

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

June 28, 2016

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, June 28, 2016, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando, and members Glenna Gelineau,, Mark Hickernell, Michael Squillante and John Sergi.

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

Mrs. Rando: Tonight we have one case for an extension of time, Case 2014-29, 92-94 Trapelo Road Realty, 300 College Farm Road; Case 2016-11, Robert and Linda Pettigrew, 17-19 Cedar Street and that's for a curb cut; and Case 2016-18, Pauline Mazmanian, 105 Brewster Road, for a variance.

The first action this evening is for a motion to accept the minutes of June 21, 2016.

On motion of Mr. Sergi, seconded by Mr. Squillante, the board voted to accept the minutes of June 21, 2016.

The Chair asked to hear from the Petitioner's representative regarding a request for an extension of time in a letter sent to the board by the Petitioners Attorney Philip B. McCourt on Case No. 2014-29. dated June 15, 2016.

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

Mr. McCourt: This is in relation to an extension for the variance in Case No. 2014-29. This is up on 300 College Farm Road and this is a variance that you granted some time ago in relation to allowing an elevation change but subject to us getting a Special Permit.

We applied for that permit and we have been working through the process of doing that including hearings, traffic commission and all that sort of business. And then it went off the the Law Department as all cases do with a recommendation from the council that they felt that it was a case that could be passed and the Law Department came back with numerous comments, like twenty pages of comments, which isn't totally uncommon. Anyway in the discussion with the Chairman of the Rules and Ordinance Committee, Robert Logan, he suggested that it might be prudent to withdraw the case, not this case but withdraw that case and refile for an August hearing where we put together all the comments rather than him trying to explain to all the councilors the items that were raised on it and therefore that necessitates tonight us asking you to continue this for another six months. So last night, the council did allow us to withdraw without prejudice with the re-filing and we expect to have it in early fall or late fall of this matter, hopefully approved.

So, we would ask that this current variance be extended from July 22, 2016, which is the current date of expiration to January 22, 2017.

Mrs. Rando: Does anyone have any questions of Attorney McCourt? This is the first time that I have heard that someone has withdrawn their Special Permit Application.

Mr. McCourt: It happens occasionally because the Law Department sometimes raises so many issues that its almost better to re-conglomerate it but he is going to agree to hear our case in August which is very rare at the summer meeting because it will be pretty compacted at that time.

Mrs. Rando: I am ready to entertain a motion to continue Case No. 2014-29 to January 22, 2017.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to continue Case No. 2014-29 to January 22, 2017.

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

Mrs. Rando: Will the Clerk please read the Petition in Case No. 2016-11, 17-19 Cedar Street.

The clerk then read the Petition of Robert S. and Linda B. Pettigrew in an application for variance - curb cut. The petitioner seeks permission to continue use of two driveways for property. House was built in 1975 and have been using a 17 foot driveway and a 20 foot driveway for forty years. Location and Zoning District: 17-19 Cedar Street, Residence B Zoning District.

Mrs. Rando: Would you like to come to the microphone and explain your case?

Mr. Robert Pettigrew, owner of the property at 17-18 Cedar Street came forward.

(Mr. Pettigrew submitted a packet to each member of the board along with some photos of his property and went over them with the board.)

Mr. Pettigrew: On the first picture you can see my property and for the last forty years we have been using a seventeen foot wide driveway and a twenty foot wide parking area. This was allowed us basically to park two, possibly three cars on the driveway and on

occasion, we park as many as three cars on the side, parallel parking area as well. And, I am requesting a twenty foot curb cut so that cars can continue to park on that area.

There should be a second picture there which I wanted to show. (Mr. Pettigrew went in front of the board to go over the photos.)

This is our neighbor on Oak Street. This is identical to how the cars have been parked. This picture is on Charles Street. This is exactly what we want ours to look like. This is where you have two driveways basically next to each other, two separate driveways next to each other with two curb cuts. Also, I took a picture of Seven and Five Cedar Street. Seven and Five Cedar Street apparently received a variance because they have a twenty foot curb cut and a seventeen foot curb cut and I was aware of that not until Sunday of this weekend.

Ms. Gelineau: How do you know they received a variance?

Mr. Pettigrew: They must of had a variance because when I drove by with a tape measure, I measured the width of the two driveways that they have and they certainly are not two twelves. They are a twenty and a seventeen.

Ms. Gelineau: It might be what they have but that doesn't mean they got a variance to do it.

Mr. Pettigrew: Well that's what they have.

Ms. Gelineau: That doesn't mean they absolutely got a variance to do it.

Mr. Pettigrew: I don't have an answer for that.

Mrs. Rando: Is that side of the street, um - - -

Mr. Pettigrew: Same side as mine.

Mrs. Rando: It has a curb cut?

Mr. Pettigrew: Yes. At this point they have made the curb cut but they have not quite yet poured the cement for the sidewalks. But we are in a very critical situation because they are half way down the street in terms of putting in this cement sidewalk.

Mrs. Rando: What about your side?

Mr. Pettigrew: My side, all I have is the driveway, only the driveway. They have completely blocked off the section where the parallel parking was. My tenants now for the last five days have been parking on the street because they put in a curb blocking them from getting access to their parking area. I have two tenants now that have to park on the street but I need to have that curb removed and hopefully get a twenty foot curb cut for the parallel parking region.

Do you have anything else to explain on these? The one here on Russell Street?

Mr. Pettigrew: Russell Street, I measured several of them as well and some of them are everywhere from twelve to twenty or sixteen to twenty so that there are situations where people must have gotten variances in the sense that the driveways are wider than two twelves.

Ms. Gelineau: Are these pictures that you took all undergoing new sidewalks like your street?

Mr. Pettigrew: Russell has been completed and the one on Charles Street was completed several years ago.

All I am really asking is identical to what Five and Seven Cedar Street have right now. Just give me the same. That's really what I need. I need the driveway cut and I need the parallel parking region cut and I need the curbs which have blocked access to the parallel parking area removed. Right now they can't even park. They are just on the street. It's terrible.

Mrs. Rando: Any questions at this time?

Mr. Squillante: I have a couple of questions. It's not clear, when was Russell paved? You say that's recent.

Mr. Pettigrew: Russell Street to my knowledge was several years ago. I don't think Russell was recent at all.

Mr. Squillante: And the other side of Cedar Street?

Mr. Pettigrew: That was paved on Thursday of last week.

Mr. Squillante: So on the other side of Cedar Street, they left the curb cuts - - -

Mr. Pettigrew: The Five and Seven Cedar Street was cut the same day mine was cut only in my case all they gave me was the driveway, only the driveway. They put curbs up blocking access to the parallel parking area.

Mr. Squillante: The Five and Seven is one lot?

Mr. Pettigrew: Yes. One lot and it has two driveways, one of which is seventeen cut and the other is twenty. And that's what I want. That's exactly what I want.

Mr. Squillante: The old curb cuts almost certainly didn't get variances.

Mr. Pettigrew: I have no idea. The house was built in 1975.

Mr. Squillante: As far as we know the house on the other side of your street didn't get variances. It's interesting why they are treating yours differently.

Mr. Pettigrew: Why would they treat me differently?

Mrs. Rando: If you are going to say something you have to come to the microphone.

Linda Pettigrew, 17-19 Cedar Street, Co-owner came forward.

Ms. Pettigrew: The uneven side of Cedar Street has a lot of driveways. The even side of Cedar Street does not. Some of them even have only parking for one car vicariously. So, the city gave them the option of parking on the street because they have a real need to be able to park on the street. We have driveways. We bought it with driveways. We want to retain the right we got in the Purchase and Sale Agreement when we bought the house to have two driveways.

Mr. Squillante: Did you say there was parking on only one side of the street?

Ms. Pettigrew: Yes.

Mr. Squillante: On the odd side or even?

Ms. Pettigrew: Parking on the even. We're on the odd. We don't have parking on our side of the street. So, if there's an elderly person renting from us or people with a child and they have to park on the other side and then collect their kid or bring in their groceries, they are going to be put at risk of having to deal with the traffic.

That's the way we bought it. Our rights should not be taken away. That's my opinion.

Mr. Pettigrew: Our other neighbor, Eddie LeBlanc's house has a twenty-three foot curb cut on Cedar Street and a fifteen foot cut on Oak Street. So he as well has some sort of variance, I assume. This way it keeps the cars off the street. That's really our goal here.

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

Mr. Sergi: No, not at this time.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: I believe from the opinion we got, the Director of Public Works is the one who determines whether you can have the curb cut or not.

Mr. Pettigrew: Yes.

Mrs. Rando: And then you would appeal.

Mr. Pettigrew: He denied it and that's why I'm here.

Mrs. Rando: But he didn't deny the other ones that are here, so there must be some reason.

Mr. Pettigrew: There must be some reason why those people got sufficient curb cuts and we did not. I just have no idea. Honestly, I was flabbergasted Sunday when I drove by it and saw that they had exactly what we wanted.

Mrs. Rando: But I wonder when it was granted. Are you on a corner also?

Mr. Pettigrew: We are not on a corner. Eddie LeBlanc is on the corner. In his situation he does have parking on Cedar Street and on Oak Street.

Mrs. Rando: All right, if there are no other questions, is there anyone in the audience that is in favor of this petition?

(The two petitioners raised their hands in favor.)

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

Mrs. Rando: All right. Did you have a Proposed Findings of Fact?

Mr. Pettigrew: My wife typed out that document there and I gave it to Pam last week around Wednesday.

Mrs. Rando: But it's not in this packet.

Mr. Pettigrew: I thought it was in that packet, maybe not. I gave her some information on what we were planning to do, what our goals were here, but she said that she was out this week.

Mrs. Rando: Do you have the Proposed Findings of Fact and Proposed Decision? Do you have a copy of it?

I am going to ask for a five minute recess to look for the Findings of Fact and Proposed Decision. Mr. Hickernell seconded the motion and the board voted to take a five minute recess at 7:25 P.M.

The board reconvened at 7:30 P.M.

Mrs. Rando: I have a message here that there was no findings of fact and no decision at your last meeting. We recessed it at that time to see Pam and you said that she had given you some to follow though one had to do with the 99 and did not have to do with your case which indeed it did.

Ms. Pettigrew: It doesn't have anything to do with our case because it's not residential property. And you as a board requested a legal opinion so did they give you one or did they not give you one?

Mrs. Rando: As a board, we require, we require the Findings of Fact and Decision and I know that you and your husband have been to the Law Department many times and Pam has bent over backwards - - -

Ms. Pettigrew: Well, I'm not saying that anybody didn't help.

Mrs. Rando: You need a Findings and Decision. You don't have that.

Ms. Pettigrew: You requested an opinion.

Mrs. Rando: I did.

Ms. Pettigrew: They didn't give you one?

Mrs. Rando: Yes, we have an opinion, but that is separate from what Pam gave you to follow. Did you happen to visit Pam since the last meeting?

Mr. Pettigrew: Yes. She has exactly what we gave to you.

Mrs. Rando: Right, but did you ask about the Findings of Fact and the Decision that you were supposed to have the last time?

Mr. Pettigrew: To me there was no decision from when we were last here. That was my understanding when we left.

Ms. Pettigrew: We are not looking to build an addition on this property or anything. All this is is a driveway. This is becoming enormously complicated!

Mr. Pettigrew: All we are asking for is a curb cut so that we can have our people park in the areas that they parked here for forty years. All we want is a curb cut.

Mr. Sergi: I think its just a procedural issue that we are asking you to comply with. There is a requirement that you need to prepare a findings of facts and a decision. So you prepare those two documents.

Ms. Pettigrew: How do we prepare a findings of fact when you ask the legal department to provide it.

Mr. Sergi: Findings of Fact are just a list of facts involved in the case and then the decision would be what you would like the board to rule on.

Mr. Pettigrew: What we would like you to rule on is to give us a twenty foot curb cut.

Mr. Sergi: I understand that, Mr. Pettigrew, but there's a procedure you need to follow in that regard.

Ms. Pettigrew: In any event, we have been told by the Department of Public Works that they'll go forward tomorrow based on whatever you say. So the ball's in your court and I don't know what magic wand that we can wave now because these are in. They are not going to wait. We were originally told that it will be done in August and now they are being done now.

Mr. Pettigrew: They moved the whole project ahead. They are pouring cement on the sidewalks right now and in two days we will have a permanent curb on that section where cars are parked for forty years will be blocked permanently.

Ms. Pettigrew: The 99 Restaurant has nothing whatsoever to do with our case.

Mr. Hickernell: I think, if I may, Madam Chair, there's a bit of a disconnect here in that Pam was directing you to sample decisions for other kinds of variances. Even if it's another kind of variance, the statutory requirements or the legal requirements are the same. The facts would be different from each case but you want to variance from the decision that this board can grant. You need to lay out according to our own by-laws a Proposed Findings of Fact, that is what you think the truth is and we should adopt is what is true and then a proposed legal decision that you want us to adopt based on those facts. That's what we have been trying to steer you towards.

Mr. Pettigrew: We told her what we wanted.

Mr. Hickernell: I understand. It's not her job to type up your Proposed Findings of Fact and Proposed Decision. It's your job to either hire somebody to do that for you or to look at something that someone has already done in the past and present us with that. That said, given the urgency of this matter, because of the city's actions, I'll make a motion that we suspend the application of that regulation as it applies to this particular petition so that we can actually have a vote on the request for a variance tonight. So that's my motion.

Mr. Sergi: I'll second that.

Mrs. Rando: Then you would have to make up the Findings of Fact and the Decision. It says here in the Rules and Regulations that you have a brief and Findings of Fact and a Decision.

All right, I have a motion to allow them to continue without a Findings of Fact and a Decision and I received a second, I believe.

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

Mrs. Rando: Is someone going to make a motion?

Mr. Hickernell: I will make a motion that the board adopt the Findings of Fact consistent with the submissions of the Petitioner including the April 28, 2016 e-mail submitted by Robert Pettigrew to Pam Doucette as well as the diagrams and pictures submitted by the petitioners.

Mr. Sergi: And the plot plan?

Mr. Hickernell: Yes, everything that was submitted.

Mr. Sergi seconded the motion.

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

Mr. Hickernell: Madam Chair, I will make a motion that the board grant the variance and decision that includes finding that the shape of the lot and the pre-existing nature of the nonconformity support the grant of a variance. That a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner and that there will be no detriment substantial or otherwise to the public good and by granting the relief that the relief will not nullify or substantially derogate from the intent or purpose of the ordinance if the relief is granted.

Mr. Sergi: I'll second that.

Mrs. Rando: You're making a motion to grant this petition.

Mr. Hickernell: One twelve foot cut and one twenty foot cut.

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

The Chair votes yes not because I see a hardship as far as you are not being able to collect rent for a two family apartment. The only hardship that I could justify would be that there is no parking on your side of the street. Parking on the south side is at a premium and according to the zoning ordinance we have to look for safety, convenience, not overcrowding of the land and lessen congestion in the street. That's the only reason I am voting yes.

Ms. Pettigrew: And the other hardship is that that lot the way the house sits does not allow a driveway on the right side of the house.

Mrs. Rando: That's not a hardship in my opinion. Enough said.

Will the clerk please read the petition in Case No. 2016-18, Pauline Maxmanian, 105 Brewster Road?

The clerk then read the Petition of Pauline Mazmanian in an application for a variance to allow for the construction of a farmer's porch at the front of the existing house. Location and Zoning District: 105 Brewster Road, Waltham, Residence A-3 Zoning District.

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

Bret Francis, Esq., Scafidi Juliano, LLP, 10 Hammer Street, Waltham, came forward.

(Mr. Francis submitted a copy of his brief and photos to each member of the board. Mr. Francis then read his brief into the record.)

Mr. Francis: Just as a note, one letter went to the law department directly but I do have three letters of support from the two, I believe they are directly across the street and then one off to one of the sides which also they have reviewed the plans and have no problems with the project. (Mr. Francis submitted these letters to the board.)

Mrs. Rando: What is behind this property, behind the chain link fence?

Mr. Francis went before the Chair to go over the plan.

Mr. Sergi: Councillor, there's no city easement for utilities behind the fence is there?

Mr. Francis: I am not aware of any.

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

Mr. Squillante: You made a comment, the project will promote a more residential theme. More than what?

Mr. Francis: Well, more than without a farmer's porch, I suppose. I mean, I think it would add just from the neighbors' letters that they think and say that it would add a little bit more, you're right I mean it's more subjective than otherwise.

Mr. Squillante: What exactly is the hardship?

Mr. Francis: Well because of the slope and the topography of the lot, the house was constructed where it was constructed right up against the front yard setback, thereby leaving them no space to do anything in that front yard.

Mr. Squillante: I'd like to think a hardship is something, if you were going to propose something that is allowed on a piece of property if there is something expensive or geological that's preventing you from doing it. I mean what you are proposing in this house could be situated in such a place that you could meet all the requirements. I think you wouldn't pick up the house and move it. That I would think that's allowable but would require a lot of money and that would be a hardship. I would think it would be a hardship.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No questions.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No questions.

Mrs. Rando: Mr. Sergi?

Mr. Sergi: No questions.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition? (Two people raised their hands.)

I see no one in opposition and no one seeking information. I do have those letters I want to have read into the record.

(The clerk read letters of support from Michael Lenza, 94 Brewster Road, Waltham; Carol Ehwa, 100 Brewster Road, Waltham; Mario Lituri, 105 Brewster Road, Waltham; Michael O'Shea and Morgan O'Shea, 114 Brewster Road, Waltham.)

Mrs. Rando: All right, you may continue with your Proposed Findings of Fact.

Mr. Francis read his Proposed Findings of Fact into the record.

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

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

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact? Are there any changes or additions?

Mr. Hickernell: I would suggest that we just edit the Proposed Findings of Fact as well as the Proposed Decision to delete any references to a Special Permit and to multiple variances. It's just one variance that's sought.

Mr. Francis: I can make that and get it over to Pam.

On motion of Mr. Sergi, seconded by Mr. Squillante that the Proposed Findings of Fact, as amended, be adopted by the board.

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

Mrs. Rando: Do I have a motion on the Proposed Decision, as amended.

On motion of Mr. Sergi, seconded by Mr. Squillante that the Proposed Decision, as amended, be adopted by the board.

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

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adjourn at 7:40 P.M.

Barbara Rando chair
7/12/16