

SUDBURY ZONING BOARD OF APPEALS

MINUTES

November 6, 2017

Board Members Present: John Riordan, Chairman; Nancy Rubenstein, Clerk; Jonathan Gossels, Jeffrey P. Klofft, Benjamin Stevenson and Frank Riepe.

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.

Mr. Riordan read the guidelines with respect of appeals according to the Town Bylaws and under Chapter 40A.

Mr. Stevenson was the alternate member to hear this appeal because Mr. Riepe is a Historic Districts Commission member.

1. Public Hearing Case 17-26 – Salim Kassouf, Owner of Stony Brook Market & Honey Dew, for an Appeal under the provisions of the Sudbury Zoning Bylaw, Section 1330, of a decision of the Building Inspector on August 14, 2017, regarding the primary sign's non-compliance with the Town's bylaw article IX section 3261 for exterior wall signs. Property shown on Town Map H09-0002, 29-2 Hudson Road, Limited Business Zone.

Mr. Kassouf was present at the hearing and he was asked to present his case, Mr. Kassouf thanked the Board for the opportunity, he added that the reason for his appeal is because he was notified by the Building Inspector regarding his sign not conforming to towns bylaws, when he feels he did go through the proper channels to have the sign approved.

Before he continued the Board proceeded to determine if the Board has jurisdiction to hear this appeal because of the appeal date of receipt.

Mr. Stevenson stated that he thinks this Board has jurisdiction to hear the appeal and the Board should let the applicant have a hearing and resolve the issues.

Mr. Gossels added that he thinks is important for the Board to understand if there is a proper appeal in front of them or not, and take these issues step by step and then decide what do they do about it.

Mr. Stevenson added that he does not necessarily see them as two separate issues, they may have been mistakes all around this process and it would be unfair for the applicant if the Board does not try to resolve the issues at hand, it makes sense to resolve the issue at a local level and he is sure there is a solution that can work for everyone for what he perceives perhaps is a minor oversight.

Mr. Kassouf stated that he received the enforcement letter on August 25, 2017. The letter is dated August 14, 2017 and he responded within 30 days of the received date.

Jeff Klofft stated that the Board should go ahead and hear the merits of the case, waive the jurisdictional issue about the time lapsing for the appeal and the Board not having jurisdiction to hear the case.

Motion made seconded, voted and pass to waive any jurisdictional issue on the timeliness of the appeal and to hear the merits of the case.

Roll call:

Benjamin Stevenson in favor

Jeffrey Klofft voted in favor

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Jonathan Gossels in favor

Nancy Rubenstein in favor

John Riordan in favor

Mr. Kassouf proceed with his presentation and thanked the board for their thoughtfulness and fairness, he added that he would like to share how stressful this process has been for him after he went through all the proper channels and procedures and he finds himself in front of this Board regardless of that. This appeal puts pressure on him and financial hardship as well, this is a business that he is trying to make it work, this is a tough location. In his opinion he has done nothing wrong.

Last year, Mr. Kassouf approached the Design and Review Board with a request for a sign, the request was for the sign to be just letters and a logo, gold in color. The sign was approved and then he had to go to the Historic Districts Commission, the HDC did not like the look of the sign and letters blending with the wall, the HDC members recommended a background with a colonial arch so the letters will be visible. Mr. Kassouf then went back to the DRB in June 2016 with the new design showing a white background to the letters and the colonial arch, after that he went back again to see the HDC and they approved the sign. In June Gemini Signs, which had prepared all of the sign specifications, applied with the Building Inspector for a permit. The Building Inspector issued a sign permit based on the application so submitted. The sign was then installed.

After the Building Inspector received complaints about the sign, some by anonymous callers referring to the sign as “ugly”, the Building Inspector looked into the matter and subsequently Mr. Kassouf was informed by letter that the sign was not in compliance with the sign bylaw due to its dimensions.

Mr. Riordan noted that there seem to be some gaps in the facts, on the DRB Minutes of April the total square footage of the sign was proximally 32.8 sq.’ and the sign installed is in the 58 sq.’ range, he understands the applicant followed all the procedures, but somewhere along the line the sign grew in size.

Mr. Kassouf added that the first time he submitted the sign his design was for letters and a logo, the second time when he added the background he did not changed the size of the letters, when he presented the sign proof on both occasions the sign had measurements on it.

Mr. Klofft asked what was submitted to the building inspector in order to get the permit for the sign.

Mr. Kassouf reply that, through Gemini Signs, he provided the DRB and HDC approvals with his application for a sign.

Mr. Klofft asked about the frontage for this property and suspected that the problem was originated when the white background was added, in his opinion the applicant was not trying to pull a fast one, however he thinks unintentionally by trying to comply with the HDC recommendations the sign got bigger in size.

Mr. Klofft asked Mr. Herweck how the sign got approved.

Mr. Herweck replied that the application looked good when he met with the owner and asked if he met with DRB and HDC and stated that the sign had to comply with the towns bylaw, he looked at the application very quickly, it looked good. When the sign went up it looked big to him but he did not say anything until he received phone calls from anonymous residents, nobody said it was ugly, everybody said it was large even the Chairs of both the DRB and the HDC called Mark asking if that was the sign that they approved, they were surprised that it was so big.

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Mr. Riordan introduced Frank Riepe, Alternate member for ZBA and also a member of HDC, he clarified that Mr. Riepe will not be voting on this appeal, but he did sit on the HDC meeting related to this application.

Mr. Riepe stated that the business owner did proceed accurately and he was responsive to comments from both Boards, the HDC does not oversee the dimensions, only aesthetics, and the DRB always reviews the dimensions.

Mr. Klofft suggested a stay in an enforcement order to remove the sign until Mr. Kassouf files an application with the ZBA for a special permit to keep the larger sign.

Mr. Stevenson opined that the building inspector should not ask the business owner to take down a sign that he issued a permit for to installed, this petition was in front of two Boards multiple times and could set a dangerous precedent, he would like to see a cooperative effort between the Board and the applicant to fix the problem. Mr. Stevenson asked if funds are available to split the cost of a new sign or something to that effect, he asked.

Mr. Gossels agreed with Mr. Klofft and Mr. Stevenson, in his opinion the solution is not to remove the sign, instead it would be to legitimize it if the applicant chooses to apply and be heard, he could get a time limited special permit for the large sign from ZBA.

Mr. Riordan asked if any members of the public wished to speak.

Dan Martin, Chairman of DRB was present at the hearing, he stated that they were presented with this application under the understanding that there were two business separately in the building as a market and a donut shop, they determined there is 70 feet of building frontage that aloud a 39 sq. feet total signage, that is 27 sq. feet for the primary sign, he stated disappointment because the letters on the actual sign are acrylic and not cut metal letter as described at the DRB meetings.

Taryn Trexler, 252 Concord Road stated that she was surprised when the sign went up, she clarified that she did not complain but is concerned for future impact of other business in the area in particular Sudbury Station regarding the size of signs approved.

The Board felt that each case is a unique case and Sudbury Station was approved under Chapter 40B that required a comprehensive permit and it stands on its own.

Ms. Rubenstein was in agreement with Mr. Klofft, in her opinion the sign is not in compliance and she agrees that a special permit would be an option with the added benefit that you would provide members of the public an opportunity be heard and involved in the discussion as well.

Mr. Herweck added that on occasion he had to review plans or application that have approximate 900 pages, i.e. Meadow Walk, but that does not give the right to the applicant to ignore the bylaw and the building code.

Mr. Riordan added that the mistake is the violation to the town's bylaw; while both Boards and the Building Inspector may have made errors, it does not matter at this point because the sign that went up simply does not follow the towns bylaws.

Mr. Kassouf added that this is a hardship for him but at the same time he is enjoying Sudbury and wants to be in Sudbury, in his opinion Sudbury is a town that wants to work with the public and business

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owners, his experience has always been good even with the Building Inspector it is a pleasant experience and he understands that Mr. Herweck is doing his job.

Mr. Klofft stated that Mr. Kassouf will be better protected by a properly issued special permit and that could not be challenged, but that it is ultimately his responsibility to comply with the Bylaw.

Mr. Riordan reminded the appellant that he has certain rights of appeal under the law, as referenced at the beginning of the appeal hearing, and that there is a specific time following the filing of the Board of Appeals decision, if adverse, within which he would have to file his appeal in the appropriate court.

Mr. Kassouf stated he understands, he does want to work with the Board and his intention is not to pursue litigation in any form.

The Board finds that the Building Inspector was correct in his letter of enforcement and they ask the town to wait a period of 90 days before enforcing the bylaw to give the opportunity to Mr. Kassouf to submit an application for a sign related special permit.

The Board agrees to waive the filing fee for the anticipated special permit application.

Motion made, seconded and voted unanimously to stay enforcement of the Building Inspector's order for 90 days.

Motion then made by Benjamin Stevenson to deny the appeal. Motion seconded and voted.

Roll call vote:

Benjamin Stevenson voted to deny the appeal

Jeffrey Klofft voted to deny the appeal

Jonathan Gossels voted to deny the appeal

Nancy Rubenstein voted to deny the appeal

John Riordan voted to deny the appeal

Mr. Riordan asked that the Board take judicial notice of the factual determinations of the appeal hearing and incorporate the same into the record if and when the Board acts on an application for a sign-related special permit by Mr. Kassouf.

2. Public Hearing case 17-27 – Daniel & Kristin Titus, Applicant and Owners, for a Special Permit under the provisions of Section 2313 of the Zoning Bylaw, to operate a kennel on the premises, property shown on Town Assessor Map D06-0481, 102 Belcher Drive, Residential Zone A.

Mr. Riordan read the guidelines with respect to the granting of special permits according to the Town Bylaws, and announced that Mr. Riepe will be a voting member replacing William Ray who is not present at this hearing.

Mr. and Ms. Titus were present at the hearing, Mr. Titus explained they had three German Shepherds for a long time and now they added a foster dog that has health problems sometimes needing to be hand fed, but getting stronger, the dog is 13 years old.

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Mr. Titus received a call from the Building Inspector in September and was informed he needed a special permit for a kennel since he has four dogs. Mr. Titus stated that he immediately filed the application including letters of support from approximately ten neighbors.

The Applicants would like to keep four dogs. Mr. Titus stated that they have never had a complaint about their dogs because he is a very responsible dog owner, he trains his dogs often, the dogs do not leave their property without him and they are spectacular animals. Mrs. Titus added that they are not bringing or boarding other dogs this special permit is just so they can keep the fourth dog.

Mr. Klofft asked if the applicant would have no problem is one of the conditions of the board would be that once the older dog is deceased the special permit for kennel will lapse.

Mr. Titus reply that they would be fine with that condition, they did not have the intention to have a fourth dog, they were happy with three dogs, they fostered this sick dog and have adopted him because they got attached to him.

Mr. Riordan asked if they breed the dogs.

Mrs. Titus reply that yes, but it is done outside of the property, through a breeding contract with the breeder they purchase the dogs from.

Mr. Riordan then asked about "Titus Dog Training Services".

Mr. Titus answered that he had trained German Shepherds for about 30 years on and off as a hobby, after he semi-retired sometimes he is asked to privately train other dogs, he goes to their homes and does not bring dogs to his house to train, he does not advertise and does this by referrals only.

Ms. Rubenstein recap asking for clarification that they are not other dog business at this property.

Mr. Titus reply that it is correct.

Mr. Riordan asked if any members of the public wished to speak.

John Hincks, 83 Belcher Drive opined that these are the best trained dogs, he had no idea that they even had dogs, he is aware of other neighborhood dogs, he is never aware of these dogs, they are very well behaving, they are not running around, they do not bark and do not make noise in the neighborhood, he cannot say the same for other neighborhood dogs. He also sees dog walkers in the neighborhood with a number of dogs but he has never seen the Titus walking multiple dogs.

Eileen Reardon, 122 Belcher Drive, agrees these are well behaving dogs and the Titus are terrific dog owners.

John Baranowsky, 103 Belcher Drive submitted a letter and a report to the Board on October 31, 2017 making clear his strong opposition to the granting of a special permit for the fourth dog, he stated first-hand numerous and profound problems with the dogs.

Mr. Klofft shared that he lives in close proximity to the applicant's home and to this day he did not know that they had 3 dogs.

The Board finds that the use is in harmony with the general purpose and intent of the Bylaw.

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That 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.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

That the proposed use would 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 nuisance.

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

The dogs will not become a nuisance

The number of dogs should not exceed four (4)

Any complaints should be reported immediately to the animal control officer.

Appropriate treatment and handling of dog waste.

No commercial activities including the sale, training or breeding of dogs should take place in the property, except for training their own animals.

No signs advertising training services.

When outside dogs need to be supervised at all times.

This permit will expire in one year on November 6, 2018.

Motion made and seconded and voted to approve petition 17-27. All voted in favor.

3. Public Hearing, Case 17-28 – Jin Xia, Applicant and Owner, for a Special Permit under the provisions of Section 2313 of the Zoning Bylaws, to raise up to 7 hens, property shown on Town Assessor Map H06-0035, 40 McLean Drive, Residential Zone A.

Mr. Gossels asked for a recusal from this hearing because he is an abutter.

Mr. Xia was present at the hearing to present his request for a chicken coop.

Mr. Riordan asked the applicant if he was willing to have his petition heard by a 4-member Board only.

Mr. Xia agreed to go forward with the hearing with a 4-member Board. He is requesting to have a 7 chicken coop in his property, he would like to show his daughter where food comes from and he thought it would be a nice activity of which she could be a part.

He confesses that after emailing the Board of Health and Building Inspector and getting the confirmation that this is something that could be approved by the Board of Appeals, he purchased the coop and hens because he did not want to lose the deal.

Mr. Klofft asked how visible will the coop be?

The applicant replied the coop will be located in the back of the house in an area surrounded by a lot of trees and people will not be able to see it from the front of the house, by coincidence the coop is the same color of the house. This is a property located on a dead end street and there is not through traffic. No free

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range chickens, no roosters, the coop is well designed. Waste will be disposed in the trash and there will not be offensive odors to the neighbors.

Mr. Riordan asked if any members of the public wished to speak.

Mr. Gossels was present at the hearing and presented satellite pictures of his home and the applicants, highlighting that he will be the only neighbor that will see the coop. The area where the coop will be located is in the shape of a kettle hole is about 20 feet down from Mr. Gossels yard, with about 3 feet of woods and therefore the coop is completely invisible.

There were no further comments.

The Board finds that the use is in harmony with the general purpose and intent of the Bylaw.

That 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.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

That the proposed use would 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 nuisance.

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

This permit will expire in one year on November 6, 2018.

Motion made and seconded and voted to approve petition 17-28 for one year with standard conditions. All voted in favor.

4. Public Hearing, Case 17-29 – Dr. Christy A. Clark, Applicant and Owner, for a Special Permit under the provisions of Section 2340 of the Zoning Bylaw, to conduct a Home Business, specifically for private psychotherapy, property shown on Town Map K05-0308, 14 Hayden Circle, Residential Zone A&C.

Dr. Clark was present at the hearing, she is a licensed clinical psychologist since 2002, she currently has a private practice in Northborough, before she had a practice in Westborough. Her hope is to move part of her practice to her home office, the design of the house that she purchased in town back in June is perfect for that purpose, she is hoping to see few clients, to start off she will not be moving the entire practice, this will be a business that will not cause noise, waste or traffic, her driveway has enough room for 5 or 6 cars, but she will only see one client at a time. Dr. Clark sent a letter to her neighbors and she received positive emails from neighbors.

Mr. Klofft asked about the length of each session and how many per day.

Dr. Clark reply that each session is 45 minutes and she does not see more than 7 people per day, but some days she has fewer clients, sometimes 2 but generally is 5 or 6.

Mr. Riordan asked for days of operation.

Dr. Clark reply that for a while it could only be couple of days a week, that originally her intention at the time of applying for the special permit was to move the entire practice to her home, but since then she had

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reconsider and would like to move slowly and see how it goes, in the meantime she will continue to run her practice in Northborough.

Ms. Rubenstein asked if the applicant will have any supporting staff or employees.

Dr. Clark reply that she does not have anyone currently, she rents a suite in Northborough and she rents to other people but she does not employ them.

Mr. Klofft asked if any of her patients are a danger to others.

Dr. Clark answered no.

Mr. Riepe asked for clarification about the proposed sign.

Dr. Clark clarified that the size will be 2 x 8 inches (not feet) and if this would require a separate application she does not need to have the sign, she is happy with just having her name on the mailbox.

Mr. Gossels added that in the town bylaw there is a section for very small signs by right and she could consult with Mr. Herweck for clarification, the whole idea is that it blends with the mailbox it is simple, just to help people find her the first time.

Mr. Riepe added that the small sign does not need approval.

Mr. Gossels opined that there is another therapist in town and this person sometimes will see clients on weekends and after work hours and since these appointments are low volume he does not see any problems with the understanding that perhaps this will not be a 9-5 business.

Dr. Clark reply that actually her business hours are 9-5, especially because it will be in her home, she does not want her clients to be interacting with her family and she only works between the hours of 9-5 and no weekends.

Mr. Riordan asked if any members of the public wished to speak.

Linda Cass of 7 Hayden Circle was present mentioned to be aware there are 3 bus stops at the end of the circle and if scheduling could be done around that, otherwise she expressed no concerns about the petition.

Dr. Clark reply that her intention will be to remind her clients that her office now is located in a residential area to be mindful of the bus stop and to drive carefully, she added that most of her clients are teenagers and families, high functioning clientele.

There were no further comments.

The Board finds that the use is in harmony with the general purpose and intent of the Bylaw.

That 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.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

That the proposed use would 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 nuisance.

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

Motion made and seconded and voted to approve petition 17-29 for one year to expire on November 6, 2018, with the condition that hours are limited to 9am to 5pm on weekdays and only in emergency situations after 5pm or on weekends. All voted in favor.

5. Public Hearing Case 17-30– Stephen Christopher Nash & Tara Nash, Applicants and Owners, for a Special Permit under the provisions of Section 5500 of the Sudbury Zoning Bylaws, to allow a detached Accessory Dwelling Unit on an existing structure that is no greater than 850 s.f., property shown on Town Map D10-0503, at 108 Pantry Road, Residential Zone A-1.

Christopher Nash and Attorney Robert Dionisi were present at the hearing, requesting a special permit for an accessory dwelling use on the premises of 108 Pantry Road of an existing detached unit that used to be an observatory for about 40 years, it had a dome glass ceiling that was recently replaced, the property is located in approximately 5 and a half acres of land and is surrounded by trees, the site has significant frontage on Pantry Road, because of the shape of the lot abutters will not be affected by the proposed intended use. The accessory dwelling is intended to house the parents of Mrs. Nash. A diagram of the septic system was included in the application and a letter from BOH will be forward to the planning office attesting the size of the septic is sufficient for waste water treatment in the site. The Applicants purchased this property in April, there is a Title V and it was passed conditionally because an alarm with the flow pump was not working properly, since then it has been repaired and certified and it is in compliance according to Mr. Murphy's from BOH.

Mr. Klofft ask if the applicant will have no problems if the special permit is conditioned only to family members.

Mr. Dionisi reply that his client will not have any problem with that. The Applicant added that this was not intended as a permanent residency for the in-laws only temporary and they would not want strangers living there.

Mr. Riordan asked for clarification about the size of the detached unit.

Mr. Dionisi reply that is just under 800 square feet.

The Board reviewed section 5523 part 4 of the bylaw and had some discussion about the interpretation.

Mr. Gossels commented that the intention of this portion of the bylaw was to limit the size of the accessory dwelling to no more that 50% of the main dwelling to avoid having duplexes in town, if there is one main structure the idea is to have one smaller structure within it to be subordinate to the main house, when there is a detached unit the board does not ask for the accessory dwelling unit to be 50% or less, especially when it is an existing unit.

Mr. Riepe asked if the accessory dwelling unit be the entire detach unit or a portion of it.

Mr. Nash reply that there is an entire unfinished basement of approximately 300 square feet that will not be use, on the main floor there is a living room, two bedrooms, a kitchen and a bathroom that will be use as the accessory dwelling unit.

Mr. Riordan asked if there could be a third bedroom in the roof area.

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Mr. Nash reply that there can only be two bedrooms as it is now, there will be no way to add an additional bedroom.

Mr. Riordan asked for the record to show that this portion of the bylaw needs to be re-worded clearly as well as the use table for research zone (as seen on another discussion) when the times come to review it with the Planning Board.

No neighbors were present for this petition. There were no further comments.

The Board finds that the use is in harmony with the general purpose and intent of the Bylaw.

That 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.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use; the Applicant will provide the letter from the BOH.

That the proposed use would 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 nuisance.

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

Motion made and seconded and voted to approve petition 17-30 with the conditions that it will be for family members only and it would expire upon the sale of the property. All voted in favor.

6. Approval of Meeting Minutes for September 11, 2017 and October 2, 2017 meetings.

Motion made, seconded to approve Minutes for September 11, 2017 and October 2, 2017 meetings. All voted in favor.

7. Approval ZBA Meeting Dates for 2018.

The Board reviewed and approved the proposed meeting dates for 2018, the list will be posted on the towns website.

Other Business Items.

278 Maynard Road

Mr. Riordan informed the Board that they have made a fair amount of progress on the site, one of the conditions the Board imposed was a review of landscape when completed. Mr. Riordan will inspect the site accompanied by Meagen Donoghue.

Mr. Klofft informed the Board that in 2018 there is a possibility that his travel trips for work might increase therefore he might not be able to be at all scheduled meetings.

Motion to adjourn at 10:05 pm.