

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
MARCH 27, 2007

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at the hearing.

Mr. Klofft, 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 Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

James and Geraldine Apostle were present to represent a petition for renewal of Special Permit 04-6 to conduct a Home Business, specifically the sale of antiques, fine art and framing at 395 Boston Post Road.

Mr. Apostle said he has been operating at this location for several years in accordance with the permit conditions without incident or complaints from neighbors. No changes to the permit were being requested.

Mr. Gossels suggested that a 5-year renewal period would be appropriate for this application.

There were no further comments or questions. No abutters were present. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant James N. & Geraldine Apostle, owners of property, renewal of Special Permit 04-6, granted under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically the sale of antiques, fine art and framing, property located at 395 Boston Post Road, Residential Zone A-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-7PM, 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. No more than two items may be displayed outside the premises.
8. This permit is non-transferable and will expire on March 27, 2012, 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 Board finds the use to be in harmony with the intent and general purpose of the Bylaw. It is in an appropriate location, is not detrimental or offensive to the neighborhood and does not significantly alter the character of the zoning district. Adequate parking and facilities are provided for the proper operation of the use. This business has existed for several years without complaints from abutters and none were present to oppose renewal. Therefore, the Board finds a 5-year renewal period to be appropriate for this case.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at this hearing.

Dorothy Martindale was present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence which will exceed the area of the original nonconforming residence at 122 Old Garrison Road.

Ms. Martindale explained that this application is a resubmission of Special Permit case 04-15 which was granted April 27, 2004. She said the previous plan expired as a result of the length of time it took to sell their current home on Jack Pine Drive. She said nothing has changed with regard to what is proposed to be constructed.

Mr. Klofft asked whether both a house a barn were to be constructed. Ms. Martindale both are proposed to be built.

Ms. Rubenstein pointed out that the plot plan shows a driveway at the front of the house with the garage to the side.

Ms. Martindale said the driveway will constructed to accommodate the side garage.

There were no further questions or comments. No abutters were present. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Dorothy Martindale, 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 a total footprint area of 4,502 s.f. on a nonconforming lot, which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 122 Old Garrison Road, Wayside Inn Historic Preservation Residential Zone, subject to the following:

1. The new dwelling will be completed within twelve (12) months from issuance of a Building Permit, and the old structure will be demolished within six (6) weeks from the issuance of a Certificate of Occupancy for the new residence.
2. 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.”

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

REASONS: The petitioner requires a Special Permit due to the nonconforming nature of the property. The Board notes that this is a resubmission of an application previously approved which had expired. The Board finds that the proposed construction will not be substantially more detrimental to the neighborhood. It will conform to all setback requirements and will be sited further back on the lot and be less visible. It will conform in style to the requirements of the Historic Districts Commission for this area. The Board notes that no abutters were present to oppose this petition.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

Herb Chambers (Land Rover)  
83 & 103 Boston Post Road  
07-20,21,22

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
MARCH 27, 2007

The Board consisted of:

Jeffrey P. Klofft, Chairman  
Elizabeth A. Taylor, Clerk  
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Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, 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 Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Present: Attorney Joshua Fox for the petitioner and Sal Sachetta, Corporate Director of Construction & Facilities for all of the Herb Chambers projects.

Mr. Fox explained that these petitions are for re-issuance of existing special permits in the name of Herb Chambers affiliates which are currently in the name of Foreign Motors West. The applicant is agreeable to all of the terms and conditions of the previous permits with the following exceptions:

1. the elimination of Condition 6 which requires the three lots to be combined into a single parcel prior to issuance of a Certificate of Occupancy.

Mr. Fox explained that this Certificate of Occupancy has already been issued which he felt makes this condition moot.

Mr. Richmond felt the condition should be changed to require the lot to remain as a single lot under single ownership. All were in agreement.

2. Mr. Fox said there is a renewal requirement for this special permit of November 8, 2007. Mr. Fox would propose instead a condition similar to the recent BMW special permits which indicates that the special permits are non-transferable and not required to be renewed on a regular basis; however, the applicant shall be required to return to the Board within a year to discuss compliance.

Since this is a new applicant, and the town hasn't seen in detail how the operation is run, Mr. Fox said they would be agreeable to that condition being imposed for the Land Rover facility.

Mr. Gossels said one of the reasons he was agreeable to eliminating the renewal condition for BMW was because he was comfortable with the Land Rover operation which had a track record in Sudbury. This is a different owner who has not operated in Sudbury.

Herb Chambers (Land Rover)  
83 & 103 Boston Post Road  
07-20,21,22

Mr. Fox felt there are other areas for enforcement – for example, through the Zoning Enforcement Agent.

3. Mr. Fox would request that the special permits become effective if, as and when the Herb Chambers entity acquires a legal interest in the property, whether it's a lease-hold interest or fee simple ownership title. He explained that although there is a potential closing date in May, that could change.

Mr. Richmond would recommend a not-to-exceed date which could be further extended should that date not be met. All agreed on a date of December 31, 2007.

There was no further input. The hearing was closed.

The following motion was placed and seconded:

Case Numbers: 07-20,21,22

MOTION: "To grant Herb Chambers of Sudbury, Inc., d/b/a Herb Chambers Land Rover of Sudbury, applicant, a special permit under the provisions of Section 2230,A,C,Use 12,13,14 of the Zoning Bylaws, for the sale and rental of new and used motor vehicles, for new and used motor vehicle general and body repair, and for new and used motor vehicle light service, property located at 83 & 103 Boston Post Road, Industrial District #4, provided that:

1. Hours of operation shall be Monday through Friday from 7AM-8PM, Saturday, 9AM-5PM, Sunday, Noon to 5PM.
2. No heavy bodywork is allowed on the premises.
3. No fuel storage is allowed on the premises.
4. The premises currently consist of three separate legal parcels spanning the Town of Sudbury and Wayland, MA. The Board makes its findings based upon the applicant's representation that all three parcels comprise the project premises. Certain of the applicant's calculations, specifically lot coverage calculation as required by Section 2600 of the Zoning Bylaws, have been based on the entire lot area of the three parcels combined. As such, the entire area of the three parcels has been essential to the applicant's proposal. All parcels comprising the project area must remain intact and dedicated to the applicant's project and may not be alienated from the project, or otherwise developed in ways that are inconsistent with this decision, without further modification of the Special Permits issued herein by decision of this Board. Notwithstanding the foregoing, the property consisting of 7.77 acres ± now or formerly of the Evergreen Realty Trust, as shown on the Plan entitled "Plan of Land in Sudbury & Wayland, Massachusetts, Prepared for Foreign Motors West," dated February 28, 2002,

Herb Chambers (Land Rover)  
83 & 103 Boston Post Road  
07-20,21,22

prepared by Schofield Brothers of New England, Inc., may be encumbered by a conservation restriction in accordance with the provisions of M.G.L.,c.184, Section et seq., may be conveyed in fee to a conservation organization provided that said parcel shall be used for conservation purposes only.

5. Landscaping and fencing shall be substantially as proposed in the plans entitled "Site Plan," Sheet LP-1, prepared by Rico Associates dated March 12, 2002, as may be modified in accordance with Site Plan approved by the Board of Selectmen, with ongoing maintenance and replacement of materials as necessary. Additional fencing, consistent with the wood cedar fence on the westerly border, shall be provided in order to screen the adjacent Mass. Highway property.]
6. This parcel shall remain as a single lot and in single ownership, with the exception of the 7.77 acre parcel, which may be alienated in the manner set forth above in Condition 4.
7. No flags, banners, spinners, pennants or other such display banners shall be displayed on the premises without first obtaining the required approvals.
8. All lighting shall be substantially the same as that proposed in the plan entitled "Site Lighting Plan", Sheet SL-1, prepared by Rico Associates, dated March 12, 2002, as may be modified in accordance with Site Plan approval by the Board of Selectmen, and shall be otherwise consistent with the provisions of Section 3427f of the Zoning Bylaws. Lighting shall be extinguished during non-business hours to the greatest extent possible so as to provide minimum lighting for security proposed consistent with adjacent properties.
9. All car repair and car service work shall be performed inside the buildings on the premises. There shall be no exterior storage of car parts or equipment. No car washing is permitted except for the incidental hand washing of cars with biodegradable soap.
10. The parking and storage of vehicles and the loading of car parts, equipment and other supplies shall be substantially in accordance with Site Layout Plan SP-2, prepared by Schofield Brothers of New England, Inc., dated February 28, 2002, as may be modified in accordance with Site Plan approval by the Board of Selectmen. No parking or storage of vehicles will be allowed at the entrance drive on the north of the building. At no time will cars be allowed to park or load on Boston Post Road (Rt. 20).

11. This permit is non-transferable and will expire in two (2) years on March 27, 2009, and the Board will consider renewal upon receipt of proper application on or before that date.”

Herb Chambers (Land Rover)  
83 & 103 Boston Post Road  
07-20,21,22

12. This Special Permit shall take effect only if, as and when the business is acquired by the Applicant, but not later than December 31, 2007. The applicant will provide notification to the Board of the date of the transfer.

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

REASONS: This petition is being requested for the sole purpose of transferring the identity of the permit holder to a new entity. The applicant has indicated agreement to operate in accordance with the existing permit. However, since the existing permit (05-37) is non-transferable, this requires application for a new permit. Inasmuch as the applicant has not previously operated in Sudbury, the Board felt that at this time the condition to require renewal after two years should be retained.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

Herb Chambers (BMW)  
122-130 Boston Post Road  
07-23,24,25,26

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Elizabeth A. Taylor, Clerk  
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Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, 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 Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Present: Attorney Joshua Fox for the petitioner and Sal Sachetta, Corporate Director of Construction & Facilities for all of the Herb Chambers projects

Mr. Fox explained that these petitions are for re-issuance of existing special permits in the name of Herb Chambers affiliates which are currently in the name of Foreign Motors West. He said these permits have recently been issued and construction has not yet begun. Mr. Fox brought the Board up to date on the progress to date with regard to the intersection of Old County Road and Boston Post Road. He said it is the intent of this applicant to continue to work with the engineers who were involved with the development of the project.

Mr. Fox said the applicant is agreeable to the conditions contained in the existing permits.

Mr. Klofft said the existing permit does not contain a renewal period. He questioned whether the applicant should be required to renew the permits inasmuch as he is an unknown entity in Sudbury.

Mr. Fox felt the applicant would prefer the existing language which requires him to come back within one year following receipt of a Certificate of Occupancy.

Mr. Gossels said the existing language was only allowed based on the Board's comfort level with the Land Rover operation.

Mr. Fox asked if the Board would be agreeable to language identical to Case Nos. 07-20,21,22 previously voted. The Board members indicated their agreement.

Mr. Richmond said approximately two weeks ago the DEP issued a press release on another Herb Chambers property stating that the agency had entered into a consent order and assessed penalties for wetland violations.

Herb Chambers (BMW)  
122-130 Boston Post Road  
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Mr. Fox said this was the result of a miscommunication with landscape subcontractors who did do some work in the wetlands and is in the process of being rectified.

Mr. Sachetta agreed that this was a miscommunication and an isolated incident. He explained that each individual dealership is its own corporation and, as its own corporation, its infrastructure is controlled individually.

Mr. Gossels cautioned that there are wetlands all around the Sudbury BMW dealership.

Mr. Richmond asked whether Mr. Sachetta has a wetlands consultant for this project. Mr. Sachetta said they typically will hire a wetlands consultant when working with wetlands or aquifers. Mr. Fox added that Fred King of Schofield Brothers specializes in wetlands.

Mr. Richmond suggested a condition be added to require Herb Chambers to retain an independent wetlands specialist throughout the construction process to flag and monitor the wetlands areas and to conduct periodic inspections to insure compliance with the Order of Conditions. Following completion of the work, a report should be submitted to the Conservation Commission and the Board.

Mr. Sachetta had no problem with that condition.

Russ Kirby, 222 Boston Post Road, was puzzled by the hearing notice which references a portion of 30 Goodmans Hill Road as being part of the address. He said he had attended the site plan hearings and came away with the impression that there was no intention to use this property at all. He asked why 30 Goodmans Hill Road was included in the notice.

Mr. Fox said the main site is the Stanmar Office park. From the site plan he pointed out the portion of Goodmans Hill Road which is a part of this project, residentially zoned and comprised of wetlands. He said both the Conservation Commission and the Board of Appeals have imposed conditions on this parcel that it remain as open space and not be used for commercial, or any other purpose.

Mr. Kirby asked why this property was included in the site plan. Mr. Jeff explained that it was acquired to meet lot coverage requirements.

Responding to a statement by Mr. Kirby that the addition of this residential parcel would result in the commercial portion being allowed to be developed more intensely which he felt would be to the detriment of the nearby residential area, Mr. Klofft said the Stanmar office park is not well occupied at this time. During the BMW hearing process it was demonstrated by the applicant's traffic engineer that there would be more traffic emanating from the office park at full occupancy than is proposed to be generated from the BMW facility. Further, Mr. Klofft said both the developer of the proposed housing complex and BMW have committed to the

Herb Chambers (BMW)  
122-130 Boston Post Road  
07-23,24,25,26

redevelopment of the Old County Road intersection to improve the traffic flow and safety as well as to contribute to part of the corridor study which hopefully will lead to some resolution with the Landham Road situation.

From the plan, Mr. Gossels pointed out the design of the Boston Post Road/Old County Road intersection for which he said BMW has committed to give up some land in order to improve safety at that intersection.

Craig and Heather Gruber, 187 Goodmans Hill Road voiced concern regarding the possibility of access by BMW through to Goodmans Hill Road along the driveway of 30 Goodmans Hill Road. They also had concerns for additional traffic resulting from test drives from the facility.

Mr. Richmond asked whether the applicant would object to a condition that prohibited access to Goodmans Hill Road from the property. Mr. Fox indicated that this was acceptable.

Mr. Fox pointed out the Goodmans Hill Road portion of the site which he said is to be used entirely for open space as it is all wetlands.

Mr. Gossels asked whether the applicant would object to a condition prohibiting test drives on Goodmans Hill Road. Mr. Fox said rather than outright prohibition, he would suggest a policy that BMW advise their employees that there not be test drives on Goodmans Hill Road.

Mr. Gruber was concerned that employees might habitually “forget” this policy.

Mr. Klofft said this permit will be renewable in two years. Any violations during that period would be brought to the attention of the Board during the renewal process.

There were no further questions. The hearing was closed.

The following motion was placed and seconded:

MOTION:

CASE: 07-23

“To grant Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 25 of the Zoning bylaws, to operate an automobile sales and service facility, property located at 122-130 Boston Post Road (Industrial District #2) and a portion of 30 Goodmans Hill Road (Residential Zones A-1 & C2).”

CASE: 07-24

Herb Chambers (BMW)  
122-130 Boston Post Road  
07-23,24,25,26

MOTION: "To grant Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a Special Permit under the provisions of Section 2230, Appendix A,C,Use 12 of the Zoning bylaws, to allow motor vehicle sales and rental."

CASE: 07-25

MOTION: "To grant Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 13 of the Zoning Bylaws, to allow motor vehicle general and body repair."

CASE: 07-26

MOTION: "To grant Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a Special Permit under the provisions of Section 2230, appendix A,C, Use 14 of the Zoning Bylaws, to allow motor vehicle light service."

All development shall be in accordance with the following:

1. Plans titled "Proposed BMW Dealership at 130 Boston Post Road in Sudbury, Massachusetts," prepared by Schofield Brothers of New England, Inc., Framingham, MA, consisting of sheets SP-1 through 9, L-1 through 3, A1-1 and 2, A3-1 and 2.
2. Plans titled "Electrical Lighting Plan prepared by Cote Electrical Engineers, Hampstead, NH, consisting of sheets E1-3.
3. Traffic improvements as shown on MDM conceptual Traffic Improvement Plan dated September 21, 2006, as may be amended by the Mass. Highway Department. Approval will be required from the Board of Appeals for any substantial changes to these plans.

ADDITIONAL CONDITIONS:

1. Prior to the issuance of a Certificate of Occupancy, the applicant will take such measures so as to legally merge the 2 lots comprising the project premises into a single parcel, and shall submit proof of same.
2. No commercial activity will be allowed on the residential lot which is currently identified as Lot 2B.
3. The sidewalk will be constructed across the entire frontage as shown on the plan and will connect to, or be aligned with, adjacent sidewalks. Additionally, the sidewalk will connect to the Wingate driveway along the frontage to the west.
4. Prior to issuance of a Certificate of Occupancy, the applicant will grant to the Town of Sudbury a walkway easement or deed for that portion of the walkway which is outside of

Herb Chambers (BMW)  
122-130 Boston Post Road  
07-23,24,25,26

the right of way as shown on Plans SP-4. Any such easement or deed will be subject to approval by Town Counsel.

5. The applicant will construct and maintain storm water controls as shown on the plans and will obtain a construction storm water permit prior to commencement of construction on the site. The applicant will comply with the storm water pollution plan required to be maintained by that permit.
6. Landscaping and fencing shall be substantially as proposed in the plans titled "Landscape Plan", Sheets L-1 through 3, prepared by Schofield Brothers of New England, dated October 5, 2006, as may be modified in accordance with Site Plan approval by the Board of Selectmen, except that the two south westernmost parking spaces will be eliminated and will be landscaped and include a mature tree. Ongoing maintenance and replacement of materials as necessary will be required. Any substantial changes to these plans will require approval by the Board of Appeals.
7. All lighting shall be substantially the same as that proposed in the plan titled "Electrical Lighting Plan", Sheets E-1-3, prepared by Cote Electrical Engineers, dated March 6, 2006, as may be modified in accordance with Site Plan approval by the Board of Selectmen, and shall be otherwise consistent with the provisions of Section 3427 of the Zoning Bylaw. Lighting shall be extinguished during non-business hours as shown on the Security Lighting Plan so as to provide minimum lighting for security purposes consistent with adjacent properties. Any substantial changes to these plans will require approval by the Board of Appeals.
8. The applicant shall complete the construction of the roadway improvements shown on the MDM conceptual Traffic Improvement Plan referenced above prior to the issuance of a Certificate of Occupancy for the project, provided that the Building Inspector may issue a conditional certificate valid for up to six months if (a) the completion of the roadway improvements is delayed due to difficulties in utility pole relocation that are beyond the reasonable control of the applicant, and (b) the applicant posts a bond for the value of the remaining work prior to issuance. No additional extensions to the conditional certificate will be allowed without the approval of the Board of Appeals.
9. There will be no construction activities which produce off-site noise before 7AM or after 6PM Monday-Friday, or before 8AM or after 5PM on weekends or federal holidays.
10. Hours of operation shall not exceed Monday through Friday from 7AM-8PM, Saturday, 9AM-5PM, Sunday Noon to 5PM.
11. No heavy bodywork is allowed on the premises.

Herb Chambers (BMW)  
122-130 Boston Post Road  
07-23,24,25,26

12. No fuel storage is allowed on the premises.
13. All car repair and car service work shall be performed inside the buildings on the premises. There shall be no exterior storage of car parts or equipment. Car washing will occur only within the car washing structure described in the application materials, and car washing residues will be captured and held in a tight tank and shipped off site for disposal.
14. There will be no outdoor public address system allowed on the premises.
15. All deliveries of automobiles on car carriers must come from the west along Route 20/Boston Post Road and such car carriers while in Sudbury are limited to travel only on Nobscot Road, Boston Post Road, Landham Road and the frontage along Old County Road.
16. At no time will cars be allowed to park or load on Old County Road.
17. On-site deliveries by car carriers are limited to the hours of 9:30AM-3:30PM.
18. All signs on the property will either comply with the Sign Provision in the Bylaw or will require approval by the Board of Appeals.
19. No flags, banners, spinners, pennants or other such display banners shall be displayed on the premises without first obtaining the required approvals.
20. The Applicant will not be allowed to develop any outlet for vehicle access from the property directly onto Goodmans Hill Road.
21. The Applicant will advise all employees that no vehicle test drives will be allowed on Goodmans Hill Road.
22. The Applicant will be required to retain an independent wetlands specialist throughout the construction process to monitor activities near the wetlands. The specialist will

maintain flags that show the buffer area, and will conduct periodic inspections to insure compliance with the Order of Conditions. Following completion of the work, the wetlands specialist shall submit a report to the Conservation Commission and to the Board of Appeals. This permit is non-transferable and will expire in two (2) years on March 27, 2009, and the Board will consider renewal upon receipt of proper application on or before that date.

23. This Special Permit shall take effect only if, as and when the business is acquired by the Applicant.

Herb Chambers (BMW)  
122-130 Boston Post Road  
07-23,24,25,26

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

REASONS: This petition is being requested for the sole purpose of transferring the identity of the permit holder to a new entity. Since the existing permits (06-23,24,25,26) are non-transferable, this requires the new entity to apply for a new permit. The Applicant has agreed to abide by the terms of Special Permit Decision Nos. 06-23,24,25,26. In addition, the Board has imposed additional conditions to safeguard the interests of the town and residents.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

Jeglinski  
28 Beechwood Avenue  
07-27

MINUTES OF THE PUBLIC HEARING  
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Mr. Klofft, 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 Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

John Jeglinski was present to represent a petition for Special Permit to construct a 6X27 foot farmers porch which will result in a front yard setback deficiency of 10'4" at 28 Beechwood Avenue which is a nonconforming lot.

The Board reviewed the proposed sketch submitted with the application. With a proposed setback of approximately 30 feet, all members were in agreement that a porch would significantly enhance the appearance of the house.

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

The following motion was placed and seconded:

MOTION: "To grant John & Brenda Jeglinski, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing a 6X27 foot farmers porch, which will result in a front yard setback deficiency of 10'4" ±, property located at 28 Beechwood Avenue, Residential Zone A-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 of await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

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, which will increase the current front yard setback deficiency by approximately 6 feet, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Rather, the Board finds that the addition of the farmers porch will not only enhance the existing structure but will be an added enhancement to the neighborhood as well. The Board notes that no abutters were present to object to this petition.

Jeglinski  
28 Beechwood Avenue  
07-27

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

Jeglinski  
28 Beechwood Avenue  
07-28

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John Jeglinski was present to represent a petition for Special Permit to legalize an alteration of a nonconforming structure having a side yard deficiency of 0.4 feet ± at 28 Beechwood Avenue.

Mr. Jeglinski explained that when he constructed an earlier addition, the plans showed that addition meeting up with the existing garage. However, when a survey was done for the planned porch addition (Case 07-27 previously heard this evening), that plan indicated that the addition encroached upon the side yard setback by 0.4 feet. Hence, this application is submitted to legalize that encroachment.

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

The following motion was placed and seconded:

MOTION: "To grant John & Brenda Jeglinski, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to legalize an alteration of a nonconforming structure having a side yard setback deficiency of 0.4 feet  $\pm$ , property located at 28 Beechwood Avenue, Residential Zone A-1."

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

REASONS: The petitioner requires a special permit to legalize an encroachment of an existing structure on a non-conforming lot. The encroachment was unintentional and the result of an error on the plan. The Board finds the encroachment to be minimal and one that will have no impact on the immediate abutter.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

Hogan  
49 Blueberry Hill Lane  
07-29

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
MARCH 27, 2007

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, 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 Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Paul Hogan was present to represent a petition for Special Permit to demolish an existing residence and to construct a larger, new residence on a nonconforming lot at 49 Blueberry Hill Lane. Mr. Hogan explained that it is proposed to construct the new house behind the existing house which would be demolished following completion of the new house. The new location will comply with all zoning setback requirements.

The Board reviewed the design plans and plot plan. They felt the design will be compatible with the neighborhood and the location consistent with the Board's Guidelines for Demolition and Reconstruction.

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

The following motion was placed and seconded:

MOTION: "To grant Paul & Christine Hogan, owners of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,854 s.f., which will exceed the area of the original nonconforming structure, said residence to conform to all setback requirements and to be constructed in the location as shown on the plan prepared by Sullivan, Connors & Associates, Sudbury, MA dated February 23, 2007, which is incorporated and made part of this decision, property located at 49 Blueberry Hill Lane, 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. The new dwelling will be completed within twelve (12) months from issuance of a

Hogan  
49 Blueberry Hill Lane  
07-29

Building Permit, and the old structure will be demolished within six (6) weeks from the issuance of a Certificate of Occupancy for the new residence.”

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 reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed house design will be compatible with the neighborhood and the location consistent with the Board’s Guidelines for Demolitions and Reconstructions. The Board notes that no abutters were present to object to this petition.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

Epstein  
545 Concord Road  
07-30

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
MARCH 27, 2007

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, 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 Land 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 Stephen Grande was present, representing the petitioners Arnold and Dawn Epstein, also present, in a petition to demolish an existing residence and to construct a larger, new residence on a nonconforming lot at 545 Concord Road. The new residence will replace the existing house which is in disrepair and will comply with all setback requirements.

Mr. Grande oriented the Board to the location of the existing house. He said he was previously before the Board with a similar proposal for the house at the top of the hill.

The Board reviewed the plans submitted with the application. Although the house derives its frontage from Concord Road, access will be via a private driveway. The house itself will be set back some 90+ feet from Concord Road.

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

The following motion was placed and seconded:

MOTION: "To grant Arnold & Dawn Epstein, owners of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,576 s.f., which will exceed the area of the original nonconforming structure, said residence to conform to all setback requirements and to be constructed in the location as shown on the plan prepared by Sullivan, Connors & Associates, Sudbury, MA dated August 23, 2006, which is incorporated and made part of this decision, property located at 545 Concord Road, Residential Zone C-2, 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.
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 reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed house will conform to all setback requirements. It will be appropriate in design and scale and is located

Epstein  
545 Concord Road  
07-30

so as not to be visible from the frontage road. The Board notes that no abutters were present to oppose this petition.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

Arkoff  
4 Louis Avenue  
07-31

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
MARCH 27, 2007

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, 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 Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Case 07-31 was submitted by Harold Arkoff for demolition and reconstruction at 4 Louis Avenue.

The record contains an email dated March 23, 2007 from the owners of the property, Daniel and Susan Sutherland, who state that they are the owners of this property and that Mr. Arkoff has no claims to the property at this time.

Ms. Sutherland was also present this evening to reaffirm that Mr. Arkoff has no standing with regard to this application.

The ZBA Secretary reported that during a telephone conversation with Mr. Arkoff this date, Mr. Arkoff indicated that he understands the situation and the fact that his application has no standing.

The hearing was closed and the following motion was placed and seconded:

MOTION: "To take no action on Case 07-31 as a result of evidence and testimony having been presented which demonstrates that the applicant (Arkoff) has no standing in this matter."

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

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

Bott  
7 South Meadow Drive  
07-32

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
MARCH 27, 2007

The Board consisted of:

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

Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, Chairman, explained that this case involves an appeal under M.G.L., Chapter 40A, Section 15 in which the petitioner is appealing a Determination of the Building Inspector that Special Permit 05-33 for an Accessory Dwelling Unit requires an amendment to include the addition of the garage and driveway. The property is located at 7 South Meadow Drive.

A vote of four of the five Board members is required in order to overturn this Determination. Anyone present who wishes to receive a copy of the Decision should leave their name and address with the Secretary.

Building Inspector James Kelly said it came to his attention in October 2006, when he wrote a letter to Ms. Bott, that some construction had taken place which included a driveway and a garage under the house. Subsequently he reviewed the special permit and minutes for the accessory dwelling unit, Mr. Kelly said it seemed to him that the applicant represented that there would be no garage built. After reading the minutes of the information that was presented to the Board with the elevations of the house and the construction that took place, it was Mr. Kelly's opinion that the special permit needs to be reviewed by the ZBA.

Mr. Kelly noted that while this may not necessarily be a per se violation of the Bylaw, he felt that the change and the way it took place should go through the process of review because the application, when it was submitted for the accessory dwelling, represented something other than what has been constructed.

As a result Mr. Kelly said his direction to the owner was to file for a modification of the special permit. He said Ms. Bott doesn't feel this is necessary. Therefore, the question is whether the direction to Ms. Bott to apply for a modification is appropriate.

Mr. Richmond asked whether there is a building permit that is currently pending.

Mr. Kelly said there is, and that it has not been released.

The Board reviewed the letter dated February 8, 2007 which was sent by Mr. Kelly which is the basis for the appeal by Ms. Bott.

Ms. Bott said by right, residents of Sudbury can construct multiple driveways and multiple garages on their property and the bylaws do not qualify that right with reference to a special permit. Similarly, she said the Bylaws pertaining to a special permit are very specific about what rights are given up as a resident by obtaining a special permit – and those do not include the right to construct a secondary driveway or secondary garage.

Ms. Bott said this construction was not something that was planned from the beginning. She said if it had been she would have mentioned it at the time of the original application. She said although the plans didn't go as anticipated, they in no way altered the dwelling unit that her mother occupies. An addition was constructed in 2005 – a portion of which contains her

apartment. That apartment is identical to what was submitted to the Board in their plans. The space in the basement that now contains a secondary garage was originally proposed to be finished space. She said the use of that is now different, but it in no way altered anything pertaining to her mother's dwelling unit.

Ms. Bott said she obtained a permit for the driveway but admitted she didn't obtain a permit for the garage. She felt that if a permit had been obtained, she wouldn't be here tonight. She felt that this wasn't a Zoning Board issue because nothing was done to alter the dwelling that her mother occupies and it meets all of the requirements of the Bylaws. If one were to drive by her house what they would see is a very large house. There is no exterior entrance from the front of the house into her mother's dwelling unit. Her entrance is through the back yard. She has no mailbox – she meets the square footage requirements – it really just looks like a very large house with two driveways. She said any other house in town could look the same way even if it didn't have an accessory dwelling unit in it – it would just have a secondary driveway.

Ms. Bott said she didn't understand why she was in front of the Board when no one else in town needs to be here to construct the same thing.

Mr. Klofft said he wasn't sure he followed the reasoning behind the statement that if a building permit had been applied for, Ms. Bott wouldn't be here this evening.

Ms. Bott replied that she felt that if she had applied for a building permit before constructing the garage, she wouldn't be here. She said construction took place in two stages. The accessory dwelling unit was completed in December 2005 and the Building Inspector did a walk-through for occupancy. The construction of the garage and driveway took place in the summer of 2006. Ms. Bott said it was not something they had planned and said it was "stupidity" not to obtain a permit for the garage and "stupidity" in taking on so much. She said it wasn't her intent to violate the process by not obtaining a building permit.

Ms. Bott added that before she even went through the process, she finished a portion of her basement and applied for a permit. She said she didn't hide the construction. She reiterated that she didn't understand why she was in front of the ZBA for this issue.

Mr. Richmond asked Mr. Kelly whether he considered the additional garage part of the accessory structure.

Mr. Kelly said it's used by Ms. Bott's mother. He submitted photographs of the house and garage for the record.

In response to further questions from Mr. Richmond, Ms. Bott said it is not a 2-car garage. Access to that garage is indirect to both the original house and her mother's apartment.

Mr. Klofft asked if the retaining wall was there before the driveway in was constructed.

Ms. Bott said it was not. She said there was supposed to be a retaining wall. What was intended was that there be two doors coming out of the basement and there was going to be a retaining wall coming out – and in a portion of the basement there was going to be a mud room and laundry room. Both she and her husband were going to install an in ground pool but they hit a lot of ledge and it just economically wasn't feasible to contemplate a swimming pool. They couldn't have two doors, so when construction was finished at the end of 2005, there was no retaining wall – there was just a large patio door. They needed a patio door of some kind for that walkout. When they did the driveway they actually built the retaining wall.

Ms. Taylor said it appears that the need for the garage arose out of the fact that there is an accessory dwelling occupied by Ms. Bott's mother and that this garage relates very directly to the accessory dwelling. Even if it wasn't contemplated it at the time that the application was made for the accessory dwelling, Ms. Taylor felt it is so entwined with it that it should have been an application for an amendment to that special permit.

Ms. Bott said there's nothing in the bylaws for a special permit that says she couldn't construct a secondary garage or driveway.

Mr. Richmond said the bylaw references the amount of floor area allowed.

Ms. Bott said she hasn't increased the floor area of the accessory dwelling because the apartment is located on the first floor and occupies the identical space that it occupied. It doesn't have direct access to that garage space. When originally before the Board to apply for the permit, she said she pointed out that that same exact space that is now a garage that was intended to be developed for use by the main house.

Mr. Richmond said that it appeared the space is being used by the accessory dwelling.

Ms. Bott said it was always intended to be finished space. The same exact space was always intended to be finished – and her mother was always going to have access to it.

Mr. Klofft said part of the rationale behind the accessory dwelling special permit is to make sure that there isn't a sort of subtle conversion to multi-family, whether that's intended or not, and to insure that the property doesn't begin to look like a multi family property. He said under other circumstances Ms. Bott might be able to put in a second driveway and a second set of garages, albeit it might be atypical. However, he felt this situation to be different because the garage is directly related to the accessory dwelling.

Ms. Bott disagreed.

Considerable discussion followed on allowed construction for a single family home as opposed to one which has an accessory dwelling unit. Mr. Richmond said what exists today is not what was represented to the Board as to what applied to the accessory dwelling. He said when Ms. Bott created the garage, she created something in addition to what she originally applied for.

Ms. Bott said was her understanding that a garage isn't considered finished space. She also said the garage is not solely accessible by the accessory dwelling – it is equally accessible to her house. The garage door that now exists is the only way that any resident of that house can get out of the basement.

Mr. Richmond asked who parks their car in the new garage.

Ms. Bott said her mother does.

Mr. Richmond asked how then could it not be integral to the accessory dwelling unit.

Mr. Kelly interjected that the Board, for the purpose of this appeal, is not saying to Ms. Bott that she cannot have what she wants, although it could possibly end up there during another process. He said it was his opinion that because something other than what was applied for was ultimately constructed for the accessory dwelling unit, a modification to that special permit is needed in order to be allowed to construct what she wants to do. He said if that were not the case, when he receives elevations for construction allowed by special permit, could those homeowners then be allowed to construct something dramatically different. Mr. Kelly felt the intent of the Accessory Dwelling Bylaw is to control in-law apartments. To not require a modification which depicts that which would ultimately be constructed would defeat the purpose of the bylaw.

Marjorie Wallace – 148 Nobscot Road said she came to the original hearing for the accessory dwelling because she was curious as to why Ms. Bott was adding 1200 s.f. She said she specifically asked about a second driveway and was assured that there was no second driveway – that Ms. Bott's mother would park over on the Nobscot Road side and cut through the house. She said she had no objection to that plan.

Ms. Wallace said when she saw the wall, the driveway and the garage she said she spoke with the Planning Director who said an accessory dwelling is supposed to be for children coming back home to live, in-laws, whatever, and it's not supposed to be evident that it's an apartment. Ms. Wallace felt this looks like an apartment.

Ms. Wallace felt that if the Board allows this, they would be setting a very bad precedent. She said she had a real issue with the thinking that it's okay for someone to come in and do

whatever they want. She felt strongly about asking for something and then changing it without going through the process.

There were no further questions or comments. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To overturn the Determination of the Building Inspector that Special Permit 05-33 requires an amendment to include the addition of the garage and driveway, property located at 7 South Meadow Drive, Residential Zone A-1."

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

REASONS: The Board finds that Special Permit Decision 05-33 was not constructed in accordance with the application originally presented. While the Board believes the intent of the Accessory Dwelling Bylaw is to provide suitable housing for family members or persons of low income, the requirement for a Special Permit to allow such accessory use is a mechanism to provide control over the design of these units in order that the appearance of the home does not change to resemble multi-family houses.

When application is made, and granted, for an accessory dwelling unit, at the time of the public hearing the Board relies on the application submitted as well as renderings and testimony presented by the applicant, and makes its decision based on that information. To substantially change what was originally allowed without benefit of a modification to the special permit would set a precedent which could ultimately have the result of construction occurring which in no way resembles that for which the permit was granted.

In upholding the Determination of the Building Inspector, the Board notes that this decision is merely a procedural decision. It is not a denial, but rather the requirement for the homeowner to apply to the Board for a modification of the special permit previously granted.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Stephen M. Richmond

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Nancy G. Rubenstein

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
MARCH 27, 2007

The Board consisted of:

Jeffrey P. Klofft, Chairman  
Elizabeth A. Taylor, Clerk  
Jonathan G. Gossels  
Nancy G. Rubenstein  
Stephen A. Garanin, Associate

Notice was published in the Sudbury Town Crier on March 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, 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 Land 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 Adam Braillard was present representing Omnipoint Communications (T-Mobile) in a petition for a Variance to allow a wireless communications facility to be located within 500 feet of a residential lot line. Also present was Rakesh Goel, RF Engineer. The property is located at 712 Boston Post Road in Business District #6.

Mr. Braillard said T-Mobile has performed a radio frequency report studying the town and specifically from this property and has determined that there is a significant gap in coverage and that this site will adequately cover that gap.

Mr. Braillard submitted copies of photo simulations for the record. He said the proposal is to install 3 panel antennas within 2 faux vent pipes on the rooftop of the building. The vent pipes are not allowed to exceed 10 feet above the height of the building; therefore, the vent pipes will measure 10 feet, or not greater than 10 feet above the roof of the building. They will be finished in a design and color that will match the color and texture of the building. Coaxial cable from the vent pipes will run along the roof deck to the east side of the building where it will run down that side of the building within a cable tray. That cable tray will also be painted to match the color and texture of existing building. The coaxial cable will run from the bottom of the building inside the basement to a base transceiver system and battery backup system.

The only visible portion of the installation will be the two vent pipes which will conceal the 3-panel antennas and the coaxial cable and cable tray that will be running down the east face of the building.

Mr. Braillard asked Mr. Goel to explain the radio frequency propagation maps that were submitted with the application package. Mr. Goel displayed two exhibits – one shows the

existing coverage in the Town of Sudbury and the other is the proposed coverage from this site. He said the applicants have been in front of the Board a number of times before with a different plan. He said there is a coverage gap and pointed out those gaps on Route 20. He said a test drive was done and, based on that drive test, it was found that this site would cover the gap in this area.

Mr. Goel added that there are approximately 25,000 vehicles traveling along Route 20. He did a monthly report on the number of 911 calls on existing sites in Sudbury and noted that there was a tremendous increase in numbers of those calls in December & January.

Mr. Gossels said at the hearing for T-Mobile's previous application, there was discussion about a combination of this site, or a site somewhere in this general area, and then the Wayside Inn. He asked if that is going forward.

Mr. Braillard said they are moving forward with that application and are waiting to get standing from the property owner.

Mr. Gossels asked whether the combination of the coverage from this site and the Martha Mary chapel would provide coverage all the way into Marlboro.

Mr. Braillard said it would. He said if T-Mobile gets this site and the Martha Mary chapel, at this point there are no plans to install any other facilities in this area along Route 20.

With regard to the criteria for granting a variance, Mr. Braillard said this property is unique because of the structure that is currently there and its proximity to where coverage is needed for T-Mobile. The property contains an existing structure – a building that is approximately 26 feet tall. It is a structure that is larger than a majority of existing structures in the area. The structure falls in an area that if a variance is granted, T-Mobile would be able to cover the gap at the height proposed.

With regard to hardship, Mr. Braillard said T-Mobile is licensed by the FCC to provide reliable service coverage to its customers. In this area there is not reliable service. If coverage was not able to be provided in this area, there is a chance that T-Mobile would lose customers to other carriers. He said the intent and purpose of the Telecommunications Act is to promote competition, which is where the hardship lies.

The system is designed in a way that T-Mobile feels there would be no substantial detriment. It is a completely concealed wireless facility. The radio equipment is going to be installed in the basement. It is designed to be camouflaged or concealed. There is existing tree coverage on three sides of the property. Mr. Braillard said when photo simulations were performed, the only visuals were from the front of the property on Boston Post Road.

For the benefit of the audience, Mr. Braillard pointed out that under the Telecommunications Act as long as the applicant conforms to the safety requirements of the FCC, local jurisdictions are not allowed to deny an application citing those concerns. He said T-Mobile complies with those regulations which also ties in to the substantial derogation portion of the criteria.

Mr. Braillard said this application conforms to all parts of the bylaw except for the requirement that it be located 500 feet from a residential lot line. He said it is within the overlay district – completely concealed – it's on an existing structure – it doesn't exceed the allowed height.

Mr. Gossels noted that since the members of the audience may not have attended the earlier hearings on another application (Case 06-36, 578 Boston Post Road), he felt it would be appropriate to give a little history of how we got to this point.

Mr. Klofft said there is actually another case pending which was continued earlier this evening without testimony, and it has been going on for several months. The initial request from T-Mobile that came before the Board was to install a 100-foot monopole on the Bartlett nursery property. The Board, working with the applicant, and with a radio frequency consultant that was hired by the Selectmen, essentially said two things (1) that there was in fact a coverage gap need here, but (2) that the monopole was perhaps not the best answer because it actually was further east and didn't give a lot of the coverage because of the topography. The consultant suggested there were other areas within the overlay district that would better suit T-Mobile's coverage needs without necessarily having to deal with the associated issues of having a 100-foot flagpole parked behind Bartlett nursery. So, the Board encouraged the applicant to work with their radio frequency engineers to find an alternative location and then to submit a secondary application. That is what they've done.

Mr. Klofft said there are a number of these cell towers, either by existing poles or isolated hidden systems. He gave as examples the facility at Feeley Field on Raymond Road which is a tower that's actually built into the light systems, and the facility on North Road. He said it has been the desire of the Selectmen and other Boards in town to find these alternative locations that shield the visibility of these antennas. The 500-foot setback is designed to protect the visual and safety aspect of a 100-foot pole.

Mr. Gossels said he was impressed with this application. He said T-Mobile has done what the Board asked them to do.

Cheryl Boland, 11 Washington Drive, abutter, asked whether any of the poles are within 500 feet of a residential zone.

Mr. Klofft said there were. They are:

- Omnipoint – 29 Hudson Road – variance from 500 ft./residential and 1,000 ft. from school building
- Sprint – North Road (Melone property) – variance from 500 ft./residential and 1,000 ft. from school building
- Martha Mary Chapel – variance from 500 ft./residential
- Omnipoint – 163 Boston Post Road – variance from 500 ft./residential

Karen Jacob, 19 Washington Drive, abutter said she was under the impression that bylaws exist to protect the residents. She said those residents are here tonight and she said “we don’t care if we don’t get cell coverage.” She understood that this antenna would add about a 30-second coverage. She was not sure what the situations were in terms of allowing variances for the sites previously mentioned but felt there are a number of bylaws to protect residents and they would really need to be overlooked to allow this.

Mr. Klofft said the 500-foot requirement was primarily intended for the larger poles. He said a 100-foot pole is larger than most of the trees. It is much more visible, and has the potential, however remote of toppling over or, as was the case at North Road, with panels falling off. He said the point of whether or not the residents would want or use this coverage is not the purview of this Board. There are federal laws which say that the FCC wants there to be competition among the various cell providers because that drives down cost and cost to consumers. Those laws do not allow local boards to restrict these facilities based upon certain arguments.

Ms. Jacobs asked about wetlands. She said there are wetlands in that area and felt there are wetland concerns with regard to cell towers.

Mr. Klofft did not feel wetlands to be a relevant issue for this case.

Jonas McCray, 76 Washington Drive, resident, had two questions (1) the market share of T-Mobile to provide coverage in this area, and (2) whether it was contemplated to add a second carrier on this site.

Mr. Braillard said he did not have the information on market share. As to adding a second site onto this installation, he said technically it is not possible. However, he was not sure if another installation could be added to another portion of the building.

Mr. Klofft asked whether Mr. Braillard would have a problem with a condition restricting the addition of a secondary carrier to T-Mobile’s installation.

Mr. Braillard said he would not have a problem.

John Brockman, 12 Revolutionary Road, resident, had several questions with regard to frequency, height and the installation itself, which were answered by Mr. Braillard. Mr. Brockman pointed out that several carriers hand off calls to other carriers and that there is the Nobscot site. He asked whether T-Mobile could do this as well.

Mr. Braillard said T-Mobile is already on the Nobscot site.

In answer to Mr. Brockman's question as to why then would T-Mobile need this site (712 BPR), Mr. Klofft explained that coverage gaps were identified and confirmed by the independent consultant that was hired. What the consultant said was that the terrain at Nobscot undulates and creates shadows. The consultant also said the Nobscot hill also creates another gap basically at the Martha Mary chapel, which is why T-Mobile pursuing that as well. There already is a carrier at the chapel but there is capacity to add a second carrier. As was stated earlier by Mr. Braillard, it is T-Mobile's intention to try to get that too to close the rest of the gap.

Discussion followed on the number of carriers on Nobscot hill and the appearance of this proposed antenna.

Mr. Gossels said the intent is to encourage these stealth sites – and not have 100-foot poles throughout the residentially zoned areas of town.

Mr. Brockman noted it interesting that right down the road the Board did not grant a 100-foot pole on an industrial site but wants to put a 10-foot pole on an existing roofline that backs up to a residential district.

Mr. Klofft said there are other circumstances. (it was pointed out later at this hearing that the Bartlett property is zoned residential) A 100-foot pole would be in plain sight from both Route 20 and from Horse Pond Road and would provide less coverage than from this proposed site. In addition, there was a great deal of overlap with the 100-foot pole and Mr. Klofft said he personally felt T-Mobile would be back looking for another site.

Mr. Brockman said it's less expensive to put up a 10-foot stack than to put up a 100-foot monopole.

Mr. Klofft pointed out that this site was not T-Mobile's first choice. He said this Board, the Selectmen and the town's RF consultant recommended that they look for another alternative.

Mr. Brockman still felt T-Mobile could have handed it off to another carrier, for example even to Verizon in the Martha Mary chapel.

Mr. Gossels said to deal with those issues the Selectmen hired an expert consultant to provide advice and ultimately this consultant found that there are true coverage gaps and that these are valid places to put these antennas.

Mr. Brockman said while he understood, he said his neighborhood really is saying that this building wasn't intended to support this kind of an infrastructure. He said there are all those lines already running down Route 20 and now the Board wants to add some additional wireless with a frequency and radiating power in his neighborhood, and they are very concerned.

Anthony Lemmo, 3 Washington Drive, abutter asked for an explanation of a coverage gap.

Mr. Braillard said reliable coverage gap or lack of reliable service means that a subscriber or user on the phone – a T-Mobile customer cannot reliably make or hold a call.

Mr. Lemmo said he has had T-Mobile service for a year and has never had a dropped call. He questioned that definition.

Mr. Gossels said this was why an independent consultant was brought in. He said the Board was skeptical of what was being presented by T-Mobile because under the Telecommunications Act there is very little that a Board or the town can do to stand in the way of a coverage gap. Therefore an independent consultant was hired. He said this Board's expectation was that the consultant was going to come back and say there's no coverage gap. That's not what happened.

Michael Hullinger, 55 Washington Drive, resident, asked if T-Mobile has ever explained why they couldn't co-locate where other services may be.

Mr. Braillard said the only the existing cell sites along Route 20 are in between this application, the proposed Bartlett application, the Martha Mary chapel, and Feeley Park. He said T-Mobile is already located at Feeley Park.

Mr. Hullinger questioned whether there was a lack of reliable coverage because he gets coverage.

Mr. Gossels said there was an earlier application that this Board was fundamentally against and turned it down. It used the same analytical technique – the Board drove around and said there's no coverage gap. That case was lost in court and the tower went up. Having a lay person driving around with a cell phone will not hold up in court.

Mr. Hullinger asked if there is a copy of the consultant's report.

Mr. Klofft said it is part of the testimony contained in the minutes of the various hearings of the previous case which is part of the public record.

Mr. Hullinger felt the protections afforded in the Bylaws have been violated. He asked for the reasoning behind the Board's granting previous variances for cell sites.

Mr. Klofft said they would be in the minutes of each case and are part of the public record.

Mr. Hullinger asked what rights T-Mobile would have if allowed to operate on this site.

Mr. Klofft replied that they would have the right to do what they requested - to build two faux stacks with antennas in them, and they would need to be set up and maintained as they have described. They do need a variance for the 500 feet from a residential lot line.

In response to a further question, Mr. Klofft said T-Mobile would not have as-of-right status if granted a variance. It would have the right to operate under a variance.

Mr. Braillard added that if this Board grants approval, T-Mobile will have to go before the Selectmen for Site Plan review.

James Boland, 11 Washington Drive, abutter said with this application it seems T-Mobile has moved slightly westward. However, it is also replicating some coverage that it already has well to the east. He said he could not see any reason for the Board granting what may be a quarter mile of additional coverage when T-Mobile was taking advantage of the bylaw from the point that it is within 500 feet of a residential zone. He felt there has to be a reason for the setbacks from residential and school – he said someone had concerns about some health issues.

Mr. Braillard said there have been no conclusive studies as to whether or not these towers are harmful or not. He said T-Mobile not only complies with the FCC regulations but falls well below the FCC safety regulations. They also comply with OSHA standards.

Ms. Jacob felt that because the health issues are inconclusive and with the number of children and the closeness of the cell tower, this is a big issue to have to contend with.

Bryan Semple, 15 Revere Road, resident asked why the Board did not want the pole located at the Bartlett nursery. He asked whether there was neighbor opposition.

Mr. Klofft said there was no neighborhood objection to that particular pole. However, the greater concern was that when a variance is granted, it begins to create precedent. He said none of the towers to date have been placed in residential districts. They've all been placed in the overlay district which is in business and/or other areas. It was felt that to put one in a

residential area would set the town on a course that would be more difficult to redirect in the future.

Ms. Taylor said the issue is the actual pole and the lot that they wanted to place it on, which is zoned residential. She said the proposed lot for this application is commercial and it's within the overlay district set out in the bylaws – which is why this was deemed a preferable location.

Mr. Klofft explained the intent behind the creation of the overlay district which was to create a wireless overlay district where the Selectmen wanted to encourage the various carriers to put their poles in this district which is mainly in the limited industrial and business districts in town so that there weren't poles going up in lots in back yards.

Margaret Knaul, 66 Washington Drive, resident said the issue of wetlands was mentioned earlier. Ms. Boland said there's a federal law that says a cell tower on wetlands cannot be constructed on wetlands.

Mr. Gossels said this would not be applicable since the antenna would be mounted on an existing building.

Mr. Jacob said he had a report on cell towers on property that shows a drop of 10-20% drop in property values where there are cell towers, and this is of concern.

Mr. Gossels said this is why the town has been trying to push for stealth type towers as opposed to monopoles. He said stealth towers are really not able to be seen, but monopoles are obvious.

Further discussion followed on the previous issues brought up by the neighbors who were not satisfied with the process and felt T-Mobile had not demonstrated a need for this service nor had they satisfied the neighbors that a variance from the 500-foot residential lot line setback should be granted. They took issue with the process noting that they were the ones defending themselves rather than the applicant who should be proving his case.

Mr. Klofft said this Board is charged with protecting the interests of the entire town. He said there are pluses and minuses to whatever gets done. There isn't always a specific answer and it's very difficult to try to determine where the best answer is amongst a varying degree of options. He said if the responses by the Board appeared to put the neighbors on the defensive, he apologized. He said that is not the intent. He said the Board is trying to determine the best answer for the town in this particular issue.

There was no further input. The hearing was closed.

Omnipoint  
712 Boston Post Road  
07-33

The following motion was placed and seconded:

MOTION: “To grant Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc., applicant, Martel Business Realty Trust, owner of property, a Variance from the provisions of Section 4363 of the Zoning bylaws to allow a wireless communications facility to be located within 500 feet of a residential lot line, property located at 712 Boston Post Road, Business District #6, subject to the following:

1. This permit is non transferable. It is granted for the sole use of the applicant and may not be used by any other carrier.
2. Co-location or add-on antennas by a secondary carrier will not be allowed on this installation.

3. The vent pipes and all exterior cabling shall be designed and painted in a color and texture to match the exterior of the building.
4. There will be no back-up generator facility beyond that which is proposed in the application.
5. The applicant shall conduct periodic maintenance and safety inspections as proposed in the application. In addition, every two years, a report of same will be forwarded to the Building Inspector with a copy to the Board of Appeals.

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

REASONS: The petitioner requires a variance to locate a component of a wireless service facility to be located within 500 feet of a residential lot line. The Board finds that the petitioner has satisfied the criteria for granting a variance. Specifically, there are conditions affecting the structure but not generally affecting the underlying zoning district in that the Bylaw allows wireless facilities to be located on existing rooftops in all districts. This property is located in a business zone. Although it is located within 500-feet of a residential lot line, the Board finds that the proposed stealth rooftop mounted facility will pose no danger to the residential zone because of its height nor will it cause a visual nuisance as it is proposed to be camouflaged within a vent pipe on a building which is surrounded by trees on three sides.

The Board finds that a hardship has been demonstrated if the provisions of the Bylaw were to be literally enforced due to the size and configuration of the lot as it relates to the residential district, and this would prevent the petitioner from being able to fill in a coverage gap and serve its existing and future customers. The Board notes that this proposal is an alternative to one where the applicant previously applied for a variance for a 100-foot monopole located within a residential zone where that installation would have been more visible and intrusive.

The Board finds that there will be no substantial detriment to the public good if the variance is granted. The installation will comply with FCC regulations and OSHA standards. As previously stated, the installation will be camouflaged in design and color so as not to be intrusive to the abutting residential zone.

For the above reasons, it is the opinion of the Board that the granting of this variance will not nullify or substantially derogate from the intent and purpose of the Bylaw.

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Jeffrey P. Klofft, Chairman

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Elizabeth A. Taylor, Clerk

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Jonathan G. Gossels

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Nancy G. Rubenstein

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Stephen A. Garanin, Associate



