

CITY OF WALTHAM  
ZONING BOARD OF APPEALS

December 16, 2014

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, December 16, 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 Glenna Gelineau, Mark Hickernell, Gordon LaSane, Marc Rudnick and John Sergi.

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

Mrs. Rando: Tonight we have one new case and four continued cases before us. Case 2013-06 Louis J. Antico and Anthony J. Antico, Prospect Hill Road and that is for a tower and that's for a continuance; Case 2014-24, Walter E. Ohnemus and Patricia Ohnemus, 32 Cowasset Lane; Case 2014-21, Pasquale Torcasio, 41 Williams Street and that is for a variance; Case 2014-LJB Moody Street, 7-9-11 Alder Street and 10 Myrtle Street, 550, and 650 Moody Street and 2014-30 Richard and Lorraine McCue, 86 Mayall Road, and that is for a variance.

The members sitting on the first two cases are: Mr. Sergi, Mr. Hickernell, Mr. Rudnick, Ms. Gelineau, and I am Barbara Rando, Chair.

The first case tonight would be 2013-06, Louis J. Antico and Anthony J. Antico. Could we hear from the petitioners or the petitioner's representative, please?

Attorney Edward T. Bigham, Jr., 564 Main Street, Waltham, the petitioner's representative came forward.

Mr. Bigham: I'm not sure, I wasn't here the last time because I have been ill, but I thought we had filed in time to get an extension and let me give you the reason for the extension.

When the board granted the original petition to move the tower from one place to another, as you all recall, there were guide wires that held that tower since 1962 and the anchors to those guide wires were on city owned property in history by way of an agreement between the city and the petitioners and it started in 1962, and it extended in 1968 and went to 70 to the present height of 292 feet. There wasn't any problem with the guide wires at that time. The anchors were put in the city owned property per agreement because the petitioners allowed the city to put their antennas for municipal services on the tower without charge. After we had come in before you, Mr. Antico and his people, including the parties that were going to build the tower, started some preliminary construction as to the location and you can well imagine this is kind of a large situation. And it wasn't until this year, after the winter had come and gone, that Mr. Antico was advised by the construction company that the guide wires in order to be more efficient and give more greater safety would have to be extended further into city owned property. I, at that point, talked to the powers to be in city hall including the mayor and some of the councillors and I was informed much to my chagrin that in order to move those and get permission a Federal Government approval had to be acquired; one of the State Agencies had to give their approval as well as the City of Waltham. And when I investigated to find out what agencies would give the permission, it was like a zoo. I couldn't get any place. I didn't know who to go to. I finally talked to the Department of Commerce and they weren't sure that they had any control over it. I talked to the FAA. In the meantime, of course, time goes on and we can't do anything more with the tower.

Subsequent to that, it was decided, and I don't know when, but it was decided that we were to seek a different approach to the whole thing, i.e., put a self supporting tower on the property but on the other side of the building which sounded to me to be a better solution because you eliminate the guide wires that infringe on some of the people's property that see it all the time and actually it would enhance the enjoyment of the surrounding properties that are

neighbors. The problem with that was that Mr. Antico after getting the cost of the new tower was double of what he was going to pay for the old one. So that delayed us some more. And we came in before the board, I wasn't here, unfortunately because I had been sick and we withdrew that because of a problem that was created not by Mr. Antico necessarily, but because of other extenuating circumstances and that problem has nothing to do with this board. It did prevent him from going any further.

So what I am trying to do really is protect the first tower as you can well imagine. I don't know if we'll ever build a tower because I'm not sure we can ever get permission from those agencies. And I thought I filed it on time. I was pretty sure I filed it in time and six months would be fine. If we can't do anything within six months then forget it. But I would ask you for a six month extension.

Mrs. Rando: Do I have a motion to allow Case 2013-06 an extension of time for six months?

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to grant a six month extension of time to June 4, 2015.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

On motion of Mrs. Rando, seconded by Mr. Sergi, the board voted to call for a three minute recess at 7:15 P.M.

The board reconvened at 7:20 P.M.

Mrs. Rando: Would the clerk please read Case No. 2014-24, The 32 Cowasset Lane Nominee Trust: Walter E. Ohnemus III and Patricia Jodi Ohnemus, Trustees?

The clerk then read the Petition of Walter E. Ohnemus, III and Jodi Ohnemus, Trustees of the 32 Cowasset Lane Nominee Trust in an application for variance-setbacks and lot area. The locus consists of a parcel of land known as Lot B a/k/a 48-Bef Cowasset Lane and a portion of 32 Cowasset Lane as shown on Plan filed herewith. The Petitioners are proposing to construct, use and maintain a new single family residence on the locus. The locus is presently a vacant parcel. Location and Zoning District: Lot B a/k/a 48-Bef Cowasset Lane and 32 Cowasset Lane; Residence A-2 Zoning District.

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

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

Joseph M. Connors, Jr., 404 Main Street, Waltham, Attorney representing the petitioners came forward.

Mr. Connors: You may recall we were here back on November 18, I believe. That was the first assigned date for the hearing and at the time I requested a continuance due to my client, a family member is not in good health and that remains the case, so I am asking tonight, and I am going to present a letter to the board, I am asking for permission for leave to withdraw without prejudice. So, a family member is just not well and he is out of state and he has been attending to that and he is just not in the right frame of mind to go forward. So I respectfully ask for leave to withdraw without prejudice.

Mrs. Rando: I have a request from Attorney Connors to allow Case 2014-24, Ohnemus, 32-34 Cowasset Lane to withdraw without prejudice. Do I have a motion?

On motion of Mr. LaSane, seconded by Ms. Gelineau, the board voted to allow Case No. 2014-24 leave to withdraw without prejudice.

Roll call: Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Hickernell, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

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

Mrs. Rando: Would the clerk please read the petition in Case No. 2013-10, 200 Moody Street, LLC. c/o the Nelson Companies, Ltd.

The clerk then read a request for an extension dated November 14, 2014 as follows:

“Dear Chairwoman Rando:

On behalf of 200 Moody Street, LLC c/o The Nelson Companies, Ltd (“200 Moody Street:), I respectfully request that the Waltham Zoning Board of Appeals (the “Board”) grant a six (6) month extension with respect tot he above-referenced zoning approval. As you will note, the Decision was filed with the Waltham City Clerk on June 30, 2013, and was set to expire June 20, 2014. Upon request, a six (6) month extension to December 20, 2014, was granted June 3, 2014. Due to financial constraints as well as the overall economy and in accordance with the Waltham Zoning Code and Section 10 of G.L.c40A, another six (6) month extension to June 20, 2015, is hereby respectfully requested. If you have any questions or need anything additional, please do not hesitate to telephone or email me. Thank you.

Very truly yours,

Bret J. Francis, Esq.”

Mrs. Rando: Attorney Francis, the extension is for?

Attorney Francis: Six months. The application for the building permit has been filed with the building department. I believe that was early to mid November. Here we are in December and a decision just hasn't been decided upon or granted, so in an overabundance of caution, we wanted to come and get a date prior to the expiration of six months.

Mrs. Rando: Do I have a motion to allow Case 2013-10 for a six month extension to June 20, 2015?

On motion of Mr. Sergi, seconded by Mr. LaSane the board voted to grant Case No. 2013-10 a six month extension to June 20, 2015.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mrs. Rando: It is granted.

Would the clerk please read the petition in Case No. 2014-21, Pasquale Torcasio?

The clerk then read the petition of Pasquale Torcasio an application for a variance for existing lot area to allow the construction and use of a commercial building on the property known as 41 Williams Street. Said building to be constructed on a legal non-conforming lot containing 6,932 square feet. The lot and proposed building meet all other requirements of the Zoning Ordinance. The existing non-conforming residential building shall be taken down and the new building will be used for commercial purposes, including storage of materials and parking of vehicles. Location and Zoning District: 41 Williams Street; Commercial Zoning District.

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

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

Mr. McCourt: Mr. Torcasio has reviewed not only the input of what occurred with the case but other options in relation to how he could address this manner and would like to ask for leave to withdraw without prejudice at this time. I provided a letter to you.

Mrs. Rando: I am ready to entertain a motion to allow Case 2014-21 leave to withdraw without prejudice.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to allow Case 2014-21 leave to withdraw without prejudice.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mrs. Rando: Would the clerk please read the petition in Case No. 2014-30?

The clerk then read Case No. 2014-30, Petition of Richard and Lorraine McCue in an application for variances - Corner Lot Side Yard and Side Yard, to allow the construction and maintenance of a proposed one-store addition to the rear of an existing single-family dwelling. The addition will have dimensions of 12 feet by 16 feet. Location and Zoning District: 86 Mayall Road; Residence A-4 Zone.

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

Richard F. Dacey, Attorney, 707 Main Street, Waltham came forward.

Mr. Dacey: I am representing Richard and Lorraine McCue. Richard and Lorraine are seated in the audience tonight.

Mr. Dacey then read his brief into the record and went over his exhibits with the board.

Mr. Dacey: I will be pleased to answer any questions that you may have.

Mrs. Rando: Does the board have any questions of Attorney Dacey at this time?

Mr. Hickernell: Mr. Dacey, do you have to amend the 1981 decision?

Mr. Dacey: I don't think so. We are not touching that section of the house. I had considered other options here, but the building inspector seemed to think that once the property has been made the subject of a variance, the fact that it's nonconforming doesn't help much. So after discussing this with the building inspector the strategy was, leave the 1981 variance which exists and continues to address that corner of the house which is the addition on the right hand side and get new variances for the new construction. I don't think the variances are inconsistent.

Mr. Hickernell: No, I don't think they are either but one of the conditions of the 1981 decision is that the property be used and maintained in accordance with the plans submitted at that time which would obviously have to be the case if this is built.

Mr. Dacey: Well, that's an interesting theory. Maybe we can condition this variance to that affect that the 1981 variance is ratified except to the extent of the lot which hasn't changed and the house which was built, so, obviously the lot is different than it was when the variance was filed. We have now built the addition and the addition was built in accordance with the



variance which is helpful. That's a fair comment. I think the way I would address it is that it be added into the decision.

Mrs. Rando: Is lot coverage an issue here?

Mr. Dacey: No it's not. According to the plan the engineer has determined that it is adequate. That is the note that appears on the plan. We are at twenty percent.

Mrs. Rando: Is there anyone in the audience that is in opposition? Seeing none. Is there anyone seeking information? Seeing none. Is there anyone in favor of this petition? (Two people raised their hand in favor.)

You may continue with your Proposed Findings of Fact.

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

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

On motion of Mr. Sergi, seconded by Ms. Gelineau, 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.

Mr. Dacey: I am just wondering where I would put Mr. Hickernell's comment.

Mr. Hickernell: I have a suggestion. At the bottom of page two, it should go in the last space before the conditions, because it is not really a condition. I would have you add Amendment to Case 81-24, I would suggest that this might work: "The decision in Case 81-24 is amended to the extent necessary to conform to this decision."

Mr. Dacey: I am very comfortable with that. I think it's an excellent suggestion.

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

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted that the Proposed Findings of Fact becomes the Board's Findings of Fact.

Roll call: 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, as amended.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted that the Proposed Decision, as amended, becomes the Board's Decision.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Ms. Gelineau the board voted to adjourn at 8 P.M.

*Barbara Rando 1/13/15*