

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

**July 12, 2016**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 12, 2016, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were Chair Barbara Rando, and members Glenna Gelineau, Sarah Hankins, Mark Hickernell, and John Sergi.**

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

**Mrs. Rando: Tonight we have one continued case and one new case before us. The continued case is Case 2015-27, Sadie M. Cardillo, Trustee of 105 - 107 River Street, it's an irrevocable realty trust, Anthony G. Cardillo Jr., Anthony G. Cardillo, III, Trustee of AAM Realty Trust, 194 Aft. Willow Street and that is for an appeal from the decision of the building inspector. The new case is Case No. 2016-21 Adam J. Piccirilli and that address is 195,197-199 Hammond Street and that is to amend a prior variance.**

**The first action this evening is for a motion to accept the minutes of June 28, 2016.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of June 28, 2016.**

**Mrs. Rando: Would the clerk please read the petition in Case No. 2015-27?**

**The clerk then read the Petition of Sadie M. Cardillo, Trustee of 105-107 River Street Irrevocable Realty Trust: Anthony G Cardillo, Jr., Anthony G, Cardillo III, Trustees**

of AAM Realty Trust and Anthony G. Cardillo, Jr. Owner 105-107 River Street Irrevocable Trust, AAM Realty Trust and Anthony G. Cardillo, Jr., in an appeal from the decision of the Inspector of Buildings. Subject Matter: By letter dated October 28, 2015, the Inspector of Buildings served a Notice of Violation on the Owners of the properties at 194 Aft. Willow Street, 105 R River Street, and 105-107 River Street; Industrial Zoning District, alleging zoning and building code violations.

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

Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham came forward.

Mr. Connors: I represent the petitioners, You have the Cardillo family here and there is Trust and individuals but Anthony is here, his father, Tony and brother Michael and Joe and sister, Kristen, so the family is here.

This case has been, we've had a couple of hearings. I did recently submit to the board some documents electronically and I just wanted to give you a paper copy of them. So, I have some Affidavits that I submitted and so I've got the original Affidavits and I have an original set and a copy for each member of the board. (Mr. Connors submitted copies to each member of the board.)

Actually, Madam Chair, I just have one, Mr. Cincotta, Ron Cincotta filled out an Affidavit and he signed that and he is here tonight and he actually signed it tonight, so I don't have copies for the board but there is that.

I have met with the building inspector. We met a couple of times. What we have been trying to do is there's six alleged violations, trying to resolve some by way of seeking a remedy which involves kind of redesigning the site to some degree. So, I would say this that

in my conversation with the building inspector, and I believe he will confirm this, that we have agreed that we would voluntarily withdraw so much of the appeal as to appealing the violations as alleged in numbers 3, 5 and 6 in his Notice of Violations. So #3 is a violation of operating of the truck terminal, so we are going to come up with a solution for that to resolve that alleged violation. Numbers 5 and 6: #5 alleges violations of the state building code; # 6 alleges violations of the City of Waltham Zoning Code as to setbacks of structures. So again, we've come up with a plan that will resolve that and we have come up with drain calculations and things like that. All the necessary things to resolve those issues based on the agreement of the Building Inspector that, you know, he's accepted what I have and I will have to formally apply for building permits on those three issues but I believe we have an agreement on those three so that leaves only alleged violations 1, 2 and 4 on the table for the board. So, Madam Chair, just on my discussions with the building inspector he's willing to come and speak at least to our agreement on those three items.

William Forte, Inspector of Buildings for the City of Waltham came forward.

Mr. Forte: I have conversed with Attorney Connors on several occasions regarding how to bring this property into compliance, and I do agree with Attorney Connors that three of the six violations could be cured given the fact that trucking terminals are allowed in the Industrial Zone as of right. There are still some problems operationally with the amount of volume in there but it can probably be cured with a special permit and maybe some additional perimeters on that. The dimensional violations with the setbacks and straddling lot lines, etc., can probably be cured with a combinations of lots being combined together, if I'm correct on that, and then there's the drainage of the trucking terminal that, again, would have to be cured but we believe that we could probably just by as of right building permit issuance that we could cure probably three out of the six. I think what we will probably present to you tonight will be the final evidence showing pre-existing use or lack thereof and the existence of the business prior to the expansion of the nonconforming

use that which I allege. So I think at that point we will concede and agree that violations 3, 5, and 6, for the record, can be resolved, as of right, with a building permit. However, it will not sanction the business to operate as it currently is. So we are conceding to the fact that 3 out of the 6 can be cured, as of right, with a building permit but it's only half a basket.

**Mrs. Rando:** Thank you very much. Any questions of the building inspector?

**Mr. Hickernell:** Is there a timeline for those violations to be cured?

**Mr. Forte:** Again, depending on what the outcome of the ZBA is tonight will kind of hinge as to what time for compliance of the application of any special permit, if any. So I think that we really don't have an agreement on that. We are kind of waiting to see where this notice of violation is going. I will just tell you that I am certainly willing to work with the owners of the property to give them time to apply for whatever permits they need to get into compliance. The fact that we have got half of these knocked out is good progress. So, I'm optimistic.

**Mr. Hickernell:** All the board appreciates your efforts to resolve these problems.

**Mrs. Rando:** Thank you for attending tonight.

**Mr. Connors:** Madam Chair, going back to the only three issues, I do have also in addition to what I submitted electronically and I had showed you before, but I just kind of put together a photo album and I tried to pull some pictures that reflect the trucking activity that was down at the site at 105-107 River Street.

**Mr. Sergi:** We had these pictures last time.

**Mr. Connors:** Yes. So what we did was kind of organize and clean them up and we put them in a book so it would be easier to kind of work your way through them. So we have pictures that again show the property, I believe in the 1960s and 70's and the 80's.

But going back to the three issues I think are remaining on the table for the board to decide on: #1, is the issue on open storage; #2 is the issue of the truck storage without a special permit and #4, the dumping of storage of soil and sand and gravel.

I'm going to address, and I think the biggest one and the one that is reflected in the pictures first, and then you see that the pre-existing nonconforming use, I think, is a critical issue for this board. It's a critical issue for the Cardillo's.

In the prior submittal, back when we originally started, I had Affidavits of Anthony Cardillo who is here tonight; Anthony Cardillo, Jr. So Tony submitted an Affidavit. So Tony is Anthony, Jr. His father and his mother Sadie Cardillo purchased 105 and 107 in 1966. So Tony submitted an Affidavit.

**Mrs. Rando:** Just say 1, 2 and 3.

**Mr. Connors:** One is deceased and two is here and three is here. So number one purchaser is Sadie. So Sadie is Tony's mother. So she submitted an Affidavit, she's not present tonight, but she submitted the Affidavit and she testifies that they purchased the property in 1966 with her husband and she kept the books and she ran the operation out of their home. That's where she ran her office but the operation of the trucking business was maintained at 105 and 107. So they are an excavation business. They are a contracting business and so what I presented to you are Affidavits that state that number one; number 2 pictures that show these heavy trucks as defined in the Waltham Zoning Ordinance.

So number one, I call your attention to Tony's Affidavit that I submitted with the original brief and then we have, as I said, the Affidavit of Sadie Cardillo. How old is your mother, Tony?

Tony Cardillo: Ninety.

Mr. Connors: So, she's been around a while but she definitely has been around since 1966 when she did in fact purchase the property with her husband.

We submitted an Affidavit of Walter Ohnemus, Jr. He was the Building Inspector in the city from 1966 to 1987 and he made observations and you actually see that one of the documents that was submitted on a prior occasion is a 1970 building permit application with a stamp on it, with Walter Ohnemus Jr.'s name on it as the Inspector of Buildings subject to his inspection. So he states in his Affidavit that he made observations of the use at 105 and 107 River Street. He's familiar with the Cardillo's. They have been in business there for many years and he confirms that since 1966 that the Cardillo's were using that property to store their trucks. And he also states on the second page of his affidavit, number 6 and number 7 where he said, it was not a common practice to issue a Certificates of Occupancy for a use. They would simply issue a building permit. And up until 1974, the building code didn't even require an issuance of a certificate of occupancy. So today when you pull a street card for a piece of property, it will say they issue a co, a certificate of occupancy. But one, it wasn't a common practice in the sixties and seventies and two, it wasn't even required by the building code up until 1974. And I also attached a copy of the street card and the site plan that Mr. Ohnemus reviewed.

We have an affidavit of William Creonte, Sr., who stated that he's in the business of Creonte Tire. He started in the 1950s and he's provided tires to A. Cardillo and Sons at 105-107 River Street and he regularly provided them tires and since 66 he believes that they

**maintained the storage of heavy trucks. And that's William Creonte, Sr., and Bill Creonte Jr., was here at the first hearing. So this is his father.**

**There's an affidavit of Robert Como who was the former local building inspector. I asked him to put the dates in of his employment. He couldn't remember. He was a building inspector in the city for many years and so he remembers going down to 105-107 River Street; seeing the Cardillo's in action; seeing them maintain in their storage of heavy trucks and he also specifically remembers that there were alleged violations by, it said Mandile, I believe it was Tony Mandile from 1955 which I think is footnoted in the building inspector's notice of violation. So it was brought up in 1995 as to the use of 194 Aft. Willow Street.**

**So he recalls that and they recall that they made a determination after investigation that there was no violation. I've also attached a copy of Tony's father, Anthony one, journal from 1995. So in Exhibit A, 1 through 9, actually pages 1-through 5, that there was a contemporaneous journal that he kept in 1995. If you look through it, it kind of just shows, April 18, 1995, Mandile is giving us trouble with our parking machines in the back yard. April 20th, Mandile, I think the Health Department came down and I believe Mandile was responsible for that and then on April 20th there was a Cease and Desist Order issued from the Waltham Building Inspector and then subsequent to that, I met with Mandile at Star Market and then the final entry is the August date, 1995. Jr., went to the building department with Russ Malone at 10 A.M. to see Gaudet and Como. "Look good". They saw paper about being there at 1987, etc. So they had contemporaneous notes in 1995 as to the storage of heavy trucks at 194 Aft. Willow Street. The building inspector got involved as confirmed by Inspector Como, it was confirmed by Mr. Cardillo's father's contemporaneous notes, that they inquired about, that they went in, they met with them and the conclusion was it looks good. I'm not sure if you saw that but that was in his kind of the third entry right there under the August date, Jr. to building department.**

And then also attached is Exhibit B1. The board was looking for something to kind of authenticate and to show that they were engaged as an excavation business in the sixties. These are just invoices that Anthony was able to provide me. They are either quotes for jobs, or invoices for work that was performed, you know. So it's not attesting that it was performed at the site on River Street. It simply attesting the fact they were operating backhoes, trucks, significant heavy trucks in their business and they were providing their services in the sixties. We have invoices from 69, two from 1969, October 1971, shovel dozer work; 1972, 1973 and there was 1974 three and four. They had projected some rates for snow removal where they had truck loaders, rubber tire loaders, etc., six wheelers. And so we go through 74 and 87 and all the way up until I believe it was 1996. So that's to kind of address the fact that A Cardillo and Sons was an excavation company that was using heavy machinery and doing jobs in and around this area and combine that with the affidavits that their operation was at 105-107 River Street, and I think we have a basis to say they were there in 1966 and they have been there ever since and that's what is stated in the Affidavits.

My initial submittal to you back in January showed a copy of the 1964 zoning ordinance that stated specifically that in an industrial zone, that any use was permitted provided that it wasn't specifically prohibited and then they list and articulate prohibited uses and storage of heavy trucks is not one of those listed. And that's in the industrial zone to be distinctly different than a commercial zone.

I also submitted a copy of a letter to the building inspector from Dr. Chiang who is a local engineer and that had to do with the concrete walls and the containers which really, I think, those are issues that are not relevant to the issue of the pre-existing nonconforming use. That was more to the issue of setbacks and getting a building permit for the structures that are situated on the lot. So we believe that we provided testimony through the Affidavits and documentation through the copies of invoices. I have more invoices if you wanted them but I didn't want to give you twenty years worth of paperwork from the



Cardillo family but there are significant paper work that was contemporaneously made at the time of the sixties and the seventies and the eighties that established that 105-107 River Street has been consistent with use for storage of their heavy trucks incidental to their excavation business.

So again it was brought to attention of the building inspector and he deemed that that was a great pre-existing nonconforming use because from 1966 to 87, it was a by right use.

So that leaves the other two main issues and I started on #2 and I'll skip to #4. Number four talks about the storage and dumping of sand, gravel and loam and I think that that is what we believe, it is not what they are doing. They are maintaining products, materials, for wholesale. So it's maintained on the property and its kept in these bins and then people come in and deliver it and then people come in and pick it up, so we are not changing the elevation of the lot. We're not storing materials indefinitely and that kind of dovetails with the definition of open storage. It says, open storage can't be done anywhere unless its screened, etc., etc., but materials may be stored provided you screen them. This is materials. We are not changing the elevation and it has nothing to do with the excavation or anything like that or a filling of a building. It simply a product that is sold as a wholesale product and nothing more, so we are not changing the elevation.

(Mr. Connors went over the plan of the locus with the board.)

And if you look in the zoning code, but in the zoning code it talks about wholesale use and so wholesale use is a by right use in an industrial zoning district. It's also defined as the storage of wholesale materials including building materials. So these products, they are not in the landscaping business. Its sand, it's gravel, it's stone and these are in the building trade. So I think it's an interpretation issue. They believe they are a wholesale business. These materials come and they go. They are not storing it there. They're containing it in a bin. They keep it there for a period of time and then the piles go up and

they have a by right use and they are not violating the statute because of the heights of the piles. They are not affecting the elevation.

And then the last issue, going back to number one, is open storage. So, again, open storage has to do with the storage of bricks and products for wholesale and retail. So we say that anything that is not there for wholesale or retail is not even involved in it, but there is materials that they wholesale there that you can see in the bins but it provides under the definition that, now it says that open storage is not permitted in any district unless you do certain things. And so if you do certain things like keep it empty from the street; if you screen it from the public and private view or adjacent and residential properties and then if you store it outdoors, after business hours, again it has to be in an enclosed area. So we are proposing to put an eight foot fence up here (referring to the plan and showing where the fence is proposed).

So we meet those conditions and we feel we don't have a violation of open storage. This is something, I think it's kind of a dynamic interpretation and its been done around the city by many other people and so now that we have been put on notice that this is a violation, there are steps that we can take to a cure that violation and so this is what we are proposing.

So that's my presentation and I will answer any questions.

Mrs. Rando: Mr. Forte would you like a rebuttal?

Mr. Forte: I've had a chance and opportunity to look at some of the Affidavits and evidence that Attorney Connors had presented regarding the pre-existing legal use of the property or claims thereof. So, just to be clear, okay, there are two separate issues here. You have basically a use that's going on in this back lot over here (referring to the plan) and you have claiming pre-existing legal nonconforming use. In 1987, that's when that

might of changed where it became illegal to have open truck storage in that zone. I'm going to get to that.

So the documents that Attorney Connors and the property owners have provided do not specifically document the address at which the business was operating. There's an address at 67 Silver Lane. There's another address in Watertown. There are invoices from different jobs and I certainly believe that they were operating out of there but I don't see any documentation there that it would present that would give them any further evidence of a nonconforming use of the building for what they claim it was which is they are claiming it was an excavation business. Again, I don't doubt that it ran out there but I just don't see any evidence where it shows that it was a pre-existing legal use. I still have evidence showing that the only thing I have on record is a two car garage. That's what the building permit says. That's what the use of the property was. I still don't see that the property owners and their attorney have met the burden of a pre-existing legal nonconforming use of an excavation business at the locus.

And Attorney Connors had alluded to the fact that there's some stuff going on here that he believes is by right. I don't believe that the dynamics of what's going on here can all be cured with a by right building permit. I agreed to issue permits for three of the five things over there that could be possibly a violation. You know, the fence will help with the screening. The drainage will help with any sedimentation that would be going into the city storm drain. You know the truck terminal aspect of it, they can try to cure, but I don't think that the dynamics of the operation that runs out the back here can be cured with as of right permits and I've contended all along that I think that the operation in and of itself because there's no specific definition of a landscaped materials distribution in the zoning ordinance. In 3.31 it specifically says if it's not specifically expressed, it's not specifically allowed. You can take portions of the zoning ordinance and say, well, ya, okay if it's not, maybe you're not filling a lot. I agree with that. They're not filling a lot but the dynamics of the materials going up and down, that's the closest thing we have in the ordinance to that.

It doesn't mean that it can be cured with a special permit by limiting the height of those piles and what times of the day those piles be covered and the sort of traffic that comes in and out of there, you know, what I mean the sort of safety precautions that will be in place with a special permit.

So the dynamics of what's going on back here, honestly I still think that it cannot be cured with a by right. You will have to determine whether or not it's a violation. I think in my first presentation back in February I presented sufficient evidence that the use was definitely not a pre-existing use nor was it a use allowed by right. I would refute the fact, I know that Mr. Cardillo provided some notes where he thought specifically he was off the hook with any kind of problems that he might have had and I certainly believe his notes. You know I would be under the same impression, the same thing, if nobody came knocking back at my door and say, well, I'm probably not in violation. But I have no documented evidence that the matter was resolved and that's why I didn't consider that when I wrote the notice of violation. So it's still an unresolved matter from two or three different dates which I presented in my first presentation.

In 1987, the type of use that they have over there basically would become noncomplying. In 1964, the claim was that the use was allowed and Mr. Connors makes the argument that in the zoning ordinance at the time that specifically this type of use was not considered a violation that it was an allowed use along with some of the other uses in the industrial zone.

I'm not an attorney, so I really can't argue the law. My attorney went over a couple of things with me but basically the words can't be taken cafeteria style. When you're interpreting the zoning ordinance, you have to take into account the entire ordinance and in this section here where it says Permitted Uses in the Industrial District and I believe this is where Attorney Connors refers to the fact that it was an allowed use back in the day and this was the zoning ordinance I think in 69 or 67. I'm not sure which but it was back when

the Cardillo's had their property and they claimed that they were using it in compliance with zoning. It says that "Any businesses or commercial use permitted in Residence, Business, Limited Commercial, it says, within any industrial districts no building structure or land except shall be used and no building structure shall be erected or altered except for the following uses: Any business or commercial use permitted in a residence, business, limited commercial or commercial district, which is less restricted, gas works, electrical lighting, power stations, steam laundries and junk yards. And then in number three it says: For any other purpose not herein expressly prohibited. So what they are referring to here is the entirety of the zoning ordinance, hence the reason why they mention the first in numbers one and two. I cannot eloquently argue this. This is kind of a matter of law. I would just suggest if you are not satisfied with, and believe me, I am certainly willing to let it go another meeting. If you would like a further clarification on this, I can ask my attorney to help me craft something that would give you a better idea of this. But we still contend that the use was not legal even back then.

So, in addition to that, the Cardillo's would have to have actually proven to us how many trucks exactly would they be able to have. In other words, if they had three pieces of equipment back then and the dump trucks, I mean the fact that they have pictures there, that's fine, but again the evidence that they have are simply just pictures. They don't actually depict a compliant operation. We contend that the operation was not compliant back then. So the evidence in the pictures that they show we still don't believe that they are sufficient to support the finding that their use was pre-existing, legal nonconforming. And again, they would have to have a specific number of trucks and it would have to be documented. I mean we've got pictures, statements and stuff, but again we still don't feel as though it's sufficient enough to prove that there was a pre-existing legal nonconforming use. There's no documentation supporting it.

So, again, this is your determination. This is really where the whole case sits. I'm certainly not going to challenge you if you decide that it's a pre-existing legal

nonconforming use but I'll just say if you want more clarification on it, then I will be more than happy to provide that to you and you may continue it if you would.

So moving on now, just a couple of things to hinge on with Attorney Connors. The ordinance has always expressed that the inspector of buildings shall issue a certificate of occupancy for any use of any lands, buildings or structures. That's always been in the zoning ordinance. It's never been excluded, 7.41. So just because the building inspector's previous never issued a certificate of occupancy for this type of use, it doesn't mean that it wasn't required. You know, the issues were really never resolved in documentation. Again, that's why, it's my responsibility as the inspector of buildings to look at all the factual finding that I can get. I've looked at every single record. I just don't see, this wasn't clear to me that this was an excavation business and that trucks were allowed to certainly be stored on the outside of the building and questionably maybe on the inside and there is no outside storage that is allowed in this zone. I don't know about that. But this specifically in the back is like a brand new permit and that's my whole argument is that to me it needs a special permit. It's not the type of operation that is specifically spelled out in the zoning ordinance that I can permit. If I could permit this, I would do it in a second. But I don't see the remedy in all of the zoning ordinance. I don't see how I could put this all together and make this happen and say it's okay because I just don't see it. There are still issues with open storage. Putting the fence around, it's going to help. It's going to screen it and again I just will kind of clarify that although we can resolve three of these six issues, there's still going to be the other issues of the fact of the operation still exists. If you find that you uphold my notice of violation, then they basically can appeal this to Superior Court but also to that the violation may still exist. Again, I would be more than willing to help the property owners work towards a speedy path of compliance. I'm all about just having it be right. That's really what I'm here for. I'm here for nothing else. I don't want to cut the knees off of anybody. I don't want to put anyone out of business. I just want to make sure that it's right. So I think that by upholding my notice of violation in those three categories, then basically what we'll insure is that the operation is permitted properly and that's really

all I am asking for. I don't want anything else. So, certainly it's up to you. If you would like more information, please feel free to express that. I don't mind continuing for another meeting or so and I don't have anything else. I think I have made the argument at the first meeting. I think if there are any questions, I will be more than happy to answer them at this point.

Mr. Sergi: First of all, thank you for working with the owner. I think you have made some progress. The question that I had in my mind as you were speaking, on the other violations on Issues 1, 2 and 4, did you clearly articulate any remedies or any path of resolution to those three at all with the property owners other than a special permit?

Mr. Forte: Sure, so the open storage thing, myself and Attorney Connors have talked about it and you know putting up an eight foot fence would be one way of remedying whether the fact that it is still open to public use. We're still in debate about what the open storage section of the ordinance actually means. Does it mean hidden from view at all times. Does it mean hidden from view after hours. What does it mean by enclosed? I agree with Attorney Connors. It is not specifically defined in the ordinance. Hence the reason why I think a special permit is necessary is because really the city council has the authority to grant these types of permits where they can take the time to study this and look at it and see what the impact is. It's one of the things about the pre-existing use. If it's a pre-existing use, it can't impact the area any more than it already is. So if you enlarge that nonconforming use, you are no longer nonconforming. If, in fact, in 1987 let's say that the business was quiet and relatively small and then we hit a building boom in 1990, I think it probably tanked back then but I think at some point it went back up. You know you can't increase that nonconformity, so hence the reason why I was looking for that evidence to show when you have a nonconforming use. It's like you snap a picture. Here's what I got. Here's what I can keep. You have to stay within that little picture frame there, but as long as I stay within that I should be fine. Here I don't believe that, you know, obviously this part of the operation has gotten bigger and I don't think there's too much debate about

that although they disagree. But in the pre-existing use right here, I still think that even if they were allowed to have heavy equipment storage here, that would be fine. I don't think the city has a problem with that. Again, has to be stored indoors it's got some other issues but I mean it's a pretty good size business, they've kind of grown. But the impact of the area I think is too great for the amount of business that they have.

So in regard to your question, I think that the open storage thing may be partially resolved but I'd have to see a plan. I don't have a specific remedy yet for that. That could be a possible thing, that again they may be able to cure without asking the city council but it has to make sense and then there's still the other two.

Mr. Sergi: That's up to your interpretation or the City Council's interpretation.

Mr. Forte: It has to meet the criteria and again I would ask the Law Department for advice on how to interpret zoning. It's a big zoning ordinance, you know what I mean. I don't want to make my own rules. I want to get it right. That's all I want to do is get it right so I would seek their expertise on the wording. I still have to make the decision. It's still in my authority in the zoning ordinance but I would ask them to help me understand the words.

The truck storage and the contracting equipment, I think, #2, that violation, again a special permit. I don't see how they could fit all of those trucks in that one little garage even if you would determine there was a pre-existing nonconforming use. They can't store it outside. That's how I understand the zoning ordinance in that zone.

Mr. Sergi: Would that be permitted by providing a criteria that says they can only store two trucks there or three trucks?



Mr. Forte: Well again, if they could have established what was there back in 66 right up to 86 or 87, then we could say okay. They were always parked outside and they were always there and this is what they're allowed and that's it. There was a similar property you know in the city where there was actually a ZBA determination and they were allowed to have ten trucks. It was actually a ZBA decision in 56 and they were in compliance within that or lower of that impact of what they had. But again, there's no evidence.

So the heavy trucking, again, has to be allowed the special permit. And the dumping of soil, sand, loam and gravel, again, I don't disagree with the Attorney that it is a product. But it's a dynamic product. Most stored products don't require heavy machinery to deliver them. And this is where the disconnect is.

You can have, basically what it says, open storage, out of doors, you know, front ten line, ten feet of the building, in an enclosed area after hours. There's a whole bunch of criteria but it doesn't specifically map out landscape materials and I think this is why it can't be cured without a special permit because they can regulate such materials as to what size the piles can be. I mean I can permit some of my safety concerns. We can permit that. We can make sure the blocks are connected properly. There's not too much lateral force. You know, we had that whole argument in the beginning. We can solve all that, you know what I mean. Most of these problems can be resolved but the operation in and of itself, my belief is that it needs a special permit because of the dynamics of the operation. There is nothing in the ordinance that will allow us to issue this permit as of right and my goal is to issue a certificate of occupancy for the use of the land and the buildings which is what I am supposed to do. So essentially that's where I stand on this but I have no feeling about it either way.

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

**Mr. Hickernell: No.**

**Mrs. Rando: Ms. Gelineau?**

**Ms. Gelineau: No.**

**Mrs. Rando: Ms. Hankins?**

**Ms. Hankins: When you first came before us and you were talking about that you were driving by and saw trucks coming out of it. Do any of the remedies that you brought forth with the Cardillo's actually affect that? Are they going to be in a better position at the end of this related to your initial concern?**

**Mr. Forte: The building permit that I can issue for the site, for the structures and for some of the other things will not cure the simple busyness of the operation. I know it's a very busy area. I'm not going down there inspecting all the time but I do drive by now and then and I do see that the operation is as busy as ever. I don't know that it's going to cure that. The fact that if the special permit was issued for this and there were certain safety precautions in place, again my biggest concern was safety. You know the fact that they may need alarms on like gates that swing in and out or maybe trucks can only deliver a certain time of the day, you know what I mean, maybe a certain size truck. It can't be delivered more than twenty-five feet or something like that. Those are all the things that can be looked for public hearing and through regulation. But I don't believe that any of the permits that I can issue will solve any of the operational problems there. It will solve the structural issues. It will solve the dimensional issues. It will solve the drainage issues but it will not resolve some of the rest.**

**Ms. Hankins:** You mentioned that you will agree upon 3, 5 and 6 being all set for them. Violation #1, if they present the plans would that satisfy you? Do we knock that one off too?

**Mr. Forte:** I think we still disagree about the open storage, whether it can be openly displayed during business hours or not. We're still kind of figuring that out. Does it have to be covered at night along with a fence being closed. Does the fence have to close during the times when there's no deliveries. Say it's eleven o'clock and all the traffic has kind of sizzled out? Does the gate have to be closed? Is there an alarm on the gate? So if I issue a building permit for the structure, the walls, they combine the logs, they take care of drainage, it still doesn't sanction the use. In other words, it still has to be a permitted use. So I could issue the building permit conditionally that the only thing there is going to be fences retaining walls and drains. I could issue them that permit with stipulations but it still not going to cure the whole thing. So there would have to be some kind of mechanism in place for the open storage. I don't believe that we are going to get to that. I think that's one of the things that we'll probably need to decide because we don't agree on number one.

**Ms. Hankins:** Okay, I guess I'm still confused as to what you agree on. Let's say there's a fence that's twenty-four hours a day. There's a number of concerns with the open storage so that to me would address the screening. There needs to be a ten foot, there's ten feet there, right?

**Mr. Forte:** Ten feet, right from line. There's no buildings there but it's ten feet from the property line.

**Ms. Hankins:** So then would your only concern then be the issue of what he defines whether or not it's enclosed?

**Mr. Forte:** It says open storage is not allowed in any zone. It's a, no, right across the board. So it would somehow have to be covered. That's why we don't agree on #1, so again that's probably a decision you're going to have to make.

**Ms. Hankins:** I guess what I'm getting at is the issues with the enclosed. What sort of, I can picture in my head - -

**Mr. Forte:** Ya, screened from view.

**Ms. Hankins:** They have it three quarters of the way from what I can see from the street. If they had something on top?

**Mr. Forte:** I don't believe that screening from view is going to take care of the whole thing.

**Ms. Hankins:** No, I'm sorry. I didn't mean screened from view. The enclosed, if they have sort of a lid on the top of the bin?

**Mr. Forte:** Right. So again we had talked about that and I still don't know how that's going to be resolved. They haven't proposed anything to me yet. There is a chance they could cure it. But again, because open storage is not allowed in any zone, without a definitive plan, saying, hey, we're going to put doors on this thing; we're going to put a roof on it and we're going to fold it up at the end of the day. Then I can say that it's adequately stored in an enclosed area. That's really what the ordinance says. It has to be stored in an enclosed area. That's where there's three or four criteria on this. That's why it's not that easy. It's not that simple, you know. So I don't know if I answered your question or not. I can't help you make that decision but all I can do is give you what I think is the law. And the answer to that is I really don't have one which is why we are here.

**Mrs. Rando:** I would like to ask you your opinion on safety. You have so many different entrances and exits. You have the liquor store that's almost like almost a turn around, that you can drive in one side and out the other.

(Mr. Forte went before the plan to go over the entrances and exits.)

**Mrs. Rando:** And then you have the trucks coming in and out and then there's two egresses for the trucks coming in and out, too. One is rather straight and one is if you are taking a left. And then you have the gas station right across the street and you have the restaurant across the street from that and then you have the shopping plaza entrance on the other side. Now I've seen a couple of huge trucks backing in and stopping traffic and the whole intersection is at a stoppage. So I'm wondering what your opinion is on safety as far as that with people walking past. Can that be rectified?

**Mr. Forte:** So without giving any sharp opinions, because basically, respectfully, Madam Chair, I don't want to opine about something that I like or don't like but I feel as though a special permit could remedy a good portion of that given the fact that the entrance and exit through this property is, I know there's a curb at one, it looks like small trucks can go in - - -

(Mr. Cardillo interrupted.)

**Mrs. Rando:** If you're going to speak you're going to have to come up to the microphone.

**Anthony Cardillo, Jr.,** We changed it. Nobody comes in Dion's parking lot.

**Mrs. Rando:** Is that were you put the antique car there?

**Mr. Cardillo:** That's Peter's antique car. Yes, that's where the antique car is.

(Mr. Cardillo went over the plan to show where everybody enters and exits.)

**Mr. Cardillo:** There's one way in and one way out.

For two weeks we put people there. Now, everybody knows.

**Mrs. Rando:** Which way are they supposed to come out?

(Mr. Cardillo went back to the plan.)

**Mr. Cardillo:** They have a lot of visibility. They can see left, they can see right. They've got a street. They got a light right in front of them and it all seems to work out pretty good. It works out good for us too because now we don't have anybody coming in saying what do I do now? Everybody knows.

**Mrs. Rando:** So the one that goes on the straight is no longer being used.

**Mr. Cardillo:** They are not coming in this way. You might get some random guy that doesn't know the layout but 90% of the people - - -

**Mrs. Rando:** No, I saw a truck coming out exactly where you explained today.

**Mr. Cardillo:** I have just one simple question. Since we've been there out front for so long, like I said, my father bought this is 66, we went in there. Tony Creonte was the building inspector when we bought there. All industrial land. It was a by right. We were told it's a by right situation. We've been in there since the 60's. Does that mean that this city will not allow any heavy equipment? How do you determine that it wasn't an allowable use because we were looking for the list? Don't you think that the building

inspector at the time had a good handle on what was going on. That's how I feel. I couldn't understand if we're not from the sixties, we're not allowed to use heavy equipment where do you stop? What do you do, do you close the whole city? Where do you go from there?

Covered use: Somebody better tell Ideal, Joe Burgoyne, that he would have to put a roof on that whole place because he's got all sorts of outdoor storage. I can understand, like you were talking, outdoor storage. What is it? They want to screen it. I can understand it. We've been working with Bill. So far it's been very good. If you want us to screen it we'll screen it and put gates there. But I don't understand, if outdoor storage is not allowed, somebody better tell Home Depot to get those grilles out of their front yard. Shaw's has flowers all over the sidewalk. What would you do? Would you close off the Shaws parking lot because they have flowers and then have somebody out there. When a car wanted to come in, you would open the gate, car goes in, you close the gate. How does that work? I can see where you want to close it off. You want to screen it at night, we pull the gates, something to that affect. But how else would you do it?

Who else would be affected with these interpretations? Thank you.

Mrs. Rando: Mr. Forte, do you want to answer?

Mr. Forte: I just had a question generally. Do all trucks come through here, the eighteen wheelers and everything?

Mr. Cardillo: So far everybody has been coming through there.

Mr. Forte: That's the only question I had, Madam Chair. I wasn't sure. But again, I have not been observing the site, I just happened to drive by and notice. Again, I don't

have any other further comments but if there are any other questions from the board I can answer?

**Mr. Sergi:** Can you respond to the Home Depot comment of the open storage that Home Depot has in the parking lot?

**Mr. Forte:** We are plagued with the problem of open storage. It's everywhere. Unfortunately I happened to notice this. This brought my attention because of the dynamics of where it was; how much activity was coming out of there and the level of, you know again, what I felt was a condition that was dangerous. So, again it doesn't mean that there aren't violations throughout the city and I would agree with Tony's summation on that but I will say this is that just for a matter of public record there is currently a changed zoning ordinance that is now for public comment and I would encourage anybody in here or anybody watching tonight to please weigh in on it because the building departments were going through it and we are trying to make some changes that make more sense for the city to adjust to the times. You know we still have things in there like millinery and all kinds of stuff that probably doesn't exist anymore, so we would like to get the zoning ordinance more current. You know, I think that the Ordinance and Rules Committee would love to hear from people for a sensible change. Things that make sense for the city because we are who we are and I'm not going to go and flip the whole city upside down, but you know, again, when I see a violation it's up to me to correct it and sometimes I have that unfortunate task but that's what I'm hired for. But I would agree that we need some better wording for some of this stuff.

**Mrs. Rando:** Storage in enclosed areas is one thing that we need clear. What does exactly an enclosed area mean and as you say there's no exact definition?

**Mr. Hickernell:** I have a question for both of them.



So you sort of resolved three of them but you're not actually withdrawing them. I don't see how we cannot rule anyway unless you've got an agreement and you are withdrawing your appeals. So what's the status of that legally speaking?

Mr. Forte: May I give my opinion on that?

Mr. Hickernell: I'd like to hear from both of you.

Mr. Forte: In my opinion, he can withdraw three and you can make the decision on the other three. You can uphold the entire notice of violation or you can deny the entire notice of violation.

Mr. Hickernell: I know what we can do in that respect but you guys have come to an agreement of some kind for three of them. I don't think any of us want to mess up a reasonable agreement. But legally, if you haven't withdrawn it, I think we have to rule, so what's going on here?

Mr. Connors: So I withdraw those three and that's based on the fact that I have an agreement with the building inspector that I've submitted a plan to him and he's accepted that. And we've contemplated putting a drainage system where actually I'll put in and then we're going to get permits. So that will resolve three of them because there's setback issues and drainage issues which can be cured in their by right permit as he says. So the issue remains the uses which is still remaining.

So I would say, if I may, Madam Chair, respond to Mr. Forte at this time. The definition of open storage is the one thing we haven't been able to agree on, if you are going to store goods out of doors after business hours you have to enclose it. That means a fence. Because my definition of out of doors means outside, not inside. So it's an enclosure. I put it in my original brief. An enclosure according to the dictionary is to fence in. So that I

think will resolve the issue of after business hours, an eight foot fence and a screen and a screen all the way around the back. So that really, the one kind of wrinkle there we couldn't agree on in that because it talks about screening from residential properties but I think it is for the most part. But during the day if we have these doors open, is that a violation of the ordinance? And I would suggest we have an ongoing business and for the most excluding except for the entrance and the exit then it's not a violation and then if we then at night and after business hours roll up the fences and screen it up so you can't see anything and I think it complies with the ordinance.

Mr. Sergi: That's I think the crux of the issue here because that's your interpretation. He has a different interpretation. He finds that it should be covered and closed completely and you're saying that the enclosure - - - It makes sense to me by the way. So is there any other cases that you can refer to. This can't be an issue that - this can't be the first time that this issue has been looked at. I mean, there has to be some studies or some materials you can refer to as to what is the intent of that code?

Mr. Connors: Anthony just pointed out the distinction between the covered and an enclosure and if it says covered, it says covered. This doesn't say covered. This section says enclosed but I think the definition itself, it says if you are going to store materials out of doors and - - -

Mr. Sergi: I agree with you counsellor.

Mr. Connors: And I don't think the building inspector really disagreed with that. I think what we disagree on is do I have to enclose it during the day too because it doesn't say that explicitly.

**Mr. Sergi:** Well I think he's looking for a further regulation, that he's saying the sound of the gate as it opens and closes or the hours of trucks going in and out which a special permit I guess would- - -

**Mr. Connors:** Right, because the zoning code doesn't necessarily address those issues in the context of the definition of open storage. It says It's got to be ten feet from the side. It says screened from public and private views and residences and its got to be enclosed at night.

The other issue, I think, is the pre-existing nonconforming use and I provided a copy of the 64 zoning code and it specifically states industrial use and articulates on page 186.37. Within any industrial district no building, structure or land shall be used except for the following uses: and then it listed in business or commercial use, gas works, electric, any other purpose not herein expressly prohibited.

And then the next section says, Prohibited Uses and that articulates what's prohibited. Storage of heavy trucks is not prohibited. Therefore it's permitted. I don't think there's any other way to read it. That's what it says so it's in plain reading of the ordinance from 1964. It's not expressly prohibited and therefore it's a permitted use.

So, and aside from that, I do think we have made the connection between the documents and the affidavits that, ya they admit that they never maintained their office. The business office was always out of their residence, but their trucks were maintained at 105-107 River Street and they have owned the property since the sixties. I've given you Affidavits that say that many people that have witnessed the activity there and pictures that have established that the activities have gone on there. Mr. Forte says he doesn't deny that it went on but I don't have a piece of paper that says it went on. Well, it's not a perfect world but I think a picture is worth a thousand words. I think that the invoices that we have that state that they are in the excavation business and their Affidavits state that they kept bringing materials here. I think that that makes the connection. Here are some other

records that go back into the sixties. They just show these are notices and they never had their name on it but it's a notice from the state that says you are running gas facilities down there. You need a license. So these are documents that authenticate the fact that they were actually running trucks at 105-107 River as well as 194 Aft Willow Street and so I do believe that we made the factual connection and the paperwork connection. We don't necessarily have to have a perfect document. So that's kind of my response on those three issues.

And there's one more item. The issue of trucks, the number of trucks the Cardillo's have maintained ten trucks.

(Mr. Connors went over the plan to show where the trucks are parked.)

There are only ten to twelve pieces of equipment that they can put on the lot. So there is a case Pauley's vs. the Board of Appeals of Bridgewater that talks about if you're expanding a nonconforming use, if you go beyond a certain extent then you're no longer at the same use. You're a different use. You've expanded it dramatically. And it's not because you went from one to four trucks to five, six or seven but they articulated a particular test in there and it says, this is the Powers vs. the Building Inspector of Barnstable, 1972. The issues are recent cases that have emphasized three tests for determining whether the current use of the property fits with the exemption granted to the nonconforming use. One, whether the use reflects the nature and purpose of the use prevailing when the zoning by law took affect; two, whether there is a difference in the quality or character as well as the degree of the use and three, whether the current use is different in kind on its effect on the neighborhood.

I would say on that test maintaining the trucks there whether its five, six, seven or eight trucks is consistent with the nature of the use that's been there since 1966. That they are running an excavation business there on the lot. They built the garage in the 70's and they

expanded it in 1980 and they continued and maintained it. They are a small shop and a local business. They haven't expanded it from 10,000 square feet to five acres. That's a small lot and they maintain a small business and they run between ten to twelve pieces of equipment on the property and I would say that that's consistent with what's been there since 1966.

**Ms. Hankins:** Do you think on issue #2, that you would need a special permit anyway, though. You think it's a pre-existing so, therefore, the five ton limit is pre-existing and - - -

**Mr. Connors:** Yes. I still think the building inspector, I mean I think he thinks I need a special permit on that but he also thinks I need a special permit to put the materials in. They're two different issues.

**Ms. Hankins:** I was seeing the special permit for five tons here. There's a rule for over five tons.

**Mr. Connors:** Right. So the pictures of the trucks we have in those pictures that I submitted, they're more than five tons. I think anything pretty much other than a pick up truck or a box truck, an eighteen wheeler is a plus five times. It also talks about three tons earth moving equipment. So they have backhoes. So opposition is that it's preexisting legal use from since 1966 on this lot here and this lot over here (referring to the plan). We don't make that finding on the middle lot because they purchased it in 2002. So we can't.

**Mrs. Rando:** Didn't the building inspector mention that he thought it was nonconforming?

**Mr. Connors:** He did and I disagree with him. But it was a permitted use in the sixties up until 1987? We have testimony to that and I think the book says that as well.

Another thing is the truck terminal, If we cure that which I think we can then what's a truck terminal? It's the operation of trucks moving goods in and out of the property. That's a by right use.

So that's my presentation.

Mrs. Rando: Are there any questions of Attorney Connors?

Mr. Sergi: So Attorney Connors it seems like you've had discussions with the building inspector. You guys know where you stand on each of these violations and despite him saying tonight that you could cure the violations of one, two and four, with certain regulations, and certain rules and definitions, I guess he would like to get a definition for himself, on what's enclosed means. Your feeling is that you can't, despite these discussions, there isn't anything you would recommend at this point that he could agree with that would resolve the violations one, two and four.

Mr. Connors: No, I don't think so. I think especially two. They have a fundamental difference of opinion on whether or not it's legal or pre-existing. I think that's the crux of the case for the Cardillo's. They have been there since 1966. If they lose on that claim, that's significant to them, you know. And we have a fundamental difference of opinion on with the building inspector and there's no way we can do that. I mean he would love for us to go to the city council and get a special permit which would be great but I can't guarantee that I can get a special permit from the city council. So if I say, okay we'll go to city council, what if they don't give it to us. Now they have been in business since 1966 and they have no place to go.

Mr. Hickernell: So the two of the three lots that you contend are grandfathered are 105-107 and 105R?

**Mr. Connors: 194 Aft.**

**Mr. Hickernell: 105R you do not contend then.**

**Mr. Connors: No.**

**Mrs. Rando: That was purchased in 2001?**

**Mr. Connors: 2002. And that's the actual railroad track that was coming in. So when B&M discontinued that line they sold out pieces of it and they purchased it.**

**Mr. Hickernell: So can you just clarify that? You don't park in either one of those other two, just the 105, 107?**

**(Mr. Connors went over the plan to show the board where they parked.)**

**Mrs. Rando: Is there anyone in the audience who has not come up to the microphone and would like to be in favor of this?**

**Ronald Cincotta, 4 Leslie Road, Waltham: Back in 1971 when I started out in business in the early 70's, I rented right next door from the Cardillo's six garages that were up against his 105 River Street. I grew up on River Street all my entire life. I rented six garages from Fiorello Fuel. I had a heavy truck in there all the time. I had bins there but I sold sand, I sold salt, any kind of materials. Actually I sold some to the Cardillo's back then.**

**Across the street there used to be the old bleachery and it burned down. To the right of the bleachery there used to be Mutrie. It was a big massive trucking terminal on the other side of the river of Calvary Street. All we had from Cardillo's all the way to**

Seyon Street used to be Fiorello Fuel. They had tanks all night long coming in without any restrictions or anything. And he had it for an oil terminal I think for over fifty years until he sold it and he put the mall in. So, it's been heavy construction on River Street from the day that I was born down there. And then I moved to Lexington Street and I've had plenty of property down there and I had to be in compliance also with heavy construction equipment.

Right now how much pressure for the City of Waltham to go out and you guys would be here every night trying to change the complete ordinance around. I feel at this time, that this board should let the Cardillo's continue to operate their business because it would be a hardship if they couldn't.

Mr. Hickernell: So since you were there for at least some of the relevant time, what do you remember about the use of those lots for heavy trucks and heavy equipment and I am particularly interested in the one in back there.

Mr. Cincotta: It was always heavy construction stuff parked there. I was there when the Cardillo's built that big construction garage. Those were big doors to put heavy equipment into the building. It was an oversized building. It wasn't a garage to store a two car garage. That's for sure and it was just an oversized construction company that he operated out of. He had bulldozers there. You've seen some of the pictures back in the 70's. He had all kinds of low beds. He had big tractor trailer low bed, a whole bunch of other dump trucks in the back along the railroad stuff. Fiorello fuel, I think, parked some old tankers over there because the trains had stopped working for a while when they had shut down that section of the track. Right behind those buildings where they tore down behind the Raytheon, I used to plow a bunch of it. They had bins just like the Cardillo's did with sand and salt and gravel and all their busted up concrete and stuff that Raytheon used to have. That was all open space that nobody ever bothered them. Right now I can see it happening with the building commissioner. He is as busy as can be chasing all kinds



of trucks without any cover over them at night and there's nothing you can do. If not, the City of Waltham is in violation just with all their trucks that are outside and I don't live around here. So, it's not just the Cardillo's you know. But I think at this time I would like to see you grant them as much as you can to help them out so they can continue their business. Thank you.

**Mrs. Rando:** Anyone else?

Is there anyone in opposition? Seeing none, is there anyone seeking information? Seeing none, what is the wish of the board? Do they want to continue. Do they want an opinion from the Law Department. Do they need more time to read everything over and dissect it? What is the wish?

We have a question as to the intent of the code the enclosed area for storage. The pre-existing nonconforming use since 1967-1969.

**Ms. Gelineau:** So, we are just voting on the three issues whether or not we are upholding or we are appealing the decision of the building inspector?

**Mr. Hickernell:** Right and we just break it down further by lot if we think that the lots are affected differently. I guess we have to have a motion to allow the withdrawal of the three that they have agreed on and I don't think that that would be a problem.

**Mrs. Rando:** So we can vote on those three.

**Mr. Hickernell:** I will make a motion that we allow the petitioner to withdraw the appeals of alleged violations 3, 5 and 6.

**Mr. Sergi** seconded the motion.

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: All right. On the other numbers? You can take them one by one or - -**

**Ms. Hankins: Well just a comment on violation #1, I feel a lot more comfortable ruling on that if we have to. We don't have anything at least visual with a plan for the screening, so I certainly don't want to rule against the Cardillo's but it would have been nice have it.**

**(Mr. Connors went before the board to go over a plan to talk about the screening.)**

**Mr. Hickernell: But at the time the citation was issued even you would not argue that it was enclosed.**

**Mrs. Rando: But this screen will only be at night. It's not going to be during the day. So it's still going to be open to the public during the day.**

**Mr. Sergi: Would there be a possibility of putting a warning system that when a truck is exiting. There would be a sound of some sort that would indicate that the truck is exiting so that the public knows.**

**Mr. Connors: We absolutely would be agreeable to that.**

**Mrs. Rando: Now does the board agree that it's nonconforming and not noncomplying?**

**Mr. Hickernell:** For which one?

**Mrs. Rando:** For the lot that he is talking about 105. That they are running a business out of there but they have been using it since 1966 or 67.

**Mr. Hickernell:** I welcome hearing everybody else's thoughts. My thought is that the Cardillo's and their attorney have done an excellent job of providing evidence that the lot at 105 and 107 River Street is grandfathered. They are not alleging the use for 105R, so that's not really an issue and west of its about 194 Aft Willow and we'd welcome to hear again. You know, there's mention of a couple of Affidavits but what is your best evidence that that's been continually used since it was legal without a special permit?

**Mr. Connors:** There was a document that we gave you from 1987 written by Mr. Blenkhorn, the son of the owner of the property. He stated that and I think I submitted it to you but he stated that this property was leased to the Cardillo's for a time and during that time he leased it for the purposes of maintaining and keeping heavy trucks. So, one, that's someone that owned the property his family owned the property. Second of all I had a note here from the file that the building department said previously Paul Poirier said parking was okay. Admittedly we don't have a dearth of documents to document that but that's what I have.

**Mr. Hickernell:** When was the special permit required? It wasn't grandfathered then. It kind of matters.

**Mr. Connors:** Yes, 1988.

**Mr. Forte:** Just as a point of information. Just when you're considering violation #2, you have two different parts. If the pre-existing use for the lot on 105 and 107 River Street is given giving them the pre-existing use at 194 Aft., I think that maybe you may

want to just as a suggestion, you may want to consider splitting the decision up. You know because there's three parcels combined, you know giving a blessing to one doesn't mean you're giving a blessing to the whole thing.

Just as a point of information. I just wanted to clear that. I'm not opposed to anything else. I just wanted to point that out that there three parcels involved with that violation.

Mrs. Rando: Again, what is the wish of the board?

Mr. Connors: Councillor Mandile brought up the issue in 1995. And that's when I went out and I got the letter in 87 and that's why I went down to the building department. So that was how they satisfied the building in 1995 with that letter and the other independent investigation of the building department.

Anthony Cardillo. III. Basically what happened is was first Mr. Mandile went after 105-107. It got thrown out of the water. This has been there from 66. We got a building, we got a permit. So now at the time we didn't own the railroad tracks yet. They had owned 194 and that's where the push was to try to get my father and my grandfather out of 194. That's what my grandfather references in his notes. That's what they were going after. So they told my father and my grandfather, they said you have to prove that you were here before 1988 and then if you do that, we're all set. So they had been renting it and parking there. Before they rented the guy like Mr. Cincotta said, people had always parked in that area so they produced a letter. It's in my grandfather's notes from 95 and that at the time satisfied the building department and that was it, we were done. From there they moved on to the gas station across the street from us and they tried to stop Pro-tech. There was a big thing on Pro-tech delivering fuel there at night. It was Mr. Mandile who had a little thing about the area and he didn't feel like heavy trucks should be there. And our argument all along, just like Mr. Cincotta said, this has always been industrial. Fiorello had a fuel

terminal there. Mr. Cincotta rented a garage from Fiorello back in the 70's and this has always been heavy industrial. The gas station rented spaces out to guys who owned trucks and they use to park there before it was Petro-Plus. So I guess, again, I am trying to drive the fact that our answer to the building department was that letter from Mr. Blenkhorn saying that we were there in 1987 and that's what made everything go away. And I think the next time that this gets brought up as you can see was 2010. So, I mean, fifteen years go by without anything brought up on 1994.

Mr. Hickernell: Well, you can see why, without a record in the building department why our third building inspector, it's not good practice to say that you guys are okay without a record of it and that you have to come back here and you have to dig up a letter from ten years ago. I know you are not issuing a letter to yourself but at the time they had said I've looked at this, it's okay, but we don't have that.

Mr. Cardillo: Bob Como in his affidavit said it was part of the investigation and produced that legal paper.

Mr. Hickernell: Rather than his affidavit this year, I'd rather have a letter from back then but I know that this is the best you can give us.

Mrs. Rando: Attorney Connors, did they need a building permit to put up those stations or whatever they call them where you have the gravel and the sand and whatever?

(Mr. Connors went before the board.)

Mrs. Rando: So you didn't have a permit.

Ms. Hankins: Why was it without a permit?

**Mr. Connors:** Because at the time until this building inspector went in didn't think I needed one. They are all around the city and no one has pulled a permit for them anywhere. So now he's asked us to get a permit and we have agreed to do it.

**Mrs. Rando:** Do the Cardillo's have any idea how many heavy duty trucks come out of there in the course of a day?

**Mr. Connors:** I don't know. I could ask then that question but I would say that the issue is the storage of heavy trucks from 10P.M. to 6A.M., not who comes in and comes out. Its what they keep in there.

**Mrs. Rando:** No, I'm just thinking of safety. I'm sure it's seasonal too.

**Mr. Connors:** In the wintertime it probably almost closes except for snowstorms and plowing.

**Mr. Sergi:** I think the warning signal system that they have agreed to put in, I think would help with that. I've seen it in many places. You see it at the Arby Restaurant when you come out of that parking lot. There's a warning signal before the cars cross over the sidewalk. I think that would help.

Would you be agreeable to a maximum number of trucks that you can park in this location and you would say there would be no more that X amount of trucks parked there.

**Mr. Cardillo:** We are on a certain size lot. We can only put so many trucks on the property. Our business hasn't grown to the amount that we could have a thousand employees. Only so many trucks can fit on the lot. Ten to twelve trucks.

**Mr. Sergi:** That's my question.

**Mr. Hickernell:** I am ready to got on violation 2, I think but not on 1 and 4 yet.

**Mrs. Rando:** All right. Mr. Hickernell is ready to vote on violation #2 but not on 1 and 4. How does the board feel? Are they ready on Violation 2?

**Ms. Hankins:** I'm ready on two and four not one.

**Mr. Sergi:** I am okay with Violation 1. But Violation 4 I have to think about. Violation 3 I think we could split it and I would say that all the others are fine with me.

**Mrs. Rando:** Ms. Gelineau?

**Ms. Gelineau:** I agree with Mark. I think I'm fine with two.

**Mrs. Rando:** Not on 4?

**Ms. Gelineau:** I'll do whatever anyone else wants to do. I'm okay either way.

**Mrs. Rando:** Ms. Hankins?

**Ms. Hankins:** I'm ready on two and four. As I mentioned on violation 1 that's more information on it on a plan.

**Mr. Sergi:** I am okay on violation 1. I mean I would defer to the building inspector if he wants to get further information for what an enclosed area is from the legal department as suggested I'm okay with waiting on that.

**Mrs. Rando:** All right, do we want to vote on 2?

**Mr. Hickernell: I request that we break it up by lots.**

**Mrs. Rando: All right, make your motion for Violation #2 and you want to go by lot?**

**Mr. Hickernell: By lot.**

**Mr. Hickernell: I will make a motion that we sustain the appeal of the alleged violation with respect to Lot 105-107 River Street as the evidence shows that it is grandfathered.**

**Mr. Sergi seconded the motion.**

**Mrs. Rando: On Violation #2, how do you vote?**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, no.**

**Mr. Hickernell: With respect to, I'm not sure this appeal is still alive, but with respect to the citation issued regarding 105R I make a motion that we sustain the decision of the building inspector.**

**Ms. Gelineau seconded the motion.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**



**Mr. Hickernell:** With respect to the third parcel, 194 Aft Willow I make a motion that we sustain the appeal.

**Ms. Hankins** seconded the motion.

**Roll call:** Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

**On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to continue this case regarding Violation #1 and #4.**

**Roll call:** Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

**All right do I have a motion to continue 2015-27 to September 13, 2016?**

**On motion of Mr. Sergi, seconded by Ms. Hankins the board voted to continue this case to September 13, 2016.**

**Roll call:** Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

**Mrs. Rando:** Do I have a motion to extend the time to act on this case to December 16, 2016.

**On motion of Ms. Gelineau, seconded by Mr. Sergi, the board voted to extend the time to act on this case until December 16, 2016.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Will the clerk please read the petition in Case No.2016-21?**

**The clerk then read the Petition of Adam J. Piccirilli in an application to amend a prior variance. Subject Matter: To amend the site plan filed in connection with case #1972-64 to demolish and construct new (2) story deck. Location and Zoning District: 195, 197-199 Hammond Street, Residence A-4 Zoning District.**

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

**Bret Francis, Esq., Scafidi Juliano, LLP, 10 Hammer Street, Waltham came forward.**

**Mr. Francis then read his brief into the record.**

**Mrs. Rando: 197-199 two family, correct?**

**Mr. Francis: Correct.**

**Mrs. Rando: So the parking plan was made because of the beauty parlor?**

**Mr. Francis: No, when they switched the beauty parlor (Mr. Francis went over the plan with the board.) I guess the original to do that going way back and every two or three years he'd have to come back to the ZBA to get it continued, get it continued and then come back again and get it continued. In 72 for whatever reason they decided they weren't going to go in the beauty business anymore. It was a variance not a special permit. It was a**

**variance to convert the use to a single family residence. As part of that you needed to have residential parking so the plan submitted that time shows the five parking spaces which was a requirement at that time.**

**So all we want to do is amend the plan. Replace that plan with this plan and then petitioners met all other requirements to get a building permit to do so.**

**Mrs. Rando: They have a huge back yard and the two decks desperately need to be done.**

**Mr. Francis: And again, you see its not enlarging actually the demolition will come with a smaller, it doesn't reach as far back to the parking lot deck. So he's not enlarging it. He's actually decreasing the size and to do so we just needed to amend this plan.**

**Mrs. Rando: I do have one question. You have a little plot that that almost looks like a retaining wall. If you're looking at the deck it's on the left.**

**(Adam Piccirilli went over the plan to show the board.)**

**Mrs. Rando: Are there any questions? I see no one in opposition. I see no one seeking information and I see one person in favor.**

**You may continue with your Proposed Findings of Fact.**

**On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to waive the reading of the Proposed Findings of Fact since it has been on file in the Law Department.**

**Mrs. Rando: You may continue with your Proposed Decision.**

**On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.**

**Mrs. Rando: Does anyone have any questions? Hearing none I am ready for a motion.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Findings of Fact as the Board's Findings of Fact.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion on the Proposed Decision?**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Decision as the Board's Decision.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: One more motion is in order.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adjourn at 9:15 P.M.**

*Berlinda Rando 7/19/16*