

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

July 26, 2016

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, July 26, 2016, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando, and members Glenna Gelineau, Mark Hickernell, Edward McCarthy, John Sergi and Michael Squillante.

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

Mrs. Rando: I would like to make a motion for a five minute recess. One of the board members, I'm sure is having a problem parking.

The board voted to take a five minute recess and reconvened at 7:05 P.M.

Mrs. Rando: Tonight we have two new cases and a one year review case.

Case 2014-32, Nila Desai, 88 Willow Street and that is for the year review; Case 2016-19, Laura and Anthony Rotolo, 113 Graymore Road and that's for a variance; Case 2016-20, 79 Pond Street, LLC., and that's an appeal from the decision of the Inspector of Buildings.

The members sitting this evening on the review and the Rotolo case are: Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Mr. McCarthy and I am Mrs. Rando.

The first action this evening is for a motion to accept the minutes of July 19, 2016.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to accept the minutes of July 19, 2016.

Mrs. Rando: Will the clerk please read the petition in Case No. 2014-32?

The clerk then read Case No. 2014-32, Petition of Nila Desai in an application for Special Permit-customary home occupation... Petitioner seeks special permit for limited cosmetology/hairdressing work on a part-time basis in a residence . Business will be limited to one chair and parking will be in private driveway. Location and Zoning District: 88 Willow Street, Residence B Zoning District.

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

Nila Desai, 88 Willow Street, Waltham came forward.

Mrs. Rando: Good evening. You were asked to come back after one year for a review. You were asked to put a fence up. Has the fence has been put up?

Ms. Desai: Yes.

Mrs. Rando: Have you re-changed the sign. There's no signs at all?

Ms. Desai: Not in the front. I put sign in the front so they would know to come in the back.

Mrs. Rando: What about the hours? Are the hours the same?

Ms. Desai: Yes.

Mrs. Rando: And, how many chairs?

Ms. Desai: One. I have a picture for fence. (Ms. Desai presented a photo to the board showing the fence.)

Mrs. Rando: I believe that she has done everything that we have asked her to do and we have had no complaints from any neighbors. So what is the wish of the board?

Is there anyone here regarding that case that would like to speak? Seeing none, is there anyone in favor, anyone against or seeking information? Seeing none, I am ready to entertain a motion to allow her to continue doing her business at Willow Street location.

On motion of Mr. McCarthy, seconded by Ms. Gelineau,

Mrs. Rando: Before we vote, how does the board feel? Do they want her back in a year or do you feel that in good faith that she should continue?

Mr. Hickernell: I am prepared to make it without further review. This is particular to the petitioner, this special permit?

Mrs. Rando: And she has done everything we have asked her to do.

All right, we have a motion and we have a second.

Roll Call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: Will the clerk please read the petition in Case No. 2016-19, Rotolo on Graymore Road.

The clerk then read the petition in Case 2015-19, of Laura and Anthony Rotolo, Trustees. Owner: Rotolo Irrevocable Trust in an application for variances - side yard setback. The locus at 113 Graymore Road consists of a single parcel of land with an existing single family residence situated thereon. The petitioner propose to construct, use and maintain an addition onto the West side of the residence. Location and Zoning District: 113 Graymore Road, Residence A-2 Zoning District.

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 presented each member of the board with a copy of his brief. Mr. Connors then read his brief into the record. He also went over the plan posted on the board showing the location of the locus and abutting properties. Photos of the property and a list of abutters in favor were also given to the board.

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

Mr. McCarthy: So why don't you just build one shed and get rid of the other? You're building a twenty by twenty anyway.

Mr. Connors: I think that's a valid question and I asked my client that. I think over the years, they just have collected a lot of things and I think their desire would be to have three, but I did speak to her about that because they may say it is a large shed, why don't

we just contain everything in one shed and be done with it. So I think that is something she would be willing to look at.

Mr. McCarthy: They are building a twenty by twenty, one story.

It's 20 x 20 but the height would be 14.1.

Mr. McCarthy: Essentially they could put some storage up the top.

Mr. Connors: They could have some rafters and some shelving on the sides.

Mr. McCarthy: What is the size of the other two sheds?

Mr. Connors: 8 x 8.

Mr. McCarthy: I think you should decrease at least one of those.

Mr. Connors: I think that's amenable.

Mrs. Rando: Attorney Connors, could you tell me how the lot next to it is different than the locus?

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

Mrs. Rando: It's the same as the petitioners, narrow at the front and wide at the back. If you're using the position of the house as kind of your hardship because the house is on the land.

Mr. Connors: And I understand your point. (Again, Mr. Connors went over the plan to show the sizes of the lots.)

Mrs. Rando: Are there any other questions?

Mr. Hickernell: I just want to say I appreciate the opportunity that the petitioner has presented me to invoke the precedence of offering two sheds, I agree with Mr. McCarthy that at least one of these sheds should go. I don't see any cause for a variance to have three as opposed to two. But in view of the petition, I also don't have a problem with the first variance you are requesting.

Mr. Connors: I don't think my petitioner has any problem with eliminating the 8 x 8 shed.

Mrs. Rando: Is there anyone in the audience that is in opposition to this?

Pat Defina: I live at 129 Graymore Road where I have lived there for forty-one years. I'm two houses down from 113, on the same side of the street. For the past twenty-six years, I have been a visiting nurse for Waltham. I can tell you that although Mr. Connors speaks of this home as a single family home, I can tell you that in a professional capacity I have been in what I would deem to be an illegal apartment on the eastern side of their home. It's a studio apartment. I have seen patients there and it's got one entrance out and one entrance in and I don't believe that to be legal. And I also know that there is an above ground pool in the back yard, and I know that there's no permit pulled for that because in building that my dry well did run through that property and when that was built my dry well kind of got blocked off and now I have water problems in my driveway.

I also have been the visiting nurse in another one of Mr. Rotolo's property at 977 Trapelo Road and I can tell you that that is made up of just multiple single rooms and double rooms (Mrs. Rando asked Ms. Delfina to stick to the petition before the board.)

My fear is, first of all, I don't think that anybody has done and had disregard for building permits and legalizing the process should be granted a variance. I am fearful that Mr. Rotolo is going to build apartments. I believe and have been told, and have seen that there appears to be apartments in their basement as well. And I believe that if we deem that prior behavior were predicted for future behavior, I think that he has in mind to build more apartments. I've lived there forty-one years and I'm kind of at a point where I'm thinking of retiring and maybe selling, and I don't want to have apartments two houses up from us and a multitude of people coming in and out. I pay taxes and I want it to stay the way it has been.

Mrs. Rando: So you're objecting to what you are seeing?
vehemently

Ms. Delfina: I am absolutely vehemently objecting.

Mrs. Rando: Because of the fear that apartments would go in.

Ms. Defina: Yes. I already know that there is an illegal apartment. I physically have been in it and I'm fearful that this will be his behavior and that there will be more apartments built on what is under the guise of a garage and a family room. I don't actually believe that that will be what actually will occur. So I will be terribly disappointed if indeed you guys were to grant this variance.

Debbie Finnerty: I live at 84 Graymore Road. I'm probably across the street and up about three or four houses. I also have lived there for forty years and it is common knowledge on the street that there are illegal apartments in there. If you go by the

driveway they are all parked early in the morning, It's been a family neighborhood which is why I have chosen to stay there all these years. I just myself invested a lot of money, got my permits like I should. I don't believe this lot is any more unique than any of the rest of ours on the street. I also have the same side setbacks that I've had to live within and I've kept to those. I recently had to put \$55,000 into the bottom of my house. I'm very concerned that that garage, that that "family room" is going to become just another person living there and I feel as though it is zoned as a single family residence and that is what it should remain and so I urge you not to increase this at all. Thank you.

Sandy Beron: I live on the West side, 121 Graymore Road. My only issue is I haven't seen any of the plans. My daughter signed the petition. She does not own the house. So I really would like to see the plans before a judgement is made. And we did get a variance for Graymore Road a few years back. We put on an in law apartment which is a single family home. I live in there. My daughter lives in the main house. So I just have not seen the plans.

Mrs. Rando: Attorney Connors will show you the plans.

Is there anyone else that is in opposition that would like to be counted or come to the microphone.

Mr. Hickernell: Madam Chair, the building inspector is here. May I ask him a question?

Bill Forte, Building Inspector came forward.

Mr. Hickernell: Mr. Forte, thank you for being here tonight. Have you made any assessment as to whether this is being used as a one family or not?

Mr. Forte: I don't recall that I have anything on my violation log or to be investigated. This is probably the first I have heard about any type of potential violation on this property. I will, upon hearing this, I will contact the owner and investigate to determine if there are any zoning or building code violations.

Mrs. Rando: Is there anyone in favor of this petition? Seeing none, is there anyone seeking information? Seeing none.

Mr. Hickernell: Madam Chair I would like to make a motion for a brief recess so that the petitioner and the abutter may discuss this.

On motion of Mr. Hickernell, seconded by Mr. McCarthy the board at 7:45 voted to have a brief recess.

At 7:50, the board reconvened.

Mr. Connors: I did talk to the neighbor. She was concerned about the lot lines and things like that. She was concerned about them building on her property. So there's a survey that was done by Mr. Bibbo here and he signed off on it and it shows that it's nine feet from the lot line. Typically when they are done with construction they need to provide you with an as-built plan that's going assert that it's nine feet off the lot line.

The other thing, I mean, is I predicated one of my arguments is the standard language is that the zoning board can only grant dimensional relief and not use variances. So I said, well it's a single family residence so, if there is a concern that they have been using it as a two family or having apartments in there, then I'm not adverse to simply adding a condition that we've represented it as a single family and it shall be used as a single family and no additional units are permitted. I think, one, the code says that; two, if you wanted to add that as a condition because that's their intent. And I think that they

are here attempting to do it the right way, get the variance and get it approved. If there's a concern that they have been using it as a two family or having apartments in there, then I'm not adverse to simply adding a condition it's represented as a single family and it shall be used as a single family and no additional units are permitted. I think, one, the code says that; two, if you wanted to add that as a condition because that's their intent. We're not adverse to adding that condition if that's a concern for the neighbors.

Mrs. Rando: I don't think that is a concern for what we are voting on tonight because I'm sure the building inspector will be on that, so I'm sure that that will be taken care of.

But as far as your hardship is concerned, I don't see anything different between that lot and the lot next to it. And just because a variance is desirable does not mean that it should be granted.

Mr. Connors: I respectfully disagree. We could build it in the back and it's additional time and money.

Mrs. Rando: That's because she wants something. I mean we can't figure the cost into a hardship.

Mr. Connors: Well I think that's an element to the statutory hardship. If the condition therefore creates a hardship and in that it's a practical hardship or a financial not just for her but for anyone, If I had to pick the house up and move it, it's a practical hardship. And I think under the statute, that's legitimate.

Mrs. Rando: I disagree completely.

Mr. McCarthy: Madam Chair, I am not ready to make a decision on this until after the building inspector does his job so I think we should postpone this.

Mrs. Rando: That's fine. Is that a motion?

Mr. Sergi: I also agree with that Madam Chair, so if he's making the motion, then I'll second it.

How does the board feel?

Mr. Hickernell: Point of parliamentary inquiry, I guess, the substance of the motion is what to postpone the case to give the building inspector the opportunity to inspect the property to make sure it's a one family?

Mr. McCarthy: Thank you for filling the blanks, yes.

Mr. Hickernell: In that case I vote yes.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: I am ready to vote but I defer to the wish of the board.

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

Mrs. Rando: How about September 20th.

On motion of Mr. McCarthy, seconded by Mr. Sergi, the board voted to continue this case to September 20th.

Mrs. Rando: Do I have a motion to continue the hundred days to act on this case to November 19th?

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to continue the hundred days to act to November 19th.

Mr. Squillante replaced Mr. Sergi for the next case.

Mrs. Rando: Will the clerk please read the petition in Case No. 2016-20?

The clerk then read Case No. 2016-20, Petition/Owner of 79 Pond Street, LLC. Nature of Application/Petition: Appeal from Decision of Inspector of Buildings. Subject Matter: Appeal of Building Inspector's decision dated May 5, 2016, concerning alleged violation of the Zoning Ordinance. The property involved consists of 2.99539 acre parcel known as 73-79 Pond Street. Location and Zoning District: 73-79 Pond Street; partially in Commercial Zoning District and in Residence C. Zoning District. Specific Relief Sought: Petitioner seeks a determination that the wrong party was cited in the May 5, 2016 Notice of Violation, thereby invalidating the notice. In the alternative, the petitioner seeks a determination that there are no violations of the Zoning Ordinance.

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

James Scanlon, Esquire: I am counsel for the petitioner with co-counsel Jack Mula.

(Mr. Scanlon submitted his memorandum to each member of the board.)

Mrs. Rando: Attorney Scanlon, when you filled out the application did you happen to notice that one of the requirements was that you send the findings of fact and the decision within two weeks?

Mr. Scanlon: Within two weeks before the hearing date? I did not at that time. I am aware of that now.

Mrs. Rando: We only received it today.

Mr. Scanlon: I submitted everything yesterday.

Mrs. Rando: At five o'clock.

Mr. Scanlon: Yes.

Mrs. Rando: 4:58 after the office was closed.
Did you expect us to go through all this information today and be ready to hear this case?

Mr. Scanlon: I think there's very little here.

Mrs. Rando: I think there's a lot from what I read.

Mr. Scanlon: I respectfully suggest there is not that much.

Mrs. Rando: I think you put this board and all these people at quite, quite a disservice for not having everything up at the law department that they could come and look at, if they wanted to, and us not to have the information to be able to make the right decision tonight. You're not a novice. You know what you are doing. You know the criteria. I find it inconsiderate and completely unprofessional and unacceptable. Most

people when they come to us and they do not have the Findings of Fact and Decision delivered earlier, we dismiss them immediately. We say, We're sorry, we are not going to hear the case tonight.

I am going to open the case tonight because of time restriction. I will let everyone in the audience speak, but I will tell you, it was done poorly; very, very poorly and very unacceptable and you know better.

Mrs. Rando: All right. I would like to hear what the people say in the audience and I am going to keep the public hearing open for the entire case unless other people want to hear what this attorney has to say. I am not prepared to compare what he says to what the building inspector said because I got the information at about ten this morning.

Mr. Scanlon: I don't think we get to that point. We don't get to the merits of the case, I believe it does't get to the merits of the building inspector's violation notices. The violation notice itself was in error and the violation notice itself said that the party was not an owner of the property and that the violation notice should be reissued against an owner of the property or party in interest. If we don't get past the notice that was given, we don't get to the merits of the nine cited violations.

Mrs. Rando: These people out here don't know that it's against the building inspector.

Mr. Scanlon: That was clear in all the original filings.

Mrs. Rando: In the petition.

Mr. Scanlon: In the petition and the documents submitted with the petition, it was clear that our contention was that the case wasn't properly cited and that the citations

should be cited against the owner of the property. The building commissioner was aware of the name of the owner of the property. In fact made an issue on an application for a demolition permit wherein the owner was misnamed by the actual owner. They used the prior name of a corporation that he owned. The building inspector wouldn't accept the application for the demolition permit on that name and was required to submit an application with the correct name.

That's Exhibit 3 to my memo, copy of a letter from the building inspector dated February 19th, which states specifically: "Please be advised that you incorrectly listed the owner of record as Aragona Realty Company LLC on the application when in fact, according to the deed recorded in Book 66584 on Page 349, the Middlesex South Registry of Deeds, the owner record for the subject property is 79 Pond Street LLC. You will need to correct this error on your application and resubmit a new one." That was February 19th.

Mr. Hickernell: Madam Chair, if I may, it sounds like the petitioner is raising a jurisdictional argument and if that's the case, I for one, would like to hear at least that part of the argument as well as the inspector's response.

Mrs. Rando: All right, I'll have the building inspector just mention what he has said about the petition being sent to the wrong person.

William Forte, Inspector of Buildings for the City of Waltham: I will contend that I did notify Mr. Jack Mula as the Principle of Aragona Realty. Mr. Mula received the notice by certified mail on May 9, 2016. I have a copy of the signed certified mail and the only thing I am going to say is that a regardless of what company was on the notice of violation, the parcel was cited correctly. The owner principle is cited correctly. The fact that it says Aragona Realty, I don't think it really has any detrimental effect on the notification of the violation of the parcel. The location and the parcel was cited properly.

The notice of violation is valid and it was issued to Vincent Mula c/o Aragona Realty who according to the Secretary of State Certificate of Organization for 79 Pond Street LLC is the company's resident agent. Moreover, the petitioner previously submitted a permit application to the building department, as Attorney Scanlon had mentioned, listing Aragona Realty as the owner of the property. We made the correction on the building permit. But Vincent Mula is the principle owner of the company, therefore, the notice and the notification is valid.

Mr. Hickernell: Can you just be very clear for the record. Do you agree that the incorrect corporation was named but contend that the correct Principle was named in February and then you feel that you made that error good and is that what I am hearing?

Mr. Forte: Yes. The owner agent is Vincent Mula period! Regardless of what the title company is, I cited the resident owner and the parcel correctly, therefore, the notice is valid.

Mr. Hickernell: And you're confident with that argument in land court?

Mr. Forte: I've been briefed by the law department that this is legal. So I don't think that this is a point of contention.

Mr. Hickernell: Well it's a point of contention, but - - -

Mr. Forte: Point of debate.

Mrs. Rando: Are there any other questions of the building inspector?

Mr. Squillante: I sort of worry if indeed this is incorrect that we'll go through this process and render some decision one way or the other and then a ruling at the land court based upon this issue. It seems like there's two things, we should ask the law department ourselves and get a written opinion from them.

Mrs. Rando: We can't because they are representing the building inspector.

Mr. Squillante: And the other is to just re-cite it with the correct corporation.

Mr. Hickernell: Probably the second possibility mentioned by Mr. Squillante, I have a question for counsel for the petitioner.

Counsellor, if the building inspector re-cites the alleged violation in the manner that you contend is accurate, are there any procedural and or timeliness errors in the case? Are you going to then move to dismiss because this is not a timely citation?

Mr. Scanlon: I assume he'd be issuing a new citation. I don't think that he'd refer back to this citation and I can't speak for the building inspector. I think he might do a reinspect and re-cite and cite the right part and clear the site of Aragona Realty LLC, Vincent A. Mula, Manager of Aragona Realty obviously.

Mr. Hickernell: Do you agree if there is a re-inspection and re-citation there will be a now procedural issue.

Mr. Scanlon: Yes.

Mr. McCarthy: Would you agree, are there violations or not?

Mr. Scanlon: Do I believe there are violations? No. On the merits? No.

Mr. McCarthy: There's quite a list there.

Mr. Scanlon: There is.

Mrs. Rando: Does anyone else have any questions of Attorney Scanlon?

Mr. McCarthy: So there's nothing on that list that you could correct?

Mr. Scanlon: That I could correct?

Mr. McCarthy: That your client could correct.

Mr. Scanlon: I think he's not in violation. I think he's got pre-existing nonconforming use rights that the building commissioner hasn't recognized.

Mr. Rando: We will not go into that.

Is there anyone in the audience that is in favor of this petition?

(The petitioner raised his hand.)

Is there anyone seeking information? The seeking information, please come.

Andrea Carrillo, 20 Washington Avenue, Waltham: I would just would like to review the documents that are in contention here because it is simply a scrivener's error. If it has the correct principle but the incorrect name of the corporation, then I agree with Mr. Hickernell that it was just a scrivener's error and should actually be dated back to the

original error. We should not be starting the clock in this instance. So I would like to review the documents.

Mrs. Rando: All right. Make sure that they get you the documents.

Michael Sullivan: 90 Pond Street, Waltham: I think there are other issues with the traffic and everything, but I have no idea of what the violations are or what the actual list of complaints are. Are we entitled to see them to see if anything impacts us or - -

Mrs. Rando: Attorney Scanlon: Do you have the sheets that you could give them?

Mr. McCarthy: Anytime you want, the law office has anything you need on any of our cases.

Mr. Sullivan: When I saw the notice of the thing, I called my representative to ask him what this was all about. I didn't realize that it was this detailed.

Mr. Hickernell: Madam Chair, I would suggest that after we hear from the other citizens present that we might want to take a break to review these documents and see if we can make more progress.

Richard Orifice, 8 Castle Street, Waltham: I live right down the street from Boston Bark and since they have moved in, I understand this meeting is on zoning and we live in that residential. A lot of retired people. I am on disability. I have PTSD, so all day long I have to hear the boom, the boom, the clang, trucks going down the wrong way on Castle Street. From what I understand from other residents they are going the wrong way down Exchange Street too. National Grid, their own trucks as well. They don't do it all the time but periodically. It's a noisy racket and it's on my nerves and many of the residents' nerves. It's decreasing the value of Ed's home.

And another issue that I have with them, it's circumstantial evidence, but we now have a rat problem in the neighborhood. And I have video and photographs of the rats. I've been there for ten years. There are residents that have been in the area for over twenty years. We've never seen a rat in the whole neighborhood before Boston Bark and Mulch moved in. Now my contention is that their previous residence was on Elm Street next to the Charles River and mulch may have inherited some rats from the river to take shelter during the winter and the rats may have been transported to our neighborhood which now live in all of our properties at the moment. And my next door neighbor, Anthony, found nine dead rats today and I have video and photographs of these rats in our back yard.

Mrs. Rando: So you're in opposition?

Mr. Orifice: I am in opposition. I want these people move. I want to see this company go someplace else.

Mrs. Rando: How long have you lived there?

Mr. Orifice: I have lived there since 2007. Never saw a rat and Artisan was a great company. They were a great neighbor. They were quiet. It was a good industry. Then they moved in and boom, boom, boom and rats and rats. There's just nothing good about it. Thank you.

Theresa Fraser, 127 Pond Street, Waltham: We have mice, rats and the trucks coming up and down the street are terrible. We hear all kinds of noises. The smell is terrible. I mean, we've never had this before. We just don't need it in that neighborhood.

Mrs. Rando: How long have you lived there, did you say?

Ms. Fraser: I've been there for about forty or fifty years.

Mrs. Rando: And it didn't happen in the neighborhood?

Ms. Fraser: Never. The company that was there before was fine. I don't know this company here just doesn't belong.

Mr. Hickernell: May I ask you, what smell in particular are you experiencing?

Ms. Fraser: Smell from the bark.

Mr. Hickernell: So mulch, bark.

Ms. Fraser: Yes it's terrible specially in this heat.

Mr. Hickernell: Well not much smell is good in this heat. I appreciate your concern.
Thank you.

Mrs. Rando: Is there anyone in opposition that would like to come and say why?

Robert Waddick, 129 Church Street, Waltham: I am the Ward 6 Councillor representing this area.

First of all, I want to start off by saying that I've known the property owner and his family for many years so I don't relish my role tonight in speaking against his interests but I must speak up for the neighborhood I represent.

Madam Chairperson, we haven't had a presentation on the merits so I don't know how far you want me to go. I thought perhaps I might briefly make some comments and reserve some more specific comments until there's been a presentation on the merits of this matter. If you're anticipating that this matter is going to be continued to another date - - -

Mrs. Rando: It is going to be continued.

Mr. Hickernell: Madam Chair, may I ask the Councillor. Sir, if you have any comments or position on the procedural issue, you could also present those?

Mr. Waddick: Well my feeling on the procedural issue is that the building inspector has indicated that he's consulted with the law department. I understand that there's an issue with respect to the law department's representation of the commissioner versus the board but perhaps if the commissioner could get a written determination from the law department to him and share it with the board, that would short circuit with the process. So I would suggest that that might be a way to expedite this. A number of the residents have come forward tonight and waited patiently.

Mrs. Rando: Could you touch on those concerns that they have?

Mr. Waddick: Yes. I just want to say that I have been a ward councillor for seventeen years. I've served split duty. I served for eight years in the nineties and I have been on the council again since 2007. For most of that time, Artisan Industries was operating its business on this site and in the seventeen years I've been representing this area of the city, I never received a complaint from any one of my constituents about the operations of Artisan Industries. And you've already heard some but you will hear from other residents tonight, I don't have to speak for them. They live in the neighborhood. They can tell you what they are experiencing. But I'm hearing many of the complaints that

you are going to hear tonight about the truck traffic, the noise, the smell. There's definitely a change in the neighborhood with respect to the operation that's taking place now.

The building inspector has identified four different areas, four different uses that require a special permit and I'm not going to go through them all but I would suggest that board member McCarthy in his questioning was getting at it. I would suggest to the board that four different uses identified as needing a special permit which hasn't been obtained, it's not even a gray area. It's not even close. Any one of those uses would require a special permit. And the whole purpose of the special permit process, as we know, the city council is the special permit granting authority with very few exceptions. This board has some special permit granting authority but the whole purpose of the special permit process is to have a public process to give the people in the area the opportunity to come forward and be heard at a public hearing. To give the special permit granting authority the opportunity to hear them; to impose conditions and safeguards to make sure that the use is not detrimental to the neighborhood. This neighborhood and this city has been denied that process.

We are here tonight in response to a zoning enforcement action of the building commissioner. We are not here tonight under a special permit process which is what should have happened I would suggest to this board. And, I'm a member of the special permit granting authority, so I'm going to be very careful with respect to what I say because it's conceivable that at some point down the road this matter will be presented to the City Council as a petition for a special permit and I want to participate in that process and I'm not going to bias myself by taking a position with respect to the uses.

My only comment tonight would be that I think it's clear that the uses as they exist are in violation of the Zoning Ordinance. They are not by right uses. They require a special permit. That is the position of the building inspector. I believe his position is well documented and supported by the evidence and I would ask this board to support the

building commissioner's position and to force the petitioner to go forward with the appropriate public process so that these uses are given a thorough vetting and this neighborhood has the opportunity to present its information to the special permit granting authority and that authority has the opportunity to impose the appropriate conditions to address the adverse or the potential adverse effects of these uses on the neighborhood.

So that's all I'm going to say tonight, Madam Chairperson and members of the board. I respect the position of the petitioner. They don't feel that they have to go through this process. I think they are wrong. I represent this neighborhood and I have heard the complaints. You're going to hear more of the complaints tonight. I think the evidence is clear that something has changed in this neighborhood.

And whatever is taking place there, based on the comments that you are going to hear from the people in the neighborhood certainly sounds like an adverse use to me and I believe it will to you. I thank you for your time.

Mr. Hickernell: Madam Chair, may I just inquire of Councillor Waddick and I know you said what you had to say but I just have a narrow question. In your view and without regard to the merits of it one way or the other, does this Zoning Board of Appeals have jurisdiction over the question of wrong-way traffic?

Mr. Waddick: I believe the question of wrong way traffic is a matter for the police department and the traffic commission. I don't believe that the Board of Appeals has any enforcement authority with respect to wrong way traffic. Perhaps in granting zoning relief a condition to a matter might indicate which way traffic is going travel from a particular site but Board Member Hickernell when you say jurisdiction with respect to wrong way traffic I guess I'm getting hung up on the word jurisdiction.

Mr. Hickernell: I think you answered the question but I know a number of the abutters and people in the neighborhood have raised concerns about the traffic and various

entrances, etc., and I wanted to know what your position was on our authority over that apart from possibly imposing conditions.

Mr. Waddick: I think that goes right to the issue of the kinds of things that are taken into consideration when a petitioner comes before a special granting authority. Traffic, parking, congestion, all of those issues are evaluated. For instance, special permits would come before the city council typically require a traffic report a traffic analysis from the traffic engineer. If this one came forward, perhaps we'd need to see that relative to the type of truck traffic that's coming and going; the frequency and size of the trucks; whether the street is suitable for that kind of truck traffic. Those are the kinds of things that I think a special permit granting authority takes into consideration. I don't believe that the Board of Appeals has special permit granting authority for the kinds of uses that are being cited by the building commissioner here.

So, my only point with respect to the whole special permit question is that was what should have been done before this use commenced on the site. There should have been a special permit process and again I reiterate the city and the neighborhood has been denied that process and here we are with the zoning enforcement action. Thank you.

Mrs. Rando: Anyone else?

Dan Delaney, 11 Pond Street, Waltham: I'm not a direct abutter. I'm not going to go over all my notes. I'm just going to say that I do support the building inspector's claims. I first contacted the building commissioner back in January soon after I saw the Bark Mulch trucks leaving down the street and heading somewhere on Pond Street, didn't really know where, but I did find the location within a few hours. I too have known the Mula family for years and I feel uncomfortable being here. But being a resident of Pond Street, I feel that it is imperative that what is transpiring at 73-79 Pond Street, the proper procedure should be done. If it's a special permit or it's through here. But the building inspector is totally

correct that what is transpiring over there. And I can only say one thing. During the zone change that happened down on Elm Street, a proponent for the zone change stated one fact. Anything would be better than Bark Mulch at the Elm Street location. He was absolutely correct. Unfortunately it ended up in our back yard. There is a use. There is a service provided by Bark Mulch. Unfortunately, it's not in that location. It needs to be in a commercial area away from residential areas. And I will say, that for your information, what you should do is go on line and go to Marbella Farms, Concord. You'll get an education of how things can maneuver over the years and I don't want to see that happen here. If it's the council we have to go to then fine, but there was a serious problem on Pond Street and as you work your way up from Lexington to Exchange to Castle, it just seems to be that something has taken over that neighborhood and it isn't the residents. So, please, help us out somewhere along the line.

Mrs. Rando: Is there anyone else that would like to speak? This is your chance to say what you are opposed to.

How many people are in opposition so I can count hands? (Seventeen people raised their hands in opposition.)

Mrs. Rando: Attorney Scanlon, I gave the building inspector and the ward councillor a chance to speak. Do you want to finish?

Jack Mula, Esquire: Thank you, my name is Jack Mula. I am co-counsel for 73-79 Pond Street LLC and I am also the brother of Vincent Mula.

Let me first apologize to the board for the late filing. I was unaware of that late filing. It's not something I would have done. I will speak to my co-counsel regarding that, though I may have played a part in that and I'll tell you why after I address Mr. Delaney and Mr. Waddick and the residents through you. I will tell you absolutely the process

should be followed without a doubt. Not being able to confer with the residents, not being able to meet with the number of people who especially are in opposition, I feel that that's wrong. Unfortunately the way the process is laid out has been something we've only been able to react to. And briefly, I will tell you that prior to purchasing the property, we sought a meeting with the building inspector about that particular parcel. We actually had discussions regarding the nonconforming use and what we would need to prove that case and remember distinctly the photograph on the wall of the building inspector is a photograph of Billy Creonte's old 1951 truck and he says, "This is better than anything. Pictures say a thousand words." So what we did is, we dealt with the employees back seventy-five years. We received an entire history of the property going back to 1929. We spoke to employees and we've gathered some four hundred pictures of which we've got twenty blown up today. And all of those pictures and all of the uses involve in heavy trucks, heavy materials, outside storage, close to a hundred employees and put it all in front of the building inspector. And he asked to come see the property. No problem, come and see the property and view the property. We consented to that. We did it on more than one occasion. No problem there at all.

Then we applied for a demolition permit because the buildings were coming down. We felt that since Artisan was moving, perhaps we could get a start on this because the buildings are making no use. There's drums of material, there's iron, there's a whole lot that no one wants in their back yard. So, what we did is we applied for a demolition permit and we were told that, sorry you have to wait because the proper party was not named. Vincent Mula is a party to four different Massachusetts corporations. He's the resident agent of all of them. We were told that if you apply for anything at the building department it best be in the legal owner of that property. So we had to re-submit the paperwork and I received also from the Law Department communications telling us that we had no standing to apply unless in fact it was the proper corporation even though Vincent Mula had applied. And so we had to resubmit all the information and we received a demolition permit. And

at that time we raised the nonconforming use and we were told that nothing in the demolition permit, as a matter of fact, it's written in the permit, nothing speaks to nonconforming use. That's something else!

We decided to bring in Mr. Scanlon and put together an entire report on nonconforming. He again met with Artisan, went down to Stoughton, met with a number of employees, obtained a number of affidavits, additional photographs, submitted them to Mr. Forte. The result of all of this, rather than come back and forth before we got into Boston Bark's doing, was violation notices. There was no process. There was no back and forth. It was violation notice. So what we had to do was we had to in fact appeal the violation notice. Knowing that this matter may end up in litigation, we felt that why don't we be on the right side of the law and just put in that in fact there's no jurisdiction to hear this matter because the proper party, the proper owner is not cited. The same principle as the demolition permit. And after a while, we starting speaking to a few neighbors and I actually left a message for the councillor letting him know there was a jurisdictional issue because I didn't want all the people showing up and not hearing this. I don't think its right they take time out of their night and come here and have to listen to a lot of legal mumble jumble. The councillor is only speaking on behalf of his residents. Mr. Delaney was artful. There should be a process. Unfortunately we were not afforded that process when we voluntarily sat with the building inspector and sought the nonconforming use. Nothing at all. As a matter of fact the violation notice says "nonconforming use notwithstanding", here you go. Here's your violation. I don't think it was the right way to handle this. I sit with the neighbors on a lot of this to be quite frank with you. This should have been an open process. This should have been back and forth. This should not have been the heavy hand of the building department.

I spent a number of years in the city law department and never did we just get hit with an invitation to come in, invite the building inspector and all of a sudden get slapped with a number of violations.

I've been here fifty-eight years. My brother's been here fifty-nine. My family has been here for over ninety years. This is not the way you do business. This is not the way I do business. So I'm just as upset as a number of the residents, the councillor, Mr. Delaney and you people probably are. I wish we didn't have to come here. But rest assured, we are fully prepared to go in front of the city council if that's where it takes us. Fully prepared to have whatever conditions; fully prepared to have a hearing on the nonconforming use. I mean, I've got over a hundred employees, affidavits, photographs, all showing what's there. When we had people wanting to develop that into things I know the neighbors don't want. I felt like, you know, perhaps we can come to some resolutions here both scientifically as it involves rat transportation as well as odors which by the way were brought up on Elm Street and taken care of with a number of neighbors. That did go through a special permit. And it was granted by the council. There are a number of conditions. There was some give and take. I look forward to that day but honestly we didn't get a chance to get there and here we are now.

I don't want to get into any of the merits because we won't have standing to an appeal because it's only the land owner has standing to bring a matter in any court in the commonwealth. Aragona Realty is not a party to this action, at all. So I think before we get into any part of the merits of that, there ought to be a decision whether to go ahead or not under Aragona because 73-79 Pond Street LLC which is listed on the deed as an exhibit in your packet has never been cited. Not any type of information has gone to that proper party. Corporation of Massachusetts stands alone. The fact that it shares resident agents does not satisfy any jurisdictional requirements for service of process.

I would love to see the memo from the law department. It's law school 101 quite frankly. I'd love to see that. I'd love to see case law on that. I think it's elementary that you need to be the proper owner of the property to be cited for zoning violations rather

than a corporation that owned property across town. I think that's a simple issue quite frankly.

That's all I have to say. Thank you very much. I will answer any questions you have.

Mrs. Rando: Thank you Attorney Mula and thank you for apologizing to this board. The reason for the two weeks is so that we could come to a decision in fact we have had some cases that have gone months and years and we don't want to see that happen.

Mr. Mula: I don't blame you. I apologize.

Secondly would you like to meet with the neighbors?

Mr. Mula: Without a doubt. We have met with a number of them but most certainly we'd love to meet with them. We've done things for the neighbors and I'm surprised that, well I shouldn't be anyway, but from helping with some of the neighbor's lawns to helping with trees to helping with other things. Everything we decided to try to help with I would gladly help them especially, you talk about rats in your yard. Goodness, gracious if we need to go over there and catch them ourselves and put something around there, we'll do it. Whatever there is, I would certainly like to attempt to take care of any of the neighbors.

Mrs. Rando: So, maybe you could pick one to be the spokesperson.

Mr. Mula: I've got a number of names, but I'll stick around after this formally ends and have an informal discussion and if they want to meet again, we'll certainly do that.

Mrs. Rando: Does anyone have anything to ask Attorney Mula?

Mr. Hickernell: Two things. One, thank you for your presentation and I would encourage you and everybody present to use the time of the continuance to work out as much of this as possible. And, second, when did the actual owner become aware of the notice of citation?

Mr. Mula: Say that again, Mark.

Mr. Hickernell: So the contention is that the wrong owner was cited and the inspector's notice of violation, when did the owner become aware of the notice of violation?

Mr. Mula: I don't think the owner became aware until the counsel informed them that there was an issue with the issuance of the citation. That was probably a matter of weeks afterwards and we decided which local counsel we would be using because I did not expect to be here quite frankly. So it was shortly after we met with a number of counsels and decided on Attorney Scanlon because of his land law expertise that he brought it up.

Mr. Hickernell: So March, 2016?

Mr. Mula: If you can tell me the notice of violation I can probably respond a little bit more intelligently.

Mr. Hickernell: Looks like its February 19th, is that correct?

Mr. Mula: So it was probably in June.

Mr. Hickernell: So that's when you say the owner became actually aware.

Mr. Mula: Yes the owner became aware when he was informed by counsel, yes.

Mr. Hickernell: Not legally noticed but actually aware.

Mr. Mula: Yes.

Mr. Hickernell: Thank you.

All right. I'll make a motion that we continue Case 2016-20 to September 27th.

Mr. McCarthy seconded the motion.

Roll call: Mr. Squillante, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: So this case will be continued to September 27th and if you would like to stay behind and speak with the attorney, that would be great.

Mr. Hickernell: Madam Chair, may I ask a point to the motion. Will the open meeting remain open?

Mrs. Rando: Yes, absolutely. We'll keep it open.

All right, I also need a motion to extend the hundred days to act on this case.

On motion of Mr. McCarthy, seconded by Mr. McCarthy the board voted to extend the hundred days to act on this case.

Roll call: Mr. Squillante, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: The hundred days will be December 12, 2016.

Mr. Forte: The reason for the continuance is to find out if the notification was done properly?

Mr. Hickernell: And also to permit us to review the briefs and give the neighbors a chance to speak to the attorney.

Mr. Forte: I will submit my briefs to the law department and they will be there for you.

Mr. McCarthy: One more question for the building inspector. Is it under your purview to notify someone to get a special permit if they have some violations of this manner?

Mr. Forte: There was discussion back in October and that was the proper way to have this permitted and I would be able to give the owner guidance on what the process is but I think the petitioners would also.

Mr. McCarthy: It would behoove us to get that process going for whatever reason.

Mr. Forte: That wouldn't be up to me that would be up to the petitioner.

Mrs. Rando: One motion is in order.

**On motion of Mr. McCarthy, seconded by Mr. Hickernell the board adjourned at
8:47 P.M.**
