

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

February 11, 2014

7:00 P.M.

at

Public Meeting Room, First Floor
Arthur Clark Government Center
119 School Street
Waltham, Massachusetts 02451

Barbara Rando, Chair
Mark Hickernell, Clerk
Gordon LaSane
Edward McCarthy
John Sergi

Arlington Reporting Corporation
(339) 674-9100

Waltham Zoning Board of Appeals/2-11-2014/2

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P R O C E E D I N G S

BARBARA RANDO, CHAIR: Good evening.
The Zoning Board of Appeals for Tuesday, February 11,
2014 is called to order at 7:00 p.m.

Tonight we have one wish for
continuance of time, and we have one continued case
before us.

Case 2012-26, American Tower LLC and
110 Bear Hill Road LLC for a six-month continuance.

We have Case 2013-15, Frank, Jr. and
Michael Valentino, 753-755 South Street, and that's
for a special permit and a variance.

The members sitting this evening on
the Valentino case and the American Tower and Bear
Hill Road case are: Mr. Sergi, Mr. Hickernell, Mr.
LaSane, Mr. McCarthy, and I am Barbara Rando, Chair.

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1 ACCEPTANCE OF MINUTES OF JANUARY 28, 2014 MEETING

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 BARBARA RANDO, CHAIR: The first
4 action this evening is for a motion to accept the
5 minutes of January 28, 2014

6

 JOHN SERGI: So moved, Madam Chair.

7

 BARBARA RANDO, CHAIR: Motion by Mr.
8 Sergi.

9

 Do I have a second?

10

 GORDON LASANE: Second.

11

 BARBARA RANDO, CHAIR: Second by Mr.
12 LaSane.

13

 All in favor?

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 ALL BOARD MEMBERS: Aye.

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 BARBARA RANDO, CHAIR: Opposed?

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 (None opposed.)

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 BARBARA RANDO, CHAIR: The ayes have
18 it. The minutes have been approved.

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PUBLIC HEARING

**Case Number 2012-26: American Tower LLC and Hilltop
110 Bear Hill LLC**

BARBARA RANDO, CHAIR: Would the Clerk please read the petition in 2012-26, American Tower?

MARK HICKERNELL: (The Clerk reads the notice for the above-mentioned Case into the record. See Attached.)

BARBARA RANDO, CHAIR: Thank you.

May we hear from the Petitioner or the Petitioner's representative?

ATTORNEY EDWARD PARE: Yes, for the record, Edward Pare, P-a-r-e. I'm an attorney at Brown Rudnick representing Cingular Wireless PCS LLC or AT&T.

As you know, the Board granted us approval to take down two towers and construct a new tower. We were here over a year ago. We've since gone to the City Council and received their approval. Our last step is to file an approval not required, ANR plan, with the Board of Planning and Survey. They're working to finalize that plan. It's very detailed in nature. We expect to have that done

1 shortly.

2 We realize that we are bumping up
3 against the one-year deadline for the variance, and
4 we're here seeking a six-month extension of that
5 variance. We anticipate within the next few weeks
6 filing our ANR plan and moving on and cleaning up
7 Bear Hill by the fact that we're getting rid of one
8 tower.

9 BARBARA RANDO, CHAIR: So, you are
10 still involved with the City Council?

11 ATTORNEY EDWARD PARE: Yes, I am. The
12 City Council, we are completed with the City Council
13 with the exception of the --

14 BARBARA RANDO, CHAIR: ANR plan?

15 ATTORNEY EDWARD PARE: -- ANR plan.

16 BARBARA RANDO, CHAIR: And the date
17 was February 15th that you were here?

18 ATTORNEY EDWARD PARE: February 15th
19 was --

20 BARBARA RANDO, CHAIR: We made the
21 condition that it had to be done within one year, is
22 that correct?

23 ATTORNEY EDWARD PARE: Correct.

24 Correct.

1 BARBARA RANDO, CHAIR: All right. Do
2 any Board members have questions of Attorney Pare?

3 JOHN SERGI: What was the delay,
4 Attorney Pare?

5 ATTORNEY EDWARD PARE: We probably
6 spent six to eight months with the City Council going
7 through the prospectus, getting the -- it was a very
8 complicated application. We were before the Rules
9 and Ordinance Committee for a number of hearings.
10 And, at this point, once the decision came out, there
11 was no appeal filed. So, we're solid with our
12 special permit. Now it's just a matter of getting
13 the survey completed and getting the ANR plan filed
14 with the Board of Planning and Survey.

15 JOHN SERGI: Do you think it will be
16 done in 90 days? What's the game plan?

17 ATTORNEY EDWARD PARE: I think we'll
18 be done in 90 days with the ANR plan for sure. But
19 to leave us enough leeway to get that done and to
20 pull our building permits, we'd request a six-month
21 extension if the Board is so inclined.

22 JOHN SERGI: That's all, Madam Chair.

23 BARBARA RANDO, CHAIR: Any other
24 questions from Board members? None? None.

1 At this time, I will entertain a
2 motion to extend the six months to August. Is that
3 sufficient?

4 ATTORNEY EDWARD PARE: That would be
5 fine, please. Thank you.

6 EDWARD MCCARTHY: So moved.

7 BARBARA RANDO, CHAIR: Let's make it
8 August -- what was the date, the 15th did I say?

9 ATTORNEY EDWARD PARE: Yes, Madam
10 Chair.

11 BARBARA RANDO, CHAIR: Let's continue
12 this six months until August 15th, 2014.

13 I have a motion by Mr. McCarthy.

14 JOHN SERGI: Second.

15 BARBARA RANDO, CHAIR: I have a second
16 by Mr. Sergi.

17 How do you vote, Mr. Sergi?

18 JOHN SERGI: Yes.

19 BARBARA RANDO, CHAIR: Mr. Hickernell?

20 MARK HICKERNELL: Yes.

21 BARBARA RANDO, CHAIR: Mr. LaSane?

22 GORDON LASANE: Yes.

23 BARBARA RANDO, CHAIR: Mr. McCarthy?

24 EDWARD MCCARTHY: Yes.

1 BARBARA RANDO, CHAIR: And the Chair
2 votes yes. It is extended for six months.

3 ATTORNEY EDWARD PARE: Thank you very
4 much.

5 BARBARA RANDO, CHAIR: You're welcome.

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1 **Case Number 2013-15: Frank D. Valentino, Jr. and**
2 **Michael D. Valentino**

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4 BARBARA RANDO, CHAIR: Would the Clerk
5 please read the petition in 2013-15, 753-755 South
6 Street, Valentino?

7 MARK HICKERNELL: (The Clerk reads the
8 notice for the above-mentioned Case into the record.
9 See Attached.)

10 BARBARA RANDO, CHAIR: Thank you.

11 May we hear from the Petitioner or the
12 Petitioner's representative?

13 ATTORNEY RICHARD DACEY: Yes. Thank
14 you, Madam Chairperson. Richard Dacey, and I am an
15 attorney. My office is at 707 Main Street. And I do
16 represent the Petitioners, Frank and Michael
17 Valentino. Mr. Frank Valentino is with me this
18 evening. And we're here at your pleasure. The
19 matter was continued. And being as old as I am, I'm
20 not quite sure what we were supposed to do this time.

21 BARBARA RANDO, CHAIR: Let me explain.

22 ATTORNEY RICHARD DACEY: Okay.

23 BARBARA RANDO, CHAIR: First of all,
24 we have invited, or we did invite, the Building

1 Inspector to attend. And we had an attorney from the
2 Law Department coming in to answer our questions. We
3 had submitted questions to the Law Department, and
4 they were going to send a representative and she
5 would be here to answer them.

6 Unfortunately, I received a letter
7 just a few minutes ago from Attorney Luke Stanton,
8 who said that:

9 "Dear Barbara,

10 Please be advised that Attorney
11 Michelle Learned contacted the office and has been
12 delayed. There's a family matter at Mass. Eye and
13 Ear and is unable to appear this evening.

14 I thank you for your kind attention to
15 this matter.

16 Very truly yours, Luke Stanton."

17 I spoke with the Law Department
18 earlier, and she was planning on coming. Her book is
19 here and she was quite prepared. But, as we all
20 know, when you have something done at Mass. Eye and
21 Ear, or any hospital, lots of times you're delayed.
22 And, unfortunately, unless she's here in a few
23 minutes, it seems like she's unable to appear this
24 evening.

1 I also invited the Building Inspector
2 to attend. And I received this:

3 "Dear Barbara,

4 I regret I will not be able to attend
5 the upcoming ZBA meeting of February 11th, 2014 due to
6 a prior commitment. I can offer the following
7 comments in answer to your February 6, 2014 memo of
8 questions. We certainly hope that these assist the
9 Board in a final determination of this case."

10 Now, seeing that we do not have the
11 Building Inspector, we do have answers to the
12 questions we submitted, but we do not have him here
13 in attendance. We do not have Attorney Learned here.
14 And that was one of the reasons that we did continue
15 this case. We submitted -- the Board submitted
16 questions to her, and they were going to be answered
17 and discussed this evening.

18 So, at this time, I don't know what
19 the Board's wish is. I'd like to hear from each
20 Board member as to how they would like to handle this
21 dilemma.

22 Mr. Sergi, go first. What is your
23 feeling on this?

24 JOHN SERGI: My feeling is I still

1 haven't heard back from the Legal Department on a
2 couple of questions that I've forwarded to them. I
3 think, you know, for me to go forward with a clear
4 conscience here, I'd like to at least have some of
5 those questions answered in some format. I thought
6 we'd have a written response of some sort.

7 BARBARA RANDO, CHAIR: Well, I'm sure
8 in her book there might be, if you were willing to
9 take the time to look through it. But she could
10 answer a question, but she's not here to answer if --

11 JOHN SERGI: I'd just as soon continue
12 the case. I'm not, you know, the whole purpose of us
13 being here tonight was to have her in attendance and
14 kind of clear up some of the clouded questions or
15 issues that we have here to move forward. So, you
16 know, my intention, it was always the case here to --
17 the neighbors and petitioners worked hard to try and
18 resolve this case. I want to make sure we have the
19 jurisdictions to do so. So --

20 BARBARA RANDO, CHAIR: All right. Mr.
21 Hickernell, how is your feeling?

22 MR. HICKERNELL: I'm ready to take
23 action on the petition tonight. But if any member of
24 the Board wants further information from the Law

1 Department or anywhere else, I would support a motion
2 to continue.

3 BARBARA RANDO, CHAIR: Mr. LaSane?

4 GORDON LASANE: I'm prepared just
5 basically to go with the pleasure of the Board. I
6 would like to have had both persons here, but
7 whatever the pleasure of the Board is.

8 BARBARA RANDO, CHAIR: Mr. McCarthy?

9 EDWARD MCCARTHY: When?

10 BARBARA RANDO, CHAIR: I'm sorry?

11 EDWARD MCCARTHY: When would you
12 continue this to?

13 BARBARA RANDO, CHAIR: It would have
14 to be March because we have two cases on the 25th, and
15 the 18th is vacation week.

16 EDWARD MCCARTHY: I mean is she going
17 to be here, the attorney? You know what I'm saying?

18 BARBARA RANDO, CHAIR: I don't have
19 her schedule, but --

20 EDWARD MCCARTHY: You know?

21 BARBARA RANDO, CHAIR: -- if we do it
22 in March, I should think that it would give her
23 enough time to change --

24 EDWARD MCCARTHY: It's just tough to

1 put a date down there if you haven't talked to her
2 first, you know.

3 BARBARA RANDO, CHAIR: I know. And
4 that's impossible because she's at the hospital. We
5 could make it March 18th -- that's one, two, three,
6 four, five weeks away -- or March 25th to give her
7 enough time if that makes you feel any more secure in
8 picking a date.

9 EDWARD MCCARTHY: Do you want to pick
10 a date after you talk to her?

11 BARBARA RANDO, CHAIR: Well, I'm sure
12 that Attorney Dacey would like to know.

13 EDWARD MCCARTHY: Well, you can get
14 everybody after that.

15 ATTORNEY RICHARD DACEY: Well, I think
16 you have to continue it to a date certain.

17 EDWARD MCCARTHY: Yeah. Yeah.

18 ATTORNEY RICHARD DACEY: Any date is
19 fine, whatever you want to do. I kind of thought
20 that's where we were, that you were waiting for some
21 sort of a response from the Law Department. That's
22 fine. I haven't seen anything. And so -- and it
23 would be -- would it be impolite for me to even ask
24 what the questions were?

1 BARBARA RANDO, CHAIR: Well, I think
2 that you read her opinion, did you not?

3 ATTORNEY RICHARD DACEY: I have. Is
4 it the August -- this is the August --

5 BARBARA RANDO, CHAIR: Right. And
6 she's here just to give her opinion, not to actually
7 defend it, and to answer any other questions that we
8 may have.

9 ATTORNEY RICHARD DACEY: Do I
10 understand that there was another set of written
11 questions posed to her or to the Building Department?

12 BARBARA RANDO, CHAIR: Yes.

13 ATTORNEY RICHARD DACEY: Okay.

14 BARBARA RANDO, CHAIR: Yes.

15 ATTORNEY RICHARD DACEY: And are those
16 privileged or are those -- is it something that
17 you're willing to share or --

18 BARBARA RANDO, CHAIR: We were going
19 to share it with the whole world tonight.

20 ATTORNEY RICHARD DACEY: Okay.

21 BARBARA RANDO, CHAIR: Let's see if the
22 questions are here.

23 ATTORNEY RICHARD DACEY: I guess that
24 might include me.

1 BARBARA RANDO, CHAIR: This is yours,
2 right? This is yours?

3 MARK HICKERNELL: Yeah, that's from
4 the Petitioner. Yeah.

5 ATTORNEY RICHARD DACEY: That's the
6 second book.

7 BARBARA RANDO, CHAIR: I don't have
8 her questions tonight, but I can forward them to you.

9 ATTORNEY RICHARD DACEY: Well, why
10 don't we do this? If you want to settle on a date,
11 just pick a date, either the 18th or the 25th of
12 March. Is either date bad for you? How about the
13 neighbors? Make a difference? Apparently not. Pick
14 a date that's comfortable for you, March 18th or
15 March 25th. If the Law Department can't be here on
16 one of the dates, we'll continue it again until they
17 can. I don't want to deny you the opportunity to
18 speak with counsel. I just think if it's a dialogue,
19 it would be more useful if we were all starting with
20 the same questions.

21 BARBARA RANDO, CHAIR: I certainly
22 will forward those questions to you.

23 EDWARD MCCARTHY: Well, I certainly
24 think that he'd be able to get a copy of what Patrick

1 wrote.

2 BARBARA RANDO, CHAIR: Right.

3 ATTORNEY RICHARD DACEY: Okay.

4 BARBARA RANDO, CHAIR: And I will
5 forward the questions to him.

6 ATTORNEY RICHARD DACEY: All right.
7 Perfect. Pick a date, 18th, 25th, doesn't matter.

8 BARBARA RANDO, CHAIR: Do you have a
9 problem with that?

10 MARK HICKERNELL: No, no, no problem.
11 I was going to say let's just give him Patrick's
12 letter anyway. We've got it here. We can give it to
13 him now.

14 BARBARA RANDO, CHAIR: Yeah.

15 MARK HICKERNELL: Why don't we pick
16 the 18th? In the event that Attorney Learned can't
17 make the 18th, then at least we can -- we're only
18 losing a week and she can make it the next time.

19 BARBARA RANDO, CHAIR: That's fine
20 with me, the 18th, March 18th?

21 EDWARD MCCARTHY: Yeah. Perfect,
22 yeah.

23 BARBARA RANDO, CHAIR: How does March
24 18th look, Board members?

1 ATTORNEY RICHARD DACEY: Are we still
2 in the timeframe?

3 MARK HICKERNELL: We are.

4 ATTORNEY RICHARD DACEY: Okay.

5 MARK HICKERNELL: Yeah, we've got till
6 April 18th, according to my file.

7 RESIDENT: The 18th is not a good night
8 for me.

9 BARBARA RANDO, CHAIR: The 18th is not?

10 RESIDENT: The Yankees are in town.

11 ATTORNEY RICHARD DACEY: Who's in
12 town?

13 BARBARA RANDO, CHAIR: The Yankees.

14 MARK HICKERNELL: Well, they'll be in
15 town for more than one night, won't they?

16 RESIDENT: But our tickets are --

17 MARK HICKERNELL: Oh, your tickets.
18 Okay. Then the 25th.

19 EDWARD MCCARTHY: March 25th? March?
20 March?

21 RESIDENT: Wait a minute. Oh, no, I'm
22 looking at -- excuse me. I'm looking at a spring
23 training.

24 EDWARD MCCARTHY: Okay. I was just

1 thinking maybe the Red Sox started playing hockey or
2 something, you know.

3 BARBARA RANDO, CHAIR: See, I didn't
4 pick up on that because I don't know baseball.

5 All right. So, let's make it -- so
6 then the 18th does not matter with you. All right.
7 So, we'll continue --

8 RESIDENT: What about Councilor
9 Giordano?

10 COUNCILOR JOSEPH GIORDANO: Yeah,
11 that's fine.

12 RESIDENT: All right.

13 BARBARA RANDO, CHAIR: -- Case 2013-15
14 to March 18th.

15 Greg, is that all right with you,
16 March 18th?

17 REPORTER: Yes.

18 BARBARA RANDO, CHAIR: Okay.

19 ATTORNEY RICHARD DACEY: Is it the
20 pleasure of the Board that you would like my written
21 response to these questions ahead of time, or how do
22 we do this?

23 BARBARA RANDO, CHAIR: What's the
24 feeling of the Board? Do we want his answers

1 beforehand?

2 MARK HICKERNELL: If he's inclined to
3 submit answers to the questions, his view of the
4 questions that the Board has submitted, and if we can
5 read them ahead of time, that would save time. I
6 can't say it would be a requirement. But, sure, why
7 not?

8 JOHN SERGI: Sure. Yeah. Yeah.

9 ATTORNEY RICHARD DACEY: You know
10 what? I'm only trying to clarify something that may
11 be impossible to clarify. But, to the extent that
12 you can get two sets of answers to the same question,
13 you're at least in a better position to judge how you
14 want to go with this. And this is what we do.

15 BARBARA RANDO, CHAIR: Okay. Fine.
16 Submit them in writing.

17 All right. Do I have a motion to
18 continue Case 2013-15 to March 18th, 2014?

19 JOHN SERGI: So moved, Madam Chair.

20 BARBARA RANDO, CHAIR: Motion by Mr.
21 Sergi. Do I have a second?

22 GORDON LASANE: Second.

23 BARBARA RANDO, CHAIR: Second by Mr.
24 LaSane.

1 How do you vote, Mr. Sergi?

2 JOHN SERGI: Yes.

3 BARBARA RANDO, CHAIR: Mr. Hickernell?

4 MARK HICKERNELL: Yes.

5 BARBARA RANDO, CHAIR: Mr. LaSane?

6 GORDON LASANE: Yes.

7 BARBARA RANDO, CHAIR: Mr. McCarthy?

8 EDWARD MCCARTHY: Yes.

9 BARBARA RANDO, CHAIR: And the Chair
10 votes yes. So the case is continued.

11 What is the date of the 100 days?

12 MARK HICKERNELL: One hundred days is
13 April 18th, 2014.

14 BARBARA RANDO, CHAIR: Okay. April
15 18th. So we're all set there.

16 Thank you very much.

17 ATTORNEY RICHARD DACEY: Oh, you're
18 welcome. I'm sorry. I hope it's nothing serious
19 that's medically going on here.

20 BARBARA RANDO, CHAIR: Right. We do,
21 too. We do, too. She would have been here if she
22 could have. Again, I'm sorry. Things happen.

23 One more motion is in order.

24 JOHN SERGI: Motion to adjourn, Madam

1 Chair.

2 BARBARA RANDO, CHAIR: Motion to
3 adjourn by Mr. Sergi. Do I have a second?

4 EDWARD MCCARTHY: I'll second it.

5 BARBARA RANDO, CHAIR: Second by Mr.
6 McCarthy.

7 All in favor?

8 ALL BOARD MEMBERS: Aye.

9 BARBARA RANDO, CHAIR: Opposed?

10 (No Board Members opposed.)

11 BARBARA RANDO, CHAIR: The ayes have
12 it. We are adjourned at 7:25. Thank you.

13 (Whereupon, the public hearing was
14 concluded at 7:25 p.m.)

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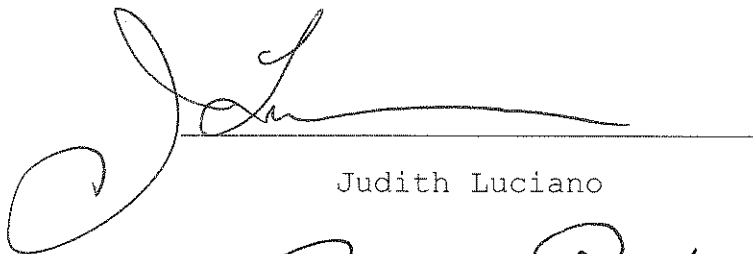
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C E R T I F I C A T E

I, Judith Luciano, do hereby certify that the foregoing record is a true and accurate transcription of the proceedings in the above-captioned matter to the best of my skill and ability.

A large, stylized handwritten signature in black ink, appearing to read 'Judith Luciano', is written over a horizontal line.

Judith Luciano

Barbara Rando, Clerk
3/11/14

