

MINUTES
SUDBURY BOARD OF APPEALS
TUESDAY, OCTOBER 29, 2002

The Board consisted of:

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

The meeting was called to order by the Acting Chairman, Mr. Delaney.

Orchard Hills Assisted Living Facility – sign

Neither Clifford Hughes nor Attorney David Wallace was able to be present; therefore, this discussion was rescheduled for Tuesday, November 12, 2002, 7:30PM.

Interview Applicant for ZBA Vacancy

The Board interviewed Constantine Athanas who has applied for a position as an Associate to the ZBA. Mr. Athanas gave examples of his zoning experience in his capacity as an attorney with Bowditch & Dewey. Mr. Delaney provided an overview of the responsibilities of the Board of Appeals and the commitment involved as an Associate member.

The Board found Mr. Athanas to be a qualified candidate and will forward his name to the Selectmen for their review and interview.

Continue deliberations and vote on Case 02-43 – Verrill et al Appeal

Mr. Delaney noted that during deliberations after the close of the public hearing on September 23, 2002, there was a consensus that the response by the Building Department did not provide a basis for reaching a decision. Therefore, it was agreed to continue deliberations and forward a copy of the Board's public hearing minutes to the Selectmen asking them to review the minutes and forward a response prior to October 29, 2002.

Mr. Delaney reported that a letter dated October 23, 2002 from Town Manager Maureen Valente has been received. The letter outlines the Selectmen's role in site-related issues and that Board's satisfaction with the Building Inspector's evaluation in this matter.

Discussion followed on whether the changes constituted significant changes to the site plan which should have been forwarded to the Selectmen for review. The majority did not feel the Selectmen's letter addressed this issue.

As a result, the Board requested Building Inspector James Kelly provide an expansion of his letter dated October 1, 2002 which indicates that Mr. Tyler was interpreting out of context and that he (Tyler) was referring to site plan changes and not architectural changes. The letter notes that no one, including the Design Review Board, has the right of approval of architectural design.

Mr. Kelly stated that in his opinion the changes to the building made by Northwood were not substantial changes. He said all elements of the original site plan are the same – footprint, parking, driveway, landscaping, etc., as are all the required services.

The Board thanked Mr. Kelly for his input.

It appeared that more time for deliberation was needed and it was agreed to suspend deliberations and resume them after the public hearing for the scheduled petitions.

Deliberations resumed on the question of whether the Selectmen should have approved the changes to the building. Mr. Phelps felt that Condition 25 of the Site Plan Decision required the Building Inspector to send any changes back to the Selectmen. That condition states that “Any change in the physical condition of the site, including changes in the location or design of structures or systems, following approval of the site plan, will require approval of the Board of Selectmen and Building Inspector.” Considerable discussion followed with the majority in agreement to send this back to the Selectmen.

The following motion was then placed, seconded and voted:

MOTION: “To find in favor of the appeal of Stephen Verrill et al with regard to the revised Northwood At Sudbury Activities Center, property owned by Northwood Properties, LLC, located at 138 North Road, and to instruct the Building Inspector to revoke the occupancy permit for said Activities Center in one hundred twenty (120) days unless the Board of Selectmen approve the physical changes to the building as contained in Conditions 25 and 27 of the Notice of Decision for Site Plan application No. 97-337 voted on November 10, 1997.”

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

REASONS:

The Board is in agreement with the contention of the appellants that the owner of the Northwood At Sudbury Activity Center, Northwood Properties, LLC did make significant revision to the building plans which were approved by the Board of Selectmen in their Notice of Decision on Site Plan Application No. 97-337. It is the opinion of the Board that these revisions represent a change in the “design of structures of systems” on the site which would require approval of the Selectmen, based on their Condition No. 25 of their Decision.

The Board notes that the Site Plan Review process provides for a Public Hearing at which time comment may be received from interested parties, including abutters, the general public and the Design Review Board. Condition 25 allows for the process to continue in the event that the Site Plan is not developed in accordance with the approved plan. The Board has determined that the changes to the Activity Center are significant enough to warrant the re-opening of that process.

Condition 27 of the Selectmen's Decision provides that an occupancy permit shall not be issued until Condition #25, among others, is complied with. This appeal is specific to the Activity Center as one component of the Northwood overall site plan, and the Board believes that it is appropriate to instruct the Building Inspector to revoke the occupancy permit for that Center until Condition 25 has been satisfactorily complied with. Further, the Board has determined that a 120-day delay in the execution of that revocation would be appropriate to allow the Selectmen to review and take action on the revisions to the plan which they originally approved.

Election of Chairman and Clerk

A motion was made seconded, and unanimously voted to elect Patrick J. Delaney III, Chairman, and Jonathan G. Gossels, Clerk, to serve in that capacity until the March 2003 Annual Meeting of the Board of Appeals.

There being no further business, the meeting was adjourned.

Patrick J. Delaney, Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Stephen M. Richmond