



# Town of Sudbury

## Zoning Board of Appeals

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### MINUTES

### JANUARY 14, 2019 AT 7:30 PM

### LOWER TOWN HALL, 322 CONCORD ROAD

**Board Members Present:** John Riordan, Chairman, William Ray, Clerk, Jonathan Gossels, Frank Riepe, and Nancy Rubenstein.

**Earth Removal Board Members Present:** Jonathan Patch.

At 7:30 PM, Chairman Riordan opened the hearing by asking the Clerk to read the notice as published in the newspaper into the record, which noted the following Zoning Board of Appeals applications and opened all of the public hearings and announcing this meeting was a Joint Meeting of the Zoning Board of Appeals (ZBA) and Earth Removal Board (ERB).

Chair Riordan read guidelines for Special Permits and Variances.

- 1. Public Hearing Case 18-41 – JEANNE ROSIER SMITH, Applicant and owner, for a renewal of Special Permit 17-33 under the provisions of Section 2340 of the Zoning Bylaw, to conduct a Home Business, specifically for art workshops at home studio, property shown on Town Map J05-0303, 131 Bent Road, Residential Zone C, Historic District.**

Ms. Smith was present at the hearing, requesting a renewal of her Special Permit #17-33 to continue holding art workshops from home, with the same request on the number of classes, no more than 12 per calendar year, with 12 people at most per day during the hours of 10:00 AM to 4:00 PM. For this coming year, Ms. Smith stated she has planned two workshops for the month of March, each workshop will be for the duration of 3 days, these will be the only two workshops that she scheduled in Sudbury. Ms. Smith requested a slight change on the wording under provision 2 of her Special Permit, that presently reads as follows: "No more than 12 events per year (one single event per day), no more than 12 students, no more than 12 cars, all vehicles to be parked on the driveways.", to be read as "Best effort that vehicles be parked on driveways". The reason for her request is because at times students need flexibility on the time they leave the workshop.

Chair Riordan asked if the applicant had knowledge of any complaints, or any zoning enforcement issues from the Building Inspector in the past year.

Ms. Smith replied no.

Mr. Gossels commented the request from the applicant is reasonable and a car or two parked a few days a year on the street is not a hardship on abutters and the Board should be as accommodating as it needs to be. Mr. Riepe and Ms. Rubenstein agreed with the statement.

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

Richard Cass, 7 Hayden Circle, stated that the events the applicant had conducted worked out tolerably well and continuing the permit with the same conditions will be acceptable for them. They are concerned if the conditions are changed, because it opens the floodgates to have this added change allowing cars to now park on the street. The conclusion from last year was that in winter time when there is snow the road effectively narrows and there are problems when cars are parked on the street.

Linda Cass, 7 Hayden Circle, stated the conditions should be very specific to say one or two cars in front of the applicants' home and not to leave it open to interpretation.

Mr. Riepe stated that he does not think is open to interpretation based on the statement on the application.

Mr. Gossels stated that the request is for few days per year and the applicant is making the effort to park the cars in her driveway, this is no different than someone having a Christmas party or a birthday party where there are some people that will park on the street. He added that the request is very reasonable.

Chair Riordan commented the applicant is making best efforts to comply with the Special Permit conditions.

Mike Petraglia, 131 Bent Road, thanked the Department of Public Works and the Highway Department for properly maintaining the side of the road, around September 2018, they addressed significant erosion in the easement and stabilized the area with gravel, therefore facilitating one or two cars to be parked in front of the house if needed.

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.

The Board extends the term to 3 years because there have not been no adverse impacts during the first term of this Special Permit.

Mr. Gossels made a motion, Ms. Rubenstein and Mr. Riepe seconded the motion. Vote was unanimous, 5-0 to approve petition 18-41 as presented with standard conditions. With the condition of one or two cars parked in front of the house, the permit for a term of three (3) years to expire on January 8, 2022.

**2. Public Hearing Case 18-42 - HERB CHAMBERS 83 BOSTON POST ROAD, LLC, DBA JAGUAR SUDBURY, Applicant and owner of property, for a renewal of Special Permit 09-6 under the provisions of Section 2230 of the Zoning Bylaws, for the sale and rental of new and used motor vehicles, property shown on Town Map K11-0015 and K11-0099 located at 83 BOSTON POST ROAD, Industrial District #4.**

- 3. Public Hearing Case 18-43 - HERB CHAMBERS 83 BOSTON POST ROAD, LLC, DBA JAGUAR SUDBURY, Applicant and owner of property, for a renewal of Special Permit 09-7 under the provisions of Section 2230 of the Zoning Bylaws, for new and used motor vehicle general and body repair, property shown on Town Map K11-0015 and K11-0099 located at 83 BOSTON POST ROAD, Industrial District #4.**
- 4. Public Hearing Case 18-44 - HERB CHAMBERS 83 BOSTON POST ROAD, LLC, DBA JAGUAR SUDBURY, Applicant and owner of property, for a renewal of Special Permit 09-8 under the provisions of Section 2230 of the Zoning Bylaws, for new and used motor vehicle light service, property shown on Town Map K11-0015 and K11-0099 located at 83 BOSTON POST ROAD, Industrial District #4.**
- 5. Public Hearing Case 18-45 - HERB CHAMBERS 83 BOSTON POST ROAD, LLC, DBA JAGUAR SUDBURY, Applicant and owner of property, for a Dimensional Variance under the provisions of Section 2644 and 6130 of the Zoning Bylaws, for a front yard setback encroachment of no more than three (3) feet, property shown on Town Map K11-0015 and K11-0099 located at 83 BOSTON POST ROAD, Industrial District #4.**
- 6. Public Hearing Case 18-46 - HERB CHAMBERS 83 BOSTON POST ROAD, LLC, DBA JAGUAR SUDBURY, Applicant and owner of property, for a Variance under the provisions of Section 3120 Table of Parking Requirements of the Zoning Bylaws on property shown on Town Map K11-0015 and K11-0099 located at 83 BOSTON POST ROAD, Industrial District #4.**

The Board received the following:

- Special Permit Renewal Applications, dated December 13, 2018.
- Narrative description of existing conditions and improvements proposed, prepared by CHA Design/Construction Solutions, signed by Scott F. Arnold, P.E. and dated January 10, 2019.
- Proposed Site Development Plans for Herb Chambers Jaguar/Land Rover of Sudbury, 83 Boston Post Road-Route 20, Sudbury, MA 01776: Drawing No. EX-001, Zoning Plan; C-001, Existing Conditions Plan; C-102, Demolition & Erosion Control; C-201, Grading & Drainage Plan; C-301, Utility Plan prepared by CHA, Design/Construction Solutions from Norwell, MA and dated December 12, 2018.
- Architectural renderings, titled: “Addition and Renovations to Herb Chambers Jaguar and Land Rover of Sudbury, 83 Boston Post Road, Sudbury, MA” prepared by Regent Associates, Inc. from Natick, MA, signed by Mark F. Regent, Registered Architect, consisting of: A5.1 Exterior Elevations, A1.1 First Floor Plan, A1.2 Second Floor Plan and Parts Mezzanine Plan and dated December 5, 2018.
- Email from Deborah Dineen, Conservation Agent, dated December 26, 2018.
- Email from Timothy Choate, Assistant Fire Chief, dated December 28, 2018.
- Memo from Mark Herweck, Building Inspector, received January 14, 2019.

Joshua M. Fox, Attorney at Rollins, Rollins & Fox, was present to represent a petition for an indefinite renewal of Special Permits 09-6, 7, 8 and requesting a dimensional Variance of approximately 3 feet on the front set back of the property and a Variance on the Table of Parking Requirements on behalf of Herb Chambers of Sudbury, Inc. DBA Herb Chambers Jaguar of Sudbury located at 83 Boston Post Road. Mr. Fox said that management has not notified him about any complaints about the property in the past 10 years.

Attorney Fox was accompanied by Gabe Crocker from Crocker Design Group, Project Engineer and Mark Regin from Regin Associates, Project Architect representing the Applicant. Attorney Fox presented to the Board a background of the request and a re-introduction to the site, an analysis to the zoning requirements request and an overall description of the project. He stated the site is located in the town of Sudbury and Wayland, the Wayland-Sudbury line bi-sects this site. The property consists of approximately 10.50 acres, about 7 acres are wetlands and upland resource areas that are all subject to a conservation restriction, granted to the Town of Wayland by a previous owner, about 85% of the building structure is located in Sudbury and the remainder 15% is located in Wayland. The site is surrounded by other commercial uses, there are not nearby residential homes. Although this will not be a brand-new building it essentially will be a “facelift” to the existing building with interior and exterior renovations and exterior site work. The building presently is about 24,000 square feet. The proposal consists of one first floor addition and an addition on the second floor. The first-floor addition of approximately 3,000 square feet will be to construct two drop off and pick up bays, that will sit about 35 feet back from the front of the main building, these two bays will be built in the present location of the canopy. There will also be an office space addition of approximately 3,700 square feet on the second-floor area. The intent is to create a better work environment for the employees and to open up the showroom. The height of the main structure will not increase, it will actually decrease-slightly from the highest elevation of the current structure. The parking lot will be removed and the drainage system will be entirely upgraded to meet current storm water requirements. The parking lot will continue to be on the left/east side of the building, the other parking lot area on the west side of the building is considered car storage area. The Sudbury Fire Department suggested certain fire safety upgrades than can be implemented to provide for better fire access to more parts of the building and to add two hydrants to the site. In addition to the ZBA filing the applicant filed with the Planning Board for a modification of Site Plan. The applicant also will be filing a Notice of Intent with Conservation, Design and Review Board, and with similar Boards in the Town of Wayland.

Regarding the zoning relief required, the applicant is asking for the indefinite renewal of the Special Permits that were renewed last on 2009 and granted for 10 years, set to expire on March 31, 2019. The applicant is also asking for a Variance of the 50-foot front yard setback requirement in the Industrial Zone, the business is presently operating under a Variance with a setback deficiency of 4.2 feet on the front yard, granted by this board around 2013 for the Jaguar portico. As far as the relief the applicant is requesting, there would be a need for a front setback Variance of approximately 2.2 feet on some portions of the proposed remodeled building; in effect the encroachment will actually be reduced but it will be located at different locations, the previous Variance was very specific as of the location of the Variance at the portico. Mr. Fox stated that the proposed encroachment will be *de minimis* and will not be noticeable to drivers on Route 20. The applicant is also asking for a Variance from the table of parking requirements in the zoning bylaw, the request is from the parking count required by the bylaw as applied to the square footage of the remodeled commercial building. There will be approximately 100 parking spaces on the site, striped and in conformance with the zoning bylaw requirements as to width and length and they will also have a 50 new vehicle storage area on the west side of the property. The applicant thus is proposing parking for approximately 150 cars, some considered storage and some for active parking. Technically, according to the zoning bylaw, based on the square footage and analysis of the area of service, vs. office, vs. retail the technical requirements for the zoning bylaw would be 160 parking spaces. Considering the soil conditions and topography of the site there is no other place on site to create more parking. With the plans proposed under this application the applicant is not proposing further disturbance in the area on the site.

Mr. Ray asked the applicant if presently they do not need the parking Variance because they have sufficient room for parking.

Attorney Fox reply yes, that was the case, and clarified the increase in parking space requirement relates to the proposed increase in square footage in office space of approximately 3,700 square feet that according to the table of parking requirements equates to about 19 parking spaces, the increase in office space is not designed with the intent of adding new employees or increasing the intensity of the use, is intended to space out the current operations.

Mr. Gossels asked if there are cases when overflow parking at Jaguar could be accommodated at BMW, since they are under the same ownership umbrella.

Mr. Fox replied that not at the BMW dealership as far as he is aware.

Mr. Riepe asked if Jaguar stores cars off-site as BMW does sometimes.

Mr. Fox replied that as far as he is aware Jaguar does not store of site, but he did know that at one point they stored Land Rovers at the D&D Mulch site in Wayland.

Ms. Rubenstein asked if the parking spaces deficit is 10 spaces.

Mr. Fox replied that it depends of how they look at the bylaw, from a very technical perspective the 50-vehicle storage area is not striped to meet the dimensional standards of the parking bylaw because they are for new vehicle storage, are moved very infrequently and not is an area accessed by the public.

Chair Riordan stated that in fact the Variance request would be for more than 10 vehicles.

Mr. Fox replied, yes.

Mr. Riepe asked if the parking requirements contemplated parking for new vehicle inventory.

Mr. Fox replied that the zoning bylaw does not articulate parking for inventory for new vehicles sales.

Mr. Riepe asked for clarification of the need to request the 2.2 feet front yard setback dimensional Variance.

Architect Mark Regin presented the floor plan and stated the reasoning for the remodel was the necessity to bring the dealership to the current arch image program, the glass line is the current building face and they are able to use the same foundation, they will be bumping out the feature portions, the 2.2 feet are needed for the articulation of the facade, they also have manufacturer requirements to meet certain space needed for each car in the showroom. The plan is to completely tear off the front exterior of the whole building and build a flat room dealership that is two stories high.

Gabe Crocker from Crocker Design Group, Project Engineer gave a summary of the site plan, stating the driveway location will remain the same as well as the configuration of the parking lot with some geometrical changes, they are re-orienting the landscape islands, as well as installing new lighting with a better distribution, the parking lot will be re-paved and the storm water will be upgraded. After meeting with the Assistant Fire Chief, Timothy Choate, Mr. Crocker modified the width of the paved corners on

the north-west and south-west sides of the building to facilitate access to a fire truck. There will be no changes to the Route 20 curb cut.

Mr. Gossels commented that having access to the service area seems important for safety reasons.

Mr. Crocker stated they will continue to use the same septic system and based on the design capacity the small addition in square footage will leave them still within the allowable flow for the septic capacity. Attorney Fox stated that it was not the intent of the applicant to materially increase the number of employees at the facility, despite the overall increase in square footage. They will be adding two new fire hydrants.

Mr. Rubenstein, asked about the request from the applicant of the renewal clause to be eliminated from the Special Permits.

Mr. Fox stated since its opening this dealership has gone through at least 3 renewals and the last renewal was granted for 10 years without complaints from anybody. The zoning bylaw speaks of a zoning enforcement agent so in the event of a violation to the conditions it would be within the jurisdiction of that zoning enforcement agent to enforce it. Given those facts altogether, the ten year of the last permit and the existence of the zoning enforcement might justify the absence of a term request.

Mr. Riordan stated that circumstances change and 10 years from now new technologies such as driverless cars and other advances may be driving the market, thus he mentioned that he is in favor of continuing to have a term limit for periodic review and oversight as uses and methods of car acquisitions evolve.

Mr. Riepe added that property owners come and go, Mr. Chambers may very well sell his business to somebody else that might not be a good corporate citizen as he is.

Mr. Gossels agreed with Mr. Riordan and Mr. Riepe and added considering the size of the business and the remodeling undertaking, he sympathizes with the applicant because bank financing sometimes could be a challenge if Special Permits are granted for short terms, in his opinion it is important for the Board to take this into consideration when deciding a term.

Mr. Ray sensed the Board would be in favor of renewing the Special Permits and he asked the Chair if the Board needs to run the checklist to see if the Variance criteria are met

Chair Riordan agreed and stated that, based on the information before it, the Board was not encountering significant challenges to meet the statutory tests for granting the Variances, i.e., that owing to the shape and topography of the land in question but not generally affecting the zoning district, a strict application of the by-law would involve substantial hardship to the applicant, and desirable relief may be granted without substantial detriment to the public good or substantial derogation from the intent or purposes of the zoning bylaw

Mr. Gossels added that the matter of signs needed to be evaluated very carefully to make sure they are appropriate and to find out if there is a need of a Special Permit from this board.

Mr. Riepe replied that procedurally if the applicant was asking for something that was outside of the regulations for signage, because at this point this Board did not have specifications on it.

Attorney Fox replied that the applicant currently operates under a Special Permit for their signs and he doubts the size of the signs will be reduced, therefore they will need to apply in the future.

Mr. Riepe and Mr. Gossels stated that the Board was not approving signs at this meeting and that any changes in signage would have to go before the Design Review Board.

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

Christopher Kenney, 32 Ames Road, a client of the Herb Chambers for many years spoke highly in favor of the applicant stating this was the type of project the community should support, in his opinion this project was located in the appropriate area, enhanced the corridor and he appreciated the reception of the Board.

Regarding Special Permit renewals 18-42, 18-43, and 18-44 for the sale and rental of new and used motor vehicles, for new and used motor vehicle general and body repair and for new and used motor vehicle light service:

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, this is an area zoned for this activity not surrounded by residential properties;

That adequate and appropriate facilities will be provided for the proper operation of the proposed use; the existing facility certainly meets current standards and the new and improved facility will be state of the art;

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; and

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

**VOTE for 18-42, 18-43, and 18-44**

Mr. Ray made a motion to approve, Mr. Gossels seconded the motion. Vote was unanimous, 5-0 to approve renewal of petitions 18-42, 43, 44 for a term of 10 years.

In regards of cases 18-45-request for a dimensional Variance to the front yard setback encroachment of 2.2 feet and 18-46 for a request for a Variance from the table of parking requirements in the bylaw, the Board finds that:

There are special conditions relating to the soil conditions, shape, or topography of the land or structures and especially affecting the land or structures, but not affecting generally the zoning district in which the land is located as this will be a re-development of an existing business in town;

There is a substantial hardship, financial or otherwise, if the provisions of the Ordinance or Bylaw were to be literally enforced; financially feasible development may not occur without granting the requested relief;

The applicant has demonstrated that there is no substantial detriment to the public good if the Variance is granted; and

The applicant has demonstrated that granting the Variance does not nullify or substantially derogate from the intent or purpose of the Ordinance or Bylaw.

Mr. Riepe asked the applicant to clarify the height of the proposed building.

Mr. Regin replied that the height will be 28.5 feet at the highest point, the present peak of the roof at the portico is approximately 33 feet high.

Chair Riordan asked if the structure will be ADA compliant?

Attorney Fox replied the structure itself will be ADA compliant, the Building Inspector asked for a letter from the applicant stating the public was not going to be invited upstairs, therefore an ADA elevator will not be needed and they would be complying with the regulations.

Mr. Crocker showed the location of the handicap parking area, access and ramp areas on the plans.

Regarding the parking requirements Variance Mr. Gossels stated that it is the constraints in the lot that are driving this request and it is a benefit to the town that the applicant is proposing this denser area for parking as oppose to creating more impervious areas given the constraints in the lot, giving the nature of the business and how the property is used, the vehicles in storage are not come and go parking spaces, they are properly engineer for their planned use.

Mr. Riordan stated that on Variance petition 18-46 it is the Board finding that this petition technically derogates from the bylaw standard but it is not because of the nature of the business and is not so substantial that it would warrant not granting the Variance, therefore this Variance is given with the condition and limitation that it is for the use of automotive sales and service industry only.

Mr. Ray made a motion, Ms. Rubenstein and Mr. Gossels seconded the motion. Vote was unanimous, 5-0 via roll call:

**VOTE for 18-45 and 18-46**

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  
Nancy Rubenstein voted to APPROVE THE VARIANCES  
Frank Riepe voted to APPROVE THE VARIANCES

VOTED: In favor: 5    Opposed: 0    MOTION CARRIED

**7. Approval of 2018 Annual Reports for the ZBA and ERB**

Mr. Gossels made a motion, Ms. Rubenstein seconded the motion. Vote was unanimous, 5-0 to approve annual reports for ZBA and ERB as amended.



### **8. Vote to Approve Warrant Articles: ZBA Revolving Fund, Permits**

Chair Riordan made a motion, Mr. Gossels seconded the motion. Vote was unanimous, 5-0 to approve ZBA Revolving Fund articles, requesting \$35,000 and amending the original article to expand the scope for the purposes of funding consultants and part-time employees, as well as costs of training members and staff on matters within the Board's jurisdiction, such as zoning law and comprehensive permits, and administering comprehensive permit applications.

### **9. Review and Vote on Rules and Regulations – Board of Appeals**

Mr. Ray made a motion, Mr. Gossels seconded the motion. Vote was unanimous, 5-0 to approved Rules and Regulations for the Board of Appeals.

### **10. Review and Vote on Supplemental Rules for Comprehensive Permits**

Mr. Riepe made a motion, Mr. Gossels seconded the motion. Vote was unanimous, 5-0 to approve the Supplemental Rules for Comprehensive Permits.

### **11. Review and Vote on Rules and Regulations – Earth Removal Board**

Mr. Patch made a motion, Mr. Gossels seconded the motion. Vote was unanimous, 5-0 to approve the Rules and Regulations of the Earth Removal Board.

### **12. Approval of Meeting Minutes for November 26, 2018 Meeting**

Mr. Ray made a motion, Mr. Riepe seconded the motion. Vote was unanimously, 5-0 to approve meeting minutes from November 26, 2018.

Mr. Ray made a motion, Mr. Gossels seconded the motion. Vote was unanimous, 5-0 to continue not releasing executive session minutes on the matter of Sudbury Station litigation.

### **13. Administrative Report**

The Attorneys General's office sent an approval to the Town on the amendments of the zoning bylaws to affect the Quarry North/Melone property.

### **14. Board Reorganization**

Chair Riordan expressed his willingness to continue serving the Board as their Chair, the Board members expressed they are grateful for his time and service to the Board and agreed that he should Chair the ZBA for another year. The Board members agreed that they would like to continue having Mr. Ray as Clerk of the ZBA. The Board also agreed to continue having Jonathan Patch as the Chair for the Earth Removal Board.

Mr. Ray made a motion, Ms. Rubenstein seconded the motion. Vote was unanimous 5-0 to adjourn the meeting at 9:57 PM.