



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

JAN 3 1 14 PM '91

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WELLESLEY, MA 02181
WILLIAM E. POLLETTA
FRANKLIN P. PARKER
SUMNER H. BABCOCK

ZBA 90-80
Bernardi's Collision, Inc.
10 Prescott Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, October 25, 1990 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, on the petition of BERNARDI'S COLLISION, INC. requesting a Special Permit pursuant to the provisions of Section XI and Section XXV of the Zoning Bylaw to allow the property at 10 PRESCOTT STREET, in a Business District, to be used for a Motor Vehicle Body Repair/Paint Shop, with hours from 7 a.m. to 5:30 p.m., Monday through Friday throughout the year.

On October 10, 1990, the petitioner filed a request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was John Kahn, attorney representing the petitioner and Cliff Associates, owners of the property. Mr. Kahn said that due to flooding problems in his present location on Linden Street, Gary Lucier, the petitioner, wishes to move his auto body repair business to the Prescott Street location. Mr. Lucier does not intend to expand the business, but to use the larger building to store damaged cars undercover. The rear portion of the Prescott Street building is presently used by a painting contractor, who has a limited painting business on the premises.

Mr. Kahn outlined the parameters of the operation, focusing on the emissions control standards of the Department of Environmental Protection. He stated that the paint shop operation had been inspected by the Board of Health in its present location, and that the Board of Health had issued guideline restrictions for the new location by which Mr. Lucier would abide.

Mr. Kahn said that the premises had been occupied by Lee Chevrolet which had an auto body repair department. Lee Chevrolet vacated the premises in 1978 or 1979. They are presently used by a painting contractor who does some spray painting in the building.

Louis Grignaffini, 151 Linden Street, spoke in support of the petition. He said that none of the occupants of his building have ever voiced complaints regarding the auto body shop in its present location.

Neil Dailey, 4 Alden Road, voiced opposition to the petition, listing traffic congestion and health concerns as primary issues.

Tom Fischer, 4 Spruce Park, expressed opposition citing neighborhood concern that the operation would be out of character with the surrounding neighborhood, which was also disturbed about possible emission of carcinogens.

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Quentin Holman, 11 Caroline Street, expressed opposition in light of the effect of emission of pollutants and the possibility of the premises becoming an eyesore due to the outdoor parking of wrecked vehicles.

Richard Sarginson, 8 Spruce Park; Bernie Parizeau, 9 Clovelly Road; Jerry Young, 16 Prescott Street; Ed Cale, 14 Caroline Street; and Carol Stewart, 29 Abbott Road, also expressed opposition citing previously mentioned concerns.

Statement of Facts

The property in question is located at 10 Prescott Street, in a Business District, on a 17,881 square foot lot, which is occupied by a concrete and aluminum building containing 8,743 gross square feet. The building was used until 1978 or 1979 by Lee Chevrolet for an automobile dealership and an auto body repair shop. At present, the front portion of the building is vacant and the rear portion is leased by a painting contractor for paint storage and painting.

The petitioner is requesting a Special Permit to use the premises for an motor vehicle body repair/paint shop. This use, allowed by right in a Business District until 1988, is now a use requiring a Special Permit.

A copy of the Town Plot Plan, an interior plan of the building, a copy of the Lease Agreement between Cliff Associates and Bernard's Collision, Inc.; Engineering Data on the DeVilbiss Paint Booth; Air Pollution Regulations with comments from the Department of Environmental Protection; a report from the Air Filter Testing Laboratories, Inc. dated April 4, 1988; and photographs were submitted by the petitioner.

Petitions signed by 95 citizens, letters and information from several signatories, in opposition to the petition, were submitted and are on file in the office of the Board of Appeals.

The Planning Board, on October 16, 1990, voted to recommend denial of the special permit request.

The Board of Health, in a letter of October 17, 1990, recommended that approval of the petition be conditioned on the requirements listed therein. Due to public concern, the Board of Health held a Public Hearing on November 19, 1990, and issued a decision on December 3, 1990, which listed advisory limitations, if the Board of Appeals granted the Special Permit.

Following the Public Hearing on October 25, 1990, the Board of Appeals was of the opinion that a decision should be deferred until the Board of Health had issued its decision. The Board of Appeals held a Business Meeting prior to the Public Hearing on December 20, 1990. At that time a preliminary decision was made, which was finalized the following day.

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Petition of Bernardi's Collision, Inc.
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Decision

This Authority has made a careful study of the evidence submitted. The petitioner is requesting a Special Permit pursuant to Section XI of the Zoning Bylaw to allow the premises at 10 Prescott Street, in a Business District, to be used for an motor vehicle body repair/paint shop, a use not allowed by right in a Business District.

This Authority is of the opinion that the use of the premises as an auto body repair/paint shop is in harmony with the intent and purpose of the Zoning Bylaw. A Special Permit is hereby granted for the premises at 10 Prescott Street to be used as a motor vehicle body repair/painting shop subject to the following conditions:

1. All design and construction must comply with all applicable State and local codes.
2. Construction of a vent stack no less than 10 feet above the roof of the building the location of which shall be at the end of the roof nearest Prescott Street and subject to final approval of the Health Department. A copy of the approved plan shall be submitted to the office of the Board of Appeals prior to the issuance of any building permit.
3. Only one spray painting booth shall be installed on the premises.
4. Spray painting operations shall be limited to a maximum of two hours per day.
5. Said spray painting operation shall comply with all state and federal requirements for air emission standards and reporting.
6. The Health Department shall approve the location of all venting elements prior to their installation. A copy of this approved plan shall be submitted to the office of the Board of Appeals prior to the issuance of a building permit.
7. All exterior doors must remain closed during all spray painting operations.
8. Any dumpster or trash receptacle provided on the premises shall be screened and covered.
9. The use of the premises shall be for a motor vehicle body repair/paint shop and no other use of the premises shall be allowed during the occupancy period of the petitioner.
10. The premises may not be sublet by the petitioner for the use allowed herewith, nor may any person, other than the petitioner, be allowed to use the premises for said use.
11. The hours of operation shall be limited to 7 a.m. to 5:30 p.m., Monday through Friday throughout the year. No vehicle repair shall be allowed on the premises by any employee after 5:30 p.m.

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WELLESLEY, MA 02181

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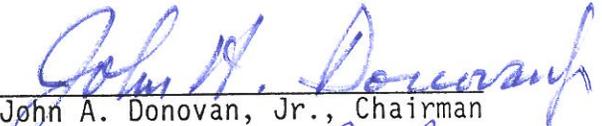
ZBA 90-80
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10 Prescott Street

12. All vehicles brought to the premises after closing hours by any tow truck shall be brought under cover immediately upon the opening of the premises on the next working day.
13. Any vehicle that is operable to the extent that it does not constitute a traffic safety hazard, which is brought to the premises after closing hours, shall be brought under cover immediately upon opening of the premises on the next working day.
14. Installation of the spray paint booth must comply with all state codes and fire prevention regulations. Final approval by the Fire Department will be contingent on this conformance. A copy of this approval must be submitted to the office of the Board of Appeals prior to the issuance of a certificate of occupancy.
15. Except for automobiles brought to the premises for repair after closing hours, the outside of the premises shall be kept free and clear of all equipment, objects and refuse of any nature, kind or description to ensure that the exterior cleanliness of the area will be maintained
16. This Special Permit shall expire one year from the date of this decision.

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
Fire Department
Inspector of Buildings
Board of Health

edg


John A. Donovan, Jr., Chairman


Kendall P. Bates


William E. Polletta

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AMENDED DECISION

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, October 25, 1990 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, on the petition of BERNARDI'S COLLISION, INC. requesting a Special Permit pursuant to the provisions of Section XI and Section XXV of the Zoning Bylaw to allow the property at 10 PRESCOTT STREET, in a Business District, to be used for a Motor Vehicle Body Repair/Paint Shop, with hours from 7 a.m. to 5:30 p.m., Monday through Friday throughout the year.

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Presenting the case at the hearing was John Kahn, attorney representing the petitioner and Cliff Associates, owners of the property. Mr. Kahn said that due to flooding problems in his present location on Linden Street, Gary Lucier, the petitioner, wishes to move his auto body repair business to the Prescott Street location. Mr. Lucier does not intend to expand the business, but to use the larger building to store damaged cars undercover. The rear portion of the Prescott Street building is presently used by a painting contractor, who has a limited painting business on the premises.

Mr. Kahn outlined the parameters of the operation, focusing on the emissions control standards of the Department of Environmental Protection. He stated that the paint shop operation had been inspected by the Board of Health in its present location, and that the Board of Health had issued guideline restrictions for the new location by which Mr. Lucier would abide.

Mr. Kahn said that the premises had been occupied by Lee Chevrolet which had an auto body repair department. Lee Chevrolet vacated the premises in 1978 or 1979. They are presently used by a painting contractor who does some spray painting in the building.

Louis Grignaffini, 151 Linden Street, spoke in support of the petition, stating that none of the occupants of his building have ever voiced complaints regarding the auto body shop in its present location.

Neil Dailey, 4 Alden Road; Tom Fischer, 4 Spruce Park; Quentin Homan, 11 Caroline Street, Richard Sarginson, 8 Spruce Park; Bernie Parizeau, 9 Clovelly Road; Jerry Young, 16 Prescott Street; Ed Cale, 14 Caroline Street; and Carol Stewart, 29 Abbott Road, expressed opposition citing concerns with emission of carcinogens, possible unsightliness of the premises, and traffic congestion.

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Petition of Bernard's Collision, Inc.
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Statement of Facts

The property in question is located at 10 Prescott Street, in a Business District, on a 17,881 square foot lot, which is occupied by a concrete and aluminum building containing 8,743 gross square feet. The building was used until 1978 or 1979 by Lee Chevrolet for an automobile dealership and an auto body repair shop. At present, the front portion of the building is vacant and the rear portion is leased by a painting contractor for paint storage and painting.

The petitioner is requesting a Special Permit to use the premises for an motor vehicle body repair/paint shop. This use, allowed by right in a Business District until 1988, is now a use requiring a Special Permit.

A copy of the Town Plot Plan, an interior plan of the building, a copy of the Lease Agreement between Cliff Associates and Bernardi's Collision, Inc.; Engineering Data on the DeVilbiss Paint Booth; Air Pollution Regulations with comments from the Department of Environmental Protection; a report from the Air Filter Testing Laboratories, Inc. dated April 4, 1988; and photographs were submitted by the petitioner.

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The Planning Board, on October 16, 1990, voted to recommend denial of the special permit request.

The Board of Health, in a letter of October 17, 1990, recommended that any approval of the petition be conditioned on the requirements listed therein. Due to public concern, the Board of Health held a Public Hearing on November 19, 1990, and issued a decision on December 3, 1990, which listed advisory limitations, if the Board of Appeals granted the Special Permit.

Following the Public Hearing on October 25, 1990, the Board of Appeals was of the opinion that a decision should be deferred until the Board of Health had issued its decision. The Board of Appeals held a Business Meeting prior to the Public Hearing on December 20, 1990. At that time a preliminary decision was made, which was finalized the following day.

A decision granting the Special Permit was filed in the office of the Town Clerk on January 3, 1991. On January 23, 1991, an appeal to the decision was filed in Norfolk Land Court, a copy of which was filed on the same date in the office of the Town Clerk (Land Court No. 156-533).

Following agreement among counsel for the Plaintiffs, the Town of Wellesley and Bernardi's Collision, Inc., a Motion to Remand was entered in Norfolk Land Court and signed by Judge Cauchon on February 25, 1991, which ordered the Zoning Board of Appeals to hold a public hearing on Thursday, March 7, 1991 in order to deliberate and vote upon the application for a special permit for Bernardi's Collision, Inc.

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The Order of Remand specified that the Public Hearing should be limited to submission by a representative of the Board of Health of its decision of December 3, 1990; testimony on the flooding situation at the petitioner's present location by a representative of the Department of Public Works; questions by the Board of Appeals of the two witnesses; comments of counsel; discussions of the conditions stated in the January 3, 1991 Decision; reasons why the grant of the Special Permit would be in harmony with the intent and purposes of the Zoning Bylaw; and a vote to confirm or deny the grant of a Special Permit to the petitioner.

On Thursday, March 7, 1991, at 8 p.m., the Board of Appeals held a public hearing as ordered. Shepherd Cohen, Chairman of the Board of Health, read the decision of the Board of Health, dated December 3, 1990, into the record. The Board questioned Dr. Cohen as to further conditions the Board of Health might want added to those already in the decision. Dr. Cohen stated that the Board of Health felt the permit should not be issued, but had no further conditions to suggest.

Testimony was given by Douglas Stewart, Assistant Town Engineer, regarding the flooding situation at the petitioner's present location. Mr. Stewart said that the flooding situation has been present for at least 15 years, but has worsened in the past two years. During a severe rainfall, the flooding can surcharge as much as two feet into Bernardi's Auto Shop. The Town and the property owners have had a longstanding dispute as to who is responsible for correction and maintenance. In response to the Board's question, Mr. Stewart stated that the matter is still in dispute at this time.

Counsel was given an opportunity to comment.

The Board of Appeals then discussed the conditions enumerated in the previous decision, as well as reasons why the granting of the special permit would be in harmony with the general intent and purpose of the Zoning Bylaw.

Following the discussion, the Board, by a voice vote, unanimously voted to grant the special permit with the same conditions as listed in the previous decision.

Decision

This Authority has made a careful study of the evidence submitted. The petitioner is requesting a Special Permit pursuant to Section XI of the Zoning Bylaw to allow the premises at 10 Prescott Street, in a Business District, to be used for an motor vehicle body repair/paint shop, a use not allowed by right in a Business District.

The Preamble of the Wellesley Zoning Bylaw lists objectives of the Zoning Bylaw which include the conservation of health, prevention of blight and pollution of the environment and the conservation of the value of land and buildings. It is the opinion of this Authority that the granting of this Special Permit will further these objectives.

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Conservation of Health/Prevention of Pollution of the Environment

At the proposed location, a DeVilbiss Pro Clean Spray Paint Booth will be installed. The air filters of this booth will remove 99.3% of the particulate matter prior to exhaust. The operation of this booth will be limited to no more than two hours per day, with all exterior doors closed, and shall comply with all state and federal requirements. The remaining .7% of the particulate will be exhausted through a stack 10 feet above the roof of the building at a location specifically determined by the Board of Health. Total emissions of volatile organic compounds will be substantially below thresholds and public health limits. Emissions from automobiles using Worcester Street, at a distance of one-half mile, greatly exceed amounts which will emanate from the proposed use.

Presently, there are several auto body repair shops which exist in Business Districts which, because they existed prior to 1988, are not subject to any zoning controls or conditions. The operation of Bernardi's Collision, Inc., in its proposed location, will be far more stringently controlled than existing similar operations.

This Authority notes that the Board of Health stated that the petitioner has had no violations of Board of Health regulations before or presently existing. Furthermore, Mr. Lucier, owner of Bernardi's Collision, Inc., appears to have operated his business in a responsible, safe manner, and this Authority believes that he will continue to do so. The flooding condition at the petitioner's present location does not appear to be of his creation, and is definitely a serious impediment to the proper running of his business.

Due to the installation of state-of-the-art equipment and the conditions placed upon its use and venting by this Authority and the Board of Health, this Authority is of the opinion that the proposed operation will not constitute a health hazard to the surrounding neighborhood, nor will it contribute to the pollution of the environment. In fact, at the Public Hearing on March 7, 1991, the Chairman of the Board of Health could not add any further restrictions to those listed below, which would further ensure the health of the neighborhood.

Prevention of Blight/Conservation of Value of Land and Buildings

It is the opinion of this Authority that the location of the proposed business will not impair the status of the neighborhood. This Authority has placed several conditions on the petitioner to ensure that the property will not become an eyesore to the neighborhood. These conditions include restrictions on the dumpster, parking of damaged vehicles and standards of cleanliness for the property.

The petitioner has owned and operated his auto body repair shop in its present location, which is also in close proximity to a residential neighborhood, for eleven years. During that time, there have been no complaints as to noise, emissions or cleanliness of the premises.

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For all of the aforesaid reasons, it is the opinion of this Authority that the use of the premises as an auto body repair/paint shop is in harmony with the intent and purpose of the Zoning Bylaw.

The final condition listed below states that the grant of the Special Permit shall be of one year's duration. During that time, any complaints regarding violations of the enumerated conditions will be handled by the Zoning Enforcement Officer. If, at the expiration of the grant of the Special Permit, the petitioner applies for renewal, the Board of Appeals will hear the petition, taking note of any violations, among other things, and/or complaints registered during the allowed time period before rendering a decision as to whether renewal of the Special Permit would continue to be in harmony with the general intent and purpose of the Zoning Bylaw.

A Special Permit is hereby granted for the premises at 10 Prescott Street to be used as a motor vehicle body repair/painting shop subject to the following conditions:

1. All design and construction must comply with all applicable State and local codes.
2. Construction of a vent stack no less than 10 feet above the roof of the building the location of which shall be at the end of the roof nearest Prescott Street and subject to final approval of the Health Department. A copy of the approved plan shall be submitted to the office of the Board of Appeals prior to the issuance of any building permit.
3. Only one spray painting booth shall be installed on the premises.
4. Spray painting operations shall be limited to a maximum of two hours per day.
5. Said spray painting operation shall comply with all state and federal requirements for air emission standards and reporting.
6. The Health Department shall approve the location of all venting elements prior to their installation. A copy of this approved plan shall be submitted to the office of the Board of Appeals prior to the issuance of a building permit.
7. All exterior doors must remain closed during all spray painting operations.
8. Any dumpster or trash receptacle provided on the premises shall be screened and covered.
9. The use of the premises shall be for a motor vehicle body repair/paint shop and no other use of the premises shall be allowed during the occupancy period of the petitioner.
10. The premises may not be sublet by the petitioner for the use allowed herewith, nor may any person, other than the petitioner, be allowed to use the premises for said use.

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11. The hours of operation shall be limited to 7 a.m. to 5:30 p.m., Monday through Friday throughout the year. No vehicle repair shall be allowed on the premises by any employee after 5:30 p.m.
12. All vehicles brought to the premises after closing hours by any tow truck shall be brought under cover immediately upon the opening of the premises on the next working day.
13. Any vehicle that is operable to the extent that it does not constitute a traffic safety hazard, which is brought to the premises after closing hours, shall be brought under cover immediately upon opening of the premises on the next working day.
14. Installation of the spray paint booth must comply with all state codes and fire prevention regulations. Final approval by the Fire Department will be contingent on this conformance. A copy of this approval must be submitted to the office of the Board of Appeals prior to the issuance of a certificate of occupancy.
15. Except for automobiles brought to the premises for repair after closing hours, the outside of the premises shall be kept free and clear of all equipment, objects and refuse of any nature, kind or description to ensure that the exterior cleanliness of the area will be maintained
16. This Special Permit shall expire one year from the date of this decision.

It is the opinion of this Authority that the conditions heretofore stated further the objectives of the Zoning Bylaw to conserve health, to prevent blight and pollution of the environment and the conserve the value of land and buildings.

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
Fire Department
Inspector of Buildings
Board of Health

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Dated this 28th day of March, 1991


John A. Donovan, Jr., Chairman

Kendall P. Bates


William E. Polletta

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WELLESLEY, MA 02181

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

LAND COURT
NO. 156-533

* * * * *

ABBE BETH YOUNG, JEROLD YOUNG,
QUENTIN HOMAN, JANICE BOOKMAN
JOANNE H. CALE, EDWARD G. CALE
MALCOLM D. HILL, JOHN C. HEYWOOD
MARIA HELENA HEYWOOD, BRIAN D.
VESKETM CATHERINE E. SCOTT,
GREGORY M. SHOUKIMAS, ALI
SADEGHPOUR, EVA LAM, STEPHEN
PRINN, JAMES J. LANIGAN,
CHRISTINE LANIGAN, LINDA
ZUKOWSKI, CARROLL B. STEWART,
DAVID CENTER, and ROBERT ANDERSON

Plaintiffs,

v.

JOHN A. DONOVAN, JR., KENDALL P.
BATES, and WILLIAM E. POLLETTA
as they constitute the WELLESLEY
ZONING BOARD OF APPEALS, and
BERNARDI'S COLLISION, INC.

Defendants,

* * * * *

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RESPONSE OF WELLESLEY ZONING BOARD OF APPEALS TO
ORDER ON DEFENDANT BERNARDI'S COLLISION INC.'S
MOTION TO REMAND

In compliance with the Order of the Norfolk Land Court, signed by Judge Cauchon on February 25, 1991, the Wellesley Zoning Board of Appeals held a public hearing on Thursday, March 7, 1991 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley, after providing notice conforming to the provisions of Mass. Gen. Laws, ch. 39, s.23B, to deliberate and vote on the application for a special permit submitted by Bernardi's Collision, Inc.

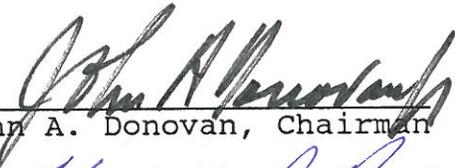
The Zoning Board of Appeals heard Shepherd Cohen, Chairman of the Wellesley Board of Health, read into the record the decision of the Board of Health, dated December 3, 1990.

The Zoning Board of Appeals then heard testimony from Douglas Stewart, Assistant Town Engineer, regarding the flooding conditions at Bernardi's present location.

The Chairman, on behalf of the Board, questioned each of the witnesses on the subject of their testimony, after which, Counsel was given an opportunity to comment.

The Zoning Board of Appeals discussed the conditions specified in its Decision filed with the Town Clerk on January 3, 1991, and reasons as to why the grant of the special permit was in harmony with the intent and purpose of the Zoning Bylaw.

The Chairman called for a vote to confirm its grant of the special permit upon the aforementioned conditions. John A. Donovan, Jr., Chairman; Kendall P. Bates and William E. Polletta each signified approval by a voice vote to confirm the grant of the special permit.


John A. Donovan, Chairman


Kendall P. Bates


William E. Polletta

Signed this 28th day of March, 1991

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