

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JUNE 29, 2004

The Board consisted of:

Jonathan G. Gossels, Chair
Jeffrey P. Klofft, Acting Clerk
Thomas W.H. Phelps
Elizabeth A. Taylor
Stephen A. Garanin, Alternate

Notice was published in the Sudbury Town Crier on June 10 and 17, 2004, posted, mailed and read at this hearing.

Mr. Gossels, Chair, 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.

Timothy McManus was present to represent a petition for renewal of Special Permit 02-13 to operate an automobile repair shop, including used-car sales at 684 Boston Post Road. Mr. McManus was requesting renewal under the same terms and conditions.

In response to questions from the Board, Mr. McManus said he was not aware of any complaints with regard to the operation and that he had no problem with the current conditions, including a 2-year renewal.

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

After deliberation the following motion was placed and seconded:

MOTION: "To grant Michael J. Griffin and Timothy M. McManus, applicants, renewal of Special Permit 02-13, granted under the provisions of Section 2230, Appendix, A,C,Use 12 & 14 of the Zoning Bylaws, to operate an automobile repair shop, including limited used-car sales, property located at 684 Boston Post Road, Business District #6, provided that:

1. This Special Permit is to be for automotive mechanical repairs and incidental body repairs only. Automotive painting is specifically prohibited.
2. The use is restricted to the business-zoned portion of the site.

3. Hours of operation shall be Monday through Friday 7:30AM-9PM, Saturday 9AM-7PM, Sunday 12-6PM.
4. All work is to be performed within the confines of the building except for incidental washing of vehicles with biodegradable soap.
5. There will be no outside storage of new or used parts, tires, assemblies, junk, trash or inoperable vehicles. Automobiles parked on the pavement to the west shall be limited to owners' cars, cars waiting to be serviced, and no more than two (2) cars for resale.
6. All exterior lights are to be wall mounted or mounted on exterior posts and are to be oriented to cast light downward only so as not to illuminate the residential areas abutting and across the street.
7. All residential areas not designated for planting areas are to be clear of debris and maintained.
8. The unpaved area to the west of the building is not to be used for employee and customer parking until such time that it is paved and sloped in such a way that storm water runoff is collected in a catch basin equipped with a gas and oil trap.
9. Disposal of all hazardous waste and materials is to be in conformance with all local, state and federal regulations.
10. Floor drains shall conform to all local, state and federal regulations.
11. Sanitary facilities shall conform to all local, state and federal regulations.
12. A dumpster is to be provided for trash and will be screened from view.
13. The sale of used cars shall be restricted to one (1) per month. These vehicles shall not exceed two (2) on display as set forth in Condition 5 above.
14. There will be no pricing sign displayed or written on the front windows of any vehicle offered for sale except as required by state and federal law.
15. The applicants shall adhere to the requirements of Section 2230, Prohibited Uses, of the Zoning Bylaw.
16. This permit is non-transferable and will expire in two (2) years on June 29, 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 proposed automobile repair shop is in harmony with the general purposes and intent of the Bylaw. The use is in an appropriate location, not detrimental to the neighborhood, and does not significantly alter the character of the zoning district. Adequate and appropriate facilities are provided for proper operation. No abutters were present to oppose renewal; therefore, the Board finds a 2-year renewal period to be appropriate.

Jonathan G. Gossels, Chair

Jeffrey P. Klofft, Acting Clerk

Thomas W.H. Phelps

Elizabeth A. Taylor

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JOHN CULLEN
60 Patricia Road
04-27 & 28

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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 Cullen was present to represent two special permits, one for construction of an addition on a nonconforming lot which will result in a front yard setback deficiency and the second, to allow an accessory dwelling unit for a family member.

Mr. Cullen explained that the proposed addition is designed to accommodate living quarters for his parents and additional living space for his family. It proposes a walk-out with an upper level attached to the existing house. Mr. Cullen was also requesting a waiver of the 5-year waiting period contained in Section 5522 of the Bylaw.

Elevation plans were presented for the Board's review. Mr. Gossels noted there is an issue with regard to the second front entrance. He asked whether Mr. Cullen considered a design which would make the construction conforming.

Mr. Cullen, while aware of the Bylaw requirement for a single entrance, the entrance is designed to be handicapped accessible. He said to access the accessory dwelling through the existing front door would require going up one set of stairs and down another set.

Mr. Klofft said his house, which is a single-family residence, has two doors in the front. It was his opinion, including the other members of the Board, that the proposed entrance made sense. However, it was felt that the door could be made less formal. Mr. Klofft suggested elimination of the window lights at the side of the proposed door and adding a window into the door itself. This would tend to diminish the door making it appear secondary. He felt the intent of the Bylaw is to keep the house from looking like a 2-family structure.

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Mr. Cullen had no objections to these suggestions.

No abutters were present. Mr. Cullen said he has spoken with most of his neighbors and none had any problems with either the construction or accessory dwelling unit.

Mr. Gossels read the following letters which were included with the application for the accessory dwelling unit:

- from Building Inspector James Kelly which recommends approval noting there is adequate parking, no addition has been made to the residence in the past 5 years, the new construction meets current Mass. Building Code requirements and the addition does not occupy more than 30% of the total residence area. A waiver of the 5-year waiting period for construction will be required.

- from Board of Health Director Robert Leupold which notes a new septic system design has been approved by the Board of Health for five bedrooms.

Discussion followed on the proposed construction as it relates to the nonconforming status. Mr. Cullen explained that in addition to the accessory dwelling unit on the lower level, the upper level will be used as additional living space for his family. With regard to the front yard setback deficiency of 11 feet, he pointed out that the lot is a corner lot. The proposed construction is an extension of the existing house and the deficiency is on the “side” which faces a dead end street and is the only lot on that side of the road. Therefore, there would be no traffic issues associated with the construction.

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

After deliberation the following motions were placed and seconded:

MOTION #1: (Case 04-27)

“To grant John G. Cullen, owner of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing an addition which will result in a front yard setback deficiency of 11 feet \pm on Dawson Drive, property located at 60 Patricia Road, Residential Zone A-1, provided that:

1. The secondary entrance will be modified to remove the window lights on the side and to modify the upper half of the door to a style consistent with a secondary door.”

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

MOTION #2: (Case 04-28)

“To grant John G. Cullen, owner of property, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws, to allow a Single Accessory Dwelling Unit for family members, property located at 60 Patricia Road, Residential Zone A-1, as follows:

1. The Board waives the applicable five-year period contained in Section 5522.
2. This Special Permit for an Accessory Dwelling Unit occupied by persons related to the family owning and residing in the principal dwelling is issued for the duration of such occupancy. This permit shall require the filing by the owner(s) of a sworn affidavit with the Town Clerk, with a copy to the Board of Appeals, certifying such occupancy every four (4) years consistent with the Special Permit. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit.”

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 front yard setback deficiency, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The lot is a corner lot and the deficiency will occur on the secondary road which is dead ended and therefore will not create and traffic or safety issues. Further, the proposed construction is intended to be used as additional living space for the owners as well as an accessory dwelling unit for family members. The petitioner has met the requirements for the granting of a Special Permit for this use and has agreed to modify the entrance to the accessory dwelling unit so it will not give the appearance of a second primary door. A waiver of the 5-year waiting period is also applicable for this case.

Jonathan G. Gossels, Chair

Jeffrey P. Klofft, Acting Clerk

Thomas W.H. Phelps

Elizabeth A. Taylor

Stephen A. Garanin, Alternate

GREEN MEADOW RT
25 Poplar Street
04-29

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Peter Bemis, Engineering Design Consultants, was present on behalf of Green Meadow Realty Trust. Also present was William Curley, contractor. The petition is for a special permit to allow demolition of an existing residence and construction of a new residence which will exceed the area of the original nonconforming structure. Mr. Bemis said the project site was part of a 1950s subdivision plan comprised of half-acre parcels. The neighborhood has recently undergone some redevelopment with newer homes being built and therefore Mr. Bemis did not feel this request to be an unusual one.

The property is deficient in area and frontage. The proposal is to remove the existing residence and construct a new 2-story, 4-bedroom dwelling which will comply with all setback requirements. Mr. Bemis felt the new construction would be an asset to the neighborhood and provide an amenity to those who might wish to similarly develop their properties in the future.

Mr. Gossels asked whether there was a particular reason why the proposed house was sited 45 feet from the front and not further back on the property.

Mr. Bemis replied that the setback requirement is 40 feet; however, if the Board would prefer it set back a bit further, he saw no problem.

Mr. Gossels said the existing house is further back than the proposed house would be and is a much lower house. He voiced concern that this house is much taller and might appear imposing.

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Mr. Bemis thought the other new house on the street might be closer to the road. Additionally, he also wants some sense of a back yard. The plans show a rear yard of 60 feet. He would be willing to set the house back another 5 feet.

Mr. Gossels noted that from the plans it appears the existing dwelling is 43 feet from the street. He asked whether the applicant would be willing to go back 50 feet from the street, particularly since this would be a much taller structure.

Mr. Curley did not feel this would be a problem.

In response to a further question from Mr. Gossels, Mr. Curley said the height of the new house is approximately 32 feet.

Responding to a question from Mr. Phelps, Mr. Curley said the square footage of the existing house is almost 3,300 s.f.; it is a multi-level house.

Joseph Boziuk, 72 Willow Road, abutter to the rear of the property, said the plans show a 4-bedroom home, 2-stories high with an expansive roof line. It will be approximately 12 feet above his own house and is sited on a half-acre lot. He said his house is on a 3/4-acre lot. It seemed to him that understanding the height limitation is 35 feet, this particular structure seems far disproportionate to most of the other surrounding homes on the street. He believed that if this house is built he will see a view that is very intimidating and one which will loom over his house.

Mr. Boziuk asked whether a new septic system would have to be installed and whether there was enough room to do so. Mr. Curley said a new one will be put in and there is room for it.

Mr. Boziuk voiced concern that this would require removal of most of the foliage in the back and there will be even less of a visual barrier.

Mr. Klofft noted that by the same token, if a homeowner wanted to put in a pool or a lawn, they would have every right to remove the foliage on their property.

Mr. Boziuk said he would be sensitive if they wanted to do that, but not sensitive to such a large house going up on such a small lot that will impose upon his view and which will not do anything for the value of his property.

Mr. Bemis said in due course this neighborhood will be redeveloped. He did not feel he was doing anything abnormal. He said the house will conform to the setbacks and there is room for the septic system. He did not feel the proposed house would be a “looming” structure.

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From the plans Mr. Boziuk pointed out where the peak of his house is. He said his house is a split level; it's not two stories high. There was no question from his point of view that the proposed house would be imposing.

Mr. Boziuk agreed that while normal redevelopment of neighborhoods does happen, it doesn't happen to this degree. He gave as an example 381 Dutton Road which he felt to be a spacious structure more in keeping with the lot size. He said it is a single story which even has a roof similar to what is being proposed here. Mr. Boziuk said what is being proposed may be appropriate for a 40,000 s.f. lot but not one that is 24,500 s.f.

Mark Kablack, 46 Poplar Street, abutter referred to previous redevelopments in this neighborhood which personally affected him and the mechanism in the bylaw which allows the Board to assess these projects on a case-by-case basis which has resulted in small yet effective results. He had three concerns with regard to this proposal: (1) the plot plan that was submitted with the application as compared to the elevation drawings appears to be reversed in the sense that the plot plan shows the driveway coming in on the eastern side of the property, whereas the elevation drawings show it coming in on the western side. (2) this needs to be straightened out since there is an important issue from his perspective on the driveway location. If it is located in the position as shown on the plot plan, he voiced concern that Poplar Street goes up an incline at that point and there will be a blind spot coming out of the driveway. He felt from a safety standpoint the driveway would be better placed on the bottom of the incline on the western side where Poplar Street intersects with Sycamore. (3) heights which bump up to the height limitation of the Bylaw. As a former ZBA member, Mr. Kablack has been sensitive to the height as it affects surrounding residences. At the same time, he also recognizes that the applicant should have the right to build up to what zoning allows. He felt there should be some certainty as to whether the height is 35 feet above the grade as it exists today or whether there will be some grade change because the lot does slope a little bit. If the lot was filled, he said one could be looking at a 2-3 foot increase in elevation plus 35 feet above that.

Mr. Bemis said he planned to work with the grade that's there. He said he would probably have no problem with saying that taking the concrete that's on top of the existing structure he would maintain within the zoning building height. He said he was not trying to build the grade up or build the house any higher.

With regard to the elevation reversal, Mr. Bemis said it is very common for a set of drawings to be drawn in generic and then get built in reverse. The plan are not drawn specifically for every site.

Mr. Gossels asked about Mr. Kablack's suggestion to locate the driveway on the western side.

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Mr. Bemis felt that from his perspective the people who will be exiting this driveway will have the visibility to the west and to the east. As far as coming straight through, there may not be good visibility to each other, but he doesn't control the roadway. He felt the driveway in this position actually affords better safety and was incorporated into the design as a better feature. He would like the plan to go as submitted.

Mr. Klofft asked whether any other house design was considered for this property.

Mr. Curley said he has built this particular house style at least fifteen times and would be willing to provide addresses of those homes.

Mr. Bemis said more importantly, there is a zoning limitation. He will stay under it and will not exceed the existing ground floor level.

Keith & Julie Kemp, 31 Poplar Street, abutters, voiced concern that the roofline is high.

Mr. Gossels felt the applicants were saying that they would be willing to have a permit condition that said that the finish floor of the new house would not be any higher than the finish floor of the existing house.

Ms. Kemp pointed out that the existing house is a multi-level house with different grade levels.

Discussion followed on which level would be considered the base elevation. Mr. Bemis said he would offer a point of reference to say that when he took the top of the concrete on the property at its highest point, he would not exceed the maximum building height.

Mr. Gossels said there are concerns among the neighbors and members of the Board of the elevation height and how it sits on the lot. He said generally the Board encourages the reuse of lots, but they want to be sure it is done sensitively to the neighbors and the neighborhood. Further, given the nature of a multi-level house, the top of concrete is going to be too high for some members of this Board and for some of the neighbors. Taking the lowest point, given that it's a multi-level, it is not really as low as a typical foundation basement would be on a colonial style house.

Mr. Klofft said he was not comfortable voting for this application. While he felt the Board would be able to put enough conditions in place to satisfy some of the issues, for him, given the nature of the lot and the height of the proposed house, he would prefer to see a topographical map in order to determine fairly precisely where the floor level of the first floor of this house would be. He said that based on the existing house, given that there's so little architectural similarity between the multi-level that's there and what is proposed to be built, the

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Board may think they agree; however, once the house is built the Board may say the end result was not what the Board wanted.

Mr. Kablack said the grade change on the right side of the house facing is the lowest point on the lot. On the opposite corner, there is a difference of 8 or 9 feet.

With regard to the proposed driveway, Mr. Kablack conceded that the applicant could be right; however, he would like to see it demonstrated on the proposed plan that it is safer.

Patrick Reale, 18 Poplar Street, abutter across the street, also voiced concern with regard to the proposed driveway location which is on part of the incline of the hill. He could see where it's going to be marked off, but right now it looks like it's too much on the incline of the hill.

Dongzhe Yang, 23 Poplar Street, abutter, also voice concerns with regard to the proposed driveway location. He had no problem with it being located on the east side. He described the problems associated with driving on Poplar Street with respect to the incline and visibility issues.

David Croll, 68 Willow Road, abutter, said as a rear abutter his main concern is the looming nature of the house and the fact that it's going to change what his neighborhood and what Willow Street is like if we're in the back of our houses looking back at these houses. He said the architectural style of the proposed house is very different from anything else around it with the exception of one or two houses. He believed that if houses like this continue to be built it will drastically change the whole character of the neighborhood. Realizing that people are going to want to redevelop, houses are not forever, and economics change, he felt the Board must be careful when making decisions on undersized lots like this of the impact down the road.

Victoria Boziuk, 72 Willow Road, abutter, said the roof itself is as tall as a 2-story building and is of an overwhelming, looming scale.

Mr. Klofft pointed out that the scale may be somewhat deceptive given the style of the house.

Mr. Boziuk asked Mr. Klofft whether he had concerns that the 35-foot height limitation is not appropriate to a half-acre lot.

Mr. Klofft said there have been houses built in the Great Lakes neighborhood where the lots are 12,000 s.f., and people are still putting smaller 2-story colonial houses in there that are still higher than this house. He felt some of it is the nature of the style of the house; colonials generally tend to be a little bit higher. He said discussion of what is an appropriate height was obviously brought up when the whole complication of the height of the zoning laws were put

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into effect. He had some particular issues that with this property. While he didn't necessarily have a problem with putting a house with this scale on the lot, he felt there is some peculiarity with this lot given the elevations which are a little trickier. He also felt there were some things that can be done in terms of some screening to help with the visual effects of that.

Mr. Gossels said the Board often breaks down issues into two categories: zoning issues neighborly issues. Zoning issues focus primarily on setbacks, building height, and location of the building on the lot. Neighborly issues focus primarily on visual screening and fine-tuning the location of the house on the lot to maximize privacy for all abutters. He suggested perhaps the applicants would be willing to replace some of the trees removed during construction or to otherwise improve the vegetative screening between the proposed house and its neighbors.

Mr. Klofft said he would like to see some sort of topographical plan in order to determine the height of the first floor.

Mr. Phelps believed the zoning does dictate one-acre and the specs are based on a one-acre lot. The Table of Setbacks in the Bylaw assumes a one-acre lot which is why this Board is here to hear this special permit application. He said it is the responsibility of this Board to try to make that judgment as to whether or not a different structure or different configuration on a smaller lot, a non-conforming lot, is in fact in line with the character of the neighborhood.

Mr. Gossels added that the Board also has to recognize that this is a very dynamic neighborhood. Within a half-mile radius of this house, how many tear downs have gone on and have been rebuilt in very appropriate scales that aren't that much different than this.

Mr. Bemis said if there were setback issues, he would place a lot more credibility to the comments made. He felt he has been more than generous with the setbacks on this property.

Mr. Gossels said it's overall issue; it's a smaller lot. Even if the house is within the setbacks, this is a large structure for a small lot.

Ms. Bosiuk commented that if the basement footprint is taken on the right side, it effectively makes the house three stories on the hill.

Mr. Klofft said that is why he wanted to see a topographical plan. Given the grade level and the grading that's there works to the advantage of a multi-level house.

Ms. Taylor said while the setbacks are maintained, there is a deficiency in terms of frontage. She felt that relates to the height as well as from a streetscape point of view.

Mr. Gossels said there is a sense from the Board that there are several concerns. He felt it unlikely that if the Boars voted tonight it would be approved. He said the applicants have two

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choices: to continue this public hearing and come back with topographical information so the Board can get a sense of how this house would really sit on this lot, where the basement would be located, where the first floor would really be located, and get a sense of the overall height. The alternative is to withdraw without prejudice, rework the plans and come back.

Mr. Bemis did not want to withdraw. He wanted to continue the hearing and prepare the necessary documentation to satisfy the Board.

A continuance was scheduled for September 14th. Mr. Gossels also suggested the applicant speak with the neighbors who voiced safety concerns regarding the location of the proposed driveway.

Jonathan G. Gossels, Chairman

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