

MINUTES

On Wednesday evening, **May 28, 2008** 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*; **Gregory Watson**, *DCLDP Director*; **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk*; **Joseph Merkel**, *Senior Planner*; **Danielle Fillis**, *Senior Planner*.

Tape 1 of 4, Side A

Chair Vlachos opened the meeting at 7:10 p.m., introduced the board and swore in the audience.

Ms. Santucci read the first legal notice:

Stepan Chiloyan, 37 Chapman Street, Watertown, MA, herein requests the Board of Appeals to grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structures, Side Yard Setback, Zoning Ordinance, so as to raze the existing rear deck 23'10" x 8' and rebuild & enlarge to 24' x 12' providing 6.1' northerly side yard setback, where the house is non-conforming at 5.6' and the southerly side setback is proposed at 9.8'-9.9' where the southerly house setback is 7.7', where 12' and 10' is required at **35-37 Chapman Street**, located in the T (Two-Family) Zoning District.

The Petitioner, Stepan Chiloyan appeared before the board and stated that he and his wife purchased this two-family in September, 2000. They live on the first floor and would like to raze the existing rear deck which is 8' wide with stairs recessed within it; further reducing the useable area. While the lot is non-conforming, they have a significant rear yard to expand. The new deck will be 12' in depth which will then provide a rear yard setback of 26.7', where 20' is required. The reconfigured stairway for the new deck will not impact the new useable area.

Mr. Chiloyan indicated that the existing deck is recessed 0'-5" from the corner of the house on the northerly side and recessed 2'-2" on the southerly. He intends to maintain the same recessed measurements on both sides.

Board concurred this is a straightforward request. No one from the public spoke for or against the petition.

The Board finds that the requested enlargement of the rear deck, providing non-conforming setbacks which are more conforming than the existing house's side yard setback, will not be more detrimental to the neighborhood .

Condition #6 of the Planning Board report will be removed.

Ms. Santucci motioned to grant the request for Special Permit Finding as it meets the criteria set out in the ordinance. Ms. Elliott seconded. Voted 5-0 Granted.

**TOWN OF
WATERTOWN**

Board of Appeals

Administration Building

149 Main Street

WATERTOWN, MASSACHUSETTS 02472

Telephone (617) 972-6428

Harry J. Vlachos, Chairman

Facsimile (617) 926-7778

Melissa M. Santucci,
Clerk

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Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

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Tape 1 of 4, Side A, Continued

Ms. Santucci read the legal notice:

Donna Jean D'Agostino Driscoll, 32 Chapman Street, Watertown, MA, herein requests the Board of Appeals to grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structures, Side Yard Setback, Zoning Ordinance, so as to raze existing one-story rear 10'x4' addition with deck above and 7'x16' open porch with deck above and construct a 9' -10' x 26'-4", first floor addition with full second floor open deck maintaining non-conforming northerly side setback of 5', where 10' is required at **32 Chapman Street**, located in the T (Two-Family) Zoning District.

Donna Driscoll, Petitioner, appeared before the Board and stated that she and her family are looking to tear down the existing rear porch and 4'x10' kitchen addition built prior to 2004. They have decided to construct a larger kitchen, therefore will build a 10'x14' addition to provide more function and flow to the kitchen area. Adjacent to the kitchen area in the rear will be a larger 3-season enclosed porch, 9'x12.4' which allows access into a new mud room and then the new kitchen. The enclosed porch is 1' less in width than the kitchen addition and Mrs. Driscoll acknowledged that it is a purposeful jog in the rear elevation. The rear addition having a flat roof, permits the petitioner to provide a large second floor open deck the full length of the rear additions at 26.4' in length and varying 9-10' in width.

The dwelling, built prior to zoning in 1923, has an existing northerly side yard setback of 4.1-4.2'. The new kitchen will extend an additional 6', maintaining the 4.2' non-conforming northerly side setback.

Member Fernandez asked Mrs. Driscoll if there is a plan for a foundation or slab because the control plans submitted do not provide any detail. She is unsure. Chairman Vlachos states that when the petitioner files for a building permit, the contractor would then need to provide that information to the Building Inspector.

The Board notes that there was no one from the public to speak on this petition. The Planning Board voted unanimously to recommend approval.

The Board, after discussion finds that the proposed addition as shown on the plot plan and drawings will not be substantially more detrimental than the existing non-conforming dwelling.

Ms. Santucci motioned to grant the Special Permit Finding as it meets the requirements set out in the ordinance. Ms. Elliott seconded. Voted 5-0 Granted.

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Tape 1 of 4, Side A, Continued

Ms. Santucci read the legal notice:

Jeffrey Collier, 81 Carroll Street, Watertown, MA, herein requests the Board of Appeals to grant a existing **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structures, Side Yard Setback, Zoning Ordinance, so as to raze rear roofed porch 5'x13.6' and 12.2x6.9' rear deck and construct a 10' x 38.1' rear deck with existing stairs to remain, maintaining non-conforming northerly side yard setback at 7.7' and southerly non-conforming side yard setback at 9.2' where 12' and 10' are required at **81-83 Carroll Street**, located in the T (Two-Family) Zoning District.

Sheila Norton, 83 Carroll Street co-owner, with Jeffrey and Jennifer S. Collier, 81 Carroll Street, appeared before the Board. She indicated that she and the Colliers are requesting to tear down the existing rear deck 6.9'x12.2 on her side and enlarge the deck to 10' x 38.1' encompassing the entire length of the house, providing #81 with a deck. The common rear exit to this house is via a roof-porch 5'x 13.6', with stairs down in the middle to access the parking area. Ms. Norton states that roof is going to remain.

The Board's attention was then drawn to Member Fernandez's concerns relative to the building contractor's detail, showing the location of proposed lally columns "matching opening of garage door" He is sure that such placement will create a more difficult 3-point turning radius to get into the garage, which is not ideal. The plan calls for 6 lally columns and Member Fernandez suggested possibly cutting it to four and spacing them better so as to not create the issue at the garage door level.

He suggests the petitioner provide an engineering plan showing the turning radius and possible placement of the columns.

Another issue raised by Member Bailey is -if the roof of the egress porch is to remain, where are those supports going? There is no detail of those supports on the contractor's drawing. Those supports would definitely interfere on the new deck.

Ms. Norton stated that they access the rear yard, which as shown on the pictures included in her statement is via a common driveway arrangement with 77-79 Carroll Street owners. There is an existing concrete retaining wall running 25' along the northerly side turning southerly 42' that they utilize for their parking area. Ms. Norton says she doesn't utilize the garage under. The Colliers already do a three-point turn to utilize the garage. With the placement of the lally columns as shown, no future owner will be able to use them without difficulty. Member Fernandez indicates that the sketch submitted is not sufficient and doesn't address the concerns. He suggests that a framing plan be provided properly laying out the columns with details relative to the center line of the lally columns at the garage entrances.

The Board notes that the proposed deck will maintain the existing northerly 7.7' side yard setback and maintain the house's southerly rear corner at 9.2'. The southerly side is adjacent the common driveway accessing the rear.

No one from the public spoke on this petition and the Planning Board voted unanimously to recommend approval.

The Board finds that the proposed enlarged deck will not be substantially detrimental than the existing structure; however, petitioner is advised to reconsider the lally column placement at both garage openings so as to provide easier access to the garages under for future use.

Condition #6 as stated on the Planning Board report has been removed.

Ms. Santucci motioned to grant the request for Special Permit Finding as it meets the requirements set out in the ordinance. Ms. Elliott seconded. Voted 5-0 Granted.

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M. Moynihan, *Alternate Member*; **Gregory Watson**, *DCDP Director*; **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk*; **Joseph Merkel**, *Senior Planner*; **Danielle Fillis**, *Senior Planner*.

Tape 1 of 4, Side A, Continued

Ms. Santucci read the legal notice:

Carmine Camerato, Jr., 2 Orsini Drive, Wakefield, MA, herein requests the Board of Appeals to grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structures, Side Yard Setback, Zoning Ordinance, so as to permit the construction of a rear deck, 10.5' x8', with 3.77'x4' platform and stairs proposing southerly side yard setback of 11.3', with existing non-conforming bulkhead at 10.3', and where 20' is required and proposing stairs to be 7.78' from garage, where 10' between structures is required at **29-31 Church Hill Lane**, located in the R.75 (Residential) Zoning District.

Stephen Winnick, Attorney representing the petitioner, stated that this is a 'garden-variety deck project' which is being built on an undersized lot so it is entitled to Special Permit Finding relief from the small non-conformities. He stated the dimensions and added that there was a question raised about the door which was not provided in the deck detail but has since been added to the plans. He said for legal presentation, it intensifies slightly the existing westerly side setback non-conformity by building more structure there. It is too small and insignificant to have any impact on the site or surrounding structures. It has received support by the planning staff and approval by the planning board.

Chair Vlachos asked Ms. Scott to explain her memo to the board. Ms. Scott referred to Attorney Winnick as he is to state his argument in regards to the lack of relief required for a minimum of 10' being required between the deck and the garage. Attorney Winnick stated that the site and structure is non-conforming and is entitled to relief so long as any additional non-conformities involved in the project do not create those that are beyond what exists or do not substantially worsen the conditions for the neighborhood.

Ms. Scott asked what the non-conformity is regarding the setback between structures. The structures comply now. Attorney Winnick said this project will now be 8' as opposed to 10' and it is creating an additional non-conformity but it is a two-family structure. It is not a commercial or industrial project where if you added a new non-conformity you would be required to have some form of variance relief. The case law is Willard vs. Board of Orleans.

Ms. Santucci asked if he has tried this before this board. Attorney Winnick said that he has many times and has never been successful.

Mr. Fernandez said if the stair were turned, they'd have the 10'. Attorney Winnick said the client feels it is more convenient to have access. There is an issue with the retaining wall. It is not easily accomplished that way. Mr. Fernandez said if the stair goes in the direction of the driveway clear of the retaining wall, they will have the 10' setback and this would be a non-issue. They are dealing with 2'. Attorney Winnick asked how that would have less of an impact on the neighborhood. Mr. Fernandez said the 10' setback is a requirement and the non-conformity that exists has to do with side yard setback not distance between structures.

Tape 1 of 4, Side B

Mr. Camerato explained that the stairs going out both sides is because the terrain in the back yard is at two levels. If he comes down towards the right two steps he is in the back yard; if he comes down the left with more stairs, he is in the driveway. Mr. Fernandez suggested he reorient the stairs. Mr. Camerato said he would be defeating the purpose of putting the deck there with the second means of egress. Mr. Fernandez said if he moves the longer step 90° - straight out and leave the two steps, he doesn't see a conflict. Mr. Camerato disagreed, it protrudes too far into the back yard and it is not convenient for his daughter, the tenant. He had the architects out and has had three plot plans done trying to come to a solution.

Mr. Vlachos asked Mr. Winnick what other type of relief would have to be requested if they considered this a separate non-conformance. Attorney Winnick said that either they adopt the reasoning that all of the relief can be granted by a special permit finding or they would grant the special permit finding but move the stairs out of the 10' requirement. It is within the board's discretion that it would be substantially more detrimental not to grant that additional element of relief under the circumstances because it is creating a new non-conformance but it is within the board's discretion to grant all of the relief requested. If the board is making a statement about relief for Special Permit Finding, this case doesn't rise to the level to do that. The planning staff agreed by Ms. Scott did not.

Ms. Fillis said there is a lot of disagreement on section 6 of Chapter 40A. If you're a single or two-family and you alter or add-on to it, you can increase a non-conformity as long as it is found not to be more detrimental the neighborhood. You can create a new non-conformity if you are a one or two-family.

Mr. Fernandez asked why 10' is required. Ms. Scott answered that the by-law required a 6' side yard setback in the past and when that changed to a 10' requirement, the distance between structures also changed to a 10' requirement. The requirement is 10' for access to the back. Mr. Fernandez said that 10' is not detrimental to the neighborhood but you can not access that portion of the site, perhaps an emergency. Ms. Fillis said as a two-family it has a small backyard and there is always a possibility of having to get a (fire) Engine back there but she doesn't see that. Mr. Merkel agrees.

Mr. Moynihan said that as a hypothetical, a one or two-family structure which has all non-conforming setbacks and if they proposed a change that would increase the height of the structure beyond that which is allowed by zoning, where the current structure is in conformance (with height), is it his (Atty. Winnick) opinion that this case this is to be a special permit finding analysis? Attorney Winnick stated that it is but it is within the board's discretion to decide that the height increase would be substantially more detrimental to the neighborhood, particularly in Watertown where height variances are never granted. That case would be denied based on the standard of review. He said that this case does not test the boundaries of those issues. This is a small deck and it is the stairway that is within the 10'. If they were building the house within 8' that would be an issue. Mr. Moynihan asked for an example of Attorney Winnick's interpretation of the applicable case law - a single or two-family in Watertown, proposing a change that would be subject to a variance. Attorney Winnick said there is an exception for variances for one and two-family homes that are pre-existing, legally non-conforming but they are subject to the Special permit finding test. Commercial or industrial cases, if you intensify or create new non-conformities you must get a variance in addition to a special permit finding.

Ms. Santucci commented that according to this, they do not have to grant variances for one and two-families. Ms. Fillis said that technically, they do not. Ms. Santucci asked what has the board been doing for all these years. Ms. Fillis said this is one thing she has been trying to get changed. Mr. Fernandez said that technically it may be so but safety is something to be considered. Ms. Fillis said you can find it more detrimental. Mr. Fernandez said the 10' is not plucked out of the air and it is a standard in every building code on this land as far as providing adequate access for any reason. He added that to undermine that is problematic. He said a reasonable solution would be to turn the stairs 90 degrees. Ms. Fillis agrees and said that it is a technocrat and advice to the board. Attorney Winnick said the exception for one and two-family homes is so the smaller cases should not be subjected to the kind of 'insectification' that occurs here and there should be more latitude in a one and two-family home. As a matter of general policy one and two-family home owners should be free from some of the scrutiny that larger projects receive. He believes the legislature's intent is to have more latitude for these home owners.

Ms. Santucci wants to know why this was not even mentioned in the Staff Report or the Planning Board Report. There is discussion on the front yard, etc. and it is not mentioned anywhere that what they are proposing is not in compliance with the by-law. Attorney Winnick said in the original filing, this wasn't identified initially. When it was identified, it

was put into the legal notice. He then told Ms. Scott that he would consider it was in the relief that he was already asking for. He added that the Planning Board did discuss it. It was in his oral presentation.

Chair Vlachos asked the public to speak. Since no one spoke, he declared a business mode and asked the board what they are inclined to do.

Ms. Santucci stated that she is of the opinion that altering a non-conforming structure which creates a new non-conformity is substantially detrimental and she could not approve the relief as requested. This board has always treated new non-conformities as variances and there are some that extend the non-conforming side yard, etc. but if something new appears, the board requires a variance. That should apply to this case, as well.

Mr. Fernandez agrees. The board's track record has been consistent.

Ms. Elliott asked the petitioner if it is possible to put the steps down the center – still at driveway level, the platform is not needed and the stairs could go straight down. Mr. Camerato said the two steps from the platform allow access to the upper level of the yard.

Mr. Vlachos said that if the board voted now, it would not be approved. The case can be continued; the stairs rotated or the board can vote and it will not be approved. Mr. Camerato said he will go over things with the architect to see how it can be reconfigured. His abutter is a church and the street is private. Ms. Scott suggested that he take the deal. Ms. Elliott asked if the board can approve it with the condition to rotate the stairs and have Ms. Scott review the plan.

Attorney Winnick requested a continuance to review what has been suggested with the architect.

Ms. Santucci motioned to continue this case (to a date uncertain). Ms. Elliott seconded. Voted 5-0 continued.

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Ms. Santucci read the legal notice:

Anthony Massarotti, 40 Whitney Street, Watertown, MA, herein requests the Board of Appeals to grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structure, Side Yard Setback and a **Variations** in accordance with §5.04, Table of Dimensional Regulations, Rear Yard Setback and Maximum Building Coverage, so as to construct a second story addition 12'6" x 8' and roofed open porch 16' x 8', above existing raised patio, 28.4'x8', maintaining non-conforming southerly side yard setback at 7.9', where 10' is required and a proposed rear yard setback of 18.9', where 20' is required and further increasing building coverage to 30.6%, where maximum 30% is allowed at **38-40 Whitney Street**, located in the T (Two-Family) Zoning District.

Anthony Massarotti, Petitioner, appeared before the Board requesting to construct a second story rear addition 8' x 28.4', which would provide an expanded dining area, 16' and the remaining 12.4' for an roofed open porch. The proposed addition would maintain the non-conforming southerly side yard setback at 7.9', where 10' is

required and provide an 18.9' rear yard setback, where 20' is required. The petitioner explained that in the construction of the existing raised patio the contractor misplaced the concrete blocks and did not build to the specifications described in the building permit which was to replace existing deck 6.8'x 28.4'. Member Fernandez wanted clarification as to what the size of the raised patio was versus the 8' requested by applicant. Mr. Massarotti explained that the supports for the new 2nd floor addition will rest squarely on the outside 8" block wall of the patio below, where the footing exists and the strongest portion of the structure. If he had to bring it in and rest on the 4" slab of the patio, it does not supply the structural support needed for the 2nd floor addition. This results in the rear wall of the patio and proposed addition extending farther into the rear yard and creating the rear yard non-conformity at 18.9', where 20' is required as shown on the plot plan submitted. Further, since a full foundation was erected under this patio, which is used as a wine cellar and storage, it created a lot coverage non-conformity at 30.6%, where maximum 30% is permitted. The construction for the raised patio structure was completed over 10 years ago, was not discovered until the plot plan for this petition was prepared and is now protected under the statute of limitations.

The original proposal as shown on the plot plan revised April 17, 2008 indicates the rear yard setback of the proposed 8' extension to be 18.9'. The plot plan also indicates a rear yard setback of 19.1' for the existing raised patio/wine cellar below, which was built at 7.8'x 28.4', creating the zoning violations explained above.

Board then heard testimony from the public. Sheila Cusack, 168 Edenfield Avenue, Watertown, representing her mother, Catherine P. Cusack, 7 Ellen Terrace, who is the rear abutter to the petitioner's property. Her mother is ill and could not be in attendance. However she has written a 6-page letter and requested to read it. Chairman Vlachos asked if she could summarize the highlights – not leaving anything out of course. Copies were given to the board together with photographs.

Ms. Cusack highlights her mother's opposition to the petitions: . The Staff report dated May 8th states in part "they are unaware of any special circumstances relating to soil conditions" at this property. Abutter's single-family ranch built in 1956 having a rear yard of 48-50', which immediately looks onto the rear Massarotti's property. There have been serious drainage problems at the petitioner's property they have witnessed and experienced, therefore any further building coverage will exacerbate the drainage issue. Chairman asked her to explain drainage issue—basement flooding in both properties; however she has no idea if her mother's drainage issue is from the petitioner's property. The petitioner's property is non-conforming and has evolved over the years from a two-family to a three-family^[1], exceeding the allowed building coverage, side yard and rear yard. She explained that there was a pre-existing wood deck 6.9'x28.4' with a permit granted to replace that deck, same size, with a concrete deck. What he made was a 8'x28.4' concrete deck with storage facility and wine cellar below. He over-stepped that permit creating a rear yard non-conformity. He now wants to further diminish the rear yard setback and further increase total building coverage. Her mother wonders if this over-stepping was

planned all along. Asking for two variances, this creates further encroachment on her mother's property; enhancing his property and detracting from her mother's. The proposed addition provides coverage over the rear patio – entertainment going on for all three apartments. The addition will look down on her mother's patio, porch and home- a single- level. The addition will be substantially more detrimental. No mitigation-fencing; fast growing trees or landscape can buffer the increased noise and activity created by this addition. The issuance of the Variances and Special Permit Finding puts an undue and awesome burden on 7 Ellen Terrace. It is unreasonable for any further loss of peace and quiet enjoyment and privacy of their property. The numerous and substantially detrimental effects on her mother's home and outdoor space that this addition would impose, their property would irrevocably be devalued financially. In conclusion, without question, the net cumulative effect is substantially detrimental to the value of her home and quality of life and substantially different from the all ready existing non-conforming structure.

Ms. Cusack's sister, Karen Cusack Bouvier, 42 Stagg Drive, Billerica, also representing here mother added that they are requesting to increase the building coverage in a marginal way, with the existing drainage issue, any increase would exacerbate it. He has a paved patio and any additional runoff adds to both of our misery. But the biggest concern for them (Mother and two sisters) is that when the deck was made in error and not in compliance, it is closer to our house. Our houses are located fairly close to the rear property lines. She believes her mother's home has a 20' rear setback as well. With the supports of the new addition, Mr. Massarotti is 1' closer to their property. Due to the nature of the addition, they will be getting far more lack of privacy and peace. Due to the increase setback, she believes the wood structure increases the safety hazard-difficulty containing spread of fire. Chairman believes the Board has heard the sister's opposition sufficiently to go forward in discussing the petition between members.

Chairman Vlachos verifies the facts. Petitioner had a permit in 1996 to replace an existing rear deck, 6.9'x28.4', which would be in compliance with the 20' rear yard setback. Petitioner rebuilt it larger and put in a full foundation for wine cellar and storage. Decks are not subject to building coverage; however, the added foundation trigger's the building coverage dimensional regulation, which exceeds the allowable 30% and less than the 20' rear yard setback. Member Fernandez clarified the size of raised deck at 7.8', yet the plot plan of the addition proposed 8'. Mr. Massarotti stated that the deck is 7.8, but with the overhang course of tile, it is in fact 8' wide.

Mr. Massarotti stated that the drainage issue for him was taken care of by having B-Dry System install pumps within the wine cellar and in front from the street by the boiler room. Cut the basement flooring and installed the pipe. There is no water problem in my home presently.

Chairman Vlachos asked Planning Members-Joseph Merkel and Danielle Fillis if they were in favor of the petitioner's request. Ms. Fillis indicated that when they reviewed this petition, the deck structure became "lawful" and took that into account. The

analysis was not based on the illegality of the raised patio structure. The Planning Board report recommended approval of both variances and special permit finding.

The Board discussed in detail their concern in allowing the petitioner's addition/expansion which would, in their opinion, further exacerbate the petitioner's error with the raised patio below by allowing this addition to be constructed further encroaching into the rear yard from 19.1' to 18.9', where 20' is required. The Board has had in the past granted de minimus Variance requests; however, the Chairman finds this problematic.

Zoning Officer suggested the Board consider the option of cutting back the size of the addition or whether that is feasible giving the structural issue of the supports. Member Fernandez concurs and technically the supports can be installed with the addition cut back to 6.9'.

Chairman Vlachos mentions there is a slight difference in the lot coverage percentage-the plot plan states 30.6% and the Planning Staff report indicates 31.4% then 31.5%. Ms. Fillis had asked land surveyor to update those numbers, but he failed to do so. Ms. Fillis states it is her calculations that are in the staff report, which she contends the building coverage to be at 31.5%.

Member Santucci is not opposed to a rear yard of 18.9', this is very close to the 20' required setback. Member Bailey states that his home is close on the sides and his neighbors can look in-it is what it is. The raised patio is a mess-either the contractor didn't know what he was doing or he just enlarged it. He is in favor of cutting the addition back to 6.9' as Member Fernandez suggests. The raised patio cannot be changed at this point.

The Board favors the applicant cutting the requested addition back to 6.9' in depth, which as shown on a plot plan dated July 12, 1996 by VTP Associates, indicates a 20.2' rear yard setback, thus eliminating the need for the rear yard setback variance. Mr. Massarotti agreed to cut back the proposed addition to 6.9'. Since this is within the allowed setback requirements, the Board asked him to withdraw the request for the rear yard setback variance. The proposed addition will maintain the existing southerly non-conforming side yard setback at 7.8' and the Board finds that not to be substantially detrimental than the existing house setback.

Much discussion ensued on the building coverage calculations and the lack of corrected calculations by the land surveyor. The Board is of the opinion that the

building coverage request is 30.6% as shown on the plot plan dated April 17, 2008, which in theory approves the existing raised patio; however, the 2nd floor addition will be cut back to 6.9' which does not further increase the building coverage and will be located 20' from the rear yard-in compliance..

The Board after discussion finds that the proposed addition as shown on the plot plan and plans will not be substantially more detrimental than the existing non-conforming dwelling.

The Board requires updated plans to reflect their approvals.

Mr. Fernandez motioned to approve the Special Permit Finding at 6.9' vs. 8'. Mr. Bailey seconded. Voted 5-0 Granted.

Ms. Santucci motioned to approve the Variance for 30.6% lot coverage (for existing wine cellar only). Mr. Fernandez seconded. Voted 5-0 Granted.

Ms. Santcuii motioned to accept the withdrawal of the variance request for the rear yard setback. Ms. Elliott seconded. Voted 5-0 Withdrawn.

TOWN OF WATERTOWN

Board of Appeals

Administration Building

149 Main Street

WATERTOWN, MASSACHUSETTS 02472

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Harry J. Vlachos, Chairman

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Melissa M. Santucci,
Clerk

www.watertown-ma.gov

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

MINUTES

On Wednesday evening, **May 28, 2008** 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*; **Gregory Watson**, *DCDP Director*; **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk*; **Joseph Merkel**, *Senior Planner*; **Danielle Fillis**, *Senior Planner*.

Ms. Santucci read the legal notice:

Richard Arnold, 23 Gleason Street, Watertown, MA, herein requests the Board of Appeals to grant a **Variance** in accordance with §5.04, Table of Dimensional Regulations, Rear Yard Setback, Zoning Ordinance, so as to construct a 2nd floor rear deck, 10' x14', with stairs, proposing 14.6' to rear property line, where 20' is required at **23 Gleason Street**, located in the S-6 (Single Family) Zoning District.

Richard Arnold, Petitioner, appeared before the Board and gave an overview of his request. He indicated that the dwelling is a non-conforming two-family (S-6 zone) built in 1928 that was divided into two condominiums in 2003. He and his wife purchased it 4 years ago and occupy the second floor unit. He wishes to provide an exterior deck, 10'x 14' with stairs, providing a rear yard setback of 14.6', where 20' is required. The petitioner provided a picture of the rear elevation of the house. There is one door which services a common means of egress for both units. That doorway will remain and the stairs will remain. An existing window at the second floor will be replaced with a door. Due to its height at the second floor, a two-level stairway will need to be constructed. In his Statement in Support, Mr. Arnold explains that he enjoys spending his time outdoors, as he did in his other home in the East End. Secondly, he and his wife have dogs and with a door at the second floor deck, his wife will be able to let them out to play in the enclosed yard below, without going up several flights several times each day.

Planning Staff advised the petitioner to consider reducing the depth of deck to 8', creating a less non-conforming rear yard setback at 16.6'. Mr. Arnold agreed and a faxed revised plot plan showing the deck reduced to 8'x14' with a 16.6' rear yard setback was submitted at the Planning Board meeting. The Planning Board reports that they voted to keep the deck the original size, 10'x14'.

Board members concur that the smaller deck would be more prudent and support the variance based on its reduced size of 8'x14'.

Mr. Fernandez motioned to grant the Variance at 8'x14'. Ms. Elliott seconded. Voted 4-1 Granted. Ms. Santucci voted against.

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Ms. Santucci read the legal notice:

Paul F. Manning, 812 E. Fifth Street, South Boston, MA and Margaret G. Puglia, 7 Swallow Street, South Boston, MA as tenants-in-common, herein request the Board of Appeals to grant a **Special Permit** in accordance with §4.09, Exception to Lot Size Regulations; **Variations** in accordance with §5.04, Table of Dimensional Regulations, Side Yard Setbacks, Rear Setbacks, Zoning Ordinance, so as to separate two dwellings on one lot into two separate lots per §4.08(c): Proposed Lot 8A, 81 Arsenal Street, having non-conforming easterly side yard setback of 0.8', where 15' is required and rear setback of 6.2', where 20' is required and Proposed Lot 8B, 42 North Beacon Street, having 7.0' easterly side yard setback, where 15' is required and rear setback of 3.1', where 20' is required at **42 North Beacon Street and 81 Arsenal Street**, located in the LB (Limited Business) Zoning District.

David Ross, 31 Paige Road, Bedford, Attorney representing the tenants in common said his clients have owned the property for 26 years and they are only asking that the properties be separated. He quoted from the ordinance and interpreted it to mean the two properties could be separated as long as they were granted the variations required. He said the variations are requested as the properties are 'grandfathered'; hardship would be financial; literal enforcement would not allow them to partition the properties under the Mass State Law Ch. 241; there will be no changes and no detriment to the neighbors. The planning board brief has not been received and he has not been able to address their comments. The planning board said the property is in poor condition and he said all of the properties in the area are in poor condition, a working class neighborhood. There are lots of homes on Arsenal Street where there are two homes on one lot, perhaps 20 of them.

Chair Vlachos asked if these homes could be condo-ized. Attorney Ross said that is a valid option but the owners did not want to do that. They want to separate from each other. He added that the planning board is concerned with some future development. The property has been in the family for 75 years and it was received by an uncle. If they are refused from this board, they'll probably do nothing. They are rented out.

Mr. Fernandez said the subdivision is creating inaccessible edges. Attorney Ross said they are not changing anything and are laying down an imaginary line between the houses. There are no setback requirements in an LB Zone.

Mr. Bailey asked about the deed stating there is a double house with single units – how is it now two houses. Attorney Ross said that the plan looks like one extended house but when 81 Arsenal Street was raised 3 feet, the dimensions of that were different than the plan shows. It was numbered 40 North Beacon Street and 81 Arsenal Street. Ms. Scott added that the 1915 Sanborn map shows it was connected at one point but they were then separated out.

No one spoke from the public. Chair Vlachos asked the Planning Staff what is wrong with doing this. Ms. Fillis said that this is an LB zone and as Planners they have to look at Economic Development and single and two-family homes are not allowed in LB zones but they are protected because they are existing. Having two small lots trying to comply with rear yard setbacks would be hard to develop. There isn't a minimum lot size in LB but it would be tough to develop those lots if you were to tear down those structures for a use that would better fit the area. Chair Vlachos asked what would happen if the board approved this and they were sold next week. Ms. Fillis said someone would probably want to merge them. Ms. Santucci asked what would be the rear yard. Ms. Fillis said there would be two fronts and no rear – with two lots the rear yard would come into play and that would create the difficulty in redeveloping it.

Mr. Moynihan asked if section 4.08 and 4.09 were considered by planning. Ms. Fillis said yes, with a special permit you can divide the lot into as many lots as there are single dwellings provided that it meets dimensional requirements. The rear yard setbacks will not be met.

Mr. Fernandez said the subdivision creates new non-conformities with the rear yard and right now there isn't a rear yard.

Ms. Santucci said although Watertown didn't adopt subdivision control, are there any provisions under the ANR that two structures on one lot prior to 1949 applicable by right. Ms. Fillis said everything is determined by the planning director so there isn't ANR and there isn't subdivision. We create our own standards – that's what they were applying for in 1908.

Mr. Bailey said that the double house – detached dwellings can be combined. They were attached up to 1926 and zoning came into force after. There is no proof they were detached.

Attorney Ross said there is evidence to building improvement to 81 Arsenal Street around the same time as the Sanborn map which shows they raised the house 3'. They had to be detached to do that.

Mr. Fernandez concurs with Planning that they are creating conditions that are unacceptable. They can not make 3.1' or 6.2' an acceptable rear yard setback for future development.

Attorney Ross argues that there are now two owners who may have separate views on how to develop the property. With two separate owners it makes it possible to leverage one owner developing quicker. Mass. Gen'l Law, C. 241 allows the property to be separated when there are tenants in common.

Chair Vlachos said the simply thing to do is to condominium-ize.

Ms. Santucci doesn't see an issue with the relief although condos are an alternative. If someone wants to develop the sites, they can purchase both and it is back to one lot. The board would have to consider the rear yard setbacks at that time. Chair Vlachos said the board could get stuck with a situation where a lot is just left to be abandoned and creates an eye-sore in the middle of town. Ms. Santucci said it is possible to speculate but the board will most likely have a say in the matter. The neighborhood is extremely dense. She would support the relief.

Mr. Fernandez would not support the relief because they'd be making matters worse. They may be faced with the entire neighborhood coming in to do the same thing. This is moving in the wrong direction. When you have an undersized lot you don't subdivide it to make two smaller undersized lots. You recognize the common land is best utilized as open space. He understands there is no minimum lot size requirement in the LB zone.

Mr. Bailey will not be supporting the relief.

Ms. Elliott will not support it either.

Chair Vlachos said a clear path to getting relief is to condo-ize and would meet the needs of the owners. It may be making matters worse to grant the relief and we don't know what

would happen in the future. He offered Attorney Ross to withdraw the petition or the board would vote unfavorably.

Attorney Ross requested a continuance to be able to speak to his clients.

Ms. Santucci motioned to accept the request for continuance to July 30, 2008. Ms. Elliott seconded. Voted 5-0 Continued.

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MINUTES

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Ms. Santucci read the legal notice:

Robert Bray, 9 Gerry Street, Cambridge, MA, herein requests the Board of Appeals to grant a **Special Permit/Site Plan Review** in accordance with §5.00(f), New Construction >3 Units; §5.01.1(l), Mixed Use Development and §9.03, Site Plan Review, Zoning Ordinance, so as to raze existing building (former Casey's Pub/Apartments) and construct 5-story mixed use building with 1179 sf retail/office space at grade floor - 14 residential units above with 18 parking spaces -14 within basement garage and 4 surface parking spaces at **24-28 Arsenal Street**, located in the CB (Central Business) Zoning District.

Attorney William York, representing the petitioner, described the property as the old Casey's Pub & Restaurant with residences above, behind the Staples building. He explained the project has (3) one-bedroom units and (11) two-bedroom units. The top story (5th floor) is setback from the street as two penthouse units and the other 3 levels would each consist of 4 residential units. He explained the intent of the CB district – to bring residential, pedestrian, smart-growth type of development. All dimensional requirements for the CB district are adhered to. The character of the building includes items found in the neighborhood – mansard roof, bay windows, soffits, turrets, etc. At the Developer's Conference, the building was presented with a wall and that was setback and now is clear with iron railings and to give better site lines to vehicles exiting from the ground-level parking. Parking is on two locations – residential units are on one level and one-way in with a right turn and one-way out with a right turn. The drive down ramp will have 14 spaces. The second level of parking is through the exit point and designed for the retail office use (dental, etc.) with 4 spaces and access directly into the building. There is a handicap lift in front of the building and handicap parking in the garage. The Traffic Memo states limited traffic production.

Tape 3 of 4, Side A

Attorney York continues by stating this project will improve traffic as people will not have to come into Watertown Square.

Frank Yao, Architect, said in designing the building, he tried to create less impact as a five-story building. The façade is intended to be broken to create less impact. Mr. Yao explained the detail as Mr. York did adding the east side of Mt. Auburn Street was intended to be more developed and not overwhelm the area.

Ms. Santucci asked how to get in and out of the garage. Attorney York pointed to plan A-1, and explained that the entrance and exit into the site has a 24' wide opening, drive down the ramp to 14 spaces. The ground level has parking for 4 cars from the westerly entrance and is also two-way with an 11' drive. The circulation will be signalized. Police and Fire have looked at the plan and they've shown where the red/green lights would be. Traffic will not be significant and occasionally will queue onto Mt. Auburn Street. There was discussion on whether or not street parking would be allowed. Mr. Yao answered a question regarding ground level parking, there is a pitch the minimal for water run-off. The handicap parking space is designed to have wheel chair access and is 100' of the door. They do not want to reduce the 3 spaces to move the handicap space. Mr. Fernandez said the 4 spaces with wheelchairs crossing traffic does not sound reasonable. Mr. York will look to redesigning the handicap space but does not want to reduce the parking to 3 spaces.

Dennis Duff, 33 Spruce Street, said the density is being increased 500% and Watertown doesn't need that. Where are the extra cars going to park – with 2 bedrooms, there are 2 cars. He thinks the red/green lights will be confusing to people coming into the square. One space per unit does not work. The design is good and the mansard roof lessens the impact but reducing the building reduces impact.

No one further spoke from the public.

Mr. Bailey said public transportation from Watertown is okay but it is not the best and most people still drive. Parking with 2 bedrooms requires more parking. They do park on the street and that will block the sight line trying to turn right from the lot. It is an unusual building for the area and could be pretty and smaller.

Mr. York said one car parking is allowed in this district as part of the land use plan of this town. The by-law specifically said one car per dwelling unit in this zone. One space works in other areas – downtown, etc. Five stories in Watertown square are not new – the banks, residential and mixed use on Spring Street, etc. Mr. Bailey said he just doesn't know where the other car will park.

Ms. Elliott asked if bicycle racks will be installed. Mr. York said they will be on the basement level along the back wall (see plan A-1).

Ms. Scott asked if visitors can be use the commercial spaces in the evening and can that be written into the deed that an agreement has been made. Mr. York said the owners of the units will be told there is only one space.

Areas open and pervious to the sky can be used for passive, recreation purposes can be used for the open space requirement (roof-top garden).

Chair Vlachos said the Planning Board and Staff recommended the relief be granted. He can not support this request as it does not meet the criterion of relation of buildings to environment. This is completely out of character to the neighborhood and does not belong in Watertown Square – the height, the look doesn't seem appropriate.

Ms. Elliott supports the development. It is a nice change for the square and a direction we could move in in the future. Hopefully, it will continue with mixed use. Parking for two would be great but it is not required. Everything proposed is by the zoning code.

Ms. Santucci likes the concept – the direction we should be going in for the square. There are a lot of low and automotive uses in the area. She is not sold on the parking with the ramp in ramp out – it is hard to digest. The low-key office use will not be an issue but a dentist would require at least more issues. She is envisioning a sign that says 'car exiting' would be more useful than a red/green light. Is mixed use a requirement (yes). See doesn't see all of this working together but believes if tweaked, it could work.

Mr. Fernandez commends the application for being within the zoning guidelines. He says there aren't any reasons to deny the request; however on a design perspective, this is not harmonious with the square. He went into some of the design features that he doesn't agree with and opposes the project on the design – it is eclectic and exaggerates the amount of green that the project will have.

Mr. Moynihan said he is not principally opposed to it and agrees with Ms. Elliott and disagrees with Mr. Bailey regarding the public transportation in Watertown. His issues are with public safety and the parking. It is an unforgiving stretch. He has issues with queuing.

Mr. Bailey is in favor of the development; however, it is large and different and should fit in better. Traffic is difficult to get through. He does not feel good about it.

Chair Vlachos said these buildings always appeared smaller on paper and was surprised at how large they are once they are built. He feels they will regret it someday if approved. There are grounds to deny it and that is #2, relation of building to environment.

Ms. Scott asked if the architect could tweak the design. Mr. Fernandez said it is fundamentally changing the strategy for the design. Chair Vlachos commented that this reminds him of the large house placed in between all of the smaller homes and the board couldn't do anything. Ms. Santucci mentioned the one on Galen Street that the board approved and once built appears massive. Ms. Scott said that it actually blends in now as the area is being built up and we are used to it. They are looking to encourage living in the down town area to help promote the businesses.

Attorney York suggests that a nicely designed building

Tape 3 of 4, Side B

Attorney York said they would like to continue the case to the July agenda and submit plans in advance to try to accommodate the board.

Mr. Fernandez is willing to review some of the designs – he doesn't have an issue with a 5 story massing. Arsenal Street is observed as a 5 story area. The number of bay windows, the mansard roof, the area is not a bunch of houses anymore. Vertical elements must not stop half way to the ground.

Mr. Vlachos would also like to review the designs.

Attorney York requests the continuance to July to prepare and requests the Extension Agreement be sent to him by Ms. Civetti.

Ms. Santucci motioned to accept the request to continue (an extension form will be completed). Ms. Elliott seconded. Voted 5-0 Continued.

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MINUTES

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Ms. Santucci read the legal notice:

John McGeough, 212A Palfrey Street, Watertown, MA, herein requests the Board of Appeals grant an **Amendment to Special Permit** #05-01 granted April 13, 2005, in accordance with §4.09, Exceptions to Lot Size, so as to allow changes to control documents –eliminated chimney at rear; rear deck- 6'x18' changed to 5'x24.5; 2nd fl rear balcony reduced 4'x10' to 4.4' x 8.7'; grant a **Variance** in accordance with §4.11, Exceptions to Setback Requirements; §2.63, Retaining Wall Higher than 6' alter and enlarge northerly exterior stairway approved 8' from northerly side yard to permit varying setback 0.0'-3.5'-7.5', where 5' required for retaining wall; 10' for uncovered stairs at **Lot 333 3A 5B Palfrey Street, a/k/a 212a Palfrey Street** located in the S-6 (Single Family) Zoning District.

Ms. Santucci motioned to grant a continuance as the original documents, Planning Board Report and Staff Report have not been received. Ms. Elliott seconded. Voted 5-0 continued.

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Ms. Santucci read the legal notice:

Kathy K. Binford, VP, Watertown Residential, LLC, a Delaware LLC, c/o John H. Nash, President, The Hanover Company, 5847 San Felipe, Suite 3600, Houston, TX, herein requests the Board of Appeals grant a **Special Permit Site Plan Review** in accordance with §5.00(f), New Construction of More Than 3 Units; **Special Permit** §5.01(g), Multi-family Use; §9.07 & 5.07, Affordable Housing Requirements and **Special Permit** §5.05g, exceeding allowable 1.0 FAR and providing 1.88 FAR, where maximum 2.0 is permitted so as to raze existing building at 149 Grove Street and construct a four-story structure having 174 dwelling units (69-1-bedroom; 105 2-bedroom) providing 17 affordable units with 366 two-level subsurface parking spaces on four parcels (140,503 sf) of land known as **149 Grove Street, 165 Grove Street, 105 Coolidge Hill Road a/k/a 151 Grove Street** (former Aggregate Site) and portion of **Assessor's Lot 1505 2A 0** (adjacent to 183 Grove Street), all located in the I-3 (Industrial) Zoning District.

The board notes that Mr. Fernandez will not be voting. Mr. Moynihan will vote in his place.

Attorney William York representing The Hanover Company, petitioners, giving an overview of the project and that it complies in every respect to the Ordinance. David Hall, further described the changes that had been done during the process and the three meetings with the Planning Board. They have reduced the number of the units to 169, provided a drive up/drop off driveway in the front by setting the building further back from the street. The height was reduced further by 2' with a maximum of 47', where 50' is permitted. 17 Affordable Units will be made. Traffic mitigation amounting to \$550,000 towards handicap ramps signalization of the intersection at Coolidge Avenue and Grove Street, together with design work for the signalization of Greenough/Grove Street Extension in cooperation with the state. Remaining funds were to be used for other street improvements per DPW direction.

The Board heard opposition from neighbors with respect to noise and shadow/light . Hanover was prepared to complete a third party sound study and detail noise control plan. The main opposition by the neighbors supported by Councilors Kounelis and Devaney is that the building is too large. Some even suggested that Hanover take off a story.

The Planning Board voted 3-1 to deny recommendation based on their opinion that the project remains dense. They relayed to the Board that they are in favor of this kind of development at this site, but additional changes need to made.

The Zoning Board deliberated the merits, with Chairman Vlachos together with Alternate Member Moynihan and Stuart expressed concerns of density and that it was large and it's presence did not fit into neighborhood. Members Santucci and Elliott were in support of the project but needed further modifications.

Attorney York indicated the plans submitted are in compliance with the Ordinance, they have addressed concerns -reduced the building in height and set backs were increased. In the end Hanover for financial reasons could not reduce the size of the building further and therefore, requested the Board of Appeals accept a request to withdraw without prejudice.

Mr. Bailey motioned to accept the request to withdraw without prejudice, the request for Special Permit with Site Plan Review. Mr. Moynihan seconded. Voted 5-0
Withdrawn.

Mr. Bailey motioned to adjourn. Mr. Vlachos seconded. Voted 5-0 Adjourned at 12:35 a.m.