

MINUTES

On Wednesday evening, **July 25, 2007** at 7:00 p.m. in the Council Chambers of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: **Harry J. Vlachos**, *Chairman*; **Melissa M. Santucci**, *Clerk*; **Stuart J. Bailey**, *Member*; **Deborah Elliott**, *Member*; **Carlos Fernandez**, *Member*; **Richard M. Moynihan**, *Alternate Member*, **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk*.

Tape 1 of 3, Side A

Chair Vlachos opened the meeting and asked for the approval of the minutes to be continued to September .

He then asked for nominations for Chairperson and Clerk for 2007 – 2008. Mr. Bailey nominated Mr. Vlachos as Chairperson and Ms. Santucci as Clerk. No other nominations were formed. Mr. Bailey motioned same; Ms. Elliott seconded. 5-0 vote for Mr. Vlachos to remain as Chair and Ms. Santucci to remain as Clerk.

Chair Vlachos asked for a vote to change the October 2007 meeting from its' scheduled date of October 31st to a week earlier, October 24th as it would be Halloween. Ms. Santucci motioned to accept the change in schedule to October 24th; Ms. Elliott seconded. Vote is 5-0.

Ms. Santucci read the legal notice for the first case:

John Donohue, 11 Standish Road, Watertown, MA, herein requests the Board of Appeals to grant a **Special Permit Finding** in accordance with Section 4.06(a), Alts/Additions to Non-Conforming Structures, Side Yard Setback, Zoning Ordinance, so as to construct a rear deck 14.5'x28.9', proposing a 7' northerly side yard setback, where 10' is required and where house is non-conforming at 6' at **11 Standish Road**, located in the S-6 (Single Family) Zoning District.

John Donohue explained his need for a Special Permit Finding to allow a setback of 7', where 10' is required to the property line abutting Mr. and Mrs. Oates.

Mr. Bailey asked about the deck stairs leading towards the garage side. He noted that there is a discrepancy between the plot plan and the drawing. He states that the stairs will encroach into the 10' space required between the garage and the new structure. Mr. Donohue said it would actually bump out from the edge of the house 2'8". Mr. Bailey said it could be 9.6' or 8.6' depending on the existing space between the structures which is not noted on the plan. Ms. Scott stated that they will drop the deck or stairs back slightly to be sure there is the 10' required between structures.

No one spoke from the audience.

Chair Vlachos read from the Planning Board report, having met on July 11th and they recommended to grant. The Planning Staff also agreed to grant. The conditions were typical.

Ms. Santucci motioned to grant the Special Permit Finding for the deck, maintaining at least a 10' setback between the garage. Ms. Elliott seconded. 5-0 Vote. Granted.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

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Tape 1 of 3, Side A, Continued

Legal Notice:

Melanie and Charles Deveikas, 75 Rutland Street, Watertown, MA, herein request the Board of Appeals to grant a **Special Permit Finding** in accordance with Section 4.06(a), Alts/Additions to Non-Conforming Structures, Side Yard Setback, Zoning Ordinance, so as to construct 3' extension of existing rear dormer 26'x12'6" on both sides to 32'x12'6", maintaining existing non-conforming northerly side yard setback at 4.86', where 10' is required at **75 Rutland Street**, located in the S-6 (Single Family) Zoning District.

Charles Deveikas, 75 Rutland Street requested a dormer extension to allow 30 more square feet to their son's room on the non-conforming, northerly side of the house.

Mr. Fernandez asked if the eastern side dormer had already been constructed. Mr. Deveikas stated that a permit was granted for the eastern side and that work had begun.

No one spoke from the audience.

Chair Vlachos read the Planning Board report of July 11th and voted to grant the finding with conditions.

Ms. Santucci motioned to grant the finding for the additional 3' with conditions as recommended by the Planning Board as it meets the requirements as set out in the ordinance. Ms. Elliott seconded. 5-0 Granted.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

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Tape 1 of 3, Side A, Continued

Legal Notice:

Kelly Corrigan, 14 Cushman Street, Watertown, MA, herein requests the Board of Appeals to grant a **Variance** in accordance with Section 6.02(j) Location of Off-Street Parking, Street/Curb Opening, Zoning Ordinance, so as to permit second driveway 17'x23' (two parking spaces) on southerly side proposing 10' curb opening, in addition to existing 22' curb opening, where maximum of 22' is allowed at **14-16 Cushman Street**, located in the T (Two-Family) Zoning District.

Kelly Corrigan, 14-16 Cushman Street stated that she is 50% owner of this property and there has never been a driveway on the southerly side of the house and since there isn't a sidewalk, there hasn't been a curb cut. It's been like this for 50 years and she is requesting a driveway.

Chair Vlachos asked if the garage is a garage as he saw on one of the documents that it has been converted to living space. Ms. Corrigan said no, it is a two car garage. Ms. Santucci asked to be shown on the plans where the garage is.

Ms. Scott asked if the property is going to be converted to condominiums? Yes, it is.

David Johansen, contractor, said the plans that they are looking at show a family room but the garage is not drawn in – the engineering plan shows the two car garage drawn in.

Ms. Elliott asked why is there a need for additional parking if there is a two car garage and outside parking? Mr. Johansen explained that Ms. Corrigan no longer has the use of the existing parking because her elderly parents need all of the parking and Ms. Corrigan wants to have parking next to her entrance.

Ms. Santucci said since there isn't any access to the house from the garage, then what is the issue with unit 14 having one side of the garage and 16 having the other side of the garage. Mr. Johansen said the garage has always been part of unit 16 and unit 14 has never had its own driveway. The in-law apartment was never assigned parking.

Ms. Corrigan said her entrance is on the southern side and she doesn't know who lives in the property next door so when she leaves at 6 a.m. for her school teacher job, she doesn't want to have to walk up the street to that driveway. It would be safer (for her to have parking on her side) and it would be on her side of the house.

Chair Vlachos verified that it isn't a condo yet and Ms. Corrigan owns 50% of the house or has a 50% financial interest in the property. He added that intuitively, they look at a two unit house with a two car garage as one unit parking one car inside the garage and one car behind it outside the garage. Not one unit have the use of the garage and the other unit having nothing.

Ms. Corrigan said both parents drive and they could have two cars there. She is already parking on the other side of the house. Her entrance is on the other side of the house. She has one bedroom and a laundry room which could also be a bedroom. Her parents have one bedroom.

Chair Vlachos said there is adequate parking. Ms. Elliott asked why she has to walk in the street when they could add a small walkway in front of the house for her to walk on to the existing driveway. Mr. Johansen said the property slopes up.

Mr. Fernandez said there is a paved sidewalk dimension that goes all the way up the hill. Mr. Johansen said there is not any sidewalk – the grass comes down to the street. The neighbors house is all paved in the front for parking and Fayette is all paved in the front yard. Ms. Corrigan only wants a 10' area to be paved - not the entire front.

Ms. Scott explained that the memo she had written to the board was regarding the Staff visit to the property where she was under the impression that the garage had been converted to living space. There was confliction regarding a plan with a 10' easement and the current plot plan did not show a 10' easement. The staff did not get into the house and they would have to go into the garage to verify if it is living space. She was going on the documents submitted that state it is a family room – perhaps that is the intension.

Mr. Vlachos asked again if there is a way to enter the house from the garage. Mr. Johansen said there isn't a way to enter the house from the garage and he would like to see the plans that state it is a family room.

Mr. Fernandez believes the drawings show the unit plan minus the garage. The volume is smaller and does not indicate the garage. It is a typical split-level. There is a 16' garage door. Ms. Corrigan's car was parked on her side of the house on the grass when he visited the property.

Chair Vlachos said they could postpone the hearing for more information. Mr. Johansen said the drawings show the house and the garage is where the red line is.

Mr. Fernandez asked Ms. Soctt about the curb cut. Ms. Scott explained that it is called street opening. The curb opening is a maximum of 22'. Mr. Fernandez said the grass is all the way to the street and the existing opening is the full length of the sidewalk. Ms. Scott said they are asking for a street opening. Mr. Fernandez said the existing conditions show a continuous street opening as there is no defined sidewalk. Ms. Scott said the DPW would require a definition of a curb be put in. Mr. Fernandez argued that the existing conditions have a continuous apron south of 14

all the way up the block. Ms. Scott said they are asking permission because they are only allowed 22' and they already have a 22' opening and they are asking 10' more. There is not always curbing but the DPW now wants driveways to be defined. Mr. Fernandez asked if the DPW has a schedule of streets that will be done over.

Mr. Bailey asked how much land is involved in the purchase of number 14. Mr. Vlachos again stated that there isn't any property defined as there isn't a deed. Mr. Bailey asked if she could park in the garage or the driveway if she wanted to. Ms. Corrigan said she could. Mr. Bailey said there is enough parking.

Dennis Duff, 33 Spruce Street, said this petition raises a red flag when properties are divided and they remove existing parking. There is adequate parking for all the people living in it and he respectfully requests they deny this.

Chair Vlachos read from the Planning Board report of July 11th, where there was no comment from the public, and they recommended that the board grant a variance with a condition that the existing driveway be reduced. The Staff also recommended they grant it with the same condition. There is also a memorandum asking if the garage has been converted to living space and a question of an easement which could be considered for front yard parking.

Ms. Elliott is not in support of this petition as there is sufficient parking for the two units. Mr. Bailey said if the garage was living space, it would be different but there is 4 spaces for parking. Ms. Santucci agrees. Mr. Fernandez supports reducing the existing driveway by 11' from the south edge to afford the second 11' maximum driveway on 14 Cushman Street side – remove the pavement, provide curbing, construct new apron and define street opening. Mr. Moynihan has nothing more to add. Chair Vlachos said if they were certain the garage was not used for living, he would be in favor of reducing the driveway on the right side and having a small driveway on the southern side but if that is not on the table as a doable project then he would also deny.

Ms. Santucci motioned to deny the petition as it does not meet the criteria set out in the ordinance. Ms. Elliott seconded. 4-1 Denied. (Mr. Fernandez voting against the motion).

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

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Tape 1 of 3, Side A, Continued

Legal Notice:

Terry O'Reilly, 19 Rushmore Street, Brighton, MA, herein requests the Board of Appeals to grant a **Variance** in accordance with Section 6.02(b & j), Location and Design of Off-Street Parking, Buffer, Front Setback, Size of Space, Front Yard Parking, Zoning Ordinance, so as to allow one parking space southerly side 8 ½' x15', portion located within building front yard; one space on northerly side 8 ½' to 6'-8" x25' both spaces on side property lines without 4' required landscape buffer; parking spaces not required size of 8 ½'x18' and without required 5' front setback at **3-5 Ladd Street**, located in the LB (Limited Business) Zoning District.

Ken Leitner, Attorney, representing Mr. O'Reilly, said that Ladd Street is a small street in the center of town with 11 houses, 6 of which have front yard parking. He submitted photos and explained that Mr. O'Reilly purchased the 1880 house and refurbished it. The house was built close to the property lines and is in an LB zone, where the other houses on the street are in a T zone. He feels this property is unique as it is a two-family on a very small lot and they are trying to get parking off the street, the setbacks are only 4 and 5' and they are trying to create something positive. Since the shape is trapezoidal, if it were a commercial use, they could park right to the sidewalk. Mr. O'Reilly would incur a hardship as he bought this property with the understanding that he could park in the front yard as there may have been

parking there before. Both properties on either side have front yard parking. The Planning Board granted their Variance with an alternate plan moving the parking further to the front of the house and away from the stairs. That would create a four foot buffer on the southerly side of the property. The size of the spaces in front of the house are only 15' long but the other houses on the street have the same situation. This doesn't derogate from the spirit of the ordinance given the age of the neighborhood and this house was constructed prior to cars.

Ms. Santucci asked for an explanation of the space on the plan. Attorney Leitner explained that the space is next to the walkway; from the southerly property line, there is a 4' buffer, the walkway and then the space which is 15' in length. The other side has the parking right up to the property line as the direct abutter also has that area paved and that space would have 18' in length.

Tape 1 of 3, Side B

Ms. Scott stated that the space is 8.5' at the curb and narrows down to 6'8" at the 25' length. Attorney Leitner said they can cut the length to the required 23'. Chair Vlachos stated when viewing the property, he felt that it was impossible to fit a car in there. He said that although everyone else is parking in the street, he doesn't believe the plan. Ms. Elliott said she measured the length and it is 15' in front of the house. Chair Vlachos said that you can not pull a car in up past the house. Attorney Leitner said just the nose of the car would be up past the porch but the rest of the car would not be. Chair Vlachos said it doesn't matter if the Variance is approved, they will park where ever they want. Mr. Fernandez asked if they can require that only a 4 cylinder car be parked there as any other car will be in the sidewalk and even though it may have been an existing condition, it has been an unacceptable existing condition. Chair Vlachos said there are 3 bedrooms in the house and you could end up with 6 cars at that address. Attorney Leitner said this is not new construction and they are not asking for this to be brought into conformity, they are only asking for two spaces. Mr. Fernandez asked how much new construction was done and there was extensive renovations. Ms. Scott stated that the property is legally non-conforming as to parking.

Dennis Duff, 33 Spruce Street, said that he respectfully requests that the board deny 6.02(j) Variances. This may be a unique situation but the newest problem in this community is ADA violations of parking across sidewalks. This street reminds him of Bradford Road where the request was denied for similar circumstances.

Chair Vlachos said he would like to offer some relief but if they do allow this then the board would have to call back several petitioners and say they have changed their

mind and they required less relief than this. Mr. Bailey asked if they could condition it with the car size. Ms. Civetti said you'd have to have someone police it. He saw a little hatchback car parked in the space being talked about and it just made it into the space. Ms. Scott asked if the board liked the revised plan with the space moved more towards the front of the house to obtain the 4' buffer? Ms. Santucci likes the original plan. Ms. Elliott said the original plan doesn't allow for the person to get out of the car and onto the steps.

Attorney Leitner asked if they were to withdraw the space on the southerly portion and just consider the northerly side space. Ms. Elliott said it is not wide enough. Chair Vlachos said in the winter it only gets worse. Ms. Scott asked if they want to control this by allowing some parking as people are desperate for parking in this area. Chair Vlachos said it is dangerous to park across the sidewalk. This property will only attract 3 roommates vs. two parents and a child and we would only be making it more attractive for single people. We denied cases for less relief than this. Ms. Scott said she was surprised they denied 99 Bradford Road. Ms. Santucci said this petition is different as there is no available parking on site and one spot on either side is reasonable and he is proposing flowers in the middle. She would support this petition if the northerly side were reduced to 23'. Mr. Moynihan said that a distinguishing characteristic is that there is no parking as opposed to wanting more parking but it still has to meet the requirements of the Variance and the hardship is no parking. Mr. Fernandez argues the hardship for use of the sidewalk not a small matter in this petition and he will not support new parking at this property – it is existing without parking. Ms. Elliott seconds Mr. Fernandez' comments.

Chair Vlachos read from the Planning Board report of July 11th stating that they voted unanimously to allow the Variance and the Staff agreed to granting the relief with conditions. Chair also said that he accepts Mr. Moynihan's observation that this is different than the other cases but he still feels this can not be allowed knowing the cars will be parked on the sidewalk.

Mr. Fernandez motioned to deny the request for variance. Ms. Elliott seconded. 3-2 Petition fails. Ms. Santucci and Mr. Bailey voted in favor.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

MINUTES

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Tape 1 of 3, Side B, Continued

Legal Notice:

Theodore and Van Arend, 179 Boylston Street, Watertown, MA, herein request the Board of Appeals to grant a **Special Permit** in accordance with Section 4.09, Exceptions to Lot Size Regulations; **Special Permit Finding** in accordance with Section 4.06(a), Alts/Additions to Non-Conforming Structures and Change in Lot Area/Frontage and **Variances** in accordance with Section 5.04, Table of Dimensional Regulations, Lot Coverage; and 6.02(j), Landscape Buffer, to construct a single family residence 24'x37' on adjacent non-conforming lot, **Assessors Map 1206-8-52 Boylston Street**, containing 4,950sf, with 48.22' of frontage, where 5,000sf/50' frontage required, with existing garage thereon, T Zone and further allow the non-conforming two-family dwelling with its lot having 4,040sf to remain having 3' easterly side yard setback, where 6' is required; 14.8' front setback, where 15' is required; 6.2' rear setback, where 20' is required; reduce non-conforming lot coverage from 34.7% to 32.5% by removing 2nd-story of two-story rear porch, leaving open deck 7'x12.5'; provide 77' long 4-car required parking driveway on southwesterly side allowing the rear 36' of landscaped parking buffer to vary from 3'11 to 1.8', where minimum 4' is required on the property at **179-181 Boylston Street**, located in the T (Two-Family) Zoning District.

Ken Leitner, Attorney for petitioners who have owned the property for over 70 years. He came before this board two years ago for relief from section 4.09 to build a single family on an undersized lot and relief for an existing two-family on 4,040 square feet. A straw poll was taken then, 3-2 but Mr. Marshall was going to step down and a new board appointed and they withdrew at that time. The lot they are now seeking relief for has always been deeded separately; lot 323 has 4950 square feet with 48.22 lineal feet of frontage which is just undersized in a T-zone for construction of a house at 50 feet short for the lot and 1.78 lineal feet for frontage. They feel it is appropriate for a single family house as opposed to a two-family which would make the lot more crowded. The design is standard and parking is within the existing garage and is an appropriate use for this lot. On the existing two-family house, they are proposing to remove the rear porch to reduce the lot coverage and add parking to the right side of the house which requires a Variance for 1.8' of side yard buffer. He said parking on this lot has always been non-conforming because there hasn't been parking on this lot – it has been on the foregoing lot. The last presentation made showed no neighborhood opposition and had neighbors in support.

Theodore Arend, said that in the Staff report it mentioned the loss of green area and he plans to reduce the size of the driveway width and eliminate a turn-around at the end of the driveway to gain green space. The buffer on the right side, two cars would have the full 4'; one car would have 4' down to 3' and the 4th car would have 3' down to 1.8' – assuming the worst-case scenario as there are only 3 cars now which are required to park within the lot only 4 months of the year.

Jean O'Cushman, 186 Boylston Street, directly across the street, is in support of the petition because they are wonderful people who help out others as she said on June 29, 2005, testimony to what a wonderful neighbor he is. She presented her testimony in writing to Ms. Civetti for the record.

Dennis Duff, 33 Spruce Street, this lot is so well maintained that it doesn't fit the statement that a single family house would improve the lot. It is one of the nicest properties in the area. Splitting off the lots creates issues on both lots and lessens the aesthetics on both lots. The issue is the existing two-family.

Mr. Arend said he would continue to maintain the lot with the nice new single family. There is one tree that can be moved and the other tree is in the power lines and has to come down anyway.

Mr. Bailey said in the future, if the property were sold, the house is only 3-4' away from the property line. Ms. Santucci said the proposed house does not meet the current requirements of ordinance for side yard setbacks as they show 6.6' and 14' and not 10' and 12', so you can not fit this house on this lot without Variances. The plot plan has not been updated to comply with the new by-law.

Attorney Leitner requested to continue to September to then not seek any Variances on lot 323.

Tape 2 of 3, Side A

Chair Vlachos said that people often get rewarded for a run-down dilapidated property when they come before the board and they state how much better they are going to make it and this property has a nice house and seems to be getting the opposite treatment, which is not fair. He said this does not look offensive to him and he does not remember how he voted prior. Attorney Leitner said Mr. Vlachos was in support of it and it was not offensive and appropriate for the location. He said Lexington Street had an undersized, dilapidated lot and they were rewarded. Mr. Fernandez said he is new to the board and has been consistent with his decision in not rewarding properties in disarray at the expense of petitions that are in good condition – he addresses the size conflict between desired goals by the property owner and the reality of the physical limits of the property and this is another case where we are trying to be magicians fitting a certain set of goals at the expense of

the limits of the property. The plot plan is from 2005 and does not satisfy the guidelines of the today and the case can be continued but the lot size is limited. Attorney Leitner argued that the lot size is 4950 square feet and it is servitude by saying it is a beautiful lot and we'd like to keep it that way. Mr. Fernandez said he didn't say anything about that – he talked about the dimensions and the limits. Attorney Leitner repeated that the lot size is only 50' short and the frontage is only 1.8' short of the requirement. Mr. Fernandez said the side yard requirements are now 10' and 12'. Attorney Leitner assured the board that there would not be any requirements for relief from a Variance and the only reason the lot size falls short is due to the curve of the street.

Chair Vlachos asked if there had even been a taking at the front of the house (by the Town for the street). Attorney Leitner said he does not have the deed.

Chair Vlachos stated that there is a request by the petitioner to continue. Is everyone in favor of the continuance? 4-1. Ms. Santucci is against continuing the case.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

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Tape 2 of 3, Side A, Continued

Legal Notice:

Tara Ripley, 125 Evans Street, Watertown, MA herein requests the Board of Appeals grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structures, Side Yard and Front Yard Setbacks, Zoning Ordinance, so as to raze roof and second floor 28'x24' and roof of one-story 12'x 28' rear addition and construct new second floor 28'10.5"x 36', with ½ story, maintaining non-conforming front yard setback at 17'6", where 25' is required and non-conforming northeasterly side yard setback at 9', where 12' is required at 125 Evans Street, located in the S-6 (Single Family) Zoning District.

This is a continued case from May '07 and Ms. Santucci will not be voting.

Tara Ripley, 125 Evans Street, said the property is non-conforming and is a Cape style, 28'x24', with a shed dormer. The ceiling height is only 6'6" on the second floor and they would like to bring the ceiling height into code as well as explaining the renovations in detail.

Ms. Santucci asked if the mortgage survey is acceptable. Ms. Scott said they are not going outside of the footprint and it is acceptable.

Wayne Pellitier, Architect, said removing the side porch will give the 10' setback required; it was redesigned to have the stoop on the back and the gable is facing the front as all other houses on the street have the gable facing front, making it look in place with the other houses.

Mr. Fernandez asked about the driveway – it is on the left side of the house.

Chair Vlachos read the Planning Board report from May which recommended to grant the finding with a condition to revise the plans. The zoning board also requested more detailed plans, which have been received.

Mr. Fernandez said he is inclined to deny this request as the extent of renovations to this property are at least 85% and he sees it not as an existing condition but as new construction. He would deny the request for special permit. The existing driveway has no buffer zone and to extend it would make matter worse. He said extending the volume of the house changes the character of the street and there is a rhythm on the street that goes Victorian two-family to a single family and then a Victorian two-family again. The property is in character with the street but not the two-family next door. He feels to build this single family into a property with the volume of a two family on both sides is in appropriate.

Mr. Pelletier said this house is setback from the street more than the other houses and they are taking the pitch of this house and not being excessive volume wise just to maintain the half story in the attic level. So the volume is not as much as a two family. The eclectic rhythm of the street is not the one-story, two story scenario but it is shorter than the other homes.

Mr. Moynihan clarified that he is voting on this and Ms. Santucci is not. He said this property is before us for a Special Permit Finding and this is the renovation of a non-conforming structure and the analysis before us is whether or not this change is more detrimental to the neighborhood than the existing condition and he would say that it is not. The architecture fits within the street and is not out of character. The architect has gone to great lengths to blend with the other structures on the street. He'd be in favor.

Mr. Moynihan motioned to grant the Special Permit Finding as requested as it meets the criteria set out in the ordinance. Ms. Elliott seconded. Voted 4-1. Mr. Fernandez voted against.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

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Tape 2 of 3, Side A, Continued

Legal Notice:

Gregg W. Steinhafel, President, Target Corporation, 1000 Nicollet Mall, Minneapolis, MN, herein requests the Board of Appeals to request an **Amendment to Special Permit** granted November 4, 1974 for construction of Watertown Mall and further requests a **Special Permit** in accordance with Section 5.00(f), New Construction more than 4,000 sf.; and 9.03 so as to permit façade upgrade; 19,076 sf of new construction--front entrance

addition 20'x 100' & new front bump-out addition 20'x 166'; construct rear addition, approx. 11,872 sf for expanded loading bay-20'x107' and stockroom, eliminate rear entrance passageway; create open loading area 66'x71'; expand interior Target store 40,360 sf within existing Mall area for warehouse/storage space ; site improvements including interior landscape islands providing 919 parking spaces at **550 Arsenal Street**, located in the I-1 (Industrial) Zoning District.

William York, Attorney for the Petitioner, introduced Perry Height, Target Real Estate Manager, Randy Peterson, Construction Manager, Hugh Haan, VHB Project Engineer; Anna Phil, VHB Traffic Engineer. The relief is limited to site plan review special permit finding as a result of 4,000 square feet of new construction and the changes to the façade and the amendment is for the creation of the mall back in 1974. This is located in the I-1 zone, which was created for retail purposes and the proposal will remain in full compliance with dimensional requirements. The purpose is to upgrade the appearance and to make it's operation more efficient. Where Target is now was formerly a Bradlees which failed in the late 90's and in 2002 Target retrofitted into the Bradlees store. Target is an anchor tenant and has assured the quality and viability of the mall and has given assurance to the commercial tax base in the community. There is a 59,000 square foot reconfiguration and expansion. 40,000 square feet comes within existing space of the mall (shown by red lines on the plan), the remaining 19,000 square feet is an expansion. The front entrance to the mall is 'kicked out' to enhance the appearance and is located 200' down to the other side of the building where the parking is underutilized. Another portion of the building kicks out 4,000 square feet where management offices will be located and offers a better front to the building and a consistent line. The remaining 11,000 square feet of expansion will be the loading and receiving area. Target now has 8,000 square feet of storage space and 34,000 square feet of the 59,000 will be for storage space. It will be a more efficient operation and lessen the truck traffic to the mall which has 14 – 18 wheelers that deliver daily will be reduced to 9 trucks per day. The increase to retail will be approximately 25,000 retail , replacing 25,000 retail that is being assumed within the 40,000 square feet which makes the traffic impact a wash or minimal, if any. The improvements include the colors of the façade and a nice face lift for the mall. The mall will have a new entrance and will enhance the façade as well. The parking will have landscape islands and plantings. There is more pervious soil – especially in the rear. There will be a water quality system added to the site to improve the parking field. Pedestrian access is non-existent now to the mall from Arsenal Street and a sidewalk will be added to bring the pedestrians directly to the mall. The rear of the site will have part of the parking field removed and covered by a portion of the expansion. The current site has 919 parking spaces and the requirement of the entire mall is 812. The rear entrance of the mall was difficult and those parking spaces near the loading dock have been removed. He said there have been questions regarding access from the mall and he stated there is a new walkway that will front at the entranceway for access to the parking area. For site plan review there are considerable enhancements and will better fit the operational needs of Target and the entire mall. Part of the direction from the town, specifically DPW, regarding mitigation, addressed the needs as shown on plan C5, the town storm drain services quite a bit of the east end and runs directly through the mall and the pipe has been there for many years. The Superintendent has suggested and Target has agreed to make a donation to design and reconstruct the pipe as it runs through the building at a cost estimate to \$300 to \$330, 000. Another suggestion has been

for improvements to Elm Street but the better need is to replace that pipe and if there is a savings after the 330,000 the remaining contribution can go to the Elm Street improvements. There have been problems in the past with carts taken off the premises and Target has installed a gatekeeper system which will lock the wheels when the cart leaves the facility. There were carts found in Philipello Park last week and that will be looked into to see if those carts need to be retrofitted. The Zoning office, Nancy Scott should be contacted if carts are found in the area. The new 25 year lease shows their commitment to the community and the improvements to landscaping and parking are not things they have to do but they want to do to contribute to the community.

Ms. Elliott asked where the end of the Target store will be in relation to the existing mall. Atty. York said that Target will extend to Work-N-Gear and the balance of the mall will open up to the walkway that exists now and the entrance near the Dunkin Donuts will be dressed up.

Tape 2 of 3, Side B

Chair Vlachos asked what businesses will be displaced at the mall. Pat Stensen, Mall Manager, said they are still in negotiations with many of their tenants and they are trying to accommodate everyone but they are not prepared to make any public statements due to the negotiations.

Chair Vlachos asked if the construction would be delayed up to a year depending on the contracts that the mall has. Ms. Stensen said they are in various stages and she can not discuss it. They expect to have all of the negotiations completed within the next few months.

Ms. Scott asked about the communication addressed to the Town Council President from the Registry of Motor Vehicles looking for usable space in the area. Ms. Stensen said the Registry is required by law to send out an RFP after so many years and they expected it to be six months ago. The Registry was held up due to the way they issue driver's licenses will be changing in response to homeland security needs. She does not know if the Registry will stay or leave this location. They are not impacted by the Target expansion.

Mr. Bailey asked about the access to the mall from Target and to Target from the mall. Attorney York confirmed that access will no longer exist. He said you'd exit from the Target entranceway and walk 300' to the right to the mall entrance. Mr.

Bailey said it is unusual for a store attached to a mall to not have access to the mall. Atty. York said it is unusual but not uncommon. Target is primarily a stand-alone operation but contributes strongly to the viability of this mall.

Mr. Bailey asked if there is access from the rear parking to Target? Atty. York said there will be a mall entrance from the rear. The only entrance to Target is from the front. Mr. Fernandez asked why they would limit public access if this is not a stand-alone site. Perry Hite responded that the Target took over an existing retail site when it moved here but generally, Target would not have a mall entry. They prefer to have a stand-alone due to asset protection – they incur additional funding for security, whereas if they have one entrance, they can better control guest safety and the merchandise in the store. The primary reason is the interior design and layout of the store. The mall entry takes space away from Target's design and all of the new stores has the same look and feel nation-wide. The Target Greatland concept is a two-entry store design and they found that reduced operational efficiencies.

Mr. Fernandez asked how wide the mall entry will be that runs parallel to the expansion. Attorney York replied that the entry will be about 30' wide and will be similar to the corridor that exists now. Mr. Fernandez commented that the entry without stores will get dirty and there will be a blank wall, the entry with stores allows better functionality – would they consider a glass wall? Ms. Hite commented that is the malls' entryway and from an asset protection and liability standpoint it would be difficult but there are freezer and cooler cases along that wall. Mr. Fernandez stated concern about the entryway problems that exist now and he feels will not change with the expansion as more people will enter at the atrium doorway and avoid this entryway all together. Chair Vlachos said this sounds like a fortress destination store with limited access and people unfriendly.

Mr. Bailey asked that an entryway be made from Target to the mall. Ms. Hite explained that the expansion plans were discussed in depth with the mall owners felt they could be very viable with the mall entry closed. Chair Vlachos commented that there will not be a mall. Atty. York said the design works with the parking etc. and walking a short way from Target to Best Buy, etc.

Mr. Bailey said they stated they have more parking spaces than they need but the parking has been reduced without showing how many spaces have been removed. Mr. Peterson said all of the parking spaces will be re-stripped and he pointed to a drawing showing the removing of spaces and added that all of the spaces will be moved slightly. Mr. Bailey asked for a new parking plan showing how many parking spaces there will be. Mr. Peterson said the existing count is 988 and the proposed is 919; the required is 812. Atty. York added that the drop-off area and fire-lane have been reconfigured for safety.

Mr. Fernandez asked about site plan review and wondered if the rest of the mall was included in this review. Ms. Scott said that Section 9.03 defines preservation of landscaping; open space; circulation; surface water drainage; utility service; advertising features; safety; microclimate and special features. It does not include inside the building.

Mr. Moynihan stated that there are now two large box stores and is the mall contemplating eliminating the mall aspect and turning this into a Shoppers' World in Framingham? Ms. Stensen said she was not aware of that. She added that they are in negotiations with all of the tenants and she is not able to discuss anything at this time.

Ms. Elliott asked how many cart corrals will be provided and are the ones shown on the plan existing or proposed? Mr. Peterson said there are 6 corrals existing and they would be maintained but not necessarily in the location they are in now.

Ms. Elliott asked about the bike racks. Attorney York stated bike racks will be placed in the front and the back in accordance with the requirements of Zoning. Ms. Scott added that the mall will also place bike racks in the front and the rear of their newly done over entrances.

Ms. Santucci asked about the drainage. Atty. York stated the 66 inch line will be replaced with a 72" pipe and be realigned at a distance of approximately 550' and will connect into the existing storm drain.

Ms. Santucci asked about work proposed on the culvert? Attorney York said the details and approval will be by DPW.

Ms. Santucci asked about the notation on the plan that is labeled "abandoned existing sewer access" and it points to the culvert. Mr. Haan said that is a man-hole that is located within the store footprint and that line is abandoned – there are two easements but one line is functioning.

Chair Vlachos asked about the design features on the façade. Mr. Peterson described the new entry to have glass and a split-faced rough-faced block, painted and a stucco-type finish in other areas. Ms. Hite said there will not be any metal bars on the window or have the windows blocked up over time – they have a commitment to

maintain the glass finish as part of their brand design. Chair Vlachos commented that there has been a severe shrinkage problem at that store over the years and wanted to be sure that additional measures are made to prevent more shrinkage. Ms. Hite said there will be no banners, posters, paint or any type of advertising across the windows – all of the advertising is within the store.

Attorney York said that the side entrance is an important issue to Target which is dedicated to the viability of the mall and they know that it can work well. That corridor can be designed to be customer friendly and an interior design that is important to the operation and consistent to their dedication and commitment to the mall.

Mr. Bailey asked if the specs of engineering will include checking on the class of pipe. Mr. Haan said they will check on the class as it is needed for the loading as well as to match what is existing.

Ms. Hite said that Target came to the mall because it is a great location and they are committed to this site. They are not in the business of putting their mall friends out of business. Target drives traffic – meaning that there are national retailers that want to be in every mall that we are at whether connected or not. They have a commitment to maintain that good relationship.

Ms. Santucci asked what “EN” meant on the plans. Mr. Haan noted that it is either an entrance or an emergency exit. Ms. Santucci asked where the rear entry to the mall will be. Mr. Haan said the rear entry is not on that plan but they are directly behind the front entrance to the mall. Ms. Stensen said there will be a rear entrance where the Gap Outlet is.

Ms. Hite said the existing skylight will be relocated but they may have to reduce it in size due to the structural beams and roof top units.

Mr. Bailey said the entrance to Target being nearer to Elm Street will have people just getting in the cars and leaving – the entrance to the mall from Target is very important. Ms. Hite noted that the primary parking for Target (is closer to Elm Street), and they do not want Targets guests to spill over to the mall parking. They do not want to interfere with the rest of the malls guest parking – having the entry on the right side will disperse traffic from stacking. Atty. York said that the mall is putting improvements into their entryways and corridors and they are well aware of the strong viability that will remain with Target.

Anna Phil, VHB, prepared the detailed traffic report which has little impact due to the expansion is mostly into retail that already exists and is mostly storage. The traffic impact is insignificant. Chair Vlachos asked if Target gave an estimate of increased retail business or sales volume for the traffic report. Ms. Phil said they used square footage and they did not get into sales volume. Atty. York said there isn't any increase in retail space - 34,000 square feet will be storage space and 25,000 will be retail space. Chair Vlachos asked again about the proposed increase in sales volume. Atty. York said the storage will adequately service the store. Ms. Hite said that Target is a publicly traded, for-profit corporation and they are making an investment in this site because they have product that they can not bring into the store – they will have an increased product offering and they will assume they will have more sales but that information is confidential. Chair Vlachos said the increase in sales volume directly impacts the traffic, parking lot, mall – if they are considering a 50% increase then that would influence the way he views this project, if it is a 10% increase then he would look at it differently. Atty. York said they can safely say that the sales will increase but the traffic study done is with the standards used in the industry and it was done conservatively because there is a swap of 25,000 square feet of space. The fact that the sales will increase is good for the mall, the community and the tax base and the differential in parking is more than required and the truck traffic will be reduced from 14 to 9 per week.

Chair Vlachos again stated that he was trying to determine what the net benefit is to the community by dividing the mall up – if there is a 5% increase in sales and you wall off the mall, how good is that for the community – if there is a great increase in sales and that will draw more vibrancy to the mall, then that would be a benefit.

Atty. York said the board is focusing on the side entrance being eliminated. Chair Vlachos said the Waltham Supermarket removed their street entrance and it changed the entire character of the street and the area and he is concerned about that happening here.

Ms. Santucci said the Traffic report doesn't reference what ITE Land Use Code was used. Ms. Phil said it is under table 3, a shopping center.

Tape 3 of 3, Side A

Ms. Santucci stated that by cutting off this store to the mall, it really isn't a shopping center (to be used in a traffic study). Ms. Phil said there will still be interaction between stores and is still characterized by a shopping center but using the ITE Discount Superstores or discount store, the number projections are lower.

Ms. Santucci asked about Table 6 (within the traffic study) regarding the delay on the build vs. the no-build. Ms. Phil said the delay reported is an average of every single movement at the intersection. If you increase the volumes at a movement that experiences less delay ie; if more cars turning right are experiencing more delays than cars turning left, and the volume is increased, the average of the intersection overall is a little lower but if you look at each approach, it will be consistent.

Atty. York asked if the side entrance were critical to the board, a condition could be considered that a side entrance be provided from the interior of the mall prior to the construction documents. The exact location would be part of the design but it would allow entrance and egress and a convenience for other customers of the mall. This is a design feature for Target that they would like to leave separately but will accommodate this if it is critical to the board as Target accommodated DPW with the Elm Street vs. the drainage issues.

Mr. Fernandez asked Ms. Scott about site plan review and the point on Circulation, Section 4, "general interior circulation", etc., is what all of the board's concerns fall under. He compared the Galeria Mall in Cambridge with the box stores opening up to the mall. His concerns (with this mall) are that the back corridor will be 6' wide and not 30' wide, the skylight is not going to be the grand skylight that we see there now, and if you park in the back, you have to walk around the mall to enter Target.

Atty. York repeated that they would accept a condition that there be an interior entrance to the mall along what is being called the side wall. Chair Vlachos asked how they would approach this so there isn't a skimpy entrance to the mall. Atty. York said that an acceptable ingress and egress from the interior space which could be subject to Staff review.

Mr. Fernandez asked why there weren't any architectural drawings included with the site plans, specifically interior circulation, etc. as he is an architect. Mr. Haan stated that the content for site plan review documents are typically the site plan itself and maintenance access through the skin of the building and does not include the layout of the interior of the space, which is the architectural plans being referred to. When they are creating the plans for permitting, they keep an eye on for construction and the references on the plans may be too early for site plan review but the plans are

part of the final architectural set. Mr. Fernandez said they do not want to show any architectural information for liability issues the same way he would not show site information in his documents because he is not covered.

Ms. Scott said there are many interpretations within the zoning paragraphs; however, the circulation they are referring to in site plan review is based on the circulation of the exterior – parking lots, walkways, etc. The town does not have architects on staff and zoning does not normally get involved in the interior space. However, she is in agreement that the viability of the mall is related to an entrance to the mall but she is not in agreement that they are not in compliance with Circulation, #4. Mr. Fernandez said he refers to the interior of the mall but the exterior of Target. Atty. York added that the issue appears to be access to the interior of the mall and they are willing to condition it and make it a comfortable entry that invites and brightens up the interior of the mall.

Ms. Hite said they are going to keep the store open during construction. If they get approval with the proposed condition, she will completely redesign the interior of the box as the wall to the mall now contains cooler for dairy, cheese, etc. Mr. Peterson added that the entire sales floor will be changed. There are currently no plans for additional hours – the hours they keep are the same nationwide.

Angie Kounellis said the façade is very pleasing and the sprinkling of green space is an added amenity. To answer some questions about sales volume, the council recently has given a proclamation to the store manager for being the top store in the northern New England district. Target is injecting \$330,000 into our infrastructure but Watertown has an aging infrastructure with limited funding for improvements. This aging infrastructure is beneath the Target store and with a 25 year lease, should the infrastructure fail, it would cost Target a lot more money in lost revenue. In March, she charged the town management to enter into negotiations with Target for mitigation funds or contributions for improvements to Elm Street. The northern most entrance to the mall is from Elm Street. Target could be doing more for the community. She received the correspondence from the state from the Registry and we don't know who is staying and who is leaving but the mall is looking for a tax abatement and the Assessor's has not made a decision regarding that. The town needs these tax dollars. Target contributes to Faire on the Square - \$1700 but they could do more to contribute to the surrounding community. For more than 10 years she has been lobbying the town to do improvements to Elm Street. A traffic study was not done on the entrance from Elm Street but it is a fact that it is a heavily traveled entryway. Aesthetic improvements to the street will not be enough as the street needs major repair. If something happens to that infrastructure, it will tie up their parking, storage and entire facility. She wants to be sure the trucks are coming from Arlington Street and not Elm Street. Shopping carts have been an issue and the locking wheels have been installed but the carts are still seen around the community. Target should be more pro-active in collecting their carts. DPW now picks up the carts and it costs the taxpayers money to crush the carts as no one wants them. The tax base will be there whether Target is at this location or another

store because it is a triple-net lease – the taxes are included in the lease agreements with the mall. Our concern is to be sure the entire mall is rented.

No one else spoke from the audience.

Chair Vlachos read from the Planning Board Report of July 11th, where the board voted unanimously to grant the finding and the Staff Report also recommended. The details in the reports were the 10 site plan review points and nothing on the interior.

Mr. Moynihan said the primary concern is a second entrance and they are offering a condition for that and although opening that wall will cause them problems internally, in the long run it blends to the viability of the mall with the two anchor stores. He commented that they are contributing to the aging infrastructure, and the Elm Street issues have not been created exclusively by Target and there has to be a balance regarding how much you take from a commercial entity.

Mr. Fernandez commented that the condition to connect to the mall is an important one and he would support that. It is difficult for him to understand the mitigation regarding Elm Street as you can not hold one entity accountable to address a need that is beyond that application – it is a difficult balancing act. He feels the investment to Elm Street as a city street is greater than the adjacency to Target.

Ms. Santucci feels the opening to the mall is important and closing it off would be detrimental to the mall. The drainage proposal is great. She feels a small additional contribution could be made to assist the Elm Street efforts. Target had a great opportunity to move into this location when Bradlees closed and if it had been an expansion from day one, there would have been a substantial mitigation package to improve the existing area.

Mr. Bailey is pleased that the entry to the mall is proposed. He hasn't seen the need on Elm Street, but he feels that the truck traffic should be routed around it to minimize further damage. Although you can not have one company re-route their trucks and all other company trucks use the street.

Ms. Elliott said the project has improved pedestrian traffic; bicycle parking and vehicular traffic. She supports the entry to the mall from Target. The \$330,000 is a significant amount and they have already discussed where that money should go and

the town has decided it should go towards the sewer line and this board should not make that decision.

Mr. Vlachos said it is important to preserve the opening to the mall and would want a full-service opening that provides normal flow of foot traffic from the rest of the stores to Target. The mitigation efforts are in Target's best interest to repair that conduit because if it did break it would cause a disruption of business – it does benefit East Watertown, as well. Project of this type also generally involve mitigation efforts for the immediate environment so, he feels it is not out of the question for Target to do something for Elm Street. People like Target in the town and it has been a great store for Watertown, but he doesn't want to neglect having a successful mall.

Tape 3 of 3, Side B (blank)

Attorney York stated that the language for the condition could be that they will provide a customer ingress that is open and inviting to customers and will appear in the construction documents. He said that in regards to the mitigation, DPW negotiated hard for the \$330,000 and in good faith, Target is paying more than others in the town; however, they have agreed to \$350,000, with \$80,000 to resurface Elm Street knowing it needs full reconstruction.

Ms. Santucci motioned to grant the Amended Special Permit and Special Permit with the condition to add an ingress/egress. Ms. Elliott seconded. Vote 5-0 Granted.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

MINUTES

On Wednesday evening, **July 25, 2007** at 7:00 p.m. in the Council Chambers of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: **Harry J. Vlachos**, *Chairman*; **Melissa M. Santucci**, *Clerk*; **Stuart J. Bailey**, *Member*; **Deborah Elliott**, *Member*; **Carlos Fernandez**, *Member*; **Richard M. Moynihan**, *Alternate Member*, **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk*.

Tape 3 of 3, Side B, Continued (Blank)

Other Business:

109 Spring Street – Modification to Control Documents.

The new owner of the property, James Chaisson approached the board and explained that he purchased the property prior to construction. He approached the Building Inspector regarding the changes to the exterior of the property and the Building Inspector did not have any issues with it but recommended he speak with the Historic Commission. The Historic Commission did not have any issues with the changes and only questioned the roof on the front of the building. He thought he had done the right thing by approaching the town.

The board wants the property to look the way they had voted and approved the plans. Mr. Fernandez stated that there needs to be additional detail to the elevation and there is not to be vinyl siding.

The board agreed to allow the petitioner to continue to September to come up with an agreeable exterior.

Ms. Santucci motioned to continue to September. Ms. Elliott seconded. Vote: 5-0 Granted to continue.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

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Tape 3 of 3, Side B, Continued (Blank)

Other Business:

65 Shattuck Road – Henry Wessmann, Architect for Owner, Steve Shavell – Extension SPF/VAR

Mr. Wessmann requested, in writing, that the board grant an extension of 6 months for him to begin this project due to the death of his mother.

Ms. Santucci motioned to grant the extension for 6 months. Ms. Elliott seconded.
Vote: 5-0 Granted.

The meeting ended at 12:00 A.M.