



ZONING BOARD OF APPEALS

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ZBA 2013-82

Appeal of Paul Bevilacqua, Trustee of Kimlo Trust
 Lot 24 & Lot 25, Kimlo Road

NOV 21 P 3:04
 TOWN'S OFFICE
 WELLESLEY MA 02482

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, November 7, 2013 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the appeal of PAUL BEVILACQUA of the decision of the Planning Board for application for Review/Certification of Adequacy of Kimlo Road that KIMLO ROAD is inadequate and there is no legal frontage for LOTS 24 & 25, as shown on plans dated 8/31/13 and 9/1/13, prepared by Thomas Mannetta Inc.

On October 21, 2013, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were George Giunta, Jr., Esq. and Dana Zakarian, Esq., on behalf of Paul Bevilacqua, (the "Appellant"). Mr. Giunta said that Mr. Bevilacqua is appealing a determination by the Planning Board that Kimlo Road does not provide adequate access to two lots that he is proposing to build upon.

Mr. Giunta said that Kimlo Road is an unaccepted private way that runs between Rockland Street and Route 9. He said that it is broken into two sections. He said that the first section runs approximately 422 feet long upslope from Rockland Street. He said that the other section that picks up from there is approximately 620 feet long and runs out to Route 9.

Mr. Giunta said that the first section from Rockland Street shows up on deeds that go back as far as 1888 and 1891. He said that it is the oldest piece of the road.

Mr. Giunta said that the Route 9 side shows up in Land Court plans that date back to 1948 but also as far back as 1929. He said that it shows up on the Land Court plan as a serpentine road that comes in off of Route 9 and terminates at a large parcel of land. He said that on the far side of that the oldest portion of Kimlo picks up again.

Mr. Giunta said that in 1948 there was a subdivision plan not subject under the Subdivision Control Law but through Land Court that is part of the registered land process. He said that it shows the full extension of Kimlo Road coming in off of Route 9 ending with a cul de sac and then another right of way extending further down to Rockland Street.

Mr. Giunta said that Mr. Bevilacqua owns two lots at the cul de sac. He said that, as a part of the process to build on those two lots, Mr. Bevilacqua had to go to the Planning Board to get a review of adequacy of the road. He said that the Planning Board found that the road was inadequate and could not be made adequate.

Mr. Giunta said that that they feel that the Planning Board applied the wrong standard.

Mr. Giunta said that during the Planning Board process, it asked for recommendations from the Engineering and Fire Departments as to the suitability and condition of Kimlo Road. He said that Engineering looked at it in 2010 and said that the oldest section from the lots down to Rockland Street was in good condition and that the section going out to Route 9 was in fair condition. He said that the Planning Board asked Engineering to update and re-review Kimlo Road. He said that they found that the conditions had deteriorated and recommended that improvements be made, including re-surfacing and a few other minor improvements. He said that Mr. Bevilacqua was prepared to make those improvements to make it adequately safe and passable. He said that Engineering set a bond figure of \$45,000.

The Board said that Mr. Giunta described two halves of Kimlo Road. The Board asked for a definition of the term, "way" when discussing adequacy. The Board said that there appears to be a way that ends in a cul de sac. The Board said that within that is a paved area.

Mr. Giunta said that adequacy of the way is the physical roadway to get up Kimlo Road to access the lots and the rest of Kimlo Road. He said that the pavement is not in the layout.

The Board said that a cul de sac is shown but not defined on the plan. Mr. Giunta said that the cul de sac is the legal layout of Kimlo Road, according to a Land Court plan.

The Board said that the Land Court plan indicates that a portion of the road is on land that appears to be owned by lot 22 and lot 24.

The Board confirmed that Mr. Giunta was determining the frontage by virtue of the cul de sac. The Board confirmed that the lots in question are shown as lots 5 and 6 on the Land Court plan.

Mr. Giunta said that between the two lots there are over 20,000 square feet. He said that, as part of the process, Mr. Bevilacqua was planning to move the lot line to give both lots 10,000 square feet of area. He said that they are pre-existing old lots. He said that an ANR plan was done.

The Board confirmed that the reference to "way" refers to the entire length of Kimlo Road from Rockland Street to Route 9.

Mr. Zakarian that they are asking the Zoning Board to remand the Appeal back to the Planning Board with the direction that adequacy of the way be approved. The Board said that it had not seen an ANR plan. The Board said that all that it could do is it to remand it back to the Planning Board with a finding that the roadway is adequate and to proceed in accordance with the ZBA opinion. The Board said that it is up to the Planning Board to choose whatever action they plan to take. The Board said that only the Planning Board can sign off on the adequacy of the way.

Mr. Zakarian said that he submitted a letter to the Board. He said that the Planning Board applied the wrong legal standard when reviewing adequacy of the way. He said that the correct legal standard is to look at whether or not emergency vehicles can adequately access the way. He said that emergency vehicles have accessed the way in the past. He said that in September, 2010 there was a fire at 41 Kimlo Road. He said that the Fire Department was able to put the fire out without issue. He said that there were issues with two lots in 2008 and 2009 and emergency vehicles were able to access the lots.

Mr. Zakarian said that the Planning Board typically referred to the Engineering and Fire Departments for recommendations when determining adequacy of the way. He said that adequacy of the way was typically approved subject to conditions that the Engineering and Fire Department recommendations be implemented.

The Board said that the street level is at an elevation of 220 feet and the back of the proposed dwellings is at an elevation of 184 to 186 feet. The Board asked if there will be adequate access to fight a fire on those houses. The Board asked how the Fire Department will get to the back of the houses.

Mr. Zakarian said that access to the lot is from a parking pad and from the main road. He said that the Fire Department did not raise any issues with the proposed houses. He said that there is a section of the cul de sac where there is a retaining wall that the Fire Department wanted to be removed. He said that the Fire Department asked that the road be widened. He said that Mr. Bevilacqua agreed to those conditions.

Mr. Zakarian said that on October 1, 2013, the Engineering Department submitted a recommendation along with estimated costs.

Mr. Zakarian said that in their decision, the Planning Board stated that, no matter what is done, Kimlo Road will never have adequate access. He said that impacts not only Mr. Bevilacqua but all of the neighbors if the road is deemed inadequate. He said that they would not be able to rebuild or build a substantial addition. He said that in this instance, the finding is erroneous.

Mr. Zakarian said that he cited on page 5 of his letter that the Planning Director stated that, "I have inspected the road surface condition, and similar to Engineering, believe the road is in fair to good condition. Certainly [Kimlo] [R]oad is in better condition than many of the unaccepted ways that have far greater deterioration, such as Edgemoor, which the Board has recently reviewed." He said that he included a chart in his letter that showed that 73 Edgemoor was unanimously approved for adequacy of way.

Mr. Zakarian said that the Planning Board applied the wrong standard. He asked that the Zoning Board issue a finding that the way is adequate and remand it back to the Planning Board.

The Board asked about the easements referred to in the Planning Board recommendations. Mr. Giunta said that the Planning Board was referring to the first portion of Kimlo Road that comes up from Rockland Street. He said that the right of way is referred to in different documents as an easement or a right of way. He said that the Town took an easement when it installed the sewer and water lines.

The Board asked how the houses will be hooked up to the sewer line. Mr. Bevilacqua said that one will be pumped and the other will be gravity. The Board said that the plans show two pump chambers. Mr.

Bevilacqua said that the house on lot 25 has an interior pump for the lower level. He said that the first floor level will be even with grade and will drain by gravity.

The Board confirmed that, standing on Kimlo Road, each of the houses will be a single story above grade.

A Board member said that he was troubled by the definition of "way". He said that on the Grading Plan there are things shown within the cul de sac but outside of what is called, "Kimlo Road." He said that there are a lot of retaining walls for the parking areas. Mr. Giunta said that the darker lines that loop around are the legal layout of Kimlo Road. He said that what the Board member had shaded blue on the plan is the physical pavement on ground. He said that most of it is within the legal layout of Kimlo Road. The Board said that it is a paper layout, not a legal layout.

The Board said that a proposed guard rail system will bisect the cul de sac. Mr. Giunta said that it will be at the edge of the existing pavement. The Board said that the cul de sac cannot be blocked off because all of the residents of Kimlo Road have the right to use the whole cul de sac. Mr. Giunta said that the guardrail would be installed in response to a recommendation from the Engineering Department. The Board said that it is Mr. Bevilacqua's responsibility to tell Engineering that he has no legal right to fence it off.

The Board said that the cul de sac will drop 12 feet from the proposed guard rail to the edge. The Board said that it drops 12 to 14 feet over a distance of 25 to 30 feet, which is a 1:2 slope. The Board questioned the ability to get any fire vehicles down the slope. Mr. Zakarian said that with the paved platform there could be access. Mr. Giunta said that there is an existing barrier there for safety.

Mr. Giunta said that the way that is in question for adequate access is a physical way on the ground, the paved road from Route 9 to Rockland Street. The Board said that it is not clearly identified on the Site Grading Plan.

Mr. Zakarian said that the issue of adequacy involves emergency vehicle access. He said that the Fire Department has not taken issue with it and they have accessed it in the past. He said that it was only the Planning Board that said that no matter what is done to it, it will not be adequate.

The Board discussed the definition of frontage. The Board said that the dimensional requirement that is in the Zoning Bylaw only counts if the boundary butts on an accepted way. Mr. Zakarian said that one of the lots does have frontage on the way. He said that the Planning Board said that neither lot has frontage on the way.

Mr. Giunta said that lot 25 has frontage on the way. He said that the house on the right side of the plan has a parking pad coming straight off of the way. He said that the other one is set up to come off of the cul de sac. The Board said that it is only 12 feet wide.

Mr. Giunta said that, as he understood it, when it comes to frontage and access, if you can physically get from the road onto the lot there is access and the access is not illusory. He said that it can be done in this case.

Mr. Zakarian said that lot 25 has sufficient frontage on the road. The Board said that the Zoning Bylaw states that frontage is a lot boundary line which abuts a public way. The Board said that the only plan that

it had seen was the Grading Plan that does not have the dimensions of the lots. The Board said that it has not seen a subdivision or plot plan for the two lots.

Mr. Giunta said that in the Zoning Bylaw there is a provision for a way in existence when the Subdivision Control Law became effective.

The Board said that the lot does not touch the way. Mr. Giunta said that even in a new subdivision the pavement in the middle of the layout does not touch the edge. He said that there is typically 24 feet. He said that the adequacy of the physical way on the ground is being questioned. He said that it is not shown on the plans that were submitted.

Mr. Giunta said that you cannot have frontage on the physical way even in a new subdivision. He said that the property line is typically 8 feet back. The Board said that every subdivision shows the property line up to the layout of the road. Mr. Giunta said that the pavement is typically 8 ft from that. He said that the physical pavement is not at the edge of the layout but is within it.

The Board said that there is not frontage for both lots unless the cul de sac is filled in and brought up to grade with the rest of Kimlo Road.

Mr. Giunta said that the matter before the Board tonight is the appeal of the Planning Board decision that the physical pavement is not adequate.

Statement of Facts

The subject property is located at Lot 24 and Lot 25, Kimlo Road, in a 10,000 square foot Single Residence District.

The Petitioner is appealing the decision of the Planning Board for application for Review/Certification of Adequacy of Kimlo Road, that Kimlo Road is inadequate and there is no legal frontage for Lots 24 and 25, as shown on plans dated 8/31/13 and 9/1/13, prepared by Thomas Manna Inc.

Submittals from the Planning Board

- Memorandum to Michael Grant, Inspector of Buildings/Zoning Enforcement Officer, dated 10/11/13, from Ethan Parsons, Assistant Planning Director, re: Determination of Inadequacy of Unaccepted Street, Lots 24 and 25 Kimlo Road

Submittals from the Appellant

- Letter of Appeal to Kathleen Nagle, Clerk, dated 10/11/13, from Paul Bevilacqua, re: Wellesley Planning Board denial of application for "Review/Certification of Adequacy of Kimlo Rd."
- Site Grading Plan, Sheet 1 of 4, dated 8/27/13, prepared by Thomas Manna Incorporated.
- Letter to Zoning Board of Appeals, dated 11/6/13, from Dana A. Zakarian, Esq., re: Lots Nos. 24 and 25 Kimlo Road/Adequacy Determination

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

On the Appeal of the decision of the Planning Board for application for Review/Certification of Adequacy of Kimlo Road, that Kimlo Road is inadequate and there is no legal frontage for Lots 24 and 25, as shown on plans dated 8/31/13 and 9/1/13, prepared by Thomas Manna Inc., the Zoning Board of Appeals finds that the paved area of Kimlo Road is in fact adequate but that only lot 25 may have sufficient frontage on the paved portion of Kimlo Road. The Zoning Board of Appeals is of the opinion that lot 24 does not have sufficient frontage on the paved portion of Kimlo Road to warrant it being a buildable lot in the Town of Wellesley. The Board is further unable to determine from the plans before it whether lot 25 abuts the paved area of Kimlo Road sufficiently so that it meets the frontage requirements. This matter is hereby remanded to the Planning Board for such further action as it deems necessary in accordance with this opinion.

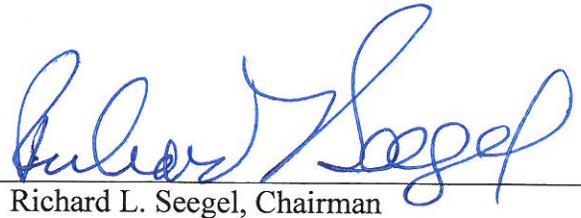
2013 NOV 21 P 3:04

WELLESLEY TOWN'S OFFICE
WELLESLEY MA 02482

ZBA 2013-82
Appeal of Paul Bevilacqua
Lots 24 & 25 Kimlo Road

2013 NOV 21 P 3:04
TOWN'S OFFICE
MILLSLEY MA 02482

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.

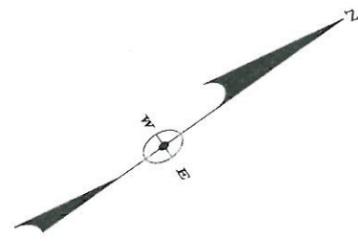

Richard L. Seegel, Chairman


J. Randolph Becker


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

BENCHMARK
 Top Spindle of Hydrant,
 15 Rockland Street,
 El. = 191.66
 TOWN OF WELLESLEY DATUM



2013 OCT 21 P 1:16
 ENGINEER'S OFFICE
 WELLESLEY MA 02482

ZONING DISTRICT: SR-10

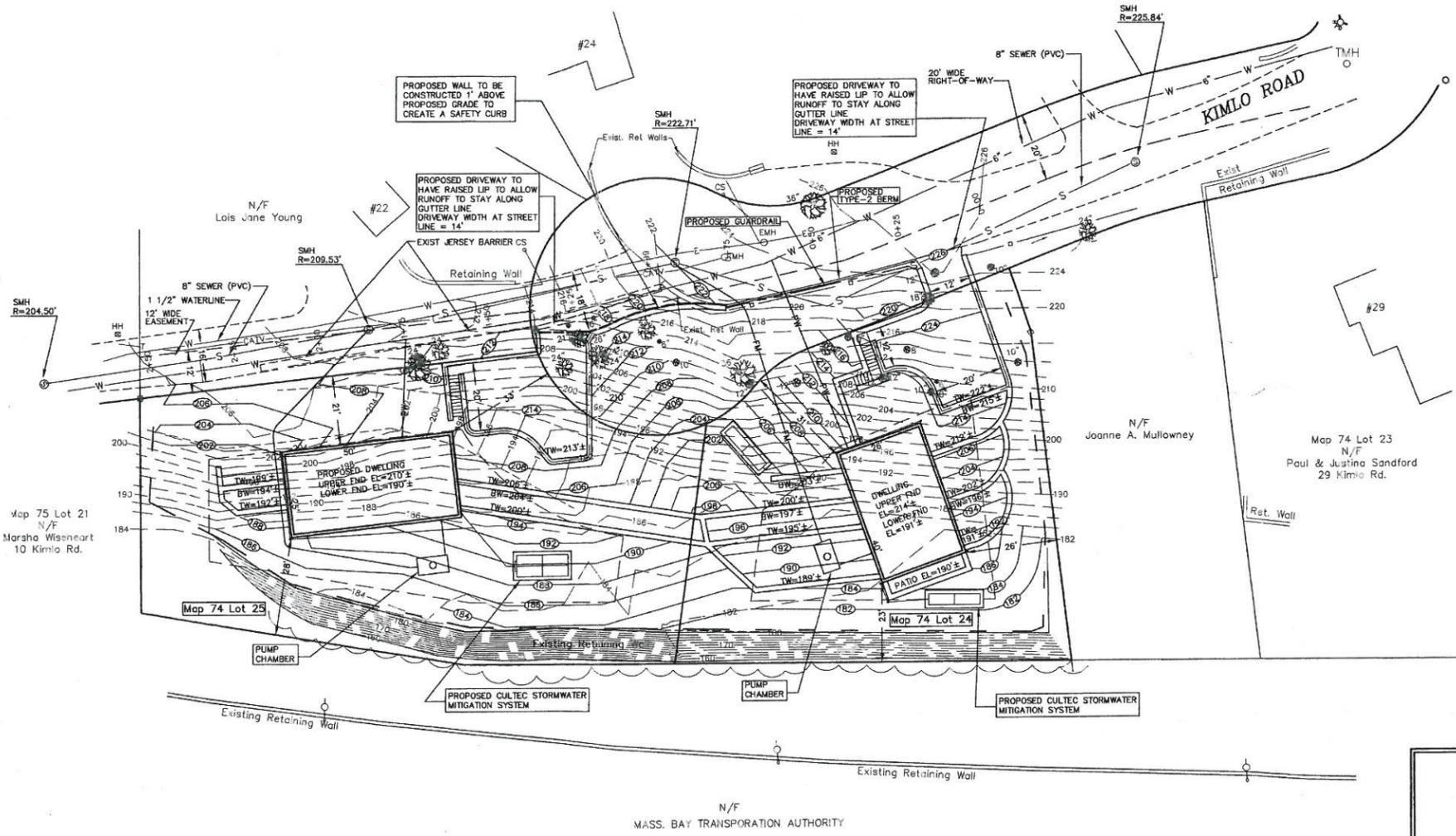
SITE DATA

Map 74 Parcel 24
 PARCEL SIZE: 10,033sf±
 Map 74 Parcel 25
 PARCEL SIZE: 12,330sf±

BUILD FACTOR (PROPOSED)
 LOT 25
 Lot Perimeter (P) = 488.71'
 Actual Lot Area = 12,330
 Required Lot Area = 10,000
 Build Factor = 19.37 / 1.23 = 15.75
 LOT 24
 Lot Perimeter (P) = 403.16
 Actual Lot Area = 10,033
 Required Lot Area = 10,000
 Build Factor = 16.20 / 1.00 = 16.20

LEGEND

- EXIST TREE
- EXIST WATER CURB STOP
- EXIST CATCH BASIN
- EXIST TELEPHONE MANHOLE
- EXIST ELECTRIC MANHOLE
- EXIST HANDHOLE
- EXIST SEWER MANHOLE
- EXIST UTILITY POLE W/LIGHT
- EXIST STONE BOUND
- EXIST IRON PIPE OR ROD
- PROPERTY LINE
- EXISTING WOOD FENCE
- BUILDING ENVELOPE
- PROPOSED RETAINING WALLS
- PROPOSED GRADE LINE
- EXISTING TREE LINE
- EXISTING CONTOUR LINE
- EXISTING TEMPORARY JERSEY BARRIER
- PROPOSED 2" PVC SEWER FORCE MAIN
- EXISTING SEWER MAIN
- EXISTING WATER MAIN
- EXISTING CABLE TELEVISION
- EXISTING EDGE OF PAVEMENT
- EXISTING TELEPHONE
- PROPOSED 1" WATER SERVICE
- PROPOSED EDGE OF PAVEMENT
- PROPOSED EROSION CONTROL
- PROPOSED GUARDRAIL
- PROPOSED FALL PROTECTION RAIL



NOTES

ALL PROPOSED RETAINING WALLS TO BE DESIGNED BY OTHERS. DESIGNS TO BE SUBMITTED TO THE TOWN OF WELLESLEY FOR APPROVAL PRIOR TO CONSTRUCTION. ALL WALLS TO COMPLY WITH SECTION XXIID TOWN OF WELLESLEY RETAINING WALL BYLAW.
 GUARDRAILS OR FALL PROTECTION SHALL BE PROVIDED ALONG RETAINING WALLS WHERE APPLICABLE.
 ALL SLOPES LESS THAN 3:1 SHALL HAVE RIP-RAP SLOPE PROTECTION OR APPLICABLE MATTING.
 GUARDRAILS SHALL BE IN CONFORMANCE WITH THE TOWN OF WELLESLEY SPECIFICATIONS

- REFERENCES:**
- 1) Land Court Plan #13446F
 - 2) Town of Wellesley, Department of Public Works dated February 22, 1989, Scale: 1"=40', Kimlo Road Utility Easement
 - 3) Town of Wellesley, Massachusetts Sewerage System Improvements, Kimlo Road Contract #99C-50-12
 - 4) Deed Book 2397 Page 502

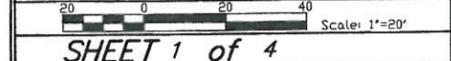
**SITE GRADING PLAN
 AT
 KIMLO ROAD
 IN
 WELLESLEY, MA**

APPLICANT:
 THE BEVILACQUA COMPANY, INC
 P.O. BOX 812704
 WELLESLEY, MA 02482

ENGINEER:
THOMAS MANNETTA INCORPORATED
 15 BOARDMAN LANE - TOPSFIELD MA 01983
 445 RANTOUL STREET - BEVERLY MA 01915
 PHONE: (978) 887-0965 EMAIL: TOM@THOMASMANNETTA.COM

DRAWING FILE: C:\TCHDRAW\2013\KIMLD8-27

TCL # 1699	DATE: 8/31/2013	
revision #	date	description
1	8/27/2013	COMMENTS PER SITE WALK



SHEET 1 of 4



9-9-13
 DATE