

Bellingham Planning Board
Town Hall Annex
Bellingham, Mass.

Special Meeting - July 6, 1982

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

The meeting was called to order by Chairman Rosenlund at 8:00 P.M.

On a Boiteau/King motion the Board voted 5-0 to extend the meeting until 8:15 P.M. pending arrival of member Mugray.

Ten people in attendance.

Chairman Rosenlund opened the meeting at 8:15 P.M. All members present. The purpose of this meeting is to reopen the public hearing that was continued to this special meeting on the request of Joseph Johnson for a special permit under section 2600 f townhouse development. Those members sitting in during the public hearing were Sergio Rotatori, John P. Murray, Bert Boiteau, Carl Rosenlund. The Board made inquiry of Town Counsel as to whether a member who was absent from the public hearing could sit and act in the capacity of voting member, at a continued hearing and after having read the minutes of the meeting. Town Counsel Ambler (in his letter of July 6, 1982) said an absent member could not act in the capacity as voting member when that member was not physically present during the public hearing wherein the facts were presented.

The letter from Mr. Ambler dated July 6, 1982 was read by Mr. Rosenlund.

Based on the advice of Town Counsel Ambler, Joan King stated that she would abstain from voting at this meeting.

Mr. Rosenlund said that the four original members who sat in at the public hearing were present and as stated at the last meeting it requires a unanimous vote which was stated to the applicant at the time and agreed upon by the applicant to continue the hearing.

Mr. Rosenlund read a letter dated June 30, 1982 from Consultant Philip Herr which addresses some of the questions which were raised by the Board during the public hearing. The letter from Mr. Herr (who is absent from this meeting) reads, "A revised plan of Victoria Hollows has been submitted to us, dated 6/26/82. The added note that no further major tree removal is contemplated completes the required submittals. By revising the parking, compliance with Section 3330 has been gained.

There are three questions legitimately before the Board at this point. First, does this proposal meet the criteria of Section 1530 for the granting of a special permst? As outlined in my June 24 letter, our analysis indicates that it does, and no contrary evidence was presented at the initial session of the public hearing. The questions and criticisms which were raised dealt with other matters discussed below.

The second question is: does this proposal meet the zoning bylaw in all respects other than compliance with Section 1530?"

Mr. Herr's letter continues, "The only violation (other than lot area) that we noted earlier has been corrected. Compliance with Section 3250 foundation grade was questioned at Building B. There is approximately 40 feet from foundation to travelled way, and a one foot difference in elevation, according to the applicant's engineer. The swale specified at Section 3250 can certainly be provided under those conditions.

Compliance with lot area requirements would be through a variance which at the time of Planning Board decision will still be subject to appeal. The Planning Board can assure that no confusion is created by conditioning its approval with words such as: "Approved on condition that the variance to Section 2600 f approved by the Board of Appeals is not appealed or, if appealed, is sustained".

The Third question, separate from the previous two, is whether the variance recently granted should be challenged by the Planning Board. It would be perfectly reasonable for the Planning Board to both approve the Special Permit (conditioned as above) and challenge the variance, if Board members believe that the necessary conditions for a variance have not been met.

Whether or not the applicant actually needs this special permit or not is not a question properly before the Board. The applicant thinks he needs it, and if he qualifies he should be granted it. I am not competent to answer whether he needs it or not and neither, I believe, is the Board.

Another question not properly before the Board is whether the variance granted several years ago was properly approved or not. That now has gone by, and is history.

If the plan is to be approved, a further reconfiguration of parking would improve both appearance and safety. Five parking exits are now proposed, serving only three buildings and only six dwelling units. Our sketching indicates that, if topography permits it (and I believe it would), the parking could be grouped into two six-car areas, each 20 feet back of the street line, leaving more landscaped area as opposed to paved area in front of the building and simplifying the street edge. Such redesign could be made a condition of the plan approval". (End of letter)

A copy of the amended plan has been received by the Board.

Mr. Rosenlund read another letter received from Mr. Herr dated July 2, 1982 regarding Victoria Hollows, stated that "a further revision to the Victoria Hollows plan has been sent to us, dated 6/29/82. It clarifies the question of compliance with Section 3250: the Plan is now clearly in accord with that requirement".

Mr. Rosenlund asked if two plans were sent.
Mr. Lavalley said, "yes, that's true".

Mr. Rosenlund said that the response from the consultant in regards to the questions that should be legitimately before the Board, and reasons he stated at the last meeting, he feels it should be quite clear in regards to the issue before the Board regarding the request for special permit.

Mr. Rosenlund asked the applicant, Mr. Johnson, if he had anything further to add at this time.

Mr. Lavallee answered for the applicant saying that he came prepared to say quite a bit in terms of what he thought the Board should be considering or shouldn't be considering; however feels that the letter from Mr. Herr has covered all the points he had planned to bring up and there is nothing further he could add to this.

Mr. Rosenlund asked Mr. Murray if he has any questions relative to the special permit that were not answered through Mr. Herr's letter.

Mr. Murray stated that, at the last meeting, he was concerned about information from the title attorney if there was a need for this (special permit). He wanted to see evidence that this special permit is needed. He doesn't want to put Mr. Johnson in a financial bind, but if he does not need this special permit he would not vote for it. If there is an alternative solution to the problem, Mr. Murray said feels that should be sought. The question asked by Mr. Murray is for evidence that the lack of a special permit is holding up the title.

Mr. Robert Simmler, attorney representing Mr. Johnson, replied stating that Mr. Johnson asked him to be present tonight to answer the question brought up at the last hearing.

Mr. Murray said that he was told that there could be a problem in passing a title, at the last meeting.

Mr. Simmler said, "apparently, as you know, this variance was granted last year for condominiums and in the process of that variance being granted the Town Meeting passed the bylaw requiring the special permit. And, as in other cases, title attorneys have differences of opinions as far as what is good title, what is marketable title, and because of requirements of title insurance, mortgage, and secondary markets attorneys are a little more conservative nowadays in requiring clear title, and many attorneys take the conservative approach in getting what you need in order to make the title clear. I think, in this particular case, there is a question whether because the Town Meeting, notice of the Town Meeting, was published prior to the granting of the variance that is requirement that a special permit is needed. I think Mr. Johnson has attempted to sell one of his condos and this question has been brought up. I think many of the brokers are aware of this question and they are hesitant to attempt to sell the condos. There is a question in my mind whether a special permit is needed. I certainly wouldn't want to pass papers and have a person buy a condo and a few years down the road when he attempts to sell it this question is brought up. The buyer would be the one to have the problem. As far as I can see, there is a question and I think in order to avoid any title questions, the special permit should be granted."

Mr. Simmler stated that there was also a letter from Mr. Webb, attorney preparing the condo documents for Mr. Johnson, addressed to the Board, which states that, in his opinion, the special permit is required.

Mr. Simmler presented the letter from Mr. Raymond Webb, attorney, dated July 2, 1982, to Mr. Rosenlund. Mr. Rosenlund read the letter.

Mr. Simmler stated that he had discussed this with another attorney who had represented a client who has backed out of the deal because of this question.

Mr. Rosenlund said he thinks it was stated by the applicant or his spokesman at the last meeting that the units, in attempting to sell were refused by both attorneys to convey deeds to the property with this gray area.

Mr. Simmler stated that the question has been brought forward now so everybody is certainly rather hesitant about doing anything concerning the individual condos unless there is a special permit granted.

Mr. Rosenlund asked if any of the Board members had any questions relative to these proceedings. No questions.

Mr. Murray directed a question to Mr. Johnson, "Has an attorney refused to pass title on this?" Mr. Johnson answered, "yes".

Mr. Murray asked Mr. Johnson whether he brought any evidence from that attorney. Mr. Johnson said Mr. Simmler replied to that. Mr. Murray asked Mr. Simmler if it was because of a lack of the special permit that title was not passed. Mr. Simmler replied, "yes".

Mr. Murray stated that his questions have been answered.

Mr. Rosenlund said his questions and concerns were primarily the parking and the questions seem to be addressed and answered as requested by the Board and Mr. Lavalley with Mr. Herr. Mr. Rotatori has asked the question in regards to the slope and Mr. Rosenlund asked whether those questions were answered satisfactorily.

Mr. Rotatori said he does not feel the sloping is right and he feels the foundation should be higher, above the road level.

Mr. Lavalley said, "it is just inconcievable that every foundation for every structure on every lot in every town is going to be one foot above the road. It's not even realistic. I think Mr. Herr said here two weeks or ten days ago, that at one time the Board had contemplated passing such a regulation and that the one that is now before us was submitted in its stead. I feel certain that's exactly why."

Mr. Lavalley also said he believed there were numerous places around town where the foundations were not above road level.

Mr. Rotatori mentioned that the problem started with "Weathersfield". And if Mr. Lavalley would go look at the last group of houses he will see that the foundations are above road level.

Mr. Rosenlund asked Mr. Rotatori if this was a fault in our bylaws. Mr. Rotatori said, "yes, that it wasn't written up right, wasn't written the way it should have been written. Mr. Herr should have written it the way it was pronounced that night, but I guess it wasn't in there and we didn't catch it."

Mr. Rosenlund asked if anyone had anything further to offer for or against this request. No comments for or against.

With reference to the last paragraph of Mr. Herr's July 2, 1982 letter concerning parking, Mr. Rosenlund asked Mr. Lavallee if he had discussed this with Mr. Herr. Mr. Lavallee said this is the first time, and he feels what Mr. Herr is saying is that there are alternatives. And although the parking proposed meets the requirements, there are alternatives to make it look better. Mr. Lavallee stated that if you make one proposal, you could probably make half a dozen. It's a matter of what any one particular individual wants there or wants to see there. From that point of view I know that what we have done meets the criteria of the law.

Mr. Rosenlund said what he is asking is if the Board in consideration of a special permit, were to take the consultant's suggestion as our concern and request that this be done, is there a problem, and if so, would you address that at this time.

Mr. Lavallee asked, "do you mean from a standpoint of is it physically possible?" Mr. Rosenlund said, "yes".

Mr. Lavallee said that he suspects that if it becomes a condition of approval Mr. Johnson would probably be willing to comply with that.

Mr. Murray asked Mr. Johnson what would happen if he were not granted the special permit.

Mr. Simmler replied for Mr. Johnson, saying that options that Mr. Johnson would have is possibly appealing the Planning Board's decision.

Mr. Murray asked, "appealing to whom?"

Mr. Simmler said, "the courts".

Mr. Rosenlund said that "the first group you would be appealing from the decision of this Board would be the Zoning Board of Appeals granting a decision on the decision of this Board".

A discussion was held concerning the appeal process.

Mr. Murray asked if the Board should turn down the request for special permit, could he file with the Zoning Board and could they give it to him?

Mr. Ambler answered saying that is an option. Mr. Ambler said he has some questions about that because of the fact that what happens is that the criteria here is a permit from the Planning Board and so that a subsequent approval by the Zoning Board of Appeals does not necessarily grant the petition of the approval of the Planning Board.

Mr. Simmler stated that just from the finances involved he feels that Mr. Johnson would have no choice but to file a court action. Also that it is his opinion that he thought Mr. Johnson would have to go directly to court.

Mr. Lavallee stated that as mentioned before, there is about \$300,000.00 involved. If the permit is denied Mr. Johnson cannot go ahead with the other two units and he cannot sell the units he has. His option is only one...he has to go to court, which will take time. Bankruptcy is a realistic possibility.

Joan King asked if it would be possible for the units to be sold as just multi-family dwellings and not as condominiums.

Mr. Johnson said no. To clarify this he said, "I have in the past year filed a master deed on this project. By filing that I have in fact

limited myself to the number of options that are open. I cannot sell it to a person and subdivide out one of the units, or one of the houses and sell it separately. I am bound by state statute to sell it to individuals with individually held mortgages."

Mr. Rosenlund asked if there were any further questions. No further questions.

On a Rotatori/Boiteau motion the Board voted 5-0 to close the public hearing. Hearing closed at 8:57 P.M.

Mr. Rosenlund informed the parties that upon the decision of the Board it is recorded and filed with the Town Clerk, there is a 20 day appeal period at which time the decision of the Board can be appealed to the courts or to the Zoning Board of Appeals, whichever is chosen, after which time it must be duly recorded by the applicant with the Registry of Deeds and becomes a fact.

Mr. Rosenlund asked if the Board was ready to vote. The four voting members stated that they were ready to vote.

Sergio Rotatori's decision is not to grant the special permit. Bert Boiteau's decision is to deny the request for special permit. John Murray's decision is to grant the special permit for the units already in existence, but not for the units not yet completed.

Mr. Rosenlund noted that the request is for four units--lots 7,8,9, and 10.

Mr. Rosenlund's decision is to grant the request for special permit for reasons that he believes that the applicant has met all the requirements under the zoning bylaws for special permits. The questions were addressed and answered by the consultant to his satisfaction, and therefore votes in favor of granting the special permit.

Mr. Rosenlund stated to the parties that they have a negative decision of two and one-half members, the half being voted by Mr. Murray.

The request for special permit has been denied.

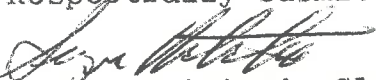
Mr. Lavallee asked when they can expect to get a written decision as to the reasons why the special permit was denied.

Mr. Rosenlund said he is going to ask Mr. Rotatori, as vice chairman, to write the negative decision, whereas he voted in the affirmative, the vote is a negative decision which is the majority decision. Under Chap. 40A G.L. each member will write his decision. Members to check on the time limit as to when the written decision is to be handed down.

On a Rotatori/Boiteau motion the Board voted 5-0 to adjourn.

Adjournment at 9:10 P.M.

Respectfully submitted,


Sergio Rotatori, Clerk