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December 26, 2023

Zoning Board of Appeals  
City of Waltham  
119 School Street  
Waltham, Massachusetts 02451

Re: Walnut Street Center, Inc.  
131 Pond End Road, Waltham, MA 02451  
Zoning Board of Appeals-Case No. 2023-24

Dear Board Members:

On November 21, 2023 the above case was heard before the Board. The issues before the Board pursuant to the application were 1) appeal of the Building Inspector denial of the application as failure to meet the frontage requirement under § 4.11 of the Ordinance notwithstanding the exception provided in § 3.711; and) variance request for a frontage of 60.62 feet when 80 feet is currently required under § 4.11. The issue before the Board is the “frontage” of the lot. The “use” and “stormwater” issues have not been appealed by the Petitioner.

In response to your questions and concerns regarding the above referenced case please note the following:

1. Traffic impact of the residence. As stated at the hearing the Petition contemplates three staff in the residence. From Monday to Friday Staff will arrive at 3 PM and work to 11 PM, when three new staff workers will arrive for the overnight shift, and the 3 -11 PM Staff will leave the residence. During the day it is anticipated that the five (5) residents will go by Bus to an off-site facility from 7 to 3 PM. 1-2 staff may be in the residence during the day. On the weekends the residents will be home in the residence. No regular truck trips are anticipated as staff will pick up households items in their vehicles, however an Amazon or other delivery service may deliver something like other residents in the neighborhood.
2. A copy of the five sheet DEP Response Plan, d 8-31-2023, is enclosed for your review.
3. Tree removal. As noted on the DEP Response Plan, “Only dead trees and invasive trees and plants are to be selectively removed, Site Plan, General Note #2.. . . All existing trees and shrubs to remain inside the limit of work area shall be protected.”, Site preparation Note #12.

4. Five disabled individuals will reside in the five-bedroom residence. Each will attend a day facility off site, Monday through Friday. Family members may visit the residence like other residences in the neighborhood.
5. Single family residence. The Inspector of Buildings has not denied that the proposed use of the property shall be as a “single family residence”. The “use” of the locus is not an issue before the Board. I realize the neighbors have a concern with the use but the issue is not before the Board.

The Board asked about the use and the definition of “assisted living facility” under the Ordinance. That definition refers back to MGL c 19D from which the definition of assisted living facility comes. It contemplates an assisted living facility for elderly licensed under the Executive Office for elder affairs.

The proposed residence is not proposed for the elderly and is not licensed under MGL c. 19D.

As stated in Exhibit 2 included in the original Brief to the Board, a Memorandum Jointly Issued by the Department of public Safety and department of Development Servies, dated 11-21-2011, states, “ *The inclusion of group homes into one and two family dwelling classification was the result of a conciliation agreement . . . to settle a complaint with the U.S. Department of Housing and Urba Development (HUD) alleging that the application of the then existing special use and occupancy provision of the building code to homes built for persons with intellectual disabilities constituted unlawful discrimination under the Fair Housing Act and the Fair Housing Amendments of 1988 ( 42 U.S.C. sec. 3601 et seq.) . . . As a result of the Conciliation Agreement group homes operated by the Department of Developmental Services (formerly the Department of Mental Retardation) with five or fewer residents are exempt from the provisions of the special use and occupancy codes and instead comply with § 308.2 of the MA State Building Code 780 CMR 8<sup>th</sup> Edition ‘one and two family ‘ dwellings. Permits issued should be classified as a single family dwelling and/or two family dwelling if a duplex.*”

The Inspector of Building for the City of Waltham has not denied the Petitioner’s application because of the proposed use of the residence. He agrees that the “single family residence” use is appropriate here. He has determined that under the State Building Code and the Waltham Zoning Ordinance that the use of the residence is a s a “single family residence”. This determination is consistent with the Memorandum above and the Fair Housing Act.

Consequently, the proposed “use” at the locus is not a legal issue before the Board which requires a determination by the Board.

6. Interpretation of § 3.711. The interpretation and the application of § 3.711 has come before this Board in a prior matter. The determination of the Building Inspector and the Board was appealed to the Land Court. In the Land Court Case Misc. 11-456490, *Linda Geraci v. City of Waltham, Patrick Powell, as acting Building Commissioner and Kevin McManus*. In that case Powell, as the Building Inspector and Building Commissioner, issued two permits to build to new homes on undersized lots with limited frontage. Each lot with limited frontage qualified for

the exemption provided pursuant to § 3.711. Geraci appealed his decision to the ZBA which upheld Powell's decision. See copy of the Opinion attached.

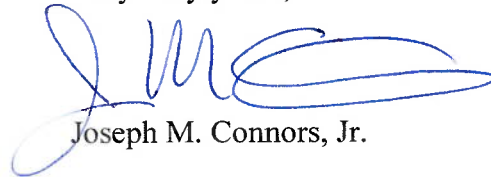
The Land Court also upheld Powell's decision and stated as follows:

*The terms of the Ordinance are clear and Powell and/or the ZBA have no discretion to determine the characterization of the lots. In determining whether to issue a building permit, Powell needed to determine (1) when the lot first came into existence pursuant to a recorded instrument, and (2) based on that finding, determine the applicable frontage and setback requirements set forth below in the Bylaw, and (3) determine whether the building plans conform to such requirements. No discretion is afforded and the dimensional requirements of the Ordinance are applied mechanistically.*

Based on the above, the Board simply needs to decide if the locus lot was created by an ANR Plan prior to December 27, 1988 and whether it conformed to the frontage requirement at the time of its creation. If so, then the frontage requirement of Article IV does not apply. Our lot was created by an ANR Plan prior to 1988 and conformed to the frontage requirements when created in 1968. The locus lot therefore satisfies the requirements of § 3.711 and the frontage requirements of Article IV do not apply.

If there is any additional information which you require at this time, please let me know.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'JMC', with a long horizontal flourish extending to the right.

Joseph M. Connors, Jr.

cc: Walnut Street Center Inc.  
File No. 23-061