



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
~~XXXXXX~~
431-1019

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

ZBA 86-4

Petition of McNeil & Associates, Inc./Town of Wellesley
322-324 Washington Street
12 Seaward Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, January 30, 1986 at 8 p.m. in Room 17 of the Town Offices at the Phillips Building, 12 Seaward Road, Wellesley Hills, on the petition of McNEIL & ASSOCIATES INC. and the TOWN OF WELLESLEY requesting approval of site plans and a special permit pursuant to Section XVIIA and Section II (A)(11) pertaining to the conversion of the property formerly known as the INTERMEDIATE BUILDING at 322-324 WASHINGTON STREET and the PHILLIPS SCHOOL at 12 SEAWARD ROAD to 48 units of elderly housing, said site containing 82,895 square feet of land, including the proposal and conditions approved by the Wellesley Town Meeting vote on April 2, 1985 and any further conditions the Planning Board may deem consistent with Town Meeting approval and the public safety and convenience. The proposal includes substantial rehabilitation of the Intermediate Building, the removal of the Phillips School and the construction of a new addition to the remaining structure and related landscaping and parking. Said site is located partially in a Business District and partially in a Single Residence District. Said request is pursuant to Section XXV of the Zoning Bylaws. No variances have been requested.

On January 8, 1986, 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 was William Roop, Vice President of McNeil & Associates, who presented a brief to the Board explaining the proposal and referred to a project site plan which was on display. He stated that the proposal had been recommended to the Town Meeting by the Board of Selectmen and approved by a two-thirds vote of the Town Meeting, that the request was pursuant to Section XXV and II (11) of the Zoning Bylaw relative to conversion of the building and site previously used for a municipal purpose. He stated that the proposal had been designed to substantially comply with the requirements of the Wellesley Zoning Bylaws for residential districts relative to buildings of that type. Jordan Krasnow, attorney for McNeil & Associates, requested that the Zoning Board of Appeals, in its decision, make a clarification that variances are not required.

Present at the hearing and opposed to the plan presented to the Zoning Board of Appeals: Betty Paltrineri, 16 Bemis Road; Walter Greeley, 17 Maugus Avenue, Vice President of the Wellesley Hills Neighborhood Association; Richard and Avery Maher, 45 Seaward Road; Sara Johnson, 30 Eaton Court; Mary Ellen [redacted], 34 Seaward Road; and

RECEIVED
TOWN OF WELLESLEY
OFFICE

Petition of McNeil & Associates Inc./Town of Wellesley
322-324 Washington Street
12 Seaward Road

John Hughes, 5 Bemis Road. Opposition focused on the contention that the plans presented to the Zoning Board of Appeals differed from the plans approved by the Town Meeting, that McNeil & Associates and the Selectmen had misrepresented the project to the neighborhood in trying to obtain their approval. One specific area of concern was the landscaping easement bordering on the playground. The neighborhood was also concerned with an amended Purchase and Sale Agreement of July 30, 1985, a copy of which had been obtained and circulated in the neighborhood the day before the public hearing. Felix Juliani, Selectman, stated that he was amazed at the neighborhood reaction, that no objection to the proposal had been raised to the Selectmen at the last meeting with the neighbors.

Statement of Facts

The property in question is owned by the Town of Wellesley and located at the corner of Washington Street and Seaward Road, containing two structures, known as the Intermediate Building at 322-324 Washington Street and the Phillips School or Phillips Building, 12 Seaward Road. The site contains 82,895 square feet of land, approximately 20,500 square feet in a Business District, the remainder in a Single Residence District.

The Intermediate Building, constructed in the 1890's, is listed on the National Registry of Historic Places. It served as a school until 1950 after which it was used to house town offices until 1983 when it became vacant. The Phillips Building served as a school for many years, then housed school department offices and in 1985 became the temporary Town Hall during renovations of the Town Hall. The Phillips Building is expected to be vacated in May of 1986 since the Town has no further use for it. With regard to both buildings, the Town of Wellesley has determined that it is in the Town's best interest to forego commercial development of the Intermediate/Phillips Building site, provided it is developed into residential units which are affordable by local elderly citizens of low and moderate income.

Therefore, pursuant to Section II (A)(11) of the Zoning Bylaw, the Wellesley Town Meeting, by a two-thirds vote on April 2, 1985, approved a proposal by McNeil & Associates, Inc., of Westwood, Mass., to convert and develop the Intermediate Building and the Phillips School site for retirement housing. The proposal had been recommended to the Town Meeting by the Board of Selectmen. The proposal included substantial renovation of the Intermediate Building, the razing of the Phillips School, and the construction of an addition to the Intermediate Building, enveloping area formerly occupied by the Phillips School, said project to be known as Phillips Park.

A Purchase and Sale Agreement between the Town of Wellesley and McNeil & Associates, Inc. was executed on April 2, 1985 and amended on July 30, 1985.

The following plans were submitted:

1. Site Plan, Phillips Park Retirement Community, Wellesley, Ma., James W. Haley, P.E., December 16, 1985.
2. Existing Site Features, John E. Bezanson, Town Engineer, October 24, 1983, revised March 18, 1985.

APR 14 10 53 AM '86
 RECEIVED
 TOWN ENGINEER'S OFFICE
 WELLESLEY, MASS.

Petition of McNeil & Associates Inc./Town of Wellesley
322-324 Washington Street
12 Seaward Road

3. Planting Plan, Green Wave Landscape Specialists, Needham, Ma., December 16, 1985, revised December 31, 1985.
4. Sheets 1-6, elevations, floor plans, November 26, 1985 by Childs Bertman Tseckares & Casendino, Inc.

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 endorsing or setting forth general requirements were received by the Board of Appeals, were duly considered and are on file at the Board of Appeals.

The Planning Board, on January 14, 1985, voted unanimously to recommend that the plans be approved and that a special permit be granted for the construction of the Phillips Park buildings. The Planning Board did not impose any conditions on the project.

The Design Review Board held a preliminary review on December 5, 1985 and a final review on January 23, 1986 at which time the Design Review Board accepted the plans.

On February 12, 1986, the Selectmen sent an information packet to the Zoning Board of Appeals indicating that the neighborhood was consulted at length on the plans and that the plans are in accord with the representations made to the Town Meeting.

Decision

This Board has made a careful study of the evidence presented. On April 2, 1985, the Wellesley Town Meeting approved the proposal of McNeil & Associates, Inc. for the Intermediate Building/Phillips School site which was recommended to the Town Meeting by the Board of Selectmen (Appendix A).

Following the 1985 Town Meeting and in accordance with the procedure set forth in the conversion bylaw (Appendix B), the Planning Board voted unanimously to recommend that the plans be approved and that a special permit be granted by this Special Permit Granting Authority for the Phillips Park project without any conditions.

The Design Review Board, Intermediate Building/Phillips School Reuse Study Committee, Council on Aging, Housing Authority, Fire Department and Board of Public Works also approved the plans for the Phillips Park project.

As required by Section II (A)(11) following the dissolution of the Town Meeting, the Zoning Board of Appeals may grant a special permit in accordance with Section XXV, which shall include the plans and conditions approved by said Town Meeting vote and any further conditions which the Planning Board shall deem consistent with said Town Meeting approval and the public safety and convenience. Section XVIA (Site Plan Approval) is also applicable to the project.

The plans which were presented to this Board for approval under the conversion bylaw and for a special permit reveal that zoning requirements will not be complied with in several areas. Town Counsel is of the opinion that the Town Meeting's approval of the comprehensive plan for the McNeil project not only recognized and approved the zoning deficiencies but, by law, superseded the zoning bylaw requirements wherever

90, Mc 86-01
TOWN ENGINEER'S OFFICE
WELLESLEY

Petition of McNeil & Associates, Inc./Town of Wellesley
322-324 Washington Street
12 Seaward Road

they might be otherwise violated. This Authority is not of the same mind as Town Counsel on this point but not being called upon to grant any variances by the petitioners, we render no decision on the zoning deficiencies. We understand that our specific task is to approve plans drawn by McNeil & Associates, Inc. and altered by the Selectmen so long as the concept as presented to the Town Meeting was met.

It is the opinion of this Board that the conceptual plans approved by the Town Meeting and the plans presented to this Board as part of the site plan approval process are essentially the same. Schematic drawings cannot be final plans due to the fact that final plans require topographical studies and other refinements.

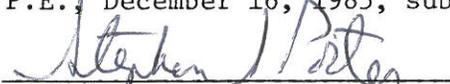
It is the opinion of this Board that the site will not endanger the safety, convenience and welfare of the public. The access is safe and will cause less intensive traffic than the site's prior use. The Town Meeting has approved the proposed use and we view the Town support for it as clear evidence that the project will minimize congestion on the public and private ways.

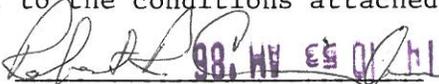
There have been many questions raised by neighbors about the agreements between McNeil & Associates, Inc. and the Town of Wellesley Board of Selectmen. It is the opinion of this Board that the vote of the Town Meeting gave the Selectmen the right to negotiate an agreement and to modify and amend the agreement as the Board of Selectmen deem to be in the Town's best interests. This Board does not have any responsibility in this matter. The neighbors have also expressed concerns regarding the plans submitted to this Board. This Board is of the opinion that the plans represent closely the plans voted upon by the Town Meeting. Questions concerning the agreements between the Selectmen and the neighbors must be dealt with by the parties involved. At the hearing on the petition before this Board, the neighbors' concerns did not touch on safety to any appreciable extent.

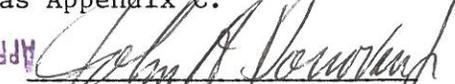
This Authority is concerned about the process of conversion of municipal buildings in the future. We feel that the conversion bylaw should be made more specific in order to deal effectively with situations similar to the case before us. This Board questions whether the razing of a building and the construction of a new building meets the intent of the conversion bylaw. The conversion bylaw makes no specific mention of zoning requirements for height, sideyard and parking spaces being exceeded, as in the case of the McNeil proposal. This Authority is of the opinion that the conversion bylaw was intended solely for change of use of existing municipal and school buildings.

However, in this case and because of the support of the Town Meeting, Town Counsel and other town boards and committees, this Board is of the opinion that it should follow the instructions of the Town Meeting and that, subject to the attached conditions, approval for the project should be granted.

The Special Permit pursuant to Section XXV and Section II (A)(11) and Site Plan Approval pursuant to Section XVIA of the Zoning Bylaw is hereby granted according to the Site Plans for Phillips Park Retirement Community, drawn by James W. Haley, P.E., December 16, 1985, subject to the conditions attached as Appendix C.


Stephen S. Porter, Chairman


Robert R. Cunningham


John A. Donovan, Jr.

APR 14 10 53 AM '86
WELLESLEY TOWN BOARD
PLANNING & ZONING OFFICE

Petition of McNeil & Associates, Inc./Town of Wellesley
322-324 Washington Street
12 Seaward Road

Appendix A

Voted, by a standing vote, YES 131, NO 57, a 2/3 vote, required that WHEREAS, the Town of Wellesley has determined that it is the Town's best interest to forego commercial development of the Intermediate/Phillips buildings site provided the same is developed into residential units which are affordable by local elderly citizens of low and moderate income means as that term has been defined by the Board of Selectmen; NOW, THEREFORE, in furtherance of said purpose the Town does hereby vote as follows:

That pursuant to Section II(A)(11) of the Zoning By-Law, the Town does hereby approve the proposal of McNeil & Associates, Inc., dated October 15, 1984, as amended, for the conversion of use for the Intermediate Building/Phillips School Building complex, and a portion of the site, from public school and municipal use to housing for low and moderate income elderly as that term is defined by the Board of Selectmen; and the Town hereby authorizes the Board of Selectmen to sell the property on behalf for the price of Six Hundred Thousand Dollars (\$600,000.00) and in accordance with the terms and conditions set forth in a Purchase and Sale Agreement dated April 2, 1985 by and between the Town of Wellesley and McNeil & Associates, Inc.; the Town further authorizes the Board of Selectmen to enter into the foregoing and any other agreements, to modify or amend the same as said Board of

APR 14 10 53 AM '86
TOWN OF WELLESLEY
PLANNING OFFICE

Appendix A (continued)

Selectmen shall deem to be in the Town's best interests, and to take any and all other action necessary to carry out this vote; said site being shown on a plan entitled "Town of Wellesley, Department of Public Works, John E. Bezanson, Town Engineer, dated October 24, 1983, Revised March 18, 1985, Scale 1" = 20', Location: No. 322-324 Washington Street and No. 12 Seaward Road, Wellesley, Mass.", said site being subject to survey with lot lines as shall be approved by the Board of Selectmen; a copy of the plan and Purchase and Sale Agreement being on file in the offices of the Board of Selectmen and the Town Clerk.

Richard J. Gleason, Town Meeting Member, Precinct E, gave notice that a motion for reconsideration of action under Article 26, may be offered at the next session of Town Meeting.

APR 14 10 53 AM '86
RECORDED
TOWN ENGINEER'S OFFICE
WELLESLEY, MASS.

Petition of McNeil & Associates, Inc./Town of Wellesley
322-324 Washington Street
12 Seaward Road

Appendix B.

Section II (A)(11)
Town of Wellesley Zoning Bylaw

- 11. Conversion of a building and site previously used for a municipal purpose to a use permitted in residential districts provided, such use shall have been recommended to the Town Meeting by the Board of Selectmen as being in the Town's best interest; and provided, further, such use shall be approved by a two-thirds vote of a Town Meeting and be subject to a special permit as hereinafter provided.

In addition to said recommendation of the Board of Selectmen, the Planning Board shall hold a public hearing and make a report to the Town Meeting as to whether there is a need for the use in the Town and whether the use is consistent with the Town's Comprehensive Plan and compatible with surrounding uses. Failure of the Planning Board to make such a report shall not invalidate Town Meeting approval. Plans of the proposed use shall be made available for public review in the offices of the Board of Selectmen and the Planning Board for at least two weeks prior to the public hearing. Said plans shall conform to the specifications for preliminary plans contained in the adopted Design Review Procedures and any additional procedures that may be adopted by the Board of Selectmen.

Following the dissolution of the Town Meeting, the Zoning Board of Appeals may grant a special permit in accordance with SECTION XXV. which shall include the plans and conditions approved by said Town Meeting vote and any further conditions which the Planning Board shall deem consistent with said Town Meeting approval and the public safety and convenience.

APR 14 10 53 AM '86
RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MASS.

Petition of McNeil & Associates, Inc./Town of Wellesley
322-324 Washington Street
12 Seaward Road

Appendix C - Conditions

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, Board of Health and Town Engineer shall be met.
7. That a surety performance bond or letter of credit running to the Town of Wellesley shall be provided in the amount of \$50,000. which shall be in all respects satisfactory to Town Counsel and the Board of Appeals, 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 with the approved plans and specifications and the compliance with all foregoing conditions. It 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 Appeals has been made for performance of any conditions which are of continuing nature.

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
mam

APR 14 10 53 AM '86
RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MASS.