



TOWN OF WATERTOWN
Zoning Board of Appeals
Administration Building
149 Main Street
WATERTOWN, MASSACHUSETTS 02472

Melissa M. Santucci Rozzi, Chairperson
David Ferris, Clerk
Christopher H. Heep, Member
John G. Gannon, Member
Kelly Donato, Member
Neeraj Chander, Member

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Louise Civetti, Clerk to the ZBA

MINUTES

On Wednesday evening, **August 27, 2014** at 7:00 p.m. in the Richard E. Mastrangelo Council Chamber on the second floor of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: Melissa Santucci Rozzi, *Chair*; David Ferris, *Member*; John G. Gannon, *Member*; Kelly Donato, *Member*. Also Present: Steve Magoon, Director, Community Development & Planning; Gideon Schreiber, Mike Mena, Louise Civetti. Absent: Christopher H. Heep, *Member*; Neeraj Chander, *Alternate Member*.

Chair Santucci Rozzi opened the meeting, introduced the board and staff and swore in the audience. She explained the fact that two board members were absent and each case would require all four voting members to vote in the affirmative in order for a case to be granted approval. She provided the opportunity for any case this evening to postpone until September.

Member Ferris read the legal notice for the first case:

“33 Robbins Road - John C. Bartley, 33 Robbins Road, Watertown, MA 02472 herein requests the Zoning Board of Appeals grant a **Special Permit Finding** in accordance with Watertown Zoning Ordinance §4.06(a), Alterations to Non-Conforming Structures; Accessory Structure, Side and Rear Yard Setbacks, so as to enlarge a 297 s.f. single-car garage, maintaining non-conforming side yard setback at 3.1’, where 5’ is required and maintaining existing non-conforming rear yard setback at 3.8’ – 4.2’, where 5’ is required for a new 528 s.f. two-car garage and further removing porch roof from rear of house to meet minimum open space requirement. S-6 (Single Family) Zoning District. ZBA-2014-19”

John C. Bartley, ‘Jack’. He explained the recent passing of his dad, John who served on the traffic commission and the passing of his mom 3 months earlier. His dad was antique car historian. A photo of his dad polishing a 1937 Ford that had belonged to his grandmother was shown with the statement that Jack was now the third generation to own this Ford. The contents of his dad’s 4 car garage does not fit in his existing two-car garage. The request before the board is to enlarge his garage maintaining two exterior walls through the Special Permit Finding process.

Dennis J. Duff, 33 Spruce Street, speaks in favor of the proposal, as submitted. He referred to himself as usually spouting about maintaining open space and green open space. He designed and installed Mr. Bartley’s back yard. There is open space but not green open space. There is no detriment and requests the board pass the petition.

Chair Santucci Rozzi asked if there is a structural analysis on the two walls that will remain as they may not be sturdy enough to support the structure being proposed. Mr. Bartley said he doesn't know but he had a couple of contractors look and the foundation and the flooring does need to be replaced.

Avo Asdorian, Architect, said the plan initially was to incorporate the two walls. However, after the structural engineer commented, they changed their plans so there will be no use of the existing walls which would compromise the structure. The strength and settlement of the building will be compromised. They want to propose taking all the walls down and not using any existing walls.

Chair Santucci Rozzi closed the public hearing and declared a business mode. She read from the application stating that it was to keep two walls and remove the roof of the porch to not exceed the building coverage. The Staff and the Planning Board (voted 4-0) to recommend approval of the request. Most of the conditions are boiler-plate; removal of the porch roof; and condition #9 speaks of leaving the two walls. She asked how the board feels about leaving the two walls or taking them down. It is a non-conforming structure and she would not like to see the new structure compromised because of the two existing walls.

Member Ferris stated that he is generally in support of the application and they want the structure to be able to stand and wants to hear from the Staff regarding the implications of taking the walls down.

Steve Magoon, Director, stated the at the very least, Staff's understanding of the submittal was the retention of two existing walls; maintaining the existing structure's non-conformity. Now to hear tonight that the plan is not to maintain those two existing walls, and to remove them to build a whole new structure, is disconcerting as that was not what was submitted to Staff. That would also bring into question whether or not this would require a Variance as opposed to a Special Permit Finding or not.

Chair Santucci Rozzi said the setbacks won't change and Staff recommended a favorable view on this garage. She sees an issue with those two walls staying and compromising the new structure and then they have to come back.

Mike Mena, Zoning Officer, stated that Staff's position is that if the structure is being entirely demolished, including needing a new foundation, there is not any reason why the new structure could then not meet the required setbacks. There would be no reason preventing the new structure from meeting the requirements. Staff indicated that if they were to tear down the existing garage, they would have to meet current code. Staff defined demolishing to mean not leaving 50% of contiguous walls; otherwise it would be an alteration to a non-conforming structure allowing it to be reviewed as a Special Permit Finding. Staff's position is that it needs to meet the current requirements of the Zoning Ordinance.

Member Ferris asked the architect and Staff if the existing walls above the foundation could be left intact but be reinforced. He said as an example to add more studs next to existing studs (and confirmed acceptability with Staff). He asked if the foundation can be repaired without being rebuilt.

Avo Asdorian, Architect said they are open to suggestions and would like to meet with the Planning and Zoning Boards to see if they can keep the existing walls, shore them up, change the foundation below them and then incorporate the new walls.

Chair Santucci Rozzi asked how can you change out the foundation with the walls remaining vertical. She said she sees the petitioner coming back to the board for additional relief.

Mr. Asdorian said the foundation as it exists will compromise the new structure because of settlement. They do not know if it goes to the frost line or not. They have to replace the foundation and then replace the walls.

Mr. Mena asked the board to look at the plot plan showing the existing garage and noting there is enough room for the new garage to meet the requirements of 5' rear and 5' side setbacks without compromising

anything else on the site. There is a fairly large yard. Staff discussed all possibilities with the Petitioner prior to filing. The current setbacks are 3.1 and 3.8' and the requirements are 5' on both.

Mr. Bartley stated that his garage meets the neighbors garage and there is very little space between them. That would not make a difference to the neighbor as the garages mirror each other. His back yard has stamped concrete and he doesn't want to tear up the stamped concrete. His neighbors are all in favor of this. He asks that he not have to incur the extra expense of changing the yard.

Chair Santucci Rozzi said the placement of his garage and his neighbors garage are back to back and she asked if the neighbor is on the property line.

Member Ferris said that most homes in this area have their garage in the back corner. He believes there is just as much room from the property line to his neighbors garage as there is to his garage. He doesn't want anyone to have the impression that the garages are touching are on his property.

Mr. Bartley stressed that the end product would be two garages very close together with landscaping in the backyard.

Chair Santucci Rozzi said that he isn't really using the space behind the garage as his fence is in line with it. Mr. Bartley said they would design the garage for safety reasons with the door on the left side and the door would have to go through the foundation. No windows except the one on top.

Chair Santucci Rozzi reiterated that the board is taking into consideration the request to leave the two walls and the Petitioner is here tonight asking that the two non-conforming walls be rebuilt on the new foundation to support the structure.

Mr. Bartley said they initially thought of razing the garage and rebuilding it but they also knew the difficulty in getting a Variance. They agreed to remove the roof on the back porch and make it a pergola. Staff has given him options.

Chair Santucci Rozzi asked the board for their concerns with removing the two walls.

Member Gannon said he could build a larger structure with a building permit. Therefore, keeping with the contours of the present project, it would have a less detrimental effect. He could build a larger structure by-right meeting the setbacks.

Member Ferris appreciates the concern regarding the use of the existing walls. However, it is not that much difference in the required setback and what exists. If the precedent is that if all walls come down then the structure has to meet the setbacks, he is in support of that. Is there a way to do an exploratory dig to find out how deep the existing footing is to assure the existing walls could remain but otherwise, he doesn't see why the structure wouldn't move based on Staff input.

Ms. Santucci Rozzi asked for the directors input that if the walls could be supported correctly – they would have to prove to the building inspector that the walls could not be rebuilt. She then asked if the inspector would make them rebuild it anyway.

Mr. Magoon said that if there were a structure with an unstructurally-sound foundation, the building inspector would tell them that it needs to be replaced or improved to make it structurally sound. However, in this case, the applicant did not come to the board and state that he wants to replace his garage as it is not structurally sound, he said I want to make a bigger garage and I don't want to meet the current setbacks. Staff said one way to do that is by maintaining the existing structure by retaining a couple of walls and building out in the other direction from there. If the proposal was to tear down the existing garage and build a new one, he does not see how the board could say no, you do not need to meet the existing setbacks. If he were replacing the existing garage where it stands, there would be provisions for that but not to expand it. To remove it and expand it, they would need to apply for a variance and we have not advertised for a variance. He respects what he is trying to accomplish and respects his dad;

however, we are either talking about a variance or moving the building slightly and building a new one with a building permit.

Ms. Santucci Rozzi said this is difficult as the Staff is providing an opinion and the board is concerned with setting a precedent. She does not have a problem with the walls being rebuilt if the setbacks are being maintained. She said this board can find that the alteration includes rebuilding them but she is only one person. She will default to the board.

Member Gannon asked if the request were called a Variance, would the same project be permitted if the board approved of it. Mr. Mena said that they filed for a Variance and this board found that it meet the criteria, if this property could be looked at as unique from all other properties around it, Staff could agree. Given the lot size and large rear yard, he doesn't see how a Variance could be approved.

Mr. Bartley agreed. He said that Staff made it abundantly clear that a Variance would not pass. They (staff) worked with him to see what could be done. The difficulty is the existing walls and the expansion is higher but it is not much wider and deeper. He wanted to work within the pressed concrete (on his patio).

Member Gannon asked if it were super supported by an 'I' beam would that work. Mr. Asdorian said that it would affect the new structure no matter how much it is supported.

Chair Santucci Rozzi asked if they were to approve this tonight and those two walls have to stay, is he stating that the garage cannot be built? Mr. Asdorian confirmed that is what he is saying. Ms. Santucci Rozzi asked what are we doing here?

Member Ferris asked if they can see cracks in the foundation. Mr. Asdorian said that if they were working within the existing footprint of the building, it would be more doable. They have to cut away two sides, it will not leave much to integrate with the rest. Mr. Bartley added that there are cracks in the rear portion inside and outside – the floor is cracked.

Member Ferris said that if it were the floor, it would be one thing but the integrity of the wall is the real question and if the footing goes down low enough, etc. If our regulations allowed rebuilding the wall and the footing in place, he would go along with it but since they don't, his concern is if the board approved this, it would not have gone through the variance process properly.

Chair Santucci Rozzi asked if he could meet the setbacks or at least get closer to them and amend the petition... if the relief were extremely de minimus – she is trying to come up with something. She said there isn't any sense in approving something that cannot be built. The garage looks nice, the intent is nice, how do we get there? Mr. Bartley added that the neighborhood support is there, as well.

Mr. Asdorian said they could get a professional engineer to provide input on the safety of the structure. Member Gannon added that they would have the same problem.

Member Ferris said that makes sense to take the time to have an engineer evaluate the foundation and if the foundation is not usable to continue to work with Staff to get something that is approvable.

Chair Santucci Rozzi asked the Petitioner if they want to continue.

Mr. Bartley said an alternative is to grant the petition and they would work with the building inspector and an engineer to make a determination on whether it is buildable, sustainable or not.

Chair Santucci Rozzi stated that if it were found not to be buildable, they would re-file. Member Gannon stated that it would be a conditional Special Permit Finding. Chair Santucci Rozzi said that it would be condition #9 that talks about the two walls and if there is a problem with that then they will come back to the board.

Member Ferris motioned to approve the application for 33 Robbins Road to expand the existing garage from a one car to a two-car garage maintaining two of the existing walls as part of the existing structure to be expanded.

Chair Santucci Rozzi stated that there is a motion for approval of the Special Permit Finding as submitted noting condition 9 with the two non-conforming walls.

Member Gannon seconded. The board voted 4-0 to grant the petition.

Documents reviewed: Topographic Site Plan, Watertown Massachusetts, by VTP Associates, Inc. dated 5/9/14, latest revision 7/15/14; Plans and Elevations, Sheet A-1, by Avo Asdourian, dated 6/25/14
Foundation and Framing Plans, Sheet A-2, by Avo Asdourian, dated 6/25/14; Planning Board Report.



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Chair Santucci Rozzi asked Member Ferris to read the Legal Notice:

"60 Russell Avenue - Maggie Booz, Architect, for Owners, Najib & Alexis Khalil, 60 Russell Ave., Watertown, MA 02472 herein requests the Zoning Board of Appeals grant a Special Permit Finding in accordance with Watertown Zoning Ordinance §4.06(a), Alterations to Non-Conforming Structures; Side Yard Setback, so as to construct a 1.5 story addition above existing non-conforming attached garage, creating a side setback of 8', where 9.4' exists and where 10' required. S-10 (Single Family) Zoning District ZBA-2014-20"

Maggie Booz, Architect, Smart Architecture, stated that Alexis and Najib have a small house with two children and the largest oak tree in Watertown in their backyard. To preserve the tree, their proposal is to add above the subterranean garage which is very narrow. They are asking for relief from the side yard setback to expand the garage and above that will be for expanding the kitchen and two bedrooms above that. Ms. Booz went reviewed the entire project.

Member Ferris asked if the siding will all match and if the retaining walls will stay. Ms. Booz said the walls will be redone and they have not discussed the wall yet. She will price a concrete wall with 4" stone ledge with stone facing or stucco. Member Ferris asked if the upstairs windows needed to comply with egress standards. If yes, the windows could be casement and she will work with the building department.

Member Donato asked if the neighbors were in support as there is one letter in the file in support already. Ms. Booz submitted a letter from an abutter at 64 Russell Avenue in support of the project.

Chair Santucci Rozzi asked if the three walls to the garage were being removed and rebuilt closer to the property line. The Plan A-3.0, shows a dotted line – Ms. Booz said that is the footing line. The entire exterior will be redone. She suggested making the retaining walls the same quality and character. Ms. Booz said they will be topped with bluestone and this has been discussed with the contractor.

Chair Santucci Rozzi closed the public hearing and declared a business mode for this Special Permit Finding. She read from the Planning Board Report on August 14,2014 with a 4-0 approval with boiler-plate conditions.

Member Ferris motioned to grant the Special Permit Finding with the expansion of the 1 ½ story structure beyond the required side yard setback. Member Donato seconded. Voted 4-0 to grant the request.

Documents Reviewed:

Plan Set Entitled: *Khalil Residence, 60 Russell Avenue, Watertown, MA 02472*, by Margaret Smart Booz, Registered Architect, and AJC Home Improvement, General Contractor, dated 7/10/14; Cover Page, A-0.0; Basement Demolition Plan, A-2.0; First Floor Demolition Plan, A-2.1; Second Floor Demolition Plan, A-2.2; Existing Elevations, N/E, A-2.3; Existing Elevations, S/W, A-2.4; Proposed Basement Plan, A-3.0; Proposed First Floor Plan, A-3.1; Proposed Second Floor Plan, A-3.2; Proposed Roof Plan, A-3.3; Proposed Front (East) and Side (North) Exterior Elevations, A-7.0; Proposed Rear (West) and Side (South) Exterior Elevations, A-7.1; Basement Electrical Diagram, A-11.0; First Floor Electrical Diagram, A-11.1; Second Floor Electrical Diagram, A-11.2; Window and Door Schedules, A-16.0.



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Chair Santucci Rozzi asked Member Ferris to read the Legal Notice:

"12 Dana Terrace- Roger Johnson, Designer for Owners, Brenda van der Merwe and Chris Elzinga, 12 Dana Terrace, Unit 2, Watertown, MA 02472 herein requests the Zoning Board of Appeals grant a Variance in accordance with Watertown Zoning Ordinance 5.04, Table of Dimensional Regulations, Side and Rear Setbacks, and further to grant a Special Permit Finding in accordance with §4.06(a), Alterations to Non-Conforming Structure, FAR, Side and Rear Yard setbacks and Minimum Percentage of Open Space, so as to attach garage to main structure to create an egress from the second floor and further to enclose an existing rear balcony. T (Two-Family) Zoning District. ZBA-2014-21"

Watertown's Senior Planner, Andrea Adams, presented the case history to the board with drawing A1-1 of the second floor proposed plan showing the project as originally proposed at the Planning Board hearing with this proposal being withdrawn. She explained that the garage was condemned and a new garage built with the intention of having an egress from the second floor of the house with an expanded kitchen and the stairs going to the roof of the garage and down to the ground. She will show the new proposal A1-1, the second floor and the garage without a connection or stairs. The stairs come down from the driveway side. The applicant withdrew the request which no longer required a Variance.

Roger Johnson, Designer for the Owners, stated that the initial petition has been changed and he handed out new 8.5x11" drawings to the board with three depictions – the existing house, the original proposal and a compromise. He explains the drawings and stated that the new proposal is to have a second stair although not required, to the second floor from the kitchen. The neighbors expressed concern with the windows on their side so they removed the windows. A grade-level view from the Hacketts house reflecting a compromise with the egress stair and enclosing the top portion of the stairs and although not on a plan, they'd like to add a window back into the plan.

Chair Santucci Rozzi asked where the egress is located on the plan. Mr. Johnson explained that the current means of egress is interior with 4 steps down to grade on the outside.

Stephanie Hackett (and husband, Tom) 14 Dana Terrace have a lot of concerns and some of them have been heard and the new drawings reflect that; however, the planning board gave approval for a plan that no longer exists. She showed a plan of the original garage which was a 'Sears' metal garage with a pitched roof at 10.5' tall. She showed the new garage which is about 4" from their property line. Mr. Mena said the garage was rebuilt without increase to footprint. Ms. Hackett said that it is higher by about 12' and it has a flat roof which takes away all of their sun and access to the sky. It is a much bigger structure. They want to maintain as much open space that they can to continue their quality of life. The owners have moved out and their house is on the internet to be rented. The space that is shown between the house and the garage be maintained with the bulkhead cut –out to allow their light and the stairs are going to wrap around and the existing stairs and then the door to the garage that was never there before. The railings are about 6-8' up and they do not want a window on their side as it is right into their bedroom. It is a non-conforming structure. Brenda, the owner is the realtor renting this unit and the ad said that this is an updated kitchen with 1800 s.f. and 5 bedrooms.

Member Gannon asked how she knew the deck was going up. Ms. Hackett said that the garage was huge and while it was under construction, she called the town and they were told about the flat roof and the plan for a deck.

Member Gannon asked Staff about rebuilding a garage with the same footprint but how did it get to be this large. Mr. Mena said that the garage is allowed at this size in the district. Member Gannon asked if the owner jumped the gun by putting on a flat roof in expectation of a deck. Mr. Mena said the building permit did not include a deck and a flat roof is allowed. Member Gannon wanted to know if the owner intended to build the deck before the board heard the petition.

Brenda Van de merwe said their garage was failing and they had it condemned. They asked what the requirements were from zoning to rebuild the garage. She feels the egress from the interior of the second floor is not safe as it empties back into the front of the house. She didn't feel that it met fire code although it does. She and her husband want to start a family and they do not feel that stair is safe. They want to build another egress. She said having children on the second floor is not safe. She thought forward when they built the garage to allow an adequate means for a fire escape. Since it has not been a popular idea, they got rid of it at the last meeting. They have come up with 4 different stair options. Only one was adequate at this property if she is there or she is renting it out.

Chair Santucci Rozzi read all of the egress options existing. Ms. Van de mer said the stairs are in the same area as the other stairs.

Member Ferris said that there are two sets of stairs and one goes to the front door and one goes to the side door. Ms. Van de merwe said there are two sets of doors. Mr. Johnson said the stair placement is indicated correctly, but they do have to go through the door from the foyer to go outside. Chair Santucci said they can reconfigure the stairs internally if it is that much of a concern. Ms. Van de mer states that if there were a fire at the front of the house, the second floor people would be trapped. Member Ferris said he does not see the requirement based on these drawings.

Thomas Atkin, 14 Dana Terrace said that side door opens to their house so it has been used to let their dogs out for the past 10 years. There has never been a concern about egress in those 10 years. There is a vestibule, like they said and you have to go through a door to get to the outside but you could reconfigure the way to have the stairs come down closer to the door. With the addition of another stair, they'd be looking at 4 egresses from next door.

Member Gannon is surprised with the inadequate drawings.

Member Ferris confirmed that the rear yard setback will be satisfied by the house although the garage is 2.4', the house is 24' from the rear yard. The deck is counted in the enclosed. Ms. Adams said the calculations were based on the original proposal. Member Ferris said his concern with a 5 bedroom apartment is the number of cars. There is a lot of pavement at this house and he'd like to see how the

cars will be parked. Ms. Van de mer said the requirement is 2 spaces. Ms. Santucci Rozzi said the plans only show 4 bedrooms so they will have to show the revised plans.

Member Ferris continued said he would benefit by seeing a site plan; however, the site is predominately paved. He walked around the area today. Ms. Van de merwe said there are two spots for each apartment and there is no parking offered in the garage as it is being used for equipment to care of the property. Ms. Santucci Rozzi said the snowblower is in the front yard. Ms. Van de merwe said the garage isn't finished yet.

Member Ferris asked if this were approved, would they consider a wooden stairway instead of a metal fire escape. Mr. Johnson said the metal stairway was discussed to minimize the impact. They want to keep the side yard open as much as possible. Member Ferris said an exterior stair could come out above the existing door and head towards the other neighbors yard and not build a deck or an extension on the kitchen. His concerns are with the overall site.

Chair Santucci Rozzi asked about the pavers in the front yard. Ms. Van de merwe said the street was dirt and rubble when she bought the house in 2004. 5 out of 6 neighbors got together to pave the private way street out of pocket. The house at 53 Summer Street, next to her, had a friend who did the paving at a reduced rate. At that time, she designed the pavers around the house to delineate between the house and the street.

Mr. Mena said there wasn't significant landscaping when this was filed. The parking and pavers were grandfathered. Ms. Van de merwe said they park around the house and in front of her house. All the parking on Dana Terrace was grandfathered. Chair Santucci Rozzi stated that she just presented testimony that she did the work 10 years ago and we did not allow front yard parking 10 years ago. Mr. Elzinger said the pavers replaced a concrete slab that was in terrible disrepair. The previous owners parked there and if there weren't a car parked there, the neighbors would drive over it as it is part of the street. Chair Santucci Rozzi stated that they have a large amount of pavement on their lot; a huge driveway, a garage and a bunch of pavers in the front – she doesn't understand why they are parking in the front yard when they have plenty of parking in the driveway. Mr. Elzinger said the parking was in place and the house across the street is owned by the town and...Chair Santucci Rozzi said the board is looking at his property only and trying to understand why they need additional parking in the front when there is ample parking in the driveway – when the board is considering relief, they look at the entire lot. Ms. Van de merwe said they park in the front because it is a two-family house. She said they try not to get in eachother's way and it would be intrusive to have keys to eachother's cars. That is the way the cars park at this site.

Member Gannon said he would like to see a plan to address the parking as they are seeking relief for an addition that they are stating would not be more detrimental and the parking issues would need to be more conforming. The WZO does not allow front yard parking without a Variance.

Ms. Van de merwe said she asked Zoning specifically about this as this is a private way. She added that it is grandfathered because it is a private way. Chair Santucci Rozzi said they are parking on their own property – not on the private way. Mr. Elzinger said every house on Dana Terrace parks in their front yard including the Hackett's. Member Gannon reminded them that they are not the same as other properties as the other properties are not seeking relief from the ZBA. They need to make their parking more conforming. Ms. Van de merwe said they are not seeking relief for parking. Member Gannon explained that they are seeking relief from typical zoning so he would like to see an attempt at making the parking situation more harmonious. Ms. Van de merwe said they were told by zoning that they were allowed to park in their front yard because it is a private way.

Mr. Mena clarified that when the question was asked, there were concerns with other properties on the street and access to them. He said it is not grandfathered in because it is a private way. It appears that the parking is helter-skelter out there and it would soon be grandfathered as he did not have any evidence to say otherwise that there used to be landscaping in that area. He said he was leaning towards giving the benefit of the doubt to the property owners that this is a long-standing situation.

Member Gannon added that the police cannot enforce parking on private ways because the private ways are owned by the abutters up to 50%. He'd like to see some attempt at making the parking somewhat conforming to a typical house.

Mr. Mena stated that he is hearing that the board wants landscaping in the front yard rather than the parking. Member Gannon confirmed that is what he is looking for and we are not rewording a conformity when a petitioner is seeking relief from the Zoning Board.

Chair Santucci Rozzi said they are required to show more detail of the interior of the house as what they are showing does support the stairs that they are asking for. Member Ferris said it doesn't explain what is existing so it doesn't support what they are seeking.

Chair Santucci Rozzi asked if this is a 5 bedroom apartment. Ms. Van de merwe said there are 3 bedrooms on the upper level and 2 on the second floor – one listed as an office. They all have closets. Chair Santucci Rozzi suggested that she revise her drawings, taking into account the comments from the board members and come back next month.

Member Gannon motioned that this case be continued to the September agenda. Member Ferris seconded. Voted 4-0 to continue.

Documents Reviewed: Plan of Land in Watertown, 12 Dana Terrace by PFS Land Surveying, dated 4/29/14; Plan Set Entitled The Van Der Merwe & Elzinga Residence; 12 Dana Terrace, Watertown, MA Issued 7/13/14; First Floor Existing Plan, Sheet e1.0; Second Floor Existing Plan, Sheet e1.1; Third Floor Existing Plan, Sheet e1.2; Existing Front Elevation, Sheet e2.0; Existing Side Elevation, Sheet e2.1; Existing Rear Elevation, Sheet e2.2; Existing Side Elevation, Sheet e2.3; First Floor Plan, Sheet a1.0; Second Floor Plan, Sheet a1.1, No connection to the garage shall be allowed; Third Floor Plan, Sheet a1.2 No connection to the garage shall be allowed; Proposed Roof Plan, Sheet a1.3 No connection to the garage shall be allowed; Proposed Front Elevation, Sheet a2.0 No connection to the garage shall be allowed; Proposed Side Elevation, Sheet a2.1 No connection to the garage shall be allowed; Proposed Rear Elevation, Sheet a2.2 No connection to the garage shall be allowed; Proposed Side Elevation, Sheet a2.3 No connection to the garage shall be allowed; Proposed Addition and Alternate Egress, Sheet s1.0 (not recommended); Proposed Addition and Alternate Egress, Sheet s1.1



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Christopher H. Heep, Member
John G. Gannon, Member
Kelly Donato, Member
Neeraj Chander, Member

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MINUTES

On Wednesday evening, **August 27, 2014** at 7:00 p.m. in the Richard E. Mastrangelo Council Chamber on the second floor of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: Melissa Santucci Rozzi, *Chair*; David Ferris, *Member*; John G. Gannon, *Member*; Kelly Donato, *Member*. Also Present: Steve Magoon, Director, Community Development & Planning; Gideon Schreiber, Mike Mena, Louise Civetti. Absent: Christopher H. Heep, *Member*; Neeraj Chander, *Alternate Member*.

Chair Santucci Rozzi asked Member Ferris to read the Legal Notice:

*"Gary Ruping, 28-30 Prentiss St., LLC, 100A Thompson Farm, Bedford, MA 01730, herein requests the Zoning Board of Appeals grant a **Special Permit** in accordance with §6.02(j), Driveway Regulations, Front Approaching, so as to raze existing two-family and replace with new two-family with two attached garages and front approaching driveways. T (Two-Family) Zoning District ZBA-2014-22"*

Gary H. Ruping, Manager of 28-30 Prentiss Street LLC, he introduced his partner and wife, Brenda. He received permission to from Historical to demolish the structure and have received approval form the Planning Board to build this two-family. He stated that the proposed house meets the zoning ordinance requirements including the third floor calculations. Staff was very helpful. He included a landscape plan with the type of paving stones for the driveways. The existing structure is in very poor condition, removed asbestos; and the house is ready to be demolished.

Dennis J. Duff, 33 Spruce Street said this is an ugly house and the two neighbors across the street keep their houses in perfect condition. He is worried about setting precedence here. He added that Charles Street was destroyed by front yard parking. The town changed the zoning to not allow front yard parking; then added the 4' buffer zone. Developers find a way to circumvent the wishes of the community. This would circumvent the zoning by having front yard parking and garages again. This would defeat the purpose. He is confused by the allowance of front yard parking by a special permit when it is only allowed by a variance.

Mr. Mena explained that the WZO states a two-family with front approaching garages is permitted by special permit. It is not by-right; it is discretionary. If this were a two-family without garages, they would need a variance to park. There was an example on Union Street several months ago.

Freddie Zartarian lives directly across from this property. This house is a sore sight for the neighborhood with 7 cars parked on the street. This new proposal has parking in the garages and in the driveway. He thinks this is wonderful. He may purchase one of the units.

Member Donato asked if this will be condos. Mr. Ruping said it will be set up as condos. Both homeowners will contribute to the upkeep of the property. Member Donato stated that they will have to use the garage as a parking space as well as the driveway. Mr. Ruping agreed – what they have proposed is proper for the site.

Member Gannon asked about the easement next to the site. Mr. Ruping said there are a lot of questions regarding that easement and this property does not have any rights to that easement. There is a paved driveway existing, with the help of DPW, they would reclaim that, pull the driveway out with the town's approval and replant it with seed. This is a condition of the planning board's approval.

Member Gannon said the Coolidge School used to be next door. When the Brown school had a fire, he recalls that school children would go in and out of that easement. Mr. Ruping said it is outside of their property boundaries and he doesn't have the full title report. They may have rights to the middle of the private way but they are willing to forgo that. Member Gannon said he thinks the town owns it.

Mr. Magoon said there has been a lot of question on Sampson Street and the town is having a survey done as recently a fence has been moved and they do not know whether that is appropriate or not. The side Mr. Ruping is on, the boundary is clear and the applicant is willing to remove the pavement placed there by the previous occupant is clearly town property. They will determine what rights the other side of the 44' wide private street has. This case will remove the encroachment onto town property.

Member Gannon stated that the town owns that area and it may not be a private way. This petition does not have anything to do with that portion of the road. Mr. Ruping added that they do not have any intention in using that road.

Member Ferris said there is a number of developments in town like this. The elevation sheet shows the side dormer on the third floor – the wall construction is flush with the second floor and the only distinction would be a rake board. He asked if the dormer could be pushed back from the front. Mr. Ruping said he would rather put a fascia and a soffit to build it out. They are fairly constrained and meet the third floor requirements now. They have had issues with that in the past with ice.

Member Ferris said the sidewalks approach the driveways and not the street; he suggested radius the edge. Mr. Ruping said they cannot widen the driveway and they usually do not have direct access to the sidewalk as at Thanksgiving, getting food to the house from the car as quickly as possible.

Mr. Ferris asked what the intention is for the curbing, edge, etc. Mr. Ruping said they will loom and seed the grass plot on the sidewalk. This plan shows only the property line and they will remove the existing brush for safe sidewalk passing. Mr. Magoon added that DPW will request that the sidewalk be installed for new development and granite curbing across the frontage. Mr. Ferris suggested one or two street trees.

Chair Santucci Rozzi said she thinks this is a huge improvement and will probably be sold before he records his permit. She noted that the driveway is 10' wide and they could run a walkway from the azalea's to the sidewalk.

Member Gannon said the Town Clerk's office should have a file under Public Ways listed by the town and ownership rights would be listed there.

Chair Santucci Rozzi closed the public hearing reiterating Member Ferris's comments regarding adding an element between the second and third floors; the pinch-point between the driveway and walkway and the improvement to the sidewalk and curbing at the front of the property, pursuant to DPW's requirements. She read from the staff report and the Planning Board report recommending conditional approval from August 13th meeting.

Member Ferris motioned to approve the request for 28-30 Prentiss Street with the conditions discussed with the extended rake condition between the 2nd and 3rd floor; potential radius walkway at the driveway;

improvements thru DPW at the front including street trees and the ability of the applicant to provide a walkway from the front door to the sidewalk should they want to do that. Member Gannon seconded. Voted 4-0, approved.

Documents Reviewed: *Application Packet*, 28-30 Prentiss Street, with cover letter, from Gary H. Ruping, dated 7/10/14; *Proposed Plot Plan*, 28-30 Prentiss Street, Watertown, MA by Commonwealth Engineering, Inc. dated 7/21/14, stamped received by ZBA on 7/22/14; *Landscape Plan*, 24 x 36, Colored drawing, drawn by R.F. Bailey, stamped received by ZBA on 7/22/14; *Proposed House Section/Proposed Elevations Detail*, received by DCDP staff by Email on 7/28/14 from Erich R. Nizsche, P.E., Commonwealth Engineering Inc.; Sheet A1.1 First Floor Plan – General Notes, HPA Design Inc., Architects, dated 6/30/14, latest revision date of 8/5/14, revision (D); Sheet A1.2 Second Floor Plan, HPA Design Inc., Architects, dated 6/30/14, latest revision date of 8/5/14, revision (D); Sheet A1.3 Upper Floor Plan, HPA Design Inc., Architects, dated 6/30/14, latest revision date of 8/5/14, revision (D); Sheet A2.1 Front Elevation/Rear Elevation/Window Schedule, HPA Design Inc., Architects, dated 6/30/14, latest revision date of 8/5/14, revision (D); Sheet A2.2 Right Side Elevation/Left Side Elevation, HPA Design Inc., Architects, dated 6/30/14, latest revision date of 8/5/14, revision (D); Sheet Z1.1 Half Story Calculations, HPA Design Inc., Architects, dated 6/30/14, latest revision date of 8/5/14, revision (D).

The board announced a 5 minute recess.



TOWN OF WATERTOWN

Zoning Board of Appeals

Administration Building

149 Main Street

WATERTOWN, MASSACHUSETTS 02472

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Member Ferris read the Legal Notice:

"Gregory Sampson, Attorney, Robinson & Cole LLP, One Boston Pl., 25th floor, Boston, MA 02108 for us auto group of Massachusetts, Ltd., d/b/a Boston Volkswagen, herein requests the zoning board of appeals grant a special permit finding in accordance with §4.06(e), replacing a non-conforming use (auto repair) with another non-conforming use (auto dealership with accessory auto service) at former Sullivan tire site. CB (Central Business) Zoning District ZBA-2014-18."

Carla Moynihan, Robinson & Cole on behalf of the petitioner, US Auto Group of Massachusetts Ltd., d/b/a Boston Volkswagen. She introduced people with her: Fredrick Lavery, President; Shane Lavery, Vice President – traveling here from Birmingham, MI. Also, the property owner, Warren Healer and Charles Long. The general manager for the site, John Welch. She explained the request and stated that their pre-owned sales are currently at the same location as their new sales. She added that pre-owned sales are becoming as important to sales as new sales and there are more stand-alone pre-owned showrooms. In order for them (VW) to remain competitive, they also need to provide their own pre-owned sales or much of it will be moved to 21 N. Beacon Street site. They believe there will be no additional impact to the area – there will be additional space for their sales-staff in addition to off-street customer parking. There will be no exterior display – it will be all interior. 13,000 s.f. single story parcel with 100% impervious coverage. They are reducing the number of parking spaces to 9 (from 12) and the service bays to 2. Sullivan Tire was the previous occupant and prior to that, Goodyear Tire. This will be 80% retail and 20% service and only to the retail purchasers of these autos. There will be 600 s.f of added landscaping as an improvement; 3 street trees; a new landscape bed in front of the bays. They are proposing a clean exterior façade; added landscaping; less vehicle trips to the site; more efficiencies with both locations; no dumpster; noise will be diminished; limited use of the two service bays which doors will be kept shut; this meets the requirements of the overlay district; and it is not substantially more detrimental to the surrounding neighborhood.

No one spoke from the audience.

Member Donato stated that the traffic study did not include some of the ongoing developments along Arsenal Street. Ms. Moynihan said she doesn't know why that was not included but in the report the trip analysis was comparing an auto dealership which is typically 15,000 up to 30,000 s.f. and this site is 6,700 s.f. They feel that the traffic analysis is still high for that area. She hopes that alleviates that concern.

Member Donato said there is 20-25 cars, which they state is less than one month's inventory, what are the plans if this is approved – what will the inventory be? Atty. Moynihan said half of the inventory will move and the rest will stay at 43 N. Beacon Street for storage. The sales staff will be at 21 North Beacon Street and the customer will park there – they may walk up the street to see the rest of the vehicles for sale. Member Donato asked again if the inventory will increase.

Fred Lavery, owner of Boston Volkswagan, in business since 1986 and they moved to Watertown as part of the Harvard development. The more cars you sell, the more inventory you need. The used car business has a quick turnover. They like to have 30-35 days worth of inventory or cars. New cars are around 120 days or cars. They will continue to store cars at 43 North Beacon Street. This will give them additional display space to accommodate additional inventory. They also rent One Arsenal Street, which provides 128 approximate parking spaces. They have plenty of room for inventory. They generally know when a customer is coming in to look at a car due to the internet. Used cars are unique – one may have more mileage, etc. This is a low-traffic business with as few as 5 customers a day. It is different than the tire business where they handle up to 7 customers per lift. Auto dealerships are the lowest impact retailers per square foot. They will have more inventory and they do have the room to do that.

Member Donato referenced the Planning Board that employees will park at 43 North Beacon Street and then under site design it states parking for 9 customers and employees. Mr. Lavery will have 'Employees' struck from that.

Member Gannon asked how many dealer plates will be sought for 21 N. Beacon Street. General Manager, John Wells said there are 6 dealer plates on premises and they are not applying for any more.

Member Gannon asked when the trip studies were done as he wants to be sure it was done when Sullivan Tire was open. Ms. Santucci Rossi said they did not use actual counts - they used ITE codes for existing and proposed. Atty. Moynihan added that they thought the counts were low. Mr. Lavery again stated that Sullivan Tire had at least 8 customers per lift per day to remain successful. There traffic will be much lower.

Member Gannon asked staff for their perspective on this being a less impactful use than the predecessor. Mr. Magoon said that they are all struggling with the use not being what they envisioned for Watertown Square although more retail in nature, it is not what they envisioned. Is this less impactful than 7 bays of auto-repair, yes but is it enough of an improvement than to stay with the 7 bays of auto-repair. The owner stated that if this was not approved, most likely the prior use would come back as a non-conforming use. It is a difficult case but this is an improvement over the use than the existing use to the neighborhood. It is less detrimental as they will improve the site with limited landscaping and 2 bays with limited repair by only autos being sold from their site – less frequency and less use.

Member Gannon asked if this is the best use of this site. Mr. Magoon said, 'No, this is clearly not the best use for this site'.

Member Ferris said the front skin will be a new treatment and they will match the glazing. Ms. Moynihan said they will all look like showrooms. Member Ferris asked if there will be additional mechanical equipment on the roof. Ms. Moynihan said no.

Member Ferris asked if the tree location will remain where the sickly looking tree is located. Ms. Moynihan said three trees will be planted. Member Ferris said the spices on the landscaping plan are warm-weather species but he suggests more evergreen. Ms. Moynihan said they are advised to work with staff on the particulars. There will be granite curbing on the property – it is in the conditions.

Chair Santucci Rozzi said she was at 43 North Beacon Street today and there are a lot of cars, 5-6 parked on the dead-end right under the sign stating, 'No Parking' 5 of them were VW's – who's are they? The street between the dealership and RCN – North Beacon Ct? They are on the street with license plates. Mr. General Manager said they are employees. There is only space for two-cars. Chair Santucci Rozzi said there were more than two cars and they were all VW's except one Mercedes. They should never be there. She added that if she were a customer, there isn't any directional signage as to where she should park to buy a car. Mr. General Manager said they pull down that street and into the lot.

Chair Santucci Rozzi asked if they own 43 N. Beacon Street – they do not and they do not own 21 North Beacon either. They lease it contingent on this approval – per Ms. Moyniahn.

Chair Santucci Rozzi said they have been here since 2007 and they still have a temporary sign – when are they going to become part of this community? There isn't any landscaping and a sign taped over someone else's sign – she is surprised that Volkswagen allows them to do that. Attorney Moynihan said they have gone through 3 different changes in the past 4 years. They were working with the initial VW and then they had a change. Their service bays are beautiful. They were going through the third rendition when this proposal happened and they wanted to include 21 North Beacon Street. Both locations will have the same façade treatments. Mr. Lavery said the signage package is part of the overall branding of the company. He spoke of the details for the signage to be completed within one year.

Member Gannon asked Mr. Mena if the existing signage at 43 North Beacon is conforming. Mr. Mena said the ordinance states a business can have a temporary sign up to 60 days while their main sign is being made. The property is out of compliance as of today.

Chair Santucci Rozzi said they are in an area where they make right turns only – they need two curb cuts to make right hand turns. Attorney Moynihan showed the plan where they are required to be able to exit from the overhead doors. Chair Santucci Rozzi said it does not make sense to have two curb cuts and not have additional landscaping.

Member Ferris said the depth is compromised and 20' is not wide. Chair Santucci Rozzi is trying to make it less impactful – this may not have the appearance...Attorney Moynihan said this property did not have landscaping and they are adding it. She is certain they came before this board before.

Chair Santucci Rozzi asked if this property were marketed and do they feel this is the best use. Mr. Long said they marketed this property and there was a lack of communication with Sullivan Tire as they really want this place but they weren't stepping up so when Fred stepped up, they worked with him but Sullivan Tire really wants the site – their lease is continuing. Sullivan is as interested in going back if this doesn't work out. This site cannot be expanded and they received serious interest; however, if you sell it, you pay a capital gains tax and what do you do with the money – try to find an investment? It makes more sense to lease out the property. They marketed for all but the interest was automotive.

Chair Santucci Rozzi asked where 1 Arsenal Street is. Mr. Lavery said it is near the mall – in the parking garage basement. Boston Accura leased there and now they are. She would like to see additional landscaping; reorient the parking spaces for turning movement; 8 spots and 1 handicap (reduced from 12) and they require 17 spots. They do not need the spots for customers but they do not want to increase their non-conformity. They have 25 parking spaces for employees, including this site. Chair Santucci Rozzi wants the front redone with more curb appeal.

Ms. Moynihan said the owners are concerned with reducing the number of parking spots. Mr. Healy said that staff discussed the installation of the green barrier in the front and the swing area is limited. They redesigned the parking configuration and installed an island and later upon Staff's recommendations, they added another large island of landscaping in front of the only two remaining service bays out of 7.

Chair Santucci Rozzi said the front landscaping is nice but it reduces the parking – if they redesigned the landscaping, they could get more landscaping and better parking. Mr. Healy said it was a condition back when the original granting was approved. The area is elevated and the cars are able to park right up to the landscaping. Ms. Santucci Rozzi said based on the testimony, they do not need all of the parking; they do not need two curb openings, etc. Ms. Moynihan said they do not want to reduce the parking because they may need it 20 years from now. Ms. Santucci Rozzi said why can't they just add it back?

Ms. Moynihan said they are not allowed to have front yard parking. Staff was asked if that is accurate in the CB district.

Mel Shuman, Attorney for the property owner said if the property has to be remarketed with 9 spaces if then reduced to 4 or 5 spaces, the grandfathering would be lost. Ms. Santucci Rozzi said they are already changing it. They are looking at it from what is going in there today – not 20 years from now. Mr. Shuman said they are reducing 7 service bays and reducing the parking further would be a hardship.

Mr. Magoon said there is no restriction of parking in the front yard in the CB district.

Nancy Scott said there is an existing variance on this property, originally granted back in 1970's for less parking and 2-way parking, less depth – 24' for 2 ways, it is down to 17. They are trying to comply with one of the conditions – landscaping. She has the original decision that was given to the board.

Chair Santucci Rozzi said that was not given to the board.

Member Ferris began suggesting additional spots for landscaping. Chair Santucci Rozzi said there are lots of areas for improvement. She added that she did not know about the variance approval and if they have an approval it is not non-conforming. Ms. Scott agreed.

Chair Santucci Rozzi said if they are changing the parking, this variance would need to be amended. She would like to review the original decision.

Member Ferris commented that the original sign post is to remain. Ms. Moynihan said it would be replaced.

Chair Santucci Rozzi said they had permission for a 20' aisle and less than 20'. Ms. Moynihan said she believes it was 24'. They had a variance for 12 spaces.

Chair Santucci Rozzi said if they want to change the parking, they have to amend the variance. Ms. Moynihan said if they want to increase the parking, they have to amend but if they want to decrease the parking, they do not with this condition and through the special permit process.

Further discussion ensued with regard to the variance approval on parking and then on the lack of a second curb-cut approval. Also, the existing center curb-cut width as opposed to the original approval width. Who installed the second curb-cut; the property owner or the DPW. It does not appear to be legal.

Member Ferris stated this is a less detrimental use than the existing; the landscaping adds a barrier to the pedestrians; more landscaping can be added. What he sees on a drawing and what is presented is a less detrimental use.

Member Donato agrees with Member Ferris. It is less detrimental than the existing use although the degree of less is a fine-line.

Member Gannon cannot condone two curb-cuts where there is approval for one. It is not a legal pre-existing use.

Ms. Moynihan asked if they were to provide the evidence that it was allowed after the 1972 approval would that change his mind. Member Gannon wants to see a zoning approval. Ms. Moynihan said if DPW approved it, then...Member Gannon said DPW has nothing to do with the Board approving one curb-cut. This is also a town issue as there is not plan to bust through the sidewalk and he has a problem with that.

Member Ferris said there is one entrance and two exits would it matter if there were one entrance and one exit, this could add more landscaping and allow the reduced width if one-way travel.

Member Gannon said they do not have approval for the second curb-cut so that would not work.

Chair Santucci Rozzi said circulation could work and more landscaping could be added along with things instituted without approval. If they are outside of the scope of what was advertised then they will amend it.

After a moment of discussion in the hallway with their group, Ms. Moynihan stated they are prepared for the board to render a decision tonight.

Chair Santucci Rozzi said the board has expressed several concerns regarding landscaping, parking, access to the site. The board is