



TOWN OF WATERTOWN

Zoning Board of Appeals

Administration Building
149 Main Street
WATERTOWN, MASSACHUSETTS 02472

Melissa M. Santucci Rozzi, Chairperson
Deborah Elliott, Clerk
David Ferris, Member
Suneeth P. John, Member
Christopher H. Heep, Alternate Member
John G. Gannon, Alternate Member

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MINUTES

On Wednesday evening, **January 2, 2013** (originally scheduled for 12/26/12) at 7:00 p.m. in the Council Chambers on the second floor of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: **Deborah Elliott**, *Acting Chairman*; **David Ferris**, *Acting Clerk*; **Suneeth P. John**, *Member*; **Christopher H. Heep**, *Alternate Member* and **John G. Gannon**, *Alternate Member*. Also Present: **Steve Magoon**, *Director, Community Development*; **Gideon Schreiber**, *Senior Planner*; **Louise Civetti**, *Clerk to ZBA*. Absent: **Melissa Santucci Rozzi**, *Chairman*; **Michael Mena**, *Zoning Enforcement Officer*.

Acting Chair Elliott opened the meeting, introduced the board and staff, stated that Ms. Santucci Rozzi is absent and she will be acting chair tonight. She appointed David Ferris as the Acting Clerk and stated both alternate members will be voting this evening. She then swore in the audience and stated the first item on the agenda is the minutes of the November 28, 2012 meeting which will be voted on in February.

Chair Elliott stated that **462 Mt. Auburn Street**, T-Mobile has requested a continuance. She asked for a motion to accept the continuance. Mr. Ferris motioned to allow the continuance; Mr. Gannon seconded. Voted 5-0 to allow the continuance. She signed the Extension Agreement.

Chair Elliott asked the acting clerk to read the legal notice for the first case.

Member Gannon stated that before the case was opened; MGL 40A, section 11 states that a party in interest would be someone whose property is within 300' of the subject property as an abutter to an abutter. He stated that he is not an abutter to an abutter but he is within the 300'. Therefore, he is recusing himself from this case. Mr. Gannon left the room.

Member Ferris read the legal notice for the first case on the agenda:

3-5 Middlesex Road - Special Permit Finding

Steve Chilian, Owner herein requests the Zoning Board of Appeals grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structure, Side Yard Setback and Building Coverage, Zoning Ordinance, so as to rebuild and extend a non-conforming two-story rear porch/sunroom within the northeasterly side yard setback, where 10' is required and 4.9' exists and to increase building coverage where 30% is allowed and 35% exists. SC (Single-Family Conversion) Zoning District.

Kevin Latady, Latady Design, Architect working with Steve & Sally Chilian, explained the drawings and the proposal to extend the 2nd story porch 2' out for a larger kitchen with the bottom level remaining as an open porch. The architectural elements will be in keeping with the style of the house. The setback will remain at 4.9'. A right of way, taken by eminent domain, pushed back the side yard although Common Street was never widened. He referred to the plot plan drawing the side yard, sidewalk and street location. The visual impact will not feel as though it is close to the property line. The side elevation from Common Street is standard; the siding will be vinyl and although the shingles will be staggered joint, that will be a future endeavor. The lower porch is arts and crafts-style; steps are in the similar location; the

gable end is a breakfast area. Planning questioned the steps coming into the yard; however, they felt they did not want to the first floor tenant to take over the yard more. He presented a letter in support from an abutter.

Member Ferris asked if the new windows will match the existing. Mr. Latady said the windows there are replacement and they will match but will be a different material. Mr. Ferris then asked about the deck – lattice will be used for skirting; posts will be asic-wrapped; railings will be an asic-type; gutters and downspouts will be along the column. Mr. Ferris suggested pulling the columns inboard to prevent a blip in the downspout. Mr. Latady said he'd keep the downspouts closer to the house to prevent that.

There were no further questions. Ms. Elliott stated that the addition is a nice complement to the existing architecture of the home. No one spoke from the audience. Ms. Elliott announced the business mode and read from the Planning Board report which recommended conditional approval as did Staff.

Mr. Ferris motioned to approve the Special Permit to allow the modified side yard setback and building coverage. Mr. John seconded. Voted 4-0. Member Gannon recused; member Santucci Rozzi absent.



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Member Ferris read the legal notices for the continued case:

“378-380 School Street - Special Permit Finding

Harold Kevorkian and Robert Kevorkian herein request the Zoning Board of Appeals grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structure, Zoning Ordinance, so as to replace two (2) non-conforming front yard parking spaces with four (4) conforming parking spaces in the rear yard accessed by a new driveway with a non-conforming 2.1' to 3' wide landscape buffer, where 4' is required and 12.1' exists. T (Two-Family) Zoning District.

378-380 School Street - Variance

Harold Kevorkian and Robert Kevorkian herein request the Zoning Board of Appeals grant a **Variance** in accordance with §6.02(j), Off-Street Parking, Required 4' Landscape Buffer, Zoning Ordinance, so as to build a new driveway with a non-conforming 2.1' to 3' wide buffer, where 4' is required and 12.1' exists. The proposal would remove two (2) non-conforming front yard.”

Attorney Steve Winnick, representing the petitioner, stated that he would be brief as the board has heard this case in November. He described the project and stated that it is conforming except for a narrowing of the landscape buffer. He described the reason the case was continued - the technical issues the board raised regarding the design that were not addressed as the architect was not available. The steepness of the grade of the driveway; the height of the retaining walls and their potential impact on visibility and safety; the drainage and adequacy of that from the driveway. The board requested more detail be added to the plans, which have been done and distributed to the board. Mr. Asdorian, Architect is here to address the issues. He added that he will address the board at the end to review the legal issues regarding the filing.

Avo Asdorian, Architect, stated that the slope of the driveway was an issue raised by the board. He explained that they attempted to stay within the frontage of the house which gave them a 17% pitch to the driveway. To eliminate that, they pushed the ‘hump’ of the driveway back 42'; shaved off from the side grading towards the house and towards the neighbor it goes up to a pitch of 1 to 3. The retaining wall extended back to sustain the berming on the left side of the driveway. This results in a 12% pitch in the driveway, which is normal. The retaining wall height of this project was compared to the retaining wall of an existing abutter, 5 doors down to the right, the retaining wall is 36 – 40" average and to the left, up to 4 and 5'. They did not come down to 30"; they came down to 3'3", which is the minimum. They have an existing right side retaining wall they are keeping, which is due to the neighbor's existing retaining wall and to the left is a 4'

high retaining wall – they are coming down to 39” level in the front. The rise in the driveway helps as the autos will be exiting front facing and the pitch coming higher, they will view the whole street as opposed to a flat driveway, which would limit their visibility. This condition will work fine and keep the streetscape continuous. The screening of the spaces to the rear has been requested by the neighbor and they have opted to go with 6’ high evergreen trees instead of another type of screening. This will eliminate the glare of the headlights coming towards the neighbor.

Member Ferris asked about the evergreens at the rear and suggested that depending upon the type of evergreen, they may not be effective in blocking headlights. He requests if the trees are a narrow species, they plant more of them. He then asked if the house has wood shingles and confirmed they would stay as wood shingles. Mr. Asdorian, speaking for the owner, stated the siding will be replaced long term. Mr. Ferris noted that the second floor windows looked to be changed in the elevations. Mr. Asdorian, said the windows depicted are not a reflection of the design in this project. However, if they were to change them, these are the ones they would choose. The porch construction will be pressure treated wood with Asic material for the trim and posts with a composite decking in front and on the stairs and Asic-type of plywood with a trim behind it as a panel design. Reinforced concrete for the retaining walls with a 2” shelf and a thin veneer stone on all of the walls.

Member Gannon stated that he was following up from the last meeting regarding the height of the retaining wall. The board is concerned with being able to see pedestrians on the sidewalk - the 73 bus in right down the street and they anticipate a lot of pedestrians on the sidewalk. He asked how much visibility the drivers coming down the driveway would have. Mr. Asdorian said if the children are not shorter than 39”, they would be seen almost 95%. No cars will be backing out of that driveway – it was designed so that the cars would drive out of the driveway, not back out. Coming in from a higher level, they would have 100% visibility of anything on the sidewalk. Mr. Gannon asked how far down the sidewalk would a pedestrian walking would the motorist leaving be able to see. Mr. Asdorian said almost none. They would be seen until the front of the car is at the sidewalk – the car would see the whole sidewalk. Mr. Gannon reiterated that the trees on the abutting would be maximized to full growth to present a block or solar intrusion on that property. Mr. Asdorian said they are open to that idea if there is something that would work better than what is proposed. Mr. Gannon asked if more trees could be added to create a greater buffer. Mr. Asdorian said across from the driveway the area is open – it is the gap between the garage and the porch. The rear of the building is a rear porch – he doesn’t know if they could be using it as a rear bedroom so there is no direct light going to the house. They’d like to add (these 6’ high trees) as a buffer for when the car is turning left or right and the light hits the house at an angle for a moment. If they can get them closer or if the growth is too thin, they will add to it. The growth is 3’ in diameter for the screening.

Mr. John requested at the last meeting they submit a grading plan and it is not here. However, by stating the 12% grade, it gives him a rough estimate. He said the length of the retaining wall should be longer than what is drawn (3.3”). Mr. Asdorian said it was done on purpose as the length of the wall does not go all the way to the ‘hump’ of the driveway. The buffer zone will berm-up from 0 to 2’. The right side will go down with it and expose more of the foundation. Mr. John said with a rough calculation, it will need to travel 3.3”, it needs a runoff of 28’ and that is the corner of the house. The entire grading is coming down at the house foundation. Mr. Asdorian confirmed that it is.

Mr. Heep did not have questions.

Ms. Elliott said there is a 12% slope, with the ice and snow, what do they anticipate for drainage – is the (driveway and sidewalk) going to be one slick pile of ice. Mr. Asdorian said the sidewalk will have a pitch of less than 2%. The driveway will be paved with tar and they are willing to put pervious pavers throughout the entire driveway to make up for the percolating issues. Ms. Elliott asked if there is an issue with the pavers and snow plows. Mr. Asdorian said they have to raise the blade up and adjust as they cannot slide across the material. Ms. Elliott stated that when the ground is frozen the water will not be going into the soil – she asked if there will still be an ice condition. Mr. Asdorian said there really wouldn’t be because the snow would be removed and it should clear itself. They are making this better than the existing condition. He asked if there is any other suggestions. Ms. Elliott said not to create a slope that steep but take it back further. Mr. Asdorian said the neighbors would be uncomfortable and they’d have to add more wall. Ms. Elliott said at the

last meeting the zoning code states the wall height cannot be higher than 30" and he is proposing 3'3" or 39". Mr. Asdorian said the height is at the 'mouth' of the driveway and the wall is less high as you enter the driveway. He added that 10-12' into the driveway it lessens to 0. They are dropping the wall down to 24" at 15' in. The streetscape would be altered drastically as the neighbors have 4' walls on both sides. The elevation stays the same.

Ms. Elliott shares with other member's in their concern with the screening on the diagram which only shows several circles. She asks that they use their best judgment on selecting plant material and encourages them to get more, if necessary. Mr. Asdorian said they would add more and consult with a landscape specialist.

Mr. Ferris asked about the pervious pavers – are they like a 'Grasscrete' brand name material and a plow would have to lift their blade... Mr. Asdorian stated that the material is similar to SMU or concrete block, which is not smooth - sliding metal over it will grind it down. Mr. Ferris said he is concerned with the pitch if the blade cannot go along the actual surface. That will encourage a build-up of ice on the surface vs. a solid surface that could be more cleanly plowed, although a solid surface would allow the water to run off onto the sidewalk. He is more concerned with a vehicle sliding (down the driveway) into the sidewalk. He added that the plow can back-up from the parking area and go forward down the driveway and clean up the residue left behind. Mr. Ferris said the plow will do the work as quickly as possible and icing on the slope is more dangerous than a pervious surface. Mr. John added that he has used this material in parking lot but not on a slope. He agrees with the point Mr. Ferris is making.

Mr. Gannon is still concerned with the water run-off and freezing and melting with black-ice on the sidewalk creating a liability for the property owner (not the town). He asked how this could be minimized and suggested a French drain at the mouth of the driveway or another solution. Mr. Asdorian said the 'hump' was towards the front of the driveway but the pitch was 17%+ and slope back to the rear. They have moved the 'hump' back and yes, there will be more water. If they eliminate the pervious pavers and put tar and come up with trenching there and connect that to the street if the town allows or a leeching field. That will eliminate any water run-off from the driveway. Mr. Gannon asked the applicant if they would accept that as a condition that trenching or a French drain be added. Mr. Asdorian consulted with the property owners and Attorney Winnick and stated that they will eliminate the pervious pavers back to where the original design was; add paving tar and add French drain or trenching and connect it to a leeching field on-site. Mr. Gannon asked if a French drain would suffice. Mr. Asdorian said it would eliminate water run-off in summer or winter. Mr. Ferris asked for clarification on the location of the pavement. Mr. Asdorian stated the tar would be from the front corner of the house (like on the original drawing) all the way to the front would be tar/asphalt paving. A French drain would be added along the mouth of the driveway to catch any water coming down the driveway and be collected in there. He said the town would like to collect all of the water and keep it on site more in the summer than in the winter.

Mr. Magoon said the solution would work and suggested leaving the top of the driveway pervious pavers. The infiltration of the pavers will reduce the water run-off. Mr. Asdorian clarified that anything within the front pitch will be asphalt pavement and anything backwards will be pervious pavers. Mr. Ferris said that is 42' in length for the asphalt or bituminous. Mr. Magoon clarified that at the base between the sidewalk and the driveway there will be a French drain that will drain into a dry well on the property. Mr. Schreiber asked if (the dry well) would be in the front yard. Mr. Asdorian said it would be set where the existing parking is before they back-fill it. Mr. Magoon confirmed they will clarify that with a final set of plans. Mr. Asdorian agreed. Mr. John recapped that the plan stays as is except that the front 42' ramping downwards will be asphalt; a French drain across the mouth of the driveway; the rest will be pavers.

Ms. Elliott asked for comments from the audience. There were none.

Attorney Steve Winnick, representing the petitioners, stated for the record that a Variance was filed for the diminished landscape buffer but they applied for relief for the total project under a Special Permit Finding which they think is the appropriate rubric for this petition. He stated the Planning Staff and the Zoning Enforcement Officer take a different interpretation of the law and believe the case ought to be approved as a Variance. He states that the board has within their discretion, the power to rule in favor on both petitions. He appreciates the board approving the project whether as a Variance or a Finding.

Director Magoon clarified that there has been several conversations with Attorney Winnick and the Town's legal counsel as well as reviewing recent SJC decisions, which have called into question the differences between Special Permit Findings and Variances for one and two-family residential. The findings were that there are few cases where a Variance is required for existing non-conforming one and two-family residential. However, our legal counsel clarified that accessory structures are not included in that criteria – a non-conforming structure cannot request a special permit finding to extend an accessory structure creating a non-conformity. This case is similar as it is creating a new non-conformity for the setback of a new driveway when the existing non-conformity does not relate to the proposed non-conformity. This would still require a Variance not a Special Permit Finding. He then stated that the petition can be approved or acted upon and is consistent with what our legal counsel would suggest. Mr. Magoon clarified that the Planning Board chose not to act on the Special Permit Finding and he suggests that the Zoning Board deny the Special Permit Finding as opposed to the petitioner's attorney requesting to approve both.

Ms. Elliott declared a Business Mode and read from the Planning Board report that the meeting took place on November 14, 2012 and a no-vote was determined on the Special Permit Finding. Staff recommended a denial. The Variance was voted by both the Planning Board and the Staff with conditional approval. The conditions are standard up to #5 which stated a new concrete sidewalk and granite curbing in accordance with DPW specifications and additional conditions of a French drain at the base of the driveway. Mr. Ferris added at planting of the buffer provide a continuous screen – they can be planted in a staggered pattern with the addition of 3 more to the shown 4. Mr. Gannon suggested the adoption of the new documents as part of the control documents.

Member Ferris made a motion to approve the Variance for a modified side yard buffer with the conditions recommended by the Planning Board and Staff with the additional conditions discussed this evening – the additional drainage and extended bituminous pavement.

Member John seconded the motion. The petition is approved by a vote of 5-0 (Chair Santucci Rozzi absent)

Member Ferris made a motion to deny the Special Permit Finding for non-conforming buffer.

Attorney Winnick objected, for the record.

Member Gannon seconded. The petition is denied by a vote of 5-0 (Chair Santucci Rozzi absent)

ZBA-2012-25 SPF has been Denied by the Zoning Board of Appeals.

ZBA-2012-27 VAR has been Granted by the Zoning Board of Appeals.

Mr. Heep motioned to adjourn. Mr. Gannon seconded. Voted 5-0. The meeting ended at 7:55 p.m.