

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, June 4, 2012

The Board consisted of:

Elizabeth T. Quirk, Chair; Jonathan F.X. O'Brien, Acting Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Stephen A. Garanin, Associate.

Notice was published in the *Sudbury Town Crier* on May 17 and May 24, 2012, posted, mailed and read at this hearing.

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

Dennis Marsicano, resident and owner of 120 Old Lancaster, along with Aaron Socrat, Architect, were present to request a special permit for a 1,043 square foot Accessory Dwelling Unit to be located within the lower level of Mr. Marsicano's house. By way of background Mr. Marsicano said that the ZBA had approved a special permit for a larger accessory dwelling at his property back in August 2010 however, his construction plans have been modified and because it has been over a year since the special permit was granted the permit has expired so he had to submit a new application.

Mr. Marsicano explained that he has downsized the plans for the unit and would no longer be excavating the driveway area which the old plans had included. The Accessory Dwelling would still primarily be contained within the footprint of his ranch-style house that has a walk-out basement. The existing garage would be moving eight feet and turning so that the doors would now face the street. The additional space in the garage would include a mudroom and a flight of stairs. Mr. Marsicano said that there would be fewer changes to the exterior of the house.

After reviewing the plans Mr. Gossels said that the proposed accessory dwelling unit would be virtually invisible to the street and was to be built within the existing structure so he was comfortable with the new plans.

Mr. Klofft expressed reservations due to the size of the unit which was almost as large as the main house.

Mr. Gossels said that the new bylaw allows for this relief when an accessory dwelling is built within an existing space, such as a basement. He noted that the accessory dwelling would amount to only thirty-one percent of the complete structure, and the bylaw allows thirty percent.

Ms. Quirk said that since the accessory dwelling was to be within the existing basement space, which is itself oversized, she did not have a problem with the accessory dwelling being slightly larger.

Mr. Klofft maintained that the intent of the bylaw was to keep the accessory dwelling to a small portion of the house, and not to encourage the creation of a two-family house.

Mr. Gossels said that he would agree with that argument if the accessory dwelling were being proposed as completely new construction.

Mr. Garanin said that the apartment was only larger than allowed by one percent and the accessory dwelling meets other criteria for the special permit.

Mr. Socrat said that the accessory dwelling would consist of two rooms and an open kitchen area and noted that one third of the lower level of the house was dedicated to the main house when utility and storage areas were considered.

As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Dennis Marsicano, 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 April 30, 2012 and the plans submitted by the Applicants, to allow a 1,043 square foot Accessory Dwelling Unit for property located at 120 Old Lancaster 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.
7. 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.
8. Construction must be completed no later than one year after commencement."

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

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

Jonathan F.X. O'Brien, Acting Clerk

Jeffrey P. Klofft

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Marcel Maillet, applicant and builder, was present to request a special permit to allow the demolition and reconstruction of a residence on a nonconforming lot not to exceed 3,400 square feet at 94 Butler Road. The reconstruction would result in a side yard setback deficiency of three feet to the east and a side yard setback deficiency of ten feet to the west. Mr. Maillet said that he intends to live in the house after it is built.

Ms. Quirk asked Mr. Maillet to clarify the setbacks. Mr. Maillet said that the proposed house would be seventeen feet away from the eastern lot line and the neighbor's house at 92 Butler Road was about six to eight feet from that property line.

Mr. Garanin said that the setback would make the proposed house very close to the neighbor's house.

Mr. Maillet said that he could move the house four more feet toward the western lot line, which happens to be owned by his father and contains swamp land upon which nothing can be built. This would move the house away from 92 Butler Road and eliminate setback issues on that side.

Mr. O'Brien asked whether or not there were wetlands in the area. Mr. Garanin asked about his intent to build within the 100 foot wetlands buffer zone. Mr. Maillet said that he is in the process of stormwater permitting with the Conservation Commission and noted that the site has already been disturbed for the existing residence.

The Board noted that Mr. Maillet would be improving the property.

Mr. Klofft asked whether the septic system was across the street. Mr. Maillet said that it was.

Sudbury Resident Debra Bishop, 92 Butler Road, said that she was supportive of the project.

Mr. Gossels asked about the height of the house and Mr. Maillet said that it was approximately thirty-three feet high.

Regarding the issue of moving the house four feet toward the western lot line Mr. Maillet submitted a letter to the Board from his father, Al Maillet, dated May 31, 2012 that Ms. Quirk read into the record. The letter stated that Al Maillet was in agreement with the change of plans to move the proposed house at 94 Butler Road four feet toward the western lot line than what was originally proposed on the plan therefore creating a six foot setback from the lot line dividing 94 Butler Road and 75 Harness Lane.

As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Marcel Maillet, applicant, and Debrah Bishop and Jay McCarthy, owners, a Special Permit under the provisions of Section 2460B and 2620 of the Zoning Bylaws, to allow reconstruction of an existing residence on a nonconforming lot not to exceed 3,400 square feet, which will exceed the area of the original structure, and will result in a side yard setback deficiency of fourteen (14) feet to the west, property located at 94 Butler Road, Residential Zone A-1, subject to the following:

1. The new house will be constructed four feet farther to the west than the location as shown on the Proposed Site Plan prepared by Thomas Land Surveyors dated April 9, 2012, which is incorporated into and made part of this Special Permit, therefore creating a side yard setback deficiency of fourteen (14) 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 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 and the applicant had the support of the two direct abutters. The Board felt that the new structure would be compatible with the surrounding homes in the neighborhood.

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Prior to discussion Mr. Klofft disclosed to the Board and those present that his pet has in the past been under the care of Dr. McNeill. No one expressed any concerns with Mr. Klofft participating in the hearing.

Dr. Gail McNeill was present to request a renewal of special permit #07-41 to allow the continued operation of a kennel and veterinary clinic on the premises at 21 Union Avenue.

Ms. Quirk asked whether Dr. McNeill was seeking any changes to the conditions. Dr. McNeill said that she was not.

Mr. Gossels said that given that this was a long-term business in town and since it was in an appropriate location and no issues had been raised he recommended that the renewal term be extended to eight or ten years. Other Board members agreed and a renewal term of ten years was agreed upon.

No abutters were present to express concerns.

As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Dr. Gail W. McNeill, applicant, and A. Elliott & Phyllis E. McNeill, & Gail W. McNeill, owners of property, renewal of Special Permit 07-41, granted under the provisions of Section 2313 of the Zoning Bylaws, to allow the continued operation of a kennel and veterinary clinic, property located at 21 Union Avenue, Business District #5, provided that:

1. Dogs are to be allowed in the outside run only between 7:30 a.m. and 9 a.m., 5 p.m. and 5:30 p.m., 7:30 p.m. and 8:30 p.m. Monday through Saturday, and between 10 a.m. and 10:30 a.m., and 5 p.m. and 5:30 p.m. on Sundays.

2. The building shall use a climate control system so that all doors and windows can be kept closed year round to preclude the issuance of noise from the building.
3. Except as modified herein, the conditions of the site plan dated March 5, 1984 shall be complied with.
4. This permit is non-transferable and will expire in ten (10) years on June 4, 2022, and the Board will consider renewal upon receipt of proper application on or before that date.”

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

REASONS: The petitioner seeks to renew a special permit to operate a kennel that has been in operation for twenty-seven years. The Board finds that the location of the activity in a business district which has minimal abutter contact within 100 feet is an appropriate location and is not detrimental to the neighborhood in and of itself. The use of a kennel in a business district is in harmony with the Zoning Bylaws in that a kennel is an allowed use by special permit.

The building within which the kennel operates was built for this specific use. Therefore, the Board finds that the facility is appropriate. No abutters were present to voice objections to the renewal of this special permit, nor do records indicate any opposition. For this reason, the Board finds a renewal term of ten years to be appropriate.

Elizabeth T. Quirk, Chair

Jonathan G. Gossels

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James Apostle was present to request a renewal of special permit #07-18 to allow the continued operation of a Home Business for the sale of antiques, fine art, and framing on the premises at 395 Boston Post Road.

Ms. Quirk asked whether Mr. Apostle was seeking any changes to the conditions. Mr. Apostle said that condition number six, which stated that "No flags or banners relating to the business shall be displayed on the premises" prohibited the use of an open sign. He said that he would like to be able to have an "open" sign or flag that would indicate that the business was open since several other businesses in town have them. The Board discussed eliminating condition number six because they did not feel an open sign would be detrimental to the neighborhood since there were other businesses surrounding Mr. Apostle's property.

Mr. Gossels said that given that this was a long-term business in town and since it was in an appropriate location and no issues had been raised he recommended that the renewal term be extended to ten years. Other Board members agreed and a renewal term of ten years was agreed upon.

No abutters were present to express concerns.

As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant James N. & Geraldine M. Apostle, owners of property, renewal of Special Permit 07-18, granted under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically the sale of antiques, fine art and framing, property located at 395 Boston Post Road, Residential Zone A-1, provided that:

1. The use must be clearly incidental and secondary to the use of the premises for residential purposes.

2. Hours of operation are limited to 10 a.m. – 7 p.m. seven days a week.
3. There will be no more than one employee other than the residents of the premises.
4. All parking is to be off-street and limited to four spaces.
5. A sign will be allowed which conforms to the provisions of the Sign Bylaw.
6. There will be no exterior storage of business materials or equipment, including the parking of commercial vehicles. No more than two items may be displayed outside the premises.
7. This permit is non-transferable and will expire in ten (10) years on June 4, 2022, and the Board will consider renewal upon receipt of proper application on or before that date.”

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

REASONS: The Board finds the use to be in harmony with the intent and general purpose of the Bylaw. It is in an appropriate location, is not detrimental or offensive to the neighborhood and does not significantly alter the character of the zoning district. Adequate parking and facilities are provided for the proper operation of the use. This business has existed for several years without complaints from abutters and none were present to oppose renewal. Therefore, the Board finds a ten-year renewal period to be appropriate for this case.

Elizabeth T. Quirk, Chair

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Prior to hearing from the applicant Ms. Quirk noted for the record that she is not related to the applicant, who has the same last name.

Bruce Quirk was present to request a renewal of special permit #07-34 to allow the continued operation of a Home Business for the sale of antiques, used furniture, and accessories on the premises at 236 Concord Road.

Ms. Quirk asked whether the applicant was seeking any changes to the conditions. Mr. Quirk said that he and his wife would like to request that the condition related to the days of operation be changed to allow the business to be open on Sundays. Mr. Quirk noted that there are often shoppers hoping to visit the shop on Sundays and this would allow more flexibility.

The Board discussed changing the language in condition number three to say, "Hours of operation shall be 10:30 a.m. – 5 p.m. seven days a week."

The Board agreed that this business was another long-term home business in town and since it was in an appropriate location and no issues had been raised a renewal term of ten years was discussed.

No abutters were present to express concerns.

As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Bruce T. & Eugenia L. Quirk, owners of property, renewal of Special Permit 07-34, granted under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically the sale of antiques, used furniture and accessories in a building at the rear of the house, property located at 236 Concord Road, Residential Zone A-1, provided that:

1. A sign, not to exceed two square feet, in conformance with the Bylaw, will be allowed, said sign subject to approval by the Historic Districts Commission.
2. No exterior indication/display of such use or variation from the residential character (other than the sign) shall be allowed.
3. Hours of operation shall be 10:30 a.m. – 5 p.m. seven days a week.
4. Only one (1) non-family member shall be employed.
5. The sale of antiques shall be confined to the rear portion of the barn.
6. No overnight parking of commercial vehicles in connection with this home business will be allowed.
7. No parking will be allowed on Antique Circle (or on a common driveway) or on Concord Road.
8. This permit is non-transferable and will expire in ten (10) years on June 4, 2022, and the Board will consider renewal upon receipt of proper application on or before that date.”

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

REASONS: The petitioner seeks renewal of a special permit to conduct an antique business which has been in operation at this location since 1986. The Board finds the use to be in harmony with the general purpose and intent of the Bylaw. It is in an appropriate location, not detrimental to the neighborhood and does not by its existence alter the character of the zoning district. Adequate and appropriate facilities have been provided for proper operation and the use does not cause traffic congestion in the area. No abutters were present to oppose renewal. The Board finds a ten-year renewal period to be appropriate.

Elizabeth T. Quirk, Chair

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Robert and Amy LaHait were present to request a special permit to build a deck which is approximately 12x23 square feet onto the back of their house at 276 Old Sudbury Road which would result in a rear yard setback deficiency of five feet.

Ms. LaHait described the proposed ground level deck and said that it cannot be seen from the abutters' property due to a fence and vegetative screening. One of the abutting properties is the Flynn Building and the deck would not be seen from the second story of that building.

Mr. LaHait said that the Historic Districts Commission verified that they did not need to apply for a certificate of appropriateness from that Commission because the deck cannot be seen from the street or any public way.

Mr. Gossels said that he had no problem with the plans for the deck and the Board concurred.

No abutters were present to express concerns.

As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Robert and Amy LaHait, applicants and owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to construct a 12x23 ± square foot deck on a nonconforming lot which will result in a rear yard setback deficiency of five (5) feet, property located at 276 Old Sudbury Road, Residential Zone A-1.

1. 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.
2. Construction must be completed no later than one year after commencement."

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioners require a special permit due to the nonconforming nature of the property. The Board finds that the proposed alteration appeared reasonable, would improve the house, and will not be detrimental to the neighborhood. The Board noted that no abutters were present at this hearing to oppose this petition.

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Bill Aliferis, applicant, and Richard Tinsley, co-owner and Sudbury resident at 6 Meachen Road, were present to request a special permit for a 720 square foot accessory dwelling unit at 27 Mossman Road. Mr. Tinsley explained that Mr. Aliferis' in-laws would be living in the accessory dwelling unit which would be located in the back of the house behind a newly constructed garage.

Mr. Tinsley said that when the septic system was inspected upon purchase of the house it failed Title V so a new survey was created. The surveyor discovered that the original certified plot plan had been done incorrectly and so the proposed three-bay garage would in fact be built within the 20 foot side-yard setback. The applicants discovered this a few days before this hearing.

Mr. Tinsley submitted for the file a new certified plot plan created by Thomas Land Surveyors dated May 23, 2012. He explained that there are wetlands in the back of the house along with a drop-off at that point. The existing detached garage would be demolished and the proposed accessory dwelling unit with new garage in front of it would actually move the structure away from the wetlands. He said that he had been working with the Conservation Commission on this plan.

Ms. Quirk explained that since the lot is a conforming lot a Variance would need to be sought in order to build the three-bay garage and obtain relief from the setback requirement. Mr. Tinsley said that he had discussed the issue with the Building Inspector, Jim Kelly, who said that since the issue was due to go before the ZBA Mr. Tinsley and Mr. Aliferis should proceed with the process for the special permit for the accessory dwelling and perhaps seek the Variance at a later time. Mr. Kelly, who was present, said that the garage is irrelevant to the use of the accessory dwelling so if a garage were presented that met setbacks a new application would not be necessary. Ms. Quirk noted that Mr. Aliferis could also withdraw the current application without prejudice and reapply for the variance and accessory dwelling at a later date.

Mr. Klofft said that it would perhaps be very difficult to prove any hardship for the three-bay garage. Mr. Gossels mentioned the law's required criteria for the approval of variances.

Mr. Tinsley said that he had drafted plans for the project that included the accessory dwelling and a two-bay garage. He noted that there would be at least three cars at the property and having only a two-bay garage would cause parking issues for the residents. But he said that with a two-car garage the accessory dwelling still would not be visible from the right of way. Mr. Tinsley then distributed plans to the Board dated June 4, 2012 that included only a two-bay garage.

Mr. Tinsley said that he had spoken with all of the abutting neighbors and they appeared happy that the house would be improved. He said, however, that he would still be looking into the three-bay garage option. Mr. Tinsley noted that due to the location of the septic system and nearby wetlands it might be difficult to find an alternate place on the property for parking.

The Board discussed whether or not they could provide the applicant with a sense of the Board in regard to the variance for the three-bay garage and it was determined that a new application would be the best way to proceed. It was the Board's opinion that the accessory dwelling, measuring 720 square feet, was modest in size and would not be visible from the public way. Also, since the accessory dwelling was to be used by relatives of the owners the Board determined that the intent of the bylaw was being upheld.

Ms. Quirk asked whether any neighbors wished to speak.

Lorraine Bauder, 14 Minuteman Lane, said that she frequently walks on Mossman Road and would like to see a three car garage in place to hide additional parked cars.

As there were no further questions from the Board or audience, the hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Bill and Maria Aliferis, applicants and owners 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 May 9, 2012 and the plans dated June 4, 2012 revised with a two-car garage, to allow a 720 square foot Accessory Dwelling Unit for property located at 27 Mossman 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.
- 7. 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.
- 8. Construction must be completed no later than one year after commencement.”

VOTED: In favor: 5 (Unanimous) 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

Jonathan F.X. O’Brien, Acting Clerk

Jeffrey P. Klofft

Stephen A. Garanin, Associate
