

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**June 2, 2015**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, June 2, 2015, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were Chair Barbara Rando, and members Glenna Gelineau, Mark Hickernell, Marc Rudnick and John Sergi.**

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

**Mrs. Rando: Do I have a motion to have a five minute recess until one of our members arrives.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to recess for five minutes.**

**At 7:05 P.M., the board reconvened.**

**Mrs. Rando: We have one case before tonight, Case No. 2015-07, 47-51 Hall Street LLC.**

**The first action this evening is for a motion to approve the minutes of May 5, 2015.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of May 5, 2015.**

**Would the clerk please read the petition in Case No. 2015-07?**

**The clerk then read the petition in Case No. 2015-07, Petition of 47-51 Hall Street, LLC in an application for variances. The locus consists of a parcel of land known as 47-51 Hall Street. Two buildings, a former rectory and a garage, are situated on the locus. The Petitioner is proposing to construct, use and maintain nine (9) residential units in the former rectory building. Location and Zoning District: 47-51 Hall Street, Residence C Zoning District.**

**Ms. Gelineau: Madam Chair, I just want to before the meeting starts, I just want to disclose that back in September, late summer through September, I did work with the Archdiocese on the sale of this building. I have had no professional or financial relationship with the petitioner but I did work with the Archdiocese when the building was on the market and I have filed a letter with the City Clerk and with the Mayor's office saying that I have disclosed this and that I still think that I can be fair and sit on the case and they agreed.**

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

**Attorney Joseph M. Connors, Jr., 404 Main Street, Waltham, MA, Attorney for the Petitioner came forward.**

**Mr. Connors: I am an attorney representing the Petitioner. Tonight, joined with**

me is Joe Fournier the Architect that prepared the architectural renderings. Also the petitioners in entity 47-51 Hall Street and its also Metro Realty Corporation. Mr. Connors introduced the representatives of the owner. Also Jim Almonti is here with me. He is in the third row and he is the site engineer that designed the site and the plans that are reflected here.

(Mr. Connors submitted a written brief to each member of the board and went on to read his brief into the record along with going over the plan with the board. Half way through his brief, Mr. Connors asked Joe Fournier to walk the board through the design of the interior of the building.)

Joe Fournier, JFF Design Architects, 24 Warwick Avenue, MA, came forward.

Mr. Fournier: When first approached by our client to reuse this building as best possible, we certainly tried to maximum the number of dwelling units that we could fit within the existing structure. Seeing there was not a very limited ill repair of the building itself, it made sense to try to use the structure as it exists to reconfiguration. So after going through several iterations, we originally started with twelve units which were comfortable within the building, however we felt that that would be in excess of density, really for the neighborhood, and certainly be very taxing as far as parking. So we reduced the unit number to nine, three comfortable units per floor. The plan before you is the basement. Each unit is outfitted with two decent size bedroom units and a large open kitchen living plan. They are self-sufficient in the sense that we have washer/dryer units, self supporting mechanical equipment, and ample storage for a unit of this size. The client wants to introduce an upscale living facility so we wanted to present the design that would actually respond to that.

The first floor space offers four independent entries to service the building. We

have entry points to the West to the parking areas for direct entry into the units for the second floor which would ultimately result in the living area. On the first floor, we are entering to the front or Hall Street, if you will, and again entering through the living portion of the plan. So alternating the entries which allow us to stack stairs thereby consolidating as much square footage as possible maximizing the area within the dwelling unit.

Because of the number of units and the configuration where we have an occupied basement, we are required to have a full sprinklered building so the only addition that we are proposing to the structure is off to the north (referring to the plan) which is between the accessory garage structure that exists in the primary building. The nice thing about this is that the sprinkler room fits within in excess of ten feet that's required between the accessory structure and the primary structure so it made sense in our design to maintain the garage. There's nothing wrong with the building so we thought rather than creating this additional wasteland of asphalt, we thought we would leave the structure that is there. It's in good shape and it compliments the main building quite nicely.

And lastly, on the second floor, here again you see that the entry points are towards the living part of the units. Each unit has two means of egress. We didn't require fire escapes or anything like that. There are viable stairs. We are hoping to arrange it in such a way that each entry will be dedicated to a particular unit. They may share a door but we are trying to promote, if you look back at the ground level, promote an entry for each particular unit isolated. So again it helps to enhance the dwelling purposes of the structure itself. The exterior, as I say, other than a few small repointings that need to be done, we are trying to maintain the character of the building. We are maintaining the roof structure. We are not asking for any additional square footage or structure to the building itself. Again, with the exception of the sprinkler room, we are trying to promote again entry

points that are more consistent with a dwelling neighborhood and certainly in a multi-dwelling capacity. (Mr. Fournier went over the elevations with the board.)

We are trying to maintain the brick as best possible in the areas that we need to patch for a variety of reasons whether relocation of existing windows and whatnot. We are proposing a stucco, here again, to compliment the brick to stay within the characteristics.

(Mr. Connors went over the plan with the board and then went back to his brief.)

Mr. Connors: So we believe that this is a great project for this part of town. It's reusing a building that has been there for a heck of a long time and we think that it will be a benefit for this neighborhood.

Joe, I just want to ask you one question. Are the windows, what's the difference in the windows from what's there today and what you are going to be constructing or what you are proposing?

Joe Fournier: Well the design of the windows is actually consistent with what exists. And we intentionally placed new windows as they responded to the dwelling areas. They are currently double hung windows. We want to retain the double hung windows. It seems to be consistent with the building design and the same thing with the entry points. We want to make the entry points, again, consistent with the overall building design and not really deter from that. We want it to be more of a blending while identifying as opposed to doing something unique and not in character.

Mr. Connors: So that's the basis of our presentation.

Mrs. Rando: When you sent your brief to us by email, did you include the cases that you cited tonight?

**Mr. Connors:** Yes, I did.

**Mrs. Rando:** That would have been very helpful.

**Mr. Connors:** I did.

**Mrs. Rando:** Oh, you did.

**Mr. Connors:** I sent it as a separate attachment.

**Mrs. Rando:** I did not see the separate attachment. It would have been very helpful because the burden on you is to prove that you do indeed have a hardship. I haven't had a chance to read these cases. I did look over one of them, the Boyajian, the Board of Appeals of Wellesley. And it said here, an unoccupied dilapidated wooden structure. Well Mr. Fournier just said it seemed to be in pretty good condition to quote: "Smaller points to be done". It doesn't seem like it's completely dilapidated. That's just one case that I happened to look through..

**Mr. Connors:** True and my point in that case is that there was a structure, it was a single family zoning district and they allowed him to convert it into a medical office building there. So the office building isn't permitted in a single family residence and so they said this particular structure was dilapidated and we'll allow you to replace it but it's just a case that says a structure can form the basis of a hardship under Section 10-40A. The conditions are different. This structure, it's not dilapidated, it's in good shape. It's a solid building. I mean it's structurally sound and so we want to reuse it rather than tear it down. You could tear it down and create two lots and create two - two families. So the reason for the case is to say that a structure is a basis of a hardship. And so the case in the Johnson vs.

the Board of Appeals is a short case but it was a case where we have a church that a congregation had gone away. In that case the board allowed them to convert the church into office space and so they said structure itself has outlived its use for purpose and we believe that that's a hardship under Section 10 and we will grant you a variance to convert it to office space.

Mrs. Rando: But even though the structure is what you are talking about, don't we have a responsibility to look at parking or safety before making a decision. It's not just the structure alone.

Mr. Connors: Well, I think you're right, absolutely. So you know I have to get over the hurdle first and say that I have a hardship. Then there's other issues to consider you know. So, is it a substantial detriment to the public good or is it not? Or, is it a derogation and nullification or is it not? But I'm citing the cases that were established that we believe that we have a hardship.

Mrs. Rando: I wish I had something to read.

Mr. Connors: I'm sorry about that but I didn't send them as an all one lump sum email because it was too large so I had to break it in pieces and I did send it.

Mrs. Rando: And you are also looking for six or seven variances. And that's a lot of variances for one locus in a very crowded area and where you mentioned parking, you said two, if I am correct, two of the units will only have one parking space and the other two can park on the street.

Mr. Connors: We are proposing nine units and we have sixteen parking spaces, so seven units will have two parking spaces and the eighth and ninth unit will have one. So

they will all have off street parking. There's enough to take care of each one.

**Mrs. Rando:** There's tandem parking.

**Mr. Connors:** So the tandems is only going to work for someone that's getting - - -

**Mrs. Rando:** It's not going to work anyway.

**Mr. Connors:** It works at my house.

**Mrs. Rando:** It doesn't in mine. And if it doesn't work, they don't want to move their car to let somebody else out.

**Mr. Connors:** We are going to assign two parking spaces to one unit. (Mr. Connors went over the parking plan.)

**Mrs. Rando:** Have you ever driven on the South Side and looked for parking on Taylor or Cushing Street, any of the streets over there?

**Mr. Connors:** It's tight. So that is why we are trying to get as many parking spaces as we can. So we are giving seven out of nine units will have two and units 8 and 9 will have one. So, still everybody is getting one parking space.

**Mrs. Rando:** And you think the tandem will safely be able to be maneuvered?

**Mr. Connors:** Yes, I mean it would have to be assigned to one unit to make it work.

**Mrs. Rando:** When I first read this case, I kind of smiled because I said, no, they



don't want this. They must be coming in looking for less. Is this what it is, hoping that you are going to get less than all of this? This is my opinion only. You're in a very overcrowded section as it is and you're trying to squeeze more in.

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

**Mr. Sergi:** Yes, I have a few questions and some comments. First question, what is the square footage of each unit that you are proposing?

**Mr. Connors:** It varies to some degree but I'll have Joe - - -

**Mr. Sergi:** Is it approximately a thousand square feet each?

**Mr. Fournier:** It's about 825.

**Mr. Sergi:** So there's quite a bit of common area?

**Mr. Fournier:** Actually very little common area. The stairs constitute most or actually all of the common space. The units take up all the horizontal area.

**Mr. Sergi:** Comment to the hardship, Counsellor. I seem to agree with the chair. I think it's a stretch in presenting the hardship the way you did. I've done a lot of developments. I'm a banker and I've sponsored a lot of developments. I look at the building as an enhancement to this development whether you make nine units or less. I think you could probably make a good project out of this but I think to put nine units here based on that hardship, it's hard for me to buy into that argument. That's my opinion.

**Mr. Connors:** I will say this. I still think there's a hardship.

**Mr. Sergi:** I knew you would.

**Mr. Connors:** I still think there's a hardship because the question is: How many units? I still think the hardship is there because now I have an old rectory building that I can't use for anything. So, the question is, how many units are going to work there. So, I don't think it's the hardship. I think is it a substantial detriment to the public good. We think nine is reasonable and the board may think different. But I still think there's a hardship there. Its just a question of are we entitled to nine or are we entitled to less than nine.

**Mr. Sergi:** I did say it was a stretch. Although, let me speak to the number of units. I think this area is overly congested and nine units is out of character for the neighborhood, in my opinion. I am talking about my opinion. I think a four unit project here would be a little bit more comfortable. It would fit into the neighborhood a little bit better and I'd like to see it add parking to the area because I think with four units I think you might be able to add some additional parking maybe for a visitor or two. I think that would be nice rather than park in the street or such. Just a thought. And bigger units. You might be able to get a little bit of more money for each. I mean, I just think that you could probably work with less units and probably place it in more conformity to the neighborhood. I think that's something maybe I would throw out there as a suggestion.

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

**Mr. Hickernell:** Not at this time.

**Mrs. Rando:** Ms. Gelineau?

**Ms. Gelineau:** Not really, but I just wanted to mention that I do like the idea that they are preserving the building, that they are preserving the structure and that they are preserving the rectory. I think there's a lot of things they could have done and torn it down. I'm kind of just glad to see the building survived just as an aside.

**Mrs. Rando:** Mr. Rudnick?

**Mr. Rudnick:** You showed us that elevation where you are making a nice looking front. That's the Cushing Street side?

**Mr. Fournier:** It's the Hall Street side.

**Mr. Rudnick:** So the rear parking lot, that's one way in and come back the same way?

**Mr. Fournier:** It is. We thought that that was a safer approach to the property.

**Mr. Rudnick:** Do you have to turn your car around or are you backing out?

(Mr. Connors went before the plan to show the parking.)

**Mr. Rudnick:** How are you arranging that last car?

(Mr. Connors went over the plan.)

**Mr. Rudnick:** So tell me the exhaustive work that you did looking at other parking options for this site and one of you mentioned the idea of razing the garage not that you were asking for it. How much parking did that provide if you put a lot there instead of a

**garage?**

**Mr. Fournier:** When Mr. Almonti worked diligently towards the parking, I think I'll let him speak to this. We brought two other examples of parking schemes that could have worked but we thought that here again for preservation of the structure we felt it better, the garage is in good condition, why not keep it if we can utilize it.

**Jim Almonti, Waterman Design Associates, Registered Landscape Architect:** So this was one of the options that Joe was speaking to where we did raze the garage. So this resulted in nine spaces within the area of the garage, one of them being compact, and then five spaces towards the rear of the property, two of those being compact. So that was eleven total spaces there.

**Mr. Rudnick:** That would no longer get into the buffer zone, they would need a variance for that.

**Mr. Almonti:** Correct.

**Mr. Rudnick:** Those ones at the bottom?

**Mr. Almonti:** These are within the ten foot setback to Hall Street.

**Mr. Rudnick:** You still need a variance for that in this design.

**Mr. Almonti:** Correct. And this one, (referring to the plan) again razing the garage, ninety degree parking resulted in eight spaces here and again five. This is essentially the same way out as the previous plan. So a total of thirteen spaces with this, two of them being compact. And this one did not require relief to the setback on Taylor or Hall Street

or Cushing as well. So those are by right.

**Mr. Fournier:** Both of those schemes illustrate we actually were able to provide more parking in the scheme of their proposed, it still would be insufficient for the number of units.

**Mr. Rudnick:** Did you look at the opportunities to put a garage in the building entering from the parking lot in the back, losing an apartment and putting a garage in there? The apartments are on grade in the back of the building?

**Mr. Fournier:** Yes. I think that would be a stretch in the sense that it would be structurally infeasible to do that. Where we have a full basement, obviously we would have to restructure the floor area in order to do so but given that the main floor elevation is a few feet higher than grade, again, I think it would have caused more harm to the building and given the age of the building, it would be very suspect of really structural reinforcement when we start getting into lateral loading and things of this sort so I didn't want to disrupt the integrity of the building structure for something as invasive as that and given the fact that we did have an existing four car garage on site. I also think that entering and exiting the garage space from the rear would have been a challenge. I think it's a safer illustration of parallel parking versus trying to navigate into a space with traffic coming through in either direction. So I really didn't want to explore that too much. I think it would have damaged the integrity of the building.

**Mr. Rudnick:** So you're parking lot, the back side, you think that floor level of the first floor is a foot or more above grade.

**Mr. Fournier:** It is. It's pretty even, it's relatively flat.

**Mr. Rudnick:** And then there would be an apartment under that garage anyway.

**Mr. Fournier:** It would. Not a very good one I suspect.

**Mr. Rudnick:** Any other parking that you looked at?

**Mr. Fournier:** Off site parking. What I was going to say with regard to the garage area it actually would have eliminated the unit down below because of head clearance. If we were down to grade then we would reduce that to substandard occupiable space. To the substructure, it's approximately seven and a half feet to the substructure so its about an eight to and eight and a half foot ceiling. So it's a decent size. They are comfortable garden style units.

**Mr. Rudnick:** I am only moderately familiar with Hall Street because I'm usually trying not to run people over when I am driving down that street, so I'm not really picturing how close the rest of the structures are to the street-line. You're proposing bringing cars out into the merge. Your building, the average set back from the street line or are there others that are closer? Is there anybody else in this neighborhood that are parking by a variance in front of the building? Are you nicely in line with the rest of the buildings?

**Mr. Fournier:** I think in looking at the abutter's map, I think you will see that our relationship to street is a little bit more generous than the average house in the neighborhood. And here again, I think that bodes well to again using as much of the existing structure, the familiarity of the neighborhood to the structures that are there granted the traffic cycle is going to change a little bit but I think that we have promoted as much safety as far as circulation on and off site that we could muster out of this.

**Mr. Rudnick:** Does the applicant own any abutting properties to this one?

So what's your unique argument to come here and say that you already had a negotiation with yourself and moved it down from twelve units to nine units or making us negotiate that down? Tell me what happened when you looked at seven or eight units for this project? So one less unit you would have the adequate number of parking, right?

(Mr. Fournier shook his head, yes.)

Mr. Rudnick: It seems like a nice place to put eight units or seven units. What's wrong with that? Just help me understand it. I'm just a dumb carpenter/

Mr. Fournier: I suspect that there may not be as much truth to that as you may suspect. It appeared that the unit size was comparable to the neighborhood. Certainly while not overly generous for a two bedroom unit, comfortable for a two bedroom unit coupled with the fact that our client has committed, at least, within our design discussions of creating a high end unit probably moreso than normal development. That comes with a price so along with that if we can couple nine units in a comfortable setting in this neighborhood and provide almost ninety percent of the required parking at the same time, it would be worthwhile in getting that ninth unit to help defray some of the cost. I also feel that given the layout, and again we are focussed on parking. We are not overburdening the board by coming in with probably more of a reality of 1.25 spaces per dwelling unit on average I would say. I think in tweaking this back and forth, I can show you inches of trace paper going through and trying to better this and I think we have reached that. Would we consider one less?

Ms. Gelineau: Are they apartments or condos?

Mr. Fournier: They are set up for apartments as of by right now.

Mr. Connors: They are stand alone units, aren't they Joe?

**Mr. Fournier:** They are stand alone units. They could be converted into condominiums.

**Mr. Rudnick:** Counsellor, what other zoning approvals do you need besides what you are here for tonight?

**Mr. Connors** went before the plan with the board. I need two other forms of relief. I need driveway opening approval from the Board of Survey. He also pointed out a driveway opening that they were seeking which was within a hundred feet of an intersection which also requires a Special Permit from the Board of Survey.

**Mr. Rudnick:** What is your FAR?

**Mr. Connors:** We are not expanding the FAR so we are maintaining the existing FAR.

**Mr. Rudnick:** So you don't need to get a special permit on the FAR even though you are changing the use?

**Mr. Connors:** The FAR is the FAR. I mean it's a conforming use to a conforming use.

**Mrs. Rando:** So you haven't gone in front of the Planning Board yet. You're coming to see because you are seeking variances from us and then you will - - -

**Mr. Connors:** Well, we have to start somewhere, Madam Chair.

**Mrs. Rando:** Is there anyone in the audience that would like to stand and be



counted in favor of this petition? (No one came forward.)

Is there anyone seeking information? (No one came forward.)

Is there anyone in opposition?

(Sixteen people stood in opposition.)

Would anyone like to come forward and speak in opposition?

Robert G. Logan, Taylor Street, Waltham came forward.

Mr. Logan: I am the Ward 9 Councillor for Ward 9 which is where this locus is located and I am also a resident of the neighborhood. My house is three blocks away from the locus.

So where to start! So much to say. First of all, in reference to the pre-legal opinions. It's interesting first of all to note that two of them are from 1972 which is before Chapter 40A was passed and one of them is from 1978. You kind of wonder why we have to go back forty years to find anything you can hang your hat on. Another interesting thing about these three legal opinions is they all relate to cases of a use variance. As you know, there are two kinds of variances. There are dimensional variances and use variances. And when Chapter 40A was passed, it was local option as to whether or not the Zoning Boards of Appeals would have the authority to grant use variances. In Waltham, the Zoning Board of Appeals does not have the authority to grant use variances. So I really don't think that these are applicable. It's interesting to note even looking at them one of them is actually, it's a case that relates to a zoning case but the case that we actually got a copy of has to do

with a court case on how much of a bond somebody had to file in conjunction with the case and the case got dismissed because they didn't agree to file the amount of the bond. But that doesn't really have to do with the merits of the case. But if you go in, this is the Broderick & Others vs. Board of Appeals of Boston, this is the Faulkner Hospital Case. And it's for the construction of a new hospital and parking garage on a large parcel of land in a residential district. So this case, they are proposing to build something that isn't allowed in the district. But again, looking at hardship and what has to be proven, it does mention the judge's findings on this point, however, that the land area of the hospital was an irregularly shaped parcel, that it contained variations of grade, extreme in some locations and that sub soil borings revealed ledge refusal. So those are the kinds of things that you would typically get in a variance. I haven't heard anything that there is any ledge here. I haven't heard anything that that there's anything about the topography of this lot, only that it is a unique building. That could be a basis for a hardship but is that why there is a hardship there? So, I think that these three cases here because they have to do with use variances not dimensional variances are really not applicable.

Now, in this case here. we look at it and say, well, okay, you could have a building and the building could be different from every other building in the area and that could be the basis for a hardship. But is it? Is it because of the building? One way to answer that question is, what if the building weren't there? What if they were building new? Could they do this? Well, no. Why? Because it would still, when you look at the required side, rear, front yard setbacks, the limits on the number of stories, the limit on height and all the different things that are in the zoning, they wouldn't be able to do it by right because of the limit on units per acre. So, it isn't the building that's causing the hardship. It's the Zoning Ordinance. Ya, it's a unique building but basically the hardship is, this is what we want to

do and it's not allowed by zoning. That's not the basis for a variance.

So, on the parking., tandem parking. I know a lot of people look at it and they say, why is there a restriction on tandem parking? What's wrong with tandem parking? It's parking, isn't it! I've lived on the South Side all my life. I know the South Side very well as do all of my neighbors who have come out tonight. People have a very difficult time finding any place to park on the street. Yet if you go around and you look, you will see that there are driveways that you can fit more cars in. Why don't they do it? Because the husband comes home first, the wife comes home second but the husband has to go out first. So if they both park in the driveway as they come home the wife's going to have to get up early to move her car so the husband can get out. So, what do they do? Park one on the street, one in the driveway, so one ends up in the street. That's what happens when you have tandem parking. On the South Side, take my word for it, if you design parking as tandem parking, you might as well count it as one space. Because that is how it's going to end up being used. So, really if they say they have sixteen spaces and I forget how many of them were tandem, two of them were tandems, so really that they have fourteen spaces. So they don't have enough spaces. You know parking is at a premium on the South Side. Now, right now you have already got two driveways. They are going to put another one, they are going to pave the entire back of the lot next to the abutting properties.

One of the things that I think is important to note, and let me pass this out (Mr. Logan submitted a copy of Sec. 3.4, Table of Uses to the Board.) It is important to note it is a change in use to begin with and because the existing use under Section 3.214 of the Zoning Ordinances, "Churches: The Use of land, buildings or structures for public worship carried on by a recognized religious sect or denomination which may include religious instruction, maintenance of a convent, a parish house or similar facilities. So this is considered a church or church use. Now it's being proposed to be turned into residential.

So, under Chapter 40A of the Zoning, Section 6, it states: Except as herein provided the Zoning Ordinance or by law shall not apply to structures or uses lawfully in existence or lawfully begun or to a building where a special permit is issued before the first publication of a notice of a public hearing or such notice or a by law required by Section 5, but shall apply to any change or substantial extension of such use. When you change a use it has to comply with all the existing ordinances. To a building where a special permit issued after said notice of a public hearing to any reconstruction, extension or structural changes of such structure and to any alteration of a structure begun after any notice of said public hearing to provide for its use for a substantial purpose or for the same purpose in a substantially different manner or to a substantially greater extent. So its clear that when you change, you have to comply with the zoning. Now, as you will notice what they are proposing is multi-family. And if you look at the handout, (Mr. Logan went over Section 3.2 with the Board. ) So in order to have a greater intensity of use, it requires a Special Permit from the City Council. You could put five units by Special Permit from the City Council. Again it's the City Council that issues the Special Permit.

(Mr. Logan also submitted a letter to the board from The Law Department dated February 10, 2015 regarding 118-120 Willow Street.)

Mr. Logan: We had some questions on 118-120 Willow Street. This case came before this board and subsequently went before the City Council for a special permit which was denied. We had some questions about the process. In responding from questions from the city council on this, you can see highlighted in yellow that says: "The ZBA does not have the authority to grant a variance for FAR. In accordance with M.G.L. chapter 40A, section 9, a municipality is authorized to grant special permits for increased density (increased intensity of use, also known as increased FAR) by enactment of an ordinance authorizing a particular special permit granting authority. In this case that special permit

granting authority has been delegated to the City Council. They issue such special permits. \*Such increased intensity of use is only authorized by special permit because increased intensity would never be able to meet the standards for issuance of a variance.”)

So this is kind of a double hit there. The Law Department basically is saying, when it comes to intensity of use, it can't meet the standard for a variance. Well you could say that because of the topography of the land, the back half of the lot is unusable or because the solid content is ledge so we have to move the building over here and that's why there's a hardship. But the hardship here is basically they want to do more than zoning allows. That's not a hardship. That's wanting to do something you can't do. One time or another maybe we all want to do something we can't do but we can't do it. Just to give you an idea, I just want to kind of graphically represent just how far of a reach this is and I know, someone said, how much could you come down to. It was really breathtaking to hear that they considered twelve but they brought it down to nine. That was great. Twelve, I guess those would have been apartments about the size of that table. But just to show graphically Units per Acre. (Mr. Logan went over a graph which shows what is allowed by right and what is allowed by special permit and what they are proposing. It's outrageous! It's absolutely incomprehensible to come in here and say that normally do you want to want to go beyond what's allowed by right but far beyond what even would be allowed by anybody else if they went before the city council to get something for a special permit. It's far beyond the maximum that the city council could grant and we hardly ever grant the maximum, even Cooper Street which some people say I can't believe you're allowing such a big building. It's only 75 percent of the maximum FAR. So to come in here and say that you want to exceed not only the allowed by right but the allowed by special permit by that much. Again it goes back to two things. First of all, I believe in all due respect, it's not within the purview of the Zoning Board of Appeals to be essentially issuing variances for what amounts to density issues. Density issues as the Law Department points out should be

before the City Council but again, even if you wanted to go back and look at the variances. It's not a hardship. The Law Department said a density issue couldn't satisfy the requirements for the issuance of a variance. And one other thing, is that, even if it could, as you know it says right in Chapter 40A, in terms of the requirement for granting of a variance, it says that: Desirable Relief May be granted Without Substantial Detriment to the Public Good, which I believe is a substantial detriment in terms of the parking and the whole layout of this having three driveways; having cars moving around right on the lot line, but without nullifying or substantially derogating from the intent or purpose of such ordinance or by law. The intent of the by law is exactly to limit over density by means of limit of Floor Area Ratio and units per acre. So, how could anyone possibly say with a straight face (referring to his graph) that this is what's allowed by right, that's what's allowed by special permit, this is what's being proposed but it doesn't substantially derogate from the intent of the zoning ordinance. It basically nullifies it. Basically that's what's being asked for tonight is nullification of the zoning ordinance. They are basically saying, we want to do more than, and again, it's not the building. You could maybe make an argument because of the shape, there's a little cut out here, but even if you want to make that argument, okay, let's say if we took this piece of land and added it to this, now it's perfectly rectangular and it's flat, nothing. How many units could you put? I don't even think that would even get them over the two by right. So there is no way in the world that the building has to do with the hardship. What has to do with the hardship is that they want to do more than what is allowed by zoning. And so, for that reason, because I don't think it should have a variance even if a variance were appropriate and the fact that I think it's really something that should be the subject of a special permit from the city council. I would certainly hope that this would not be granted. Thank you.

Mrs. Rando: Is there anyone else that would like to come to the podium and give

your name and say why you are against it.

Donald Desrochers, 51 Taylor Street, Waltham: Madam Chair and Members of the Zoning Board, I find this a real education. I've heard the legal aspect of this. I've heard the technical aspect of it and even the political aspect as far as to what's going on. I simply want to come and call to your attention just the quality of life aspect. My wife and I moved in about two years ago to 51 Taylor which is right across the street from what they are proposing to do. In the time that we have been here, and as you so eloquently said the South Side is challenging to find parking. As more new units are being built, there are four new units being built across the street from us on Taylor Street, each of those units have two parking spaces each, however there is a garage for only one car. So I am curious where the other four cars are going to stay. There are another two units built right down after the parking lot on Hall for St. Charles Church. I'm curious about how the parking is impacted.

Since we have been there, we have seen the parking situation become more and more contentious. There are three issues that we see happening all the time. There are issues with the people parking that using the commuter rail. We see issues with people that cannot fit in the church parking lot for functions, and we also see contention with people who are going to our wonderful Moody Street which is getting more and more popular by the minute based upon the amount of places that I've seen being built and I try to stay away from so I don't gain more weight. So when I come home, and I take a look at what's happening, I was thinking when I come home tonight because we drove up here with the weather and everything like that, we are going to have to go cruising around probably to find a parking space because my wife and I both have to park on the street. We usually find something. There have been times where I have had to park somewhere that I'm not supposed to and go out at midnight, possibly one o'clock in the morning to relocate my car

and hope that I haven't gotten a ticket prior to. When I saw this come down and notice what they are trying to accomplish on a small piece of property and everything like that, I found that very unreasonable from that standpoint. I don't mind people coming into the area however there is a limit as to how many that area can absorb under these circumstances.

**Ms. Gelineau:** Why do you have to park on the street?

**Mr. Desrochers:** Well, we bought a condo, but because of the size of our condo, we didn't have any deeded parking so we have to park on the street.

**Ms. Gelineau:** So you bought a condo on that corner knowing there was no parking.

**Mr. Desrochers:** That is correct. I was coming down from New Hampshire, coming back to Massachusetts after twenty-six years.

**Mrs. Rando:** Is there anyone else?

**Lawrence Bucci, 37-39 Taylor Street:** I live directly adjacent west, I don't live, I own this four family (referring to the plan) west of the proposed project. So, I'm in business. I am a contractor myself and I look at this and Mr. Logan couldn't say it any better. It is a little bit unreasonable. Based on the site plan that I've seen, if you put four units in there either keeping the garage or tearing it down to park, that would be a beautiful property. But I don't see any place for snow removal. You've got three driveways. Your close to intersections. Two of them, Hall Street and Cushing and Hall and Taylor which are treacherous at times especially when you have snowbanks. They are



taking almost more than half of the property and turning it into like impervious, which I think there's rules and regulations about how much non- impervious you are supposed to have and I don't see how you are going to put basement units in there when you need so much natural light and windows that you have to crawl out of in case of fire. I just don't see it. I see it as a detriment to the neighborhood. It definitely doesn't fit. A four unit building in there would be beautiful. The look of the building on the outside as proposed with two entrances the way it is looks great but nine units and the congestion and no room for snow removal with the winter we just had, not only with the winter we just had but like an average winter. It will all end up in the street as the roads are already narrow as we all know that area. So I think it is a detriment and I agree with Mr. Logan. He said the hardship is the number of units. I have a four family here on a postage stamp lot. I wish I could have twenty units too and collect those rents every month. But you know that's what it really boils down to folks. So I'm not for it.

**Mr. Hickernell:** How many parking spaces do you have.

**Mr. Bucci:** Four for four units. I could fit six no problem, but its tight. The driveways are long but tandem parking is not allowed and it's an inconvenience. So when we have snow we can fit the cars, no problem. But on a regular basis, like Mr. Logan said, you can count on one of those cars being on the street because people don't want to move their cars early in the morning or late in the night.

**Janet Driscoll, 59 Taylor Street, Waltham:**

**Mrs. Rando:** It's right across the street?

**Ms. Driscoll:** It's across the street, three down. It's still less than six hundred feet.

So we have a little single in back and our driveway is just straight across for two so I don't have the problem with the tandem. But we've lived there for over thirty years. The neighborhood has changed. There's been a lot of development. It's always been very dangerous with the traffic even before all the development. There used to be a bus stop for the kids across the street and we fought to get the four way stop signs on Hall and Taylor Street which we finally managed to get. As its developed, more and more people are coming down the one ways, the wrong ways. The cruisers come down the wrong way without sirens. I'm just surprised nobody has been killed and it just gets worse every time there's more development added. As far as the rectory I think its great they are reusing it, but I don't think reusing it is a hardship either. I think four would work nicely. I think you need a basement. You need storage. You won't get the natural light. The parking, I don't know how you are going to do it. The whole thing is just going to be a big mess. You're going to use the whole section. It's either going to be parking. You're going to be coming out right into the intersections. A little kid is going to get killed or some elderly lady coming out of St. Charles. It happens all the time. I don't know what else to say. When I read it I said this is ridiculous. Absolutely ridiculous! You cannot fit nine. If you wanted nine, you should have bought a different piece of property but not that one. So I don't see it as any hardship at all.

Maria Bonilla, 29 Taylor Street: I'm thinking of a lot more people, a lot more noise. I have a big family of my own. I can just picture a lot more people, the parking. They are two bedroom apartments. What about the person in the other room? If it's a husband and wife or a child. The child has a car or all the company that's going to come. I can't even imagine it to be honest with you. That's really all I have to say but I think its way too many apartments.

**Mrs. Rando:** Is there anyone else? (No one came forward.) Attorney Connors? They've brought up some really big issues: snow removal, dumpsters, green space, storage, visitors.

**Mr. Connors:** So it conforms to the requirements of the ordinance. Forty square feet per vehicle. So that's on there. The other issues, visitors, you get them on the South Side. You only have so many parking spaces so we don't have adequate parking spaces to provide for visitor's parking. We have what we have. The other issue, I think the FAR is the FAR it's a conforming use. So in consultation with the building department they find it's a conforming use converting it into another conforming use. Their opinion was that was allowed without going to the city council for a special permit. I am only entitled to an opinion from the building department. I am not entitled to opinions from the law department but I think that's consistent with the case law.

**Mr. Rudnick:** Have you seen the opinion from the Law Department?

**Mr. Connors:** No, I haven't seen that.

**Mr. Hickernell:** I think Councillor Logan raises a serious argument about whether this is properly before us in terms of the intensity of use so I would appreciate it if we could give you one of these opinions and you could take the chance and review it and make a serious response to the argument.

**Mr. Connors:** I'd welcome that because as I say I am dependent on the building inspector who is the zoning enforcement officer in the city. He's the only one who will speak to me and render an opinion. I've never seen that opinion nor would I be entitled to

it unless you give it to me.

(A copy of the Law Department opinion was given to Mr. Connors by Mr. Hickernell.)

Mrs. Rando: And what about the green space. Can you show them where the green space would be?

Mr. Connors: There's no requirement of green space. There's a requirement of open space.

Mrs. Rando: Is there a place for them to sit outside?

Mr. Connors. Oh, yes. Well, all I can talk about is the percentage of open space. Right now there's no picnic tables, but Jim if you could just address the open space on the site and what's going to be there when its developed.

(Mr. Almonti went over the plan showing the green space proposed.)

Mr. Connors: There's a minimum open space requirement of 15%, existing 49.5. There's still 32 % so they exceed what's required.

Mrs. Rando: And the storage?

Mr. Connors: It's within unit.

Mrs. Rando: Are there any questions?

**Mr. Rudnick:** It seems to me like you could put seven units in here. You wouldn't even have to be in this room. I'm not sure what's more disturbing to me. The parking, a lot of cars surrounding the garage or the overall density. They both just frankly really seem to fly in the face of this neighborhood. It's a pretty nice looking building. A nice looking garage. I don't see how this is enhancing this with four cars parked around the garage all the time. It just feels really like a parking lot to me. I'm just not seeing the off setting benefits that you are providing here. It hardly seems that there's any benefit to this neighborhood.

**Mrs. Rando:** I think we all agree that the parking is a problem. The tandem parking.

**Mr. Connors:** I would suggest a short continuance now that I have this opinion. I need to take a look at it and obviously take into consideration the comments that have been made by everyone and discuss that with the clients and see what their positions is. So if the board will indulge me to a short continuance.

**Mr. Hickernell:** Are you thinking of a continuance or if a recess will be helpful for the moment, then I would make a motion - - -

**Mrs. Rando:** You're asking for a recess.

**Mr. Connors:** No, no, no. I think a continuance. I can't read this, this fast. A short continuance, a couple of weeks. Whatever accommodates the board. You know we have heard the comments of the neighbors and will consult with the clients and see what they think as well as the opinion.

**Mrs. Rando:** What is the wish of the board to continue this case or to move forward

tonight?

**Mr. Sergi:** His request is reasonable Madam Chair. I'd go ahead with the continuance. That's my opinion.

**Mr. Hickernell:** I feel the same way.

**Ms. Gelineau:** I agree.

**Mr. Rudnick:** I certainly see an opportunity for you to make a stronger case about the intensity of use disagreement that you are having with the neighbors. I hope you are going to come back about something with the parking because I am going to have an equally hard time about that but I'm certainly willing to give you the time.

**Mrs. Rando:** And the chair votes yes. Do I have a motion to continue this case to July 7th.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to continue Case 2015-07 to July 7th.

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

**Mr. Logan:** Could I make a suggestion since it's being continued for a number of weeks, on the jurisdictional issues that I raised, maybe you could send a request for an opinion to the law department as to whether or not the ZBA can grant variances on units


per acre or whether or not that's under the same prohibitions as the FAR.

Mr. Hickernell: It should be clear that people who have already made public comments, you're welcome, but are not required to show up again to make comments.

Mrs. Rando: We are closing the public hearing.

One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 8:15 P.M.

  
Barbara Rando, Chair  
6/23/2015