



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

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ZBA 88-51
Petition of Hewins Farm Realty Trust
167 Forest Street

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, June 23, 1988 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) on the petition of HEWINS FARM REALTY TRUST requesting three Special Permits for the HEWINS FARM SUBDIVISION at 167 FOREST STREET in a Single Residence and a Water Supply Protection District: 1) Special Permit for Site Plan Approval pursuant to Section XVIA-B5, Section XIVE-E and Section XXV of the Zoning Bylaw to allow the HEWINS FARM SUBDIVISION to be used as single family house lots with new road and utilities; 2) Special Permit to allow the rendering of more than 10,000 square feet as impervious area at the HEWINS FARM SUBDIVISION in a Water Supply Protection District, pursuant to Section XIVE-D2(d) and Section XXV of the Zoning Bylaw; and 3) Special Permit pursuant to Section XIXB and Section XXV of the Zoning Bylaw to allow Lots 2, 3, 4, and 6 in the HEWINS FARM SUBDIVISION to be used as building lots, said lots having less than the required frontage on a curved streetline and less than a sideline radius of 100 feet. The total square footage of the subdivision is 161,678 square feet of which 20,610 square feet will be devoted to roadway and 141,068 square feet devoted to house lots.

Presenting the case at the hearing was Timothy Sorrell, trustee of the Hewins Farm Realty Trust, who was accompanied by Robert Lakin and John Hughes, III, co-trustees in said Trust; William Mone, attorney for the Trust and Robert Drake of Drake Associates, the engineering firm for the project.

Mr. Sorrell reviewed the requests for Special Permits and submitted a revised plan in compliance with the Town Engineer's recommendation, in which the interceptor trench is extended to cover the entire uphill side of Hewins Farm Road to protect the road base. Mr. Sorrell stated that the lots were created as part of the subdivision process which has preliminary approval from the Planning Board. Definitive approval is being sought on June 28, 1988.

A discussion ensued regarding the Special Permit for the lots with reduced frontage on a curved street, particularly in regard to Lot #6, which is not on the bulb of the cul-de-sac as are Lots 2, 3, and 4, has a sideline radius of 99 feet and frontage of 50 feet. In answer to the Board's question if sufficient frontage was available to avoid seeking a Special Permit for this lot, Mr. Sorrell responded that the configuration of the lots had been drawn to retain as much open space and as little paved area as possible.

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In regard to Lot 6, the Board felt that the road had been curved in order to achieve the 50 foot frontage. Previous cases have dealt with existing cul-de-sacs or lots on the bulbs of cul-de-sacs, whereas in this case, the subdivision had been designed with a curved road in a situation where Lot 6 could have been placed on a straight road and not received the benefit of reduced frontage. Mr. Sorrell agreed that he had used the intent of the Bylaw to maximize the buildability of the site, but that in so doing, he had created lots that did not have odd shapes.

William Mone said that Section XIX of the Zoning Bylaw had divided the dimensional requirements into two tables: Table 1 was applicable to lots endorsed on or before January, 1985 and Table 2 was applicable to lots endorsed after that date. The proviso regarding reduced frontage aids in the planning of subdivisions. Hewins Farm development has relied on Section XIXB to establish the cul-de-sac. "Curved" means on a radius of less than 100 feet. Therefore, Lot 6 does qualify for reduced frontage, as do all the lots for which the Special Permit is sought. The Special Permit process ensures that the lots will comply with the provisions of Section XIXB, and a Special Permit is allowable as long as the lots comply with said requirements.

The Board questioned Mr. Mone's interpretation of Section XIXB, feeling that the phrase "may have a reduced frontage", implied discretionary power whereby the Board of Appeals could require more frontage for a lot on a minimal curve, rather than approving the minimum 50 foot frontage regardless of the location of the lot on the curved streetline.

The Board stated that it would seek an opinion from Town Counsel in regard to the interpretation of the 50 foot frontage provision of Section XIXB.

Peter Staaterman, 151 Forest Street, expressed concern as to the disposition of the ground water run-off. Mr. Sorrell said that he had continued the interceptor trench up the hill to pull water off of the property. Each lot will be treated individually. If necessary, Mr. Sorrell will provide any rights-of-way necessary for private drainage to connect to the Town storm drainage system.

Ms. Sarah Johnson opposed the granting of the Special Permit to render more than 10,000 square feet as impervious area due to serious concern regarding the Town water shortage. Mr. Sorrell said that the plan has been approved by the Wetlands Protection Committee which has overseen the leaching basin plan.

No other persons had any comment on the petition.

Statement of Facts

The subject property is located at 167 Forest Street, in a Single Residence and a Water Supply Protection District and contains 161,678 square feet; 141,068 square feet devoted to seven house lots, each one approximately 20,000 square feet, and 20,610 square feet devoted to roadway. The property abuts Wellesley Avenue to the south, Forest Avenue to the north, Town owned property to the east and single family residences to the west.

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The petitioner is requesting a Special Permit for Site Plan Approval to allow the Hewins Farm subdivision to be used as single family residence house lots with a new road and utilities. This request is due to the provisions of Section XVIA-B5 which requires Site Plan Approval for any activities regulated under Section XIV-E, Water Supply Protection Districts. As the petitioner is planning to create more than 10,000 square feet of impervious area, an activity regulated under Section XIV-E, a Special Permit for Site Plan Approval is required.

The Planning Board voted preliminary subdivision approval on February 16, 1988 and definitive subdivision approval (PB-88-E-1) on June 28, 1988.

The following plans all amended May 31, amended June 22, 1988 and engineered by Drake Associates, Inc., signed by William F. Drake, professional engineer, and Robert F. Drake, Registered Land Surveyor were submitted: Sheet 1, Locust; Sheet 2, Layout; Sheet 3, Grading; Sheet 4, Hewins Farm Road Profile; Sheet 5, Utility Easement Profile; Sheet 6, Wellesley Avenue Improvements and Electrical Distribution Plan; Sheet 7, Tree Location Plan; Sheet 8, Tree Location Plan. A Hydrologic Analysis, amended May 31, 1988, prepared by William F. Drake, professional engineer; and a Municipal Systems Impact Report, dated and signed as above, were also submitted.

The Design Review Board, on June 9, 1988, voted to approve the plan with the recommendation that an island be located in the cul-de-sac to minimize the amount of paving and recommended oaks or an English elm to be planted in the island. Site plans and other submission materials were also 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 in the ZBA office.

In response to the Authority's request for a legal opinion regarding discretion of the Zoning Board to require minimum frontage in excess of 50 feet in regard to Section XIXB of the Zoning Bylaw, Town Counsel, in a letter dated June 30, 1988, stated:

"I interpret the proviso language in the Bylaw to vest in the Board of Appeals, as the Special Permit Granting Authority, some form of discretion; the discretion would seemingly apply to the number of feet to be required as a minimum, for frontage purposes, on a lot having frontage on a side line radius of less than 100 feet; but it remains unclear as to what criteria are intended to guide the Board of Appeals in its determination in that computation....."

The Planning Board, in its letter of July 1, 1988, regarding the Reduced Frontage Provision reviewed the intent of the Planning Board in proposing the change in the Bylaw to Town Meeting in 1985.

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Decision

This Authority has made a careful study of the evidence presented. Due to the proposed rendering of more than 10,000 square feet as impervious area in a Water Supply Protection District, the petitioner is requesting a Special Permit for Site Plan Approval pursuant to Sections XVIA-B5 and Section XIVE-E; and a Special Permit pursuant to Section XIVE-D2(d) to render more than 10,000 square feet as impervious area in a Water Supply Protection District.

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 pursuant to Section XIVE-D2(d) to render more than 10,000 square feet as impervious area and a Special Permit for Site Plan Approval is hereby granted pursuant to Section XIVE-E and Section XVIA-B5 and subject to the conditions contained in Addendum A.

A Special Permit has also been requested pursuant to Section XIXB to allow Lots 2, 3, 4 and 6 to be used as building lots, said lots having their only frontage on a curved street line and having a sideline radius of less than 100 feet.

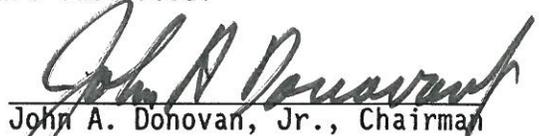
It is the opinion of this Authority that due to a lack of criteria regarding specific allowable frontage in proportion to the distance of the sideline radius, and as the petitioner meets all of the stated requirements of Section XIXB, a Special Permit may be granted to allow Lots 2, 3, 4, and 6 to be accepted as building lots.

Therefore, said Special Permit is hereby granted, subject to the following conditions:

- a. The minimum frontage of each lot shall be 50 feet.
- b. The minimum front yard width (100 feet) is maintained at the street setback line (house line) and
- c. All other dimensional zoning requirements are satisfied.

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
Inspector of Buildings
edg


John A. Dohovan, Jr., Chairman


Robert R. Cunningham


William E. Polletta

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Addendum A

1. That all work shall be performed in accordance with plans submitted and on file with this Authority.
2. That all design and construction must comply with all applicable state and local codes.
3. That all requirements of the Town of Wellesley Fire Department shall be complied with.
4. That all requirements of the Department of Public Works shall be met, including but not limited to the requirement that water, sewer and electric connections together with drainage connections be made in accordance with DPW standards and installed and maintained at no cost to the Town of Wellesley.

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