

CASE 11-17  
Nicholas and Candice Obratsov  
61 Lakewood Drive

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, April 4, 2011

The Board consisted of:

Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Jonathan F.X. O'Brien.

Notice was published in the *Sudbury Town Crier* on March 17 and March 24, 2011, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, explained the requirements necessary to substantiate the granting of a Special Permit. She 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.

Ms. Quirk read a letter from the applicants, Nicholas and Candice Obratsov, requesting that their current application for demolition and reconstruction of their existing residence on a nonconforming lot at 61 Lakewood Drive be withdrawn. A revised application is to be submitted and discussed at the next scheduled public hearing. Filing fees will be waived.

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

The following motion was placed and seconded:

MOTION: "To accept a request from the Applicants to withdraw Case 11-17 without prejudice."

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

REASONS: The application for Case 11-17 as submitted did not make mention of a four-foot setback deficiency that would be created along the southerly property line, and as such the deficiency was not noted in the public hearing notice. A revised application will be submitted to reflect the setback deficiency. The application for Case 11-17 was withdrawn without prejudice.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Benjamin D. Stevenson, Clerk

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Jeffrey P. Klofft

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Jonathan F.X. O'Brien

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Attorney Joshua Fox, from Rollins, Rollins, and Fox, was present on behalf of the applicant Herb Chambers BMW of Sudbury to request a renewal of special permits 09-9, 09-10, 09-11, and 09-12 to sell new and used cars and repair new and used motor vehicles at property located at 68 Old County Road.

Mr. Fox reported that since the special permit was renewed in 2009 the Selectmen required a follow-up traffic study. He said that surprisingly the traffic counts are actually less than were projected, which shows that the operation does not have a traffic-intense use. He also noted that cars were not queuing up at the intersection to turn into the business as was anticipated.

The ZBA commended Herb Chambers on the work that was done to improve the intersection.

Mr. Fox added that because Old County Road is a scenic road the Planning Board required Herb Chambers to make a contribution to the tree replacement fund and they also added two large trees where trees had to be taken down during construction.

Mr. Fox was not aware of any complaints filed about the business. As such he requested that the Board consider an indefinite time period for the special permit.

Mr. Klofft asked whether there were any complaints about test drives in the surrounding neighborhood on Goodman's Hill Road. Mr. Fox said that he had not been made aware of any problems regarding Goodman's Hill Road. He added that Goodman's Hill Road is not listed on the regular route for test drives.

Mr. Gossels said that the business looks successful. He did, however, take issue with the size of the existing American flag on the large pole in front of the business. He suggested that the flag was perhaps a marketing gimmick. He said that he was inclined to recommend that the renewal term be extended, but he would want the large flag replaced with a much smaller flag when the existing one wears out.

Mr. Klofft agreed that the oversized flag is distracting to drivers.

Ms. Quirk said that the issue of the American flag was addressed through previous hearings related to signage. She did not think that the flag pertained to this hearing which concerns property use. She also reminded the Board that the request for a free-standing sign was denied in part because the flag was serving to call attention to the property.

In regard to signage, Mr. Fox noted that he has on occasion been driving behind customers who have missed the driveway into the business and who have had to turn around in the parking lot of neighboring Wingate to go back to Herb Chambers.

Mr. Gossels proposed a renewal term of ten years with an added condition about reducing the size of the flag. Mr. Klofft agreed.

Mr. Stevenson, Ms. Quirk, and Mr. O'Brien said that they would have difficulty adding the condition about the flag since they did not feel that it was relevant to the subject of the renewal.

Mr. Fox defended Herb Chambers BMW and the flag by stating that the flag pole was marked on the approved site plan. He said, however, that he would agree to a shorter renewal term.

Mr. O'Brien asked about the procedures for washing cars and removal of oil residue. Mr. Fox said that there are holding tanks on the premises to capture runoff that are then removed and replaced when full.

The Board then reviewed the conditions of the special permit. It was agreed that some conditions could be removed as they were no longer relevant because the work was completed.

Ms. Quirk asked whether there were any members of the public who wished to speak in regard to the case. None were present.

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

The following motion was placed and seconded:

CASE: 11-18

MOTION: "To grant Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 25 of the Zoning bylaws, to operate an automobile sales and service facility, property located at 68 Old County Road (Industrial District #2, Residential Zones A-1 & C-2)."

CASE: 11-19

MOTION: "To grant Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 12 of the Zoning bylaws, to allow motor vehicle sales and rental, property located at 68 Old County Road (Industrial District #2, Residential Zones A-1 & C-2)."

CASE: 11-20

MOTION: "To grant Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 13 of the Zoning

Bylaws, to allow motor vehicle general and body repair, property located at 68 Old County Road (Industrial District #2, Residential Zones A-1 & C-2).”

CASE: 11-21

MOTION: “To grant Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a Special Permit under the provisions of Section 2230, appendix A,C, Use 14 of the Zoning Bylaws, to allow motor vehicle light service, property located at 68 Old County Road (Industrial District #2, Residential Zones A-1 & C-2).”

All development shall be in accordance with the following:

1. Plans titled “Proposed BMW Dealership at 130 Boston Post Road in Sudbury, Massachusetts,” prepared by Schofield Brothers of New England, Inc., Framingham, MA, consisting of sheets SP-1 through 9, L-1 through 3, A1-1 and 2, A3-1 and 2.
2. Plans titled “Electrical Lighting Plan prepared by Cote Electrical Engineers, Hampstead, NH, consisting of sheets E1-3.
3. Traffic improvements as shown on MDM conceptual Traffic Improvement Plan dated September 21, 2006, as may be amended by the Mass. Highway Department. Approval will be required from the Board of Appeals for any substantial changes to these plans.

ADDITIONAL CONDITIONS:

1. No commercial activity will be allowed on the residential lot which is currently identified as Lot 2B.
2. The applicant will construct and maintain storm water controls as shown on the plans and will obtain a construction storm water permit prior to commencement of construction on the site. The applicant will comply with the storm water pollution plan required to be maintained by that permit.
3. Landscaping and fencing shall be substantially as proposed in the plans titled “Landscape Plan”, Sheets L-1 through 3, prepared by Schofield Brothers of New England, dated October 5, 2006, as may be modified in accordance with Site Plan approval by the Board of Selectmen, except that the two south westernmost parking spaces will be eliminated and will be landscaped and include a mature tree. Ongoing maintenance and replacement of materials as necessary will be required. Any substantial changes to these plans will require approval by the Board of Appeals.
4. All lighting shall be substantially the same as that proposed in the plan titled “Electrical Lighting Plan”, Sheets E-1-3, prepared by Cote Electrical Engineers, dated March 6, 2006, 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 3427 of the Zoning Bylaw. Lighting shall be extinguished during non-business hours as shown on the Security Lighting Plan so as to provide minimum lighting for security purposes consistent with adjacent properties. Any substantial changes to these plans will require approval by the Board of Appeals.

5. There will be no construction activities which produce off-site noise before 7 a.m. or after 6 p.m. Monday-Friday, or before 8 a.m. or after 5 p.m. on weekends or federal holidays.
6. Hours of operation shall not exceed Monday through Friday from 7 a.m.-8 p.m., Saturday, 9 a.m.-5 p.m., Sunday noon to 5 p.m.
7. No heavy bodywork is allowed on the premises.
8. Fuel storage on the property will be permitted as follows: Fuel will be for the exclusive use of this BMW dealership; the status of the fuel storage tank will be revisited in twenty-five (25) years and the applicant is responsible for notifying the Board of same; and the tank will be removed if left unused for a period of twelve (12) months.
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. Car washing will occur only within the car washing structure described in the application materials, and car washing residues will be captured and held in a tight tank and shipped off site for disposal.
10. There will be no outdoor public address system allowed on the premises.
11. All deliveries of automobiles on car carriers must come from the west along Route 20/Boston Post Road and such car carriers while in Sudbury are limited to travel only on Nobscot Road, Boston Post Road, Landham Road and the frontage along Old County Road.
12. At no time will cars be allowed to park or load on Old County Road.
13. On-site deliveries by car carriers are limited to the hours of 9:30 a.m.-3:30 p.m.
14. All signs on the property will either comply with the Sign Provision in the Bylaw or will require approval by the Board of Appeals.
15. No flags, banners, spinners, pennants or other such display banners shall be displayed on the premises without first obtaining the required approvals.
16. The Applicant will not be allowed to develop any outlet for vehicle access from the property directly onto Goodmans Hill Road.
17. The Applicant will advise all employees that no vehicle test drives will be allowed on Goodmans Hill Road.
18. The Applicant will be required to retain an independent wetlands specialist throughout the construction process to monitor activities near the wetlands. The specialist will maintain flags that show the buffer area, and will conduct periodic inspections to insure compliance with the Order of Conditions. Following completion of the work, the wetlands specialist shall submit a report to the Conservation Commission and to the Board of Appeals.

19. This permit is non-transferable and will expire in five (5) years on April 4, 2016. The board will consider renewal upon receipt of proper application on or before that date and when all conditions have been substantially met then renewal will not be unreasonably denied.”

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioner requires a special permit to operate an automobile sales and service facility, to allow motor vehicle sales and rental, to allow motor vehicle general and body repair, and to allow motor vehicle light service.

With regard to this operation, the Board finds that the use will be in harmony with the general purpose and intent of the Bylaw. It is located within an industrial district having similar uses and is not detrimental to the neighborhood, nor does it alter the character of the zoning district. This business will not substantially increase noise, traffic or other issues normally present in an industrial district.

To ensure that the applicant is in compliance with the conditions of the permit once the business is fully operational, the Board finds a five-year renewal period to be appropriate.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Benjamin D. Stevenson, Clerk

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Jeffrey P. Klofft

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Jonathan F.X. O'Brien

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Ms. Quirk, as Chair, explained the requirements necessary to substantiate the granting of a Special Permit. She 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.

Jeff Newman, President of Sign-A-Rama, was present on behalf of the applicant and owner Sudbury Crossing LP, to request a special permit to replace the existing freestanding business sign with a 46.5 square foot freestanding center-identification sign with individual tenant panels, measuring 11 feet, four inches high to stand at the entrance of 435-437 Boston Post Road.

Mr. Newman said that he is requesting the special permit from the ZBA because the height is 1 foot 4 inches greater than the 10 foot height allowed in the bylaw, the sign area is greater than the allowed 30 square feet, and the proposed material differs from the requirement that the sign be made of wood.

Mr. Newman explained that rather than a wooden sign the applicant is proposing that the new monument sign be made from expanded polystyrene which is highly durable. He said that the polystyrene sign would be hand-sculpted and hand-painted to look like brick. He presented samples of the material for the Board to review.

Mr. Newman said that there would be sixteen tenant panels on the sign. He noted that the Sudbury Bylaws require signs to use a uniform type-face, however during discussions with the Design Review Board the DRB recommended using logos on the tenant panels for ease of business identification. He reported that he has met with the DRB twice and they unanimously approved the design. In response to Ms. Quirk's question about the DRB's opinion on the material, Mr. Newman said that the DRB appeared impressed with the polystyrene.

Mr. Klofft said that the rendering provided in the application was perhaps inaccurate. Mr. Newman responded by saying that the sign was made larger in part because the DRB wanted taller letters across the Sudbury Crossing identity panel.

As a point of comparison with other signs around Sudbury, Mr. Klofft asked about the height of the sign at the Shaw's Plaza. The business sign at Shaw's Plaza is about eleven feet high.

Ms. Quirk said that the address numbers do not count toward the overall height of the sign. She said that the polystyrene would offer lower maintenance and she said that the design looked good. She said that the trend with newer signs is to include business logos. And, she added, that the increased identification also

serves as a safety feature for drivers trying to find the businesses. The majority of the Board agreed that this sign was an improvement over the existing sign.

Mr. Klofft asked how far the sign was set back from the roadway. Mr. Newman said that it was 21.5 feet from the roadway, in the same location as the existing sign.

Ms. Quirk mentioned that the bylaws do not permit blank panels. Mr. Newman said that he could take out the blank panels and add them when spaces are rented. He said, however, that would create empty space. After some discussion it was agreed that to enhance the design of the sign blank panels would be allowed as long as they were consolidated at the bottom of the sign.

Mr. O'Brien asked about illumination. Mr. Newman said that the sign would be externally lit with three floodlights proposed for each side of the sign, up-lit from the ground. The Board discussed using the standard language pertaining to lighting in the conditions of the special permit, including that lights should be white lights, and should be shaded shielded so as not to affect the vision of drivers passing by. Also included would be the hours of allowed illumination, no lighting after 11:00 p.m. or before 6:00 a.m.

Mr. O'Brien suggested that there be a condition stating that all of typeface and logos should be white.

Ms. Quirk asked whether there were any neighbors or members of the community who wished to speak. None were present.

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

The following motion was placed and seconded:

MOTION: "To grant Sudbury Crossing LP, applicant and owner, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to allow a 46.5 s.f. double-faced free-standing business sign which is 11 feet 4 inches in height as shown in the rendering included in the application received March 3, 2011, property located at 435-437 Boston Post Road, Limited Business District, provided that

1. The color scheme will be limited to three colors: green, beige, and white, as shown on the proof submitted with the application. The background color for the header will be beige with green lettering. The background for the tenant panels will be green with white lettering. Tenant logos will be permitted and will all be white;
2. Blank tenant name panels may be hung from the sign as long as they are consolidated at the bottom of the sign; and
3. The sign shall not be illuminated between the hours of 11:00 p.m. and 6:00 a.m. Only white lights shall be used for direct illumination. Illumination shall be shaded, shielded, directed and maintained at a sufficiently low intensity and brightness that it shall not affect the safe vision of operators of vehicles moving within the premises or on any adjacent public or private ways."

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



REASONS: The petitioner requires a special permit to install a directory sign that is slightly larger and in a different material than the bylaws allow. The Board finds that the location of the property justifies the granting of a special permit for the directory sign. The sign will not be a detriment to the surrounding area and will not alter the character of the zoning district which is located in the limited business district. The sign will not cause visual confusion, glare, or offensive lighting in the area, nor will it interfere with traffic safety. The Board notes that after meetings between the applicant and the Design Review Board, the DRB has recommended that the Board of Appeals consider the exceptions requested.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Benjamin D. Stevenson, Clerk

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Jeffrey P. Klofft

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Steven Poole, of Lakeview Engineering, and Jay Berglund, of Berglund Enterprises, were present to request a special permit to allow demolition of an existing non-conforming structure on a nonconforming lot at 7 Willis Lake Drive and construction of a new, colonial style residence not to exceed 2,020 square feet, which will exceed the area of the original structure and will result in side yard setback deficiencies of 9.5 feet, a front yard setback deficiency of 16.5 feet and a rear yard setback deficiency of 12.5 feet. A new septic system and new driveway would be installed on the property. The new house would have a one-car garage. He explained that the lot is L-shaped, fronting Willis Lake Drive and Hudson Road, and there are two abutters. The new house would move over about eight feet from where the existing house stands and holly bushes and arborvitae would be planted to allow screening along the property lines.

Ms. Quirk said that the new proposal makes clever use of the lot. The house would have frontage on both Hudson Road and Willis Lake Drive.

Mr. O'Brien asked what the distance was between houses. Mr. Berglund said that the distance between structures is thirty-three feet. He said that he had proposed pushing the house back farther to allow for additional parking in the driveway.

Mr. Gossels said that everything that is being proposed is aimed at minimizing current problems. In regard to comments about the height of the structure, Mr. Berglund said that the height is less than twenty-nine feet, with two stories and an attic. Mr. Gossels said that he liked the village style siting that allowed it to fit well on the lot.

Ms. Quirk asked whether there were any neighbors or members of the community who wished to speak.

Kevin Klapper, resident at 494 Hudson Road, and Howard Wolke, 1 Pinewood Avenue, asked to see the plans to have a better understanding about the orientation of the proposed structure.

Mr. Wolke, who is a direct abutter, asked about the height of the arborvitae that would be planted because he had concerns about the amount of screening that would be in between his property and the proposed house at 7 Willis Lake Drive. Mr. Berglund said they would be about eight feet high. He added that because construction crews would be digging in that area the scrub bushes would be removed.

Mr. Klapper asked about whether any trees would be taken down. Mr. Berglund said that some trees would be taken out within the construction and septic system areas. Mr. Poole added that there is a proposed play area and screening would be added along the property line. For safety purposes and to enclose the play area a stockade fence would be installed along Hudson Road and halfway up the lot line between the house and 1 Pinewood.

The Board discussed whether a condition should be added to the decision about extending the stockade fence along the entire Western property line. Mr. Wolke said that he would prefer the fence over the arborvitaes. Mr. Berglund also agreed that extending the fence was a good idea.

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

The following motion was placed and seconded:

MOTION: "To grant Berglund Enterprises, Inc, applicant and owner of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing residence and construction of new residence on a nonconforming lot not to exceed 2,020 square feet, which will exceed the area of the original structure and will result in side yard setback deficiencies of 9.5 feet, a front yard setback deficiency of 16.5 feet and a rear yard setback deficiency of 12.5 feet, property located at 7 Willis Lake Drive, Residential Zone A-1 subject to the following:

1. The new house will be constructed in the location as shown on the Proposed Site Plan dated February 28, 2011, prepared by Lakeview Engineering Associates, which is incorporated into and made part of this Special Permit;
2. A six foot stockade fence will be erected along Hudson Road as well as the west boundary and the 100 foot length of the east boundary proceeding to Hudson Road, enclosing the entire side yard;
3. 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; and
4. 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 reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed reconstruction is modest in size and the design will be compatible with the surrounding homes in the neighborhood.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Benjamin D. Stevenson, Clerk

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Jeffrey P. Klofft

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Jonathan F.X. O'Brien