

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

August 18, 2015

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, August 18, 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 Michael Cotton, Glenna Gelineau, Mark Hickernell and Michael Squillante.

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

Mrs. Rando: Tonight we have two cases before us and one extension of time.

The first action this evening is for an approval of the minutes of July 21st and 28th.

On motion of Mr.Cotton, seconded by Mr. Squillante, the board voted to accept the minutes of July 21 and July 28, 2015.

Mrs. Rando: Why don't we do the extension of time first.

Philip B. McCourt, Jr., 15 Church Street, MA, forward.

Mr. McCourt: This is a request for an extension of time for a building going up on 99 Third Avenue which is under construction and is going to have two restaurants and perhaps a kind of high end coffee type house in between. So we came here because it has exposure on both sides and got some sign variances a year ago. And while the building is virtually in the final stages of completion, to actually put the signs on may take a couple of

months. So we are asking that you extend the time for the sign variance from August 6th when it would have been the year time, but we did file this prior to that year time to February 6, 2016.

Mrs. Rando: Does anyone have any questions at this time? Do I have a motion?

On motion of Mr. Cotton, seconded by Ms. Gelineau, the board voted to extend the time to February 6, 2016.

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

Mrs. Rando: As I said before, we have two cases, Case 2015-12 which is The Arc of Massachusetts, Inc. d/b/a The Arc of Massachusetts, 217 South Street and Case 2015-13, Stephen and Maria Sweder, 116 Rose Hill Way.

Would the clerk please read the petition in Case No. 2015-12, The Arc of Massachusetts, Inc.

The clerk then read the Petition of Arc Massachusetts, Inc. d/b/a, The Arc of Massachusetts for two variances to allow for the demolition, and construction of a two story office building. Location and Zoning District: 217 South Street; Residence A-4 Zoning District.

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

Attorney Bret Francis, Harnish, Jenney, Mitchell & Resh, LLP, 309 Waverley Oaks Road, Waltham, MA, forward.

Mr. Francis: I am here on behalf of the Petitioner of The Arc of Massachusetts.
(Mr. Francis then read his brief into the record along with going over the plan of the locus with the board.)

Mr. Francis: I have with me the architect for the project, David Sorgman as well as the CEO of The Arc of Massachusetts, Leo Sarkissian. We'll be happy to answer any questions that you may have.

Mrs. Rando: How many parking spaces do you have there now?

Mr. Sarkissian, The Arc of Massachusetts, 217 South Street, Waltham: We have seventeen parking spaces.

Mrs. Rando: What is the second story on this building?

Mr. Sarkissian: It's offices.

Mrs. Rando: And how many people work there?

Mr. Sarkissian: Approximately nine but a number of them are part time. We have work study students as well.

Mrs. Rando: And how many visitors usually during the day?

Mr. Sarkissian: It varies. Sometimes there may be twelve people coming for group meetings, There might be a board meeting that we would have at night. Again eighteen people. Staff aren't there.

Mrs. Rando: I also notice that you have a couple of neighbors on either side. Have you spoken to the neighbors?

Mr. Sarkissian: I spoke to one and actually they are here tonight.

Mrs. Rando: And how about on the other side.

Mr. Sarkissian: I have not probably because there's a daycare that's been there for years on the Shakespeare Road side. We do have another neighbor next to us closer to the street. They actually drive into our lot to get into of their lot.

Mrs. Rando: And the second story on this new building will just be for storage?

Mr. Sarkissian: Correct.

David Sorgman, Set in Design, 33 Cedar Street, Milford, MA.: There will not be a second story.

(Mr. Francis went over to the plan to show the board where the attic space would be.)

Mr. Squillante: So why does renovating the existing building require an elevator?

Mr. Francis: If they renovate it. At this point the house is old. That would be a major renovation not a minor renovation.

Mr. Hickernell: So, that's why you won't need an elevator.

Mr. Francis: That is correct. We were able to get a larger ground floor area with the building in the back rather than the front. In the front, it would go up another floor and require that elevator.

Mr. Sorgman: It maximizes the use and maximizes accessibility impairments. So it helps people. We have people who come to the building with disabilities. Going up to the second level, you need two stairwells, so the building footprint doesn't meet that.

(Mr. Francis went over the plan again with the board explaining the driveway. He mentioned there would be two fences and the intent of the by law is to give the neighbor privacy and space and in this situation. He stated they are not derogating from that intent because of what's there (tennis courts).

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

Mr. Squillante: Someone has an office building directly beside your house and it doesn't affect you? Did you speak to those two people?

Mrs. Rando: I am sure he will when he has a chance to speak.

Mr. Squillante: Why does renovating this existing building require an elevator?

Mr. Francis: If they renovate it. At this point the house is old. They are at the point that it would be a major renovation, not a minor one.

How many square feet is the present house?

Mr. Francis: Sixteen hundred and forty-eight square feet. I am going to guess 800 square feet on the floor. The coverage is 1648 square feet.

Mr. Squillante: So in principle, there's no change in use. I worry about this is cheating on a use variance.

Do you have a dimension of the front? How many feet is the actual frontage.

Mr. Francis: Sixty-four. So they will meet the frontage.

Mr. Squillante: Okay. So my biggest concern is I worry that, even though the same people are using the building, you're actually creating a use variance that would turn a residential lot, this is a residence, office buildings are not allowed in this zone. So, whether you call it use or not - - -

Mr. Francis: I think under the Dover Amendment, I think they are.

Mr. Squillante: This petition is under the Dover Amendment?

Mr. Francis: I think that the use has not been challenged by the building department when they signed off. It's "just dimensional requirements".

Mr. Squillante: The Dover Amendment doesn't allow you to do whatever you want.

Mr. Francis: Not whatever you want, but it allows you to construct in a residential neighborhood under certain circumstances.

Mr. Squillante: I think those are my questions. Thank you.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No questions at this time.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No questions.

Mrs. Rando: Mr. Cotton?

Mr. Cotton: No questions at all.

Mrs. Rando: All right, you may continue. I believe that the Dover Amendment would have to do with safety. If there was a problem with safety.

Mr. Francis: Discrimination as well.

Mrs. Rando: That's what the Dover Amendment is. But I mean, for conditions to vote it down, safety would probably be the primary one.

Mr. Francis: Absolutely.

Mrs. Rando: Is there anybody in the audience that is in favor.

(Three people raised their hands in favor.)

Mrs. Rando: Is there anyone in opposition or seeking information? There's two different things. All right you are in opposition. Would you like to come up to the microphone and give your name and address and give your concerns.

Leo Chaisson, 12 Morris Street, Waltham: I'm on the North side of the lot. We worry about the drainage only because even though it's not a flood plain, the other day when it rained, we got water all the way up to the front of our driveway and we have a twenty-five foot side yard and it fills the drain and it came up that far. We wanted to make sure that the drainage is set. I'd like, at the front of the lot, to make sure that the sidewalk, it looks like its up eight inches from the street and that that doesn't get pushed down and so the water up on the hill on South Street isn't able to run down into their lot so it would endanger their floor and run right off into our lot. And that they have sufficient drainage on their lot to protect from coming into us. I don't know how you exactly do that but, my lot, it runs off there at seventy-five feet. They're going to put the slab down there and it runs off seventy-three feet on the northern edge which is not the back. So I don't have a problem with the two variances that they are looking for. There's a whole bunch of lots in the area who have the same problem.

Ms. Gelineau: The City is pretty comprehensive in striving about what they are required for and they are going to make them comply to some pretty stringent regulations for storm water and drainage.

Mr. Cotton: It's enforced by the city.

Mrs. Rando: Have you ever had water in the basement?

Mr. Chaisson: I pumped one year, all year. So I have a sump pump.

Mrs. Rando: This could make it better for him.

Mr. Sarkissian: We have people working with us to make sure there's no issue. We don't have a basement, if this is approved. I am totally sensitive to his concerns.

Mr. Chiasson: The other thing, you realize, that concerns me is that that building being labeled an office building and because they are The Arc and they have to do with disabled people and stuff like that, I thought the variance was in that area as opposed to it just being, I mean we wouldn't want to have it be an office building, something like Vista Print, putting machines in there and junk, junk, junk and trash on the side. I mean they have regular trash. They don't put out a lot of trash. So would this be a difference there?

Mrs. Rando: Absolutely because as Attorney Francis said he's going to have to insert the Dover Amendment into his petition.

Mrs. Rando: Is there anyone else?

Geraldine Chiasson, 12 Morris Street, Waltham: My concern is, I've lived in this neighborhood all my life. I was born in that area and we built in that area. It's always been a residential area. Yes, that building was turned into a business. So my concern is now the fact that the business is going to be down in the back where I look out my window and it's going to be a business. I don't see the house now. But I'm concerned that if you do sell, what's going to go into our residential area. It's always been a residential area, so that business in a residential area, that is my concern. I am very concerned about the water. We've lived twenty-two years on Morris Street. We've built the house with pumps. We've had to pump. The water table changed when Bicycle Park was redone. It changes all the time. It will change again for the better or for the worse. You know I have to wait and see but, I mean, we have pictures of the back yard being totally under water and all the way up to our driveway. So it could impact if it's not done right. But also, as Mr. Squillante said, I'm concerned about the fact that it's a business.

Mrs. Rando: What do you think of the rendition?

Mrs. Chiasson: I actually haven't seen it. Mr. Francis was sort of in the way. So I really didn't get to see it. (Mr. Francis pointed out the rendition displayed on the board.) You know I look on a parking lot now. Yes, the house would be nice except it's going to be fifteen feet from the edge of our property, the side of the house. So, its pretty close. It looks lovely. So, I'm trying to be open minded because it's a nonprofit. Those are just my concerns at the moment. I haven't talked to Leo actually. My husband has done most of it when they're out in the back and he's getting into his car. They've discussed it. So, anyway those are my concerns.

Mrs. Rando: Is there anyone else that would like to speak?

Joe Giordano, City Councillor of Ward 7: I too have some concerns as Mrs. Chiasson does. And first of all I would like to state that I was very disappointed that the petitioner did not reach out to me to let me know which most petitioners usually do. So that's a bad step right off the bat. My concerns are, were all the abutters notified? Do they have a three hundred foot radius on this?

Mrs. Rando: They do.

Mr. Giordano: And they were all notified?

Mrs. Rando: I haven't heard that they haven't been.

Mr. Giordano: The other concern is that I find it hard to believe that, it's not changing, even though it's the same tenant, that it's not changing the use of the area. And another concern is that down the road if The Arc decides to sell it and move on, there's such a thing as a grandfather clause that if it's an office building, can somebody take it over as an office building? And will it ever get to the point that they may rent some of these offices out? So, those are some of my concerns. The building does look nice but its still

considered a residential area and it's a business going in there even though it's a nonprofit. So, that's all I have. Thank you.

Mrs. Rando: Is there anyone else?

Charles Whalen, 173 South Street, Waltham: I am a property owner of Drew Street and South Street. When his home was built, I began to pump. When the city put the drainage in the Park, they no longer had that problem. But I just have a concern when they start digging there, they are going to divert the underground water there, too.

Mrs. Rando: All right. Very good. We will take that under consideration. Thank you.

Mrs. Rando: Attorney Francis, do you have anything to say to the neighbors. Why you didn't reach out.

Mr. Francis: I apologize for not reaching out. I thought it was a project that was kind of contained to the area. And with not many abutters, I didn't expect that line of opposition, so I apologize for the oversight as well as my client.

I would say, it seems that the biggest concern being what happens in the future? Well, again, as stated, we are here under the Dover Amendment which is what was originally allowed when they started there. Any other business that were to come in, unless they are offering nonprofit educational services, would be required to get a change of use variance. You know, it would not be able to be a Staples going from being a nonprofit organization providing the services that The Arc provides. So any change, unless one that fits what their process is, I don't think that's a concern.

Second, they are not a tenant of the owners of the property. They are the owners of the property. So, I think the chance of them changing leases and moving to another place, and especially in the short term, are negligible. So I think those two factors, I think would help lay the concerns that people might have.

Regarding the fence, and you're right, it is a fifteen foot setback. You know we will put a fence there, and any kind of a fence that's something that Leo would love to meet with you on to discuss any kind of a fence, if any, whatever we can do to make it - - -

Mr. Squillante: One quick question. Do you ever have water in your back yard?

Mr. Sarkissian: If anything, this is going to improve not only what the place looks like but drainage. It's going to be a huge impact. We are basically looking at ten drains in the property area. Whatever we do, but our goal would be to minimize the problem:

Ms. Gelineau: Engineering is going to insist that you mitigate it so it's only going to get better. The technology is so much better today. It's so far advanced. So much more comprehensive.

Mrs. Rando: All right, any other questions? Hearing none, you may continue with your Proposed Findings of Fact.

On motion of Mr. Hickernell, seconded by Mr. Cotton, the board voted to waive the reading of the Proposed Findings of Fact since it has been on file in the Law Department.

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

On motion of Mr. Hickernell, seconded by Mr. Cotton, the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.

Mrs. Rando: Now, I am going to ask for a motion on the Findings of Fact.
Mr. Squillante, you have a question on the Findings of Fact.

Mr. Squillante: It's not a question I would move to change "office building" to "structure". I would just as soon not have "office building" anywhere in the Findings and Decision.

Mr. Hickernell: Want to call it "office"?

Mr. Squillante: No, let's say one story structure.

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact, as amended, because the wording has been changed.

On motion of Ms. Gelineau, seconded by Mr. Cotton, the board voted to adopt the Proposed Findings of Fact, as amended, to be the Findings of Fact of the Board.

Roll call: Mr. Squillante, no; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Cotton, yes and Mrs. Rando, yes. The vote was 4-1 in favor.

Mrs. Rando: Do I have a motion on the decision. Now, on the decision, I would like to see that there will be no renting of offices; the Dover Amendment should be added; and you mentioned the fence. It should go into the decision, and if there is a problem with the drainage you will take care of it with a sump pump, if needed.

All right do I have a motion on the Proposed Decision as amended.

On motion of Ms. Gelineau, seconded by Mr. Cotton, the board voted to adopt the Proposed Decision, as amended, to be the decision of the board.

Roll call: Mr. Squillante, no; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Cotton, yes and Mrs. Rando, yes. The vote was 4-1 in favor.

At 8:05 P.M., on motion of Mrs. Rando, seconded by Ms. Gelineau, the board voted to take a five minute recess.

The board reconvened at 8:10 P.M.

Mrs. Rando: Will the clerk please read the Petition in Case No. 2015-13.

The clerk then read the Petition of Stephen and Maria Sweder for variances, front and side yard setbacks. The locus consists of a single parcel of land with an existing single family residence situated thereon. The Petitioners propose to construct, use and maintain a second story addition and an enclosed front entry to the existing single story residence.

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

Joseph M. Connors, Jr., Attorney at 404 Main Street Waltham came forward and presented each member a copy of his brief. He introduced Mr. Stephen Sweder, Mrs. Maria Sweder and her mother Mary Jo.

Mr. Connors then read his brief into the record and went over the abutter's plan with the board. He also submitted photos of the property as it exists.

Mrs. Rando: Did you speak to the neighbors?

Mr. Connors submitted a signed petition of the abutters on Rose Hill Way who are in favor.

Mr. Connors: Everyone signed except for #94. They didn't want to sign unless they saw the plan.

Mrs. Rando: I think the neighbors are happy with what you are doing.

Ms. Gelineau: There are some really big trophy houses there.

Mrs. Rando: It's a nice neighborhood.

Are there any questions Mr. Squillante?

Mr. Squillante: No.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell; No.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: Mr. Cotton?

Mr. Cotton: No.

Mrs. Rando: Is there anyone in favor of this petition?

(Four people raised their hands in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none, is there anyone seeking information? Seeing none, you may continue with your Proposed Findings of Fact.

On motion of Mr. Hickernell, seconded by Mr. Cotton, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department.

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

On motion of Mr. Hickernell, seconded by Mr. Cotton, the board voted to waive the reading of the Proposed Decision since they it has been on file in the Law Department.

Mrs. Rando: I am ready for a motion on the Proposed Findings of Fact.

On motion of Mr. Hickernell, seconded by Mr. Cotton, the board voted to adopt the Proposed Findings of Fact to be the board's Findings of Fact.

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

Mr. Hickernell: I move that we change to 13 sheets from 9 sheets.

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

On motion of Mr. Hickernell, seconded by Mr. Cotton, the board voted to adopt the Proposed Decision as amended to be the board's Decision.

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

There being no further business, on motion of Mr. Hickernell, seconded by Ms. Gelineau, board voted to adjourn at 8:35 P.M.

Barbara Rando, chair 8/25 2015