

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
Wednesday, June 8, 2005

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

Also in Attendance Lawrence Adams, Town Planner
Nancy Campbell, Clerk
Scott Young, P.E., CME Associates, Inc.

G. Peabody opened the meeting at 7:00 PM and read the agenda. G. Peabody granted David Barnicle, Conservation Commission Chairman, a request to rise under a point of order. He stated there were serious misrepresentations by “the Spaho group” that were reflected in the minutes of April 27, 2005 and he would like to correct them when Spaho representatives were present. D. Barnicle stated that the inconsistencies were part of the Board’s minutes and could be used as factual information when the information was grossly not factual. Since the public hearing for The Spaho Corporation variances had been closed, G. Peabody would have to inquire how to address D. Barnicle’s concern.

The minutes of May 25, 2005 were reviewed. M. Blanchard noted she had not made the motion to close the public hearing on the retaining wall, page 9. N. Campbell corrected the motion to read “Motion by, P. Jeffries, second by B. Sutter.” M. Cooney asked to defer approval of the minutes to the Board’s next meeting to allow for additional time to review. The Board tabled the minutes to June 22, 2005.

CORRESPONDENCE

Kopelman & Paige – dated 06-02-05 – Bonin – to be held in confidence;
Kopelman & Paige – dated 05-25-05 – Rehabilitative Resources, Inc. – to be held in confidence;
Attorney Michael Caplette;
Zoning Enforcement Officer – dated 06-06-05 – Cease and Desist Order Permit # SH 1925;
Zoning Enforcement Officer – dated 06-06-05 – Kennel at 69 Cricket Drive;
Levesque Letter – dated 06-07-05 – support for Blue & Gold Development Stoneleigh Woods project;
Leonard Senecal, Fire Chief – dated 06-07-05 – review of Blue & Gold Development Stoneleigh Woods revised plans;
Conservation Commission Agent – dated 06-07-05 – Blue & Gold Development Stoneleigh Woods access road relocation;
Attorney Mark Donahue – dated 05-24-05 – Blue & Gold Development Stoneleigh Woods Special Permit Extension Request to June 30, 2005;
Planning Board – dated 06-08-05 – Blue & Gold Development Stoneleigh Woods revised plan review recommendations;
Attorney Mark Donahue – dated 06-02-05 – Blue & Gold Development Stoneleigh Woods draft of proposed open space restriction and proposed phasing schedule for construction; and
OFS Fitel Letter – dated 05-31-05 – expressed concerns of impact from water and sewer infrastructure from the proposed Blue & Gold Development Stoneleigh Woods project to OFS Fitel.

G. Peabody mentioned the work session conducted on May 11, 2005 which addressed technical issues relative to the intersection realignment, water pressure, stormwater runoff, easement for drainage onto OFS Fitel, results of Hall Road survey, wetlands reflagging, redesign of Chase Road cul-de-sac, and the sewer pump capacity.

PUBLIC HEARING CONTINUATION – 01-26-05-1SP – BLUE & GOLD DEVELOPMENT SPECIAL PERMIT – TO PERMIT THE CONSTRUCTION OF THE PROPOSED DEVELOPMENT OF A 71 UNIT ACTIVE ADULT HOUSING COMMUNITY, NAMELY STONELEIGH WOODS, ON APPROXIMATELY 35.5 ACRES OF LAND AT 72 HALL ROAD

G. Peabody continued the public hearing and asked Attorney Mark Donahue to begin by addressing the issue of legal frontage for the proposed project. Attorney Donahue submitted a checklist of what he felt to be open issues from the May 11, 2005 public hearing and then stated the following opinions relative to the issue of frontage:

- Chase Road was an approved subdivision roadway which served the purpose of establishing frontage under the Town’s Zoning Bylaws for the Stoneleigh Woods development.
- The pavement area of a cul-de-sac did not determine the lot’s frontage, frontage was measured along the right of way of the cul-de-sac,
- The elimination of the paving of the cul-de-sac for a through road would require a decision from the Planning Board to grant a waiver from the currently approved roadway design. If a waiver was not granted Blue & Gold Development was prepared to pave the cul-de-sac.
- Paving or not paving the cul-de-sac did not change the definition of the frontage.
- Attorney Donahue had submitted a letter dated 05-27-05 which outlined Blue & Gold Development’s intentions as it related to the subdivision roadway. He suggested this letter be reviewed by Town Counsel at the expense of the developer. L. Adams agreed input was needed from Town Counsel, but felt the Board needed to understand Blue & Gold Development’s frontage issue so as not to establish a precedent of converting subdivision roadways into private ways that could then serve as access to abutting properties.

Motion: to refer the issue of Blue & Gold Development’s legal frontage on Chase Road to Town Counsel with the invoice for this service to be submitted to and paid by the proponent, by M. Blanchard
2nd: M. Cooney

Discussion: Attorney Donahue suggested his 05-27-05 letter be forwarded for interpretation. M. Cooney commented that Chase Road was for an entirely different project (The Estates North) that was non-existent. Attorney Donahue disagreed.

Vote: All in favor

Attorney Donahue continued with an outline of current issues –

Phasing schedule for Execution of Stoneleigh Woods Development – Attorney Donahue felt the market would drive the project. G. Peabody was looking for a timeframe so residents would not be living in a construction zone for a long time. The phasing schedule was discussed. Robert Havasy, of Blue & Gold Development, felt the clustering would create communities and agreed with M. Cooney that the project would have three phases.

Proposed Open Space Restriction - Attorney Donahue stated the Board would establish the plan for the open space and any change to that plan would have to come back before the Board to amend the special permit. The open space restrictions, as drafted, would be reviewed by the Board before filing occurred with

the Worcester District Registry of Deeds. B. Sutter pointed out that this open space was not an addition to the project, but required by the regulations.

G. Peabody read item #2 (d) of the open space restrictions addressing the authority and right to revise and relocate the Open Space Easement Areas and stated she wanted the language removed from the document. Attorney Donahue suggested it remain since the provision was intended to keep a unit owner from stopping a change to the open space if a change was approved by the Board. M. Cooney would want the final document approved by the Board before it went on record. M. Blanchard wanted the document to be rewritten so the Board had the final approval. Attorney Donahue agreed with the members and would make the language reflect the Board's concerns. M. Cooney asked if there was any consideration to designate some units as affordable housing. Attorney Donahue explained why affordable units would not be a consideration with this project as designed. R. Havasy agreed he had spoken in a receptive manner when G. Peabody put this question to him at an earlier time. He was still considering the issue.

Geometry of Intersection at Access Drive and Hall Road – John Massaro, of Waterman Design, stated the intersection was constrained by a property line to one side and resource areas to the other; a new survey has been done; photos of the intersection were submitted; and the Judith Nitsch Engineering, Inc. traffic report indicated the area could handle the additional traffic since the proposed project was a 55 and over aged community.

G. Peabody asked D. Barnicle for any questions – He was in attendance representing ConCom and stated the Commission had not seen the plan. Therefore, anyone commenting that ConCom was for or against the plan would be “out of line.” ConCom had approved a detention basin near the intersection under a previous subdivision plan and the basin had not been reviewed for 71 units. The only review given consideration had been a design for houses along a cul-de-sac. Wayne Belec, Waterman Design Associates, noted the plan had not been filed with the ConCom because the wetlands were being fine tuned. The 71 units had its own stand alone detention system and if the paved cul-de-sac was removed there would be less runoff to the area. D. Barnicle would make no further comments until ConCom reviewed the plans. L. Adams noted there had been no numeric value submitted for the centerline offset. W. Belec said he would get that number to the Board. G. Peabody asked if the property owner across the street from the site had been approached regarding the realignment. W. Belec said they had not. R. Cornoni felt that a full one lane offset at the intersection created a potential safety issue. In order to review the intersection issue, B. Sutter requested the survey rather than the photos submitted. M. Cooney stated the Board had requested a full instrument survey of the intersection. W. Belec said the survey would be forth coming.

DPW Concern Regarding Water Pressure – A letter was submitted by Susan Hunnewell, P.E., of Tata & Howard, which recognized the concerns of the DPW Director, but stated that the site did not adversely impact the distribution system. L. Adams added that there may be a request for a bond on the project for a booster pump should it be needed after buildout. G. Peabody noted this had been discussed during a work session.

Drainage Issues with Abutting Landowners – J. Massaro had met with Bob Roach, of OFS Fitel, who stated there had been drainage problems on OFS Fitel property on the opposite side from the proposed project. He acknowledged CME's comments of point discharge versus sheet discharge and would look at the details and location of the outfalls and basins.

- Bud Mastalerz, OFS Fitel – was looking forward to definitions to the point and sheet source flows; was sensitive to the potential drainage issue given OFS Fitel's previous problems with drainage from Old Farm Road.

Chase Road Cul-de-sac Impact on Legal Frontage – previously discussed.

Fire Department Turnaround Concerns – W. Belec would provide a print of the turning motions of the Town's emergency vehicles once the dimensional specifications had been obtained. P. Jeffries noted that Sgt. Curboy had stated he preferred three point turns and not a back up. W. Belec would provide an option for this concern. R. Cornoni said the turning motions must accommodate all emergency equipment and suggested a connector roadway to other units. W. Belec said the transitional grades were not conducive to this application, but recognized these issues were the call of the Town's public safety officials. L. Adams commented that the cornerstone of zoning was health, safety and welfare; noted this was a high density development and the ability to maneuver within the development was critical; stated the Fire Chief wanted to be sure that the turning radii would accommodate the Town's ladder truck; and officials did not want emergency vehicles backing out into roadways, they wanted three point turns.

Wetlands flagging Process – W. Belec had been plotting data which had come in from the wetlands flagging and noted there would be some minor modifications.

G. Peabody asked Scott Young, of CME Associates, Inc., to review his letter dated 06-06-08, regarding the engineering review of the project. This document addressed the following –

- Sewer flow – 150 gallons/day based on housing for the elderly; raised a concern with number of bedrooms given the lofts; covenants may need to be in place regarding number of people per unit to make the proposed 150 gallons/day adequate. G. Peabody noted that the granting of the water and sewer by the Water and Sewer Commissioners had been set to not exceed 11,000 gallons/day. S. Young suggested obtaining written comment from Greg Morse, DPW Director. Attorney Donahue felt this issue would be dealt with in the future connections process with G. Morse; and felt the Board's issue was a generic land use. S. Young referenced J. Malloy's letter, dated 12-08-04, which had an attachment of the 07-19-04 Board of Selectmen minutes.
- Water – a rule of thumb test performed on the Fiske Hill water tank (bottom of tank located approximately 70 feet about the highest building) provided results indicating approximately 30 psi of static pressure; flow test (was it witnessed by DPW) conducted certified there was the required flow and pressure; and a bond was suggested to protect the Town.
- Easement for grading of roadway – should be reviewed by Town Counsel.
- Detention basins – awaiting a geotech report (J. Massuaro submitted the report to the Board); explained point discharge versus sheet flow.
- Hall Road survey was not up-to-date
- Written documentation for the proposed project to impact over and through the gas easement; G. Morse's concern to sleeve the water and sewer pipes.
- Regulatory Factor – should be demonstrated and calculations should be shown.
- Other items reviewed – roadway alignment; phasing; grading changes; general engineering "housekeeping"; drainage; legal language restricting number of occupants; information relative to stormwater management; reflagging of wetlands; building height not to exceed 30 feet; concerns of G. Morse and Sgt. Curboy, frontage; lighting; and Town Bylaw sections relative to the multiple dwelling projects.

Waterman Design would respond to S. Young's letter and would contact the Board to arrange a work session for the technical concerns and discussions.

G. Peabody asked if there was anyone wishing to speak from the public –

- Carol Childress, New Boston Road – asked for clarification from Attorney Donahue on the ownership and management of the open space. – Attorney Donahue stated the open space would be placed into

condominium ownership through an association board of trustees. M. Cooney interjected that this would be done in perpetuity. Attorney Donahue concurred.

- Ed Goodwin – asked if there were any covenants/restrictions on the number of occupants per unit – There were none; was there any affordable housing provided – G. Peabody answered presently no, this was a possibility; asked if it would be a gated community and would the open space be open to the public – The project was not proposed to be gated and the open space would be open to the public; concerned that the Levesque letter indicated a wetlands was going to disappear – G. Peabody believed the letter stated the project would not add to the wetlands on his property; asked if the project was maximum buildout – B. Sutter said effectively it was; asked the mix of open space and was it protected – G. Peabody stated only hiking trails were proposed (within the covenant.)
- Maureen Ouelette, 95 Fiske Hill Road – hoped there would be a restriction to the number of occupants per household given the concerns for sewer usage – G. Peabody stated restrictions could be placed to ensure the community would remain active adults aged 55 and older.
- Carol Goodwin – concerned about the health, safety and welfare of the future residents; felt it was a dense project and units could be eliminated to accommodate safety vehicles, as opposed to eliminating green space to add more roadway; and felt the open space provided was inadequate

B. Sutter would like Town Counsel to comment on the validity of the existing roadway if the non-existing roadway was to be moved (realigning the intersection); what impact would the changes to the existing approved subdivision roadway have on the legal frontage for the project; was concerned with all the legal talk on this issue; suggested the applicant buy land from the Meadows Apartments to move the roadway or rework the parking lot across Hall Road; and did not like the offset of the intersecting roadways. Attorney Donahue stated that changes to the approved subdivision portion of the plans could only occur under a public hearing process with the Planning Board; and that the roadway was restricted by property lines and wetlands.

Motion: to continue the public hearing for Blue & Gold Development Stoneleigh Woods special permit to June 29, 2005 at 7:05 PM, by P. Jeffries

2nd: M. Blanchard

Discussion: None

Vote: All in favor

REQUEST FOR DETERMINATION – 05-08-05-1D – ANNE IANNICHERI, 14 SNELL STREET

Anne Iannicheri presented the request for determination for property located at 14 Snell Street. This request was to permit the construction of dormers to the second floor and add a second floor to the existing 12 foot by 23 foot addition. A. Iannicheri submitted photos of the structure with inserts of the proposed changes and noted that the requested change was within the existing footprint. The lot was nonconforming in that it lacked sufficient area and frontage. There were no questions from the Board.

Motion: to grant a determination to Anne Iannicheri since the request did not intensify or create any new non-conformities and that the applicant may apply for a building permit as shown on the request for 14 Snell, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

M. Blanchard recused herself and stepped off the Board at 9:17 PM.

DISCUSSION AND VOTE – 05-25-05-2V – VARIANCE - THE SPAHO CORPORATION – TO ALLOW AN ACCESS DRIVEWAY OFF MAIN STREET/ROUTE 131 WHICH IS NOT THE LEGAL FRONTAGE OF THE LOT AND TO ALLOW RETAINING WALLS WITHIN TWO FEET OF THE PROPERTY LINE ALONG THE PROJECT’S PROPOSED ACCESS DRIVEWAY FOR A LOT AT 30 FARQUHAR ROAD

G. Peabody took a short recess for a conference with L. Adams regarding D. Barnicle’s earlier question regarding minutes previously approved by the Board. G. Peabody resumed the meeting at 9:24 PM and stated that the minutes had been approved and there was no reason to revisit them. She did, however, give D. Barnicle standing to correct any facts that were not accurate as the Board conducted its deliberations. She also noted an email, dated 06-08-05 was forwarded to the Board in error and should be disregarded since the public hearing had been closed. G. Peabody could not provide a copy of the email at Attorney Robert George’s request since she had not printed it. She then opened the discussion.

P. Jeffries, having driven through the area many times recently, had a problem adding more traffic to this section of Route 131. M. Cooney agreed and stated that a traffic study did not give a true picture of the safety issues. Previously, R. Cornoni had requested the time of day used to obtain the counts. JNEI’s traffic engineer stated the numbers had been compiled at 10:00 AM on May 18th. R. Cornoni realized that JNEI may not have taken issue with the traffic data, but the Police Chief did. R. Cornoni felt this was important for the Board to consider.

G. Peabody summed up her thoughts on why the variance was sought relative to access - 1) the Water and Sewer Commissioners had approved water and sewer to come from Route 131 (she did not know why) and 2) ConCom’s condition for approval was that they preferred egress and exit from Route 131 because the wetlands area from Farquhar Road was more pristine than the wetlands near Route 131.

D. Barnicle asked to be recognized. He noted that what G. Peabody stated was the opinion expressed by Bertin Engineering Associates, Inc. and not the opinion that had been expressed by ConCom. ConCom had not ruled on any application for entrance from Farquhar Road. He stated it was the decision of the applicant to apply for permission to enter from Route 131. ConCom had not at any time disapproved other plans with entrance from Farquhar Road. ConCom did agree that the Farquhar Road wetlands area was more pristine, but that was not the plan given to ConCom for its approval. The plan seen by ConCom showed the entrance from Route 131 and ConCom insisted upon a bridge to protect that wetland which the applicant agreed to do. D. Barnicle stated this had been the “mantra” used to justify various things. D. Barnicle added that in 2003 ConCom explained to Bertin Engineering that the construction of the houses on Farquhar Road would seriously impact their ability to access the area they were now trying to develop. ConCom had specifically stated that if they built those houses they probably would impose on themselves a hardship which would prevent access to that land from Farquhar Road. D. Barnicle remembered telling Michael Loin, of Bertin Engineering, that he had been warned that there would be a “self imposed hardship” if the houses were built because they were blocking off their access without having to cross a wetland. D. Barnicle emphasized ConCom had not had a vote on plans with access from Farquhar Road.

Arnold Wilson asked for ruling as to whether or not he, as Chairman of the BOS, could address the Board on facts just stated. G. Peabody allowed his comments. A. Wilson did not recall the BOS approving the sewer permit conditional on access from Route 131 as G. Peabody had commented.

G. Peabody asked D. Barnicle to confirm that ConCom had approved a wetland crossing from Route 131. He said it had. B. Sutter stated that it was his understanding that ConCom had forced the applicant to access from Route 131. M. Cooney concurred.

G. Peabody read from BOS minutes 11-15-04, which approved water and sewer for the Estates at Sturbridge Farms shown on a plan accessing from Route 131. B. Sutter asked her to read again condition #3) which said that "...any substantive changes to the Plan, as determined by the Board of Selectmen, shall require a new application to the Selectmen for approval of a new sewer extension permit for the plan." B. Sutter had understood from the applicant that they had been forced by the Town (ConCom) to use the Route 131 driveway, but he now did not see evidence of that. M. Cooney stated this had been her opinion all along. P. Jeffries now felt the Board was not backed into a corner. R. Cornoni now questioned if the applicant had created their own hardship. G. Peabody felt the main issue now was had the information been misrepresented. N. Campbell referenced the Board's draft minutes of 05-25-05, page 8, paragraph 1, which detailed M. Loin's comments stating the applicant was forced by ConCom to access from Route 131. R. Cornoni recalled this testimony. G. Peabody had based her findings on M. Loin's testimony indicating the Town was imposing a hardship by requiring the Route 131 access. She now felt the testimony was a misrepresentation. B. Sutter said it would be difficult to trace back the evolution of these plans; was not certain it would matter and could not see a hardship or a reason to grant a variance because this was a self created hardship. R. Cornoni commented that the Board needed to keep in mind the requirements for granting a variance and the applicant could not prove that a genuine hardship was created. G. Peabody reviewed her earlier reasons for supporting this variance request, but felt they no longer applied.

L. Adams suggested that a hardship was not created by an action, inaction, decision or indecision of any board, it related to the land. Therefore the misrepresentation could be considered irrelevant. The hardship relates to the land and not an inability to get a permit from any board. Regardless that the Board did not explore the possibility of access from Farquhar Road due to ConCom recommendations, a hardship did not exist due to a regulation preventing the issuance of a permit. The hardship must relate to the land.

Motion: to deny the variance for The Spaho Corporation to allow an access driveway off Main Street/Route 131 which is not the lot's legal frontage and to deny the variance to allow retaining walls within two feet of the property line along the project's proposed access driveway for a lot at 30 Farquhar Road, by P. Jeffries

2nd: B. Sutter

Discussion: None

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

Attorney Robert George requested that the entire Board be polled for its vote.

Theophile Beaudry	voted to deny the variance.
Robert Cornoni	voted to deny the variance.
Patricia Jeffries	voted to deny the variance.
G. Peabody	voted to deny the variance.
Margaret Cooney	voted to deny the variance.
Bruce Sutter	voted to deny the variance.

G. Peabody noted the vote was for both variance requests and that there would be no further discussion on the variance issues since the public hearing was closed.

M. Blanchard stepped back onto the Board.

OLD BUSINESS

G. Peabody asked the Board to accept the legal documents from SPL Development Group, LLC which had been reviewed by Attorney Bobrowski. office and pertained to the Crescent Gate at Sturbridge Chapter 40B project.

Motion: to approve the Regulatory Agreement, Monitoring Agreement and the Deed Rider for SPL Development Group. LLC, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

NEW BUSINESS

G. Peabody asked the Board to approve for payment invoice #10298, dated 05-31-05 for the professional services of Attorney Mark Bobrowski for review of the above mentioned documents.

Motion: to remit payment to Blatman, Bobrowski & Mead, LLC, Invoice # 10298, dated 05-31-05 for professional services in the amount of \$200.00, by P. Jeffries

2nd: M. Blanchard

Discussion: None

Vote: All in favor

G. Peabody explained that there was an issue between the Town and SPL Development Group for the sewer fees at Crescent Gate at Sturbridge. She asked the Board to recall its intention when conditioning the sum of \$200,000 (endorsed by the BOS) for sewer fees. Had the Board intended that all fees, including the sewer connection and permit, be covered under this figure? The Board agreed it waived all sewer fees for the Affordable Units. There was discussion on its intent when setting the sewer figure of \$200,000. G. Peabody stated that SPL Development Group had been told they would be responsible for paying a sewer permit fee since the Town Administrator did not consider it to be included in the \$200,000. The sewer permit fee calculated out to approximately \$80,000. Some members had not been aware there was such a fee. The issue was to be resolved between the Board and the Board of Selectmen. Arnold Wilson commented that the BOS was not aware of the \$80,000 dispute. B. Sutter felt the math may help establish the intent. The Board would review past minutes and correspondence and take the matter up at its next meeting.

Motion: to adjourn, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

Adjournment at 10:27 PM