



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

STEPHEN S. PORTER, Chairman
JOHN A. DONOVAN, JR.
ROBERT R. CUNNINGHAM

MARY ANN McDOUGALL
Executive Secretary
Telephone
~~235-1664~~
~~XXXXX~~
431-1019

WILLIAM B. POLLETTA
FRANKLIN B. PARKER
SUMNER H. BABCOCK

ZBA 86-53

Petition of A. Louis Sozio, A.L.S. Realty Trust; Ira Silverleib, David Kobey, Trustee, 999 Worcester Realty Trust
999 Worcester Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, September 18, 1986 at 8 p.m. in the Great Hall of the Town Hall at 525 Washington Street, Wellesley, on the petition of A. LOUIS SOZIO, TRUSTEE OF A.L.S. REALTY TRUST; and IRA SILVERLEIB and DAVID KOBAY, TRUSTEES OF 999 WORCESTER REALTY TRUST requesting; 1) a Special Permit for Site Plan Approval pursuant to Sections XVII, XI and XXV of the Zoning Bylaw to allow the construction of a two-story building with approximately 12,000 square feet of gross building area at 999 WORCESTER STREET, said parcel containing 49,480 square feet of land (29,420 square feet located in a Business District, 20,060 square feet located in a Single Residence District) and associated parking and landscaping, said facility to be an Acura automobile dealership; 2) permission and/or a variance from the terms of Section II and pursuant to Section XXI and Section XXIV-D of the Zoning Bylaw which will allow parking and/or storage of automobiles connected with the Acura auto dealership in a fifty (50) foot strip of land located in a Single Residence District at the rear of the Business zoned portion of the land known as 999 WORCESTER STREET.

The Public Hearing on September 18 was continued until Thursday, October 23, 1986 to allow for changes in site plans in response to Wetlands Protection Committee requirements.

On August 20, 1986 the petitioner originally filed a request for a hearing before this Board and thereafter notice of the hearing was given by mailing and publication.

Presenting the case at the hearing on September 18 were Leonard Eskenas of Eskenas, Schlossberg & Kaplan, P.C., representing Ira Silverleib and David Kobey, prospective purchasers of the property; Stephen Morse, architect. Mr. Silverleib was present as was Nicholas Scali, attorney representing Mr. Sozio, the seller. Mr. Eskenas read the Design Review Board letter of September 15 approving the plans subject to four recommendations. He stated that the petitioner had appeared before the Wetlands Protection Committee last Tuesday evening and will determine shortly how to respond to the Wetlands Protection Committee requirements for the site. Modifications and alterations to the site plans will be presented to the Wetlands Protection Committee on September 30. Mr. Morse stated that he did not think the changes would be substantive. Mr. Porter stated that, because there would be alterations to the site plan, the ZBA should review final plans at the next hearing on October 23. The ZBA members voted unanimously to continue the hearing for the Site Plan Approval until October 23.

RECEIVED
 ZONING BOARD
 SEP 21 3 11 PM '86
 TOWN OF WELLESLEY, MASS.

ZBA 86-53

Petition of A. Louis Sozio, A.L.S. Realty Trust; Ira Silverleib, David Kobey, Tr.,
999 Worcester Realty Trust
999 Worcester Street

OCT 23 3 11 PM '86

Regarding the parking variance requested for the 50 foot strip of land located in a Single Residence District, Mr. Eskenas said it would be used for new cars and/or customers cars. Discussion of the previous variances on the same area followed.

Carol Fyler, a member of the Natural Resources Commission, noted that an aquifer runs underneath the property and stated that the use of the property as an auto dealership is not compatible with such a fragile area.

The following neighbors were present expressing concerns: Steve Harkins, 26 Overbrook Drive, who stated he is not opposed to the request if the parking variance area is not changed. He wants screening at the edge of the variance by a 6 foot fence and bushes, no curb cut on Overbrook Road, hopes the area behind the variance area in the Single Residence District could be kept clean and not used as a dumping area; R. Amann, 15 Overbrook Road, who wants no curb cut on Overbrook Road; Michael Croke, 84 Overbrook Road, concerned about traffic; Toby and Andy Bellemare, 20 Overbrook Road, concerned about drainage and noise.

The continued Public Hearing was held on Thursday, October 23, 1986 at 8 p.m. in the Great Hall of the Town Hall at 525 Washington Street, Wellesley. Presenting the case was Leonard Eskenas, who introduced Ira Silverleib, Stephen Morse, and Nicholas Scali.

Mr. Eskenas referred to a new certified site plan which had just been delivered to the Zoning Board office. The plan had been requested in response to a question from the ZBA on October 21 concerning the area of the Business-zoned portion of the lot. (The Business District was incorrectly described on the plans submitted with the application on August 20). Mr. Eskenas stated that the ZBA decision of 1957 (57-45) granted a variance to extend the Business zone a distance of 50 feet and that this variance runs with the land. He claims that the decision of 1957 was reconfirmed in a decision of 1961 (61-25) and 1979 (79-38). He furthermore stated that the variance of 1970 (70-18) granted an additional 50 feet in the Single Residence District, making a total parking area 100 feet deep in the Single Residence District. He claims that is why the site plan submitted on August 20, 1986 shows the Business District to be 29,420 square feet. Mr. Eskenas stated that the second floor area has just been reduced and that the building is now 9,790 square feet in area, which he stated meets the floor area requirements of the Zoning Bylaw.

Andy Bellemare, 20 Overbrook Road, stated that he had never been aware that permission had ever been granted for more than a 50 foot strip of land in the Single Residence District which abuts his property.

Mr. Scali, attorney for Mr. Sozio, was asked to comment on the past permissions granted. He responded that they needed an additional 50 feet of parking space for business use and hoped to go beyond the 50 feet already existing.

Mr. Donovan stated that a change in use of the building required the owner to seek approval again from the Zoning Board of Appeals for the off-street parking in the 50 foot strip of Single Residence land and that the use was only relative to the business use at the time of grant.

ZBA 86-53

Petition of A. Louis Sozio, A.L.S. Realty Trust, Ira Silverleib, David Kobey, Tr.,
999 Worcester Realty Trust
999 Worcester Street

RECEIVED
3 11 PM '86

Statement of Facts

The property in question is located at 999 Worcester Street (Route 9) between Overbrook Drive and Edgemoor Avenue. The parcel contains 49,480 square feet of land, a portion in a Business District and a portion in Single Residence District. A building presently exists on the property owned by A. Louis Sozio, Tr., A.L.S. Realty Trust, the building housing an appliance sales business.

The petitioners, Silverleib and Kobey, wish to purchase the property from A.L. Sozio and to demolish the existing building on the site and to construct a two-story building for an Acura automobile dealership. A Special Permit for Site Plan Approval is requested and permission and/or a variance to allow parking of autos on a 50 foot strip of land located in a Single Residence District as described on page 1 of this document.

The petitioners' original application for Site Plan Approval proposed 42 off-street parking spaces which they claimed were in the Business District portion of the lot. An additional 31 spaces were proposed in the 50 foot strip of land located in the Single Residence District portion for which a variance is requested. The total parking on the site would be for 73 autos. The building would have 12,000 square feet of gross building area and 6,330 square feet of gross first floor area. Entrance and exits from the property would be from Route 9 on two existing curb cuts. The easterly curb cut would allow one-way traffic entering the site. The other curb cut would be two-way. No curb cuts would exist on Overbrook Drive or Edgemoor Avenue.

The property in question has come before the ZBA in many previous cases. In 1957 (57-45), permission was granted to Carmen and Laura Surro to extend the business use northerly from the northerly boundary of the existing business zone line a distance of 50 feet for the purpose of a turn-around driveway and off-street parking spaces for cars associated with a restaurant. Subsequent ZBA decisions involving the parking strip in the Single Residence District on file at the ZBA include: 61-25, 67-7, 69-68, 70-18, 79-38. Other ZBA cases involving the property, on file at the ZBA office, are the following: 64-7, 64-44, 66-36, 67-8, 68-21, 70-19, 70-20, 71-20.

The following plans were submitted on August 20, 1986: X-1 and X-2, site plans; X-3, topographic plan, dated July 24, 1986; A-1, A-2, floor plans, elevations, cross sections; Morse Company Architects, Stephen Morse, Registered Architect, Milton, Ma.; landscaping plan, July 24, 1986, John T. Judge, Landscape Architect. Plan X-1, existing and proposed site plan, dated July 24, 1986, was drawn by Stephen P. DesRoche, Registered Land Surveyor. On October 17, 1986, the following plans were received: X-1, revised September 3, 1986, X-2, revised September 30, 1986, X-3, revised October 8, 1986, L-1 revised October 8, 1986. A site plan was presented to the ZBA just prior to the hearing on October 23, 1986 - X-1, revised October 23, 1986, Walter Watson, Registered Professional Engineer.

The Design Review Board held a preliminary review of the plans on July 31, 1986, a review of final plans on September 11, 1986 and a review of revised plans on October 9, 1986. Letters dated August 4, September 15 and October 10 are on file at the ZBA office. The Design Review Board approved the plans on October 9, 1986.

ZBA 86-53

Petition of A. Louis Sozio, A.L.S. Realty Trust; Ira Silverleib, David Kobey, Tr.,
999 Worcester Realty Trust
999 Worcester Street

OCT 30 3 11 PM '86
RECEIVED
PLANNING BOARD
TOWN ENGINEER
ASS.

Site Plans and other submission materials 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 the Planning Board, Board of Health, Fire Chief, Town Engineer and Wetlands Protection Committee were received and are on file at the ZBA office.

The Wetlands Protection Committee issued an Order of Conditions on the proposed auto dealership, (DEQE 324-131) dated October 15, 1986, which is on file at the ZBA office.

On October 21, 1986, it became apparent to the Board of Appeals that the Business District area of the parcel was incorrectly described on the plans submitted by the petitioner. The petitioner was informed of this on October 21 and responded by presenting a new plan, X-1, on October 23, showing General Revisions October 23, 1986 by Walter Watson, Registered Professional Engineer and by the testimony of Mr. Eskenas, attorney at the hearing on October 23, 1986 as described on Page 2 of this document.

Letters concerning the application were received from the following: J. Steve Harkins, 26 Overbrook Drive, Amy Rossi Dawson, 20 Bluebird Road.

Decision

This Authority has made a careful study of the evidence submitted. The petitioner is proposing to construct a two-story building at 999 Worcester Street to house an Acura auto dealership.

The original plans submitted on August 20, 1986 called for a 12,000 square foot building on a 49,480 square foot parcel of land, of which 29,420 square feet were claimed to have been in a Business District. A Special Permit for Site Plan Approval was requested pursuant to Section XVIA, XI and XXV of the Zoning Bylaw. Parking spaces for 42 cars were claimed to have been provided in the Business District. Gross first floor area was proposed 6,330 square feet. The petitioner had also requested permission and/or a variance from the terms of Section II and pursuant to Section XXI and XXIV-D of the Zoning Bylaw which would allow parking and/or storage of autos in a 50 foot strip of land located in a Single Residence District at the rear of the Business zoned land to accommodate 31 additional parking spaces.

The hearing on September 18 was continued until October 23 due to the fact that the Wetlands Protection Committee would be issuing an Order of Conditions which could change the site plans.

Following the hearing on September 18, it was discovered by this Authority that the Business District portion of the lot was incorrectly shown on the Plot Plan X-1 dated July 24, 1986 by Morse Co., Inc., Milton, Stephen P. DesRoche, Registered Land Surveyor.

The petitioner, in response to notification of this new discovery, submitted new plans just prior to the hearing on October 23, changing the location of the Business District line and reducing the size of the building. The petitioners' attorney

ZBA 86-53

Petition of A. Louis Sozio, A.L.S. Realty Trust, Ira Silverstein, David Kobey, Tr.,
999 Worcester Realty Trust
999 Worcester Street

claimed that a variance granted in 1957 extended the business use on the 50 foot strip of land in the Single Residence District permanently, thereby allowing his request for an additional 50 foot strip of land in a Single Residence District.

Regarding the variance granted by the Board of Appeals in 1957, the decision extended the business use of the 50 foot parking strip to Mr. Surro for a specific use associated with his restaurant. Each subsequent permission by the ZBA to extend the business use for the 50 foot parking strip in the rear of the Business District was only relative to the petition at hand and restricted to the proposed use at the time of grant.

It was the contention of the applicant that the ruling of 1957 in effect changed the Business District line and that subsequent requests for use variances were for further extensions into the Business District beyond the original 50 foot strip. There is nothing in the decisions of 1957 or 1970 to indicate that this was the case. However, it should be noted that the ZBA never had the right to extend the Business District. A change in zoning from a Single Residence District to the Business District can only be accomplished by a vote of the Wellesley Town Meeting.

Regarding the variance request now before this Board, the only variance that could be requested is for a continuation of the variance for the original 50 foot strip of land with a new use. The petitioner must display the new use on plans which meet the requirements of the Zoning Bylaws.

The plans which were submitted to this Board do not conform to the Zoning Bylaws. The original plans submitted on August 20 do not meet the requirements for floor ratio or for parking in a Business District. The plans that were submitted on October 23 do not meet the parking requirements.

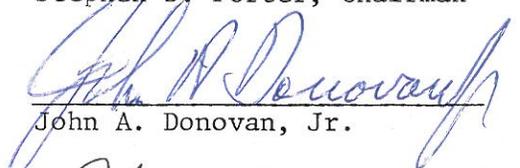
This Authority hereby denies the Special Permit for Site Plan Approval pursuant to Section XVIA, XI and XXV of the Zoning Bylaw and denies the variance requested pursuant to Sections II, XXI and XXIV-D of the Zoning Bylaws and the case involving the property at 999 Worcester Street is hereby dismissed.

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

mam


 Stephen S. Porter, Chairman


 John A. Donovan, Jr.


 Robert R. Cunningham