

**STURBRIDGE ZONING BOARD OF APPEALS**  
MINUTES OF  
Wednesday, October 12, 2005

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

**Absent:** Theophile Beaudry

**Also in Attendance:** Linda Coates, Clerk

G. Peabody opened the meeting at 7:03 P.M. G. Peabody introduced the new Planning and Zoning Administrative Assistant, Mrs. Linda Coates, and wished Nancy Campbell well at her new job. The minutes of 9/21/05 & 9/28/05 were by-passed as they were not ready. There was a decision to hold off the hearing on the Administrative Appeal for O'Connell/St. John (548 Main St.) until P. Jeffries arrived at the meeting, as five members were needed to approve the Special Permit. Old/New business was discussed in the meantime.

**OLD BUSINESS:**

**Motion:** to reconsider the Neil (20 Tantasqua Shore Drive) Determination vote of September 28, 2005, by M. Blanchard

**2<sup>nd</sup>:** B. Sutter

**Discussion:** None

**Vote:** In favor-M. Blanchard, R. Cornoni, G. Peabody, B. Sutter  
Opposed – M. Cooney

M. Cooney would like all correspondence for Special Permits or Variances to be listed consistently. Whoever filed the original petition should be the name on all files. G. Peabody stated that it was an in house matter and would be taken up.

G. Peabody stated that there would be changes to how Public Hearing Notices are handled. For the past four or five years the Planning Department has prepared the Public Hearing notice and faxed it to Stonebridge Press. The Proponent is called when the bill arrives and sends the Planning Department a check for the correct amount. This is against Town Hall practice. In the future, the Town Planner will still prepare the notice, but it will be up to the proponent to file it on time. The proponent will notify all abutters on the abutter's list obtained in the Assessors Office by certified mail. The chairman of the Board will need to make sure everything is in place before the public hearing can be heard.

(P. Jeffries arrived at approximately 7:40)

**PUBLIC HEARING 10-12-05-1AA – ADMINISTRATIVE APPEAL FROM A DECISION OF THE BUILDING INSPECTOR DECLINING A REQUEST TO REQUIRE SITE PLAN REVIEW DUE TO AN EXPANSION OF USE, TRAFFIC IMPACTS AND PARKING AT 548 MAIN STREET.**

G. Peabody stated that they could proceed to the Public Hearing now that P. Jeffries had arrived and acknowledged the petitioner's lawyer, Attorney Edmond A. Neal, III.

Attorney Neal stated that when his clients, Frances O'Connell and Edward St. John, first came to him they had correspondence from Harold Nichols, Building Inspector/Zoning Enforcement Officer; Jim Malloy, Town Administrator; and Joel Bard, Town Council re: renovations to 548 Main Street. Atty. Neal sent a request to the Building inspector for a site plan review in June 2005, but did not receive a response until August of 2005 in which Mr. Nichols requested that the matter be brought before the Zoning Board of Appeals for clarification. (Letters from Harold Nichols, Zoning Enforcement Officer, James Malloy and Joel Bard were discussed).

The question being raised is as to prior use. Currently there are two apartments above and an antiques shop below. In June, O'Connell and St. John (residence of 544 Main St. and owners of apts. at 546 Main St.) requested a cease and desist until such time that the owner of 548 Main St. (Wetherbee & Wetherbee, LLC ) could apply for a special permit or site plan review. The lot is 1.2 acres (5,000 sq. ft.) with five parking spaces. This is a commercial/tourist zone and the proponents contend there is not enough parking, so lot coverage regulations are not met. The addition of the 2<sup>nd</sup> apartment constitutes an overuse of the zone.

Atty. Neal stated the Zoning Officer has done nothing. He submitted letters from Mr. Nichols, Atty. Bard and Mr. Malloy in which he contended Atty. Bard stated that it is up to Wetherbee to prove he has a pre-existing non-conforming use. Appellants claim that since 1982 there have been periods in excess of two years when the shop has not been used for anything but storage and that there was originally one apartment and now there are two. Atty. Neal stated that the zoning bylaws do allow for 2 apartments as maximum use, but their concerns are:

- (1<sup>st</sup>) There is a 20 ft. right of way owned by the proponents that is shared with their building in back that can't be blocked by either property. Customers and residents of 548 Main need to use this private right of way to back in and out and for access to parking. (Pictures are used for proof) Proponents have observed people backing into their house to get out. Apartment dwellers use her drive to get out, and customers block her driveway.

Board acknowledged the tight space. A letter was read in which Jim Malloy stated he sees periodic activity that would indicate the shop has been open for business and not used solely for storage.

- (2<sup>nd</sup>) Atty. Neal continued that a Site Plan Review is needed because it's in a commercial/ residential zone and this process has been bypassed
- (3<sup>rd</sup>) Expanding use from 1 apartment to 2 apartments on a sub-sized lot requires a Special Permit, which also has been bypassed.

Appellants would like the ZBA to enforce the cease and desist until a site plan review and special permits are obtained.

G. Peabody read the letters from Jim Malloy to Harold Nichols and the letter from Joel Bard regarding the claims that the building has lost its non-conformity. Joel Bard clearly stated that the person claiming non-conformity has the burden to prove they are right. Atty. Neal claims he has never seen any business. During discussion there was a correction made that the lot is .12 acres not 1.2 acres. M. Blanchard stated that all the lots are non-conforming in that section of town. Atty. Neal restated that the right of way is only for the back building and he is concerned that Wetherbee has chosen not to appear to help clarify things. G. Peabody and M. Blanchard also stated they have seen activity during flea market times. Atty. Neal conceded that the abandonment issue is a side issue.

B. Sutter-questioned if going from one apartment to two was making a change that would fall under a request for Determination, not a Special Permit. The Board decided any increase in use is subject to Site Plan Review. More business means more traffic than previous. M. Blanchard felt that was too hard to judge. G. Peabody stated in Chapter 8 under the Apartment/Commercial bylaws 801A, that single-family dwellings are not to exceed two apartments per building. They have not exceeded the bylaws. B. Sutter – going from 1 apt. to two in a non-conforming structure is an increase of use. M. Blanchard-does not consider it a substantial expansion of use, or that it was detrimental to the neighborhood. All the buildings in Fiskdale have parking issues. While she sympathized with the appellants she was inclined to deny; this did not qualify for a Site Plan Review. G. Peabody suggested the appellant have cars that block their driveway towed.

F. O'Connell requested to speak – the parking is dangerous. Having cars towed wouldn't be effective as it isn't always the same people. The current owners are already talking about selling and they (O'Connell/St. John) are concerned there would be even more business. They've had the police and fire departments both say the situation is unsafe. There are children that play in the back where cars turn around.

M. Blanchard said we cannot deprive one person what's allowed by the bylaws. B. Sutter – I can see how it [2<sup>nd</sup> apt] would make a substantial change, as it would take up parking for customers. If the board approves, it should go for a Site Plan Review according to section 20.05. M. Blanchard countered that under 20.05.1 they have not changed the envelope. R. Cornoni-questioned if the board should be concerned with how busy it's going to get. G. Peabody stated it was not up to the board to decide how busy it will or

can get. Atty. Neal stated that the second apartment with a retail space below is what brought them here. If it were one [apartment] and one retail they wouldn't be here.

M. Blanchard suggested closing the Public Hearing and taking it under consideration to continue the Public Hearing. B. Sutter asked for proof of how many apartments there originally were. Proponent stated that there was one [apt.] not completely finished when they looked at purchasing it, and was listed in January 2005 as a one family home.

Carol Goodwin, 19 Orchard Road – Do they need a Variance or some kind of 2nd permit because there is not enough parking?

**Motion:** to continue the Public Hearing on November 9, 2005 at 7:05, G. Peabody  
**2<sup>nd</sup>:** M. Cooney  
**Discussion:** None  
**Vote:** All in Favor

**REQUEST FOR DETERMINATION RECONSIDERATION – THOMAS & CAROL NEILL – TO CONSTRUCT AN ADDITION AT 20 TANTASQUA SHORE DRIVE**

Mr. & Mrs. Neill stated they wish to remove the deck on the side of their house because it would allow them to stay within the 15% lot coverage. They are in compliance with all setbacks. They have been in the house for over 27 years and a small addition would greatly improve their lives in the house. The lot has been surveyed; the addition/foundation requires them to go outside the original footprint. Mr. Neill did not understand how to fill the Special Permit request form and asked Mr. Malloy for help in question #4. Mr. Malloy suggested they e-mail the Board, which is why they are here.

M. Blanchard – The house is on a non-conforming lot because of frontage and acreage and refers to section 20.05.1 letter B for extending a basement foundation. They are not adding to or increasing non-conformities.

M. Cooney – They are increasing the envelope so it isn't a right. They need a Special Permit.

G. Peabody – [Paragraph re: alterations below A & B] takes care of A & B in this case and we should allow the Determination.

**Motion:** to make a Determination that the addition does not increase the non-conformities or add any new non-conformities and allow the construction of an addition at 20 Tantasqua Shore Drive, M. Blanchard  
**2<sup>nd</sup>:** B. Sutter  
**Discussion:** None  
**Vote:** In favor – B. Sutter, M. Blanchard, G. Peabody, and R. Cornoni  
Opposed – M. Cooney and P. Jeffries

**PUBLIC HEARING CONTINUATION – 01-26-05-1SP – SPECIAL PERMIT – BLUE & GOLD DEVELOPMENT – 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**

Attorney Donahue - requested an extension of the Public Hearing date in order for the Board to look at additional information.

G. Peabody – had talked to Town Counsel regarding Chase Road. The ZBA cannot make an approval based on another action. They may make a decision; however, if it's denied it could go to court as an appeal.

**Motion:** to continue the Public Hearing to November 7, 2005 at 7:20p.m.,  
M. Blanchard  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** All in favor

**PUBLIC HEARING CONTINUATION – 09-28-05-1SPV – SPECIAL PERMIT/VARIANCE – FREDERICK & MARGARET GUNN – TO DEMOLISH THE EXISTING STRUCTURE, TO PERMIT THE CONSTRUCTION OF A SINGLE FAMILY DWELLING AND ALLOW IT TO ENCROACH TEN FEET INTO THE STREET SETBACK ON A LOT THAT LACKS THE REQUIRED FRONTAGE AND AREA AT 36 & 38 GOODRICH ROAD**

Leonard Jalbert questioned if the Zoning Department had received the Gunn's check for the public notice. L. Coates stated she had not. G. Peabody suggested that it be researched later and continued with the hearing.

L. Jalbert stated they are going for a Special Permit for three non-conformities in frontage, lot area and intensity coverage. What the proponents would like to do does not worsen the non-conformities; it actually benefits them. The building would be constructed in proper setbacks. The actual area of the lot is grandfathered as required in 40A. As for intensity, the Gunn family wants to cut back the footprint making the house smaller. Everything is properly taken care of for the Special Permit. They would like to move the position of the house towards the road because of topographical constraints on the lot.

G. Peabody – The deck will need to be demolished for work to be done and wanted the Board to consider requiring that the rebuilt deck/s be smaller. Currently the total deck space is 1,956 sq. ft. Total lot coverage at present is 38%. The proposed changes would have total lot coverage at 35% and permitted lot coverage is 15%. R. Cornoni added that since they are making the house smaller the deck should be reduced to bring it into conformity. M. Cooney stated 27% of the proposed construction is in decks. L. Jalbert – The deck has been there forever and is the only place to sit because of the topography. R.

Cornoni and B. Sutter would still like to see the setback and lot coverage issues on the side of the house addressed.

L. Jalbert requested a continuance of the Public Hearing to clear reducing the deck size/s with his client.

**Motion:** to continue the Public Hearing to November 9, 2005 at 7:45 P.M.,  
M. Blanchard  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** All are in favor

Mrs. Blanchard recuses herself at 8:26 P.M.

**PUBLIC HEARING CONTINUATION – 02-09-05-1SP – SPECIAL PERMIT – THE SPAHO CORPORATION – TO ALLOW AN ACCESS DRIVEWAY OFF OF MAIN STREET (ROUTE 131), WHICH IS NOT THE LOT’S LEGAL FRONTAGE AND TO PERMIT THE CONSTRUCTION OF TWENTY-ONE AGE RESTRICTED CONDOMINIUM UNITS LOCATED AT FARQUHAR ROAD**

G. Peabody read letter from Attorney Robert E. George requesting a continuation of the Public Hearing until November 23, 2005. Due to the Thanksgiving Holiday, the Board decided that the Public Hearing would be continued to November 9, 2005 at 7:50 P.M. G. Peabody will notify Atty. George of the change.

Mrs. Blanchard – questioned if the request for continuance is a delaying tactic. The Variance had been denied, so it is a mute point to apply for a Special Permit. She requested that the Public Hearing be closed and that the Board vote on the Special Permit.

G. Peabody suggested the Board allow for a continuance because of the wording in the Public Notice. They’ve already denied the Variances, but they need to allow him to withdraw without prejudice.

M. Cooney – we should deny the continuance to November 23<sup>rd</sup> as requested - allow the proponent to come forward on Nov. 9<sup>th</sup> - suggested that the proponent withdraw without prejudice, submit a whole new Special Permit application and issue a new Public Hearing notice; and the Board would close the Public Hearing on November 9<sup>th</sup> and vote.

**Motion:** to continue the Public Hearing to November 9, 2005 at 7:50 P.M.,  
P. Jeffries  
**2<sup>nd</sup>:** R. Cornoni  
**Discussion:** B. Sutter/R. Cornoni suggested that the Board communicate to Atty. George that he needs to appear at the next hearing and wrap it up, or they will close the discussion. Mrs. Blanchard again requested the Board to not go along with delaying tactics because Atty. George never appears.

**Vote:** All are in favor

M. Blanchard returned back on the board at 8:33 P.M.

**Motion:** to adjourn, G. Peabody

**2<sup>nd</sup>:** B. Sutter

**Discussion:** None

**Roll Call Vote:** All in favor

**Adjournment at 8:35 P.M.**