

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

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

Also Present : Diane Trapasso, Administrative Assistant

Absent: Kevin Kelley

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 March 4, 2009 by F. Froio
2nd: E. Banks
Discussion: None
Vote: 5 – 0 – 1 (P. Jeffries)

REQUEST FOR A VARIANCE. DANIEL & ERIN KIRSCHNER ARE REQUESTING A VARIANCE TO FRONT SET-BACK REQUIREMENT TO COMPLETE THE CONSTRUCTION OF THEIR HOUSE WITH COVERED PORCH. THE PROPERTY IS LOCATED AT 5 BADGER ROAD,

A. GAUDETTE read the legal notice.

G. Peabody read the department memos from the following:

- T. Ford, Police Chief, dated 2/9/2009
- G. Morse, DPW Director, dated 2/24/2009
- J. Bubon, Town Planner, dated 3/9/2009
- E. Jacque, Conservation Agent, dated 2/9/2009

Mr. Kirschner, the owner spoke on his own behalf. He stated that because of the ledge issues during the initial excavation, the house was moved forward to avoid major blasting costs. The house plan included a covered porch on the front, they recently were made aware that completing this porch would put the house 4 feet beyond the required setback line. Their contractor was under the impression from the previous building inspector that because Badger Road is a private road, building the porch would not be an issue. Now that they had

learned that it was an issue, they requested a Variance to complete the construction of their house with the covered porch.

G. Peabody stated that this is a very difficult case. The Board must follow the law and not with their heart.

G. Peabody stated that according to MGL Chapter 40A, Section 10 requires that a Variance can only be granted when the ZBA finds the three criteria are met. The three criteria are the following:

1. Soil conditions, shape or topography
2. Hardship
3. Public Good

A. Gaudette stated that this is a very difficult decision to make. The porch is an accessory use to the main use which is the house. The ledge is not unique to the Kirschner's property only, it is the whole neighborhood.

Mr. Kirschner asked about egress from the house.

The Board felt that they could make a walkway with steps to the house.

The Board felt they could not grant a Variance because the criteria was not met, the soil is not unique to the property and there is no hardship because of the property.

Motion: Made by P. Jeffries to close the Public Hearing.
2nd: F. Froio
Discussion: None
Vote: 6 – 0

Motion: Made by A. Gaudette to deny the Variance, Chapter 19 which requires a 30 foot set-back from the street to permit the completion of a new home construction to Daniel & Erin Kirschner for the property located at 5 Badger Road. The three criteria for a Variance was not met:

1. Soil conditions, shape or topography
2. Hardship
3. Public Good

2nd: P. Jeffries
Discussion: None
Vote: 6 - 0

REQUEST FOR A SPECIAL PERMIT. JAMES & PATRICIA SOUCY ARE REQUESTING A SPECIAL PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING RESIDENCE, DECK & SHED TO CONSTRUCT AN 879 SQ. FT. SINGLE-FAMILY HOME ON AN EXISTING NON-CONFORMING LOT. THE PROPERTY IS LOCATED AT 25 VALLEY ROAD.

A. Gaudette read the legal notice.

G. Peabody read the department notices from the following:

- T. Ford, Police Chief, dated 2/9/2009
- G. Morse, DPW Director, dated 3/10/2009
- E. Jacque, Conservation Agent, dated 2/9/2009
- J. Bubon, Town Planner, dated 3/9/2009

Mr. Roberts of Jalbert Engineering spoke on behalf of the applicant. He gave the Board the revised plans, addressing the concerns of the DPW Director. Mr. Roberts stated that the applicant is proposing to demolish and remove an existing residence, deck and shed to construct an 879 square foot single-family home on an existing non-conforming lot. The lot coverage would be 20.60% where presently it is 23.33%.

The Board stated that it was very nice to see an application for reduced coverage at the lake. The Board questioned the height of the retaining wall.

Mr. Roberts stated that the wall is four feet.

Motion: Made by P. Jeffries to close the public hearing.
2nd: F. Froio
Discussion: None
Vote: 6- 0

Motion: Made by A. Gaudette to grant the Special Permit pursuant to Section 20.05 of the Zoning Bylaw which authorizes the ZBA to permit the construction upon a lot with less than required width or area to James & Patricia Soucy, for the property located at 25 Valley Road, according to the revised plans dated 3/11/2009.
2nd: P. Jeffries
Discussion: None
Vote: 6 – 0

REQUEST FOR A DETERMINATION. JOSEPH OVERLY IS REQUESTING A DETERMINATION TO ADD A SECOND FLOOR TO THE EXISTING HOUSE. THE PROPERTY IS LOCATED AT 48 STREETER ROAD.

Mr. Lemieux of R & L Construction spoke on behalf of the applicant. He stated that he is proposing to remove the existing cape style roof and construct a second floor in a colonial style. The footprint will remain the same. There will be no excavation.

G. Peabody read the following department memos:

- E. Jacque, Conservation Agent, dated 2/27/2009
- J. Bubon, Town Planner, dated 3/9/2009
- G. Morse, DPW Director, dated 3/9/2009

Motion: Made by F. Froio to grant the Determination to Joseph Overly for the property located at 48 Streeter Road. 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: P. Jeffries

Discussion: None

Vote: 6 – 0

REQUEST FOR A SPECIAL PERMIT & VARIANCE. GERARD & ALICE MARTINI ARE REQUESTING A SPECIAL PERMIT & VARIANCE TO ALLOW THE CONSTRUCTION OF A NEW GARAGE AND FAMILY ROOM WITHIN 8'-0' FROM THE LEFT SIDE YARD LINE. THE PROPERTY IS LOCATED AT 13 WALLACE ROAD.

A. Gaudette read the legal notice.

G. Peabody read the following department memos:

- G. Morse, DPW Director, dated 3/10/2009
- E. Jacque, Conservation Agent, dated 2/17/2009
- J. Bubon, Town Planner, dated 3/9/2009
- T. Ford, Police Chief, dated 2/24/2009

Mr. Melick an Architectural Designer spoke on behalf of the applicant. He stated the applicant requests permission to construct a new garage and family room within 8' – 0' from the left side yard line. The slope of the existing grades along the left side yard where the driveway lays is sloped down 7' 0" vertical over a 24' -0' horizontal run. He stated this is difficult at best to walk up in fair weather and impossible to use in winter season. He further stated owner is forced to park vehicles in the front lawn. This condition is an exceeding hardship to the owners and occupants. He felt the lot width creates a further burden in that it is only 95' -0' wide at the location of the house and overriding hardship is the physical handicaps that the owners and occupant have specifically as it relates to accessibility.

G. Peabody stated that the Board again has a difficult decision to make. The Board has to act according to the law and not their hearts. Three criteria are needed for a Variance according to MGL Chapter 40A, Section 10;

1. Soil conditions, shape or topography
2. Hardship
3. Public Good

The Board felt that the slope of the Martinis' property was not unique to their property because all the properties on that side have a greater slope. The Board felt the owners can access the property now, a garage is an accessory use to the main use, it would be nice to have but not necessary. An alternative could be a ramp to the front of the driveway and they would not have to come before the Board.

Ms. Martini, the homeowner spoke stating that they want to make their home handicapped accessible for the future. She always thanked the Board for their time in listening to their request.

Motion: Made by P. Jeffries to close the public hearing.

2nd: F. Froio

Discussion: A. Gaudette stated that if the Variance is denied, the applicant should ask to withdraw the Special Permit without prejudice in order to come back to the Board with revised plans. The Board agreed.

Vote: 6 – 0

Motion: Made by A. Gaudette to deny the Variance to Gerard & Alice Martini for the property at 13 Wallace Road. The Variance does not meet all three criteria which are the following:

1. Soil conditions, shape or topography
2. Hardship
3. Public Good

2nd: E. Banks

Discussion: None

Vote: 6 – 0

Motion: Made by A. Gaudette to allow Gerard & Alice Martini of 13 Wallace Road to withdraw without prejudice the Special Permit.

2nd: E. Banks

Discussion: None

Vote: 6 - 0

OLD/NEW BUSINESS

CPTC Workshop – March 21, 2009 will meet in Town Hall parking lot @ 7:10 AM

The Board will consider meeting twice a month if necessary because of the increase in applications.

The Board would like to see better defined plans, while some Engineers do a better job than others, the Board felt that if the plans submitted were not clear, the best way would be to ask for clarification and continue the Public Hearing.

NEXT MEETING

April 8, 2009

On a motion made by P. Jeffries, seconded by E. Banks and voted unanimously, the meeting adjourned at 8:35 PM.