

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
WEDNESDAY, SEPTEMBER 22, 2004

The Board consisted of:

Jonathan G. Gossels, Chairman
Stephen M. Richmond, Clerk
Elizabeth A. Taylor
Jeffrey P. Klofft
Stephen A. Garanin, Alternate

The public hearing was reconvened by the Chairman, Mr. Gossels for Land Rover Case Nr. 04-14, renewal of a special permit to allow sales and rental of new and used motor vehicles, new and used motor vehicle general and body repair, and for new and used motor vehicle light service at 83 & 103 Boston Post Road.

Attorney Joshua Fox was present representing Land Rover. Also present was Bruce Ey, Schofield Brothers Engineering. Mr. Fox noted at the last hearing the Board had several concerns and he wanted to update the Board on what has been accomplished since that time.

Mr. Fox said Town Planner Jody Kablack pointed out that Land Rover had not conformed 100% to the planting plan – that some of the trees and shrubs were not native, which was a requirement of the Conservation Commission. As a result some plants were swapped out to conform to those requirements. In addition, some dead plants were replaced.

Following this, there was a meeting on June 17, 2004 with the Selectmen and Town Planner on site. All confirmed that the as-built conditions were substantially in conformance with the original approved site plan. It was also agreed to substitute two additional planting beds for the originally required honey locusts. Those sketch plans have been approved by the Selectmen and Design Review Board. The last step is to work out which native species are acceptable to the Conservation Commission.

Mr. Fox would suggest rather than to renew from the expiration date of April that the Board consider a September or October expiration date in order to see the benefits of the additional plantings.

Mr. Garanin said the Selectmen's Site Plan Decision limits the number of cars on the site to no more than 75 indoors and outdoors. He said he counted the lot next to Siam Garden to hold at least 48 vehicles. Counting the other lot, he said there are obviously many more than 75 on the site.

Mr. Ey said the lot next to the restaurant is used for vehicle storage and it is not laid out like a conventional parking lot. Customers cannot go in and move the vehicles; therefore there are a lot more vehicles in a small area. He said the other parking lot meets the much larger dimensional requirements.

Mr. Garanin said he would estimate there is in excess of 100 vehicles, not even looking inside the building. He said the Decision limits the total number on site for sale to 75.

Mr. Ey said there are also a lot of cars on site for service – there are 21 service bays. However, he did say he had not counted the number of new cars.

Mr. Garanin said when he visited the site, he found the parking to be haphazard and did not seem safe. Again, he said it seems the number of cars allowed has been exceeded by quite a few.

Mr. Ey said this could certainly be monitored.

Mr. Richmond suggested the Building Inspector be asked to monitor the situation if this is a concern.

Mr. Gossels said the Board was in receipt of a letter dated June 23, 2004 from the Selectmen which confirms their opinion that the site is substantially in conformance with their Site Plan requirements.

Mr. Gossels said he still has concerns that the requirements placed by the ZBA were not complied with either to the letter or to the spirit. While he did appreciate the improvements to the landscape, he was not sure whether they would be sufficient to meet the Board's concerns. His personal decision would be to give time to see how the landscaping works and review the situation in a year.

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

The following motion was placed and seconded:

MOTION: “To grant Land Rover Metro West LLC, owner of property, renewal of Special Permit 03-21, granted under the provisions of Section 2230, A,C, Use 12,13,14 of the Zoning Bylaws, for the sale and rental of new and used motor vehicles, for new and used motor vehicle general and body repair, and for new and used motor vehicle light service, property located at 83 & 103 Boston Post Road, Industrial District #4, provided that:

1. Hours of operation shall be Monday through Friday from 7AM-8PM, Saturday, 9AM-5PM, Sunday, Noon to 5PM.

2. No heavy bodywork is allowed on the premises.
3. No fuel storage is allowed on the premises.
4. The premises currently consist of three separate legal parcels spanning the Town of Sudbury and Wayland, MA. The Board makes its findings based upon the applicant's representation that all three parcels comprise the project premises. Certain of the applicant's calculations, specifically lot coverage calculations as required by Section 2600 of the Zoning Bylaws, have been based on the entire lot area of the three parcels combined. As such, the entire area of the three parcels has been essential to the applicant's proposal. All parcels comprising the project area must remain intact and dedicated to the applicant's project and may not be alienated from the project, or otherwise developed in ways that are inconsistent with this decision, without further modification of the Special Permits issued herein by decision of this Board. Notwithstanding the foregoing, the property consisting of 7.77 acres \pm now or formerly of the Evergreen Realty Trust, as shown on the Plan entitled "Plan of Land in Sudbury & Wayland, Massachusetts, Prepared for Foreign Motors West," dated February 28, 2002, prepared by Schofield Brothers of New England, Inc., may be encumbered by a conservation restriction in accordance with the provisions of M.G.L.,c. 184, Section, et seq., or may be conveyed in fee to a conservation organization provided that said parcel shall be used for conservation purposes only.
5. Landscaping and fencing shall be substantially as proposed in the plans entitled "Site Plan," Sheet LP-1, prepared by Rico Associates dated March 12, 2002, as may be modified in accordance with Site Plan Approval by the Board of Selectmen, with ongoing maintenance and replacement of materials as necessary. Additional fencing, consistent with the wood cedar fence on the westerly border, shall be provided in order to screen the adjacent Mass. Highway property.
6. Prior to the issuance of a Certificate of Occupancy, or applicant's commencement of use of the premises, whichever comes sooner, the applicant shall take such measures so as to legally combine all three lots comprising the project premises into a single parcel, with the exception of the 7.77 acre parcel, which may be alienated in the manner set forth above in Condition 4.
7. No flags, banners, spinners, pennants or other such display banners shall be displayed on the premises without first obtaining the required approvals.
8. All lighting shall be substantially the same as that proposed in the plan entitled "Site Lighting Plan", Sheet SL-1, prepared by Rico Associates, dated March 12, 2002, as may be modified in accordance with Site Plan approval by the Board of Selectmen, and shall be otherwise consistent with the provisions of Section 3427f. of the Zoning Bylaws. Lighting shall be extinguished during non-business hours to the greatest extent possible so as to provide minimum lighting for security proposed consistent with adjacent properties.

9. All car repair and car service work shall be performed inside the buildings on the premises. There shall be no exterior storage of car parts or equipment. No car washing is permitted except for the incidental hand washing of cars with biodegradable soap.

10. The parking and storage of vehicles and the loading of car parts, equipment and other supplies shall be substantially in accordance with Site Layout Plan SP-2, prepared by Schofield Brothers of New England, Inc., dated February 28, 2002, as may be modified in accordance with Site Plan approval by the Board of Selectmen. No parking or storage of vehicles will be allowed at the entrance drive on the north of the building. At no time will cars be allowed to park or load on Boston Post Road (Rt. 20).

11. This permit is non-transferable and will expire in one year on September 22, 2005, 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 petitioner seeks renewal of a Special Permit to operate a motor vehicle sales and service business. The business has been in operation for approximately one year. While the Board still has concerns with regard to landscaping, etc., it finds a good faith attempt has been made to rectify the situation. Therefore, the Board finds a one-year renewal period appropriate in order to monitor the situation and to insure compliance with the conditions of the special permit.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Elizabeth A. Taylor

Jeffrey P. Klofft

Stephen A. Garanin, Alternate

GREEN MEADOW RT
25 Poplar Street
04-29

MINUTES OF THE PUBLIC HEARING CONTINUATION
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WEDNESDAY, SEPTEMBER 22, 2004

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

The public hearing was reconvened by the Chairman, Mr. Gossels. The Board was in receipt of a letter dated August 30, 2004 from Peter Bemis, Engineering Design Consultants, Inc. which included a supplement site development plan, prepared by his firm, revised August 30, 2004 which includes the site contours of the property.

Mr. Bemis referred to the supplemental plan noting that at the previous meeting there was discussion relative to the site plan and building plans. He has corrected the plan to show the garage and driveway as being on the east side so both plans are consistent.

There was also the issue of the final proposed grade elevation. Mr. Bemis said the supplemental plan indicates a dark line showing what that grade would be from its image from the street. In response to questions from Mr. Klofft, Mr. Bemis said the elevation at the corner of the garage is at 107.5 dropping down to 104 at the basement walkway.

From the plan, Mr. Bemis pointed out the elevations at various points of the proposed construction including the rear elevation of the house coming off the garage, stepping down through a bump out and then running to a walkout basement condition.

For the record, Mr. Bemis submitted a copy of the Septic System Permit and plan that was approved by the Board of Health as well as the Driveway Permit approved by the DPW.

Mr. Bemis described the driveway as coming in on the east corner of the lot, coming into the garage on grade with the grade going from left to right, with existing grades of 100 and 109 being maintained as shown on the plan. He also pointed out the area where there will be a slight cut and fill.

Photographs of the property were presented to demonstrate sight distance. Mr. Bemis said another item that was of concern was the sight distance. He said there is plenty of sight distance as evidenced by receipt of the driveway permit.

Mr. Bemis also wanted to point out the fact that the Board recently approved a petition to redevelop another house in this neighborhood. In addition, he said there is another house that has been built. He said that project is basically the same house he is proposing to build.

Mr. Gossels said both of those houses are on level lots. They don't have walkout basements.

Mr. Bemis pointed out a knee-wall in the petition that the Board approved on the northeast side of the constructed dwelling.

Mr. Bemis said in his letter of August 30, 2004 which supplements the original package, he informed the Board about the septic system and provided that plan. The letter also reiterates the nonconforming issue with this parcel which again, for the record, is the deficient area and frontage. All other setbacks are in compliance. The structure meets the bylaw's minimum requirements for the zoning district. We're not exceeding any threshold in any regard.

Mr. Klofft asked how high the hip roof was from the point of where the drive comes into the garage to the peak of the main structure.

Mr. Bemis said it was 31 feet.

Mr. Klofft felt Mr. Bemis was probably right on the edge of the height limitation of 35 feet. He said given the fact that this is a redevelopment and given that the average grade level of the existing house is less than the grade that he is going to end up with on this house, the average grade around the existing house is closer; it's probably 3-4 feet lower than the average grade you will end up with.

Mr. Curley stated that this house will not exceed the height limit.

Mr. Bemis elevation 105 is where the top of the existing concrete structure is. What he is trying to do is maintain the existing grade on the low end of the site. He said you don't want to put the basement below grade where you can't drain it.

Mr. Klofft said he have gone with is a slightly different roof structure.

Mr. Gossels said there is no substantive change to what was proposed before based on the input received from the neighbors or this Board the last time around except to provide a driveway permit and a sheet showing the elevations.

Mr. Bemis said he has designed the site, fully.

Mr. Gossels said he was talking about the structure. The structure proposed this evening is essentially the same as the structure proposed at the previous hearing.

Mr. Bemis said this is the house that the Curley's would like to build here. Mr. Curley added that this house is nearly identical to 39 Poplar Street.

Mr. Gossels said he understood that. He said personally his only issue is this house, given this lot with this driveway, the issue is only from the neighbors' point of view. They're looking at a very tall structure when they look up at that house. They're essentially seeing three floors of living space plus a roof line.

Mr. Bemis to mitigate that what we could do is introduce some sort of landscaping treatment to take out the visual to the street. He would offer that as a form of mitigation. He said he didn't go to that sort of detail on this plan for the submission but was sure the Curleys wouldn't have any problem with it.

He said another thing he could do is bring the grade a little bit further down so from the street, because really from the rear it's not going to be an impact. He could do a similar knee-wall condition that was done at the other house.

Joseph Boziuk, 72 Willow Road, said looking at the layout of the leaching field, the last row is 15 feet from his property line. In order to install that, most of the trees almost to the property line will have to be removed. That creates the burden of lack of a visual barrier to his property. His other concern is that the height of the house is close to the zoning limit. He said the bylaws imply a larger lot.

Mr. Gossels Mr. Boziuk implied that house size should be based on the size of the lot. He said the Board has never applied that to these lots. He said it's just not done.

Mr. Klofft said he had concerns regarding a house being built on Dutton Road which is actually a multi-level design. It appeared that it might be too tall, but after investigation, it was not. This was a reconstruction allowed by right.

In response to a request from Mr. Gossels, Mr. Bosiuk pointed out how his property would be affected by the installation of the leaching pipes. He said in order to even get the equipment in, essentially most of the foliage beyond the 15 feet will have to be taken down. That area consists of pine trees and seasonal trees as well as seasonal trees on his property.

Mr. Bemis said he did locate the tree line on the plan. One leach line does extend beyond the tree line. This is our reserve area. He said he certainly wanted to try to address everyone's concern. If he knew he could get a permit, he could possibly go back and look at this and

eliminate that one end line and possibly salvage some trees. He said he was trying to get something before the Board of Health as quickly as possible to get a permit for this meeting.

Mr. Klofft said given the tree line, why was this way chosen as opposed to preserving some of the tree line.

Mr. Bemis if the Board was willing to support the application, he could insure the 15 feet would be maintained as a buffer.

Keith Kemp, 31 Poplar Street had concerns with regard to height asking how the 35 foot limit is determined. This was explained by Mr. Klofft. Mr. Kemp's concern was how this would fit into the neighborhood.

Mr. Gossels said this is what the Board is wrestling with.

Dongzhe Yang, 23 Poplar Street, reiterated his concerns expressed at the first hearing with regard to the proposed driveway location from a safety standpoint. He said the owner will not be able to see traffic to the right because of the poor sight distance when exiting the property.

Mr. Gossels said the Board is in receipt of a letter from Mark Kablack, 46 Poplar Street, dated September 13, 2004 expressing the same concern.

Further concerns were with regard to height were expressed by Victoria Bosiuk and Julie Kemp.

Mr. Gossels asked if Mr. Bemis would be willing to agree to a condition to enhance the vegetated screening on all three sides of the lot.

Mr. Bemis said he already said he would be willing to maintain a 15-foot buffer across the rear. Mr. Curley added that he would not touch anything to the west which is heavily treed.

There was no further input or questions from the Board. The public hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Green Meadow Realty Trust, Karen Curley, Trustee, owner of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,000 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 25 Poplar Street, Residential Zone A-1, provided that:

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25 Poplar Street
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1. There will be no disturbance of the screening within 15 feet of the rear property line, nor disturbance of any of the screening that exists along the westerly side.
2. A 10-foot width shall be substantially maintained on the easterly side. Any disturbed portion will be replanted with vegetative screening
3. Additional landscaping will be provided in the northwest corner of the property as further visual screening to adjoining properties.”

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.

Construction must be completed no later than one year after commencement.

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

REASONS: The petitioner requires a Special Permit due to the nonconforming nature of the property. The majority found 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 than the existing nonconforming structure.

During the public hearing, Board members, as well as neighbors, expressed concerns with regard to the size, height, driveway location and visibility of the proposed house. The Board found that while the size was not substantially greater than the footprint of the existing house, there was a concern with regard to height since the proposed 2-story structure would replace an existing multi-level house on a sloping lot. However, the new house will be within the height limitation of the Zoning Bylaws and conform to current setback requirements. The style is consistent with that which is currently being constructed and preferred by prospective homeowners. Further, the petitioner has agreed to condition the special permit to insure that adequate existing screening will be maintained, and landscaping will be provided in the northwest corner of the property as additional screening.

With regard to the driveway location the Board found that traffic on this particular road is not high and the grade not that extreme to present a safety issue which would warrant relocating the driveway. Further, the Board notes that the petitioner has obtained a Driveway Permit from the DPW which is an indication of adequate site distance.

The Board notes that at least two other houses of similar styles have been approved for reconstruction in this neighborhood and the question of whether a proposed house is in keeping with the character of a neighborhood is subjective. The Board evaluates each potential redevelopment on a case-by-case basis in an effort to maintain the character of the neighborhood

and to protect the neighbors, while at the same time taking care to insure the property owner's rights to develop the property are not infringed upon. In this particular case the Board finds that the conditions attached to this special permit will achieve that objective.

Jonathan G. Gossels, Chairman

Jeffrey P. Klofft, Acting Clerk

Thomas W.H. Phelps

Elizabeth A. Taylor

Stephen A. Garanin, Alternate

MINUTES
SUDBURY BOARD OF APPEALS
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Jeffrey P. Klofft

Also present: James Kelly, Building Inspector

The meeting was convened by the Chairman, Mr. Gossels for the purpose of discussing items which the Board feels should be discussed with the Planning Board for possible inclusion as warrant items for Town Meeting.

It was decided to focus on the following:

1. Permitted Use Table – need to modify to include special permits which have expired and no longer are permitted under the current use table. (These are Especially for Pets, Carpet Carousel, MacKinnon's, Camp Sewataro, Sudbury Animal Hospital)
2. Demolition and reconstructions – need to discuss this further; i.e., how to define “character of the neighborhood”, etc., when dealing with applications

3. Raising of Animals – brought up by Jim Kelly. Need to define what is allowed by right and what needs a special permit

It was also decided to schedule a meeting for September 29, 2004, 7:30PM to discuss ZBA Associate appointments.

There being no further business, the meeting was adjourned.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Thomas W.H. Phelps

Elizabeth A. Taylor

Jeffrey P. Klofft