

CITY OF WALTHAM
ZONING BOARD OF APPEALS

June 18, 2013

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, June 18, 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, Mark Hickernell, Marc Rudnick and John Sergi.

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

Mrs. Rando: Tonight we have one continued case before us, Case No. 2013-11, 64 Curve Street LLC.

The first action this evening is for a motion to accept the minutes of June 11th.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board approved the minutes of June 11, 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 revised brief which contains everything in it, but I have added some items to it. In this brief, it's all the same except for a couple of things. (Mr. McCourt gave each member a copy of his brief.)

So, there was a discussion with hardship, I guess was one of the things, and then how the neighborhood is set up. This is what I wrote about hardship and how I feel and we can expand upon it in any manner that you care to consider. We basically read the whole brief the last time into the record so I would say we could concentrate on this. (Mr. McCourt read his addition regarding the hardship which was highlighted in his brief into the record. Mr. McCourt also posted a plan on the board of the abutting homes with lots sizes less than 8000 sq. ft., and went over them with the board. He also submitted a list of them to the board and photos of the house next door.)

As I also mentioned to you after the first case when we were here and because realizing it was a chicken and egg conversation of would we ever be able to take the home down and we do have a demolition permit necessity for any house over seventy five years and this house here, as you can see in the data I gave you last week, was actually constructed approximately in 1865. And they determined that the building didn't have any significance and it's not that unique but from any point of view to do it. It's listed on this National Register of historic places. I only tell you this just to bring you up to date on that. But that was something that was done in an initial

portion of it. It did not make the house a national house, communities merely turned in criteria on houses that had been constructed before a certain period of time and in that sense it was on a criteria but it's not on nor does it have to be removed on any binding historic places. For some reason they called this the North Waltham Street Historic District. So what happened was, as there were some federal funds around, they would take in the community and say that area like the Piety Corner area one and then they would take the age of the home and just turn the list over to the federal government in relation to it but did not list the home; one, they didn't have the right to and two, we never in Waltham established historic district, despite what they call it, It was never historic like downtown Lexington and other places where they have actual historic designated areas in which at that point you are very controlled in what you can do. But in this case, the Historic Commission on November 13, 2012 determined in a 3-1 vote that this house could be taken down.

So the house really has outlived its uses as Albert Costa who did do the new plan but also went through this meticulously originally to see if the house could be converted when in the original petition to something determined in today's world with the stair configuration, the layout, what had been done inside was destroyed, which what I mean, as you took all these areas and you made small bedrooms and really cut up the house. And underneath that siding, its not in great shape by any means and determined that, one, it couldn't be converted even for the other use in any economic way and it was determined that it had no viability to be economically done into a single family home.

So, after a discussion with the neighbors and several other people who had an interest in the cases and everything the determination was made that it was best suited to take everything down and do two lots. Unfortunately the only criteria it doesn't meet is lot area but we did in fact, as I say, explore here (referring to the plan showing the different lot sizes).

Mrs. Rando: Did you tell me that this is the Hart House (holding up a photo).

Mr. McCourt: It is the Hart house. Mr. Hart is sitting right here who hopes and expects to speak here tonight because facing the back. Unfortunately the uses that go beyond this would be some sort of governmental uses of it and he and his neighbors obviously would be distressed.

Mrs. Rando: Could you tell me if the Hart property was owned by the Hopkins people?

Mr. McCourt: It was.

Mrs. Rando: Why would they have left him with ten thousand, five hundred and something square feet and take away from this house? And wasn't the garage part of Lexington Street? That was one of the questions and, secondly, when did it turn to 64 Curve Street?

Mr. McCourt: First of all, Mr. Hart didn't build the house. He purchased it. So Mr. Hopkins sold the property to a person who built the house and then sold it.

Mrs. Rando: He sold the property.

Mr. McCourt: He sold that portion of the property the reason being is like I am saying it had outlived its usefulness and it was a question of what he would do with the property, you know, the overall property.

Mrs. Rando: What year was that?

Mr. McCourt: The property at 56 Curve Street, which is Mr. Hopkins' property, got a Certificate of Occupancy on November 25, 2002. So it was right after they closed. They closed the home around 2000, so he took a portion of the property off of that one. I mean as you look more to the future, I guess he might have tried to something a little bit different. He would not have technically met the criteria but there would be say an additional thousand square feet that

could have been split up.

Mrs. Rando: So, if he hadn't divided the lot, then there would have been an access to Curve Street and to Lexington Street.

Mr. McCourt: I don't know that. Does anyone (looking to the audience) know that? Access to Curve Street, I don't think there was.

Mrs. Rando: It certainly looks to me when I made a site view that that driveway went all the way over to the nursing home.

Mr. McCourt: Oh, let's ask Mr. Hart that, with your permission. I mean he lives there. He bought the house. I mean, I don't believe his driveway ever went into the nursing home. I don't know and he might not know.

Mr. Hart: I don't really remember my driveway off of Curve Street going into the nursing home. I remember it off of Lexington Street.

Mrs. Rando: Are there any other questions?

Mr. Rudnick: So 56 Curve was an open space portion of the full lot.

Mr. McCourt: It was a portion of the house on it which he took down so that he could meet it and the reason it became 64 was by doing that he lost his rear yard, if you will, which is thirty feet in the area. So there is a door on Curve so they let him call it 64 and then he met the side yard setback for it.

Mr. Rudnick: So he demolished a part of the house, split off this lot in 2002 - - -

Mr. McCourt: I'd say around 2000.

Mr. Rudnick: And then the subdivision of the current two lots that are before us, when did that happen?

Mr. McCourt: That was only done after we had attempted to avail ourselves of the nursing home thing, which by the way requires no square footage of land. That is, it's just the thing. If we had done that we could have built up to four units, arguably. The subdivision was after that case. We felt it was prudent to withdraw it and they did that in January of this year. So the criteria that you have to meet for an ANR plan, is frontage and being on a way, it can be public or private, but it has to be on a way. They don't make a zoning determination beyond that. However, we knew going in and doing that we would need to come to this board. We got everything done with the exception of – you know we couldn't do the square footage since you can't add that lot into two 9600 square foot lots.

Mr. Rudnick: At the last hearing, you talked a bit about the gray area around the historic determination of this lot. Were there other reasons besides that you didn't proceed with the by right conversion of the nursing home into four units?

Mr. McCourt: Well, it wasn't by right. That is, as part of the zoning you have to get a special permit from this particular board. This happens to be the last potential home. It was targeted towards reuse of homes that clearly had outlived their use. And there is no requirement that it be a nursing home when you file that petition and there are examples of that on Worcester Lane where both John Walker and Rick Curtin lived prior to the conversation, and down on Dale Street, they closed, and there are no criteria. It just had to be a nursing home some time between - - - The nursing home had to be licensed by the State as of January 1, 1982 and you can even see from the building card, that in fact, they were remodeling the nursing home but prior to January 1, 1996. I mean they studied very hard; the council did when they did this and they give you one house for every four beds but if there is a division which you could get almost

five, like in this case, there's no ups.

Mrs. Rando: When was it last assessed a nursing home?

Mr. McCourt: Assessed? Well that has nothing to do with the thing. That has nothing to do with this criteria. It doesn't talk about assessment. It's just an existence, a licensed home. But it was assessed probably in 1999 or 2000. I mean I could get that information from Joe Goode. But there's no assessment factor here. It's just that you have to fall within those dates.

Mr. Rudnick: Attorney McCourt, I think I expressed a little bit less than my only reservation about this because it sounds like a better thing for the neighborhood. We have seen plenty of neighbors who have said that. Pretty much anyone would agree that two single family houses looks better there than four family houses and probably, actually provide more open space and other amenities in this neighborhood. The part I have a hard time wrapping my head around is what appears to be a reckless act of creating two substandard lots and coming to us for a variance from the dimensional criteria. They have a lot of adequate size to build upon. If you told me somebody came in 1945 and subdivided that lot, I think you would be making a different case. But here's the case of an owner subdividing a lot into unbuildable lots and then coming and asking for a variance to make them buildable again, um - - -

Mr. McCourt: It was only after attempting to avail ourselves of the permissive special permit. Now, true we didn't take it to conclusion because it was quite clear that it was not going to pass - - -

Mr. Rudnick: You made some exhaustive kind of reuse study of the lot and ---

Mr. McCourt: A lot. And discussed it with many municipal and other type of people, municipal figures, and neighbors, of course, and the architect and all of that.

Mr. Rudnick: I mean I do see this as a better use, frankly of the lot. It's the only reason I'm not sitting here saying that was a bad gamble. You created two unbuildable lots. That's what their intended to be. It's unbuildable and we have a little park there on that corner, instead of a house. So I admire your client's gustiness in taking the risk on creating unbuildable lots and coming to us for a variance that we clearly do not have to give in order to make good use of it. But I am swayed by the testimony that's what concluded a large variety of neighbors understandably think this is a better use of the lot and I hear your testimony about it being that there's enough similar lots and enough similarly sized lots that it's not out of character of the neighborhood including the distance of condos across the street. I notice that you don't have the support of the neighbors who will actually look at the façade of this building. No neighbors across the street, on either streets. Was there an effort to reach the people on the other corner of Curve and Lexington?

Mr. McCourt: I will have to ask. I do know one thing that when we came, now true it was a different sort of petition, but arguably a more intense petition, no one also appeared with the exception of two people, Mr. Hart who spoke in favor obviously, not obviously, but you know he's clearly the most affected and a person who came more seeking information and in the end was in agreement who was a member of the condominiums. Over here, frankly, (referring to the abutters plan), they get the notice, they have to. I don't know if the boys went over and talked to them.

Mr. Rudnick: These plans that you submitted are the actual plans from the Bibbo Brothers Surveying Company? I'm surprised they misspelled the word Surveying in their boiler plate. They also spelled the word "email" wrong there so you can tell the Bibbo brothers that Mr. Rudnick was quite surprised at that. No more questions. Thank you very much.

Mrs. Rando: I think that we checked the audience, but I will do it again.

Is there anyone in opposition?

Mr. McCourt: I think Mr. Hart would like to speak to the issue because he lives right next door.

Mrs. Rando: I knew he wasn't opposed to it. I'm just going backwards because there isn't anyone else except the people that were in favor of it here.

Is there anyone seeking information? Seeing none, is there anyone in favor that would like to be recognized. Would you like to come up and say why?

Mr. Hart: First of all, I think I said this the last time, I know Mr. Douglas and I know Mr. Morreale. I know them as Firemen. I don't have a personal relationship with them. So this has nothing to do with a relationship with Mr. Douglas and Mr. Morreale or myself.

To give you a little history, I bought my house in 2003 and I was led to believe by the previous owner that something like this would be coming down at some point. I did my research because I didn't want to buy a house that was next to this structure because, one, the site, for one, and two, I didn't want it to turn into a house that was approximately about an eighth of a mile away. I am not going to mention, obviously this is going to be televised, I'm not going to mention the address, but the police, the fire and the ambulance departments are there once or twice a week. And I didn't want something like that next door when I have two young children. So that being said, I was very patient. I have dealt with cocktail shrimp being thrown in my side yard prior to these owners. Beer cans in my yard. Pieces of flashing coming off the house landing in my backyard. Worrying that the current structure, not the house itself, but the detached garage is actually going to fall down into my yard. I don't know if you have driven by there but the roof is sloping. It looks like its going to fall apart much like it did a lot over how a specific barn fell down. So any time there is a storm like there was the other day, it was pieces of that house actually coming onto my property. Obviously two beautiful single family homes I think would be much more attractive for myself and for the neighbors. And I'm specifically

worried again of a group home going in; a subcontractor through the state coming in and I don't think that's going to be good for the neighbors either. And any neighbor that I have spoken to is fully in support of, actually when I found out it was going to be two single family homes as opposed to condos, I was even more excited. I didn't even realize it. So my thing is its kind of an eyesore, especially in the back when I am looking at it. I've actually had to acclimate myself as a police officer a few times because the upstairs tenants were having an argument and there's a kid hanging the other kid over the top of the fire escape and I had to go running up there because I thought someone was going to fall of the two story fire escape. And I have actually had some of their friends coming down, drunk friends, kicking the panels in my fence down. Now, again I was pretty patient of this because I thought something like this would be coming down the pike at some point and obviously I am in full support of this because the current structure, even if you drive by it, it looks a mess and two single family homes will be great for me. Obviously I have some stake in this but definitely for the neighbors. So, obviously I am in support of Mr. Douglas and Mr. Morreale building two single family homes.

Mrs. Rando: Any questions from board members?

Mr. Rudnick: What do we require for a sideyard on the corner?

Mr. McCourt: The same as the front yard.

Mr. Rudnick: And what do we require for driveways at an intersection?

Mr. McCourt: Within a hundred feet. We will probably have to go to the Board of Survey and Planning to get the driveway approved which they will almost surely do as long as we keep in as far back as we can.

Mr. Rudnick: So do we already have a condition like that?

Mr. McCourt: That's a good point. Actually I did not add that but we can, absolutely.

I did add a condition that obviously we would record the ANR plan. It's not yet recorded because an ANR plan virtually can be recorded years from now if it had to be, but that isn't our intent. But obviously before getting a building permit, we would record this should this happen to pass and the appeal period passes.

Mr. Rudnick: Those lots are in current ownership?

Mr. McCourt: Yes.

Mrs. Rando: Does anyone want to make a motion that we waive the reading of the Proposed Findings of Fact?

Mr. Sergi: Madam Chair, I make a motion that we waive the reading of the Proposed Findings of Fact since they have been on file at the legal department.

Mr. Cotton seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: You may continue with your Proposed Decision.

Mr. Sergi: Madam Chair, may I make a motion that we waive the reading of the Proposed Decision since it has been filed in the legal department.

Mr. Cotton seconded the motion and the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: All right, I am ready for a motion on the Proposed Findings of Fact?

Mr. Rudnick: Want to suggest the language about the driveway?

Mr. McCourt: Yes. As a condition of the decision, I would suggest that it be "Subject to the petitioner obtaining the necessary approvals for a curb cut within a hundred feet of an intersection from the Board of Survey and Planning." That would be Condition #2.

Mrs. Rando: I have a problem with your findings of fact that says about making the best use of this property.

Mr. McCourt: Is that in the hardship statement?

Mrs. Rando: Yes, Page 3, at the bottom or it may be Page 4. "The Petitioner has the right to make the best and most effective use of his property for those purposes allowed by the Zoning Ordinance."

Mr. McCourt: This is in the conditions, right?

Mrs. Rando: This is, "A literal enforcement of the Zoning Ordinance would create a potential hardship."

Mr. McCourt: I am happy to take that out.

Mrs. Rando: I think by subdividing those lots, he could of and he still can make use of that land.

Mr. McCourt: I'll take that out.

Mrs. Rando: All right, I am ready to entertain a motion on the Proposed Findings of Fact.

Mr. Sergi: Madam Chair, I make a motion that the Proposed Findings of Fact, as amended, be adopted as the board's Findings of Fact.

Mr. Cotton seconded the motion and the roll being called: Mr. Sergi, yes; Mr. Hickernell, no; Mr. Rudnick, yes; Mr. Cotton, yes and Mrs. Rando, yes.

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

Mr. Sergi: In a similar fashion, Madam Chair, I make that motion that the Proposed Decision, as amended, becomes the board's decision.

Mr. Cotton seconded the motion and the roll being called: Mr. Sergi, yes; Mr. Hickernell, no; Mr. Rudnick, yes; Mr. Cotton, yes and Mrs. Rando, yes.

Mrs. Rando: So, it is granted.

Mr. McCourt: Thank you very much.

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to adjourn at 7:45 P.M.


7/8/13