

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

August 25, 2015

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, August 25, 2015, in the Auditorium 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 John Sergi.

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

Mrs. Rando: Tonight we have two cases before us and an extension of time: Case 2014-18, Jutras Signs, 293 Second Avenue, Case 2015-14 Full House Realty Trust, 329-333 Moody Street and Case 2015-15 BP 99 Third Avenue, LLC and BP Fourth Avenue, LLC., c/o Boston Properties, 99 Third Avenue, and 77 Third Avenue.

The first action this evening is for a motion to approve the minutes of August 18th.

On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to accept the minutes of August 18, 2015.

Will the clerk please read the Petition in Case No. 2014-18, Jutras Signs, 293 Second Ave., extension of time.

Mr. Hickernell: Do you want me to read the request for extension?

Mrs. Rando: Yes.

(Mr. Hickernell read a letter from Cathy Champagne, Jutras Signs, Inc. dated August 12, 2015 requesting an extension of time on behalf of the MSPCA.)

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

Cathy Champagne, Jutras Signs and Flags, 30 Harvey Road, Bedford, NH on behalf of the MSPCA came forward.

Ms. Champagne: As the letter states, actually it doesn't say this part, but if somebody would have told us a year ago that the sign would have been delayed this long, I don't think anybody would have believed it. There was a period of a few months where, frankly nothing got done between November and February, not a lot of signs were going up but what had happened we were here for permission on some of the building signs and that was the first thing to commence. I know they were new to that property so we constructed and installed all of the building signs for them and this particular sign that we are talking about, the ground sign, we did take extra time to get the location just right. It's very tight and not too long ago we came up with a better spot for it than we have been considering this whole time. So that combined with other delays on the part of the MSPCA just put us right on the timeline.

Mrs. Rando: You would like an extension to December 31st?

Ms. Champagne: December 31st just so we won't be back again.

Mrs. Rando: All right. Any questions from board members? Seeing none. Do I have a motion to allow the extension of time on Case 2014-18 to December 31st.

On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to grant an extension of time in Case No. 2014-18 to December 31, 2015.

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

Mrs. Rando: Will the clerk please read the petition in Case No. 2015-14, Full House Realty Trust, 329-333 Moody Street.

The clerk then read the Petition of Full House Realty Trust for a variance for parking. The developer plans to renovate the second floor of a two story commercial building in a Business C District, currently underutilized as mostly vacant, unimproved office space. The developer will convert eight offices into six residential apartment units. Location and Zoning District: 329-333 Moody Street, Business C Zoning District.

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

Ms. Gelineau: Madam Chair, can I just say before we begin this case, that the petitioner, in fact, recently purchased the building where my office is located. So, he is, in effect my landlord and has been for a few months. I did not that this was his property or that he bought this property, so it's kind of a surprise to me tonight. So I feel like I should mention it and I still feel that I can be totally impartial and will proceed.

Josh Krefetz; I am the attorney. My client here, Mark Resnick, who is the President of the Bean-town Companies which is a development company and the Full House Realty Trust is an entity he's managing to handle this project and Ben Herman from his office is with us as well.

Mrs. Rando: Before you start Attorney, do you have a brief for each one of us? Do you have a Proposed Finding of Fact, a Proposed Decision?

Mr. Krefetz: No, I do not have that.

Mrs. Rando: Did you indeed get the packet when you came to apply that showed you step by step what you needed before you came to a meeting? The application packet?

Mr. Krefetz: Yes, and I believe I sent the package to the Zoning Board.

Mrs. Rando: There's no Finding of Fact or Decision delivered. On Page 5, it states fourteen days prior to the hearing, Finding of Fact and Proposed Decision and Memorandum of Law. We don't have that. So none of these people on this panel have had the chance to read your brief, read your Proposed Findings of Fact or read your Proposed Decision. So, how do you expect us to make a decision this evening?

Mr. Krefetz: I apologize for the oversight. If you would like, I could still make the presentation, it's a pretty simple issue here.

Mrs. Rando: It is simple except that we still have to see your facts and indeed see that they are facts. We have to see your decision. We may have conditions to put on it.

I don't know how the rest of the board feels, but I really feel that what we have tonight is inadequate to continue.

Mr. Krefetz: I guess I would ask to postpone it for two weeks.

Mrs. Rando: Well, I am going to get the rest of the board. I am only speaking for myself.

Mr. Sergi: I feel the same way as Madam Chair as you feel. We don't have sufficient information here and the packet is incomplete, so I think we need more information to hear this properly.

Mrs. Rando: Mr. Hickernell, how do you feel?

Mr. Hickernell: At first blush, I'm glad that there is a proposal to make better use of the currently underused property, but we do have regulations on the board and I would like to see the brief.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: I concur with whatever the board decides.

Mrs. Rando: Mr. Cotton?

Mr. Cotton: I agree.

Mrs. Rando: I think that they are in agreement with me that you should continue.

Mr. Krefetz: Understood.

Mrs. Rando: September 29th?

(The board all agreed to that date.)

Mrs. Rando: Do I have a motion to continue Case No. 2015-14 to September 29th?

On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to continue this case until September 29th.

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

Mrs. Rando: Will the clerk please read the petition in Case No. 2015-15?

The clerk then read the Petition BP99 Third Avenue, LLC and BP Fourth Avenue, LLC for a Special Permit for remote parking. The Petitioner requests approval in accordance with Section 5.8 of the Zoning Ordinance for a Special Permit to allow remote parking. The proposed remote parking would include twenty parking spaces to serve uses at 99 Third Avenue to be located at 77 Fourth Avenue. Location and Zoning District” 99 Third Avenue to be located at 77 Fourth Avenue. Location and Zoning District:: 99 Third Avenue and 77 Fourth Avenue Commercial Zoning District.

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

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

Mr. McCourt: I know you have received some materials from Pam electronically, but I have a copy here. (Mr. McCourt submitted a copy of his brief to the board.)

So as Mr. Hickernell just read, this is a request for a Special Permit in relation to having remote parking for 99 Third Avenue. I don’t know if you have had an opportunity to go up there but you will see that there is a building under construction just beyond 75 Third Avenue which was here a couple of weeks ago for some revised parking which I think is just a great idea when it was done in order to improve their parking situation.

In our situation, Boston Properties is building a total restaurant building because there's such a need. They own many properties in the area and there's such a need of that so they have a valid building permit with sufficient parking for the intended uses which is two regular size restaurants. One is Bonefish which I am sure many of you are familiar with and the other one is Posto. An interesting presentation, it's a fellow, Joe Castinelli from Davis Square. He has a small Posto which is about a hundred seats over in Davis Square. He also owns the Painted Burrow and also the Rosebud Kitchen. He wants to come here and open this restaurant which is another full seat sit down restaurant. Both of those restaurants have liquor licenses already approved and are ready to occupy as soon as we \ get the building kind of finished up.

In the meantime, in the center space which is the space which is not directly concerned here tonight, we hope to put a fast food in a setting that it will be characterized that way under the way the ordinance reads and would provide salads, coffee, that sort of thing in a small space in between. So, even though as I said, we have a building permit and under the new parking regulations for restaurants, we have sufficient parking. It became apparent, since Boston Properties owns the building up the hill, it would probably be prudent to seek the Special Permit for twenty additional spaces because they are actually over spaces in 77 Second Avenue to accommodate parking for up to twenty cars. This would assure that there would always be parking, much of it might be valet or employee parking. So, we have worked carefully with the people next door. We don't see that this is out of character with the neighborhood. This is a Special Permit not a variance. It's a permissible act of the board, discretionary but permissible and it will allow us to provide parking. What may happen here, is that on the outside of the building, in the patio areas, they may want to add some additional seats to these restaurants in order to provide seasonal seating probably four months a year. So by adding these twenty spaces, we would be able to satisfy that need.

So, we're closer to the people next door, like I said, the 75 Third Avenue people, and we have been working back and forth in accommodating each other. So, if the board, and we have prepared a decision which is within your packet and Giuliana can show you a picture of the two things. But anyway, we have worked out an accommodation where naturally we don't want the parking in our spot and they don't want parking in theirs so we have worked out an accommodation and a proposed condition that would be added.

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

Mrs. Rando: Attorney McCourt, you have 196 spaces.

Mr. McCourt: On our site.

Mrs. Rando: When this little eating restaurant, or salad bar or whatever you're calling it is built, how many exactly will you require?

Mr. McCourt: 196. So we already have a permit to do this.

Mrs. Rando: But why, if you have enough parking with 196, why are you trying to get remote parking?

Mr. McCourt: Because what we may want to do up there is to add some seasonal seats outside which will make us possibly exceed.

Mrs. Rando: If you do that, how much will you exceed your parking requirement?

Mr. McCourt: Probably only by ten to twelve spaces but since we have fifty extra, we decided we would ask for twenty. Which also perhaps employees and if there's a function at the restaurant they can valet park up there.

Mrs. Rando: And do you have a map showing us and the people at home how far from the restaurant the remote parking would be?

Mr. McCourt: It's within six hundred feet of the building (going over the plan).

Mrs. Rando: So, it's across the street.

Mr. McCourt: Yes, it is.

Mr. Sergi: Do you mind bringing it up at this end?

Mr. McCourt and Giuliana went before the board and went over the plan and questions were asked by the board.

Mrs. Rando: Did anyone do a traffic study?

Mr. McCourt: There is an extensive study done by VHB, so we feel very confident.

Mrs. Rando: Attorney McCourt, there's a drive around. I was up there today. When you come out on the side, is there a distance between you and 75?

Mr. McCourt: Yes, there is. On 75, I would propose as a condition, should you elect to grant this.

Mrs. Rando: What agreement do you have?

Mr. McCourt: The agreement would be that, if they felt that there is any traveling going into their parking spaces or vice versa, at their election we would put a fence between the two properties at our cost.

Mr. Hickernell: Are there any other encumbrances on 77 Fourth Avenue?

Mr. McCourt: No, there aren't. They received a Special Permit several years ago, naturally before they built the building. But in that there were fifty extra spaces available and we are only accommodating ah —

Mr. Hickernell: None of them are promised to anybody else?

Mr. McCourt: No. Boston Properties or anyone else cannot park there.

Mrs. Rando: There are fifty-eight extra and you are only taking twenty.

Mr. McCourt: That's right.

Mrs. Rando: What is 77?

Mr. McCourt: An office building. Quite nice.

Mrs. Rando: Do you have anything else to add?

Mr. McCourt: No, I don't. In the back of this little brochure is the Proposed Decision and I then I have two conditions that we would like to add after with Bret Francis who had worked with his people in order to do it. So it is a special permit. We don't think it's outside the character of the neighborhood or anything like that. So we think it's

probably not only good but prudent to always, you can't have too much parking. But it's just a precaution.

Giuliana Di Mambro, Boston Properties: I just wanted to clarify that we had, in fact, done a traffic study and as Phil mentioned it is part of a much larger traffic study but even with adding these additional seats we are well within the overall trips that were allotted to this property. Just to clarify that.

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

(Two people raised their hand in favor.)

Mrs. Rando: Is there anyone seeking information?

Attorney Bret Francis, Harnish Jenney, Mitchell and Resh: I represent 75 Third Avenue. I want to clarify that we do have an agreement. We have the same concerns as you. Boy, it must be some restaurant if we think they are going to walk up there, when we think they will just park in our lot and walk over. But we have been able to work together and we have been able to come to some agreement whereby we would like to see a condition to the grant of the decision. If the board so desires that the condition can be met, then by all means we do not oppose the project and rather support it. I do have that language. I don't know if the board would like me to read it into the record.

Mrs. Rando: Sure.

Mr. Francis: "The petitioner will manage the parking so that as capacity demands it will direct employees and valet services to park in the 77 Fourth Ave lot. In furthermore thereof, if the owners of 75 Third Ave., at their discretion, determines the need for a fence

between the properties, petitioner agrees to construct and maintain a fence at their cost, not to exceed \$6,000.”

Again just to reiterate if that is a condition that the board would include in their decision, by all means 75 Third Avenue would support the project.

Mr. McCourt: And we agree with that. Mr. Francis and his client would be successful in achieving this if this be a condition.

Mrs. Rando: All right. Do we have any other questions from board members?

Mr. Sergi: Just curious, how many seats in the restaurant?

Ms. Di Mambro: I believe currently Bonfish would like to have 250 and I believe Posto is a little bit short of 300.

Mr. Hickernell: I appreciate you guys coming to an agreement beforehand rather than litigating afterwards.

Mr. McCourt: We have had several discussions over the last two days, Bret and I. but he's the best and we try hard.

Mrs. Rando: All right, no other questions from board members, I am ready to have you continue with your Proposed Findings of Fact.

Mr. McCourt: Yes. We had submitted this petition with the Findings of Fact which I can read in, but these are the same findings of fact which, in fact, we have submitted to Pam which I assume is electronically provided. I will be happy to read them if you wish.

Mrs. Rando: Has everyone had a chance to read the Proposed Findings of Fact.

(The board stated they had.)

Mrs. Rando: Do I have a motion to waive the reading?

On motion of Mr. Sergi, 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.

Mr. McCourt: And similarly, the decision is contained here and because it's a special permit, there's less to be said but the decision you are adopting is our decision. I can read that if you choose but that also has been submitted.

Mrs. Rando: And do we have the conditions in there?

Mr. McCourt: Well we just gave Mrs. Oliveri. Do you have those conditions?

Mrs. Oliveri: Yes.

Mr. McCourt: And those two conditions would be added to it.

On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to waive the reading of the Proposed Decision, as amended.

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

On motion of Mr. Sergi, 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. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Cotton, yes and Mrs. Rando, yes.

Mrs. Rando: And on the Decision?

On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted that the amended decision to incorporate the condition that has been outlined here tonight be included and is adopted as the board's decision.

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

There being no further business, on motion of Mr. Sergi, seconded by Mr. Hickernell the board vote to adjourn at 7:46 P.M.


9/8/15