

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, September 10, 2012

The Board consisted of:

Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jonathan F.X. O'Brien; and Jonas D.L. McCray, Associate.

Notice was published in the *Sudbury Town Crier* on August 23 and August 30, 2012, 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.

Sarah and Robert DeFreitas, applicants, were present to request a modification to the previously approved special permit 12-9 for demolition of an existing structure and reconstruction of a four bedroom house located at 39 Elaine Road. Ms. DeFreitas explained that during the ZBA hearing for Case 12-9 held on April 23, 2012, due to the abutting neighbor's comments about potential noise impacts, the ZBA had added a condition to the decision requiring that the heat pumps and air conditioning condensers be located at the rear of the house. She said that as the building project began it became apparent that locating the heat pumps and air conditioning condensers at the rear of the house would not be possible due to logistics and so the only place they could be installed would be the east side of the house. She said that she had spoken with the abutter, Paul Taranto who lives at 33 Elaine Road, and he was in agreement with that plan. The ZBA was in receipt of a letter from Ms. DeFreitas stating this and the letter was also signed by Mr. Taranto. The letter also included a request from Mr. Taranto that adequate screening should be included to reduce noise.

Ms. Quirk said that the modification appeared reasonable and given that Mr. Taranto agreed to the change the Board felt that the modification should be granted.

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

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 Sarah and Robert DeFreitas, applicants and property owners, a modification to the previously approved Special Permit #12-9 that would eliminate the requirement that heat pumps and air conditioning condensers be located at the rear of the house, property located at 39 Elaine Road, Residential Zone A-1, provided that the following conditions were met:

1. The new house will be constructed in the location as shown on the Proposed Site Plan prepared by PureGround, Inc., dated March 10, 2012 and revised April 19, 2012 with a side setback of 35' to the east, which is incorporated into and made part of this Special Permit.

2. Vegetative screening along the eastern border of the lot shall be comprised of species that will grow no higher than eight (8) feet. Adequate screening shall be placed near the heat pumps and air conditioning condensers to reduce noise.
3. The demolition contractor shall comply with all applicable federal and state laws and regulations.
4. 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.
5. 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. The Board felt that the new structure would be compatible with the surrounding homes in the neighborhood. Given that the applicant and closest abutter were in agreement with the modification to the special permit the Board felt that the modification should be approved.

Elizabeth T. Quirk, Chair

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Ms. Quirk, as Chair, opened the hearing. She then explained the requirements necessary to substantiate the granting of a Variance. 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.

James Mawn, President of Mawn and Mawn, P.C., was present to request a continuance for Cases 12-23 and 12-25. Case 12-23 was a request for a dimensional variance that would result in a front yard setback deficiency of 12.2 feet from Union Avenue and Case 12-25 was a variance request that would allow less than 20 feet of a landscape buffer along Union Avenue. Mr. Mawn explained that the project's design had been revised since the initial ZBA hearing held on July 16, 2012. Copies of the new proposal were distributed to the Board. Per the ZBA's suggestion on July 16 the proposed bank building was moved from the front southwest corner of the lot to the front southeast corner. The engineers felt that the change did result in a better product. The redesign would negate the need for the requested variances. Mr. Mawn explained that the reason for the continuance rather than a withdrawal of the variance is due to the fact that the ZBA also requested that the applicant consider reducing the number of parking spaces which would require a waiver from the special permit granting authority, which in this case is the Sudbury Board of Selectmen. Therefore Mr. Mawn respectfully requested that the ZBA grant a continuance so that Northern Bank and Trust Company could have an opportunity to present the proposal to the Selectmen. After that point Northern Bank would either reappear before the ZBA or would request that the variances be withdrawn.

There were no comments from the public.

The Board agreed that this course of action would be acceptable and voted unanimously to continue the hearing until October 1, 2012 at 7:30 p.m. at the Town Hall

Elizabeth T. Quirk, Chair

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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.

Peter Fales of Centerline Communications, Agent to Sprint Spectrum L.P., applicant, was present to request special permits to allow modifications to three existing wireless facilities located in Sudbury's Wireless Overlay District, one located at 20 Boston Post Road (Sudbury Landfill), one at 16 North Road (Sudbury Water District), and one at 36 Hudson Road. Mr. Fales described the existing poles and the changes to the equipment that would be required to upgrade the towers with current technology and to continue adding quality service to customers.

In regard to Case 12-30, the tower at 20 Boston Post Road, Mr. Fales said the pole is a 150-foot unipole. Three antennas would be replaced at a height that is lower than the top of the pole since Sprint Spectrum is not the top-most carrier. He showed the Board a visual of what the tower would look like with the modification. The existing shroud would increase from thirty-six inches in diameter to forty-eight inches to accommodate new technology. This width would be similar to the existing carriers' current width therefore the change in width from the top to the base of the pole would not be very noticeable. He said that their equipment was located within the existing building at the base so changes would be invisible from public view. Two of the existing cabinets would be replaced and one would be added. The fiber distribution box would be located in there and cables would be contained within the shrouded pole. The only visual change would be the minor bump-out below the existing top carrier. He noted that Sprint Spectrum would only be installing six radioheads but he had originally applied for nine. The Board felt that that was fine to authorize to allow flexibility.

With Case 12-31, 16 North Road, Mr. Fales explained that the tower was an older model and as such does not have a shroud. The antennas are on the exterior. Two equipment cabinets will be replaced on the concrete pad and an additional one would be added. The equipment would be contained on the concrete pad within the existing fenced area of the compound, so visually it would be relatively unnoticeable. The pad itself is not expanding its footprint. The three antennas would simply be swapped and the radioheads would be located below the antennas and would be painted to match the pole since they need to be within ten feet of the antennas. He said that they are not taking up space for another carrier and the visual difference is minor. The Board discussed the fact that the tower was well within the Sudbury Water District's property so it was not causing a visual nuisance for neighbors.

In regard to Case 12-32, 36 Hudson Road, Mr. Fales explained that the pole is a shorter, 100 foot stealth unipole. The changes proposed were similar to the pole at the Landfill. He said that in terms of expanding the width Sprint would be working with the most minimal canister that they could because it was a stealth pole. The highest carrier is located at a height of seventy-seven feet. Mr. Gossels pointed out that the pole reaches the tree line and therefore is fairly hidden.

Mr. O'Brien questioned whether all carriers would eventually want to increase the width of their equipment and asked what a maximum width might be. Mr. Fales said that he could not speak for other carriers, but said that given how equipment and technology is changing this appears to be the trend among carriers. He said that forty-eight inches is the greatest width that he has seen so far. He said that Town Boards would probably be able to work with carriers to come up with a better solution to expanding the width of poles in the future. Each pole is a different case.

Ms. Quirk asked whether any neighbors were present who wished to comment on the proposal. No abutters were present. Ms. Quirk noted that the Board had received an e-mail message from Roanna London, 46 Hudson Road, dated August 6, 2012 who expressed concern over the increase in width to the pole behind Ti Sales and near the Sudbury Town Center Historic District because it would be visible, particularly during the winter. Mr. Gossels reminded the Board that the ZBA originally did not want to allow a cell tower in that location, however due to the Telecommunications Act the Board's ruling was overruled. He noted that Sudbury has approved cell towers located in churches elsewhere in town where they are not visible. Mr. Stevenson said that he shares the concerns of Ms. London's but he felt that in the context of this case the best way to reduce the visual impacts is to work with the applicants as requests for special permits come in and maximize existing poles' utilities to avoid building more new poles.

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

The following motions were placed and seconded:

CASE 12-30

MOTION: "To grant Sprint Spectrum, LP, applicant, and the Town of Sudbury, property owner, and AT&T Tower, structure owner, a special permit under the provisions of Section 4300 of the Zoning Bylaws, to allow modifications to an existing wireless facility in the Wireless Overlay District located at 20 Boston Post Road to replace two (2) existing equipment cabinets with three (3) new equipment cabinets, replace three (3) existing antennas with three (3) new antennas, replace one (1) GPS antenna, add nine (9) radioheads to be installed below the antennas, add one (1) fiber distribution box, add three (3) hybridflex cables from the equipment to the antennas, and increase the diameter of the shroud from thirty-six inches (36") to forty-eight inches (48"), as shown on a plan entitled Sudbury Landfill prepared by Sprint Vision dated May 7, 2012. Property located at 20 Boston Post Road (Sudbury Landfill), Limited Industrial Zone.

The approval herein granted is based on the plan as described above, with modifications allowed under this decision, as well as other documents on file but not included herein. All conditions, as part of the original special permit approval case #99-55 dated December 28, 1999, are incorporated herein and shall remain in full force and effect, with the exception of those waived or modified pursuant to this decision."

CASE 12-31

MOTION: "To grant Sprint Spectrum, LP, Applicant, and the Sudbury Water District, Property Owner, and American Tower Corporation, Tower Owner, for a special permit under the provisions of Section 4300 of the Zoning Bylaw, to allow modifications to an existing wireless facility in the Wireless Overlay District located at 16 North Road, to replace two (2) existing equipment cabinets, add one (1) new equipment cabinet, replace three (3) existing antennas with three (3) new antennas, replace one (1) GPS antenna, add nine (9) radioheads to be installed below the antennas, add one (1) fiber distribution box and add three (3) hybridflex cables from the equipment to the antennas all shown on a Plan entitled Spectrasite, prepared by Sprint Vision and dated June 14, 2012. Property located at 16 North Road, Research District Zone.

The approval herein granted is based on the plan as described above, with modifications allowed under this decision, as well as other documents on file but not included herein. All conditions, as part of the original Site Plan approval case #05-379 dated June 22, 2005, are incorporated herein and shall remain in full force and effect, with the exception of those waived or modified pursuant to this decision."

CASE 12-32

MOTION: "To grant Sprint Spectrum, LP, Applicant, and Lawrence W. Tighe, Property Owner, and TowerCo. Assets, LLC, Structure Owner, a special permit under the provisions of Section 4300 of the Zoning Bylaws, to allow modifications to an existing wireless facility in the Wireless Overlay District located at 36 Hudson Road, to add one (1) new equipment cabinet, replace three (3) existing antennas with three (3) new antennas, replace one (1) GPS antenna, add nine (9) radioheads to be installed inside of the stealth unipole, add one (1) fiber distribution box, add three (3) hybridflex cables from the equipment to the antennas, and increase the diameter of the shroud from thirty-six inches (36") to forty-eight (48"), all as shown on a plan entitled Nextel/Tighe prepared by Sprint Vision dated May 7, 2012. Property located at 36 Hudson Road, Business District #7.

The approval herein granted is based on the plan as described above, with modifications allowed under this decision, as well as other documents on file but not included herein. All conditions, as part of the original approval of cases #01-17, 01-18 and 01-19 dated February 23, 2004, are incorporated herein and shall remain in full force and effect, with the exception of those waived or modified pursuant to this decision."

VOTED: In favor: 5 Opposed: 0

REASONS: According to Section 4320 of the Sudbury Zoning Bylaws a special permit is required from the Zoning Board of Appeals for any amendments to wireless services located in the Wireless Services Overlay District. The Board was in agreement that the proposed modifications were minor in nature, would not create visual nuisances, and as such were unanimously approved.

Elizabeth T. Quirk, Chair

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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.

William Curley was present to request a special permit to allow the demolition and reconstruction of a residence on a nonconforming lot not to exceed 3,300 square feet at 460 Dutton Road. He said that it was his intention to build the same house as had been approved by the ZBA at 16 July Road which was on a smaller lot. He has also built the same house on Jarman Road. These homes offer more affordable new construction. The only difference with this plan is that he intends to include a breakfast nook off the back of the house, which seems to be something that buyers were looking for in this house model.

Ms. Quirk noted that the lot was wooded in the back where the breakfast nook would go. Mr. Gossels commented that the setbacks were nicely spaced and the lot was flat. Mr. Curley said that the soils in the area were very good. He said that he could work with the existing septic system and would not need new material.

Ms. Quirk said that the house appeared appropriate for the land and Mr. Gossels added that there are several reconstructions nearby.

Ms. Quirk asked whether any neighbors were present who wished to comment on the proposal. Greg Kycia, resident at 457 Dutton Road, asked to see the plans. Mr. Curley explained the plan to Mr. Kycia who appeared satisfied. The driveway would not be directly across from Mr. Kycia's and the house is significantly set back from the property line at 68 feet. He again said that the house would be no greater than 3,300 square feet.

Mr. Curley said that he was attempting to keep the tree line as is but would have to remove the oak trees in the driveway area. The Board noted that the house would now be parallel with the street and therefore more conforming than the existing house.

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 William F. Curley, applicant, and Eleanor L. Bisson, owner, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow reconstruction of an existing residence on a nonconforming lot not to exceed 3,300 square feet, which will exceed the area of the original structure, property located at 460 Dutton 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 prepared by Lakeview Engineering Associates dated July 10, 2012, 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: 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 abutters. The Board felt that the new structure would be compatible with the surrounding homes in the neighborhood.

Elizabeth T. Quirk, Chair

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Brian E. White was present to request a special permit for a 522 square foot accessory dwelling unit on the ground floor of his property located at 215 Mossman Road. Mr. White explained that he was looking to rent a portion of his house to one person. Mr. White is currently the sole resident of the house. There would be a parking space made available for one car and the long driveway allowed ample room for this additional vehicle. He said that the house had been modernized and the septic system was new. He anticipated that with only one additional resident there would not be an increase in any trash. He said that there would be no need to conduct any interior renovations to the property. The kitchen would be shared between himself and the tenant. Mr. White said that he had already been advertising for a tenant and had potentially found the ideal renter. As Mr. White travels a good deal the tenant would be able to help keep up the house and look after his pets.

Ms. Quirk said that this appeared to be an ideal set-up and followed the intent of the bylaw. Mr. Gossels added that the house was set far back from the road so the accessory unit would not be visible.

Ms. Quirk asked whether any neighbors were present who wished to comment on the proposal. No neighbors were present.

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 Brian E. White, 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 August 9, 2012 and the plans submitted by the Applicants, to allow a 522 square foot Accessory Dwelling Unit for property located at 215 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 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 F.X. O'Brien

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Anne Stone, Jamie Denn, and Sharon Sutherland, applicants, were present to request a renewal of special permit 11-37 to continue operating a kennel, Pet Nannies at Stone Tavern Farm, at 554 Boston Post Road. They explained that operations are running smoothly and at this time they are not requesting any changes to the conditions of their special permit.

Ms. Quirk noted that the Board had received a positive report from the Animal Control Officer dated September 10, 2012, stating that a site inspection found that the facility was well-organized, clean, and there were no problems. The Board also received an impressive number of e-mails from clients supporting this business. For the record e-mails were received on September 4, 2012 from Alissa and Peter LoVerme, 85 Kato Drive, and Kim LeQuire; on September 5, 2012 from Kenneth and Connie Kolman; Steven Swanger, 14 Bent Brook Road; Tom and Mary Prince, 6 Ridge Road, Framingham; and Lynn and David Coughlin, 54 Cedar Creek Road; on September 6, 2012 from Susan Goswami, 36 White Oak Lane; Heidi Wyle, 26 Pigeon Hill Road, Weston; Susan Steneri; and Rhaea Maurel, 297 Willis Road; on September 7, 2012 from Gratia Morgan, 81 Ruddock Road; Jeannette McLellan, 14 Musket Lane; and Jill Baker, 232 Goodman's Hill Road; on September 8, 2012 from Bryan and Paula Coffey, 24 Tippling Rock Road; Michael Orzech, 10 Whispering Pine Road; on September 9, 2012 from Pat Ausman and Kathy French; and on September 10, 2012 from Diane Ellaborn; Ingrid Mayyasi; and Stacey Lander. The Board expressed their appreciation to those who e-mailed as they provided good feedback for their consideration.

Ms. Quirk asked whether any neighbors were present who wished to comment on the proposal. No neighbors were present.

Mr. Gossels suggested that, given the good response from clients, he would recommend a longer renewal term. The Board then discussed a term of three years, which everyone agreed to.

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 Anne Stone, Sharon Sutherland, and Jamie Denn, applicants, renewal of Special Permit 11-37, granted under the provisions of Section 2313 of the Zoning Bylaws, to operate a kennel on the premises, property located at 554 Boston Post Road, Residential Zone A-1, subject to the following:

1. A kennel license will be required for this operation.
2. The dogs do not become a nuisance.
3. The maximum number of dogs allowed on the property is fifty (50).
4. There will be an 8:1 ratio of dogs to people allowed for this operation.
5. All dogs must wear tags which identify their owners' address and telephone numbers.
6. Each dog being dropped off must be on leash from the car to the facility.
7. No dogs will be allowed off leash in the area shown on the plan marked Exhibit #1 which is made part of this Special Permit.
8. Waste disposal shall be in accordance with Board of Health requirements.
9. No commercial activity consisting of breeding or sale of dogs will be allowed on the property.
10. Hours of operation shall be from 7:00 a.m.-6:00 p.m. No overnight boarding of dogs will be allowed.
11. A sign in conformance with the Bylaw will be allowed.
12. Any complaints received by the applicants shall be reported immediately to the Dog Officer.
13. This permit is non-transferable and will expire in three (3) years on September 10, 2015, 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 petitioners seek renewal of a special permit to operate a kennel on the premises. This kennel has been in operation for six (6) years and there have been no problems associated with the operation or complaints from abutters. The use is allowed in all districts by Special Permit from the Board of Appeals. 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 presence significantly alter the character of the zoning district. The property consists of a large tract of land which contains a working farm stand located between two commercial businesses. The facility is not visible from Route 20. Adequate and appropriate facilities have been provided for proper operation. The animals are restricted to the area as shown in the plot plan which is made part of this decision to ensure that the use will not be offensive to the adjoining zoning districts or neighboring properties. Due to the

overwhelming support from clients, the Board finds that a three-year renewal period would be appropriate at this time.

Elizabeth T. Quirk, Chair

Jonathan F.X. O'Brien

Benjamin D. Stevenson, Clerk

Jonas D.L. McCray, Associate

Jonathan G. Gossels