

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

November 24, 2015

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, November 24, 2015, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

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

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

Mrs. Rando: I am going to ask for a motion to have a five minute recess. One of our members is stuck in traffic and should be here very shortly.

On motion of Mr. Sergi, seconded by Ms. Gelineau the board voted to have a five minute recess.

The board reconvened at 7:08 P.M.

Mrs. Rando: Tonight we have one continued case before us, Case No. 2015-09 Louis J. Antico and Anthony J. Antico, Prospect Hill Road in an Appeal of a Cease and Desist Order by the Inspector of Buildings.

The first action this evening is for a motion to accept the minutes of November 10, 2015.

On motion of Mr. Sergi, seconded by Mr. Cotton, the board voted to approve the minutes of November 10, 2015.

Mrs. Rando: Will the clerk please read the petition in Case No. 2015-09?

The clerk then read the Petition of Anthony J. and Louis J. Antico in an Appeal of a Cease and Desist Order by the Inspector of Buildings. The Petitioner seeks to overturn a Cease and Desist Order by the Inspector of Buildings concerning the existing tower and wireless communications uses located on the property. The use, structures and equipment are pre-existing non-conforming or otherwise protected from enforcement. Location and Zoning District: Prospect Hill Road, Residence A-2 Zoning District.

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

Attorney Brian S. Grossman, Anderson & Kreiger LLP, One Canal Park, Suite 200, Cambridge, MA, Counsel for Louis and Anthony Antico came forward. Mr. Grossman read a letter dated November 24, 2015, requesting the Zoning Board of Appeals to continue the hearing scheduled for this evening to a date and time convenient for the board when all necessary board members can be present.

The continuance will permit the board additional time to review the petitioners' submission dated November 16, 2015, as well as the response by counsel for the Building Commissioner received today, November 24, 2015. It will also allow petitioners time to review the Building Commissioner's response.

Mrs. Rando: Why do you want a contiuance?

Mr. Groaamn: Our submission was later than expected and that information, because of my delay, Attorney Learned's submission was today. That means we just got it today so we hope to review Attorney Learned's submission.

Mrs. Rando: Are there any questions from Board members?

Mr. Hickernell: Do you have a date in land court?

Mr. Grossman: We do in December.

Mr. Hickernell: Do you need a decision from us before then?

Mr. Grossman: We don't have to have a decision before then.

Attorney Michelle Learned, Legal Counsel for the Building Inspector came forward.

Attorney Learned : As eluded, this apparently has been stayed for a number of meetings waiting for this to be brought to its conclusion today. We continued land court case two times. Initially the cease and desist was issued in April 2015, continued to July and once again in September and now that continuance seems to skip December. Respectfully I think we have people in the City of Waltham that have a right to have zoning enforced. They have to keep coming to these hearings every so many months. We have all the information before you this evening. I understand counsel wishes to have time to respond to legal arguments. Those legal arguments will be resolved in the land court. The question before the issue of the cease and desist order is whether or not the commercial use of the locus is nonconforming or non noncomplying. That is a decision you are able to make tonight. My main point is that the argument he wishes to make are legal arguments.

The court will decide that issue. All that is here before you is a factual determination whether you agree it's a nonconforming or a noncomplying structure. That is a decision that can be resolved tonight. I urge you do that. A short continuance would be preferable and not skip December.

Mr. Grossman: Everything she submitted today has to do with legal issues not factual. That is why we spent a considerable amount of time on these legal issues. In all due respect, that is why I would ask for a continuance. This is a petition by the Antico's, Typically the petitioner gets to get the last word. The petitioner should be able to respond to the submission by the building inspector.

Mrs. Rando: Ms. Learned has made a valid point that this has come up many times.

Mr. Grossman: This is a desire to respond. We want a chance to respond. I don't think we can respond tonight. We are not trying to drag this out.

Mrs. Rando: How does the board feel?

Mr. Cotton: I don't think we have all the evidence. I think it is necessary for us to have all the information.

Ms. Gelineau: I have not had a chance to read all the information. I think we should wait.

Mr. Sergi: I was on vacation. I haven't had a chance to read the November 16th memorandum. I think I have a responsibility to read this information and not ignore it. I

would like to see a continuance of some sort so I can digest this information.

Mr. Hickernell: I read the submissions. I want to compliment counsel. It was clear and helpful. I am ready to vote tonight.

Mrs. Rando: I feel that I am ready to vote. Three of the board members have not had a chance to read it today. So I would also agree that it should be continued.

On motion of Mr. Cotton, seconded by Ms. Gelineau the board voted to continue this case.

Roll call: Mr. Sergi, yes; Mr. Hickernell, no; Ms. Gelineau, yes; Mr. Cotton, yes and Mrs. Rando, yes. The vote was four to one in favor of a continuance.

Mrs. Rando: It is going to have to be in January. I am looking at the 26th of January.

On motion of Mr. Cotton, seconded by Ms. Gelineau, the board voted to continue Case 2015-09 to January 26, 2016.

Roll call: Mr. Sergi, yes; Mr. Hickernell, no; Ms. Gelineau, yes; Mr. Cotton, yes and Mrs. Rando, yes. The vote was four to one.

Mrs. Rando: (To the audience) The continuance is basically because three of the board members haven't had a chance to go over the cases submitted.

I will now need a motion to extend the hundred days to act on this case.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board unanimously voted to

extend the time to act on this case to February 25, 2016.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Cotton, 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 7:30 P.M.

Barbara Rando, Chair
12/01/15