

MINUTES OF THE PUBLIC HEARING - REVISED
SUDBURY BOARD OF APPEALS
Monday, May 21, 2012

The Board consisted of:

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

Notice was published in the *Sudbury Town Crier* on May 3 and May 10, 2012, 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 the 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.

She then listed for the record the additional correspondence that the Board had received since the filing of the application.

Prior to hearing from the appellant, First Colony Northwood, LLC, Ms. Quirk reiterated the issue at hand for the Board which was whether or not to overturn the Sudbury Building Inspector's March 8, 2012 denial of First Colony Northwood's February 28, 2012 application for a building permit. Discussion about the ZBA's jurisdiction in this matter ensued.

Attorney Thomas Moriarty, Counsel for First Colony Northwood, gave a brief history of the project at 10-20 Northwood as background for their further appeal of the Board of Selectmen's January 5, 2012 denial of the requested amendment to the Modified Site Plan Decision. He argued that the January 5 decision of the Board of Selectmen, when followed by an action of the Building Inspector that triggers review under M.G.L. c. 40A, Section 8, should be treated as part of the decision of the Building Inspector which is subject to review by the ZBA.

Mr. Stevenson and Mr. Klofft sought further evidence from Mr. Moriarty that the Selectmen's decision was unacceptable.

Mr. Moriarty explained that First Colony Northwood, LLC requested on October 18, 2011 an amendment of a decision to modify a site plan. Included were minor alterations to the elevations for aesthetic reasons, interior floor plan modifications, and the relocation of two duplexes. He said that the modifications were previously approved by Sudbury's Design Review Board and Planning Board. Stormwater plans were also approved. He also said that the Building Inspector had no substantive concerns about the modifications. When the amendment was presented at a hearing with the Selectmen, Selectman Drobinski recused himself from the vote, Chairman O'Brien voted to approve the modification, and Vice Chairman Haarde voted against approval of the modification. Based on the absence of an approved site plan the Building Inspector then denied First Colony Northwood a building permit on March 8, 2012.

The Board then discussed at length whether or not the Selectmen, Vice Chairman Haarde in particular, could have identified any problems with the proposed modifications and whether they should have instead issued a decision with conditions. Since the Board of Selectmen had not offered any solutions in the form

of conditions and no problems with the site plan modifications were identified for the record the Board felt that the disapproval of site plan modifications was inappropriate.

Mark Kablack, Attorney for the Northwood at Sudbury Board of Trustees, explained that the majority of the Trustees and majority of the unit owners at Northwood approve of the site plan modifications.

Further discussion ensued about what exactly led to the disapproval of the site plan modification. Mr. Klofft noted that it was the reconsideration of age restriction on the property that eventually led to disapproval, or denial, of the site plan modification. Mr. Klofft said that age restriction was not in any way connected to the requested modifications and therefore should not have been considered as the basis of the Selectman's denial as reflected in the Board of Selectmen's minutes dated November 15 and December 6, 2011. The Minutes of the Board of Selectmen meetings were held as testimony to the events that led to the denial of the site plan modification. The Board then focused discussion on whether Mr. Haarde's action was inappropriate. The Board was united in their opinion that the age issue was irrelevant to the site plan modification.

Ms. Quirk asked whether Jim Kelly, Sudbury Building Inspector, wished to speak on the matter. Mr. Kelly said that the matter of the word "denial" is not mentioned in the minutes, but rather the minutes state that the site plan modifications were "not approved." He said that the Selectmen are supposed to approve or disapprove site plans with conditions. Mr. Kelly said that a building permit cannot be issued if a site plan is not approved by the Selectmen and that is precisely why he did not issue First Colony Northwood, LLC a building permit. His action in denying the building permit was purely procedural. He could not approve the building permit because he did not have the Selectmen's approval of the site plan modification. Mr. Kelly also said that the site plan modifications were, in his opinion, minor.

Ms. Quirk then asked whether any members of the public wished to be heard.

Barbara Murphy, 20 Northwood and Northwood Trustee, said that in her fifteen years of living at Northwood the residents have had to fight to get things done at the property. She said that she has seen several other senior housing projects approved and/or built in Sudbury since then and it is time for Northwood to be finished. She said that the supermajority of the Trustees support the plans. She said that the Town should not let this senior community languish any longer.

Catherine Rowan, 10 Northwood, said that the limbo aspect of the site was troubling. She said that the majority of unit owners have approved of the plans for years and they are hoping not to have to go to court once again which consumes much of the residents' financial reserves.

Jody Gianotti, 20 Northwood, said that it is time to get rid of the work pits on the site.

Rhoda Bronstein, 20 Northwood, said that the site is up on a hill and the residents do not impact traffic much and many residents do a lot of volunteer work in the town. She said that Northwood is filled with wonderful, smart people who want to be a part of this community and have a lot to offer. She said that the condominiums are beautiful but the project has gotten out of hand. She said that she would like to see this property settled so that the residents can enjoy their golden years.

Ralph Tyler, 1 Deacon Lane, mentioned past litigation on the project involving the ZBA. He urged the ZBA to be consistent. He also noted that Selectman Haarde said that First Colony Northwood presented a great plan but he was hung up on the age restriction.

Mr. Stevenson asked whether there was anyone present in the room that was opposed to the site plan modifications. Ms. Quirk noted that she saw someone who may have raised a hand in the back of the room. One Sudbury Resident, gesturing to include a few other people sitting near him, said that they were opposed but were just listening to what the law said.

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

The following motion was placed and seconded:

MOTION: "To find that the Board of Selectmen exceeded its authority in its failure to approve the appellant's minor modification request dated October 18, 2011, and hereby annul and vacate the decision of the Board of Selectmen dated January 5, 2012; as the grounds supporting denial no longer exist, to direct the Building Inspector to issue a building permit consistent with this decision; and to approve the appellant's minor modification request of October 18, 2011, as contained in its October 18, 2011 application."

VOTED: In favor: 5 Opposed: 0 MOTION CARRIES

REASONS: As reflected in the minutes of the Board of Selectmen dated November 15, 2011 and December 6, 2011, the Selectmen's failure to approve the appellant's request for site plan modification was based on Vice Chairman Haarde's disagreement with a 2010 decision allowing modification of the age restriction condition in the original site plan decision. The Board of Appeals found that the age restriction issue was not properly before the Board of Selectmen in 2011 and should not have been considered in its review of the appellant's request for site plan modification. Therefore, the Board of Appeals found that the Selectmen's failure to approve the appellant's request was inappropriate. The Board of Appeals further found that the requested amendments to the 2010 Site Plan Modification decision contain alterations to the plans that are minor in nature.

Elizabeth T. Quirk, Chair

Jonathan F.X. O'Brien

Benjamin D. Stevenson, Clerk

Jeffrey P. Klofft

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CASE 12-11
Cambridge Eating Disorder Center
40 Tall Pine Drive

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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.

Attorney Joshua Fox, Rollins, Rollins and Fox, was present on behalf of the Cambridge Eating Disorder Center (CEDC) which had sought a special permit to use the site at 40 Tall Pine Drive as a convalescent home. As the CEDC is not moving ahead with the purchase of 40 Tall Pine Drive, Mr. Fox requested that the Board accept a request to withdraw Case 12-11 without prejudice.

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

The following motion was placed and seconded:

MOTION: "To accept a request from the Applicant to withdraw Case 12-11 without prejudice."

(Request for a Special Permit to allow the use of 40 Tall Pine Drive as a convalescent home.)

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

REASONS: As the applicant is no longer planning to purchase the property at 40 Tall Pine Drive a special permit is not needed. Therefore the Board accepts the request to withdraw Case 12-11 without prejudice.

Elizabeth T. Quirk, Chair

Jonathan F.X. O'Brien

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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.

Attorney Joshua Fox, Rollins, Rollins and Fox; Brad Craig, Executive Manager for the Herb Chambers Companies; and Heather Dudko, Sign Consultant, were present to request consideration for a special permit for approximately eighty-six square feet of wall signage and an approximate fifty-seven square foot freestanding, double-sided pylon sign to be located within thirteen feet of the front property line at 83 Boston Post Road. Mr. Fox reminded the Board that he had appeared before the ZBA on February 6, 2012 with a similar request. The ZBA had voice approval at that time for the wall signage but had reservations about the pylon sign. Mr. Fox therefore withdrew the application without prejudice on February 6 and has submitted this new application with a revised plan for the pylon sign.

No changes were being requested for the wall signage and the Board expressed their approval of those plans. The location of the pylon sign had been moved to within thirteen feet of the road and was reduced in size to measure nine feet in height from grade. Mr. Fox said that the new pylon sign is modest, tasteful, and is now in a good location.

Ms. Dudko said that the lit signs would be internally illuminated with soft, key-line lighting that would highlight the signs around the edges. The graphics would be metallic.

Mr. O'Brien asked what materials would be used for the the pylon sign should the sign ever get hit by a car. Ms. Dudko said it would be made of aluminum. Mr. Klofft asked about the sign's thickness. Ms. Dudko said that it was about one and a half feet wide, but was not a solid sign. Mr. Fox said that there was a fire hydrant in front of the sign between the sign and the road and trees nearby.

Ms. Quirk said that the placement of the pylon sign was improved.

Building Inspector Jim Kelly asked whether the Design Review Board had seen the plans. Mr. Fox said that the DRB had seen the original plan for a fourteen foot pylon sign and had requested that Herb Chambers reduce its size.

Mr. Kelly also reminded the Board that the bylaws do not typically allow internal illumination. The Board felt that this lighting was subtle enough to allow and agreed to add a condition about the hours that the signs could be lit. Mr. Fox reminded the Board that there is a very large ground-lit flood light on the current sign which is hard to maintain, particularly when it gets covered in snow. He suggested that the internal lighting would be more aesthetically pleasing.

The Board also discussed the idea of adding a condition that no portable free-standing signs be used since an appropriate pylon sign would be in place with an approved special permit. The Board felt that this condition would help reduce the number of sandwich-board signs that are being used around Town. Mr. Fox was amenable to adding that condition.

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 Herb Chambers of Sudbury, Inc., DBA Jaguar Sudbury, applicant, and Land Rover MetroWest, LLC, owner, a Special Permit under the provisions of Section 3290 of the Zoning Bylaws, to allow approximately 86 square feet of wall signage and an approximate 57 square foot freestanding, double-sided pylon sign located within 13 feet of the front property line, which exceeds the allowances set forth in the bylaw, property located at 83 Boston Post Road, Industrial District #4, provided that

1. The pylon sign will be installed in the location as shown on the Proposed Sign Plan dated March 27, 2012, prepared by Schofield Brothers of New England, Inc., and the wall signage will be designed as and installed in the locations as shown on the renderings dated April 26, 2011 and November 17, 2011, prepared by Pattison Sign Group, which are incorporated into and made part of this Special Permit.
2. The sign shall not be illuminated during the hours thirty minutes after closing and thirty minutes prior to opening the business. Only white lights shall be used for direct illumination. Illumination shall be shaded, shielded, directed and maintained at a sufficiently low intensity and brightness that it shall not affect the safe vision of operators of vehicles moving within the premises or on any adjacent public or private ways.
3. The use of portable freestanding signs is prohibited.
4. The existing free-standing sign should be completely removed from the premises."

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

REASONS: The petitioner requires a special permit to install signage that is larger than the bylaws allow and is within the boundary of the front setback. The Board finds that the location of the property justifies the granting of this special permit. The signage will not be a detriment to the surrounding area and will not alter the character of the zoning district which is zoned industrial. Additionally the signage will not cause visual confusion, glare, or offensive lighting in the area, nor will it interfere with traffic safety.

Elizabeth T. Quirk, Chair

Jonathan F.X. O'Brien

Benjamin D. Stevenson, Clerk

Jeffrey P. Klofft

Jonathan W. Patch, Associate