

SUDBURY ZONING BOARD OF APPEALS
MINUTES
AUGUST 8, 2016

The Board consisted of:

Jonathan F.X. O'Brien, Chair; Jonathan G. Gossels; Jeffrey P. Klofft; Clerk; Nancy Rubenstein; John Riordan (Alternate).

Also present at the meeting on behalf of the Town were: Mark Herweck, Building Inspector and Zoning Enforcement Agent, Glenn Garber, Interim Town Planner.

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

Mr. O'Brien opened the hearing by asking the Clerk to read the notice as published in the newspaper.

1. Public Hearing Case 16-19 – Sidney and Rita Bourne, Applicants, for an Appeal under the provisions of M.G.L. Chapter 40A Section 15, of a decision of the Building Inspector to issue building permits at 30-34 Northwood Drive, property shown on Town Map C11-0302, zoned Research District.

Attorney Ryan Avery of Mirageas and Avery was present at the Hearing representing Sidney and Rita Bourne. Mr. Avery asked the Board if they are in receipt of a document dated August 2, 2016, containing a letter from Atty. Mirageas and related documentation. The Board replied that they have not yet received this submission.

Mr. Gossels wondered if Mr. Bourne, in a previous litigation, effectively tried to change the definition of independent living. Chair O'Brien replied that the previous litigation is irrelevant to the present action, which is along narrow lines of whether the Zoning Enforcement Officer was correct in his determination that there were no grounds to further delay the issuance of a building permit. Mr. O'Brien reiterated that the master deed obligated the developer to stick to a phasing schedule after 2010, in the form of Phases II, III, IV and V allowed by special permit. The permitting runs with the land, regardless of changes in ownership, and the Applicant has no right to impede that phased construction. However the Board noted it did not know what the Applicant's legal argument was given that the attorney for the Applicant had prepared a written submission to the Board that the Board had not received and therefore had not had the chance to review in proper preparation for the hearing. The Board suggested that a continuation may be necessary to review the arguments presented by the Applicants' attorney.

Mr. Gossels stated that this case is one of long and continuing duration and the Bourne's appeal should be denied. Stan Gordon representing First Colony Development, parent company of Northwood LLC, stated that any continuation on this hearing impacts them greatly economically and further delays the beginning of construction.

The Board made a motion to continue this hearing to have the chance to properly review the submission from the Bourne's legal counsel. Seconded and passed 5-0.

Motion made and seconded to continue petition 16-19 to September 12, 2016 at 7:30 pm.

2. Public Hearing Case 16-20 – David Kaplan, Applicant, for an Appeal under the provisions of M.G.L. Chapter 40A Section 15, of a decision of the Building Inspector to deny a request for zoning enforcement at 9 & 23 Old County Road, related to a ZBA Decision dated April 13, 2013, property shown on Town Map K11-0014 and K11-0025, zoned Limited Industrial.

This appeal of the Board's 2013 decision (which was later appealed in Superior Court by the Lewis interests and then dismissed), found the Acting Building Inspector/ZEO to be partially incorrect in terms of his

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applicability of the performance standards in the Bylaw, in Section 3420. David Kaplan was present at the Hearing, stated that there are about 12 to 15 families affected by the noise produced at the industrial property.

Mr. O'Brien asked if septic transfers are happening on this site. Mr. Kaplan replied yes and added that at times the odor is very strong, forcing residents to close their windows.

Mr. Gossels stated that the applicant bought a property next to an industrial district, that he sees this case as a neighbor dispute and suggested that the neighbors and the owners of this business should meet couple of times a year to discuss these issues and feasible mitigation. Atty. Michael Fee is representing the Lewis family and stated that he is happy to meet with Mr. Kaplan to discuss any issues and potential remedies.

Mr. Riordan stated that this is not a zoning violation and that the noise and smells are occasional as stated on the emails received. Mr. Kaplan stated that the major issue that he has is the noise at 4 am. and that he asked the Homeowners Association to hire acoustic experts to measure the levels of noise but the association does not have the money for it.

Paul Maranian, Old County Road was present at the Hearing and expressed that when the smells are strong he is forced to closed his windows and cannot walk his dog.

Mr. Klofft expressed that he does not see quite enough evidence to support Mr. Kaplan's claims clearly and objectively. Mr. Gossels recapped that there are three specific performance standard-related issues under Sec. 3420 ZBL in front of the Board whether they come back in front of this Board or not: the noise of the dumpsters at the abutter's site, the noise from rock-moving at the abutter's site, and possible septic odors emanating from the abutter's site. He again emphasized that these are matters that need to be worked out between the parties; there is a limit to what the appeals process can achieve, as a practical matter.

The Board discussed the fact that the Building Inspector has the responsibility to enforce the law fairly and equitably, and to ensure that no violations were occurring at the site, but in the end the parties will need to work together.

Motion made and seconded to deny petition 16-20.

Approval of Meeting Minutes – N/A

There were no minutes to be approved.

There being no further business, the meeting was adjourned at 8:50 p.m.

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