

CASE 09-4
MetroPCS Massachusetts
251 Old Sudbury Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MARCH 31, 2009

The Board consisted of:

Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; Jonas D.L. McCray and Benjamin D. Stevenson.

Notice was published in the *Sudbury Town Crier* on March 12 and March 19, 2009, posted, mailed and read at this hearing.

Ms. Quirk, Chair, explained the requirements necessary to substantiate the granting of a variance. 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.

Scott Lacy, Attorney at Prince, Lobel, Glovsky & Tye LLP, was present to represent a petition for dimensional variance relief for installation of a wireless communications facility. The property is located at 251 Old Sudbury Road, the Sudbury Methodist Church. The applicant needs a variance to install and operate the wireless facility within 500 feet of a residential lot line as outlined in Section 4363 of the Zoning Bylaws. Mr. Lacy explained that MetroPCS' goal is to install an interior mounted wireless communication facility that would allow the company to close the communication coverage gap in Sudbury center while having a low impact on the community. According to a report by radiation safety specialist Don Haes that was included in the application, the site is the least obtrusive location for a facility in the center of Sudbury. It can be argued that a gap in coverage is a hardship for wireless users. Mr. Lacy said that the church has an 82 foot steeple and in Sudbury center there is no other structure that has that height with the ability to swap materials to construct it.

The applicant has met with and presented site plans to the Board of Selectmen. The Department of Planning and Community Development requested updated plans with minor changes which Mr. Lacy then distributed to the Zoning Board.

The proposed plan would replace the top of the steeple with an identical design and with RF-friendly material. Cables would be painted to match the exterior of the building. According to Mr. Lacy approximately eight inches of the steeple would be replaced. Ancillary equipment would be located at the rear of the building. The proposed fence enclosing the cabinets and equipment will be an eight foot wooden stockade fence. Ms. Rubenstein inquired as to whether or not the fence would be visible from the interior of the church. The fence compound does block a portion of a window and would be visible from within the church.

Mr. Lacy then showed the ZBA a series of coverage maps to illustrate where in Sudbury there are current gaps in MetroPCS wireless service.

Mr. Gossels asked if someone could speak to the level of energy used by the equipment. Mr. Aghilino Orichi, of 285 Billerica Road in Chelmsford, who was at the meeting to speak on behalf of MetroPCS, said that the power used is slightly less than that used by other carriers, although there is not much difference in terms of end-user.

In regard to the topography criteria, Ms. Quirk asked Mr. Lacy to comment. He explained that rather than ground topography, topography in this case refers to structural height and coverage gaps. Other existing structures where wireless facilities could be placed do not have the central location or the height needed to allow installation without major structural alterations.

Mr. Stevenson asked whether there was any consideration given to co-locating with other facilities. Mr. Lacy said that there was but there are not other towers in the area that have an available space.

Mary Scott, 16 Brewster Road, spoke as an abutter. She said that she had no problems with the project and couldn't see where it would be harmful to residents.

Mr. Gossels said that the Board was generally in supportive of improving coverage with stealth installations and ensuring public safety.

Mr. McCray asked whether or not there have been other wireless companies who had proposed a facility at this location to close the coverage gap. There have not been other proposals to date.

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

The following motion was placed and seconded:

MOTION: "To grant, in the words of the application, MetroPCS Massachusetts, LLC, applicant, Sudbury Methodist Church, owner of property, a Variance from the provisions of Section 4363 of the Zoning Bylaws, to allow a radiating component of a wireless service facility to be located within 500 feet of a residential lot line, property located at 251 Old Sudbury Road."

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioner requires a variance to locate a wireless communications facility to be located within 500 feet of a residential lot line and school. The Board finds that the petitioner has satisfied the criteria for granting a variance. Specifically, there are conditions affecting the land

or structure but not generally affecting the underlying zoning district in that the Bylaw allows wireless facilities to be located in existing steeples. Although the facility will be located in a steeple, the structure is within 500 feet of a residential lot line and school. However, the Board finds that the proposed facility will pose no danger to the residential zone because of its height, nor will it cause a visual nuisance as it will be entirely concealed within the steeple.

The Board finds that a hardship would result if the provisions of the Bylaw were to be literally enforced as this would prevent the petitioner from being able to fill in a demonstrated coverage gap and serve its existing and future customers.

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. As previously stated, it will be concealed within the steeple of the church and due to location of equipment at the rear of the building and surrounded by a fence, it will be unobtrusive to the public view.

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 or purpose of the Bylaw.

Elizabeth T. Quirk, Chair

Nancy G. Rubenstein, Clerk

Stephen A. Garanin

Jonathan G. Gossels

Jonas D.L. McCray

Benjamin D. Stevenson

CASE 09-5
Sudbury Auto Care Center
80 Union Avenue

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MARCH 31, 2009

The Board consisted of:

Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; Jonas D.L. McCray and Benjamin D. Stevenson.

Notice was published in the *Sudbury Town Crier* on March 12 and March 19, 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.

Frankie Hernandez, applicant, was present to represent a petition for renewal of special permit 08-9 to operate a motor vehicle repair business, Sudbury Auto Care Center, at 80 Union Avenue. Mr. Hernandez requested consideration for extending the renewal period for the permit and for expanding his business operations into a second bay that is currently vacant at the property.

In response to Ms. Quirk's question about whether or not there have been any complaints about the business in the past six months, Mr. Hernandez said that to his knowledge the only complaint has been a telephone call from Sudbury Building Inspector Jim Kelly reminding him that the portable A-shape sign that stands along the roadside needs to be removed after close of business.

Jim Kelly spoke on behalf of the applicant stating that he had reviewed the site and found it close to being in full compliance with the conditions of the permit and confirmed with Debbie Dineen, Conservation Coordinator, that the property owners have addressed some of the Conservation Commission's concerns. For example, the parking lot has been paved and appropriate drainage and fencing have been installed.

Mr. Gossels proposed that the term of renewal be extended from six months to two years with all of the original conditions left in place. The only change to the conditions would be an allowance for expansion of business operations into a second bay.

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

The following motion was placed and seconded:

MOTION: “To grant Frankie Hernandez/Sudbury Auto Care, applicant, and Union Avenue Realty Trust, owner of property, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 13 of the Zoning Bylaws, to allow motor vehicle general repair, property located at 80 Union Avenue, Industrial District #2.”

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioner requires a special permit for motor vehicle general repair. This petitioner has previously been operating the same business utilizing one bay without incident. The petitioner now seeks to operate the same business utilizing two bays once a second bay becomes available in order to meet the volume of demand from the applicant’s clients.

With regard to this operation, the Board finds that the use will be in harmony with the general purpose and intent of the Bylaw. It is located within an industrial district having similar uses and is not detrimental to the neighborhood, nor does it alter the character of the zoning district. This business does not substantially increase noise, traffic or other issues normally present in an industrial district.

Given that the petitioner has complied with the conditions of the permit, the Board finds that increasing the renewal term to two years is appropriate.

Elizabeth T. Quirk, Chair

Nancy G. Rubenstein, Clerk

Stephen A. Garanin

Jonathan G. Gossels

Jonas D.L. McCray

Benjamin D. Stevenson

CASE 09-6,7,8
Herb Chambers Land Rover of Sudbury
83 Boston Post Road and
Parcel #K11-0099

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MARCH 31, 2009

The Board consisted of:
Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; Jonas D.L. McCray and Benjamin D. Stevenson.

Notice was published in the *Sudbury Town Crier* on March 12 and March 19, 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.

Joshua M. Fox, Attorney at Rollins, Rollins and Fox, was present to represent a petition for a renewal of special permits 07-20, 21, 22 on behalf of Herb Chambers of Sudbury, Inc. DBA Herb Chambers Land Rover of Sudbury located at 83 Boston Post Road. Mr. Fox said that management has not notified him about any complaints about the property in the last two years.

Mr. Fox wanted to discuss two conditions be placed on the permit renewal, a clarification of property address and extension of renewal term.

Mr. Fox noted that on other special permits the property has been referenced with the dual addresses of 83 and 103 Boston Post Road in keeping with the Town of Sudbury's tax assessment identification. At present there is a restaurant on the site of 103 Boston Post Road that uses the address as a means of identification. Mr. Fox explained for point of reference that the original parcels comprising 103 Boston Post Road, each measuring about a half an acre, were originally under ownership by the McManus family. The family subdivided the lot and sold part of the parcel to the restaurant owners. When Foreign Motors acquired the other piece of the property they continued referencing the land as 83 and 103 Boston Post Road. Upon reviewing the application for renewal of special permit Jim Kelly, Building Inspector, notified Mr. Fox that he felt it was misleading for Herb Chambers to use the two addresses because of the implication that the 103 Boston Post Road parcel was under ownership by Land Rover.

The Board and Mr. Fox discussed using as the property address 83 Boston Post Road and the parcel ID #K11-0099 (otherwise known as #103 Boston Post Road) for the additional lot. Mr. Kelly agreed that this identification would solve any misunderstandings.

Mr. Gossels felt the request for term extension was reasonable, but stated that he still has concerns about landscaping conditions left unmet under the terms of conditions. He mentioned the various plantings that he found unsuitable for the purpose of screening, which was a point made by the Board at the time of renewal. Mr. Fox argued that a planting plan has been put into place and that significant plantings have been installed such as ornamental grasses and annuals in addition to red cedars and other native species such as honey locusts and evergreens that would grow taller in time. He asked for any recommendations that he could present to Herb Chambers to address additional screening concerns.

As to renewal term, Mr. Fox asked for consideration that the condition of the two-year permit term either be removed or extended. If the requirement were removed, he reasoned that should the property change hands the new owner or applicant would have to apply for a new special permit from the ZBA. One of the reasons Mr. Fox was seeking removal or term extension is that commercial lenders, concerned about future ZBA action that might deny renewal of the special permit, are often reluctant to lend money to a business requiring special permits and all of the conditions and restrictions in the permits.

Discussion ensued about an appropriate term limit versus removal the requirement. Mr. Garanin said that rather than removing the renewal requirement he felt a five-year term would be adequate and ease some of the lenders' fears. Mr. Gossels agreed that he would prefer to lengthen the term as opposed to making it infinite. Mr. Kelly noted that it is easier for the town to address property concerns if there are set renewal terms. Ms. Quirk asked if the renewal term were removed, could the Zoning Enforcement Officer then serve as the mechanism for catching violations or problems. She noted that if violations are determined then the ZBA would get involved and fines could be given. With enough fines accrued the applicant would then have to settle matters in court.

Ms. Quirk asked whether lenders would be more comfortable with a ten year renewal period versus a five year period. Mr. Fox felt that lenders would be more comfortable with a ten year term.

Mr. Fox then asked for consideration of a motion to change condition #11 from a two-year to a ten-year renewal period to expire March 31, 2019. Mr. Fox asked that the language include wording to say "when all conditions have been substantially met then renewal will not be unreasonably denied." The Board agreed to include this language.

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

The following motion was placed and seconded:

Case Numbers: 09-6,7,8

MOTION: "To grant in the words of the application Herb Chambers of Sudbury, Inc., DBA 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 Boston Post Road and including Parcel #K11-0099, Industrial District #4. The following two changes are also included: 1) The parcel will be referenced as 83 Boston Post Road and Parcel #K11-0099; and 2) The renewal period will be changed from two (2) years to ten (10) years and the language added to the conditions stating that when all conditions are substantially met then renewal will not be unreasonably denied. "

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

REASONS: The petitioner seeks to clarify for the record the address of the business as 83 Boston Post Road and Parcel #K11-0099 and increase the renewal term of the special permit. The petitioner requires a special permit 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. This petitioner has previously been operating the same business without incident.

With regard to this operation, the Board finds that the use will be in harmony with the general purpose and intent of the Bylaw. It is located within an industrial district having similar uses and is not detrimental to the neighborhood, nor does it alter the character of the zoning district. This business does not substantially increase noise, traffic or other issues normally present in an industrial district.

Given that the petitioner has complied with the conditions of the permit, the Board finds that increasing the renewal term to ten years is appropriate.

Elizabeth T. Quirk, Chair

Nancy G. Rubenstein, Clerk

Stephen A. Garandin

Jonathan G. Gossels

Jonas D.L. McCray

Benjamin D. Stevenson

CASE 09-9,10,11,12
Herb Chambers BMW of Sudbury
68 Old County Road,
formerly 130 Boston Post Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MARCH 31, 2009

The Board consisted of:
Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; Jonas D.L. McCray and Benjamin D. Stevenson.

Notice was published in the *Sudbury Town Crier* on March 12 and March 19, 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.

Joshua M. Fox, Attorney at Rollins, Rollins and Fox, was present to represent a petition for a renewal of special permits 07-23, 24, 25, 26 for Herb Chambers BMW of Sudbury, property located at 68 Old County Road. Mr. Fox reported that construction is underway after a few slight delays. Anticipated opening is mid-summer 2009. He noted that there is one change since the original conditions. At great expense to the applicant all utility lines are being placed underground. All permits are in place with NSTAR and Mass Highway. Off-site work will be done in next few weeks and they are moving forward despite the economy.

Mr. Fox began discussion by addressing condition #1, which lists the merging of the lots. Mr. Fox explained that today Stanley Snider has acquired both parcels of land so that it is under common control. The land is then leased to Herb Chambers by Mr. Snider. Mr. Gossels felt that the condition was supposed to ensure ownership of one parcel, not a trust and personal property combination. Mr. Fox pointed out that one person does own the parcel now. Mr. Gossels felt that this was a valid technical update but that the condition should state that the land should be under common control. The Board discussed amending the language in the condition to say that "prior to issuance of certificate of occupancy the applicant will demonstrate that the project premises are under common control."

Jim Kelly stated his concerns about the land ownership and questioned why it was that Mr. Snider owns the land rather than Herb Chambers. Due to the language of the conditions Mr. Kelly was under the impression that Herb Chambers was to own the land. Mr. Fox said that a land lease isn't an unusual arrangement and that Herb Chambers has a certificate from Mr. Snider that allows Herb Chambers to apply for permits, but that he will get signature from Mr. Snider stating who owns land.

Mr. Fox then noted that condition #12 relating to fuel storage should be updated with the language provided by the November 25, 2008 amendment to special permit 07-23, 24, 25, 26. The new language will be updated in the permit renewal.

In regard to term renewal Mr. Fox explained that while this is a new business, the management structure is similar to Land Rover because they are all subsidiaries of Herb Chambers Motor Group. He said that Land Rover has a proven track record in Sudbury and that Herb Chambers BMW would follow a similar business model. Mr. Gossels said he had concerns about extending a renewal term for a new business that hasn't started yet and has no history of business policies and practices. Ms. Rubenstein echoed Mr. Gossels' concerns stating that while she appreciates the lenders concerns she feels the Board doesn't have a sense of this business' operating practices because it might be hard to meet conditions. Mr. Garanin also felt the same way because the business doesn't have a proven track record yet. Mr. Fox asked the Board to consider a five-year renewal term.

Ms. Rubenstein raised a question about using broader language in condition #21 which discusses prohibited areas for test drive. Ms. Rubenstein suggested using the words "Goodmans Hill Road and vicinity." Mr. Fox described the expected route for test drives. He said that after the business is operational it can be better determined whether or not there are issues with test driving in the area and the issues can be raised at the time of permit renewal. The Board discussed keeping the renewal term at two years to allow a reasonable time to determine whether or not conditions are being met and to identify any concerns in operations.

Susan Adam, Center Manager for Best Friends Pet Care, 150 Boston Post Road asked about the plans for the traffic pattern on Boston Post Road, specifically the left turn issue. The Board explained to Ms. Adams that plans for traffic changes are already underway and while this wasn't the issue of the hearing, plans are available with the Town so that she can get more information from them. Mr. Fox gave Ms. Adam his business card so that she could contact him at a later date.

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

The following motion was placed and seconded

Case numbers: 09-9,10,11,12

MOTION: "To grant in the words of the application Herb Chambers Boston Post Road, Inc., d/b/a Herb Chambers BMW of Sudbury, applicant, a special permit under the provisions of Section 2230, A,C, Use 25, 12, 13, and 14 of the Zoning Bylaws, to operate an automobile sales and service facility, to allow motor vehicle sales and rental, to allow motor vehicle general and body repair, and to allow motor vehicle light service, property located at 68 Old County Road, Industrial District #2, Residential Zones A-1 & C-2, and including changes to condition #1 to

state that parcels shall be under common ownership and are to be under common control as one parcel and to condition #12 updating the language about fuel storage with amended language from the November 25, 2008 hearing. The renewal period will remain at two (2) years and language will be added to the conditions stating that when all conditions are substantially met then renewal will not be unreasonably denied. ”

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioner requires a special permit to operate an automobile sales and service facility, to allow motor vehicle sales and rental, to allow motor vehicle general and body repair, and to allow motor vehicle light service.

With regard to this operation, the Board finds that the use will be in harmony with the general purpose and intent of the Bylaw. It is located within an industrial district having similar uses and is not detrimental to the neighborhood, nor does it alter the character of the zoning district. This business will not substantially increase noise, traffic or other issues normally present in an industrial district.

To ensure that the applicant is in compliance with the conditions of the permit once the business is fully operational, 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

Jonas D.L. McCray

Benjamin D. Stevenson