

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

November 29, 2016

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, November 29, 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 Glenna Gelineau, Mark Hickernell, Edward McCarthy and John Sergi.

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

Mrs. Rando: Tonight we have one continued case and one new case before us: Case 2016-32, Robert and Linda Hanley, 58 Weir Road, and that's for a Special Permit; Case 2016-38, Rumbleseat, LLC. 746 AKA, 750 South Street and that is the new case.

The first action this evening is for a motion to accept the minutes of November 22, 2016.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of November 22, 2016.

Mrs. Rando: Would the clerk please read the petition in Case 2016-38?

The clerk then read the petition of Rumbleseat, LLC in an application for variances - Setback on Northerly side and setbacks from lot lines. Application for Special Permit - Additional compact cars and remote parking. Location and Zoning District: 746 South Street; Commercial Zoning District.

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

Philip B. McCourt, Jr., Esquire, 15 Church Street, Waltham, the Petitioner's representative came forward. Mr. McCourt submitted a copy of his brief to each member of the board.

Mr. McCourt: So, as Mr. Hickernell just read, we are seeking variances here to replace the building that has been there for many, many years. Originally Charles Broadcasting owned the entire lot and then at some point they sold this portion of the lot to the building that I'm sure you are also familiar with which is on South Street. (Mr. McCourt went over the plan with the board.)

We have the access here, the same as it is today, and the reconfiguration of the building has brought us into a better setting. As you know, this is owned by the City of Waltham here and then DCR has this land down here.

So should we achieve the variances that we are requesting, we would have to go, one for a special permit and, two, to the Conservation Commission both of which obviously this board can't grant but we need to get the variances first.

(Mr. McCourt went over the spaces, the remote parking with the board on the plan.)

So this building, I don't know if anyone has had an opportunity to go down there, is tired and old and really outlived its usefulness. This building here will only be twenty-five thousand square feet on approximately an acre of land of forty-two thousand, plus, but will allow the owner to have a much better and up to date building in order to lease to some tenants.

So there are setback variances along here (referring to the plan) because of the narrowness of the lot down here and the height of the building which is determined by the building itself is a little short because of the fact that it is closer here to the DCR land.

There's parking under the building. There's parking out here (referring to the plan). It required eighty-six parking spaces and eighty-six shall be provided.

So under various sections of the parking provisions, under Article V, we've asked to allow fifty percent compact cars. In today's world that seems to be a more common type use. Today a lot of small cars, in fact I was down there this afternoon and many, many cars in the parking garage and here are smaller cars. So fifty percent which is allowed by a special permit, here you can do twenty-five percent by right which would get him to fifty percent under the provisions of the zoning and to allow the remote parking which already exists by easement, perpetual easement here (referring to the plan) and these are these eight spaces. So, in fact, they're really getting nothing new but since we have to come here anyway, we need to memorialize this beyond a written easement that's in the deed and there are some side yard setbacks here in relation to parking where we can't quite meet the five feet because of the configuration of the land and the respect that we have obviously for the river. So that's why we need a northerly side yard of 12.3 and the setback for some of the parking spaces would be less than five feet.

In many ways, you can't even see this property new or old. It's in back here. It's existed forever. I can't think of the radio station. It used to be back there years ago and the new owner has leased this to various tenants and feels that he needs to update the building in order to more adequately use the property to comply meeting fire rules and all those sort of things that in today's world you wouldn't have.

I'm going to ask Paul Finger. He might give you a lot more details here. I think you all know Paul Finger and he will explain to you the whole setting of it. Not only is he great in preparing those things but he also is an expert in wetland and some of the challenges that we had to face should we get this variance.

Paul Finger of Finger Associates, 14 Spring Street, Waltham, came forward.

Mr. Finger: The site as Phil McCourt has indicated fits nicely in terms of replacing the building towards the back side of it. We were able to, we've actually coordinated it with the fire department so that there's adequate turning movements to come in. That was one of the first things that we did so that they have the ability to come in and turn around and come back out again. We've actually met with the direct abutter being here, Intercontinental, because we are coordinating all our utilities, our access with them as well as obviously the setbacks for the parking lot and the only reason for it is because of lot configuration that comes to a point here so that it is very difficult to meet all the exact standards for the parking itself. So as we narrow down here, there is landscaping on this side of it and this is a very large parking lot so it wasn't intrusive as far as the office building is concerned. So everybody is in general agreement. We meet the landscaping requirement. We meet all the requirements as far as snow storage and all the other aspects of the zoning ordinance are here and in place; adequate handicapped accessibility. The entrances to the building, this is a lobby (referring to the plan) here which sits on the ground and then basically go up one level and then this is actually the office building, two levels of office above it.

There is a topographic relief behind here which is actually a knoll that sits out so it's actually higher than the existing grade and actually will shield it and this is basically a heavily wooded area so the existing trees there, in fact, are taller than the proposed building itself. And, obviously, there are no abutters. It's the Charles River DCR but we have to respect the whole purpose. This is actually outside of a hundred feet but the

Conservation has something called the Riverfront Resource Area. So in there, we are actually slightly encroaching in that one, and therefore, basically respecting that we have made sure that there is, we are not going any further. In fact, the parking lot actually jets out even further as far as the existing parking lot. We are actually setting the building further back into the site.

Utilities are all handled. It meets all the requirements as far as storm water and again, all these things are going to be reviewed by both the City Council, the Engineering Department and the Conservation Commission.

And that's a brief summary.

(Mr. Finger went over the plan showing the access to the parking garage.)

Mrs. Rando: Are there any questions of Mr. Finger?

Mr. Sergi: So, is this going to be fully occupied by one tenant?

Mr. Finger: It could be multi tenanted. You know there's no tenant that's identified at this particular point, but it's a twenty-five thousand square foot building. It could be, in fact, a single tenanted building if the right tenant comes along or it could be multi tenanted.

Mr. Sergi: All office space?

Mr. Finger: All office space.

Mr. Sergi: You're really reducing the size of what was there. Forty-two thousand square feet.

Mr. Finger: No, it wasn't forty-two thousand square feet. The lot is actually forty-two thousand square feet. The radio station was just sitting right in this location and it was really designed as a radio station and they were there for a long time. So it's not really conducive to reconfiguration as office space so and that's the reason for looking to do this.

Mr. Hickernell: Why didn't you go to the Conservation Commission before coming here?

Mr. Finger: Because the process would be is that we can receive the variances, then we have the right to go to the Conservation Commission. If for some reason something is changed here, I know they meet basically all the performance standards as far as their regulations are concerned because it's only storm water that we really have to deal with here. This is considered to be something called a previously developed and this is also referred to as the redevelopments project. So we also will be filing with the city council and at the same of the filing with the city council we will be going to the Conservation Commission. Obviously we need all boards and commissions to approve the project in terms of moving forward.

Mrs. Rando: I don't understand either why you didn't go to the Conservation Commission because they may have changed it and you would not be able to make it as large or as close and it would change many of the things that we are voting on this evening.

Mr. Finger: Again, the Conservation Rules and Regulations are very, very specific. There are performance standards that we are required to meet. It's not something that basically they would prefer to have something moved a little further away. This is actually developed almost predominantly within the existing paved area. So it's not one of those things. They can rule on storm water runoff. They can rule on impacts to resource areas. For example, I was impacting a wetland and I have to fill a wetland to replicate a wetland. But in this particular case, what it is, is that because the regulations were there really as far

as riverfront is concerned is the major portion of the riverfront regulations were to prevent further development in pristine riverfront area. This is not that. This is a redevelopment project and I've had a lot of experience in terms of working with the Conservation Commission.

Mrs. Rando: Do you have a date that you're going in front of them?

Mr. Finger: We will be filing with them probably within a matter of two weeks.

Mrs. Rando: How many parking spaces do you need for that building?

Mr. Finger: A total of eighty-six spaces.

Mrs. Rando: And you only have?

Mr. Finger: We have eighty-six spaces.

Mrs. Rando: And that's if you get forty some odd percent of small cars?

Mr. Finger: That is correct.

Mrs. Rando: There is a parking problem there now before you even add that building. I have been down there many times and cannot find a parking space. And now you want to cut them down to small compact cars. There's not too many small compact cars there.

Mr. Finger: The number of parking spaces that are being proposed was required by the ordinance, Yes, we are reducing the size of them but we are not reducing the number.

Mrs. Rando: You have some on the adjacent lot, too.

Mr. Finger: These eight spaces that are on the adjacent lot actually were part of an easement that was granted in perpetuity when, in fact, this property was settled. So that they have been there and they will continue to be there and they are in direct proximity to, in fact, the structure. So they are really part of it. The only difference is that, and, in fact, there were originally nine spaces here that were built when they built the garage here and we have the deed clearly states eight, so we reduced it down to eight and we are memorializing that in terms of filing for that special permit with the board.

Mrs. Rando: And are you also aware that a lot of Brandeis students park there?

Mr. Finger: No, actually I'm not aware of that. This lot is predominantly empty for us. We have better control because, remember this is sitting back, and this is the throat in terms of coming here. I'm not aware of what's going on at 800 and Intercontinental hasn't said anything to us.

Mrs. Rando: We have some Brandeis students that are living in the homes across the street and they do park there. I found that out many times.

Mr. Finger: Again, we were not aware of that nor did Intercontinental actually mention anything to us.

Mrs. Rando: You do have a problem with parking.

Mr. Finger: As I said, every time that I've been on the site, there have been very few, maybe one or two spaces that somebody in back were here, but again this building is vacant right now. Let's assume that basically with the number of spaces that we have here,

if we are having a parking problem and we think that people are parking there that are not tenants that's something that can easily control because we can actually assign spaces and then basically make sure that we police it. I think it's a lot easier for us to do it for our eighty some odd spaces than it is for the much larger parking and the parking inside the garage.

Mrs. Rando: For me, I'm afraid that you have insufficient parking.

Anyone else have any questions?

Mr. McCarthy: How many spaces are there now?

Mr. Finger: I would say that we have nine here and then maybe another twenty spaces there.

Mr. McCarthy: So you have thirty-one, you're going up to?

Mr. Finger: Eighty six.

Mrs. Rando: And forty-eight percent are not compact.

Mr. Finger: Yes.

Mrs. Rando: Do you have anything to add, Mr. McCourt?

Mr. McCourt: I think what Paul said in relation to control the parking, we can issue stickers to tenants to put on their cars so that it would be clear who's there or not. I can't understand why Intercontinental hasn't done that themselves, but I would suggest that might be something to do because I feel very sure that Intercontinental has permitted the

students to park there day or night. I would say several times over the last couple of weeks, including this afternoon, there seem to be, not in our property because it has not been used currently, but on the others there were ample parking spaces, I thought, and they have received a special permit for that property, so it's under the dictates of that and Im sure it didn't envision a lot of parking.

Mrs. Rando: What is the address of the property next to yours?

Mr. McCourt: 800.

Mrs. Rando: I never get a parking space there at 800. Never. So I always go down the back and try to get onto yours, unfortunately.

Mr. McCourt: So you have had occasion to come here. Did you go in the parking garage and everything and there's no spaces?

Mrs. Rando: Actually I see the parking garage full many, many times. Every once in a while I will get a spot there.

Mr. McCourt: Because, as I say, I've been there because obviously to get a feel for what the property was and I have to say I never found a lack of parking at least during the day. I'm not there during the evening but I assume the office people go home. And this garage, I think is with the roof top part is three stories high.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition that would like to be counted? Seeing none, is there anyone in opposition? Seeing none, is there anyone seeking information with any questions concerning this? Seeing none, you may continue with your Proposed Findings of Fact.

Mr. McCourt: I have provided the Findings and this is just an additional copy. We have the Proposed Findings of Fact and the Decision both which has been submitted about seven or ten days ago and I can read those into the record. Remember we are looking for two special permits, one for remote parking and one for additional compact cars and then we need the setbacks. Those are the two variances.

Mrs. Rando: So if it is a variance, don't you need a hardship?

Mr. McCourt: Well, certainly the lot itself. The fact that it's location and all of that is a definite hardship. Its location and all of that, it's next to the river so I think it has all of the instances of a hardship.

Mrs. Rando: Are you telling me that the person who owned that building did not make use of the building.

Mr. McCourt: He made use of the current building but now wants to replace it. The building existed prior to this building. He wants to replace it. He really is only redoing it for more up to date form than it is here. (Mr. McCourt went over the plan with the board regarding parking.)

The initial discussion with the Traffic Engineer suggests that it would have really no impact on that because there's very few cars in the peak hours that would come. Parking, I can only repeat what I physically saw.

Mrs. Rando: All right, 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 and the Board has had a chance to read them.

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 its been on file and the board has had a chance to read it.

Mr. McCourt: I would suggest this in relation to the decision which I should have put on. It has nothing to do with the body of what you had here, but a condition that we obviously receive all additional permits needed which would include a Special Permit and the Conservation Approval, Engineering and Fuel Storage. Because there's parking under the building as part of the special permit we will have to ask for Fuel Storage.

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 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; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: Now on the Decision we are going to add the Conservation, fuel storage. Engineering and special permit and the city council before this can be constructed.

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

Mr. Hickernell: So, generally, I would prefer that you go to the Conservation Commission first but under the specific facts of this case I am going to vote yes.

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

Would the clerk please read the petition in Case 2016-32. Robert and Linda Hanley, 58 Weir Road?

The clerk then read the Petition of Robert W. Hanley and Linda M. Hanley. Owner: Robert W. Hanley, Linda M. Hanley, Joseph J. Bergantino, Jr., and Patricia Bergantino in an application for Special Permit - Accessory Dwelling Unit. Location and Zoning District: 58 Weir Road, Residence A-2 Zoning District.

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

Attorney Nicole Starck, 6 Lexington Street, Waltham, Counselor for the Petitioner, along with the Petitioner, Mr. Robert Hanley came forward.

Ms. Starck: I have just a supplement. I believe you have most of the stuff. Nothing has changed from when it was originally filed. This packet gives a close up of the map of the parcel, parking, plans of the proposed accessory dwelling unit as well as a series of letters in support of the petition by neighbors and people in the surrounding area that would like to support Mr. and Mrs. Hanley's petition for an accessory dwelling unit.

So by way of just a little background, the Hanley's have owned this property since 1985. They've lived there. They have raised their three children there.

In August of 2014, their daughter Patricia Bergantino and her husband Joe Bergantino moved back into the property. They have two young children and the goal with

is essentially to assist with raising their children. Patricia also has a daycare that she operates out of her home and Mr. and Mrs. Hanley wanted to have an opportunity to stay in the house; stay there with their family and be able to provide assistance with raising their grandchildren and also for support for them when they get older with the high cost of long term care and everything like that. It would be beneficial to be able to be at a home with their children.

Ms. Starck read her brief into the record and went over the layout of the proposed addition with the board.

Mr. Hickernell: So no changes to the current parking.

Ms. Starck: No changes.

Mrs. Rando: Is the building attached to the other building? Can they go from one to the other?

Ms. Starck: You have to go out of the rear door off the kitchen of the main building onto the porch and then there's a separate entrance.

Mr. Hanley: Right now, there's a door that goes through the proposed kitchen.

Ms. Starck: As I just ran through the provisions of 3.616 as you also see in the Proposed Findings of Fact and the decision we feel as though and we hope that the board feels as though that we have met the criteria required to demonstrate that the accessory building unit is permissible by a special permit since it will be occupied by Mr. and Mrs. Hanley. And they understand the requirements in that they have to re-apply for this permit. It cannot be transferred to another purchaser and essentially would like to, they have been living in this kind of situation for almost two years now. So we are really hoping

that the board would consider and approve their petition so they can get a nice kitchen in there and their accessory building in time for the holidays.

Mrs. Rando: Do you have a proposed findings of fact and decision?

Ms. Starck: I do not have one but I believe one should have been submitted to everyone.

Mrs. Rando: There's a couple of things, number fifteen I think. There were two things that you said that I didn't understand in your findings of fact.

Mr. Sergi: Could you go over your findings of facts?

Ms. Starck: Absolutely. (Ms. Starck read her Proposed Findings of Fact into the record.)

Mr. Hanley: We have signed off with the building department, the engineering department, the fire department. We have had more inspections and more things to do in putting the addition on. Everything in the other part of the house had to be brought up to meet code. So we have done everything even so far as to have a second sewer clean out because the city engineer didn't believe that his people could stand underneath the deck to do the clean-out. He changed his mind at the last minute, getting back we had to put another one in front of the stairs. We have done everything. I can't believe the amount of things that we had to go through over the last two years.

It got to the point where the builder started feeling bad so he didn't charge us for these things anymore.

We had to put a dry well in the backyard after the yard was done. The city came back and determined that we needed the dry well because there was two downspouts even though there's been two downspouts in the back of the house since 1958. And then they came back with that. So that was dug up and the dry well was an eight foot wide dry well in the underground. It's just one thing after the other. Everything that we were supposed to do, we've done. That's what took so long and that's the way I wanted to do it.

Mr. Hickernell: So it looks like you did a great job getting the neighbors on board with this project. Are you aware of any neighbors who are in opposition to it?

Mr. Hanley: Did not receive one letter, one phone call, one visit from anybody that was in opposition.

(Mrs. Rando read #15 of the Proposed Findings of Fact.)

Mrs. Rando: I never heard that before.

Ms. Starck: That's provision KR 3.616

Mrs. Rando: Another one, you said that it will not go to the clerk. You will not, um-

Ms. Starck: Like report anything at the Registry of Deeds or anything, right.

Mrs. Rando: Why are you not?

Ms. Starck: Well, for the purpose itself. If they were to sell the property, the new owner doesn't get the entitlement to the accessory dwelling unit. They would then have to come and petition here. It's not transferrable. It's a proposed in law apartment,

supposedly. Then they would have to come and submit their petition to you. It's a nontransferable right once a permit is granted.

Mr. Hanley: It states that an owner has to be, before you can apply for this permit you have to be an owner of that house for a minimum of five years.

Mr. Gelineau: What is the semantics between proposed in law and accessory unit. What makes one more advantageous to the homeowner than the other?

Ms. Starck: Insurance purposes which is the biggest one. For example, if they didn't take the proper route in coming before you to seek petition for a special permit to have this accessory dwelling unit, and they put a kitchen in there anyways, and there's a fire - - -

Mr. Hanley: It's the stove really. So if we didn't get the special permit, the stove went in and there was a fire, the insurance company would deny paying the claim and I don't want to live with that.

Ms. Gelineau: They are everywhere.

Ms. Starck: Not legally.

Mr. Hanley: There's two in the City of Waltham that you people have approved. This would be number three. And I don't want to put my head on the pillow at night not knowing that I didn't do it the right way. That's why we are here before you.

Ms. Starck: If anything was recorded at the Registry of Deeds to specifically state that there was this approved special permit granted for an accessory dwelling unit, that would be on record. So in the event that they did sell the property, a bonified purchaser

doing research at the Registry of Deeds would say okay we've got a single family dwelling with a legal accessory dwelling unit that defeats the purpose of the zoning code which says its specially nontransferable to the purchaser.

Mr. Hanley: They would have to wait five years and then come before you.

Ms. Starck: That section L of 3.616.

Mrs. Rando: K and L?

Ms. Starck: Yes, K and L are the two provisions in question.

Ms. Gelineau: You can have two stoves in your home.

Mr. Hanley: According to what we've been told which comes from a lot of city people, as well as insurance companies, if you're in a separate section of the house, but if you put an addition with a separate kitchen and you put a stove in there and you set the house on fire, your insurance company will come along and say you did not get the permit from the city, so we don't have to pay this claim.

Mr. McCarthy: Most of the apartments are down in the basement.

Mr. Hanley: Right.

Ms. Starck: Then there's not a problem. A lot of people have a second kitchen.

Mr. Hanley: They can't use it as an in laws apartment. They have to be owners for five years. They'd have to remove the stove from there.

Ms. Gelineau: So you're saying all those in law apartments can't get insurance.

Mr. Hanley: No. If you're in the same main part of the main house, so if you're in the same footprint, and you wanted to put another one downstairs you can do it. You still have to get approved front the fire department and all that. It's the addition that's different.

Mrs. Rando: Now I see the letters from all of the neighbors. Anyone on either side of you in opposition?

Mr. Hanley: No both of them are in there, the MacDugalls and the Suplits are on each side of me. And the neighbors behind us, they approved it too.

Mrs. Rando: Is there anyone in the audience that is in opposition? Seeing none, is there anyone seeking information? Seeing none, anyone in favor?

(Seven people raised their hands in favor.)

All right, you can continue with your Proposed Findings of Fact. Have you changed the Findings of Fact?

Ms. Starck: They have not been changed.

Mr. Hickernell: I would suggest that we amend the findings of fact, adding #20: Twelve neighbors submitted letters in support of the petition and no one has expressed opposition.

Mr. Sergi: I proposed that we waive the reading of the findings of fact since they have been on file and we have had a chance to read them.

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

Mrs. Rando: Your Proposed Decision, have you come before us before?

Ms. Starck: No.

Mrs. Rando: I didn't think so. Your decision, this is what the decision should look like. I brought a copy and you don't have any of this in your decision. So if we approve this I would like you to do what is needed and that will be a lesson.

Mr. Sergi: In a similar fashion, Madam Chair, since the Decision has been on file and we have had a chance to read it I propose that we waive the reading.

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

Mr. Hickernell: The proposed decision will be amended to add our usual conditions. No. 20 goes on the Findings of Fact. The usual conditions should be added on the Decision.

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. Gelineau, 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 board's decision.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, 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 7:55 P.M.