

**CITY OF WOBURN
DECEMBER 20, 2011 - 6:30 P.M.
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

Anderson	Gately
DiTucci	Haggerty
Drapeau	Mercer-Bruen
Gaffney	Raymond
Denaro	

VOTED to dispense with the reading of the previous meeting's Journal and to APPROVE, all in favor, 9-0.

MAYOR'S COMMUNICATIONS: None.

PUBLIC HEARINGS:

On the petition by Alderman Anderson relative to the structure or structures located at 30 Union Street, Woburn for the purposes of determining whether said building or buildings are a nuisance, a nuisance to the neighborhood, a dilapidated or dangerous building or buildings or other structure, as said terms are used in Mass. General Laws Ch. 139, Sec. 1, and if so, enter an order adjudging it to be a nuisance to the neighborhood, or dangerous, and prescribing its disposition, alteration or regulation. PUBLIC HEARING OPENED. Alderman Anderson stated that he spoke to the attorney handling the foreclosure of the mortgage, that the process has been slow, and that he requests a further continuance of sixty days. IN FAVOR: None. OPPOSED: None. Motion made and 2nd that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON FEBRUARY 21, 2012, all in favor 9-0.

Alderman Haggerty recused himself from participating in the following matter and left the Council Chamber.

On the petition by 859 Main Development, LLC, 57 Russell Street, Woburn, Massachusetts 01801 for a special permit pursuant to Section 22 of the 1985 Woburn Zoning Ordinances, as amended for a proposed 98 unit condominium development at 859 Main Street. PUBLIC HEARING OPENED. A communication dated December 16, 2011 with attachments was received from Attorney Shaun W. Briere, Mawn and Mawn, 275 Mishawum Road, Woburn, Massachusetts 01801 as follows:

Re: 859 Main Development LLC – Special Permit Petition

Dear Mr. Campbell and Members of the City Council:

In advance of the meeting of the City Council scheduled for Tuesday, December 20, 2011, please find enclosed herewith an original and ten (10) copies of the Memorandum of Law relative to the above referenced petition.

Please feel free to contact the undersigned should you have any questions.

Very truly yours, s/Shawn W. Briere

Motion made and 2nd to accept the communication and the communication dated December 5, 2011 with attachment from City Engineer John Corey relative to the mitigation proposal of the petitioner, the communication dated November 18, 2011 from Edmund Tarallo, Planning Director, Woburn Planning Board relative to the favorable recommendation with conditions of the Planning Board, and the report of the Committee on Special Permits with “Conditions per Meeting of 11/28/2011” be received and made part of the record, 8 in favor, 0 opposed, 1 absent (Haggerty absent). The report of the Committee on Special Permits was as follows:

CITY COUNCIL COMMITTEE ON SPECIAL PERMITS
IN THE MATTER OF 859 MAIN STREET DEVELOPMENT, LLC
(to construct 98 unit condominium development)

CONDITIONS PER MEETING OF 11/28/2011

1. That the Plans of Record shall be the plans consisting of consist of Sheets 1 & 2, and 6, 7, & 8 dated January 27, 2011 and Sheets 3, 4, & 5 dated January 27, 2011 revised 5/23/11 entitled “Proposed 98 Unit Condominium Development, 859 Main Street, Woburn, Massachusetts” by Keenan Survey, 8 Winchester Place, Winchester, MA 01890(“Plans”);
2. That the affordable housing requirement of Section 11.11 shall be met;
3. That the height of the building shall be three stories and shall not be greater than 42’ in height;
4. That compliance with the off-street parking space requirements of Section 22.G.1.e shall be complied with;
5. An electronic copy of the as-built plan shall be submitted to Engineering upon completion of the project;
6. That the fire hydrant shall be relocated after the proposed fire and domestic services;
7. That the sewer flow will require permitting through Mass DEP;
8. That provision shall be made to the satisfaction of the Engineering Department that the overflow pipes be provided from the infiltration chambers to the resource area for storm events in excess of 100 years;

9. That the applicant shall replace the existing 6" water main on Main Street with approximately 210' of 10" CLDI water main to the southerly property line of the property;
10. That the existing concrete sidewalk on Main St. at the southerly property line shall be continued as concrete through the frontage of the property to the satisfaction of the DPW Director;
11. That a new walking trail shall be constructed at the rear of the property along the wetland and Middlesex Canal and access easements shall be provided and approved prior to construction to the trail and for the trail;
12. That monies shall be set aside from the mitigation as agreed upon by the City Engineer for this project to address the optimization of timing and sequencing of the new traffic volumes at the Main@Alfred/Elm Streets intersection near the Rte. 128 Rotary and to establishing a review process for traffic flows at the entrance/exits of the project six (6) months after occupancy;
13. That the 15' wide easement shown on the Plan as the "Route 38 widening easement" running along the Main Street frontage of the property shall be provided to the City for the widening of Main Street;
14. That the one-way pair of driveways that designate the easternmost as one-way in and the westernmost as one-way out shall be a permanent condition of this approval and the signage shall be as shown on the Plan;
15. That all trash shall be stored in the trash area designated on the Plans and if a dumpster is required its location and screening shall be approved by the Planning Board;
16. That Planning Board approval for more than one residential structure on a lot shall be obtained in accordance with the subdivision regulations of the Woburn Planning Board;
17. That the Planning Board shall retain jurisdiction over the landscaping; and
18. That vertical granite curbing shall be required along the entrance driveway from Main Street up to the entrance to the garage for the first building on both sides of the entrance drive and along the exit driveway from Main Street to the 20' foot radius after the first building as shown on the Plan" on both sides of the exit drive;
19. That a snow removal plan be filed with the Department of Public Works;
20. That the property shall be developed in a condominium form of ownership administered by a condominium unit owners' trust/association. The Condominium Trust / Association Instrument shall contain a provision that states: "*That the construction and operation of the condominium is governed by a Special Permit issued by the Woburn City Council on (insert date), a copy of which is available for review at the Office of the City Clerk.*"
21. That the Condominium Trust / Association Instrument shall contain a provision that states:
"The terms and conditions of the Special Permit shall be enforced by the trustees of the condominium trust/association to the extent necessary to compel compliance including, if necessary, pursuing proceedings at law or in equity against any person or persons violating or attempting to violate any such condition or restriction, either to compel compliance, or to restrain the violation or to recover damages. If the Trustees fail to enforce said conditions and/or restrictions, any Unit Owner may

bring a proceeding at law or in equity against any person or persons or Trust/Condominium Association in violation thereof to enforce compliance with said conditions or restrictions.

This provision is in addition to, and not in lieu of, the City's right to pursue similar enforcement proceedings."

Appearing for the petitioner was Attorney Shaun W. Briere and he stated that he rests on the memorandum of law received in the record, that the petition is for 98 condominium units and this request has not been amended, that a condominium development is required by the ordinance, and that the petition conforms with the ordinance. Alderman Anderson stated that the cases cited by the City Solicitor regarding a condition requiring that a development be owner-occupied units involved the conversion of apartments to condominiums, that this is not the case with this petition and there are no cases on point, that there is a New York state case which indicates the condition can be added, that the Committee on Special Permits recommended that two conditions relative to owner-occupied status be adopted, that the City Council should further consider reducing the size of the proposal, that there will be fifteen units per acre, that the Winning Farm project has 4.9 units per acre, that the Salem Place project has nine units per acre, that the ordinance requires that the condominium development not be developed until the Alzheimer unit is developed, that the Building Commissioner indicated that there is not specification as to when mitigation funds are to be conveyed to the city and a condition specifying when the mitigation funds are to be paid would define when the matter, and that \$86,000.00 in mitigation funds are to be paid. Alderman Raymond stated that the density of this project was taken into account when the overlay district was established, that the parcel development was linked to the Alzheimer's unit on the adjoining lot, and that the density issue was dealt with in the zoning overlay process. Alderman Mercer-Bruen stated that she supports a condition specifying that the building permit cannot issue until the building permit for the Alzheimer unit issues and the mitigation funds are paid to the city. Alderman Gately stated that the city can condition approval of a project on mitigation being paid, that \$86,000.00 is to be paid for mitigation, and the remaining mitigation is tied to traffic and site work. Attorney Briere stated that the petitioner has no issue with waiting for the building permit for the Alzheimer's unit to issue before the building permit for this project issues, that he asks that the mitigation portion of the proposal be treated as all others proposals with mitigation are treated, that the petitioner will comply with the mitigation requirements, and that after discussion with the petitioner there is no objection to requiring payment of the \$86,000.00 for mitigation before the building permit issues. Bryan Melanson of 859 Main Development, LLC stated that some of the required mitigation is donated land, that some mitigation is the development of walking trails and work at the waterline that cannot be accomplished except in conjunction with the site development, and that he has no issue with tying the issuance of the building permit to the issuance of the building permit for the Alzheimer's unit on the adjoining lot. IN FAVOR: John Martini, 169 Place Lane stated that he is in favor of the petition, and that this is an ideal petition for the property at this time. OPPOSED: Jim Callahan, 32 Van Norden Road stated that the density of the project will set the basis for future developments, that the proposal opens the city to litigation, that this project is not a

by-right use, and that the proposal must be less detrimental than the eighteen single family homes that could be built on the parcel. Motion made and 2nd that the public hearing be closed, 8 in favor, 0 opposed, 1 absent (Haggerty absent). Motion made and 2nd to delete Condition 20 and Condition 21 of the conditions set forth in the Committee Report of 11/28/2011, ROLL CALL: Anderson – No, DiTucci – Yes, Drapeau – Yes, Gaffney – Yes, Gately – Yes, Haggerty – Absent, Mercer-Bruen – No, Raymond – Yes, Denaro – Yes, Motion Passes. Motion made and 2nd that the special permit be amended by adding the following condition: “That the building permit shall not issue until the mitigation fee of \$86,000.00 is paid to the City of Woburn and the building permit shall not issue until the building permit issues for the construction of an Alzheimer’s unit at 859 Main Street, Woburn”, 7 in favor, 1 opposed (Drapeau opposed), 1 absent (Haggerty absent). Motion made and 2nd that the SPECIAL PERMIT be GRANTED, AS AMENDED with the conditions per meeting of 11/28/2011 of the Committee on Special Permits as further amended herein, ROLL CALL: Anderson – No, DiTucci – Yes, Drapeau – Yes, Gaffney – Yes, Gately – Yes, Haggerty – Absent, Mercer-Bruen – No Raymond – Yes, Denaro – Yes, Motion Passes.

Alderman Haggerty entered the Council Chamber. Alderman DiTucci left the Council Chamber.

CITIZEN’S PARTICIPATION: None.

COMMITTEE REPORTS:

PERSONNEL:

On the appointment of a new City Treasurer/Collector, committee report was received “Recommend that Deputy Treasurer/Collector Timothy Donovan be appointed City Treasurer/Collector.” Motion made and 2nd that a TREASURER/COLLECTOR be APPOINTED EFFECTIVE UPON VACANCY IN THE OFFICE OF THE CURRENT INCUMBENT, ROLL CALL: Anderson – Timothy Donovan; DiTucci - Absent, Drapeau - Timothy Donovan; Gaffney - Timothy Donovan; Gately - Timothy Donovan; Haggerty - Timothy Donovan; Mercer-Bruen - Timothy Donovan; Raymond - Timothy Donovan; Denaro - Timothy J. Donovan.

Motion made and 2nd to take the following matter out of Order and to hear from His Honor the Mayor Scott D. Galvin, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

FINANCE:

On the Order to appropriate the sum of \$455,000.00 from Overlay Reserve Account to OPM/Walnut Hill Parking Deck Acct and Design/Walnut Hill Parking Deck Acct, committee report was received "ought to pass". Alderman Anderson stated that he was reluctant to support this project due to the cost, that he understands it is necessary for the City Council to be on the shovel ready list in order to obtain funding, that he does not want the cost of the project to impact the tax rate, and that he is in favor of this appropriation. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor: December 22, 2011 s/Scott D. Galvin December 22, 2011

Motion made and 2nd to return to the regular order of business, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

POLICE AND LICENSES:

Renewal of First Class Motor Vehicle Sales License by Lawless Chrysler Jeep, Inc., committee report was received "ought to pass." Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor: December 22, 2011 s/Scott D. Galvin December 22, 2011

Renewal of Second Class Motor Vehicle Sales Licenses by Joseph P. Mahoney Company, Inc.; McSheffrey Auto Sales, Inc.; Tracy M. Batten dba Tracy's Auto; and Wassim dba Woburn Square Mobil, committee report was received "ought to pass." Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor: December 22, 2011 s/Scott D. Galvin December 22, 2011

Transfer of Inflammable License from Acquiport Unicorn, Inc. to ND/CR Unicorn LLC at 500 Unicorn Park Drive, committee report was received "back for action". Motion made and 2nd that the TRANSFER OF INFLAMMABLE LICENSE FROM ACQUIPORT UNICORN, INC. TO ND/CR UNICORN LLC AT 500 UNICORN PARK DRIVE be APPROVED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor: December 22, 2011 s/Scott D. Galvin December 22, 2011

Transfer of Inflammable License from Acquiport Unicorn, Inc. to ND/CR Unicorn LLC at 400 Unicorn Park Drive, committee report was received "back for action". Motion made and 2nd that the TRANSFER OF INFLAMMABLE LICENSE FROM ACQUIPORT UNICORN, INC. TO ND/CR UNICORN LLC AT 400 UNICORN PARK DRIVE be APPROVED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor: December 22, 2011 s/Scott D. Galvin December 22, 2011

FINANCE:

Communication from PERAC relative to the FY2013 appropriation for the retirement system, committee report was received “receive and place on file.” Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

NEW PETITIONS:

Petitions for renewal of Second Class Motor Vehicle Sales License by Capelo’s Auto Service, Inc. dba J.C. Auto Sales, 84-86 Winn Street; Robert Fucarile dba Classic Auto Sales, 9 Salem Street; and Woburn Gas & Service, Inc., 545 Main Street. Motion made and 2nd that the MATTERS be REFERRED TO COMMITTEE ON POLICE AND LICENSES, 8 in favor, 0 opposed, 1 absent (DiTucci absent)..

Petition by McDonald’s USA, LLC, c/o Bohler Engineering, 353 Turnpike Road, Southborough, Massachusetts 01772 for a special permit pursuant to Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to modify a special permit that was issued on October 27, 2011 by adding a door and sidewalk on the south side of the restaurant, widening the Hill Street driveway by 3.5 feet, and replacing the concrete pad in front of the restaurant with a parking space and lawn area, at 333 Montvale Avenue. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

COMMUNICATIONS AND REPORTS:

A copy of a communication to Archdiocese of Boston, Deborah C. Dillon, Director of Property Services, 66 Brooks Drive, Braintree, MA 02184-3839 was received as follows:

Dear Deb:

Thank you for taking the time to talk with me on the phone on Wednesday, December 14th regarding the recent MLS listing of the St. Joseph Church and rectory property located on Washington Street and Central Street.

I was very pleased to hear that the Archdiocese is committed to making sure that potential development of this property fits within the character of the neighborhood and that decisions will be made based on what is in the best interests of the surrounding neighbors. This is reassuring and I thank you for that.

In that same spirit, as we discussed the property for sale is primarily surrounded by single family homes, and one or two (2) family homes. I thank you for your commitment to monitor closely the marketing for this property to be sure it clearly represents the allowable uses that are truly in character for the neighborhood. I would also like to extend an invitation for you to attend a meeting in January to meet with the neighbors. I will follow up with you soon to arrange a time that is mutually convenient for everyone.

Additionally, with the recent listing of the property there have been many questions from the neighbors about who is responsible for maintaining general landscaping/upkeep as well as snow removal from the sidewalks in front of the Church and on Central Street. It would be very helpful if you could provide me with a contact name for the property management organization that is responsible for these tasks.

Thank you again, Deb for your support and assistance with these matters and for your quick response to my phone calls. I wish you and your loved ones a very Merry Christmas and a healthy & Happy New Year. God bless.

Sincerely, s/Darlene Mercer-Bruen, Alderman, Ward 5

Motion made and 2nd that the COMMUNICATION be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

A communication dated December 16, 2011 was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Petition of Northeast Tree, Inc., 62 Holton Street, Woburn, Massachusetts

Dear Mr. Campbell:

I respectfully request that the City Council public hearing on this matter presently scheduled for January 3, 2012 be continued to the City Council meeting on January 17, 2012. If you need any further information, please contact me. Thank you.

Very truly yours, s/Joseph R. Tarby, III

Motion made and 2nd that the MATTER be RECEIVED AND PLACED ON FILE, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

UNFINISHED BUSINESS OF PRECEDING MEETING: None.

APPOINTMENTS AND ELECTIONS: None.

MOTIONS, ORDERS AND RESOLUTIONS:

RESOLVED That the Woburn City Council send a communication to the current property owner of 399 Washington Street (formerly known as GMC/Buick) advising that the building in its current condition with broken out windows, graffiti lined exterior and landscape overgrowth is becoming a nuisance to the area, and further advising that the building exterior be cleaned up of all graffiti, windows be made secure and that the property should be cleaned up.

s/Alderman Mercer-Bruen

Motion made and 2nd that the RESOLVE be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor: December 22, 2011 s/Scott D. Galvin December 22, 2011

RESOLVED That the City Council in collaboration with the Building Department send a communication with associated fines to North East Tree, Inc. located on Salem Street whereas the company is in violation of the 1985 Woburn Zoning Ordinances, as amended Sections 5.1.42, 5.1.43 and 5.1.57b; and further North East Tree, Inc. applied for a special permit to operate at the property located at 62 Holton Street and three weeks ago began using the property without any permits and is operating the business at 62 Holton Street without the benefit of a special permit.

s/Alderman Mercer-Bruen

Motion made and 2nd that the RESOLVE be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor December 22, 2011 and ten days having elapsed without same being approved, said License became effective without his signature on January 3, 2012.

From the Traffic Commission:

ORDERED CENTRAL STREET – No parking Monday through Friday between 6:00 a.m. and 5:00 p.m. westerly side from the intersection with Montvale Avenue a distance of 461 feet in a northerly direction, except for school buses servicing the Goodyear School.

All prior ordinances and regulations contrary to this regulation are hereby repealed.

Motion made and 2nd that the ORDER be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor: December 22, 2011 s/Scott D. Galvin December 22, 2011

Motion made and 2nd to suspend the rules for the purpose of adding the following late filed matters to the Order of the Day, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

FINANCE:

On the matter relative to requesting an appropriation to fund a city-wide traffic study, committee report was received “That a communication be forwarded to the Mayor stating that the City Council supports the concept of conducting a city-wide traffic study with the object of establishing truck traffic routes at a price to be determined depending upon the scope of work set out in the proposal”. Motion made and 2nd that the COMMITTEE REPORT be ADOPTED, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Presented to the Mayor December 22, 2011 and ten days having elapsed without same being approved, said License became effective without his signature on January 3, 2012.

Petition by National Grid for a grant of right in a way to modify an existing grant of location of existing underground regulator vault and associated piping on the corner of Montvale Avenue and Washington Street to install an underground vault, associated piping, vent posts and electric traffic box in accordance with plan filed with petition. Motion made and 2nd that the MATTER be REFERRED TO PUBLIC HEARING ON JANUARY 3, 2012, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Motion made and 2nd to return to the regular order of business, 8 in favor, 0 opposed, 1 absent (DiTucci absent).

Motion made and 2nd to ADJOURN, 8 in favor, 0 opposed, 1 absent (DiTucci absent). Meeting adjourned at 7:10 p.m.

A TRUE RECORD ATTEST:

William C. Campbell
City Clerk and Clerk of the City Council