

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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ZBA 2018-23  
Petition of TD Bank, N.A.  
999 Worcester Street

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2018 APR 19 PM 2:59

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 5 2018 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of TD Bank, N.A., a National Banking Association, requesting extension of a variance that was originally granted in 1957 (ZBA 57-45) to transfer ownership of the property, pursuant to the provisions of M.G.L. Chapter 40A, Section 10 and Section XXV of the Zoning Bylaw, and amendment to eliminate the need to request further extensions if the property is transferred to another owner, and to reduce the number of off street parking spaces to 39 spaces, at 999 Worcester Street, in a Business District and a Single Residence District.

On March 12, 2018, the petitioner 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 at the hearing were John Scribner, Lisciotti Development, and Austin Turner, Polar Engineering. Mr. Scribner said that Lisciotti Development is planning to buy the property at 999 Worcester Street. He said that the property straddles residential and business districts. He said that the existing building is approximately 6,200 square feet, of which 2,900 square feet is occupied by TD Bank and Sherwin Williams is looking to lease the remaining space.

Mr. Scribner said that relief was granted in 1998 that allowed for parking in the residential district. He said that decision had a condition that said that prior to a change in ownership a new petition needed to be submitted requesting extension of the existing variance. He said that Lisciotti Development is requesting that the Board grant that extension and eliminate the change of ownership condition. He said that the intent of the condition was for a change of use. He said that somehow change of ownership got added to the decision. He said that the decision references 40 parking spaces. He said that they just completed a survey and identified 39 parking spaces. He said that it appears that some improvements were made at some point and they added handicapped accessible spaces along the right side. He said that the number of spaces was reduced by one but none of the parking in the residential district was affected. He said that number remains at 17. He said that the request is to amend the prior decision to reflect what is current.

The Chairman said that he researched the history of the property since 1947. He said that different numbers of parking spaces are discussed. He said that he did not see anything in any of the decisions specifying the number of parking spaces. He said that the number of parking spaces depends on the business use and that is fundamentally proportional to the building. He said that as long as they do not change the building, nothing changes. Mr. Scribner said that the Statement of Facts in the 1998 decision states that the total number of spaces is in accordance with the Zoning Bylaw requirement of 40 spaces.



Mr. Turner said that the number of spaces needed for a bank use with a retail component is 41. He said that the site has historically been operating as a bank and retail with various tenants. He said that it appears that at some point in the not too distant past someone made improvements for accessibility by putting handicapped spaces close to the entrances. He said that the site is still appropriately served by parking. He said that improvement for the sake of accessibility at the cost of one parking space seems reasonable. He said that many parking lots were created without any accessible spaces but the State's access regulations now require that parking areas for 15 or more spaces be retro-fitted.

The Chairman said that the Petitioner has asked to continue the variance that allows the use of the residential portion of the property to be used for parking, to amend the conditions to do away with at the change of ownership, and the number of parking spaces. He said that this is a long running case of a bad decision at the beginning that through time has ignored other available solutions exacerbated by the Zoning Bylaw changing fundamental requirements. He said that prior to 1976 when the State changed its Chapter 40A rules to control variances better, the town amended its bylaw to change the basis for variances. He said that prior to that time, any difference between what somebody wanted to do and the Zoning Bylaw was called a variance. He said that it would not be a variance under today's bylaw. He said that currently under the bylaw there is a special permit or a variance and there are very specific conditions required for a variance.

A Board member said that overlaid on that are the two different types of variances, use and dimensional. He said that Wellesley does not recognize use variances under its current bylaw. The Chairman said that the town used to recognize use variances but it no longer does. He said that one could argue that the 1998 decision is null and void because the Board did not have the power to do what it did.

The Chairman said that under residential special permits, off-street parking can be permitted as a non-accessory use. He said that the most common application of that in town is in church parking lots where they rent out spaces to uses that are not related to the church. He said that Lisciotti Development could make an agreement with itself that as the residential portion you would have a non-accessory use agreement with the business portion to park cars there. He said that the owner would have to come in once a year to get a special permit. He said that the real solution is to go to the Planning Board to get the residential portion re-zoned as Business at Town Meeting.

Catherine Johnson, Planning Board, said that Town Meeting just approved re-zoning of a property at 170 to 184 Worcester Street. She said that it had a residential property to the back of it that they wished to use for parking. She said that the Planning Board proposed that the property be re-zoned as Single Family A, which allows any single family use and accessory parking. She said that this could very easily be done here. She said that it will have to go through Site Plan Review to configure the parking and landscaping. She said that the Planning Board recommended that going forward with this property that it go through the process to re-zone it. The Chairman said that granting a special permit for non-accessory parking would give the owner a year to work on re-zoning the property.

The Chairman said that he did not think that the Board can amend the basic original variance because it does not have the power to grant a use variance. A Board member said that Chapter 40A, Section 10, does have a provision relative to use easements that were properly granted prior to January 1, 1976 but limited in time. He said that it may be extended on the same terms and conditions that are in effect. The Chairman said that the Board can extend the variance but it cannot change its terms. A Board member



said that he was not sure that the restriction was proper at the time. He said that he is more concerned about a variance granting 39 spaces because that would require an entire analysis having to do with the topography, the shape or soil conditions of the lot. Mr. Scribner said that they can adjust the number of parking spaces. The Board said that if the Petitioner goes to Town Meeting they can probably resolve all of the issues with the assistance of the Planning Board.

A Board member asked about the size of the existing spaces. He said that it is a bit of an eclectic lot where no one really knows where the property lines are. Mr. Turner said that parking spaces are typically 9 by 18.

Ms. Johnson said that a reasonable Town Meeting action would be to re-zone the property as Single Family A and then require the property to go for Site Plan Review. The Board asked about re-zoning the property to a Business Zone. Ms. Johnson said that re-zoning it to Residential A makes it more conforming with the abutting properties where the business districts flow in a straight latitudinal line across the back. She said that everything behind is single family district.

Mr. Turner said that it seems like there is a provision that allows the Board to extend with the change of ownership, provided that nothing else changes. He said that when they reviewed the minutes on this property there was clearly an item that talks about a future change of use. He said that it looks like that got translated to owner/use in the ultimate condition. He said that there was no discussion about owner in the minutes. He said that the spirit and intent of that condition was to address a change in a type of business and different impacts. The Board said that it can extend the variance and over the next year the owner should work with the Planning Board to resolve the issue by re-zoning the property.

The Board said that the number of required parking spaces is based on the use. Mr. Turner said that the bank and retail unit was there in 1998. He said that the decision references 40 parking spaces. He said that they can put it back to that number to be consistent with the decision. He said that the ownership provision stays because, given the change in the law, it is not something that allows the Board the empowerment to modify that. He said that the request would be that the Board grant the extension of this approval without modifying the provision concerning ownership. A Board member said that the Board will probably add a recommendation that the owner work with the Planning Board to attempt to re-zone. He said that it would not be a requirement. He said that Dunkin Donuts had a similar situation where they acquired land from the State. He said that every time they came before the Board to renew their drive-through special permit, the Board encouraged them to try to buy the land.

Mr. Scribner said that the Board mentioned that Chapter 40A allows a length of time for the extension. The Board said that the Statute says that it may be extended on the same terms. The Board said that the term was applicable to the original decision. The Chairman said that in 1998 the Zoning Board said something to the effect that the time that you owned it was the term, therefore there was a time and therefore it can be extended, hence the ownership provision. He said that the solution to the problem is to get it re-zoned. Ms. Johnson said that it is an easy process. She said that it is something that the Planning Board would want to do.

The Board said that they can probably give up one of the parking spaces and still comply with ADA. Mr. Turner said that they have four and they only need two.

A Board member confirmed that Lisciotti Development does not own the property yet. He questioned whether this is ripe for the Board to decide. Mr. Scribner said that the decision says that the potential owners need to come before the Board prior to a change of ownership. He said that Lisciotti Development submitted the application but a representative from TD Bank signed it. Mr. Scribner said that Wellesley Retail, LLC is the entity that will purchase the property.

There was no one present at the Public Hearing who wished to speak to the petition.

#### Statement of Facts

The subject property is located at 999 Worcester Street, in a Business District and a Single Residence District, on a 29,420 square foot lot of which 20,959 square feet are in the Business District and 8,191 square feet are in a Single Residence District. The property is also located in a Water Supply Protection District. The property is currently owned by TD Bank, N.A. but will transfer ownership to Wellesley Retail, LLC.

The Petitioner is requesting extension of a variance that was originally granted in 1957 (ZBA 45) to transfer ownership of the property to Wellesley Retail, LLC, pursuant to the provisions of M.G.L. Chapter 40A, Section 10 and Section XXV of the Zoning Bylaw.

On April 5, 2018, the Planning Board reviewed the petition and recommended that the variance be extended with the same conditions as previously imposed.

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

It is the opinion of this Authority that extension of a variance that was originally granted in 1957 (ZBA 57-45) to transfer ownership of the property to Wellesley Retail, LLC, pursuant to the provisions of M.G.L. Chapter 40A, Section 10 and Section XXV of the Zoning Bylaw may be granted.

Therefore, extension of a variance that was originally granted in 1957 (ZBA 57-45) to transfer ownership of the property to Wellesley Retail, LLC, pursuant to the provisions of M.G.L. Chapter 40A, Section 10 and Section XXV of the Zoning Bylaw is granted, subject to the following condition:

- Conditions imposed by the Board in its previous decisions (i.e. ZBA 57-45, ZBA 61-25, amended on March 28, 1962, and ZBA 98-6) are incorporated into this decision.

The Board recommends that the Applicant work with the Planning Board to seek a re-zoning of the residential portion of the premises.

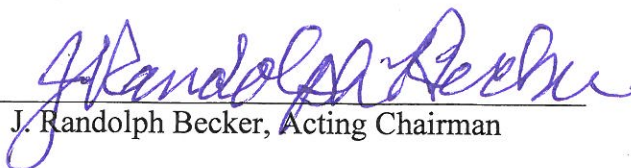


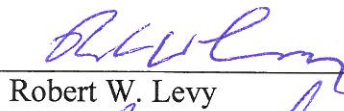
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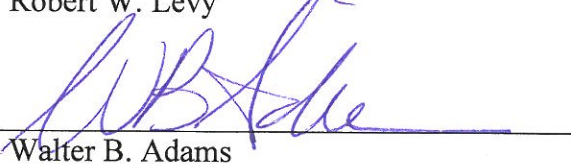
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2018 APR 19 P 2:59

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

  
Robert W. Levy

  
Walter B. Adams

cc: Planning Board  
Inspector of Buildings  
lrm