

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

July 25, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 25, 2017 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.

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

Mrs. Rando: Tonight we have two new cases before us, Case 2017-20, McLean Enterprises LLC, Global Companies LLC, 845 Moody Street and that's for variances; Case 2017-21, Deeoaj Nigaoatra, 12-16 Rumford Ave., and that's for variance.

The first action this evening is for approval of the minutes of July 18, 2018.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to approve the minutes of July 18, 2018.

Would the clerk please read the petition in Case No. 2017-20, McLean Enterprises, LLC, 845 Moody Street.

The clerk then read the Petition of McLean Enterprises, LLC, Global Companies LLC in an application to amend existing decision. The locus consists of a 18,829 square foot parcel of land with an existing gasoline and service station thereon at 845 Moody Street, also known as 863 Moody Street. The Petitioners are proposing to use and maintain

awn addition onto the west side of the existing building on the locus. Location and Zoning District: 845 Moody Street; Business B Zoning District.

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

Attorney Joseph Connors, Jr., 404 Moody Street, Waltham came forward and introduced Bill McLean, the petitioner, who is the principle of McLean Enterprises, LLC. He then presented each member with a copy of his brief. (Mr. Connors then read his brief into the record. He also went over the plan of the locus with the board and submitted photos of the property.)

Mr. Connors: So we believe that this is a minor change and permitting this change to this area and to the locus and it's in the interest of Mr. McLean and it's not detrimental to the public good. So we request that the board approve it.

Mrs. Rando: In 2013 did Mr. McLean buy it? When did he buy it?

Mr. Connors: No. He's been there for twenty years.

(Mr. McLean did not come to the microphone but spoke from his seat.)

Mrs. Rando: But I find that strange because you are a business man. You owned one gas station and then bought another that you weren't privy to having an attorney look at it when you were building something.

Mr. Connors: That's a mistake, no question about it.

Mrs. Rando: Also could he have built it four years ago by right in 2013?

Mr. Connors: No. The only reason he could do it by right is because of the 1986 plan. If they didn't build a canopy in 1986 and have this subject to the jurisdiction of the Zoning Board, it's a by right addition.

Mrs. Rando: So how do we know he didn't know that and did it anyway? When someone does something without a permit, you question it.

Mr. Connors: I can understand that, but I think that he didn't get that because Mobil Oil Corporation got the permit in 1986. He's a tenant there. He operates there as a tenant. The landlord takes care of the building and things like that. But he stepped in and he took care of this thing. He really didn't know he needed to do it. But even if he did know, now he knows and he's trying to rectify it so the building inspector said he needed to get a building permit and he said okay. He went down and filled out the application and they denied it.

So, I mean, I understand that he should have gotten it and he didn't. But the building inspector hasn't fined him, hasn't hit him under a cease and desist. He just said fix it and he said come here as well. He said I can't issue the building permit until the Zoning Board of Appeals allows you to amend the case.

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

Mr. Sergi: No, not at this time, Madam Chair.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No questions.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No questions.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: No questions.

Mrs. Rando: All right. Is there anyone in the audience that is in favor of this petition? Seeing three, is there anyone that is in opposition or seeking information? Seeing none, you may continue with your Proposed Findings of Fact.

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.

Mr. Connors: Madam Chair, on my Proposed Findings of Fact, may I make just one amendment? I found a mistake. In paragraph five on page two, I stated that the existing building on the locus was constructed sometime in the 1960's but prior to 1967 which is not true. I would strike the word sometime and it should read "The existing building on the locus was constructed in 1967."

Originally I couldn't find the building permit until I found it on the Crescent Street building cards so I do know that it was constructed in 1967.

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 Facts.

Mr. Sergi: Just one question, Madam Chair, I just thought of and I want to get it into the record. The plan that you are asking us to accept tonight, Counselor, the only change is what you have outlined tonight. Everything else is similar to the original plan?

Mr. Connors: Yes. Everything else, I think we've shown the red which defines the footprint of what we added and the black is pre-existing and on site today and it's consistent of what was approved in 1986.

Mr. Sergi: Okay.

Mr. Connors: It was consistent with what was approved in 1986.

Mr. Sergi: It's pretty much the exact same plan. There are no other changes?

Mr. Connors: No.

Mr. Sergi: Okay. I will make a motion that the Proposed Findings of Fact, as amended, be the findings of the board.

Ms. Gelineau seconded the motion.

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: How do you vote 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: So it is granted. Good luck!

Would the clerk please read the petition in Case 2017-21?

The clerk then read the petition of Deepak Mohapatra in an application for variances - Setbacks, height and stories and to amend existing decision. The locus consists of a parcel of land known as 12-16 Rumford Avenue. A multifamily dwelling, three units, is situated on the locus. The Petitioner is proposing to reconstruct, use and maintain three new residential units on the locus. The existing structure was significantly damaged by a fire. Location and Zoning District: 12-16 Rumford Avenue, Residence A-4 Zoning District.

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

Joseph M. Connors, Jr., 404 Main Street, Waltham, MA came forward and introduced the Petitioner Mr. Deepak Mohapatra. He then submitted a copy of his brief to the board which he read into the record along with photos of abutting properties. He went over the site plan with the board and exhibits which are attached at the end of the brief.

Ms. Hankins: You want to go from a two story to a three story?

Mr. Connors: Yes.

Ms. Hankins: I mean, I went by. What do you mean by two and a half? It looked like two floors of building space.

Mr. Connors: Let me restate that. I am not talking about what I have there. I'm talking about the zoning code that says you can have two and a half stories by right.

Ms. Hankins: I just asked you want to go from what exists now which is two floors, right?

Mr. Connors: Yes.

Ms. Hankins: Okay.

Mr. Connors went over the proposed plan showing the projections in the second and the third floor.

Ms. Hankins: So there are three units now.

Mr. Connors: Yes. Well, there were. I know they had to demolish the entire interior because it was not safe. So only the shell is there. And the reason for that is because of the fire. The fire department had to deem it as unsafe.

Ms. Hankins: When the current owner bought the property there was probably nothing in there. I mean I could have walked right into the building. There was practically nothing done in there. The kids probably party in there. Was that how you bought it?

Mr. Mohapatra: Yes. (Mr. Mohapatra spoke from the audience.)

Ms. Hankins: And you didn't fence to rectify that? But I'm saying as it is tonight kids could go in there and break their neck. I just don't understand why right away you wouldn't have boarded it up at the very least. If I was in the neighborhood I would be very upset.

Mr. Connors: I think that's a safety issue and I think that's a reasonable recommendation and Mr. Mohapatra will take some measures to secure the property because his intention is to demolish it. He doesn't want anybody else hurt there. I don't think anyone was hurt in the fire but that's certainly not his desire. So he will secure the property.

Mr. Connors went on with the reading of his brief.

Ms. Hankins: Where was the entrance? When I was there, I saw two doors and they were numbered 12 and 16, so presumably the third one was 14. Where was the entrance for that?

Mr. Connors: Well, I couldn't find a plan that's referenced in the 1977 decision.

(The board had a copy of that plan.)

Mr. Connors: I might ask my client to look at it first to see if he knows.

Ms. Hankins: I couldn't figure it out.

Mr. Connors: I couldn't figure it out either. I went to the building department to try to figure that out because it looks like a two family. It really doesn't look like a three family. A couple of the floors must have shared units. It was approved as a three family and a permit was issued for a three family and the Zoning Board of Appeals approved it as a three family.

Ms. Hankins: Are you saying that it was occupied as a three family.

Mr. Connors: Yes.

Ms. Hankins: You are saying that before the fire there were three families living there.

Mr. Connors: I can't say that. What I can tell you that in 1977 the Zoning Board of Appeals granted a variance to build a three family. And then in 1977 a permit was issued to build the three family.

Mr. Hickernell: That plans that we have here show two units on the second floor.

Mr. Connors: Is that from 1977?

Mr. Hickernell: By the looks of it.

Mrs. Rando: And you had a bedroom in the basement too.

Mr. Sergi: Yes, in 1977, June.

Mr. Connors sent back to reading his brief.

Mr. Connors: So I would say that the most significant change that we are asking for is the third story. I would say that maybe in 1977, three units in a two story building made sense but it doesn't make practical sense today, so he is trying to build something that would be adequate for modern families. It will be a modern structure and it will be an improvement to what's there today which is a building that needs to be torn down.

We believe that it's a good project and we would respectfully request that the board grant the relief requested. Thank you.

Mrs. Rando: Mr. Connors: When did he get the permit to rebuild?

Mr. Connors: They don't have a permit to rebuild.

Mrs. Rando: They don't have a permit to build?

Mr. Connors: They need zoning relief first.

Mrs. Rando: I thought I saw some permit in the window.

Mr. Connors: That was demolition.

Mrs. Rando: You have no permit to build this building?

Mr. Connors: We haven't. That's why we are before the Zoning Board. We need to get Zoning Board approval first.

Mrs. Rando: But the fire was in 2016. So from 2016 in March you had six months to get a permit. It's another Ash Street case all over again.

Mr. Connors: That has to do with a nonconforming issue. So if I had a nonconforming building that was burnt by fire, I have a year to rebuild it. That's not what I have here. We are not seeking relief out of that provision of the zoning code. We were granted variances in 1977. We can rebuild on the footprint of that building. To expand it like we are proposing, we need relief from the Zoning Board of Appeals, but that particular provision in the zoning book talks about when I have a nonconforming structure or use and if it burns by fire, I've got twelve months to re-do it. This isn't not conforming. It's conforming because it was approved in 1977 by the Zoning Board of Appeals. So those don't expire with the fire. They still matter, twelve months, thirteen months after.

Mrs. Rando: And you're telling me that the house on Ash Street, the case on Ash Street, was not a nonconforming?

Mr. Connors: I think it was nonconforming.

Mrs. Rando: That was built a long time ago.

Mr. Connors: I think it was a nonconforming lot because it didn't have the adequate frontage. So it was pre-existing nonconforming. It was legal, and then it burnt to the ground and then more than a year went by. So he didn't reconstruct it under the provision of the code that says you can reconstruct after fire damage a nonconforming structure. This property is not nonconforming. So that doesn't apply. I could rebuild it by right based on the 1977 variance. So we could build the exact replica of the plan over there that Mr. Sergi looked at. So I just don't think it applies in this case. If it was nonconforming and more than twelve months went by, then we would be out of luck. But that's not the case.

Mrs. Rando: I don't know. All I can see is that the height is 35, you want 36. It's supposed to be 2.5 stories. You want three stories. Side yard at 25, we granted you 13 and

now you want 11. Side yard at 16.2, should be twenty five and now you want 15, rear yard 30, wants 25.5, when if he built on the exact footprint and made a three family like you had, he certainly would make money from that. So, I see no hardship here, whatsoever.

He's making money. He made money on the three family. So if he just built in the footprint, he would certainly make money with the three family that he builds. So where's the hardship? He wants more.

Mr. Connors: The hardship is based on the elevation.

Mrs. Rando: That's part of it. You have to have that.

Mr. Connors: You can't build a replica of what was there before as three units.

Mrs. Rando: Why can't he?

Mr. Connors: He could. I'm just saying it's uneconomic to do it.

Mrs. Rando: That's not our problem of whether it's economical. He will make money on that house as a three family. Now he's just asking for more and more and there's even a bedroom in the basement. The parking you have more bedrooms than you've had before. There's going to be more cars. Where are they going to go? Can you get all those cars in that yard? I don't think so.

Mr. Connors: The intent is to be renting to one family unit per unit.

Mrs. Rando: To me it looks like four units if you are going to have a bedroom in the basement. A couple could live down there.

Mr. Connors: No. They can't do that because that would be illegal. We would certainly entertain a condition that states that each unit needs to have a lease that says he's not going to have a rooming house.

Mrs. Rando: I often wonder with all these bedrooms and the studies, the studies are going to turn into bedrooms also.

Mr. Connors: Well, I brought that up with my client. If you look at one of the studies it's 116 square feet. It's very small. So really it's in the design stage. So he needs to get it approved before he continues to flush out the design. And what he anticipates is that study is really going to be a utility room. It's only 116 square feet. He wants the utilities for each unit in each unit. They will have stand alone heat and electrical panels in that room. So it's really a study/utility room. But it can't be an additional bedroom.

The other thing is that the city regulates how many bedrooms you can have under the I/I code. So I mean, he can't be calling it one thing and try to treat it as a bedroom.

Mrs. Rando: It's a very, very busy street. I was there today. There are a lot of big trucks that go up and down this street as a cut through.

Mr. Sergi, do you have any questions or concerns?

Mr. Sergi: I have some similar concerns, Madam Chair. Going from six bedrooms to eight bedrooms, I think if you came in here and asked for maybe one or two additional variances. You came in here and asked for quite a number of them as compared to the last case and, in my opinion, I think you are asking for a lot. You're adding about 2200 square feet on the third floor. I think you could probably do without the third floor and probably get the same type of plan that you had in 1977. So, I just think you are asking for a lot as compared to what's there now. I don't know what additional hardship you have now from

1977, from that point to this point, I don't know if there's any additional hardship. It doesn't look like there's much change, so I'm just trying to justify in my mind.

Mr. Connors: I mean I understand because you're reading off six listed variances, but I think that it does sound like a lot but one of them simply talks about projection, so he's trying to use the same footprint and he's trying to buy some living space above it in the second and third floor, hence the extension of two feet and .1 foot on the front and side, so and when you add them up and it is a lot but I think just really each one of them, they are not really expanding the building that much. We're trying to use the footprint. I do realize the third floor is the difference but really adding something that really makes it a project that is worth doing, really, because it's going to enhance the value of the building. It's going to make it look better but it also makes that third unit whereas in 1977 the second and third unit were sharing a floor. The units themselves are 1200 square feet, 960, 1100 and I don't think they are that big. They are good units but they are not 1500.

Mr. Sergi: I would have felt better if you came in here and asked for maybe shrunk it, just kept that side yard dimension the same and the rear yard, front yard the same, asked for a little bit up top. But to ask for the boat, I'm kind of scratching my head, is it justified and why? I still think you could make good use out of it if you could shrink it down a little bit. Those are my comments.

Mrs. Rando: Mr. Hickernell, any question?

Mr. Hickernell: No.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: Just to Mr. Sergi's point too that it seems like just looking around the neighborhood and not going into peoples individual homes that it doesn't seem like that third floor in those people's houses looks to be like a full third floor like you guys are doing. It is different than the character of the neighborhood. The kind of roofs like that, I mean, there's only so much living space if you have it like this. You guys have the flat roof. It really kind of maximizes it and that's different than the character of the neighborhood.

The second thing is that the 1977 decision, one of the hardships was the fact that you're up against the river and, therefore, you were limited on your building space because part of your space is the back is unbuildable. Now you want a variance for the back, so that doesn't make any sense. It seems to contradict our understanding that there was a hardship that there was not enough space back there to go. There's obviously enough space back there to build if you actually want to go into the setback.

Mr. Connors: We can take a look at that but it's not actual living space on the first floor.

Mrs. Rando: Mr. Connors, what is the width between the locus and the house to the right?

Mr. Connors: 6.2 to the lot line existing today.

Mrs. Rando: And you wanted 6.1, right?

Mr. Connors: We want to go from 6.2 to 6.1.

Mrs. Rando: So you are getting even closer to this house.

Mr. Connors: Well I mean, I think that's what it says but I mean what we are trying to do is build (Mr. Connors went over the plan with the board.)

Mrs. Rando: Any other questions from board members?

Seeing none, is there anyone in the audience that is in favor? Seeing none, is anyone seeking information? Seeing none, is there anyone in opposition?

Anyone in opposition?

Kevin Buckley: I've owned the house next door for over thirty years and I used to live in it and I don't live in it anymore. It's a house that I've always taken care of and it's a tight house. There's six feet on their side and three feet on my side. My house was built around 1900. When the fire happened, it melted two sides of my house and so I lost money on it. I had to go back to work. And now they want to basically build a bigger house closer to me and put more timber in that can burn right next to my house. And also if you go to my house, second floor has nice light. If they go up with a full story third floor, all that's gone away.

And I think parking, the other tenants had six bedrooms and people used to park in the street. I think the current plan has nine including the bedroom in the basement, and if you look at the studies, the storage room and all those other things, you could get students in there and you could go up to twelve bedrooms. It's just out of scale and the house doesn't match anything. It's this big block. I don't know how it gets closer to me. It's already close enough. The whole thing is just out of line. I think parking will be an issue. I think fire an issue, and I think it impacts me financially because I have a kitchen now that I don't get any sun. And I also think the back of the house, if you look at the back of the house, the lot line goes into the river. so there's actually less land there then the full lot. It's

under water. So I think the person who built it before made money out of it and the person who owns it now should make money on it but it should be a very similar house.

Are there any questions or anything?

Mrs. Rando: Did you write a letter?

Mr. Buckley: Yes I did. I don't really understand the overhang. But in this meeting I do now. I think it's really ugly. The people really had a hard time getting into that parking spot. I don't know if the overhang is going to interfere with parking. I never saw seven cars in there. Most of them were six.

Mrs. Rando: You mentioned: "Finally I have two questions about the plans. Foundation for the previous fireplace."

Mr. Buckley: The prior house had a fireplace. But actually from the foundation to my house is actually four feet. I don't know what they are going to do with that. I would like to know if they take it out, how they are going to take it out.

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

Mr. Hickernell: You're saying the existing foundation extends within four feet of the lot line?

Mr. Buckley: There is a chimney and it extends there. It's like six feet.

Mr. Hickernell: It makes a difference if it's six feet or four feet.

Mr. Buckley: It's six feet long, comes out two feet, so there's four feet left between the foundation and my lot. I can show you.

Mr. Hickernell: No, I understand what you are saying, but it sounds to me like they don't need the side yard setback, then.

Mr. Hickernell: Do you know how high your house is?

Mr. Buckley: It's just like all the other houses on the street.

Ms. Gelineau: (looking at the plan) And that's not there now?

Mr. Buckley: Just the foundation.

Mr. Hickernell: So Attorney Connors, I think you said you haven't seen these plans before. You may want to take a look at them.

Mr. Connors: I made a big mistake. I went to the building department and I couldn't find it. So what are we looking at?

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

Mr. Hickernell: The chimney that extends four feet on the lot on the south side.

Mr. Connors: I did see Mr. Buckley's email and I drove down and looked at it. So there's a little bump out on the foundation for a chimney. The chimney in itself is gone so the only thing that's there today is a cement foundation.

Mr. Hickernell: Which is on the approved plan for 1977.

Mr. Connors: Right. So it is there in the foundation but the actual brick chimney is gone for whatever it is worth because maybe that was the source of the fire.

It's not his intention to really kind of replicate the chimney although it's there today, and I don't know why it wasn't shown on the site plan, but it didn't. But we weren't intending to replicate the chimney there because it's just not consistent with the design. But I do think the building next door, just in response to Mr. Buckley's comments, his building is tall. I don't know what it is, but it certainly seems more than thirty-five feet to me. But when we talk about the light, the light on his building is reflected on ours, so really our building would be the same height as his building at the end of the day whereas right now it's a full story below it but he does have a dormer on the other side of the building where we are not proposing any of that. He doesn't have one on this side of the building. If we couldn't do two and a half stories and put dormers in we would but the building inspector is now of the opinion, if you put in a dormer on a half story, it's a third story. So we designed it this way.

Mr. Hickernell: Does he feel that way about the existing buildings?

Mr. Connors: No, I didn't ask him that but if we were to propose dormers on a half story he'd call it a third story. so it's more economical to design it like this as a flat story.

Mrs. Rando: Any other questions? Hearing none, Attorney 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 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 at the law department.

Mr. Hickernell: Attorney Connors, did you want time to discuss with your client the possibility of amending this application before we vote on the petition as it is?

Mr. Connors: Yes. I was just thinking about that and the reflections about the comments that were made. I think the board is concerned about the number of variances I have requested. And I do think, and I do know, that I have discussed it with him that we could certainly eliminate some of them. And so, I would like an opportunity to go back with my client, talk with his designer and see if we can eliminate the number of variances, so, therefore, what we are proposing is less impactful and less beyond the scope of what was approved in 1977. So I would ask for a short continuance to do that.

Mr. Hickernell: I would think that that would be a good idea and I think it would also be a good idea to involve Mr. Buckley in your discussions.

Mr. Connors: Right.

Mrs. Rando: We also would like to see something on your hardship, a little bit more.

Is that a motion Mr. Hickernell?

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

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

Mr. Sergi: One other last suggestion, counselor, if you could somehow when you redesign it, see if you can make it conform a little bit more to the other residences and try to fit it into the neighborhood a little bit better.

Mr. Connors: I think that's a good point. But the neighborhood is, three doors down from a commercial zone so what you get there becomes all these commercial block buildings but we will discuss that. I will try to reflect the buildings around us.

Mr. Connors: What dates does the board have, Madam Chair.

Mrs. Rando: I have October 3rd or October 10th.

Mr. Connors: October 3rd.

October 3rd was an agreeable date for continuance by the board.

We have to extend the time, do we not?

Mr. Hickernell: The hundred days expires September 27th.

Mrs. Rando: Do I have a motion to extend the hundred days?

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to extend the hundred days to act on this matter to November 21st.

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

Mr. 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
8/8/17