TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

STEPHEN S. PORTER, Chairman
JOHN A. DONOVAN, JR.
ROBERT R. CUNNINGHAM

MARY ANN McDOUGALL
Executive Secretary
Telephone
235-1664

WILLIAM E. POLLETTA
FRANKLIN P. PARKER
SUMNER H. BABCOCK

83-33
Petition of Tyrone T. Hanlan & Kevin J. Ahearn
Hanlan Group, Ltd.

Pursuant to due notice, the Zoning Board of Appeals, acting as Special Permit Granting Authority and Permit Granting Authority, held a Public Hearing in the second floor hearing room of the Town Hall at 8:00 p.m. on Thursday, June 30, 1983, on the petition of The Hanlan Group, Ltd., requesting approval of plans pertaining to the conversion of the property formerly known as the Seldon L. Brown School to thirteen (13) condominium units and a resident superintendent unit at 63 Garden Road, in a Single Residence District, containing approximately 5.56 acres of land, including plans and conditions approved by Wellesley Town Meeting of April 4, 1983 and any further conditions the Planning Board may deem consistent with Town Meeting approval and public safety and convenience. Said request is pursuant to Section XVIA (Site Plan Approval), Section II(A)11 (Single Residence Districts - Conversion), Section XXV and Section XXIV-D of the Zoning Bylaw. The petitioner requests variances from the following sections of the Bylaw: Section XIX (Yard Regulations), Section XX and IIA-3-A (Maximum Height) and Section XVIII-C (Area Regulations - Ratio of Building to Lot Area).

Presenting the Petitioner's case was Tyrone T. Hanlan, President of the Hanlan Group, Ltd. who introduced at the hearing Leonard J. Charney, Project Manager and William Hammer of Hammer, Kiefer and Todd, Inc., Project Architect. Mr. Hanlan stated that the Petitioner requested Site Plan Approval under Sections II(A)(11) and XXV-B and Variances from Section XIX (Yard Regulations), Section XX and IIA-3-a (Maximum Height) and Section XVIII-C (Area Regulations - Ratio of Building to Lot Area). Mr. Hanlan further stated that all requested Variances related to pre-existing conditions of the original Brown School structure which was constructed in 1923, except the Variance from Section XVIII-C (Area Regulations - Ratio of Building to Lot Area).

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS.
DEC 23 2 49 PM '83

Interested parties present included: Martin Moore-Ede, 110 Hundreds Road, opposed to the conversion to multi-family property, Janis Stankevics, 19 Lanark Road, Mary Sullivan, 81 Garden Road, John Lawler, 75 Garden Road, Jerry Crowley, 24 Lanard Road. Neighbors were concerned about the land to be retained by the Town, including the ball field and the adjoining parking lot.

The 1983 Annual Town Meeting on April 4, 1983, approved a vote of 187 to 16 the sale of the Brown School site to Hanlan for conversation to condominiums. A Purchase and Sale Agreement, dated April 11, 1983, was signed by the Board of Selectmen and Hanlan. The Agreement provided that the site was to be subject to survey with lot lines upon survey to be approved by the Board of Selectmen. At the time of the Public Hearing on June 30th, Selectmen, Town Counsel and Hanlan had not completed negotiations on the property boundaries. Mr. Hanlan stated that definitive site plans would be available in a week. Mr. Porter, Chairman of the ZBA, stated that the ZBA would not act on the petition until the lot lines were established. He recommended and the Board of Appeals voted unanimously to continue the hearing to August 11, 1983.

On August 11, 1983 the hearing was continued and again, on behalf of the Petitioner, Tyrone Hanlan appeared and presented a Plan of Land which established lot lines for the parcel for which Site Plan Approval and a Special Permit had been requested. The Plan of Land had previously been endorsed (as approval not required) by the Planning Board at its meeting of July 26, 1983 and approved by the Board of Selectmen at their meeting of July 26, 1983 as being in conformity with the plan that had been submitted to Town Meeting in April 1983. The Chairman, Mr. Porter, called on Fire Chief Stephen Black to explain his requirements for a fire lane from Colburn Road to the rear of the lot under consideration for a Special Permit. Chief Black stated that he requires a 12-foot hard-surface access road to be available in case of emergency. Mr. Hanlan, on behalf of the Petitioner, stated he had no objection to Chief Black's requirements. Albert S. Robinson, Town Counsel, stated that the purpose of the Plan of Land was only to specifically define the site and that site plan review should be limited to the same.

Present at the hearing with questions and concerns: Robert Mahoney, 53 Garden Road, of the Brown School Study Committee, who recommended that the site plan be approved, Dorothy Wensink, 31 Colburn Road, Mary Sullivan, 81 Garden Road, who stated a fire lane was not necessary. Paul Counihan, Attorney representing Mr. and Mrs. Lawler, who expressed opposition to the Garden Road entrance to the site; Chris Selbert, Landscape Architect, Hanlan, who stated five trees would be removed for the entry road from Garden Road; and Janis Stankevics, 19 Lanark Road who objected to the proposed access driveway from Garden Road.

The Petitioner withdrew its request for a Variance under XVIII-C stating that the Variance, under XVIII-C, was not required in that the Plan of Land now before the Zoning Board of Appeals met the required ratio of building to lot area.

STATEMENT OF FACTS

1. The property in question is the former Selden L. Brown School at 63 Garden Road, which is in a Single Residence District. The main building was constructed in 1923, at its present height. The Zoning Bylaw was first enacted in the Town of Wellesley by Town Meeting vote on March 26, 1925 and has been amended from time to time.

2. An addition was constructed pursuant to a building permit issued June 3, 1968, with one corner a distance of 18.45 feet from the southerly boundary. This distance appeared as 18'6-3/8" on the plan submitted in the 1968 application.

3. The Brown school was a "neighborhood school" until 1975, for grades K-6. In 1975, the use was changed by the School Committee and the school became restricted to 5th and 6th grades but with townwide enrollment. Thereupon, the bus and automobile traffic increased dramatically since the children no longer walked to school. The increased vehicular traffic at the school was both bus and automobile traffic. The school has not been used for classroom activities since June 1981 but has been used by the School Department for educational activities for storage of educational materials and equipment, which use ended with the removal of same on July 22, 1983.

4. The Wellesley Town Meeting of April 4, 1983 voted under Warrant Article 35 to approve the proposal to convert the use of the building and a portion of the site from public school use to a use permitting multi-family housing and to sell approximately 2.5 acres to Tryone T. Hanlan, Kevin J. Ahearn, Hanlan Group, Ltd. and to retain for Town ownership approximately 3 acres. The application was filed not only on behalf of the Petitioner but also on behalf of the Town through the Board of Selectmen as the current owner of the locus. The locus is presently under the care, custody, management and control of the Board of Selectmen. A Purchase and Sale Agreement was signed by the Board of Selectmen, Town of Wellesley, and Tyrone T. Hanlan and Kevin J. Ahearn on April 11, 1983.

5. The Board of Selectmen on August 9, 1983, voted to approve the subdivision of the Brown School property in accordance with a plan entitled "Plan of Land in Wellesley, Ma., Scale 1'=40', July 15, 1983 by Norwood Engineering Co., Inc. Consulting Engineers - Land Surveyors, Norwood, Ma." The Planning Board, after a public hearing duly advertised, on July 26, 1983 endorsed PBC-83-12 showing the division of the Brown School parcel into two lots, Lot #1 (with the school building) containing 111,280 square feet and Lot #2 (playground area) containing 128,627 square feet, and voted to approve the site plan dated 7/26/83.

RECEIVED
SEP 23 2 43 PM '83
CLERK'S OFFICE
WELLESLEY, MASS.

6. Copies of the application and site plans were distributed to the following as required by Section XVIA of the Zoning Bylaw: Planning Board, Design Review Board, Wetlands Protection Committee, Town Engineer, Board of Health and Fire Department. Written recommendations in favor or setting forth general requirements were received by the Board of Appeals and were duly considered, and are on file at the Board of Appeals.

7. The Petitioner proposes the conversion of the Brown School into thirteen residential condominium units and a resident superintendent unit with associated site improvements including an access driveway, two exterior parking locations and various landscaping improvements. The Variances requested under Section XIX are for a sideyard of 18.45 feet at the nearest point, wherein the present requirement for this district is 20 feet and under Section XX and Section II, A-3-a for a height of a building which is in excess of 40 feet wherein the present requirements as set forth in Section II, A-3-a is 40 feet. The Variance originally requested from Section XVIII-C has been withdrawn. The conditions for which Variances have been requested are pre-existing, non-conforming conditions

8. Plans proposed by Hammer, Kiefer & Tood, Inc., Cambridge, MA and dated June 3, 1983 were submitted. These included the existing site plan, proposed site plan, site sections, floor plans, elevations and photographs. Revised site plans, dated July 26, 1983, which had been approved by the Planning Board at a meeting on July 26, 1983, were also submitted. A Plan of Land, drawn by Norwood Engineering Co., Inc., Norwood, MA dated July 15, 1983, was also submitted.

9. The Planning Board voted on July 26, 1983 as follows:

Brown School Site and Utility Plan.

In accordance with Section II.A.11 of the Zoning Bylaw the Board reviewed the revised plan 7/26/83 prepared by Hanlan Group showing the location of utilities, driveway and fire lane, and related easements. The Board moved, seconded and voted to approve the plan as shown with a 24 foot wide driveway from Garden Road, five catch basins to drain the driveway and parking lot and a 12 foot wide fire lane from Colburn Road each of which was deemed to be "consistent with Town Meeting approval and the public safety and convenience."

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS.
SEP 23 2 49 PM '83

DISCUSSION AND DECISION

This Board has made a careful review of the evidence presented on the applications before it and taking those applications in seriatim decides as follows:

1. On the application for a Variance for height restrictions: The Variance is not granted because it is not needed. This matter concerns the original main building constructed in 1923 prior to the enactment of any Zoning Bylaw. The Town did not enact its first Zoning Bylaw until 1925. Therefore the height is a valid pre-existing non-conforming condition.

2. On the application for a Variance from sideyard restrictions: This Variance is not granted because it is not needed. This matter concerns the building addition constructed in 1968. The building's location on the lot is a valid pre-existing non-conforming condition.

The building itself, as a municipally owned building for public use for educational purposes, was not subject at the time of construction to zoning requirements. Moreover, even if it were subject to zoning requirements at that time, the building permit was issued on June 3, 1968 based upon plans clearly showing that the sideyard would be 18'6-3/8", and more than six years have since expired. The existing location is thus protected since the applicable statute of limitation has long since expired.

3. It is further found that the pre-existing non-conforming structure may be altered to permit the conversion of the structure as aforesaid since such change and alteration is not detrimental to the neighborhood in which it is located. In support of this finding, the Board relies upon the reasons hereinafter stated in its granting of the special permits requested.

4. On the application for a Special Permit for site plan approval: the permit is hereby granted and the site plan dated July 26, 1983 is hereby approved, on the following terms and conditions and based upon the following findings and reasons:

There are two procedures invoked in this development. The first is the site plan approval required under Zoning Bylaw II(A)(11) for conversion of a municipal building to a use permitted in Residential Districts.

There is no question but that the proposed multi-family use is a use so permitted and that the Town Meeting approved the project by more than the required 2/3 vote. The Town Meeting has imposed no conditions on the project.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS.
SEP 23

This Board has referred the proposal to the Planning Board and its recommendations have been received. We hereby approve the plan approved by the Planning Board and impose the following conditions which the Planning Board has deemed consistent with the Town Meeting approval and the public safety and convenience, namely:

a. There shall be a 24 foot driveway from Garden Road. The access to Garden Road is specifically approved since the traffic to the site on this access now will actually be less intensive than the former use of school access. In 1976, when the school building was entirely used for town-wide enrollment of 5th and 6th grades, the busing of children from across Town was involved. The traffic was therefore heavy both by buses and parents' automobiles. It was no longer the "neighborhood school" it had formerly been and traffic was substantially increased. The 24 foot width is deemed by the Planning Board, and we concur, to be a safe width for vehicular traffic on the driveway, since there is a curve heading to the garage. It will also provide a safe, convenient, and appropriate exit point for vehicles entering and exiting onto Garden Road.

b. The drainage shall include five (5) catch basins to drain the driveway. This will clear the driveway sufficiently of water and prevent icing of the surface.

c. The parking lots shall be constructed as shown on the plan, namely: 16 interior parking spaces and 17 exterior spaces, for a total of 33 spaces for 13 units. This will adequately serve the number of units and any visitors. With the garage spaces inside and the additional outside parking, it will more than satisfy the ratio of 1-1/2 spaces for each dwelling unit, which we deem consistent with public safety and sufficient to provide off-street parking.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS.
SEP 23 2 43 PM '83

d. The 12' wide fire lane shall be designated, as shown on the plan. This will connect to a fire lane voted by the Board of Selectmen to come in from Colburn Road across the land retained by the Town. The Fire Chief expressed his strong recommendation for this and we concur that it is advisable for fire safety and for immediate access to the rear of the building. The entrance is particularly appropriate because the vehicle garage is in the rear of the building. This will expedite personnel evacuation should a disaster ever occur at the site. Moreover, the fire lane will not be used for general traffic.

We now turn to the second applicable site plan review procedure, under Section XVIA.

We have comprehensively reviewed the project.

1. The project will comply with zoning. There are no violations of zoning as discussed above in this decision. The Building Inspector has certified that the proposed site plan will be in compliance with zoning.

2. The site will protect the safety, convenience and welfare of the public. The access is safe, and in fact, will cause less intensive traffic than the site's prior use. The limited fire lane will serve fire protection needs. There is no doubt that the Town Meeting has approved the proposed use and we view the overwhelming Town support for it as clear evidence that the project and site are in the public welfare and we so find.

3. We find that the proposed site plan will minimize congestion on the public and private ways. There are only thirteen (13) residential units to be created and the traffic thereby generated is almost insignificant. The driveway will intersect Garden Road at a point

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS.
SEP 23 2 03 PM '83

where the view in both directions along Garden and onto Lanark Road is more than adequate and safe. This private driveway, being 24' side, is situated to protect occupants, visitors and the neighborhood with a well designed entrance and driveway.

4. There is adequate provision for water, sewerage and drainage as certified by the Town Enginner, whose findings we accept since he is charged by the Town in those areas of responsibility. We also make our own determination of approval on these matters. The drainage required by the Planning Board has been incorporated onto the plan and it is appropriate. The Town's existing sewerage line will be protected by the Town reserving an easement for access to it.

5. We have reviewed Sections XVI, XXI and XXII and the project fully complies in all respects. Section XVI is basically a catch-all provision and the plan fully meets its requirements. Section XXI governs the off-street parking and the ratio of spaces to units is well within the requirements as discussed above. The developer has been before the Design Review Board as required by Section XXII, and they approved the project and submitted their findings which we have accepted.

Accordingly, for the foregoing reasons, and since the use of Brown School structure is in harmony with the general purposes and intent of the Wellesley Bylaw, and the terms and conditions herein stated, this Board does hereby grant a Special Permit approving the Site Plan under Section XVIA drawn by Hammer, Kiefer and Todd, Inc. dated July 26, 1983, subject to the conditions attached as Addendum A.

ZONING BOARD OF APPEALS
OF THE TOWN OF WELLESLEY

Stephen S. Porter, Chairman

John A. Donovan, Jr.

Robert R. Cunningham

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS.
SEP 23 2 43 PM '83

Decision - Addendum A

1. That a copy of the Selectmen's deed to the developer as recorded be filed with the Board of Appeals at the time of recording.

2. That all work shall be performed in accordance with plans submitted and on file with this Authority or as modified by this Special Permit.

3. That all design and construction must comply with all applicable state and local codes.

4. That upon completion of the entire project, a complete set of "As Built" plans, including a complete set of mechanical plans, shall be submitted to the Inspector of Buildings and site utility plans shall be submitted to the Department of Public Works.

5. That a copy of the Occupancy Permit issued by the Inspector of Buildings shall be submitted to this Authority at the time of issuance.

6. That all requirements of the Town of Wellesley Fire Department be complied with, including the fire lane to Colburn Road.

7. A surety performance bond or letter of credit running to the Town of Wellesley shall be provided in the amount of $50,000.00 which shall be in all respects satisfactory to Town Counsel and the Board of Appeal and shall be posted with the Treasurer of the Town of Wellesley before commencement of work. Said bond or letter of credit shall be conditioned on the completion of the work in accordance herewith and the performance of all conditions hereof, shall be signed by a party or parties satisfactory to Town Counsel, and shall be released after completion of the project, provided that provision satisfactory to the Board of Appeal has been made for performance of any conditions which are of continuing nature.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS.
SEP 23 2 43 PM '83