

SUDBURY ZONING BOARD OF APPEALS
MINUTES
JANUARY 25, 2016

The Board consisted of:

Jonathan F.X. O'Brien, Chair; Jonathan G. Gossels; Nicholas B. Palmer, Clerk; John Riordan (Alternate) and William Ray (Alternate).

Also present at the meeting on behalf of the Town was: Jody Kablack, Director of Planning and Community Development.

The meeting was opened at 7:30 p.m.

Mr. Palmer read the Hearing Notice published in the Sudbury Town Crier.

1. Public Hearing Case 16-1 – Chad and Michelle Nixon, applicants and owners, for a Special Permit under the provisions of Section 2420 of the Zoning Bylaw, to allow an approximately 18' x 38' swimming pool resulting in a side yard deficiency of approximately 18' and a front yard deficiency of approximately 30', property shown on Town Map F04-0911, 7 Crystal Lake Drive, Residential A-1.

Chad Nixon was present at the hearing, and explained his intention to build a pool for recreational purposes on a non-conforming lot. Due to the septic location he is limited to one spot on the lot for the construction of the in ground pool. He stated that the noise and lighting will be minimum, and an eight foot tall privacy fence is existing.

Mr. O'Brien asked if any structures around the pool are proposed. The applicant replied no.

Mr. Palmer asked the applicant if a metal detector was used to find the exact location of the septic system covers as a safety precaution before digging the ground.

The applicant replied that they have done that and they are aware of the location of the manhole covers underground.

Mr. Riordan asked more details about the fence, the applicant replied that the pool will have a complete enclosure fence.

No neighbors were present for this case.

The Board expressed that this pool will be appropriate for the neighborhood, that the owner will provide adequate facilities for the functioning for this pool, the applicant states to have the adequate budget for this construction, the applicant will put a spot light on the west side of the garage and some landscape lighting, this pool will not cause undue traffic congestion.

Motion was made, seconded and voted to approve Petition 16-1.

2. CONTINUATION - Public Hearing Case 15-38 – Applicant BPR Development LLC C/O National Development, Owner BPR Sudbury Development LLC, for a Special Permit under the provisions of Sections 2230 and 6200 to construct a commercial building greater than 20,000 square feet, property shown on Town Map K07-0011 and K07-0013, 526 and 528 Boston Post Road, LID and Res A-1.

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Steve Senna from National Development and Peter Tamm from Goulston & Storrs were present at the hearing. Mr. Senna shared with the Board revised architectural drawings that have been prepared based on feedback from the Design and Review Board and the Planning Board. The revised style now reflects the agricultural roots of Sudbury, utilizing more wood on the design and giving it a warm feeling resembling a farm stand.

Mr. Senna walked the Board through the following agenda items in his presentation:

- Reintroduction
- Update on site plan
- Update on architecture
- Update on signage
- Discuss draft decision

Mr. Senna explained that the engineering on the traffic signal has proceeded and the location is now final. The location will utilize the westernmost curb cut at the Shaw's Plaza and provide access improvements to that property as well as the National Development property. The National Development property will utilize 2 curb cuts on Route 20, with the closure of the easternmost entrance used by Raytheon. There have been no other major changes to the site plan. It was again noted that the 7 parallel parking spaces along the front driveway into the site will be removed from the plan.

Mr. Gossels mentioned that the Board received several emails from neighbors concerned about contamination on the site, and asked the Applicant for clarification.

Mr. Senna replied that National Development is aware of this situation and stated that it is unfortunate that there has been some misinformation disseminated about this issue. Mr. Senna noted that they are well aware of a small amount of contamination on the property in the rear of the site that is under the authority of the Massachusetts Contingency Plan, and that all reports indicate that it is not moving or migrating, it is about 50 to 80 feet below ground, overtime it will mitigate itself, and no further action is needed by DEP relative to this contamination.

National Development and Avalon Bay had done their due diligence on this issue prior to the purchase of the property, working with environmental engineers. Avalon Bay hired Haley & Aldridge, one of the finest environmental firms in the country, to review the issue, and National Development hired Sanborn Head, an environmental firm. Raytheon had historically used GZA and other environmental firms to review this site for years. Mr. Senna stated that National Development has nothing to hide on this project. He also noted that the area of contamination is not located within the construction area of the grocery store project.

Mr. Senna continued that there is nothing associated with this very low level of contamination of very deep ground water that impacts the current occupants at Raytheon to make good productive and safe use of the property. Similarly in regards of future use of this site, there is nothing that stands in the way of development and safe use of the property in the future.

Mr. Gossels stated that this issue does not concern this Board, that this will be handled by the Conservation Commission or whichever relevant board has jurisdiction.

Mr. Tamm stated that the Town's groundwater is protected, and no change is anticipated due to the development activities. The Conservation Commission has reviewed the environmental consultant's reports, and have approved an Order of Conditions for the demolition of the buildings. That Order was appealed to

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DEP by approximately 18 residents, and DEP has decided to wait to issue any decision on this until the MEPA filing for the entire site has been submitted. The Applicant anticipates that filing to occur in February.

Mr. Riordan asked about the exact location of the parking spaces for the grocery store.

Mr. Senna replied that they will be located in front of the grocery store and some behind, a total of 291 parking spots. A sidewalk will be added along the western side of the development as previously requested.

Mr. Tamm stated that they have reviewed the draft decision with Town Counsel, and the pedestrian walkway is included as one of the conditions.

Mr. Gossels asked if the Design Review Board has approved the final architectural drawings of the grocery store.

Ms. Kablack replied that the DRB and the Planning Board have been meeting jointly to review the architectural drawings, and are close to approving them. They are still working on the landscape design and signage.

National Development will ask to again continue cases 15-39, 15-40 and 15-41 when that hearing reopens on Feb. 1, 2016. They prefer to have the discussion on signage on March 7. Whole Foods is in the process of updating their logo, and this will give the DRB and Planning Board time to have input before the ZBA considers these special permits.

Mr. Gossels asked if a window film counts as a sign. Ms. Kablack replied that no more than 15% of the window should be covered by film otherwise it counts as a sign.

Mr. Tamm stated that the following have been discussed and included as conditions in the decision: Lighting, the buffer on the westerly side, limitation on hours of operation, westerly pedestrian access, approval of use for the retail store over 20,000 s.f. and MassDOT approval for the intersection.

The Board asked if any neighbors were present for this application.

Robert Abrams, 578 Boston Post Road, stated that he represents a group of about 20 residents that have submitted an appeal to the Order of Conditions from the Conservation Commission, and noted that DEP will not issue a Superseding Order of Conditions until the MEPA review is underway for this site.

Mr. Abrams also requested that the Board reject the traffic analysis presented by the Applicant, as the Town's Traffic Consultant noted several deficiencies in the methodology used.

Mr. O'Brien replied that the Traffic Consultant stated that the traffic will be less with the new use compared to the current volume.

Mr. Abrams stated that demolition cannot begin until a MEPA certificate is issued and requested the Board not to segment this project.

Mr. O'Brien explained that this application is a limited request for a special permit to operate a grocery store that exceeds 20,000 s.f. More general discussion in regards to other issues will take place when the 40B application is submitted.

Mr. Tamm stated that National Development is committed to working with Mr. Abrams, sharing the submission of the ENF to the MEPA office with him and his clients.

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In regards of the concerns raised about traffic, what the Town's Consultant suggested is a matter of methodology. The full study has been completed and submitted, and considers the impact of the global development when completed, not only the grocery store. The Board agreed with Mr. Tamm that enough information on traffic was presented for them to decide on the special permit for the Major Commercial Project.

Ms. Kablack pointed out that some of the conditions for approval include the need for further approvals regarding the access. The project requires the approval of a site plan by the Planning Board, and all conditions of that approval will be incorporated into the special permit. Additionally, Town Meeting will be the ultimate decider on this project as it requires a zoning change.

The Board reviewed the special permit criteria contained in Section 6220 of the Zoning Bylaw and determined that the proposed use provided safeguards, as well as conditions in the decision, which ensure compliance. The Board read the complete draft decision into the record (attached).

Mr. Riordan asked a question about the proposed lighting. The Board reworded condition #5 to state that, interior lighting, except for security lighting, shall be turned off when the building is not in use, and exterior lighting shall be minimized while the store is closed.

Mr. Riordan asked if there will be construction on Sundays. The Board decided that the decision shall be revised to note that in the event the applicant needs to construct on Sundays, they will need to get consent from the building inspector.

Motion was made, seconded and voted to approve Petition 15-38 as amended per comments from the Board.

3. Vote to approve Warrant Article: Zoning Board of Appeals Revolving Fund, Permits.

Motion was made, seconded and voted to submit the Warrant Article: Zoning Board of Appeals Revolving Fund, Permits.

4. Approval of Meeting Minutes – January 4, 2016.

Motion was made, seconded and voted to approve Minutes from January 4, 2016 meeting.

There being no further business, the meeting was adjourned at 9:40 p.m.

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