

MINUTES

On Wednesday evening, **January 7, 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*; **Deborah Elliott**, *Member*; **Carlos Fernandez**, *Member*; **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk*; **Joseph Merkel**, *Senior Planner*. **Absent: Stuart J. Bailey**, *Member*; **Richard M. Moynihan**, *Alternate Member*

Tape 1 of 1, Side A

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

The minutes of the November 28, 2007 meeting were voted on and approved as written (vote 4-0).

The cases were taken out of order in anticipation of Mr. Moynihan's arrival:

The first case is a leave to withdraw:

Theodore and Van Arend, 179 Boylston Street, Watertown, MA, herein request the Board of Appeals to grant a **Special Permit** in accordance with Section 4.09, Exceptions to Lot Size Regulations; **Special Permit Finding** in accordance with Section 4.06(a), Alts/Additions to Non-Conforming Structures and Change in Lot Area/Frontage and **Variances** in accordance with Section 5.04, Table of Dimensional Regulations, Lot Coverage; and 6.02(j), Landscape Buffer, to construct a single family residence 24'x37' on adjacent non-conforming lot, **Assessors Map 1206-8-52 Boylston Street**, containing 4,950sf, with 48.22' of frontage, where 5,000sf/50' frontage required, with existing garage thereon, T Zone and further allow the non-conforming two-family dwelling with its lot having 4,040sf to remain having 3' easterly side yard setback, where 6' is required; 14.8' front setback, where 15' is required; 6.2' rear setback, where 20' is required; reduce non-conforming lot coverage from 34.7% to 32.5% by removing 2nd-story of two-story rear porch, leaving open deck 7'x12.5'; provide 77' long 4-car required parking driveway on southwesterly side allowing the rear 36' of landscaped parking buffer to vary from 3'11 to 1.8', where minimum 4' is required on the

property at **179-181 Boylston Street**, located in the T (Two-Family) Zoning District.

Chair Vlachos explained that the board had continued this case from July and proceeded to read a letter addressed to the Board from Attorney Kenneth Leitner dated November 26, 2007, per request of the Petitioner, to dismiss the continued case for the Special Permit and the Variance.

Ms. Santucci motioned to accept the withdrawal request. Ms. Elliott seconded. Voted 4-0, Withdrawal granted.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

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Tape 1 of 1, Side A, Continued

Chair Vlachos explained that there is a four-member board at this time and all four votes will have to be unanimously in favor of the petition in order for it to pass and gave the Petitioner the option to continue after the case is discussed.

Ms. Santucci read the legal notice:

Theodore E. Rowe, Operations Manager, Atlantic Plant Maintenance, 3225 Pasadena Boulevard, Pasadena, TX, herein requests the Board of Appeals to grant a **Variance** in accordance with §5.04, Table of Dimensional Regulations, Front Yard Setback, Zoning Ordinance, so as to remove existing roof over entrance walkway 5'-9" x 13'-2" located 2.9' from front property line; Construct one story addition 7.4' X 13' for new entry; attach reconstructed and enlarged roof only over entrance walkway to 7'8" w x 11', maintaining 2.9' from front property line, where 20' is required at **19 Coolidge Hill Road**, located in the I-2 (Industrial) Zoning District.

Peter Wright, Architect, representing the Petitioner, designed the proposed entry vestibule. He referred to a graphic page titled "Plan and Diagram Showing Existing and Proposed" and explained that the setback requirements will not allow them to build as proposed. There is a concrete slab where the existing entryway is and there

is a stairway leading down to the plant. They would like to keep the entryway where it is to provide easier access to that stairway and to maintain the circulation in the office area without disrupting it. There is a large grade drop at the end of the slab, away from Coolidge Hill Road and drainage would be compromised. The clients have approached the neighbors and the neighbors have approved. It is not compromising the neighborhood, as it is only one-story high, the existing building is within one foot of the setback, and they are moving this back from the street. The change is di minimus. There is an existing roof and they will not be going any further towards the street, but will be making it a bit wider.

No one spoke from the audience.

Chair Vlachos read from the Planning Staff Report that they have recommended to approve the petition.

Mr. Merkel said upon visiting the site that this is a modest entry and a good solution for the topography.

Chair Vlachos said the Planning Board voted to recommend to grant the petition with conditions and reviewed the soil conditions, hardship, etc.

Mr. Fernandez is in favor of the petition. It is modest and improves the site.

Ms. Elliott is in favor of the petition.

Ms. Santucci motions to grant the variance for the modest addition with the conditions recommended. Ms. Elliott seconded. 4-0 Granted.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

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Tape 1 of 1, Side A, Continued

Chair Vlachos explained that there is a need for at least four members to be present and we have just heard from our alternate member who will be here within 15 minutes. The board will break until the fourth member arrives. (Mr. Fernandez recused himself from this case).

Chair Vlachos announced that the board will be joined by Mr. Moynihan who will be voting as a full member.

Ms. Santucci read the legal notice:

R. Timothy McBride, 108 Marshall 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, to permit the construction of a single story, rear addition, 11.3'x6.7' maintaining non-conforming westerly side yard at 6.6', where 10' is required and reducing rear deck from 26.4'x 9.2' to 25'x 9.2', creating a less non-conforming westerly side yard setback from 5.3' to 6.7', where 10' is required at **108 Marshall Street**, located in the S-6 (Single Family) Zoning District.

Tim McBride introduced himself and explained his request for a Special Permit Finding for the westerly side yard setback. The house was built in 1919 and 6'6" to the westerly property line. He wants to maintain that setback as opposed to 10'. He bought the house in 1986 and built a deck across the back of the house, matching the side of the house, but because his property comes in at an angle, it cut the 6'6" setback to 5'7", shortening the westerly side. He said he will rip off 1'-3' of the back deck to bring it into the non-conforming 6'6". He wants to build a single-story rear addition 11'x6' (or 7') which will match an addition on the back of the house that was built in 1921. He said he is renovating a three family dwelling and removed all of the tenants from the building (at a cost of \$18,000 a year in rent) and converting it to a single family, which will be in conformance with the S-6 zoning district. He is taking a non-conforming three family house and through sufficient cost to him, converting it back to a single family so it conforms. It will greatly enhance the neighborhood. He has put \$250,000 into the home so far. He talked to Nancy Scott about the back deck and that is why he is taking a portion of the deck off.

Chair Vlachos asked how long the house was a three family. Mr. McBride said it was a three family when the Watson's had lived there and his dad bought it off them as a three family. He believes Mr. Watson's daughter lived in one of the apartments and then rented the other two. He bought it in 1986 and slowly was converting it back. He rented it for about 10-15 years, but he didn't want to deal with tenants. He got permits to go ahead and to the work, but it was brought to his attention that the westerly side was always non-conforming and he'd like to get that grandfathered in.

Chair Vlachos asked if the issue of the non-conforming side came up during construction. Mr. McBride said he left the third floor as it is and put Berber carpet up there and the second floor was gutted and all of the horse-hair was taken out and all brand new walls put in and \$10,000 worth of cortisone oak floor were put down and marble bath and at this point, he is doing the first floor and the project is $\frac{3}{4}$ done.

Ms. Santucci asked if the house had 3 kitchens initially and why does he need the addition if there already was a kitchen. Mr. McBride said for re-sale value, he wants a larger kitchen. The original owners put a 13'x13' addition off the back and created a jog and he wants to fill in the jog and make the interior space squared off. Ms. Santucci asked about the 13'x13' as she can only see 6'. Mr. McBride explained the proposed plan and he will gain 7'x10' of interior space for his kitchen. He referred to the second floor deck, which is 13x13 and has been there since 1921. He said he got the numbers from the 30-year-old building cards through Nancy Scott and the back of the house is actually 11'3"x6'7". Ms. Scott explained that the addition was to a piazza 13x13x6 for \$70 in 1926. Mr. McBride said the staff report photo shows the jog of the addition which goes back 6 or 7'. There is a slider on the left hand side of the photo on the ground level. That slider will be pushed into the back yard to where the second floor deck ends to enlarge the kitchen.

Ms. Scott noted that he is also seeking relief for the deck on the third floor, which will be maintaining the 6'6" setback and the addition below.

Ms. Santucci asked if he did all of the work without permits. Ms. Scott answered that he did. Mr. McBride explained that the bottom deck was built by contractors that had a permit for a three-story staircase for a second means of egress. During the construction, they suggested the deck be built; he agreed and thought they pulled the permit for it. He admits that he didn't and thought they did. He said he needs to have that okayed. He ripped the stairs off when he made it a single family. The single window on the second floor of the back of the house used to be a slider to the outside staircase. He did a lot of work to take the staircase off. He pulled a permit for the second floor deck, but the plot plan supplied wasn't sufficient to show what was going to be done. A formal permit was never issued on that. It is all done to code per the application he sent in.

Ms. Santucci clarified that he sent in an application, didn't get a permit and built it anyway. Mr. McBride said, 'yes'.

Mr. McBride said he is proposing to take \$18,000 a year out of his pocket, conform this from a three-family back into a single; rip the back deck off 2-3' so it conforms with the left-hand side 6'6" and all he is asking is to extend that little piece of kitchen out to the back to square off the house.

Dennis Duff, 33 Spruce Street, stated his support of the petition as he is in favor of reducing density and Marshall Street is one of the nicest streets in the community and to restore this Victorian to its original state or facsimile is an asset to the community and reducing density, he is for it. Ms. Scott asked Mr. Duff if he agreed with pulling permits for the work. Mr. Duff answered 'yes'.

No one further spoke from the audience. Chair Vlachos declared a business mode.

Chair Vlachos said his only concern is that all kitchens be removed except for one for single-family use so it does not convert back to multi-family use or accessory apartment use.

Ms. Santucci stated that she is having difficulty trying to make the finding that this isn't substantially more detrimental to the neighborhood. It is already a large home and she doesn't know why he didn't work within the existing footprint when he was re-planning it.

She thinks it is great that he is restoring it and the house looks beautiful, but she doesn't know why it can not be accommodated within the footprint.

Chair Vlachos asked Mr. McBride to address the board on if the house fit 3-families before, why would he need to expand it now. Mr. McBride said it is his personal taste. He has lived here since 1986 and he has paid the Town of Watertown 3-family taxes for 15 years; he has put over \$250,000 into this house and he knows his taste – he knows how to make this house look good and with that little jog there, it cuts the kitchen back significantly. He said it would enhance the look of the property for all of the neighbors. They have been advised of this, but no one showed up to refute this by simply bringing this out 6'7" to square off the back of the house – and with a beautiful hip roof and a skylight – it will enhance the look of the property; the value of the property...

Chair Vlachos asked if he agrees that he has to square it off because he added illegal decks. Mr. McBride said no, the decks have no bearing on his desire to square off. Chair Vlachos said the idea of squaring it off – is because he built the decks. Mr. McBride said the extension he is talking about has nothing to do with the decks – it has to do with the addition that occurred back in 1919, before he was born in 1959. He is not asking to take the house all the way out to the edge of the deck, he simple wants to bump-out 6' to where it meets the back of the house on the right-hand side. It is not coming all the way out to the deck. It has no bearing on putting the deck on and it has not bearing on the extension done in 1919. He contents that the bumping out in the back will enhance the property without making it look like a mcmansion – it is just matching the back of the house.

Ms. Scott said that the plot plan says the lot coverage will be 26% and Cliff Rober (Surveyor) will have to be called to clarify that figure because when the deck was on, the lot coverage was 26.2% and she is wondering if he included the deck in the lot coverage when it shouldn't be as the maximum is 25% for the district. Mr. McBride said the second plot plan is dated 11/19. Ms. Scott said she has one dated 9/24 – there are so many plot plans, she can not keep track of them. Mr. McBride said he pays every time this guy comes out - \$800-1200 every time. Ms. Scott has one dated 9/24/07, showing the third floor deck, the first floor deck and the second floor deck, with 5.3' away from the property line and 26.2% lot coverage. The new plot plan with the proposed addition, shows 26% and the maximum allowed is 25%, but decks are not included in building coverage and she feels Mr. Rober made a mistake in the building coverage number. Mr. McBride said that does make sense as the only thing being removed is 2' of deck. Ms. Santucci said the addition would increase the lot coverage. Ms. Scott added that the portion of deck that is over the first floor deck also should be included. She said the board can go forward, but being sure the lot coverage is down to 25% so it does not require a variance. She will call Mr. Rober tomorrow to clarify. Mr. Vlachos wants to be sure his calculations are shown right on the plot plan – the dimensions of the house, etc., so the board can determine the accuracy of the 25%. Mr. McBride said he was unaware of the 25% lot coverage and there could be some miscalculations and he could be way-under.

Chair Vlachos again declared a business mode and asked Mr. Merkel about the Planning Board report recommending that it be granted. Mr. Merkel said the additions are in the

back yard and not visible from the private way and they are moving towards compliance with the rest of the house and he thought that was a good gesture.

Chair Vlachos read from the Planning Board report of December 12th with 5 members present, recommended to approve the Special Permit Finding with typical conditions.

Mr. Moynihan said he feels the petitioner has met the burden of the ordinance as this is a Special Permit analysis and to weigh the changes being made to the property would be hard pressed to find a substantial detriment to the neighborhood with the 6-7' extension, which is easily outweighed as this is going from a 3-family to a single family.

Ms. Santucci is not in favor.

Ms. Elliott is in support of the proposal as it is in the rear of the property and it is not visible.

Chair Vlachos said he would be in favor if it met the 25% maximum lot coverage proven by the surveyor's calculations. With four members here, it does not look like the petition will pass.

Mr. McBride asked if it has to be unanimous. Chair Vlachos said with a four member board, it has to be unanimous.

Mr. McBride asked where the fifth member was. Chair Vlachos said in the past he has informed people that on a four member board, you need unanimity if there was a negative, it would not pass. The only alternative (unless another is thought of) is to let the vote occur, which it wouldn't pass or to withdraw it. Ms. Scott added that he could continue it based on the fact that the lot coverage needs to be clarified. Chair Vlachos explained that the case could not be continued just because it would not pass. He thought he had explained the four member board earlier tonight. Chair Vlachos said he would continue based on the need of the clarified plot plan to determine if he would need to apply for a variance and it would need to be reheard by a full board or a 4 member board. Mr. McBride said it would be to his benefit to have the 5th member here to have a 4-1 vote and have it passed. Chair Vlachos said he wouldn't guarantee that it would pass, but yes, a vote of 4-1 would pass. Mr. McBride asked why the 5th member was not here. Chair Vlachos said the case is continued and requests the Petitioner to bring a revised plot plan showing the lot coverage and if there is not a five member board at that time, he will have an opportunity to continue until a five member board is present. He understands his issue as he usually explains the four member board. Mr. McBride asked when he could be in front of the board again. Chair Vlachos said one member is on an extended trip abroad and he will be back in March, possibly. One member has recused himself, meaning the person feels there may be a conflict of interest or an abutter and they do not feel they could vote fairly. Mr. McBride said that fairly, he would not appear in front of the board before March. He thanked the board and left.

Chair Vlachos asked for a motion to accept the request to continue.

Ms. Santucci motioned. Ms. Elliott seconded. Voted 4-0 to continue.

Ms. Santucci motioned to adjourn. Ms. Elliott seconded. 4-0 The meeting ended at 8:00 p.m.