

IN BOARD OF SELECTMEN
MONDAY, AUGUST 2, 1993

Present: Chairman Judith A. Cope, Lawrence L. Blacker, and John C. Drobinski.

The statutory requirements as to notice having been met, the meeting was convened by Chairman Cope at 7:30 p.m. at the Fairbank Senior Center.

Appointment of Executive Secretary Pro Tem

It was on motion unanimously

VOTED: To appoint Janet Silva as Executive Secretary Pro Tem for the purposes of this meeting.

Public Hearing - T. J. Maxx Site Plan Application 93-317

Present: Myron J. Fox, Attorney representing Sudbury Crossing Associates Realty Trust; Gerald D. Cohen, CGI Companies and Trustee for Sudbury Crossing Associates Realty Trust; Bruce Thomas, Schofield Bros.; Richard W. Cote, Architect; Frank M. Vana, CGI consultant; Thomas Phelps, Chairman, Board of Appeals; Ursula Lyons, Planning Board; Lee Miller, Evergreen Books; and a few interested citizens of Sudbury.

Chairman Cope announced the public hearing, originally scheduled to be held on Monday, July 12, 1993, at 8:00 p.m., and continued to Monday, July 26, 1993 at 9:00 p.m. and continued again for tonight, Monday, August 2., 1993, at 7:30 p.m., on the application of Sudbury Crossing Associates Realty Trust for a Site Plan Special Permit to construct a 7,200 square foot addition to the rear of the existing T. J. Maxx store and revise parking area to the rear of the same building located at 435-437 Boston Post Road, and including properties known as 225 and 239 Raymond Road.

Administrative Assistant to the Board, Janet Silva, announced that all abutters and parties in interest have been properly notified and advertisement of this public hearing was published June 21 and 28, 1993.

The Board acknowledged receipt of the following communications:

1. Application for Site Plan Approval received May 12, 1993, from Sudbury Crossing Associates Realty Trust, dated May 10, 1993.
2. Architectural rendering of the site plan including the floor plan and elevation received May 25, 1993.
3. Communication dated March 1, 1993, from CGI Companies on behalf of Sudbury Crossing Associates Realty Trust in favor of and consenting to the plans for the T. J. Maxx expansion from Schofield Brothers.
4. Three communications from the Building Inspector, John B. Hepting as follows:
 - (a) Communication dated July 9, 1993, citing several zoning issues.

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 - (a) Communication dated July 9, 1993, citing several zoning issues.
 - (b) Communication dated July 22, 1993, noting the changes to be made as a result of a discussion with the design engineer concerning the zoning issues outlined in the Building Inspector's July 9, 1993 communication, and verifying that the parking easement for Sudbury Farms can be used to determine parking calculations.
 - (c) Communication dated July 30, 1993, to Bruce Thomas responding to Mr. Thomas' request for comments on the proposed site plan revisions faxed to the Building Inspector on July 23, 1993.

5. Communication dated June 16, 1993, from Design Review Board Chairman Frank W. Riepe, recommending approval, but outlining the DRB's concerns with regard to parking, traffic flow and landscaping; also requesting their review of the final landscape plan.

6. Communication dated June 14, 1993 from Town Engineer, I. William Place, providing recommendations with regard to parking, landscaping, a walkway to Raymond Road, loading bays, detention area, noting absence of landscape calculations and the need for documentation allowing access from Frank Vana Trust land to westerly diagonal parking spaces.

7. Communication dated July 6, 1993, from the Planning Board listing their recommendations/comments:
 1. Remove dead end aisles wherever located.
 2. Establish well marked loading docks and solid waste disposal areas with adequate room for truck movements.
 3. Install better signage directing patrons to the rear of the building.
 4. Improve the pavement between the Sudbury Crossing buildings and Sudbury Farms to accommodate two way traffic in the southwestern corner of the site.
 5. Incentives be explored to encourage the use of the rear parking area particularly by employees of all the stores in the shopping complex.
 6. The Planning Board particularly recommends soliciting and applying as conditions specific comments from the Sudbury Water District concerning the protection of an aquifer in the adjacent area.
 7. Selectmen should consider requiring the applicant to post a bond in an amount sufficient to indemnify the Town and the Water District should the construction cause a problem with the aquifer.
 8. Pedestrian circulation should be enhanced by the use of walkways (a) along the length of this property on Route 20; (b) from Route 20 into the site in the vicinity of the main entrance, and crosswalks be painted within the site at the major intersections; and (c) a walkway or set of stairs be constructed from the upper level parking to the rear of the site.
 9. Landscape restriped areas of the parking lot to the current standard of 1 landscape tree per 10 parking spaces, and landscape around the unsightly detention basin in the rear of the site.
 10. Compliance with section V,C,3 of the Zoning Bylaw (Parking Standards).
 11. A reconfiguration of parking is proposed within Parking Easement E. It is questioned whether there is a limit to the number of spaces permitted within this easement.
 12. This property is within the Water Resource Protection District Zone II, and this zoning designation should be added to the plan, as required in section V.A.5.b. of the Zoning Bylaw.

8. A copy of the minutes from the Board of Appeals Public Hearing on the application of Sudbury Crossing Associates Realty Trust, dated June 29, 1993, at which a special permit to enlarge the non-conforming structure was denied.

9. A communication dated July 28, 1993 from Dr. Edward Chiang, H2O Engineering Consulting Associates, Inc. to Water District Superintendent Mr. Richard Carroll addressing concerns related to the plan and nearby wellfields.

10. Communication dated July 9, 1993, from Board of Health Director Robert C. Leupold, stating approval of the use of the existing septic system for the proposed 7,200 square foot expansion, and also noting that redesign of a future replacement system has been approved.

11. Verbal communication from Police Chief Peter Lembo on July 9, 1993, stating no objections to the site plan.

12. Verbal communication from Conservation Coordinator Deborah Montemerlo updated August 2, 1993, that the Commission would be involved with Wetlands issues for any channeling of runoff into Hop Brook or work on the detention basin.

13. Report dated July 12, 1993, from the Fire Chief stating the addition must be sprinklered and requesting a larger fire lane at the proposed entrance.

Chairman Cope explained that the non-conforming special permit petition requested by Sudbury Crossing Associates Realty Trust to the Board of Appeals was denied at their hearing which took place on June 29, 1993. The applicant now has the ability of going back to the Board of Appeals only if the Planning Board were to verify a substantial difference in the proposal, or they file a suit or appeal from which a settlement or agreement for a rehearing could result; the latter she believed was being done.

Mr. Myron Fox, attorney representing the applicant, confirmed that the applicant has filed an appeal to the Board of Appeals decision as a matter of form. Mr. Fox explained that many of the issues brought before the Board of Appeals were issues that should have been addressed by the Planning Board and the Board of Selectmen--not the Board of Appeals. The appeal is dependent upon what action the Board of Selectmen and the Planning Board choose to take.

With regard to the letter received from H2O Engineering Consultant Dr. Chiang, Mr. Fox explained that Dr. Chiang misunderstood to think the applicant was applying for the installation of a new septic system, and that the Water District is awaiting another response from Dr. Chiang. Schofield Brothers engineer, Mr. Bruce Thomas, noted that he had conversation with Dr. Chiang today, August 2, 1993, in which the information requested was made clear and that Dr. Chiang will be responding to the Planning Board's concerns for water protection which were submitted to the Water District.

Mr. Fox further explained that all letters responding to the site plan had not yet been received from all the Town Boards and Officials at the time of the Board of Appeals hearing; therefore, it was difficult for the applicant to respond until all information was received. Upon receiving this information,

continued Mr. Fox, it was easier for them to see what the concerns were and what changes were necessary, so overlays have now been made to the original site plan.

The background and history of the site was explained by Mr. Fox as follows: Over the years, Sudbury Crossing has provided many jobs and paid a large amount in taxes. The applicant's proposal is for construction of a 7,200 square foot addition, which is a 9% addition to the building for T.J. Maxx with additional parking in the rear of the building. A rear entrance will encourage parking in the rear of the building not only for T.J. Maxx, but for the other stores as well, added Mr. Fox.

Upon review of the bylaw, Mr. Fox explained that the case law asks if the applicant can legally do what he is proposing to do on this site. The answer is yes, according to Mr. Fox, in that this is a limited business district which includes retail, and that the proposed use is a permitted use--the Board of Selectmen should grant the permit, but should impose any reasonable conditions on the approval. Mr. Fox cited a "lead case", Y.D. Dugout, Inc. vs. Board of Appeals of Canton, 1970, a case where the court granted approval for a site plan because it was a permitted use stating that the use can be regulated, but not prohibited.

Case law states that a properly prepared site plan application cannot be denied unless the proposed use reaches the level of legal nuisance, stated Mr. Fox, and he cited a communication dated June 4, 1982, from Town Counsel Paul L. Kenny describing a nuisance, and Mr. Fox stated he does not believe there is a legal nuisance apparent in this instance. Mr. Fox also submitted, for the record, another court case involving SCIT, Inc. vs. the Planning Board of Braintree & another, 1984 relative to uses in a business district, and a communication dated January 2, 1986, from Town Counsel Paul L. Kenny citing the Y.D. Dugout, Inc. v. Board of Appeals of Canton also relative to special permit granting authority under uses which are allowed as of right in the various districts.

In addition, for the record, Mr. Fox submitted a communication dated July 31, 1986 from then Assistant Attorney General Henry F. O'Connell to Town Clerk Jean M. MacKenzie with regard to amendments to zoning bylaws adopted under Article 21 of the Warrant for the Sudbury Annual Town Meeting that convened April 7, 1986, for site plan approvals.

Mr. Bruce Thomas, architect for the site plan, explained the proposal and displayed the blueprint for review. He explained that the proposal of adding 7,200 square feet to the existing T. J. Maxx, was governed by the number of parking spaces they could fit on the existing site. They were able to identify 40 additional spaces after examining the existing parking, planning the reconfiguration, and getting the traffic moving better at the rear of the building. In large part, they were limited to 40 additional spaces because of the water resource protection district area located at the rear of the existing parking area, in that they could not add more impervious areas.

Mr. Thomas continued by pointing out the loading area that will be relocated because of the addition and the rear entrance to the addition, remarking that the rear entrance will resemble the front entrance in an effort to encourage more people to park in the rear of the building and use the rear entrance. The traffic pattern was described by Mr. Thomas and the one-way entrance to the rear of the site with the two-way traffic pattern on the opposite side of the building between Sudbury Farms was pointed out.

With regard to comments and suggestions received by various Town Officials and Boards, Mr. Thomas explained the following changes made to the original site plan through the use of overlays:

1. Dead end parking aisles were eliminated and were opened at every other isle to allow traffic to flow around the ends.
2. As requested by the Fire Chief, to allow access for a fire truck across the entire rear side of the building, a 35 ft. area was cleared to allow for two-way traffic as well as to accommodate parallel parking in front of the loading ramps for other stores.
3. Additional parking spaces will be made available in the front parking area by removing the photo hut and re-aligning how the cars will park in this area.
4. The two handicapped parking spaces by the new rear entrance to T. J. Maxx were eliminated to allow the Fire Chief access to the front door.

The effect of these changes resulted in an 1100 ft. decrease in the impervious area because of cutting the pavement and adding parking spaces in other areas.

Mr. Thomas commented they had met with the Design Review Board (DRB), who in turn asked them to discuss their concerns with the Board of Selectmen as follows:

1. The Design Review Board would like to see more open space within the parking area.
2. The Design Review Board would like to see the detention basin landscaped, and suggested that the applicant ask for or apply for a grant of relief from the parking requirements in order to increase the landscaping in the rear parking area. The DRB said that the amount of parking proposed would only all be used a few days of the year.

The result of addressing these issues would be a loss of about 6-8 parking spaces, but the gain of more green space. Mr. Thomas reported that by eliminating 16 spaces, the traffic flow and the landscaping would result in more of what everyone is looking for, but it would mean getting relief from the required number of spaces.

The Building Inspector, Mr. John Hepting, came forward and used the blueprint and overlays of the site plan to point out his concerns which were documented in his correspondence already noted. Mr. Hepting suggested that some parking spaces be eliminated at the end of parking aisles that were not open to allow for cars backing out to turn around and exit the parking aisle. He also mentioned that the two handicapped parking spaces noted on the original site plan to the right of the entry should be eliminated as now proposed, as they require wheelchair circulation back into a driving lane and were not necessary because they had already exceeded the required number. He concluded that the zoning was satisfactory, the traffic circulation is adequate, and the handicapped compliance is fine.

Chairman Cope asked about property lines and the 10 ft. requirement. Mr. Thomas remarked that there are several non-conforming property lines within 10 ft. and that they tried to list as many as they could find in the Board of Appeals application.

One of the biggest concerns, added Mrs. Cope is the delicate situation in the rear of the building just beyond the parking area for the need to protect the aquifer, and the attention needed to be paid to the swale which abuts the parking area. In discussion with the Planning Board, Mr. Fox suggested that a new liner could be installed vs. a grass swale. He noted that the Planning Board's letter to the Water District relative to this subject has been forwarded to Dr. Chiang.

Mr. Thomas added that alternatives in dealing with the swale have been discussed, and it was noted that the best management practice would be to install a grass swale because it works most effectively in eliminating pollutant runoffs. These are options that Dr. Chiang has been asked to look at according to Mr. Thomas. Chairman Cope asked about traps and separators because of the grease in the runoff. Mr. Thomas stated that grease control can be done by the existence of a grass swale or a hood placed over the pipe out of the detention basin which catches the surface oil as the water rises.

Selectman Blacker stated he is in favor of reducing the parking spaces, but he believes this is not the purview of the Selectmen, rather the Board of Appeals.

The lighting was discussed and concluded that all lighting would be directional and be directed toward the site. Mrs. Cope questioned what the inside of the new site might include, and Mr. Thomas showed a blueprint of the plan explaining that the whole store would be reorganized as a result and that cash registers would be placed in the rear of the store in addition to the front of the store for security purposes.

Selectman Drobinski asked about the parking in the front and the removal of the photo hut and what the results would be. Mr. Thomas stated that the area would be repaved, and rearranged.

Mr. Hepting added the following comments, not as a Building Inspector, but as a professional landscape architect:

1. Mr. Hepting highly recommended a grass swale with no liner and no curb with cuts to eliminate concentrated flow. He believes it should be sheet drained, with wheel stops added rather than any type of curb. A grass area is much better for absorption, percolation and distribution, he opined.

2. With regard to hoods over the pipe to catch grease, it has been Mr. Hepting's experience that this type of measure can result in flushing, in which case in flooding situations concentrations of oil and grease would pour offsite.

It was noted that the Conservation Commission is questioning whether or not the adjacent property is wetlands, and therefore under the Wetlands Protection Act. Mr. Thomas stated that this has yet to be resolved.

Selectman Drobinski mentioned the Planning Board's suggestion of stairs or a walk from the elevated parking area to the rear of the building. Mr. Thomas explained that the stairs would leave the pedestrian in the path of traffic. It was concluded that with the addition of the rear parking, the elevated area would probably be last choice and not a problem as far as having a rear access. Designated areas for crossing were discussed. Mr. Drobinski asked Mr. Hepting if he knew if Sudbury Farms was required to

repave their back parking area when their addition was added. No one seemed to know, but acknowledged this was worth checking.

Mr. Richard Cote, architect, came forward and displayed a photograph of the front of the T. J. Maxx store and an architectural rendering of the addition proposed for the rear of the building, pointing out that the rear will resemble the front with regard to the entrance.

Mrs. Janet Silva, Administrative Assistant to the Board of Selectmen, advised that the Board can specify its desires and continue the hearing to address the issues raised, and wait for the final plan to be reviewed by the Building Inspector, Planning Board, etc. and themselves.

Selectman Drobinski stated he prefers the grass swale for the detention basin instead of an artificial liner and is also in favor of reducing the parking and letting the green belt take care of the pollutants that drain off the parking lot.

Board of Appeals Chairman, Mr. Thomas Phelps remarked that he believes it is within the Selectmen's purview to reduce the number of parking spaces required.

Selectman Blacker questioned whether the Selectmen had the authority to waive the 15% needed for parking and stated that if it is waived, it is not as though it is gone forever. Mr. Fox opined that he interprets the bylaw to read that under limited circumstances, the Selectmen may grant relief from requirements of a specific section of the bylaw. Mr. Fox continued that if the Board of Selectmen choose to limit the parking requirements, he does not want his applicant to have to go back to the Board of Appeals and have this denied. He is asking that a condition be put on it.

Chairman Cope stated she would like to have Executive Secretary Thompson and Town Engineer I. William Place confer with Dr. Chiang. She asked about the placement of catch basins. It was stated by Bruce Thomas that catch basins would have to be lined continuously across the swale to take care of the sheet runoff and that the parking lot would need to be regraded. Mrs. Cope added that a maintenance program and inspection plan need to be included and that as much landscaping as possible should be added.

Upon review of the bylaws, Zoning Enforcement Agent John Hepting stated that the Selectmen have jurisdiction and the maximum parking spaces allowed to be waived is 30% of the total; however, those spaces not constructed have to be designated for backup and shown as spaces on a plan. Selectman Blacker suggested waiving up to 5%, which would be a total number of about 25 spaces.

On the recommendation of Selectman Drobinski, it was on motion unanimously

VOTED: To continue the public hearing on the application of Sudbury Crossing Associates Realty Trust for a Site Place Special Permit #93-317 to Monday, August 23, 1993 at 8:30 p.m. in the Fairbank Senior Center and to direct Town Counsel Paul Kenny, to draft a Decision approving Site Plan #93-317, incorporating items discussed tonight and in other board meetings, and to have specific items worked out between the applicant and the Town Engineer.

Executive Session

At 9:00 p.m., it was on motion by roll call unanimously

VOTED: To go into Executive Session to discuss a Discretionary Fund expenditure.

(Chairman Cope, aye, Selectman Blacker, aye; Selectman Drobinski, aye).

It was announced that open session would not reconvene. The meeting adjourned at 9:05 p.m.

Attest: _____
Janet Silva
Executive Secretary Pro Tem