

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

January 26, 2016

7:00 P.M.

at

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

Barbara Rando, Chair
Mark Hickernell, Clerk
Glenna Gelineau
John Sergi

Arlington Reporting Corporation
(339) 674-9100

Waltham Zoning Board of Appeals/1-26-16/2

I N D E X

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A T T A C H M E N T S

Legal Notices: Case No. 2015-09

Case No. 2015-09:
Letter from the Applicant requesting a continuance
Letter from Sonja Wadman, WLT Program Director

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P R O C E E D I N G S

BARBARA RANDO, CHAIR: Good evening.
The Zoning Board of Appeals for Tuesday, January 26,
2016 is called to order at 7:00 p.m.

Tonight we have one continued case
before us, Case 2015-09, Louis J. Antico and Anthony
J. Antico, Prospect Hill Road.

The members sitting on the Antico case
are Mr. Sergi, Mr. Hickernell, Ms. Gelineau, and Mr.
Cotton, and I am Barbara Rando.

I don't believe I have minutes to be
approved. I don't see any. If I do, we'll do it at
the end of the evening.

The first action this evening is --
well, I have to inform you that due to illness, Mr.
Cotton is not able to join us this evening. So, we
have four members. We have a quorum, so we will
continue.

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1 **Case Number 2015-09: Anthony J. and Louis J. Antico,**
2 **Prospect Hill Road.**

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4 BARBARA RANDO, CHAIR: Will the Clerk
5 please read the petition in Case 2015-09.

6 MARK HICKERNELL: (The Clerk reads the
7 above-mentioned petition into the record. See
8 Attached.)

9 BARBARA RANDO, CHAIR: Thank you.

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

12 ATTORNEY BRIAN GROSSMAN: Good
13 evening, Madam Chair. Brian Grossman and Steve
14 Kreiger on behalf of the Petitioners.

15 Madam Chair, since we've become aware
16 that Mr. Cotton will not be present this evening, we
17 have submitted a letter to the Board, which I will
18 read into the record now.

19 BARBARA RANDO, CHAIR: You may go
20 ahead and read it.

21 (Attorney Grossman reads letter to the
22 Board into the record. See attached.)

23 BARBARA RANDO, CHAIR: You know you
24 have the right to go with four members. We have a

1 quorum.

2 ATTORNEY BRIAN GROSSMAN: The
3 Petitioner does have the ability to go forward with
4 four members, and I understand that. In some
5 instances, clients have done that. In this instance,
6 we think it makes sense to have all five Board
7 members present. I have no idea how Mr. Cotton is
8 going to vote. I have no idea how any of the members
9 are going to vote. But it does fundamentally alter
10 the dynamic in terms of the petition and having a
11 five-member board that sits with only four board
12 members versus even, you know, a three-member board.
13 With a five-member board, as the Board knows on this
14 type of petition, it takes four positive votes --

15 BARBARA RANDO, CHAIR: Correct.

16 ATTORNEY BRIAN GROSSMAN: -- to carry
17 the petition. And that number doesn't change
18 regardless of the number of Board members. And so if
19 you have a five-member Board, you still need those
20 four votes whether or not you have four Board
21 members, as we do tonight, or you have five. And,
22 for that reason, given the petition and the evidence
23 provided to date regarding this matter, it is our
24 position that we would prefer to have five members.

1 In my experience, that option has always been given.
2 When I say my experience, I mean hearings in general.
3 I've done hearings throughout the state, as well as
4 in Rhode Island and New Hampshire. Generally, that
5 option is given to the applicant as to whether or not
6 they would like to proceed with four board members or
7 not. In this instance, we would like to proceed with
8 a full five-member board rather than four.

9 BARBARA RANDO, CHAIR: Could you tell
10 me, if this -- continuing this case holds the other
11 case that is in court up? Does that have any
12 influence on that?

13 ATTORNEY BRIAN GROSSMAN: It will not
14 be -- the next court date for any of the cases, and
15 there are a couple that will happen, the next date is
16 February 11th.

17 BARBARA RANDO, CHAIR: I feel bad for
18 these people that come night after night and it's
19 continued continuously.

20 ATTORNEY BRIAN GROSSMAN: And we
21 appreciate that. And, again, we would have been
22 prepared to substantively go forward and probably
23 close the hearing. We are missing a Board member.
24 And, typically, it is the applicant's -- it is

1 requested of the applicant whether or not they would
2 like to proceed with four. In this instance, given
3 the nature of the petition and the contentiousness of
4 it, we would prefer to have all five Board members
5 available for discussion, consideration of the
6 evidence, and voting.

7 BARBARA RANDO, CHAIR: During all the
8 time since the last appointment that we had with you,
9 have you submitted any information, any new
10 information, to us?

11 ATTORNEY BRIAN GROSSMAN: We have not.
12 We reviewed the information that was provided. We're
13 prepared to respond to it orally. But given -- we
14 had a chance to thoroughly go through it. There's
15 not much that was raised that was really new.

16 BARBARA RANDO, CHAIR: But we had
17 asked for information two weeks before the meeting,
18 and we didn't find out until late this afternoon that
19 Mr. Cotton was not going to be able to join us.

20 ATTORNEY BRIAN GROSSMAN: Right. Any
21 information I have or any response I have to the
22 submittal from Attorney Learned is going to be -- is
23 going to be oral.

24 BARBARA RANDO, CHAIR: But we haven't

1 received anything. For this meeting tonight, we have
2 not received anything.

3 ATTORNEY BRIAN GROSSMAN: Right,
4 because I have no additional written submittals that
5 we had to submit.

6 BARBARA RANDO, CHAIR: Mr. Sergi, do
7 you have anything to say on this matter?

8 JOHN SERGI: I was under the
9 impression we granted you the extension to respond to
10 the memorandum that was provided by the City
11 Solicitor. And it's surprising that you haven't
12 taken that opportunity to do that.

13 ATTORNEY BRIAN GROSSMAN: I got it
14 that day so I hadn't had a chance to thoroughly go
15 through it.

16 JOHN SERGI: That day when?

17 ATTORNEY BRIAN GROSSMAN: The day of
18 the last hearing was the day I received the package
19 from --

20 JOHN SERGI: Correct. That's the day
21 we got it. And we said, you know --

22 BARBARA RANDO, CHAIR: Right.

23 JOHN SERGI: What day was that?

24 BARBARA RANDO, CHAIR: Mark is looking

1 at it.

2 MARK HICKERNELL: November 24th.

3 JOHN SERGI: November.

4 BARBARA RANDO, CHAIR: November,
5 November 24th.

6 GLENNA GELINEAU: But it was only for
7 him to process it. We didn't ask him to reply to us
8 in writing.

9 BARBARA RANDO, CHAIR: No, but that's
10 what they --

11 JOHN SERGI: No, no, but he asked for
12 that. Maybe I was misunderstanding, but I thought
13 that that's why, you know, we gave him the
14 opportunity to address that.

15 BARBARA RANDO, CHAIR: Right.

16 ATTORNEY BRIAN GROSSMAN: We needed --
17 I did need an opportunity to review it to even try
18 and address it one way or another that night and
19 would not have been prepared to do that. Having now
20 had a chance to thoroughly go through what was
21 submitted, there's not, in terms of the submittal,
22 it's -- it's very much the same as what was
23 previously submitted. There's certainly cases, but
24 it's the same. I can easily distinguish those cases

1 and give my theory of it orally. I didn't see an
2 additional reason to provide any more paper and to
3 generate another response from Attorney Learned,
4 another back and forth. I've now had a chance to go
5 through it. I would not have been prepared to
6 respond to it really in any way that night. I am
7 prepared -- now prepared orally to respond to and
8 distinguish the cases she's raised.

9 JOHN SERGI: You're responding orally.
10 Okay. I'm not going to argue. That's fine.

11 Thank you, Madam Chair.

12 BARBARA RANDO, CHAIR: Mr. Hickernell?

13 MARK HICKERNELL: Well, I didn't want
14 to continue it last time. But, where the Solicitor's
15 Office is in agreement, or at least is not opposed, I
16 guess nobody -- nobody is going to be prejudiced
17 except for several dozen citizens who showed up
18 tonight.

19 BARBARA RANDO, CHAIR: I don't know if
20 they're in opposition to it or not.

21 ATTORNEY MICHELLE LEARNED: If I
22 could, Michelle Learned for the Building and --

23 BARBARA RANDO, CHAIR: Could you come
24 to the microphone, please?

1 ATTORNEY MICHELLE LEARNED: Good
2 evening. So, Michelle Learned for the City Building
3 Inspector.

4 We're not opposed if it's a very short
5 continuance. The hearing would sometimes still occur
6 before our next court date. In the event that you're
7 not able to have the complement of the full Board
8 prior to the 9th, then we do advance and request that
9 you go forward today with a vote with the quorum that
10 you have.

11 I feel for the public, the residents,
12 who come to each and every hearing. This has been
13 ongoing since the first time in July.

14 This is a request to appeal a cease
15 and desist order. It's not a request for a special
16 permit. It's not that they're awaiting to build
17 something where continuances might be able to be
18 liberally given. This is where the site has been
19 found to be in violation of zoning. The Building
20 Inspector had issued that cease and desist notice
21 back in April, and here we stand fully ready for the
22 Board to make its decision. It is courteous,
23 however, in a situation where the member of the ZBA
24 is not present. I thought it would extend the

1 courtesy to a short time period for a continuance.
2 But, of course, we would be happy with whatever
3 decision the ZBA makes tonight.

4 BARBARA RANDO, CHAIR: Thank you.

5 GLENNA GELINEAU: Is short the 9th?
6 Is that okay with you?

7 MICHELLE LEARNED: Yeah, I guess. We
8 suggested the 9th because our court appearance is the
9 11th. And, frankly, I cannot see that this can
10 extend beyond that.

11 GLENNA GELINEAU: Okay.

12 BARBARA RANDO, CHAIR: Do you have
13 anything else to add?

14 GLENNA GELINEAU: I was just curious.
15 It said here that counsel for the Building Inspector
16 assented to the request. Does he want to be in
17 attendance? Is it his choice to be in attendance on
18 the 9th?

19 ATTORNEY MICHELLE LEARNED: It's for -
20 - yeah, it's --

21 GLENNA GELINEAU: Oh, you? Okay. I
22 thought it was someone -- I apologize.

23 ATTORNEY MICHELLE LEARNED: And, just
24 to let everybody know, the Building Inspector is here

1 this evening.

2 GLENNA GELINEAU: Yes.

3 ATTORNEY MICHELLE LEARNED: And will
4 likely be here on the 9th, or whatever date --

5 GLENNA GELINEAU: I apologize.

6 BARBARA RANDO, CHAIR: And was here
7 the last meetings, too, along with all of you.

8 GLENNA GELINEAU: I'm so sorry. I
9 thought -- I thought since then someone new had come
10 into the fray. I totally apologize. I did
11 understand that you were representing the City.

12 BARBARA RANDO, CHAIR: All right.
13 Thank you.

14 After hearing from Attorney Learned,
15 what is the desire of the Board? First of all, is
16 February 9th available? Mr. Sergi?

17 JOHN SERGI: I'm available, Madam
18 Chair. Do we have any other cases on the 9th?

19 MARK HICKERNELL: We do.

20 JOHN SERGI: How many other cases?

21 BARBARA RANDO, CHAIR: We have
22 February 2nd.

23 ATTORNEY BRIAN GROSSMAN: I'm
24 scheduled for another hearing February 2nd.

1 MARK HICKERNELL: I just have written
2 down that we have a meeting both the 2nd and the 9th.

3 BARBARA RANDO, CHAIR: All right.

4 JOHN SERGI: I guess I'm okay with the
5 9th, Madam Chair.

6 BARBARA RANDO, CHAIR: You can make
7 the 9th, Mr. Sergi?

8 JOHN SERGI: Yes. Yes, I'm okay.

9 BARBARA RANDO, CHAIR: Mr. Hickernell?

10 MARK HICKERNELL: I was going to be
11 here anyway.

12 BARBARA RANDO, CHAIR: Ms. Gelineau?

13 GLENNA GELINEAU: Yes.

14 BARBARA RANDO, CHAIR: All right. Do
15 I have a motion to continue Case 2015-09 to February
16 9th?

17 JOHN SERGI: So moved, Madam Chair.

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

20 GLENNA GELINEAU: I'll second it.

21 BARBARA RANDO, CHAIR: Second by Ms.
22 Gelineau.

23 How do you vote, Mr. Sergi?

24 JOHN SERGI: Yes.

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1 BARBARA RANDO, CHAIR: Mr.

2 Hickernell?

3 MARK HICKERNELL: Sure.

4 BARBARA RANDO, CHAIR: Ms. Gelineau?

5 GLENNA GELINEAU: Yes.

6 BARBARA RANDO, CHAIR: And the Chair
7 votes yes.

8 Do we have to continue the 100 days?

9 MARK HICKERNELL: No.

10 ATTORNEY BRIAN GROSSMAN: Yeah. No, I
11 think your extension is through the end of February.

12 MARK HICKERNELL: Yeah. Yeah,
13 February 25th. We're okay.

14 BARBARA RANDO, CHAIR: So, we're all
15 set there.

16 All right. Then this case will be
17 continued to February 9th. Sorry. I apologize.
18 Thank you all for coming.

19 One more motion is in order.

20 JOHN SERGI: Motion to adjourn, Madam
21 Chair.

22 BARBARA RANDO, CHAIR: Second?

23 GLENNA GELINEAU: Second.

24 BARBARA RANDO, CHAIR: Ms. Gelineau

1 seconds it.

2 All in favor?

3 ALL BOARD MEMBERS: Aye.

4 BARBARA RANDO, CHAIR: Opposed?

5 (No Board Members opposed.)

6 BARBARA RANDO, CHAIR: The ayes have

7 it. We're adjourned at 7:20.

8 Thank you very much.

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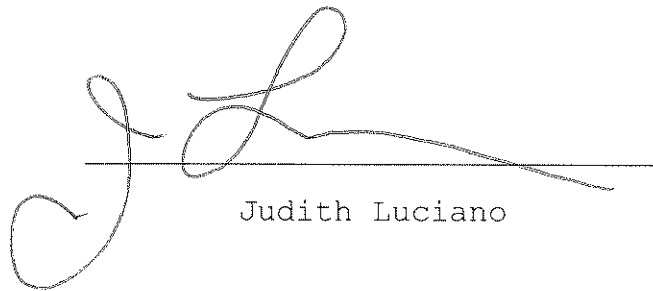
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C E R T I F I C A T E

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



Judith Luciano

