



The City of Waltham ZONING BOARD OF APPEALS

NOTICE OF DECISION

CASE NUMBER: #2020-05

NAME OF PETITIONER: JC/SMP Waltham Owner, LLC

NAME OF OWNER: JC/SMP Waltham Owner, LLC

LOCATION OF PROPERTY: 130 Turner St. Waltham, MA

DATE OF HEARING(S): April 15, 2020

DATE OF DECISION: April 15, 2020

DATE OF FILING OF DECISION WITH CITY CLERK:

DATE OF NOTIFICATION TO BUILDING INSPECTOR:

FINAL DATE FOR FILING OF APPEAL FROM THIS DECISION: May 14, 2020

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws Chapter 40A. All plans referred to in the decision have been filed with the Planning Board and with the City Clerk.

DECISION

GRANTED _____
DENIED _____

ROLL CALL

	Yes	No		Yes	No
Barbara Rando			Edward T. McCarthy, Jr.		
Michael J. Cotton			Oscar L. LeBlanc		
Mark A. Hickernell			Glenna Gelineau		
John Sergi			Marc S. Rudnick		
			Michael R. Squillante		

PETITION

Case #: 2020-05. Petitioner: JC/SMP Waltham Owner, LLC . **Nature of Appeal:** Special Permit Modification to site plan **Subject Matter:** The large parcel of land with buildings thereon located at 130 Turner Street, owned by the JC/SMP Waltham Owner LLC (“Stony Brook”). Petitioner is looking to expand an existing patio in the rear of building 3, located on the western portion of the site. The expansion of this patio will require relocation of (7) seven parking spaces. The proposed relocation is to a separate area on the site that is already an impervious paved area but is un-stripped and not included in the parking count for the parcel, as shown on the attached plan. As a secondary option, if the Board shall deem necessary, Petitioner can re-strip a portion of parking stalls that are wider than the by-law requirement (In some instances by 1 ft) on the parking deck on the property. Due to prior special permits on the property this petition is an administrative change to the site plan on record. With the Board’s acceptance of this plan, petitioner will immediately seek a building permit to execute this patio project. The petitioner’s goal is to amend the record of site plan, in turn yielding a project that would be beneficial for the building and commercial district with hopes to bring new companies into Waltham. **Location and Zoning District:** 130 Turner Street is in a Commercial Zoning District. **Provisions of Zoning Ordinance Involved:** Section 5.8. and Section 7.8 **Specific Manner in Which Subject Matter Varies From Zoning Ordinance:** 1. Modification of Special Permit Site Plan: Case No. 2009-22 condition 3 required a site plan associated with the parcel. This patio project is a net zero change in the parcels parking count. Because of Condition 3, that ““Submittal to Waltham Zoning Board of Appeals Special Permit-Remote Parking 60 Turner Street in the City of Waltham, Massachusetts”, dated June 15, 2009, consisting of a cover sheet and sheets C-1, C-2, C-3 and C-4.”, We need to amend and memorialize the site plan to show the relocation of the 7 parking spots.

ON MOTION DULY MADE AND SECONDED THE BOARD ADOPTED THE FOLLOWING FINDINGS OF FACT:

The Board of Appeals for the City of Waltham makes the following **FINDINGS OF FACTS** after a hearing on the above captioned petition for special permit.

1. This Board of Appeals, having met all legal prerequisites by proper publications and posting as provided in General Laws Chapter 40A section 11 and having also notified by mail all parties in interest and having heard all evidence, is now empowered to exercise the power to grant or to deny the special permit sought by the Petitioner.
2. The Petitioner, JC/SMP Waltham Owner, LLC. The property is numbered 130 Turner Street and is located in a Commercial Zone “C”. 130 Turner Street (pursuant to ANR Plan filed with and approved by the Board of Survey and Planning on May 3, 2001 and recorded in the Middlesex Registry of Deeds as Plan 267 of 2002 on March 22, 2002).

3. Per case 2009-22 the Board of Appeals granted petitioners Eastport Turner LLC and Stonybrook Holding LLC special permit for the right to relocated and lease 36 parking spaces allocated to the parcel at 60 Turner to 130 Turner St. With this allocation of parking requirement, the parcel at 130 Turner St still holds a parking count that is in excess of the bylaw minimum standard. Case 2009-22 was granted, and the case is outlined in the below points.
 - a. Case 2009-22 requested special permit for remote parking is a result of the provisions of Article V, Section 5.8 as it relates to remote parking requirements, and which specifically requires that if adequate parking space cannot be reasonably provided for on the same lot or in accordance with the provisions of Section 4.225 of the Zoning Code, the Board of Appeals may grant a special permit therefore on any land in the same zoning district which is within a radius of 600 feet. The inclusion of this section in the Zoning Code demonstrates the clear intent of the City of Waltham to provide relief to property owners the use of remote parking lots when existing lots prove inadequate to comply with the provisions of Section 5.2 of the Zoning Code.
 - b. The Co-Petitioner Eastport acquired title to 60 Turner Street via deed dated March 13, 2003. That conveyance was subject to a recorded and exclusive parking easement for the Co-Petitioner Eastport Real Estate to use the "Parking Area" located at 130 Turner Street, originally dated May 15th 1998 and recorded in the Middlesex Registry of Deeds in Book 28805, Page 199, as later confirmed by a Grant of Easement by WWG 74 Turner LLC to the Petitioner dated March 13, 2003 and recorded in said Registry as Doc. # 2632 on March 17, 2003. Hereinafter both easements are referred to as either Easement or Declaration of Easement.
 - c. That based upon the current parking requirements of Section 5.2 of the Zoning Ordinance, 60 Turner Street would be a non-conforming use and that the Easement pursuant to Paragraph 1.b in its essential terms was designed to insure that the Co-Petitioner Eastport, and its successors-in-interest were able to secure enough parking spaces from the "Parking Area" to meet the **"office use"** parking requirements of the Zoning Ordinance over time.
 - d. That the Declaration of Easement granted the Petitioner the right to use the cross hatched portion of the "Parking Area" located immediately north across Turner Street from 60 Turner Street at the property now known as 130 Turner Street.
 - e. That the Remote Parking Plan prepared by Beals & Associates, Inc. ("Remote Parking Plan") for the Petitioners application, shows all abutters within a three hundred foot radius of the Subject Property, layouts of the 60 Turner Street and 130 Turner Street, and that the location of the Parking Easement within 130 Turner Street, meets the requirement of Section 5.8 of the Zoning Ordinance, as located within a 600' radius of 60 Turner Street.

- f. That 60 Turner Street built in 1970 (formerly a four family dwelling) is currently a 15,977 square foot two story office building with a finished basement. That the original Site Plan filed with the Waltham Building Department in 1970 showed 21 parking spaces located on 60 Turner Street. That the Updated Parking Plan submitted by the Petitioner, prepared by Hayes Engineering, Inc. dated August 26, 2008 confirms that 21 parking spaces are located on the Subject Property.
- g. That the Declaration of Easement granted the Petitioner the use of 36 parking spaces located at 130 Turner Street in order for the Petitioner to comply with the provisions of Article V, Section 5.2. That the Easement used an “office use” formula (per the then current Zoning Code) for calculating the number of spaces granted to Petitioner, or 1 space for every 300 square feet of gross floor area, or 53 spaces.
- h. That the Co-Petitioner Eastport is seeking a Special Permit to confirm its use of up to **36 parking spaces** located in the remote parking area originally described in the Easement, which is required per Section 5.8 of the Zoning Ordinance because the additional parking spaces contained within the Easement are necessary for the Co-Petitioner Eastport’s and its tenant uses at 60 Turner Street. And that although Paragraph 1.a of the Declaration of Easement, stated that 34 of the parking spaces granted to the Petitioner are located adjacent to Turner Street, and two of the parking spaces are located adjacent to the right-of-way of the Massachusetts Bay Transportation Authority as delineated by the cross hatching on the Plan attached to the Declaration of Easement as Exhibit “D” that the Co-Petitioners have agreed to re-draw the proposed Parking Easement per the Remote Parking Plan sheet C-4 as submitted.
- i. That the Board of Appeals has the authority to grant the Petitioner’s special permit pursuant to M.G.L. Chapter 40A, Sections 9, 10 and 14; and via grant of authority under the City of Waltham Zoning Code Section 5.8 entitled Remote Parking.
- j. That the current use of 60 Turner Street as primarily office space is consistent with the other lots in the neighborhood, and therefore the grant of the Special Permit will not cause detriment to the public good nor would the issuance of a special permit for remote parking, detract from the character of the neighborhood, or conflict with the provisions of Section 5.2 of the Zoning Code for off-street parking.
- k. That the Co-Petitioners cannot reasonably provide for, on the same lot, the currently required amount of parking spaces per Section 5.2 or 4.225 of the Zoning Ordinance for an “office” use solely on the 60 Turner Street parcel.
- l. That the conditions affecting the property were not created by the Co-Petitioner Eastport and are not personal to the Co-Petitioner Eastport. The Co-

Petitioner Eastport cannot provide for adequate parking on the 60 Turner Street parcel. To deny the Co-Petitioner's Eastport's request for a special permit would deny the use of valuable property to the Co-Petitioner Eastport, its tenants, and the community, and cause hardship both financial and otherwise. Denying the special permit would be disproportionate to the common good.

- m. The Board of Appeals voted an approval of case #2009-22 for the following.
 - i. That the Special Permit as sought for use of 36 off-site remote parking spaces, is reasonable and does not interfere with or compromise the character or harmony of the neighborhood.
 - ii. Adequate parking as required cannot be accommodated solely at 60 Turner Street, and that the Petitioner was granted an Easement over the 130 Turner Street parcel when it purchased the Subject Property to provide the Petitioner additional remote parking.
 - iii. Section 5.8 of the Zoning Code clearly contemplates the relief sought, in this and similar situations by allowing the approval of "remote parking on lots within a 600' radius and when both properties are located in the same Zoning District.
 - iv. The 130 Turner Street Property where the remote parking will occur is a direct abutter to the 60 Turner Street Property and within the 600' radius of the 60 Turner Street Property.
 - v. That the Parking Easement shall be located in the area as described in Sheet C4 of the Remote Parking Plan prepared by Beals & Associates, Inc. dated June 15, 2009 as submitted with the Petition.
 - vi. That the 60 Turner Street Property and the 130 Turner Street Property are both located in a commercial zoning district.
 - vii. That the use of the Parking Area will be used by the Co-Petitioner Eastport and its tenants in order to effectively comply with the parking provisions of Article V, Section 5.2 and as required.
 - viii. The direct abutters are in support of the requested special permit.
 - ix. Based on these facts the denial of a special permit would create a clear and substantial hardship for the Co-Petitioner Eastport.
- n. The Board of Appeals granted Case 2009-22 petition was based upon the following conditions:

- i. Any and all necessary permits shall be issued within one (1) year of the date of the filing of this decision with the City Clerk of Waltham and all work shall be completed within two (2) years of said filing date; and
 - ii. All construction and use of the premises shall be in substantial accordance with the following plans:
 - iii. "Submittal to Waltham Zoning Board of Appeals Special Permit-Remote Parking 60 Turner Street in the City of Waltham, Massachusetts", dated June 15, 2009, consisting of a cover sheet and sheets C-1, C-2, C-3 and C-4.
 - iv. The Co-Petitioners shall record the Special Permit in both the 60 Turner Street and 130 Turner Street chain of title at the Middlesex Registry of Deeds.
4. Per the decision of case 2009-22 The Board of Appeals granted this special permit and associated site plan.
5. This case, 2020-05, is to amend the site plan on record associated with the special permit granted on the site.
6. That the grant of an amended site plan per the special permit for this use would be in harmony with the general purpose and intent of the Zoning Ordinance.

THEREFORE, THE ZONING BOARD OF APPEALS FOR THE CITY OF WALTHAM AFTER DUE DELIBERATION, ON A MOTION DULY MADE AND SECONDED, VOTED UNANIMOUSLY:

1. That the Amended Site Plan showing the Petitioner is relocating the 7 parking spaces, is reasonable and does not interfere with or compromise the character or harmony of the neighborhood.
2. Adequate parking is provided for the parcel at 130 Turner St along with associated Special Permits granted via case 2009-22 on the property. A net zero change in parking has occurred.
3. 130 Turner Street property is located in a commercial zoning district.
4. That the continued use of the Parking Area will be used by the Co-Petitioner Eastport and its tenants in order to effectively comply with the parking provisions of Article V,

Section 5.2 and as required. The parking area granted in case 2009-22 will not be impacted

5. The direct abutters are in support of the requested special permit.

The granting of this petition is based upon the following conditions:

1. Any and all necessary permits shall be issued within one (1) year of the date of the filing of this decision with the City Clerk of Waltham and all work shall be completed within two (2) years of said filing date; and
2. All construction and use of the premises shall be in substantial accordance with the following plans:
“130 Turner_Parking Relocation Plan Plan of Land for address 130 Turner Street, Waltham, MA. 74 Turner Street, Waltham, MA and 5 Turner Street, Waltham, MA.
3. The Petitioners shall record the Special Permit in the 130 Turner Street chain of title at the Middlesex Registry of Deeds.

Barbara Rando, Chair

DATE: _____