

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

The Board consisted of:

Stephen M. Richmond, Chairman  
Jeffrey P. Klofft, Clerk  
Jonathan G. Gossels  
Richard D. Vetstein, Associate  
Jonas D.L. McCray, Associate

The hearing was reconvened by the Chairman Mr. Richmond

This hearing is a continuation of the initial hearing begun August 22, 2006 in which the applicant was requesting a special permit to allow construction of a 14-foot wide driveway through land located within the Floodplain Overlay District.

At that time, the proposal was for the applicants to live in the front structure while a house at the rear of the property was being constructed, after which they would move to the rear structure and the second residence would become a farm manager's office and barn which, Roy Cramer, Attorney for the applicants said, was allowed under an agricultural exemption.

The Board expressed concern for two houses existing on a lot when there was no agricultural exemption in place. Subsequently, after discussion, the hearing was continued to October 11, 2006 to allow for resolution of whether a second structure is allowed. The hearings were further continued, at the request of the applicant, with no testimony taken on October 11, 2006 January 23, 2007, February 27, 2007, until this evening, March 27, 2007.

Attorney Roy Cramer was present, representing the Dillons. He explained that the Dillons have revised their proposal so that the house which was originally proposed to be constructed in the rear will be replaced with a 40X40 foot barn to be used as a farm office with a 2-bedroom apartment above to be used by the farm manager.

The Board was in receipt of the following documents:

- Letter dated February 22, 2007 from Attorney Francis A. DiLuna with copies of the Farm Plan for this property, including a forest management plan for a portion of the property and construction plans for the proposed second structure, entitled Bent-Stone Farm: Proposed Out Building, dated 1.05.07.
- Letter dated February 23, 2007 from Town Counsel Paul Kenny which notes that a farm plan was presented at a meeting held on February 16, 2007, attended by Town Counsel,

Mr. Dillon and his counsel, and the Building Inspector. Following review of that plan, it was the opinion of both Town Counsel and the Building Inspector, that the proposed use is an agricultural use allowed under the Zoning bylaw which would allow for an apartment in the barn as an accessory use provided it is used solely and exclusively in support of the farming operation.

- Memo dated March 19, 2007 from Greg Topham, Conservation Commission Chairman which notes that the plan before the ZBA has significantly changed from that which was presented to the Conservation Commission last spring. The Commission questions if there is still a need to fill the floodplain if the original driveway location is being moved and that there may appear to be an alternative to floodplain filling. The Commission also questions a 6-bedroom septic system for that rear structure.
- Letter (via FAX) dated March 27, 2007 from Attorney Roy Cramer in response to the Conservation Commission's memo
- Email dated March 27, 2007 from Deborah Dineen, Conservation Coordinator, in response to Mr. Cramer's letter

Referring to Town Counsel's letter, Mr. Cramer gave an overview of that meeting which he felt resolved the issues relating to the status of the property with respect to agricultural use. He then presented the plan noting that the barn will not be in the flood plain and the roadway will remain the same. The work being requested within the floodplain is the same as for the original plan.

Mr. Klofft asked what type of septic system was proposed for the barn.

Mr. Cramer replied that they may build the same one because it is approved; however, he was not sure what size will be needed to accommodate the farm. He said they may downsize.

Mr. Richmond asked whether the plan that was submitted is what is intended to be built, because the Board may condition a Special Permit on certain details of what is proposed.

Mr. Cramer said it will be substantially as shown; however, they would like some slight discretion and would ask that any condition be worded so that it was substantially as shown in the application.

Mr. Richmond asked what was planned for storage of pesticides, herbicides and fertilizers.

Mr. DiLuna said the Dillons will be implementing integrated pest management practices – pesticides are only used when there is an outbreak. He said the amounts used will be less than average and will be kept in the barn in a dry place. There will be no outdoor storage.

Daniel & Sharon Dillon  
1011 Concord Road  
06-39

Mr. Gossels asked for comments on the Conservations Commission's memos.

Mr. Cramer felt the statements in the memos were incorrect as they are not within an area subject to Conservation Commission jurisdiction.

Mr. DiLuna added that the Order of Conditions approved by the Conservation Commission approves certain work within their jurisdiction. He said that is not being changed.

Peter Churchill – 999 Concord Road, abutter to the left, said the plans are not that detailed and his greatest concern has been the location of the driveway and where it may change. He said the plan was approved by the Conservation Commission with a statement from the Dillons that they would not cross his (Churchill's) land with their driveway. He wanted to understand what has been changed on the plan. He said there is a greenhouse and several retaining walls in that area. He wanted to know what would happen to them if the driveway is changed.

Mr. Crispin pointed out the greenhouses. He said they were not making any modifications within the jurisdiction of the Conservation Commission or ZBA.

In response to a suggestion from the applicant that the location of the road may change from what was shown on the plans submitted to the Board, Mr. Richmond said the Board will deliberate on a motion that locks in the plan that has been proposed. He said the Board has the original plan and he is now concerned that the applicant is proposing to build something different than what was proposed. Mr. Cramer suggested that the Board had jurisdiction only in the designated floodplain area. Mr. Richmond disagreed, and said that the bylaw stated the Board must look at the flood plain resource area and the impact on adjacent lands.

Mr. Cramer said they were not going to do anything that would affect that.

Mr. Richmond asked whether Mr. Cramer was suggesting that he could build a "six-lane superhighway". Reading from the Bylaw, he said this Board is charged "with protecting the community against the detrimental use and development of lands adjoining such water courses and to conserve the watershed areas of the Town."

Mr. Crispin pointed out an area in the front where it could be changed slightly. He added that the roadway on the application is 14-foot wide.

Mr. Klofft said while understanding that the applicant is only talking about changing a portion of the driveway, the Board is concerned with the entirety of the driveway. He said there is much more to this than just a 14-foot driveway.

Mr. Richmond said the Board is looking for assurances that what is being shown on all of the plans in the application is what is intended to be built.

Daniel & Sharon Dillon  
1011 Concord Road  
06-39

Mr. Cramer said he could not specify the exact location of the barn floor plan because it has not been sited. He did not feel it should be a concern to the Board if it's 1 or 2 feet back from the location shown on the plan.

As to the driveway, he said it will not encroach on the Churchill property and will comply with applicable town ordinances.

Mr. Richmond said there was a lot of detail provided with the initial application. He said now it appears the applicant isn't sure as to what is going to be there.

Mr. Cramer said what is proposed is exactly the same as what will be built for most of it.

Mr. Richmond said the Board needs to be comfortable with what is in front of it before voting. He said he has heard that the road is not going to substantially change from what is on the plan. However, the Permit, if granted, will be conditioned, and he wanted to be sure the applicant understands and will be comfortable with those conditions.

Discussion followed on the plan. Mr. Crispin pointed out an area where there is a use easement granted to the owner of the Dillon property and where a portion of the driveway layout might change.

Mr. Churchill said that the use easement by its terms prohibits the Dillons from impacting the maintenance and functionality of his septic system. He said the contemplation of the easement was for a lawn area – there was never any contemplation of a driveway.

Further discussion followed between Mr. Cramer and Mr. Churchill on what can or cannot be done on the use easement.

Mr. Vetstein felt this to be an issue which should be discussed between the two homeowners.

Mr. Klofft asked what it would take to get a set of plans which details what is going to be built.

At that point Mr. Cramer presented a plan which he said showed the most recent thinking (Plan B). He said everything is the same except that Plan B goes through the easement area and meets up with the driveway as shown on the previous plan. He said this would eliminate work in the buffer zone. He would be agreeable to have both plans referenced in the decision.

David Nielsen, 1021 Concord Road, said his main concern is not the farm but the development of the property. He felt this whole project for development as a farm was to escape zoning regulations. He could not understand why the applicants wouldn't state what they

Daniel & Sharon Dillon  
1011 Concord Road  
06-39

intended to do. He said there has been no dialog between the Dillons and the neighbors and questioned the intended infrastructure.

Mr. Klofft said Town Counsel has opined on the agricultural status.

Mr. Cramer distributed copies of Plan B.

Mr. Klofft said the Conservation Commission's memo mentioned a gravel road. He asked whether it was a road or a path.

From the map, Mr. Crispin pointed out that area where he said it starts out as gravel and then ends just outside the resource protection area.

Mr. Neilsen expressed dismay that Plan B was presented at this late hour of the process.

There was no further input. The hearing was closed.

After deliberation the following motion was placed:

MOTION: "To grant Daniel & Sharon Dillon, owners of property, a Special Permit under the provisions of Section 4165 of the Zoning Bylaws, to allow construction of a 14-foot wide driveway through land located within the Floodplain Overlay District, property located at 1011 Concord Road, Residential Zone A-1, subject to the following:

1. The road will be constructed as shown on plans submitted with the application prepared by BSC Group, Sheets 1 through 5 as listed in the Index of Drawings, or alternatively, as shown on the plan entitled Sewage Disposal System plan dated February 27, 2006 submitted at the hearing on March 27, 2007 which is hand-marked on the Board's copy as Plan B.
2. The road to be constructed will serve only one barn structure to the rear of the property to be built substantially in accordance with the plan titled Bent Stone Farm Proposed Out Building dated January 5, 2007.
3. The barn structure, including the office and apartment shown on the plan, will be used solely and exclusively for agricultural purposes.
4. No outdoor storage of pesticides, herbicides or fertilizers will be allowed.
5. No underground storage of fuel will be allowed.

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

Daniel & Sharon Dillor  
1011 Concord Road  
06-39

REASONS: The Board of Appeals is charged with insuring that any driveway constructed within the Flood Plain Overlay District will not endanger the health, safety and welfare of the public. The petitioner requires a special permit to perform work within the flood plain zone. The proposal is to construct a 14-foot wide driveway to the rear of the property to serve a barn which will be used for agricultural purposes.

Initially the driveway was proposed to serve two residential homes on a lot for which application was made for an agricultural exemption. The second residence has been eliminated and replaced by a barn to be dedicated to the agricultural use.

In approving this plan the Board has provided the applicant with two options for construction of the road, finding that either option will afford the necessary protection for that portion falling within the Flood Plain Overlay District.

In addition, recognizing that the driveway is proposed to be constructed to serve an agricultural use, and for no other purpose, it is the concern of this Board that this use not be expanded further than what is allowed, as such expansion of use would adversely impact that portion of the driveway located within the Flood Plain Overlay District. As a result, additional conditions have been imposed to insure this will not be the case.

---

Stephen M. Richmond, Chairman

---

Jeffrey P. Klofft, Clerk

---

Jonathan G. Gossels

---

Richard D. Vetstein, Associate

---

Jonas D.L. McCray, Associate

Omnipoint  
578 Boston Post Road  
06-36

MINUTES  
SUDBURY BOARD OF APPEALS  
TUESDAY, MARCH 27, 2007

The Board consisted of:

Jeffrey P. Klofft, Chairman  
Jonathan G. Gossels, Acting Clerk  
Elizabeth A. Taylor  
Jonas D.L. McCray, Associate

The meeting was convened by the Chairman, Mr. Klofft.

Continue Public Hearing – Case 06-36 – Omnipoint – 578 Boston Post Road

The Board was in receipt of a FAX dated March 26, 2007 from Adam Braillard, representing Omnipoint Communications, requesting that the Board continue Case 06-36 to May 15, 2007. The applicant has agreed to extend the time for final action to May 31, 2007.

A motion was made, seconded and unanimously voted to continue this hearing to May 15, 2007, 7:15PM at the Lower Town Hall.

There being no further business, the meeting was adjourned.

---

Jeffrey P. Klofft, Chairman

---

Jonathan G. Gossels, Acting Clerk

---

Elizabeth A. Taylor

---

Jonas D.L. McCray, Associate

