

SUDBURY ZONING BOARD OF APPEALS
MINUTES
December 2, 2013

The Board consisted of: Benjamin D. Stevenson, Chair; Jonathan F.X. O'Brien, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Nicholas B. Palmer, Associate.

MEETING OF THE ZONING BOARD OF APPEALS

The meeting was convened by ZBA Chair Benjamin Stevenson at 7:30 p.m.

Request for Insubstantial Change to Comprehensive Permit #11-27, The Coolidge at Sudbury, 189 Boston Post Road:

Michelle Stanchi, Marketing Coordinator at Peabody Properties and present on behalf of B'nai B'rith, requested an insubstantial change to Comprehensive Permit #11-27, The Coolidge at Sudbury - 189 Boston Post Road, so that a larger temporary marketing banner can be displayed along the construction fence during the construction phase of the project. Fifteen square feet of signage is allowed through the permit, however a larger sign would help to increase interest in the property. At this point the signage is too small to read as cars travel by. A larger sign would provide visibility and would reduce safety hazards as cars slow to read the signs.

Building Inspector Mark Herweck was present and he said that he would be in favor of increased signage. He asked whether the Board would consider two signs.

Ms. Stanchi then requested a sixty square foot sign along Boston Post Road and forty-five square foot sign along Landham Road. The Board felt that a sixty foot sign was too large and in the end determined that two forty-five square foot temporary banners would be acceptable. Ms. Stanchi was amenable to the two forty-five foot signs.

The Board voted unanimously that the change was insubstantial. Then the board voted to modify the comprehensive permit to allow two forty-five square foot temporary signs affixed to the construction fence at the corner of Boston Post Road and Landham Road. All signage will be removed when the construction fences are dismantled.

There being no further business the meeting was adjourned.

Benjamin D. Stevenson, Chair

Jeffrey P. Klofft

Jonathan F.X. O'Brien, Clerk

Nicholas B. Palmer, Associate

Jonathan G. Gossels

CASE 13-35
Rose Miller Caloiero
23 Belcher Drive

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, December 2, 2013

The Board consisted of:

Benjamin D. Stevenson, Chair; Jonathan F.X. O'Brien, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Nicholas B. Palmer, Associate.

Notice was published in the Sudbury Town Crier on November 14 and November 21, 2013, posted, mailed and read at this hearing.

ZBA Chairman Benjamin Stevenson, 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 Rose Miller Caloiero was present to request a special permit for a 1,092 square foot accessory dwelling unit that already exists in the basement of her property at 23 Belcher Drive. Ms. Caloiero explained that when she purchased her home the prior owner had an accessory space already in existence on the premises, and she referenced a 2001 building permit for that space. Ms. Caloiero's intent was to obtain a special permit from the ZBA and convert the existing office in that space into a bedroom so that she can rent out the accessory dwelling and from the additional income be able to afford to stay at her residence in Sudbury.

Mr. O'Brien asked for confirmation that there was already in existence a bathroom, living room, kitchen, separate entrance and exit and smoke detectors. Mrs. Caloiero said that there was. Photographs of the space were provided in the application.

Mr. Stevenson said that he upon his review this application looked rather run-of-the-mill. With the exception of a waiver of the size, the accessory dwelling was virtually invisible to the street and the space already exists. He noted that there were, however some comments submitted from neighbors to consider.

Beginning November 20, 2013 until the afternoon of the hearing, the Board was in receipt of periodic submissions of an electronic petition entitled, "Sudbury – Keeping Bowker Estates as single-family homes – December 2 Town Meeting." The petition stated: "We want to see Sudbury's Bowker Estates remain true to the developer's vision as approved by the zoning board in the late 60's. It was, and is, to be a single-family oriented neighborhood of high value homes in a very desirable suburb of Boston. We ask you 'NOT' to extend 'Special Permits' allowing the conversion of a single-family home (23 Belcher Drive) into a multi-family property with a rental unit. We believe allowing such a permit to move forward will start our neighborhood down the path of declining desirability and lower property values." To date the following residents had signed the electronic petition: Stacey Danziger, 144 Belcher Drive (11/25/13); Brian Post, 14 Belcher Drive (11/24/13); Susan Post, 14 Belcher Drive (11/28/13); Leeanne Booth, 16 Darvell Drive (11/27/13); Elisabeth Mayer, 19 Darvell Drive (11/25/13); Tad Mayer, 19 Darvell Drive (11/25/13); Annika Noren, 5 Harvard Drive (11/30/13); Amy Kennedy, 47 Ironworks Road (12/1/13); Elena Wohl, 104 Longfellow Road (11/26/13); Gina Timmermans, 16 Munnings Drive (11/24/13); Silvy Brookby, 284 Willis Road (11/20/13); Susan Dean, 272 Willis Road (11/30/13); Dana Farabaugh, 60 Willis Road (11/25/13); William Pelouquin, 289 Willis Road (11/20/13); Kendra Quirk, 272 Willis Road

(11/30/13); Martha Baldwin, 28 Witherell Drive (11/25/13); Virginia Crosby, 38 Witherell Drive (11/25/13); Mark Link, 60 Witherell Drive (11/24/13); and Mary Young, 22 Witherell Drive (11/26/13).

Mr. Klofft expressed concern that the measurements of the accessory apartment would be over 30% of the main house.

Mr. Gossels agreed that it was over the 30% but countered that it was already built and the footprint would be staying the same.

Mr. Klofft asked whether the Town keeps a master list of all of the accessory dwellings. Ms. Hild said that the ZBA keeps a record of any accessory dwelling applications and the re-certifications as filed with the Town Clerk. Mr. Klofft asked because he wanted to know how, when a property changes hands, the new homeowners would know whether a property had an approved accessory dwelling on record and if one were not on record then how would a new homeowner know that a special permit needed to be obtained. He cited examples where homes were marketed as having accessory dwellings, but in reality new permits would be needed. Building Inspector Mark Herweck said that new homeowners would have to come in to the Building Department to read the building jacket on file for the particular property. He said that for this property what is on file is an approval for a kitchen, laundry, bath, and sitting room. Mr. Gossels noted that there is no actual control over how the homeowner uses the spaces unless there is a future inspection of the property.

Mr. Gossels said that he would like the ZBA to meet with the Planning Board to discuss how the accessory dwelling bylaw can be refined to eliminate flaws. The rest of the Board agreed.

Mr. Gossels then wanted to address the comments as presented by the neighborhood petition. He said that the Accessory Dwelling bylaw was passed overwhelmingly by those present at the 2009 Town Meeting. Accessory Dwellings are allowed in all neighborhoods. Therefore he said that no one neighborhood should be held to a different standard than any other neighborhood in Sudbury. Mr. Stevenson agreed but he said that everyone who attended the hearing would have a chance to be heard. He added that it was not just a matter of what the Town passed at Town Meeting, but it is also a matter of equal protection for the Town as a whole. The ZBA cannot be unfair in its enforcement of the bylaws holding standards to one neighborhood and not another.

Mr. Klofft said that the Town did not want accessory dwellings to be allowed by right but instead created the special permit for them because they wanted debate on an individual basis.

Mr. Stevenson agreed with Mr. Klofft's point and said that he intended to hear the issues presented from neighbors, but his concern was that the ZBA had received the petition requesting that accessory dwellings be outlawed in the Bowker neighborhood and that is not equal protection.

Mr. Klofft said that the size of the accessory dwelling, as outlined in the bylaw, was to keep these spaces small and to manage the number of bedrooms, for instance. He had concerns about the size of this request.

Mr. Stevenson then asked whether anyone from the public wished to speak about the proposed application.

William Peloquin, 289 Willis Road, said that his in-laws have lived in Sudbury for sixty years. He said that he felt that the intent of the bylaw was so that the elderly and those who cannot afford to continue to live in Sudbury due to rising taxes, might be able to stay. He felt that this intent was very different from people who move to town who cannot afford to live Sudbury turning their homes into multifamily houses.

He requested that the ZBA look at the spirit of the bylaw. He did not feel that the petition stated that the Bowker neighborhood was special, but rather he said that Sudbury has an aura about it and is seen as a desirable place to live in the western suburbs of Boston and the neighborhood wants to see it kept that way. He said that the neighbors are not asking the ZBA to do something uniquely different but to hold to the spirit of the bylaw. He said that he hopes to be able to stay in Sudbury when he retires, but if he cannot afford to do so then he said he would not turn his home into a multifamily home to potentially detract from his neighbors' properties. He said that he would not be that selfish to do that just so that he can stay. He interpreted the spirit of the bylaw to be for people who have lived in Town for many years to stay and not for people who cannot afford to be here to turn their homes into multi-family homes.

Mr. Gossels agreed with what Mr. Peloquin said, as he was opposed to the accessory dwelling bylaw as written, but he said that the trouble with the bylaw is that it is no longer for family members only, and the ZBA does not have the ability to evaluate who is converting homes and who is occupying them because the Town changed the law.

Mr. Stevenson still felt that the online petition did not take into consideration the town as a whole. He further said that he did not want this particular meeting to be taken up with what the Town did at the 2009 Town Meeting. Given that the Board has in hand the bylaw as it stands, he wanted the application evaluated so that a determination could be made. He respected Mr. Peloquin's right to object to the bylaw, but he added that as has been pointed out the bylaw passed overwhelmingly at the 2009 Town Meeting and so the Board must apply it.

Mr. Peloquin said that if he had participated in Town Meeting he would have voted against this bylaw change. He added that he moved to Sudbury to be in a neighborhood of single-family homes. He said that he lived in multifamily housing in Marlborough for many years and he saved in order to afford living in Sudbury in a single-family neighborhood. He also said that there is a big difference when apartments are rented by people other than family and he said that the State has many other requirements for rental housing that he did not understand how the Town can just approve renting properties out without meeting those requirements.

The Board then went back to the special permit criteria. Mr. Klofft said that under point two, which states that 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, then how does an accessory dwelling not alter the character. He said that he has a history of not approving accessory dwellings for this reason. Mr. Stevenson maintained that the vote to revise the accessory apartment bylaw at the 2009 Town Meeting was purposeful to expand housing options in Sudbury and the article passed. He said that it was not up to the ZBA at this point to change the will of that vote at Town Meeting.

Jo-Ann Howe, 38 Birchwood Avenue and recently retired Director of the Sudbury Housing Authority, said that she had served on the committee that worked to change the original accessory apartment bylaw twenty years ago. She said that the intent was to increase the diversity of housing in Sudbury and to provide additional housing options for nannies, other employees, and low-income people in addition to family members. She hoped that the ZBA would keep that in mind.

Brian Post, 14 Belcher Drive, said that no one was addressing why the spirit of the bylaw was changed because he felt that allowing the accessory dwelling would change the fabric of the area, and not just the Bowker neighborhood but Sudbury as a whole.

Mr. Gossels said that the change was made for an intentional broadening of housing options. He said that it was created for people who could not afford to buy a house to live in Sudbury. Mr. Stevenson added

that in some cases allowing these apartments would enable a homeowner to stay in town and hold on to their home.

Mr. Post said that the idea seems foreign in his way of thinking. He cannot fathom why the Town could approve this in a single-family neighborhood.

Rosanna Tavana, 15 Belcher Drive, asked how accessory units are different than other forms of rental units. Mr. Stevenson said that there is not much of a difference, however he was clear to state that the term “rental housing” does not mean “multi-family housing,” although an accessory apartment could be rented by a small family with school-aged children. The issue of school enrollment and residency was briefly discussed. The Board recognized that issue may exist in Sudbury and it was being reviewed by other boards and authorities in town. Mr. Klofft added that the square footage of the accessory dwelling could not be more than 30% of the main portion of the house and a maximum of 850 square feet so that it would remain in an accessory role.

William Timmermans, 16 Munnings Drive, asked who would be responsible for the governance of the area, especially when things are in disrepair. He cited the example of 23 Belcher Drive, which he says has been in disrepair for several years. With this application he said he noted that it was an example of someone trying to bring money into the neighborhood but he questioned what else would be brought into the neighborhood in terms of the number of additional cars on the street, maintenance, snow plowing and things like that could potentially impact how this area is viewed.

Building Inspector and Zoning Enforcement Agent Mark Herweck was present and said that if there are complaints about a site he then can act upon complaints if there are valid concerns. Mr. Timmermans asked whether this building has been inspected. Mr. Herweck said that it had not yet been inspected recently.

The Board discussed including a condition in the special permit that the accessory dwelling be inspected by the Building Inspector to ensure that it is up to code and that there are smoke detectors, etc.

Mr. Timmerman said that he moved to Sudbury because he wanted to live amid single-family housing, not multi-family. Mr. Stevenson cautioned about the use of the term “multi-family” because it was not being used properly. He said that even if the accessory apartment were permitted it would still be a desirable neighborhood and it could never be considered an urban setting. He then explained that the ZBA is rather strict in what it allows in the construction of these accessory dwellings and the conditions posed on each. Mr. Palmer concurred about the term “multi-family,” which is not what would be created should the accessory dwelling be allowed.

The Board then reviewed the special permit criteria again, pointing to the reference about its need to not visually detract from the neighborhood. Mr. Peloquin argued that the property does, in fact, visually detract from the neighborhood already because there has been construction equipment stored on site and other visual nuisances.

Mr. Gossels said that a condition could be included in the special permit that the site be well-maintained.

Ms. Caloriero said that there has in the past been a bobcat parked at the site for an extensive period of time while there was a septic system project happening at the site. She said that she tries to keep her garage door closed, however her son sometimes forgets to close it. She said that she is at present a single-mother while her husband is away overseas and she does not want to leave her home. She said that she is not looking to make any changes to that space other than change the room from an office to a bedroom. She would be looking for a quiet single person to rent it just for a while to get through. She explained that

she can afford Sudbury and runs her own business. She said that she has always lived in a single-family home and chose Sudbury to provide a better school system for her children. She has three children with two of them in college and one in school in Sudbury. She does not expect to leave Sudbury or this neighborhood. The rent from the apartment would enable her to stay. She said that she felt her neighbors were saying that if she cannot afford her home then she should leave. She feels that neighbors should help support each other in times of need.

Mr. Stevenson said that the pictures submitted with the application materials did not speak of any visual nuisance. He further noted that none of the concerns about visual nuisances had come before the Zoning Enforcement Agent/Building Inspector prior to the application submittal for the accessory dwelling.

Mr. Stevenson said that upon his review of the application the accessory dwelling would be located in an appropriate location on the property and would not pose a detriment to the neighborhood because it does not alter the character of the Residential A-1 Zoning District.

Mr. Gossels said that the unit is nice-looking, the space already exists, but it is really an administrative change to make a bedroom out of the office. He said that if the accessory space was not already there he might not agree to build it, but because it is already there he may.

Susan Post, 14 Belcher Drive, said that there have been tenants in the apartment in the past. Ms. Caloiero said that there was an elderly couple living in the apartment for a while that were like her own family but they have since left. Ms. Caloiero said that she did not know that the accessory dwelling was not legal so she went to the Building Inspector who showed her the application for the Special Permit in order to go through the proper channels.

Mr. Stevenson said that he thought the application was similar to others that the Board had approved. He said that the outside of the house remains exactly the same. He did recognize that it was large but it does fit within the parameters of others that have been approved. Mr. Klofft said that it was not unlike others that he has abstained from voting on.

The Board then discussed additional conditions to add to the standard conditions typically assigned to accessory dwellings. Namely, the Board wanted to add a condition that the apartment shall be inspected by the Building Inspector to ensure that it is up to current code.

To deal with the number of bedrooms that the septic system could accommodate the Board pointed to Health Director Bob Leupold's letter dated November 27, 2013 which stated that, "The septic system at 23 Belcher Drive upgraded in July 2010 is adequate for a five bedroom dwelling with a total of eleven rooms. A deed restriction limiting the dwelling to five bedrooms is needed if the total number of rooms exceed eleven." The Board discussed adding a condition that would restrict the number of bedrooms in the accessory dwelling to one.

At the end of four years the accessory dwelling shall be inspected by the Building Inspector.

Given the size of the unit the Board then discussed at length whether it was a matter of a special permit or a variance, but in the end determined that it was indeed appropriate to consider a special permit. Mr. Stevenson pointed out that the language of Section 5522 states that the unit shall contain no more than 850 square feet, however upon request the ZBA may waive the size restriction if the unit is in an existing structure. He suggested that this is a waiver situation. Mr. O'Brien agreed stating that under property rights a homeowner does have the ability to modify his or her home and the rules do state that if there are physical constraints of an existing structure the ZBA can waive the size restriction.

Mr. Peloquin said that this decision was going to set a precedent and said that there is nothing in place to stop Sudbury for turning into Marlborough where all of the larger homes are turning into multifamily.

Mr. Stevenson felt that this special permit case does not have that sort of precedential value. Mr. O'Brien felt that there are controls on the way the bylaw is written.

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

The following motion was made and seconded:

MOTION: "To grant Rose Miller Caloiero, applicant and property owner, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws in conformance with the application for the Special Permit dated November 5, 2013 and the plans submitted by the Applicant, to allow a 1,092 square foot Accessory Dwelling Unit for property located at 23 Belcher Drive, Residential Zone A-1, as follows:

1. A building permit must be obtained to convert the office in the Accessory Dwelling Unit into a bedroom.
2. The Accessory Dwelling Unit may only have one bedroom.
3. The Accessory Dwelling Unit shall be occupied by no more than four persons.
4. A deed restriction limiting the total number of bedrooms in the house and accessory dwelling unit combined to five is needed before this permit is valid.
5. 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.
6. 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.
7. 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.
8. The Accessory Dwelling Unit shall be inspected by the Building Inspector in four years at the time of recertification of occupancy.
9. 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.
10. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit.

11. 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.

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

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

REASONS: The petitioner requires a Special Permit to allow a single-family accessory dwelling unit. While additional conditions were imposed, the Board finds that the petitioner has fulfilled the requirements of the Bylaw for the granting of a Special Permit.

Benjamin D. Stevenson, Chair

Jeffrey P. Klofft

Jonathan F.X. O’Brien, Clerk

Nicholas B. Palmer, Associate

Jonathan G. Gossels

CASE 13-36
Jo-Ann Howe
38 Birchwood Avenue

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, December 2, 2013

The Board consisted of:

Benjamin D. Stevenson, Chair; Jonathan F.X. O'Brien, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Nicholas B. Palmer, Associate.

Notice was published in the Sudbury Town Crier on November 14 and November 21, 2013, posted, mailed and read at this hearing.

ZBA Chairman Benjamin Stevenson, 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 Jo-Ann Howe was present to request a special permit for a 728 square foot accessory dwelling unit at her property at 38 Birchwood Avenue. Ms. Howe explained her intent to add a stove within an existing living space above the garage, which comprises the accessory dwelling, in order to accommodate her daughter who lives there presently. Ms. Howe's daughter was also in attendance. Ms. Howe said that the space had originally been designed to serve as a game room in the garage but it has been altered to create an apartment, minus a kitchen. A wet bar already exists. With the exception of the stove, no major re-configuration of the space needs to be done and no new wiring needs to be added.

Mr. Gossels said that the application supported the intent of the bylaw. Mr. Klofft added that the accessory dwelling fit within the parameters of the size allowed. There was agreement from the rest of the Board.

The Board then discussed alternative conditions to add to the standard conditions typically assigned to accessory dwellings. Namely, the Board wanted to add a condition that the apartment shall be inspected by the Building Inspector after the stove is installed. In addition, a condition was added requiring the apartment to be used only for family and also that the accessory dwelling should be inspected again in four years at the time of recertification of occupancy.

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

The following motion was made and seconded:

MOTION: "To grant Jo-Anne Howe, applicant and property owner, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws in conformance with the application for the Special Permit dated November 6, 2013 and the plans submitted by the Applicant, to allow a 728 square foot Accessory Dwelling Unit for property located at 38 Birchwood Avenue, Residential Zone A-1, as follows:

1. The Accessory Dwelling Unit shall be inspected by the Building Inspector after the stove is installed.

2. The Accessory Dwelling Unit shall be occupied by no more than four persons.
3. The Accessory Dwelling Unit shall be restricted to use by direct family members only.
4. 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.
5. 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.
6. 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.
7. The Accessory Dwelling Unit shall be inspected by the Building Inspector in four years at the time of recertification of occupancy.
8. 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.
9. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit.
10. 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.
11. 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 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.

Benjamin D. Stevenson, Chair

Jeffrey P. Klofft

Jonathan F.X. O’Brien, Clerk

Nicholas B. Palmer, Associate

Jonathan G. Gossels