



**CITY OF WALTHAM**  
**BOARD OF SURVEY AND PLANNING**

The following are minutes of the 7:00 p.m. November 7, 2018 public hearing held in the auditorium of the Arthur Clark Government Center located at 119 School Street, Waltham, MA. In attendance were Chairman Creonte and Members Barrett, Callahan, DeVito, Duffy and Moroney.

The chairman opened the public hearing at 7:00pm and informed the public that the meeting was being taped by the local Waltham Cable Access Channel and if anyone were to come forward to speak to please sign in.

The chairman then opened and immediately closed the public hearing as there were no items on the agenda. He then opened the regular meeting.

The clerk ready the first item on the agenda which was for the deliberations and recommendations to the city council on a Zoning Amendment, Chapter 21, Article VIII, Section 8.64- adding sub section 8.641 - Fast Casual Restaurant. This matter was heard at the city council public hearing held on October 9, 2018.

Attorney Philip B. McCourt, Jr. of 15 Church Street, Waltham, MA came forward representing the petitioner, Boston Properties.

He mentioned that items one (1), two (2) and three (3) of the agenda would all go together, but need to have separate recommendations. He did a recap of the public hearing of all three (3) zone amendments and reviewed questions and concerns that members of the board had. He said that this was the definition they came up with after working with the City Building Commissioner.

The definition of fast food was discussed and that this zone change is only allowed in this zone.

Ms. Callahan and Mr. Moroney asked Mr. McCourt to review all the parking on the site.

Mr. McCourt reviewed this with the board.

The chairman asked if they met all the requirements.

Mr. McCourt said that do meet all the requirements.

With that being said and there being no further questions, the chairman asked if there was a motion.

On the motion of Mr. Barrett, seconded by Ms. Callahan, the Board,

**VOTED: to recommend approval of Zoning Amendment subsection 8.641 as presented.**

The Clerk read the next item on the agenda which was for deliberations and recommendation to the city council on a Zoning Amendment, Chapter 21, Article V, Section 5.21 Off Street Parking Requirements, Fast Food Restaurants.

The chairman asked if there were any questions from the board. There being none, he asked for a motion.

On the motion of Mr. Barrett, seconded by Ms. Callahan, the board,

**VOTED: to recommend approval of Zoning Amendment Section 5.21 as presented.**

The Clerk read the next item on the agenda which was for the deliberations and recommendation for a Zoning amendment, Chapter 21, Article III, Section 3.229- Fast Casual Restaurants.

There being no questions from the board, the chairman asked if there was a motion.

On the motion of Mr. Barrett, seconded by Ms. Callahan, the Board

**VOTED: to recommend approval of Zoning Amendment Section 3.229 as presented.**

The Clerk read the next item on the agenda which was for deliberations and recommendation for a Zoning Amendment to Chapter 2, Zoning District Map for 17 Prospect Street, 17-NX Prospect Street and 105-111 Russell Street.

Attorney Philip B. McCourt, Jr. came forward representing the petitioner, Capasso Hospitality, LLC, and 49 Lexington Street, West Newton, MA 02465.

He reviewed what was heard at the public hearing held on October 9, 2018. *Currently*, the locus has three (3) zones, Business A, Business B and Residence B. The proposed zone change would change the property to all Business B.

The chairman asked if this zone change were to be approved, would the petitioner still need to go to city council for further permitting.

Attorney McCourt said that they would still need to go to the city council for a special permit as what they could build by right is very limited. The zone that they are asking for probably has twenty-four (24) uses or more that could possibly go in there, so a way of handling that without having contract zoning, meaning the city can't decide what can go there, but the petitioner could put restrictions in the zone as to what could be done, which they may propose restrictions or the number of uses to this property. Paul Finger of Paul Finger Associates came forward to review the matter further and to answer questions from the board.

Mr. Finger reviewed the current locus plan showing the three (3) different zones.

He reviewed the percentages of each zone.

If this proposal were to get approved for the rezone, they still would have to go back to the city council for a special permit, which would include any additional mitigation that is required which would be included with the city council review. All setback and height requirements were discussed.

The chairman opened the meeting to the board for questions.

Mr. Moroney asked if this request crossed Russell Street.

Mr. Finger said, "It does not cross over Russell Street."

Mr. DeVito asked if this proposal were to be approved what would the maximum height of any structure that could be placed on the lot.

Mr. Finger said it would be four (4) stories, the maximum height would be 40-feet with a 20-foot set back from there.

Mr. DeVito was wondering if a boutique hotel was still being considered to be placed on this property.

Mr. Finger said, "Yes, that is still being considered, and they have been preparing architectural plans to be prepared if the zone change does get approved."

Ms. Callahan asked about the entrance and exit routes if this boutique hotel went in.



Mr. Finger reviewed the routes and the direct access to the structure which would be from Prospect Street not Russell Street.

Ms. Callahan asked how many feet from Main Street is it to the corner of Russell Street.

Mr. Finger said it was approximately 250 linear feet of frontage along Prospect Street.

Ms. Callahan then asked how many hotel rooms there would be if they moved forward.

Mr. Finger said they were looking at sixty (60) rooms. This hotel would be similar to the one on Crescent Street. A more service oriented hotel.

Ms. Callahan mentioned that she had listened to the residents who live there at the public hearing and she does have an issue with a hotel going there. She personally wouldn't want to live next to a hotel. The neighbors are losing sunlight with this building being so tall.

Mr. Finger said that is an impression you might have. If you think about the parking area, at a minimum is forty (40) feet away, but in fact it would be closer to 100 feet from the residential line, and there is only one (1) resident on that corner, the petitioner controls the other.

The petitioner, Dante Capasso, came forward and spoke of the community outreach that he personally did to answer some of these concerns. He explained that they actually own the property directly across the street on Russell Street. It is currently a parking lot and will continue to be a parking lot. At the last city council meeting, Councilor McLaughlin said it would be a good idea to go around the neighborhood and see if there has been a turn over since they last did an outreach in 2016. He cross referenced the original abutters list with the current abutters list and saw there was a small amount of turn over. He went to every house on the list and dropped a letter with all of the abutters. He was able to speak to one of direct abutters to the site and he was actually in favor of the project and in your packages there are four other letters from abutters that are in favor of this project. They all felt that this type of investment would be good for this area.

He followed Councilor McLaughlin's direction. He cased the neighborhood and spoke to all of the direct abutters and all of them are supporting this project.

Mr. Barrett asked if were not to be a boutique hotel what else could go there. How big of any office building could go there.

Mr. McCourt said that would be controlled by the ordinance.

Mr. Barrett then asked how many stories it could be.

Mr. McCourt said it could be four (4) stories which is the same height as Gordon's next door and the bank across the street is much taller.

Mr. Duffy asked what zone the property would then become with the zone change.

Mr. McCourt said it would become Business B. He said it could be residential and commercial of many uses, which is why he felt there should be some kind of restrictions.

Mr. Barrett asked how they would restrict it.

Mr. McCourt said they would go through the list and select probably three (3) or four (4) from the list making sure it couldn't be a restaurant or a night club, as examples. Then give the city say a portion of the property as an easement and that is how they could get the restrictions enforced.

The chairman said that he too has some concerns. Whenever there is a project like this in a residential area there are going to hardships. He knows the Capasso's do a good job with all their work, but he has an issue with the encroachment upon the residents. There is no real buffer. If this was a special permit then the board could suggest restrictions and have more say in the approval. He didn't think that was a good spot for a hotel.

Mr. McCourt said that that is why he would sit with the Capasso's and eliminate around eighteen (18) or nineteen (19) of the twenty-four (24) uses from the Business B List.

Mr. McCourt said that he couldn't definitely say that a hotel would be going there.

Mr. Barrett asked how much of the lot is going to be needed no matter what it's being used for. If you put a tree buffer if it's going to anything other than residential, if it were five (5) feet wide, with a row of shrubs or something so the residents aren't looking at a parking lot, that would be much more palatable. They reviewed the buffer zone area on the map.

Mr. McCourt said that they would absolutely agree to the suggested five (5) foot wide landscaped buffer zone.

Ms. Callahan commented that as a board, they have to look at every project with its merits and sometimes there are petitions that come before the board that we may say we are for it or against it. Sometimes our hands are tied and we have to approve it. There have been some ANR Plans, (Approval Not Required Plans) and residents get upset with us because we may have to approve a plan that meets requirements, but it also may not be in the best interest of the abutters. We have the duty to put in something that they feel would be best suited for this piece of property. Coming from Main Street onto Prospect Street, that's a tough intersection including the traffic there. A project like that would not make that better. You could argue that this is spot zoning, agree both sides though.

Mr. McCourt disagreed and said it isn't spot zoning.

Ms. Callahan said she has to look at what's best for the city and residents. Some residents at the public hearing were against this idea of a hotel.

Mr. McCourt said, "The residents that abutt this property are in favor of this proposed upgrade to the site."



There were further discussion on this matter.

Mr. Duffy commented that there would be a need to define the use of this property during the city council special permit review.

There being no further questions the chairman asked if there was a motion for a recommendation.

Some of the neighbors wanted to speak but the chairman informed them that this was just a regular meeting and that they were allowed to speak at the previous public hearing.

**Mr. Barret made a motion to recommend approval of the proposed zoning amendment, of Chapter 21, Zoning District Map for 17 Prospect Street, 17 NX Prospect Street and 105-111 Russell Street with restricted uses for the site to be determined by the city council and also that a five (5) foot wide landscaped buffer zone be at the residential end of the parking lot be part of the requirement.**

**Mr. DeVito made an amendment to the motion that the height requirement of the evergreen buffer zone be nothing less that fifteen (15) feet in height at the residential end of the parking lot.**

**Mr. Duffy seconded the motion and the amendment to the motion.**

**The chairman asked for a roll call.**

**ROLL CALL:**

<b>John Duffy</b>	<b>YES</b>
<b>Justin Barrett</b>	<b>YES</b>
<b>Kathleen Callahan</b>	<b>NO</b>
<b>S. Anthony DeVito</b>	<b>YES</b>
<b>Brian Moroney</b>	<b>YES</b>
<b>Chairman Creonte</b>	<b>YES</b>

**The motion passed.**

The clerk read the next item on the agenda which was for deliberations and recommendations for a zoning amendment of Chapter 21, Article II, Section 2.314A entitled Convenience Food Stores in Gasoline Stations.

Attorney Joseph Connors of 404 Main Street, Waltham, MA came forward representing the petitioner, Mr. John Generoso of 511 Totten Pond Road, Waltham, MA.

Mr. Generoso owns the piece of real estate up on Totten Pond Road, the Shell Service Gas Station and Convenience store.

They filed the zoning amendment for 511 Totten Pond Road. He owns the property and owns the gas station.

To review the zoning change they are changing the definition of convenience food stores in gasoline stations. We took the old definition of convenience food stores and then we added to it as operated as part of a gasoline station in line one, and at the end of the definition they added “a store operated as part of a gasoline station may also sell fresh baked goods, e.g. bagels, donuts made off the premises and e.g. prepared foods such as hotdogs, sandwiches provided that there would be no kitchen facilities on the premises, except warming devices and microwave ovens and that no more than 125 square feet of the public floor area of the retail food store may dedicated to the display and/or sale of such items.”

A few years ago through a special permit process through the city council, Mr. Generoso received a permit to open the convenience store. This permit limits him to 1000 square feet of floor area for a convenience food store. Mr. Generoso is contemplating using part of that store as a Dunkin Donuts. When you say the words Dunkin Donuts, the buzzers go off at the building department that you are trying to create a fast food store under the Waltham Zoning Code, which is not what they are trying to do. They are trying to carve out the ability to simply add a satellite area, separate from the area that he sells his stuff. He could then sub lease 125 square feet to a Dunkin Donuts Franchise who could then sell coffee and the foods that they sell, that are not prepared there.

There are nineteen (19) retail gasoline station in the City of Waltham, five (5) of which have legitimate convenience stores, four (4) of them received a special permit through the city council; the other one (1) was granted a use variance in the 1960's.

The chairman asked if this zoning amendment was just for this gas station or for any gas station.

Attorney Connors said that it is for this gas station, but the way it is written any gas station could go to the city council and ask for a special permit.

Mr. Barrett asked, “From the list of gas stations that already have convenience stores, they could automatically open a Dunkin Donuts store?”

Attorney Connors said, “No, they would still have to go to the city council and seek a special permit to do so. This amendment change allows them to do that.”

There were brief discussions, which then the chairman asked if there was a recommendation.

**Mr. Barrett made the recommendation that the city council approve the amended definition of Section 2.314A in its entirety.**

**Mr. DeVito second the motion.**

**The Chairman called for a roll call.**

<b>John Duffy</b>	<b>YES</b>
<b>Justin Barrett</b>	<b>YES</b>
<b>Kathleen Callahan</b>	<b>YES</b>
<b>S. Anthony DeVito</b>	<b>YES</b>
<b>Brian Moroney</b>	<b>NO</b>
<b>Chairman Creonte</b>	<b>YES</b>

**The motion passed.**

The Clerk read the next item on the agenda which was for the approval of the minutes of the October 3, 2018 Meeting.

On the motion of Mr. Moroney, seconded by Mr. DeVito, the Board

VOTED: to approve the minutes of the October 3, 2018 Meeting as submitted.

There being no further business, the chairman asked if there was a motion to adjourn.

On the motion of Mr. Barrett, seconded by Mr. Moroney, the board

**VOTED: to adjourn the meeting at 8:40 p.m.**

Respectfully submitted,



Michael L.J. Chiasson, Clerk  
Board of Survey and Planning