WATERTOWN PLANNING BOARD

DATE: November 17, 2010 PLACE: Town Council Chamber TIME: 7:00 PM COMMENCED: 7:00 PM

PURPOSE OF MEETING: Regular Monthly Meeting

PRESENT: John Hawes, Chairman; Fergal Brennock; Linda Tuttle-Barletta
Staff: Steve Magoon, Director, Danielle Evans, Senior Planner, Louise Civetti, ZBA Clerk

Chair Hawes opened the meeting at 7:00 PM.

ADMINISTRATION BUSINESS

Mr. Brown motioned to adopt the minutes of 10/13/2010.
Ms. Tuttle-Tuttle-Barletta seconded. Voted 4-0 Adopted

Chair Hawes announced that 198 Summer Street is continued until next month.

CASE PENDING

- **7-9 Swetts Court; Erez Levanaon – Special Permit Finding & Variance**

Chair Hawes stated to the petitioner of the first case, 7-9 Swetts Court, that the Staff Report recommends denial; however, there is information about building permits that the petitioner submitted from the year 2000, which showed French doors, etc. He added that he looked on Google Earth today and went back in time to January 1, 2001 and found that the deck can be seen in an aerial view. Chair Hawes printed that view for the Petitioner to see. He stated that the Petitioner can look at this as a 10 year condition and withdraw the petition and be "grandfathered" from the deck. He can then settle with the Town Officials who will agree that 10 years is okay.

Steve Magoon, Director of Community Development and Planning, suggested that he explain the process to the Petitioner outside of the room and allow the Chair to continue the meeting.

Mr. Magoon reported that after their conversation, if the board finds that the deck has been there for more than 10 years then he would agree to withdraw his application so the existing deck would continue to enjoy the protection of not having the town order its' removal. He explained that it does not make it a legal use, it makes it a use that has the protection of exceeding the limitations of when they could order the removal. If the board agrees to the deck having been there for ten years, they can proceed to vote.

The Planning Board discussed amongst themselves and all agreed. Chair Hawes suggested a vote is not necessary as it is in the record. Mr. Magoon requested they make a finding.

Member Tuttle-Barletta motioned to find the existing deck has been in existence for more than 10 years and is therefore grandfathered in under the zoning ordinance. Mr. Brown seconded. Voted 4-0, approved.

Member Tuttle-Barletta motioned to approve the request for withdrawal of the variance and special permit finding.
Mr. Brennock seconded. Voted 4-0 Withdrawn

Mr. Magoon stated documentation for the petitioner's records will be provided.

- **73-75 Putnam Street; Avi Golani, 20 Forest Street - Variance**

Avi Golani, Petitioner, stated that he wants to add a parking space – one each for the two units. They are doing the same parking that his neighbors have – in the front under the porch.

Chair Hawes asked to hear the Staff Report.

Danielle Fillis Evans, Senior Planner explained the four criteria that is required in order to be granted a variance. The first is regarding topography in which Staff found this to be a sloping lot with a 4' tall retaining wall separating the front yard from the street, thus creating topography issues. The second criteria is literal enforcement of the zoning ordinance in which the Staff finds that denial of the request would cause a hardship as there is no feasible option for a second parking space for the two-family dwelling which requires 4 parking spaces. Third: Can relief be granted without detriment to the public good – Staff finds the second space would be consistent with the adjacent properties which do have front yard parking; however, they are conditioning the curb cut to be 20' as opposed to the requested 22'. Fourth: can this be granted without nullifying or derogating from the ordinance – Staff finds the second parking space is minimum relief requested and would not derogate from the ordinance; however, the curb cut be no wider than 20. Staff finds the criteria met, with the condition of the curb cut change.

Member Brown stated that the examples (provided by photographs of four abutting properties) were appropriate and this would not be the only situation like it on the street.

Mae Nigohosian, 66 Putnam Street, across the street from this property, strongly objects to the parking in the front. She said the 4 or 5 houses across the street did not have garages or driveways when built in the '20's. They have a problem but they are defacing the street. She doesn't like looking across the street to see what little frontage is there now and it is deteriorating. She would rather see someone have an overnight parking permit rather than destroy any more frontage to any more property on that side of the street. It is a nice neighborhood (she has lived there 70 years) – these houses were not built to accommodate the 4 or 5 cars people own. She is very much opposed to it.

No further comments by the board or the public were made.

Member Tuttle-Tuttle-Barletta motioned to recommend to the Board of Appeals approval of the variance under section 6.02(j) based on the finding that it meets the requirements of the ordinance and based on the recommendation of the Staff Report including the limitation of the 20' curb cut.
Member Brown seconded. Voted 4-0 Approved.

Chair Hawes confirmed that the petitioner will now proceed to the Zoning Board which will meet 5 days from now on Monday, November 22nd (as opposed to Wednesday) due to the Thanksgiving holiday.

- **190-192 Arlington Street; Robert Ozcan – Amendment to Special Permit Finding & Variance**

Robert Ozcan, Owner of 190-192 Arlington Street, stated that he does not know the history of this building as it relates to the prior approval of the permits granted sometime after the fire in 2005 but he was the contractor of this building and after three years, he then became the owner. The owner at the time asked for an easement to 186-188 Arlington Street, which the neighbor refused to give the easement. The board approved the original 3 parking spaces because the owner couldn't get the easement from the neighbor. After he became the owner, he asked the neighbor for the 40 square foot easement and because the neighbor approved of him cleaning up the mess (at the burned out

house), he gave the easement and it was recorded in April 2010. He finished the house and straightened the wall because of the easement and added a 22" flowerbed. When it rained, people tracked the mess onto the new floors and he wanted to do something to end the mess. Although he did not get approved for 4 car parking, he put a binder – not a finished coat, just an inch and a half binder (in the area of the straightened wall). If the town doesn't allow it, he'll stick with the original plan. He was asking for 32' curb cut but he only wants the approved 30' curb cut with 3 car parking. He did not touch the granite curbs but the middle measures 30' and 5".

Chair Hawes asked for the Staff Report.

Ms. Evans explained that the Staff Report included the original approval for three-car parking as there was not access to the rear or the side yard due to the nature of the curved lot line and since he was not able to obtain an easement. The planning board recommended to the zoning board that they allow only two spaces but the ZBA approved 3 spaces. This request for an amendment is for four spaces. The retaining wall was moved, excavation done and pavement placed. The Staff reviewed the four criteria for a variance: 1) Topography – the site does have topographical issues with a 6' grade differential between the street and the first floor. 2) Would literal enforcement cause a financial hardship for the petitioner – Staff does not find a financial hardship as the original approval was based on a hardship for the three spaces due to the then owner not being able to secure the easement with the neighbor. Now that an easement is in place, this nullifies the granting of the original three spaces. There is room to install a driveway without dimensional variances at all. 3) Can this be granted without substantial detriment to the public good – No, Staff does not. The additional extension to the curb cut opening creates an unfriendly pedestrian environment and the negative aesthetic and environmental impacts of increased impervious surface. 4) Can relief be granted without derogating from the intent of the ordinance – No, the relief cannot be granted as there is an alternative option if the petitioner wants to build four parking spaces without requesting variance relief. Staff recommends denial of the request for the fourth space and the site returned to the original approved condition with three spaces and landscaping on the left side of the property or at least the landscaping with a new physical barrier to separate it from the driveway.

Mr. Ozcan stated that the 30'5" curb cut is original and he does not need to make the curb cut wider to have the 4th parking space. Mr. Magoon clarified that the request is for 32' wide curb cut. Ms. Evans stated the original approval was for 30'.

Chair Hawes stated that the request does not meet the criteria for variance relief. He asked if there was discussion regarding taking the entire pavement up and replacing it with impervious pavers. He believes this would be a better solution than cramming four cars between the two houses.

Mr. Ozcan asked to show to the board the plot plan drawing of his property. He identified the gas line that NStar installed as being from the street to the stairway (straight), to the left towards the lot line, then back behind the stairway to the house. Mr. Magoon clarified that in order for him to place 4 car parking on the side of the house, he'd have to move the retaining wall as well as the new gas line.

Chair Hawes said it would be better to have 3 spaces than 4 aesthetically but on this street, it is not a bad thing to have 4 spaces. Ms. Evans stated that at the original Planning Board approval, Mr. Hawes recommended two spaces maximum. Chair Hawes explained that he was not aware the ZBA expanded the approval to three spaces. He said the street has been redone with new sidewalks and curbing and it is not going to offend anyone across the street to have four spaces. He suggests that they leave it as is - not moving the walls or the curb cut and landscape the portion in question or using pavers within the entire area. He then said to follow the Staff recommendation.

Member Brown stated that if the owner were to landscape the entire site, it would be more expensive for him. Chair Hawes added that he would be receiving an extra parking space. Mr. Brown said a simpler solution is to remove the one space and replace it with landscaping as opposed to tearing up the entire front of the house and replacing it with new material. Chair Hawes said people are spending fortunes to get extra space which makes the apartments more marketable.

Member Brennock said that there is a protocol and the fourth space was added without proper permitting. It sets a precedent. Other people go to great lengths to get the proper approval for another parking space - be it denied or approved. He doesn't agree that setting a trend by doing it and then asking for forgiveness and although some people are successful doing that, he believes everyone should do it the right way. He would not be in favor of granting the fourth space on that principle.

Mr. Magoon said they have not discussed replacing the pavement with an impervious surface. He stated that added this as an option to the amendment could be discussed but it is not something that has been considered or agreed to with the petitioner.

Ms. Evans spoke with the petitioner at length during a site visit where he explained that the pavement is just a binder coat and it can be removed easily. He said he would return it to landscaping if he did not get approved. She said to take him up on that offer. Pervious pavers in the front would not be an aesthetic improvement – it should be returned to landscaping as it is not in line with the ordinance in any way.

Member Brennock said although he stated he does not approve of things being done in reverse, as an Engineer, he understands the complexities of the gas line which re-routing the gas line would be a nightmare but the retaining wall looks very good. He does not agree with the fourth space being put in before approval.

Member Brown asked how this all happened in the first place.

Mr. Ozcan explained that after he had received the easement, he ended up owning the property and the curved line did not look good. He spent $16,500 just to have the utility pole moved 8 1/2 ' to the right side, plus the curb cut, etc. If the town doesn't allow it, he admits he is guilty but not the guilty that he moved the wall as it is on the property.

Chair Hawes said he read all of the materials and realized that Mr. Ozcan was not the original owner in 2006 when this was last approved. He asked if Mr. Ozcan was aware of the town requirements regarding driveway improvements or what the original control plans were.

Mr. Ozcan said he was the contractor and the architect gave him the plans and he followed them. The original owner left the property a disaster for 3 years. He cleaned up the entire property – new sewer line, etc. After he owned the property, and he received the easement, he saw the 30'5" curb cut, he just wanted to clean it up more with the pavement near the retaining wall.

Chair Hawes said that some people clearly know they are doing something wrong and it doesn't appear that he (Mr. Ozcan) was aware. He then stated the board should vote, using the option mentioned in the Staff report and let it go to the ZBA. He said if the petitioner agrees to remove the parking space and replace it with landscaping, he does not have to go to the ZBA as it is only a change in the control documents.

Ms. Evans explained that they have to deny the variance but with the conditions that they would be modifying the control documents by moving of the retaining wall and the Staff recommendation of

removing the pavement in that area and replacing it with a type of landscaping or planting bed and a new barrier to separate the parking area.

Ms. Tuttle-Barletta clarified that they are not requesting the retaining wall be returned to its' originally approved location.

Vincent Piccarelli, District C Councilor commented that (Mr. Ozcan) did a wonderful job on the property. His concern is broader than this one property and it is an ongoing problem with people parking on their front lawns; removing grass and placing parking without the proper permitting. The damage has been done here and the illegal spot needs to be removed. It needs to have a barrier between the approved parking as people have a tendency to park in the unauthorized area in the winter when the parking ban is in effect. We cannot have every front yard in Watertown turn into a parking lot. We need to draw the line. The understanding is that this should not be used for ad-hoc parking even if this is a grass area. Other properties on Arlington Street use their grass area in the winter to park on and the letters from the Zoning Enforcement Officer are ignored. Other people create walkways and park on them in the winter. This property should have the landscaping put back and a barrier put in to prevent parking in the future. At a minimum, this illegal spot needs to be removed.

Member Brown confirmed that the board is recommending the spot be removed, landscaping replaced and a barrier created. Chair Hawes agreed and added enforcing the barrier at a specific height.

Mr. Magoon made a variation to the recommendation stating that the applicant asked to amend the variance and special permit to reflect the location of the retaining wall, adding the 4th space and expanding the curb cut – we recommended denying that. It is correct to deny the amendment. He is hearing that they would approve an amendment to variance and the special permit to reflect the current location of the retaining wall; however, the asphalt relected in the 4th space be removed and a physical barrier built so that cannot be used as a parking space.

Chair Hawes said to go back to the 1996 plans with the proviso that the retaining wall can remain and remove the pavement in line with the house to the side retaining wall as he believes it is more than 8' and it would be okay to place a 4' area at the bottom of the steps to provide a stepping area to the driveway. He is saying to go back to the original drawing but leave the new walls and steps where they are. He can leave a little bit of asphalt at the bottom of the steps.

Mr. Ozcan said he has 24' parking area. Mr. Magoon said the paved area is 25' from the corner of the house to the other stairway and put grass or flowers in that area and leave the curb cut where it is.

Erez Levanon, 7 Swetts Court (a petitioner from an earlier case tonight) said the parking issues are due to the population today just has more cars and that should be a consideration, especially in the winter. Chair Hawes agreed that this is a common, ongoing problem.

Chair Hawes marked up a plot plan with red marker showing where the landscaping area should be and presented it to Mr. Ozcan.

Member Brennock suggested the downspout be put into a drywell as it is adjacent to the stairs and would create an icy area in the winter. Mr. Ozcan confirmed that he would not have left the downspout like that as he has been a contractor for 37 years and would not wish to create a safety issue.

Member Brennock reiterated that Ms. Evans suggested to reuse the granite buffer that is near the wall now and move it to the driveway as the barrier.

Chair Hawes suggested that he center the paved area within the 30' curb cut and the house. Mr. Magoon suggested that the details be worked out with Staff as this board has made their recommendation - the three parking spaces as opposed to the four spaces.

Member Tuttle-Barletta motioned to recommend to the BOA to deny the request to amend variance and special permit finding # 06-29 as it does not meet the requirements set out in the zoning ordinance. Mr. Brown seconded. Voted 4-0, Denied.

Member Tuttle-Barletta motioned to approve the amendment to the SPF to reflect the new location of the retaining wall and to instruct the petitioner to otherwise return the site to the original control plan with the option to add in some sort of barrier to prevent parking on that site. Mr. Brennock seconded. Voted 4-0, Approved.

Member Tuttle-Barletta motioned to accept the request from the petitioner to continue the case at 198 Summer Street until next month.

Mr. Hawes seconded. Voted 4-0 Continued

Chairman John Hawes adjourned the meeting at 8:15 PM.

MEETING ADJOURNED: 8:15 PM MINUTES APPROVED:_____

For more detailed Minutes see tapes dated 11/17/2010 available in the DCD&P office.