



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, Alternate
Jason D. Cohen, Alternate

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Louise Civetti, Clerk to the ZBA

MINUTES

On Wednesday evening, August 26, 2015 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, *Clerk*; John G. Gannon, *Member*; Kelly Donato, *Member*; Neeraj Chander, *Alternate Member*; Jason D. Cohen, *Alternate Member*. *Absent*: Christopher Heep, *Member*. *Also Present*: Mike Mena, *Zoning Enforcement Officer*; Louise Civetti, *Clerk to the ZBA*.

Chair Santucci Rozzi opened the meeting at 7:00 p.m., introduced the staff and board members, noting that Jason D. Cohen, Alternate Member, will be voting tonight; Member Heep is absent and Member Chander will join us shortly participating but not voting. She reviewed the agenda, stating that the May 28th minutes will be held and they will vote on the June minutes. The case for 80 Elm Street has been continued to September 30th and 195 Mt. Auburn Street will be heard. She swore in the audience.

Member Ferris motioned to accept the June 24, 2015 minutes as written. Chair Santucci Rozzi noted a correction by Ms. Civetti representing that Member Gannon was only at a portion of the meeting, not at the entire meeting. She noted a motion with one edit. Member Gannon seconded as amended. Voted 4-0.

Chair Santucci Rozzi asked for a representative for 195 Mt. Auburn Street. Ms. Civetti noted Mr. Younger is on his way. Chair Santucci Rozzi declared a recess for 5 minutes to allow Mr. Younger time to arrive.

Member Chair reopened the meeting and swore in the attendees that entered and announced 195 Mt. Auburn Street, modification to control documents.

Clyde Younger stated that he has been here before and tried to alleviate the concerns of the tandem parking and provide means of egress on one of the lanes. Bruce Bradford, Engineer came out and designed a new layout that will hopefully be in line with what the board is asking for. Mr. Younger stated that he thought Ken Leitner would be here and he believes he thought the meeting was in September. Chair Santucci Rozzi asked if he would like to continue to allow the attorney to be here. Mr. Younger declined and said his preference is this evening. He did not think this was a public hearing. Chair Santucci Rozzi explained that it is on the agenda as, 'Other Business'. However, if he wanted his counsel, they would continue the case. Mr. Younger again stated that he'd prefer to have the board review the new drawing.

Member Donato thanked Mr. Younger for submitting the new drawing. She questioned the maneuverability of spots #3 and 4 on the drawing. If all of the spots are taken, the fourth spot on the left

side – even though there will be two empty spots, she wonders if they will have to move cars 2, 3, 4. Will it create an issue and cause cars to park on the street. She is only making a comment and trying to work it through.

Mr. Younger asked if the board had driven by to see what the actual usage factor is as the time lines play a significant role in the maneuverability. There are very few cars in the driveway. He could consider taking down the garage to widen the area. However, regardless of if the garage is there or not, practically speaking, there will be some maneuverability issues with a car trying to get out from the end. He said there isn't any witnessing of backing into the street. The concern was with an SUV parked close to Franklin Street where they said emergency vehicles could not come around the corner safely. They tried to eliminate that concern. The impact or usage on that property is not as high as one would imagine. He asked that this be considered.

Member Ferris reviewed the use and the parking: Realtor, massage therapy, residential but vacant, the fourth office space will be vacant in November. Member Ferris asked staff regarding the drawing for the 10 spaces, how many are required for these uses. Mr. Mena part of the previous amendment that was applied for and acquired (for 10 spaces), under today's code, 13 spaces would be required. The ordinance at that time required 12 parking spaces. Mr. Mena then clarified that what is being analyzed is not whether or not this meets today's zoning requirements, the site was approved for the current mix of uses with 10 parking spaces. The issue is a proposed modification from the original plan – so is this modification any worse than the originally approved drawing or is it more detrimental? The original also had stacked parking and circulation issues and where people would have to back up and move forward. He repeated, 'is this new plan the same or more detrimental than the original plan' – that is the question.

Member Ferris commented that regardless of the original configuration of 10 cars requiring someone to back off of the site forces people to park on the street rather than on the site and this proposed scenario has the same characteristic with 6 spaces blocking other cars. It does not seem to be a better plan.

Member Gannon asked staff if the spaces are maneuverable. Mr. Mena said the original approval would most likely not be approved by the board today. However, this was approved in 1996 and reaffirmed by the Board in 1998 with an expansion. There is a code-compliance order as the property is not actually configured the way it was approved in 1996. In order to come into compliance, the property owner must come into compliance by providing the 10 parking spaces, which is what was originally approved. The owner is trying to achieve the 10 parking spaces – to say that the 1996 and the 1998 approvals are in compliance today, probably not. He is looking at this from a staff position that whether or not the decision was right or wrong back then, the decision was made. The owner is providing 10 parking spaces, as required, are they any worse or better than the original? Are there other alternatives. The board can express those recommendations.

Member Cohen asked if the two newly added spaces, provided that the other issues were mitigated, would it make more sense to angle them more to Franklin Street (parallel to Franklin). He states that one space is close to the building and the other may block spaces 7 & 8 from backing out. He asked about the configuration. Mr. Younger said the spaces were measured in conjunction with the towns zoning by-laws. He added that the ramp going into the property would be affected and they were trying to preserve some green space in that area.

Member Cohen asked staff if it were possible to approve this without the 10 parking spaces. Mr. Mena said that it is a possible solution but would require an amendment to the Special Permit Finding. The applicant went through this with 8 stacked parking spaces and the board was split with some thinking that less parking would work and the other thinking to amend the commercial space to require less parking – perhaps 6 parking spaces but that would mean a reduction in commercial space. Mr. Younger said that it had been discussed and a course in real estate would prove that the parking can make or not make the value of a property. They tried to come up with solutions by complying with the original approval in 1998 with the 10 parking spaces. Member Cohen said that the approval was on a property line that was not accurate. Mr. Younger said it was provided and accepted then. He said that Mr. Mena had provided the show cause and he showed 8 parking spaces and then the 10 parking spaces are being identified.

Chair Santucci Rozzi said this was the best plan they have seen. She said the two new spaces are 8' wide instead of 8.5' wide and this is 'tight'. The cars are slightly larger than park on this site. She asked if there are any conflicts with any conditions from the previous approval and then asked if his company is a tenant in this building as the approval of the special permit finding was predicated on him being a tenant in this building. She said another condition lists – one unit residential and 3 office units, not to exceed the following: basement 943 s.f.; 1st floor 1008 s.f. tenant space; Younger Corp 1663 s.f. If he is not the tenant, then that space should be empty. Mr. Mena said he does not believe that the intention was to have the tenants named to remain there in perpetuity. From a Zoning Enforcement perspective, those identified spaces were office-type uses. If a tenant changed, it would still be an office use – it would be difficult to say that if the tenant left, the special permit finding is voided.

Chair Santucci Rozzi said that she is curious if some of this configuration on this grossly non-conforming layout was predicated on Mr. Younger being in the building. Mr. Younger added that the use then was much more intense than it is now as far as the number of cars. Chair Santucci Rozzi said if there is a low rental rate in the building now and we look at the parking with less occupancy, it may appear okay. Some tenants have more clients than others, as well and there isn't a way for the Zoning Board to keep track of the tenants. She added that the new owners of the property could split the space into 100 s.f. and have 36 people in there. The Special permit finding runs with the property. Mr. Younger reiterated that if the use changes, it has to come back to this board for approval. Chair Santucci Rozzi said that if it is office, then it is office and she disagrees. The conditions specify the tenant use and the Younger Corporation as the tenant. It does just say, 'office'. Mr. Younger said it is the language that the attorney at the time used. He had more people in his office than the real estate advisers have now.

Chair Santucci Rozzi asked why the spaces are not 8.5' x 18'. Mr. Younger said the design was done by the engineer.

Chair Santucci Rozzi asked if a specialized parking engineer determined if these spaces were maneuverable as a surveyor or civil engineer is not trained to do that. Mr. Younger said that he is a well-respected engineer and...

Ms. Santucci Rozzi said he made a mistake.

Mr. Younger said the staff and director reviewed this and never pointed out that it did not meet the requirements. Mr. Mena said that he and the Director met with Mr. Younger in regards to this plan and they looked at it asking if this plan was any worse than the previous approval – which also did not meet length or size requirements. It is a non-conforming site with non-conforming issues. The Director's perspective is that this is no better and no worse than the previous plan. They are not coming out as a strong supporter in recommending approval, they are not recommending denial. The Director and Staff are not making a strong approval; they are not making a recommendation for denial either.

Chair Santucci Rozzi asked that the two new spaces be conforming – having 17' long will be tight. The space next to Franklin Street will not be able to open the driver side door to get out. Mr. Younger said they planned to make these spaces gravel so it would not be as small as those markings are for the automobiles. Chair Santucci Rozzi asked why he did not show that on the plan and then enunciated, 'show us what you want to do, Mr. Younger.'. She believes the plan is sub-par and they are trying to work with him. She said they offered him to come back.

Member Ferris asked if the proposed gravel driveway is beyond the outline of the parking spaces. Mr. Younger said that they would have to be.

Member Ferris said the task at hand is based on the previous approval and the previous approval was based on an inaccurate plan. He asked if the two new spaces being between the house and the road would be allowed on a new application. Mr. Mena stated that they would be allowed. The Franklin Street side is the side of the property and that is allowed. The house fronts on Mt. Auburn Street.

Member Ferris asked if other regulations would relate to the width of the curb cut of the driveway. Mr. Mena stated that that is correct

Member Donato, Member Gannon and Member Cohen do not have any further comments.

Chair Santucci Rozzi announced that this is not a public hearing. However, she will allow members of the audience to come up to the podium to make comments only – no back and forth discussion. This is not a public hearing – the applicant is only here to show his plan.

Cecilia Lenk, Councilor District B, 81 Boyd Street, said that approving this is problematic and would set a precedence if approved. She said the new parking spaces at the incorrect width would not be acceptable and would have other residents wanting the same. She objects to 10 parking spaces that are out of scope into a driveway that cannot accommodate 4, she thinks. This was set in the 1990's and the new parking spaces should be held to today's requirements.

Rena Baskin, 15 Franklin Street, gave some history on the 1996 decision when Mr. Younger owned the other property next door. She said his attorney must have told him it was okay to have 10 parking spaces on his land when he sold the property next door and it isn't fair that he can make a profit on this property and the town is going to fix it for him. She added that there is possibly a way to fix it. It just isn't fair to everyone. She said the town may have paved over the strip of land (or Mr. Younger) where there used to be grass. She feels this is impossible to put 10 in there and remove a beautiful tree that sets up the neighborhood. She advises him to change the use in the building.

Roger Erickson, Vice President, Concerned Citizens Group, and a registered landscape architect said this is the worst plan. They lose a tree, there is more paving and this doesn't work. All the cars cannot get out of there. He fears that this will set a pattern of approval of too-small spaces. He believes Clyde will sell the property as soon as he can and all of the promises will be forgotten.

Jonathan Bloch, 9 Franklin Street which abuts 195 Mt. Auburn Street and this house sits on a corner lot which a Grand Victorian is built about 100 years ago. The house he lives in was at the location of 195 Mt. Auburn Street and moved it back as it wasn't grand enough and the new house was built. This is also in the Historic District. He said if the permits were not in compliance with the conditions, it should be suspended. He said that it was found by the Zoning Enforcement Office, it should be suspended until it is brought into compliance by the board. He said it is out of compliance with parking and with the Younger Corp as one of the tenants. He said the only thing he can do is change his use. He said his new plan requires the board to accept new spaces that are not to the proper size. The spaces would need another special permit or a variance. He said the other spots are also new as they are not exact as before and will now have to be brought up to code. He said the zoning ordinance doesn't say that a corner lot has a front and a side – it is up to the Zoning Enforcement officer to decide. If the criterion is what the ZEO just mentioned, no one ever enters the front entrance of the building. The tenants all complain that the front entrance is not used nor is the fire escape stairs at the back. He said he doesn't know how they should be considering this drawing. In 2007, they purchased the property and the 1998 parking plan was in effect. The property line is not defined on the old plan and access is not shown. In the decisions, they talk about being able to drive around there (through is property). That was a one-way driveway with parking on the side and now it is a two-way driveway - spaces were lost because of that.

Chair Santucci Rozzi stated that there is nothing that can be done about the past.

Mr. Bloch said there is not date certain for the show cause. He said the town can be compelled to enforce this.

Chair Santucci Rozzi said the neighbors have made their comments and there will be no further back-and-forth and asked the board to speak on voting or continuing.

Member Ferris stated that he is willing to vote on this unless the applicant feels he can dramatically change what is going on in the site in regards to parking. He does not foresee that would be the case. Member Cohen asked staff if a new parallel parking space would be required to be 22' long and these spaces are 17.5'. Mr. Mena agreed.

Member Ferris, in looking at the original approved plan, stated that there is an arrow turning to the property to the south and to him that was part of the approval – driving on to the site and driving off. Mr. Mena said this site was independently looked at and not predicated on the parking on the adjacent site. Member Ferris said none of the board was there and when he looks at the drawing, he is led to believe that is part of the approval. He feels this changes what it is they are asked to approve. He said the previous approval is based on driving onto this property and driving off another.

Mr. Mena said that the decision was not predicated on that. Chair Santucci Rozzi said it is right in the decision.

Member Ferris reiterated that whatever is happening now may not be happening in 10 years. If the businesses have a lot of people coming to the site. In all scenarios, backing out onto the street is a safety concern due to compromised visibility – the fact that someone is not driving face first off of the site but is backing out.

Mr. Younger said that Mr. Hawes was on the original committee for approval and has currently, again given his approval. Chair Santucci Rozzi said there are not any members named Hawes on the Zoning Board. Mr. Younger continued – stating that people back into the property, not back out. Member Ferris said on a residential use, there may be 6 times when someone backs off of the property. In a business use, it could be 25 times that people are backing off of the property. It is the increased activity of people backing off of the property that is his concern for safety to pedestrians. Mr. Younger said this site would not support office staff of 25 people. They would not have that and this should not be a concern of the board. The intensive use of any property is a concern of the town. He sees autos ‘zoom’ down Franklin Street – the tenants, not the owners of the property. He sees it on the street where he lives. Watertown is becoming denser. This plan is more of an improvement over what they had before with the tandem parking – even if it is all residential, you would have the same issues you have today.

Chair Santucci Rozzi asked if this is to be continued as there are some issues or if Mr. Younger would like to have another try at this.

Member Ferris said he would vote tonight.

Chair Santucci Rozzi asked Mr. Younger if he would like to have the board vote or continue the case. Mr. Younger requested the continuance.

Chair Santucci Rozzi asked for a motion.

Member Ferris moved to continue. Member Donato seconded. Voted 5-0, continued.

Chair Santucci Rozzi asked for a motion to adjourn. Member Ferris moved to adjourn. Member Gannon seconded. Voted 5-0, the meeting ended at 8:15 pm.