

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

May 1, 2018

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, May 1, 2018, 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 Marc Rudnick.

Mrs. Rando: Due to a family passing of one of our members, we had to get a substitute and he hasn't arrived yet. He's trying to get here as soon as he can. I would like to call for a fifteen minute recess.

Mr. Hickernell seconded the motion and at 7 P.M. the board recessed for fifteen minutes.

The board reconvened at 7:15 P.M.

Mrs. Rando: Tonight we have two new cases before us, Case 2018-08, Kate M. Thurman, 10 Bowdoin Avenue and that's for a special permit; Case2018-09, GJC Real Estate Investment LLC, 238-240 Calvary Street and that is for an appeal from the building inspector.

The first action this evening is to approve the minutes of April 24th.

On motion of Ms. Gelineau, seconded by Ms. Hankins, the board voted to approve the minutes of April 24, 2018.

Mrs. Rando: Will the clerk please read the petition in Case No. 2018-08?

The clerk then read the Petition of Kate M. Thurman in an application for a special permit to alter/enlarge a nonconforming residential building. Location and Zoning District: 10 Bowdoin Avenue, Residence A-4 Zoning District.

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

Attorney Deborah Sawin, 564 Main Street, Waltham came forward and submitted a copy of her brief and exhibits to each member of the board.

Ms. Sawin then read her brief into the record along with going over the exhibits, photos, abutter's plan, the site plan and a rendering of the proposed property.

Ms. Sawin: In terms of this property now having a second floor on it, there are a number of houses in the neighborhood on the smaller lots. The single lots are only forty feet wide that have a full second story, either because they were constructed that way or because they have added additions since they were constructed in 1924.

In the brief that I submitted, I identified thirty-three such properties within the area, on Hiawatha, Bowdoin Avenue, Lake Street, Sioux Avenue and Amherst Avenue on all the surrounding streets.

When I do that, I drive around and when I look at the houses, I make a list. Well, this is what my notes look like. Unfortunately, they did not translate accurately when I wrote the brief. So, in the brief is a proposed amendment because I mixed up the street addresses with the street names.

Kate did go around to the neighborhood and she talked to all the direct neighbors. Most of them she was able to after she talked to them go back and ask them sign a letter in support. So her neighbors at 13, 17, 19, 8 and 16 Bowdoin Ave, they had all signed and behind at 17 and 33 they had signed. The neighbor at 11, there were conversations which were supportive but when she went back to get her to sign, they were unable to connect to have her physically sign, but they had talked and she is in support as well.

Mrs. Rando: I'm sorry, I wasn't watching. Is the neighbor on the southern side, did she sign the petition.

Ms. Sawin: Yes.

Mrs. Rando: What's the number on the southern side?

Ms. Sawin: 8 and 16. They are the two in the back.

(Ms. Sawin submitted the list of signatures to the board for the record.)

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

(There were no questions from board members.)

Mrs. Rando: When was the porch in the front added?

Ms. Sawin: It wasn't added. It was part of the original construction.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition?

Joe Pavone, 33 Amherst Avenue, Waltham: I am an abutter and certainly I am in favor of this petition. I wish her well. Over twenty-one years ago I put a second floor on my house as well and I didn't have to go through this so I am very appreciative of that. I'm here to support her.

Mrs. Rando: Anyone else wish to speak. Raise your hands if you are in favor.

(Three people raised their hands in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none. Anyone seeking information? Seeing none. You may continue with your proposed findings of fact.

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

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

On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Decision since it has been on file in the law department.

Ms. Sawin: Madam Chairperson, regarding the decision I noticed that the surveyor did not put the garage that exists on the property is not on the site plan so to my normal language in the decision that says, "All use of the property should be in accordance with the plans submitted", I would like to add another Condition #3: The existing garage shall be allowed to remain in its current location.

Mrs. Rando: Do you intend to give these plans to the law department?

Ms. Sawin: Since the construction won't affect that building, it's on the abutters plan.

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

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

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

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

On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to adopt the Proposed Decision, as amended, to be the board's decision.

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

Mrs. Rando: Will the clerk please read the petition of GJC Real Estate Investment LLC in an appeal of the decision/order of Inspector of Buildings. Subject Matter: By letter dated February 22, 2018, the Inspector of Buildings served a Notice of Violation on the Owners of the property at 238 Calvary Street alleging certain zoning and building code violations. Location and Zoning District: 238-240 Calvary Street; Commercial Zoning District.

May we hear from the petitioner or the petitioner's representative, please?

Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham came forward and submitted a copy of his brief to each member of the board.

Mr. Connors: Tonight here with me here are the two principals, George Sarris and his wife Julie. I know it is a lengthy legal notice. I noticed that at prior times we have been able to abbreviate it to simply state that we are appealing the decision. Pam did that on her own and in this case she didn't do it. I thought she would. Sorry about that, Mr. Hickernell.

Mr. Connors read his brief into the record along with going over the exhibits attached to his brief.

Mr. Hickernell: So the dump trucks don't have anything to treat the roads?

Mr. Connors: I'm talking about in the off season. But in the winter season, do you have salt?

Mr. Sarris: I have a salter that goes with that. The city calls me and I work for the city. I go into the city yard and they load it up with salt.

Mrs. Rando: Attorney Connors, did I read in the brief that you rent the trucks out in the summer to landscapers.

Mr. Sarris: Yes. I rent the trucks out to a company out of Brockton. They do a lot of work in town. My trucks go to work for them. I simply work for them. I give them a driver and a truck.

Mr. Connors: So again, we are not handling materials. It's not a transfer station. It's not a bus terminal.

Mr. Hickernell: There's no gravel or anything like that.

Mr. Connors: No. There's no space for it. I think at one point there was a tent back there and he may have some salt. But he's going to have to take the tent down. He can't keep that tent up and I state that in my brief that he will remove the tent.

(Mr. Connors went back to reading his brief going over the violations.)

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

Ms. Hankins: Looking at the storage and the tank, there's a picture here that shows that they were storing or currently storing sand.

Mr. Connors: He's not going to do that any more because his tent cannot be permanent because it's too close to the lot line, so I told him that.

Ms. Hankins: Ok. I get that in relation to that violation. But in relation to the violation of the truck terminal or transporting materials etc., - - -

Mr. Connors to Mr. Sarris: Is that for the small pick ups. Do they pick up the sand there?

Mr. Sarris: I keep a pile there. I use it to salt my site.

Mr. Connors: So where's the principal source of your sand and salt that you use on the large dump trucks?

Mr. Sarris: I work for the city and I do some private work. If I do a private lot usually I leave a pile on site.

Mr. Connors: So I would say that he needs to remove the tent there and any materials there will be removed. Again I would say its incidental to the majority of truck work that is used. There are several large trucks that are there that are in the business of plowing in the wintertime and going off site in the the other months to move materials but materials are not maintained there,

Ms. Hankins: Also, there is a picture on there that looked like that right on Calvary Street that one of the trucks, I am presuming owned by this business, is parked on the street and they are washing it, it looks like, and there's cones in the back. Can he put cones on a public street and sort of make his own parking spot there?

Mr. Connors: I would say no. I see picture five with the cone and they have been in attempt to reserve a parking space in front of the building. But as I say, they no longer will be conducting any washing of trucks on site. So if any truck is kept on site, it's simply parked there. They don't have a right to put a cone there. It's a public street.

Mr. Hickernell: To the car wash again, is he washing his own trucks or other people's trucks?

Mr. Connors: His own trucks.

Mr. Hickernell: How is that a problem?

Mr. Connors: I would say it's incidental to his business.

Mr. Hickernell: Why would he stop washing his own trucks?

Mr. Connors: To kind of stay in business.

Mr. Hickernell: Where is he going to wash them?

Mr. Connors: He's going to find an off site place. I would say, as I said, we found it incidental to the business that he runs. He's washing his own trucks, he's not soliciting.

Mr. Hickernell: Are you washing other people's vehicles for profit?

Mr. Connors: No.

Mr. Hickernell: That's not a car wash.

Mr. Connors: No, I would say it's not a car wash but I certainly want to mitigate any issues that are there.

Mr. Hickernell: And your general objections there's no specificity with respect to, violations. Notice of violations as a site visit was made. So how is that not specific enough for the respondent to understand what the building inspector is talking about.

Mr. Connors: That was a general denial as there were many allegations in here and I was really trying to address violations at particular setbacks. So I think the only setback we are talking about is the tent. So, I mean again, it's a general denial and I put it in all my denials just to kind of protect the petitioner in the appeal. But I admit there are specifics in Sections 4 and 5 where he cites the tent. He doesn't cite how it violates but he just cites that it violates.

Mr. Hickernell: So we are not talking about the tent anymore. Your removing the tent.

Mr. Connors: We are going to take the tent down because I think he's right. We don't have a building permit for that and you can't be that close to the lot line.

Mrs. Rando: Can you tell me in 2005, you got a letter and you met with the building inspector and found that you had taken care all of the violations.

Mr. Connors: Yes.

Mrs. Rando: Has anyone come near the place, any inspector since that time? Have you received any letter from the City of Waltham?

Mr. Connors: No.

Mrs. Rando: Nothing.

Mr. Connors: No.

Mrs. Rando: Nothing until December.

Mr. Connors: February.

Mrs. Rando: Okay, thank you.

Hearing no more questions would the building inspector, Mr. Forte, like to come to the podium?

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

Mr. Forte: I am required by statute and ordinance to inspect the property that's been reported to be in violation. I am required to do an inspection and make note and determine whether or not there are violations and if there are violations, I am required to cite them.

Mrs. Rando: Could you tell me if a neighbor or someone complained?

Mr. Forte: The complaint came from constituents through a city councillor. So there was some disturbance to the neighborhood, otherwise I would say, that I have no direct contact with any constituents.

So, Mr. and Mrs. Sarris were kind enough and willing to allow me to come on the property to perform the required inspection. I did go out there on the day that the pictures are dated which would be February 12, 2018. I provided Attorney Connors and the board with a draft and I wanted to very briefly just go over some of the things that were found as part of the inspection.

Essentially there are probably two issues here that probably cannot be resolved and Attorney Connors elaborated on them a bit in that heavy trucking and contracting equipment cannot be stored. A special permit cannot be acquired for heavy trucks and contracting equipment storage without a special permit. In this particular case, it abuts a residential zone.

I would just say that in 2005, when this property was inspected, you will notice the pictures that I provided you from that time, Exhibit A-1 through A-6, I have the fortunate

circumstance of actually having the inspectors who dealt with this violation at the time. I talked to them a little bit today and we went over some of the pictures that they had.

At the time of this inspection, I believe that Mr. Sarris believes that he complied with the order at the time and maybe he was to the understanding that if he just screened it, it would all go away. I do not have confirmation from either building inspector either John Milian or Patrick Powell that an inspection was performed once again when the property was in compliance. The fence may have substantially screened some of the open storage, the fences that were there. But I know that this board has heard case before in similar instances where fencing may not be substantially enclosed.

The ordinance does speak to enclosure and especially when it talks about heavy truck storage, it talks about covered, open or covered or unenclosed. Those are the three things. If it has any one of those criteria it is open storage of heavy truck.

So I would say that I disagree with Mr. Connors' interpretation of it, however, that's for the board to decide. I know there have been similar cases where the board has upheld my notice of violation based on these exact same findings is that these trucks were substantially surrounded by a fence but they were not enclosed in a building. I think that we had arrived at a conclusion about that on at least one other case. I would not consider a heavy truck parked in a commercial building a violation nor would I think that it requires a special permit. Now that's how I consistently ruled on this and given the example of 73 Pond Street, there's a commercial building over there. Trucks are substantially housed in there. They don't do anything except leave the building in the morning. They probably get rented out, the same kind of thing. I don't consider that a constitution of a violation. I don't believe that that is a violation.

This speaks specifically to heavy trucks and truck storage equipment out of doors.

I don't have proof that it was not there between the hours of 10 PM and 6 AM. I don't drive around the city at ten at night and check these lots to see if they parked it elsewhere. I would just say that these trucks are substantially parked overnight and that fencing that's not how this board interpreted the definition some time ago.

Mrs. Rando: Are you saying that Pond Street does not have any fencing around it?

Mr. Forte: It has buildings big enough to house every single truck that's there. There is fencing there but they don't store the trucks outside. They are allowed by court agreements to park two trailers. They really just kind of stay there and this is why we are working out some issues but in that case I do not consider that trucks that are parked in a commercial building are housed, I do not consider that a need for a special permit. But that does not negate the requirement for a truck terminal.

The truck terminal definition is specific. It says three or more vehicles in combination for moving of persons or materials That's what these trucks do. They move materials. It does not say that the material has to be on site. It's very specific. It just says buildings or land used for the purposes of trucks that move materials. That's how the definition is written.

It says: Truck or private bus terminals, an area of land with or without structures. In this case it does have a primary structure with three or more buses, trucks or tractor trailers or any combination thereof are parked or otherwise used in connection with the mass transportation of persons or with receiving, shipping, transferring or other handling of items objects or materials of any kind. It's not talking about materials being transferred on the property. It's talking about vehicles associated with that type of use.

Ms. Gelineau: That's an interpretation.

Mr. Forte: No, it's not. It's literally what the zoning ordinance says. It's not an interpretation. This is the literal zoning ordinance.

Ms. Gelineau: But your interpretation that it applies to when the trucks are off site is your interpretation. That is not literally what it says.

Mr. Forte: Literally what it says: An area of land with or without structures where three or more busses, structures or in combination thereof are parked. It doesn't say where they go there and get material and move it. They are talking about where they are parked. So that's what it says. I didn't make it up. I know what you are thinking about, a truck terminal, a terminal like a warehouse like Amazon. That's a truck terminal. You pull up, load up the truck. You're out of there. That's a truck terminal. An airport terminal. What do they do? They load passengers. That's a federal definition. This is a local definition that I didn't write but this is specifically what it says. So three or more busses trucks or trailers in combination used to move materials or persons is a truck terminal.

Mr. Rudnick: Mr. Forte, could you give me an example of the storage of three trucks on a piece of property that's not a truck terminal.

Mr. Forte: By this definition?

Mr. Rudnick: No, this says: Every property in Waltham that has three trucks on it is either a legal or an illegal truck terminal.

Mr. Forte: It doesn't even give a weight on this. So, no. Three or more vehicles used in combination, that's what it says.

Mr. Rudnick: It's unclear what it says because it has some unclear language in it. Its always when these things happen to me i think, well what did the city council mean when they wrote this?

Mr. Forte: Well you can ask him. He's right here (referring to Councilor Logan).

Mr. Rudnick: I think if the city council wanted to produce an ordinance that said that you could only park three trucks on a property, it's a truck terminal. That's what the ordinance would say. Instead it goes to great length to describe the activities of the truck and they do seem pretty comprehensive, the activities of the truck. But I'm always left wondering if the city council just meant three or more trucks can't be stored unless you get a permit to be a truck terminal. Why didn't they just say that instead of saying otherwise used in connection with the mass transportation of persons or with the receiving, shipping, transferring or other handling ing of items, objects or materials of any kind packaged or unpackaged.

It seems to me and Im not a lawyer telling you what this means or that I'm a judge trying to determine what it means but it seems that they are trying to describe particular activities of trucks, not all the activities of trucks because it's much easier to say the activities of trucks. If there are three or more, it's a truck terminal. Instead they went to great length to describe these particular activities most of which sound much more like a truck terminal because trucks go out and transfer their materials and drive somewhere else and not what you do with a dump truck unless your at the place you fill and empty the dump truck. It sounds like some of the bad activity is happening at this site and is inappropriate but it's not like most of it is not happening on the site, I mean the city yard or elsewhere. The city yard is the truck terminal. So just by asserting that this says every storage of three trucks is a truck terminal, I'm not fully convinced because the city council would have just written that and gone home that night instead of describing all of these uses. So perhaps you can comment on that.

Mr. Forte: I know that they tried to broaden the language to be all encompassing when they include a definition. I have had the law department draft two similar notices of violation where the law department determined that vehicles three or more used in combination would violate or would be classified as a truck terminal. So I had assistance from the law department. You feel free to go up and ask them what they think about this and certainly, no rush, because you can go through this and be careful about it but in my past experience and in my past findings of notices of violation, this has always been a citing that if there are vehicles used in combination, it doesn't necessarily mean they've got to be in and out all day. And I am trying to be consistent when I write these notices. It's pretty similar.

Ms. Hankins: We're talking about the truck or bus terminal. Now it says in here that it's allowed in that zone by a special permit but I don't see where that's the case.

Mr. Forte: In a table of uses in a commercial zone, it is allowed but under the definition, it's ruled that within a hundred and fifty feet of a residentially zoned property it is not allowed. So that means the city council can't even approve that. Attorney Connors alluded to that.

Ms. Hankins: In terms of, you mentioned in the complaint, it seemed to me in the site plan and photos and things like that, that might not be the case but there might be drainage issues. What is your basis on that?

Mr. Forte: So in my determination, if you look at the pictures from 2005, there were storage containers, there were plows, there were substantially low pollution things probably. There weren't vehicles parked there. When you create a truck terminal. When you create vehicles parking in there especially heavy trucks, they have a tendency to drip oil more, they have grease on them, they have higher impacts. I do not have an approved

drainage plan for this particular truck terminal of heavy truck storage that would tell me that it is adequate to handle the amount of pollution levels at that property. The trucks are probably minimal. They are all fairly new, they are decent looking and in great shape. However, we don't have any proof of that. So again, if I don't have evidence in record then I have to cite a violation and it's up to the petitioner to prove that it's otherwise not a violation.

So, for that particular use, heavy truck storage and truck terminals, we do not have an adequate plan that shows that it complies with this section of the ordinance. It may have been paved; it may be pre existing; it may be nonconforming; maybe there were passenger vehicles parked there at one point; maybe there were light pick up trucks which you see in the images, but we do not have proof that it's adequately drained and it captures all the pollution. And it is within two or three hundred feet of the Charles River. So we would want to see that.

Getting back on the expansion of the business under the public way, this is basically what my finding is, is that the operation grew exponentially from 2005. It was the attestation of both building inspectors that have gone to the site back then that no heavy dump trucks existed. I don't even know if Attorney Connors had alluded to that or not but there were likely pick up trucks at the time. I think that his plowing business did exist but there were no heavy trucks or big contracting equipment at least from the images and the attestation of the building inspectors that were their at the time. So the expansion of this business went from a few trucks and some plows and maybe a few plow attachments and some plow installations to a trucking business that was not present in 2005. At least I don't have any evidence of it. And if there were trucks that were owned and purchased by Sarris Trucking, they were not in the pictures nor were they noted. There was some heavy truck violation noted in their but I am not exactly sure because I did not see them in the photos and again both building inspectors did attest that they did not see any substantially

heavy equipment at the time. So, again, it's not sanctioned by any kind of permission from the building department at least to my knowledge.

This is a detrimental impact on the neighborhood. Obviously this really was annoying somebody or was a detriment to the people who live across the street. This is obviously a disturbance. They wouldn't have reached out to their City Councillors otherwise and this is what brought my attention to it.

So violations one and three are the main crux of what the notice of violation is.

The open storage, again, Attorney Connors, I would disagree with just because you put up a fence doesn't mean that the violation is cured. I think we could refer to a case down in River Street where the property owner not only had to fence it in with a screen which he's done but so they cover the piles at night. So I would consider that enclosed.

Mr. Hickernell: That was reached through a settlement, the covering of it. That wasn't our ruling.

Mr. Forte: That was by right. So in that we did uphold the notice of violation on the open storage. I required the property owner to comply by covering the piles and screening it from view.

Mr. Hickernell: Well we didn't find it in violation. You guys resolved that issue.

Mr. Forte: You didn't have a finding on it but that's how we resolved it. So again, consistently that's how I would resolve this. Anything that basically is in open storage, now open storage, primarily the citing of this is related to the salt that's in the the tent. I don't think that the city or anybody else and I would even give them the fact that, yes, in 2005 or 06 when the fence was installed, you know the covering of that open material whether it be

plows stacked up neatly or something else, I think that mostly this open storage citing is related to obviously the items up in the roof and the salt shed. So having those things packaged and substantially screened to me doesn't constitute a violation. So if you have a full skid of something, it's enclosed, it's packaged and it's secured and it's screened from view I don't see that as a problem.

When there's loose material that a wind could pick it up, drive it out to another property, that would be considered substantially noncompliant.

Mr. Hickernell: But as a result of your citation, they are removing all that.

Mr. Forte: To be specific, there's two or three parts of that structure where you have the tent, then you have the concrete blocks that retain the material then you have the loose material itself. You would want to see it all gone because we don't believe that any of it should be there.

So the tent structure is what they were talking about. I don't know if they are talking about keeping the blocks there with an area for loose material. But again if it was less than four feet high, I would not consider it a structure. So if they have one row of blocks in there with little material that was substantially covered, screened from view it would not be a violation. So I think that's resolvable.

Mr. Rudnick: Trucks stored in the yard, is that also a violation of open storage?

Mr. Forte: No. It's only loose material.

Mr. Rudnick: So if it has a stack of plows that's not considered loose material.

Mr. Forte: If its packaged substantially and its secured and its screened from view, I would not consider it a violation.

Similarly there's another case over on Emerson Road. If it's screened from view and it's secured, again it would not constitute a violation or at least as far as I can tell from the definition. So again within reason I think it could be resolved.

I think that the two main things that we have here is whether or not this board agrees that this is a truck terminal and that there is heavy truck storage. And again, I don't believe that setting up a fence eliminates a violation. I think that it has to be in a building and that may not be agreeable to everyone but that's how I uniformly enforce since I have been in the city and again if Mr. Sarris had a building the size that he could fit every truck in there then we probably other than some of the other violations on the outside, we probably wouldn't be at this hearing.

So if there's any other questions.

Ms. Gelineau: What do you see that could remedy this problem?

Mr. Forte: I don't have that answer. A change in the ordinance would have to happen I mean for him to be able to obtain a special permit. It's in the wrong spot. It's too much impact for an area that's that close to a residential zone. We are not saying that he can't run his business. We are saying it can't be there existing the way that it does.

So these are just the parameters in which the violations exist and there's only certain remedies that the zoning ordinance can offer. It's like anything. If it's not allowed, it's not allowed. An ordinance change would be the only thing that could cure it. At least in this spot. That doesn't mean every commercial property is a problem. Special permits could be obtained in certain areas.

Ms. Gelineau: It seems like you have found a lot of them. Are they supposed to go out of business?

Mr. Forte: That's not my goal nor is it my purview. My purview is to enforce the zoning ordinance. That's what I'm statutorily obligated as you are. We are all required to enforce the zoning ordinance.

Mrs. Rando: Any other questions?

Mr. Hickernell: A couple of questions. Hopefully some of them will be resolved after we hear from everybody else but I do want to thank you for appearing. It really helps crystalize things for this board and I think for the city as a whole and to hear your consistent application of these as so without any prejudice of how I will eventually vote, I sincerely appreciate it.

Mr. Forte: It's my obligation and my service/

Mrs. Rando: We all appreciate it.

Mr. Forte: It's not always pleasant. The Sarris's are great people. Unfortunately this really has nothing to do with the issue at hand.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition?

(Three people raised their hands in favor.)

Mrs. Rando: Is there anyone in opposition?

Robert Logan, 109 Taylor Street, Waltham, Councilor Ward 9 came forward.

Mr. Logan: I was the one that submitted the complaint to the building department. As a result of a couple of complaints that I got from neighbors and also I received another complaint through Councilor at large, Carlos Vidal, from another neighbor, not the same ones that had contacted me. He couldn't be here tonight. He's away on vacation but he is also concerned about this.

Ms. Gelineau: What was the nature of the complaints?

Mr. Logan: The noise from the trucks also the levels of the noise of the trucks going down the street especially early in the morning. Also, there's a problem there which is somewhat outside of the purview of zoning but with parking on the sidewalk ,both the fact that they are parking these trucks overnight, weekends, not only in a public way but sometimes blocking the sidewalks.

Ms. Gelineau: Did you reach out to them to see if they could manage that?

Mr. Logan: Sometimes. We have in the past. But again, I think there's the symptom of the fact that there's too much going on at this location.

Ms. Gelineau: But his nine trucks are just a small part of the number of trucks that must go down Calvary Street every day. There must be thousands of trucks that leave from Calvary Street every day. This must be a small part of this. There must be trucks making noise up and down Calvary Street all day long.

Mr. Logan: Well there are but these are emanating from a particular location where there's a zoning violation, that would constitute a zoning violation.

Ms. Hankins: Are the trucks louder than from other properties?

Mr. Logan: So it was mentioned that there was a violation back in 2005. One of the violations was the open storage, the plow blades in boxes on top of the building and I believe that that was part of this current violation so that was something they were made aware of. They said they complied and then went back to doing this.

Mrs. Rando: But no one went back down to inspect it.

Mr. Logan: No, but the point is they were notified that that's a violation and they acknowledged in this filing that it is a violation and they are willing to stop it. They had stopped it for a while but then they went back to it. So it's a repeat violation. The first time you can say he didn't know. The second time they were on notice. So they knew that that was a violation.

As far as putting the fence up and there's some reference made by the attorney for the petitioner of what they were told by the building inspector at the time. There's nothing in writing. Back then I did not get any kind of a communication as to how it was resolved and, quite honestly, it just kind of fell off the radar until recently when we got more complaints. We went back and looked at it. I do, what the building inspector was saying in terms of there not being so many of these large trucks back then, if there were any. More smaller trucks kind of resonates. It's kind of what I remember back at the time that they weren't these big trucks. I went by there recently and these are big trucks.

Prior to this operation being there, I remember it being Steve Happenny's car repair. In fact my brother used to go there. It was just a garage. There weren't any trucks there and then there were pickup trucks when the current operator started out. He started out, I believe, as doing car repairs originally automotive. Now there are huge trucks. These are big. When you say dump trucks, we are not talking about a pickup truck with a dump body. We are talking ten wheelers, big trucks. I don't know if you've seen the

pictures. They are big trucks, okay. And not only are they on the property, as I said, in violation of zoning, but sometimes I see trucks parked on adjacent properties. For example, one time I went down and I took some pictures, I probably should have printed some out, but here's two of the big trucks out on the street. If you look down further, there's two of the pickup trucks where the sand is on the back. I believe that was on a Sunday.

So let me just, again, talking about the heavy trucking equipment storage, and, again when the attorney for the petitioner was up here, he kind of conflated different sections that had to do with different things. For example, in relationship to the heavy trucking and equipment storage, he made reference to the term screened from view from public or private ways. But that wording isn't found in the section of having anything to do with heavy trucking storage. That's in the section for open storage, sales for the merchandise of goods. So it's got nothing to do with screening.

Heavy trucking and equipment storage, is if it's not in a building and a perfect example that came before you was Vanaria down on Felton Street and it was determined that that was the suggestion at the time was is what if we put up a fence? But the problem with that is, that's not what the ordinance says. It requires a special permit for heavy equipment storage. The argument that has been made in the past always had been successful and is being made here again, but if we put up a fence and screen it from view, it's no longer heavy trucking and equipment storage. So you can make something, you can change the use by putting up a fence, just a fence. But heavy trucking and equipment storage is not allowed by right anyway. Anywhere that it's allowed, it's only allowed by special permit. So why would you have an ordinance that says, if you don't have a fence you have to get a special permit because we all know how lengthy and expensive the special permit process is. Who in their right mind wouldn't then just put up a fence. So why not just have an ordinance that says, if you have trucks you have to have a fence. But that's not what this says. It doesn't say put up a fence and you're okay.

It says, Heavy Trucking Equipment or Storage: Buildings or land used for the storage of heavy trucks, heavy contracting equipment and earthmoving equipment “Storage” shall mean the keeping of such vehicles or equipment or portions or parts thereof, remaining un-utilized of stationary, in open lots or uncovered or unenclosed areas. Therefore it would have to be not only enclosed but covered.

Basically it has to be in a building. If you enclose something and you cover it, what do you have? You have it in a building.

Mr. Hickernell: I’m not sure I agree with that. That’s three things that are prohibited but otherwise it would just say not in a building and uncovered.

Mr. Logan: It says, these are the definitions.

Mr. Hickernell: I get that.

Mr. Logan: So what it’s saying is Storage shall mean keeping of those vehicles, because it says or and not and. It says such vehicles in an open lot. So if it’s in an open lot then it’s considered heavy trucking equipment or in uncovered areas or unenclosed areas. So if any of those three conditions exists then it falls under this definition and it’s not covered. It has to be enclosed and covered. And this is what has always been held in the past. This is what has always been held in the past. This has always been the interpretation of this because otherwise who in their right mind would ever go for a special permit? They’d just put up a fence. But you can’t put up a structure that’s enclosed and covered because now you have to comply with the setback requirements and the FAR and all of that.

So its quite clear that this constitutes heavy trucking and equipment storage and I know, also, it was referenced in the legal ad, I believe it was read, claiming somehow it was grandfathered because it's been there for more than ten years and he's referencing Chapter 40A, Section 7. But if you look at Section 7, you'll see that there's two different things. One has a six year time clock and that applies when a building permit has been issued for a use or a structure. No building permit was ever issued for truck storage here. So, therefore, you go to the other part of that which talks about the ten years. But that only applies to structures not uses. So they cannot be grandfathered. You can't be grandfathered for a use unless a building permit was issued for that specific use. Other than that, there's no such thing as a grandfathered use unless it existed before the adoption of the zoning ordinance that prohibits it. I mean, this has been on the books since before I was on the council. So that's thirty years. So it's been on the books before they were in there. Perfect example is NStar, Keyspan, whatever they are, further up Calvary Street. They have been there for like eighty years. So they are grandfathered because they were in there before probably there were any ordinances but this is not grandfathered because it did not exist before the ordinance was adopted.

So, I support the building inspector. I believe that his findings, the violations that he found that he has correctly interpreted the zoning ordinances and that's just the way it is. So I hope that you would support the building inspector in that and also support the neighborhood because it is a mixed neighborhood. Unfortunately a lot of that is developed before you had zoning but directly next door on the same side of the street, just right to the east of this is a two family; across the street there's a two family and on that side of the street all the way down to Farwell Street, there are eight residential properties in a row and down at the other end of Calvary Street there are at least two more residential properties. There are a lot of residential properties all around there that are affected by the operation of this business that has grown and kind of impact in intensity, the size of the trucks, the number of the trucks, to the point where I am getting a lot of complaints. And I understand, what's he going to do? That's the zoning. The zoning is the zoning. The

building inspector has found a violation. I believe the building inspector is correct in that violation and there is no remedy for that violation. It is what it is. So, thank you.

Mrs. Rando: Are there any questions of Councillor Logan?

(There were no questions by board members.)

Mr. Logan: I would just say, again, as the building inspector said, if there are any questions on the points of law, I always encourage everyone to consult the law department.

Mrs. Rando: What is the wish of the board? Do they want to continue the case and look over all the information from the building inspector.

Attorney Connors, are they ready to go forward tonight?

Mr. Hickernell: Can I ask a question to the building inspector?

Mrs. Rando: Sure.

Mr. Hickernell: Mr. Forte, the petitioner or the owner of the locus has submitted an Affidavit stating that heavy equipment has been stored there since prior to the last enforcement action. I understand your position is that there's nothing that is reflecting that in the file but we have an Affidavit stating otherwise. Is there any sworn evidence or other strong evidence to contradict that?

Mr. Forte: You know, I'm not your board and I can't make that decision but if I was going to look at a sworn statement I would want it backed up with some kind of evidence. Does Mr. Sarris have old registrations? Does he have old bills of sales for equipment that was on the road at the time? Was it considered heavy equipment? I mean,

what I see in the pictures right, and the attestations of both building inspectors that have visited the property is that they were light to medium duty pick up trucks which is stated in my record there. I have no reason to believe that Mr. Sarris believes that he had them. It's not really up to me. I would certainly weight that evidence along with everything else. I mean he's an honorable guy and I would believe him. I think that he believed that at the time that he was cited that he believed he corrected the violation and I had spoken about that and I believe that he believes it. But, again, the attestation and the record don't indicate that the issues were resolved.

Mr. Rudnick: But this one that Mr. Hickernell is talking about s specific to the idea that this is a truck terminal, right? Because you can't cure the truck terminal with a fence. You can only cure that by having the vehicles stored inside the buildings. So, we don't allow the storage uncovered or unfenced. We only allow storage of vehicles inside the building could make this a truck terminal if we could get a special permit on to this property. So, the question is, if evidence was presented to you that proved to you that, in fact, these trucks were in use on this site even though nobody saw them and you don't have a picture of it. If the Sarris could present evidence that convinced you, that absolutely convinced you, that heavy trucks were used on the site back in 2005, how does that change your view about this violation?

Mr. Forte: So, again I'm not an attorney but I do follow by certain parameters. Section6, Chapter 40A says specifically: Except as herein provided the zoning ordinance or by law shall not apply to structures or uses lawfully in existence or lawfully begun or to a building a special permit issued before the first publication notice of the publication hearing of such ordinance or by law required by Section 5 but shall apply to any change or substantial extension of use and that's the world I live in right there.

Mr. Rudnick: So if he can prove to you that this wasn't a change - - -

Mr. Forte: In order for it to be lawful it would have to be unchanged. It would have had to be permitted correctly at the time and it would have had to remain in that use without substantial change or expansion.

Mr. Hickernell: Since when?

Mr. Forte: Let's just say the building inspector published a letter and said you are now in compliance and he made that ruling. That might be considered a permit. If what Mr. Sarris had at the property at that time, if it was identical to what at the time the building inspector ruled was okay or fair or whatever might be, then he would be protected from enforcement and I would not enforce against him. But, again, with the pictures and the attestation of the building inspectors at the time, really what they provided me was information on a few pickup trucks, some plows, some plow attachments, a few plow installations, obviously there were some storage containers there.

Mr. Rudnick: I understand and respect the basis of your finding. Now I'm saying, if proof came up now, let's say we continue this case and we look into it. The Sarris's come back and say, here is the information about all the trucks that I owned in 2005. Half of them are the same trucks, the other ones are a similar size trucks. Then it seems like we have the situation you're describing but seemingly there was a permit, there was a complaint, action was taken to address the complaint but nobody complained about the action that was taken, a long time went by. The only thing that's troublesome here is that it seems like it was changed to a more egregious or more intense use. Well, proof would make a difference on this one violation.

Mr. Forte: You would be the one to overturn that finding.

Mr. Rudnick: I would have to see the proof. So I feel like we were on the same page.

Mr Forte: I would have gladly considered any evidence that would have shown to the contrary of what this notice of violation cited. I don't look for ways to find violations. I look for ways to resolve them. This is certainly common practice. When there is no evidence and there's no means to resolve it or there's no right way to resolve the violation, because I am required to issue a permit to resolve violations or to resolve violations if a property is in violation. It happens a lot, but in this particular case where heaving truck storage equipment, truck terminals, all this stuff, this is unfortunately, my authority to grant a permit for that is exceeded by the city council and that's his purview.

(A lady in the audience asked if she could speak and since the public hearing was not closed she was allowed.)

Dee Vanaria, 55 Ivy Lane, Waltham: I was not asked to come here and speak tonight but I cannot sit back here and be quiet. I just want to say that I have been a long life resident of Waltham, born and raised here. If I was to buy or purchase a home on Calvary Street, I would know how busy that street is and I would not purchase a home. Anybody that purchases a home on Calvary Street knows that there are vehicles constantly up and down that road, constantly!

There is more commercial property than there is residential, So I hope that you can favor the Sarris's at least in that perspective that I feel that there is a lot nit picking going on. And I also want this board to be aware, that there are many big companies in Waltham. It seems they are all being struck one by one on petty things. I understand there's ordinance laws. I understand that there are things to comply with. But talking about car wash. There are just so many things that I feel are so unnecessary and it is putting businesses out of business. It's causing families distress. All these people want to do is make a living and it just seems like all of a sudden it's just one after the other. I don't understand it and it saddens me to see these families going through this. I only wish that

our ward councillor would be more interested in the opioid epidemic that's going on than to nitpick these companies.

And I felt that I had to come up here and speak. I just can't walk out of here without saying this tonight.

As you all know we have Vanaria Landscape which has been before this board and my husband is going through so much and it affects our family. To me, they are digging. They are scraping, scraping for things and it's not fair that all of our companies in Waltham that have done so much for this city, so much. We have donated, contributed so much and then a new building inspector comes in and just goes down the line for everything. I just hope that you take some consideration to understand that. Yes, there are rules to comply by but when you start talking about car washes because this gentleman wants to wash his own vehicles on his property, that to me is absurd. That's nitpicking.

Let's concentrate on a lot more things that we have to worry about in this city and stop driving the people that try to make this a wonderful city, stop trying to drive them out of business. That is exactly, no one is going to tell me any different what they are trying to do. It's a shame if that happens.

And I thank you respectfully for listening to me tonight. I don't want my conversation to affect anything with them. This is coming from me and I hope you will favor for them for what they are asking for.

Mrs. Rando: Anyone else?

George Sarris, 238 Calvary Street, Waltham: I just wanted to say years ago when John Millian came in, he asked me to correct problems that I had and they told me to put

the fence up and screen it in. I submitted a letter addressing what I did and ten years later they came back in and taking off everything that you guys just heard.

I've been there for eighteen years. I wasn't even aware of any complaints. We are there every day. I didn't realize we ever had any complaints. All my surrounding neighbors are great. I get along with them. I wasn't aware. That's all I wanted to say.

Ms. Hankins: Did Councilor Logan ever reach out to you and was there ever a conversation?

Mr. Sarris: No. And in fact, today when he came by Sarah, the car that was on the sidewalk was across the street was a neighbor's car. I don't park on the sidewalk. You saw that, remember? So we don't park on the sidewalk. That's all.

Mr. Connors: I just want to add a couple of things. I do admit to you that there's two sections in this book and you guys have read it and I have read it and everyone's read it. It's up to you to interpret it

Mr. Hickernell: Are you talking about the trucks or the materials?

Mr. Connors: I'm talking about both. So, there is no definition of enclosed in the heavy trucking definition. But there is a definition of what it means to be enclosed in the open storage and also in Black's Law Dictionary as well. So, just by, if they are defining it here, an enclosure is an enclosure is an enclosure. So I did mix them and I admit that because one of them gives you a more specific definition of what it means to enclose something whereas the other one just simply says enclosed.

So I just want to repeat that. I think we can surely read the english language and interpret it as it is written.

The second thing I wanted to add was on the preexisting nonconforming use, Councilor Logan and the Inspector are correct. It only applies to a use that has been permitted and we could not find a permit. Our use here is based off the definition of the heavy storage and if it's not then we are not violating the definitions as articulated in the zoning ordinance. So that is my two points.

Mr. Hickernell: So Section 3.628 says that the city council grants special permits for the storage of heavy trucks and that's as defined in Section 3.247 and the building inspector is interpreting 3.247 so basically anything not in a building is storage of heavy trucks.

So I'm inclined to make a motion to the board to continue the case to hear further from you and your client on that legal point and we've got an affidavit that states generally that heavy equipment was there. We have a definition of 3.247 as what heavy trucks are and heavy equipment is to supplement that affidavit with evidence.

Mr. Connors: State what trucks, define the trucks?

Mr. Hickernell: Well, again, 3.247 defines any heavy contracting equipment and earth moving equipment as well as heavy trucks. So as to what was previously at the last enforcement action of what was there because there's I think it's just been brought to us as far as that goes. I'm not positive that that that dispute is dispositive but I think it's something we need to consider. And if you have anything further to say about just the broad claim that if it's not enclosed you need a special permit from the city council. Sorry enclosed is not what I meant to say. That means something else. If its not in a building if its not inside, then you need a special permit. So I would like to hear more from you and the petitioner.

Mrs. Rando: Does anyone else have to add to the continuation?

Mr. Hickernell: It seems like you've conceded certain points of the notice of violation to the extent that you can stipulate and illuminate some of those points of the violation. I think that would also be helpful to the board when we reconvene, so we don't have to rule on a couple as opposed to assuming that they don't matter.

Mr. Forte: Again, I'll reiterate my original findings that if trucks are stored within a building, it does not constitute a violation of the heavy truck storage equipment. However it does not negate the fact that it may be a truck terminal.

Mrs. Rando: Is it the wish of the board to continue the case?

Do I have a motion to continue Case 2018-09?

On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to continue Case 2018-09.

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

Mr. Rudnick: I want to send a question up to the law department.

Today the building inspector asserted that Section 3.249 truck or private bus terminals indicates that any property where three or more trucks are parked is a private truck terminal under this definition.

I would like the law department to affirm or not that parking three trucks on a lot constitutes a private truck terminal.

Mrs. Rando: All right, we have a motion to continue the case and we will be hearing the case on June 19th.

One more motion is in order.

On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to adjourn at 8:25 P.M.

Barbara Rando, Chair