

FRUGAL FLOWER
736 Boston Post Road
Case Numbers: 03-17, 18, 19, 20

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
TUESDAY, APRIL 29, 2003

The Board consisted of:

Jonathan G. Gossels, Acting Chairman
Stephen M. Richmond, Acting Clerk
Thomas W.H. Phelps
Stephen A. Garanin, Alternate
Jeffrey P. Klofft, Alternate

Also present: Michael Couto, Sudbury Design Group, Craig Wambolt, applicant, Attorney
Harold Jacobi

The public hearing was reconvened by the Acting Chairman Mr. Gossels.

Mr. Couto said the goal for this continuance was to readdress some of the design issues and look at the proposed site plan and the specific needs of Frugal Flower to see if there was an alternative to the proposed plan. Mr. Couto said both he and Mr. Wambolt feel confident and comfortable that all of the design options have been exercised to get to this point and that the plan as proposed is really the best plan.

It was their belief that the proposed plan satisfies the requirements for the granting of the requested variances. There are substantial hardships that are created by the land, specifically speaking to the water resources district, the split zone and the presence of the wetland area. The petitioners believed it has been demonstrated to the Board that there are financial hardships if these variances are not granted and the plan represent no substantial detriment to the public good. In fact they felt the plan addresses some very serious safety concerns with regard to this parcel and how it operates. The site plan is tasteful, in keeping with the character of Sudbury and addresses some of the aesthetic issues for which the Bylaws were originally created.

Mr. Couto said many positive endorsements have been received, from the Planning Board, Town Planner, and Design Review Board. He believed those Boards looked at the intent of the current bylaw as well as the Master Plan for Sudbury, one goal of which is to look at a site specifically for what the needs are and not take a broad brush approach to zoning.

There were also some negative responses. Mr. Couto will speak to the Conservation Commission issues.

Town Engineer Place wrote a letter to the Board addressing some concerns, but he also understood that those concerns would be addressed with a post construction bond protected site plan.

Mr. Wambolt has had discussions with Frank Sweet, the abutter across the street, and they have ironed out some issues.

All that being said, the petitioners see no other alternative other than the application presented to the Board.

Mr. Wambolt said there were three issues with Conservation, the first one being the Conservation Restriction. The document still has to be reviewed by the Conservation Commission and Selectmen. It will be reviewed by the Conservation Coordinator when she returns on May 1. There should be no problem with this document since the template was provided by Ms. Dineen.

The second issue was the engineer's stamp on the as-built. It turns out that this was a technicality which has now been resolved.

The third issue was the Operation and Maintenance plan. This has also been done and is now awaiting review by Town Engineer. A draft of that plan was submitted for the record.

Mr. Wambolt said he went over and spoke with Mr. Sweet to discuss the issues he had. One issue was that he didn't want to see company vans parked along the front of the building. It appeared that there was a miscommunication when Mr. Sweet called one day and left a voice message asking that there be no van parking in front. At the end of the day an employee parked the van in front and Mr. Sweet took that as being unresponsive. Mr. Wambolt explained what happened, that issue was ironed that out and Mr. Sweet was actually very positive about the proposed look of the property. He also understood that there is a need for pick up and drop off in front, but that there will be no parking of commercial vehicles.

The lighting issue was also discussed. Mr. Sweet had no issue with the two lights that are facing the building, but he did have issue with the two lights that face his property. Mr. Couto agreed to disable those lights.

Mr. Gossels asked about the screening to the rear. Mr. Wambolt said he was agreeable to extending the screening along the back; however, he would have to screen according to Conservation standards with native species, probably arborvitae.

Attorney Jacobi said he prepared a Conservation Restriction from a template provided by the Conservation Coordinator. It has been signed, notarized, and is all set to go pending Ms.

Dineen's review when she returns May 1. Attorney Jacobi submitted copies of the Restriction for the record.

From a safety standpoint, Mr. Gossels liked the proposed recommendation which changes the traffic flow so that some it goes across the front instead of around the back. He questioned whether the spaces on the side were needed for the day-to-day conduct of the business since there will be fewer retail customers. He said one of the concerns voiced last time was that it seems that there was just too much parking on this site. Mr. Gossels had hoped the plan would be scaled back a bit.

Mr. Couto said the plan was designed to address some of the financial issues surrounding this building and maximize, in the future, the potential to rent some space out. If Mr. Wambolt doesn't meet parking requirements, this is null and void because he cannot utilize the second floor the way he may have to in the future. The reason he felt the plan can't be scaled back is because then he would not be in conformance.

Mr. Wambolt added that it would also limit his own future growth in the telemarketing environment on a regional or national basis which is an intense office use. He didn't want to have to come back in a few years to request more spaces.

Mr. Garanin pointed out that Curves, on the second floor, is an intensive use. He said that type of business drives a need for parking as opposed to office space which would reduce the amount of spaces needed.

Mr. Gossels said there was concern at the last hearing from several members that there is a clear recognition that the business has changed and there is a need for more spaces. However, there is an argument that what is being proposed just seemed like it is too much given the realities of the site.

Mr. Couto said there is a direct correlation to using that space to the requirements for the number of parking spaces.

Mr. Phelps could not understand how this situation came to be that this business is operating with a plan that was obviously approved somehow. He said there must have been something that happened for the town to allow this to happen, otherwise, how would the Selectmen sign off on this if they didn't have the space.

Mr. Wambolt said originally the allocation of space was different and required less parking. Previously, he said he was operating a gift shop and garden center with what he thought at the time was more than enough design space. Now the business has changed. Before, the telemarketing space was off premises. Now it is on the premises.

Mr. Garanin said there are two dumpsters. Only one was originally allowed one which was to be screened. One is overflowing. There is also some type of plastic structure out back which is flapping around and is unsightly.

Mr. Wambolt said it is his to take that down with the implementation of the new plan. Mr. Couto added that this plan makes provisions for both dumpsters to be fenced in and screened

Mr. Phelps still felt this is the wrong site for this operation. Although he would like to say let's try this for five years to see if it works, and if it doesn't work, let's get together again, this can't be done with a variance. He wanted to see this business succeed but said it's this continual thing that in order to utilize the existing square footage of the existing business, more parking is required and that is a hardship. It seemed to Mr. Phelps that it was obviously a self-imposed hardship. He said everything here is limited by this, limited by that. It's limited because of what it is. He would be more favorable if there was a way to let this business go for a few more years and then be able to review it. He had real problems with doing something that cannot be reversed.

Mr. Klofft said he felt this to be a classic variance hardship. Mr. Wambolt has a much larger lot and due to soil conditions and resource protection he's very limited in terms of his ability to leverage the property that he owns. So it all ends up dense and compressed.

Mr. Gossels felt this to be a self-imposed hardship.

Attorney Jacobi disagreed that it was self-imposed. He said there is a hardship. He's just grown into this hardship and Mr. Wambolt is at the point where he either has to out and find other property, or with the variances he will be able to continue his business here.

Mr. Couto, speaking as an abutter, said his business is located at the west end of Route 20 and he likes what is happening up there. There is Orchard Hill, Coach House Inn and Alan Marrone's property. To him, Frugal Flower is an eyesore.

Mr. Phelps disagreed that Frugal Flower is an eyesore. He said the building is very attractive and could have been improved by having a buffer in the front, but Mr. Wambolt didn't want a buffer, he wanted a nursery.

Mr. Couto said he looked at alternatives. He said he received a variance to put parking in the residential portion of his property. However, Mr. Wambolt doesn't have that option. The constraints of this property do not allow him to do anything else.

Mr. Phelps asked why Mr. Wambolt couldn't just change the uses within the building so that less parking is needed.

As discussion continued it appeared that parking, particularly the amount of parking for that site, was the main obstacle. The general feeling of the Board was that it was too dense for the property.

Further discussion followed on how to address this. While the Board understood the evolution of the business and the need for some additional parking, it was concerned for the long term and the permanence of a variance.

Mr. Couto asked whether the Board would consider a reduction of the six parking spaces on the east side and a reallocation of internal space in order to make those reduced numbers work. He said visually it would allow that area to be green and could also be used for more seasonal display.

The Board said they would feel more comfortable with a reduction.

Mr. Wambolt said he thought he could make it work. He said an increase of 11 spaces would certainly work better than it does now.

There was general consensus that this might work with conditions attached to the variance.

There was no further input. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: “To grant Frugal Flower & Craig Wambolt, applicant, Big Daddy Realty Trust, owner of property the following Variances from the Zoning Bylaws, in accordance with Plan titled The Frugal Flower, Dated October 30, 2002, revised April 30, 2003, prepared by Sudbury Design Group, Sudbury, MA, Sheets 1 & 2, and subject to conditions as stated herein, property located at 736 Boston Post Road, Residential Zone C-1 and Business District #4:

Case 03-17 - Variance from Section 2230 A,C,11, and to the extent necessary from Sections 3410 and 3420, to locate refuse storage in a residential zone.

Case 03-18 - Variance from Section 3144 to locate parking in front of the building.

Case 03-19 – Variance from Sections 3265 and 3266 to relocate the existing freestanding sign which will result in a front property line setback deficiency of 15 feet \pm , and a side property line setback deficiency of 7 feet \pm .

Case 03-20 – Variance from Section 3550 to allow a reduction in the landscape buffer requirement of 20 feet to 9 feet.

Conditions:

1. Parking shall be as shown on the revised plan which eliminates six spaces on the east side of the building for a total of 39 spaces (37 plus 2 handicapped spaces) for the property. No parking of business vans/commercial trucks in the front area will be allowed.
2. Landscaping shall conform to the revised plan and incorporate the recommendations of the Design Review Board. Applicant shall maintain the landscaping as shown on the plan as a condition of this approval.
3. Screening will be provided as a buffer for the residential properties to the rear of the property and will consist of evergreen plantings and appropriate plantings as designated by the Conservation Commission for the resource area.
4. Lighting shall be reduced and be directed towards the property so as not to be intrusive to any residential properties.
5. The plastic outstructure located at the rear of the building will be removed.
6. The sign will be located in accordance with the setbacks shown on the plan, but will be sited perpendicular in accordance with Design Review Board recommendations.
7. Approval is contingent upon receipt of an Order of Conditions from the Conservation Commission, including a maintenance schedule for the drainage structures. Implementation of the maintenance schedule shall be a condition of this approval.
8. Approval is contingent upon the recording of a Conservation Restriction at the Registry of Deeds, signed by the Town and in substantially the form presented to the Board at the public hearing.
9. Site Plan approval by the Selectmen.
10. Water Resource Protection District Special Permit from the Planning Board.
10. A Performance Bond will be required to be posted by the owner in an amount sufficient to ensure that the site work is completed in accordance with the approved plan.

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

REASONS: The petitioner seeks four variances to accommodate a reallocation of space resulting from the evolution of the business over the past few years.

With regard to the criteria which must be satisfied in order to grant variances, the Board, for this property, finds the following:

1. Special conditions relating to the soil conditions, shape, or topography of the land or structures and especially affecting the land or structures, but not affecting generally the zoning district in which the land is located.

1. The Board finds that although this property is comprised of approximately 73,393 s.f., it is severely limited in its ability to provide for additional parking, landscaping and refuse storage as a result of the location of the existing building on the lot and the fact that the property is split zoned (Business District #4 and Residential Zone C1). In addition, a portion of the property is within a wetland resource area which, together with the constraints of the split zone, renders almost 50% of the property unusable.

2. There must be substantial hardship, financial or otherwise, if the provisions of the Bylaw were to be literally enforced.

The Board finds that if the parking and landscaping is not allowed, the usable square footage of the building cannot be utilized and the financial viability of the building would be in jeopardy. The Board notes that the petitioner, in order to lessen the density on the usable area of the lot and provide for more green space, has agreed to a reduction in the number of proposed parking spaces and a reallocation of his internal space to accommodate that reduction.

The nature of the business requires refuse storage, and due to the limitations of the lot can only be located in the residential zone. This storage is an integral factor of the business and must be sufficient in order for the business as it has evolved to be viable. The Board notes that the petitioner has agreed to fence in the dumpsters and to include screening along the rear portion to shield the neighbors located in the residential area to the rear of the property.

In order for any business to be viable, there must be identification to attract customers. The proposed changes to parking and landscaping will not allow for the existing sign to remain in its current location. Although the proposed sign will result in front and side yard setback deficiencies, the Board finds the lower height and location will be more in keeping with the character of the business district and the intent of the Bylaw. Further, the Design Review Board has approved the proposed sign and its location.

3. There must be no substantial detriment to the public good if the variance is granted.

The Board finds that the granting of the four variances will not be detrimental to the public good. The parking is designed to provide for safe vehicular and pedestrian traffic flow. The landscaping to the front will enhance the appearance of the streetscape and will benefit the abutter across the street as it will be less visually intrusive to him. The dumpsters will be fenced

in and screened so as not to be intrusive to the residents at the rear of the property. Signage is more in keeping with the character of the town. All of the changes will result in an upgrading of this property, benefiting not only the nearby residents and the business owner who will be able to remain viable, but the town as a whole as it will result in an attractive streetscape and convenient customer experience for residents of the town and nearby areas.

4. Granting the variances will not nullify or substantially derogate from the intent or purpose of the Bylaw.

The Board has set conditions to the granting of these variances in order that project be completed in accordance with the plans presented by the petitioner. These conditions have been imposed to insure that there will be no derogation from the intent or purpose of the Bylaw.

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