

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
Wednesday, February 13, 2008

Present:

Theophile Beaudry
M. Blanchard
Marge Cooney
Robert Cornoni
P. Jeffries
Kevin Kelley
Ginger Peabody, Chairman

Also Present : Diane Trapasso, Administrative Assistant

G. Peabody opened the meeting at 7:00 PM and read the agenda.

The Board introduced themselves and G. Peabody also introduced J. Bubon, Town Planner, H. Nicholas, Building Commissioner/Zoning Enforcement Officer and Jonathan Eichman, Town Counsel from Kopelman & Paige.

APPROVAL OF MINUTES

Motion: to approve the corrected draft meeting minutes of January 9, 2008 by P. Jeffries

2nd: M. Blanchard

Discussion: None

Vote: 7 – 0

DETERMINATION FOR JAMES AND LISA WISEMAN TO DEMOLISH THE EXISTING TWO CAR NON-CONFORMING GARAGE AND CONSTRUCT THE ADDITION TO THE EXISTING HOUSE OF A NEW TWO CAR GARAGE WITH A KITCHEN AND FRONT PORCH. THE PROPERTY IS LOCATED AT 12 BIRCH STREET.

Mr. Wiseman, the property owner, spoke on his own behalf. He stated that they plan to demolish the existing two car non-conforming garage which is approximately 24'X30' and build a new one. The new addition attached to the house will be approximately 24'X50" consisting of a kitchen and front porch.

G. Peabody read the Department memos from the following:

J. Bubon, Town Planner
E. Jacques, Conservation Agent
A. Rusiecki, Health Agent
H. Nichols, Building Commissioner/Zoning Enforcement Officer

Motion: Made by M. Blanchard to grant a Determination to James and Lisa Wiseman for the property located at 12 Birch Street for the Plan # 07356. The Determination does not intensify the existing or create additional non-conformities, and the owner may apply for a building permit for the described activities as shown on the attached survey forthwith.

2nd: K. Kelley

Discussion: None

Vote: 7 – 0

CORRESPONDENCE

Three letters dated January 17, 2008, February 6 & 8, 2008 and from Waterman Design Associates – Construction report on Crescent Gate at Sturbridge

Memo from H. Nichols, Building Commissioner/Zoning Enforcement Officer – 126 River – Construction Yard/Business

Letter from Kopelman & Paige – Recent Development in Land Use Law

OLD/ BUSINESS

G. Peabody stated that she would like the Board to vote to use the funds from Crescent Gate to help fund a new Master Plan.

Motion: Made by M. Blanchard to allow the Zoning Board of Appeals to appropriate the funds of \$25,000 given to the Board by the Crescent Gate project to revise the Town’s Master Plan.

2nd: P. Jeffries

Discussion: None

Vote: 7 - 0

CONTINUATION OF THE PUBLIC HEARING FOR AN ADMINISTRATIVE APPEAL FILED BY SYLVIO PROULX WHICH SEEKS TO OVERTURN A CEASE & DESIST ISSUED BY THE ZONING ENFORCEMENT OFFICER FOR PROPERTY LOCATED AT 109 MAIN STREET

H. Nichols, Building Commissioner/Zoning Enforcement Officer, gave an update of the zoning violation and the basis for the cease and desist order. He offered the following:

Prior to 1965, Sylvio Proulx operated a new car dealership at 109 Main Street (he has been informed it was a Nash dealership). As part of this dealership, there was an auto body shop and repair shop that operated as accessory uses to the main or primary use of an auto dealership.

Under the current Zoning Bylaws, auto dealerships are not allowed uses in the Commercial Zone. Syl's Auto Sales may operate at this location as a non-conforming (existing at the time zoning was adopted) use. It is my understanding that the other businesses that operate at 109 Main Street (Sturbridge Automotive, R&R Auto Center, Status Limousine and Sturbridge Service Center's storage area) are not owned by Mr. Proulx. Therefore, these other businesses, specifically Sturbridge Automotive and R&R Auto Center are now independent primary uses and no longer accessory uses to Syl's Auto Sales.

Attorney Neal spoke on behalf of the applicant. The petitioner is appealing the enforcement action of the Zoning Enforcement Officer. The property has been used, since before the adoption of zoning in March, 1965, for auto repair, auto rental, limousine service and auto body shop. Under §20.03 of the zoning bylaw, any lawful use in existence at the time of the enactment of the bylaw may continue even if such use does not conform to the bylaw.

Attorney Neal presented to the Board a picture of the repaired jeep and a copy of the taxi/livery license.

Attorney Neal also stated that the letter sent by Mr. Malloy on May 9, 2007 and the letter sent by Mr. Nichols on October 12, 2007 were the same. He felt that Mr. Malloy is not the Zoning Enforcement Officer and had no right to send the letter.

Attorney Neal referenced the Power Case.

The Board knows that Syl's is the primary use and feels that the other businesses are not accessory to Syl's. They feel the other businesses are operating on their own and are not accessory to the primary use. They feel the auto repair and limo services are not entwined with the primary use.

G. Peabody stated that there is a difference in the quality of the property with the junk yard. She read the definition of junk yard and feels that is what the yard at Syl's looks like.

Attorney Neal stated that the junk cars are bought and used for repairs.

J. Eichman of Kopelman & Paige, referred to the Derby case indicating that the case was relevant that it runs with the land, but it is not relevant to the primary/accessory use discussion.

Mr. Demauro owner of Status Limousine stated that he followed procedure in setting up his business.

Mr. Malloy stated that Mr. Demauro of the Status Limousine filed for a livery/taxi service license and BOS granted it. He also stated that L. Murawski, Town Clerk, sent a letter to Mr. Demauro stating that the Town does not have private limousine/livery requirements and has no objection to Status Limousine operating in the Town.

G. Peabody stated that the Town Clerk, in her opinion, had no authority issuing the letter to Mr. Demauro and should of directed him to the Zoning Board of Appeals.

K.Kelley referred to the Simons/Newburyport case about incidental relationship.

Mr. Rose, son-in-law to Mr. Proulx, stated that the cars in the fenced area are used for repairs. He did not realize he needed a Class 2 license for the cars that are in storage and that you can only have two unregistered vehicles in your yard at one time.

Mr. Malloy stated that Syl's has not filed for a Class 2 license.

H. Nichols stated that simply 30 years ago the new dealership was approved and once the dealership ceased, the added business have no jurisdiction to be there as stated in the October 12, 2007 letter.

Motion: Made by P. Jeffries to close the public hearing and grant a continuation for the Administrative Appeal filed by Sylvio Proulx for property at 109 Main Street to March 5, 2008 at 7:00PM
2nd: K. Kelley
Discussion: None
Vote: 7 – 0

CONTINUATION OF THE PUBLIC HEARING FOR BICHOP AND LINDA NAWROT REQUESTING A SPECIAL PERMIT AND VARIANCE TO ALLOW THE DEMOLITION OF THE EXISTING NON-CONFORMING RESIDENCE AND RECONSTRUCTION OF A NEW HANDICAPPED ACCESSIBLE IN ITS PLACE AT 88 WESTWOOD DRIVE.

Mr. Trifone of Trifone Design Associates, Inc. spoke on behalf of the applicant. He also stated that the Nawrots were present. He stated that the Nawrots want to go back to the original deck and ramp configuration as submitted in the original plan. The revised basement plan (without the utility/summer kitchen) and other revisions to the site plan will remain.

Mr. Nawrot, the homeowner, spoke. They want to take down the cottage and build the new house. They want the house to be family friendly and handicap accessible.

G. Peabody stated that a Variance is very hard to come by in Massachusetts. There are three criteria for issuing a Variance and all three conditions must be met. They are the following:

1. Soil conditions
2. Shape of the property
3. Topography

The Board felt that these conditions are not met with this plan.

Mr. Nawrot felt that having a handicap family member should qualify them for a variance.

G. Peabody stated that handicap or personal reasons does not qualify for a Variance.

The Board still has concerns about the size of the house. The house exceeds the lot coverage.

The Board suggested the Nawrots talk with Mr. Trifone and redesign the house plans.

The Board gave an informal vote of not issuing the Variance.

The Nawrots decided to ask for a continuance.

Motion: Made by M. Blanchard to continue the Public Hearing for Bichop & Linda Nawrot requesting a Special Permit & Variance to March 12, 2008 at 7:20 PM
2nd: P. Jeffries
Discussion: None
Vote: 7 – 0

NEXT MEETING

March 5, 2008 – Administrative Appeal

Motion: Made by M. Blanchard to adjourn at 9:05 PM.
2nd: P. Jeffries
Discussion: None
Vote: 7 - 0