

CASE 13-33
Bruce and Amy Heidke
51 Powder Mill Road

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

The Board consisted of:

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

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

ZBA Chairman Benjamin Stevenson, 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.

Attorney Joshua Fox of Rollins, Rollins & Fox, was present along with applicants Bruce and Amy Heidke to request a special permit for a 675 square foot accessory dwelling unit at their property at 51 Powder Mill Road. Mr. Fox explained that Ms. Heidke has owned the home for nineteen years and a building permit was pulled for work to create an apartment at the house in 2001. The accessory dwelling is located in the basement area and consists of a bedroom, kitchen, living room, and full bath. The basement has a walk-out ingress and egress. Mr. Fox referred to the photographs included in the application explaining that the accessory dwelling is not visible from the road.

Building Inspector Mark Herweck was notified about the accessory dwelling in October of 2013.

Mr. Fox said that the Heidke's main house has a total of three bedrooms but only two are in use as bedrooms. The Heidkes have one child and the accessory dwelling is currently rented to and occupied by a mother with one child bringing the total number of inhabitants at the property to five.

Ms. Quirk asked whether the Board of Health had rendered an opinion on the status of the septic system. Mr. Stevenson said that the Board was in receipt of a memo dated October 25, 2013 from Bob Leupold, Health Director, stating that the accessory dwelling unit is acceptable at 51 Powder Mill Road with a three-bedroom dwelling and a one-bedroom accessory dwelling. If the total room count exceeds nine then a deed restriction would be required limiting the number of bedrooms.

Mr. Herweck said that the 2001 building permit was for a bedroom but noted that the final inspection had not been conducted. Additionally there was no building permit for a kitchen at the site.

Mr. Stevenson then read into the record an e-mail dated October 27 received by the Board from an abutting neighbor, Diane Kaye, 55 Powder Mill Road, stating her concerns with the accessory dwelling including the concept of a two-family house in a single-family neighborhood, and about her involuntary involvement in the tenant situation at the accessory dwelling which concerns the Sudbury Public Schools and Sudbury Police. Mr. Stevenson also noted for the record that the Board was in receipt of a letter of complaint dated October 2, 2013 from Ms. Kaye to Mr. Herweck notifying him of the unpermitted accessory dwelling, and a letter dated October 4, 2013 from Mr. Herweck to property owner Amy

(Martin) Heidke stating that the apartment may be in violation of the zoning bylaw and directing her to the Board of Appeals to obtain a special permit.

Mr. Stevenson said that the application as presented appeared straight-forward, however he suggested that there may be some politics at play that are not part of the application package. Mr. Fox said that the politics were not relevant for zoning in that the application was for a use permit. In his opinion the application and request met the criteria for zoning and special permits.

Mr. Gossels noted that the apartment had been in existence illegally for ten years, even before the revisions of the accessory apartment bylaw at Town Meeting in 2009. Mr. Fox said that the applicants acknowledged that fact in the narrative of their application and now want to resolve the situation by obtaining a special permit.

Mr. Fox said that the accessory dwelling had been created for Ms. Heidke's father who has since passed away and has been rented intermittently to non-family members since 2005 or 2006. There were no children living in the apartment prior to the current tenants. The child living in the accessory dwelling does attend a Sudbury Public School. Mr. Stevenson asked whether there are other family members of the tenants living in the accessory dwelling. Mr. and Mrs. Heidke said that while the tenant is still married, to their knowledge the husband and another child of preschool age does not live there.

Mr. Fox added that in the spring of 2013 Mr. Heidke was laid off from his job and Ms. Heidke, who runs a small business, became the victim of financial fraud so they are now in a financial bind and need the income from the rent of the accessory dwelling in order to pay taxes on their property.

Mr. Stevenson asked whether there were any members of the public who wished to speak.

Diane Kaye, 55 Powder Mill Road, said that she has been a resident of Sudbury since 2003. In that time she said that she was aware of the accessory dwelling but said that it did not bother her because it was typically rented to couples who were not utilizing Town resources and so the neighborhood essentially kept a blind eye on it. However, she said that in June of 2013 she began getting questions about the accessory dwelling from other residents and from the Sudbury Public Schools. The SPS wanted to know from Ms. Kaye who lived at the property. Ms. Kaye said that she has even spoken with the tenant herself who said that she still has a house in Marlborough. Ms. Kaye said that the child receives services from the Sudbury Public Schools and, as she is concerned about the crowded class sizes at Sudbury Public Schools, she wanted the use of school resources to stop. She said that she does not mind that accessory dwellings can be rented to support homeowners but she did find fault with renters who do not pay taxes taking school resources.

Mr. Stevenson said that it is not in the ZBA's jurisdiction to recommend school enforcement, noting that the ZBA had to look at the apartment according to its jurisdiction in regard to special permit criteria.

Mr. Klofft posed the question about whether or not the apartment's use is within the intent of the bylaw. He noted that families with children can rent accessory dwellings and said that if the application were being judged strictly on the size of the unit to the main house then it would fit within the requirements.

The Board then discussed the number of bedrooms on the site and the Health Director's opinion. Mr. Fox said that the Board could impose a condition about the number of rooms used as bedrooms if there were concerns about the number of residents at the site.

The Board discussed the applicants' past noncompliance with the bylaw in terms of the lack of special permit and lack of a permitted kitchen. Mr. Fox said that if there is an issue with trust then a condition could be imposed for term of renewal.

The Board then reviewed the Special Permit criteria. After much discussion the Board determined that the accessory dwelling itself was in harmony with the general purpose of the bylaw, the use does not significantly alter the character of the zoning district, there are adequate facilities for proper operation, there would be no detrimental effects to adjoining properties due to lighting, odors, smoke, noise, sewage, refuse materials, or other visual nuisances, and there would be no traffic issues at the site.

Various conditions were added beyond the standard conditions for an accessory dwelling. Included was a one-year permit term after which the Heidkes must obtain a renewal. The Board also wanted the kitchen inspected and appropriate permitting by the Building Inspector. And finally, to assuage any concerns about too many occupants in the building a condition was imposed that stated that the number of bedrooms in the combined house and accessory dwelling should be no more than four.

Mr. Stevenson asked whether there were any further comments from the public. No one else was present who wished to speak about the proposed accessory dwelling. There being no further comments from the Board or audience. The hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Bruce and Amy Heidke, applicants and property owners, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws in conformance with the application for the Special Permit dated October 9, 2013 and the plans submitted by the Applicants, to allow a 675 square foot Accessory Dwelling Unit for property located at 51 Powder Mill Road, Residential Zone A-1, as follows:

1. The kitchen in the Accessory Dwelling Unit must pass a satisfactory final inspection by the Building Inspector and a building permit must be obtained.
2. There shall be no more than four bedrooms utilized as such at the premises.
3. The Accessory Dwelling Unit shall be occupied by no more than four persons.
4. 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.
5. 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.
6. 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.
7. This permit will expire in one (1) year on November 4, 2014, and the Board will consider renewal upon receipt of proper application on or before that date.
8. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit."

VOTED: In favor: 4 Opposed: 0 Abstained 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. Conditions were imposed to ensure that the kitchen in the accessory dwelling has been properly installed and meets with the Building Inspector's approval and that the total number of bedrooms in the main house and accessory dwelling combined do not exceed four so that the property meets the requirements of the Board of Health in regard to the property's existing septic system. The Board issued the special permit for a duration of one year to confirm that conditions are being met. The property owners will have an opportunity to renew the special permit after that time.

Benjamin D. Stevenson, Chair

Jeffrey P. Klofft

Jonathan F.X. O'Brien, Clerk

Elizabeth T. Quirk

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

ZBA Chairman Benjamin Stevenson, 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.

Applicant Matthew DeAvila was present to request a special permit to construct a 24.3x14 foot attached garage addition on a nonconforming lot which will result in a front yard setback deficiency of approximately 17.1 feet. Mr. DeAvila explained that his house currently has a two-car garage and he would like to add a third bay to accommodate an additional hobby vehicle. Mr. DeAvila said that he has in the past installed a temporary tarp to cover the third vehicle but he has done quite a bit of work to improve the property and would like to build a permanent garage to eliminate the need for the tarp.

The property is located on the corner of Hudson Road and Crestview Drive and the garage would be installed on the Crestview Drive side. The application included several photographs which showed ample vegetative screening of arbor vitae and viburnum which would minimize the view of the garage. The trees and shrubs would remain in place after construction. He said that no cars would be parked behind the property.

Mr. DeAvila said that he had notified his neighbors about his project and no one expressed concerns.

After a brief discussion there were no further comments from the Board or audience. The hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Matthew DeAvila, applicant and owner, a Special Permit pursuant to Section 2420 of the Zoning Bylaw, to construct a 24.3x14 foot attached garage addition on a nonconforming lot which will result in a front yard setback deficiency of approximately 17.1 feet, property located at 215 Hudson Road, Residential Zone A-1, provided that:

1. The one-story garage addition will be constructed at a height that is identical to the existing garage as shown on the plan prepared by Beyond Basics dated October 10, 2013 that is incorporated into and made part of this Special Permit.
2. There shall be no vehicle storage shall be permitted to the west of the garage.

3. 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.”

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

REASONS: The petitioner requires a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed garage, which will create a front yard setback deficiency, will not be substantially more nonconforming than the existing nonconformity to the neighborhood. No abutters were present to oppose the petition.

Benjamin D. Stevenson, Chair

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Prior to re-opening the hearing as continued from October 21, 2013, ZBA Chairman Benjamin Stevenson, 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.

Dr. Gail McNeill, applicant, was present to request a modification to special permit #12-15 for her veterinary clinic and kennel. Specifically Dr. McNeill had requested that the condition restricting hours during which animals are allowed outdoors and the condition requiring windows to be closed year-round for noise reduction be eliminated from the special permit.

The Board was in receipt of a copy of the original site plan decision issued by the Board of Selectmen on March 23, 1984. Upon review all agreed that since the area where the Veterinary Clinic is located has grown and changed since 1984, removing the restrictions would not pose a noise issue for abutters.

The Board did express concerns about the temperature inside the clinic during hot days and asked whether air conditioners were in working order at the site. Dr. McNeill said that they are. For the better health of the animals, however, Dr. McNeill said that fans and open windows would be used primarily for air circulation except when temperatures are extreme and then air conditioners would be used.

Mr. Stevenson then asked whether there were any comments or questions from the Board or from the public. No abutters were present. As there were no further comments 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, a modification of Special Permit 12-15, 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. Except as modified herein, the conditions of the site plan dated March 5, 1984 shall be complied with.
2. This permit is non-transferable and will expire in ten (10) years on November 4, 2023, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 4 (Unanimous) Opposed: 0

REASONS: The petitioner sought to modify the conditions of special permit 12-15, granted to operate a kennel that has been in existence for twenty-nine years. The Board finds that the location of the activity in a business district that has minimal abutter contact within 100 feet is appropriate 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 about the modifications to the conditions of the special permit. For this reason, the Board finds a renewal term of ten years to be appropriate.

Benjamin D. Stevenson, Chair

Jeffrey P. Klofft

Jonathan G. Gossels, Acting Clerk

Elizabeth T. Quirk