

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

December 1, 2015

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, December 1, 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 Glenna Gelineau, Mark Hickernell, Marc Rudnick and John Sergi.

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

Mrs. Rando: Tonight we have two new cases before us: Case 2015-21. Elizabeth Gartz, 67 Ash Street and that's an application for a variance. The second case is Case No. 2015-22, Posto Waltham LLC, 99 Third Avenue and that is for a sign variance.

The first action this evening would be for a motion to accept the minutes of November 24th.

On motion of Mr. Sergi, seconded by Ms. Gelineau the board voted to accept the minutes of November 24, 2015.

Mrs. Rando: Will the clerk please read the petition in Case 2015-21?

The clerk then read the Petition of Elizabeth Garz, Personal Representative of the Estate of Elizabeth Miller in an application for a variance to qualify property for the construction of a two family residential dwelling following the destruction of a single family home by fire. Location and Zoning District: 67 Ash Street, Residence B. Zoning District.

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

William D. Sack, Esquire, 1000 Franklin Village Drive, Franklin, MA came forward.

Mr. Sack: Good evening. I am representing the Personal Representative of the Estate of Elizabeth Miller. Elizabeth is here with her husband and brother. The property is at 67 Ash Street which was the site of a tragic fire in February of this year where Elizabeth lost her mother and brother. (Mr. Sack then read his brief into the record.)

Mrs. Rando: Could you tell me what you feel your hardship is for this?

Mr. Sack: We don't have soil conditions or topography but we have shape. If you look at the Assessor's map, you will notice that most of the other properties along this area are much wider. This is not a wide lot but it is deep and you know the hardship, well, concerning the tragic loss that she suffered and the house was razed for safety reasons and just for memory of the tragic loss, we feel it affects this zoning district, this particular lot, and not generally the zoning district within which the property lies.

Mrs. Rando: You say that due to concerns for safety and the emotional nature of the destruction, what is the safety issue?

Mr. Sack: Well, it was boarded up. After the fire it would be a safety issue for people coming in and just people in the area using it.

Mrs. Rando: How many parking spaces are there?

Ms. Gartz, 15 Hammond Street, Hopedale, MA: One to the side and three tandem.

Mrs. Rando: And in your last statement, your last sentence, “The construction of a two family dwelling will allow the property its best use consistent with safety and housing concerns and avoid a financial hardship to petitioner.”

We can't consider a financial hardship to the petitioner.

Mr. Sack: As the sole reason, right.

Mrs. Rando: All right, do you have anything else to say before the board asks questions?

Mr. Sack: We think it meets the neighborhood, certainly. If it was the only two family around on the street we certainly wouldn't be asking for it but the character of the neighborhood it's all four families, three families and many two families. There's only one single family on the entire side of the street from Moody Street to Adams Street.

Mrs. Rando: It was a single family.

Mr. Sack: It was a single family destroyed by fire, yes.

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

Mr. Sergi: I'm trying to visualize a two family on the lot. Do you have a rendering of any sort that we can look at?

Mr. Sack: Not yet because it was just razed.

Mr. Sergi: Do you have any idea how it fits on the lot?

Mr. Sack: We will leave that to the architect and the building department but there are houses on the street that are two families with the same width.

Mr. Sergi: You're saying that the shape of this lot is unique than others because the lots look similar to me up in that area. You're saying this is different?

Mr. Sack: It's a little different. The other lots are wider in the general area.

Mr. Sergi: You had a frontage issue with the single family, right?

Mr. Sack: We can rebuild what was there as a single family. To be only two and a half feet short, having it fit in the character of the neighborhood. as I said, if you're at the street looking at it, you wouldn't notice two and a half feet from forty feet.

Mr. Sergi: Have you talked to the neighbors and the neighbors are all on board with this?

Mr. Sack: We didn't hear any opposition from it.

Mr. Hickernell: So according to the code, you could rebuild on the same footprint without any variance whatsoever. It's just because you are building a two family.

Mr. Sack: Right.

Ms. Gelineau: So you have no idea what you are putting there.

Mr. Sack: It will meet the other dimensional requirements. I am not going to seek any other variances for any dimensional requirements.

Ms. Gelineau: Is it your intention to live in it again?

Ms. Gartz: No.

Mr. Sack: She lost her mother there and brother, so she doesn't have the best memory. I mean she has had good memories growing up there.

Greg Miller, Irving Street, Apt. 3, Watertown, MA (Ms. Gartz's brother) stood. He declined to go up to the microphone and became too emotional to speak.

Mr. Rudnick: Were you aware of the existence of the old lots opinion in Waltham? You didn't seek that for some reason. You came here for a variance instead.

Mr. Sack: We were advised that we needed a variance for the two and a half feet.

Mr. Rudnick: There was an ordinance that we call an old lot opinion that allows you to build to more relaxed standards.

Mr. Sack: Right. We have that, except I think we are still short two and a half feet in order to change the use. The use was a one family and now we are trying to make it a two family. We understand that old lot. The change is now the use.

Mr. Rudnick: So have you spoken with an architect or someone who is telling you it's going to be feasible to build a complying house on this lot with ten foot side yard setbacks and four parking spaces or tandem parking spaces for vehicles? I just hate to issue a variance here and find that you need more of them.

Mr. Sack: We did look into the side yard variance and he said we can comply with everything. We didn't want to apply for too much.

Mr. Rudnick: Is that advice from the building department?

Mr. Sack: Yes.

Mrs. Rando: Would anyone like to see a rendering before we continue?

Mr. Sergi: Typically we do see renderings when something like this is presented to the board. It's hard to visualize what you are going to put there. So, typically, when you present a case like this you do have a rendering of some sort and it would give an idea to the board and it would actually answer Mr. Rudnick's questions definitively, I would think.

Mr. Sack: We discussed that. It's just the expense of hiring an architect to do that when we didn't know whether this board would agree to the two family or not. We could always come back if the board is considering the variance and discuss that and she could get an architect. It could be subject to that approval of the rendering.

Mr. Sergi: I would like to see how the house was going to be situated and the parking going along with it.

Mr. Hickernell: We don't have to have a detailed floor plan of the inside of the house but we do need to know where the house is sitting on the lot.

Mr. Sack: We would certainly be amenable to approval with a condition on that.

Mrs. Rando: I think the case is weak because of the lack of a hardship. I made a site view and I felt the lots were all consistent with your lot in that area. So I think it would be very smart of you to suggest a continuance and get a drawing to satisfy the other members on the board.

How does everyone feel?

Mr. Sergi: I would like to see a rendering.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: I feel it would be of assistance to my decision.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: I agree.

Mrs. Rando: Mr. Rudnick?

Mr. Rudnick: I'm not going to go along with the board. I don't feel that I need a rendering but I would be willing to hear this case again for more variances. I'm glad to bend to the will of the board and accept a continuance to produce more plans of how the property is developed.

Mrs. Rando: All right do I have a motion to continue Case 2015-21?

Mr. Hickernell: Before I make that motion, I would like to hear from the public.

Mrs. Rando: All right. Would anyone like to come to the microphone and stand up and be in favor?

Antonio Nicolazzo, 71 Ash Street, Waltham came forward.

Mr. Nicolazzo: My issue are the trees that are between the two properties. I have pictures if you would like to see them.

My concerns are that the trees will not survive due to the excavation of the two family dwelling since the lot is very narrow. The roots will be damaged resulting in dead or unstable trees. To prevent this, I ask that all the trees on the property to be removed and replaced with clouded green giants to be planted with the height of seven to eight feet, spaced every four to five feet the entire length of the property. I ask that they be irrigated and warrantied for three years and also want the fence to remain.

Mrs. Rando: Have you spoken to the attorney about that?

Mr. Nicolazzo: No.

Mrs. Rando: Maybe you can get together with him.

Is there anyone else in favor? (No one came forward.)

Is there anyone in opposition? (No one came forward.)

Is there anyone seeking information?

Nancy Caruso, I live right next door. I'm the other single family left. I just have concerns because I just don't know how it's going to work there, how that's going to fit. It's very tight and I know how it was before with the single. I'm just concerned with four cars and the two family if it's going to fit there.

That's my concern. It's very, very close. We have great neighbors. Unfortunately, they are gone and now it's a different thing and I don't know how it will fit there. That's my only concern. It's a very tight spot and with a fire, our house wouldn't be there.

Mrs. Rando: Anyone else seeking information? Seeing none. All right I will consider a motion to continue the case.

On motion of Mr. Hickernell seconded by Mr. Sergi, the board voted to continue this case pending the production of a site plan.

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

Mr. Sergi: You may want to submit a landscape design seeing the concern of that neighbor.

Mrs. Rando: How about the 19th? The case will be continued to January 19th at 7 P.M.

Mr. Rudnick: So it would be excellent if you could run it by the building inspector so that we know that he's going to approve that and also if you could provide that map that you just passed in or make copies. It's something that we can all study and understand better why this lot is unique.

Mrs. Rando: Will the clerk please read the petition in Case No. 2015-22, Posto Waltham LLC, BP, 99 Third Avenue LLC?

The clerk then read the Petition of Posto Waltham LLC, BP 99 Third Avenue, LLC in an application for sign variance. The petitioner seeks a variance from sections 6.52 and

6.672 of the Zoning Ordinances to allow for its proposed signage package in support of its restaurant business at the property. Location and Zoning District: 99 Third Avenue, Commercial Zoning District.

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

Eric T. Speed, Esquire, Bernkopf Goodman LLP, Two Seaport Lane, 9th Floor, Boston, MA came forward.

Mr. Speed: Here tonight is Mr. Joseph Castinelli, the owner of the restaurant at 99 Third Avenue. The application before you this evening is for two signage variances. Back in July of 2014, the owner of the property received a number of signage variances for its three anticipated tenants. Since that time the design branding of Mr. Castinelli's restaurant has changed and we wish to modify the package. However, by changing the name, originally it was set up it was just Posto written on the awning so that was limited as to the signage. However by amending it to put the logo of the restaurant on the awning it now encompasses, essentially the awning becomes a sign in and of itself and that adds to our square footage total and then also for the secondary sign, it was originally 88 square feet on Route 128 but then no wrap around. Essentially this is the same size on Route 128. However we are having the logo of the restaurant on the south elevation so there is some signage on that building. If you have been over to the property, there's severe grade changes on Third Avenue. It's very hard to see the property from Third Avenue and also to make sure that part of what was found in the original decision was that it's difficult for cars coming in off of Third Avenue to see the restaurants, so by adding one additional logo signage there you can see the building coming from the other direction as well.

I have provided a memorandum of law. I'm happy to go through the legal basis for the variance but since this has been before the board before, I would be happy to answer questions at this time.

Mrs. Rando: You're meaning to tell me that because you are taking the name off of the awning and just having this logo?

Mr. Speed: The whole awning then becomes a sign as opposed to just the name. So how it was originally set up was that you had an 18 square foot just name, and the remainder of the awing wasn't signage. By doing the logo and having essentially a colored awning now, the whole awning has become a sign in and of itself and put us over that three hundred foot restriction based on our frontage. It's a forty-eight square foot overage but it is an overage.

Mrs. Rando: Any other restaurants that have awnings?

Mr. Speed: Just Bonefish. I have the original package that was approved. Bonefish Grille is the other tenant. It has a different design. It's part of the property that each one is kind of designed so it looks a little bit different.

Mr. Sergi: It reminds me of the Copper Tavern Case that we had which had awnings and we had the same type of issues.

Mrs. Rando: Are there any questions from Board members?

Mr. Rudnick: Do you use this logo on your Somerville location store?

Joe Castinelli, 55 Wilkins Lane, Carlisle, Ma: No, it's a different style logo. This is completely branded differently.

Mr. Rudnick: How many residents in the City of Waltham can see this sign from their homes?

Mr. Speed: I mean it's a commercial district. Half of the building fronts on 128.

Mr. Rudnick: So I might be right, not one single residence in this community can see this sign.

Mrs. Rando: Is there anyone in the audience that would like to stand up in favor?

Giuliana Di Mambro, Boston Properties stood in favor.

Mrs. Rando: Seeing no one in opposition and no one seeking information, what is the wish of the board?

You may continue with your Proposed Findings of fact.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to waive the reading of the Proposed Findings of Fact since they are familiar with the case and it has been on file at the Law Department.

Mrs. Rando: The attorney may continue with his Proposed Decision.

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

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact.

On motion of Mr. Rudnick, seconded by Mr. Sergi, the board voted that the Proposed Findings of Fact be the Findings of Fact of the Board.

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

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

On motion of Mr. Rudnick, seconded by Mr. Sergi, the board voted that the Proposed Decision be the Decision of the Board.

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

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. Rudnick the board voted to adjourn at 7:40 P.M.

ALL ELEVATIONS ON NAVD 88

DEED REFERENCE:
BOOK 13067 PAGE 104-105

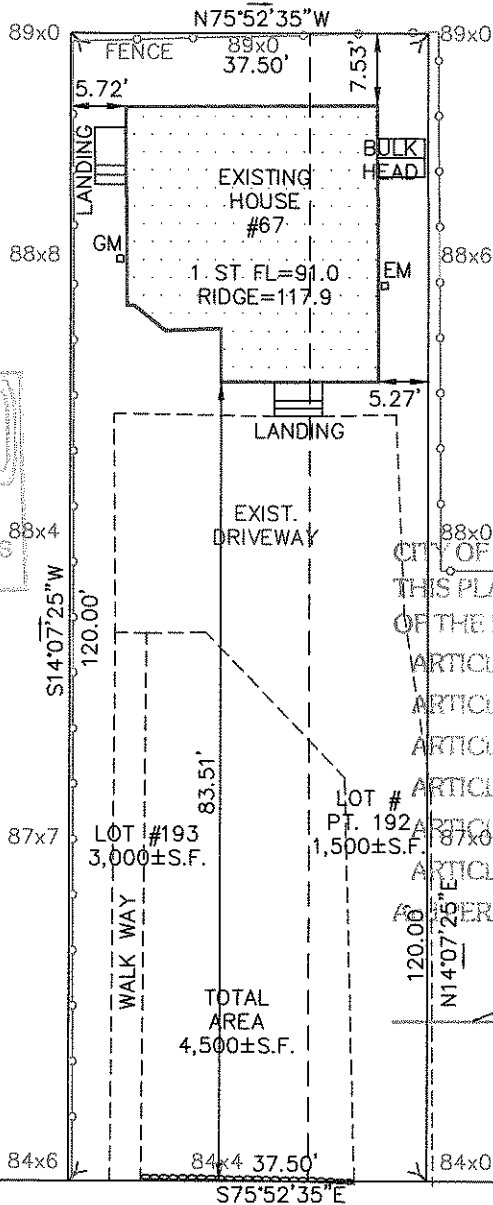
PLAN REFERENCE:
PLAN DATED OCTOBER 1854
PLAN BOOK 11 PLAN 49

AVE. AGGREGATE GRADE = 87.1
MAXIMUM HEIGHT + 40.0
MAXIMUM ALLOWED RIDGE = 127.1

EXIST. RIDGE TO AVE. GD = 30.8'

LOT COVERAGE:
30% OF 4,500±S.F. = 1,350±S.F.
EXIST. HOUSE = 702±S.F. OR 15.6%

I HEREBY CERTIFY THAT THE HOUSE SHOWN ON THIS PLAN WAS LOCATED IN THE FIELD BY INSTRUMENT.



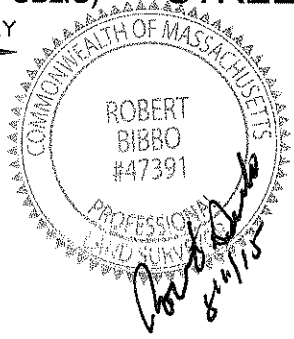
RECEIVED
OCT 29 2015
2015-21
WORKING COPIES OF APPEALS
CITY OF WALTHAM

CITY OF WALTHAM DATE 10/26/15
THIS PLAN DOES NOT CONFORM WITH THE REQUIREMENTS OF THE BUILDING ZONING ORDINANCES, as follows,
ARTICLE III SECTION 3 Sub Sec. 3.711
ARTICLE SECTION Sub Sec.
ARTICLE SECTION Sub Sec.
ARTICLE SECTION Sub Sec.
ARTICLE SECTION Sub Sec.
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PERMIT is hereby Refused.

INSPECTOR of BUILDINGS

ASH (40' WIDE PUBLIC) STREET
ONE WAY



PROPERTY LOCATED IN RESIDENCE B ZONE

PLAN OF LAND WALTHAM MA
SHOWING EXISTING HOUSE
67 ASH STREET
Date: 8/11/15 Scale: 1" = 20'
PREPARED BY:
**BIBBO BROTHERS
AND ASSOCIATES**

SURVEYING, ENGINEERING,
CONSTRUCTION CONSULTING
10 HAMMER STREET WALTHAM MA 02453
781-891-0417
RALPH BIBBO JR. - MANAGER - OWNER
ROBERT BIBBO - P.L.S. - OWNER

THE PROPERTY SHOWN ON THIS PLAN IS IN FLOOD ZONE "X", AND IS NOT IN THE 100 YEAR FLOOD PLAIN AS DESIGNATED BY THE FLOOD INSURANCE RATE MAP #25017C0551E JUNE 4, 2010