

TOWN OF WELLESLEY



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ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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83-59

Petition of Theodore F. Parker and North Coast Properties, Inc.,
Trustees of the Prescott Park Trust

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing in the second floor hearing room of the Town Hall on Thursday, November 17, 1983 at 8 p.m. on the petition of Theodore F. Parker and North Coast Properties, Inc. (John Niles), Trustees of the Prescott Park Trust, requesting Site Plan Approval under Section XVIA of the Zoning Bylaw for the construction of a two-story addition to an existing office building at 366 Washington Street, in a Business District, said new building to contain a gross building area of 29,229 square feet, and associated landscaping and parking. The petitioner requests a Special Permit under Section XXI, Part E, Subpart 2, for Off-Street Parking. Said request is pursuant to Section XXV of the Zoning Bylaw.

On October 25, 1983, the petitioner requested a hearing before this Board, and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was John Niles, President of North Coast Properties, Inc., who stated that Prescott Park Trust was formed to purchase the property involved which consists of the Lee Chevrolet building at 366 Washington Street, and 10 Prescott Street. The parcel involved includes a strip of land which is leased by Prescott Park Trust from the Town of Wellesley over the Cochituate Aqueduct to provide off-street parking. The term of the lease ends August 31, 1986 with an option to extend the terms until 1993, a total of ten years. The petitioners propose to add two stories to the existing building and request Site Plan Approval. Mr. Niles and the architect, Anthony Pisani presented several displays; a rendering of the proposed building, plan of land, site plans showing parking and landscaping, elevations, floor plans. Mr. Niles described the building design and materials, the circular driveway on Washington Street, and stated that the Butler-type building at 10 Prescott Street would be removed. Parking spaces for 76 cars would be provided. Mr. Niles stated that he understood that 64 parking spaces would be required by the Zoning Bylaw for the two new floors, and that new floor area would be 10,000 sq.ft. per floor. He stated that the first floor pre-dated the current parking requirements. He stated that an alternative parking plan was also submitted for informational purposes, showing 67 parking spaces, without using any leased land. Mr. Niles stated that the first floor would consist of 9,300 square feet (including an addition of 460 square feet of ground floor space at the southeast corner of the building, but representing an addition of less than 5% to the ground floor coverage of the existing building). Part of the facade of the first floor would be maintained in the front, side and a portion of the rear. The existing floor would be removed to add support columns.

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Mr. Niles stated that they would accept a condition that would require them to provide parking on land owned by them (including the construction of a parking deck) if leased parking were eliminated.

Present at the hearing was J. Robert Connor, 12 Brook Street, who expressed concern about the design of the building and the landscaping. Ed Donlon, 4 Seaver Street, asked if Town Meeting had authorized the Selectmen to issue leases for aqueduct land. Felix Juliani, member of the Board of Selectmen, replied that Town Meeting authorized it two years ago. Salvatore DeFazio III, owner of the abutting property at 346-358 Washington Street, read a letter dated November 16, 1983 which he had sent to the Board of Appeals, expressing concern about drainage and a piece of aqueduct land that juts into his driveway. Harold W. Young, Jr., abutter and owner of property at 16 Prescott Street, expressed concern about parking and traffic. Alfred Fraser, owner of property at 330 Washington Street, expressed support for the petition.

Statement of Facts

The property involved is located at Washington Street at the corner of Prescott Street, in a Business District. It consists of two properties known as 366 Washington Street and 10 Prescott Street. A topographic plan of land dated October 21, 1983 shows Parcel 1 containing 17,634 square feet, Parcel 2 and 3 together containing 15,652 square feet. A strip of land containing 8,359 square feet runs between Parcels 1, 2, and 3, is owned by the Town of Wellesley and is currently leased to the petitioners.

The owner and developer of the property is Prescott Park Trust. Prescott Park Trust is a partnership comprised of North Coast Properties, Inc. (John Niles) and Theodore F. Parker, Selectman of the Town of Wellesley. The property was purchased from New England Investment Realty Trust in 9/83 and formerly owned by Lee Family Trust. A one-story structure exists at 366 Washington Street, and a Butler-type metal-clad building exists at 10 Prescott Street, which the petitioners propose to remove.

The petitioners request Site Plan Approval and propose a three story office building at 366 Washington Street with related parking and landscaping, containing 29,229 gross square feet of commercial space. 460 square feet of ground floor space would be added to the existing first story at 366 Washington Street. Parking would be provided for 76 cars on land owned by the petitioner and a strip of land leased from the Town.

The following plans were submitted, drawn by Pisani & Associates, Architects, Boston, dated October 21, 1983; a rendering of the proposed building; Plan L-2, site plan; A-1 and A-2, floor plans; A-3, elevations; A-4, sections, elevations, wall section. A topographic plan of land, L-1, by Robert Applegate, Registered Land Surveyor, Harry R. Feldman, Inc., Boston, was submitted, dated October 21, 1983. A site plan, L-4, by Pisani Associates, showing an alternative parking plan without land leased from the Town, was submitted.

The Design Review Board held two preliminary site plan review meetings with the petitioners on September 28, 1983 and October 12, 1983. A final design review board meeting was held on November 10, 1983, at which time the board approved the plans as presented. The Planning Board supported the recommendations of the Design Review

Board and commented on the alternative parking layout in a letter of November 16, 1983.

Site Plans and other submission materials were sent to the Planning Board, Wetlands Protection Committee, Town Engineer, Board of Health and Fire Chief as required by Section XVIA. Written responses were received from the Planning Board, Town Engineer, and Wetlands Protection Committee and are on file at the Board of Appeals office.

Decision

This Authority has made a careful study of the evidence presented, both documentary and oral. The petitioners are requesting Site Plan Approval under Section XVIA of the Zoning Bylaw for the project at 366 Washington Street and a Special Permit for Off-Street Parking under Section XXI, Part E, Subpart 2.

Site Plan Approval requires this Authority to address concerns insuring compliance with the Zoning Bylaw, protecting the safety, convenience and welfare of the public, minimizing additional congestion in public and private ways, and insuring compliance with the provisions of Section XXI dealing with Off-Street Parking.

The petitioners are proposing a major rehabilitation of the existing one-story, former car dealership building at 366 Washington Street. Not only are they proposing to add two stories to the building, but also intend to make major structural changes to the first floor. The entire space is being redesigned and rebuilt. An elevator is being added. The floor and walls except for a narrow portion of the outside facade will be torn out. The support pilings are being enlarged to support the two new floors of the office building.

The original use of the building was for an automobile dealership. During the last several months the existing space was used by a manufacturing company for its own purposes. The petitioners intend to lease out the entire three story building as office space. Such an office building will produce substantial new traffic and increase the need for off-street parking.

This Authority believes that the petitioners are building essentially a new building and thus the "existing" and new space must comply with current building code requirements. The proposed building must be considered new for purposes of the Zoning Bylaw. Because the use is being changed, the "existing" space in the building is not protected by any grandfather clause and the proposed building must meet current parking requirements for new buildings.

Based upon Section XXI, Part D, subpart 2 (Required Parking), the petitioners must provide 3.2 spaces per 1,000 square feet of floor area or 93 parking spaces for the new building which has a total of 29,229 square feet of floor area. The petitioners have proposed only 76 parking spaces with the leased land and this is not enough.

Even if this Authority were to view the proposed building as merely adding two stories, the off-street parking with the leased land is 76 spaces, and would not be enough under the Zoning Bylaw. The petitioners argue that the new floor space would only require 64 new spaces and that the twelve spaces from the Washington Street side

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are being preserved as suggested by the Design Review Board.

This Authority believes that in excess of 76 spaces would be required since the property had more than 12 "existing" off-street parking spaces that have to be preserved under Section XXI, Part C, 2 which reads:

"No existing off-street parking spaces shall be eliminated by the replacement or enlargement of an existing building or structure, unless replaced by spaces provided in accordance with this Section."

This Authority does not believe the above bylaw is being complied with since more than 12 "existing" spaces existed and because old existing spaces in the rear are being used to replace existing spaces from the front of the building. This slight of hand is compounded by the petitioners' specious argument that even though they must have 64 new spaces for the two new floors, they do not have to provide any space for the 460 new square feet of ground cover on the first floor. At least 65 if not 66 spaces would be required.

We read Section XXI, Part C-3 of the Zoning Bylaw as requiring an aggregation of the new floor and ground coverage as long as either the new floor coverage exceeds 15% of the existing floor area or the new ground coverage increase exceeds 5% of the existing coverage.

The purpose of the bylaw is to provide additional off-street parking for buildings which trigger one or the other or both minimum in increased space. To say that petitioners would only have to provide parking for increased floor coverage but not for the 460 square foot increase on the first floor flies in the face of the only reasonable interpretation of the bylaw.

The petitioners claim that the language of Section XXI, Part C-3,

"...but only to the extent that such increase exceeds 5% of the ground coverage or 15% of the floor area existing at the time this Section becomes effective;...."

requires that 5% and 15% be read separately. This Authority believes that if one is exceeded that any amount of increase in the other must be aggregated and the off-street parking requirement is applied to such aggregate.

This Authority is concerned that the lease for town property to be used for off-street parking by the petitioners is inadequate. First, the lease gives either party the right to terminate upon giving 90 days written notice. The second paragraph on the third page of the lease states:

"This lease may be terminated by either party by giving ninety (90) days written notice to the other party of its intention to terminate said lease, provided, however, Lessor's rights to terminate shall be exercised only in the event that the premises are determined by the Board of Selectmen of the Town of Wellesley to be needed for municipal purposes."

This Authority believes that the petitioners would never have accepted such a lease

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if they intended to construct a building on leased land with these provisions. We believe strongly that leases or arrangements for parking spaces required under the off-street parking bylaw should be long term and firm arrangements especially where the lease is used to provide parking spaces for more or less permanent structures. The subject lease would be subject to many outside influences and factors and, should the lease be terminated, there would be little likelihood that the off-street parking bylaw could be complied with at that time. At least no such future alternative parking plan in the event of lease cancellation has been offered by the petitioners.

While not necessary to this decision, this Authority believes that the permission granted by the 1983 Annual Town Meeting to the Selectmen on an eighty-three (83) to eighty(80) vote to lease town land "to the New England Investment Realty Trust (or other appropriate entity)" was for an entirely different situation than that before us.

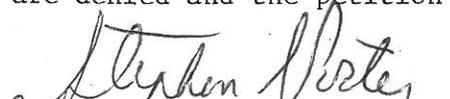
The Advisory Committee reported that:

"Passage of this article will authorize the Selectmen to grant a lease to New England Investment Realty Trust for five years for 8,060 square feet of land used as a parking lot at the junction of Prescott and Washington Streets in Wellesley Hills. The rent will be \$3,806 annually, payable on a monthly basis. The rent is calculated on rates paid on other Town leases in FY82, adjusted by changes in the Consumer Price Index over the previous five years."

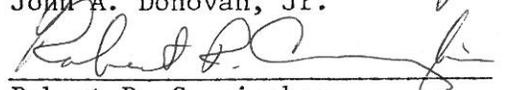
New England Investment Trust sold the "Lee Chevrolet" property to the present petitioners. Neither the length of the lease nor the scope of the building project were presented to Town Meeting and therefore it had no capacity to judge its advisability to the Town concerning the lands use and the amount of rent to be paid therefore.

This Authority is greatly concerned with the potential traffic and congestion which the petitioners' project will create in the area it is to be located. The results of inadequate off-street parking can be seen in many of Wellesley's commercial areas and streets. The lines of legally and illegally parked cars stretching deep into residential areas from business sections, the danger of accidents from people getting into and out of cars parked on busy streets, the interruption of the free flow of traffic caused by cars pulling in and out of street spaces are but only a few of the reasons behind the requirement of additional off-street parking for building expansion.

This Authority finds the proposed project does not provide sufficient off-street parking required by the Zoning Bylaw. The petitioners have failed to provide enough spaces and even the ones it has provided by way of lease with the Town are too tenuous as far as permanency is concerned. Because of the inability of the petitioners to provide this Authority with evidence sufficient to show that the proposed project meets the requirements and intent of the Zoning Bylaw with respect to off-street parking, the requests for Site Plan Approval under Section XVIA and for a Special Permit under Section XXI, Part E, Subpart 2, are denied and the petition is dismissed.


Stephen S. Porter, Chairman


John A. Donovan, Jr.


Robert R. Cunningham