

CITY OF WALTHAM
ZONING BOARD OF APPEALS

July 8, 2014

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 8, 2014, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando, and members Mark Hickernell, Gordon LaSane, Marc Rudnick and John Sergi.

The Chair called the meeting to order at 7 P.M.

Mrs. Rando: Tonight we have one continued case before us, Case 2014-09, Daniel and Maureen Keleher, 93 Claremont Street, and that is for a Special Permit for a Livestock Farm.

The first action this evening is for a motion to accept the minutes of the meeting of June 3, 2014.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to approve the minutes of June 3, 2014.

Will the clerk please read the petition in Case No. 2014-09?

The clerk then read the petition of Daniel and Maureen Keleher in application for a Special Permit - Livestock Farm. The Petitioners seek a special permit to allow a livestock

farm under five acres in size on their property, such farm to be devoted to the raising of up to eight chickens. Location and Zoning District: 93 Claremont Street, Residence A-2.

May we hear from petitioner or the petitioner's representative please?

Daniel Keleher, 93 Claremont Street, Waltham came forward.

Mr. Keleher: So at last meeting, I had an opportunity to speak to some neighbors about the chickens, about what the current setup is and why we were in favor of keeping the chickens if we were allowed permission to do so. We also heard from other neighbors who had concerns about our having chickens. I did bring with me tonight one neighbor, Bill Wiggins, who lives immediately to the south of our property who was not able to attend the last meeting. I am hoping he would have an opportunity to say a few words to the board.

I would say just a few things which is that we have had about a month since that meeting. At least a few of you have had an opportunity to visit the property and so you can envision what the site looks like. I've also had an opportunity to think about some of the concerns that the neighbors raised at the last meeting and I basically see that if we keep the chickens, the best way for us to devote our energy in terms of accommodating the neighbors is to connect the current shed where the chicken coop is with the outdoor space that is separate from the shed, basically the enclosed area that is near the garden. Right now, I sometimes transfer the chickens from the shed over to the garden area. I think if we get a bigger and closed space, they'll be happier chickens and occasionally they make noise when they are unhappy and I think that will make them even quieter. And the noise is very seldom, but I don't know how it was when you were there, but generally they are extremely quiet.

My wife and I did go over Mrs. Pratt's house last night to engage her in conversation to see whether there were steps that we could take that would help to address her concerns. She declined to engage in conversation with us but that she preferred that the city issue whatever order that it has. She indicated that she was just going to abide about with whatever the city said. I suggested maybe we could speak in advance of the meeting but she didn't seem interested in doing that. So, I think that's what I heard from her perspective is that she was going to submit to what the board says. If I could introduce Bill Wiggin, is that okay?

Mrs. Rando: Well, actually we did close the public hearing because we voted to waive the reading of the Finding of Facts and we voted to waive the reading of the Proposed Decision, so actually - - - But if it is the wish of the board to hear from Mr. Wiggin - - -

All right, have Mr. Wiggin come up.

Bill Wiggin, 75 Greenwood Lane, Waltham: I live directly behind the chickens. It abuts the Kelleher's property. And I am speaking on behalf of the chickens. The chickens have become part of my family. I even baby sat for them at one time when they were away and I would miss them if they weren't there. In fact, there was an elderly man that comes down Claremont Street occasionally on a walker. I saw him in front of their house and I didn't know what his problem was. I went out and he said: "I don't hear the chickens. Are they all right?" And I had to bring him over the cage to show him that they were all right. So as far as I am concerned, there's no problem with them at all as far as sound goes or anything that you might have against it.

Mrs. Rando: Is there anyone else in favor or in opposition or seeking information?

Marilyn Pratt, 63 Greenwood Lane: I live directly on the side next to Mr. Keleher, diagonally across. The chicken coop is right on the property line. You've been there so you know what I am talking about. I thought we went through this last week, you know, but evidently we need to go through it again. As a matter of fact, I didn't appreciate you (Mr. Keleher) unannounced, ringing my doorbell at 7:30 last night. That has to stop. This morning I went out. I've gone back and forth. I did some shopping and the ruckus over there with those chickens, this went on incessantly. It sounded like they were fighting with each other. And you know, I just don't need this. That's the bottom line. I'm not going to go on about this because you know how I feel. This is no place for thickens. I think that this is not a farm. This is a residential neighborhood. You know, there's plenty of places out in Stow if you want a farm. They are beautiful with acreage. So that's it! You know. I don't get it. This has to stop. I can't live with that and harassment, I don't appreciate either.

Mrs. Rando: Are there any other questions. We waived the reading of the Findings of Fact and we waived the reading of the Decision, already. So I am ready for a motion on the Proposed Findings of Fact.

Mr. Hickernell: Madam Chair, I do agree with the abutter on one thing. This is not a farm. I don't think Section 3.612 applies but since that's what our building inspector has invoked I will make a motion that the Proposed Findings of Fact be adopted as the Board's Findings of Fact.

Mr. Rudnick seconded the motion.

Mrs. Rando: How do you vote Mr. Sergi?

Mr. Sergi: I was wondering about the reference to a Livestock Farm which bothers me a little bit. I don't know if we would be able to amend that? I mean, I understand what Mark is saying. I don't see it as a livestock farm, so it bothers me a little bit.

Mr. Rudnick: I know that Special Permit language states "including riding stables, greenhouses, the raising or keeping of poultry, pigeons, fur-bearing animals". That's considered a livestock farm.

Mr. Hickernell: I'm not sure I agree with that interpretation but as I said I am going with the purposes of this motion.

Mrs. Rando: I think that's the only ordinance it could come under.

Mr. Hickernell: I disagree, its not a farm. It's a house.

Mr. Sergi: I agree, it's not a farm. Maybe I would suggest just eliminating it, I'd feel more comfortable.

Mrs. Rando: Is that a yes?

Mr. Sergi: Yes, with the elimination of the livestock farm.

Mrs Rando: Mr. Hickernell?

Mr. Hickernell: Yes, with Mr. Sergi's amendment.

Mrs. Rando: Mr. LaSane?

Mr. LaSane: Yes.

Mrs. Rando: Mr. Rudnick?

Mr. Rudnick: Yes.

Mrs. Rando: And the chair votes no.

The vote was 4-1 in favor.

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

On motion of Mr. Rudnick, seconded by Mr. LaSane, the board voted that the Proposed Decision becomes the Board's decision.

Mrs. Rando: How do you vote, Mr. Sergi?

Mr. Sergi: I want to acknowledge Mrs. Pratt's concerns. Mrs. Pratt, you should be aware that I suggested that he come to talk to you. So, that was possibly my fault that he came to visit you. I made that suggestion and I just wanted you to be aware of that.

The conditions I would like to add is, as suggested by the petitioner, is to fence in between the shed and the open area . I think that would be a good compromise for the neighbors, in my opinion, so that the chickens won't roam. So that means that the chickens will roam between the shed and fenced in area. If we could make a condition that the chickens will not roam the property and will be contained within the fenced area.

As far as the sound goes. I went and I didn't hear the chickens. I mean, I've got to say, I have to be honest, I did not hear the chickens make any noise. And limited to eight chickens. Those two conditions and I'm okay with it.

Mr. LaSane: Could I add some sub language just to strengthen what Mr. Sergi said that those conditions be placed within a time certain. What would be reasonable?

Mr. Sergi: You should be able to do that within thirty days,

Mr. Keleher: I would prefer if you said the end of September, but I will do whatever is desired. There are a lot of competing demands but - - -

Mr. Hickernell: Will forty-five days be enough?

Mr. Keleher: Forty-five days is fine,

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: Yes, with those amendments.

Mrs. Rando: Mr. LaSane?

Mr. LaSane: Yes.

Mrs. Rando: Mr. Rudnick?

Mr. Rudnick: Yes.

Mrs. Rando: And the chair votes no. And the reason I voted no is because even though there is an advantage to children who have chickens and getting the eggs, I do not think that that is the area for it. I think your lot is too small. And although we do look at every case individually, I just don't think that your lot is the right lot for chickens and when you do have a neighbor that is in opposition, that weighs very heavily on my decision. She shouldn't have to listen to the noise that she listens to. She shouldn't have to put up with them in her yard. So, therefore, the ordinance is there for a reason. I'm not sure why they made that ordinance. Maybe, because if we allowed this, we are starting a precedence and everyone would want chickens. And why they made the ordinance, maybe it was disease, maybe attracting wild animals, I don't know. If somebody thinks that it is not a very good ordinance, then maybe we should petition the council, but although we look at each case individually, I have to vote no. But your case has been granted so the chickens stay.

Brad Pratt, 50 Wellington Street, Waltham: Is that appealable?

Mrs. Rando: Yes you can appeal it. Write a letter to the building inspector.

Mr. Pratt: I was wondering why the board of health wasn't involved.

Mr. Hickernell: You can complain to the board of health but this is a zoning issue.

Mr. Sergi: It could be a board of health issue, sure.

Mrs. Rando: Well, I think if there was a lot of mess or something that was very unhealthy. It seemed clean when I was there and I didn't get much of a smell. I must say that. None that the neighbors could pick up.

Mr. Rudnick: I think we heard testimony from several of the neighbors. All of them were in favor of having the chickens. We heard testimony that there are numerous homes in this neighborhood that have chickens. So I have to say that I felt pretty good that Mr. Keleher chose, unlike other neighbors who have chickens, to go through the process. The city council in their wisdom, whether its questionable or not, chose to allow chickens in Waltham by a Special Permit as opposed to by right meaning that we are the arbiters whether the owners are going to act responsibly or can present to us that they will act responsibly under the ordinance. The ordinance, of course, has no mention of the health department or other departments being involved in making decisions about whether these things happen. Of course the health department should respond if there's a perception of problems. And that's what the health department does but not part of allowing or not allowing a special permit for chickens.

I drove by the site three times and visited the site once and never heard the chickens and I didn't even hear a chicken in the chicken coop. I went inside with Mrs. Keleher. So, I mean, I do feel for the neighbor who had a bad experience with the chickens. I was convinced that Mr. Keleher regretted that incident and would take efforts to make sure that that didn't happen again. And that's why I voted in the affirmative.

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to adjourn at 7:20 P.M.

Barbara Rando, Chair