

**CITY OF WALTHAM**

**ZONING BOARD OF APPEALS**

**October 27, 2015**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, October 27, 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, Edward McCarthy, John Sergi and Michael Squillante.**

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

**Mrs. Rando: Tonight we have two new cases before us: Case No. 2015-19, Petition of Gail M. McClymonds and James W. McClymonds, 27 Drury Lane and they are here for a variance, and Case. No. 2015-20, DBC1, Inc., 411 Waverley Oaks Road and they are here for a Special Permit.**

**The first action this evening is for a motion to accept the minutes of October 20, 2105.**

**On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to approve the minutes of October 20, 2015.**

**Will the clerk please read the petition in Case 2015-19?**

**The clerk then read the Petition of Gail M. McClymonds and James W. McClymonds, Trustees of the Gail M. McClymonds Living Trust in an application for a**

**variance - rear yard setback. The locus consists of a single parcel of land with an existing single family residence situated thereon. The Petitioners propose to construct, use and maintain a single story addition onto the existing single story residence. Location and Zoning District: 27 Drury Lane; Residence A-3 Zoning District.**

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

**Attorney Joseph M. Connors, Jr., 404 Main Street, MA, forward.**

**Mr. Connors: I am an attorney representing Gail McClymonds and her husband, James McClymonds who is right here in the second row.**

**(Mr. Connors submitted a copy of his brief and exhibits to the board and then read the brief into the record. Mr. Connors also went over photos of the property, exhibits and plans. A petition of the abutters who were in favor was submitted to the board.)**

**Mrs. Rando: Attorney Connors, are you telling me that the other houses on Drury Lane do not have the same discrepancy in the back yard as far as sloping down?**

**Mr. Connors: It's a pretty flat neighborhood. So, I went up and walked around, I think that the houses in the back are pretty much level. I'm not sure if there's a retaining wall.**

**James McClymonds, 27 Drury Lane, Waltham came forward: You're asking as far as a retaining wall between other properties?**

**Mrs. Rando: Do the other properties slope?**

**Mr. McClymonds:** The properties on Drury Lane, they are more or less like ours is. The retaining wall behind our home continues all the way down Drury Lane and gets taller as it approaches Trapelo Road. It's probably ten or fifteen feet high further down. It's maybe four feet high where we live.

**Mr. Connors:** I mean, my Exhibit E, if you look at it, the brown lines that float around, you can get that right off the Waltham GIS website and it's the topography of the neighborhood, so you will see that there is some topography, there's a grade changes at the back of the McClymonds home and the neighbors adjacent to them. Once you're around the back side, the back lots level off. All the lots across the street from him are at the same plane. There is no retaining walls over there, pretty much the same elevation. So there is some lots adjacent to his that do have a retaining wall.

**Mrs. Rando:** Did you mention that in 1952 they were allowed to build a garage Why wasn't the garage built?

**Mr. Connors:** It was built in 62.

**Mrs. Rando:** What are they using that for now?

**Mr. Connors:** A garage. In my Exhibit A22, there's a rendering that shows it drawn on there. That was the plan that was attached to the Zoning Board case that was approved. I found that at the Zoning Board of Appeals office.

**Mrs. Rando:** So you are actually asking for about seven feet, correct?

**Mr. Connors:** Yes.

**Mrs. Rando:** Mr. Sergi, do you have any questions?

**Mr. Sergi:** No I did a drive by site view and I could see the slope that the counselor is talking about. So, I don't have any questions.

**Mrs. Rando:** Are there any other questions? (There were none.)

Is there anyone in the audience that is seeking information on this case? Seeing none, is there anyone in the audience that is in opposition? Seeing none, is there anyone in the audience that is in favor? (Two people raised their hands in favor.)

**Mrs. Rando:** All right, you may continue with your Proposed Findings of Fact.

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 and the board has had a chance to read them.

Roll call: Mr. Squillante, yes; Mr. Sergi, yes; Mr. McCarthy, yes; Mr. Cotton, yes and Mrs. Rando, yes.

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

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

**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 and that they become the Board's Findings of Fact.**

**Roll call: Mr. Sergi, yes; Mr. Squillante, yes; Mr. McCarthy, yes; Mr. Cotton, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion on the Proposed Decision?**

**On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to adopt the Proposed Decision and that it become the Board's Decision.**

**Roll call: Mr. Sergi, yes; Mr. Squillante, yes; Mr. McCarthy, yes; Mr. Cotton, yes and Mrs. Rando, yes.**

**At 7:30 P.M., the chair made a motion for a five minute recess and it was seconded by Mr. Cotton. The board voted to take a five minute recess.**

**At 7:35, the board reconvened.**

**Mrs. Rando: Would the clerk please read the petition in Case No. 2015-20?**

**The clerk then read the Petition in Case 2015-20, DBC 1, Inc. in an application for a Special Permit to alter a non-conforming parking lot. DBC 1, Inc., proposes to alter its exiting nonconforming parking lot situated at 411 Waverley Oaks Road by adding eight parking spaces Location and Zoning District: 411 Waverley Oaks Road, Waltham, MA.**

**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 and presented each member a copy of his brief.

Mr. Connors: Tonight here with me is Kevin Duffy and Bob Duffy, owners of the property and in the front row are representatives of City Streets Restaurant, Robert Scott from City Streets.

(Mr. Connors then read his brief into the record and went over the plan posted on the board with the board.)

Mrs. Rando: You expect those eight spaces to do an awful lot. First you say that there's no parking problem there and then you say the eight spaces are going to ~~have~~ <sup>help</sup> tenants, they are going to ~~have~~ <sup>help</sup> neighbors, they are going to ~~have~~ <sup>help</sup> people going to the restaurant. Eight spaces are going to do an awful lot of work. You don't think the restaurant are going to have cooks or waitresses or managers?

Mr. Connors: Well, I think they are. There have been restaurants there at this facility. I mean, granted, eight spaces are not a lot of spaces. It's not a lot but basically based on the past practice of this particular property there has not been a real definite parking problem. It's an amenity but it's really to satisfy the demand of the parking code. The Duffy's have owned it since the 1970s when their predecessors built it and they haven't had a real parking problem there. So I don't disagree with you, it's only eight spaces. But are there going to be eight spaces that are not there today so, these spaces are all spread around. (Mr. Connors went over the plan on the parking spaces.) I admit it's only eight spaces but it is better than what's there today and we find that's going to be a general benefit to this neighborhood and to this site.

Mrs. Rando: When the Duffy Brothers built this, the whole complex. Was it conforming? Did they have to come before us for parking?

**Mr. Connors: No.**

**Mrs. Rando: They didn't. So actually when did it become nonconforming?**

**Mr. Connors: I'd say over the years when the zoning regulations changed. So this was drafted on the 1969 ordinance when it required one for every two employees. You have to make a determination as to what the peak employment is and come up with the parking scheme to satisfy that and it has to be approved by the building inspector.**

**Mrs. Rando: Why didn't they come before us once the other buildings were occupied and it became nonconforming?**

**Mr. Connors: That's why I called out Section 5.9 because it's a pre-existing building. Once it was built in 1973 and it was occupied that anytime a new tenant went in because it's for business use, it's like Moody Street and Main Street, any time you get a new business on Main Street or Moody Street, maybe a different business, they don't have to come back and satisfy a parking demand because of that change of use. The code provides that if you have an existing business use in a commercial building you can change. You could have a new business in that space without having to satisfy the requirements of the ordinance. Because if that happens, anytime we get a new tenant up and down Main Street and Moody Street, they would have to get a parking variance if the use was different than the other use. If we had a bank, banks call for say, one parking space for every 200 hundred square feet of floor area whereas an office is 300 feet. So if we had an office and we converted it to a bank on Main and Moody Street, the code allows that to happen seamlessly. You don't have to go back and re-address parking. So that's why I called it out because in 1973 the building was built, the parking scheme was set and therefore under Section 5.9 of the ordinance which was amended in total in 1988, every time you had a business occupying an existing space, you didn't need to satisfy the requirements of the**

ordinance. So it's the new thing in here. It was never a patio before. Now we have a patio that didn't pre-exist and now the parking regulations state that if you are going to have outdoor seats you need to have parking spaces. So that's what brings us here. And granted, I mean, it's only eight spaces and that's what we need but we didn't want to change the whole parking design.

**Mrs. Rando:** You need relief of these spaces.

**Mr. Connors:** Well, the relief is the alteration that will allow me to satisfy the requirements of the ordinance. So, if I was to go down and ask for a building permit for the patio then he would say, okay, you're putting forty-eight seats outside you need eight more spaces to satisfy the patio. So I need the building parking spaces, otherwise I can't build the patio.

The parking is driving the issue here but the patio itself we can construct that but for a restaurant now they are required to have one for every six seats.

**Mrs. Rando:** I'm a little confused with the nonconforming and the building and then the whole complex. I'm not sure I can see your argument.

**Mrs. Rando:** Mr. Sergi, do you have any questions?

**Mr. Sergi:** The parking, you structured the modification on the perimeter of the lot so the minimal impact on the lot you could possibly have is on that lower end.

(Mr. Connors went over the plan on parking)

**Mr. Sergi:** So, you just picked up an extra space. The patio you are taking about is a deck. It's going to be off the ground? It's not going to be on the ground?

**Mr. Connors:** Well it's going to be. I think the ground is going to have to come up. They are going to make a grade change. It will be on the ground level. We will have to build the berm up so it's on ground level but we are going to have to build the ground up on the corner.

**Mrs. Rando:** Mr. Squillante?

**Mr. Squillante:** A couple of questions. The dimensions of these spaces are what?

**Mr. Paul Finger, Paul Finger Associates:** They can stay the same length but you can shorten them.

**Mr. Squillante:** And the existing spaces?

**Mr. Finger:** 9 Feet.

**Mr. Squillante:** What's the percentage of compact spaces now?

**Mr. Finger:** There are no compact spaces. So what we have done is provide sufficient for that.

**Mrs. Rando:** Mr. McCarthy?

**Mr. McCarthy:** Just a point. You're adjusting six spaces for five and then the last two you're only adjusting five spaces.

(Mr. Connors and Mr. Finger went before the board and went over the parking plan.)

**Mr. McCarthy:** That's not my real issue with this at all. Mr. Connors, I've gone down there many, many times to pick up Chinese Food or getting a fine bottle of wine at Michael's, maybe going to party needs. Never ever, ever, ever, had a problem with a parking space down there. There's always been a plethora available no matter what time I go there. It seems like this is much ado about nothing to tell you the truth. I don't get it in this particular location. On top of that, the Duffy Brothers own what six adjacent parcels of land with all sorts of parking spots on them. They must have parking in there for, you could put Foxborough Stadium down there. Is there any way that we could approve this or give you a special permit to put the patio in without doing any adjustments to the parking because I have a four runner. I like a big parking space.

**Mrs. Rando:** Well, he could ask for a variance.

**Mr. Connors:** Well the building department is of the opinion that even if I am going to make it larger I need to get a special permit to alter it. So it's the word alter that is the key to the equation even though I'm adding spaces not diminishing them.

**Mr. Cotton:** I have to hang my hat with Mr. McCarthy here because I have been down there for twenty years in business. It's never ever had a parking problem, never ever! After a snowstorm they are always there cleaning up. It's always perfect down there and the place is always well kept and there's plenty of parking. I've been down there New Year's Eve at the Chinese restaurant, if you want to see a place fill up, they fill up and I have never had a parking problem.

**Mrs. Rando:** All right, is there anyone in the audience that is seeking information? Seeing none, is there anyone in opposition? Seeing none, is there anyone in favor? (Five people raised their hands in favor.)

**Mrs. Rando:** Could you answer one question. What did the building inspector put on your form that you needed relief for?

**Mr. Connors:** I read that and I couldn't figure it out myself. I read that and said what is this? I didn't get a good explanation. I think he just wanted to think about adding spaces. As you say we don't need more spaces.

**Mrs. Rando:** Do you have the form?

**Mr. Connors:** He said, needs relief in accordance with Article 3, Section 3, Subsection 3.7222. Please consider discussion on parking/increase in the number of spaces may also need relief. That's why I am here, I think. That's why I am here I think. I didn't understand that's what it said but that is why I am here is because the increase for parking spaces is the reason for the relief because I am altering a nonconforming cited in 37222. I scratch my head, I don't have a good explanation.

**Mrs. Rando:** All right, since there are no other questions, you may continue with your proposed Findings of Fact.

On motion of Mr. Ssrgi, 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 and the board had a chance to read them.

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

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

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**Roll call: Mr. Sergi, yes; Mr. Squillante, yes; Mr. McCarthy, yes; Mr. Cotton, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion on the Proposed Decision?**

**On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to adopt the Proposed Decision to be the Board's Decision.**

**Roll call: Mr. Sergi, yes; Mr. Squillante, yes; Mr. McCarthy, yes; Mr. Cotton, yes and Mrs. Rando, yes.**

**Mrs. Rando: One motion is in order.**

**On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to adjourn at 8:10 P.M.**

*Barbara Rando chair*  
*11/07/15*