

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
Wednesday, August 20, 2014

Present: Elizabeth Banks
Thomas Creeden, Chair
Margaret Cooney
Donald Fairbrother, Vice-Chair/Clerk
Chris Mattioli
Maryann Thorpe
Michael Young

Also Present: Diane M. Trapasso, Administrative Assistant

Mr. Creeden opened the meeting at 6:30 PM and read the agenda.

The Board introduced themselves.

APPROVAL OF MINUTES

Motion: Made by Mr. Fairbrother to accept the amended minutes of July 9, 2014.
2nd: Ms. Cooney
Discussion: None
Vote: 6 – 0 – 1 (Ms. Thorpe)

Mr. Creeden recused himself from the Board for the Determination for Janet Brooks and the Determination for Marthe Reighard because he is an abutter to both.

DETERMINATION – JANET BROOKS IS REQUESTING DETERMINATION TO REMOVE THE TEMPORARY STAIRS AND REPLACE WITH A 8'X12'6" DECK. THE PROPERTY IS LOCATED 94 MCGARGLE ROAD.

Materials presented:

Application for Determination – Janet Brooks – received 7/7/2014

Proposed Sewage Disposal System Repair for McGargle Road – prepared by Ecotec Environmental Associates – dated March 1998 – revised 6/5/98 – received 7/7/2014

Mortgage Inspection Plan – 94 McGargle Road – dated 11/22/2013

Photos of the home

Mr. Fairbrother acknowledged the following department memos:

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- Ms. Bubon, Town Planner
- Ms. Rusiecki, BOH Agent
- Mr. Colburn, Conservation Agent
- Mr. Morse, DPW Director
- Mr. Burlingame, Building Inspector

Mr. Lamontagne of Lamontagne Building spoke on behalf of the applicant. Mr. Lamontagne stated that they are removing the temporary stairs on the east side of the house and replace them with a 8'X12'6" deck. He will also reconstruct the fieldstone steps to the lake.

The Board had the following concerns and questions:

- Questioned the size of the deck – revised agenda showed the true dimensions of the deck
- Pump house – Mr. Lamontagne stated that this was an old camp and the pump house is the original one to the property
- Mortgage & sewer plans differ – Mr Jalbert stated that there is always a difference – depends who does it

Motion: Made by Mr. Fairbrother to find the application submitted by Janet Brooks to request a determination to allow the construction of an additional 8'X12'6" deck on the back of the home located at 94 McGargle Road, a non-conforming lot, and as shown on the plan submitted by Ms. Brooks identified as "Mortgage Inspection Plan, 94 McGargle Road", dated November 22, 2013 does not intensify the existing non-conformity nor create any additional non-conformities and the owner may apply for a building permit for the described activities as detailed on the request and the above cited plan under the following conditions:

1. Ensure that the access covers for the Tight Tank septic system remain accessible
2. Proceed to file with the Conservation Commission for both the deck construction and the fieldstone walkway reconstruction.
3. Satisfies all other requirements of all other boards and committees.

2nd: Ms. Banks

Discussion: None

Vote: 6 – 0

DETERMINATION – MARTHE REIGHARD IS REQUESTING A DETERMINATION FOR AN ADDITION TO THE FIRST FLOOR, DORMER TO THE SECOND FLOOR AND AN UNATTACHED GARAGE. THE PROPERTY IS LOCATED AT 495 LEADMINE ROAD.

Materials presented:

Application for Determination – Marthe Reighard – received 7/21/2014

Existing Site Plan Kevin B. Greene & Marthe Reighard – prepared by Jalbert Engineering – plan date 5/28/2014 – DWG #14102 – received 7/21/2014

Proposed Site Plan Kevin B. Greene & Marthe Reighard – prepared by Jalbert Engineering – plan date 7/8/2014 – DWG #14129 – received 7/21/2014

Architectural Designs – prepared by Home Designs by Bruno

Mr. Fairbrother acknowledged the following department memos:

- Ms. Bubon, Town Planner
- Mr. Colburn, Conservation Agent
- Lt. Marinelli, Fire Inspector
- Ms. Rusiecki, BOH Agent
- Mr. Burlingame, Building Inspector

Mr. Jalbert of Jalbert Engineering spoke on behalf of the applicant. Mr. Jalbert stated that the proposal is for the construction of an addition to the existing home and dormers to be added to the second floor and a detached garage. The proposed addition and garage meet the setbacks and lot coverage requirements.

The Board had the following concerns and questions:

- The existing shed is shown approximately 30 – 35' from the shoreline – Mr. Jalbert stated that the shed conforms
- Trees that need to come down – Mr. Jalbert stated that the Conservation Commission will discuss alternatives during the hearing which may include realignment of the walkway between the garage and house which may save two trees. Replacement planting may be required.
- How many trees are coming down – Mr. Jalbert stated four to six trees may come down but as many as ten
- Will the garage have running water – Mr. Jalbert stated no water and the garage will be used for storage only
- Will the septic have the capacity for the bedroom – Mr. Jalbert stated yes

Mr. Maguire of Leadmine Road stated that he has a shed and wanted to know if he was grandfathered.

Mr. Jalbert stated that with a permit you are grandfathered seven years, without a permit ten years.

Motion: Made by Mr. Fairbrother to find the application submitted by Jalbert Engineering on behalf of Marthe Reighard to request a determination to allow for an addition to the first floor, a second floor dormer and a free standing garage of a conforming single family home on a non-conforming lot located at 495 Leadmine Road, Sturbridge MA and as shown on the plan submitted by Jalbert Engineering, 54 Main Street, Sturbridge, MA 01566, further identified as Drawing No. 14129, Dated July 8, 2014 does not intensify the existing non-conformity nor create any additional non-conformities and the owner may apply for a building permit for the described activities on the above cited plan under the following conditions:

1. The owner of the property will provide the Sturbridge Fire Department with blue print drawings showing smoke detectors and carbon monoxide detectors locations in accordance with M.G.L. Chapter 148 section 26F, 26F 1/2 . The house numbers must also be visible from the street.
2. The Health Agent needs a septic system location plan to check for offsets and capacities
3. Satisfactorily achieves all the requirements of all other boards and committees.

2nd: Ms. Cooney

Discussion: None

Vote: 6 – 0

Mr. Creeden returned to his seat on the Board.

PUBLIC HEARING – MATTHEW S. ROUSSEAU IS REQUESTING A SPECIAL PERMIT TO IMPROVE AND REDEVELOP THE EXISTING SINGLE FAMILY HOME INTO A COMMERCIAL OFFICE SPACE AND MAINTAIN THE EXISTING USE OF THE WAREHOUSE. THE PROPERTY IS LOCATED AT 23 MAIN STREET.

Material presented:

Application for Special Permit – Matthew S. Rousseau – received 7/21/2014

Site Plan Matthew S. Rousseau – 23 Main Street – prepared by Jalbert Engineering – plan date 7/10/2014 – DWG #14136

Existing Floor Plans Matthew S. Rousseau – 23 Main Street – prepared by Jalbert Engineering - plan date 7/10/2014 – DWG #14132

Mr. Fairbrother read the legal notice.

Mr. Creeden acknowledged the following department memos:

- Mr. Coloburn, Conservation Agent
- Ms. Bubon, Town Planner
- Mr. Morse, DPW Director
- Mr. Burlingame, Building Inspector
- Ms. Rusiecki, BOH Agent

Mr. Jalbert of Jalbert Engineering spoke on behalf of the applicant. Mr. Jalbert stated that the applicant is proposing to improve and redevelop the existing single family home into a commercial office space. The exterior portion of the residence will not be changed and only the alteration of the interior walls for office use will be done. The warehouse will not be altered. The only change to the facility will be the addition of a new H.V.A.C. unit for climate controlled interior for warehousing.

The Board had the following questions and concerns:

- What kind of storage – Mr. Jalbert stated no hazardous materials
- Conservation Department would like to see a guard rail to prevent future intrusions into the buffer zone – Mr. Jalbert stated that it will be discussed at the Conservation Commission meeting
- Single family home seems to be a duplex – Mr. Jalbert stated that it is not
- Will the warehouse be divided up – Mr. Jalbert stated the warehouse will not be divided up and will not be public storage
- Parking in SR – Mr. Jalbert stated the parking has been grandfathered for about 40 years

Motion: Made by Mr. Fairbrother to close the Public Hearing.

2nd: Ms. Cooney

Discussion: None

Vote: 7 – 0

Motion: Made by Mr. Fairbrother to Find that the proposal for a Special Permit by Jalbert Engineering on behalf of Matthew Rousseau for 23 Main Street, Sturbridge MA to allow the conversion of a single family home into office space on this non-conforming lot in the Commercial District. Office space is a permitted use in this District. This Special Permit application would not be more detrimental to the neighborhood in the Commercial and Suburban Residential Zones than the existing structure and would not increase the non-conformities. Additionally, the structures, both the warehouse and the residence, have existed in the current location since 1940.

2nd: Ms. Thorpe

Discussion: None

Vote: 7 - 0

Motion: Made by Mr. Fairbrother to Grant the Special Permit requested by Jalbert Engineering on behalf of Matthew Rousseau for 23 Main Street, Sturbridge MA to allow the conversion of a single family home into office space on this non-conforming lot in the Commercial District. Per zoning bylaws section 7.01 (b) office spaces is a permitted use in the Commercial District. This Special Permit application fully complies with section 20.05 and section 24.09 subsections (a) through (f) of the zoning bylaws and would not be more detrimental to the neighborhood in the Commercial and Suburban Residential Zone. This structure is located at 23 Main Street, Sturbridge MA and will be altered in accordance with the plans entitled “Site Plan- Matthew S. Rousseau” Drawing No. 14136, dated July 10, 2014 and “Existing Floor Plans- Matthew S. Rousseau (sheets 1-3)” Drawing No. 14132, dated July 10, 2014 submitted by Jalbert Engineering of 54 Main Street, Sturbridge MA 01566. Approval is contingent on meeting the following conditions:

1. No hazardous material will be used or stored on site unless approved by the Sturbridge Fire Department and the Sturbridge Board of Health.
2. Removal of items stored within the 200’ wetlands buffer zone and consider installing a guard rail to prevent further encroachments.

3. All building and fire codes will need to be adhered to when the property is renovated and full plans will be required by the Building and Fire Departments.

2ND: Ms. Thorpe

Discussion: None

Vote: 7 - 0

Ms. Cooney recused herself from the Board on the Determination of Richard Clemence because of his recent purchase to either rent or flip.

DETERMINATION – RICHARD CLEMENCE IS REQUESTING A DETERMINATION TO ADD A FULL DORMER TO THE SECOND FLOOR. THE PROPERTY IS LOCATED AT 22 MEADOW BROOK ROAD.

Materials presented:

Application for Determination – Richard Clemence – received 7/25/2014

Plot Plan of Properties – Richard M. Clemence – prepared by Jalbert Engineering - plan date 7/23/2014 – DWG #14145 – received 7/25/2014

Architectural Designs – Clemence Residence – prepared by Rockwood Design, Inc.- permit set – 4/28/2014

Mr. Creeden acknowledged the following department memos:

- Ms. Bubon, Town Planner
- Ms. Rusiecki, BOH Agent
- Lt. Marinelli, Fire Inspector
- Mr. Colburn, Conservation Agent
- Mr. Burlingame, Building Inspector
- Mr. Morse, DPW Director

Mr. Jalbert of Jalbert Engineering spoke on behalf of the applicant. Mr. Jalbert stated that the proposal is to add a full dormer to the second floor bedroom. The dormer will accommodate the expansion of the existing bedroom and will provide space for a full bathroom.

The Board had the following concerns and questions:

- There are three sheds on the property – Mr. Jalbert stated that two sheds are coming down and will reduce the lot coverage
- What kind of foundation are the two sheds on that are coming down – Mr. Jalbert stated they are on blocks that can be picked up
- Mr. Clemence owns three parcels, can the middle parcel be sold – Mr. Jalbert stated that under reversion it cannot be sold

Motion: Made by Mr. Fairbrother to find the application submitted by Richard Clemence to request a determination to allow construction of a full dormer including a bedroom, bath and a sitting area on an existing home at 22 Mountain Brook Road, a non-conforming lot, does not intensify the existing non-conformity nor create any additional non-conformities. Details of the plans are included on the plans submitted by Mr. Clemence identified as “Rockwood Design, Inc. Permit Sheets A2, A3 and A4” dated April 28, 2014 and “Plot Plan of Properties – Richard M. Clemence, Drawing No. 14145” developed by Jalbert Engineering on July 23, 2014. The owner may apply for a building permit for the described activities as detailed in the request and the above cited plans under the following conditions:

1. Provide the Sturbridge Fire Department with blue print drawings of smoke detector and carbon monoxide detector locations once design plans are finalized.
2. Removal of the two sheds on the property.
3. Satisfactorily achieves all the requirements of all other boards and committees.

2nd: Ms. Banks

Discussion: None

Vote: 6 – 0

Ms. Cooney returned to her seat on the Board.

DETERMINATION – JOSEPH GODING IS REQUESTING A DETERMINATION FOR CONSTRUCTION OF AN IN-GROUND POOL. THE PROPERTY IS LOCATED AT 34 FARQUHAR ROAD.

Materials presented:

Application for Determination – Joseph Goding – received 7/21/2014

Pool Plot Plan – Joseph S. & Shaundra K. Goding – prepared by Jalbert Engineering – plan date 7/18/2014 – DWG #14140 – received 7/21/2014

Mr. Creeden acknowledged the following department memos:

- Lt. Marinelli, Fire Inspector
- Ms. Bubon, Town Planner
- Mr. Burlingame, Building Inspector
- Mr. Colburn, Conservation Agent

Mr. Goding spoke on his own behalf. Mr. Goding stated that he is requesting a Determination to be allowed to construct an in-ground pool and 5’ concrete apron surrounding the pool for his family.

Mr. Goding stated that the lot is conforming and the proposed pool will comply with all the setbacks, however, lot coverage already exceeds what is allowed by the zoning bylaw (15%) with the existing house being as originally built at 19.82%.

Mr. Goding stated he should not be penalized for a mistake made by the Town of letting the builder exceed the lot coverage when the house was built.

The Board had the following questions and concerns:

- When was the house built – Mr. Goding stated that the house was built in 2002
- The land behind your house is Conservation land – have you asked the Town if you could purchase a piece of it – Mr. Goding stated “No”
- Some members had concerns with run-off from rain water
- Will there be a pool house – Mr. Goding stated “No”
- Some members felt that granting the Determination for the pool will not be more detrimental to the neighborhood

Ms. Waters of 38 Farquhar Road stated that because of errors in the past by the Town, Mr. Goding should not be penalized. He should be granted the Determination.

Ms. Blanchard of 26 Farquhar Road stated that she owns an in-ground pool and has never had a problem with run-off. Mr. Goding should be granted the Determination.

Ms. Gimas of 38 Farquhar Road stated that the run-off would be going into the woods and cause no problem to the neighborhood. She is in favor of granting Mr. Goding the Determination.

Ms. Cooney stated that a 4' fence would have to be erected surrounding the pool site.

Motion: Made by Mr. Fairbrother to find that the application submitted by Joseph Goding to install a 20' by 25' in-ground pool with a 5' concrete apron around the pool at 34 Farquhar Road as shown on the submitted plan by Jalbert Engineering “Pool Plot Plan” drawing No. 14140, dated July 18, 2014 does increase the non-conformity of lot coverage from 19.8% to as much as 24.43%. The maximum lot coverage for this Suburban District is 15% and to find that the further increase in lot coverage is acceptable and will not significantly change the drainage characteristics of the surrounding area with increased stormwater runoff and down gradient flooding.

2nd: Ms. Thorpe

Discussion: None

Vote: 6 – 0 -1(Ms. Banks)

Mr. Mattioli recused himself from the Board. He stated that he will not be part of any or all future process with this project.

OM SHRI AMBIKA, LLC IS REQUESTING A WITHDRAWAL WITHOUT PREJUDICE OF THE APPLICATION FOR THE VARIANCE AT 21 NEW BOSTON ROAD.

Materials presented:

Letter from MidPoint Engineering + Consulting – Re: Hotel Redevelopment Plan 21 New Boston Road – requesting to Withdraw without Prejudice the Variance for 21 New Boston Road – received 7/18/2014

Also Present:

Attorney Eichman, Town Counsel
Attorney Neal, Counsel for the applicant
Mr. Doherty, MidPoint Engineering
Mr. Patel, property owner

Mr. Creeden stated that this is only an agenda item and not a public hearing, so therefore he did not allow the public to speak on this matter.

Ms. Banks asked how can the application be withdrawn since the hearing has been closed and voted on but not filed with Town Clerk?

Attorney Eichman stated there is no case that I am aware of on this specific question, and our opinion is based on the requirements of G.L. c.40A, s.15, 16, and 17, taken together, and related case law. Once an application is filed with the ZBA, in our opinion that application remains before the Board until either the application is withdrawn, the Board takes final action on the application, or the Board fails to take final action within the time required and notice is filed with the Town Clerk. Final action by the Board requires both a vote on the application and the filing of the requisite written decision of the Board with the Town Clerk. It is the filing of the decision with the Town Clerk or the filing of notice with the Town Clerk. The Board failed to act within the time required, that makes the decision final and takes the application outside of the jurisdiction of the Board as only then does a right of appeal arise pursuant to G.L. c.40A, s.17. Prior to that time, the application remains before the Board and the Board may take any lawful action within its power with respect to the application. One such action is consideration of an applicant's petition to withdraw under G.L. c.40A, s.16. The statute places no limits on when such a petition may be made or decided provided that the application in question is before the board of appeals.

Mr. Creeden stated that he takes full responsibility for the actions of not filing the decision. At the time, some unforeseen matters had been revealed and the decision needed to be put on hold in order for the applicant to withdraw the application.

Ms. Cooney stated that all the case law they received only dealt with decisions that have been on Special Permits but not a Variance.

Attorney Eichman agreed that in his opinion the same rule applies for the Om Shri Ambika variance.

Ms. Cooney stated since we are not a precedent setting Board, she could support the Withdrawal Without Prejudice.

Ms. Banks was opposed to the withdrawal because we did not have all the facts that Mr. Creeden was referring to. We (the Board) were not notified about any reasons for an unfair hearing. The ZBA should have been informed.

Motion: Made by Mr. Fairbrother to move that Board vote, pursuant to M.G.L. c. 40A, s.16, to allow Om Shri Ambika, LLC to withdraw without prejudice its application for a variance for 21 New Boston Road.

2nd: Mr. Young

Discussion: None

Vote: 5 – 1 (Ms. Banks)

Mr. Mattioli returned to the Board.

CORRESPONDENCE

None

OLD/NEW BUSINESS

The Board was given a Status Worksheet for the ZBA projects. Mr. Creeden asked Ms. Banks to review and make comments for the next meeting.

Ms. Banks agreed.

RE-ORGANIZATION OF THE BOARD

Motion: Made by Ms. Cooney to nominate Mr. Fairbrother as Chair.

2nd: Ms. Banks

Mr. Fairbrother accepted

Vote: 6 – 0 -1 (Mr. Creeden)

There were no other nominations

Motion: Made by Mr. Creeden to nominate Ms. Cooney as Vice/Chair/Clerk

2nd: Ms. Thorpe

Ms. Cooney accepted

Vote: 7 – 0

NEXT MEETING

September 17, 2014 at the Center Office Building

On a motion made by Mr. Fairbrother, seconded by Ms. Cooney, and voted unanimously, the meeting adjourned at 8:20 PM.