

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, OCTOBER 18, 2005

The Board consisted of:

Stephen M. Richmond, Chairman  
Jeffrey P. Klofft, Clerk  
Jonathan G. Gossels  
Constantine Athanas, Alternate  
Nancy G. Rubenstein, Alternate

Notice was published in the Sudbury Town Crier on September 29 and October 6, 2005, posted, mailed and read at this hearing.

Mr. Richmond, 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.

Attorney Joshua Fox was present to represent a petition for renewal of Special Permit 04-14 for the sale and rental of new and used motor vehicles, for new and used motor vehicles general and body repair, and for new and used motor vehicle light service at 83 and 103 Boston Post Road. The only change in conditions is a request to allow a 2-3 year term limit.

The major concern at the last hearing was with the landscaping and screening along the front of the new vehicle storage area. The applicant was forced to adhere to the Conservation Commission's requirements using almost exclusively native species. Native species do not have the strength to grow as quickly as cultivars which are available, so the process is a little bit slower. However, after reviewing it the past year it is felt that some of the growth has made good progress and will continue to increase the screening.

Mr. Richmond said there were also discussions about the number of cars on the lot and whether the number was consistently within the limits of the permit.

Mr. Fox said the maximum new and used retail vehicle requirement on site is 75 vehicles. He requested that the manager take several counts, and at those times he did not count over 75 vehicles, Land Rovers and used vehicles on site. He explained that there are many Land Rovers there for service. They also use Land Rovers for loaners and several of their employees drive Land Rovers. But for new and used vehicles sales, any

time a count was asked for, there were no greater than 75 vehicles. It might look like substantially more because of the other Land Rovers

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mentioned. Mr. Fox believed that the manager did submit a statement to the Building Inspector attesting that the vehicle limit was not exceeded.

Mr. Gossels said it was his position that what was built there was not what this Board originally approved. He said the Board specifically discussed the screening of the new vehicle storage area at the time the initial permit was approved. While it is true that there were some additional plantings just before last year's hearing, he took a picture of the site today, and it's not just a matter of the native plants growing slowly. Referring to the photograph, Mr. Gossels said there are a few scraggly plants spaced very wide apart which provide no effective screening at all. He said he would be comfortable renewing the permit for one or two years, but would require as a condition for approval that the screening of the vehicle storage area be enhanced.

Mr. Klofft said given the issue of the native screening and that it's been a year and there apparently hasn't been any substantial change, he would be less inclined to be comfortable with two years until he saw more substantial change.

Mr. Fox said although he couldn't speak for the applicant as to specific details of the landscaping, he could say that there will be additional landscaping provided in that particular area. He said he may have to schedule meetings with the Conservation Commission and DRB on this issue.

Mr. Gossels felt the landscaping on the far right side is effective and in the spirit of what the Selectmen asked for. It's not fencing, it's not berm, it's more of the softer landscaping. If that same type of density was carried across, he would be very comfortable.

Mr. Richmond asked whether the front screening was subject to Conservation Commission jurisdiction.

Bruce Ey, Schofield Brothers, said the Commission really took jurisdiction of the whole site. He said he tried to stay with the native species and his client has spent thousands of dollars replacing plants. He felt the Conservation Commission realizes that the harsh environment down by the road where there is salt is what's really what's causing the problem. Those plants are not conditioned to grow like cultivars. Mr. Ey felt the Commission would be more willing to allow some cultivars to be used in that area because of the harsh environment. If this were back by the wetland, it would not be the case.

Mr. Athanas suggested that if the applicant was interested in making this a condition, he would suggest a continuance to allow them to come back with concrete plans, at which time the Board could make the plans a condition and give a 2-year approval.

Mr. Richmond asked for comments from the audience.

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Ralph Tyler – One Deacon Lane said it sounds like there’s a loophole in the total number of vehicles. He would encourage the Board to put some kind of limit on everything. He said there must be some number that is reasonable for the site in total.

Mr. Fox wished to respond. He said there are no major parking problems on the site right now. He said he drives by there frequently every day, particularly during rush hour, in both directions and hasn’t seen backups on Route 20 from ingoing or outgoing vehicles from the site. He did not feel there was a need at this time to place restrictions on vehicles, service vehicles, and loaners.

Mr. Fox was agreeable to Mr. Athanas’ suggestion to continue the hearing.

The Board voted to continue the hearing to November 8, 2005, 7PM, at the Fairbank Senior Center, to allow the applicant to come in with either a plan or a date certain as to when they would have a planting plan to present to the Board for consideration. Mr. Richmond said the Board will be focused on creating more of a visual buffer, depth, and height, so that from the road one sees greenery, not cars.

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Stephen M. Richmond, Chairman

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Jeffrey P. Klofft, Clerk

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Jonathan G. Gossels

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FAIRVIEW DEVELOPMENT CORP.  
206 North Road

MINUTES OF THE PUBLIC HEARING  
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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.

Attorney Henry Dane was present, representing the petitioners, Bruce and Jeff Maurer, also present, in a petition for renewal of Use Variance 02-36 to use a portion of the property for the storage, garaging and repair of the company's own light and heavy equipment and trucks, and the storage of loam, chips and other landscape materials at 206 North Road.

Mr. Dane said this Board and its predecessors have continually renewed this since 1963 some twenty times. Essentially the activities that are requested to be continued are the same activities that have been conducted in the previous applications.

The property in question is next to the old abandoned railroad to the west of the Sperry property on Great Road. Mr. Dane presented some photographs that were taken of the property. He said the property looks more like a golf course than the landscaping business.

Mr. Dane said the activities that would normally be permitted as of right are constitute a substantial portion of the activities that are going on there. Jeff Maurer lives on the property and a lot of what goes on there falls under the category of agriculture and tree farming because they grow trees that they use in their business. They have employees and equipment which they use in the landscape business, all as they have over the past years.

Mr. Dane then proceeded to provide an overview of the application which addresses in detail the criteria required to justify the granting of a use variance. From the plan he pointed out the area which is the subject of this application, namely Parcel B.

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Mr. Richmond asked whether Parcel B was a separate lot.

Mr. Dane said it was. He said the plan which was submitted with this application is a plan that has been recorded at the Registry of Deeds. This is a change from the plan for the previous applications.

Mr. Richmond asked whether this was a subdivision plan.

Mr. Dane said it was not. It is an Approval Not Required (ANR) plan which was signed by the Planning Board on March 22, 2005.

It was Mr. Richmond's understanding that in order to qualify for an Approval Not Required Plan, it must have frontage.

Mr. Dane said this would be the case only if you wanted to use the roads. The Maurer's are not proposing to use any frontage. All that happened was that the plan simply identified the creation of Parcel B which is a separate legal lot. There was also conveyance of the rear 15 acres from the Maurer Corp. to the Maurer brothers. So they hold that separately.

Mr. Dane said Parcel B is a legally existing lot shown on the plan that is recorded in the Registry of Deeds. The original plan from the 1963 file shows this Parcel B on a plan that was not a recorded plan.

There was still some question in the Board's mind as to whether the ANR plan constituted a correct, legally subdivided lot.

With regard to the special conditions relating to soil condition, shape or topography of the land or structures, Mr. Dane said this land is not suitable for other than its current use. There is limited access, a high water table, the adjacency to the railroad right of way and soil conditions which prevent it from perking. There are also has several ponds on the property which limits its use because of wetland issues.

Mr. Dane said there has never been a resident of the town of Sudbury who has complained about the activities over these past 30 years. A letter dated August 15, 2005 from the Building Inspector indicates he went out there for this particular application and found that the conditions of the use variance are being met and he found the site to be in excellent condition.

The hardship that would be involved is the fact that the site is very limited as to what it can be used for. It is abutted by a large parcel on the eastern side which is zoned industrial/research so the variance is consistent with the existing zoning scheme and the railroad tracks and it is surrounded by high ledge on the opposite side. Another hardship would be the

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lack of an appropriate use for this site if the current uses were discontinued and the enormous cost of finding another location for the applicants to conduct the business.

In response to a question from Mr. Richmond, Mr. Dane said the business activities as pertain to this application are conducted on Parcel B. Any activities that are conducted off of Parcel B are essentially either residential or agriculture. The whole rear portion is used for growing trees which qualifies as an agricultural use.

As a result, Mr. Dane believed the use is consistent and meets the requirements of the bylaw for a use variance, or renewal of the use variance. It is also consistent with the general neighborhood and there is no traffic generated as a result of this use.

Mr. Richmond understood that the question for the need of an abutters list for adjacent abutters in Concord was put to Town Counsel. He asked for the outcome of that discussion.

Mr. Dane said the outcome was that Town Counsel didn't think it was necessary, but that it was up to him if he wanted to do so. Mr. Dane said he chose not to send to Concord abutters.

In response to further questions from Mr. Richmond, Mr. Dane said the only parcels within 300 feet are owners who are living in Sudbury who are within the requisite distance as certified by the Assessors. Those owners received notice of the hearing. Any of the residents not living in Sudbury but in the town of Concord are at least 750 distant from Parcel B, so they are neither abutters nor abutters of abutters within 300 feet.

Mr. Klofft asked whether those Concord residents had been notified for previous hearings.

Mr. Dane said they had.

Mr. Klofft asked for the rationale at that point given that they didn't need to be notified.

Mr. Dane said with the ANR there is now an intervening owner owning the 15 acres putting the residents in Concord at 750 feet distant. He added that in the past those residents have been troublesome.

Understanding the issues with the Concord residents, Mr. Klofft said if, in fact, this plan was not correctly subdivided, than in fact Parcel B doesn't exist. It exists as an entire parcel, then they are direct abutters.

Mr. Dane agreed that would be the case; however, he said he would not conclude that it's not correctly subdivided adding the Planning Board has signed the plan and the Registry of Deeds has accepted it for recording, and nobody has challenged it.

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Mr. Richmond asked whether the prior use variances were issued for the entire parcel.

Mr. Dane said they were not. He said they always been granted always for Parcel B, the 3.67 acres.

Mr. Richmond asked whether there was a Parcel B that was referenced in the prior use variance although it was not on a legally separate parcel from the rest of the property.

Mr. Dane said that was correct, but it was specifically identified on the plan that was filed. It formed the basis for each one of subsequent applications. But now, it has been made more regular in that the parcel is now actually shown the parcel as a separate parcel.

Mr. Richmond asked if that was done this year and whether Mr. Dane believes it to be a legally permissible lot and recorded at the Registry of Deeds.

Mr. Dane replied in the affirmative.

Mr. Richmond asked Mr. Dane to speak about the court case because there seems to be quite a bit of activity in land court.

Mr. Dane said the gentleman in question (Mr. Holmes) actually has appealed the decision of this Board every time since 1995. And he has just either failed to pursue those cases or, as in the case of the 1995 appeal, it was actually dismissed for failure to prosecute by the Superior Court. Actually, the dismissal of that case under the applicable rules amounted to a dismissal on the merits and Mr. Dane said he has argued in front of the Land Court that it was the end of the matter. But the point is there has been a decision in the Land Court and the Decision has been appealed to the Appeals Court.

Mr. Richmond said the decision was entirely adverse to Mr. Dane's position.

Mr. Dane said it was not a favorable decision but it has been appealed. He believed there is a sound basis for appeal. The judge in that Decision was rather specific in saying that each application, each permit, stands on its own two feet. Mr. Dane felt that if the judge says that you must establish every single element of the variance requirements every time you come back, you cannot rely on a previous court decision. He felt that decision applied only to that particular permit. It does not apply to this application. The permit the court decided on expired a month ago. Mr. Dane felt it could even be argued that the decision which was handed down on September 2<sup>nd</sup>, five or six days after the permit expired, was moot because it decided a permit that expired was not valid.

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But the point is, the merits of the case have been appealed to the Appeals Court and the final outcome will be determined by the Appeals Court when it's decided. As of this point there really is no legal decision in the sense that this is at this point merely the opinion of one judge. The legal decision would be made by the Appeals Court which will decide whether the judge was correct.

Mr. Richmond believed this to be correct. He said the difficulty he has is that the judge ruled pretty directly on the points that are necessary to uphold the granting of a variance. He noted that he was sympathetic to the position of the applicants; that this use variance has been issued again and again and the Maurer's have based their business on it.

On the other hand, Mr. Richmond said there is a judge saying these grounds are not tenable to uphold the grant of a variance. What he was looking for are changes in this application that would in some way present a different situation.

Mr. Dane said he tried to be extremely deliberate in covering nearly every single issue that was raised in the Land Court trial and address those issues and deal in much greater detail with the issues of hardship and uniqueness of the lot. The application is much more focused on the issues than the prior applications have been.

Mr. Athanas said given those specific items, the court has already rejected them. Even if there is more depth, the court has rejected them. He asked whether there were any additional items that would support a use variance, not simply further explaining the reasons used before, but anything that was not used – any reasons that were not litigated in the case that was decided adversely.

Mr. Dane said the activities that are conducted there are the same as were conducted before and the lot was the same. The configuration and features of the lot are the same as they were before. He said there is no escaping that. The question is whether



or not the judge correctly understood that. Mr. Dane felt he was entitled to the benefit of the doubt on that given the history of this case until there's a final judicial decision on these matters.

Considerable discussion continued on the court case, its possible outcome and the justification, particularly the hardship issue, which would be needed in the event of reapplication in the future.

Mr. Richmond then asked if anyone in the audience wished to speak. No one did.

Mr. Klofft asked whether there was a date for the appeal.

Mr. Dane said the appeal has been filed. It will probably take 2-3 years for the Appeals Court to hear the case.

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It was Mr. Klofft's opinion that either the ZBA was right or the judge is right. Either the logic that was used to grant this use variance some 42 years ago was correct and continues to be correct, or the judge was right and the ZBA overstepped its bounds. He felt that until told otherwise, if the Board did not grant this, it would almost be saying that the ZBA capitulated and that the judge was correct in that ruling before the applicant went through appeals court, which doesn't seem to be the fair thing to do.

Mr. Richmond said the Board has spoken continuously in the same way over and over, and there is the appeal of these facts in front of the Board. He felt it appropriate to let that appeal play out. He would suggest granting some form of approval based on the prior decisions that have been granted – the same facts, but subject to the appeal that's pending in court. That way they can continue with their use variance – there will be an appeal that's pending – let the court make a decision in appeals court, and whatever that decision is our decision will be that we're bound by that decision.

Mr. Athanas asked whether there was any way to deal with the Concord abutter.

Mr. Dane replied that the conditions on the permit were imposed to address this. Jeff Maurer added that the berm was built, trees were planted, the hours of operation were changed and Saturdays were eliminated. He has spoken with him and offered to discuss a compromise but to no avail. He felt believe he would prefer to have the whole thing shut down.

Ralph Tyler – One Deacon Lane felt the Board should give notice to the Concord residents and hear their side of the story. He said the Maurer's designed the property in such a way that they didn't have to notify Mr. Holmes. But the Board knows he's

aggrieved. He's already found standing, not because of distance but because of the noise. He said the Board should hear the other side.

There were no further comments. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Fairview Development Corp., owner of property, renewal of Use Variance 02-36, granted under the provisions of Section 6140 of the Zoning Bylaws, for the storage, garaging and repair of the company's own light and heavy equipment and trucks, and the storage of loam, chips and other landscape materials, property located at 206 North Road, Residential Zone A, provided that:

1. The hours of operation at the site shall be limited to Monday through Friday, from 8AM to 4PM, for the use of heavy and light equipment, the loading and unloading of materials and the moving of on-site materials.

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2. The exiting and entering of heavy equipment shall be permitted Monday through Friday, from 7AM to 5PM and Saturday from 8AM to 4PM, except for snow removal emergencies.

3. The activities and storage of materials are restricted to the 3.7 acre area shown as Parcel B on ANR Plan prepared by Thomas Land Surveyors dated March 23, 2005, marked as Exhibit #1 and made a part of this Decision.

4. The applicant shall maintain the earthen berm and evergreen screen, and shall clearly maintain the four corner boundaries which identify the 3.7 acre site.

5. No exterior storage of the merchant materials shall take place beyond the 3.7 acre area.

6. In the event a final judicial determination of the applicant's use variance case currently under appeal is adverse to the applicant, this Use Variance will lapse."

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

REASONS: The petitioner seeks renewal of a Use Variance for a use which has been in existence since the 1963. The Board is basing its determination and the qualifications for the use variance requirements on the facts that are contained in the application. Further, the Board finds that those facts are substantively the same as the facts that the Board has previously acted on in past years and that each of the qualifications for the grant of a variance are therefore the same as are contained in the prior variance decisions issued by

the Board. Additionally, the Board eliminated the term limit as it found that Sudbury's Bylaws do not appear to provide for the ability to impose time limits on use variances.

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Stephen M. Richmond, Chairman

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Jeffrey P. Klofft, Clerk

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Jonathan G. Gossels

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Constantine Athanas, Alternate

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Nancy G. Rubenstein, Alternate

JEFFREY PARKER  
19 Old Forge Lane  
05-39

MINUTES OF THE PUBLIC HEARING  
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Jeffrey parker was present to represent a petition for special permit to erect an amateur radio tower at 19 Old Forge Lane. He has been a licensed operator since 1974.

The tower would be 32-feet high with a 5-foot antenna. He said he had this particular structure at his previous house and would now like to put it behind his current house. The tower is self-supporting and will have no guy wires or anything that will extend out. The house peaks at just over 20 feet so the tower will extend about 12 feet above the roofline and will be placed behind the house to shield it from the neighbors.

In response to a question from Mr. Gossels on the location, Mr. Parker said his house is comprised of a medium section and a tall section. The tower will basically go just into the area where it goes higher.

Mr. Parker said he spoke with the three neighbors who would be able to see the structure who live at 15, 16 and 25 Old Forge Lane and explained what he would like to do. Two had no comments and one had several questions. He showed them the antenna and its proposed location.

He said the other neighbors behind and to the left of his property are separated by tall trees and wouldn't be impacted visually by the tower.

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Mr. Parker said in the past the Board has approved this type of antenna structure and has found that it is in general harmony with the intent of the bylaw. He would assume this would a similar type situation.

With regard to the location, Mr. Parker said he tried to put it in an are where, in the unlikely event that it did fall down, it is more than 40 feet from the property line so it would fall on his property. It was placed behind the house to attract as little attention as possible.

Mr. Gossels asked whether this antenna would interfere with radio signals or television reception.

Mr. Parker said no, but would qualify that by saying that the highest frequency of operation has been known to create some television interference; however, he does not operate at that frequency. He added that most people have cable which would eliminate that problem. Mr. Parker said he has lived on a military base in a condo for the past four years and there have never been any problems with interference.

Mr. Athanas asked for a description of the tower. Mr. Parker said it is an aluminum tower, triangular shaped and tapered at the top. It is similar in looks to a cell phone tower, only smaller. It is secured by a concrete base and is designed to withstand

100-mph winds. At the request of the Building Inspector, Mr. Parker contacted the manufacturer who recommended a 3X5 foot concrete footing to secure the tower.

At Ms. Rubenstein's request, Mr. Parker described the antenna which consists of a pole with three elements on top. The boom is 16 feet long and it has three 30-foot cross elements.

Ms. Rubenstein said the location as shown appears to put the tower at the lower portion of the house. Mr. Parker said it would actually be to the right of the back door and out from the house.

Mr. Gossels asked if it could be positioned to be behind the higher portion of the house. Mr. Parker said if he did that, it gets closer to the neighbor to the side. In addition, he said he has a door that exits out back and he did not want to put it in front of that door. He felt that by pulling it into the house that it would be less intrusive.

Mr. Gossels felt the proposed location would be much more visible to the neighbors across the street.

Mr. Parker said this structure will be seen, no matter where it is put. He said in the past, when he has erected a tower, once it's put up, no one ever paid any attention to it. He said the

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tower is green, and although it's there, it has never bothered anyone in the past. He would prefer it to be located as proposed.

Mark Roussel, 33 Old Forge Lane, had concerns regarding wave length, interference with cell phones and microwaves and health issues. He asked what information was available on this subject.

Mr. Parker said the frequency is lower than a microwave and cell phone and is well below the government power levels. He said he is a member of the amateur radio society and there is a lot of literature available attesting to the fact that the RF frequency is not hazardous.

Mr. Roussel said this is a very dense neighborhood with many children. He asked how this tower will be secured so that children cannot climb it.

Mr. Parker said there will be three 5-foot aluminum sheets put onto each of the triangular sides. The only way to climb the tower would be to remove those sheets.

Mr. Richmond noted that in the past the Board has required 10 feet of shielding. He asked whether this presented a problem. Mr. Parker suggested he could put on the shielding and add 5 feet of chicken wire. The Board preferred the shielding to be sheet type for the entire 10 feet. Mr. Parker said he could do this.

Should a permit be granted, Mr. Roussel asked whether there was anything to prevent this from becoming a commercial venture. Mr. Parker said his license is for non-commercial amateur radio only and is in his name only.

With regard to issues which could arise, Mr. Klofft said this would be a special permit which needs to be renewed. Typically a permit is issued for one year; after that, if there are no problems, it can be extended to two years. Any permit would be granted specifically to the applicant with a condition that it cannot be used for commercial use.

Michael Davis – 23 Old Forge Lane, abutter voiced similar concerns as expressed by Mr. Roussel. He said he has two children and was uncomfortable with having this structure next door, particularly with regard to electromagnetic fields. He would want to see an impartial expert analysis of the radio tower. He also had concerns with regard to the aesthetics of the structure and its impact on the neighborhood. First and foremost, his concern was for safety.

Mr. Parker said he generally operates at about 100 watts; the tower has the ability to put out 1,000 watts. The frequencies are in the 3.5 to 28 megahertz range which is very low compared to the frequency of a cell phone or microwave. This is well under the government limits for safety.

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Mr. Parker said he shared the abutters' concerns about children and has agreed to install high shielding to insure it can't be climbed. He said he demonstrates amateur radio to boy scouts and it is well received by them.

Reiterating his earlier statement regarding interference, Mr. Parker said in the unlikely event it was found that his tower caused a problem, he would be happy to address it. He said in the past there have never been any issues.

Mr. Athanas asked whether Mr. Davis was to the left or right of this property. Mr. Davis said he was to the left. Mr. Parker said he did not contact him because of all the trees between the properties. He did not feel it would be an issue. Mr. Davis said his concerns were less aesthetic and more of safety.

Mr. Gossels asked whether the 16X30 antenna has to be that large. Mr. Parker said it did; something smaller would not work at the frequency needed.

Iolee Plender - 35 Stubtoe Lane, abutter, said she has lived in Sudbury for over 48 years. She said she has interference already from radios, etc. She cannot afford cable. She voiced concern with regard to the effect this would have on the neighborhood. She noted that Mr. Parker never contacted her with regard to this structure

Regina Hunter, 32 Stubtoe Lane, abutter, said she also had not heard from Mr. Parker. She said she would be able to see the tower from her back yard and felt it would be intrusive.

Nancy Keenan 38 Stubtoe Lane, abutter, voiced similar concerns. She felt the structure would be visible in the winter when the leaves are off the trees.

Stephen Allor – 36 Old Forge Lane, abutter, had all of the same concerns plus uncertainty. Having moved into the neighborhood three years ago, he said there are six houses on this cul de sac and it is a small neighborhood. Now it is proposed to introduce something that may or may not affect property values. He said there's a level of uncertainty as to what this will do to the neighborhood in general. He said he lives at the end of the cul de sac, so every day he and his wife will drive past this house and see this. He said it's not a small structure. Because of the split-level style of the house, he felt the structure will be very unsightly to the neighborhood.

Mr. Allor said there are six children in this neighborhood under the age of six. Although he was not familiar with the studies on health issues or interference, he felt this to be another layer of uncertainty to contend with.

With regard to the issues, Mr. Parker reiterated his earlier statements that this will pose no health hazard or interfere with reception.

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Mr. Allor said he was still not satisfied. He said he didn't buy into the neighborhood to have his property value decrease or be subjected to something which was aesthetically displeasing.

Mr. Athanas asked whether it was possible to erect the tower temporarily just for the neighbors to get a sense of the aesthetics of it. He said he has done the research on the health issues and found there to be no health hazard associated with this type of structure. Although he was not sure about television reception, he would guess there was no problem. He asked whether it was possible to turn it on and do a test so that people could see what would happen and then come back to the Board with those neighbors reporting on what did or did not happen and the visual impact.

Mr. Parker said anything is possible, but he would request he be granted a permit for a year. He said he is not on the radio very often – sometimes only an hour a day. If

there are problems with the neighbors, he would prefer to resolve those problems with them.

Mr. Athanas said while Mr. Parker may use the antenna only an hour a day, the structure will be there 24 hours a day. To him, it seemed that aesthetics was the main issue and the only way to determine the impact was to see it.

Mr. Parker said there is a fair expense involved with putting it together, which includes having someone pour the concrete pad. He said right now, because he needs a permit, he hasn't been able to do anything and he wants to be able to do it right.

Mr. Allor felt Mr. Athanas' point was well taken. He asked if there was a way to construct the top antenna to get a sense of what it would look like.

Before asking Mr. Parker to respond, Mr. Richmond wanted to point out that the Board must find that this use is in an appropriate location and not detrimental to the neighborhood and that it does not significantly alter the character of the neighborhood. Further, it must find that the proposed use would not be detrimental or offensive to the neighboring properties, which includes visual nuisance. He asked Mr. Parker to think about this when discussing whether there was a way to erect this structure temporarily so that people can see the impact.

Mr. Parker said that in order to put it up safely, he would have to put it up all the way. He felt the only way to take a look at it is to go through all the construction of putting it up. He said this would involve a fair amount of investment and he was not sure he was willing to do this with a proviso that the neighbors then can decide that they don't like it.

JEFFREY PARKER  
19 Old Forge Lane  
05-39 Page 6

He said he was willing to put it up if the Board granted a permit for a year. Then, if the neighbors found some serious issues, and the Board agreed with them, it would be taken down. He said there are antennas around Sudbury which the neighbors could look at.

Ms. Plender asked whether the Board had a picture of another tower to demonstrate what it might look like. Mr. Richmond said the Board did not have a picture.

A question was asked as to whether the other antennas in town could be shared by other operators. Mr. Parker said an operator can only use his own tower – he cannot lease or share it with anyone else.



Mr. Klofft said he has never seen one of these tower in order to assess its visual impact. Mr. Gossels said his neighbor had one and it was a visual nuisance. He felt a 16X30 foot structure to be exceptionally large.

It appeared that the general feeling of the Board at this point was to deny the application.

Mr. Richmond suggested Mr. Parker could withdraw without prejudice and reapply at some other point in time. If he was able to work out some accommodation with the neighbors, he might want to consider reapplying.

If Mr. Parker was considering a withdrawal and resubmittal, Mr. Klofft would suggest he educate the neighbors, have them look at some of the towers in order to become comfortable with the idea that it might not be as sizeable a visual nuisance as they had imagined.

Ms. Rubenstein also suggested educating the neighbors on the interference issues.

Mr. Parker requested that he be allowed to withdraw his petition.

A motion was made seconded and unanimously voted to accept the petitioner's request to withdraw his application without prejudice.

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Stephen M. Richmond, Chairman

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Jeffrey P. Klofft, Clerk

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Jonathan G. Gossels

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Constantine Athanas, Alternate

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Nancy G. Rubenstein, Alternate

LEONARD NOCE  
36 Village Road  
05-26A

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, OCTOBER 18, 2005

The Board consisted of:  
Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk  
Jonathan G. Gossels  
Constantine Athanas, Alternate  
Nancy G. Rubenstein, Alternate

Notice was published in the Sudbury Town Crier on September 29 and October 6, 2005, posted, mailed and read at this hearing.

Leonard Noce was present to represent a request to amend Special Permit 05-26 to increase the square footage of the proposed new house to be constructed at 36 Village Road. He explained that he would like to increase the total square footage from 2,512 s.f. to 3,100 s.f. in order to create a room above the family room. The footprint of the house would remain the same as would the number of bedrooms. Mr. Noce felt this addition would enhance the look of the house.

The Board reviewed the plan asking questions for clarification. They had no problem with the proposed increase since the footprint was not being increased.

No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To amend Special Permit 05-26 to allow an increase in the total square footage from 2,512 s.f. to 3,100 s.f. All other terms and conditions will remain in full force and effect."

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

REASONS: The Board finds that the increase in square footage is not substantial and will result in a more pleasing design. More importantly, the footprint will remain the same and not increase the lot coverage.

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Stephen M. Richmond, Chairman

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Jeffrey P. Klofft, Clerk

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Jonathan G. Gossels

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Constantine Athanas, Alternate

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Nancy G. Rubenstein, Alternate

S. ROBERT SMITH  
234 Horse Pond Road  
05-40

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, OCTOBER 18, 2005

The Board consisted of:

Stephen M. Richmond, Chairman  
Jeffrey P. Klofft, Clerk  
Jonathan G. Gossels  
Constantine Athanas, Alternate  
Nancy G. Rubenstein, Alternate

Notice was published in the Sudbury Town Crier on September 29 and October 6, 2005, posted, mailed and read at this hearing.

Mr. Richmond, 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 Smith was present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence, not to exceed 3,200 s.f., at 234 Horse Pond Road.

The Board reviewed the plan which proposes a 45-foot front yard setback. Mr. Gossels felt that 45 feet was too close to the road given the size of the house.

Mr. Smith said he had no problem moving it back as there was room to do so. He was agreeable to a 60 foot setback.

In response to a question from Mr. Richmond, Mr. Smith said he planned to remove the existing house prior to construction of the new one.

Alexander Barned – 231 Horse Pond Road, abutter, was in favor of the petition, particularly in light of the fact that the neighborhood has been changing as a result of several tear downs and reconstructions, including his. He said this house, in its current design has the forward facing garage which will be his direct view into the garage. He said all the other houses have garages to the side, which he felt was preferable. Although there may be constraints to locating it on the side, he said the neighbor to the right of the property has offered to make a sale of space to allow some room if there was a spatial consideration to locating the garage to the side.

Mr. Barned said he did want to see a new house constructed but he would like to see the garage constructed to the side if possible.

Mr. Smith said the problem with the existing parcel of property is that it is 100 feet wide. With a side yard setback of 20 feet, there is not enough turning room to go into a side-loaded garage. He said the rule of thumb is 35 feet. He said he has spoken with the next door neighbor about possibly purchasing a strip of land next to this parcel, but he did not want to make it part of the deal to purchase this property.

Mr. Gossels asked how likely it would be to obtain a strip of property.

Mr. Smith said his purchase of 234 Horse Pond Road is contingent upon this application being approved. He said if it is approved he plans to speak with that other neighbor about purchasing a strip. In addition to the 20-foot strip, she also has an extra acre. If he could buy more of that at a reasonable price he could actually put the house considerably back. However, he said that is secondary to getting this application approved.

Mr. Gossels said normally with a colonial style house, the garage is placed on the side of the house. The proposed house has the garage impinging on the main body of the house. However, he did understand the constraints of the lot.

Mr. Richmond said he was less concerned if the house is set back 60 feet because presumably there will be some plantings in front the break to up the space.

Mr. Smith said he is going through the process with the current owner in order to purchase the property. He said he may have other options should he be able to negotiate with the other neighbor. However, this property is his first priority.

Mr. Gossels said he preferred to have the garages side loaded.

Discussion followed on alternatives. Mr. Barned suggested flipping the design so that the garage would be on the left would be a preference because that would remove his concern.

Mr. Smith was agreeable to this reiterating his comment that he would prefer to negotiate separately with the other neighbor before committing to other options.

There was no further input. The hearing was closed.

The following motion was placed and seconded:

MOTION: “To grant S. Robert Smith, applicant, Gloria Woodward, owner of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition

S. ROBERT SMITH  
234 Horse Pond Road  
05-40 Page 3

of an existing residence and construction of a new residence, not to exceed 3,200 s.f., which will exceed the area of the original nonconforming structure in accordance with the Proposed Site Plan submitted with the application, prepared by Thomas Land Surveyors dated August 15, 2005, except that the front of the garage which is the closest point to the property line will be placed 60 feet from the front property line and the plan of the house design will be built as a mirror image with the garage facing to the left of the front of the house.”

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.

Construction must be completed no later than one year after commencement.

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

REASONS: The petitioner requires a Special Permit because of the nonconforming nature of the property. The Board finds that the proposed construction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed new house is appropriate in scale and design and compatible with other reconstructions in the area. Further, the petitioner has agreed to site the house further back on the lot to so as not to cause a looming effect. He has also agreed to relocate the garage to the opposite front of the house and to pursue other options for the location of the garage should the opportunity present itself. Overall, the Board finds that the alignment of the new house will continue an aesthetic streetscape in a neighborhood which is undergoing change.

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Stephen M. Richmond, Chairman

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Jeffrey P. Klofft, Clerk

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Jonathan G. Gossels

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Constantine Athanas, Alternate

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Nancy G. Rubenstein, Alternate

JEFFREY & LAUREN HARRISON  
27 Robert Frost Road  
05-41

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, OCTOBER 18, 2005

The Board consisted of:

Stephen M. Richmond, Chairman  
Jeffrey P. Klofft, Clerk  
Jonathan G. Gossels  
Constantine Athanas, Alternate  
Nancy G. Rubenstein, Alternate

Notice was published in the Sudbury Town Crier on September 29 and October 6, 2005, posted, mailed and read at this hearing.

Mr. Richmond, 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.

Thomas Buckborough, Buckborough & Associates, was present, representing the petitioners Jeffrey and Lauren Harrison in a petition for a Special Permit to construct a porch and second floor bedroom expansion which will result in an 8-foot front yard setback deficiency at 27 Robert Frost Road.

Mr. Buckborough said the Harrisons have lived in this house since the early 90s. They have three young children. Their family has grown, and his firm has completed three major projects at their house. They would like to stay in the house; however, the children are growing, the bedrooms are too small and the purpose of this project is to beautify the house as well as to provide the extra needed space.

A photograph of the existing house was shown for the Board's review. The lot is 35,795 s.f. Mr. Buckborough said three bedrooms face the front of the house – one faces the back. It is proposed to expand the front bedrooms.

The Board reviewed the proposed plans.

Mr. Athanas asked whether in the alternative, the wall on the right side of the house could be pushed out which would allow the master bedroom to be moved over and increase two of the bedrooms.

JEFFREY & LAUREN HARRISON  
27 Robert Frost Road  
05-41 Page 2

Mr. Buckborough felt this would create some awkward aesthetic situations. There is also the issue of the septic system being on the right side of the house.

Mr. Gossels said the issue is whether there are other alternatives to accomplish the same goals without increasing the zoning problem.

Mr. Richmond said he shares that concern particularly when looking at the layout of the street, where the other houses are on the street and what this would mean by pushing it forward. He said it would be very close to the street. Further, it's a small cul de sac and this house would protruding forward with the other houses having consistent setbacks.

Mr. Klofft asked what was to the left of the house. Mr. Buckborough said the driveway. The bathrooms are at the rear – to change anything in that area would result in expensive changes as bathrooms would have to be relocated.

Mr. Klofft asked whether Mr. Buckborough knew the exact location of the septic system. He did not.

While understanding the issue of aesthetics, Mr. Klofft also shared the concern of the other Board members. He said in general it is preferred to have houses further away from the road, not closer. From the plan, it appeared that there may be other space potentially to accomplish the goals. He suggested consideration of continuing this hearing until the septic location is known.

Mr. Gossels said even if the location of the septic system is known, he would still have a problem with a 2-story house being located 32 feet from the road.

Mr. Athanas said the reality is if this wasn't a "slightly too small lot" they would have needed a variance. If they needed a variance, there would be no justification for it. He was not in favor of encroaching that much into the front yard setback.

Ms. Rubenstein said when driving by the house she noticed that it seems to be set higher than the street, and that feels very close to the street in its existing condition. Although she liked the design, she felt it was going to feel close.

Mr. Buckborough asked if changing the roof line would make a difference. The feeling of the Board was that the house would still be too close to the road. He asked if it would make a difference if the porch was constructed with the bedroom additions located elsewhere.

There was general agreement that looking at the house the way it's situated on the lot and the street, a porch may help the house, but in terms of looking at the street, it creates problems.

JEFFREY & LAUREN HARRISON  
27 Robert Frost Road  
05-41 Page 3

Mr. Richmond suggested Mr. Buckborough might want to consider withdrawing this application in order to consider submitting a different design.

After further discussion, Mr. Buckborough requested the application be withdrawn.

A motion was made seconded and unanimously voted to accept a request from the petitioner to withdraw this application without prejudice and to waive any subsequent application fee should the applicant wish to submit an application for a similar project.

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Stephen M. Richmond, Chairman

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Jeffrey P. Klofft, Clerk

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Jonathan G. Gossels

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Constantine Athanas, Alternate

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Nancy G. Rubenstein, Alternate

FRUGAL FLOWER  
736 Boston Post Road  
05-42,43,44,45,46

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, OCTOBER 18, 2005



The Board consisted of:

Stephen M. Richmond, Chairman  
Jeffrey P. Klofft, Clerk  
Jonathan G. Gossels  
Constantine Athanas, Alternate  
Nancy G. Rubenstein, Alternate

Notice was published in the Sudbury Town Crier on September 29 & October 6, 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.

Craig Wambolt, owner of Frugal Flower and Jeff Morrissette, Hancock Associates, were present representing five variance requests: (1) to allow a reduction in the number of parking spaces, (2) to locate parking in front of the building, (3) to locate refuse storage in a residential zone, (4) to allow a reduction in the landscape buffer requirement, (5) to relocate the existing free-standing sign which will result in a front property line setback deficiency.

The Board was in receipt of the following correspondence:

- from the Fire Chief to the Planning Board dated September 26, 2005
- from the Planning Board dated October 14, 2005
- from the Design Review Board dated October 4, 2005
- from the Building Inspector dated September 29, 2005
- Order of Conditions dated September 12, 2005

Mr. Wambolt explained that when he submitted his application for Site Plan Approval, he was informed by the Building Inspector that the variances previously granted by the ZBA on April 29, 2003 had expired. Since the previous variances were issued, many items required action by various town boards and he has been in the process of working on them. He said nothing has changed from the prior submittal. The prior plans were done by Sudbury Design Group. He has enlisted the engineering firm of Hancock Associates, and Jeff Morrissette is present this evening. Mr. Wambolt said his plans are scheduled for Site Plan Review with the Board of Selectmen next Tuesday evening.

Mr. Wambolt said he has met all the Conservation Commission's guidelines and now has an Order of Conditions based on all the prior issues either being dealt with previously or rolled into the site plan.

Mr. Wambolt said the Town Planner brought to his attention the fact that when he gave back the parking spaces in order to come to agreement with the Board last time, that dropped him below the required number based on calculations by one. As a result, there is an additional variance request.

Mr. Gossels pointed out that the Fire Chief had a problem with the fire lane and two parking spaces.

Jeff Morrisette said he met with the Fire Chief this morning and addressed those concerns. The Fire Chief asked that the changes be forwarded to him, which was done. The Fire Chief said he would write a letter of recommendation because this proposal improves the existing conditions by relocating one of the two parking spaces of concern and eliminating another and adding it elsewhere. He was more satisfied with the maneuverability for emergency vehicles.

Mr. Gossels asked if Mr. Morrisette had that updated plan to show the Board.

Mr. Morrisette showed the plan which indicated the changes based on his conversation today with the Fire Chief. This included the shifting of two parking spaces. As a result, he said it makes the travel way much easier and provides an 18-foot clearance for much of the area.

Mr. Richmond asked Mr. Morrisette to list every change.

Mr. Morrisette said the striping and the pavement has changed very little. From the plan he pointed out where they will be bumping the curbing along the back which is approximately a foot. He also pointed out where some pavement will be added and noted that is the only physical change in terms of the pavement. The other changes are all striping.

It was also pointed out that they will be mitigating a lot more drainage up front. Mr. Morrisette said he felt it better to slightly over design the drainage up front to prevent more of the storm water from getting closer to the resource area. He said the Conservation Commission was satisfied with that, as was the Town Engineer. This was done by putting infiltration trenches underneath the parking and collecting it before it can leave that area. Some of the runoff that is now going down from the roof and going around down to the site is being captured before it reaches the buffer zone.

Mr. Morrisette said those were the only changes from what was originally submitted to the ZBA. Mr. Wambolt added that Hancock Associates took Mike Couto's original design and snapped their design onto it, so the Board will not see anything different than what was looked at three years ago. Traffic is going to go in the same place – sign is going to go in the same place.

Mr. Klofft said the Planning Board's letter noted concern with regard to the fenced in area in the residential zone.

Mr. Wambolt said the reason the fence was there was to bring some complacency to the neighborhood which did not like the fact that some of the buildings were lighted, among other things. They actually wanted that buffer zone. He said functionally, what the Planning Board is asking for is a fence along the asphalt berm which is impossible because he will have no place to remove snow. It will be constantly be run into and doesn't make sense.

Mr. Gossels felt this could be addressed by a condition in the Decision.

Mr. Klofft said another issue was the need to reapply for the sign because it doesn't conform to the current bylaw.

Mr. Morrisette said the bylaw changed since the original approval was granted. He is looking into the possibility of whether there is any grandfathering attached to allow that sign to be used as originally proposed.

Mr. Klofft asked whether the planting plan was going to be in accordance with DRB recommendations.

Mr. Wambolt said that issue was discussed at the Planning Board meeting and he agreed to use Mike Couto's original plan.

Mr. Klofft said there was also some question about the plans being stamped by a professional engineer.

Mr. Morrisette said that would not be a problem.

Mr. Gossels said it appears there is only one application that's missing which is for the sign. Discussion followed on how the sign might be in violation. The general feeling was that it may be a height issue. Mr. Morrisette said he was actually going out to measure the sign to see how it doesn't conform and see, when it's relocated, if it can be adjusted to be in conformance. This is one of the reasons that portion has not been finalized. He wants to go out and see what can be salvaged of the existing sign.

Mr. Richmond said the Board cannot deal with the sign non-conformance; it can only deal with the location. If it is not in conformance, a filing will be required.

Mr. Gossels wanted to focus on what has changed. He didn't want the Board to be reversing the decision its original decision capriciously.

Mr. Morrissette said one other significant change is the function of the drainage infiltration system.

Mr. Gossels asked whether that changed the elevation of the front parking lot. Mr. Morrissette said it did not.

Mr. Gossels said it seems that in addition to the drainage system, there's a little bit of repaving, re-striping and a change in the parking.

Mr. Morrissette added that there is also the shifting of the location of the enclosure in the back so as to have suitable access. He said right now, if someone comes in – if a truck comes in to remove the dumpster, it's in a very bad location right now. They are actually moving it along the same back line and putting it in a spot that's further away from the resource area and which also makes it more accessible.

Mr. Gossels said as a condition he would want to support no storage in the residential area, except for within the dumpster enclosure.

Mr. Richmond asked whether a bond had been posted as required in the Order of Conditions.

Mr. Wambolt said it had not. He said the Conservation Coordinator is working on a vehicle to accept a bond and determine how and when that money comes back.

Mr. Richmond asked whether the Order of Conditions had been recorded.

Mr. Wambolt wasn't sure. He said his attorney is dealing with it.

Mr. Richmond said it is required to be recorded within 30 days.

Mr. Richmond said there is a requirement in the Order of Conditions to remove stuff that has accumulated in the non-paved areas at the back of the site and then to spread soil and seed. He asked whether this has been done.

Mr. Wambolt said it has not. He said he purchased property in Hudson and some of this stuff will be moved to that property. At this point the only items in that area are about 12 arches

FRUGAL FLOWER  
736 Boston Post Road  
05-42,43,44,45,46 Page 5

for the former greenhouse and some bags of material. Those will be going to go to the other facility, probably within the next two weeks.

Mr. Richmond asked whether the conservation restriction has been recorded. Mr. Wambolt said it has.

Mr. Gossels pointed out that several neighbors spoke at the last hearing. He asked what has happened with regard to the neighbors and their issues.

Mr. Wambolt said there were issues with only one neighbor, Frank Sweet, and he has been doing everything he can to appease him.

Discussion followed over the expiration period for variances which expire after one year unless application for a 6-month extension is made prior to expiration.

Mr. Wambolt estimated he would probably not be able to begin construction until the spring.

Mr. Richmond asked if the Board was in receipt of the updated plan as amended after discussion with the Fire Chief. Mr. Morrissette said he would get a stamped copy to the Board by tomorrow.

There were no further questions; the hearing was closed.

The following motions were placed and seconded:

MOTION: To grant The Frugal Flower, applicant, Big Daddy Realty Trust, owner of property, the following Variances from the Zoning Bylaws, in accordance with Plan prepared by Hancock Associates, Marlborough, MA, Titled The Frugal Flower Proposed Parking Lot Expansion, consisting of 6 Sheets, Sheet 1 dated August 17, 2005, revised September 29, 2005, Sheet 2 dated January 25, 2005, revised August 15, 2005, Sheet 3 dated August 17, 2005, revised October 18, 2005, Sheet 4 dated August 17, 2005, Sheet 5 dated August 17, 2005, Sheet 6 dated August 17, 2005, and subject to conditions as stated herein, property located at 736 Boston Post Road, Residential Zone C-1 and Business District #4:

Case 05-42 – Variance from Section 3120 to allow a reduction in the number of parking spaces for a total of 36 spaces.

Case 05-43 – Variance from Section 3144 of the Zoning bylaws to locate parking in front of the building.

FRUGAL FLOWER  
736 Boston Post Road  
05-42,43,44,45,46 Page 6

Case 05-44 – Variance from Section 2230 A,C,11, and to the extent necessary from Section 3424 to locate refuse storage in a residential zone.

Case 05-45 – Variance from Section 3550 to allow a reduction in the landscape buffer requirement of 20 feet to 9 feet.

Case 05-46 – Variance from Section 3265A to relocate the existing freestanding sign which will result in a front property line setback deficiency of 14 feet  $\pm$ .

Conditions:

1. Parking shall be as shown on the revised plan for a total of 36 spaces, which includes 2 handicapped spaces, one of which will be van accessible. No parking of business van/commercial trucks in the front area will be allowed.
2. No additional materials will be stored in the residential zone except for the dumpster enclosure. The dumpster shall be enclosed by an 8-foot fence so as not to be visible to the surrounding area.
3. Landscaping shall conform to the revised plan and shall incorporate the recommendations of the Design Review Board. Applicant shall maintain the landscaping as shown on the plan as a condition of this approval.
4. Lighting shall be reduced and be directed towards the property so as not to be intrusive to any residential properties.
5. The plastic out structure located at the rear of the building will be removed.
6. A conforming sign will be located in accordance with the setbacks shown on the plan in accordance with Design Review Board recommendations.
7. Approval is contingent upon receipt of an Order of Conditions from the Conservation Commission, and compliance with the conditions therein, including a maintenance schedule for the drainage structures. Compliance with the Order of Conditions, including implementation of the maintenance schedule, shall be a condition of approval.
8. Approval is contingent upon the recording of a Conservation Restriction at the Registry of Deeds, and signed by the Town.

9. Approval is contingent upon Site Plan approval by the Selectmen.

10. Approval is contingent upon a Water Resource Protection District Special permit from the Planning Board.

FRUGAL FLOWER  
736 Boston Post Road  
05-42,43,44,45,46 Page 7

11. A Performance Bond will be required to be posted by the owner in an amount sufficient to ensure that the site work is completed in accordance with the approved plan.

12. If the rights authorized by these variances are not exercised within one year of the date of grant of such variances, such rights shall lapse; provided, however that the Board of Appeals in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further that the application for such extension is filed with the Board of Appeals prior to the expiration of such one year period. If the Board of Appeals does not grant such extension within thirty days of the date of application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of M.G.L., Chapter 40A, Section 10.

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

REASONS: The petitioner seeks five variances to accommodate a reallocation of space resulting from the evolution of the business over the past few years.

With regard to the criteria which must be satisfied in order to grant variances, the Board, for this property, finds the following:

1. Special conditions relating to the soil conditions, shape, or topography of the land or structures and especially affecting the land or structures, but not affecting generally the zoning district in which the land is located.

1. The Board finds that although this property is comprised of approximately 73,393 s.f., it is severely limited in its ability to provide for additional parking, landscaping and refuse storage as a result of the location of the existing building on the lot and the fact that the property is split zoned (Business District #4 and Residential Zone C1). In addition, a portion of the property is within a wetland resource area which, together with the constraints of the split zone, renders almost 50% of the property unusable.

2. There must be substantial hardship, financial or otherwise, if the provisions of the Bylaw were to be literally enforced.

The Board finds that if the parking and landscaping is not allowed, the usable square footage of the building cannot be utilized and the financial viability of the building would

be in jeopardy. The Board notes that the petitioner, in order to lessen the density on the usable area of the lot and provide for more green space, has agreed to a reduction in the number of proposed parking spaces and a reallocation of his internal space to accommodate that reduction.



The nature of the business requires refuse storage, and due to the limitations of the lot can only be located in the residential zone. This storage is an integral factor of the business and must be sufficient in order for the business as it has evolved to be viable. The Board notes that the

petitioner has agreed to fence in the dumpsters and to include screening along the rear portion to shield the neighbors located in the residential area to the rear of the property.

In order for any business to be viable, there must be identification to attract customers. The proposed changes to parking and landscaping will not allow for the existing sign to remain in its current location. Although the proposed sign will result in a front yard setback deficiency, the Board finds the location will be more in keeping with the character of the business district and the intent of the Bylaw.

3. There must be no substantial detriment to the public good if the variance is granted.

The Board finds that the granting of the five variances will not be detrimental to the public good. The parking is designed to provide for safe vehicular and pedestrian traffic flow. The landscaping to the front will enhance the appearance of the streetscape and will benefit the abutter across the street as it will be less visually intrusive to him. The dumpsters will be fenced in and screened so as not to be intrusive to the residents at the rear of the property. Signage is more in keeping with the character of the town. All of the changes will result in an upgrading of this property, benefiting not only the nearby residents and the business owner who will be able to remain viable, but the town as a whole as it will result in an attractive streetscape and convenient customer experience for residents of the town and nearby areas.

4. Granting the variances will not nullify or substantially derogate from the intent or purpose of the Bylaw.

The Board has set conditions to the granting of these variances in order that project be completed in accordance with the plans presented by the petitioner. These conditions have been imposed to insure that there will be no derogation from the intent or purpose of the Bylaw.

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Stephen M. Richmond, Chairman

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Jeffrey P. Klofft, Clerk

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Jonathan G. Gossels

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Constantine Athanas, Alternate

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Nancy G. Rubenstein, Alternate



