



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

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

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Louise Civetti, Clerk to the ZBA

**MINUTES**

On Wednesday evening, October 28, 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, *Clerk*; Christopher Heep, *Member*; John G. Gannon, *Member*; Jason D. Cohen, *Alternate Member*. Absent: Melissa Santucci Rozzi, *Chair*; Kelly Donato, *Member*; Neeraj Chander, *Alternate Member*. Also Present: Steve Magoon, Assistant Town Manager and Director of Community Development; Mike Mena, *Zoning Enforcement Officer*; Andrea Adams, *Senior Planner*; Louise Civetti, *Clerk to the ZBA*.

Acting Chair/Clerk David Ferris opened the meeting, introduced the staff and board members, noting that there were only four members voting on the projects listed on the agenda, noting that item #1 would be continued to the November meeting, and that all four members must vote in the positive for a vote/motion to carry and asked if any applicants would like to continue until there is a full Board, in November.

The applicant for Item #3, 124 Watertown Street, requested a continuance. The Board voted to continue the Item to the November meeting, motioned by Member Gannon and seconded by Member Heep. Vote 4-0-0, granted to continue to the November meeting.

The applicant for Item #2, 252 Common Street, requested for clarification of what it means for the Board to review the project this evening. Acting Chair Ferris explained that all four Board Members would be required to vote in the positive for a vote/motion to carry. The Applicant indicated that they would still like to be heard this evening, October 28, 2015.

**CASES PENDING:**

**ITEM #2**, Member Heep read the legal notice, "**252 Common Street** – Jeffery Slone, herein requests "Jeffrey Slone, 252 Common Street, Watertown, MA 02472 herein requests the Zoning Board of Appeals grant a Special Permit Finding in accordance with §4.06(a), Alternations to Non-conforming Structures, Side Yard Setback so as to construct an addition and deck located 5.3' into the northerly side yard setback, where existing is 4.8' and where 10' is required. S-6 (Single Family) Zoning District ZBA-2015-20"

The applicant's contractor and designer provided a brief explanation of the proposed scope of work and noted that the project would be at the rear, single story and would not be a detriment to the neighborhood, nor would it create a vehicle hazard. The applicant noted that this was the only area where the addition

could be located and looked at other options, but non worked given the floor plan of the existing house and met the owner's needs.

Acting Chair Ferris asked if anyone from the public would like to speak and noted that there were no questions from the public. Acting Chair Ferris then asked the Board if they had any questions.

Member Gannon asked to clarify the existing square footage of the house compared to the propose addition. The applicant responded that the addition was small, only 7-8"x12'-3". Member Gannon asked to clarify the square footage. Staff responded that it is approximately 117 square foot addition.

Member Heep had no questions and felt it was a modest addition and there was enough room to accommodate the addition.

Member Cohen asked about property line and fence how tall the fence is. The contractor stated that it is only a six foot fence. Member Cohen reiterated the comments of Member Heep regarding the appropriateness of the addition.

Acting Chair Ferris, asked about a sidewalk on the north side of the house and whether the fence would be impacted. The contractor confirmed the sidewalk would be extended to the rear yard stairs. Acting Chair Ferris also asked how the porch and addition will be supported (foundation). The contractor explained he would use conventional construction methods with footings. Acting Chair Ferris also asked clarification of the stair location from the deck and its orientation. The contractor stated that the stairs may go into the rear yard, than to the side yard.

Member Cohen, asked a question regarding the siding and whether the shingles will match the existing.

Acting Chair Ferris referenced the recommended approval by the Planning Board and the conditions in the Planning Board report and asked to add conditions regarding siding align with the existing siding/ shingles and that the stairs from the deck would be allowed from the deck to grade as long they were not installed in required setbacks.

Member Heep motioned to approve the project with said conditions. Member Cohen seconded. The Board voted unanimously to grant approval (5-0-0). Members Ferris, Heep, Gannon, Cohen voting in the affirmative (Members Santucci Rozzi, Donato, Chander absent).

## **OTHER BUSINESS:**

### **Item #1.** 195 Mt. Auburn Street – Clyde Younger – Modification to Control Docs

Acting Chair Ferris motioned to the applicant to present the proposed project, plan modification.

Attorney Ken Leitner, representing Mr. Younger, provided a brief history of uses of the site and the purchase of the property and the Special Permit Findings granted in 1996 and 1998 for a mix of commercial office and a residential apartment with ten parking spaces. Mr. Leitner stated that the plan originally approved showed ten spaces and the applicant is proposing to reconfigure the ten spaces in order to bring the property back into conformance with the 1996 and 1998 approvals. The previous approvals permitted a stacked parking configuration and the proposed would demolish the garage and again proposed the ten stacked parking with an added four-foot landscape buffer to the neighbor at 9 Franklin Street. The project would also increase the amount of pervious surface. The exposed wall by the removal of the garage would be replaced by matching siding, in addition to other minor changes to a landing and stairs at the rear. The applicant is proposing a parking pass system for the tenants of the building. Mr. Leitner referenced section 4.06 and the process to amend/modify an existing non-conforming use.

Acting Chair Ferris opened the meeting up to public comment, noting that comments had been heard prior and that anyone please only add new comments, responding to the new plan proposed by the applicant.

Town Councilmember Ms. Lenk recommended denial of the proposed modification citing traffic, parking, and safety concerns. The councilmember also stated that the town should look at current regulations and not allowing and extension of a use that does not conform to current code.

Robert Vercollone, resident on Franklin Street, asked if the driveway is being widened. Mr. Vercollone did not think some of the spaces could exit the driveway safely nor practically. Mr. Leitner noted that the driveway would be expanded to accommodate the relocation of two parking spaces and the existing tree would not be impacted. Mr. Vercollone asked if a variance would be required for the widened curb cut.

Member Gannon asked how much the driveway would be expanded. Mr. Leitner stated it would be expanded by approximately six feet. Staff noted that the driveway would be limited to 22 feet at the point the driveway meets the right-of-way. Member Gannon asked whether a permit would be required by the Department of Public Works. Staff clarified that the driveway would require a permit from Public Works.

Rena Baskin, resident, asked what zoning district the property was in and how the uses are there given the residential zoning district. Ms. Baskin also stated that Mr. Younger previously owned 9 Franklin Street which allowed vehicles use of both properties for circulation and after he sold it they did not. Ms. Baskin stated that the town should not allow this parking since it did not work without the ownership and circulation of the adjacent property. Ms. Baskin cited safety concerns regarding the parking configuration.

Staff stated the permit history of the site and how the existing uses were able to locate there and were granted by the Zoning Board of Appeals in 1996 and 1998. The Director of Community and Planning added that the reason why the owner is back before the Board is because the current parking does not match the previous plan.

Councilmember Steve Corbett, stated that we would be concerned if the town took away a permit/entitlement permitted by the town previously and should honor the previous granting.

Johnathon Bloch, resident and abutter to 195 Mt. Auburn Street, questioned the process that town is taking regarding allowing the change to be considered as part of a Modification. Mr. Bloch wanted to correct the record that Mr. Younger did not own the adjacent property at 9 Franklin Street until after the 1996 granting, but before the 1998 granting. Mr. Bloch noted that the property is out of compliance regarding either or both the town's zoning ordinance and the permit granted to the property in 1996 and 1998. Mr. Bloch stated that he feels the real estate office is not in compliance with the permitted uses of the site, in addition to parking. He noted that he filed an official complaint to the town and is awaiting a response. Mr. Bloch stated that his attorney informed him that the town is following inappropriate procedures and that, if approved tonight, the project would be back before the town as a result of Land Court. Mr. Bloch stated that the stacked parking is not allowed and should require a Variance and that this should have gone before the Planning Committee and that there is insufficient maneuverability. Mr. Bloch also noted the curb cut issue previously raised by a prior resident/speaker. Mr. Bloch stated that the square footage of the real estate office is greater than what is allowed.

Acting Chair Ferris asked staff to respond to statements regarding the real estate office as an allowed use, parking, and square footage. The Director of Community and Planning referred to previous statements that the real estate office is an allowed use and previous permits identified a specific user but does not mean that that the specific user must remain to be valid; it is the type of use that must be consistent, not the user. The Director stated that the end goal is that non-conforming uses eventually conform to uses of the district the property is in; however, case law and state law allow for non-conforming uses to remain in perpetuity and allow some minor changes and/or expansions by discretionary review. Acting Chair, Ferris, asked to clarify the square footage limitation to the uses of the building. The Director noted that an inspection of the interior of the site was conducted and will be getting back to Mr. Bloch regarding such.

Mr. Bloch stated that the Chair, at a previous meeting, said the permit specifically noted Mr. Younger's business as the use. He also stated that the change in user would have required to come back before the Board and he could find no permit to allow the change in user. Mr. Bloch continued to question the message use and stated that a use not allowed in the district is not allowed to locate here and that this would end up in Land Court.

Mr. Roger Erickson, resident, asked what a "Control Document" is and the Director explained. Mr. Erickson stated that he is a registered landscaped architect and he does not believe the plan would work.

Councilmember Lenk, read into the record a letter she received by a resident opposed to the proposed Modification and again siting safety as a concern.

Mr. Younger, the property owner, state that it was his understanding that the Board was to only to consider the ten parking spaces and not the legitimacy of the uses. He stated that he has done what he can to address the Board's previous concerns and requested information. Mr. Younger contracted with a surveyor that does work for the town to survey the property and noted that a previous plan did have an error and also showed the removal of an existing tree. These plans were not looked favorably on and the new plan is showing a lane to allow vehicles to exit the lot and accommodates the parking.

Mr. Vercollone, asked whether there was a snow storage plan submitted with the new plan.

Acting Chair Ferris closed the public comment and asked Board members to ask or provide any comments they may have regarding the new proposal.

Member Cohen stated that the existing zoning ordinance does not permit parking spaces in the proposed configuration. Member Cohen also stated that if the garage was to be removed, that the Board would want to see more detail as to how the building façade would be treated.

Member Heep asked for clarity of the new stairs at the rear and that it appears to conflict with the parking plan and asked about the proposed four-foot buffer. Mr. Leitner stated that they were basing their plan on the 1996 and 1998 plan which already had the parking/stacked configuration are simply continuing that approved plan. He also stated that the four-foot buffer would have low vegetation/landscaping. Mr. Heep also asked about snow removal/storage. Mr. Leitner stated that this is an existing situation for many years and that it has never been an issue and he often removes the snow from site by contract when needed. He was unaware of any complaints regarding snow in the past. Mr. Heep noted that with the garage gone, will require additional area of snow to be dealt with. Mr. Leitner noted that the additional snow would be minimal and not a problem. Mr. Heep asked how people would get out of the driveway. Mr. Leitner noted that they would be assigning each tenant a space and they would have to work together to move cars as needed and the new drive isle would allow people to get in and out.

Member Gannon asked what the present buffer is from the garage to property line. Mr. Leitner stated that the pavement buffer would be the same as the garage is now. He also clarified that the parking shown meets code, despite is not noted on the plan. He also clarified with Ferris that the doors would be able to open. Member Gannon asked and staff noted that this all started as part of a code violation/citation.

Member Gannon asked staff if the proposed plan would meet the issue sited in the code violation noted. Staff stated that the question should be is the proposed plan equal to, or worse than the previously permitted plan and whether it should be approved is up to the Board. The Director added that the Board as the following choices: (1) that the plan is consistent with the previously approved and corrects the parking violations and consistency issued with the granted permits, (2) deny the modification, stating that this is not a minor modification and that this should be a formal request to Amend the Control Documents, or, (3) deny the project on the merits discussed by the Board and staff would then regroup with the property owner to determine further enforcement action.

Acting Chair Ferris noted that the property is up for sale and wanted confirmation that the existing tree would not be damaged. He also noted that he is an architect and had concern about the proposed stairs and exiting people into a confined area blocked by cars and the egress path is not adequate. Ferris also noted that there would be a 100 foot, plus back out for some of the vehicles. Mr. Leitner stated that he would have to go back and look at the egress issue, but noted that there are existing stairs in, or about that location. Ferris noted again his concern for safety.

Mr. Morrison, resident on Franklin Street, stated that the business operators would park on the street and no one would park in the lot and this would not work.

Mr. Younger thanked the Board for continuing to consider resolution to the issue. He stated that the two new parking location would not impact the tree due to use of pervious material that would work with the tree and not increase run-off. Mr. Younger stated that the prospective new owner would care for the property. Mr. Gannon asked what the proposed use would be with a new owner. Mr. Leitner stated that it would be a palates studio and that the new owner would like to live at the property and have their studio there.

The prospective new owner of the property explained his vision for the property as a by-appointment only palates studio and the parking and that he has been meeting with the neighbors.

Staff stated that the Board should not be taking into consideration a further project that has been applied for and should not discuss the merits of a future use, on file, without proper public notice.

Mr. Heep had concern about the removal of the garage and what is on the property abutting the rear of Mr. Younger's property and fronting on Otis Street. The applicant noted that there was no fence and that there was a parking lot on the abutting lot.

Acting Chair Ferris reiterated the modification request and what the Boards role is related to the request.

Member Cohen asked how the parking would work with the residential tenants and the parking. Mr. Leitner reiterated that they would have to work together with the business parking.

The Board deliberated extensively, siting concern over maneuverability, safety, and conflict between the resident parking and business parking while still noting that a similar plan had been approved previously. Member Heep stated that he felt this is not a Minor Modification and needed to be done via a formal application with property public notice and review. Mr. Heep and the remainder of the Board also noted they would want to see more detail in the new landscape buffers, how snow would be dealt with, and with a parking plan that would be more conforming to current code, related to size, maneuverability, etc., or find parking off-site.

Member Heep motioned to deny the minor modification request. Member Cohen seconded. The Board voted 3-0-1 to deny the minor modification with Member Gannon voting "Present." Members Ferris, Heep, Cohen voting in the affirmative. Members Santucci Rozzi, Donato, Chander absent.

Mr. Younger asked to and was granted final comments.

Member Heep motioned to adjourn. Member Gannon seconded. Voted 4-0 to end meeting.

\*These minutes have been updated per request of Chair Santucci Rozzi, 1-26-16 lc

At their meeting on January 27, 2016, Member Ferris motioned to accept these minutes. Member Heep seconded. Voted 4-0, with members Ferris, Heep, Gannon and Cohen voting in the affirmative. Members Santucci Rozzi, Donato, Chander absent.