

CITY OF WALTHAM
ZONING BOARD OF APPEALS

June 11, 2013

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, June 11, 2013 in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA. In attendance were Chair Barbara Rando and members Michael Cotton, Glenna Gelineau, Mark Hickernell, Marc Rudnick and John Sergi.

The chair called the meeting to order at 7:00 P.M.

Mrs. Rando: Tonight we have two new cases before us; Case No. 2013-10, 200 Moody Street LLC, the Nelson Companies, and that's for a variance. The second case is 2013-11, 64 Curve Street LLC, and that's also for a variance.

The members sitting this evening on our first case and we are going to take the Curve Street case first are Mr. Sergi, Mr. Hickernell, Mr. Rudnick, Mr. Cotton and I am Barbara Rando, Chair.

The first action this evening is for a motion to accept the minutes of the meeting of June 4, 2013.

On motion of Mr. Sergi. seconded by Mr. Cotton, the board voted to accept the minutes of June 4, 2013.

Will the clerk please read the Petition in Case 2013-11?

The clerk then read the petition of 64 Curve Street, LLC in an application for a variance to demolish the former 19 bed nursing home and a garage on the property currently known and numbered 64 Curve Street (formerly 508 Lexington Street) and to construct a single family house on each of the lots known as lot 1 and lot 2, which were created by the endorsement of the Board of Survey and Planning on January 3, 2013. Location and Zoning District: 64 Curve Street, formerly known as 508 Lexington Street, also known as Lot 1 and 2, Lexington Street, Residence A-3 Zoning District.

Mrs. Rando: May we hear from the petitioner or the petitioner's representative, please,

Philip B. McCourt, Jr., Esquire, 15 Church Street, Waltham, the petitioner's representative came forward.

Mr. McCourt: I have a brief here that I sent over to the law department before.

Mrs. Rando: Attorney McCourt, I did not receive this brief.

Mr. McCourt: I sent it about a week ago, probably a few days later than I should have, about the same time as the last case.

Mrs. Rando: Pam said she did not receive the brief or findings of fact or a decision from you.

Mr. McCourt: Well, I find that odd. If she doesn't receive it, frankly, she sends me a little notice that she hasn't.

Mrs. Rando: Because I asked her today. I have not received the brief from Attorney McCourt and she informed me that she did not receive a brief from you. So, this panel hasn't had time to review the brief or the findings of fact or the decision.

Mr. McCourt: Well, I think if you put in the case then whatever time you need beyond

we can do at some other time, but at least we will do the case. This is the day that the people will appear either pro or con for this petition. It's pretty simple this case in the sense of the setting I think most of the board is familiar with.

Mrs. Rando: I will open the case and I will hear what you have to say and where the people are here in favor or against or seeking information, I will also hear from them, but we will have to continue the case until we are able to read and dissect the brief and whatever.

(Mr. McCourt then read his brief into the record and also submitted to the board a petition of a number of people that live in the area who signed the petition in favor of this grant. Mr. McCourt submitted to the board a plan showing what the houses would look like on Lexington Street and he went over the plan with the board.)

Mrs. Rando: Does anyone want to ask Attorney McCourt questions now or concerns that they have so that he can prepare for when this case is continued? I have a couple.

I have a problem with your hardship. So I would like you to work on the hardship. The problem is that according to Article IV, Section 411, you're supposed to have 9,600 feet per lot. You have 8,143 in one and 8.2 hundred and something on the other. So you're one thousand, four hundred and fifty seven feet short on one lot and you're one thousand, three hundred and ninety six on the other lot. So if you add those two together, what do you get?

Mr. McCourt: About seventeen thousand square feet.

Mrs. Rando: Okay, you have close to seventeen and you should have almost twenty. So you are about three thousand feet less.

Mr. McCourt: No, two thousand something.

Mrs. Rando: Two thousand, eight hundred and something.

Mr. McCourt: Fairly discernable in this set, obviously that sounds just insane, the figure relatively larger, but the front yard setback, the side yards would all be the same. So if there was any really deviation of where you would have a difference in looking at it would be the rear yard. We would need the rear yard setback which in that area is 30 feet. However, driving by the house or any visible or looking at the house or tie into the neighborhood the fact that you had a thousand plus square feet less than the requirement would not be discernable. I mean it is obviously arithmetic in relation to the requirement but it's hardly something that could on the street be determined.

Mrs. Rando: Well, I'd like to see the houses on either side of them going up the street if they have a smaller lot than the nine thousand, six hundred. That would interest me. It's such a nice section; I'd hate to see houses squeezed on a smaller lot there. I also have concern that that has something to do with your hardship. If the person has the right to make the best use of his land, he could have one lot and have the one home on the nine thousand six hundred square feet lot.

Mr. McCourt: And what would he do with the remainder of the lot? That's the problem. What would you do with it, what would be a seventeen thousand square foot lot.

Mrs. Rando: Well, our job isn't to let him make money. I mean the hardship isn't allowing him to make more money by putting two houses there.

Mr. McCourt: I don't think that is the sole criteria here. The point is we have a building that's totally outlived its use.

Mrs. Rando: I'm shocked that the Historical Commission allowed you to take it down. That was a beautiful home. That was a Dorothy something home and wasn't it built in seventeen something?

Mr. McCourt: I don't know when it was. The point is, it has been gerrymandered particularly in additions on the side and the top, so often. But the only thing that draws

someone's attention which is just a wind sort of preventer, is the little glass portico type where you enter. Other than that it's a pretty standard, too large even for the area type house because the Hopkins even added to it. I mean they thought long and hard of it. I didn't happen to be present for that hearing or vote but as you can see it was a three to one vote. I think it was pretty definitive of what happened after quite a bit of Anglicization going through it. It had been discussed with them before of ways of handling it. We could have handled it many ways of utilizing the building under the prior thing but for some reason, one you would not want to accept, that there was a certain window in which the council because they saw these houses outliving their use, in which, if you were a nursing home between that period which ended January 1, 1996 you could convert it to that number. However we converted the house into it which might have been an option or in part of the original case we wanted to take it down and put up four townhouses with some architectural tie into a prior house but whichever way you did it we felt that was clear and it was only a special permit. That was the whole intent and it happened to be the last nursing home surviving that whole era. They specifically put it in to handle homes like this. That was the judgment of the board. Now the board didn't vote, true, but it was pretty clear their prudence was to withdraw the case at the time. So we would have been happy to have it done. In fact, it would have been completed at this point if that would happen. But you know those are things that change. We consulted a lot of people before concerning what we were doing. So the neighbors definitely want to see something up. And if you walk around the house, particularly in the back or the garage and everything, you'll see that this house, and you would be more than welcome to set up an arrangement, you could even look at the house inside. I mean it really doesn't lend itself to fixing it up.

See, in my opinion, your power is not to make it a two family, you know what I mean? Now you're changing the zone, so we could have the special permit which would give us up to four units but you can't give us two units, you can't give us three units, even within the house. You can give us a special permit and that permit allows us to make four units. And the Historical Commission could see that this was not a house that needed to be saved.

Mrs. Rando: Did they ask you what type of home you planned on putting there?

Mr. McCourt: They did.

Mrs. Rando: Did they ask if it would have any historical characteristics?

Mr. McCourt: No, not really. They viewed it that these people do nice homes and it would have to be a colonial type house to do it. They have attractive doorways, I guess. Their mandate is to decide whether or not it's significant enough to preserve it.

Mrs. Rando: Mr. Sergi, do you have any questions at this time?

Mr. Sergi: No, not at this time.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: Not at this time.

Mrs. Rando: Mr. Rudnick.

Mr. Rudnick: You know, I'm always a little slow on the uptake here, Mr. McCourt. It sounds like you're saying you came to this board for relief under our nursing home reuse ordinance and the case never was concluded. You withdrew without prejudice?

Mr. McCourt: Without prejudice. We spent some time here. There was a discussion of whether or not should we have gone to the Historical Commission first to say that we take it down and that sort of thing.

Mr. Rudnick: That was why you withdrew?

Mr. McCourt: There was a sense that we were not going to get it and it would deter the viability of making some practical use of the house for two years.

Mr. Rudnick: But setting the historical stuff aside, in converting the building or replacing it with four units as would have been allowed under a special permit issued under the ordinance was a doable thing for you? The requirements rather, setting aside the historic. What was the roadblock there?

Mr. McCourt: Well, first of all, because of how the house was set up, its age and how it was gerrymandered inside and everything, it just tended to make more sense to take it down. However, as we were going through this process, obviously since there seemed to be some desire to keep the house, I mean I can understand on one level that way, but again Al Costa went through it and we had Archie Bennett look at it, we could have probably made a small addition to it, and because of the staircases and items like that, or we could have maybe tried to connect the garage into it, all of which you could pursue. But we couldn't get by, and this is my opinion now, because Mr. Hopkins did not want to continue to own the house without anyone having some rights to proceed in some method to do something with it, it just didn't seem like that was going to be satisfactory to a sufficient number of the board that they would pass it.

Mr. Rudnick: So you went to Historical and got an okay from them on demolition. So why aren't you back here, and the ordinance allows you, the special permit ordinance allows you to construct new town houses, demolish the building, and construct four new townhouses. It doesn't have to be a reuse. My question is why aren't you here proposing a now historically okay new four townhouse units under that ordinance other than you are afraid the board is going to say no.

Mr. McCourt: Let me say that it was my impression that it was clear, obviously and this is the right way to go we don't pick the board. I mean there are essentially ten members and, whoever can sit, sits naturally, right. So we felt that there was enough negative feeling by the board. Frankly, let me say this. When that was done, the next door neighbor came and spoke vigorously for it. A representative from Clark's Pond came and spoke for it and I think there was one other person. There was absolutely no opposition to it. But we just felt that it wasn't the way to pursue it.

Mr. Rudnick: Okay, I was just wondering why you came in with the harder to ask for, in my view, but I hear what you are saying. There were circumstances around it.

My other question I guess was, how did you get the S&P to create, these are new lots?

Mr. McCourt: Yes.

Mr. Rudnick: How did you get them to create substandard lots?

Mr. McCourt: Because to create a lot, you only need frontage on a way. These lots were created and this is not a statutory requirement, they are marked unbuildable on the plan.

Mr. Rudnick: You have the frontage. You don't have lot area and with your proposed building plans you also meet all of the other dimensions criteria. I still don't understand how you got the lots to be created in 2013. I guess what you are saying is, they were created at your risk.

Mrs. Rando: This was all one lot at one time?

Mr. McCourt: Yes.

Mr. Rudnick: Until 2013 it was one lot.

Mr. McCourt: At one point, maybe ten years or fifteen years before the abutting member, Mr. Hopkins, when he owned it, eliminated one lot from his ownership. That's where the 64 Curve Street came from. Because when he eliminated that lot it would have put a portion of the building either in nonconformity unless you turned and looked at it as 64, and then it met all of the criteria.

Mr. Rudnick: But it wasn't either of these lots that are on the map?

Mr. McCourt: No.

Mr. Rudnick: And you didn't find an old sub lot that you invigorated. You created a new.

Mr. McCourt: We had to. There's no old lot situation that's existing in this case, correct.

Mrs. Rando: Mr. Cotton, any questions at this time?

Mr. Cotton: No, not really. I think Mr. McCourt's proven it. It's not going to be hard for the area. It's certainly better looking than it is now.

Mrs. Rando: Attorney McCourt, there's a house right behind on Curve Street. Was that lot owned by Mr. Hopkins?

Mr. McCourt: It was. He sold it to another person who actually built the house and that's the first signer on that property list, Dan Hart.

Mrs. Rando: Right. But did you have any egress on to Curve Street from the lot that you own?

Mr. McCourt: Previously.

Mrs. Rando: No, now. You have no egress to 64 Curve Street.

Mr. McCourt: No, but it doesn't turn on where your driveway is. You can have a corner lot and have a driveway on either street. What it turns on is frontage. We would have frontage on either street, however, we would not have had the required rear yard setback but we did have the required side yard setback when they subdivided the lot back there in whatever year it was.

Mrs. Rando: So, in fact, it was one lot and it was Lexington Street.

Mr. McCourt: It was 508 Lexington Street.

Mrs. Rando: With only one entrance or exit. Because the fence to the driveway for 64 has been cut off. So at one time there was a driveway going to 64 and that has been cut off. You can't go out that way.

Mr. McCourt: There was no 64. The original lot, including the next lot - - -

Mrs. Rando: Where you have the other 64 Curve Street now, there's no egress, correct?

Mr. McCourt: From our lot on to Curve Street, there is not. Where there ever was existing one - - -

Mrs. Rando: There was, because you can see where the driveway was at one time. And now there is a fence that is blocking it. So there was definitely an egress on to Curve Street.

Mr. McCourt: Well, I was there on the site view with the Historical Commission. Frankly I don't remember that so I can't- - -

Mrs. Rando: Did any of you make a site visit to this lot? I believe that there was at one time. I could see the fence and I know the driveway was there at one time.

Mr. McCourt: May I be a little aggressive and ask you what point does that make other than there was one?

Mrs. Rando: I am wondering what is the number of that house.

Mr. McCourt: Its number 56. (Mr. McCourt went over the plan with the board.)

Mrs. Rando: Didn't Mr. Bennett tell you that you could have the four units if you added

on and not had taken the older house down?

Mr. McCourt: Mr. Bennett was very cooperative. He's obviously very interested in historical things. But understand, whatever we did, had to come here and there was no indication that that would occur. We tried very hard - - -

Mrs. Rando: Right but you didn't try - - -

Mr. McCourt: Now, I recall even more. Then the law department suggested that we were outside the window in that. Unfortunately, in our council, unlike some legislative bodies and no problem, and this is frequent in most councils; they don't have like a history of it. But it's very clear that the permit says if you were in existence sometime like 1980 to January 1, 1996 you can avail yourself of this. There have been other houses, the Walker house on Worcester Lane who certainly from the nursing home days lived in it, Mr. Curtin lived in it and then they converted because this narrow window of time, if you fit into that, you can reap the benefit of a praising from you.

(Mr. McCourt went over a former plan of the property with the board.)

Even with the filing of the petition we still fit within the time frame, in my opinion.

Mrs. Rando: Now, did you have to prove to us that that home was used as a nursing home to the end?

Mr. McCourt: Yes. Oh, not to the end. As of January 1, 1996. Some time after that they sold it.

Mrs. Rando: And did you give us proof of January 1996?

Mr. McCourt: Yes.

Mrs. Rando: You did?

Mr. McCourt: Yes, we did. It was a licensed home for all that time.

Mrs. Rando: So, that's in our packet.

Mr. McCourt: It will be in your packet. It's an old license, but the Department of Public Health would still somewhere have in their records that it was a licensed home.

Mrs. Rando: So, since 1996 it's being used as a boarding house or a dorm or whatever. It doesn't matter?

Mr. McCourt: Absolutely, just as it didn't matter when Mr. Walker used that as his house. There were only about ten or twelve in the entire community, homes that fit under this description. This, frankly, is the last one.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition?

(Four people raised their hand in favor.)

Is there anyone in opposition? Seeing none, is there anyone seeking information? Seeing none, we are going to continue this case so I can read the brief, the findings of fact and the decision and have you come back.

Mr. Cotton: Could I ask a question? Why didn't you just come back in for what you proposed in the beginning? Did you just have the feeling the board would reject it?

Mr. McCourt: In your packet, also, you will see an opinion from the Law Department. We never responded to it because, I mean, it really didn't, suggesting that perhaps because it had been used for something else that that benefit had left. Of course, it doesn't but whatever.

Mr. Cotton: It fits.

Mr. Rudnick: Is it in the package tonight.

Mr. McCourt: No, not in the package tonight but in the prior package. Even the one on Bacon Street was after that. Now he was only closed for a period. He never had an interim use but he was closed for a period.

Mr. Rudnick: That was an opinion this board asked for from the Law Department?

Mrs. Rando: Apparently we did. That was two years ago?

Mrs. Rando: Can you answer the questions that the board asked you by June 18th?

Mr. McCourt: I can.

Mr. Rudnick: So, I would like to see that Law Department opinion before we meet.

Mrs. Rando: I can have Pam make a copy it, Carol, the opinion for every board member.

Do I have a motion to continue Case 2013-11 to June 18th?

On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to continue Case No. 2013-11 to June 18th.

The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Mr. Cotton, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

The members sitting on this next case are: Mr. Sergi, Mr. Hickernell, Mr. Rudnick, Ms. Gelineau and Mrs. Rando.

Mrs. Rando: Will the clerk please read the Petition in Case 2013-10.

The clerk then read Case No. 2013-10, Petition of 200 Moody Street, LLC, c/o The Nelson Companies, Ltd. In an application for a variance. The locus at 210 Moody Street, formerly known as 200-226 Moody Street consist of approximately 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 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.

Mrs. Rando: May we hear from the Petitioner or the Petitioner's representative please?

Joseph M. Connors, Jr., Esquire, 564 Main Street, Waltham, MA came forward.

Mr. Connors: I do have a written prepared brief for the board.

Mrs. Rando: Before you start your brief, could I ask you one question on the petition? Could you tell me why in The Specific Manner in Which Subject Matter Varies from Zoning Ordinance, you stated a whole paragraph on Affordable Housing and the contribution to City of Waltham Municipal Affordable Housing Trust Fund and then the amount? Why did you put that into our petition when it has nothing to do with us? I've never seen it. I mean, you don't have in this petition what the Historical Commission recommended that you do. Why would you put something like that in when it has to do with the City Council and the Housing Trust Committee? Why is it here? I don't think it should be. I'd like to see that taken out.

Mr. Connors: Well, I'll tell you why its here.

Mrs. Rando: Please do.

Mr. Connors: If I could just back up. You have seen this case before and this building

here to my left is the same building that we appeared before this board back in 2010 and requested certain variances which were granted by the board and so the building has yet to be constructed. We are still intending to build the same building that we had before and we are asking minor modifications which I'll call out to the board. But in addition to the zoning relief that we needed, we needed a Special Permit from Waltham City Council. So we proceeded to the Waltham City Council. We had a public hearing back in September of 2011. So we have been at the Waltham City Council with the Special Permit request since that time. In the last probably thirty to forty five days, the Waltham City Council forwarded our proposed order over to the law department to do a review and to do a kind of commentary on the proposed decision. But one of the issues that came up was some of the variances that are requested but also the affordable housing. So we had been asking, based on the fact there were certain economic implications as a result of the Special Permit request. The city engineer has requested that we replace the city sewerage that services the property line. It's \$120,000 expense to the petitioner to replace the city owned property, so that's an expense that we agreed to spend for the benefit of the city and for the benefit of this project but it the replacement of a city owned property.

And so in our presentation with the Waltham City Council, we simply asked them for some relief on the affordable housing contribution because if you go to the Section 9.14, it states there's three methods to satisfy that. One of which is a cash contribution in lieu of units and so that was one of the recommendations of the Affordable Housing Trust that we could contribute cash in lieu of units. And the cash contribution is ten percent of the total development cost. So if you go to Section 9.14, it states that a cash contribution will be equal to ten percent of the total development cost of the project. So that's what the ordinance states and when we asked the city council for a reduction in that number due to the other financial impacts with the project, the council essentially said to us that they don't have the authority to vary that number. The only one that can vary that number is the Zoning Board of Appeals. And so that's why we filed. We are asking the Zoning Board of Appeals to make a dimensional variation in the contribution to the Affordable Housing Trust Fund.

Mrs. Rando: I don't think that's under our jurisdiction.

Mr. Connors: Well, I can see your concern, Madam Chair - - -

Mrs. Rando: What's before us tonight is to decide the open space and the other issue.

Mr. Connors: Well, the jurisdiction of the board is they have the authority to grant dimensional variances. This is a dimensional variance. It is a ten percent request in the ordinance. We are asking that that be reduced to 2.5%. And I looked for case law that would support this type of variance and the only case that I found was Cronin's Landing and I attached a copy of that. So in Cronin's Landing they asked for ten variances. Variance number nine, they granted a variance reducing the cash contribution under Section 9.14 to \$300,000. That was the order to allow Cronin's Landing to construct two hundred and eighty one units. We are contemplating building sixteen units, so we feel that there was a precedence set in the Cronin's Landing case where this board varied that number and they allowed a complete waiver in lieu of a cash contribution of \$300,000. So I didn't make this up. I went to the Cronin's Landing case and that's where I found a precedent for this request and that's where this request came. But also, the City Council said we can't change that only the only one who has the authority to do it would be the Zoning Board of Appeals. So that's what brought us here in addition to the other variance requests. So we were of the opinion that there is precedence to do it. This Zoning Board of Appeals has done it in the past. We feel that this is a great project for the City of Waltham. We feel that the financial impact on this particular development is severe due to its shape, topography, also due to the infrastructure of the city that surrounds it. We are going to have to replace it. We are going to need to spend \$120,000 to replace the sewer system in Moody Street. Now, if we were just going to build a by right building, the city couldn't impose anything on us. So we are doing that for the benefit of the city and we are asking for consideration in that cost. And so we do believe there is a precedent for this board. They have done it before and we respectfully ask that you consider it again.

Mrs. Rando: I am not going to act on this this evening until I have done some research on it and read the brief on Grover Cronin and look into it. I feel like I am stepping on something that is the council's authority and the housing board's authority and - - -

Mr. Connors: Well, if you go into the zoning ordinance, it talks about whenever you're requesting a Special Permit, an intensity of use, and you're constructing more than eight units, the city council has the authority to determine how we satisfy the affordable housing.

Mrs. Rando: I know that. I know their methods.

Mr. Connors: And so the Waltham Affordable Housing Trust and that in the instance that we have, all they do is make a recommendation.

Mrs. Rando: And then you go back to the City Council and then you work out an amount. Correct?

Mr. Connors: Correct.

Mrs. Rando: And I don't know if the \$100,000 is the amount you worked out, or you talked about, or it's going to be, it could be less or it could be more. You could be absolutely right on both facts. But - -

Mr. Connors: I can tell you we haven't worked out any number. The city council said to us, we can ask you to contribute ten percent of your total development cost based on the numbers we have, that's \$350,000. So they said, they don't have the authority under their ordinance to change that number. It's ten percent of your total development cost; it's ten percent of your total development cost, so they were of the opinion that the only one that can vary that number would be the Zoning Board of Appeals.

Mrs. Rando: Well, I am very surprised. I didn't think it should be in there. I still don't. I am not going to act on that part of it. If you would like to start on (2.3) Footnote, the frontage, and Section 4.12.

Mr. Connors: I would like to continue with that. On September of 2011, we had a public hearing and we submitted a proposed decision. That's the document that the city council works

with to then ultimately make a decision and they adopt just like the board does. We provide you with a proposed decision here. But that decision goes to the Law Department for a review and they reviewed not only the plans that we submitted with the Special Permit, they also reviewed the plans that we submitted in our last case, with the Zoning Board of Appeals case. So the Law Department was of the opinion that we failed to request a few variances and so I've highlighted under number one, I talked about Section 9.14 but variances 2 and 3 under Footnote 13 and Section 4.12 states that "Business C Zoning District, no construction may be construction within ten feet of a public pedestrian way at least five feet in width if that public pedestrian way is used for access to a public parking area, public open space or public building." We received that particular variance for the north end of the building when we came here two years ago. We did not receive that relief down here (referring to the plan) because we were of the opinion that we were abutting a public park which was not a public pedestrian way. But the law department was of the opinion that because within the park is a stairwell to the public parking area. The law department was of the opinion that we should have requested that. So the building is not going to move, we are not moving it at all. We requested that relief in addition to what we already have requested because proposed building, south wall and the east wall is within zero feet of the Embassy Park. It's about thirty feet from the stairwell but in that we are not proposing to move anything. We are just asking for an additional form of relief which the law department was of the opinion that we failed to get the first time through. But I would certainly say that the hardship exists as has before and we got zero relief on the north side where there is actually a walkway down to the Charles River to go up the Charles River walkway. But we did not ask for that relief here (referring to the plan) so this wall here, it fits the corner and they are both zero feet of the Embassy Park so we are asking the board to grant that relief and again we feel that really nothing has changed structurally whatsoever to that part of the project. And the fourth variance that we requested has to do with open space and that's kind of interesting because our first reading was it doesn't apply. If you look under Section 4.11, it states it doesn't apply in a Business C Zoning District. So there's no requirement of open space. But then you go into the text of the zoning ordinance and it states that when you are requesting a special permit for increasing the density of use there's a base requirement of fifteen percent open space which then incrementally increases depending on the incremental special permit request. And then it refers

us in the zoning book to Appendix C. So if you go to Appendix C, there is no statement that talks about how we get from fifteen percent to an incremental increase.

Mr. Finger was with me on that, and can you explain how we came up with 37%?

Mr. Paul Finger: If you look at the language within the zoning ordinance, it actually talks about the fact that what you do is you use a proportional basis from the by right FAR to in fact the maximum FAR allowable in that area. And then using 15% as your base and if you increase it to that proportional amount it turns out that the maximum open space that would be in this area is 37.5%. Now, in addition to that, there is no loading requirements actually required here so what wound up happening is that when we actually did the original calculations the loading is shown here because we wanted to be able to show that we can actually bring in a moving truck when in fact residents move in and move out. Most of the loading for the commercial use, as you're familiar with, Moody Street is actually done through the front on Moody Street so we wanted to be able to show that we could get a moving van in here. As a result of that, even though it's not required, it actually has to be taken away from the open space. So, by deducting that from that space that also deducts from the amount of coverage that you would have with that amount of space that would be eligible. So since we are actually at the maximum FAR that's allowable in this particular zoning district, its 2.5 FAR which is again hasn't change from the date that we originally filed. It would mean that the requirement for open space would be 37.5 percent. And that's again based on the proportional basis of fifty to thirty seven point five as is one point zero is to two point five. So that's the mathematical formula.

Mr. Connors: And again, you know, the open spaces remain consistent as we showed before. It's just because the zoning book did not provide a method to get to that, Mr. Finger had to do some calculus to get to that. But that's why it was omitted the first time. And then the last form of relief, we're asking again, and that was pointed out to us in the opinion of the city's law department that typically and in this prior case with the Zoning Board of Appeals is the condition that the construction and use of the property has to be consistent with the plans filed herewith. Now, once we received approval from this board and we need to go through a development

Prospectus and have sign off from various departments and boards within the city before we present to the city council.

First off, was the commentary from the engineer as to this area here?

Mr. Connors: I'm going to ask Mr. Finger if he could just articulate what we added which wasn't there before.

Mr. Finger went over the original plan which was part of the original board submission.

Mrs. Rando: Are there any questions at this time? You may continue, Mr. Connors.

(Mr. Connors then read his brief starting on page 2 into the record and went over the plan with the board.)

Mr. Connors: So that I think sums up the move to reappear before this board. And that the city council review really kind of calls on the particularity the ZBA plans as they meet with the Special Permit plans so they needed to change the windows, relocate the doors and eliminate a door.

(Mr. Connors then went on to read his brief.)

Mrs. Rando: Any changes since you were here?

Mr. Connors: No. The shape of the lot remains as it was created in 1928. But what I called out to the attention of the board back then was and I attached exhibits, Exhibits B through G, a series of title documents which show that Exhibit C shows the building as it was back in 1922 and then as it progressed on this portion of the building was eliminated (referring to the plan) and then ultimately reshaped like a lot as it is today.

Mrs. Rando: Didn't they ask you to try to match the brick of the Boston Manufacturing

Company?

Mr. Connors: They did and they asked for the two over two windows. And I think that we had probably presented that to them based on our architect had gone around to the City of Waltham and tried to draw out historical features of other buildings in the city and so the Waltham Historical Commission wrote a letter and said that they endorse the proposed building there provided that we have two over two windows, that we match the brick of the Boston Manufacturing, so we have done all that.

Mrs. Rando: And they are one of the boards that you have to sign off on?

Mr. Connors: We received a sign off from them but also the city council asked us to take that letter and the conditions in the text of that letter and add it to our proposed decision. And they haven't granted the decision yet but they asked us to add that as a condition. So anything that is articulated by the Waltham Historical Commission is added as a condition and it has to be built. I think the biggest one here is the two over two and the six over six, so, that's it.

So as I said, we believe there are certainly hardships that flow from the uniquely shape lot, the topography and I have added exhibits for the board to take a look at that. I also added a letter from Scott Griffin, Architects which calls out the construction costs to the proposed residential building and it's about \$3.5 Million and I have also, as I said, added a copy of the Cronin's Landing decision rendered back in 1996.

So we feel that the relief that we requested, particularly variances 2, 3, 4 and 5 and the change in the plans which really reflects the comments from various boards throughout the city as we went through the development process but the request that we are asking for this board to modify the plans to conform with the plans filed herewith. There's no zoning implication. There's no zoning relief aside from the fact that what was shown on the plans is different than what we are showing on the plan that was submitted to the city council. And again, the open space, the open space at the site right now is I think about 20% so we are increasing the open

space to the area and we are not getting credit for this area over here (referring to the plan) even though it meets open space, in our opinion.

. And then the public pedestrian way, our building here, zero foot side yard setback, zero rear yard set back. That remains as it is. Nothing's changed. It's simply that the law department is of the opinion that we failed to ask for that relief and we couldn't build the building as we contemplated. So we are adding that in. So we feel that there's really no detrimental effect to the board and that the building that we are showing is already approved by the board.

There is a distinct benefit to the public good. We are taking an over a hundred year old building that's presently vacant. It's been vacant for several years now and rehabilitating the site and we are demolishing and we are creating a new signature building for the City of Waltham. Its' going to have first floor retail and residential units on the second floor to the fourth floor. We believe this is a significant benefit to the City of Waltham. We also believe the cash contribution is \$100,000 which is less than what would be called for under the ordinance but we still believe that that's a significant contribution to the City Housing Affordable Trust and that would be beneficial to the residents of the City of Waltham.

Mrs. Rando: Well, if I go forward tonight on this case, I am going to take out that whole first paragraph and we will go from Footnote 13 unless you would like to continue and I'll get an opinion from the Law Department. That's up to you.

Mr. Connors: Well time is of the essence for us in that we have been working on this and we were here two years ago and finally in the city council in 2011. It took us a year and a half to get to this point now and we would like to put it forward to the City Council. Could I request a two minute recess to consult?

On motion of Mrs. Rando, seconded by Mr. Sergi, the board vote to take a two minute recess at 8:22 P.M.

The board then reconvened at 8:24 P.M.

Mr. Connors: 200 Moody LLC is here. Bob Francis and Doug Waybright of the Nelson Companies and Paul DiIeso, I think I failed to introduce them when we started.

As I said, in the interest, time is money for them and they need to move forward on this project, so if the board accepted, we would request that we be given to withdraw without prejudice so much of our application that dealt with the Section 1.1 of the Affordable Housing part and then go forward with the remaining relief requested.

Mrs. Rando: I suppose I would want a motion that we will accept his offer to take out the whole first paragraph on the Waltham Housing and we continue with the rest.

Mrs. Rando: I'll make a motion to do that. Do I have a second?

Ms. Gelineau seconded the motion and the roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, no and Mrs. Rando, yes. The vote was 4-1 in favor.

Mrs. Rando: You may continue with your proposed findings of fact. And is there anything in the proposed findings of fact that have to do with the Waltham Housing trust?

Mr. Connors: If you look at my Proposed Findings of Fact, I do recite the variances requested under Page 2, #7, Subsection 1, so I can just delete subsection 1 in its entirety and it continues on to page 3, the first two lines, again, I would delete that. And then skipping ahead to page 6, I suggest we delete number 7 and delete number 5.

Mrs. Rando: On page 3 of the decision the third paragraph.

Mr. Connors: On page 3, third paragraph, I'll delete that. And then on the condition on Page 5, delete that.

Mrs. Rando: Would someone like to make a motion that we waive the reading of the Proposed Findings of Fact?

On motion of Mr. Sergi, to waive the reading of the finding of fact since they have been on file in the legal department, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: On the Proposed Decision?

On motion of Mr. Sergi, in a similar fashion, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact as amended?

On motion of Ms. Gelineau, seconded by Mr. Sergi, the board voted to accept the Proposed Findings of Fact as amended to be adopted as the board's Findings of Fact.

The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, no and Mrs. Rando, yes. The vote was 4-1 in favor.

Mrs. Rando: Do I have a motion on the decision as amended?

On motion of Ms. Gelineau, seconded by Mr. Sergi, the board voted to accept the Proposed Decision as amended to be adopted as the board's decision.

The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes;

Mr. Rudnick, no and Mrs. Rando, yes. The vote was 4-1 in favor.

There being no further business, on motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 8:30 P.M.

A handwritten signature in cursive script, reading "Barbara Rando", written over a horizontal line.