

MINUTES

On Wednesday evening, **April 30, 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*; **Stuart J. Bailey**, *Member*; **Deborah Elliott**, *Member*; **Richard M. Moynihan**, *Alternate Member*; **Gregory Watson**, *DCDP Director*; **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk*; **Joseph Merkel**, *Senior Planner*. Absent: **Carlos Fernandez**, *Member*.

Tape 1 of 3, Side A

Chair Vlachos opened the meeting at 7:10 p.m., introduced the board noting that Richard Moynihan will be voting this evening, and asked for a motion regarding minutes. Ms. Santucci motioned to approve the January 30, 2008 minutes as written. Ms. Elliott seconded. Voted 5-0 to approve. Mr. Moynihan motioned to approve the minutes of March 26, 2008 as written. Ms. Elliott seconded. Voted 4-0 to approve, Ms. Santucci abstained.

Chair Vlachos motioned to go into Executive Session. Ms. Santucci read a role call vote for executive session with all members voting 'yes'. Chair Vlachos explained to the audience that Executive Session has been called to discuss the issue of pending litigation and the regular meeting of the ZBA will reconvene.

The regular meeting of the ZBA reconvened at 7:50 p.m.

Chair Vlachos changed the agenda order and requested a motion to continue the **Palfrey Street Lot** case per request of John McGeourgh, Petitioner. Ms. Santucci motioned to accept the request for continuation to May. Ms. Elliott seconded. Voted 5-0 to continue to May.

Ms. Santucci read the legal notice of the first case for the record:

Richard & Laurel Corelle, 24 Hall Avenue, Watertown, MA, herein request the Board of Appeals grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structures, Side Yard Setback; **Variance** in accordance with §5.04, Table of Dimensional Regulations, Maximum Building Coverage so as to permit the addition of a rear bay window 3.5'x 10.8', located 7.5' from southerly lot line, where existing house is non-conforming at 5.8'-6.2' and where 10' minimum is required and further increases non-conforming building coverage from 30.8% to 31.4%, where maximum 30% is allowed at **24 Hall Avenue**, located in the T (Two-Family) Zoning District.

Laurel Corelle, Petitioner, stated that the addition of the bay window is de minimus and hopes to be able to have a table in her kitchen.

Chair Vlachos read the planning board report where it was voted to approve both the variance and the special permit finding.

Mr. Moynihan said that it is a de minimus request and noted that staff mentions the first criteria to the variance regarding shape, topography or soil conditions of the land and there is nothing special about the lot. Also, Timothy Lund, Architect writes in the statement that there isn't anything peculiar of the lot other the existing non-conforming status and the undersized lot. He has concerns regarding meeting the variance.

Mr. Merkel added that the requirements of the variance were marginally increased upon.

Chair Vlachos noted the lot is somewhat elevated and that could have an effect on the way the structure was sited on it. He said that the project requires both the variance and the special permit finding. He questions the minor variations in lot coverage regarding cases like this and wonders if things are measured properly. We are dealing with 10ths of percentages and due to the de minimus nature of this, he feels there are topographic issues as the house is sited higher off the street, he would be in favor of granting both forms of relief. Ms. Santucci agreed and the addition is so modest and it is clear that the applicant is not trying to severely exceed the preexisting non-conformity with less than 1% increase and this is de minimus. Chair Vlachos noted the conditions from the Planning Board as standard.

Ms. Santucci motioned to grant the Special Permit Finding for the alteration to the non-conforming side yard setback with the conditions set forth by the planning board. Ms. Elliott seconded. Voted 5-0 SPF granted.

Ms. Santucici motioned to grant the variance for lot coverage for .6% increase finding that it is de minimus. Ms. Elliott seconded. Voted 4-1, VAR granted, Mr. Moynihan voted against.



TOWN OF WATERTOWN

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Tape 1 of 3, Side A, Continued

Ms. Santucci read the legal notice(s) for the record:

Michael J. Penta, Trustee, Penta Auto Body Company, Inc., d/b/a Perfection Auto Body, 483 Pleasant Street, Watertown, MA herein requests the Board of Appeals to **Amend Special Permit #92-18** granted November, 1992 and **Amended SP #01-28**, granted July, 2001 to reconfigure the exterior parking of two former B&M Railroad properties permitted for a maximum 122 vehicle storage and allow for an increase to 169 vehicle spaces in the rear of **483 Pleasant Street**, located in the I-3 (Industrial) Zoning District.

Michael J. Penta, Trustee, Penta Auto Body Company, Inc., d/b/a Perfection Auto Body, 483 Pleasant Street, Watertown, MA herein requests the Board of Appeals to **Amend Special Permit #98-47**, granted January, 1999 for Motor Vehicle Body Repair so as to increase number of indoor vehicle storage from permitted 10 to 31 spaces at **10 Bridge Street**, and further amend Conditions #8 & 9, where maximum of 7 vehicles is permitted in front of 483 Pleasant Street building to allow increase number of vehicles to 18 vehicles, located in the I-3 (Industrial) Zoning District.

Dave Sheehan, representing the owner, stated he has worked for the past four months configuring a parking plan to meet the demands of the business at both addresses. He spoke on 10 Bridge Street, stating that the building is entered in the rear and it is where the body work is done. There is also parking for indoor storage

for Police investigation or a high-line car that requires inside parking. He then discussed the old B&M property stating that is 920' long and an average of 50' wide and used to park cars waiting to go into the shop, cars that are towed and cars waiting service. The front of 483 Pleasant Street is where the completed cars are parked waiting to go into the paint shop and the service cars are parked on the westerly side. They've made changes to alleviate problems with the traffic by moving the body shop office to the other side of the building to separate the body shop and the service area; they've put barricades up in the lot to make it less open and they've marked the entrance and exit to help with the flow of traffic.

Ms. Santucci said that she has driven by this site since she was a child and there is always more than 7 cars there. The place is a mess with cars backing out on to Pleasant Street and there isn't any order. She can not imagine another vehicle parked there. Mr. Sheehan said they have reconfigured the back lot and have designated areas for work. As soon as a vehicle pulls into the front, it is moved out. The barricades they put up has helped tremendously.

Chair Vlachos asked what Mr. Sheehan's role in this is. Mr. Sheehan stated that Mr. Penta approached him four months ago as he was having licensing issues and since he had owned his own auto business for 15 years, Mr. Penta asked for his assistance to organize the parking. Consulting is not something he does for a living, but he has been in the auto business his entire life.

Ms. Santucci asked what the aisle width distances were for the front layout. Mr. Sheehan said that the entrance is 22' wide and the exit is 22' wide. She asked about the stacked spaces that are on the street. Mr. Sheehan said on the westerly side there is a landscaped island with trees and shrubs and behind that is where the service cars park. In the middle there is another landscaped island and the 2 spaces on the opposite side of the island are for customers coming in. They are proposing another landscaped island on the easterly side. Ms. Scott mentioned the revised landscape plan. Mr. Merkle said that staff spoke to Mr. Sheehan regarding revising the front layout and since vehicles enter from the front of the building, it would require a minimal amount of maneuvering space. They looked at what they could use the front area for and came up with additional revisions.

Ms. Elliott said they have a permit for 7 autos to be parked in the front and when she drove by this afternoon there were 25 or 26 autos parked there. She said if the board allows 13, what will stop them from parking 25 or 26. Mr. Sheehan said that the idea is to fill those spaces with cars that are ready to go into each area and leave the middle open. Right now there isn't any rhyme or reason for the front. There aren't any lines to show people where to park now. Ms. Elliott asked if the cars are parked there by the employees, will they need lines to know where to park. Mr. Sheehan said they are looking to work this out. Ms. Elliott asked why that policy hasn't been worked out now since there are to be only 7 cars parked there. Mr.

Sheehan said it is always busy and you can never tell how many cars will pull in at the same time. The cars are moved within an hour. He said he put up jersey barriers because cones didn't work (to limit the cars pulling in). Ms. Elliott questioned where the cars went on the westerly side of the barriers. Mr. Sheehan said it is complicated but when a car comes in for body work, the car is parked on the easterly side of the property until it is moved inside the 483 Pleasant Street building. It then goes out and around and now it can pull directly in line in one of the 6 spots to go into the paint booth from the front of 483 Pleasant Street. From there it goes into the back yard and there are additional steps. The effort was to keep cars off of the street and that is working.

Mr. Vlachos said he would like to see a parking engineer get involved with this. There are cars strewn all over the front. Mr. Sheehan asked if he needed a professional at the start and he wanted to approach it from his experience. He straightened out the yard and asked the police to do a re-inspection of the property. They are in line with what the license should be. He then looked at the entire yard to alleviate the problem in the front. The front lot is 10x better than it has been and people are commenting positively as they know where to go now. He has talked to the fire department about parking in the rear and by simulating what would take place in the back by setting up 50 cars, Captain Walsh gave a stamp of approval on the plot plan.

Ms. Santucci said the 2001 control documents show the 7 spots that were supposed to be striped and then there is a report that shows the excess – vehicles parked all over the site. She is concerned that none of the previous conditions and control plans have been obeyed by Perfection Auto Body and now they want to park more vehicles. She is reluctant to allow anything further until something can be demonstrated that they will follow the conditions that have been in place already. She doesn't see any turning radius's on this plan nor where the tow trucks and flat bed trucks will drop cars off on Pleasant Street. Mr. Sheehan said the only time a tow truck in on the property is when they are dropping a car off and that is very seldom – they don't go in there. He said they go into the back yard by entering from the gas station next door. Occasionally, they will drop a car off in the front if it is inoperable. Ms. Santucci asked how they would maneuver onto the site. This site can not handle the business that is going on here – it is too much. She is disappointed that none of the conditions have been followed and asked what type of emergency access there is if there are 284 vehicles on the lot and there are only supposed to be 159 – she eliminated 40 more for the snow during the time of the report, and said that it is still 60 extra cars on the lot. Mr. Sheehan argued that the fire department said they have a safe entrance and exit with spaces for 169 cars on the B&M property and they have a plan that says they can fit those cars, they are trying to solve the problem.

Mr. Moynihan said the prior relief granted by the board in 2001 stated a number of cars that were to be on the property and it was ignored. He has lived here all his life and there has always been an excess of vehicles. There has been no demonstration

of an ability to abide by what has been agreed to previously. There is no reason to believe that that a request for more vehicles on the property would be abided by either. Mr. Sheehan said the difference now is that they hired him and their business has grown from 2001 when they only had 4 people doing body work and now they have 10. He stresses that the business can work on this property with his plan. Chair Vlachos stated that when a petitioner is looking for relief and they are not in compliance with existing orders it will just exasperate the problem by giving more relief. He suggests the business become compliant with the existing permits, then see what is needed beyond that.

Mr. Sheehan said that he has shown his plan to everyone in authority and they say it will work. Mr. Vlachos said if you have a plan to build 50 units on a lot of land, the Fire Department may say it is within fire code but it may not comply with zoning. Ms. Elliott said the fire department may have established that a fire truck can get in and out but there isn't a turning radius or any dimensions done by an engineer on this plan - are they considering pedestrian circulation and other circulation that could be dangerous. Mr. Sheehan said the main plan was done by an engineer and the secondary plan was done by him and to scale. Ms. Elliott questioned how the cars in #12 and #13 back out as they are blocked in. Mr. Sheehan said the cars are moved by employees and when #6 and 11 move out, those can move in.

Mr. Bailey said there were 19 cars in the front of the business after business hours. Mr. Sheehan said the gas station is separate but people drop their cars off at night in that lot. Mr. Bailey said there were 2 tow trucks backing into the back lot. His opinion said he cares about the cars in the front of the lot – not the back. There was a car with two flat tires there over a week and other cars in front are untidy. He asked where all employees park (in the rear) and suggested that all cars get moved to the back – no matter when they are dropped off. He suggested barricading the entire front so there are not any cars dropped off in the front. They can bring the cars around from the back in the morning and move cars around during the day.

No one spoke from the audience.

Chair Vlachos suggested that this be continued until the petitioner can get a better grasp on what is happening in the front of the business and conform to what has been approved on the existing permit. Mr. Moynihan said that the concerns are regarding the front of the property and how it looks – it has been overloaded for years. Currently, it is approved for 7 cars and he would like to see the number closer to 7 in the front rather than the 18 they have requested - the business can look a lot better than it does now. Mr. Sheehan said he believes the problem is in the front lot and questioned if they can do anything with the rest of the plan in the rear that no one sees – organize it like 10 Bridge Street. That would help him to get the front of the lot organized.

Mr. Moynihan suggested that he request a continuance and work with Staff to come up with something better for the front. Ms. Scott asked if they are looking for a template for turning radius'. Ms. Elliott requested it for the front and a minimum of dimensions. Ms. Santucci asked for the engineer's stamp on the revised, proposed front. Ms. Scott said they want the Essex Engineering plan and design the front. Ms. Santucci said that stamp is by a land surveyor and he is certifying what is there – not the layout or stating that the radius' will work. Ms. Scott said the alternate plans were done by Staff and they will work on the template for the front with dimensions for the island, etc.

Ms. Elliott asked if they can be in compliance with the permit first. She drives by the location twice a day.

Ms. Santucci said that it is possible that other conditions from the permit have not been met and she would like to see all of the conditions satisfied. If there are any other businesses running from this location, condition 14 should be enforced.

Mr. Moynihan motioned to continue. Ms. Elliott seconded. Voted 5-0. Continued.



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Tape 1 of 3, Side B

Ms. Santucci read the legal notice:

Jennifer Van Campen, Executive Director, Watertown Community Housing, Inc., 63 Mt. Auburn Street, Watertown, MA, herein requests the Board of Appeals to grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Addition to Non-Conforming Use and Parking; **Special Permit** in accordance with §5.01(g), Table of Use Regulations, Multi-Family 5+ to allow reconstruction of two former commercial basement units into two residential units (studio and 1-bedroom) providing 6 residential units in the building

known as **1060 Belmont Street/3-9 Townly Road**, located in the NB (Neighborhood Business) Zoning District. Existing 23 non-conforming parking spaces are provided and shared with adjacent properties, under same ownership, known as 1062-1068 Belmont Street and 6-8 Prospect Street. Petitioner requests a **Variance** from **§6.02(b), 6.02(c), (h), (i), (j), (k)**, Parking size, configuration, curb opening and **Variance** in accordance with §6.01(b), Required Off-Street Parking, providing 25 parking spaces, where 35.25 is required for 18 units within the three buildings known as **3-9 Townly Road/1060 Belmont Street; 1062-1068 Belmont Street; 6-8 Prospect Street**, located in the NB (Neighborhood Business) Zoning District and **6-8 Prospect Street**, located in the S-6 Zoning District.

Steve Winnick, Esquire for Watertown Community Housing (WCH), mentioned all of the supporters in the audience, and described the mission of WCH. He said the property is located in an NB zone and was built in 1959 when the zoning ordinance showed it as an apartment zone. If they were all legal units, they would not need the special permit relief but one building has 2 units that are not legal – they want the building to have 6 units and not 4. The site was constructed when there was not any parking requirement. Currently, the parking is non-conforming in a myriad of ways and the total number of required spaces. Townly Road is building A on the plan and was permitted with 4 units and a dental office in the basement. 15 years later, the dental office was converted to two units without building permits. They are requesting variance relief for the two units and the associated parking required for it. WCH has devoted \$1.5M to renovations including landscaping which does not exist now as the majority is black-top. They are reconstructing the two units on Townly Road, one of which will have HP access with one bedroom and the other is a studio unit. The parking has been calculated by Cliff Bomer at 23, spread amongst the 3 buildings in 3 lots. A hurdle is a 2.5' grade differential and the HP spacing requirement. The ordinance today requires 26 spaces and the maximum on the lot is 25 – they require relief for the one space and for the size, etc. of the existing spaces. SPF for changes to the existing non-conforming building and site; SP for the illegal units and variance for the parking.

Cliff Bomer, Architect, Davis Square, pointed out the 'grandfatherable' parking spaces. The upgrades to the buildings are for life safety and energy savings. The 23 spaces that he counted are where a car could park; the other painted spaces have either a tree that has grown through it; 3 potential spaces are not usable due to the dumpster placement. They have reconfigured the striping to save a tree; pulling the parking back from the rear setback; they are making some usable outdoor space for the residents; they will add nice wooden porches; fencing, etc.

Jennifer Van Campen, Director, said the 18 units will remain rental at 60% or below of area median income – between \$20 - \$30k yearly. The neighborhood has experienced some decline and they are investing to maintain rental units in Watertown that have been lost to condominiums conversion and demolition (over 300 lost). The town has also invested in this project and they are happy about the partnership.

Michael Sherman, Knowles Road resident and Treasurer of WCH. They purchased and renovated the two two-family properties on Quimby Street and co-sponsored the development on Marshall Street. Their goal is to invest in Watertown. This project assists with affordable housing and makes the neighborhood a better place to live.

Alex Liasos started this group 20 years ago and he also serves on the Commission on Disability and they have encouraged WCH to develop the two units that are HP accessible and a third one that may be adapted.

Gerald Kelly, Belmont Park Condominium Association, said the area is very congested and the 10 owners in his association with housing worth \$3.5M are concerned with any waiver in parking as there is no where to park. The objectives of the project are terrific but need to be within the requirements of zoning. He handed in a letter of summary to Mr. Vlachos. Mr. Moynihan asked where their condos are located and was told 115 Circuit Lane and 1063-1067 Belmont Street, diagonally across from the project, adjacent to the gas station and across from the market. Mr. Vlachos summarized the letter from the Belmont Park Condominium Association which notes the congested area, parking, passing in excess of posted speed, etc. and the letter is in the record.

Dennis Duff, 33 Spruce Street said the architect made a comment about the dimensional requirements for parking spaces being less than adequate and better spaces could be added by cutting the two basement units because the handicapped people in the basement won't have enough light.

Mr. Winnick said the deviations from parking are from when the buildings were built in 1959 and there was commercial space in the basement – the space is 1000 s.f. and would require 3 spaces; however, as residential, it requires only 2 spaces. The entire site has been functioning with 23 spaces since 1959 and with this parking design, it will be upgraded to 25 spaces. They are providing more parking with a superior design. All of the spaces vary from code on a variety of requirements and have existed for 49 years. The design is an improvement over what has been the function of this site for ½ a century.

Ms. Elliott asked what the dimensions of #21 were and Mr. Bomer responded 16'x 8.5'. He further explained that the re-design brought all of the spaces up to the required width. They are activating the outdoor space, including storm water runoff.

Ms. Scott asked how they are going to improve the space for handicap accessibility. Mr. Bomer said it is not really a basement, it is down 2.5' only. Building A has an adaptable unit (not HP accessible and was the 'illegal' unit) and buildings B & C have units on the

lower level and they have created a patio that is sunken down allowing more light into the unit and are accessible from the one ramp coming from the parking; the units are dimensionally ACA compliant and have been completely gutted and redone.

Ms. Elliott asked if the parking would be assigned to the units and she was answered, 'yes'.

Ms. Van Campen said the two illegal units have been occupied since 1979 and one unit has an elderly woman living in it who does not wish to move. The bedroom count will be decreasing slightly and the total number of occupants will likely decline as they are advertising the apartments with one parking space only. The entire project is subject to significant subsidy dollars and all of this is subject to getting the dollars and they have set aside monies to relocate tenants in the interim – they will empty and renovate one building at a time. They will relocate non-income eligible tenants to other areas and move 2-3 households off-site temporarily with a 9-10 month construction period.

Ms. Santucci asked where the parking is for the accessible unit in building A. Mr. Bomer said the unit in building A is not designed for mobility disability. The two accessible spaces use the ramp.

Ms. Santucci asked if there is a grading plan. Mr. Bomer said the only grade is on site survey and they are confident that the spaces will meet the grade requirement.

Ms. Santucci asked where the second egress for these units are and she was answered that there is an outdoor patio space 2.5' down and they are not required to have ramps in the front. Mr. Bomer added that sprinklers are being added to these buildings.

Chair Vlachos declared a business mode.

Ms. Santucci commented that the project is taking something that needs a little work and providing a great need to the community, targeting a low income bracket, with the same number of units but less bedrooms, where most households will use one vehicle based on income.

Ms. Elliott is in favor and the request is mostly current conditions.

Mr. Moynihan supports the proposal.

Chair Vlachos read from the Staff Report and Planning Board in detail and both show positive recommendations.

Ms. Scott said conditions #7 & #8 need to be removed as they do not have foundation work being done, #8 is repetitive as #3 is already listed.

Chair Vlachos believes the neighbors will be happy with the results and it does not appear that additional traffic will be brought there.

Ms. Santucci asked if there would be reference to the conditions regarding affordability, if something happens to the funding, she'd like it noted in the conditions that affordability and accessible units will be in perpetuity as that is the bonus to the project being allowed. Ms. Van Campen said there are many conditions placed on the property by other sources and more conditions are okay and there are conditions relating to the 60%. Mr. Watson added that there are town-related agreements that define the affordability requirements into permanent terminology and there will be layers of state subsidy that will track the same language and (these documents) will be attached as part of the record. Ms. Scott asked Ms. Van Campen to provide those copies to the ZBA.

Ms. Scott said a separate condition would read 'to provide two handicapped accessible units in perpetuity'.

Mr. Watson added that the Staff has worked closely with WCH on this and other projects and they are very responsive to suggestions. The project responds well to the community needs; 100% affordability is a real asset when we struggle to get any concession, and Planning supports this.

Ms. Santucci motioned to grant the Special Permit Finding for the alterations and additions to the non-conforming structures shown on the plans based on the finding that the proposed use will not be substantially more detrimental than the existing. Ms. Elliott seconded. 5-0 Granted SPF

Ms. Santucci motioned to grant the Special Permit based on the finding that it meets the criteria as defined in the ordinance. Ms. Elliott seconded. 5-0 Granted SP.

Ms. Santucci motioned to grant the parking Variances for 6.02 (b, c, h, i, k) to allow the maintenance of the existing parking based on the finding that it meets the ordinance. Ms. Elliott seconded. 5-0 Granted VAR

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Tape 1 of 3, Side B, Continued

Ms. Santucci read the legal notice:

Roberto Huet, President, Aggregate Industries-Northeast Region, Inc., 1715 Broadway Street, Saugus, MA, herein requests the Board of Appeals to grant an **Amendment to Special Permit, #00-46**, granted November, 2000, to construct metal building 30'x175' and upgrades to the existing non-conforming asphalt plant use in accordance with § 4.05, 4.06(a), 5.00(f) & (c), 5.04 and 505(d) and further grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structures/Equipment/Use by increasing height of bag house 4.5' to 39'-4"; increase stack by 4.5-5' ; install new belt conveyors; and 10.5'x18' slab for new feed-bin hopper to allow for the use of recycled asphalt pavement (RAP) material at **48 Coolidge Avenue**, located in the I-3 (Industrial) Zoning District.

Jerry Effren, Esquire, Aggregate Industries, introduced the team in attendance to support the request: Jeff Ciampa, Operations Manager, Asphalt Division; Scott Colby, Manager Permitting Department; Peter Gouldberg, Tech Environmental to address environmental issues. Atty. Effren gave a summary of the background on the property stating that the use as an asphalt plant has been non-conforming since the 1920's.

Tape 2 of 3, Side A

Attorney Effren continued: Tilcon Capaldi operated the site before Aggregate and came before this board with a comprehensive project in 2000. They were awarded a special permit for reconstruction of storage bins, an office and warehouse but no change of use. Aggregate is before the board for upgrades to the site for an asphalt batching plant. Attorney Effren explained in detail how the plant will run; what equipment will be used and the written supporting information supplied. He stated that the silos used prior were dismantled and the use is reduced in production material. This site has been deemed to be a small job plant and serves the municipalities in eastern Mass. Issues brought up are regarding particulate matter and traffic. Traffic queuing on Coolidge was mentioned and Aggregate will make it a condition of approval on this request that a traffic detail be hired whenever expected demand queued traffic. Fugitive dust was also mentioned and fugitive dust is the blowing around dirt or dust fines that are left on the ground during the process. The process moves raw material and dust is left. With the dust suppression and water spray already in place, they are including an inferred condition where all raw material is stored in the bins and a detailed water, spray, sweeping and monitoring are done – especially before the plant closes for the weekend or any length of time.

Chair Vlachos asked who would clean up the street if a contractor's truck dropped material after leaving the plant. Mr. Ciampa said that 50% of the trucks coming into this plant belong to municipalities, there is a graft of regulations both Federal and State for the conditions of trucks used and an unsecured load would be addressed by the owner of the truck and the police. They do not do business with sub-standard trucks.

Attorney Effren said they have met the burden of §4.06(a). They have taken additional steps to meet any issues regarding traffic and dust or particulate mitigation and odor. They are stating that the impact requested today is less than the impact approved in 2000.

Chair Vlachos opened the hearing to the public:

Angie Kounelis, Coucillor District A, said that the request initially wanted to bypass this process and she is glad that all of the issues were brought forward through the neighbors and Attorney Winnick representing the Mt. Auburn Tennis Club.

Dennis Duff requests that the board approve the request and said that for too many years the members of the tennis club parked wherever they wanted but that was okay then.

Chair Vlachos declared a business mode:

Chair Vlachos asked that this request follow the normal process so that a full airing of all issues would be brought forth, which they have. The Planning Board met on March 12th & April 9th ; considered the Staff report; listened to the neighbors concerns including the Mt. Auburn Tennis Club who must be satisfied at this time; and they recommended to grant both the amendment and the special permit.

Ms. Santucci said the material submitted by the applicant is comprehensive and gave her a thorough understanding of the process there and has made this easier to make a decision. She is in support. She asked about the additional conditions. Mr. Effren said the three conditions are to be included.

Ms. Scott asked about Condition #6 as exhibit A and could Condition #3 be exhibit A. Remove the Planning Board's #6 and add Aggregates' #3. Aggregates #2 & #3 will become the Planning Board's #11 and 12.

Ms. Santucci motioned to grant the amendment to special permit 00-46 with conditions and additional conditions supplied by the applicant. Ms. Elliott seconded. Voted 5-0, granted.

Ms. Santucci motioned to grant the special permit finding in accordance with §4.06(a), to allow the alterations to the non-conforming use and structures. Ms. Elliott seconded. Voted 5-0, granted.

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Board of Appeals

Administration Building

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Richard M. Moynihan, Alternate

MINUTES

On Wednesday evening, **April 30, 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*; **Stuart J. Bailey**, *Member*; **Deborah Elliott**, *Member*; **Richard M. Moynihan**, *Alternate Member*; **Gregory Watson**, *DCDP Director*; **Nancy Scott**, *Zoning Enforcement*

Officer; Louise Civetti, Clerk; Joseph Merkel, Senior Planner. Absent: Carlos Fernandez, Member.

Tape 2 of 3, Side A, Continued

Ms. Santucci read the legal notice:

Kathy K. Binford, VP, Watertown Residential, LLC, a Delaware LLC, c/o John H. Nash, President, The Hanover Company, 5847 San Felipe, Suite 3600, Houston, TX, herein requests the Board of Appeals grant a **Special Permit Site Plan Review** in accordance with §5.00(f), New Construction of More Than 3 Units; **Special Permit** §5.01(g), Multi-family Use; §9.07 & 5.07, Affordable Housing Requirements and **Special Permit** §5.05g, exceeding allowable 1.0 FAR and providing 1.88 FAR, where maximum 2.0 is permitted so as to raze existing building at 149 Grove Street and construct a four-story structure having 174 dwelling units (69-1-bedroom; 105 2-bedroom) providing 17 affordable units with 366 two-level subsurface parking spaces on four parcels (140,503 sf) of land known as **149 Grove Street, 165 Grove Street, 105 Coolidge Hill Road a/k/a 151 Grove Street** (former Aggregate Site) and portion of **Assessor's Lot 1505 2A 0** (adjacent to 183 Grove Street), all located in the I-3 (Industrial) Zoning District.

William York, Attorney on behalf of the Hanover Company, introduced the development staff: David Hall, Development Partner, Hanover; Ben Yanna, Development Associate, Hanover; Jeffrey Dirk, Traffic Engineer, Vanesse. Mr. York said that relief is limited to Special Permit/Site Plan Review for a use that is encouraged in the I-3 zone that is in total compliance with the by-law

Mr. Hall referred to a hand-out; a picture book for developments by Hanover across the country; a shadow study and an acoustical study. He is presenting a MS PowerPoint presentation. He showed the process they have been through and the changes made to the project thus far to address the neighbors and Planning Board concerns. He gave a history of the Hanover Company with 35,000 units across the country and several developments in Massachusetts going on now. He said a similar building to this was developed in Texas with 4 stories and 2 underground for parking. He showed an amenity space that is very high-end; movie theater; exercise room, billiard room. He went into the unit details showing granite countertops, hardwood floors, etc. The streetscape shows an urban design and is meant to be close to the sidewalk. He showed an aerial picture with the three lots indicated. He summarized the project with 169 quality units priced at \$2000 - \$3400 per month. Brick, plaster, split-faced concrete block with New England accents. Four stories with 10' ceilings; 2 underground parking. No surface parking except for 4 visitor spaces up

front. Two courtyards and 2.1 parking spaces per unit. The front of the building is designed as suggested by the neighbors with a vehicular drop-off area. The building is rectangular with double-loaded corridor looking into the courtyard and the outside. The building has come down in height. Parking circulation starts with entering down a ramp, visitor parking first then gate opens for resident parking and then down another level for parking below.

\$550,000 in yearly taxes and fees by the Town of Watertown and residential units have the strongest multiplier effect as far as economic activity as opposed to a shopping mall. Very few school-age children – their studies show 13-14 which they consider to be a high amount. They will be removing their own snow and trash. A traffic mitigation plan with Watertown's Department of Public Works includes that they will be funding the signalization at Grove and Coolidge. The proposal is that they fund the entirety of signalization at Grove and Coolidge – a new light. They will contribute \$200,000 - \$250,000 towards an additional intersection which the DPW suggested be Grove and Arlington. This is what Mr. Mee has suggested and it has been finalized. The funding of the planning and funding through the state of a redesign and light at Grove Street Extension and Greenough Boulevard. They'll pay for the plan; they've talked with Sen. Tolman's office; they've talked with DCR through Sen. Tolman's office about the funds being placed in a bond bill and DCR has approved the project and they will help fund the project and push it through. They have adhered to the Watertown Growth Management Plan and By-laws to promote residential development in the I-3 district with a strong preference to underground parking, they've put all the parking underground, and create a pedestrian friendly, smart-growth street scape. They've done a lot of outreach with the communities; they've done multiple shadow studies at the neighbor's request, they've relocated the height at the corner so the neighbors could see and they've completed an acoustic study. They've made substantial changes to the original plan through the three planning board meetings and two side meetings with Jeff Brown and John Hawes regarding what they were expecting, and the Staff. The changes they've made include a unit count drop of 5 units and a bedroom count drop of 22 units. It may not be a lot but that is driven by the economics of having the parking underground. The FAR is down to 1.76, where the dimensional wouldn't allow 2. They've pulled the front of the building back at the corner of Grove and Coolidge Hill 39' to reduce the impact on the neighbors. They've dropped the building 2' into the ground and reduced the parapets and at the highest point it has dropped 7.4'. The building is 76,000 square feet smaller than what is allowed by zoning. They have more parking than required and they are 19.7' away from the front yard setback than they need to be. A comment made that they maxed the site and have gone to the limit of zoning and that is not true. The acoustical study shows the sound level at 41 decibels and barely audible. White noise is 50 decibels and a lawn mower is 90 – they will be substantially lower. The shadow study shows the worst case day of the winter solstice and at 9am in the morning on one house is half-way up the house. Anything on the site will create a shadow. No impact throughout the rest of the year. Mr. Hall went over the changes again and showed the site line from a neighbors home.

Attorney York stated that Coolidge Hill road is in the Industrial-3 zone

Attorney York reiterated the comments made by Mr. Hall. He said considerable effort has been put into traffic mitigation at Grove Street. Significant funds would be paid to the Town and Hanover will fund the design study for the other intersection. Although the site will be significantly improved, some abutters have fears relating to the impact of the plan. That is not uncommon and people do have concerns. He suggests to the board that Hanover intends to significantly upgrade the area and the site and they have totally complied with the by-laws of the town and the master plan to promote smart-growth. He said the suggestion to reduce the building by 25% or 150 units is inconsistent with the intent of the by-law and would make the project economically infeasible. The developer has looked at the by-law and the project has been reduced and fits well on the site. The shadow studies show a primary impact to the houses upon each other. This is a win-win situation; meets the requirement of the by-law; meets the requirements of site plan review; received strong support from the staff; brings substantial money into the town and improves the intersections at Coolidge Avenue and Grove Street.

Chair Vlachos opened the meeting to the public:

Alison Kericuzian 143 Grove Street, is speaking for many residents. She states the public notice was inadequate and the last published notice was February 18th and did not give this meeting date. The abutters notice was mailed only 12 days ahead of the meeting and the agenda was not posted on the Town website until 5 days prior to the meeting. They are trying to protect the quality of life in their neighborhood and they were not given adequate time to review the shadow study provided 2 days ago or the sound study they requested months ago and were not provided until this afternoon. This Texas corporation has shown itself willing and capable of undercutting the planning board. She showed a drawing of the proposed development and the shadow study on the winter solstice which puts 3 houses into 2 hours of shadow between 9 am – 11am. She said the quality of life will be impacted. She then references the differences in all of the shadow studies done. They were requested to provide a MEPA standard report and feel they were trying to persuade the planning board and the shadow study done in March was misleading. The noise study done is not sufficient for the abutters at the top of Coolidge Hill Road as it was done at the ground level and not at the bedroom level. She is requesting an ANSI report be done on the level of the bedrooms in the townhouses. They recognized that the industrial use of the site affected them in the past and they support the mixed use of the site but this development does not fit. The developers say that economically they can not reduce the project and they have not supported this claim. There is also no assurance of the future of the building as they will sell this property within 5 years. They believe a cluster of smaller buildings with increased open space and more access to natural light for the residents of the project could be a more appropriate use. They request the Zoning board reject this proposal. There are 10 people in the audience that are being represented by Ms. Kericuzian.

William Patterson, retired Police Officer for Watertown of over 30 years has concerns with the traffic. He lives on Kondazian Street and although appreciates the work that Hanover is putting into the Grove Street and Coolidge Avenue intersections, the stop sign on Grove Street Extension at Greenough Boulevard is a major tie-up. He said both intersections need to be taken care of at the same time and the developer needs to fund this as the state is

not a guarantee. He said the intersection at Grove Street and Arlington Street are also being looked at and that is not a priority. This board should make it clear that the other two intersections need to be covered first. They have a police officer at that intersection for Tufts every day as they have a 1000 car parking garage. The project will have 300 spaces and those 300 cars are most likely going to have jobs in Boston.

John Airasian, 43 Bailey Road has a business on the top of Coolidge Hill Road. He said the entire neighborhood and the planning board have asked for this project to be reduced. The building is too big for the site and blocks the view and sun from the neighborhood. Hanover seems to be a good company but they are going to build it, sell it and be gone. He suggests either reducing this project or rejecting it. He remembers when they put the residential bonus into the 2.0 to encourage residential in the I-3 district and this is not what they had in mind. It is offered but doesn't have to be given.

Angie Kounelis, 55 Keenan Street, District A Councillor, commends Alison for her presentation and her community activism. She then commends the Hanover company. They had 182 units and 364 parking spaces. Their new proposal is 169 units and 355 spaces (17 extra for visitors). This is important to the community as there is no parking in the neighborhood. The developer said he couldn't do a lot of the things that they ended up doing and now they are saying they can not reduce the building any further. She received a call from an Oak Street resident which is behind 480 Arsenal Street and they were complaining about Sunday noise. She drove there with her windows down and could hear the noise like a tunnel, echoing through the neighborhood. She is concerned that this type of environment could develop on Coolidge Hill Road. This building is not unique to this location. This building could be built anywhere. Some of these units will be looking out to a wall – like a cave. Maybe terracing the units would help. She approached the town manager when she heard that a developer was looking at this property and suggested through the planning staff that traffic mitigation including these intersections be looked at. She has letters and information from 6 years ago regarding traffic and she agrees that there must be work done on both intersections. The project is very dense for the area and does not fit into their community.

Marilyn Petito Devaney, 98 Westminster Avenue, said Alison's presentation is fantastic. When the first meeting was held, she asked who the owner of the building was and was told that after a couple of years it would be sold. She said that people don't realize what shadow does to a neighborhood and the noise factor, too. She lives across from an HVAC and she asked that it be moved to the back but was not heard. The town has a noise ordinance and she asked that the town buy an instrument to measure the noise level and it is no longer around. She remembers a project that was rejected by the board due to uniqueness and she had never heard that before and this property is unique. This project is too big and affects the quality of life in these neighborhoods.

Charles Laverty, Laverty Properties, 149 Grove Street and is part of the properties that will be undertaken when this project is approved. They acquired the two-story building 20

years ago and they were approached 2 ½ years ago by the developer to sell their property. They investigated the Hanover Company and found out they have a great reputation and have the financial stability to put a project like this together. They were assured that they would not have to be involved in a variance as they did not want to be involved in a project that had little chance of passage. Their long term tenant would be leaving within 1-2 years and the time element was perfect. In March 2006, they acquired an option to purchase their property subject to the approval of this project. That agreement expires in 30 days. This project has been continued on and they have sought out a tenant in the event that this did not go through and they have to make a decision. He feels this project would have been of value to the community and would have increased revenue to the town and would change the neighborhood from industrial to residential. They have to make a decision and time is of the essence.

Tape 3 of 3, Side A

A man spoke regarding the past practices of the board and said that when the board heard opposition from the neighborhood, the board listened and sent the requestor back to the drawing boards. He is concerned with the traffic on Grove Street at 7 a.m. and with another 300-400 cars, it will be impossible. He is asking the board to be consistent with their decisions.

Tim Flynn, 67 Lovell Road, a Lowell School dad, a coach with two children, sees Watertown resources dwindling. He sees the town taking in revenue from this project and is in favor of this project.

Linda Polande, 59 Kondazian street, has an issue with the traffic and thinks there will be gridlock with Mt. Auburn parking at the top of Coolidge Hill Road, Tufts, etc. and lights will slow traffic down and prevent accidents because that building is also on a curve and will be a major traffic issue and this is a cut-through street. The building should be moved to a more appropriate place.

Chair Vlachos closed the public portion and opened the business mode.

Ms. Santucci said she reviewed the traffic report and her interpretation of what she read is very different from what people are talking about. She requests Mr. Dirk give a brief presentation.

Jeffrey Dirk, Vice President of Vanesse and Associates, a licensed engineer and a certified professional traffic engineer. The town retained an independent traffic engineer to review the traffic study. They did a comprehensive study; collected existing traffic counts and areas that had safety issues. They did the study on 184 units and that is reduced. They look at the peak hours, they projected 93 vehicle trips in the morning and 118 in the evening. When they drop it down to the 169 units, it drops the traffic down. Further away from the site, the traffic turns off. The bulk heads south towards the river. To the north the traffic is minimal; the south, a back up at Coolidge and at the bottom of the hill, install a traffic signal improved flow and it goes hand and hand with a signal at the bottom. The state will fund but someone has to produce the design plans and this project will produce the design. No build level of service is a failing condition so the delay is well over a minute – with the traffic signal, the delays are cut in half (a D or better).

Mr. Bailey asked about the 93 cars coming out in the morning. Mr. Dirk explained that that is within only one hour.

Ms. Elliott asked if the peer review as completed. Ms. Scott stated that the report agreed with the finding in the report and the mitigation.

Chair Vlachos reviewed the Planning Board reports and on April 9th they voted against this project 3-1. He doesn't believe that the Zoning Board has voted differently when Planning has rejected a plan. He would like to digest what was presented tonight.

Mr. Moynihan said that the technical materials presented need to be reviewed and due diligence requires we go through this material.

Chair Vlachos again said that he'd like to look at this more carefully as there is a lot at stake for the residents, tax income for the town, etc.

Ms. Elliott asked if the petitioner could submit a sound study. Chair Vlachos asked if any reports are submitted, they should be submitted prior to the meeting so the board can review them.

Mr. Hall said they have already done the sound study and if there are specifics, they will address them.

Ms. Santucci suggested that this be continued as she is looking at the DEP regulations and the numbers are not in accordance with this. This needs to be summarized and the chart on the second page means nothing.

Chair Vlachos said the project has been reduced a couple of times and the Planning Board voted against it and he doesn't remember voting for something that the Planning Board voted against. He is wondering if they have missed something and he wants to give it proper consideration. He is willing to move forward if the members do not agree to continue.

Ms. Santucci motioned to continue this case to the May agenda. Ms. Scott noted that if an extension is necessary, they will agree. Mr. Hall agreed. Ms. Elliott seconded the motion. Voted 5-0 to continue to May.

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MINUTES

On Wednesday evening, **April 30, 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*; **Stuart J. Bailey**, *Member*; **Deborah Elliott**, *Member*; **Richard M. Moynihan**, *Alternate Member*; **Gregory Watson**, *DCDP Director*; **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk*; **Joseph Merkel**, *Senior Planner*. Absent: **Carlos Fernandez**, *Member*.

Tape 3 of 3, Side A, Continued

Chair Vlachos announced the last case for the evening and apologized to counsel for the late hour.

Legal notice for the record: (not read)

Trilogy Mount Auburn LLC, 694 Mt Auburn Street, Watertown, herein requests the Board to hear an **Appeal of Determination of Zoning Officer** pursuant to MGL c40a, §§13,14, and 15, Town of Watertown Ordinance, 9.19 and Zoning Appeals Rules of Practice and Procedure § 4.2, from the Zoning Enforcement Officer's Memorandum dated March 10, 2008 relating to conditional zoning approval for property at 319 Arlington Street: further **Appeal the Inspector of Buildings'** issuance of building permit #00-76 on March 10, 2007 for the property at **319 Arlington Street**, former Coolidge School building, located in the OSC/RSOD Zoning district.

Laura Stock Craven, Esquire, Goodwin Procter LLC, Exchange Place, Boston, MA, representing Trilogy Mount Auburn LLC, Francis N. Mastroianni, President, owner of 694 Mt. Auburn Street, a direct abutter to 319 Arlington Street, the former Coolidge School and the property subject to this appeal.. The site is the former Coolidge School leased by Coolidge School LLC, Bart Mitchell, President, Mitchell Properties for the redevelopment providing 38 affordable rental units. Ms. Craven indicated that Trilogy submitted papers to the Zoning Board of Appeals (ZBA) on April 8, 2008 including its petition and a detailed statement appealing the Building Inspector's March 10, 2008 issuance of the building permit to CWC Builders, Inc., for the renovation/conversion and demolition of the former Coolidge School building; and appealing the Zoning Enforcement Officer's (ZEO) March 10, 2008 memorandum to the Building Inspector regarding conditional zoning approval for the property, which the Building Permit relies on. Trilogy opposes the building permit issuance and the ZEO's conditional determination in her memo and therefore, appeal to this Board under M.G.L. Chapter 40A, Sections 8, 13, 14 & 15. Ms. Craven states that the Town's Zoning Ordinance doesn't allow a building permit to be issued unless the plans and the intended uses of the property conform with the ordinance. If a variance is required, the building permit can not be issued until the variance has become legally effected and recorded with the Registry of Deeds. The ZEO's memo attempts to work around the variance requirement allowing for tenant use only for the auditorium, which according the ZEO's decision indicates it would not require any parking for the auditorium use and all 76 parking spaces that represented on the property would be used for the residential units. Ms. Craven understands that the effort is to accommodate the developer of the project, but it can not be done in this fashion. The ZEO's determination turns this boards' decision inside out, it turns its back on Trilogy's appeal and ignores the terms of the ordinance. Ms. Craven gave an overview of the Board's variance decision. The project is designed to include 38 rental apartments and an auditorium assembly space for community and public use. The variance decision gives relief to Coolidge from Sections 5.15(e) and 6.01(b), which requires a minimum of 2 off-street parking spaces per residential unit and one parking space per 5 fixed seats or 10 linear feet per bench floor area open to public assembly where no seats or benches are provided. The residential units would require 76 spaces and the auditorium 16 additional spaces. She indicated that Trilogy has appealed the Variance which is now pending in Middlesex Superior Court. Demolition and construction have begun pursuant with the building permit issued. It is her client's contention that the ZEO memo and building permit was improperly issued as adequate parking for both residential units and auditorium space – 16 spaces for auditorium and 76 for 38 residential units, total 92 parking spaces, is not provided. The variance for relief of off-street parking requirements can not be recorded due to the judicial appeal. She submits that the developer has parking for 30 residential units, which would be 60 parking spaces and the 16 required for the auditorium. Her client submits a better solution: re-hear the matter to allow for construction of 30 units only, pending the outcome of Trilogy's appeal of the variance. She cited Section 9.01(a), Watertown Zoning Ordinance, that provides that the Building Inspector shall not issue a building permit unless the plans, specifications and intended uses on the lot are in conformity with the ordinance and have been approved by the ZEO. The Section further states the Building Inspector shall not issue a building permit until directed to do so by ZBA. No amendment to the developer's petition for the variance has been filed. The ZBA has never directed the Building Inspector to issue the permit, which currently exists. No evidence of recording at Registry of Deeds. The memo circumvents the appeals process...zoning

approval for outside public use can not be given at this time. Use for auditorium assembly space is temporarily restricted pending the outcome of Trilogy's appeal.

The variance issued by this Board details the public use and contends that the residential units only required 1.5 spaces and provided 16 for the auditorium – 76 total spaces, sufficient for entire project. Ms. Craven recites various portions of the Variance decision. Historical tax credits for auditorium – pg 4 -variance request for parking is necessary to allow operation of auditorium – if auditorium not used, tax credit lost. Never tenant only use. Pg 6 – developer says auditorium history as a gathering place - too large just to sit there as an amenity for the tenants – if not used, difficult to continue with project. Community use. She contends that the Ordinance does not distinguish between a tenant only use and an outside public use. Parking spaces are related to the use and the ZEO's memo is unworkable to enforce tenant only use as they would be able to invite family and guests, create traffic. Her better solution offered is to construct 30 residential units only. Amend or withdraw variance or wait for a final determination on appeal. She is asking this Board to annul the building permit issued and annul the ZEO's memo and have construction and demolition cease.

Chairman Vlachos asked Attorney Craven if the developer was proceeding under his own risk. Her opinion is that with a variance appeal pending, he may not do so under his own risk. Chair Vlachos asked about the Special Permit. Ms. Craven said the Special Permit is not the subject of Trilogy's appeal. Chairman queried why they can not proceed under the special permit and does that mean if they are intimately connected you can not move forward with either? Ms. Craven agreed and added that the Variance is relief from the parking requirements. Chairman stated as an example- residents playing bridge and asked Ms Craven if that would that be permitted. Ms. Craven said the auditorium use by anyone would not be permitted without the required parking. She asks how would the town monitor that? Mr. Vlachos said most of the forms of relief they grant are the same – how does the board know that there are not 5 families if they granted a 3 family? Unless it's brought to the board's attention they would not know. Ms. Craven said as long as the auditorium exists, it has to be dealt with – it requires the associated number of parking spaces under the ordinance.

Tom Schnorr, Edwards Angell Palmer & Dodge, 111 Huntington Avenue, Boston, Counsel for Coolidge School LLC addressed the Board and stated he agrees that without the variance they cannot use the auditorium for public assembly or community uses which will attract the public to the building – people who don't already have the right to be in the building. They have no dispute with that analysis. He states that the petitioner, under c 40A, must be considered a person aggrieved by the actions of the Zoning Enforcement Officer (ZEO) and Building Inspector. Merely being an abutter or an abutter to an abutter who happens not to like an action does not constitute a person aggrieved by Mass Law. For a person to be aggrieved by the actions of the ZEO, whatever the action is must be a personal violation or an injury to that property owner that is different and special from the concerns of the rest of the neighbors. Attorney Schnorr contends the petitioner said he is an abutter and he is aggrieved; however, they have entered no evidence that

his injury is any different than the neighbors who immediately abut the property. It is his legal opinion that the petitioner does not have standing to present this petition. Having made that declaration, Attorney Schnorr states there were two forms of relief given to Coolidge School – special permit and variance. The special permit was required under the overlay district to allow multi-family housing and authorize assembly use for community purposes – the special permit approved by ZBA is recorded and it is valid and binding. The special permit proceedings speaks of the desirability for community use of auditorium, but the special permit doesn't require the use of the auditorium for community use. The only use required is the affordable housing component, which has been provided. The special permit gives the right to build a project with 38 units as long as they provide parking. Mr. Schnorr's question then is, 'what happens to the auditorium?' The ordinance has an accessory use that speaks to clubhouses, administrative offices, etc. as accessory uses to multi-family housing is permitted by right in R.75 districts and under the overlay district as a use provided. The use of the function hall or the auditorium by the occupants only is a permitted accessory use under the zoning ordinance. Mr. Schnorr rhetorically asks, does the occupant/tenant only use trigger additional off-street parking under s. 6.01. He reiterates, the Petitioner states that for Public Assembly uses, additional parking is required in order to meet demands of additional people going to a project not otherwise coming there because of their right to do so. He contends that tenant only use is no different than tenant use of their individual apartments – so one mentioned if there is a 50th birthday party what happens if 35 grandchildren show up and there isn't an auditorium but there is a two-bedroom apartment. This is a private building for private tenants. An earlier petition that evening spoke of wonderful amenities, movie theatres, swimming pools for private use. Apartment buildings often have assembly spaces for tenant use and often are not intended to bring in people from the outside.

Mr. Schnorr states that we support the position of the ZEO because the use of the building for 38 apartments is permitted by special permit and they have 76 parking spaces for that. The issue one could quibble with is whether or not tenant only use of the auditorium constitutes the public assembly use open to the public that requires additional parking under the zoning ordinance. Under the zoning ordinance it is the primary duty of ZEO to initially make an interpretation and how to apply the ordinance. They submit the ZEO has properly applied and interpreted the ordinance under Section 6.01—additional parking required for public assembly uses for use of this space for tenants only. She did not exceed her authority and a legitimate decision on her part and asks the Board to support her decision.

Attorney Craven responded that if it boils down to an interpretation of the zoning ordinance, she would concur. The auditorium space is there and requires parking and Trilogy's position is that whether it's restricted to tenants only, which she doesn't know how it would be enforced or public comes in as guests, it still does not have the required number of spaces for the use.

Member Moynihan asked Attorney Craven to address how her client has standing in this case – how the petitioner is aggrieved. Attorney Craven said Trilogy is a direct abutter and has concerns about parking, noise, traffic, congestion and similar

concerns that are raised in the appeal of variance, it is on that basis that it brings the petition here before the Board. Member Moynihan asked how that is different from any other individual in the neighborhood. Ms. Craven said that just because no other neighbor has raised an appeal, doesn't mean that Trilogy doesn't have a significant concern regarding traffic and noise in the area and therefore, is aggrieved by the building permit.

Bart Mitchell, representing Coolidge School LLC, addressed the Board. Coolidge LLC is very dedicated to working with the town. He has worked with the town for over 5 years - town council, planning board, ZBA, housing partnership... when councilor Devaney asked for handicapped access, they provided it, they wanted to have local people for affordable units and that was approved. Present with Mr. Mitchell was Nina Schwartzchild, the project manager; Bruce Pollichuk, owner, CWC Builders, who started construction in early March, spent already 1 million dollars and has done a beautiful job. Mr. Mitchell asked if there is any member of Trilogy LLC in the audience so he could see which principals had arrived. The Board notes that no one stood up, however acknowledges Attorney Craven. He has asked Trilogy to meet and Trilogy said they are sorry that they are doing this but they do not have significant concerns about the project - they are upset about the conditions on their special permit from 2003. Chair Vlachos asked Mr. Mitchell to focus on the determination of the Building Inspector and ZEO. The right people have interpreted the ordinance, the Board and the ZEO, not third parties.

Tape 3 of 3, Side B

Mr. Mitchell continues, they are proceeding with building 38 housing units with 76 parking spaces and are hopeful that the variance challenge will someday be withdrawn.

Chairman then asked for public input.

Angie Kounellis, Councilor District A, 55 Keenan Street, stated she did not support this project, but was the primary supporter of the proposal at the RFP, this was misrepresented to her. She is upset that this developer is using \$10 million of state money for affordable housing for a private for-profit development and feels there will be adverse economic impacts to the town as revenue will not be generated as promised. She started to give background information of the Coolidge School Reuse Committee and Chairman Vlachos asked that she focus on the issue tonight before the Board. She agreed to be specific on the Auditorium. The reuse committee accepted Mitchell's proposal. From the RFP she stated that it is quoted "with a portion of the existing auditorium to be renovated into community amenity space."

The petitioner appeared before the Planning Board with 45 units proposed, including 7 units in the auditorium and the community space in the basement. The petitioner discovered he could not use the historic tax credits without using the entire auditorium for assembly and the 7 units were removed. The project was reduced to 38 units and returning the entire auditorium for community use. She contends that is something the neighbors never accepted. It's a massive auditorium with no ideas on how many people it can accommodate for seating or standing, which are two standards required for a function room. The Zoning Ordinance requires 16 parking spaces for the auditorium—she questions whether that is adequate.

She refers to the lease signed by the Town Manager and stated she does not support the lease. She references Section 10.6, neighborhood parking and community use of auditorium spaces. If a favorable outcome of variance appeal, tenant and lease holder agree to add following: (a) tenant shall make auditorium space available for use without fee to neighborhood organizations at least 4 times a year and/or cultural organizations active within the town at least 2 times year at such time as the buildings' auditorium space is not being used by tenants or any association of the residents of the building. The auditorium according to the lease, is not specific to the tenants giving a birthday party – it is any association of residents of the building. It continues that such use by community groups shall not entitle to any off-street parking spaces on the demised premises. There is not parking on Mt. Auburn Street, Arlington Street, etc. There is nowhere to go. This is a very densely populated area. Ms. Kounellis said that she has been told that this is a pet-peeve of hers—it is not, she lives here. There is no parking. The developer wanted to reduce parking to 1.5 in April 2006. Fortunately, not allowed but compromise was 76 to include auditorium use. The decision was made and the neighbors were not listened to. She supports the neighbors. That is the reason she voted against the project and the other issues. The lease has other specifics.

Robert Pine, 199 Coolidge Avenue, Unit 307, spoke in favor of proceeding with construction. He said the ZEO has made a common-sense determination as to how to proceed with the construction project until the appeal has been resolved in the courts. He has lived in the neighborhood for over 20 years and remembers how the auditorium was used for a polling place for the expanded neighborhood and understands that until the issue is resolved it makes sense to having the auditorium restricted to tenant use only. He lives in a condominium building where they have a community room they never use for public assembly or for outside people. It's used for their residents of their community. There is hardship for developer and affordable housing will suffer if there is delay in this project. He urges that the Board allow the project to go forward

Kathy Thompson, Executive Director of the Arsenal Center for the Arts said she has been in contact with Mr. Mitchell many times. She offered that if there is a demand for the auditorium that would increase parking, the center can handle some of those requests at the Center. The Center is available as a meeting place for the people living there while this issue of the auditorium can be used or not, they are willing to be the place where people gather.

The public meeting portion has been closed. The board entered into their business mode.

Chairman Vlachos feels that the Building Inspector and ZEO made a common sense decision how they handled this. He thinks things should move forward and he supports their position. Secondly, he does not believe the petitioner has standing and is not convinced from what he heard that her client has standing to even contest this. Despite that, what the Building Inspector and ZEO did was within their right and was a common sense determination and should be supported.

Member Moynihan agrees with the Chairman, he is not persuaded by the argument for standing and having decided that there is no standing, he does not believe he must give weight to their arguments presented. However, while appeal of variance is going on, he believes the petitioner should have the ability to go on with the special permit that was approved and filed and the issue of extra parking will be decided when the case is decided and may well come before us at a future date, at this juncture the ZEO made right decision.

Chairman called for a vote:

Ms. Santucci motioned to uphold the Building Inspector's issuance of the building permit. Ms. Elliott seconded. Unanimously voted 5-0 to uphold decision of Building Inspector.

Ms. Santucci motioned to uphold the Zoning Enforcement Officer (ZEO) determination, dated March 10, 2008. Ms. Elliott seconded. Unanimously voted 5-0 to uphold the determination of the ZEO.

Ms. Santucci motioned to adjourn. Ms. Elliott seconded. Voted 5-0 Adjourned at 12:15 a.m.