



The City of Waltham
ZONING BOARD OF APPEALS

NOTICE OF DECISION

CASE NUMBER: #2013-10

NAME OF PETITIONER(S)/OWNER(S): 200 Moody Street, LLC c/o The Nelson Companies Ltd.

LOCATION OF PROPERTY: 210 Moody Street

DATE OF HEARING(S): June 11, 2013

DATE OF DECISION: June 11, 2013

DATE OF FILING OF DECISION WITH CITY CLERK: June 19, 2013

DATE OF NOTIFICATION TO BUILDING INSPECTOR: June 19, 2013

FINAL DATE FOR FILING OF APPEAL FROM THIS DECISION: July 9, 2013

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

DECISION

GRANTED
DENIED

XX

ROLL CALL

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

PETITION

Case #: 2013-10. **Petitioner:** 200 Moody Street, LLC. c/o The Nelson Companies, Ltd. **Nature of Appeal:** Application for Variance. **Subject Matter:** The locus at 210 Moody Street, formerly known as 200-226 Moody Street consists of 12,345± square feet of land. The Petitioner proposes to demolish the existing building and to construct, use and maintain a multi-level mixed use building thereon. Retail use shall be provided on the first floor and sixteen (16) residential units shall be situated on the second, third and fourth floors. **Location and Zoning District:** 210 Moody Street, formerly known as 200-226 Moody Street; Business C Zoning District. **Provisions of Zoning Ordinance Involved:** Article IX, Section 9.14, Article IV, Section 4.11 and Article III, Section 3.537. **Specific Manner in Which Subject Matter Varies From Zoning Ordinance:** (1) §9.14 states that where the number of residential units exceeds 10 and the development requires a special permit, then the Petitioner shall provide affordable housing by one or more of the methods cited under §9.14. The Petitioner appeared before the City of Waltham Municipal Affordable Housing Trust and they recommended that the Petitioner pay a cash contribution to the City of Waltham Municipal Affordable Housing Trust Fund. Here, the Petitioner is proposing to construct more than ten units and requires a Special Permit. In this instance the Petitioner proposes to pay \$100,000.00 and request a total waiver of any other obligations of this section. (2-3) Footnote 13 in §4.12 states that in the Business C Zoning District no new structure may be constructed within 10 feet of a public pedestrian way of at least five feet in width if said pedestrian public way is used for access to a parking area, public open space or public building. Here, a new structure shall be constructed within 0 feet of a public pedestrian way, the Embassy Park, on the south and east side of the building. (4) §4.11 provides that no open space is required for lots situated in a Business C Zoning District. §3.537 of the Ordinance provides however that when seeking a special permit for intensity of use, there is a base requirement of 15% to open space, which increases proportionally with a special permit request (FAR). 37.5% of open space is required with the proposed increase in floor area ratio. Here, the Petitioner proposes to have 23.13% of open space. (5) In Case #10-24, the Zoning Board of Appeals granted zoning relief, variances, to construct, use and maintain a new structure on the locus. Here, the Petitioner seeks to modify said case and the plans filed therewith to conform with this Petition and the plans filed herewith. The Petitioner also confirms these variances as they have been extended by the Permit Extension Act and remain in effect pursuant thereto.

PETITION as Amended

Case #: 2013-10. **Petitioner:** 200 Moody Street, LLC. c/o The Nelson Companies, Ltd. **Nature of Appeal:** Application for Variance. **Subject Matter:** The locus at 210 Moody Street, formerly known as 200-226 Moody Street consists of 12,345± square feet of land. The Petitioner proposes to demolish the existing building and to construct, use and maintain a multi-level mixed use building thereon. Retail use shall be provided on the first floor and sixteen (16) residential units shall be situated on the second, third and fourth floors. **Location and Zoning District:** 210 Moody Street, formerly known as 200-226 Moody Street; Business C Zoning District. **Provisions of Zoning Ordinance Involved:** Article IX, Section 9.14, Article IV, Section 4.11 and Article III, Section 3.537. **Specific Manner in Which Subject Matter Varies**

From Zoning Ordinance: (1-2) Footnote 13 in §4.12 states that in the Business C Zoning District no new structure may be constructed within 10 feet of a public pedestrian way of at least five feet in width if said pedestrian public way is used for access to a parking area, public open space or public building. Here, a new structure shall be constructed within 0 feet of a public pedestrian way, the Embassy Park, on the south and east side of the building. (3) §4.11 provides that no open space is required for lots situated in a Business C Zoning District. §3.537 of the Ordinance provides however that when seeking a special permit for intensity of use, there is a base requirement of 15% to open space, which increases proportionally with a special permit request (FAR). 37.5% of open space is required with the proposed increase in floor area ratio. Here, the Petitioner proposes to have 23.13% of open space. (4) In Case #10-24, the Zoning Board of Appeals granted zoning relief, variances, to construct, use and maintain a new structure on the locus. Here, the Petitioner seeks to modify said case and the plans filed therewith to conform with this Petition and the plans filed herewith. The Petitioner also confirms these variances as they have been extended by the Permit Extension Act and remain in effect pursuant thereto.

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

The Board of Appeals of the City of Waltham makes the following findings of fact after a hearing on the above captioned Petition for a variance:

1. This Board of Appeals, having met all legal prerequisites by proper publications and posting as provided in Massachusetts General Laws, Chapter 40A, §11 and having by mail notified all parties in interest and having heard all the evidence, is now empowered to exercise the power to grant or deny the variances sought by the Petitioner.
2. The locus is now known as 210 Moody Street, formerly known as 200-226 Moody Street, and is located in a Business C Zoning District.
3. The Petitioner is 200 Moody Street LLC, a limited liability company formed in the Commonwealth of Massachusetts and owner of the locus.
4. A structure was constructed on the locus parcel around 1880 according to the City Assessor's records.
5. The Petitioner proposes to demolish the existing structure on the locus and to then construct, use and maintain a multi-level building thereon to include retail and residential uses.
6. A retail use is proposed for the first floor and residential uses are proposed for the second, third and fourth floors. Both uses are permitted in the Business C Zoning District.
7. The variances requested are as follows:

- a. (1-2) Footnote 13 in §4.12 states that in the Business C Zoning District no new structure may be constructed within 10 feet of a public pedestrian way of at least five feet in width if said pedestrian public way is used for access to a parking area, public open space or public building. Here, a new structure shall be constructed within 0 feet of a public pedestrian way, the Embassy Park, on the south and east side of the building.
 - b. (3) §4.11 provides that no open space is required for lots situated in a Business C Zoning District. § 3.537 of the Ordinance provides however that when seeking a special permit for intensity of use, there is a base requirement of 15% to open space, which increases proportionally with a special permit request (FAR). 37.5% of open space is required with the proposed increase in floor area ratio. Here, the Petitioner proposes to have 23.13% of open space.
 - c. (4) In Case #10-24, the Zoning Board of Appeals granted zoning relief, variances, to construct, use and maintain a new structure on the locus. Here, the Petitioner seeks to modify said case and the plans filed therewith to conform with this Petition and the plans filed herewith. The Petitioner also confirms these variances as they have been extended by the Permit Extension Act and remain in effect pursuant thereto.
8. The variances requested are dimensional and the Board of Appeals has the power (Massachusetts General Laws, Chapter 40A, §10 and §14) and authority (Article VII of the Ordinance) to grant them.
9. As to the facts concerning the requested variances the Board takes note of the following:
- a. Shape
 - i. A building was originally constructed on the locus in the 1880's according to the City Assessor's records.
 - ii. At the time of the original construction of the building it was situated on a much larger parcel than exists today.
 - iii. Land Court Plan No. 8916A, dated July 27, 1922, shows the locus and adjacent land to the rear as one lot. The shape of the lot was square, except for the northerly lot line.
 - iv. A portion of the original building was demolished between 1922 and a subsequent plan dated March 28, 1927, Plan No. 8916B, which also subdivided the original lot.
 - v. The locus lot was further subdivided on plan dated July 12, 1927 and finally on a plan dated June 12, 1928.
 - vi. The resulting shape of the lot, as subdivided, reflects the footprint of the building on the lot as it was in 1928.
 - vii. The shape of the lot is narrow from front to back as it is only 53 feet deep for most of the lot.

- viii. The lot perimeter lines vary in length. The southerly line is 53 feet long and the northerly lot line is 155.71 feet long. The furthest most rear lot line is 17.93 feet yet the front lot line is 182.27 feet long.
- ix. The shape of the lot was also created as a result of a subdivision to allow for the construction of the Embassy Theatre directly behind the locus parcel in 1928.
- x. The design of the lot was according to the building standards of a downtown area in 1920's.

b. Topography

- i. The topography of the locus varies greater from the front of the lot on Moody Street to the rear of the lot adjacent to the parking area.
- ii. The elevation of the lot is at 41.87 feet at Moody Street and 31.75 feet at the rear lot line.
- iii. The highest point of the lot is 41.92 feet whereas the lowest point is at 31.71 feet which is a difference of 25%.

c. Structure

- i. A multi-level building, up to five stories is permitted in the Zoning District, but constructing additional floors over the existing building still requires setback variances.
- ii. The existing structure is approximately one hundred thirty years old and in disrepair.
- iii. In order to make the existing structure rentable to a retail tenant, a new HVAC system, a new roof, and all store front glass is needed.
- iv. The required upgrades to the structure will trigger full compliance with the new State Building Code. This will require significant structural improvements to the building.
- v. Construction of a new structure within the required setbacks will reduce the square footage of retail space and eliminate the possibility of residential units above.

THEREFORE, THE ZONING BOARD OF APPEALS FOR THE CITY OF WALTHAM AFTER DUE DELIBERATION, ON A MOTION DULY MADE AND SECONDED, VOTED 4 TO 1:

To grant the variances requested in Case No. 2013-10 and incorporate by reference the Findings of Fact and further cites as reasons the following:

That there are circumstances especially affecting their locus which does not generally affect other lots in the Business C Zoning District in which it is located, in that:

Shape: The locus is uniquely shaped. The lot is “L” shaped with a long narrow portion of the lot fronting on Moody Street and a deeper portion of the lot runs along the northerly border and the Charles River.

Topography: The elevation of the lot varies by approximately 25% from the front to the back of the locus.

Structure: The existing structure is more than 100 years old and is in no condition to support residential units above the existing single story.

A literal enforcement of the Zoning Ordinance involves substantial hardship to the Petitioner, both practically and financially, in that:

The existing building at 210 Moody Street, formerly known as 200-226 Moody Street, on the locus was constructed on a larger lot in the late 1880’s. Multiple renovations and alterations have occurred at the building over the last one hundred plus years. Rehabilitating the existing structure to accommodate permitted uses, retail and residential, is not practical or financially sound.

It is not practical to construct a new building on Moody Street which is only 28 feet deep.

The locus was created to allow for the construction of the Embassy Theatre practically on its rear lot line. Current zoning does not allow for this type of construction today, but modernization of buildings in the downtown area, is beneficial to the public good.

This Petition may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or the purpose of the Ordinance.

The proposed construction shall not be detrimental to the public good in that the variances requested for the rear yard setback and the side yard setback will allow what has existed since at least 1928. The percentage of open space shall be an upgrade to the percentage of open space today. The construction of a new building will allow the Petitioner to redevelop a downtown Moody Street property which overlooks the Charles River and the Moody Street Bridge. The proposed building has been designed to incorporate historical architectural designs which have been used throughout the City of Waltham and are an aesthetic improvement to the existing building.

The proposed plan amendment affects two changes, window design and location of the loading area, which aside from being shown on the prior plans, require no zoning relief.

Desirable relief may be granted . . . without nullifying or substantially derogating from the intent or purpose of the Ordinance.

The Ordinance is not nullified because there will be in compliance with many of the other dimensional requirements of the Ordinance. The Ordinance is not nullified because an enumerated purpose of the Ordinance is to encourage the most appropriate use of the land throughout the City and this is being accomplished.

The granting of this variance is subject to the following conditions:

1. All necessary permits shall be issued and work commenced within one (1) year of the date of the filing of this Decision with the City Clerk's office, and work shall be completed within two (2) years of said filing date;
2. All construction and use of the premises as contemplated in this case and in Case No. 10-24 shall be in substantial accordance with the following plans introduced as evidence during the hearing:
 - a.) Plan set entitled "210 Moody Street, Waltham, Massachusetts 02453", consisting of four sheets entitled:
 - (1) "Existing Conditions Plan", Sheet #L-0-0, last dated 5/20/13;
 - (2) "Site Plan", Sheet No. L-10, last dated 5/20/13;
 - (3) "Grading, Drainage & Utilities Plan", Sheet L-20, last dated 5/20/13; and
 - (4) "Building Plans and Elevations", Sheet L-4.0, last dated 5/20/13.



Barbara Rando, Chair

DATE: 6/17/13