

DR. GAIL W. MCNEILL
21 Union Avenue
04-30

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, AUGUST 17, 2004

The Board consisted of:

Jonathan G. Gossels, Chairman
Elizabeth A. Taylor, Acting Clerk
Jeffrey P. Klofft
Richard L. Burpee, Alternate

Notice was published in the Sudbury Town Crier on July 28, 2004 and the Metro West Daily News on August 9, 2004, posted, mailed and read at this hearing.

Mr. Gossels, 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.

Dr. Gail McNeill and Elliott and Phyllis McNeill were present to represent a petition for renewal of Special Permit 01-12 to operate a veterinary kennel and clinic at 21 Union Avenue. The business has been in operation since 1985. No changes were being requested.

Dr. McNeill said her business has grown and is doing well. There have been no complaints from the neighbors. She is comfortable with the existing terms and conditions of the permit.

There were no further questions from the Board. No abutters were present. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Dr. Gail W. McNeill, applicant, A. Elliott & Phyllis E. McNeill and Gail W. McNeill, owners of property, renewal of Special Permit 98-21, granted under the provisions of Section 2313 of the Zoning Bylaws, to allow the continued operation of a veterinary kennel and clinic, property located at 21 Union Avenue, Business District #5, provided that:

1. Dogs are to be allowed in the outside run only between 7:30AM and 9AM, 5PM and 5:30PM, 7:30PM and 8:30PM Monday through Saturday, and between 10AM and 10:30AM, and 5PM and 5:30PM on Sundays.

2. The building shall use a climate control system so that all doors and windows can be kept closed year round to preclude the issuance of noise from the building.
3. Except as modified herein, the conditions of the site plan dated March 5, 1984 shall be complied with.
4. This permit is non-transferable and will expire in three (3) years on August 17, 2007, and the Board will consider renewal upon receipt of proper application on or before that date.”

VOTED: In favor: 4 (unanimous) Opposed: 0

REASONS: The petitioner seeks to renew a special permit to operate a kennel which has been in operation for nineteen years. The Board finds that the location of the activity in a business district which has minimal abutter contact within 100 feet is an appropriate location and not detrimental to the neighborhood in and of itself. The use of a kennel in a business district is in harmony with the Zoning Bylaws in that a kennel is an allowed use by special permit.

The building within which the kennel operates was built for this specific use. Therefore, the Board finds that the facility is appropriate. As to the issue of whether the use is detrimental or offensive due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances, the Board finds that there is some noise which, if not controlled, could be considered detrimental. However, by limiting the hours during which dogs may be out, as well as requiring the closure of windows and doors to the times set forth in the Decision, the Board finds that the detrimental effects, if any, would be minimal to the neighboring properties.

The Board further notes that no abutters were present to voice objection to renewal of this special permit, nor do records indicate any opposition for the past several years. For this reason the Board finds a renewal term of three years to be appropriate in this case.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

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Ron Gilfix was present to represent a petition for renewal of Special Permit 03-37 to allow an indoor commercial recreation activity at 31 Union Avenue.

In response to questions from the Board, Mr. Gilfix said he is happy with the business which is growing. There have been no issues with abutters. Although the business is located in Chiswick Park, the hours of operation are such that there are no traffic problems. Larger events, such as fundraisers, are held during the evening hours when the office park is closed and therefore present no traffic or parking problems.

Mr. Gilfix was requesting renewal under the same conditions but would like a longer renewal period. Mr. Gossels explained the guidelines for renewal terms noting this permit would be eligible for a 2-year term.

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

After deliberation the following motion was placed and seconded:

MOTION: "To grant No Limits Enterprises d/b/a Velocity Sports, applicant, renewal of Special Permit 03-37, granted under the provisions of Section 2230,A,C,Use 22, to allow an indoor commercial recreation activity, property located at 31 Union Avenue, Limited Industrial District #2, subject to the following:

NO LIMITS ENTERPRISES D/B/A VELOCITY SPORTS

31 Union Avenue

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1. This permit is non-transferable and will expire in two years on August 17, 2006, and the Board will consider renewal upon receipt of proper application on or before that date.”

VOTED: In favor: 4 (unanimous) Opposed: 0

REASONS: The petitioner requires a Special Permit to operate a recreational facility within a Limited Industrial District. This facility has been in operation for one year. The facility is surrounded by other commercial activities, including another recreational facility and is therefore considered to be in an appropriate location which does not alter the character of the zoning district. Adequate and appropriate facilities have been provided for proper operation. There is ample parking and adequate traffic circulation to ensure safe vehicular movement throughout the parking area. Since the facility operates at off-peak hours from the surrounding commercial activity the Board anticipates no traffic congestion in the area.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Jeffrey P. Klofft

Richard L. Burpee, Alternate

SUDBURY HOSPITALITY LP

738 Boston Post Road

04-32

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, AUGUST 17, 2004

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Mr. Gossels, 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.

Jon Hayward, applicant, was present to represent a petition for renewal of Special Permit 01-10, to operate a motel/inn at 738 Boston Post Road. Mr. Hayward was aware of the conditions of the previous permits and requesting renewal under the same conditions. He was not aware of any issues or complaints from the neighbors.

There were no questions from the Board. Mr. Klofft complimented Mr. Hayward on the inn at which in the past he had occasion to stay. There were no abutters present. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Sudbury Hospitality LP, owner of property, renewal of Special Permit 01-10, under the provisions of Section 2230,A,C,Use 10 of the Zoning Bylaws, to operate a motel (inn) on the premises, property located at 738 Boston Post Road, Business District #5, provided that:

1. The westerly access (at the intersection of Boston Post Road and Lafayette Drive) shall be closed to all regular vehicular traffic and shall be access only to emergency vehicles.

2. There shall be no lighting affixed to the rear of the building.

SUDBURY HOSPITALITY LP
738 Boston Post Road
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3. The stockade fence and natural plantings (screening) shall be continually maintained and, if damaged or destroyed, shall be repaired or replaced within two weeks from such damage or destruction.

4. There shall be no rubbish pickup prior to 10:00AM or after 6:00PM.

5. Live entertainment shall be allowed on said premises provided that:
(1) any "live entertainment" be associated with a private function
(2) that it be held indoors
(3) that it be discontinued as of midnight

6. A lounge, located on the ground level of the premises, shall be allowed provided that:
 - (1) seating capacity shall be displayed and shall be in accordance with the requirements so stated by the State Fire Marshall and/or any other appropriate authority
 - (2) hours of operation shall be in accordance with the requirements of the applicant's current liquor license

7. This permit is non-transferable and will expire in three (3) years on August 17, 2007, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 4 (unanimous) Opposed: 0

REASONS: The petitioner seeks renewal of a special permit to operate an inn in a business district. Under the Zoning Bylaw, the use as a hotel/motel is allowed with a special permit and the Zoning Bylaw sets forth the criteria the Board must find in order to issue a special permit.

The inn has been in existence at this location for approximately eighteen years. The petitioner, who has operated the inn for the past eleven years, has complied with the conditions of the previous permits. The Board has observed that the inn has been meticulously maintained and its appearance is an asset to the area. Further, no abutters were present to oppose renewal. The Board finds a three-year renewal period to be appropriate in this case.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Jeffrey P. Klofft

Richard L. Burpee, Alternate

DAVID & PATRICIA MISSIRIAN
 133 Concord Road
 04-33

MINUTES OF THE PUBLIC HEARING
 SUDBURY BOARD OF APPEALS
 TUESDAY, AUGUST 17, 2004

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- Elizabeth A. Taylor, Acting Clerk
- Jeffrey P. Klofft
- Richard L. Burpee, Alternate

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Mr. Gossels, 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 Missirian was present to represent a petition for Special Permit to allow a Single Accessory Dwelling Unit for family member(s) at 133 Concord Road. He said the addition of this unit will allow his father-in-law, who has recently undergone bypass surgery, to sell his house and move in with Mr. Missirian's family along with his wife.

Mr. Missirian submitted a letter from abutters Carol Galvin, 129 Concord Road, and Thomas Anderson, 137 Concord Road in support of the special permit. These abutters reside on both sides of the Missirians. The letter was read by Mr. Gossels.

The following letters, submitted with the application, were also read:

- from the Building Inspector dated July 20, 2004, which recommends approval noting there is adequate parking and the new construction will meet current Building Code requirements. The addition will not occupy more than 30% of the total residence area nor is greater than 1,200 s.f. The owner must also request a waiver of the 5-year waiting period for use of an addition as an accessory dwelling unit.

- from the Health Director dated July 20, 2004 which notes the septic system has been upgraded to a four-bedroom septic system to accommodate a proposed accessory dwelling unit.

With regard to the 5-year waiting period, Mr. Missirian explained that at the time construction was about to begin, the ZBA was not meeting due to vacation schedules. Therefore, the Building Inspector said Mr. Missirian could begin construction but must request a waiver.

DAVID & PATRICIA MISSIRIAN
133 Concord Road
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Mr. Gossels said it was unclear from the rendering where the entrance to the accessory dwelling would be and when he drove by he still could not see where it would be.

Mr. Missirian said the entrance is on the side. The steps come off that entrance and rotate around to the front. It was designed to comply with the Bylaw.

There were no further questions from the Board. No abutters were present. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant David E. and Patricia A. Missirian, owners of property, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws, to allow a Single Accessory Dwelling Unit for family members, property located at 133 Concord Road, Residential Zone A-1, as follows:

1. The Board waives the applicable five-year period contained in Section 5522.
2. This Special Permit for an Accessory Dwelling Unit occupied by persons 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 (4) years consistent with the Special Permit. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit."

VOTED: In favor: 4 (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 requirements of the Bylaw for the granting of a Special Permit.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Jeffrey P. Klofft

Richard L. Burpee, Alternate

MAILLET & SON INC.
43 Butler Road
04-34

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, AUGUST 17, 2004

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Elizabeth A. Taylor, Acting Clerk
Jeffrey P. Klofft
Richard L. Burpee, Alternate
Melinda M. Berman, Alternate

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Mr. Gossels, 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.

Marcel Maillet was present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence which will exceed the area of the original nonconforming structure and will result in front yard setback deficiencies on Butler Place and 43 Butler Road.

Mr. Maillet said this is the second application for this property. The Board originally granted a special permit on April 27, 2004 (Case 04-17). At that time, in accordance with the Board's request, Mr. Maillet agreed to try to locate the new structure further back on the lot and therefore the decision was granted with a 12 foot deficiency on Butler Road rather than the 20 feet requested by Mr. Maillet.

The plan submitted with the first application showed only the location of the septic tank. Subsequently it was discovered that the new house cannot be moved back because of the location of the leaching field which comes up to the house. As a result, Mr. Maillet said he is unable to locate the house further back.

While the Board would have preferred the house to be able to be moved further back, they agreed that what is now being proposed is still much better than that which is already there.

Mr. Maillet said he does have another plan which twists the location of the house a little bit. However, this brings the house 3 feet closer to Butler Place.

MAILLET & SON INC.
43 Butler Road
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Following review of the plan, the Board agreed it would not want to see the house moved closer to Butler Place.

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

After deliberation the following motion was placed and seconded:

MOTION: "To grant Maillet & Son, Inc., 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 1,800 s.f., which will exceed the area of the original nonconforming structure and will result in front yard setback deficiencies of 20 feet \pm on Butler Road and 21.9 feet \pm on Butler Place, property located at 43 Butler Road, Residential Zone A-1 as follows:

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: 4 (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 proposed location of the new house is more appropriate to the lot and neighborhood and will alleviate visibility issues associated with the existing house being too close to the road. Originally the petitioner had agreed to move the house even further back; however, due to the location of the septic tank and leaching field was unable to do so. While this would have been a preferable option, the Board agreed that the proposed location is more favorable than that which already exists. Further, the scale and design of the new house will be consistent with other homes in the area and will be an improvement to the neighborhood.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Jeffrey P. Klofft

Richard L. Burpee, Alternate

Melinda M. Berman, Alternate

CLEVELAND & MARGARET MANLEY
436 Peakham Road
04-35

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, AUGUST 17, 2004

The Board consisted of:

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Elizabeth A. Taylor, Acting Clerk
Jeffrey P. Klofft
Melinda M. Berman, Alternate

Notice was published in the Sudbury Town Crier on July 28, 2004 and the Metro West Daily News on August 9, 2004, posted, mailed and read at this hearing.

Attorney Lisa Bergman was present representing the petitioners for a special permit to allow demolition of an existing residence and construction of a new residence which will exceed

the area of the original nonconforming structure at 436 Peakham Road. The new residence will conform to all zoning setback requirements.

Ms. Bergman said the existing house is approximately 1,800 s.f. and is currently serviced by a cesspool. The proposed house is approximately 3,600 s.f. The new septic system will conform to Title 5 requirements and will be located toward the Peakham Road portion of the lot. The house itself will be oriented toward Peakham Road.

Ms. Bergman said the nonconformity is with the frontage which is 31.43 feet. The driveway is actually a shared driveway the house on the right.

Mr. Klofft asked whether there is enough room for two separate driveways. Ms. Bergman believed there was.

Although a bit larger than some of the surrounding homes, Ms. Bergman believed the proposed house would be in character of the neighborhood.

Mr. Gossels pointed out that the other side of the right side neighbor has a rebuilt home which seems about the same size. Ms. Bergman pointed out another house close by which appears to be a bit larger.

Mr. Gossels asked whether this proposal was discussed with any of the neighbors. Ms. Bergman had not.

From the plans, Mr. Gossels noted the proposed driveway will come straight in from Peakham Road, which is the existing driveway. The garage is on the right side of the lot. He

CLEVELAND & MARGARET MANLEY
436 Peakham Road
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asked whether the existing house will be removed before construction begins. Ms. Bergman said it would.

Mr. Klofft asked whether the applicant had considered donating the house. Ms. Bergman had not discussed this with her clients but said she could.

Francis Leard, 446 Peakham Road, said his property is the long, narrow piece along Peakham Road which abuts this parcel. He wanted to know where the leaching field would be, and this was pointed out to him by Ms. Bergman. In response to Mr. Leard's concerns as to whether the location would cause problems on his property, Ms. Bergman said the system has been approved under Title 5.

Mr. Leard also pointed out that in a couple of years he plans to take down some trees for a driveway which will take away some of the buffer that exists between the properties.

Enrico Catalanotti, 12 Woodberry Road, abutter, asked whether the lot has been surveyed for the septic system. Ms. Bergman responded that it has been surveyed for the actual septic system. She was not sure about the remainder of the lot.

Mr. Catalanotti wanted to be sure the property was surveyed since his fence, which was put up by the builder, may or may not be on his property and an adjustment may be needed.

Mr. Gossels felt this not to be a ZBA issue and suggested Mr. Catalanotti discuss this privately with the owner.

Lou Weinstein, 7 Forest Street, abutter, also had similar concerns with regard to the fence.

Mr. Gossels suggested to Ms. Bergman that it might be advantageous to discuss this with the neighbors.

William Senecal, 430 Peakham Road, owner, said his issue was with the driveway. He did not want a shared driveway. He felt that since this property is being totally redeveloped, the driveway should be put on its own property rather than what is proposed on the plan.

Mr. Gossels asked for the legal status of the driveway. Ms. Bergman said it is by recorded easement which allows both parties driveway access.

Mr. Senecal was still opposed. He felt since it was being redeveloped it should be made more conforming with the existing driveway requirements requiring placement 5-feet of the lot line.

CLEVELAND & MARGARET MANLEY
436 Peakham Road
04-35 Page 3

Mr. Klofft asked whether Mr. Senecal would be willing to move his driveway. Mr. Senecal said he would. He presented a sketch of a proposed driveway scenario for the record with a copy also given to Ms. Bergman. He has spoken with the Building and Engineering Departments, both of whom agreed a waiver could be given to accomplish this. Ms. Bergman agreed to put her clients and Mr. Senecal together to discuss this.

Mr. Klofft felt that if in fact the right-of-ways exist as recorded documents, this Board could go forward with the demolition and reconstruction and the two parties could discuss a way to resolve the driveway issue. The other Board members agreed.

Mr. Weinstein asked whether the proposed house was within the height limitation. Ms. Bergsen said it does; it is 31 ½ feet tall.

Mr. Gossels said the Board has adopted guidelines for reconstruction which are included as conditions to the special permit. These include (1) construction must begin no later than one

year after the special permit is issued; (2) construction must be completed no later than one year after commencement; (3) guideline for demolition, which in this case would be prior to construction.

Mr. Gossels would strongly urge Ms. Bergman and her clients to meet with the neighbors regarding the fence issue, screening and the driveway, which have been voiced as concerns this evening.

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

After deliberation the following motion was placed and seconded:

MOTION: “To grant Cleveland & Margaret Manley, 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 3,245 s.f., which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 436 Peakham Road, Residential Zone A-1, as follows:

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.
2. Construction must be completed no later than one year after commencement.
3. The existing house is to be demolished prior to construction of the new residence.

CLEVELAND & MARGARET MANLEY
436 Peakham Road
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VOTED: In favor: 4 (unanimous) Opposed: 5

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 proposed construction is similar to other homes in the area in terms of style and scale and therefore will not be intrusive to the neighborhood. The Board notes that while some issues were raised by neighbors which are outside of the Board’s purview, there was agreement by the applicants’ representative to meet in an effort to resolve those issues.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Jeffrey P. Klofft

Melinda M. Berman, Alternate