

Bellingham Planning Board
Town Hall Annex
Bellingham, Ma.

Regular Meeting - June 24, 1982

Members Present: Carl Rosenlund, Chairman
Sergio Rotatori, Vice Chairman, Clerk
Bert Boiteau
John P. Murray

The meeting was called to order at 7:35 P.M. by Chairman Rosenlund.

On a Sergio Rotatori/John Murray motion the Board voted to pay the bills of: \$900.00 to Philip B. Herr & Associates, consultant; \$29.75 to Milford Daily News for public hearing legal notices on application of Joseph A. Johnson for special permit and \$32.34 to Woonsocket Call for the same notices; \$17.22 reimbursement to Martha Russo for postage for mailing notices to town and land abutters and plan copy to Mr. Herr on the Joseph Johnson hearing, and notices on the Beech St. Subdivision hearing, and tapes; \$229.97 to Daniels Tobacco Co. (Save Rite) for new typewriter; Salary payments for the balance of the year to the Chairman, Carl Rosenlund \$75.00; Vice Chairman Sergio Rotatori \$50.00; Joan M. King \$50.00; John P. Murray \$50.00; Bert Boiteau \$33.00 for March, April, May, June; Gerald Brisson \$17.00 for Jan., Feb.; secretary's salary of \$76.74.

Mr. Rosenlund asked the secretary if payment had been received for the cost of advertising for the public hearing. Payment had not yet been received.

The Board reviewed the mail and other pending items for discussion. Mr. Rosenlund requested that the information that came from the Army Corp of Engineers on the flood plans be given to the consultant, Mr. Herr. Also received is a big box with the flood plan maps which the secretary has in the back of her car. Discussion on pending items to be held at a later meeting.

PUBLIC HEARING - SPECIAL PERMIT, JOSEPH A. JOHNSON, 28 STANDISH RD.

Chairman Rosenlund opened the public hearing at 8:00 P.M. on the application of Joseph A. Johnson for a special permit. Secretary read the notice as it appeared in the papers. Mr. Rosenlund pointed out the one correction to the notice is 2400 which should read 2600 f instead of 2400, which has to do with another section regarding 10 acres and 7,000 sq. ft. It is a typographical error.

Mr. Rosenlund informed the applicant that it requires the unanimous vote of the four members present for an affirmative decision, unlike with five members there could be one negative vote. And if the applicant so desires Mr. Rosenlund would allow the request for a special permit to be continued to a later date.

The applicant asks that the Board proceed with the four members present. Chairman Rosenlund introduces himself and the other members of the Board, and requests that anyone who wishes to speak on behalf of the applicant, for the applicant, or in opposition, to direct all questions or remarks to the chair.

Mr. Rosenlund stated that for the information of the Board and those present the request before the Board for a special permit under section 2400 and 2600 item f, the applicant has satisfied the Board insofar as procedure is concerned. Mr. Rosenlund read the decision of the Zoning Board of Appeals rendered June 17, 1982.

passing the motion

Mr. Rosenlund said that for the record there is also a copy of the transcript of the minutes of the meeting as they apply to the hearing which he attended and which Mrs. King attended, and a copy of the original variance which does not apply at this point, but is there for reference.

Mr. Rosenlund stated that the Board having received this decision of the Zoning Board of Appeals, it is his opinion that this proceeding go forward, that the requirements have been met to seek a special permit. He also asked that section 1530 page 6 be addressed.

In opening statement, Mr. Johnson said he would turn his presentation over to his engineer, Mr. Lavallee. Mr. Lavallee made the presentation to the Board on behalf of Mr. Johnson. He began by referring to Mr. Rosenlund's suggestion that section 1530 be addressed and stated "that under section 4424 for this particular use it says that in deciding on a special permit for multi-family townhouse dwellings the following detailed criteria shall be used rather than those of section 1530. And that, in fact, is what we have prepared the report based on". Mr. Lavallee said the purpose of their coming before the Board is for, in his opinion, "clarification of an unusual circumstance in that one year ago Mr. Johnson was granted a variance to construct exactly what we are applying for tonight. The situation arises that in obtaining the variance on June 22, and the variance application heard in May, a by-law was passed on May 27, 1981 at Town Meeting which was enacted which is the subject of tonight's special permit application. For one year everything proceeds; Mr. Johnson receives building permits, three occupancy permits (one for each unit). Everything seems to be in accordance as it should be; however, the Title Attorneys points out that there could be a problem and the simplest way to eliminate the potential problem is to go back and follow the procedures outlined in the new by-law under multi-family townhouse laws. And, basically, what that comes out to is that Mr. Johnson receives special permit. One thing that I would like to point out at the beginning is that at no time has any of the conditions of the variance been violated. Everything has been done exactly in accordance with what Mr. Johnson had proposed to do and what was approved. The proposal before you tonight is exactly the same in terms of units and structures, etc., that was proposed to the Zoning Board of Appeals. As Mr. Rosenlund pointed out the first step in this procedure before we could get to this hearing was to get a variance in the section of the by-law considering the area. We were successful in obtaining that variance last Thursday evening for the conditions specified."

Mr. Lavallee stated that what has been done there is that under a variance, and apparently, something that could occur in terms of the future is a possible title problem. He stressed that the concern is for "possible title problem". That the attorneys are advising that the way to clarify this is to go through this procedure. Mr. Lavallee said that two of the structures are already built; all of the site preparation work has been done. Some basic grading is already complete and he believes the other two foundations are in the ground, so he considers this project to be well under way to being complete.

Mr. Lavallee said he thinks that Mr. Rosenlund pointed out that they have provided the information required by the by-laws in terms of the site plan and we have prepared a report based on section 4424 which replaces 1530 in this instance, and considers the municipal cost in

revenues, effective range of available housing, service to identify housing needs, service to current Bellingham residence, support for local business activity and jobs, impact on the natural environment especially relating to ground water and surface water quality and level, impacts on traffic safety and congestion, adequacy of water service and the need for school facilities. Referring to the copies of the report submitted to the Board, Mr. Lavallee said it encompasses everything. He spoke to the Board at length on each of the above considerations. Referring to the ground water he said that the only possible detriment to the ground water would be infiltration from the septic systems and Title V, which is the State sanitary code, and the local by-laws regarding sewerage disposal have been adhered to on the units constructed and will also be adhered to in the next two units. The permits from the Board of Health have already been issued.

Mr. Lavallee stated that he believes they have complied with all of the requests of the by-law and in submitting the information pointed out that this proposal is a far better solution on the site than anything else that could be built there.

Mr. Rosenlund asked consultant Phil Herr, who received a copy of this report, if there is anything in the report that he questions. Mr. Herr, referring to his letter of June 24, 1982, reviewed the application and noted the submitted materials complete except that they do not indicate the location of major trees, which he felt was not serious. Parking areas on lots 7, 8, and 9 are less than 20 feet from the street right-of-way, in violation of Section 3330a and parking areas on lots 7 and 8 appear to require backing onto a public way, in violation of Section 3330c.

To comment about the analysis which was discussed Mr. Herr said he has some serious reservations about some of the analysis they make although agrees with their conclusions. And the reason for raising the concern is that he doesn't want that report to stand as a precedent to other people doing similar things. It is not adequate in a number of respects but he does agree with the conclusions that there are more things and more important ways in which this development is better than single family.

Mr. Rosenlund asked if anyone or any of the Board members has any questions. Referring to the areas of parking discussed, the areas as indicated have not been built on yet and would have to comply.

Mr. Johnson stated, "I suspect that the reason you are talking about section 3330 in relationship to the parking is because you have a plan that was submitted as a preliminary one really doesn't reflect what actually happened. We don't have a parking space for more than two cars.

Mr. Herr said, "that is not what the plan shows".

Mr. Johnson said, "I understand, what happened was that Mr. Lavallee drew the plan and we accepted the plan and we realized after the plan was drawn that there were, at least in my opinion, I did not believe, aesthetically speaking, a big parking lot in front of the building was what I wanted or what the Town wanted. I believed that every one of the units should have its own individual two car parking space, and what in fact has happened is that when the two units that are built that is what exists. Every unit has its own driveway, and that is what will continue to exist. Unfortunately, when the plan came for submittal he and I both knew at the time, but there was no opportunity to change it and so it got submitted that way. I had anticipated, and

I am sure Mr. Lavallee had anticipated, that this was going to be one of the things that would have to be rectified. I think that the single driveways for each unit meeting the residential requirement is what the Town should have, or what the people who live there should have.

Mr. Herr asked Chairman Rosenlund if he has a drawing that shows what exists. Mr. Rosenlund said no and Mr. Boiteau said he had not seen any. Mr. Herr said that he feels that before the Board can approve something they have got to have something that complies with some documentation. Confirming that there is a site plan in the report, Mr. Herr pointed out that the site plan shows parking apparently different from what exists or is proposed. Talking about approving a special permit, Mr. Herr said, "when you act on the special permit I would presume that you are going to do that referencing in a plan, saying that you approve it with, among other conditions, that it get developed in accordance with this plan". Mr. Rosenlund said, "in accordance with the requirements of the by-laws. Mr. Herr said, "no, sir, more than that, 'in accordance with a plan', there is no reason why they shouldn't in fact be able to show you, particularly in this case, exactly what it is that they propose to do. I would think that they would want it for their protection and I would think that you would want it for your protection that there is a document that shows in fact what they are going to build. Not just a promise that they will be consistent with the by-laws but that they will both be consistent with the by-law and also will be consistent with the by-law to building it just this way."

Referring to the parking requirements, Mr. Herr noted that the applicant had expressed how he would like to do it, with a series of two car driveways, and that may well be the best possible way but that means more openings onto the road than would be true with a large parking area. Mr. Herr feels it is a trade-off and does question whether that is really the best way and would like to see it and thinks the Board would like to see it.

Mr. Johnson stated to Mr. Herr that he could see it because it is there. The driveways are done on the two units that are built.

Mr. Herr expressed surprise and said had he been here earlier he would have gone down to look at it.

Mr. Johnson said they were all set but it is not a question of a parking problem.

Mr. Rosenlund said he did go to look at it.

Mr. Murray said he would like to question the applicant.

Mr. Rosenlund asked those present if there were any further questions on this discussion. There were none.

Mr. Rosenlund asked the building inspector, Mr. LaPlante and the Town Counsel Mr. Ambler, both in attendance, for their comments if they would address the Board.

Mr. Ambler had no comments at this time, but stated that if Mr. Rosenlund had any questions he would be happy to answer them. Mr. Rosenlund had no questions.

Mr. LaPlante said he goes along with Mr. Herr's comments about having a site plan approved by the Planning Board. He doesn't foresee any problems but respects the opinion of Mr. Herr concerning the parking situation.

Mr. Rotatoridirected a question to Mr. Johnson about one foundation being below road level. Mr. Johnson did not understand the question. Referring to the by-laws, there was a question as to whether or not a foundation can be below road level. This to be checked on.

Mr. Rotatori states, "the Planning Board came out with a multi-family with 10 acres of land, 7,000 sq. ft. per bedroom. I would like to know, how can the Zoning Board grant the variance on this?". Referring particularly to the 3.5 acres when we require 10 acres, Mr. Rotatori asked what right did the Zoning Board have issue the variance.

Mr. Brennan, member of the Zoning Board in attendance, replied, "I am in a very awkward situation because the original variance was a 4-1 decision and I was the negative vote. The other members of the board felt that sufficient hardship had been proven and they felt that Mr. Johnson's application met the requirements of the statute. I can't speak for that. As far as the variance granted last week, I voted for the variance--I can't see beating a dead horse.

Mr. Rosenlund said that the question asked was, by what authority did the Zoning Board of Appeals hear and act on a request to vary a by-law requiring 10 acres.

Mr. Brennan replied, "by the authority as the members saw it under Chapter 48".

Mr. Lavallee said, "I think the issue that perhaps is coming up here is that the Planning Board proposed a by-law but what they proposed was a zoning by-law, not a subdivision regulation and as such, as a zoning by-law, the Zoning Board of Appeals can vary that by-law. A large number of these are proposed by the Planning Board and if relief from something in here must be granted, in most instances it is the Zoning Board of Appeals that grants the variance. As a matter of fact there are only certain things in here that the Planning Board comes under jurisdiction for and it is specifically outlined".

Mr. Rotatori said what he is getting at is that there seems to be no reason for the five members to make any zoning by-laws; the Board requires 10 acres and this is down to 3.5. The next contractor comes along and he could come in with 2.5, so what's the sense of the Board requiring 10 acres. There's no need to make a law...just build what you want.

Mr. Rotatori said to Mr. Lavallee that the parcel was a subdivision to begin with. Mr. Johnson bought the parcel, went before the Zoning Board and got a variance for whatever he got, ..that wasn't enough, now he has to go back and get another variance for this. By right that should have been a subdivision to start with.

Mr. Brennan replied, "with all due respects, Sarge, the Board made its decision. The Planning Board had the option to challenge the Board's decision within the appeal period. The Planning Board did not do so, so I can't see beating this thing. This happened a year ago.

Mr. Rosenlund said he needed a motion to continue the Public Hearing, in order that the Board meet with the representatives of the Beech Street Franklin/Bellingham subdivision who arrived at the appointed time.

The applicant agreed to continue the hearing until 9:00 P.M.

Mr. Murray asked whether the Franklin subdivision would require a public hearing at any future date. Mr. Rosenlund said no, not unless or if its been decided to go on on the preliminary plan.

On a Murray/Rotatori motion the Board voted to recess the public hearing until 9:00 P.M.

8:45 P.M. Franklin/Bellingham Subdivision -- Mr. Rosenlund asked consultant Phil Herr, the developers, owners of the Franklin subdivision, attorney Roche to approach the Board. Mr. Rosenlund asked the secretary for the plans of the subdivision, which was placed before the Board and the representatives.

Those representatives present were: Phil Lukens, GLM Engineering, Holliston; Dennis Marguerite, one of the partners; Neil Roche, attorney; Ralph Pinto, Vice Chairman of Franklin Planning Board.

Mr. Rosenlund, referring to the proposal last submitted, established that no changes have been made. Also stating that the request for extension was received and granted by the Board. Comments received from the various departments in Bellingham would be discussed. Mr. Rosenlund said he had the opportunity to meet with the Franklin Planning Board and it was discussed there and expressed the views of the Town of Bellingham. The fact that we have 7 lots to be proposed in the Town of Bellingham, the main problem being no access from Bellingham to these particular lots. Of major concern discussed was water which was resolved by water being brought in from Franklin, charged by Franklin for payment in Franklin. This was a concern of the fire chief.

The access road, and lack of access to Bellingham, was discussed. Mr. Roche pointed out that it happens that the access to that portion of the subdivision that lies in Bellingham coming by way of a proposed road from Beech Street in Franklin there is no access to Bellingham. He said that there is no other way that this could be laid out without involving the Town of Bellingham other than if the Town of Franklin change the zoning so as to provide some type of cluster. Mr. Pinto said the Franklin Planning Board is in the very early stages of discussing cluster zoning. It is now a matter of time. Mr. Rosenlund said that in his conversation with Mr. Herr said the plans were in compliance with the subdivision laws of the Town of Bellingham so there is no dispute in that area. Also, the letter from Mr. Trudea of the Bellingham Water Dept. saying that no water could be provided. The Bellingham Fire Chief's concerns were the use of emergency telephone number 911 and how the respective towns would respond to the calls, and also the access road as far as the response time from Bellingham to that area; however, he felt these things could be worked out between the towns. They do have a reciprocal arrangement.

The Bellingham Highway Dept. expressed concern as to how the roads were going to be maintained, such as snow plowing and other service. This would also have to be worked out between the towns.

Mr. Rosenlund said that Mr. Roche had informed him that they could put up duplex houses because they meet the requirements. It is a suburban zoned area and the square footage in that area on these lots would accommodate duplex houses. Mr. Rosenlund said he had been looking at it as 7 lots and 7 units. It could be, in essence, 14 families in there. Mr. Rosenlund questioned whether the board would have the right, other than the personal feelings, to deny. Mr. Herr said that, "clearly, if the requirements are met you have to approve it. The only issue you could raise is whether the access is sufficient".

Mr. Rosenlund asked Mr. Ambler for his opinion as to the legalities of of the Board rejecting a plan that meets the requirements. Mr. Ambler said he has the same question in regards to access but has not researched it. He suggested the Board refer this to his office for study.

Mr. Herr stated the Board has the responsibility to assure that the subdivision has adequate access.

Referring to Town Counsel, Mr. Rosenlund said he feels some of these issues are going to have to be resolved with mutual agreement between the towns. He stated that Bellingham has a time element which is 60 days and Franklin does not.

After further discussion it was suggested that an extension of time be made. Mr. Rosenlund said that with the summer schedule the Board meets on the 4th Thursday of July and 4th Thursday of August. Mr. Roche agreed to further extend the meeting to the 4th Thursday of August and would send a letter to that effect.

Mr. Rosenlund thanked the parties attending the meeting. They left at 9:07 P.M.

Public Hearing resumed at 9:10 P.M.

Referring to the zoning by-laws as previously discussed and the decision of the Zoning Board of Appeals as expressed by Mr. Brennan on the acreage, Mr. Murray questioned as to where the line is drawn.

Mr. Herr said the Board of Appeals has the authority to vary any provisions in the zoning law but they can only vary it in accordance with the standards established in the State Zoning Act and they are quite demanding. Mr. Herr stated that the reason why it is worthwhile for the Planning Board to propose at Town Meeting to adopt the 10 acre minimum is because it is only in an unusual circumstance that a person is going to be allowed to depart from that. Because by definition variance requires that the circumstance be unusual if the conditions that cause a person to want to vary from 10 acres to 3.5 acres are the same conditions that all of his neighbors have got, then the statute says the Board of Appeals may not grant that.

Mr. Herr also stated that varying from 10 acres to 3.5 derogates from the intent of the by-laws.

Mr. Ambler said he is concerned about the basis of the hardship which has to do with the unavailability for construction of the land because of wetlands when, in fact, 2600 f concerns itself exactly with that issue, which says for townhouse dwellings you must have, and excluding the issue of 7,000 sq. ft. per bedroom, in no case less than 10 acres and must be met without counting any wetlands as defined in section 40, chapter 131, G.L. Mr. Ambler questioned whether or not the Zoning Board concerned itself with that provision when it granted this exception because the by-law itself spoke in terms of that which rather takes it out of the realm of a hardship provision.

Mr. Ambler suggested that the Board address itself to section 2400, in any decision that it makes, that being section 2400, townhouse, footnote 4.

Referring to the point previously made by Mr. Rotatori concerning foundation, Mr. Ambler said he looked it up and found a section 3250 in the zoning regulations which addresses that.

Mr. Murray asked Mr. Lavallee about the title attorneys saying there could be a problem. Mr. Lavallee said that had the by-law amendment on May 27th not passed they would not be before the Board, but the fact that it did pass and the fact that it passed prior to the ZBA granting the variance sets up potential problems from the standpoint of title because very specifically in the by-law it states that in order to build these structures a special permit is needed. Title attorneys would go forth, look for that special permit and not find it because it doesn't exist. In essence, what has happened is, from what can be seen, nothing illegal has taken place, everything has been done in accordance with what is required, but the potential for a title problem exists.

Mr. Lavallee said that, "at first Mr. Magaldi's feeling was that if we have a variance and got through the appeal period, we were all set. And, quite honestly, that is what we thought. But then he did back up and say that there is a possibility you could have a title problem". Based on all of the other information, Mr. Lavallee said it is a sequence of events.

Mr. Murray asked, "is there is a problem or just the potential of a problem".

Mr. Lavallee stated that in the future and in the course of a sale this could prove to be a cloud in the title, which means everyone involved is subject to legal action.

Mr. Murray again asked whether or not there is a problem.

Mr. Johnson said that the title attorneys feel as though there could be a problem and, therefore, they are making it a problem right now. He further stated going to the ZBA one year ago and getting a variance and emphasizing that no one questioned the variance. Also, he got building permits. He came before the Planning Board presenting a new drainage profile for the street and it was accepted. He pointed out that the Board took his bond for the sidewalks to release the lots and complete the drainage. "Nobody had any problem with that..the houses were already built when the bond was taken for the sidewalk and drainage. I completed it, the Planning Board has released my bond. I have an occupancy permit from the Town of Bellingham. I've sold these units and all I'm saying now is that to me, if I was doing something wrong, somebody should have said something, or not issued the permits. None of those things have happened. The Town has allowed me to continue with this project, ongoing for a year".

Mr. Johnson states that he feels he has done everything in his power to meet every requirement of every Board he has come before. Now he is at a point where he is ready to pass papers on two of the units. The title attorney asked whether he had a special permit, to which Mr. Johnson said he told the attorney he didn't need a special permit, he has a variance. The attorneys said they didn't know and Mr. Johnson said they referred him to section 4424 of the by-laws for a special permit. Mr. Johnson said he told them it wasn't enacted until after he applied for the variance.

Mr. Johnson states that Mr. Magaldi of Mass. Federation of Planning Board, told him whether or not the variance was granted technically correct, the fact that it was not appealed gives him standing. He has a right. The fact that the Town gave him building permits, the Planning Board gave him lot releases and that he has done everything gives him standing.

Mr. Johnson stated that he has no wish to be involved in a court hassle over this, and that everyone at this meeting knows what he has been doing for a year. The town knows what he has been doing and no one has ever said "you can't do that". He said now its done and he has over \$300,000.00 invested and is committed to another 60 or 70,000.00 so how is he going to stop. He said the simple answer is "he can't". The attorneys and Communities & Development told him he has to go to the Zoning Board and get relief from the area requirement because he could not meet it.

Mr. Johnson continued, "even if I could purchase more land I couldn't meet it because the land that abutts me is wetlands. I can't purchase more land, it wouldn't do me any good. It doesn't qualify". They say, 'you've got to go to the Zoning Board of Appeals and ask for relief under 2600 f. I've done that. The ZBA agreed to give me relief from that section of the by-law.

Mr. Johnson continued, "I have relief from that section of the by-law and I come here before the Board asking you gentlemen to issue me a special permit so that the title on my property will be clear. All I wanted to do is to qualify under the by-law 4424 in regards to townhouse development. The only thing stopping it is the area requirement. In relationship to the area requirement, the one thing that was never a consideration before the Planning Board when we started talking about 10 acres is the size of the development that 10 acres dictates. We're not talking about 12 units in 10 acres, we're talking about 60 units. We're talking half of another Pilgrim Village or another half of Weathersfield. I don't think that that was the intention of the Planning Board. I think the intention of the Planning Board was controlled growth for the Town of Bellingham".

Mr. Johnson said he feels he is providing affordable housing through his idea for townhouse development. Stating that the median price of a house in this country today is \$65,000.00 and with 20% down payment a person has to make \$40,000.00 per year to buy it.

Mr. Murray asked, "what is the price of one of your townhouses?".

Mr. Johnson replied, "right now I'm offering to sell one of those townhouses for \$15,000.00 down and \$750.00 a month for five years. That comes to out to \$59,000.00. There is no other way for \$59,000.00 that you could buy a house. If you went into the conventional market to buy a \$60,000.00 home with an 18% mortgage you would pay over \$200,000.00 for it, if you could qualify for the mortgage".

Mr. Murray brought up the problem he feels about the advertising and seeing a site plan.

Mr. Rosenlund said, "let me address that as I did in the beginning of the hearing. I said that in the advertisement it said 2400 f and I said that it was an error and that it should have been 2600 f, and 2400 relates to townhouse development. I said that it was of my opinion that this section did apply and it is of my opinion that there was no intent by any individual or this Board or the newspaper or anyone else to hide any facts, and I'll stand by that and if anyone wants to challenge it on a technicality I would doubt very much that it would be thrown out because of that so I'm satisfied with that.

Mr. Murray said he wasn't challenging that. It is not clear to him what the problem is with the title attorney and he would like to see some communication from him. He said he would be more inclined to send the title attorney a letter saying that this Board feels we do not need to issue a special permit and papers should be passed on the original variance.

Mr. Rosenlund said it is not the Board's direction to tell them how to pursue it. The title attorney was before this Board previously telling us about the title problem. Mr. Rosenlund said that it is his opinion that for whatever reason they are seeking a special permit under a section of the by-law, under section 2600 f relief had been granted by the Zoning Board of Appeals for the acreage and for the 7,000 sq. ft. for the bedroom. If they meet all the other requirements of the by-law that has to do with townhouse development, keeping in mind and I would agree that these parking requirements have to be addressed. But should the Board address these parking requirements, multi-family housing, or are we addressing a request for a special permit under the by-law. If we can act and address that particular issue then I think that is the responsibility of the Board. To debate, at this time, the merits of a by-law that was passed, in my opinion, passed through recommendation of a consultant who is paid by this Board to bring in this recommendation, was presented at Town Meeting, voted at Town Meeting, approved by the

attorney general, I do not see the relationship that Mr. Ambler does see with multi-family and townhouse development. I have no problem with that, I know why I requested it (by-law) and why it was presented and I think the requirements have been met as far as the presentation for a special permit from this Board".

Mr. Rosenlund said whether or not the Board agrees with the decision of the Zoning Board or whether they had the authority on it, he feels the ZBA has done their job with responsibility and have rendered their unanimous decision. They have stated their reasons; it can be appealed. Now the next step is to come before this Board. This Board can grant the request for special permit under these zoning by-laws, the Board can reject the request for special permit. The appeal of this Board can go back to the Zoning Board of Appeals. I don't think of the best interest of this Board or the Town of Bellingham for one Board to challenge the other Board in court action or appeal action. I'm not telling you how to vote. To get into these particular issues, I think first is, have the requirements been met to act on a request for a special permit or haven't they?"

Mr. Ambler in his reply said, "I think it is only important because it's the problem that goes on with the Board and has been addressed by the Board, but I get the impression that you are suggesting that if they grant a variance then this Board lives with it. Then my question to you is in the form of the question Mr. Murray had directed..what happens if the Zoning Board of Appeals listens to an application for a variance on a 30 lot subdivision and waives the requirements of 125 ft. frontage and 30,000 sq. ft? Is it your opinion, therefore, that you do not take into consideration that debate?"

Mr. Rosenlund said, "I am not saying that at all".

Mr. Ambler said, "it sounds like it, that's why I wanted to straighten it out, if that's what you were saying".

Mr. Rosenlund said, "I'm not saying that at all. If its the opinion of this Board that the decision of the Zoning Board of Appeals was wrong, there is one of two courses which you well realize; appeal their decision as individuals or as a Board which I think would not be beneficial as a Board to appeal the decision; or, reject the request at which time the individuals can appeal the decision of this Board and its back to the ZBA again. Thats the recourse. I am not saying that I have to agree with it.

Mr. LaPlante said, "my understanding is the reason why Mr. Johnson is here is for special permit. The special permit only comes into effect really, because it's a 3 family. If it were a 2 family his variance would have covered everything. He hasn't changed anything on the premises initially. This special permit now is because he needs the words 'special permit'".

Mr. Lavallee added that if he was building a 2 family, he wouldn't need any variance or anything.

Mr. Rotatori said that's what this thing started as..two family dwelling, when he first took it over.

Mr. Lavallee said the subdivision was created with that intent but there were no buildings on it.

Mr. Rosenlund said we all know its there, we know why its there and we all have our own opinions how it came to be. The fact of the matter is what is there is there legally with a variance. There's no disputing that. I don't agree, personally, and I told that lawyer at the time, the fact that it has to come under this subdivision. However, because of the gray area as explained by the lawyers in regards to a clear title they are suggesting that this route be pursued.

Mr. Ambler said he is not sure if its general knowledge, but he understands that a petition has been filed by the Board of Selectman which will call for a Town Meeting within 45 days. He said there may be some wisdom to proposing some form of article, which he thought was going to be proposed last March, to correct the problems that Mr. Johnson has before the Town Meeting, which has to be called within 45 days.

Mr. Herr asked what kind of article.

Mr. Ambler said he had no idea, but when this was discussed last March the very same problem as he understands it and it was the first time he was hearing about it, there were talks about coming up with another proposal, other than by amending it through the definition clause.

Mr. Herr said he didn't hear anything with regard to this problem.

Mr. Rosenlund said, referring to the issue brought up by Mr. Ambler, "we went to a Town Meeting with an insertion of condominium and at that time it was of the opinion of Town Counsel and recommended that it be withdrawn because there ^{were} discrepancies in the various by-laws. Mr. Rosenlund referred to the letter Mr. Ambler sent to the Board in which he indicated the various areas that he felt was in conflict. The letter was forwarded to the consultant for his review and to address these particular items to perhaps clear up a lot of these areas. Mr. Rosenlund But this has nothing to do with the request before this Board, and I told Mr. Johnson my opinion, anybody has a legal right to pursue whatever they want to pursue before this Board in their request. My only concern is that it is done properly and that all channels are covered. I feel that Mr. Johnson has done this, now I think it is a matter for the Board to act on this request unless the applicant sees another way that he wants to handle it at this point, which I don't see. Mr. Boiteau said, "I can sympathize with the applicant, but by the same token I don't think he should have had to get a variance on it. Mr. Rosenlund, said that was not the issue.

Mr. Murray said he would like to make a motion to continue this public hearing or to close it.

Mr. Rosenlund asked for comments from those in attendance who haven't spoken and wishes to address either for or against. Also if the applicant has any further comments.

There were no further comments and no comments either for or against. Mr. Murray said that he was not ready to make a decision based on information that he has. He would like to get the name of the attorney and would like to know a little more about this. This doesn't have anything to do with casting a reflection on Mr. Johnson, but would like to see another way to solve the problem rather than the issuance of a special permit that is contrary to a by-law. If after speaking with the attorney and he says there is no other way, then that is a different story. I am not totally in agreement with what the Zoning Board has done, but it is not up to me to do that but I don't want to become part of it. So I would like to hear suggestions as to whether we should continue this or to close the hearing.

Mr. Rosenlund said that if Mr. Murray is going to move to continue the hearing he would hope that it would be for the purpose of hearing further testimony that is relevant to the particular issue.

Mr. Murray thought pertinent information was needed regarding the problem relating to the title and to the site plan.

Mr. Herr stated, "I would like to urge that if you want more information for whatever reason, do not close the hearing but continue it to a further date. If you want more information, there seems to be two things suggested:

First of all you do have a site plan, but what you may want is an amended site plan to reflect in compliance with what's physically on the ground and the requirements of parking, section 3330. Secondly, Mr. Murray's request for more information, whether it is in written form or oral testimony regarding the necessity of a special permit, and I think ought to be provided and someone speak to it.

Mr. Murray stated that our next schedule meeting would be July 22, 1982. He referred to Mr. Johnson saying he had 30 days to closing. Mr. Johnson said he has a closing scheduled for the 30th of June.

Mr. Rosenlund said the Board had not voted at the last meeting on the schedule for July and August. Mr. Rotatori said it was discussed but not voted on. Therefore, there is technically a meeting scheduled for the second Thursday in July.

On a Murray/Boiteau motion the Board voted to continue the public hearing to a special meeting on Tuesday, July 6, 1982 at 8:00 P.M. at the Town Hall Annex.

The secretary was directed to send a letter to the Town Clerk to this effect. Also to the abutters and the various Boards. Also to issue a press release to this effect. Mr. Rotatori made a motion that the secretary send a copy of the minutes of this meeting to Joan King in order that she will be familiar with the discussions. (Mrs. King is on vacation). Also a copy of the decision of the ZBA, copy of Mr. Herr's letter on townhouse clarifications and on business buffers. The secretary was directed to send a letter to Mr. Ambler concerning the legalities with reference to a member who was absent from a public hearing and after reviewing the minutes of that meeting and is available at the continued public hearing, can that member sit and act in capacity as a member of the Board hearing that case.

A letter to be sent to Mr. Ambler with a copy of Mr. Herr's letter on Subdivision Access and on Townhouse Clarification, along with a copy of Mr. Ambler's letter to the Board on townhouse, dated April 22, 1982.

The Board voted unanimously to adopt the summer schedule of meetings to be on Thursday, July 22, 1982 and on Thursday, August 26, 1982.

On a Rotatori/Boiteau motion the Board voted 4-0 to adjourn.

Adjournment at 10:38 P.M.

Respectfully submitted,

Sergio Rotatori, Clerk

