

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, July 16, 2012

The Board consisted of:  
Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jonas D.L. McCray, Associate; and Stephen A. Garanin, Associate.

Notice was published in the *Sudbury Town Crier* on June 28 and July 5, 2012, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, opened the hearing. She then 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.

William Reid Smith-Vaniz was present to request a special permit to build a 9'x12' foot porch onto the back of his house at 29 July Road which would result in a rear yard setback deficiency of no greater than twelve (12) feet. Mr. Smith-Vaniz described his lot, explaining that it is similar in size to those in his neighborhood. He said that there already existed a 12'x12' patio at the back of the house on top of which the porch would be situated. The porch would be a one-story, three-season porch with screens and glass. It would not be lighted or heated.

As to its impact on any neighbors Mr. Smith-Vaniz said that the rear of the house is fully screened by oak and evergreen trees so that it could not be seen by the neighbor to the rear of the house. There is also a garage between his house and another neighbor's house so that neighbor would also not be impacted by the porch.

Ms. Quirk asked whether Mr. Smith-Vaniz had spoken with his neighbors about the project and he said that he had and no one expressed any concerns.

Mr. Gossels noted that the porch would be a modest structure and would not be seen from the road.

Ms. Quirk agreed saying that it would not be more intrusive than the existing patio.

Mr. Stevenson said that since the neighbors were fine with the project he was also.

Mr. McCray asked about the height of the house in relation to the porch. The porch is one-story and the house has two-stories.

No abutters were present to express concerns.

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 William Reid Smith-Vaniz and Alison Beth Smith-Vaniz, applicants and property owners, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to construct a 9x12 square foot porch on a nonconforming lot which will result in a rear yard setback deficiency of no greater than twelve (12) feet, property located at 29 July Road, Residential Zone A-1.

1. 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.
2. Construction must be completed no later than one year after commencement.”

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioners require a special permit due to the nonconforming nature of the property. The Board finds that the proposed alteration appeared reasonable, would improve the house, and will not be detrimental to the neighborhood. The Board noted that no abutters were present at this hearing to oppose this petition.

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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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Ms. Quirk, as Chair, opened the hearing. She then explained the requirements necessary to substantiate the granting of a Use 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.

Robert Smith, Commander of the Sudbury American Legion Post 191, was present to request the renewal of a Use Variance to use the building and property located at 676 Boston Post Road for a private clubhouse and meeting hall. Mr. Smith, who has held the position of Commander of the Sudbury American Legion Post 191 for the last year, gave a synopsis of the activities that occur at the American Legion and provided the background for the Use Variance and its many renewals. He said that the American Legion is once again running smoothly and is financially stable and has been able to participate in and contribute to various local institutions and charities

Mr. Smith said that there had been no physical changes to the building or property with the exception of some interior improvements made to the restrooms and bar area. No changes were being sought to the conditions of the Use Variance.

Ms. Quirk asked whether Mr. Smith had received any complaints from abutters about the activities at the property.

Mr. Smith explained that he had heard from one neighbor, Bruce Kankanpaa, 11 Stone Road, who notified him about wild vines that were growing from the American Legion property onto Mr. Kankanpaa's lot. Mr. Smith said that he would have his landscaping company address this issue.

Mr. Gossels suggested that since there had been no issues in the last two years perhaps the duration of the Use Variance could be extended to three years. Mr. Kankanpaa was present and Ms. Quirk asked his opinion, as a direct abutter, about extending the term of the Use Variance. Mr. Kankanpaa said that over the past year events at the American Legion were fairly quiet and he said that he had confidence in Mr. Smith's leadership of the American Legion. As such he said he would be amenable to the extension. However, he did request that more advance notice be given to abutters who wished to submit comments to the ZBA. Mr. Gossels suggested that abutters be contacted annually inviting comment to the ZBA prior to renewal. The Board agreed to add this as a condition of the Use Variance.

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 the Sudbury American Legion Post 191, Inc., applicant, renewal of Use Variance 10-19, granted under the provisions of Section 2250, Appendix A,C, Use 24 of the Zoning Bylaws to use the building and property as a private clubhouse and meeting hall, property located at 676 Boston Post Road, Residential Zone A-1, provided that:

1. There shall be no parking on Boston Post Road or Stone Road by those using the building, and there shall be no traffic hazard as defined by the Police Chief.
2. All off-street parking is to be on the westerly side of the property. The five-foot wide buffer between the parking area and rear lot line shall be maintained and shall consist of a low retaining wall at the rear of the parking area with suitable plantings within the buffer area.
3. Special consideration for event parking on any abutter's property must be obtained by written request to the abutter at least forty-eight (48) hours in advance of any American Legion event.
4. The barrier constructed to prevent parking on Stone Road shall be properly maintained.
5. There shall be no illuminated signs on the property.
6. One sign that conforms to the Town of Sudbury's sign bylaw will be allowed.
7. One storage shed that conforms to Sudbury's bylaw and that is subject to the approval of the Design Review Board will be allowed. No exterior rubbish bin (dumpster) will be allowed.
8. There shall be no organized outdoor activities on the property, except for the following four occasions: Memorial Day, July 4<sup>th</sup>, and Veterans Day, plus one additional outdoor event per year.
9. There shall be no exterior floodlights on the property except one single motion sensor light to illuminate the parking area and one single light to illuminate an American Flag. The light for the flag shall be situated and maintained in accordance with federal laws and guidelines for lighting of a flag. Both of the lights shall be located so as not to shine toward abutting residences or into the public way thus creating a safety hazard.
10. No nuisances shall be created and abutters must be contacted by written letter annually, with a copy to the Board of Appeals, to solicit complaints or areas of concern.
11. This Use Variance is non-transferable and shall not run with the land and shall be limited to expire on July 16, 2015. The Board will consider renewal upon receipt of proper application on or before that date."

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

REASONS: The petitioner seeks renewal of a use variance to continue using the building and property as a clubhouse and private meeting house. Recognizing that this use is in a residential zone and has in the

past been the subject of complaints from the neighbors, the Board felt strongly that lines of communication between this facility and the neighbors should be kept open as an attempt to head off any problems which may arise. Given that no issues had been identified over the last year the Board finds that a three year renewal term for this use variance is appropriate and stressed the importance of complying with Condition #10 prior to any subsequent renewal.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Ms. Quirk, as Chair, opened the hearing. She then 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.

Shaun Briere, Attorney at Mawn and Mawn, P.C., was present along with James Mawn, President and CEO of Northern Bank and Trust Company; Site Engineer Brian Fairbanks, EBI Consulting; and Project Architect Mark Sereda, Strategic Design Works, to request several variances to operate a commercial bank building with a detached drive-thru at 430 Boston Post Road, which is presently owned by Colonial Auto of Sudbury, Inc.

Mr. Briere requested that the Board allow the applicants to formally withdraw without prejudice case 12-22, the petition for a variance from Section 2430. It was discussed that the request for the operation of the nonconformity was not actually necessary. A motion was made and seconded. The request for withdrawal without prejudice was approved unanimously.

Mr. Briere then provided a background on the property describing existing conditions, including the site's use, layout, extant buildings, and their proximity to Union Avenue and Boston Post Road. He said that the existing buildings would be demolished and replaced with a one-story, 2,500 square foot bank building. The bank would include a detached drive-thru window with ingress and egress located exclusively on Union Avenue with a dedicated exit. There would be fourteen parking spaces, including one handicapped space, and the site would be landscaped where no landscaping exists today. He said that the proposed plan would lessen the existing nonconformities on all respects.

Mr. Briere participated in a pre-application meeting on March 27, 2012 with several Town Departments including the Board of Health, Building Department, Department of Public Works, Conservation Commission, and the Fire Department and comments were incorporated into the project design.

Brian Fairbanks of EBI Consulting submitted for the record a locus map and layouts of existing and proposed conditions. He then described the physical nature of the site. He said that today much of the site is impervious with a small amount of grass so the focus of the new plan would change this. The bank would be positioned prominently on the corner of the intersection and would measure approximately 2,500 square feet which is a smaller amount of building than currently exists. The remote drive-thru would be situated to the north. The decision for a remote drive-thru was site-driven due to the size and shape of the lot and the need to incorporate parking, accommodate vehicle queues, and keep traffic off of

Boston Post Road. He explained traffic flow throughout the site and noted that there would be one two-way drive and one dedicated exit drive on Union Avenue. In regard to the positioning of the building, Mr. Fairbank explained that the reason it is sited close to Union Avenue is that the area to the right would be reserved for the proposed septic system. Due to Title V regulations, separation of ground water is a concern. There is high groundwater concentration on this site. In order to meet Title V septic system regulations with the distance from the bottom of the system to groundwater the system is going to have to be raised two to three feet. As such the septic system could not be situated underneath the parking lot. To the far north of the site, off of the site, is a drainage ditch which technically is a wetland that requires a minimum 100-foot buffer. Therefore the front right-hand side of the site is the only area where the septic system could go. As of now the site drains from Boston Post Road toward the drainage ditch so the placement of any mounding affects that drainage. He said that the septic area would not really be seen because it would be hidden by a retaining wall and would be further hidden by the building itself. He said that the grassy area at the back of the site really should be more natural vegetation of the kind found in a wetland area.

Ms. Quirk asked whether a site plan had been submitted for approval. Mr. Briere said that the ZBA was the applicant's first stop but a site plan submission to the Board of Selectmen would follow.

Mr. Gossels said that he was still troubled by how close the building would be to Union Avenue and its looming quality. He noted that the applicant had not submitted any elevations for the Board to have a sense of what the building might look like. Mr. Fairbank said that the existing structure is one and a half stories high and the new structure could be almost two-stories given the shape of the roof.

Mr. Gossels also felt that too much area was designated for parking given today's banking needs and the two-bay drive-thru also meant more paving. Mr. Briere said that fourteen spaces is the minimum number of parking spaces required by Sudbury's bylaws.

Ms. Quirk questioned what might happen to bank sites when banking changes and the Town is left with a number of out-dated bank buildings. She asked whether the building could be moved north and east at all to get it off of Union Avenue. Mr. Briere said that the bank is pushed as far to the north and east as is possible. Ms. Quirk then asked whether the building could be altered at all to change the looming nature. Mr. Fairbank said that the building would be at about a twenty foot setback from the edge of pavement which is an improvement over where it stands today.

Mark Sereda, architect, showed a sample elevation and explained that the building would be contemporary in nature but would include more traditional elements. The roof would be stepped back away from the corner and would rise twenty-nine feet. At the corner it would be flat. The building itself is L-shaped. There would be glass along the front to give the building a transparent, almost porch-like feel. The retaining wall around the septic system would be made of stone and the stone wall element would be repeated on the building. Colonial, or traditional, materials would be used to clad the building. Mr. Gossels said that he was ok with the twenty-nine foot height and L-shape.

Addressing Ms. Quirk's comments about the future of bank buildings, Mr. Sereda said that if the building were to have another use in the future the architecture could lend itself well to retail space or a restaurant due to its shape and the use of glass.

Mr. Gossels asked what number of parking spaces would be needed if the bank did not have to adhere to Sudbury's bylaws. Mr. Mawn said that there would likely be four employees at this location and perhaps three to four customers at a time, therefore eight spaces would be realistic. Mr. Mawn suggested that perhaps a solution to additional parking is that a grassed area without curbing could be used if necessary. Mr. Briere said that he could look into the possibility of taking out some of the parking. Ms. Quirk said that she would like to know what the Board of Selectmen would think about reduced parking as the Selectmen could vote to allow a reduction of up to 30% under Section 3113. Ms. Quirk said that she could write a memo to the Board of Selectmen with the ZBA's preference for reduced parking. There may be alterations to the site plan that would affect parking.

With respect to Section 2620 (Case 12-23) requesting relief from the twenty-foot front yard setback from Union Avenue created because the building would be situated on a corner lot, Mr. Briere said that the proposed setback from Union Avenue would be 7.8 feet resulting in a deficiency of 12.2 feet. He said that 7.8 feet would be improving the current setback.

Mr. Gossels said that if the building were shrunk slightly then it could be moved back more. Mr. Briere said that the general design with these branch banks is 2,500 square feet and he would have to review with his client whether a smaller building could be a consideration. Mr. Garanin agreed with Mr. Gossels because he felt that this site has a unique setting. Mr. Stevenson said that even a few feet would make a big difference but he also appreciates the bank's business needs. The Board wanted to make it clear that they did not expect the full 20 foot setback, but rather they wanted some improvement.

With respect to the special conditions related to the soil conditions, shape of the lot, and topography, Mr. Briere said that the lot is small and on a corner and with the existing location of the drainage swale to the north resulting in that 100 foot buffer and the site's high groundwater these all create special site conditions that have determined the location of the bank building so that he feels it is as far back from Union Avenue and Boston Post Road as the engineers can place it. He felt that there was no substantial detriment to the public good and no derogation to the intent or purpose of the bylaw. He said that Northern Bank and Trust Company would be vastly improving the site. Pedestrian sidewalks would be installed on both Union Avenue and Boston Post Road where none exists now. This will ensure that all traffic entering and exiting the site will do so safely whereas now traffic flow is rather half-hazard. Mr. Briere said that strict adherence to the bylaw does create a substantial hardship because of the design constraints with respect to the ground water and drainage swale in the back and the septic system installation. There is no substantial detriment to the public good because of the removal of the existing structure and the subsequent clean-up and beautification of the site, and installation of proper on-site septic system, increased landscaping and green areas, and sidewalk installation.

Mr. Stevenson asked whether the client might consider swapping the locations of the septic area and the building. He noted that the green space would then be at the corner. He understood that the septic system would have to be elevated however the setback issues could be alleviated with the switch. Mr. Fairbank said that the main reason for the proposed location is for bank operations and aesthetics. He suggested that the bank might prefer to have the building in the front where the main access would be.

Mr. Stevenson said that if it were moved over the bank would not lose its visibility given the size of the site. Mr. Gossels said that he would also prefer the two elements to be switched. Mr. Garanin also agreed.



There was a brief discussion about the abutting businesses to the right of the site. Mr. Briere said that he would discuss the changes with his client.

The Board then discussed continuing the request of Case 12-23 for a future hearing so that Mr. Briere could consult with the applicant about making changes to the proposal and looking into the feasibility of making modifications to the proposal.

With respect to Section 3143 (Case 12-24) which requires at least 200 feet between driveways the applicant is proposing access and egress drives that are approximately 60 feet apart. With respect to the special conditions and shape and topography of the site there is the issue of the small lot and corner location, the existence of the drainage swale and wetland resources which pushes everything to the south and necessitates putting the driveways in the locations as proposed. He said that there would be no substantial detriment to public good, nor derogation to the intent of the bylaw because the applicant is increasing the site's efficiency and safety with the proposed traffic circulation on Union Avenue as opposed to Boston Post Road and by providing a dedicated ingress and egress. Substantial hardship would be created and there would be confusion on the site if the driveways were to be situated elsewhere. The applicant is also providing landscaping and sidewalk installation to further safety goals.

Mr. Stevenson agreed. Regarding the traffic flow of the driveway Mr. Stevenson then asked if two ATMs were needed or could the bank manage with only one. Mr. Briere said that two ATMs were vital to the bank's operations. Mr. Gossels then asked about the canopy over the ATM and the lighting. Mr. Sereda said that there were approximately 9.5 feet on each side of the canopy with a pitched roof that is not too tall. The Board confirmed whether the southern access drive was two-way. It is intended to be a two-way drive. Mr. Garanin asked about the purpose of the northern one-way drive out to Union Avenue. Mr. Fairbank said that the Sudbury Fire Chief had wanted fire trucks to be able to fully circulate the lot around the drive-thru.

Ms. Quirk said that she did not have a problem with the driveway locations given that the site is very constrained and unique.

Regarding Case 12-26, with respect to Section 2230(c-20) to allow a detached drive-thru the structure would be located more than ten feet from the main building. Once again, the special conditions related to the soil conditions, shape of the lot and topography are that the lot is small and located on a corner with constraints caused by the drainage swale and wetlands, therefore the proposed location is the only realistic location that the drive-thru can be placed. He said that there is no real opportunity to create an attached ATM machine at this site. Again he said that there should be no substantial detriment to the public good or derogation to the intent of the bylaw and he noted that drive-thru ATM kiosks have been approved elsewhere in Sudbury without issue. ATMs create a desirable service to patrons and residents of Sudbury. The substantial hardship from literal enforcement of the bylaw would prevent the applicant from having this service available to patrons providing a vital and necessary convenience and without it this bank would be at a disadvantage from other banks in town. There would be no substantial detriment to the public good due to the cleanup and beautification of the site, installation of sidewalks and pedestrian access, and the addition of landscaping and greenery.

Ms. Quirk, Mr. Stevenson, and Mr. Gossels all agreed that with the realities of banking today drive-thru ATMs are needed and given this site it would be difficult to have an attached ATM.

With respect to Section 3550, Case 12-25, to allow less than twenty feet of a landscape buffer along Union Avenue Mr. Briere again said that the special conditions with soil, topography, and shape of the small lot, corner location, drainage swale and wetland resource area, all of these necessitate the design of the site and there is not an opportunity to install the proper landscaping.

Mr. Gossels noted that if the building and the septic area were swapped then the landscape buffer could be larger. Mr. Briere said that he had agreed to look into this possibility given that the current design does not comply.

Ms. Quirk asked whether any members of the audience wished to speak in regard to the proposals. No abutters were present to express concerns.

Mr. Garanin said that he did, in fact, have a real problem with the number of banks in Sudbury in close proximity to one another and he felt that there could be a more appropriate use approved for 430 Boston Post Road. He suggested that other retail uses would perhaps be better. As such he said that he would abstain from the vote. Ms. Quirk noted that because there was no sewer system in Sudbury this is one reality of why a restaurant could not be situated there.

The Board discussed that the criteria needed to approve variances for Cases 12-24 and 12-26 had all been satisfied and because of the reasons set forth in the applications and as defined by Mr. Briere at this hearing, the Board agreed that the hearings for Cases 12-24 and 12-26 should be closed. Determinations for Cases 12-23 and 12-25 were to be continued to the next scheduled hearing of the Zoning Board on Monday, September 10, 2012 in order for the applicant to consider the feasibility of swapping the locations of the building and the septic system area.

The following motions were placed and seconded:

Case Number 12-22:

MOTION: "To accept a request from the Applicant to withdraw Case 12-22 without prejudice."

(Request for a Variance for the purpose of conducting and operating a commercial bank building with a drive-thru window, 430 Boston Post Road)

VOTED: In favor: 5 Opposed: 0

Case Number 12-24:

MOTION: "To grant Northern Bank and Trust Company, applicants, and Colonial Auto of Sudbury, Inc., property owner, a Variance under the provisions of Section 3143 of the Zoning Bylaws, to allow two access driveways within 200 feet of one another, property located at 430 Boston Post Road, Business District #5."

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

Case Number 12-26:

MOTION: To grant Northern Bank and Trust Company, applicants, and Colonial Auto of Sudbury, Inc., property owner, a Variance under the provisions of Section 2230 (C-20) of the Zoning Bylaws, to allow a

detached ATM drive-thru structure at a location greater than 10 feet from the main building, property located at 430 Boston Post Road, Business District #5.

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

REASONS: The petitioners require a Variance to have more than one access driveway for ingress and egress within two hundred (200) feet of one another and require a Variance to allow a drive-thru ATM structure at a location greater than ten (10) feet from the main building. The Board finds that the petitioner has satisfied the criteria for granting Variances under Sections 6130 of the Zoning Bylaws.

Specifically, under Section 6131 the subject parcel is a small lot located on a corner and the existence of a drainage swale and wetland resource area that results in a 100-foot buffer zone on the northern portion of the site creates special conditions at the site not typical of other lots in the zoning district.

In terms of the driveways, the Board finds that under Section 6132 a hardship would be created by forcing both entering and exiting traffic to utilize the same driveway resulting in congestion and confusion regarding entry and exit to the site in close proximity to the major intersection at Union Avenue and Boston Post Road. Under Section 6133 the Board finds that the requested variance serves the public good by allowing a second driveway making ingress and egress from the site safer and more efficient, keeping traffic entering and exiting from the site as far away as possible from the Union Avenue and Boston Post Road intersection without disturbing the 100-foot wetland buffer. The intent and purpose of the bylaw is to provide safe and adequate ingress and egress therefore the Board finds that the requested variance aids that purpose by increasing the safety and efficiency of the traffic circulation at the site. Additionally the Board finds that the public good is directly served as a result of the overall project by the removal of the existing use and structure on the site, the cleaning up and beautification of the existing site, the installation of a proper on-site septic system, and increased landscaping and green space.

With respect to the detached ATM structure, the Board finds that the above reasons hold true with the additional reasoning that under Section 6131 the site conditions necessitate locating the bank building as close as possible to the front of the site along Boston Post Road to accommodate the 100 foot wetland buffer to the north and the installation of the septic system immediately adjacent to the building. The location of the building and design of the site including the parking area does not allow for a drive-up ATM attached to the main building. Under Section 6132 the Board finds that a hardship would be created by preventing the applicant from providing a vital and necessary convenience to its patrons putting it at a severe disadvantage with other banking facilities in the Town of Sudbury where such remote drive-thru ATMs have been allowed. Under Section 6133 the Board finds that the requested variance for a detached ATM does not derogate from the intent or purpose of the bylaw and does not represent a substantial detriment to the public good as remote drive-thru ATMS have been approved and allowed at other sites in the Town without issue and represents a desirable service convenience to patrons of the banking facility, which consists largely of Sudbury Residents.

For the above reasons, it is the opinion of the Board that the granting of these variances will not nullify or substantially derogate from the intent or purpose of the Bylaw.

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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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Prior to discussion of Case 12-27 Mr. Gossels disclosed to the Board and those present that he is a patient of Dr. Cadoo's and that he had no financial interest in serving on this case. No one expressed any concerns with Mr. Gossels' participation in the hearing.

Ms. Quirk, as Chair, opened the hearing. She then explained the requirements necessary to substantiate the granting of a Use 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 Robert Dionisi was present along with applicants William and Lori Cadoo and owners Mel and Joan Kramer to request a Use Variance to conduct and operate a medical and professional office at 631 Boston Post Road which is zoned as a residential C-1 property. The property has been utilized as a medical office since the 1980s and as ownership is changing hands Attorney Dionisi suggested that it would be fitting to continue its use in that manner.

Mr. Dionisi then provided a history of the district and the site explaining that from 1975 until 1982 the property was a single-family residence. After that point, as the neighborhood went through its transformation to include additional businesses and offices a Use Variance for 631 Boston Post Road was obtained in 1982 as ZBA Case 82-18. The applicant at that time was Dr. Kramer. William and Lori Cadoo have a chiropractic and physical therapy business in Waltham and would like to relocate to Sudbury. Mr. Dionisi said that the reason that the applicants applied for the Use Variance was to continue the property's use as a business. He said that he had discussed the matter with Zoning Enforcement Agent Jim Kelly prior to submitting the application and it was decided that it would be best to apply to the ZBA to allow the continuation of the use under new ownership. Mr. Dionisi explained that retrofitting the building to make it residential once again would be extremely difficult and would cause great hardship to the owners and it would place a residence in the midst of what is essentially a business district. The special conditions of the property are that it is a commercial property.

Mr. Dionisi said that there is no substantial derogation to the public good as there is quite a bit of commercial activity along Boston Post Road in the area of the property and he cited some of the examples of those businesses.

Additionally Mr. Dionisi said that there is no substantial derogation to the intent of the bylaw as the Sudbury bylaw was drafted to create an opportunity for the ZBA to issue a Use Variance when there are nonconformities.

Mr. Dionisi said that the site plan approved in 1982 would remain unaltered so there would be no need for the applicant to apply for site plan approval. There would be no expansion to the property however the garage would be renovated to house a physical therapy and rehabilitation gym. The garage doors would be removed and replaced with glass windows. There would be no need to expand the septic system or the driveway and parking area. Additionally there would be no excessive or additional drainage from the site.

With regard to the bylaw's criteria for Variance requirements the applicant contends that the conditions set forth in Section 6140 will be adhered to, specifically Section 6142 and 6143. The use of the property will be almost identical to the use maintained by Dr. Kramer since the 1980s. He said that Dr. Cadoo would have two physical therapists and one chiropractor on site. He noted that there is presently one chiropractor operating out of the second floor per a rental arrangement. Dr. Cadoo would continue to rent the second floor for medical practices or professional uses. Office hours would run from 7:30 a.m. to 7:30 p.m. Monday through Friday and there would be up to three or four patients on the premises per hour.

In regard to Section 6220, the special permit criteria that are necessary for the Variance, Attorney Dionisi said that the use would be in harmony with the general purpose of the bylaw as there has been no disturbance to the neighborhood and no municipal contact noting otherwise from any Board or Commission. The existing medical office, which has been there for thirty years, blends in well with the neighborhood and surrounding medical and professional office buildings in the area. As such the use is in an appropriate location and is not detrimental to the neighborhood. Facilities will be provided for the proper operation of the business. As mentioned previously there will be no external expansion of the building except for the minor alteration to the façade of the garage converting the bay doors into windows. The proposed use will not be detrimental or offensive to the adjoining Zoning District or neighboring property due to the effects of lighting because the lighting plan will conform to the existing site plan as approved by the Board of Selectmen in 1982. Signage will also remain the same. The business will consist of noiseless and odorless activity. Hours would be from 7:30 a.m. to 7:30 p.m. The proposed use will not add additional traffic to the area because there should not be any additional activity at the site. Sight distances are very good.

In closing Mr. Dionisi said that given the plans it is the applicants' intent that they have met the requirements of Sections 6130, 6140, and 6220 of the Sudbury Zoning Bylaws.

A brief discussion ensued about signage and all parties agreed that the building should have no visible indication that there is a business on the premises with exception of a business sign that is of the same size and in the same location as what currently exists today. The sign would continue to be lit with two ground lights.

Building Inspector Jim Kelly inquired as to whether the existing sign was permitted in any way given that the building is in a residential district in which small signs are typically allowed. Attorney Dionisi said that the approved site plan from 1982 allowed the existing sign. He said that any new sign would continue to be the same size in the same location. Dr. Kramer said that the sign went through review by the Town at the time it was installed.

Mr. Stevenson asked whether the second floor would be rented to medical-related professionals only or could there be any sort of professional located there. Mr. Cadoo said that he would rent to any business professional. Ms. Quirk said that the space itself would limit what the second floor could be used for so

there would probably not be additional impacts if, for example, an accountant rented space versus a chiropractor.

No abutters were present to express concerns.

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 William and Lori Caddoo, applicants, and Melvyn and Joan Kramer property owners, a Use Variance under the provisions of Section 2230 of the Zoning Bylaws, for the purpose of conducting and operating a medical/professional office on a parcel of land zoned for residential use, property located at 631 Boston Post Road, Residential Zone C-1.

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioners require a Use Variance to change the permitted use of the property from a residential use to a business use. The Board finds that the petitioner has satisfied the criteria for granting a Use Variance under Section 6140 of the Zoning Bylaws. Specifically, under Section 6142 the subject parcel is bounded on three sides by uses of a commercial nature of the same classification as the applicants have sought. Under Section 6143, the subject parcel has been in use as a medical and professional building without incident since 1982. The property has been utilized to a degree as to render unreasonable any use which would be in conformance with the Residential C-1 Zoning District. The extent of conforming commercial activity on abutting parcels and the existence of commercial activity on the lot renders conforming use unreasonable. The Board finds that a hardship would result if the provisions of the Bylaw were to be literally enforced because retrofitting the building to make it residential once again would be extremely difficult and would place a residence in the midst of what is essentially a business district.

Under Section 6145 the Board finds that there will be no substantial detriment to the public good if the Use Variance is granted. The applicant is proposing use of the entire structure without any external change or expansion with the exception of minor alterations to the façade of the garage which will allow the occupants to effectively conduct their business. The number of employees, occupants, and parking spaces will be no more than is presently allowed.

Under Section 6146, the Board finds that the proposed uses will be consistent with present uses and will produce little noise in excess of the noise presently created by abutting commercial activities. The hours of activity, number of employees and patients and clients will be consistent with daytime professional activity.

The Board also finds that the proposed use complies with all conditions set forth in Section 6147, which states that if the use is authorized under Sections 6142 or 6143 by the prior existence of adjoining nonconformities or incompatibilities: the use nonconformity on the lot in question shall be permitted no further from such prior adjoining conditions as the width of the lot or 100 feet, whichever is less; and the use nonconformity shall be terminated, except that the ZBA may grant a special permit for a further delay of not more than five years.

The Board also finds that the applicants, through their proposal, have satisfied the Special Permit Criteria in that the use is in harmony with the general purpose and intent of the bylaw where uses of nonconforming nature in locations which, if literal zoning enforcement is applied, create a hardship to the site and/or its structures. The use is in an appropriate location and is not detrimental to the neighborhood and does not significantly alter the character of the zoning district because the property abuts Business District #15, a nursing home, medical center, funeral home, and Town-owned property and is situated along a State highway. Additionally, commercial activity has been conducted at the site for thirty years and has not been a detriment. Adequate and appropriate facilities will be provided for the proper operation of the proposed use in that the property will continue to be used for medical and professional activities with no external expansion. The proposed use will not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances because the proposed use will be in harmony with the adjoining business district. The proposed use will also not cause undue traffic congestion in the immediate area because the sight distances at the location are adequate for the proposed use. Patient and client activity is staggered over the course of the business day and as a result will not cause undue traffic congestion in the area.

For the above reasons, it is the opinion of the Board that the granting of this variance will not nullify or substantially derogate from the intent or purpose of the Bylaw.

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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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Jonas D.L. McCray, Associate

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Stephen A. Garanin, Associate



MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, July 16, 2012

The Board consisted of:

Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jonas D.L. McCray, Associate; and Stephen A. Garanin, Associate.

Notice was published in the *Sudbury Town Crier* on June 28 and July 5, 2012, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, opened the hearing. She then 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.

James Kelly was present to request a special permit to build an 11.6' x 12' foot sunporch onto the west side of his house at 19 Oakwood Avenue which would result in a side yard setback deficiency of approximately ten (10) feet. Mr. Kelly described his property, noting that there was already a door on that side of the house that would lead out to the sunporch. He referenced photographs of the house and an example of a porch from another residence in town that he had included in his application.

Mr. Kelly said that he had spoken with all of his neighbors and there were no objections to the project.

Mr. Gossels opined that the project was appropriate for the house and other Board members agreed.

No abutters were present to express concerns.

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 James and Sarah Kelly, applicants and property owners, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to construct an 11.6x12 square foot porch on a nonconforming lot which will result in a side yard setback deficiency of approximately ten (10) feet, property located at 19 Oakwood Avenue, Residential Zone A-1.

1. 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.
2. Construction must be completed no later than one year after commencement."

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioners require a special permit due to the nonconforming nature of the property. The Board finds that the proposed alteration appeared reasonable, would improve the house, and will not be detrimental to the neighborhood. The Board noted that no abutters were present at this hearing to oppose this petition.

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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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Jonas D.L. McCray, Associate

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Stephen A. Garanin, Associate