



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman
ROBERT R. CUNNINGHAM
KENDALL P. BATES

ELLEN D. GORDON
Executive Secretary
Telephone
431-1019

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

ZBA 87-90

Petition of the Estate of Jean Jewett
75 Livingston Road

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, November 19, 1987 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley on the petition of the ESTATE OF JEAN JEWETT requesting a Special Permit for Site Plan Approval pursuant to Section XVIIA-B(4) and a Special Permit pursuant to Section XIVE-D(2)(e) under the provisions of Section XXV of the Zoning Bylaw to create more than 10,000 square feet of impervious area at 75 Livingston Road in a Single Residence District and a Water Supply Protection District, previous to construction of two single family dwellings at that location.

On November 2, 1987, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case was Leslie B. Shea, attorney for David Porter, President of Techbuilt Homes, the prospective developer of the property. Also present were John DeGrenier, Site Supervisor for Techbuilt Homes and Mrs. Porter. Mr. Shea stated that the lot, consisting of approximately 3.6 acres, would be subdivided into one lot of about 75,000 square feet and a second of about 41,000 square feet. A cul-de-sac of 9,000 to 10,000 square feet, plus driveways, will bring the impervious paved area to over 10,000 square feet, and thus requires a Special Permit.

It is necessary for Mr. Porter to provide for on-site recharge of stormwater which has been done by providing two catch basins with run-offs and leaching basins. There must be a five foot overlay of surface material and if fill is brought on site, it must be approved by the Wetlands Protection Committee. The need for fill is not thought to be necessary at this time.

Mr. Shea stated that the lot size in the area was 40,000 square feet and that the proposed subdivision would have the required frontage. Curbing would also be provided. Following a determination by the Board of Appeals, the subdivision plan will be submitted to the Planning Board for final approval.

The Board questioned whether street lighting was required by the Town. Mr. Shea did not think it was required. The schematic electric plan submitted represented underground electric service. The distance from Livingston Road to the outside perimeter of the cul-de-sac is about 250 feet according to Mr. DeGrenier. As yet, the Town has not required illumination of that area.

There will be a septic system connecting to the Town Sewer located on Livingston Road.

No one was present expressing favor or opposition to the request.

ZBA 87-90

Petition of the Estate of Jean Jewett
75 Livingston Road

Statement of Facts

The property in question is located at 75 Livingston Road, in a Single Residence District and a Water Supply Protection District, and contains 145,853 square feet as follows: Lot 1, 40,180 square feet; Lot 2, 75,714 square feet; Parcel A, 3,552 square feet, Jean Jewett, 9,180 square feet and the roadway which will be 17,227 square feet. The Town of Wellesley has a 15 foot wide Sewer Taking of 1,200 square feet which separates Lot 2 from the parcel entitled Jean Jewett.

The petitioner is requesting a Special Permit and Site Plan Approval as stated above. On May 5, 1987, Mr. Porter received approval on his Preliminary Subdivision Plan for this property from the Planning Board subject to requirements of the Town Engineer, the Board of Health and the Fire Chief and determination of the proposed disposition of non-buildable "Parcel A". The petitioner must receive a Special Permit and Site Plan Approval as he plans to pave a cul-de-sac, resulting in the creation of more than 10,000 square feet of impervious area in a Watershed Protection District.

The following information has been submitted: 1) Hydrologic Study for Definitive Subdivision off Livingston Road, dated October 14, 1987, prepared by GLM Engineering Consultants, Inc.; Plot Plan, Cross Section, Grading Plan, Electrical Plan and Plan of Typical Precast Leaching Pit, dated October 15, 1987, prepared by Philip D. Lukens, Registered Land Surveyor and Francis Gaboriault, Professional Engineer.

As there is no construction planned at this time, there has been no submission to the Design Review Board. Site Plans and other submission materials were sent to the Planning Board, Wetlands Protection Committee, Town Engineer, Board of Health and Fire Chief as required by Section XVIA of the Zoning Bylaw. Written responses from each of the above were received and are on file at the ZBA office.

John Bezanson, Town Engineer, in a letter of November 13, 1987, approved the concept of the proposed leaching basins and requested a definitive structure design for the basins. This plan (Typical Precast Leaching Pit) was submitted and approved as noted in Mr. Bezanson's letter of November 18, 1987.

The Wetlands Protection Committee, at its meeting on November 2, 1987, reviewed the site plans and advised that the following applicable Design and Operation Standards in Section XIV-E(F) must be adhered to: 1) on-site recharge of stormwater, 2) preservation of the 5 foot soil overburden above the water table and 3) documentation of the source and quality of fill brought to the site. The Committee was satisfied that the first two conditions have been adequately satisfied. The applicant, at this time, does not foresee the need to bring fill to the project site. However, should fill be necessary, its source and quality must be documented.

The Planning Board, in its letter of November 12, 1987, advised that although it appeared that the Preliminary Subdivision Plan would meet the requirements of the Subdivision Rules and Regulations, modifications might be required for approval of the Definitive Subdivision Plan.

RECEIVED
TOWN ENGINEER'S OFFICE
WELLESLEY, MASS.
NOV 11 11 18 AM '87

ZBA 87-90
Petition of the Estate of Jean Jewett
75 Livingston Road

Decision

This Authority has made a careful study of the evidence presented. The petitioner paving of more than 10,000 square feet of impervious area in a Water Supply Protection District requires the granting of a Special Permit pursuant to Section XIVE and Site Plan Approval pursuant to Section XVIA-B(4).

It is the opinion of this Authority that the Design and Operation Standards as enumerated in Section XIVE-F are adequately satisfied and that the plans submitted as listed in the Statement of Facts comply with Section XVIA of the Zoning Bylaw.

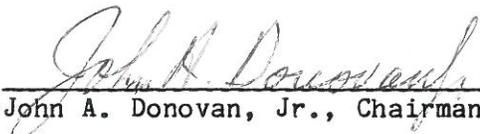
A Special Permit is hereby granted and Site Plan Approval is given by this Authority pursuant to Section XIVE-D(2)(e), Section XVIA-B(4) and Section XXV of the Zoning Bylaw subject to the following conditions:

1. Documentation of the quality and source of any fill brought to the project site.
2. A definitive Subdivision Plan must be submitted to the Planning Board for final approval under the provisions of the Subdivision Control Law.
3. If substantial changes or modifications are made to the approved plans on record due to Planning Board approval of a definitive Subdivision Plan, the petitioner must submit a new application for a Special Permit and Site Plan Approval to the Zoning Board of Appeals.

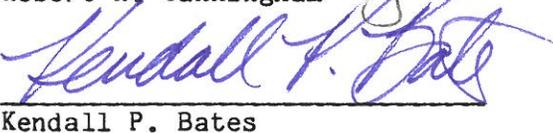
APPEALS FROM THIS DECISION, IF ANY SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
Inspection of Buildings
Wetlands Protection Committee

edg


John A. Donovan, Jr., Chairman


Robert R. Cunningham


Kendall P. Bates

DEC 9 11 28 AM '87
RECEIVED
TOWN CLERK'S OFFICE
WESTLEY MASS.



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman
ROBERT R. CUNNINGHAM
KENDALL P. BATES

ELLEN D. GORDON
Executive Secretary
Telephone
431-1019

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

ZBA 87-90
Petition of the Estate of Jean Jewett
75 Livingston Road

Addendum

It having come to the attention of the Board of Appeals that its decision on the above-referenced case, filed with the Town Clerk's office on December 9, 1987, contains a misstatement of fact, the Board of Appeals hereby issues the following amendment to its said decision:

The following sentence, as it appears therein on Page Two, in Paragraph Four, is hereby stricken:

"As there is no construction planned at this time, there has been no submission to the Design Review Board."

and the following sentences are hereby substituted in its place:

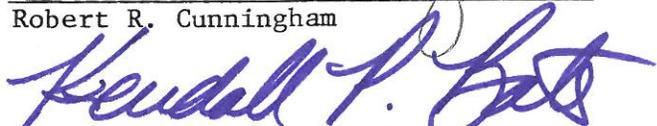
"Although no construction plans were filed, the application was submitted to the Design Review Board on November 2, 1987 as required. No recommendation was received from the Design Review Board."



John A. Donovan, Jr., Chairman



Robert R. Cunningham



Kendall P. Bates

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS.
MAR 4 9 11 AM '88

COMMONWEALTH OF MASSACHUSETTS.

APPEALS COURT FOR THE COMMONWEALTH,

AT BOSTON,

June 26, 1989

IN THE CASE OF

ROBERT G. MURRAY & another

vs.

ZONING BOARD OF APPEALS OF WELLESLEY & others.

pending in the SUPERIOR

Court for the County of NORFOLK

ORDERED, that the following entry be made in the docket; viz.,—

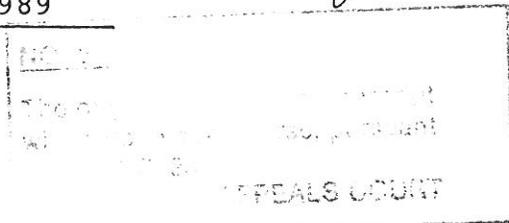
Judgment affirmed.

The motion for damages and costs under Mass.R.A.P. 25 and 26, except to the extent allowed automatically by operation of rule 26(a), is denied.

BY THE COURT,

Nancy Tucker Foley, CLERK.

June 26, 1989



OVER

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

88-P-636

ROBERT G. MURRAY & another

vs.

ZONING BOARD OF ~~APPEALS~~ OF WELLESLEY & others.

MEMORANDUM AND ORDER UNDER RULE 1:28

The plaintiffs have appealed from a judgment upholding a decision of the Zoning Board of Appeals of Wellesley which, subject to conditions, approved a site plan and gave a special permit for construction as described below.

The plaintiffs' home abuts the land that is the subject of this case, a 3.6-acre parcel off Livingston Road in Wellesley owned by the defendant Porter as trustee. Porter plans to subdivide the parcel to create two single-family residential houselots and to construct a cul-de-sac on which the lots will front and which will connect them to Livingston Road. The parcel lies within a water supply protection district (Zoning By-Law, § XIVE), in which owners are permitted generally the uses allowed in the underlying zoning district, but subject to additional restrictions (§ XIVE[D]). Certain uses, listed in § XIVE(D)(1), are prohibited altogether; these are not involved in the present case. Other uses, listed

in § XIVE(D)(2), are allowed by special permit. These include:

" ;

"b. Major construction projects which are defined in Section XIVA, SITE PLAN APPROVAL, Parts B.1 through B.4, and which are subject to site plan review.

"

"d. Any uses where more than 10,000 square feet of any lot would be rendered impervious."

Section XIVE(E) states that "[t]he provisions of Section XVIA, SITE PLAN APPROVAL, shall apply," presumably referring, at least, to uses allowed by special permit under § XIVE(D)(2).

Porter's proposed cul-de-sac will be paved; it will cover (at least when driveways are included) an area in excess of 10,000 square feet. Hence the need for a special permit and site plan approval. "Major construction project[s]" are defined in § XVIA(B)(1) to include "construction of twenty-five hundred (2,500) or more square feet gross floor area." The plan submitted to the zoning board of appeal showed, we are told (the plan is not included in the appendix), the lot lines and the cul-de-sac but not the proposed houses and any accessory buildings or driveways. For purposes of decision we assume these will constitute a major construction project.

The plaintiffs argue that it was improper for the board to grant the special permit and to give the site

plan approval without plans showing the location and design of the house, accessory buildings (if any), and driveways. Doubtless the board might, in its discretion, have required of Porter a plan that was more forthcoming than the one submitted. But the by-law contemplates a somewhat more limited role for site plan approval in a ~~water supply protection district~~ than in other districts requiring site plan approval. Section XVIA(A) defines the purpose and scope of site plan review:

"This section is adopted by the Town to provide a comprehensive review procedure for construction projects as hereinafter defined, (excluding construction, alteration, enlargement or reconstruction of any single or two family building, or building or structure accessory thereto, unless in a designated Flood Plain or Watershed Protection District) for [various listed purposes]."

The underlying district is zoned for single family residential use. Single family residences are contemplated. Construction will be subject to a building area to lot area ratio requirement (§ XVIII[C]) and to various yard requirements (§ XIX) specified in the zoning by-law. The by-law, we think, can be read as contemplating that these restrictions should suffice for relatively low intensity residential uses and that § XVIA was not intended to require the board to review construction plans for one or two family houses in a water supply protection district. Driveways can be regarded as an adjunct of house construction rather than an extension of the road. Hot-topping of driveways does not usually require zoning approvals. We conclude that

the board acted reasonably in not requiring more detailed plans.

The plaintiffs' other arguments are without merit. The second condition (submission to the planning board of a definitive plan for final approval) was merely redundant of an independent legal requirement. The third condition, apparently intended to require resubmission to the zoning board (for site plan and special permit approval) in the event that the final approved plan should differ substantially from that which was the basis of site plan approval, cannot fairly be criticized for imprecision -- particularly absent some suggestion of how it might be stated more precisely. Cf. Congregation Beth Sholom & Community Center, Inc. v. Building Commr. of Framingham, 27 Mass. App. Ct. 276, 280-281 (1989). The notice point, we think, has been abandoned, probably explicitly (see brief, p.7), but if not explicitly, then under Mass.R.A.P. 16(a)(4), 367 Mass. 921 (1975). And while it is generally true that a trial court must make independent findings of fact in approving a special permit, this does not exempt special permit appeals from the provision of Mass.R.Civ.P. 56(b), 365 Mass. 824 (1974), where, as here, no material issues of fact are in dispute.

The defendant Porter has filed a motion for damages and costs under Mass.R.A.P. 25 and 26, as amended, 378 Mass. 925 (1979). The order of this court affirming the

judgment will result in costs being taxed against the plaintiffs under rule 26(a). The motion for damages is based, essentially, not on an allegation that the appeal is frivolous, but on the basis that the plaintiffs were actuated by improper motives in pressing the appeal. This is an allegation which would necessitate independent fact-finding. Where an action (or appeal) is not frivolous, but is improper solely by virtue of misuse of legal process for an improper motive, neither rule 25 nor G. L. c. 231, § 6F-G, seems on point. If the defendant Porter wishes to purpose a claim for damages, he should probably initiate an independent action. The motion, except to the extent allowed automatically by operation of rule 26(a), is therefore denied.

The judgment is affirmed.

By the Court (Armstrong, Kaplan
& Smith, JJ.),

Nancy Ruth Foley
Clerk

Entered: June 26, 1989