

CITY OF WALTHAM
ZONING BOARD OF APPEALS
May 20, 2014

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, May 20, 2014, in the Auditorium 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 Edward McCarthy and John Sergi.

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

Mrs. Rando: Tonight we have two continued cases and one extension of time case before us. Case 2013-28, 232 Realty LLC, Ideal Concrete Block, 232 Lexington Street and that is for a Special Permit. We have Case 2014-05, LJB, LLC, 7-9 Alder Street, 7-9R Alder Street; 11 Alder Street; 550,560 and 570 Moody Street; and 10 Myrtle Street. And we have Case 2013-06, Anthony and Louis Antico, the Tower on Prospect Hill Road, and that is for an extension of time.

The first action this evening is for a motion to accept the minutes of May 6, 2014.

On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to accept the minutes of May 6, 2014.

Would the clerk please read the petition in Case 2013-06, Anthony and Louis Antico.

The clerk then read the petition of Anthony J. and Louis J. Antico for a Special Permit to alter or expand a nonconforming structure located on Prospect Hill Road.

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

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

Edward T. Bigham, Jr., Attorney, 564 Main Street, Waltham, representing the Petitioners, Anthony J. and Louis J. Antico came forward.

Mr. Bigham: The reason for my request made back to this board on May 7th was that due to the extreme conditions during the winter, we were unable to get started with the construction of the tower in the time required. So I am asking for an extension of six months from June 14th so that we may be able to start probably in the latter part of July or the first of August and it will be finished before the six months is up.

Mrs. Rando: So you are asking for six months from June or from August?

Mr. Bigham: I think we would be smart if we took it from June 14th, the date of the decision. I think if you extend it from August, I am not sure it is consistent with the decision of the board.

Mrs. Rando: That would be December 14th Attorney Bigham, six months?

Mr. Bigham: Six months would be fine.

Mrs. Rando: Are there any questions from board members? Hearing none, I am ready for a motion to grant the extension of time to December 14, 2014.

On motion of Mr. McCarthy, seconded by Mr. LaSane, the board voted to grant an extension of time in Case No.2013-06, Anthony J. and Louis J. Antico to December 14, 2014.

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

Mrs. Rando: The members sitting on the second case, Case No. 2013-28 will be Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Mr. LaSane and I am Barbara Rando, Chair.

Would the clerk please read the petition in Case No. 2013-28?

The clerk then read Case No. 2013-28 232 LLC in an application to change to similar use and appeal from decision of the building inspector to utilize residentially zoned land that has been used by the City of Waltham as a gravel bank and storage area to be utilized as an area for storage of construction supplies and building materials associated with the Ideal Block business operated on the adjacent property at 232 Lexington Street as a similar use of not as restricted character. Location and Zoning District, 17 AFT Varnum Park, Residence A-3 Zoning District.

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

Richard F. Dacey, III, 707 Main Street, Waltham representing the petitioners LBJ LLC came forward.

Mr. Dacey: I have with me this evening John Burgoyne, his son, also named John, his brother Joseph and Brian from the engineering firm. If there are any engineering questions we have an engineer to answer them.

I see Councilor Romard is here.

If I might just summarize where I think we are. I believe we did a very thorough job of allowing testimony on factual information at the last hearing of this board and then the matter was adjourned to allow us to meet with Councilor Romard and the neighbors to see what we could do about working some accommodations. And I am willing to report to you that

Councilor Romard made a concerted effort to meet with the neighbors. He called a meeting, I believe it was at the Prospect Hill area and I went over it in some considerable detail the proposals that we had made and the plans that we had submitted and then was kind enough to write a fairly detailed memorandum back to me concerning the suggestions and comments that the neighbors had. We in turn studied the comments, talked with our engineer, talked with the principals and produced a plan which is designed to incorporate many of the suggestions that came out of that neighborhood meeting. The plan is here. I have for your consideration this evening 11 x 17 versions and I also have larger versions which I can put on the table if this is an appropriate time for me to do that.

(Mr. Dacey placed two plans before board members.)

Also in the packet that I handed you is a revised Proposed Decision and I should mention that I have given a copy of this Proposed Decision and the Plan, at least the 11 x 17 size, to Councilor Romard and to Mr. Anderson who I saw here earlier tonight. If there is anyone else who is an interested party we can share them with you.

Mrs. Rando: Is there anyone interested in receiving a plan?

(Four people came forward.)

Mrs. Rando: Do you have the Findings of Fact also?

Mr. Dacey: Yes, the Findings of Fact are at Tab 2 in my book. Those haven't changed.

This petition has something of an unusual flavor to it because the action in front of you tonight, or the petition that brings us all here, stems on the decision on the part of the building inspector who issued a cease and desist order and we appealed that order. We disagree with the building inspector who seems somewhat critical about the nonconforming status of the property. So that we appealed his decision and that is where it is before you.

It is a threshold matter. We need to determine what the use was and what it is and if it is in fact the same use modified by some permissible expansions under the Powers Test then the appeal from the decision of the building inspector should be granted and his decision should be reversed and the nonconforming status of the property should be confirmed.

While I think there was a number of people in the audience who have had a willingness to acknowledge that the use of the so called 17 AFT Varnum Park, and that's the 69,000 square foot vacant parcel behind the True Value Hardware Store has been used for concrete block and building material storage for quite some time.

The concern was, how do we police this? How do we enforce this? If are verbal representations made, how do we make sure that whatever is said at a public hearing isn't lost and three weeks after the fact, there's no public record.

So that one of the attempts by Councilor Romard was to say, look, whatever you are willing to do, please be willing to put in writing and please be willing to put on a plan and please be willing to accept that whatever you agree to will be enforced by the building inspector. So don't say something that you don't mean. And I think that's a fair comment and I think that in the interest of being accommodating neighbors, that is precisely what is in front of you tonight. You might well say, look, the decision of the building inspector is kind of like a light switch. It's either on the on position or its in the off position. You either sustain his decision or you overturn his decision. And I think that's probably accurate from a legal standpoint. It just doesn't do much for the neighbors to offer them any security or and comfort that whatever is decided here tonight regarding permanency. So, I had decided the way to address this problem is to reduce the proposal to writing and then essentially incorporate the agreements on a plan and then restate them verbally in a Proposed Decision and incorporate them that way as written, predictable and enforceable conditions that would apply on the property.

If this were a special permit, you could easily condition it. If it's an appeal from the decision of the building inspector, I think this is somewhat more problematic that conditions can be applied to that kind of a decision. I have chosen to characterize them, therefore, in a slightly different manner but I think we get to the same point and that is that these are mitigation measures that the petitioner is voluntarily willing to accept as restrictions on his decision, if you will.

So, in summary, it starts at the top of the plan (Mr. Dacey went over the plan with the board.)

He then read some of the sixteen (16) mitigation items that were listed on the Proposed Decision and also on the plan dated May 15, 2014, "Site Plan #17 AFT VARNUM PARK, Waltham, MA."

So those are the visual representations that are on the plan and then there were a number of other suggestions that were made about restrictions or things that they would like to see done differently on the site and most of them are acceptable to the petitioner and are therefore incorporated in this Proposed Decision which I would hope that we will eventually get to tonight.

The concern was, what about this residential piece here (referring to the plan)? It's on the other side of Varnum Park, so it will be on the other side of the wall. It will be on the other side of the cement wall, it will be on the other side of the eight foot stockade fence. But, nevertheless, it's in the same ownership and there was some concern that there was some plan on the part of the petitioner to, at some point in the future, annex that property to the business. The answer is, there is no plan. And under our current petition involving nonconforming use, this particular piece of property which we show as Lot 2, was never formed by the city. It was never a part of the nonconforming property so that it does not have the benefit of the nonconforming history. It's always been residential. The Burgoyne's bought it in the late 60's. But

nevertheless, if the concern is by the neighbors that somehow or another this represents a possible expansion site then the conditions in the decision remove that possibility.

I understand verbal assurances don't count for much, but I think putting it on the plan that this is a residential lot and it's not part of the petition and then putting it in the decision to the effect that it can't be used for commercial purposes, it is adequate assurance that that is the future of that property. That property when it is developed, it will be developed for residential purposes.

Mr. Dacey then read the remainder of the sixteen items listed on the Proposed Decision.

So, that in a very quick summary form is a result of the dialogue that has taken place with the neighbors and we have met with a representative sampling of them as late as Sunday afternoon of this week; went through the plans; walked the sites and identified the areas and made a few refinements between Sunday and today. So, what you are seeing here on the plan is a result of some very hard and much appreciated work by Councilor Romard and also a result of some more direct discussions which took place between the Burgoyne's and the neighbors last Sunday.

If you have any questions on any of that, I would be pleased to try and answer it or if you would rather direct your questions to one of the representatives of the business, we can do that too. If the questions are engineering oriented we have Brian here from the engineering firm.

Mrs. Rando: I have a couple of questions. It seems like you have done a lot of work since we met last. But, is there an entrance on Dale Street that goes into the property, also? You said there was only one entrance.

Mr. Dacey: There is a right of way down here (referring to the plan). But it's not available to Ideal. It's not actually available to the True Value Hardware. It's really a private right of way but is shared with Mr. Thompson.

Mrs. Rando: Also, that residential lot, if you came before us you would have to go for a zone change anyway if you wanted to make it legal.

Mr. Dacey: Absolutely. Those of us who do this kind of work know how difficult it is. You need a theory to convert a residential property to a business use and the only two theories that have any viability at all, are either you need to change the zone or you need to establish that the property has a business history and establish it as a nonconforming property.

Mrs. Rando: And it's not before us tonight.

Mr. Dacey: No. Well, in our situation, there is no appetite for a zone change on a 25,000 sq. Ft. parcel that is separated from the main business portion by an eight foot fence, a stone wall and a right of way and there is no history of nonconforming use on that property that would sustain any kind of a petition to this board.

Mrs. Rando: That would be Councilor Romard's headache not mine.

Mr. Dacey: It's a concern. I can't say that it's not a concern because the property does appear to be in the same ownership but it has a very different history and it's subject to a very different use.

Mrs. Rando: Do you have any questions, Mr. Sergi?

Mr. Sergi: No, I would like to second Madam Chair's observation. I think there has been a lot of work done here by a lot of different parties and I want to commend all who got together here and put this plan together. It seems like its well thought out.

Mr. Dacey: I can't say that the plan is unanimously acceptable to all parties. People left Sunday saying, we'll think about it. I am sure there are still comments. We don't expect unanimous approval. I would settle for an acknowledgement that the petitioners have made a sincere effort to address the legitimate concerns of the neighborhood.

Mr. Sergi: Counselor, I simply made an observation that I think there was a lot of work here done, so that's all I meant to say.

Mr. Dacey: It remains to be seen what the reaction to the plan is in a public forum. I can't predict it. I don't know.

But I don't want to represent that I am representing a plan that is unanimously endorsed by the neighbors. I don't believe it is. I would like to think that they would give this serious consideration and recognize it for the step forward that it is. I mean, this property has existed since 1953 without any control. This is a significant step in the right direction if the neighbors are concerned about gaining some oversight on what does happen to the property on an ongoing basis.

Mrs. Rando: Mr. Hickernell, any questions at this time?

Mr. Hickernell: No questions.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: Mr. LaSane?

Mr. LaSane: No.

Mrs. Rando: All right. Hearing none, I think we will let the other half come up.

Is there anyone in opposition to this proposal that would like to speak.

Mr. Romard: Thank you Madam Chair and the board. My name is Councilor Dan Romard. I live at 91 Dale Street. I am not an attorney. I am not here in full representation of some of the

neighbors although there were some neighbors that couldn't be here tonight and so I said that I would come and represent a couple of their concerns.

In terms of the process, I do want to state my sincere thanks to Attorney Dacey and the petitioners. We have had a lot of work done. We have made a whole lot of progress in this. I think from my standpoint and again I cannot speak for all of the neighbors but we are on our way to what appears to be a nice concession.

However, I am a little concerned and I come here in opposition just from the standpoint from where we are right now. We did receive the Proposed Decision just a little while ago. It was emailed to me earlier today but I didn't have a chance to check my emails. So my major concern with this, and I will speak, as I said, for myself as well as for some of the neighbors is the issues around this not being a special permit. I don't understand and have not had a chance to look at the results of that and so maybe I will ask the board here if it's easy enough to do in a few words or less: Is there any benefit to the neighbors, or to the zoning board, or to the city to having this not be a special permit? I can assume that there's probably benefit to the petitioners, but what benefit would there be to anybody else if this were not a special permit? I don't understand that and, again, I haven't had a chance to look that up.

Mrs. Rando: Attorney Dacey, what is the benefit of the Special Permit for the neighbors?

Mr. Dacey: If I might, Madam Chairperson and members of the board, I think really it's an alternative strategy. I don't think it's a benefit or a loss either way. I think it's one of these situations where both remedies are available to a petitioner to appeal the decision of the building inspector because he thinks the decision was incorrect. Or, if they agree with the decision of the building inspector and say, okay, we go through a special permit. In this instance, the petitioner chose to say, I think Mr. Building Inspector and, respectfully, you miscalculated here. We think this really is a nonconforming property and that we meet the criteria to establish it as a nonconforming property. Now, in the interest of administrative efficiency, I added the business of the special permit just to, if it turned out that you disagreed with that, that we would be here and we could move forward with a special permit. But as I said in the beginning of my presentation, the appeal of the decision of the building inspector is a threshold matter. If he is wrong and we are right and we overturn his decision, then we don't need a special permit. The question was, if we do the appeal of the decision of the building inspector, I think it was Mr. Hickernell who said, fine, I see where you are going with this but what do you do for the neighbors in an appeal from the building inspector. It really is like a light switch. It's either on or off. So, the question is, what can we do to assure the neighbors that we are not simply making this up and that's why we did this.

Mrs. Rando: But conditions can be placed on both.

Mr. Dacey: Yes. I would call them different. Its six or one a half a dozen of the other at the end of the day, in my opinion. You would call them conditions in a special permit. You would call them an owner's voluntary agreement to make certain concessions here under the appeal of the decision of the building inspector. It's a separate procedure. They are separate and distinct.

How about this? They are both appeasable to the land court if that's where we want to go.

Councilor Romard: I do follow it a little bit. I am more familiar with the special permit piece of it. And that's the sort of guise that we were working on all along. So, the fact that it's not a special permit, again I'd just like the opportunity, if the board was going to go with that way, not a special permit, to give myself and the neighbors the chance to look that up. If in fact, what we heard, there's really no difference then I would lean on the side of let's have a special permit in terms of, again, the conditions that are there. It will give the neighbors, if for some reason and I don't expect this to happen, but if for some reason things aren't followed through, it will give the neighbors something to hold on to and look to as well, I guess I will put on my councilor hat now, I am worried about some precedent this might set for anywhere else in the ward or in the city. I think in terms of the lot here for the most part it is non conforming, It's been nonconforming, but we do have an absolute residential zone there that in my mind if it's not going to be used for that purpose then again setting a precedence, I'd like to see a special permit.

Mrs. Rando: First of all let me tell you that we look at each case individually and we look at the merits of the case so that no two cases are the same. Where this one was used by the city has some influence on the case. Every case is different.

Mr. Romard: And I will leave that to the guidance of the board in whatever you folks feel is best. So, in terms of where we are and, again, the special conditions, I would hope that what was provided tonight is not the final conditions that will be part of this decision only in that there are several issues missing from this just from my quick perusal tonight. And for the benefit of Attorney Dacey and the Petitioners, a couple of things that are different from my understanding at least when we left on Sunday, and that was to our benefit, it looks like on number 8 there will be sixteen trees instead of twelve. But the type of trees there are not detailed so on any decision that we see here or any final conditions, I would like to make sure we detail the trees.

In terms of the time and the noise ordinance, I do understand the petitioners request to conform with the noise ordinance that is in the city and that is up to 7 am, or maybe its 8. I'm just not sure, again, not having much time to look at this, would a truck backing up with that beep, beep, beep, be considered something that the neighbors might have recourse for against the noise ordinance. So on Saturday morning at 7:10 if the neighbors are trying to sleep and trucks are coming in there with that beep, beep, beep, is that something, I don't know if they would have to call the police and say the beeping is

bothering me, its in our ordinance. So, I would just once again ask that the board look at that and I think the neighbors would be happy with just that 8 o'clock start on Saturdays and Sundays on the weekends.

The proposed decision here doesn't mention a major concern from the Richardson property around erosion. Now we spoke about that on Sunday. I think some work has been done; some decisions have been made and again the petitioners have been fairly up front about working to do something about that but no decision has been presented to the Richardson family regarding the erosion on their property nor is anything detailed in this Proposed Decision. So, if we can get that detail and commitment as to exactly what's going to happen there and how that's going to be fixed, that would be great.

I would just mention one issue that I saw as a concern and I want to bring it up to the board here, although the neighbors didn't have too, too much concern about this and that really is this spot out here (referring to the plan) this private property. The petitioners are proposing a stockade fence right along here (referring to the plan) which I think from the standpoint of the neighbors and concerns of putting what now appears to be sixteen trees versus twelve which is great, my concern as a Councilor is that if we put a full stockade fence there, this property would be totally contained and should something happen, a fire or kids get in there or whatever, it didn't appear to me to be any access by the fire department. So even if we were to put a gate here which would be great, the problem is still the fire department let's say on a weekend

might have an issue trying to get in there anyway. I just wanted to bring that up to the board. It's a slight concern. Nobody else really had too, too much concern about it. But I just felt that was an area, I wasn't sure how the fire police would get in there if they had to.

Another item was snow storage. We had talked about some of the issues. There's draining issues on the property and I think where we left on Sunday, there was talk of snow storage being right in this area where the mulch is, on seasonal when the mulch goes away they could use it for snow storage. Once again, it's just not detailed, I'd like to see that.

There was issues around the chain link fence. A good part of the property around the Thompson's and some of the Richardson's property, I believe as well, that originally the original plan called for stockade fencing all around that area. What's there today is chain link and so in working with the neighbors, and again I think I don't want to speak for Mr. Thompson, so if I am saying anything different where he may come up here, but again talk on Sunday was that that entire perimeter of the chain link fence around his property and some of the others would be covered with slats, and that is not in the Proposed Decision.

One other piece I would just mention from again, some of the neighbors who couldn't be here and brought this up. It was really a concession that we talked about that they were concerned about and we put in communication to Attorney Dacey and the petitioners, but again hasn't been looked at and that is

around the paving of Varnum Park. Again, it doesn't have too, too much around the actual lot here but in terms of that the neighbors wanted to just make note that that might be something the petitioners would consider given that Varnum Park is a private way. They own most of it in terms of the two lots. If it were to be paved or if the neighbors wanted it to be paved the frontage that the petitioners own is probably fifty or maybe a greater percentage and they thought that maybe the petitioners would consider paving it. I just wanted to mention that.

So that's why I am here in opposition of where we are today just because some of those concerns are not in this Proposed Decision and then I ask that the board consider those things that we had talked about. I'm not quite sure of the process, but I wanted to be sure that those things got into the Proposed Decision and those concessions, if, in fact, that's the way we decide to go. Thank you.

Mr. LaSane: Councillor, first now, you are part of the process. In that you are part of the process, is it accurate to describe your position as being in opposition? If you are stating other things that you would like to see - - - Are you in opposition to the process, or

Mr. Romard: I am in opposition to it not being a special permit only because, like I said, that is fairly new to me and I am not sure of the impact of that. If the board says there's no impact to it, then I will defer to the board and your expertise in that.

I am in opposition to this Proposed Decision because of the items that I think that are missing.

Mr. LaSane: So, but you've come up with set of other conditions. So I'm not really sure of what you are in opposition to.

Mr. Romard: I would say it's probably to the process. I want to make sure and go on absolute record that as I mentioned at the start, Attorney Dacey and the petitioners have been very forthcoming in working to work through this and have made a lot of progress.

Mr. LaSane: So you are seeing this as a very good, not a starting process at this process, but a good milestone to the process and the dialogue should be ongoing.

Mr. Romard: Yes, we have made great progress but we are just not there yet.

Mr. LaSane: Because opposition says to me, we're shutting down. And I don't think that's where you are.

Mr. Romard: No. I am in opposition to the Proposed Decision that they failed to complete. And that piece there, this Proposed Decision includes foregoing special permit. So that's what I would say. I am in opposition of this Proposed Decision.

Mrs. Rando: Are there any questions?

Ms. Gelineau: I don't really have any questions, but my thought is if we appeal the decision of the building inspector and we affirm and say that this is nonconforming and they are entitled to use it as they have been using since 1953, that's our job here tonight. I think they have been more than generous with their proposal. I mean, I don't really think we have the right to keep, asking, asking, asking, asking. I'm saying that our job is to decide whether we overturn the decision of the building inspector, that's it! However, they have come a thousand percent above that. And I just want to say, I feel that that's an awful lot, that that's incredibly generous and they don't have to. So in terms of give and take, I feel there's a lot of give and we just keep piling on them when it's really not right or fair to request all this. That's just my opinion.

Mr. Romard: Okay. And I understand that. And to that point again I want to be clear that we have made progress. It's just some of the things we talked about and I thought were all agreed upon are not in the Proposed Decision that we were handed to tonight.

Mrs. Rando: Is there anyone else in opposition?

Daniel Chernoble, 69 Dale Street, Waltham: The reason that I am standing in opposition is that I would really encourage this board not to make any decision until all the details have been worked out between the petitioner and the neighbors. You might ask why? I heard at a previous hearing several of you folks sitting on the board said why now? Why are you objecting

now? Which led me to believe your metric, your gold standard, to know that there's a problem just to have people object. To have people complain. This is not something that we wish to hear on a daily basis but we do wish to make it clear, at least I can only speak for myself in my heart of hearts, I would just as soon see that the board deny the petition and not allow the petitioner to increase use of the property because it does affect the quality of life, property value and just the ability to enjoy some peace and quiet when you get home. That has not been addressed with all the other things that have been discussed.

I propose something very common sense, very easy to accommodate and its been totally ignored. Turn the trucks off when they are there for a delivery or a pickup because the trucks run, noise and the fumes and that's one of the objections in terms of quality of life.

So once again I would urge you to make no decision until a written agreement has been proposed by the petitioners and agreed to by the neighbors.

Fred Thompson, 45 Dale Street, Waltham: I also own the property at 35 Dale Street. I wanted to just basically say, yes, there were things agreed to and covered on Sunday and the first time I saw what Mr. Dacey had written up is when I got here. And some of those things that were agreed to did not show up in that proposal. One of the major things just to reiterate was that initially people thought the erosion is down here (referring to the plan), which is where they are putting the wall. But this

basin this stone that goes up to the top of the property, run off from here is eroding this portion of the property (referring to the plan). Now on Sunday Mr. Burgoyne said that they would look at that but I didn't see anything in the proposal to say that they had addressed that. And, as was mentioned earlier, the initial building permit that was granted was for a stockade fence. If anybody has ever looked at stockade fence, there's a big difference between stockade and chain link. I don't see the need to change it to stockade but I did suggest that they put in privacy slats and Mr. Burgoyne did say that he would do that but again it did not appear in the proposal. So, I personally would like to see what was discussed and what was agreed upon in that proposal.

Mrs. Rando: Is there anyone else in opposition? Seeing none, is there anyone in favor?

(Four people raised their hands in favor.)

Mrs. Rando: Attorney Dacey, do you want to address any concerns of the neighbors? Why don't we start with the privacy slats?

Attorney Dacey: Okay, we will start with privacy slats. My concern was that the slats really involved the True Value Hardware Store and do not involve the 17 AFT Varnum Park that we are talking about. So with your permission, (Mr. Dacey submitted to the board a letter dated May 20, 2014 from John V. Burgoyne, Sr., Managing Trustee agreeing to install slats in the existing

chain link fence to prevent and contain headlight illumination from vehicles on the property within 90 days of this date.)

Mrs. Rando: So you're saying that even though it's not before us you are willing to do it.

Mr. Dacey: Yes. I just thinks that it clutters the decision on 17 AFT Varnum Park because it's truly an issue that involves the True Value Hardware Store. The building permit that he is talking about is associated with the True Value Hardware Store, not for that piece.

Mrs. Rando: Well I think he said that in your original proposal.

Mr. Dacey: I do not want Mr. Thompson or Councilor Romard or anyone else in the audience to think that Mr. Burgoyne is not a man of his word. He is following my legal instructions not to clutter a decision involving a nonconforming property that involves the storage of concrete products with privacy slats that are associated with the hardware store.

Mrs. Rando: I appreciate that.

Mr. Dacey: Now, why don't we go to erosion. We did talk about erosion and Mrs. Richardson made a large point Sunday about erosion. Yours truly made a site visit on Tuesday morning; rang Mr. and Mrs. Richardson's doorbell and said, may I see your back yard, I want to see the erosion. (Mr. Dacey submitted photos of the Richardson's back yard and went over them with the

board.) Frankly there's no erosion there. So, Mr. Burgoyne is more than happy to address what happens on his side of the fence.

You can see Varnum Park in the picture. So it turns out that Mr. Richardson runs a towing business and those are his two tow trucks which are one in his driveway and one on Varnum Park. The product of his towing business is a BMW with no plates on it which happens to be parked on Mr. Burgoyne's lot too. So tell me why we want to pave Varnum Park other than to improve Mr. Richardson's towing business. So, these pictures would have stayed in my file, folks. I don't need to make enemies here, but fair is fair. Don't come in here and talk about erosion when there isn't any. And don't come in here and talking about paving Varnum Park to make it easy for the tow trucks.

You want a gate in the stockade fence? Not a problem.

Mrs. Rando: If there is a fire, how does the fire department get in?

Mr. Dacey: They drive through the fence. Mr. Chernoble says no decision until there's a complete agreement. When's that going to happen? I mean every time we had a neighborhood meeting, there's two or three different people there. I mean we can't get complete consensus on this and we never will. The best thing that we can do is commission somebody like Councilor Romard to schedule a meeting off site at a time when we had nothing to do with it; make it convenient for the people, give us the list and we will do the best we can with it. But does

anyone expect that the petitioner is going to sit here and delay his decision on this petition until we have satisfied every neighbor within the 300 foot radius? Tell me what you would like to do.

Oh, I missed the noise ordinance. Home Depot opens at 6 o'clock. They're subject to the noise ordinance. The landscapers that are in their neighborhoods, they're subject to the noise ordinance. Mr. Burgoyne is subject to the noise ordinance. If there's a noise of any sort it's measured by decibels. If you don't like the noise, call the police.

Mrs. Rando: Mr. Chernoble mentioned turning the trucks off. How long do the trucks park there?

Mr. Dacey: This is an OSHA requirement. It's something that Mr. Burgoyne is willing to do. He's willing to post signs. What he is not going to do is create a decision that is in a land based petition that allows people to come in and say your truck is running, you're in violation of your agreement and we are going revoke your permission to operate the business.

Ms. Gelineau: Well,irrespectively any of it, we can't tell someone how to run their business.

Mr. Dacey: Well the business has been running this way since 1953. There's always been trucks up there.

Ms. Gelineau: Its ridiculous to think that you could put that kind of condition on it.

Mr. Dacey: What Mr. Burgoyne did, which is again voluntary, is that he went to OSHA and he got permission to install white noise back up beepers instead of the beep beeps. So, if the neighbors are hearing beep, beeps, they are not from Burgoyne's trucks. Maybe they are from the tow trucks.

Mr. Romard: We weren't able to hear what went on up here nor did we see the pictures. So, I'm not sure if Mr. Dacey is now saying that there is no erosion there. Can you just repeat that thing.

Mr. Dacey: I am saying that, under oath, there is no erosion!

Mrs. Rando: Would you like us to take a five minute recess?

Mr. Romard: Yes, so we can see the pictures.

Mrs. Rando motioned for a five minute recess and the board voted to take a five minute recess.

The board took a five minute recess at 8:14 and reconvened their meeting at 8:22.

Mr. Romard: Madam Chair, I just wanted to state a couple of things. First of all, I guess there's some misunderstanding about the erosion piece and so the Richardson's are not here, they can't speak to it, then they can't speak to it. The only

one thing I just would mention according to what Attorney Dacey had mentioned, in my opinion and from what I know from the neighbors, new things do not keep coming up. I think when we left on Sunday, everyone was fairly satisfied with what they had heard; what we had heard and what we thought we had agreed on. The only issues that I think now are those pieces that we mentioned that weren't in the decision tonight. Attorney Dacey has mentioned their position on some of those and so they stated their positions and the neighbors have stated theirs, but in terms of new things coming and never satisfying the neighbors or any of that, I don't think that's the case. Thank you.

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

Mr. Dacey: I'm genuinely easy to get along with. I hardly ever get excited these days.

Mrs. Rando: Has everyone read the Proposed Findings of Fact? Have they changed from Tab 2.

Mr. Dacey: That's right. These are the January 27 version.

Mr. Sergi: We have read them, Madam Chair, and I would like to make a motion that we waive the reading since they have been on file.

Mr. LaSane 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. Dacey: I would direct you to the revised decision which I issued tonight. I do want to make this clear that at some point this proceeding has to end. At some point you people are the deciders. You are going to have to make a decision, whether it's tonight or whether you want to take a site view or you want to go out in Mrs. Richardson's back yard and look at erosion that doesn't exist, its fine with me. It's not a problem. We are not here to bully. We are not here to rush to judgement. I can tell you when we left Sunday, I can tell you with absolute certainty no one mentioned paving Varnum Park.

Mrs. Rando: We are ready to hear your Proposed Decision.

Mr. Sergi: Madam Chair, just a clarification on the detail of the trees, I think if you look at the plans it does detail the trees. Am I wrong? It says Evergreen Pine Trees.

Mr. Dacey: That is correct. The goal was to turn this back to nature.

Mr. Sergi: But he's planting those in conjunction with - -

-

Mr. Dacey: Yes, the decision incorporates the plan and all of the notes that are on it.

Mr. Dacey his Proposed Decision into the record.

Mr. Sergi was correct in that Item #1, the vote incorporates the plan which is the Site Plan at 17AFT Varnum Park Prepared by Whitman and Bingham Associates it's dated May 15, 2014 and is referred to throughout the decision as the site plan. This plan would obviously be recorded with the decision and enforceable like any other decision by the building inspector.

So, that is our presentation tonight, Madam Chairperson. If there are any other questions or anything else we could do, we will be glad to help.

Mrs. Rando: All right, I am ready for a motion on the Proposed Findings of Fact.

On motion of Ms. Gelineau, seconded by Mr. Sergi, the board voted to accept the Proposed Findings of Fact to be 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 Decision, now the decision that was given to us tonight and is dated May 20th. It's a revised decision and it is an Appeal from the Decision of the Building Inspector. To lets take that first and if we vote on that then we would be voting to overturn the Decision of the Building Inspector and not accepting the Special Permit Without Prejudice.

Mr. Hickernell: Madam Chair, may I speak to that. Two things. One, since this Proposed Decision has not been on file at the Law Department at least not before today, I think though Mr. Dacey read part of it, I think we need to get Items 1 through 15 in the record at this point. And second, I just have two proposed edits to the decision along the lines of what you just said which is underneath the second "VOTED" caption that states: "To determine that a special permit under Section 3.7223 of the Waltham Zoning Ordinance is unnecessary since the nonconforming use consisting of storage of construction materials, building supplies, and finished concrete products has not changed", (and insert at that point) "and so the portion of the petition seeking a special permit is denied without prejudice".

And the second one on the 3rd page under the last "VOTED" caption, change the word "rescind" to "overturn".

Mr. Dacey: I don't have any objection to either edited suggestion.

Mr. Dacey then read the remaining portion of his Proposed Decision.

Mrs. Rando: Are there any additions or changes by board members? Seeing none, I am ready for a motion if this is what we are going to accept.

Mr. Sergi: I will make a motion that the Proposed Amended Decision that is revised on May 20th with the additional modifications be the board's decision.

Ms. Gelineau 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: So it is granted and we have overturned the decision of the building inspector. And may I say that, in all the years that I have been on the board, I have never seen a petitioner or a neighbor go to such length to try to make people happy. I am impressed and if everyone didn't get what they want, they certainly did try.

Mrs. Rando: Would the clerk please read the petition in Case #2013-05?

The clerk then read the Petition of LJB, LLC. Nature of Appeal: Various requests for Variances and Special Permit. Subject Matter: To allow for the demolition and construction of office, commercial and residential buildings on five (5) newly created lots. Location and Zoning District: 7-9 Alder Street; 7-9R Alder Street; 11 Alder Street; 550, 560 and 570 Moody Street; and 10 Myrtle Street. Business A Zoning District.

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

Bret Francis, Esq., Harnish, Jenney, Mitchell & Resh, LLP, 564 Main Street, Waltham, the Petitioner's representative came forward.

Mr. Francis submitted to the board a copy of a Summary of Requested Relief Lot by Lot and copies of the Floor Plan as requested by the board.

Mr. Francis: Good evening. I represent the Petitioners LJB, LLC., 550 Moody Street. With me tonight is the Architect on the project, Joe Fournier, and as well as the principals of LJB both of whom are happy to answer any questions that this board may have.

We were last here on April 8th and I think we had a positive meeting. We had a lot of support from the community, a couple of letters of support as well as Councilor Logan, I think he spoke energetically in favor of this project. Since that time, the Browns have been busy working on this project. For instance, one of the things that was requested by the board was the Floor Plans and we have given you a copy of those and if you have any questions I will direct those to Mr. Fournier who is probably more apt to answer those for you.

Also, per the Chairwoman's request, we did a lot by lot analysis which really broke down the relief that we are seeking on each and every lot and we will get into that in more detail later on.

Also what was requested was a meeting with the abutters and we did have a meeting with the abutters. In fact, we sent notice to all abutters that were required within the 300 radius. That meeting was held at 550 Moody Street on Saturday, May 10th between 2 and 4 P.M. I did also bring a list of those, we had the participants sign it and you will also see in addition to the support of Councillor Rourke and Councillor Logan, you will see that Councilor Stanley was at that meeting and he also voiced his support.

Mrs. Rando: Who is the councilor of that ward?

Mr. Francis: Stephen Rourke. You have a letter on file from him as well as other entities in the City of Waltham supporting this project.

All the people who showed up, no one had any objections. They really just had a lot of questions, what's going to go in there?

Basically the consensus was Starbucks. But really there was otherwise, nil objection with no concern and again I think the consensus was well, whatever goes in is better than what's there now. They were all happy to see the project move forward.

There were a few also inquiries that we received by telephone and by email. To those people we responded accordingly. Some of them just had a couple of questions, they didn't need any plans. The others did request a set of plans which we were able to email to them and, again, they were just

requesting more information not in support of, not in objection to, just didn't really know what was going on. I never heard back from them so we'll have to assume that there was no major objection.

Also regarding the abutters, although he wasn't able to make the meeting, Stephen Hebert who is here tonight, we did have a chance to meet with Stephen twice at his property which abuts the project and we had some positive conversations. His concerns, and I don't want to speak for him, he will speak tonight I am sure but basically was the buffer between his lot and the locus as well as minor concerns about snow removal, dumpsters and lighting. The last meeting that we had, the Architect Mr. Fournier also came to that meeting and was able to show him a plan exactly where the lighting would be, the dumpsters would be and as well as the snow removal. He doubted the upkeep and the maintenance of the project, but again, we are happy to put any contract requiring snow removal with the city on file as trash as well, dumpsters. He was concerned that the trash wouldn't be removed, at least not efficiently both of which we are happy to meet any concerns of the board that you might have. We had some positive conversation and I'll let him speak for himself when we get to that part.

One of the other concerns of the board was the residential parking for the residents as not so much the commercial aspect of the project. And we did have a couple of conversations with the Browns and we thought what we would do is dedicate by signage some of the spaces down here (referring to the plan) and what we were able to do is come up with 16. There's 16 units

there will be 16 parking spaces. (Mr. Francis went over the parking on the plan with the board.)

So, again, I think we have been busy since the last meeting but again we have gotten a lot more support since that time and have come against with absolutely zero objections, literally no concern, from any of the abutters other than Mr. Hebert who you will hear from tonight.

With that, again was a lengthy description by Mr. Hickernell and it's appreciated. I won't go into it again unless the board has any questions. Actually I did intend to go into the Lot by Lot Analysis. Mr. Francis went over his Lot by Lot Analysis with the board.

Mr. Fournier is here to answer any questions as well as the Browns. I thank you very much for your attention and look forward to it.

Mrs. Rando: Thank you. Are there any questions from board members? (There were none.)

Ms. Gelineau: All I wanted to say is you really have done a good job.

Mrs. Rando: Attorney Francis, I am concerned about the parking. You know the parking is very scarce on the South side of town. You have two bedrooms in each unit. Why do you think that you can get away with less parking than what is required?

Mr. Francis: Well, this is Moody Street. You wouldn't come to Moody Street with two suburbans that you intend to park off street. The Browns have a history of renting to tenants in that area. They also have on Moody Street those that are subject to this but as well as the area surrounding Moody Street and pursuant to their history its never been a problem. They never had a situation where they didn't have off street parking for a tenant. And again, I think with what Councilor Logan suggested, this is a high commuter area where there's plenty of public access. People who move into this area are probably more often than not depend on public access and utilize it as well. And that's why we think that it probably won't be an issue and I'm sure that if they come across where a tenant had two cars and was adamant that we may be able to possibly add another parking spot to the remaining commercial lots that are going to be constructed along Moody Street. And again, this right here, well we are increasing from what exists. Right now you have sixteen units on the property and only twenty spaces. We are going to have thirty-one of them now and sixteen just dedicated just to residential parking. If the board thought that there was another number that they have in mind, again less than thirty but more maybe than sixteen, I am sure the Browns would like to hear it and consider it.

Mrs. Rando: I don't know of two many couples that do not have two vehicles and after the winter that we had, I cannot fathom somebody getting out of work and coming home and going into their apartment and not having a parking space because someone would be in the store, or restaurant, or in an office.

Parking is a huge, huge problem in this development. I think the development is beautiful. I think that it's an asset to Waltham to have something like that, but I think that you have to cut it down and give them parking. On that south side, parking is necessary.

Mr. Francis: Again, I think that by the fact that we are adding more than what currently exists, this is a complete nonconforming locus for multiple, multiple reasons and we're bringing it closer to conformity than what currently exists and I would say that based on their history of having tenants there
- -

Mrs. Rando: Have you ever tried to go to a function at the old South Middle School?

Mr. Francis: Once or twice.

Mrs. Rando: You can't get in there. Parking is at a premium there.

Mr. Francis: Well, that's a problem for the entire side of Moody Street on the South Side.

Mrs. Rando: Same thing.

Mr. Francis: But we are increasing it. I would also note that there are approximately five spaces out in front of Moody Street as well. So, if you add those in, you are now at thirty-

six which is more than required for residential purposes. You know we can't get there but we are doing our utmost to do what we can. And again, it's not something that's been taken lightly by the Browns. This plan has been modified and modified and modified again.

Mrs. Rando: Do they have any remote parking? Where would that be?

Mr. Francis: They do. That would be on the opposite side of Moody Street, on Cherry Street, and that is also within the six hundred yards required by the zoning ordinance. We did also consider that. The Browns were open to that. We thought if we were able to label and reserve, and again, the Browns are going to be on site. It's not just that these tenants are left to their own devices. One, property manager, right there. Two, call the police. Call the towing company.

Mrs. Rando: How many parking spaces on Cherry Street?

Mr. Francis: Nineteen.

Mrs. Rando: You have sixteen units and sixteen spaces. That would be dedicated to the apartment dwellers?

Mr. Francis: Yes, then you would have more than the thirty-two required. For obvious reasons the Browns are hesitant to commit that lot to this project but if that is where the board is heading, I think they would very well consider that. And

again, for other projects that you see in the area, I think we have done as well as we could with the parking.

Mrs. Rando: As far as directions are concerned to the store, if you want to go to one of the restaurants, you'll walk there if it's a good restaurant. I'm more concerned with the residents.

Mr. Francis: I understand. And, again, it's a highly commutable area. I mean, I really don't think you are going to have too many two car tenants.

Ms. Gelineau: What size is you're building on Cherry Street?

Kenneth Brown: It's a two family.

Ms. Gelineau: Just the people from the two family park there?

(Mr. Brown spoke from the audience but did not go up to the microphone and could not be heard.)

Ms. Gelineau: So you could say that a second person could park there.

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

Kenneth Brown: I've been doing rentals in Waltham for twenty-eight years and when I do the advertisements, I advertise

for apartments, and I will say how many parking spaces come with that rental, one, two. And typically its always one space. It's not uncommon to have zero space from doing other landlords. And I never have a problem renting it. The tenants never complain that there is no parking. They just deal with it because we are in an urban environment. We are in Waltham. So when we were to prep these, I would just advertise just one space and it would be our burden if we don't have it rented. But I don't think that we have never run into a parking issue. No other landlords run into parking issues. If we start from the beginning advertising it, we'll still be able to get them rented and it becomes our burden as a landlord if we have a vacancy. But we can fill them. I typically now see families with just one vehicle or no vehicle coming into the area. And with a two bedroom, it could be a single person and they are looking for that second bedroom specifically for that office or for that guest space. But I can easily say one parking space and I don't have a problem getting those renters now.

Mrs. Rando to the Architect Joe Fournier: Could you tell me, have you seen the Cherry Street lot?

Mr. Fournier: I have, yes.

Mrs. Rando: Can you indeed get that number of parking

Mr. Fournier: I have not measured it Madam Chair, but I drew in a quick count. Yes, I believe I can.

And for the record, Joseph Fournier, 24 Warwick Ave,
Waltham.

Mrs. Rando: Is there anyone else in favor?

(Six people raised their hand in favor.)

Mr. LaSane: I have a quick question. In terms of the
residents would you have their plates registered?

Mr. Brown: We give them permits.

Is there anyone seeking information? Seeing none, is there
anyone in opposition?

Stephen Hebert, I am the abutter at 16 Myrtle Street.

Mrs. Rando: Mr. Hebert, did you get my email.

Mr. Hebert: Yes, I did. I met with the attorney a few
times at the property and I address some concerns. We did go
back and forth a little bit and my issue is when I raised some
questions, it seems like they haven't left any room at all for
any concessions whatsoever. It seems like they just maximized
every little bit of grass, every little bit of parking space.

My issue again, as the abutter and the person behind me
also as abutters, the biggest issue I seem to have is parking.
If I was buying a property I would assume if I had a two bedroom
I would want a piece of property that had two parking spaces to

accommodate that two bedroom. That's just a rule of thumb for any real estate.

Mr. Hickernell: But these are not condos. They are not being sold.

Mr. Hebert: I understand that, but you're asking for a lot of special permit here. I just don't see it, the residential part of it, I'd like to see assigned spaces per unit. I'd also like to see the residential section of the property that abuts the existing residential to be somewhat separate. I know they are putting the dumpsters up on our property line, but that's two dumpsters and we are not even discussing the commercial space property yet, so we are assuming these two dumpsters will be adequate and then when this commercial space gets rented then is that going to be suitable or are we going to have two more in there? It seems like you're not even sure what they are. Next to my building where I have my business there is a fish market next to us and when they dump that dumpster at 7 o'clock in the morning it will wake you right out of bed.

These are my concerns. I had asked if they could move the dumpster or bring some of the commercial dumpsters at least next to the commercial site and the residential I can understand would be within this residential. But there just didn't seem that there's room for any movement.

Also, the snow storage is going to be a big problem. We discussed it and it's pretty aggressive to say that every snowstorm you're going to make a big pile and someone is going

to come out and truck this thing and haul it out. We have car spaces moving every tenant every resident I mean, I do snow removal. That's not how it works. It doesn't work that simple especially if you don't have assigned parking and you've got cars in the way. You've got everything and this could go on all night long until the storm ends and then you are going to try and haul it off and to say that that's going to work, I don't see it. I see what will happen is that the landscaper or whoever they hire is going to keep bashing as much snow as they can into this corner on the property line. Whatever buffer we have won't be much of a buffer any more.

I mean I get what they are trying to do. I think we are all on the same page and I think that's where I think we lose sight of these projects is, whatever goes in there is better than what's there and then we kind of give everybody a carte blanche whoever is asking. You've got to keep in mind you don't want to lose the existing business you have on Moody Street because there is no parking to get there and it shouldn't be well, first come first serve. You've got to fight for it. I don't agree with that. I think when you are going for a Special Permits and if you want to build within the existing plan, that's great. When you are going for special permits and you're asking for something special from the town then the responsibility of these boards you know you need to keep everybody in mind. You know there's not much parking as exists. If there's a trash truck, if there's anything on Myrtle Street at all, it's a nightmare. There's just a lot of things that they are trying to compress within this property and maximize it, but there's just not a lot of room for any adjustment whatsoever.

So, I want to see something happen there. I just feel like they are just trying to condense too much within this project. And even if they say we are going to have satellite parking, again they have a real estate office. They are going to have their own employees parking. They are going to have open houses and things people come over, there's more parking. So, I don't think it should be a first come, first serve fight for whoever gets what off site. If you're trying to have a snowstorm or whatever you don't have assigned parking. You don't have the opportunity to say I'm going to haul this snow out of here. It just doesn't happen. You can say it. You can commit to it but it just doesn't happen. I think its just not feasible. You can't move all these cars in one storm and say we are going to take this out every time it snows. After winters like this, it just doesn't happen. Again, you've got to move cars just to get to the snow storage. There are parking spaces and issues there.

I asked for a lighting plan and just a drainage plan just to see where things were going to be and basically he said there was going to be a pole there and I'd like to take everybody's word but I don't. I'd like to see more detail and maybe some kind of room for concessions. I'd like a bigger buffer between the residential if it's the dumpsters or the snow storage. I just don't want it so close to the property. It's just going to be pushing over, pushing over. I get it. The residential part, I don't mind a dumpster there. Who knows? We're talking Starbucks, We are talking a lot of parking and a lot of trash. And I don't want this commercial part moving back into my residential area. I'd like to see some backup. No one's

assuming what's moving in here if they do rent these commercial spaces so I would like to have a little more detail on that. Again, I would like to see something happen. I just was hoping to see something else. Thank you.

Ms. Gelineau: Do you live in your house on Myrtle Street?

Mr. Hebert: I don't.

Ms. Gelineau: I live in Stow Massachusetts. You don't live in the house,

Mr. Hebert: I did at one time, I don't now. Born and raised in Waltham, though. Thank you.

Mrs. Rando: Anyone else?

Patricia Kepler, Pastor of the First Presbyterian Church, 34 Alder Street, Waltham: I expressed what I am going to express again last time there was a hearing and I quite agree with the Chair's concern for parking and I don't like glossing over the issues of parking and traffic by saying that we're in an urban community. We are in an urban community that is attached to other communities and people go outside of Waltham to work and to go to school and do other things. So people have cars. It is not realistic to say that people will not have cars. Part of the reason there's not much objection, I would assume its because the abutters are many of them institutions. We have the Rec. building next door and there's nobody here to speak for them except all of you. Because we are going to increase traffic in

that area. We are going to increase parking and the Methodist Church is right across the street. They use Cherry Street to park but another institution that is not someone who lives in the area.

So, I would support the project conditionally. I do think the issue of parking needs to be considered with all seriousness and not glossed over as does the increase in traffic in the area. There will be a lot more traffic, hopefully, because there will be commercial building and there will be new housing. I don't know if the city has any restrictions on what can go into these commercial buildings. I mean, can McDonalds come in, no. So there are some restrictions. Could another store selling alcohol come in, there are already two across the street. I mean, I don't know what restrictions there would be on the commercial use. So I just speak for the people in this area who are not housed there but who use the institutions that are there and who already have trouble with parking. And also for the condos across the street from our church which are not abutters, so they can't speak but they certainly have issues with parking on Alder Street. And I do want to point out that no parking on Moody Street, Alder Street, Myrtle Street matters if it snows because at that point, cars need to be off the street and can't park there. So what do you do when the weather is not good.

So, I am interested in the fact that there is this lot on Cherry Street. I don't know if you are willing to have that actually dedicated for parking for this project but I would assume that that would be one alternative but it would have to be dedicated.

Thank you for hearing me.

Mrs. Rando: Anyone else? Seeing none, Attorney Francis do you have any rebuttal?

Attorney Francis: Not so much as a rebuttal.

Mrs. Rando: Mr. Hebert had some really valuable concerns that I agree with as far as the snow removal, getting the cars out of there.

Mr. Francis: Again that's something that every neighbor and every property owner including myself deals with that on the South Side of Waltham. Every parking lot the stores Tedeschi, Gordons, all parking lots, all cars have to be removed. That's what you deal with. That's what you do. And I don't think it's a valid reason. I mean snow storage, of course, is important and that's why we are designating a specific space to it. But, we do what we can. We contract with a plow company and they remove the snow. That's what's done. If it takes a little while longer because cars have to be moved, that's something that is a situation that arises everywhere. So, if it takes a little bit longer, it takes a little bit longer but the Browns will do what they have to do. They will have a contractor who comes out and removes the snow. Again they only intend to store snow there if its less than an inch, two inches, you know, very minimal amount. A big storm they will have it completely out and that's what they intend to do.

Regarding the parking, again with respect to Ms. Kepler, the Methodist Church did actually show to the abutters meeting and they were very supportive of the plan. They weren't concerned about parking. That was not one of their concerns. And a lot of the abutters, and again, this is 300 square feet in Moody Street. A lot of them are commercial on Moody Street but when you get back and you go down Myrtle Street and you go down Alder Street, you go down some of the side streets, there's a lot of residential abutters I can assure you and we sent out the mailing notices for the meeting so I am more than familiar with the amount of residential abutters for this project, quite a few of them.

And again, the traffic, we are not seeking any variances based on use nor are we increasing the use of any of the project that currently exists there today. Currently there is today the Brown office building, commercial right here, there's a sign up here that says Gemelli's, and a residential lot right there (referring to the plan). And you have a house that's surrounding, a house right here business over here and another house over there on Alder Street. We are cutting that down and making it orderly so that it goes back to the snow removal. This area (referring to the plan) is readily accessible. And again, I don't think there will be an increase in traffic than currently what exists there today except for the fact that they are vacant. Barring the fact that they are vacant, you would have the exact same traffic that's there today after this project. We are not seeking anything more.

And to satisfy the parking requirement, again if that is what the board is requiring they would issue a special permit for remote parking. The Browns are more than willing to dedicate that lot to this project, thereby all thirty-two parking spaces required for residential will be met.

Mr. Hickernell: What would that do to people currently using that lot? You indicated that some of the other neighbors and abutters are using it.

Mr. Francis: There's nineteen spaces, so you would have three left over. I indicated that a lot of people just park there because, they see what it is. Its private, but it's not public property.

Mr. Hickernell: I am not saying they have a right to do it but there will be an influence on other people who are taking advantage of that situation.

Mr. Francis: This is an early conversation on it. It if required a fence or some kind of a gate or something that would prevent that situation, so be it and then also there's the normal remedies of calling the landlord right across or calling the police. There will be tow signs put in there saying any non permitted user will be towed at owners expense, I'm sure. Again, there's ways of getting around that in ways of dealing with it and if the board would like to implement as an order of conditions in their decision, the Browns would welcome it as well.

Lastly, and I'm not sure, he mentioned first come first serve. The residential will be marked as such and I have never been in a commercial situation where there was anything but first come first serve. So other than the spot that will be labeled for residential and monitored by the petitioner, the few remaining commercial spots, yes, will be first come first serve as any other commercial practice in the city.

Mrs. Rando: Does anyone else have any questions or concerns at this time?

Mr. Hickernell: No, I think we should go forward on the petition.

Mrs. Rando: Does everyone feel that they are ready to go forward?

(Every member on the board agreed that they were ready to go forward.)

Mrs. Rando: Has everyone read the Proposed Findings of Fact?

Mr. Sergi: Yes we have Madam Chair. Have you made any changes to the Proposed Findings of Fact and Proposed since we last met?

Mr. Francis: No.

Mr. Sergi: Seeing that there are no changes, Madam Chair, I propose that we waive the reading of the Proposed Findings of Fact.

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

Mr. Sergi: In a similar fashion, Madam Chair, I propose that we waive the reading of the Proposed Decision since it's been on file.

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

Mrs. Rando: Are you going to put in your decision that the Cherry Street lot will be for the residents.

Mr. Francis: If the board would like that as a condition, I am prepared to do that and get that back to the board via email tomorrow.

Mr. Hickernell: I am not voting for that condition.

Mrs. Rando: That's fine. That is a condition that I would like. I will see who wants to go forward with that but I definitely would like to see that.

Mr. Francis: If the board so votes, we will be happy to do it, absolutely.

Mrs. Rando: All right, we have the decision and my addition to it, amended, is: To make the Cherry Street parking area designated for the residents of these apartments.

All right, I make the motion. Do I have a second?

Mr. Hickernell: Do we need to change more of it regarding the remote parking?

No, I think he said it was within the remote parking, did you say?

Mr. Francis: It satisfies the zoning requirements, correct. It came up actually with the TD project, so it's a known.

Mrs Rando: What was the measurement?

Mr. Francis: I don't know exactly. I just know that it falls within. I am sorry. I apologize. It's actually within the three hundred foot radius. It's just across the street.

Mr. Hickernell: Would you need a special permit for that?

Mr. Francis: You can apply for, all remote parking requires a special permit. You have to satisfy the 600 foot radius. We do.

Mrs. Rando: So we could make that part of the special permit.

Mr. Francis. I would rather that, yes. Absolutely.

Ms. Gelineau: What would be the objection to doing it.

Mr. Francis: You would have to cross Moody Street with groceries, I imagine unless they come over, drop off and go over and park. You mean procedurally or substantively, I'm sorry.

Ms. Gelineau: For them.

Mr. Francis: Well, its land in Waltham, its valuable, and you're committing it now to an off site project. But as far as the zoning that is required, if the board requests it, they do satisfy it becoming on a petition for remote parking. We would satisfy the burden if that's what you are asking.

Ms. Gelineau: Again, what's the negative effect of us asking for that?

Mr. Francis: For the Browns? It restricts future use of that lot and any other surrounding lot that they might own and may want to develop that down the road, I'm not sure. Maybe the Browns want to speak to that.

Mr. Kenneth Brown: We do own the property next door which is a four family.

Ms. Gelineau: The one with the nineteen spaces, is it a two family?

Mr. Brown: It's a two family. It's residence B.

Ms. Gelineau: They could never sell it.

Mr. Francis: They could never sell it.

Ms. Gelineau: You couldn't do anything more than a two family there.

Mr. Brown: We couldn't do anything more than a two family.

Ms. Gelineau: Its characterized as a misuse anyway.

Mr Brown: Technically, yes. That has been bounced around.

Mrs. Rando: I have a motion that the decision include the nineteen parking spaces, remote parking, on Cherry Street to help the residents of this project.

Mr. Francis: Would it be all nineteen or just sixteen of those nineteen to make it a total of thirty-two.

Mrs. Rando: Sixteen.

Mr. Hickernell: Three for the two family?

Mrs. Rando: Maybe the fifteen would be better.

Mr. Francis: I would be happy to do the fifteen.

Mrs. Rando: Fifteen of the nineteen spaces on Cherry Street shall be designated for this project.

Mr. Sergi: So you're expanding the special permit to include this special permit, Madam Chair?

Mrs. Rando: Yes.

I have a motion by the Chair, seconded by Mr. Sergi. The roll being called: Mr. Sergi, yes; Mr. Hickernell, no; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes. The vote was 4-1 in favor.

Mr. Hickernell: That is to amend the proposed decision?

Mrs. Rando: That is to amend it.

Mr. Sergi: I make a motion that the Proposed Findings of Fact become the board's Findings of Fact.

Ms. Gelineau seconded the motion. 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 Amended Decision becomes the board's decision.

Ms. Gelineau seconded the motion. The roll being called: Mr. Sergi, yes; Mr. Hickernell, no; Ms. Gelineau, yes;

Mr. LaSane, yes and Mrs. Rando, yes. The vote was 4-1 in favor.

Mr. Hickernell: I would like to interject a motion to go into Executive Session to discuss pending litigation and to adjourn directly from Executive Session.

Mr. Sergi seconded the motion and the board voted to go into Executive Session.

Mrs. Rando: We are going into Executive Session and we will adjourn from there.

At 9:38 the Board went into Executive Session to discuss pending litigation.

Barbara Rando, Chair