

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

May 16, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, May 16, 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 Glenna Gelineau, Sarah Hankins, Mark Hickernell, Edward McCarthy and John Sergi.

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

Mrs. Rando: Tonight we have one new case and one continued case: Case 2017-10, Charles Mantenuto, 23-25 Hastings Ave., Lot on Tudor Street, f/k/a Lot No. 363 and that's for variances; Case No. 2017-14 which is a new case, Timothy and Sara Wondolowski, 24 Bowker Road, for variances.

The first action this evening is for a motion to accept the minutes of May 9, 2017.

On motion of Ms. Hankins, seconded by Ms. Gelineau, the board voted to accept the minutes of May 9, 2017.

Mrs. Rando: Will the clerk please read the petition in Case No. 2017-10, Charles Mantenuto.

The clerk then read the Petition of Charles Mantenuto, Trustee of 23-25 Hastings Ave. Trust in an application for variances to allow for the proposed construction of a single family house on a lot with 9,020 square feet, similar in shape and area to each lot in the

neighborhood. Location and Zoning District: Parcel of land f/k/a Lot No. 363 on Plan of Glen Meadow Park West dated June 1952; Residence A-3 Zoning District.

The members sitting on this case were Mr. McCarthy, Mr. Hickernell, Ms. Gelineau; Ms. Hankins and Mrs. Rando.

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

Philip B. McCourt, Jr., 15 Church Street, Waltham, the Petitioner's representative, came forward. He presented each member with a copy of his brief and went over the plan showing the locus with the board along with reading his brief into the record.

Mr. McCourt also submitted a list of abutters who signed in favor of this petition.

Mrs. Rando: Are there abutters here?

Mr. McCourt: One abutter on one side and a fellow on the other side. These are the immediate abutters.

Mrs. Rando: What about the people down the street?

Mr. McCourt: Yes, I think they are all there too.

Mrs. Rando: What about the people behind?

Mr. McCourt submitted a sheet showing the abutters noted in yellow that are the people who signed in favor.

So, I think that because of the uniqueness of fact that the original lot subdivision and the fact that there was no plan that separated this lot that it got restored by ownership and deed to the original lot, the subdivision plan the 9020 vs. the 9600 now. Out of thirty eight lots shown on the lot, thirty four are all of this size, there might be a few differences of size only because of the configuration of the lot. Only a few are above the 9600 that would meet today's standard and it would definitely improve the neighborhood and allow another single family house there, reduce the ledge and update the existing conditions.

Ms. Gelineau: Do you feel that if there had been an approved plan that you couldn't do it?

Mr. McCourt: No, I'm not saying that but I think that the board could look at it differently that there was more of an intent than just someone saying, a developing saying, I'll deed you half.

Ms. Gelineau: They would change the plan.

Mr. McCourt: Right. And, as in an old lot decision, the key factor and we don't need an old lot opinion but one of the key factors would be if you had a plan and changed it that would take it off the ability - - - Up here you don't really need a whole lot because the building department recognizes that these lots were validly laid out and built upon at the 9,020.

When the city did the street in the 70's, they wanted to stub off the sewer and the water so it didn't have to be disrupted and they treated it like a lot. It is a lot!

Mr. McCarthy: Do you know what year they had done the six hundred feet?

Mr. McCourt: The same year as this subdivision plan. So in May it was 9020 and in December when they asked that it would be a more comprehensive thing they bumped it up at 580 sq. ft.

Mr. McCarthy: Do you have any idea how many homes were built after the 9020.

Mr. McCourt: Oh, all of this because there was only a few months because this subdivision was only made in May, but it was a valid subdivision and recorded which every house was built after it became 96 but the subdivision and you get a seven year life on the subdivision, so it was valid even from the beginning.

Mrs. Rando: Are there any questions from the board?

Hearing none, is there anyone in the audience that is in favor of the petition?

(Eight people raised their hands in favor.)

Mrs. Rando: 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 Ms. Hankins, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact since it has been on file in the law department.

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

On motion of Ms. Hankins, 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: I am ready to entertain a motion on the Proposed Findings of Fact.

On motion of Mr. McCarthy, seconded by Ms. Hankins, the board voted to adopt the Proposed Findings of Fact as the board's findings .

Roll Call: Mr. McCarthy, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

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

On motion of Mr. McCarthy, seconded by Ms. Hankins, the board voted to adopt the Proposed Decision as the Board's decision.

Roll Call: Mr. McCarthy, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

Mrs. Rando called for a two minute recess at 7:25 P. M.

The board reconvened at 7:28 P.M.

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

Would the clerk please read the petition in Case No. 2017-14?

The clerk then read the Petition of Timothy and Sara Wondolowski in an application for variances - side yard setback. The locus consists of a parcel of land with an existing single family residence thereon. The Petitioners propose to construct use and

maintain a two story addition onto the residence. Location and Zoning District: 27 Bowker Road, Residence A-4 District.

Mrs. Rando: May we hear from the Petitioner or the Petitioners representative, please?

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

Mr. Connors: I am joined with my clients Tim and Sara Wondolowski here in the second row and I do have a copy of a printed brief for each member.

Mr. Connors then read his brief into the record and went over the plans, photos of the proposed addition and his exhibits with the board.

Mrs. Rando: Do you have anything that show it was built in 1923?

Mr. Connors: The lot was created in 1923. Exhibit A is my Warrendale Subdivision Plan in the brief. So Exhibit A in my brief is the creation of the lot.

Mrs. Rando: What district is it in?

Mr. Connors: Residence A District. They didn't have A-1, A-2, A-3 and A-4. They had Residence A and Residence B. I have actually attached a copy of the 1925 Zoning Ordinance. And this tells you what the rules were in 1936 because they haven't changed it since 1936. You had to be five feet on one side and eleven on the other. My thinking is they probably intended to build a five feet and an eleven feet and now the surveyors are more precise. But now the survey comes down and says the foundation may be five feet but the siding is 4.05 because the siding now extends into the side yard setback.

Mrs. Rando: Did they get a variance to build the garage?

Mr. Connors: No. In 1936 a building permit was issued so they could build a garage and it's right on my street card in Exhibit B.

Mrs. Rando: Why did they get the permit to build the garage if - - -

Mr. Connors: Well at the time, so if you see on Exhibit B, Gertrude Ames in July of 1936, gets the permit to build a house. A month later she comes back and gets the permit to build the garage. So my thinking is that they intended to build it eleven feet from this to have an eleven foot sideyard. Instead they miscalculated by less than half a foot. They built it 10.58 feet from the side lot line. So if we were five and eleven, we would be subject to an old lot status and we can certainly build up. We wouldn't have a problem at all. But, unfortunately we are at 4.05 and 10.58.

(Mr. Connors went over the footprint of the proposed addition.)

We believe that that's an improvement to this particular neighborhood. They've done a nice job with the architect coming up with a rendering that looks like they spent a lot of thought and time of how they wanted to do it. I think they have come up with a pretty good looking house. They are a young family. They have been in this property since 2006. They want to remain in the City of Waltham and this will allow them to do so.

So, therefore, we believe we have met the three requirements under the statute for the unique circumstances, the hardship, and that we are not creating a substantial detriment to the public good. So we think its an improvement to this particular house in this particular neighborhood and, therefore, a benefit to the neighborhood.

Tim did go around and speak to some of his neighbors and he has signatures. I think he spoke to all of the abutters.

(Mr. Connors submitted a copy of the list of abutters who are in favor.)

Mrs. Rando: Mr. Connors, you say that it was built in 1936 and you stated here in your brief that in 1942 it does not meet the requirements of 4.2181 and the house is built by a variance. Correct?

Mr. Connors: No, it was a by right build in 36. So, in 1936, I couldn't get the applications. They don't have it. All we know is on the street card a permit was issued in 1936. So I spoke with the building department and the zoning ordinance then was in effect in 36 since 1925.

So the only way they could have built the home, it says on Residence A-2 Districts and it says the same thing that we have in the old lot exceptions under the zoning ordinance today. If you have a two story building, you need a combined sixteen feet of side yard setbacks and nothing less than five. So in 1936, they must of went into the building department and said we are going to build a house five feet from this lot line and eleven feet from that lot line and he simply went over the lot. But now he's stuck with the house that's been there since 36, so, and it's not practical to really kind of cure that.

Mrs. Rando: Are you trying to decide that it is nonconforming house or if it's noncomplying. If it was built in 1936 and it does not conform to the zoning in that time, and was built by right then the only reason it came out of compliance would have been when they built the garage. Correct?

Mr. Connors: Right, but they built the garage a month after they pulled the permit to build the house but the garage is what put him over the eleven foot setback.

Mr. Hickernell: It didn't put him over the five foot setback, that's the other side of the house.

Mr. Connors: That is correct.

Mrs. Rando: Right, but it changed the house, just the change alone brought it out of conformance. Correct?

Mr. Hickernell: No, its already out of compliance.

Mrs. Rando: The building is a lawful nonconforming structure. The board must determine whether the building was constructed at the time when it complied with the provisions of zoning ordinance, and it didn't.

Mr. Connors: Well I think that they represented that it did in 1936 but the difference between nonconforming and noncomplying - - -

Mrs. Rando: It didn't in 1936. It didn't comply.

Mr. Connors: I think there's an argument to say they simply measured it differently. There's nothing in the zoning book that tells me how do I determine the setback. Is it a measurement from the foundation or is it a measurement from the side wall which is the siding that's been added to the house over the years. I don't know how many times they've added. So Mr. Bibbo measured it from the siding. Maybe in 1936, he measured it from the foundation and they issued a permit. But I will agree with you that today Mr. Bibbo measured is 4.05 on one side and 10.58 on the other. But it's not a noncomplying house even if it was built arguably in violation because that particular statute was amended to say that even if it's noncomplying and more than ten years have

gone by it's now considered nonconforming. That was an amendment to the Mass General Laws last year, August of 2016. So this house has been there since 1936. Nobody's gone after it. They are not asking him to move it. This will cure that side yard setback over here (referring to the plan). It won't cure the other side but I would say that the statute itself which was amended to state that if a noncomplying structure has been existence for more than ten years we now consider it nonconforming which makes it legal. I mean I think that's part of an academic argument because that had to do with the other side of the house. We're not even building over there. We are building over here (referring to the plan) and the variance will any issues with the side yard set back. It's a narrow lot. The structure, I think, simply doesn't lend itself to an addition in the back. It's got almost eighty-three feet of rear yard.

Mrs. Rando: It's a beautiful house and I would like to see the addition but I want to do it the right way and I want to make sure that it is not noncomplying.

Mr. Connors: We have an old lot opinion that says its eligible for it but Patrick Powell said, well, it's four feet this way so the only way to come up with a solution is to get a variance under today's zoning permit which is fifteen feet. So, that's why we are here. My analogy to say that all these other houses that are on these small lots they were built five and eleven. We don't have the benefit of that because of what they did in 36.

Mrs. Rando: Because if it was noncomplying he would have no way to do anything unless it conformed to today's zoning.

Mr. Connors: Right. I would say that now that the statute states that if its more than ten years old, it's nonconforming, then I could come in under Section 3.7222 and say I'm going to alter or amend the noncomplying house. But I'm not because I'm curing it with the side yard variance. This is the direction that Inspector Powell sent us into. He did issue an old lot opinion and he said its eligible but you're four feet from the side yard it's

not going to really help you. So the only way to cure it is to get a variance under the current zoning code.

Mrs. Rando: I was not aware of the 2016.

Mr. Connors: It just came out. I did some research on it actually. I went to a seminar, that's why I learned about it. There's another case that I was doing research on and I will be in front of the board in a month or two where that is critical.

Mrs. Rando: Are there any questions?

Mr. Hickernell: You said the petitioners have lived there since 2006.

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

Is there anyone in the audience that is in favor? (Three 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 Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact since it has been on file in the Law Department.

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

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

Mr. Connors: Madam Chair, I do have a small revision to the Proposed Decision that I want to submit to the board.

I've added this last paragraph because this rendering shows it is kind of a greenhouse and I don't want the building department tell me that we have to paint it green, so I have added to condition B:

The color of the residence as depicted on the rendering is not a condition of this approval, and only the interior floor plan of the proposed addition is conditioned herein. The Petitioner may modify the floor plan of the existing home as desired.

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

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Findings of Fact as the Board's Findings if Fact.

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

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

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Decision as amended to be the board's Decision.

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

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board vote do adjourn at 8 P.M.

Barbara Rando 5/23/17