

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 9, 2018

Board Members Present: John Riordan, Chairman; William Ray, Clerk; Jonathan Gossels; Nancy G. Rubenstein and Benjamin Stevenson.

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

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

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

1. CONTINUATION - 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. CONTINUATION - 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. CONTINUATION - 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. CONTINUATION - 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 open the hearing at 7:30 p.m. acknowledging correspondence received from neighbors and stating a quorum was present.

Attorney Joshua Fox from Rolling, Rolling & Fox and Jake Parsons, of Parsons Commercial, were present at the hearing.

Attorney Fox requested withdrawal without prejudice of petition 18-4. The Board acknowledged and accepted the request.

Since the last hearing on March 5, 2018, the Applicants submitted a list of nine (9) possible conditions or safeguards and four (4) renderings showing different viewing angles of the property with special attention to the views from the residential neighbors, Mr. Parson has also discussed the matter with his neighbors and once again he reviewed the list of conditions with them, since then the neighbors added four more conditions to the list of requests. Attorney Fox continued stating the Applicant has work very hard and collaboratively with the neighbors and the Board and hopes this will be a good project for everybody.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 9, 2018

Chair Riordan thanked the Applicant for submitting meeting materials days before this hearing and commented it appears that no structural changes took place and the position of the building is in the same location as discussed at the hearing on March 5, 2018.

Attorney Fox reply that was correct, the materials submitted on March 2 have not changed, and clarified the location of the AC units, these units will be located on the ground on the east side of the property towards the front of the building, there have been no changes to the building after the shift to move the building towards the west a little bit and move the parking lot to the west and to the south.

The Board discussed conditions for these applications based on the list received by the applicant.

Attorney Fox stated some of the conditions on that list came from the Applicant, some from abutters and some were suggested by the Board.

- While restaurant use is permitted, no restaurant shall be permitted to operate without ZBA review and approval of size and nature of restaurant. The ZBA shall be permitted to impose reasonable conditions on the use, including, without limitation, size of restaurant, hours of operation and number of seats.

Chair Riordan asked if in the Bylaws a coffee shop is considered a restaurant.

Attorney Fox replied that is the case, a coffee shop is consider a restaurant.

- Owner to educate all tenants and remind them as necessary, that there are nearby residential neighbors, and that they should be particularly conscious of this fact so as to minimize disturbance to these neighbors.

Mr. Gossels asked if this will be done at the time of signing the lease or annually.

Mr. Parsons replied they have rules and regulations included on the lease and if needed the tenants will be reminded, their leases are typically for a duration of 7-10 years.

Chair Riordan stated if issues were to arise the Town's Building Inspector could be contacted to take action if needed.

- Hours of operation – not past 10 PM, unless ZBA permits later expansion of hours of operation after notice and a hearing.

Chair Riordan asked if Sunday hours could be limited until 8 PM.

Mr. Parsons, asked if in the future 8 pm would be a problem with one of the tenants, could he come back to extended it at a later time.

Mr. Riordan replied the Board will have an open mind to that.

- Landscape to be continuously maintained.

Attorney Fox reminded the Board the details on the landscape plan, arborvitaes 7-8 feet tall will be planted through the back of the property line per neighbors request, couple of street trees will be added

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 9, 2018

and the mature tree at the front of the property will be preserved, as far as total green space in the property, there will be more green space than with the existing police station.

Mr. Gossels asked for a combination of green plantings on the back of the property area.

Mr. Fox replied there is not enough depth or buffer room to add multiple, staggering lines of plantings. He stated one the neighbors requested the trees not to be trimmed, and the Applicant agrees with that, but they would like to be able to trim them if they over grown and becomes hazardous, diseased or for maintenance only.

- Stormwater to be treated and retained on-site.

Chair Riordan reminded some of these conditions will be up to the Planning Board, but the ZBA will make a recommendation.

- HVAC exterior units shall not be permitted on the roof and shall be continuously screened.

Attorney Fox stated the HVAC exterior units will be located on the ground not on the roof and they will be continuously screened.

The Board asked for a noise dampening internal screening on the internal part fence that will wrap around the HVAC units.

- Lighting to be dark sky compliant
- Lighting to be reduced to security-only levels after 10PM
- Dumpster pick up hours only between 7 AM and 9 PM. Dumpster to be continuously screened from view from residential properties.
- Trees allowed to grow taller and only to be trim for health, maintenance and as needed only
- To change the color of the fence to black or gray, instead of the proposed white color.
- The Applicant to obtain approval from the owners of Sudbury Crossing to plant 3-4 additional large evergreens of a different variety than the ones planted at 415 Boston Post Road to enhance the buffer even more.

Attorney Fox stated they will ask the owner of Sudbury Crossing but they cannot promise this will be done, since it is someone else's property, but the Applicant will use reasonable efforts to do so.

- Any use of the property is to be made that requires a material modification of the septic system including a material relocation of the septic system, or elimination of the septic and hook up to a future sewer system the Applicant will be required to get approval from ZBA.

Chair Riordan stated they could make this conditions with the private septic, but he is not sure if the ZBA had technically the jurisdiction to impose a condition of this nature, in his opinion the Board of Health and Planning Board are the two Boards that have jurisdiction.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 9, 2018

Mr. Stevenson responded he was not sure if that was the case, but regarding this application the Board could impose their own conditions, even more if these have been agreed upon the Applicant and the abutters.

Mr. Stevenson asked the Chair if the Board agrees to read all of these conditions for the record and apply them to the other petitions for this property.

Chair Riordan agreed.

Attorney Fox clarified if the septic were to fail or a minor immaterial relocation was needed to take place these should not require ZBA approval.

The Board agreed.

Chair Riordan added the condition that signs on the property should comply with the sign bylaw.

Chair Riordan explained that in the past developers posted a bond regarding landscape, a recent example of that is The Coolidge Phase 1, and he recommended to the Board that a Performance Bond be put on place for the first 3 years.

Mr. Gossels asked if the Chair had a number in mind.

Chair Riordan replied he was not sure, but a reasonable number, perhaps 25% of the total landscape cost.

Mr. Stevenson stated if the Applicant is willing to post a bond, he does not see anything wrong, on the other hand he added, the applicant has shown good faith and attention to detail, therefore he would be comfortable by letting the owner take care of the landscape, considering is in the best interest of his tenants.

Mr. Gossels stated it will be up to the Building Inspector to get involved if the landscape is not being maintained.

Mr. Herweck replied, he gets involved if he receives an official complaint. If necessary, he can issue a fine if he finds there are in violation of the permit.

Mr. Gossels added that there is something legitimate about a bond even if it is a specific limited number, he stated the proposed conditions sounded reasonable but he would not be opposed to a smaller sum.

Mr. Ray asked if any neighbors were present to speak about this application, none were present. He stated that tells him the neighbors are fine with this application.

After discussion the Board felt comfortable to go forward without requesting a landscaping bond.

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

Ms. Bettina Westerberg, 239 Raymond Road, shared her appreciation with the drawings and proposed screening, but she had questions after this hearing about the lighting on the signs.

Mr. Gossels stated neon lighting is not allowed in the bylaw.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 9, 2018

Mr. Stevenson stated if the Applicant would like to do anything different outside of the town sign bylaws with the lighting of signs the neighbors will be notified.

There were no further comments from residents.

Chair Riordan read the conditions necessary to grant a variance.

- 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.

On petitions 18-5, 18-6 and 18-7 the Board finds that due to the topography of the land and the shape of the lot, the split nature of the lot between the LBD and residential zone, this plot is *sui generis* due to a former municipal use not subject to zoning and it is consistent with other commercial neighboring properties on the area.

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

The shape of the property, the split nature of the lot between the LBD and residential zone, the parking requirements and the impervious area, would be a hardship if the building were to be use in its current configuration and was not move forward, in effect this property would be useless.

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

The record shows the Applicant worked very diligently with the neighbors to insure there is no detriment to the public good, and the building to result of this proposal instead will be a benefit to the community.

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

The Board finds that the applications meet all four requirements of a Variance.

Motion made, seconded and voted via roll call to approved Petition 18-5, 18-6 and 18-7 with additional conditions as discussed and having agreed that these Petitions meet all the requirements of a Variance.

VOTE for 18-5, 18-6 & 18-7

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

John Riordan voted to APPROVE THE VARIANCES

William Ray voted to APPROVE THE VARIANCES

Jonathan Gossels voted to APPROVE THE VARIANCES

Benjamin D. Stevenson voted to APPROVE THE VARIANCES

MOTION: To approve 18-5, 18-6 & 18-7 petitions.

VOTED: In favor: 4 Opposed: 0 MOTION CARRIES

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 9, 2018

- 5) Public Hearing Case 18-12 – William F. Curley, Applicant and Owner for a Special Permit under the provisions of Section 2460B of the Zoning Bylaw, to construct a dwelling of approximately 2,068 s.f. after demolition of a pre-existing, non-conforming structure on a non-conforming lot, exceeding the total floor area of the original structure. Resulting in a front yard setback deficiency of approximately 4 feet and side yard deficiency of approximately 2 feet for 17 July Road, Property shown on Town Map F06-0623, at 16 August Road, Residential Zone A.

Chair Riordan acknowledge Ms. Rubenstein will be joining the Board for the rest of the hearing, and finds there is a quorum.

William Curley, East Falmouth Mass., was present at the hearing requesting to build a new Cape style home after demolition at 16 August Road, currently a two-bedroom home with a small garage underneath. He described the back of the house having a slope that goes up the proposed hill; it will sit perfectly, in approximately the same location of the current home. The proposed house will be 44 feet long. There was a walkthrough of the property together with Beth Suedmeyer, Environmental Planner and Debbie Dineen from Conservation, the lot is approximately 250 feet from a river bend, and he will be submitting an application to Conservation and Planning Board regarding stormwater review and approval directly to Conservation.

Mr. Gossels asked for the height of the proposed structure, and added in the future he would appreciate having this number on the plans.

Mr. Curley replied, the height will be under 35 feet.

Chair Riordan asked more details about the existing house.

Mr. Curley replied the current structure is a two-bedroom home and he plans to build a new septic for the proposed home, the septic will be located in the next parcel, and an easement will be created. He owns both parcels.

Mr. Stevenson shared he liked the proposed plans to build a cape style home on this location.

Chair Riordan asked if the height of the proposed home could not be more than 28 feet.

Ms. Rubenstein asked for a clarification of what grade will the 28 feet be measured from? She added she senses from the garage elevation. She clarified to the Applicant the height the Chair is referring to is from the garage to the ridge.

The Board and Applicant agreed on a 31 feet height from the front of the garage.

Chair 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.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 9, 2018

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 18-12 with standard conditions in the words of the application.

- 6) Public Hearing Case 18-13 – David Lin & Shuan Lin 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 859 s.f., property shown on Town Map E07-0407, at 288 Maynard Road, Residential Zone A.

David Lin & Shuan Lin were present requesting approval for an existing accessory dwelling unit, the Applicants purchased the home recently, Mr. Lin's mother will be occupying the accessory dwelling unit.

Chair Riordan acknowledge receipt of a complete application as well as correspondence from the Board of Health stating compliance with septic requirements. Chair Riordan confirmed with the applicant that this is a special permit request for an accessory use dwelling and that the Board had issued a special permit for such use to the previous owner of the property. The owner confirmed that he was not making any alterations to the property.

Chair 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 18-13 with standard conditions.

- 7) Approval of Meeting Minutes for February 5, February 16 and March 5, 2018 meetings.

Minutes were approved by all members present.

- 8) Administrative Report

Chair Riordan shared, Town Counsel, Barbara Saint Andre was leaving, and she will be the Director of Economic Development and Planning for the town of Medway. Sudbury will continue working with the same law firm – Kopelman & Paige (K-P Law), Attorney George Pucci will be one the attorneys that will

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 9, 2018

support the Board of Appeals on some matters, the main attorney for the Town will be Attorney Jonathan M. Silverstein.

Chairman Riordan announced the Board will go next to an executive session.

At 9:38 p.m. entering Executive Session not to return to an Open Session as of declared by the Chairman via roll call vote:

- 9) Vote to enter into Executive Session and not to return to Open Session for the purpose of discussing strategy with respect to litigation as an open meeting may have a detrimental effect on the litigating position of the Zoning Board of Appeals and the Chair so declares, with respect to Linda Mills, et al v. Zoning Board of Appeals, (41 Prides Crossing Road) pursuant to General Laws chapter 30A, §21(a)(3).

John D. Riordan Aye
Nancy G. Rubenstein Aye
Jonathan G. Gossels Aye
William Ray Aye
Benjamin Stevenson Aye

Motion to adjourn at 9:38 p.m.