

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, APRIL 26, 2005

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on April 7 and 14, 2005, posted, mailed and read at this hearing.

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.

Attorney Joshua Fox was present, representing Wellborn Builders for a special permit for 242 Horse Pond Road to demolish the existing single-family home and construct a new home which is significantly larger. The non-conformity with respect to this lot is with frontage which is 100 feet; the required frontage is 180 feet. It is a fairly narrow lot.

The existing structure is non-conforming with respect to the northerly side yard setback as there is an encroachment of ten feet into the 20-foot side yard setback. The new structure will meet all setback requirements.

Mr. Fox said the applicant has made significant efforts to reach out to the neighbors. He has written several neighbors and, for the most part has received positive feedback, or no feedback, for the project. One neighbor, directly to the north, Andrew Gould, 246 Horse Pond Road, had requested, after viewing the site plan, that the home be shifted forward towards the front lot line. The original application showed a front yard of 56 feet. A new plan has been drafted which now show a front yard setback of 46 feet.

The letter from Mr. Fox dated April 21, 2005 as well as the accompanying revised plans were entered as part of the record.

Mr. Fox said the applicant was willing to accommodate, subject to the Board's approval.

Mr. Fox said the property is located near the intersection of Horse Pond, Peakham and Pratts Mill Roads. The area is comprised of a mix of new and old homes, both large and small. He felt the proposed structure is relatively modest in size and will fill it with neighborhood.

Mr. Gossels said the application requested 3,200 s.f. for the new house. The notice was advertised as 3,086 s.f. He noted that Town Counsel has advised that such discrepancies are negligible and that the hearing could move forward. He asked which number was correct.

Mr. Fox said he had applied for an amount “not to exceed 3,200 s.f.” which would provide a cushion should one be necessary. The floor plan measures out, pre-construction, to be 3,086 s.f.

With regard to the front yard setback, Mr. Gossels said when going from a small house to a full sized colonial with a high roof, the Board generally likes to have the house setback around 60 feet as opposed to 40 feet. The movement from the 56 feet would tend to push the house to a point where it would be looming over the street. He asked for comments from Andrew Gould, the neighbor who requested that it be moved forward further.

Mr. Gould said the reason for his request to move the house forward was because under the original plan with a 60 foot setback, the front of the new house would be basically in back of his house. From his patio, he would be looking at the door and seeing cars come and go from the new house.

Mr. Gould said most of the lots are approximately one acre and are located “shoulder to shoulder” down the street and there are no other redeveloped houses near his house so the back yards are contiguous with his.

Mr. Gossels understood Mr. Gould’s concerns and suggested perhaps splitting the front yard setback distance.

Mr. Gould said when he first spoke with the developer, he requested the new house be sited 40 feet back, which is the minimum front yard setback requirement. Following discussions, they arrived at a compromise of 46 feet. He would not want to further compromise.

Mr. Gossels said most of the newer houses being built tend to not have the garages facing the street, having instead windows facing the street and the access from the side. He asked why this was not done in this case.

Mr. Fox said the applicant looked at this and felt that access from the side would place the driveway significantly closer to the other neighbor on the south side.

Michael Baum, 238 Horse Pond Road, abutter on the garage side said with regard to the setback, the house will still be set back further than the existing house. He did not feel that what Mr. Gould was asking would compromise the neighborhood.

Mr. Klofft asked whether Mr. Baum would have any issues if the garage was turned so that the driveway would come in to the side. Mr. Baum said he would have no objection. After conferring with a representative that was present, Mr. Fox said he would be agreeable to relocate the garage to face the side.

In addition Mr. Fox said the height limit for the new house is 32 feet which is within the maximum allowed.

When speaking with the developer, Mr. Baum said he voiced concerns for the large mature trees on the applicant's property which are also located fairly close to his property line. Specifically, Mr. Baum was concerned that during and after construction those trees may be further weakened to a point where there could be liability issues should any of them fall down onto his property or house. Mr. Baum said he would prefer to have 4 or 5 of those trees removed. He pointed out the location of the trees.

Mr. Klofft felt some of them might have to be removed to accommodate the driveway. Mr. Gossels added that there are generally two categories of issues – zoning related issues and neighborly issues. He felt this fell into the category of neighborly issues. He asked whether Mr. Fox would be willing to work with Mr. Baum with regard to this issue.

Recognizing that there could be a liability issue, Mr. Fox felt the developer would be willing to work with Mr. Baum.

Mr. Gossels suggested Mr. Baum might want to identify the trees and then schedule a meeting with the developer.

Mr. Gossels reviewed the demolition guidelines. Mr. Fox understood them and had no issues with them.

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

The following motion was placed and seconded:

MOTION: “To grant Wellborn Builders, LLC, applicant, Thelma St. Croix, Trustee Horsepond RT, 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 3,200 s.f., which will exceed the area of the original nonconforming structure, said

residence to conform to all zoning setback requirements, property located at 242 Horse Pond Road, Residential Zone A-1, subject to the following:

1. The location of the new house for setback purposes will be as shown on Plan of Land prepared by Guerriere & Halnon, Inc., Milford, MA, revised April 14, 2005.
2. The garage will be reoriented so as to be entered from the south side of the property and the driveway will be relocated to the south to serve the reoriented garage.
3. Appropriate landscaping will be provided along the entire front of the new house.
4. 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.
5. Construction must be completed no later than one year after commencement.”

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 proposed 2-story colonial, which will replace a one-story house is appropriate in terms of scale and design and will comply with all setback requirements. The developer has spoken with the neighbors with regard to this project with a favorable response. Although originally proposed to be set back further, as a result of a direct abutter’s concern, a compromise was reached whereby the house was moved forward an additional 10 feet. The Board found this to be acceptable as the end result is that the new house will be located 6 feet further back than the existing house. At the Board’s suggestion, the petitioner agreed to relocate the garage and driveway which will result in a more aesthetic orientation and streetscape. Further, the petitioner has agreed to work with another abutter with regard to a tree issue. The Board finds that the conditions imposed in this Special Permit will result in new construction which will be an asset to the neighborhood.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Jeffrey P. Klofft

Elizabeth A. Taylor

Constantine Athanas, Alternate

SUSAN LITOWITZ
199 Concord Road
05-21

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, APRIL 26, 2005

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on April 7 and 14, 2005, posted, mailed and read at this hearing.

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.

James Hill and Susan Litowitz were present to represent a petition for Special Permit to alter and enlarge a nonconforming structure by constructing an addition which will result in a side yard setback deficiency.

Mr. Hill explained that they met with couple of architects and are looking to add an artist studio onto the house. It will be added onto where the family room is currently located. Because of the angle of the property, at one point there will be a 5-foot side yard setback deficiency with the greatest deficiency being 7 feet.

Mr. Gossels said the property is set very far back from the road and appears to be a very private lot. He asked where the closest neighboring house was.

Mr. Hill said there are two houses on either side; he pointed out the locations. Those abutters, Derek Oram, 15 Pennymeadow Road and Elizabeth Mecler, 7 Pennymeadow Road, were present.

Mr. Oram said his house is located directly behind the property. He had no problems with the visual aspect of the proposed project; however, have a problem with the possible effect on his septic tank which is located directly in between his house and Mr. Hill's house. He said there is a slope of approximately 4-5 feet. His concern was with the increase in square footage of Mr. Hill's house and the potential impact on his septic tank.

Mr. Gossels said in the past when the Board has had these types of issues, they have requested the applicant to put in some type of drainage mitigation system to insure there will be no problems.

Mr. Oram wanted his concerns to be noted because he hasn't done a Title 5 on his septic tank and I didn't want to have any problems as a result of this construction.

Ms. Mecler also raised concerns with regard to the drainage. She said she is below street level – lower than Messrs. Hill and Oram.

Mr. Hill said the intent is to put in a drainage system. He said they currently have a drainage system on the other side of the house. The intention is to do a similar type of system here.

Further discussion centered on water runoff.

Mr. Richmond said what he didn't hear is whether the neighbors are comfortable with the concept of the drainage being proposed.

Ms. Mecler and Mr. Oram wanted to know how it would be handled.

Mr. Hill said the concept of the drainage system is that it is collected in downspouts into a dry well and into the garden. He described where this would be on the plan adding that he would be willing to go over engineering design drawings once they get to that state so the neighbors will be comfortable with it.

Mr. Gossels said the plan appears to be appropriate in terms of scale and setbacks and there didn't seem to be any visual issues with the neighbors. With regard to drainage, he would feel more comfortable having an actual engineering plan that the Board and neighbors can see.

Mr. Klofft asked whether this is a one-story or 2-story addition.

Mr. Hill said it is a single story which is a second story added above the existing family room.

Mr. Klofft said he would want to see a condition in the Decision limiting it to a single story.

Mr. Gossels felt this hearing should be continued. He asked when the applicants could get engineering plans.

Ms. Litowitz said one of problems is that they want to move forward with a master plan which would include landscape design and among other things, a long-term plan and the basic facilities of sewage and water and drainage. In order to move forward in that process they didn't want to invest the money in going on with the master plan and all the engineering aspects of it until they know that they could actually accomplish this portion.

Mr. Gossels said the sentiment of the Board is generally approving of what is being proposed. However, the Board agrees with the neighbors' concerns on the water management.

Mr. Klofft added that the Board wants more concrete information that the runoff is going to be addressed and addressed to everyone's satisfaction.

The hearing was continued to the next scheduled meeting. (May 31, 2005)

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Elizabeth A. Taylor

Jeffrey P. Klofft

Constantine Athanas, Alternate

WELLEN CONSTRUCTION
93 Pratts Mill Road
05-22

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, APRIL 26, 2005

The Board consisted of:

Jonathan G. Gossels, Chairman
Elizabeth A. Taylor, Acting Clerk
Jeffrey P. Klofft
Constantine Athanas, Associate
Nancy G. Rubenstein, Associate

Notice was published in the Sudbury Town Crier on April 7 and 14, 2005, posted, mailed and read at this hearing.

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.

Charles Gadbois was present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence on a non-conforming lot. The property is currently under a Purchase & Sale agreement. The new house will be no greater than 3,515 s.f. which is larger than the existing residence; however, it will conform to all setback requirements.

Mr. Gadbois displayed a larger version of the plot plan which was submitted with the application. The existing house is located approximately 50 feet from the front property line. Since it is in poor condition, it is proposed to remove it and construct the new house approximately 61 feet from the front property line.

Mr. Gadbois said he has marked all the trees on the property. The ones with double orange ribbon will remain and the ones with single orange ribbon will be removed. The septic system will be located in front of the new house. The house will be constructed at approximately the same grade level and the same curb cut will be used for the driveway.

Mr. Gadbois said he mailed a letter to all the abutters informing them of his plans and made himself available on April 16th for an hour at the site. No abutters showed up.

Mr. Gadbois described the elevations which were submitted with the application which result in the house being 32 ft. 3/8" off grade.

WELLEN CONSTRUCTION
93 Pratts Mill Road
05-22 Page 2

Given the size of the proposed house, Mr. Gossels said he was pleased that it was sited further back. He felt it will be a vast improvement over the existing house.

Mr. Gadbois said he has done a assessment of the house wherein a small amount of asbestos was found. This will be removed by a certified asbestos removal company.

In response to a question from Mr. Gossels, Mr. Gadbois said he was aware of the standard guidelines for demolition and reconstruction and had no issues with any of them.

Mr. Gadbois said he offered the house to the Sudbury Housing Authority which declined the offer.

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

The following motion was placed and seconded:

MOTION: "To grant Wellen Construction Inc., applicant, Constance Witherby, Elaine Holder, Ingeborg T. Witherby, owners 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 3,520 s.f., which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 93 Pratts Mill Road, Residential Zone A-1 subject to the following:

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

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 proposed new residence will replace an existing structure which is in disrepair. It will be appropriate in scale and design and set back further from the front property line resulting in a less intrusive structure and a more pleasing streetscape. Further, the proposed construction will be consistent with other redeveloped lots in the area. No abutters were present at the hearing. The petitioner indicated that he had contacted every abutter and had made himself available to discuss the project. The Board finds that the resulting house will be an improvement over that which currently exists and will be an asset to the neighborhood.

WELLEN CONSTRUCTION
93 Pratts Mill Road
05-22 Page 3

Elizabeth A. Taylor, Acting Clerk

Jeffrey P. Klofft

Constantine Athanas, Associate

Nancy G. Rubenstein, Associate

TI-SALES
36 Hudson Road
05-23

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, APRIL 26, 2005

The Board consisted of:

Jonathan G. Gossels, Chairman
Stephen M. Richmond, Clerk
Elizabeth A. Taylor
Jeffrey P. Klofft
Constantine Athanas, Associate

Notice was published in the Sudbury Town Crier on April 7 and 14, 2005, posted, mailed and read at this hearing.

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.

Kerry Olsen was present on behalf of Ti-Sales for a petition for Special Permit to install a 9.33 s.f. double-faced non-illuminated freestanding sign at 36 Hudson Road. Ms. Olsen explained that the intent is to replace the old sign and move it a bit closer to the road. Currently the sign is approximately 25 feet from the street and it is difficult to see it because of the curve on Hudson Road as well as the shrubbery on the other side. In addition the existing sign is too small.

Ms. Olsen said the proposed sign was submitted to the Design Review Board and that Board approved of the design.

Mr. Gossels read a letter from the Design Review Board (DRB) dated March 10, 2005 which noted that a freestanding sign is clearly needed in this case as the building is barely visible from the street. The DRB recommends approval.

The Board reviewed the petitioner's application and proposed sign design.

Ms. Olsen asked how far back from the property the sign could be located. From the Table contained in the Sign Bylaw, it was determined that the minimum setback from the property line is 4 feet.

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

TI-SALES
36 Hudson Road
05-23 Page 2

The following motion was placed and seconded:

MOTION: "To grant Ti-Sales, applicant, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to install a 9.33 s.f., double-faced, non-illuminated freestanding sign, in accordance with the Sign Design Plan submitted with the application, which is marked Exhibit #1 and made a part of this Decision, said sign to be located not less than 4 feet from the front property line, property located at 36 Hudson Road, Business District #7."

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

REASONS: The petitioner requires a Special Permit to install a free-standing sign on the property. The Board finds that the location of the building is such that it is nearly invisible from the road and therefore impossible to identify by any other type of sign. The sign is small, unobtrusive and unlighted and will not cause visual confusion or be intrusive to the neighborhood, the surrounding area and will not interfere with traffic safety in the area. The size and scale of the sign is appropriate and in harmony with the business district in which it will be located.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Elizabeth A. Taylor

Jeffrey P. Klofft

Constantine Athanas, Associate

MICHAEL & KRISTIN BAIN
182 Powers Road
05-25

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, APRIL 26, 2005

The Board consisted of:

Jonathan G. Gossels, Chairman
Stephen M. Richmond, Clerk
Elizabeth A. Taylor
Jeffrey P. Klofft
Constantine Athanas, Associate

Notice was published in the Sudbury Town Crier on April 7 and 14, 2005, 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.

Michael and Kristen Bain were present to represent a petition for a Variance to construct an addition which will result in a front yard setback deficiency of 13.6 feet at 182 Powers Road. Mr. Bain explained that they would like to construct a mudroom and porch at the front of the house in order to make the home more livable and also add to the aesthetic appeal of the house.

The reason for the Variance request is that when the house was originally built, there was proposed to be a cul de sac at which their home and one other home would be at the end of that cul de sac. The cul de sac was never built. Instead, the developer built a shared driveway and their house is at one end of that driveway.

As a technical matter, construction of the mudroom and porch would be too close to the paper road. In reality, Mr. Bain said the house is approximately 200 feet from the actual road.

Mr. Gossels asked what the status of the paper road was and whether it could be built. Mr. Bain did not know the reason why it was not built. He said originally there were proposed to be three homes at the end of the cul de sac. However, only two homes were built. His assumption was that the end result provided for more front yard space for the two homes.

Mr. Richmond asked whether Mr. Bain owns all the way to Powers Road. Mr. Bain said he did. Mr. Klofft said technically Mr. Bain does not own the paper street. Mr. Bain said technically it's a shared easement. It was his understanding that it is owned jointly by both parties. It's privately owned; it's not owned by the Town.

Mr. Bain said the cul de sac, if constructed, would have taken up most of the front yard. Now he has a nice front yard with 200 feet of frontage between his house and the corner of Powers Road.

In response to a question from Mr. Richmond, Mr. Bain said his property is approximately 1.79 acres.

Discussion followed on the criteria for the granting of variances. There was agreement that the paper cul de sac constituted special conditions that affected the land or structures but not the zoning district. The design of the proposed construction is consistent with a residential dwelling and therefore would not derogate from the intent of the Bylaw.

With regard to hardship, Mr. Bain said he engaged an architect to design an addition to accommodate the porch and mudroom. Any alternative design would require removing and reconstructing the garage causing a financial hardship.

Mr. Athanas asked whether Mr. Bain had spoken with his neighbor with regard to the project. Mr. Bain said he had and that neighbor was supportive.

There were no abutters present. After a review of the plans and further questions with regard to the status of the paper cul de sac, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Michael and Kristin Bain, owners of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to construct a 467.25 s.f. porch and a 134 s.f. mudroom addition, which will result in a front yard setback deficiency of 13.6 feet ±, property located at 182 Powers Road, Residential Zone A-1."

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

REASONS: The petitioners require a Variance to construct an addition which will result in a front yard setback deficiency. With regard to the criteria for the granting of Variances, the Board finds the following:

1. The Board finds there to be special conditions relating to the shape of the land in that the property derives its frontage from a paper cul de sac which was never constructed. The house is located at the end of a shared driveway approximately 200 feet from the road. The proposed construction would encroach on the setback requirement for a cul de sac which was never constructed.

2. The Board finds that there would be substantial financial hardship to the petitioner if the provisions of the Bylaw were to be literally enforced. The proposed construction will add needed functionality to the home and the proposed location is the most practical one for that which currently exists. To require an alternative plan would necessitate removal and reconstruction of the garage resulting in financial hardship to the petitioner.

3. There will be no substantial detriment to the public good if the Variance is granted. The Board finds that the proposed construction is practical, small in size, and in keeping with the character of the house and residential zone.

4. As a result, the Board finds that the granting of this Variance will not nullify or substantially derogate from the intent or purpose of the Bylaw. Rather, it will enhance the appearance of the existing house and surrounding neighborhood.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Elizabeth A. Taylor

Jeffrey P. Klofft

Constantine Athanas, Associate

