

BELLINGHAM PLANNING BOARD
TOWN HALL ANNEX
BELLINGHAM, MASSACHUSETTS

Special meeting of September 15, 1980

Members Present: John P. Murray, Chairman
James F. Brennan, Jr.
Carl R. Rosenlund
Sergio Rotatori

PUBLIC HEARING - REZONING 15 ACRES FROM B-2 TO RESIDENTIAL, PULASKI BLVD.

Chairman Murray opened the public hearing to consider rezoning approximately 15 acres of B-2 district to residential district located on the easterly side of Pulaski Blvd., at 8:35 P.M.

Finance Committee was also holding their hearing at the same time and would be allowed questions.

Secretary read the notice as it appeared in the papers. Approximately 29 people in attendance.

Roland Lavallee, Pulaski Blvd, petitioner spoke in favor of the article and showed a plan of the proposed rezoning. Area is approximately 15 acres in size currently zoned B-2. He pointed out that the B-2 area was in the midst of residents with the exceptions of the drive-in theatre and the proposed ice cream building which now only has a foundation. In a B-2 district almost anything is allowed. The neighborhood is all homes, there is a school nearby and is only 1/4 mile from Crooks Corner the site of many accidents. The traffic in the area does not warrant this type of business. There are no large businesses presently located in the zone. The businesses that are there would still have the same rights that they now have, just as though they were in full operation. He did not feel that the area was suited for B-2 type of operation based on traffic and safety features. One year ago this same rezoning was presented to the Planning Board and it was recommended at the town meeting by the Board. He felt the area should be rezoned back to residential.

Rosenlund questioned Lavallee how much land does the ice cream stand, the proposed skating rink and the drive-in theatre take of the B-2 area. Lavallee stated he was not sure. The largest portion is where the old track used to be. Gerald Marchand told the Board that the ice cream stand had 1.5 acres.

Lavallee pointed out that the drive-in up until last year was in a non conforming use. They were proposing to return it to residential. This would not take away any of the current uses.

Murray questioned Lavallee if his article was just like the one proposed originally when it was residential and then changed to B-2. Lavallee stated the same land was involved. Murray questioned why none of the proponents of the residential zoning was at the hearing tonight.

Billiejean Lavallee stated that they had previous engagements.

Henri Masson, Finance Committee, questioned with the drive-in, ice cream stand would there still be enough land for the roller skating rink. Marchand stated that yes, they still had a valid foundation permit.

Nick Winters, Finance Committee, questioned if the rezoning was approved and the area were to go back to residential, what would happen to the drive-in if it were to close down. Rosenlund stated it could change to

another non conforming use that is no greater than what currently exists with a Special Permit from the Zoning Board of Appeals. This cannot be done without a Special Permit.

Murray asked for anyone else who was in favor of the rezoning to speak. None spoke up but a group of approximately twelve people stated they were in favor by a voice account.

Murray asked for those against the rezoning to speak.

Maurice Morin, ownere of Fore Court Tennis Club, spoke stating that he found it very hard to believe that people can come in here and try to rezone someone else's land and that they live down the street and the land in question has no bearing on them. The businesses located on the land have mortgages. The banks have given these mortgages based on the land being B-2 and to have other people come before the Board to rezone it to residential for their own benefit, I find it hard to believe.

Gerald Marchand stated that about one year ago when the land was rezoned from residential to B-2, he did not see the Lavallee's concerned. They were just as glad to see it going in someone else's backyard. They do have a foundation permit on the land where they have been approved for a roller skating rink. He asked the Board not to vote favorable for the rezoning.

Bruce Lord, Finance Committee, questioned Marchand since he has a foundation permit was he still going to build the roller skating rink. Marchand stated that his permit is good for two years.

John Burke, Finance Committee, stated if this was rezoned to residential it would not effect the drive-in, & the ice cream mortgages.

Morin stated if this rezoning were to happen to this land and the businesses currently there were to go out of business, they would have to go before the ZBA for a Special Permit for operation of any kind of business. There have been many buildings that have changed hands in town such as the Cottage Club, the old Almacs store, the Outdoor Motors building. If these areas had been rezoned to residential they could not have changed hands without a Special Permit. The same thing will happen to the businesses in existance at this location if it is rezoned. They have to go before the ZBA for a permit.

Marchand stated that the banks have second thoughts before financing property like that.

Bob Hackett, Finance Committee, stated that brooks, swamps have been refered to and questioned if land use in relation to the swamp ever come into action on this property.

Murray stated that the land is not in the flood plain. Only a small portion of the land located in the back is swamp. Fernand Dalpe stated it is located 400 to 500 feet in back of the street.

Brennan questioned Marchand if he had to get an enviromental report on his land. Marchand answered no.

Marchand stated that the land is now commercial. They would be dumpting no refuse on the land as could happen if the land were industrial. Commercial use shouldn't make any difference on the land.

Lavallee stated that having to get a special permit and worrying about the ZBA should not be a concern. He felt that a permit is only needed if the property changed use and not on the sale of the business. He did not feel that banks get very excited about non-conforming uses. If it is a business use it is going to stay a business use. Their question is if a business can survive in that location. Banks are aware of wet lands. We are not talking about specific businesses, we are talking about businesses located there. He questioned what happens if these businesses do not survive. What would they get instead. If the land is in a B-2 district anything can come in and the town would have no recourse. He pointed out the street width. The Town is going to widen Center Street. It is going to be twice the size of Pulaski Blvd. Traffic is already heavy right now. We have to consider these things, safety and traffic. We are trying now to do something about it. We are now aware of the situation. It doesn't take an Industrial Park to create a hazard to the brook,

On a Brennan-Rosenlund motion the public hearing was adjourned unanimously.
Public hearing on rezoning from B-1 to residential was opened.
On a Rosenlund-Brennan motion it was unanimously voted to continue the public hearing at the end of the public hearing on the rezoning from B-2 to residential.

Billiejean Lavallee stated that Morin is seeking a zoning amendment for his own personal use. Marchand and Dalpe had their land zoned to B-2 to suit the needs of their roller skating rink. The fact is that a roller skating rink does not belong on Pulaski Blvd at all. She pointed out that they have an article on the special town meeting of Sept. 17th for speical consideration for their roller skating rink. We were supposed to have been contacted by Mr. Burke and we had never been contacted. She believed that the mortgage on the drive-in has been paid.

Brennan questioned Lavallee on the exact location of the drive-in the ice cream stand the the property of the roller rink. Lavallee pointed out the various locations on a map showing assessors lots. Brennan questioned if the frontage of these properties didn't take up to 80 to 90% of the B-2 zone. Lavallee stated he felt they did but only in the vicinity of 75%.
Marchand stated he felt there was only about 50' otherthan for the businesses already there. There was a buffer strip between the drive-in and the residential area. Lavallee stated he felt there was much more land involved since there is a brook and the curve of the road.

Toni Martin, Finance Committee, questioned why the Lavallee's were not at the first town meeting on the original rezoning to B-2. She read it in the papers and showed up at the town meeting. Rosenlund questioned Mrs. Martin if she was a resident of the area and she replied that she was not.

Fern Dalpe stated that to his knowledge, the B-2 zoning only goes about 50 to 75' beyond the property line of the ice cream property. He pointed out that they had tried to rezone it back to residential and it failed at the town meeting. He suggested that they leave it to rest. Lavallee disputed Dalpe's statements saying there is a lot more land involved than their property and the other businesses,

Hackett questioned Marchand if his land was to be rezoned to residential if he knew for a fact that you would suffer financial repercussions. Marchand stated that he did have a mortgage on the land, but did not feel that they would sign it if the land was rezoned to residential. The bank involved has told him that they will not finance it if it is rezoned. When questioned more closely by Hackett on it, Marchand stated that they did have a bank official say that they will have more trouble in getting a mortgage on the building if it is rezoned. They are looking at the next business if the skating rink were to close down.

Public hearing was closed at 9:15 P.M. on a Brennan, Rosenlund motion unanimously.

On a Brennan-Rosenlund motion it was unanimously voted to take the hearing under consideration.

A two minute recess was unanimously voted on a Brennan-Rotatori motion.

PUBLIC HEARING REZONING APPROX. 2.8 ACRES FROM B-1 to RESIDENTIAL

Secretary read the notice of the hearing as it appeared in the papers. Approximately 30 people in attendance.

Roland Lavallee showed a map outlining the 2.5 acres in question. He pointed out that it was a congested area and that the commercial area was established in 1960 and was changed to B-1 in 1975. At that time all business land was changed to either B-1 or B-2 zone. He was requesting the land be changed back to residential. There were three residents in the area and the businesses already there would be still be business. They would only be non-conforming. The other side of the street is all residential, in the back are homes, the whole area is residential. His neighborhood has seen proposals in the last three months that are frightening. It is not their intent to drive out businesses that are already there. The change is only to protect the residents. They were trying to limit what can go on there. They could do most things that are allowed in a business area, only on a non conforming basis. With the right set of conditions, he would be in favor of business, he would not be in opposition. He pointed out the very busy intersection close by. Traffic flow was already heavy on Pulaski Blvd. Safety has to be taken into consideration.

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People around the area have to be given consideration. The by-laws have protected us. By proposing to change the area to residential is to limit what can go on there. They are not proposing to put anyone out of business. They could change their use it could remain a tennis club, it could become a medical office, business offices, religious and municipal use, manufacturing for one site sales, whole sale establishments, etc. It was never their intent to put anyone out of business. They could even do more things than they can now, only they would need a special permit. With the right set of conditions he would not be opposed to business. A business that is located this close to a busy intersection must be scrutinized very closely. Under the by-law as it stands, too much flexibility is allowed. The area was zoned to business in 1960, and he very much doubted that anyone at that time had the insight to see what would occur in this area as far as traffic flow generation. Now before it is too late, before the other residents begin to sell their homes, before more businesses create further problems, he felt it was time to halt it. He wanted to keep business to the point where it would not harm the rest of the neighborhood, and not cost the town money in terms of construction of more roadway and other things. He pointed out the accidents that have occurred the last three months at the intersection. He pointed out the proposed area for more paved area on the side of the club closest to the intersection. He hoped the Board would consider this during the site plan review. Heavy traffic generation in this area would only result in blockage at this intersection, and also in the side streets. The side streets in most cases are only 20' wide with no sidewalks. They are in heavy residential area. All of this leads to 126. These are the main reasons why they want to rezone the land to residential. The businesses in the corner will remain the way they are.

Murray stated that there were three residences existing in the zone now and questioned what businesses would be changed. The area in question was not clear to him. Lavalley showed the area on the map. The vacant area of Fore Court, the old Grenier house, Fore Court Tennis Club, the Arpin resident, with a home occupation - Travel Agency- located in the home, and the Trudel residence.

Murray questioned Lavalley on what businesses he felt could be allowed if it were to be rezoned to residence. The Tennis Court would be allowed to operate as it now stands. Murray pointed out that business or professional offices, under the use regulation schedule, states no, not allowed in a residential area. Lavalley felt they could change in use as long as they do not expand their use. It has to be to a lesser use. Murray questioned Zoning Board members Brennan and Rosenlund that if the Tennis Club were to be closed to business for 6-12 months would they need a special permit. Answer was yes. Any change in use would have to come before the Zoning Board for a hearing.

Tony Martin, Finance Committee, questioned the difference between B-1 and B-2. Murray answered that B-1 was basically for small businesses and B-2 for heavy businesses.

Bob Hackett, Finance Committee, questioned Zoning Board Members if in past practice was there any trend in terms of non-conforming use which would make it almost impossible to get a Special Permit. Rosenlund indicated if someone had a non-conforming use and came before the Zoning Board to change it to a similar type of business or something to a lesser degree, yes, speaking for himself only, he

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would be inclined to grant the permit. Each case would have to be considered on its own merit. For that, it would be very difficult to give a broad yes. The whole idea of non-conforming is to make the use to a lesser and lesser degree, until the end result is to make it conform to the area, in this case to a resident. Brennan agreed with Rosenlund.

Nick Winters, Finance Committee, questioned the Planning Board if they were aware of anything being done to study Crooks Corner. Money had been appropriated at the town meeting for this purpose. Board indicated they were unaware of any study being started as of now. Murray asked for comments from those opposed.

Maurice Morin, owner of Fore Court, spoke. Roland Lavallee is very frightening if this was not rezoned to residential. Speaking as a businessman, he was frightened just to hear this being discussed. The land has been zoned business for 20 years. There are two restaurants, two travel agencies, a school municipal building, and a jewelry assembly plant, located within a stone's throw from this land to be rezoned. He built his place eight years ago, spent hundred's of thousands of dollars on it, put up a 28,000 sq. ft. building, and now they are saying we're in the wrong zone. He is looking into why they have a building that is B-2 and they were not rezoned B-2 four years ago when the whole town was divided up into B-1 and B-2 from businesses. They paid taxes as a business, bought the land as business land, paid for it as such, as a business man, and speaking for every other business man in town, to rezone it back would be a tremendous financial burden on Fore Court. Right now Rosenlund's board might be very receptive. Three years from now, it might be other people who would not be like them. It is easy to say now they you could get a special permit, but it just isn't so. Lavallee has been printing flyers, saying they could build small specialities shops, warehouse, or an office building. He would be only too happy to have them come in. Where are they. They also talk about Crooks Corner, this was a top priority seventeen years ago. It still has not been studied. Are businesses to be held accountable for this also. The flyer also stated that there would be 10,000 customers. He did not feel that there was a skating rink in the states that did that much business. He was going to be holding this group accountable for their flyers. He did not feel that it was right for them to rezone someone else's land. There are three pieces of land to be rezoned that belong to Fore Court. Both Arpin and Trudel both built their homes when it was zoned commercial. Lavallee moved into his home when the land in question was commercial.

Nick Winters questioned Morin as to how much taxes he paid, and was told \$7,000/year.

Bob Hackett questioned if the Tennis Club were to be rezoned to residential, it ultimately would go to a non-conforming use and finally to resident use. Would it be a reasonable thing to assume that the building would be torn down and sold as a house lot. Would this be a profitable option. Morin stated that he has 280' of frontage on Pulaski Blvd and this would not at all be a viable option for him. He has invested many thousands of dollars in his business.

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Lavallee questioned Marchand if a traffic study has been done to see what the increase in traffic would be. It has not been done so no one knows just how much traffic would be increased.

Attn. Warren Heller, attorney for the Lavallee's spoke.

Morin is paying \$7 000 in taxes, did he feel that by rezoning to residential that his taxes would be reduced. Morin stated that he did not feel that taxes was the issue, As a businessman he is looking at the land as an investment Morin felt if it were rezoned to residential it would probably bring in less taxes. He has two parcels without any buildings on them, and he is paying as commercial land. Heller questioned Morin if he was then saying that the other home owners in the B-1 area were paying the commercial rate. Morin did not know the answer. He would suspect they were not paying the commercial rate. If you restrict business you are hurting business. Heller felt that if you were to rezone to residential you would in no way effect the tax rate.

As to the question of being able to get a special permit at a future date for the tennis building. The regulations are there, if the use is to a lesser degree they will get the permit.

Across the street is residential, behind the tennis club is residential, they are only trying to protect themselves from any further enroachment of businesses. He did not feel that you would be lessening the tax rate by changing the zone to residential. Businesses will remain as such and homes will remain as such.

Bob Hackett questioned when the land was zoned to commercial. Morin stated back in 1960 when the whole town was zoned on the master plan. This was from the Lenox to Trudel land.

Lavallee stated the original zoning was prepared by only one man. The other side was already zoned for residents.

Jack Burke pointed out the first parcel at the hearing at 8:30 was zoned for 20 years for residential, and it was recently rezoned to B-2.

John Drew questioned how come there was a shoe store and a gas station. Lavallee stated that the repair shop was a non-conforming use. It was there before zoning. Drew also stated that there was a farm stand and a beauty shop also there. Lavallee felt the farm stand was in an agricultural zone.

On a Rosenlund-Rotatori motion it was unanimously voted to close the public hearing at 10:10 P.M.

On a Murray-Rosenlund motion it was unanimously voted to hold a five minute recess.