

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 7, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman  
Jonathan G. Gossels, Clerk  
Thomas W.H. Phelps  
Jeffrey P. Klofft, Alternate  
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on December 19 and 26, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Chairman, explained to the applicant 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.

George Sherman was present to represent a petition for renewal of Special Permit 99-59, to continue the sale and repair of new and used motor vehicles at 40 Station Road. Renewal was being requested under the same terms and conditions of the previous permit. Mr. Sherman said he has been in business for 16 years and has complied with the condition of the permit. There have been no problems associated with his operation, nor have there been any complaints with regard to the use.

The Board members noted their familiarity with this business with no recollections of any problems in the past. There were no further comments, nor were there any abutters present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Station Road Auto Body and Garage, Inc., applicant, George J. Sherman and Stephen D. Jones, owners of property, renewal of Special Permit 99-59, under the provisions of Section 2230, Appendix C,12,13,14 of the Zoning Bylaws, for the sale and repair of new and used motor vehicles, property located at 40 Station Road, Industrial District #2, provided that:

1. This operation shall not constitute a visual nuisance.

2. There shall be no storage of materials or vehicles, and no overnight parking in front of the building.
3. No work shall be performed outside of the building after 10PM.
4. The property shall be maintained in such a way that no waste material of any type shall be disposed of in such a way as to contaminate Hop Brook or the marsh surrounding it at the rear of the premises.
5. This permit is non-transferable and will expire in three years on January 7, 2006, and the Board will consider renewal upon receipt of proper application on or before that date."

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

REASONS: This is an application for renewal of a special permit to continue the use of the property as an auto body shop which has been in existence for 16 years. The Board finds that the use is not offensive to the adjoining properties due to the effects of light, odors, smoke, noise and refuse materials and that this use is in harmony with the intent and purpose of the Zoning Bylaws. The Board further notes that there were no abutters present to speak in opposition to this renewal.

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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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Jeffrey P. Klofft, Alternate

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Richard D. Vetstein, Alternate

ROBERT J. & PATRICIA L. CROWLEY  
64 Puritan Lane  
03-2

TUESDAY, JANUARY 7, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman  
Jonathan G. Gossels, Clerk  
Thomas W.H. Phelps  
Jeffrey P. Klofft, Alternate  
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on December 19 and 26, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Chairman, explained to the applicant 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.

Robert Crowley was present to represent a petition for renewal of Special Permit 99-60 to maintain a 51-foot amateur radio tower at 64 Puritan Lane. Mr. Crowley asked if this renewal is subject to appeal and whether the conditions imposed are the minimum practicable regulations noted in M.G.L.40A. Mr. Delaney replied in the affirmative to both questions.

Mr. Crowley expressed concern that each renewal is subject to appeal noting he still gets calls from neighbors when it is renewal time.

Mr. Delaney pointed out that the Board has established a maximum 3-year renewal period as it believes these petitions should be looked at periodically. He noted that while the initial application generally tends to bring out a lot of the neighbors, subsequent renewals do not, as is the case here.

In response to a question from Mr. Vetstein, Mr. Crowley said the 51-foot structure can be lowered to 21 feet and can also be placed horizontally on the ground.

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 Robert J. and Patricia L. Crowley, owners of property, renewal of Special Permit 99-60, under the provisions of Section 2632 of the Zoning Bylaws, to maintain a 51-foot  
ROBERT J. & PATRICIA L. CROWLEY  
64 Puritan Lane  
03-2 Page 2

amateur tower antenna structure, property located at 64 Puritan Lane, Residential Zone C-1, provided that:

1. The structure shall continue to be located between the house and garage, as shown as the alternate location on sketch dated November 28, 1994, submitted with the original petition, Case 95-5.
2. Panels, no less than eight (8) feet in height, shall be maintained around the perimeter of the tower to prevent climbing of the structure.
3. No illumination at the top of the structure is allowed.
4. This permit is non-transferable and will expire in three (3) years on January 7, 2006, 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 Board finds that the operation of a home-based radio hobby to be in harmony with the general purpose and intent of the Bylaw. The antenna is in an appropriate location, not detrimental to the neighborhood and is shielded by trees which act as a buffer. The structure is not illuminated, nor is it offensive or detrimental to the adjoining zoning districts as no smoke, noise or other visual nuisances are produced. Adequate safety precautions have been taken to prevent access by children. The Board notes that there have been no problems associated with the structure and that no abutters were present to oppose renewal. Additionally, the Board finds a 3-year renewal period to be appropriate for monitoring purposes and consistent with the Board's current guidelines.

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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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Jeffrey P. Klofft, Alternate

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Richard D. Vetstein, Alternate

DRS. JOHN K. & BETSY A. SINNIGEN  
662 Boston Post Road  
03-3

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 7, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman  
Jonathan G. Gossels, Clerk

Thomas W.H. Phelps  
Jeffrey P. Klofft, Alternate  
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on December 19 and 26, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Chairman, explained to the applicant 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.

John Sinnigen was present to represent a petition for renewal of Special Permit 00-37 to continue operation of a veterinary medical center and clinic at 662 Boston Post Road.

Mr. Delaney pointed out that since Dr. Sinnigen's last renewal the Zoning Bylaws have been recodified and it appears that there may be a procedural question with regard to this petition.

The renewal was advertised as a medical center and clinic under Section 2230,A,C, Use 18 of the recodified Bylaws, which is an allowed use by way of a special permit from the Board of Appeals. However, under that same section, Use 4, Animal Clinic or hospital, is prohibited in a residential zone.

The Board pointed out that this type of situation has occurred in two other cases, Camp Sewataro and Carpet Carousel. Each case was handled differently on the advice of Town Counsel. In the case of Camp Sewataro, that permit was renewed, whereas the Board took no action on Carpet Carousel.

Mr. Phelps believed these situations should be addressed by the Planning Board with, hopefully, a mechanism put in place within the Bylaws to allow the uses to be grandfathered.

Mr. Delaney told Dr. Sinnigen that a vote to take no action would allow the Sudbury Animal Hospital to continue its operation under the same conditions as the previous permit until  
JOHN K. & BETSY A. SINNIGEN  
662 Boston Post Road  
03-3 Page 2

such time as the Bylaw is addressed to either require renewal or allow it to continue as a nonconforming use without the requirement for renewal.

The public hearing was then closed.

A motion was made, seconded and unanimously voted to take no action on the petition of John K. and Betsy A. Sinnigen for special permit renewal, to send them a copy of Town

Counsel's letter dated August 20, 2002 with regard to the Carpet Carousel situation, and to contact the Planning Board in an effort to explore resolutions to addresses these situations.

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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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Jeffrey P. Klofft, Alternate

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Richard D. Vetstein, Alternate

GAIL D. LILLY & ROBERT L. PELLEGRINI  
48 Willow Road  
03-4

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 7, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman  
Jonathan G. Gossels, Clerk  
Thomas W.H. Phelps  
Jeffrey P. Klofft, Alternate  
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on December 19 and 26, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Chairman, explained to the applicants 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.

Ms. Lilly and Mr. Pellegrini were present to represent a petition for Special Permit to alter and enlarge a nonconforming structure by constructing a one-story addition consisting of a 2-car garage and workshop which will result in street centerline setback deficiencies on both Hemlock and Willow Roads. The property is a corner lot.

Ms. Lilly said in addition to the proposed construction it is planned to change the driveway location from Hemlock Road to Willow Road. She said these plans have been discussed with the neighbors who had no objection to what is considered to be an upgrading of the existing structure.

The Board reviewed the plot plan submitted with the application. The existing house currently meets the setback requirements; however the lot is deficient in area and frontage.

Mr. Klofft suggested that Hemlock Road might be safer for a driveway location as it is less traveled than Willow Road.

Ms. Lilly said the driveway of the neighbor opposite her had traffic concerns, but felt that an opening onto Willow Road would be better for them as well as the applicants as that location is a blind corner. Mr. Pellegrini added that with the existing driveway, it is very difficult to pull out because of that blind corner.

GAIL D. LILLY & ROBERT L. PELLEGRINI  
48 Willow Road  
03-4 Page 2

Mary Gray, 78 Hemlock Road, asked whether any of the large trees on that corner would be cut down or the corner altered in any way. Mr. Pellegrini answered "no" to both questions.

There were no further comments from the Board or audience. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Gail D. Lilly & Robert L. Pellegrini, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing a 24X26 foot 2-car garage with 10X12 foot workshop, which will result in a street centerline setback deficiency of 4 feet 11 inches  $\pm$  on Hemlock Road, and a street centerline setback deficiency of 2 feet 4 inches  $\pm$  on Willow Road, property located at 48 Willow Road, Residential Zone A-1."

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

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

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction, which will result in street centerline setback deficiencies on a corner lot, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The size of the garage and workshop is compatible with the existing structure and will enhance its appearance. It is consistent with

similar improvements in the neighborhood. Additionally, the Board notes that there were no objections from abutters.

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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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Jeffrey P. Klofft, Alternate

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Richard D. Vetstein, Alternate

CHARLES & DIANNE STAHL  
51 Lakewood Drive  
03-5

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 7, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman  
Jonathan G. Gossels, Clerk  
Thomas W.H. Phelps  
Jeffrey P. Klofft, Alternate  
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on December 19 and 26, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Chairman, explained to the applicant 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.

Charles Stahl was present to represent a petition for Special Permit for construction of an addition which will result in a side yard setback deficiency on Lakewood Drive.



Along with other home improvements, Mr. Stahl would like to construct a new side entry which includes a small mudroom and short outside portico. He presented a rendering of the project and noted that the existing house is almost 20 feet from the side yard. This addition would result in a 6-foot deficiency.

Mr. Stahl would estimate his neighbor on that side to be 30 feet away. He has discussed the project with that abutter who had no objections.

The Board reviewed the plot plan and rendering with questions asked for clarification. Measurements of the setbacks on the plot plan were made by Mr. Stahl using the property bounds in place.

Nicholas Obaztsov, 61 Lakewood Drive, abutter, was present to voice his support for the petition.

There were no further comments from the Board or audience. The hearing was closed.

After deliberation the following motion was placed and seconded:

CHARLES & DIANNE STAHL  
51 Lakewood Drive  
03-5 Page 2

MOTION: "To grant Charles & Dianne Stahl, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing a 6X15 foot mudroom/porch addition which will result in a side yard setback deficiency of 6 feet  $\pm$ , property located at 51 Lakewood Drive, Residential Zone A-1."

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

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

REASONS: The petitioner requires a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction, which will result in a side yard setback deficiency, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The addition will be architecturally compatible with the existing structure and is consistent with other improvements made in this neighborhood of older homes. Further, the petitioner has spoken to his neighbors, in particular the one who would be most affected, and there were no objections to the project.

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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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Jeffrey P. Klofft, Alternate

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Richard D. Vetstein, Alternate

GERALD & LUCINDA BOROVICK  
384 Peakham Road  
03-6

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 7, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman  
Jonathan G. Gossels, Clerk  
Thomas W.H. Phelps  
Jeffrey P. Klofft, Alternate  
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on December 19 and 26, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Chairman, explained to the applicant 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.

Gerald Borovick was present to represent a petition for a Special Permit to allow demolition and construction of a new residence on a nonconforming lot, which will exceed the area of the original nonconforming structure. The property is located at 384 Peakham Road.

Mr. Borovick presented a blow-up of the plot plan which was submitted with the application. He would like to build a new house behind the existing house. Upon completion of the new house, the old house would be demolished.

The lot itself is comprised of 2.3 acres; however, it is deficient in frontage having 156 feet instead of the required 180 feet.

Mr. Borovick said he has hired a local architect to design the house, which will be colonial in style and consistent with the style of houses in the neighborhood. Those plans show that the new house will conform to all setback requirements. In addition, Mr. Borovick has spoken with two abutting neighbors, both of whom had no objections.

While some portions of the existing house are older than 50 years, the Historical Commission has no objection to the demolition. A copy of their letter dated March 21, 2002 was included with the application.

Mr. Gossels commented that the siting of the new house looks better than the old house as it is further back and more centered on the lot. Mr. Borovick added that since the lot is large,

GERALD & LUCINDA BOROVICK  
384 Peakham Road  
03-6 Page 2

there is a lot of area behind the house, including vegetation which provides a buffer to the neighbors.

Mr. Delaney asked for the time frame for construction and demolition. Mr. Borovick estimated construction would be completed within a year from receipt of a building permit, with demolition soon after. He would expect the construction documents necessary for a building permit to be finalized within 2-3 months.

In response to a question from Mr. Phelps, Mr. Borovick said the existing structure is approximately 1,200 s.f. plus the detached garage. He said the footprint for the new house, which is to be 3,270 s.f., is not much larger if one adds the footprint of the old house and detached garage. He said the old house is a vinyl sided camp-style house. The new house will be a 2-story colonial.

Mr. Delaney read into the record a letter dated December 27, 2002 from Craig Gustafson, 381 Peakham Road, abutter, who had no objection to the petition.

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

After deliberation, the following motion was placed and seconded:

MOTION: "To grant Gerald D. & Lucinda S. Borovick, owners of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition and construction of a new residence not to exceed 3,270 s.f., on a nonconforming lot, which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 384 Peakham Road, Residential Zone A-1, subject to the following:

1. The new dwelling will be completed within twelve (12) months from issuance of a Building Permit, and the old structure will be demolished within six (6) weeks from the issuance of a Certificate of Occupancy for the new residence."

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

REASONS: The petitioner requires a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction of a new residence, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental to the neighborhood. The new structure will conform to all setback requirements and is sited more favorably on the lot than the existing structure. This siting, with its surrounding vegetation, will provide an ample buffer to adjoining homes. The house is designed to be colonial in nature,

GERALD & LUCINDA BOROVICK  
384 Peakham Road  
03-6 Page 3

consistent with the other homes in the area. Further, the Board notes no abutters were present to oppose this petition.

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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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Jeffrey P. Klofft, Alternate

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Richard D. Vetstein, Alternate

ZINGALE & CROWLEY  
42 Candy Hill Lane  
03-7

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 7, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman  
Jonathan G. Gossels, Clerk

Thomas W.H. Phelps  
Jeffrey P. Klofft, Alternate  
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on December 19 and 26, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Chairman, explained to the applicant 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 Shirley Sheridan was present, representing the petitioner Douglas Zingale, also present, in a petition for a variance to allow the creation of a building lot having a frontage deficiency of 76.77 feet. The property is located at 42 Candy Hill Lane.

For the record Attorney Sheridan submitted her Memorandum in Support, as well as six letters of support from neighbors. The Board was in receipt of two plans, one showing the lot as it currently exists, the other being a proposed subdivision of that lot into Lots 2A and 2B for purposes of this variance application.

Attorney Sheridan said the Zingales reside at 96 Plympton Road which is approximately 1/2 mile from the Candy Hill Lane property. They have lived in Sudbury for 15 years and would like to remain in this town. They have entered into an agreement with the Crowleys to purchase Lot 2A subject to the condition that a building permit can be obtained.

The petition before the Board requests a variance from the frontage requirements. The lot is located in a Residence C district, which has a frontage requirement of 210 feet. The proposed lot contains 133.23 feet of frontage which is deficient by 76.77 feet.

On behalf of the Zingales and Crowleys, Attorney Sheridan was requesting the Board make a favorable finding in the matter of the criteria to grant a variance.

ZINGALE & CROWLEY  
42 Candy Hill Lane  
03-7 Page 2

With regard to the shape and topography of the lot, Attorney Sheridan noted that the Crowleys are the owners of the property shown on the map as Lot 2. The plan which created this lot was drafted in 1992 and comprises 5.32 acres and 343 feet of frontage. This lot contains an excess of three times the amount of acreage required in the Residence C district along with a significant excess of frontage. The lot is also significantly larger than the surrounding lots on Candy Hill Lane. To the south of the lot is open space which is owned by the Town of Sudbury.

Candy Hill Lane was created by a plan in 1933 and terminates at the Quirk's property. It was never laid out with a cul de sac or turnaround. The lane is owned and maintained by each of the landowners via a maintenance agreement which has been adequate and ongoing for over 70 years to service the residences and is more than adequate to support an additional house.

The significant excess acreage and open space to the south mitigate any detrimental effect that would result from the frontage deficiency, and the combination of these circumstances relating to the shape of the parcel plus the unique nature of Candy Hill Lane are beyond the lack of conformity to the zoning regulations.

With respect to hardship, Attorney Sheridan pointed out that the cost of housing in Sudbury and surrounding areas is becoming prohibitive. She said the Zingale's family ties to Sudbury create a desire to remain here. However, they can do so only in an economically feasible manner, which is what led them to request this variance.

In order to create the additional frontage, the Zingales would be required to formulate and submit a plan to the Planning Board, and eventually be able to create additional frontage. However, the costs associated with formulating and submitting plans exceed any economic sense to a project such as this. It would closely exceed the cost of the property.

That economic hardship would cause Mr. Crowley to not be able to utilize his land for the purpose that this zoning district calls for. He would be denied the use of his property for the excess acreage that he has.

Attorney Sheridan believed relief could be granted without substantial detriment to the public good and without derogating from the Bylaw. She said the intent of the Zoning Bylaw is to mitigate and insure against overcrowding, congestion, etc. The dimensional regulations are set forth to insure appropriate spacing of houses. The frontage regulation is set forth to insure adequate access to homes, including utilities, etc.

In this instance, Mr. Crowley already has his utilities in place. He also has a driveway with a circular turnaround as shown on Lot 2B, the lot which would be deficient. Attorney Sheridan said all the concerns for the dimensional regulations would remain the same as Mr. Crowley is not proposing any changes at all.

ZINGALE & CROWLEY  
42 Candy Hill Lane  
03-7 Page 3

Lot 2A would exceed the dimensional requirements by 15,000 s.f. of land and would comply with all dimensional requirements. Lot 2B would comply as well, except for frontage.

The Crowley house is set further back. The new lot would be created to the north of the property and there would be proper spacing between the houses.

Attorney Sheridan pointed out that there have been cases before the Board for properties along Candy Hill Lane. It was her opinion that relief has been granted because of the maintenance agreement in place and the neighbors' commitment to that agreement. She referred to the Board's 1999 Decision which granted a variance for the Quirk property that had deficient frontage of 177 feet. Also, in November 2001 and September 2002, the Board granted Special Permits for the demolition of existing houses and the construction of two new residences.

Attorney Sheridan believed the facts presented this evening are as compelling as prior cases heard by the Board and requested a favorable vote on this variance request.

The Board acknowledged receipt of the following letters:

- from the Planning Board dated December 12, 2002 which voted no position on the application.

- letters in support from neighbors as follows:

Carolyn Sullivan, 151 Plympton Road dated January 7, 2003

Carolyn Kyriakos, 26 Candy Hill Lane dated January 6, 2003

Michael Freedman & Dorothy Puhly, 49 Fieldstone Farm Road dated January 7, 2003

Cheryl & Glen Bashian, 45 Fieldstone Farm Road dated January 7, 2003

Christopher & Jeanne Bleck, 44 Fieldstone Farm Road dated January 7, 2003

Drake and Maria Behrakis, 23 Candy Hill Lane (undated)

In response to a query from Mr. Klofft, Attorney Sheridan clarified that the smaller plan depicts the Crowley's property at the time of purchase. The larger plan is a proposed subdivision of that land for purposes of this variance.

Mr. Klofft said this plan creates a nonconformity where none existed before in order to create that second lot.

Attorney Sheridan agreed. However, she cited the Warren Case (referred to in her brief) which says this a variance cannot be sought if the only factor is a lack of frontage. She said there must be other circumstances to that lot which are special to that area. Those factors are Candy Hill Lane which was constructed in 1933, open space and excess acreage. She said the Paulding Case (also referred to in the brief) dictates that in situations like this where there is excess

ZINGALE & CROWLEY  
42 Candy Hill Lane  
03-7 Page 4

acreage or an odd road, then Boards can fully avail themselves of the variance process rather than the subdivision process.

Mr. Delaney said the shape doesn't seem to be an issue. He asked what was unique with the shape of the lot.

Attorney Sheridan said the statute refers to circumstances surrounding the shape.

Mr. Delaney said the shape is not unusual.

Attorney Sheridan said it had no public ways around it. She pointed out the terminus of Candy Hill Lane which is 33 feet wide.

Mr. Delaney said that is access; he was speaking to the shape. He then asked if soils were an issue. Attorney Sheridan did not believe they were.

With regard to the topography, Mr. Klofft said he found the land to be a "gentle hill" which is typical of the area. Attorney Sheridan agreed with that description.

Mr. Delaney said the obvious question is if you split a lot and end up with a portion being deficient, haven't you created your own hardship.

Attorney Sheridan said the hardship cannot be the deficiency in a frontage case. She said a hardship has to relate to a corrective deficiency in a frontage case.

Mr. Delaney asked whether a deficiency has been created.

Attorney Sheridan said it was; however, she referred to the Warren and Spaulding Cases cited in her brief which speaks to uniqueness. She said Candy Hill Lane is unique and Lot 2B if created exceeds Sudbury's dimensional requirements.

She said hardship is the fact that Mr. Crowley cannot use his excess acreage without a variance because Candy Hill Lane does not have a cul de sac.

To Mr. Klofft, the division of this lot to create this hardship happened as a secondary transaction and it seemed to him that the applicant was coming to this Board to ask for relief of a problem that was effectively created by the current property owner.

Attorney Sheridan said she would agree if that were the only issue. She said the homeowners have the right to use their land as residential.

ZINGALE & CROWLEY  
42 Candy Hill Lane  
03-7 Page 5

Mr. Gossels said the Crowleys purchased the property knowing it was a single lot suitable for a single house.

Attorney Sheridan referred to the Quirk variance which she said granted a variance for excess acreage.



Mr. Delaney asked whether this wasn't what subdivision plans were intended to address.

Attorney Sheridan replied that in the event a subdivision plan could be done, one has to consider the economic feasibility in the Planning Board process. She referred to the Paulding and Warren Cases which discuss this. She said the cost to do a subdivision plan for one lot nears the cost of the lot thereby making it economically not feasible to go through the subdivision process and this is what creates a hardship for the Crowleys to use their excess land for a residential use.

Mr. Delaney believed the Quirk situation was different in that it proposed one house on 5 acres. He said there are two residences proposed to be created from one lot that exists now.

Mr. Phelps had a problem believing this situation to be the same as Quirk. It was his feeling that the intent of the lot which was sold to the Crowleys was for a single lot.

Attorney Laura Cannon was present, representing Richard Curtin, 31 Candy Hill Lane, also present. Mr. Curtin is the direct opposite abutter.

In Attorney Cannon's view, the hardship claimed by the petitioner did not satisfy the statutory criteria. She said the petitioners are creating their own hardship by creating a second lot. In the Quirk case, there was vacant land. It was unbuildable without a variance.

She said this land has a use. The Crowleys bought it as a single family lot and used it as such. One doesn't have a right by law to profit and skirt the zoning provisions to make a profit from their property. There are many cases which state that frontage alone is not a case for a variance.

There is no unique circumstance to this particular lot to justify a variance. Attorney Cannon said the Paulding case dealt with shape which doesn't apply in this case. This is a perfectly shaped lot, with a use on it. The circumstances cited, such as being on a private way in existence since 1933, as well as open space, could probably be applied to other areas in town as well. This is not unique.

Attorney Cannon believed the petitioner failed to comply with the statutory criteria. To justify a variance all criteria must be proven.

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Thomas Quirk, 45 Candy Hill Lane, said he was granted a variance by the Board to construct a home. He was present to support the Zingales, as he believed there was plenty of acreage in the area to support another house.

Greenfield Sluder, 161 Plympton Road, also supported the variance petition.

Richard Curtin, 31 Candy Hill Lane, direct abutter across the street, was opposed to the granting of a variance. Before purchasing his house he was told by the town that there could be no additional construction across the street. He said he spoke with the Zingales and told them that if they worked with the Planning Board and came up with a plan that puts the driveway in another location, he would keep an open mind. However, in terms of the way this is being presented, by trying to bypass the Planning Board, he was opposed.

Douglas Zingale, applicant, said the Lot 2B on the proposed plan would have the required 210 feet of frontage. He said it was the character of the property which drew him to this land. He said this is the only available land which would provide him with the opportunity to remain in Sudbury.

When he began this process, he did consider, and sought, advice and spent a fair amount of time talking with the Town Engineer and Town Planner. What he discovered is that there was a long list of actual and potential requirements. To deal with the frontage issue he would be required to put in a very large asphalt turnaround, with curbs. He was asked to consider changing the water lines and power lines. He said the list went on and on, and it became clear, after looking at the situation, that he wasn't in a position to engage in substantial expense which might not even result in an approval. He was not left with a comfort level with which to work.

Mr. Zingale said he felt that should his variance petition not be granted, someone else, who is less constrained, will develop the property. He felt that he was trying to do was the best in terms of developing the land.

Mr. Curtin said that while he didn't necessarily disagree with Mr. Zingale, he felt the Planning Board process is there for a specific purpose. He said he is a developer who built a 3-lot subdivision off of Maynard Road. He went to the Planning Board and demonstrated that he could put in a cul de sac; then went back to the Planning Board and asked for waivers, which were granted in return for certain protections such as walls, landscaping, tree retention, etc.

He said the Town Planner was working with Mr. Zingale and continues to be willing to work with him. Mr. Curtin said he would also work with him, but wants to see the planning process go forward.

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Mr. Zingale reiterated his earlier statement that the list of requirements from the Planning Board provided no comfort level to precede through the Planning process. He said he could not afford the risk when he was not sure of the outcome.

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

After deliberation the following motion was placed and seconded:

MOTION: "To grant Douglas A. Zingale, applicant, Timothy & Marianna Crowley, owners of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to allow creation of a building lot having a frontage deficiency of 76.77 feet, property located at 42 Candy Hill Lane, Residential Zone C."

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

REASONS: The petitioners seek a variance to create a new building lot composed of 74,952 ± square feet that would be in compliance with the Zoning Bylaws. However, creating this lot would leave the remaining parcel with only 133.23 feet of frontage on Candy Hill Lane, causing the petitioner to request a variance from the Zoning Bylaws (lot frontage).

The Board makes the following findings concerning the circumstances relating to soil conditions, shape or topography of the land in question:

- Both sections of the parcel are at the top of a gentle sloping hill
- The parcel is a very well-shaped rectangular lot

The Board does not find there to be special circumstances relating to the shape or topography as the lot is a perfect rectangle on the top of a hill with no drainage issues and thus does not create any hardship.

Desirable relief may not be granted without substantial detriment to the public good or substantially derogating from the intent and purpose of the Zoning Bylaw because this is a self-inflicted problem. When the owners bought the property in 1992, they understood the nature of Candy Hill Lane. They also understood (or could have) understood the limitations of subdividing the lot based on the Zoning Bylaws. Since the Bylaws exist to control this type of activity, granting this variance would substantially derogate from the Bylaws.

There is no hardship to support this variance and the Board denies the request.

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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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Jeffrey P. Klofft, Alternate

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Richard D. Vetstein, Alternate