

MINUTES OF THE PUBLIC HEARING CONTINUATION  
SUDBURY BOARD OF APPEALS  
JULY 21, 2005

The Board consisted of:

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

Also: Nancy G. Rubenstein, Alternate  
Jody Kablack, Town Planner

For the Applicant:

Louis W. Mountzoures, Esq. Pari Holdings LLC, applicant  
Michael Sullivan, Sullivan & Connors, Engineer  
Morris Schopf, Architect

The hearing was reconvened by the Acting Chairman, Mr. Klofft. The Board was in receipt of the following:

- Letter dated July 14, 2005 from Louis W. Mountzoures which includes revised Site Development Plan dated July 11, 2005, Architectural Street Elevations, Typical Unit Elevations and Floor Plans
- email dated July 18, 2005 from Conservation Coordinator, Deborah Dineen
- Letter dated July 18, 2005, from I. William Place, Town Engineer

Mr. Sullivan displayed the latest plan noting that the development has now been transformed into 8 single family units each having a 2-car garage. Six of the units will have 2 bedrooms, and 2 of the units will have 3 bedrooms. Each will have its own lot; the house will sit on a lot and the residents will own that specific lot. The size of the lots will range anywhere from 4,200 s.f. to 9,300 s.f.

Mr. Sullivan described the setbacks for the various units pointing out that dimensionally, they are closer to the property lines, particularly with respect to Unit 6 which is approximately 20 feet from the property line and its deck being almost 6 feet from the line.

Mr. Sullivan said the earlier plan proposed a T-shaped road configuration. However, after meeting with the Design Review Board (DRB) the plan has been changed to a road with a

90-foot diameter circle. There is enough room for the fire engines for turn around, and there will be a landscaped island in the middle of it.

The pavement width at the neck of the cul de sac will be approximately 22 feet wide. The septic system and the drainage conceptually would be the same. There would be a series of cul-tecs underneath the pavement that would act as a subsurface infiltration basin to accommodate up to a 100-year storm. In a larger storm event it would overflow and be discharged, still maintaining that offset from the wetland that the Conservation Commission had requested.

The septic system for 18 bedrooms would be a little less as far as the flow – a little under 2,000 gallons. In addition each unit will have a subsurface cul-tec system that will infiltrate the roofs from the building.

Mr. Gossels pointed out that the road name is “Meadowbrook Circle”. He said there already is a Meadowbrook Circle in town. Mr. Schopf said he would rename the road.

Mr. Gossels said he likes the idea of the single family homes each with its own individual lot, but felt that the garage doors dominate the streetscape. He asked if it was possible to push them back so that the wall of the house would be seen first.

Mr. Schopf said he was trying to provide all the amenities one would find in a suburban house in a community like Sudbury, including a 2-car garage. He felt perhaps by altering roof shapes, trim details and the shapes of the dormers and such, the fact that there are two garage doors could be mitigated.

Mr. Klofft said the Board’s concerns were the percentage of garage door to the rest of the space, and protrusion of the garage. He felt this configuration created a sense of looming of the garage.

Mr. Schopf asked if the Board would prefer a single garage door with the balance of that space treated as storage space or incorporated into the façade of the house rather than appearing as two garages.

Discussion followed on how this could be accomplished.

Frank Riepe, DRB, felt the public environment will be vastly more attractive if what is dominant is the façade of the house rather than the garage doors.

In response to a question from the Board, Mr. Mountzoures pointed out the 210 contour line which runs through the Stewart property.

feet off the property line. The setback of the unit and deck would be 18 feet and 10 feet respectively from his property line.

Attorney Witten was present representing Mr. & Ms. Stewart. He would challenge the applicant to demonstrate how in this market he would build a 2-bedroom unit. He said this plan shows two 2 bedrooms plus a study/home office. He said under Title 5, that's a bedroom and under the Sudbury Board of Health regulations, that's a bedroom. Because it's a bedroom, it increases the flow, from 220 gallons per dwelling up to 330 gallons per dwelling and would push the total flow over 2,000 gallons a day triggering DEP review.

Mr. Mountzoures said Title 5 says "room intended for privacy". This is a loft at the top of the stairs not intended for privacy. He said if it became an issue he would put in the nitrogen enhancement, and it is still under the 2,000 gallons. But he said it's moot; it's an open foyer which many houses have, in Sudbury and everywhere else. As far as he was concerned it would satisfy DEP.

Mr. Sullivan added that with Title 5 there is a deed restriction regardless of the number of rooms. It would have to be recorded and the Board of Health would have to have a copy. However, he said if there is a degree of discomfort, it could be resolved architecturally.

Mr. Schopf also agreed.

Mr. Witten said the applicant is trying to stay below 2,000 gallons per day and has the obligation to deed restrict to make sure it complies. He said to sell it as a 2-bedroom unit without first proffering the restriction, or requiring the Board to raise it, or an abutter to raise it questions where this project is going. He said it sounds as if the Board has a good relationship with the applicant and the applicant has a good relationship with the neighbors. He was not here to ruin that relationship but was here to suggest that his client is unduly interfered with to his privacy. His property is unduly affected by this project and this project has too many units proposed on such a small parcel.

He said a far smaller project, one that combined a pro forma with the Rules & Regulations and combined with the capacity of this parcel, would have far less impact on his client, and the town of would still be able to gain at least one additional affordable unit.

Mr. Klofft said this is not a forum to discuss the public policy of the 40B regulations and whether or not or how they impact neighbors and what the effect is. He said we are here to interpret and enforce the regulations as they exist on the books.

Mr. Witten said he was suggesting that the regulations on the books can impose conditions that do not render the project uneconomical. Unless the Board reviews the pro forma

for the 8 units and determines that the applicant is entitled to an 8-unit project, he felt that the Board is skirting its obligations and the applicant is skirting his obligations to his client.

Mr. Klofft said there is no way this application is going to be approved or completed this evening. This is an ongoing process which is a long way from being finalized.

Ann Miller, 28 Mary Catherine Lane said she hadn't come to many of these meetings because she expected that the ZBA would protect their interests. She said she was disappointed in this latest plan which puts the development close to one of her neighbor's property lines. She was also disappointed to see that these units are going to have 2-car garages which will make them quite large.

Mr. Klofft said with respect to 40B developments, this Board is very limited in its authority. He said the neighbors should understand that by right this is low density – by right, given the size of this property, there could be probably five times as many units.

Further discussion followed on comparisons between this development and the Carriage Lane development in terms of setbacks and an explanation of why waivers may be granted by the State under Chapter 40B.

With regard to the wetlands, Ms. Miller said there's a pond behind her house, and when it rains a lot, between the septic and the rain, her back yard is a puddle. In the winter, children skate on it. She voiced concern over the impact this development may have on her property.

Mr. Sullivan said a filing has been made with the Conservation Commission to memorialize this wetland and Conservation has verified the extent of the wetland. This area was pointed out by Mr. Sullivan on the plan. In terms of the drainage and impervious surface, the developer has to model what the current existing conditions are prior to the development. Then, after the development is built, they calculate all the impervious surfaces associated with the building, the driveways, and the roadway. They also have to mitigate a 100-year storm event. They cannot increase the rate of runoff from this site in a 100-year storm event, so it's got to be mitigated on site. Conceptually, although a definitive design has not yet been done they would be infiltrating all of that runoff from these units into a subsurface infiltration basin. Coupled with that, DEP has what is called Best Management Practices in terms of pollutants which has to be satisfied as well. Not only is the volume addressed, but also the quality.

In response to a question from Mr. Klofft regarding density per acre, Ms. Kablack replied that under the Smart Growth Initiative, the minimum is 8 units per acre. Under the current plan, this development would be 8 units per 5 acres. She added that under the state guidelines, wetlands are not counted; however, the town does count them and the intent has been to be sensitive to not allow 8 units per wetland.

Further discussion centered on explaining the criteria by which an applicant may apply for a 40B development. The Board also answered abutters' questions regarding the appeal process.

Mr. Gossels suggested that as abutters, it would be more advantageous to work with the developer and come up with a plan for mitigation, fencing, landscaping, etc., and to be an active part of this process.

Ms. Miller asked whether this plan was the result of several revisions.

Mr. Klofft said it was – that the developer has gone from 16 town house units to 8 single family units.

Mr. Witten said an abutter or an abutter within 300 feet has a statutory right to appeal the ZBA's decision to Superior Court. It was also his opinion that the determination of the number of units and the waivers to be granted is not up to the State, but is up to the ZBA under the statute. He said the Board must determine whether the waivers are required to be waived to keep the project from being uneconomical. He felt that rather than give the developer credit for reducing the density, the Board should look at what the project is doing to the neighbors.

Mr. Klofft said the Board did do a preliminary pro forma review for a larger scaled project, and the opinion of the members was that there wasn't a lot of fat in terms of where the profit margins were going to be.

Mr. Gossels said the Board specifically asked the applicant to come in this evening to talk about this conceptual redesign because the design had changed so radically. He said the Board doesn't want to waste the applicant's time and money churning through complete documentation and pro formas before reaching agreement on a conceptual design. Tonight is design level. If it's acceptable, then we go forward and do the fine detailing.

Speaking to Mr. Stewart, Mr. Klofft said at the last meeting there was discussion about whether he would rather be 10 feet from an attractive building or 100 feet from an unattractive building – an unattractive neighborhood vs. an attractive neighborhood. He asked Mr. Stewart whether he preferred the previous plan that had greater density but more setbacks or this new plan.

Mr. Stewart said he recalled that at the last meeting Mr. Burpee had asked if he preferred something more aesthetically pleasing, higher quality, closer to his property vs. a lower quality but more distance from our property. At the time he did recall preferring a higher quality structure closer to his property as opposed to a lower quality of units which might diminish the appeal of that area of town. However, he felt that seeing this in print is quite extreme, going from close to 60 feet off of our property line to 7 feet.

Mr. Klofft said this is zoned Residential A with 20-foot side yard setbacks.

Mr. Schopf said the setback is currently 10-feet. However, with a single family structure there may be a way to get some of that 10 feet back.

Mr. Athanas asked whether any thought was given to double units – staying with the 8 but having 4 structures as this might pull units 2 and 3 away from the Stewart’s lot line.

Mr. Mountzoures said this was looked at. However, although some of the area in between might be picked up, the neighbors would be looking at a larger mass.

Mr. Klofft asked Ms. Kablack for comments. She suggested that since this has now become a subdivision, the developer should produce his list of waivers earlier rather than later. She asked how the maintenance organization would be structured.

Mr. Mountzoures said it would be a homeowners’ association akin to a condominium fee. He said the septic system is not an expensive system to maintain and the drainage system has a good life expectancy. He said he would probably require funds at the beginning once the improvements were made, and then there would be a monthly homeowners’ association fee which would cover that.

With regard to a question about the wetland area, Mr. Mountzoures said he hasn’t been before the Conservation Commission yet. He would assume that they would want a restriction or conservation easement. So, rather than draw lot lines that seem bigger but really weren’t, he left it open and will figure it when going for the Notice of Intent.

Patricia Garrett – 21 Mary Catherine Lane asked how the developer would propose moving the house away from the Stewart’s property line.

Considerable discussion ensued between the Board, developer and neighbors as to how this could be accomplished taking into account issues with the road, garages, parking and wetlands.

Mr. Witten felt that one of the problems is that everyone is looking at the design first rather than the pro forma. He said the applicant is going to maximize profit, the neighborhood is trying to preserve the integrity of the neighborhood, and the Board’s obligation is to make sure the project isn’t uneconomic. He felt the only way to meet in the middle is to start with the pro forma

Mr. Klofft felt you just can’t go straight to the pro forma because then you don’t know what the quality and the design elements are, all of which affects the construction costs. He rejected Mr. Whitten’s point to start with the financials and come back to the design.

Mr. Gossels said when an appropriate number of units has been determined, we'll have financial figures. He said the process began with a design that most found unacceptable. The DRB made an important statement with some of their design guidelines to open the development up to preserve the natural meadow in the back. He said those are very important advances over the initial design. He felt the Board has to have those types of values driving what we're trying to do before you can look just at finances.

Mr. Mountzoures went through the numbers for a 4-lot subdivision which he said puts him at a break-even point and doesn't even include financing, legal or transaction costs.

Mr. Whitten said he would provide a pro forma for four units for the Board's review if the Board will accept it as testimony.

Mr. Klofft agreed to accept it as testimony.

Mr. Mountzoures said he would not go below 8 units. He said he has been through the numbers and has looked at every possible scenario.

Mr. Klofft saw the action items for the next meeting as being another pro forma and a look at a couple of different house designs - perhaps a one-car house design and then approaches that potentially can move the units that are close to the property line further forward.

Mr. Gossels added that the attempt is to fine tune the design of the house to minimize the garage impact and fine tune the impact on some of the closest abutting neighbors. Then we'll take a careful look at the finances.

Mr. Klofft said the Board will require Mr. Stewart and his attorney to adhere to the same guidelines by which documentation is required, which is 7 days before the meeting.

The hearing was continued to August 18, 2005.

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