

CITY OF WALTHAM
ZONING BOARD OF APPEALS

July 29, 2014

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 29, 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, and John Sergi.

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

Mrs. Rando: Tonight we have two new cases before us: Case 2014-14, Andrew and Kara Kunkler-Peck, 154 Hardy Pond Road and Case 2014-15, BP 99 Third Avenue, LLC, c/o Boston Properties, 99 Third Avenue.

The first action this evening is for a motion to accept the minutes of July 22, 2014.

On motion of Mr. Sergi, seconded by Mr LaSane, the board voted to accept the minutes of July22, 2014.

Mrs. Rando: Will the clerk please read the petition in Case 2014-14, 154 Hardy Pond Road?

The clerk then read Case No. 2014-14, Andrew and Kara Kunkler-Peck in an application for a variance to add a second story to their home. Location and Zoning District: 154 Hardy Pond Road, Residence A-4 Zoning District.

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

Andrew Kunkler- Peck, 154 Hardy Pond Road, Waltham came forward.

(Mr. Kunkler-Peck then read his brief into the record.)

Mrs. Rando: And you are right up to the water?

Mr. Kunkler-Peck: We are. We have water in the back so we can't build off the back. We can't built out front, so we are really kind of restricted in what we can do. We've got neighbors who have also added second stories and everybody else in the neighborhood are getting two story houses, so we are trying to meet the level of this.

Mrs. Rando: And that's a 100 foot setback?

Mr. Kunkler-Peck: Yes, it is.

Mrs. Rando: Do you want to go over the Desirable Relief portion in your brief briefly.

(Mr. Kunkler-Peck did so.)

Mr. Kunkler-Peck: We don't have any people directly across the street from us, so there's no blockage of views. I think it actually makes the neighborhood look a little bit more consistent.

Mr. Sergi: I took a site view today. You are absolutely correct.

Mrs. Rando: A lot of those lots, I mean they have to go up, they can't go back.

Mr. Kunkler-Peck: We love the neighborhood. It's a great neighborhood. It's really quiet. We love the neighbors.

Mrs. Rando: Does anyone have any questions from the carpenter?

Mr. Sergi: Is it going to be stick built?

John Canty, 61 Mechanic Street, Marlborough, Ma: The setback is only an issue on the front corner of the house. The rest of the house actually meets setbacks. So we have space everywhere else.

Mrs. Rando: So you need the one.

Mr. Canty: Yes. It's just the front corner just because of the shape of the lot. It gets wider as it goes further back. So the back yard is fine.

Mr. Sergi: I was just wondering if it would be stick built so it will conform to the neighborhood.

Mr. Canty: Yes. It's actually going to match 90% of the footprint of the house.

Mrs. Rando: And how do the neighbors feel about it, the direct abutters?

Rick Carr, 150 Hardy Pond Road: We live next door. It's fine. We are in agreement. He can put up whatever.

Paul Maillet, 160 Hardy Pond Road: I live two houses down. I have no complaints whatsoever.

Mr. Rando: Is there anyone in this audience that is in favor of this petition?

(Eight people raised their hands in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none, is there anyone seeking information? Seeing none, you can continue with your Proposed Findings of Fact.

Mr. Sergi: Madam Chair, I will make a motion that we waive the reading of the Proposed Findings of Fact since its been on file and we have had a chance to review it.

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

Mrs. Rando: And the Proposed Decision?

Mr. Sergi: In a similar fashion, Madam Chair, I will make a motion that waive the reading of the Proposed Decision since its been on file and we have had a chance to review it.

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

Mrs. Rando: All right, since there are no more questions, additions or changes, I am ready to entertain a motion on the Proposed Findings of Fact.

Mr. Hickernell: Madam Chair, I will make a motion that the board adopt the Proposed Findings of Fact as its Findings of Fact.

Mr. Sergi seconded the motion and 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.

Mr. Hickernell: Same motion, Madam Chair. I will make a motion that the board adopt the Proposed Decision as its Decision.

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

Mrs. Rando: The case is granted. Good luck.

Will the clerk please read the petition in Case No. 2014-15?

The clerk then read the petition of BP 99 Third Avenue, LLC, c/o Boston Properties in an application for sign variances. The Petitioners seeks six sign variances for the 99 Third Avenue property pursuant to Article VI, Section 6.51, 6.52, 6.622 and 6.63 (c) of the Zoning code. Location and Zoning District: 99 Third Avenue, Commercial Zoning District.

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: I am here tonight representing the Petitioners, Boston Properties and here tonight is James Ward from Nutter McClennen & Fish who prepared all this documentation, and Guiliana Di Mambro who is from Boston Properties and who is really the Project Manager who has done a lot of work and actually helped to devise the building that they hope to build, and also Jeffrey Gannon who is from the sign company who can answer and will explain the signs.

(Mr. McCourt submitted a copy of his brief to each member and then read his brief into the record. He then introduced Guiliana Di Mambro to the board.)

Ms. Di Mambro came forward and went over a quick overview of the building and how it sits and also went over the overall diagram showing the signs. She displayed a plan of the locus on the board. She went over each sign separately with the board and their locations.)

Ms. Di Mambro: I realize that was a lot. If you have any questions, I will be happy to answer them.

Mrs. Rando: Are there any questions?

Mr. Sergi: I had a question on the signage. As you come down the road can you see the sign from the top of the hill?

Ms. Di Mambro: Actually the warehouse that is there is currently being demolished and the new building will actually be built up quite a bit higher because it will have a level of parking underneath. So as you are coming down, the intent is that you will be able to see the top of the building. It won't be like it currently is where it's literally down in a hole. We'll be kind of raising the entire ground floor up close to the grade.

Mr. Sergi: How high are you raising the first floor?

Jeff Gannon, PCA, 221 Hampshire Street, Cambridge, MA:

Currently within the site as well, we will be filling in to bring the entry off of Third Ave, just a couple of feet below Third Ave. There will be a parking garage underneath that as you go around the site, drive in the parking lot, you will end up about twenty feet lower.

Mr. Sergi: Will you see the signs?

Ms. Di Mambro: Yes, so the intent is that from Third Ave you will see all of the signs on Third Ave and the ground sign on Third Ave as you're coming down or as you are coming up or as you are coming from Fourth Ave and then the intent is that you would see these other signs and the other ground sign from the highway.

Mr. Sergi: So you clearly have the visibility of the signs. So you mentioned that on the other signs there that you are not going to be putting any other lettering underneath so this space will be left.

Ms. Di Mambro: That's our intention.

Mr. Sergi: Okay, so we can state that.

Ms. Di Mambro: I mean if we put the address down there. (Ms. Di Mambro went over the plan with the board.) We just want to maintain the flexibility of either CityPoint or you know we name the building something.

Mr. Sergi: As you go through the city, there's a lot of signs that don't kind of like work together. Have you guys put any thought of having the signs work together with the other signs?

(Ms. Di Mambro went over the description of what the signs would look like.)

Ms. Di Mambro: There's a thought that we may, given that those are all office buildings and this is more of a restaurant and retail place, we might want it to be a little different and have a little more flair. But I think certainly everything will be well coordinated, high quality, and it will look like it fits in with the building.

Mr. Sergi: That's important, because if you go down to Moody Street, there's all sorts of different signs and we don't want that up in this area. I mean they have to all conform.

Ms. Di Mambro: Yes, absolutely. And that's certainly the intent.

Mrs. Rando: Any questions, Mr. Hickernell?

Mr. Hickernell: I have no questions. I have three additional Proposed Findings of Fact when we are ready for that.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: Mr. LaSane?

Mr. LaSane: What is Posto's line of business? What do they do?

Ms. Di Mambro: It's an Italian Restaurant. They actually have one in Davis Square. It's sort of a higher end, chef driven concept. Very creative. Definitely recommend it.

Mrs. Rando: Could you tell me, are these chains?

Ms. Di Mambro: Bonfish Grill is a chain. Posto, as I mentioned, there is one in Davis Square but it's a chef driven concept, trying to grow, but it's definitely not a chain.

Mrs. Rando: Where is the closest Bonfish?

Mr. Ward, Nutter, 155 Seaport Boulevard, Boston: Burlington: I went there with my son and we had an appetizer, two drinks and dinner. It was probably in the vicinity of \$50. It's a good quality at a good price.

Mrs. Rando: Could you tell me will these signs be lighted?

Ms. Di Mambro: Yes, I think that is the intention. It will be according to code.

Mrs. Rando: Do the other buildings that have frontage facing on Route 128, do they have signage that same size?

Jeff Gannon: We can't get up to MGH and measure, so it's more of a proportional study. But for instance, MGH which is right across 128 from our site has what it looks like two 60 sq. ft. area signs, and also Embassy Suites also has two signs, the same size. They are about 130 each. Uno's which is down the highway a bit is a little bit smaller. I think in proportion with the restaurant. It's like 30 square ft. each. They are all proportional to the buildings. But, I am going say ours are exactly the same especially because our signs on the

front side facing Third Ave are much smaller than the 128 for the obvious reasons for the speed of traffic on the highway.

Mrs. Rando: And your hardship is that potential customers will be able to access safely? That's your hardship.

Ms. Di Mambro: Yes.

Mrs. Rando: One other big, big problem is that you do have abutters. You have abutters within the 300 foot radius. Now, how are the signs going to affect the abutters?

Ms. Di Mambro: I don't think they will at all. We are the abutters across the street. We have a very good relationship with our neighbors at 75 Third. We have been going through the plans with them.

Mrs. Rando: Are there any homeowners within the 300 sq. ft.?

Ms. DiMambro: No. It's all businesses.

Mr. McCourt: I would have to say the closest residence would be more than a thousand feet away and that would be condos on Winter Street. There's nothing in this area.

Mrs. Rando: Tell me, will you be in front of us for any other variances, parking or any other signs or frontage?

Mr. McCourt: We've already been before the Conservation Commission for a Notice of Determination because in theory its within 200 feet of the Reservoir, but it's determined that since it's on this side and already has a drainage that we didn't have to go.

But noted in the Findings of Fact is that fact that we got that. And then we needed to go to the Planning Board because they had to reconfigure the curb cuts and they are doing some sidewalk work in the area and everything, but the planning board has already authorized this curb cut here (referring to the to the plan). So in this place, the only sign currently contemplated that would change from what's on the plan is the tenant whoever happens to be there.

Mrs. Rando: Are there any other questions?

Is there anyone in the audience in favor of this petition?

(Five people raised their hand in favor.) Is there anyone seeking information? Seeing none, is there anyone in opposition? Seeing none, you may continue with your Proposed Findings of Fact.)

Mr. Sergi: Madam Chair, I propose that we waive the reading of the Proposed Findings of Fact since they have been on file.

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

Mr. Sergi: I will make a motion that we waive the reading of the Proposed Decision. I have a question about the landscaping. Can you talk a little bit about that?

Ms. Di Mambro: We have a fairly comprehensive landscaping plan. We will be having all the required number of trees but we are planning a lot of different varieties so that in the summer, spring and fall there will be some color. There will be some lawn. It will be comparable to any of our other properties.

Mr. Gannon: There was a landscaping plan submitted with our building this week and that's readily available. We are required to have very hardy plants so they won't die over a winter or two.

Mrs. Rando: I have a motion from Mr. Sergi to waive the reading of the Proposed Decision.

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

Mr. Hickernell: Madam Chair, I have three additional Findings of Fact to add the Proposed Findings of Fact:

15. The topography of the lot, including its low grade relative to adjoining public ways, makes more and larger signs necessary.

16. The proposed signs are in keeping with those existing on other lots in the commercial district.

17. Greater visibility for the signs will serve the interests of public safety.

Mrs. Rando: All right. Do I have a motion on the Proposed Findings of Fact, as amended?

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to adopt the Proposed Findings of Fact, as amended.

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

Mr. Sergi: I will make a similar motion that the Proposed Decision becomes the Board's decision. Mr. Hickernell seconded the motion.

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

Mrs. Rando: It is granted. Good luck.

There being no further business, on motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to adjourn at 7:55 P.M.

Barbara Rando, chair