

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

May 22, 2018

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, May 22, 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, Sarah Hankins, Mark Hickernell and John Sergi.

Mrs. Rando: Tonight we have one continued case and one new case before us.

Case 2017-34, Waltham-Farm Home Realty Trust, Daniel and Christine Wildes, Trustees, 54 Emerson Road AFT 29 Emerson Road and that's for an appeal of the building inspector; Case 2018-13 John S. Defina Jr., Terri Linn Defina, 44 Wimbledon Circle and that's to. Amend existing Variance.

The first action this evening is a motion to accept the minutes of April 3rd and May 8, 2018.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to approve the minutes of April 3, 2018, and May 8, 2018.

Mrs. Rando: Will the clerk please read the petition in Case No. 2017-34, Waltham-Farm House Realty Trust?

The clerk then read the Petition of Waltham-Farm Home Realty Trust; Daniel and Christine Wildes, Trustees in an appeal of a notice of violation. Subject Matter: Appeal of

**a notice of violation dated September 19, 2017, issued by the Inspector of Buildings.
Location and Zoning District: 54 Emerson Road/29 AFT Emerson Road, Commercial
Zoning District.**

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

**Kevin Dwyer, Esquire, 707 Main Street, Waltham, on behalf of the Petitioners
Daniel Wildes and Christine Wildes came forward.**

**Mr. Dwyer: We are asking that this hearing be continued for six weeks. I had a
meeting with Mr. Forte of the building department yesterday at the location along with a
surveyor hired by my clients to draft a site plan that will cover the open storage issues that
are outlined in the Notice of Violation.**

**Many of the other issues in the Notice of Violation have already been resolved to Mr.
Forte's satisfaction. Mr. Forte is in agreement that if we had a six week continuance it
would give DTP about thirty days to do the site plan in accordance with the open storage
issues. So, our request is to continue this hearing for six weeks with the board's approval,
of course.**

**Mrs. Rando: All right, does the board have any questions or are they ready to make
a motion?**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to allow the
continuance of this case.**

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

The board set the date of July 17, 2018 to continue the hearing on this matter.

Mrs. Rando: Do I have a motion to extend the date to act on this matter to September 15th.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to extend the time to act on this matter to September 15, 2018.

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

Mrs. Rando: Will the clerk please read the Petition in Case 2018-13, John S. Defina Jr., Terri Linn Defina?

The clerk then read the Petition of John S. Defina Jr., Terri Linn Defina. Nature of Appeal/Petition: Petition to amend existing Variance. Petitioner seeks to alter a variance granted in 1980 to allow an addition in the rear yard which will not encroach beyond the distance previously authorized and to allow the continued use of improvements which have been made by permit. Location and Zoning District: 44 Wimbledon Circle; Residence A-2 Zoning District.

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

Deborah A. Sawin, Esquire, 564 Main Street, Waltham came forward.

Ms. Sawin: I am here tonight representing John and Terri Defina who are the owners of the property at 44 Wimbledon Circle which is the property before you tonight.

(Ms. Sawin submitted a brief and a packet of exhibits to ~~to~~ each member of the board. She then read her brief into the record along with going over the subdivision plan of the locus, abutters plan and a rendition of what is proposed.)

Mrs. Rando: I lost you at one point. In 1980, did someone come out after it was done from the building department and check to see that it was done properly?

Ms. Sawin: Yes.

Ms. Sawin: So everything was fine in 1980 and then after the addition was built everything was fine. After that, some five years later, they went to replace the deck, they went to the building department and just asked for a permit to replace it and make it bigger. They showed them the plans. They issued the permit and then they actually went out and did a final inspection and signed off on it. And that was 2015. And then in 2017 the same with the pool. They thought they needed a permit so they went and had plans drawn and went to the building department, got a building permit, built the pool, everything was inspected and everything was fine,

Now one of the thoughts that came out of that was that because it didn't affect the building, the room, that maybe there was some question as to whether or not they were required to come back especially for the pool. When we get to this point and we wanted to do an addition, - -

Mrs. Rando: Was it on the building card?

Ms. Sawin: It was on the building card. So it wasn't that until to this point when we took a look at the building card and said we have to go back to the board.

Mrs. Rando: It's strange.

Ms. Sawin: It's strange that permits were issued. It's not often that I can come and say that the work was done by permit. Usually it's work was done and there was no permit issued but both times they did exactly what they thought they needed to do

Mrs Rando: And even now, when they do what they want to do, they're still going to have less than the lot coverage calls for and they have all the side yard and back yard - -

Mrs. Rando: This will cause no new encroachments, correct?

Ms. Sawin: Correct.

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

Mr. Sergi: just some clarification. The addition that you are building obviously conforms to the current house in place. You don't have a copy of the rendition?

(Ms. Sawin presented a rendition of what is proposed and went over it with the board.)

Mr. Sergi: Okay, perfect. I just wanted to make sure. I'm all set, Madam Chair.

Mrs. Rando: Are there any other questions?

Ms. Gelineau: So there's no basement under the deck, just under the new addition?

Ms. Sawin: Correct.

Ms. Gelineau: Suppose they had gone to sell this, would that be a title defect?

Ms. Sawin: Not a title defeat but it could be a zoning issue but not a title issue.

Ms. Gelineau: But if they hadn't found it, would it inhibit them from selling it?

Ms. Sawin: No. If someone looked at the building card, they probably would have said they had permits. Unless you were a Waltham zoning attorney, you probably wouldn't question it. I mean, in other towns, I'm not sure if it's the same that you have to go back.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: No questions.

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

(The two petitioners raised their hand in favor)

Mrs. Rando: No one is in opposition and no one is seeking information.

All right, you may continue with your Proposed Findings of Fact.

Mr. Sergi: Counselor, have these been on file?

Ma. Sawin: Yes, they have.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department.

Mrs. Rando: You have a letter from Cambridge. Is that in here?

Ms. Sawin: I believe it was submitted to you. I believe that there were two letters.

Mrs. Rando: I didn't see the first one.

Ms. Sawin: I didn't have it at the time the brief was submitted. It came in after the publication and the mailing went out. So it went directly to the law department.

I think the first letter sort of raised the question that maybe you would want to add a condition that it be cleaned and so they responded to that right away and there was a second letter saying that they have done that.

Mrs. Rando: You may proceed with your reading of the 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: Any questions? All right, I will entertain 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.

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

Mrs. Rando: And on the decision?

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

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

Mrs. Rando: It is granted.

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Ms Gelineau, the board voted to adjourn at 7:30 P.M.

Beth Rando, Chair 4/12/2012