

**CITY OF WOBURN
JANUARY 21, 2014 - 7:00 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.

MAYOR'S COMMUNICATIONS:

ORDERED That the sum of \$22,000.00 be and is hereby transferred from the Cemetery Interest Fund to the following accounts: \$2,000.00 to Building Maintenance #0149054-543000, \$15,000.00 to New Equipment #0149058-586600. \$5,000.00 to Over-Time #0149051-513100

I hereby approve the above: William E. Kerns, Chairperson
I hereby recommend the above: s/Scott D. Galvin, Mayor
I have reviewed the above: s/Gerald W. Surette, City Auditor

s/Alderman _____

ORDERED That the amount of \$30,374.19 be and is hereby appropriated from Unreserved Fund Balance Acct #01-356000 \$30,374.19 to Planning/Sick Leave Buy Back Acct #0117251-515400 \$30,374.19 – Purpose: Retiring Planning Director

I hereby recommend the above: s/Scott D. Galvin, Mayor
I have reviewed the above: s/Gerald W. Surette, City Auditor

s/Alderman _____

PUBLIC HEARINGS:

On the petition by Lytron Realty Corp. and Lytron Incorporated to amend the Woburn Zoning Map for the parcels of land known as 73 Dragon Court containing approximately

5.3 acres of land; 41 Dragon Court containing approximately .52 acres of land; 39 Dragon Court containing approximately 1.31 acres of land; Dragon Court, Lot 1 containing approximately .28 acres of land and Dragon Court, Lot 2 containing approximately .28 acres of land, as shown on Assessors Map 16 Block 02 Lot 02, Map 16 Block 02 Lot 04, Map 16 Block 02 Lot 05, Map 16 Block 02 Lot 06 and Map 16 Block 02 Lot 07 from the R-2/I-P zoning district to the I-P zoning district. PUBLIC HEARING OPENED. A communication dated January 9, 2014 was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: (1) Lytron realty Corp./Lytron Incorporated Petition to Amend Zoning Map and (2) Lytron Incorporated Petition to Amend Zoning Ordinance

Dear Mr. Campbell:

I respectfully request that the City Council public hearings on the above matters presently scheduled for January 21, 2014 be continued to the City Council meeting on February 4, 2104. If you need any further information, please contact me. Thank you.

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

On the petition by Lytron Incorporated to amend the 1985 Woburn Zoning Ordinances, as amended, as follows:

Be it Ordained by the City Council of the City of Woburn that the 1985 Woburn Zoning Ordinances, as amended, be further amended by revising the following:

- Section 5.1, line 72, Table of Use Regulations shall be amended by replacing the “_” with “P” in the R-2 Zoning District and inserting: Note 26 under the heading: “Notes; Other Sections”
- Amend Section 5 Notes to 5.1 Table of Use Regulations by adding the following note:

26. Accessory parking facilities in an R-2 Zoning District for use in an IP Zoning District shall be subject to the following conditions:

- a) No portion of the parking facility may be located within 100 feet of an immediate abutting property used for residential purposes;
- b) Except for the following, the Buffer Requirements set forth in Section 5.7 are not applicable:
 - i. The buffer zone may be used to calculate the Minimum Useable Open Space percentages required in Section 6.1;

- ii. The buffer zone may be used for driveways, useable open space, walkways and landscaped areas; and
 - iii. The perimeter of the parking facility shall contain a screen of evergreen plantings at least ten (10) feet from the edge of a road except for entrances and exits and any portion of the parking facility abutting a highway. Such evergreen plantings shall not be less than three (3) feet in width and six (6) feet in height at the time of occupancy of the parking facility and shall thereafter be maintained by the owner so as to maintain a dense screen year round. Other alternative screening devices may be permitted by Special Permit where topography, soils or other conditions make the planting or maintenance of such a hedge impractical.
- c) The parking facility shall comply with the requirements of Section 8.4, 8.5 and 8.6; and
- d) The City Council shall also impose such additional conditions of those specified in this Ordinance as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance, including but not limited to the following: Screening, buffers, or planting strip, fences, or walls, as specified by the Council; modification of the exterior appearance of the structure; method and time of operation, or extent of facilities; regulation of number and location of drives, accessways, or other traffic features, and off-street parking or loading, or other special features beyond the minimum required in the Ordinance.
- Section 8.3 shall be amended by adding a new paragraph as follows:
 - 3. Within any R2 district, the City Council by Special Permit pursuant to the requirements of Section may allow accessory parking facilities for a use in the IP Zoning District on a lot separate from the use to be served provided such facilities immediately abut the use to be served in the IP Zoning District and are owned by the user of the parking facilities.

A communication dated January 9, 2014 was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: (1) Lytron realty Corp./Lytron Incorporated Petition to Amend Zoning Map and (2) Lytron Incorporated Petition to Amend Zoning Ordinance

Dear Mr. Campbell:

I respectfully request that the City Council public hearings on the above matters presently scheduled for January 21, 2014 be continued to the City Council meeting on February 4, 2104. If you need any further information, please contact me. Thank you.

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

On the petition by Linear Retail Woburn #1 LLC, 5 Burlington Woods Drive, Burlington, Massachusetts 01803 for special permits pursuant to 1985 Woburn Zoning Ordinances, as amended, Sections 5.1.29, 5.1.63A, 7.3, 8.2.5 and 12 to allow for the alteration of an existing non-conforming structure to allow for: 1. Approximately 9,250 square feet of existing space presently occupied by one retail tenant to be divided into three (3) tenant spaces: Tenant A containing approximately 2,600 square feet more or less of gross floor area; Tenant B space containing approximately 2,500 square feet more or less of gross floor area; and Tenant C space containing approximately 4,150 square feet more or less of gross floor area; 2. A fast food restaurant in the Tenant A space with an outdoor seasonal seating area; 3. A drive thru for Tenant B space (bank); 4. A reduction in the required parking space from 171 parking spaces to 148 parking spaces; 5. Alteration of nonconforming signage; and 6. That Condition 1 to the Landowner's Decision and Notice of Special Permit dated February 20, 2011 be amended by deleting the reference to the Plan of Record and replace with the plan entitled "Site Plans for 299 Mishawum Road, Woburn, MA 01801" dated November 30, 2013 prepared for Linear Retail Woburn #1 LLC, Five Burlington Woods Drive, Burlington, MA 01803 by Allen & Major Associates, Inc., all at 299 Mishawum Road. PUBLIC HEARING OPENED. A communication dated January 8, 2014 was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows

Re: Special Permit Petition of Linear Retail Woburn #1 LLC – 299 Mishawum Road, Woburn, Massachusetts

Dear Mr. Campbell:

As you know I represent Linear Retail Woburn #1 LLC on the above-referenced matter. Due to the unavailability of our traffic consultant to attend the Planning Board meeting on January 7, 2014, we continued the Planning Board's review of the Special Permit Petition to its next meeting on January 28, 2014. As a result, I respectfully request that the City Council Public Hearing on this matter presently scheduled for January 21, 2014 be continued to the City Council meeting on February 4, 2014. If you need any further information, please contact me. Thank you.

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

On the petition by National Grid for a grant of right in a way to install approximately 85 feet of 2 inch plastic main to supply house number 3 Hobson Avenue. PUBLIC HEARING OPENED. A report was received from Superintendent of Public Works John Duran as follows: "I have requested the information stated below from National Grid. I have not received the requested plan update. I recommend that this hearing be continued until the next meeting or until I have obtained the proper information so that I can

eliminate the possibility of disturbance to the utilities and the proper restoration to the roadway after the gas main extension.”

On the petition by Alderman Drapeau concerning the structure or structures located in the City of Woburn, County of Middlesex, Commonwealth of Massachusetts known and numbered as 4 Pheasant Lane, Woburn, Massachusetts, for the purposes of determining whether said structure or structures are a public nuisance, a nuisance to the neighborhood, a dilapidated or dangerous building or other structure, as said terms are used in Massachusetts 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. A communication dated January 21, 2014 was received from Attorney Thomas Lawton, Lawton and Lawton, 4 Bennett Street, Woburn, Massachusetts 01801 as follows:

Re: James Calvey, 4 Pheasant Lane, Woburn, MA 01801, Nuisance

Dear Mr. Clerk:

Kindly continue the above referenced matter for a period of thirty (30) days or at the convenience of the City Council. The owner Mr. Calvey awaits receipt of a “Digsafe” permit number at which time he intends to raze the structure. In light of these facts I believe the issue of “nuisance” will be rendered moot.

Should you have any questions or concerns please do not hesitate to contact this office. I remain

Very truly yours, s/Thomas W. Lawton

On the petition by Kohl’s Illinois, Inc., N56 W17000 Ridgewood Dr., Menomonee Falls, Wisconsin 53051 for a special permit pursuant to Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended to allow remodeling to building exterior, including addint less than 110 square feet of uninhabited area to the store entrance for cosmetic reasons, adding EIFS to enhance the existing façade, and minor maintenance where needed around the building at 425 Washington Street. PUBLIC HEARING OPENED. A report was received from the Committee on Special Permits as follows: “Ought to pass with the following conditions: 1. That the site plan shall be in accordance with the plan titled “Proposed Site Plan” for Permit 11/27/13 – Exterior, Sheet SP dated 11/01/2103; 2. That all conditions of the original Special Permit granted August 2, 2012 for this locus shall remain in full force and effect unless modified by this Special Permit; 3. That this permit will not serve as approval of any new or modified signs requiring a separate permit from the Building Commissioner; and 4. That a chain and lockbox be installed and signage to prevent trucks from parking overnight ni the area behind the building. Said chain and lockbox shall be in effect for the hours of 10:00 p.m. to 6:00 a.m.”

On the petition by Rosematwo, LLC, 10 Dorrance Street, Boston, Massachusetts 01219 for a special permit pursuant to Sections 8.7.2.10, 5.1.42, 8, 6.1 Note 8, and 12 of the 1985 Woburn Zoning Ordinances, as amended, to allow for the construction of a 10,000 square foot building addition to an existing warehouse facility, including loading docks and parking at 7 State Street. PUBLIC HEARING OPENED. A communication dated January 8, 2014 was received from Erin E. Wortman, City Planner/Grant Writer, Woburn Planning Board as follows:

Re: Rosematwo, LLC – 7 State Street – To allow for a 10,000 square foot building addition and loading docks to the existing warehouse facility pursuant to Sections 8.7.2.10, Section 5.1 Line 42, Section 8 and Section 6.1 Footnote 8.

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on January 7, 2014, the Planning Board voted to send a favorable recommendation to the City Council on the Special Permit application of Rosematwo LLC, regarding the property at 7 State Street to allow for a 10,000 square foot building addition and loading docks to the existing warehouse facility subject to the following conditions

1. That the Plan of Record shall be “Rosematwo, LLC, Building Expansion, 7 State Street, Woburn, Massachusetts” Sheets C-1.0, C-2.0, C-3.0, C-4.0 and C-4.1 dated 04/08/2013, revised 10/07/2013 and further revised 11/07/2013, prepared by Level Design Group, 249 South Street, Unit 1, Plainville, MA 02762” except as modified by this decision;
2. That a minimum of 32 parking spaces be required for the facility and complies with Section 8 of the Woburn Zoning Ordinance;
3. That any proposed water services require approval from the Department of Public Works;
4. That the petitioner shall comply with any requirements of the Plumbing Inspector with regards to the oil/water separator prior to occupancy;
5. That the applicant’s engineer verify that drainage runoff as a result of the proposed work will not impact the abutting properties to the satisfaction of the Engineering Department prior to issuance of the building permit;
6. That the petitioner show sizes and location of the existing site utilities and utilities on State Street including inverts and rims as appropriate to the satisfaction of the Engineering Department prior to issuance of the building permit; and
7. That the Engineering Department shall review and approve the mitigation cost submitted by the developer prior to the issuance of a building permit.

If members of the City Council have any questions or concerns regarding the foregoing recommendation, please feel free to contact me.

Sincerely, s/Erin E. Wortman, City Planner/Grant Writer

On the petition by David Donovan, 46 Plain Road, Westford, Massachusetts 01886 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended Section 7.6.2 to allow for the reconstruction of the existing non-conforming use and structure (two family) to provide for the construction of a new two family dwelling at 4 Prospect Street. PUBLIC HEARING OPENED. A communication dated January 8, 2014 was received from Erin E. Wortman, City Planner/Grant Writer, Woburn Planning Board as follows:

Re: David Donovan – 4 Prospect Street – To allow for the reconstruction of the existing non-conforming use and structure (two family) to provide for the construction of a new two family dwelling pursuant to Section 7.6.2

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on January 7, 2014, the Planning Board voted to send a favorable recommendation to the City Council on the Special Permit application of David Donovan, regarding the property at 4 Prospect Street to allow for the reconstruction of the existing non-conforming use and structure to provide for the construction of a new two-family dwelling subject to the following conditions:

1. That the Plan of Record shall be “Proposed Plot Plan, #4-6 Prospect Street, Woburn, Massachusetts, Map #51, Block #20, Lot #13”, dated November 19, 2013 and prepared by Land Engineering & Environmental Services, Inc., 130 Middlesex Road, Tyngsboro, Massachusetts, 01879; and
2. That the kennel shown on the site plan be used for personal use only; and
3. That all parking shall be in compliance with Section 8.4

If members of the City Council have any questions or concerns regarding the foregoing recommendation, please feel free to contact me.

Sincerely, s/Erin E. Wortman, City Planner/Grant Writer

On the petition by Brian Carpentier d/b/a Koffee Kup Bakery, 436 Riverside Avenue, Burlington, Vermont 05401 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, Section 5.1.57b to allow for overnight parking of commercial motor vehicles at 10 Micro Drive. PUBLIC HEARING OPENED. A communication dated January 8, 2014 was received from Erin E. Wortman, City Planner/Grant Writer, Woburn Planning Board as follows:

Re: Brian Carpentier dba Koffee Kup Bakery – 10 Micro Drive – To allow for overnight parking of commercial motor vehicles pursuant to Section 5.1(57b)

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on January 7, 2014, the Planning Board voted to send a favorable recommendation to the City Council on the Special Permit application of Brian Carpentier dba Koffee Kup Bakery, regarding the property at 10 Micro Drive to allow for overnight parking of commercial motor vehicles subject to the following conditions:

1. That the commercial motor vehicles be limited to the 22 spaces marked on the Allen and Major plan dated 02/01/2012 and further stamped received as part of this submission on 11/21/2013 provided that there is sufficient parking spaces under the Woburn Zoning Ordinance to comply with Section 8 of the Ordinance for the use of the building; and
2. That said vehicles shall be registered within the City of Woburn.

If members of the City Council have any questions or concerns regarding the foregoing recommendation, please feel free to contact me.

Sincerely, s/Erin E. Wortman, City Planner/Grant Writer

On the petition by Upland Architects, 250 E. Main Street, Norton, Massachusetts 02766 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, Section 5.1.57b to allow Comcast utility vehicles to park overnight on a regular schedule at 9 Forbes Road. PUBLIC HEARING OPENED. A communication dated January 8, 2014 was received from Erin E. Wortman, City Planner/Grant Writer, Woburn Planning Board as follows:

Re: Upland Architects – 9 Forbes Road – To allow for Comcast utility vehicles to park overnight pursuant to Section 5.1.57b

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on January 7, 2014, the Planning Board voted to send a favorable recommendation to the City Council on the Special Permit application of Upland Architects, regarding the property at 9 Forbes Road to allow for Comcast utility vehicles to park overnight subject to the following conditions:

1. That the overnight Comcast utility vehicles be limited to fifteen spaces as shown on the Allen and Major plan dated 10/21/2011 and further stamped received as part of this submission on 11/21/2013 provided that there are sufficient parking spaces under the Woburn Zoning Ordinance to comply with Section 8 of the Ordinance for the use of the building; and
2. That said vehicles shall be registered within the City of Woburn.

If members of the City Council have any questions or concerns regarding the foregoing recommendation, please feel free to contact me.

Sincerely, s/Erin E. Wortman, City Planner/Grant Writer

CITIZEN'S PARTICIPATION: None.

COMMITTEE REPORTS:

FINANCE:

On the Order to transfer the sum of \$75,000.00 from BLS Receipts Acct to Fire Ambulance Salary Acct, committee report was received "ought to pass".

On the Order to transfer the sum of \$3,000,000.00 from Unreserved Fund Balance Acct to Stabilization Fund Acct, committee report was received "ought to pass".

On the Order to appropriate the sum of \$2,684,500.00 from Unreserved Fund Balance Acct to Various Capital Projects, committee report was received "As to the school expenditures, back for action pending additional information from the School Department; and as to the remaining expenditures, ought to pass provided that any such funds so appropriated that are neither disbursed nor encumbered as of June 30, 2014 shall be returned to the General Fund, that the City Auditor shall provide the City Council with a quarterly accounting of the disbursement of the funds so appropriated and further that the City Auditor shall provide the City Council with an accounting of the funds appropriated pursuant to City Council Order dated June 19, 2012 and confirm that the funds appropriated pursuant to the City Council Order dated June 30, 2013 (with the exception of the DPW/Remedial Yard Work/ACO which was exempted from this requirement) have returned to the General Fund as required by the Order dated June 19, 2012."

PUBLIC SAFETY AND LICENSES:

On the petition by Murray's Enterprises, Inc. dba Murray's Auto & Truck Sales for renewal of a Second Class Motor Vehicle Sales License, committee report was received "ought to pass".

PERSONNEL:

On the reappointment of John J. Ryan III as a Member of the Woburn Board of Appeals, committee report was received "ought to pass".

On the reappointment of Angela Amato, Eleanor Camillieri, Dorothy Capone, Francis Hancock, Jack Kelly, Barbara Ridley and Doris Stanton as Members of the Woburn Council on Aging, committee report was received "ought to pass".

NEW PETITIONS:

Petition by Adria Transporation LLC, 80 Salem Steet for a new Livery License.

Petition by NSTAR Electric Company for a grant of right in a way to install approximately 589 feet of conduit on Liberty Avenue easterly from MH22423 at the intersection of Eastern Avenue and install two new manholes (MH29793 and MH29792).

Petition by Melanson Development Group, Inc., 5 Robertson Way, Woburn, Massachusetts 01801 for a special permit pursuant to Section 5.1, Note 15 of the 1985 Woburn Zoning Ordinances, as amended, to construct a residential garage in excess of 900 sqare feet at Lot 11, Wyman Farm Estates, Wyman Street. A notice of withdrawal of the petition was received from the petitioner.

Petitions by David Pruyne, Robert Hughes and Stephen Miele for approval of an exemption under M.G.L. Ch. 268A, §20(b) to allow the provision of snowplow services to the city.

COMMUNICATIONS AND REPORTS:

A communication dated January 15, 2014 was received from Joanne Collins, Director, Woburn Council on Aging along with a copy of the Director's Report and the minutes of the Council on Aging for the month of December 2013.

A communication dated January 15, 2014 was received from Joanne Collins, Director, Woburn Council on Aging along with a copy of the Woburn Council on Aging 2013 calendar year annual report.

A communication dated January 15, 2014 was received from City Solicitor Ellen Callahan Doucette as follows:

Re: Newly Elected Members – Restrictions on Voting

This memorandum shall serve as a response to the City Council's request for a legal opinion as to which pending matters a newly elected Alderman can vote. A copy of the City Council's request is attached hereto for reference.

The ability of a member of a local board, committee or commission to vote on a matter before it, if that member did not attend all meetings held on the matter (regardless that they had not yet been sworn or were simply absent), depends upon whether the matter to be voted on is adjudicatory in nature rather than legislative or administrative.

I'm sure the members of the City Council are aware of the Massachusetts Appeals Court's decision in *Mullin v. Planning Board of Brewster*, 17 Mass.App.Ct. 139 (1983) where the court held that when a municipal board acts in a judicial or quasi-judicial capacity (that is, adjudicatory), all members of the board who join in the decision must attend the hearing and all subsequent dates thereof if the hearing is continued. A matter is considered to be adjudicatory if the relief requested affects a specific individual or individuals' legal rights, duties or privileges which relief may only be determined after a hearing. Adjudicatory matters which may be pending before the City Council, or which may have been referred to one of its Committees include special permit applications; original license (not renewal) applications and nuisance hearings. If the new City Council member was not sworn when the requisite hearing for those matters was held, he cannot vote on those adjudicatory matters. Other City Council members who may have missed one date of a continued adjudicatory hearing may comply with the so-called "Mullin Rule" by filing a certification of compliance with M.G.L. c.39, §23D.

In contrast, legislative or administrative matters are those which come before the City Council, may or may not require a hearing, but do not affect a specific individual's rights. Examples of legislative or administrative matters are amendments to the Municipal Code, the Zoning Ordinance (Although zoning amendments must comply with the requirements of M.G.L. c.40A, §5 and require a public hearing, zoning amendments affect the public interest generally and not that of a one or more specific identifiable individuals), the City Council's own Rules or Regulations, license renewals, appropriations, or other Orders or Resolves. The new City Council member may participate in and vote on any of these matters which may be pending before the City Council or in one of its Committees notwithstanding that he was not sworn at the time the matter was filed.

Should the City Council have additional questions or require further assistance regarding this matter, please don't hesitate to contact me.

Very truly yours, s/Ellen Callahan Doucette

UNFINISHED BUSINESS OF PRECEDING MEETING: None.

APPOINTMENTS AND ELECTIONS: None.

MOTIONS, ORDERS AND RESOLUTIONS:

ORDERED That the City Council requests the Human Resources Director provide to the Committee on Personnel a copy of the job description and requirements for the City Auditor position. It is also requested that the job descriptions and salaries for similar positions be obtained from several neighboring towns or cities so that a comparison can be made.

s/Alderman DiTucci

Motion made and 2nd to ADJOURN.