

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
Wednesday, February 11, 2009

Present: Elizabeth Banks
Robert Cornoni
Francesco Froio
Adam Gaudette
Pat Jeffries
Kevin Kelley
Ginger Peabody, Chairman

Also Present : Diane Trapasso, Administrative Assistant
Jean Bubon, Town Planner
James Malloy, Town Administrator
Attorney Eichman, Town Counsel, Kopelman & Paige
Jonathan Tobin, Intern

G. Peabody opened the meeting at 6:00 PM. G. Peabody read the agenda.

The Board introduced themselves.

APPROVAL OF MINUTES

Motion: to approve the draft meeting minutes of January 14, 2008 by P. Jeffries
2nd: K. Kelley
Discussion: None
Vote: 7 – 0

CORRESPONDENCE

Letter from Mr. Malloy, Town Administrator – Re: Zuidema – 209 Shepard Road

Letter from Kopelman & Paige – Re: Casaubon, et al. v. Banks, et al. (Town of Sturbridge Zoning Board of Appeals & Zoning Enforcement Officer) Land Court No. 09 MISC 390943

CONTINUATION OF THE REQUEST FOR A SPECIAL PERMIT. JOEL & CHRISTINE CASAUBON REQUEST A SPECIAL PERMIT FOR CONSTRUCTION OF A SINGLE FAMILY HOME ON A PRE-EXISTING NON-CONFORMING LOT. THE PROPERTY IS LOCATED AT 286 BIG ALUM ROAD.

G. Peabody read the department memos from the following:

- J. Bubon, Town Planner, dated 1/26/2009
- G. Morse, DPW Director, dated 1/23/2009
- L. Senecal, Fire Chief, dated 1/22/2009 & 1/27/2009
- E. Jacque, Conservation Agent, dated 1/8/2009

G. Peabody stated that this request is difficult because the Board had upheld the decision of the stop work order of the Enforcement Officer and now that appeal is in land court. It makes it very difficult to negotiate because of the difference between the ROW or not.

Attorney Gates and Ms. Blakeley of Bertin Engineering spoke on behalf of the applicant.

Attorney Gates stated that the applicant understands the DPW 'sstrong desire to move the garage located farther away from the sewer line. The applicant is showing on the draft working plan the garage is being relocated over 10 feet away from the main sewer line. The applicant will need approval to relocate the E-one pump line for his property into the sewer line.

Attorney Gates also stated that installation of a gate or chain is acceptable to the applicant. With the proposed relocation of the garage there should be no issue for access of the fire truck.

The applicant's position is that the lot frontage is at the property line, which is not the end of Big Alum Road. The original Town vote on September 26, 1986 Article 63, regarding adoption of the Town maps and the language regarding the adoption. The language is as follows:

Article 63:

To see if the Town will vote to adopt an official map showing ways and parks previously laid out and established by law and "... Private ways then existing and used in common by more than two owners." Or take any action in relation thereto.

Based on the letters from Nelson & O'Connell Title Company dated December 10, 2008 and January 28, 2009, no one else has the right to cross the property, from either direction. In addition, the title research company has confirmed the a 4' strip of land between the Casaubon's property line and the end of Clarke Road Extension, commonly referred to as a spite strip, which prevents rights to ordinary travel from Clarke Road Extension to the Casaubon property.

Based on the title company's reports and the Town's acceptance language for the adoption of the Town Map, the applicant respectfully requests that the ZBA reconsider the early determination that Big Alum Road extends across the property.

The applicant does not intend to prevent the DPW from using the turn around for the purpose of plowing and sanding as the applicant has allowed it since owning the property. A formal agreement allowing the use of the driveway turn around for such purposes can be drafted if requested by the Town. The proposed project has actually increased the size of the turn around area to make it easier for the town's plow truck and as requested by DPW.

The applicant does know that there is a right to cross for fire protection equipment provided in the property deed. However, this same right is not provided in any other deeds surrounding the property. In addition, the deed clearly details that it is not for ordinary travel.

Ms. Blakeley of Bertin Engineering explained the proposed revised plans which shows the garage being rotated by a 30° angle with an attached breezeway.

The Board feels that the applicant has made strives to remedy this difficult situation. They have been given a lot of knew material to read over. The Board does want to make sure it was given all the information it will need to make the right decision.

Attorney Eichman of Kopelman & Paige stated that he and Attorney Gates will work together to resource titles on the right of way.

Ms. Rascioli of 247 Big Alum Road stated she has original documents saying the road is not a thruway. It's a private driveway.

The Board still questions whether a Variance will be needed if the Board maintains the position that the road is a "private way". Under the legal definition, as per Town meeting vote on the official map, it would have to be a private way existing and used in common with two or more owners. If it is not considered a "private way", then a Special Permit only would be appropriated.

Motion: Made by P. Jeffries to continue the Public Hearing for the Special Permit for Joel & Christine Casaubon at 286 Big Alum Road to March 4, 2009 @ 7:00 PM.

2nd: E. Banks

Discussion: None

Vote: 7 – 0

REQUEST FOR DETERMINATION. JAMES ROWE IS REQUESTING A DETERMINATION TO ADD A DECK TO THE REAR OF THE HOUSE. THE PROPERTY IS LOCATED AT 6 BIRCH STREET.

Mr. Rowe spoke on his own behalf. He stated that they are adding a deck to the rear of the house (lakeside).

Motion: Made by A. Gaudette to grant the Determination, it 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: E. Banks

Discussion: None

Vote: 7 – 0

CONTINUATION OF A SPECIAL PERMIT. PAMELA DAOUST OF 85-H-FOOTE ROAD, CHARLTON IS REQUESTING A SPECIAL PERMIT TO

PERMIT THE OPERATION OF A ONE PERSON BEAUTY SALON AND TO LIVE ON THE OTHER SIDE OF THE TWO FAMILY HOME. THE PROPERTY IS LOCATED AT 588 MAIN STREET.

P. Daoust spoke on her own behalf requesting a continuation. She stated that she needs additional time to meet the parking requirement. Also she is working with a new engineer Christopher McLure of McLure Engineering and are working on new plans.

Motion: Made by P. Jeffries to continue the Public Hearing of the Special Permit for Pamela Daoust for property at 588 Main Street to March 4, 2009 @ 7:30 PM

2nd: E. Banks

Discussion: None

Vote: 7 - 0

The Board decided to postpone their discussions on zoning issues with lakefront properties until after the Master Plan proceeds.

OLD/NEW BUSINESS

None

NEXT MEETING

March 4, 2009

On a motion made by P. Jeffries, seconded by E. Banks and voted unanimously, the meeting adjourned at 7:35 PM.