

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

July 19, 2016

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 19, 2016, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando, and members Sarah Hankins, Mark Hickernell, Edward McCarthy and John Sergi.

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

Mrs. Rando: Tonight we have one continued case before us, Case 2016-17, Storage Development Partners, LLC., 96 Linden Street Realty Trust c/o Babak Veysi, Trustee.

The first action this evening is for a motion to accept the minutes of July 12, 2016.

On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to accept the minutes of July 12, 2016.

Mrs. Rando: Will the clerk please read the petition of Storage Development Partners, LLC?

The clerk then read Case No. 2016-17, the Petition of Storage Development Partners, LLC. 96 Linden Street Realty Trust c/o Babak Veyssi, Trustee, in an application for dimensional variances. The locus of this petition is a large parcel of land located on the westerly side of Linden Street. The locus contains 70,756 +/- square feet of land (1.62 +/- acres) with an existing one story commercial structure and surface parking thereon. The commercial building has been vacant for a number of years. Petitioner proposes to raze the existing commercial structure and parking and construct use and maintain a new four story self-storage facility with parking underneath. Location and Zoning District: 96 Linden Street; Business B Zoning District.

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

Attorney Michael R. Connors, Law Offices of Connors and Connors, 6 Lexington Street, MA, forward.

Mr. Connors: I am here tonight on behalf of our client Storage Development Partners, LLC requesting the three variances that the clerk mentioned. I think these matters were all addressed at the June 21st meeting with the board and pursuant to the request of the board at said June 21st meeting, we've revised the plans, a number of the plans which are included in the packages I submitted tonight. That was the site plan, the landscape plan, the floor plans and exterior elevations. These changes, which are also reflected on the water colored rendering behind me, so additional brick added to the front of the building and the facade in multiple locations as well as more flowering trees requested by a number of board members, but specifically Board Member Sergi as to the brick.

Additionally in the packages are a letter from Director of Consolidated Public Works Michael L. J. Chiasson, dated July 14th, addressing the benefit to the city to have access to Beaver Brook; a letter from BL Companies. Then there were some questions regarding the flood storage. We can walk through those individually but the flood storage table show that this is better than the existing. This is better than the proposed by right which had been approved by the Conservation Commission for a fourteen unit residential building. And it also shows that the petitioners already made changes to this as I had mentioned at the June 21st hearing that during the City Council review, the petitioner further improved the flood storage addressing concerns from the engineering department.

Mrs. Rando: Can I interrupt you. Do the board members want to take a five minute recess and read over these letters? We did not get them earlier today, they were just hand delivered.

Mr. Connors: I apologize for that. I think with the July 4th holiday and other items - - -

On motion of Mr. Hickernell, seconded by Mr. Sergi the board voted to take a five minute recess at 7:10 P.M.

The board reconvened at 7:15 P.M.

Mr. Connors: Just finishing off that list as the board just went through it, I also make mention in there, there's a request, my letter to the City Council requesting an extension of time. At the board's hearing on the 21st, I mentioned

there was one more meeting of the City Council before they went on break for summer session. Due to the fact that we didn't have a vote from the board, on the City Council Rule 90, the City Council couldn't move forward.

We filed a request for an extension. I don't know if the Law Department then got that and didn't respond because there was no time crunch, or otherwise, but since it was extended to September 30th as it shows there, it was voted on at the City Council's last hearing on Monday, June 27th, that we haven't received law department comments. So I thought at that time potentially, if we didn't get a vote that night maybe we were still, according to the Ordinance and Rules, had it set up if we were able to get comments, appropriately respond to them, we could have got a vote out that night. But since the date has been moved, I think that the law department went on to more pressing issues. So there's been no comments there that's why I included those items in the filing package.

The water colored rendering that I previously mentioned and then the Proposed Decision simply reflects the only changes were made with the new revision dates at the end of the decision and they showed up in red lined in the decision.

As to the CPW Director Chiasson's letter, stating that it would be very beneficial to the city to have access to the site, I just make mention that above and beyond the access, the plan already has a plan note that states on the site plan that to provide cleaning of debris from Beaver Brook, contractor to remove organic and inorganic debris from the surface of water and banks at the brook within the limits of the property line.

It's come to our attention there's been some concern about that specific language, and this is discussions with abutters at the City Council meetings and I think the best place with this could be addressed is in a City Council condition and I have made that point to some of the abutters that are here tonight as well as to the Ward Councillor who's here tonight, that we would be willing to include language, that instead of just saying surface of water, it would include contractor to clean debris and sediment from Beaver Brook obviously and bank within the property line. Obviously the flooding issue is very personal to the people that have been in that area and have been affected by it but my client obviously wants to build a building. Storage that gets wet isn't a strong advertising claim and obviously is something you want to avoid at all costs.

So we are looking forward to finalizing that language but we would be willing to change that whether it be in a plan order. I think the best place in speaking with the ward councillor is in a specific condition of the special permit if this matter moves forward from this board tonight.

Mrs. Rando: May I ask you one question? By right you can build the apartment house, correct?

Mr. Connors: Yes, the fourteen unit apartments are by right.

Mrs. Rando: And are you telling me that the City of Waltham would not have access to that site for the purpose of dredging?

Mr. Connors: Well the owner of the site obviously we could either build the by right fourteen unit residential or what he's chose to do and what is obviously a

better deal for him because he's going into agreement with the petitioner to build this proposed self-storage facility. If this is voted down and he moves forward, he obviously would have no reason to move forward and be helpful towards the city that denied him on this petition. He wouldn't have to go through the City Council. It's a by right. He has gone through the Conservation Commission, so he could move forward and pull a building permit without any mitigation to the flooding.

Mr. Hickernell: Is the dredging access a one time thing or an ongoing access?

Mr. Connors: The access would be, and that's the type of language that potentially is to be discussed at the City Council but the access would be continued. The first work to be done by the contractor would be the petitioner's contractor the first time and then however the city wants to move forward from that. You know, that language would be buttoned up whether it would be- - - And the city is in the process of studying it. Board member McCarthy had asked if there's any current studies and we checked with the Conservation Commission and they simply said, no, there are no new studies. They're working on it now.

Mr. Hickernell: That will be worked out with the City Council if the permit is granted.

Mr. Connors: Correct. The city council is more apt to have department heads come into the meeting and speak to these concerns. We had gone through the development prospectus process as part of the city council so they had already chimed in. So it's more of a continuation of a discussion that already had been done as opposed to something new.

At this time, I don't know if there's further questions from the board. I think the letter from the CPW Director as well as the flood storage tables. I know there's members of the City Council that have requested that as you can see at the top of the flood storage tables, that was specific to Councillor Patrick O'Brien's request that the Ordinance and Rules Committee level put that together and I think it's pretty clear on its face that this addresses a concern that's a reality that there's a flooding issue down in that area. And it's our contention that this use would not be a detriment but instead a benefit to the public good down there because it would address that concern.

Mrs. Rando: Has the Ward Councillor received this packet?

Mr. Connors: I hand delivered it today. So I handed him a copy of it as we sat here tonight.

Mrs. Rando: Are there any questions of Attorney Connors?

Ms. Hankins: There's sort of confusion about what you were just mentioning. You said if they granted relief and through the City Council that they would work with the city to allow access to mitigate the flooding, but that if the apartment building was built, that they may not allow access, but Mr. Chiasson says that the access would be to mitigate the flooding issues that affect the property. So what is their game plan if they're not going to allow the city to go in and do flood mitigation if they do an apartment. What are they going to do to make sure that that apartment that there isn't a flooding issue?

Mr. Connors: Well, it's a by right development. So I mean, I don't know what they plan to do. They might build it and sell it and no longer have the concern. All I'm saying is that they won't be mandated by a special permit decision. Nothings been done to date. I think that's been the concern of the abutters that we have spoken to. The city has known about this issue. and one of the reasons that nothing has been done is that the city doesn't own the land nor have access to it. Here there need to be legal agreements as far as access to the property. There's liability concerns. So there's a number of reasons why the owner would not grant access, for the city to grant access. It's an impediment to the title that the petitioner is okay with but maybe the owner of the property would not be. Once again we've discussed the fact that this isn't a residential use that's in front of you. There are some commercial uses down in that area on that side of the bridge and obviously much more residential on the other side of the bridge but maybe they wouldn't want dredging or whatever the word is to remove debris machinery. So that might be reason enough. If you're trying to sell the entirety of it or at least some space and someone sees that maybe they'll just move around to the next property without asking the questions.

Mrs. Rando: Unless the builder of the apartment doesn't do it by right and they come before us.

Mr. Connors: Exactly. That was a concern and that's why as a point, sometimes I made mention of this at the June 21st hearing. I'm not dealing with hypotheticals. Sometimes people say, well what else could be built at the site? This is a plan that had been already approved by the Conservation Commission as moving forward when the petitioner reached out to the owner and thought that this

would be a potential location for something that would be financially beneficial to the owner and, more importantly, I find it a successful sub-storage facility.

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

Mr. Sergi: Just a couple. By way of clarification, so the access issue you're going to discuss at council and you will put a provision or a condition on that special permit that you will be seeking?

Mr. Connors: Correct. And that simply is that the language matches up. The council has issues with access all the time. We have to go to them last so otherwise it would be a back and forth again changing condition language.

Mr. Sergi: With the dredging, just a question. When you say organic or inorganic, so that means if there's a piece of rusty metal or whatever is in that area, would you leave it there?

Mr. Connors: And that was I think some of the concern. Obviously the point is to take it out to solve the flooding issue. That's why the language that is being proposed as far as sediment or other, I think it's more inclusive to include, so anything on the way to sediment you would clean up where the language that is currently on the site plan, says the surface of the water. Now all these conditions obviously have to be, the building inspector goes through and checks off every condition. It's not something that's under the purview of the building inspector. Here he might ask the CPW Director or the City Engineer to say did they satisfy the conditions, otherwise they don't get a certificate of occupancy. So I'm not saying lightly that they would be able to get away with something. The concerns of the abutter have been, let's just get it iron clad off the bat, so it's clear on its face what needs to

be done. Because where it's done you would say surface of the water, you think of someone with a pool skimmer going in and just grabbing - - -

Mr. Sergi: That's exactly what I thought. So I mean, if you see a shopping cart in the water you'll take that out.

Mr. Connors: Most definitely. And that's the type of language whether it's an inclusive list. Like I said clean debris, I mean all debris. Contractor clean debris and sediment from Beaver Brook and back the property line. But if the council says parenthetical, whether that be shopping carts, man made objects, foreign material, etc.

Mr. Sergi: Just a clarification on the improvements on the rendering which I appreciate. The brick looks a hundred percent better and the landscaping plan is very detailed. I am wondering is that going to be professionally installed or is the petitioner doing it themselves?

Mr. Connors: No, that will be professionally installed. Once again that's a specific condition of the special permit, so the building inspector in this case, at this time, the commercial inspector would go around with the landscape plan, and make sure that flowering trees are that certain type that are outlined by name on the list.

Mr. Sergi: I appreciate that. What's the height of the trees that you are installing?

Mr. Connors: That detail is on the landscape plan. This is Andy Graves. He's from BL Companies.

Andy Graves, BL Companies: So at your request, we have increased the number of trees along the facade along the street as tight as we can get them and not make them too close that they can't grow properly. So we have added two additional trees from the entry

way. We have added one hundred and fifty privations plants. We've also added fifty shrubs. It's a fairly small strip between the street and the sidewalk so we planted as densely as can be planted so they still survive.

Mr. Sergi: I think it looks nice.

(Mr. Graves went over the plan with the board showing where the trees would be planted.)

Mr. Sergi: Thank you.

Mrs. Rando: Attorney Connors, did you tell me that the person is buying it and then turns around and sells it to someone who just builds them? Is that correct?

Mr. Connors: They have done that in the past, I've been told in this instance people do what they do but they plan to hold this for a period of time. I obviously had this question, as I mentioned, that the current owner may be adverse to a condition just simply for the fact that it's an impediment to sale. If someone is looking through and says what's this in the decision? I want to know the parameters on that so that's why, like I said, they don't want anything to flood down there. The condition language, it does need to be worked to make sure that it's clear on its face, so everyone knows including in the future if they do sell it. But I think at this time I've been told that their intent is to build it and - - -

Mrs. Rando: Is it the same person that purchased the other two the one on Moody Street and the one on Lexington Street?

Mr. Connors: They are people who were part of those build-outs but those buildings were sold. I have just that email and it doesn't say much. You can see on the first page it says, "The short answer is no" and this is from Sam Bade of SSV Engineering. I didn't

think I was going to address it but since I did bring it up this goes to board member McCarthy's question if the Army Corp of Engineer had done recent studies, so I would just like to add that at this time. I printed out copies in case it came up.

(Mr. Connors submitted a copy of the email to each member.)

Mr. Connors: You will note that the email is from Julie Toole who is the assistant for the Conservation Commission and it's to Shawn Keefe of our office and one of the reasons is because on Monday, June 27th, I wasn't at that City Council meeting. My wife's water broke nine weeks early and we gave birth to a baby boy, Daniel Robert Connors, seven weeks early so he's in the unit now, otherwise he definitely would be here tonight with me.

Mrs. Rando: The last time, didn't we ask for some proof that it was needed. That something this big is needed in Waltham where we have the other two?

Mr. Connors: Testimony was given and I think that shows from the sale of the other properties that these are very successful. There's an issue they have competitors around and competitors don't give out information very easily. But this is what they do for a living. They've been doing it for a number of years but I thought a lot of those questions were asked and answered at the meeting.

Mrs. Rando: Why are you making something that size when it's not conforming when you can make it smaller and have more parking and conform a little bit more? And loading docks, you have one, you're required to have five. Why not make it a little smaller and try to conform a little bit.

Mr. Connors: Those are based on industry standards and this board had granted variances for those other properties. That's why I brought them up the last time. And I

think any time you run into those substantial mitigations with flooding, that comes at a high cost. It has to do with the design. I think that is reflected in the fact that nothing has really been done. The site hasn't been built over for quite a long time.

Mrs. Rando: It could be.

Mr. Connors: Well everything is cost associated so, I don't know if you could say that financially it's worth doing.

Mrs. Rando: That wouldn't be a hardship then.

Mr. Connors: That is a hardship, the soil conditions, the shape of the site, the topography in back. So for all those hardships, like I said the site hasn't been built out. The structure is basically the same fruit stand that was built by the DeVincentis in the forties. It's just a small building on a large site, as I said, that has so many issues.

Mrs. Rando: You may continue, do you have anything else?

Mr. Connors: I don't but it's my understanding the public hearing is still open because we were still offering information, so - - -

Mrs. Rando: At this time, I will ask if there's anyone in opposition? Seeing none, is there anyone in favor? (Three people raised their hands in favor.)

Mrs. Rando: Is there anyone seeking information? Seeing none, is there anyone that would like to say anything?

William Creonte, 75 Wildwood Lane, Waltham: I am also partners at 127 Linden Street with my Dad and my brother, Tom.

When you asked the question, are we in favor, I think it's a great, great project for the area because of the limited asphalt that would be in there; the limited building sizes and also the way that that was constructed to accept water. I have been working with San Bade and one particular person on the Conservation on this Beaver Brook problem and the flooding. And we are very, very concerned with the cleaning of the Beaver Brook and they did state to me that they would clean it from their entire property and then give it access to the city as it was discussed tonight. I think that's really crucial that they clean it first and get it where it should be cleaned and as Attorney Connors stated that that could be a condition here or the City Council but if that was now, we would be standing up in favor of this. That's the big piece that we think is the most important. And we then have to go upstream and catch a couple of owners up there and hopefully the city can continue. There's nothing that has been done there. My Dad could attest to it for probably sixty years. We've been asking and asking and asking and nothing has been done. But cleaning is very, very important. It's a big start. It's not the cure all but it's an enormous start so with that I just want to say thank for hearing this and like I said, I think it's a great project for that area for those reasons. Thank you.

Mrs. Rando: Anyone else?

Robert Waddick, 129 Church Street, Waltham: I am the City Councillor representing this area which is in Ward 6.

The property owner has been trying to develop this site for some time and all of the proposals prior to this have been residential. There was a larger than fourteen unit proposal which required a special permit which he was dissuaded from pursuing. Then there was a proposal which required a fuel storage permit which was not received well on the City Council because of the fact that it was residential. And apparently he went back to

the Conservation Commission and obtained an Order of Conditions for this fourteen unit by right proposal.

My concern as the Ward Councillor, because of the flooding which I think we are all familiar with is that I think it would be irresponsible to put residential dwellers in that area. We've seen when we've had these fifty and hundred year storms which seem to be occurring every other year, in recent years. We've seen people taken out of there in front end loaders and I believe the Creonte's have been involved in rescuing people from that area. So the last thing I wanted to see was an additional residential use in that area until the city resolves this flooding issue and hopefully that will take place and hopefully this petitioner will help with that respect.

I see this use, although it's a large building, I see the use of a storage facility as a relatively innocuous use. It's not going to generate many vehicle trips so there would be limited traffic. It doesn't require a lot of parking. I think the data shows that, but if you're not convinced with the data all you have to do is observe the site on Lexington Street or the site on Moody Street or the site on River Street. When I renovated my home several years ago and this board was generous enough to grant me a variance in order to do that, we had to move a lot of stuff to a storage facility. And we spent a lot of time going back and forth and my observation was on most of those occasions we were the only ones there. My own experience tells me that these types of uses are very low impact uses which I think is beneficial to that area.

With respect to the flooding, I think this has been designed in such a way as I don't believe it will exacerbate that situation. It might help it a bit and certainly the residential use that's proposed would create more impervious surface and I think would not be beneficial to the area.

From my perspective, the developer has been very cooperative. I know the board has asked for some modifications on the plan and I think they are good and I appreciate the board doing that. Mr. Sergi's suggestions I think enhanced the project. When the project was first brought in I asked that the petitioner reduce the massing by doing something with the roof which they did. They created sections of the roof which were slanted to try to make it look less like a box. They have also been willing to add windows to the facility to make it look more like an office structure than just a big storage facility. And because of the proximity to the bike trail which hopefully we'll get someday, they were willing to put a bike rack and a seating area. It won't benefit the facility. It's going to be towards the railroad tressel which will be part of the bike trail. I'm not anticipating that folks are going to be taking their storage to and from the storage facility on bicycles so that's just something that they are willing to do to benefit the community.

So, it's a large building. I look at this from a perspective of the ward councillor. I look at this as a better use than what can possibly go there in terms of the impact to the area. It is a large building, but I think the petitioner has made an effort to mitigate the impacts on the community. So, I'm not saying, this matter is pending before the City Council as you all know and I respect the autonomy of this board and all municipal boards. I am not saying anything tonight that I haven't said publicly to my colleagues on the city council. So I respect your autonomy and I will respect whatever decision this board makes. And I thank you for your time.

Mr. McCarthy: Madam Chair, I would like to ask the councillor a question. What, if any, in regard to the condition associated with gaining the access to the city, the property, is this in stone as far as you are concerned? Is that cast in stone? Are you definitely going to have that as part of their permit or whatever it is that you are going to be giving them to continue this project?

Mr. Waddick: I will certainly ask for that as a condition in the special permit.

Mr. McCarthy: We could add a condition here subject to the council approving the access conditions. So the petition will be granted under those circumstances.

Mr. Waddick: Whatever the board feels is appropriate. But I believe since the petitioner is willing to do it, I don't anticipate that it will be a problem in the city council if the petitioner is willing to grant access and it may be necessary to do it in the form of an easement so that its - - -

Mr. McCarthy: Legal and insurance issues are taken care of, etc., etc., etc.

Mr. Waddick: And it runs with the land. The special permit runs with the land but I guess that's something that I haven't had a lot of discussion with the petitioner about before this evening but the city would certainly want access into that area and since the petitioner is willing to do it, I believe we can work it out one way or the other. And if the by right petition went forward, you know, there's such a thing called eminent domain and in my experience you can take an easement by eminent domain if there's a public purpose, so I am not too worried about that either. Thank you.

Mrs. Rando: Any other questions?

Mrs. Rando: Attorney Connors, could we go over again what you feel is your hardship because I don't feel that wetland conditions also create a hardship. That has to do with the land but it doesn't have to do with the hardship. You said that there's only a large area that can be built on because of the wetland. Well, then you knew it was wetlands. He knew was wetlands, so how does constitute a hardship? It can't be financial. The hardship can't be financial that he can make bigger now.

Mr. Connors: Section 10 deals with the hardship compared to other lots in the zoning district. That's what he based it on. It's not do people know what this land is. It is, is this land different and for these reasons. So this land is different because it is wetlands. The whole design of our building is based off of - - -

Mrs. Rando: But that's only one thing. That's only one part of it.

Mr. Connors: One part of what?

Mrs. Rando: One part of getting a variance is that the land has to be different than - - -That wetlands does have something to do with him being only being able to build a certain amount and it's one of the reasons he could apply for a variance because there are wetlands. But the size of the building has to do with financial advantage. He knew it was wetlands there when he bought the property and he wants to build a building that size. It's more beneficial money-wise.

Mr. Connors: The whole idea of the hardship is with the land. So it is with the land and it would be for anybody, any other user of the land. That's why it hasn't been built.

Mrs. Rando: There are many reasons that you have to conform to. It can't be a detriment to the public good.

Mr. Connors: I filed a brief. I can go through the brief. I was told that people didn't want me to read the brief that they received it. I walked through every factor to be considered and Mass General Laws.

Mrs. Rando: Topography, absolutely! The shape and topography. Well, when it comes to a hardship of the why when the land can be sued for something else and I know it's going to help with the flooding. I understand that. But I need something more.

Mr. Connors: Madam Chair, once again the hardship has to do with the land as can be seen, other things haven't been built here. I think this property more than others, I won't name specifically that I've had in front of this board screams of hardship.

Mrs. Rando: We look at each case individually.

Mr. Connors: I understand that. I'm just saying this land has the shape, the topography off the back that goes into Beaver Brook. We've had testimony from abutting neighbors who have been there for years that nothing has been built. And the size of the building is a product of some of the cost that goes into the mitigation. But there's a lot of plusses that come with that. There's tax dollars. So when the city wants to clean it out they have an income stream. Annually those tax bills go out. The other benefits as Mr. Creonte stated and also the Ward Councillor, is that this site is all asphalt right now other than the building and the parking is contained within the structure there's a lot more green space and landscaping. So it softens up the site and all of that helps with the flooding.

Mrs. Rando: Absolutely helps. I don't know if it's a hardship.

Okay, are you ready to go into your Findings of Fact?

Mr. Sergi: Madam Chair, since we have had a chance to read it, I will make a motion that we waive the reading of the Proposed Findings of Fact.

Ms. Hankins seconded the motion.

The board voted to waive the reading of the Proposed Findings of Fact.

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

Mr. Sergi: Madam Chair, since he's made the changes and incorporated the new plans in the Decision, I propose that we waive the reading of the Proposed Decision as amended.

Ms. Hankins seconded the motion.

The board voted to waive the reading of the Proposed Decision as amended.

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

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to adopt the Propose Findings of Fact.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Hankins, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

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

On motion of Mr. Sergi that the board adopt the Decision as amended by the Petitioner tonight become the board's decision. Mr. McCarthy seconded the motion.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Hankins, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: I am voting yes although I do not feel you have truly met the hardship but on the safety matter in that area, I cannot disagree that that is needed. I'm not crazy about your hardship.

Mrs. Rando: One more motion is in order.

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

Barbara Rando, Chair 2016-26