

CITY OF WALTHAM
ZONING BOARD OF APPEALS
November 15, 2016

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, November 15, 2016, 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, Glenna Gelineau, Sarah Hankins and John Sergi.

Mrs. Rando: Tonight we have a request for an extension of time, two continued cases and one new case.

The first case that we will be hearing is 84 Hardy Pond Road for an extension time; then the second case will be Cardillo on 105-107 River Street and 194 Aft. Willow Street and then Gilman on 14 Huntington Street and also Ash Street which is for a variance for 67 Ash Street.

The first action this evening is for a motion to accept the minutes of October 25th.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of October 25, 2016.

The first case is Case No. 2015-18.

Is there someone here for the extension of time on Hardy Pond Road?

Rob Forney, 84 Hardy Pond Road, Waltham came forward.

Mrs. Rando: Do you want to explain to us why you want to continue?

Mr. Forney: It just took longer than expected to pull it all together. At this point we have all the sign offs that we need. We just need the extension. We ran out of time on the original zoning board decision.

Mrs. Rando: Are there any questions?

Mr. Sergi: What is the new schedule to complete the project?

Mr. Forney: As soon as we can get the permit, we are hoping to have the foundation in before the frost and then over the winter we will do the interior construction. We'll do the frame and weatherize it and do the interior construction.

Mr. Sergi: It will be weather tight before the winter?

Mr. Forney: Hopefully before Christmas.

Mrs. Rando: And when was the time up?

Mr. Forney: October 29th was the deadline on the Zoning Board decision.

Mrs. Rando: So you have missed the deadline?

Mr. Forney: Yes. We talked to Pam Doucette prior to that and she got us in as soon as possible.

Mrs. Rando: And how much time do you want for the extension?

Mr. Forney: Well, I think we have everything else ready to go. Now the contractor has all the sign offs.

Mr. Rando: Are you thinking six months?

Mr. Forney: Six months would be great.

Ms. Hankins: I just seem to require a little more detail as to why?

Mr. Forney: It was my first time going through the process and it took me a long time. It took me six months to get the architect drawing. I did everything kind of sequentially and at the end tried to get all the final sign offs more quickly and the final sign off took a lot longer than expected.

Mrs. Rando: Do I have a motion to allow Case 2015-18 to be extended to May 2017?

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to allow Case No. 2015-18 to be extended to May 2017.

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

We will extend it to May 13, 2017.

Mrs. Rando: The second case tonight will be Case No. 2015-27, Sadie M. Cardillo, Trustee of 105-107 River Street, Irrevocable Realty Trust, Anthony G. Cardillo, Jr., and

Anthony G. Cardillo III, Trustees of AAM Realty Trust, 105-107 River Street in an appeal from the Building Inspector.

The clerk then read the petition of Sadie M. Cardillo, Trustee of 105-107 River Street Irrevocable Realty Trust: Anthony G Cardillo, Jr., Anthony G, Cardillo III, Trustees of AAM Realty Trust and Anthony G. Cardillo, Jr., in an appeal from the decision of the Inspector of Buildings. Subject Matter: By letter dated October 28, 2015, the Inspector of Buildings served a Notice of Violation on the Owners of the properties at 194 aft. Willow Street, 105 R River Street, and 105-107 River Street; Industrial Zoning District.

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

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

Mr. Connors: We were here a couple of months ago past and at that meeting, I think the principal reached an agreement with the building inspector how to resolve the outstanding violations and he asked us to file building permits which we did. He asked us to revise the building permits which we did again and we submitted them. So he has all the building permit applications which would effectively resolve all the issues because there would be by right permits and then the case would resolve itself.

He has yet to issue the permits and the reason being is that a kind of a little wrinkle that we had here is that a portion of this property was a former railroad easement or railroad line. So, therefore, in order for the building inspector to issue a building permit, which I believe he intends to do, we need to petition the State Mass DOT for their consent before he'll issue the permit.

So, therefore, as a result of that, I am requesting an extension so to give the Mass DOT time to consent to the applications that we filed with the building inspector. The building inspector has provided me with a letter to the Mass DOT requesting their consent before he issues the permit and the building inspector is amenable to an extension. So, hopefully, with some time and the consent of Mass DOT and I've done that before and they usually consent. We are not building any structures. We're just putting bins in a tent. So I don't anticipate any problem there and then once that formality has gone through then he can issue a final building permit. At that point the case will resolve itself and we will just withdraw the appeal. So I am asking the board for an extension of time so we can effectuate that.

Mrs. Rando: How much time?

Mr. Connors: Well knowing the Mass DOT it's going to take at least three months.

Mrs. Rando: So you want three?

Mr. Connors: I'll take as much as we can get but I would say at least four months.

And I do have a copy of the letter to the DOT from the building inspector just so the board has a copy of that.

Mrs. Rando: Do you have anything from the building inspector?

Mr. Connors: Yes.

(Mr. Connors submitted a letter dated November 3, 2016, to Mass DOT and also an email to Mr. Connors from the building inspector dated November 15, 2016.)

Mrs. Rando: In other words, you and the building inspector want to come to an agreement.

Mr. Connors: Yes we have an agreement but he can't technically issue the permit until Mass DOT says okay.

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

Seeing none, I am ready to receive a motion.

On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to grant the extension for four months to allow the petitioner to get the appropriate approvals for the building permit.

Mrs. Rando: And that's to March 7th.

We have to extend the hundred days. So we will extend the hundred days to June 16, 2017.

How do you vote to allow this case to continue?

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

On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to extend the hundred days to act on this matter to June 16, 2017.

Roll Call: Mr. Sergi, 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 2016-37, Janalee L. Gilman. Owner: Derek and Omolara Gilman, 14 Huntington Street and that's for a variance.

The clerk then read the petition of Janalee L. Gilman. Owner: Derek and Omolara Gilman in an application for a variance - Parking Requirements. Petitioner seeks to convert garage of a single family residence into more living space for family. Petitioner needs relief from parking requirements. Location and Zoning District: 14 Huntington Street; Residence A-4 Zoning District.

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

Derek Gilman, 14 Huntington Street, Waltham, came forward.

Mr. Gilman: We are trying to convert our garage into a playroom.

Mrs. Rando: Do you have a brief or Findings of Fact or a Decision?

Mr. Gilman presented some photos to the board and a packet of information.

Mrs. Rando: You may continue and tell us about the case.

Mr. Gilman: We were just trying to convert our garage basically to a playroom. We have two daughters, a two and a half year old and a one and a half year old. As stated earlier, we need a five foot buffer between the car and the building and we are three feet short and I have a two foot window so as you can see in the pictures we still will have two off street parking side by side in the driveway. We're just three feet short.

Mrs. Rando: And this is just going to be a playroom? No kitchen? Just a playroom?

Mr. Gilman: Yes. Just a safe area for the kids to kind of run around in and have fun.

Mr. Sergi: You will replace the garage door with a regular door?

Mr. Gilman: Yes. A regular door and like a window.

Mrs. Rando: Any questions?

Ms. Hankins: To receive relief like this you need to show why this is a particular hardship for you? Do you have any thoughts on that? Is your property different than a lot of the properties in the area?

Mrs. Gilman: We don't have much of a back yard for the kids to play in. It's pretty much for a lack of a back yard.

Mrs. Rando: Actually you are taking the cars off the street too.

Mr. Gilman: They will still be in the driveway.

Mrs. Rando: That's what I am saying.

Have you talked to the neighbors?

Mr. Gilman: Actually there's a petition that we had them sign saying they didn't have an issue with it. They actually thought it was a good idea.

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

(Three people raised their hands in favor.)

Is there anyone in opposition? Seeing none. Is there anyone seeking information. Seeing none. All right I am ready to entertain a motion.

Mrs. Rando: We received the findings of fact. Has everyone read them?

Mr. Sergi: We have received the findings of fact and had a chance to read them, Madam Chair. So I propose that we waive the reading of the proposed findings of fact.

Mr. Hickernell seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.

Mr. Sergi: In a similar fashion I propose that we waive the reading of the Proposed Decision since its been on file and we have read them.

Mr. Hickernell seconded the motion and the board voted to waive the reading of the Proposed Decision.

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

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

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

Mrs. Rando: On the decision?

Mr. Sergi: Madam Chair, I make a recommendation that we add some language related to the hardship that was kind of described to us by the petitioner by way of a smaller lot and the lack of a backyard as your hardship.

Mr. Hickernell: I propose that we add to the end of numbered Paragraph 9 in the Proposed Decision: The variances are in keeping with the residential character of the neighborhood and are justified by the hardship posed by the small lot and lack of backyard for the petitioners' growing family.

Mrs. Rando: All right I have a motion on the Proposed Decision as amended. Do I have a second?

Ms. Gelineau seconded the motion and the roll was called:

Mr. Sergi, 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 2016-35. Ash Street, LLC?

The clerk then read the Petition of 67 Ash Street, LLC in an application for a variance - Frontage. Subject Matter is to allow for the construction of a single family residence upon the lot. Location and Zoning District: 67 Ash Street; Residence B Zoning District.

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

Bret Francis, Esquire, Scafidi Juliano, LLP, 10 Hammer Street Waltham, the Petitioner's representative came forward.

(Mr. Francis submitted a Supplemental Memorandum of Fact to the board.

He also went over the plan of the locus and then read his brief into the record.)

Mr. Francis: I met with Deputy Cliff Richardson, of the Waltham Fire Department and showed him this plan and asked him to make an opinion of what is the better location for his purposes, the proposed location or the previous location.

Mr. Francis submitted a letter dated November 8th from Deputy Cliff Richardson.

Mr. Francis: And therein he agreed that the proposed location better meets to his needs.

Lastly, I have here letters to the board from my client. I just received them today so they weren't able to be incorporated into the proposed decision but they are what my client agrees to do in regards to the fence on one side and a driveway and trees on the other side. What I would do, if the petitioner were allowed to revise this, using the exact language and getting it over to Pam Doucette.

Mr. Hickernell: Those would be conditions?

Mr. Francis: Those would be conditions on the Proposed Decision.

Mr. Sergi: Have you shared this with the neighbors?

Mr. Francis: Yes. They were given a copy.

Mrs. Rando: Does anyone have any questions?

Mr. Sergi: Does this qualify for a small lot opinion?

Mr. Francis: It did with respect to side yard setbacks which they were actually more conforming with the proposed plan but we were granted relief under 4.2181 I believe. But we did not qualify for frontage. It didn't have the minimum for that, two and a half feet. Otherwise if we had had two and a half more feet, it would be as of right. We are literally, again, bringing the house closer to conformity. The only deficiency is the frontage which cannot be remedied no matter where the house is located. The frontage is the frontage. But this is a safer house and it brings it closer to conformity. And I think that location really is a hardship that is unique to this petitioner and not the neighborhood in general.

Mrs. Rando: Attorney Francis, I think that's your problem right there. I think that you are not allowed a small lot opinion because you weren't able to get the frontage and again, I think that 40A does not allow us to vote if you do not have the proper frontage. That's the city council that sets the side yard, the front yard.

Mr. Francis: I would suggest that case law supersedes.

Mrs. Rando: I've read those cases and I didn't find that they helped your argument.

Mr. Francis: In the case with the structure being the hardship, that was once a church and what happened was a parishioner died on Route 6. It was located on a highway essentially. Bad location for a church. So the church dissolves. What's to be done with the church? A buyer comes in and wants to turn it into office suites, not allowed in the zoning and needs a variance. And in that situation, there wasn't anything else unique about the lot, shape, soil and what have you, but it was the structure itself. You can't have a church next to a highway. There's a danger involved. And they used that in the decision was that the structure itself was it something other than and it made it the grant of the variance held up.

Mrs. Rando: And there's nothing different in the soil conditions or the shape of the lot or anything?

Mr. Francis: No. So it's exact same situation here.

Mrs. Rando: I find it hard to believe that they could vote on that without hitting all the criteria that is necessary.

Mr. Francis: The case is cited but that situation is similar to this one in that this is a bad location for a house. And again, if the board denies it, we are forced to fit that footprint. That bulkhead would go back on where it is. It will cross into the other neighbor's lot. Firemen will not be able to get to the rear of that building. That is a hardship above and beyond the lack of a frontage.

Mrs. Rando: There are a lot of other houses on the South side that are like that.

Mr. Francis: There's only this one (referring to the plan) where it's located because it's a not a pork chop so to speak, but it's narrow, narrow lot and it opens up in the back and there's no place to put the house.

Mrs. Rando: I'm not arguing that it might be a better place where you want to put it. But that's not for me to say. I firmly believe that we do not have the right because another person would come in with a problem with frontage and expect us to grant them because they don't have it for whatever reason.

Mr. Francis: With all due respect, if they can show something more than, they are entitled to it. In my case I've shown something more. I can't speak for any future hypothetical. But if it was a pork chop shaped lot and all they lack is a frontage, that would be allowed to be. In fact, this case has happened a lot.

Mrs. Rando: I think your hardship isn't strong enough either.

Mr. Sergi: May I make a suggestion that we craft a question and ask for an opinion from the legal department?

Mr. Francis: I would talk to my client if I can have a couple of minutes to talk to my client.

Mrs. Rando: A motion for a five minute recess.

Mr. Hickernell seconded the motion and the board voted for a five minute recess at 7:50 P.M.

The board reconvened at 7:55 P.M.

Mr. Francis: It looks like we will accept that if we can have a continuance date of December 27th. That way not too much time is lost. We will be happy to continue it so the law department can, I guess, weigh in.

Mrs. Rando: My question is does 40A prevent us from voting on a smaller variance. I'll phrase it better tomorrow.

Mr. Francis: May I ask to see that question.

Mrs. Rando: I'll email it to you tomorrow.

Mr. Francis: In other words, I'd rather not wait until the night of the hearing to get her response. I think they usually need authorization to release it.

Mrs. Rando: Lots of time we don't get it until the day before that date.

Do I have a motion to continue Case 2016-35 to December 27th?

Mrs. Rando: Does anyone have anything different to say than they did the last time?

Is anyone seeking information that would like to come up?

James LaRosa, I represent the house at 70 Ash Street. There was also another house there that was recently ripped down. They are getting ready to rebuild. And due to the complications that are happening right now, it's a big mess up and maybe I'd like to

maybe talk to someone in person someday to see if we can resolve all the problems that are happening in that area right now, if possible.

Mrs. Rando: I would suggest that you call the building inspector.

Mr. LaRosa: Okay, that would be good. Thank you.

Mrs. Rando: Does anyone else have any questions?

Do I have a motion to continue Case No. 2016-35 to December 27th.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to continue Case No. 2016-35 to December 27th.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, no, and Mrs. Rando, yes. The vote was 4-1 in favor.

Mrs. Rando: And we will make the extension of time to February 21, 2017.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to extend the time to act on this matter to February 21, 2017.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, no, and Mrs. Rando, yes. The vote was 4-1 in favor.

Mrs. Rando: One more motion is in order.

**On motion of Mr. Sergi, seceded by Mr. Hickernell, the board voted to adjourn at
8:05 P.M.**

Barbara Rando, chair

Date: Tuesday, September 13, 2016

Matter: MIDDLESEX, SS

SUPERIOR COURT

CIVIL ACTION

NO. 16-01177

**ZONING BOARD OF APPEALS OF
THE CITY OF WALTHAM.**

Plaintiff

v.

**DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT, DEPARTMENT OF MENTAL
HEALTH, AND DEPARTMENT OF
DEVELOPMENTAL SERVICES.**

Defendants

A public meeting was properly posted as required by statute. The public meeting was opened in public session at 6:30 P.M., Tuesday, September 13, 2016, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham.

In attendance were Sarah Hankins, Oscar LeBlanc, Glenna Gelineau, Mark

Hickernell, John Sergi and Barbara Rando, Chair.

A vote was then taken to go into Executive Session for the purpose of discussing a Draft Settlement Agreement on the above matter.

On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to go into Executive Session.

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

Carol Oliveri was designated by the presiding officer to serve as the Clerk of the Executive Session.

Attorney Michelle Learned of the City of Waltham Law Department went over the Draft Agreement at length. Questions were asked by board members and on motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to authorize Michelle Learned to sign the Settlement Agreement related to Superior Court Civil Action No. 16-01177.

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

After the Executive Session, on motion of Mr. Sergi, seconded by Mr. LeBlanc, the board voted to close the Executive Session at 7:28 P.M., and go into their regular session.

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

This form shall become and is part of the minutes of the public meeting held on this thirteenth day of September, 2016.

Barbara Sands, Chair

Clerk of the Waltham Zoning 9/20/16

Board of Appeals