

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 14, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Richard L. Burpee, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Melinda M. Berman, Alternate

The public hearing was called to order by the Acting Chairman, Mr. Delaney who acknowledged receipt of a letter dated April 22, 2002 from the petitioner requesting this application by withdrawn.

The following motion was placed and seconded:

MOTION: To allow withdrawal of Case 02-16.
(Petition for Special Permit to construct a 22X28 foot structure which will result in a rear yard setback deficiency)

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

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Melinda M. Berman, Alternate

CHRIS OUTZEN

MINUTES OF THE PUBLIC HEARING
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Notice was published in the Sudbury Town Crier on April 25 and May 2, 2002, posted, mailed and read at this hearing.

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

Mark D. Hammer, Hammer Architects, was present representing the applicant in a petition for a Variance to construct a garage addition which will create a side yard setback deficiency of 5 feet. The proposal is for an addition which will result in construction of a garage, swimming pool and changing room, with a dining room above, and a guest suite.

Mr. Hammer said he looked at a number of different alternatives before arriving at this design. Most were additions which were toward the front of the site and which avoided setback issues. The feeling was that an addition which conformed to setbacks would be much more visible from the street and would have greater impact on the neighbors. The house currently encroaches on the wetland; therefore, to move the addition back would further encroach on the wetland.

Mr. Delaney said the Board wanted to see where the new footprint would fit and how it would function on the existing structure plan. Mr. Hammer had brought a copy of this plan. He noted that the Outzen's have spoken with their neighbors and it was his understanding that they supported this project. From the plan, he pointed out the location of the existing house and the proposed construction, the main components of which will be a garage for two more cars, and the swimming pool.

Mr. Hammer was requesting side yard relief for three reasons: (1) the loss of the 5 feet would result in a difficult turning radius in the driveway, (2) without that, cars would have to

CHRIS OUTZEN

back up onto the street which would be dangerous (3) snow removal would be facilitated with the additional 5 feet.

The abutting property to the north, where relief is being sought, is conservation land owned by the town and therefore would result in no impact to a neighbor. In addition, the town has an easement to the Outzen property which cuts off a corner of their property.

The proposed width of the parking area would be 25 feet at the narrowest point. The existing width is more than 25 feet and the Outzens are able to back out, turn and drive forward.

The Board reviewed both plans submitted with the application, one that shows the addition within the setbacks, the other within the 5-foot deficiency. Mr. Hammer said the hardship is primarily with the turnaround area. Further discussion centered on maneuverability within that area as well as the location of the nearest abutters.

There were no abutters present. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Chris Outzen, owner of property, a Variance from the provisions of Section 2600 of the Zoning Bylaws, to construct a garage addition in accordance with Sheets A-1b and A-2b dated March 18, 2002, prepared by Hammer Architects, which will create a side-yard setback deficiency of 5 feet \pm , property located at 23 Run Brook Circle, Residential Zone A."

VOTED: In favor: 1 (Burpee) Opposed: 4 (Delaney, Phelps, Gossels, Berman)

PETITION DENIED

REASONS: The petitioner seeks a variance to construct an addition which will create a side yard setback deficiency. In order for a Variance to be granted, four criteria must be satisfied. Failure to meet any one of the four criteria will cause the request to be denied.

In this case the Board found that the petitioner failed to demonstrate a hardship, financial or otherwise, if the provision of the Bylaw were to be literally enforced. Two plans were submitted with the application, one depicting the proposed addition within the required setbacks, the other with a 5-foot deficiency. The petitioner maintained that if the construction adhered to the required setbacks a hardship would be created since the homeowner would then be required to back up onto the street as there would be insufficient turning radius in the driveway to exit the driveway in a forward direction. It was the Board's finding that a turning radius is not a necessity but merely a convenience which may be added if there is sufficient area for same. As to the issue of safety in backing up into the street, the Board notes that this property is located on

CHRIS OUTZEN

a cul de sac, of which a portion is comprised of town-owned conservation land, which experiences minimal traffic; therefore, safety would not be a factor.

Following a review of the plans submitted with the application it appears that there may be alternatives to accomplish the desired construction and the Board would encourage the petitioner to explore those alternatives.

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Melinda M. Berman, Alternate

MAILLET/LAGRASSA
364 Hudson Road
02-19

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 14, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
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Jonathan G. Gossels
Melinda M. Berman, Alternate

Notice was published in the Sudbury Town Crier on April 25 and May 2, 2002, 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.

Attorney Paul Giannetti was present, representing the petitioner Andre Maillet, also present, in a petition for a Special Permit to allow demolition of an existing residence and construction of a new residence, not to exceed 3,140 s.f., on a nonconforming lot which will exceed the area of the original nonconforming structure and will conform to all zoning setback requirements.

The property is located at 364 Hudson Road. The lot comprises 42,688 s.f. and is nonconforming because of its frontage which is 150 feet. The existing structure is 1,385 s.f.; the proposed structure is 3,137 s.f. Attorney Giannetti said the plan submitted with the application shows the footprint of the proposed structure as well as the existing structure. Also submitted was a rendering of the proposed structure.

With regard to the special permit criteria, Attorney Giannetti said the proposed use will be in harmony with the general purpose and intent of the bylaw as it will remain a single-family use within a residential district. The footprint of the structure, while slightly larger, will comply with all setbacks. It will not be detrimental to the neighborhood as it is compatible with other new construction in this area of Hudson Road. He believed it would enhance the area aesthetically. The premises will be served by town water and the applicant is in the process of obtaining a new sewage disposal system which is in compliance with Title 5.

MAILLET/LAGRASSA
364 Hudson Road
02-19 Page 2

Mr. Gossels noted that although the footprint of the house has not changed substantially, the mass has. He asked why it could not be set back further to be compatible with the other houses.

Attorney Giannetti said the proposed structure was sketched in to conform to the setback requirements. As to setting it back further, he was not sure where suitable soils would permit a sewage disposal system, which could affect the street centerline setback location. He said if the Board preferred a greater setback, and septic conditions so allowed, he would be agreeable to looking into another location on the lot.

Mr. Delaney asked what time frame was estimated for the demolition.

Mr. Maillet said it would be demolished within 2-3 weeks after receipt of the necessary permits. He would estimate a 6-month construction period for the new house.

Mr. Phelps agreed with Mr. Gossels preference for the house to be set further back. Looking at the area he felt relocation, if possible, would be an improvement aesthetically and fit in more with the neighborhood.

Again, Attorney Giannetti said he would be willing to look at another location given the parameters of the septic system. He believed he would be able to have the septic information for the Board's next meeting.

James Carroll believed the back left corner of his property may abut this property. He would oppose siting the house further back. He said his back yard is very aesthetic and he does not see the existing house. He said a larger, 2-story house would be visible to him.

At this time it was the consensus of the Board to retain the option of another location which meets all setback requirements and agreed to continue this hearing. Mr. Delaney requested the petitioner submit both a plan for relocation and a plan which shows the location of the adjoining residences.

The hearing was continued to June 18, 2002.

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Melinda M. Berman, Alternate

JOSEPH & MARIA LISA DISTEFANO
228 North Road
02-20

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 14, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
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Jonathan G. Gossels
Melinda M. Berman

Notice was published in the Sudbury Town Crier on April 25 and May 2, 2002, posted, mailed and read at this hearing.

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

Joseph and Maria Lisa DiStefano were present to represent a petition for a Variance to construct a 20X20 foot addition which will create a rear yard setback deficiency of 4 feet. Mr. DiStefano explained that the proposed addition is to the existing kitchen which is too small to accommodate his family. The new kitchen will retain the existing appliances but will add much needed additional eating area for their growing family.

The house is situated approximately 152 feet from the street. The back of the house is located 46 feet from the rear property line. From the plan submitted with the application, he described the area of the proposed construction. The existing house is located on top of a hilly area. There is a wooden area in the back of the house.

The DiStefanos said they have spoken with their two direct abutters who have no objection to the petition. In addition, they submitted plot plans of those adjacent abutters to demonstrate the amount of separation between the houses.

The Board reviewed the plans submitted with the application asking several questions for clarification.

Stephen Lanzendorf, 43 Hawes Road, abutters, pointed out the location of his home on the plan. He asked how many trees would have to be removed for the addition. Mr. DiStefano said no trees are planned to be removed. Mr. Lanzendorf had no objection to the petition.

JOSEPH & MARIA LISA DISTEFANO
228 North Road
02-20 Page 2

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

After deliberation the following motion was placed and seconded:

MOTION: "To grant Joseph and Maria Lisa DiStefano, owners of property, a Variance from the provisions of Section 2600 of the Zoning Bylaws, to construct a 20X20 foot addition which will create a rear yard setback deficiency of 4 feet \pm , property located at 228 North Road, Residential Zone A."

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

REASONS: The petitioners seek a Variance to expand the kitchen area which will result in a rear yard setback deficiency. The house is situated on a hill towards the rear of the lot and expansion of the kitchen area entails retaining the existing appliances and expanding the eating area which is feasible only by constructing the addition at the rear of the house in the location as proposed.

The petitioners have demonstrated a need for the expansion as their current kitchen area is too small to accommodate their growing family. The proposed construction will not result in a substantial detriment to the neighbors as no tree removal is anticipated; therefore, the existing vegetation will continue to provide buffering.

As a result of the above, the Board finds the granting of this Variance will not nullify or substantially derogate from the intent or purpose of the Ordinance or Bylaw.

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Melinda M. Berman, Alternate

BROOKS PHARMACY
423 Boston Post Road
02-21

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 14, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Richard L. Burpee, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Melinda M. Berman, Alternate

Notice was published in the Sudbury Town Crier on April 25 and May 2, 2002, 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.

Richard Poyant, Poyant Sign Co., was present representing the applicant, Brooks Pharmacy, in a petition for Special Permit to install two primary signs, a secondary sign and a drive-thru sign at 423 Boston Post Road. The site is the former Osco Drug which has now changed to Brooks Pharmacy.

Mr. Delaney read a letter dated May 9, 2002 from the Design Review Board which voted to recommend approval of the entire Brooks Pharmacy Sign application.

It was pointed out that the application specifies two secondary signs whereas the Special Permit granted to Osco Drug was for one secondary sign. Mr. Poyant said he was applying for the same number of signs that was had by Osco Drug the only difference being that the two primary signs were larger in area.

Mr. Delaney was not convinced a special permit was required for the primary signs. He read from the Bylaw under Sign Display Area which states "The total surface area of a sign. The display area of an individual letter sign or irregular shaped sign shall be the area of the smallest triangle or rectangle into which the letters or shape will fit."

Further discussion followed on the number of signs being requested. It was determined that the request was for two primary signs sides of the building, a secondary sign over the walkway and a drive-thru sign for a total of four signs.

BROOKS PHARMACY
423 Boston Post Road
02-21 Page 2

There were no further questions. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Poyant Sign Co., representing Brooks Pharmacy, applicant, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to install two primary signs 42 s.f. each, one secondary sign 2,345 s.f., and one drive-thru sign 5 s.f. in accordance with the design and dimensions as shown on Sign Plan titled Brooks Pharmacy dated 2/5/02, prepared by Poyant Signs, Inc., New Bedford, MA, property located at 423 Boston Post Road, Limited Business District #6."

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

REASONS: The petitioner is requesting the same number of signs that were installed for the former Osco Drug Pharmacy. The Board finds the two primary signs to be necessary for safety in identification from Route 20 and within the plaza. The secondary sign is also necessary to identify store location while walking under the canopy, and the directional sign will serve to identify the drive-thru area.

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Melinda M. Berman, Alternate

SPRINT SPECTRUM/VOICESTREAM WIRELESS
TOWN OF SUDBURY
North Road (Map C12-100 – Melone Property)
02-22, 02-23, 02-24

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEAL
TUESDAY, MAY 14, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Richard L. Burpee, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Melinda M. Berman, Alternate

Notice was published in the Sudbury Town Crier on April 25 and May 2, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of special permits and variances. 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 Edward D. Pare and Joe Giammarco, Consultant, were present representing the petitioner Sprint Spectrum in a request for a Special Permit and two Variances to provide telecommunications services on the Melone property located off North Road.

Attorney Pare said it is proposed to locate a 100-foot flagpole-style monopole, including associated equipment on the Melone property. The antennas will be located inside the monopole. The plan provided with the applications depicts the style of the monopole and the equipment shelter. The installation will be able to support three carriers at locations on the pole and the equipment shelter will be able to house three carriers as well. Voicestream is the second co-locator and there will be one additional carrier.

The property is within the town Wireless Overlay District and the area is in the Research District zone. Sprint is leasing a 40X40 foot area from the town which was pointed out on the map. The facility will be unmanned and is monitored at a central switching location. There is no need for municipal services.

Attorney Pare said Sprint looks to have sites that somewhat overlap and build a honeycomb fashion coverage objective. It is licensed by the FCC to provide digital service at high frequencies. Two competing installations are already located near this site.

SPRINT SPECTRUM/VOICESTREAM WIRELESS
TOWN OF SUDBURY
North road (Map C12-100 – Melone Property)
02-22, 02-23, 02-24 Page 2

Sprint has applications pending with the Selectmen for Site Plan Review and the Planning Board for a Water Resource Protection District Special Permit for this site.

Sprint is seeking a Special Permit under Section 4300 which incorporates Section 6200. Also being sought is Variance relief from Section 6130. Under Section 4363 of the Wireless Communications section of the Bylaw there are two requirements which Sprint cannot achieve at this site. One is that the installation be 500 feet from a residential lot line. The Sprint installation as proposed is 173 feet from the residential lot line. Additionally the Bylaw requires the installation to be not less than 1000 feet from a school building. Sprint would be approximately 648 feet from a Montessori school.

For the record, Attorney Pare listed the contents of the application package submitted by Sprint.

Also referenced was a letter dated April 22, 2002 from Town Counsel Paul Kenny to the Planning Board, Board of Appeals and Board of Selectmen. Attorney Pare said it was important to note, as was stated in Town Counsel's letter, that Sprint has not necessarily chosen the site

location. That location has been determined by Town Engineer so as not to conflict with present and future gravel mining operations by the town.

Nurullah Kose, RF Engineer, provided a presentation of Sprint's coverage gap showing how this proposed installation will fill that gap. Mr. Kose displayed two maps, one showing the existing Sprint coverage and the other showing coverage with the proposed installation. He said with the proposed site, Sprint will be able to connect between two existing sites and will be able to fill a large coverage gap on Route 117.

With regard to questions regarding site locations on the map, Joe Giammarco, Consultant for Sprint, commented said he has filed a petition in Maynard for a site at the Maynard Rod & Gun Club which is scheduled for a hearing on June 25. He said he would like to be located on Willis Hill; however, that is not possible. He was also looking at the Nextel petition at Tighe Sales, off Hudson Road, which was denied. Essentially he said everything on the map except for the green overlay on the proposed site already exists as a Sprint site. The red dots are search rings for potential sites.

Mr. Delaney asked if there is a difference between Sprint & Nextel technology, Mr. Kose replied that Nextel operated at 1,900 megahertz with PCS technology. He believed Nextel was operating at around 800-900 megahertz.

Paul Gascoyne, Voicestream, presented his company's coverage map, noting Voicestream has a similar gap in coverage. From the map he described the blue area which depicted areas of coverage which is a target area objective. He oriented the Board to the site

SPRINT SPECTRUM/VOICESTREAM WIRELESS
TOWN OF SUDBURY
North Road (Map C12-100 – Melone Property)
02-22, 02-23, 02-24 Page 3

locations on the map.

With the proposed site, and with Voicestream antennas located at 85 feet in the Sprint structure, he pointed out the coverage area that would be achieved along Route 117 which fills a gap of approximately three miles. He presented an overlay with town lines noting that not all of the surrounding sites are necessarily propagating at this time; some are search rings, sites in development or sites that have been permitted.

Mr. Giammarco gave an overview of the existing structures and why they cannot be used by Sprint. He said the AT&T structure on the Cummings parcel was designed for two carriers and currently AT&T and Nextel are operating there. The other existing structure is on the Water District parcel with Cell One and Verizon operating there. When Verizon located on the pole, a structural upgrade was needed which precludes another operator from locating there without a rebuild of the tower. The Water District has taken a position that they don't want to be involved with anything that has to do with zoning. That led Sprint to the Selectmen and a request for RFP for the Melone parcel which is in the Wireless Overlay District.

Deb Haskell, Appraisal Consultant, was present to provide an analysis of the site. She said she has over 20 years experience and was hired by Sprint when they first launched their telecommunications installations over five years ago. She was asked to look at existing towers and to develop an impact analysis of the towers on property values. After an extensive review of this proposed tower, the surrounding area and nearby existing towers, it was her analysis that when these facilities are viewed at a distance, there is not much impact. When looking at sales of properties within view of these facilities and similar properties without views it was Ms. Haskell's opinion that this facility will not have an adverse effect.

Mr. Delaney asked whether any of the properties she looked at had a 173-foot proximity to a cell tower facility as does this proposed facility. Ms. Haskell replied that she had and had looked at facilities that were almost in somebody's backyard. This was looked at in terms of sale of the property. She pointed out that there are a number of instances where telecommunications facilities are constructed and then residential subdivisions have been constructed around them. She said a subdivision in Dover is being constructed around such a facility and property values are not impacted as a result.

Mr. Giammarco referenced Sprint's application for the three petitions being sought noting that each application provides detailed explanations which he believed justified the granting of the special permit and variances.

In response to a question from Mr. Delaney, Attorney Pare said the AT&T monopole which currently exists on the Cummings property is a similar design to Sprint's proposal and is
SPRINT SPECTRUM/VOICESTREAM WIRELESS
TOWN OF SUDBURY
North Road (Map C-12-100 – Melone Property)
02-22, 02-23, 02-24 Page 4

considerably closer to the Montessori school than the proposed Sprint monopole. As to the distance to the residential lot line, Mr. Giammarco said 173 feet would come to the Norwood property line. He believed both the Sprint and AT&T facilities would be equidistant from the Northwood buildings.

There will be no lights on the facility. An 8-foot chain link fence with swept-back straight wire will be provided for security. Back-up power will be provided by batteries.

Mr. Delaney read the following letter dated April 22, 2002 from Town Counsel Paul Kenny:

“As you are aware, Sprint has entered into a lease with the Town for a location on Town-owned land, the former Melone property, located off North Road, on which to erect a wireless communications facility pursuant to an RFP by the Town, and has applied for the appropriate permits to do so.

Please be advised that the location for the site has been specifically determined by the Town Engineer so as not to conflict with the present and future Town gravel mining operations. Utility access is also in accordance with the request of the Town Engineer.

Sprint has secured access to the Melone property by virtue of a License from the Water District to access and cross the adjoining Water District parcel. Because of the present excavation, the permanent access has not been specifically delineated and will not be so delineated until such time as the mining operation shall cease and a determination made as to the use of the Melone parcel.

These limitations have been imposed as a condition of the lease and are not under the control of the lessee. Therefore, it is requested that the applications be approved as submitted relative to these matters.”

Attorney Norman Greenberg was present, representing Northwood Properties, as abutter and closet residential property to the proposed facility. Attorney Greenberg opposed the proposed application for the primary reason that he believed the information presented demonstrated clearly that there were alternative possibilities for location of a site. He referenced the Cummings monopole which is essentially the same size as the proposed facility, noting that although there are already two carriers on that pole, he could not understand why it could not be altered to allow for three carriers.

Further, he said the monopole is being sited on a 32-acre parcel. Using the depth currently anticipated with this site, the lot is approximately 875 feet in width and yet it's been

SPRINT SPECTRUM/VOICESTREAM WIRELESS
TOWN OF SUDBURY
North Road (Map 12-100 – Melone Property)
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sited within 173 feet of a lot line. He pointed out that the Northwood property is currently under development and is being marketed as two residential buildings for a total of 24 units of senior residential housing. There will be three additional residential buildings which will be even closer to the lot line than the existing buildings.

Attorney Greenberg questioned the calculation of the lot line distance which was done at a diagonal. He believed if it was a straight line measurement the distance would be more like 165 feet. He said the leased area is 50 feet square which is more like 125 feet from the line when the equipment is taken into account. He could not see why the installation could not be located further north or west.

Attorney Greenberg said he was sensitive to the fact that the Town is using the property for graveling and the site has been determined with that in mind. However, he still believed there was room to move the site away from the Northwood property.

Attorney Greenberg was still unclear as to why the Water District would refuse to allow the monopole in the gravel pit area to be used.

With regard the variance aspects, Attorney Greenberg referenced the Wireless Communications Bylaw which states the installation must be at least 500 feet from a residential lot line and 1,000 from a school. He asked why that was being ignored. He assumed it had to do with potential health hazards. If the distance from the site was taken from the monopole to the nearest building it would be 227 feet which is less than half of the mandated requirement of 500 feet. He asked what the purpose of the 500 feet was if it could be ignored.

Attorney Greenberg pointed out that there could be a potential risk to the seniors at Northwood who have pacemakers and are in close proximity to the radio frequency.

For the record, Attorney Greenberg submitted a Memorandum in Opposition and requested the Board deny the applications for special permit and variances.

Mr. Delaney said Attorney Greenberg had raised a lot of important points, some which the Board cannot touch on because of the Federal Communications Act which is very specific about the issue of health hazards. Although the Board is very concerned about health, he said the Act clearly spells out the Board's role.

As to the reason AT&T cannot support a third carrier, Mr. Delaney said it is not because of the height, which although is important, the Board in granting a permit deliberately restricted the outer diameter of that tower and a third carrier cannot fit within that diameter. He said the Board had three options for size and it selected the medium size.

SPRINT SPECTRUM/VOICESTREAM WIRELESS
TOWN OF SUDBURY
North Road (Map C-12-100 – Melone Property)
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Ms. Berman asked why the pole could not be moved to a different location. Attorney Pare replied that when the lease was being negotiated he was required to place it in this location. At that time he said Sprint knew it would need certain variances. He said the variance standards are tempered by the Telecommunications Act and he had no explanation, other than reasons of health, why the Town had a 500-foot lot line setback and 1,000-foot school setback. He said the Board cannot consider health, the Bylaws cannot take health into account, and he would agree that there is no purpose once it has been determined that there is no visual impact.

Because the Town has placed this parcel in the overlay district and Sprint has a right to provide service to its customers, it is mandated that Sprint appear before this Board. Attorney Pare wanted to emphasize that Sprint took great pains to locate 125 feet from property lines. He said he had numerous discussions during this process with the Town Engineer who has insisted exactly where it goes and where the access will come from because of the future use of the property.

William Wagner, 36 North Road, said he lives beside a tower which is approximately 250 feet from his home. He said it is a visual blight; however, he accepts the fact that it is and has been an industrial area for quite some time. He said he purchased his property knowing this and he must live with it. He also believed the town should confine these installations to areas such as this and not be placed all around the town. As a result, he did not object to this installation.

Attorney Greenberg wanted to emphasize that the 500 and 1,000-foot requirement would have a very important visual impact on the Northwood property. He said the buildings are tall and six months of the year there will be no leaves on the trees and that will have a great impact on the residents of those buildings.

There being no further input, the hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION #1: (Case 02-22)

“To grant Sprint Spectrum LP d/b/a Sprint PCS and Voicestream Wireless, applicants, Town of Sudbury, owner of property, a Special Permit under the provisions of Section 4350 of the Zoning Bylaws, to install, operate and maintain a 100-foot free-standing, 3-carrier monopole wireless communications facility, including associated equipment, in accordance with the Plan titled Melone Parcel North Road, Sudbury, MA BS13XC620, Sheets A1 and A2 dated 5/7/02, prepared by Greenman-Pederson, Inc., Marlborough, MA, property located on North Road (former Melone property) shown on Town Property Map C12-100, Research District Zone.

1. Lighting of the facility is prohibited unless required by the Federal Aviation Administration.

SPRINT SPECTRUM/VOICESTREAM WIRELESS
TOWN OF SUDBURY

North Road (Map C-12-100 – Melone Property)
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2. The proposed installation shall be enclosed by an 8-foot chain link fence with swept-back straight wire as depicted on the Plan.

3. The approval granted herein shall expire in five (5) years on May 14, 2007. Continued operation of the facility shall be subject to application for a renewal by the Board of Appeals.”

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

MOTION #2: (Case 02-23)

“To grant Sprint Spectrum LP d/b/a Sprint PCS and Voicestream Wireless, applicants, Town of Sudbury, owner of property, a Variance from the provisions of Section 4363 of the Zoning Bylaws, to locate a wireless communications facility within 1000 feet of a school building, property located on North Road (former Melone property) shown on Town Property Map C12-100, Research District Zone.”

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

MOTION #3: (Case 02-24)

“To grant Sprint Spectrum LP d/b/a Sprint PCS and Voicestream Wireless, applicants, Town of Sudbury, owner of property, a Variance from the provisions of Section 4363 of the Zoning Bylaws, to locate a wireless communications facility within 500 feet of a residential lot line, property located on North Road (former Melone property) shown on Town Property Map C-12-100, Research District Zone.”

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

REASONS: The petitioner proposes to install and operate a 100-foot monopole including associated equipment.

In the case of the Special Permit (Case 02-22), the Board finds that the proposed use will be in harmony with the general purpose and intent of the Bylaw. The proposed site is in the Wireless Overlay District and the location has been determined by the Town Engineer so as not to conflict with present and future town operations on that parcel. The selection of Sprint as a provider was determined via an RFP issued by the Town of Sudbury.

Adequate and appropriate facilities will be provided for the proposed use as evidenced by the testimony of the petitioner and the plans submitted with the application.

The Board further finds that the proposed facility will not be detrimental or offensive to the neighborhood and notes that a similar facility is located nearby. There will be no lighting on the monopole, nor are odors, smoke, noise, sewage of refuse materials associated with the proposed

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use. The use will not cause undue traffic congestion in the immediate area as there will be no employees on site at the facility.

In the case of the Variances (Cases 02-23 and 02-24), the Board finds there to be special conditions with regard to soil, shape and topography affecting the land or structures, but not affecting generally the zoning district in which the land is located. The property is owned by the Town of Sudbury which uses portions as a gravel mining operation which is expected to continue in the foreseeable future. As a result, the Town issued a RFP for a particular location of the site, and one for which this type of communications facility could only be installed with the granting of variances to property line and school setbacks. The Board finds the location was selected so as not to interfere with its current operation by the town and to minimize visual impact.

The Board finds there would be substantial financial hardship to the owner if the provisions of the Bylaw were to be literally enforced. Should the facility not be allowed in the proposed

location, it would result in a loss of revenue from the lease. Additionally, should the facility be required to be installed within the required setbacks, the owner of the property would incur additional financial loss as a telecommunications facility in any other location would jeopardize the gravel mining operations.

With regard to the applicant, the Board finds that if the provisions of the bylaw were to be literally enforced, the applicant would suffer hardship in its ability to provide telecommunications services which would allow for an existing coverage gap to be filled between its other sites in the area.

The Board finds there will be no substantial detriment to the public good if the variance is granted. Rather, the proposed facility will provide enhanced communications service to the general public and residents of the town.

Finally, the Board finds that the granting of the variances will not nullify or substantially derogate from the intent or purpose of the Bylaw. The proposed installation will be located in a Wireless Overlay District which was established to allow wireless communications services to be provided with minimal harm to the public health, safety and general welfare of the residents, and was designed to regulate the installation of such facilities by minimizing visual impact, avoid potential damage to adjacent properties and promote co-location on existing facilities.

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Jonathan G. Gossels

Melinda M. Berman, Alternate

