



## BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

JOHN P. MURRAY, CHAIRMAN  
ANNE M. MORSE, VICE CHAIRMAN  
EMILE W. NIEDZWIADK  
GLENN E. GERRIOR  
EDWARD T. MOORE

### MINUTES OF REGULAR MEETING

JANUARY 14, 1993

Meeting was called to order at 7:58 p.m. Secretary EN acted as Chairman in JM's absence. EM and GG were also present. JM and AM were absent.

#### LOT RELEASE REQUESTS

Clerk presents a lot release request for 35 Monique Drive, Wethersfield II.

EM makes a motion to sign the lot release since the subdivision has been built for 10 years.

GG seconds motion. Unanimous vote of 3 (EN, GG and EM).

GG makes a motion for GG and EN to sign the lot release now and EM will sign the lot release out of the meeting since it has to be notarized and a notary is not present at the meeting.

EM seconds motion relative to EM signing the lot release out of the meeting in front of a notary. Unanimous vote of 3 (EN, EM and GG).

Clerk presents a lot release request for 169 Ruth Ellen Road, Wethersfield III.

EM makes a motion to sign the lot release. GG seconds motion. Unanimous vote of 3 (EN, EM and GG).

GG makes the same motion as above relative to EM signing the release out of the meeting.

#### DONOVAN COURT DEFINITIVE SUBDIVISION CONTINUED PUBLIC HEARING

EN opens the continued public hearing

John Donovan, applicant explains that he has gone before the



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Zoning Board of Appeals who approved a variance for frontage but there is a 20 day appeal period which will be up on February 2, 1993. He requests an extension to that time.

GG asks if the abutters concerns were addressed at the variance hearing.

J. Donovan states that they were not really addressed. Mr. Collins did have concerns about the placement of the house on the lot. He assured him that it would make no sense for him to hug Mr. Collins' house.

Clerk reads decision from the ZBA, dated January 11, 1993, stating that they voted 5-0 to grant a variance to John Donovan, Jr., and Priscilla Donovan, 114 N. Main St., Bellingham, MA. The Board grants a 26 ft. plus/minus frontage variance on lot 1 and lot 2. Hardship due to the shape of the land and if a cul-de-sac were created (which could be done legally) it would allow a run off to the back and would be a detriment to any building in order to comply with the back lot subdivision regulations. Before any permits are granted, this decision must be filed with the Registry of Deeds. There is a twenty day appeal period from the date this decision is filed with the Town Clerk.

EM notes that they did not put a condition in that the garage would have to come down.

J. Donovan states that they did not put it in but it will come down.

EM indicates that it should have been put in.

J. Donovan points out that the abutters were there. For aesthetic reasons it is in the wrong place. It would not meet the setback requirements with the garage there. J. Donovan presents an extension and continuance request to February 11, 1993.

EM makes a motion to continue the definitive subdivision for Donovan Court to February 11, 1993 at 8:00 p.m. GG seconds motion. Unanimous vote of 3 (EM, EN and GG).

DISCUSSION WITH JOEL AND JEAN KARSBERG  
RELATIVE TO DRIVEWAY AT 155 CENTER STREET



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Joel Karsberg explains that they bought the house at 155 Center Street in June 1988. The closing went fine. Now five years later they are selling the house. The title examiner found the restriction about the driveway not going to Park Street or Center Street. The builder put their driveway in on Park Street. They did not know about the restriction. The builder put in enough room to turn around and head out instead of backing out onto Park Street. Joe Johnson was the builder and they bought the house brand new.

EN explains that the Planning Board does not have the authority to grant an exception.

GG believes that this happened because of a flaw in the Building Inspector's office. No one can waive the restriction. They would have to come back and have another public hearing.

EM talked with Town Counsel who said that if it is recorded on the deed at the Registry of Deeds that their driveway be on Joe Rosenfeld Way, then they have the right to do that. The only way to amend the special permit hearing takes a vote of 4 out of 5 members. The only other way to do it would be if they received a variance from the ZBA.

J. Karsberg asks why the restriction was put on.

GG explains that it is because the 3 roads meet together. The LaVallee's received a special permit to cluster all the houses on a main street. It came down to a safety issue and the safety officer's recommendation.

J. Karsberg states that their other alternative is to take the driveway and put it on Rosenfeld Way.

Jean Karsberg explains that even if they put their driveway in on Rosenfeld Way, their driveway would be only 4' apart from where it is now on Park Street.

GG states that the whole thing is behind the issue. The LaVallee's still have 4 unbuilt lots which were on the plan when it was presented. There are no houses there now but only lots. The problem is that they will have one person accessing while another is accessing Rosenfeld Way.



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Joel Karsberg points out that no one drives on Park Street.

EM states that is correct now but when the other houses are built, they will be egressing at the same time.

EN states that the Board sympathizes but they do not have the power to change it.

GG explains that the Board is looking at it from the point of a complete subdivision. It was the wrong thing for the Building Inspector's office to give the permits with the driveway on Park Street.

Jean Karsberg states that when their house was built Joe Rosenfeld Way was not there.

EN indicates that their only remedy is to now have a public hearing before the Planning Board or go to the ZBA. The Planning Board can not do anything without a public hearing.

EM states that they had the same situation with Rawson Farm. They had to agree to move the driveway when the road is built.

Joel Karsberg asks if the Planning Board will sign the release.

GG responds that the Board can not sign without a special permit.

Jean Karsberg states that an 81-P was done in 1986 and is recorded at the Registry of Deeds. The attorney passing papers found the restrictions. They do not have enough frontage on Joe Rosenfeld Way. They would have to go through the LaVallee property. The end of their driveway is the end of their property.

GG notes that the plan says they have 70' on Rosenfeld Way. They still own 70' along Joe Rosenfeld Way. He asks if their driveway is dirt/gravel.

Joel Karsberg responds that it is gravel.

EM asks how the driveway ended up on the wrong place.

Roland LaVallee joins the discussion and states that Joe Johnson built the driveway there. He sold the property to Mr. Johnson



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and had no control over where they put the driveway. Yes, they do have frontage on his road.

EM states that since it is not a public way, they would have to get a building permit.

R. LaVallee states that no, they can get a building permit if it is a private way or just a paper street.

GG notes that the Karsbergs can not pass papers.

Jean Karsberg states that no, they can not. They have already moved from there and they have a buyer. They are supposed to close tomorrow.

GG asks if they can put money in escrow towards the driveway.

Jean Karsberg states that they can not do that. In order to pass the papers, they have to clear the title.

EM states that there is a letter from Mr. LaVallee in the file stating that he agrees that the driveway will not be on Center Street or Park Street.

Roland LaVallee points out that there is no question that the Karsbergs have the right to access on Joe Rosenfeld Way. He does not think the Karsberg's are seeking a variance as much as they are seeking relief from the special permit.

EM notes that it requires a public hearing with a vote of 4 out of 5 members.

GG states that they should not have gotten an occupancy permit from the Building Inspector.

R. Lavallee does not know.

GG believes that it was a town blunder and the town should pay for their mistake. The Karsbergs can seek out recourse from the town. He thinks that this is a question for Lee Ambler as to whether or not an occupancy permit should be granted under the circumstances.

Joel Karsberg points out that Joe Rosenfeld Way did not exist at



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the time.

GG notes that does not matter.

R. LaVallee did not research the law regarding whether or not they have to have a public hearing. The conditions issued were part of granting the special permit.

EM asks if lot 1 also has a driveway on Park Street.

Joel Karsberg responds that it is but it is not on the deed.

R. LaVallee states that the function of the special permit governs everything.

EM states that this situation will hit the other guy too when he goes to sell his house.

Jean Karsberg spoke with 4 attorneys today. Three out of four said that the Planning Board could sign the release. She spoke with Town Counsel and he is the only one who said that the Board could not sign the release.

EN notes that the Board would like to help but they can not.

GG asks agains if there is any way they can put up a surety for the driveway so they can still close.

EM indicates that the quickest way out would be for them to put a driveway in. Their attorney should have called Lee Ambler. He asks if they talked with the people who own lot 1.

Joel Karsberg points out that technically the statute of limitations will expire next year because the 6 years will be up. They could hire a bulldozer to come in.

R. LaVallee just spent money landscaping there.

Joel Karsberg states that their buyer wants someone to say that the driveway is o'kay.

Jean Karsberg believes that since the builder obtained a building permit and occupancy permit, the driveway is allowed to be there.



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EM states that this would not be affected even if a zoning violation dies after 6 years since this was a restriction put on the special permit by the Planning Board.

R. LaVallee points out that the reality is that this was a request put in by P. Herr.

EM states that the only way they can get action out of the Planning Board is with a public hearing. It is still on record at the Registry of Deeds. The only way it can be removed is with a public hearing and a vote of the Board stating that the restriction does not need to be there. The Board at the time felt that it needed to be there. It will take time to advertise and have a public hearing. They also have to notify abutters.

Jean Karsberg states that they can just put the driveway in. They would have to survey it to say exactly where the driveway has to go. The bank is not going to let them call up and say yes, there is a driveway there. They want it surveyed.

EM points out that the way the release was written sounds great if this were the ZBA, but it is not correct for the Planning Board. The Planning Board does not deal with hardship.

Joel Karsberg thanks the Board for their time.

GG again asks if they could put \$3,000 up to pay for it and then get the money back from escrow after the driveway is in. There is a lot of excavation involved.

Clerk asks about 307 Farm Street. An assessor phoned her asking about the zoning.

EM instructs Clerk to tell the assessor to check with the Town Clerk relative to the zoning. That parcel was rezoned and had 81-P grandfathering. The foundation has to be destroyed. No site plan was done on that parcel. They wanted to go affordable housing. The 81-P locked in the industrial zoning. They had gone industrial because it was pre-existing non-conforming. That was done in the mid-80's. It is now agricultural.

Members sign clerk's pay voucher and invoice for P.O. Box.

EM makes a motion to adjourn the meeting at 8:52 p.m. GG seconds



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motion. Unanimous vote of 3 to adjourn (EN, EM and GG).

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John P. Murray, Chairman

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Anne M. Morse, Vice Chairman

*Emile W. Niedzwiedz*  
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Emile W. Niedzwiedz

*Glenn E. Gerrior*  
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Glenn E. Gerrior

*Edward T. Moore*  
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Edward T. Moore