

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JUNE 13, 2006

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on May 25 and June 1, 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.

Nelson Costa was present to represent a petition for Special Permit to allow expansion of the overhang above the existing doorway and front steps which will result in a front yard setback deficiency of 3 feet. Mr. Costa said he would like to enlarge the existing overhang which does not cover the steps. Because of this situation, ice builds up on the steps which creates a safety issue. In order to remedy this situation, an overhang 3 feet larger than the existing one is necessary. The new overhang will match the size of the existing steps.

Mr. Costa presented a sketch of the proposed overhang for the Board's review.

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

The following motion was placed and seconded:

MOTION: "To grant Nelson J. & Lori A. Costa, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by expanding the front overhang by 3 feet from the existing overhang, property located at 40 Massasoit Avenue, Residential Zone A-1."

This Special Permit shall lapse if construction has not begun, except for good cause, within twelve (12) months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., chapter 40A, Section 17.

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

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction, which will increase the setback deficiency by 3 feet, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Since the current overhang does not cover the existing steps, it creates a safety issue, particularly during the winter, when ice builds up on the exposed portions. The size of the proposed overhang will match the size of the existing steps and will be architecturally compatible with the house. The Board finds that the additional 3-foot encroachment is minimal and will eliminate a safety issue. Further, no abutters were present to oppose this petition.

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Stephen M. Richmond, Chairman

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The Board was in receipt of a letter dated April 18, 2006 from the Design Review Board (DRB) which recommends approval of this petition.

Jeffrey Smart, Sign System Solutions was present to represent a petition for Special Permit to install an oversized wall sign at 490 Boston Post Road, which is the site of the Emerson Medical Building. Also present were Charles Giacchetto, co-owner of the building, Ms. Goldsmith, Director of Public Affairs, Emerson, Thomas Dunn, Sign System Solutions.

Mr. Giacchetto explained that size of the sign which is allowed under the bylaws is so small that it would be impractical as it wouldn't be able to be seen from Boston Post Road. The building is set back approximately 400 feet from the road. He went before the DRB and that Board recommended a larger sign. He said the initial design was for a 24" high sign but was reduced to 21" after the DRB meeting.

The proposed sign will consist of channel lettering which white acrylic covers, internally illuminated with white LED lights.

Mr. Klofft pointed out that the rendering shows the sign on the right front side of the building. Mr. Smart said the sign will be centered at the recommendation of the DRB.

Mr. Richmond asked whether any other changes made to the sign since the DRB meeting. Mr. Giacchetto said the only change is the centering of the sign.

In response to a question as to when the sign would be lit, Mr. Smart replied that the lights would be on a timer and would not be lit beyond the hours of operation.

Mr. Kelly expressed surprise that the DRB would recommend an internally illuminated sign since there are no internally illuminated signs in Sudbury. He said the revised bylaw does have provisions for illumination. He gave as an example Thunder Sports which is back lit.

Mr. Dunn explained that the sign letters will be front lit with white LED illumination. They are not lit from behind. He said the LEDs are inside the letters.

Mr. Gossels read from the Bylaw that section which deals with channel letters. Mr. Dunn said that section described basic channel letters which is essentially what he has.

Although Mr. Kelly did not want to set a precedent for internally illuminated signs, he said he would defer to the DRB's recommendation in this case.

Further discussion followed on the sign illumination after which the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Emerson Medical At Sudbury, applicant, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to allow a 24'4"X21" oversized wall sign in accordance with the plan titled Emerson Medical Drawing No. 05-12-751A5 dated 12/30/2005, except that the lettering as shown on the plan will be centered in accordance with the Design Review Board's recommendation, property located at 490C Boston Post Road, Limited Industrial District #1."

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

REASONS: The petitioner requires a Special Permit for an oversized wall sign. The building is a health care facility located approximately 400 feet from the road and an oversized sign is necessary in order to be able to identify the building. The Board finds that the proposed sign will not cause visual confusion, glare, offensive lighting or be detrimental to the surrounding area. The sign will not interfere with traffic safety in the area and will be consistent with the architecture of the building.

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Stephen M. Richmond, Chairman

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Jeffrey P. Klofft, Clerk

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Jonathan G. Gossels

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Constantine Athanas

KEVIN WHEELER  
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KEVIN WHEELER  
15 Powers Road  
06-31

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This case is an appeal under M.G.L., Chapter 40A, Section 15, by Kevin Wheeler who was present to appeal a decision of the Building Inspector that a commercial business is being operated in a residential zone located at 15 Powers Road.

For the record, Building Inspector James Kelly submitted documentation dating from 1994 to the present, including recent pictures taken of the property.

Mr. Wheeler said there appears to be some confusion as to the activities being conducted on his property. He said he received a citation from Mr. Kelly that there is a commercial business being operated on his property. He said there is not.

Mr. Wheeler said he owns a commercial business consisting of demolition, excavation and repair of construction equipment. The demolition and excavation are conducted off-site. The repairs are conducted either on site or at his repair facility in Acton. He submitted photographs of the Acton facility.

Mr. Richmond asked Mr. Wheeler to further explain the situation.

Mr. Wheeler said some of his hobbies and interests are restoring antique trucks. He also restores antique construction equipment. He said none of the equipment that is in his yard right now is connected with his business. He said they are his personal things.

Mr. Richmond asked what he does with the items he restores. Mr. Wheeler said he brings them to shows and is a member of several clubs associated with his activities. Right now, on his property he has two trucks that he is working on. In the last couple of years he said he has worked on five trucks. Some he has sold.

Mr. Klofft said he went by the property today and saw a fairly new dump truck by the barn. Mr. Wheeler said it is a 1978 antique.

KEVIN WHEELER  
15 Powers Road  
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Mr. Richmond asked why the repairing and selling of antique trucks would not constitute a business. Mr. Wheeler said because he does not have it registered and he could not make a living from doing this.

Mr. Richmond said at some point it would become a business. Mr. Wheeler said perhaps if it reached some monetary level it might.

Mr. Richmond said it appears that Mr. Kelly and some of the neighbors have a different opinion. He asked whether there was any ability for Mr. Wheeler to accommodate some of their concerns.

Mr. Wheeler said he has cleaned up the yard as much as he is going to clean it. He felt it was his right to continue with his hobbies and interests.

Referring to the correspondence submitted by Mr. Kelly, Mr. Klofft noted that in Mr. Wheeler's letter to the Building Inspector in 2002, he listed 22 vehicles as being on the property. He asked what has happened since then. Mr. Wheeler went down the list providing the disposition of each of those vehicles, some of which have been sold, sent to the junkyard, restored as antiques or kept as personal items of himself and his family.

Mr. Kelly was then asked to address the Board. He said this situation goes back to 1997, and to him it appears to be a business operation. He said every 2-3 years his department goes through this exercise which has involved himself, the previous Building Inspector and the Zoning Enforcement Field Agent. He said most recently in February 2006, there were excavators, tractors, bulldozers and a dumpster on the property.

Usually when Mr. Wheeler is contacted, the equipment goes away. However, Mr. Kelly said this time Mr. Wheeler is not inclined to move any of the equipment out because he feels he is not running a business. Mr. Kelly said he disagrees with him and has sent him a letter. He would have had to cite him but explained to him that he had the option of coming before the ZBA for a determination as to whether a business is being operated. He said while Mr. Wheeler may be restoring some antiques, he felt there is more going on there.

Beth Brown, 5 Powers Road, next door abutter, said she moved to her home in 1998. At that time the yard was filled with several large construction vehicles. She said at any given time there are at least ten different types of vehicles in the yard. She has seen large flat bed equipment trucks pull up in front of the driveway, drop off large equipment, pull it into his yard and stay there for the entire day. They get loaded up at the end of the day and they leave. This has happened on several occasions. She said at any given moment she is subjected to diesel fumes which come across to her yard and she can hear sheet metal being worked on, and this has all been going on since 1998. She has sent photographs to the Building Department, has written to the former Building Inspector John Hepting and with former Selectman Roopenian as well as

KEVIN WHEELER  
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the Zoning Enforcement Field Agent. She said there is a business going on there and she watches it go on. She said it gets cleaned up and then starts again. To her, for equipment to be dropped off in the morning and picked up at night does not imply a restoration business but rather a construction business.

David Frissora, 37 Powers Road, direct abutter at the rear, said his wife works from their home and she also hears the noise from equipment being worked on. He said he has left messages on the Building Inspector's phone when he has been bothered by the noise of vehicles being worked on at night. He said there is too much action going on in what is supposed to be a residential neighborhood.

Gary Bardsley, 5 Powers Road, said right now there are two or three bulldozers parked in the yard. He said he has seen landscape companies drop off equipment and come back later to pick it up. To him, this is a business.

Mr. Athanas pointed out that the documentation submitted this evening contains a letter dated March 6, 2006 from Mr. Kelly to Mr. Wheeler in which Mr. Kelly has determined that a business is being operated on the premises and further, that Mr. Wheeler may appeal that decision to the ZBA within 30 days. He said Mr. Wheeler did not submit his appeal within 30 days.

Following review of the letter and Mass. General Law, the Board agreed with Mr. Athanas' conclusion. Mr. Richmond then explained to Mr. Wheeler that because he did not file his appeal within the 30 days, the ZBA could not hear his appeal or vote a decision on this matter.

As a result, Mr. Richmond said the Board will not officially act on this matter because it is time barred. It would, however, provide to Mr. Wheeler a sense of how each individual Board member felt about whether a business is being conducted. The Board was polled with all members expressing their opinion that a business was being conducted on the property.

Further discussion followed on the process. Mr. Richmond informed Mr. Wheeler that Mr. Kelly's next step will most likely be to issue a citation. That citation will have to be appealed through the courts.

Mr. Richmond said this Board would encourage Mr. Wheeler to dramatically cut back on the amount of equipment which is on his property.

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Stephen M. Richmond, Chairman

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