

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, NOVEMBER 8, 2005

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Elizabeth A. Taylor
Constantine Athanas, Alternate

Notice was published in the Sudbury Town Crier on October 20 and 27, 2005, posted, mailed and read at this hearing.

Mr. Richmond, Chairman, explained the requirements necessary to substantiate the granting of a Use 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.

Floyd Stiles, General Manager, was present to represent a petition for renewal of Use Variance 04-4 to use the building and property at 676 Boston Post Road as a clubhouse and meeting hall. No changes were being requested other than a longer renewal period.

Mr. Stiles said through an oversight he did not comply with Condition 9 of the permit which required abutters to be contacted by written letter, with a copy to the ZBA soliciting complaints or areas of concern.

Mr. Klofft expressed concern because of the nature and past history of this operation that the letters were not sent. He would feel more comfortable continuing this hearing in order that the letters could be sent.

The Board was in agreement. A motion was made, seconded and unanimously voted to continue this hearing to January 3, 2006 to allow the petitioner time to comply with Condition 9 of his Special Permit.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Elizabeth A. Taylor

Constantine Athanas, Alternate

CVS PHARMACY
505 Boston Post Road
05-48

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The Board consisted of:

Jeffrey P. Klofft, Acting Chairman
Elizabeth A. Taylor, Acting Clerk
Jonathan G. Gossels
Constantine Athanas, Alternate
Nancy G. Rubenstein, Alternate

Notice was published in the Sudbury Town Crier on October 20 and 27, 2005, posted, mailed and read at this hearing.

The requirements necessary to substantiate the granting of a special permit were explained to the applicant. Also explained was the fact 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.

Joseph Barrier, Sign Enhancement Services, was present representing CVS Pharmacy in a petition for special permit to install two internally lit wall signs and two internally lit box signs at 505 Boston Post Road.

Mr. Barrier explained that recently this CVS Pharmacy has become a 24-hour store. They would like their signage to reflect this and while they are doing this they are also rebranding the site with their new corporate logo.

Currently, there are two green CVS Pharmacy signs on the building. One is externally illuminated – the other has no illumination. It is proposed to switch those out with two internally illuminated red signs and two 24-hour box signs to inform the public that it is a 24-hour store. The sign is translucent in front so that the light shines through the letters. The light is inside each individual letter.

Mr. Barrier said the front of the building which faces the plaza has no illumination and is almost invisible at night. The sign that faces Boston Post Road is partially blocked by trees.

Mr. Klofft asked whether Mr. Barrier was aware that in terms of size, in addition to being over on the total amount of the size, when factoring in the fact that it is supposed to be reduced by one third, the sign is even more noncompliant. Mr. Barrier said he was aware of this.

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Mr. Gossels said he saw the proposed 24-hour sign as a direct contradiction to the Bylaw and contrary to what has been allowed in the past. He said most of the signs in town are externally – and not neon boxes.

Mr. Barrier said he drove by the Sudbury Farms Plaza and those signs are back lit and have internal illumination with opaque letters. He felt this to be almost the same thing but with individual letters.

Mr. Gossels had concerns with regard to the 24-hour box.

Mr. Barrier said this is the only way they are made, that it is difficult to see at night unless it is well illuminated.

Mr. Klofft asked whether stores which are not open 24 hours turn off their signage at night.

Mr. Barrier said some do. If it is a city code, they will. He said for this CVS, the sign facing Boston Post Road was lit but the front was not.

Discussion followed on sign color and the desire for consistency within the plaza. Mr. Barrier said the Shaws sign is orange and CVS is really just pursuing its corporate logo, and red is the color.

Mr. Klofft said he could understand the color requirements and he didn't have a problem with the size of the CVS signs or the illumination. However, he did have a problem with the 24-hour box signs believing them to be superfluous. He said most other retail businesses, when they close at night, turn off the lights. He felt that if someone was driving at night looking for a 24-hour pharmacy they would see the lighted CVS signs indicating that the store was open.

Ms. Rubenstein added that the guidelines state that signs should not contain selling slogans or other advertising which is not an integral part of the name or other

identification of the enterprise. She felt the 24-hour sign to fall into the advertising category.

Mr. Barrier said while it is not part of the name of the store, CVS views it as being integral because they really want to advertise this as a 24-hour store.

Discussion followed on whether, if it is legitimate to advertise 24 hours, it would allow other businesses to advertise, for example, early morning hours. Ms. Rubenstein felt it useful to know a store is open 24 hours, but saw it as advertising.

Mr. Barrier said from his experience, many stores leave their lights on all night for security reasons. He said the 24-hour sign would alert people to the fact that the store is open.

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Mr. Gossels felt the Design Review Board (DRB) accepted the fact that there is a public safety benefit to the CVS sign being able to be seen from Route 20, even though the Bylaws required it to be reduced. He felt the applicant was going beyond this with the additional 24-hour signs.

Mr. Barrier agreed that he was requesting in excess of what is generally allowed, but said the two 24-hours signs are only 4 s.f.

Mr. Gossels felt the 4 s.f. signs would look “tacky” and just what the town wants to avoid. He added that this Board only recently approved the awning signs for CVS, which are also outside of the Bylaw requirements.

Mr. Barrier asked whether it would be possible to include the 24 hours in bullet fashion beneath the CVS sign.

Mr. Klofft did not feel this was acceptable. Ms. Rubenstein said this would pave the way for any business to post their hours in this fashion.

Pamela Mannocchia, 43 Butler Road, resident, suggested other alternatives, such as advertising in flyers, newspapers, etc., could be used in lieu of the 24-hour box.

Mr. Gossels said this Board relies heavily on the DRB with regard to signs. Although he would feel uncomfortable with the translucent red letters, he would accept the DRB’s recommendations. However, he said he is clearly uncomfortable with the 24-hour sign.

There was no further input. The hearing was closed.

The following motion was placed and seconded:

MOTION: “To grant CVS Pharmacy, applicant, a Special Permit under the provisions of Section 3261(a), Chart A, of the Zoning Bylaws, to install two internally lit 33.50 s.f. wall signs, property located at 505 Boston Post Road, Limited Business District #2.”

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

REASONS: The petitioner requires a special permit to install two internally illuminated oversized wall signs. In granting this permit, the Board accepts the recommendation of the Design Review Board that the signs need to be a large as presented in order to be effective. The Board finds the change in color, from green to red, is in keeping with the revised corporate logo for all CVS stores.

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The Board notes that this petition also included a request for two 24-hour box signs. The Board found that the inclusion of these signs would be superfluous and would add visual clutter to the area. In addition, they would create the potential for other businesses to advertise their hours of operation thus adding substantially more visual clutter.

For these reasons the Board voted to allow only the two wall signs which it believes will accommodate the needs of the tenant.

Jeffrey P. Klofft, Acting Chairman

Elizabeth A. Taylor, Acting Clerk

Jonathan G. Gossels

Constantine Athanas, Alternate

Nancy G. Rubenstein, Alternate

FERRERI ET AL
Lots 4 & 5 Butler Place
05-49

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Notice was published in the Sudbury Town Crier on October 20 & 27, 2005, posted, mailed and read at this hearing.

Mr. Richmond, 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.

Attorney Gerald Cournoyer was present to represent a petition for a variance to restore the former status of a nonconforming lot (Lots 4&5) located at Butler Place. Mr. Cournoyer submitted a revised supplemental brief, including deeds and plan, which provide a timeline of the facts for this petition.

In 1924 Ida Butler acquired the property which consisted of a large tract of land. A subdivision plan consisting of 11 lots was put on record. Over the years, Ida Butler conveyed out lots, some of which were done without a plan or recording. Eventually she conveyed everything she owned except for two lots and put a deed on record which were incorrectly described at Lots 3 & 4, causing a title inconsistency.

In 1950, Lots 2,3,4 & 5 came into common ownership. There was a house on Lots 2 & 3 and 3 and Lots 4 & 5 were vacant.

In 1982, Lots 2 & 3 were subsequently sold but Lots 4 & 5 were not conveyed with those lots.

In the late 1990s, Mr. Cournoyer was contacted to look into the zoning and the title. Eventually the issue went to Superior Court, and in 2004 there was a judgment to the effect that Ida Butler had actually conveyed Lots 2 & 3 which left 4 & 5 left to sell.

Prior to 2001, the Adamowitz v. Ipswich case ruled that there had to be evidence of an intent to merge. Given the judgment of the Superior Court of the conveyance of Lots 2 & 3, Lots 4 & 5 would have been legal nonconforming lots. However, in 2001, Preston v. Hull overruled the Adamowitz case which threw out the intent to merge factor.

It was Mr. Cournoyer's position that if not for the title problem, Lots 4 & 5 would have been grandfathered and considered a buildable lot. Now there is a lot on which nothing can be built on.

Mr. Richmond said it appeared that the cornerstone of Mr. Cournoyer's argument is that Preston overruled the Adamowitz case.

Mr. Cournoyer said the law was clarified by saying that intent to merge was subordinate to the intention of the Zoning Bylaws to avoid nonconforming small lots regardless of what Chapter 40A says.

Mr. Richmond said the Adamowitz case doesn't deal with merger, but only with Chapter 40A.

Mr. Cournoyer disagreed. He said the Preston case didn't overrule any previous cases. However, he felt that Planning Boards and Building Inspectors are being cautious, and the Building Department was cautious in this case by not issuing a building permit.

Mr. Cournoyer said he discussed this situation at length with the Building Inspector and chose the variance route because overriding the Building Inspector's decision would accomplish the ability to build, but it would not necessarily remove the zoning problems and it might make the property unmarketable.

Pamela Manocchia, 43 Butler Road, abutter, said she recently purchased her house and voiced concern with regard to the actual property bounds. It appeared to her that Lots 4 & 5 are comprised of a portion of her property and she wanted the Board to be aware of this.

Mr. Richmond noted her concern but said this would be a dispute which this Board does not have authority to resolve.

David Otis, 11 Butler Place, abutter felt there to be quite a few discrepancies ranging from the size of the property and the timeline of events. He had copies of the property map and assessor cards which show approximately 1,000 s.f. less than the 12,500 s.f. He also felt the description of the judgment was wrong.

Mr. Cournoyer said the intent of the judgment was to determine what Ida Butler intended to convey.

Mr. Otis said he also created a timeline of the deeds which differs from the one submitted by Mr. Cournoyer.

Mr. Richmond asked whether it was possible to obtain an accurate description of Lots 4 & 5. Mr. Cournoyer said this could be done by an engineer.

Further discussion followed on the accuracy of the property description in the judgment and its possible impact on neighboring properties.

Mr. Richmond stated that he did not see how the Board could act favorably on this application because they don't know what they are being to act on in terms of the physical description. He felt, in any event, even if the Board had the physical description, he hadn't heard any evidence that this application meets the requirements for a variance.

Mr. Gossels felt any claimed hardship was self-imposed – that there was ample time to build before there was an issue of the title. However, the owners chose not to build. Further, during this period the owners enjoyed the amenities of a larger lot.

Reflecting on the merger issue, Mr. Athanas said the Adamowitz case does not address merger in terms of intent, and the Preston case does not seem to have overruled Adamowitz. He did not see support for Mr. Cournoyer's case under Adamowitz.

There was no further input. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Christine Ferreri, John Bulgari, Richard Florida and Ronald Florida, owners of property, a Variance from the provisions of Section 2600, Appendix B, of the Zoning Bylaws, to restore the former status of a non-conforming lot consisting of a total of 12,500 s.f., with 100 feet of frontage, property located on Butler Place (Lots 4 & 5) and shown on Town Property Map F05, Residential Zone A-1."

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

REASONS: The petitioners are seeking a Variance to restore two merged lots to their former grandfathered status of one nonconforming building lot. With regard to the merger, the Board found that the two lots appeared to have merged under the precedent set in Preston v. Board of Appeals of Hull in 2001 which ruled that a nonconforming lot would lose its grandfathered status if held in common ownership at the time of a zoning change. In reviewing this case, the Board found that the arguments presented by the petitioners' attorney did not support the contention that Adamowitz should apply because of the delay in resolving the title issue. The Board also

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did not agree with the contention that Adamowitz a lot was protected and remained protected unless and until it was “intentionally” merged with abutting land.

The petitioners have chosen to apply for a Variance to allow these lots to become one buildable lot. In order for a Variance to be granted, four specific criteria must be satisfied. Failure to satisfy any one of those criteria will cause the Variance to be denied.

In this case, the Board found that the petitioners failed to demonstrate that they had met the criteria necessary to establish that a Variance may be granted.

The Board found there to be no special conditions relating to soil, shape or topography. Rather, it found this to be a case where lots held in common ownership merged and lost their grandfathered status. The Board also found there to be no hardship. Rather, it found there was ample time to build before there was a title issue. They chose not to do so and subsequently the lots merged. Any perceived hardship appears to be self imposed.

Furthermore, the Board felt that the granting of this Variance would be contrary to the intent of the Bylaws and would set a precedent for others to apply for restoration of merged lots to nonconforming building lots.

Stephen M. Richmond, Chairman

Elizabeth A. Taylor, Acting Clerk

Jonathan G. Gossels

Constantine Athanas, Alternate

Nancy G. Rubenstein, Alternate