

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

December 12, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, December 12, 2017, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham.

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

Mrs. Rando: Tonight we have three new cases before us. Case 2017-38, Edoardo and Carlo Fragale, 15 Orange Street and that's for a variance; Case 2017-39 Anchorline Properties LLC, and that's for a sign variance; Case 2017-40, Alexandria Real Estate Equities Inc., and that's for a special permit.

The first action this evening is a motion to accept the minutes of December 5, 2017.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to approve the minutes of December 5, 2018.

Would the clerk please read the petition in Case No. 2017-38?

The clerk then read the Petition in Case No. 2017-38, Edoardo Fragile. Owner: Edward and Carlo F. Fragale in an application for variance to allow for the demolition and construction of a two family structure at the locus. Location and Zoning District: 15 Orange Street; Residence B. Zoning District.

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

Bret Francis, Esquire, Scafidi Juliano, 10 Hammer Street, MA, came forward. A copy of his brief was submitted to each member.

Mr. Francis: I am here tonight on behalf of my client, Edoardo Fragale. He is a co-owner along with his brother, Carlo, of property located at 15 Orange Street.

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

Mrs. Rando: Attorney Francis, when was the house built?

Mr. Francis: I have in my records Circa 1900, that's the best, it's not on the building card. The best we could do is the Assessors.

Mrs. Rando: Was it built at a two family?

Mr. Francis: I don't know. I think it might have been a single when it was originally built.

Mrs. Rando: And you want to add on a third story?

Mr. Francis: I don't believe so. It's currently two and a half and he's adding a half a space.

Mrs. Rando: Why does he have to add the extra unit upstairs?

Mr. Edoardo Fragale, 19 Bacon Road, Sudbury, MA , one of the owners of 15 Orange Street. I am requesting for another half a story for some additional space on that level there. We don't currently have much room up there and it's pretty cramped, so being able to get a full story will give us a more feasible and more livable space.

Mr. Francis: Three stories are allowed in the district.

Mrs. Rando: How many bedrooms do you have?

Mr. Fragale: Two bedrooms on the second floor and two bedrooms on the first floor.

Mrs. Rando: And do you plan on putting a bedroom or anything up on the third floor?

Mr. Fragale: I believe so, yes.

Mrs. Rando: Are there any other homes in the area that have tandem parking?

Mr. Fragale: I didn't notice tandem parking but I noticed a lot of off street parking because they didn't have any parking on their lot.

Mrs. Rando: And you also noticed how narrow it is and how hard it is to back out and you have four cars there backing out.

Mr. Francis: At the currently location, yes. It will be split, They are getting one row, so it won't be, it will be easier on that end to back out without a row of cars to your right or your left. Again, it's improving. It's a small lot and this is again trying to improve that situation. It's a weird shaped lot and as a result it's a safe way to make it functional and use as it is intended.

Mrs. Rando: Mr. Sergi, do you have any questions at this time?

Mr. Sergi: Do you have a rendering?

Mr. Fragale went before the board to go over some sketches that he had on the proposed house.

Mrs. Rando: Mr. Hickernell, do you have any questions?

Mr. Hickernell: No questions, but I can say as a resident of the South Side that there is not a small amount of tandem parking in that vicinity.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: The lot is 2900 square feet?

Mr. Francis: Yes.

Ms. Gelineau: And how big is the house going to be?

Mr. Francis: It will be the same size, just moved over.

Ms. Gelineau: How big are the units going to be?

Mr. Francis: Approximately 1275 sq. ft.

Ms. Gelineau: And how many bedrooms?

Mr. Fragale: Just what it would be like now. They would be a little more spacious.

Ms. Gelineau: But there will be just two bedrooms each side, not three bedrooms.

Mr. Fragale: Yes.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: So, on the plan it has that the third floor will not be used as additional bedroom space.

Mr. Francis: It may be. I think he's intending to put one of the bedrooms up there.

Ms. Gelineau: So you are going to have a bedroom on the second floor and one on the third floor?

Mr. Fragale: No. The second floor would actually be the main living and then the third floor would actually be the bedrooms or whatever they are going to be.

Ms. Gelineau: What's on the first floor?

Mr. Fragale: Right now, if you were to look at the house the stairway that goes up to the first floor because there's like a change in grade, that stairway actually goes to the second floor.

Ms. Gelineau: So, what's on the first floor?

Mr. Fragale: The first floor essentially is the basement. It's partially exposed on one side, not entirely, but three and a half feet of the basement is exposed.

Ms. Gelineau: No bathroom in the basement.

Mr. Fragale: I don't believe so. I don't believe that they are intending to put a bathroom down there. It's pretty schematic and up in the air right now.

Mrs. Rando: I think it's a very big house on a small lot.

Mr. Francis: It's keeping what's in line with what's there right now. We're just moving it along getting it off one side of the lot.

Mrs. Rando: Are there any other questions?

Ms. Gelineau: How could it be in the same footprint if you are moving it over?

Mr. Francis: The same size footprint.

Ms. Gelineau: Well that's different from the same footprint.

Mr. Francis: It's not literally the same footprint, it's the same size footprint being shifted. So we are bringing one of those rows of tandem parking to the east side of the property so they are not bothering each other, opening doors and all the other things that come along with that. So it's really relocating it keeping it the same size.

Ms. Hankins: So, this is going to stay two units?

Mr. Francis nodded his head yes.

Mrs. Rando: And that will be a condition?

Mr. Francis: That's fine.

Mrs. Rando: Is there anybody in the audience that is in favor of this petition that would like to raise their hand or come up to the microphone?

(One person raised his hand in favor.)

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

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

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

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

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

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

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, no.

The vote was 4-1 in favor.

Mrs. Rando: Do I have a motion on the Proposed Decision and in the decision there will be a condition that it will be just a two family.

Mr. Francis: That's fine.

On motion of Mr. Sergi, seconded by Mr. Hickernell, 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; Ms. Hankins, yes and Mrs. Rando, no.

The vote was 4-1 in favor.

Mrs. Rando: So the case is granted.

Will the clerk please read the petition in Case No. 2017-39?

The clerk then read the Petition of Anchorline Properties LLC. Owner: 200 Smith Street NWALP Property Owner LLC, % Anchorline Properties LLC. Nature of Appeal/ Petition: Application for sign variances. Subject Matter: Request to install two ground signs and two directional signs on the property at 200 Smith Street. Location and Zoning District: 200 Smith Street; Limited Commercial Zoning District.

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

John Mula, Esquire: I am an attorney with an office in Waltham and this building is 200 Smith Street, Waltham. It's undergoing major renovations and nearing completion of the building and the parking lot, landscaping, roadway improvements are ongoing.

This signage package is for a total of four signs. We had filed the application and visited with the building department. The building department has stamped the plans and asked us to seek variances on four sections of the zoning ordinance. Those were detailed in the petition.

I'll go through the memo. I won't read it verbatim since you all have but will certainly highlight what we need to do in order to show that the board has jurisdiction why we feel we satisfy the conditions before we ask for the action on the petition.

As I said, this is a thirty-six acre parcel in Waltham. It's in a limited commercial district. Waltham Zoning Code permits one ground sign per lot. My client is asking for four, although two are directional signs which are allowed as of right. The fact they are asking for additional wording or print on the directional signs in the opinion of the building department means we are putting a total of four ground signs. So I used directional please, it's just for reference because I'm adding some language on the directional signs due to the type of building, the fact that there is a United States Government Office located on the property.

So there's a total of four signs. They permit us to put one at the entrance and exits per lot and we are asking for one on each entrance and exit, although one is limited hopefully for commercial only. The south side will only have a one sided sign and the north side will have a two sided sign.

The directional copies in addition to adding the words North, South, East, Tenant Garage and Loading Dock. It will have the logo of the building on it. We are also asking for signs be illuminated.

General Laws, Chapter 40, Section 10 and 14 authorize the board to grant variances as long as it's for a use not prohibited by the ordinance. In this instance the requested variance for signs is something which is not prohibited by the Waltham Zoning Ordinance. So, the board has the power and authority to grant the variance and we are asking you to grant because of conditions that follow.

But, first we have to establish that the circumstances relating to the conditions shape and topography of the land and affecting this land or structure generally don't affect the zoning district in which it is located. In this one it's a large parcel, one boundary is Route 128 by the highway, the other boundary on the east side is actually residential. On the southern side is a commercial operation of senior housing and on the northern side there's actually commercial activity partially located in Lexington Mass.

The lot, as I said, is 36 acres. The entrance on the north side which is the larger entrance, it runs perpendicular to Smith Street. The southern entrance which you see on the plan is a little less. So in that one, where it only has one sign, we believe the best site lines, we'd only have one rather than having the additional back side of the sign which we feel is needed up at the north entrance.

We are asking for this for the safety of the travel, for identification of the property and also after meeting with the neighbors. Without the requested sign variances, we believe it would be a hardship to the petitioner/owner financial or otherwise. Lacking the specific identification of the different parts of the building, we are asking for the additional language and variances because we feel it's necessary to take traffic away from the government side of the building. The United States Post Office occupies one side and as part of the renovation they have dedicated a roadway that specifically would serve just the Post Office which is located on the northwest side of the building. The southern side would also direct any large commercial traffic to come which would service mainly the office building, though it's possible they could come in to service the post office but we are trying

to avoid that. What we would like is to keep the commercial traffic located to the southern side or the northern side with all the traffic being in the middle. That's the reason we are asking for additional language on the directional sign which are located inside the premises versus the ground signs identifying the building which would be along Smith Street. We are not asking for anything regarding dimension or the size of the double sided sign. All the setbacks are met without asking for a variance.

We believe that it will not result in the detriment to the public good. We believe it won't substantially derogate from the intent or purpose of the ordinance. This petition does not present a detriment to the public good. In fact the neighborhood of single family homes adjacent to the property as well as the heavily travelled roadway during certain hours, we believe will benefit from the proper identification of the building and the directed traffic routes on the premises.

Requested relief here does not nullify or derogate from the intent of this ordinance. The variances are reasonable to the size and shape of the lot. They protect both the commercial and the residential zones in the area. Plus the petitioner having met all of the legal requirements respectfully request that the petition be granted. I will answer any questions that you may have?

Mr. Hickernell: What specifically are you requesting for the hours of illumination?

Mr. Mula: Just what's limited by the ordinance. The building department referred to that. Called that a default. The fact that you want the sign to be illuminated and the fact that there's a provision in the ordinance that says we are allowed means we need to have permission from the board. That's the interpretation of the building department which is why that was included. So it will not be lighted between the hours of 12 midnight and 6 A.M.

Mrs. Rando: Tell me, how close will these illuminated signs be to the residential?

Mr. Mula: Well, it would be across the street. I will have to look at the plan to give you the exact footage. I believe it's six to eight feet. (Mr. Mula went before the board to go over the plan.)

Mrs. Rando: Will it be close enough that the residents will notice the lights?

Mr. Mula: Well, I know they notice the building because we are constantly speaking to them about the building and there's ongoing landscaping that needs to be done because of the removal of a very large stockade fence that was there. I haven't spoken to any of the neighbors regarding the illumination. If there are any here I can certainly address it. We do have the designer and fabricator of the signs who may be able to get a little more particular in terms of the illumination but I believe what they are and if I misspeak Joe, then you need to come up, but the illumination is behind the metal portion of the sign which rests on the wooden portion of the sign so there's a back lit on that metal portion and then I believe there are illumination that goes from each side of the pedestal and it points onto each side of the sign. So there's nothing that is pointing to either towards the building or towards the residential neighbor's house.

Mrs. Rando: Do you have a rendering of any of the signs?

(Mr. Mula submitted renderings to the board and described each sign to the board.)

Mrs. Rando: What is the hardship for all these signs?

Mr. Mula: The hardship was the building identification to make the commercial operation run smooth for building identification. It was the size and shape of the lot. Thirty-six acres, in fact, one is allowed at each entrance however the zoning ordinance

states that you can only have one where we have two entrances. And we feel that just putting an entrance on one is going to cause there to be traffic at that one side only and it's something we worked out both for the neighbors as well as the commercial operation of the building that we have two entrances and exits, the north and the south.

Mrs. Rando: The post sign is going to give a lot of light?

Mr. Mula: It certainly give more than the other one which is only lit one but in terms of a glare or shining into the residents, the purpose is just to identify that sign only. The fact that we are trying to keep it only for the sign is what we want someone just to see rather than lighting up the area. There is street lighting, not only, obviously on the street, but there is overhead lighting that's put on the lot and I believe we addressed that so there was no spillage and I would be surprised if there was any spillage from the sign that would make the impact of the lights that are on the premises any more exaggerated than they would be to be a nuisance to any of the neighbors.

Joe Correia, Boston Building Wraps: I just want to jump in on the lighting. The lighting is all indirect. So there's no way to visibly see the actual node that creates the light. It softens all indirect and it's dimmable so there are ways to adjust it if need be down the line but it's very subtle. So how it's designed and it's in mahogany and the wall looks of metal so what they really trying to play on the design is the light will be secondary. It's really not that major design feature of the sign.

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

Is there anyone in the audience that is in favor of this petition that would like to raise their hand and be counted?

(Two people raised their hands in favor.)

Is there anyone seeking information? (Three of people raised their hand.)

Mrs. Rando: All right, now I am going to ask if there is anyone in opposition?

So if you would like to speak seeking information you may come up to the microphone.

John Darcy came forward.

Mr. Darcy: Councillor McMeniman emailed a letter written by the residents of 14 Hersum Way and if that could be at some point during the proceedings could be read into the record and their concerns are concerning the illumination of the sign that's on the South Side.

And, also, if it's possible for the developer to meet with the residents the twenty-five or so odd residents that live Smith Street, Carlin Road, Hersum Way, Wingate Road, those are all located in a Residence A-3 Zone which is opposite the limited commercial, so they have to live permanently with whatever gets complete at the site and the developer has worked very, very well with the neighbors in the past and I would expect him to do the same concerning this. From what I can understand, it's the concern about the lighting and how it will affect their homes especially at night time.

And for the record, I'm George Darcy, 93 Hobbs Road, Waltham, MA and for full disclosure I am on the City Council.

Mrs. Rando: Anyone else would like to speak?

Robert Coleman, 249 Smith Street, Waltham came forward.

Mr. Coleman: I live directly across from the north entrance to the site. I brought a few things with me tonight that I thought I might share with the board. These are a few pictures taken before the work began on this particular site. And I also have some others. These are various photographs of the site. My house is this particular house right here directly opposite the sign on the north side.

As you can see from those photographs, prior property that was owned by the post office was pretty well screened from the residents on Smith Street, Wingate Road and Hersum Way and I have some photos that show current conditions as well and I will share those with the board also. These are aerial photos, I'm sorry, ground photos here. And I also have some aerial photos here as well. This is taken after the construction and that's my house again and you can see all the trees here and there are now gone. I also have some pictures of the south entrance as well. The south entrance is here opposite Hersum Way.

This is the third time that the developer has come to the city looking to get approvals. They came to the Board of Planning and Survey for a special permit to widen the north entrance and to put a slip lighting in to ease traffic as it enters the plant on the northerly end of the site. They have also changed the south entrance as well and the first time that they came in they went to the Board of Planning and Survey to get an approval. Then they went to the City Council to get a 1725 permit to be able to excavate Smith Street which had previously been paved within the last five years and they received a City Council Order and a Board of Survey and Planning approval as well. And generally the neighbors have had a good dialogue with the developer. I guess what our surprise is, you'll see in both of those documents there the Board of Survey and Planning and the City Council permit and approval that they were going to provide significant screening to replace the fence which shows up in some of those photographs and the fence appears in the before photos.

The current situation is they removed all of the fence and they planted some Christmas tree size evergreens but no way near screening particularly the area around the north entrance as you can see from the current photos. And so we are concerned about that.

We are also concerned about the size of the signage. They have constructed already the pedestals, three feet by ten feet. They plan to put a sign on top that I believe is going to be another four feet high so it will be a seven foot high sign, ten feet wide and I'm certain that when their tenancy situation gets resolved they will be looking to add the names of the tenants to the sign also. And I think I saw that on some of the documentation that's presented as well.

And so, we are concerned the size of the sign, its location and I do have some photos also of the original signage the post office had as well as the sign which they used to replace it with. I also have their brochure. You will be interested in seeing that. This the original post office sign on the property. This is the second sign is more recent during the current construction and you can see from those signs they are relatively small.

The size of the building really has not changed. They have inserted some mezzanine area in the interior but the exterior of the building, they pulled off all the siding etc.

So one of the things that the neighborhood is concerned about is the traffic. One thousand, three hundred and eighty parking spaces expected to have over four thousand trips a day and they've ultimately lit, the building's occupied and they still have no tenant as of the current date. They are fast approaching the end of their work on the exterior of the building and as part of that work they are looking to put up a sign. And we do acknowledge that we expect that there will be a sign both at the north entrance and the south entrance. We are concerned about the size, the illumination and what will happen. Once the tenants get in up there, I know one of my neighbors driving by on Route 128 saw

a big huge Verizon sign on the west facing side of the building and it turned out to be a banner. Currently Verizon was looking at the building at the time and so one of the questions that comes up is, will there be more signage that they will be looking for along the way. And so I simply raise those questions and wonder if there is some way to incorporate the findings of the Board of Planning and Survey and the City Council into whatever approvals that you might consider granting as part of this particular project.

The other thing is we had discussions about their doing some additional plantings. Nothing has been finalized. The concerns as you can see from the photos that I have given you is quite a dramatic before and after shot.

Ms. Gelineau: Why take the trees down?

Mr. Coleman: You'll have to ask them.

Ms. Gelineau: I just wondered if you had a theory, that's all.

Mr. Coleman: Probably to make that side of the building visible from Smith Street. But the prior existing driveway as you can see from the aerial photograph, beforehand was always at such a way that you couldn't really see the building because of the forty-five foot high trees located here and here (referring to the plan) and those are now all gone. What you see here is the fence and they are supposed to be planting the so-called Christmas trees to replace those.

So that's the concern, I think, from my discussion with some the neighbors as well as you can see maybe one or two other neighbors here also raise those questions. I wonder if we can get answers to some of them.

I think that's all I have. If anyone has questions for me, I'm happy to - - -

There were no questions from the board.

Mrs. Rando: Is there anyone else seeking information?

Mr. Hickernell: Are you seeking information.

(The lady shrugged her shoulders.)

Mrs. Rando: Is there anyone else seeking information? No one came forward.

Cynthia Carney, 9 Hersum Way: I am directly across from the south side entrance on the corner and we have worked very well with the developers and mimic most of what Bob's saying. But I just have to show and voice my opposition to any type of signage that's not within the guidelines of the town. I'm sorry, I'm not good at articulating what I am trying to say but I guess what I'm trying to say is they did work well with me. They did put up some fencing for me but, you know, where my house is situated and from where I see the cement posts, you know, anything more than what is allowed is going to be invasive to us. I can now have a clear view of 128. I did not have that before when the wall was up. With the way that things are now with this slip road having been put in which I really thought was kind of going to be shielded with plantings. Not only do I see the road, I see 128 and the last thing I want to see is an illuminated sign. I'm getting kind of enough illumination from everything else. You know when the traffic comes it's going to be invasive. There's no question.

We have accepted the development of this property and, again, I mimic what Bob says. It's our quality of life. I don't think anybody would want this in their front yard.

You know, me as a resident that's about all I can say. If they could just stay within the ordinance of the city. The post office had no illumination. They were a twenty-four/seven operation. I mean with GPS, I think people can find their way to an address and I don't see the need for illumination if this is like a nine to five type of business property which is my understanding what it's suppose to be. So that's it.

Mrs. Rando: Thank you. Anyone else in opposition? Anyone in opposition and want to raise their and just be counted?

Mr. Mula: The southern entrance sign would be forty square feet, so I believe that's less than what is allowed by right. The northerly has the two sides that brings it over. The northerly side has the square footage that's over due to the two sides.

There was extensive talk with the neighbors who met us each time regarding site lines especially regarding plantings because the plantings that were there replace that stockade fence. There's also a berm that was erected in place of the stockade fence. The thinking was when they are fully mature, it was not offered here, it was offered to the residents and in evidence to the planning board we actually showed what they would look like, five years, ten years and twenty years later. It will look completely different naturally than the new plantings now regarding the trees and bushes.

The illumination, I'll have to defer again to Mr. Correia but I believe he stated it's all inside the sign. Nothing will spill out into the residential neighbors.

And, I have no issues with revisiting or certainly adding any of the conditions that the other political bodies have put on us on the parcel for what we requested. That would certainly be part of the record. I have no issue there.

I have no issue meeting with the neighbors again regarding additional plantings and somehow maybe to convince them that the lighting we propose is exactly what they would ask for if they saw it operational and so that all my words might ring hollow. I'm certain that demonstration of the lights, it will prove to back up exactly what Joe has stated that there will be nothing that would involve any spillage to the neighborhood. I believe that's most everything.

Ms. Hankins: You said that one of the signs would be within the entrance sign, the one that's only one sided. At least it says right here it's forty square feet, right? Doesn't it allow thirty two in the ordinance?

Mr. Mula: I thought it was forty-two. I stand corrected. We asked for forty and its thirty-two.

Ms. Hankins: The concern for the neighbors in terms of the hours if the post office didn't need it illuminated at twenty four hours if your'e going to be during general business hours why would you need to go - - -

Mr. Mula: The only reference we have with the post office is showing them where the post office is and the post office hasn't asked for their tenant they haven't asked for ,and don't want a sign. They are entirely a commercial operation. There's nothing open to the public for that one. It's a distributor part of the postal service operations. So they may have had one but they haven't asked us for one. We do expect that depending on the tenant, we would be back in front of you and if the tenant seeks to have a building identify a sign either on any of these signs or of their own on the building. As far as the post office goes they don't want any and don't plan on giving any.

Mrs. Rando: You are willing to have a meeting with the neighbors?

Mr. Mula: Yes, sure.

Mrs. Rando: Is there any way that you could get some type of a replica of what the lighting would look like? And I think if they saw what the lighting is going to look like that would make a big difference to them.

Mr. Mula: It shouldn't be hard. It should be easy. Just light up a piece of wood.

Mrs. Rando: I think that would be a very good idea. It would make a big difference to me if I were living there. I would like to see that.

So maybe tonight after the meeting if we continue, of if we vote, well that's another story, but you could have one person that would be a spokesperson to let the people know when there's going to be another meeting, that would be a good idea too.

Mr. Mula: No objection to that Madam Chair.

Mrs. Rando: We have a couple of letters to read into the record.

The clerk then read a letter dated today from Kathleen McMenimen supporting the Moriarty family in their concerns for their neighborhood.

He then read a letter dated December 11, 2017 from Kate Moriarty in opposition.

Mrs. Rando: Mr. Mula, the residents speak very highly of you and I think when you have a locus that is this size and you have signs that are going to be lighted and trees that were there and separating it, I think it would be very beneficial for you to discuss it with them. I think we should continue the case until he has a meeting with the neighbors.

How do you feel Mr. Sergi?

Mr. Sergi: I'll go along with that Madam Chair.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: Definitely.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: Sure.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: I agree since the ward councillor is here

Mrs. Rando: We could do it on the 23d of January or go into February. We could do any date in February.

(The neighbors agreed on January 23rd.)

Mrs. Rando: Do I have a motion to continue Case 2017-39 to January 23, 2018.

On motion of Mr. Sergi, seconded by Mr. Hickernell the board voted to continue Case 2017-39 to January 23, 2018.

Mrs. Rando: Would the clerk please read the petition in Case No. 2017-40, Alexandria Real Estate Equities, Inc.

The clerk then read the petition of Alexandria Real Estate Equities, Inc., Owner: ARE-MA Region No. 63, LLC., in an application for Special Permit and Modification of Board of Appeals Case No. 97-8, Case No. 98-41, and Case No. 2011-01. Location and Zoning District: 266 Second Avenue which is located in a Commercial Zoning District. 275 Second Avenue is located in a Commercial Zoning District and a Residence A-2 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, MA came forward.

Mr. Connors: I am here tonight on behalf of the petitioner, Alexandria Real Estate Equities, Inc. Thank you to the board for taking a third hearing on a night getting into the holiday season. My client appreciates it.

Alexandria is an urban office REIT uniquely focused on collaborative life science and technology campuses in AAA cluster locations founded in 1994. Alexandria pioneered this niche and has since established a significant market presence in key locations nationwide, including Greater Boston.

The petitioner may be very familiar to this board because I was actually before many of you, if not all of you in September for the second time on 225 Second Avenue which is in the midst of completely redeveloping the site after acquiring that property in March of 2014. In this case the petitioner purchased 266 and 275 Second Avenue this past summer. I point this out just to show that the petitioner has a commitment to improving the properties shortly after acquiring them to develop them and to attract tenants which in turn have higher assessed values bringing more property taxes.

The locus as the clerk indicated, and I apologize for the lengthy legal notice that was necessary. It's because this board has ruled multiple times on the property so I'll try to skip over some of this stuff so it won't be repetitive. But all of the petitions granted in the three prior cases and what we are seeking tonight are special permits. So its just a different standard of review for instance what was in front of you for the first two cases tonight which were both seeking variances. There's not the hardship requirement.

So I can skip over some of that history because the clerk did just go through that but what's being proposed. The proposed development and it shows on this board is all within the footprint of the existing parking garage there (referring to the plan) and it's on three floors, two, three and four. It's approximately a fifteen hundred square foot addition which will include a freight elevator. As I mentioned the petitioner often has and has lined up here a tenant for life sciences so as opposed to simple office space, lab space needs a freight elevator and other things that a typical office does not.

So, once again, there's no change to the footprint or the height of the building and this is limited to five hundred square feet per floor inside the garage that lose the spaces but still have enough spaces within it because it's a use and also the prior cases which the clerk mentioned some of which address parking, the shared parking between this site and 266. Nothing on this petition has to do with the land at 266 other than the prior cases connected to for the shared parking reasons.

Limited just to that fifteen hundred square feet on the three floors, but the case seeks to, where those were brought by individuals tenants, those cases, this is being brought by the property owner to kind of just unify them so, if it has to come back again, we can just say didn't we clear that all up in just this one case. So that's what we sought to do here.

Exhibit G in the brief shows how the ordinance changed as the clerk mentioned. This building was built by right and then the city council changed how FAR is calculated to include, for instance, mechanical rooms and elevators which weren't included beforehand so the building that was by right trickled over the .4 allowed and that's how we find ourselves here in front of you as a legally nonconforming and available to the zoning relief which is a special permit for less than ten percent of the floor area. At the fifteen hundred square feet, we are roughly 5.6 to the ground floor area of the existing building.

As to the modifications, we would just like to continue those special permits that were granted in Case 97-8, Case 98-41 and Case 2011-01.

If this petition is granted all prior zoning relief by this board will be consolidated into this one decision.

As I stated earlier, there are no variances being requested here and the standard for special permits under 40A, Section 9, is that special permits may be issued only if use is in harmony with the general purpose and intent of the ordinance. 40A, Section 9 also grants this board the ability to put on conditions so we would be modifying the conditions in the prior cases.

With regarding the the modifications of the decisions that's in General Laws 40A, Section 10, the courts have upheld that the Board of Appeals is authorized to modify any conditions that is imposed in earlier conditions. The building inspector also likes to cite Section 7.2 as to the board's authority in that.

Thus for all those reasons, Madam Chair, contained in the materials I filed with the board, we request that the petition be granted and since I have filed that, I would be happy to answer any questions at this time or I could continue on with the Findings of Facts.

Mrs. Rando: Case 97-8, in the last sentence you said that you want to be able to change the use of the building for a not less restricted character which is allowed by right in the commercial zoning district without permission of the Board of Appeals. In 97-8, was that one of the stipulations of the board that you had to come back?

Mr. Connors: Well, I think there was a question as I had mentioned that was brought by individual tenants. Here we are in a situation where it's office and lab use. So if we were to switch back and forth those are both uses that are allowed in the district.

Mrs. Rando: When we granted it, did we say in our decision that you had to come back to us if you changed the - - -

Mr. Connors: I think we just want to clarify the fact that every time a tenant changes, we wouldn't have to come back. We have the sufficient parking, so that's what we were asking as part of it. We just want it to be clear from the prior decisions where some who read them may have seen that there would be a need to come back here for changes.

So, I think the intent of the provision of the zoning ordinance is while someone might classify something as a less intense use it may have unintended consequences. So this would be especially where you would be bordering a residential area. Here we have no residential abutters in Waltham. There's some residential zone land in Weston but it's a you can't get there from here type of thing. They are far removed.

Mrs. Rando asked the board member if they had any questions and there were none.

Is there anyone in the audience that is in favor of this petition that would like to be counted?

(Four people raised their hand in favor.)

No one is seeking information and no one is in opposition.

You may continue with your Proposed Findings of Facts.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department.

You may continue with your reading of the Proposed Decision.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.

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

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Findings of Fact.

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

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

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

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

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adjourn at 8:30 P.M.

Barbara Rando
12/19/17