

CITY OF WALTHAM

ZONING BOARD OF APPEALS

September 29, 2015

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, September 29, 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 John Sergi.

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

Mrs. Rando: Tonight we have two cases before us: Case No. 2015-14 Full House Realty, 329-333 Moody Street and Case No. 2015-16, 47-51 Hall Street.

The first action this evening is for a motion to accept the minutes of September 17th.

On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to approve the minutes of September 17, 2015.

Would the clerk please read the petition in Case No. 2015-16, 47-51 Hall Street?

The clerk then read the petition in Case No. 2015-16, 47-51 Hall Street, LLC in an application for variances. The locus consists of a parcel of land known as 47-51 Hall Street.

Two buildings, a former rectory and a garage, are situated on the locus. The Petitioner is proposing to construct, use and maintain nine (6) residential units in the former rectory building. Location and Zoning District: 47-51 Hall Street, Residence C 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, MA, Attorney for the Petitioner came forward.

Mr. Connors: I represent the Petitioner, 47-51 Hall Street, LLC. Tonight here with me is Joe Fournier the Architect who did the architectural renderings. Also Jim Almonti from the surveying company, also the principals of the Petition, right here with me in the front row.

So I do have a brief that was prepared for the board.

The board may be familiar with this petition. We were here before. We were seeking approval for nine units, then we redesigned it for six units; two units in the basement; two units on the first floor and two units on the second floor. So the existing structure shall remain the same.

(Mr. Connors submitted a copy of his brief to each member of the board. He then read his brief into the record and went over the plans and exhibits with the board.)

I just want to take you through a little bit as to how we redesigned it. I'm going to have Mr. Fournier maybe just walk you through this. Joe, I would like you at least show

how each unit is accessible.

Joseph Fournier, Architect came forward and went over the plans showing the redesign of this project.

Mr. Connors: We are proposing to do it in an existing structure and so we believe it's beneficial to this property. It's beneficial to the community and we feel it will be a benefit to the City of Waltham. So that is our presentation. Thank you.

Mrs. Rando: Mr. Sergi, do you have anything to say at this time?

Mr. Sergi: Not at this point, no.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No questions at this time.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: Mr. Cotton?

Mr. Cotton: No.

Mrs. Rando: I have a couple. I was reading the cases. I read the cases quite clearly

and the Cavanagh Case, that was on Route 57 on a highway and there's no parking and the judge felt there was no detriment to that for the public good and no adverse affect to the neighborhood. It was a highway. It was a general store in a residential neighborhood.

Mr. Connors: Right.

Mrs. Rando: Now, on the other, Johnson case, that's Route 6. That's another highway and it's use to heavy traffic. What did they want to build there?

Mr. Connors: They converted a church into office space.

Mrs. Rando: And there was nothing about a parking problem. It was a large, large lot with adequate parking, extra space. And Broderick, again, the physical condition of the building, all these buildings had to be torn down. Yours was in good - - -

Mr. Connors: Well, I think the church wasn't torn down. It was converted to offices in the Johnson case.

Mrs. Rando: It was in good condition.

Mr. Connors: Right.

Mrs. Rando: Except you have to pave up to the door to get sufficient parking and to get your twelve spaces you had to make fifty percent of your spaces, small. So you are cutting down on the regular size cars, too, on that.

Mr. Connors: Correct. There's a difference of three under the ordinance. We've

increased it to three.

Mrs. Rando: Now, when you came before us the first time, did you ever mention nineteen apartments and then went down to a smaller number?

Mr. Connors: We started with nine. And we went down to seven.

Mrs. Rando: And now you are going down to six.

Mr. Connors: Correct.

Mrs. Rando: Even though you heard one of the board members say that they felt four would be something they could possibly, in his own opinion, go for.

Mr. Connors: Well, I mean, I think that we heard several things from several different board members and then we heard one board member say they asked us to do seven and then he wanted six. But, I mean, I think that there's economics here, too. It's not going to work with four units whether its these petitioners or the rectory or the Archdiocese of Boston if they try to convert it because the property is a nice solid building but it has to be converted. It needs to be updated interior. So I mean there's a breaking point. I mean the statute provides that there can be a practical or financial hardship for this petitioner or for any petitioner. So there's a break even point where four units just doesn't seem to do it. As I said, they could just tear it down and draw a line down the middle and they could have two plus 6000 sq. foot units and build two families, but they don't want to do that. They would like to retain that. So I understand your point on those cases but the cases I think - - -

Mrs. Rando: Are old cases too.

Mr. Connors: They are. I am looking for a new zoning case to come out all the time. There's not a lot of them that come out. They just don't and they rely on these old historical cases and they continue to cite them because that's all there is. But if you read the Land Court decisions, they cite them as well. They continue to cite them.

But the Cavanagh Case, I wasn't particularly citing that case because there was a similar fact pattern. I was citing that case because the language in that case the court said: "The local discretionary grant of a variance must be upheld because some derogation from the by laws, purposes anticipated by every variance." So the point in that case was there's some derogation of the intent and purpose of the ordinance because obviously if it was zero derogation you could never grant a variance. So, the question is, where's the line? You know I think we have been moving the line. I think that the board spoke and said they thought nine was too many and then we heard from members in the neighborhood and they thought nine was too many because we were going to propose tandem parking and things like that. So we have eliminated all of that.

Mrs. Rando: Keep in mind that no one is entitled to a variance.

Mr. Connors: That is correct. I understand that. I don't disagree with you.

Mrs. Rando: You have to prove to us that you have a hardship and you have the rest of the criteria.

Mr. Connors: Right and so the hardship is, as I said, we believe we have a unique

structure here that has been around since 1963. It's no longer going to be used as a rectory.

Mrs. Rando: To me, it seems like you went out and bought a building and you're making your own hardship. You're making your own hardship because you want something and you can't get it. So the hardship is, we're cutting it down, now it's only going to be six units and you have enough parking but really we had to make more compact than what it should be.

Mr. Connors: True, but I mean I think if you go down to that particular neighborhood, we're providing off street parking.

Mrs. Rando: How many for visitors?

Mr. Connors: Nothing. But we are providing two parking spaces for every unit even the representatives of the neighborhood talk some of the four families only have one parking space. The gentleman who talked who has a condo and has no parking spaces. So I think we are trying to provide something that is going to work for the neighborhood because we are not going to be build a bigger building, a taller building, we can utilize what we have and we are going to keep all of the parking spaces on site. And so the distinction between, you know there is a distinction between regulation parking spaces 9 x 18 feet because I think the compact is 8 x 17 so, but in this world, day and age, there's a lot more compact cars than there used to be.

Mrs. Rando: It's just cutting and cutting and cutting. What about the use? You're extending the use. What about that?

Mr. Connors: The use is a familiar use in the zoning district. It's a nonconforming

use. Before it was residential use accessory to the church. It was a rectory before that provided residential accommodations for priests that worked at the church. The use is a familiar use. So it's not not permitted. It's not nonconforming. It's allowable by right.

Mrs. Rando: And your hardship is, just that it's financially not feasible.

Mr. Connors: No, my hardship is the building itself presents a hardship in that we have a 9000 square foot building that has good walls, solid structure, solid foundation. Two families are permitted down there by right so we could make it a two family but we would have only have two 4500 square foot units. It just doesn't make sense.

Mrs. Rando: Couldn't that be turned into a single family home?

Mr. Connors: Sure.

Mrs. Rando: I think St. Joseph's Rectory was turned into a single family home.

Mr. Connors: They could, but I would say that that would be uneconomical. It would be uneconomical for them or for anyone.

Mrs. Rando: We can't consider that a hardship if it's not economical for them.

Mr. Connors: It's uneconomical for anyone because we would spend a million dollars for a single family home on a 14,000 square foot lot. It doesn't make economic sense whether it's these petitioners or another petitioner.

Ms. Gelineau: St. Joseph's Rectory was built as a single family home. This wasn't

built as a single family home. So it's not applicable.

Mrs. Rando: Even a two family home.

Mr. Connors: They believe that it would work as a six family, they believe, they hope. I mean they are looking to improve the property, make it something that's viable as six residential units that's marketable. They believe a two family is just not going to do it. And so I think that there is a provision in the code or in the statute that says that if there is a financial or practical hardship, you're entitled to a variance.

Mrs. Rando: You're only allowed 1.98 units and you're asking for six.

Mr. Connors: As I said, that's under the FAR but two families are permitted by right so we can break the lot, cut it in half and build two-two families. The lot area is 6000 we have 14,000, so we build four units. So, really between what they can do by right and what they can do with a variance is two units. But the extra two units is going to allow them to retain the building and provide all off street parking and we believe that that's beneficial to them but to the city as well because we are going to retain something you know is a nice building. It's been around since 1963. It was part of the St. Charles Church.

Mrs. Rando: I have some other questions but if anyone else would like to jump in, feel free. Anyone have any questions?

Mr. Sergi: No, but I just don't feel like you should be throwing it on the shoulders of the board to make this economic sense. I mean, the developers go in with a project in mind. I mean if they don't have the approvals to put that project in place maybe they shouldn't have paid as much as they paid. But, I'm only speculating here for the profit so

for you to say that, oh, we have to put in six units to make it economically feasible to them to be successful is not justified in my mind to place that burden on the board and that's why we should vote in favor of the variance. That's what I'm hearing you saying.

Mr. Connors: Well I'm responding to the Chairman's questions, but I'm saying that the building itself is 9000 square feet. It makes more sense to construct six units. To spend the money to construct six units than to do two units or do a single family. It's just not going to make sense economically. It's like throwing money out the window. It just doesn't make sense. So it's the building and the size of the building that is the basis of the hardship and not how much money we necessarily need to spend on it. But you know if the building was 3000 square feet, it would probably make sense to do two units.

Mr. Sergi: I understand that fully. I mean the use is different than the church had compared to what you are trying to put in place now. And we heard from the neighbors, Counsellor, that it was detrimental to the neighborhood for a number of reasons. So when you say it's not detrimental to the neighborhood how can you ignore the comments of - - -

Mr. Connors: I don't know. They haven't spoken yet. But I do think when we heard from them before and they were opposed to it, I agree. But it had to do with the parking spaces. Because before, remember we proposed tandem parking spaces and Councillor Logan said that never works. He said it doesn't work because people don't want to park one behind the other because if somebody has got to come in and somebody has got to go out somebody is going to park in the street. So we've done away with that. So there is no tandem parking. So we have been able to eliminate that. So hopefully we have eliminated some of the concerns of the neighbors and what I chiefly heard from the neighbors was concern about parking. That it is a congested area and off street parking is critical. They come down and they have to drive around and find a space. So we don't

want to contribute to that and the zoning code doesn't allow us to contribute to that so we have twelve spaces on site and no tandem parking. Everyone has their own space which they can get to without relying on someone else to move. So, I think that we have taken steps to react to some of their concerns. I don't think we have just ignored them. We recognized that we weren't going to get approved with the opposition to nine units primarily because of the parking.

Mrs. Rando: Now with the greater intensity of use, you don't have to go in front of the council?

Mr. Connors: The building itself is preexisting . The council grants variances for intensity of use. We are not increasing it. It's remaining as is. The FAR is 5.2 and it will remain as it is, so we are reusing a building which the structure and the FAR is nonconforming but we are using it for a conforming use. So if we were going to add floor area to it, we would need to go to the council.

Mrs. Rando: If you went in front of the council, how many units would they grant if you had to go for a special permit?

Mr. Connors: If you looked in the book, it says that they could go up to .6 FAR so we would have 4.2 and it also says in this particular residential zoning district, they could go up to 18 units per acre which is essentially what we are proposing, six units.

Mrs. Rando: Say that again. I lost you.

Mr. Connors: So they could grant a FAR ratio special permit which would allow us to increase the floor area to .6. We have .52 so you could go up another .08 but we really

couldn't increase the units because the floor area and the number of units kind of go together. And so, under the code, they can allow up to eighteen units per acre. We don't have an acre. We have fourteen thousand square feet. So if you do the math, we have a third of an acre. The book says the council could grant up to eighteen units per acre which a third of that is six units. I mean, I heard you concerns about that before and I spoke to the building department and they were of the opinion that again we are going from a use that was permitted to a use that's permitted. The use has never been nonconforming.

Mrs. Rando: You're going from a religious use to residential.

Mr. Connors: Which is an allowed us

Mr. Sergi: I think I understand what the Chair is trying to say. The intensity that I see here is that you are adding is a number of kitchens, you know, turning it into six kitchens, three bedrooms, there's eighteen people plus that are going to be residing versus you know the religious use which Barbara is referring to is going to the priests and not as much intensity of use at the time. So, I mean, it's a permitted use, I agree. Now you are going to have over twenty individuals here and additional cars. That's what I think.

Mrs. Rando: I think you are going to have a problem with the hardship.

All right, does anyone else have any questions? Hearing none, is there anyone else in favor of this that would like to come to the microphone and be counted or would like to raise their hand and be counted?

(Three people raised their hand in favor.)

Mrs. Rando: Is there anyone seeking information?

Seeing none, is there anyone in opposition that would like to come.

Robert Logan, 109 Taylor Street, Waltham came forward.

Mr. Logan: I am the ward councillor for the area. Where do I start? First of all, just basically in terms of the proposal, it's still, in my opinion, excessive. Under existing zoning, units per acre would only allow 1.98 units. They are talking six. That's three times the number allowed by right. If you do the calculations on the number allowed by special permit, it would allow just under six and you can't round up. So, really it would only come out to five. So they're still asking, even though it's still a rounding, they are asking to exceed the maximum allowed by special permit.

Mrs. Rando: By the City Council?

Mr. Logan: By the City Council.

Now as far as the granting of a variance. To begin with I don't think, there are different kinds of variances, use variances and dimensional variances. In Waltham, the Zoning Board of Appeals does not grant use variances. It doesn't have that authority. Most of the court cases that were cited, in fact I remember these were basically the ones cited the last time, have to do with use variances. They were changing from one use to another. That just doesn't apply here. The attorney for the petitioner has asserted that this is a dimensional variance. I would argue that not only is it not a use variance, it's not a dimensional variance. What they are requesting is a variance in the intensity of use and

that that's not allowed.

Mr. Hickernell: That's a new kind of variance that you are proposing?

Mr. Logan: No. I am saying that it is a variance that doesn't exist. And I will get to that at the end of my talk. But let's say it was a dimensional variance. Let's say we will concede just for the sake of argument that it is a dimensional variance. You know, again, I don't think those court cases apply because they were use variances. But on the issue of whether or not the hardship, okay. There are plenty of court cases that establish the fact that if economical use can be made of a property, that is, if you can make any economical use then there is no hardship. But what is economical use? Economical use doesn't mean that you can make more money than what you paid for it. If that were the case, then if they paid three million for this property that would justify a variance for thirty-two units. That's just a ludicrous proposition. I think that you can see that that's crazy. So, basically any kind of a use that would be a reasonable use for that area. The argument is always made is oh, that this is a unique property. Every property is unique. Just pick a property in the city and I'll tell you what's unique about it. That doesn't qualify for a variance at all. If you read Chapter 40A, it's clear. The hardship, if there's a hardship at all, has to be directly related to conditions affecting the lot regarding soil content, topography, shape. There's nothing about this lot, it's perfectly flat. There's nothing about the topography. There's nothing about the soil content. There's no ledge. They don't have to do any blasting. You could argue if you wanted to, maybe it will be a stretch, that it's a little bit of an irregular shape but just for the sake of argument, what if I went out and bought them this little strip here (referring to the plan) or if their neighbor gave it to them, so now it's perfectly rectangular. They still couldn't build, put in anywhere near six units.

They still couldn't put in the two units.

So the fact that they can't do what they want has nothing to do with the soil content or the shape or the topography. It just doesn't qualify for a variance. It just doesn't qualify. Beyond that, substantial derogation. How in the world can anyone argue that allowing three times the by right use is not a substantial derogation. If they were in here saying, we want to exceed something by twenty-five percent or something like that, you may say, well, maybe it's a little bit more but maybe we'll stretch it and call it diminimus. Three times! That just blows the intent of the zoning right out of the water. Basically it's just negating the zoning ordinance.

But beyond that, I don't think that this can be granted because it's really for intensity of use. Now, you have heard the attorney for the petitioner say that the FAR is what it is and that the use is allowed by right it's not really a change of use. But the fact that it is a change of use because if you look at Section 3.214 of the Zoning: Churches: "Use of land buildings or structures for public worship carried on by a recognized religious sect or denomination which may include religious instruction, maintenance of a convent, parish house or similar facility." So, under the Waltham Zoning Ordinance, a rectory is considered a part of the church use. It is an institutional use as a church which is covered under the Dover Amendment which is why they could have built that building to that size in that particular use in the first place. The use as an apartment building is not protected by the Dover Amendment. So you're into an entirely different situation. But under Section 4.12, Paragraph 12, it says, "consistent with the higher floor area ratio as allowed by special permit, the City Council when issuing a special permit for intensity of use may allow an increased number of units per acre up to the following maximums:" And then it gives the maximum. So there's two ways to measure intensity of use by the floor area ratio which is

a ratio of the lot size to the total building space and for residential purposes, units per acre. They're both a measure of intensity of use. So they are not going to increase one intensity of use but they are going to increase the other. They could easily come before the city council to confirm the existing FAR and consistent with that existing FAR get an increase in the units per acre up to the maximum. Whenever there is an administrative avenue, a variance shouldn't be granted. The variance should be the action of last resort. When all else fails, get a variance. But there's clearly a way to approach this and that's through the special permit process. Obviously that's a more expensive, lengthier and involved process. According to my calculations they would only be able to get five units not six and one of them because of the inclusion of the Zoning Law would have to be set aside for affordable housing.

So to me, this is just a way to circumvent the special permit process, to get an extra unit and to avoid to have to dedicate one as affordable housing.

Now, and the Law Department said this in other cases before, but what I would like to do, for all those reasons, I believe that the variance should be denied. I don't think it's appropriate to grant a variance on many different levels and I have explained that. However, if the board disagrees and that's certainly your right with my interpretation and is inclined to grant a variance, I would say before you do, please ask this question of the law department. "Does the Zoning Board of Appeals have the authority to grant a variance for units per acre in excess of the maximum allowed by right and, if so, may it grant a variance for more than the maximum units per acre allowed by the special permit per Section 4.12, Paragraph 12, of the Zoning Ordinances?"

So, basically that's what I am saying. I don't think the variance should be granted but if you're inclined in that direction, please before you make a decision, all you have to do

is continue this for one more meeting and ask the Law Department to answer that question. And I think I know how it will come back and I think maybe even the attorney for the petitioner does too because if you will recall when this was before the board before, board member Marc Rudnick was sitting at the end where Mr. Cotton is and everyone was discussing this and board members were indicating that maybe if they cut down on the size, six units and stuff like that, but as soon as Mr. Rudnick said, he wasn't satisfied with the answers that he was getting to questions asked that night and said maybe we should ask that question of the Law Department. As soon as he did that the attorney for the petitioner huddled with his clients and withdrew. The only conclusion that I can reach is that they don't really want to know the answer to that question. But I think you should know the answer to that question before you vote on it if you're inclined to grant it. Again, my wish would be to just deny it tonight but if you want to continue and ask that question, I certainly hope you will, but I will certainly would hope you wouldn't vote on it without getting the answer to that question.

Thank you.

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

Donald Desrochers, 51 Taylor Street, Waltham, came forward.

Mr. Desrochers: I am the owner that doesn't have any off street parking that was mentioned earlier.

Mrs. Rando: When was your house built?

Mr. Desrochers: It was built in 1900. It was refurbished in 2008. There are three

deeded parking lots on the property for six owners. So basically, I thank God that there are about three of the owners there that are single and there are no other cars from that standpoint. I gave up a perfectly good parking spot this evening to come here to talk to the board and explain to them where I am at. I can't talk about the technical or the engineering evidence involved, however, I think from our own personal standpoint we're concerned with the minimum amount of people on those properties because of the fact that even though nobody's living there right now, we have an exceptionally contentious situation with parking. I think I'm doing pretty good at only getting one parking ticket per year since I've been here the last two years. However, I can see that getting worse as time goes on.

We had, right across the street from us, we had four townhouses put in. They have off street parking there. These were about eighteen hundred square feet. They are going for \$660,000 a piece. There doesn't seem to be a problem with that. We'd like to see the property across the street from us on Hall Street go forward but with a reasonable amount of occupants. I have a hard time buying that compact parking unless it's a criteria of the sale of the property is going to be adhered to. There are an awful lot of SUV's. There are an awful lot of Ford 150s out there, a number of full size cars. If they can't fit in those spots then they are going out on the street and that's going to be an issue. It's going to be more of an issue for me than it is for anybody else because they will be long gone and we will be still struggling to find a place to park.

Mr. Hickernell: It could be more of an issue for you because you haven't been provided enough parking on your lot.

Mr. Desrochers: Yes, but when we moved in we weren't aware of the circumstances

in this situation.

Ms. Gelineau: You weren't aware that you didn't have parking?

Mr. Desrochers: Well we didn't have parking but we weren't aware of the full existence of what was going on in the area.

Ms. Gelineau: Which is what?

Mr. Desrochers: Which is that we had a lot of people from Moody Street that park there. We have commuters that park there during the day.

Mr. Hickernell: This may be one of the only multi family lots in the area that actually provides what the city council has asked for in terms of parking. I mean, I live on the South side too. It's a problem but just because your there first doesn't mean nobody else could come in. You've been lucky that it's been unoccupied for a while. Someone is going to occupy it. I hope it's not somebody who throws up more of these God awful two stories that we have on Lowell Street.

Mr. Desrochers: All I am asking for is is the minimum amount possible from that standpoint. We don't want to keep it vacant but I don't want to see an excessive amount of owners there because it's just going to get more people.

Ms. Gelineau: Why should he be punished for providing parking where you even purchased a property with no parking. I mean for that argument, why can't we go back and punish whomever you bought it from to provide parking? I don't understand why it's

his fault that you have no parking.

Mr. Desrochers: Well it's not his fault but I am saying we have been dealt a hand that we trying to work with as well as we can and if, in fact, we can minimize the amount of units being built across the street from us it will work to everybody's advantage.

Ms. Gelineau: I agree with Mark. do you want to see three go up across the way from you with the same parking constraints instead of trying to preserve a building that does conform to the integrity of the neighborhood. Do you prefer that?

Mr. Desrochers: I can't answer that question.

Mrs. Rando: When did you buy your house?

Mr. Desrochers. We bought two years ago.

Ms. Gelineau: I can't make sense of that why they should be punished because you bought property with no parking.

Mr. Desrochers: Well I'm not considering it a punishment.

Ms. Gelineau: And you bought it two years ago. You still bought a property in Waltham and thought it was okay.

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

Ms. Gelineau: There's none.

Mrs. Rando: I thought you said you had two.

Mr. Desrochers: Well there are three within the units, for the six units that were on the property there are three dedicated parking spots. That's it.

Mrs. Rando: And you're in one of the units.

Mr. Desrochers: I'm in one of the units that doesn't have any off street parking. And there's another unit there that doesn't have any off street parking. And the ones that do, they only have one off street parking. And we just accepted that as that's just the way it was.

Mrs. Rando: If they want to have company they have to find a spot on the street which is impossible to do.

Mr. Desrochers: Sometimes, yes. I mean there are times where you can find parking but you know prime times, late at night, weekends it does seem to be more challenging.

Mrs. Rando: Right. Thank you very much.

Anyone else that would like to come up and speak?

Stefan Ahlberg, 72 Taylor Street, Waltham: My concern is, the more you build the more traffic, More parking more traffic. I am concerned about the traffic. So it's two

units too much if I understand it right. So that's four parking, that's four more cars. Why not let it be and let them build as much as they are allowed and we then will have less traffic.

Mrs. Rando: At 72 Taylor Street, how many units?

Stephan: Four.

Mrs. Rando: How many parking.

Stephan: We have two big driveways. So I would say at least ten cars.

Ms. Gelineau: Tandem?

Stephan: No. We have two driveways, two, four, six, maybe twelve.

Ms. Geleneau: Tandem.

Mrs. Rando: But there's only how many units?

Stephan: Four.

Mrs. Rando: Thank you very much.

Is there anyone else that would like to come up and say why they are concerned?

Does anyone want to raise their hand in opposition so we can count them?

(Five people raised their hands in opposition.)

Mrs. Rando: All right. Do you have anything to add to what was said by the speakers, Attorney Connors?

Mr. Connors: So, I'm just citing from the statute. Chapter 40A, Section 10, under Variances states, I'm not going to read the whole thing to you but if I could skip down to where it gets to a Literal Enforcement of the Provisions of the Zoning Ordinance or By Law when involved substantial hardship, financial or otherwise, to the petitioner or the appellant. So I think it's written into the statute. It talks about financial hardship, so it's a practical hardship too. We have a nine thousand square foot building that it's not economical to use as a one family or a two family. So it's not about maximizing profits. Its about modernizing the structure to the benefit of the petitioner for their efforts without maximizing profit so I take issue because the statute provides right there, that financial hardship is - - -

Mrs. Rando: Financial hardship, in all due respect is, is if someone comes in and has a house and they want to put an addition on the right hand side but the addition on the right hand side is too close to the neighbors, but if they do it on the left hand side its all ledge and it would be just financially costly for him to do it on the left hand side. So you would make that little agreement and say all right you can do it on the right side if the neighbors agree.

Mr. Connors: It certainly can be interpreted that way but the statute itself doesn't define what financial hardship is and it does say financial hardship. So, I'm saying that it's

a basis for their hardship and it's consistent with the statute. So that would be my point. And again, the other thing I would just restate that a church or a rectory is a permitted use in the zoning district. It's permitted. It's not permitted because of the Dover Amendment. It's permitted because the zoning book says its permitted. So we have a proved use to a multi family use which is also an approved by right use. So the uses have never been nonconforming historically as proposed.

Mrs. Rando: Does anyone else have anything else to say?

Well, I would like to make a motion at this time that we continue the case and get an opinion from the Law Department as the Councillor just stated because it makes a lot of sense.

Mr. Hickernell: The Councillor wrote the question and assumes that this scenario applies to this. I suppose you could also ask if the law department thinks if those are facts that we are faced with.

Mr. Connors: I will also say that I do have an opinion from the building inspector that was of the opinion that I didn't need relief for the use, not a written opinion but he signed the application. He denied it on the basis of the units per acre.

Mrs. Rando: Which building inspector?

Mr. Connors: The current building inspector.

Mrs. Rando: I would like to make a motion at this time that we get an opinion from

the Law Department.

Mr. Sergi seconded the motion.

Roll call: Mr. Sergi, yes; Mr. Hickernell, no; Ms. Gelineau, no; Mr. Cotton, yes and Mrs. Rando, yes. The vote was 3-2 in favor of requesting an opinion from the Law Department. So we are going to continue this case.

Mrs. Rando: How about November 10th? The board concurred.

The board agreed.

All right we have a motion and we are going to continue Case No. 2015-16 to November 10th at 7 P.M.

Mrs. Rando: Would 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?

Josh Krefetz, P.O. Box 88, Somerville, MA 02143 came forward.

Mr. Krefetz; I am the attorney representing Full House Realty Trust and the Trustee and primary developer Mark Resnick, is here with me tonight

(Mr. Krefetz went over the rendition of the property with the board and then read his brief into the record.

Mr. Krefetz: Right now this is vacant and currently not part of this proposal but it's being made into kind of a luxury spa use and there's a luggage store and there's a cell phone store. These stores basically survive off foot traffic. There aren't a lot of people driving to the locations to go to these stores and that's part of the reason why we don't think there will be an impact from the parking variance.

So the second floor is currently offices which are heavily underutilized. I think that most recently there was some sort of urban like distributor leadership and a couple of other offices. But at this point its pretty empty and we'd like to change it into apartments which we think that this building is a prime location for apartments that will attract people who want to live in a dense commercial area, want to take commuter rail or bus, if anything, if they do need to have a car often people use zip cars and things like that. And as it was mentioned in the application this is very, very close to a couple of municipal parking lots where I believe you can get a yearly pass for pretty short money compared to some other cities. You know, the zoning code provides for conversion of commercial to residential in this area and it seems to be encouraged to me by the building department and the people that Mr. Resnick dealt with as well. This is his third or fourth development in this exact area in the past year or so. So he's worked on a couple of other properties on Moody Street and currently is working on a couple of other ones. And we think this is going to be

something that is going to improve the community. It will bring more foot traffic and more street life to the area and I definitely see a revitalization of the area since I was here maybe seven or eight years ago. And bring in more residences directly to the street creates more of a symbiosis between the people living there and the stores that go up and down Moody.

So we think this will be a good thing for the economy of the area and it will be a good thing for the community and will create the kind of housing that's currently needed.

I did present the brief to the board and I won't go through the entire thing. There's no increase in the FAR its just a reconfiguration of the units inside on the second floor.

Mr. Hickernell: How many bedrooms in each apartments are there?

Mr. Krefetz: Because of the way the building is which it's something I will get to in a little bit. It's a very narrow building so the units are somewhat narrow. We have one unit which is two bedrooms, another unit here that's three bedrooms, this is another three bedroom, this is a three bedroom, this is a two bedroom and this is a one bedroom (referring to the plan).

Mr. Cotton: How many units in all?

Mr. Krefetz: Six.

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

Me. Cotton: How many two bedrooms?

Mr. Krefetz: Two, two bedrooms.

Mr. Cotton: A couple of threes and no parking.

Mr. Resnick: We have four parking.

Mr. Krefetz: We are seeking a variance for the four additional parking spaces that are required by due to the conversion.

Mr. Cotton: You said nobody takes a car to go to the business downstairs. They walk there, everybody?

Mr. Krefetz: I mean I don't have the statistics but - —

Mr. Cotton: You just said that.

Mr. Krefetz: Obviously it's possible. But again this would most likely be during the day. The stores aren't open at night. So they are most likely parking in front. (Mr. Krefetz went over the plan with the board.)

Ms. Gelineau: Why just eight?

Mr. Krefetz: It's Section 5.232 of the Ordinance. It says that if you're designing dwelling units in existing commercial space you need 1.25 per unit.

I think, I don't know for sure, but it seems that the intent is to encourage conversion

to residential on these heavy commercial streets, just a greater mix of uses. I don't know for sure but that's my thinking and it seems to be in tune to what's happening more and more.

So, I submitted a brief and you know there are the two primary statutory circumstances for the variance that we've heard about. In this case it's the shape of the lot and its front. It's really a combination of the two that creates a unique circumstance for the lot not generally affecting other buildings in the district or other lots, rather. The other is the hardship.

Mrs. Rando: What is the hardship?

Mr. Krefetz: The hardship is that this building basically it can't be used for its highest and best use because there isn't a demand now for the kind of space that exists on the second floor in the community. And up and down Moody Street are all these vacant second floor offices which is a lot of what he is trying to buy. Obviously there could be a financial hardship, but I think you know he can make money doing whatever but it's not desirable the way it is. I don't know that its desirable for the community to have a whole bunch of empty spaces.

Mrs. Rando: I don't remember until recently that storefront being empty and I don't even know if the upstairs, what was upstairs? The storefronts are all stained.

(Mr. Resnick explained to the board about the upstairs offices.)

Mr. Hickernell: That's the hardship because there is literally no space.

Mr. Krefetz: That is a circumstance which uniquely affects this lot. If you look at the last exhibit in my brief which is Exhibit H which is this map of the area. You will see that this is the only, there's one exception which I will get to, this is the only lot like that. The other lot is 425-37 Moody. But 425-37 Moody and 419 Moody are owned by the same owner. So they are able to use that large space you see behind those buildings for their joint parking. So, if you look at the one we are talking about 429-433 Moody, there is no other lot that is built out like that. And that's from the Waltham GIS site. So these are circumstances which uniquely affect this lot in this whole Business C District.

I spent a lot of time in the Registry of Deeds and I went really into the history of this and what is interesting is there was originally another street called Colby Ave., its kind of hard to describe, but it basically, if anyone has this map, I think is the 1915 street map of Waltham, you'll see the intersection of Spruce and Moody and this is Exhibit B of the brief. There's a street there that's called Colby Ave., the city granted it to a developer who then conglomerated all these lots and behind this building also was a big lot owned by the City of Waltham that was also given and eventually ended up in the hands of same developer so that developer basically surrounded this lot and you know it's arguably unique circumstances that public lands would all go into the hands of one developer to then build on them around another lot, but I think it's fine enough for us to rest on the idea that it's unique that this is the only lot in the whole area really where the building is built basically to the limits of the lot and you know, we have squeezed four parking spaces into this area here (referring to the plan).

With the granting of the variances that we believe would be beneficial for the community. That this is the kind of housing that this particular micro neighborhood needs

and it's the kind of thing which is desirable for a lot of people who are young professionals, a lot of people not working necessarily in Boston but even a lot of people in Waltham working around 128 and places like that. And here he is able to offer rents which aren't so astronomical as Boston that people that are making that kind of money can afford to live. So we think this will help contribute to the ongoing revival of Moody Street as a mixed use and a vibrant area with a lot, I feel there's a lot more foot traffic now than there was before and part of that is from people moving around and part is from new business and they build upon each other. And again, as far as the parking goes, you know there's a tremendous amount of public parking available very close to this building that's right next to the Spruce Street lot and a one minute walk to the Crescent Street lot which is I think one of the biggest lots around the area. And again you walk in to the commuter rail as well. So, I hope that will as crape some of the concerns, you know we are only talking about four spaces and the base line for the requirement for the parking spaces come from the commercial use and we don't see the commercial use requiring parking at night which is mostly likely when the tenants would be home.

Ms. Gelineau: Are your parking spaces tandem, too, also?

Mr. Krefetz: They are not tandem. (Mr. Krefetz went over the parking with the board referring to the plan.)

Mrs. Rando: When did you buy this property?

Mr. Resnick: Six to nine months ago.

Mrs. Rando: So you have only been there six to nine months trying to get renters,

correct?

Mr. Resnick: Yes.

Mrs. Rando: Show me on this picture where the apartments are going to be. Are they going to be down here and up here, (referring to the plan).

Mr. Krefetz: All though out the second floor only. We don't perceive the conversion to residential having an impact on the parking in the area.

Mrs. Rando: Are there any rented already?

Mr. Krefetz: There's just three spaces. AA meeting group, Urbanite diet and a lawyer who has been there for twenty-five years.

Mrs. Rando: Could you make the apartments bigger?

Mr. Resnick: We tried. Mr. Resnick went over the plan with the board. There's no hallway. We are limited because theres no hallway inside the billing We tried to do five and couldn't.

Mrs. Rando: Did you ask anyone to leave while you were doing the conversion?

Mr. Resnick: No one has a lease. We have other places for them to go.

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. (Three

people raised their hands in favor.

Are there any questions from:

Mr. Hickernell: I think this is an example that is a smart use that I'm thinking the revisions of the zoning code will incorporate more.

Mr. Sergi: Just a comment. I am sitting on the Chamber of Commerce here in Waltham and the Council on Partnership has kind of a task ahead of itself trying to make the signage a little bit more appealing on Moody Street. I was wondering if you would be kind enough to talk to your tenants and especially the newer tenants, commercial tenants, to kind of make the signage look a little nicer on Moody Street. It's really not appealing the way it is and it's not only you, it's the whole street. I just make that point because the city has made some money available to the downtown to help with the fees. I believe they are allocating Five Thousand Dollars per store front. I would reach out to them.

Mrs. Rando: All right, you may continue with your proposed findings of fact.

On motion of Mr. Hickernell, seconded by Mr. Sergi 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 your Proposed Decision.

On motion of Mr. Hickernell, seconded by Mr. Sergi the board voted that the reading of the Proposed Decision be waived.

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

On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to 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: I am ready for a motion on the Proposed Decision.

On motion of Mr. Hickernell, seconded by Mr. Sergi, the board vote dot adopt the Proposed Decision to be the Board's decision.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 8:50 P.M.

Barbara Rando, chair 10/20/15