

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
Wednesday, December 10, 2008

Present: Elizabeth Bank
Robert Cornoni
Francesco Froio
Adam Gaudette
Pat Jeffries
Kevin 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 corrected draft meeting minutes of November 12, 2008 by E. Banks
2nd: F. Froio
Discussion: None
Vote: 6 – 0 – 1 (K. Kelley)

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 THE RECONSTRUCYION OF A NEW HANDICAPPED ACCESSIBLE IN ITS PLACE AT 88 WESTWOOD DRIVE.

Attorney Neal spoke on behalf of the applicant. He stated that the proposed home has been re-positioned on the property so that it will meet the setback requirements. The proposed deck, porch and stairs are causing the increase in coverage beyond what is allowed in the district.

The Board questioned Attorney Neal how the Nawrots can make the house and decks reasonable and comply with the zoning bylaws. Why is it necessary to have a side deck, just use the front door to get from one end of the house to the other.

Attorney Neal stated that the variance and special permit applications herein are similar in nature to that granted to the DeVines' at 23 Valley Road on June 20, 2007. In that case, a

variance was requested for lot area, frontage and lot coverage requirement. There was a existing house on a non-conforming lot in the SR zone. Due to health problems, the DeVines applied for a variance to build a new handicapped accessible home including an elevator to the second story. They met the setbacks but the proposed lot coverage was 19.9%. The Board approved the variance and special permit to allow construction of a new two story handicap accessible single family home. In voting to grant the variance for the lot coverage, the Board found that there is a unique hardship in making the home handicapped accessible.

Similarly, the Nawrots face a similar hardship in making the home handicapped accessible for one of the occupants and for the person with the disability to have the ability to enjoy the lake view since the lot is too steep for wheelchair access to the lakefront.

The Board feels that the DeVine case and the Nawrots' are not the same. They deal with applicant on an individual case. The DeVine case worked with the Board to make their design work.

The Board is trying to be reasonable, maybe the applicant can make the house smaller or cut back on the deck.

G. Peabody stated that for a Variance, three criteria must be met:

Soil, shape, topography

Hardship

Public good

The Board feels all three conditions are not met and coverage is the problem. They are willing to have the applicant make revisions to plan to see if they can make some cutbacks and maybe not need a Variance.

Attorney Neal agreed to a continuation and submitted a letter for an extension to render a decision.

Motion: Made by P. Jeffries to continue the Public Hearing to January 14, 2009

@ 7:05 PM.

2nd: F. Froio

Discussion: None

Vote: 7 - 0

CONTINUATION OF THE REQUEST FOR A DETERMINATION. JAMES ROWE REQUESTING A DETERMINATION TO DEMOLISH THE SECOND FLOOR AND ADD A FULL SECOND FLOOR DORMER. THE PROPERTY IS LOCATED AT 6 BIRCH STREET.

PETITION FOR AN ADMINISTRATIVE APPEAL. JOEL & CHRISTINE CASAUBON APPEALING A STOP-TO-WORK ORDER ISSUED ON OCTOBER 17, 2008 WHICH DOES NOT PERMIT THE CONSTRUCTION OF A HOME AT 286 BIG ALUM ROAD

Attorney Gates spoke on behalf of the applicant and stated that she wanted to do the two petitions at the same time.

A. Gaudette read the legal notice for the Appeal.

Attorney Gates stated that the letter from Nelson & O'Connell Title Company, Inc. which addresses the issues in the request for the Determination and the Administrative Appeal filed by Casaubons'.

Attorney Gates stated the opinion clearly states that the private road referred to as Big Alum Road is completely private in nature and that absolutely no one has the right to pass over the Casaubon property by way of private road, Further, the title report clearly shows that the Town of Sturbridge does not have an easement for the public purpose(sewer easement) over the parcel, and states that any easement to the Town for fire fighting purpose is of dubious validity.

Attorney Gates stated that the property is exempt from zoning dimensional controls, including frontage. Pursuant to M.G.L. ch.40S §6. The Casaubon's assert that the property does not have frontage, as contemplated by zoning, but that it is none the less grandfathered and protected pursuant to M.G. L. ch40A. The Casaubon's further assert that a Determination should be made pursuant to M.G.L. ch.40A §6 that the proposed structure does not increase the non-conforming nature of the structure. The structure had previously encroached in the side yard setback and the new structure does not. In all respect the building and lot comply with zoning.

In the event that Sturbridge determines that Big Alum Road is frontage which terminates on the northerly boundary, then the same Section6 Determination should be made. The old structure slightly encroached into the front yard setback and the new structure will not encroach more. In either circumstance, the stop work order should be lifted and building should proceed.

Attorney Gates further stated that the proposed structure is not more non-conforming than the old structure, whether the measurement of the northerly boundary line be measurement of the front yard or side yard setback. The house is further removed from the lake and meets with Conservation Commission approval. The lot is oversized and the structure does not violate any other dimensional controls.

Finally, the structure's proximity to the sewer line is completely irrelevant. There is no state building code restriction setting a minimum distance from a sewer line. Sewer lines by necessity pass under streets and buildings. Rather, the question is whether or not the construction will negatively affect the core of influence around the sewer line. The Casaubons went to great length through their engineering firm Bertin Engineering, to satisfy the DPW that the design would protect the sewer line.

For these reason the Casaubon's request the Board make a Determination that this proposed structure is not more non-conforming than the old structure and lift the stop work order.

Mr. Malloy, Acting Zoning Enforcement Officer, stated the definition of street in our bylaws as “ a way, whether public or private, as shown on the most recent edition of the “Official Town Map” located at the Town Hall, DPW and Public Safety Complex”.

G. Peabody read an email from J. Eichman from Kopelman & Paige, Town Counsel, stating the way running through the Casaubon property, as shown on a recorded plan of the property and referred to in the Casaubon’s deed to the property, is what is commonly understand as a private way. It is generally defined by the plan, and it appears from the deed that others have rights to use the way. He understands that the Casaubons have offered no evidence that the rights of others in this way referred to in their deed have been released, and thus the Board can properly conclude that this private way continues to exist. Whether this way is referred to as a private road or as a private right-of-way, the key fact is that the evidence now before the Board indicates it is a way that persons other the Casaubons have a right to use.

B.Caron of 296 Clark Road supports the Casaubon project. He feels the Town shouldn’t waste money or time on this project and let the Casaubons’ continue their project.

V. Roscioli of 247 Big Alum Road stated she has original documents saying that the road is not a thruway only for fire apparatus. It’s a private driveway.

G. Peabody questioned why does the Town plow a driveway.

B. Campell of 516 Leadmine Road stated that the Casaubons’ were issued a building permit and therefore does not see a problem. The problem came about because of an audit by Federal government. The problem is with the Town not doing their job properly.

P & K. Harrington of 14 Harrington Court both agreed the Casaubons’ did everything right, getting a building permit and think everything is fine.

A. Crane who is the Casaubon’s general contractor feels this should be worked out with common sense. There are no easements.

G. Peabody stated that the Board has a job to do and their mission is to uphold the zoning bylaws.

The Board agreed that the project does increase the non-conforming nature and does increase the intensity of use.

Motion: Made by A. Gaudette to deny the Determination to Joel & Christine Casaubon of 286 Big Alum Road because it does intensify the use and increase the non-conforming nature.

2nd: P. Jeffries

Discussion: None

Vote: 7 – 0

The Board took a two minute recess.

Motion: Made by P. Jeffries to close the Public Hearing.
2nd: K. Kelley
Discussion: None
Vote: 7 – 0

Motion: Made by K. Kelley to uphold the Stop-To-Work Order issued on October 17, 2008 to Joel & Christine Casaubon which does not permit the construction of a home at 286 Big Alum Road.
2nd: P. Jeffries
Discussion: None
Vote: 7 – 0

OLD/NEW BUSINESS

None

NEXT MEETING

January 14, 2009

At 9:50 PM a motion was made by G. Peabody to enter into executive session under Chapter 39 § 23B, Paragraph 3 for the purpose of discussing strategy with respect to collective bargaining or litigation and not to reconvene in open session.

2nd: A. Gaudette
Vote: E. Banks – yes
R. Cornoni – yes
F. Froio – yes
A. Gaudette
P. Jeffries – yes
K. Kelley
G. Peabody - yes