

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
Wednesday, October 8, 2008

Present: Elizabeth Bank
Robert Cornoni
Adam Gaudette
Pat Jeffries
Keven Kelley
Ginger Peabody, Chairman

Also Present : Diane Trapasso, Administrative Assistant

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

The Board introduced themselves.

APPROVAL OF MINUTES

Motion: to approve the draft meeting minutes of September 10, 2008 by A. Gaudette
2nd: P. Jeffries
Discussion: None
Vote: 5 – 0 – 1 (K. Kelley)

CORRESPONDENCE

Letter of resignation from the ZBA from M. Cooney

Memo from Mr. Malloy – joint meeting of BOS & ZBA - appointment of new member
November 3, 2008

CPTC – Fall Workshops

ROBERT & MICHELLE AUDINO ARE REQUESTING A DETERMINATION FOR A GARAGE ADDITION (16'X24'). REMOVE THE EXISTING ROOF ADD 16'X24' FROSTWALLS TO EXISTING GARAGE, ADD SECOND FLOOR WITH NEW ROOF OVER EXISTING AND THE NEW GARAGE. REMOVAL OF TWO PINE TREES. THE PROPERTY IS LOCATED AT 33 MOUNTAIN ROAD BROOK ROAD.

G. Peabody read the department memos from the following:
E. Jacque, Conservation Agent
J. Bubon, Town Planner

Mr. Audino spoke on his own behalf. He stated that they wish to do the following to the garage: remove the existing roof, add 16X24 frostwalls to the existing, add a second floor with new roof over the existing and new addition.

Motion: Made by P. Jeffries to grant the Determination to Robert & Michelle Audino for the property located at 33 Mountain Brook Road, 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: A. Gaudette

Discussion: None

Vote: 6 - 0

PUBLIC HEARING FOR A VARIANCE. PETER & REBECCA MIMEAULT ARE REQUESTING A VARIANCE FOR THE CONSTRUCTION OF A TWO STORY THREE STALL GARAGE WITH HOME WORKSHOP ABOVE, ACCESSORY TO A SINGLE FAMILY HOME. THE PROPERTY IS LOCATED AT 76 SOUTH SHORE DRIVE.

A. Gaudette read the legal notice.

G. Peabody read a letter from the Mimeaults' stating their position. She also read letters of support from three abutters from the following addresses: 72 South Shore Drive
35 South Shore Drive
82 South Shore Drive

G. Peabody read the department memos: E. Jacque, Conservation Agent
J; Bubon, Town Planner (11/8/2007)
Board of Health (10/25/2007)
G. Morse, DPW Director (11/14/2007)
T. Ford, Chief of Police (10/23/2007)

Attorney Neal spoke on behalf of the applicant. He stated that this proposal has been before the ZBA twice in the last year. On September 12, 2007, the Mimeaults made a request for Determination for the construction of the on 25 South Shore Drive. At that time, 25 South Shore Drive and 76 South Shore Drive were separate lots, both owned by the Mimeaults. Subsequent to that time, the lots have been consolidated into one lot. The Board, at that time stated that 25 South Shore Drive was not a pre-existing non-conforming lot nor to be a new structure on a separate parcel of vacant land, the Board thought that they should file for a special permit.

The Mimeaults filed an application for a Special Permit. The public hearing on the special permit was opened on November 14, 2007. At the hearing, the Board had concerns with the size of the garage, the amount of material being removed to accommodate the garage construction and the negative impact to abutters to the rear of the property by the appearance of the garage. One of the members of the Board had a concern that M.G. L. c. 40A, §6 only applied to the construction of single or two family homes and not accessory buildings and therefore the garage could not be permitted even

by Special Permit. The Board decided to obtain a ruling from Town Counsel and continued the hearing. At the continuation hearing on December 12, 2007, the Mimeaults withdrew their application without prejudice so they could apply for a Variance.

The Variance application is in accord with the instructions of the ZBA. However, the applicants question whether a Variance is necessary based on recent actions of the ZBA. On May 14, 2008 the ZBA granted a Determination to Susan Cooke for property located at 208 Hemlock Path for construction of a detached two story garage believed to be 30'X20'. The lot has a single family house on it. The second story of the garage has a balcony and sliding doors, although it was stated that the second floor would be used for storage. The subject property has 16,800 feet of area and approximately 81 feet of frontage. The Board found that the garage did not intensify the existing non-conformities or create additional non-conformities and the owner could apply for a building permit. On, July 9, 2008, the Board granted a Special Permit to the Tetreaults of 94 South Shore Drive to construct two additions totaling 762 sq.ft. and a garage with 891 sq. ft. This lot has 21,780 sq. ft. of area.

Attorney Neal suggested that the recent Determination for Susan Cooke and the Special Permit granted to the Tetreaults set a precedent for the Mimeaults and the Board should said precedents in deciding the within application.

Mr. Mimeault, the owner of the property spoke. He stated that due to the size of the lot, where the house is located, the topography of the land, the location of the pre-existing septic system and structures on the property and the location of the private road, a garage cannot be added on to the house. At present, due to the size of the lot where the house is located, there is no room for parking of two vehicles. The garage would alleviate the parking problems. The size and shape of the lot does not make it possible to install an attached garage and parking area.

He also stated that the use requested is an allowed accessory use in RR. There is no detriment to the public good as it does not increase traffic and aids in public safety as it allows for parking off of the private way.

Mr. Mimeault further added they have attempted to utilize the terrain on the upland side of the road and cut the garage into the embankment as much as possible. One benefit that this affords them is a walk-out second level storage area. The remaining land directly around the garage will be landscaped with plantings that should enhance the natural beauty of the neighborhood. In order to help visualize the garage site, we have erected a temporary set of tarps were erected, which represent a close proximity of the peak and pitch of the roof.

Ms. Krochmalnyckyj of 23 South Shore Drive an abutter spoke and stated that the construction of the garage would obstruct her view of the lake and feels that not having a garage is not a hardship.

Mr & Mrs. Allard of 31 South Shore Drive abutters spoke and were concerned about the second floor storage turning into living space down the road and being too large.

The Board had concerns about all the excavation being done to the property and how it will be controlled.

Mr. Mimeault stated that they have strict guidelines from Conservation to follow.

The Board stated that all the criteria for a Variance are not being met:

1. Soil conditions, shape or topography – steepness of the banking – not unique – that side of the street is all steep
2. Hardship – not having a garage is not a hardship
3. Detriment to the public good – blocking the view of the lake to the neighbors

The Board felt that the Mimeaults went above and beyond with this plan and felt bad about all the work and time and money they have spent already. But the Board felt that they could not justify in issuing a Variance because all the criteria were not met.

Motion: Made by P. Jeffries to close the Public Hearing.

2nd: K. Kelley

Discussion: A. Gaudette suggested not to close the Public Hearing so that, perhaps the applicant can come back with a more reasonable plan.

G. Peabody stated that in order to grant a Variance all three criteria must be met. The Board agreed that all three could not be met.

Motion: Made by P. Jeffries to close the Public Hearing.

2nd: K. Kelley

Discussion: None

Vote: 6 – 0

Motion: Made by A. Gaudette to deny a Variance to Peter & Rebecca Mimeault of 76 South Shore Drive for the construction of a two story three stall garage with workshop above, accessory to a single family house, because the criteria for a Variance was not met.

2nd: P. Jeffries

Discussion: None

Vote: 6 – 0

DECISION TO BE MADE FOR MARGARET PREDELLA REQUESTING A SPECIAL PERMIT. THE APPLICANT IS REQUESTING A SPECIAL PERMIT TO DEMOLISH AND REMOVE AN EXISTING RESIDENCE, WALKWAYS

G. Peabody stated that the Public Hearing was closed at the last ZBA meeting and now the Board needs to make a decision on the Special Permit requested by Margaret Predella for property located at 160 Lake Road.

G. Peabody stated that the Board must make a decision on the request of Maragaret Predella requesting a Special Permit.

G. Peabody continued that the applicant has stated, for the record, that this request is for a single-family house, even though some staff have stated it looks like a 2 family house, we are looking at a single-family house proposal. This Board can make a decision on the height and bulk of the house but not on the interior. We can make a decision on whether or not it meets setbacks, coverage, impact the character of the neighborhood, this per our bylaws, specifically 24.09 Special Permits. I site "E" of this section.

Further I refer Chapter 20 General Regulations specifically 20.05... I quote..." in order to assist in making its decision, the ZBA shall review and consider information related to the following: traffic, noise, lighting, heat, glare and vibration, drainage, air quality, intensity of use, public nuisance, abutting uses, neighborhood character and environmental quality." The character of the neighborhood.... At a meeting I passed out a list, consisting of lots on the abutters list, which I consider the neighborhood, not the whole lake as a neighborhood. Unfortunately I did not date the abutter's list but as a means of identification if starts out with lot 146 and ends with lot 179 identifying lot, year built, name, land square feet, living area and gross area. The expansion of the house, as requested by Special Permit would make this house second largest in this area, the first being approximately 7700 square feet of gross area, the proposed house is approximately 6840 square feet of gross area, the major difference, in my opinion the larger home as 40949 square feet of land while this proposed house would sit on 21780 square feet of land a difference of 19,166 square feet.

The Supreme Judicial Court ruled this year in Bjorlund v. ZBA of Norwell, where a plaintiff proposed to tear down an existing house which had 675 square feet of living space and construct a new and much larger house with 3600 square feet of living space, even though the new house would have a larger footprint and increased height, it would comply with all setbacks and dimensional requirements with the exception of lot size. The SJC found the new house would be substantially more detrimental to the neighborhood, due to the doubling of the length of the building and the increase in height, which would not be keeping with the rural character of the neighborhood,.....

The new footprint is approximately 88X30 and in my opinion if not in keeping with the character of the neighborhood, the house is just too large for the parcel.

Further the DPW had concerns with the driveway; the design did not allow for any protection to the neighbors, the lot design should stand on its own merit without affecting an abutter .Also there was concern over the relocation of the sewer lateral and pump.

Mr. Predella wanted to make a comment.

G. Peabody stated that the Public Hearing was closed and no comments could be accepted.

The Board was surprised that the applicant did not take the opportunity to approach the Board with revised plans after the Boards comments on the house being too large for the lot.

Motion: Made by A. Gaudette to deny the application of Special Permit requested by Margaret Predella to demolish and remove an existing residence, walkways and associated retaining walls, patio and deck to construct a single-family home with associated site work for the property located at 160 Lake Road.

2nd: K. Kelley

Discussion: None

Vote: 5 – 0 -1 (P. Jeffries)

OLD/NEW BUSINESS

None

NEXT MEETING

November 12, 2008

Motion: Made by P. Jeffries to adjourn at 9:15 PM.

2nd: R. Coroni

Discussion: None

Vote: 6 - 0