

Harry J. Vlachos, Chairperson

Melissa M. Sambucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

## MINUTES

On Wednesday evening, **September 24, 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. Sambucci**, *Clerk*; **Deborah Elliott**, *Member*; **Carlos Fernandez**, *Member*; **Richard M. Moynihan**, *Alternate Member*; **Steve Magoon**, *CDPD Director*; **Nancy Scott**, *Zoning Enforcement Officer*; **Danielle Fillis**, *Senior Planner*; **Louise Civetti**, *Clerk*. *Absent: Stuart J. Bailey*, *Member*.

Tape 1 of 3, Side A

Chair Vlachos opened the meeting at 7:05 p.m., introduced the board and staff, swore in the audience, and requested to postpone approving the minutes of July 30, 2008. Ms. Santucci motioned to continue; Ms. Elliott seconded. Voted 5-0, voting postponed.

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

Antonio Enciso, 81 Lexington Street, Watertown, MA herein requests the Board of Appeals grant a **Special Permit Finding** in accordance with §4.06(a), Alts/Additions to Non-Conforming Structure, Side Yard Setback and further seeks a **Variance** in accordance with §5.04, Table of Dimensional Regulations, Maximum Building Coverage, Zoning Ordinance, so as to raze rear deck/patio 9'x30' and construct and enlarge rear porch 11.4'x29.7',

maintaining non-conforming easterly side yard setback at 5.9', where minimum 10' is required and increase building coverage from 29% to 35.3%, where maximum 30% is allowed at the property at **81-83 Lexington Street**, located in the T (Two-Family) Zoning District.

Antonio Enciso, owner since 1974 said he had been told he needed a permit and came for a permit. The work done in the past to the front of the house was change the garage under to basement storage space and repaved the front driveway. He could not handle the garage doors and in the winter, it was difficult to shovel and to drive up the driveway. The back of the house had a terrace and he built a raised deck then enclosed it without a permit. Mr. Enciso said he has tenants, his wife and himself, an old friend who is 89-90 years old lives in the basement, but has been asked to move out.

Chair Vlachos commented that the type of relief is extraordinary and the fact that the work is already done and the 2-family is being rented as a 3-family, puts the board in a bad position.

Ms. Santucci, Mr. Moynihan, Ms. Elliott, and Mr. Fernandez commented on tasks completed without permits. Mr. Enciso said he has learned his lesson.

Marilyn Pettito-Devaney, 98 Westminster Avenue, said she knows there are rules but hopes the board will understand. They are good people and she does not know why this happened. They came from Argentina and became citizens quickly. They had a dilapidated deck that he wanted to fix. People make mistakes and should be given a chance.

Anthony Gentile, 85 Lexington Street, closest abutter, said he doesn't have a problem with this and he is only 7' away. There aren't any abutters that have a problem with this. He added a foot to the porch and it is fine with him. He wanted to know if someone 'dropped a line'.

No one else spoke from the audience. Chair Vlachos closed the public hearing and opened business mode. He read a hand-written note in support by Catherine Wencis, 46 Edenfield Avenue.

Chairman Vlachos read that the Planning Staff recommends denial of the special permit finding and variance, but the Planning Board recommends approving it.

Ms. Fillis states that if approved, a condition of removing some of the impermeable surface by either removing the shed or replacing the entirely paved front yard with something permeable, perhaps grass-crete or gravel – something to allow water to filter. Chair Vlachos asked about the use as a three-family. Ms. Fillis thought she had moved out.

Ms. Santucci asked if the zoning board can grant relief if there is a zoning violation on the property – it is being used as a 3-family as opposed to a two-family. She has never voted for a lot coverage variance but she has seen this property over the years and states that the foundation that you see in the rear was always there and is a solid concrete surface and for this was never pervious and no more water and no less water will penetrate the area of this addition. There is no more coverage there now than before the addition was built.

Mr. Fernandez asked if the area of the deck is included in lot coverage. Ms. Scott stated that it was not included. Mr. Fernandez said as a raised terrace, would that be included. Ms. Scott said it would be. This was enclosed and extended and is now included in the lot coverage. Discussion ensued on whether or not the petitioner is creating the non-conformity and therefore seeking a variance or if the non-conformity existed and is being increased. Ms. Fillis stated that if the patio was a legal pre-existing non-conformity vs. an illegal non-compliant addition. This was not built before zoning; however, it may be over 10 years old.

Chair Vlachos questioned what relief could be provided when the two-family is being used as a three-family. Ms. Scott said that creating a condition that when the 89-year-old woman vacated the premises, the unit would have to be shutdown. Mr. Enciso confirmed that there are kitchen facilities in the basement along with a bath. Chair Vlachos stated again, that he does not know how the board can grant relief when the 3-family condition exists. Mr. Fernandez stated that another case tonight at 460-465 Main Street where ignorance is stated as the reason for not coming back to the board for changes by former members of the zoning board and the house on the hill with the beautiful terraced stair, again claiming ignorance and the board approved them. He is prepared to support this application due in part by the recent past record of this board, recognizing that people make mistakes. Chair Vlachos argued that the construction had not occurred. Mr. Fernandez said all cases completed the work without getting approval. He is prepared to be careful and consistent. He agrees that this cannot continue to be a three-family, but to reduce the footprint of lot coverage is extreme as they did not ask either of the other petitioners pointed out to make changes.

Ms. Scott stated that it is the 74 square foot addition and shed calculate out at...

Mr. Vlachos said he would support this if the basement apartment were cleared out immediately or no further work is to be done on the property until it is reverted back to a two-family. Mr. Enciso said he would do what the board asked but he doesn't know when the woman could leave.

Chair Vlachos suggested continuing this case until the petitioner could change the circumstances with the tenant in the basement. Mr. Fernandez said the petitioner should come back to the board in October with the date the woman can move out and replacing the asphalt with permeable material. Mr. Enciso said he doesn't understand why they want him to do something with the driveway but asks how much he needs to change. Mr. Fernandez said three cars worth. Ms. Santucci said there was always a garage-under – two spaces instead of three. Mr. Enciso said the driveway was too steep and he could not get into the garage. The former garage is not part of the apartment, it is the basement used for storage.

Ms. Scott asked if they are looking to change 22' of asphalt in front of the house. Chair Vlachos clarified that their request is from the stairway to the right. The driveway can remain as is.

Tape 1 of 3, Side B

Chair Vlachos said that he hopes she finds suitable quarters because she has rights, too now that she is there. Ms. Scott said that is why she wasn't going to move her. Mr. Fernandez said it is a non-safe, unsustainable location and staying there is not a good thing.

Chair Vlachos stated that he might not come back next month; it might be the month after. Mr. Enciso said he would be in touch with Ms. Scott.

Chair Vlachos stated that a motion by the petitioner to continue has been made and all members voted in favor of continuing the case.

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Tape 1 of 3, Side B, continued

Ani & Jak Eskici, 127 Evans Street, Watertown, MA 02472, herein request the Board of Appeals to grant a **Variance** in accordance with §5.04, Table of Dimensional Regulations, Building Coverage and §5.00(e), Distance Between Structures, to permit razing and rebuilding non-conforming two-story rear

porch 6'x16', enlarging screened-in second floor to 8'x16', increasing non-conforming building coverage at 40% to 41%, where 25% maximum is allowed and further increasing existing non-conforming distance between structures (garage) from 5' to 3', where 10' is required at **127-129 Evans Street**, located in the S-6 Zoning District.

Ken Leitner, Attorney representing the Eskici's, owners of 127-129 Evans Street. Their house has a dilapidated rear porch. They are here requesting to rebuild the first floor porch as is and rebuild the second floor with an increase of 32 square feet or 7/10ths of a percent increase in lot coverage. They are on an undersized lot with an oversized garage. The house has legitimate setbacks in the rear. They cannot expand anywhere else on this lot. They are going to cantilever the 2' additional length, not requiring separate supports. If they expand deeper into the back yard, there would be posts into the rear yard; into their only green area.

Mr. Fernandez suggested that they expand the porch to the opposite side of the porch, one structural bay, and away from the garage, creating a 10' dimension between the garage and the porch. He wants to eliminate the existing first and second floor bay, relative to the existing end of the house. He is not prepared to vote on this application if they do not move the footprint of the deck, to provide the proper distance between the garage and the house. He requires that they improve the situation or he is not voting in favor.

Ms. Elliott asked how that would correspond with the existing stairways, doors, windows, walkways, etc. Mr. Fernandez said they would move them over and it would be doable – 3' is not acceptable on the second floor. Attorney Leitner said they could rebuild the porch as is with just a building permit. Mr. Moynihan stated that the two variances are for pre-existing non-conformities. Ms. Eskici stated that the doorway out to the porch on the second floor is currently through the kitchen and they would have to put a doorway in the bedroom to meet the request by Mr. Fernandez. Mr. Fernandez said the plans are easily modified. Ms. Scott said the roof would change to a shed roof to cover the 8' length. Chair Vlachos said he doesn't see any safety issues with the extension and a (fire) truck doesn't need to get to the back yard, only the hose does. Ms. Scott added that it is required at the first level that they get around but not on the second level. Mr. Fernandez disagrees and said it is not a small matter and not good policy. Chair Vlachos said this is plan is not any worse than what exists and he is in favor of it, although he takes Mr. Fernandez objections into consideration. Mr. Fernandez said he will vote to deny the petition. Ms. Elliot will support the petition. Mr. Moynihan will also support the petition.

Chair Vlachos read from the Staff Report stating that they recommended to deny the petition – however, the report is actually to recommend conditional approval (a typing error). On September 10<sup>th</sup>, the Planning Board recommended to approve with conditions.

Ms. Santucci motioned to grant the variance for the reduction in separation between the structure and the garage for the second level only. Ms. Elliott seconded. All in favor? 4-1, Granted (Mr. Fernandez voting against).

Ms. Santucci motioned grant the relief for the increase in building coverage for a de minimus amount of 1%. Ms. Elliott seconded. All in favor? 4-1, Granted (Mr. Fernandez voting against).

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Tape 1 of 3, Side B, Continued

Bruce Martin, Vice President, MetroPCS, 285 Billerica Road, Chelmsford, MA 01824, herein requests the Board of Appeals to grant a **Special Permit** in accordance with §5.13, Wireless Telecommunications, so as to install 6 panel antennas within 3 rooftop faux vent pipes and an equipment cabinet at **65 Main Street** (Armenian Library & Museum), located in the CB (Central Business) Zoning District.

Brain Grossman, Attorney with Prince, Lobel, Glovsky & Tye, LLP representing MetroPCS, a new entrant to the New England market with an FCC license; however, they do have market areas in other parts of the nation. Their marketing plan is unlimited use with one low fee, competing directly with the other carriers. This will be located in a permitted area, Central Business, within 3 false vent pipes, located on the roof and equipment cabinets, also screened and then painted and textured to match the existing building. The vent pipes will not exceed more than 10' from the natural roofline (a 2' parapet exists), well within the height requirement and is not in a residential district, nor within 50' of a residential district. One GPS antenna will be attached near the equipment cabinets, for the site but also to enhance E911. The cabinets are two radio receiver cabinets and two back-up cabinets and one telephone cabinet. There is another wireless facility on this roof.

Brian Ethan, Radio Frequency Engineer, showed drawings with the coverage of in-car portable and on-street portable. The coverage they currently have proposed includes 5 sites in Watertown. They currently do not have any coverage and are planning their build-out for 2009. The other proposed sites are: 705 Mt. Auburn Street (Tufts), 65 Main St., 341 Mt. Auburn St., 818-826 Mt. Auburn St., 508 Arsenal. Their first option is to look at existing locations as they do not like to build towers.

Ms. Santucci asked if they considered flush mounted antennas at this site. Mr. Grossman said it is less ideal for coverage and the visual impact would have been too great. The photographs accurately depict what the site will look like.

Lenny Santamaria, was sworn in by Chair Vlachos and asked why the Community Church was the location of this. He admitted to being at the wrong case...

No further questions were asked.

Chair Vlachos read from the Staff report recommending conditional approval. The Planning Board also voted for conditional approval with the list of conditions, including matching the penthouse. Chair Vlachos asked about the abandonment of equipment; however, Ms. Scott clarified that it is part of Section 5.13 in the Zoning Ordinances.

Ms. Santucci motioned to grant the special permit for the installation of the 6 panel antennas, as it is in compliance with the ordinances. Ms. Elliott seconded. All in favor? 5-0, Granted.

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Tape 1 of 3, Side B, Continued

Robert Dotson, President, Omnipoint Communications, Inc., a Wholly Owned Subsidiary of T-Mobile USA, Inc., 15 Commerce Way, Norton, MA 02766, herein requests the Board of Appeals to grant a Use **Variance** under the Federal Telecommunications Act, §5.13(a) 1 & 2, Wireless Telecommunications, WZO to allow the installation of (3) panel antennas mounted within the existing bell tower at **531 Main Street**, (Union Church), located in the S-6 (Single Family) Residential Zoning District.

Brian Grossman, Attorney with Prince, Lobel, Glovsky & Tye, LLP representing Omnipoint, T-Mobile stated that Adam Braillard is elsewhere and he is covering this petitioner tonight. His radio frequency engineer is ill and not able to attend. He will present the case; however, if further questions are necessary, he will request a continuance to allow the engineer to be present.

Chair Vlachos wanted Mr. Grossman to be sure he understood that if he presented tonight, he would need to have the same board next time to vote. Mr. Grossman understands the situation and has Mr. Parakkavetty's affidavit and coverage plot. Omnipoint has several sites in Watertown and the allowed zoning districts do not allow adequate coverage for the significant gap on Main Street, Gilbert Street, Olcott Street, Belmont Street and surrounding areas that include heavily traveled thoroughfares and a dense population. They are seeking a use variance in the single-family zoning district, which is not allowed under Watertown's ordinance; however, Omnipoint is left with this significant gap that they must address. There will be three panel antennas mounted to the façade of the columns of the existing bell tower. The bell tower is about 62' high and the antennas will be mounted in the center line, about 49' and the equipment would be located within the bell tower in an interior room built-out slightly but within an existing area of the church. The equipment cabinets are not visible, the façade mounted antennas will be. The antennas are 72' long. The equipment room will house 3 (bts) base transceiver cabinets, one battery cabinet, one telephone cabinet – no generator. The GPS and enhanced 911 antennas will be mounted to the rail near the bell tower and a small air conditioning unit on a concrete pad, behind some shrubs at grade outside the building. The antennas will be below the top of the columns of the bell tower and will be textured and painted to match the columns. Omnipoint has tried to fill this gap utilizing their existing sites.

Tape 2 of 3, Side A

Mr. Grossman continued: The existing structure is taller than other buildings in the area, is a non-residential use and does allow Omnipoint to achieve the necessary height for its facility to allow it to address the significant gap without having to construct a tower or something on a residential structure or something more visible to artificially create height.

The structure and the land is unique to Omnipoint's significant gap and the board knows that the need to fill the significant gap is another unique circumstance that the board can and should consider when acting upon a wireless communications facility or application for a large communications facility that is unique to a large communications facility that wouldn't apply to some other application (sic).

Literal enforcement of the existing site or in the allowed zoning district doesn't allow Omnipoint to cover their significant gap. There is no location within to allow adequate coverage to the significant gap.

Desirable relief can be granted – communications facilities are passive, unmanned, do not produce offensive odor, noise, fumes, are not a burden on municipal services, schools, police, fire, do not require sewage, water, or other adverse impact.

The facility is consistent to the extent possible to the underlying communications for Watertown and will be camouflaged to the extent possible and using the existing height of the bell tower.

The coverage plots were presented in the package and they show the existing adequate coverage in Watertown providing in-building and in-vehicle coverage to residents and travelers to Watertown and businesses in Watertown.

Route 20 shows the densely populated areas that Omnipoint is not providing coverage to. He showed the additional new coverage, which would overlap the existing sites and offload traffic to better service the areas that the existing sites are located. This dual function again is to provide Omnipoint coverage to their significant gap and address a gap that exists from an inability to provide reliable consistent service. Even though there is some signal, it is not always reliable due to the amount of traffic at those sites.

Chair Vlachos asked who signed the lease option on the church. In the past, there were issues with the body of the organization, whether it is the trustees, etc. He asks that someone representing the body of the church speak tonight as he wishes not to have people or members of the church to come forward not knowing this was authorized. The board does need to hear the engineer's testimony next month on gaps in coverage.

Mr. Fernandez asked if the white areas on their plot map are going to be addressed soon with the board. Mr. Grossman said they were not going to be addressed at this time as it is all done in phases. Part of this objective is Route 20. Mr. Fernandez said they are covering 2/3 of their dead spots (with this location) and if they could find another site that is higher, would they cover all 3 areas. Mr. Grossman said the propagation of radio frequency is based on several factors: height, topography, limited power of how the facility operates. Mr. Fernandez said that this location does not meet their current void and asked if they have explored alternative sites (the lower part of route 20 is industrial). Mr. Grossman said the gap is located central and moving east, they are 'pulling' east as well and there were not locations to fill the gap. Mr. Fernandez said moving it to the nearest I-3 zone would not cover. Mr. Grossman said, 'no'. Mr. Fernandez asked about the nearest CR zone on the other side of route 20. Mr. Grossman said, 'no, and not address this particular area.' Mr.

Fernandez suggested a coverage map that shows the percentages of coverage from different locations. Mr. Grossman agreed to have these prepared.

Ms. Santucci said the two sets of plans that she has shows 3 antennas going onto the chimney and another shows 3 antennas going onto the bell tower. Mr. Grossman said the plan is to go onto the bell tower and the plan with the chimney is with the original lease exhibit, which another carrier was looking at that particular location. Nextel went to the Rosary and vacated this spot. The chimney-type was not considered due to the age of the building and Mass. Historic rejected the chimney proposal. Mr. Fernandez asked if Mass. Historic actually approved the bell tower location. Mr. Grossman said they are still working through Mass. Historic on the revised design, but they were considering other locations on the building when Nextel vacated this area and they revised their plan to attach to the bell tower. They based this design on the feedback of Mass. Historic and this is what Omnipoint thinks they are looking for in terms of an installation and their past experience with them. Mr. Vlachos asked if the ZBA were to approve it, could Mass. Historic deny it. Mr. Grossman said that it is conceivable. Mr. Fernandez commented on the fact that they would reject attaching to brick. Mr. Grossman said it was not attaching to brick, it was the creation of a new false chimney with antennas located on it; creating a new structure where nothing is now.

Mr. Fernandez said they are attacking THE architectural feature of the building, the bell tower. Mr. Grossman said that this is more consistent with what Mass. Historic has approved in the past. He is not an architectural historian but his team has worked with them enough to know what they are going to do. They had a similar design where they proposed to removed the columns, replace them with fiberglass and place the antennas behind them and Mass. Historic rejected that. They did not want the original historical fabric replaced, they suggested to mount the antennas on the façade instead.

Mr. Vlachos asked what would happen if the church wanted to turn the building into condos. Mr. Grossman said the notice of lease would have already been recorded and anyone who purchased the property would take subject to the Omnipoint right. The underlying use of the building could change.

Chair Vlachos requested that photos be produced showing the specifics of the bell tower and the materials in the antennas. He commented that the antennas appear to be defacing something beautiful.

Ms. Elliott wanted to know the reason the antennas need to be placed onto the columns and could they be placed onto the rear columns facing forward and could

the conduit along the face of the building be placed on the back. Mr. Grossman said, 'no'. The site is set-up to cover 360° and the most important is the one on the front is the one facing the front to cover the area in the direction it is covering. The conduit is an upgrade to what is existing on the building. Ms. Elliott noted that it was not visible on the face of the building.

Ms. Santucci said that this proposal is to cover behind the church – that is where the gap is depicted. Why would the antennas then face Main Street. The antennas should be on the rear facing the gap. Mr. Grossman said that there are two located over the main area of the structure and then one located facing northwest.

Chair Vlachos would like to continue the case to hear the radio frequency engineer, and a color depiction of how these are going to fit on the cupola. Ms. Santucci asked if they could locate the antennas on different columns to see what they would get for different coverage – perhaps not on the front of the column. Mr. Grossman said he would ask the rf engineer. He would like specifics from the board – which antennas are of concern and where would the board want them to be moved to. Chair Vlachos said all of them on the cupola. Mr. Fernandez added that the antennas are larger than the bell tower posts and from an aesthetic perspective, the addition of antennas is not minor as they would be doubling the width of the posts. Chair Vlachos asked if they could put the antenna on the inside of the cupola to serve the opposite direction – beam it through the opening. Mr. Grossman answered that they try to avoid putting an antenna in the open space because that would ordinarily not be something the board would be looking for. Aesthetics is tricky and they go with what they know and what has worked in the past. Mr. Fernandez would like to see proof that they have tried the closest 1-3 zone and the coverage is significantly less than the two-thirds being proposed here. Mr. Grossman will talk to the rf about moving things around, but which ones out of the three. Ms. Elliott said to move all of them around. Ms. Santucci asked that they move them to different places and show the photo sims. There are 8 columns and there would be 8 choices of placement. Mr. Grossman explained that most columns face in the same direction and moving the antenna one column over is not going to change things. The two sectors are going to be the same. Mr. Fernandez said the posts could be obstructive. Ms. Elliott repeated that Mr. Grossman is going to check to see if they can be placed on the inside. Mr. Grossman said they can not locate the antennas on the inside of the column – they'd have to replace the column. They can not be located on the circle on the inside as it would create a shadowing. Propagation has to be clear. There would be shadows by placing the antennas on the inside of the columns. The antennas are wide enough to cover a 360° angle.

Ms. Elliott asked if there is a bell in the tower and if it is used. Someone answered from the audience, but was not at a microphone. Mr. Grossman said the bell does not inter or distort the waves from the antenna even if ringing.

Chair Vlachos repeated that the board is looking for color depictions and the thickness of the antennas.

John Lawn, 20 Pilgrim Road, 3 houses in from the church said he just heard about this yesterday by a letter in his mail box. He is also the district councilor. There is great concern about notification although he understands the board is not voting tonight. He understands that churches, clubs, etc. are losing membership and doing what they have to do to survive. This tower could go here due to the telecommunications act, but he asks that the board put a 90 day delay on this to allow the wireless communications company to find another suitable area as this is a single-family zone. The church houses a pre-school and there are a lot of families with young children in this area, including himself. He asks the board to delay the vote for the church to work with the neighborhood. The active membership is down to 25 people and he wonders if the antennas are a short term solution to a long term problem, if they do not have the membership. There may be other short term ways to gain financial solutions. He asks again to provide the time to give the pre-school and others time to provide their views.

Marilyn Petitio-Devaney has been involved in the cellular antennas for years. She is opposed. She said they can not bring up health issues, but just like asbestos, you never know. Her last count, there are 104 cell towers in Watertown. She is not convinced there are dead zones. There are dead zones on Common Street in Belmont and that is what these antennas are for – to serve Belmont, Cambridge and Boston. She has a granddaughter and daughter that live in this area. She sad that people (in the area) don't know about this. She wants the board to vote no. The telecommunications act says we cannot prohibit cell towers to come in, but we can cite them – this is not the zone for it – not where there are children. That is why Oakley didn't get it and other areas. She said she didn't win them all, but this area is not zoned. Watertown is saturated. She keeps asking congressional representative to amend this but they will not. She said Belmont only has enough to count on your hand. She knows the church is getting \$1500 a month for this. The pastor of St. Patrick's said no. The town of Harvard just said yes. She said it is time for people to say no and to think about the health issues and the people surrounding this building.

Lenny Santamaria said his concern is the unattractive antennas he sees on the side of the focal point of buildings like this – in the cupola. If they could put the antennas in the center of the bell tower so they would be less visible, he may not object. He said many areas are being destroyed visually by cell towers like this one. He disagrees with the attorney who said putting the antennas on the outside of this building would be more visible than putting the antennas on the outside of the buildings focal point or in a tower in a field somewhere where there aren't people around.

Mary Snow, 10 Pilgrim Road, lives a bit closer than Councilor Lawn. She did not find out about this from notification in her mailbox, she found out by a letter handed to

her tonight at 6:25 p.m. She found childcare to come here. She is upset that they found out at 6:25 p.m.

Chair Vlachos asked if there were issues with notification on this. Ms. Scott said the only issue was a phone call from someone complaining that the notice said Union Church and not the Community Church, however, the assessor's records and the petitioner's application both list this as the Union Church. There were also questions by the board regarding the address as 531 Main Street.

Ms. Snow continued stating that she does not read the Watertown Tab and was disappointed that she did not receive a notice in her mailbox. She "Googled" cell towers and health and although she will not speak about health, there were over 5 million hits on this one issue. She has a childcare business out of her home and there are over 10 children under the age of 5 between her house and the church. This is a single-family area and there are many industrial areas in town that should be considered. She also would like the board to give the church and the neighbor's time to get the facts and work with the church.

Donald Shane, a member of the Church as well as on the board of directors. The board has discussed the issue along with joint meetings of the diaconate of the church as well as an annual meeting with the whole of the church. This is not something that Charlie has taken on as his own, the whole church has voted for this. The church itself is behind this. The address that they use is 525 Main Street, they have had issues with the town, and the post office with getting this recorded. The post office has it as 531 but on the church, it is clearly marked 525. He has a notice that was in the newspaper as required that did give public notice to this hearing. There is a day care downstairs in the church that has been operational for 7 years and there are 33 local children.

Margaret Claremont, Director, Watertown Cooperative Nursery School, moved from 128 Mt. Auburn Street to this location 7 years ago when that church changed to condos. They are a non-profit with 33 children in the basement. They are bound to be there by lease for another 3 years. The children's ages are 3, 4, & 5.

Mr. Grossman would like to continue the case.

Mr. Moynihan clarified that Mr. Grossman be prepared with evidence of their search for specific locations and all of their attempts to find suitable locations outside of this district. Mr. Fernandez quoted the WZO, Section 5.13: "To be located within these zones: CB, LB, I-1, I-2, I-3, CR". This is the basis of our request that you need to

prove to us that no locations within these zones satisfy the needs and only this location that can match the two-thirds coverage that they are seeking.

Chair Vlachos stated there is a request to continue, all those in favor? 5-0 Voted to Continue to October 29, 2008.

Harry J. Vlachos, Chairperson

Melissa M. Sambucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

## MINUTES

On Wednesday evening, **September 24, 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. Sambucci**, *Clerk*; **Deborah Elliott**, *Member*; **Carlos Fernandez**, *Member*; **Richard M. Moynihan**, *Alternate Member*; **Steve Magoon**, *CDPD Director*; **Nancy Scott**, *Zoning Enforcement Officer*; **Danielle Fillis**, *Senior Planner*; **Louise Civetti**, *Clerk*. *Absent: Stuart J. Bailey*, *Member*.

Tape 2 of 3, Side B

The legal notice was not read at the meeting and is printed here for reference. This is a continued case.

Arto Demousesian, 55 Moulton Street, Newton, MA, herein requests the Board of Appeals to grant a **Special Permit** in accordance with §5.02(m), Accessory Use, Sale of New and Used Motor Vehicles, so as to allow as an accessory use the sale, display and storage of two (2) operable used vehicles in conjunction with existing Arto's Service Station, gas station /auto repair facility at **445 a/k/a 441 Main Street**, located in the LB (Limited Business) Zoning District.

Argen Roy, Attorney and Arto Demousesian introduced themselves. Chair Vlachos mentioned that the last time they were in front of the board there was a crowd with some complaints. Attorney Roy said the issues have been addressed and Mr. Salvucci is not here as his issues are addressed and he no longer objects to their proposed use of the space. Ms. Scott said that Mrs. Salvucci supported them but did not support the number of vehicles. Attorney Roy said there was an issue regarding the maintenance of the piece of property between the gas station and Mr. Salvucci's property. They removed the grass that was untidy and replaced it with mulch. They have photos to show the change. The other issue was the parking and the service station has moments when they are busy and the 7 spots are taken. They will use street parking if they ever run busy again. All the businesses in the area do not have any parking. Mimi's Roast Beef, Watertown Flower Shop, Fitz's Bar and Grill, Feet Wise, Acapulco Restaurant do not have parking and all customers park on the street. They also submitted 5 statements of abutters in support of the proposed use to sell new and used motor vehicles. They have also addressed the Planning Board's concern regarding the striping in the parking lot and the 7 spaces are now clearly defined.

The petitioner submitted photos for the record.

Attorney Roy stated that the strip of land is not planted on as there would not be any light or air and the plants would be subject to exhaust.

John Lawn, District Councillor, has a business across the street from the service station. He was out of town when the petitioner came around for signatures in support. He is stating for the record that he would have signed the petition in support of his business.

Marilyn Petito-Devaney, went here the other day. She didn't have any cash and they trusted her with a check. She trusts them, too. They have been a good neighbor. She lives on the next street.

Ms. Santucci said at the last meeting they had talked about softening that area, additional landscaping, trees, etc. Chair Vlachos told her that a condition could be added.

Chair Vlachos read from the Staff Report that they recommended to deny the Special Permit. On June 11, 2008, the Planning Board voted 4-0 to deny. The reports asks for the site to be cleaned and not to look hazardous.

Ms. Fillis stated that Planning Staff now supports this proposal as it has changed significantly since she first saw the site. The parking has been striped, it has been cleaned up and they have managed their parking issues.

Ms. Scott said the lot has been cleaned up and they continue to empty the barrels. They have done what they said they would do and they have maintained that. Evidence is that the Salvucci's are not here. The Licensing Board will make adjustments to their license. They can be conditioned to maintain the cleanliness of the site and landscaping. Ms. Santucci added that mulch is not landscaping. The board discussed plantings in the 3' strip and it was decided that very little would grow in that area. The wood cutting business has ended and they are not storing wood on the lot. They will paint over the "absolutely no parking" on the brick wall. The conditions were discussed from the Planning Board report: Clearly stripe the 12 parking spaces. That has been done. Remove signage painted on brick wall and replace with a small sign denoted parking #12 as 15 minute customer parking. That will change because the two spaces, 11 & 12 will be designated for class II only.

Mr. Moynihan motioned to approve the petition with the conditions discussed. Ms. Elliott seconded. Voted 4-0 (Mr. Fernandez did not vote)