

SUDBURY ZONING BOARD OF APPEALS  
MINUTES  
July 10, 2017

Board Members present:

John Riordan, Chair; Jeffrey P. Klofft; Jonathan G. Gossels, Clerk; Nancy Rubenstein and Frank Riepe, Alternate.

Town Staff present: Mark Herweck, Building Inspector and Zoning Enforcement Agent.

The meeting was called to order at 7:30 p.m.

Mr. Riordan opened the hearing by asking the Clerk to read the notice as published in the newspaper.

The Chair explained the requirements necessary to substantiate the granting of a Special Permit. He also explained if anyone was not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty (20) days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Mr. Riepe, Alternate member will be a voting member for tonight's petitions, with the exception of Petition 17-15, Mr. Riepe being the architect for the proposed accessory dwelling in that matter.

- 1) CONTINUATION - Public Hearing Case 17-12 – Michael Dimodica, Applicant and Michael Lind for Robert G. Lind, Owner for a Special Permit under the provisions of Section 2460B of the Zoning Bylaw, to construct a dwelling of approximately 3,880 s.f. after demolition, exceeding the total floor area of the original structure. Property shown on Town Map C07-0115, 22 Curry Lane, Residential Zone A.

Mike and Thomas Dimodica appeared at the hearing. Since the last hearing the Applicant, revised their proposed plans showing a change pitch of the roof to a 10x12, with a building height of 32 foot and 2 inches, as suggested at the last meeting. The Applicant also changed the septic system location as shown on a plot plan submitted, dated June 29, 2017.

Mr. Klofft asked for clarification about the sun room. Specifically whether to include the square footage in the proposed new construction. Mr. Dimodica replied that this space will be a screened porch.

Mr. Riordan thanked the applicant for addressing the feedback received at the last meeting. Particularly regarding the size and height of the proposed home, he added what is presented tonight is an improved plan showing a much better slope and massing that will be a welcome addition to the neighborhood considering the condition of the current property.

Mr. Gossels thanked the applicant for the revised plans and asked the Board if the planting of the street trees will be required.

Mr. Klofft replied this would not be necessary since the applicant will make his best effort to preserve the existing trees.

Mr. Gossels added that if the trees are damaged during construction, he would like to see them replaced.

Mr. Dimodica replied the intent is to have the house set back from the street to preserve and maintain the natural buffer.

Mr. Riepe asked to add some language for the preservation of the trees for any future unforeseen natural consequences.

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Ms. Rubenstein added that the applicant is showing in the plans the trees to be preserved and this Board is approving those plans as shown.

Mr. Riordan asked if any members of the public wished to speak. None were present. There were no further comments from the Board or audience.

The Board found the use is in harmony with the general purpose and intent of the bylaw. The property was previously developed as a single family residential lot which will not change with this proposal. Zoning in this district is Residential A.

The use is in an appropriate location and is not detrimental to the neighborhood and does not significantly alter the character of the zoning district. The proposed structure is situated more centrally on the lot than the existing structure and conforms to current setbacks.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use. Additional approvals from the Board of Health, driveway permit and Stormwater Management will be obtained if required.

The proposed use will not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances. The proposal has been designed to mitigate impacts on neighboring properties, including limiting construction hours and preservation of existing vegetation.

The proposed use will not cause undue traffic congestion in the immediate area. The proposed use as a single family dwelling will not significantly increase traffic in the neighborhood.

Motion was made, seconded to approve Plan entitled "Proposed Plot Plan, 22 Curry Lane, Sudbury, MA 01776, prepared by Meisner Brem Corporation, dated June 29, 2017; Revised Elevation Plans and Floor plans dated, June 27, 2017 with standard conditions for Petition 17-12. All Voted in favor.

- 2) Public Hearing Case 17-14 – Rachel & Drew Stocker Applicants and Owners, for a Special Permit under the provisions of Section 5500 of the Sudbury Zoning Bylaws, to allow an Accessory Dwelling Unit that is no greater than 900 s.f., property shown on Town Map J09-0405, at 11 Walkup Road, Residential Zone A.

Michael Nathanson, father to Rachel Stocker appeared at the hearing representing the Applicants. Mr. Nathanson stated that the proposed accessory dwelling fits very well with the rules and regulations for this type of units, the intent is for Mr. Nathanson and his wife to reside at this unit, so they can provide childcare for their granddaughter. He added that they are converting a home office located on the first floor that currently has an exterior front entrance into a bedroom, there will be no changes to the exterior of the home and ample parking space available set back from the street, there is enough of a visual buffer, there will be only one additional car.

The Board was in receipt of emails in favor to this petition from: Christoph and Laurin Belanger from 16 Walkup Road and Jonathan Patch from 7 Walkup Road.

Mr. Klofft added that there is one finding that the Board will need to make because the accessory dwelling unit will be greater than 850 sq. feet. and no more that 30% of the existing house, the combined total including the accessory dwelling, according to section 5522.

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Mr. Riordan asked if any members of the public who wished to speak. None were present. There were no further comments from the Board or audience.

The use is in an appropriate location and is not detrimental to the neighborhood and does not significantly alter the character of the zoning district. The structure is currently used as a single family residential home and the exterior appearance will remain as such.

The proposed use will not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances. The structure is used as a residential home and does not produce any offensive nuisances.

There will be no substantial detriment to the public good if the special permit is granted. The Accessory Dwelling Unit will be no greater than 30% of the total square footage of the primary residence.

Mr. Riepe is the architect that work on this project and he recused himself from discussion and vote on this petition because of a conflict of interest.

The Applicant agreed to proceed with less than a full Board.

Motion was made, seconded to approve Petition 17-14 waiving Section 5522, with the condition that it will be occupied by a family member and it will expire upon the sale of 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. All voted in favor.

- 3) Public Hearing Case 17-15 – Henry Cavooto, Cavooto Sudbury Realty Trust, Owner, for an Appeal under the provisions of the Sudbury Zoning Bylaw, Section 1330, of a decision of the Building Inspector on June 1, 2017 regarding the removal or relocation of a coop structure, property shown on Town Map C09-0031, 338 North Road, Residential Zone A-1.

The Board held a public hearing on Monday, July 10, 2017, at which the petitioner, Henry Cavooto, and son John A. Cavooto were present. Also present was the Building Inspector/Zoning Enforcement Agent, Mark Herweck, and representative from Distinctive Homes, John Fenton.

Chair John Riordan opened the public hearing and announced associate member Mr. Frank Riepe would vote in lieu of Mr. William Ray's absence. Mr. Riordan noted the Appellant filed a timely appeal, which was transmitted to the Board in a timely manner.

Mr. Riordan stated that applicants should have to provide reason for the appeal, but no reasons were listed on the Appellant's correspondence. Therefore, the Board would have to infer with the materials provided including the June 8, 2017 appeal letter, plans labeled "P+S" and "Town Record," and subdivision plans, that this is the reason for the appeal.

Son of the Appellant, John A. Cavooto provided a history of the property and indicated the structures on the site were pre-existing and non-conforming and been in continuous use since the 1950s. Mr. Cavooto noted that on the plans the Appellant submitted, the structure in question was listed as "Coop to Remain."

Mr. Cavooto further noted there was no reference to the removal of the coop on the P+S and Town Record handouts he provided for the Board.

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Mr. Klofft stated the property lines on the Town Record did not appear to match the recorded subdivision plan and requested clarification from the Appellant. Mr. Cavooto indicated that something happened to Lot 1 of the subdivision where provisions had to be made to adjust the lot lines.

Mr. Gossels indicated the Purchase and Sale document did not come under the Board's purview and the focus was to be directed to the recorded subdivision plans. Mr. Gossels further noted the Building Inspector has to rely on the approved subdivision plans for zoning enforcement and compliance and that is what the Board votes on. Mr. Gossels also stated that the Appellant cannot cry hardship when they, the Appellants, created the subdivision. Therefore, the act of "grandfathering" the structure did not apply.

Building Inspector Mark Herweck provided documentation showing the approved subdivision and referenced the "TBR" notation on the plans indicating "to be removed."

Mr. James Fenton of Authentic Homes stated when he purchased the property, he had to adjust the lot lines so the Planning Board requested removal of the coop. He further noted the coop was in a state of disrepair. Mr. Fenton also noted he was not the applicant when the subdivision plans were submitted to the Planning Board; Mr. Cavooto was, and he signed and recorded the plans, which included the reference to the removal of the coop. Mr. Cavooto stated he does not have the money to remove or move the coop five feet.

Mr. Klofft asked the Appellant why the need to keep the coop. Mr. Cavooto noted the coop is part of their culture and part of Sudbury's history dating back to the 1950s. Mr. Cavooto stated the sign is a town landmark. He noted that he wasn't clear of the bylaw when they offered the lot line of 40 feet. Mr. Klofft asked if the Cavooto family was remunerated for the additional 40 feet, Mr. Cavooto indicated they were not.

Mr. Gossels indicated that this is an administrative appeal and the Appellant has to provide rationale the Building Inspector made a mistake in judgement and interpretation. Mr. Klofft agreed and noted there is a difference between zoning and neighbor issues.

Mr. Fenton indicated the site was an eyesore for the million dollar homes he was constructing on the subdivision. Mr. Cavooto indicated his family would be interested in a fence if Mr. Fenton were to put one up. He also indicated there were arbor vitae planted as screening, but approximately half died or dug up; contributing to the eyesore Mr. Fenton spoke of. He stated the structure is very sound, but is old and needs upkeep on the roof.

Mr. Riordan stated he had two comments: 1. the site is in a residential area, not agricultural which does not allow for animals. 2. The developer could be neighborly and repair the screening and help relocate the coop. Mr. Riordan continued by stating the Building Inspector needs to apply the Town's Bylaws and standards that affect the residential zone. Mr. Riordan stated he believes Cavooto's neighbor, Mr. Fenton benefited from the willingness to adjust the lot lines to provide relief for lot six. Mr. Riordan opined that it would not be out of the question for the developer to provide a small contribution for the repair or to move the existing coop and provide screening as well. However, he doesn't see anything wrong administratively on the recorded subdivision with respect to the enforcement. Mr. Riordan noted that the legal, signed document, recorded at the Registry of Deeds indicates "To Be Removed," which is also addressed in the plan's legend.

Mr. Klofft referenced the lot lines again, noting there was a discrepancy between the plans the Appellant submitted with their appeal and the recorded subdivision, having differing dates stamped on each document.

Mr. Cavooto reiterated the structure is grandfathered, the property line reflected in the Purchase and Sale are completely different than what was submitted for the Town Record. Mr. Herweck indicated the structure is not grandfathered. Mr. Klofft noted anything prior to 1969 is grandfathered. The property however was

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owned by Cavooto at the time he subdivided the land and therefore cannot create their own hardship, and the right to grandfathering is no longer.

Mr. Riordan asked how many rabbits are housed in the coop. Mr. Cavooto answered approximately 50. Mr. Riordan asked of the dimensions of the structure. Mr. Cavooto replied approximate 20 x 60 feet. Mr. Klofft asked the cost of rebuilding the structure. Mr. Cavooto did not have a sense as to how much it would cost and haven't investigated the option. Mr. Klofft suggested the option of the developer rebuilding the structure elsewhere on the property. Mr. Riordan asked of the amenities within the structure. Mr. Cavooto indicated electricity and water, but no indoor plumbing. Mr. Riordan asked if the developer could rebuild the structure to alleviate the zoning issue. Mr. Fenton indicated the land was "X amount of dollars." In the interim of planning, the Planning Board's hearing was stretched out for months and Mr. Cavooto forced a \$30,000 extra payment because they couldn't close until they received the approval of the Planning Board. Mr. Fenton noted that if he didn't pay the money, then the deal was off. So Mr. Fenton believes he already paid that fund and can provide the receipts for it. Mr. Cavooto noted that additional money was in order to maintain the property so the family would not go or sell elsewhere and it is in the Purchase and Sale agreement. Mr. Riordan asked if the payment was predicated on Mr. Cavooto getting his permits through Planning Board. Mr. Cavooto said no, but further went on to say his grandfather stopped paying taxes on the property ten years ago and so the family had to take a mortgage on the property to pay the back taxes. Because of the extended permitting process, in order for Mr. Fenton to buy the property, the Cavootos asked for the money.

Ms. Rubenstein stated the discussion was not relevant and what the Board has to base their appeal decision on is the approved plans. Based on those plans, Mr. Cavooto is to remove the structure and the Board must facilitate that.

Mr. Riordan stated he was hoping that if a compromise was met, then the appeal could be dismissed, but there is no way of avoiding having the coop along the lot lines. What is recorded in the Registry of Deeds is for the removal of the coop which is addressed on the plans.

Ms. Rubenstein noted that there were three revisions of the original plan, and the last one, dated May 21, 2014, which has the notation of the removal of the coop became the approved plans submitted to the Registry of Deeds in June 2014.

Mr. Riordan indicated that based on the existing Town Bylaws and the existing registered record at the Registry of Deeds, the Board was to determine if the Building Inspector/Code Enforcement Officer complied with issuing his order.

Mr. Riordan asked if any members of the public who wished to speak. None was present. There were no further comments from the Board or audience.

Therefore, the Board, after reviewing the available materials and based upon the above findings, voted unanimously to DENY the APPEAL.

The Board of Appeals of the Town of Sudbury acted as follows in the above matter:

John Riordan voted to DENY the appeal  
Jonathan Gossels voted to DENY the appeal  
Jeffrey Klofft voted to DENY the appeal  
Nancy Rubenstein voted to DENY the appeal  
Frank Riepe voted to DENY the appeal

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MOTION: To deny appeal 17-15 of the petitioner.

- 4) Public Hearing Case 17-16 – Sign Art, Joe Craven representing Rite Aid, Applicant and Sudbury Crossing Limited, Owner, for a Special Permit under the provisions of Section 3264 of the Zoning Bylaw, to allow a 17.75 s.f. directional, aluminum sign, on Town Map K08-0004, 437 Boston Post Road, Zone Limited Business.

Mark Conserva representing Rite Aid (petitioner) appeared at the hearing. The Applicant sought the approval for a Special Permit under Section 3264 of the Sudbury Zoning Bylaw to allow a 17.75 s.f. aluminum directional sign.

The applicant met with the Design and Review Board on May 24, 2017, who made recommendations that the applicant follow up and present to the Board of Appeals for approval.

Mr. Conserva added that the sign is necessary because the drive thru is not visible from the road and parking area and could create a traffic hazard.

Mr. Rubenstein suggested that the sign might be more effective if located closer to the main entrance, therefore more visible to people driving to the store.

Mr. Riepe opined that the sign should be move towards the right so it is center in relation to the light and this way could be illuminated uniformly at night.

Mr. Gossels added that from a zoning point of view, the applicant worked with the Design and Review Board and have followed their recommendations.

Mr. Riordan asked if any members of the public wished to speak. None were present. There were no further comments from the Board or audience.

The use is in an appropriate location and is not detrimental to the neighborhood and does not significantly alter the character of the zoning district.

The proposed use will not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances. On the contrary it is addressing a safety issue.

There will be no substantial detriment to the public good if the special permit is granted. The directional sign will be no greater than 17.75 total s.f. and will follow recommendations from the Design and Review Board.

Motion was made, seconded and unanimously approved Petition 17-16 as proposed by the applicant. All voted in favor.

- 5) Public Hearing Case 17-17 – Ava Vernooy, Applicant and Owner, for a Special Permit under the provisions of Section 2420 of the Zoning Bylaw, to permit the extension of a non-conforming structure for the construction of a 14' x 14' square foot addition with a 36' x 28' square foot garage and open lean-to to be added to the existing dwelling, which will result in a rear yard setback deficiency of 17 feet and a side yard deficiency of 2 feet, property shown on Town Map G06-0573, 17 Allene Ave, Residential Zone A.

Ava Vernooy appeared at the hearing. The Applicant seeks approval to permit the extension of a non-conforming structure for the construction of a 14' x 14' square foot addition with a 36' x 28' square foot

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garage and open lean-to to be added to the existing dwelling, which will result in a rear yard setback deficiency of 17 feet and a side yard deficiency of 2 feet.

The Board discussed the layout of this property and considers the rear set back requirement is 40 feet and this property has two fronts.

The applicant noted she has a driveway relocation plan and the septic system is located in the front of the property.

Ms. Rubenstein suggested installing bell footing underneath of the right hand side post on the end to lean-to for structural safety.

Ms. Vernooy described the top portion of the garage will be unfinished and used for storage. The intention for the lean-to is to have a small patio for barbecuing. There is septic for the only two-bedrooms within this home.

Mr. Riordan asked if any members of the public who wished to speak. None were present. There were no further comments from the Board or audience.

The use is in harmony with the general purpose and intent of the bylaw. The property is presently developed as a single family residential lot which will not change with this proposal. Zoning in this District is Residential A-1.

The use is in an appropriate location and is not detrimental to the neighborhood, and does not significantly alter the character of the zoning district. The addition will replace the existing deck footprint. It is in an appropriate location on the lot and will be attached to the existing house.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use. All necessary approvals from the Board of Health, driveway permit and Stormwater Management will be obtained if applicable.

The proposed use will not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances. The continued use as a single family dwelling is not anticipated to generate offensive nuisances. On the contrary, the garage will be use to park two cars.

The proposed use will not cause undue traffic congestion in the immediate area.

The proposed use will not be substantially more detrimental or objectionable to the neighborhood than the existing non-conforming use.

Motion was made, seconded and unanimously approved Petition 17-17. All voted in favor.

6) Approval of Meeting Minutes for December 5, 2016 and June 5, 2017 meetings.

Motion was made, seconded to approve December 5, 2016 and Minutes for June 5, 2017 as amended. All voted in favor.

Other Business Items.

There being no further business, the meeting adjourned at 9:18 p.m.