

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, April 23, 2012

The Board consisted of:
Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft;
Jonathan F.X. O'Brien.

Notice was published in the *Sudbury Town Crier* on April 5 and April 12, 2012, 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.

Elizabeth Orlando, applicant and owner of property, was present along with her attorney Michael Fee of Pierce and Mandell, P.C., to request renewal of special permit 11-31 to operate a home pet care business, a kennel, on the premises, property located at 163 Barton Drive.

Mr. Fee began by walking the Board through Ms. Orlando's application, providing a status update on what has been done at Ms. Orlando's home since the special permit was granted in 2010. No changes to the facility or operations were being sought at this time as the facility is at its maximum capacity with four cages. The only modification requested of the special permit was an increase of the renewal term from one to three years.

Mr. Klofft asked whether there had been any issues with the business. Ms. Orlando said that to date there have been no complaints filed about noise or other nuisances associated with the kennel.

Ms. Quirk noted that a letter of support was received from Sudbury's Animal Control Officer, Jennifer Condon, dated April 12, 2012, stating that the conditions were immaculate. She also noted that the application included supportive input from a number of neighbors.

Mr. Stevenson asked how often the kennel was full. Ms. Orlando said that often there are just one or two boarding dogs, however when it is summer of vacation time there can be up to four dogs.

Mr. O'Brien asked how Ms. Orlando deals with noise and dog waste. Ms. Orlando said that the property is equipped with an in-ground septic system and enzymes to break down waste. She said that if the dogs are outside she is with the dogs so if there is excessive barking she can manage the dogs. She said that overall the dogs appear happy and calm, which in turn keeps the noise to a minimum. She said that in the evening she uses a baby monitor to keep tabs on the dogs in the kennel.

Ms. Quirk asked whether there were any comments from the audience.

Elaine Jones, 21 Bent Brook Road, said that she is an immediate neighbor of Ms. Orlando's and said that no one would ever know that the kennel existed due to the lack of noise. She has been very pleased with the kennel's operations and supports it.

Dick French, 20 Bent Brook Road, said that he can never hear any barking and Ms. Orlando manages the dogs on walks extremely well.

Ted Jones, 21 Bent Brook Road, said that the behavior Ms. Orlando's clients' dogs set a good example for the other neighborhood dogs.

Ms. Quirk said that she would be comfortable extending the duration of the special permit from one year to three.

Mr. Gossels said that he planned to abstain from the vote.

Mr. O'Brien questioned oversight of the kennel during the three year period. Ms. Orlando said that the Animal Control Officer would be making annual inspections and reporting to the Board. She said that anyone who would have a complaint would have the ability to report issues to the Dog Officer.

Mr. Stevenson said that he was impressed that so many neighbors were present at the hearing to express support for the kennel.

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 Elizabeth Orlando, applicant and owner of property, renewal of Special Permit 11-31, granted under the provisions of Section 2313 of the Zoning Bylaws, to operate a kennel on the premises, property located at 163 Barton Drive, Residential Zone A-1, subject to the following:

1. The Applicant shall construct an addition in accordance with the plans and specifications submitted with the Application and in conformity with all applicable codes and regulations.
2. The dogs shall not become a nuisance.
3. The maximum number of dogs allowed on the property shall be no more than seven (7) (including the Applicant's pets).
4. All boarding dogs shall wear tags which identify the business.
5. Any complaints shall be reported immediately to the Dog Officer.
6. Ultrasonic units shall be employed to deter excessive barking.
7. Compost bins shall be provided for disposal of dog waste, the number and capacity of which shall be appropriate for the number of dogs. Dog waste is to be picked up immediately.

8. No commercial activity consisting of breeding or sale of dogs will be conducted on the property.
9. No signs advertising the kennel will be allowed.
10. Dogs shall be dropped-off at the facility no earlier than 8:00 a.m.
11. Dogs shall be kept inside at night.
12. Dogs that are outdoors are to be supervised at all times.
13. Dogs are to be contained within the fenced area or by a leash at all times.
14. No more than four (4) boarding dogs at a time may be on a leash.
15. Fencing shall consist of a chain link fence bordering the woods along the property and six foot stockade fencing at the front and back of the site.
16. This permit is non-transferable and will expire in three (3) years on April 23, 2015, at which time the Board will consider renewal upon receipt of proper application on or before that date.”

VOTED: In favor: 4 Opposed: 0 Abstained: 1 (Gossels)

REASONS: The petitioner seeks renewal of a special permit to operate a kennel on the premises. 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. Adequate and appropriate facilities will be provided for proper operation. The animals will be restricted to the area as shown in the plot plan which is made part of this decision in order to ensure that the use will not be offensive to the adjoining zoning districts or neighboring properties. Given that there have been no issues with the facility and the Dog Officer's review of the site was positive, the Board finds that a three-year renewal period is appropriate at this time.

Elizabeth T. Quirk, Chair

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Prior to beginning the hearing Mr. Klofft disclosed the fact that he was a former neighbor of the applicant. He asked whether anyone present had any concerns about this. If there were concerns he offered to recuse himself from the case. No concerns were raised by anyone present.

Sarah DeFreitas, applicant, and both Joe Maillet and Joe Maillet, Sr., builders, were present to discuss an application for a special permit for demolition of an existing structure and reconstruction of a four bedroom house to be located at 39 Elaine Road. Ms. DeFreitas said that the design of the house, which would have approximately 3,235 square feet of living space, would be similar to other new construction in Sudbury.

Mr. Gossels said that the proposal appeared to comply with the ZBA's reconstruction guidelines.

Mr. Maillet submitted to the Board a revised site plan showing that the proposed house had been moved west four feet and a swail had been added along the eastern boundary to accommodate concerns that the abutting neighbor, Paul Taranto, 33 Elaine Road, had expressed in regard to drainage and privacy. To further provide a screen between the two properties, Mr. Maillet said that overgrown shrubs would be removed and new shrubs would be planted that would reach a height of eight to ten feet. He said that during the week prior to the ZBA hearing Mr. Taranto had expressed that this plan was acceptable.

Ms. Quirk asked whether the large tree which currently stands behind the existing house would remain. Mr. Maillet said that it would have to be removed for the new house. He said that perimeter screening along the western side would remain.

Ms. Quirk said that all setbacks appear well within the parameters.

Mr. Stevenson commented that the house appeared large. Mr. Maillet said that the house would have approximately 3,235 square feet of living space, but he did include a margin for more square footage on the application should the residents want to use their basement as living space.

Ms. Quirk asked whether any neighbors wished to comment on the proposal.

Paul Taranto, 33 Elaine Road, said that he had a number of concerns. One issue he had was with the square footage. Mr. Gossels and Mr. Klofft said that the ZBA's decision would rest on approval of only the specific plan presented to the ZBA and any future changes would have to be approved by the Board.

Mr. Taranto then said he had concerns about the height of the shrubbery that would be planted between his property and the new house. He said that the proposed arborvitae can grow up to twenty-five feet. Since he is a gardener and spends much of his time working on his garden he did not want the light blocked by the new trees. He said that he would prefer plantings that were no higher than eight feet since that is what currently is there today. Members of the ZBA felt that was reasonable and said that a condition could be placed in the decision stating that any plantings, species to be determined, shall not exceed a height of eight feet.

Mr. Taranto said he was concerned about water runoff since Elaine Road has existing drainage issues. Mr. Maillet said that a swale was being incorporated into the plan. He said that he would have to obtain a stormwater permit from the Planning Board prior to receiving his building permit and that should identify any water issues. Building Inspector Jim Kelly confirmed that if more than 5,000 square feet are to be disturbed then a stormwater permit would be required.

Stan Hargus, 28 Ford Road, said he also had concerns about stormwater.

Mr. Stevenson asked about the specific concerns with water. Mr. Taranto said the concern was about the recharge of the aquifer since the road does not drain well. He was concerned that the septic system would be covered by what he considered to be excessive impervious surface. He said that basements on the street do flood often.

Mr. Maillet said that the house would be built about a foot above the water table so flooding should not be a problem for the house.

The Board discussed the fact that the stormwater application, once filed, would be part of the public record and could be reviewed by Mr. Taranto and Mr. Hargus.

Mr. Taranto said that the application states that the building will be contained on the lot. He was concerned with the possible looming nature because the house would be two-stories and his house was one-story and this would have an impact on privacy.

Mr. Maillet said that he tried to alleviate this by moving the house over four feet.

Mr. Klofft said that farther down Elaine Road several of the houses were rebuilt with two stories so this was not unusual.

Mr. Stevenson asked for a measurement of the height of the house. Mr. Maillet said that it was thirty-two feet high from the top of the foundation and thirty-three feet from the grade. Mr. Taranto said that his house was only fourteen and half feet tall.

Ms. Quirk asked whether there was any room for moving the house back further from the road to further separate the alignment from the neighbors. Mr. Maillet said that the proposed location is positioned well within the lot.

Mr. Gossels also added that neighborhoods do go through transformations and those in Sudbury are no exception.

Mr. Klofft said that in terms of recent reconstruction around Sudbury this proposal is a modest size. He noted that the neighbor to the west of the house has a smaller setback so it would be good to keep it as centered on the lot as it can.

Mr. Taranto asked whether the septic system could be moved to the back of the site. Ms. Quirk said that would present a problem with the house looming over the road. She said that it would be better to have a greater front setback so the septic area should stay in the front.

Mr. Taranto then reiterated his concerns and noted that several had been addressed through the hearing. His concerns included the details for rear yard privacy, proposed plantings shading his gardens, drainage, runoff, stormwater management, and too little affordable housing in Sudbury. Lastly he noted that he was concerned about the mechanicals of the house being located too near his windows. The Board discussed a condition that would ensure that heat pumps and air conditioning condensers would be located at the rear of the house.

Sherry Tantarelli, 5 Curry Lane, said that she was concerned about the lack of affordable housing in Sudbury and said that the ZBA should evaluate the current rate of teardowns. Ms. Quirk said that the bylaws for the town are governed by vote at Town Meeting. She said that the re-use of existing parcels with dwellings already on them is preferable to new construction on an open parcel. She said that there is perhaps a tension about teardowns, however through Town Meeting the Town as a whole has said that this is ok. She recommended that Ms. Tantarelli bring her concerns to the attention of the Sudbury Housing Trust and the Community Housing Specialist, Beth Rust.

Mr. Gossels added that the ZBA's management of the teardowns by striking a balance between the property owners, builders, and the neighbors is essential. He said that people have a right to build on private property.

Stan Hargus, 28 Ford Road, said that he agreed with Mr. Gossels. He said that his main concern was stormwater management.

Steven Greene, 36 Elaine Road, said that he had major concerns about hazardous waste, such as asbestos, when the older homes are torn down. He described the intricacies of doing such work and said that he was pleased to see the Sudbury Housing Authority taking appropriate measures as they proceed with building their duplexes around North Sudbury. Building Inspector Jim Kelly attempted to assure Mr. Greene and the Board that there are state regulations that must be followed as part of the permitting process and the Building Department is aware of the work.

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 Sarah DeFreitas, applicant, and Joan Burns, owner, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow reconstruction of an existing residence on a nonconforming lot not to exceed 4,200 square feet, which will exceed the area of the original structure, property located at 39 Elaine Road, 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 prepared by PureGround, Inc., dated March 10, 2012 and revised April 19, 2012 with a side setback of 35' to the east, which is incorporated into and made part of this Special Permit.
2. Vegetative screening along the eastern border of the lot shall be comprised of species that will grow no higher than eight (8) feet.
3. Heat pumps and air conditioning condensers must be placed at the rear of the house.
4. The demolition contractor shall comply with all applicable federal and state laws and regulations.
5. 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.
6. Construction must be completed no later than one year after commencement."

VOTED: In favor: 4 Opposed: 0 Abstained: 1 (Klofft)

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 Board felt that the new structure would be compatible with the surrounding homes in the neighborhood.

Elizabeth T. Quirk, Chair

Jonathan F.X. O'Brien

Benjamin D. Stevenson, Clerk

Jeffrey P. Klofft

Jonathan G. Gossels