooney to adjourn at 9:50 p.m.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 –0