

TOWN OF WELLESLEY



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ZONING BOARD OF APPEALS

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ZBA 2006-55

Petition of Archdiocese of Boston
910 Worcester Street

Petition of ARCHDIOCESE OF BOSTON requesting a Special Permit pursuant to the provisions of Section II A 8 (j) and Section XXV of the Zoning Bylaw for non-accessory use of off-street parking spaces in its existing parking lot at 910 WORCESTER STREET, in a Single Residence District, which is a use not allowed by right.

On June 19, 2006, the petitioners filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case the hearing was Dudley Mulcahy, who said that he is the Real Estate Manager for the Archdiocese of Boston. He submitted a revised sketch of the parking area with dimensions.

The Board confirmed that the revised sketch replaces the two that were submitted with the application.

Mr. Mulcahy said that St. James Church was closed by the Archbishop almost two years ago. At that time businesses came to them and asked for permission to park vehicles on their lot. He said that they agreed to do that. They signed licenses with Brigham-Gill, Lee Volvo and Jarvis Appliances. He said that they since learned that the use was not allowed without a special permit.

The Board said that the petitioner is applying for a special permit under a fairly new section of the Zoning Bylaw. The bylaw was put in place to regulate non-accessory uses of church parking lots in residential areas of town. St. James is in a residential district.

The Board said that the Planning Board wrote the bylaw. After reviewing the petition, the Planning Board advised the Zoning Board that this proposal is not consistent with their intent of the bylaw. They said that granting a special permit should fulfill or partially fulfill a public need without creating a disturbance.

The Board said that under Section XXV of the Zoning Bylaw, general special permit conditions, the use has to be in harmony with the general purpose and intent of the bylaw.

The Board said that this proposal should be harmony with the residential district. The property is surrounded by residential areas on all sides.

The Board asked about the type of parking to be allowed by the special permit. The Board would have to make the determination that whatever parking is necessary for the facility will be available. Without knowing what will happen to the property, it is difficult for the Board to do that.

The Board asked what the facility is being used for now. Mr. Mulcahy said that the church is closed but there is a canonical appeal to that closure. While the appeal is going on, the archbishop will not sell the property.

Mr. Mulcahy said that two of the licenses are for local business' employee parking. Lee Volvo and Jarvis Appliances employees park at the front of the lot. Brigham-Gill Jeeps are stored at the back of the lot.

The Board asked for a description of the agreements regarding number, types of vehicles, and hours of use. Mr. Mulcahy said that the Brigham-Gill vehicles are there for storage. The other parking is for employees during working hours. There are 20 spaces allocated for Jarvis, 40 spaces for Lee, and 60 spaces for Brigham-Gill.

The Board asked if there are any measures in place to control the parking according to the agreements. Mr. Mulcahy said that the licensees enforce that.

The Board said that under Section XIX of the Zoning Bylaw there is a clear distinction between auto storage and parking.

The Board said that the 150 foot by 350 foot area seems large for employee daytime parking. The bylaw does allow for parking but does not allow for storage in a residential district.

The Board said that the property is located in a Water Supply Protection District. There are no substantial drainage control features on the lot. A new lot would be required to meet drainage control regulations. There is a grey area here since the lot is existing but the use is new. Any use could potentially impact the Water Supply Protection area. This proposal could trigger the need for an upgrade to the parking lot since it is being used for storage of vehicles.

The Board asked if the agreements were for terms of time. Mr. Mulcahy said that the licenses are issued for 30 day terms.

The Board said that it was concerned with the tax exempt status since the church is closed and the lot is being used for commercial purposes. Mr. Mulcahy said that the lot has been assessed and taxes have been paid. He said that the Assessors assigned 60,000 square feet to that use.

Barbara Canoni, 1 and 2 Dale Street, said that they live directly behind the area where the vehicles are parked. She said that the proposal does concern them. She said that there were modular homes parked at the lot last week because no one is watching to see who is parking there or what is going on. She said that cars are being loaded and unloaded all the time. The number of cars there varies. She said that is not acceptable. She said that this is a residential district and she is concerned that this will set a precedent.

Dana Lee, Lee Volvo, said that they are parking there during the day. He said that they have 100 employees. They have been using the lot for overflow employee parking for 10 to 12 years. He said that recently Jarvis Appliances employees started parking there. He said that there is a need for this for businesses that have been established in Wellesley for many years.

Mr. Lee said that he was asking for relief for the daytime employee parking. He said that they do police the lot themselves. He said that Route 9 is probably more of a factor when considering noise or traffic.

The Board asked if all employee parking was in the lot. Mr. Lee said that they have a good amount of parking on premises and at their other facility. He said that this is their overload as they have grown over the years.

The Board asked if they use all 40 spaces. Mr. Lee said that the number spaces used fluctuates on a daily basis.

The Board asked where the employees will park if the special permit is denied. Mr. Lee said that he would be before the Board shortly with plans for a parking structure at 962 Worcester Street. He said that it is a great benefit for them to be able to use the parking at the church at this time. He said that it would be a hardship if they had to be out of there tomorrow.

The Board asked if the employees needed to park there other than Monday through Friday, 9 a.m. to 5 p.m. Mr. Lee said that most of the weekend parking is on-premises. There are some people who park at the lot on the weekend because they prefer to walk back and forth to the lot.

The Board asked if the need for parking depends on the inventory. Mr. Lee said that they have to delegate areas for certain purposes. The Board asked if they have another facility for parking inventory. Mr. Lee said that they have the two facilities on Route 9 plus the employee parking at St. James. He said that there are other facilities that they have used on Route 9.

Mr. Lee said that 888 Worcester is not a residential property. He said that it is a big business area with employee parking.

Mr. Mulcahy said that the issue of the modulars was brought to their attention by the property management company. The modulars have been removed from the lot.

The Board said that storage of vehicles along with the loading and unloading of vehicles for sale could be found to cause a significant disturbance and disruption to the residential neighborhood. That is something that the Board could not allow.

The Board said that the property is zoned residential but is located in a commercial corridor. There will not be several residences that will be affected. The Planning Board said that it will be conducting a study of the corridor. The area could be rezoned as commercial after the church moves on.

The Board said that storage is a more intense use than non-accessory parking. There is concern that the church has essentially been closed and the lot has been identified as income generating.

The Board said that the employee parking should not only not cause a disturbance but should fulfill a public need. Because they have been doing this for 10 to 12 years, they should be given some time to phase it out. It should be understood that the special permit would allow for a temporary solution.

The Board said that it has some responsibility to protect against encroachments in residential districts. Encroachments should be held to the highest standards because of precedents being set.

The Board said that by granting a one year permit, that would allow for employee parking for that time and for development of the use of the property. The special permit would be effective for one year or until the use changes, whichever comes first. The Board said that the special permit would not go with the sale of the property.

The Board said that there should be no storage because the bylaw does not allow the Board to consider storage in a residential district.

The Board asked Ms. Canoni if there is a difference between the car storage and employee parking as far as the effect on the residential neighborhood. Ms. Canoni said that the cars that are stored are at the back, close to the residential area. The employee parking is at the front of the lot, closer to Route 9. They do not have an issue with the employee parking. They are concerned that a special permit might be granted to allow for more vehicles.

Ms. Canoni said that the big issue is the loading and unloading of vehicles, sometimes at 4:30 to 5 a.m. She said that they do not hear the Route 9 traffic.

Ms. Canoni said that the parking lot at 888 Worcester Street is newer and has drainage facilities.

J. Joseph Elliot, Precinct A, said that he was interested in the church use. He said that the church use is very limited. People are occupying the church 24 hours a day, 7 days a week. He said that he hoped that anything the Board decided would not force them to abandon the church. The Board said that the proposition before it relates only to parking.

The Board asked if there was adequate parking when the church was open. Mr. Elliott said that there was. The Board said that under the bylaw non-accessory parking cannot interfere with accessory parking.

The Board said that there is an entrance south of Route 9 off of Dale Street and an exit back onto Route 9 near the church. That makes the location of the parking reasonable.

Jim Love, 20 Bay View Road, said that he has been a resident for 40 years. He said that there is a banking to the property that goes up to Shadow Lane. He said that there is an extensive lot in between the Lee properties that is vacant.

The Board said that is the Wellesley Motor Inn property.

Mr. Lee said that the church may still be open in one year. The property could be sold and then be rezoned as commercial. He asked that if nothing changes with the church that the effective period of the special permit be extended. The Board said that under the bylaw the petition must be reviewed annually.

The Board said that this proposal does not fulfill the intent of the bylaw. Granting the special permit will give the people who currently park in the lot a year to find another solution.

Statement of Facts

The subject parking lot is located at 910 Worcester Street, in a Residential District and a Water Supply Protection District. The petitioner is requesting a Special Permit to allow for non-accessory use for parking of vehicles in a 150 foot by 350 foot area of its existing parking lot, which is a use not allowed by right.

The designated parking spaces are intended for employee parking during working hours. There are 20 spaces allocated for Jarvis Appliances and 40 spaces for Lee Volvo.

A Sketch Plot Plan, dated 7/6/06, was submitted.

On June 20, 2006, the Planning Board reviewed the petition and strongly recommended denial of this request, stating that this proposal is not consistent with the intent of the bylaw amendment.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. A Special Permit is required pursuant to Section II A 8 (j) of the Zoning Bylaw, as the requested use of the parking lot for non-accessory off-street parking for employee vehicles in a 150 foot by 350 foot area of the existing parking lot is not a use allowed by right in a Residential District.

It is the opinion of this Authority that the non-accessory use parking shall not cause significant disturbance or disruption of any residential neighborhood, shall not detract from the use of the parking lot for the accessory use, or reduce landscaping or screening areas. Therefore a Special Permit is granted, subject to the following conditions:

1. Parking shall be limited to business hours only.
2. Parking spaces shall be assigned on a monthly basis only.
3. 40 parking spaces shall be for employee parking for Lee Volvo.
4. 20 parking spaces shall be for employee parking for Jarvis Appliances.
5. There shall be no vehicle storage allowed including storage of Brigham-Gill vehicles.
6. There shall be no overnight parking.
7. The Special Permit shall expire one year from the date time-stamped on this decision or earlier if there is a change of use as a closed church.

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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

J. Randolph Becker, Acting Chairman

Cynthia S. Hibbard

Robert W. Levy

cc: Planning Board
Inspector of Buildings
lrm