

IN BOARD OF SELECTMEN
MONDAY, MAY 24, 1982

Present: Chairman William J. Cossart and Anne W. Donald.

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 7:30 p.m. by Chairman Cossart.

Site Plan 82-245 - Melvyn Kramer and John Aegerter, 631 Boston Post Road

Present: Dr. and Mrs. Melvyn Kramer; Atty. Robert Dionisi; Fire Chief Josiah F. Frost; Building Inspector Joseph E. Scammon.

In accordance with Article IX, Section V, Paragraph A of the Sudbury Bylaws, the Board considered site plan 82-245 of Dr. Melvyn Kramer and John Aegerter (owner), for property located at 631 Boston Post Road, for professional offices.

Executive Secretary Richard E. Thompson stated that all appropriate Town officials and abutters had been notified and noted receipt of the following communications:

- from the Conservation Commission, dated May 13, 1982, stating no concerns regarding the proposed construction;
- from the Town Engineer, dated May 6, 1982, recommending approval subject to a use variance or special permit from the Board of Appeals and approval by the Board of Health with regard to the new use of the septic system;
- from the Building Inspector, dated May 18, 1982, referencing the Board of Appeals hearing on June 8 and stating that a change-of-use permit and probably an alteration permit would be required by the Building Department if the Board of Appeals granted the petition;
- from the Board of Health, dated May 21, 1982, recommending approval;
- from the Planning Board, dated May 21, 1982, recommending approval and that the entrance to the property be widened to make the turning radius less sharp.

The Building Inspector showed the plan entitled, "Plot Plan in Sudbury, Mass.", dated December 28, 1981.

Atty. Robert Dionisi, representing the applicants, stated that the egress/access would be wider than as shown on the plan, and further commented, as follows:

- parking meets the zoning bylaw;
- the building, a garrison colonial, consists of 1100 square feet on the first floor; 600-700 on the second;
- Dr. Kramer will have his office space on the first floor and part of the second for a total of approximately 1300-1400 square feet;
- the balance of the second floor space will be used for additional office and/or professional use;
- there will be no exterior alterations/renovations to the building.

The Fire Chief was present and verbally recommended the site plan.

Responding to Selectman Donald, Dr. Kramer stated that the breezeway entrance would service his offices and the front entrance would be for the others.

The Building Inspector raised the question of correcting the width of the driveway entrance on the plan. Chairman Cossart stated that the Selectmen would sign the plan once it was corrected and commented that there appears to be enough time for the engineer to make the correction on the plan and the Selectmen to sign it before the Board of Appeals hearing on June 8.

It was on motion by Selectman Donald unanimously

VOTED: To approve site plan 82-245 of Melvyn Kramer and John Aegerter (owner), for property located at 631 Boston Post Road, as shown on the above-mentioned plan, for professional offices.

Cable Advisory Committee Report

The Board acknowledged receipt of a report, dated May 15, 1982, from the Cable Advisory Committee updating the Board on its meetings to date.

On the recommendation of the Executive Secretary, he was directed by the Board to schedule a meeting with the Cable Advisory Committee, either on June 7th or the 21st, depending on how soon they will be prepared to report further.

Juvenile Restitution Program

In response to a request from the Executive Secretary, at the direction of the Board, the Selectmen were in receipt of a communication, dated May 18, 1982, from Juvenile Officer William B. Carroll, updating them on the Juvenile Restitution Program Committee activities, its prospective workload in the future, and the effectiveness of this program.

During discussion, the Board agreed that the system has been successful and that it should not be discontinued since it appears to be going in the right direction.

Chairman Cossart commented that he wanted to feel confident that the Juvenile Restitution Program Committee was not in any way a hindrance to the court process. Commenting further, Selectman Cossart pointed out that the Town entered this program because of the large number of violations against Town property, but it appears not to be the case.

Town Counsel responded that the Town may want to consider expanding the reasons for the use of the Committee. Mr. Thompson suggested that Officer Carroll be consulted.

Following further discussion, the Town Counsel was directed to forward a letter to Chief Probation Officer Robert Bonner Clifford of the First District Court of Southern Middlesex, Framingham, with a copy to Officer Carroll, inquiring about expanding the Juvenile Restitution Program to include all offenses relating to private, as well as, public property.

Hosmer House - Snap-Tight Interior Storm Windows

Present: Building Inspector Joseph E. Scammon.

Following review of a communication, dated May 10, 1982, from the Sudbury Historical Commission concerning the installation of Snap-Tight interior storm windows in the Hosmer House, and on the recommendation of the Executive Secretary, the Board agreed that:

- one snap-tight interior storm window (to determine if the Town should proceed further) be installed in the Hosmer House; and
- Plexiglass be installed over the parlor fireplace.

The Board directed the Executive Secretary to get competitive prices and the cost of the carpentry work to repair the windows for the total snap-tight installation.

Town Fathers Forum

At 8:00 p.m. Chairman Cossart convened the 145th session of the Town Fathers Forum, a copy of which is attached and made a part of these minutes.

Donation to Africare Health Support Program

Present: Fire Chief Josiah F. Frost.

As previously supported by the Board on January 25, 1982, it was on motion by Selectman Donald unanimously

VOTED: To confirm approval of donating all of Sudbury's hospital package, which is not usable by our Civil Preparedness Agency, to the Africare Health Support Program, as recommended by Civil Defense Director Josiah F. Frost.

Chief Frost stated that he had moved all the material that is usable to Sudbury to a locker room in the Flynn Building.

Emergency Operations Plan

It was on motion by Chairman Cossart unanimously

VOTED: To approve and sign an updated Emergency Operations Plan for the Town of Sudbury, dated May 24, 1982.

Public Entertainment License - 99 West, Inc.

It was on motion by Selectman Donald unanimously

VOTED: To renew a License for Public Entertainment on Sunday for a folk singer with guitar (one or two), requested by 99 West, Inc., for property located at 698 Boston Post Road, for the period April 11, 1982, to April 3, 1983, from 7:15 to 11:15 p.m.

Site Plans 82-243 (Resubmission of SP81-238) and 82-44 - William A. Senecal,
57 Codjer Lane

Present: Applicant William A. Senecal; Counsel J. Owen Todd; Building Inspector Joseph E. Scammon; Conservation Commission Chairman Richard O. Bell; Ralph Ernest Hawes, Planning Board; and approximately 10 Codjer Lane abutters.

In accordance with Article IX, Section V, Paragraph A of the Sudbury Bylaws, the Board considered alternative site plans of William A. Senecal, owner, for property located at 57 Codjer Lane (ID #2), as follows:

Site Plan 82-243 (Resubmission of SP81-238) for a retail business - sale of wood and coal, and the processing of wood.

Executive Secretary Richard E. Thompson stated that all appropriate Town officials and abutters had been notified and noted receipt of the following communications:

- from the Building Inspector, dated May 20, 1982, recommending conditional approval and commenting as follows: the site plan has not been altered but, addressing concerns of his neighbors, the applicant has stated on the application that noisy activity will not take place between 6:00 p.m. and 8:00 a.m.; and that retail sales and outside storage (s.IX, E, 7a) require Board of Appeals approval;
- from the Town Engineer, dated May 14, 1982, stating that the site plan is identical to the plan previously submitted and, therefore, referred to his earlier reports (dated November 16 and 21, 1981), recommending approval subject to the following: that provisions be made to prevent coal dust and saw dust from entering Wash Brook (actually Hop Brook at that location); that stored wood and coal be kept covered when not in use; resolution of the zoning issue; and approval by the Board of Health regarding the use of the existing septic system;
- from abutters Robert E. and Charlotte L. Nims, 20 Codjer Lane, dated May 19, 1982, who were unable to attend the hearing, commenting on the use of the property in conjunction with the future value of their home, and the owner's indifference to the concerns and welfare of the neighborhood. Mr. Dan Bortle later commented on the depreciation of his property in view of the present use and the proposed development of this abutting property.

Mr. Ralph E. Hawes of the Planning Board was present and stated that the Planning Board's recommendations remain as stated in its December 1, 1981, report on SP81-238, conditional approval as follows: that a green buffer barrier be erected along the easterly boundary separating ID#2 from the residential zone; that coal be stored in a covered structure; that coal and wood storage/processing be enclosed by a 6" bituminous curb and drained by a catch basin; that no chainsaws be used on the site; that all trucks use Union Avenue, not Concord Road; and that there is no further encroachment on the wetlands.

Atty. J. Owen Todd clarified that there would be no noisy activities during the hours of 6:00 p.m. and 8:00 a.m., (correcting an error on the application).

Mr. Todd stated that the present business is being conducted by a lessee and, at the time SP81-238 was filed, it appeared he was conducting a business that did not, without a special permit from the Board of Appeals, conform to the zoning bylaws for retail sales and outside storage. That site plan was disapproved on the principal objections of noise, activities and buffer zones. Mr. Todd stated that SP82-243 addresses those concerns and later stated it reflects an effort on the part of the owner to get along with his neighbors.

Mr. Todd went on to say that, since the original site plan was submitted, the term of the lease came to an end and has been extended only on a month-to-month basis and, according to the lessee's attorney, Mr. D'Angelo plans to continue his business at that location only until the end of June, and that is the reason for alternative SP82-244.

Mr. Todd expressed his opinion that they proceed with SP82-243 since Mr. D'Angelo is still on the property, but that it is his client's ultimate wish that the property be developed for the conventional use of the industrial zone for light manufacturing and warehouse purposes, as proposed on SP82-244.

Mr. Todd stated that they would proceed to the Board of Appeals for a special permit upon approval by the Selectmen of SP82-243.

Responding to Chairman Cossart, Town Counsel Paul L. Kenny stated that there cannot be two approved/effective site plans for the same property, but that the Board could act on one, and if it is approved, act on the second subject to discontinuance of the first.

Mr. Todd stated he did not agree with Town Counsel that there cannot be two approved site plans for the same property, since there is no prohibition in the Town's zoning bylaws nor in M.G.L., Chapter 40 or 40A. Mr. Todd added that if the second site plan (SP82-244) is approved, it would supersede the first (SP82-243), and further, that if the first were disapproved for the present use, and the second were not approved, they would have no approved use for the property.

Mr. Kenny concluded that the second site plan could be approved conditioned on the demise of the first.

Chairman Cossart stated that they would proceed on the basis that it is not appropriate to have two site plans running concurrently but will address in the conversation the idea that if SP82-243 is to be approved that there could be dates attached to it expiring if SP82-244 becomes active.

Regarding hours of operation, as questioned by Selectman Donald, Mr. Senecal stated that Vesta operates six days a week between 8:00 a.m. and 6:00 p.m.

Mr. Thompson stated that the office had received calls that previous hours of operation are other than those mentioned.

Selectman Donald stated her personal feeling that the hours should be modified to 8:30 or 9:00 a.m. to 5:30 p.m. Counsel Todd stated concurrence on behalf of his client.

Town Counsel responded to Chairman Cossart that Sunday Blue Laws prohibit Sunday operations at the Codjer Lane site.

Mr. Daniel Bortle of 53 Codjer Lane stated that it was his understanding that a cease and desist order had been issued for this property and that he could not believe that the Board was addressing the exact same site plan all over again!

Mr. Kenny responded to Chairman Cossart that a cease and desist order had been issued on the Codjer Lane property and action brought against Vesta in the District Court. The District Court was not interested in hearing a zoning matter. Since that time, Town Counsel stated that it was his understanding that the sale of coal had diminished significantly.

Dr. Irwin Leav of 21 Codjer Lane asked how a Town enforces a zoning bylaw. Mr. Kenny responded that the Building Inspector/Zoning Enforcement Agent issues a cease and desist on the individual/company allegedly in violation of the zoning bylaw. That individual has thirty days to appeal that decision with the Zoning Board of Appeals, or, if he does not choose to appeal that decision, and continues the use, the Building Inspector/Zoning Enforcement Agent has the right to proceed to the Superior Court or the District Court. In the District Court, it would be for a criminal action - in this case for violation of the zoning bylaw; the Superior Court would be for an enforcement order or injunctive relief.

Mr. Todd stated it is the position of the owner of the property that the use taking place on the property is permitted under the zoning bylaw and by variances issued in the past; that it meets all the requirements of the site plan; and that use for wholesale and retail sales by lumberyards has been the subject of 2-3 variances in the past, and variances run with the land.

Under the Town bylaw, retail sales in lumberyards are an allowed use in industrial zones, Mr. Kenny stated.

Chairman Cossart stated that when the Selectmen had previously addressed the Vesta site plan, they had taken into consideration the concerns of the neighborhood and had made a judgment, based on their interpretation of the bylaw, and disapproved the site plan on the basis that it was detrimental to the neighborhood in terms of offensive activity and noise and because of its extraordinary location in relation to residential property.

Mr. Kenny pointed out that there would be some difficulty maintaining an action that is based on those types of nuisances (processing and selling wood and coal), as this district allows that type of use. (It is really a question of the degree of noise, vibration, explosion, etc.) Mr. Kenny pointed out that it is a fairly accepted fact that, in any residential zone in any town, and especially in Sudbury, one will find a number of chain saws going on any given weekend, and that it would be difficult to prove that there is excessive noise based on chain saws alone. Mr. Kenny further stated that the Zoning Enforcement Agent can make a determination as to whether or not the operation of a chain saw (or whatever else) will make the kind of noise that it would be considered a detriment to the neighborhood. Selectman Cossart commented further that it was a question of whether the neighborhood should have to accept the noise of chain saws on a regular basis.

The Building Inspector replied that he was not called upon to make that type of determination, and that his enforcement was based on the lack of site plan approval.

Mr. Thompson reviewed the status of the site plan to date and commented on the latitude of Selectmen in making decisions.

Dr. Leav agreed with Mr. Bortle's earlier statement that it is an issue of good faith - stating further that the abutters have attempted to be good neighbors but have not been the recipients of the same, and commented that the neighbors are not trying to prevent a man from making a living or to receive proper remuneration for his property. Mr. Bortle later added that what Mr. Senecal says and what he does are two different things. He continued to say that there have been activities taking place at 6:00 a.m. and late at night. Also, the variances issued to this property in the past were for specific uses identified as lawnmower sales and service and refrigerator sales.

Mr. Todd reiterated that this new site plan addressed the concerns expressed by abutters on SP81-238, and that SP82-243 addresses a short-term use.

Mr. Clifford Hughes of 27 Concord Road suggested that the area from Codjer Lane to Boston Post Road be rezoned residential to prevent industry from encroaching on the residential area and the wetlands.

Mr. Todd stated that Town Meeting in 1975 or 1976 had defeated an article to rezone the Senecal property under question. On question from Chairman Cossart, the applicant stated that he would not be in favor of the rezoning.

Mr. Hughes commented on the lights and the noise generated from activities at the Senecal site and mentioned that trash is picked up at 4:30 a.m. by a large, noisy truck. He further stated his opinion that Union Avenue is not policed properly.

Following further discussion, Selectman Donald made a motion which carried to temporarily table SP82-243 until after the Selectmen understand and have acted on SP82-244. Selectman Donald stated that she was bothered by the fact that this business has continued to operate for five months without an approved site plan or special permit.

(Later in the evening this vote was rescinded.)

Site Plan 82-244 - Proposed construction for light manufacturing and storage.

Executive Secretary Richard E. Thompson stated that all appropriate Town officials and abutters had been notified and noted receipt of the following communications:

- from the Conservation Commission, dated May 17, 1982, determining that a filing under the Wetlands Protection Act is required.
- from the Town Engineer, dated May 14, 1982, expressing concern that such a large building has been designed based on only 18 employees per shift and that the only reasonable use would be a warehouse, and on this scale, would

require large trailer trucks necessitating roadway and intersection improvements; and requesting specific information on the exact use of the building to determine whether or not it will be detrimental or offensive to the adjoining residential district.

- from the Board of Health, dated May 19, 1982, remarking as follows: a report relative to the use of hazardous waste chemical or any other offensive material generated or stored on the property is to be submitted to the Board of Health; the existing sewage system design capacity is adequate; Town water will be supplied; final approval cannot be considered until the type of manufacturing is known; and the owner shall provide two toilet facilities for the employees.
- from the Building Inspector/Zoning Enforcement Agent, dated May 20, 1982, recommending approval and commenting as follows: the proposed use - manufacturing/storage - is a permitted use in the district; area, height and setbacks are met; parking complies; Conservation Commission approval is required because of the proximity of the wetlands; and if Codjer Lane or Union Avenue are less than 40 feet in width, the building will have to be set back 50 feet from the street center line.
- from the Planning Board, reported by Mr. Ralph Ernest Hawes, conditioning approval on the following: that a green buffer barrier be erected along the eastern boundary separating the Industrial District #2 from the Residential zone; that the new landscape bylaw be considered (Article IX, sec. V.N - Landscaping); that truck and employee traffic be restricted to Union Avenue; that there be no further encroachment on the wetlands; and that adequate access for fire apparatus be provided.

Regarding the tenants for the warehouse, Mr. Todd and Mr. Senecal explained that approximately one third of the building would be occupied by a company whose business it is to assemble lamps; that company is negotiating for use of possibly another one third of the building. This company would require a van-type vehicle for deliveries of the lamps and would employ approximately three people. Trailer trucks would not be used by them. Mr. Senecal stated he would try to find a tenant to use the remaining portion of the building or it would be used for warehouse purposes.

Responding to Selectman Donald, Atty. Todd stated that the parking is designed for nine spaces. The Building Inspector stated that parking for this site is based on one space per two employees.

Chairman Cossart replied to Dr. Leav that it would not be necessary for the owner of the building to come before the Selectmen again if a different tenant rented space as long as his business was a permitted use under the bylaw for that district and no changes were made to the building.

Mr. Bortle pointed out that the proposed plan involved adding on to a structure which is non-conforming. The Building Inspector explained that the proposed addition falls within the setback requirements; it will not affect or attach to the non-conforming portion of the building.

Mr. Bortle stated that the current building on the property is twenty-four feet from his property line and the applicant is planning on making a walkway to the old building to the toilet facilities; he questioned the adequacy of the system, stating that the septage is directly over the wetlands and expressed his opinion that it was not sufficient for the potential of thirty-six people a day depending on the number of shifts. Mr. Bortle challenged the Board of Health's May 19 report which states that the existing sewage system design capacity is adequate.

Mr. Todd stated that if Mr. Bortle's remarks are correct then they would not be able to pass the perc tests and therefore not be able to obtain a building permit.

Town Counsel further explained that Mr. Senecal would have to go to the Board of Appeals if he were planning to expand on the non-conforming part of the structure, for example on the side lot line where it is already non-conforming, but not if the building proposed is within the setbacks requirements.

Mr. Bortle quoted the Town bylaw IX, section 3,c regarding alterations and enlarging non-conforming buildings.

The Building Inspector stated that Mr. Senecal's SP82-244 meets all the setbacks and there is no need for him to go to the Board of Appeals on this site plan.

Town Counsel further explained the difference between "non-conforming use" and "non-conforming building":

- a non-conforming building is a building not meeting setback requirements (location) - it is a dimensional requirement;
- a non-conforming use is a use not permitted by zoning and if that use is within a building which is proposed to be expanded for that use, the site plan then would have to go to the Board of Appeals for "expansion of the use".

Mr. Thompson responded to Mr. Hughes that the Conservation Commission will require a Wetlands Protection Act hearing because the proposed building is within on hundred feet of the wetlands.

Selectman Donald questioned the Building Inspector's comment in his report of May 20 which states, "if Codjer Lane or Union Avenue are less than 40 feet in width, the building will have to be set back to meet the requirement of 50 feet from the street center-line."

The Building Inspector responded that the width of the road had not been determined and that if it were determined to be less than 20 feet wide, the building would have to be set back or decreased in depth.

Responding to an abutter, Chairman Cossart stated that the number of employees in the building would be monitored jointly by the Building Inspector, the Board of Health and the Fire Chief.

Regarding the use of trailer trucks, Mr. Thompson stated that the Board can restrict the weight of the vehicles on Codjer Lane. Mr. Todd added his opinion that large trailer trucks would not be able to make the turn off Union. Mr. Bortle stated that the widest pavement part of Codjer Lane in this area is only 13 feet and

questioned the size of the building and vehicles entering and exiting the site, further stating that at the last site plan hearing, it had been stated that only panel trucks would be used and that proved to be untrue.

Mr. Bortle expressed his opinion that the Town has lost complete control regarding how to enforce its zoning bylaws.

Selectman Cossart suggested that, since the expiration date of the application is June 13, the Selectmen should hold their decision for their next meeting in order to pool together all the comments and consolidate them and to request a further opinion from Town Counsel regarding the zoning issue and the latitude the Selectmen have in approving or disapproving SP82-243 and SP82-244 within the Town bylaws. Selectman Cossart stated he has a strong feeling about the obligation to the neighborhood, and, at the same time, is trying to balance that against the owner's right to develop his industrial property.

Town Counsel stated that SP82-244 appears to comply with zoning as far as use is concerned, and that the appearance of the building would not be a valid objection as being detrimental to the neighborhood. SP82-243 is more questionable as far as being detrimental to the neighborhood.

Selectman Donald suggested that the Town Engineer respond more fully regarding large trailer trucks using the site, and that the Board of Health clarify the adequacy of the existing septic system in view of comments made tonight. Mr. Thompson stated he would contact both departments.

Following further discussion, the Board rescinded its earlier vote to table SP82-243, and it was on motion by Selectman Donald unanimously

VOTED: To take Site Plans 82-243 and 82-244 under advisement until June 7 for comment from Town Counsel regarding zoning and a request for draft votes for review; for consultation with the Town Engineer and the Board of Health; and in order to update Selectman Murray who was unable to attend the meeting.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the Regular Session of May 17, 1982, as amended.

Use of Community Sign - Route 20

In accordance with a request from Kathleen K. Jones, Publicity Chairman, it was on motion by Selectman Donald unanimously

VOTED: To approve the use of the community sign on Route 20 at the Fire Station, from Tuesday, June 1 through Monday, June 7, to advertize the Curtis Middle School Kids Fair (June 5-10, 1982), subject to concurrence by the Sign Review Board.

Transfer Request - Account 501-13, Clerical

It was on motion by Selectman Donald unanimously

VOTED: To approve a request for transfer dated May 24, 1982, from the Reserve Fund to Account 501-13, Selectman, Clerical Salary, in the amount of \$350 to cover additional hours needed for the Recording Secretary in this fiscal year closing June 30, 1982.

May 10, 1982 Minutes

As requested by the Highway Surveyor, the Board agreed to amend the minutes of May 10, 1982, under Utility Petition #82-11, by adding a comment made by the Highway Surveyor to the effect that he would not issue any further street opening permits involving the telephone company until telephone problems were corrected at the Highway garage.

Cable Television

Chairman Cossart stated that he had received a telephone call from Fred Welch who was interested in becoming involved on an advisory level in the Town's endeavor to obtain cable television. Selectman Cossart further stated that he had invited Mr. Fred Welch to attend the Board's meeting with the Cable Television Advisory Committee, and directed the Executive Secretary to so advise Mr. Welch.

Conversation with David Grunebaum

Chairman Cossart stated that he had spoken to David Grunebaum relative to his re-appointment to the Personnel Board and the role of that Board in collective bargaining, and during that discussion also talked about his interest in serving as Labor Relations Counsel. Mr. Thompson stated that he has tried not to use Murphy, Lamere and Murphy during the current bargaining sessions in an effort to cut costs, but that the Board had recently reappointed that firm for the next fiscal year and that, if the Town were to consider using another attorney, it would require a great deal of discussion. Selectman Cossart stated he would so inform Mr. Grunebaum.

Executive Session

At 10:45 p.m. it was on motion by roll call

VOTED: To enter into Executive Session for the purpose for discussion strategy for collective bargaining or litigation where open discussion of the same may have a detrimental effect.

(Roll call vote: Chairman Cossart, in favor; Selectman Donald, in favor.)

Chairman Cossart stated that Open Session would not reconvene following the Executive Session.

There being no further business to come before the Board, the meeting was adjourned at 11:30 p.m.

Attest:

Richard E. Thompson
Executive Secretary-Clerk