

CASE 10-18
Rosanna Woodmansee
105 Powers Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, May 3, 2010

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 April 15 and April 22, 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.

Susan Karon, 93 Powers Road, was present on behalf of Ms. Woodmansee to represent a petition for a special permit for an accessory dwelling unit at 105 Powers Road.

Ms. Quirk noted that the hearing had been continued from March 22, 2010 in order for the correct size of the unit, 954 square feet, to be legally noticed in the *Sudbury Town Crier*. Ms. Quirk read into the record the standard list of conditions that the Board imposes for accessory dwelling units, which had been discussed at the previous hearing and were deemed acceptable to Ms. Woodmansee.

As there were no changes to the original petition, there were no additional questions from the Board. No abutters other than Ms. Karon were present. Therefore, the hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Rosanna Woodmansee, applicant and owner of property, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws in conformance with the application for the Special Permit dated February 10, 2010 and the plans submitted by the Applicant, to allow a 954 square foot Accessory Dwelling Unit for property located at 105 Powers Road, Residential Zone A-1, as follows:

1. The Accessory Dwelling Unit shall be occupied by no more than four persons.
2. Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of the Accessory Dwelling Unit in accordance with all requirements of the Board of Health.
3. There shall be at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the Accessory Dwelling Unit.
4. The property owner shall file a sworn affidavit with the Town Clerk, with a copy to the Board of Appeals, certifying such occupancy is consistent with the Special Permit, every four (4) years.

- 5. This permit shall be recorded at the Middlesex South District Registry of Deeds prior to issuance of a building permit for the accessory dwelling unit.
- 6. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit.”

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioner requires a Special Permit to allow a single-family accessory dwelling unit. The Board finds that the petitioner has fulfilled the requirements of the Bylaw for the granting of a Special Permit.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Nancy G. Rubenstein, Clerk

Jeffrey P. Klofft

Stephen A. Garanin

CASE 10-24
Joe Jowkar and Marta Redjaee
10 Crestview Circle

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, May 3, 2010

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 April 15 and April 22, 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.

Joe Jowkar, applicant and owner, presented a petition for a special permit under the provisions of Section 5500 of the Zoning Bylaws to allow an accessory dwelling unit in the lower level of his house located at 10 Crestview Circle. The apartment would be comprised of his existing basement space.

Mr. Jowkar presented the Board with photographs of the existing property to illustrate his case. In the photographs the driveway, patio, and rear entry to the basement were shown. Mr. Jowkar said that the total size of the two-bedroom apartment would measure approximately 945 square and he explained that the mechanical room, oil tank room, and storage room would be blocked off from any tenant's use so should not be counted in the square footage calculations.

Mr. Klofft disagreed with the calculations since the entire property appeared to measure approximately 3,100 square feet. He expressed concern about the upwardly spiraling size of accessory apartments requested over the past year. He wanted to know how the calculation of 830 square feet, as was advertised in the newspaper, was derived. Mr. Jowkar said that he submitted the 830 square foot size for advertising because the apartment could become a one-bedroom apartment by blocking off a storage room that could potentially make a second bedroom.

Ms. Quirk said that she was not concerned about the size of the apartment since the basement is an existing space.

Mr. Gossels said that at this point he was also not concerned about this case but about the precedent set for future cases. He said that the bylaw was not written in order to create two-family houses. Mr. Gossels said that he would be inclined approve this case, although the applicant shouldn't be denied the second bedroom. He again said that he was concerned about apartment size in future applications.

Mr. Jowkar asked whether the garage space could be considered as living space in the upstairs of the house. Mr. Klofft felt that the apartment would still measure about half of the house even if the garage were counted as living space. He said that he would have a hard time approving the application because he doesn't see it fitting the accessory apartment bylaw due to size. He also pointed out that the proposed accessory apartment is above grade and not below as a true basement might be. Mr. Jowkar explained that

the space was a basement with a walkout prior to his recent renovations. He also said that he is familiar with Zoning laws because he is a civil engineer. He did not see what was different about his application and the other accessory apartment that was just approved.

Mr. Gossels said that the apartment spaces are structured differently.

Mr. Klofft pointed to section 5522 of the Zoning Bylaws which states that accessory apartment cannot be greater than 850 square feet unless the ZBA approves a waiver due to the physical constraints of an existing structure.

Mr. Jowkar said that he had reviewed his plans with the building inspector, Jim Kelly. Mr. Kelly had said that if the accessory apartment had only one bedroom then it would be less than the 850 square feet.

Mr. Klofft noted that the Building Inspector was not present at the meeting to consult. He further said that the greater issue is that the apartment measures more than 30% of the size of the house which is not in the spirit of the accessory apartment bylaw. Mr. Gossels reminded the applicant that the Zoning Board is ultimately the decision-making authority for special permits.

Ms. Quirk asked whether Mr. Klofft would approve the petition if only one bedroom were proposed. Mr. Klofft said that he would not because he still felt that the space was larger than 30% of the house.

Mr. Jowkar said that he was using the assessor's document to measure the property which he said does not include the basement in livable square footage.

Ms. Quirk asked whether any neighbors were present to comment. Michael Kleeman, 11 Crestview Circle, said that he was opposed to the Accessory Apartment Bylaw in general. He said that Crestview Circle is a single-family, owner-occupied neighborhood and he was concerned about what an accessory apartment next door, with potentially transient people renting it, would do to his own property value.

Ms. Quirk said that the Board has been struggling with the interpretation of new version of the bylaw, but that the Board needs to respect the votes of Town Meeting that adopted the revisions. One difficulty is distinguishing how to differentiate between a two-family house and an accessory apartment. She said that the changes adopted at Town Meeting enabled two unrelated groups of people to live on one premises. She then said that if the public is not happy with the revised bylaw then they could prepare to come to Town Meeting with a petition to repeal it.

After a great deal of discussion about dimensions, calculations were then done to determine the amount of square footage that would measure 30% of the house. The total was approximately 896 square feet. More discussion followed about the starting measurements used to calculate the square footage of the proposed accessory apartment. In the end Mr. Klofft still felt that the apartment measured almost half of the total house even with the exclusion of the mechanical spaces. Mr. Garanin and Mr. Gossels agreed with the assessment.

Ms. Quirk suggested that given the Board's conflicted opinions about whether this case fit the intent of the bylaw, a vote on the special permit would probably not be favorable. She told Mr. Jowkar that if he wished to proceed with creating the accessory dwelling with square footage that would fit the size

outlined in the bylaw then he could re-file a new application for a special permit with the Zoning Board and all filing fees would be waived.

Mr. Jowkar then requested that the application for the Special Permit for an accessory dwelling be withdrawn without prejudice.

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

The following motion was placed and seconded:

MOTION: "To accept a request from the Applicants to withdraw Case 10-24 without prejudice."

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

REASONS: Relying on the information submitted, it is the determination of this Board that the size of the applicant's proposed accessory apartment exceeds the parameters of Accessory Apartment Bylaw.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Nancy G. Rubenstein, Clerk

Jeffrey P. Klofft

Stephen A. Garanin

CASE 10-25
Mark and Marjorie Lustig
16 July Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, May 3, 2010

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 April 15 and April 22, 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.

Mark and Marjorie Lustig, applicants and owners of the property, presented their application for a special permit to demolish an existing non-conforming structure and garage and construct a new residence not to exceed 2,900 square feet at 16 July Road. Mr. Lustig explained that while the new house improves the rear setback a waiver would still be required for a four foot rear yard deficiency.

Mr. Gossels asked about the height of the house which measured 33 feet. He expressed concerns about the height in relation to the front setback of 40 feet which he felt would create a looming aspect.

The builder, Bill Curley, explained that the lot is about 100 feet deep which did not leave many options for roof height.

Mr. Garanin suggested that a smaller house be built.

Mr. Klofft said that he understood that the lot was long and narrow and noted that there are other houses of this height in the area of July Road.

Mr. Gossels asked whether or not the height could be adjusted. Mr. Curley said that a reduction of a foot or two was not going to make a great visual difference from the street.

Ms. Quirk asked whether any neighbors were present who wished to speak. Will Smith-Vaniz, 29 July Road, said that as a neighbor he is happy to have the Lustigs contribute to the renovation of July Road.

Mr. Klofft said that he would approve the plan since it was not an overly-large reconstruction.

Ms. Rubenstein also felt that adjusting the height by two feet would not make a great difference given that the lot is long and shallow.

Ms. Quirk noted the standard conditions for the timing of demolition and new construction and the Lustigs were amenable.

There were no additional questions and no other abutters were present. Therefore, the hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Mark and Marjorie Lustig, applicants and owners of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing non-conforming structure and outbuildings and construction of a new residence not to exceed 2,900 square feet, property located at 16 July 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 April 6, 2010, prepared by Lakeview Engineering 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 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 (Gossels)

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

Jeffrey P. Klofft

Stephen A. Garanin

CASE 10-26
Julie Lieberman
19 Rolling Lane

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, May 3, 2010

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 April 15 and April 22, 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.

Julie Lieberman, applicant and owner of the property, presented her application for a special permit to demolish an existing non-conforming structure and construct a new residence not to exceed 3,000 square feet at 19 Rolling Lane. She said that the existing house is in poor shape and she feels that it makes good economic sense to demolish it and build a new house on the site.

Ms. Lieberman proposed a front setback of 45 feet as noted on the plot plan presented in the application. Ms. Quirk asked whether Ms. Lieberman would consider moving the house back. Ms. Lieberman said that there is quite a lot of septic infrastructure located at the back of the house. She had recently conducted a Title 5 study on the septic system and it was deemed in good shape and conforming. Her preference would be to not move the septic system.

Mr. Gossels said that the proposed house is very tall and noted that the lot is very deep so that there is room in the back if the house were to be moved. Ms. Quirk agreed. She tried to explain the negative impact on the streetscape that a tall, multi-story house set too closely to the road would have. Ms. Lieberman said that there are a number of other newly constructed houses along the street now that are of a similar height. It was suggested that the house be moved back ten feet.

Saul Milan, the builder, suggested that the pitch of the roof could be reduced perhaps by two feet.

Mr. Klofft asked about the location and age of the septic system. Mr. Milan said that the septic system was located directly behind the house but its age is unknown.

Mr. Gossels said that he felt the house had a nice design but he could not support the proposal because he felt that there was enough yardage at the back of the house to move it back. Mr. Milan said that a hill is behind the house so they would have to cut into that hill. He suggested moving the house perhaps five feet and the septic tank could be moved. Mr. Gossels said that it is just such a tall house that it would read tall if not moved back. Mr. Milan suggested that the tank could be moved back if the applicant wanted to do so. Ms. Lieberman said that it would be fine if it needed to be moved back but she was concerned about where the septic system would go and about losing much of the back yard which is comprised mostly of woods. Mr. Garanin said he did not feel ten feet is a large number. Ms. Lieberman and Mr. Milan reminded the Board that the back yard was mostly woods and a hill.

The Board discussed moving the house so that the house would be no closer to the road than 55 feet.

There were no additional questions and no abutters were present. Therefore, the hearing was closed.

The following motion was made and seconded:

MOTION: “To grant Julie Lieberman, applicant and owner of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing non-conforming structure and construction of a new residence not to exceed 3,000 square feet, property located at 19 Rolling Lane, Residential Zone A-1 subject to the following:

1. The new house will be constructed ten feet back from the location as shown on the Proposed Plot Plan dated January 15, 1960, prepared by Kon-Tac Engineer Service, which is incorporated into and made part of this Special Permit, so that the front setback from Rolling Lane measures fifty-five (55) feet.
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: 5 Opposed: 0

REASONS: The petitioner requires a special permit because the total floor area of the proposed structure will exceed the total floor area of the existing non-conforming structure. The Board finds that the proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed reconstruction will be designed compatibly with the surrounding homes in the neighborhood.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

Nancy G. Rubenstein, Clerk

Jeffrey P. Klofft

Stephen A. Garanin