



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

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

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Louise Civetti, Clerk to the ZBA

MINUTES

On Wednesday evening, **March 25, 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: David Ferris, *Acting Chair*; Christopher Heep, *Acting Clerk*; John G. Gannon, *Member*; Kelly Donato, *Member*. Also Present: Mike Mena, Zoning Officer, Andrea Adams, Sr. Planner, Louise Civetti, *Clerk to the ZBA*. Absent: Melissa Santucci Rozzi, *Chair*; Neeraj Chander, *Alternate*.

Acting Chair Ferris opened the meeting, introduced the board and staff, reviewed the agenda and explained the four member board this evening means that each case is required to have a unanimous vote of 4-0 to pass.

Acting Chair Ferris stated that there are minutes on the agenda for November, December, January and February and noted there were comments made by himself and the Chair for the January minutes. Member Gannon motioned to accept the minutes with the amendments for the months of November, December, January and February. Member Donato seconded. Voted 4-0, approved.



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attendance: David Ferris, *Acting Chair*; Christopher Heep, *Acting Clerk*; John G. Gannon, *Member*; Kelly Donato, *Member*. Also Present: Mike Mena, Zoning Officer, Andrea Adams, Sr. Planner, Louise Civetti, *Clerk to the ZBA*. Absent: Melissa Santucci Rozzi, *Chair*; Neeraj Chander, *Alternate*.

Legal Notice:

*"Margaret E. Cloherty, R.E., 14-16 Morse Street, Watertown, MA 02472, herein requests the Zoning Board of Appeals grant a Special Permit Amendment in accordance with Watertown Zoning Ordinance §5.02(d) Home Occupation, so as to allow an approved Home Occupation (Electrolysis) to modify its hours from Saturdays, 9am-10pm to Tuesday-Saturday 9am-5:30pm. "T" (Two Family) Zoning District. ZBA-2015-04"*

Margaret Cloherty approached the podium, stated that she lives at 16 Morse Street and has an electrolysis office at 14 Morse Street which was approved by the Zoning Board 40 years ago. She was not aware of a restriction in hours placed on her by the board at that time. She has now applied to extend her hours to Tuesday through Saturday, 9 a.m. to 5:30 p.m. She works part-time. She applied to the board back in 1970 and just recently discovered that her hours were restricted. She worked in Boston at the time. The extension of the hours is only for the convenience of the public – so they can have a choice of when to come.

Mike Mena, Zoning Enforcement Officer, clarified that the Staff report said the use is on the second floor, it is actually on the third floor. This will be corrected in the decision. It was recommended to add a condition for the Inspector of Buildings to review the property to be certain there are not life-safety issues since the permit was issued in the 1970's. Mr. Mena asked the board to clarify that the garage on the property is not being rented by someone not living at the property.

Member Gannon asked if this is the same use that was granted back in 1970. Mr. Mena said that it is the same use. The only difference is the hours of operation. The town became aware of the change in hours when a sign was removed at the property and a question arose if a sign is necessary to have a sign for a home occupation. He was pleased to find that the property had been issued a permit for the use – the question then became the hours of operation. He then contacted the business owner to either cease and work only on Saturday or come in and apply to adjust the hours.

Member Gannon asked if there is also a residential use. Mr. Mena said the third floor is dedicated only to the electrolysis use. Ms. Cloherty said she has two women on the second floor and she lives on the first floor alone. She has approximately 6-7 parking spaces. She is a registered electrolysis.

Member Gannon said the home occupation is secondary to the use of the home and he is trying to determine if the occupation is bigger than the residential site. Ms. Cloherty said this is part-time work in two rooms – a treatment room and a waiting room.

Member Gannon said the hours that she is requested total 42.5 hours per week and that is more than a part-time business. Ms. Cloherty said she is not doing this full time – the hours are only for flexibility.

Member Gannon is concerned with the amount of hours for a home occupation. He wants to know if the use is 25% or less than the residential use. Mr. Mena said everything is compliant with that original permit. He reiterated that the requested hours are only to allow for flexibility with scheduling. He added that a condition could be initiated so that there is a limit to no more than two clients at any one time. This is a similar use to the psychotherapist office recently granted.

Member Gannon said the intensity of the hours are greater than residential use. The residents are subservient to the occupation portion of the home and this is supposed to be incidental.

Member Ferris stated that the incidental use is related to floor space and not hours of duration. He said it makes sense that if there were a home occupation, they may be working full time there.

Member Gannon said clients coming in and out at all hours strikes him as being more than the incidental use to the neighborhood. Ms. Cloherty said it is not full time. She can only do one person at a time and she is almost retired. She does not do a lot of work. She never has. She ran an electrolysis business in Boston. She would not subject the neighbors to all kinds of traffic. She keeps up her property very well.

Member Gannon said his concern is that there are too many hours that the petitioner is asking for.

Member Heep asked if there are dedicated parking spaces specifically for the business use on the property. Ms. Cloherty said there is not dedicated parking but there is plenty of parking spaces. Clients can park right next to the steps and then go right in. Mr. Heep clarified that if someone parked there, it would be in the driveway. Ms. Cloherty said if someone wanted to get out, they'd ask them to move the car.

Member Donato asked if Ms. Cloherty would increase her hours or have anyone else practice electrolysis there. Ms. Cloherty said she is the only worker and works part-time only.

Member Donato said she shares the concern with the number of hours. She doesn't see anything in the conditions that it is only licensed to her. Ms. Cloherty said she does not have any agreements with other people. Mr. Member said the ordinance states that it has to be a resident of the home – that should satisfy that concern.

Member Ferris said the hours are Tuesday through Saturday, how many clients does she see. Ms. Cloherty said she sees about 5, right now; most people work and the older people do not have the money anymore or people just cannot afford it. She said it would only be part time. She was requested to put hours down and that is the only reason why. She does not do two clients in a row. She would leave ½ hour space in between them.

Member Gannon reiterated that it is a single-wide driveway and do the tenants have evening shifts. When Ms. Cloherty answered that they do not; Member Gannon questioned whether she ever had a tenant in 40 years work an evening shift. Ms. Cloherty said she did not own the home then. Mr. Mena clarified that the ordinance does not state that a home occupation must be by the owner of the property – only a resident.

Member Ferris asked is anyone else is parking in the garage other than the tenants. Ms. Cloherty said she has a relative that goes in and out – she is not leasing it.

Member Gannon asked if any of her clients park in the street. Ms. Cloherty said they do.

Member Ferris swore in the audience again.

Connie Christo, 66 Morse Street said she has known Ms. Cloherty for over 40 years and her business has never been swamped. She doesn't do one after the other. If she is asking for those hours, it is only that her clients have a choice. If they park in the driveway, it is at the end near the street not on the sidewalk, so they can back out. She is not going to fill all of those hours – there is not a waiting line of one after the other. There is never anyone waiting to come in. She doesn't even see 7 people a week. Morse Street has parking on the street. It has never been an issue. She is meticulous with her work. She once saw someone sitting at the end of the driveway and Margaret said it was a husband waiting for his wife.

Member Heep asked if she would paint a dedicated parking space at the rear of the lot with enough room for the tenants. Ms. Cloherty said it would.

Acting Chair Ferris announced the close of the public hearing.

Member Gannon said he is stuck on the 42.5 hours requested even if she is only working part-time. There will be people coming and going. He wonders if the occupation is more than incidental, given the hours.

Member Heep said he is okay with the hours requested as the clients are not coming in on a non-stop basis and if it were an attorney, you would request the same window of hours and only see clients for a small portion of that. He is more troubled by the parking situation. He would not be bothered by parking in the driveway if this were a single family home. However, this is a multi-family with other residents involved so he'd like to see dedicated parking with a condition of a painted space.

Member Donato asked if this is typical home-office hours. Mr. Mena said there has not been a lot of these cases since he has been here but there is one that recently was approved and he believes a limit to the number of clients could be a way to contend with the hours. He suggested records be kept with the number of clients so if there is a complaint, the records could be requested. It would be complaint driven. He would request records for the number of clients. Member Ferris asked how they would know if the petitioner is keeping records. He suggested that maybe they request that records be kept for the first couple of months.

Acting Chair Ferris recapped that the applicant has had the home occupation for a number of years with the misunderstanding of the number of hours allowed. She has been practicing the number of hours that the application is now requesting. When the applicant was notified that the current hours of operation were not compliant, she immediately took the steps necessary to become compliant.

Member Ferris said he is comfortable with the hours of operation. He said many home occupations would be working 40 hours a week but not seeing clients for 40 hours a week. He agrees with the condition of a designated parking spot, out of the way of residents. He also agrees with the Building Inspector going to see the property. Have the applicant keep records of the number of clients for the next three records. Ms. Cloherty said she cannot by law give any patient name. She then added that at the corner of the street, she is the fourth house in, there is the post office with two employees who park all the time and others parking to pick up the mail. She then said if she had clients all the time, she'd be a rich lady and not have to work anymore. Member Ferris clarified that the records would not have names – just the quantity of clients. Just a record of how many. Mr. Ferris said they could park on the street, as well. Ms. Cloherty suggested that she tell her clients to park behind her car in the garage instead of having to paint the driveway.

Member Gannon asked how many clients are part time. Ms. Cloherty said 5 a week but there could be bad weather and no one comes or good weather and people want to look good – she has the opportunity to go to people's houses to do their face. She does not go to hospitals or nursing homes but they are allowed to go to their homes.

Member Gannon asked what the peak number of clients would be. Ms. Cloherty said 10 at the most. Member Gannon said he does not know what electrolysis falls under. Mr. Cloherty said, 'para-medical'. Member Gannon said he would feel better with a limitation of clients. He asked Mr. Mena if there is a ball-park number of clients that could go to a home. Mr. Mena said the only one he can reference is the current psychotherapy where there is 30 clients going to the home in a week. Member Gannon wants to limit her clients to 15. Ms. Cloherty said there could be 15 scheduled and 10 cancel, would she then be limited to 5. Member Ferris asked why they would limit the number of clients when they haven't done so in the past. Member Gannon said the location is a well-traveled area with a post office around the corner – it is a concern of a typical residential street.

Member Ferris said the turnover is not great; there is one client at a time. He is comfortable with the parking at the site and asking the applicant to keep a record three months from now or if there were complaints in the next three months. Member Gannon suggested capping the clients to 20 a week. Member Heep said if they come up with a number it would be difficult to impose that number in the future. They could make up a number without inconveniencing the applicant in any real way. Member Ferris said if clients were coming in one at a time, the maximum per day would be about 5 and weekly about 30. He

would equate it to a therapist. Mr. Heep said it would be difficult to impose a condition if they came back to review the number of clients; however, 30 clients would be reasonable. Mr. Gannon and Ms. Donato concur.

Mr. Ferris reiterated 30 clients, a painted parking space and a visit by the inspector.

Member Heep motioned to accept the amendment for special permit with the conditions just discussed and listed. Member Donato seconded. Voted 4-0, Granted. Members Santucci Rozzi and Chander absent.



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Member Heep read the legal notice:

**"76 Westminster Avenue** Michael F. Iodice, Agent, Thornbush Properties, 71 Westcliff Road, Weston, MA 02493 herein requests the Zoning Board of Appeals grant a **Special Permit** in accordance with Watertown Zoning Ordinance §5.04, Table of Dimensional Regulations, FAR, so as to construct a new two-family structure with an FAR of .621, where >.50 and maximum .625 is allowed by Special Permit. T (Two-Family) Zoning District. ZBA-2015-05."

Doug Argule, Chatham Properties explained that they will be building the property for Thornbush Properties. He said they are proposing to remove a non-conforming single family and garage to build a two-family, side-by-side, 1700 s.f. each side, increasing the allowable FAR slightly. Three bedrooms, 3.5 baths, centered on the lot, unlike others in the area, driveways are designed to handle three parking spaces each – two more than required.

Member Heep asked about the landscaping within the buffer being right at the property line instead of filling the 4' landscape buffer area. Mr. Mena stated that there is lawn specified within that area. There is not a type of planting required within the ordinance, only that it be landscaped.

Member Heep asked about the drainage system. Mr. Argule said this is typical of DPW design standards and this conforms to the 100 year plan, as required. There will also be permeable pavers in the driveway.

Member Gannon remembers the house many years ago. He has no problems with the plans.

Member Ferris asked about the pavers. Mr. Argule said they are permeable pavers – different than regular bricks. Member Ferris asked about the Hardy Kiwi planned for the planting. Mr. Argule said they are slow to get going but they have to be maintained. He explained that this is a rental and all of the rentals are maintained on a regular basis. They are not intended to be taller than the fence. Member Ferris asked about the 4' high fence. Mr. Argule said the fence is existing to the rear and belongs to the abutter. There is a bit of overgrowth near the property line and they will have to be pruned.

Mr. Ferris asked about the retaining walls. Mr. Argule said there are retaining walls along the left side to the sidewalk until the sidewalk meets grade at the right side driveway. The material will be a fabricated concrete landscape block with a chipped/broken face – looks like a landscaped block wall. The exterior will be a fiber cement board, pre-finished paint.

Mr. Heep asked if the backyard drainage structure is sub-surface. Mr. Argule said the backyard will be all lawn. The drainage is well below.

No one spoke from the audience.

Mr. Heep said the proposal looks good. He usually has concerns when there is a single family razed and a two-family proposed. This is done well with parking and leaving a decent sized yard and landscaping.

Mr. Gannon and Ms. Donato are both in support.

Mr. Ferris said the quality of the application is appreciated along with the design of the side-by-side vs. the traditional one over one.

Ms. Civetti asked if condition #8 b; replacing the hardy kiwi is to be kept since it was part of the discussion earlier. Ms. Adams clarified that the hardy kiwi is not on the invasive list but is under watch. The request is to replace it with something like a climbing hydrangea.

Member Gannon motioned to approve the special permit with the condition mentioned. Member Heep seconded. Voted 4-0, Granted.



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Acting Chair Ferris announced the next case to be an Appeal of the Zoning Enforcement Officer Determination and requested the representative introduce himself.

Terrance Morris, Attorney, 57 Elm Road, Newton, representing Virginia Marzilli Gill, an heir to the estate of Anna Marzilli, the owners of 217 Watertown Street. Attorney Morris asked if the board has certain documents for the case, specifically Michael Mena's memorandum; the letter from Kopleman & Paige and most importantly, a letter from Attorney Morris to Mr. Mena dated November 17, 2014.

Attorney Morris stated that the 1957 Variance approved by the ZBA had defined the approval as one "which will result in frontage of proposed lot X not abutting (the) street line". He further states that the Watertown Zoning Ordinance does not define a rear lot or a substandard lot and provided the definition in the City of Newton's Zoning Ordinance §30-15(r) as, "a parcel of land not fronting or abutting the street" whose minimum frontage requirement may be satisfied by measuring lot frontage along the rear line of the lot or lots in front of it. He states that the Variance granted described the frontage as 'not abutting the street line' and not 'no frontage' or 'substandard frontage'.

Attorney Morris describes the 12' right of way running from Lot X through Lot Y to Watertown Street as one of the principal purposes of a frontage requirement – to provide safe vehicular access to and from the premises. Thereby, the Board was not wavering the frontage requirement but applying a different standard of measurement. He further describes the purpose of a Variance is to fill the gaps in a zoning ordinance where the ordinance is silent or does not have a provision for otherwise providing necessary relief. Again, he states the Variance decision in 1957 resulted in "frontage...not abutting the street line" with a net "result" of Lot X would have 70.19' of frontage not abutting the street line but abutting the rear line of Lot Y in front of it, rendering it compliant with the minimum (lot frontage) requirement of 50'. He also states that the Variance was for lot frontage and not for use, which supports the proposition that §4.09, *Exceptions to Lot Size Regulations*, would not apply in this case. The size of the lot exceeds what is required for conversion to or construction of a two-family dwelling. He concludes that the Variance granted in 1957 does not provide a condition for a single-family dwelling. Attorney Morris also quoted several case law studies.

Attorney Morris requested a continuance from the February 25, 2015 meeting to provide a statement from an expert witness. At the meeting on March 25, 2015, Attorney Morris submitted a letter from C. Nancy Scott, the former ZEO of the Town of Watertown in which she states, "...denial under §4.09 is not applicable as having been adopted in 1982-1983, was historically applied only to undeveloped/vacant lots" and further indicates that, "the 12' ROW still provides access" to meet the requirement of frontage as defined in WZO, §2.48, Lot Frontage. She also states that all other dimensional requirements from §5.04, Table of Dimensional Regulations, are met.

Mike Mena, ZEO stated the easement provides access and is thereby not a safety issue. In 1983, the adoption of §4.09 was for lots lesser in size or other dimensional regulations and in this case, frontage. This is a substandard lot by definition of having no frontage on the street line. The section applies to

vacant and existing lots – where if someone comes in with a request to convert a single family to a two with less than 5,000 s.f., they are refused. At the time of the original request, the petitioner could have built a single or a two and chose to build a single. The ordinance at the time did not provide that a two-family could be built in perpetuity. The Variance was only for the dimensional limitation of not having frontage. If codes changed at a later time and a new request is submitted, they have to abide by the new rules.

Member Ferris asked if the lot had never been subdivided and the petitioner came to us today to approve a rear lot, would any scenario provide a two-family approval or only single? Mr. Mena said that section 4.09 would still require a variance as it does not have frontage. This would require a Use-Variance as it does not have frontage and the ordinance only allows for single family as it does not have frontage. Our ordinance does not allow Use Variances. Therefore, it would only be allowed to have a single family.

Mr. Mena added that staff agrees that the lot is oversized given the regulations today and back then but the issue isn't lot size, it is lot frontage.

Mr. Morris spoke about Ms. Scott's letter stating that this (section 4.09) has only been applied to vacant or undeveloped lots – a provision in the ordinance that it has to be a vacant or undeveloped lot. It has never been applied to a situation like this. He added that when you are interpreting an ordinance, if there is any ambiguity at all, it should be construed against the sovereign – in this case, the town. As they had it in their power to make it happen and didn't. He concluded that because of that, this should be interpreted in his clients' favor.

Mr. Mena stated that staff would like to see evidence that two-family homes have been allowed to be built on substandard lots. He does not have evidence and he has not seen this happen since he has been here – that a two-family was allowed on a substandard lot with substandard frontage. The zoning ordinance at that time did not grant in perpetuity to allow a single or two-family. The Variance was only for the dimensional limitation of no frontage.

Member Gannon questioned 'Use' Variances being granted in this town. Mr. Mena stated that there have been use variances granted. He does not know when the State law changed making local zoning ordinances require specifically stating that a Use Variance is permitted but it was at least 20-25 years ago. Member Gannon stated that as the prior Town Attorney, 20 years ago, Town officials said a Use Variance had never been allowed. Member Gannon asked if Mr. Mena read the statement from his predecessor, Ms. Scott. Mr. Mena has not as it was just submitted to the board.

Member Gannon asked the petitioner's attorney if he read the letter from the Town's attorney, Mary Georgio, Kopelman and Paige. Attorney Morris spoke to Attorney Georgio as he had issue with her letter referencing his issue being a use variance. He did not ever communicate with the town that he was suggesting a use variance was granted. She said she had not read his communication from November 17, 2014. She conceded that the last paragraphs in her letter referring to a use variance were not germane. He hopes that there use variances do not enter into this discussion. The district allows two-family houses since zoning has been in place.

Member Heep stated that the Variance in 1957 approved a single-family home. Therefore, this request is not relevant. By today's requirements, this would not be approved.

Member Kelly stated that not allowing two-family construction after 1983 has been consistently applied.

Member Ferris stated that the decision from 1957 is for a single family home to be built and with that statement in the record document, it is clear that the intent is for a one family. He does not see that the board would ever then consider a two family. Attorney Morris asked why then would the board not make that a condition. Member Ferris said that the board bases their decision on what was submitted – not then stating that a driveway could be 10’ longer than presented, for example. He reiterated that if the applicant came in requesting a single family house, why the board would have to say, ‘but you cannot build a high-rise there or a gas station. It is part of the decision that the applicant wanted to build a single family home.

No one spoke from the audience. Acting Chair Ferris closed the public hearing and declared a business mode.

Acting Chair Ferris stated that the consensus of the board is that they are satisfied with the comments not allowing construction of a two-family there.

Member Gannon said he respects the comments noted by Attorney Morris as a respected zoning attorney. He reiterated that he does not believe the board in 1957 would have given such a broad authority to allow a future two-family.

Member Ferris stated that it is logically clear to him that the premise of the application in 1957 was for a single family home. It does not make sense to contradict what the current zoning allows and contradict what the initial allowance was for a single family to allow a two-family. Member Heep agreed. Member Gannon stated that the letter from attorney Georgio was considered and he formed his own opinion.

Member Heep motioned to deny the appeal of the zoning enforcement officer determination on the grounds discussed from the board tonight, including discussion from the ZEO, on the application of section 4.09 and the belief that the 1957 variance granted was used to support a one family dwelling on the lot. Member Donato seconded. Voted 4-0, Denied. Members Ferris, Donato, Gannon and Heep voting to deny; Members Santucci Rozzi and Chander absent.



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Acting Chair Ferris announced a continued case for 28 Fayette Street, which has been heard a couple of times by the board already. He stated there is a revision to the roof plan, A3, which he passed to the other board members.

Junming Gao introduced himself and thanked the board for their feedback to make this a much better plan. With the feedback provided by the board regarding the width of the driveway, they will move the retaining wall closer to the porch, allowing more width in the driveway. The retaining wall will be less than 2' high under the porch. They will replace all of the siding on the home.

Member Heep noted that the bulkhead is not on the new plan; he has concerns about open space; the retaining walls at the end of the driveway; and too much on a small lot.

Member Ferris would like to see some windows retained; what will it look like at the end; will they retain corner boards. He added that the trim on the windows is not shown, he is not understanding what will be there as the plans are not professionally done – he questions all of these small items as there are glitches in the architecture.

The options presented to the petitioner: 1. Have the board vote tonight which is leading towards a denial; 2. Continue to next month with details on plans; 3. Make the plans substantially different. Also to stamp the engineering plan on the last page.

Member Heep motioned to continue the case to the May agenda. Member Donato seconded. Voted 4-0 to continue. Members Santucci Rozzi and Chander absent.

### **ADJOURN**

Member Gannon motioned to adjourn. Member Heep seconded. Voted 4-0 to adjourn at 9:50 p.m.