

CASE 09-21
Herb Chambers BMW of Sudbury
68 Old County Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, September 21, 2009

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

Notice was published in the *Sudbury Town Crier* on August 27 and September 3, 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.

It was noted for the record that under the Mullin Rule Jonathan Gossels had reviewed the audio tape and the minutes of the August 3 hearing and therefore was able to participate in the discussion at this hearing and serve as a voting member.

Joshua Fox, Attorney at Rollins, Rollins and Fox, and Sal Sachetta, Corporate Construction and Facilities Manager for the Herb Chambers Company, were present on behalf of Herb Chambers BMW of Sudbury to represent a petition for a special permit to install signage at the new BMW dealership, property located at 68 Old County Road.

Proposed is a combination of directional signage and a single freestanding sign. Mr. Fox reminded the Board that the consensus at the August 3 meeting was that the ZBA was in favor of approving the directional signs. The directional signs are modest in size and consist of white panels with lettering and serve to help customers navigate around the dealership. There is no illumination and there are no BMW logos on them. The Board was in agreement about the directional signs and discussion then shifted to the proposed 25 foot freestanding sign.

At the ZBA's request Mr. Fox presented new photo simulations of the BMW site with the proposed freestanding sign at 20 feet and 25 feet as seen from the view of eastbound traffic. After a brief discussion of traffic patterns he said that the sign's visibility is of the utmost importance when a clear view of the building cannot be seen. To illustrate his point, one of the photos showed a view of the site from the vantage point of Bosse Sports and Health Club. Bosse sits approximately where the street lines and turn lane begin. Mr. Fox noted that while the building is not visible, a freestanding sign would be. He argued that from a traffic flow and safety perspective a sign would provide drivers with enough advance notice to put on their turn signals and move into the turn lane. Mr. Fox noted that the sign would also aid the elderly

residents of neighboring Wingate at Sudbury, a nursing home and rehabilitation center, who would also be using the turn lane to enter the Wingate facility.

Mr. Gossels said that he wanted to consider the sign as part of a package including the flag and flagpole also standing on the property.

Mr. Fox then reviewed the criteria used to consider special permits and reminded the Board about the areas where they were in agreement at the August 3 hearing. To the question of whether or not the use was in harmony with the site he said that he felt the use of the site as a car dealership was appropriate. BMW does not feel a 25 foot sign would be detrimental to that use. When considering whether the use is in an appropriate location he said that the building is in an industrial district with a restaurant and other neighboring businesses and said that the Board found the use was compatible. The Herb Chambers Company feels signage is reasonable for this particular site based on its location off of Boston Post Road and behind Sky Restaurant which, due to its siting at a higher grade, creates diminished visibility for BMW from Boston Post Road. Mr. Fox said that the grade of Sky Restaurant sits approximately 10 feet higher than the BMW building and its roof height is approximately 20-25 feet. Therefore the Herb Chambers Company feels that the 25 foot sign is necessary and reasonable to achieve visibility.

Mr. Gossels asked about the height of the BMW building and Mr. Sachetta said that it was approximately 28 to 30 feet high so the sign would be below that.

As to the fourth criterion, whether or not it is offensive he argued that lighting of the sign would be minimal. In regard to the fifth criterion, traffic congestion, Mr. Fox said that the sign will add to the safety of the intersection.

The Board then discussed their thoughts on the proposal. Mr. Gossels said that he wanted to respond to points raised at the August 3 meeting, in particular, comments about the flag. While he does not dispute Mr. Chambers' patriotism he took offense to the idea that the oversized flag was installed solely as a display of patriotism. Instead he views the large flag as a marketing tool which he described as "a cartoon of a sign." Mr. Gossels said that when the ZBA was presented with the site plan for the property he assumed that the flag would be a normal size flag. He said that the ZBA typically works to prohibit attention-getting devices and he feels that the flag is just that, an attention-getter. He even suggested that the flag might be a distraction for drivers. In response to his question about the height of the flagpole, Mr. Fox said that it was an 80 foot pole. Mr. Gossels also noted concerns he had about the lights that spill into the conservation area to the east of the property. Although Mr. Gossels raised these issues he also commended the Herb Chambers Company on a terrific job with the site. He said that he wants to see the business succeed but he did feel the need to raise the issues he mentioned and found jarring.

Ms. Quirk raised a point about the second criterion. While she acknowledged that the site is within an industrial district she said that it also abuts a residential neighborhood and noted that other businesses in the area or in Sudbury do not have similarly sized signs or flags for that matter. She did not feel that the town wants this type of signage and therefore that is the reason for the sign bylaw. As for the third criterion, reasonableness for appropriate facilities, she said that the Sudbury Zoning Bylaws have been in place for a number of years so that the Herb Chambers Company should have known what the expectations and restrictions were when developing their proposal. She said that she still had concerns about the 25 foot freestanding sign, the lighting and the flagpole, which she understood would remain in place.

Mr. Garanin, a veteran himself, also took issue with the size of the flag. He said that the 80 foot pole with the oversized flag is a visual nuisance and he feels that a 25 foot sign is also superfluous. He has viewed the site at all times, day and night. While he also feels the building is well done he said that it is the perhaps the biggest building in Sudbury, with the exception of Raytheon, with an even greater visual impact. It is his opinion that the fixed signage on the building is enough and that due to the flag's prominence no other signs are needed. It was his opinion that he did not feel anyone would mistake the site for anything other than a car dealership. As to the lighting, the first time he saw it at night was from the direction of Bosse Sports and Health Club and with its overwhelming brightness his impression was that of Route 9. He said that with any cloud cover it will light up the sky above it. Mr. Garanin also asked about the state of the fence along the property. Mr. Fox said that the fence will eventually be a stockade fence that should block the glare of headlights. He reminded the ZBA that a bond is being held by the town for that work.

Mr. Stevenson said that he would echo what other Board members said about the site being well done and that he too hopes for a successful business. While he was not personally offended by the flag and said that he does not feel that he can question the choice of using that size flag, he agreed that the flag is big and does call attention to the building. It was his opinion that since the flag is doing that job then it should therefore be a factor in considering additional signage. Mr. Stevenson noted that at the August 3 hearing concerns were raised about westbound traffic. Mr. Fox said that since there would only be a small glimpse of the sign from the approximate point on Boston Post Road where Papa Ginos stands, at this time the Herb Chambers Company is primarily focusing primarily on directing eastbound traffic. Mr. Stevenson pointed out that drivers would probably be looking for the dealership as a destination, knowing the address, as it would seem rare for people to simply drop in at the site on an impulse. As such he did not feel that an additional sign was necessary. Other Board members agreed. He then asked for examples of similarly sized signs in Sudbury. Mr. Fox mentioned that Aculpulco's Restaurant has an older, oversized 20 foot sign but feels that it is unassuming and not offensive. He said that people probably drive by the restaurant and don't even notice that it is oversized. Mr. Gossels noted that Aculpulco's sign is externally lit rather than internally lit as is intended at the BMW site.

There was discussion about how flags of this size are only used at car dealerships.

Mr. McCray said that he sees the utility of the sign if drivers in either direction are coming from out of town. He sees the sign as being the visual cue that the business would need and did not view the flag as the cue. He also did not see an appreciable difference between a 20 foot or 25 foot sign.

Mr. Gossels asked whether it was possible to increase the size of the BMW logos fixed to the building. Mr. Fox said the medallions measure about 10 square feet, but are actually smaller than the company had expected and are harder to see. The Board discussed whether it would be possible to alter the building signage and agreed that Herb Chambers could ask the Board for larger building signage.

Again, Mr. Fox said that the BMW site is unique and that their main goal is to achieve traffic safety and visibility for a commercial site that is at a disadvantage. He referenced the photo renderings and said that from the eastbound direction either a 20 or 25 foot sign would achieve the goal. Their original hope was that the 25 foot sign would be seen by westbound traffic as well and since that goal cannot be achieved the company is considering a smaller sign.

Ms. Quirk then asked whether any members of the audience had any questions. Jeffrey Klofft, 15 Ironworks Road, asked whether most of the traffic going to the site might be service traffic and therefore clients would be apt to know the address of their destination and would probably know where they were headed. In regard to the 80 foot flag pole he noted that if a cell phone company were to apply to install an 80 foot cell tower there would probably be a set of hearings on that issue whereas this flag pole was not discussed in those terms. He also wanted to acknowledge that the site had been allowed to be built closer to the road than would otherwise have been allowed in order to address the unique siting and help the business' visibility from Boston Post Road.

Mr. Stevenson asked whether or not smaller signs could be installed closer to the street. Mr. Garanin said that he had suggested this at the last meeting but was told that underground wiring made placement difficult. Mr. Fox said that they did not review plans for small signs on Boston Post Road because they were initially hoping to have a tall sign that would achieve visibility from the west as well as from the east and therefore only considered locations where a tall sign might be placed.

Ms. Quirk then asked for a poll of the board if the proposal for a 25 foot sign were reduced to 20 feet. Ms. Quirk, Mr. Garanin and Mr. Gossels were against that proposal. Mr. Stevenson and Mr. McCray would be agreeable to that plan. Mr. Gossels argued that if the sign isn't going to be seen by Boston Post Road from the west, then perhaps a 12 foot sign would be appropriate. He

suggested the much smaller sign in conjunction with enlarging the signage fixed to the building, which then might be useful for westbound traffic.

Mr. Klofft asked about the Design Review Board's opinion. Mr. Fox said that the Herb Chambers company had two meetings with the DRB and in the final meeting the DRB Chair Frank Riepe said that the particular circumstances of this building exceeds the assumptions of the signage bylaws. He said that the Design Review Board finds the sign proposal of a high standard and therefore recommends approval by the ZBA.

The subject of lighting was discussed. Mr. Gossels voiced concerns about light spilling over into the wetlands. Mr. Fox said that the lighting plan was approved by the ZBA subject to review by the Selectmen. The Selectmen had a second look during last week's site visit and felt that it was not overly lit. Mr. Fox noted that the after-hours security lighting reduces the light by 75 percent. Mr. Klofft said that there were no light deflectors on the lights by the wetlands. Mr. Fox said that he could discuss this with the Herb Chambers Company and review this with the Selectmen.

Ben Stevens, President of Trask Incorporated and developer for The Villages at Old County Road which abut the site, said that there are no evergreens currently planted at the wetland side of the property and that lighting may be an issue for his property once the season changes.

When asked for any comments, Sudbury Building Inspector Jim Kelly noted that there are actually a number of businesses in town with challenging siting that could use additional help with visibility by having freestanding signs. Mr. Gossels said he still had strong concerns about setting a precedence by allowing the freestanding sign.

Mr. Garanin asked whether anyone had checked with Town Counsel about the possibility of dividing the application in order to consider the directional signage and pylon sign separately so that the ZBA could vote on directional signage. No one had and so the application had to stay as it was.

The Board then discussed the possibility of a 15 foot freestanding sign with larger BMW logos on the building. Mr. Gossels added that he also wants to see the lighting issue fixed to alleviate lighting of the wetlands and said that when the flag wears out he wants it replaced with a smaller flag.

Mr. Fox formally requested that the hearing with the full application be continued to October 19, 2009, the next meeting of the Board.

There were no further comments from the Board or audience. The hearing was continued to October 19, 2009.

Elizabeth T. Quirk, Chair

Stephen A. Garanin

Jonathan G. Gossels

Jonas D.L. McCray

Benjamin D. Stevenson

CASE 09-26
David Howell
50 Beechwood Avenue

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, September 21, 2009

The Board consisted of:
Elizabeth T. Quirk, Chair, Stephen A. Garanin, Jonathan G. Gossels, Jeffrey P. Klofft, and
Jonas D.L. McCray

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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.

David and Olivia Howell were present to represent a petition for a Special Permit to build an attached three-car garage onto the west side of their property. Mr. Howell said that an attached garage was preferred over a detached garage for the ability to share the utilities of the house such as heat, electricity, and hardwired smoke detectors. Mr. Howell said that the site for the garage was determined by the location of a large c. 1940s septic system installed by masons who once owned the property. As is typical with a three-car garage, Mr. Howell intended to use two bays for parking and one for storage.

Mr. Gossels noted that a three-car garage would be unusual for that neighborhood.

Ms. Quirk said that while there appear to be several trees screening the area she had concerns about the proximity of garage to the abutting neighbor. Mr. Howell said that the neighbor does have a fence.

Both Mr. Gossels and Ms. Quirk then noted the large amount of garage and driveway that would be created by the addition. Discussion ensued about lot coverage and the amount of impervious surface allowed in the area. Maps were consulted to determine that the house was located in Water Resource Protection District Zone 3 and therefore there is no criteria for impervious surface that needs to be addressed.

Plans for the roofline were then discussed. Mr. Howell said that the roofline would be the same height as the existing house.

Mr. Klofft mentioned the current condition of the driveway area noting that multiple cars were parked there and a dumpster. Mr. Howell said that a three-car garage would allow a place for all

of the things that are currently visible. He explained that he had recently had a flood in his basement and is in the process of cleaning it out which requires multiple dumpsters to do so.

Ms. Quirk said that she still had concerns about how close the garage would be to the lot line and the neighbor and suggested a two-car garage which would preserve more of a buffer between the back of the garage and the lot line.

Mr. Howell said that he could build a detached garage but that it would require many more site alterations. He still preferred an attached garage.

Mr. Klofft noted that the lot is larger than others in the area, but the concern is to avoid a sprawling house on a small lot.

In order to provide Mr. Howell with an alternative design that would be acceptable to the ZBA, discussion about various garage dimensions setbacks ensued.

The house has a gambrel roof so the pitch of the gable would also determine dimensions.

In the end the application was amended to provide for a 28 foot by 29 foot addition consisting of a two-bay garage with room for a door at the side.

No neighbors were present at the hearing.

There being no further questions or comments, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant David Howell, applicant and owner of property, a Special Permit pursuant to Section 2420 of the Zoning Bylaws, to construct an attached, two-bay garage measuring 28 feet wide by 29 feet deep with a rear setback of not less than 15 feet. The roofline is not to exceed the height of the existing property located at 50 Beechwood Avenue, Residential Zone A-1.

This Special Permit shall lapse if construction has not begun, except for good cause, within twelve 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."

VOTED: In favor: 6 (Unanimous) Opposed: 0

REASONS: The petitioner requires a special permit due to the nonconforming nature of the property. The Board finds that the proposed garage, which will create a rear yard setback

deficiency, will not be substantially more nonconforming than the existing nonconformity to the neighborhood. The roofline and architecture will be compatible with the existing structure and the garage will provide needed indoor space to park vehicles and store equipment. No abutters were present to oppose the petition.

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Stephen A. Garanin

Jonas D.L. McCray

Jonathan G. Gossels