

SUDBURY ZONING BOARD OF APPEALS
MINUTES
March 5, 2018

Board Members Present: John Riordan, Chairman; William Ray, Clerk; Jonathan Gossels; Benjamin D. Stevenson and Jonathan F.X. O'Brien.

Others Present: Mark Herweck, Building Inspector and Zoning Enforcement Agent.

The meeting was called to order at 7:30 p.m. The presence of a quorum was noted. Messrs. Stevenson and O'Brien (alternates) were sitting for Mr. Klofft and Ms. Rubenstein.

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

1. Public Hearing Case 18-4 –OSPD Realty Company, LLC, Applicant and Owner, for a Variance under the provisions of Section 3114 of the Zoning Bylaw, for construction after demolition with parking proposed not completely behind or to the side of the proposed building, property shown on Town Assessor Map K08-0006, at 415 Boston Post Road, Residential Zone LBD/Res A-1.
2. Public Hearing Case 18-5 – OSPD Realty Company, LLC, Applicant and Owner, for a Variance under the provisions of Section 2600/2620 of the Zoning Bylaw, to request a dimensional variance for a front yard deficiency of approximately 7.5' on the LBD portion of the premises and a front yard deficiency of approximately 12.5' on the Res. A District portion of the premises, property shown on Town Assessor Map K08-0006, at 415 Boston Post Road, Residential Zone LBD/Res A-1.
3. Public Hearing Case 18-6 – OSPD Realty Company, LLC, Applicant and Owner, for a Variance under the provisions of Section 2600/2620 of the Zoning Bylaw, to request a dimensional variance for a side yard deficiency of approximately 14' on the Res. A District portion of the premises, property shown on Town Assessor Map K08-0006, at 415 Boston Post Road, Residential Zone LBD/Res A-1.
4. Public Hearing Case 18-7 – OSPD Realty Company, LLC, Applicant and Owner, for an Use Variance under the provisions of Section 2200/2230 of the Zoning Bylaw, to permit retail/office/restaurant/and/or personal service, property shown on Town Assessor Map K08-0006, at 415 Boston Post Road, Residential Zone LBD/Res A-1.

Chair Riordan opened the hearing at 7:40 p.m. acknowledging correspondence received from neighbors.

Chair Riordan informed the Board that a meeting took place on February 16 between the applicant and two representatives of the Board, Mr. Riordan and Mr. Frank, town staff was also present and neighbors where invited to assist.

Attorney Joshua Fox representing the Applicant, Jake Parsons, of Parsons Commercial, and Michael Sullivan, Project Engineer from Sullivan and Connors were present at the hearing.

Mr. Fox described the current building as unattractive containing hazardous materials including asbestos and functionally obsolete, when the property was for sale through a RFP, Mr. Parson was the highest, best bidder, the Town awarded him the bid and now OSPD Realty Company, LLC owns the property.

The site is approximately 0.63 acres, the existing one story building is approximately 6,100 s.f. the proposed structure will be a one level building construction, less than 6,000 s.f. in size. Green space and landscape is presently 7,740 s.f., the applicants are proposing this number to increase slightly to 8,020 s.f. of open space. If we calculate lawn, landscape plus walkways, the open space area will increase to approximately 9,000 s.f. Around 80% of the site is located in a LBD zone and 20% of the lot is zone

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residential, TDBank located on the east side of the property is also residential and operates under a use variance.

The applicant is asking for a dimensional variance for a side yard setback relief, because the residential side yard requirement is 20 feet, if this portion was zoned LBD the side yard requirement would be 5 feet, the proposed side yard setback on the easterly portion will be approximately 8 feet and this will be reflected in revised site plans submitted at this meeting, with this petition they allowed a greater buffer for the existing young trees located on the boundary.

After the February 16 meeting following up on Mr. Riepe's suggestion they shifted the parking lot to the rear and west, with that the applicant accomplished to eliminate one of the variance requests.

Mr. O'Brien asked the applicant why they are not connecting the property on the back to the other stores.

Mr. Fox replied the businesses located on the back have different owners, they do not have permission for that and on the back of their property there is a 6 foot retaining wall, the parking lot was shifted and a 5-6 foot landscape buffer was incorporated. An updated landscape plan was submitted that shown more evergreen on the back. The applicant circulated the landscape plan with the abutters and the recommendation from the neighbors was to continue the line of evergreen all the way towards the west portion of the lot.

Mr. Stevenson asked what is the closest lot that is residential.

Mr. Fox replied 239 and 245 Raymond Road.

Mike Sullivan presented a site plan of the property and stated the proposed building will be located almost in the same location as the old police station, with a different geometry but essentially in the same location, it will be retail use and they are required 1 parking space per 180 s.f. which translates to 33 spaces, the curve cut will be essentially in the same location but the grading will be improved from what is currently there and it will go to DOT for approval. Although they are not increasing the impervious surface, this project is classified as a re-development project, they are not required to change the drainage but are required to improve what is currently there, the open space required in this area is 30% and they are proposing 34%, they will have vertical curving to prevent cars from driving or parking off the site, Sudbury Design Group has created a Landscape Plan for the site, the dumpster will be properly fenced and located on the back of the building.

Mr. Stevenson asked for specific information about the proposed use or tenants in the proposed new building.

Mr. Fox replied they do not have that information because they currently do not have the space lease, the applicant understands they are septic constraints and a restaurant taking a significant portion of this building will be highly unlikely without some kind of alternative septic, they may have a retail tenant, or a small coffee shop or a salon.

Mr. Stevenson asked if the language on the requests mirrors the Town's Bylaw.

Mr. Fox replied, yes it mirrors the language on the Bylaw.

Mr. Stevenson asked if there is any assurance of something heavier, more industrial like an auto repair will not go to the site.

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Mr. Sullivan answered that the site is located in an aquifer protection zone, the wells are located in the back of the shopping center as a result of that they are limited in the flows coming from the building, essentially they are precluded from any type of heavy use like a restaurant, the existing septic will stay there, it has been inspected and they have talked with the Director of BOH, Bill Murphy and the plan is to utilize the current system that is already at the site, the maximum allowed flow associated with that is 400 gallons a day, due to the aquifer protection zone the potential use of the site is limited.

Mr. O'Brien asked for details on the type of building proposed on the site.

Mr. Parson reply that Verizon will be taking the front of the building around 2,000 s.f. on the approximate 3,900 s.f. left they could have one or two tenants.

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

Daniel and Stephanie Kuster from 245 Raymond Road, thanked the Board for their service, stated the substance of their concerns is yet to be addressed, the landscape is one of their primary concerns, the use change from a municipal to a business use is viewed by them as a negative impact. After the TDBank was constructed the three neighbors on Raymond Road moved away.

Mr. Stevenson asked if Mr. and Mrs. Kuster have any ideas of how to minimize the impact.

Mr. Kuster stated they have not seen a plan for a minimal viable use yet.

Mr. Gossels reply it sounds like the applicant is trying to address residents concerns.

Mr. Stevenson commented the applicant does not have to ask for this variance, and instead could build as of right a two story commercial structure on the portion of the site that is zoned LBD, which would place it in closer proximity to the residential properties.

Mr. O'Brien stated the Board is very cautious when issuing a variance vs. a special permit, because variance has the strictest standard.

Mr. Riordan expressed concern if the building was shifted to the LBD piece of the property, the structure will go up with a two story structure, the parking will be closer to Raymond Road, they might see cars turning around at night with their lights on and the only tree located on that side will be sacrificed.

Bettina Westerberg from 239 Raymond Road, thanked the developer, her concern is the change over the years, she asked if dumpster could not be emptied at 3 or 4 in the morning, she was also concerned about stormwater.

Mr. Sullivan clarified, when he indicated this is an aquifer protection zone, it means it needs about 10,000 s.f. lot area per 110 gallons of discharge, there is absolutely no way they could expand the size of the septic.

Mr. Gossels stated the "elephant in the room" is perhaps in the future having sewer on route 20.

Mr. Sullivan reply he does not argue it, he has been in town for about 30 years and he is not sure that is going to happen any time soon. Under the current circumstances there is absolutely no way to expand the current septic capacity.

Mr. Stevenson suggested to take restaurants off the table use on this petition.

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Mr. O'Brien suggested instead limiting the number of tables aloud in case of a coffee shop might be going there.

Mr. Fox commented there is a lot of competition of retail business online and the trend now is to lease to service establishments, such as hair or nail salons; this owner is trying to preserve the right to those uses. Regarding neighbors' concerns the applicants are open to and expect conditions and limitations for times on delivery and times to empty the dumpsters.

Mr. Riordan noted the location of the dumpster proposed to be in the back of the building, and he added the Board would like to see that section properly and adequately screened.

Timothy Walsh from 236 Raymond Road commented he also worked with TDBank when it was under reviewed, he would like to continue dialogue between neighbors and applicant.

There were no further comments from residents.

Mr. Riordan asked for an update on the variances requested.

Mr. Fox reply the applicant would no longer need a variance on petition 18-4 under section 3114, but they would like to keep the petition and when the time comes for the Board to make a decision on all petitions, the applicant expects a denial on this portion of the request.

Mr. Stevenson commented that personally he would like to support this petitions, but would need more detail information about the proposed building from the applicants, therefore he would like to suggest a continuation of these petitions.

Mr. Fox expressed he understands and was not expecting a decision on this evening, but a continuation to a future date.

Motion made, seconded and voted to continue petitions 18-4, 18-5, 18-6 & 18-7 to April 9 meeting at 7:30 p.m. at Town Hall.

5. Public Hearing Case 18-8 – The Paper Store, Donald McCarthy, Director of Events and Promotional Marketing, for a Special Permit under the provisions of Section 3290 and 3261 of the Zoning Bylaw, to allow for a sign to exceed size requirements of 31.5 with the dimensions of 50 s.f., Town Map K08-0004, 435 Boston Post Road, Limited Business Zone.

Patrick English was present representing the Paper Store, he shared the Paper Store is updating their signs on all of their locations, he is a general contractor for the Paper Store and he is requesting a special permit to install a sign that would be larger than what is allowed under the Town's Bylaw, the existing sign located on the front of the store is approximately 31.5 s.f., their intention is to improve the sign visually and increase to an approximate size of 50 s.f. the sign will be all black, the letters will be black and they will be mounted directly on the white wall, the applicant is requesting the sign to be back lit, with halo lights. The current sign is illuminated by goose neck lights.

Mr. Gossels expressed concern that the proposed sign will look and stand out from the existing signs at the plaza, he reminded the Board neon box lights are prohibited in the Bylaw.

Mr. O'Brien drove by the plaza and noticed other signs are much wider and larger than the proposed Paper Store sign.

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Mr. Ray stated he does not remember other special permit applications for other businesses in the plaza and he fears this might result in similar requests from other business to ask for larger signs.

Mr. Riordan replied the Board is not bound by previous decisions, and he is not sure if in this particular plaza more business owners would apply, the proposed sign will be more in keeping with the average size of signs in this plaza, especially considering the large front setback. He added he liked the halo lighting design, the sign looks attractive, the problem he sees is that other business in the same plaza are using the gooseneck lighting and they will not all be the same.

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

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.

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 seconded and voted to approve petition 18-8 for a halo back lit sign with standard conditions in the words of the application including technical references and the Town's applicable sign By Law.

6. Public Hearing Case 18-9 – Howe Development, Corp. David J. Howe, Applicant and Owner for a Special Permit under the provisions of Section 2460B of the Zoning Bylaw, to construct a dwelling of approximately 3,474 s.f. after demolition, exceeding the total floor area of the original structure. Property shown on Town Map G05-0009, at 207 Pratts Mill Road, Residential Zone A.

Mr. Howe was present at the hearing, he stated the current structure proposed for demolition is approximately 2,300 s.f., single family, 5-bedroom home, the new structure will increase the square footage by approximately 1,000 s.f. to about 3,474 s.f. to be a single family 5 bedroom home, the current structure is completely dilapidated and in poor state, it is non-conforming and the current set back is approximately 35 feet, the proposed structure will be conforming in all setbacks, he has removed all trees that he intended for the new construction and got in touch with abutters and they are very supportive of the plans.

Chair Riordan commented the proposed plan shows a very large building in an area of non-conforming modest size homes.

Mr. Gossels commented the Board should not request the new construction homes to be placed in the front of the road, he would like the applicant to push the house five feet from what he is proposing to get it closer to a 60 feet front yard set back.

The Applicant reply the change will be fine, and he will move the entire structure back.

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Mr. Ray commented the new structures on the street should be in sync.

Mr. Riordan stated that the property was clear cut on the front and sides of the current structure.

Mr. Howe reply he only took down 10-12 trees and stated the power installation to this house will run underground.

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

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.

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 seconded and voted, to approve petition 18-9 with standard conditions and the whole structure to be pushed back 5 feet to a setback of 45.6 feet.

7. Public Hearing, Case 18-10 – Nicola S. Payne & Robb A. Aistrup, applicants and owners, for a Special Permit under the provisions of Section 2340 of the Zoning Bylaw, to conduct a Home Business, specifically for music lessons, more than once a day, Assessor's Map B09-0326, 15 Thoreau Way, Residential Zone A.

Chair Riordan acknowledge the Board received correspondence for this petition and it will become part of the official file.

Nicola Payne and Robb Aistrup residents of 15 Thoreau Way, both professional musicians, stated the cornerstone of their income comes from teaching, she named her business Sudbury String Studio, she apologized to the Board for not having a special permit for the business, they started their business in 2012 but this year it got busier.

They are applying for the special permit because they exceed the one client per day, currently they have 37 students, they operate outside of school hours by necessity, sometimes they teach until 8 p.m. the lessons typically run from 30 to 60 minutes, they also teach outside of the house, they do not schedule any lessons on Sundays but sometimes they have make up lessons from 10 am to 12 pm. Saturdays are their busiest day, starting at 8:30 am and ending at 6:00 pm. Couple of times a year they hold recitals held at the Good Now Library in Sudbury, before recital they hold a rehearsal with a piano and this happens about 5 times per year typically on a Sunday.

Mr. Stevenson asked about the concerns from neighbors about cars.

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Dana & Jim Flavin from 20 Thoreau Way were present at the hearing, they asked the Board to consider their situation as abutters, and asked for conditions if the petition is approved in order to be able to have the same residential experience and enjoy their home as any other neighbors do.

Anne Hallows & Steve Ulfelder abutters from 9 Thoreau Way, stated they have no problem with the neighbor's home business and have no complaints about the operation of the home business.

Clark Moeller from 30 Thoreau Way, is an abutter stated he has no problems with the parking or traffic on the street.

Jackie Zhou, 41 Maplewood Ave. the parent of a student, stated they are very lucky to have them as teachers, music lessons are a service that all appreciate, especially because they are located in Sudbury.

Jennifer Rossi, 30 Philemon Whale Lane has a son that is a student and she appreciates their flexibility with scheduling classes and would like that to continue.

Cathy and Charlotte Jacobs, 91 Dakin Road, stated the Robbs Provide a great service to students and Sudbury.

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.

Motion made seconded and voted, to approve petition 18-10 for a period of one year with hours of operation from 8:30 a.m. to 8:00 p.m., 7 days a week with a good faith effort to minimize on street parking. All voted in favor.

8. Public Hearing Case 18-11 – John & Mary-Michael Merhige, Applicants and Owners, for a Variance under the provisions of Section 2600/2620 of the Zoning Bylaw, to request a dimensional variance for relief of rear-yard setback requirements to allow a 4.5 foot encroachment of a proposed addition, property shown on Town Assessor Map J05-0404, at 51 Fox Run, Residential Zone A.

John & Mary-Michael Merhige, were present at the hearing, requesting a dimensional variance to allow an encroachment of approximately 4.5 foot needed to construct an addition on the east side of the house, the living room side of the property, to build a home office. Both applicants work from home and they need an additional home office.

Mr. O'Brien asked why the addition cannot be put on the other side of the house.

Ms. Merhige reply the garage is on that side and it would not work because they would need to walk through the garage to get there and they cannot build in the back because the septic is located there.

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Mr. Ray asked if any of the trees will be removed on the side of the proposed addition.

Mr. Merhige replied they would like to maintain the wooded area, but they are not sure but maybe a tree could come down in the process.

Mr. Gossels stated the proposed encroachment is trivial and in his opinion there is "no harm, no foul."

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

Amy and Mark Cooper, 41 Fox Run were present, Mr. Cooper stated they want to have good neighborhood relationship, but the reason why they are opposing this variance is because they love their back and side yard, they spend a lot of time outdoors because it is pristine and private, as stated on Mr. Merhige application the house located at 51 Fox Run was built too close to the abutting line, Mr. Cooper stated they can see the house and fears the house will get even closer to the divided lot line, their biggest issue is privacy.

Mr. Gossels remarked the variance is only for 4.5 feet and asked if there could be some mitigation to enhance the plantings that could give Mr. Cooper more privacy.

Mr. Stevenson commented pointing at the pictures submitted and noted there are not a lot of trees, and the ones that are there are very tall and thin, which is typical for Sudbury trees, if evergreens are planted on that side would that help to mitigate the privacy issue, he asked.

Mr. Cooper stated the area is full of sink holes in the back yard.

There were no further comments.

There must be special conditions relating to the soil conditions, shape, or topography of your land or structures and especially affecting your land or structures, but not affecting generally the zoning district in which your land is located. The Board acknowledges the presence of sink holes, the odd shape of the lot and the location of the structure.

There must be a substantial hardship to you, financial or otherwise, if the provisions of the Ordinance or Bylaw were to be literally enforced.

There must be no substantial detriment to the public good if the variance is granted.

Granting the variance must not nullify or substantially derogate from the intent or purpose of the Ordinance or Bylaw.

The Board asked for a reasonable landscape screening agreement to be reached between the owners of 51 Fox Run and 41 Fox Run and to be permanently maintained, the variance and conditions will run with the land as a condition for this variance approval.

Motion made, seconded and voted.

VOTE:

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

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John Riordan voted to APPROVE THE DIMENSIONAL VARIANCE

Jonathan Gossels voted to APPROVE THE DIMENSIONAL VARIANCE

William Ray voted to APPROVE THE DIMENSIONAL VARIANCE

Benjamin D. Stevenson voted to APPROVE THE DIMENSIONAL VARIANCE

Jonathan O'Brien voted to APPROVE THE DIMENSIONAL VARIANCE

MOTION: To approve 18-11 petition.

VOTED: In favor: 5 Opposed: 0 MOTION CARRIES

9. Approval of Meeting Minutes for February 5, 2018 meeting.

Minutes were not approved.

10. Administrative Report.

Motion to adjourn at 11:15 pm.