

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, January 5, 2015

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 Variance or 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.

William and Mary LoVerme, applicants and owners of 295 Concord Road, were present to request either a Special Permit or Variance for a 644 square foot detached garage to be built on the footprint of a previously demolished barn. The Board discussed at length whether a Variance or Special Permit would be required. Given that the lot is nonconforming the Board determined that granting a Special Permit would be the appropriate action. The Applicants were amenable to having their proposal reviewed as a Special Permit and requested a withdrawal without prejudice of the Variance application, Case 15-1. A motion was made and unanimously approved to withdraw Case 15-1 without prejudice.

William LoVerme then explained the proposal. He said that he and his wife bought their property on October 1, 2014 and they now want to build a garage in the location where there used to be a barn. Their intent was to construct the garage in the manner of the historic style. Their plans have been approved by Sudbury's Historic District Commission and an HDC Certificate of Appropriateness has been issued. The HDC requested that the barn be painted white and not red and that the size of the fascia boards be reduced. Included in the application was a copy of the 1936 County Map which shows the barn on plot plan and a historic photo of the barn that was provided by the neighbor.

Mr. LoVerme said that the next-door neighbors have lived for many years. In fact the neighbor even remembers playing in barn as a child. The old stone foundation is still one the site. There will be no basement level. The second floor space will be small, used for storage. The total square footage will be smaller than the old barn. Mr. LoVerme said that the surveyor placed the proposed garage a little closer to the side setback and not on old foundation as was expected. Because of this he felt that the side setback would be two feet rather than one foot. It was his hope that he could gain even more footage, moving the garage closer to his house, so that he does not impinge on his neighbors. There are trees in between the neighbors and his garage that are not reflected on the plan.

Mr. Stevenson asked how many trees would be taken down for construction. Ms. LoVerme said that none would be taken down but some trimming would occur to protect the new garage from hanging branches. She said that the neighbors were comfortable with that. The plans have been reviewed by all three neighbors. The ZBA was in receipt of a December 23, 2014 memo from Walker Development, owners of the Town Square complex, stating that they are in favor of the plans.

Mr. LoVerme said that in addition to having protected car coverage the primary reason for building the garage was for safety. The existing driveway does not allow cars to easily maneuver about so cars back out onto Concord Road. Given the speed by which cars already drive by the property, and the new Town Center reconfiguration plans which may enable cars to go even faster, he wanted to park cars in the garage and allow a turn-around area where the existing driveway is. The turn-around would be located so as to have cars turning toward the house and then turning out of the driveway.

Mr. Gossels said that he remembers the old barn and thinks that the scale of the project is appropriate, particularly as it would be slightly smaller than the old barn. He added that with the Town Square commercial area behind the property the garage would provide privacy.

Mr. Palmer asked how heavy equipment would maneuver to the back of the site if, for example, the septic system needed work. He did not want the homeowners to be too limited in their options, and he was also concerned about any future homeowners' options. Mr. Klofft said that he was also concerned about how the homeowners would do maintenance at the house if the setback was too small. He said that a three-foot setback would be better.

Mr. LoVerme said that he would most likely get the neighbors' permission for equipment to go onto the neighbor's property to get around the house.

The Board asked about the HDC's concerns. Mr. LoVerme said that a Certificate of Appropriateness was approved in December without issue.

Mr. Stevenson reviewed a set of additional conditions for the decision including that the garage would move over so that the minimum set back was no smaller than two feet with the deficiency being no greater than eighteen feet; construction would be in compliance with the Sudbury Historic District Commission's Certificate of Appropriateness; and trees are to be trimmed and not removed.

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 motions were made and seconded:

**Case 15-1**

MOTION: "To accept a request from the Applicant to withdraw Case 15-1 without prejudice."

(Request for a Variance to allow a 644 square foot detached garage with storage above on a nonconforming lot and which would result in a front yard setback deficiency of less than 9.5 feet and a side yard setback deficiency of no greater than 18 feet.)

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

**Case 15-2**

MOTION: "To grant William and Mary Ann LoVerme, applicants and owners, a Special Permit under the provisions of Section 2430 of the Zoning Bylaw in conformance with the application for the Special

Permit dated December 1, 2014 and the plans submitted by the Applicant, to allow a 644 square foot detached garage with storage above on a nonconforming lot and which would result in a front yard setback deficiency of less than 9.5 feet and a side yard setback deficiency of no greater than 18 feet for property located at 295 Concord Road, Residential Zone A-1, as follows:

1. The detached garage will be constructed as shown on plans dated November 11, 2014 prepared by Genesis Design Associates that are incorporated into and made part of the application for a Special Permit with the exception that the side yard setback deficiency will be no greater than 18 feet.
2. Construction shall be in compliance with the Sudbury Historic District Commission's Certificate of Appropriateness.
3. Existing trees shall be trimmed but not removed.
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: 4 Opposed: 0 Abstained: 1 (Palmer)

REASONS: The Board discussed at length that the petitioner requires a Special Permit rather than a Variance for the garage due to the nonconforming nature of the property. The application for a Variance was withdrawn without prejudice. The Board finds that the proposed garage, which will create front and side yard setback deficiencies, will not be substantially more nonconforming than the existing nonconformity to the neighborhood. No neighbors were present to express concerns therefore the proposal for a Special Permit was unanimously approved.

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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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Applicant Robert Brais was present to request a Special Permit under the provisions of Sections 4100 and 4166 of the Zoning Bylaw to transfer 11 cubic yards of soil in zone AE to provide flood protection for his property located at 79 Jarman Road.

Mr. Brais provided some background into how the FEMA flood zone mapping evolved at his property since he has owned it since 1999. Updates to flood zone mapping resulted in his property being placed within a flood zone which has significantly impacted his insurance premiums causing a hardship. He said that two porch posts are the only portion of his house to actually be within the boundaries of the flood zone so that if he added some fill to the area it would remedy the situation. An engineer and a surveyor concluded that placing fill around a strip of the house his property would be changed and he could then reapply to FEMA to reclassify the property. Adding fill, excavating, and transferring materials within a floodplain requires a Special Permit from the ZBA and also an Order of Conditions from the Conservation Commission. Mr. Brais explained the significant amount of time it has taken to get the project to this stage.

The Board was in receipt of a memo from Assistant Planner Jim Kupfer dated December 1, 2014 explaining that where things stood in regard to the Conservation Commission's review. The fill area within the floodplain needed to be determined along with the flood storage areas in accordance with the Wetlands Protection Act as required in the Notice of Intent. A Notice of Intent was filed.

Mr. Gossels felt that eleven cubic yards was a small amount of fill and he felt that the Special Permit was simply administrative in nature.

Mr. Palmer felt that the applicant is going in the right direction but he saw some technicalities in the application that made him hesitant to approve the proposal. He cautioned that raising the grade would bring the porch out of flood plain, but his basement will still get wet. Mr. Brais said he would get no flood protection anyway even though he is paying for the insurance.

The Board then spent some time discussing their role in issues with floodplains.

Mr. Brais said that he has been working with the Conservation Commission but they had yet to render a decision of the Order of Conditions. The next meeting of the Conservation Commission where he expects

to have his proposal approved was the week following the ZBA hearing. He said that the Board of Health has signed off on the plan due to the location of the property's septic system.

Mr. O'Brien said that he preferred to see additional documentation such as a print-out of the flood plain overlay district map and proof that Federal requirements were being met in the application.

Mr. Gossels suggested that perhaps the ZBA could approve the work with a condition stating that approval would be pending the Conservation Commission's approval. Mr. Klofft agreed saying that if the Conservation Commission does not approve then Mr. Brais would have to come back to the ZBA anyway.

Mr. Brais said that the project has become onerous and expensive. He has spent years dealing with this and wants to move on.

Given that some members of the Board wanted more documentation and the Conservation Commission's approval Mr. Stevenson asked what would be the problem of coming back to the ZBA after the January Con Com hearing. Mr. Brais said that it was a matter of more time with the project on hold and more insurance fees. Mr. Gossels and Mr. Klofft felt that the ZBA could issue a Special Permit with conditions. Mr. O'Brien, Mr. Palmer, and Mr. Stevenson felt that the Con Com should render an opinion before the ZBA issues a Special Permit.

Given that the majority of the Board wanted to hear from the Conservation Commission before rendering a decision, a motion was made to continue the hearing to Monday, February 2, 2015 at 7:30 p.m. at the Town Hall.

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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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Mark Taylor, Owner and Director, William Dowie, Consulting Director, and Monica McCann, General Manager, were present for Camp Sewataro, to ask for a renewal of Special Permit 10-1 to conduct a summer day camp at One Liberty Ledge. They were amenable to all existing conditions with the exception of the renewal term limit. Mr. Taylor asked that the Special Permit be granted without any limit of time for renewal. He said that the camp is over 50 years old. As an owner of land the Taylor family is completely dependent upon the success of the camp. Camp Sewataro is a summer camp for children located off of Haynes Road on a parcel of approximately fifty acres. Operations have gone smoothly. However, Mr. Taylor asked the Board to consider permanence of the permit so that camp has no obstacles to operation. Children from twenty-three communities enrolled in the camp last year including 278 children from Sudbury.

Mr. Klofft said that he had no problem issuing a longer term but was unsure about indefinitely.

Mr. Gossels suggested that if the time limit were removed and the applicant wanted changes to any conditions then they could come back to the ZBA. He felt that Camp Sewataro has proven itself to be a good business in town.

The Board then discussed at length adding a condition that if there were no time limit imposed then if there were any change in use or change in land ownership or the business ownership then the applicant would have to come back before the ZBA. Mr. Taylor said that Liberty Ledge Real Estate Trust owns land and has been since the camp was established in 1960.

The Board was comfortable with the way the camp has been running. Therefore, after discussion, a condition was added the existing conditions that there be no expiration term, but that if there are any changes in the use of the land or change in ownership then the applicant will have to come back to the ZBA...

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 Camp Sewataro, Inc., applicant, and Liberty Ledge Real Estate Trust, property owner, renewal of Special Permit 10-1, granted under the provisions of Section 2140 of the Zoning Bylaw, to conduct a summer day camp, property located at One Liberty Ledge, Residential Zone A-1, as follows:

1. The number of campers for nursery, kindergarten and first graders shall not exceed 150.
2. The number of campers for all other campers to age 14 shall not exceed 450.
3. The camp may also offer additional programming for up to 100 camp families on evenings and weekends during the regular camp session in June, July, and August through Labor Day.
4. The camp may also be opened for occasional use up to 15 days per year outside of the regular summer season, September through May.
5. This permit has no expiration, however any change in use or in ownership will require review by the Zoning Board of Appeals."

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

REASONS: This camp has been in existence since 1960 and has operated with no detriment to the neighborhood. The Board finds that the petitioners have consistently met the requirements for the granting of a special permit and considers this camp to be an asset to the community. Proper facilities are in place for this operation which continues to exist harmoniously with the surrounding neighborhood. No complaints have been received with regard to camp operations. Therefore the Board was amenable to dispensing with the renewal term, however any change in use or in ownership will require review by the Zoning Board of Appeals.

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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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Lynne Sullivan was present to ask for a Special Permit have a total of four dogs at her property at 28 Paddock Way. The Sudbury bylaw states that if four or more dogs reside at a property the owner needs a personal kennel license and Special Permit from the ZBA. Ms. Sullivan said that she is simply trying to follow the rules to accommodate her fourth dog, a puppy, recently acquired. Her dogs are a Eurasier breed.

Mr. Stevenson noted that the Board was in receipt of various correspondence on the matter, including a December 5, 2014 e-mail to ZBA from Jennifer Condon, the Animal Control Officer, who said that she had inspected the site and found no issues with the space and property. She said that the applicant employs a dog nanny who is responsible for the care of her dogs and opined that Ms. Sullivan is an excellent dog owner.

In addition, e-mail was received on December 5, 2014 from Bernard Bonn, 21 Paddock Way; on December 6, 2014 from Denise and Ken Sauter, 31 Paddock Way; and on December 10, 2014 from James Tasker, 27 Paddock Way all stating that they were apprised of the plans and had no concerns.

Additional photos of the property line were e-mailed to the Board by Lynne Sullivan on January 5, 2015 to supplement those submitted in the application.

Mr. Stevenson asked whether anyone was present who wished to speak on behalf of proposal. Jane Moeller of 30 Thoreau Way said that her home abuts Ms. Sullivan's property backyard to backyard. She said that she can hear barking from dogs and wanted to learn more about what the application proposed.

Ms. Sullivan said that there are dogs in the neighborhood that bark. She hears them too. However, she said that her dogs are a Eurasia breed which tend to be very quiet. She said that she has trained her dogs not to bark and noted that she has a dog nanny who takes care of her dogs. She said that her dogs are mostly indoor dogs that do not like to be outside. She also does not leave them outside for any length of time. Clark Moeller, also of 30 Thoreau Way, said that having not met Ms. Sullivan before he just wanted to clarify things in terms of what the application was about. The Moellers wanted to know if any form of outdoor structure was proposed to house the dogs. Ms. Sullivan said that she is not intending to build any structure, or dog kennel.



Mr. Klofft said that the ZBA can include a condition in the permit that the dogs are personal pets. The Moellers said that their main concerns were that there would be no noise and no outdoor kennel building which they felt changes the dynamic of animals. Ms. Sullivan said that there was to be no commercial operation whatsoever and no outdoor building.

Mr. Klofft said that since the four dogs are simply four family dogs and there was to be no kenneling or grooming on the property he was fine with the application. Mr. Stevenson said that the Board should give Ms. Sullivan some credit to applicant for coming to the Board with an application instead of just owning four dogs without reporting that.

Mr. Stevenson asked whether any other neighbors were present who wished to speak. None were present.

The Board then discussed adding in conditions to include that there be no outdoor kennel building; no commercial operations, and that there be just four personal pet dogs on the premises.

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

The following motion was made and seconded:

MOTION: "To grant Lynne Sullivan, applicant and owner, a Special Permit granted under the provisions of Section 2313 of the Zoning Bylaws for a kennel, to allow four dogs as personal pets at the premises, property located at 28 Paddock Way, Residential Zone A-1, subject to the following:

1. The dogs do not become a nuisance.
2. The maximum number of personal pet dogs allowed on the property is four (4).
3. No outdoor kennel facility shall be built.
4. There shall be no commercial operations involving the dogs.
5. Waste disposal shall be in accordance with Board of Health requirements.
6. Any complaints received by the applicants shall be reported immediately to the Animal Control Officer."

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

REASONS: The petitioner seeks a special permit to allow up to four dogs as personal pets at her property. 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. It is in an appropriate location, is not detrimental to the neighborhood and does not by its presence significantly alter the character of the zoning district. The animals are restricted to the area as shown in the plot plan which is made part of this decision to ensure that the use will not be offensive to the adjoining zoning districts or neighboring properties. Due to the support from neighbors and an excellent review by the Animal Control Officer, the Board finds that a special permit would be appropriate.

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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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Prior to discussion ZBA Member Jonathan O'Brien said that in the interest of full disclosure his property sits at or within 300 feet of the applicant's property. The Board did not feel that Mr. O'Brien needed to abstain from discussions on the case.

Applicant William F. Curley was present to ask for a Special Permit to reconstruct an existing residence on a nonconforming lot that would exceed the area of the original structure and result in a front yard setback deficiency of 12.5 feet. The new residence will measure approximately 2,000 square feet.

Mr. Curley said that he was planning to build virtually the same house that he built at 29 Allen Avenue that was approved by the ZBA. He said that the 7 July Road septic system has been placed in the area that the engineers determined was best and where there was sandy soil and not a lot of rock. In that regard the septic system is determining the house location which means that there is a front setback deficiency. Both the previous Board of Health Director Bob Leupold and the new Board of Health Director Bill Murphy have approved of the septic system.

Mr. Curley said that he owns other houses with similar setbacks in this neighborhood. He said that the house is being pushed back farther than the existing house. Mr. Curley owns the house to the left of 7 July Road which has a setback of eighteen feet.

Mr. Klofft agreed that the lots were tight in that neighborhood. He questioned the house design, however, suggesting that if the house were a gabled cape style then the roofline would be lower.

Mr. Curley said that the current roof ridge line is 31 ½ feet high. The garage is a single story. He added that cape-style houses actually cost more money to build but there are not as many buyers for that style.

Mr. Stevenson asked whether any neighbors were present who wished to speak on behalf of the project. Mark Lustig, resident at 16 July Road, said that he has been fortunate to see the neighborhood turn over. He said that the house was two houses to left of his and indicated that it would sit lower because the grade is lower at that point in the road. He did not feel that there would be any negative impact because of the height because the street grade is lower.

Mr. Gossels said that the ZBA simply wanted to ensure that mistakes weren't made in allowing larger colonials too close to the road.

Mr. Curley said that has owned this property since 2008 and it is nearing the end of its life. He said that he is not proposing doing anything with this property that has not been done in the neighborhood already where there have been reasonable reconstructions.

Mr. Klofft said that he understood that. Mr. O'Brien said that he would rather see a new building than what is currently there.

When Mr. Curley was asked whether or not the house would be taller than the houses on either side he said that it would be but the abutting houses were not low houses. The ceiling heights are nine and eight feet which are tall but are what new buyers want nowadays. Building Inspector Mark Herweck confirmed that the ceiling heights were appropriate and preferred by buyers.

Mr. Gossels said that the ZBA has been requesting of developers doing rebuilds that a condition be put into the Special Permit that requires the planting of street trees. The applicant was amenable to putting in two or three maples or oaks on the property line.

Mr. Stevenson asked whether any other 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 William F. Curley, applicant and owner, a Special Permit under the provisions of Section 2460B of the Zoning Bylaw, to reconstruct an existing residence on a nonconforming lot that would exceed the area of the original structure and result in a front yard setback deficiency of 12.5 feet. The new residence will measure approximately 2,000 s.f., property located at 7 July Road, Residential Zone A-1, subject to the following:

1. The new house will be constructed with a front setback of no less than 27.5 feet as shown on the Proposed Site Plan prepared by Lakeview Engineering Associates dated November 18, 2014 that is incorporated into and made part of this Special Permit.
2. The applicant agrees to plant two or three street trees either of maple or oak varieties.
3. 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.
4. 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 due to the nonconforming nature of the property. The Board finds that the proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and felt that the new structure would be compatible with the surrounding homes in the neighborhood.

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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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