

CITY OF WALTHAM  
ZONING BOARD OF APPEALS

May 6, 2014

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, May 6, 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, Gordon LaSane Edward McCarthy and John Sergi.

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

Mrs. Rando: Tonight we have one continued case, a new case and an extension of time:

Case 2013-15, Frank and Michael Valentino. 753-755 South Street, for a Special Permit and a variance;

Case 2014-08, Roberto Pandolfi, 32 Before College Farm Road and that is for a variance;

Case 2013-04, SPC, 1265 Main Street for an extension of time.

The first action this evening is for a motion to accept the minutes of April 15, 2014.

On motion of Mr. Sergi, seconded by

Mr. LaSane, the board voted to accept the minutes of April 15 , 2014.

Would the clerk please read the petition in Case No. 2013-15, Valentino on South Street?

The clerk then read the Petition of Frank D. Valentino, Jr., Michael D. Valentino in an application for a variance, side yard, and application for two special permits for expansion of a nonconforming building on property numbered 753-755 South Street, Residence A3 Zoning District.

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

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

Mr. Dacey: I represent the petitioners this evening in the matter of Case No. 2013-15. As you have, I'm sure, received from your clerical staff, I did send over to the office this afternoon a motion to withdraw without prejudice. I have the original of the motion with me if you would like for your records and I also have one for your stenographer.

Mrs. Rando: Are there any questions for Mr. Dacey? Hearing none, I am ready for a motion to allow withdrawal without prejudice.

On motion of Mr. McCarthy, seconded by Mr. Hickernell, the board voted to allow Case No. 2013-15 to withdraw without prejudice. The roll being called:

Mr. Sergi, yes; Mr. Hickernell, yes; Mr. LaSane, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: Would the clerk please read the petition in Case No.2013-14, 1265 Main Street, LLC (Formerly SPC Main Street, LLC)?

The clerk then read the petition of SPC LLC, Main Street for a sign variance.

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

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

Mr. McCourt: I am representing 1265 Main Street LLC which was formerly SPC Main Street LLC. It's the same limited liability company but in the interim they have just changed the name from SPC, so that's why it was characterized that way in relation to the request for the extension.

Obviously there were some unforeseen circumstances that delayed some of the construction plus a winter I think we all can see was very difficult. We have gotten some sign permits already and, in fact, the building inspector would suggest that he would be comfortable that we are in progress of doing it, but just to be safe because the major signs won't be applied for

some time within the next six months, we would ask for this extension. So by that point the work will be well underway and we will have a long time to complete the signage for the place. That's why we are here requesting the extension.

Mrs. Rando: You are asking of six months. That would be in November?

Mr. McCourt: I am not sure. I'm sorry, I don't have the case with me. I don't know the date of granting was.

Mr. Hickernell: The decision was May 7, 2013 and filed with the city clerk on May 17th.

Mr. McCourt: Well, I think to be conservative if we start at May 7th, it might be the way to go.

Mrs. Rando: So, six months from May 7th would be November.

Any questions of Attorney McCourt?

Mr. LaSane: With the name change, our city attorneys know what we are voting on tonight with the name change?

Mr. McCourt: Yes, it's the same petition. I just informed you of that since there has been a name change and it was published.

Mrs. Rando: Do I have a motion to allow Case 2013-04 to extend the time to November 7, 2014.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to grant an extension of time on Case No. 2013-04 to November 7, 2014. The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Mr. LaSane, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: Would the clerk please read the petition in Case No. 2014-08?

The clerk then read the petition of Roberto Pandolfi; Owner: Judith Ann Salvucci to allow the construction of a single family house on a currently vacant lot created in 1924 and having it's only frontage on an existing 40 footright of way. The lot has received an old lot opinion but does not meet the current frontage definition. Location and Zoning District: 32 BEF College Farm Road, Residence A-3.

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

Philip B. McCourt, Jr., Esquire, 15 Church Street, Waltham came forward. Mr. McCourt submitted a brief to the board members, a copy of the portion of the zoning ordinance relating to this petition and copy of the building card and assessors card relating to the lots in the area. Mr. McCourt also went over the plan of the locus with the board.

Mr. McCourt: It's fairly unique circumstance, in fact, under the prior ordinance from April of 88, previous the building department had already interpreted this to be a buildable lot. As a matter of fact, and you will see in the

back of your brief and memorandum that Patrick Powell determined on July 18, 2013 to Mrs. Salvucci's Attorney, John Sullivan, that, in fact, it had received a favorable old lot opinion as of November 20, 1910, and attached a copy, and accordingly it's still eligible for this status and you will see after that the actual opinion rendered by Ralph Gaudet which only consists of one line but which has the old lot opinion. In those days they sent the old lot opinion up to the Law Department and they would return a yes or no and tell Mr. Gaudet what they thought and it says: The above property is approved old lot status under Section 4.2181 of the City of Waltham Ordinance.

Subsequent to this letter on July 18, 2013, as Mrs. Salvucci was seeking possible purchasers of this property which ultimately Mr. Pandolfi became the potential purchaser under the Purchase and Sales Agreement, Mr. Powell in looking at the definitions felt uncomfortable with the current definition, although he agrees that the old lot opinion stands, that the change to public or private way, he thought that the board ought to at least be able to see this.

We are not looking for a variance for staying on the old lot opinion. We are not looking for a variance side yards, front yards, size of the lot or anything of that, because that's all handled under the Old Lot Opinion but to have you determine that due to circumstances long beyond Mrs. Salvucci's doing and consistent with all the other lots on this right of way. (Mr. McCourt went over the lots shown on the Plan.)

So, based on those facts and standards and the plan which was dated June 1924 and revised in 26 and then later on

recorded, it appears in 1930 at the Registry of Deeds, this right of way existed and these houses have been constructed and we are like a house without a permit but between houses that have a permit and we would like to have the board determine that leaving this situation and the unavailability under a strict interpretation of the current definition to grant relief to Mrs. Salvucci in relation to the lot.

(Mr. McCourt then read his brief into the record and submitted a picture of the lot to the board.)

Mrs. Rando: Attorney McCourt, Chapter 40A clearly intended to give the City Council the authority to set the minimum frontage requirements for lots and just because the lot does not have sufficient frontage, that does not make it a hardship.

Mr. McCourt: It does have sufficient frontage. We are not looking at that.

Mrs. Rando: Because it's not on a street or a private way.

Mr. McCourt: Right from a change of definition but it does have sufficient frontage and Mr. Powell in his letter recognizes that in fact this lot is entitled to an old lot opinion.

Mrs. Rando: Right, but didn't the City Council change in 1988 change it so, are you asking us just to forget what the City Council says and just to give you the variance?

Mr. McCourt: I wouldn't use the word forget. I am asking you to determine for the benefit of the building department

that, in fact, it's a hardship under this definition, the new definition on a lot that was created in the middle twenties on a way that has been used for sixty or seventy years as a way, but because of a change of a description in that, that, in fact, we should be permitted to build this lot. We are not looking to change the frontage. It was a definition of what frontage along the street meant, not the dimensional width of frontage that what we have according to the letter.

Mrs. Rando: Right.

Mr. McCourt: But, yes, I am asking you to do that. That's exactly why we are here.

Mrs. Rando: And do we have the authority to do that?

Mr. McCourt: Absolutely. This is what all these cases in here clearly state (referring to the brief), when someone has no other right and particularly in a residential situation when it can be virtually making the lot unusable even though it has been treated as a separate and distinct lot for fifty or sixty years and taxed in that manner to allow that change you certainly have the right to do it. You don't have to do it, but you have the right to do it.

Mrs. Rando: Does anyone else have any questions of Attorney McCourt?

Mr. Sergi: Attorney McCourt, what size house are you planning? Is there a rendition?



Mr. McCourt: Yes, we do. We showed the house that would fit here on the supplemental plan that was filed with it. (Mr. McCourt went over the plan with the board.) The house is 33x26 with a garage under.

Mr. Sergi: Is it a cape?

Mr. Roberto Pandolfi, the petitioner/builder, stood before the board.

Mr. Pandolfi: I would be the builder. The house would be 34 feet wide, 46 feet deep with a garage under. It will be a colonial style home: kitchen, living room, dining room the first floor and three bedrooms second floor, two and a half baths.

Mr. Sergi: That's 3000 square feet?

Mr. Pandolfi: No, 1900.

Mr. McCarthy: The lot has a building on it right now?

Mr. McCourt: No.

Mr. McCarthy: Looks like there's something in the picture down here (referring to the plan).

Mr. McCourt to Mr. Pandolfi: Is that a shed?

Mr. Pandolfi: There's a tool shed on it.

Mr. McCourt: Whose is it?

Mr. Pandolfi: It was the Salvucci's. They use it to store lawnmowers.

Mr. McCarthy: So, that's about it, right here?

(Mr. Pandolfi went before the board and pointed it out on the plan.)

Mr. McCarthy: Is that the Salvucci's?

Mr. Pandolfi: Yes, that's the shed right there.

Mr. McCarthy: Now, this end of the brick wall, is that the property line?

Mr. Pandolfi: The property line is five feet away from that brick wall.

Mr. McCarthy: Really. Now, is that an optical illusion. It doesn't look like there's not really much space here between the driveway. Its like twenty feet.

Mr. Pandolfi: I think that's the way the picture was taken. It was taken at an angle. If you take a look at the other picture you can see the other picture you can see it between the houses.

Mr. McCarthy: I see you've got ledge there.

Mr. Pandolfi: I've done some perk tests. I wouldn't be doing any type of blasting there. I would work with the contours. Naturally, I would have to bring in a hammer.

Mr. McCarthy: So you are putting a full cellar in?

Mr. Pandolfi: I am, however the way its contoured

Mr. McCarthy: It would be a drive around in the driveway.

Mr. McCarthy: Isn't part of this driveway on Salvucci's property?

Mr. Pandolfi went before the board to show where the lot line is.

Mr. McCarthy: The trees will all be gone? Are you wiping out the trees?

(Mr. Pandolfi went over the plan regarding the trees.)

Mrs. Rando: These trees here are not on your property anyway.

Mr. Pandolfi: No.

Mrs. Rando: This is on College Farm Road.

Mr. Pandolfi: Right.

Mrs. Rando: I have to tell you, when I drove in there the other night, when I was trying to back out because I wanted to take a look at this lot here. I almost got sideswiped by a car coming down because of the curve there. It's very dangerous. The driveway is so close to the road.

Mr. Pandolfi: You're talking about the existing driveway to the house?

Mrs. Rando: The house next door. And that house next door is sold.

Mr. Pandolfi: It's not been sold.

Mrs. Rando: And that's the one that you may take if you get this?

Mr. Pandolfi: I probably would remodel that house and do a new home next to me.

Mrs. Rando: Do you own the other two that were done on the other side of it?

Mr. Pandolfi: No.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition that would like to raise their hand or come to the microphone?

No one in favor.

Is there anyone seeking information? Seeing none. Is there anyone not in favor of this case?

(Ten people raised their hands in opposition.)

Would anyone like to come to the microphone and give their name and address and state the reasons why?

Edmond P. Tarallo, 52 Montview Avenue, Waltham: I am an abutter in the rear of the property. I have some concerns as I think some of my other neighbors do, each of us probably have different ones. Where I'm located, my particular house has a wall of significant height to the rear of my property which certainly concerns me as well as other things.

But more importantly tonight as I heard Mr. McCourt make his presentation, he's based it on some legal issues and I just want to see if I can address some of those issues that concern me and I guess I take a little different point of view than he does.

One of the things that surprised me in the materials that I received that Mr. McCourt was so nice to give me this evening, and he presented to you, was he has a letter from Mr. Gaudet and then he has a confirmatory one from Mr. Powell in 2013. I would just point out to you that it's interesting that on November 29, 2010, this is when that letter was dated, it was for 32 College Farm Road. As you know this is before 32. And the Law Department actually on November 5, 2010 was asked to opine on this and they did opine in December 15, 2010 and they indicated at that time that they did not have enough information

to determine whether it had old lot status. And they did indicate in the last paragraph, or second to last paragraph, I apologize: "In addition it appears the subject lots despite a College Farm address do not abut College Farm Road. You'll have to determine (this is to Mr. Gaudet) whether either lot qualifies as a lot having adequate frontage on a way as defined by the Zoning Ordinance." So, even in 2010, this issue that's here today was prevalent at that point and time.

Mr. McCourt indicated that the lot actually, the Zoning Ordinance that's changed in 1988, I believe, if you pay attention to the deed that was presented for the acquisition of this property by Salvucci, the actual date of the deed in which they received the property was actually a date of May of 1998. It's ten years after the law had changed. I'd also point out that in that deed, both properties are all on the same deed and indicated as processed being Lot #63 and Lot #64, but they were all together. And more importantly too, it's interesting that if you go to the assessors' records you will see and determine that the property 32 Before College Farm Road, they're assessed separately as stated being a property use that is being unbuildable and having a land value of \$8100 compared to the abutting property which has a house on it having a land value of \$161,600. So the assessors did not believe that the lot is buildable and they have not assessed it as such and the deed showing both properties indicated that the properties and private building and the structure that's there, that Mr. McCarthy pointed out, indicates the property has always been used as one lot and continues to be used as one lot until further permission is granted by this board if they so desire. However, I would also indicate to you that with regard to the

issues of lots, you have old lot opinions. But old lot opinions only go as so far as to determine whether that lot qualifies for a building. It doesn't necessarily grant building permits because there are other factors that have to be met, as this board is probably aware of in many cases that you have before you. Sometimes there's a need for a side yard variance or a rear yard variance. Tonight happens to be a frontage variance.

Well, it's interesting because when the City Council has looked at this section many times. By the way, I was not on the City Council in 1988 and I am not on the City Council today. So interestingly enough, this all predates me but some of the things that happened in between I am familiar with. And in that, I would point out that particularly with regard to the zoning district, in Section 3.711, the ordinance does provide for many different aspects how we deal with frontage. But it does not guarantee, because you have an old lot, that you can build on it. Many lots in Lakeview were built with 20 feet of frontage on a public road. This has no frontage on a public road, but those that had twenty needed to be combined to be built on. And even at that, in this particular zoning district, if you had more than three lots that were contiguous and owned together and were old lots, they cannot be built upon as three lots. They only may be able to get two and, sometimes if you have more than three, you can even get fewer than what certainly was at least originally designed. So there's no guarantee in the ordinance by the City Council in their writing of it to allow for these things to occur. That is why this case is before you and that's why you have to make the decision as to whether it qualifies for a variance. And, again, I point out that the property was acquired on one deed. It was acquired

after the ordinance had changed and, therefore, it would seem to me that no hardship was there nor should there have been an expectation based on the assessment and the way its been done for the ability to build on this lot.

The other thing that's a factor, is if you were to determine that you had to comply with today's standards, actually what you need for frontage on a public way in A-3 zone is 70 feet. These lots together, the two 63 and 64 that have been used always together only total 100. They don't total 150 or 140. So they don't total enough to make two separate lots. And the ordinance does provide that lots can be combined for the purpose of continued use in building. And I believe that that's what this has always been and always continues to be. And, therefore, I don't see the need, the hardship or the desire, from at least my point of view, as to why this should be allowed to be built on.

And I would also say to this board, and I know each case is unique, but the regards is that the variance that is being sought is to waive the frontage for a small lot which has already been waived. If you consider it to be a small lot, even though there's no evidence the legal department ever opined that way, that it would be from a forty foot requirement or a forty five foot requirement down to a zero. So, therefore, if I had a lot that had twenty feet, that would be like heaven compared to this lot and one of the reasons that the City Council never changed it and never altered that was because of a number of houses that were built before that definition was completed and understood and re-crafted this way was that you can see houses on Trapelo Road that are on far smaller than a forty foot



frontage. So, I don't think people did it without thinking. I don't think people did it without thought. They gave sufficient allowances for small lots and for older lots but within limitations. This does not meet those limitations. Therefore, I don't believe there's a basis for the variance that's being requested.

I thank you for listening to me and if there's any questions I can answer, I will be glad to.

Mrs. Rando: Are there any questions of Mr. Tarallo?  
Hearing none, who else would like to come up?

Rachel Casseus: I am actually here on behalf of my mother, Marie Casseus. She is here. Her address is 22 College Farm Road. So she is a direct abutter. So we are here with a number of safety concerns. As you well know, the right of way is just that. We heard from the petitioner's attorney that it's a forty foot right of way. We would actually believe that it is much less than that. It is probably no more than twenty-six feet. It's so narrow that two cars in opposite direction can't even pass each other. College Farm Road has a number of young students walking to school. We have older individuals who like to walk around the neighborhood and really having more construction would cause a detriment to everyone in the area. We passed around a petition two weeks ago and got twenty of our neighbors who are against the building due to safety concerns, due to traffic concerns. There really is no parking for another house. My mother has her car. My sister lives at the home. I come to visit. We have difficulty parking. Another home, I am sure would increase the amount of visitors to the street. As

Chairperson Rando appropriately stated, there really is no visibility in terms of there really is no visibility in terms of leaving that right of way. It has been a hazard for myself when I lived at the property. It was dangerous trying to leave. So, imagine how the construction vehicles that park may create a difficulty for people who are trying to take a right, or even a left on incoming traffic may not see them. We really do want to keep the neighborhood safe. Really a large concern for myself and we do have some neighbors with us today. We have Victor Rodriguez and Vivianna. They have raised issues of noise and disruption to the neighborhood. We have been twenty year residents of College Farm Road and have really enjoyed the peaceful aspects of the neighborhood. There have been a number of new constructions but I don't know how people who are at home could even bear it. When I come to visit, you hear incessant pounding. I'm not saying that this is going to be an issue, but with any new construction we are aware that noise and just debris will be an issue and I do definitely want to just really implore to the board that for the peace, the safety and the quiet of the neighborhood that we are opposed to building on this parcel. It was described as a lot, but I really do believe that it is a side yard for thirty two and I think whoever buys the home, yes, they will have to do considerable construction but this could merely be considered a side yard for children to play and people have barbecues. We ourselves have a back lot. My mom makes a beautiful use of it. She has great pavers and she has plants and I do think that whoever buys thirty-two could make beautiful use of it and potentially the value of that house will be increased by not having another house next to it. I am not a zoning expert. I am an immigration attorney, but I do know about value and I do believe that we all will re-value by

having another house on this small lot. Thirty-two will lose value. Twenty-two will lose value. It's a beautiful neighborhood and it should remain that way.

Ms. Casseus submitted a petition of all the neighbors who were opposed.

Mrs. Rando: Are they all direct abutters?

Ms. Casseus. They are within the radius. And we invite any of the board members to come over and visit. You can see for yourself that it really is a very narrow, very small space.

Sabrina Hepburn, 28 College Farm Road, #1, Waltham: I just want to be very brief but I just wanted to add I echo the sentiments of the lady who just spoke in terms of the traffic. I live down the end of the right of way that has been described and certainly it's a concern of mine. There are lots of cars along that very small road. And, obviously, adding more will only increase the congestion of getting in and out of that area, so although its been presented that this wont have an affect on the residential area and the traffic of the area, I think, given the particular nature of the position of that parcel, it certainly will. I will also add that although I am an abutter to that right of way, *I actually was not part of that petition*, so I am an additional neighbor to the twenty that signed that petition.

Mrs. Rando: Tell me which house do you own, the last one on that right of way?

Ms. Hepburn: No, the one on the second to last which is a two family and I'm one of those two.

Mrs. Rando: And when you back out, do you back out of your garage?

Ms. Hepburn: We actually have a driveway that parallels along the slope. So to get out we have to back out of the driveway and turn.

Mrs. Rando: You back out all the way out to College Farm Road.

Ms. Hepburn: No, I do a three point turn and turn around to get there. But, in any case it is quite narrow.

(Ms. Hepburn and Mr. Tarallo signed the petition also.)

Rosemary Miller, 58 College Farm Road, Waltham: My husband and I bought our house in 1986 and we have been there for a few years and my family lived on Indian Road starting in 1968 so we have been in that area for quite a long time.

Now it worries me, Mr. McCourt, when you talk about one more. What's one more? I'll tell you what one more is. When I try to pull out of my driveway, I pull my car in backwards so I can come out straight *first*. You know, I am *almost sideswiped* every morning by cars especially at the busy hours when kids are coming and going to school. When full size busses are coming down the road, that street is a cow path. There's no sidewalks. There's a metal barrier across from our house and then there's

Nutting Road right below. But what concerns me about that area from the Denault's house down to where you are proposing to build the house is that back area. I worry about the erosion. I worry about the houses that are up above those houses. I've seen the slice of pie house built on College Farm Road which is a little bit further up from where we are on the corner. It's like how the heck did they ever get that in there? But they did. It's for sale if anybody is interested. And then I couldn't believe either that they took, there's a garage that has fallen down on some property and I liked the idea that they took the garage out and then moved the Dutch Colonial over to another foundation and then built a colonial right in that spot. It's taken forever for the building to occur because they are on ledge and there's no back yard in that area. So I wonder, how much is enough? When do we say, no? So the traffic is horrible. My daughter use to walk from the high school and from Kennedy up that hill. She was basically taking her life in her hands. And even though, and I still can't believe that speed, it's not posted but when I called to find out about it, its thirty miles an hour on that road which is unbelievable and not everyone follows that thirty miles an hour.

When they put the lights at Lake and Lexington Street a few years back, a lot of people started coming up College Farm Road to get over to the Hardy Pond area so they didn't have to wait for the light. So the traffic increased then too.

So, again, I worry about the erosion. I wonder if you had the grading looked at and studied to see if it would support a house. You said you did a perk test but I think there's probably other things that need to be looked at also. There's no

sidewalks on that street at all and it makes for a very treacherous place. And that corner is really bad. I've gone down that street and had stopped for something and next thing I know here comes a car right beside me and their but for the grace of God they didn't hit me. And at night, its even worse because the lighting up there isn't as good as it could be or it should be. So, I am not in agreement with another house in the neighborhood.

Sabine Casseus: I live with my mother, Marie, at 22 College Farm Road. I would just like to second, third, fourth and fifth at this point the safety issues. I moved back a couple of years ago from Texas and winter surprised me. But the fact that that road gets very icy and very slippery. A lot of the cars are speeding down during the summer. They're coming down as fast, without any control during the winter. So, I would really like you to take into consideration that point and also snow banks. Visibility along that road is almost impossible in the winter. Combine night time with that and folks trying to get home in the evening, it makes it a very, very dangerous turn for folks who can't get off the main part of College Farm Road and for folks heading down College Farm Road. So I would just like to point out that there's more than one season which especially for children makes it a death trap in these sort of situations.

Victor Rodriguez, 17 College Farm Road: I'm just echoing everybody's comments. I recently moved into the neighborhood about five years ago. New construction, built and I guess I am diagonally across from the lot and in the winter, absolutely right, there's no space as it is now in the winter. It's

dramatically reduced. We have two small kids, six and eight year old kids, that, you know, safety is a concern. And we see every time there is events and things like that in the area, you know, that the streets line up with cars because there's no place to park anywhere else. So, again, to me that's an issue which I think has been already discussed. But also, you know, I sort of like the idea of one more, this is just one more. I think one more is just too much because as I look at that lot, I can't imagine a house there. I mean, physically, I am sure you could build it, but should you and essentially open your window and say hello to your neighbor and pass the sugar and the salt because its that close. And I'm trying to be funny, but it's actually that close. And you know we also want to preserve the integrity of the neighborhood. It's a nice looking area. We don't want more density. We like the trees and the look and feel of the neighborhood and you know how much value do you place a lot in an already congested and dense city. So, I think that needs to be protected.

So, again, not against the free enterprise. Nothing against the folks that are trying to build it. But I think that that job would be better served if the house was remodeled and somebody that was interested like us, buy a house with a lot which is very rare in Waltham but we found this place that Diane LeBlanc did a nice job with. Our kids can play in the back. I just don't know how people do it when all you have is ledge. So, anyway, that's my story and I appreciate you listening.

Mr. Sergi: Madam Chair, I just wanted to make you aware I asked Mr. Tarallo for a copy of the deed since it was mentioned and I didn't see it. So he did give us a copy of the deed.

Marie Casseus: I am at 22 College Farm Road since 1990. The street is so narrow. I cannot tell you how many times my car gets hit just by parking in my driveway. Because when people are trying to turn there's no space. I love to walk. Sometimes I have to drive somewhere else to go and walk because this is a narrow street.

Viviana Rodriguez, 17 College Farm Road: It's interesting what she said because my kids have this pass time during wintertime and literally they sit in front of the window that sees in the front of the house and they start counting the cars that get stuck going up when we have like a bad snowstorm. but when they cannot make it, and I feel bad for these people, I almost want to go there and help them push, the street that they use to turn back down and maybe try Lake Street to go back to their home is where they live. And I cannot imagine having a house there, you know, the traffic and the accidents potentially that could happen. And to me it's concerning because I have an six year old and a eight year old and they would like at some point to walk to school and we don't get a bus for Kennedy or for the High School and I would like to keep it easy and simple for them. So that's why we came. And, again, I second what my husband said. We were looking for a house with enough land for them to play, two boys, rambunctious as they come, and they need a place to play and this house would provide if the space is left as a side yard a great family home. Right now we don't have any neighbors with kids so this could potentially bring a family looking for the same things we were looking for when we bought our property. So, that's my two cents.



Mr. McCourt: Mr. Tarallo made great reference to the deed. The deed when it was conveyed contained both lots and each separately described as you will see on the deed so their each separately described; common way if you own several lots the way you might do it. Why would you pay additional money to make two separate actual deeds recording. They were separated out as you will see. The first one is lot #63 which is the actual existing house that Mrs. Salvucci lives in and the second lot is also a certain parcel of land secured in Waltham and that being lot #64. So they clearly knew and intended to keep it separate. I also point out if you look at the top of that deed that the consideration for it was One Hundred Dollars. The reason being is that she received it from her mother and father. It wasn't like she came and bought the house and she was entitled to it due to the fact that she was related, but her family have owned it for sixty or seventy years or more. So if it's not really a new, someone after the ten years after the incident of changing it, it's just someone who received a family lot when either the parents have passed or well they couldn't have passed away if they signed here but were ready to turn the house over to their daughter. So you can see the consideration of One Hundred Dollars which is usually tantamount to some sort of a family giveaway.

Mr. Tarallo also mentioned that there was an opinion in the Law Department or that opined further on this lot. Let me say, getting the opinion other than what I provided in there, which I provided to Pam after she didn't seem to get it from Patrick Powell, not because he wouldn't, but they didn't seem to be in the files beyond that, bBt obviously Mr. Tarallo seems to have developed that opinion. I would like to have an opportunity to

read that, to in fact look at it. I think it also may be worthwhile if someone comes and looks at it. I point out, however. 32 College Farm Road is a parcel which you will see in here of about 4300 or 4400 square feet. This one may be similar. The Casseus house, the amount of land they have is the same, so all of these houses around here (referring to the plan) are on lots of similar size. So it's not like they are looking to increase or do anything beyond the old lot. The Cedrone's owned this. Sal Mele owned the rest of the lots. I believe there was no act at the time of any conveyance when he did no act of adding them together. Mr. Mele owned a number of lots including I think some on Montview. It is a little unique on that. I will be very honest with you, I attempted to go up there today but I just had a public hearing at 2:30 and I could not do it and I should have gone before. I certainly accept the fact that they are saying that it's only built out to a rather small portion but it is a forty foot right of way on the deed and on the plan that was created. Mr. Pandolfi, in many areas where he has built is very good with neighbors and works it out. I think it might be worthwhile to come and just take a look at it at some point. I understand that you have gone and looked it but I would like to get this opinion from the Law Department, this additional opinion to be able to read and I would like to look at it.

Mrs. Rando: So you are asking for a continuance?

Mr. McCourt: That's right. We don't want to burden everyone to be coming back in one setting but I do think there were factors that were developed here tonight.

Mr. Sergi: Are there any other similar deeds with two parcels on them?

Mr. McCourt: I have no idea. I don't know I'll find that out for. I mean the Cedrone's owned both parcel so when they gave it to the daughter they just deeded it, but they were very careful, whoever drew that deed did the right job. You could have a deed and I still believe that under the law you wouldn't unite the parcels but he or she, whoever drew the deed could have said lots 63 and 64 and given the outside perimeter. A description that doesn't unite the lots but certainly would lead one to believe that that might be the case.

Mr. Sergi: I am wondering as a banker if I was to foreclose on this, I would have to foreclose on the deed, right?

Mr. McCourt: No, you would have to foreclose on whatever property they put up to secure your loan. So, you could easily give a mortgage on 63 and not involve 64.

Mr. Sergi: On the same deed!

Mr. McCourt: Deed has nothing to do with it. There is nothing in this that would prevent you from getting a mortgage.

Mr. Sergi: By creating a separate deed.

Mr. McCourt: Well, you could have a separate deed but you wouldn't need one.

Mr. LaSane: How do you reconcile the fact of the assessment?

Mr. McCourt: The assessment is out of our hands. It's how he assessed the, but how they assessed it, I don't know that.

Mr. LaSane: The point being, the lot in question was assessed as - - -

Mr. McCarthy: It wasn't assessed as a regular lot.

Mr. LaSane: I am trying to straighten out in my mind how we change the definition to move forward.

Mr. McCourt: Assessing never defines the lot. Assessors assess what they see and make their decision on. For instance, I don't know if this is a good example, let's say there was a small office building on the lot in a residential zone. The assessing department would assess what exists there. It might be an illegal construction. That's a zoning issue. So according to the documents that we have, this is a buildable old lot. The assessing department, I don't know why they determined it unbuildable, but they did determine that it was a separate assessable lot despite one deed. So their designation does not control the zoning of the lot or what it can be used for.

Mr. LaSane: However, the family has been paying taxes on this lot as what definition?

Mr. McCourt: I have no idea, whatever the tax bill said. They didn't make the assessment. They paid it as a separate

lot, however the city chose to send them the bill. What the assessors do is beyond our control. It does not determine however what the lot is.

Mr. McCarthy: But it does determine the tax bill. It does determine, whether or not this is a benefit to build on this lot, and you're saying that these people if we don't let them build on it, they have been hurt, when in fact, they haven't been paying taxes on it like it's a buildable lot forever. And then their taxes more than likely were at the behest of the owners to come back to the town and say its a non--buildable lot you can't tax me like it's a buildable lot. And for the past fifty years, or sixty or seventy years, they have been benefiting from this so to change that all around now and say these poor people we are going to be hurting them if you don't let them build here, well they have had the benefit of that sideyard for all these years from low taxes on it for all these years and it doesn't seem like it's that much of a hardship for me.

Mr. LaSane: And on that point really, I don't personally see the need for a continuance.

Mr. McCourt: Well, I would like to have a continuance to at least to build whatever legalese goes into the case depending on what happens next. And I would be happy to explore at the assessors office whether or not they ever applied to make that lot- - -

Mr. McCarthy: I mean that whole thing really plays into it at lot, in my opinion.

Mr. McCourt: I understand.

Mr. LaSane: That's a huge part for me. When you're talking about benefit and hardship, you know, we've got to figure that.

Mrs. Rando: Well, we have had other cases where we have had people before us who have paid taxes on two family houses and it's really a single. And the other way around. They have paid taxes on a single and it was a two family and no one found out until later. So I don't think that what the assessor has to say is the actual - - -

Mr. McCarthy: I think our point is strictly, he's saying that it's a hardship if unable to build. Well, they haven't been paying like it's a buildable lot in the past forty or fifty years. They are paying like it's an unbuildable lot. So, you know, that in of itself eliminates the hardship. They haven't been paying like it's a buildable lot. So how can it be a hardship if we don't let him build on it?

Mrs. Rando: Because he doesn't fit the criteria if I am following him correctly.

Mrs. Rando: Say again what you are trying to say. What the assessors say is not the law it's not the thing that we have to go by.

Mr. McCarthy: I'm not going by what the assessors say. So I'm saying the fact is that they have been paying like it's a non-buildable lot for all these years. Don't come and say that we won't let you build on it, it's a hardship because you haven't been paying like it's a buildable lot for all these years so that eliminates that hardship.

Mr. McCourt: That's certainly an argument and we respect your opinion but I will find out from the assessors when or if they ever made an application to have it unbuild, but they have received a separate tax bill.

Mr. McCarthy: You can't have it both ways.

Mr. McCourt: It's a laid out lot that's similar in area with all the other lots, not only the area but on the street.

Mr. McCarthy: Well anyway, see if you can get anything to go against that argument and get the information you need.

Mrs. Rando: Mr. Tarallo, do you want to say something?

Mr. Tarallo: Just a couple of points. First of all, the lot is unbuildable as it is today. That's why they are here. If it was a buildable lot they wouldn't have to come here. As you know, many small lots get built upon and never appear before this board. Okay, so it's not a lot. It's buildable. So, make sure that that's clear. I will provide for the record the tax assessment for before 32. See it for yourself, and it says unbuildable and it does say the things that I said.

The other point that I would like to make to go to the fact of the deed itself, and understand that Waltham is different than the State. We go farther than the State in giving people the right to use older lots. If I was to say, indulge me for a moment, when I ran for office, the reason I ran for office was because of that problem, but that's an issue because they had changed the law to allow that because it wasn't allowable years ago. It was based on a Board of Appeals case that was here that denied a house to be built upon and the City Council decided to change the ordinance to allow these houses to be built before I was elected to office in 1989. But that being said, the issue is, is the State Law in Chapter 40A, Section 6, clearly indicates and does take into account that if the lot was held in common ownership, you can clearly see from the deed, that the lot has been held in common ownership. Just because it says Lot 63 and 64 doesn't give any magic. Lot 63 and 64 doesn't give any ability to build on it. Lot 63 and 64 don't give it anything. Because if they are in common ownership and they are next to each other. If we went by the state law it certainly couldn't be built upon either and they would have to seek a variance. So, please, make sure that you understand that those things are important to consider in making your decision. That's why, in my belief, and I haven't talked to the assessor, I have no idea, it may have been decades ago when they decided how to evaluate the property. I haven't looked at it recently but the issue is that it is not a buildable lot until you grant a variance. If you don't grant a variance, it's like its always been, one lot used in common with the other lot next door to it in common ownership. And that's why they have had that advantage over the years and that's why there's a structure there for their convenience and for their usage. Only at this time have they



decided to try and do something different. And they can't do that without your approval.

Mrs. Rando: Any questions from any board member? I guess it comes down to if anyone wants to make a motion to allow Case 2014-08 to continue.

Mr. Hickernell: I will make a motion.  
Mr. McCarthy seconded the motion. The roll being called: Mr. Sergi, yes,;Mr. Hickernell, no; Mr. LaSane, no; Mr. McCarthy, yes; Mrs. Rando, no. The vote was 3-2 not to allow Case 2014-08 to continue.

Mrs. Rando: It does not carry.

Mrs. Rando to Mr. McCourt: What is your wish. Do you want to go through the Findings of Fact or do you want to - - -

Mr. McCourt: I'm not sure on the vote what status it is because of the vote and things of it. We have had this before of what constitutes a vote. Ordinarily it takes four votes to do it, but I'll accept the vote that it can't be continued. I think that it is unfair with the information that has been presented and what loose ends there are to this whole thing.

I can do the Proposed Findings if you want me to, or you can accept what I filed and vote how you see fit.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: On the Proposed Decision?

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: All right. On the Finding of Facts?

Mr. Hickernell: I will make a motion to deny the petition. Mr. LaSane seconded the motion.

Mr. Hickernell: I think we can write our reasons following the meeting but my reasons for making this motion are that: Under Section 2.323, frontage on a public and private way is required and non exist here and I don't think we have the ability to rewrite the City Council Code, even if we can, I don't believe that the petitioners with all respect has met the showing of what is needed for a variance. I don't see a hardship and I do believe it will be detrimental to the neighborhood for crowding and safety issues. Typically, I am not a big fan of density arguments or anti-density arguments, I think it does fit in this situation. So those are my reasons.

Mrs. Rando: And I agree. I would have asked the law department for an opinion on whether we could change the Council's definition of on the street or private way.

Would you like to add any other ones, Mr. Sergi?

Mr. Sergi: No, I mean I voted to continue because I always like the petitioner to have some additional research if there are some issues clouding here but in this case, I have to agree with Mr. Hickernell, the reasons he's laid out, so I am okay with going forward.

Mrs. Rando: Does anyone else have any other reasons?

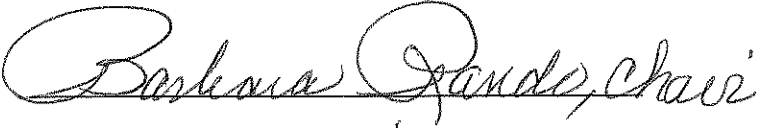
Mr. Hickernell: I'd like it to be clear that the reference by Mr. Tarallo to the law department's opinion that we had before us did not factor into my motion.

Mrs. Rando: All right, Mr. Hickernell made a motion and it was seconded by Mr. LaSane to deny it in full, so how do you vote Mr. Sergi to deny?

Mr. Sergi, yes; Mr. Hickernell, yes; Mr. LaSane, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

The vote was 5-0 to deny.

There being no further, on motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 8:40 P.M.

  
5/20/14