



TOWN OF SUTTON


ZONING BOARD OF APPEALS

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ZONING BOARD OF APPEALS

MINUTES

October 1, 2015

Approved by: 
Date: 12/3/15

Zoning Board Members Present: Rick Deschenes, Chairman; Richard Haskins;
Brittanie Reinold, Clerk; Nicole Kuchinski; M. McGovern

Secretary: John Couture, Lynn Dahlin

All others present: Ray and Marie Pierce; Carolyn Shannon, Patrick Doherty, Brenda & Jim O'Brien;
Paul Dahlin; Ronnie and Alan Engstrand, Steven Dahlin; Leah Dahlin and Jason
Langlois

7:30pm: Public Hearing: Variances and Finding
15 W Sutton Road
Paul and Lynn Dahlin

(See attached)

7:45pm: Public Hearing Cont'd
182 Manchaug Road
T.J.J Development

Paul Hutnak from Andrews Survey represented his client and recapped the information supplied to the Board at their September meeting.

R. Haskins asked for verification on whether or not what he was seeing was a decrease in the existing footprint in which he was answered yes.

R. Haskins motioned, Nicole Kuchinski seconded and the vote unanimous to close the public hearing.

7:50pm: Public Hearing: Finding
68 Wilderness Drive
Brenda O'Brien

R. Deschenes read the hearing notice as it appeared in the Millbury Sutton Chronicle.

Bob Yerka from Civil Site Engineering represented the petitioner and stated the existing structure was a summer cottage with a bunkhouse. It was proposed to tear it down and rebuild. They had their approvals from the Board of Health as well as the Conservation Commission. They were proposing to replace the existing structure with a (2) bedroom home with deck and stairs. The new structure would meet all setback requirements of current zoning but they needed a finding from the Board because it was a non-conforming lot. The footprint of the new structure with deck would be approximately the same as the footprint of the existing cottage.

R. Deschenes questioned if the attached drawing represented what they hoped to build and it was answered yes.

M. McGovern questioned lot coverage and it was answered that they were at 5%.

All those present in favor or opposition: None

M. McGovern motioned, R. Haskins seconded and the vote unanimous to close the hearing.

7:55pm: Public Hearing: Variances

1 Galaxy Pass

Galaxy Sutton. LLC

R. Deschenes read the hearing notice as it appeared in the Millbury Sutton Chronicle.

Patrick Doherty represented Galaxy Sutton, LLC. He explained that they were looking for variances for buildings C & D to allow not only wall signs on the front of the buildings but also wall signs on the side of the buildings facing Route 146.

It was felt the hardship was the same as for the pylon signs in that it was a 40 acre site, entrances on two different streets and it was felt it was different than other commercial properties. It was also thought that to allow the additional signage as proposed would allow for successful tenants and improve economics for the town and improve the property. It was felt it was also in harmony with the district in general.

M. McGovern questioned the location of the pylon sign and whether or not these businesses would be located on that sign as well in trying to establish the repetitiveness of signs and how many there were going to be.

P. Doherty stated they would have the ability to be on those signs noting that they were smaller spaces. He noted that the tenants require that they be seen from the highway and in fact it was a condition of the Five Guys lease that they get a second building sign.

M. McGovern stated that he did not have a problem with the front signs as they were directional in nature but he was starting to see a Billboard effect and he himself would like to wait to see the property fully developed using the pylon signs and front building signs and then perhaps come in and ask for this so that it could actually be seen whether or not there is a need. Pat Doherty said it was a condition for both Starbucks and Five Guys leases and felt the scale of the signs that would be seen on the building were appropriate. The signs evenly placed, the siding and decorative cornices above and below would not be considered a billboard in anyway. The reason for the additional signage was because the building did not face the road which was done to make the development more attractive.

R. Haskins noted the he felt that the Board had approved variances for the petitioner and they were back 60 days later asking for more, getting further approvals through their convincing arguments and then coming back yet again asking for more. He noted the second anchor store that they hoped to bring in and their most likely wanting signs in every corner and flags. He just wanted to make the petitioner aware of what he was thinking. P. Doherty answered that he did not want to keep coming back but Five Guys and Starbucks would not talk to them without having that signage. To minimize returning they had asked for both buildings because they do not want to come back.

M. McGovern asked if the signs were a deal breaker for both establishments requesting an honest answer in which it was responded "correct" and added that there were no leases yet and they were still negotiating.

R. Deschenes noted that he had no problem with the corner side sign for the corner unit.

P. Doherty answered by saying that the more internally placed businesses had less visibility from the highway and would be very difficult to lease those spaces. M. McGovern noted that he could understand the 2 restaurants but found it difficult to justify a nail salon which was more of a planned event. B. Reinold agreed and added that just because she doesn't see Michael's at the Millbury Mall "doesn't mean I don't go to Michaels." Both M. McGovern and B. Reinold disagreed with P. Doherty's argument that Building signage needed to be seen from the street for National chains as it was not that way in Millbury and people still managed to successfully go there. M. McGovern also noted it was the same argument that was used for Unibank. P. Doherty reiterated that it was a unusual set up where the buildings were broken up in which M. McGovern agreed and reminded him of what he told the Board earlier that a lot of time went into the thought process for breaking up the parking lot with landscaping and he agreed it was nice but he was worried that when the project was done it would be excessive in signage and reiterated that people will know where these businesses are without the additional signage.

B. Reinold asked what will happen if they can't get the home improvement store. Would they break up the space into smaller buildings where they are going to want additional signage. It was agreed that there was a "plan B" to develop that area as well if Lowes did not come on board but again stated that the businesses along the streets are paying a bit more and expect visibility as they are in a prominent spot. He reiterated the fact that the site is unlike others in that there were no parking lots in front of the buildings because they turned the buildings. He also noted that the renderings are not what the Board was going to see once they planted trees and shrubs. It was attractive and they were trying their best to make it a good looking project.

R. Deschenes was surprised that they did not want the signs at the location closest to where the people come in which P. Doherty answered "they would want them on all four sides if they could have them".

R. Deschenes added that he would rather see the Five Guys and Starbucks signs on one end and the other signs on the other "side end" in which it was replied that it needed to service Rte 146.

M. McGovern stated that he did not want to look back and see excessive signage.

M. McGovern motioned, R. Haskins seconded and the vote unanimous to close the public hearing.

A motion was made and seconded to close the public hearing.

Board Business:

182 Manchaug Road - Decision

T.J.J Development

R. Haskins motioned, N. Kuchinski seconded to approve the variances to allow buildable lot coverage of 27.1% with 15.7% deck coverage, a (29)ft. front line setback, an (18)ft. rear line setback, an (8)ft. side setback and a (10)ft. right side setback as all are shown on the plan submitted by ASE dated August 4, 2015. R. Haskins noted that all of the setbacks proposed as well as lot coverage would be less than what currently existed.

Vote 4-0 in Favor

1 Abstaining – Michael McGovern

Minutes:

M. McGovern motioned, R. Haskins seconded and the vote unanimous to approve the August Minutes as submitted.

N. Kuchinski motioned, M. McGovern seconded and the vote unanimous to approve the September Minutes as submitted.

68 Wilderness Drive - Decision

Brenda O'Brien

Haskins motioned, M. McGovern seconded and the vote unanimous to find that the tear down and reconstruction of the new residence as shown on a plan drawn by Civil Site Engineering dated August 1, 2015 would be no more detrimental than the existing as all setbacks will be met including lot coverage.

1 Galaxy Drive – Decision

Michael C. O'Brien

R. Haskins motioned and M. McGovern seconded to approve the variances as requested to allow second wall mounted tenant signs, 1 per tenant, located on the Worcester Providence Turnpike sides of Buildings C (4 signs) & D (3 signs) Each sign to be no more than (20) sqft.

Condition: Cannot exceed one sign per tenant.

Discussion:

R. Haskins wanted to make it clear that there would be no additional free standing signs and noted that he was very aware of Mr. Doherty's reappearance on a pretty regular basis but was also aware that they can't plan on signage for buildings that are not built or tenants they did not have so he understood that. He did not have an issue with the signs they designed but was annoyed that they execute a lease based on signage that is not approved. He could overlook that and felt that these signs were ok for what they are asking, facing Rte 146 and not someone's backyard, and therefore did not consider it as "over doing it."

M. McGovern noted that Mr. Doherty assured them that he would not be asking for any more signage facing the road and that the only other signage was within the complex and on the face of the buildings. He noted that he was glad that Mr. Doherty cleared up what their intentions were moving forward.

B. Reinold felt that the requested signage should be located uniformly on the corner of the buildings and for the Starbucks and Five Guys restaurants. M. McGovern responded that it was his thought that they were trying to maximize usage. B. Reinold noted that the applicant stated that they were doing all of this for the aesthetics of the project but she felt too many signs fed into the aesthetics and the more signs the less aesthetic it looks.

M. McGovern noted that he wanted to see the businesses do well as the worse thing a town could have is empty buildings. He noted that Boston Road was the area that it was felt was scenic and faded into residential and the area discussed tonight faced the highway which was an area under development and growing by the minute.

N. Kuchinski stated she was torn on the issue because there was "sort of a delicate balance" between too much signage and not being welcoming to business. Regarding the lease issue, she noted that it was very common to throw things in leases that have not been granted yet and make them contingent on permitting. She stated that if all (4) and (3) signs respectively on the buildings are granted now, it would prevent tenants coming back in the future adding that it was not certain that all the tenants would take advantage of the signage in question. She was comfortable with the application as it faced Route 146 noting that all the signage from across the street faces the highway as well with the only exception being that in this case there was no parking between.

Vote: (4) - In favor
(1) - Opposed

8:25pm - Meeting adjourned

Respectfully submitted,

Lynn Dahlin
BOA Secretary

10-1-2015

15 W. Sutton Road: Dahlin

R. Deschenes opened the public hearing at 7:30 pm for the petitioner Lynn and Paul Dahlin for the property located at 15 west Sutton Rd(Map 8 Parcel 41) requesting a Finding under section 6 of MGL 40A and Variances from §III.B3 Table II and III of the Sutton Zoning Bylaws

Attorney Damien Berthiaume presented the Dahlin's petition to the board requesting a finding under MGL.ch.40A section 6 and relief in the form of two variances. He stated that they were here previously and had been remanded back to the Zoning Board by the court for additional findings. He then showed a plan of the proposed lot development. The area in green represented the existing house location and the area in red showed the proposed new construction. The area in blue represented the building envelope if the construction met current zoning setbacks. He then stated that the removal of the existing structure and replacement of the proposed would not be detrimental but an improvement to the neighborhood. Previously the board described the structure as dilapidated in its last decision. The structure is one of the last summer camps in the area and the majority of homes in the area were more modern and larger structures. This existing structure is a much smaller house on an existing nonconforming lot that does not conform to current zoning requirements. The proposal would be to remove the existing and replace it with a more modern house. He then showed a copy of assessors map #8 showing that parcel #41 had about 6000 sqft and 50 ft. of frontage. This was consistent with most of the parcels in the area and added that most of the structures in the area were larger than the Dahlin's house. It was their position that construction of a larger home would be consistent with the neighborhood structures in size. They would be up grading the septic to a title 5 compliant system that would also be a benefit to the lake community. The new structure would be completely new and code compliant. This would be a benefit to the town and not as detrimental to the area as the existing. This would be in compliance with the finding in 40A requirement.

The house as constructed as it currently sits is in violation of front and side setback requirements. The proposed would reduce the violation slightly 3.5ft to 5ft and moving the front setback back about 1 ft to about 30ft this would be consistent with adjoining properties in the area. They will be requesting variances on the setback facing West Sutton Road and southerly on the side line. The reason for the request is that they will be increasing the nonconformity in those areas. It was his position that as long as an existing nonconformity relief was not required under existing case law. They would be requesting dimensional variances in

the two areas where there are not currently nonconformities. The request for variances would be based on the hardship that the current lot configuration would not allow compliance. The strictest enforcement of the bylaw would impose a hardship as most of the other adjoining structures have the same setback issues. Applying the setback requirements to the Dahlin's and not to adjoining properties would be a unique hardship to Dahlin's alone. The Board has previously granted at least 10 variances for similar issues.

The open space on the road side is substantially larger than area properties and consistent with topography issues in the area. The Dahlin's have a unique situation and the strict enforcement of the bylaws would render the lot not buildable. He then presented photos of adjoining properties with consistent violations and the Dahlin's proposal would not be greater than any of those. He then requested that the board grant the finding and the two variances. He presented the board with proposed findings and decisions if the board wished to use in the writing of the approval.

M. McGovern questioned if the plan was the same as previously submitted. D. Berthiaume answered yes and that the reason they were here was because of the courts remand order. Haskins questioned new variances?

Berthiaume said they are seeking two variances in addition to the finding. The current case law requires relief for any new encroachments in the setbacks that were not previously there.

Attorney Finkelstien spoke on behalf of Miss Jernberg's trust (13.5 west Sutton road). He explained as a preliminary matter the reason for being here was the remand order from the court for additional findings because of the inadequacies in the finding and what specific findings were granted. He explained that there were increases in the south and front setbacks of which variances are requested. There are also increases in the lot coverage where a variance was not requested. He disagreed with Berthiaume that there were no other additional increases. The expansion of the garage along the lot line is an increase in the nonconformity and will require two additional variances. He stated that the bylaws also require an additional variance on Page 7 article 1, section c. 2. d that a conforming accessory use (the existing does not have a garage) conforming accessory use (which is a garage) in a nonconforming structure may be extended to maximum of 40% of the floor area of the existing structure. If the existing structure is 672 ft. the addition of an "accessory" garage can only be increased 268 sqft. If larger, it will require a variance. It was felt that there were three additional variances required. He felt there are additional requirements not being requested. He then requested that the Building Commissioner make an interpretation. The Building Commissioner read the section of the bylaw and disagreed with Attorney Finckelstiens position. It was noted that Miss Jernberg had lived there 30 years and has no objection to the development of the lot. It is the type and scale of the development and it has to meet the size of the lot. Something larger than 672 sqft would be considered reasonable as there would be

no way to meet the current bylaws. Construction as proposed would be tripling the size of existing building and lot coverage to 1980 sqft . This is not a hearing to compare the size of existing structures but to see if it detrimental to the neighbors and it is to Miss Jernberg. It will block light and affect the quality of her life on her lot. He considers tearing down a structure and rebuilding it not to be reconstruction or replacement. The bylaw has a list of provisions to consider in issuing a finding and you are not using them. Specifically the one regarding the garage. The existing structure doesn't even have a garage so this is a different building entirely. The court has requested that specificity on how many nonconformities are there which ones are you applying 40A to and which ones you requesting variances for. He does not agree with the hardship he feels s a hardship has to be applied to the land. The relief should be minimized and what is proposed is massive.

Attorney Berthiaume requested to clarify the application was clear and was correct. They are seeking a 40A finding and two variances and are consistent with the Bylaws and 40A and current case law. He has a different interpretation of the law. Case law does not require any additional variances as was stated. As for mischaracterizing the statute he read 40A and stated clearly he hadn't. As for the argument from the bylaw he agreed with the Building Inspector that the specific section had to do with nonconforming uses and this was a conforming use. The requested relief is for a nonconforming structure not a nonconforming use.

Prepared By

John Couture
Building Commissioner
Town of Sutton