

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**May 23, 2017**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, May 23, 2017, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were Chair Barbara Rando, and members Mark Hickernell, Glenna Gelineau, Sarah Hankins and John Sergi.**

**Mrs. Rando: Tonight we have two new cases: Case 2017-16 Micozzi Management and that's for a variances; Case 2017-17, 67 Ash Street, LLC and that's an appeal of the building inspector.**

**The first action this evening is for a motion to accept the minutes of May 16, 2017.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of May 16, 2017.**

**Mrs. Rando: Will the clerk please read the petition in Case 2017-16?**

**The clerk then read the Petition of 121 Ash Street LLC c/o Micozzi Management, Inc. in an application for variance - Parking and to amend prior ZBA Decisions. The locus consists of an 8,870 square foot parcel of land with an existing multifamily dwelling thereon at 121 Ash Street The Petitioner is proposing to construct, use and maintain an additional studio apartment in the basement of the existing multifamily dwelling. Location and Zoning District: 121 Ash Street, Residence B 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 and presented each member with a copy of his written brief.**

**Mr. Connors: So, as stated in the legal ad, I represent the petitioner and the petitioner is Waltham 121 Ash Street, LLC. The petitioner is the owner of the property at 121 Ash Street, here in Waltham. The managers of the Waltham 121 Ash Street LLC are here tonight. So they own the building and the Company, Micozzi Management, Inc., a management company for real estate properties and their company manages the properties.**

**Mr. Connors went over the plan with the board showing where the locus is located. He then read his brief into the record. He also submitted a layout of the building and photos of the property.**

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

**Ms. Hankins: Just one question. I was actually just looking at the pictures and the 67 decision mentioned having a cedar fence to block off noise and such from the neighbors and it looks like it's just sort of one of those wired fence. They should probably get in compliance with that, don't you think?**

**Mr. Connors: I agree. I discovered that because it's hard to read but I read it. I think it says cedar fence, six feet and I talked to them and they are glad to do it.**

**(Mr. Connors went over the plan to show where there were two fences.)**

So we certainly would be happy to construct the cedar fence which is stated because it should be there and they just realized it. We would accept that as a condition.

Mrs. Rando: Are there any other questions?

I have a couple. You stated that all you are doing is amending the plan but actually you're adding to the extension of use of the building and to me it seems like you are going from nineteen to sixteen parking spaces and you are going up to twenty apartments. And as far as, you say here, the existing parking is adequate. I don't think it is. You don't have the twenty spaces.

You also used for a hardship, "hardship underutilizing the existing and unused space is a practical hardship to the petitioner." I don't think that's a hardship. He's making use of the building that he has. Where is the hardship? It's not like he's not renting those apartments.

Mr. Connors: Well, I agree. He's renting the apartments but he has the empty space that's available. It's just an open room that sits there. It's simply utilizing the space that we have in the city to generate something that's a benefit to the community. And right now it's just sitting there and vacant. It's just an empty room.

Mrs. Rando: God forbid, it's one empty room in an apartment house.

Mr. Connors: Well, It's one tenth the size of the building so nine tenths of the building is utilized and this one tenth can't be utilized because it just sits there.

I understand what you are saying, but I say that the hardship is that we have this space that's unavailable. Like in the Johnson Case, we have a church that was no longer usable as a church so they converted it into an office space. In this case we have an

underutilized empty room. You've got four walls and you have nice windows and we have heat and we can't use it.

The other thing is that in 1967, when the board allowed us to create the multi family so I would say that we are amending that case to some degree in order to meet the requirement of hardship but we certainly do for the variance on the parking but it's simply utilizing un-utilized space and so I understand we that are using the rest of the building but this is simply an opportunity to make an improvement to a building, They came in and they cleaned it and they painted it and they said this is wasted space and so it doesn't have an impact. It's not detrimental to this community. It's not detrimental to this property. In their experience from owning the property for a year and a half is that they have eight vehicles in the parking lot.

Mrs. Rando: You also stated that the parking demand for the studio units is more consistent with the requirements of the ordinance.

Mr. Connors: Because it's a separate unit. If you look at the requirements for the parking spaces under the code, it says, each dwelling unit will have to have two parking spaces. Now I could have a dwelling unit with two bedrooms. I could have a dwelling unit with three bedrooms and I still only need two parking spaces. But if I have a dwelling unit with one room, because it doesn't say studio, it just says dwelling unit. So there's no distinction. So I mean I could have three bedrooms and two parking spaces so I don't think its finely drafted, so I think that they can only fit one bed per unit. So all your tenants have one bed. And one bed usually means one person and that's what I have.

Mrs. Rando: Well, I was there today. There were probably six cars in the back so it wasn't completely empty. Moody Street, parking is so, so tight.

**Mr. Connors:** And I agree. Now they have only owned it a year and half and they would be willing to put a provision in there limiting that the next tenant can only have one vehicle. The other thing is, they are this close to Moody Street near public transportation. So one of their tenants doesn't have a vehicle. They use the bus.

**Mrs. Rando:** That's the only questions I have.

Is there anyone in the audience that is in favor of this petition. Three people raised their hands.

Is there anyone seeking information? Seeing none. Is there anyone in opposition? Seeing none. You may continue with your proposed Finding of Fact.

**Mr. Sergi:** Counselor these are the Findings of Fact that have been on file? You haven't change them, right?

**Mr. Connors:** That is correct.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Facts 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 Ms. Gelineau, 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. 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, no.**

**The vote was 4-1 in favor.**

**Mrs. Rando: Do I have a motion on the Proposed 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, no.**

**The vote was 4-1 in favor.**

**Mrs. Rando: It is granted. Good luck.**

**Mrs. Rando: Will the clerk please read the Petition in Case 2017-17, 67 Ash Street, LLC.**

**The clerk then read the Petition of 67 Ash Street, LLC. Nature of Application/Petition: Appeal of Decision of Inspector of Buildings. Subject**

**Matter: Petition to overturn the decision of the Inspector of Buildings made under Article VII, ss 7.42 in connection with Article III, ss 3.7224 or in the alternative to instruct the Inspector of Buildings to issue a building permit under Article III, ss 3.7225. Location and Zoning District: 67 Ash Street, Residence B Zoning District.**

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

**Bret Francis, Esquire, Scafidi Juliano, LLP, 10 Hammer Street, Waltham came forward.**

**Mr. Francis: I am here tonight on behalf of 67 Ash Street LLC. Principal Joseph Chegade is here with us as well to answer any questions you may have.**

**(Mr. Francis read his brief into the record which contained the history of this property which was before the board previously.)**

**Mr. Francis: If you have any questions I will be happy to answer them and my client, Joseph Chegade is here as well.**

**Mrs. Rando: Does anyone have any questions?**

**Mr. Hickernell: Counselor, have you seen the email from Mr. Forte addressed to the board?**

**Mr. Francis: No.**

**(The Chair gave Mr. Francis a copy of an email addressed to the board from Inspector of Buildings, William L. Forte dated May 23, 2017.)**

**On motion of Mr. Hickernell seconded by Ms. Gelineau the board voted to take a two minute recess at 7:50 to give Mr. Francis an opportunity to read the email.)**

**The board reconvened at 7:55 P.M.**

**Mrs. Rando: At this time, I would like to make a motion to overturn the Inspector of Buildings determination and grant the building permit. And that needs four votes.**

**Do I have a second?**

**Mr. Sergi: Madam Chair, should we acknowledge the Proposed Findings of Fact or the Proposed Decision?**

**Mrs. Rando: I don't think so. All we are supposed to look at is the building permit. If we are going to allow him to do a building permit. It doesn't mean he can make an original house or a bigger house or whatever. It's up to the building inspector to decide. We are just giving him a building permit. We are over the building inspector so we can have him change and give the - - -**



**Mr. Francis:** I would just ask one question. In most of my decisions we put a standard time to get the project started. Could that be included so that it's clear that it - - -

**Mrs. Rando:** I think after you talk to him, you might have to come back if I understood by his email: The only thing that is before us tonight is the appeal of the section outlined in the notice of permit rejection that prevented me from issuing a building permit. He said don't look at plans. Don't look at anything. It's not before us this evening. It's just to give you a permit.

It sounds like, I would respectfully ask the board to not approve any building plan for the footprint and allow the building department to review and approve the building permit to ensure that the same size structure is proposed and constructed in kind.

**Mr. Francis:** I see what you are saying. That would be fine. You're right. So leave that portion out with respect to plans and - - -

**Mrs. Rando:** And if you had had something in the ground he could have just given you an extension.

**Mr. Francis:** We know who the general constructor is that pulled it. We didn't hire him. My client has no knowledge of him. Never met him. We didn't know about it until after the fact. I mean he had no reason to know. Even when he went on line pulled the building card, the street card, you know they list all the permits as well as what happens here. But when I got involved in the case in July of 2016, it made no mention of the demolition permit that

was pulled; made no mention of the construction permit that was pulled in December. I mean right or wrong, I relied, in zoning you really don't have to dig too deep, But I relied on what was available on the computer for the City of Waltham as to what was on their street card. No notice. No idea whatsoever that permits had already been pulled.

**Mrs. Rando:** Now your Proposed Findings of Fact was just all about the permit? Just the permits?

**Mr. Francis:** Yes. My initial argument, correct. It sets up meeting all the requirements. Number one and Number two, what the locus is, 3 what it comprises of and 4 that the petitioner seeks to overturn the decision of the building inspector pursuant to Article 772 which authorizes this board to utilize all the powers granted to it which can overturn the decision of the building inspector. That the six month period in which to commence construction should have been tolled by the two separate appeals to the Zoning Board of Appeals and that the application for the building permit was timely filed within the tolled six month period and that principals of equity require issuance of a construction permit.

And I am happy to amend that if need be.

**Mrs. Rando:** How does the board feel? Do you feel that we have to do the Proposed Findings of Fact and the Decision?

**Mr. Hickernell:** So he basically never reviewed the dimensional aspects of your application. Just said that you are bound to it. Right?

**Mr. Francis:** Correct. And we actually in conversation with him said we wanted to build it sooner than later because time is of the essence we need to get it back before the zoning board. I mean I don't think he spent a couple of days. stamped a denial for that reason so that he could go forward on this issue. Other things have to be filed with the application, again the I/I's and some other things that they require but they denied it just to get us understanding what we needed to do, that there's a law suit going on concurrently with this that he would deny it for the purposes of getting us in here.

**Mr. Hickernell:** Right. And what I take his message to us from this afternoon to mean that he hasn't actually looked at the plans to make sure that they are the correct dimensions - - -

**Mr. Francis:** We will provide that at the time the application is filed.

**Mr. Hickernell:** Right. He only talks about the time limits. He could have maybe denied it on both grounds, but he didn't. So I think, I prefer to just grant you your tolling argument but I think you still might have to have him stamp your plans approved.

**Mrs. Rando:** Right, and if he did give you a building permit and you build it in the same footprint then you don't need us.

**Mr. Francis:** Well you're right. We won't need variances for those dimensions. Those dimensions will unfortunately stay as terrible as they are.

**Mrs. Rando: But if you had done it within the six months you could have done it by right.**

**Mr. Francis: We didn't own the property.**

**Mrs. Rando: But I am just saying if you did.**

**Mr. Francis: Once the prior owner withdrew that application they could have stuck a shovel in the ground and went forward. They didn't. They said, forget it. We are going to sell it.**

**Mr. Hickernell: So we shouldn't necessarily be granting a construction permit as much as just overturning his determination.**

**Mrs. Rando: Well the way he has it worded when I spoke with him make a motion to overturn the inspector of building's determination and grant a building permit.**

**Mr. Francis: Subject to the building department's review?**

**Mrs. Rando: Okay.**

**Mr. Francis: That would be fine with us, review of the plans.**

**Mrs. Rando: I will make a motion that we overturn the Inspector of building's determination and grant a building permit subject to the building inspector's approval.**

**Ms. Hankins seconded the motion.**

**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 voted to adjourn at 8:05 P.M.**

*Barbara Rando, Chair*  
*5/6/17*