



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
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MINUTES

On Wednesday evening, January 27, 2016 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: Melissa Santucci Rozzi, *Chair*; David Ferris, *Clerk*; Christopher Heep, *Member*; John G. Gannon, *Member*; Kelly Donato, *Member*; Jason D. Cohen, *Alternate Member*. *Absent*: Neeraj Chander *Alternate Member*, Also Present: Steve Magoon, *Director*; Mike Mena, *Zoning Enforcement Officer*; Andrea Adams, *Sr. Planner*; Louise Civetti, *Clerk to the ZBA*.

Chair Santucci Rozzi opened the meeting, introduced the board and staff and swore in the audience.

Chair Santucci Rozzi noted under the agenda title, 'Administration', several sets of minutes. September 30th minutes Members Gannon and Donato were not present. Member Ferris motioned to accept the minutes as written. Member Heep seconded. Voted 4-0 with Members Ferris, Heep, Santucci Rozzi, and Cohen voting favorably.

Chair Santucci Rozzi stated that the October 28th set had herself and Member Donato absent. Member Ferris motioned to accept the minutes of the October 28th meeting. Member Heep seconded. Voted 4-0 with Members Ferris, Heep, Gannon, and Cohen voting favorably.

Chair Santucci Rozzi said all members were present for the last two sets of November 23rd and December 16, 2015. Member Ferris motioned to accept the minutes; Member Heep seconded. Voted 5-0, with all members voting favorably.

Chair Santucci Rozzi thanked the Staff for assisting in getting all of the minutes sent out.

Chair Santucci Rozzi asked if Staff required a vote on the request to continue case at 8 Hardy Avenue. Member Ferris motioned to accept the request for continuance to the March agenda for **8 Hardy Avenue**, a Special Permit Finding. Member Heep seconded. Voted 5-0 with Members Ferris, Heep, Santucci Rozzi, Donato and Gannon voting favorably.

Chair Santucci noted the next item on the agenda is a Continued Case: **195 Mt. Auburn Street**. She said there has been quite a bit of correspondence in the last month on this petition and asked the petitioner's representative to give an overview of the material.

Michael Brodigan, Attorney for the Petitioner, said they created plans to fit the request of the Board with changes to the porch and stairs, relative to a 'pinch-point' in the driveway. The porch and stairs have

been eliminated. He said the type of pavers were commented on and they are now shown on the plan as 'grass-root' pavers, as requested by the Board. The updated engineered drawings for the parking show the turning radius, which addresses the concerns of the board. Proposed signage and a rendition of the proposed sign were submitted. These were the major topics from the last meeting.

Chair Santucci Rozzi asked that the engineer review with the board the turning radius. Al Gala, Gala Simon Associates, Civil Engineers, Lexington, MA, noted drawing D-1 depicts 7 parking spaces with spaces with pervious pavers; the circle at the end of the driveway is potential location for a storm water infiltration system, which will be evaluated later on. Plan E-1 is specific to spots 1-4 and shows a car entering and turning at a radius of 24' and then the sequence of movement. E-2, E-3 maneuvering on E-4 and exiting on E-5. E-6 are for spots 6-7, car 6 or 7 back out directly slightly turning to the left to position their car at the corner E-8, showing how the car clearly exits the property. E-9, car #5 backs up to E-10 and exits E-11.

Chair Santucci Rozzi asked if the drainage is pre-cast stone. Mr. Gala said there is a garage with downspouts and a low point (on the surface). His client does not want his parking lot to be flooded or to flood his neighbors. The drainage is not sized but it is a typical pre-cast concrete structure with stone around it. They expect to find sand and material there but they have to do a soils test first. Chair Santucci Rozzi noted that prior to installation, they will work with DPW to test the soil and size the unit. Depending on what they determine, would they do a 'Coltex' system. Mr. Gala said that system is plastic and although withstands the weight of trucks, they will have to look further into it.

Chair Santucci Rozzi invited the public to speak, requesting that they bring new items to the board.

James Morris, 16 Franklin Street, thanked the board for taking the time. He said he has been here before so he will only speak on new things. He understands how respectful the petitioner has been; how great Pilates is and how wonderful the applicants are. He wants to address the issue of whether this is more detrimental than the existing and argued that the board gave their closing remarks at the last meeting and were supposed to vote and didn't, then did not give the public a chance to respond. (Chair Santucci Rozzi noted that there was not supposed to be a vote). Mr. Morris continued, at least one member said the proposed use would be less detrimental. That stunned him and he will list reasons why this is more detrimental. 1. Hours of operation. 6am – 9pm. The current use is not 6am – 9pm. There is an increase in the number of hours. There is an increase in the traffic. No one comes to the Writing Center. The massage therapy gets a couple of people a day, maybe 10. He then asked what the limit of students were allowed per hour (for the Pilates). 5 max per hour, 15 hours, and 75 people is more than 10 times existing. The current use requires that the parking be all on the site. He said the lawn space will look terrible and they will have to back out of it – never mind if the cherry tree will be affected. So, the parking will be an increase. Detriment is defined by the effect it has on the neighborhood. He said, 'Rob' presented a petition last time with a huge amount of signatures. Detriment is not a matter of opinion, it is a matter of the effect it has on the people living there. We are not supposed to increase the usage, it is supposed to be equal. He asks the Chair how she feels this is less detrimental. Chair Santucci Rozzi said that the board will address the question during their deliberation. Mr. Morris said that the public will not be able to comment then. He asks if the board is going to vote yes, vote yes so that it is saying that even though this is more detrimental, I am voting yes. He said that if the board should say it is less detrimental, that does not make it so. He asked for a definition of detriment. Chair Santucci Rozzi stated that the individual member will express their opinion when the time comes. Mr. Morris asks if this is more or less detrimental and this is not a matter of opinion – these are facts. Chair Santucci Rozzi explained that each board member will give their opinion, close the public hearing, deliberate and then vote. Mr. Morris said there are positive aspects: going from 3 businesses to 2; people are making a concerted effort, taking down a dilapidated garage, etc. but these things do not impact the neighborhood. On paper, going from 3 businesses to 2 but the effect to the neighborhood is traffic, noise, hours and parking. The effect on zoning...He would like to hear how the board responds to those things. He said Rena Baskin mentioned something at the last meeting and no one responded. There was a proposed Pilate's studio on Russell Avenue that was denied with more restrictive hours. Chair Santucci Rozzi said that this board did not hear that case and the board will not speak on it. Mr. Morris said this is ad hoc as there are two proposals with one accepted and one denied. It is random. Chair Santucci Rozzi

said that there are things that are allowed in residential neighborhoods and that application was for a home occupation. This may be the same use but you are not required to live there. Mr. Morris said this is offensive to him. He will provide context. There is a kind petitioner and angry neighbors. He said the reason they are so angry is the long standing issues of the narrow and residential street and there are cars parked on both sides of the street. There are no curbs and the berms are paved over. Cars are parked all day and could be parked the wrong way. This has nothing to do with 195 Mt. Auburn Street. He wrote a letter to the Chief of Police and the parking bureau and he did not get a response. He suggested putting in curbs and making it a one way but DPW did not respond. Chair Santucci Rozzi asked if he spoke with his district councilor. Mr. Morris said that everyone knows these issues. Chair Santucci Rozzi said that this board cannot direct the Police Chief to do something. Mr. Morris said that it took 10 years of complaining about what the massage parlor really was before they did something. They are a lot of unresolved issues on this street that are not the fault of 195 Mt. Auburn Street but to this mix (the Board) is going to consider increasing the traffic 10-fold to a street where the police or DPW do not enforce and where the town is unresponsive. Each department in the town does their own thing. You will make your determination based on Zoning because that is your job. He said that Zoning needs to work with the police and with DPW to come up with a solution that is reasonable. He added that what would be reasonable would be to have businesses in this building with hours that are 8:30 – 5:30 or reasonable hours. If there is going to be parking on the street, restrict it to one side, you need curbs. The residents have come across as angry because we are angry and this Petitioner is kind. He said the 7 parking spaces haven't been assigned and will the Pilates studio use all of them after hours. Why consider this when they don't know which are which and do they have after hours permission from the real estate company. This is a basic thing. He said they could not respond after the closing remarks last time and he has been here 6 times. He heard that two (ZBA Members) thought this was a good idea; two were concerned with what exists and one concerned about backing out on to the street. He said in the 6 times he has been here no board members have spoken about hours or traffic or the concerns of the neighbors. He wants to know what detriment means. He said this is the third meeting on this petition but before that there was a reconfiguration of the 10 stacked parking. Chair Santucci Rozzi said the prior petitions are not on the table tonight. Mr. Morris said he is just stating that he has been here trying to voice concerns of the residents and no one is bringing up their concerns. He wonders if they have a voice here. He wants to know about the process. He said the first time this came before the board, there was no survey, which was the same issue with the last petition. The second time, the Petitioner asked for a vote and it appeared that it would not pass so the Petitioner decided they would come back another month. Chair Santucci Rozzi said the Petitioner has the right to ask for a vote. Mr. Morris continued by saying if there was a negative vote, he had the option of continuing. Chair Santucci Rozzi said the Board expressed concerns and the applicant was afforded the opportunity to direct those concerns. Mr. Morris said he brought up a series of questions and at the end, the board will have their closing remarks and they (the audience) will not be able to say anything. He trusts that she will bring up the detriment issues, the Pilates Studio, and the context of the neighborhood. Chair Santucci Rozzi clarified that the Board has not asked any questions of the Petitioner yet. They presented the revised materials, she opened the meeting to the public and the board will have questions for the applicant. Mr. Morris said his concerns are never addressed. Chair Santucci Rozzi said the Board has not gotten into what they usually get into. If he feels he has more to say at the end, raise his hand and he will be recognized.

Mr. Morris read into the record a letter from Barbara Ruskin, 140 Spring Street stating that she believes the property in a historic area would become commercial, not enough parking, signage would be an issue and she hopes these types of businesses would find another location in town.

Mr. Morris read a letter from Rena Baskin, 15 Franklin Street stated that a Pilates studio would be a more intensive use; more out of compliance; greater hazard to the neighborhood, more car trips at a corner with low visibility and would impact other historic homes on Mt. Auburn Street that abut residential streets. She said the Pilates studio proposed on Russell Avenue in 2012 was recommended by the Planning Board to be denied. She said Russell is 4 lanes wide and Franklin is not fully 3. She added that when there is an event at the Marine Center, there is parking on both sides of the street, the street is barely wide enough for one car. This is a more intensive use than the Russell Avenue proposal which was denied. She suggests not "grandfathering" out-of-compliant uses. She further compared the hours of this

proposal to the Russell proposal; this use should be considered new. She asks that the Board consider the safety of the neighborhood.

Several people were sworn in that had not been sworn in earlier.

Clyde Younger asked the audience if they had heard of the name, 'Winthrop Rockefeller'. He stated his funeral business in 1914 at this location. This has been a commercial entity. He suggested that uses could have been there (he described a park where years later people decided they didn't like the park). He said the board will use their own frame of reference to determine detriment. He said the neighbors have spoken on their stress and frustration and he, as a property owner, has rights, too. He has asked no more or no less as a property owner. They have tried to work with everyone. He spoke of the Show Cause that should not have been agreed to and should have been taken to court as the town should not have entertained it.

Jonathan Bloch, 9 Franklin Street, adjacent to the rear of 195 Mt. Auburn Street, said he has questions that he wants cleared up. He handed something to the Board saying it was a copy of D-2, revised January 8th. He said the new numbers have changed and the side and rear yard setbacks are different than the last drawing. He does not know how these have changed. He asked if the building as it is, is not in compliance as the rear yard setback is 5.96' and Zoning says 20' is allowed. He added that the side yard and rear yard have switched. Chair Santucci Rozzi asked the engineer if he is showing the setbacks to the garage.

The engineer described the drawing done by Bibbo Brothers as the rear yard being that next to 9 Franklin Street, Mr. Bloch; the front is along Mt. Auburn Street; the side yards are Franklin Street and Otis Condominium. The table of the rear yard is 5.96' existing; proposed of 22'. He said on drawing D-1, shows space number 3 to the corner is 12.3' and knowing the spaces are 8.5', that would bring that dimension to approximately 22', which is more than the required 20'. Chair Santucci Rozzi clarified that there is land area between the parking space and Mr. Bloch's property. The engineer said there is grass to be proposed, which is a little over a foot, which will allow room for a fence and curbing, if necessary. At 21.8'.

Mr. Bloch said he as measured things on this property several times. Chair Santucci Rozzi asked why he is on this property measuring. Mr. Bloch said Mr. Younger has made references that he did not put his landscaping in the right area. So he had to confirm the location of the landscaping and he spoke to the surveyor when they confirmed the line. He had a good idea of the numbers for this area and he knew that the table on D-2 was incorrect in various places. He added that this updated table shows corrections but not entirely. He said the closest distance from the building to the property line was measured with the land surveyor and his landscaper to be certain he knew where he was putting his landscaping. Chair Santucci Rozzi said they have stamped plans done by surveyors and engineers and in the absence of a conflicting survey, he is not a registered land surveyor. Mr. Bloch said if they did not have this meeting tonight and they did not vote last time in the affirmative. Chair Santucci Rozzi said they did not vote last time. Mr. Bloch said the D-2 plan was stamped by an engineer and then revised and stamped – he just wants to point that out. He said the structure is not in compliance today and when these things (the survey) is put into the record, they should be accurate. He said the Planning Board added a condition that there be a 4' buffer on the Otis Condo side line and a zero foot buffer towards 9 Franklin Street, he said the measurements reflecting those conditions – in the zoning table, the allowed buffer of 4' – the dimensional parking plan indicated the buffer is over 4' and dropping to 2', which is out of compliance with the condition. Chair Santucci Rozzi said the condition has not been confirmed yet – it could be eliminated or changed based on what this board votes. Mr. Bloch said the 4' buffer was not taken into consideration when the engineer showed the turning radius as the car would need to be within that 4' buffer to turn. Mr. Bloch said if he didn't point this out and this was granted, the property would immediately be out of compliance. He wants to make sure the vote is correctly. Mr. Bloch said the control documents should be noted when the vote is taken. He said he questions procedure – there are a lot of drawings submitted and involve removing the stairs. The new plans no longer agree with what was submitted to the Historical Commission to obtain the certificate of appropriateness. Chair Santucci Rozzi said the Board would not discuss that. Mr. Bloch said they are required to go back to get a new certificate before construction

happens. This should be entered in as a condition. Chair Santucci Rozzi said this Board has no jurisdiction over any other board. The applicant is still required to seek any appropriate permits from all departments before they receive a Building Permit. Mr. Bloch said he is concerned that the petitioner may need to change the control documents that this board votes on – can he resubmit or just change the control documents. Chair Santucci Rozzi reiterated that he is asking if the petitioners' plans change after this board votes, does he come back to this board. She said the Petitioner will have to work through conflicting drawings.

Mr. Bloch said he has two large things to discuss: the impact of the proposed changes to his neighborhood - he said the petitioner has done a great job in responding to issues, from garbage collection to snow removal but he has not explained why the changes are not more significantly detrimental than the current use. In Mr. Bloch's opinion, this is more detrimental (and his neighbors agree). Two factors: increase in operating hours and intensity of the use. Combined these are significantly detrimental. He said this Board can deny this petition just on the basis that there is an increase in operating hours (Donovan Drug Corp. vs. ZBA Hingham). He said in 2012, there was a request for a Pilate's studio in a residential district that was denied by Planning – due to the operating hours. He said the planning board also submitted their report regarding this petition stating that, "...the proposed uses should be conditioned to not have early morning or late hours." Mr. Bloch agrees with this. He said the increase in hours alone would have a negative impact to his neighborhood, he said his neighbors agree, he said the planning board agrees and he said the courts agree. He said the intensity is an increase and the petitioner has volunteered to limit the clients at any one given time. However, it is an intensity over what is there now. Mr. Bloch defended his opinion by stating the Writing Company only had 2 employees and no visitors; their impact was minimal. He said the real estate company did not have more than a few clients per week; also minimal impact. He added that the massage business's door was on the opposite side of his house and he could not see it. However, he and his neighbor watched the door for a portion of the day and did not see clients coming and going every hour. He said even if the proposed use is limited, it would still be an increase over what is there now. Five clients a day would be near equal what is there now. Business activity at 6am and 9pm is not acceptable in a residential area. He added that this is significantly more detrimental and does not meet the zoning requirements. People said at the last meeting that there has always been commercial activity at this location and he should have taken that into consideration. However, his house was once located at 195 Mt. Auburn Street – it was built in 1870 and moved to 9 Franklin St. A new house was built in this location in 1893. The house was used as a single-family home until at least 1957. The house was located in the 'Apartment District' at the time it was sold to Mr. Rockefeller, an undertaker and a variance was sought from the Board to run an undertaker business as well as a residence. He operated this business for 40 years. In 1996, a Special Permit Finding was sought by Mr. Younger to operate the Younger Corp and another tenant. He said the SPF was based on the funeral home being a lawful non-conforming use. The funeral home was lawful according to the variance; however, he said this was not a non-conforming use. Mr. Bloch said in 1990, this was defined by Mendez vs. ZBA Barnstable. That court concluded that the use C. 40a, S. 6, (MGL) – a use defined by a variance is not a non-conforming use. Mr. Bloch added that the 1996 Special Permit Finding should not have been granted. He then added that the burden of proving a non-conforming use is on the party proposing the change. He suggested that the board not approve a Special Permit Finding until the prior use be deemed non-conforming and lawful. He believes the prior use is not non-conforming and the proposed use is more detrimental as to hours and activity.

Clyde Younger said Mr. Bloch has gone on record as trespassing on his property without his permission. He will request a copy of the tape of this meeting and the transcript so he can take it to the police to file a complaint. He then asked what is more detrimental – to take down a garage and have the Historical Commission take care of that for you as far as approving it or disapproving it or to have someone like Mr. Bloch that is going around looking at things allegedly in this community.

Robert Vercolone said he has spoken 15 times at these meetings on this property. He said Mr. Younger accused the Planning Board of discrimination and threatened to go to the MCAD about it. He inferred that the neighbors were discriminating against him, as well. He said he has a skating rink in his back yard and the neighbors bring their kids down and people come on skates – he invited everyone to come as he has about 60-70 extra pairs of skates. He thought he knew his neighbors until he started a petition, which

he submitted about 40 names last time. He approached the chair of the board and presented another petition which he said also had 40 names on it. There was only one person in the neighborhood that did not want to sign it. He said he feels bad for the applicant because if this gets approved and they have a business in his neighborhood, the problems are just starting for them. He added that their customers will not be welcome in his neighborhood. Chair Santucci Rozzi stated that the property owners in this area have just as much right as he does. She said the street is in the Town of Watertown and does not belong to him. Mr. Vercolone said the deal about no parking on Franklin Street has been dropped out of the proposal. He said there was a sign that was proposed to be in their offices that said there would not be parking on Franklin Street. He wants to know if Mr. Mena is going to enforce this or will he have to call the police. Chair Santucci Rozzi acknowledged that the board hears his concern and has asked the applicant to address all of the issues presented. The applicant has a right to attempt to satisfy these concerns. She showed the audience a sign that the petitioner presented showing a tow-truck. Mr. Vercolone asked about Otis Street – he said the people on Otis Street are upset.

Roger Erickson, 48 Chester Street said he has lived here for 48 years. He thinks the parking plan will not work and believes it is almost laughable. He thinks the parking space on the (side) front of the house is a statement of defiance. He hopes the board votes it down.

Lee Ann Famolare, Langdon Avenue, 28 years there...said she is in support of the Pilates Studio. She did not understand the contention. She has been a client of Boston Pilates for about 5 years and has gone to the Belmont, West Newton and the Boston studios and they are all immaculate. This is a good group of people. This is a benefit to the town to have a local resident want to live in the business and the area. She said if she saw a sign that said, 'do not park on Franklin Street', she wouldn't park on Franklin Street. They have a lot of parking issues on Langdon and the police need to be notified when it happens. She supports the proposal. Chair Santucci confirmed that she had also received something in writing.

Mary McCarthy, 183 Mt. Auburn Street, an abutter said that this has been going on too long and people are upset. She just wants the board to vote and get it over with.

Steve Parnagian, representing the real estate tenants, said he would like to give a copy of the lease to the board to clarify that the lease is in effect to January 31, 2016. There was some confusion as this lease has an extension to January 31, 2021. The extension is not dated but there is not a dispute that the option has been exercised.

Marie Papadapalous, Real Estate Advisors Group, spoke about their new opposition to the new landlord. She explained that there are inaccuracies with the application. The second means of egress from the second floor is the issue. This issue was in effect with their current landlord. It contains 340 square feet of their reception area. She asks that they pay attention to the interior plans as well as the outside plans.

Mr. Bloch asked a question about the interior layout plan shown in color by Chair Santucci Rozzi. He asked if this was the plan used to determine parking. Chair Santucci Rozzi asked and Mr. Mena concurred that there was a 41 s.f. discrepancy and the table used for parking was updated. However, the parking is still for 9 spaces. 2,706 s.f is correct.

Mr. Bloch said the area in yellow on their plan indicating that it is in use by their tenant, when he was there today, he could attest that it looked like it was in use. He believes if it is in use then it should be included in the parking calculations. Chair Santucci Rozzi said that it is proposed – if it is in use then it could increase the parking calculations but it has not been determined to be used. Andrea Adams pointed to the plan on the screen and explained that the area in yellow is a necessary means of egress for the second floor.

Andy Rojas, Rojas Architectural Design, clarified that the issue brought up regarding the Historical Commission is that they requested that they remove the stair that connected the second floor deck to the lower deck. He asked them what they wanted – He said a member told him that once they have an approved plan from the ZBA, they will approve the plan. They only want a resubmitted plan once approved by the ZBA. Chair Santucci Rozzi agreed that is how planning works.

Chair Santucci Rozzi opened to the board.

Steve Magoon, Director of Community Development, spoke on how the neighbors voiced their opinions on whether or not this is more detrimental and the board will take that into consideration and deliberate on it. He said another opinion by Mr. Bloch is that this is not appropriately before the board – that the case granted in 98/95 was not appropriately permitted. Staff presents this to the board as a build-on to the permit granted in 98/95. The board needs to consider only the application that is before them. There are other venues for whether or not the permit in 95/98 was appropriate. It is not the job of the board to consider case law and make a determination.

Member Cohen said that in the argument on whether or not this is more detrimental, he feels it is more detrimental at least in the manners that the public has mentioned. He does not agree that the Russell Street petition is a good comparison as it is different – a completely residential neighborhood. He understands the concerns about the hours of operation. He believes that there are 6 legitimate parking spaces on this lot, not 7 and the space in the front yard is not appropriate.

Member Gannon said he agrees that the Russell Street petition is not a comparison as this location has a business use that Russell Street did not have. He asked for clarification on Plan A-01 – he asked where the Pilates members will be entering. Mr. Rojas showed on that plan, a side stairway where the clients would enter. Member Gannon explained that the real estate tenant had a concern that the Pilates people would be entering their area. Mr. Rojas stated that they would not be.

Member Gannon suggested that the traffic and parking issues could be petitioned to the Traffic Board. The hours of operation as presented on the 3-page document, Mr. Elefteriadis confirmed the hours: 6am – 9pm M-F and 8-6 Saturday. Last class is from 7-8. Eliminating the 6 am class is difficult as it is a standard time. They suggesting limiting or semi-private clients at that time and it is now changed to a single client at 6 am – up to 3x per week. Atty. Brodigan said the difference is that the type of class changed at 6 am from the initial public class to a private session (one person). The activity would be one instructor and one client at 6am, three times per week. He added that clients sign up for a class on the website and one thing that will be prominently displayed will be a prohibition of parking on Franklin Street. Staff will monitor the parking on Franklin Street. They have heard the neighbors loud and clear – there will be no hiding from this and there is very little room for error. It is in his client's interest to be vigilant.

Member Gannon asked about the hours of operation of the massage parlor - that prior clients were taken up to 11 p.m... Atty. Brodigan said he heard that there were clients coming and going at all hours – constant and frequent. Mr. Elefteriadis said there was an illuminated 'open' sign that stayed on, as well. (There was an outburst from the audience that was quickly put under control) Mr. Elefteriadis continued and said the sign was on 24 hours and the person that was arrested was staying there – they had a rice cooker. They are trying to clean up that corner. The illuminated sign will be removed. He showed a rendition of a sign that he may propose and said it would be within the requirements of the ordinance and tastefully done. It will not be illuminated but it may have a little light on the ground.

Member Gannon said he has never been in a Pilate's studio and wondered who the clients are. Mr. Elefteriadis said they are articulate, warm, caring people that care about health and wellness. Their model is a perfect fit for the Community Based Health and Wellness – more businesses that encourage walking and biking and using more greenspace. Attorney Brodigan said this is not a drop-in center where you pay your dues and show up – this is a sign-up class. If the class is full, you cannot go. You do not have people just showing up. This is how they control the number of people coming to the classes. Mr. Elefteriadis said there are no showers or locker rooms; it is very calm and relaxed. It is a stretching, etc. There is no loud music – maybe classical without words as Pilates is about cueing to get people in the right position. He added that the Pilates industry and the clients are a specific breed – they listen to instruction for 50 minutes. There is a discipline – they wipe their own machines, leave shoes outside, wear socks, leave cell phones, etc. He has never had a problem with the rules. His determination to exhibit this discipline – he may purchase a tow-truck. Receptionists are encouraged to take public transportation. They are usually younger and do not have a car. When he hires their trainers, they ask

that they do not drive. They will continue to encourage that. There is a large area to park on Mt. Auburn Street. His parking plan is a huge improvement to the prior ones. Member Gannon noted that he takes the bus in front of this building almost every day. He will reserve other comments for after.

Member Heep stated that the parking is on the Franklin Street side but the business is fronting on Mt. Auburn Street – with entering and exiting on Mt. Auburn Street, except to get to their cars in the back. There is public parking on Mt. Auburn Street, an MBTA stop directly in front, and heavy traffic that this property has always experienced. He confirmed that the 6am time slot with one client, three times a week will not have a noticeable impact on the neighborhood. He remains supportive of this project and does not believe it is more detrimental.

Member Ferris stated that the funeral home started in '57; changed to a different type of use in '95 and '98 and asked when the real estate business went in. Mr. Elefteriadis said it began in February 2012. Member Ferris asked if it is more sales or rental. Ms. Papadopoulos said they do both. There are four employees there and three others that work from home. They work off-site a lot. Their hours of operation are from 8 – 6 M-F, 9-5 Sat/Sun. Their doors are not open off-hours but they may be there. They do not 'man' those hours constantly but there could be one person or no one. At a closing, there may be up from two to eight people. A lot of these things are done out of the office.

Member Ferris asked Staff about the 'more detrimental aspect' and if there were limited hours of operation in the previous decision. Mr. Mena said there were no conditions on hours. Mr. Magoon added that in the minutes there were discussion but not a condition. Member Ferris asked if the Pilates studio goes out 20 years from now, will the board go through this same process. Mr. Mena said that a change in use would trigger this process, i.e., a change from Pilates to a doctor's office. If another fitness company moved in, it would not have to come back to the board.

Member Ferris asked about the 4' buffer and if the site plan in 1995 or 1998 had a buffer. Mr. Mena said there was not a buffer shown, and that file plan also showed parking along side of the garage.

Member Ferris asked about the Tenant B space on the plan #A-01, with a restroom. He then said the lease doesn't have a date, a letterhead, etc. He asked if there is an area of a common foyer and does the Pilates studio require full accessibility. Mr. Royas said that full accessibility is not required for the Pilates Studio. However, the new restroom is required to be fully accessible. Mr. Elefteriadis said that is based on the modifications – the total assessed value of the improvements, according to the Architectural Access Board.

Member Ferris asked when the sessions start with the five clients. Mr. Elefteriadis said 7 am. – he referred to the sheet showing the hours. He added that the 6 and 7 pm classes also have five. The last clients leave around 8pm – although they may linger a bit.

Member Ferris asked if they would tell their clients that they have to park on Mt. Auburn Street after the real estate office hours began at 8 am. Mr. Elefteriadis said he has done everything that the staff and the board has asked him to and the clients may park on Mt. Auburn Street anyway. Atty. Brodigan said the client at 6am would most likely park at the site. Member Ferris reiterated the hours of operation for the Pilates and then stated the massage and the writers were quite random.

Member Donato clarified that the real estate office has two parking spaces on site. She asked for clarification on the parking plan and discussion with the real estate group. Attorney Brodigan said that the discussions have been regarding the common space; a 340 s.f. area. And there hasn't been an agreement with that. The real estate is entitled to two spots according to their lease and the residential will have their own two spots along the side of the house, tandem. The spot on the yard is designated solely for the Pilates and the remaining spots will be for the real estate on a first come, first serve – he hopes the first person will move to the first spot, etc. Mr. Elefteriadis said that he expects they will resolve any differences they have – 340 s.f. – if he could put it (on the lease) now, he would. He said he asked the town if he could do that and they said no. Chair Santucci Rozzi added that a second means of egress

is more important than what is in the lease and she hopes that all of the professionals in this room understand and respect that.

Member Donato asked if the schedule allows for breaks between sessions. Mr. Elefteriadis explained that each session is 50 minutes – starting on the hour and ending at 10 minutes before the hour.

Chair Santucci Rozzi stated that she understands what is happening at 6:00 a.m. (only one client) and there will be up to 5 people at 7 a.m. and up to 5 people at 6 & 7 p.m. and people may linger a bit longer at the last session of the day. She questioned keeping the studio open until 9 p.m. It was clarified that the last class begins at 7:00 p.m. and they may be cleaning up the studio until 9 p.m. She focused on traffic – she does not see the volumes that people have raised. She asked what happens between 7 am – 6 p.m. Mr. Elefteriadis said there will be single and duet (two on one) sessions. Chair Santucci Rozzi created a worst-case scenario of 12 hours at 3 people an hour, there could be 36 possible clients. Classes have 15 people (3 classes at 5 people; 1 person at 6 am and then 36 in between for a total of 52 people per day. Mr. Elefteriadis does not expect to see 52 people in autos per day. Chair said if that if they used the worst-case scenario of 52 (cars) and spread it out over 15 hours in a day it ends up being 3 trips an hour, which is negligible.

She said she has other notes and would like the board to prepare to vote. She asked if the board had other questions. Member Cohen said the real estate office has two parking spaces and the residential has two parking spaces - it seems they would most likely park on Mt. Auburn Street, where the entrance is (most convenient). He stated that Mr. Elefteriadis will be living there and enforce the parking. Mr. Elefteriadis. said he would be located here for the duration of the studio hours.

Member Heep asked about the planting plan – are they proposing a fence on the property line. Mr. Rojas said the fence is an 'L' shape, starting at the end of the property on Franklin Street, around the rear of the property and then along the side to the front of Mt. Auburn Street. It will not be along Franklin Street. It will be a 6', shadow-box solid wood fence, alternating slats, stained to work with other wood features on the building.

Member Ferris appreciates the parking diagrams. His concern was backing out of the property. He asked to mount a few smaller signs requesting that people not back out. Just to remind people – at each entry and at the rear of the building. On the Franklin Street side of the fence, he asked that it be tapered down. Mr. Mena stated that there is an ordinance that the fence cannot be higher than 3' along the first 15' of fence, if abutting a driveway.

Dennis Duff, asked if there is a fence along side of the driveway, how you get out of the car. Chair Santucci Rozzi showed a diagram with a car facing toward the garage, along the rear of the property and the door was open, showing the driver could easily get out.

James Morris, said that they compare existing use to proposed use and they use the massage parlor and what was going on there and 'we' are supposed to compare permitted use to proposed use, not illegal use to proposed use. If there were things going on with lots of clients at all hours, which was not the case as he lives in the neighborhood, that is an illegal use and you cannot compare that. Chair Santucci Rozzi said it is a good point but it was happening. The massage parlor was permitted. Mr. Morris said that she referred to the street with lots of traffic and that is true as there is a bus stop in front of the property. He said to be precise, the traffic is concerning going in and out of this building. There will be more use to the building. She used the number 52, he said 70. There isn't anything close to that now. It is more use. People will park on Mt. Auburn Street as that is the best place to park but it fills up with that military thing and he said the over flow will spill on to Franklin Street. Chair Santucci Rozzi asked if there were a lot of people parked in the driveway. Mr. Morris said no one parked in the driveway. He said there are two cars parked on the street all day, every day. Chair Santucci Rozzi said the space could have been rented to 10 CPA's; however, they do not know where they were parking. Mr. Morris said there is an increase from 10 to 52 (vehicle trips). Is this more or less detrimental and why? He said if you go from 10 to 50 and extend the hours and put parking on the lawn, this is more detrimental. Chair Santucci Rozzi commented that that is his opinion. Mr. Morris said those three points are not an opinion, they are more

detrimental. He asked specifically if increasing the hours was more detrimental. Chair said it is his opinion that it is more detrimental – just an increase in hours does not represent something that is more detrimental. All the facts of a petition have to be considered.

Jonathan Bloch said that Mr. Elefteriadis will not be living there. They are evaluating what is more or less detrimental by what is on the ground now. He said what is on the ground now is the illegal massage business, a voluntarily made vacant Writing Company, a vacant residence and they can say that the real estate business can have an exclusive use as there is no second egress required at the moment. There has not been bodies in months – it is irrelevant. The lease for the real estate specifies two parking spaces, zoning clearly says that based on the square footage that they need three spots. They use the square footage and there is no issue with the second egress. If the new owner wants to put people in the residence, he cannot do that because there is no second egress. The use now, and by an spf in 1996 and amended in 98 there was an agreed parking. The real estate business has taken over in the entirety and magically, the parking requirement has been reduced because a new use has been proposed. The new use expansion can be decided if it is more or less detrimental, tomorrow the use can expand as there is more space in there. He believes that is as of right to expand. There is nothing to stop them from expanding into the space.

Mr. Mena said to clarify, the numbers changing from one to five doesn't make it detrimental. A use can be modified by special permit finding, can be extended and intensified as long as it is found that it is not more detrimental to the neighborhood. Just a math equation does not make a special permit finding through zoning automatically denied. He said that Mr. Bloch has submitted court cases stating that requests can be denied and similar cases have been denied but it is not based on this alone. He added that there is another question on what is on the ground now vs. vacant spaces. There is a residential use that can be used tomorrow as well as office space. They have to look at the proposed use vs. a fully occupied building with currently permitted uses. The third point being that the Pilates studio could be expanded by right after this is approved is not accurate. They would have to come back to the board to expand or change their use.

Mr. Bloch said he has two points. The massage therapy seemed like it was used as testimony with a 24 hour sign that took him a year of documented complaints to Mr. Mena before the sign was turned off. The fact that the sign was on and the residents were using the space cannot be used as justification that there was business going all day long. The second point was that someone asked when the real estate use came into being and the real estate company had to be asked because they did not come before this board. There is the three-prong powers test to see if a use is similar. He said Mr. Mena refused to review the real estate business to see if it was a change and now he is saying that further expansion has to come before the board. Mr. Mena clarified that he has sent Mr. Bloch a letter explaining the difference between a change in use and a change in user. Change in use from office to office or change in user from Clyde Younger Corporation, office use to real estate office use is the same. A Pilates studio with a name of Clarkes Pilates Studio to Mike's Fitness Gym is the same. Mr. Bloch said if they reviewed the prior decision, they would see that it is different, just as the hours from 8:30 – 5pm.

Chair Santucci Rozzi closed the public hearing.

Member Donato commented that she acknowledges that there will be more vehicle trips; however, the combination of the proposed new parking plan as well as the reconfiguration of the parking spaces in the driveway will encourage more people to park in the driveway than has happened in the past. It is helpful to have the 10 minute break in between classes to avoid a client overlap.

Member Ferris said the hours of operation are very similar to what has been going on at the site now as far as use 7 days a week and a primary concern has been safety of kids on the sidewalk and the backing out. He appreciates the diagram to be able to turn around in the driveway and drive out. He was able to test the theory himself and it will be greatly improved with the garage removed. He said there will be more people entering the building during the day with the consideration that it is right on Mt. Auburn Street – it is not a more detrimental scenario with the Pilates studio compared to what is existing now.

Member Heep reiterated his earlier comments on this proposal compare to what exists: the hours of operation are controlled and well defined to minimize the impact the users of this sight will have on the neighbors as opposed to uncontrolled hours of operation now; the parking situation is not good now under current permitting conditions and the proposal is the best that it can be considering the site constraints. The 6' fence to separate the site driveway to the nearest abutter will mitigate any impact to the neighbors on that side. There are a lot of proposed improvements – the landscape plan looks good, the new owners have proposed to improve the property in many ways to visually improve the property. He wants to take into consideration that the entry to this property will be mostly by Mt. Auburn Street.

Member Gannon concurs with the board members and supports the proposal. It is no more detrimental and it is a good project. The petitioner is conscientious and is willing to work with the neighborhood and has been upfront. The proposed use has brought an engineer to show what a turn-around could look like on the property. He knows real estate and closings and it is not an intense use. The clients of the Pilates studio will not do anything deleterious to the neighborhood when they are done with their business there. If the large condo building on Otis Street had come before the board, he would have said no. There is another Victorian house with offices in it that has no parking on the site. He mentioned other businesses in the area that are out of large homes. This project would be a benefit to the neighborhood in many ways. He looks at it not detrimental. He is glad that the town stopped zoning to be allowed on large corner lot homes on small lots. He will be in favor of this petition.

Member Cohen asked if there is street parking on the west-bound lane of Mt. Auburn Street (there is no parking on that side). He suggested that a condition be placed stating that a parking space be not allowed in the front yard – he feels it would be a deleterious effect on the neighborhood.

Chair Santucci Rozzi said she has never seen a petitioner eliminate three non-conformities. The side yard setback will become compliant; the rear yard setback will become compliant and the removal of the excess structure will bring the property into compliance for building coverage, which is an important one. The overall footprint of the structure is being reduced; accommodate the porch and the additional improvements within the existing footprint. There is a huge improvement to the non-conforming parking; the circulation of the spaces and compliant aisle width of 20' (with 34' to the property line). The number of spaces was never to be compliant going forward, they are short two spaces. She added that they are improving the open space, the quality of the open space, landscaping and storm water improvements and they are decreasing the number of businesses from 3 to 2 and almost a 1,000 s.f. reduction from 3,614 s.f. to 2,700 s.f. She said all of these are substantial improvements on a constraint site. The parking space on the lawn is not ideal; it is grass-Crete and the landscaping will hopefully provide for some screening. They are not adding pavement on front lawn even though that is seen in the neighborhood. She has a list of conditions and updates to the proposed conditions. A lot have been mentioned by the neighbors. She referred to the Planning Board report and the condition #2: The parking spots should be numbered and striped ("T" stripes showing where the space begins and ends); The two spaces will be designated for the residents and one space for Pilates (new condition); Bike rack on plan; Spaces numbered tastefully on the ground along the fence – and post signs that state, first person gets space number one, 2nd person, space 2, etc. providing an understanding of how the parking works. People will get into a rhythm. No preference to the numbering and the residential spots do not have to be numbered. It is noted that there is not to be signage that draws attention to the property and it is preferred that the autos turn around and drive off of the property. She said Condition #3 (B) is about the landscape buffer. The existing conditions plan (with the garage) shows the closest point at 2.7' and the back corner of the garage is 4.96' – the full length is not 4'. The condition should be revised to be 2.7' (existing) up to 4' as there are some sections proposed at 4'. It would be maintaining the non-conforming buffer to the dimension that exists now. Condition 3 (D) talks about the waste removal. Ms. Adams stated that they have a section shown on the plan. Chair said there is one receptacle for recycle and one for trash and asked if they are eligible for town pick-up. Mr. Magoon stated only the residential portion is allowed to have town pick-up. Chair Santucci Rozzi said they would be better off just getting one. She continued with the next condition: Snow storage should be stored on site not to impede any circulation or parking, which will limit the storage on site; however, the petitioner submitted a letter stating they would haul it off site. The condition should reflect those intentions. Condition #4, Hours of Operation – she would like to

have a submittal of the hours less detailed than what they have now - '6 am, one person; 7 am, 3 people, etc., Monday – Friday, teacher training, etc. and the worst-case scenario. The last 50 minute class can start no later than 7 p.m.. Saturday and Sunday, 8pm – 5pm (identical to the real estate). Condition # 4(B) and she added 4 (D) – The interior space shown on the plan cannot be subdivided into more tenants. The maximum number of businesses shall be two in that square footage (2,700 s.f.). Any more (commercial tenants) would change the characteristics of this site.

Chair Santucci Rozzi said her other concern is that the person living in the residential unit has to be the person operating tenant space B. Mr. Elefteriadis said he wasn't planning on living there. Member Gannon said he is not sure if he supports that. Chair Santucci Rozzi said she wants to understand it as him living there and running the studio vs. him not living there and running the studio. Member Gannon added that the board has never had a condition like that. Chair Santucci Rozzi checked in with the rest of the board and there were no members interested in discussing this further.

Chair Santucci Rozzi continued with the rest of the conditions: #5, plan modifications; 6, applicable codes – she is proposing conditions #7 – 12. #7, no outside storage, display or activity. The outside is not to be used for any type of activity that is taking place inside of the building. #9, TDM, Car-pooling, green bucks or a condition that included these types of things into their culture. The Petitioners appear to be in tune with that; however, she is reiterating their importance. Next Condition – annual review, come back in a year. We've done this a couple of times in the past and it is helpful to review any issues by the petitioner. #11 – Franklin Street to be restored the area used by parking – and the appropriate town authorities. She defer to staff to write that – restore the curbing, the grass – whatever was destroyed by previous people parking there be restored to have a nice curb appeal at the corner. Only this side of the street. She also had a note about the fencing but that is in the ordinance. She will default to staff to update the plans and they have received a bit of information and all of the other materials – the culture about the facility; the green policies, etc. should be included in the control documents as they mean something. She said the Petitioner wants to do this right, wants to make it better for the neighborhood. This will be a change but no one liked what was going on there previously. She said there are issues with the real estate company but hopefully those will be worked out. Anyone who comes to this site needs to know the scrutiny this went through by this board and needs to adhere to the conditions of this board and work with the property owner as a tenant – and whatever he is putting forward is because of this board. The animosity created in the neighborhood is unfortunate but she added the new owners have put in a lot of material and time to show how they care. She encourages everyone to be respectful and sensitive and everyone has the same rights as everyone else on this street in Watertown.

Member Ferris clarified that the variation in the setback is regarding the buffer – he pointed to a property line on a drawing where Chair Santucci Rozzi agreed she had indicated earlier. Chair Santucci Rozzi said she is talking about the westerly side property line. There is nothing on the Southerly line. The plan will need to be tweaked 6" or so to make that carried forward (behind the garage).

Member Ferris said the potential of a condition regarding signage at the entry points of the building that no one back out – forward drive off of the property. He appreciates the neighbors comments and he looked at the petitions that were signed – some of the same signatures on both petitions. One petition states that it is 'not in favor of approving the request for change of use' and last month they received something stating that the building should be turned into residential use as soon as feasibly possible. He added that there are no neighbors that have lived in this area before this building has some type of use – funeral or other. So this has been a long-standing condition.

Chair Santucci Rozzi said that the board had other comments in addition to the audience comments in favor and in opposition. There is a couple of documents from the real estate agent; 5 written comments in support.

Mr. Magoon asked for a clarification of no further division of the square footage based on the square footage of the control plan based on the January 19, 2016 drawing. Chair Santucci Rozzi added that she only wants two tenants.

Mr. Mena stated to Member Ferris that a condition stating that there only be forward driving out of the property would be difficult to enforce. Member Ferris said he only asked that the signage be put up to suggest turning around and driving off the property – not that it be a requirement that they do that. His primary concern was backing out, not the quantity of space.

Member Gannon said he feels the conditions are appropriate and he is ready to vote.

Chair Santucci Rozzi said they are ready for a motion. Someone called out from the audience. Amy Cant said she heard they were going to monitor the property but how are they going to do that if they are not living there or there be a resident oversight. Chair Santucci Rozzi said the owner of the Pilates studio stated that he will be there during all operating hours of his business. Ms. Cant wants to know if that is a condition. Chair Santucci said that is not a condition – the petitioner and his wife have people working for them and she is certain that they will have them monitor the property when they are teaching a class.

Chair Santucci Rozzi said they are breaking all of the rules tonight and allowed someone else to come to the podium to speak.

The wife of the petitioner wants to reassure the neighbors that they run their business quietly and they are there almost all of the time with great managers.

Member Ferris motioned to allow the special permit finding based on the number of conditions discussed this evening for the property at 1295 Mt. Auburn Street. Member Heep seconded. Members Santucci Rozzi, Ferris, Heep, Donato and Gannon voted in the affirmative, 5-0.

Tape: 3:16:40

Chair Santucci Rozzi requested that all audience members not affiliated with the upcoming agenda, to please leave the room.

Chair Santucci Rozzi announced the next agenda item is a continued case on 124 Watertown Street, a TCA variance.

Victor Manugian representing Verizon Wireless introduced Tim Yee, Structure Engineering Group and Jose Xavier, Hudson Design, Martin Lavin, C-Square Systems. He mentioned that they had emailed plans earlier and distributed them again tonight to address the issue of the board regarding lighting. This plan has removed all lighting. They also addressed the issue of requiring 16 antennas and found after investigating that they can work with 8 antennas – a little weaker but it takes care of their gap issue.

Martin Lavin addressed the other sites in question. All of the sites have been updated to AWS standards in the past year. They will address the other issue of the board requesting feasibility of going to 4 sectors at the other sites – Newton Silver Lake; Newton North and Newton 2... He said Silver Lake is a flagpole stealth tower there is no room for a 4th antenna on the sector – not feasible. Newton North does not have any room – it is an assisted living facility at 430 Center Street called Evans Park at Newton Corner. They have two false chimney's on the roof and there is no space for more antennas. Newton 2 is a mile from this site and only 50' above ground level. It is not in an area they are looking for. He explained that there are more technical aspects; however, Chair Santucci Rozzi stated it was not necessary to get into that. She said she wanted to know what was around; what was updated; what had capacity and how many antennas can they live with – now it is half.

Member Gannon asked if they are going from 16 antennas to 8, where are the other 8. Mr. Lavin said they eliminated 8 – they can function at this level without loss of any bandwidth or flexibility.

Member Heep asked the attorney about the availability of being able to install antennas as of right. Does the board now have to approve other antennas by right for a use variance, under the 2014 changes? Attorney Manugian said that under the Federal requirements, other carriers have the 'as right' ability to add antennas to this site – whether they be on a structure, rooftop, bay stations, etc. Under the Federal

law you should only be required to file for a building permit. They have not had much luck doing that. Therefore, they simultaneously file for a building permit and whatever the ordinance in the municipality requires.

Mike Mena said that Staff has the ability at the Building Permit level to decide whether or not the request fits the criteria. They have the ability to require a Zoning Board review if they do not provide the proper screening through the Special Permit Finding.

Member Gannon said that he was instrumental in formatting ordinances for the 1996 TCA and asks Staff if the 2014 Federal amendment ameliorates the zoning ordinance. Mr. Magoon said the Watertown Zoning Ordinances for Wireless Antennas is outdated and they should take another look at updating that.

Member Ferris said that his concerns were regarding the equipment at grade and being too close to the fire escape and other required exits. It has been switched to the other side of the building and he is all set.

Dennis Duff, 33 Spruce Street, also the Head Trustee of the Aldrich Condo Association, which is very close to this building. The Aldrich Condo Association would like to go on the record as being against this petition as they fear health concerns. He added his disappointment in the town selling this former elementary school. He hopes the board will look further into updating the ordinances to not allow these in the town – due to health.

Chair Santucci Rozzi closed the public hearing, stated the Planning Board heard this case back in October and there has been substantial changes to the petition since then – now going from 16 antennas to 8 antennas as well as other submittals showing proof of the need for the antennas at this location. She will entertain a motion.

Member Ferris motioned to approve the TCA Use Variance. Member Heep seconded. Voted 5-0 with Members Santucci Rozzi, Ferris, Heep, Donato and Gannon voting in the affirmative. Member Cohen, as an alternate did not vote.

Member Gannon motioned to adjourn. Member Heep seconded. Voted 5-0. The meeting ended at 10:25 p.m.