

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, November 3, 2014

The Board consisted of:

Benjamin D. Stevenson, Chair; Jonathan F.X. O'Brien, Clerk; Jonathan G. Gossels; Nicholas B. Palmer; and John Riordan, Associate.

ZBA Chairman Benjamin Stevenson explained the requirements necessary to substantiate the granting of a Special Permit. He said 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.

Neil Bifulco, applicant and owner of 15 Lillian Avenue, was present to request a Special Permit for a three-season porch measuring approximately 12 by 12 feet. A fourteen foot long patio is located there currently and he simply wants to build decking for the base and an enclosure in the same space. The square footage of the enclosed porch will actually be smaller than the patio. The porch will have electricity and a ceiling fan.

Mr. Gossels said that the porch was a modest size was located behind the house and as such was not affecting any neighbors. Mr. Bifulco said that he did talk to the surrounding neighbors about the project and no one expressed any concerns.

Mr. Palmer asked how close the back neighbors were. Mr. Bifulco said that the neighbors are close to the property line but he did speak with them and there were no concerns raised. The patio is also there already and is being used without issue.

Mr. Stevenson asked whether any neighbors were present who wished to speak. None were present.

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

The following motion was made and seconded:

MOTION: "To grant Neil and Rosalie Bifulco, applicants and owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to construct a 12'x12' foot porch on a nonconforming lot which will result in a rear yard setback deficiency of almost ten (10) ± feet, property located at 15 Lillian Avenue, 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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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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Jonathan F.X. O'Brien, Clerk

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John Riordan, Associate

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Jonathan G. Gossels

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Amy Heidke, applicant and owner of 51 Powder Mill Road, along with attorney Joshua M. Fox, Rollins Rollins and Fox, were present to request a renewal of Special Permit 13-33 for a 675 square foot accessory apartment at the residence. Mr. Fox explained that the original special permit was granted for one year. The year was uneventful and the property is in good stead with the Building Inspector. All of the standard ZBA conditions are acceptable to the applicant but she would like a perpetual permit as is usually granted for Accessory Dwellings.

The Board asked Ms. Heidke for a recap of the initial concerns that led to only a one-year permit. Mr. Fox said that the kitchen in the accessory dwelling had not been approved by the Building Inspector, however after the November 2013 an inspection was made. It passed and Building Permit was issued. There were also concerns unrelated to zoning but rather about the tenant who was residing there with a child in the Sudbury Public School system. The tenant has since moved out and purchased a home in Sudbury. There is not a tenant living in the accessory apartment at the moment.

Mr. Stevenson asked whether any neighbors were present who wished to speak. None were present. The Board had not received any other correspondence related to this case.

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

The following motion was made and seconded:

MOTION: "To grant Amy Heidke, applicant and property owner, a renewal of Special Permit 13-33 under the provisions of Section 5500 of the Zoning Bylaws in conformance with the application for the Special Permit dated October 3, 2014, 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 Accessory Dwelling Unit shall be inspected by the Building Inspector prior to issuance of a certificate of occupancy.
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. 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.
7. 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.
8. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit.”

VOTED: In favor: 5 (Unanimous)

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.

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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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ZBA Chairman Benjamin Stevenson explained the requirements necessary to substantiate the granting of a Special Permit. He said 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.

Igor Bily, applicant and owner of 26 Eddy Street, was present to request a Special Permit to build a 5.75 by 31' porch onto the house that they are in the process of renovating with a two-story addition. The porch would result in a front yard setback deficiency of almost 5.5 feet. Mr. Bily described the existing house as a garrison colonial and the porch would create a more traditional colonial structure. He said that both the front and back yards are of a good size and the extension into the setback will not encroach onto anyone else's property.

It was Mr. Bily's understanding after speaking with the Building Inspector, that the addition, which will create a two-car garage and second story bedroom, does not need zoning relief. The height of the addition will match the height of the existing house.

Mr. Palmer asked about the engineering firm. The firm is R. Wilson and Associates.

Mr. Bily said that neighbors have been made aware of the project and appeared fine with the plans.

The Board discussed the fact that the addition, which can be built as of right, is going to be forty feet back from the road.

Mr. Palmer said that the porch appears proportionate to the house.

Vladimir Pevunov, 37 Eddy Street, said that he felt the project will be in harmony with the surrounding environment. He was quite fine with porch and was aware of the addition. He added that the project is in line with other homes in the area.

Mr. Palmer asked whether this property was being renovated as an investment property. Mr. Bily said it was.

When Mr. Stevenson asked whether Mr. Bily would consider moving the house back Mr. Bily said that the addition was already built as he had obtained his building permit already. The request before the ZBA was simply for the porch relief.

Mr. Stevenson asked whether any other neighbors were present who wished to speak. None were present.

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

The following motion was made and seconded:

MOTION: "To grant Igor Bily and Jan Hanzl, applicants and owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to construct a 5.75'x 31' porch on a nonconforming lot which will result in a front yard setback deficiency of no greater than 5.5 feet, property located at 26 Eddy Street, 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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Benjamin D. Stevenson, Chair

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ZBA Chairman Benjamin Stevenson explained the requirements necessary to substantiate the granting of a Special Permit. He said 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 Noyes was present to request a Special Permit to enlarge an existing residence on a nonconforming lot at 29 Elsbeth Road which would result in a front yard setback deficiency of no greater than three feet. Mr. Noyes said that the new residence would measure approximately 3,500 square feet. He described the layout of the house noting that the corner of the garage would extend into the setback. He said that engineers were presently working on the site survey but were unable to complete the plans prior to the hearing. He noted that the application included a layout that corresponded to the plans and served essentially as the survey. Mr. Palmer said that he wanted to see a formal survey before making a decision so that the exact location of the structure was known.

Mr. Gossels said that the front elevation of building was concerning. Mr. Noyes said that there was still work to be done on the aesthetics but the design would be of a traditional style.

Mr. Gossels felt that the Board should see more definitive plans because the town would have to live with their decision once made. Mr. Noyes said that his engineer, Schofield Brothers, indicated that the northwest corner of existing structure is 39.8 feet from property line but the survey he had was only preliminary. He said that the setback encroachment on the southeast corner is a preexisting, and would not change with the improvements to the house.

Mr. Stevenson pointed out that the existing structure is single-story ranch with approximately 840 sf of living space and a 1-car garage. He was concerned that the front façade of the new residence should have more variation in its presentation to break of the expanse. He did not have problem with proposed size of the new house. Mr. Gossels felt that the house, though technically a renovation, is essentially a teardown.

Mr. Klofft said that there are some larger renovations in same neighborhood and pointed out that the massing of the house next door is a problem.

Mr. Stevenson understood that the applicant wants to use the existing foundation of the house but agreed that the board should see specific plans prior to approval. Mr. Gossels felt that the house was too massive and too close to the road. He did agree that the roof line was low though, but the low roof plus the large size and the current design had the aesthetic of a big box. Mr. Noyes said that he had not accepted the final architectural plan, noting that this was just a first reiteration. He said that he was trying to design in a way that would not violate the setbacks.

The Board discussed needing something more concrete, perhaps in the way of a letter from the surveyor that showed the setback measurements. Board members were not comfortable approving the proposal without solid plans.

Mr. Noyes then handed out the preliminary survey plans saying that he was fairly certain that the marker was set at 39.8 feet rather than the required 40-foot front setback.

Mr. Gossels suggested that Mr. Noyes withdraw his application without prejudice which would allow him to come back before the ZBA with more definitive plans. The application fee would be waived and only a \$25 advertising fee charged.

Mr. Noyes said that he was currently working with the Conservation Commission and the Conservation Coordinator, Debbie Dineen, said that there are no problems with building on any disturbed property but that he would need to show how he is addressing the increase in the impervious surface at the site. He had hoped to get ZBA approval first and then proceed with the Conservation Commission. The Zoning Board again discussed the fact that a big problem with the proposal is the building's aesthetics and the fact that they need specific designs and elevations in order to render a decision. Mr. Klofft further pointed out that the case was advertised as having a deficiency of only three feet. If it is determined that the deficiency is more than three feet then it would have to be re-noticed anyway. Therefore final plans are needed. The Board also suggested that perhaps the garage could be pushed back which would eliminate the setback issue.

Mr. Noyes felt that the setback deficiency would not be a major concern. However, Mr. Gossels said that the ZBA would be concerned with setbacks given that in their teardown guidelines the ZBA prefers a front setback of 60 feet. Mr. Noyes said that he had done his due diligence and had spoken with Building Department and he felt as though he was following the rules as laid out in the bylaw. He said that the 60-foot setback was a surprise to him.

There was discussion among the Board members about whether the project was really a full tear-down or not. Mr. Stevenson said that Mr. Noyes was utilizing the foundation and 1<sup>st</sup> floor of the existing structure so it should be considered a renovation. Mr. Noyes said that the house sits in a neighborhood of modest houses, however 19 and 20 Elsbeth are large. He said that he wants to have a more modest and fitting design for the street.

Mr. Stevenson asked whether any neighbors were present who wished to speak.

Natasha Rivera, 9 Turner Road in Maynard, said that she was the neighbor to the West. She had questions similar to the ones that the ZBA brought up given that the existing house is a small ranch. She wanted to know more about the planning and construction phase. She explained that the surveyors who came to look at the property were unclear about the mapping and property lines. She said that her husband helped to show the surveyor where the property line was, however what the surveyor showed her husband was an outdated plot plan. She had concerns about the residence tripling in size. Mr. Noyes said that he was hoping to use entire footprint of existing structure and the rooms and layout of the house would be changed with the interior walls coming down. The ZBA argued again that the proposal appeared to be a teardown. Ms. Rivera noted that there are wetlands at the back of the property. She said that the builder is

proposing a lot of building just in order to save a small house. She felt that the size of the new house was odd for a small lot.

Lyn MacLean, Chair of the Historical Commission and Sudbury resident at 209 Water Row, asked how old was the house. She wondered whether or not it was built before 1940 because if it were the project would need approval of the Historical Commission prior to demolition Mr. Noyes thought that the house was circa 1950s-1960s.

Mr. Stevenson asked about potential conservation issues. Mr. Noyes said that he had spoken with Debbie Dineen and she confirmed that the property does have wetlands. The stormwater bylaw requires impervious surface review. He noted that the septic system would further limit how far the house could move back on the site. Mr. Gossels then questioned the size of the house with only a three-bedroom septic system. He felt that the septic system would be undersized. Other board members agreed that the septic system needed additional consideration.

The Board recommended that Mr. Noyes request a withdrawal without prejudice so that he could come back to the ZBA with more appropriate plans for the site. The ZBA needed more information before anyone could make a decision. It was also recommended that Mr. Noyes determine what year the house was built to determine whether the Historical Commission needed to weigh in.

Mr. Noyes then requested that his application be withdrawn without prejudice. The application fee for any future applications would be waived, but an advertising fee would be required.

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

The following motion was made and seconded:

MOTION: "To accept a request from the Applicant to withdraw Case 14-33 without prejudice."

(Request for a Special Permit to enlarge an existing residence on a nonconforming lot and which would result in a front yard setback deficiency of no greater than three feet. The new residence would measure approximately 3,500 s.f.)

VOTED: In favor: 6 (Unanimous) Opposed: 0

REASONS: The petitioner requires a special permit due to the nonconforming nature of the property. The Board found that they did not have enough information in the way of a formal property survey or architectural renderings to make a decision, therefore the applicant was advised to revise his plans. The applicant was amenable to requesting a withdrawal without prejudice.

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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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Jason Falender, applicant and owner of 219 Water Row, was present to request a 648 square foot accessory dwelling at his residence. Mr. Falender recently purchased his home and explained that the property already included the apartment in place. He said that while there is some construction work being done at his property for a deck no new construction would be needed for the apartment. No changes were being made there. The apartment is located at the back of the residence so it is fairly hidden. The driveway is able to accommodate two cars' width. No parking will be more than two cars deep.

Mr. O'Brien asked where the apartment's entrance was located. The tenant would be able to use the carport and go around the back of the house to get into the apartment.

Mr. Gossels asked if Mr. Falender had a specific tenant in mind for the apartment. Mr. Falender said that the apartment would be rented and he did have a tenant available to rent.

The Board then discussed the fact that the apartment met the requirements of the bylaw and fit within the percentage of the space allowed.

Mr. Stevenson asked whether any neighbors were present who wished to speak. Lyn MacLean, 209 Water Row, said that she has lived on Water Row for 55 years and noted that there has always been an apartment in Mr. Falender's property. She said that since no changes were proposed she was in favor of the special permit.

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

The following motion was made and seconded:

MOTION: "To grant Jason Falender, applicant and owner, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws in conformance with the application for the Special Permit dated October 8, 2014 and the plans submitted by the Applicant, to allow a 648 square foot Accessory Dwelling Unit for property located at 219 Water Row, Residential Zone A-1, as follows:

1. The Accessory Dwelling Unit shall be occupied by no more than four persons.
2. The Accessory Dwelling Unit shall be inspected by the Building Inspector prior to issuance of a certificate of occupancy.
3. 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.
4. 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.
5. 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.
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 automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit.”

VOTED: In favor: 6 (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.

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Benjamin D. Stevenson, Chair

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Nicholas B. Palmer

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