

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, FEBRUARY 15, 2000

The Board consisted of:

Thomas W.H. Phelps, Chairman  
Mark A. Kablack, Clerk  
Patrick J. Delaney III  
Gilbert P. Wright, Jr.  
Lauren S. O'Brien, Alternate

Notice was published in the Sudbury Town Crier on January 27 and February 3, 2000, posted, mailed and read at this hearing.

Mr. Phelps, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

William and Dorothy Schirmer were present to represent a petition for renewal of Special Permit 98-1 to conduct a Home Business, specifically the sale of antiques in a building at the rear of the house at 850 Boston Post Road. No changes were being requested nor has Mr. Schirmer had any complaints associated with the use.

Mr. Phelps read a letter from the Planning Board dated February 14, 2000 which recommended approval.

There were no questions from the Board nor were there any abutters present.

After deliberation the following motion was placed and seconded:

MOTION: "To grant William C. and Dorothy J. Schirmer, owners of property, renewal of Special Permit 98-1, granted under the provisions of Section III,A,1,c of the Zoning Bylaws, to conduct a Home Business, specifically the sale of antiques in a building at the rear of the house, property located at 850 Boston Post Road, Wayside Inn Historic Preservation Residential Zone, provided that:

1. Not more than one additional employee other than family members will be allowed.
2. All parking will be off-street.

3. Hours of operation are Wednesday through Sunday 10AM-5PM.
4. One sign, not to exceed two square feet, will be allowed.
5. No exterior changes to the property or additional exterior lighting will be allowed, and no additional indicators of activity such as flags, banners or exterior display of merchandise.
6. This permit is non-transferable and will expire in three years on February 15, 2003, and the Board will consider renewal upon receipt of proper application on or before that date.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The applicants are requesting renewal of a special permit to conduct an antique business. The location of this operation is appropriate for this activity and the applicants have complied with the terms of the previous permits. No abutters were present to oppose renewal.

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Thomas W.H. Phelps, Chairman

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Mark A. Kablack, Clerk

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Lauren S. O'Brien, Alternate

JAMES & MARYBETH MADIGAN  
32 Oakwood Avenue  
00-6

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James and Marybeth Madigan were present to represent a petition for special permit to alter a nonconforming structure by constructing a 28X30 foot 2-car garage with a second floor bedroom at 32 Oakwood Avenue.

Mr. Madigan explained that the addition, proposed to be constructed on the left side of the house, will result in a rear yard setback deficiency of 9 feet.

Mr. Madigan said other houses in the area have had similar additions and this would not alter the character of the neighborhood.

The Board reviewed the plans submitted with the application as well as the photographs presented this evening.

In response to questions from the Board, Mr. Madigan explained that the existing house does not have any garage. Additionally, the small porch to the side of the house will be removed to accommodate the addition. He submitted a sketch of the proposed interior layout of the house and addition.

With regard to outside appearance, Mr. Madigan said there are four risers from the existing driveway to the first floor. The height of the garage slab will be approximately 3 ½ feet below the first floor; the peak of the roof addition will be 3-4 feet below the existing roofline.

A sketch was shown of the proposed dormer and roof slope in response to further questions from the Board.

With regard to setback, Mr. Madigan explained that the rear lot is an empty lot approximately 50-100 in area.

Mr. Phelps read a letter dated February 14, 2000 from the Planning Board which voted to take no position on this petition.

There were no further questions from the Board. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant James E. & Marybeth G. Madigan, owners of property, a Special Permit under the provisions of Section I,D,3 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing a 28X30 foot 2-car garage with second floor bedroom, which will result in a rear yard setback deficiency of 9 feet  $\pm$ , property located at 32 Oakwood Avenue, Residential Zone A-1."

VOTED: In favor: 5 (unanimous) Opposed: 0

REAONS: The petitioners require a special permit due to the nonconforming nature of the structure. The Board finds that the proposed alteration, which will increase the rear yard setback deficiency, will not be substantially more detrimental than the existing nonconformity to the neighborhood. The proposed addition is similar to other additions in the area. The design will architecturally compliment and enhance the appearance of the existing structure. The Board notes that no abutters were present to oppose this petition.

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Carol Bugbee, Barlo Signs, was present, representing the petitioner, Best Friends Pet Resorts & Salons, in a petition for special permit to erect a 15.9 s.f. double-faced freestanding sign at 150 Boston Post Road.

From the plot plan, Ms. Bugbee described the area of the building and the proposed location of the sign. The sign would be a 3 ft. 11 in. X 4 ft.  $\frac{3}{4}$  in., double-faced wooden sign with an overall height of 12 feet.

Ms. Bugbee explained the need for this sign is due to the fact that the building is set back quite a distance from the road. In addition, the building beside it, the Wingate Nursing Home facility, projects out significantly towards the street from the front line of the pet resort and would block visibility of a wall sign. The foliage blocks visibility from the other side.

The sign will be fairly low profile and was approved by the Design Review Board. It will be consistent with the building architecture and is similar to other freestanding signs in town. Ms. Bugbee felt this request meets the criteria for a special permit.

Mr. Delaney asked whether this sign would be in addition to the existing wall sign. Ms. Bugbee replied that the petitioner has agreed to take down the wall sign if this petition is granted. There is a "comment" sign over the door which will remain.

BEST FRIENDS PET RESORTS & SALONS

150 Boston Post Road

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Mr. Delaney had some questions regarding the lighting. Referring to a FAX from Barlo Sign sent to the Board on February 10, 2000, which states the lighting to be from the base upward toward the sign, he asked the size of the base. Ms. Bugbee said it was 3 ft. 11 in.

Ms. Bugbee read portions from that letter which indicates there are two 175-watt fixtures. At 175 watts the brightness would be that of three standard 60-watt light bulbs. The letter states that "although we are in the sign business, we are not specialists in the effects of general outdoor lighting in regards to lumens or lamberts. We are specialists in regards to the proper amount of lighting required to sufficiently illuminate signs."

Mr. Delaney voiced concern with regard to the lighting. He said when lights are mounted below and point up at an angle towards the sign, they are generally visible to traffic and, in this case, the residential area on Goodmans Hill Road. He said they cannot be effectively shielded at those angles. The only way to effectively shield the lighting would be to put it above the sign to shine downwards. He noted the Buddy Dog sign has a similar type sign.

Mr. Delaney referred to the statement which says Barlo Sign is not a light expert and that the brightness would be that of three standard 60-watt bulbs. He said the statement with regard to brightness is not accurate; that the wattage of the lamp proposed, which is metal halide, would be much brighter than a standard light bulb as that type of lighting is more efficient. Mr. Delaney would want to see more definitive information on the lamp.

Discussion followed on the proposed sign location which is 10 feet from the road. Mr. Delaney said the Bylaw section V,D,7,e refers to the size of the sign which is put up and which essentially says that the greater the frontage, the larger the sign can be. It also contains a setback requirement.

Mr. Delaney believed this creates a procedural problem because V,D,7,e is the only section which refers to setback for "specific things". There is another section that refers to all setbacks for that which is structural, and it includes a sign as a structure. Therefore, he said there are two sections in the Bylaw which refer to signs. In the sign section, the Board of Appeals can approve something not called out in the sign section. However, in the section on setbacks, there is no such provision. If the Board were to approve something closer to the road than the Bylaw indicated, in the sign section it would be a special permit; in the intensity regulations it would be a variance.

Mr. Phelps read a letter dated January 5, 2000 from the Design Review Board (DRB) which voted to recommend approval. The letter notes that the DRB, in reaching this recommendation, took into account the deep setback of the building necessitated by the wetlands in front of the lot, the fact that the Wingate building blocks visibility to eastbound traffic, and the summer foliage does the same from the west.

Discussion followed on how to proceed. The Board wanted additional information on lighting, specifically with regard as to how the lighting will look, perhaps by comparison of other signs in the area. Also, the suggestion of lighting on top of the sign could be considered.

With regard to the setback issue, Mr. Delaney said he was not comfortable with approving something that is prohibited in another section of the Bylaw. He also did not want the applicant to attend another hearing and be disadvantaged because of what might be a procedural problem.

Following further discussion, it was agreed that the petitioner should apply for a variance and the Board agreed to waive the filing fee. Ms. Bugbee agreed to do so and to also provide some additional information on brightness, either by bringing in the equipment or by comparing the lighting to other signs. Also requested was a comparison of sign size to other signs in town.

The hearing was continued to March 28, 2000.

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Thomas W.H. Phelps, Chairman

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Mark A. Kablack, Clerk

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Mr. Phelps, Chairman, explained the requirements necessary to substantiate the granting of a variance. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Attorney Paul Piazza was present, representing the petitioner, Richard Stitt, also present, in a petition for a Variance to legalize an existing garage having a side yard setback deficiency of 11.1 feet at 29 Stone Root Lane.

Attorney Piazza explained that the notice advertised a 13.5 foot deficiency. That figure has been revised to show an accurate setback deficiency of 11.1 feet. The plans were submitted and a history was provided. Back in the early part of 1998, Richard Stitt owned Lots 32 and 33. He decided to sell Lot 33, but before he did, he cut off an extra piece in order to have sufficient side lines to construct a garage.

After selling the lot he began plans to construct the garage. The garage as drawn on the plan appeared to have the proper setback. Acton Survey & Engineering, Inc., drew the plans. Their engineer on site misinterpreted some field data and omitted a portion of the Stitt's house when he was drawing the plan.

According to the engineer's drawing, the garage was 6.7 feet away from the house and 21.6 feet from the side line. The error was realized when the as-built was being drawn which pushed the garage to 8.9 feet of the side line. A letter from Acton Survey & Engineering, Inc., explaining the situation was submitted as part of the application package.

Attorney Piazza said there is a hardship in that the structure is existing. It would be difficult to sell the property since there is a cloud on the title. To move the building would cause a substantial financial hardship. Further, if the garage was required to be pushed further



back, it would run into the buffers of the wetland. If it were moved behind the house, aside from being impractical, there is a swimming pool in that location.

As to location with regard to the abutter's house, Attorney Piazza pointed out that the abutter's house is approximately 115 feet from the property line. Additionally, the garage as constructed is separated from the other property by a grove of trees which provides a substantial buffer. Pictures were submitted of that area.

The Board was in receipt of letters from abutters Marie Palek, 23 Stone Root Lane, Betty Byrne, 26 Stone Root Lane, and a note from Joseph Lavelle, 14 Stone Root Lane, all in support of the petition. Although no letter was received from David Rose, 35 Stone Root Lane, direct abutter to the side, Attorney Piazza said he had spoken with Dr. Rose who had no objections and indicated that he would be sending a letter.

With regard to the Conservation Commission's Order of Conditions as it applied to the error, Attorney Piazza said he went to the Conservation Commission and was told that the garage and driveway are still in compliance with the Commission's requirements.

Ian Rubin, Surveyor, Acton Survey & Engineering, Inc., explained that whoever drew the house misinterpreted the field data and saw it as a continuation of the wall, which it was not. Somehow, an additional 12 feet was missed. Subsequently after the garage was constructed, the error was found.

Mr. Kablack asked whether the Stitt's had pursued a lot line change with the Roses. Attorney Piazza said he was not the attorney for the sale of Lot 33; however, the property is recorded in land court which entails a lengthy and expensive process. He was not sure Dr. Rose would even be amenable to this process.

Mr. Phelps read a letter dated February 14, 2000 from the Planning Board which voted to recommend approval of the petition.

There were no further comments. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Richard & Mazie Stitt, owners of property, a Variance under the provisions of Section IV,B of the Zoning Bylaws, to legalize an existing garage having a sideyard setback deficiency of 11.1 feet  $\pm$ , property located at 29 Stone Root Lane, Residential Zone A-1."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner requires a variance to legalize an existing garage having a side yard setback deficiency. The garage was constructed in its present location as the result of an erroneous engineering plan. This error was confirmed by the engineering firm. To move the structure to another location would be impractical and incur substantial financial costs and would interfere with the wetland buffer.

The Board finds that in this case there will be not substantial detriment to the public good if the variance is granted. The house of the abutter most affected is located a substantial distance from the property line. In addition, there is tree cover on the petitioner's property which provides a buffer on that side. It is the Board's opinion that the granting of this variance will not nullify or substantially derogate from the intent or purpose of the Zoning Bylaw.

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