

SUDBURY ZONING BOARD OF APPEALS
MINUTES
February 3, 2014

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

MEETING OF THE ZONING BOARD OF APPEALS

Review of Landscape Plan for 71 Concord Road, ZBA Case #14-4:

Rick and Maggie Watson, owners of 71 Concord Road, were present along with Bud Haworth, the builder of a proposed garage addition for which a special permit from the ZBA was recently sought. As a condition of the special permit the Watsons were required to show the ZBA a landscape plan that was mutually agreed upon by themselves and their abutting neighbor, Deborah Drummond, 67 Concord Road. The landscape plan prepared by the Watsons had been reviewed by Ms. Drummond's attorney, James Goodhue of Grindle Robinson LLP and all parties had agreed upon the plans. In addition to the landscape plan a certified plot plan dated February 3, 2014 prepared by Snelling and Hamel which located the new garage was also submitted to the ZBA's files.

Mr. Stevenson said that he was pleased to see that all parties had worked together to develop a mutually suitable plan and the rest of the Board agreed that all appeared in order.

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

Nancy G. Rubenstein, Associate

CASE 14-1
Lynn Green
558 Dutton Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, February 3, 2014

The Board consisted of:

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

ZBA Chairman Benjamin Stevenson, re-opened the hearing, explaining the requirements necessary to substantiate the granting of a Special Permit. He said 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.

Lynn Green, applicant and property owner, was present along with Attorney Michael C. Fee, Pierce and Mandell, to continue her request for a special permit for a home business to operate a kennel with dog grooming and day boarding facilities at her property at 558 Dutton Road.

Mr. Fee said that the Animal Control Officer, Jennifer Condon, had inspected the site and in her report dated January 14, 2014 rated the facilities as excellent. She suggested that the ZBA consider permitting six dogs per day for boarding with no dogs kept overnight. She did not recommend imposing a limit on grooming. He said that Ms. Green reached out to approximately ten of her closest abutting neighbors via a letter of invitation to tour the facilities. Four of the neighbors toured the premises. He said that Ms. Green had made an effort to initiate a dialog and to ameliorate concerns. Given the concerns about operations that were raised at the last hearing Mr. Fee asked that the ZBA accept the Animal Control Officer's recommendations along with several conditions that he proposed in a statement that he presented to the Board. Mr. Fee said that the ZBA has issued a number of special permits to kennels in different neighborhoods around town and he noted that the Board typically gives new kennels a shorter permit duration so that applicants have an opportunity to prove that operations are not detrimental to the neighborhood.

Mr. Fee stated that Ms. Green is asking for the opportunity to exercise her rights under the special permit bylaw and his memo addressed the criteria that fit. He added that there is additional oversight from the Dog Officer if there are complaints.

Mr. Stevenson noted that the ZBA received several e-mails from neighbors and he read into the record the list of correspondence:

- January 8, 2014 – e-mail from Vic Paquette (11 Petersen Circle) to Jan Pitzi, William Raeis Real Estate
- January 8, 2014 – e-mail from Jan Pitzi, William Raeis Real Estate to Vic Paquette, 11 Petersen Circle
- January 30, 2014 Memo from Richard Goulet, The Appraisers Group
- January 31, 2014 e-mail from Bonnie and Jim Jenson, 14 Peterson Circle
- January 31, 2014 – e-mail from Vic and Amy Paquette, 11 Peterson Circle
- February 1, 2014 – e-mail from Kathy and Bob Linke, 29 Babe Ruth Drive
- February 3, 2014 – e-mail from Swati and Bill Kearney, 18 Atkinson Lane

- February 3, 2014 – e-mail from Todd Short & Alison Walters-Short, 82 Pratts Mill Road
- February 3, 2014 – e-mail from Kathy Cromwell, 19 Atkinson Lane

Mr. Stevenson then asked for public comment.

Craig Menko, 15 Petersen Circle, showed a display that he prepared from Google Maps to illustrate the density of different neighborhoods where other kennels were located in comparison to Dutton Road. He noted that the Barton Drive kennel is next to conservation land and that the Boston Post Road kennel was on a farm. He said that Dutton Road is more congested. He thanked Ms. Green for having him over to tour the barn and said that he is not trying to stop Ms. Green's business venture but he does not want it in his backyard. He reiterated his explanation from the last meeting where he said that he moved to his house for the quiet neighborhood. He agreed that the barn had approximately 5,000 square feet of space and described the interior. Mr. Menko said that he went to Ms. Green's old neighborhood and knocked on doors to talk with previous neighbors. While no one wanted to go on record with their opinions he said they reported that dogs barked in the middle of the night and there were other issues with dogs left outdoors. He said that he understood that her passion is to breed and show dogs and as a result he felt that there would be a lot of puppies and a lot more noise. He had concerns that the breeding and traffic caused by people looking to obtain puppies would grow out of control.

Mr. Menko referenced a petition of opposition that he circulated around Sudbury that he then presented to the Board. There were a total of sixty-five names on the petition, although those that signed were not necessarily from the immediate Dutton Road area.

Mr. Menko said that he would be ok with the grooming business but not with boarding. He said that his house is affected by the dog run as noise from barking funnels into his home office and yard. He said that he loves dogs but just doesn't want breeding or boarding taking place at Ms. Green's property. He also argued that everyone's property values would decrease if a kennel were located there.

Victor Paquette, 11 Petersen Circle, said that his backyard abuts 558 Dutton Road. The barn is in his line of sight. He said that he was afraid of the noise and did not believe it was possible to control barking. He referenced a memo dated January 30, 2014 from Richard Goulet of The Appraisers Group, that was submitted to the Board stating that property values could be impacted by barking dogs and increased traffic. Mr. Paquette described this part of Sudbury as a quiet, upscale neighborhood and he did not want it changed by noise. Another e-mail was sent by Jan Pitzi, a realtor for William Raveis, in which she stated that she would have to disclose a kennel nearby when selling a home. She said it would be a deterrent for sales. Mr. Paquette said that he was opposed to any boarding of dogs and opposed to any dog grooming, but was ok with the breeding. Mr. Paquette said that Ms. Green has worked hard to develop her business but the goals of the business are, in his opinion, in direct contrast to the neighborhood. He said that he did meet Ms. Green at her property and the barn itself is fantastic. Mr. Paquette said that perhaps people from other areas of town might not find the kennel offensive but his house is within sight of it and he would find the loss of enjoyment of his backyard offensive. He asked that the Board deny the special permit request.

Mr. Stevenson said that those who spoke made good points that were well-heard. He said that the Board would be committed to making sure that the neighborhood character remains but he added that making the decision based upon property values and considered detriments is a balancing act because while neighbors do not want change the Town as a whole voted at Town Meeting to allow this use in all districts so the criteria for the bylaw needs to be applied.

Jim Jenson, 14 Petersen Circle, said that he is also an abutter and expressed concerns about impacts to the wildlife at the nearby pond that a high density of dogs in the front yard might cause.

Addressing the breeding process Ms. Green said that she is a hobby breeder. She said that in a given year she would breed up to two litters of puppies. The puppies live in a box and are not mobile for the few weeks of their lives and they cannot go outside. She said that the puppies have limited exposure to people due to germs and they leave her care and go with new owners by eight weeks of age. She added that Portugese Water Dogs are a well-socialized breed of dog and she involves her children in the process of caring for the puppies. She said that her children would miss the opportunity to help raise the puppies and she already has a wait-list of potential owners who want these special animals. She said that she does not run a puppy mill.

As to the boarding of dogs she said that the business is run almost like a children's daycare facility with prospective clients being interviewed. She said that only dogs that are a good fit would be taken into the program and the dogs would be monitored while in her care. Only her personal pets would be allowed outside. The day boarding would take place indoors in approximately 1,500 square feet of play space. She said that in many cases dogs are crate-trained and know how to behave quietly while in their crates. Dogs would rotate on a system between exercise time, crating and the dog run.

Mr. Stevenson reminded those present that the decision on grooming and boarding only was within the ZBA's jurisdiction.

Penny Brewer, 12 Petersen Circle, said that she abuts an arts camp and feels that it fits within the neighborhood but she felt that the cul-de-sac character would change if the kennel was permitted.

Dan Jacob, 10 Atkinson Lane, asked whether Ms. Green would have employees. Ms. Green said that it would depend upon the number of clients. She said that if there were more than five dogs at a time allowed then she would need help. She would not take on more clients than she could handle.

Mr. Stevenson asked how the grooming business would operate. Ms. Green said that dogs would be staged much like a hair salon operates on a rotating cycle.

Mr. Stevenson said that the dog officer recommended that a total of six dogs be allowed for boarding so the Board then discussed that option.

Mr. Fee said that the Board was being asked to decide on a special permit, not a variance. He said that a special permit allows the ZBA to condition activities thus providing oversight. The applicant, therefore, must demonstrate the ability to adhere to the conditions in order to maintain the special permit. He suggested that the criteria for special permits does not include any discussion of property values. He said that the ZBA's decision could be appealed after it is made. Mr. Fee noted that the property has been used commercially in the past and multiple employees came and went from those businesses. He said that as the barn was built for commercial use as a result it is quite sound-proof. He said that the Board had to look at the application objectively as to whether the applicant is proposing a use that is not significantly detrimental to the zoning district. He pointed to the kennel that was permitted on Barton Drive as an example of one that was permitted with conditions that would be similar.

Mr. Klofft felt that the Dutton Road neighborhood was significantly denser than Barton Drive and other kennels were located where there was more open land.

Mr. Fee said that the Board was in receipt of the Animal Control Officer's report with recommendations and the applicant has proposed a use that could be adequately housed and was in line with the special permit criteria.

Mr. Klofft still was not convinced that the proposal met the intent of the bylaw due to density. Mr. Stevenson agreed that there were too many houses spaced too closely together. Mr. Palmer asked for a show of hands from those present as to who was opposed to the dog daycare. About half of those present raised their hands.

Martine Cullen, 15 Perry Circle, said that she did not think that the rotation of dogs for grooming was accurate. She suggested that clients would take advantage of Ms. Green and use the grooming service as a day care.

Kimberly Mitchell, 62 Kato Drive, said that she is a client of Ms. Green's and she attested to the fact that Ms. Green was always on schedule with her grooming practice and she never witnessed a situation where there were more than the appropriate number of dogs waiting for grooming service.

Ted Fedynyshyn, 32 Atkinson Lane, did not agree that the property was mixed-use and he said that the kennel would be disruptive and not what the neighborhood was about.

The board then discussed as-of-right uses.

Joe Green, the applicant's husband, suggested that the Board approve the permit but on a shorter duration. Mr. Klofft said that the Board has on occasion given one-year or even six-month permits. He suggested that the Board allow the grooming part of the business since there appeared to be less opposition to that practice.

Mr. Palmer asked whether Ms. Green would be willing to defer on the day care portion of the proposal as she had indicated she might at the hearing on January 6. Ms. Green said that she wanted to operate the day care because there is a need for quality dog boarding in Sudbury. She did not feel that three to six dogs would cause chaos. She said that as the business owner she would be in control of all aspects of the business and client selection. She said that she would not take on what she could not handle.

Mr. Fee asked whether the Board would be amenable to approving grooming and up to three boarding dogs per day with a six-month duration on the special permit.

Mr. Klofft and Mr. O'Brien felt that only grooming should be allowed with a six-month special permit and an assessment after that. Should Ms. Green want to pursue boarding dogs after that she could request that option at that time.

After much discussion the Board agreed to approve a six month special permit for the grooming business for up to five dogs per day giving Ms. Green the option to request dog boarding after that point. Business hours were discussed and it was agreed that the grooming business could begin as early as 8:00 a.m. and end by 6:00 p.m.

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

The following motion was made and seconded:

MOTION: "To grant Lynn Green, applicant and owner of property, a Special Permit, granted under the provisions of Section 2313 of the Zoning Bylaws, to operate a kennel on the premises for dog grooming, property located at 558 Dutton Road, Residential Zone A-1, subject to the following:

1. The dogs shall not become a nuisance.

2. The maximum number of dogs allowed on the property shall be no more than five (5) per day for grooming, and no more than three may be present at one time (excluding the Applicant's pets).
3. All boarding dogs shall wear tags which identify the business.
4. Any complaints shall be reported immediately to the Dog Officer.
5. Dog waste is to be picked up immediately.
6. No signs advertising the kennel will be allowed.
7. Dogs shall be dropped-off at the facility no earlier than 8:00 a.m. to 6:00 p.m.
8. No Dogs shall be kept overnight.
9. Dogs that are outdoors are to be supervised at all times.
10. Dogs are to be contained within the fenced area or by a leash at all times.
11. This permit is non-transferable and will expire in six months on August 3, 2014, at which time the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioner seeks a special permit to operate a kennel on the premises for the purpose of dog grooming and day boarding. 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. The Animal Control Officer has issued a statement that 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. The Board finds that a six-month renewal period will allow for review of operation and any impacts to the neighborhood.

Benjamin D. Stevenson, Chair

Jeffrey P. Klofft

Jonathan F.X. O'Brien, Clerk

Nicholas B. Palmer, Associate

Nancy G. Rubenstein, Associate

CASE 14-5
Benjamin and Emily May
68 Pine Street

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, February 3, 2014

The Board consisted of:

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

ZBA Chairman Benjamin Stevenson explained the requirements necessary to substantiate the granting of a Special Permit. He said 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.

Benjamin and Emily May, applicants and property owners, were present along with their architect, to request a special permit to construct an attached garage with one-bay measuring approximately 13.5' x 22' on a nonconforming lot to be located approximately five feet from the side yard resulting in a side yard setback deficiency of approximately fifteen feet at their property located at 68 Pine Street. The addition would also include a mudroom with an entryway.

The Mays' application included photographs of other homes with similar garages in their neighborhood. All of the lots were nonconforming with tight side yard setbacks.

The Board briefly discussed the fact that there were many similarly configured homes on the street and the idea that their garage would enhance the neighborhood.

Mr. Stevenson asked whether any neighbors were present who wished to speak.

Tracy Guy, 4 Glen Lane, explained that she was the abutting neighbor at the rear of the Mays' property and she was present to learn more about the project and to see if it would be built closer to her property line. The Mays walked through the plans with Ms. Guy who appeared satisfied with the location.

Mr. Stevenson asked about the reaction of the abutter most closely affected by the side yard setback. Mr. May said that the property next door at 62 and 64 Pine Street was owned by the Sudbury Housing Authority. The SHA had submitted in writing their approval and the Mays gave a copy of that memo to the ZBA at the hearing for their files. The Mays also submitted to the file memos and signatures from the following neighbors who were also in support of the project: Cindy Simon, 53 Pine Street; Andrew and Alison Sonderfan, 55 Pine Street; Elizabeth and Andrew Heier, 57 Pine Street; Erin Thalmann, 61 Pine Street; Robert Taber and Michelle Demore Taber, 67 Pine Street; Mary McGurn, 70 Pine Street; Daniel and Judy Clawson, 73 Pine Street; Sandra Brown, 74 Pine Street; and Tobi Edwards, 78 Pine Street.

Cindy Simon, 53 Pine Street, was also present and explained to the Board that the ZBA had recently granted a similar special permit to her for a similar garage and mudroom addition and it has improved her property greatly.

Ms. Rubenstein commended the Mays on their well-documented application and presentation. She said that she did not have a problem with the setback especially since the closest neighbor, the SHA, was fine with it.

The Board briefly discussed the arborvitae landscaping that was planned to screen the garage and driveway from the neighboring property. The idea that the garage could not have a second story unless an application was submitted to the ZBA for their approval was also discussed as a condition of the permit.

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

The following motion was made and seconded:

MOTION: "To grant Benjamin and Emily May, applicants and owners, a Special Permit pursuant to Section 2420 of the Zoning Bylaw, to construct an attached garage measuring approximately 13.5'x22' and a mudroom on a nonconforming lot to be located approximately five feet from the side yard resulting in a side yard setback deficiency of approximately fifteen feet, property located at 68 Pine Street, Residential Zone A-1, provided that:

1. The one-story garage addition and mudroom will be constructed in the location as shown on the plans prepared by Mahoney Architects dated January 8, 2014 that are incorporated into and made part of this Special Permit.
2. A second story may not be built onto the garage without the approval of the Zoning Board of Appeals.
3. Arborvitae will be added along the northwest property line to screen the driveway and garage.
4. This Special Permit shall lapse if construction has not begun, except for good cause, within twelve (12) months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17."

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

REASONS: The petitioner requires a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed garage, which will create a side yard setback deficiency, will not be substantially more nonconforming than the existing nonconformity to the neighborhood. Abutters were either present or had submitted written expressions of support for the project.

Benjamin D. Stevenson, Chair

Jeffrey P. Klofft

Jonathan F.X. O'Brien, Clerk

Nicholas B. Palmer, Associate

Nancy G. Rubenstein, Associate