

CITY OF WALTHAM
ZONING BOARD OF APPEALS
July 11, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 11, 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, Oscar LeBlanc, and John Sergi.

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

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

Case 2015-27, Sadie M. Cardillo, 105-107 River Street and Anthony G. Cardillo, Jr., and Anthony G. Cardillo, III, Aft. 194 Willow Street, and that for an appeal from the Building Inspector; Case 2016-17, Storage Development Partners, LLC, 96 Linden Street Realty Trust and that's for variances; Case 2017-19, Gibraltar Pools Corp., Carey Family Trust, John Jr. & Arlene Tr., and thats for variances.

The first action this evening is for a motion to accept the minutes of June 20, 2017.

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to accept the minutes of June 20, 2017.

Mrs. Rando: Would the clerk please read the petition in Case 2015-27 Cardillo.

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 III, 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? We only have four members tonight and that would be Mr. Sergi, Ms. Gelineau, Ms. Hankins and myself.

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

Mr. Connors: This case goes back to 2015 and filed and our first hearing was in January. We did bifurcate the case so we split it in half. We resolved several of the issues by a prior decision last year and then we dismissed three other issues because we were going to work on a resolution with the building inspector and then there was two remaining issues which again we were working on a resolution with the building inspector in order for him to issue a building which we needed to resolve the issues. We first needed to get the consent of the Mass DOT because there's a railroad right of way there which took a while to get. But we had that and the building inspector has issued building permits for the alleged violation so we essentially I believe either resolved the prior decision of the board or cured it by the issuance of a building permit.

So we are respectfully asking for permission to withdraw without prejudice. The remaining two violations which are only violation 1 and 4 which again legally we have cured by securing a building permit and that was issued today.

(Mr. Connors submitted A letter to the Board dated July 11, 2017 from Joseph M. Connors Jr., requesting leave to withdraw without prejudice.)

So that's my letter to the board requesting permission to withdraw without prejudice and it is academic to say without prejudice because the notice of violations go back a year and a half or so but I think we resolved all our issues and I did speak with the building inspector today. He told me he was going to send Pam an email. I don't know if you got it.

Mrs. Rando: Maybe. I didn't see it.

Mr. Connors: He did issue the building permits today and we consider the case to be resolved.

Mrs. Rando: That's good. Are there any questions? Hearing none, I am ready for a motion to allow Cardillo to withdraw without prejudice.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to allow Case No. 2015-27, Sadie Cardillo, Trustee of 105-107 River Street Irrrev. Tr., et all, to withdraw without prejudice.

Ms. Hankins: Before I vote, I just want to say to the Cardillo's or their representative that we appreciate your patience. I really feel like you guys really did a good job working with the building inspector and the Mass DOT.

Mr. Connors: I think that the building inspector was happy with the result as well.

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

The following members are sitting on this case:

Mr. LeBlanc, Mr. Sergi, Ms. Gelineau, Ms. Hankins and Mrs. Rando.

Will the clerk please read the petition in Case 2016-17, Storage Development Partners, LLC.?

The clerk then read the petition of Storage Development Partners, LLC, 96 Linden Street Realty Trust c/o Babak Veyssi, Trustee, in an application for dimensional variances. The locus of this petition is a large parcel of land located on the westerly side of Linden Street. The locus contains 70,756 +/- square feet of land (1.62 +/- acres) with an existing one story commercial structure and surface parking thereon. The commercial building has been vacant for a number of years. Petitioner proposes to raze the existing commercial structure and parking and construct use and maintain a new four story self-storage facility with parking underneath. Location and Zoning District: 96 Linden Street; Business B Zoning District.

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

Attorney Michael R. Connors, Law Offices of Connors and Connors, 6 Lexington Street, Waltham, MA came forward. Mr. Connors submitted a letter dated June 22, 2017 requesting this case be extended for six additional months.

Mr. Connors: I might have missed it just in the reading there, but I am here simply tonight for a time extension. This was unanimously approved by this board last July 19th. We then went off to the city council and at their summer session were approved by them on August 1st of last year. There was an issue with the Con/Com on some of the language of the city council. We amended it in September and then there was a couple of leftover items and in going through I had a full presentation but I have been asked to keep it short tonight.

The long and the short of it is when we were here the last time there may have been a discussion of a fourteen unit residential structure that people did not want in that area because of its permanent flooding. There was, in fact, it has a by right development and there was a covenant with the city under the Inflow/ Infiltration the I/I, and because that was left over that had been recorded at the Registry of Deeds is a title encumbrance and it slowed down the sale of the property. Our client, the petitioner purchased it in April and they have been moving to clear that matter up with the Law Department. They bought it even with that title encumbrance outstanding. They were issued a demo permit and I have been informed just this last week and a foundation permit but not a building permit. They need a building permit to exercise their rights under the variance and they have to do that within one year of the grant of the decision from this board. So, that one year will be up in about eight days. They hoped that they would get it without needing to file for this extension. Once they informed me of it, I filed my letter on June 22nd and with the 4th of July holiday this was the first available meeting. This board has the power to grant one six month extension so that's all we are asking for. We are moving forward, like I said, the property did sell in April and They are moving forward. They need the full six month extension because they haven't received the building permit and that's the standard they need to exercise their right under Chapter 40A, Section 10.

Mrs. Rando: What was the actual date?

Mr. Connors: The date of the decision was July 19th.

Mrs. Rando: So should we make it January 19, 2018?

Mr. Connors: Yes. Correct.

Does anyone have any question?

Mr. Sergi: Just one. Counselor, has any of the remediation that was talked about done yet or is that going to wait until - - -

Mr. Connors: No. As I said they were just this week issued by the building department a foundation permit and a demo permit. So none of the work has been done at the site. They did purchase the building and they are moving forward as much as they can. You'll see work being done soon.

Mrs. Rando: All right, I am ready for a motion to allow Case 2016-17 an extension to January 19, 2018?

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to grant a six month extension to January 19th, 2018 on Case 2016-17.

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

Mrs. Rando: Would the clerk please read the petition in Case 2017-19, Gibraltar Pools Corporation, Carey Family Trust, 79 Whitman Road.

The clerk then read the petition in Case #: 2017-19 Gibraltar Pools Corp Owner: Carey Family Realty Trust, John Jr. and Arlene Carey Trustees in an application for a Special Permit - Above-Ground Pool. Subject matter:

Installation of an Above ground swimming pool which will not conform to the required property line setbacks. Location and Zoning District: 79 Whitman Road, Residence A-4 Zoning District.

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

Jay Henshall, Project Manager, Gibraltar Pools Corp., 435 Boston Street, Topsfield, MA came forward.

Mr. Henshall: Basically it's a small lot. It's just over a five thousand square foot lot. The placement of the house restricts the placement of the pool in the rear lot line. The closest we can get to the lot line is five feet.

Mrs. Rando: Five feet from side and back?

Mr. Henshall: No. Ten feet from the side we will be able to adhere to. Just five feet on the rear lot line.

Mrs. Rando: What is the actual size of the pool?

Mr. Henshall: The size of the pool is 12 x 20.

Mrs. Rando: It's above ground.

Mr. Henshall: Yes.

Mrs. Rando: Whitman Road, is that very close to Watertown?

Mr. Henshall: It's relatively close.

Mrs. Rando: So the house is on the other side of the fence. Is that Watertown? Oh, that's Waltham, too.

Mr. LeBlanc: The side that you are on, they didn't give us a map of this.

Mr. Carey submitted a map and signatures of the abutters in favor of this petition.

Ms. Gelineau: How long have you lived there?

Mr. Carey; Thirty, forty years, I guess.

Mrs. Rando: So, tell me Mr. Carey these are the names of the people that will be affected by this pool?

Mr. Carey: Jackson, their house is directly behind. They are the closest abutter and they said they are in favor of it.

Mr. Carey went over the locations of the people in favor.

Ms. Hankins: I guess my only question is that is just more procedural. Is it a special permit or are they looking for a variance, or is it both? I'm a little confused.

Mr. LeBlanc: they are looking for a variance.

Ms. Hankins: I agree with you it looks like a variance to me. Do you need a special permit? I don't think you need a special permit for an above ground pool? So we've got to correct a little of the wording in here because it keeps saying special permit. That threw me off.

Mrs. Rando: Any application goes immediately to the building inspector and if he sees a problem he sends it back to Pam that he needs a variance or whatever and I don't understand why they have special permit here.

Mr. Henshall: I think that it's the wording in request for relief.

Ms. Hankins: So I would just propose that we sort of clean up the language.

Mrs. Rando: We can just say variance. I must say that I did make a site view today and where it says here that owing to the size of the lot, the placement of the home, there is no possible location besides that to install the pool. It's two houses. His son lives in one and he lives in the other. The back yard is actually once it is grassed on one side and the pool will be on the other side so it looked like a very nice arrangement.

Mr. Sergi: This section (reading from the Zoning Ordinance) goes specifically with a swimming pool. It talks specifically about the intent. It says: "One swimming pool may be constructed on a lot. The pool shall have the minimum setback requirements per district and it shall be at least ten feet from the side yard and rear lot line. In the event that such pool will not provide the minimum setback and rear yard requirements in the district, the Board of Appeals may grant a special permit for such construction." So we're okay. I just wanted to make sure.

Ms. Hankins: They sort of get into fulfilling the requirements of a variance and in the Proposed Findings of Fact and Decision. You know what I'm saying, the hardship and all that. So it's like a little mix of both. I think it's fine. I just read through it.

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

On motion of Mr. Sergi, seconded by Mr. LeBlanc, 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 may continue with your Proposed Decision.

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

Mrs. Rando: All right, are there any other questions or suggestions?

I also noticed this yard is completely fenced in.

Do I have a motion on the Proposed Findings of Fact?

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

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

Mr. Sergi: I just want to add on the Proposed Decision, that the granting of the Petition "*for a Special Permit*" is based on the following reasons:

On motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted that the Proposed Decision, as amended, becomes the Board's Decision.

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

Mrs. Rando: Is there anyone here that is in favor that would like to speak?

Mr. Steven Ciano, Whitman Road, an abutter, just stated he was in favor.

Mrs. Rando: And there is no one in opposition and there's no one seeking information.

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.

Barbara Rando, Chair 7/18/17