

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 30, 2018

Board Members Present: John Riordan, Chairman; William Ray, Clerk; Jonathan Gossels; Nancy Rubenstein and Jeffrey Klofft.

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) Public Hearing Case 18-14 –OSPD Realty Company, LLC, Applicant and Owner, for a Special Permit under the provisions of Sections 2420 and 3142 of the Zoning Bylaw, for a reduction of an existing nonconforming rear and side yard parking area set back, the proposed parking area to be set back 5’ from the westerly lot line and 6’ from the southerly lot line, 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 that a quorum was present.

Attorney Joshua Fox from Rolling, Rolling & Fox, was present at the hearing. He gave a brief background to the project mostly intending to update Ms. Rubenstein and Mr. Klofft whom were not present at previous hearings for the same property when the Board reviewed a variance request.

Attorney Fox stated the reason for this special permit request is a follow up after a meeting and recommendation from the Zoning Board of Appeals that resulted in the parking lot being shifted closer to the rear line and a little bit to the west line. Originally along that line in the rear they had a 10-foot landscape buffer, after the suggestion from the Board they shifted the parking lot and the rear yard setback is now 6 foot from the parking lot and 5 feet from the westerly side. The current condition of the parking lot is non-conforming and the parking lot line goes through the property line, the applicant is seeking to reduce the existing non-conformity.

Attorney Fox gave a brief description of the proposed building, describing the proposed new building around 7,000 square feet, with less impervious area, more green space, an upgrade on the landscape, and the front yard setback will be similar to TDBank. About 10 conditions were added to the variance request after meeting with neighbors, including hours of operation, hours of trash pick-up.

Mr. Klofft asked for the proposed height of the building.

Mr. Fox replied it will be under 35 feet.

Mr. Gossels thanked Attorney Fox and recognized the collaboration with neighbors as example for the community. Mr. Gossels asked if the present request for Special Permit’s term would affect the ability of the applicant to obtained financing.

Attorney Fox responded that often times term limitation on a special permit in large scale projects do affect and have financing repercussions, but on this project he was not sure, in his opinion perhaps a smaller bank will be used for financing. He commented that for any project is time consuming to have the renewals done on an annual basis, in his view there are enough conditions in the variance that could be also be incorporated in the special permit’s decision that have enough ‘teeth’ to it that the Building Inspector or the Board could enforce the decision, therefore he would hope that the special permit will be perpetual.

Mr. Klofft asked if the bylaw would allow a perpetual term.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 30, 2018

Mr. Gossels replied that in his opinion it would.

Mr. Ray asked the applicant if based on his research he feels comfortable that this petition is a special permit and not a variance.

Attorney Fox reply that he is positive this is not a variance.

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

No neighbors were present for this petition.

Chair Riordan congratulated the applicant for working collaboratively with the abutters, and stated this is how a project should be done, he congratulated the developer for his patience and his Counsel for his advice and working collaboratively with the Board.

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. The proposed project will reduce the non-conformity and will transform a dilapidated and not re-usable municipal building.

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 Board discussed the appropriate term for this special permit.

Mr. Ray commented he did not see a difference between the variance and the special permit because both are granted to the same property and same applicant, he suggested a term of five (5) years but he was open to hear other suggestions from the Board.

Mr. Klofft seconded a 5-year term.

Motion made, seconded and voted, to approve petition 18-14 with a five (5) year term with standard conditions in the words of the application.

- 2) Public Hearing Case 18-15– Nikhil Bhosrekar, Applicant and Owner, for renewal of Special Permit 17-5, granted under the provisions of Section 2313 of the Zoning Bylaws, to raise up to 6 hens, property shown on Town Assessor Map H08-0001, 317 Old Lancaster Road, Residential Zone A-1.

Nikhil Bhosrekar was present at the hearing, requesting a renewal of special permit 17-5 to raised up to 6 hens in a coop located in the back of his property.

Chair Riordan, Mr. Gossels and Mr. Klofft commented it was a beautiful coop and hardly noticeable from the main road.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 30, 2018

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 18-15 for a term of five (5) years with standard conditions in the words of the application.

- 3) Discussion of correspondence from Attorney David Wallace requesting a Modification of the Drumlin Development, LLC/Orchard Hill, Sudbury Comprehensive Permit at 761 Boston Post Road.

Mr. Klofft stated for the record his parents worked at this property for a short period of time.

The Board finds there is no conflict of interest.

Attorney David Wallace and Clifford Hughes were present at the hearing.

The Board is in receipt of correspondence, dated April 17, 2017 with a request from Attorney Wallace for a determination of whether their intended plan to add additional (4) four units to the existing (45) forty-five units constitutes a “substantial” or “insubstantial” change to their special permit 96-15 dated October 2, 1996.

Mr. Riordan explained to the Board this is a request for modification of a long standing comprehensive permit, the Board is in receipt of comments back from the Board of Health and Conservation asking for the Board to get more information about the proposed increase, Conservation is concerned about the run off and wetlands delineation in the original permit and how the present request might impact it. Board of Health raised a question about the additional discharge from the proposed four units to the current septic facility on the property.

Chair Riordan asked if in the original special permit, the applicant requested waivers from the Board.

Mr. Hughes replied he did not believe they did, at the time the only special request was for zoning because there was not an assisted living law in place, while this was pending the legislature passed a law. Back then there were not assisted living regulations and the town bylaws did not provide for the same, they only had provisions for nursing homes. There was a debate as to the use of this property regarding zoning -- whether this was a nursing home or assisted living, eventually after many hearings it was approved as assisted living. Before they started building the permit was modified in 1998 to add a childcare-preschool facility. Mr. Hughes added this is an attractive, well run facility and they would like

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 30, 2018

to add 4 more units, with a modification to the special permit that in their view is an “insubstantial” change, he clarified they are not looking for a huge change, the request is to add four units to an existing 45, this would represent less than 10% of the current count.

Mr. Klofft asked if there will be changes to the building or if the applicant will be reconfiguring the existing space.

Attorney Wallace shared a site plan and a north elevation plan for the proposed addition with the Board and stated their intent is to have a temperature reading of the position of the Board before they go do a full drawing of architectural and engineering plans.

Attorney Wallace described their plan is to extend the length of the building approximately 60 feet in length and 50 feet in width, to be two stories high and to hold four 2-bedroom apartments with a roughly 1,600 s.f. of common space, the proposed area of this addition will be located away from the conservation area, they currently have only four residents that have a car, the proposed plan is to add one more parking space if needed. As far as septic capacity, the present regulations call for a capacity of 150 gallons per day per person, so there will be roughly and extra 1,200 gallons a day added to the system.

Chair Riordan asked for the elevation of the proposed addition.

Attorney Wallace reply it will not be any higher than the existing one or perhaps a bit lower.

Mr. Klofft stated in his view this would fall under “insubstantial” change, but without more detail plans it might be difficult for the Board to make a final determination.

Attorney Wallace asked for a clarification on the criteria from the Board of what would be considered “substantial” versus “insubstantial” change.

Mr. Klofft replied the 40B language is pretty loose and ultimately the factor that will determine “substantial” vs “insubstantial” in addition to size will be the impact to drainage.

Mr. Gossels stated there is clearly a demand within the community for this type of facility, the Applicant has been a great neighbor, from a visual point of view trees located along Route 20 have grown, it looks beautiful from the road and from a visual point of view he would have no concerns, but he would like to see more engineering details.

Ms. Rubenstein commented the Applicant has done a good job in the location of the proposed new addition, blending it in, changing the roof line, making it not visible from the main road, she agreed with the previous Board members stating the need of final architectural and engineering drawings and making sure there will be no issues with septic, wetland, stormwater and run offs.

Attorney Wallace pressed on the question asking the Board to take a position on whether the proposed change is “substantial” or “insubstantial” and added if the Board considers this a “substantial” change he would probably not do it, because he would need to go through a full hearing, instead he might look to add 10-20 units, because it will be more conducive to going to the full process again. He was hoping to hear if this was a “substantial” or “insubstantial” change at this meeting.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 30, 2018

Chair Riordan commented there are no other guidance on 760 CMR, and if 90% of the present special permit is not changed it does look “insubstantial”, he added this has been a good project for the community.

Mr. Klofft stated this item procedurally was not advertised correctly, therefore the Board cannot make a determination because it is not an official question for the Board, and added in his opinion at least one more meeting is needed to get a determination as well as more detailed plans.

Attorney Wallace asked how much detailed plans would be Board need.

Mr. Klofft replied a least for him, he would like to see more details about the stormwater plan.

Mr. Gossels added the Board would request a limited stormwater plan to give some detail about roof runoff and changes on impervious area.

Attorney Wallace recapped what the Board was asking him for some engineering outlining or detailing of the stormwater impact.

Mr. Klofft clarified the Board would need a letter from Board of Health stating the current septic system can handle the proposed additional flow.

Mr. Gossels stated it would be good for the Board to have plans delineating the wetlands clearly.

Chair Riordan added the Board would benefit from seeing a schematic drawing of the proposed addition, in his opinion an “insubstantial” change is not always linked to a percentage on number of units added, but changes to the façade of the project or impacts to wetlands.

Ms. Rubenstein asked the Applicant to contact the Fire Chief to make sure if their building will be extended an approximate of 60 feet they could have access to it and be able to reach.

Attorney Wallace asked the Board if they would like to see elevations.

Chair Riordan replied not necessarily, and the assumption from the Board is that they will not be adding an eye sore to the town.

Mr. Gossels added it is on the best interest to the applicant to have an attractive building.

Attorney Wallace replied he is very interested in the architectural aspect of the design.

The Board decided to advertise the request for determination correctly for June 11, 2018 and requested calculations from an engineer for the storm water and run off, preliminary calculation for stormwater, a letter from Board of Health regarding septic and for the applicant to contact the Fire Chief regarding adequate access to the proposed addition.

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 applicant agreed to return for final consideration on the substantiality question at the June 11, 2018 meeting.

- 4) Approval of Regular and Executive Session Meeting Minutes for April 9, 2018.

SUDBURY ZONING BOARD OF APPEALS
MINUTES
April 30, 2018

Minutes for the regular session of April 9 were approved by all members present as corrected.

5) Administrative Report

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

At 8:34 p.m. entering Executive Session not to return to an Open Session as declared by the Chairman via roll call vote:

- 6) 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
Jeffrey Klofft Aye

Motion to adjourn at 8:34 p.m.