

CASE 11-36
Robert Prendergast/Integrated Properties LLC
5-15 Concord Avenue

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, July 18, 2011

The Board consisted of:

Jonathan G. Gossels, Acting Chair; Benjamin D. Stevenson, Clerk; Nancy G. Rubenstein, Associate;
Jonas D.L. McCray, Associate; and Jonathan W. Patch, Associate.

Notice was published in the *Sudbury Town Crier* on June 30 and July 7, 2011, posted, mailed and read at this hearing.

Mr. Gossels, as Acting Chair, 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.

Attorney David Wallace and applicant Robert Prendergast of Integrated Properties LLC were present to request a Special Permit to install a twenty-four square foot double-sided, free-standing business sign on property located at 5-15 Concord Road. The placement of the sign, which is determined by the location of the parking area, would necessitate a setback deficiency of eleven feet. Mr. Wallace said that placing the sign at the required sixteen foot setback would be infeasible because it would position it in the middle of the parking lot. Mr. Wallace added that the business sign would replace extraneous signage at the site and would serve as a complete list of the tenants in the building.

As requested in the application dated June 3, 2011, Mr. Wallace noted that the applicants want to use logo fonts for each tenant panel as has been approved for other business signs in Sudbury. He cited the directory sign at Shaw's Plaza as an example.

Mr. Wallace noted that Sudbury's Historic Districts Commission had issued a certificate of appropriateness for the proposed sign on May 23, 2011 and he said that the applicants had met with the Design Review Board on June 1, 2011 as well. The DRB had approved of the plan but suggested that the applicant lower the overall height of the sign to below ten feet.

Mr. Gossels said that he felt that the application was thorough and questioned the applicant about adjusting the height. Mr. Wallace said the DRB had suggested that if the sign were being installed at street level then ten feet would be a reasonable height. However, since the sign is being installed on an elevated bank then it should be reduced because its height could be as high as thirteen feet otherwise.

Mr. Gossels suggested an alternate height of seven feet so that the sign does not loom over the road.

Mr. Stevenson, Ms. Rubenstein, Mr. McCray, and Mr. Patch were in agreement with lowering the sign to seven feet. It was discussed that the size of the tenant panels did not necessarily have to be reduced, but that alterations to the panels would be left up the discretion of the designer.

Mr. McCray asked about plans for illuminating the sign. Mr. Prendergast said that low-wattage lights would be installed in soffits at the top of the sign and would be set on a timer to conform to the lighting bylaws. He said that the light would not be intense and would not shine into a public area.

Ms. Rubenstein asked whether the original lighting plan could potentially be too bright if the sign were reduced in size. Mr. Prendergast said that he did not think he would need to alter the lighting plan but would review this.

No neighbors were present to comment on the proposed sign.

As there were no further questions from the Board or audience the hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Robert Prendergast, Integrated Properties LLC, applicant, and 15 Concord Road LLC, owner, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to allow a twenty-four (24) square foot double-faced, free-standing business sign which has a setback deficiency of eleven (11) feet as proposed in the application dated June 3, 2011, property located at 5-15 Concord Road, Village Business District Zone, provided that

1. The overall height of the sign shall be no greater than seven (7) feet;
2. No sign shall be illuminated between the hours of 11:00 p.m. and 6:00 a.m. except signs on premises open for business; and
3. 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 business sign with a lesser setback than the bylaws allow. The Board finds that the location of the property justifies the granting of a special permit for the business 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 Village Business District. The sign will not cause visual confusion, glare, or offensive lighting in the area, nor will it interfere with traffic safety.

Jonathan G. Gossels, Acting Chair

Jonas D. L. McCray, Associate

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Ann Stone, Sharon Sutherland, and Jamie Denn were present to request a renewal of Special Permit 09-24 to operate a kennel at 554 Boston Post Road. Renewal was being requested under the same conditions as the original special permit with one exception, that the applicants want to increase the number of dogs allowed on the premises from forty to fifty dogs. Ms. Stone said that while they do not envision keeping fifty dogs on the premises at all times, the increase would provide flexibility for their business operations ensuring that Pet Nannies remains in compliance with capacity requirements during busy sessions and during client drop-offs and pick-ups.

Ms. Sutherland explained that business has been steadily growing and there have been no known issues or complaints with regard to the operation of the kennel. With the exception of the number of dogs allowed, the applicants are comfortable with the current conditions of the special permit. Pet Nannies is not impacting traffic on Boston Post Road as clients drop off and pick up dogs and she noted that Pet Nannies staff often pick up clients' dogs in their own vehicles further reducing cars visiting the site.

Ms. Stone said that realistically the dog to staff ratio is 7-1. She then described the facilities and their system of fencing with gates and half-gates to separate groups of dogs.

Mr. Gossels then listed letters of support that the Board received from Pet Nannies' clients prior to the hearing. Letters were received from the following: Kathy French; Deborah and Dale Hardy; Diane Baumgartner, 22 Munnings Drive; Victoria Jacobson, 99 Cranberry Circle; Elizabeth Ingersoll, 150 North Road, #39; Stacey Lander, Framingham; Aiko Pinkoski, 4 Whispering Pine Road; Tami Buhr and Jeff Gray, 11 Allene Avenue; Michel Orzech; and Deborah Dineen, 14 Firecut Lane. A letter from the Animal Control Officer, Jennifer Condon, was also submitted citing excellent conditions at the facility as observed during a site visit. Given the positive support Mr. Gossels was inclined to grant the renewal.

Mr. Gossels questioned whether there might be a technical problem with the ZBA's issuance of the renewal since the kennel is located in a Residential Zone. If the kennel is being operated as a Home Business (Section 2342 of the Zoning Bylaws) by special permit in a Residential Zone there is a restriction on the number of employees that the business can have. A home business is restricted to only one employee, however Pet Nannies has four or five employees and would need additional employees in order to maintain the required dog and staff ratio.

Mr. Gossels said that Building Inspector Jim Kelly suggested that because the property is used as a farm it is not a home business and would not be subject to provision 2342.

Mr. Kelly was in attendance at the meeting. He said that in looking further at the bylaws he noted that a kennel is a use that is permitted in all zoning districts, therefore the ZBA can issue a special permit for an allowed use and the number of employees becomes a non-issue. By its nature a kennel has dogs and employees to manage them. He used the example of a nursing home as an allowed use in a residential district as a comparison.

Ms. Rubenstein noted that the Animal Control Officer had said in her letter that she observed the dog to staff ratio to be 10:1. Ms. Sutherland said that perhaps at drop-off there may be more dogs, but realistically with forty dogs the ratio has been 8:1.

Ms. Sutherland said that one of the main reasons for increasing the dogs is that they want to accommodate a growing client list. The winter season was busy and they now have a waiting list for prospective clients.

Mr. Stevenson asked about hours of operation. Ms. Sutherland said that hours are from 7:00 a.m. until 1:00 p.m. Dogs are not boarded overnight but are strictly on the premises for play and exercise. He asked if fifty dogs was realistic for the long term, or would Pet Nannies be looking to increase again. Ms. Stone said that fifty was the maximum for now. She added that additional shifts could be added in the future, however at the moment there are no plans to increase hours of operation.

Mr. Gossels noted that the increase would be a growth of twenty-five percent which he considered a big jump. Ms. Sutherland said that if they do not increase the number of dogs then they cannot have the flexibility to add new clients.

Mr. Gossels asked whether operating procedures would need to change to accommodate more dogs and if they did would the resulting product be the same. Ms. Stone then talked about daily shifts and staff coverage. Ms. Sutherland added that it often takes a while to process new clients and try out the dogs at the facility so there might not be fifty dogs at the kennel every day, but given that fluctuation, having fifty as the maximum allows flexibility for training dogs and for operating the kennel. She said that the winter season is when dogs particularly need a place to exercise and they want to be ready to welcome clients for the busy season.

There were no neighbors present to comment on the proposal. As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Anne Stone, Sharon Sutherland, and Jamie Denn, applicants, renewal of Special Permit 09-24, granted under the provisions of Section 2313 of the Zoning Bylaws, to operate a kennel on the premises, property located at 554 Boston Post Road, Residential Zone A-1, subject to the following:

1. A kennel license will be required for this operation.
2. The dogs do not become a nuisance.

3. The maximum number of dogs allowed on the property is fifty (50).
4. There will be an 8:1 ratio of dogs to people allowed for this operation.
5. All dogs must wear tags which identify their owners' address and telephone numbers.
6. Each dog being dropped off must be on leash from the car to the facility.
7. No dogs will be allowed off leash in the area shown on the plan marked Exhibit #1 which is made part of this Special Permit.
8. Waste disposal shall be in accordance with Board of Health requirements.
9. No commercial activity consisting of breeding or sale of dogs will be allowed on the property.
10. Hours of operation shall be from 7:00 a.m.-6:00 p.m. No overnight boarding of dogs will be allowed.
11. A sign in conformance with the Bylaw will be allowed.
12. Any complaints received by the applicants shall be reported immediately to the Dog Officer.
13. This permit is non-transferable and will expire in one (1) year on July 18, 2012, and the Board will consider renewal upon receipt of proper application on or before that date."

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

REASONS: The petitioners seek renewal of a special permit to operate a kennel on the premises. This kennel has been in operation for five (5) years and there have been no problems associated with the operation or complaints from abutters. The use is allowed in all districts by Special Permit from the Board of Appeals. The Board finds the use to be in harmony with the general purpose and intent of the Bylaw. It is in an appropriate location, not detrimental to the neighborhood and does not by its presence significantly alter the character of the zoning district. The property consists of a large tract of land which contains a working farm stand located between two commercial businesses. The facility is not visible from Route 20. Adequate and appropriate facilities have been provided for proper operation. The animals are restricted to the area as shown in the plot plan which is made part of this decision to ensure that the use will not be offensive to the adjoining zoning districts or neighboring properties. The Board finds that a one-year renewal period will allow for review to ensure proper operation with the increase in the number of dogs permitted.

Jonathan G. Gossels, Acting Chair

Jonas D. L. McCray, Associate

Benjamin D. Stevenson, Clerk

Nancy G. Rubenstein, Associate

Jonathan W. Patch, Associate

CASE 11-38
Elaine Payne
15 Thoreau Way

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, July 18, 2011

The Board consisted of:

Jonathan G. Gossels, Acting Chair; Benjamin D. Stevenson, Clerk; Nancy G. Rubenstein, Associate; Jonas D.L. McCray, Associate; and Jonathan W. Patch, Associate.

Notice was published in the *Sudbury Town Crier* on June 30 and July 7, 2011, posted, mailed and read at this hearing.

Mr. Gossels, as Acting Chair, 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.

Applicant Elaine Payne and architect Jeffrey Baron of Baron & Associates, Inc. were present to request a special permit create an 808 square foot accessory dwelling unit as an addition to her house located at 15 Thoreau Way. Ms. Payne explained that she currently lives alone which she is finding somewhat of a struggle. She wants to enlarge her house so that her daughter and son-in-law, along with their triplet boys, could live with her. She said that she needs to build a garage to accommodate her family members and other houses in the neighborhood also have garages. Ms. Payne would live in the accessory dwelling unit located above the garage.

Mr. Baron said that the storm water management plan had been approved on June 20, 2011 and he had obtained approval from the Board of Health for the septic plans and wetlands conditions were approved by the Conservation Commission. He said that he had also reviewed the plans with Building Inspector Jim Kelly who confirmed that the accessory dwelling is well below the 850 square foot requirement.

Mr. Gossels asked about the height of the house. Mr. Baron said that it is approximately thirty-two feet from grade level. He mentioned that the driveway is approximately one and a half feet below the main portion of the house. To enter the house one would have to step up to the foyer and then up to the landing of the house.

Mr. Gossels asked other Board members to comment. Mr. Stevenson said he felt that the plans were exactly what the bylaw intended and he felt that the architect had achieved the goal of a seamless design. Mr. Gossels agreed.

Ms. Rubenstein felt that the addition was large but the whole effect was not out of character with the neighborhood. She said that while it had a large volume it looked nice.

Ms. Payne said that the angle of the addition was necessary due to the location of the septic system.

Mr. Baron said that the addition appears to soften the house and provides a nice entry.

Mr. McCray asked whether the septic system would be staying in the same location. Mr. Baron said that it would be moving closer to the street and farther away from the wetlands. He said that it actually improves the back yard area for Ms. Payne's grandsons.

Mr. Patch asked whether the neighbors were aware of the plans. Mr. Baron said that they were. No neighbors were present to comment on the proposal.

As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Elaine Payne, applicant and owner of property, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws in conformance with the application for the Special Permit dated June 21, 2011 and the plans submitted by the Applicant, to allow an Accessory Dwelling Unit that is no greater than 850 square feet for property located at 15 Thoreau Way, Residential Zone A-1, as follows:

1. The Accessory Dwelling Unit shall be occupied by no more than four persons.
2. Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of the Accessory Dwelling Unit in accordance with all requirements of the Board of Health.
3. There shall be at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the Accessory Dwelling Unit.
4. The property owner shall file a sworn affidavit with the Town Clerk, with a copy to the Board of Appeals, certifying such occupancy is consistent with the Special Permit, every four (4) years.
5. This permit shall be recorded at the Middlesex South District Registry of Deeds prior to issuance of a building permit for the accessory dwelling unit.
6. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit."

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

REASON: The petitioner requires a Special Permit to allow a single-family accessory dwelling unit. The Board finds that the petitioner has fulfilled the requirements of the Bylaw for the granting of a Special Permit.

Jonathan G. Gossels, Acting Chair

Jonas D. L. McCray, Associate

Benjamin D. Stevenson, Clerk

Nancy G. Rubenstein, Associate

Jonathan W. Patch, Associate
