

CASE 07,23,24,25,26
(modification)
Herb Chambers BMW of Sudbury
130 Boston Post Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
NOVEMBER 17, 2008

The Board consisted of:
Jeffrey P. Klofft, Chairman
Elizabeth T. Quirk, Clerk
Jonathan G. Gossels
Stephen A. Garanin
Benjamin D. Stevenson, Associate

Notice was published in the Sudbury Town Crier on October 30 and November 6, 2008, posted, mailed and read at this hearing.

Attorney Joshua M. Fox was present on behalf of Herb Chambers for a request to amend the current special permits to permit fuel storage. Also present was Bruce Ey, Schofield Brothers of New England, Inc., and Luis Diaz, Commonwealth Tank

Mr. Fox explained Condition 12 of the Special Permit does not permit fuel storage. His recollection was that this condition was a carry over from the original Land Rover permits which were transferred to Herb Chambers. This is a larger dealership and is considered usual and customary for a dealership of this size.

It is proposed to install one 8,000 gallon double lined underground storage tank with a sensing device to detect any leakage. In addition a monitoring well will be installed down gradient and there will be a test done of that well once a year.

Mr. Fox said the Selectmen and the Fire Dept. are the licensing authorities. The Fire Chief has executed a license and the Selectmen have voted to approve the storage tank.

The reason the storage tank is needed is because new vehicles are delivered empty or with a negligible amount of gas. Based on estimated sales of 200-300 cars per month, this translates to 400-600 trips to local gas stations. In addition, certain higher level employees are entitled to fill their vehicles bringing a total estimated trip amount to local stations along Route 20 to 900-1000.

Mr. Klofft pointed out that the Selectmen's meeting minutes reflect 6,400 gallons vs. the 8,000 mentioned by Mr. Fox.

Mr. Fox explained that the 6,400 gallons is above the ground and includes approximately 900 gallons of fuel that is just sitting in the tanks. However, there are other inflammables that are not fuel, such as transmission fuel, used oil, etc.

Assuming the fuel will come in on similar fuel tanker trucks that go to other gas stations, Mr. Klofft asked whether there would be any issue with requiring them to follow the same route as the car carriers.

Mr. Fox felt it would be significantly easier for the tanker trucks to come in than car carriers.

Mr. Garanin said he has been involved with remediation for fuel tanks. He asked why underground storage is proposed when recommendations for state-of-the-art tanks are to avoid underground tanks.

Mr. Fox said his understanding was that this tank was state-of-the-art. However, he said there is no place to put it above ground on this property.

Mr. Garanin asked whether any ground water studies have been made.

Mr. Ey said the direction of the ground water is known – the flows are to the northeast which determined the placement of the monitoring well.

Mr. Garanin felt there should be a series of wells.

Mr. Ey said the tanks have to be permitted by both local officials and DEP. DEP does not require any monitoring wells down gradient because it's a doubled walled structure.

Craig Gruber, 187 Goodmans Hill Road, resident, said there are gas stations close by and questioned why BMW needed their own tanks. Further, he said BMW agreed to the terms of the permit.

Mr. Klofft said with regard to the modification, it is not uncommon for applicants to request modifications as they move forward in the process. Mr. Gossels added that this permit, with its conditions, was transferred from Land Rover to BMW and the subject of fuel storage was not discussed.

With regard to the gas, Mr. Fox said this will not be used for retail gas sales. It will be used solely by the BMW facility. Essentially this is a business decision in the interest of efficiency. The problem with requiring vehicles to fill up at the local gas stations would result in 900-1000 vehicle trips to those stations adding additional traffic along Route 20.

Mr. Gruber expressed concern with only once a year testing of monitoring well. He said if there is a leak, the environmental consequences are far too high.

Mr. Fox said other than what is inside of a vehicle, all of the other hazardous materials are kept in one room. They are above ground now and are kept in double lined tanks. Should those doubled lined tanks be compromised, it goes into a floor drain into another tight tank.

Mr. Gruber referred to test drives on Goodmans Hill Road which are a part of the permit.

Mr. Klofft replied that at this point the Board is dealing only with the issue before it which is fuel storage.

Mr. Gruber said he opposed this modification which he felt would be detrimental to the environment.

Jonathan Everett, 23 Nashoba Road, resident, felt 8,000 gallons is a lot of fuel. He was glad it would be double lined and that there will be a monitoring well. However, he said there are several tanks in the area which are above ground and it seemed to him that this could still be above ground. He asked whether more monitoring wells could be added.

Louis Diaz, Commonwealth Tank, said monitoring wells are not required. He described how the sensor unit works to detect any leakage from the double lined tank to prevent any contamination to the environment.

Mr. Gossels voiced concern that since allowing the tank would mean it would be there in perpetuity, he felt there should be a condition relating to the life of the tank.

Mr. Diaz said the tank itself comes with a warranty of 30 years.

Mr. Klofft asked what would happen to the tank if at some point BMW decides to move the dealership to another area.

Mr. Fox said it would be removed and he would agree to a condition to that effect.

Mr. Gossels asked whether there is any testing of the fuel management system.

Mr. Diaz replied that it is done every year.

There were no further questions from the Board of audience. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To amend Special Permit Case Numbers 07-23,24,25,26 by deleting Condition 12 in its entirety and substituting the following in lieu thereof:

12. To permit fuel storage on the property as follows:
 1. Fuel will be for the exclusive use of this BMW dealership
 2. The status of the fuel storage tank will be revisited in 25 years and the applicant is responsible for notifying the Board of same.

3. The tank will be removed if left unused for a period of 12 months.

All other terms and conditions of the original permits shall remain in full force and effect.”

VOTED: In favor: 4 (Klofft, Quirk, Gossels, Stevenson) Opposed: 1 (Garanin)

REASONS: The original permit conditions prohibited fuel storage on the premises. When the Board granted a transfer of the original permit to the new owner, it was done so without discussion of the conditions therein. The new owner, a larger facility, is requesting a modification to allow fuel storage. Upon the recommendation of the Fire Chief, a license for fuel storage has been granted by the Selectmen.

The Board finds that as a result of the conditions imposed by the Selectmen as well as the ZBA, that this modification will have no detrimental effect on the area.

Jeffrey P. Klofft, Chairman

Elizabeth T. Quirk, Clerk

Jonathan G. Gossels

Stephen A. Garanin

Benjamin D. Stevenson, Associate

CASE 08-29
Stanislav Mezhebovsky
15 Willis Lake Drive

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
NOVEMBER 17, 2008

The Board consisted of:

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Notice was published in the Sudbury Town Crier on October 30 and November 6, 2008, 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.

Stanislav Mezhebovsky was present to represent a petition for Special Permit to demolish the existing structure and construct a larger structure on a nonconforming lot, which will result in front and rear yard setback deficiencies. The property is located at 15 Willis Lake Drive.

Mr. Mezhebovsky explained that the existing house is old and small. He attempted to obtain quotes to renovate, but found that it would be more cost efficient to demolish and rebuild. The new house would be a one-story 1,800 s.f. house located in the area shown on the plot plan submitted with the application. The location is similar to the existing house. Mr. Mezhebovsky said the location of the septic and leaching field precludes siting the house more in compliance with the setbacks.

The Board reviewed the plans submitted with the application. Mr. Gossels complemented the applicant on the design and size of the house as well as the location which he felt was appropriate for the lot.

William Dorfman, 18 Willis Lake Drive, abutter, while not opposed to this petition, expressed concern that the house was not within the front yard setback requirements. He pointed out that the new footprint would be larger and could present a safety issue with regard to school busses and other traffic on that stretch of road.

Mr. Klofft agreed that while the footprint would be larger, 1,800 s.f. is not excessive, and the new house would be no closer to the road than the existing structure.

There were no further comments from the Board or audience. The hearing was closed. The following motion was placed and seconded:

MOTION: "To grant Stanislav Mezhebovsky, owner of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing structure and construction of a new residence not to exceed 1,800 s.f., which will result in a front yard setback deficiency of 6.4 feet \pm and a rear yard setback deficiency of 13.8 feet \pm , property located at 15 Willis Lake Drive, Residential Zone A-1, as follows:

1. The new house will be constructed in the location shown on the plan titled "Proposed Plot Plan 15 Willis Lake Drive", dated October 3, 2008, prepared by Applewood Survey LLC, Holliston, MA 01746
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.

3. 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 reconstruction is modest in size and the design will be compatible with the surrounding homes in the neighborhood.

Jeffrey P. Klofft, Chairman

Elizabeth T. Quirk, Clerk

Jonathan G. Gossels

Stephen A. Garanin

Benjamin D. Stevenson, Associate

CASE 08-30
Eric & Karol Hjerpe
19 Pipsissewa Circle

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
NOVEMBER 17, 2008

The Board consisted of:

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Elizabeth T. Quirk, Clerk
Jonathan G. Gossels
Stephen A. Garanin
Benjamin D. Stevenson, Associate

Notice was published in the Sudbury Town Crier on October 30 and November 6, 2008, 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.

Mr. Klofft disclosed that through his past employer he had been associated with the firm which employs Mr. Hjerpe. He said this is not the case with his current employer.

There were no objections to Mr. Klofft sitting on the Board for this petition.

The Board was in receipt of a letter dated November 5, 2008 from Tracy and Kathleen Sykes, 15 Pipsissewa Circle, in support of this variance.

Eric Hjerpe and Karol Hjerpe were present representing a petition for a Variance to install a 15X32 foot swimming pool and 8-foot diameter spa which will result in a rear yard setback deficiency of 15' 10" at 19 Pipsissewa Circle. Also present was Michael Couto, Sudbury Design Group, contractor for the project.

Mr. Hjerpe has lived on this property for 8 years. He said he involved the neighbors in this process and submitted letters of support from those neighbors for the record.

Mr. Hjerpe said this is a unique situation where the pool could have been put in a location which conforms to the setback requirements; however the neighbors objected to that location. He felt there were three reasons for the proposed location (1) the pool would not be visible from the street, (2) it maintains the current trees and screening and would not be visible to the neighbors, (3) the location would be furthest from all the neighbors' homes.

Michael Couto displayed the plan of the project and described the lot configuration which he said was unusual. He pointed out the driveway and the septic system location and the area shown in blue which was the only conforming location in which the pool could be located. He said that area is very narrow and is close to the Sykes property and that area is also moderately wooded to the property line.

Plans call for the removal of the existing deck on the back of the house. The pool would be tucked in close to the house and would require relief from the rear yard setback. The back of the property, behind the Hjerpes is very wooded and a letter of support has been submitted from that neighbor to the rear.

The end result is that the pool will not be seen from the house, street or the rear lot.

Mr. Couto displayed satellite images of the property. He said the Sykes' driveway is actually an easement over the Hjerpe's property. He pointed out the location of the driveway and berm which separates the properties noting that if the pool were to be located in the area allowed as of right, it would require removal of that berm and trees and would be visible from the front of the Sykes house. There is also a deed restriction on this subdivision dealing with

visual screening noise abatement which limits tree removal and specifies the type of fencing which may be used.

Tracy Sykes, 15 Pipsissewa Circle, abutter, referred to his letter of November 5th. He said he is sensitive to the constraints under which the Hjerpes must work with and understands the purpose of the setbacks. He felt this to be a unique situation in that his front yard abuts the Hjerpe's side yard and if the Hjerpes are forced to comply with the setbacks it will degrade the value of his property. He does not want the pool to be located in his front yard.

Speaking to the criteria which must be satisfied in order to grant a variance, it was Mr. Couto's belief that he demonstrated that there were special conditions with regard to the lot configuration, the location of the septic system and the easement to justify locating the pool in the proposed location. He said the pool, as proposed, would not be visible from the street or from the side and rear abutting properties and would have no detrimental effect on the neighbors. Granting a variance would nullify or substantially derogate from the intent of the Bylaw which is to protect abutting properties and the proposed location would satisfy the intent of the Bylaw.

With regard to hardship, Mr. Couto said to require the pool to be located within the setbacks would be more costly to the petitioners in terms of construction, utilities, tree removal and fencing. However, the greater hardship would be with the neighbors, particularly the Sykes who would literally see this pool from their front yard.

Mr. Hjerpe said he has discussed both scenarios with his neighbors and it is his belief that to construct the pool on the side would cause a great deal of stress within the neighborhood which has enjoyed a harmonious relationship to date.

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

The following motion was placed and seconded:

MOTION: "To grant Eric and Karol Hjerpe, owners of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to install a 15X32 foot swimming pool and 8-foot diameter spa, which will result in a rear yard setback deficiency of 15' 10"±, property located at 19 Pipsissewa Circle, Residential Zone A-1."

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the Board of Appeals may in its discretion and upon written application, extend the time for exercise of such rights for a period not to exceed 6 months; and provided further that the application for such extension is filed with the Board of Appeals prior to the expiration of the one-year period.

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

REASONS: The petitioners require a Variance to construct a swimming pool in a location that will require a waiver of the rear yard setback requirements.

The Board reviewed the criteria which must be satisfied in order to grant a Variance and found the following:

1. The Board finds there to be special conditions relating to the shape of the lot in that the lot is situated on a cul de sac and due to its configuration, the side yard abuts the front yard of the abutting property. To locate the pool in the side yard area, which is the only area allowed as of right, would result in the pool being visible from the street and to the neighbors.
2. With regard to hardship, the Board finds that construction of the pool in a conforming location would entail higher construction costs, landscaping and screening. However, more importantly, it would by its presence degrade the property value of the most affected abutter from a financial and visibility standpoint since the pool would be visible from that abutter's front yard.
3. There will be no substantial detriment to the public good if the variance is granted. The pool will be in an appropriate location where it will not have any affect on the neighbors.
4. Granting the variance will not nullify or substantially derogate from the intent or purpose of the Bylaw which is to promote the general welfare of the town and to encourage the most appropriate use of the land.

Taking into account the fact that the pool could be constructed in a location which would not require a variance, the Board weighed the merits of the proposed location which would encroach on the rear yard setback. Due to the unique lot configuration, the Board found the only logical choice was to grant a waiver of the rear yard setback as the end result would be a "more normal" situation in terms of location and visibility and one which would not adversely affect the neighbors. Further, the variance is supported by the neighbors, in particular the abutter to the side as well as the one to the rear, both of whom would be most affected. Therefore, the Board finds that the petitioners have satisfied the criteria for granting a Variance.

Jeffrey P. Klofft, Chairman

Elizabeth T. Quirk, Clerk

Jonathan G. Gossels

Stephen A. Garanin

Benjamin D. Stevenson, Associate

