

CASE 09-1
Omnipoint Communications
163 Boston Post Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
FEBRUARY 2, 2009

The Board consisted of:
Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jeffrey P. Klofft

Notice was published in the Sudbury Town Crier on January 15 and January 22, 2009, posted, mailed and read at this hearing.

Ms. Quirk, Chair, explained the requirements necessary to substantiate the granting of a special permit. She 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.

Brian Grossman, Attorney at Prince, Lobel, Glovsky & Tye LLP, was present to represent a petition for renewal of special permit to allow the operation of the applicant's existing wireless communications facility. The property is located at 163 Boston Post Road.

Mr. Grossman explained that all of the special permit criteria is still being met and there are no proposed changes. Omnipoint Communications has conducted regular site visits and there are no noisy generators being used.

Ms. Quirk asked if there is a co-locator. Mr. Grossman was uncertain about whether or not there was a co-locator being used. [Editorial Note: There are no co-locators on this tower.]

Mr. Gossels questioned the safety of the structure, specifically asking about the materials covering the tower and whether or not they consisted of the type of paneling that has been known to become loose and fall therefore presenting a safety hazard. Mr. Klofft suggested that panels of that type should require annual inspections. Mr. Grossman was uncertain about the type of covering on this tower but suggested that banding might be an option used to ensure safety. He then stated his preference for no annual inspections. Mr. Klofft and Mr. Garanin both agreed that the tower was in a remote location so that loose paneling would be unlikely to affect anyone.

Jody Kablack, Planning Director, reminded the board that the tower's construction was permitted prior to the town experiencing structural issues on similar structures. She suggested that a certificate from a structural engineer confirming that the tower was built according to plan, that would be valid for a period of five years, would remove the need for annual inspections. Mr. Grossman said that he could obtain a report from a structural engineer certifying whether or not

the structure was structurally sound. The Board agreed that making this a condition at each 5-year renewal would suffice.

Ms. Kablack also noted that the removal bond for this installation may have expired. She said that there should be a condition of the renewal that if the removal bond has expired then a new removal bond should be put in place.

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

The following motion was placed and seconded:

MOTION: "To grant Boston Edison Co./NSTAR Electric co., owner of property, a renewal of special permit under the provisions of section 4300 of the Zoning Bylaws, to allow the operation of the applicant's existing wireless communications facility, property located at 163 Boston Post Road, provided that the following two conditions are met:

- 1) Omnipoint Communications shall submit an inspection report by a structural engineer certifying that the structure is structurally sound within 90 days of issuance of the special permit.
- 2) If the removal bond for this decision has expired then a new bond needs to be issued within 60 days of issuance of the special permit.

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioner requires a special permit to continue operating the wireless communications facility at 163 Boston Post Road. The Board finds that a five-year renewal period is appropriate. The Board further finds that inspection of the structural soundness of the facility is necessary every five years.

Elizabeth T. Quirk, Chair

Nancy G. Rubenstein, Clerk

Stephen A. Garanin

Jonathan G. Gossels

Jeffrey P. Klofft

CASE 09-2
Tails By The Wayside
882 Boston Post Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
FEBRUARY 2, 2009

The Board consisted of:
Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin
Jonathan G. Gossels; and Jeffrey P. Klofft

Notice was published in the Sudbury Town Crier on January 15 and January 22, 2009, posted, mailed and read at this hearing.

Ms. Quirk, Chair, explained the requirements necessary to substantiate the granting of a special permit. She 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.

Heather and Richard Clement and Attorney Michael Fee were present to represent a petition for renewal of special permit to operate a kennel, Tails by the Wayside, at 882 Boston Post Road.

Mr. Fee explained that this is the fourth time the applicant has come before the Zoning Board of Appeals to ask for a special permit. The first permit had a duration of six months, the second one was issued for one year, and the third was for a period of two years. The conditions remain the same as with the initial permit and all have been fulfilled. There are a few conditions that are no longer applicable. Mr. Fee noted that the Board was in receipt of a letter of support for the renewal from the Dog Officer, Joyce Boardman and also a letter of complaint from a former client, Penny Brewer, along with a response from applicant Heather Clement. The issue of the complaint had to do with identification issues, which the Clements have taken measures to correct with the use of embroidered dog collars. A sample of one of the collars was passed around among the Board members. Mr. Fee explained that the applicants are not asking for any changes to the permit conditions, but would like the duration of the permit to be extended to three or five years rather than another two-year permit, particularly in light of the favorable report from the Dog Officer.

Ms. Quirk said that she had a few concerns relating to permit criteria, one being the issue of identification of dogs in Tails by the Wayside's care; however, she noted that the sample collar was an improvement. She expressed a bigger concern relating to the supervision of the dogs. She noted that in Mrs. Brewer's dog's case it appeared that there was a lack of supervision when it jumped a fence and ran away. Mr. Klofft further discussed his reservations about issuing a renewal due to lack of supervision of the dogs. In order to ascertain whether or not there is an adequate view of the dogs when they are out in the yard, Ms. Rubenstein asked about the size of

the dog yard and height of the fence surrounding it. Mr. Clement responded that the fence was five feet high and the yard was approximately 200 feet by 300 feet. There was discussion about interpretation of the criteria for supervision. Specifically, at the time of the original Permit, the Board's expectation was that there would be someone outside with the dogs directly supervising them.

Jim Kelly, Building Inspector, noted that supervision is a condition of business operations and that the town really has no responsibility for that. He said that the letter of complaint from Ms. Brewer read as though the town does have responsibility to manage the business as it relates to supervision and he recommended that the condition be taken out so that it is not misinterpreted and the town is not held responsible if there are future issues. Mr. Klofft said that the condition was put in place to appease neighbors who were concerned about barking and noise. Ms. Quirk said that she saw Mr. Kelly's point but that the ZBA is not in the habit of removing criteria. She recommended leaving the language in the renewal terms, particularly since the Clements were amenable to keeping the criteria as is. Mr. Garanin said that he did not have a problem removing that condition but did ask what the Clements do to avoid cases of dogs jumping the fence. Ms. Clement said that she asks clients whether or not their dogs can jump five foot fences before agreeing to kennel their dogs. Mr. Garanin pointed out that the number of cases of jumping dogs has been relatively low. Mr. Clement pointed out that the ability to successfully board dogs depends upon the dog owners' honesty about their dogs.

Sandy Block, of 5 Martin Drive in Sudbury, spoke as a client in support of Tails by the Wayside. She said that before agreeing to board their dog the Clements asked whether or not their dog can jump five feet. She has also heard the question asked of other clients. Additionally, with the space provided for dogs to run and level of care and attention the Clements offer, she feels Tails by the Wayside provides the best environment for boarding their dog.

Discussion ensued about the renewal term limit. Some board members continued to express concerns about extending the renewal term due to issues with supervision.

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

MOTION: "To grant Richard and Heather Clement, owners of property, a renewal of special permit under the provisions of section 2313 of the Zoning Bylaws, to allow Tails by the Wayside to operate a kennel on the property located at 882 Boston Post Road.

VOTED: In favor: 4 Opposed: 0 Abstained: 1 (Gossels)

REASONS: The petitioner is requesting renewal of a Special Permit to operate a kennel on the premises. The Board finds that the petitioner has generally complied with the conditions of the permit. In addition, the premises were inspected by the Dog Officer who found no problems with the operation. As a result, the Board finds a two-year renewal period to be appropriate.

Elizabeth T. Quirk, Chair

Nancy G. Rubenstein, Clerk

Stephen A. Garanin

Jonathan G. Gossels

Jeffrey P. Klofft

CASE 09-3
Berglund Properties, Inc.
37 Beechwood Avenue

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
FEBRUARY 2, 2009

The Board consisted of:

Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin
Jonathan G. Gossels; and Jeffrey P. Klofft

Notice was published in the Sudbury Town Crier on January 15 and January 22, 2009, posted, mailed and read at this hearing.

Ms. Quirk, Chair, explained the requirements necessary to substantiate the granting of a special permit. She 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.

Steven Poole from Inland Survey and Jay Berglund, the applicant, were present to represent a petition for a modification of a special permit to allow the addition of a 22'x24' garage to be attached to the previously approved house. The property is located at 37 Beechwood Avenue.

Mr. Poole explained that the ZBA had already approved the demolition of the existing house and construction plans for the new one, but now they are seeking approval to include an attached garage in the plans. The garage would appear at the side of the lot and does not create a nuisance. Mr. Poole said that they have spoken with the Building Inspector about their plans. The house is in the same location as originally permitted, with an extension for the garage. Mr. Poole

said that the garage would be no bigger than 22' and could only measure 18' wide depending upon the layout of the septic system.

Ms. Rubenstein asked if the existing shed would remain. Mr. Poole said it would be demolished.

Mr. Klofft raised concerns about the house size conforming to that of its neighbors in such a densely populated neighborhood and asked whether there was any thought to a garage that was integrated into the house footprint. Mr. Poole said that that type of garage would significantly decrease the footprint of the house. There was discussion about single versus double bay garages. As a matter of aesthetics Ms. Quirk stated her preference for cars parked in a garage and noted that there are many cars parked outside along Beechwood Avenue. Mr. Berglund said a garage is needed as an asset to help with the eventual sale of the house. Ms. Rubenstein noted that the footprint takes up about forty percent of lot, which is standard in that neighborhood. More discussion about impact on neighborhood character ensued.

Mr. Gossels noted the impact the garage would have on the yard. Mr. Berglund said the plans for the garage meet side lot setbacks. Mr. Garanin suggested a double depth garage with a single width, however the rear setback precludes this configuration. Discussion ensued about conditioning the modification to require an 18' width with a 16' door which would allow for a garage that could accommodate two small cars. Mr. Poole mentioned that screening and landscaping was proposed to accommodate the neighbors.

Jeff Walsh, neighbor at 11 Great Lake Drive, said that he has no objections to the plans. Jim Kelly, Building Inspector, asked about whether or not there were windows at the back of the garage? Mr. Kelly mentioned that the abutting neighbor had called to talk about the plans and he recommended working with the neighbor on determining window placement. While the plans did not yet show any windows, Mr. Berglund said that he did plan to put some in and that he would take the neighbor's opinions into consideration.

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

MOTION: "To grant Berglund Enterprises, owner of property, a modification of a special permit, to allow the addition of an attached garage to be incorporated into plans of the previously approved house, property located at 37 Beechwood Avenue, provided that the following conditions were met:

- 1) The proposed width will be reduced to 22' x 18' with a single garage door;
- 2) Extra screening be provided;
- 3) No windows will be installed in the rear of the garage; and
- 4) No other outbuildings will be included on site.

VOTED: In favor: 5 Opposed:

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. At the request of the Board the petitioner has reduced the dimensions of the proposed garage to an acceptable size.

The petitioner has agreed to discuss plans for window placement with a direct abutter, plant trees for screening along abutting property lines and agrees that no other outbuildings will be included as provided in the conditions of the permit.

The Board finds that with the conditions imposed, the resulting house will be an asset to the appearance of the neighborhood and will have no adverse effect on the abutters.

Elizabeth T. Quirk, Chair

Nancy G. Rubenstein, Clerk

Stephen A. Garanin

Jonathan G. Gossels

Jeffrey P. Klofft