

**CITY OF WALTHAM**  
**ZONING BOARD OF APPEALS**

May 21, 2013

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, May 21, 2013 in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA. In attendance were Chair Barbara Rando and members Michael Cotton, Glenna Gelineau, Mark Hickernell, Gordon LaSane and John Sergi.

The chair called the meeting to order at 7:00 P.M.

Mrs. Rando: Tonight we have two new cases before us, Case 2013-05, The Kindness LLC, 20 Linden Street, and they are asking for an Appeal of the Decision of the Building Inspector. The second case is Case 2013-08, Emily A. Shea and Matthew Regonini, 93 Hardy Pond Road for a Special Permit and a Variance.

The members this evening that are sitting on the first case are: Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Mr. Cotton and I am Barbara Rando, Chair.

The first action this evening is for a motion to accept the minutes of the meeting of May 14, 2013.

On motion of Mr. Sergi. seconded by Ms. Gelineau, the board voted to accept the minutes of May 14, 2013.

Would the clerk please read the Petition in Case 2013-05?

The clerk then read the Petition of The Kindness LLC., in an appeal of the determination of building inspector. The petitioner seeks to overturn a Cease & Desist Order issued by a building inspector concerning the boarding of dogs within the veterinary clinic on the property. Location and Zoning District: 20 Linden Street, Business B. Zoning District.

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

Brian Grossman, Attorney for the applicant, Kindness LLC, Prince Lobel Tye, LLB., 100 Cambridge Street, Suite 22100, Boston, MA came forward.

Mr. Grossman: Madam Chairman, I did receive an email today, I believe it's from one of the abutters, Mr. Slade, with some additional information and some argument for the abutters. In response to that, I do have a supplemental submittal as well. (Mr. Grossman gave each member a copy of his supplemental submittal.)

The submittal includes a supplemental statement from me going through some applicable case law with regard to the increase of the volume of the nonconformity. I will certainly walk through that later. It also includes three Affidavits. It includes an Affidavit, the second Affidavit from Dr. Seymour Bigman and I think that the board is familiar that he was the prior owner/occupant and operator of Kindness Animal Hospital and Shelter from 1972 to 2003 before the purchase by Steve Carlin and then the Kindness, LLC.

Mrs. Rando: Do you think you should present your first brief for us and then we'll hear -

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Mr. Grossman: It is actually easier from me to go through all of it. I just wanted you to know it was in there. There are two other Affidavits in there, one from Chris Fraize and one from Jodi Harrington, both are former employees of Dr. Bigman and Jodi Harrington actually worked for both Dr. Bigman, it was two different periods of time as well as a period of time for The Kindness as well. Since the enforcement action refers to returning the pre-existing nonconforming use back to the volume as it has existed in 2003 which was the time of the sale

from Dr. Bigman. Her testimony is, I think, particularly instructive and informative.

And lastly, there are two other things in the supplemental. One is just excerpts from the Polk Directory; I managed to pull them off line. They are a business directory. I only grabbed a handful of years. I tried to grab one in the 1940's, the 1950's, 1960's, 70's and then the 80's to just show originally that the property was used for a veterinary clinic although, I think we agree on that going back as early as 1944. There's a 1945 Polk Directory, I'm missing in there, either the year sheet and then just the listing. At that point it was just operated under the name of Dr. Julian Karasoff. Subsequent years it becomes Kindness Animal Hospital and Shelter which is also an important point that I have.

Lastly is a plan dated March 28<sup>th</sup> of 1985. That plan was submitted to the building department, as I understand it, for in support of a building permit application, the renovation never went forward. But it was submitted in an existing plan. The plan is semi incomplete because part of the building was not being modified. But it still shows a notation for boarding for an area of the clinic. And it doesn't show the walls because that area wasn't being modified but it does show a notation for boarding. Again, I soon will be referring to that as it is instructive in terms of the overall history of the property and showing that it was used for the non medical boarding of dogs which is the issue that Inspector Powell has raised.

Mrs. Rando: Could I ask you a question? In 1985, I made the site view at that time also. How were we to decide that they weren't sick dogs or well dogs when you said there were kenneled there? How do we know they weren't just recuperating from some surgical procedure?

Mr. Grossman: This plan actually shows two different areas for the keeping of animals and it shows cages, shows surgery, it shows a recovery room and then it shows dog boarding. I'll also address the fact that ultimately, I believe, the commissioner's distinction draws a distinction that's impermissible under the ordinance and is arbitrary under the ordinance because the ordinance doesn't draw that distinction. And secondly, you have the affidavits from Dr. Bigman, Mr. Fraize and Ms. Harrington that tell you that commercial boarding of dogs took place on the

property as well, and lastly, under the cases that I provided in the supplement that I will go over when I get there in my presentation, the volume of dogs whether medical or non medical is, I want to say, irrelevant but the increase in volume alone is not an extension of preexisting nonconforming use such that it would be illegal and that it is at least permissible, and the volume trying to set the volume at a specific date and time when a use became nonconforming is improper and judgments have been overturned for that.

In terms of the Cease and Desist order itself, the sole reason itself given by Inspector Powell is simply that there is an increase in non-medical boarding. Even the enforcement action waffles on it somewhat indicates that in Mr. Powell's opinion there has been some non-medical boarding of pets whether that be dogs, whether that be cats or other types of animals, but what the enforcement does is it draws a distinction. It draws a distinction between the medical boarding of pets and the non-medical boarding of pets. When I say the medical boarding of pets, I think the board understands what I mean by a dog or a pet that would be recuperating from surgery or recuperating generally from injuries that needs to stay at the facility rather than just be treated and sent home on the same day.

Under the ordinance as it existed in 1976, which is part of what we will come back to and then the ordinance changed in about 2007, 2008, under the ordinance there is no distinction between the medical boarding of pets and the non-medical boarding of pets, or the boarding of dogs and the non-medical boarding of dogs. Under the ordinance, it was the number of dogs being boarded for any reason that determined whether or not you were a cat, it determined whether or not you needed a kennel license, it determined whether or not back in 1976 whether you needed relief from this board or the planning board to board dogs and have a cat. It made no distinction. As a matter of fact, the current by law in the 2008 provision makes abundantly clear that there is no distinction. If you have four or more dogs for any purpose, for whatever period of time that you keep them on the premises, you're a kennel. And I don't know how else to say it other than a kennel is a kennel. If you are a kennel whether its because you are boarding dogs because they are there for medical care or you're bringing them there just because they are there just to be boarded, you're a kennel and that's the use that's been made of the property since 1944. There is also a veterinary clinic on the property and in that building but the simple fact

that that use is there, the additional use of the keeping of dogs makes it a kennel. And that's all it is in terms of this enforcement action. And so the splitting of hairs, the drawing of a distinction, and the board could have done, the planning or whoever created the ordinance, they could have drawn the distinction themselves. They could have said we are going to define a veterinary clinic one way and we are going to define the commercial boarding of pets in a different way. By laws can do that, ordinances can do that. It chose not to and because it chose not to then to the extent that there is a detriment to it everyone in town if you can operate a kennel, you need to live with that. Because we have the benefit of that distinction with the fact there is no distinction as well. And there is no distinction here. And so the drawing of a distinction for medical vs. non medical, it doesn't exist under the ordinance. And I would suggest that it is improper for Mr. Powell to draw that distinction for us because the ordinance is what he needs to look to enforce. That's what he's enforcing. And he hasn't said that there has been an overall increase of boarding pets, what he says there's been an increase of commercial boarding. He doesn't say what that level was. He hasn't given any indication as to what he thinks that level should have been, he says return it back to 2003.

Well, as the Harrington Affidavit tells you, in her time there from 1999 to 2007, which bridges both Dr. Bigham's ownership and Mr. Carlin's ownership, that use has been historically consistent. There are peak times, there are low times, there are super peak times where you have certain holidays where almost everybody goes away and people need to board their pets. And so you kind of even get that higher number than you ordinarily would in just kind of any normal time during the summer or something like that.

With regard to the allegation that there has been an increase in the non-medical boarding of pets, even if you said, you know we are going to uphold the building inspector's determination in terms of deciding that he can draw a distinction between medical and non-medical boarding, Look at the history, if there hasn't been an expansion then under his enforcement action there's nothing improper going on. There is no enforcement action necessary.

We submitted three Affidavits as I have already told you, one from Dr. Bigman, one from Mr. Fraize, and one from Jodi Harrington. All three of them tell you that the non-medical

boarding of pets was more than just the small scale use that Mr. Powell intimates in the enforcement action. That in fact it was a critical component of the business operation of The Kindness Animal Hospital and Shelter. And that's a distinction that shouldn't be lost as well. It wasn't just Kindness Animal Hospital. It was Kindness Animal Hospital and Shelter. You can see it in the Polk Directory; starting I think, it might be the one from the early fifties but certainly from the sixties and going forward. And Shelter! There's a reason it said and Shelter. And that was because they provided the boarding of dogs and other pets. And that's what Dr. Bigman did. That was his familiarity with Dr. Karasoff's operation because he worked with Dr. Karasoff at one point as well. In fact, Mr. Fraize and Ms. Harrington tell you in their Affidavit that not only were they employees but part of their main duties was taking care of the commercial boarded pets the ones that weren't there for medical reasons. They may have had some duties associated with medical and Mr. Fraize never attempted to assist at times holding a dog down or assisted with the regular vet text in providing medical care. But a main component of his job was the care, feeding and cleaning up after the non-medical pet. Ms. Harrington tells you the same thing. Then from historic perspective we have the 1985 plan which is referred to in the building inspector's determination going back some time and it was also referred to by Mr. Slade that shows you, that was in Tab 6 of the supplement, there's an area that's shown as dog boarding and the area that Mr. Powell is looking at is talking about because he was back and there were a certain number of cages, thirty or so, that had what he called healthy pets.

What the Affidavits tell you consistently across the three from Dr. Bigman, Mr. Fraize who operates his own business up in New Hampshire, has no financial connection to Kindness and from Ms. Harrington who no longer works at Kindness as well is you have approximately and again this number could vary but ten to fifteen pets that were there at any one time per day for medical reasons, twenty to forty in the slow periods. General periods, what it wasn't a holiday, it wasn't summer vacation period or anything like that, non-medical pets being boarded that type of thing. During some of the higher times in general summer activity, certain holidays, I'm not going to repeat holidays, fifty to sixty five, and then Dr. Bighman's Affidavit says it exceeded sixty five during the peak holidays of Christmas and New Years, Memorial Day, Thanksgiving, a couple of the other super holidays, major holidays where people tend to go away. Mr. Fraize and Ms. Harrington's Affidavits fill in the blanks for us in terms of well, it's

more than sixty five. More than sixty five means seventy five to a hundred according to Mr. Fraize and Ms. Harrington who was also responsible at times for making the reservations. Those Affidavits are consistent. Now why would Dr. Bigman not know because the doctor wasn't running that part of it. He wasn't the one who had to take care of all the animals. People who had to take care and feed all the animals would be much more in tune with the exact number that were there and so we can rely on their testimony for that. As I said, the enforcement action says reduce it back to what it was in 2003. Again, acknowledging that there has been some non-medical boarding of pets. When Ms. Harrington's Affidavit says well I was there from 1999 and 2007, I can tell you from 1999 to 2007, even after the changeover, those numbers were relatively consistent that there was no significant increase after the business was sold in 2003.

And lastly, and this is addressed more fully in the supplement I gave you in Tab 1, which is in the supplemental letter that I submitted today, we disagree respectfully with Mr. Powell that there has been an increase at all. The Affidavits show that there hasn't been an increase and that the activity level has been relatively consistent. However, under the case law, even if there has been a dramatic, substantial or to a great extent increase it is still protected as a pre-existing nonconforming use. As a matter of fact, the case that Inspector Powell cites with all due respect there's two parcels and I go through this in the supporting statement, there's two parcels that are addressed in Powell's. There are what they are called Parcel 1 and Parcel 2. Parcel 1 was a candle shop and was operated by this company, called Candle Company and they produced and sold candles there. They had an administrative office in that building. And their operation there pre-existed the ordinance that made their use nonconforming and the period existed from about 1946 forward. And the by law changed in 1949 and 1956. In 1962 after it had been sold a couple of times, the second parcel becomes part of Candle Company's operations. And there have been some use of that property, a couple of employees had lived there. They had a "house industry" that wasn't even related to the candle business, but there had been some commercial activity there but it wasn't clear to quite what extent. But what was clear is the Candle Company's operation of that property was after the by-law changes. But in looking at what happened in the changes of ownership from 1946 to an intermediate owner to the final owner, there is a significant increase in volume for the type of candle business that was operated there. They started doing more wholesale increasing the volume; increasing the commercial traffic for

shipment. They started actually bringing in candles from outside companies and selling them on the premises. They opened a gift shop on the premises, or a retail shop on the premises to sell their candles and the candles they were bringing in. And the court acknowledged there was a significant amount of increase of volume of the candle business, the traffic and potential impact on the neighborhood. But as the parcel went, it said that increase in volume, because the original use, it was still consistent, its still a candle operation, just the volume had grown, simply an increase in volume you can't really penalize them for the simple increase in volume it is not an impermissible extension or expansion of a nonconforming use. It's still protected as part of the original pre-existing nonconformity. There are a couple of other cases and I mentioned them, again more fully in the supplemental statement but again, they are instructive there are two cases, Tellestone and Amaral where the lower court entered a judgment in trying to roll back the clock. Well as of the date that the bylaw changed and your use became nonconforming, that's the use you have. You can't grow that. You can't increase it in volume. Not grow in terms of land area but grow in terms of volume, and those cases were overturned. The judgments were entered in error or were erroneous in trying to reduce them back to that pre- nonconforming level. And the reason for that is, you look at the nature and character of the use. Is it the same they call nature and purpose? When they had the candle shop, ya, they are still creating candles; they are still selling them, that's what you are doing. Here, we are still boarding pets whether it's medical, non-medical or whether you agree there's non-medical and now that use has increased which we disagree we think it's still consistent. If you think that use has increased, it's still the same nature and purpose. It's still the boarding of pets. And it's still the boarding of pets inside the same building and the enforcement makes no allegation there's been an illegal expansion of the footprint. It solely the volume. The change in volume is not a change in the nature and purpose nor is it under the second part of the test a change in character. You can have a use that is so far off scripts and it can go so far away from what it was originally that it becomes a change in the character. You don't have that here. The cases that have that are, some cases are actually a complete change in use; it was an ice warehouse, or an oil based distributing business, or you have a quarry that was turning out fifteen hundred cubic yards a year now and then its turning out hundreds of thousands. It's turned more than what they have turned out in a year in a day. Those kinds of uses we have thirty to forty fold changes, might, might be an impermissible extension. Here we don't have that. Here what we have is the history of the property as given to



you by the people, who worked there, by the people who own it, the people who operated it and they tell you what the history was. And lastly, there's no change on the effect of the neighborhood. And I know you guys are going to argue that. But what we are talking about is inside the clinic, inside the clinic not outside. Outside as this board knows is governed by a different set of restrictions and conditions that were imposed and agreed to by Kindness. And so the only potential argument about the impact or effect on the neighborhood would have to relate to inside because outside right now, those conditions exist. Those conditions will continue to exist. And as long as there's no allegation that Kindness is not abiding by those conditions, governed by the number of dogs outside and how long they can be outside and if the dog is barking it has to come inside. The volume inside doesn't matter because those restrictions allow a certain amount outside during certain periods and so the only argument as to the effect on the neighborhood has to come from the inside. It has to come from something else maybe like traffic because Ellison Park is on the other side. The traffic that goes to and from Kindness is on Linden Street in the business district. It goes to the gas station. It goes to Petco. It goes to CVS. It goes to Dunkin Donuts. It goes to the District Court. It goes past all those businesses down the road. It's a business district. And they back up to it but the traffic doesn't go through that neighborhood. And again, the enforcement action says nothing about traffic. All it says is, look you have increased the volume, I think that's inappropriate or improper and the cases say otherwise.

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

Mr.Sergi: No, not at this point.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: I do not.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No.

Mrs. Rando: Mr. Cotton?

Mr. Cotton: Was there a number of dogs mentioned in the first petition? I seem to remember that Dr. Bigman, he was allowed so many to keep overnight that were recuperating and then so many allowed for kenneling. Is that true?

Mr. Grossman: I'm not sure I understand the question.

Mr. Cotton: When I sat on this the last time, I went down and looked at the petition when he went to city hall, they said in the variance, you can have x amount of dogs to stay there if they are recuperating and sick. I think the number was six. And you can also have another six to board.

Mr. Grossman: I have never seen that. I know my firm was involved in the last petition a couple of years ago. I wasn't. I was involved later. I've never seen that restriction in the file. The license is historic for licensing. I know it's different from zoning. I have had that discussion with Bernadette in the Law Department. The licenses were historically issued for the number of dogs and if there had been that kind of restriction I would expect that it would show up in the license as well.

Mr. Cotton: Unlimited!

Mr. Grossman: Unlimited.

Mr. Cotton: Because you're not dealing with candles. You're dealing with dogs and noise and smell. It affects everybody. If you made a thousand candles it doesn't make a difference to the neighborhood but you put a thousand dogs in there with the smell and doing their business it makes a big difference to the neighborhood. I can't understand why there's no restrictions.

Mr. Grossman: Well with the candles you can say it doesn't make a difference but it could. I mean when you increase the number like that, you're increasing the traffic, you're increasing noise, you're increasing the manufacturing process and there are other cases that deal with other types of more invasive issues like quarries and things like that. In fact one of the cases that deal with the more intensive use basically is dealing with welding. So it had noise. It had fumes. It had flame, odors and things like that and its talking about an increase in that activity. It said, well, you already have those things so even the affect in the neighborhood doesn't change; you either have those things from the permitted use. But remember, part of the complaints having to do with noise, smell and things like that had to do with the outside use. And the outside use again is currently governed and has been for a couple of years now, governed by restrictions that were agreed to and there's no allegation in the enforcement action that those conditions are not being lived up to. And the conversations that I have had with Mr. Powell, may be few and far between, he's never raised those to me and I don't believe he's raised those to Mr. Carlin either. So everything inside is inside and certainly it minimizes any impact or potential for any impact by being located inside; the soundproofing, the walls and all of that.

Mr. Cotton: So what basis does Mr. Powell say that he's in violation?

Mr. Grossman: I don't know.

Mr. Cotton: He must have said something.

Mr. Grossman: His enforcement action letter speaks for itself. You can read it and interpret it as well as I can, Mr. Cotton. The issue is, all he says is look it may have been in use but I think it was incidental to the medical boarding and therefore I think you have impermissibly expanded it. I wish he had given more. He bases it on some prior inspections from 2007, something like that but he doesn't specifically say to me or to you, I saw this, this is why I think this. He just kind of gives a general statement and in my conversation with Mr. Powell is I'm not sure how much research he'd done into it; I don't know what basis he had for it. It was he had a complaint from enforcement action by presumably Mr. Slade and he was responding to

that and based on that he couldn't determine to what extent the use was permissible so he was issuing an enforcement action and leaving it up to the petitioner, us, to demonstrate to the board that the nonconforming use is legally permissible.

Mrs. Rando: I think his basis was that in 2008 when he made the site view, there were probably thirty kennels in the clinic and I made a site view on that day also. Now, I counted ninety today and there was one room that I wasn't allowed in because they were doing some medical procedure and there were kennels in there also. It seems to me that you have moved a very lucrative business from the house into the clinic and I think that's the basis of - - -

Mr. Grossman: Well, perhaps any arguments we have moved the lucrative business from the clinic into the house but regardless, in my conversations with Mr. Powell, and I wasn't at some of the other inspections that you were at so I can't speak to where you were able to go but the room that Mr. Powell and I were in that he references in his letter I think was in November, I had said during the prior iteration of this when it went to litigation and I was involved then, we had site visits as part of that and I was present there and I had said to him we've been in that room before and I was told no, he hadn't at least in that inspection he hadn't been back there and so I don't know how to reconcile this because one, I had the memory or being back there.

Mrs. Rando: Well, he saw seventy, eighty, maybe a hundred kennels when he made his last site view he told me personally.

Mr. Grossman: And from my walk through back in 08 or 09 and I was there in November and I've been there the whole time since, those rooms all look exactly the same to me that they hadn't been changed.

Mrs. Rando: Mr. Cotton and I walked through it today and we walked through it in 2008 and it's completely different.

Mr. Cotton: It changed.

Mrs. Rando: But I would like to know, do you have any proof or any records from the doctors that he has boarded animals there, well animals there, since 1940 or 1944? There must be records. Doctors keep records.

Mr. Grossman: Well, Dr. Karasoff is now deceased and Dr. Bigman's records were with to the extent they were turned over, the relevant portions of them in terms of medical were turned into business records that are now electronic and there's no active litigation that they need to be preserved. I have one that was given to me during the course of the prior litigation that was kind of a sample just to show me what it was so that I could reveal it and actually talk to Bernadette Sewell about it. And I can tell you, that one record shows medical history and shows from, and these dates aren't exact but shows separate from that - - -

Mrs. Rando: Was this continually without any lapse in time?

Mr. Grossman: I have one record but you have the Affidavit of Dr. Bigham. You have an Affidavit from Chris Fraize. You have an Affidavit from Jodi Harrington. They were all there at different times. They tell you what their primary function was. You know, in absence of the business records, the best we can do is go to the sworn testimony of the people we have.

Mrs. Rando: See you have to prove to us. The burden is on you to prove to us that it is a nonconforming use.

Mr. Grossman: I have Affidavits from people that tell you what the job functions - -

Mrs. Rando: At that time when they were there. When they were there, but not beforehand or after or whether there was any lapse in time that you've lost your nonconforming? To me, you have increased the nonconformity of the - - -

Mr. Grossman: And if it's the increase in volume that the cases that control that tell you the increase in volume is still legally protected.

Mrs. Rando: Well, you can't tell me that in 1944 that people kenneled their dogs for vacations and whatever like they are today.

Mr. Grossman: I can't tell you 1944.

Mrs. Rando: Let's go back to 1950. Were people kenneling their animals in 1950?

Sheila Bassett: I was kenneling my dog when I was in junior high school which was sixty four years ago.

Mrs. Rando: Really. I picture it's like a nail salon today where people go and have their nails or pedicures done every week. In those days they did not kennel dogs. My dog was at home and he was around unleashed.

Mr. Grossman: Right. But remember, back in those days and I know this because I talk to other people, I drop by the Pooch Hotel every day. The Pooch Hotel didn't exist in 1944. Things like the Pooch Hotel didn't exist in 1944. They didn't exist in the 1990's until maybe towards the end. When people went away, and Dr. Bigman's Affidavit says this as well, when people went away in those days the only place to take your dog or your pet was the vet if you had to board them if you didn't have a neighbor that could walk them. That's where you took them. That's where I took mine; my parents took mine. We had to go to a vet because there was no one else set up to care, long term, meaning more than a day.

Mrs. Rando: Do you think at that time there were a hundred dogs kenneled in those days?

Mr. Grossman: Remember under the cases it doesn't have to be a hundred dogs. It's not the number, it's not the volume that existed in 1944, and it's whether it existed. And no one has ever argued that there's no commercial, until now, that there's no commercial boarding permitted. No one's ever said, and it's been known that there's been commercial boarding there for an extended period of time because it was known that Dr. Bigman was doing it. So that the

use was there. If you want to argue the numbers, then the cases tell you that the volume, you don't get to reset the clock; you don't reset the clock back to what the volume was when it became nonconforming. If the nonconforming use was present then a simple increase in the volume was permissible and it's not permissible by permit from the board, it's permissible as the continuation of the protected use. I know that it seems like a hard concept to get the head around that you can take a use that might have been around ten or twenty and you can grow it to eighty and that's protected. That's what the cases tell you.

Mrs. Rando: Without increasing the nonconformity. That doesn't make sense to me. All right, any other questions from board members? Hearing none, is there anyone in the audience that would like to speak in opposition to this?

Lady in audience: In opposition to what, restricting the numbers or - - -?

Mrs. Rando: Overturning the decision of the building inspector which is to stop the kenneling in the clinic.

Mr. Hickernell: To reduce it back to 2003 numbers.

Mrs. Rando: Does everyone understand that, what opposition means?  
This lady is saying that she wants it to continue it the way it is. So she is not in opposition, correct?

Mr. Grossman: She's in support of it.

Mrs. Rando: She's in support of it.

Madam Chair, if I could be heard. My name is David Slade, I am an immediate abutter, we are probably the closest abutters to the clinic and therefore we have had a concern with this for a long time. As the documents that I submitted today to this board in opposition to the petition to overturn the building inspector's decision show that since 2007 I have been writing to

the city building department asking them to find that the non-medical boarding of dogs is not a lawful nonconforming use and should be prohibited. The decision that the building inspector made, I think raises a number of questions in my view and it didn't go far enough but it did make certain conclusions. It implied that there was a nonconforming use. A nonconforming use means a lawful nonconforming use. But as I think this board in its questions has already seen the burden is really on the petitioner to demonstrate the nonconforming use. And really to demonstrate the nonconforming use, I think as a practical matter especially when the records had been in the possession of the petitioner they need to show when the nonconforming use started and it has been continuously kept up for two years. I don't think that the cease and desist order can really be read quite as broadly as Mr. Grossman is saying. One of the key lines in the Order is a very sort of conditional statement by the building superintendent and it says: Arguably some additional boarding of healthy pets may have taken place. However whether it was a continual use is unknown and what is clear is it was a little more than a minimal accessory use." And that as the representative for Kindness and Skipton just said Dr. Bigman in his deposition testimony on the last issue concerning the use of the house said that the business records were turned over to the people that he sold the business to, to Skipton. You are now hearing today, that apparently one record conveniently was all that was kept and that that's okay because it wasn't an order to preserve the records. But if the burden is on the petitioners to demonstrate that there's been a lawful nonconforming use those records would be very helpful and very relevant and would show at a minimum that by a certain time it had or had not started and that throughout the time since then it had continued or it had lapsed. I don't know the specifics of what myself, what the business was at the time it was bought in 2003, but it would certainly seem that the business had to significantly wound down before it was sold by Dr. Bigman. And that was certainly sort of the impression that some of the neighbors had was when Dr. Bigman was done with his business, that would be it for this burden on the neighborhood. And it didn't take me long in looking when we started looking at the question of the house a number of years ago in the boarding of dogs there to find you know books that tell you about how to set up a dog kennel. I mean the first thing you do when you go into a community is you look and you find out what the regulations are and you get the permit. Nobody has ever sought a special permit for this. It's, I think, rather clear from the various zoning regulations that since 1964 the operation of a kennel has explicitly required a special permit under all of the zoning ordinances from 64 until 2008. Without the



records, it's hard. We can get from anecdotal evidence that's apparently some of what is in these Affidavits. I haven't had a chance to look at the Affidavit. In a somewhat complex situation like this things sometimes happen sort of quickly. There's been a long period coming to this decision then we have this hearing set up and a few days the petitioner submits Proposed Findings. I today submitted them very late in the day to the board and to the petitioner. I did not see these Affidavits until now. I have not had a chance to look at them. I was trying to follow Mr. Grossman but I don't think that it has been established and I don't think that the petitioner has met his burden of showing that a nonconforming use was ever lawfully established to board dogs separate from or beyond the medical care that would be necessary to operate any veterinary clinic. You know, I don't know when these records were destroyed or whether Skipton now is saying all the records except one have been restored but I think it would be incumbent on the board in terms of trying to understand whether a nonconforming use was ever established and whether its continued to exist to formally ask the petitioner for that documentation for that support for their claim that they have established a nonconforming use.

I think it's interesting as these things go kind of quickly. I submitted as part of my packet today a diagram that I had for a long time that I believe is specifically attached to some type of city report in 1985. It looks very similar to the diagram that was submitted tonight by Mr. Grossman except it's very different if you look at those two diagrams. The document that I submitted shows no room for boarding other than space for cat boarding. It shows the very room that their document shows just boarding as surgery. So it may take a while to sort out some of the details but I think that the burden is really on the petitioner to establish that the nonconforming use existed at any point and time and that its been maintained ever since then. I don't think you can just submit a document without anything that shows where the document came from. Now, I did that. There isn't any details to where I submitted that document but I don't think we have the burden.

There really are a couple of sets of issues here. A big part of the issue is a legal issue as to whether there's ever been a lawful nonconforming use. The other part of the issue is just sort of the burden on the neighborhood, the noise; the other issues that came up when we were here talking about the dogs boarding in the house. I think others can speak more to the issues of the

burden on the neighborhood. Other people will want to have something to say about that, but I think that it's clearly not a licensing issue. The license isn't the question. The question is whether it's a zoning one and whether there's ever been a nonconforming use established and I don't think what's been submitted to you, although I haven't read the Affidavits I don't think that's enough to really satisfy the burden of establishing the prior nonconforming use.

Mrs. Rando: Mr. Slade, you said that the building inspector, Mr. Powell, hinted at it being a nonconforming, why do you feel that he felt that way? Didn't you say that?

Mr. Slade: Well, ---

Mrs. Rando: Do you think it has something to do with a business and a residential home on one lot? Do you think he took that into consideration?

Mr. Slade: I don't know whether he took that into consideration. I guess his conclusion at one point is, "It is the determination of this office that an expansion of the prior nonconforming use has taken place." That sort of assumes without actually finding a prior nonconforming use, the building superintendent does not say a nonconforming use has been established. I find that it was started at a certain date. The hospital has shown evidence that it's been established as of a certain date. He so references it and at that point he is focusing on the expansion of it. But before then, he says that its only arguable that there may have been such a use established and we had one of the documents that I submitted as a prior opinion from the Law Department that says there is no documentary evidence that it had been submitted to the city that a prior nonconforming had been established in either the clinic or the house. And, prior to tonight, as of a few days ago when they submitted their proposed findings they said it relied on Affidavits and testimony without identifying what that Affidavit was. I was led to assume the only Affidavit I was aware of in this case was the very brief Affidavit by Dr. Bigman and I think to some extent in the issue involving the house the board has already really decided that that Affidavit was not fully credible. If it was then the decision would have been different on the house matter and that was a fairly conclusiary Affidavit. This is a somewhat more detailed Affidavit and certainly Dr. Bigman's deposition testimony was much more detailed.

Mrs. Rando: Does anyone have any questions for Mr. Slade?

Mr. Hickernell: I do. Mr. Slade, I think you noted at the beginning of your presentation that you felt like the building inspector hadn't gone far enough so his Cease and Desist Order, as I read it, just says return it to how it was in 2003. You seem to be asking us in your proposed paperwork, and I haven't finished going through it, to go even further. Can we do that?

Mr. Slade: The short answer is I don't know.

Are there any other questions? Hearing none is there anyone else?

Robert Waddick, 129 Church Street, Waltham: I'm here tonight with the residents of the neighborhood to oppose this appeal. I believe that we have and I don't know if Mr. Slade presented it, we have a petition that was circulated and we have some twenty four signatures from the residents of the Ellison Park area in support of the building commissioner and in opposition to the appeal. And several of the neighbors are here tonight as well.

This is obviously an issue of great concern to the neighborhood as its been. Mr. Slade has done yeoman's work on this. He's been working and researching for years, as a matter of fact, and I'm not going to be repetitive and go over the legal arguments that he's made and presented to the board in writing. This is the petition, Madam Chair. (Mr. Waddick presented a petition from the neighbors to the Chair Lady.)

Mrs. Rando: These are all abutters?

Mr. Waddick: These are all residents of the area. I don't know if they are all technically abutters. I believe most of them probably are because we just went around in the immediate area. I must admit I signed it as well although I don't live in the immediate area but I consider all these folks my neighbors.

Just a couple of comments. With respect to the use of the outside of the property regardless of what happens on the inside, well, it seems to me if kenneling is not allowed in the clinic then the outside use becomes irrelevant. You can't have one without the other. And I think the agreement for judgment was very careful to delineate the issues and not to link anything that happens with respect to the clinic to the decision that was made in the Agreement for Judgment that it is what it is and the Agreement for Judgment didn't indicate whether it was legal or not. And that's before the board now. And that issue remains to be litigated or decided by this board and possibly litigated but that issue is open.

I think that Mr. Slade made the point, you know, that the burden of proof is on the petitioner and there should be records forthcoming which corroborate the business use of this property, not anecdotal information but actual documentary evidence which shows that there was a level of business activity going back in time and we haven't seen that.

Notwithstanding the argument that was made by Mr. Grossman, I believe that the change in the degree of use is relevant and I believe that that is a relevant consideration especially given the character of this type of use. I think this is distinguishable from other types of uses because of its impact on the neighborhood. If kenneling was going on to any significant degree that remains to be proven I believe. But if it was going on to any significant degree in the past, either it was going on over the radar or the people who lived on the other side of the fence on Ellison Park were all hard of hearing because something happened when Skipton came to town. And what happened was an animal hospital that had been operating in the community for years suddenly became a high volume kennel and all hell broke loose. And you all heard it from the neighbors. I heard it. We all heard it. Something changed on that property. When we go through all that with the prior litigation, the noise, the odor and what all of that led to was an Agreement for Judgment that the house could not be used for kenneling and here we are now getting back to the question of, you know, what's going on this property and why is this a continuing nuisance. And I think the lesson that we learned from everything that happened early on and I think it's probably a pretty obvious one and again I don't think any of the neighbors are animal haters. I think most of us probably have pets. You know, it's just a question of this kind of use so close to residential properties that's why the lesson we learned from this when the city

council changed the ordinance; you can't have this use in a Business B District anymore. It's only in Limited Commercial and Commercial and it has to be five hundred feet from a residential property and by special permit. So this type of use, you know, could not even be permitted on this site today because we don't want other people in the community to endure the hell that these residents on the other side of the fence in Ellison Park have endured as a result of this since Skipton came to town. The petitioners need to present evidence that the kenneling of dogs is a legal nonconforming use and I agree with Mr. Slade that they have fallen short of that obligation. They have not met the standard.

The building inspector's position is that this facility was historically used as an animal hospital and there was incidental boarding for sick animals. And regardless of the legal implications of that, I think that's right because, you know when you set aside the facts and the law you just step aside and maybe bring some common sense to it and listen to what the folks who live there have experienced. Something changed. Something changed drastically and if the law doesn't protect a neighborhood in this instance, then I would suggest to you we have flaws in the law because the law should protect the neighborhood from this expansion, from this acceleration of this use, and I know residents are here and I hope some of them speak to you about what they have endured. The building inspector has taken a look. You know, he's considered the issue. He's made a finding. The neighbors I think are fully in support of what the building inspector is asking. He's asking for this use to Cease and Desist. We hope that the board upholds the building inspector and denies this appeal. We think it's the right thing to do for the neighborhood and the right thing to do for the city. Thank you.

Mrs. Rando: Is there anyone else that would like to speak in opposition? Is there anyone that would like to stand and be recognized in opposition? Keep your hands up I have to count. (Thirteen people raised their hands.)

Mr. Cotton: How many abutters?

(Three abutters raised their hand.)

Mrs. Rando: Is there anyone in favor of this petition?

Most of you know me, I'm Laureen Donovan. I ran for council in Waltham at one time and Mr. Waddick even came and asked me if I was going to run against him. So I have been around for a long time. Speaking to the use of the Kennel, my name is Lareen Donovan, 12 Sunset Road, Waltham. Speaking to the use of that kennel shelter between being in my cousin's family and Dr. Bigman. I'm sixty eight. It has been used as a kennel and a shelter, Mr. Waddick, for that number of years. I have picked up dogs who were kenneled there for vacation and for people that could not make it tonight. One lives on the Cape, Virginia Surrette. Her dog was kenneled there for a week. Another dog I picked up was for Bob and Diane Hudson. He was kenneled there for two weeks. And when I left the kennel, I not only had her dog but I had another dog that I kept.

Mr. Cotton: What years were these?

Mr. Donovan: Twenty years ago, thirty years ago. And as long as I can remember the dogs have been there. In fact, in that neighborhood, some may or may not remember, there use to be a monument company there called Cassell Monument where the condos are now. And if you talk of noise, there was quite a bit of noise then. There was also a dentist in that neighborhood who had traffic, had a big parking lot behind his house. He was on Pleasant Street. I believe his name was Dr. McManama. He ran a business out of that area and there was a lot of traffic through there and that was when those streets were two ways in and out, not just one way.

Ms, Gelineau: Do you think Dr. McManama's practice generated a lot of traffic?

Ms. Donovan: Dentist, every half hour, yes, just as much as any other office does in this area. Stop and Shop created an awful lot of traffic when it was here on Linden Street. So I am in favor of that kennel. It's been a kennel and a shelter for as long as I can remember and I have lived in Waltham sixty eight years. And as I said, with family members who had cousins that owned that business originally to today and I use that kennel today. I have a shelter dog from there and it has been in continuous use as a boarding facility, a hospital and a surgical procedure

for animals both cats and dogs. And for people in that neighborhood, they have had dogs barking for years. The court house has had dogs barking for years. It's never been a problem until new homes went up in the area and they weren't aware that things were there. Pooh, pooh on them! Thank you.

Mrs. Rando: Is there anyone else in favor?

I do want to talk. I figure I've got ten years on her. My name is Sheila Bassett and I lived in Rangely Acres as a kid and I'm living in there now. I am on Allen Road. I went to North Jr. High School which is this building and I found a dog and we adopted it. I was in seventh grade so that's like sixty four years ago. And every summer when we went to Sagamore Beach we brought the dog to that place, whatever it was called then, for two weeks. I would go with my father and drop the dog off and then I picked the dog up because she was so excited when we were going home. Apparently it did happen.

Joanne Mickens, 13 John Street, Waltham: I grew up in Waltham and love Waltham. I remember the veterinary clinic. My dad remembers there being boarding. In fact, he remembers the day when there was a crematorium on that site too. I mean, I don't think that's there any more, I mean with the vet. But what I wanted to say, I'm not a neighbor there but I show up at all different times of day and I'm a nurse so I am very particular about the place being clean. I show up whenever. I drop my dog off. I'm there almost every day of the week. And the property never smells. I don't hear dogs barking and I know I'm not a neighbor there, but it's the quietest, cleanest kennel I have ever seen in my entire life, seriously. There's only a few dogs out in the yard at a time and they are very particular about the dogs that go out together. I hear from other friends who board their dogs in other kennels and their dogs are getting contagious diseases and I don't hear that here and I also don't hear dogs being chewed up. They are being particular. They are really mindful of the dogs and my dog is seventeen years old and I got him when he was sixteen. He is a ten pound dog and he's blind and the only way I can have this dog is if I can take him somewhere because he's petrified of being alone. So, like I said, I'm a hospice nurse. The only way that I can have a dog, honestly, is to have a quality kennel that I don't have to feel guilty going to work long hours and whatever. And like I said, they have

always been extremely clean. I'm amazed. When I go to pick him up on a hot summer's day, you don't smell dog odors. You smell more odors when you walk into the kennel area in the back; you smell more odors in a house who has dogs than you do in their kennel. So, I just wanted to speak in favor of them staying.

Holly Sivec, 10 Marlborough Road, Waltham: I have lived and worked in Waltham for eight years and counting. And I have been bringing my dogs to Skipton regularly for seven years. We chose to bring our dogs to Skipton with all of the seriousness that one would choose a day car provider for their child. We did our due diligence and without a doubt Skipton won our business and our hearts and our dog's trust and affection as well. When we were looking to buy a new home in Waltham two years ago, one of the big reasons we chose to stay in Waltham was because of Skipton, because of Steve and because of Karen and their unparalleled service they provide to us as individuals and to our pets. The biggest selling point to my house wasn't the new construction, the fancy kitchen. It was the fact that door to door I can be to Skipton in five minutes. I pass their site two and from work every day and that as a Waltham resident means the world to me. Convenience aside, the service that Karen, and Steve and the staff provide are of the highest caliber. They are a true asset to Waltham and to our surrounding communities. Their business is indispensable to my family and to so many other families that I know as well. And just to echo what you were saying a few minutes ago, I came to these hearings back in 2008 or 09; whenever this first started that it came on my radar. I've been to the hearings upstairs as well. And that planted a seed in my head. Hum, maybe something's not right here. Maybe this place does smell. Maybe they have too many dogs. I am here regularly several times a week; I do not smell a thing. It is quiet when I am there. I am there at all hours just like you. I depend on them. I'm at work ten hours a day. So having them in my community is just remarkable. And like I said, I've done my due diligence. I've checked out other doggy day care sites. Nothing compares to them as far as cleanliness, as far as service. I'm really surprised how quiet it is. I mean, my one dog is kind of loud and I am there, like I said, all times during the day. I sometimes go at lunch. I'm always there in the morning and there in the evening. It's surprisingly quiet. And I am so appreciative of the service that Karen and Steven provide and all their staff. I just wanted to share my sentiments with you guys as well. Thank you.



Hi, I'm the husband of Laureen who was up here. I'm Joe Donovan, 12 Sunset Road, Waltham: There was a question about records and how far they go back and they can't find them. Well, the City of Waltham should have some. When the city council decided they were going to have a leash law, everybody wanted those dogs off the street. Guess where they all ended up, where that locale is now. I don't know how many dogs went there, but I am sure the City of Waltham, because they authorized all that and evidentially thought it was okay to do that.

Mrs. Rando: Are you saying they went to Skipton?

Mr. Donovan: Yes. It was under Bigman. When you're looking for records when things are done, well you've got to have a record of somewhere, somehow. You're making the onus on the petitioners to come up with certain records whether Bigman did it or not but you guys should have it that you sent so many dogs there in the course of time. Then you opened up your own pound and then you closed that down. I don't know where they go now, but back then everything went down there. So, I think you should look into your own records and find out how many dogs were there at those periods of time. That's all I've got to say.

My name is David Abramson. I don't live in Waltham but I did live in Waltham when I worked for that kennel. I don't know what is the legal requirement for us to keep records for any business. My understanding for at least for the medical stuff its seven years. So even if you go to your doctor and you don't go to your doctor for seven years, you are no longer required to keep your records past that. So we've had this business for more than seven years, I don't understand what is the expectation for us to hold these records for longer than that. And you file your taxes, you file any of that business stuff, you're not required to keep it past a certain number of years so what are we legally expected to have other than people who have worked there. You have three people who worked there. I mean, what are you expecting of us? In addition, why would the city have settled in the first place, to have all of those dogs over there, and agree to those terms if they felt that there was never supposed to be dogs there in the first place? And then turn around and say, oh we have this agreement where you guys can have these dogs and then three years later say, oops, sorry we are going to renege on that agreement and say you can't have those dogs there. The city knew we were having dogs when we made that agreement and

now we're saying we don't have that agreement.

Mrs. Rando: What agreement are you talking about?

Mr. Abramson: From when the house, the whole case - - -

Mrs. Rando: In 2008?

Mr. Abramson: Ya, whatever year it was. The city knew we were having dogs in that house, in the facility. All along, you guys, during that case said there was never any question about whether there were dogs in that facility, whether they were boarding in that facility. I remember Mr. Slade brought up the boarding facility and I don't remember, there was another gentleman with glasses that was on the board, said you have no right to bring up the boarding facility. That is not even a question. So in the previous case, there was never even any question of whether there was boarding in the kennel and the city settled to say, yes, you guys can board there. You guys can use the outside facilities as whatever was agreed to and now the city is saying, hold up, maybe you guys can't board there. I don't understand why the city would have agreed to that if they were going to come back and question that. They're questioning themselves.

Mrs. Rando: I believe after talking to Mr. Powell that at that time there were probably thirty or forty, or twenty or thirty, I am not sure - - -

Mr. Abramson: In addition to what you are saying the whole issue in the first case was illegal expansion. And I remember from that first case, you were saying that it didn't matter the number of dogs. We could have forty dogs or a thousand dogs, it didn't matter the number of dogs ---

Mrs. Rando: Who said that?

Mr. Abramson: It was said in that meeting many times but let me finish my point.

Ms. Gelineau: That was not before us. It was just the house.

Mr. Abramson: Right, I understand. But the question of expansion was expansion from that original space into the house. And that we expanded beyond whatever that ten percent amount was. Wasn't that part of the question that we illegally expanded?

Mrs. Rando: I don't think anyone on this board at any time would say give you carte blanche to do –

Mr. Abramson: I'm not saying you are but the original space was based on the square footage of the hospital, of what was boarded in the hospital. It's not based off the number. The zoning is based off the building not the number. Isn't the zoning based off the square footage, the building itself, the property itself, not on the numbers?

Mrs. Rando: Patrick Powell feels that you have increased your nonconformity. You have a nonconforming business and you have increased it.

Mr. Abramson: So what I am understanding, its' different from what you guys were saying in the past. When I was in these meetings all in 2008 and 2007 that is different than what you guys yourselves said in those meetings. Mr. Slade came up with the diagram and said the square footage of the building. I remember him coming up here with a diagram of the total square footage of the building and of the space in question. And he came up and said the house is way beyond that ten percent increase. He said that. So, if he said that, then how can he come back and question the numbers. This is from him. If he himself was saying the square footage and he's the one questioning it and making the complaint, how can he change what he was saying during that original meeting? I mean that goes against logic for me. And if it is the space, if you were supposed to zone off the space, not numbers and volume, then it shouldn't matter whether we have ten dogs, twenty dogs, fifty dogs, six thousand dogs as long as it still in that space.

Mr. Cotton: They are already jammed in there.

Mr. Abramson: Well I'm not saying that's what we do, sir.

Ms. Gelineau: It's a separate issue. He can say whatever he wants but it was the house that was before us. Somebody can say anything it doesn't make it right, wrong or was voted on.

Mr. Abramson: But that was the whole point of the position that we expanded beyond our ten percent.

Ms. Gelineau: I think that you were using the house inappropriately there.

Mr. Abramson: It was that we expanded the space we used into the house.

Ms. Gelineau: No, the house was not nonconforming. And the house was not pre-existing nonconforming.

Mrs. Rando: Anyone else?

David Stempler: I'm a resident of Waltham only for about a year now. I take both of my dogs there almost every day. I'm a MBA student at Babson. My dogs are old; one of them is blind and diabetic. And as to the noise and the smell issue, you know there's a very limited number of dogs outside. There's always someone right behind the dogs scooping everything up. So I'm sort of dumfounded that maybe some of these complaints were exaggerated on that point because I have never heard any noise. I've been there multiple, multiple times on a daily basis every weekday and I'm sort of disappointed that that government would be going against this business and trying to limit its growth. That's very disappointing to me and it's not a question about the footprint of the building. It's a question, okay you can't expand your business as far as the revenue beyond this much and it's very disappointing to hear. Thank you.

Cindy Brown, 242 Lowell Street, Waltham: And while I understand that it's a burden of

Skipton Kennel to prove the nonconforming consistent use. I put two things before you. One is that in a Federal Court a person who purchases a business from another person is not obligated to produce records that did not belong to them if this is what you're asking from Skipton. You're asking for them to produce records for a business, daily records, of a business that they did not own during a time period when they did not own. In Federal Court, that wouldn't even be an issue because it wouldn't.

The other thing is that from my understanding that the information from the people who have brought their dogs there for years and years in the fifties and sixties is anecdotal. I submit to you where is the proof that there's smell, and where is the proof that there is noise. And this hell that the people have gone through, is that not anecdotal because I haven't heard recordings of dogs barking, I haven't been brought through there and I've been there and I don't smell the dogs now. But why is that not as anecdotal as the history of people who have brought their dogs for years and years. How is that not anecdotal? Actually that is not a rhetorical question. Thank you.

Angela Curry, 15 Ellison Park: I am in opposition of the kennel. I was here and we hired our own lawyer the first part of this. Everyone here has come up here and spoken about how great Skipton is with the dogs. I don't think that's even under discussion. Like that so out there in the stratosphere. When we moved into the house in 2000, there was nothing going on in the house. There were actually college students living there. The fence was broken and they could talk to us through the fence and they asked us to come over for a barbeque. So there was nothing going on in the house. When we hired a private detective, an investigator to try and go about finding those students, of course, they are very difficult to find. So we gave up on that after spending a thousand dollars to try and do that information and get that search going. When we moved in, Kindness, we thought it wasn't even functioning as a veterinary clinic and we had cats at the time and I didn't even bother going there because I didn't see any activity and I took my cat somewhere else. So it wasn't that I didn't want to go to some place that was convenient to me, I had a newborn, but I didn't think they were even functioning.

The other thing with this nonconforming use, and I do, having been through the court

system with my own stuff, the burden of proof really is on the petitioner and I get that there are Affidavits but I don't feel that the Affidavits, there's got to be some record. And everyone's saying that Skipton shouldn't have to have those records. Skipton knew whenever this last thing was going on that maybe this would come to a head. They knew they were going to court. They should have been gathering all their records and digging as far as they could to find those records and have them so that they could come before the board and say, listen, we've got this stuff. Here are the house records. It doesn't say specifically but this says yes we saw the dogs and hey then those people brought their dogs back to kennel them. They don't have anything and I understand that records aren't kept. My ex-husband has his own business. I still have records in the attic from 1994. Okay, so if he goes to sell his business, somebody can have those records. Its an auto repair business, its not a kennel and its not a veterinary office but if somebody wants to say, okay, how much is this worth to me, how much money did you make on it he can have those records to say listen this is where I started and this is where you can grow to. So just for the nonconforming use, I definitely think that Skipton hasn't proven their point. They appeared in my back yard and at the time I called my city councillor and said hey listen there's a dog kennel all of a sudden and as for the smell and all that stuff going on, that was horrendous. There were flies all over my daughter's swing set which is by their fence because the smell was horrific. They did have ten to fifteen dogs out there in kennels. That has been reduced since the last ruling but they did start this winter putting out those plastic domes and I did have to call my city councillor, Mr. Waddick, again and say, listen it looks like Skipton is doing something again in the house. They also revamped what their fence line was. They use to have it divided in certain ways. They redid that. So when I moved into that house, there was nothing going on in that house other than people living there. There were no dogs barking at the kennel, and I know that people say when I go there I don't smell anything. I don't hear anything. I live there. At ten o'clock at night there are dogs barking and can I hear them? Yes. Do I have super hearing? No, but I do about there. Dogs bark. I use to have a dog. It barks. That's normal. But when you have more than one, your neighbor's dog barking, and there are five or six of them, there is a noise concern. And I do agree, you know what, there are times of day when it is quiet and I can go in my backyard with my kids and there aren't dogs barking. And then there are other times I go outside and there are dogs barking because that's what dogs do. So my point that I really want to get across is the nonconforming, I didn't see a kennel going on when I moved in. Would I

have moved in right behind a kennel, probably not because I really just had a newborn? Did I want dogs barking all the time, no. So that was not there and when I moved in the house it was 2000. Skipton only appeared in 2003, or 2002. It just appeared one day. You know, we got Google pictures. I was the one up here with the big pictures last time on poster board showing that there was a pool there and there weren't kennels outside and things like that. Also, they extended the part next to the courthouse. They put more of a roof overhang there. I know these things. These are not things that I have made up. So that nonconforming use, I didn't see it. I didn't see that there were dogs there all the time. I also didn't see that the traffic was like it is today. That just was not happening when I first moved into the neighborhood and it started happening after Skipton came in. Thank you.

Judy Slade, 27 Ellison Park, Waltham: I wish we could go back to candles, frankly. I bought my house ten years before I was married to my husband and that was 1991. And the difference between what was going on what was going on there and what started to happen after Skipton moved in, there's no comparison with the level of activity. Dr. Bigman didn't do as much business in a month as happened in a day there and I am directly behind them with a fence that their dogs are leaning up on. So I know the level of noise. I hear at 6:30 AM the dogs on weekends are barking and it's been a great distress not to be able to eat outside without having dogs barking. I'm sure that Mr. Carlin does his best to follow rules and keep things considerate but there's not enough space there for that many dogs. It is a very small parcel of land. And if you like dogs you want them to have room to move around, not be all contained. I love dogs but I wouldn't put them there because there's not enough space and it's just been an issue that's been getting worse and worse. About the last three years before Angela bought her house, things were winding down and I had every expectation that after Dr. Bigman nobody would be allowed to do such a thing there again and it was almost secretly. I never saw a for sale sign I never saw anything. All of a sudden we got this big Skipton Boarding sign and trees are being cut down and the whole thing changed. So, I am certainly hoping that this will not be overturned.

I am obviously not in opposition because I am wearing a Skipton T-shirt. My name is Allison Mikels. I've worked at Skipton for almost ten years now. I, after I started working there, my grandmother has been friends with Karen's mother going back sixty seven years. My

grandmother said I have a friend who needs somebody and she owns a kennel. And I said to her, are you crazy? I am not going to work in a kennel. I have high functioning autism. I have problems with noise. I have problems with smell. Right now I am going crazy in this room because I can hear people jiggling change in their pockets. I can hear everyone breathing. I can hear you rustling papers. I can hear every sound in this room that drives me up a wall. I can work in the kennel every single day. I work there forty hours a week. I work there twelve to fourteen hour days. I can be there for twelve to thirteen hours without having any issues with sound, any issues with smell. I can tell you being autistic, that is something. I have documentation, I didn't bring it with me that I have these problems but I can tell you I have been struggling with this since I was a child. I have a sixteen year old dog we use to bring him before we knew about Skipton to Best Friends in Sudbury. I couldn't walk in the door there because of the sounds and the smell. It was so loud the building would shake, literally shake with the dogs barking. We don't have that. The dogs bark. Of course they bark, they're dogs. Do our dogs bark at Skipton? Yes, they bark at Skipton. But dogs bark over in that little condo area. They bark in the neighborhood. They bark over across the street at PetCo. They bark when people leave them in cars at the courthouse. We get blamed for every single bark in the neighborhood regardless or not whether or not it comes to us and I don't think that's very fair.

Jessica Houghton-Vella: I am not a resident of Waltham. I am a full-time employee of Kindness Animal Hospital. I grew up in Belmont, Mass. My grandparents were from Belmont, MA and my mother and her two sisters all grew up in Belmont, Mass. My mother being the baby of three and fifteen years younger than the oldest. They adopted my mom's most beloved cat "Fifty" from Dr. Bigman in the fifties from his shelter and that is where the cat was brought to the veterinary office and also they vacation every year in Maine and that's where they brought their cat to be boarded during those times. So they were boarding animals back in the fifties and sixties and they had a shelter where people could adopt animals from. Also, just an analogy for, I bought a house. I drove by my house before I bought it; put my offer in, at ten o'clock at night, six a.m., in the morning, two o'clock in the daytime. All different times. I actually knocked on people's doors and talked to them to find out if it was a neighborhood I wanted to live in, I wanted to raise my children in. It was. People probably thought I was a predator or something watching traffic because I wanted to see what my children were growing up in. I did my



homework. I would not move into an area, like say Logan Airport, move in and knowing that there were airplanes whether it was a small airport like Manchester or Logan and move into that house and then say there's a business here. It's too loud. That's why I did my homework. Maybe some of the other people should have done their homework before they get into where they live. I'm not saying that I wouldn't move, but that building has operated as a veterinary hospital and a kennel for years.

Mrs. Rando: And they are saying there has been such a change over the years.

Ms. Vella: The world has changed. The only industry to grow in the recession was the pet industry. The pet industry is one of the largest growing industries in the country, and honestly, what people did instead of going on vacation during the recession, they bought a dog, they bought a cat. What do people do now? They bring their dogs to doggy daycare. They bring their cats to be boarded. That's what people do. The world has changed. So hasn't what people do. I'm there forty hours a week, sometimes more. I'm there on my days off. I live in New Hampshire. I come down and my dogs are boarded there. I have children and I have dogs and my dogs are my children as well. I've boarded in many different facilities throughout Massachusetts and New Hampshire, honestly the quietest, cleanest facility and I recommend it to many, many people. Thank you.

Sheila Bassett: Can I say one more thing? I just want to say that Ellison Park is one of the loveliest parts of Waltham. Waltham is broken up into Ellison Park, up in Cedarwood. Rangely Acres is considered nice, Warrendale is considered nice. However there always has been building issues. I mean, I was brought up in Rangely Acres and right across the street was Raytheon. And you loved it when they went on vacation for two weeks because then I could go out and walk around and stuff. You are not in Wellesley, you're not in Weston and there are growing things from a gazillion years ago and I just think that, do you get what I'm saying?

Daryl Ricci, I am a resident of Ellison Park. I moved in three years ago and I am a realtor. So I was doing homework, I know Ellison Park quite well. It's been quiet for the most part. I think the disturbing part; it's the common sense situation. I am hearing at certain times we

may have a hundred dogs being boarded; maybe a hundred and fifty; maybe fifty. The noise, it's going to be incredible, you're going to hear it day and night, winter, spring, summer and fall. There's not going to be any winners. Is that what I am hearing? If you have your way you are going to have a hundred dogs, maybe a hundred fifty or two hundred. I'm hearing six thousand over here. I grew up in Waltham, just like yourself. Years ago I remember as a kid walking through and I used to hear the dogs barking. It's relatively quiet now but they want to have a situation where they can have endless amount of dogs. It's not fair.

Mrs. Rando: All right, why don't we have a show of hands that how many people are in favor?

Audience: In favor of what?

Mrs. Rando: In favor of overturning, in favor of the petition.

(Seventeen people raised their hands.)

Mr. Cotton: Can the people who work there take your hand down?

Mrs. Rando: I'm going to end this session if I don't have order. Is there anyone seeking information, that wants some more information or doesn't understand the whole thing?

Terry Donovan, 12 Sunset Road, Waltham: I just had a quick question. Why are you blaming the traffic on Skipton when there's a Dunkin Donuts, are you going to stop that. You have PetCo are you going to stop that. I'm just asking because they are talking about traffic.

Mr. Sergi: Traffic has not been discussed here. It's not an issue.

Ms. Donovan: Everyone has mentioned it tonight so I just wanted to mention that but you can't blame it on Skipton, you've got to blame it on all of them. So you are going to slow down PetCo, You're going to slow down the gas station? You're going to slow down Dunkin

Donuts? All the other used car places that are on that street? The park that happens to be down Waverly Oaks? You've got to think about the entire area and not just Skipton.

Mrs. Rando: That's not before us, but thank you. All right. What is the wish of the board? Do they wish to continue? Do they wish to take the two packets home and dissect them because I haven't had a chance to read all of Mr. Slade's material.

Mr. Cotton: And look at the originals.

Mrs. Rando: And look at the originals, right.

Mr. Sergi: Barbara, may I suggest that we close the public hearing.

Mr. Hickernell: If we ask for more information they are going to want to do it in public hearing.

Mr. Sergi: Madam Chair, I have sufficient information tonight to vote. I sat on this case years ago. I don't think there's too much difference between what we heard earlier two years ago to today. I am set to vote tonight.

Mr. Hickernell: I don't think it would be responsible to vote without reviewing the submissions in a little more detailed than I have had a chance to.

Ms. Gelineau: I agree with Mark.

Mr. Cotton: I do also.

Mrs. Rando: All right. As you have heard we are going to continue this case to September 17<sup>th</sup>. If anyone has supplemental information, it should be submitted to the law department two weeks beforehand so we will have it to read it and try to assess it and understand it and compare it.

Mrs. Rando: Do I have a motion to continue Case No. 2013-05 to September 17<sup>th</sup>?

On motion of Mr. Cotton, seconded by Ms. Gelineau, the board voted to continue Case No. 2013-05 until September 17<sup>th</sup>. The roll being called: Mr. Sergi, no; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Cotton, yes, and Mrs. Rando, yes. The vote was 4-1 in favor of continuing this case.

On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to take a five minute recess at 8:50 P.M.

The board reconvened at 9 P.M.

Mrs. Rando: I would like at this time to have a motion to extend the 100 days for making a decision on Case No. 2013-05 The Kindness to November 1, 2013.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to extend the 100 days to act on Case No. 2012-05 to November 1, 2013. The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes, and Mrs. Rando, yes. (Mr. Cotton had already left the meeting.)

The members sitting on the next case were: Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Mr. LaSane and Mrs. Rando.

Mrs. Rando: Would the clerk please read the petition in Case No. 2013-08, Emily A. Shea and Matthew Regonini in an application for Special Permit and Variance to construct, use and maintain a second floor addition to the rear portion of the existing dwelling and to "square off" a corner of the first floor in the rear. Location and Zoning District: Hardy Pond Road, 93; Residence A-4 Zoning District.

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

Deborah A. Sawin, Attorney, for the Petitioners: I am here tonight with Emily Shea and Mat Regonini who are the owners of the property at 93 Hardy Pond Road. I have submitted a brief and a packet of exhibits for you which was previously filed with this board with a couple of small changes. There are two petitions before you tonight, one is for a Variance and one is for a Special Permit. (Ms. Sawin then read heir brief into the record. Ms. Sawin also went over photos of the house both existing and proposed, and the exhibits with the board.)

Mrs. Rando: I did make a site view today. How many stairs to go up to the front of the house because you stated that once the second floor addition is put on its going to be about the same height as the neighboring houses?

Ms. Sawin: It will be lower than the one on the left and a little bit higher than the one on the right. This is the house to the left (referring to the photo), so even after they come up here, this house is still going to tower over them and that's just because of the elevation of that lot. So they are going to come up, I think its twelve feet.

Mrs. Rando: What do you have behind your house?

Ms. Sawin: There's one shed in the back yard here (referring to the photo).

Mrs. Rando: And do you have gardens?

Mr. Regonini: We have a flower garden.

Mrs. Rando: And there is only one shed, I thought I saw more?

Mr. Regonini: We have one. Our neighbor has a shed.

Mrs. Rando: And what is that in the picture at the foot of the step on the right?

Ms. Sawin: That's the top to the Jeep.

Ms. Rando: Are there any questions?

Mr. Sergi: Are you going to be using typical construction materials?

Mr. Regonini: Yes.

Mrs. Rando: Are there any other questions? There were none.

Ms. Sawin presented the Chair with an original petition of those in favor from the neighborhood.

Mrs. Rando: Is there anyone opposed to this petition? No one came forward. Is there anyone in favor? (Five people raised their hand in favor.) There was no one seeking information.

You may continue with your proposed findings of fact.

Ms. Sawin: I have submitted to the board a separate proposed findings of fact, one for the variance and one for the special permit. Those were filed with the clerk two weeks ago from tonight.

Mr. Sergi: Madam Chair, I make a motion to waive the reading of the findings of fact since they have been on file, and there have been no changes, correct?

Ms. Sawin: No changes.

Mr. LaSane seconded the motion and the board voted waive the reading of the findings of fact.

Mrs. Rando: All right, on the decision?

Mr. Sergi: In a similar fashion since the proposed decision as been on file may I propose that we waive the reading of the proposed decision.

Ms. Gelineau seconded the motion to waive the reading of the proposed decision.

Mrs. Rando: Do I have a motion on the proposed findings of fact?

On motion of Ms. Gelineau, seconded by Mr. Sergi, the board voted to accept the proposed findings of fact to be the board's findings of fact.

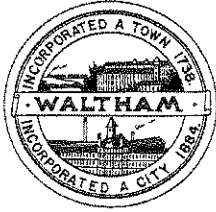
The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

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

On motion of Ms. Gelineau, seconded by Mr. Sergi, the board voted to accept the proposed decision and grant the Special Permit and Variance in Case No. 2013-08.

There being no further business, on motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 9:20 P.M.

*Barbara Rando, Chair*



**City of Waltham**  
COMMONWEALTH OF MASSACHUSETTS

**ZONING BOARD OF APPEALS**

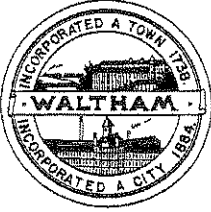
**LEGAL NOTICE**

DATE FILED: April 4, 2013

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 21, 2013 AT 7:00 P.M. ON THE FOLLOWING:

**Case #:** 2013-05. **Petitioner:** The Kindness LLC. **Nature of Appeal:** Appeal of Determination of Building Inspector. **Subject Matter:** The Petitioner seeks to overturn a Cease & Desist Order issued by a Building Inspector concerning the boarding of dogs within the veterinary Clinic on the property. **Provisions of Zoning Ordinance Involved:** §3.226E, §3.644; and §3.72. **Location and Zoning District:** 20 Linden Street; Business B Zoning District. **Specific Manner in Which Subject Matter Varies From Zoning Ordinance:** N/A. 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, Gordon LaSane.





**City of Waltham**  
COMMONWEALTH OF MASSACHUSETTS

**ZONING BOARD OF APPEALS**

**LEGAL NOTICE**

DATE FILED: April 12, 2013

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 21, 2013 AT 7:00 P.M. ON THE FOLLOWING:

**Case #:** 2013-08. **Petitioner:** Emily A. Shea and Matthew Regonini. **Nature of Appeal:** Application for Special Permit and Variance. **Subject Matter:** Petitioners propose to construct, use and maintain a second floor addition to the rear portion of the existing dwelling and to "square off" a corner of the first floor in the rear. **Location and Zoning District:** Hardy Pond Road, 93; Residence A-4 Zoning District. **Provisions of Zoning Ordinance Involved:** Section 3.7222 and 4.2181. **Specific Manner in Which Subject Matter Varies From Zoning Ordinance:** Section 3.7222 requires the issuance of a special permit prior to alter or enlarge the use on a nonconforming lot by less than 10% of the ground floor area or area of land used. The proposed addition to the first floor would add 1.8% coverage to the use of the lot. The second floor addition would not create any increase in ground floor area. Section 4.2181 requires a side yard width of 16 feet and the existing and proposed side yard at the front of the house is 12.81 feet. 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, Gordon LaSane.