

CASE 09-29  
Mark Sevier and Constance Farb  
14 Arborwood Road

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, November 2, 2009

The Board consisted of:  
Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; Jeffrey P. Klofft; and Benjamin D. Stevenson

Notice was published in the *Sudbury Town Crier* on October 15 and October 22, 2009, posted, mailed and read at this hearing.

Mr. Gossels, acting as 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 Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Mark Sevier and Constance Farb, applicants and owners, presented a petition for a modification of special permit 04-45 to allow the use of the existing house for a garage plus storage and workshop space rather than tearing down the old house once the new house is built. The property is located at 14 Arborwood Road.

Mr. Sevier reminded the Board that the original special permit, 04-45, allowed construction of a new house and demolition of the old dwelling. As the new house is almost complete, Mr. Sevier and Ms. Farb were beginning the process of drawing plans for a garage at the new house when they contemplated re-using the old house that had a garage in it, rather than completely demolishing it and throwing out the housing materials to construct a completely new garage out of new materials. Mr. Sevier explained that a garage at the new house would need a basement under it due to the slope of the land and the re-use idea evolved as a way to reduce waste and other resources that would be generated during demolition and rebuilding. Mr. Sevier said that he was coming before the Board to see whether or not this plan would make sense.

The proposal appeared to keep the old house in place, which raised a number of questions about its use. Mr. Gossels pointed out the bylaws oppose having two houses on one lot with two driveways. There was discussion about ensuring that the old house was not usable as a dwelling.

The applicants noted that the surrounding wetlands were a sensitive area and perhaps reducing work done on the old house would generate less impact on the wetlands.

Jim Kelly, the Town's Building Inspector, said that the idea was an interesting one, and that there have not yet been other requests such as this. He said that the structure would have to be altered to ensure that it would not be used as a dwelling. Mr. Sevier said that it was not his intent to use it as such.

Mr. Gossels explained that the new accessory apartment bylaw allows existing stand-alone structures to be converted into accessory apartments. This use would have to be permitted and the structure would have to meet a set of criteria that Mr. Gossels felt the old house does not meet. He said that while Mr. Sevier may not want to use the building as an accessory dwelling even if the kitchen and bathrooms were removed it would be easy for future residents to add them back and the use of the structure would have to be monitored.

Mr. Kelly agreed that in order to re-use the old house there would need to be some form of permanent change made to the structure to ensure that it was not used as a dwelling without proper permits.

Mr. Klofft asked whether a garage could be put on the property without a special permit. Mr. Sevier said that a garage could be built for the new house without coming before the Zoning Board of Appeals but only if it was not being built in the same location as the existing old house.

Mr. Garanin then questioned the timing of the project. He wanted to know why, after so many years from the time of the initial permit, it was taking so long to build the new house and why the old house was not already torn down.

Mr. Sevier gave a brief explanation of the events that transpired after the permit was issued. Ms. Farb said that they had just received the occupancy permit as of November 2, but have not yet lived in the house.

Mr. Garanin asked why they hadn't sought extensions for the special permit during this construction period. He expressed concerns that the conditions of the permit were not followed and said that he was having a difficult time ruling favorably on a proposal that would allow two driveways and two septic systems, particularly when the initial permit was approved for what was to be an energy efficient house. He suggested that doubling up on features like driveways and septic systems would negate the benefits of the project.

Mr. Sevier argued that people use energy, not buildings and since only one building has been in use at a time they have not wasted energy over these years as Mr. Garanin suggested. Ms. Farb said that they want a garage, but they want to build it sensitively. Since a new garage would be built so close to the old house, which would then be sent to the landfill in the process, they began thinking of the re-use concept as a way to conserve resources.

To provide the Board with a better sense of how the proposed project would happen, Mr. Stevenson asked Mr. Sevier and Ms. Farb to explain how the existing house would be converted into the garage. Ms. Farb said that there was already a garage in the old house. Mr. Sevier said that they would propose using the existing garage for parking and would take out the kitchen and laundry facilities and use the rest of the structure as work and storage space.

Mr. Klofft asked whether or not the approximately 880 square feet of living space includes the garage. Mr. Sevier said it did not. Mr. Klofft then asked what size a new garage would measure. Mr. Sevier explained that he would want a two-bay garage measuring up to 500 or 600 square feet. Because the house is on a steep hill there would need to be steel decking to support the garage and so the project would become much larger than originally anticipated.

Mr. Klofft noted that the original special permit was approved partly because the new house was being built away from the wetlands and the old house would no longer be standing close to the wetlands. He pointed out that using the existing house for a garage would negate the positive aspect of the siting of the new house.

Mr. Gossels asked if any neighbors were present who wished to speak. Charlie Rice, resident at 58 Willis Lake Drive, said that he was concerned about how the old house would look if used as a garage and storage space. He felt it might look poor from the neighbors' perspective and suggested that it might detract from the value of neighboring properties. He also expressed disappointment that the old house wasn't yet removed from the site leaving two houses standing on the lot as time has gone on.

Mr. Klofft said that the problem with the proposal is that the use of the old house as a garage is not in general harmony with the intent of the bylaw, the intent being to create the appearance of one house on a lot. This structure would look different than the typical detached garage. He said that he had a hard time seeing how the proposal meets the criteria of the special permit. He also noted from the language of the original special permit that there are conservation issues to consider and he wondered whether or not the special permit would have even been issued if the old house was not being removed.

Ms. Farb pointed out that there would probably be more disturbance to the land during the demolition process than with re-using the house. Mr. Klofft said he didn't dispute that point but that the Board was obligated to evaluate the petition according to the bylaws and the neighbors' concerns and that another accessory structure would be more in keeping with the property. Mr. Gossels concurred that a new structure would more appropriate for the neighborhood.

Mr. Gossels said that in light of the fact that several people had concerns about the re-use of the old house as a garage he reminded the applicants that they could either withdraw their petition without prejudice or the Board would then vote on the petition.

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

The following motion was placed and seconded:

MOTION: "To grant Mark Sevier and Constance Farb, owners of property, a modification of Special Permit 04-45 granted under the provisions of Section 2460 of the Zoning Bylaws, to allow the use of the existing house for a garage plus storage and workshop space, property located at 14 Arborwood Road, Residential Zone A-1.

VOTED: In favor: 0 Opposed: 5

PETITION DENIED

REASONS: The petitioners require a special permit to make any modifications to an existing special permit. Upon review of the application the Board finds that the proposed plan to use the old structure for as a garage would fail to satisfy the criteria of the special permit and would be substantially more detrimental to the neighborhood due to its scale and appearance as a second dwelling on the property. There was also some opposition from the neighbors and due to its location, environmental issues to consider.

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Jonathan G. Gossels

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Jeffrey P. Klofft

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Nancy G. Rubenstein, Clerk

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Benjamin D. Stevenson

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Stephen A. Garanin

CASE 06-54  
William Peng  
115 Willis Road

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, November 2, 2009

The Board consisted of:

Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; Jeffrey P. Klofft; and Benjamin D. Stevenson

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Mr. Peng appeared to request an extension of his special permit, case 06-54. He stated that he is near completion of the project but needs more time beyond the permit expiration date to finalize the work.

Mr. Gossels asked why the project has taken so long to complete. Mr. Peng said making decisions on things such as paint color for each room and finding tile caused extensive delays, along with the contractor's availability. Grading the earth also took longer than expected.

Mr. Klofft asked the Building Inspector for the Town of Sudbury, Jim Kelly, about whether an occupancy permit could be obtained in spite of the examples provided by Mr. Peng. Mr. Kelly could not provide a definite answer because the permit depended upon the nature of the work to be completed. He suggested that one could possess an occupancy permit but not live at the property. Mr. Klofft then asked Mr. Peng what work was left to complete.

Mr. Peng presented the Board with a letter dated October 16, 2009 from Frederick Heim of Oakwood Group, LLC, the contractors, listing the remaining work that needed be done on the property and stating that all work, including razing the existing house, would be completed by December 31, 2009. The Occupancy Permit would also be issued by this time. The remaining proposed landscaping would be completed in the spring of 2010 as weather permits.

Discussion of the extension length was discussed. Since the contractor said the work would be completed by December 31, Mr. Klofft felt that the extension should expire on December 31. He noted that the neighbors have had to endure construction for a long time and, given the examples Mr. Peng had cited, he felt the delays were self-imposed. Mr. Peng said that he too wanted to complete the project as soon as possible and did not want to have to come back for yet another extension. Mr. Klofft suggested that a tighter deadline would help to move the contractor long.

Discussion ensued about the amount of time the project has already taken. In regard to the duration of the extension Mr. Peng said that he also needed time to move his family out of the

old house and into the new one before the old one was torn down. Mr. Gossels said that once the house is complete it would not take long to move from one house to the other.

Mr. Peng said that he had installed arborvitaes along the edge of the property and had talked with the neighbors when doing so to make sure that they approved of placement.

Mr. Stevenson suggested that in reality Mr. Peng was only a few weeks overdue in completing his house from when the project broke ground. Other members on the Board reminded Mr. Stevenson of the applicant's project history and multiple extensions.

Mr. Gossels said that he was sympathetic to Mr. Klofft's reasoning for keeping the extension brief and proposed an extension to the end of January. Mr. Klofft said that he preferred shortening the extension to January 15, 2010 with construction completed and occupancy permit obtained. Mr. Peng would then have six weeks after that to move and demolish the old house.

There were no further comments from the Board or audience.

Mr. Klofft made a motion to extend the permit to January 15, 2010 provided that the current conditions of the permit will continue to apply. The motion was seconded and unanimously voted in favor of the extension.

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Jonathan G. Gossels

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Jeffrey P. Klofft

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Nancy G. Rubenstein, Clerk

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Benjamin D. Stevenson

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Stephen A. Garanin