

**CITY OF WALTHAM**  
**ZONING BOARD OF APPEALS**

December 3, 2013

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, December 3, 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, Mark Hickernell, Glenna Gelineau, Gordon LaSane, Edward McCarthy and John Sergi.

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

Mrs. Rando: Tonight we have one continued case and that is the Community Day Center of Waltham, Case No. 2013-22, and one new case, Case 2013-27, and that is Paul and Lisa Centofanti, 24 Bowker Street aka 17 Wilton Street, Waltham and that is for a Special Permit.

The first action this evening is for a motion to accept the minutes of November 19, 2013.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of November 19, 2013.

Mrs. Rando: Will the clerk please read the petition in Case No. 2013-27?

The clerk then read the petition in Case No. 2013-17, Paul G. and Lisa Centofanti in an application for a special permit to alter/enlarge a use of a non-conforming lot. The Petitioners propose to construct use and maintain an addition to the first floor of the existing nonconforming, single family dwelling. Location and Zoning District, 24 Bowker Street a/k/a 17

Wilton Street, Residence A-4 Zoning District.

Mrs. Rando: The members sitting on this case will be Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Mr. LaSane, and I am Barbara Rando, Chair.

May we hear from the petitioner or the petitioner's representative, please?

Deborah A. Sawin, Esquire, 564 Main Street, Waltham, the Petitioner's representative, came forward and presented each member with a hard copy of her brief and packet of exhibits.

Ms. Sawin: I am here this evening with Mr. Paul Centofanti. Paul Centofanti is a familiar face but for the record he is here as an individual and not in any official capacity.

(Ms. Sawin then read her brief into the record and went over the plan and photos regarding this petition.)

Ms. Sawin: Finally, Paul did speak with all of these neighbors and several of the direct abutters. They stated they had no objection to the proposal. The only thing they wanted to know was when he might be able to start.

Mrs. Rando: Ms. Sawin, could you tell me, with the 7.3% added, what is the total lot coverage and what is allowed?

Ms. Sawin: Maximum allowed is 30. It's 30.9. I'm sorry, required is 25.

Mrs. Rando: Are there any questions at this time?

Mr. Sergi: I just assume that the building will conform to the rest of the property.

Ms. Sawin: As much as they can in terms of design. It will match the outside materials.

Ms. Gelineau: Just a one story addition?

Ms. Sawin: Yes, a one story addition.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition? (One hand was raised in favor.)

Is there anyone in opposition? Seeing none, is there anyone seeking information? Seeing none, are there any more questions? You may continue with your proposed findings of fact.

Ms. Sawin: Madam Chairperson, I have filed with the city a Proposed Findings of Fact and Proposed Decision. You have copies in your packets.

Mr. Sergi: Are these the same?

Ms. Sawin: Yes, they are.

Mr. Sergi: They haven't been altered?

Ms. Sawin: That is correct.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to waive the reading of the Proposed Findings of Fact since it has been on file in the Law Department.

In a similar fashion, on motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to waive the reading of the Proposed Decision.

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

On motion of Mr. Sergi, seconded by Mr. LaSane that the Proposed Findings of Fact become the Board's Findings of Fact.

The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mrs. Rando: Do I have a motion on the Proposed Decision.

On motion of Mr. Sergi, seconded by Mr. LaSane the board voted that the Proposed Decision become the Board's Decision and grant the Special Permit in Case No. 2013-27.

The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mrs. Rando: This next case, Mr. Sergi is going to be replaced by Mr. McCarthy.

Mrs. Rando: Would the clerk please read the petition in Case No. 2013-22?

The clerk then read the petition of Community Day Center of Waltham, Inc. and Michael Colomba in an application for a variance to allow the continued use of the first floor of the existing restaurant building at 16 Felton Street as a restaurant with not less than 20 seats and without restriction as to operation. And, to allow the use of the second floor as a community day center. The variance request is similar to the variances granted in Case No. 1997-06 and Case No. 1984-33. Location and Zoning District: 16 Felton Street, Commercial 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, MA came forward and submitted a hard copy of his Amended Proposed Findings of Fact and Proposed Decision.

Mr. McCourt: The last meeting, as I recall, it ended because there was a discussion in relation to parking, to be more specific, and the board wasn't finding the number of parking spaces, so I explored with the Transportation office, the Traffic Engineer, because I recall that

they had produced a plan over the years and I have attached it and ask that it be added as part of the Findings which details all of the public parking spaces in the city. So the only reason we are referring to this is this was in the prior two cases and in fact there is public parking in the general area and one that is across on Carter Street. I was off a space or two, so it was prudent to the board to make sure we get the correct numbers. So the numbers of the parking spaces, the ones on Carter Street are forty five spaces plus two handicapped. That's really demonstrative of the fact that there is parking in the area.

To be a little repetitive, as you will recall, this building was built before the institution of zoning in the City of Waltham. The use served many purposes. It was a Packing House for meat; part of it was for Gene Snow's warehouse at one point, and then it became a restaurant in the 80's and they asked at the time that the owners get a variance just stating what the use was and in fact that there was no parking provided. And then when another person purchased it in 1997, that case was repeated and that is why Patrick Powell thought that we should go here.

You might recall that in the original, there was a little misstep in this process in the sense that both of these uses are allowed uses in this zone. So we are not really talking about the uses. We are talking about the parking. And when Mr. Colomba originally approached the building inspector, there was a misinterpretation about the Community Center situation and that that might need some relief in the Council but that was quickly told to us by the City Council that they felt that we needed no relief, and if anything that we return to the Board of Appeals just to confirm the parking variances and that it was up to Mr. Powell and he felt that we should do that and that's why we are here.

As a matter of fact, last evening, I was with the City Council and there was a discussion. I've kept that case technically alive over there and Mr. Tarallo, the Chairman of the Rules and Ordinance Committee, said that I think its time to have this case withdrawn because we can't give you any relief. These are matters of right of being here, the uses. So they are here. Really what they are looking for is to reaffirm the number of parking spaces, so we are going to be doing that this week. Just a matter of formality as the council is drawing to an end and because it's an election year, the businesses and technically these matters such as special permits aren't

carried over to next year because just as this board would be, you have to sit on the case in order to be able to vote on it. So there's at least three new councilors coming on board.

I have bolded in the language that I added to the prior decision emphasizing the fact that the real reason here before you is that these uses which are permitted, and I want to emphasize that don't have the parking. That is what the board is really doing authorizing the use of the premises without parking as they have done twice in the past which is not uncommon along this corridor. So I can read these into the record if you would like, the Findings of Fact with new changes or what I would propose as the decision. I feel that these are two good uses for the area. I note there is no opposition to this except that two people who came the last time, both of them had no objection to the restaurant and as far as the community center I think that after listening to Marilyn and the members of her organization that they seem to be more comfortable with the focus that this community group is and the fact that they do go home at 4:30 in the afternoon and that they are very cognizant of being sure that the organization is run properly and correctly. I think you can see here, these people, I believe are all in favor of the situation and there were even more here the last time. But you're not voting for the community center use because that's permitted there. You're voting to reaffirm the fact that whatever use is in there they have no parking.

Mrs. Rando: Attorney McCourt, this is a nonconforming building with a nonconforming use.

Mr. McCourt: No, this is not a nonconforming use. It's a nonconforming building but both uses are permitted uses.

Mrs. Rando: Okay, I'll get to that in a second. But what we have to do is we have to see if the restaurant proposed is more or less restricted than what was there. Correct?

Mr. McCourt: No. We added the restaurant thing under the advice of Mr. Powell to do that but that's his determination assuming this variance is granted for parking.

Mrs. Rando: Now, my second problem is that you stated that there would be less than twenty tables.

Mr. McCourt: Twenty seats.

Mrs. Rando: And according to the table of uses, I think less than fifty seats are considered a fast food restaurant.

Mr. McCourt: That's still going to be a determination made by the building inspector. At the end when this comes to him, he could make that decision.

Mrs. Rando: But we can't decide.

Mr. McCourt: I am not asking you to decide. We are just describing what's in here.

Mrs. Rando: But you have restaurant here and restaurant with not less than twenty seats. So I feel that is a fast food restaurant because it's under fifty seats. It's considered fast food. Now, are we able to grant a fast food restaurant? No. I believe that would cause a special permit from the city council. So what I see tonight that I can vote on is the parking, just the parking. That's all I think that we have the ability to vote on tonight. So I would want everything that says restaurant take out of this.

Mr. McCourt: We respectfully are trying to do that. We reviewed this petition with the city council, with the building department. Ultimately it's Mr. Powell's decision, you can't grant a special permit for a fast food. We agreed with that and so we are not going to do that. We can't. We are not going to do that now.

Mrs. Rando: You also said you are reducing the size of the restaurant.

Mr. McCourt: Correct, because it was a two floor restaurant.

Mrs. Rando: I see it again as you're trying to mix apples and oranges because you're not reducing the size of the restaurant to a smaller restaurant. You're reducing the size of a restaurant to a fast food restaurant.

Mr. McCourt: I beg to differ.

Mr. McCarthy: Madam Chair - - -

Mrs. Rando: Let me finish with my thoughts and I think only the council can do that. I also know that fast food is it 3.4 that says that fast food is not allowed by right in most districts, A, B and Industrial only. If I'm correct. Do you know?

Mr. McCourt: It's allowed in many zones including this zone but it does require a special permit.

Mrs. Rando: Is it allowed in A, B and Industrial Districts?

Mr. McCourt: It's definitely allowed in this district, in Business A and Business B. I think in Industrial but I am not sure of that.

Mrs. Rando: But anyway, before I could vote affirmatively on this I would want to get an opinion from the Law Department, but I'm only one on the board and I want to do the right thing and I can't understand why Mr. Powell didn't put it in writing and why the council didn't take care of you in the proper way if you went in front of the council. Why does everyone seem to be pulling in different directions? I don't understand that?

Mr. McCourt: Well, Mr. Powell made an unintentional misjudgment, not about the restaurant now. He read in the book where it talks about community center, like the Boys Club and all that that you need a special permit. But this is an organization that happens to be called Community Day Center but it does not fit under that. It's like the Bristol Lodge or any of these which are permitted in this area by right.



Mrs. Rando: I hope you're right because it's needed.

Mr. McCourt: I know I'm right because we spent a lot of time here. These people have been working on this for one year.

Mrs. Rando: I know that. That's why I would like to know why they are pushed in all directions.

Mr. McCourt: We are not being pushed in all directions.

Mrs. Rando: That's why I would like to know why Mr. Powell didn't put it down. Why the council hasn't decided. First of all, when you have a fast food restaurant, don't you have to get the square footage for the building and decide how much is used for food service and for preparation and then get twenty five percent of the food total?

Mr. McCourt: But that is the determination of the building inspector when this comes to him.

Mrs. Rando: No, it's here.

Mr. McCourt: We are only describing what this reduced restaurant will be. Based on what language Mr. Powell suggested that we were having a restaurant in there with less than twenty seats, not a fast food restaurant. That's what he asked me to add. That's what I did add and that's what with all due respect I am not removing.

Mrs. Rando: Mr. McCarthy, I'm sorry. You asked a question.

Mr. McCarthy: The twenty seats was my request. The original document that came in had a convoluted statement that you could have more than twenty if you wanted. I, in the thought process of reducing the parking, thought that if you restrict it to twenty seats or less

you're going to reduce the parking requirement. It said twenty or more. It did not have a limit on it. You could have had a thousand seats, but I said why don't we just leave it twenty or less and they had no objection with the reduced the requirements at any point in the future. That's my request, not theirs about the twenty seats.

Mrs. Rando: Are there any other questions from the board. (There were none.)

Mrs. Rando: Is there anyone in the audience that is in opposition to this? Seeing none, is there anyone seeking information? Seeing none, is there anyone in favor?

(21 people raised their hands in favor.)

Is there anyone who would like to speak in favor who has not spoken before or has anything new to add? (No one came forward.)

Mrs. Rando: All right, what is the wish of the board? Would they like Attorney McCourt to continue with his Proposed Findings of Fact or do they feel that we should continue this to get an opinion from the Law Department?

Mr. McCarthy: I would like to hear his Findings of Fact.

Mr. Hickernell: Winter is coming. I am ready to move on this.

Ms. Gelineau: I'm fine to go forward.

Mr. LaSane: The same.

Mrs. Rando: You may continue with your proposed Findings of Fact.

Mr. Hickernell: The Proposed Findings of Fact have been on file for quite a while. The amended Findings of Fact arrived yesterday. So I would make a motion that Mr. McCourt read

the amendments to the Findings that were filed into the record.

Mr. McCarthy seconded the motion and the board voted to have Mr. McCourt read the amendments to the Proposed Findings of Fact that were filed.

Mr. Hickernell: On the Decision, I would make the same motion with respect to the Amended Decision that the Petitioner's representative read only the amendments to the Proposed Decision that has been on file.

Mr. McCarthy seconded the motion and the board voted to have Mr. McCourt read the Amendments to the Proposed Decision that has been on file.

Mrs. Rando: What are the hours of the restaurant?

Mr. McCourt: 6 A.M. to 9 P.M.

Mr. LaSane: So you're not going to put a Chick-Fil-a in.

Mr. McCourt: No. If we did we would have go to the council.

Do you care to add the hours of the restaurant in the conditions I will be happy to add it.

Mrs. Rando: Does anyone want to add any other conditions as to the time of the restaurant from 6AM to 9 PM? (The members did not feel this item had to be added.)

All right. I am ready to accept a motion on the Proposed Findings of Fact, as amended.

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

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

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

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

On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to accept the proposed Decision, as amended, to be the board's Decision and grant the variance in Case No. 2013-22.

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

There being no further business, on motion of Mr. McCarthy, seconded by Mr. LaSane, the board voted to adjourn at 7:50.

*Barbara Rando, Chair*