

FRANCIS J. VANARIA
448 Dutton Road
01-20

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels, Alternate
Stephen M. Richmond, Alternate

Notice of this hearing was published in the Sudbury Town Crier on September 20 and 27, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting 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.

Francis Vanaria was present to represent a petition for special permit to demolish an existing residence and construct a new residence on a nonconforming lot which will exceed the area of the original nonconforming structure. The property is located at 448 Dutton Road (formerly 5 Maple Street) and is comprised of .57 acres with 120 feet of frontage.

Mr. Vanaria said there were two sections to his petition – reconstruction of a nonconforming lot and a street centerline deficiency from Maple Street.

It was pointed out that the application was advertised as a petition for demolition and reconstruction with no street centerline setback deficiency mentioned.

Mr. Vanaria submitted a model depicting the lot and proposed house location. He said Maple Street is a 20-foot private street which is not paved and does not service any properties. It is now used as an access drive for this property.

Working from the model, Mr. Vanaria described the proposed house location. He said if he were to reconstruct the house without adding to the nonconformity, the location would cause the house to peer down into the backyard of 46 Poplar Street which would be detrimental to that abutter. Complying with the setback, except for Maple Street, he described the optimal location for a house which would not impact the abutting property. However, he said there is still the street centerline setback issue.

Mr. Delaney said it appears that the enlargement aspect can be covered under this special permit application, but the relocation aspect and setback issue which was not advertised would have to be considered separately.

Discussion followed on the history of Maple Street and its applicability to the setback issue. Mr. Delaney felt there was not enough information to reach a conclusion on the setback issue and that a determination should come from the Building Inspector.

Mr. Delaney read a letter dated September 4, 2001 from Mark and Jody Kablack, 46 Poplar Street, abutters who would be most affected by the reconstruction. The Kablack's support the demolition and reconstruction and ask that the applicant consider moving the building envelope closer to Dutton Road by several feet so that the front façade will coincide with the setback of their residence to Dutton Road.

Mr. Vanaria said he was agreeable to moving the building envelope in accordance with the Kablack's request.

There were no further questions from the Board. No abutters were present. Mr. Delaney said the Board would take up the matter of the demolition and reconstruction and Mr. Vanaria should request a determination from the Building Inspector regarding the street centerline issue.

The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Francis J. Vanaria, owner of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence on a nonconforming lot which will exceed the area of the original nonconforming structure, property located at 448 Dutton Road, Residential Zone A. provided that:

1. The applicant consider moving the building envelope closer to Dutton Road by several feet in order that the front façade of the proposed residence will coincide with the setback of the residence at 46 Poplar Street to Dutton Road."

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, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental than the existing nonconforming structure. Further the applicant has indicated his willingness to work with the abutter to site the proposed structure in a location which will lessen any impact to that abutter.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels, Alternate

Stephen M. Richmond, Alternate

CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS
SUDBURY WATER DISTRICT
0 Maynard Road
01-21

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels, Alternate
Stephen M. Richmond, Alternate

Notice of this hearing was published in the Sudbury Town Crier on September 20 and 27, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a use variance. 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.

Attorney Michael Giaimo was present representing the petitioner in a request for renewal of Use Variance 96-27 and 96-27A for continued operation of a wireless communication facility at 0 Maynard Road (Willis Hill watertank).

Attorney Giaimo was requesting two changes to the Use Variance. The first was a request to remove the time limit. The second was a request to change the antenna configuration from 4 antennas per side to 5 antennas per side for a total of 15 antennas. The fifth antenna would be mounted on the existing structure. There would be no enlargement of equipment or change in the location of use. The size and height of the structure will remain the same.

Attorney Giaimo said the site is as close to an invisible site as one would see for this type of use. He described the layout and location of the equipment shelter which he said is not visible even to the closest abutters.

A representative from Cellco described the facility and spoke to the continuing need for coverage. He displayed two maps, one depicting the existing coverage, with the other showing the gap should the facility be turned off. He said the site continues to meet the use variance guidelines and referenced the information submitted with the application in justification of renewal.

CELLCO PARTNERSHIP D//B/A VERIZON WIRELESS
SUDBURY WATER DISTRICT
0 Maynard Road
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Attorney Giaimo submitted a RF report from Donald Haes, Jr., which states that the facility complies with all regulatory limits for RF exposure. Also submitted was a plan dated August 17, 2001 prepared by Edwards & Kelcey which depicts the site with the new antenna array.

Mr. Delaney asked whether there have been any complaints from the neighbors. Attorney Giaimo said he was not aware of any. When asked about the access road which is Condition 1 of the original permit, Attorney Giaimo said although he did not have the final plans, he believed the first 300 feet was graded and stabilized as per the condition.

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

After deliberation the following motion was placed and seconded:

MOTION: 'To grant Cellco Partnership d/b/a Verizon Wireless, applicant, and Sudbury Water District, owner of property, renewal of Use Variance 96-27 and 96-27A, under the provisions of Section 1210 and 4220 of the Zoning Bylaws, for continued operation of wireless communications to the Town of Sudbury, consisting of 3 arrays of 5 antennas on each side for a total of 15 antennas, 4 feet in height, and a single equipment shelter, in accordance with plan

titled Communications Facility Modification Willis Hill Watertank, prepared by Edwards & Kelcey, Boston, MA, Project #0200883013, dated 8/17/01, Sheets 1-3, property located at 0 Maynard Road (Willis Hill Watertank), Residential Zone A, subject to the following:

1. The first 300 feet of the access road shall be graded and stabilized with perk pack over 1½”-3” stone.
2. The air conditioner and emergency generator shall not produce undue noise and shall be consistent with average noise levels for residential uses.
3. The structure shall be used solely to house equipment associated with antennas.

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

REASONS: The applicant seeks renewal of a use variance for continued operation of a wireless communications facility. The Board finds that the applicant has complied with the provisions of the original permit and has satisfied the requirements for renewal of the use variance. As a result of changes in technology over the past 5 years, the Board finds the addition of a 5th antenna appropriate and consistent with the requirements of such a facility to provide service to their customers. This facility is virtually invisible and has no impact on the neighborhood in terms of

CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS
SUDBURY WATER DISTRICT
0 Maynard Road
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noise or access by personnel. The applicant is not aware of any complaints, nor have any abutters or neighbors contacted the Board with regard to the operation of this facility.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels, Alternate

Stephen M. Richmond, Alternate

TIMOTHY WALSH & GAIL KESSLER-WALSH
236 Raymond Road
01-22

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels, Alternate
Stephen M. Richmond, Alternate

Notice of this hearing was published in the Sudbury Town Crier on September 20 and 27, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting 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.

Timothy Walsh was present to represent a petition for special permit to enlarge a nonconforming structure by constructing a deck with sunroof which will result in a side yard setback deficiency at 236 Raymond Road.

Mr. Walsh said he would like to remove the old deck and construct a new one extending it by 4 feet. This would result in a side yard setback deficiency of 4 feet. He described the proposed construction from the plan submitted with his application which will be more functional if enlarged.

Mr. Walsh said he spoke with the neighbors behind him and on Maple Avenue and none had any problem with the construction. The immediate side abutter is land owned by the town.

There were no abutters present. Following a brief review, the hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Timothy Walsh and Gail Kessler-Walsh, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing a 12X36 foot deck with sunroof which will result in a side yard setback deficiency of 4 feet \pm , property located at 236 Raymond Road, Residential Zone A."

This Special Permit will lapse if substantial construction has not begun within 12 months following the filing of this approval (plus appeal period) with the Town Clerk.

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 construction, which will result in a side yard setback deficiency, will not be substantially more detrimental than the existing nonconformity to the neighborhood. The proposed deck will upgrade the existing structure and will have little or no impact on town-owned adjoining land. The petitioner has spoken with neighbors in the area and none had any objection to the proposed construction.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels, Alternate

Stephen M. Richmond, Alternate

BARBARA DESOUSA
26 Summer Street
01-23

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels, Alternate
Stephen M. Richmond, Alternate

Notice of this public hearing was published in the Sudbury Town Crier on September 20 and 27, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting 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.

Barbara DeSousa was present to represent a petition for Special Permit to enlarge a nonconforming structure by constructing a 25X10 foot bedroom/bathroom addition which will increase the existing street centerline setback deficiency by 7 feet.

Ms. DeSousa described the proposed construction explaining that the location chosen is the only feasible area because of lot and septic constraints. Additionally, she submitted signatures of nine abutters who had no objection to the petition.

The Board reviewed the plan submitted with the application as well as a sketch with questions asked for clarification purposes.

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

After deliberation the following motion was placed and seconded:

MOTION: "To grant Barbara DeSousa, owner of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing a bedroom/bathroom addition which will increase the existing nonconforming setback by 7 feet \pm , resulting in a total street centerline setback deficiency of 37 feet \pm and a front yard setback deficiency of 17 feet \pm , property located at 26 Summer Street, Residential Zone A."

BARBARA DESOUSA
26 Summer Street
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This Special Permit will lapse if substantial construction has not begun within 12 months following the filing of this approval (plus appeal period) with the Town Clerk.

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 construction, which will increase the existing street centerline setback deficiency, will not be significantly more detrimental than the existing nonconformity to the neighborhood. The construction will be aesthetically compatible with the house, will provide additional needed space, and is similar to other additions in the

neighborhood. The Board further notes that several abutters signed a statement in support and no abutters were present to oppose the petition.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels, Alternate

Stephen M. Richmond

STEPHEN E. GRANDE, JR.
22 Candy Hill Road
01-25

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels, Alternate
Stephen M. Richmond, Alternate

Notice of this hearing was published in the Sudbury Town Crier on September 20 and 27, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting 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.

Stephen E. Grande III was present to represent his father, Stephen E. Grande, Jr. in a petition for Special Permit to allow demolition of an existing residence and construction of a new residence, not to exceed a 6,000 s.f. footprint, on a nonconforming lot which will exceed the area

of the original nonconforming structure. The property is located at 22 Candy Hill Road. The area is zoned Residential C with a requirement for 60,000 s.f. of lot area and 210 feet of frontage. The property is comprised of 63,370 s.f. with 202.1 feet of frontage.

Mr. Grande said his father has owned the property since 1954. It was planned to take the house down and construct another one. However, Mr. Grande said he was informed by the Building Inspector that a change to the Bylaw now required a special permit from the Board of Appeals to demolish and construct a residence that was larger than the existing one on a nonconforming lot.

Mr. Grande said the intent is to market the lot as a buildable lot. All zoning setbacks will be met for the reconstructed house. Although Mr. Grande had no house plans, he was advised by the Building Inspector to put in a not to exceed a 6,000 s.f. footprint which would allow for some flexibility in the size of the structure and the ability to market the lot.

From a plan, Mr. Grande described the existing structure and location which does not front on Candy Hill Road. The new residence would be designed to front on that road.

STEPHEN E. GRANDE, JR.
22 Candy Hill Road
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In response to a question from Mr. Delaney, Mr. Grande said the sketch submitted with the application was not drawn to scale. It was provided to demonstrate what could be placed on the lot. It was also not intended to convey the exact position of the proposed house.

Elizabeth John, 16 Candy Hill Road, said she is the downhill abutter. She had concerns with regard to the driveway location of the proposed house because of the potential for accidents. She would also want to see a safety fence during the construction period.

While recognizing Ms. John's concerns as valid, Mr. Delaney did not believe this Board had jurisdiction. He felt those issues would be addressed during the building application process.

There was no further input or questions from the Board. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Stephen E. Grande, Jr. owner of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence, not to exceed a 6,000 s.f. footprint, on a nonconforming lot which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 22 Candy Hill Road, Residential Zone A."

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, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The Board finds that the large land area of 63,370 s.f. will adequately contain a structure not to exceed a 6,000 s.f. footprint which will conform to all setback requirements.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels, Alternate

Stephen M. Richmond, Alternate

SUDBURY CROSSING LP
437 Boston Post Road
01-26

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels, Alternate
Stephen M. Richmond, Alternate

Notice of this hearing was published in the Sudbury Town Crier on September 20 and 27, 2001, posted, mailed and read at this hearing.

Mr. Delaney, Acting 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.

Bart Steele, ViewPoint Sign and Awning, was present to represent the applicant, Sudbury Crossing LP in a petition for Special Permit to erect an oversized freestanding business sign at 437 Boston Post Road.

Mr. Steele said the property is comprised of approximately 82,000 s.f. with 483 feet of frontage. The petitioner requests approval for the new sign design which will be replacing a pre-existing nonconforming sign which is 30 s.f. and set back 15 feet from the road.

The new design was approved by the Design Review Board (DRB) and is 36.73 s.f. It was approved after two meetings during which several recommendations were made by the DRB. The proposed sign is 4'4" high, 8'3" wide and will be constructed from the material as shown in the sample provided by Mr. Steele. It will not be internally lit but will be illuminated by the existing lighting.

Mr. Steele explained that the intent of the sign was to enhance visibility to the 16 tenants of the shopping plaza which is a major shopping center. The first step is to revamp the front entranceway by putting in a new sign with landscaping.

Mr. Delaney asked why, since the sign is custom made, it could not be the same size thus eliminating the need to come before this Board.

SUDBURY CROSSING LP
437 Boston Post Road
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Mr. Steele replied that his client is not interested in keeping the logo of the old sign, which is outdated. He said the sign size was a compromise between the petitioner and the DRB since originally a substantially larger size of approximately 72 s.f. was being requested.

Mr. Phelps felt that the proposed sign size would work for that particular area. He did not feel it was overly oversized.

The Board was in receipt of a letter dated August 27, 2001 from the DRB which voted to recommend approval of the sign as proposed provided it keeps the existing 15 foot setback of the current sign.

There was no further input. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Sudbury Crossing LP, owner of property, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to erect an oversized freestanding business sign (36.73 vs.), said sign to maintain the existing 15 foot setback of the original sign, property located at 437 Boston Post Road, Limited Business District #6."

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

REASONS: The petitioner requires a special permit to erect an oversized freestanding business sign. The Board finds that the proposed sign, which is slightly larger than the existing sign, and

which will maintain the setback of the original sign, is in harmony with the general purpose and intent of the Bylaw. The size of the sign is a result of a compromise between the petitioner and the Design Review Board. It will replace an outdated, deteriorating sign and will provide the needed visibility to the shopping plaza and its tenants.

Patrick J. Delaney III, Acting Chairman

Lauren S. O'Brien, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels, Alternate

Stephen M. Richmond, Alternate

VERRILL vs. NORTHWOOD AT SUDBURY
138 North Road
01-27

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 10, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels, Alternate
Stephen M. Richmond, Alternate

Mr. Delaney, Acting Chairman, noted a petition by Joan Verrill appealing a decision of the Building Inspector pertaining to zoning issues with regard to Northwood at Sudbury, Building #1 and refusal to rescind the building permit for Building #2 was advertised in the Sudbury Town Crier on September 20 and 27, 2001, posted, mailed and read as required. The property is owned by Northwood Properties LLC located at 138 North Road.

Stephen Verrill submitted a letter on behalf of Joan Verrill who was unable to attend this evening and who asked that Stephen Verrill represent her in this matter.

Mr. Verrill said her appeal asks for enforcement of the zoning code as the Building Inspector refused to enforce it for Building #1, and for refusal to rescind the building permit for Building #2. He referred to material which was submitted by Ms. Verrill including a motion to dismiss which was submitted by Northwood Development, all of which are part of the record.

Mr. Delaney said the Board must first consider whether or not it can hear this case. He said the Board of Appeals is a quasi-judicial board; it is not a court, and therefore it does not take

motions to dismiss. Applications are filed for special permits, variances, or appeals, and a public hearing is held. A decision on the application is then made by the Board. However, he said the decision from the Board may be that it does not have, or no longer has, jurisdiction or that the application is not timely filed.

In this case, the Building Inspector issued a building permit for Building #1 of the Northwood development in 1996. That decision of the Building Inspector was appealed to this Board by Stephen Verrill, William Wagner and Ralph Tyler. The Board held several sessions of public hearings with much testimony from both sides, and the Board reached a decision that the Building Inspector did act properly in granting that building permit.

The next action by the Building Inspector was many months ago when he granted a building permit for construction of Building #2. Essentially the same situation occurred and an appeal was filed by the same parties. The Board again conducted a series of public hearing sessions, testimony and deliberations, and again reached exactly the same conclusion in that the

VERRILL vs. NORTHWOOD AT SUDBURY

138 North Road

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Building Inspector had acted properly in granting a permit. That decision was subsequently appealed and is in court.

For that reason, and with that background, Mr. Delaney said it would appear that this Board has essentially heard this case and that presents a number of practical and probably legal issues with this case.

The practical issues are obvious. One would be that if this Board were to hear this case, it would be essentially usurping the authority of the court which is hearing the appeal of the previous decisions. It would also be problematic in that a previous sitting Board has reached a decision based on essentially the same actions by Building Inspector. If this Board were to reach the same conclusion, nothing would have been accomplished. If this Board were to reach the opposite conclusion there would be two Boards in the same town, with the same case, with opposite conclusions.

Mr. Delaney said this Board looked to Town Counsel for guidance with a response letter dated October 5, 2001 having been received which states Town Counsel's opinion that this appeal was not properly brought before the Board for the reason that this matter has been essentially covered before.

Mr. Delaney said he himself looked at M.G.L. Chapter 40A, Section 15, and it appears that the time frame for appealing decisions by a town official is limited to 30 days. He felt that the previous two appeals had been filed within 30 days of the action of the Building Inspector and the Board heard those cases. Thirty days was many months ago; therefore it appears that in order to hear this case the Board would have to enforce that section of M.G.L. Further, a conflict would be created, not only between this sitting Board and the previous Board's decision, but also between this Board and the appeals cases that exist right now.

For those reasons Mr. Delaney said he does not believe this appeal was properly brought before the Board and he would recommend to the other Board members that they not conduct a public hearing and re-re-review these concerns for a third time. Rather, he would recommend the Board issue a denial on the basis that the application was not properly brought before the Board.

Mr. Verrill asked whether there was not a 6-year period for zoning violations.

Mr. Delaney said there is a 6-year period but it is for different circumstances than what is presented here.

Mr. Verrill said this appeal was submitted under the 6-year period. Mr. Delaney reiterated that he did not believe the time frame suited the circumstances. He added that for the

VERRILL vs. NORTHWOOD AT SUDBURY
138 North Road
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other two appeals there was a 30-day window and people took advantage of that and filed appeals which were heard, deliberated and voted.

Ralph Tyler, 1 Deacon Lane, said with regard to Building #1 this appeal is based on the Zoning Enforcement Agent's inaction on a completed building which is occupied. He said there were two appeals filed – one for Building #1. He said a letter was written to the local Building Inspector requesting him to enforce the zoning bylaw and new information was provided with regard to marketing brochures, etc.

With regard to Building #2, Mr. Tyler said it was not the issuance of a building permit that was being appealed. It was a request that the Building Inspector revoke the building permit. The Building Inspector refused to revoke the building permit and that is what is being appealed.

Mr. Tyler said the Board can deny if it is so inclined but he felt there isn't the statutory 30 days in that sense as he has been advised.

Mr. Delaney said practically there isn't any way the Board can take this case. He said the Board has heard this case twice and has put more time into it than would have been expected of them. He said that while all the members did not agree on it, a decision has been made.

There were no further comments. After deliberation the following motion was made and seconded:

MOTION: "To deny an application by Joan Verrill, appealing a decision of the Building Inspector pertaining to zoning issues with regard to Northwood at Sudbury Building #1, and refusal to rescind the building permit for Building #2, property owned by Northwood Properties, LLC, located at 138 North Road, Research District Zone."

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

REASONS: The Board denies this appeal on the basis that it was not properly brought before the Board. The Board refers to M.G.L.Chapter 40A, Section 15 which states that any appeal shall be taken within thirty days from the date of the order or decision which is being appealed. The Board finds that this appeal was not timely filed within the constraints of this statute.

In addition, two previous appeals, in 1996 and 2001, and virtually identical, were brought before this Board by three parties, one of whom is the spouse of the petitioner in this third case. The Board finds that this matter has been previously decided by the Board and is presently pending judicial review by the court. To rehear this third appeal would be counterproductive and conflict with the two previous cases which are pending in the court.

VERRILL vs. NORTHWOOD AT SUDBURY
138 North Road
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Patrick J. Delaney III, Acting Chairman

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