

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
Wednesday, November 10, 2010

Present: Elizabeth Banks
Marge Cooney
Thomas Creeden
Pat Jeffries, Vice-Chair
Chris Mattioli
Maryann Thorpe

Also Present: Diane Trapasso, Administrative Assistant
Jean Bubon, Town Planner
David Lindberg, Building Commissioner/ZEO
Attorney Eichman, Town Counsel
Attorney Baird

Ms. Jeffries, Vice-Chair, opened the meeting at 6:15 PM.

Ms. Jeffries read the agenda.

APPROVAL OF MINUTES

Motion: Made by Mr. Mattioli to approve the minutes of October 13, 2010.
2nd: Ms. Thorpe
Discussion: None
Vote: 5 – 0

Ms. Banks was not present for the voting of approval of the 10/13/2010 minutes.

**CONTINUATION OF THE REQUEST FOR VARIANCE FOR
REHABILITATIVE RESOURCES, INC. TO ALLOW A PARKING LOT
EXPANSION WITHIN THE SETBACK REQUIREMENTS AS SHOWN ON
THE PLAN. THE PROPERTY IS LOCATED AT 1 PICKER ROAD.**

Materials Reviewed:

Letter from Bath Path College dated October 28, 2010

Site Plan for Rehabilitative Resources, Inc. – 1 Picker Road – dated 9/17/2010 – received 10/20/2010

Mr. Loin of Bertin Engineering spoke on behalf of the applicant. He stated that the new plans, which the Board received after their October 13th meeting, show more detail and usually for ZBA only need a variance plan. There will be no change along Route 20. There will be plantings of evergreen trees.

The Board had the following questions and concerns:

- Buffer on Route 20
- Pine trees and how fast they grow

Ms. Dumas of 136 Walker Pond Road stated that the Industrial Park is good for the Town by bringing in tax revenue; but the front setback along Route 20 needs to be greener.

Motion: Made by Mr. Mattioli to close the Public Hearing.

2nd: Mr. Creeden

Discussion: None

Vote: 6 – 0

Motion: Made by Mr. Mattioli to grant a 40' Variance to allow a parking lot expansion for 18 additional spaces into the front(Route 20) setback to RRI at 1 Picker Road according to Zoning Variance Plan dated 9/17/2010 and Site Plans dated 9/17/2010, received 10/20/2010, File # Y711 Drawing # P-1 with the Condition that all the concerns of the departments heads are met including all safety concerns.

2nd: Ms. Thorpe

Discussion: None

Vote: 3 – 3(Ms. Cooney, Ms. Banks & Mr. Creeden)

Motion: Made by Mr. Mattioli to grant a 15' Variance to allow a parking lot expansion for 16 additional spaces along northerly property line side setback to RRI at 1 Picker Road according to Zoning Variance Plan dated 9/17/2010 and Site Plans dated 9/17/2010, received 10/20/2010, File # Y711 Drawing # P-1 with the Condition that all the concerns of the departments heads are met including all safety concerns.

2Nd: Mr. Creeden

Discussion: None

Vote: 5 – 1(Ms. Cooney)

Motion: Made by Mr. Mattioli to grant a 18' Variance to allow a parking lot expansion for 8 additional spaces into the westerly property line setback to RRI at 1 Picker Road according to Zoning Variance Plan dated 9/17/2010 and Site Plans dated 9/17/2010, received 10/20/2010, File # Y711 Drawing # P-1 with the Condition that all the concerns of the departments heads are met including all safety concerns.

2nd: Mr. Creeden

Discussion: None

Vote: 6 – 0

PUBLIC HEARING FOR KEVIN MONGEON FOR AN APPEAL OF A DECISION OF THE BUILDING INSPECTOR (CEASE AND DESIST) FOR THE USE OF THE PROPERTY LOCATED 120 WALLACE ROAD AS A

STORAGE FACILITY FOR INVENTORY ACQUIRED IN THE COURSE OF HIS WHOLESALE BUSINESS.

Materials Reviewed

Petition for an Administrative Appeal – received 10/7/2010
Certificate of Abutters Mailing receipts
Legal notice from the Southbridge Evening News
Zoning Bylaws presented by Mr. Mongeon
Records from the Building Commissioner
Email from the Law Office of Rachel M. Baird

Ms. Banks read the legal notice.

Attorney Eichman stated that the applicant has requested that this meeting being closed. He stated that according to M.G.L. Chapter 40A and the Open Meeting Law, it is required that the meeting is open to the public and recorded.

Attorney Baird and Mr. Mongeon stated that they were recording the meeting, also.

He also stated that the Board is only dealing with zoning issues and zoning alone. The question is a zoning issue, can the applicant store firearms acquired as inventory for his business as a wholesale firearms dealer at his residence, 120 Wallace Road which is located in Suburban Residential.

Mr. Lindberg, Building Commissioner/ZEO stated that the property at 120 Wallace is located in a Suburban Residential zoning District in the Town. Only those uses of property set forth in Chapter 6 of the Zoning Bylaws as either permitted or allowed by special permit are lawful on the SR District. Neither wholesale firearms dealer nor storage incidental to such use is expressly listed in Chapter 6. Nor does his use of the property to store firearms incidental to his business fit within any of the use categories in Chapter 6. The only commercial uses permitted as of right in the SR District are farming and in-home professional office, while the only commercial uses allowed by special permit are earth removal, bed and breakfast and golf course. Clearly, none of these apply. He has found no evidence that Mr. Mongeon was ever issued a special permit allowing the storage of firearms.

Attorney Baird, Law Office of Rachel M. Baird, stated she is representing Mr. Mongeon. Mr. Mongeon seeks relief from a Notice to Cease and Desist issued by letter dated September 10, 2010, to Mr. Mongeon from Mr. Lindberg, Building Commissioner/ZEO as agent and representative of the Town.

The Notice informs Mr. Mongeon that the use of his home at 120 Wallace Road “to store firearms acquired as inventory for his business as a wholesale firearms dealer” “is prohibited under the Town’s Zoning Bylaws.”

The relief requested by Mr. Mongeon is that the ZBA grant and sustain his appeal and act accordingly so that the Cease and Desist is rescinded, withdrawn or otherwise rendered null and void.

The evidence supporting Mr. Mongeon's appeal and request are the following:

1. The lack of evidence for the statement in the Notice to Cease and Desist alleging that Mr. Mongeon stores firearms acquired as inventory at his home at 120 Wallace Road
2. The absence of support in the Town's Zoning Bylaw for the conclusion, contained in the Notice to Cease and Desist, that Mr. Mongeon has used or is using his property as a "wholesale warehouse and storage facility" as referenced in the Town's Zoning Bylaw.
3. The malicious and retaliatory nature of the Notice to Cease and Desist which follows Notices to Cease and Desist issued to the Town by Mr. Mongeon's counsel on August 2 and 3, 2010 and a letter of presentment.
4. The malicious and retaliatory nature of the Notice to Cease and Desist which follows court hearings regarding the Town police department's false and misleading representations at the Dudley District Court that Mr. Mongeon conducts a business from his home at 120 Wallace.

Attorney Baird stated that the storage of firearms, identical to the storage of any other lawful possessions in one's home, presents no detriment to the public harm. Whether or not a connection between an individual's possessions may be made to the individual's work is of no consequence. An attorney keeps files at home for easy or security, an Avon representative keeps make-up products at home, the valuable inventory of a wholesale jeweler is safeguard at home, plumbers, electricians, mechanics and other tradesmen keep tools of their trade and products at their homes. The defining difference is that the items in questions at 120 Wallace are firearms so that the intent and consequence of the Notice to Cease and Desist is to deny Mr. Mongeon his Second Amendment right to keep and bear arms. Mr. Mongeon's appeal and request for relief creates no detriment, substantial or otherwise, to the public good and in fact benefits the public good as the appeal seeks to preserve rights founded in the Bill of Rights to the United States Constitution.

Attorney Eichman stated that Mr. Mongeon and his son are wholesale firearms dealers and that the storing of his access inventory in his home is in violation of the Zoning Bylaws, it is an accessory to business use for his New Hampshire store.

Mr. Mongeon stated that the firearms he stores at his residence are very valuable and are in a safe, he feels they are safer in his home than in New Hampshire. He does not sell from his residence. Sometimes, he may ship, already packed from New Hampshire, from Sturbridge.

The Board had the following questions and concerns:

- Concern about storing of the firearms in SR District – not allowed
- License for firearms –Mr. Mongeon has a firearms license
- How many weapons are being stored at 120 Wallace Road – 10 – 12 weapons
- Why can't the firearms be stored in a safe in New Hampshire

Ms. Grecia of 111 Wallace Road stated she was shocked to find out that the Mongeons' were storing firearms in their home, why can't they store them in New Hampshire were their business is located.

Motion: Made by Mr. Mattioli to close the Public Hearing.
2nd: Mr. Creeden
Discussion: None
Vote: 6 – 0

Motion: Made by Mr. Mattioli to uphold the Cease and Desist Order issued by Mr. Lindberg, the Building Commissioner/Zoning Enforcement Officer, dated 9/10/2010 for the use of the property located at 120 Wallace Road as a storage facility for inventory acquired in the course of Mr. Mongeon wholesale business.

2nd: Ms. Banks
Discussion: The Board had further comments between themselves.
Vote: 4 – 2 (Mr. Creeden & Ms. Thorpe)

CORRESPONDENCE

None

OLD/NEW BUSINESS

None

NEXT MEETING

December 8, 2010 at 6:30 PM at the Center Office Building

On a motion made by Mr. Mattioli, seconded by Ms. Banks and voted unanimously, the meeting adjourned at 8:25 PM.