

CITY OF WALTHAM
ZONING BOARD OF APPEALS

September 13, 2016

The Zoning Board of Appeals held a public hearing at 6:30 P.M., Tuesday, September 13, 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, Oscar LeBlanc, Glenna Gelineau, Mark Hickernell, and John Sergi.

The Chair called the meeting to order at 6:30 P.M.

Mrs. Rando: Tonight we are going to go into Executive Session for matters concerning Case 2015-25 and that was the 40B Case.

At this time, I would like to take a roll call of the people that are here.

Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes; Mr. LeBlanc, yes; and I am Mrs. Rando, the Chair.

Mrs. Rando: At this time I would like to accept a motion to go into Executive Session.

On motion of Mr. Sergi, seconded by Mr. Hickernell that the board go into Executive Session and return to regular session.

Ms. Hankins: Do you have to amend the motion to include Ms. Learned, the Attorney for the City?

Mrs. Rando: Fine. We will amend it to say that the attorney for the City is with us, also. And I think also I asked if everyone was in favor.

Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes; Mr. LeBlanc, yes and Mrs. Rando, yes.

Mrs. Rando: So we will go into Executive Session and then we will come back into our regular scheduled meeting. Thank you.

At 7:31 P.M., the board returned to their regular scheduled meeting.

Mrs. Rando: Tonight we have two continued cases and one new case before us:

Case No. 2015-27, Cardillo, 105-107 River Street and 194 Willow Street and that's for an Appeal of the Building Inspector; Case 2016-29, 53-55 Brown Street and that's for a variance. The new case is 2016-34 Medical Care of Boston, 75 Third Avenue, and that's also for a variance.

Mrs. Rando: The first action this evening is for a motion to accept the minutes of August 23, 2016.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of August 23, 2016.

We are now going to vote that we have authorized the Attorney for the City of Waltham to sign a letter for us concerning the 40B case and the vote, Mr. Sergi?

Mr. Sergi, yes, so moved, Madam Chair. I make a motion that we acknowledge that we had Attorney for the City, Michelle Lerner, and we have authorized her to enter into an agreement of settlement on our behalf as it relates to the 40B case number that we had discussed which is Superior Court Civil Action No. 16-01177.

Ms. Gelineau seconded the motion. and the roll being called:

Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes; Mr. LeBlanc, yes and Mrs. Rando, yes.

Mrs. Rando: The members sitting on the River Street Cardillo case are: Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Ms. Hankins and the Chair.

Mrs. Rando: Would the clerk please read the Petition in Case No. 2015-27.

The clerk then read Case No. 2015-27, Sadie M. Cardillo, Trustee of 105-107 River Street, Irrevocable Realty Trust; Anthony G. Cardillo, Jr. and Anthony G. Cardillo III, Trustees of AAM Realty Trust and Anthony G. Cardillo, Jr.. Owner: 205-107 River Street Irrevocable Realty Trust, AAM Realty Trust, and Anthony G. Cardillo, Jr. Subject Matter: By letter dated October 28, 2015 the Inspector of Buildings served a Notice of Violation on the Owners of the properties at 194 aft. Willow Street, 105 R River Street and 105-107 River Street alleging zoning and building code violations. Location and Zoning District: 194 aft. Willow Street, 105R River Street and 105-107 River Street; Industrial 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 came forward.

Mr. Connors: I represent the Cardillo family and the Inspector of Buildings is also here.

Mr. Connors posted a plan on the board and went over the three lots, 105-107 River Street, 105 R and 194 Aft. Willow Street.

There were seven violations in the original letter and we have been here before and we withdrew so much of the violations as to our appeals as to 3, 5 and 6 because we were working with the building inspector to resolve that with the plans and permits, etc., and we did have a vote on violation #2. So I think it leaves just two violations that issued and that would be #1 which be the issue of Open Storage and #4 which would be the Storage of dumping of soil, sand and gravel on the parcel or lot which exceeds three feet in height.

I have a plan here, original date is May 23, 2008, revised in July 7, 2006. I did submit this to the building inspector over the summer to resolve what we think would be 3, 5 and 6. But also what we are proposing on this plan, I believe I gave a copy to the board, but what we are proposing is a fenced in area down here and back in here and we already have a back retaining wall. In addition to the landscaping that's pre-existing there, we's have a fence that would come around here (referring to the plan) and propose that any trucks that would enter would come in through here and cycle through here. So they would only be coming in off of 105-107 Willow and they would be exiting here onto River Street.

Mr. Connors submitted a plan of a sign image showing "Caution Vehicle Exiting" that they would place at the end of the gate that would be at the intersection as it exits from the lot onto River Street.

So that would legally address the issue of Open Storage. If you read the definition of Open Storage that we've been through, that if it's screened from public view, screened from

residential properties and screened from the public and private way so we're doing that. We are creating a fence and then in the fence we'll screen it and then, you know, kind of a second element to the issue of Open Storage is afternoon or business hours unless stored in an enclosed area. So again we would be closing up all the gates at the end of the night and sealing the property. It will be an eight foot fence and would have screens in the fence. So a chain link with screens in them or some other type of solid fence so it would be screened from the public. It will be enclosed after normal business hours. That is for violation #1.

Violation #2 has to do with the storage of the materials and if it exceeds three feet. So as if we are changing the elevation I would say we have bins that would set three walls into the buildings. So the material is contained within the bins. Wholesale storage and warehousing of materials is permitted in the zoning district. It's not for the purposes of construction. It's not related to a building permit for the construction of a building here. It's wholesale materials that are stored on site. It's a fungible material that we move in and out of that in a container. So it's not simply dumped on the lot.

If you read the definition, it states that: "The storage or dumping on a lot of gravel, sand or loam on any parcel", and then it talks about changing the elevation because it's greater than three feet. We would argue that it's contained in the bin. That's why the bins are here to create that cover and there's also a tent over one of the bins which creates a cover over as well. But it is our position that these are fungible materials that come and go on a daily basis during the seasonal work. It's limited in the winter but it's not a violation of the zoning because it's a material. Wholesale Storage of Materials is permitted in the zoning district. We are keeping it in a container that's covered and it's open on one side but it's still within the bin and then they have applied for permits to have a bin and it will be situated on the lot. So we believe in both instances, we don't violate the zoning code as it's written. Actually on the first one, we think this will solve any issues of open storage (referring to the plan) because and as stated in my brief, open storage is not permitted in any zoning district. You can't get a special permit. What you need to do is you need to

meet certain criteria. So it needs to be screened from public view and enclosed after business hours. And that's what we intend to do. And so that's our proposal to resolve #1 and #3. #4 again we simply state that if we have fungible materials that are incidental to the business of wholesale distribution of those materials and we keep it in a bin. Wholesale storage is permitted use in the zoning district so there is no violation and I would suggest that it's simply inapplicable in this case and if you look at the code it's actually a subsection of another section of the code which talks about storage is 3.86 and removal of storage and then there is a subsection of that. So, 3.86 talks about removing soil to grade, layout and a change in area in shape or form and then there is a subsection after that talks about that as well. And it's almost as if it's related to a construction project. This is simply materials coming and going. They're not doing any construction on site. It's materials that comes and goes with the business. The Cardillo's are an excavator but they also are a wholesale and distribute materials that is incidental to excavation work in that business. So again, we believe that it is simply not meeting the definition of the dumping of soil. We are wholesalers of soil and bins on the site which is a permitted use.

So that would be my position, Madam Chair. I've been here a couple of times but I will answer any questions that you might have.

Mrs. Rando: Any questions of Mr. Connors?

Mr. Hickernell: So you essentially concede the violation as to the first violation.

Mr. Connors: Yes, because I mean it's been going on for years and no one has really enforced it. So now we pull out the definition and say, okay, we close it and we are meeting the conditions that allow you to store things out of doors during the day. So, that's our proposal to say, yes, there is a violation but this is our proposal to remedy the violation and that meets the definition of Open Storage.

Mrs. Rando: Tell me about the sign. Will that be flashing when the trucks are going out or will they be flashing all the time?

Anthony Cardillo, 203 Grove Street, Waltham: It's basically a sign that can stay on all the time. We can activate it with a sensor. It can be wired any way we really want to wire it. We have options on how it operates. Our general idea is basically in business hours, to turn it on and keep it on. So it's on and it's visible and when we are done for the day, shut it off.

Mrs. Rando: We will hear from the Building Inspector, Mr. Forte.

William Forte, Inspector of Buildings for the City of Waltham came forward.

Mr. Forte: We're almost there. They have submitted a building permit and the property is on its way to be in compliance. We still have this one sticking point about open storage.

I did try to offer a solution to the petitioner and we just don't agree on this. I will just respectfully caution the board that whatever decision is made tonight, whether this violation stands or is overturned could have dire implications on the city. And when I say that, what I mean is that we have an open storage problem throughout the city. There's no question about it. If we can't regulate or control this, then we don't have zoning. So, I feel as though this is a very important decision and I would just ask respectfully that you approach your decision with great caution because this really is a game changer. So - - -

Mr. Hickernell: I am sorry to interrupt, but there are still two violations before us. We've got the first one which is the enclosure and then we've got the fill. Which one are you talking about?

Mr. Forte: This will hinge on both actually because in my opinion, if it's enclosed at night it's not a sand, loam and gravel problem. It's a product that's enclosed. It's contained. It's a dynamic product. I agree with Attorney Connors. It's really not dumping of soil as it relates to a building permit under the definition. If it's not contained and enclosed, it's loose soil. So what I propose is that the materials in the bins are not substantially enclosed if they are not covered. That's how I read the ordinance and let me just break it down to you because I've gone over this with you a few times and again what I am trying to do is just bring compliance to an issue to me that it just doesn't comply.

When we talk about open storage, 3.248. "Storage or display of merchandise or goods, new or used, whether for sale at retail or wholesale, whether crated, uncrated or in cartons, within 10 feet of the street line" (doesn't violate that). "Storage or display of used merchandise or goods or of cartons or crates, whether full or empty, between the line of the front of the building (there is no building) and the street-line"; "storage or display of used merchandise or goods of cartons or crates, whether full or empty, unless such items are screened from view" (that's the first thing) and the second thing is that "whenever stored out of doors after normal business hours, unless stored in an enclosed area".

I don't pretend to know what the authors meant when they said this but there's no reason for separate language on this unless it's a strictly separate item. My opinion is that an enclosed area, and you heard Attorney Connors say, it's open on one end. Those things are open on one end. That's not enclosed. It's contained. But is not enclosed. I will agree that a fence does screen it from view but screened from view and enclosed are a different definition in this Open Storage definition. So I think that the intent of the ordinance is that an enclosed area is substantially enclosed. It's not meant to be open and loose. And there's a good public safety reason for this. Let's say you had a pile of lumber and it was openly stored in a lumber yard and it wasn't enclosed or it wasn't covered. Potentially the wind could pick up a sheet of plywood at thirty five to forty miles of wind gust, it could pick it up and go. It's the same thing with loose sand and any other aggregate materials that are

light. Of course, not crushed stone or some other things but there is sand over there and a good gust of wind could blast that out. I don't believe that the ordinance meant that if you put up a fence, it's enclosed. So, I just don't see where screening it from view and enclosing it in a fence means that it's an enclosed out of doors after normal business hours. I just don't see it.

So, I would ask that you uphold the Notice of Violation for count #2 and that essentially will uphold this loose sand and gravel.

Mr. Sergi: You said you recommended a solution to them. What is your solution?

Mr. Forte: Well, one example of a remedy for this is to have portable covers that go over these bins at night. They do have one problem down there of an area where there's a pile of fill that they use during the day to put the machine on to gain some elevation and to empty out trucks. There's a dynamic pile of loose asphalt material that can't be buried. It's got to be picked up and moved. It's got to be sent out to process and all that stuff. It's a pile that moves in and out.

My suggestion for that was at the end of the day pack it down tightly. You could water it down to keep the dust down and dampen it down over night and push a couple of jersey barriers in there. That's contained. At least to some degree it's enclosed. (Mr. Forte went over the plan with the board.) But these piles out here can be enclosed without a lot of effort. Is it a pain in the neck, of course it is. But by giving away the definition of open storage, you're saying that this is okay for the entire city.

Mr. Sergi: I don't do this for a living, so give me an example. Where is this in place today what you are describing so where is it in place so I can envision it?

Mr. Forte: It would have to be built and designed.

Mr. Sergi: Can you point to a location in the vicinity that I could visit to look at?

Mr. Forte: No. There's no other model for it but it's a possibility it can be resolved. I think by overturning the decision of whether there is open storage in existence or not is the real question. So being able to control the site with that kind of enclosure if you will or that kind of cover or that kind of site control essentially takes care of that part of the violation of Open Storage. We're almost there. I mean, they have a building permit. I'm going to look it over. They have solved the drainage issue. With this building permit they are going to possibly combine lots and take care of some of this set back and straddling lot lines, all these other issues. They have the pre-existing legal nonconforming use resolved. I mean this is one thing but it's probably the most critical thing of this decision is what we're defining as Open Storage. I don't see that putting up a fence substantially encloses a loose produce overnight. I just don't see it.

Mr. Sergi: Well, again, going back to my question, if I envision a dumpster with a top on it, is that what you are talking about.

Mr. Forte: No, what I am talking about, is I'm talking about basically a membrane, a flexible membrane, that goes over the product at night. It rolls up during the day. Now they don't have to keep it covered at all times. It's at night, after regular business hours, the law says it has to be enclosed. Putting up a fence and forgetting all about it is not enclosed. That's my whole point. And it doesn't substantially remediate the violation. So that's where I stand on that.

And I believe that upholding this will uphold that and to some degree the applicant will have to resolve this and they can do it by right with a building permit, a proper design and a proper control.

Mr. Hickernell: First I ought to reiterate that I think the sense of the board at the last meeting or maybe the one before that, that we appreciate the work that you did to narrow your differences and to resolve some of the issues and I appreciate you continuing to doing that. For what's left and it sounds to me, and I say this respectfully and correct me if I am wrong, or if maybe that could be put differently. It sounds like you each have a solution for the alleged violations as cited and you're asking us to ratify which one we think it fits the code better. I don't think that's our role. I think our role is to say that it was in violation at the time you were cited and it has to be fixed by the time we vote. It hasn't been fixed. It's neither enclosed or covered. I'm not sure those are the same thing but if you came to us and said we've settled it, but you haven't, and you've got different ideas on how to comply with the code but none of them are there for us to look and rule on. I think we have to vote on, not on these proposed solutions but on the citations. So that's what I have to say.

Mr. Forte: So, agreeably, there was an Open Storage violation. Hence the reason for the fence. So, we already know that the violation existed because why would they be putting up a fence if there wasn't a violation. So my thing is that I don't think that this substantially cures the violation and if it was then the petitioner would have to withdraw which is what we spoke tonight about that if they can come up with an ideal solution that will cover this material at night and it's substantially enclosed and contained, this material within conventional bounds, I think it's very possible, then I think that our work is done here. But, again, I don't think that what they proposed here does substantially mitigate the violations.

Mrs. Rando: I agree with what Mr. Hickernell said that If they withdraw tonight and come back with some type of a procedure to cover or we have to go forward with what is before us tonight. Is that what you're saying, Mr. Hickernell?

Mr. Hickernell: I'm not suggesting anybody withdraw anything. I guess we could probably split it up but it's not a question of withdrawing. It's a question of if it's not settled you have to vote.

Mrs. Rando: Well we could make it a conditions, too.

Mr. Hickernell: We could do that. They don't seem to agree on the conditions.

Ms. Hankins: If they resolve it we could continue it until they come up with an agreement.

Mrs. Rando: We could do that too. We could continue it until there is an agreement.

I would like to hear from your attorney why it is so difficult for them to satisfy what the building inspector is requiring?

Mr. Connors: I'm not trying to be difficult but you know we are all busy in this world and things happen and time catches up but he approached me at quarter of seven. So we haven't had an opportunity to fully digest what he's proposed. And so, we have come up with some remedies and I think, though I'm not sure and I'm hearing what board Hickernell is saying, it's either this way or that way we have a violation or not a violation. But we have a fundamental disagreement about what it means to enclose. So we think we put the fence up. We screen it. We've enclosed the property. We've screened it from view during the day. We close the fence at night. And that's where we have that fundamental difference. Hearing what Mr. Hickernell says, I'm not sure you can tell me what you believe enclosed means either because it's not necessarily before us.

Mrs. Rando: It's also a very important vote because it's going to affect many other businesses. Is it not?

Mr. Sergi: Let me ask you, have you seen this anywhere else in any other city? I'm just wondering just how common it is. Are we blazing a new trail here ourselves with this?

Mr. Connors: No and in the fifteen minutes we had to talk about it we just haven't had an opportunity to digest it but I mean we have been trying. I think we've nailed down a lot of these issues.

Mr. Sergi: I think you did a good job.

Mrs. Rando: What is your wish?

Mr. Connors: Could I have a five minute recess?

On motion of Mrs. Rando, seconded by Mr. Sergi, the board voted to take a five minute recess at 8 P.M.

The board reconvened at 8:10 P.M.

Mr. Connors: I would like to ask for a short continuance to see if we can come up with a solution with the building inspector.

Mr. Sergi: Would you say that the Open Storage issue is pretty much resolved from what I heard tonight?

Mr. Connors: Well I think we're still there. Number one is the enclosure issue. I think putting the fence up, screening it is getting us there. It's just that one piece. What do we do at night? So that's what we've got to talk about. I just got it tonight so we need an opportunity to digest it to see if it actually is practical.

Mr. Hickernell: Can I make a suggestion and I think this is more at the advice of Pam Doucette who knows a lot about this stuff but I think we should make a motion to fibercate this petition into the matters that have already been settled and those that have not so that so those that have been settled can be filed and those that have not we can continue with the current extension.

Mr. Connors: Sounds good to me.

Mr. Hickernell: So I would make a motion that we bifurcate this petition into two and the two will be designated Case 2015-27A and 2015-27B where 27A the matters disposed of at the last hearing and that the three withdrawals can be one vote, 3, 5, and 6, and the vote on #2. So those will be under the caption 2015-27A and the remaining alleged violations #1 and #4 will be designated 2015-27B. We can conclude 27A and make a motion to continue 27B.

Mr. Sergi seconded the motion.

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

Now a motion to allow case 2015-27B to continue to November 15th.

On motion of Ms. Gelineau, seconded by Mr. Sergi, the board voted to continue Case 2015-27B to November 15th.

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

Mrs. Rando: The member sitting on the following case are Mr. LeBlanc, Mr. Sergi, Ms. Gelineau, Ms. Hankins and Mrs. Rando.

Mrs. Rando: Would the clerk please read the Petition in Case No. 2016-29, Carmarvia Real Estate Holdings, LLC.

The clerk then read the Petition of Carmarvia Real Estate Holdings, LLC. c/o Carl E. D'Angio in an application for a variance - Confirm existing setbacks, lot coverage and parking and Application for Special Permit - Conversion of existing non-conforming commercial use to residential use. Location and Zoning District: 53-55 Brown Street; Residence B Zoning District.

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

Philip B. McCourt, Jr., Esquire, 15 Church Street, Waltham came forward and submitted a copy of his brief to each member of the board. Mr. McCourt read his brief into the record and also went over the exhibits in the back of his packet.

Mr. McCourt: If I can answer any questions, I will be happy to answer any questions.

Mr. LeBlanc: I agree that the place is not usable for a store but three bedrooms, the problem is, there is no parking. In a business, the people that are living in that neighborhood get up and drive their cars away. I happened to go look at it and there's

barely room for two cars on the right side. Now with the three bedroom apartment, there could be three cars or there could be more. And there's only parking on one side of the street. Am I correct?

Mr. D'Angio: That is true.

Mr. LeBlanc: So I went down there at night. Where do you think these people are going to park?

Mr. McCourt: I think it's the same thing that exists for anyone in the area. Parking is limited but we think that we can put in three cars to be honest with you. They are tandem parked, but we could do that.

Mrs. Rando: I don't think that you could, even if you took the steps out in the back.

Mr. LeBlanc: There was a van parked there. There is no land with this house. These bedrooms, how big are these bedrooms, roughly?

Mr. D'Angio: They are big. (Mr. D'Angio went over the plan of the interior with the board.)

Mr. LeBlanc: How many bedrooms in the upstairs?

Mr. D'Angio: The second floor has three. The third floor has one.

Mr. LeBlanc: The use makes sense.

Mr. McCourt: And it's very close to all kinds of public transportation right along Moody Street.

Mr. LeBlanc: The problem is the parking.

Mr. McCourt: It wouldn't be economically feasible to take the house down but if there was an office or a retail store there- -

Mr. LeBlanc: This is not a place for a store. The days of a store or an accountant going in there, there's nobody that's going to rent in that space.

During the day there's parking. It's not a problem.

Mrs. Rando: Could you tell me how the person on the third floor gets out? She can come down the stairs to the front but there's no exit in the back?

Mr. D'Angio: There's stairs in the back. (Mr. D'Angio went before the Chair with a plan to show the entrance and egress.)

(Mrs. Rando read from a previous decision of the boards regarding the access.)

Mrs. Rando: Why did it say it had to be registered at the Waltham Housing Authority?

Mr. D'Angio: I have no idea. I do have a Section 8 person living upstairs.

Mrs. Rando: I do think you do have a problem with parking. I think that the south side is drenched right now with parking. Even if you have the three parked tandem. They don't use the tandem and they park in the street. And if they should have a teenager in there, there's another car.

So, I don't know, but that's a problem for me.

I think the attorney stated that there were offices in there at one time. Maybe that's a good place for an office. You are making use of that property. It's not like the whole place is going to cease. You do have two apartments there.

I have a problem with the parking, unfortunately.

Mr. McCourt: We were trying to squeeze the parking. Let's say we had some extra room and had some latitude to do it. We're asking to reduce, but it's just an existing condition.

Mrs. Rando: How far back could that driveway go?

Mr. McCourt: It's seventy feet.

Mr. LeBlanc: I think the guy could have pulled the truck a up a lot further. It will fit three cars.

Mrs. Rando: What is parking requirement for a three family.

Mr. McCourt: Six. He's not required to have that. It's a nonconforming use.

Mr. D'Angio: Would it make a difference if we make it a two bedroom?

Mr. LeBlanc: It's almost impossible to rent that as an office. You're better off if it's in a shambles now. The way it was it probably wouldn't have worked. If you say you can't do this, I don't know what to tell you.

Mr. McCourt: There's so much space around. I can't imagine it being rented.

Mr. LeBlanc: That's the problem. It's a hard thing to vote on because if you said you can't do this. I don't think it's very rentable to rent. I don't know what to tell you.

Ms. Gelineau: He's not required to show parking. I think his gesture to make it two bedrooms is pretty- - - .

Ms. Hankins: I agree. I just think the biggest problem in my mind is the parking on the South side.

Mr. McCourt: It's not close to Moody. Say it was one house back from Moody Street or even down along to Crescent Street. But where it is it's just like in between.

Mr. LeBlanc: I don't disagree with the use. I would be more in favor if he did cut it down to one bedroom.

Mr. Sergi: I agree with that. There's only so much you can do with this.

Mrs. Rando: All right. Are there any more questions? Hearing none, is there anyone in the audience in favor of this petition? (Two people raised his hand.)

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

Mr. McCourt: My Proposed Findings of Fact would be what I have written and submitted with the exception that obviously at any place where it said we are adding a three bedroom unit will now be a two bedroom unit.

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to waive the reading of the Proposed Findings of Fact since it has been on file and the board has had a chance to read it.

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

Mr. McCourt: So similarly, in any place where it might refer to three bedrooms, we'll eliminate that. We'll produce a plan for Pam Doucette and the building department and we will add the condition that the first floor unit, if approved, would only have two bedrooms.

Ms. Hankins: I motion that we first amend that anywhere it says that it's a three bedroom that it's changed from a three bedroom to a two bedroom.

Mr. McCourt: So within the findings of fact you want to say a two bedroom.

Mrs. Rando: And also in the decision.

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

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to waive the reading of the Proposed Decision since it has been on file and the board has had a chance to read it.

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

On motion of Ms. Hankins, seconded by Mr. LeBlanc, the board voted to adopt the Proposed Findings of Fact, as amended, to two bedrooms rather than three bedrooms.

Roll call: Mr. LeBlanc, yes; Mr. Sergi, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, no. The vote was 4-1 in favor.

Mrs. Rando: Now, do I have a motion on the decision as amended? And the decision also goes from three bedrooms to two bedrooms on the first floor.

On motion of Mr. LeBlanc, seconded by Ms. Gelineau, the board voted that the Decision, as amended, be the decision of the board.

Roll call: Mr. LeBlanc, yes; Mr. Sergi, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, no. The vote was 4-1 in favor.

Mrs. Rando: The Chair votes no only because I have voted no on many other cases when I find insufficient parking, especially on the South Side.

Mrs. Rando: Would the clerk please read the petition in Case No. 2016-34?

The clerk then read the Petition of Medical Care of Boston Management Corp. d/b/a Affiliated Physicians Group. Owner: 75 Third Avenue Real Estate Trust in an application for a sign variance to allow for the existence of a secondary wall sign in a commercial district greater than the area requirements. Location and Zoning District: 75 Third Avenue, Commercial Zoning District.

The members sitting on this case are: Mr. Hickernell, Mr. Sergi, Ms. Gelineau; Mr. LeBlanc and Mrs. Rando.

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

Attorney Bret Francis, Scafidi Juliano, LLP, 10 Hammer Street, Waltham came forward and submitted a brief to each member of the board.

Mr. Francis: I am here tonight on behalf of Medical Care of Boston Management Corp d/b/a Affiliated Physicians Group. Mr. Conlon is here as well.

Mr. Francis then read his brief into the record and went over the plan of the locus posted on the board.

Mr. Francis: If you have any questions, I will be happy to answer them.

Mrs. Rando: You're asking for a sign twice the size which you're allowed.

Mr. Francis: Almost.

Mrs. Rando: Why do you feel that you need it?

Mr. Francis went over the plan to show where other signs were located.

Mrs. Rando: How big is their signs?

Mr. Francis: I don't know. I would be guessing. Well, they wouldn't have secondary signs. Those are their primary signs. So as long as they are within the limit required by their frontage. I think the only one is the Nelson Properties but I'm not positive. I think we would be the second sign going up.

Mrs. Rando: Do you have a rendering of the sign?

Mr. Francis: Yes, it should be included on the plan both the existing as well as the proposed. Again the proposed requires no relief whatsoever.

Mrs. Rando: Any questions?

Mr. Sergi: If I understand you right, you're just requesting a sign the same size, is that right? Has there been a sign there before in that location?

Mr. Francis: It's existing. It's been in existence since the tenant has been in that space. I believe it's been about a year. So there is already an existing sign. This is just to add a new sign over 128.

Mr. LeBlanc: You don't have the sign over 128 now.

Mr. Francis: That is correct. That meets all the requirements by size. Even with this one here, the 33 or 34 feet, both of them combined is still well within what they are allotted due to their frontage and the fact that it is in a commercial district. That multiplier gives them 246 square feet. We're right over a hundred.

Mr. LeBlanc: So why are you here?

Mr. Francis: Because the secondary sign exceeds eighteen square feet. It can only be eighteen square feet.

Mrs. Rando: Is the sign going to be lighted?

Mr. Francis: The one on 128?

Mrs. Rando: No.

Mr. Francis: The one that exists now, I don't believe so.

Mr. Sergi: When you enter into the site, it goes down a bit.

Mr. Francis: It might be, but it is relatively level. (Mr. Francis went over the plan with the board.)

Mr. Sergi: It dips down so that's why you would need a little bit larger sign.

Mr. Hickernell: What percentage do this establishment come on foot as opposed to a vehicle?

Mr. Francis: I couldn't answer that. I would say more often than not they would come by vehicle.

Mr. Hickernell: So between zero and two percent?

Mr. Francis: That's probably correct.

Mr. Hickernell: This isn't Moody Street. You need a bigger sign there.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition? (One person raised their hand in favor.)

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

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to waive the reading of the Proposed Findings of Fact since it has been on file and the board has had a chance to read it.

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

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to waive the reading of the Proposed Decision since it has been on file and the board has had a chance to read it.

Now, do I have a motion on the Proposed Findings of Fact.

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

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


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

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted that the Proposed Decision becomes the board's decision.

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

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to adjourn at 9:05.


Barbara Rando Chair
9/20/6