

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

August 8, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, August 8, 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 Mark Hickernell, Sarah Hankins, Edward McCarthy and John Sergi.

Mrs. Rando: Tonight we have two new cases before us, Case No. 2017-22, Nathan and Kirsten Gilbert, 17 Smith Street and that is for variances; Also Case No. 2017-23, Joseph and Eleanor Aucoin, 53-55 Chestnut Street.

The first action is to approve the minutes of July 25th. Do I have a motion?

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to approve the minutes of July 25, 2017.

Will the clerk please read the petition in Case No. 2017-22?

The clerk then read the petition of Nathan D. and Kirsten A. Gilbert in an application for variances - and to amend existing decisions. The locus consists of a single parcel of land with an existing single family residence thereon. The petitioners propose to construct, use and maintain a single story addition with a deck onto the residence. Location and Zoning District: 17 Smith Street, Residence A-2 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. He presented each member with a copy of his brief and introduced the petitioner, Mr. Gilbert.

Mr. Connors: The subject matter, the petition at 17 Smith Street, I know it's referred to as a new case but I do know that we all know that we were here back in April 11, 2017. We were here before the board and members on the board that night were the Chair, Mrs. Rando, Mr. Hickernell, Ms. Gelineau, Mr. Squillante and Ms. Hankins. So I did present some of this to the board on a prior occasion.

So what we have though, is the Gilbert's were proposing to make a single story addition off of their home and the addition was to be 16 x 16. So that addition back in April was proposed off the house, the easterly side which faces essentially vacant land which is the easement area for the overhead electric wires that run through kind of North Waltham there.

So we came to the board and sought two forms of relief. One, is for the front yard setback because it needs to be forty feet with an overhang which was actually thirty-eight feet. So it's kind of the overhang that is 38 feet where it should be 40 Ft. because the foundation of the sideline is 40 feet. So we sought and were granted a front yard variance. We also sought a side yard variance because the ordinance, I believe 20 feet is required and we only have 14.5. for the proposed addition of the 16 x 16 addition. Now the petitioners before they even build it, would like to expand it and it's really kind of second guessing themselves. They should have probably asked for this the first time. (Mr. Connors went over the plan with the board.)

We don't need a variance and I know it said that in the legal notice, and that's my mistake, but the variance that was granted in April was for a side yard set back of 14.5. This addition will not affect that at all. The front yard variance of 38.07. Again won't affect that at all because we are moving forty feet back from the front yard and more than forty feet back from the rear yard. So, we meet the front yard setback. We meet the rear yard setback and we meet the variance granted in the April case for 14.5. It's really kind of the Gilbert's hoping to expand the size addition because they essentially second guessed on how much area they need.

So in my brief, I kind of take you back through the kind of history of this particular property which was the basis on which the variances were granted in April. I can go through that but I think that, one, we are really here just to amend the decision that was granted in April because as any decision that the Board renders today, we will add a condition and that's what we did in this case, and one of the conditions was that if he constructed consistent with the plans filed therewith and the plan filed therewith was from Mr. Bibbo and it shows a 16 x 16 foot addition. The building inspector says if you want to go six feet over, even though you don't need any zoning relief like variances, you need to go back to the Zoning Board of Appeals and get them to approve the new plan and it's May 18th as opposed to the old plan which is dated January 3rd.

(Mr. Connors read a portion of his brief into the record.)

We are not seeking a variance, we are simply seeking to amend the prior case. I will be happy to answer any questions.

Mrs. Rando: When they applied for the variance the first time, what was the hardship that they offered? Was there a hardship for the variance?

Mr. Connors: The hardship had to do with, we have a rattail lot which is no longer permitted in the zoning district. (Mr. Connors went over the plan with the board showing the location of the rattail which is unbuildable.)

The lot lines and the shape of the lot with the rattail lot. The shape of the lot is affected by that long narrow strip of land extending off the Northwest corner. The lot shape is commonly referred to as a rattail. I also stated that the building portion of the lot is approximately 108 feet wide from east to west and 120 feet deep. This results in a more narrow lot measuring from east to west, side to side. The rattail portion of the lot is approximately 2,550 square feet of land with 16.5% of the total land area. It's too narrow to build on and the actual building area of the lot is reduced to 12,946.

The proposed addition shall be constructed in the footprint of the existing uncovered deck on the lot and that's true except that now we are extending it six feet beyond the addition. So there was a deck that sat underneath where we proposed the 16 x 16 addition. Now we want to extend that not over the deck but into an area that is presently vacant. So the basis of the hardship is the shape of the lot.

Mrs. Rando: Attorney Connors, when I was on the zoning board several years ago, we were always told that variances have to be granted sparingly except if there's a good reason for it. And I feel that we have been very, very generous to this address. What's the hardship that he has to make it larger? I don't see a hardship here and furthermore, did you ever record the decision from the last case?

Mr. Connors: I have not yet.

Mrs. Rando: Isn't that usually done right after we hear a case? I know you have a year before it's just abandoned, but - - -

Mr. Connors: Well before I was off to the registry to do that - - -

Mrs. Rando: And you decided you wanted it bigger.

Mr. Connors: My intention is to record that decision that was approved in April. And if this is approved here tonight then we record the both of them because I have the first one that's approved and I have the second one that's amending the first one. So I have to record both of them because they both are relevant to the case. And you know, I understand and I agree that variances should be granted sparingly, but in this case we are not asking for a variance. We are not expanding it into the side yard. So we are trying to respect what was granted before by the board and keep it 14 1/2 feet from the side lot line. So we simply are expanding it forward and still our lot coverage is 11.1% with the addition.

So I understand your position. If he had probably asked for this the first time then maybe it would have been granted but to come back and ask for it again is unusual.

Mrs. Rando: I also don't understand why the building inspector told you to come before us again.

Mr. Connors: Because it was already approved. So I need to amend that case because of the April 2017 approval that states: It shall be constructed in substantial accordance with the plan introduced as evidence and it references the Bibbo plan dated January 3, 2017.

So I can't pull a permit to build this because it expands the scope of what is approved. So we are simply changing the footprint and again we don't think that we need any zoning relief other than to amend what was approved in April.

It's a single story addition. It's not a two story addition. It's really just to provide for downstairs living space for the Gilbert's. They have a young family. It faces the utility area. They can't build under the utility lines. I don't think they can. There is an easement in which the utility company owns, so that's there. But we are not going to encroach into that at all. It will remain with what was approved in April.

Mr. McCarthy: Why didn't he square it out and bring it out the other two feet?

Mr. Gilbert: We didn't want to have that long front facing the house. We wanted to have — —

Mr. McCarthy: Break it up?

Mr. Gilbert: Yes.

Mr. McCarthy: It shows here you want sonic tubes for the addition?

Mr. Gilbert: Yes.

Mr. McCarthy: You're not putting a foundation underneath it?

Mr. Connors: I think that's just a budgetary issue.

Mr. Sergi: Counselor, I assume you talked to the neighbors and you're all set with the neighbors and they are happy. Right?

Mr. Connors: We had a signed petition at the prior meeting and submitted it to the board.

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

(Three people raised their hand 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 Mr. McCarthy, 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 Mr. McCarthy, 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 Mr. McCarthy, the board voted that the Proposed Findings of Fact be adopted by the board.

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

Mrs. Rando: Motion on the decision?

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

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Hankins, yes; Mr. McCarthy, yes and Mrs. Ramdo, yes.

Mrs. Rando: It is granted.

Mrs. Rando: Will the clerk please read the Petition in Case No. 2017-23?

The clerk then read the Petition of Stephen M. Douglas, Owner: Joseph G. and Eleanor E. Aucoin in an application to amend a prior decision. The locus consists of a parcel of land known and numbered as 53-55 Chestnut Street. A multifamily dwelling, a three family dwelling, is situated thereon. The Petitioner process to demolish the existing structure and to reconstruct a new multifamily dwelling with three residential units thereon. Location and Zoning District: 53-55 Chestnut Street, Residence C 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 brief which he read it into the record. He also went over the exhibits contained in his brief and a plan showing the locus along with a rendering of the proposed three family dwelling.

Mrs. Rando: Are there people living there now?

Mr. Connors: No. It's empty right now.

Mrs. Rando: Because when I made a site view today, I looked at the stairs going upstairs and the porch and it was so dangerous. They were just rotted and I looked at the rest of it and said, oh, I hope no one is living there.

Mr. Connors: As I said, it was in the Aucoin family since 1948 so Joe died four or five years ago and Eleanor, I don't know how old she is but she's elderly.

Mrs. Rando: You're actually real lucky that he had that 1948 variance for the frontage. Very lucky.

Mr. Connors: Well we wouldn't call it lucky. We would call it good planning.

Mrs. Rando: It was built as a two family, correct?

Mr. Connors: I think it was and the only reason I think it was because in 1976 it says altered to a three family. I couldn't find any building department records that indicated what it was built as a three.

Mrs. Rando: Mr. Sergi, any questions?

Mr. Sergi: No. Have you talked with the neighbors, I assume?

Mr. Connors: Steven has gone around and delivered letters to the neighbors and one of them are rental properties and I think this gentleman here, he is one of the neighbors, that did receive one of the letters from Steve. So, in addition to the legal notice he reached out to him. Don't know if he talked to all of them but he hand delivered the letter to all of the neighbors. I don't want to speak for this gentleman, but he is here and he is a neighbor.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No questions.

Ms. Hankins: Could I just see the design you had? What is that behind the green trees?

Mr. Connors: That's a good question. I think it's just an architectural distinction.

Mr. Douglas: It's kind of to break up the material to make it a little bit more appearance wise to the neighbors. So it's a different material.

Mrs. Rando: Mr. McCarthy?

Mr. McCarthy: What does the end of the building look like on Chestnut Street?

Mr. Connors: On the other end?

Mr. McCarthy: Yes.

Mr. Connors: The other end is the back door.

Mr. McCarthy: So you're not on Maple Street. Just plain all red? Oh, it does look like the front. Is there an entrance too?

Mr. Douglas: There is an entrance to the front.

Mr. McCarthy: Oh cool. That's what I was looking for. Fine, that's good.

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

(Three people raised their hand in favor.)

Mrs. Rando: Is there anyone seeking information, and no one seems to be in opposition.

You may continue with your Proposed Findings of Fact.

Mr. McCarthy: Excuse me, Madam Chair. On that rendering, as I look at that view, the side view, I see the porch for the door on one end but I don't see a porch on that side. Are you going to swing that door around on the other side?

Mr. Stephen Douglas: There's a rear door on the back of this.

Mr. McCarthy: Oh, there is. You have to have two entrances, anyway.

Mr. Douglas: But there will not be an overhang on the back. It's just a rear door.

Mr. McCarthy: Where is the second entrance for the first unit?

Mr. Douglas: There's one in the front and one on the back side.

Mr. McCarthy: The opposite side looks like that?

Mr. Douglas: Minus the break in the siding.

Mr. McCarthy: Is the opposite side all red?

Mr. Douglas: Yes, it is. This is broken up that way because that's the front main entrance.

Mr. McCarthy: It's kind of bazaar, but there's no neighbors complaining. But that looks better with the gray. Like you say, it breaks it up.

Mrs. Rando: Is that the same color as the house to the right.

Mr. Douglas: The house to the right is brick.

Mrs. Rando: But it's red.

Mr. Douglas: Yes.

Mrs. Rando: And you wouldn't mind a condition that it will stay a three family?

Mr. Douglas: It will stay as a three family.

Mr. McCarthy: That's my thought process. If you're going to clean it up on one side, why wouldn't you do the other side too?

Mr. Douglas: That could be a consideration.

Mr. McCarthy: Is it that much of a deal to do anything?

Mr. Douglas: No, it is not.

Mr. McCarthy: I'm not going to make it a condition, Madam Chair. Just wanted to run that by you and maybe you can make some people happy in the neighborhood.

Mr. Douglas: Thank you. I'll have to think about it.

Mrs. Rando: All right, I am ready for a motion on the reading of the Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. McCarthy, 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 Mr. McCarthy, the board voted to waive the reading of the Proposed decision since it has been on file in the law department.

Mr. Connors: May I make a recommendation on the Findings of Fact in that the original petitioners Joseph and Eleanor Aucoin, co-petitioner Stephen Douglass. So at the time Stephen Douglas had a purchase and sale agreement to buy the property. As I said he recently bought it

Mr. Connors added (j) to the Proposed Findings of Fact as follows:

That StepheM M. Douglas purchased the locus property on August 3, 2017 by its 53 Chestnut Street LLC which is owned by Stephen Douglas. Just so the building inspector doesn't say who is 53 Chestnut Street LLC. So that is my proposal just to kind of clarify it.

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

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to adopt the Proposed Findings of Fact as amended.

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

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

On the condition I would like to add that it would be a three apartment only. It will stay three apartments.

Mr. McCarthy: Three units, Madam Chair.

Mrs. Rando: Three units, yes.

Mr. Connors: It says Proposed Three family. So that's consistent.

Mrs. Rando: That's fine.

This will be added to the conditions as number 4.

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

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to adopt the Proposed Decision as amended.

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

Mrs Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to adjourn at
7:50 P.M.

Barbara Rando 8/22/2017