

CASE 13-1
Monika Haack and Pawel Sowinski
78 Old Framingham Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, February 4, 2013

The Board consisted of:

Jonathan G. Gossels, Acting Chair; Jeffrey P. Klofft, Acting Clerk; Jonathan F.X. O'Brien; Stephen A. Garanin, Associate; and Nicholas B. Palmer, Associate.

Notice was published in the *Sudbury Town Crier* on January 17 and January 24, 2013, posted, mailed and read at this hearing.

Mr. Gossels, as Acting Chair, explained the requirements necessary to substantiate the granting of a Special Permit. He 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.

Monika Haack, applicant, was present to request a special permit to raise six hens and one rooster at her property located at 78 Old Framingham Road. Ms. Haack said that the coop would measure six by four feet and would be raised three feet off of the ground. The base would be enclosed to be predator-proof. She said that at night, from approximately 8:00 p.m. to 8:00 a.m., the chickens would be closed inside the coop but she envisioned that they would be free-range during the day. She said the coop is very stable.

Mr. Gossels explained that the ZBA has issued several special permits for chicken coops throughout Sudbury, but has never allowed a rooster as part of the permit. He said that roosters crowing as early as 3:00 a.m. are loud and a nuisance to abutting neighbors. Ms. Haack said that she was requesting the rooster as protection for the hens as roosters are known to protect against predators such as hawks. She did not think that one rooster would cause a problem.

Mr. Gossels said that he would have no trouble allowing the special permit for the hens, but he would not vote in favor of a rooster. Ms. Haack asked whether there are any roosters in Sudbury. Mr. Gossels said that only farms were exempt from having to obtain a special permit so there could be roosters at some of Sudbury's farms. Mr. Klofft said that the property's C-1 zoning makes a difference in this case and in his approximately twelve years on the board he has never approved a rooster.

Prior to the hearing the Board was in receipt of correspondence in the form of a letter dated January 7, 2013 from John and Barbara Finlay, Unit 16; John and Beatrice O'Reilly, Unit 14; Ralph and Jan McQuade, Unit 15; John and Maureen Dolan, Unit 18; and Betsy and Fredy Leuenberger, Unit 17 at 32 Old Framingham Road; a January 16, 2013 e-mail from John and Maureen Dolan, Unit 18, 32 Old Framingham Road, a January 17, 2013 e-mail from Barbara Finlay, Unit 16, 32 Old Framingham Road; a January 28, 2013 e-mail from Robert H. Diefenbacher, Unit 11, 32 Old Framingham Road; a January 28, 2013 e-mail from Nira Kermisch, Unit 20, 32 Old Framingham Road; and a January 28, 2013 e-mail from John and Ann O'Hearn, Unit 16, 30 Nobscot Road; and a February 4, 2013 e-mail from Jane Ambash, Unit 4, 32 Old Framingham Road.

Mr. Gossels asked whether any neighbors present wished to speak.

Larry Isrealite, Old Framingham Road, said that predators would go after the chickens and he did not think that free-range chickens would work.

Betsy Leuenberger, Unit 17, 32 Old Framingham Road, said that she has lived near a rooster previously. She said that aside from the horrible crowing the hens attracted all kinds of wildlife including raccoons. She said that living near one created a horrible existence and she did not want that for her senior community at Grouse Hill. Therefore she was opposed to the proposal for the rooster.

Mr. Gossels reiterated that in his opinion he had no concerns about smell or noise caused by the six hens. He said that roosters, however, cause problems for neighborhoods.

John O'Reilly, Unit 14, 32 Old Framingham Road, explained that his mother-in-law lives in Rome and when he and his wife visit the guest room in which they stay is close to a neighbor's rooster which crows beginning at 4:00 a.m. and throughout the day. He said that it is impossible to sleep with the rooster crowing. He also talked of his experiences playing golf at the Framingham Country Club where a neighbor's rooster crows while golfers are trying to concentrate on their shots, which causes a great interruption. He wants the quiet setting of Grouse Hill to remain quiet.

Mr. Gossels then called for a sense of the Board on the issue. All members indicated their opinion that a permit should be issued for hens but not a rooster.

Roberta Freed, Unit 10, 32 Old Framingham Road, asked whether the coop would attract more predators.

Sue Clark, Unit 32, Old Framingham Road, said that there are already fisher cats and coyotes in the conservation area by Grouse Hill and there was a fox that was killed by a car on Old Framingham Road just last week. Old Framingham Road has many blind spots so drivers often cannot see animals and she worried that this sort of thing would become more of an occurrence with the chickens attracting more wildlife.

Mr. Klofft said that the coop would probably not add any more animals than trash receptacles that are left out. He and Mr. Gossels both said that there is quite a lot of wildlife in Sudbury already hunting and eating wild turkeys, for example, so the addition of the hens would not necessarily attract more.

Ms. Haack said that the coop would have a protected free-range area during the day and at night the hens would be locked up in the coop to keep predators out. There would be one low-watt light in the coop that would be seen from the coop's small windows, but the light would not be overly bright.

Given that the Board's concern was over the noise of the rooster, Mr. Klofft asked Ms. Haack if she would be willing to amend her application to eliminate the request for the rooster. She said that she would.

Mr. Gossels explained to Ms. Haack and those in attendance that special permits for chickens are typically given a one-year term to start so that the applicant can reconvene with the Board to request a renewal in a year's time. Anyone wishing to comment or express concerns about the chickens can do so then.

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

The following motion was made and seconded:

MOTION: "To grant Monika Haack and Pawel Sowinski, applicants and property owners, a Special Permit granted under the provisions of Section 2313 of the Zoning Bylaws, to raise six hens on the premises, property located at 78 Old Framingham Road, Residential Zone C-1, subject to the following:

1. The chickens shall not become a nuisance.
2. The maximum number of chickens allowed on the property is six. No roosters shall be kept on the premises.
3. The chicken coop and pen area may be no greater than 10'x10' in size.
4. One low-watt light no greater than 75 watts will be allowed inside the chicken coop. The light may be turned on 24-hours per day.
5. Composting of waste litter shall be allowed on-site, provided that odor does not become a nuisance.
6. No commercial activity consisting of the sale of eggs, chickens, or chicken products will be allowed on the property.
7. This permit is non-transferable and will expire in one (1) year on February 4, 2014, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioners seek renewal of a special permit to raise chickens on the premises. 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. The coop is situated in an appropriate location, is not detrimental to the neighborhood, and its presence does not significantly alter the character of the zoning district. Adequate and appropriate facilities will be provided for proper maintenance. The permit will expire in one year at which point the applicant may seek renewal and the Board can then assess whether the coop has impact on the neighborhood.

Jonathan G. Gossels, Acting Chair

Stephen A. Garanin, Associate

Jeffrey P. Klofft, Acting Clerk

Nicholas B. Palmer, Associate

Jonathan F.X. O'Brien

CASE 13-2
David S. Kaplan
9 and 23 Old County Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, February 4, 2013

The Board consisted of:

Jonathan G. Gossels, Acting Chair; Jeffrey P. Klofft, Acting Clerk; Jonathan F.X. O'Brien, Stephen A. Garanin, Associate; and Nicholas B. Palmer, Associate.

Notice was published in the Sudbury Town Crier on January 17 and January 24, 2013, posted, mailed and read at this hearing.

Mr. Gossels, as Acting Chair, opened the hearing. He 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.

David Kaplan, resident at Unit 25, 6 Old County Road, was present to request that the ZBA overturn a decision of the Sudbury Building Inspector, Mark Herweck, dated December 6, 2012. Mr. Kaplan said that he was appealing all aspects of the decision regarding Section 3423 (Noise), Section 3425 (Glare), Section 2321 (Unregistered Motor Vehicles), Section 3422 (Air Quality), Section 3424 (Solid Waste Storage), Section 2248 (Limited Industrial District or Industrial Park District Parking), Section 2247 (Industrial District Outside Storage), and Section 3500 (Screening and Landscaping).

By way of background Mr. Kaplan said that residents began moving into The Villages at Old County Road during 2009 through the end of 2011. He said that throughout that time Lynch Tree Service was one of the tenants at 9 Old County Road and they were good neighbors and not noisy. Now, however, the site is occupied by Masonworks which Mr. Kaplan reported often operates its equipment beginning at 3:30 a.m. He said these practices presented a new situation for the tenants of the Villages at Old County Road who have to deal with the sounds and smells from generators and diesel trucks idling which wake residents up in the early morning and disrupt the use of backyards. Mr. Kaplan said that given the conditions there they can't enjoy their yards, grill food on patios, or have visitors.

Mr. Kaplan said that after dealing on their own with the rude replies to their complaints from Masonworks the Trustees of the Villages at Old County Road wrote a formal letter of complaint on August 29, 2012 to Town Officials including the Board of Selectmen, Town Manager, Building Inspector, and Chief of Police about the diesel fumes, sewage smells, and rusty vehicles parked at the site. In the letter Mr. Kaplan maintained that the visual buffer between the properties had been thinned as driveways to 9 and 23 Old County Road had been widened in 2012 to accommodate the trucks for Masonworks.

A follow-up letter to Town Officials was sent on October 2, 2012 listing the specific concerns identified in the appeal of ZBA Case 13-2. Mr. Kaplan said that the appeal was filed with the ZBA because the noise concerns continue. He said that he was particularly concerned about the potential for increased noise in the spring when construction work picks up. He said that it was difficult to understand Mr. Herweck's letter which he felt was lacking in explanation. In Mr. Kaplan's opinion the fact that the industrial site was grandfathered into local law overreaches. Rusty cars and noxious smells from dumpsters add to the concerns. Mr. Kaplan said that no one's business would be hurt from the complaints because the bylaws do not hinder business, however the residents' property values at the Villages at Old County Road do suffer.

Mr. Kaplan said that since filing the appeal he has learned that some of the noise from banging dumpsters is caused by trash pick-up service at neighboring Wayland property. He thanked the Lewis' for identifying that and he will be following up with Wayland to remedy that situation. However, he said that Masonworks continues to be loud with their trucks' back-up signals and with the crashing of stone into the trucks. He said they continue to position truck headlights so that they shine into the residents' properties.

Mr. Kaplan said that opinions of the owners at the Villages at Old County Road do vary but all are in support of a solution. He said that he does not want to see any businesses shut down but does want all parties' interests protected.

Mr. Gossels asked the owners, Denis and Marie Lewis, to come forward to discuss the situation. Ms. Lewis said that they adhered to a landscaping plan as part of an approved site plan for 9 and 23 Old County Road. She said that she had met with some of the Trustees of the Villages at Old County Road to discuss issues.

Mr. Gossels noted that the ZBA has the sense that the neighbors consider the activities from the businesses at 9 and 23 Old County Road a nuisance. He said that the ZBA is faced with assessing both zoning and neighborly issues. He acknowledged that the Lewis' have taken steps to meeting with the Trustees of the Villages at Old County Road. He said that Sudbury needs businesses such as the Lewis's long-standing business and the fact is that the land on which those businesses are is zoned industrial. He further said that Town Officials have previously reported that the Lewis' are not in violation of the Town's bylaws.

Denis Lewis said that there was some amount of noise at the site when Lynch Landscaping was there simply due to the nature of the business. There also was a tenant operating a noisy generator and the Lewis' fixed that problem. They have imposed limits on truck idling times. He admitted that the lights shining through the driveway is still a problem for the second floors of the condominiums because those

buildings sit lower than the driveway across the street. In regard to early morning noise he said that Wellesley Trucking empties overhead dumpsters into their trucks during morning hours at Candela, a company located in the business park in Wayland that abuts 9 Old County Road. Dumpsters are not being emptied on the Lewis' property at that time.

Mr. Gossels asked for further explanation of the septage fumes as described in the appeal. Mr. Lewis said that septic pumping trucks do transfer septage from truck to truck on the property but the smells dissipate in a short time. Jon Lewis, son of Denis and Marie Lewis, added that the smells of roasted coffee beans from neighboring Karma Coffee also smell in the area and can at times smell like septage.

Mr. Gossels said that in regard to noise and glare the approved site plan for 9 Old County Road dated October 19, 1987 only required a small amount of landscaping. He said that from his observation the trees are there. They may be ineffective now but the required trees were planted so the owners did what the Selectmen's decision required them to do. Therefore they are in compliance. Mr. O'Brien added that the trees have grown up since 1987 so the screening is not necessarily at an effective height.

Mr. Palmer asked for clarification on the coffee odor versus septic odors. Ms. Lewis said that she had been in discussion with the owner of the septic business. He acknowledged that there is some odor produced transferring from one container to another but the process lasts for a half hour maximum. She said that Karma Coffee roasts coffee for about the same amount of time and the resulting smell is that of burned popcorn. The two smells can intermingle. She reiterated that Karma Coffee is not part of their lot. Mr. Kaplan said that anyone can tell the difference between septage and coffee roasting. He said that the residents at 6 Old County Road can even hear the pumping of septage. Mr. Klofft opined that sewage smells can linger at a property for quite some time after the pumping activity is finished.

In regard to the noise of trucks beeping when backing up Mr. O'Brien said that the Sudbury bylaws state that businesses cannot make this noise prior to 7:00 a.m. except in the case of temporary construction work, which does not apply to 9 and 23 Old County Road, an ongoing business. He said that DEP regulations discuss regular versus irregular construction activity and states that if there are noise issues the property owner needs to mitigate them. He added that DEP's regulations are somewhat subjective.

Mr. Lewis noted that employees of the tenant companies are told to go to work at the times they are told to by their parent companies. Mr. Gossels said that the landlord sets the rules of its tenants.

Mr. Gossels asked whether there were any abutters who wished to make comments.

Donna Mills, 47 Rolling Lane, said that the industrial businesses have been there a long time and the residential area does not belong because now the situation isn't fair to the industrial owners or the residents. Mr. Klofft said that there are many areas of Sudbury where different zones border one another.

Mr. O'Brien said that development happens and the rules say that when residential communities are developed then the industrial facilities do need to take the residences into consideration. He added that there does need to be compromise.

Karen Bent, 539 Hudson Road, said that industrial jobs start at 7:00 a.m. in many cases so trucks need to start up even earlier in order to get to job sites. To restrict this means that jobs could be on the line.

Chuck Mills, 47 Rolling Lane, stated that he is a tenant at 9 Old County Road and provides snow plowing services.

Tim Hammer, 23 Old County Road, said that his kitchen window is approximately sixteen paces from the septic area and the coffee roasting smell is just as bad as the septic smell. He added that a resident from the Villages at Old County Road rides a loud motorcycle throughout the property early in the morning and he finds that just as disturbing as other sounds. He added that the working-class people working at the Lewis's lot are just trying to earn a living.

Jodi Tucker, Unit 9, 6 Old County Road, said that she has lived at The Villages for five years and has never heard of these complaints except for in the past few months. She said that she can't hear the noise from her unit. However, in this process she has heard nothing about being neighborly and the concerns have been going on for eight or nine months. She said that no one has appeared to apologize so it has become one-sided fighting. Mr. Lewis disputed this claim saying that they have reached out to the residents and he has received at least one phone call of thanks for their efforts. Ms. Lewis added that she and Mr. Lewis had met with four of the current Trustees of the Villages at Old County Road at their units and talked about the noise, lighting, and screening. They discussed the state of the screening at 9 Old County Road. She said that there could be better communication but they are always approachable and Mr. Lewis can usually be found at the site.

Mr. Gossels questioned whether it would be a good course of action to continue the hearing so that more issues could be sorted out between the neighbors and the Lewis'.

Gio Marzot, Unit 10 6 Old County Road and Trustee for the Villages at Old County Road, said that a cordial meeting with Town Officials had been held recently.

Brian Williams, 26 Autumn Street, questioned whether the Villages at Old County Road should put in more trees and fencing. Screening efforts appeared to him to be lopsided.

Nancy Marshall, Unit 26 6 Old County Road, asked for clarification on which bylaws address times at which work can begin. Mr. O'Brien referred to Section 3423.

A motion was then made and seconded to continue the hearing to Monday, March 4, 2013 at 7:30 p.m. at the Town Hall.

Jonathan G. Gossels, Acting Chair

Stephen A. Garanin, Associate

Jeffrey P. Klofft, Acting Clerk

Nicholas B. Palmer, Associate

Jonathan F.X. O'Brien