

CASE 11-24
Nicholas and Candice Obratzsov
61 Lakewood Drive

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, April 25, 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 April 7 and April 14, 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.

Nicholas and Candice Obratzsov, applicants and owners of property located at 61 Lakewood Drive, were present to discuss their proposal to tear down an existing residence and build a new colonial style home within the existing footprint. A two-car garage would essentially replace the existing one-car garage and breezeway. The foundation would be new. The new house would be larger than the current house but the square footage would not exceed 3,000 square feet. There would also be a four foot side yard deficiency.

Ms. Quirk said given that the house is being built within the same footprint of the old house and because the reconstruction would be similar to other new houses in the neighborhood, she felt comfortable with the plan.

Mr. Gossels said that he had issues with the height of the house, which he calculated at almost thirty-five feet, and in light of the height he had concerns about the front setback which he felt was too close to the road. He thought the tall structure would loom over the road and neighbors.

Ms. Quirk said that the plans met the forty foot setback requirement.

Mr. Klofft agreed with Mr. Gossels that the height was high.

Mr. Gossels said that he would prefer a height of twenty-seven or twenty-eight feet.

Mr. Obratzsov said that they looked at other reconstructed houses in the area that appeared to be far larger than what they were requesting. He also passed around photographs of other houses as examples. Mr. Gossels said that the larger homes in the photographs illustrated his concerns about new houses looming over older homes.

Mr. Klofft agreed that there were certainly larger houses being built in the area, but maintained that he would be fine with the height if it were moved farther back from the road. Mr. Klofft said that he had no problems with the side yard setback deficiencies. He asked the Obratzsovs whether or not they would be amenable to moving the house back twenty feet. Mr. Obratzsov said that he could not do that because of the location of the septic tank and leaching field which are directly behind the house.

Mr. Stevenson said that Lakewood Drive is a tough neighborhood in which to replace smaller homes because larger homes are then magnified.

Mr. Obratsov said that they were trying to stay within the same footprint of the existing house.

Ms. Obratsov asked whether the Board would agree to a lower pitched roof. Mr. Gossels said that a thirty-foot height would be better. The Board cautioned the Obratsovs, however, that the pitch cannot just change but the whole design of the roof must change. Ceiling height was then discussed. The proposed plan has eight and a half foot ceilings. Discussion ensued about creating eight foot ceilings instead.

Mr. Obratsov expressed concern about ensuring usable attic space and room to maneuver around in the attic. He also cited concerns about increased construction costs due to the changes. Ms. Obratsov reminded the Board about the location of the septic system which is close to the rear of the house.

Ms. Quirk suggested that perhaps adding architectural details to the façade such as dormers would make the height appear less large. She said that not every lot can accommodate a sixty foot setback.

Ms. Obratsov asked whether the Board would agree to the house moving back only ten feet and a roof height of thirty-two and a half feet.

The Board discussed this and was in agreement.

Mr. Obratsov expressed concern about losing more of his back yard if the house were moved. The Board felt that the back yard was large enough to accommodate the move and that the house would look good if it were centered on the lot. The setback would then be fifty feet from the road.

Ms. Quirk asked whether any neighbors were present who wished to speak.

Brenda Shepard, resident at 58 Lakewood Drive, said that she owned the house directly across the street from the Obratsovs. She said that she was happy about the proposed reconstruction and did not want the Obratsovs to leave Sudbury to find a larger house.

Fred Dymont, 4 Lake Shore Drive, said that the Obratsovs were good neighbors and he also did not want the Obratsovs to leave Sudbury. He wanted them to be able to see their dream fulfilled.

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

The following motion was placed and seconded:

MOTION: "To grant Nicholas and Candice Obratsov, applicants and owners of property, a Special Permit under the provisions of Sections 2460B and 2620 of the Zoning Bylaws, to allow demolition of an existing residence on a nonconforming lot and construction of a new residence not to exceed 3,000 square feet which will exceed the area of the original structure and will result in a side yard setback deficiency of four (4) feet, property located at 61 Lakewood Drive, Residential Zone A-1 subject to the following:

1. The new house will be constructed ten (10) feet back from the location as shown on the Proposed Plot Plan dated February 6, 2011, prepared by John Malnati, Architect, which is incorporated into and made part of this Special Permit, so that the front yard setback from Lakewood Drive measures fifty (50) feet.
2. The height of the house shall not exceed thirty-two and a half (32.5) feet.
3. A revised plot plan shall be submitted to the ZBA for the record.
4. 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.
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 because the total floor area of the proposed structure will exceed the floor area of the existing non-conforming structure and because there will be a side yard setback deficiency of four feet. The Board finds that the proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and will be designed compatibly with the surrounding homes in the neighborhood.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Benjamin D. Stevenson, Clerk

Jeffrey P. Klofft

Jonathan F.X. O'Brien

Steven Milley
22 Basswood Drive

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, April 25, 2011

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Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and 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.

Steven Milley, applicant and owner of property located at 22 Basswood Drive, presented a proposal to build a 25x16 foot living room addition onto the front of his existing residence. Mr. Milley explained that the current house sits on a nonconforming lot and the addition would create a ten foot deficiency in the front yard setback. He said that the single story addition would have a cathedral ceiling with skylights and its height would be no greater than the current height of the house. A bay window will be placed onto the front of the addition. There were plans for a full foundation beneath. The main entrance to the house would be re-located to the side of the house, essentially creating two side entrances.

Mr. Gossels said that he did not have any problems with the scale and design of the addition but questioned whether it should instead project from the side of the house.

Mr. Milley responded by saying that due to the layout of the interior rooms a side addition was not feasible, nor was locating it onto the back of the house where there are bedrooms. The existing living room would become a dining room and lead to the new living room. A wrap-around deck is located at the right and rear of the house so building there is not an option without removal of that feature. The septic system and leaching field also hinder alternative locations. Mr. Milley said that he owns one of the few remaining small ranch houses left in the neighborhood and felt that the addition was a reasonable size. He added that his house is already set farther back on the lot so he felt there would be adequate room for the addition.

Ms. Quirk noted that creative landscaping around the addition might soften the look of the extension.

No neighbors were present to comment on the proposal.

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

The following motion was placed and seconded:

MOTION: "To grant Steven Milley, applicant and owner, a Special Permit pursuant to Section 2420 of the Zoning Bylaws, to build a 25x16 foot addition on a nonconforming lot which will result in a front yard setback deficiency of ten (10) feet, property located at 22 Basswood Avenue, Residential Zone A-1.

6. 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.”
7. 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 addition, which will create a front yard setback deficiency, will not be substantially more nonconforming than the existing nonconformity to the neighborhood. No abutters were present to oppose the petition.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Benjamin D. Stevenson, Clerk

Jeffrey P. Klofft

Jonathan F.X. O’Brien

John and Sonja Simon
71 Cudworth Lane

MINUTES OF THE PUBLIC HEARING
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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 April 7 and April 14, 2011, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, explained the requirements necessary to substantiate the granting of a Variance. 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.

Attorney Paul Piazza, Paul E. Piazza Law Office, and Collin Hynes, Sudbury Lawn and Landscape Design, were present on behalf of John and Sonja Simon, applicants and owners, to discuss their plans to install a swimming pool that measures approximately 40x18 feet, an 8x5 foot hot tub, and a 7-foot diameter grotto, which will result in a front yard setback deficiency of no greater than 20 feet at property located at 71 Cudworth Lane.

Mr. Piazza explained that the Simon's house stands on a lot bounded on three sides by lanes, creating frontage on three sides, which requires a setback of 40 feet on all three. Mr. Piazza said that prior to selecting the proposed site for the pool the applicants looked at two other areas that met setback requirements but which the applicants considered undesirable. One location was in the front yard, which would make it highly visible from the street and would therefore create a potential visual nuisance. The second location contemplated was at the rear of the house, but to meet the forty foot setback it would need to be so close to the house that, in addition to causing a financial hardship due to removal of an existing deck and creating concerns about excavating for a pool so close to the house's foundation, there could also be potential safety concerns with children or other pool users. Specifically there were concerns about children using the house as a point by which to jump into the pool.

The applicant then passed out a letter from Scott Canavan of Ferrari Pool and Patios in which Mr. Ferrari explained that placing the pool inside the existing building envelope setback regulations creates an unsafe condition for egress to the pool area and an economic burden for the homeowner due to the proximity of construction to the house. Mr. Piazza noted that included in the application were several letters of support for the proposed location from neighbors.

Mr. Piazza reported that Sudbury Building Inspector Jim Kelly opined that given that the property is bounded by lanes on three sides (Cudworth Lane, Michael Lane, and Widow Rites Lane) the house would therefore have frontage on three sides and therefore the setbacks should be 40 feet on each, or front yard setbacks. Mr. Piazza requested that the ZBA give consideration to the proposed location as a side yard so it would then meet the side yard setback requirements or with a rear yard designation and the setback deficiency would not be so great.

Mr. Gossels agreed with Mr. Kelly's assessment that the setbacks are all front yard setbacks.

Mr. Klofft felt that the hardship was that the shape of the lot was 3-sided and narrow, but he felt the proposal meets the criteria for a variance.

The Board began to evaluate whether or not the proposal met the criteria for a variance.

Mr. Piazza said that the shape of lot, or its topography, would necessitate a variance.

As far as substantial detriment to public good, all of the neighbors have been contacted and none are in opposition.

Ms. Quirk asked about the type of fence that was being proposed for the pool area. Mr. Hynes said that a standard fence made of black steel and chain link would be installed in order to secure the pool and to meet safety requirements. He added that the pool would be surrounded by thick screening so that it would be inconspicuous.

Mr. Piazza said that there was only one direct abutter. There was foliage in between the two properties and in one area where there was a gap the applicant has proposed installing nine foot saplings to further screen the area. Mr. Piazza added there is an existing play set and trampoline in the area near the pool so there is already a sense of expectation from neighbors on the use of that area of the yard.

As to hardship Mr. Piazza said that the condition of lot and safety concerns are primary hardships and in addition there are financial difficulties with enforcement of locating the pool within the required setbacks.

The Board discussed that the proposal does not derogate from intent of bylaw.

No neighbors were present to comment on the proposal.

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

The following motion was placed and seconded:

MOTION: "To grant John and Sonja Simon, applicants and owners of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to install approximately a 40x18 foot swimming pool, 8x5 foot hot tub, and a 7-foot diameter grotto, which will result in a front yard setback deficiency of no greater than 20 feet, at property located at 71 Cudworth Lane, Residential Zone A-1."

If the rights authorized by a Variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the Board of appeals may in its discretion and upon written application, extend the time for exercise of such rights for a period not to exceed 6 months; and provided further that the application for such extension is filed with the Board of Appeals prior to the expiration of the one-year period."

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

REASONS: The petitioners require a Variance to construct a swimming pool in a location that will require a waiver of the front yard setback requirements.

The Board reviewed the criteria which must be satisfied in order to grant a Variance and found the following:

1. The Board finds there to be special conditions relating to the shape of the lot in that the lot has frontage on three sides rendering it essentially a peninsula with one direct abutter. To locate the pool in front of the house, albeit within the setbacks, would result in the pool being visible from the street and to the neighbors.
2. With regard to hardship, the Board finds that construction of the pool in a conforming location, in this case closer to the house, would entail higher construction costs due to the removal of a deck that is already attached to the house and therefore the hardship would be of a financial nature. Additionally there are safety issues related to children and pool users associated with locating the pool close to the house.
3. There will be no substantial detriment to the public good if the variance is granted. The pool will be in an appropriate location where it will not have any effect on the neighbors.
4. Granting the variance will not nullify or substantially derogate from the intent or purpose of the Bylaw which is to promote the general welfare of the town and to encourage the most appropriate use of the land.

Taking into account the fact that the pool could be constructed in a location which would not require a Variance, the Board weighed the merits of the proposed location which would encroach on the front yard setback requirement. Due to the unique lot configuration, the Board found the only logical choice was to grant a waiver of the front yard setback as the end result would be a “more normal” situation in terms of location and visibility and one which would not adversely affect the neighbors. Further, the variance is supported by the neighbors as evidenced by the letters of support for the proposed location submitted to the ZBA. Therefore, the Board finds that the petitioners have satisfied the criteria for granting a Variance.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Benjamin D. Stevenson, Clerk

Jeffrey P. Klofft

Jonathan F.X. O'Brien

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, April 25, 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

Also: Jody Kablack, Director of Planning and Community Development

For the Applicant:

Ben Stevens, Manager, Trask Inc.

Joshua M. Fox, Attorney, Rollins, Rollins & Fox

Ms. Elizabeth Quirk, Chair of the Zoning Board of Appeals, opened the hearing and Mr. Stevens provided an update on progress. There were no additional documents received in advance of the meeting. To date there have been two working sessions. To address concerns raised by the ZBA and neighbors at the initial hearing, plans had been reconfigured into two potential scenarios, one which called for thirty-two units, and including nine affordable units, and one which had thirty units total, which would enable eight affordable units. Mr. Stevens also provided a sketch for the Board at the hearing.

The most noticeable changes to the plans are those that reduce the impact to the site. The cul-de-sac design reduces the amount of pavement required and preserves a stand of evergreen trees by one of the abutting neighbors' properties. Visitor parking has been relocated to the two end spaces to break it up. The front setback from Boston Post Road is fifty feet and setbacks are greater near the wetlands. Instead of two and three unit groupings the plan calls for three and four unit groupings so that rather than twelve buildings the plan can be achieved with only nine. This also reduces on-site construction. Mr. Stevens said that he still needs to speak with the Fire and Police Departments to obtain their feedback on the new design. He said that a landscape architect will be employed to determine a landscape plan.

Mr. Stevens noted that in the thirty-two unit plan the end units changed to become middle units and, he explained, that doing so impacts the financials. However, he said that it was helpful to have some data from the Villages at Old County Road to use as a model.

Affordable units would primarily consist of two-bedroom units with one one-bedroom and one three-bedroom unit. The total septic capacity for the site is sixty-four bedrooms.

Mr. Stevens said that in his opinion there is not much difference between the thirty-two versus thirty unit plans, but he said that the thirty-unit plan does get tight financially and one affordable unit and one market unit would be lost.

Mr. Klofft said that with the thirty-unit plan there could be more parking available and he estimated perhaps twenty-five percent more room on the site.

Mr. Gossels said that he thought the design was much improved. He wanted to know more about the financials of the project.

Mr. Stevens said that he has also asked for some waivers for stretch energy code fees, but said that in all likelihood he was not going to be able to receive one. He said that the affordable units have changed, the plans and he was not able to have financials for this meeting but would have a better sense later. He did say that there could be a \$5,000 to \$7,000 increase in construction costs. The reason being that there is a new energy code with associated costs and a new sprinkler code which would alter costs as well. He anticipates an increase of about \$250,000. He also said that middle units usually tend to sell for less, so that reduces income on the project as well.

Mr. Gossels said that while he likes the design it still seems crowded.

Mr. Stevens said that he could still take out a few feet from the width of the middle units to instead make them deeper so that more space can be between buildings. He said there might be other scenarios which would appear to make more space without reducing the number of units.

Mr. O'Brien asked what would be located at the center of the cul-de-sac. Mr. Stevens said that he would be hiring a landscape architect to create a plan for the space.

Ms. Kablack added that there would be stormwater pipes under ground and grass on top. Street trees will be planted as well to create green space for the people who live there.

ZBA Member Ben Stevenson asked what makes it unfavorable to further reduce the number of units.

Mr. Stevens said that 25 percent of the units are subsidized. The project has slightly higher density due to the cost of having to build the affordable units. In order to make the project feasible he would need to build either 31 or 32 units. He did not feel the project could be built with fewer.

Ms. Quirk said that she understands that affordable housing in the town needs to be maximized. With the 32 unit plan the town would gain nine affordable units which brings the town closer to the percentage mandated by the state. She said that this development appears to be good for the town.

Mr. Klofft said that he too feels that the buildings are rather tightly spaced. He said he felt better about the 30 unit, eight affordable unit configuration.

Ms. Quirk said that she did not see enough of a difference between the thirty versus thirty-two unit plans and so she would rather have one more affordable unit.

Mr. Klofft said that the impact on the easterly abutting neighbor is minimal. He questioned why there was no visitor parking for thirteen units.

Mr. O'Brien wanted to know whether the end units could be re-aligned.

Mr. Stevens said that the driveways could run tighter.

Mr. Klofft and Mr. Stevenson wanted to know how this project compares with the Villages at Old County Road.

Mr. Stevens said that there are changes in the financing and approval. He said that it is one thing for permitting, and another to see it actually built.

Ms. Kablack explained to the board that that when discussing the thirty-two versus thirty unit plans there are additional financial considerations to factor in. If having thirty-two units lessens the strain on finances then there may be funds available from the applicant for traffic mitigation. She said that additionally if the interiors of the affordable units are similar to market rate units then this keeps the affordable homes in better condition. Better landscaping can also be funded.

Mr. O'Brien agreed with Ms. Kablack's points.

Mr. Klofft questioned why at the first working session the discussion focused on 28 or 30 units and now it has increased to 30 and 32 units. Mr. Stevens answered that thirty-two is the maximum that can be allowed on site due to the septic constraints. Also, the new design opened up the site so two could be added. Mr. Klofft suggested that the new design appeared tight against the wetlands boundaries, but noted that the plan had attractive units with decks and patios, so he thought that would be good financially.

ZBA Member Mr. Stevenson agreed with Ms. Quirk on the point of additional affordable units. He said that the development should be profitable both for the development and for the Town.

Mr. Klofft said that the Board has not yet asked Mr. Stevens to present a scenario that showed only twenty-eight units. But he said that the thirty-unit plan meets the criteria, is an attractive development with a great amount of open space and he suggested that the development could move forward at thirty units.

Ms. Quirk reminded the Board that Mr. Stevens' plan that falls within the ZBA Comprehensive Permit guidelines. She did not have a problem with thirty-two units with nine affordable.

At that point Ms. Quirk then asked for a sense of the Board. Ms. Quirk preferred the 32-unit plan with 9 affordable units, as did Mr. Stevenson. Mr. Klofft suggested that a 31 unit development might be a good compromise and likened it to the 40B at Carriage Lane. Mr. Gossels first commended Mr. Stevens saying that he has been a terrific applicant to work with, but then said that he would prefer a 28 or 30-unit development or alternatively a 31-unit development that would allow nine affordable units. Mr. O'Brien said that he was not partial to the 4-unit building at the end closest to Boston Post Road, but would be ok with a 31-unit development with nine affordable units. He liked the fact that one would be a buy-down unit.

Mr. Stevens said that a 31-unit development would be an option, but would not be the best option. One of the buildings would have to be eliminated at the cul-de-sac and the units added elsewhere.

Ms. Kablack asked whether the 32-unit with 9 affordable units had included one of them being a buy-down unit. So that there would really be eight affordable units and an additional buy-down unit bringing the total to nine. The Town would give \$100,000 so the unit could sell for more. She said that the Sudbury Housing Trust could possibly do this if it gets CPA funds.

Mr. Stevens said that smaller units are attractive because they are cheaper to build.

Ms. Quirk reminded the Board about expectations for Route 20 including trying to fund a traffic light.

Mr. Stevens expressed disappointment that the preference was for 31 units. He is confident that a 32-unit development would work with nine affordable units. He felt that no one would know that there were 32

units. He felt that the end building with four units was a unique building and was not a detriment to the development. He said that if he were pushing the guidelines then he would understand having to revise the plans, but he felt that asking to reduce it by one unit would make things tighter for the development.

ZBA Member Ben Stevenson said that what Mr. Stevens said resonated with him. He said that Mr. Stevens knows what sells.

Ms. Quirk asked what the next steps might be. She cautioned the ZBA about becoming fixated on unit numbers because the developer had worked so hard to propose a plan that met the guidelines. She compared the situation to the recent development approved for Maynard Road where unit numbers ultimately impacted that project.

Mr. Klofft said that the Board would be striving for balance within the design.

ZBA Member Mr. Stevenson said that in looking at the two designs no one would really see the difference, but there are implications to reducing by one unit.

Mr. Stevens said that the 31-unit development is similar to the 32 unit development. He said that he could move forward with the project and determine changes. Then he can decide if it would be worth it to create the additional buy-down unit. He said if he revises the 32-unit plan to make 31 units with eight affordable then he could plug in the buy-down affordable so that the work could move forward. He said that from the working session Mr. Klofft had asked for the 30-unit plan. He didn't think that it would work because of the mitigation funds coming. That is why he did not go into much difference between the 30 and 32 design during the presentation.

Mr. Gossels said that in general the Board feels comfortable with the design and now it is down to fine-tuning. The building on the end is an architectural issue but can still proceed with other units.

Mr. Stevens said that he could see what could be done with the end unit. He has enough flexibility now to proceed and meet with other Town Boards. Drainage needs to be considered and a landscape architect needs to provide a plan.

It was agreed that rather than another working session the full Board should see the revisions in a few months.

A motion was made to continue the hearing.

The hearing was continued to Monday, June 20, 2011 at 7:30 p.m. in the Lower Town Hall Meeting Room.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Benjamin D. Stevenson, Clerk

Jeffrey P. Klofft

Jonathan F.X. O'Brien

