

STURBRIDGE ZONING BOARD OF APPEALS

MINUTES OF

Wednesday, March 8, 2006

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

Also in Attendance Jean M. Bubon, Town Planner

G. Peabody opened the meeting at 7:00 PM and the Board members introduced themselves.
G. Peabody read the agenda.

APPROVAL OF MINUTES

The draft minutes of February 8, 2006. M. Cooney, M. Blanchard, and G. Peabody all recommended changes and corrections to the meeting minutes.

Motion: to approve the draft meeting minutes of February 8, 2006, as amended, by
M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: 6-0-1 with Robert Cornoni abstaining

CORRESPONDENCE

G. Peabody acknowledged receipt of correspondence from Kopelman and Paige, Public Hearing notices from the Town of Southbridge and a letter from Mr. Nichols to WalMart regarding the storage trailers on the premises.

PUBLIC HEARING CONTINUATION – 11-29-05-1SP2V – SPECIAL PERMIT/VARIANCE – JMJ PROPERTIES INC. – 79 MAIN STREET

At 7:07 p.m. G. Peabody opened the Public Hearing continuation of JMJ Properties, Inc. for a Special Permit and Variances from the Sturbridge Zoning Bylaw to construct a parking lot to serve an existing business on an existing non-conforming lot at 79 Main Street. The lot is non-conforming in area and street frontage.

G. Peabody indicated that the Board had received revised plans from Jalbert Engineering which had been reviewed by Mr. Morse who had provided a memorandum to the Board dated March 7, 2006. G. Peabody read the memorandum which stated that the revised design addressed the concerns of his February 8, 2006 memorandum.

Mr. Jalbert stated that he would like to review the changes for the Board. He indicated that the previous plan was reviewed by the DPW Director who had some serious concerns with the project. Based on the report issued by Mr. Morse, the plans had been revised. The proposed addition has been removed from the plan and that is now shown as a snow storage area. The original parallel parking plan had been replaced with an arc shaped parking plan. As a result, two parking spaces were lost. This will result in the reduction of two possible employees at this location based upon the parking requirements of the town of 1.1 parking spaces per employee. There is currently room for fifteen employees with seventeen parking spaces. The original small right of way had been re-designed to allow for ingress and egress on the property. In addition, he noted that an Order of Conditions had been issued by the Conservation Commission. Pending a positive response by the ZBA, the applicant would be filing for Site Plan Approval with the Planning Board.

M. Cooney stated that she thought this was a much better plan that would provide for better circulation.

Motion: to close the Public Hearing by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: 6-1 with T. Beaudry abstaining

Motion: to grant the Special Permit and Variances requested to JMJ Properties, Inc. to construct a parking lot to serve an existing business on an existing non-conforming lot at 79 Main Street as shown on the revised plans dated February 13, 2006 by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: 6-1 with T. Beaudry abstaining

UPDATE ON MEETING WITH THE ZONING ENFORCEMENT OFFICER REGARDING SIGNS

At this time, M. Blanchard updated the Board in regards to a meeting that she and P. Jeffries attended that was set up by the Zoning Enforcement Officer, Mr. Nichols to discuss signs in town. She stated that the issue over signs was raised when Sleepy's came in since there seemed to be several non-conforming signs on site. Mr. Nichols was able to put a packet together that contained all of the variances granted with the original permit for the Center. All permits had been granted with the exception of the EB Toys sign, and the internally lit signs. Sleepy's back sign was not included with the original permit. B. Sutter stated that it seemed strange that all permits had been included originally with the exception of Sleepy's. P. Jeffries indicated that she did not think the back signs had been requested at that time. She also indicated that the entire plaza is different than was originally proposed. M. Blanchard stated that she would like to request clarification from Mr. Nichols on that one sign for EB Toys.

M. Cooney stated that in regards to the WalMart storage trailers, this issue came up when she served on the Planning Board. WalMart was granted approval for nine trailers. There are now forty-two. She was pleased that Mr. Nichols sent an enforcement letter to the manager.

M. Blanchard stated that two high school students were photographing all signs in the community. The pictures will then be installed on the computer system making it much easier to track the signage in town. She also stated that the internally lit signs at EB Signs had been turned off. P. Jeffries stated that the Christmas lights in town are being addressed also.

PUBLIC HEARING CONTINUATION 10-12-05-1AA – ADMINISTRATIVE APPEAL O'CONNELL & ST. JOHN - 548 MAIN STREET

At 7:20 p.m. the Public Hearing for the Administrative Appeal filed by Frances O'Connell and Edward St. John regarding the property located at 548 Main Street was reconvened. Attorney Neal was present to represent the petitioners. He provided a packet of materials to the Board members that included a Memorandum dated July 7, 1998 from Gregory H. Morse, DPW Director to Jennifer Cortis, Town Planner, a hand sketched plot plan, a photograph of 548 Main Street, a Request for Waiver of Site Plan Review to provide additional parking, a Zoning Board of Appeals Notice of Decision dated October 15, 1998, and an application for a building permit and copy of a Building Permit dated May 17, 2005. All materials have been inserted in the file.

He stated that the materials submitted represent the information provided to the town for a 1998 proposal to expand beyond the current parking spaces. He stated that the Board voted unanimously against that proposal. He read the above referenced Memorandum to the Board at this time. He stated that there has been no occupancy permit issued for the above referenced building permit either. He stated that previously the upstairs had someone living in what were the remnants of three apartments. Currently the upstairs is not occupied.

Attorney Neal stated that a letter had been sent to Mr. Nichols in June 2005 outlining his client's concerns. Mr. Nichols stated that it is not up to him to have to prove abandonment; it is up to the proponent to prove that it was not abandoned. He stated that there are issues of Special Permit to be concerned with here. He stated that the CT District allows one apartment as an accessory to a commercial building, but that the criteria have to be met. He stated there has to be adequate parking and area. He stated that there are severely undersized lots in this area and that Site Plan and Special Permit are possibly required. He stated that this issue came up in 1998 with regards to the retail use and the expanded parking area and that perhaps Mr. Beaudry and Ms. Jeffries would remember that. He read the last paragraph of a letter from Mr. Nichols to him dated August 11, 2005 which stated in part that he would appreciate if they make their appeal to a third party (ZBA) to help resolve this issue. He stated that it would appear that Mr. Nichols may not have a clue as to how to resolve this issue. M. Blanchard stated that she was not sure she agreed with Attorney Neal's interpretation of that paragraph.

G. Peabody stated that she did not see a lot of change of use to the property. She stated that she obtained records from the Assessors Office which indicates that there are two studio

apartments and one one-bedroom apartment upstairs and a business downstairs. Both the October 13, 2005 and August 20, 1998 property cards reflect this property description. She asked Attorney Neal what had changed. Attorney Neal stated that his client could state that this was one apartment and someone attempted to convert it to three apartments. G. Peabody stated that the Assessors records show this building as having three apartments. She did not care what the Realtors information said. The Assessors have this as permitted and it has been taxed as such since 1998. Attorney Neal questioned what the 2005 property card listed as number of units in the structure. G. Peabody stated that it was the same as the 1998 property card. P. Jeffries asked if both the 1998 and 2005 cards were the same. G. Peabody indicated that yes they were; the new owner may have improved the looks of the building but not the dimension. Attorney Neal stated that Mr. Morse owned the property in 1998 and he lived alone. G. Peabody indicated that it did not matter how many people lived there. Attorney Neal stated that he would agree, except that if the apartments were vacant for two years they would be abandoned and would have to revert to the allowed use. B. Sutter asked how it would be abandoned. Attorney Neal stated that if something is not used for two years then it reverts to what is allowed as opposed to what is constructed. B. Sutter stated that he was trying to decide if he agreed with that interpretation. Attorney Neal stated that the statute says use not building. The statute is very clear in a situation where the building burns down, but the owner has to prove it's been used in that fashion. B. Sutter stated that the lot is non-conforming not the use.

Mr. Weatherbee, the property owner stated that he purchased the property from Roberts who had owned the property from 1998 to 2005. Mr. Roberts was an antiques dealer and the business had sporadic hours and by appointment, especially during the Brimfield Flea Market. The shop was not open very often, but it was open. He also rented an apartment and he stayed in the other apartment when he was in town for the Flea Market. He indicated that it is very common for antique shops to be open only on occasion. He stated that the property had not been abandoned as stated by Attorney Neal; he was there at least every month. Everything in the place was kept up; it was not dusty or un-used. R. Cornoni asked when the last time the shop was open. Mr. Weatherbee stated that he purchased the property in January 2005 and the last time he saw Mr. Roberts at the shop was at the July 2004 Flea Market. G. Peabody stated that she drives by at least once a day and knows that the shop was open periodically. Attorney Neal asked if anyone was living upstairs at this time. Mr. Weatherbee stated that as of February 28, 2006 there is no tenant; he plans to do some renovations. Attorney Neal asked if they were renting one apartment. Mr. Weatherbee stated that they were renting the entire upstairs because it was less stressful for him as he tried to renovate the property. Attorney Neal asked when it was last leased as three apartments. Mr. Weatherbee stated July 2004.

G. Peabody stated that it was not necessary to go any further. This was an allowed use and the property card since 1998 has listed this as three apartments and a business. This is a grandfathered use. P. Jeffries agreed that it was permitted. B. Sutter stated that he originally thought an increase in the number of apartments might be an issue, but there is evidence that it has been used as three units for the last eight years. He does not see an issue; it is not a change in use. M. Cooney stated that she agreed with Mr. Sutter. She stated that all the Board can really go by is the Assessors records and what is being presented. M. Blanchard stated that she originally argued against Mr. Sutter since she did not see a substantial increase or change. She agrees that the current uses are permitted. R. Cornoni stated that he did not

see where this owner changed anything. The property has been used in that manner since 1998. P. Jeffries agreed.

Motion: by M. Blanchard to deny the appeal requested by Frances O'Connell and Edward St. John seeking relief from a decision of the Building Inspector dated August 11, 2005 declining a request to require Site Plan Approval due to an expansion of use, traffic impacts and parking; additionally declining a request to require Special Permit for the extension, change or alteration of a pre-existing non-conforming use by Weatherbee & Weatherbee LLC for property located at 548 Main Street, Assessors Map 24, Lot 548, Worcester District Registry of Deeds, Book # 35469, Page 200, due to the fact that the Board agrees there is no expansion of use.

2nd: P. Jeffries

Discussion: None

Vote: 6-1 with T. Beaudry abstaining

CRESCENT GATE – HOMEBUYERS AFFIRMATIVE MARKETING AND BUYERS SELECTION PLAN

At 7:45 p.m., Judy Epstein of JTE Realty Associates met with the Board to review the Homebuyer's Affirmative Marketing and Buyer's Selection Plan which includes the buyer selection process and local preference as outlined in the Comprehensive Permit for Crescent Gate. Ms. Epstein stated that she wanted to confirm that the local preference category was defined as the Board had intended. Specifically, she questioned if the term Veterans in the Comprehensive Permit meant any Veteran of the Armed Forces, or only Veterans of the Armed Forces that reside in Sturbridge. G. Peabody stated the intent was any Veteran. M. Cooney agreed stating that the term was intended to be all inclusive.

M. Cooney asked for clarification on the pricing for the affordable units. She stated that the document provided to the Board states that the nine two bedroom units will have an affordable price of \$124,000 compared to the two bedroom market rate units which would be priced between \$246,900 and \$282,000. The one bedroom affordable units would be priced at \$109,500 compared to the one bedroom market rate units which would be priced between \$192,000 and \$297,000. She stated that did not seem correct to her as the higher end of the one bedroom units shouldn't be priced higher than the higher end of the two bedroom units. Ms. Epstein agreed stating that she would get clarification from the developer since they are the ones that provided her with the figures. M. Cooney asked if the documents would be amended to reflect the appropriate figures. Ms. Epstein stated that they would be updated with corrected figures.

G. Peabody wanted the record to show that the Town was not involved in the lottery process and that interested parties cannot apply to the Town. The Town is completely hands off with regards to the lottery. Ms. Epstein stated that typically they do like people to be able to pick up applications at a town location; the applications can also be obtained through the mail and via e-mail. But, the applications are usually left at the Town Hall or Library for convenience. G. Peabody stated that her preference would be that they only be left at the Library, not at Town Hall. R. Cornoni stated that the Library is open better hours

for people anyway. P. Jeffries asked if the applications could also be picked up at Crescent Gate. Ms. Epstein stated that they could be, but she would direct people to the library to obtain the applications. A notice would also be posted on the bulletin board, the Town website, at the Senior Center and the Post Office. G. Peabody stated that Ms. Epstein should be sure that J. Bubon received copies of everything so that she could direct people to the appropriate locations.

Motion: by M. Blanchard to approve the Homebuyer's Affirmative Marketing and Buyer's Selection Plan as presented on March 8, 2006 which includes the buyer selection process and local preference as outlined in the Comprehensive Permit.

2nd: P. Jeffries

Discussion: None

Vote: 7-0

Motion: by M. Blanchard to authorize the Chairman to sign the Homebuyer's Affirmative Marketing and Buyer's Selection Plan as presented on March 8, 2006

2nd: P. Jeffries

Discussion: None

Vote: 7-0

Motion: by M. Blanchard to amend the motion above to include the approval of JTE Realty Associates, LLC as the Lottery Agent.

2nd: P. Jeffries

Discussion: None

Vote: 7-0

PUBLIC HEARING – J.S. DRAGONFLY ENTERPRISES, INC. – 52-54 GOODRICH ROAD

The Public Hearing on the application of J.S. Dragonfly Enterprises, Inc. for property located at 52-54 Goodrich Road was opened at 7:58 p.m. and the legal notice was read by B. Sutter. The applicant is requesting a Special Permit in accordance with Section 20.05 to permit the alteration of a pre-existing non conforming use. The applicants are requesting that approval be granted to allow the existing structure to be modified by adding dormers to both sides at the first floor level, as well as extending the front of the structure and then building a retaining wall and cat walk to accommodate access into the structure from street level. The applicant also requests seven variances from the provisions of Chapter 19 – Intensity Regulations of the Sturbridge Zoning Bylaw to accommodate the proposed alteration. The following variances are requested: A variance to the front and side set-back requirement for the construction of the retaining wall; a variance to the front and side set-back requirement for the construction of the addition; a variance to the front set-back requirement for the construction of the cat walk; a variance to the frontage requirement; and a variance to the lot area requirement. The subject property is located at 52 & 54 Goodrich Road; Assessor's Map 44 Lots 309, 52, & 54. The property owners are Sarah E. Greene and James Grubert.

Mr. Leonard Jalbert of Jalbert Engineering was present to represent the owners. The owners and several interested parties were also present for the Public Hearing. Mr. Jalbert presented the tear sheets from the newspaper, the abutter notification cards from the certified mail, and two envelopes which were returned as refused.

Mr. Jalbert explained the proposal to the Board at this time. He indicated that the lot had a very dramatic grade change from the street to the portion of the lot where the house is situated. He stated that the parking is non-existent on Goodrich Road and that this proposal would improve public safety and accessibility to the property. He stated that there were seven variances required, the first two variances would be for the lot area and frontage since this is a grandfathered lot that does not meet the requirements. He stated that the retaining wall adjacent to Goodrich Road will accommodate vehicle parking and that will be 2'-4' from the street line. The wall will range from 0'-9' and with the frost wall will be 13'-9' exposed. The grade on Goodrich Road will be even with the top of the wall and 10' from the property line at a 1:1 slope which is typical of what is up there now. The catwalk will require a variance and that will provide a level area into the building on the upper second floor. The catwalk adds a level access other than going down a steep slope. The dormers would not change the footprint and therefore there is no zoning request required for that. The changes would be a 12' X 14' addition and catwalk and the addition of the dormers.

The owners, James Grubert of 220 Podunk Road, and Sarah Greene of 17 Charlton Street explained their need for the improvements at this time. Mr. Grubert stated that the current structure is an A-Frame and with the slant of the walls they are unable to hang kitchen cabinets. The catwalk would allow them to access the house through the upstairs and stairs would be installed to the main floor which would allow safer access in the snow. The retaining wall is needed to allow parking. He stated that if a car parks on the street it is difficult for another car to pass.

G. Peabody stated that she had been out to the site three times and was familiar with the conditions. At this time she read Memorandums from G. Morse, DPW Director dated 2/27/06, J. Bubon, Town Planner dated 3/8/06, and H. Nichols, Building Inspector dated 3/6/08. Each Memorandum outlined concerns with the proposal.

G. Peabody asked Mr. Jalbert if he could explain how this proposal met the three criteria required for the granting of a variance. Mr. Jalbert stated that there are slope constraints. The elevation of Goodrich Road is 100' where the floor of the A-Frame is at 80'. G. Peabody stated that the condition must be unique to the property. She questioned how this property was unique when compared to the other properties in the District. Mr. Jalbert stated that the properties on the left side by the lake have a very steep down gradient, but the properties on the right side are up gradient. P. Jeffries stated that everything on the left side is steep. Mr. Jalbert agreed stating that there were a couple more proposals for work on this street that were pending before the Board at this time. The steep slopes were not appropriate for access. The maximum slope allowed for a driveway is 12% and this property is 25%. G. Peabody stated that they have to meet the criteria and the first is soil and topography. She did not see how this property was different from others in the District. M. Cooney agreed stating that this situation was not unique. M. Blanchard stated that she understood that they were trying to make the property safer, but she thought the request was

excessive and she could not vote for the request. G. Peabody stated that to construct the retaining wall, several trees would have to be removed and they appeared to be stabilizing the road. She stated that she was not a structural engineer but she thought this was opening up a Pandora's Box. The current retaining wall consists of about 3 or 4 logs that are held back by iron posts. She just could not go for the retaining wall with a catwalk to an addition that looks like it would add another floor. She stated that she did not really have an issue with the dormer on the septic system side, but thought the one on the other side would greatly impact the abutters view since that house is very close. She stated that she looked this over very carefully and did not think this was fair to the neighbor; the other side did not appear to be a problem. Mr. Jalbert asked if she was suggesting that the east side was acceptable but the west side was problematic. G. Peabody stated that was her suggestion. She thought that the retaining wall would have a domino affect on other properties; it really forced others to do the same thing or you could lose the road. P. Jeffries agreed stating that to remove the trees would create a disturbance to the property. M. Cooney stated that she had visited the property also, and was very surprised at the conditions, stating that the road width was only 8-10' maximum. She questioned how long they had owned this property. Sarah Greene stated since the end of December 2005. M. Cooney stated that if that was the case they certainly knew the limitations. She had a great concern with the stability of the land and the impact on the abutter. She really did not feel this was fair to abutters and she did not feel that it met the criteria. R. Cornoni stated that the DPW Director had concerns that could be better addressed with a profile plan. Mr. Jalbert stated that he just received that today. He would like to request a continuance to discuss the layout with his clients to see if the plan can be amended and then they could make a more meaningful presentation. G. Peabody stated that was his prerogative but she hoped that he heard what the Board was saying that they did not think it met the criteria. If the criteria cannot be met, she would not want him to waste his, his client's or the Board's time.

Roger Leblanc of 56 Goodrich Road stated that he owned the small cottage on the right. He stated that due to the topography, flooding conditions occur during medium to heavy rains. The new retaining walls would cause a diversion of the water and he thought that his property would experience flooding. Currently, they can get up to 6" of water in the basement during storms. He also believed that the construction of the wall would create serious erosion problems. He stated that he had already spent \$10,000 to stabilize his home and he would not want the structure to be compromised. He stated that he also thought that the addition of the dormers would devalue his property by means of encroachment. The dormers would also place that structure closer to his and he was concerned that his house could be ignited if there was a fire there. The dormers would also block his view of the lake since he has constructed a new stairway and added benches to the stairs to enjoy the view. He stated that he had a lot more to add but felt it was already covered by the Board. He thanked them for being so thorough in the review.

Mr. Jalbert requested a five minute recess to meet with his clients. The Board agreed.

After the recess, Mr. Jalbert stated that they would like to eliminate the parking area on Goodrich Road, the retaining wall, the catwalk and the addition. That would leave only the dormers on the original footprint. They would not install windows in the dormer and the dormers would be only 10' high so they would not impose on the abutter's sight lines. They would request two variances; one for the lot area and one for the frontage. R. Cornoni

asked how wide the dormer would be. Mr. Grubert stated 12' wide. G. Peabody stated that she had a problem with the dormer on the abutter's side. R. Cornoni stated that there would not be a window and it would not stick out of the footprint of the house. M. Cooney stated that the view on the one side would be a problem. R. Cornoni asked if they could make the dormer longer on the other side. Mr. Grubert stated that there was a stairway that would prevent that. G. Peabody stated that they cannot give more than requested. P. Jeffries stated that they really bought the problem. M. Cooney agreed. M. Blanchard stated that if they eliminated the retaining wall and everything and just wanted to build the dormers she did not think they would need the Special Permit since that section of the bylaw states that no Special Permit would be required if it does not increase the non-conformity. She stated that her personal view was that they should request to withdraw without prejudice and re-submit and the Board could consider waiving the fees. Mr. Jalbert stated that he would rather continue and amend the plan since the legal advertisement cost \$300.00. R. Cornoni asked if he could provide a better illustration of the dormers. Mr. Jalbert stated that he would remove the retaining wall, catwalk and two story addition from the plan and put the two dormers in the footprint of the existing building and would go forward with the Special Permit to alter the structure and the two variances.

Motion: by M. Blanchard to continue the Public Hearing on April 12, 2006 at 7:15 p.m.
2nd: P. Jeffries
Discussion: None
Vote: 7-0

Motion: by M. Blanchard to adjourn at 8:45 p.m.
2nd: M. Cooney
Discussion: None
Vote: 7-0