



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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ZBA 88-42  
Petition of One Market Street Realty Trust  
17 Prescott Street

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Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, June 23, 1988 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street on the petition of ONE MARKET STREET REALTY TRUST requesting a variance from the terms of Section XII-D and pursuant to Section XXIV-D of the Zoning Bylaw to allow the total floor area of the proposed addition and existing structure at 17 PRESCOTT STREET, in a Business A District, to exceed the maximum floor area ratio allowed; and requesting a Special Permit for Site Plan Approval pursuant to Section XVIIA and Section XXV of the Zoning Bylaw for construction of an addition approximately 13, 947 square feet to an existing office building, a garage approximately 28 feet by 40 feet, associated parking and landscaping at 17 PRESCOTT STREET in a Business A District.

On April 29, 1988, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

The first hearing of this petition was held on Thursday, May 19, 1988 at which time the Board and the petitioner agreed to continue the hearing to June 23, 1988. In the opinion of the Board, the application for Site Plan Approval was incomplete and a question of notification of abutters was raised by Thomas Fischer, 9 Spruce Park. Donald Babson, d/b/a One Market Street Realty Trust, presented a memo to the Board regarding the variance request.

Presenting the case at the hearing on June 23, 1988 was Donald Babson, d/b/a One Market Street Realty Trust, who was accompanied by Alan Brackett, Executive Vice-President of Babson Registered Investors, Nicholas Soutter, attorney for the project, and Victor Cromie, architect for the project.

Mr. Babson submitted an updated edition of the memo submitted on May 19, 1988. He stated that he had submitted the application for Site Plan Approval based on a "one-lot" approach, as historically, all the parcels had been used and taxed as one lot for over 50 years. If the land were viewed as one lot, a variance would be unnecessary. However, if the land area is treated as two lots, a variance is necessary and requested. Babson said he is willing to covenant that all of the land area involved would be bound together to the expanded building in perpetuity. A literal enforcement of the Zoning Bylaw would result in great financial hardship due to the unique shape of the land involved, and such enforcement would deny the petitioner the possibility of development of the land to its economic potential.

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General concern was expressed by the abutters regarding the possibility of the opening of Prescott Street to connect with Caroline Street. Nicholas Soutter stated that Mr. Babson had no intention of so doing, if the variance were granted. Mr. Soutter also submitted a memo with an attached map of the area.

Other neighborhood concerns involved the potential use of Lot K as a parking lot, the proposed garage, and the location of the required 49 additional parking spaces.

Carol Stewart, 29 Abbott Road presented a petition signed by 27 neighbors and abutters in opposition to the variance.

Selectman Sarah Johnson elaborated on the issue of the floor area ratio and expressed opposition to granting the variance as there was no hardship, the traffic volume would be increased, and the granting of the variance would set a poor precedent.

Selectman David Daley was opposed to the granting of the variance on the grounds that the situation of separate lots was not unique, as others in town own separate lots and do not request building variances in conjunction with the total square footage of separate lots.

Steve Fischer, 9 Spruce Park, concluded that although some residents were absolutely opposed to the project, some residents would not oppose it if they were given guarantees regarding visual and sound buffers on Caroline Street and Laurel Avenue, and traffic control in regard to access to the parking lots to protect the residential character of the neighborhood from the encroachment of the commercial zone.

#### Statement of Facts

The subject property is located at 17 PRESCOTT STREET, in a Business A District on a land area consisting of 5 separate lots. Lot I, Prescott Street and Lot K are contiguous. Lots 6 and 7 are contiguous. The two groups of parcels are separated by the Aquaduct which is owned by the Town of Wellesley.

Lot I contains 71,000 square feet, 59,800 of which are zoned for business use; Lot K contains 18,200 square feet, of which 8,100 square feet are zoned for business; Prescott Street contains 14,300 square feet, of which 9,000 square feet are zoned for business. The total of the business zoned area of these three lots is 76,900 square feet.

Lot 6 contains 23,380 square feet and Lot 7 contains 3,853 square feet. The total of the business zoned area of these two contiguous lots is 27,233 square feet. The total business zoned area of all 5 lots is 104,133 square feet.

There is an existing office building of approximately 38,015 square feet with a non-conforming floor area ratio of .6357 on Lot I.

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The petitioner is proposing to construct an addition approximately 13,947 square feet to the existing office building. The combined floor area of the existing building and the addition would total 51,874 square feet. The floor area ratio of the proposed and existing building in relation to the combined square footage of Lots I, K and Prescott Street would be .6746.

The petitioner is seeking a variance to exceed the maximum floor area ratio of .5 allowed in a Business A district, with the condition that he will forever bind Lots 6 and 7 to the building. Lots 6 and 7 would have a floor area ratio of .0000. The total floor area ratio of the proposed structure to the total square footage of the two non-contiguous parcels would be .4982.

Section IA of the Zoning Bylaw defines Floor Area Ratio as:

"The floor area of building divided by the commercially zoned lot area..."

In response to a request from the Board for a legal opinion on the issue of whether two parcels of non-contiguous land could be considered a single commercially zoned lot area on which to base the floor area ratio, Town Counsel, in a letter dated May 5, 1988, stated:

"It is my opinion that, under the circumstances of your inquiry, the most that can be gained by a merger is two commercially zoned areas. The existence of the Aquaduct between Lots K, I and Prescott Street, on the one hand, and Lots 6 and 7 on the other hand, preclude an ability to merge all of those parcels into one commercially zoned lot unless and until the intervening Aquaduct were to be acquired by the same property owner.

The effect of the foregoing is to permit at a maximum the joinder of Lots K, Prescott Street and I into one commercially zoned lot on which the construction is to be completed. The floor area ratio should be based on that configuration."....

The petitioner is also requesting a Special Permit for Site Plan Approval for construction of an addition approximately 13,947 square feet to an existing office building, a garage approximately 28 feet by 40 feet with associated parking and landscaping. Forty-nine new parking spaces would be provided in addition to the 101 presently available.

The following information was submitted: Official Development Prospectus with a Test Boring Report; Site Development Plan dated April 25, 1988, drawn by Victor Cromie; Floor Plan/Second, Third Floors/Garage, dated April 25, 1988, drawn by Victor Cromie; South & West Elevations, dated April 25, 1988, drawn by Victor Cromie; Section/East & Garage Elevations, dated April 25, drawn by Victor Cromie; Landscape Plan, dated April 25, 1988, revised May 18, 1988, drawn by Victor Cromie; Plot Plan, dated January 29, 1988, revised February 9, February 22, March 22, April 5, April 25, and May 12, 1988, drawn by Richard B. Betts, Registered Land Surveyor; Grading, Drainage and Utilities plan, dated April 24, 1988, revised June 10, 1988, drawn by William G. Lyons, Professional Engineer.

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Additional electrical and storm drainage calculations were submitted by Victor Cromie in response to a request from the Town Engineer.

The Design Review Board held two preliminary meetings on September 8, 1987 and January 14, 1988. A final review was held on May 12, 1988 at which time the Board voted to approve the design of the building as submitted, but was concerned with the lack of landscaping. On May 17, 1988, the Landscape Architect on the Design Review Board met with Victor Cromie to discuss landscaping of the proposed project.

The submission materials listed above were also sent to the Planning Board, Wetlands Protection Committee, Town Engineer, Board of Health and Fire Chief as required by Section XVIA of the Zoning Bylaw. Written responses from each of the above were received and are on file at the ZBA office. The Town Engineer, in a letter dated May 13, 1988, requested further information relating to drainage and electrical areas. On June 22, 1988, the Town Engineer advised that the electrical information was complete, but that percolation tests and a revised site plan showing location and sizing of leaching basins was yet to be submitted.

The Planning Board, on May 17, 1988, voted to oppose the granting of the variance to exceed the floor area ratio, as there is no mechanism or criteria available in the Zoning Bylaw to enable transfer of development potential from one commercially zoned lot to another noncontiguous commercially zoned lot. There was no objection to the granting of Site Plan Approval provided all the zoning requirements are met.

#### Decision

This Authority has made a careful study of the evidence presented.

Variations may only be granted by the Permit Granting Authority once they have found any or all of the following (Section XXIV-D 1. as quoted from the Zoning Bylaw):

- "1. ...
  - a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape or, iii) topography of such land or structures, especially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and
  - b. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw."

It is the opinion of this Authority that the hardship of the petitioner is self-created and not a "substantial hardship" as defined above.

It is the further opinion of this Board that the existing building on Lot I currently exceeds the maximum floor area of .50 allowed in a Business District A by .1357, and that to grant the petitioner a variance to further exceed that maximum by .1746, based on the binding of Lots I, K and Prescott Street, would be substantially derogating from the intent and purpose of the Zoning Bylaw.

It is the further opinion of this Authority that the unique shape of the lot is not that of a single lot, regardless of the historical use and taxation of the property. It is in fact a unique situation in which five commercially zoned lots would be bound first into two lots, and subsequently said two lots would be bound to the proposed building itself, in order to reduce the floor area ratio to that which is allowed by the Zoning Bylaw. To grant a variance to exceed the floor area ratio, based on the above condition, would not only set a dangerous precedent, but would substantially derogate from the intent and purpose of this Zoning Bylaw.

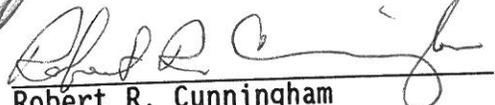
Therefore, it is the unanimous opinion of this Authority that this request for a variance be denied.

It is the unanimous opinion of this Authority that as the variance to exceed the floor area ratio has been denied, the request for a Special Permit for Site Plan Approval of the proposed construction is no longer viable. Therefore, as the proposed addition for which a Special Permit for Site Approval is requested cannot be constructed, and as the submission of plans and information for said Special Permit were not complete as of June 23, 1988, the request for a Special Permit for Site Plan Approval is also denied and this petition is dismissed.

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.

cc: Planning Board  
Inspector of Buildings  
edg

  
John A. Donovan, Jr., Chairman

  
Robert R. Cunningham

  
William E. Polletta

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