

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
WEDNESDAY, June 11, 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 6:30 PM.

Motion: to enter into Executive Session under the provisions of MGL Chapter 39, Section 23B, paragraph 6, to discuss pending litigation and then reconvene the open meeting session at 7:00 PM, by J. Bonja
2nd: M. Blanchard
Discussion: None
Roll Call Vote: All in favor

At 6:30 PM the Board moved to the first floor conference room for this executive session. At 7:05 PM the Board returned to Veterans Memorial Hall.

G. Peabody reconvened the open meeting at 7:05 PM and read the agenda. The Board members introduced themselves. G. Peabody read a letter she wrote, commending the Board for its efforts and fairness, in response to a recent encounter she had with an unhappy Sturbridge resident. The minutes of May 21, 2003 were reviewed. M. Blanchard stated that Attorney Patricia Davidson was from the law firm of Mirick O'Connell and not Kopelman & Paige as noted on page one, Administrative Appeal – Harold & Mary White.

Motion: to accept the minutes of April 9, 2003, as amended, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

CORRESPONDENCE

There was none for the record.

At 7:07 G. Peabody asked G. Jeznach to recuse himself from the Board.

PUBLIC HEARING – SPECIAL PERMIT – GARY AND PATRICIA JEZNACH – TO ALLOW THE CONSTRUCTION OF A 24 FOOT BY 44 FOOT ADDITION TO A SINGLE FAMILY DWELLING AT 12 CEDAR LAKE DRIVE

G. Peabody opened the public hearing at 7:07 PM and J. Bonja read the legal notice. Attorney James Burgoyne, of Fletcher, Tilton and Whipple, represented the applicants and reviewed the petition. He explained the process of the standards for review and special relief under the provisions of Chapter 40A, Section 6, noting its complexity. He referenced the “second except clause” of this statute which allowed, in this case the Zoning Board of Appeals, under

proper application, a special permit to grant alterations of a single or two family non-conforming structure even where the work would exacerbate a non-conformity or create a new one. He commented that the standard for review was whether the proposed alteration to the structure would be substantially more detrimental to the neighborhood than the existing non-conforming structure. Atty. Burgoyne identified the aspects of the property's non-conformities:

- lot size – 11,778 square feet (one acre, required)
- lot frontage – 78.8 feet (125 feet, required)
- lot had two principle structures - #12 Cedar Lake Dr. and #12B Cedar Lake Dr. (one principle structure, allowed)
- #12B located in the street setback
- garage located in the side yard setback
- existing percentage of lot coverage – 29.45% (15%, maximum allowed) This non-conformity would increase approximately 10%, to 39.51% with the proposed addition.

Atty. Burgoyne stated the reason for the proposed addition was that the applicant wished to make this their principle residence. He felt that for the following reasons the proposed addition would not be substantially more detrimental to the neighborhood:

- it would not impinge on abutter's properties
- was within the limitation of two stories and 35 foot height restriction
- it was consistent with the developed uses in the neighborhood. Atty. Burgoyne submitted letters of support from three abutters.
- an order of conditions was issued by Conservation Commission – submitted to the Board.
- lot fairly flat (two foot slope) and did not create a drainage problem
- serviced by town sewer with water supplied by an existing well

G. Peabody asked for questions from the Board. There were none. She asked if there was anyone wishing to speak for or against the petition.

- Pat Jeznach, 6 Woodside Circle – explained they needed more room to accommodate their family and their aging parents. She noted that 12B Cedar Lake Dr. was currently rented, but would be used as an in-law apartment in the future. 12 Cedar Lake Dr. would be their primary residence.

J. Bonja asked that the hearing be continued to review the formal plan just submitted and revisit the property.

Motion: to continue the public hearing for Gary and Patricia Jeznach to July 9, 2003 at 7:05 PM, to revisit the property with the new plans, by P. Jeffries

2nd: M. Blanchard

Discussion: None

Vote: All in favor

G. Jeznach stepped back onto the Board at 7:35 PM.

PUBLIC HEARING CONTINUATION – ADMINISTRATIVE APPEAL – REHABILITATIVE RESOURCES INC. – RELIEF FROM A DECISION OF THE BUILDING INSPECTOR DATED MARCH 13, 2003, DENYING A BUILDING PERMIT FOR A NEW BUILDING FOR EDUCATIONAL USE AT 171 CHARLTON ROAD

G. Peabody recognized Attorney Jeffrey Chasse representing, Rehabilitative Resources, Inc. (RRI) who reviewed the latest submissions brought to the Board –

- copies of the Sturbridge Planning Board's Decision denying Site Plan Review, dated July 9, 2003
- copies of RRI's application for permit to build submitted to the Building Inspector, dated March 11, 2003

- copies of the Building Inspector's denial of that application, dated March 13, 2003
- full copy of all Site Plans for the project
- copy of letter from Susan Grandone, acting executive director for RRI, dated June 4, 2003, which addressed the of number of employees at 171 Charlton Road and 173 Charlton Road – 21 and 20, respectively. It explained that 36 of the 41 employees would move into the new building and five employees would remain at 171 Charlton Road. The tenancy at 173 Charlton Road would be terminated. There was no intention to increase the employees coming into the site or the traffic flow to and from the site. The property would continue to be used for training purposes and administrative use.

Atty. Chasse reiterated the issues of traffic relevant to the area, which was one of the Planning Board's reason for denial and criterion allowed under Chapter 40A, Section 3. He stated that if the project went forward there would not be an impact of the traffic from RRI.

G. Jeznach questioned the discrepancy in the square footage listed for the plans (13,000 sq. ft.). The proposed two story building measured approximately 80 feet by 100 feet (16,000 sq. ft.) for a difference of 3,000 sq. ft. Atty. Chasse said the usable portion of the building would be 13,000 square feet. G. Jeznach asked the number of parking spaces, to which Atty. Chasse said there were 90 additional spaces to comply with the Town's zoning bylaws. When asked, Atty. Chasse offered that RRI would be willing to accept the loss of parking spaces, but preferred to have them there.

J. Bonja felt the Board needed to determine if the Building Inspector had jurisdiction to deny the building permit. He felt the Board needed to address this concern before it moved on to the other issues. It was Atty. Chasse's position that site plan review, by itself, with the criteria that was applied, was inappropriate because RRI was zoning exempt under the statute.

M. Blanchard pointed out that Section 3 did not totally negate the controls, but that reasonable concerns still applied. In her opinion, traffic was a reasonable concern. She asked the percentage of administrative employees to clients. G. Peabody recognized Attorney Edmond Neal, general counsel for RRI, who answered that RRI employed 320 people over all the State, of which 41 were administrative (1:8 – 12%). He did not know how many individuals came in on a daily basis for training, it depended on RRI's class schedules which would remain "identically" the same.

G. Peabody challenged RRI's exemption (educational uses) from zoning regulations, saying that the statute adds, "...However, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures, and determining yard size, lot area, setbacks, open space, parking and building coverage requirements." She noted that RRI had a non-conforming, 75 foot frontage (150 feet required) and felt they should be subject to reasonable dimensional requirements. Atty. Chasse replied that RRI could not comply any more with the frontage requirement, it was what it was, but said again that RRI should be considered zoning exempt. It was also his opinion that RRI was a grandfathered non-conforming use and structure. In her interpretation of the law, G. Peabody did not agree with Atty. Chasse.

P. Jeffries felt that grandfathering pertained to what was in existence and did not pertain to the proposed new building. Atty. Chasse said the area RRI sought to develop was previously found to be an educational public use. G. Peabody added "for parking," referencing the Planning Board minutes of May 13, 1991, where Atty. Neal restricted the use of the above site to parking only. She asked how that expanded into a building. Atty. Chasse responded that after 12 years the situation had changed. G. Peabody agreed and felt the Board needed to consider the potential for future change, given the proposed expansion detailed in RRI's submitted plans. Atty. Neal commented that the Planning Board's intent in limiting the use to parking was not for RRI (SCRRI, at that time), but for any other commercial owner, had the property been sold. He also added that the dimensional requirements did not apply to the land, but to structures only. Therefore, frontage was not an issue. G. Peabody disagreed.

G. Peabody addressed J. Bonja's concern regarding the authority of the Board. She noted that under the Zoning Act, Section 14, Powers of the Board of Appeal, it stated, "In exercising the powers granted by this section, a board of appeals may, in conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit." J. Bonja questioned what ability the law (Section 3) gave the Board to restrict educational entities and felt the issues of parking spaces, number of employees, etc. were all secondary.

G. Jeznach asked if Atty. Chasse agreed with him that safety was an issue and that it should pertain to everyone. Atty. Chasse agreed, but added that traffic safety should not be an issue in the case.

G. Peabody recognized Larry Adams, Town Planner, who commented that it was difficult for him to speak against an organization that brought so much to the community, as well as to the State. It was his intent to protect the legitimacy of the planning and review process (he supported the Planning Board's decision) and to present facts along with his interpretation of the law. He told the Board it may be setting legal precedents with regard to frontage which was in its right, as there was none relative to this case. He offered the following comments:

- the traffic flow itself on Route 20 may not be an issue, but the traffic entering and exiting in a 50 mile per hour zone was;
- the "expert" traffic engineer never looked at internal circulation or the issue of on site congestion, just the number of vehicles on Route 20,
- did a nonprofit educational corporation have a blanket exemption for all zoning regulation and if not, was frontage a reasonable dimensional requirement to apply to this project
- the purpose of Section 3 was to protect against the discrimination of education or religion; he said that the Town could strike a balance between issues of discrimination and legitimate municipal concerns
- the Planning Board did not discriminate against RRI, its interest was to arrive at a workable site plan; it was irrelevant that RRI argued that the review process did not apply to them; the Planning Board got to the facts and it did not think this was an effective site plan, partly because of frontage restrictions
- if frontage did not apply, then a lot measuring 100 feet by 100 feet should be no different from a lot that was 10 feet by 1,000 feet, front and side dimensions were relevant
- the purpose of frontage – separated properties, separated curves, allowed for time to turn in and out of property, buffered side yards, gave potential for future development
- frontage was a reasonable municipal concern as it related to site design
- reviewed information obtained from RRI's website which spoke of its expanding staff and new workshops - TIPS, ServSafe Food Protection Manager Certification, Defensive Driving, Bloodborne Pathogens, Applied Non-Violence, Ergonomics & Back Safety, Medication Administration Program (MAP), Supervisor Training, Community First Aid & Safety/CPR and Sensitivity Training.
- engineers termed the new building as administrative when it clearly was a training center with classrooms (Planning Board was never given the floor plan showing the proposed classrooms.)
- cautioned the Board against putting restrictive language in an approval (ex. limiting employees) as it would not stand over time or in a court of law
- in an answer to J. Bonja's question – the Board was authorized under the law to set aside the Building Inspector's decision and decide whether or not the project deserved a building permit, based on Section 3; RRI was exempt from a use, but not from reasonable regulations

G. Peabody recognized:

- Jay Mallon, 102 Walker Pond Road and landlord of the building adjacent to RRI – spoke of the two entrances used by all three buildings; he would be renting the building RRI currently leased from him to new tenants increasing the traffic to the area, concerned RRI would vacate the building they currently owned and occupied if the proposed building was permitted which could bring in new people.

- Sandy Gibson-Quigley, 66 Streeter Road and Chairman of the Planning Board – reiterated that RRI exceeded lot coverage, the side buffering with the driveway and the addition to the internal traffic which was part of the Planning Board’s decision; also found it interesting that RRI felt they were exempt from one aspect of the law (traffic safety), but said they must comply with zoning requirements (90 parking spaces.) G. Jeznach questioned the calculation for percentage of lot coverage. S. Gibson-Quigley said she would check her notes.
- William Muir, 45 Shattuck Road – concerned that the Board would have to consider this use in other locations if it supported RRI’s request; felt the Boards were not hearing the whole story with regard to RRI’s growth and that there would be a serious traffic problem
- Atty. Chasse disagreed with S. Gibson-Quigley’s comments.

J. Bonja asked Atty. Chasse’s interpretation for yard size. His response was the square footage of the lot, but did not include frontage – that was a specific criterion that was not mentioned in the statute. G. Peabody said that would be a topic of discussion for the Board, whether dimension and frontage were one in the same. R. Cornoni asked if RRI had looked at improving their entrance and exit. Atty. Chasse answered it had been looked at, but with 75 foot frontage there was not much that could be done. Atty. Neal further explained there was a secondary access (a deeded easement.)

Motion: to continue the public hearing to July 9, 2003, at 7:20 PM, by M. Blanchard
2nd: J. Bonja

Discussion: G. Peabody asked for the deadline date on this petition. J. Bonja suggested the Board meet a second time in June for deliberation. The Board agreed it had heard sufficient evidence. M. Blanchard withdrew her motion. J. Bonja withdrew his 2nd.

Motion: to close the public hearing, by M. Blanchard
2nd: J. Bonja

Discussion: None

Vote: All in favor

Motion: to schedule a meeting date on June 25, 2003, 7:00 PM, by M. Blanchard
2nd: P. Jeffries

Discussion: None

Vote: All in favor

G. Peabody noted this meeting would be for the purpose of deliberation of the RRI Administrative Appeal only.

REQUEST FOR DETERMINATION FOR A NON-CONFORMING STATUS #06-11-03-1D – JOHN PHILBLADE, 18 & 20 MAIN STREET

John Philblade presented his request to convert the existing garage into a yoga studio. This property was non-conforming due to the lack of required frontage, but met all other zoning requirements. The intent was to combine the two lots into one commercial lot, remove the back shed and create a parking area. The lot would become less non-conforming with the removal of the back shed. M. Blanchard expressed a concern in granting a determination on property J. Philblade did not own. J. Philblade did have a signed Offer to Purchase, but not a formal Purchase and Sales (P & S) agreement. The P & S was set to be signed if the Board granted the determination.

Motion: to grant a positive finding for a determination of no change in non-conforming nature for properties located at 18 and 20 Main Street, Sturbridge, Massachusetts for the proposed property owner, John Philblade for the proposal included with the application for request for determination, dated May 23, 2003, by J. Bonja
2nd: M. Blanchard

Discussion: J. Philblade would check with the Building Inspector to determine if a permit was necessary for the parking area.

Vote: All in favor

G. Peabody thanked the applicant for his patience.

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

John Dulka was present for his parents to request the determination. G. Peabody felt the proposal was an improvement and less non-conforming. G. Jeznach, M. Blanchard and J. Bonja wanted to visit the property. J. Bonja questioned that since this was a teardown and rebuild, was it truly a determination. Part of his decision would be to decide if the change was significant enough to require a public notice allowing comments from the abutters. The Board had discussion regarding the manner in which the members reviewed pending applications. J. Dulka appealed to the Board to take this matter up sooner than their July 9th meeting. R. Cornoni suggested the June 25th meeting scheduled for RRI. G. Peabody did not approve of the suggestion. J. Bonja asked if any abutters would be against this proposal. J. Dulka said there were no objections to his plans from the abutters.

Motion: to continue John and Ruth Dulka’s request for determination to July 9, 2003, at 7:20 PM, by M. Blanchard

2nd: J. Bonja

Discussion: R. Cornoni asked if there was a scheduling problem that the Board could not hear this at the June 25th meeting to accommodate the applicant. G. Peabody agreed to make the exception. M. Blanchard withdrew her motion. J. Bonja withdrew his 2nd.

Motion: to continue John and Ruth Dulka’s request for determination to June 25, 2003, at 6:59 PM, by P. Jeffries

2nd: G. Jeznach

Discussion: None

Vote; All in favor

OLD BUSINESS/NEW BUSINESS

There was none.

Motion: to adjourn, by P. Jeffries

2nd: M. Blanchard

Discussion: None

Vote; All in favor

Adjournment at 9:20 PM