

IN BOARD OF SELECTMEN  
NOVEMBER 12, 1973

Present: Acting Chairman John C. Powers and John E. Taft

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The Executive Secretary announced that Chairman Toomey had been hospitalized on Saturday, November 10th, but would be released in a few days.

Acting Chairman Powers announced that the Governor had returned House Bill 1086, a bill providing for compulsory and binding arbitration of labor disputes in municipal fire and police departments, with a veto, and that the Senate was scheduled to vote on it today and the House tomorrow.

Utility Petition #73-19, Boston Post Road

It was on motion unanimously

VOTED: To continue consideration of Utility Petition #73-19 until November 19, 1973.

Board of Appeals Decision - Case #73-55

Present: Ronald Adolph, Thomas Gallagher, Philip Ahlin, Robert Savoy of the Board of Appeals; Eben Stevens, Jane Gillespie, Paul McNally, Robert Cooper and Edward Connors of the Planning Board; Olga Reed of the Conservation Commission.

The Executive Secretary reported that he had been notified by telephone, on November 7th, of the Planning Board's concern with the Board of Appeals decision to grant a variance to Douglas J. Macone to construct a single family residence and barn on a lot with an insufficiency in street frontage and that the Planning Board was seeking permission from the Selectmen to enter into a court case to appeal the Board of Appeals decision.

Mr. Thompson stated that the Planning Board's concern was the ownership of the access road as well as its safety in a flood situation, as the road crosses flood plain. Mr. Thompson stated that Mrs. Langmuir, Chairman of the Conservation Commission, had stated, in a telephone conversation, that the road entering the property in her opinion was above flood plain.

Mrs. Reed, a member of the Conservation Commission stated that the Assessor's office records indicate that Mr. Macone was the owner of the road in question.

Selectman Taft asked if anyone had looked at the deed to determine ownership of the road and it was concluded that the deed had not been examined.

Mr. Adolph, Chairman of the Board of Appeals, stated that Mr. Frederick Macone presently owns the property and the road and intends to sell both to Douglas Macone upon the granting of the variance.

Mr. Stevens, Chairman of the Planning Board, stated that the concern of the Planning Board is the access to the parcel which Mr. Macone may or may not own, and commented that this land, in the opinion of his Board, does transgress part of the flood plain zone. Mr. Stevens contended that access cannot be maintained high and dry in a flood situation and that, therefore, the access is unsafe and a variance should not have been granted.

Mr. Stevens added that the Planning Board was also concerned with the construction of a house, access to which is provided only by an easement, if that is the case. Mr. Stevens added that if the road is in fact owned by Mr. Macone, the Planning Board would not object on that point, although the granting of the variance constitutes a substantial derogation from the intent of the bylaws.

Mr. McNally stated that the only developable land on the eighteen-acre parcel is very small and, in the opinion of the Planning Board, very closely situated to a neighbor.

Mr. Adolph reviewed the history of the Board of Appeals hearings held on June 12<sup>th</sup> and June 19<sup>th</sup>, at which time the Board of Appeals suggested to Mr. Macone that he contact the Conservation Commission. Mr. Adolph stated that on July 24<sup>th</sup> his Board had received a communication from the Conservation Commission which recommended against the petition because of Mr. Macone's proposal to fill a portion of land on which to build the house and barn and a communication from the Planning Board which recorded their vote against Mr. Macone's plan for filling the land.

Mr. Adolph stated that Mr. Macone then came to his Board with a new plan, which indicated the location of his house and barn entirely above the 125' zone and which would not require any filling. Mr. Adolph added that his Board had no question about the ownership of the right-of-way. Mr. Adolph further stated that a hearing was held on this new plan on October 2<sup>nd</sup> and a decision made to grant the variance, that his Board stands on their decision, and while not wishing to cause trouble with the Planning Board, finds it difficult to understand why they were not contacted by that Board in an effort to resolve this matter out of court.

Mr. Stevens agreed that the Planning Board should have contacted the Board of Appeals for this purpose.

Acting Chairman Powers requested that Town Counsel comment on the relevance of the fact that the deed had not been examined to determine the ownership of the road, and Town Counsel stated that, in his opinion, it did not matter whether Mr. Macone owned the road or had only a valid easement to pass over it.

Acting Chairman Powers asked whether the Planning Board still wished to proceed with their suit, and it was the consensus of the Planning Board not to proceed with litigation against the Board of Appeals.

It was the conclusion of those present that unless Mr. Macone owns the 20' wide access road from Concord Road, the street frontage insufficiency of 160 feet mentioned in the variance petition cannot be complemented by the additional 20 feet, and a legal building lot cannot be created upon which to build.

The Executive Secretary and Mr. Adolph will contact Mr. Macone to confirm the ownership of the road.

Selectman Taft stated that in accordance with Article IX, III, E, 4, e, of the bylaws, Mr. Macone must apply for a permit for paving the access road, and it was agreed that Mr. Macone be so informed.

Acting Chairman Powers commented that he thought the earlier comments pertaining to more communication among Boards as a method of resolving problems were well taken.

#### Campfire Girls

Miss Kim Sanders, representing the Sudbury Campfire Girls, presented a box of Campfire Girls candy to the Selectmen.

#### Hearing - Applications for Transfer of Liquor Licenses

Present: Roger S. Murray; Robert J. McCabe; Jerome L. Francis, attorney; Ralph Barton, abutter.

The Executive Secretary read the notice of public hearing, which was concerned with the following petitions:

1. Application for transfer of package goods store license for the sale of Wine and Malt Beverages, under Chapter 138, Section 15, of the General Laws, from Victoria Miceli, d/b/a Tracy's Package Store, located at 466 North Road, Sudbury, Massachusetts, to Roger S. Murray, Manager, and Robert J. McCabe.
2. Application for transfer of restaurant license for the sale of All Alcoholic Beverages, under Chapter 138, Section 12, of the General Laws, from Armando S. Troisi, d/b/a Ye Olde 117 House, located at 470 North Road, Sudbury, Massachusetts, to Roger S. Murray, Manager, and Robert J. McCabe.

Also read into the record was the opinion of Town Counsel dated October 29th, which cited General Laws provisions which prohibit the issuance of both a package store license and a pouring liquor license to the same applicants.

Acting Chairman Powers suggested that Mr. Francis take a moment to confer with Town Counsel in regard to Town Counsel's recommendation that the applications be withdrawn.

Following a brief review of Town Counsel's opinion, Mr. Francis responded that as long as only the applications are being questioned, he would request a continuance to resubmit the applications.

Town Counsel stated that resubmission would require a second notification, and the Executive Secretary recommended that the present applications be withdrawn by the Petitioners and resubmitted.

It was on motion unanimously

VOTED: To accept the withdrawal of the above-mentioned applications by the petitioners to enable their resubmission at a later date.

#### Minutes

The Board voted unanimously to accept the minutes of the Town Fathers' Forum of October 24, 1973, the regular meeting and the executive session of November 5, 1973, as amended.

#### Appointments

The Executive Secretary announced that the following appointments had been made on November 5, 1973:

John Sullivan to the Revolutionary War Bicentennial Committee.

William L. Carleton as Sudbury's representative of the Trinity Mental Health Centre Advisory Board.

Alan L. Erskine and Linda Buxbaum to the 1973 Town Report Preparation Committee.

#### Heritage Park

The Board signed a contract agreement dated November 12, 1973, between the Selectmen and Ron Boucher Associates, Inc., landscape architects, to prepare a site development master plan for Heritage Park, said professional service not to exceed \$700 and said funds to be expended from the Heritage Park Fund.

#### Building Inspector

The Board received a communication dated November 7, 1973, from R. G. Light, Associate Professor of Agricultural Engineering, University of Massachusetts, which requested that the enclosed Certificate of Participation be presented to Mr. Francis E. White, Building Inspector, in recognition of his attendance at the annual

Municipal Building Officials Conference held at the University of Massachusetts at Amherst.

Acting Chairman Powers acknowledged the Certificate of Participation and presented the same to Mr. White.

Emergency Communications Planning Report

The Board received a copy of a communication dated November 1, 1973, to Albert St. Germain, Director of Civil Defense, from Louis F. Saba, Director, Commonwealth of Massachusetts, Civil Defense Agency, which informed Chief St. Germain that the recently completed Emergency Communications Planning Report had been approved for reimbursement by the Federal Government in the amount of \$350, 50% of the estimated cost of the project.

Temporary Trailer Permit - 3 Stock Farm Road

Present: Building Inspector, Francis E. White; Virginia McCarthy, applicant; Linda Burdette, abutter.

Building Inspector, Francis E. White, reported that a building permit had been issued this date for a new home at 3 Stock Farm Road. Mr. White also reported that the Board of Health would accept the existing sewage system.

Mr. White stated that there lies, on the easterly side of Mrs. McCarthy's property, a small piece of tax title land, and that the debris of Mrs. McCarthy's burned home had been bulldozed into an existing depression on this property in the belief that it was all in the same ownership.

Discussion followed concerning the removal or the covering of the material and it was concluded that the Executive Secretary and the Building Inspector will resolve the problem with the assistance of Mrs. McCarthy.

Following further discussion, it was on motion unanimously

VOTED: To grant an extension of the present permit for a temporary trailer located at 3 Stock Farm Road for a period of ninety days to allow completion of a new dwelling.

Executive Session

It was on motion unanimously

VOTED: To enter into executive session for a brief period of time for the purpose of discussing, deliberating or voting on a matter, which if made public, might adversely affect the financial interest of the Town or the reputation of a person.

Site Plan Application #73-121, Normand Martel, 712 Boston Post Road

Present: Francis E. White, Zoning Enforcement Agent; Normand G. Martel, applicant; Howard Saklad, Edward A. Sokoloff, Carol Sokoloff, abutters.

Acting Chairman Powers opened consideration of Site Plan Application #73-121, Normand Martel, 712 Boston Post Road, which was continued from November 5, 1973, to allow receipt of Town Counsel's opinion relative to jurisdiction of residential property contiguous to business property under site plan consideration.

The Board had previously received a communication dated October 17, 1973, from the Conservation Commission, two communications dated October 25, 1973, from the Planning Board, one of which recommended conditional approval of the site plan, and a communication dated October 15, 1973, from the Building Inspector, which recommended approval.

Acting Chairman Powers requested Town Counsel to present his opinion on the matter.

Town Counsel paraphrased his opinion dated October 9, 1973, stating that the Selectmen could to a "degree consistent with a reasonable use of the site for the purposes permitted" in the district, impose screening conditions if they are deemed reasonable or necessary to protect adjoining districts against "seriously detrimental or offensive uses on the site", but that the right of government becomes more and more tenuous as it extends farther into the residential portion of the property.

Mr. Martel stated that the residential land to the rear will be maintained as a suitable natural screen between the business property and the residential area to the rear and that he would be willing to stipulate that except for selective pruning that might be required for reasons of aesthetics, any major cutting or alteration to this residential portion of his property would necessitate a hearing before the Board of Selectmen.

Selectman Taft suggested that the employee parking area to the westerly side of the proposed building be angled to provide better access and that the screening fence be continued to the boundary line. Selectman Taft also stated that the topography contours must be shown on the site plan, if only by reference.

Mr. White stated that a reference to a plan dated October 12, 1973, by Schofield Bros., Inc., for the proposed sewage proposal system, which included topographical contours, would be made.

Following further discussion, it was on motion unanimously  
VOTED: To approve the site plan for Normand Martel, 712 Boston Post  
Road, dated October 10, 1973, subject to the following conditions:

1. Westerly employee parking area should be redrawn.
2. Extension of the 7' chain link fence to the rear of the  
equipment parking area should be shown.
3. That a provision be placed on the plan to indicate that  
the trees growing on the residentially zoned land, owned by the  
applicant, which is contiguous to the business site, shall be main-  
tained as a visual screen, and shall not be removed or altered,  
except for pruning and selective cutting, without notice and hearing  
by the Board of Selectmen and subject to the imposition of other  
visual screen requirements.

Executive Session

It was on motion unanimously

VOTED: To enter into executive session for the purpose of discussing  
matters which if made public might adversely affect the financial  
interest of the Town.

There being no further business to come before the Board, it  
was on motion unanimously

VOTED: To adjourn at 11:15 p.m.

Attest: Richard E. Thompson  
Richard E. Thompson  
Executive Secretary-Clerk