

CASE 10-51
Thomas E. Powers
Lot 5A Old Lancaster Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, December 6, 2010

The Board consisted of:
Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; and
Jonathan F.X. O'Brien

Notice was published in the *Sudbury Town Crier* on November 18 and November 25, 2010, posted,
mailed and read at this hearing.

Ms. Quirk, as Chair, opened the hearing. She 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.

Gerald Cournoyer, attorney, presented on behalf of his client Thomas E. Powers, Trustee of the R&K
Realty Trust and resident of 201 Union Avenue, an appeal of the determination by the Sudbury Building
Inspector, Jim Kelly, that Lot 5A lost its protected status as a legal nonconforming lot on May 6, 1971
when it merged with Lot 6A under common ownership by Robert and Angelyne Bozeman. Mr. Kelly
contends that the merger doctrine provides that when separate nonconforming lots come into common
ownership, they merge and therefore are no longer nonconforming. A memorandum outlining the above
appeal was presented by Mr. Cournoyer to the Zoning Board of Appeals. It is Mr. Cournoyer's contention
that the owners of Lot 5A were, and are at present, separate and distinct from the owners of Lot 6A and as
such there can be no merger of the title to the two lots.

Mr. Cournoyer briefly discussed the ownership of the property and the timeline of property conveyance.

Mr. Gossels questioned who were the beneficiaries of the property, although the Board then discussed
whether or not beneficiaries would be relevant to the case.

Mr. Kelly proposed that there may have been a "sham conveyance" of land during Mr. Boseman's
ownership in order to avoid common ownership. He said that action was not the intent of the merger
doctrine. Mr. Cournoyer disagreed. Further discussion about the timeline of lot division and ownership
ensued.

In the end the Board discussed the opinion that the lots appear to have been held as distinct and did not
merge.

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

The following motions were made and seconded:

MOTION: "To overturn the Determination of the Building Inspector that Lots 5A and 6A Old Lancaster
Road had merged, based on the fact that separate and distinct ownership of the parcels in question had
been maintained throughout the period in question."

VOTED: In favor: 5 (Unanimous) Opposed: 0 MOTION CARRIES

REASONS: In looking at the timeline of lot ownership, the Board finds that separate and distinct ownership of the parcels in question had been maintained throughout the period in question. Therefore the Board decided to overturn the decision of the Building Inspector that Lots 5A and 6A Old Lancaster Road had merged and were no longer valid non-conforming lots.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Nancy G. Rubenstein, Clerk

Jonathan F.X. O'Brien, Associate

Stephen A. Garanin

CASE 10-52,53,54,55
New Cingular Wireless, LLC (AT&T)
116 Victoria Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, December 6, 2010

The Board consisted of:

Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jonathan F.X. O'Brien

Notice was published in the *Sudbury Town Crier* on November 18 and November 25, 2010, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, opened the hearing. She 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.

Andrew Thompson, Consultant with Centerline Communications, presented on behalf of his client New Cingular Wireless, LLC (AT&T), applications for a Use Variance for a 95 foot monopole outside of a Wireless Overlay District, a Special Permit to install a 95 foot monopole for a Wireless Facility, and Variances to locate a 95 foot monopole within 125 feet of a property line setback and to locate radiating components of a Wireless Facility within 500 feet of a residential lot line, on property located at 116 Victoria Road.

Ms. Quirk noted that the materials submitted to the Board of Appeals appeared to be incomplete. She referenced a memo the Board received dated December 1, 2010 from Jody Kablack, Director of Sudbury's Planning and Community Development, which recommended that additional information would be necessary from the applicant in order for the ZBA to make any determinations on this project. Ms. Kablack suggested that it might be in the applicant's best interest to withdraw the applications without prejudice and submit the correct and complete applications. She also recommended that the Board hire a consultant, to be paid for by the applicant, to peer review the applications.

Ms. Quirk acknowledged that there were several members from the community who had come to the hearing and said that she appreciated their interest and time. However, she said that given that the applications were incomplete there was probably not a lot to be gained by getting into their substance at this point in time. She instead suggested that the Board and the applicant would go through the list of items contained within Ms. Kablack's memo in order to ensure that when new applications were submitted all of the information would be included.

Mr. Gossels said that he visited the site and was unclear, given the power and telephone lines, which pole was to be converted into the wireless pole. He asked for further clarification.

Mr. Thompson said that he had been in discussions with NSTAR about the required balloon test, which was posing a problem given the proximity to the power lines. He said that a crane would be used instead. He was going to visit the site with NSTAR later in the week to determine feasibility and would get back to the Board about the dates and location of the test so that it could be properly advertised for the public.

The Board then went through Ms. Kablack's memo item by item and Mr. Thompson said that he would comply by gathering essential information.

Mr. Gossels pointed out that the current proposal was for an exterior antenna. He said that the Board has historically not approved exterior mounted antennae except in cases of Town use. He suggested that AT&T also look into the pole's capacity, technology and ability to facilitate co-location on a proposed pole. Mr. Thompson acknowledged that he was only recently brought on as a consultant in this case and said that he would review the proposal once again and take care of outstanding issues.

Among other issues the Board suggested the applications address other collocation opportunities and coverage gaps, the noise diesel generators might make, underground utilities, and a bond for removal of the pole. The size and quantity of plans required was discussed. The site plan will need approval by the Selectmen and there will be stormwater review as well.

Mr. Gossels also added that he wanted to see the justification for a 100' pole in the form of comparative data with lower heights.

At this point the applicant and the Board discussed the applicant's withdrawal of the application without prejudice. Mr. Thompson said that New Cingular Wireless, LLC (AT&T) would re-submit new applications.

Mr. Gossels suggested strongly that the applicant speak with the neighbors to discuss the application prior to the next hearing.

Ms. Quirk explained to the audience of several neighbors that the applicant was being asked to fix deficiencies in the application and comply with the Wireless Bylaws and to return at a future hearing. The hearing notice will be mailed to the abutting neighbors.

Stan Kaplan, 98 Victoria Road, told the Board that all these people came to the meeting expecting to be heard. Ms. Quirk said that she understood the frustration, but the Board would be following procedures by holding further comments until the next meeting.

Harvey Peters, 110 Victoria Road, questioned how the consultant for peer review would be hired. He was concerned about how the easement would be addressed.

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

The following motions were made and seconded:

CASES 10-52

MOTION: "To accept a request from the Applicant to withdraw Case 10-52 without prejudice."
(Request for a Use Variance for a 95 foot monopole outside of a Wireless Overlay District, 116 Victoria Road)

CASES 10-53

MOTION: "To accept a request from the Applicant to withdraw Case 10-53 without prejudice."

(Request for a Special Permit to install a 95 foot monopole for a Wireless Facility, 116 Victoria Road)

CASES 10-54

MOTION: "To accept a request from the Applicant to withdraw Case 10-54 without prejudice."
(Request for a Variance to locate a 95 foot monopole within 125 feet of a property line setback, 116 Victoria Road)

CASES 10-55

MOTION: "To accept a request from the Applicant to withdraw Case 10-55 without prejudice."
(Request for a Variance to locate radiating components of a Wireless Facility within 500 feet of a residential lot line, 116 Victoria Road)

VOTED: In favor: 5 (Unanimous) Opposed: 0 MOTIONS CARRY

REASONS: The applications were incomplete and new information is needed for the Board to make its decisions.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Nancy G. Rubenstein, Clerk

Jonathan F.X. O'Brien, Associate

Stephen A. Garanin

CASE 10-56
Elizabeth and Jason Steffick
16 Intervale Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, December 6, 2010

The Board consisted of:

Elizabeth T. Quirk, Chair; Nancy G. Rubenstein, Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jonathan F.X. O'Brien, Associate.

Notice was published in the *Sudbury Town Crier* on November 18 and November 25, 2010, posted, mailed and read at this hearing.

Ms. Quirk, as 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.

Elizabeth and Jason Steffick presented their application for a special permit to demolish an existing structure on a non-conforming lot and construct a new colonial style residence not to exceed 3,000 square feet at 16 Intervale Road. As their family grows they are seeking additional space in which to live and in explaining the layout Mr. Steffick said that he feels it fits within the context of the street. He said that he has spoken with his neighbors about the project and they are supportive.

Mr. Gossels said that the scale of the project is good, however he found the proposed front setback of 41 feet troubling.

In response Mr. Steffick noted that the bylaws allow for a forty foot setback and said that given the lot's rectangular shape he wanted to avoid reducing the back yard further. He explained that there is a wooded area between his house and his closest neighbor's and if the proposed house were moved back, as Mr. Gossels suggested, it would encroach upon that neighbor.

Mr. Gossels still wanted to see the house moved farther back. He noted that he consistently votes for larger front setbacks when special permits are requested for demolition and new construction project.

Karen Flynn, 15 Harness Lane, was present and explained that she was the abutting neighbor who would be impacted by the removal of trees should the Stefficks have to move their house back toward hers.

Ms. Rubenstein also noted that the design of the house, with the projecting section at the back, also impacts how far the house can move backward.

Ms. Quirk expressed that she was fine with the location of the proposed house as is, particularly because the neighbor had expressed concern at the hearing.

Mr. Kelly interjected that the tear-down guidelines are in fact just guidelines and so the location of each newly constructed house should be considered individually. He said that since the house plans did not have a third floor and were of an appropriate scale he felt that the neighborhood could withstand a 41 foot setback.

The homebuilder, Mr. Maillet, said that in his opinion a setback of 60 feet would be too far back on this street. He said the proposed house will be similar in size with the houses that are already there.

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

The following motion was made and seconded:

MOTION: "To grant Elizabeth and Jason Steffick, applicants and owners, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of a structure and outbuilding on a non-conforming lot and construction of a new residence not to exceed 3,000 square feet, property located at 16 Intervale Road, Residential Zone A-1 subject to the following:

1. The new house will be constructed in the location as shown on the Proposed Site Plan dated October 27, 2010, prepared by Sullivan, Connors & Associates which is incorporated into and made part of this Special Permit.
2. This Special Permit shall lapse if construction has not begun, except for good cause, within twelve (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: 4 Opposed: 0 Abstained: 1 (Garanin)

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.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Nancy G. Rubenstein, Clerk

Jonathan F.X. O'Brien, Associate

Stephen A. Garanin