

Case No. 06-47 - Cavallaro

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 11, 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 September 21 and 28, 2006, 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.

Peter Cavallaro III and Debra Cavallaro were present to represent a petition for special permit for a kennel at 7 Saddle Ridge Road.

Mr. Cavallaro explained that there are currently three dogs on the property. The kennel license would be to allow for one more dog. He submitted information regarding his plans to operate a non-profit involving two therapy dogs which visit nursing homes and rehabilitation centers. One more dog is needed so as not to overtire the first dog.

Mr. Richmond asked if the Dog Officer had visited the premises. Mr. Cavallaro said she had.

Mr. Richmond also asked whether the neighbors had ever expressed concerns with regard to the three dogs they currently own. Mr. Cavallaro was not aware of any concerns.

At Mr. Richmond's request, Assistant Dog Officer Paula Adelson reported that she visited the property on October 9th and found the setup for the dogs to be done well. She said the Cavallaros had originally asked for three more dogs; however, she recommended one more dog and the Cavallaros were amenable to this.

Ms. Adelson felt a lot of thought had been put into their plans and she hoped this worked out for them. She said she did tell them that, for their own safety and for the safety of the residents in the nursing home, they needed to have another person with them at all times for the

protection of the facility. She said she found the Cavallaro home to be suitable for one more dog.

Mr. Athanas asked whether the request for one additional dog was a temporary measure and whether if plans went well there would be plans in the future to add more dogs.

Mr. Cavallaro said he felt he could handle only one more dog.

Ms. Taylor asked whether the plans are to have two dogs being used in the therapy program and then two as pets.

Mr. Cavallaro replied in the affirmative. He said two of the dogs would go through training at Especially for Pets in Sudbury to receive certificates in order to be able to visit nursing homes.

Mr. Richmond asked for comments from the audience.

Mary Boyle, 799 Concord Road, resident, explained that she gave Peter this idea and supported his endeavor which will benefit many ill or elderly patients. She said Peter has put a lot of hard work into this project and the sisters at St. Patrick's nursing home, where he visits the various units, have encouraged him as well.

Winton Crofton, 8 Saddle Ridge Road, abutter, said his only concern, should the kennel license be granted, is that there be some mechanism by which it can be limited to just one additional dog, that he be required to go through the process again should the permit change substantially or additional dogs be added.

Mr. Richmond said any permit, if granted, would be for a total of four dogs.

In response to a question from Laurie Wishner, 92 Fox Run, abutter, as to the term of a permit, Mr. Richmond explained that the Board's rules provide for an initial permit term of one year, after which it would go to two years and if there are no problems then 3-5 years. This allows for any concerns to be voiced during renewal hearings.

Stacy Zeder, 21 Saddle Ridge Road, abutter, felt the permit should be limited for personal use and not for a for-profit operation.

Ms. Adelson said if this were to become a for-profit, it would have to come back before the ZBA because she was not recommending this be a for-profit situation.

Mr. Richmond asked Ms. Adelson if this would change her evaluation.

Ms. Adelson replied that it would. She said in this particular situation she did not feel that the Cavallaros had the experience or background for a for-profit situation. She added that this is not their intent with this application. She said she did not want to set a precedent for

saying that they could have four dogs for personal use and then have it go to a for-profit. Ms. Adelson said this is a specific request to go to nursing homes and assisted living care facilities on a personal basis.

Michael Bayer, 30 Saddle Ridge Road, resident, felt this to be an admirable pursuit. However, he felt it should be done in concert with the neighborhood properties and requirements of the bylaw. He said this is a very dense neighborhood with many children and an errant dog can cause injuries. In addition, with the noise and odor issue associated with more dogs than what is currently allowed by right, he felt this would be detrimental to the neighborhood and not consistent with the general purpose and intent of the bylaw.

David Hallal, 89 Fox Run, resident, seconded Mr. Bayer's comments. He said in terms of the intent, he felt it was admirable, but as a neighbor he felt four dogs would be a detriment and not what he would want in his neighborhood. With three small children, he expressed concern not only for these dogs but any pet that would get loose. He was not impressed with electric fences as he felt they are not foolproof.

Mr. Hallal said this application has been modified to reduce it down to one additional dog. He asked what the Dog Officer observed on the property to result in this modification.

Ms. Adelson said she just felt there wasn't room for three more dogs or that the Cavallaros could handle a total of six dogs on their property. She did agree that they needed to have two additional dogs to go to the assisted living facility. On the site visit she observed that they have a very large area. They have also worked it out so they only have one dog out a time and they would take that dog out on a leash. She said the Cavallaros are very aware of the neighborhood and the noise and odors associated with dogs, and they are taking care to make provisions for this. In the event of problems, the neighbors can always call her office to make a complaint after which she will come out and subsequently inform the ZBA.

Mr. Hallal asked whether there a method to determine whether one or more additional dogs would be allowed.

Ms. Adelson said it is done on a case-by-case basis.

Kristine Smerlas, 11 Saddle Ridge Road, said her property abuts the Cavallaros and they have been neighbors for 15 years. She had concerns about this permit based on the layout of the Cavallaro property. She said the kennel area and exercise area is at the side of the house which would be very visible and there have been times when one of the dogs has gotten loose and has gone over to her house. While she felt the endeavor was admirable, she had concerns with regard to the neighborhood as a whole and an increase in the dog population.

In response to a question from the Board relative to the breeds of the three dogs, Ms. Cavallaro replied that there is a chow mix, a Chihuahua, which rarely goes out, and a Boston terrier which has at times gotten out. She added that they do have an electric fence and emphasized that the four dogs would not be out at the same time.

Mr. Klofft asked whether Ms. Adelson felt there was a need for additional conditions to be imposed.

Ms. Adelson replied said she did not, based on one extra dog and what the Cavallaros had told her. She said this evening was the first time she heard that there have been other complaints in the neighborhood as no complaints have been lodged either with her or Dog Officer, Betsy DeWallace.

Understanding that the current mix of dogs may not necessarily work, Mr. Klofft said it seemed to him that this project could work within a 3-dog limit.

Mr. Cavallaro said it could; however not with the current mix. He said the Boston terrier is 12 years old and too old, and the Chihuahua is not an assistance-type dog.

Mr. Gossels felt the project to be an excellent one but would like to see it done with a three dog limit where a permit is not needed. Mr. Klofft agreed.

Mr. Athanas felt four dogs might be a benefit as there would be more control over the dogs. Currently, with three dogs, those dogs can all be outside at one time. With a special permit there are conditions, one of which would limit the number of dogs which can be out in the yard at a time.

Mr. Richmond would envision the wording of a motion which would set a limit of four dogs, no commercial enterprise, no more than one dog outside at a time, and a one-year term. He said after one year the Board would address the situation again. He felt this would provide a fair amount of control.

Mr. Richmond asked whether the neighbors had comments that hadn't already been expressed.

Mark Greenlaw, 24 Saddle Ridge Road, resident, said electric fences are not a great barrier, especially in the winter. He said there have been instances when one of the Cavallaro dogs has been aggressive towards his dog. He felt this project to be admirable but would suggest a physical barrier to confine the dogs.

Mr. Bayer asked whether there was any way the permit could limit the size or breed of dog on the premises.

Mr. Athanas said it would be for the preexisting dogs plus one more.

Mr. Sternburg said he has two dogs and has had dogs for many years. He approved of the project and felt that if done properly as non-profit and with noise and odors kept under control, it could be evaluated every 3-6 months to be sure there are no complaints from the neighbors

There was no further input. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Peter Cavallaro III, applicant, Peter, Jr., & Debra Cavallaro, owners of property, a Special Permit under the provisions of Section 2313 of the Zoning bylaws, to allow a kennel on the premises, property located at 7 Saddle Ridge Road, Residential Zone A-1, subject to the following:

1. This permit shall be allowed for a maximum of four dogs.
2. Only one dog at a time will be allowed outside on the premises.
3. The four dogs shall be for personal use only. A commercial enterprise will not be allowed.
4. This permit is non-transferable and will expire in one year on October 11, 2007, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 2: Richmond, Athanas Opposed: 3: Klofft, Gossels, Taylor PETITION DENIED

REASONS: The petitioner requires a special permit to allow a kennel on the premises for four dogs. Two of dogs would be used as therapy dogs which visit nursing homes and rehabilitation facilities. During the hearing several neighbors expressed concerns with regard to the number of dogs which would be allowed should this permit be granted. As a result, the majority felt that after extracting the humanitarian aspect, they were not convinced that this application satisfied the requirements for granting a special permit. Additionally, the majority felt that the applicant could at some point in time move forward with his intent to provide therapy dogs with three dogs on the premises which is allowed by right with no special permit required.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Elizabeth A. Taylor

Constantine Athanas

Case 06-48 - Mahoney Farms

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
WEDNESDAY, OCTOBER 11, 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 September 21 and 21, 2006, 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 Tyler Chapman and William Depietri, developer, were present to represent a petition for special permit to allow an 18 s.f. double-faced freestanding sign at the Mahoney Farms Development located at 30 Nobscot Road.

Mr. Tyler provided some background on Mahoney Farms which is a senior housing development consisting of 33 buildings. He said the fact that it is senior housing is material to the application which is to locate the sign closest to the nearest right of way. The setback requirement is 10 feet and the applicant would like to put the sign 3 feet away from the right of way.

Although the sign would be located 3 feet from the right of way, it would actually be 13 feet from the existing pavement. The reason for this request is because of the nature of the housing being for seniors. This is an area of heavy foliage and other vegetation and if the required 10 feet is complied with, the sign would be so far behind the trees that it would not be able to be seen until one passes by the sign. There is also concern that the sign should be visible not only for the seniors living there but for visitors as well.

In terms of hardship, if the sign was placed as required in the bylaw, those trees that would block the view would have to be taken down. Not only are they located in the public way, but they are also located in a wetland area.

In addition, it is proposed to create a slightly larger sign of 18 s.f. as opposed to 10 s.f. basically for the same reasons as the sign location. Mr. Tyler presented a rendering of the proposed sign which he felt was tasteful and appropriate for this development.

Mr. Klofft said there is a possibility that this road could be widened at some point in the future in which case the sign would become closer to the road. He questioned whether the Board could require the applicant to revisit the repositioning should this occur.

Mr. Richmond felt it could be imposed as a condition.

Mr. Tyler said he would be receptive to a condition but would propose there be some time period for the widening.

Following further discussion it appeared that a time limit would not be feasible.

Mr. Richmond read a letter from the Design Review Board dated September 14, 2006 recommending approval of the proposed sign based on the fact that it will be on such a large property and will have no negative effect of environmental clutter of being over-scaled.

Mr. Depietri said the only change to the rendering was the color which will be dark green with gold leaf. He said this scheme was presented to the DRB and Town Planner, neither of whom had any objections.

It was pointed out that the spelling of the road address was incorrect.

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 Martin Loiselle, applicant, Mahoney Farms, LLC, owner of property, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to allow an 18 s.f. double-faced freestanding sign, said sign to be located 3 feet from the right of way, property located at 30 Nobscot Road as follows:

1. The sign shall be in accordance with drawing 72706 prepared by Sunshine Sign Company dated 7/27/06, except that the color shall be dark green with gold leaf and the street name on the drawing shall be corrected to read "Nobscot".
2. If Nobscot Road is widened along the frontage of this property in the future, this Special Permit shall lapse and the applicant shall be required to reapply for a Special Permit."

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

REASONS: The petitioner requires a special permit to install an oversized freestanding sign to be located closer to the right of way than that which is currently allowed in the Bylaws. The Board finds that the nature of the development is such that the sign should be permitted in the public interest. The design and location will not cause visual confusion, glare, or be detrimental to the surrounding area. Although the sign will be 3 feet from the right of way, it will be 13 feet from the edge of pavement and therefore will not significantly alter the character of the zoning district or interfere with traffic safety in the area. The sign scale and design will be appropriate and compatible with the development on the site.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Elizabeth A. Taylor

Constantine Athanas