

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MARCH 20, 2001

The Board consisted of:

Mark A. Kablack, Chairman
Patrick J. Delaney III, Clerk
Thomas W.H. Phelps
Gilbert P. Wright, Jr.
Lauren S. O'Brien

Notice was published in the Sudbury Town Crier on March 1 and 8, 2001, posted, mailed and read at this hearing.

Mr. Kablack, Chairman, 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 District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Bruce Quirk was present to represent a petition for renewal of Special Permit 99-5 to operate a Home Business, specifically the sale of antiques, used furniture and accessories in a building at the rear of the house at 236 Concord Road. The business has been in operation since 1986 and Mr. Quirk was not aware of any complaints since the last renewal and no changes were being requested for this application.

Mr. Delaney asked whether there are any non-resident employees. Mr. Quirk replied that at times there is a part-time person which he will continue to use when needed.

Mr. Kablack read a letter dated March 16, 2001 from the Planning Board which had no objection to the renewal.

There were no further comments. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Bruce T. and Eugenia L. Quirk, applicants, renewal of Special Permit 99-5, granted under the provisions of Section III,a,1,c of the Zoning Bylaws, to conduct a Home Business, specifically the sale of antiques, used furniture and accessories in a building at the rear of the house, property located at 236 Concord Road, Residential Zone A-1, provided that:

BRUCE T. & EUGENIA L. QUIRK
236 Concord Road
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1. A sign, not to exceed two square feet, in conformance with the Bylaw, will be allowed, said sign subject to approval by the Historic Districts Commission.
2. No exterior indication/display of such use or variation from the residential character (other than the sign) shall be allowed.
3. Hours of operation shall be 10:30AM-5PM, Monday through Saturday.
4. Only one (1) non-family member shall be employed.
5. The sale of antiques shall be confined to the rear portion of the barn.
6. No overnight parking of commercial vehicles in connection with this home business will be allowed.
7. No parking will be allowed on Antique Circle (or on a common driveway) or on Concord Road.
8. This permit is non-transferable and will expire in three (3) years on March 20, 2004, and the Board will consider renewal upon receipt of proper application on or before that date.”

VOTED: In favor: 5 (unanimous) Opposed:

REASONS: The petitioner seeks renewal of a special permit to conduct an antique business which has been in operation at this location since 1986. The Board finds the use to be in harmony with the general purpose and intent of the Bylaw. It is in an appropriate location, not detrimental to the neighborhood and does not by its existence alter the character of the zoning district. Adequate and appropriate facilities have been provided for proper operation and the use does not cause traffic congestion in the area. No abutters were present to oppose renewal. Therefore, the Board finds a three-year renewal period to be appropriate.

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John Castoldi was present to represent a petition for Special permit to legalize an addition having street centerline deficiencies on Great Lake Drive and Lake Shore Drive, and to legalize a deck addition having a rear yard setback deficiency of approximately one foot.

Mr. Castoldi explained that he was unaware of any of the setback issues until he sold his house. He said he purchased the house in December 1994 and subsequently received a mortgage inspection plan dated December 22, 1994, prepared by Joseph McLaughlin, R.L.S., which showed the layout of the existing house. A copy of the plan was submitted with the application package.

In 1996, Mr. Castoldi applied for a building permit to construct a 30X30 foot addition. At that time the Building Inspector explained that his lot was nonconforming and he could obtain a permit as long as the proposed construction would not be more nonconforming in terms of setback.

The proposal for the new construction was submitted on a plan prepared by William C. Melcher, Registered Architect, dated April 17, 1996, which showed the addition as having the same setback from Lake Shore Drive as the existing house. This plan was also submitted with the application.

A building permit was issued and the addition was constructed in accordance with the Melcher plan.

The house was placed on the market and is currently under a purchase and sale agreement. During this process it was discovered by the buyer's surveyor that there are setback issues with regard to street centerlines and rear yard setback. A copy of the mortgage inspection plan prepared for the buyers by Snelling & Hamel Associates, Inc., P.L.S. dated January 26, 2001 depicting that surveyor's findings was also submitted as part of the application.

As a result of the discrepancies, the potential buyers will not go forward with the purchase of the house until the situation is resolved.

There appear to be three issues. The first is with a setback deficiency from Great Lake Drive. Mr. Castoldi explained that the Melcher plan that was brought to the Building Inspector as part of the application for a permit to construct the addition did not show Great Lake Drive. Therefore, that side was presumed to be a side yard.

Mr. Castoldi explained that this portion of Great Lake Drive is a dirt road not serviced by the town. At one time it was not even listed; however, he was told by the Town Engineer that it was put back on the list for purposes of Fire Department information and identification.

Since it is listed, the street centerline setback applies and the addition which had been constructed was now deficient by 8 feet.

With regard to the setback deficiency on Great Lake Drive, Mr. Castoldi explained that the plan prepared by the surveyor for the prospective buyers shows different setbacks than those shown on Mr. Castoldi's mortgage inspection plan.

Mr. Castoldi said there is a legitimate street centerline deficiency from Great Lake Drive. However, the buyer's surveyor indicates the setback from Lake Shore Drive to be 27 feet as opposed to that shown on Mr. Castoldi's plan mortgage inspection plan dated December 22, 1994 which is 25 feet. In addition, the latest plan indicates there is a rear yard setback deficiency of approximately one foot for the deck.

Mr. Castoldi said he brought this information to the attention of Building Inspector Hepting who advised him to apply for a special permit and to explain his situation in a letter to the Board.

Mr. Kablack noted that Mary Corley, ZBA Secretary, reported to him of her discussion with Mr. Hepting on this subject. Mrs. Corley was told that there is a street centerline setback issue on Great Lake Drive, which was considered to be a side yard at the time application for a building permit was made since that street was not shown on the architect's plan.

With regard to the setback on Lake Shore Drive, Mr. Hepting said this area is very difficult to survey because there are no bounds until Hudson Road which is quite a distance

JOHN & MARGARET CASTOLDI

7 Lake Shore Drive

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away. Points are then taken in a zigzag pattern which Mr. Hepting believed would result in different results by different surveyors. He believed it would be difficult for every surveyor to come up with the same result.

Mr. Kablack read a letter dated March 16, 2001 which took no position on the petition. He asked whether Mr. Castoldi ever had issues from the neighbors when he constructed the addition. Mr. Castoldi said he did not.

There were no abutters present.

Following further review of the three plans with questions for clarification, the hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant John & Margaret Castoldi, owners of property, a Special Permit under the provisions of Section I,D,3 of the Zoning Bylaws, to legalize an addition having a street centerline setback deficiency of 8 feet \pm on Great Lake Drive and a front yard setback deficiency of 12 feet \pm and street centerline setback deficiency of 42 feet \pm on Lake Shore Drive, and to legalize a deck having a rear yard setback deficiency of one foot \pm , as shown on Mortgage Inspection Plan dated January 26, 2001, prepared by Snelling & Hamel Associates, Inc., Lincoln, MA, property located at 7 Lake Shore Drive, Residential Zone A-1."

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

REASONS: The petitioner requires a special permit to legalize an addition having setback deficiencies. The Board finds that the testimony presented warrants the granting of a special permit. At the time application was made for construction of the addition, the setback from Great Lake Drive was never shown on the plan, nor was it picked up since that street is a dirt road which is not serviced by the town. Hence, unbeknown to all parties, this was considered a conforming side yard.

The Board further finds that the setback from Lake Shore Drive and the one-foot setback deficiency for the deck appear to be the result of field errors which could arise due to the difficulty in locating reference points for this particular area of town.

The Board notes that the addition is not significantly more nonconforming than the existing nonconformity to the neighborhood and is compatible with other homes in the area.

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7 Lake Shore Drive
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Mark A. Kablack, Chairman

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ALBERTSON'S INC. D/B/A OSCO DRUG
423 Boston Post Road
01-7

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Attorney David Wallace was present to represent a petition for special permit to install a second primary sign, a secondary sign and a directional sign higher than 3 ½ feet above the ground at the proposed Osco Drug Store to be located at 423 Boston Post Road.

Also present were Matthew Ward, Cubellis Associates, Inc., and Michael Radner, Geller Associates.

Before beginning his presentation, Attorney Wallace noted that there has been a change in the look of the building since the last meeting with this Board. The north side of the building facing Route 20 no longer has an entrance. It will be glassed and will look as it did before. The sole entrance will be on the east side which faces the plaza. Everything else will be the same.

Attorney Wallace displayed the plans and pointed out the locations of the requested signs. Basically he was looking for four signs. He said on the application the primary sign size was listed as 30 s.f.; however it will actually be 11.25 s.f. since only the sign letters are counted, not the outside exterior.

Mr. Radner explained that the sign size requirements are governed by the mall requirements. They will be the same size as the other signs in the plaza and will serve as visual cues from Route 20 and the plaza itself.

ALBERTSON'S INC. D/B/A OSCO DRUG
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The secondary sign will be installed under the canopy, similar to other signs in the plaza in order for shoppers to be able to identify a store while walking under the canopy.

The directional sign will be 3 s.f., or one foot greater than allowed and will be located 10 feet from the ground to the bottom of the sign, which is more than is allowed in the Bylaw.

With regard to the sign on the canopy, Mr. Delaney asked whether this was strictly a directional sign to identify the drive-through with no plan or intention to add wording such as "Osco", "pharmacy", or any other wording.

Attorney Wallace affirmed that this is the intent. He agreed with Mr. Delaney's statement that should any other change be proposed to that sign, he will come back before the Board for a permit.

To a question regarding illumination, Attorney Wallace believed the sign might be illuminated. However, if it is, it will only be externally illuminated.

Mr. Kablack asked whether the Design Review Board (DRB) submitted a report on the signs as this Board was not in receipt of any correspondence from them. Attorney Wallace believed he had a copy of the minutes although he could not locate them at this time. He said that Board had no objection to the signs. Mr. Kablack said this Board will request a copy from the DRB.

Mr. Kablack read a letter from the Planning Board dated March 16, 2001 which recommended approval.

There were no further questions. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Albertson's Inc. d/b/a Osco Drug, applicant, a Special Permit under the provisions of Section V,D,12 of the Zoning Bylaws, to install two primary signs, one secondary sign, and one directional sign in accordance with the design and dimensions as shown on Sign Plan SKA2, dated 1/10/01, prepared by Cubellis Assoc., Inc., Boston, MA, property located at 423 Boston Post Road, Limited Business District #6."

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

REASONS: The Board finds that the petitioner meets the requirements for granting of a special permit for the requested signs. Specifically, it finds the two primary signs to be necessary for safety in identification from Route 20 and within the plaza. The requested secondary sign is

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necessary to identify store location while walking under the canopy, and the directional sign, in the proposed location and the requested height, will serve to identify the drive-through.

The Board commends the applicant on a responsible sign proposal which is designed to fit in and be compatible with the other plaza signs.

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