

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, March 14, 2011

The Board consisted of:

Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Jonathan F.X. O'Brien.

Notice was published in the *Sudbury Town Crier* on February 24 and March 3, 2011, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, explained the requirements necessary to substantiate the granting of Variances. 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.

Attorney Robert Dionisi was present on behalf of the applicant, D. Demetri, Trustee of Old South Street Realty Trust, to request a use variance to conduct and operate a commercial bank, operated by TD Bank, with a drive-thru kiosk on land that is zoned for residential use at 407 Boston Post Road. Mr. Dionisi was also seeking a dimensional variance to construct the bank building with a front yard setback deficiency of 23.7 feet.

Ms. Quirk noted that since the initial hearing on February 7, 2011 the Sudbury Planning Board had submitted a memorandum dated February 15, 2011 and the Selectmen had submitted a memorandum dated March 4, 2011 with comments on the proposed project. The Zoning Board of Appeals was in receipt of both.

Ms. Quirk said that in thinking about the project as a whole she was not as concerned with the design of the building, which would be discussed and developed during the site plan review process, but rather the main issue for the Zoning Board appeared to be the use variance. She noted however that the dimensional variance would relate to building design.

Mr. Klofft mentioned that the placement of the drive-thru kiosk was a design element as well.

Mr. Gossels agreed that the Board should discuss the kiosk.

Jody Kablack, Director of Planning and Community Development, pointed out that the drive-thru kiosk is a prohibited use and the applicants had not specifically asked for this feature in their application.

Mr. Dionisi said that the application mentions a detached drive-up window on the use variance application, and it was the intent to request consideration of both the bank use and the kiosk use in the application.

After a brief discussion it was determined that the applications received by the ZBA, one for a use variance and one for a dimensional variance, were adequate to review the proposal submitted, including the detached kiosk.

The Board then began to go through the variance criteria in the Bylaw to ensure that all aspects were covered.

Ms. Quirk said that she supported a commercial use on the property, as it has been the subject of a use variance for some time. She noted too that the neighbors seem to have no objections.

Mr. Gossels said that the kiosk remained an issue linked with the use.

Mr. Klofft asked about the height of the kiosk. Mr. Dionisi said that it would be about 15 feet with a projecting roof.

The Board then determined that the proposal met the following criteria for granting variances, as outlined in the bylaws: under Section 6131, a special condition exists relating to the land because it is a residentially-zoned lot surrounded by commercial activity on three sides; under Section 6132, there would be substantial financial hardship to the owner if the bylaw were literally enforced because the land is unsuitable for anything other than a commercial use due to its location on Route 20 surrounded by commercial activity; and under Section 6133, the Board found that there would be no substantial detriment to the public good if the variance were granted because the land is located on Route 20 and is surrounded by commercial activity.

Regarding Section 6134, the Board determined that the kiosk in some sense derogates from the purpose of the bylaw because the bylaw prohibits kiosks; however, the bank building itself does not derogate from the purpose of the bylaw, and since the kiosk is integral to the functioning of the building as a bank and is an accessory structure to the main bank structure, it ultimately does not derogate from the bylaw.

The Board found that under Section 6140 a use variance may be granted because the applicant demonstrated that uses of the same general classification on adjoining lots were in existence before January 1, 1978, thus satisfying Section 6142.

Regarding Section 6145, the Board wanted to know how the proposed bank building compares with other bank buildings in town. Mr. Dionisi said that while he did not have the exact square footage, this proposed bank building is small compared to other branches, which can measure from 3,000 to 5,000 square feet. Compared to the existing building the footprint would be similar but it would be essentially a single story structure. There was some discussion about whether or not the proposed structure would be greater than what is currently there and whether or not this meant that it did not meet the criteria for 6145. Jonathan O'Brien noted, however, that the Board is not approving a specific size. The Board concluded that the structure was no greater than the minimum necessary to provide relief from the hardship and therefore satisfied Section 6145.

Regarding Section 6146, the Board had no opposition to the proposed bank's hours of operation and its impact on the location. The Board also determined that the proposed use met Section 6147, both part A and B.

As to special permit criteria listed in Section 6220, the Board found that the proposed use was harmonious with the bylaw, and that the location on Route 20 was surrounded by other commercial uses and therefore not detrimental to the neighborhood. The Board also found that adequate and appropriate facilities would be provided for the proper operation of the proposed use and it would not be detrimental or offensive to adjoining zoning districts or neighboring properties since the applicant has worked to

address concerns that the neighbors brought to its attention regarding lighting, screening, and traffic. In particular, traffic issues have been addressed by having only an entrance, and not an exit, on the Raymond Road side.

Ms. Quirk then read through the various letters of support as submitted by neighbors and Sudbury citizens. Included were letters from Charles Katz, Manager at the Rugged Bear Plaza, dated February 18, 2011; neighbors Tim and Gail Walsh (236 Raymond Road), Alphonso Canella (245 Raymond Road), Marjorie Drew (246 Raymond Road), Bettina Westerberg (239 Raymond Road), Zander and Brianna Thuijs (225 Raymond Road), and Michael and Brianna Caso (250 Raymond Road), dated February 2011; Robert McGinty, with Maple Meadows Condominiums, dated February 19, 2011; Louis B. Stephan, President of Prudential Ursula M. Stephan Realtors, dated March 1, 2011; Robert W. Macnamara, Jr. (58 Meadowbrook Circle), dated February 21, 2011; Silvy and Rob Brookby (284 Willis Road), dated March 7, 2011; and Vanessa and Mark Bilbe (43 Village Road), dated March 12, 2011.

Ms. Quirk asked whether there were any members of the public who wished to speak.

Tim Walsh, 236 Raymond Road, said that developer had worked with the neighbors every step of the way and they have done what the neighbors had asked so he was supportive of the proposal.

Michael Caso, 250 Raymond Road, echoed Mr. Walsh's comments. He said that his house would be most impacted by the project and the developers said that they would put in landscaping and would adjust the lighting plan to reduce the impact.

Briana Thuijs, 225 Raymond Road, said that the developer has been very responsive to the neighbor's requests and so they are also supportive.

Alfonso Canella, 245 Raymond Road, said that the neighbors were concerned that if this project did not go forward, another developer might not be as cooperative.

Bettina Westerberg, resident at 239 Raymond Road, agreed with her neighbors as did Marjorie Drew, resident at 246 Raymond Road.

Mr. Dionisi added that the Board should consider that this project would be a benefit to the Town given the increased tax revenue it would receive.

Mr. Klofft remained concerned about the kiosk. He likes the design of the building but not the kiosk as the structure would not be allowed in a residential zoning district.

Mr. Dionisi argued that the developers have taken measures to locate the building at the front of the lot along the street in order to promote a village atmosphere. It was therefore difficult to do this and have a drive-thru as other banks have. The drive-thru could not be at the front of the building, and so they proposed shielding it at the rear of the property.

Mr. Stevenson and Mr. Klofft both said that they support the neighbors' opinions but are uncomfortable with the kiosk.

Ms. Quirk questioned whether an attached ATM would work. Mr. Dionisi said that drive-up windows are typically on bank buildings, but due to special conditions of this site related to traffic circulation they cannot attach the drive-thru to the building.

Rick Curtain, Trustee of D&D Trust, said that one of the most important things that they did when they met with the neighbors was to close off the Raymond Road egress, and that is why they pushed the kiosk back. He said that the placement of the kiosk is where the neighbors wanted it. He said that the property is in their neighborhood. At the same time the developers were also told by the Town to push the building as far up to Boston Post Road as they could so that the bank would have a retail look. Mr. Curtain said, therefore, that they were trying to balance the Town's needs with the neighbor's needs over ten months of meetings.

Mr. Dionisi added that the kiosk is an accessory use to the principal use.

Mr. O'Brien and Mr. Stevenson discussed the fact that in this case the kiosk is so closely tied with the use of the bank that its location is perhaps necessary because of the hardship related to the site itself.

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

The following motions were made and seconded:

Case Number 11-7:

MOTION: "To grant D. Demetri, Trustee of Old South Street Realty Trust, applicant, and Edward and Linda Davis, Trustees, D&D Realty Trust II, owners, for a Use Variance pursuant to Section 2230 of the Zoning Bylaws for the purpose of conducting and operating a commercial bank building with a detached drive-thru window on a parcel of land zoned for residential use as shown on Preliminary Concept Plan 1 dated December 1, 2010, property located at 407 Boston Post Road, Residential Zone A-1."

VOTED: In favor: 4 Opposed: 0 Abstained: 1 (Klofft)

Case Number 11-8:

MOTION: "To grant D. Demetri, Trustee of Old South Street Realty Trust, applicant, and Edward and Linda Davis, Trustees, D&D Realty Trust II, owners, for a Dimensional Variance pursuant to Section 2620 of the Zoning Bylaws to construct a commercial bank building with a front yard setback deficiency of 23.7 feet, property located at 407 Boston Post Road, Residential Zone A-1."

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

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Benjamin D. Stevenson, Clerk

Jonathan F.X. O'Brien, Associate

Jonathan G. Gossels

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Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Jonathan F.X. O'Brien

Also: Jody Kablack, Director of Planning and Community Development

For the Applicant:

Ben Stevens, Manager, Trask Inc.

Joshua M. Fox, Attorney, Rollins, Rollins & Fox

Notice was published in the *Sudbury Town Crier* on February 24 and March 3, 2011, posted, mailed and read at this hearing.

Elizabeth Quirk, Chair of the Zoning Board of Appeals, explained to those in attendance that the ZBA is governed by M.G.L., Chapter 40B, Sections 20-23, the Sudbury Supplemental Rules for Comprehensive Permits and State regulations 760 CMR 31. She then gave a brief overview of the procedures the ZBA follows to hear 40B cases and gave an explanation of the Chapter 40B process. She noted that Chapter 40B is permitted under Massachusetts state law to encourage the construction of affordable housing. This state law enables local developers to bypass certain local laws, primarily zoning restrictions if twenty-five percent of units in the development area are designated as affordable units for sale or rent to low- or moderate-income households. She said the Town's authority under 40B is limited to health and safety issues, however most developers will work with the town to mitigate other impacts from the development so that the buildings fit into the neighboring surroundings. Screening, building style, and setbacks are often issues that are negotiated. Review of the plans rests with the ZBA. One comprehensive permit is granted with other town boards providing input throughout the hearing process. Because this type of development is enabled under state law Sudbury's power to deny these applications is limited. In order to deny 40B applications a town must already have at least 10% affordable housing within its housing stock or the proposed development must have some significant deficiency which makes it unsafe to the public or the environment. She noted that historically when towns have denied comprehensive permits for reasons beyond the limited issues, appeals courts have ruled in favor of the developer.

Documents received for March 14, 2011 included the following:

- 2/3/2011 Letter from Mass Housing;
- 2/9/2011 Trask Inc. Application for Landham Crossing LLC;
- 2/22/2011 Traffic Impact Assessment from MDM Transportation Consultants, Inc.;
- 2/24/2011 Memo from the Sudbury Design Review Board;
- 3/1/2011 Memo from the Debbie Dineen, Conservation Agent, Sudbury Conservation Commission;
- 3/3/2011 Memo from William Place, DPW Director/Town Engineer;
- 3/7/2011 Memo from John Whalen, Assistant Fire Chief;
- 3/11/2011 Memo from Jim Kelly, Building Inspector; and a
- 3/11/2011 Memo from Jody Kablack, Director of Planning and Community Development

Attorney Joshua Fox of Rollins, Rollins, and Fox presented the application on behalf of Trask Inc. for a proposed 40B development, Landham Crossing LLC, located at 192 Boston Post Road. Mr. Fox explained that the site comprises eight and a half acres at the intersection of Landham Road and Boston Post Road, in a residential district. Mr. Fox reminded those present that Mr. Stevens has built single-family homes in Sudbury and has also spearheaded the development The Villages at Old County Road, a similar 40B project as the proposed Landham Crossing. Mr. Fox said that Landham Crossing will have similar architectural features and attention to detail but is actually a less dense project than Old County Road. Old County Road was built on six acres with thirty-seven units and Landham Crossing will be built on eight and a half acres with thirty-two two-bedroom units proposed, or five units per buildable acre. Mr. Fox said that the property currently has a dilapidated single family home and several outbuildings which would be razed in order to build the development. He said that the parcel abuts single family homes on each side and in the rear and is directly across from a business district which includes a gas station and several small retail shops in a small retail plaza. It is in a pedestrian-friendly location within walking distance to the commercial corridor which contains Bosse Sports Health Club and other restaurants.

With respect to the Sudbury Zoning Bylaws and recommended 40B guidelines for setbacks, no setback waivers are needed. With respect to height the proposal complies with the thirty-five foot height limit of the Sudbury Zoning Bylaws.

Mr. Fox noted that a list of waivers was included in the application, however, per the suggestion of the Director of Planning and Community Development, Jody Kablack, the list of waivers will include further details as the hearings progress.

Mr. Fox reported that he had not received much feedback from abutters to the property who have all been made aware of the plans.

Mr. Fox mentioned that Ms. Kablack had recommended in her memo that a stormwater treatment plan and landscaping plan be provided in the application. He said that it was the intent of the developer to make adjustments to the location of the proposed structures pending ZBA feedback and then determine landscaping and stormwater around the revised plans.

Mr. Fox said that a traffic impact report was prepared by MDM Transportation Consultants, Inc., paid for by the applicant. The consultants opined that the impact on Route 20 would be practically negligible and could support the project. It is the applicant's hope that the ZBA does not see a need for a traffic engineering peer review given the costs of additional traffic studies.

Ben Stevens of Trask, Inc., and Manager for Landham Crossing LLC, then gave an overview of the site layout. Mr. Stevens said that on the site are two acres of wetlands, with six and a half acres of buildable land. He said that the wetland line was confirmed with the Sudbury Conservation Commission. It has also been confirmed that no streams or vernal pools are within the build area. Perc tests have been witnessed by Sudbury Board of Health and it was determined that a 64-bedroom system can be accommodated. The maximum septic size is based on wetland setbacks. The back area of the property contains the septic system with development at the front. He explained that the traffic engineer recommended moving the site entrance as far east as possible and away from the Landham Road/Boston Post Road intersection. He said that he has confirmed with the Sudbury Fire Department that a second access is not necessary if the buildings are equipped with sprinklers. However, he said that he would leave that option to the Board to discuss. Mr. Stevens said he would prefer to carry the landscaping across the front of the development to provide better screening.

The buildings would be set back fifty-one feet and a landscaped berm could be created along Route 20. The units at the west side have walk-out basements. Not much grading is required there. Mr. Stevens will remove invasive species in the wetland buffer if the Conservation Commission requires it.

It was Mr. Stevens' opinion that stormwater management should be easy to accomplish. The site has good soils so problems are not anticipated.

He said that the application and plans were sent to the four direct abutters and he has heard from only one neighbor directly.

Mr. Stevens then walked the Board through the building and floor plans. Most, if not all, of the building materials are the same as those used at Old County Road. All buildings are a minimum of twenty feet apart. Walkways differ slightly depending upon entrances. Privacy screening will be placed between walkways.

Ms. Quirk then went through the correspondence the ZBA received (as listed in these minutes).

The Design Review Board recommended reducing the amount of impervious surface noted on the plan and suggested that closing the second emergency access would lessen the amount of paved area. Ms. Quirk suggested that perhaps the Fire Chief would have comments. She asked Mr. Stevens whether all of the buildings would be equipped with sprinklers. He said that they would if he eliminated the second access. Mr. Stevens said that there would be additional ways to reduce paving by shifting the buildings.

Jonathan O'Brien suggested eliminating the portion of road in front of buildings C and D. Mr. Stevens wondered whether or not this would be acceptable to the Fire Department.

Ms. Quirk said that another way to reduce impervious surface is to have fewer structures. Mr. Gossels felt that the number of buildings was too much for the site. He suggested reducing the number of units to twenty-four. Mr. Klofft agreed with Mr. Gossels.

Mr. Klofft said that given the proximity to Route 20, the design should incorporate a village façade. Ms. Quirk said that there is the argument for having buildings relate to street but also maintain a sense of community within the development itself. She questioned whether the architecture at the back of the buildings along Route 20 could resemble building fronts.

Mr. Klofft suggested having a few working sessions to discuss the conceptual design along with the DRB. Mr. Stevens has considered alternative designs which could be discussed during those sessions.

Ms. Quirk then asked whether any neighbors wished to comment on the project.

Pat Delaney, 206 Boston Post Road, noted that the location of the driveway impacts the abutting neighbor, Mrs. Brown. She would essentially have units on two sides of her property surrounding her. He suggested that perhaps that layout in that area could be improved.

Lawrence Hoagland, 33 Goodman's Hill Road, suggested that increasing the size of the buildings to accommodate larger groupings of units goes against neighborhood character.

Peter Bonadio, 8 Green Hill Road, expressed great concern over water run-off and the impact on neighboring properties. He urged the use of permeable pavers for roads. Ms. Quirk told Mr. Bonadio that a stormwater management plan will be filed prior to approval. She noted that the Conservation Commission would also be involved.

Dan Farmer, 46 Green Hill Road, asked about the wetland elevation. Mr. Stevens said that it was between 139 and 140 feet.

Russ Kirby, 244 Boston Post Road, asked whether a condominium association would be involved and responsible for monitoring the septic system. He asked what happens when an affordable unit is eventually for sale. Ms. Kablack explained that each affordable unit would be restricted in perpetuity with the deed restriction that ties the resale price to the current median income limit and must be sold at the affordable price to an income eligible household.

Mr. Kirby then asked who would be responsible for payment of taxes. Ms. Kablack said that the condominium association would be responsible for taxes on the common area and that individual unit owners would be responsible for taxes on their own units. Mr. Kirby then asked for clarification that the owners of the affordable units would have to pay taxes on their units and pay a condominium fee. Ms. Kablack said that would be the case. The condominium fees would be based on a sliding scale according to the cost of the units. Mr. Kirby expressed concern about how someone with limited income could afford the fees and taxes along with a mortgage and could therefore be overburdened. Ms. Kablack said that the purchase price is based on income limits. What the homebuyers can afford is factored into their mortgage, their real estate taxes, and their condominium fees. The mortgage price is never above seventy percent of the area median income.

Mr. Kirby also asked about traffic being negligible given that there may be more 40B developments in the Landham Road area.

Speaking from his experience as a past member of the Planning Board, Mr. Kirby also expressed concerns that the multiple proposed 40B projects would be a potential drain on the water supply and could produce greater quantities of wastewater than the area can handle. He questioned whether these issues could be grounds for denial of one or more of the proposals.

Ms. Quirk then opened discussion about the Conservation Commission's memo from Conservation Coordinator Debbie Dineen. She asked Mr. Stevens whether he was planning to file a Notice of Intent. He said that he would be doing so but he first needs a plan showing the extent of site disturbance. In regard to concerns that more than half of the septic leaching field is located less than 100 feet from the edge of a wetland, Mr. Stevens said that the location is permitted under Title V but said that he would be submitting a fully-engineered plan to the Board of Health. In regard to stormwater Ms. Quirk asked whether Mr. Stevens would consider incorporating landscaping and design into the plans. A full landscape plan will be forthcoming and Mr. Stevens will work with the Conservation Commission to determine plant materials.

In regard to Town Engineer Bill Place's memo, drainage and drywall calculations will be forthcoming. Kablack asked about the retaining wall which Mr. Stevens said will be contained on the property.

From a memo submitted by Assistant Fire Chief John Whalen, there will be no gate at the access road. An additional fire hydrant will be added at the left side of the development. Units will have sprinklers that will be monitored by an alarm. Ms. Kablack asked whether a different system is proposed for Landham

Crossing than is currently used for Old County Road. Mr. Stevens explained the set-up at Old County Road, describing the placement of the various utility lines. He did not anticipate having the same set up at Landham Crossing, however the plans will need to be worked out with the Building Inspector.

Ms. Quirk mentioned that Building Inspector Jim Kelly noted that the applicant was looking to waive the fees for the stretch energy code. Mr. Stevens said that they are looking for a waiver of fees due to level of expense.

In reviewing the memo from the Director of Planning and Community Development Jody Kablack, Ms. Quirk noted that the building height is not identified on the plan. Mr. Stevens said it would be below 35 feet. Mr. Klofft asked about the height at Old County Road. He said that the tallest was around 37 feet due to the landscape.

In regard to the Mass Housing Site Eligibility letter, more information on the waivers that Mr. Stevens is seeking for is needed, as are calculations for earth removal.

ZBA Member Ben Stevenson asked whether any data had been gathered for speed limits greater than 35 miles per hour which is the current posted speed limit. Ms. Kablack said that the Police Department can be asked whether they have observed people traveling faster than 35 miles per hour on a regular basis. Mr. Klofft did not feel that there was anything to gain by requesting an additional traffic study. Mr. Stevenson explained that he was thinking about sight distances as they relate to the proposed berm. Mr. Gossels said he wants go on a site visit to look at sight distances. Ms. Quirk said that traffic will need to be discussed further, but perhaps after the layout is determined and exact locations of entrances are known.

Ms. Quirk said that the next step would be to hold a Working Session at a date to be determined and posted on the Town's web site.

Dana Farmer, 46 Green Hill Road, asked what variances would be necessary. Ms. Kablack explained the process by which developers have to ask for waivers for anything that falls outside of Sudbury's Guidelines for Comprehensive Permits. Mr. Klofft said that at this stage of the application review process the ZBA is looking at preliminary plans. As the plans become more finalized through review by the Board and Town Departments then the list of waivers will become known.

Lawrence Hoaglin, 33 Green Hill Road, asked which Board is responsible for reviewing wetlands. Ms. Quirk explained that the Conservation Commission would be holding a public hearing to discuss any issues related to wetlands. Mr. Stevens said that once the ZBA is comfortable with the general layout of the development then he would be presenting the plans to the Conservation Commission for their review. Mr. Klofft explained that the State and Town both have rules that determine design of 40B developments. Ms. Kablack said that the State Wetland Protection Act does not have a setback requirement but does state that any work being done within 100 feet of a wetland requires approval by the Conservation Commission. The Town also does not have a specific wetlands setback requirement.

Ms. Quirk noted that a copy of the Landham Crossing Application is available at the Goodnow Library for the public to review. The application is also at the offices of Planning and Community Development and the Town Clerk.

A motion was made to continue the hearing.

The hearing was continued to Monday, April 25, 2011 at 7:30 p.m. in the Lower Town Hall Meeting Room.

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Benjamin D. Stevenson, Clerk

Jonathan F.X. O'Brien

Jonathan G. Gossels