

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
AUGUST 22, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Constantine Athanas
Richard D. Vetstein, Associate
Jonas D.L. McCray, Alternate

Notice was published in the Sudbury Town Crier on August 3 & 10, 2006, posted, mailed and read at this hearing.

Mr. Richmond, 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.

Daniel Carty was present to represent a petition for Special Permit to construct a porch/mudroom which will result in a front yard setback deficiency of 6 feet, 6 inches at 15 Stonebrook Road. Mr. Carty explained that he has an existing covered front landing which he would like to replace with an enclosed front porch. The existing landing does not meet setback requirements and the proposed porch will be 6 inches longer than what is there now. The size of the porch will be 9 feet 4 inches by 6 feet.

It was the consensus of the Board that this was a modest plan with a minimal amount of setback intrusion. No abutters were present. The hearing was closed.

The following motion was placed and seconded:

MOTION: To grant Daniel & Maura Carty, 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 9'4"X6' porch/mudroom, which will result in a front yard setback deficiency of 6'6"±, property located at 15 Stonebrook Road, Residential Zone A-1."

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 increase the current setback deficiency by approximately 6 inches, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed construction is modest

in scale and improves the appearance of the existing structure. The Board notes that no abutters were present to oppose this petition.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Constantine Athanas

Richard D. Vetstein, Associate

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
AUGUST 22, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Constantine Athanas
Richard D. Vetstein, Associate
Jonas D.L. McCray, Alternate

Notice was published in the Sudbury Town Crier on August 3 and 10, 2006, posted, mailed and read at this hearing.

Mr. Richmond, 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.

Laurie Ensley was present to represent a petition for Special Permit to construct a 2-story addition which will result in a side yard setback deficiency of 7 feet at 598 Peakham Road.

Ms. Ensley submitted three letters from abutters in support of the petition which included the abutter who would be most affected by the proposed construction. She explained that the house is a small 3-bedroom cape and she would like to add a 2-room, 2-story addition.

Mr. Richmond commented that 13 feet to the side property line is tight. Ms. Ensley pointed out that her abutter to the other side is 10-12 from her property line. She said they constructed a similar addition.

Mr. Athanas noted that while these houses are smaller, they are also on small lots and more of this type of construction could result in a congested appearance.

Mr. Gossels asked whether any alternatives were considered with regard to location.

Ms. Ensley said alternatives were considered; however none were feasible. One would involve moving the septic system and there would also be problems as there are wetlands on the property. All the builders she contacted felt the proposed location to be more preferable.

Mr. Klofft asked whether there is screening on the property line. Ms. Ensley said there are some pines on the side where the addition would be. She said that neighbor would like to have those trees removed, so they can either be removed or remain.

Ms. Ensley pointed out the recent reconstruction that is in progress a bit further down noting that this area is comprised of several small homes. She said her neighbors' concern was that this could happen here should she decide to move rather than construct this addition. She said her preference was to remain in this neighborhood.

Discussion followed on the proposed design and whether it could be made smaller to encroach less into the setback. Ms. Ensley agreed that while it could be made smaller, it would result in much less space, particularly on the second floor which loses space because of the cape-style roof. She said the existing square footage is 1,550 s.f.; with the 2-story addition, it would increase to 2,300 s.f.

While agreeing that this setback was tight, there was general agreement that this addition would be preferable to a demolition and reconstruction of a much larger structure on the property.

There were no further questions. The public hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Michael & Laurie Ensley, 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 15X26 foot 2-story addition, which will result in a side yard setback deficiency of 7 feet \pm , property located at 598 Peakham Road, Residential Zone A-1."

VOTED: In favor: 4 (Richmond, Klofft, Gossels, Vetstein) Opposed: 1 (Athanas)

REASONS: The petitioner requires a special permit due to the nonconforming nature of the property. A majority found that the proposed construction, which will result in a side yard setback deficiency, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. This neighborhood is comprised of small homes on small narrow lots. Similar homes on small lots throughout the town have been sold, demolished and reconstructed as much larger homes and this has been a concern of the Board. The homeowner wishes to remain and construct an addition which is small in comparison to what could be built as a reconstruction. The addition will be architecturally compatible with the house and modest in scale. It will enhance the appearance of the house and neighborhood. The Board notes that the immediate abutters support this petition.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Constantine Athanas

Richard D. Vetstein, Associate

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
AUGUST 22, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Constantine Athanas
Richard D. Vetstein, Associate
Jonas D.L. McCray, Alternate

Notice was published in the Sudbury Town Crier on August 3 and 10, 2006, posted, mailed and read at this hearing.

Mr. Richmond, 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.

Edwin Lynch, owner, and Joseph Alarie, contractor, were present to represent a petition to construct a 6X9 foot mudroom on a nonconforming lot. The resulting side yard setback deficiency would be 16 feet.

During the course of the presentation the Board expressed concern that the addition would be only 4 feet from the property line and noted that it has not been the policy to grant special permits for this amount of deficiency. It was pointed out that the structure could not be maintained from the homeowner's property.

After further discussion, the applicant requested a withdrawal to consider other options.

The following motion was placed and seconded:

MOTION: "To allow the applicant to withdraw his petition (Case 06-42) without prejudice and to waive a subsequent filing fee."

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

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Constantine Athanas

Richard D. Vetstein, Associate

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, AUGUST 22, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Constantine Athanas
Richard D. Vetstein, Associate
Jonas D.L. McCray, Alternate

Notice was published in the Sudbury Town Crier on August 3 and 10, 2006, posted, mailed and read at this hearing.

Mr. Richmond, 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.

David Crispin, Engineer, BSC Group, and Attorneys Roy Cramer and Frank DiLuna were present on behalf of the applicants, David and Sharon Dillon, for a Special Permit to allow construction of a driveway located within a flood plain zone. The property is located to the west side of the Nashawtuc golf course opposite the large wetland.

Mr. Crispin explained that the property is comprised of approximately 20 acres. The proposal is to provide a 14-foot wide driveway to the back corner of the site. The driveway will access a proposed single family dwelling at the rear of the property. Currently, two structures exist on the property. Mr. Crispin pointed them out on the plan.

An Order of Conditions has been received from the Conservation Commission as well as septic system approval from the Board of Health.

From the plans, Mr. Crispin pointed out the location of the proposed driveway and the portion which would be within the flood plain zone. At Mr. Richmond's request, he outlined the flood plain boundaries on the plan.

Mr. Richmond asked whether the fill would go only in the driveway portion that is in the flood plain.

Mr. Crispin said it would, and the amount needed would be approximately 2-3 cubic feet. With the exception of the gravel for the road surface, they will be using only the fill that is on the property. He said the Wetlands Act requires that for each cubic foot of fill put in the flood plain, one cubic foot has to be taken out somewhere else. The calculations that are included in this submission represent that is exceeded by a 10:1 ratio. The reason for this is because the septic system has to be mounded and fill is needed to do that. Mr. Dillon wants to create a pond, possibly stocking it with trout and the creation of the pond will result in a net increase in flood storage.

Regarding the criteria for granting special permits for work within a flood plain, Mr. Crispin elaborated on the information provided in the application. He said the shape of the property is such that there is no alternative location for the driveway. It is long and very narrow. In addition, Town Engineer in his letter dated January 24, 2006 has certified that the driveway will not endanger the health, safety or public welfare. The Order of Conditions issued by the Conservation Commission will ensure that the driveway will not result in contamination or pollution of the waterway or pond.

Mr. Crispin explained that for the entire length of the driveway everything drains down into the pond through a series of small traps in the soil to trap the sediment through grass line swales. He said this meets the state's Best Management Practices even though this is not required for a single family dwelling.

In response to questions from Mr. Gossels, Mr. Crispin said the drainage will not come to the driveway, but beside it. On the north side, the driveway is pitched with a very small portion

grassed on the outside with a culvert underneath. He described the drainage in that area which eventually goes into the pond.

Mr. Richmond asked if there is a commitment to use the DEP's Best Management Practice requirements and if so, would the applicant be agreeable to a condition to that effect.

Mr. Crispin had no problem with this being made a condition of approval.

Mr. Gossels asked about the topography in the pond area in wet years and whether there would be any problem with flooding.

Mr. Crispin said the flood mechanism is not from this land but from the property owned by the Division of Marine Fisheries and Cold Brook is what backs up. There are two dams downstream that keep this area flooded. When it floods, it backs up into the field and it will go into the pond before it even reaches the driveway. He said it's not a question of what's running off of this site – it's more a question of backing up from Cold Brook and the two dams that are up there.

At Mr. Richmond's request, Mr. Crispin pointed out the portion of the construction which subject to Conservation Commission jurisdiction.

Mr. Klofft asked whether it is the intention of this plan to remove the house at the roadside of the property.

Mr. Crispin said the Dillons propose to modify that to a farm office with a residence in the back.

Mr. Richmond pointed out that this is a single lot. He was not sure the Board would be comfortable with two structures on a single lot.

Attorney Roy Cramer said the application before the Board is only for the special permit for a driveway. He said there are other issues with which he has had conversations with the Building Inspector and Town Counsel which deal with the status of the land and zoning. It was Mr. Cramer's belief that when the Dillons qualify for an agricultural exemption it will allow for a residence and then a farm manager's barn. He said the intent is to convert the existing structure on the site and have a farm manager's office and barn. Eventually the farm manager may live there, but it is not considered two residences on a single lot.

Mr. Richmond asked if there is farming activity on this property.

Mr. Cramer said there is, and that the property has been under Chapter 61A for a number of years. He said the Dillons intend to continue the agricultural use with haying and growing of grapes and a variety of agricultural activities. Once they get the permit to build the house in back they will live in the front structure while the house is being constructed – then they will move out to the back. The second residence will then become the farm manager's office and

barn as allowed under an agricultural exemption. He cautioned that the only item before the Board is the exemption for work in the flood plain.

Mr. Richmond said the application is for construction of a driveway to a house.

Mr. Cramer said it's for construction of a driveway to a house that's not yet constructed.

Mr. Richmond said what is in front of the Board is a driveway to a house. He said although what Mr. Cramer was saying about the agricultural use and the potential use of that building may make sense, he was not sure the Board could approve a driveway to the house until they know that the agricultural use issue is resolved.

Mr. Cramer said the reason they came before this Board is for construction activity in the floodplain. He also felt that Section 6240 of the bylaws allows the Board to act on what is before them with the capacity to condition.

Mr. Klofft said the Board can't condition based on a future decision. Mr. Gossels added that there are two houses involved; until he knows there is an agricultural exemption in place and that a house could be built, he would not feel comfortable voting on this application.

Mr. Cramer said all that is being asked for is to work within the floodplain. It would not be considered giving approval for another structure.

Mr. Klofft had a problem with this. He said if the Board voted approval and for some reason the house in the back part of the lot can't be constructed, it then becomes a driveway to nowhere.

Mr. Cramer said it could be a driveway to just drive out to the back of the property or to have a garage or some other structure.

Discussion followed on structures and use of the driveway. Mr. Klofft felt this does not meet the general intent of the Bylaw if it were just a driveway to nothing.

Mr. Cramer felt the criteria the Board should be assessing is the bylaw for putting in the driveway. Mr. Klofft said the general criteria for granting special permits also applies.

Mr. Gossels asked when Mr. Cramer would resolve whether they had an agricultural exemption.

Mr. Cramer said there is no definite time frame.

Mr. DiLuna said there is a forest cutting plan. When it is completed, he said they will have forest cutting and a farm, and this will be brought to Town Counsel.

Mr. Richmond said the Board needs to know there is an agricultural use and that this house can be built before it is comfortable voting. He then asked for comments from the audience.

Peter Churchill, 999 Concord Road, abutter to this property, had questions and concerns about the nature of the farm the Dillons are planning on creating. He questioned how they are under 61A now if they're planning to be a farm in the future. He also had questions as to where the farm is and where haying has been done in the past. He voiced concern that this is being developed under the umbrella of 61A which he felt sets a very dangerous precedent in that it has the potential for any potential lot of 5 acres to wave the farm flag.

John Donovan, 26 Old Orchard Road, resident voiced concern with the term "haying" and questioned whether there had actually been haying on the lot or if in fact they were just cutting grass.

Mr. DiLuna said the fields have been mowed, tethered and baled. It is a haying operation. He added that 61A has nothing to do with this application and should not cloud the issue.

Mr. Richmond noted that the presenters for this petition raised the agricultural exemption issue. He suggested that this hearing be continued and asked the applicants what they thought would be an appropriate time period to resolve the question of whether a second structure is allowed.

Mr. Cramer felt it made sense to continue and said they will follow up with the Building Inspector and Town Counsel. He would ask the Board to think about the jurisdictional issues as he felt the standards for working in the floodplain have been met.

Mr. Klofft said he cannot judge whether or not these activities are in harmony with the intent of the Zoning Bylaw until he understands how this particular parcel is going to end up being zoned. If it is going to end up being zoned residential, his standard is going to be different than if it is going to end up with a different use – and whether or not there is going to be one structure or two.

Mr. Cramer said in terms of where the single family residence is going to be, it will be in back. The only issue they will be talking to the Building Inspector about is to satisfy him with regard to the front structure which exists and the restrictions on that structure. Once the house in back is constructed, that is where the Dillons will live.

Mr. Richmond said this issue needs to be resolved with the Building Inspector and Town Counsel and that either or both of them should attend that continuance or to write to this Board their opinions on how this is resolved.

The hearing was continued to October 11, 2006 with the written consent of the applicant.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Constantine Athanas

Richard D. Vetstein, Associate

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, AUGUST 22, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Constantine Athanas
Richard D. Vetstein, Associate
Jonas D.L. McCray, Alternate

Notice was published in the Sudbury Town Crier on August 3 and 10, 2006, posted, mailed and read at this hearing.

Mr. Richmond, 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.

Kenneth Chung & Ying Cho were present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence at 19 Elsbeth Road. Mr. Chung also submitted photographs of the surrounding homes. He explained that his existing house is a small ranch style. He has two small children and more room is needed for his family. In addition, the proposed reconstruction includes plans for an accessory dwelling unit for his wife's parents. The new house will face towards Bowker Drive having that as its address.

Mr. Richmond had two concerns: one was that this is a large structure on a lot that's not particularly large. The other was that there is garage space on the new house and the applicant proposes to keep the existing garage which further fills up the lot.

Mr. Chung said the dimensions of the garage are 26X32 feet and a portion of that is his father-in-law's storage which he doesn't want removed. Mr. Chung said the garage portion in front could be removed, but not the storage area.

Discussion followed as to the size of the area which could be removed. It appeared that two thirds of the 2-story building would remain. Mr. Chung also pointed out the pool area which would remain.

The Board reviewed the plans for the proposed house.

Mr. Gossels felt there was too much on a small lot. He referred to the Board's guidelines for reconstructions which recommend the larger house be sited further back on the lot. Added to this is the fact that this is a corner lot and with the proposed setbacks, he felt the house would create a looming effect.

Mr. Klofft voiced concern that the existing house is 1,420 s.f. and the proposed house is 4,200 s.f. However, it appears that the unfinished attic has the potential for an additional 1,000 s.f., which would increase the square footage to over 5,000 s.f.

Mr. Richmond said the problem is that the size of the lot and the size of the structures are somewhat out of proportion, especially given the pictures that were submitted. He said while there are other large houses of similar size, they are on larger lots or set further back. He said typically the Board likes to see a 60-foot setback from the road and this is a corner lot which requires two front yard setbacks.

Mr. Richmond said with the plans the Board typically sees, he would say Mr. Chung would probably want to eliminate the storage shed and garage and move the house further back on the lot so there is more setback.

Mr. Chung said the Building Inspector had advised him to shrink the house size and submitted an alternative plan. The Board reviewed that plan briefly.

Mr. Gossels said the closer the house gets to 60 feet back, the lower the roofline appears as imposing.

In response to Ms. Cho's questions relative to the shed, Mr. Klofft said keeping the shed will be problematic because basically the applicants are so substantially increasing the amount of building on the lot. He said there is too much on the lot and with all that going on it makes it difficult to approve this.

Mr. Richmond said that plus the fact that this is a corner lot adds to the complications.

There was brief discussion on a possible redesign. Mr. Chung and Ms. Cho reiterated their statements that they don't want to remove the shed.

Mr. Richmond noted the Board was in receipt of a letter dated August 18, 2006 from Steven & Susan Berkowitz, 34 Bowker Drive which raises concerns with regard to the size of the proposed reconstruction as well as the other structures on the property.

The applicants requested this hearing be continued in order to provide a redesign of the structure.

The hearing was continued to October 11, 2006.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Constantine Athanas

Richard D. Vetstein, Associate

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, AUGUST 22, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Constantine Athanas
Richard D. Vetstein, Associate
Jonas D.L. McCray, Alternate

Notice was published in the Sudbury Town Crier on August 3 and 10, 2006, posted, mailed and read at this hearing.

Mr. Richmond, 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.

Inasmuch as this petition for an accessory dwelling is contingent upon the outcome of Case 06-43 (petition for demolition and reconstruction of a new dwelling), which has been continued to October 11, 2006, it was on motion unanimously voted to continue Case 06-44 to October 11, 2006 as well.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Constantine Athanas

Richard D. Vetstein, Associate

Case No. 06-38 – Feist – 15 Brimstone Lane – Applicant not present. Hearing continued to September 1, 2006.

EDWIN & MARIANNE LYNCH

39 Great Lake Drive

06-42 Page 14

