

IN BOARD OF SELECTMEN
WEDNESDAY, MARCH 24, 1976

Present: Chairman John E. Taft, William F. Toomey, and John C. Powers

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 8:00 p.m.

Continued Hearing - Site Plan Application #76-162, Robert Quirk Realty Trust, Village Green, 29 Hudson Road

Present: Robert D. Quirk, owner of Village Green Shopping Center; Bruce Quirk; Carlton Colburn, author of site plan under consideration; Francis Harney, attorney representing Norma McDonnell, an equity owner in the Village Green Shopping Center; Richard Flier, leasing agent for Village Green; Patrick Todd and Donald Wagoner, prospective tenants of Building #8; Zoning Enforcement Agent/Building Inspector Francis E. White; Robert Cooper, Eben Stevens, Albert St. Germain, and Edward Connors of the Planning Board; John Cutting of the Conservation Commission; LaMonte Griswold and Clark Goff, abutters; William Cooper, Chairman, and James Healy of the Board of Health; Health Director John Sullivan; Edwin A. Blackey, Chairman, and Burgess Warren of the Historic Districts Commission; Robert Zimmerman, attorney representing several of the mortgagees of the Village Green Shopping Center; Karl and Hildegard Michels, tenants at Village Green, Clifford Hughes and Philip Newfell, Townpeople; and Daniel A. Wooley, associated with West Newton Savings Bank

The Board, at its March 22, 1976 meeting, voted to continue further consideration of Site Plan Application #76-162, Robert Quirk Realty Trust, Village Green, 29 Hudson Road, until Wednesday, March 24, at 8:00 p.m.

Chairman Taft now reopened consideration of the above-referenced site plan and stated that at the March 22 meeting, it had been announced that tonight's hearing was to be held in the Lower Town Hall. Chairman Taft reported that it had been necessary to move the meeting to the White Building, but that he had appeared at the Town Hall at 8:00 p.m. to make a public announcement to this effect.

Chairman Taft noted that several additional people were present tonight and requested that they identify themselves and any interest they might have in the Village Green site.

The Executive Secretary stated that he had sent notices of tonight's meeting as soon as possible following the recess of the March 22 meeting to all abutters on record.

Chairman Taft reported that when the last meeting adjourned, the building height and parking requirement situation were under discussion and that the Board had specifically asked that the applicant provide for tonight's hearing what he believes to be the correct number of required parking spaces for the intended uses of the buildings as shown on the site plan.

Mr. Robert Quirk stated that he did not have this material with him tonight, but could bring it to the Selectmen's office on March 25. Mr. Quirk stated that it was his belief that the number was 42, which he had arrived at by reviewing the requirements in the bylaw and separating the retailing, storage, and other uses of the building.

Chairman Taft noted that the previous site plan indicated a total area of 29,000 square feet and the present site plan a total of 40,422 square feet, not including some of the basement areas, and he questioned Mr. Quirk as to how he had arrived at the reduced figure when the previous plan indicated a need for 86 spaces and it would appear that the usage of the buildings was substantially the same.

Mr. Quirk responded that at an earlier meeting, the Board had instructed him to get guidelines from the Building Inspector/Zoning Enforcement Agent and the Executive Secretary. Mr. Quirk stated that he had gone with Mr. White while he had measured the interior of the Village Green buildings and that each had calculated what he considered retail space, storage, warehousing, and office space, using the same footage.

Chairman Taft asked Mr. Quirk if he could provide the Board with a copy of his calculations tonight, and Mr. Quirk replied that he could not.

Chairman Taft offered to recess tonight's hearing to enable Mr. Quirk to pick up the requested material tonight and to resume the proceedings when he returned.

Mr. Quirk stated that he could not provide the material until tomorrow. Mr. Quirk further stated that at the March 22 meeting, he had been willing to go forward with Mr. White's March 12, 1976 report on the subject of required parking spaces for this site, which had called for 55 spaces, but was of the opinion that the Board wished him to submit his own calculations. Mr. Quirk stated that he was still willing to abide by Mr. White's calculations, but had made his own calculations, which he did not have with him tonight.

In response to Chairman Taft's question, Mr. Quirk stated that his figure differed from Mr. White's figure because Mr. White had counted all their basement space which is being used for retail purposes, and that he had not because, in his opinion, there were no zoning requirements for basements. Mr. Quirk stated that if the figures listed in Mr. White's report for the Building #1 basement, 1011 square feet, and the Building #2 basement, 1527 square feet, were added, a total of 2538, and that figure subtracted from Mr. White's figure of 7238 total square feet, and then divided by the 180 rule, there would be a requirement of 28 spaces, or 12 less than calculated by the Building Inspector.

Mr. Quirk again stated that he would abide by Mr. White's calculations, but suggested that a determination must be made of the use of the basement area.

Chairman Taft read Article IX, V, B of the bylaws, which regulates off-street parking, following which he stated that, to his knowledge, this bylaw has always been applied to the total area.

Selectman Powers suggested that Mr. White and Mr. Quirk be asked building by building, how many parking spaces, in their opinion, each building would require.

The following answers were received:

<u>Building</u>	<u>Mr. White</u>	<u>Mr. Quirk</u>
#1	8	6
#2	12	10
#3	9	7
#3A	3	1
#4	11	7
#5	6	4
#6	20	15
#7 (basement and first floor)	$\frac{6}{75}$	$\frac{4}{54}$
#8 plus second floor of #7 (restaurant)	53	(balance of 67 sp. to be used by restaurant)
Foundation between #3 and #8	$\frac{2}{130}$	$\frac{0}{121}$
	TOTAL	
	spaces	spaces

Dr. Cooper stated that the plan submitted to the Board of Health indicated 160 seats, and that that figure was the number for which the septic system is designed.

Selectman Toomey recalled the Board's May 27, 1975 hearing for the all alcoholic beverages license and the figures given by Mr. Wagoner at that time for 100 parking spaces to accommodate the restaurant's full seating capacity and waiting patron figure of 264 people.

Mr. Wagoner stated that the earlier capacity figure had been reduced by approximately 100 because it had included the cocktail lounge, a license for which had been denied. Mr. Wagoner stated that the earlier figure now has no bearing with regard to this site plan and that the present capacity figure has been set by the Board of Health's requirement that the present sewage disposal system can accommodate 160 patrons.

Selectman Toomey stated that he could also recall asking at the May 27, 1975 hearing about the limited parking available at the Village Green Shopping Center restricting the volume of business that the petitioners assumed they would do, when they compared their proposed business with that of three established area restaurants of a similar type. Selectman Toomey stated that Mr. Wagoner's response at that time had been that they would need approximately 100 parking spaces to accommodate their expected 264 patrons in order to maintain their expected volume of business. Selectman Toomey asked Mr. Wagoner whether he could still make a success of the business with a reduction in patrons.

Mr. Wagoner responded that he did not recall making such a statement at the earlier hearing, but had been under duress at that time and had perhaps made such a statement, but that the higher number of patrons would not be necessary for the success of the business.

Selectman Powers stated that, in view of the fact that since Messrs. Todd and Wagoner had first met with the Board, they had encountered a severe limitation through the Board of Health relative to reduced total capacity, and he asked Mr. Wagoner if he had held any discussion with Mr. Quirk or with any other person representing the property owner about possible expansion of the restaurant facilities into the area that is represented by the foundation that now exists between Buildings #3 and #8.

Mr. Wagoner stated that he had not.

Mr. Robert Quirk reported that this foundation area is not for expansion, but partially for the septic design and partially to create a walkway and rear entrance to the bank.

Mr. Quirk also reported that this area will be used for the storage of tools, that there will be no entrance, but an access hole will be made to it for service to the utility and sewerage pipes which will be enclosed in this space. Mr. Quirk further stated that this area will act as a receiving area and will be partially covered with sod and grass.

Chairman Taft stated that the Zoning Bylaws specify a 35' height and two-and-one-half-story limitation in a Limited Business Zone, and he noted that the site plan would indicate that Buildings #1, #2, and #3 have a third floor area which is almost the same as the second floor area, which would seem as though they were not two-and-one-half-story buildings, but three-story buildings.

Mr. Quirk stated that the houses in Bowker Land Grant, which are commonly referred to as two-and-one-half-stories are two full stories of living area and that the one-half story, in his opinion, starts at the roof line. Mr. Quirk stated that the delineation is an architectural delineation and has nothing to do with the square footage of the third floor.

Chairman Taft asked Mr. Quirk whether, in his interpretation of a half-story, it would be as fully usable in all respects as the floors below or whether it would be limited in its usage.

Mr. Quirk again stated that his only interpretation of a half-story is that it begins at the roof line and consists of whatever area is above the roof line--the area differing with different types of structures.

Selectman Toomey commented that this would be an interesting question for the Board of Assessors, as they assess the one-half story of a two-and-one-half-story house at less than one-half the area of the floor below, which perhaps should not be the case for a house with a gambrel roof.

Selectman Powers asked members of the Historic Districts Commission if they, at any time when granting a Certificate of Appropriateness to the Village Green Buildings #7 and #8, were aware of or had they made any recommendations which had resulted in the ultimate height of the roofs being in excess of the zoning bylaw maximum of 35'.

Mr. Warren responded in the negative, commenting that they had not been concerned with height as they knew that height limitations would be the concern of the Building Inspector.

Selectman Powers asked if any plan had been submitted to the Historic Districts Commission which had shown the height of the building to be in excess of 35'.

Mr. Warren responded that he did not remember and would have to check the drawings.

In further questions from the Board, Mr. Warren made the following statements:

- He did not remember being advised by the Quirks or their representatives that if they were to follow the architectural suggestions which the Historic Districts Commission might have made, the buildings might be in trouble as to height, nor did he remember any specific situation where the Historic Districts Commission was insisting on a steeper roof pitch.

- He did not remember any recommendation, aesthetically, which would require a change in roof pitch or otherwise with regard to Buildings #4 and #8.

- The Historic Districts Commission had not considered applications for an air make-up vent standing on the front face of Building #8, for the chimney on the west side of Building #8, or for the metal structure behind the chimney, nor had a Certificate of Appropriateness been issued for any of these structures.

- The Historic Districts Commission had not examined any plans for the rear of the buildings, as they were only concerned with the lighting of the parking area.

- In response to a question from Mr. Harney, Mr. Warren stated that the dormers had been removed from Building #2, but the roof pitch had not been changed. This statement was confirmed by Bruce Quirk.

- The Historic Districts Commission had not granted a Certificate of Appropriateness for the connection between Buildings #2 and #3, although it had appeared in a drawing.

- A Certificate of Appropriateness had been issued on the two porches of the Desjardin house and the bay window and the kiosk on Building #3.

- The visibility of the site had been considered from Hudson Road only; it had not been considered from Peakham Road.

On this subject, Selectman Powers asked Mr. Warren, apart from the consent decree which affected what was under the jurisdiction of the Historic Districts Commission, if there had ever been any discussion between the Historic Districts Commission and the Quirks or their agents concerning the view from Peakham Road or an agreement resulting from such a conversation.

Mr. Warren responded that he did not recall any conversation in this regard.

Discussion followed relative to the remaining work to be done for aesthetic reasons. Mr. Robert Quirk stated that the pillars for the porches on Building #1 were still owing, as were several chimneys.

Chairman Taft asked Mr. Robert Quirk about the functions of the concrete walkway and the roof over and the extension to Building #6, which have been built to the rear (south) of Buildings #4, 5, 6, and 7, but did not appear on the previously approved site plan, although they are shown on the present site plan.

Mr. Quirk described the walkways as an access route to the stores on both the first and second levels, the overhead roof as protection, and the fire escape as access between levels.

Chairman Taft asked Mr. Quirk whether there would be a second fire escape at Building #4.

Mr. Quirk responded in the affirmative and Chairman Taft noted that the second fire escape was not shown on the site plan.

In response to further questioning from the Board, Mr. Quirk stated that his engineer had not been able to resurvey the site to verify the exact boundaries of his property, but that he (Mr. Quirk) had walked the site and had seen where he had extended onto Mr. Griswold's land in some areas. Mr. Quirk stated that he had talked with Mr. Griswold in this regard and had ordered the engineer to put stakes on the site's property lines. Mr. Quirk stated that he had assured Mr. Griswold that whatever condition his property should be returned to, it would be done.

In answer to Selectman Powers' question concerning the total flow to the septage system, Mr. Colburn reported that he did not have the figure with him tonight, but, to the best of his knowledge, the total flow from the site would be 9,000 gallons per day, of which the restaurant would contribute 5600. Mr. Colburn also reported that the design for the system of the restaurant has been approved by the State and by the Town Board of Health.

Selectman Powers reported that several residents of Concord Road have complained that, since the rug robbery, the lights shining on the rear of the Village Green property are clearly visible from Concord Road and that there have also been complaints concerning trespassers wandering across the back of the site and onto other people's property.

Mr. Robert Quirk stated that he had been unaware that the lights were offensive to the Concord Road residents and that he would be glad to have them redirected. Mr. Quirk further stated that if it became necessary, because abutters were offended with the restaurant traffic, they would be agreeable to erecting some type of fence between the residential zone and the parking area, keeping in mind that they would really want to screen that off again with evergreens.

There followed a review of earlier lighting and screening discussions with the Historic Districts Commission.

Chairman Taft referred to the all alcoholic beverage license hearing on May 27, 1976, at which time discussion had been held concerning the mezzanine area.

Chairman Taft also referred to Town Counsel's opinion dated May 23, 1975, in which he indicated that the so-called loft area is an intermediate floor between the floor and ceiling, and, if it covers less than one-third percent of the floor area immediately below, would be allowable, but if it exceeds the floor area limitation, would become a third story and would be prohibited under the zoning bylaw.

Chairman Taft also recalled that Mr. White and Mr. Wagoner had stated at the time that Town Counsel's ruling would present no problem -- that one-third of the loft area of Building #7 was floored and that the loft area in Building #8 exceeded this figure, but could be reconstructed to comply with the ruling. Chairman Taft noted in Mr. White's March 12, 1976 report, that the second floor of the restaurant (Buildings #7 and #8) constitutes 3000 square feet, and that the so-called mezzanine would constitute 1270 square feet, which is more than one-third. Chairman Taft further noted that Mr. White's figures do not agree with those on the site plan, which shows a similar number (3140) for the second floor, but which shows the third floor as 1043 feet, a substantially lower figure than the 1270 feet in Mr. White's report.

Mr. Robert Quirk commented on a reference to the mezzanine figure which indicated that there will be a permanent structure to reduce the usable floor area of the mezzanine to 1000 square feet. Mr. Quirk stated that it had always been their intention to build a large planter or other permanent structure on the mezzanine area to reduce the space to meet with the requirements.

Chairman Taft asked the public for any further questions or statements.

Mr. Bruce Quirk commented on the subject of parking, stating that there would be additional spaces at the Village Green site in front of the buildings which they could not use because of the Historic Districts Commission's criteria.

Chairman Taft pointed out that the August 7, 1969 site plan, which was approved on September 25, 1969 by the Selectmen and also approved by the Historic Districts Commission shows parking on both the east and west sides towards the front of the property. Chairman Taft also pointed out that the site plan approved on May 14, 1973 shows parking on the west side in front of the main complex in the back, quite visible from the street, and he commented that the Quirks had of their own volition removed this parking because of their septic system for the restaurant and the access way for the drive-in window for the bank.

Mr. Bruce Quirk stated that when they had earlier met with the Historic Districts Commission, they had made the point that if the Krause building were to be used for offices, it would be functionally impossible without some adjacent parking, but if the Commission had had their preference at that time, they would not have granted the parking at that location. Mr. Quirk continued that this was an item of considerable negotiation at that time and, in his opinion, it would not be a simple thing to have parking in the front.

Selectman Powers commented that Mr. Quirk was fully well aware of the fact that this area was within the Historic District at the time his interest in the property began. Selectman Powers stated that much discussion and many arguments had been held over the years on the subject and that he was sure Mr. Quirk was aware that one zone is not in conflict with the other, but that one is in addition to the other, and therefore more stringent. Selectman Powers stated that the Board of Selectmen has no discretion to ignore one or the other, but that the Board of Appeals might have discretion in the matter.

Daniel Woolley, a corporator of the West Newton Savings Bank, who was involved on behalf of the bank in lease negotiations and is also a resident of Sudbury, expressed his concern, which, in his opinion, was also the concern of the West Newton Savings Bank and the tenants at Village Green, that if the site plan is unacceptable, the resolution should not be continued cease and desist, as this would be ultimately disastrous to the property owners and to the tenants.

Chairman Taft stated that, in his opinion, the Board understood the point Mr. Woolley was making very well and were very conscious of this fact. Chairman Taft stated that he had pointed out at the March 22 meeting that the Board has proceeded as expeditiously on this site plan as possible. Chairman Taft also pointed out that had the construction gone forward in accordance with the previous site plan, there would have been no need for tonight's meeting.

Karl Michels, speaking as a tenant of the complex and a resident of the Town for the last eleven years, expressed his pride in the shopping center and in the Town of Sudbury and his hope that tonight's decision by the Board would lead to the eventual completion of the complex.

Mr. Connors of the Planning Board also commented on the fine job done by the Quirks and further stated that, in his opinion, the parking requirements in the bylaws create "seas of asphalt" which are never fully utilized. Mr. Connors also stated that, in his opinion, there was room for consideration of the other point of view. Mr. Connors stated that he had heard many Townspeople say that this shopping center is very pleasing, aesthetically, and an improvement on other shopping centers and that he was of the opinion that these facts should be given consideration.

Clifford Hughes and Philip Newfell, both of Concord Road, commented on the fine quality of the businesses and construction of the buildings in the shopping center.

As no one else wished to speak, it was on motion unanimously

VOTED: That the Board would take the matter under advisement, would make its decision, and would so advise the applicant and interested parties.

A tape recording of the above proceedings is available in the Selectmen's office.

Sudbury Police and Fire Department

The Board received Incident Report #76-255 of the Sudbury Police Department relative to an industrial accident at C.R. Wood, Inc., Station Road.

Following a review of the above report, it was on motion unanimously

VOTED: To send a letter of commendation to the Patrolman and the Firefighters involved in saving a man's life.

Special Police Officers

The Board considered a request dated March 24, 1976 from Nicholas Lombardi, Police Chief, relative to the appointments of special police for duty at the Lincoln Sudbury Regional School only, and one special police officer as an honorary appointment.

Following discussion, it was on motion unanimously

VOTED: To defer further consideration of Chief Lombardi's request referenced above until receipt of an opinion from Town Counsel as to whether these special police officers may be given the power of arrest.

House Bill No. 2969

It was on motion unanimously

VOTED: To support Massachusetts House Bill No. 2969 - legislation to abolish the Alcoholic Beverages Control Commission and the Milk Control Commission as being beneficial to the consumers of Massachusetts.

The Board directed the Executive Secretary to notify the local representatives, the Governor's Advisory Committee, and the Massachusetts Selectmen's Association Legislative Committee of the Board's above vote.

Special Meeting - March 27, 1976

It was on motion unanimously

VOTED: To schedule a special meeting for Saturday, March 27, 1976, at 10:00 a.m., in the Loring Parsonage for the purpose of continuing the hearing of site plan application #76-162 of Robert Quirk Realty Trust, Village Green, 29 Hudson Road.

Highway Department Employee - Back Pay

It was on motion unanimously

VOTED: To defer consideration of a communication dated February 13, 1976 from Attorney Michael J. Norris, representing an employee of the Highway Department in his claim for back pay, until the Board's special meeting on Tuesday, March 30, 1976.

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

VOTED: To adjourn the meeting at 11:00 p.m.

Attest:

R.E. Thompson
Richard E. Thompson
Executive Secretary-Clerk