

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

November 14, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, November 14, 2017, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Acting Chair, Barbara Rando, and members Sarah Hankins, Mark Hickernell, Edward McCarthy and John Sergi.

Mrs. Rando: Tonight we have three new cases and one continued case before us. Case 2017-25, 75 Third Avenue Real Estate Trust, 75 Third Ave., and that's for signage; Case No. 2017-32, Premier Storage Investors, LLC, 151 to 171 Bear Hill Road and that's also for signage; Case 2017-33, Christy Belleau, 84 Hibiscus Avenue, and that's for a second floor and deck; Case 2017-35, The Dog Retreat and Spa LLC, 219 Bear Hill Road, and that's for a doggy daycare.

Mrs. Rando: The first action this evening is for a motion to accept the minutes of October 24, 2017.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to approve the minutes of October 24, 2017.

Mrs. Rando: Will the clerk please read the Petition in Case No. 2017-25?

The clerk then read the Petition of 75 Third Avenue Real Estate Trust for a sign variance. Subject Matter: The construction of a second ground sign. Location and Zoning District: 75 Third Avenue, Commercial Zoning District.

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

Attorney Bret Francis, Scafidi Juliano, 10 Hammer Street, Waltham came forward.

Mr. Francis: I am here tonight as you indicated on 75 Third Avenue. What we are going to do today is actually seek a continuance to 11/28 as part of a global agreement with the petitioner in Case 2017-35. We have agreed to take their date of 11/28 if they could have today's date, for their reasons. I'm not exactly sure.

It was agreed with Ms. Doucette and if that's okay with the board we would like to continue to 11/28.

Mrs. Rando: All right. Any questions? (There were none.)

Do I have a motion to allow Case 2017-25 to continue to the 28th of November?

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to continue Case 2017-25 to November 28, 2017.

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

Mrs. Rando: Will the clerk please read the petition in Case No. 2017-32, Premier Storage Investors, LLC, 151-171 Bear Hill Road.

The clerk then read the petition in Case No. 2017-32, Premier Storage Investors, LLC. Owner: PSI Atlantic Waltham, MA LLC in an application for sign variances. The locus is a large parcel of land located on the easterly side of Bear Hill Road. The locus contains 85,229+/- square feet of land (1,957 +/- acres) with an existing one story commercial structure and 144 surface parking spaces located thereon. The petitioner proposes to raze the existing commercial structure and surface parking to construct, use and maintain a new self-storage facility thereon. This petition is for proposed signage associated with the proposed self-storage facility. Location and Zoning District: 151-171 Bear Hill Road in a 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.

Mr. Connors: We are here tonight on behalf of our client Premier Storage Investors LLC requesting three sign variances for the proposed signage of the proposed self-storage facility to be located at 151-171 Bear Hill Road.

Mr. Connors began reading his brief and going over the plan with the board.

Mrs. Rando: Could I ask one question? You discussed with the council exactly what?

Mr. Connors: With the City Council, I'm just saying why we are here and the timing of it.

Mrs. Rando: It has nothing to do with the signage.

Mr. Connors: It does have to do with the signage. We bifurcated the two cases. Technically we could build a building without signage. So we could get zoning relief by the city council for the FAR Special Permit that's being sought.

So that was one case that was approved by this board on October 3rd. Now I'm here for the signage.

Mrs. Rando: But you had mentioned the council. I was wondering if you had mentioned the signs to the council.

Mr. Connors: Yes, the city council received the list of the signs and they are well aware. I have been to the Ordinance and Rules Committee at multiple times over the last two months. They are well aware of this meeting here tonight that we were coming back for signs because they can technically - - -

Mrs. Rando: So it's up to us.

Mr. Connors: Well, the only relief that can be granted by you as to signage in excess. That's what this board has the authority.

Mrs. Rando: I wanted to get that clear.

Mr. Connors: That is clear. Technically they could then take that away from it but they will have the final say on the Special Permit. But, yes, Madam Chair that's why we are here tonight. This board has the jurisdiction over the signage and because we are seeking variances.

Mr. Connors went back to reading his brief.

So Madam Chair and members of the board, the clerk read the variances being requested. I then touched on the size of the signs and I do see that you have a full docket tonight with four items.

I submitted this brief two weeks prior, consistent with the board's rule. Once again, this board made the findings as to the shape of the locus as well as to the unique soil conditions at the meeting on October 3rd in Case 2017-28. So at this time would the board like me to read the remainder of my brief?

Mr. Sergi: I'm okay with it.

Mr. Hickernell: I read the brief.

Ms. Hankins and Mr. McCarthy also noted they read the brief.

Mrs. Rando: For the people at home and the people in the audience, I think it would be a good idea for you to explain why you feel that you need the over abundance of signs.

Mr. Connors: We don't feel it's an over abundance at all. It's typical signage. It's a unique site. Anyone who has driven up around that area knows it's located on an "S" Turn on Bear Hill Road, so it's very difficult to see. It's also located far away from exits. So someone might see the signage on the highway but then have to navigate their ways through the Waltham roads whether it be coming off closer to Cedarwood or over near Winter/Wyman Street and coming up Second Ave which then turns into Bear Hill Road.

So the signage is located, the location of the building was determined as we discussed on October 3rd by the soil conditions underneath. They can't dig under so it has to be located in such a way that also dictates where the signage will have to be placed. And so some of these signs are being used because it is along 128 which isn't typical. In the brief it discusses it and this board many times has heard that the sign code is really written in a way to address a building along Main Street and Moody Street in the downtown and that the secondary signs would be such that if you pulled into a parking area you look at almost an inventory to see okay in these next four or five buildings I'm going to find the business I am looking for. It doesn't really contemplate a building up along 128 which it's obviously a premium pay for real estate and it's typical of buildings that have signage along 128.

Also the fact that this is a self-storage facility, it's going to be infrequently visited. So for that reason, it's not something that people go to once and then either continue to go back to and everyone knows where it is located. There's a constant turnover and the storage spaces and so for the sake of safety in the area, Bear Hill Road, like I said, is connected to Second Avenue and can be very busy during rush hour.

One of the benefits of this self-storage facility as noted in the brief, I have with me also the Traffic Engineer tonight since this went to the City Council for the Special Permit Development Prospectus process. The Traffic Engineer and the Traffic Commission reviewed the traffic study which showed this will roughly be a 66 percent reduction in traffic during the rush hour. So when you have that reduced rush hour, you don't want people pumping their brakes for signage or driving past it and there's not a lot of areas to turn around so this signage I think fits the building and the size of the building is being determined by the City Council. That's under their purview and the special permit for floor area ratio.

Mrs. Rando: I find it a little surprising that you can move an entire building where there is contaminated ground but then you can use as part of the argument that you can't find a spot to put a sign here, here and here because of the contamination.

Mr. Connors: If you remember, we wouldn't be able to dig down in the site which is unique. That's a unique soil condition. So that is where we locate the building so obviously if the building were located different on the site you wouldn't need signage in certain areas. Also as I mentioned as to the shape the "S" turn along Bear Hill is very unique and you're coming up over the hill for someone who is not used to it, you have the highway looking off to your side, if you're driving northbound. You come over the hill and then the property is upon you.

But along those lines, once again, it's a reduction of traffic in the area. The petitioners also agree to putting sidewalks along the street frontage there which adds to safety in the area. Overall, it seems to be viewed favorably. I think that the signage fits the building and due to the fact that it's along 128 and this "S" curve, those are really the reasons why signage other than like I said if you were on a street front along Main and Moody you just need your signage along the front. We actually have less signage than technically is allowed. It's just chopped up differently and that shows on the plan.

Mrs. Rando: Mr. Sergi, any questions?

Mr. Sergi: Not at this time.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No questions.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: I can understand for sign 3 because it's on Bear Hill Road and you know having been on the site visit and having been there many times that it is a difficult area to navigate. So it would make sense to have some nice signage there, but I'm not sure that justifies Sign 2, especially Sign 2, you additionally want it larger than is allowed, correct?

Mr. Connors: Yes. Sign 2 is the variance requested. (Mr. Connors went over the plan) So Sign 3, as I mentioned, that's for traffic coming southerly on Bear Hill Road. So I mean their different signs. This Sign 2 faces 128. So, yes, it is a request for a larger size but one note on that same plan we are looking at, in the plan note you will see technically by right a simple multiplier of frontage times six. We could have 792 square feet and all the signs we are asking for are 644.9. So we are well under the maximum signage and that's obviously discussed further in the brief which I can get into in greater detail if that's the wish of the board. So it's just under a hundred and fifty feet, under the maximum we could have by right. We just have it cut up into six different signs due to the fact how the building sits on the property and the fact that it is along 128 and the "S" curve along Bear Hill Road which is very unique.

Mrs. Rando: Mr. McCarthy?

Mr. McCarthy: Sign 6 is illuminated?

Mr. Connors: Yes, it is. It's along 128.

Mr. McCarthy: It seems like a duplication to me the two and the six. I don't understand why you need both of them. I mean you've got that sign 6 out there lit up.

Mr. Connors: And that sign as far as size goes is forty-eight square feet. The only reason we have a variance on that is it's double sided because it has more traffic on 128. Technically it could be there as our by right ground sign at the same size. We just wouldn't put signage on one side. And that's really a determination by the building department that they have been adding since the addition of grade signs. The definition of grade signs specifically speaks to the fact that they are double sided so then I made an inverse interpretation that that means that other signs that maybe in the past weren't treated as such that they started using a multiplier.

Mr. McCarthy: If you need six why would you need two?

Mr. Connors: Two is on the wall itself.

Mr. McCarthy: I understand. I mean six, your object is to get the attention of the folks on 128 which I assume Sign 2 is doing as well. Yes? No? That's what it's for, right? The folks on 128.

Mr. Connors: The site is also directly across from the Market Basket site, the Marshall's site. It is a wall sign that is allowed. Once again that ground sign is built out to the side. It's allowed by right. The only request there is whether it can be two sided or not which, I mean, I think is a very reasonable ask.

Mr. McCarthy: I know. I understand. It just seems like a duplication of effort why you have additional signs if you don't really need them.

Mr. Connors: I have with me, Mr. Jay Tillman.

Mr. Jay Tillman: Premier Storage Investors, Memphis, Tenn: Thank you again for your time tonight. We would like to have done this zoning being done at the last time but

we weren't familiar with your zoning code and it was a little more complicated than what we are used to.

But to answer your question quickly, sign six as a pylon sign capped out of forty-eight square feet still isn't the ideal size for something to be visible to 128 at that distance. It still is undersized. Most of the people on Bear Hill Road actually put their pylon signs on 128. You know that were tearing down is the only establishment that actually had their existing sign facing Bear Hill Road.

Sign 2 is more important to us at 200 square feet. It's more in line with the size of the building elevation and its much more visible to 128. At a forty eight square foot sign, two sided, six by eight at that distance, it's not a very efficient sign.

Mr. McCarthy: It seems like a duplication of effort here. If one is more desirable than the other, then choose the one that is more desirable.

Mr. Tillman: What we were told was that this board is more accustomed to taking the board from two sided to one sided and keeping it at the six by eight size. But most of the businesses along Bear Hill Road they have building signs on the back of the buildings and they put their pylon signs on 128. You probably have a hard time visualizing it because at that rate of speed you don't pick up on it.

It's more important to me to have, even though it's still difficult the way the building shaped, if you're headed, it gives you a better chance. If you're headed north on 128 you're going to see the building sign up front. The way the building jogs on 128, you're going to see the pylon sign heading south. They're still both important. But Sign No. 2 is critical because of the size of it.

Mr. Connors: Madam Chair, if I could just request a one minute recess to speak to my client?

**On motion of Mrs. Rando, seconded by
Mr. McCarthy, the board voted to take a one minute recess at 7:26 P.M.**

The board reconvened at 7:29.

Mrs. Rando: You may continue.

Mr. Connors: Yes, Madam Chair. I did see during that break the Ward Councilor is here. I didn't notice him at the beginning but as to the Sign 6 as far as the variance request goes there. As you can see the building jogs in so it is needed in that the southbound, the cars coming from the south going northbound on 128 are more apt to see Sign 2 whereas the southbound ones will first catch their eye on Sign 6. Hearing the board's concerns, we would like to reduce that to a single sided sign so it would be a ground sign that does not require a variance. It would be the forty-eight square feet that's allowed by right. So we would remove the variance request for Sign 6 if that would so please the board.

Mr. McCarthy: Will it still be illuminated?

Mr. Tillman: Yes sir. It's an illuminated sign.

Mr. McCarthy: You're not illuminating 2?

Mr. Tillman: Sir, the signs are all illuminated on the building, yes sir.

Mr. Connors: There are no residential, it's commercial zone for the property.

Mr. McCarthy: How about a time limit on shutting the lights off?

Mr. Connors: The lighting would meet any requirements of the code.

Mr. Tillman: We are not open twenty-four hours.

Mr. McCarthy: I mean they can see the sign all they want from 128 but they are going to be scratching their head to get there if you haven't been there before. It's a real head scratch to get there.

Mr. Tillman: That's why the signage is important where it is.

Mr. McCarthy: Well out in Bear Hill, yes, I understand that but out on 128 itself, I don't know how the heck you can get up there from here you know. You can't get there from here so to speak.

Mr. Connors: And storage is one of those things. When you need it then you go looking for it.

Mr. McCarthy: It's more of an advertising thing.

Mr. Connors: The sign serves as a dual purpose and I and I think that's true of any signage otherwise people are going to rely simply on their GPS.

Mrs. Rando: You said that the lettering could be changed from time to time. Why would you want to change the lettering?

Mr. Connors: As I mentioned about the petitioner. They are building the building. This isn't for instance a McDonalds coming and saying it's going to be a McDonalds. They don't know who's going to in the end lease or purchase the space and that's a typical condition that we have on requests for signs just so we are not backing up your docket for something that turns over from one party to another.

Mrs. Rando: And the sign is going to be red with white? This is a rendering of what the sign is actually going to look like?

Mr. Tillman: Yes.

Mrs. Rando: If we are going to agree to this type of a sign, if you're going to change the color of the sign, I think that you should come back before us.

Mr. Connors: Different companies have different colors. Really the variances are not aesthetic as to color but as to the size of them.

Mrs. Rando: It does influence the decision. We don't want an ugly sign up there.

Mr. Tillman: The red and white happens to be the logo. If this was a hotel, if you were going to the Hilton you would do letters that are appropriate for the Hilton. Who's to say five years from now the Marriott wants to come in and they want to put their signs there. We don't want to be tied for Marriott colors for Hilton colors. It will be professionally managed.

Mrs. Rando: Are there any other questions? Hearing none, is there anyone in the audience that would like to speak in favor? Please come to the podium. Hearing none, is there anyone in opposition?

Daniel Romard, 291 Dale Street: I am the ward councilor for this area. I want to first apologize to the petitioners. They didn't know I was going to be here. I am actually here for another matter. I haven't seen much of this detail at all. However just knowing the area, knowing what's coming in, knowing what was there UNO's prior to this and what's next door, my concern is that if we allow this commercial entity, anything over and above what is by right, my fear is we are now going to get requests from all the businesses along this stretch. For instance, let's take NTW which is right next door. Nice business, been there a long time. I don't know how many signs they have but it's certainly not excessive. They might have one stand sign and two along 128. We do have a dual brand hotel which is coming in which is the Marriott Fairfield and a Residence and I believe that just due to the fact that it's dual branding there's going to be some excess signage there that we need to worry about. Obviously across the street the Phase Two of the Market Basket area is going to be exploding. So there's going to be signage and lighting and issues there. So with that I just want to be sure that the committee here keeps that in mind and sort of address that fear if we do it for one in the spirit of competition that we are going to get requests from a lot to say, well, you did it for them and you let them have six signs, bigger signs, you know, why can't I.

So I would just suggest that we maintain the status quo as much as we can and simply support any by right signage but I respectfully ask the committee to think about denying anything over and above any relief from that by right.

Thank you.

Mrs. Rando: is there anyone else in opposition? Seeing none, is there anyone seeking information? Seeing none. Attorney Connors, do you have anything else to say?

Mr. Connors: I would like to add in all due respect to the Ward Councilor this matter as I mentioned will be back at the City Council. He has spoken on the matter. This is very typical signage that is up in the area.

I will say that this board, and we talk about it each time as opposed to the city council where there is a different standard as to hardships here. We were talking about the soil conditions and shape that are unique to the locus. That wouldn't be as the ward councilor mentioned, that if one gets it someone else would because they won't have the same unique hardships that this parcel does have.

As to across the highway, I mean it is across the highway, eight lanes there. That site across the way is going to be lit up more than anything. This will be a drop in the bucket as far as light up in that area and there's no residential abutters within three hundred feet. So I would ask that the board obviously as we talked about the board's jurisdiction before that's the very reason we are here for variances above and beyond what's allowed and the sign ordinance as you mentioned, there was a case on here before us tonight, this board hears quite a few sign variances. I think one of the reasons for that is that the sign ordinance has been rewritten and in a number of years there's been piece meal additions as I mentioned earlier in my statements but other than that it does still go back in the calculations when you look at them are more set up for a banner sign along Main and Moody, for instance, along the frontage. So like I said we have almost a hundred and fifty square feet less than what we could have by right. By right we could do a banner across the whole building with technically more signage. This is as I mentioned my client and his partners have built across the United States and this is very typical signage. They're putting up a nice landscaped building in the area which I mentioned was favorably received. So I don't think that it's excessive by any stretch of the means and variances for signs are considered by this board on a regular basis. But it's not that if one was granted another one would get it. We went over the uniqueness of the locus, the hardships here that we discussed in Case 2017-28 which caused us to locate the building in such a way that

instead of using all of our allowed signage we decided to break it up so it works better for this locus along 128 and an “S” curve on Bear Hill Road.

So really we are now down to just two variance asks. We removed the variance ask for Sign 6.

Ms. Hankins: Again, on Sign 2, what you just said is very true that the sign ordinance is very confusing which is what has brought you here tonight as you probably have had a lot of experience with this and you're still like what is this?

Mr. Tillman: I feel like the sign ordinance was made more from downtown.

Ms. Hankins: I don't feel like that that's the Ward one Councillor's and his bodies problem. You know that they should draft that but until then we should work with what we have and I very much see where having a sign on Bear Hill Road fits in with having a hardship with the location of the lot. I just don't it on the highway side of the signs there, sign two there, especially since if you are saying it's related to your building, you know, you can make it the way you want and do it within the sign code. That's just my opinion on that.

Mr. Connors: The analysis is the hardship as the ordinance applies to the specific locus and if people can make a reasonable use of it. So I mean if sign 2 were to be eliminated to eighteen square feet. I mean that's less than a five by four sign. It's not going to be visible on 128.

Ms. Hankins: I don't see where the signs on the highway will actually benefit people especially in this day and age with GPS. I don't think people are looking on the highway to pass the sign. It seems to me to be more advertising. So I just don't really see why were are going to grant a variance to advertise the property.

Mr. Connors: Any signage, advertising is considered.

Ms. Hankins: Yes, but there's a certain degree that you are asking for a variance for a hardship but it's somewhat related to you know - - -

Mr. Connors: I think as a community we also want to know what buildings are up and around in the area. This is a beautifully designed building that's an improvement to the site. It lessens traffic in the area.

Mrs. Rando: Attorney Connors, I found where the doggy day care is going to be is without a sign today. I used my GPS. It brought me right to it.

Mr. Connors: I think Madam Chair is referring to a case that's on later tonight. That case hasn't been heard yet.

Mrs. Rando: Right but what I am saying is that I found that locus without any sign.

Mr. Connors: Some with doggy daycare they probably will be there every day so and there's one entrance to the site. I don't think they are here seeking a variance as to signage.

Mrs. Rando: I'm just stating a fact.

Mr. Connors: Right. It's just a different locus is what I was getting at. They are not on the "S" turn. So as far as locating, that's one thing. As I mentioned, pumping the brakes, safety of the public is something to be concerned. Maybe people hit the brakes lightly there but if they listen to the GPS, maybe they are hitting them harder coming around that turn which is something once again I think that the ordinance may not address

fully because it can't be written to every single unique property but I think is definitely important to the public safety as is spelled out in the brief.

The Zoning Ordinance 6.211 defines signs as "any announcement used to identify any person, premises, or product and the same is in view of the public. I mean product is language as to advertisement.

As I mentioned as this board hears all the time statutory Kirkland vs. Board of Appeals statutory hardship is usually present when a landowner cannot reasonably make use of his property for the purposes or in a manner allowed by the zoning ordinance. So if we forget about the use that's here, signage along 128 I think is definitely a landowner making reasonable use of their property so they can identify their premises. Otherwise, if it's just simply by plugging in the GPS, as I said, then there wouldn't be any need for any signs. This building is over a hundred thousand square feet as proposed so this is less signage than is allowed by right. We have reduced the variance request.

Mrs. Rando: Any other questions?

Mr. Tillman: Ms. Hankins, Sign 2 is extremely important to me. It's extremely important to all the other businesses that have signs along 128 as well. I would be willing to give up Sign 4 which I am not here for a variance but I'll take and scratch it off. I'd gladly give up sign four for sign 2. It's very important to my business.

Mrs. Rando: If there are no more questions, we will closed the public hearing and you may continue with your Proposed Findings of Facts.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to waive the reading of the Proposed Findings of fact since they have been on file.

Mrs. Rando: You may read the 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.

Mrs. Rando: I am ready to entertain 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 as amended by the Petitioner to eliminate the request for the variance on Sign 6 be adopted by the board.

Mr. Connors: At this time I would like to ask the board if the removal of Sign 4 that was just brought up by the petitioner if the board finds that helpful in reduction of signage at the property.

Mr. Sergi: I personally am okay with the signage the way it is. I think we have looked at this a number of times on other cases and we have the same issue, the size of the sign and how it relates relates to the center of town. So I am okay with the sign 4.

Mr. Hickernell: I agree with Mr. Sergi.

Ms. Hankins: I appreciate it but sign four is actually more to my point that the Bear Hill Road signs I have absolutely no problem with. I see very clearly the hardship and I see a cleaner argument on that side.

Mr. McCarthy: I have no problem with sign 4. I have no problem with sign 3 either.

Mr. Tillman: I hate to give up my pylon sign but sign 2 is more important to me than the pylon sign.

Mr. Connors: May I make mention to the board. We are in front of the City Council and there's just been an election there's going to be four changes for the city council. So time wise we are limited and I understand the board is well aware of that and thank you for taking four matters on tonight. This is something we hope to be able to discuss with the board we've reduced some of the requests.

So Sign 6 before we said that we would reduce it to the by right size now we will eliminate it completely. So along 128, the only signage is Sign 2.

Mrs. Rando: All right. So we have a motion by Mr. Sergi. Do I have a second?

Mr. Sergi: The motion has to include the elimination of Sign 6 and amend the Findings of Fact to include that.

Mr. McCarthy seconded the motion.

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 Decision?

On motion of Mr. Sergi, seconded by Mr. McCarthy the board voted to adopt the Proposed Decision as amended and the items discussed by the board be included.

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

Mrs. Rando: So it is granted.

Mrs. Rando: Will the clerk please read the petition in Case No. 2017-33?

The clerk then read the Petition of Christy Belleau in an application for a variance to allow for the addition of 430 sq. ft.+/- of living space by demolishing the second floor shed dormer and constructing a full second floor and covered front deck. Location and Zoning District: 84 Hibiscus Aveue, Residence A-4 Zoning District.

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

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

Mr. Francis: I am here on behalf of the Petitioner, Christy Belleau and her daughter Cloey, individuals and owners of the single family home that is the subject of tonight's hearing located at 84 Hibiscus Avenue.

(Mr. Francis then read his brief into the record.)

Mrs. Rando: Are there any questions?

Mr. McCarthy: Do you have any renderings of what this is going to look like?

Mr. Francis: No. (Mr. Francis went over the plan to answer Mr. McCarthy's questions.)

Mr. McCarthy: How high off the ground is the door?

Christy Belleau, the Petitioner, went before the board.

Ms. Belleau: Yes, there would be three steps up to the front door. That's currently a very tiny bedroom so you just would walk in there.

Mrs. Rando: May I ask you one question. I made a site view there today and you have a fireplace in the front.

Ms. Belleau: That's coming down.

Mrs. Rando: There are two houses past you going towards Lake Street and it has a fireplace and then a front door. I thought you were going to mimic that but you're not.

Ms. Belleau: There's two brand new houses that just went up.

Mrs. Rando: Two new ones and then this gray one that has a fireplace in the front and a front door and I thought that that was exactly what you were doing.

Ms. Belleau: No, the fireplace is in really bad shape and it would be much more expensive to try and repair it than to take it down and I have a fireplace in back of the house so I really don't need two.

Mrs. Rando: The neighborhood is really a mixture of big houses. Right after you there are about five houses about the same size as yours.

Are there any other questions? (There were none.)

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

Is there anyone in opposition. (No one came forward.) Is there anyone seeking information. (No one came forward.)

Now did you speak to the abutters?

Mr. Francis: I believe that the petitioner did. One is here with us that lives across the street.

Mrs. Rando: 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 they have been on file.

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

Mr. Hickernell: Could you take a look at paragraph 5 of your Proposed Findings of Fact? The side yard setback looks accurate but the next underlined paragraph looks like you've got references to Rear Yard Setback. It should be Front Yard Setback. It should be changed on the second line also.

Mrs. Rando: I need a motion to waive the reading of the Proposed Decision.

On motion of Mr. Hickernell, 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: All right, I am reading to entertain 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 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. Rando, yes.

Mrs. Rando: It is granted. Good luck.

Mrs. Rando: Will the clerk please read the petition in Case No. 2017-35 The Dog Retreat and Spa, LLC?

The clerk then read the Petition of the Dog Retreat and Spa LLC, Owner: 221 Bear Hill Road, LLC in an application for variance. The locus consists of a large parcel of land with an existing Commercial Building situated thereon. The Petitioners propose to renovate the existing building to construct, use and maintain a dog kennel or dog day care thereon. Location and Zoning District: 219 Bear Hill Road, Commercial 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.

Mr. Connors: The Principles of the Dog Retreat and Spa, LLC Jalene and Ed Buckner are here in the fourth row.

Mr. Connors submitted a written brief to each member of the board and then read his brief into the record and went over the plan with the board.

Mrs. Rando: Is the council waiting for our vote?

Mr. Connors: Yes, they are. The council has said that we will forward it to the full council but we are going to table it because we believe that the building inspector says we need the variance. We can't approve it with less than five hundred feet unless you have a variance to do so.

My client did make mention to me the 62 acre parcel that is now known as Avalon Apartments is subject to a Zoning Board of Appeals case. Mr. McCarthy remembers it and voted on it in 1996. But in that brief they made mention of a, and actually in the decision that I found on line, the Notice of Decision, there was a finding by the Zoning Board of Appeals that stated: "The buildings will only occupy about ten percent of the locus. The drives and parking about fourteen percent. The remaining seventy-six would be the landscaped area, 25 percent were natural areas, fifty-one percent. This represents a substantial benefit to the public in that it would be preserving natural areas as much as practical.

I mean, I just put that out there because in 1996 they got all the apartments approved, kind of over here (referring to the plan) and with the representation that the rest of it would remain wooded area and so we are adjacent to that. So we don't believe that there will be any development of that any time soon. Certainly there will not be any further approval of the Board of Appeals. So we don't think, clearly the intention of the ordinance was to prevent some type of dog kennel interfering with residential property. It's just not going to happen here. Just the noise from 128 is going to overwhelm anything. I did mention in my brief, I haven't mentioned it tonight, we did take that into consideration. There are sound mitigations that will be taken by the petitioners so they have cushioned floors, certain sound panels that would be in the ceilings and on the walls which will mitigate any noise which would perhaps be generated by the dogs but they really don't think that's going to be an issue especially when you consider its proximity to Route 128.

Mrs. Rando: Attorney Connors, the wooded land, is it build able or is it wetland? You said it was wetland.

Mr. Connors: It is. If you look at my picture here, Exhibit E, so there's a big wetland area right there (referring to the Exhibit). We're just a little bit north of that. So there is a lot of water there. I believe that's where we are going to be 398 feet from. But arguably we would be in the buffer zone of the wetland area. I didn't have the wetlands marked but this particular property, this entire locus property is in addition to being subject to the Zoning Board of Appeals and subject to the Order of Conditions of the Waltham Conservation Commission.

So there is some wetlands there. (Mr. Connors went over the plan with the board.)

Mrs. Rando: Are there any questions from board members?

Mr. Sergi: So most likely, that will not be developed, is what you are saying, Counselor, correct?

Mr. Connors: Correct.

Mr. Sergi: So if you add that to the fact that the building is 500 feet away, I mean you're here solely for the interpretation of what you outlined.

Mr. Connors: Yes. It's simply kind of a strict interpretation of the zoning ordinance when we determine five hundred feet from the use. So the building is going to take it conservatively from the edge of the driveway as opposed to where we are actually going to keep the dogs. Based on precedent, any time any part of your lot is within five hundred feet, then it's within five hundred feet, so he was reluctant to just say, well, just because the building is more than five hundred feet, I'm not going to approve it. I think you need Zoning Board of Appeals approval.

Mr. Sergi: But in actuality the closest residential ears is well beyond five hundred feet. Correct?

Mr. Connors: Absolutely.

Mrs. Rando: That's because of cases coming in. They do need a variance.

Mr. Connors: Yes. I would say the building is more than five hundred feet from a residential zone. We are two thousand feet, three thousand from an actual residential structure.

Ms. Hankins: How far are you from the Avalon has an easement road there and there is a gate there. How far are you from that gate?

Mr. Connors went over the plan with the board. So I would say we are more than five hundred front the cul-de-sac which is inside of the gate.

Mr. McCarthy: Joe, do you have any elevations?

Mr. Connors: I do. (Mr. Connors went over the elevation plan with the board.)

Mrs. Rando: Are there any other questions from Board Members?

Hearing none, is there anyone in the audience that is in favor of this Petition?

(10 People raised their hands in favor.)

Would anyone like to speak in favor?

Dan Romard, 291 Dale Street came forward.

Mr. Romard: This facility is also in my ward, Ward One. I would like to express my sincere support for this. The issue that Attorney Connors mentioned in my mind, I won't say is insignificant technicality but I would view it as a minor technicality. If this didn't go through, it would be a very strong hardship for the petitioners. I met them, I want to say ten years ago, maybe, when they were looking at some other properties along that area and just their strong desire to be in Waltham and come up with this facility impressed me right away. From a council perspective, we didn't vote on it so I certainly can't speak for the other councilors but I know there was strong support for this review as an amenity. It's unlike anything we have here in Waltham or even close by unlike a well lit storage facility two doors down. This is a great use of the property and this building and then the last point I wanted to make was all summer in door knocking up in Fox Road and that area up in

Avalon with the upcoming election, no one mentioned any issues with this, any concerns or anything within the facility. And the fact that Board Member McCarthy, you did mention the elevation, I think that's critical. Again, I don't know the exact but it's got to be fifty to sixty feet above Bear Hill Road.

So as the Ward Councilor, I look at this as a great addition to the ward, great neighbors and facility up there on Bear Hill Road and I would hope that the board would see the same.

Ms. Hankins: Councilor Romard, when you were up to Avalon, you said nobody complained about it. Did you, as you were talking to people up there, did you mention, hey, this is possibly coming in and what are your thoughts on it?

Mr. Romard: We had other issues to deal with and you have three minute at the door, we focussed on some other things. But my point there was if there was strong concern around that, it probably would have come up and not one person mentioned it and I haven't gotten a call from anyone else based on the notice to abutters or anything else. Thank you very much.

Mrs. Rando: Is there anyone else? Is there anyone in opposition? Seeing none, anyone seeking information? Seeing none.

We have one letter to be read into the record.

The clerk read a letter dated November 7, 2017 from Amy Koel, Ph.D, 70 Waverley Ave., Newton in support of this petition. (A copy is attached to the minutes.)

Mr. Connors submitted another letter to the board which the clerk read into the record from Katharine deNatale, 204 Mallard Way, Waltham dated October 26, 2017. (A copy is attached to the minutes.)

Mrs. Rando: All right, the public meeting is closed. I am ready for you to read 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.

Mrs. Rando: The Proposed Decision?

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: On the Proposed Findings of Fact, I noticed that in your Findings of Fact and your Decision on Page 4, letter “k” of your Findings of Fact you stated that it is five hundred feet from the residential zone, I think you should put that 398.7, because we’re giving it a variance from the 500.

Mr. Connors: Why don’t I just delete the last sentence on the Proposed Findings of Fact.

And on the Proposed decision, Page 2, third paragraph second sentence.

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 Decision as amended?

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

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 8:50 P.M.


11/28/17