

CITY OF QUINCY
Zoning Board of Appeals
Business Agenda

Pursuant to the provisions of Title 17 of the *Quincy Municipal Code*, the Quincy Zoning Board of Appeals will hold a **Public Hearing** on **Tuesday, March 22, 2011** at **7:15pm** on the **Second Floor** in the **Council Chambers** of Quincy City Hall, 1305 Hancock Street, Quincy, MA 02169, for the purpose of considering the following:

MINUTES OF PREVIOUS HEARING - MOTION –

OLD BUSINESS:

- 10-070 MICHAEL GREHAN** – Remanded back by the court for the limited purpose of the Board’s consideration of revising its decision and to see if it can and will supply findings in support of its decision or otherwise alter it, for the premises numbered **71 ROBERTSON STREET, QUINCY**
- 10-053 ZU SHEN GUAN** for a **VARIANCE** to legalize an addition on the premises numbered **247 WINTHROP STREET, QUINCY**
- 08-035 JET EIGHT GROUP, JUDY CHEN, FAI YIN CHEN AND ELAINE MANDELL** for a **FINDING**, this matter has been remanded back to the Zoning Board of Appeals by The Commonwealth of Massachusetts, Land Court Division, Case #08 MISC. 384961, for the premises numbered **681 HANCOCK STREET, QUINCY3**

NEW BUSINESS:

- 11-008 WAH TUNG HUM** for a **VARIANCE** to tear down the existing structure and rebuild with a third floor due to the flood plain on the premises numbered **15 POST ISLAND ROAD, QUINCY**
- 11-009 SHENGXI TINN ESQ. FOR MT. LAW LLC** for a **FINDING** that changing the use from an American legion Post to a residential structure is not substantially more detrimental to the neighborhood on the premises numbered **1110-1118 SEA STREET, QUINCY**
- 11-010 SCOTT & DONNA SHUTLEWORTH** for a **VARIANCE** to construct a one story addition to the existing single family home on the premises numbered **41 BAY VIEW AVENUE, QUINCY**
- 11-011 LUI SHUN LAU** for a **FINDING** to enclose the existing back porch for extended living space on the existing footprint on the premises numbered **74 WILLET STREET, QUINCY**

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Councillors
Traffic & Parking
Public Works
Mayor
City Solicitor
Planning Department
Engineer

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Commonwealth of Ma
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Quincy Neighborhood Housing
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MDC

Quincy Zoning Code (the "Code").² Eleven of the units are presently in use. Ten are vacant.³ The change sought was the combination and conversion of two vacant units on the ground floor, one previously occupied by an insurance agency and the other by a real estate office (2584 square feet in total), into a 72-seat Chinese-American restaurant and bar.⁴

The building is located in a Business C zoning district.⁵ In such districts, as noted above, both the previous office use and the proposed restaurant use are allowed as of right. Code, §17.16.020. Because of the building's non-conformity, however, Jet Eight required "a finding by the board of appeals...that such change, extension, or alternation shall not be substantially more detrimental than the existing nonconforming use to the neighborhood." G.L. c. 40A, § 6; Code, §17.24.020.B.⁶

The board denied the finding, stating only its conclusion that the proposed change in use was "a substantial change" and "would be substantially more detrimental to the neighborhood." Decision at 1-2. It gave neither reasons nor explanation in support. At the Case Management Conference, however, the parties agreed that the board's decision "was based on the board's view that parking for a change from office to restaurant use would be inadequate and that inadequacy would substantially and adversely affect the

² The parking lot is non-conforming in two respects. First, it fails to meet current setback requirements. Code, §17.28.030.E. Second, its parking spaces do not meet current dimensional requirements. Code, §17.28.050.A & B. The board admits that these non-conformities are "grandfathered" pursuant to Code, §17.28.050.C ("These provisions shall not apply to any building for which a permit to construct foundations was issued prior to January 1, 1987"). The building was constructed in the 1920's.

³ The bottom floor has a hair salon, a dry cleaner, a bridal shop, a retail tea store, a nail salon and two vacant units (the ones proposed to be converted). The top floor contains eight offices, some currently vacant and the rest occupied by a non-profit (the Chinese-American Federation; run by Jet Eight's principals), a Chinatown news office, a real estate company, and a building contractor's office.

⁴ The 72 seats include both those at the tables and those at the bar.

⁵ "Business C" is Quincy's Central Business District. Code, § 17.12.010.

⁶ Jet Eight argued that a non-conformity in the parking lot does not make the *building* non-conforming but, for the reasons set forth below, I find and rule that it does. A finding is thus required for the proposed change to restaurant use.

surrounding neighborhood.” Notice of Docket Entry (Dec. 22, 2008). Based on this stipulation, Jet Eight waived its right (if any) to request a remand for further explanation.

Id. The board confirmed this stipulation at trial, stating that “this is, as you know, essentially a case about parking.” Trial Tr. at 13-14.⁷

Under the Code, if the building was newly constructed instead of grandfathered, the proposed new restaurant plus the other uses of the building (counting both occupied and vacant units) would require 44 parking spaces.⁸ The building’s parking lot provides only 32.⁹ The building *is* grandfathered, however, and the test is not what the Code currently requires. Rather, as noted above, it is whether the proposed change and its impact on parking would be “substantially more detrimental than the existing nonconforming use to the neighborhood.” Code, §17.24.020.B.2.

⁷ “Traffic” was also mentioned as an issue, but only as it relates to parking. Even if it *was* a separate issue, there was no persuasive evidence that traffic in the area would be adversely affected by the proposed restaurant, particularly since the parking lot entrance (where all but a relative handful of “driving” customers will park) is off a two-way side street (Chapman), not Hancock. Jet Eight’s expert witness testified that the additional cars reasonably expected as a result of the changed use would not change the level of service at any of the nearby intersections and would add (at most) an imperceptible delay of 3/10’s of a second to cars traveling through those intersections. They would not increase the likelihood of accidents in the area (currently only 1.18 per 1,000,000 vehicle trips). And they would not create any safety or other issues for cars going to and from Hancock Street to the building’s parking lot off Chapman since there are no sight-line issues at the Hancock Street/Chapman Street intersection and the traffic lights at the intersections on either side of that intersection create “gaps” in traffic that easily allow both left and right turns from Hancock onto Chapman and from Chapman onto Hancock. I fully credit that testimony.

⁸ The calculation goes as follows. The Code currently requires one parking space for every 400 square feet of retail space and one parking space for every 600 square feet of offices. The top floor of the building (all offices) is 7590 square feet, which would require 13 off-street parking spaces under the Code. The ground floor, *excluding* the space to be occupied by the proposed restaurant, is 5006 square feet and is presently occupied by retail businesses. As such, it would require 13 off-street parking spaces if the Code applied. The proposed restaurant would occupy the remaining 2,584 square feet on the ground floor which, in its former state as offices, would require 5 spaces if the Code applied. The combined total for current building use to be Code compliant is thus 31. Restaurant parking requirements under the Code are calculated not by square footage but by number of seats. A 72-seat restaurant in the 2,584 square foot space would require 18 off-street parking spaces. Thus, with the two offices converted to a restaurant, a total of 44 off-street parking spaces would be required to make the building Code compliant.

⁹ Jet Eight argued that the lot could accommodate 35 spaces, but acknowledged at trial that the number was actually 32. *See* Trial Tr. at 106 (“the parties have agreed that the parking space for this building has 32 spaces”). Even without this agreement, I find that 32 is the correct number. It is the number reflected on Jet Eight’s original plans and the actual number of spaces used at the time of application and trial. Jet Eight’s revised parking plan showing 35 spaces is neither realistic nor practicable given site constraints.

In this appeal, Jet Eight contends that, as a matter of law, the Code does not require a finding for the proposed change in use. Alternatively, it contends that even if a finding *is* required, the board erred in denying that finding because the traffic and parking impact of the change will not be substantially more detrimental to the neighborhood and the board's conclusion to the contrary was unreasonable, arbitrary and capricious. The board argues otherwise.

A trial was held before me, jury-waived. Based upon the agreed facts, the testimony and exhibits admitted into evidence at trial, my assessment of the credibility, weight, and inferences to be drawn therefrom, and as more fully set forth below, I find and rule that a finding is required for the use change proposed but that the board acted arbitrarily and capriciously in denying that finding. The board's decision is therefore annulled and judgment shall issue allowing the change. *See Wendy's Old Fashioned Hamburgers of New York, Inc. v. Bd. of Appeals of Billerica*, 454 Mass. 374, 382-383, 387, 389 (2009).

Standard of Review

In a G. L. c. 40A, § 17 appeal, the court is required to hear the case *de novo*, make factual findings, and determine the legal validity of the board's decision upon those facts. *Roberts v. Southwestern Bell Mobile Sys., Inc.*, 429 Mass. 478, 486 (1999) (citing *Bicknell Realty Co. v. Bd. of Appeals of Boston*, 330 Mass. 766, 679 (1953)); *Joseph v. Bd. of Appeals of Brookline*, 362 Mass. 290, 295 (1972). In making factual findings, "the judge is not allowed to give the board's findings or decision evidentiary weight." *Josephs*, 362 Mass. at 295 (citing *Devine v. Zoning Bd. of Appeals of Lynn*, 332 Mass. 319, 321-322 (1955)); *see also Guiragossian v. Bd. of Appeals of Watertown*, 21 Mass.

App. Ct. 111, 114 (1985) (“[T]he board’s decision carries no evidentiary weight on appeal”).

After finding the facts *de novo*, the court’s “function on appeal” is to

ascertain whether the reasons given by the [board] had a substantial basis in fact, or were, on the contrary, mere pretexts for arbitrary action or veils for reasons not related to the purpose of the zoning law. If formal requirements have been met, the [board’s] decision cannot be disturbed unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary.

Vazza Properties, Inc. v. City Council of Woburn, 1 Mass. App. Ct. 308, 312 (1973)

(internal citations and quotations omitted).

In determining whether the decision is “based on a legally untenable ground,” the court must determine whether it was decided:

on a standard, criterion, or consideration not permitted by the applicable statutes or by-laws. Here, the approach is deferential only to the extent that the court gives some measure of deference to the local board’s interpretation of its own zoning by-laws. In the main, though, the court determines the content and meaning of statutes and by-laws and then decides whether the board has chosen from those sources the proper criteria and standards to use in deciding to grant or to deny [the finding].

Britton v. Zoning Bd. of Appeals of Gloucester, 59 Mass. App. Ct. 68, 73 (2003) (internal quotations and citations omitted).

In determining whether the decision was “unreasonable, whimsical, capricious or arbitrary,” “the question for the court is whether, on the facts the judge has found, any rational board” could come to the same conclusion. *Id.* at 74. This step is “highly deferential.” *Id.* However, while “it is the board’s evaluation of the seriousness of the problem, not the judge’s which is controlling,” *Barlow v. Planning Bd. of Wayland*, 64 Mass. App. Ct. 314, 321 (2005) (internal quotations and citations omitted), and “a highly deferential bow [is given] to local control over community planning,” *Britton*, 59 Mass.

App. Ct. at 73, deference is not abdication; the board's judgment must have a sound factual basis. *See id.* at 74-75 (to be upheld, the board's decision must be supported by a "rational view of the facts"). If the board's decision is found to be arbitrary and capricious, the court should annul the decision. *See, e.g., Colangelo v. Bd. of Appeals of Lexington*, 407 Mass. 242, 246 (1990); *Mahoney v. Bd. of Appeals of Winchester*, 344 Mass. 598, 601-602 (1962).

If the decision is annulled, the court may remand the case to the board with appropriate guidance or, as here, approve "affirmative relief from the denial by the board where remand to a board would be futile, or where it is clear that remand would produce an inevitable result." *Wendy's Old Fashioned Hamburgers of New York, Inc.*, 454 Mass. at 382-383. This is particularly so (affirmative relief) where, as here, the specific factual findings made by the court mandate that relief since "a board may not ignore or disagree with the specific findings of a reviewing court after a judge has fulfilled her statutory duty to 'determine the facts,' G. L. c. 40A, § 17." *Id.* at 389.

Facts and Analysis

A Finding Is Required

As noted above, Jet Eight proposes to convert two vacant units on the ground floor of its building from empty office space to a 72-seat Chinese-American restaurant and bar.¹⁰ Those units were previously occupied by an insurance agency and a realty business. The building was constructed in 1920, prior to the adoption of the relevant provisions of the Quincy Zoning Code, and is located in Quincy's Business C (Central

¹⁰ As previously noted, the 72 seats include both those at the tables and those at the bar. Jet Eight's original plans showed 87 seats but this was later downsized to 72.

Business) zoning district. Both office and restaurant uses are allowed in that District as of right.

In accordance with G.L. c. 40A, § 6, Quincy Zoning Code §17.24.020.B

(“Alterations — Change in Use”) provides:

1. This title shall apply to any change of use of an existing building or structure and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent.
2. No such extension or alteration shall be permitted unless there is a finding by the board of appeals, as the permit granting authority, that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

A restaurant use is allowed in the District as of right. The only non-conformity, either now or with the restaurant, is associated with the *building* and the building is non-conforming solely because of its non-compliance with the Code’s current parking requirements.¹¹ In light of this, Jet Eight makes three arguments in support of its contention that a change to restaurant use does not require a finding as a matter of law.

Jet Eight’s first argument is essentially as follows. Code §17.24.020 is entitled “[n]on-conforming buildings, structures and uses.” A parking lot (the sole source of the non-conformity) is not, in and of itself, a “building[.]”, “structure[.]”, or “use[.]”.

Therefore, § 17.24.020’s requirement of a “finding” does not apply.

Its second argument is based on § 17.28.010 of the Code. That section provides that “[b]uilding and land uses in existence on the effective date of the [zoning] ordinance...shall not be subject to the [Code’s parking requirements] except as set forth

¹¹ See n. 2, *supra*.

in Sections 17.24.020 through 17.24.040.” Since its building pre-dates the zoning ordinance, Jet Eight contends that this provision exempts any allowed use of that building from the Code’s parking requirements. In Jet Eight’s view, the exception to that exemption (“except as set forth in Sections 17.24.020 through 17.24.040”) does not apply because, as it argued just above, a parking lot is not a “building”, “structure” or “use” within the meaning of §17.24.020.

Lastly, Jet Eight argues that §17.28.050 (“Parking Spaces — Minimum dimensions — Exceptions”), specifically subsection C’s statement that “these provisions shall not apply to any building for which a permit to construct foundations was issued prior to January, 1, 1987,” is once again reflective of its building’s exemption from the Code’s parking requirements for any allowed use.

None of these arguments is persuasive. A “nonconforming building or lot” is defined in §17.08.020 of the Code as “a building or lot that does not conform to a dimensional regulation ... *or to regulations for off-street parking* ... provided that such building or lot was in existence and lawful at the time the regulation became effective.” (emphasis added). The Code thus speaks directly to this situation. Moreover, precisely the same parking lot non-conformity that is involved in this case (a failure to comply with the Code's buffer zone requirements — *i.e.*, a non-conformity neither of the building, structure or use) has previously been held by this court to make the property as a whole non-conforming for purposes of requiring a §6 finding for proposed building alterations. *Burger King Corp. v. Faherty*, 1992 WL 12151886, *1 (Mass. Land Ct. 1992) (Cauchon, C. J.) (even though both the physical structure and its uses conformed to the Code, “[l]ocus is nonconforming in that to comply with parking requirements it does not

contain the buffer zone between its parking lot and the abutting lots and streets as is required by ... the Quincy Zoning Ordinance,")¹² I fully concur with that ruling. Because the property as a whole is non-conforming based on its failure to comply with the parking requirements contained in the Code, Jet Eight's overly-narrow reading of the applicability of §17.24.020 as being limited by its title to non-conformities stemming from actual "buildings," "structures" and "uses" to the exclusion of non-conformities based on failure to comply with the Code's parking requirements is incorrect. The parking non-conformity makes the entire property non-conforming for purposes of G.L. c. 40A, §6 and Code §17.24.020. Accordingly, changes to the use of the building are subject to a "finding" requirement.

It follows from this that Jet Eight's argument based on §17.28.010 must also fail. This is so because: (1) §17.28.010 specifically states that its exemption from the Code's parking requirements for "buildings and land uses in existence on the effective date of the ordinance codified in this title" applies "except as set forth in Sections 17.24.020 through 17.24.040," and (2) as just explained, §17.24.020 requires a "finding" in the situation presented by this case. Simply put, §17.28.10 does not negate the parking non-conformity for purposes of §17.24.020.

Jet Eight's third contention is just as easily addressed. By its express terms, §17.28.050.C's exception applies only to the minimum dimensional requirements for individual parking spaces set forth in §17.28.050 subsections A and B. It does not negate a parking non-conformity based on other factors.

¹² The court held that a §6 finding was required, but went on to hold that the board's failure to grant it exceeded its authority because, on the facts as found by the court, the impact of the addition of a drive-through window even without the Code-required buffer was, at most, *de minimus* and did not cause substantial detriment to the neighborhood. *Id.*

Having said all this, however, the parking provisions cited by Jet Eight *do* have relevance to this case. They may not *negate* the parking non-conformity (*i.e.*, making a finding unnecessary when parking is the only non-conformity) but, taken together and in conjunction with G.L. c. 40A, § 6 and §17.24.020, they show that the §6 / §17.24.020 analysis does not start and end with whether the changed use meets current parking requirements, and that a failure to meet that current requirement does not in and of itself establish the rationality of a board's conclusion that the surrounding area will adversely be affected. Rather, the board must conduct a broader, fact-based inquiry of the *actual* impact of the change on parking needs and parking availability in the neighborhood before it lawfully may conclude that the change will be "substantially more detrimental than the existing nonconforming use to the neighborhood," Code, §17.24.020, and the factual basis for that conclusion is subject to this court's *de novo* review.

The Finding Must Issue Because the Parking and Traffic Impact of the Proposed Change in Use Will Not be Substantially More Detrimental to the Neighborhood

As the board concedes, this is a case about parking or, more precisely, about the impact of the proposed Chinese restaurant on the adequacy of parking in the surrounding neighborhood. Will that impact be "*substantially* more detrimental" than that caused by the existing non-conforming structure? G.L. c. 40A, §6 (emphasis added). If so, the board's denial must be upheld. If not, it must be vacated.

Under the Code, as discussed above, a 72-seat restaurant, plus the remaining uses in the building (office and retail), would need 44 parking spaces. There are 32 spaces in the parking lot at the building, leaving a Code-based "shortfall" of 12.¹³ As explained below, the *actual* need is less, and varies with the time of day. Using *either* calculation,

¹³ If my math is correct, the 32 existing spaces are (in number, if perhaps not in dimension) adequate under the ordinance to serve the existing uses in the building (a Code requirement of 31). *See* n. 8, *supra*.

however (the 12 spaces stated in the Code or the actual need), there is more than adequate available parking. Thus, the impact of the change to a restaurant use will not be “substantially more detrimental” than the impact of the building today.

The Restaurant’s Actual Parking Needs

The proposed restaurant, open from 11:00 a.m. to 1:00 a.m., will have two peak periods, the 11:00 a.m. to 1:30 p.m. lunchtime and the 6:30 p.m. to 8:30 p.m. dinnertime. Under the Code, assuming full occupancy, the other uses in the building (office and retail) require 26 parking spaces. There are 32 in the parking lot, leaving 6 available for the restaurant.¹⁴ The analysis thus begins with the question, how many others are needed, and when?

The Institute of Transportation Engineers (“ITE”) conducts studies and publishes data regularly used and relied upon by professionals in the field. *See* G.L. c. 233, §79B. Those studies and data, which I fully credit, indicate that the proposed restaurant will need 14 spaces at the highest peak hour (dinnertime, between 6 and 7 p.m.) and about half that (7 spaces) at the height of the lunchtime peak.¹⁵ *See* the testimony of Jet Eight’s expert, Gary McNaughton. Jet Eight’s own experience with a similar restaurant in Canton confirms this pattern — a far higher volume in the evening than at lunch. It also seems logical for this type of restaurant. Evenings would have more “take out”

¹⁴ Jet Eight claims that it will reserve 18 spaces in its parking lot for restaurant customers, fully addressing the restaurant’s needs. But this is beside the point. The parking needs of the other building uses do not disappear and must still be accommodated *somewhere*. The analysis thus remains essentially the same. Are there sufficient spaces nearby to accommodate the “extra” cars *resulting* from the restaurant so that there is no substantial detriment to the surrounding neighborhood?

¹⁵ It may seem odd that a 72-seat restaurant needs this few parking spaces, but this is a function of two factors. The first is the restaurant’s urban setting. Unlike suburban restaurants where most patrons will arrive by car with the restaurant as their destination, *this* restaurant, in Quincy’s Central Business District and surrounded by offices, shops and homes, will draw the vast majority of its customers from those who live, work or shop nearby and have already parked in *those* places or arrived by bus or T. Second, a Chinese-American restaurant in such a location is considered a “high turnover” restaurant — a place for takeout or relatively short dining, *not* a leisurely dining experience. Recall that even Quincy’s zoning code itself, without any allowance for these factors, requires only 18 spaces for 72 seats.

customers arriving and departing by car, as well as those choosing the restaurant as a destination. A higher proportion of lunchtime customers are more likely to be walking from nearby offices or shops. Both peak hour numbers are less (and, at lunchtime, far less) than the 18 spaces the Code requires, and means that the “extra” parking need generated by the proposed restaurant will be only *one* car more than the building’s parking lot provides at the lunchtime peak, and *eight* more than it provides at the evening peak, not twelve.¹⁶ It also means that truck deliveries will not be an issue. The restaurant has them scheduled between 2 and 4 p.m. to avoid the peak hours, and they are minimal even then — one drygoods delivery per week, one meat, one produce, and perhaps two or three for wine/beer/liquor depending upon demand, all from short-bed vehicles easily maneuvered into, out of, and around the parking lot, and without taking up much space when they load and unload.

Parking Availability Nearby

The building is located in Quincy’s central business district (the Wollaston area) and fronts on the city’s main thoroughfare (Hancock Street/Rte. 3A). It stretches along Hancock from Beale Street on its west (another main thoroughfare) to Chapman Street on its east (a side street). It has its own 32-space parking lot in the back, accessed from Chapman. In addition, there are over 110 on-street parking spaces within walking distance, many directly in front or along the sides of the building itself and the others along Hancock, Beale, Chapman, Cushing and Beach.¹⁷ There are also several publicly-

¹⁶ As more fully set forth below, however, the reality is that even 18 spaces are easily available nearby, either on-street or in publicly-available parking lots.

¹⁷ Hancock Street and Beale Street have parking along both sides. Chapman allows on-street parking only on the side opposite the Jet Eight building. Clay Street (a half-block behind the building) has on-street parking as well. Even the board’s expert conceded that there are over 50 legal on-street spaces in this just this one-block area. The other 60-plus are within the second block radius. I find that including the

available parking lots within a block or two, including the large lot at the Wollaston “T” station and another large lot behind the old, now vacant, Wollaston Theatre. Together these lots hold hundreds of cars and are regularly used by employees and customers of local businesses. The board made much of the fact that none of them are municipally-owned but that is beside the point. The large lots, and many of the smaller ones, are open to the public and their charges relatively inexpensive.¹⁸

There are a scattering of other food establishments near the Jet Eight building, some with their own parking lots, some not. Among them are two pizzerias, a cafe, two Asian restaurants, a tavern, and a Dunkin Donuts. There are also a number of retail shops and, on the residential streets, single and multi-family dwellings, many with their own driveways, garages or lots. The two-hour time limitation for many on-street spaces guarantees turnover, ensuring general availability.¹⁹ Moreover, not everyone uses a car to get to the shops and restaurants. Many residents walk from their homes. Those from further away have the “T” and frequent buses available.

There are no apparent problems with parking availability at present, even with all these businesses, restaurants and dwellings. Both Jet Eight’s and the board’s experts viewed the surrounding area during the lunch and dinner hours and consistently found open spaces on the surrounding streets, never mind the many additional available in the nearby parking lots. Jet Eight’s expert observed at least 20 open on-street spaces within

second block is far more realistic and accurate of where restaurant and business patrons could, and would, park.

¹⁸ The lot behind the old Wollaston Theatre, for example, charges only \$3 per day — a strong indication, in and of itself, that available parking is plentiful. The Wollaston “T” lot will be substantially empty in the evenings. Moreover, since much of the on-street parking is limited to two hours (not an issue for restaurant customers since their stays will be shorter), there is always turnover and consequent availability.

¹⁹ As previously noted, a two-hour limitation does not discourage restaurant patrons from using those spaces because their dining time will be shorter.

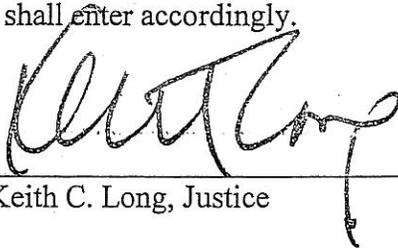
two blocks of the building between 11:30 a.m. to 1:30 p.m. on weekdays, and over 40 between 5:00 p.m. and 7:00 p.m. Even in the one-block area to which the *board's* expert confined his study, that expert never found fewer than 7 empty on-street spaces and sometimes as many as 36. Since the offices in the Jet Eight building generally close by 5:00 p.m., the spaces their occupants use will be empty and available for the restaurant's evening dinner peak. It is thus unlikely that *any* on-street parking will be needed for the dinner and later hours. The fact that the City itself is unconcerned about the adequacy of parking in the area is shown by the absence of parking meters and resident-only parking restrictions.

In short, more than adequate parking will be convenient and available for the proposed restaurant and the rest of the neighborhood uses, with spaces to spare. There will thus be no substantial detriment to parking in the neighborhood from the change in use, and the board's conclusion to the contrary has no rational basis.

Conclusion

For the forgoing reasons, the board's denial of the requested finding is **VACATED** and **ANNULLED** and the case is remanded to the board with instructions to issue the finding forthwith. Judgment shall enter accordingly.

SO ORDERED.



Keith C. Long, Justice

Dated: 18 January 2011

(SEAL)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
LAND COURT DEPARTMENT

NORFOLK, ss.

CASE NO. 08 MISC. 384961 (KCL)

JET EIGHT GROUP LLC, JUDY CHEN,
FAI YIN CHEN and ELAINE MANDELL,

Plaintiffs,

v.

MICHAEL HANLEY, JOHN FAGERLUND,
ROBERT KACHINSKY, JOHN BROWN, JR.
and FRANCIS SANDONATO, as they are
members of the QUINCY ZONING BOARD
OF APPEALS,

Defendants.

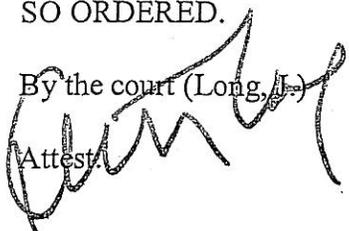
JUDGMENT

This case is plaintiffs Jet Eight Group LLC, Judy Chen, Fai Yin Chen, and Elaine Mandell's G.L. c. 40A, § 17 appeal from the defendant Quincy Zoning Board of Appeals' denial of their application for a G.L. c. 40A, § 6 finding allowing them to convert the use of a small, presently-vacant portion of their non-conforming building at 681 Hancock Street from one allowed use (office) to another (restaurant) in accordance with their application. For the reasons set forth in the court's Decision of this day, the board's decision is **VACATED** and **ANNULLED**, and the case is remanded to the board with instructions to issue the finding.

SO ORDERED.

By the court (Long, J.)

Attest:




Deborah J. Patterson, Recorder

Dated: 18 January 2011

