



City of Waltham
COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

LEGAL NOTICE

DATE FILED: March 5, 2018

THE ZONING BOARD OF APPEALS OF THE CITY OF WALTHAM WILL HOLD A PUBLIC HEARING IN THE GOVERNMENT CENTER, 119 SCHOOL STREET, WALTHAM, MA ON May 1, 2018 AT 7:00 P.M. ON THE FOLLOWING:

Case #: 2018-09. **Petitioner/Owner:** GJC Real Estate Investment LLC. **Nature Of Appeal/Petition:** Appeal of decision/order of Inspector of Buildings. **Subject Matter:** By letter dated February 22, 2018, the Inspector of Buildings served a Notice of Violation on the Owners of the property at 238 Calvary Street alleging certain zoning and building code violations. **Location and Zoning District:** 238-240 Calvary Street; Commercial Zoning District. **Provisions Of Zoning Ordinance Involved:** Article III, §3.247, §3.248, §3.249, §3.628 and §3.622; Article VII, §7.41 and G.L. c.40A §§6, 7, and 8. **Specific Relief Sought:** By letter dated February 22, 2018, entitled "Notice of Violation", the Inspector of Buildings has alleged seven (7) violations of the Zoning Ordinance and/or State Building Codes against the Petitioner and its property.

General Denial

1. All seven alleged violations fail to state with particularity the location, structure, lots and/or materials which allegedly create zoning violations. The Petitioners cannot properly defend any allegations as they are so general and nonspecific that we are unsure as to which structure and/or use is allegedly in violation.
2. Any alleged dimensional and/or use violations are protected by M.G.L. c. 40A §7 as the Inspector of Buildings has known of said "alleged" violation since 2005 or before.

Specific Denials

As to allegation No. (1) Alleged Violation of "§3.628: Truck storage, contracting equipment. Storage of heavy trucks, heavy contracting equipment and earthmoving equipment, as defined in §3.274, shall be allowed when a special permit therefor has been granted by the City Council, provided that no such yard is placed within 150 feet of an area zone for residential use. . . There was a front end loader stored inside the building that was observed ...". The allegation goes on to cite the definition of storage of heavy trucks from §3.247 of the Ordinance. The Petitioner concurs with the cited definition of the storage of heavy trucks and heavy equipment.

The Petitioners deny the allegation of a violation. As stated in the definition "storage" shall mean the keeping such vehicles or equipment or portions or parts thereof, remaining unutilized or stationary, in open lots or in uncovered or unenclosed areas between the hours of 10:00 p.m. and 6:00 a.m. or any portion thereof. The Petitioner has, since at least

2005, stored his heavy trucks and equipment either inside the building (as observed in the alleged violation) or in the enclosed (fenced in yard) with privacy screening.

The Petitioner also alleges that the “storage” of any heavy trucks and or contracting equipment as defined by §3.247 is legal as it is a pre-existing non-conforming use conducted by the Petitioners. It has existed here for more than 10 years without any enforcement action as required by G.L. c. 40A §7.

(2) Alleged violation of §3.245 – “Truck or Private bus terminal.” The notice restates the definition of a truck terminal and then alleges that, “The inspections confirmed that you are operating a trucking terminal at your property (approximately 5 dump trucks) and that the land being used for said truck terminal use has not been graded, paved and drained with approved on-premises catch basins or appropriate dry wells or connection to the street drainage systems.” The Petitioners deny this allegation. The “use” as a “truck terminal” includes the following language, “...parked or otherwise used in connection with the mass transportation of persons or receiving, shipping, transferring or other handling of items, objects or materials of any kind, packaged or unpackaged.” There is no allegation or evidence that any of the trucks observed are engaged in the mass transportation of persons or that any trucks are used in the receiving, shipping, transferring or other handling of items of any materials. The Petitioners contend the area is graded, paved and has drainage.

(3) Alleged violation of §3.248 Open Storage. Inspector alleges that the Petitioner is maintaining “open storage” in violation of §3.248. He states, . . . “You are visibly storing (and/or permitting others to store) open loose materials such as plow attachments, . . . Such open storage is not sufficiently screened from the street during business hours, after business hours, is not stored in an enclosed area. Fencing with screening alone is insufficient.”

The Petitioners deny the allegations, and further state the allegation is vague and nonspecific as where the violation is occurring. The Petitioner further alleges that any storage of “materials” conforms to the conditions in §3.248, i.e., screened from public ways; more than 10 feet from street line, and in an enclosed area after business hours.

(4 and 5) 780 CMR 105.1 and 4.11 Allegation of “unpermitted structures” in violation of state building code and Zoning Ordinance. Specifically it alleges an unpermitted membrane structure (a tent) on the locus. Petitioner shall either submit required building permit or remove the structure. Other items are also alleged to be stored on the roof in violation of State Building Code. Items have been removed from the roof. This violation is not appealed.

(6) §7.41 of Zoning Ordinance, Occupancy permits. The letter restates the requirement of an occupancy permit as stated in §7.41. It then states that “...Where you commenced using, and continue to use, the subject property (and/or permit others to so use) in the manner identified above in paragraphs 1-5 without obtaining an occupancy permit for such uses, you have violated §7.41. “The Petitioner denies the allegation. The building and use of the building as a commercial building was started in 1957 when the building was constructed. No occupancy permit was issued in 1957. No occupancy permit was required in 1986 when the use of the property as a commercial building was before the Zoning Board

of Appeals. The Petitioner has always used the locus in a commercial manner, more specifically as a general manufacturing and/or light manufacturing uses.

These are by right uses in a Commercial Zoning District. Any alleged failure to possess a “certificate of occupancy”, which we deny, was waived by the Building Inspector when they inspected the property in 2005.

(7) §3.622 Car wash – The violation alleges that the locus does not possess a special permit to operate a car wash as required under the Zoning Ordinance.

The Petitioner does not deny that it does not possess a special permit to operate a car wash. The Petitioner denies the allegation as any washing of trucks is incidental to the general manufacturing business of the Petitioner and its tenant. Washing of trucks is incidental and accessory to the truck repair and plow installation business conducted on site. Further information and plans concerning this case may be viewed at the Zoning Board of Appeals’ Office, 119 School Street, Waltham, Massachusetts 02451; Hours: Monday - Friday 8:30-4:30. **MEMBERS:** Chair Barbara Rando, Michael Cotton, Mark Hickernell, John Sergi, Glenna Gelineau. **ASSOCIATE MEMBERS:** Edward McCarthy, Oscar LeBlanc, Marc Rudnick, Michael Squillante, Sarah Hankins.