

CASE 09-18
Wellen Construction
67 Willow Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, July 6, 2009

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

Notice was published in the *Sudbury Town Crier* on June 11 and June 18, 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.

Charles Gadbois, owner of Wellen Construction, was present to represent a petition for a special permit to allow the demolition of an existing single-family house and construction of a new residence that would exceed the total floor area of the original residence. The property is located at 67 Willow Road.

Mr. Gadbois told the Board that in advance of this hearing on June 25 Wellen Construction held a meeting at 67 Willow Road to which abutters were invited for an opportunity to view construction plans and raise any concerns associated with the redevelopment. From issues identified at the abutters meeting Mr. Gadbois revised construction plans to address the proposed house elevation, vegetation removal, and plans for exterior lighting. The new site plans were presented at this hearing.

Neighbors had questioned why the current septic system needs replacing since it was installed in the mid-1990s. In response, Mr. Gadbois said that during the planning process he had discussed system options with Sudbury Health Director Bob Leupold. The new system proposed is a current, standard approved system, however it does require a certain level of grading and elevates the house six feet higher than the road. Mr. Gadbois said that if there are mitigating circumstances the Board of Health may approve an alternate drip line septic system which would enable the grade to be lower. However, the drip line system would require that the house be set back ten feet farther from the road, and would reduce the amount of vegetation needed for removal. The revised site plan presented at the hearing was based on the drip line septic system.

Asked about overall setbacks Mr. Gadbois said that the back setback would not change. The rear yard is approximately forty-five feet deep (with the remaining area wooded) and eight foot wooded buffers exist on both sides of the existing house.

Addressing neighbors' concerns about exterior lighting Mr. Gadbois said that there would be no floodlights in the front or at the sides of the house. There would be one set of floodlights at the back of the house, two lights at the front door, one post light, two lights at the garage, and the minimum number of lights required at the rear entrance of the house.

On behalf of the Board, Ms. Quirk thanked Mr. Gadbois for meeting with the neighbors and attempting to address concerns in advance of the meeting. Mr. Gadbois told the Board that the neighbors are seeing and hearing about the revised site plans for the first time at this hearing. Ms. Quirk maintained that the application meets the five criteria for zoning consideration.

Ms. Rubenstein asked for clarification of square footage to which Mr. Gadbois answered that the house measures less than 3,200 square feet, and the height of the roof ridge measures 33 feet, 10 inches. For point of comparison Mr. Gadbois noted that this house is smaller than another house Wellen Construction had built across the street from this address.

Mr. Gossels said that he felt the scale of this building is appropriate and noted that in the general area of the property there is a lot of rebuilding happening. He said he was initially concerned about the height of the roof ridge but that the new setback provides a solution. Ms. Quirk also agreed.

Ms. Quirk then opened the floor for comments from the audience.

Alan Larsson, of 65 Willow Road spoke as an abutter to this project. He said that he was concerned about the Dig Safe flags lining his property and wanted assurance that there would be no construction on his property. He also voiced a larger concern about storm water runoff and drainage, noting that the hydrology in the area would be disturbed as digging commenced on the construction site. He wanted a guarantee that his basement would not be affected by storm water runoff. Mr. Gadbois said that he did not think that water would run in the direction of Mr. Larsson's property, and while there will be slightly more impervious surface area upon completion of the project he did not envision post development runoff being a problem.

Mr. Gossels asked whether Wellen Construction could commit to channeling fifty percent of rainwater runoff into a drywell. Mr. Gadbois said that a dry well would be installed most likely at the back of the property, but that test pits would be dug to determine the best location.

Mr. Larsson was still concerned about the hydrology of the area and asked if there would be any compensation for neighbors affected by water in basements. Ms. Quirk explained that it is not in the Zoning Board's scope to condition permits to fully ensure that no water problems would ever occur. She reminded Mr. Larsson that if there were water issues caused directly by the construction project he could pursue problems through the legal system.

Mr. Gossels noted that the footprint of the house and its foundation are not significantly larger than what currently exists, but the height of the house is greater. He felt that having runoff lead into a drywell would help alleviate any water issues.

Melanie and Markian Pawluk, direct abutters at 73 Willow Road, said that they too were concerned about water displacement, the lack of vegetation to soak up moisture, and the route the water would travel to drain between their property and 67 Willow Road. Mr. Pawluk said that he had spoken with a relative who was an engineer to discuss whether or not the weight of the house would affect drainage on the property. The answer he received was yes, that the force of pressure due to the weight of the house would displace more water. Mr. and Mrs. Pawluk also expressed concerns that any future expansion on their home might be jeopardized by potential drainage issues. Mr. Pawluk expressed appreciation to the Board for hearing their concerns and then asked about the location of the proposed driveway. Mr. Gadbois said the driveway would stay in the same place as it is now but would be lower and would be eight feet from the property line.

Joe Boziuk, resident of 72 Willow Road in Sudbury, said that he feels the revised plan is going in the right direction in regard to lower grading and height of the house and that the developer has been quite responsive to neighbors' concerns. He asked for clarification of how the height of thirty-five feet had been determined. Mr. Gossels explained that height is determined by the zoning bylaws which state that the height is an average measurement of the finished grade, or from the top of the soil. Mr. Boziuk then asked about the septic system requirement by the Board of Health. Ms. Quirk said that the ZBA's conditions of the special permit would be contingent upon the drip line septic system. However, because the ZBA functions independently from the Board of Health, if the Board of Health does not allow the drip line system then a new hearing must be held with the ZBA.

David Croll, who lives across the street at 68 Willow Road, said that he attended Wellen Construction's meeting with the neighbors and acknowledges that some attempt has been made to address neighbors' concerns, however he implored the ZBA in its decision to minimize the overall impact from big, new houses on the street and elsewhere in Sudbury. He said that since he is an astronomer he is sensitive to light pollution and said that bright houses destroy the lifestyle of the neighborhood and their property values. While he acknowledges that Sudbury has changed from the 1960s, he wants Sudbury to keep its rural feel with its trees and privacy. Ms. Quirk answered that she is very aware of the neighborhood and said that all of the ZBA's decisions are based on the Zoning Bylaws which give the Board guidance. She noted that the bylaws can be very vague at times and the Board does its best to interpret the bylaws and carefully consider each case individually. She invited the neighbors to form a committee if they so desired to help revise the bylaws, particularly in regard to regulation of teardowns, and present the changes for a vote at Town Meeting.

Mr. Gossels noted that a landscape plan was missing from the revised plans and asked Mr. Gadbois for a sense of what the front of the property might look like. At the front of the house a mature lawn would be maintained as is and there would be the same plantings at the front of the house. Planting of trees would be somewhat limited due to the nature of the septic system. The areas between lot lines would be left natural. Ms. Quirk mentioned that the front of the house was Town-owned land and she did not feel the ZBA could require planting in the right-of-way. There was discussion of planting two two-inch maple trees between the right of way and the septic system.

Lynne Ausman, of 68 Willow Road, said that she was also concerned about landscaping plans, and noted that a mature pine tree also has to come down.

Mr. Gadbois wanted it made known for the record that Wellen Construction did try to contact the Sudbury Housing Authority to ascertain their interest in relocating the old house.

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

The following motion was placed and seconded:

MOTION: To grant Wellen Construction, applicant, Bruce Kuhnert, owner of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow a demolition of an existing structure and construction of a new residence not to exceed 3,200 square feet, said residence to conform to all zoning setback requirements, property located at 67 Willow Road, Residential Zone A-1 subject to the following:

1. The new house will be constructed in the location as shown on the Plot Plan dated July 6, 2009, prepared by Inland Survey, Inc. DBA Zanca Land Surveying, which is incorporated into and made part of this Special Permit.
2. The applicant will preserve the wooded areas in the rear and side yards to the extent feasible in order to screen the house from abutting properties. If significant tree removal is necessary in these areas the applicant shall replant the area to fulfill this condition.
3. Two 2" maple trees in the front yard shall be planted in front of the septic system to the extent feasible with septic system construction.
4. Fifty percent of roof runoff will be captured and channeled to the back of the house in a drywell.

5. There will be no floodlights in the front or at the sides of the house. There shall be no more than one set of floodlights at the back of the house, two lights at the front door, one post light, two lights at the garage, and minimal lighting at the rear entrance of the house.
6. 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.
7. Construction must be completed no later than one year after commencement.

VOTED: In favor: 4 (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 new house will be located further to the rear so as not to present a looming effect. The petitioner has agreed to provide screening which is acceptable to the abutters and that will not impact the septic system to further lessen the visual impacts to abutters.

Elizabeth T. Quirk, Chair

Nancy G. Rubenstein, Clerk

Stephen A. Garanin

Jonathan G. Gossels

SUDBURY ZONING BOARD OF APPEALS
MINUTES

July 6, 2009 Page 1

The Board consisted of:

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

MEETING OF THE ZONING BOARD OF APPEALS

The meeting was convened by Ms. Quirk at 8:20 p.m.

Extension of Comprehensive Permit, TD Sudbury Village LLC:

Russell Tanner of Tanner Development, LLC was present to request that the ZBA grant a two-year extension for Comprehensive Permit (Case Number 06-37, dated July 10, 2007) for TD Sudbury Village LLC. The permit expires within two years of its filing with the Town Clerk if a building permit has not been obtained.

Mr. Tanner explained that plans for the development had been presented to the Conservation Commission, Mass. Highway Department, and Board of Health. Since the issuance of the Comprehensive Permit on July 10, 2007 there was much additional permitting work to be done, in fact more than anticipated, and it took time to complete. This work began in the fall of 2007 and ended in December 2008. The Highway Department was the last department to sign off on the plans and issue permits. The treatment plant permit was issued by the Department of Environmental Protection (DEP) in August 2008.

While progress has been made and all permits have been obtained, Mr. Tanner explained that now the housing market has fallen apart so that selling units at market rate has achieved poor results. He noted that in Sudbury there are currently four struggling housing developments with a lot of unsold inventory. He said that he plans to wait out the market. The investors are staying with the project. But he feels that he needs more time to obtain financing and stability. Therefore he is requesting an extension on the comprehensive permit.

There were no further comments from the Board or audience. A motion was made and seconded to extend the original Comprehensive Permit dated July 10, 2007 through July 10, 2011. The decision to approve the extension was unanimous.

Vote on Revised Decision, Herb Chambers BMW:

In order to correct two clerical errors that appeared in a decision that was filed on April 14, 2009 for Herb Chambers BMW, Case #09-9,10,11,12, the Board voted to approve the revised text using language previously approved at the March 31, 2009 public hearing. Ms. Quirk read the revised decision with corrected conditions. All members present approved it and voted unanimously to adopt the revised decision to be filed with the Town Clerk on July 7, 2009.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
July 6, 2009 Page 2

There being no further business the meeting was adjourned at 8:45 p.m.

Elizabeth T. Quirk, Chair

Stephen A. Garanin

Nancy G. Rubenstein, Clerk

Jonathan G. Gossels