

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, NOVEMBER 12, 2002

The Board consisted of:

Patrick J. Delaney, Chairman  
Jonathan G. Gossels, Clerk  
Thomas W.H. Phelps  
Stephen M. Richmond  
Elizabeth A. Taylor, Alternate

Notice was published in the Sudbury Town Crier on October 24 and 31, 2002, posted, mailed and read at this hearing.

Mr. Delaney, 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 Arthur Anderson was present representing the petitioners, which included Neal and Deborah Shifman who were also present. The petition is for a variance to legalize a screen porch having a rear yard setback deficiency.

Attorney Anderson explained that when the Shifmans applied for a building permit to construct the porch three years ago, they used their mortgage plot plan which showed that the porch would easily comply with the 30-foot rear yard setback. The porch was then constructed by a professional contractor in accordance with the setbacks on the Shifman's plans.

The house was put up for sale and it was only three days before closing when the buyers bank plan revealed that there was a violation did the Shifmans realize there was a problem. Upon the advice of the Building Department, they hired a registered professional land surveyor which confirmed that the porch is over the required setback. A copy of this plan was included with the application.

Attorney Anderson said there was no intent on the part of the Shifmans to do anything improper when constructing the porch. They would have been unaware of any violation except for the sale of the property.

The house has now been sold to Jonathan Everett and Gloria Littooy. A substantial amount of money to the Shifmans has been held back in the event a variance is not granted which would cover the cost of demolition of the porch and subsequent reduced value of the

house. This creates a hardship for the Schiffmans as well as the buyers who would not have the house they intended to buy.

Attorney Anderson referred to certified plan. He felt the location of the house, which is at an angle, contributed to the error in the setback.

Neal Shifman said he has spoken with his neighbors who were sympathetic to his situation and who had no problem with the porch remaining in place. He reiterated Attorney Anderson's statement that there was no intent to violate the setback when constructing the porch.

Mr. Delaney said it appears the error is on the part of the last surveyor. He then read a letter dated November 3, 2002 from the buyers, who are away on their honeymoon, which requests the porch be allowed to remain as it is part of the reason they purchased the house.

In response to a question from Mr. Phelps, Mr. Shifman said the first mortgage plan was dated 1985. The house itself is 42 years old.

Mr. Gossels asked who owned the land behind the house. Mr. Schiffman did not know but he did not believe it was a buildable lot.

There were no further questions. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Neal & Debra Shifman, Jonathan Everett & Gloria Littooy, owners of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to legalize a screen porch having a rear yard setback deficiency of 6 feet 4 inches  $\pm$ , property located at 23 Nashoba Road, Residential Zone C."

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

REASONS: The petitioners seek a variance to legalize a porch having a rear yard setback deficiency. The deficiency was discovered upon the recent sale of the property. The Board finds there was no intent on the part of the owners to violate the setback. Rather, it appears that the error was on the part of the survey plan which was used to calculate the setback when constructing the porch. The Board notes that the house is located at an angle which could have been a factor when the original mortgage plan was drawn. It further notes that only a portion of the porch violates the setback.

A financial hardship to the seller would result should this variance not be granted in that a substantial amount of money has been held back for demolition and for the reduced value of the

home. Additionally, a hardship to the buyer would also be incurred as they purchased the house with the intent of having a porch which adds to the character of the house.

As a result, the Board finds that in the granting of this variance there will be no substantial detriment to the public good, nor will it nullify or substantially derogate from the intent or purpose of the Bylaw.

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Patrick J. Delaney III, Chairman

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Jonathan G. Gossels, Clerk

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Thomas W.H. Phelps

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Stephen M. Richmond

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Elizabeth A. Taylor, Alternate

GRAVESTAR INC. (SHAW'S SUPERMARKET)  
509 Boston Post Road  
02-47

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Mr. Delaney, 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.

Gary McCoy, Poyant Signs Inc., was present representing the applicant in a petition for special permit to erect six additional signs on the fascia of the Shaw's Supermarket building at 509 Boston Post Road. He said he has upgraded the secondary signage and this is the final upgrade. He referred to the plan presented with the application which depicts the signs which will be used to identify the different specialty areas within the market.

Mr. McCoy added that the primary sign on the roof of the building has been reduced significantly in size. He said even with the additional signs requested, the total area will be less than what was originally there.

Mr. McCoy referred to the Design Review Board (DRB) letter dated July 30, 2002, included with the application, which recommends approval of the signs which will be useful and add life and interest to the façade, and further that the material be brushed aluminum or brushed stainless steel.

A sample of the letter material was presented to the Board and consists of ¼ inch thick plate with a brass finish. The letters will be pin mounted with non-corrosive fasteners and there will be no illumination. The style and size will be in accordance with that shown on the plan.

Mr. Delaney asked whether Mr. McCoy anticipates any other signs relating to the departments are anticipated should this request be approved. He was referring to the painting of signs on the glass which he said are allowed without the requirement of a special permit. Mr.

McCoy said typically this is not done. He said painted signs would not be visible from the road because the building is set so far back.

Mr. Phelps referred to the awning signs for the CVS building which were recently approved by the Board. He felt this request was not dissimilar and actually looked better and more consistent than the other signs.

Mr. Richmond asked what happens when the specialty departments change. Mr. McCoy said he has been working with this firm for five years and to date nothing has changed.

Mr. Delaney added that typically the Building Inspector would allow a change provided that change fell within the same content of that which was allowed previously.

In response to a further question from Mr. Delaney, Mr. McCoy reiterated his earlier statement that this sign application is the last one which will be requested.

There were no further comments. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Gravestar Inc., owner of property, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to erect six additional signs on the fascia of the building, in accordance with plan prepared by Poyant Signs Inc., New Bedford, MA, dated July 26, 2002, property located at 509 Boston Post Road, Limited Business District #2, subject to the following:

1. The signs will not be illuminated and the material will be either brushed aluminum or brushed stainless steel."

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

REASONS: The petitioner requires a special permit for six additional signs. The Board notes that this is a very large building and the signs, as proposed, are reasonable. They are consistent with the architecture of the building and will enhance the appearance of the building. The signs will not cause visual confusion, nor will they cause glare since they will not be illuminated.

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Patrick J. Delaney III, Chairman

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Jonathan G. Gossels, Clerk

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Thomas W.H. Phelps

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