

CITY OF WALTHAM
ZONING BOARD OF APPEALS

May 9, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, May 9, 2017, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando, and members Sarah Hankins, Mark Hickernell, Marc Rudnick and John Sergi.

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

Mrs. Rando: Tonight we have two continued cases before us and one new, Case 2015-27, Sadie M. Cardillo, Trustee of 105 - 107 River Street for irrevocable realty trust, Anthony G. Cardillo, Jr. and Anthony G. Cardillo 111, Trustee of AAM Realty Trust 194 Aft. Willow Street and that is for an appeal from the decision of the building inspector; Case 2017-04, 520 Main Street Realty Trust and that is for variances. The third and new case is Case No. 2017-13, William Tuccero, 245 to 251 Charles Street and that's for a special permit.

The first action this evening is a motion to accept the minutes of May 2, 2017.

On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to accept the minutes of May 2, 2017.

Mrs. Rando: Will the clerk please read the petition in Case 2015-27, Cardillo on River Street.

The members sitting on the following case are: Mr. Sergi, Mr. Hickernell, yes; Ms. Hankins and Mrs. Rando.

The clerk then read the Petition of Sadie M. Cardillo, Trustee of 105-107 River Street Irrevocable Realty Trust: Anthony G Cardillo, Jr., Anthony G, Cardillo 111, Trustees of AAM Realty Trust and Anthony G. Cardillo, Jr., in an appeal from the decision of the Inspector of Buildings. Subject Matter: By letter dated October 28, 2015, the Inspector of Buildings served a Notice of Violation on the Owners of the properties at 194 aft. Willow Street, 105 R River Street, and 105-107 River Street; Industrial Zoning District.

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

Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham came forward.

Mr. Connors: I do have a letter that I want to present to the board tonight.

Mrs. Rando: Before you start Attorney Connors, we only have four members this evening. Ms. Gelineau could not make it. You have a choice going forward or to wait.

(Mr. Connors submitted a letter dated May 9, 2017 requesting a continuance.)

Mr. Connors: So my letter is actually requesting a continuance and I will update you.

I was here back in early March, I believe. So actually prior to that we had resolved I think more than half the case. We have an agreement in kind with the building inspector

and that requires him to issue building permits but because part of the property is in an area that was formerly a railroad easement, we need the permission of MASSDOT.

So my first delay was getting the hearing at the MASSDOT but, I did in fact, have a hearing at the MASSDOT late March, March 27th I believe it was. And so they were delayed in rendering a decision but they have rendered a decision and they tell me they are going to consent and allow the building inspector to issue the permits. However, I haven't got the letter yet and they told me it would take three weeks to a month before the Executive Secretary of the Commonwealth signs the letter.

So I have spoken with the building inspector, Mr. Forte. He's amenable to a continuance.

Mrs. Rando: I also spoke to the building inspector and he knew about this and he was in agreement because he cannot give you the permit without the letter.

Mr. Connors: But they tell me they will consent to it except I need that actual letter signed by the Executive Secretary. I mean she has a cabinet position in the Commonwealth of Mass, Stephanie Pollack. She needs to sign the letter so, it's probably not a top priority for her, but they tell me it will take three to four weeks and that was about a week ago, so I think in a month to six weeks' time we'll have our permits and I can just tell the board that we dismissed our appeals.

So, I am requesting a continuance, respectfully.

Mrs. Rando: We can do it on July 11th.

Mr. Sergi: Can I ask what the proposed settlement is? The last issue, Joe?

Mr. Connors: Yes, he said I want you to build an enclosure. We built it, we did a prototype. We designed it, we fabricated one. He's come down and inspected it.

Mr. Sergi: Did you do the sliding cover?

Mr. Connors: Well I don't think it worked as swiftly as they had planned. I do think they have a method that he's inspected and said that he is going to approve. So really it's just the formality of getting the permit.

Mrs. Rando: Do I have a motion to allow Case 2015-27 to continue to July 11, 2017.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to continue this case to July 11, 2017.

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

Mrs. Rando: Now, do I have a motion to extend the time on making a decision on this case to August 11, 2017?

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to extend the time to act on this case to August 11, 2017.

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

The members sitting on the following case are Mr. Sergi, Mr. Hickernell, Ms. Hankins, Mr. Rudnick and Mrs. Rando.

Mrs. Rando: Will the clerk please read the petition in case no. 2017-04, 520 Main Street Realty Trust?

The clerk then read the Petition of 520 Main Street Realty Trust in an application to amend the prior ZBA Decision. The developer plans to renovate an existing two-story mixed-use building in a Residence B District, from six commercial units, twelve one bedroom units and eight studio units to six commercial units, fifteen two bedroom units and five one bedroom units. Location and Zoning District: 520 Main Street Realty Trust, Residence B Zoning District.

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

Michelle M. Baratta, The Beantown Companies, Inc. 138 Harvard Avenue, Allston, MA, came forward.

Ms. Baratta: I have the petitioner here with me and also the Architect, Joseph Walsh from O'Sullivan Architects, Reading, Ma.

Ms. Baratta: We were previously here a month ago. Do you want me to start from the beginning or can I jump in, I know we left with some information that we had to get and there were some revisions that we had to make on our petition and I am happy to jump right in with what we have done since we last saw you.

So one of the issues was legally as to what we are actually asking for. We did go back and look through the material that is a variance and not a special permit that we received. There isn't specifically a legal avenue for amending a variance. So in my materials, I left in the information for applying for a variance, however, all of our hardship still remains, so really we focussed more on the effect of granting what you might call an

amendment to the variance where what we are asking for is amend the plans that were attached to the variance to include our new revised plans.

We did go in and address the parking situation. I know that that was something that was brought up last time. I do have for you a brief.

So what we have done here (Ms. Baratta went over the plan showing where they moved the dumpster area, showing the thirty one parking spaces available, and the addition of a fence.)

We have also been able to getting the additional trash pickups that were requested by some of the neighbors. The plan is to add additional pickups, one per month or one additional every ten days in addition to what's already being done.

We were also asked about trees which we have also done. The neighbors are here as well and can speak to that and repairing the fence. That's some of the work that we have done since we have been here.

We feel that the movement of the dumpster will and the additional pickups will take care of any possible unsightliness especially if there's increased residents to the bed changes that we are proposing with the studio one bedroom units.

Mrs. Rando: Does anyone have any questions?

Mr. Sergi: So you added three additional parking spaces from 28 and increased it to 31. And the dumpster, the resolution there is to pick it up every ten days. It's being picked up, just remind me again. . .

Ms. Baratta: Every two weeks.

Mark Resnick, 138 Harvard Ave, Allston: So we are trying to increase the intensity and preferably what they wanted to do is they come on Mondays. So if we went Monday, Wednesday and Friday, we didn't think that would be necessary. What I am trying to arrange is where they come ... I flipped flop the weeks, I left three to four days between each one. Right now, they are coming once a week and twice a week would be too often. So I am trying to get them to come at one and a half times a week and once we have more tenants, we think we'll need at least twice a week but we won't know until they start to come.

So we moved it away from the neighbors' homes and we are going to put up a fence around it so you only can see it from the front because a truck has to be able to get access to it. But otherwise it will be enclosed and it's near no one else's house where before it was near the neighbor's back yards.

Mr. Sergi: It sounds like you need a bigger dumpster.

Mr. Resnick: The bigger ones are I think for quicker pickups. People tend to dump sometimes if you have big one. And so you get neighbors and people who will just throw a lot of stuff in there because if they come all the time, and also if it doesn't sit as long, especially in the summertime for odors.

Mr. Sergi: So you said the longest is four days?

Mr. Resnick: Until the new tenants come. That's what we are doing now and then I think we will need to go at least twice a week. Right now there really is about twenty people living there.

Mrs. Rando: I drove down there a couple of times into the parking lot and it was quite crowded. It's very, very hard to maneuver around there. I don't understand how you come up with that you had it for twenty parking spaces without people parking on Appleton Street, or Cross Street or even Central Street.

(Mr. Resnick went over the parking on the plan.)

I've never seen it all full. So we basically are going to line them and define them and number them and then rent them with the apartment. So currently not all the tenants even have cars. I don't know what you see because I only know as the owner but there's no intensity of parking issues. We have no tenants that can't park. We rent none of the spaces out. I have never seen a complaint that there wasn't a space in the entire condominium property even with the snow in the back. We purposely left a green area. I could put two more cars in but I felt that then I wouldn't have as much area for the snow and it wouldn't be as nice for the neighbors. So, you could squeeze two more in. I mean we could come back. We could if you wanted us to and install two more.

Ms. Hankins: What would you do with snow at that point?

Mr. Resnick: We are much more limited then. If it really got too crowded, I would have to take that out but we still added three and left plenty room for the snow. If you wanted me to add more parking it would start getting close and then snow issues for us.

Mrs. Rando: And if your tenants have visitors.

Mr. Resnick: Right now all the spaces are just open parking.

Mrs. Rando: You don't assign parking.

Mr. Resnick: Well, we would. We think we are going to have more parking than the people would need. We have more than one per unit.

Mrs. Rando: What you think and what might really happen could be two different things. You could have a tenant that has two cars.

Mr. Resnick: What happens is, if I only rent to one, first of all I have room for two cars. We have thirty one spaces in twenty apartments. I have enough parking for basically for every single two bed in there if we granted them to have two. This is a pretty urban location. We will not get two cars per unit on a two bedroom. We may get one or two. A couple could be living in a one bedroom and you could get two. But on a consistent basis you would not get two parking. I don't have a problem in any of my other properties here in Waltham and this has more than one parking per unit. It's over two to one per unit, or one and half I mean.

Ms. Baratta: It's also near public transportation. We anticipate that will also be utilized too.

Mrs. Rando: If I were renting one of those apartments, I don't think I would try to maneuver via that parking plan you have there. I would have looked for parking on the street.

Mr. Resnick: Everyone parks there now for the last thirty - - - How long has the variance been, forty or fifty years?

Mrs. Rando: And you can say that none of your tenants did park on the street?

Mr. Resnick: Oh, no. I'm sure people could park on the street but you would never want to park on the street if you have parking spaces right on the off street.

Mrs. Rando: Sure you do. It's quicker.

Mr. Resnick: These are set up like a motel. There's no main entrance to the residential. You'd never park on the street and then walk up to here when you can just pull right in and park in a secured parking area.

Mrs. Rando: Is there a way to get to the residential through the front door?

Mr. Resnick: No. You can go through. Like there's an opening during the day, possibly, but then you would still have to go back outside. You could go through the building and then go inside and back outside. Why would you go through the building and go inside and then back outside when you can just park in the back and go up the back stairs? The parking is back there and for safety on your car. There's always tenants there that are watching their vehicles. You really wouldn't want to park on the street. You would park in the parking lot and thirty one parking for twenty units is not really tight parking.

Mrs. Rando: Anyone else have any questions?

Mr. Rudnick: I would like to discuss how you are currently meeting the requirements of the 1964 variance on your property?

Ms. Baratta: So we have not built out at all, so in terms of - - -

Mr. Rudnick: My concern is actually that you meet the requirements. I don't really care if they were met five years ago, but you are asking us to amend a variance attesting that you meet all the requirements of the variance. So the variance required is that you not utilize more than forty percent of the lot area. And you seem to be telling us that you used thirty-four percent of the lot area. I might be wrong here. I'm reading this quickly but on

one of your documents, oh, it's right on that one (referring to the plan) in that little box down at the bottom there, what does it say about lot coverage?

Ms. Baratta read the contents listed on the box on the right hand side of the plan.

Mr. Rudnick: So you're building is out of compliance with your variance which allowed you to build a building up to thirty percent of the lot area of the lot. And you are giving testimony today that the existing building is thirty-four and change percent of the lot. So I'm not sure how much of a problem I think that is, but it's pretty clear that nobody took the variance that seriously at the beginning.

You're also required by variance to have cedar fences on both sides of the lot. Not that I really understand this exactly, but it says that "the same shall apply on the easterly and westerly side of the lot a cedar type fence shall be established and maintained and all parking on the petitioner's parcel shall be not less than ten feet from the easterly lot line. So you have a ten foot verge between your easterly lot line and the beginning of the parking spaces. There are parking spaces that go right up and nose in against the property line.

If this were to be granted, I don't really care if you have it, you need it. So you will need to establish that if we grant the variance here that you'll need those parking spaces if they aren't currently ten feet away from the property line. I think they were expecting a little landscaping but they didn't specify that specifically. But they did require the ten feet. So what you are doing here today, is requesting an amendment to this variance. You are certainly going to have to show us that you're living up to the requirements of the variance.

Mr. Resnick: Obviously this is pre-existing, so could we, or should we request a variance from that ten feet to fit the parking in better? Or is it better just to move the parking in as the original variance permitted?

Mr. Rudnick: I think you can resolve the parking problem if it exists because neither of us are asserting that we know whether it's ten feet or not by moving the parking spaces which brings you into conformance. I'm not sure it will knock off enough percentage of the building to comply there and of course to get control of the variance you can come and ask for another variance but you can't change this variance. You can't modify it. You can only amend it and add things like changing the plan, but the determinations that the variances apply like 30 percent, the conditions of the variance. we can't change those. You would have to apply again for a variance and you probably know that you can't apply to us for a variance because that's a use variance and you know the Board of Appeals is not allowed to grant those anymore.

So, I'm not sure where you would go with that. So you really want to work hard to make sure that you are living up to the original variance.

And there was one other element there. Oh, so when you move the parking spaces ten feet away from the property line, you create a strip or verge and that's to be landscaped according to the original. So maybe the fence is in the way and has to be moved, I don't know, a fence, ten feet of verge, landscape and then parking spaces on that side. It appears that they only were concerned about that side which means some the neighbors on that side came to the hearing in 1964.

I don't know what to do about the building being too big.

Mr. Hickernell: If I may, I don't think the building is any bigger. I think the lot is smaller. If you look at the original decision it had a lot area of some 32,000 sq. ft., and that plan seems to have reduced it to 29,000. Read the box exactly.

Ms. Baratta: 29,806.

Mr. Hickernell: So they lost 3,000 sq. ft. somewhere on the line changing the lot coverage. There's no record that anything has been sold off of the lot but it's obviously a substantially different survey. I did the math here and that's the difference. I'm not quite sure what to do with that at this point.

Mr. Rudnick: Do you concur with Mr. Hickernell that there have been no subdivisions of the lot as far as you know?

Ms. Baratta: No, I printed actually all the deeds and I didn't see anything.

Mrs. Rando: Is there anything else you want to add?

Ms. Baratta: Not at this time.

Mrs. Rando: Is there anyone in the audience that would like to come up and speak in favor? Seeing none. Is there anyone seeking information? Seeing none. Is there anyone in opposition?

Susan Grubbs, 25 Cross Street, Waltham: My property borders 520 Main Street. When we were here last time, we talked about the trees which they took down my tree, thank you very much. So we feel much safer in the backyard.

The dumpster has not been moved and I have pictures, I'm sorry I didn't make multiple copies of the fence.

Mr. Sergi: This is current?

Ms. Grubbs: The other day. My concern especially with the fence, the gaps, the parking, exhausts coming through and granted it's going to go through a wooden fence anyway but not underneath and not with big spaces and it's really an eyesore from my back yard and pretty much the fence and the dumpster. It does seem that it's not as full. I'm not sure why. I thought it was being emptied more often. It has not been as full as it was prior to our last meeting. But the parking we are little bit concerned and maintaining the property itself. We're concerned with the fences. The fence across the way I believe is metal and the one along the back, it's damaged. I'm not sure it belongs to 520 Main Street. It may belong to another property. I don't know. Those were our concerns.

Mrs. Rando: Do you have any cars parked on Cross Street?

Ms. Grubbs: I do. We have one driveway.

Mr. Hickernell: I'm actually curious if you park there.

Ms. Grubbs: We do park out front if we can get it. My brother is disabled. I don't believe anybody currently there. It's really not full to capacity. And it appears that there are more cars parked there during the day in that parking lot then there is at night. Because we went there the last time after our session here and there weren't that many cars there. So there seems to be more there during the day. So maybe the commercial people park there during the daytime. But in the evening there weren't that many cars. But if they open up spaces up against our property, that I was just a bit concerned about. Thank you.

Joanne Richards, 25 Cross Street, Waltham: I have a question on the east parking. Where would it be over here (referring to the plan)?

The owner went over the plan with Ms. Richards.

Mr. Rudnick: Do you know that the fence is on the property line?

Ms. Richards: As far as we know it's on the property line. You must have had it surveyed or something. That fence has always been there.

Mr. Rudnick: If that's the case, then we will require and I'm sure they will agree to put a ten foot boulder there.

Ms. Richards: That's the only question that I have.

Michael Falkoff, 22 Appleton Street, Waltham went came forward and went over the plan showing the location of his property where it abuts 520 Main Street.

Mr. Falkoff: The parking lot is sort of wide open to a bunch of resident's backyards. They propose moving the dumpster from here (referring to the plan) which is the wire fence which borders the parking lot of the housing thing on Central Street. So they just moved the dumpster right here which is my side yard which is sort of not landscaped but it's not black topped either.

If you recall at the last meeting, one of the neighbors had complaints about the dumpster being always open. Usually overfilled and sort of low income housing for rats. I think they put up one or two more rat traps recently and I haven't seen any rats. It's not high season for that but what they were saying about situating the dumpster, so it's not near housing, it's not near your house instead, it's right at my back yard with no fence at all there. The fence is right between my garage and the parking lot and then there's about twenty feet of just my land with no fence where tenants for the last twenty five years that have been there sometimes drive right over the lawn, or screech the brakes on and park there or drive through a cast iron garden bench that I had out there. So traffic out there is

somewhat uncontrolled and this rosy picture about not needing parking spaces and having plenty of room is a stretch, I believe.

(Mr. Falkoff went over the plan again with the board.) So it's not really as spacious as the lawyer has presented.)

For the last month or so, I guess its been two or three weeks since the last hearing, there have been days where I can't get a parking space at all on Appleton Street. This is my garage here, (referring to the plan) but it collapsed, but I haven't been able to get it rebuilt yet because I need to get a permit and I gave a contractor a \$5,000 deposit but he did nothing for a year so I was sort of led down a long road. So I can park in the evening when I get back from work usually on the street and I can park in this stretch before the twenty foot passage because that's my land going up to the garage.

Mr. Hickernell: When you have company do they park on Appleton or the municipal garage.

Mr. Falkoff: I tend not to have company now. I used to but I'm seventy-one so I don't need as much.

So getting on to snow, over the years there have been a few odd problems like the snow plower trimming the tail lights off my car parked in the driveway. (Mr. Falkoff went over the plan with the board to show where his car would get damaged.)

There was one time when the snow plow bashed in the cellar window. For a week I was really afraid that a homeless person busted through and fallen down. I didn't want to go in the cellar. This last winter, one time I went out and the snow plow guy was driving his Ford F350 straight along this stretch here (referring to the plan) and piling the snow eight feet tall, twenty feet deep against my garage door. There really isn't a place to put snow.

So snow may be a problem and certainly was a problem this last winter when they piled it basically on my land here next to the garage. But clearing snow is a problem there and they don't shovel it out or move it out. They just push it up against the back where all these proposed parking spaces are.

So, I just want to correct the parities of the view of the plan with the view of the neighbor who has to live with it every day for the last twenty five years.

Now, it's not perpetually problems. Snow clearance certainly is a problem. Certainly having a snow plow push it up against my garage door. That's a real problem not being able to get into my car for two weeks once in the 1990's and not being able to get into the garage for a week this last winter. But as I said my garage roof fell down so I couldn't get into it, so I didn't suffer real damage. It's just the insult of being used as a dumping ground.

Mrs. Rando: So, did you mention it to the owner?

Mr. Falkoff: I mentioned it two or three times to the previous owner.

Mrs. Rando: You haven't had a problem with this owner?

Mr. Falkoff: Yes, this past winter. I had a problem with snow plow going straight down here and slamming into the garage.

Mrs. Rando: Did you inform him?

Mr. Falkoff : I had no idea how to reach him or where to reach him. But anyhow I just wanted to correct that rosy view that you have, the adequacy of parking and nicely how things are arranged.

So that's it. I don't have any objections, but I do think I want the trash barrel right here where there's not even a fence and it's right up against my yard (referring to the plan).

Mr. Hickernell: Would a fence there solve the problem of the cut through as well as you seeing the dumpster quite as much?

Mr. Falkoff: Well I don't think a stockade fence would solve any problem.

Mr. Sergi: So half wall and half fence?

Mr. Rudnick: What would you propose that the landlord do to address the concerns here which all seem to be concerns that are current.

Mr. Falkoff: I was actually surprised to get the postcard about this and I was shocked that nobody had ever spoken to me. So I had no idea what was going on.

Mr. Rudnick: My question was, do you have any suggestions about how the landlord or property owner can make better the concerns that you are expressing tonight?

Mr. Falkoff: A fieldstone wall that weighs many tons the way the neighbor at 16 Appleton, I'm 22 has. That's the other side of the passage. 520 and I are the only people that have any rights in that passage and I use it typically for car and for bicycles to get to the garage. But the notion of having thirty cars use it in a very unstructured fashion in short-term single room or double room dwelling units is a little bit overwhelming and I'm not quite sure how you would address that. I would think that's more in your ballpark

about how much parking is necessary and what constraints there are on traffic going in and out.

Mr. Rudnick: You have specific concerns about the location of the dumpster. They propose a new location of the dumpster and incursions by the snow plowers as well as the drivers not properly identifying the edge of the driveway.

Mr. Falkoff: Yes, incursions by snow plowers have been a real ongoing thing, not all the time but two or three times a year, every year for twenty years. They are not given any instructions about whose property it is and what they should do with extra snow.

Mr. Rudnick: You gave testimony at the last hearing that this driveway belonged to you and that the property owners here had an easement - - -

Mr. Falkoff: That was a misimpression. It's a 20 foot wide passage. They don't own it. They have a right to use the twenty foot wide passage. My land goes up here and I have a right to use the passage.

Mr. Rudnick: So you any sense that you own the driveway is what you're saying is incorrect.

Mr. Falkoff: Yes, that's incorrect. I didn't own the driveway. I have been told I own up about seven feet out and then there's a twelve foot passage way. That was from a surveyor that had been looking at it.

Mr. Rudnick: Ownership of the driveway is no longer an issue.

Mr. Falkoff: No that's not an issue. It's just co-use of it, his thirty-one cars and my bicycle. My impression was when that passage way was set up, one person owned the lots

with various church things behind it. It was set up so that there would be access to things that were actually located back in here. Now there's no buildings back there and stuff like that.

One thing that should be considered is that the big dump truck comes in to empty. I'm not sure it will be able to do very well coming into this 20 foot passage and turning around and backing up here.

Mr. Hickernell: I feel confident that the petitioner will arrange for the drivers to remove somehow. I guess we will hear from him shortly what his plan is for that, given your concern.

Anyone else in favor?

Thomas Geary, 16 Banks Street, Waltham: I have been a lifelong Waltham resident. I am a member of the Carpenter's Union Local 275, which represents Waltham.

Mr. Resnick has informed us that he would like to work with us and use one of our responsible contractors who will make sure area standards are upheld for the people working on the job and it will also employ local residents and I believe that from being here the last two times that Mr. Resnick has shown his sympathy to the neighbors as well and seems to be working with the neighbors to the capacity that he can and I think this renovation will bring life to a kind of tired old building there on Main Street and I think it will be overall a good project for the neighborhood.

Mrs Rando: What is the wish of the board?

Mr. Hickernell: Can we hear from the Petitioner?

Mr. Resnick: This is going to be where the dumpster is, so the truck would not be coming around. He would be just pulling in and pulling out and we are proposing to put a fence around it. It needs to be big enough to get that truck in there and that's one of the main reasons we are not getting a bigger dumpster because there would be a much bigger truck. This will be maybe an eight yard dumpster. It's not a very large dumpster. And that's why I think it was overfilling before. So then we increased the pickups and then that problem went away, but we still will have more pick ups since we have more people there. By keeping it small it keeps the size of the truck down.

I'm sorry sir, I'd like to apologize for the snow plow. I see what you mean. (Mr. Resnick went over the plan with the board and Mr. Falkoff to show where the fence would be.) We didn't move the dumpster because I didn't think we had permission to move the dumpster so I increased the pickups but I didn't want to put it next to this gentleman's yard without someone giving me a thumbs up on that.

Also, now that we have a huge ten foot space along the fence, we'll have plenty room for snow because we have ten feet running the entire length. So now I don't think snow will be near the same problem because we don't have to pile it up any more.

We haven't done much with this property because we couldn't get any permits because of the the way the apartments are in. We were waiting to propose and do all this. The front of the building looks excellent. The dentist put his own sculpture out there. It's very nice. But the back is very, very tired.

Mr. Rudnick: What is between the building the the property line on the east side?

Mr. Resnick: There's currently an undersized sort of a boardwalk like a deck that's the second means of egress illegally from all the second floor units. It's too skinny to be legal. So that will be eliminated.

Mr. Rudnick: Is it obsolete now?

Mr. Resnick: It is the current second egress. But it's not a sprinklered building like that, so once the building is sprinklered a lot of the other issues- -

Mr. Rudnick: Does the fence exist along that length as well?

Mr. Resnick: I'm not sure what's in there, but it's all real dingy and so we would be ripping out all the fence and putting a new fence around our property, basically the entire perimeter back there.

Mr. Rudnick: So you won't mind if that is a condition?

Mr. Resnick: No, we would do that. This is such an extensive project you wouldn't really leave anything that looked old after doing all this. So we probably would put up the new fence at the property line to give us the ten feet on the inside. We could do it the other way too and put five feet on the land on our side and leave the fence where it is as long as you are satisfied with that's ten feet from the lot line. We'd still be ten feet from the lot line.

Mr. Falkoff: My concern is still about moving the dumpster from the back against an old parking lot and maybe 20 feet from your house to right against my back yard. There is currently no fence or wall or anything else. Is there any alternate place that you could put it that would be accessible to the truck that empties there and, if not, would you be able to put like a stone wall that's eight feet tall over that stretch to make sure that I don't have to deal with the dumpster or any of that stuff.

Mr. Resnick: I think an eight foot wall, I'm not sure it would be sturdy but we could put up a stone wall that's four feet high and run the fence inside it so you'll see the

stone wall and the dumpster would just see a fence that is eight feet tall. (Mr. Resnick went over the plan with Mr. Falkoff.)

Mr. Hickernell: Sir, can you return to the microphone so that I can capture what you, it sounds like you agreed to do along the property line and around the dumpster next to this neighbor?

Mr. Resnick: So his yard - - -

Mr. Hickernell: Is that 22 Cross Street?

Ms. Baratta: Appleton Street.

Mr. Resnick: We would put a small stone wall, let's say approximately four feet high, so it would block people from driving through it and then we'll wrap the dumpster in a fence and then we will actually continue this so this line will run straight all the way to the back of our property as a cedar fence because that's, we are already obligated to have a cedar fence there and then this cedar fence (referring to the plan) will be replaced running all the way down our property line and so then we will pull the parking back ten feet from the lot line and that will be a place to keep snow and still leave these two spaces open (Mr. Resnick went over the plan.)

Mr. Rudnick: We'll probably be moving toward a condition that the six foot cedar fence be put up on the entire perimeter of the property other than the Main Street side of the property. Whether that was the exact intention of the board or not, you're going to please your neighbors. The poor maintenance of the fence very clearly seems to be at the bottom of why a lot of people are aggravated about this property. And perhaps you were aware of it, perhaps you were not aware of it, but you're in a single family zone here.

Mr. Resnick: That's why we are trying to clean the place up.

Mr. Rudnick: Nobody else has a dumpster in this neighborhood so that's why these concerns are particularly important to your property. I think that the 1964 Zoning Board saw that and made an effort to make some, I think some very reasonable conditions that unfortunately you are failing to maintain. So we are going to be looking for you that you own these fences and then maintain them.

Mrs. Rando: We'd like to see that as a condition.

Mr. Rudnick: I think Waltham only allows a six foot fence.

Mr. Hickernell: How far is that stone wall with the fence inside it going to extend? I don't want to make it a condition all along the property line if that's what you meant.

Mr. Resnick went over the plan to show where the fence would be.

Mr. Hickernell: So basically the section of the fence that encloses the dumpster?

Mr. Resnick: Correct. And I would put the fence inside the stone wall so that he can see the nice stone wall.

Mr. Hickernell: The driver could see it too.

Mr. Rudnick: At this particular location, a stone wall on Mr. Falkoff's side of your cedar fence and on the other side of your cedar fence, you are also going to have an enclosure around your dumpster.

Mr. Resnick: Correct. (Mr. Resnick went over the plan to show where the fence will be.)

Mr. Rudnick: Understand that we are trying to get these fairly exact so that you don't have to redraw these plans and come back to us again.

Mr. Hickernell: Now, what are you proposing and you have already done this to some extent, what's the minimum that you are proposing to empty the dumpsters?

Mr. Resnick: So we are doing it like one and a half times now but we think we need to do it at least twice per week but more if it turned out to be busier.

Mr. Hickernell: So what are you comfortable with as a legal condition of no less than twice a week.

Mr. Resnick: Twice a week, sure.

Mrs. Rando: Sir, it is your responsibility to maintain the fence, the wall and the snow.

Mr. Rudnick: The original plan of the parking lot showed angled parking spaces for all of the parking spaces. I don't really care but you need to affirm that's a change from the original plans because you have head in parking, right?

(Mr. Resnick went over the parking on the plan.)

Mr. Rudnick: Are you saying the original lining was angled?

Mr. Hickernell: The original parking is angled.

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

Mr. Resnick: That was in error. They are all straight in along the front face of this wall.

Mr. Rudnick: Again I think we just want to condition it that we're changing it to this layout on this plan.

The plan is part of the variance, I guess that takes care of that. But my concern is that it's different the the original plan.

Mr. Hickernell: So what if we change condition 2, In accordance with the plan submitted to the extent that they vary from the plans submitted in the 1964 petition.

Mrs. Rando: What is the wish of the board. Should we continue with the Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Ms. Hankins the board voted to waive the reading of the Proposed Findings of Fact since it has been on file in the Law Department.

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

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

On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.

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

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

Mr. Hickernell: I would like to make an amendment to the Proposed Findings of Fact which I circulated but I will read into the record.

Amendments to the Proposed Findings of Fact:

Add to Proposed Findings of Fact 10:

h. The survey of the lot at the time of the 1964 variance showed a lot area of 32,140 square feet, whereas the current survey shows a lot area of 29,806 sq. ft. The record does not show that any part of the lot was devised since 1964, nor has the structure been enlarged. Accordingly, the prior 30% area limitation appears to be a scrivener's error. No change to the 1964 lot area or actual percentage of lot coverage existing in 1964 is contemplated or permitted by this petition.

Mrs. Rando: Do I have a motion on that?

Mr. Hickernell: I will make a motion that the Proposed Findings of Fact, as amended, be adopted by the board.

Mr. Sergi seconded the motion.

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

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

Mr. Hickernell: I have a number of amendments to propose for that.

Amendments to the Proposed Decision:

Conditions:

No. 2 should read: All construction and use of the premises shall be in substantial accordance with the plans submitted to the Building Department as part of the Petitioner's application and presented to the Board of Appeals during the hearing to the extent they vary from the plans submitted with the 1964 petition, which shall otherwise apply.

3. The Petitioner shall maintain no more than two dumpsters at the property, keep them enclosed and shall increase trips to empty the dumpster(s) to no less often two times a week.

4. The petitioner shall surround the dumpster with a fence, which shall include a stonewall no higher than four feet high along the border with 22 Appleton Street as far as the dumpster extends.

5. Petitioner shall conform to the ten foot setbacks required by the ordinance between the parking area and easterly lot lines.

6. Cedar Fence six feet high shall surround the property and be well maintained by the petitioner on all sides of the property except the Main Street boundary and driveways.

7. Property manager shall send out contact information to all the abutting properties and invite the abutters to speak directly with management every two years so that any concerns can be addressed promptly.

Mr. Rudnick: So we are just left with the part about the Affordable Housing. Obviously we can't require you to do anything like that here. This is one of the largest residential properties in Waltham and it does not come under our Affordable Housing Ordinance, and strictly by virtue of the gift given to this property in 1964. So the requirement would be that it would be a percentage of your units be rented to qualifying low income families at qualifying rents and these are all targeted at eighty percent of median families. It's ten percent. So that would be two.

Mr. Resnick: I would certainly provide one.

That would be wonderful! Could we make that a condition?

Mr. Resnick: Absolutely. So the condition is that:

8. The owner of property will voluntarily comply with Section 9 of the ordinances and since it is voluntary, the owner has offered one unit at the development to be rented to an 80% of a median family at rent affordable to that group.

Mrs. Rando: Are there any other changes or additions? All right, do I have a motion on the Decision as Amended?

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adopt the decision, as amended, to be the board's decision.

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

Mrs. Rando: I would like a motion that the board signed an extension of time on Case 2017-04 and that is 520 Main Street Realty Trust. So every board member has signed and that gives us more time on this case.

On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted and signed and extension of time to act on Case No. 2017-04 to June 20, 2017.

Mrs. Rando: Will the clerk please read the petition in Case No. 2017?

The clerk then read the Petition of William Tuccero, Owner: Mary Nancy Tuccero, Trustee of Chat-Toc trust in an application for a social permit to allow for the enlargement in use to an extent not exceeding ten percent of ground floor area of the building. Location and Zoning District: 245-251 Charles Street; Residence B Zoning District.

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

Bret Francis, Esquire, Scafidi Juliano, LLP, 10 Hammer Street, Waltham, MA. came forward. He presented to each member of copy of his brief.

Mr. Francis: I am here on behalf of William Tuccero who is the sole beneficiary of the Chat-Toc Trust and owner of the pre-existing nonconforming eight unit residence located at 245-251.

(Mr. Francis then read his brief into the record.)

Mrs. Rando: When was this house built?

Mr. Francis: In 1936. (Mr. Francis read from the building card which he submitted to the board.)

So when it was built that was before zoning.

Does anyone have any questions at this time?

Mr. Rudnick: Can you describe all the changes that were made to the outside of the building?

Mr. Francis: None.

Mrs. Rando: There are eight units now?

Mr. Francis: Correct. Each one story. Four on the first floor and four right directly above them and then attic space on the third floor, vacant.

Mrs. Rando: Right now, you have someone on the first floor and then the second floor.?

Mr. Francis: Correct.

Mrs. Rando: Then what are the two little rooms in the back, like little houses in the back?

William Tuccero, 176 Prospect Hill Road, Waltham: Those little extensions in the back are kitchens which were provided for the original four family units because they're only one story. They're not two stories and they just had kitchens there and there was a dining room, living room and then, the second floor were two bedrooms or two and a half bedrooms depending on which unit you went in and then there was attic space on the third floor. That was from the original plan as a four family. Then it was converted into an eight family way back and the kitchens remained kitchens on the first level. One of the bedrooms was converted into a kitchen and the other room was more or less like a studio, it was a combination living room/bedroom. That's what's there now.

Mrs. Rando: I made a site view this afternoon and there was an awful lot of clutter and broken chairs and barrels and gasoline containers there.

Mr. Francis: I would say that he's done some exterior work, siding, and that may be left over from the contractors. But he's sided the entire thing. I think he's wrapped aluminum around the windows. So he's done work to the outside, not anything to do related to this.

Mrs. Rando: I'm talking about even to the side of the house there's a grass area.

Mr. Tuccero: That's where we keep the rubbish.

Mrs. Rando: So these kitchen that you say were built after the house was built?

Mr. Tuccero: No, no. That was the original plan of the structure, the kitchens.

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

Mr. Francis: They are only one floor.

The first floor units will be remaining the same as a result of this. It's the second floor that are going to be getting rid of, the half bedroom/half living room to a full living room and the bedroom in the attic.

Mrs. Rando: When I drove in, I couldn't go out the other side.

Mr. Tuccero: You can't do that.

Mrs. Rando: No, because there was a trailer parked there.

Mr. Tuccero: You wouldn't be able to make the swing there anyway, because that driveway was made - I used to live there when I first got married and I wanted my own special driveway, so I did that work way back and it was kept just for a driveway and the present use of it is everybody that has more than one vehicle. That's where they park so they can piggy back.

Mr. Francis: Again, we are not adding any further bedrooms, so nothing would change from the grant of this special permit.

Mrs. Rando: Does anyone have any questions?

Mr. Rudnick: The change is just to this one side.

Mr. Francis: Correct.

Mr. Rudnick: So what's up there now?

Mr. Francis: Just on the third floor?

Mr. Rudnick: The top floor in the attic. It has windows on it and everything. It's not a living space area?

Mr. Francis: No, it's not a living space.

Mrs. Rando: It just seems like a very, very crowded area. I have never been down that road. If you don't take the driveway that you have blocked and the driveway next to it, there's rattach lots with apartments. Its very very interesting.

Mr. Francis: And that's why we were sure in discussions that we weren't adding any additional bedrooms and that was the main point. You can't have another bedroom with the existing situation that's there. This is just making it a little bit better. A little bit more normal of a space. It gives them a little separation from their bedroom from their kitchen, bathroom, living area. It just pushed their bedroom up the stairs. That's all it does. It doesn't add any further vehicles, traffic or what have you.

Mrs. Rando: I also saw nine meters outside. Why would there be nine meters?

Mr. Rudnick: They're common meters.

Mrs. Rando: I have one other question, 3.7222. We always granted it and then at the last meeting, I think it was Mr. McCarthy said at the time of the provision of that article and how do you feel about that prior to 1970?

Mr. Francis: Are you referring to the fact that before it gives you ten percent choice of the building and or the land? Well we went by the most restricted. We went by the ground floor of the building. I did not make that mistake twice.

Mrs. Rando: That would be the wise way to go.

Mr. Francis: Correct and that's why it's 9.9. There's more room up there to make the addition larger but to do it under this venue, this route, this vehicle, this is the route we chose. I suppose we could be here for variances to get this additional space back here but this was designed 9.9%, not adding any intensification . All we are doing is moving a bedroom to the third floor.

Mrs. Rando: And how many more parking spaces do you need?

Mr. Francis: Zero. It's a nonconforming pre-existing use. We are not any other units. We are not adding any bedrooms. Nothing will change.

Mrs. Rando: All right. Any other questions?

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

(Two people raised their hands in favor.)

Mrs. Rando: You may continue with your Proposed Findings of Fact.

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

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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. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.

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

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

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

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

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

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

Mrs. Rando: One more motion is in order.

**On motion of Mr. Sergi, seconded by Ms. Hickernell, the board voted to adjourn at
9 P.M.**

Barbara Rando, Chair
5/16/17