

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
WEDNESDAY, June 25, 2003

Present: Theophile Beaudry
Mary Blanchard
Jeff Bonja
Robert Cornoni
Pat Jeffries
Gary Jeznach
Ginger Peabody, Chairman

Also in Attendance Nancy Campbell, Clerk

G. Peabody opened the meeting at 6:59 PM and read the agenda. The Board members introduced themselves. The minutes for June 11, 2003, were reviewed. M. Blanchard noted a correction to page 4, 5th bullet to L. Adams' comments – "...effect site plan..." should be "...effective..." J. Bonja asked that on page 3, 4th paragraph beginning "J. Bonja felt the Board..." the words "...and questioned the Board's authority in this situation," be struck from the minutes since that was not his intent.

Motion: to accept the minutes of June 11, 2003, as amended, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

The Board would review the draft minutes from its Executive Session on June 11, 2003, and take them up at its July 9th meeting.

G. Peabody offered an apology to G. Jeznach after learning that the State Ethics Commission allowed for a board member to step off the Board and be heard, if representing himself/herself, at a public hearing (re: 06-11-03 Public Hearing – Jeznach Special Permit.) It had been her understanding from Town Counsel that this could not be done.

CORRESPONDENCE

Berthiaume & Berthiaume Letter – Attorney Damien Berthiaume stated he would be representing Donald Garfield in regard to the appeal filed against the special permit granted by the Board on April 9, 2003. He requested that a Board member contact him. Nancy Campbell had contacted Atty. Berthiaume acknowledging receipt of this letter and at his request, forwarded a copy of the minutes from that meeting. No further action was requested from the Attorney of the Board.

Mark Lev letter – for the Board's review to be addressed at the July 9th meeting.

**REQUEST FOR DETERMINATION FOR A NON-CONFORMING STATUS #06-11-03-2D
CONTINUATION – JOHN & RUTH DULKA, 31 BENNETTS ROAD**

John Dulka was present for his parents, John and Ruth Dulka. The Board discussed that the proposed structure would be less non-conforming than the existing structure. J. Dulka stated that a deed restriction maintained it could only be a two bedroom home.

Motion: to grant a determination that the request did not intensify the existing non-conformities on the property at 31 Bennetts Road for the building activities as shown on the Site and Plot Plan drawn by Henry A. Maramo, Jr., dated July 19, 2002, stamped by Leonard S. Jalbert, Sheet #2, Project No. 1252, by P. Jeffries

2nd: J. Bonja

Discussion: None

Vote: All in favor

DISCUSSION AND DECISION – REHABILITATIVE RESOURCES, INC.

G. Peabody gave an overview of the previous Rehabilitative Resources, Inc. (RRI) administrative appeal public hearings. This discussion would address only the appeal of the decision from the Building Inspector and had no connection to the appeal in process for the Decision of the Sturbridge Planning Board. The question in front of the Board was to determine if the Building Inspector correctly denied RRI's request for a building permit based on the Planning Board's Decision.

J. Bonja stated that in reading Chapter 40A, Section 3, RRI was of a certain class under protection of this statute, while not all criteria applied, certain ones did. It did not clearly state which Board had the authority to apply this criteria, but it was his opinion that the Planning Board was the correct authority to the first review. Therefore, he supported the Building Inspector's decision. The Board could then take it to the next step and review all the evidence and testimony of the Planning Board Decision and apply it under Chapter 40A, Section 3 distilling out the facts that were pertinent (ex. parking, yard size, etc.)

G. Peabody commented that the Board of Appeals had the full authority to act in the capacity of the Building Inspector and determine if a site plan was or was not reasonable. She asked the Board how it felt about the first issue – the fact that RRI said it was exempt from all zoning requirements. The Board agreed that no organization was totally exempt from zoning requirements and that Chapter 40A, Section 3 was intended to prevent religious and educational entities from being discriminated against, it did not give them carte blanche. Issues open for consideration under the statute were bulk and height of structures, yard size, lot area, setbacks, open space, parking and building coverage requirements. G. Jeznach had reviewed the plans and felt it was not necessary to redo the process. He had enough information based on what had been presented to make a determination. M. Blanchard concurred that the Board should not act as a Planning Board on a site plan. She had read all the materials presented and felt that the safety onsite and offsite would be made worse by going ahead with this project. T. Beaudry also agreed saying there was a safety factor involved. G. Peabody was concerned with the lot size, the safety onsite, in particular the narrow driveways between the two buildings, the future of the building which would be vacated by RRI (would it bring in more traffic?). In reviewing all the testimony, J. Bonja's main concern was that this was a non-conforming lot with existing structures and uses which were protected under the grandfathering clause. However, an increase of that non-conformity was not protected. In the memorandum on law from Town Counsel, he noted the discussion found frontage to be a criteria that could be applied under the law. He felt comfortable saying that the plan, as it was, could not go forward.

L. Adams clarified that the issue before the Board was whether or not RRI's proposed project met reasonable dimensional requirements for the Town. M. Blanchard felt it did not meet these requirements regarding frontage, internal circulation, lot coverage and the setbacks. R. Cornoni wanted the Board to keep in mind the issue of safety and felt it was doing so by looking at the various criteria one at a time and finding that they did not meet the zoning requirements. Frontage was a specific concern, in that the 75 foot frontage restricted RRI from having an adequate access. P. Jeffries pointed out that the construction in that area would have a major impact on safety.

Motion: to deny the building permit for RRI for the property located at 171 Charlton Road, Assessor's map 26, Lot 171, Worcester Registry of Deeds, Book #20004, page 342, Plan # 533109, reason being for lack of frontage as indicated in the Sturbridge Zoning Bylaw, Chapter Nineteen, Intensity Regulations, by J. Bonja
2nd: M. Blanchard

Amended Motion: to add the words "and yard size" after the word "frontage", by G. Peabody
2nd: P. Jeffries

Discussion: G. Peabody asked to have "safety" included in the motion and referenced a court case, *Tufts College vs. City of Medfield*, in which safety was an issue. R. Cornoni agreed because he felt it was important to have justification for what the Board was doing. J. Bonja disagreed because it was not clearly stated in Section 3 that the Board could use safety as a criteria. M. Blanchard concurred with G. Peabody and R. Cornoni. G. Jeznach referenced the Town's Zoning Bylaws, Chapter One, which states they are for the purpose of promoting health and safety. He felt that in a general sense it could be included in the decision since it was part of the overall bylaws package. M. Blanchard referenced the *Dover Amendment* which mentions the promotion of public health or safety.

L. Adams suggested the Board vote the amended motion and offered to draft a decision, along with the help of Board members and Town Counsel, and present it to the Board on its July 9th meeting. At that time, the Board could amend it accordingly and sign the final decision.

Vote Amended Motion: All in Favor

Discussion on Main Motion: None

Vote Main Motion: All in Favor

The decision would be presented, amended accordingly and voted at the Board's July 9th meeting.

NEW BUSINESS/OLD BUSINESS

There was none.

Motion: to adjourn, by P. Jeffries

2nd: M. Blanchard

Discussion: None

Vote: All in favor

Adjournment at 7:50 PM