

CITY OF WALTHAM

ZONING BOARD OF APPEALS

September 26, 2017

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, September 26, 2017, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando and members Sarah Hankins, Oscar LeBlanc, Glenna Gelineau, Mark Hickernell.

The Chair called the meeting to order at 7:00 P.M.

Mrs. Rando: Tonight we have two new cases and one continued case before us. Case 2017-18, Laing, 71 Edgewater Drive; Case 2017-26 Taranto, 106 Westgate Road and Case 2017-27 Alexandria Real Estate, Inc., 205, 225 and 231 Second Avenue.

The first action this evening is for a motion to accept the minutes of the Executive Session held on August 22, 2017.

On motion of Ms. Gelineau, seconded by Ms. Hankins, the board voted to accept the minutes of the Executive Session held on August 22, 2017.

Mrs. Rando: Do I also have a motion for the minutes of the Regular Meeting held on August 22, 2017?

On motion of Ms. Gelineau, seconded by Ms. Hankins, the board voted to accept the minutes of the Board's Regular Meeting held on August 22, 2017.

Mrs. Rando: At this time, I am sorry but I am going to ask for a motion to go into Executive Session for the purpose of discussion of litigation strategies.

Do I have a motion?

Mr. Hickernell: Would we be exiting Executive Session into Regular Session?

Mrs. Rando: We will go back into Regular Session. So we would be going out of Executive Session and at that time I am going to have to ask you to leave with the door shut and then very shortly you will be invited back in for the regular meeting.

Mrs. Rando: At this time I would like to accept a motion to go into Executive Session. Do I have a motion?

On motion of Mr. Hickernell seconded by Ms. Gelineau, the board voted to go into Executive Session and then return to their regular meeting.

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

Mrs. Rando: So we will go into Executive Session at this time. Thank you so much.

The board reconvened into their Regular meeting at 7:30 P.M.

Mrs. Rando: Thank you for your patience and now we are ready to start with Case No. 2017-18, Richard and Leueen Laing, 17 Edgewater Drive.

Would the clerk please read the petition?

The clerk then read the Petition of Richard and Leueen Laing in an application for variance, application for special permit - Accessory Dwelling Unit, and Appeal of Notice of Violation, dated May 3, 2017, by Inspector of Buildings. The Petitioner seek to appeal under Section 7.31 the Notice of Violation issued May 3, 2017. Location and Zoning District: 71 Edgewater Drive, Angleside, Residence A-3 Zoning District.

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

Mr. Laing came forward.

Mrs. Rando: Unfortunately Mr. McCarthy is not going to be with us this evening and at about 4 O'clock I received a phone call that Mr. Sergi had an unexpected emergency and was not able to attend this evening also. You have to have the four members that sat on the original case. So you need Mr. McCarthy and Mr. Sergi. So there's only three members this evening.

Mr. Laing: So, I will have to defer.

Mrs. Rando: I think it would be in your best interest, if you went with three, if you could, you would have to get all three votes.

Mr. Hickernell: You need to get four.

Mrs. Rando: You need four to be granted and you only have three tonight. Unfortunately these things happen.

Mr. Laing: I can understand it.

Mrs. Rando: So we have to continue. How is November 28th? (It was agreeable by all.)

Do I have a motion to continue Case 2017-18 to November 28th?

On motion of Ms. Hankins, seconded by Mr. Hickernell, the board voted to continue this case to November 28, 2017.

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

Mrs. Rando: We will extend the hundred days to January 16, 2018. That's for making a decision.

Do I have a motion?

On motion of Mr. Hickernell, seconded by Ms. Hankins the board voted to extend the hundred days to act on this case to January 16, 2018.

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

Mr. Laing: I was wondering if it was possible to note that we have eight supporters here. (It was so noted.)

Mrs. Rando: will the clerk please read the petition in Case 2017-26, Felix and Lynne Taranto?

The clerk then read the Petition of Felix Taranto and Lynne Taranto in an application for variance and to amend prior variance. The petitioners seek new variance

and to amend a prior variance (Case 85-22) to allow the construction and use of an addition to the westerly side of the property and otherwise to continue to use and maintain the property in its current district. Location and Zoning District: 106 Westgate Road, Residence A-3 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 and presented each member with a copy of her brief and exhibits. (Ms. Sawin summarized her brief into the record along with going over her exhibits, photos and abutters plan.)

Ms. Sawin: Lynne did go around to talk to all of her neighbors. I think she set a goal to go see everybody on the abutter's plan. With sixteen being what they are, I think she's just four short but she got all of the remaining properties all outlined in green. All of those neighbors have signed a letter of support. I do have the original filing which I will present to the clerk. The ones that she wasn't able to reach, she just wasn't able to reach. It's not that anyone had any objections she just wasn't able to reach those neighbors.

Mrs. Rando: Number 105, did they sign it?

Ms. Sawin: They signed. It's on the fourth page, second one down.

Mrs. Rando: Thank you.

Does anyone have any questions at this time?

Ms. Hankins: I just want a little clarification. So there were two prior cases that you're referencing, one in 85 and 2007. So in 2007 the work never commenced, correct. But in 85 the work was completed.

Ms. Sawin: Correct.

Mrs. Rando: Did you mention the hardship?

Ms. Sawin: The hardship is just in not being able to use the property to the extent that's permitted by the ordinance. So we had a lot coverage permitted of 25% but they can't really do anything on the lot without relief from this board because of the conditions and they can't get to use it to the extent permitted because of the conditions that exist on the property. It was part of the challenge that they ran into the garage. They couldn't actually end up building it because of the conditions associated with the costs of doing it.

Mrs. Rando: So you're saying they can't make any developments that are consistent with the ordinance.

Ms. Sawin: They can't use it to the extent permitted under the ordinance.

Mrs. Rando: But they are making use of the house the way it is.

Ms. Sawin: Correct.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition? (Two people raised their hands.)

Is there anyone seeking information? Seeing none, is there anyone in opposition? Seeing none, you may continue with your Proposed Findings of Fact.

On motion of Mr. Hickernell, seconded by Mr. LeBlanc, the board voted to waive the reading of the Findings of Fact since they have been submitted in advance and are on file in the Law Department.

Mrs. Rando: You may continue with your Proposed Decision.

On motion of Mr. Hickernell, seconded by Mr. LeBlanc, the board voted to waive the reading of the Proposed Decision since they have been submitted in advance and are on file in the Law Department.

Mrs. Rando: I am ready to entertain a motion on the Proposed Findings of Fact.

On motion of Ms. Gelineau, seconded by Mr. LeBlanc, the board voted that the Proposed Findings of Fact be the Findings of the Board.

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

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

On motion of Ms. Gelineau, seconded by Mr. LeBlanc, the board voted that the Proposed Decision become the decision of the board.

Roll call: Mr. LeBlanc, 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 2017-27 petition of Alexandria Real Estate Equities, Inc.

The clerk then read the Petition of Alexandria Real Estate Equities Inc. , Owner, ARE-MA Region 51, LLC, in an application for dimensional variances, special permits and modification of Board of Appeals Case No. 97-21. Subject Matter: Note that this is the same zoning relief that was requested and granted in Board of Appeals Case No. 2015-28. The property is located at 205, 225 and 231 Second Avenue. Location and Zoning District: 205, 225 and 231 Second Avenue, Commercial Zoning District.

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

Michael Connors, Esquire, Law Offices of Connors and Connors, 6 Lexington Street, Waltham came forward. He submitted copies of briefs and exhibits to anyone on the board that did not have one.

Mr. Connors: I am here tonight on behalf of our client, the petitioner, Alexandria Real Estate Equities, Inc. They are an S&P 500 company in an urban office uniquely focussed on collaborative life science and technology campuses in triple A innovation cluster locations.

Before I go any further, I think it is important to point out to the members that this board unanimously granted the exact same zoning relief being requested tonight. In this proceeding for the locus and this petitioner in Case 2015-28 which was decided on January 5, 2016. Four of the five members sitting tonight were on that case. The only one is the one that was mentioned earlier tonight was unable to come tonight for a family emergency.

Additionally a six month time extension was granted to the petitioner and that was by this board on December 13, 2016, that was Exhibit N and that case was Exhibit M in your packet.

I delivered two packages. The exhibits have a green back and the brief has a blue back.

The extension lapsed on July 5th and this board only has the power to grant one six month extension for variances under Mass General Laws which is different from the City Council for Special Permits which continually grant year after year extensions.

Accordingly the petitioner had to reapply for the zoning relief that was previously granted. The clerk read in and I will try to because of those unique facts with the board members being uniquely aware of the property here, the former ADP building. I'll try to skip over some specifics as to the property but as mentioned the only difference between the petition in 2015-28 is that work has taken place at the locus since that time.

Mr. Connors read his brief into the record "The Petition" on page four.

This board has all the powers to grant that same zoning relief and modify prior cases. Thus for all the reason mentioned above and those contained in the materials that I filed which include the whole brief that go through all those standards that as I mentioned four of the five members sitting tonight already agreed with that they met. Alexandria respectfully requests that this board approve that same relief granted.

So, Madam Chair, that's my presentation in chief tonight. So hopefully I saved some time here but as I mentioned there's a lengthy brief that jumps through all the hoops necessary and I can go through that in further detail at this time if that's the wish of the board.

Mrs. Rando: Are you saying, Attorney Connors, that you want us to extend the time?

Mr. Connors: No, you don't have the power to extend the time generalized when it's really one six month extension. You already granted it. So we came in last December and you granted it and it lapsed. So there's been a period of time where they have been unable to build further under that and it was because of securing a new tenant. They had one tenant Forum Pharmaceuticals.

Mrs. Rando: So this is like a new case.

Mr. Connors: They have to start anew because we didn't meet the requirements set forth in Mass General Laws.

I have included the same decision that was drafted that was approved by the board.

Mrs. Rando: All right, Mr. LeBlanc any questions?

Mr. LeBlanc: No.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: No.

There was no one in the audience that was in opposition or seeking information.

Mrs. Rando: You may continue with your Proposed Findings of Fact.

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

Mrs. Rando: You may continue with the Proposed Decision.

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

Mrs. Rando: Do I have a motion on the Proposed Findings of Facts?

On motion of Ms. Gelineau, seconded by Mr. LeBlanc, the board voted to adopt the Proposed Findings of Fact as the Board's Findings of Fact.

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

Mrs. Rando: Now the Decision?

On motion of Ms. Gelineau, seconded by Mr. LeBlanc the board voted that the Proposed Decision become the board's Decision.

Roll call: Mr. LeBlanc, 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 Ms. Gelineau, seconded by Mr. Hickernell the board voted to adjourn at 8:15 P.M.

Barbara Rando 10/3/17