

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, December 1, 2014

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

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.

Applicant Matthew Gogan was present to request a Special Permit to allow an accessory dwelling unit that is no greater than 974 square feet at his property at 27 Concord Road. The proposed Accessory Dwelling would be built as a residence for Mr. Gogan's mother and brother. He explained that his property sits behind the Goodnow Library. After they bought their house in 1992 they have done some construction at the property replacing windows and the roof. The accessory dwelling addition would include a 2-car garage.

Mr. Stevenson opined that the proposal was squarely within the intent of the bylaw however the size is larger than allowed.

Mr. Klofft questioned whether the application should have been for a Variance given that the accessory dwelling was a new structure. The Board debated for some time the issue of whether the applicant should have applied for a Variance or a Special Permit.

Mr. Gossels pointed out that the applicant could have simply built an addition and then come back before the Board after a while to request the Special Permit for an accessory dwelling. He further said that the ZBA has granted relief for larger units previously. Mr. O'Brien agreed that the request is really to allow the accessory use.

The Board spent additional time clarifying the bylaw to ensure that the majority were in agreement that the applicant had filed the correct application for a Special Permit. Discussion included the Board's ability to exercise discretion in interpreting the bylaw with each new case. New construction and attached structures versus detached structures were all debated issues.

Mr. Gogan noted that the accessory dwelling would be housing two people who needed two separate spaces. He said that the project has only been designed at this stage and not yet constructed.

Mr. Stevenson argued for consideration of a special permit. Mr. O'Brien was also convinced that the ZBA has the right to waive the size to a degree. Mr. Gossels also felt that it was up to the ZBA to determine a Special Permit. Mr. Klofft disagreed and noted that he would most likely abstain from voting.

Mr. Gossels said that the house was tucked away from the road and the location of the accessory dwelling would not impact neighbors. Mr. Klofft asked to include a condition that the dwelling be for immediate family.

Mr. Palmer asked about the layout of the main house and addition and whether there were physical constraints on the property that necessitated the arrangement. Mr. Gogan said that the accessory dwelling needed to accommodate two bedrooms and he wanted to keep the accessory dwelling in the back of the house and away from the neighbors. The closest neighbor to the accessory dwelling is the Goodnow Library's parking lot. Mr. Gogan also wanted to ensure that the accessory dwelling had its own separate space. The garage, however, is shared.

Mr. Gossels again opined that the ZBA has the right to act with discretion. He said that the location of the property and the fact that family would be living there were all favorable factors.

Mr. Klofft said that Mr. Gossel's point was compelling about how someone could build an as-of-right addition and then come back for approval of a special permit for an accessory dwelling after the fact.

The Board then discussed adding the condition that the accessory dwelling would be occupied by family members. Mr. Gogan asked about the possibility of allowing a caregiver to reside there. The Board agreed to add language to enable a future caregiver.

Mr. Stevenson spoke in support of the application noting that the accessory dwelling would be built for the correct purpose, with good reasons for its slightly larger size, and because it is located in an area that is tucked away. Mr. Gossels agreed that the proposed location of the accessory dwelling was best as designed in order to to keep the apartment away from neighbors.

The Board then discussed whether or not the bylaw should be revised to clear up any ambiguity and the process through which revisions would take place. Revisions involved the Planning Board.

Mr. Stevenson asked whether any neighbors were present who wished to speak. None were present. There were no further comments from the Board or audience. The hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Matthew and Barbara Gogan, applicants and owners, 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, 2014 and the plans submitted by the Applicant, to allow a 974 square foot Accessory Dwelling Unit for property located at 27 Concord Road, Residential Zone A-1, as follows:

1. The Accessory Dwelling Unit shall be occupied by no more than four persons.
2. The Accessory Dwelling Unit shall be inhabited by at least one family member and possibly a caregiver.
3. The Accessory Dwelling Unit shall be inspected by the Building Inspector prior to issuance of a certificate of occupancy.

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. 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.
8. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit.”

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

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

Nicholas B. Palmer

Jonathan F.X. O'Brien, Clerk

Jeffrey P. Klofft

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Andrew To, architect with Sarabia/To Design, was present on behalf of applicant David Noyes to request a Special Permit to enlarge an existing residence on a nonconforming lot which would result in a front yard setback deficiency of approximately five feet. The new residence will be approximately 3,200 square feet.

Mr. Stevenson explained to Mr. To that the last time Mr. Noyes was present that Board felt that the design was lacking. Mr. Gossels added that it was also sited too close to road. He said that it was being identified as a three-bedroom house when there could be four bedrooms and given that a new septic system should have been proposed. Mr. Gossels felt that Mr. Noyes had essentially submitted the same application. The Board wondered whether there may have been a communication breakdown between the applicant, architectural firm, and the ZBA since the proposal appeared to be more of the same, with more rooms, and a taller height.

Mr. To said that the new house will not exceed 3,200 square feet with only three bedrooms proposed. He said that Mr. Noyes will also be replacing the septic system with a four-bedroom system.

Mr. Stevenson was concerned that the house was eight feet higher and with its massing close to the road it would look more imposing. Mr. To argued that the reconstruction still meets the zoning code as stated in the bylaw.

Mr. Klofft referred to the ZBA's teardown guidelines stating that the ZBA tries to work with applicants to avoid new construction looming over the road. He said that irrespective of that the application is asking for relief for the front setback and he was not in favor of granting that for a reconstruction.

Mr. To said that the height of the house meets Sudbury's zoning code and the massing would be broken down with an array of materials. He also suggested that the garage could be pushed back to meet the zoning code.

Mr. Klofft had been concerned about the location of existing leaching field and heard Mr. Noyes' argument at the last meeting about attempting to save expense by not moving leaching field. However, if Mr. Noyes plans to alter the septic system then he wondered why the house could not be moved back.

Mr. To argued that his research about Sudbury's allowed setbacks stated a front setback of forty feet. The Board said that as part of the Special Permit criteria they can request that structures be moved back. Mr. Stevenson said that the proposed structure is too large of a house for a small lot so the applicant needs relief. Because of the setback issue the reconstruction is not a by-right construction and therefore needs a special permit. The Board discussed the fact that they do have the right to get the visuals right in order to manage the size of new constructions.

Mr. To said that he could work on the architectural, but in terms of size he said that it meets the bylaw. Mr. Gossels said that he did not have a problem with actual size of the house but rather he was concerned about the impact of the design and size together and impact on the street. Mr. To said that he could work with those issues.

Mr. Klofft said that the new house should not be detrimental to the neighborhood, therefore in order to meet the Special Permit criteria it should be pushed back. Mr. Stevenson said that if the house were pushed back and architecturally varied it would improve things. Mr. To said that could accommodate those concerns. He also suggested that the garage could be pushed back.

He asked if the ZBA would allow a two-story house. The Board said it would. Mr. To said that he could not achieve a sixty-foot setback and argued that the applicant was not fully tearing down the original structure but was just improving the structure. The Board asked how much of the old structure would remain. Mr. To said that what would remain would be at least the vertical wall and floor, the pad foundation and several walls. Building Inspector Mark Herweck was present and said that he would have to verify the load on the walls.

Mr. Gossels noted that the walls would need to be rebuilt. Mr. To asked if construction was part of the ZBA purview. Mr. Stevenson said that it is a ZBA concern because the ZBA is required to exercise discretion when looking at Special Permit applications in their totality.

Mr. Klofft said that in his mind the application does not meet two of the four conditions as proposed. Mr. To asked if the ZBA was allowing a two-story structure without a 60 foot setback.

Mr. Stevenson said that he did not see why Mr. Noyes needs to build in the proposed spot when the project appears to essentially be a teardown.

Mr. Gossels expressed frustration that this application was worse than the first. He and Mr. Klofft felt that the proposed structure would create a visual nuisance and impact on the neighborhood. Mr. O'Brien said that Mr. Noyes came back to the ZBA with a bigger rather than smaller proposal. Mr. Klofft, Mr. Gossels, and Mr. O'Brien said that they would likely not approve of this proposal. They said that they were looking for less massing, maybe a smaller house, or they would be fine with the size if it were presented with a greater front setback.

Mr. Palmer asked about the third story. Mr. To said that it was simply attic space. The Board felt that there was so much vertical space that future owners could occupy it as additional rooms. Mr. To disagreed stating that the intent was storage space.

The Board then suggested that Mr. To could withdraw the application without prejudice or the Board could take a vote on the application. Mr. To said he could work with Mr. Noyes to place the house farther back, add more architectural diversity, and less massing. The Board felt that the height would be fine if those other concerns were met.

Mr. To then asked the Board to withdraw the application without prejudice. The application fee for a new submission would be waived.

Mr. Stevenson asked whether any neighbors were present who wished to speak. None were present. There were no further comments from the Board or audience. The hearing was closed.

The following motion was made and seconded:

MOTION: "To accept a request from the Applicant to withdraw Case 14-36 without prejudice."

(Request for a Special Permit to enlarge an existing residence on a nonconforming lot and which would result in a front yard setback deficiency of no greater than five ± feet. The new residence would measure approximately 3,200 s.f.)

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

REASONS: The petitioner requires a special permit due to the nonconforming nature of the property. The Board found that several of the Special Permit criteria were not being met, therefore the applicant's representative was advised to revise his plans and the architect, present on behalf of the applicant, requested a withdrawal without prejudice.

Benjamin D. Stevenson, Chair

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