

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

**October 4, 2011**

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, October 4, 2011 in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA. In attendance were Chair Barbara Rando and members Glenna Gelineau, Mark Hickernell, Oscar LeBlanc 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 2011-18, Elizabeth Lowe and Matthew Passell, 16 Wheelock Terrace and Case 2011-19, Waltham Housing Authority, 101 Prospect Street.

The first action this evening is for a motion to accept the minutes of September 27<sup>th</sup>.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of September 27, 2011.

Mrs. Rando: Would the clerk please read petition in Case 2011-18?

The clerk then read the petition in Case No. 2011-18, Elizabeth M. Lowe and Matthew Passell in an application for a variance to construct, use and maintain an addition to the front

entry of the existing single family dwelling, reposition the front stairs and walkway, convert the garage to a living area and reconstruct the driveway (widen and level) and the adjacent retaining wall. Location and Zoning District: 16 Wheelock Terrace, Residence A-3 Zoning District.

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

Deborah A. Sawin, Esquire, 564 Main Street, Waltham came forward representing the petitioners in this matter.

Ms. Sawin: I have a brief and a packet of exhibits which I would like to distribute to the board with your permission. (These are on file and may be viewed at the City of Waltham Law Department.)

I am here tonight with the petitioners, Beth and Matt. They are in the back of the room and I was planning to start my presentation by telling you that they would like to add on this addition as their family grows. Little Portia didn't wait for us to get to the hearing so little Portia is out on the hall somewhere being quieted by her grandmother.

(Ms. Sawin went on to read her brief into the record and went over the photos and exhibits with the board.)

Mrs. Rando: Are there any questions from board members? Hearing none, is there anyone in the audience that is in favor of this petition that would like to stand and be counted in favor of the petition?

(Seven people raised their hand indicating they were in favor.)

Is there anyone in the audience in opposition to this petition? Seeing none, is there anyone seeking information? Seeing none, I just have one question. On page 5, where you

stated that they inherited the existing condition in their hardship. Actually they didn't inherit it, I mean they bought the house- - -

Ms. Sawin: Yes, I meant they inherited it in that they did not create it. It was there when they bought the house. Not inheriting in the probate sense of it but in terms of it being something that was existing when they got there.

Mrs. Rando: Also, did you say that the door opens out to a step, there's no platform?

Ms. Sawin: There is a small landing (referring to a photo), the storm door opens out.

Mrs. Rando: I know it's no longer allowed to come out to a step.

Ms. Sawin: So, yes, there is a landing there but in order to get the door open you do have to step back.

Mrs. Rando: All right, you may continue with your proposed findings of fact.

Ms. Sawin: Madam Chair, I have submitted proposed findings of fact, previously submitted it to the board with the materials. I am happy to read that if you would like.

Mrs. Rando: Has everyone read the proposed findings of fact?

Mr. Sergi: I will make a motion that we waive the reading of the proposed findings of fact since it has been on file with the Zoning Board.

Mr. Hickernell 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: Similarly, I propose that we waive the reading of the proposed decision since its been on file with the Zoning Board.

Mr. Hickernell seconded the motion and the board voted to waive the reading of the proposed decision.

Mrs. Rando: All right, I am ready to entertain a motion on the proposed findings of fact.

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to accept the proposed findings of fact to be the findings of the board.

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

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

Mr. Sergi: I will make a motion that the proposed decision becomes the board's decision.

Mr. LeBlanc seconded the motion and the roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LeBlanc, yes and Mrs. Rando, yes.

Would the clerk please read the petition in Case No. 2011-19?

The clerk then read the Petition of the Waltham Housing Authority in an application to amend the comprehensive permit. The applicant is proposing to construct use and maintain a second elevator at the existing apartment building at the locus. Location and Zoning District:

101 Prospect Street, Commercial Zoning District.

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

Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham representing the petitioner, The Waltham Housing Authority came forward. Mr. Connors submitted a copy of his brief to the board. (The brief is on file and may be viewed in the City of Waltham Law Department.)

Mr. Connors: Tonight here with me is Walter Maguire the Executive Director of the Waltham Housing Authority and also John Gollinger who is the Assistant Executive Director of the Waltham Housing Authority. (Mr. Connors then went over a copy of the plan showing the building and then read his brief into the record.)

Mrs. Rando: Didn't it in fact, the one elevator that you have, did it not break down this summer and some people were not able to use the stairs? So there clearly is a need for a second elevator.

Mr. Connors: I think that is true. I think the police had to come and carry people up and down.

Mrs. Rando: Are there any questions from board members?

Mr. Hickernell: Has Chapter 40B changed in any way that affects this petition since 1980?

Mr. Connors: No.

Mr. Hickernell: I see the 1983 decision; there was a requirement that a shuffle board

court be maintained. Is that still there?

Mr. Connors: No. You know I was reading that and I said where's the shuffle board? But it says in the condition, Condition #4: A condition of the permit is that the Housing Authority set aside an area for recreational pursuits large enough to encompass a shuffle board court and outdoor activities. There is an area, they haven't built it (referring to the plan) and I spoke to Mr. Maguire, and maybe he can talk.

Mr. Hickernell: Well, if the area is there I think the condition is satisfied.

Mr. Connors: So, really, they haven't built it because there has been no desire for it.

Mrs. Rando: In 79, you asked for twenty three parking spaces. And then in 1980 you asked for eleven more, thirty four parking spaces. Is that sufficient?

Mr. Maguire: Currently it is. What happened was 23 was all the state would allow us to build.

Mrs. Rando: Without a parking garage. We talked about a parking garage at one time, correct?

Mr. Maguire: We have parking for our maintenance shop a garage is located there. Subsequently there was development money left for the project when it was done. There was only a sufficient amount as really needed parking spaces. We found we had to come back to the board and modify the plan to add those parking spaces to somewhat conform to the existing requirements. We will never have enough parking.

Mr. LeBlanc: In other words, they should have stayed with the seventy five parking

spaces originally.

Mr. Maguire: But the comprehensive permit lobbying the requirement for that, unfortunately for us.

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

(Four people raised their hand in favor.)

Mrs. Rando: Is there anyone in the audience seeking information? Seeing none, is there anyone in opposition? Seeing none, you may continue with your proposed findings or fact.

Mr. Connors: I e-mailed both the findings of fact and proposed decision to the board. I am not sure if you had an opportunity to read them.

Mr. Sergi: Madam Chair, I propose that we waive the reading of the proposed findings of fact since its been on file in the City of Waltham Legal Department.

Mr. Hickernell seconded the motion and the board voted to waive the reading of the proposed findings of fact.

Mrs. Rando: You may read your proposed decision.

Mr. Sergi: In a similar fashion, Madam Chair, I propose that we waive the reading of the proposed decision since it has been on file in the Legal Department of the City of Waltham.

Mr. Hickernell seconded the motion and the board voted to waive the reading of the proposed decision in this case.

Mrs. Rando: I will entertain a motion of the findings of fact.

On motion of Mr. Sergi, seconded by Mr. Hickernell the board voted to accept the proposed findings of fact to be the findings of fact of the board.

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

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

On motion of Mr. Sergi, seconded by Mr. Hickernell. the board voted to accept the proposed decision to be the decision of the board and grant the application to amend the comprehensive permit.

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

There being no further business, on motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adjourn at 7:40 P.M.

*Barbara Rando, chair*