

# **STURBRIDGE ZONING BOARD OF APPEALS**

## **MINUTES OF**

Wednesday, June 13, 2007

### **Present:**

Theophile Beaudry  
Mary Blanchard  
Marge Cooney  
Robert Cornoni  
Kevin Kelley  
Pat Jeffries  
Ginger Peabody, Chairman

**Also Present :** Diane Trapasso, Administrative Assistant

G. Peabody opened the meeting at 7:00 PM.

G. Peabody read the agenda.

G. Peabody welcomed Kevin Kelley as a newly appointed member to the Board. She also thanked B. Sutter for all his work on the Board and wished him well.

G. Peabody read an email from B. Sutter thanking the Board He learned a lot from the each member and wished them all the best of luck.

### **APPROVAL OF MINUTES**

**Motion:** to approve the corrected draft meeting minutes of April 11, 2007 by M.

Blanchard

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

**Discussion:** None

**Vote:** 4 – 0 – 3 (M. Cooney, K. Kelley & P. Jeffries Abstained)

**Motion:** to approve the corrected Executive Minutes Session of  
April 11, 2007 and to keep them in confidence by M. Blanchard

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

**Discussion:** None

**Vote:** 4 – 0 – 3 (M. Cooney, K. Kelley & P. Jeffries Abstained)

### **RAOUL & THERESA RICARD – 32/53 BEACH AVENUE REQUEST FOR AN ADMINISTRATIVE APPEAL TO OVERTURN THE CEASE & DESIST ORDER AND ALLOW THE CONSTRUCTION OF THE GARAGE WITHIN THE EXISTING FOUNDATION FOOTPRINT.**

G. Peabody read the legal notice.

H. Nichols, Building Commissioner & Zoning Enforcement Officer, stated that he received a complaint from a neighbor during the framing of the garage. The foundation is in the paper road. He issued a Cease & Desist order, because, if one agrees with the owner that his lot includes all of Olney Street under and in front of the garage as shown on the last plan forwarded by Attorney Neal (this includes the piece of Olney Street recently purchased from an abutter), the garage will still be approximately three feet from the curve of the lot lines. This would violate the minimum (10') setback requirement in the Bylaws.

Attorney Neal spoke on behalf of the applicant. The applicant applied for and received a building permit for the construction of a garage in the existing foundation on the property. The Zoning Enforcement Officer issued a Cease and Desist order for the reason that the foundation and proposed garage would be in the setback and was being built on a paper street, Olney Avenue, which had never been built. The applicant then was conveyed the fee in Olney Avenue from a neighboring landowner (which had vested in the neighbor in accordance with M.G.L. c. 183, §58) so that the foundation and proposed garage was no longer within the setback and complied with the setback requirements of the zoning bylaw. The Zoning Enforcement Officer was of the opinion that the garage would still not comply with the zoning bylaws because it was built on part of a paper street which had never come into existence. The alleged easement rights of the other property owners in the paper street is not a zoning issue for the Zoning Enforcement Officer to address; therefore if the proposed building complies with the setbacks, then the cease and desist order should be lifted.

With the purchase of the property from an adjoining landowner, the garage will comply with the setback requirements of the zoning bylaw and there will be no detriment to the public good.

Ms. Peterson of 34 Beach Street stated that she was told, Olney Avenue could never be built on. When she was on vacation in 1999, she came back and found all the trees down and a foundation was constructed and nothing else was built.

Board members questioned whether Olney Avenue is a street or paper street, and if it is on the official Town map as a street.

H. Nichols requests a ruling from the Zoning Board of Appeals.

T. Ricard, owner of the property, responded that there was no Olney Avenue on the Town map when they bought the property.

**Motion:** Made by M. Blanchard to continue the Administrative Appeal of Rauol & Theresa Ricard – 32/53 Beach Avenue to July 11, 2007 at 7:45 PM.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 – 0

**KATHLEEN & WILLIAM MASON – 19 BENNETTS ROAD REQUEST FOR A DETERMINATION TO REMODEL INCLUDING INTERIOR AND**

**EXTERIOR OF THE HOME, DEMOLITIONS AND RECONSTRUCTION OF THE EXISTING STONE FOUNDATION AND ADDING A SECOND STORY**

Mr. Trifone, of Trifone Design Associates spoke on behalf of the applicant. The project is a remodel including interior and exterior demolitions and reconstruction of the existing stone foundation and adding a second story. The existing abutting properties are on small water front lots. The neighborhood is a mix of summer cottages and year round residences.

G. Peabody read the memos from Town Planner, Conservation Agent and the Building/Zoning Officer.

Board members wanted to know if abutters have a problem with the remodeling. They also questioned the decks that are on the property.

Mr. Mason, owner of the property stated that all are aware of the project and have no concerns. The decks were already built when they purchased the home.

**Motion:** made by M. Blanchard to grant the Determination on the plans that the application does not intensify or create additional non-conformities, and the owner may apply forthwith for a building permit for the described activities as shown

on the attached survey dated March 27, 2007.

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

**Discussion:** None

**Vote:** 6- 1(G. Peabody)

**MICHAEL & LINDA DEVINE – 21 VALLEY ROAD REQUEST FOR A SPECIAL PERMIT & VARIANCE TO DEMOLISH THE EXISTING HOME AND CONSTRUCT A NEW HANDICAP ACCESSIBLE HOME AND RESIDENTIAL ELEVATOR ON THE PROPERTY**

G. Peabody read the legal notice.

Mr. & Mrs. Devine spoke on their own behalf. They will be improving front, and side set backs, meeting the required set backs on the non-conforming lot. Due to health problems, they are requesting a variance to build a new handicap accessible home including a residential elevator. The proposed new dwelling requires and includes wider than normal doors, hallways and bathrooms. It is for this reason they are requesting a variance to allow for the aforementioned relief.

G. Peabody read the memos from the Town Planner, Conservation Agent, Board of Health and Building/Zoning Officer.

G. Peabody stated that Variances are very hard to come by. G. Peabody read a section from a letter from Town Counsel dated July 12, 2000. It read in part... it is not impossible to grant a variance to an applicant who desires to alter or reconstruct a nonconforming structure ... that will not substantially derogate from the intent or purpose of the Bylaws:... The Board may issue a variance.

G. Peabody stated with this letter she can vote in favor of a Variance and the Board agreed.

**Motion:** Made by M. Blanchard to grant a Variance requesting existing lot area 6,715 Sq. ft., existing frontage 65'± lot coverage increase to 19.9% to Michael & Linda DeVine of 21 Valley Road.

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

**Discussion:** None

**Vote:** 7 – 0

**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 to grant a Special Permit changing a pre-existing non-conforming structure to permit demolition and new construction of a 2 story handicap accessible single family home to Michael & Linda DeVine at 21 Valley Road.

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

**Discussion:** None

**Vote:** 7 – 0

### **CORRESPONDENCE**

1. G. Peabody noted the correction she made to the Telegram & Gazette on their article dated June 12, 2007 on their reference to ZBA should be ZSC.
2. Letter from Mirck O'Connell, Attorney at Law  
Re: Clarence M. Soper v. Penny Dumas et.al Civil Action No. 00-2223B
3. Letter from Kopelman & Paige, P.C.  
Timothy Bonin v. Ginger Peabody, et. al. (Sturbridge Zoning Board Appeals) Worcester Superior Court, C.A. No. 05-904
4. Letter from JMJ Properties
5. Memo from Town Planner  
Re: Robert Cottone – 53 Caron Road
5. Two Letter from Waterman Design Associates dated May 16, 2007 & June 11, 2007  
Re: Construction report for Crescent Gate

**Motion:** Made by M. Blanchard to approve a letter regarding Housing Plan and have G. Peabody sign and send to the Community Preservation Committee. The plan will be funded with an appropriation from the Crescent Gate project.

The sum of \$25,000 was provided to the Board to be used for any public purpose including the preparation of a housing production plan as defined in 760 CMR 31.00.

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

**Discussion:** None

**Vote:** 7 - 0

## **OLD/NEW BUSINESS**

P. Jeffries attended the Massachusetts Federation of Planning & Appeals Boards and handed to the Board copies of “Some problems created by natural disasters and how to solve them” presented by Attorney Carol A. Rolf.

M. Blanchard mentioned Fred’s Variety remodeling dateline coming up.

G. Peabody suggested to the Board to change the way the notices go out to abutters for Public Hearings. Certified mail is very expensive for the applicant. We could send the notices out from the office or allow the applicant to do a certified mailing (certification from the post office that notifications were mailed).

Mr. White, of Shepard Road, reminded everyone of the upcoming special election which is June 25, 2007

## **REORGANIZATION OF THE BOARD**

G. Peabody asked for nominations for Chair.

**Motion:** Made by M. Cooney to nominate G. Peabody.

G. Peabody accepted.

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

**Discussion:** None

**Vote:** 7 – 0

G. Peabody asked for nominations for Vice Chair.

**Motion:** Made by M. Blanchard to nominate P. Jeffries.

P. Jeffries accepted.

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

**Discussion:** None

**Vote:** 7 – 0

G. Peabody asked for nominations for Clerk.

**Motion:** Made by M. Cooney to nominate M. Blanchard.

M. Blanchard accepted.

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

**Discussion:** None

**Vote:** 7 - 0

**Motion:** Made by M. Blanchard to adjourn at 8:45 PM.  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** 7 - 0