

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

July 7, 2015

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 7, 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: Tonight we have one continued case before us and we had an Executive Session that was scheduled that we will not be having this evening.

The first action this evening is for a motion to accept the minutes of June 30, 2015.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of June 30, 2015.

We have the Executive Session minutes from June 30, 2015, also.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the Executive Session minutes of June 30, 2015.

Will the clerk please read the petition in Case No. 2015-07, 47-51 Hall Street LLC

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.

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: We were here back in June and there were several concerns of the board and there was an opinion offered that was kind of a similar situation on Willow Street, so the case was continued.

Mrs. Rando: Attorney Connors, before you continue, I'm wondering if the board feels that because this was June 2nd, I think it was, that we heard this case and it is July 7th and we just got the report yesterday, if they have read it and really dissected it and decided whether it had to be republished if there's enough differences that it needs to be republished.

Also, we asked for an opinion from the Law Department which we have not received and I think that's important. We still have questions as to, can we hear the case? The FAR? There's many questions. I would prefer continuing the case and waiting for the opinion from the Law Department. I'd like to know how the board feels about that. If anyone has a motion?

Mr. Sergi: I would tend to agree. I mean I would like to wait. I mean I think the opinion is very important that we asked for and we haven't received it back to my knowledge.

Mrs. Rando: I have a motion, Mr. Sergi, and was that a second?

Mr. Sergi: That's a second.

Mr. Hickernell: I vote no. I am ready to vote tonight.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: I am ready to hear it tonight.

Mr. Rudnick: Me too.

Mrs. Rando: Okay. It's the usage if we have the right to, for the usage. If the majority is ready, you may continue.

(Mr. Connors submitted a copy of his supplemental brief which he had already sent electronically to the board.)

Mrs. Rando: Carol, did we close the public hearing on this?

Mrs. Oliveri: Yes.

(Mr. Connors went over his supplemental brief with the board and went over the plan with the board and half way through his brief, Mrs. Rando asked the following questions) .

Mrs. Rando: May I ask at this point, if you went in front of the City Council with a Special Permit, how many units would they grant? Would they grant seven?

Mr. Connors: They could. I'm not sure if they would but they certainly could.

Mrs.Rando: I thought five was the limit.

Mr. Connors: There's a sliding scale and I don't have it in front of me.

Mrs. Rando: And you mentioned per acreage and you're secure with that per acreage for the seven units?

Mr. Connors: Well, I'm asking for a variance because under the zoning code, I am only allowed six units per acre. I don't have an acre. I can only technically build 1.9 units.

Mrs. Rando: So when you go in front of the City Council, will they take that into consideration, also?

Mr. Connors: Well I think they can but it's a different form of relief. So what happens is under a special permit for increased floor area ratio under 3.5, it allows them to,

they have a by right FAR and they have a FAR maximum allowed by special permit. So, in a Residence C Zoning District, they could go up to .6 FAR by special permit, if they so desire. And with that, then they can allow the number of units to go up. And then there was an amendment to the code, I don't have that in front of me. but they do have a variable, the ability to amend how many units you could have per acre, or how many units are permitted provided they dovetail with the FAR allowed by special permit. But that's not the form of relief that we are asking for. So if you go to the zoning code, there's a different category and we have FAR by right and FAR by special permit and under FAR by special permit the city council allows you the option of allowing you to increase the units per acre but then slide down under Section 4.1 of the Table of Dimensions, there's a separate and distinct requirement of maximum dwelling units per acre and that's what we are asking for a variance for. So under RC it says six for a multi family. So that's the variance that I am requesting under that provision of the zoning code, not related to a special permit under FAR at the City Council. So I'm not requesting any relief from FAR because we intend to use the existing building as it stands today.

The other issues that were in my prior application was, as I said, lot coverage because we removed the sprinkler room, and no longer have a lot coverage issue. We are not increasing the lot coverage. It shall remain as it is. So we are not asking for any relief under that because under the existing conditions, I believe its 3.7 and it shall remain as it is because we are not adding any lot coverage.

So there's really only three forms of relief that we are looking for with a reduction from nine units to seven and that's to have six compact spaces which is consistent with what we asked for before. We have eliminated lot coverage and then just put parking in the front yard which is consistent with our prior request. So the three requests are consistent with our prior request. We've eliminated the three variances because of the change in the design of the project. But, you know, the opinion from the Law Department

said the ZBA can't issue variances for FAR and I don't disagree with that. I agree. But we are not changing the FAR. We are not looking to add FAR. We are simply looking to use the existing ground floor area for multi family dwellings, The present use of the property and the recent use of the property was was a former rectory which is a residential property for priests.

(Mr. Connors then went on to read the remainder of his supplemental brief.)

So, I'm just going to ask the Architect, Mr. Joseph Fournier, to kind of walk you through the changes in the design of the building and to explain to you how he worked the nine units to seven.

Mr. Joseph Fournier, JFF Design Architects, 24 Warwick Avenue, Waltham, came forward.

Mr. Fournier: We did take into account the opinions of the neighbors and the board with respect to the number of units and thinking to reducing the amount of the units from nine to seven which along with our clients, the thought process they want to create high end units in this locale. So that afforded us the opportunity to create, although the first and the second floor end units did not change in square footage. The basement unit and the center units did. It allowed us to take the second unit and make an open living plan with bedrooms on the upper level. So this particular unit (referring to the plan) actually has a three bedroom with a study, too small to call a bedroom, but three other bedrooms on the upper level. We relocated the domestic facilities to the upper level and then went with a scaled down version on the lower level for ground level living. The basement units what we did was we took advantage of the center space and expanded the garden units to a three bedroom layout and then that afforded us the opportunity to put the sprinkler and mechanical room in the basement. That's going to be common to the entire facility.

So as Attorney Connors pointed out, it eliminated the need for additional square footage to be constructed onto the building so the building and the accessory structure of the garage remain in tact as it is today.

Mrs. Rando: Are there any questions of board members?

(There were none.)

Mrs. Rando: Attorney Connors.

Mr. Connors: Madam Chair, as a brief response to the concerns of the board, we thought that reducing the number of units and the parking spaces would minimize the parking relief we needed. The concerns of the neighbors were that there wasn't enough parking as is in this particular neighborhood. So with the design change, we are now able to provide two parking spaces for every residential unit on site, four in the garage and (Mr. Connors went over the parking as shown on the plan).

So, we feel that we have attempted to address the concerns of the neighbors as to the parking. There seems to be a significant issue of off street parking, so we believe that we have addressed it under the zoning code that every unit shall have two parking spaces and the relief we are looking for is consistent with what we asked for before although it has changed. Either we have eliminated or we have minimized the extent of the relief required but we went from nine units to seven units and we actually remain consistent with the number of compact spaces we needed is six. And we have eliminated the issues with tandem parking relief. We have eliminated the issues with lot coverage.

So we feel that this is a conforming use which is consistent with the prior conforming use, going from one conforming use to another, It was a rectory but it was a residential use. We are continuing with residential units although different in kind but still a residential use, multi family, but under the code it's a permitted by right use in the zoning district and we feel it's consistent with the neighborhood use. There are many multi families in the neighborhood. There's ten families, four families, two families surrounding and abutting this property and when the petitioners are done with the project, it will be a definite improvement to the neighborhood and it will enhance the value of all the properties in the neighborhood. So, we ask the board to consider it and move forward. Thank you.

Mrs. Rando: I'm just reminding the board that there have been changes and they have to decide whether it has to be republished or not. Also these minutes are open to the public if they wish to read the minutes of the last meeting. They didn't have a chance. You just gave them to us yesterday and it is a public meeting and they have the right for that. Also, there was a problem with the usage and the hardship the last time. You have the same hardship that it was a unique building?

Mr. Connors: Yes. I think the hardship is, no question, that it's a unique building. It's a residential building. It's almost nine thousand square feet in total for gross floor area. It simply doesn't lend itself to a two unit building. So it would have ten bedroom units. It's just not going to make sense, so we have a large building that is on a small site in a multi family neighborhood. So, i think that the hardship probably relates to the number of units you're looking for. I mean I think truly a simple two units would be a hardship because you would be building units that are forty-five hundred square feet per unit. It just doesn't make sense economically.

Mr. Hickernell: And you preserve that building.

Mr. Connors: And we preserve the building, right. And so, I mean, there would be two very, very large units that wouldn't be practical or financially prudent to simply put two units there. So we feel that there is a point where the hardship is both practical and financial to the petitioner and feel that seven units is perhaps more appropriate for the neighborhood than what we were proposing before.

Mrs. Rando: Mr. Rudnick, do you have any questions?

Mr. Rudnick: Attorney Connors, so I assume you think the Zoning Board has the authority to vary from the dimensional setbacks in general.

Mr. Connors: Yes.

Mr. Rudnick: To issues variances related to inability to meet the setback.

Mr. Connors: Right.

Mr. Rudnick: So, why do you think we don't have the authority to vary from floor area ratio?

Mr. Connors: Because the zoning book says so. The zoning book says, if you go to your Table of Uses, it says Floor Area Ratio. There's a by right and then there's allowance by special permit. And then you go into the tables and they say Y-1 by right or additional intensity of use is granted by way of a special permit and that special permit is reserved to the City Council.

Mr. Rudnick: Where does it say that.

Mr. Connors: It's in the Table of Uses. So if you go to the table in the back of the book. So right here Table of Uses under FAR by special permit and then if you go into the Table of Uses, it talks about Multi Families in a Residence C District, then you go to the key and it says Y-1 as opposed to Y. The Key in Y-1 says: "Permitted by right and additional intensity of use permitted by special permit from the City Council.

Mr. Rudnick: That undistinguishes the city council's special permit from the zoning board of appeals special permit. What's the basis for the allegation that the zoning board doesn't have authority to issue a variance from Floor Area Ratio? There's no special process going on. Can I allow you to have a five foot back yard setback? I certainly can.

Mr. Connors: Sure.

Mr. Rudnick: Why can't I allow you a variance from Floor Area Ratio. I understand these things are in the special permit purview. We are dealing with certain issues that are smaller impact that would come to this board instead. Let's say a five percent increase in a nonconforming use. That would be a special permit from this board. But nothing in that seems to me to prohibit the board from issuing variances on certain dimensional characteristics that are also subject to special permit in other cases because there is no special permit in this case.

Do you think that the board has the ability to vary from the number of units per acre?

Mr. Connors: Yes.

Mr. Rudnick: How is that different from floor area ratio and it's conceptually the same in my view. What I am getting at here, Attorney, is if we are not going to wait for the Law Department's opinion about why we can't vary from that, I'd like to understand why you believe we can't vary from that. I believe we can vary from Floor Area Ratio and I believe we can vary from number of units per acre. When the Law Department tells me I can't vary from it, I will understand it. Hopefully, I'll understand it. You believe it too, so you can explain it to me.

Mr. Connors: I would say past practice, I've never come to this zoning board of appeals looking for a variance on FAR because the book specifically enumerates the process is through the city council. So, I can always come in here and ask for a variance and that's going to put me in conflict as to whether or not I can do it or not.

Mr. Rudnick: So your view then sounds like a variance from number of units per acre is allowable even though it's a pretty similar kind of context to FAR but it's allowable because it's not something subject to the special permits in general. None of our special permits seem to reflect units per acre.

Tell me more about your hardship, then. I'm having a hard time understanding why there's a hardship here at all. How about six units? Is there a hardship there? If it was six units, you'd get rid of another one of these variances. You don't need that parking in the front of the building business. Six units, twelve parking spaces. You've already got them. Another variance gone. Why can't we do that? What's the hardship?

Mr. Connors: The hardship remains the building and it really comes down to a financial and practical hardship. How many units can they build and still make it practical to invest in the property and rehab. So, where that fine line is. These guys believe it was nine.

Mr. Rudnick: I thought you invest in property based on the allowable uses and then you hope you get a variance but you can't reinvest in the property based on the expectation of getting a variance. Anybody would do that, that would seem.

Mr. Connors: Going back to the building where it's nine thousand square feet, so it simply doesn't lend itself to two units.

Mr. Rudnick: I'm not asking two. I'm talking about six. I get your argument why you can't do two. Why can't you do six?

Mr. Connors: I'd have to go back and talk to these guys about the numbers but they felt that seven was a compromise in what they could do. And then it gets into if you started doing six units what are you going to do, like five bedroom units? It just doesn't make practical sense.

Mr. Rudnick: They could build nice big luxurious units.

Mr. Connors: They are.

Mr. Rudnick: You'll have to convince me a little bit more on why there is a hardship that says you can't build six? I get the thing about, I'm sort of undecided about the number of units per acre. We have the ability to vary from that. It's not the same issue as the FAR. But it just seems like you're asking for a lot based on a hardship that I don't even understand that's existing. You can make economic use out of this parcel by knocking the building down and building something conforming. You could make it by asking for a variance for something smaller than you're asking for. I just don't understand what the magic is that makes this a hardship with six but not at seven. I do understand

that it's a hardship at two. So, I'm just looking to reduce the number of variances that you are asking for to your minimum reasonable number. We'd like to do this as close as possible to what's allowed in the district. I just drove by the house tonight and one of the things that looked the worst about it to me personally is that you're going to park four cars sideways in front of that garage on either side of the garage doors. That sure looks crowded in a neighborhood that's looking pretty crowded already. The parcel is still one of the nicer ones but not if you're parking cars in front of that building. That's pretty crowded to me. It seems like with six units you could get rid of those two most offending parking spaces. I'm not sure how you are making the driveway part behind as well. I guess why I'm saying I'm not seeing the building as being the hardship. It's a nice building capable of having a lot of things done with it. I don't see it as a hardship. I see it as a benefit. Its layout on the lot. I don't see it as a hardship. If you moved the building on the lot it seems to me you actually eliminate your ability to do something, either the parking behind if you move the building back. You can do the park behind. If you move it forward you can do the parking in the front. I mean the location of the building and its size on the lot, I'm just not seeing them as major disincentives to development on this lot.

Mr. Connors: I'm not saying the location is. I'm saying the gross floor area of the building is the hardship. I mean we had a building that was built back in 1963 to house, I don't know how many priests that were serving St. Charles and it's no longer practical. So you can't pick up and move the building. We have to use the building as it stands and as its situated on the lot and I think there's an argument that the building is conforming as to where it sits, you know, the setbacks and things like that. And so it's really just the number of units that we are going to put in there. And so I think as a financial and practical, it would be a hardship if we only build two units. The developers believe it would be a financial and practical hardship if they could only build six.

Let me ask Mr. Fournier. Talk about the size and the elements of each seven units. Could you talk about the size of each unit and the elements of each unit as to the style of the rooms.

Mr. Fournier: I think one of the things we need to focus on is the units themselves are design consistent with the dwelling units of the neighborhood. I would suspect that the lying share and I haven't been in these homes but I would suspect the lying share of these multistories that are in the area are two and three bedroom units. We are proposing two and three bedroom units which is consistent. We could have grossly sized bedroom spaces, grossly sized living spaces but to what end? Again, at the end the caliber of the unit that our client proposes, the intent is to upscale the quality of the unit itself. The size is there and I believe it was one of the suggestions of the board from a nine to a seven. How about a seven? So we looked at that and our client looked at that in terms of the feasibility and they got back to us pretty quickly and said we could make this work at seven but we are right there at the threshold. So as an architect, we take that challenge and look back into say how do we make these units still feasible without grossly overbuilding. If we eliminate one more unit, what I feel is going to happen is it's going to be impractical to build larger living space. We are going to have to increase mechanical space and there's no reclaim on mechanical space or sprinklers or things of that. As it is, these ancillary spaces that are accessory to the building for life safety I think are adequately sized for the building. So the improvement of the building in that score is, I think, tremendous.

As far as the layout of the units themselves, they actually lend themselves for quite a bit of social gathering spaces that we all appreciate in the dwelling space, very comfortable spaces whether they are going to be one family or multiple non-related individuals so I think if we eliminate one more, can we design it? Sure. We can design anything, but it

comes down to the feasibility. Does this make a feasible project for the return if they are going to build this high end of a client, they need that additional unit in order to, not reap the benefits, but to make this a plausible project. And I agree with Attorney Connors that therein lies a hardship on their part. If we want them to build and if we want to aspire the higher quality construction we need to afford them the opportunity to do so from a business because let's face it, they are not doing this for personal use. They are using it for a business use. Its retainers. They are going to maintain the apartments, they are going to keep them up. To our knowledge, that's their game plan. If we make the units larger, there's a fine line between the two to the seven to the nine, two being a gross hardship too large of a unit; nine being, they were good units, nine hundred square foot units. Those are good units for a two bedroom unit. Now we have increased a bit. The one unit is a thirteen hundred square foot unit. It's a three bedroom. It's a good size unit.

Mr. Rudnick: That's the seven?

Mr. Fournier: That's the seven. We can't make them all that way. If we were allowed to build another floor, we could make them all that way and build a six but then we are into FAR and then, unfortunately, it goes somewhere else. So I think what we have done is maximize the minimum and minimize the maximum on this. The client has seen the value of listening to the neighbors in terms of the number of parking spaces which is directly related to the number of units. We now comply with the ordinance with regard to that. As far as the appearance of the parking spaces that you mentioned in the front yard, they are anticipating a very aggressive landscaping. I don't think it's going to be as unsightly as you think. We are not proposing an asphalt jungle here. There's still going to be a fair amount of green space in the important areas. That's going to be your street scape and I think that that's going to play out quite well compared to what you currently have.

Mrs. Rando: You mentioned something. You said it takes away from the business use by them cutting down the number of units. Well, that's none of my problem. To have a hardship, it can't be economical. It can't have to do with the economical use that you people can make money. It's not feasible for you people. I understand. And if I were building, I would want to make some money too. But we have a criteria and the hardship can't be that one making money on it.

Mr. Fournier: I don't believe I presented it that way. I mean it certainly can be interpreted that way but I wasn't presenting it that way. The hardship we were referring to is the fact they are endeavoring to build higher caliber apartments that we have seen in this city and we all know that. We know the caliber of the units than have been built in this city and some of them are really, really good and some are less than good. They are endeavoring to put something out there in this building as a good reuse. It's a feel good project for this particular building because the building is in good shape. Perhaps therein lies the hardship. The building is in great shape. It's set perfectly for reuse and the reuse is the same use, just in a different configuration. In order for them to have the ability to provide that caliber of architecture that they are looking to do, I think the board can see to it that additional unit, it's not to make the money it's to make the affordability so they can bring that caliber to Waltham that we all endeavor to do. I advocate for a good design throughout the city as much as this board does and everybody that has seen my work knows that. That's what we endeavor to do. We strive to have our clients take the extra step, spend the extra money and make it better because this is my community. That's what they are proposing here. I think the board has the ability to see that because we are not asking that as the hardship, It becomes a hardship. We are not asking that it is the hardship. If we make these units too large, it becomes a gross use of the building space. I think the units as designed are good. I think the nine units as designed were good. They

were plausible units. You could make a great argument for it. Making them a little larger, yes; making them grossly larger, we are not trying to create palaces here. We are trying to create good living units that families can thrive and they have the ability to do so with it.

Mrs. Rando: Thank you. Ms. Gelineau?

Ms. Gelineau: No questions.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No. I think Mr. Rudnick covered everything.

Mrs. Rando: Mr. Sergi?

Mr. Sergi: I agree with Mr. Rudnick. I think its too intense at seven, but I would suspect it may be too intense at six. I'd like to see four units. I've financed a lot of apartments before and a twenty-two hundred square foot unit could be beautiful with built in walk in closets, a nice kitchen, a family room, three bedrooms each with a bathroom. I think you could make economic use with a layout like that. So I don't totally buy into the argument that you're presenting as far as nine hundred square feet vs. twenty-two hundred square feet. I've seen them that sell for a lot. I think Waltham has a market in that regard. So, the hardship issue, I'm struggling with as well. That's where I am at.

Mrs. Rando: Are there any other questions?

Mr. Connors: Just going back to the hardship with Mr. Sergi, I cited that Johnson case out of there. Chatham where they found a building itself was the basis of a hardship they were converting an old church into an office use. So I do believe it meets with the

criteria under the case law to be the hardship and I think the question is, is the relief we are getting, does it nullify or derogate from the intent of the ordinance and that's when you get into how many units is appropriate for the site. So I think it is a hardship, it's just a question of how many units is appropriate considering the size of the building.

Mrs. Rando: No hardship. I don't consider that a hardship.

Mr. Connors: Well, I think there's case law out there - - -

Mrs. Rando: Give me a case law then that show it.

Mr. Connors: I did. It's attached to my first brief. The Johnson Case out of the Board of Appeals of Chatham where they took an old church and they found that there was a basis of a hardship and allowed them to convert the old church - - -

Mrs. Rando: Was that before use variances were not allowed in Waltham?

Mr. Connors: I believe so.

Mrs. Rando: Then we could talk about usage then.

Mr. Connors: But it's still is a hardship and the statute provides that a building or a structure is the basis of a hardship. What I have here, again, going back to, we have a rectory that's almost nine thousand square feet and so, the question is, the use itself, multi family is a permitted use by right. It's just a question of how many units go with that building and what's appropriate. You know, so I think it's a hardship and really it's just a question of what's appropriate under the zoning code and what's appropriate for the neighborhood.

Does it substantially derogate from the intent and the purpose of the code? Does it substantially derogate from the neighborhood? And, we believe that seven units is not over the top for the site. I mean, one thing I did look at when I was looking at the neighborhood, most of the lots that back up behind it are lots that front on this street (referring to the plan and abutting properties). So what we are proposing is double the space than what's around the area. I don't think it's a significant detractor from the neighborhood.

Mrs. Rando: You have heard from Mr. Sergi and Mr. Rudnick and myself, so you can continue with the proposed findings of fact unless anyone has any other questions of Attorney Connors.

Mr. Rudnick: I have a question. Could you reiterate what the question is we sent to the law department?

Mrs. Rando: We asked about the usage, whether we have the right to grant it. We asked for the number of units per acre.

Mr. Rudnick: Whether we had the right to vary the number of units?

Mrs. Rando: Right. I don't have the exact request in front of me. Um, the hardship. The hardship, exactly. We asked if they considered the unique building. There's nothing wrong with the land.

Mr. Rudnick: I am very happy to stipulate that that buildings can be the reason for a hardship. I'm not understanding what the hardship is with this building. There's plenty of testimony that it's a nice building, a big building, beautiful building, worth saving, lots of

good things about the building. I haven't heard what the hardship is about the building in relation to the number of units. So the question that I politely don't ask applicants here is how much? How much money are we talking about here. But when you are making a case to me that seven units is undoable and six units is doable within the hardship, I really need to understand more about the economics. To accept the idea that building seven units on this site would be a hardship that you can't overcome with the variance but at seven units you could have overcome it, I really need to understand. Like Mr. Sergi, this sounds like a real nice project at six units and I wish I had the opportunity to build this, to buy this and put six units in. that's what I am asking you, Joe, why does the hardship go away at seven units and not six units?

Mr. Connors: Just reiterating what my client did say to you, you suggested seven units the last time we were here. And so they went back and looked at it. These guys have purchased the property. They have invested in it. They went back and looked at the economics of constructing seven units as opposed to nine and they felt it could work. They didn't give me an exe; spreadsheet of why that works for them but they believe that that would work economically for them to retain the building because the alternative is we can demolish it and they want to retain it. They think it has character. They think it's a good solid building and so in their determination, financially, they came to the conclusion that they could live with seven units and they could make it work. I don't have an excel spread sheet in front of me that I can articulate the cost of construction for seven as opposed to six and why that's the tipping point. It was something that they could live with at seven units. cost of construction for seven as opposed to six and why that's the tipping point but it was something that they could live with at seven units.

Mr. Sergi: I would suggest you can make economic success out of four units as well, Attorney Connors. I don't think that's not much of an argument to me. I really don't. I

think that where I stand here, I think it's more detrimental to the neighborhood. I think that's my tipping point here. I mean the hardship is in question as well. I think there's a lot of units out there, you mentioned it. You're right and I don't know if I want to add to that. I don't think I want to add to a problem that already exists. So, I think if you make four nice units, and you can call them palaces or whatever you want, I still think you have a chance of making economic sense out of the project.

Mrs. Rando: I don't think we should be discussing economic use as a hardship at all.

Mr. Connors: Well I think the statute states practical and financial hardship. It spells it right out. I understand, Madam Chairman, if I came in and said it's a hardship that I can't build two houses on a four thousand square foot lot, I mean, that's kind of ridiculous. We are not asking for that. I mean, we are trying to reuse an existing building that lends itself to reuse for residential purposes. It's really just the question of how many units that makes it work.

Mr. Rudnick: I approached this evening's work with the idea that maybe we didn't have to hear from the law department because you would be convincing enough that I would be interested in granting this variance. At this point I haven't been convinced enough. I'm not convinced that I wouldn't grant a variance here but at this point I actually would like to hear the opinions of the Law Department on the questions that we asked. I just wanted you to know that before we move forward.

Mrs. Rando: You may continue with your proposed findings of fact.

Mr. Connors: Madam Chair, could I have a five minute recess to confer with my clients?

Mrs. Rando: I'll make it a motion for a five minute recess. Mr. Hickernell seconded the motion and the board voted to take a five minute recess at 7:50 P.M.

At 8 P.M. The board reconvened to their regular meeting.

Attorney Connors: Thank you for the brief recess. We discussed the matter. At this point knowing the concerns of the board, we would respectfully ask for permission to withdraw without prejudice.

Mrs. Rando: Do I have a motion to allow them to withdraw without prejudice?

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to grant Case No. 2015-07 permission to withdraw without prejudice.

Roll Call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

There being no further business, on motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adjourn at 8:00 P.M.

Barbara Rando 7/21/15