

JAMES & LINDA FLANAGAN  
20 Bulkley Road  
03-40

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JULY 1, 2003

The Board consisted of:

Jonathan G. Gossels, Chairman  
Jeffrey P. Klofft, Acting Clerk  
Patrick J. Delaney III  
Thomas W.H. Phelps  
Stephen A. Garanin, Alternate

Notice was published in the Sudbury Town Crier on June 12 and 19, 2003, posted, mailed and read at this hearing.

Mr. Gossels, 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.

James and Linda Flanagan were present to represent a petition for a Variance from the Zoning Bylaws to allow construction of a 36X30 foot garage which will result in a side yard setback deficiency of 5 feet at 20 Bulkley Road.

Mr. Flanagan would like to replace an existing 2-car garage with a 3-car garage. He said the orientation of the house on the lot would suggest the garage be placed as designed. He said he explored other options, but because of the grade of the property none of those options seemed to work. In addition, other options would have included significant tree removal which would result in significant costs and a less attractive lot.

With regard to hardship, Mr. Flanagan said it is his intention to expand the garage for storage and workshop space, and given the location of the house of the property, it is impossible to do this with any other configuration. Without a variance, Mr. Flanagan said this "shuts down" the possibility to expand, which is his hardship.

Mr. Gossels asked whether this is just garage space or whether it will be expanded for living space above. Mr. Flanagan said there will be no expansion of the living space.

Mr. Flanagan referred to a plan submitted with the application which depicts the location of his house in relation to the lot line and the neighbors. He believed there would be no detriment to the neighborhood because since there would not be tree removal and the overall look would be the same. The house of the neighbor most affected is 99 feet from his property line and this also includes a 20 foot + drainage easement on that abutter's property.

Mr. Flanagan believed the Bylaw was intended to prevent buildings from encroaching on one another. Given the location of his house and the abutter's house, he felt the proposed construction was within the intent of the Bylaw.

Mr. Klofft said the Board, in similar situations, has been uncomfortable with using mortgage plot plans to depict setbacks as those plans, in many instances, have been inaccurate. Mr. Garanin said the plan shows a portion of the garage encroaching on the setback. With the plan submitted, it was unclear as to exactly what that portion would be.

Jim Brown, 32 Bulkley Road, direct abutter to the proposed construction, said the only two concerns he had was the height, which has been addressed, and tree cutting, and the petitioner has indicated during this hearing that there will be no tree removal. As to the location, Mr. Brown preferred the proposed location as it will not be intrusive to his property.

In response to a question from Mr. Phelps, Mr. Flanagan explained that it is proposed to remove the existing garage and construct the 3-car garage. The 36X30 foot garage is designed with the single bay closest to the house to be indented.

Discussion followed on whether there were other alternatives that might be possible without the need for a variance. Also discussed was whether not having a 3-car garage constitutes a hardship.

There were no other abutters present to speak to this petition. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant James & Linda Flanagan, owners of property, a Variance from the provisions of Section 2600, Appendix B, of the Zoning Bylaws, to allow construction of a 36X30 foot garage which will result in a side yard setback deficiency of 5 feet  $\pm$ , property located at 20 Bulkley Road, Residential Zone A-1, provided that:

1. This variance is for construction of a one-story structure which is to be limited to garage use only."

VOTED: In favor: 4 (Gossels, Klofft, Phelps, Garanin) Opposed: 1 (Delaney)

REASONS: The petitioners require a Variance to construct a 3-car garage which will result in a side yard setback deficiency. A majority found that the orientation of the house, in addition to the grade of the property, is such that the proposed location is preferable and less intrusive to the abutter who would be most affected.

With regard to hardship, the petitioner has opined that to locate the garage in another area would require tree removal which would entail substantial costs and would not allow for expansion.

A majority also found that there would be no substantial detriment to the public good if the Variance was granted. As noted on the plan, only a portion of the garage would encroach on the setback. In addition, the garage would be located a substantial distance away from the abutter's residence, and that abutter voiced no objection to the granting of a Variance.

Since the encroachment would be minimal, it was found that the granting of this Variance, with a condition limiting it to a one-story, garage use only, will not substantially derogate from the intent or purpose of the Bylaw.

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Jonathan G. Gossels, Chairman

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Jeffrey P. Klofft, Acting Clerk

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Patrick J. Delaney III

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Thomas W.H. Phelps

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Stephen A. Garanin, Alternate

CHERTOK & ROSE  
33 Singletary Lane  
03-41

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JULY 1, 2003

The Board consisted of:

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Mr. Gossels, 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.

Frank Riepe, architect was present, representing the petitioners Fern Chertok & F. Thomas Rose III, also present, in a petition for Special Permit to construct a 22X22 foot garage which will result in front yard, street centerline and side yard setback deficiencies at 33 Singletary Lane.

Mr. Riepe explained that the petitioners have lived at this address for 13 years and have never had a garage. The reason for this is that the front of the property falls dramatically from the street which is above the house. In addition, there are a number of large trees across the front of the property.

Mr. Riepe presented a up-to-date topographic survey plan which shows the grade down to the house including the traffic pattern of the household.

It is proposed to build a garage at the upper corner of the property, 10 feet from both the front and side property line which will allow for a level entrance into the garage. There would then be a covered set of steps down the side to an entry courtyard which goes to the house. There would also be a storage room underneath the garage since the entrance to the house is a full story below the street. Mr. Riepe distributed photographs of the house and property from various angles, including the proposed garage area, to supplement the plan.

Mr. Riepe said the reason for positioning the garage as proposed is that in order to satisfy the Bylaw and have the garage within the setback, it would require an enormous amount of tree

CHERTOK & ROSE  
33 Singletary Lane  
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cutting, earth removal and possible blasting. The cost would be prohibitive, and the disruption of the site from the tree removal would be enormous.

Mr. Riepe said the photographs show a modest house in a modest neighborhood, and the cost of doing this within the setbacks would be disproportionate to the value of the property. The position proposed for the garage nestles it into the corner of the property with almost no disruption to the grade. Only two trees would have to be removed.

The garage is the minimum size for a 2-car garage with a single door. Two doors would necessitate a larger size garage. The roof would be a hip-roof which blends in with the house.

With the setback of 10 feet from the property line there would be room for guests to park. The storage area below is needed by the residents as there is no basement or attic storage in the house.

Mr. Riepe showed elevations of the proposed garage from several angles. In addition, he said the petitioners have spoken with the neighbors who had no objection to the proposed construction.

Mr. Gossels read a letter from John and Karen Regan , 32 Singletary Lane, dated June 30, 2003, abutters, which stated that as abutters across the street and ones who would be most visually impacted, they supported the petition.

Mr. Delaney asked what the existing nonconformity was. Mr. Riepe responded that the property is less than an acre. He said the existing building conforms to the setback requirements.

Mr. Delaney questioned whether this should have been a variance request as the Bylaw specifically states “The Board of Appeals by special permit may authorize a non-conforming use to be extended or a non-conforming building to be structurally altered or enlarged.....” In this case, he believed that since this proposal was for a structure separate from a structure which conforms to current setbacks, even though the property was under less than an acre, it should require a variance. He said the Bylaw addresses structures, not property.

Russell Kirby, 244 Boston Post Road, abutter, pointed out two properties on Singletary Lane, one of which recently added an attached garage, the other, which has a similar grade to the property, added a detached garage. He was not sure whether the Board of Appeals was involved in those situations, but if so, he urged the Board to be consistent since he felt there to be a precedent which should be considered. As an abutter, he had no objection to this petition as long as decisions are consistent and in conformance with the Bylaw.

Peter Cramer, 40 Singletary Lane, abutter, supported the construction of a garage noting the petitioners have the only house which does not have a garage. He felt this to be a particularly

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33 Singletary Lane

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difficult situation in the winter. Ada Vassilovski, also of 40 Singletary Lane, agreed noting a garage would be more in keeping with the character of the neighborhood since now there are always cars at the edge of the road. Mr. Cramer added that as far as alternatives go, Singletary Lane is very wooded and this plan to maintain those large trees is desirable.

Further discussion followed on the application with agreement being that this petition should have been submitted as a variance. It was suggested that the petitioners consider withdrawing without prejudice and resubmitting as a variance with the Board agreeing to a waiver of the filing fee.

There was also agreement that this proposal meets the criteria of a variance.

On behalf of the petitioners, Mr. Riepe requested a withdrawal of the application without prejudice.

A motion was made, seconded and unanimously voted to accept a request for withdrawal without prejudice and to waive a subsequent filing fee.

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

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Jonathan G. Gossels, Chairman

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Jeffrey P. Klofft, Acting Clerk

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Patrick J. Delaney III

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Thomas W.H. Phelps

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Stephen A. Garanin, Alternate

JOSEPH & HEATHER TAVOLIERI  
69 Oakwood Avenue  
03-42

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JULY 1, 2003

The Board consisted of:

Jonathan G. Gossels, Chairman  
Jeffrey P. Klofft, Acting Clerk  
Patrick J. Delaney III  
Thomas W.H. Phelps  
Stephen A. Garanin, Alternate

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decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Joseph & Heather Tavolieri were present to represent a petition for Special Permit to alter and enlarge a nonconforming structure by constructing a deck which will result in a rear yard setback deficiency at 69 Oakwood Avenue. Mr. Tavolieri explained that the deck is proposed to be constructed at the rear of the house. It will extend 11 feet from the house resulting in a rear yard setback deficiency of 7 ½ feet. The footings will be placed 9 feet from the house with a 2-foot deck overhang. The septic pipes are 10 feet from the house and this design will allow access to those pipes if necessary.

Mr. Gossels asked if this proposal was discussed with the neighbors. Ms. Tavolieri said she discussed this with her neighbor to the rear who had no issue. In addition, she said there is a 6-foot fence around the property which affords privacy for themselves as well as their neighbors.

Currently there is a bluestone patio in this area. The deck will have two steps for access.

Mr. Gossels asked how far back the house to the rear was located. Ms. Tavolieri said originally this lot was part of that rear lot and was subdivided. She would estimate that house to be approximately five feet from their property line.

There were no abutters present. Following a review of the plan submitted with the application, the hearing was closed.

After deliberation the following motion was placed and seconded:

JOSEPH & HEATHER TAVOLIERI  
69 Oakwood Avenue  
03-42 Page 2

MOTION: “To grant Joseph & Heather Tavolieri, 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 17X11 foot deck which will result in a rear yard setback deficiency of 7 feet 6 inches ±, property located at 69 Oakwood Avenue, 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 deck, which will result in a rear yard setback deficiency, will not be substantially more detrimental than the existing nonconforming structure. The deck will be replacing an existing patio which is currently surrounded by a fence which

serves as privacy to both the petitioners and abutters. The petitioner has spoken with the abutter to the rear who would be most affected and that abutter had no objection to the proposed deck.

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Jonathan G. Gossels, Chairman

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Jeffrey P. Klofft, Acting Clerk

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Patrick J. Delaney III

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Thomas W.H. Phelps

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Stephen A. Garanin, Alternate

SHEA/PELLEGRINO  
192 Dutton Road  
03-43

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JULY 1, 2003

The Board consisted of:

Jonathan G. Gossels, Chairman  
Jeffrey P. Klofft, Acting Clerk  
Patrick J. Delaney III  
Thomas W.H. Phelps  
Stephen A. Garanin, Alternate

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Michael Shea was present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence not to exceed 5,000 s.f. on a nonconforming lot, which will exceed the area of the original nonconforming structure. The



property is located at 192 Dutton Road. The existing house has a front yard setback deficiency. The new house will conform to all setback requirements.

Mr. Shea distributed an updated site plan and permit from the Historic Districts Commission to demolish the existing house. From the site plan he pointed out the location of the proposed new house which is behind the tree line. He did not believe the house would be able to be seen from the road as the intent is to have a long driveway to the house.

Mr. Shea pointed out the heavy dash lines on the plan which are an upland wetland resource area. He has spoken with the Conservation Coordinator and is in the process of applying to the Conservation Commission for a Notice of Intent. The location of the house and driveway is designed to minimize disturbance to that resource area.

Mr. Shea said he met with the Historic Districts Commission last week and the Commission issued the demolition permit. They agreed with the proposed location and design of the house; however, did not approve the house as they are looking for more detail on the corner boards and trim detail. The house is a colonial Williamsburg adaptation which fits in with the Wayside Inn area.

SHEA/PELLEGRINO  
192 Dutton Road  
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In addition, between the driveway and construction of the new house, it is proposed to alter 11,400 s.f. of the resource area in order to build the driveway.

In the process of tearing down the existing house, that area will be regraded and vegetated with native species, allowing the area to be turned back into a meadow.

There was some question as to whether the Historic Districts Commission or Historical Commission is responsible for issuing approval of demolition of structures over 50 years old. Mr. Gossels noted that at a previous hearing for demolition of this house, an abutter raised the point that this was a historic structure. A review of the Bylaw indicates this is the purview of the Historical Commission. However, it was noted that this is a checklist item on the building permit application which is required to be obtained before a building permit can be issued.

In response to a question from Mr. Delaney as to the construction process, Mr. Shea explained that the first step is to demolish the house and regrade that area before actual construction of the new house. Since he will not be able to get on the Conservation Commission's agenda until August, he would anticipate demolition the last week in September or first week in October. The demolition should be completed in a day.

For the record, Mr. Shea noted he is now the owner of this property having passed papers on the property the previous day.

Robert and Dorothy Coombs, 208 Dutton Road, abutters, said he attended the Historic Districts Commission meeting on this property, his interest being in the historic significance of this house. He said apparently this building was a maintenance building which served the Dutton School which is now a residence located diagonally across the street.

Mr. Coombs' concern as a abutter was with the location of the driveway to his property line and the landscaping of that area. Mr. Shea described the driveway location and proposed landscaping. He would estimate the driveway to be approximately 30 feet from Mr. Coombs' property line.

Ms. Coombs voiced concern with the previous owner who dumped debris on their property. She did not want their property to be a dumping ground.

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

After deliberation the following motion was placed and seconded:

MOTION: "To grant Michael W. Shea, applicant, Anthony & Lynne Pellegrino, owners of property, a Special Permit to allow demolition of an existing residence and construction of a new residence not to exceed 5,000 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 192 Dutton Road, Wayside Inn Historic Preservation Residential Zone, subject to the following:

SHEA/PELLEGRINO  
192 Dutton Road  
03-43 Page 3

1. The existing dwelling is to be removed prior to construction of the new residence.
2. The new dwelling will be completed within twelve (12) months from issuance of a Building Permit."

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 residence will conform to all setback requirements. It will be colonial in design, in keeping with the Wayside Inn Historic area. The house will be located further back from the road, served by a long driveway, and should not be visible from the road. The front area will be landscaped to allow the open expanse to be returned to a meadow state resulting in a more pleasing streetscape along this portion of the road.

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Jonathan G. Gossels, Chairman

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Jeffrey P. Klofft, Acting Clerk

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Patrick J. Delaney III

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Thomas W.H. Phelps

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Stephen A. Garanin, Alternate