

STURBRIDGE ZONING BOARD OF APPEALS

MINUTES OF

Wednesday, July 27, 2005

Present: Mary Blanchard
Theophile Beaudry
Marge Cooney
Robert Cornoni
Pat Jeffries
Ginger Peabody, Chairman
Bruce Sutter

Also in Attendance Nancy Campbell, Clerk

G. Peabody opened the meeting at 7:00 PM and read the agenda. The minutes of June 29, 2005 were reviewed with minor corrections made by M. Blanchard. M. Cooney brought the Board's attention to page 7 regarding the margin of profit allowed under a comprehensive permit. She had stated that percentage was 15% and noted that she had corrected that figure to be 20% the following day with the Town Planner. The correction had been so noted in the draft minutes.

Motion: to approve the minutes of June 29, 2005, as amended, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

G. Peabody acknowledged a work session conducted on July 7th for the purpose of discussion on legal frontage for the Blue and Gold Development project. Larry Adams, Town Planner, N. Campbell, Sandra Gibson-Quigley, Attorney Mark Donahue, Bob Havasy and G. Peabody attended this session. The discussion topics addressed the design of the cul-de-sac relative to legal frontage for the proposed project and for the approved subdivision's three residential lots and also the paving of the cul-de-sac. It was suggested that the cul-de-sac not be constructed and that the subdivision plan be amended to include the purchase of additional property to allow for a straight roadway that would provide legal frontage for the project. This amendment would require a site plan review waiver from the Planning Board's Subdivision Rules and Regulations to allow for a dead end road. If the special permit was to be granted the Zoning Board of Appeals would need to include a condition in its decision to provide the appropriate language for these changes. It was the consensus of the Planning Board that it would approve such an amendment to the approved subdivision plan (The Estates North.) M. Cooney asked that the proponent show on the plan the changes being suggested for the frontage. She added that she was not prepared to make a decision on the project since the revised plans had not been delivered as agreed upon by the proponent.

Attorney Mark Donahue stated that the changes involved the outline of the cul-de-sac was shown as filed with the Board in November 2004 and added that the bulb to the right of way of Chase Road would be eliminated to create a "spur" into the property to provide adequate frontage within the Rural Residential District. M. Cooney asked if Chase Road was an approved roadway and if it had been recorded. Attorney Donahue commented that Chase Road was an approved road and that it had not been recorded with the Worcester District Registry of Deeds. In M. Cooney's opinion the Board was back to the same issue relative to the lack of frontage. Attorney Donahue disagreed stating the absence of action by the Planning Board would result in the construction of the cul-de-sac or with approved amendments to the plan by the Planning Board, the spur road would create frontage for the purpose of the project whereby limiting the frontage in the Rural Residential District. M.

Cooney was comfortable with the use proposed for the property, but expressed her concern that the Board was dealing with a hypothetical situation since the roadway on the plan had not been recorded. Attorney Donahue responded that it was the consensus of those in attendance at the work session that the approved subdivision with amplification by the Planning Board for construction and assurance for construction was adequate to constitute frontage under the Zoning Bylaws. He referenced Town Counsel's letter addressing the legal frontage issue saying that the road, if built and bonded, would satisfy counsel's requirements for legal frontage. M. Cooney asked S. Gibson-Quigley for a review of what occurred at the Planning Board's last meeting.

S. Gibson-Quigley summarized the Planning Board's informal discussion as follows regarding the above issue:

- She was uncomfortable with the cul-de-sac not being paved because it was then not the same plan;
- After lengthy discussion the Planning Board supported the process for amending the plan with four members supporting the concept, two members not supporting (one not supporting because this option did not afford for something better than the first option) and no vote counted for another member since his resignation was effective July 31, 2005;
- The concept would require a waiver from dead end roadways;
- If a special permit was to be granted the Planning Board would hold concurrent public hearings for site plan review and amendments to the original subdivision plan followed by an Approvals Not Required (ANR) process;
- The ANR process would change the original 13 acres, from four lots (3 residential/ 1 commercial) to the 35 plus acres, two lots (1 commercial/1 residential).

Attorney Donahue added that the spur road would not change the perimeter of the property. The only technical change that would exist would be that the bulb and the right of way. The applicant would need to purchase a small section of land that would increase the acreage from 35.5 acres to 36.2 acres.

G. Peabody recognized those wishing to speak from the public.

- Kirstie Pecci, 138 McGilpin Road – a real estate attorney and former employee of Kopelman and Paige, who had reviewed the letter from Kopelman & Paige relative to the access issue; gave her reasons why the roadway was not a source for legal frontage including the bonding issues; felt the developer was attempting to skip a part of the process; and cautioned the Board against approving a special permit for a project which was entirely different than the original submitted plan. P. Jeffries reminded the public that the Zoning Board of Appeals was not a precedent setting Board.

Attorney Donahue responded that this frontage issue could be resolved with a condition that before work commences on the project 1) the subdivision plan be recorded; 2) adequate security be provided to the Planning Board for the construction of Chase Road in accordance with the Subdivision Control Law; and 3) an additional bond may be required by the Board.

Attorney Donahue responded to the following questions/concerns from the Board.

- When would finalized plans be available to the Board – After review of the revised plans by B. Havasy, the final plans would - 1) be submitted to CME for their review to ensure all items of concern had been satisfied; and 2) any specific technical changes not addressed could be incorporated as a condition that it be shown on the plan submitted to the Planning Board for site plan review.
- The Board had received a letter from Sgt. Curboy, an officer with 21 years experience, who was in opposition to the alignment of the roadway and members were concerned that the proponent had not made sufficient effort to find a solution – Attorney Donahue had submitted a definitive answer from the abutter located across the street from the project who was not interested in reconfiguring his property; no letter had been obtained from the abutter adjacent to the site; he had visited the site and found the Wendy's access to be more a concern than the Pistol Pond access; comments had indicated moving the roadway

alignment would create a wider and more complicated traffic pattern. M. Blanchard agreed with Attorney Donahue and stated that the proponent had tried to remedy the issue and she did not find it was on a level that would be grounds to deny the project. P. Jeffries felt the Pistol Pond access did not create a great deal of traffic, but noticed a great volume at the Wendy's access. R. Cornoni and M. Cooney reiterated their concerns for this intersection. B. Sutter agreed Pistol Pond did not have large volumes of traffic and did not feel it should hold up the project.

- The Board acknowledged the July 5, 2005 letter from Bob Roach, of OFS Fitel, which expressed concerns with potential drainage issues from the proposed project onto OFS Fitel property – Attorney Donahue told the Board that the applicant was willing to work with OFS Fitel; had agreed to include a condition defining the property line with the rock wall and that it remain as located; felt the drainage issues were solved through the design of the project and that the applicant would make sure the design worked. B. Roach's letter was read into the record.

G. Peabody asked for comments/questions from the public.

- Carol Goodwin, 19 Orchard Road – not opposed to the use for the area, but felt it could be a better project; believed the Town Planner had stated to her that the project did not have frontage on Hall Road; concerned that the project did not have frontage on an existing road or a registered road; felt the applicant had frontage available from the commercial lot (G. Peabody clarified that the applicant could not use the frontage from the commercial lot for the project and that the Board could not tell an applicant to purchase land.)
- Chip Silvestri, 16 Beaudry Road – commented that at a Finance Committee meeting Chief Button had stated that Hall Road was the most traveled town road and felt the project would complicate an existing safety issue; asked if there would be a restriction that the project could not connect to other adjacent roads or property (G. Peabody stated that would be a condition imposed by the Board); concerned with the project becoming a hub for future sewer usage (G. Peabody stated this would be an issue for the Water and Sewer Commissioners); and asked if the age restriction could be changed if the project were to fail (The Board agreed that such a request would need to come back to the Board for approval.)

There were no further comments from the public. G. Peabody asked if the Board needed any additional information before closing the public hearing. M. Cooney and M. Blanchard agreed they wanted to review the revised plans before the close of the public hearing. Attorney Donahue stated the revised plans would be delivered to the Board by August 1st and that the revisions would be technical and substance of issues discussed as conditions of approval. M. Cooney asked that the conditions be placed on the plans. Attorney Donahue agreed to inscribe the conditions, as filed with the Town Clerk, on the final plans. R. Cornoni asked that the applicant make an additional effort for improvements to the plans such as signage, lighting, access of curb cut to the road and obtain recommendations from individuals involved in the safety business.

Motion: to continue the public hearing for Blue and Gold Development Stoneleigh Woods special permit pending a written request for extension to August 10, 2005 at 7:05 PM, by M. Blanchard

2nd: P. Jeffries

Amendment: to extend the decision filing date to and including August 26, 2005, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote amendment: All in favor

Vote main motion All in favor

Attorney Donahue submitted the above requests in writing to the Board. G. Peabody informed the applicant that additional funds would be needed for the outside consultants review fee account. After payment of CME Associates, Inc.'s invoice # 00072424, the current balance would be below \$95.38. G. Peabody also mentioned

the pending payment due Kopelman and Paige re: the Eichman brief for frontage. Attorney Donahue agreed to contact Kopelman and Paige for this payment amount.

Motion: to pay CME Associates, Inc.'s, invoice # 0007424, dated June 30, 2005, for professional services in the amount of \$2,236.00 from the Stonleigh Woods Outside Consultant Fees Account, by M.

Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

M. Blanchard recused herself from the Board at 8:15 PM.

OLD BUSINESS

Discussion and Vote for Repetitive Petition for The Spaho Corporation – G. Peabody noted that the Board had not received any information from counsel for the applicant. B. Sutter referenced previous correspondence that indicated information would be sent to the Board reviewing reasons for considering a repetitive petition. In the absence of this information, he felt there was nothing for the Board to discuss. The Board agreed.

G. Peabody recognized Mary Blanchard who felt the Board should take formal action by voting the above matter as discussed and voted at a previous meeting.

Motion: to deny The Spaho Corporation's request that the Board consider hearing a reconsideration for repetitive petition in the absence of information for this argument, by P. Jeffries

2nd: M. Cooney

Discussion: The information for this request was to be to the Board by June 29, 2005 and the applicant had been expected to be present on this meeting date. No information had been submitted and the applicant was not present.

Vote: In favor – B. Sutter, M. Cooney, P. Jeffries, R. Cornoni and T. Beaudry

Abstain – G. Peabody

M. Blanchard stepped back onto the Board at 8:17 PM.

NEW BUSINESS

Joint Meeting – Planning Board, Conservation Commission and Zoning Board Chairs – The Chairs for these Boards discussed how communication between the boards/commissions could be improved. It had been suggested that a member from each board attend other various meetings and bring back pertinent information to their board. R. Cornoni suggested having members from respective boards attend various meetings as a source for questions and answers on a given project. Other suggestions were offered by the Board and it agreed to discuss the matter further after some consideration.

Motion: to adjourn into Executive Session under M.G.L., Chapter 39, paragraph 3, for the purpose of discussing matters of litigation and not reconvene into open session, by B. Sutter

2nd: M. Blanchard

Discussion: None

Roll Call Vote: All in favor

Adjournment at 8:27 PM