

MINUTES OF THE PUBLIC HEARING CONTINUATION  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 3, 2006

The Board consisted of:

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

The public hearing was reconvened by the Chairman, Mr. Richmond who recognized Floyd Stiles, General Manager of the American Legion Post 191.

Mr. Stiles noted that this hearing was continued because Condition 9 requiring abutters to be contacted by written letter, with a copy to the Board of Appeals, had not been complied with. Mr. Stiles said that letter has now been sent. He provided the Board with a copy dated November 30, 2005. He apologized for the oversight. He used an abutter list from a previous permit and addressed it to that owner, or current resident.

Mr. Stiles said he had no feedback from the letters. Bruce Kankanpaa, 11 Stone Road, direct abutter, said when there have been problems, he has tried to work them out with Mr. Stiles. He said at the moment things are all right and he has no problem with a renewal.

Mr. Stiles acknowledged that there have been problems associated with the Legion in the past and he has tried to address them. He said he will make a better effort on Mr. Kankanpaa's behalf with regard to noise, particularly when people leave the club after closing.

With regard to Condition 7, Mr. Stiles would request a change in the activities allowing a substitution of Veterans Day for Earth Day. He would also request a two-year renewal period.

The Board had no problem with the substitution. However, they emphasized that the letter to abutters must be sent. Mr. Stiles assured them this would not be a problem.

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

The following motion was placed and seconded:

MOTION: "To grant Sudbury American Legion Post 191, applicant, renewal of Use Variance 05-47, granted under the provisions of Section 2250, Appendix A,C,Use 24 of the Zoning

Bylaws, to use the building and property as a private clubhouse and meeting hall, property located at 676 Boston Post Road, Residential Zone A-1, provided that:

1. There shall be no parking on Boston Post Road or Stone Road by those using the building, and there shall be no traffic hazard as defined by the Police Chief.
2. All off-street parking is to be on the westerly side of the property. The five-foot wide buffer between the parking area and rear lot line shall be maintained and shall consist of a low retaining wall at the rear of the parking area with suitable plantings within the buffer area.
3. The barrier constructed to prevent parking on Stone Road shall be properly maintained.
4. There shall be no illuminated signs on the property.
5. A sign no larger than one square foot to identify the building shall be allowed.
6. There shall be no exterior storage of any kind, nor shall exterior rubbish (dumpster) be allowed.
7. There shall be no organized outdoor activities on the property, except for the following three events: Memorial Day, July 4<sup>th</sup> and Veterans Day activities.
8. There shall be no exterior floodlights on the property except that a single light, consisting of a motion sensor light, to light the parking area and so located as not to shine into the public way or towards residences, is permitted.
9. No nuisances shall be created **and abutters must be contacted by written letter, with a copy to the Board of Appeals, three months prior to renewal, to solicit complaints or areas of concern.**
10. This Use Variance is non-transferable and shall not run with the land and shall be limited to expire on January 3, 2008. The Board will consider renewal upon receipt of proper application on or before that date.”

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

REASONS: The petitioner seeks renewal of a use variance to continue using the building and property as a clubhouse and private meeting house. Recognizing that this use is in a residential zone and has in the past been the subject of complaints from the neighbors, the Board felt strongly that lines of communication between this facility and the neighbors should be kept open as an attempt to head off any problems which may arise. For this reason, at a previous renewal hearing, Condition 9, requiring the petitioner to solicit input from the neighbors was imposed.

For this renewal, the petitioner acknowledged that he had not complied with Condition 9 and the Board continued the hearing in order that the letters be sent. This was done, and the most direct abutter noted that at this time he has no problem with renewal.

As a result, the Board finds that a renewal of this use variance for a period of two years is appropriate and stressed the importance of complying with Condition 9 prior to any subsequent renewal.

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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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Elizabeth A. Taylor

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Constantine Athanas

STATION ROAD AUTO BODY & GARAGE, INC.  
40 Station Road  
06-1

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 3, 2006

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on December 15 & 22, 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.

George Sherman was present to represent a petition for renewal of Special Permit 03-1 to continue the sale and repair of new and used motor vehicles at 40 Station Road. Renewal was being requested under the same terms and conditions of the previous permit. Mr. Sherman said he has been in business for almost 20 years and has complied with the conditions of the permit. He said there have been no problems associated with his operation, nor have there been any complaints with regard to the use.

Mr. Richmond referred to condition 2 which does not allow storage of materials or vehicles and no overnight parking in front of the building. Mr. Sherman said he has complied with this condition as well as condition 3 which prohibits work being performed outside of the building after 10PM.

There were no comments from the Board other than a recommendation to extend the renewal period from 3 to 5 years. No abutters were present.

The public hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Station Road Auto Body and Garage, Inc., applicant, George J. Sherman and Stephen D. Jones, owners of property, renewal of Special Permit 03-1, granted under the provisions of Section 2230, Appendix C,12,13,14 of the Zoning Bylaws, for the sale and repair  
STATION ROAD AUTO BODY AND GARAGE, INC.  
40 Station Road  
06-1 Page 2

of new and used motor vehicles, property located at 40 Station Road, Industrial District #2, provided that:

1. This operation shall not constitute a visual nuisance.
2. There shall be no storage of materials or vehicles, and no overnight parking in front of the building.
3. No work shall be performed outside of the building after 10PM.
4. The property shall be maintained in such a way that no waste material of any type shall be disposed of in such a way as to contaminate Hop Brook or the marsh surrounding it at the rear of the premises.
5. This permit is non-transferable and will expire in five years on January 3, 2011, and the Board will consider renewal upon receipt of proper application on or before that date."

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

REASONS: This is an application for renewal of a special permit to continue the use of the property as an auto body shop which has been in existence for almost 20 years. The petitioner has complied with the conditions of the permit and there have been no complaints associated with this use. The Board finds that the use is not offensive to the adjoining properties due to the effects of light, odors, smoke, noise and refuse materials and that this use is in harmony with the intent and purpose of the Zoning Bylaws.

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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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Elizabeth A. Taylor

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Constantine Athanas

MAILLET/LARHETTE  
29 July Road  
06-2

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 3, 2006

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on December 15 and 22, 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.

Marcel Maillet and Al Maillet were present to represent a petition for special permit to allow demolition of an existing residence and construction of a new residence on a nonconforming lot located at 29 July Road. The new residence will not exceed 2,000 s.f. and will result in a front yard setback deficiency of 6 inches.

Marcel Maillet explained that he is in the process of purchasing this property. He said the proposed footprint is not much larger than what is there now.

With regard to a question about the height of the proposed house, Mr. Maillet said he would estimate it to be 30 feet or less. The house is only 28 feet deep. It is actually the same house he built on 43 Butler Road.

Mr. Maillet said the design was changed somewhat to incorporate some square footage over the garage which will require a dormer on the front. The house will still be under the 2,000 s.f. which was applied for.

Mr. Richmond referred to the standard conditions which are applied to demolitions and reconstructions. Mr. Maillet said he was familiar with them and had no problem with them.

The Board reviewed the plan for the house and its proposed design. There were no further comments, nor were there any comments from the audience. The public hearing was closed.

MAILLET/LARHETTE  
29 July Road  
06-2 Page 2

The following motion was placed and seconded:

MOTION: "To grant Maillet & Son, Inc., applicant, Marlene & Sidney Larhette, owners of property, a Special Permit under the provisions of Section 2460 of the Zoning bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 2,000 s.f., which will result in a front yard setback deficiency of 6 inches  $\pm$ , property located at 29 July Road, Residential Zone A-1, subject to the following:

1. This special permit shall lapse if construction has not begun, except for good cause, within twelve (12) months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.
2. Construction must be completed no later than one year after commencement."

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

REASONS: The petitioner requires a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction of a new residence, which will exceed the area of the original nonconforming structure and which will result in a front yard setback deficiency, will not be substantially more detrimental to the neighborhood than the original nonconforming structure. The proposed 2-story house, which will replace a one-story house, is appropriate in terms of scale and design and will not be intrusive to the neighborhood.

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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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Elizabeth A. Taylor

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Constantine Athanas

MAILLET & SON, INC.  
82 Butler Road  
06-3

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 3, 2006

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on December 15 and 22, 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.

Marcel Maillet was present to represent a petition for special permit to allow demolition of an existing residence and construction of a new residence on a nonconforming lot at 82 Butler Road. The proposed residence, which will be larger than the new residence, would result in a side yard setback deficiency of 8 feet. He said the new house, however, is pulled back further from that side line than that which was existing.

Mr. Maillet said he purchased this property last spring and it consists of approximately one-half acre and 100 feet of frontage. The existing house, a one-story ranch, is not in good condition and will be demolished.

The new house, a 2-story colonial, will not exceed 3,000 s.f. and will conform to the height requirement of 35 feet.

The Board reviewed the plot plan and elevation plans submitted with the application asking questions for clarification and for comments from abutters.

Lauza Richard, 78 Butler Road, abutter to the east, objected to this petition. Her son was also present. He said their house is 700 s.f. consisting of one story. They were asking that Mr. Maillet conform to the setback requirements of the Zoning Bylaws. Ms. Richard felt this could be done by downsizing the proposed house. She said a large 2-story house would be intrusive given the closeness to the property line. The new house would be 14 feet from the property line and her house is 16 feet from her property line for a total separation of only 30 feet.

MAILLET & SON, INC.  
82 Butler Road  
06-3 Page 2

Mr. Richard said theirs is the only property affected by this proposal. Ms. Richard said she had no objection to Mr. Maillet building his house as long as it could be built within the setback requirements.

Mr. Klofft asked why this location was chosen since it appears a reorientation would result in more space between the houses on the other side.

Mr. Maillet said the driveway goes out that way and the septic system is also on that side.

Ms. Richard countered that both are new designs which could be relocated. She voiced concern that, with the design of this house, she would just be looking at a wall of house.

Mr. Maillet said he could possibly move it to the other side although that abutter might object. He said that abutter's house is similar in size to what he is proposing.

Mr. Klofft felt it to be a combination of size and the fact that Ms. Richard's house is close to the property line to begin with and Mr. Maillet is proposing to move even closer to his side line which will move both houses close together. He said although the house is pulled back from what is now there, the height is going up significantly.

Mr. Maillet suggested perhaps splitting the difference with a 4-foot deficiency on each side. Ms. Richard said she would be amenable to this; she would just like to be as far away from the new house as possible.

Mr. Klofft said there are some hardships with this lot given its narrow size. In order to construct any house there will be some deficiencies.

Robert Hershfield, 88 Butler Road, abutter to the west, preferred the proposed plan which does not affect his setback.

Discussion followed on a possible relocation of the house. Mr. Maillet said there are wetland issues which preclude moving it further back. A suggestion was made to perhaps flip the house so that the garage was on the other side – a mirror image of the plan being presented. Although it wouldn't change the deficiency, it would change the view. There would be less of a mass facing the Richard house.

Mr. Richmond suggested perhaps Mr. Maillet and the two abutters might want to consider a recess during which they could discuss the situation and perhaps arrive at an amenable solution.

All parties agreed and the hearing was temporarily recessed.

MAILLET & SON, INC.  
82 Butler Road  
06-3 Page 3

Following the recess Mr. Maillet reported that nothing was able to be worked out. He said he had suggested sliding the house 6 feet over but the other abutter was not agreeable to this. There was no decision with regard to flipping the house; the Richards were primarily concerned with the setback.

The Board suggested the Richards give serious consideration to flipping the garage as it appeared that it would considerably reduce the mass that would be facing them. Mr. Gossels said although it might not be at a 20 foot setback, there would be a lot less house to see. Ms. Taylor showed them what they would see of the new house. Although the Richards could see that there was less mass, they still had concerns with regard to the setback.

Mr. Richmond said the applicant has the right to build within the existing footprint and the Board did not want to force a decision that would end up with a worse situation than what is proposed.

The Hershfields had no problem with flipping the house. However, it was discovered that this would create a 2-foot setback deficiency on his side because of the chimney. Mr. Hershfield had no problem with this but said he would like to see a provision that no trees be cut down that screen his property. Mr. Maillet was agreeable to this.

Following further discussion, it appeared that both abutters were agreeable to flipping the garage to the western side of the house which would result in setback deficiencies of 6 feet on the eastern side and two feet on the western side. Mr. Maillet agreed to provide an amended plan for the record. He was also agreeable to the standard demolition/reconstruction conditions.

The public hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Maillet & Son, Inc., owner of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence consistent with the plans submitted in the application and not to exceed 3,300 s.f., which will result in side yard deficiencies of 6 feet  $\pm$  on the eastern boundary and 2 feet  $\pm$  on the western boundary, property located at 82 Butler Road, Residential Zone A-1, subject to the following:

1. The garage shall be relocated to the western side of the house.
2. The vegetation along the western lot line shall be maintained and disturbed as little as possible.

MAILLET & SON, INC.  
82 Butler Road  
06-3 Page 4

3. 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.

4. 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 due to the nonconforming nature of the property. The Board finds that the proposed construction of a new residence, which will exceed the area of the original nonconforming structure and which will result in side yard setback deficiencies, will not be substantially more detrimental to the neighborhood than the original nonconforming structure. This is a neighborhood that has undergone several reconstructions with the potential for more in the future. Although recognizing the right of the property owner to develop his property, the Board is cognizant of the concerns of the residents of older properties in the area and attempted to bring both parties together to work out acceptable solutions. In this particular case, the developer was agreeable to a modification of his plan which was acceptable to both abutters, the end result of which will be beneficial to all parties.

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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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Elizabeth A. Taylor

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Constantine Athanas

MAILLET/BRANDON  
107 Pratts Mill Road  
06-4

SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 5, 2006

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on December 15 and 22, 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.

Marcel Maillet was present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence on a nonconforming lot at 107 Pratts Mill Road. He explained that he is in the process of purchasing this property and is proposing a 2-story dwelling of 3,500 s.f. The new house will meet all setback requirements. The existing house will be demolished prior to construction of the new house.

The Board reviewed the plot plan and renderings. Mr. Maillet said he was comfortable with the standard demolition/reconstruction conditions. There were no further comments. No abutters were present. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Maillet & Son, Inc., applicant, Lucille Brandon, owner of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,500 s.f., said residence to conform to all setback requirements, property located at 107 Pratts Mill Road, Residential Zone A-1, subject to the following:

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

MAILLET/BRANDON  
107 Pratts Mill Road  
06-4 Page 2

2. 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 due to the nonconforming nature of the property. The Board finds that the proposed construction of a new residence, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental to the neighborhood than the original nonconforming structure. The new structure is appropriate in terms of scale and design and similar to other reconstructions in that area. Further, it will conform to all the setback requirements.

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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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Elizabeth A. Taylor

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Constantine Athanas

RAY BACHAND  
63 Old Framingham Road  
06-5

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 3, 2006

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on December 15 and 22, 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.

Ray Bachand was present representing a petition for special permit to conduct a Home Business, specifically the sale of antique and reproduction furniture and accessories in a barn on the property at 63 Old Framingham Road. Mr. Bachand said he purchased the Mahoney Farm

house and barns four years ago which was suitable for his hobby of collecting antiques and woodworking. He would like to use the larger barn as a showroom to collect and sell antique and reproduction furniture.

Mr. Richmond asked whether Mr. Bachand anticipated additional employees for this business. Mr. Bachand said it would be himself or he might have someone part time. Hours of operation would be 10AM-8PM, seven days a week although he might not be open all those hours. He does not expect a lot of random drive-in customers. His furniture is high-end and he would expect many of his customers to be by appointment.

Most of the work is hand made, one piece at a time. It is all produced inside in the barn which is his home workshop.

Mr. Richmond said it appeared that there is sufficient space for customer parking on the property. Mr. Bachand agreed and pointed out the entrance and parking area which he said is screened. Mr. Bachand said he has two entrances, one from Old Framingham Road and the other from Nobscot Road.

Mr. Bachand said he spoke with his closest neighbor who supports his petition.

RAY BACHAND  
63 Old Framingham Road  
06-5 Page 2

Mr. Bachand said he did have one issue with signage. He said he would prefer to have customer traffic coming from Nobscot Road, but his address is on Old Framingham Road. He would like to have two signs to identify the business, one at the Old Framingham Road address and the other on Nobscot Road, the location of which he pointed out. He asked about applying for a variance to allow two signs.

It was pointed out that the Bylaw allows only one sign for a home business and that it would be very difficult to meet the variance requirements to allow two signs, particularly in a residential district. It was suggested that the petitioner might want to discuss his situation with the Engineering Department. At this point in time, the Board can only allow one sign.

Mr. Richmond reviewed the standard conditions which are applied to home businesses. Mr. Bachand had no problem with any of them. He did question the use of banners which the Board indicated was not allowed in the Bylaw.

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

The following motion was placed and seconded:

MOTION: "To grant Ray Bachand, owner of property, a Special Permit under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically the sale of antique and reproduction furniture and accessories in a barn on the property located at 63 Old Framingham Road, Residential Zone C-1, provided that:

1. The use must be clearly incidental and secondary to the use of the premises for residential purposes.
2. Hours of operation are limited to 10AM-8PM, seven days a week.
3. There will be no more than one employee other than the residents of the premises.
4. All parking is to be off-street and limited to four spaces.
5. A sign will be allowed which conforms to the provisions of the Sign Bylaw.
6. No flags or banners relating to the business shall be displayed on the premises.
7. There will be no exterior storage of business materials or equipment, including the parking of commercial vehicles. All furniture production will be conducted indoors.

RAY BACHAND  
63 Old Framingham Road  
06-5 Page 3

8. This permit is non-transferable and will expire on January 3, 2007, and the Board will consider renewal upon receipt of proper application on or before that date.”

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

REASONS: The petitioner requires a Special Permit to operate a Home Business consisting of the sale of antique and reproduction furniture. The property is comprised of over 60,000 s.f. and the business will be conducted in one of the barns on the property. The Board finds that the proposed use will be in an appropriate location, not detrimental to the neighborhood and will not significantly by its presence alter the character of the zoning district. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. Further, the nature of the business will not cause it to be detrimental or offensive to the adjoining zoning districts and neighboring properties. As a result, the Board finds the proposed use will be in harmony with the general purpose and intent 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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Elizabeth A. Taylor

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Constantine Athanas

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 3, 2006

The Board consisted of:

Stephen M. Richmond, Chairman  
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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.

Jean Terasconi was present, representing The Jewelry Exchange, in a petition for Special Permit to erect a 12 s.f. freestanding sign at 440 Boston Post Road. Ms. Terasconi would like to replace the existing sign which contains only the numbers "440" with a sign which also identifies the building as The Jewelry Exchange. She said at the original meeting with the Design Review Board (DRB), that Board asked that the sign be redone, excluding the slogan and including only the name of the business and the street number "440". This was done and resubmitted to the DRB on December 21, 2005.

The Board was in receipt of a letter from the DRB dated December 22, 2005 which voted to recommend that the ZBA grant a special permit for a 12 s.f. freestanding sign with the understanding that the sign includes the "440" of the address at the top and eliminates the slogan "Factory Direct".

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

The following motion was placed and seconded:

MOTION: "To grant The Jewelry Exchange, applicant, a Special Permit under the provisions of Section 3290 of the Zoning bylaws, to erect a 12 s.f. freestanding sign, property located at 440 Boston Post Road, Limited Business District #2, as follows:

1. The sign shall be in accordance with the recommendations of the Design Review Board, specifically, the sign will include only the "440" of the address at the top and the name "The Jewelry Exchange" as reflected in the rendering submitted at the ZBA hearing which is marked Exhibit #1 and made a part of this Decision."

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

REASONS: The petitioner requires a special permit to erect a freestanding sign which identifies the business. The existing sign identifies only the street number. The Board finds that the location of the building with reference to the street and the existing sign make it virtually impossible to see the building until one has driven past it. The proposed sign will not cause visual confusion or interfere with traffic safety. Rather, a more identifiable sign will serve to aid in traffic safety along a stretch of road which is heavily traveled. Further, the proposed sign is consistent with the architecture of the building and the surrounding area and thus will not significantly alter the character of the zoning district.

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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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Elizabeth A. Taylor

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Constantine Athanas

TAILS BY THE WAYSIDE, LLC  
882 Boston Post Road  
06-7

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, JANUARY 3, 2006

The Board consisted of:

Stephen M. Richmond, Chairman  
Jeffrey P. Klofft, Clerk  
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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 Michael C. Fee was present, representing the petitioner Heather Clement, also present, in a petition for renewal of Special Permit 05-4 to operate a kennel on the premises at 882 Boston Post Road. For the record, Mr. Fee submitted copies of the water test results which were submitted to Board of Health Director Robert Leupold on December 28, 2005, as well a letter of support dated December 29, 2005 from Judith Hogan Sheldon, 48 Mill Pond Road.

Mr. Fee was requesting renewal for an additional year as well as two amendments to the permit conditions. Condition 2 allows a maximum number of dogs on the property of six plus a pet. He would request an increase in the number of dogs to ten plus a pet. Condition 4 currently allows one boarding dog outside at a time, plus a pet. He would request this be increased to three dogs plus a pet.

Mr. Fee said from the materials submitted with this application it can be seen that the petitioner has done everything that was asked for. A compost bin has been installed. The water has been tested and has been found to be within acceptable limits.

With regard to the manner in which the kennel has been maintained, in terms of monitoring, noise, nuisance, etc., Mr. Fee said no complaints from any of the neighbors have been reported to the Dog Officer that he is aware of.

For those reasons, Mr. Fee would state that all of the conditions have been complied with. However, for the sake of completeness, he would like to address some issues that came to his

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attention during the course of the permit from July to January. First, he asked Dog Officer Betsy DeWallace to speak.

Ms. DeWallace reported that she inspected the premises during the required period and found everything to be in good order. The numbers on the premises never exceeded six, and the dogs appeared to be very well cared for. Personally, she said she was impressed with the operation.

Mr. Richmond said the Board was in receipt of a letter from Assistant Dog Officer Paula Adelson which states "Due to a demonstrated lack of good judgment on the part of Mrs. Heather

Clement, I very regretfully cannot in good conscience give my professional recommendation for the continuance of her boarding kennel, Tails By The Wayside.”

Ms. DeWallace said she was unaware of the letter although she knew Ms. Adelson was uncomfortable about some things.

Mr. Richmond asked who made the visits to the kennel. Ms. DeWallace said Ms. Adelson made a couple, at the beginning, and she made the rest. She said Ms. Adelson also handled the dog bite situation, which upset her. After that, Ms. DeWallace followed through on the visits.

Mr. Klofft asked whether Ms. Adelson did not want to continue with the visits. Ms. DeWallace said no; that typically Ms. Adelson, as Assistant Dog Officer, gets paid differently from the Dog Officer and technically Ms. DeWallace said she should have been the one to conduct the visits from the beginning.

Mr. Richmond asked whether Ms. DeWallace had had any discussions with Ms. Adelson regarding her impressions of the kennel. Ms. DeWallace said Ms. Adelson only indicated to her that she was unhappy with the dog bite incident.

Mr. Gossels said Ms. Adelson called him the day she heard about the dog bite. He said there was an issue where she was very disappointed that she heard about it from the veterinarian rather than the Ms. Clement.

Ms. DeWallace said she was comfortable with the visits she made and she did not have any problems with the operation. She said she was not involved with the bite incident.

Given that Ms. DeWallace had been to the facilities and had seen how it is run, Mr. Athanas asked whether she had a problem with increasing the number of dogs from six to ten.

Ms. DeWallace did not feel there would be a problem as long as there weren't one or two dogs there that might not be happy with a larger group and as long as Ms. Clement knew this.

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beforehand and kept this in mind. She added that the dogs she observed were all compatible dogs.

Mr. Gossels said that during the first hearing it was learned that there were up to seventeen dogs on the premises. Ms. DeWallace commented that that would entail a lot of work.

In response to a comment about good judgment, Ms. DeWallace said it is simply a matter of deciding whether the dogs can get along and refuse to board them if appropriate.

Mr. Athanas asked for a description as to how the dogs are situated inside the house. He said this is not a typical kennel where there are dog runs outside.

Ms. DeWallace said there is a back room where they can be crated or they can be loose. There is an outside barn, although this wasn't being used since the number of dogs allowed was reduced. This consists of a large room with crates along the outside.

Mr. Richmond asked whether this meant that an increase in number of dogs would work in some circumstances and in others it might cause some problems.

Ms. DeWallace felt it would probably work. She felt the dog bite incident was a "freak thing."

Mr. Athanas felt this was an incident with her dog and had nothing to do with the number of dogs.

Ms. DeWallace agreed. She could see ten dogs behaving or ten dogs getting into scuffles. She said you just don't know what will happen, but felt Ms. Clement had a handle on the situation and wouldn't allow a dog that she felt would be a problem dog.

Ms. Adelson, the Assistant Dog Officer then arrived at the hearing. Mr. Richmond asked Ms. Adelson her impression of the operation. She said her letter stands and she felt Ms. Clement did not exhibit good judgment. Ms. Clement had her own dog meeting a potential client's dog. She told the client that her dog could be aggressive and had her dog meet the potential client's dog. There was direct contact and there was a bite. Ms. Adelson said she was not informed of this by the owner of the kennel but from the vet.

Mr. Richmond asked whether Ms. Adelson had any observations about the way the kennel was being operated or the guest dogs. Ms. Adelson replied "not at all" – that up until the time of the dog bite, she felt Ms. Clement was doing an outstanding job. She had everything in place and was willing to spend extra money for waste products. She had an indoor/outdoor situation all set up and everything seemed very well contained. Ms. Adelson said she advised Ms. Clement to contact her during the 6-month period if anything came up. This did not happen.

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To the issue of good judgment, Mr. Klofft asked Ms. Clement why she didn't contact the Dog Officer. Mr. Fee replied that this is not required under the Bylaw.

Mr. Klofft said one of the concerns that was expressly stated was an issue of good judgment – the judgment of knowing she had to get the permit and operating during that period. He said maybe she wasn't required to do this but given the situation and given the concerns of the Board, he felt it would have been prudent to do it even if it wasn't required.

Ms. Clement explained the dog bite situation which resulted in the Sheldon dog's ear being torn. She said she assessed the situation, administered first aid, realized the dog needed to go to the Vet, called the Sheldon's Vet in Wayland and told them the dog was coming. She then called her Vet and asked them to fax her dog's record to Wayland so the dog wouldn't have to get a booster shot.

Ms. Clement said she paid for Ms. Sheldon's dog's medical expenses and apologized to her for the situation, which was accepted by Ms. Sheldon who understood that there is an inherent risk with bringing dogs together. Ms. Clement said the dog was not yet in her care and this could have happened anywhere. It's just two dogs meeting each other. Both owners were there.

Ms. Clement said she was more concerned about the dog and didn't even think to call Ms. Adelson. When Ms. Adelson called her the next day, she told her she was coming over to quarantine her dog and to shut her down. As a result, she said she also called Best Friends inquiring as to what they would do in a similar situation and was told by them that what she did was correct. She then asked if this could cause the Dog Officer to shut her down. The Best Friends rep said "no" – that things like this will happen when dealing with animals.

As a result, Ms. Clement said she knows she did the right thing.

Mr. Richmond asked Ms. Adelson to elaborate on what happened when she told Ms. Clement she was coming over after the incident.

Ms. Adelson said she does not remember saying that she was going to close her down. She did remind her that after the granting of the permit she told her that she needed to be "squeaky clean" so that there were no incidents, because part of what the Board asked was to have her or the Dog Officer go over every two weeks. She wanted to be sure nothing was going to happen.

Ms. Adelson said she made a specific appointment to see Ms. Clement with regard to a quarantine and arrived at that time. In response to a question from the Board, Ms. Adelson explained the quarantine process. This was a 10-day quarantine after which Ms. Adelson would return and lift the quarantine.

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Mr. Athanas felt that the dog bite issue was not relevant from a zoning perspective. He felt the question was whether this is a proper use of the property. He was more concerned about the barking issue which was the biggest issue to begin at the original hearings. He felt this situation could happen anywhere and said he has taken his dogs to Best Friends and sometimes bigger dogs will jump on them just coming in the door because everyone comes in the same door to get to the front desk. He said it happens.

Mr. Richmond said his concern was not with the incident but rather the judgment point.

Mr. Athanas did not feel it was this Board's purview to decide on whether Ms. Clement has good business judgment to run this particular business. It's whether the business can become a nuisance to the neighbors. He said if a dog is being brought into that house for a business purpose and attacks another dog, that's a bad business practice. But it's not affecting anybody outside that house.

Mr. Richmond disagreed. He felt that a person's judgment in how they run their business in that it creates issues are relevant to the permit. He said the permit is issued to the applicant, not to the property.

Ms. Adelson did say that she has had no barking complaints for this property.

Mr. Richmond asked for comments from the audience. Catherine Boothby, 49 Bridal Path, Leslie Smith, 3 Musketaquid, Concord, MA, Seamus O'Kelly, 16 French Road, Georgette Heerwagen, 91 Robert Best Road, Robin Generoso, 6 Colburn Circle, Tammy Wilson, 87 Bigelow Drive (abutter), Dawnmarie Black, 14 Hayden Circle, all spoke in support of renewal of this petition. They described their experiences with the operation, felt it was a well run operation and that Ms. Clement exercised good business judgment and responsibility when accepting dogs for boarding and during the boarding period.

Mr. Gossels said he didn't believe one could separate good judgment of a person from approval of an activity.

Ms. Taylor said she was satisfied that the permit conditions have been followed. Mr. Athanas was in agreement.

There was some concern with regard to the differing opinions between Ms. DeWallace and Ms. Adelson.

Mr. Klofft asked whether, outside of the dog bite incident, Ms. Adelson had no other issues. Ms. Adelson said this was the case.

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Susan Carlson, 7 Garrison House Lane, said there has not been any substantial barking during this period. Her concern was that good judgment be exercised in the disposition of animal waste.

Mr. Gossels replied that the Dog Officers have investigated this during their visits and have found everything to be satisfactory.

There being no further input the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Tails By The Wayside, LLC, applicant, Richard J. & Heather C. Clement, owners of property, a Special Permit under the provisions of Section 2313 of the Zoning Bylaws, to operate a kennel on the premises, property located at 882 Boston Post Road, Wayside Inn Historic Preservation Zone, subject to the following:

1. The dogs do not become a nuisance.
2. The maximum number of dogs allowed on the property is ten boarding dogs plus a pet.
3. All boarding dogs must wear tags which identify the business.
4. Only three boarding dogs will be allowed outside at a time, under supervision, within the fenced-in area. This condition does not apply to the family pet.
5. Any complaints should be reported immediately to the Dog Officer.
6. Compost bin(s) shall be provided for disposal of dog waste. The number and capacity of the bin(s) shall be appropriate for the number of dogs. The composting system must be placed at least 100 feet from the property line.
7. The shallow well must be tested for nitrates and coliform bacteria within the term of this permit, with results sent to the Board of Health Director.
8. No commercial activity consisting of breeding or sale of dogs will be allowed on the property.
9. No sign advertising the kennel will be allowed.
10. This permit is non-transferable and will expire in one year on January 3, 2007, and the Board will consider renewal upon receipt of proper application on or before that date."

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VOTED: In favor: 4 (Richmond, Klofft, Taylor, Athanas) Abstain: 1 (Gossels)

PETITION GRANTED

REASONS: The petitioner is requesting renewal of a Special Permit to operate a kennel on the premises. The majority found that the petitioner has complied with the conditions of the original permit and were in favor of renewing the permit to allow for an increase in the number of dogs allowed to be boarded, an increase in the number allowed to be outside at a time, and an increase in the renewal period to one year.

It is to be noted that considerable discussion centered on a dog bite situation which occurred on the premises between the petitioner's dog and a client's dog, specifically to the issue of judgment. The majority found this to be unrelated and not relevant to the conditions of the Special Permit or the criteria required to justify the granting of said permit. Both the Dog Officer and Assistant Dog Officer testified that, other than the dog bite incident, no complaints were received during the 6-month permit period.

The Board notes that during the hearings for the initial permit, several abutters were present who expressed their concerns with regard to this operation in terms of impact from noise and waste disposal. At this renewal hearing, only one abutter was present who expressed concern that there be good judgment in terms of waste disposal. This abutter had no issue with barking.

As a result, the Board finds the petitioner's request for an increase in the number of dogs allowed and a one-year term to be appropriate. Further, a copy of the Decision will be forwarded to the Dog Officer with a letter requesting that the premises be visited at least twice during the year for monitoring purposes.

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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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Elizabeth A. Taylor

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Constantine Athanas