

JAMES & SARAH KELLY
19 Oakwood Avenue
03-26

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 13, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman
Jonathan G. Gossels, Clerk
Thomas W.H. Phelps
Stephen M. Richmond
Jeffrey P. Klofft, Alternate

Notice was published in the Sudbury Town Crier on April 24 and May 1, 2003, posted, mailed are read at this hearing.

Mr. Delaney, 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.

James Kelly was present to represent a petition for Special Permit to construct an 8X34 foot farmer's porch which will result in a street centerline setback deficiency of approximately 7 feet. Mr. Kelly said he spoke with his abutters on the sides, across the street, as well as others in the area. None had any problems with the proposed construction.

The Board had no questions following a review of the plan. No abutters were present to oppose the petition. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant James & Sarah Kelly, 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 an 8X34 foot farmer's porch which will result in a street centerline setback deficiency of 7 feet \pm , property located at 19 Oakwood Avenue, Residential Zone A-1"

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L. Chapter 40A, Section 17.

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

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed porch, which will result in a street centerline setback deficiency, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The porch will enhance the appearance of the house and is consistent with similar upgrades in this neighborhood which is comprised of smaller house lots.

The petitioner has spoken with his neighbors who had no objection to the proposed construction, and no abutters were present to oppose this petition.

Patrick J. Delaney III, Chairman

Jonathan G. Gossels, Clerk

Thomas W.H. Phelps

Stephen M. Richmond

Jeffrey P. Klofft, Alternate

MICHAEL & DONNA NOYES
3 Old Meadow Road
03-27

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 13, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman
Jonathan G. Gossels, Clerk
Thomas W.H. Phelps
Stephen M. Richmond
Jeffrey P. Klofft, Alternate

Notice was published in the Sudbury Town Crier on April 24 and May 1, 2003, posted, mailed and read at this hearing.

Mr. Delaney, 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.

Michael & Donna Noyes were present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence at 3 Old Meadow Road. The property is nonconforming in lot area and frontage.

Mr. Noyes said the new construction will conform to all zoning setback requirements. The existing house is a 1,742 s.f. split-level style house. The new house will be a 3,540 s.f. 2-story structure. A rendering of the design was submitted with the application.

The Board reviewed the plot plan submitted with the application. Mr. Noyes said it is planned to tear down the existing house as the new construction will be located in that location. The house is modular and approximate construction time is nine weeks. Additionally, Mr. Noyes said he spoke with his neighbors and all have been supportive.

Mr. Phelps asked whether any consideration was given to turning the house on the lot as this is a corner lot. Mr. Noyes said he had; however, this location afforded the most uniform back yard.

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

After deliberation the following motion was placed and seconded:

MICHAEL & DONNA NOYES
3 Old Meadow Road
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MOTION: "To grant Michael & Donna Noyes, owners 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 3,540 s.f., 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 3 Old Meadow Road, Residential Zone A-1."

This Special Permit shall lapse if construction has not begun, except for good cause, within twelve (12) months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17."

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 of a new residence, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental to the neighborhood. The new structure will conform to all setback requirements. The siting, which is in the location of the old house, will not be intrusive as the bulk of the increase in square footage is towards the rear of the property. The petitioner has spoken with his abutters and none were opposed to the proposed construction. Additionally, no abutters were present at this hearing to voice objections.

Patrick J. Delaney III, Chairman

Jonathan G. Gossels, Clerk

Thomas W.H. Phelps

Stephen A. Richmond

Jeffrey P. Klofft, Alternate

SUDBURY CHAMBER OF COMMERCE
03-28

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 13, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman
Jonathan G. Gossels, Clerk
Thomas W.H. Phelps
Stephen M. Richmond
Jeffrey P. Klofft, Alternate

Notice of the hearing was published in the Sudbury Town Crier on April 24 and May 1, 2003, posted, mailed and read at this hearing.

Mr. Delaney, 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.

David Levington was present representing a petition for Special Permit to allow the continuation of the Chamber of Commerce's practice of installing banners in the Business Districts along Boston Post Road and in the commercial parking lots along that road. Mr. Levington said since 2000, the Chamber has installed banners in an effort to improve the appearance of the utility poles along Boston Post Road, and has met with support and approval from both the business and residential community throughout that time.

Mr. Levington said the banners are installed in a non-profit manner which is the reason for a request for waiver of the filing fee. He said Comcast, Inc. installs and maintains the banners pro-bono and the marketing is provided by the Chamber of Commerce. Mr. Levington felt the banners are a contribution to the community and make the shopping area more cohesive and more attractive.

This year the Chamber asked the Selectmen for approval; however, they were not sure as to how the process should be handled legally and properly. It was supposed to be addressed within the new revised Sign Bylaw proposed for this year's Annual Town Meeting, but through an oversight didn't make it into the revision. It was ruled that it couldn't be added because it didn't fall within the four corners of the Article. The Building Inspector advised the Selectmen that in his opinion a Special Permit was required from the Board of Appeals.

Mr. Levington had one of last year's banners to show the Board. He said banners usually last about a year before deteriorating. He also wanted to let the Board know that the wording for the new banners is to be slightly changed from that submitted with the application. The new

SUDBURY CHAMBER OF COMMERCE

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banners were to have the slogan "No Place For Hate". However, some felt that to be controversial so the slogan was changed to "A Place For All". Mr. Levington submitted a rendering of the new banner and colors.

Mr. Delaney said the current banners have individual businesses on them. The new banners along Boston Post Road will say "Chamber of Commerce" and the ones in the parking lots will have the names of the plaza on them and not any individual business. He asked whether that was the plan for this round of signs or will that be the plan from now on.

Mr. Levington said it is the plan for now; next year they may want to put individual businesses on the banners.

In response to further questions from Mr. Delaney, Mr. Levington said the new banners will be displayed for approximately a year. They will be displayed on one side of the road except for the following areas which will be on two sides: the railroad crossing across from Lotus Blossom, Mill Village, the Mobil station and Shaw's Supermarket.

Mr. Delaney said the Board usually will waive the fee when there is a procedural difficulty with an application where the applicant is encouraged to withdraw the application

without prejudice and resubmit a new one. This is done so as not to penalize the applicant. Mr. Delaney could not recall any instance where a fee was waived in support of an organization, individual, or business making application. It is done strictly for technical reasons. He said Mr. Levington's request will be discussed during deliberations and if it is not waived, Mr. Delaney wanted him to know why, and that it is not a reflection on the Chamber of Commerce.

Mr. Delaney read a letter from the Town Planner dated May 9, 2003 explaining that the approval process which would have made the Selectmen the granting authority did not make it into the final version of the Sign Bylaw for Annual Town Meeting, and that for now a Special Permit is required.

The Town Planner recommends approval with the condition that any changes to the approved number, design and location of the banners within a 2-year period require approval by the Selectmen as this gives the Chamber the opportunity to change design without the need for an additional Special Permit from the Board of Appeals. It also gives the Planning Board the opportunity to address the issue in the bylaw in the near future.

Mr. Delaney said this application is unusual because applications for Special Permits for signs are for structures that are permanent. When special permits for signs are granted for a business, for example, usually there is no term. As long as that business is within the same ownership the special permit stays in effect. With uses, and he would say this falls halfway between a use and a normal special permit, the Board usually does apply a standard that has been developed as a guideline, which if the application is approved, it is for a trial period which is initially one year. After that, if there are no issues, it is renewable for two years, and later to a

SUDBURY CHAMBER OF COMMERCE

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maximum of three years, but always maintaining some degree of review. This has been the Board's philosophy. He said if a term is set for this application, it is because of those guidelines rather than a concern for the banners.

Mr. Delaney said he liked the way the proposed banners are standardized. He felt they should be taken in as a whole rather than as advertisements for individual businesses.

Mr. Klofft would support a one year review. Mr. Gossels agreed. He said this would ensure the banners don't get shabby.

Mr. Phelps liked the idea of the shopping areas sponsoring the banners and getting away from the individual stores. He also felt the DRB and Selectmen should be able to carry the burden of design.

Mr. Delaney agreed. He said while the number and location may be within the purview of this Board, he would not want to be in a position of having to decide what the content is.

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

After deliberation the following motion was placed and seconded:

MOTION: "To grant the Sudbury Chamber of Commerce, applicant, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to install 50 banners within the Business Districts between Winsor Road and Dudley Road, subject to the following:

1. These banners will not be displayed in any residential area.
2. The Applicant will be responsible for keeping the banners in good repair.
3. The content of the banners displayed along the public way shall be identical.
4. This Special Permit will expire in one (1) year on May 13, 2004, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor 5 (unanimous) Opposed: 0

It was also on motion, seconded and unanimously voted not to waive the filing fee for the reasons stated during the hearing.

REASONS: The petitioner has been installing and maintaining banners within the business districts along Boston Post Road for the past few years with the approval of the Selectmen. The Building Inspector has opined that until the bylaw adequately addresses the issue of banners, a Special Permit is required from the Board of Appeals.

SUDBURY CHAMBER OF COMMERCE
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The Board finds that the banners installed previously have improved the appearance of the utility poles along Boston Post Road. The proposed banners are tasteful in design, color and continuity as they do not contain the names of individual businesses, but rather highlight the Chamber of Commerce in the banners along the main road, and promote the shopping plazas on those banners within the parking lots.

The Board finds a one-year term to be appropriate for this initial permit. Since the numbers and locations may need to be changed, this will afford an opportunity for review.

Patrick J. Delaney, Chairman

Jonathan G. Gossels, Clerk

Thomas W.H. Phelps

Stephen M. Richmond

Jeffrey P. Klofft, Alternate

CYNTHIA HOWE

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 13, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman
Jonathan G. Gossels, Clerk
Thomas W.H. Phelps
Stephen M. Richmond
Jeffrey P. Klofft, Alternate

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Mr. Delaney, 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.

Cynthia Howe was present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence at 36 Birchwood Avenue. The proposed new construction will exceed the area of the original house and will result in side yard, front yard and street centerline setback deficiencies.

Ms. Howe explained that the lot is comprised of 21,825 s.f. and is long and narrow with 75 feet of frontage. There are no abutters in the rear. Ms. Howe's mother is the abutter on both sides. She owns the corner lot for which application has made for a building permit to develop that lot. Ms. Howe's mother currently lives at 32 Birchwood Avenue.

Ms. Howe said she spoke with the neighbors on her side of the street who had no objections. She also had letters of support from three neighbors.

The biggest problem that the lot faces is that there is water in the back yard, a severe change in grade, and cobblestone retaining walls 5-6 feet high. These walls are also within the 100-foot buffer zone. For this reason the house cannot be moved back. There are two existing cesspools in the back. A new septic system must be constructed in the front.

Because the original plan was to build a second floor on this house and to retain the original footprint, the house was designed to be 58 feet long. However, since this will be modular construction, the difference in this type of construction resulted in having to add a foot and a half to the house. Ms. Howe was able to decrease the size of the hallways but still had to

CYNTHIA HOWE

add that extra foot. The plan does shift the house a bit more to the right to provide more setback to the left. Ms. Howe noted the house at 32 Birchwood Avenue is 20 ½ feet from the property line and would result in a difference of 25 feet separating the two houses.

At Mr. Delaney's request, Ms. Howe pointed out the location of the two cesspools. Because of the water table in that area, the septic system must be constructed in front of the house.

In response to a question from Mr. Phelps, Ms. Howe explained the status of the lots surrounding this property as being grandfathered and which are legal building lots.

The Board reviewed the property map which depicts these lots as well as the plot plan showing the proposed construction. The Board expressed concern for the side setbacks; however, Ms. Howe noted that the lot is very narrow and the house was shifted over to lessen the setback deficiency on the left side.

There were no further comments. No abutters were present to oppose the petition. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Cynthia Howe, 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 2,400 sf., which will exceed the area of the original nonconforming structure and will result in side yard setback deficiencies of 10 feet ± and 15 feet ±, a front yard setback deficiency of 6 feet ± and street centerline setback deficiency of 16 feet ±, property located at 36 Birchwood Avenue, Residential Zone A-1."

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

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 of a new residence, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental to the neighborhood. The Board notes that the footprint of the proposed house will not be substantially greater than the existing house; the increase is in the addition of the second story. Because of the wetland buffer, retaining walls and existing cesspools, the house cannot be sited further back. Although the house is close to both side lines, the lot itself is very narrow and the length of the house is comparable to that which now exists. The proposed construction will be separated from

CYNTHIA HOWE

the structures on either side by a distance of approximately 25 feet. The Board notes that no abutters were present to oppose this petition.

Patrick J. Delaney III, Chairman

Jonathan G. Gossels, Clerk

Thomas W.H. Phelps

Stephen M. Richmond

Jeffrey P. Klofft, Alternate

MARTHA MCGUIRE
104 Pokonoket Avenue
03-30 & 03-31

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 13, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman
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Notice was published in the Sudbury Town Crier on April 24 and May 1, 2003, posted, mailed and read at this hearing.

Attorney David Wallace was present, representing the petitioner, Martha McGuire, also present, in two petitions: one for a Special Permit to construct an addition which will result in front yard and street centerline setback deficiencies, and for a Special Permit to allow an Accessory Dwelling Unit for a family member. The property is located at 104 Pokonoket Avenue.

Attorney Wallace explained that Ms. McGuire currently lives in this house with her son and her mother. Her mother sold the house to Ms. McGuire who would like to demolish the existing garage to construct a garage and an accessory dwelling unit for her mother.

From the plot plan submitted with the application, Attorney Wallace described the existing house and garage and the proposed addition. He said the expansion would encroach on the existing front yard and street centerline setbacks, resulting in deficiencies of 9 feet 6 inches and 19 feet 6 inches respectively.

Attorney Wallace submitted a photograph of the house taken last year. The location of the swimming pool and the septic system prevent construction in another location. Also submitted was a rendering of the proposed construction and interior layout. The total expansion would be 25% of the total existing area which meets the criteria for an accessory dwelling unit.

Ms. McGuire has spoken with her neighbors who have no objection to the proposed construction or accessory dwelling unit. Attorney Wallace submitted six letters of support from neighbors.

Mr. Gossels asked why the addition couldn't be moved further back. Attorney Wallace said it wouldn't fit in aesthetically given the constraints of the pool and septic system.

MARTHA MCGUIRE
104 Pokonoket Avenue
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Attorney Wallace said the design was intended to give the appearance of one living unit. However, in order to access the unit and the house, a second door on the front was required. In the Bylaw section for Accessory Dwelling Units, a second door is required to be either on the side or the rear. Attorney Wallace did not believe two doors in front to be unusual. He submitted photographs of several houses on Pokonoket Avenue, all of which have two doors in front. He felt this construction would not deviate from those houses. He felt the outside still gave the appearance of a single family house.

Mr. Richmond asked what would happen if the house is sold. Mr. Delaney explained that the Special Permit runs only to the applicant and terminates upon sale of the house. Recertification is also required every four years to insure the accessory dwelling is being used for the purpose approved.

Susan Pettit, 84 Pokonoket Avenue, abutters said she had not seen the plans as did a neighbor who had just recently moved into the area. Attorney Wallace showed the plans to those residents.

There was no further input and the hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: #1: Case 03-30

“To grant Martha McGuire, 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 32.33X44 foot addition which will result in a front yard setback deficiency of 9 feet 6 inches \pm and a street centerline setback deficiency of 19 feet 6 inches \pm , property located at 104 Pokonoket Avenue, Residential Zone A-1.”

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

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 addition, which will result in front yard and street centerline setback deficiencies, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The construction will be architecturally compatible and consistent with other structures in the neighborhood. Further, the Board notes that letters were received in support of this petition and there were no objections from the abutters present at this hearing.

MARTHA MCGUIRE
104 Pokonoket Avenue
03-30 & 03-31 Page 3

MOTION #2: Case 03-31

“To grant Martha McGuire, owner of property, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws, to allow a single accessory dwelling unit for a family member, property located at 104 Pokonoket Avenue, Residential Zone A-1, as follows:

1. The Board waives the applicable five-year period contained in Section 5522 of the Bylaw.
2. This Special Permit for an Accessory Dwelling Unit occupied by person(s) related to the family owning and residing in the principal dwelling is issued for the duration of such occupancy. This permit shall require the filing by the owner(s) of a sworn affidavit with the Town Clerk, with a copy to the Board of Appeals, certifying such occupancy every four years consistent with the Special Permit. This permit shall automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit.”

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

REASONS: The petitioner requires a Special Permit to allow a single accessory dwelling unit. The Board finds that the petitioners have fulfilled the intent and requirements of the Bylaw for the granting of a Special Permit.

Patrick J. Delaney III, Chairman

Jonathan G. Gossels, Clerk

Thomas W.H. Phelps

Stephen M. Richmond

Jeffrey P. Klofft, Alternate

GOLDENWEST DIAMOND CORP.
465 Boston Post Road
03-32

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 13, 2003'

The Board consisted of:

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Notice was published in the Sudbury Town Crier on April 24 and May 1, 2003, posted, mailed and read at this hearing.

Mr. Delaney, 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.

Kaffee Kang was present, representing the petitioner, Goldenwest Diamond Corp., in a petition for Variance to locate parking to the front of the property at 465 Boston Post Road. Ms. Kang explained that she was the architect hired to explore this property. Goldenwest Diamond Corp. is the owner of the Jewelry Exchange which is currently leasing space. That space is now too small and they are interested in expanding and building rather than leasing and would like to stay in this area.

The petitioner has an option to purchase this property which is on the corner of Boston Post Road and Nobscot Road and is the old Mobil Oil property. Ms. Kang said this is a very difficult property which is small, narrow and shallow. In order to get the required parking for a 2,800 s.f. retail building and 17 parking spaces, some type of variance is needed.

The option was to look at a variance that would be least counter to the Bylaw and the most in keeping with the intent of the Bylaw. This resulted in the request for a variance for parking to the front of the lot. The Bylaw allows parking to the side and rear; however, since this is a corner lot, it can only go to the west or east of the building.

It seemed to Ms. Kang that this is an unusual location where parking, whether to the east or west, doesn't make a lot of difference in terms of the intent of the Bylaw. From what she understood, the intent of the Bylaw, as far as parking to the side or rear, is to create a streetscape for the buildings in the area and keep parking away from view.

GOLDENWEST DIAMOND CORP.
465 Boston Post Road
03-32 Page 2

If parking were to the west of the building, it would conform to the Zoning Bylaw, but it wouldn't provide the Jewelry Exchange with an adequate amount of parking spaces. It would also leave a hole in the street frontage. There would always be a hole in that streetscape; whereas if it was reversed, as shown on the plan, there will always be a hole at the Nobscot Road intersection. This is big intersection; there are railroad tracks and no potential for a streetscape there.

Mr. Klofft said there is a streetscape on the other side of the road where Friendly's is.

Ms. Kang said there are railroad tracks there and there's a very wide gap. The thought was that there could potentially be a streetscape to the west if the Sullivan Tire property is ever sold, which is why this approach was taken.

Ms. Kang said she explained to the petitioner that this is just one of many steps that would have to be taken in order to develop this site. They agreed to apply for a variance to see if they wanted to pursue purchasing the property, subject to site plan review and all other required permits. There is a cost issue involved and they want to take it one step at a time to see if this is viable to consider.

Mr. Klofft said he had a safety concern in terms of design. Looking at the way the parking is constructed, there is a one way in, one way out situation. It was difficult to imagine the traffic flow, given this tenant and the traffic associated with this business.

Ms. Kang said this plan is a design concept to show where the parking could go. It would have to be engineered.

Mr. Richmond said a number of letters were received and some of them refer to remediation. He asked whether Ms. Kang had any idea of the contamination and its impact on the property.

Ms. Kang said she was not familiar with that aspect of the property. Her understanding from the owner was that they have all the reports and the property is supposed to be clean. There will be no purchase if it is not clean.

Mr. Delaney said there seems to be a general concern from some of the other Boards that this variance application may be premature and that there is other work that needs to be done before reaching the step of considering a variance. The following letters were read.

- from Town Planner Jody Kablack dated May 9, 2003 which requests the ZBA reserve a decision on this application until further information is submitted. A pre-application meeting was held, which included Ms. Kang and several Town staff members. At that meeting, it was the opinion of the Conservation Coordinator, Health Director and Town Planner that significant

GOLDENWEST DIAMOND CORP.
465 Boston Post Road
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other information was necessary to make an informed decision. In addition, soil testing had not been done to determine the location of the building and the Town Planner was reluctant to expend time without more information. Recognizing that this is a difficult site which might require some type of variance to be developed, it was the Town Planner's opinion that more information is needed to pursue development on this property.

- from Town Engineer I. William Place dated April 24, 2003 which notes the following:

1. The property is located in Zone II of the Aquifer Protection District and development cannot render the parcel more than 15% impervious. The proposed building alone renders the lot 19% impervious without the parking area.

2. Proposed use of the property has not been submitted.

3. Parking calculations should be submitted for review based upon the proposed use.

4. Curb cut permit will be required.

5. Interior driveway should be a minimum of 20 feet for 2-way traffic. Plan shows by scale 14 feet in the area of handicapped parking.

6. Area for septic system has not been shown.

7. Area is currently undergoing remediation for contamination.

- from the Conservation Coordinator Debbie Dineen dated May 9, 2003 which recommends denial or withdrawal of the application as presented, for the following reasons:

1. No soil testing has been done to determine suitability of a septic system.
2. Final building size, shape and location has not been determined
3. Wetlands in the area are not shown to determine where work will occur
4. There is no information on current storm water management or drainage upgrades

It seemed to Mr. Delaney that the Board had two options – the first being to decide the application based on the information received, the three letters, which he felt to be problematic, or the petitioner has the opportunity to request a withdrawal to allow for time enter into discussions with the Conservation Coordinator and Planning Board to get through the hurdles raised in their letters, and then reapply.

Ms. Kang said the information requested constitutes a full site plan development. She has spoken with the petitioner who does not want to spend the time or money developing it without owning the property and without knowing whether it can be developed in this direction.

GOLDENWEST DIAMOND CORP.
465 Boston Post Road
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She said there are many directions in which to take this. She didn't know if a different variance could even be looked at if the Board denies this variance. This was the variance that was thought to be the least counter to the Bylaw. Ms. Kang said the petitioner has already asked for multiple extensions on their option. Their deadline is up, so they have to make a decision.

Mr. Delaney said most of the considerations that Ms. Kang just mentioned don't mean a lot to the business plan or to the zoning decision.

Ms. Kang understood this; however, she said she still considers this a zoning issue and not a site plan related issue. If the variance was granted, it would still be subject to site plan review.

Mr. Delaney pointed out that if there is a denial, the petitioner cannot come back for two years on the same application.

Mr. Richmond said the standard for variances is very strict. Without additional site work he didn't know if the Board could get to the point of addressing those issues.

Mr. Phelps said just looking at the plan he was uncomfortable with the parking to the extent it is at the front of the building, particularly since two properties in that area across the street were denied variances to park in front of the building. He did not feel this application fits into the overall scheme of the Bylaw. For those reasons, plus those expressed by the Board, Mr. Phelps wanted to provide Ms. Kang with information should she request a withdrawal.

Ms. Kang did not feel there were other options to parking. As to a withdrawal, she said her client would not be willing to request a withdrawal or expend more time, effort and costs to pursue other options. She did not have the authority to request a withdrawal.

The public hearing was then closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Goldenwest Diamond Corporation, applicant, Mobil Oil Corp., owner of property, a Variance from the provisions of Section 3144 of the Zoning Bylaws, to locate parking to the front of the property located at 465 Boston Post Road, Limited Business District #2."

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

REASONS: The petitioner requires a Variance to locate parking to the front of the property. In order to grant a Variance, four specific criteria must be satisfied. Failure to meet any one of the four will cause the variance to be denied.

GOLDENWEST DIAMOND CORP.
465 Boston Post Road
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The Board found that this petition failed to pass the standard as to whether there would be a substantial detriment to the public good if the variance was granted. Specifically, the petitioner stated that the plan was a design concept submitted with the understanding that if a variance was granted, applications would be made to the necessary town boards/departments for the required permits. As such, with the information provided, the Board of Appeals was unable to determine whether this application met the criteria of safety in terms of building design and size or traffic flow within the property or on the adjacent roads.

Understanding that this is a difficult property, the Board offered the petitioner the opportunity of withdrawing without prejudice to address the issues of concern expressed by the Town Boards/Departments in order to determine whether a new variance application could be submitted which would provide this Board with the information needed to render a decision. The petitioner declined this opportunity; therefore this petition for Variance is denied.

Patrick J. Delaney III, Chairman

Jonathan G. Gossels, Clerk

Thomas W.H. Phelps

Stephen M. Richmond

Jeffrey P. Klofft, Alternate

ROBERT & CHRISTINA DEIGNAN
200 Old Lancaster Road
03-33

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, MAY 13, 2003

The Board consisted of:

Patrick J. Delaney III, Chairman
Jonathan G. Gossels, Clerk
Thomas W.H. Phelps
Stephen M. Richmond
Jeffrey P. Klofft, Alternate

Notice was published in the Sudbury Town Crier on April 24 and May 1, 2003, posted, mailed and read at this hearing.

Mr. Delaney, 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.

Robert and Christina Deignan were present to represent a petition for Special Permit to construct a 21X21 foot 2-car garage which will result in a side yard setback deficiency at 200 Old Lancaster Road.

Mr. Delaney noted that the Deignans had been before the Board in April (Case 03-24) at which time some issues were raised and they were allowed to withdraw without prejudice in order to address them. The original plan proposed a 23X21 foot garage which would result in a 15 foot setback deficiency. The Board expressed concern with regard to amount of deficiency which would result from this construction particularly since the plan used was a mortgage inspection plan rather than one drawn by a Registered Land Surveyor.

Mr. Deignan said he subsequently had a survey plan drawn by Snelling & Hamel Associates, Inc., Registered Land Surveyors, which resulted in a reduction in garage size to 21X21 feet with a setback deficiency of 14.8 feet \pm .

Mr. Gossels said he was still concerned with the setback; however, he felt more comfortable knowing the setbacks on this certified plan were accurate.

In response to a question from Mr. Klofft, Mr. Deignan said the garage will be a 2-car garage with storage above. The pitch of the roof is to the street. He said originally he had looked at several alternatives but was limited because of topographical constraints and location of the septic system. The neighbor who would be most affected preferred the proposed location

ROBERT & CHRISTINA DEIGNAN
200 Old Lancaster Road
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which, although was close to his property line, was forward of his house and would not detract from his view. The neighbor felt he would be impacted if the garage were constructed further back. He had submitted a letter in support at the previous hearing.

Mr. Delaney said the issues seemed to be addressed. There were no abutters present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Robert & Christina Deignan, 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 21X21 foot 2-car garage, which will result in a side yard setback deficiency of 14.8 feet \pm , property located at 200 Old Lancaster Road, Residential Zone A-1."

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months, following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

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

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed porch, which will result in a side yard setback deficiency, will not be substantially more detrimental than the existing nonconformity to the neighborhood. The Board finds that the proposed construction, although close to the property line, is the preferred location since constructing it further back, with less of a setback deficiency, would severely impact the abutting neighbor. That neighbor has voiced his support of the construction as proposed. In addition, the petitioner has had his property surveyed by a Registered Land Surveyor to insure the setbacks for the garage will be accurate.

Patrick J. Delaney III, Chairman

Jonathan G. Gossels, Clerk

Thomas W.H. Phelps

Stephen M. Richmond

Jeffrey P. Klofft, Alternate