

**STURBRIDGE ZONING BOARD OF APPEALS**  
MINUTES OF  
WEDNESDAY, October 8, 2003

**Present:** Theophile Beaudry  
Mary Blanchard  
Robert Cornoni  
Pat Jeffries, arrived at 7:15 PM  
Gary Jeznach  
Ginger Peabody, Chairman

**Absent:** Jeff Bonja

**Also in Attendance** Nancy Campbell, Clerk

G. Peabody opened the meeting at 7:00 PM and read the agenda. She noted that one Board member was absent and another would be present momentarily. The minutes for September 10, 2003 were reviewed.

**Motion:** to accept the minutes of September 10, 2003, as written, by M. Blanchard  
**2<sup>nd</sup>:** R. Cornoni  
**Discussion:** None  
**Vote:** All in favor

The minutes for September 24, 2003 were reviewed. M. Blanchard made a grammatical correction to page three, P. Grudzien's comment second line... "were" to read "where."

**Motion:** to accept the minutes of September 24, 2003, as corrected, by M. Blanchard  
**2<sup>nd</sup>:** T. Beaudry  
**Discussion:** None  
**Vote:** All in favor

G. Peabody delayed the opening of the 7:05 PM scheduled public hearing until the arrival of P. Jeffries with the consent of the applicant.

**OLD BUSINESS**

Workshop – Non-Conforming Structures, Lots, Uses & Vested Rights – October 30<sup>th</sup> – Oxford Senior Center – M. Blanchard requested to attend this workshop. G. Peabody noted that if other members decided to attend they should contact N. Campbell.

**NEW BUSINESS**

RF Engineer Consultant, David Maxson, Broadcast Signal Lab, LLP, Cambridge, MA – N. Campbell stated that D. Maxson would be prepared to give a verbal presentation at the Board's October 15<sup>th</sup> meeting regarding the RF information submitted by Nextel and T-Mobile for a proposed telecommunications tower.

Proposed Empty Nest Housing Project – The Board of Selectmen had been presented, as a courtesy, with a proposal for an empty nest housing project at its October 6<sup>th</sup> meeting. At the request of Chairman, Arnold Wilson, N. Campbell asked if the Board had an opinion regarding the process for reviewing this project –

LIP (Local Initiative Program) or Chapter 40B. The Board was interested in the proponents experience with the LIP process and was willing to meet with the Selectmen for discussion. G. Peabody favored a Chapter 40B application as the Board had experience with this process.

Denise McNally Letter dated October 7, 2003 – G. Peabody read this letter stating D. McNally allowed Robert E. McNally to act as her agent for a variance application for property at 63 Bushnell Road.

G. Peabody gave Robert McNally an option to continue his variance petition public hearing until there was a full Board. He agreed to present his request with six members present.

P. Jeffries joined the Board at 7:15 PM.

**PUBLIC HEARING– VARIANCE- ROBERT McNALLY – TO ALLOW DRIVEWAY ACCESS FROM THAT PORTION OF THE LOT ABUTTING PODUNK ROAD INSTEAD OF ACCESSING FROM THE WAY ON WHICH LEGAL FRONTAGE FOR THAT LOT IS ESTABLISHED AT 63 BUSHNELL ROAD**

G. Peabody opened the public hearing at 7:15 PM and read the legal notice. Robert McNally presented his request for driveway access from Podunk Road which had approximately 118 feet of frontage. He stated that there was a perennial stream running along the Bushnell Road section of this property preventing him from accessing on the way that had the legal frontage. The Sturbridge Conservation Commission supported this request noting that the perennial stream was protected under state jurisdiction by a 200-foot buffer zone for a resource riverfront area.

M. Blanchard felt that the applicant had created his own hardship when he separated this 2.25 acre parcel from the larger parcel. R. McNally stated that the stream would have prevented him from accessing the 2.25 acre area even if it had not been divided. Podunk Road was the only way to access this lot. G. Peabody felt this application showed a topographical hardship for the property. T. Beaudry commented that the original driveway was proposed off of Bushnell Road, but the state and Sturbridge Conservation Commission denied the access.

G. Peabody asked if there was anyone from the public wishing to speak for or against the request.

- Elizabeth Brosnan, 169 Podunk Road – had been told when she purchased her property that the lot R. McNally was requesting the variance for was a nonbuildable lot due to its size; felt that driveway access from Podunk Road would be a safety issue; concerned that building on the lot would disturb an undocumented vernal pool; had to call for a legal notice due to an error from the certified abutters mailing.

G. Peabody apologized to the resident for the error. P. Jeffries felt it was not detrimental to the abutter to allow a 25-foot wide driveway from the approximate 118-feet of frontage on Podunk Road. The Board appreciated the concern of the resident, but recognized that the lot had sufficient size for a house. G. Jeznach commented that the lot’s 2.25 acres did not “shrink” because of the vernal pool. He asked the resident to repeat the reason she felt the driveway was detrimental to her house. E. Brosnan was concerned the house would be too close to the road, that the property was small in comparison to abutter’s properties and that there was a safety concern due to the narrow road.

**Motion:** to close the public hearing, by M. Blanchard  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None

**Vote:** All in favor

M. Blanchard felt this was a self-created hardship and was uncomfortable granting a variance to allow driveway access from Podunk Road. G. Jeznach disagreed stating that without the variance the 2.25 acre lot was unbuildable due to the topography. G. Peabody felt this request met the criteria for a variance. Board members suggested the applicant consider positioning the driveway such that it would not be directly across from the E. Brosnan's driveway.

**Motion:** to grant a variance from Chapter Twenty, Section 20.31(b) which requires access on the way on which legal frontage for that lot is established to Denise McNally as sole owner of 63 Bushnell Road, Assessor's map 8 and 13, lot #63, Worcester District Registry of Deeds Book 25573, page 98, and instead to allow driveway access from that portion of the lot abutting Podunk Road, if at all possible the driveway should be offset from the driveway across the roadway, by G. Peabody

**2<sup>nd</sup>:** P. Jeffries

**Discussion:** None

**Vote:** In favor – G. Jeznach, G. Peabody, P. Jeffries, R. Cornoni and T. Beaudry  
Opposed – M. Blanchard

G. Peabody reminded the applicant that there was a 20-day appeal period. M. Blanchard expressed her displeasure at the process with which the motion was made.

**REQUEST FOR DETERMINATION FOR A NON-CONFORMING STATUS #10-08-03-1D – BRIAN UNGERER, 120 WALKER POND ROAD**

Brian Ungerer, 51 Old Villlage Road, was present to request that the Board find for a positive determination for property located at 120 Walker Pond Road for the purpose of installing an inground pool on a non-conforming lot. He noted that the location of the pool would conform to all zoning requirements. There was a 20-foot access path owned by the Walker Pond Association separating the 51 Old Village Road lot from the 120 Walker Pond Road lot. B. Ungerer told the Board that the Association president did not have an issue with the proposed location of the pool near the access path. B. Ungerer had spoken with the neighbor abutting his property and the neighbor did not have issues regarding the pool.

Concerns of the Board – the submitted plan showing the location of the pool was not to scale; the right-of-way separating B. Ungerer's two lots; wanted input from the abutters and the Walker Pond Association regarding the installation of the pool and questioned if it could approve a structure to be built on a non-conforming lot without a special permit.

**Motion:** the determination would increase the nonconformity of the lot therefore a special permit would be necessary, by M. Blanchard

**2<sup>nd</sup>:** G. Jeznach

**Discussion:** None

**Vote:** All in favor

**REQUEST FOR DETERMINATION FOR A NON-CONFORMING STATUS #10-08-03-2D – BRIAN CARON, 294 CLARK ROAD EXT.**

Brian Caron was present to request that the Board find for a positive determination for property located at 294 Clark Road Ext. to allow the reconstruction of an existing one and a half story structure to a two story structure using the same footprint on a non-conforming lot. B. Caron had submitted a plan for the Board to

review which showed that the structure conformed to the zoning requirements. He noted there was no intention to enclose the existing porch. He had removed the loose stones, remortared and filled in the stone areas with block to seal the foundation from water. He said the Building Inspector determined the foundation to be adequate for the proposed structure. B. Caron stated he had begun work on the reconstruction before coming to the Board because he was not aware a non-conforming lot required a determination. G. Peabody asked if the two story structure would be blocking anyone's view. B. Caron responded it would not. There were no other questions from the Board.

**Motion:** to determine that the request did not intensify the existing nonconformities or create new nonconformities and that Brian Caron be allowed a building permit from the Building Inspector, as requested on the above referenced application, by M. Blanchard

**2<sup>nd</sup>:** P. Jeffries

**Discussion:** None

**Vote:** All in favor

### **NEW BUSINESS (cont.)**

Mary Blanchard Letter dated October 7, 2003 – RE: ZBA Cell Tower Hearings & Conflict of Interest (attached)  
– M. Blanchard read the letter stating her concern that G. Peabody may have a conflict of interest in acting on the cell tower application which could nullify the efforts of the Board regarding its decision. She requested G. Peabody share with the Board any legal opinions obtained from Town Counsel or the State Ethics Commission allowing G. Peabody to vote on this matter.

G. Peabody commented she had spoken with the State Ethics Commission and had followed its recommendations by filing a written disclosure with the Town Clerk and obtaining a letter from the appropriate people stating her property value would not be affected by the construction of the proposed cell tower eliminating a financial interest. M. Blanchard and G. Jeznach requested this information in writing. G. Peabody suggested M. Blanchard verify this information with the State Ethics Commission as it was not in writing and G. Peabody was not willing to call the Commission to obtain it. She felt her word should be sufficient for the Board.

**Motion:** to request G. Peabody contact the State Ethics Commission to obtain in writing the fact that there was no conflict or any appearance of conflict and give a copy of that letter to each member of the Board, by M. Blanchard

**2<sup>nd</sup>:** G. Jeznach

**Discussion:** R. Cornoni asked if Town Counsel could provide or get this information from the State Ethics Commission. M. Blanchard commented that Town Counsel cost money and could give opinions, but the State Ethics Commission ruled on conflict of interest concerns.

**Vote:** In favor – G. Jeznach, M. Blanchard, P. Jeffries, R. Cornoni and T. Beaudry  
Opposed – G. Peabody

If G. Peabody could not get the letter by the October 15<sup>th</sup> meeting, the Board agreed it would continue with matters as they were.

**Motion:** to adjourn, by M. Blanchard

**2<sup>nd</sup>:** P. Jeffries

**Discussion:** None

**Vote:** All in favor

**Adjournment at 8:25 PM**