

MINUTES  
SUDBURY BOARD OF APPEALS  
TUESDAY, NOVEMBER 12, 2002

The Board consisted of:

Patrick J. Delaney III, Chairman  
Jonathan G. Gossels, Clerk  
Thomas W.H. Phelps  
Stephen M. Richmond  
Elizabeth A. Taylor, Alternate

The meeting was convened by the Chairman, Mr. Delaney.

Orchard Hills Assisted Living Facility

Present: Clifford T. Hughes, Attorney David A. Wallace

Mr. Delaney noted that the deadline for sign compliance with the Housing Appeals Committee's (HAC) Decision is December 27, 2002. He said the ZBA's issue was location, number of signs and Condition 2 of the Comprehensive Permit which indicated that the sign did need to be moved back. He asked Mr. Hughes what his plans were since the signs are still in the same location.

Attorney Wallace said Messrs. Delaney and Phelps were the original board members involved in this issue which goes back to 1995. For those members who were not present, Attorney Wallace gave a history of the sign issue. He said the ZBA said the signs did not comply with Condition 2 of the Comprehensive Permit. Mr. Hughes appealed it to the HAC. The trial was on the issue of whether or not placement of the signs had been followed and, if not, if to move them would be uneconomical. The trial hearing was in 2001 with a decision made September 2001. The HAC found for the ZBA giving Mr. Hughes 15 months to comply. Adding in the 30-day appeal period, this brings the deadline to January 25, 2003.

Attorney Wallace expanded on the assets of this facility in terms of its benefit to the residents and the community as a whole. He said in retrospect, although Mr. Hughes believes the sign was erected in the best way, it was not in conformance with the ZBA's Decision and he must live with the HAC Decision.

The signs as they currently exist have proven to be successful. He said if the Board will not allow them to stand as constructed, Mr. Hughes accepts that. However, he would suggest the ZBA consider a couple of scenarios: (1) Allow the signs as they exist to remain temporarily on a year-to-year basis. If there presents a safety issue, the temporary status could be revoked.

In return for the existing signs to remain, Mr. Hughes would be agreeable to donating a significant sum of money to the walkway fund. Mr. Hughes also has some land near the library which he would be willing to donate to the Town.

Mr. Phelps said Mr. Hughes would prefer not to change the signs and request this Board take into consideration reversing its vote. He said the ZBA's major concern was based on the fact that Mr. Hughes did not do what the Board tried to get him to do in the beginning. He said Mr. Hughes should have complied well before this.

Mr. Hughes said he made an innocent mistake; if there was anything the Board would reconsider to help him, he would like to discuss this.

Mr. Gossels asked what the cost of moving the sign would be. Mr. Hughes estimated it to be between \$10,000-\$15,000.

Mr. Delaney said there a great deal of time has passed since this was originally heard. When this was brought before the Board for reconsideration, different members reached the same conclusion and Mr. Hughes appealed that decision to the HAC.

Now, he said, Mr. Hughes was offering to trade land to have the signs remain where they are. The ZBA has always taken the position that the sign location was imposed because of safety concerns and that moving the sign back would be safer.

This meeting was temporarily adjourned in order to allow the Board to hear the petitions advertised for this evening.

Following the public hearing, the Board resumed discussion of the issues and the proposals suggested by Mr. Hughes to allow the signs to remain where they were.

Mr. Delaney said the Board's Decision has withstood appeal. The basic facts remain unchanged. He said the Board does have the option to rehear, but does not have to take any action regarding a donation not formally before the Board.

Mr. Richmond said he sat in on the previous meetings on the sign issue. He felt it annoying to spend time on an issue which was reached and dealt with. He said the Board reached a decision; it was appealed and took much of the town's time. While Mr. Hughes does have the right to be heard, the fact remains that all this time has gone by to come to this point where a letter has to be sent saying time is up. Regardless of suggestions or offers of donations, Mr. Richmond said he was not inclined to reconsider.

Discussion followed on the issues involved and the suggestions made by Mr. Hughes. It was the consensus of the Board not to reconsider and to send a letter to the Building Inspector informing him of the HAC's Decision that the sign for the Orchard Hill Assisted Living residence shall be constructed or relocated in conformity with Condition D5 of the Zoning Board's Decision of October 2, 1996, modified January 7, 1998, that the deadline for completion

shall be January 26, 2003, and to instruct the Building Inspector to impose the applicable fines should that deadline not be met.

Carriage Lane Comprehensive Permit

Present: Alan Marrone, Attorney David A. Wallace

The Board was in receipt of a letter dated November 5, 2005 from Town Planner Kablack indicating that the plans as submitted contain all the information required by the Board's decision with the exception of the typical driveway cross section. With regard to the documentation, Ms. Kablack noted that the open items remaining are evidence of financing approval and the performance bond.

Mr. Marrone explained that his engineers are still working on the driveway cross section which will be submitted prior to receipt of a building permit.

As to the financing, Mr. Marrone said the project will be privately financed by the Roth Family Trust. Should it be needed, he will also be able to use the Mass. Housing Financing Agency as evidence of financing.

Mr. Marrone said he will be posting the performance bond from his personal assets in cash and understands that the building permit will not be issued until this is submitted to the town.

The Board reviewed the plans, documentation and comments made by the Town Planner in her letter. They found all to be satisfactory and agreed with the recommendation contained therein. They also felt comfortable with the information provided by Mr. Marrone as evidence of financing.

It was then on motion unanimously voted to accept the Town Planner's recommendation that the applicant has satisfied the requirements as to the information required by the Board's Decision for issuance of a building permit, (with the exception of the typical driveway cross-section), and further that the outstanding items will be submitted prior to issuance of that permit.

A memo will be sent to the Town Planner, Building Inspector and Town Engineer informing them of the Board's vote.

Report on Subcommittee for Recodification of Signs

Mr. Phelps, who is serving on this subcommittee, reported that rather than rewriting the Sign Bylaw, the committee will take one or two items that have caused problems and try to address them. He gave as examples the fact that there is no differentiation between the size of the business in terms of building size. Everyone gets the same size and perhaps this should be

addressed. Also, the committee might want to take a look at the possibility of internally lit signs. Mr. Phelps said the committee would try to come up with a couple of changes for Town Meeting.

Verrill Et Al – Case 02-43  
Present: Ralph Tyler

The Board was in receipt of a letter dated November 8, 2002 from Messrs. Verrill, Wagner and Tyler. Mr. Delaney pointed out that while this case was not specifically listed on the meeting agenda for discussion, he would entertain a brief discussion under miscellaneous business items.

Mr. Tyler referred to his letter dated November 8, 2002 which requests the Board delay the filing of its Decision of November 7, 2002 in order that the petitioners be granted an opportunity to present reasons why the Board had jurisdiction in this matter and why the earlier vote to grant the appeal cannot be reconsidered. He said the Board voted on October 29, 2002 to allow the appeal; then on November 7, 2002, on the advice of Town Counsel, it reversed its vote. Mr. Tyler believed there was case law to substantiate that the earlier vote should stand and that the November 7 vote was ineffective. He believed there to be a procedural issue here.

Mr. Tyler did not believe the Board had to file the Decision within 14 days; he felt the Board had 100 days from the date of the application. He said Board had several choices, the end result being that the first Decision of October 29, 2002 would apply.

Mr. Gossels said Mr. Tyler was making an assumption that the Board wanted to undo the November 7, 2002 vote.

Mr. Tyler said he was saying that the Clerk has said if the November 7 vote is appealed, the Board will lose. He suggested the Board could chose not to file either Decision letting the 100 days run out. He did not agree with the advice Town Counsel gave the Board on November 7, 2002, that it wouldn't work and that the town could be liable for damages as well.

Mr. Delaney said the Board was giving Mr. Tyler a lot of leeway. He said this was an unfortunate situation; that reconsiderations generally don't look good. He said both he and the other members felt badly about the outcome, but they didn't just change their minds. He said the Board didn't reverse its decision. All the thinking that went into the original idea of how the Decision would be worded remains unchanged. However, in the face of new interpretation that was unavailable to the Board on it's jurisdiction, the Board was left with the choice of not accepting it's own legal counsel who is paid to inform the Board in matters such as this in order to help the Board avoid pitfalls like this. Or, the Board had no choice but to decide that the wording of the Decision would be different than what was talked about during deliberations in

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previous hearings and decide that it did not have jurisdiction. The Board made that decision and the vote of November 7, 2002 stands.

The Board concurred with Mr. Delaney's statements.

There being no further business, the meeting was adjourned.

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Patrick J. Delaney III, Chairman

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Jonathan G. Gossels, Clerk

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Thomas W.H. Phelps

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Stephen M. Richmond

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Elizabeth A. Taylor, Alternate