

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

April 10, 2018

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, April 10, 2018, in the Auditorium 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.

Mrs. Rando: Tonight we have one continued case and one new case before us. Case 2018-01, Aggregate Industries, 537 South Street and that's for a Special permit; Case 2018-07, Aggregate Industries, 537 South Street and that is for variances.

Would the clerk please read the Petition in Case No. 2018-01?

The clerk then read the Petition of Aggregate Industries, Northeast Region, Inc. for an application of special permit to allow for upgrades to the non-conforming use of the property at 537 South Street which will maintain the current use as a Ready Mix Plant while providing a more modern concrete batch plant and expanded parking areas. Location and Zoning District: 537 South Street,

Commercial 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, come forward. Mr. Connors submitted a brief and updated plans.

Mr. Connors: As you can see from tonight's agenda, there's two cases where Aggregated Industries on and it really has to do with the same project and the same improvements, but I have an updated set of plans and I'll kind of go into that. The plans are in keeping with both case one and case two.

Mr. Hickernell: Are you going to be presenting both cases together?

Mr. Connors: Yes, I'm going to make a presentation in chief for the improvements that are going to be made to the property which will include everything under the special permit and will include the silos which exceeds the allowable height and needs a variance. So my intention is to basically put my case in in chief, address what we have and what we intend to do and why we need a special permit and then kind of secondarily state why we are also asking for a variance, but in the variance case, I am not going to rehash the improvements at Aggregate Industries or anything like that. So I'll just address the hardship issue with the variance. My intention was to kind of just proceed with one presentation.

Mr. Rudnick: Are these separate cases because you left out the permit or amended,

so it could be all in one.

Mr. Connors: Yes. So when we initially filed case number one, the building inspector said you need a height variance and at the time they hadn't done a proper calculation to determine whether they did or did not, so we proceeded and then subsequently we did the proper calculations and we deemed it was correct, so we filed case two.

So with me here tonight from Aggregate Industries are several representatives: Stephanie Herbster, Environmental Engineer with the company, Lisa Young, she's the Regional Land and Environmental Manager; Eric Mueller who's the General Manager of Aggregate Industries, Northeast Region; and Larry Schaefer is the Operations Manager of Aggregate Industries. Also with me tonight is Tim Bernier, he is the gentleman that prepared the site plan for the property.

So I had attached Page two in my brief just a colored picture of what we are talking about but this is Aggregate Industries at 537 South Street. So if you were travel down South Street heading south towards Brandeis say from Main Street and you pretty much pass the main entrance to Brandeis on your right, you come over the hill down the hill and approach the railroad tracks and then just before the railroad tracks on your right is a driveway.

(Mr. Connors went over the plan to show where the locus is.)

Mr. Connors then read his brief into the record.

Mr. Connors: Stephanie has reached out to three of the principal neighbors here:

Brandeis University. She's reached out to them and gave them a copy of the plans and they have no objections to the proposals here. I also asked here to send some information to the Cambridge Water Board because if you go up the tracks and down to kind of the Southwest, you will see, I think it's the Stony Brook reservoir and that is a part of the City of Cambridge. So Stephanie reached out to David Kaplan of the Cambridge Water Board. He asked for some information and she sent it along. He had no questions or concerns with her and she gave him some documentation that he asked for. She's also reached out to the office park on the South side, across the railroad tracks and they had no objection to the proposal.

So that would be my presentation in the primary case. I do want to address the request for a variance and do you want to read the legal notice and proceed with that, Mr. Hickernell?

Mr. Hickernell: I think we should vote on one case before we open the next.

Mrs. Rando: Does anyone have any questions?

Mr. Sergi: What are the hours of operation?

Larry Shaefer, Operations Manager, Aggregate Industries, 1715 Broadway, Saugus, MA.: Our normal operations are from 6 o'clock in the morning till usually 4 P.M., Monday through Friday.

Mrs. Rando: I made a site view at five. It was crazy. Is that all the factories and office buildings getting out?

Mr. Shaffer: Yes.

Mrs. Rando: I have a question. When you came before us and received the ten percent, you stated that the land area used for this nonconforming use would be increased less than ten percent.

Mr. Connors: Correct.

Mrs. Rando: And we granted that. And now you are saying that you got ten percent and you feel you don't really used —

Mr. Connors: What I am saying is that in 2003, it said in the approval that you are going to increase the area of land used by less than ten percent, but it doesn't tell you one percent, two percent, six percent, it doesn't tell you. So the only way you can find that is to go to the plan that is referenced on the last page of the decision. And in that plan it states- -

Mrs. Rando: I am looking at the decision.

Mr. Connors: Yes, so the decision just talks about ten percent as a general number. It doesn't articulate whether it's eight percent, nine percent, ten percent. It doesn't say what square footage is approved. So, if you look at the 2003 Mr. Bibbo plan, it says there was one building that was demolished and one that was added so the area differential was 1,768 square feet. And so he states that current area of land used 5.4 acres. Ten percent of the current of future area is .54 acres. They only used 1768. That's in 2003. It's our position that we are still limited in cap by that ten percent. We used one and a half percent

of it in 2003 and now we are asking to take a little bit more of it.

As I said earlier, this particular property is over ten acres. Every other dimensional requirement we have satisfied except the height in Case No. two.

Mrs. Rando: Also, you are so close to, is it the Stony Brook? Do you need Conservation to be involved in that?

Mr. Connors: No. We are so far away from that.

(Mr. Connors went over the plan with the board to show where Stony Brook is.)

Mrs. Rando: Anyone else have any questions?

Mr. Hickernell: If you already have permission from this board for up to ten percent, and you are staying under under ten percent, do you need a special permit that you can submit with those plans?

Mr. Connors: I think in either case I need to have a new plan because I am changing the plan that was approved in the 2003 case.

Mr. Hickernell: I mean we still have to act on it either way.

Mr. Rudnick: You're cutting down a lot of trees to put this parking lot in, are you

replacing the trees anywhere or do you have trees in your parking lot design?

Mr. Connors: We need to satisfy the parking requirement under the ordinance which will require that for every ten parking spaces we construct, you need to install one tree.

Mr Rudnick: How about screening from the neighbor?

Mr. Connors: There are trees remaining as a buffer.

Tim Bernier, T. F. Bernier Inc., 50 Pleasant Street, Concord, NH came forward and went over the plan regarding the trees in the area.

Mr. Rudnick: So you will be okay when we put something in that says the trees that will be required in the parking lot just because you're not showing them on the drawings.

Mr. Connors: Yes.

Mr. Rudnick: Looks like your improving or expanding your sedimentation plan.

Mr. Connors: Correct.

Mr. Rudnick: But your stormwater management report says that your stormwater impacts will be reduced when this project is over. So why are you making stormwater improvements? Did somebody ask you to?

Stephanie Herbster, Aggregate Industries, 1716 Broadway, Saugus: So the improvements aren't right now because we just have the dirt parking lot and cars are parking in that area and everything runs to our stormwater controls right now. But we will be managing the parking area when we pave it and we are expanding a stormwater feature to contain that water and treat it.

Ms. Herbster went over the plan with the board.

Mr. Rudnick: This business about your output, as I understand it, you're capped at a million cubic feet. So you are allowed a million a year and no more than two hundred thousand a month. So what happens? Do you shut down when you hit the number or when you come close.

Mr. Connors: They haven't come close to the two hundred per month.

Mr. Rudnick: So there is no plan to increase the output and the output will still be controlled by the demand.

Mrs. Rando: Is there anyone in the audience that is in favor of this Petition?

(Five people raised their hands in favor.)

**Is there anyone in opposition? Seeing none. Is there anyone seeking information?
Seeing none**

Mrs. Rando: Did you have any neighbors approach you or any concerns with

neighbors?

Mr. Connors: Well, we reached out to the three principal neighbors, Brandeis, Stony Brook Office Park and Cambridge Water. So we reached out to those three neighbors and they didn't have any problems.

Lisa Young: 1716 Broadway, Saugus, MA, Regional Land and Environmental Manager of Aggregate Industries: We tracked any external complaints that we received and I looked back for the last ten years and we don't have a single complaint that we have lodged through our system.

Mrs. Rando: All right, I am ready for your Findings of Facts.

Mr. Sergi: Counselor is this your same Findings of Fact that you filed with the Law Department?

Mr. Connors: Yes, it's the same Findings of Fact that has been on file.

Mr. Sergi: I propose that we waive the reading of the Proposed Findings of Fact.

Mr. Hickernell seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.

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

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

been on file.

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

On motion of Mr. Sergi, seconded by

Mr. Hickernell, the board voted that the Proposed Findings of Fact be adopted by the board.

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

Mrs. Rando: Do I have a motion on the Decision and do you want to add something?

Mr. Rudnick: I would like the decision to include a condition just stating that the parking lot will conform to Waltham's ordinances about tree location and sighting in parking lots given that the plans submitted doesn't show that compliance.

Mr. Connors: I was going to suggest that I write that the parking lot shall conform to the requirements of Section 5.43, Trees with a minimum width of three and one-half inches in diameter (measured six inches from ground level) shall be provided at the rate of one for every 10 cars.

Mr. Rudnick: So it's all applicable elements in Section 5.4.

Mr. Rudnick: And a condition that says, "Inspite of anything drawn on the plan the

parking lot will conform with the requirements of Section 5.4 Design of Parking lots.

Mr. Rudnick: I think the only thing that is missing is the trees aren't shown on the drawings.

Mrs. Rando: Would anyone opposing having a condition that they be kept up by the owner?

Mr. Connors: No. So all trees shall be maintained by the Petitioner.

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

On motion of Mr. Sergi, seconded by Ms. Gelineau that the decision, as amended, becomes the board's decision.

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

Mrs. Rando: It is granted. Good luck.

Mrs. Rando: Will the clerk please read the petition in Case 2018-07?

The clerk then read the petition of Aggregate Industries. Northeast Region, Inc. in an application for variance - Height and to Amend existing decision. The locus consists of a large parcel of land known and numbered as 537 South Street. The Locus property has a pre-existing nonconforming use, a ready mix concrete plant, situated thereon. The

Petitioners are proposing to alter and enlarge the use by constructing a building addition, silos, conveyors and a new parking area. Location and Zoning District: 537 South Street, Commercial Zoning District.

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

Attorney Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham came forward. Mr. Connors submitted his brief to each member of the board.

Mr. Connors: A lot of this brief is kind of a rehash of Case No. 1 as to who we are and what we are doing. But I will go specifically to the relief we are requesting in this case which is different than Case No. 1.

Mr. Connors read a portion of his brief into the record and went over the plan with the board. (Mr. Connors submitted a copy of the average existing Elevation Worksheet and went over it with the board.)

Mrs. Rando: So you're saying that the two silos that you plan putting in are going to be just about the same size but because of the variance degrees of the wind, you are having a hard putting them in. Is that what you are saying? You're using the elevation of the land as the hardship?

Mr. Connors: Yes. Well, the average elevation kind of, it isn't a true elevation of where we are going to build from and so it affects our ability to build the silo. You know, if we are building on the top side of the hill it would actually would be okay, but once we build

it down south that's when we get into problems. Once we take the averages from the western half of the lot where the elevations are in the nineties, we're starting with an elevation of 112. So it just really affects, and it's not a true indication of how tall the silo is, it's the average elevation. It's almost an eleven acres large, so it's a very large parcel. More than almost half of it we are not utilizing in the use and we don't intend to use it in the use that we can use it in the use. But yet it affects how tall we can construct the silo. And granted, the pre existing silos are right about the same height or taller with the structures that they have on top. So, again, they were originally proposed to, because this is what they need but also compliments what's already there, they are not doing it any higher of one, I think is equal to and the other one I think is a little bit higher. But the pre existing silo extension is going to be higher than what we are proposing.

Mrs. Rando: I think that's a legal hardship more so than you stating the hardship is not being reasonably to make good use of this property. I mean he's one of the top companies you stated earlier in your brief. So I'd like you sticking to the argument you just gave because he's making good use of his property the way it is without the two silos.

Mr. Connors: Well, are we making good use of it without the two silos? Yes we are. But I'd say we are trying to improve the efficiency of the property.

Mrs. Rando: Better, but not gain.

Mr. Connors: But it means it's not necessarily to produce more concrete but it's just to produce concrete more efficiently.

The silos require a certain height so they can distribute the materials into the area. So if we were to build them low then that would impact our ability to distribute the

materials from the silo, into the plant and then into the truck. The silos themselves are off the ground, right? (Mr. Connors went over the plan to explain where the silos were.)

Mr. Rudnick: Are the silos a standard height or are they custom made?

Mr. Shaeffer: Standard.

Mr. Rudnick: These are self supporting structures? They don't have guy wires or anything like that. They don't require a study like a radio tower might?

Mr. Shaeffer: No.

Mr. Rudnick: So it sounded really like having that rock wall is a plus for you. Having that rock wall is what's allowing you to build that 89 foot bin. It's the railroad tracks that are your hardship because that had to be low and flat. You're stuck with that on your property not that I'm trying to make your case for you.

I was curious did you do this survey? (Speaking to Mr. Bernier)

Mr. Bernier: Yes.

Did you count the corners as a part of each side? Or do you assign one corner per side?

Mr. Bernier: The regulation was every thirty feet and at every angle point.

Mr. Rudnick: Since I don't see the same number at the beginning and at the end of

your sections, you're counting each corner onto one side.

Mr. Bernier: Correct.

Mr. Rudnick: Do you have any contemplation of having wireless equipment mounted on these towers?

Mr. Connors: I can tell you it's already on the existing silos.

Mr. Rudnick: You would come for a special permit from the city council to do that on these?

Stipulate to me that you understand that you can't just put ones on these silos just because you have them on your other silo.

Mr. Connors: I think on Exhibit A there was a wireless communication facility was permitted, T Mobile. So they went to the city council to get permission.

Mr. Rudnick: So you're okay with a condition that says wireless can't be put on these silos without action from the city council.

Mr. Connors: Right. That's consistent with the evidence.

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

(5 people raised their hands in favor.)

**Is there anyone in opposition? Seeing none. Is there anyone seeking information?
Seeing none.**

You may continue with your Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact.

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

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

Mrs. Rando: I will entertain a motion on the Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. Hickernell that the Proposed Findings of Fact be adopted by the board.

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

Mrs. Rando: Do I have a motion on the Decision as amended and - - -

Mr. Rudnick: I would like to add a condition maybe that just says: The existence of wireless equipment on the existing silos shall not be construed as permission to mount

similar equipment on the new silos and any new wireless equipment will permitted separately as required under the ordinance.

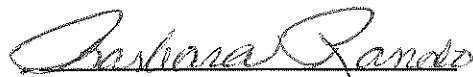
Mrs. Rando: Do I have a motion?

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to adopt the Proposed Decision as amended.

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

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 8:25 P.M.

A handwritten signature in cursive script, reading "Barbara Rando". The signature is written in black ink and is positioned centrally on the page.