

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

July 28, 2015

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 28, 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, Oscar LeBlanc, Edward McCarthy and Marc Rudnick.

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

Mrs. Rando: Right now, we are waiting for another member to come, so I am going to make a motion for a ten minute recess.

Mr. Rudnick seconded the motion and the board voted to have a ten minute recess.

The board reconvened at 7:10 P.M.

Mrs. Rando: Tonight we have one new case before us, 75 Third Avenue Realty Trust, 75 Third Avenue.

Would the clerk please read the petition in 75 Third Avenue Realty Trust.

The clerk then read Case No. 2015-11, 75 Third Avenue Realty Trust requesting variances and Special Permit to allow for the demolition, and construction of the parking

lot located on the locus and to increase the number of parking spaces. Location and Zoning District: 75 Third Avenue; Commercial Zoning District.

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

Attorney Bret Francis, Harnish, Jenney, Mitchell and Resh 309 Waverley Oaks Road, MA, forward.

Mr. Francis: I am here today on behalf of 75 Third Street Realty Trust and the Principle of that trustee is here with us tonight, Charlotte Maynard. If you have any questions she will be happy to answer any questions that she absolutely could.

Mr. Francis went on to read his brief into the record.

Mrs. Rando: Do you have copies of your brief for us?

Mr. Francis: I brought multiple copies to the Legal Department and e-mailed them over to here and she said she could mail them out.

(Mr. Francis submitted a copy to the Chair. Mr. Francis then continued reading his brief into the record and went over the plan if the locus with the board.)

Mrs. Rando: When Case 89-16 came before us and you needed 120 parking spaces that were required and we gave you 103, we granted it and I guess as a determination for us to see if it was adequate, you had to come back in 1994, Case 94-5, to see if it was adequate. Correct?

Mr. Francis: Yes.

Mrs. Rando: Then in 1996, Case 96-26, we had you come back again after we said it was adequate twice. What happened between that time? I don't remember.

Mr. Francis: I wasn't obviously at that time counsel for them but she could probably speak to that.

Mrs. Rando: Was there a change of use or was there something changed up there?

Mr. McCarthy: No, they put a Dunkin Donuts in.

Mr. Francis: That was in 2004.

Mrs. Rando: Could we have your name and address for the record?

Charlotte Maynard, PO Box 95, Newton Upper Falls, MA 02464 came forward:

Ms. Maynard: The way that the original deal for this property was structured was actually a land lease in which Nelson Properties was the builder and owner of this building. So the current owners of the land were not part of the prior applications but my guess would be that it was from the installation of a new tenant, that's why it triggered. I don't know if it was a change in use at that time or, I'm not sure.

Mrs. Rando: Then in 2004, the City Council approved a special permit and they approved a special permit with 103 parking spaces, correct?

Mr. Francis: With what was existing. They found what was existing to be sufficient to satisfy the new fast food Dunkin Donuts coming in. So they never required any further

changes there. They said, they reviewed it, thought it was sufficient and allowed the special permit.

Mrs. Rando: The relief from 5.47, don't you think 50 is a little bit large number for small cars? I looked up on the website I found today, they said that there are more larger cars than there were small cars. So, for you to have fifty percent small spaces -

Mr. Francis: I understand, I was thinking about this and my thought was if there was ever a project that would allow for smaller vehicles up to the maximum fifty percent, this is it. I mean this isn't, there's not residential so you don't have families. You don't have restaurants.

Mrs. Rando: There's a doctor up there and families go to that doctor. Families go to Dunkin Donuts. Have you ever driven a SUV and see all these small spaces and you can't get into it.

Mr. Francis: Understood, but there will be more than fifty percent, fifty plus one, that are correct size. Again, these are all people who work in the commercial district. It really doesn't service the neighborhood outside of Third Ave and all the Hotels and the rest of it. So I think there's more commuters in this situation than you would typically see. It's not a restaurant, so you don't have families coming with their kids, no sporting events, any child activities. Yes, there may be the occasional doctor's visit but at the same time, I think how many visits they can do on that lot under the provisions of the zoning, you know over-stricted it as well. So it's not like an emergency room up there. I think everything is scheduled and organized. So I would say, again, I've never sought fifty percent, you know I've never had to do that. I do believe that if any project were approaching that fifty percent level that this is it. I mean it's a cleaners for the workers that work there, it's a sub shop for the workers that work there. They don't even put seats down,

Mr. McCarthy: Are you reducing the current number of large parking spaces?

Mr. Francis: Yes. again, the overall numbers are increasing. I'm not sure what the breakdown was back in 89 as to the small spaces.

Mr. McCarthy: They could very well have the same number of large, just increasing the numbers because you want a lot more small.

Mr. Francis: And I would say that's probably the case because to get to fifty percent it means you're probably having just small cars and the existing large ones would probably remain. But I will defer it to - - -

Mrs. Rando: She can speak during the public- - -

Mr. LeBlanc: I have a question, the difference between the large parking space is ten feet vs. eight feet for a compact car.

Mr. Francis: I think its nine to eight.

Mr. LeBlanc: It's a one foot difference. And is the length the same?

Mr. Francis: No. The length is also different.

Mr. LeBlanc: How many feet shorter?

Mrs. Rando: Two feet shorter.

Mr. LeBlanc: If you were going there Barbara and there was a compact space, and you had a big car, and you couldn't find a place, you'd park the car in the width. That's the way it is.

Mrs. Rando: It seems like he is trying to squeeze in 121 parking spaces.

Mr. Francis: One hundred and twenty-two are required. That's what they are doing. You want to come as close as possible.

Mrs. Rando: There's another business in Waltham that has too many small compact spaces too, but - - -

Mr. Francis: We would be happy to have a review. The petitioner would have no problem coming back in a couple of years and if there's any questions, complaints.

Mr. McCarthy: What percentage of the 103 was small?

Mr. Francis: I don't know that off the top of my head.

Mr. McCarthy: Does she know?

Mr. Francis: Yes, she knows. She is the Petitioner.

Ms. Maynard: I would say right now, they come out quite far and the lanes that exist now are not up to the same code as the lanes that are now required. So what happens now is the first guy comes in and he can't get around the isle, so he needs three feet to his right and then that person is right on the line. So effectually they are not fully nine feet now. They are all a little shy of nine feet when I went and measured what I did. And they are all one on top of the other and they can't actually make the turn because of the way the

isles are. So, it's not the most efficient parking lot the way it runs now. And, in fact, they all become compact spaces without actually being property marked.

Mr. LeBlanc: So you're saying that this new design is going to be able to use the parking better.

Ms. Maynard: Yes, definitely. And also it will be clearly marked compact vs. large. So if somebody wants to park in the large lot they know they can go, and because now, I have a Prius and I can't fit sometimes in the current spots because of the way that the isles affect the parking.

(Mr. Francis went over the plan with the board.)

Ms. Maynard: And the only other thing to consider is the current amount allows for less handicapped accessible parking spaces so this new plan has to take into consideration that we've gotten up a certain level of more handicapped accessible parking.

Mr. LeBlanc: Which eats up the space.

Ms. Maynard: Which does eat up the space and the current existing plan has handicapped spaces that are actually on a hill which also affects the ability for somebody to get out of their car and so my new one will have flat handicapped accessible access.

Mr. LeBlanc. That's very important, actually.

Mrs. Rando: One call that I received today, a lady said that she would have to find a new physician if fifty percent were small compact spaces.

Mr. Francis: I think that Beth Israel is supporting the plan to have that extra small parking spaces, so that's an anomaly, I suppose.

Mr. McCarthy: Do you have any figures on the percentage of large cars vs. small cars today because it seems to me are we going more to small cars? I think we are.

Mr. Francis: It sounds like that to me. Rather than taking away large spaces, obviously you're going to result with probably the same amount of large car spaces and a substantial increase in the small car.

Mr. McCarthy: I have no problem with the number of spaces. What I'm concerned about is the land you're taking. Where are you going to put the snow?

Mr. Francis went before the board again to talk about snow removal.

Mrs. Rando asked each member if they had any questions, and they did not.

Mrs. Rando: Is there anyone in the audience that is in opposition to this? Seeing none, is there anyone seeking information? Seeing none, is there anyone in favor? (The petitioner raised her hand in favor.)

All right, you may continue with your proposed findings of fact. Has everyone read the Proposed Findings of Fact? (Each member said yes.)

Do I have a motion to waive the reading?

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

Mrs. Rando: The same with the reading of the Proposed Decision.

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

Mrs Rando: Do I have a motion on the Proposed Findings of Fact. One thing, in reading through here, the date is wrong on the plan.

Mr. Francis: Just the one plan. The rest of them have the same date of 2015.

This one has the date of 2014, so you will correct that.

On motion of Mr. McCarthy, seconded by Mr. Rudnick, the board voted that the Proposed Findings of Fact be the Findings of the board.

Roll call: Mr. Rudnick, yes; Mr. McCarthy, yes; Ms. Gelineau, yes; Mr. LeBlanc, yes and Mrs. Rando, yes.

Mrs. Rando: Do I have a motion on the decision?

On motion of Mr. McCarthy, seconded by Mr. Rudnick, the board voted that the Proposed Decision become the board's decision.

Roll call: Mr. Rudnick, yes; Mr. McCarthy, yes; Ms. Gelineau, yes; Mr. LeBlanc, yes and Mrs. Rando, yes.

Mrs. Rando: And there is a condition that the snow will be removed by the petitioner and removed off site. And the case is granted.

Mrs. Rando: One more motion is in order.

**On motion of Mr. LeBlanc seconded by Mr. McCarthy, the board voted to adjourn
at 7:45 P.M.**

Barbara Rando Chair
8/18/15