

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

June 3, 2014

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, June 3, 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 three new cases before us and an extension of time.

Case No. 2013-10, 200 Moody Street LLC and that's for an extension of time. Case 2014-09, Daniel and Maureen Keleher, 93 Claremont Street and Case No. 2014-10, LaCava Family LLC, 372 - 380 Winter Street, and Case 2014-11, LaCava Family LLC, The Copper House Tavern, 372-380 Winter Street.

The first action this evening is for a motion to accept the minutes of May 20, 2014, and that also includes the minutes of the Executive Session.

On motion of Mr. Sergi, seconded by Mr. LaSane the board voted to accept the minutes of May 20, 2014 and the Executive Session minutes of May 20, 2014.

Would the clerk please read the petition in Case 2013-10.

The clerk then read the Petition of 200 Moody Street, LLC, c/o The Nelson Companies, Ltd in an application for a variance to demolish the existing building and to construct, use and maintain a multi-level mixed use building thereon. Location and Zoning District, 210 Moody Street, formerly known as 200 to 226 Moody Street, Business C Zoning District.

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

Attorney Bret J. Francis, Law Offices of Harnish, Jenney, Mitchell & Resh, LLP came forward.

Mr. Francis: I represent 200 Moody Street LLC tonight. We are here looking for an extension. I believe the Special Permit expires June 20th. We intend to have that building permit filed by the end of the month, but I am not sure we will be able to get it done by June 20th. So, we are looking for a small extension of six months.

Mrs. Rando: And what was the hold up?

Mr. Francis: A couple of reasons: Dealing with the City Council was one of the reasons and, number two, the easement that needed to be worked out with the Mayor and that only got worked out, I believe, in March of this year. Then on top of that, we had to go back to the City Council for a fuel permit storage permit, I/I issues, but we are ready to go at this point. All those issues have been resolved.

Mrs. Rando: Are there any other questions from board members? Hearing none, I am ready to entertain a motion on the extension of time to December 20, 2014.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to grant an extension of time in Case No. 2013-10 to December 20, 2014.

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

Mrs. Rando: 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? Please give your name and address for the record and if you have paperwork for the board you may pass it out at this time.

Daniel Keleher, 93 Claremont Street, Waltham came forward.

Mr. Keleher: The two pieces of paper that I have for the board are simply a petition signed by a couple of neighbors in support of our request and a letter from a neighbor also in support of this request.

Mrs. Rando: Do you have a brief?

Mr. Keleher: I submitted one electronically. I have a copy with me. (Mr. Keleher gave a copy of his brief to the Chair.) I am here with my wife, Maureen. We are here to request permission to have up to eight chickens on our property. And those chickens, to be clear, we are just requesting permission for female chickens. We are not intending to have

roosters. And I should also make clear that the reason that we picked eight, we are really interested in having six on average. It's just that sometimes, we have five right now, we got six initially, one of them turned out to be a rooster, we had to get rid of that. So I would like some flexibility that sometimes it goes more with thought in mind that overall it would average to six chickens.

Well, I did want to say that I did invite some friends and neighbors tonight, so they are here with me. I have my family, Maureen in the background with two of my children, Connor and Anna, and then a friend who is also nearby, Steve Cushing and Barbara and his two children and I see Tom McGlaughen here and Sheila and Tom whom I recognize as well.

As I understand it, the basic legal standard is flexible here as to does this benefit the neighborhood and the city or is it something that is not good for the neighborhood and the city and as a practical matter, the board looks largely to what the neighbors think.

I am just going to give a little bit of background about our having chickens. We got them a little over a year ago. When we moved to Waltham which was nine years ago, I had looked at the Zoning Ordinance at that time and saw that chickens were allowed with the granting of a special permit from the Board of Appeals. I considered getting chickens at our first house which was in Waltham Highlands but it wasn't as practical. It wasn't a really big yard so there wouldn't be that much room for the chickens and we also were in a two family so it would have been something that was in our neighbors property. So we didn't do it at that time and then two years ago we moved in the Lanes neighborhood where we are located now and we have a bigger lot there. It's about a quarter acre, so it's a roomy lot. It's a roomy neighborhood. It's a place where we can have chickens where they go virtually unnoticed by other people in the neighborhood. I would say that most people in the neighborhood don't know we have chickens. They're kept in the back end of the lot. We have lots of bushes and trees on the lot so that if you are walking by, you don't even see

that the chickens are there. They make so little noise that people wouldn't hear the chickens.

I will say that when we were getting the chickens a year ago, I knew that there was a special permit process and I elected at that time not to go through the channels of obtaining a special permit for a couple of reasons. One was just I didn't know whether we were going to keep the chickens. I didn't know how it was going to work for our family so I didn't want to invest the time and the money in going through the process. Another was that I understood that the basic standard was what people in the neighborhood think so we spoke with our neighbor Arlene Pratt and we spoke with our neighbor Bill Wiggin who were the closest neighbors on the side of the property where we keep the chickens. Arlene, I wouldn't say was supportive of our having chickens but she was amenable to our having chickens. I think her big concern is that they not be on her property and I did have an escape in the fall but I've taken steps to make sure that they stay on our property and I respect that she doesn't want them on her property. One chicken got into her property at that time.

Our other neighbor, Bill Wiggin who is right there was very supportive of our having chickens. He didn't have any problem with that and in fact, he's an eighty-five year old man and he helped me build the chicken coop and got down on his hands and knees with a saw. He's a former carpenter and he was the one who was cutting the hole to allow the chickens to go from the coop inside to the run that we built outside.

And then after we had made preparations and talked with those two neighbors about it, we got six chickens. One of them turned out to be a rooster and we got rid of that chicken. But it turned out to be very successful so we are interested in keeping the chickens. So we are interested in getting permission from this board to keep them.

It's been successful for a number of reasons. It's been successful for our family. You know we had six chickens originally and we have six people in our family so each of us got to name one chicken. Unfortunately for one of us that chicken had to leave because that chicken turned out to be a rooster but its also been successful for the neighbors and friends. When they come over, people are pretty excited to see that we have chickens especially the kids. They tend to get more excited but even the adults are excited so it's something that our kids are proud to share when people come over to our house. They are proud to go out and collect the eggs that are in the chicken coop. We get about four eggs a day from the five chickens on average and it's an experience that the kids don't have that often. I would say that the kids in the neighborhood who have been to our house and some more have come in. (Mr. Keliher named more of his neighbors who have just walked into the hearing.) I will just reference that in the papers that I handed to you I spoke with the neighbor who is directly across the street from us, slightly down the street. His name is Jordan and I am not sure of his last name but he is one of the people who signed the petition. And then on our street, Claremont Street, we have the neighbor Jordan who signed the petition. We have Bill Wiggin to our left. He's the one who signed the letter. We have a neighbor directly across from us who I didn't ask to sign the petition but he told me in the past that he's interested in getting chickens himself. Then we have the neighbors Sally and Tracy who are directly to our right who are interested in having chickens but not at that property. So I don't want to represent that they are. And I think their concern, I spoke with Sally this week, and their concerns are that we not have a rooster and I told her that we were not planning to have a rooster.

So, if you have any questions, I would be happy to answer them. But I am basically telling you that from my perspective it's been positive for the neighborhood and the city, for my family, for friends and neighbors who have visited.

Mrs. Rando: I'm a little surprised with the names that you have. You have three names written down here, one of which is the Keleher.

Mr. Keleher: That's my six year old daughter who said she wanted to come.

Mrs. Rando: Right. And the other two, one is 85 and 75. So Mr. Wiggin is 75 and you're 93 and he is right next door?

Mr. Keleher: He's 75 Greenwood Lane. He is right next door. Claremont is a very short street where we are. I think there are two house with the Claremont Street address or maybe three. There are three houses on our side of Claremont Street, Bill Wiggins, our house and then Sally and Tracy.

Mrs. Rando: And Sally and Tracy's name is not on this list.

Mr. Keleher: That's correct.

Mrs. Rando: I'm concerned with the effects of one neighborhood. I'm concerned with chickens getting out and walking around the neighborhood. I'm concerned with odor. I'm concerned with safety of those chickens with dogs and where you are so close to Prospect Hill Park with coyotes or whatever. I don't know if raccoons would attack them not. Those are concerns that I have.

Mr. Keleher: So odor, getting into people's yards and safety of the chickens.

Mrs. Rando: Safety of the chickens and the neighborhood. I'm sure its delightful to go out and get the eggs and it would be great on the farm and it's a learning experience for the children and it's something that I probably would like to do myself or have my grandchildren do in the proper place. But I'm not sure that your neighborhood is the proper place to have them.

Mr. Sergi, do you have anything to say at this time?

Mr. Sergi: No, I share concerns. I think it's a A-2 Zone, residential area and having chickens could cause a detrimental affect on the neighborhood through odor and, you know they do get out. You said one already has left the yard. Some people are just scared. They might be afraid of these chickens for one reason or another. So I think those are basically my concerns as well.

Mr. Hickernell: I would note that a number of our surrounding communities allow a certain number of hens by right. Not sure why Waltham doesn't but I mean ought to. My experience, a small group of chickens is beneficial. They are not noisy. They are not smelly. They are friendly and intelligent and a benefit to the neighborhood. I know there are other chickens in Waltham and I think it's a positive thing for the city.

Mrs. Rando: There were other chickens in Waltham but I think they all have passed on.

Mr. Hickernell: No, there's plenty of them. Trust me.

Mrs. Rando: Well, that have gone through us.

Mr. Hickernell: That's not what I am talking about.

Mrs. Rando: Mr. LaSane, do you have anything to say?

Mr. LaSane: You know, I'm totally intrigued by the whole notion. And I applaud the positive impacts it has from neighbor to neighbor interaction gathering. I think it's a bold undertaking. But I am really interested in what happened to the roosters. You said the roosters went away. Did they go into a recipe?

Mr. Keleher: I actually returned it to Agway where I bought it and I lost track after that.

Mr. LaSane: So, in terms of social impact, I think it's a phenomenal undertaking. I sort of agree with Mr. Hickernell. There are other chickens in town and so this isn't a precedence in my mind by any stretch.

Mrs. Rando: Mr. Rudnick?

Mr. Rudnick: The ordinance seems very clear that if it's okay in the neighborhood and we don't see any issue of it generally negatively affecting the city that a special permit should be issued as Waltham is saying in its ordinance that we like this kind of activity as long as we do our job to protect the neighborhood. It seems like you have neighbors here in favor of this and I'm interested in seeing neighbors stand up who are opposed to it and hear from them as well. But, I don't see anything here for the board to do other than to judge those two specific issues. Is this a negative impact on the neighborhood? And, is it a negative impact on the city? I guess I understand concerns about the chickens but our ordinance doesn't say anything about negative impact on the chickens being a part of the special permit process.

Mr. Keleher, with a grist of displaying my urban nature, can you tell me what a pullet is that you referred to in your brief?

Mr. Keleher: It's basically a female chicken before they start laying eggs. And a hen is a female chicken once they start laying eggs.

Mr. Rudnick: Pullets are not all of your chickens that you choose to keep.

Mr. Keleher: I could have just said female.

Mrs. Rando: Mr. Keleher, could you tell me what kind of chickens you are raising. Are they heavy breed chickens or light breed chickens? Or, are they mixed?

Mr. Keleher: So, I take them for three basic considerations. One was, whether they laid well. The other was whether they are friendly. And the third was whether they were hardy and do they withstand the New England winters. They're the specific varieties. One is an Austrelorp, two are some kind of comet sex-linked and one is an Easter egger. Probably what I told you at first is the most useful just that they are supposed to be friendly, relatively tame, good egg laying and cold hearty.

Mrs. Rando: The heavy breed chicken are not able to fly that far. So yours do not fly?

Mr. Keleher: I have never seen them fly far. I mean they do fly a few feet. I suspect that they don't fly far because I have never seen them fly more than a couple of feet.

Mrs. Rando: Do they lay brown eggs or white eggs?

Mr. Keleher: Four of them lay brown and one of them lay greenish eggs.

Mrs. Rando: So one of is a mix of a heavy and a light breed and the other is the heavy breed. The brown is the heavy breeder.

Mr. Keleher: The way that I know how heavy they are is simply by lifting one. And I worked on a farm once where we had chickens that were a lot heavier than these

chickens. But, you know. they are kind of regular size looking chickens. I will mention that the Easter egger is one that lays the green egg thus like suitable for Easter with color.

Mrs. Rando: I know that the heavy breded chickens are more docile. Do yours ever fight?

Mr. Keleher: Well, these are docile. All I can tell you, I'm not a chicken expert, but I can tell you that these were selected because they were docile. I have a number of children in the room who have seen the chickens. The only one that I am aware of that is afraid of them sometimes, is this one here, (pointing to younger daughter) as she was with dogs.

Mrs. Rando: Do you have a chicken coop where they have shelter from the sun or whatever?

Mr. Keleher: Yes.

Mrs. Rando: And how far away from your house is that?

Mr. Keleher: Approximately thirty-five feet.

Mrs. Rando: And how close is it to the next house?

Mr. Keleher: About seventy-five feet to the next house.

Mrs. Rando: Because there is an odor that comes from them. Maybe you have to get closer to it but there's definitely - - -

Mr. Keleher: No doubt, there's an odor if you go into the chicken coop but I'm confident that its undetectable at the other residences. I don't smell it when I am sitting on my porch which is about twenty feet from the chicken coop.

Mrs. Rando: But you can get use to the smell too.

Mr. Keleher: Well we could certainly have a sniffing party.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition that would like to come up to the microphone and speak?

Julie McVeigh, Sanders Lane, Waltham: On the odor piece and I am not accustomed to it but we were just at their house on Sunday sitting on the patio and on the deck and did not notice the odor. And I think one thing to note about the coop is that it was a shed first and so it is very enclosed. It wasn't created initially as a coop.

Maureen Keleher, 93 Claremont Street, Waltham: I personally was opposed to the chickens a year ago. We have four children and we do not have extra time or the money for chickens. I don't like messy or dirty. That's not my thing. I grew up in Waltham. I think when I grew up in Waltham there were not chickens in Waltham. I could be wrong but I doubt it. And we got the chickens and they were in house because they were chicks and they were in like a Target container. And after a couple of weeks I said they stink they have to be out because chickens do smell. Daniel built the coop in the shed. I am very sensitive to smells, dirt, etc. You don't smell even when you are beside the shed or on our kids swing set side or on the porch. I will say in fairness to Mrs. Pratt into whose yard the chicken escaped last summer because at that time we were not taking proper precautions. Others in the optimistic thrust, my brave Daniel, which is everyone will love the chickens and this chicken got into Mrs. Pratt's yard and scared her. And this was obviously a problem. After that, I don't think any neighbor since the end of August would say that they have seen the

chickens because after that and that concern, Daniel made sure these chickens were never out of the coop unless he was home and when he was home even then he made them a space outside that was enclosed by chicken wire. So it is a very legitimate argument that they shouldn't bother the neighbors and I think we have addressed that very well.

The other thing I would say is that in this idea that there are other surrounding towns that have other chickens and other livestock. I grew up in Waltham. Waltham is known as a city. Waltham is not known as a Wellesley or Lexington or Weston or Belmont for their school systems. for its urban feel, for all these other things. And its been nice coming back to Waltham. I moved away for a long time. It's been nice moving back to Waltham as an adult and appreciating all that Waltham does have to offer in terms of different neighborhoods and its diversity and our kids going to Public Schools which I did not and being more a part of this community. It's seeing it valid in its own right. I attended private school. We intend to keep our kids in the Waltham Schools and seeing the good that Waltham is. And I think that Waltham has come a long way and it doesn't need to be compared to those towns to become its own. At the same time its nicer to have the best of both worlds. So we are a city. We are diverse and we do have certain parts of Waltham that are a little more rural and to appreciate that and to use that when we can.

I love having chickens. I never clean the coop. I refuse to clean the coop. Our four year old goes with me when we want eggs because I am not going into the coop. I love having the chickens. So, I myself, if I were a neighbor I would have reservations about having chickens and I wouldn't want them in my yard, honestly as a neighbor but I will tell you at this point and time and it will continue, they are well situated and I appreciate their concerns very much and I am also apologetic that we were not more foresightful in taking care of that and should have talked to you sooner. So, I apologize for that happening. I think they're good and I appreciate your time.

Tom McGlaughlin, 15 Buxton Lane, Waltham: I really don't know the Keleher's other than when they cut through my property when they are taking the kids for a walk. I come at this from a slightly different perspective. I am Professor of Pediatrics out of U Mass Medical School so I understand some of the things that cause disease in people. And I realize that chickens can be dirty and they can smell. It is the responsibility of an animal owner, a pet owner, to make sure that that doesn't happen just as a dog smells. I mean a dog stinks if you don't give him a bath. But, I have a dual appointment. It's in pediatrics and in psychiatry and I work a great deal with people who have to work with children who have been abused or I work with children who are aggressive, inappropriately aggressive, and we know that being around animals —

Mrs. Rando: Chickens also?

Mr. McGlaughlin: Chickens also. Even goldfish has a positive affect, very positive affect on children and in this society that we live in and some of us who are old enough to remember when the world was a little bit different, that anything that we can do that is positive and to do that responsibly, I think that is to be applauded. This is the first time I have ever been to a town meeting, although I have lived in Waltham for over twenty years and I love it. I am very glad to hear the sentiments that I did hear from the people on the board. But again, I think that the chickens have rights to as you said. They shouldn't be left to roam the neighborhood. They need to be protected too. I am also a member of Peta, People for the Ethical Treatment of Animals. And animals have, even though they are things, they're not people but they should be cared for according to societal standards. So, I just want to throw that in as a real positive. When I see Mr. Keleher going through with his kids, you know with the tricycle, it makes me feel good as Professor of Pediatrics and I say, There's a father who is spending time with his kids. We need everything that we can muster to make our kids happy and healthy. And having chickens helps!

Mrs. Rando: Thank you. Anyone else in favor?

Steve Garschina-Bobrow, 143 Dale Street, Waltham: I am a friend and relatively close neighbor to the Keleher's. I just wanted to at least mention that I have been following the issue actually there's quite a big movement toward small back yard chicken raising and I appreciate the committee discussing at least discussing it as a concern for other neighbors. I just want to emphasize that a lot of these cases were successful. We are not talking about large livestock situations where there's hundreds of chickens but a handful of four or five or ten. I think eight was the number that Dan referenced earlier which actually that is a relatively common number. So, the concern about the smell. I've been to the Keleher property and when you are physically inside the dwelling where the chickens are, there's definitely a little bit of odor in there, but not in the gardens that are just outside and the surrounding area. So its just one of those things that dissipates and not a factor really because it's a small scale situation that this request is for. And I also appreciate the committee member who mentioned that several surrounding communities encourage this kind of activity in backyards and again emphasizing the small scale nature of this, I think, many of the surrounding towns, I think the maximum was eight or ten for the exact reason that it's really for family consumption or as a pet as a sort of fun family project to take on and it's not something that people will have a larger scale commercial production. But this is sort of a national movement that is happening. People sort of taking responsibility for their own food production, gardening and chicken raising. I think that it sort of fits into that category. So I just want to emphasize that I see it as a real positive benefit to the community that you've got people taking responsibility for their food choices and just taking ownership of that and being open about that with the community.

Mrs. Rando: Thank you. Is there anyone else? Seeing none, is there anyone in opposition.

Arlene Pratt, 63 Greenwood Lane, Waltham: The rear of my property really abuts Mr. Keleher's property. The only thing that separates my back yard from his back yard is

a row of large rocks, but the chicken coop and the barn that's attached, the coop part with the wire is inches from my property line and maybe about ten or fifteen feet to the end of my driveway and maybe twenty-five feet to my patio where I sit out. And the noise is a factor. It really is. I've lived at the same address here for thirty-five years and enjoyed a lot of peace and quiet in my back yard on the patio, now I don't go out there any longer. You hear the chickens. I mean its noisy. There's not enough space between the property to diffuse the noise and the odor and usually I use to open all my windows upstairs at the back of the house, now I don't do that. And, also, I am a registered nurse and I'm aware of the public health aspects of this relative to managing waste. And last fall, I was in my back yard raking and I turned around and I had two chickens and a rooster chasing me and I ended up going in the house and calling the building department so he came over and took pictures and this is how we all got this thing started because there's no ordinance for chickens in Waltham. So this could have gone unnoticed, really unless this little incident happened. So I am really not in favor because of where I live, you know, and I think I am entitled to peace and quiet in my own yard. Now, I'm a little apprehensive about the same thing happening again because there's no real fence. There's nothing but big rocks that separate my property from his in the back yard.

Mrs. Rando: Do the chickens run free around the yard?

Ms. Pratt: Well they were that day when I was out raking.

Mrs. Rando: Have you seen them running free since?

Ms. Pratt: No. I did call Mr. Keleher and he told me that he would make sure that that would not happen again. But, you know, psychologically, I don't think it's the area for farmland and plus I was thinking too it attracts the coyotes, We have had problems with coyotes in that area and it attracts predators. So that's another issue and for a long time I was thinking of getting a puppy. Well, I've kind of put that out of my mind because, you

know, that would not be a good thing because my daughter has a dog and when she comes over we have a heck of a time trying to keep the dog away from the chicken coop that's on the property line. So it has been a problem for me. I know a lot of the neighbors, I think its great for the kids. I can appreciate that. The kids love chickens. I have children of my own but the situation that I am in now it's a different story. So basically that's it.

Mrs. Rando: Do you mind me asking you how bad the odor is?

Ms. Pratt: Well, because of the breeze, it comes down my way, you know. So that's why I haven't opened my windows upstairs because I have smelled an odor and this is the thing, you know. There's not enough space. The chickens, you've got to be on the farm to have chickens, you know. I think its kind of confining too for chickens. I mean its different if you have a dog. You can control the dog and keep the dog clean but these chickens, its noisy, it really is.

Mrs. Rando: Thank you very much. Is there anyone else in opposition?

Tom Neylon, 95 Greenwood Lane, Waltham: I am very close, actually, to the Keleher's location, sort of diagonally to that part of Claremont. I must say that everything I have heard in defense of the Keleher's stand on this has made some impression on me., but I still have some concerns that this sort of thing isn't appropriate for the neighborhood. And no one else has mentioned specifically, as far as I know, I have never heard or had any unpleasantness experience with the Keleher's chickens. I didn't know they already had them. I just got the postcard that said that they are thinking of having them, words to that effect. But there are chickens in that neighborhood and they do get out and have been on our property and rambled about and you know, you're not fearful or anything but they knock out part of your drain pipe apparatus. It's just not really the place and I don't know that it sounds like the Keleher's lately have not had any problems with their chickens in getting out but I sense that this was yet another source of possibly chickens getting out .

And I also get the feeling that maybe the people talking it up , etc., that there are going to be a few more people that want to have chickens too, and you know, it doesn't seem truly appropriate to me and prefer they don't win the case but I don't want to convey any ill will to them.

Mrs. Rando: Is there anyone else in opposition? Seeing none, is there anyone seeking information? Seeing none, Mr. Keleher, could you tell me how big the coop is and if you are aware that there is a standard size that they're supposed to be for x number of chickens?

Mr. Keleher: The coop itself is approximately 8 feet by 4 feet. Then there's a run that's immediately outside the coop that is approximately 6 feet by 4 feet. So now we are up to approximately seventy-four square feet. And then in addition we have space in our garden that has a fence enclosure that's probably an additional 3 by 15 feet, so 45 feet. But I would say that we will probably increase the space somewhat if we knew we were keeping the chickens but I haven't been too eager to spend a lot of time creating a more permanent enclosure until I know that we can keep them. And in that same regard, I would say that I would also be more inclined to make a more, the coop is very sturdy. The run is very sturdy. The reason that that chicken got out back in October, it could have been September of last year, is the fact that I had four kids in the car, I came to get the chickens to give them food and water, and then one of them got out. I wish I had gone and got that one but I went to the car and came back later and it was too late at that point. So, it's not like they're not breaking out of the coop and I could do things, like add a spring or something like that, to guard against human error. It was basically human error that they got away from. So, if I knew I was keeping the chickens, and I have been vigilant in making sure that they don't get out but I could do more things that would make it even more certain that they don't get out.

I do want to respond to a couple of things. One is that we have dogs in our neighborhood, the next house over, who I guarantee you who are about twenty times louder than these chickens are. I think Mrs. Pratt would agree with me on that.

The other is that there are leaf blowers and lawn mowers in the neighborhood. They make a lot more noise than our chickens do. So there are noises that happen in the neighborhood. I guess we could ask, do you prefer the noise of the chickens that are intermittent but more frequent than a lawnmower, or the half hour a week lawnmower noise. But I just want to emphasize the point that they are quiet.

And I think the only way for you to know whether there is an odor problem is to visit the property. I really can't believe that there's an odor problem, so I would invite you to come to the property. I don't know if that's something that you do, but we could have a site visit.

Mrs. Rando: I do know that I think its two cubic centimeters for two chickens and my seventh grade grandson was there and I asked him to convert it into inches but he didn't have the time.

Mr. Keleher: I guarantee you we have more than that. I have never seen coyotes there on our property so maybe theoretically they attract coyotes. I have never seen coyotes on our property. But I have no information that our chickens attract coyotes. So there might be something on somebody else's property that's attracting coyotes but there's nothing on our property that I know of that's attracting coyotes. So I just want to make that point clear.

Mrs. Rando: There was someone else in your neighborhood that had chickens and the coyotes got them in your neighborhood somewhere on the lanes, I'm not sure but I'd have to look up the case but I was informed of that today.

Mr. Keleher: I am not saying that that couldn't theoretically happen. I mean it's a legitimate concern and I mean part of the reason I built a solid coop and chicken run was to protect the chickens. I wasn't thinking of coyotes in particular but I was thinking of something like raccoons which are attracted by chickens and also attracted by trash which every one has on their property. So, anyway I do appreciate your time. I don't know where we go from here but thank you for taking the time this evening to hear this request.

Mrs. Rando: We have Mr. Keleher's Proposed Findings of Fact. Has everyone had a chance to read it?

On motion of Mr. Sergi, seconded by Mr. Hickernell to waive the reading of the Proposed Findings of Fact since they have been on file, the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: And also for the Proposed Decision?

Mr. Sergi: The same fashion, Madam Chair, I propose that we waive the reading of the Proposed Decision since its been on file. Mr. Hickernell seconded the motion and the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact.

Mr. Hickernell: Madam Chair, I interject a motion or at least ask the board's pleasure. We have been invited to make a site visit which the board does do. If there is a factual dispute as to the capacity of the coop or odor from the coop and maybe this board can make that determination.

Mrs. Rando: I did drive by this afternoon and stopped and got out and I did not smell the coop.

Mr. Sergi: Madam Chair, I am not opposed to a site visit as well. I am curious to see the distance. Ms. Pratt mentioned that its close to her yard than I had thought, so I'd like to see maybe the proximity of the coop.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: I think it would be a good idea.

Mrs. Rando: Mr. LaSane?

Mr. LaSane: Yes, sure.

Mrs. Rando: Mr. Rudnick?

Mr. Rudnick: I'm prepared to vote tonight, Madam Chair, but if other members are interested in a sight visit, I wouldn't stand in their way.

Mrs. Rando: And the chair will make a site view.

The members agreed that they would make a site view individually.

The first time we could meet will be July 8th.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to continue this case to July 8th.

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

Mrs. Rando: Will the clerk please read the petition in Case No. 2014-10.

The clerk then read the Petition of the LaCava Family LLC in an application for a variance and sign variance. The petitioner seeks to amend Cases No. 96-29 and 07-05 by removing the attached illuminated sign on the roof of the hotel and installing an illuminated 235 1/8 inches by 35 inches sign (57.14 sq. Ft.) at the top of the face of the hotel.

The Petitioner also seeks to move the existing illuminated sign measuring 138 inches by 126 inches (120.75 sq. Ft.) on the roof to the side of the building to a location where an illuminated sign existed measuring 12 feet by 8 feet which was approved in Case No. 96-29. Location and Zoning District: 380 Winter St. aka as 477 Totten Pond Road and 372 Winter Street, Waltham, MA, Limited Commercial Districts.

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

Michael Delaney, Esquire, Delaney and Delaney, 564 Main Street, Waltham, came forward.

Attorney Delaney: I represent the LaCava Family LLC. Present here tonight is Steve Holbrook of the LaCava Family LLC, Anthony DeLosa, LaCava Family LLC, Richard Ventura, LaCava Family LLC and Stuart Pitchel of SRP Sign Corporation. I have a brief with me, Madam Chair. (Attorney Delaney submitted a copy of his brief with exhibits to each member of the board. He then read his brief into the record.

If you have any questions, I will be happy to answer them for you.

Mrs. Rando: First of all, I wish we had received all this information sooner than this evening. This is quite a big book to look at. I think that what we received on line we only received four days ago.

Mr. Delaney: Yesterday.

Mrs. Rando: Its supposed to be two weeks. Number 7, the picture that you showed, you're saying that you cannot see the sign on the roof.

Mr. Delaney: Right.

Mrs. Rando: I don't see any sign on the Courtyard Marriott.

Mr. Delaney: It's the third page.

Mrs. Rando: Well, I saw it on page eight, I think it shows it.

Mr. Delaney: It's the third photo.

Mrs. Rando: The next page, I see it but I don't see it on this one here. It's on eight, this one here. I was able to see it but I wasn't able to see the one you were using for your argument.

Now could you tell me, in your Findings of Fact, you said that, number 3, I believe: "If the variance is not granted, the property will be singled out from other similar hotels." You mentioned the hotels. The size of their signs in comparison to yours, how many have exactly the same size illuminated, would you say?

Mr. Delaney: I would say the Hilton. It may be larger. It's about the same size. And the Courtyard may be about the same. The Courtyard has three signs. I only have two there. I couldn't get out to the one on Wyman Street. They have one facing Winter Street and then one facing Winter Street/Totten Pond Road at the intersection there towards the bridge. And that one on Wyman Street as well.

Mrs. Rando: And why do you feel that the allowance of the variance would allow easier traffic flow. Are you saying that because they can see your sign.

Mr. Delaney: Once you get off 128 you can see where you're going. Right now with the sign on the roof, as you can see where I was standing, you could not see the sign up on the roof because they changed the facade on the hotel. If you could see even from the picture that I took from the bridge at the red light half of it's blocked because the tower, the new facade I don't know how many feet it's increased over what was there before but it blocks the view. And the sign being moved, there was a sign there before on the side of the building when they did renovations on the facade it was an aluminum sign not an illuminated sign.

Mrs. Rando: And it will be lighted?

Mr. Delaney: Yes.

Mrs. Rando: For how long?

Mr. Delaney: Whatever is allowed by the ordinance.

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

Mr. Sergi: Just for clarification, the current sign that you have on the front of the building will be eliminated or moved to the side of the building and that's illuminated?

Mr. Delaney: Right..

Mr. Sergi: And this actually is going to be a little lower than the other existing sign?

Mr. Delaney: Right.

Mr. Sergi: And is the lighting, going to be different. You said it's going to be high tech, new technology.

Is it going to be similar to the surrounding hotels?

Stuart Pitchel, SRP: The light will shine through the letters which will be white.

Mrs. Rando: Mr. Hickernell do you have any questions?

Mr. Hickernell: I find the petition in order and I have no questions.

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

(Five people raised the hands in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none, is there anyone seeking information? Seeing none.

How close is the closest neighbor? There's condos behind.

Mr. Delaney: If you look out from the signs, there's no residences till Weston or down to Main Street.

Mrs. Rando: All right, I am ready for the Proposed Findings of Fact. Seeing that we only received them a couple of day ago has the board read them.

The board concurred that they have read the Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: I am ready for the Proposed Decision.

Mr. Sergi: In a similar fashion, Madam Chair, I move that we waive the reading of the Proposed Decision.

Mr. LaSane seconded the motion and the board voted to waive the reading of the Proposed Decision.

Mr. Sergi: Madam Chair, just a question on the decision. Do you want to insert anything relating to the hours of illumination in reference to the ordinance?

Mrs. Rando: Good idea.

Mr. Delaney: That's fine. Lets say, #6: The hours of illumination will be in accordance with the City's Ordinance.

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact?

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted that the Proposed Findings of Fact become the Board's Findings of Fact.

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

Mrs. Rando: And the Decision as amended?

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted that the Proposed Decision, as amended, become the Board's decision.

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

Mrs. Rando: Will the clerk please read the petition in Case 2014-11, please?

The clerk then read the petition of The LaCava Family, LLC and TPGN Corp. d/b/a Copper House Tavern, in an application for a variance and sign variance. The Petitioner PTGN Corp. d/b/a Copper House Tavern, a Tenant of the Petitioner/Owner, The LaCava Family LLC, seeks to install and attach to the building two awning signs measuring 132 inches by 100 inches (88) square feet) with lettering having a height of 54.57 inches and 9.67 inches. Total signage is 26.8 square feet and each awning is the same. Petitioner also seeks to attach to the building a 3 feet 6 inches by 19 feet 8 inches illuminated one sided blade projecting sign. Location and Zoning District: 380 Winter Street, a/k/a 477 Totten Pond Road and 372 Winter Street, Limited Commercial Zoning District.

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

Michael Delaney, Esquire, Delaney and Delaney, 564 Main Street, Waltham, came forward.

Mr. Delaney submitted a copy of his brief to the board. He introduced Greg Coughlin, representing the Copper House Tavern and the other individuals on behalf of LaCava, LLC as well.

Mr. Delaney then read his brief into the record and went over the exhibits attached to his brief.

Mr. LaSane: So this is an awning in its pure sense.

Mr. Delaney: Yes and it's non illuminated. It's just an awning. And if it was just an awning without any advertisement for Copper House, there would be no problem. But because it has lettering on it, it kicks it into this ordinance and it becomes a problem. So it would be on the front and on the side.

Mr. Sergi: Would it be blocking the window?

Mr. Delaney: I believe there's no seating up there.

Greg Coughlin, Copper House Representative: Yes the sun is very strong. It would help alleviate some of the sun that beats into the area. There's a lot of glass there.

Mr. Delaney: And then the blade sign would be attached to the building facing the front and that would be attached.

Mr. LaSane: Is there anything special about that sign?

Mr. Delaney: Well it is illuminated and that's a problem in a limited commercial area. That's was the problem that I came with the building inspector. In limited commercial, all signs, he takes the position, he says that his hands are tied. All signs should be attached to the building. But he says this board has great discretion in doing and he says that the law should be changed so you don't have to make these kinds of decisions and he shouldn't have to do it. I spent a lot of time with him that's why it took me a long time to get here. They first came to see me in July and I kept on talking to him about it. I submitted a petition with all the signs on one petition and after two months he told me I have to split them up. But I have some pictures in No. 7, I don't know how it got here, on the last page. The Naked Fish, their sign is not attached to the building.

Mr. Rudnick: It's a ground sign?

Mr. Delaney: No, it's on the building but it's not a wall sign. It's a projecting sign. So, we are just two buildings down. And it's illuminated.

They have put a lot of money to it. They have invested in the community, a lot of charities, the race around Waltham. They are doing well so far but people don't know where they are. People think it's the Best Western Hotel. So they want to get a little step aside so people think they are there. That sign needs to be to the right to stick out.

Mrs. Rando: You're putting the sign on the canvas, on the awning, so that is like having another sign. That's why you are before us for that. You're allowed to have one primary sign.

Mr. Delaney: So you could have one primary sign and one awning.

Mrs. Rando: Right. You're asking for other sign and the illuminated light sign. And you're in limited commercial.

Mr. Delaney: Correct.

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

Mr. Sergi: Just the illuminated sign. Is the color similar to the Best Western or is it different colors.

Mr. Coughlin: We are trying to make it different. It's better for both of us if its established in the customer's mind that they are not one entity both from our perspective and their perspective as well.

Mr. Sergi: Will it be like a copper type color?

Pitchel: Bottom will be white and top would be copper color.

Mrs. Rando: Could you tell me, why aren't you keeping the same kind as the awning? Why are you going to the copper color?

Mr. Coughlin: First of all, its to tie in with the whole Copper House. Number two, they had a red roof which we didn't like so we made it copper. So the sign will tie in with the copper roof and the extension of the hotel and further separate in people's minds the restaurant from the hotel.

Mrs. Rando: You have so many signs there close to each other to have that one different than the awning.

Mr. Coughlin: The architect we hired when we designed the entire restaurant, color of restaurant, wall coverings, when it was all done it was great. This all tied in as well. He has an excellent eye for this. He's building restaurants all over the country.

Mrs. Rando: This is a chain?

Mr. Coughlin: No, its set up to be, so there is a possibility you might see more. That was kind of our vision when we were designing it and that's why we went to such a high end architect. That is this worked out well, and it has so far, and if we decided to replicate it because that is what he does.

Mrs. Rando: And where is the entrance to this restaurant. When I went, I entered through the hotel.

Mr. Coughlin: We try to discourage people just because it's a burden on the hotel for people going through the lobby that are just really coming into the restaurant. We have an outside patio with a staircase that leads right up to the entrance where our main host stand is and where there is a waiting area. I mean its like four or five or six steps or something like thats in the front of the building and it kind of works out better and again signage will help with that.

Mrs. Rando: Do you have any questions, Mr. Rudnick?

Mr. Rudnick: So for some reason you are proposing two principle signs.

Mr. Delaney: If you call an awning a principle sign only because it was the interpretation of Mr. Powell and - -

Mr. Rudnick: (reading from the ordinance) “Advertising placed on an awning shall be considered a primary sign.” That’s not Mr. Powell’s interpretation, this is the council’s. So we are asking for two principle signs instead of one and that ancillary blade sign. And its unclear that projected signs are okay in limited commercials. so you are asking for the variance.

Mr. Delaney: Yes. And it's only illuminated with one sign.

Mr. Rudnick: And that sign has the additional purpose of shading from the sun the interior space.

Mr. Coughlin: The awnings have that.

Mr. Rudnick: I guess the only problem that I see that you haven’t addressed is that it also says that the awning is only supposed to be one color. “Any awning on which advertising is placed shall be one color only except for the advertising placed thereon which may be of different colors.” You’re saying that’s a border not the awning, is that what you are telling me. So, that’s good. That answers my question.

Mrs. Rando: Are there any other questions from board members? Hearing none, I am ready to hear a motion on the reading of the Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact.

On the Proposed Decision?

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: I am ready to entertain a motion on the Proposed Findings of Fact.

Mr. Sergi: Madam Chair, on the Proposed Decision, may I just add the same amendment that we did on the other case that the hours of illumination conform with the city's Ordinance.

Mr. Rando: All right, I am waiting for a motion.

On motion of Mr. Sergi, seconded by Mr. Rudnick 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; Mr. LaSane, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

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

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

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

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

Barbara Rando, Chair