

CITY OF WALTHAM
ZONING BOARD OF APPEALS
December 9, 2014

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, December 9, 2014, 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, John Sergi and Michael Squillante.

The Chair called the meeting to order at 7 P.M.

Mrs. Rando: Tonight we have one continued case and one new case before us, Case No. 2014-17, RTN Federal Credit Union, 600 Main Street and it's an application for a variance. The second case is a new case, Case No. 2014-29, 92-94 Trapelo Road Realty Trust, Ciro G. & Mario D. Zottola, Trustees, it is for a building at 300 College Farm Road, and that's for a height variance.

The members sitting on the first case are Mr. Sergi, Mr. LaSane, Ms. Gelineau, Mr. Squillante and I am Barbara Rando, Chair.

What I would like first would be a motion to accept the minutes of December 2nd.

On motion of Mr. Sergi, seconded by Mr. Squillante, the board voted to accept the

minutes of December 2, 2014.

Mrs. Rando: Would the clerk please read the Petition in Case No. 2014-17?

The clerk then read the Petition of RTN Federal Credit Union in an application for sign variances. RTN Federal Credit Union intends to remove existing signs and to construct, use and maintain new signs onto its office building at 600 Main Street, Waltham, MA. Location and Zoning District: 600 Main Street, Waltham, MA; Business C Zoning District.

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

Joseph M. Connors, Jr., 404 Main Street, Waltham, the Petitioner's representative came forward.

Mr. Connors: Tonight with me is my sidekick, Joe Connors , from RTN. We have been before this board on a couple of dates and the board asked me to revise the Proposed Findings of Fact and Proposed Decision. (Mr. Connors submitted a revised copy of his Proposed Findings of Fact and a revised copy of his Proposed Decision.)

So, the legal notice that you heard was a lengthy list of variances that were requested related to a multitude of signs and just to refresh your recollection, we revamped the proposal significantly and deleted several signs that were requested in the original application. So we deleted, there was an RTN sign at the corners of Elm and Main. We deleted that. We reduced the proposed projecting sign from eighty square feet to six square feet per side which is a by right, so there's no relief that we even need for that. So we took

that one off the table as well. There was a secondary wall sign on the East side of the building. Our original request was for a variance to exceed eighteen square feet and go up to a hundred and eleven square feet and we've reduced that to twenty-four square feet. So, the variance there, eighteen square feet is allowed by right so we'll just have six feet above what's permitted by right. There were two secondary wall signs that were sixty feet on the South side of the building. We took them off the plan altogether. So, again, we don't need any relief for that, and so we just left one secondary wall sign on the South side of the building. I think our original application had four for which we needed three forms of relief, so we reduced it to one which is permitted by right and so the only relief that we need is the fact that it exceeds eighteen square feet and that would be thirty-eight square feet, so its 20 square feet above the by right.

Ms. Gelineau: That was the projecting one?

Mr. Connors: No. The projecting, that's a wall sign. (Mr. Connors went over the colored renderings of the signs with the board and their location on the building.) So we really have reduced it significantly. I have drafted Proposed Findings of Fact to reflect the fact that we are a distinctly different building than my surrounding buildings which is the basis of our argument for approval.

So, if you look on the Findings of Fact that I submitted to you tonight, where I began adding to the Findings of Fact, I have added a revised paragraph (h.) from the original draft and so I state: "This results in a total permitted sign area of 378 feet. The signs proposed shall have a total sign area of 200 square feet." So, that's by right. I'm just stating what the facts are and that's consistent with the letter from Councilor Logan which he thought we exceeded in measuring that incorrectly. If we go on his method then 378 feet

is what we are deleting and we are well under that.

Then I added paragraphs I, J and then continued on K, L, M and N. And so these were specific facts. (Mr. Connors read paragraphs I, J, K, L, M, N into the record which are attached to the minutes.) Mr. Connors then read the changes in his revised Proposed Decision.

Mrs. Rando: The sign on the corner on the Elm Street side which you say is a by right sign, what size by right can you build?

Mr. Connors: The size comes from the dimensions of the building. So in that it's a primary sign, I believe it can go up to a portion of 378 square feet, not to say that we are going to do that. It's sixty-three square feet.

Mrs. Rando: And the sign on the East side on Main Street, that one is going to be enlarged. The one on Elm Street, correct?

Mr. Connors: No, its twenty-four square feet. (Mr. Connors went before the board to go over the signs in question.)

Mrs. Rando: And I don't really feel that you met the hardship requirement, never mind asking for a bigger sign.

Mr. Connors: I haven't expanded anything from what I initially asked for. It's consistent of what I initially asked for.

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

Is there anyone in the audience that is seeking information? Seeing none. Is there anyone in favor? (Five people raised their hands in favor.) Is there anyone in opposition? Seeing none.

All right. If there's no questions from board members, you can continue with your Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to waive the reading of the Proposed Findings of File since it has been on file and the board has had a chance to read it.

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

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to waive the reading of the Proposed Decision since it has been on file and the board has had a chance to read it. - - - - -

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

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

Roll call: Mr. Sergi, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Squillante, 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 Ms. Gelineau, seconded by Mr. LaSane, the board voted to accept the Proposed Decision as amended to be the Board's Decision.

Roll call: Mr. Sergi, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Squillante, yes and Mrs. Rando, no. The vote was 4-1 in favor.

Mrs. Rando: So it is granted.

The members sitting on the following case are: Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Mr. LaSane and Mrs. Rando.

On motion of Mr. Sergi, seconded by Ms. Gelineau the board voted to take a five minute recess at 7:29 P.M.

The board reconvened at 7:35 P.M.

Mrs. Rando: Would the clerk please read the petition in Case No. 2014-29?

The clerk then read the petition in Case No. 2104-29, 92-94 Trapelo Road Realty Trust c/o Ciro G. and Mario D. Zottola, Trustees, in an application for a variance - height based on elevation. The petitioner seeks to establish an elevation on the lot from which the height of any building can be determined. The building(s) is known and numbered as 300 College Farm Road. The height of the existing building(s) currently exceeds on the height

of any future proposed future building(s) will exceed the height allowed by Section 4.11 under the method of calculating height under the definition of height defined in Section 2.326 of the Zoning Ordinance. The existing building is legal nonconforming as to height and the proposed addition to the building requires this variance to be constructed. The request is for a determination of height/elevation only. The construction of any future addition will require a special permit from the City Council. All other provisions of the Zoning Ordinance shall be met and the required parking shall be provided. Location and Zoning District: 300 College Farm Road; Business A and Residence A-3 .

The members sitting on the case are: Mr. Sergi, Mr. Hickernell, Mrs. Rando, Ms. Gelineau and Mr. LaSane.

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

Attorney Philip B. McCourt, Jr., 15 Church Street, Waltham, came forward.

(Mr. McCourt submitted a copy of his brief to the board along with photos of the property and then read his brief into the record. He also went over the plan with the board)

Mr. LaSane: Councillor, the words, "addition to the building", in my mind, you're not looking to add to this building?

Mr. McCourt: Well, yes, they would add two to three units that you see there. There would be three more units if the City Council deems it appropriate. So, in that sense, it would be an addition.

Mr. LaSane: Free standing or attached to this?

Mr. McCourt: Attached.

Mr. LaSane: They share a common basement for instance?

Mr. McCourt: No, it's a townhouse type of thing.

Mr. LaSane: So, in addition, it would be added to the end of the building?

Mr. Zottola, 82 Forest Street, Waltham: Sure.

Mr. LaSane: So, share this wall?

(Mr. Zottola explained how the addition would be.)

Mrs. Rando: So, Attorney McCourt, you're asking for the elevation on just the new addition that you are doing?

Mr. McCourt: Well it appears that there was a somewhat misreading when this was done. It doesn't make the building any higher. This is 36 feet above flat ground.

Mrs. Rando: But is in on the new addition that you are asking for the base elevation not for the building that is there.

Mr. McCourt: Well, for the land.

Mrs. Rando: Is he going to do anything to the first building. Is he going to take down the first building?

Mr. McCourt: No, he is not doing anything to it.. So the land comes and goes down.

Mrs. Rando: So you only have three stories.

Mr. McCourt: Three stories that is permitted.

(Ciro Zottola went before the board to go go over the photos of the locus.)

Mrs. Rando: How many units do you have there in all?

Mr. Zottola: Six and then there are three here.

Mrs. Rando: So that's nine and you will have three more. All going out that one driveway? That's the only egress?

Mr. Zottola: Yes, it's an easement.

Mrs. Rando: Is there room for them to turn around in the back and drive out or do they have to back out?

Mr. Zottola: There's plenty of parking.

Mrs. Rando: Do you have every other dimension that is needed, side yard, front yard, back yard?

Mr. McCourt: Everything else is there other than permission from the city council possibly for FAR. (Mr. McCourt went over the plan again with the board.)

Mrs. Rando: Well, again, you mentioned hardship and he has been able to make sufficient use of his buildings now.

Mr. McCourt: Well the hardship is the topography of the land.

Mrs. Rando: But hardship enters into it. For a variance you have to have a hardship.

Mr. Hickernell: But you've got three units on the ground now, right?

Mr. McCourt: Correct.

Mr. Hickernell: And that's not a reasonable use of the property?

(Mr. McCourt went over the plan of the locus again with the board.)

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

Mr. Sergi: No. I made a visit and I saw the lot.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: Mr. LaSane?

Mr. LaSane: No.

Mrs. Rando: Is there anyone in the audience seeking information? Seeing none.

Is there anyone in opposition? (Three people raised their hands.)

Mrs. Rando: Would you like to go to the podium and give your name and address for the record, please.

Mario Patriacca, 80 Hatfield Road, Newton, Ma and Caroline Lucchetti, 296 College Farm Road, Waltham came forward.

Mr. Patriacca: We are talking about this strip right here, (referring to the plan), 300 College Farm Road. She lives at 296 which is to the right if you are looking from the back. The existing wall that's discussed here in back of 296, it took her deceased husband at least a year to get that approved. What he was trying to do was back it up another thirty feet so he would have a decent back yard. The town said, absolutely not, and that thing costs tens

of thousands of dollars which they were not expecting because if they did they could just grade down to this pit.

Mrs. Rando: And who paid for that, you?

Mr. Patriacca: Of course. The town didn't. So the bottom line is that wall was a heartbreaker because he was sick and everybody in the system made use of that. I want you guys to understand that that wall, first of all, let me ask the lawyer, was this line surveyed this 191 foot line?

Mr. McCourt: Yes.

Mr. Patriacca: We checked out the video of the whole area and never saw anybody surveying anything in that area. So, we would like to see the paperwork if that's possible, but anyhow, it doesn't matter.

Mr. McCourt: We would be happy to produce it.

Mr. Patriacca: What is important is the edge of her wall is nowhere near that line. It's at least ten feet away towards her property. The reason is she didn't have enough money to go all the way. So, there's a huge gap there. She is drastically concerned about any construction of these three units affecting that wall and her house. So the question she has is, do they have a trust fund to handle damages to her house while this is going on and in the future? And what we would like to really know is, since I know her husband very well, her deceased husband, that this sees very quickly as part of this mess, is how did they get this approval for this wall all the way down there when he couldn't do it six years earlier And he couldn't do it. So, how did this happen? How did this wall all of a sudden

pop up here? The other thing is you've got a hundred and ninety-five elevation on her property. The wall is going to be blocking that elevation which means you are going to have ice and water streaming there. It's going to be a pocket of water back here. It's going to lift her wall eventually. It goes on and on and on. But what we would like to know is how did they get here? We got this postcard in the mail that says basically this is a done deal. All you need to do is vary the height. Everything else is done. Well, how did this all happen? How did we get here?

Mrs. Rando: I know they sent a postcard to every abutter so you can attend the meeting and you can speak in favor or against. It doesn't mean it's a done deal.

Mr. Patriacca: It's only about the height. But how did we get this far? How did we get to this wall being here? The card basically says this is a done deal. The whole project is a done deal. The only thing they had to do is vary the height. That's what it reads. Please!

Mrs. Rando: Did that come from the City of Waltham?

Mr. Patriacca: Absolutely.

(Mr. Patriacca went before the board and submitted some papers.)

Mrs. Rando: Sir, when it says subject matter, it's just telling you how it varies from the zoning laws. It doesn't mean it's a done deal. That means they have to come in front of us because of this reason right here.

Mr. Patriacca: I'm sorry but I don't really read it that way but I accept your translation. So anyhow, we would like to know if this plan goes together, is she going to

have a trust fund that she can draw from for damage to her house.

Mrs. Lucchetti: There will be damage because I saw what they did on the ground when I built my house. There's going to be boulders and ledge and rocks and I know that anything going on like that next door that will damage my wall and my home.

Mr. Patriacca: When you look at these six parking spaces back here where is this snow going to be dumped? Is this snow going to be dumped in through this ravine or is it going to be dumped into her yard to go to the other side basically? The other thing is, if you look at the existing three units, the steps in back of this building that are not even on these drawings for obvious reasons, but the steps in the back of the center unit is on her property.

Mrs. Rando: There are steps on her property?

Mrs. Lucchetti: Yes, I have a five foot easement.

(Mr. Patriacca went before the board to go over the steps.)

Mr. Patriacca: So if you guys did surveying, I would like to know how you missed that? How do you propose around the staircase? And it goes on and on and on.

Mrs. Rando: Do you have any other concerns?

Mr. Patriacca: Those are all our concerns. I mean we are really shocked that we would get this in the mail two weeks before this meeting without any prior announcement whatsoever and all of this work has gone ahead and it looks like it's approved.

Mrs. Rando: They have to produce plans before they come before us. That does not mean it's a done deal.

Mr. McCourt: I like to be able to have Bobby Bibbo who is a land surveyor - - - I can assure you he would not put something on the plan. I'd like to meet you there and have him show you. And the problem with your wall, I don't know this, because their wall as with our wall will be over three feet high. It had to be an engineered wall so sometimes that can take quite a while. For instance, I think its important to realize what we show a potential wall, right here (referring to the plan). We can't just go build it, We have to get it engineered and approved by not only the engineering office but the building department. I mean, you can't just put up a wall that's over three feet high without a lot of planning. That might have been the problem at the time. I don't know that but we can check with the building department. It certainly wasn't the location because it's on their property.

Mrs. Rando: Is there anyone else in opposition?

Deb Skaltsis, 295 College Road: I've been there since 1986 and I just want to say in the past ten years, my whole neck of College Farm Road has changed drastically. I am right next to the infamous Walman House. Remember 2004 all the construction that was going on there. My house experienced a good amount of damage, my house and my wall in front of it, and I just wanted to say if you do a 180 arc around my house, what was a nice little neighborhood, three small houses, have been replaced by four pretty good size houses and two sideways, they may be called townhouses, but I call them apartments. So I don't think they are owned by anybody.

And what I noticed other than the congestion and the traffic and some other issues is that, you know, I feel like I'm boxed in. There's no more light anymore from these tall

buildings. I mean, Lena is really going to get it. My little garden doesn't want to grow now because I have tall houses up here. Ive got tall houses over there. It may not sound like much but it's a quality of living thing. That whole new area was decimated ten years ago and to quote one of my neighbors who has since moved but isn't there anymore, it's almost like, why do we have zoning in that neighborhood when all that has to happen is if someone wants it changed is they come to the Zoning Board of Appeals. I mean, just take a look at what's happened to that neighborhood if you folks have been around for about ten years and looked at it. I don't believe it has helped my property value by having what was a little community of small houses, now I've got these sideways houses in there where I had four neighbors and maybe four cars. I've got a whole heck of a lot more now. You know there's traffic. It has just made my area very unpleasant to live in. And now we are dealing with putting in this taller building. You probably can't find another place to put a tall building that's going to destroy my sunlight anymore, but I am thinking about Lena. She's going to lose her afternoon sun by that. I mean, that's about all we've got left that's nice in the neighborhood anymore because it's not what it was. I do hope you take that into consideration.

Mrs. Rando: Thank you very much.

Mark Profito, 26 Rosewood Drive: I am not an abutter of the property but my interest in the area is, I was President of North Waltham baseball for many years and on the board for fifteen years then that time planning with Park with Rec., Ed Tarallo, the councillors and the Hardy Pond Association. I built the dugout, the handicapped accessible wall, did the field over. So, I've planned many things. So that's my interest in the area and I feel that building these gives someone a chance to move into some new construction up there, so I am in favor of the property. And just on the Zottola's behalf. I myself and I think people that know them in the city, they have a real interest in this city. They have

owned different properties throughout the city that they upkeep very well. Just recently bought a north end style restaurant on Moody Street and that's really helped the renovation and revitalization of Moody Street. So I find them innovative and I am in favor of the project.

Mrs. Rando: Thank you. Anyone else.

Attorney McCourt: Remember they are not changing the thirty-six feet. They are just changing the point from which we can determine it. And a single family house is thirty-five feet. It's one foot and that's the only difference in height.

But I really think the suggestion here, which I am sure is very well thought out and intentioned. If there's a problem, I'd like to put this case so I can have them meet with the Bibbos and just show them that's nothing on their property, I believe.

Mr. LaSane: Including the stairs?

Mr. McCourt: Including the stairs, absolutely.

Mrs. Rando: Why is there an easement going into their property?

Mr. McCourt: Did you sell her the land?

Mr. Zottola: Yes.

Mr. McCourt: He sold the land to her.

Mr. Zottola: We sold the land to Mrs. Lucchetti and we subdivided it. You requested an easement and we granted it.

Mrs. Rando: Attorney McCourt, there's an easement into his property to, is there not?

Mr. McCourt: It's a common driveway. It;s an easement on both these properties, 304 and 300.

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: Can you state for me, Mr. McCourt, I understand the topography is your statutory reason for seeking a variance. What is actually the locus owner's hardship here? What can't he do with the land. I mean I understand if it's vacant and you couldn't build it, but there's three units on it. What's the hardship?

Mr. McCourt: They might be entitled to build more if they seek permission from another board. (Mr. McCourt went over the plan again with the board.)

Mrs. Rando: But you're afraid the FAR isn't not going to - - -

Mr. McCourt: No, the FAR, we would have to go to the City Council. I think we can meet with the neighbors. I think we can show them - - -

Mrs. Rando: Are you saying that you are asking for a continuance?

Mr. McCourt: I am. I don't know if all of the board, and it's kind of a tough time of the year, if you'd come to look at it or not but I would ask for a continuance.

Ms. Gelineau: Can I ask you a couple of questions? Are these units that are proposed larger than the units that are there?

Mr. Zottola: The width of the units now are thirteen feet wide and the newer ones are twenty feet wide.

Ms. Gelineau: So each one is seven feet larger. And on this easement that you are talking about, the utility and access easement to access what utilities?

Mr. Zottola: That could be, I believe, it's gas. I'm not 100% sure of that.

Ms. Gelineau: But it's a utility easement to access your property?

Mrs. Lucchetti: No. I own it.

(Mrs. Rando polled the board to see how many of the members viewed the property.)

Mr. LaSane: Would you be willing to meet with the abutters to get a hearing of everything they have of issues?

Mr. McCourt: Absolutely.

Mr. LaSane: And produce, not only to them but to the board's satisfaction as well, the legal documents that outline what's there and what the plans are.

Mr. McCourt: Yes.

Mr. LaSane: That's the only question I have.

Mr. McCourt: I think that in this room it's hard to have an ongoing discussion with them. They do need to have an opportunity to talk about any issues that they have. Right here it's probably not the place to do it, but we need to talk, whatever the final outcome is.

Mrs. Rando: Then maybe we could, all the board members that are available, could meet when the surveyor is there, also.

Mr. McCourt: I'll have them put a couple of stakes in there in the next week.

Mrs. Rando: The meeting is closed. We will all meet, the ones that are available at 300 College Farm Road, How about January 13th for a meeting and if we could meet the Sunday before that on the 11th and meet with you and the surveyors so we could go over what you are saying. Are the board members available on Sunday the 11th at 10 A.M?

(The board members all agreed to meet on the 11th at 10 A.M.

Do I have a motion to continue Case No. 2014-29 to the 13th of January?

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to continue Case No. 2014-29 to January 13th.

Roll call: Mr. Sergi, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Hickernell, no, and Mrs. Rando, yes; The vote was 4-1.

We will see you on Tuesday night, January 13th here and we will see you on Sunday, January 11th at 10A.M. for a site view with the surveyor and with Attorney McCourt and board members that can make it and with Mr. Zottola and the neighbors.

Mr. McCourt: With your permission, we will call them and talk to them before then.

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to adjourn at 8:20 P.M.

Barbara Rando, chair
12/16/2014-1