

STURBRIDGE ZONING BOARD OF APPEALS

MINUTES OF
WEDNESDAY, May 21, 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 7:00 PM and read the agenda. She welcomed, Gary Jeznach the newly elected member to the Board. The Board members introduced themselves.

CORRESPONDENCE

Administrative Appeal – Harold & Mary White – G. Peabody had received letters from Harold and Mary White and Attorney Michael Caplette, counsel for Clarence Soper, regarding litigation in Worcester Superior Court for issuance of a building permit for the property at 209 Shepard Road (October 2000). G. Peabody asked for authorization to invite Attorney Patricia Davidson, of Mirick O'Connell, to the Board's June 11th meeting for the purpose of updating the Board in this matter. This would be done in an executive session. G. Peabody noted that the meeting would be scheduled to begin at 6:30 PM at which time the Board would go into executive session until approximately 7:00 PM.

Motion: to allow G. Peabody to ask Atty. Patricia Davidson to attend the meeting of June 11, 2003, for the purpose of updating the Board on the administrative appeal of Harold and Mary White, by P. Jeffries
2nd: M. Blanchard
Discussion: None
Vote: All in favor

M. Blanchard requested copies of the above letters. G. Peabody would get copies to the Board by the beginning of the next week.

Citizen Planner Training Collaborative – Workshops were available and any interested members should contact G. Peabody or N. Campbell to make the necessary arrangements.

AG Approval of Zoning Amendments – The Attorney General had approved the zoning bylaw changes so they were now in affect.

Miscellaneous Memos – Massachusetts Land Use Reform Act; Review of Grandfathering and Freezing

NEW BUSINESS

Judith Nitsch Engineering Review – G. Peabody asked that the Board authorize payment of \$600.00 (amount to be paid from review fees collected from the applicant) to Judith Nitsch Engineering, Inc. for partial review of the Stallion Hill Village.

Motion: to authorized the payment of \$600.00 to Judith Nitsch Engineering, Inc. for partial review of the Stallion Hill Village, by M. Blanchard
2nd: P. Jeffries

Discussion: None
Vote: In favor – T. Beaudry, M. Blanchard, J. Bonja, R. Cornoni, P. Jeffries and G. Peabody
Abstain – G. Jeznach

PUBLIC HEARING CONTINUATION FOR STALLION HILL VILLAGE, LLC. – COMPREHENSIVE PERMIT – TO CONSTRUCT FIFTY-SIX TOWNHOUSE CONDOMINIUMS LOCATED OFF STALLION HILL ROAD

G. Peabody opened the public hearing continuation at 7:05 PM. She read a letter (attached) that had been faxed to the Board from J&W Company requesting a withdrawal without prejudice of their Chapter 40B application.

Motion: to accept the withdrawal without prejudice of J&W Company for the Stallion Hill Village project, by M. Blanchard

2nd: J. Bonja

Discussion: N. Campbell clarified that the approval letter from the State to J&W Company was valid for two years from the date it was written. It was valid for the referenced owner and the property location only. Any other applicant would need to reapply with the State. M. Blanchard commented she regretted that a representative of J&W Company was not present to answer questions the Town might have.

Vote: In favor – T. Beaudry, M. Blanchard, J. Bonja, R. Cornoni, P. Jeffries and G. Peabody
Abstain – G. Jeznach

Motion: to direct the clerk to notify the Finance Director to release any remaining funds from the Stallion Hill Village administrative/review fees account to J&W Company, by P. Jeffries

2nd: M. Blanchard

Discussion: M. Blanchard asked if any funds would need to be paid to the facilitator. G. Peabody expected there would be and that this would be looked into.

Vote: In favor – T. Beaudry, M. Blanchard, J. Bonja, R. Cornoni, P. Jeffries and G. Peabody
Abstain – G. Jeznach

PUBLIC HEARING – SPECIAL PERMIT – DONALD GARFIELD – TO PERMIT THE CONSTRUCTION OF A TWO-FAMILY DWELLING AT 214 BROOKFIELD ROAD

G. Peabody opened the public hearing at 7:10 PM and J. Bonja read the legal notice. Donald Garfield was present to request a special permit to construct a duplex (side by side) for his daughter and son. G. Peabody asked if this was the lot that presently had a foundation. D. Garfield stated that it was. He stated that the structure would comply with all zoning requirements, had ample parking and was on Town water and sewer. He stated the structure would measure 52 feet by 28 feet which excluded the two 12-foot by 12-foot decks, be a two story colonial with a single front entry (in keeping with the neighborhood) into an alcove, each unit would have three bedrooms, approximately 1,700 square feet per unit and a garage on each side of the structure. This was a newly developed neighborhood and he felt the design would conform to the area.

G. Peabody asked if there were any questions from the Board. There were none.

G. Peabody recognized

- George and Virginia VanFleet, of 213 Brookfield Road - who objected to the granting of the special permit. They were concerned that the applicant was applying for a special permit for a two-family when a two family foundation had already been poured on the lot, that a two-family dwelling would adversely affect the real estate value of their home (submitted a letter stating such from Crossroads Realty, attached.) and the aesthetic nature of a two-family home across the street from their home. G. Jeznach asked if the VanFleets were objecting to two families residing in the dwelling or the facade of the dwelling. They objected to both, but felt stronger about the six bedrooms and two families on the one lot.

- Carl Beu, 241 Brookfield Road – objected to the allowance of two family houses in single family zoning on the north side of the turnpike (Interstate 90.)

G. Peabody believed that any proposed two-family within the Town must apply to the Zoning Board for a special permit. If the Board upheld these objections there would be no two-families allowed in Sturbridge. She felt that with the cost of houses there would always be the need for rentals and that affordability had to be taken into consideration.

Motion: to close the public hearing, by M. Blanchard
2nd: J. Bonja
Discussion: None
Vote: All in favor

Motion: to grant a special permit to Donald Garfield to construct a two family residence at 214 Brookfield Road, Assessor's Map 14, Lot 214, as recorded in Worcester Deed Book #26433, Page 355, by M. Blanchard
2nd: P. Jeffries
Discussion: J. Bonja stated that special permit gave the Board latitude, where variances did not. One of the inclusions was the opinions of the abutters. Two family homes were allowed, but not specifically written in as allowed by right. Being that two abutters had objected, his interpretation was that the laws encouraged Board members to take that into account when making a decision. P. Jeffries commented that two families do not have to be a detriment to a neighborhood. M. Blanchard said she was taking into concern the opinions of the abutters. However, she would take into account the rights of the petitioner.
Vote: In favor – T. Beaudry, M. Blanchard., R. Cornoni, P. Jeffries, G. Jeznach and G. Peabody
 Opposed – J. Bonja

G. Peabody noted that the foundation mentioned by G. VanFleet was an enforcement issue and should be considered. She reminded the applicant of the 20 day appeal period.

PUBLIC HEARING – 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 opened the public hearing at 7:40 PM and J. Bonja read the legal notice. Attorney Jeffrey Chasse was present to represent the petitioner, Rehabilitative Resources, Inc. (RRI). He passed out a legal brief to the Board with numerous cases which he felt were relative to his client's position.

He gave a history on RRI for background purposes –

- A non-profit educational corporation (1975) for the purpose of providing community residences and a host of living services to developmentally disabled adults
- Currently employs over 300 men and women from Massachusetts in 40 cities and towns with its central administrative office located in Sturbridge on 171 Charlton Road since mid 1980's
- Proposed office building (13,000 sq. ft.) sited for a 2.33 acre parcel which presently has an existing building used by RRI
- Recognized as an exempt corporation under 501C3 of the Internal Revenue Code (any supporter of RRI could take a tax deduction for their contributions.)
- Has been acknowledged by Sturbridge as a nonprofit educational corporation

Atty. Chasse felt that as a non-profit educational corporation, RRI fell under a different classification or statute than most other business corporation, in similar circumstances, applying for expansion. RRI had been denied by the Planning Board for Site Plan Approval mainly for traffic and safety concerns. It was his opinion that under Chapter

40A, Section 3, (read by Atty. Chasse), the Planning Board's disapproval was an error. G. Jeznach asked how this statute applied to RRI's appeal. Atty. Chasse responded that the traffic safety issue was not applicable to RRI due to its special status as a non-profit educational corporation. G. Jeznach asked if this comment meant it did not matter that it was unsafe for the public to have RRI build at the proposed location; that the Board's concerns did not apply to RRI. Atty. Chasse said under the statute, RRI was zoning exempt. Traffic was not a criteria that applied in this case. He felt RRI had met all criterion set forth in the statute. A traffic study had been done by an expert who found the building would not substantially increase the flow of traffic to and from the proposed property site. RRI had obtained the necessary prerequisites by gaining approvals from the Design Review Committee, Conservation Commission and MassHighway permitting access to Route 20. Atty. Chasse felt MassHighway governed the issue of traffic safety and that a denial based on traffic and safety was not legally founded. He suggested the traffic issue on Route 20 was due to other projects – Hobbs Brook, Southbridge Savings Bank, Cracker Barrel, Comfort Inn and not due to RRI. He requested the Board overrule the decision of the Building Inspector which denied the building permit.

G. Peabody questioned the expansion of the building without new employees for training and added traffic; the compliance of a non-profit educational corporation under the statute (Trustees of Tufts College vs. City of Medford, Zoning and Planning 236.1, attached) provided that the Board could look into safety and density (namely, frontage) issues. She agreed that other projects had been allowed, but they had been made to comply with safety issues by creating turning lanes (with the exception of Southbridge Savings Bank.) Atty. Chasse said the numbers would not substantially increase. He said there was no intention to bring in any more people than currently flow though everyday. Since MassHighway had approved access to Route 20 without a turning lane, he felt one was not necessary. G. Peabody felt Site Plan Review was a Planning Board issue. The Zoning Board should take up the issues of the Town, zoning issues – frontage, density and safety, keeping in mind Chapter 40A, Section 3.

J. Bonja asked the current occupancy during the day. Atty. Chasse said it was about 60 to 65 employees. Attorney Ed Neal was recognized and stated there would be no new employees or cars. RRI was operating out of 5,000 square feet (one person per 20 sq. ft.) of space with an additional 2,500 square feet (one person per 15 sq. ft.) of rented space and had no space for storage. The bottom of the proposed building would be completely storage. The number of people coming in for training would remain the same. Presently, offices designed for one person were accommodating up to three people. The proposed building was a zero growth project which would house the current operation and not for any new or big expansion or change in hours of operation. M. Blanchard found it hard to believe RRI would move from 7,500 sq. ft. of space to 13,000 sq. ft. of space without any possibility of new employees or traffic. She added that in the articles of incorporation, it was not only educational, but administrative, as well. Atty. Neal commented that case law found administration was an integral part of the educational process. G. Peabody pointed out that RRI's lot was non-conforming due to lack of required frontage, which meant the expansion would create a density issue. Atty. Neal said all the density requirements of the current zoning bylaws were met. M. Blanchard requested a copy of the plan submitted to the Planning Board, minutes to that meeting and a clear copy of the application for building permit to the Building Inspector. Atty. Chasse clarified that Susan Grandone was the acting CEO while Bonita J. Keefe-Layden was away.

G. Peabody recognized those speaking for or against the project –

- Jay Mallon, 102 Walker Pond Road – an abutter to RRI – acknowledged the work RRI did, but was opposed to the size of the expansion; felt the traffic in and out of the facility was intense. He noted that Alan Armstrong, also an abutter, could not attend the meeting, but asked that J. Mallon pass on his concern for the safety of his employees. He questioned that RRI would not increase its number of employees or rent its current building bringing in additional people.
- William Muir, 49 Shattuck Road – as a resident (former member of Planning Board) – opposed to the project, wrote a letter (dated June 18, 2002, attached) outlining his problem with the project to the Planning Board members. He stated in 1991 RRI requested additional parking (on the back residential land) which

was allowed after it indicated there were no other plans for the property. Other issues involved – exceeding lot coverage (15%), size of the building for the area, traffic report done by an expert using an eight lane highway for statistics (prior to Hobbs Brook) did not agree with a traffic study conducted by himself (after Hobbs Brook) – 1,800 cars per hour – traffic situation hazardous, concerned for the use of the property (Rural Residential District) if it were to be sold. W. Muir also acknowledged the work done by RRI.

G. Peabody asked for clarification on training courses offered. Atty. Chasse reiterated that RRI would not increase its traffic flow to and from the site, noted that the building met building coverage requirements and that it did not follow that the size of the building would increase the traffic flow of traffic. The purpose for the building's size was to relieve the overcrowding. R. Cornoni expressed a concern about the capacity issue, as did P. Jeffries. G Peabody asked the Board to review the Chapter 40A, Section 3 material from Town Counsel. She requested the public hearing be continued and that a subcommittee be formed to work with Town Counsel. M. Blanchard did not agree with the idea of a subcommittee, but would like to have all questions asked within the open meeting.

Motion: to continue the public hearing to June 11, 2003, at 7:25 PM, by M. Blanchard
2nd: J. Bonja
Discussion: None
Vote: All in favor

P. Jeffries agreed that clarification should be done in an open forum and not with a subcommittee. G. Peabody asked if the Board had any questions for Town Counsel. The Board had none at this time.

OLD BUSINESS/NEW BUSINESS

Coalition for Zoning Reform – P. Jeffries commented that this group was looking for interested individuals. Information relating to the Coalition had been passed out to the Board.

Jeznach Special Permit Application - G. Peabody asked G. Jeznach to recuse himself. He stepped off the Board at 8:28 PM. G. Peabody mentioned an application for special permit had been filed by Gary and Patricia Jeznach of 6 Woodside Circle, for property at 12 Cedar Lake Drive. Nancy Campbell stated that in her absence this application had been filed with the Town Clerk. In reviewing the submittal, N. Campbell found it to be incomplete. G. Peabody asked the Board's permission to send a letter (read to the Board) stating as such to the applicant.

Motion: to authorize the Chairman to send a letter to Gary and Patricia Jeznach informing them their application for a special permit was incomplete, by M. Blanchard
2nd: J. Bonja
Discussion: None
Vote: In favor – T. Beaudry, M. Blanchard, J. Bonja, R. Cornoni, P. Jeffries and G. Peabody

The minutes of April 9, 2003 were reviewed

Motion: to accept the minutes of April 9, 2003, as written, by M. Blanchard
2nd: R. Cornoni
Discussion: None
Vote: In favor – T. Beaudry, M. Blanchard, J. Bonja, R. Cornoni, P. Jeffries and G. Peabody

G. Jeznach stepped back onto the Board at 8:34 PM.

REORGANIZATON

G. Peabody asked for the reorganization of the Board and opened the floor for nominations.

Motion: to nominate G. Peabody for Chairperson, by J. Bonja
2nd: R. Cornoni
Discussion: None
Vote: All in favor

Motion: to nominate P. Jeffries for Vice Chairperson, by M. Blanchard
2nd: G. Peabody
Discussion: None
Vote: All in favor

Motion: to nominate J. Bonja as Clerk, by G. Peabody
2nd: M. Blanchard
Discussion: None
Vote: All in favor

Motion: to adjourn, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

Adjournment at 8:36 PM