

STURBRIDGE PLANNING BOARD
MINUTES OF
TUESDAY, SEPTEMBER 16, 2003

Present: Mike Beaudry
Marge Cooney
Sandra Gibson-Quigley, Chair
Deb Hill
Thomas Kenney
Milton Raphaelson
David Yaskulka

Also present: Lawrence Adams, Town Planner

S. Gibson-Quigley called the meeting to order at 7:00 PM and read the agenda. The minutes for September 9, 2003 were reviewed. M. Cooney questioned the reference to Sturbridge Candy on page 2 regarding, "the detention basin for runoff (Sturbridge Candy), but would have a narrow berm," asking if it should be "Sturbridge Tea Shoppe."

Motion: to accept the minutes of September 9, 2003, as corrected, by M. Cooney
2nd: T. Kenney
Discussion: None
Vote: All in Favor

ANR's/Releases

Mattioli – 80 & 82 McGilpin Road – Jalbert Engineering – Approved as presented	Reconfiguration
Celuzza – Mashapaug Road – Jalbert Engineering – Approved as presented	Reconfiguration

OF PARCELS CREATED 0

Releases

Brook Hill – Release of Funds and Request for Postponement of Road Completion – The request for partial release of funds was in the amount of \$15,500 - \$1,000 – detention basin and related structures; \$1,000 – fire tank and accessories and \$13, 500 – binder replacement contingency. DPW Director, Greg Morse stated in a memo dated September 16, 2003 that he had no objections. L. Adams commented that the work had been done and the funds were available under a lender’s agreement. He recommended the Board endorse of the release of \$15,500.

Motion: to endorse the release of \$15,500 for Brook Hill, by M. Cooney
2nd: D. Hill
Discussion: None
Vote: All in Favor

L. Adams explained the request for an extension to June 30, 2004 (original date: December 30, 2003) included; landscaping, street lights and signage- \$23,000; setbounds and As Built Plan - \$8,000; finish paving - \$9,000 and general contingency reserve - \$4,000 totaling \$44,000. L. Adams had no objections to the extension nor did G. Morse, provided the final paving was not placed during cold weather (50 - 50 degrees and above temp.)

Motion: to grant an extension for the completion of the Brook Hill development to June 30, 2004, by T. Kenney
2nd: M. Beaudry
Discussion: None
Vote: All in Favor

Sturbridge Hills – Request for Postponement of Road Completion – Mr. Williams had intended on asking the Board for an extension. G. Morse had no objections. L. Adams commented that the construction of a private tennis court and bike trail should take place before the completion of the road because of the construction. L. Adams would like to have the date of completion for the road for the Board's next meeting.

PUBLIC HEARING – LIBRARY LANE BED & BREAKFAST – SPECIAL PERMIT

Elizabeth Eckhardt

S. Gibson-Quigley opened the public hearing at 7:15 PM and M. Cooney read the legal notice. Upon reading the legal notice it was stated the scheduled time for this hearing was 8:00 PM. Since the legal notice took precedent over the agenda, S. Gibson-Quigley stated that the hearing would be opened at 8:00 PM.

PLANNER'S UPDATE/DISCUSSION

Copper Stallion – Formerly Margeax's Deli – L. Adams commented that the building had been built in the mid 1800's and would need a thorough review by state inspectors at the recommendation of L. Senecal. L. Adams suggested to Donald Garfield that he delay his request for waiver of Site Plan Review until he had committed to bringing the build up to code (load bearing for the porch and all three floors, a second means of egress, strobe light and sprinklers, if necessary) and had addressed the issue of parking with better calculations. S. Gibson-Quigley questioned if the Community Preservation Act could be a source of funds for this project, since it was a historic building. M. Cooney commented that the Community Preservation Committee was interested in supporting items of historic significance.

Autumn Ridge – L. Adams explained this was an active elderly housing project proposal that would be presented to the Zoning Board of Appeals under Chapter 40B due the parcel's lack of frontage. It is located behind Autumn Ridge. The proponents had been scheduled to meet with the Board of Selectmen on September 15th. Charles Blanchard commented that not all Selectmen were present so the meeting was postponed.

Scenic Roads Check Off List – L. Adams would compile a list of selected names submitted by members of the Board for a formal vote by the Planning Board on each name. He would forward the final list to the Board of Selectmen.

Proposed Zoning Bylaw Changes – L. Adams stated there were no known zoning bylaw changes proposed at this time for the Annual Town Meeting.

Boardwalk Parking Lot – Since the rezoning of the back property of the Boardwalk for a parking lot, it has been determined that wetlands constraints would require that the parking lot be four feet from the property line. The Board could grant a waiver through a Site Plan Review process. L. Adams noted that alternatives were being prepared for the Board's review.

Route 20 Study Committee - At its last meeting the Committee reviewed a detailed report of traffic accidents over the past two years. MassHighway would be contacted for types of traffic control and design elements. L. Adams wanted the Committee to understand the kinds of tools that were available for traffic calming, signalization, turn-arounds and beautification. He acknowledged D. Hill and T. Keeney's participation and offered to pass related materials on to the Board.

At 7:27 the Board took a short recess.

PROPOSED BODY AND SOUL MASSAGE THERAPY AT THE TEA SHOPPE – Second floor; Snell St.

S. Gibson-Quigley noted that the Board had approved Site Plan Review for a tea shoppe at 428 Main Street at its last meeting (09-09-03.) Conditions of that Decision restricted restaurant retail space to the first floor and required Site Plan Review for any expansion of the commercial space into the residential area. Melissa Langevin had submitted a letter to the Board requesting to start a massage practice above the tea room. She would be the only employee and her practice would be by appointment only with a maximum of five clients per day.

L. Adams requested the Board to waive Site Plan Review. M. Cooney raised the concern of handicap access to the second floor and parking for M. Langevin's practice. D. Hill noted that this would be opening the second floor up to commercial business and questioned if handicap access would then be required. L. Adams felt that since the practice was a professional service (not commercial space) and was by appointment for select clientele, the same rules may not apply. He offered to contact the Architectural Barriers Board for clarification and noted that the Board could include a condition to address this concern before an occupancy permit was issued. M. Raphaelson asked if the abutters to the property should be notified of the request. S. Gibson-Quigley suggested that an official request for Site Plan Review Waiver be submitted along with a sketch showing the two additional parking spaces, that the abutters be notified and the handicapped issue be resolved. L. Adams added that a change of use (ie. professional service to retail space) would trigger Site Plan Review. The Board agreed to take this proposal up again at its October 7th meeting.

PUBLIC HEARING – 25 LIBRARY LANE BED & BREAKFAST – SPECIAL PERMIT **Elizabeth Eckhardt**

S. Gibson-Quigley opened the public hearing at 8:00 PM and M. Cooney read the legal notice. Attorney George Hammond represented Mr. and Mrs. Eckhardt and gave a brief background of the applicants and property

- formerly the Wells Estate
- property was zoned residential where a bed and breakfast was allowed under provisions of a special permit under the Town's Zoning Bylaws
- purchased the 2.4 acre property with 539 feet of frontage on Walker Pond in January 2001
- residence – 6,000 square feet, 6 bedrooms, 6 ½ baths, 2 complete separate kitchens, 2 dining rooms, a great room and a den
- guesthouse – 2 bedrooms, 2 baths, living room/dining room area, bath and kitchen
- septic system – 3 years old and designed for 8 bedrooms

The request was for a special permit

- to operate a bed and breakfast under the name of Tantiusqus Lodge
- to rent a maximum of four rooms each with a private bath at approximately \$150/night per room
- maximum guests would be eight – two per room
- continental breakfast provided each morning
- operational from April to October/November; not year round

Atty. Hammond stated that the area was zoned residential and a bed and breakfast was an allowed use under special permit from the Planning Board. The use would not be detrimental to the residential zone, it would not be a danger or create a hazard to public health and safety and the use would be consistent with future development. He noted that bed and breakfasts in other residential areas of Town (Fiske Hill and Fiskdale) did not pose a financial risk to its abutters, nor would this use. Guests would be made aware that they were invited guests to the Eckhardt property only. E. Eckhardt would not be adding to the non-conforming use, but making use of the space she had.

S. Gibson-Quigley asked Atty. Hammond to explain the proposal for the three car garage that would be heard by the Zoning Board of Appeals. Atty. Hammond stated the garage was intended to house Mr. and Mrs. Eckhardt's

personal vehicles and a garden tractor. He added that the pitch of the roof would not allow for a use other than additional storage space. M. Cooney asked how the guest house would be used. Atty. Hammond said it was currently occupied by two family members. The parking plan was discussed. All the services for the bed and breakfast would be provided for by E. Eckhardt. D. Yaskulka asked how liability insurance usually worked for a bed and breakfast and would it indemnify neighbors on their insurance. Atty. Hammond did not think it would. D. Hill noted that the bed and breakfast Atty. Hammond referenced on Fiske Hill was different from this request because it did not abut common land. Atty. Hammond replied that E. Eckhardt would inform her guests that they could enjoy her property and not that of the neighbors or the Walker Pond Association. S. Gibson-Quigley questioned why E. Eckhardt would make this distinction to her guests when as a member of the Walker Pond Association she was entitled to use the common land. Atty. Hammond said E. Eckhardt realized this was a sensitive issue with her neighbors and other members of the Walker Pond Association. The Board discussed the liability responsibilities relating to injuries occurring on the common land.

S. Gibson-Quigley asked for those wishing to speak for or against the project.

- John Cotell, 1 Library Lane – concerned that the Walker Pond Association would be sued if a bed and breakfast guest was injured on the common land; that the commercial business in a home of a Walker Pond Association property owner would impact the Walker Pond Association's ability to purchase insurance; that the Walker Pond Association insurance rates would increase substantially; and that the liability for injuries on Walker Pond Association property would extend to the individual members of the Association if it were unable to afford or obtain insurance. He identified the general issues of concern to the Walker Pond Association by summarizing a letter drafted by Marc Macero, Walker Pond Association President (see attached) -
 - the special permit would bind how the property would be used in the future
 - the property was non-conforming for its current use
 - guests must use the access road which is owned by the Walker Pond Association to get to the bed and breakfast
 - the project failed to meet each of the conditions of the special permit
 - Walker Pond neighborhood including Podunk Road had no allowed uses granted under special permit at this time

S. Gibson-Quigley read the letter from Allied American Insurance dated September 2, 2003 to the Walker Pond Association regarding insurance coverage should the bed and breakfast proceed. (see attached.)

- Marc Macero, 126 Walker Pond Road – concerned that E. Eckhardt did not intend to carry the Walker Pond Association as an additionally insured party under her policy as she had agreed at its earlier informal meeting; concerned with public safety for the neighborhood, in particular guests that might use the bed and breakfast who were individuals of a predatory type offender.

M. Beaudry asked how unwanted people in the neighborhood were presently dealt with. M. Macero stated the resident the person was staying with would be contacted and if necessary, the police would be notified. T. Kenney asked how bed and breakfast guests differed from a resident's relative that had the same predatory aspects. M. Macero realized that anything was possible, but felt residents would know relative's backgrounds. M. Macero asked if the special permit would be transferable if the bed and breakfast were sold. L. Adams stated that the special permit could be conditioned that it would not be transferable. M. Raphaelson asked if the public had a right of way over the access road mentioned by J. Cotell. M. Macero answered that the road was maintained by the Town and that anyone could use it. M. Raphaelson also asked if M. Macero had attended the July 4th party mentioned in his letter, if he knew Marie and Paul Dubrey who had submitted a letter to the Board informing it of a beer party where under aged drinking had occurred and added their support for the project. He raised the issue because he felt it was an issue of public safety and responsible people and wondered if it were true. S. Gibson-Quigley read the letter submitted by Marie and Paul Dubrey dated September 15, 2003 (see attached.) Board members asked M. Macero if the accusations in the letter were true and if the guests were all members of the Walker Pond Association. M. Macero stated he did not know, that it was out of his control and he would have to

verify it. S. Gibson-Quigley felt this letter was questioning why people were raising the issue of liability, responsibility for guests and public safety when situations as the July 4th party happen. D. Yaskulka felt the Board needed to determine what the material impact was on the neighbors relating to financial issues and health and public safety and that the letter was stating there were public safety issues all over, the Walker Pond Association was dealing with it already and the project would not have a huge impact. M. Raphaelson felt it was an issue of the Walker Pond Association not wanting a bed and breakfast in “their backyard.”

- John Cotell, 1 Library Lane – asked the standard that needed to be met to grant the special permit. Then offered that the zoning “code” placed the responsibility of the proponent, not of the community, to demonstrate that these three “tests” were passed.

S. Gibson-Quigley read the flyer entitled The Walker Pond Walker Pond Association may be faced...you can make a difference! (see attached.)

- Irene O’Keefe Hammond, 23 Library Lane South – was opposed to the bed and breakfast because it brought more strangers to town and Walker Pond and she felt it necessary to limit the exposure of young children to situations that put their safety at risk; asked how E. Eckhardt would respect the Walker Pond Association bylaw that stated all guests would be accompanied by the residents on the common land. Though Board members said the applicant would inform her guests they were not to use this area, I. O’Keefe Hammond insisted it would happen and asked how E. Eckhardt intended on informing her guests as such. E. Eckhardt stated guests would sign a notification restricting them to the Eckhardt property before coming to the bed and breakfast.
- Joel Lalashius, 14 Wells Park Road – concerned with the layout of parking and the how it could effect the response time in the instance of a fire. S. Gibson-Quigley noted this could be a hazard whether or not a bed and breakfast was located in the area.
- Patrick McGarrah, 29 Library Lane – not concerned about the party that happened once a year, but the party everyday and the potential for substantially more traffic. Also concerned that the property lines are not well defined so how would the guests be aware of them. M. Raphaelson asked if P. McGarrah was aware of under aged drinking at the July 4th party. P. McGarrah said he did not know. He had not attended the party.
- Jim Egan, Wells Park Road – was at the July 4th party and had 20 people attend and shared a keg of beer which he later brought back to his home; questioned the definition of a beer party; stated residents have friends stay at their homes many nights. M. Raphaelson asked J. Egan if everyone knew there was under aged drinking at the party. J. Egan stated ID’s had not been checked and in all probability there were minors drinking beer.
- Evelyn Young, 129 Walker Pond Road – concerned if the bed and breakfast was approved and the property were sold that the new owner could operate a bed and breakfast. L. Adams stated that the Board could put a condition on the approval of the special permit which would make it non-transferable. If the Board did not choose to do that, the special permit would go with the property.
- Shari Smith, 4 Walker Pond Road –an honorary member of the Walker Pond Association, did not have the same attachments to her deed as other residents had; supportive of E. Eckhardt’s project; felt the property had been much improved by E. Eckhardt and was confident she would be responsible for her guests. S. Smith read a letter drafted by her husband, Robert Smith, noting the Eckhardt’s fine character, improvements made to the property, their ability to operate a reputable business, the issues of the Walker Pond Association and other businesses currently located in the neighborhood.
- Charlie Blanchard, 26 Farquhar Road – noted that he was aware there were other businesses in the Walker Pond area and asked if those businesses were required to have liability insurance naming the Walker Pond Association as co-insurer. S. Gibson-Quigley asked if there was anyone that could address this question. D. Yaskulka commented that other businesses may not have people coming to visit that location. J. Cotell noted that the Allied American letter specifically addressed the bed and breakfast as an issue and the other businesses in the community did not have a flow of people coming to the business.

- Bob Duncan, 12 Old Village Road – explained how one became a member of the Walker Pond Association, their responsibilities to common ownership and liability and that selling your home was the only way to terminate the membership making this very different from other associations.

T. Keeney asked P. McGarrah if the gravel drive he shared with the Eckhardts was the only access to his property. He stated that it was.

Atty. Hammond responded to the earlier comment about E. Eckhardt agreeing to name the Walker Pond Association as an additional insured under her liability policy, stating that she had agreed to this as a possibility. This he referenced from the minutes of the Walker Pond Association meeting of April 10, 2003 which he submitted to the Board (see attached). E. Eckhardt had been told by her insurance company she would not be able to add the Walker Pond Association as an insured.

Motion: to close the public hearing, by D. Hill
2nd: M. Cooney
Discussion: None
Vote: All in favor

Concerns of the Board – the safety issues for children with transients coming in and out of the area; the common land issues regarding liability and control; the issue that the property was non-conforming; the Walker Pond Association should not be burdened to accommodate the proposed bed and breakfast; what separated this neighborhood from allowing a bed and breakfast when others had motels at the end of their streets; discussions that were under scrutiny and "mismatched" information; though a non-conforming lot, its size for the proposed operation was not unreasonable; this was a situation of the residents not wanting a bed and breakfast in their backyard; the inconsistency of protecting children and the financial impact to the residents if the special permit were approved S. Gibson-Quigley felt that becoming involved with issues that dealt with the Walker Pond Association relationship and its members should not fall under the purview of the Board.

S. Gibson-Quigley asked if there was a motion to approve the application for a special permit for a bed and breakfast at 25 Library Lane.
 There was none.

Motion: to deny the special permit for the operation of a bed and breakfast at 25 Library Lane, by M. Cooney
2nd: D. Hill
Discussion: D. Yaskulka asked if a proposal was made regarding the liability issue would there be an opportunity to address the special permit again. L. Adams stated there was a two year wait to avoid a repetitive petition, but the Board could waive that and hear it on its own merits. Reasons for denial by the Board were that the special permit was detrimental due to the financial impact, liability and the addition to the non-conforming use.

Amended Motion: to amend the above motion to include “and that the determination is made because the proposed use would be detrimental to the zone because it would contain a non-conforming use in that the proposed use would be detrimental by increasing the liability of the Walker Pond Association and the homeowners, by M. Cooney

2nd: D. Hill

Amendment Vote: In favor – M. Beaudry, D. Hill, S. Gibson-Quigley, M. Cooney and D. Yaskulka
 Opposed – T. Keeney and M. Raphaelson

Main Motion Vote: In favor – D. Hill, S. Gibson-Quigley, M. Cooney and D. Yaskulka
 Opposed – T. Keeney and M. Raphaelson
 Abstained – M. Beaudry

L. Adams noted that a super majority was needed to grant a special permit, not to deny one. In the absence of a super majority, there was no granting. It was an automatic denial. The Board's next meeting would be October 7th.

Motion: to adjourn, by M. Beaudry

2nd: D. Yaskulka

Discussion: None

Vote: All in favor

Adjournment at 9:55 PM