

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**June 19, 2018**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, June 19, 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: Tonight we have one new case before us and one continued case before us. Case 2018-09, GJC Real Estate Investment LLC, 238-240 Calvary Street and that is for an appeal of the decision of the building inspector; Case 2018-16, Jean Goodwin, 41 Ellison Park, and that is for a variance.**

**The first action this evening is a motion to accept the minutes of June 12th.**

**On motion of Ms. Hankins, seconded by Mr. Hickernell, the board voted to approve the minutes of June 12, 2018.**

**Mrs. Rando: Before we enter into hearing the cases tonight, we are going to take a short interruption for Executive Session and that was just to discuss client/attorney conversation and it shouldn't take us long. And at that time, I am going to have to ask you to wait out in the hall and we will call you back as soon as we finish. Sorry.**

**Do I have a motion to go into Executive Session?**

**On motion of Mr. Hickernell, seconded by Mr. Rudnick that the board go into Executive Session and return into open session.**

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

**At 7:18 P.M., on motion of Mr. Hickernell, seconded by Mr. Rudnick, the board voted to go back into regular session.**

**When the clerk is ready, will he read the petition in Case 2018-09.**

**The board reconvened to their regular meeting at 7:15 P.M.**

**The clerk then 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, the Petitioner's representative came forward.**

**Mr. Connors: I represent the petitioner, the petitioner as a corporate entity but the Principals are George Sarris and Julie Sarris right here in the second row with me here tonight.**

We were here back in May 1st in an initial public hearing. Just to kind of reorientate the board if you were to head Newton Street south on Newton Street, take a left on Calvary Street and head past a significant amount of companies, NStar on your left and some commercial businesses on your left and then you approach Sarris Auto and Truck Repair.

I did create a supplemental brief for the board based on questions and concerns the board had at the last meeting and also I have a second Affidavit from George Sarris in which he kind of summarizes the trucks that he has owned from 2004 through 2008 because that was a question of the board and so he's attached that by way of an Affidavit form. I wasn't able to email the attachment form but I did provide the board with a list electronically and then this Page 1, a particular year's tax return and the second page is his equipment list.

So I am going to that in that, particular year he filed a tax return and listed his equipment accordingly. So I am going to submit these to the board before I go through them.

Mr. Hickernell: I saw his Social Security Number in the tax return that you gave to us. Do you want to adapt?

Mr. Connors: We need a pen to adapt it.

Mr. Hickernell: I find that for purposes of your presentation, but before we close tonight, we've got to find a sharpie.

Mr. Connors: Okay. I'll do that.

I will say that some of the other issues were resolved already. Also, you will see on the locus plan here, there's a little box here (referring to the plan), that's the tent structure which has been completely removed. The tent is gone and the original cinder blocks that surrounded the tent are gone.

I did see that there was an opinion from the Law Department. I just received that this afternoon at 6:40 but I agree with the Law Department that the question is Rules of Statutory Construction. So there are some rules of statutory construction and that means, it's kind of a legal terminology, is how do you interpret statutes, what's the proper way to read them and dissect them and then interpret them.

Mr. Connors then went on to read his Supplemental Brief into the record.

He then submitted letters dated December 5, 2006, from Patrick Powell, Senior Building Inspector to Mrs. July Sarris and a letter dated December 6, 2006, from Julie and George Sarris to Patrick Powell.

So the building department by their admission from 2006, to 2018, nothing has occurred. I would say that speaks to one. They brought him up on an alleged violation. He thought he resolved it, and putting up a fence that's cited in his Affidavit, he puts a new fence constructed in 06. His vehicles are in open lots. There's no debate about that but they are in an enclosed area, privacy fencing. The building department, if the legislative intent was they needed to be both covered, enclosed and they ignored that legislative intent for thirteen years and they ignored it back in 05 and 06 because he came up with a solution and the building department followed up with that and he followed up with his letter and he never heard anything since on that violation.

**Mrs. Rando:** Attorney Connors, you are saying that he was served with a violation and after he said that he took care of them, the city never went back to check it for thirteen years?

**Mr. Connors:** Yes. Our position is, maybe they did go back and check it but they put a fence up and screened the trucks, so he did it. And then he thought it was resolved. He didn't think they were coming down because he thought he resolved the issue. And I am saying by the fact there is no follow up letter saying otherwise then that was Mr. Sarris understanding and perhaps that was an understanding with the building department as well.

(Mr. Connors then went back to his supplemental brief.)

**Ms. Hankins:** Attorney Connors, on the open storage issue there's been a few cases before this board. I have been on at least one or two related to the same issue and my recollection is we sort of had generally your interpretation of things. Are you aware of any issues that have come from that? Has there ever been a higher court that's told us why, because I feel that we are litigating the same thing over and over again.

**Mr. Connors:** No. I think it's been resolved so therefore, nothing is appealed. To my knowledge, the court hasn't issued an opinion.

I will admit though the definition of open storage provides screening language in it. It says, if you screen it and if you do this and you do that, then it's not open storage. It doesn't say that in the heaving trucking. It just says, it can't be unenclosed or uncovered. So it doesn't say there if you put a screen on it, it doesn't say that. It's my position is that we define how you enclose something in the definition of open storage. I think it's a common understanding of it what it means to enclose something. To enclose something means to put a fence around it. That's what the Sarris's did in 06.

**Mrs. Rando: I have one other question. The opinion that Michelle Learned gave you today, did she cite a case, a Supreme Court Case in 2007 - City of Waltham/Kenneth C. Lopez.**

**Mr. Connors: I didn't get this one from Michelle Learned. I got this one from you. It's the one in footnote 1?**

**Mrs. Rando: Yes.**

**Mr. Connors: That's the Supreme Court opinion which I haven't read, number one. This is simply a decision of a judge. It may be influential but it's not dispositive of the issue. But I haven't read it. I am at a disadvantage but I would say that was a case that was ruled on by a judge in 07 and I don't know what the basis of the facts of that case were. It's not an appellate decision. It's a decision about the City of Waltham against Kenneth Lopez down on Pond Street.**

**So Michelle Learned does discuss and talks about Rules of Statutory Construction and there are books written about that. You can find ones that says this means this and you can find another case that says it doesn't mean that.**

**Mrs. Rando: I do have that case if you want to read it at some time.**

**(Mr. Connors went on to read from his supplemental brief.)**

**And so I have given you this list of vehicles that he has had over the years.**

**In 04, he had a few and then in 05 he had three heavy trucks and one heavy equipment piece and in 06 he had six pieces, 07, six pieces and in 08, eight pieces of**

equipment. He has eight now. The difference is they are incremented, number one. Number two, the site as designed and accepted by the Zoning Board of Appeals in 1986 allowed for the parking of ten vehicles. He can't exceed that, he can't. That's all he can fit on the site. And so the vehicles that he owns are used by Mr. Sarris. They are parked on his site per the approved ZBA plan in 1986 and we believe then, therefore, based on the definitions of a truck terminal, it's not a truck terminal; based on the definition of the Waltham Zoning Code he's not storing heavy trucks as such that he would need a special permit and I think that's backed up by the fact that this has been going on since 05 and it came to the attention of the building inspector, yet that issue was resolved in Mr. Sarris's opinion to their satisfaction because nothing else became of it.

Mr. Sarris was able to get the signatures of a few of his abutters because of his initial complaints from his neighbors. (Mr. Connors pointed them out on the plan and submitted the list to the board.)

Ms. Hankins: How many residential neighbors are right there?

Mr. Connors: I think most of them on the left side as you come up Calvary Street are commercial. Once you hit George and then go past George then they become residential. So across the street is residential. And so there's actually a mix of business and residential (referring to the plan). (Mr. Connors went over the plan with the board and pointed out numbers 241, 245 and 239 residential properties.)

Mr. Connors also submitted a letter from Chris Falzone, Assistant Superintendent of City of Waltham Streets and Forestry Division dated April 11, 2018 in support of this petition. Also for the board's information in case they never saw one, Mr. Connors submitted a sample sheet entitled Request for Zoning Enforcement.

So we think Mr. Sarris is a good neighbor. He's an individual that's invested in his property; he invested in his business. He invested in the City of Waltham and I think he's trying to do that fairly and by the rules and when they asked him to do something, he did it. And so we believe that there are no zoning violations. He did admit to some in the legal notice that are resolved.

**Mr. Hickernell:** Is everything resolved except the first two items in the Notice of Violation.

**Mr. Connors:** I believe so. He removed the tent. I waived the issue on the car wash because he's not operating a car wash, and the open storage I believe that he cleaned it up. He's taken the stuff off the roof that was there before that shouldn't have been there so as to open storage, number three, he cleaned that up; violation four and five were setback violations and again he removed the tent and number six was the issue about a c.o. And then number seven is the car wash. We believe that the car wash is resolved in that we are not washing cars. They don't intend to wash cars. He was doing it which was incidental to his business use but he certainly is in agreement he would not operate a car wash there. I think we have addressed everything and there are only two critical issues left.

**Mrs. Rando:** Have you met with the building inspector since the last meeting?

**Mr. Connors.** Yes, he did.

**Mr. Hickernell:** Would you just ask Mr. Forte to come to the podium?

**Mrs. Rando:** Sure.

**Mr. Hickernell:** I just wanted to confirm and if you're not done you can continue in a moment, but Mr. Forte do you agree what's left from your notice of violation?



**Bill Forte, Inspector of Buildings for the City:** So Mr. Sarris did call me. He reminded me that he removed the tent and the blocks. I did drive by. I didn't re-inspect the property with pictures. He had told me that he still needed to patch some asphalt. I said why don't you give me a call when that's patched. It was the hundred and fifty square feet that will be required by engineering.

In addition to, if I just may comment on the open storage. It was not the biggest problem that was there and I believe that even if there are a couple of loose items that need to be stored, I believe that Mr. Sarris can indeed, he can probably comply in short order. I don't see that there's much problem with that.

I do agree with Mr. Connors that the two main things that still are outstanding right now that I don't think can be cured or resolved without a special permit are the heavy truck storage and a truck terminal. The permit granting authority is the city council.

I don't have anything else to add to Attorney Connors things. I am here to answer questions if you like.

**Mr. Rudnick:** Did you observe these pictures.

**Mr. Forte:** Yes. Those were the first week. Mr. Sarris was more than cordial in resolving any issues that he could take care of. So I don't think it's a question of Mr. Sarris's willingness to comply. I just think he's in a situation where we are in a corner where that type of business can't be operated within that zone without some kind of approval from the permit granting authority which is not me and I don't believe, respectfully, is the ZBA.

**Ms. Hankins: Do you know how many businesses around the city have this special permit for a truck terminal?**

**Mr. Forte: No, I wouldn't know that answer off hand.**

**Ms. Gelineau: Do you have a ballpark?**

**Mr. Forte: I could find out. I do know there was one on West Street that National Grid just recently had a special permit to allow for six heavy trucks to be stored openly in a lot. That's the only one I can remember off hand.**

**Ms. Hankins: If you can only recall one, I could drive down probably a mile and find according to Attorney Learned's definition and your definition, I could find ten. So, I guess I'm confused as far as the either the uneven enforcement or, I'm not sure what's going on that if this exists all over the city, why are you just picking certain people. This right here, this Request for Zoning Enforcement, do you have requests for Zoning Enforcement, do you have a form filled out for this particular - - -**

**Mr. Forte: No. I received an email from a city councilor about the complaint.**

**Ms. Hankins: Councilor Logan.**

**Mr. Forte: Yes, and also Councilor Vidal.**

**Ms. Hankins: And they both said that it was neighbors that complained.**

**Mr. Forte: I believe so. I can produce that email.**

**Ms. Hankins:** It's interesting that the immediate neighbors would not have an issue but it was initiated from a councilor. It's kind of interesting.

**Mr. Rudnick:** Mr. Forte, did you receive a letter or an email from Councillor Vidal or just one from Councilor Logan?

**Mr. Forte:** I believe it was asserted by Councilor Logan that Councilor Vidal also received complaints. I can produce that email and I will certainly do that.

**Mr. Rudnick:** Email from Logan.

**Mr. Forte:** Yes.

**Mr. Rudnick:** And for the record, this was in the record, Logan asserts that he and Mr. Vidal received complaints. Mr. Vidal has not appeared here nor has confirmed that he received complaints. So it's Mr. Logan's assertion that you're acting on.

**Mr. Forte:** yes.

**Mr. Rudnick:** Thank you.

**Mrs. Rando:** You made a statement that they could go to city council for a special permit. Could they get one? Doesn't they have to be about two hundred feet from a residential property.

**Mr. Forte:** Well one of the questions in a Development Prospective doesn't require a zoning amendment and if that application came before me for review I would say, yes, it is a zoning amendment. Again, that's what's in the zoning ordinance and it's there for a particular reason whether it be for trucks idling, whether it be for noise traffic. I don't

know what the reasoning is but their in there. So I don't know that they could achieve a special permit but perhaps a zoning ordinance amendment might be the vehicle in which they get their approval.

**Mrs. Rando:** These direct abutter are in favor, how close is there another house?

**Mr. Forte:** I don't have that answer.

**Mrs. Rando:** Attorney Connors, do you know?

Attorney Connors went over the plan with the board showing where the direct abutters are located.

George Sarris, 238 Calvary Street, Waltham, the Petitioner came forward.

**Mr. Sarris:** I went to all my neighbors that are right next to me (going over the plan). I went to my houses that are next to me to see if they had a complaints about me and if there was anything wrong. There's two separate families that own this house and both signed it. So everybody that's next to me within a hundred and fifty feet signed. I didn't go further down the street to any of these houses down here (referring to the plan) because I really don't affect them, I don't think.

**Mrs. Rando:** Has anyone ever complained to you?

**Mr. Sarris:** No. I get along fine with my neighbors.

**Ms. Hankins:** Did Councilor Logan reach out to you to try to resolve this?

**Mr. Sarris:** No.

**Ms. Hankins:** Did you hear from him at all before you were served this violation?

**Mr. Sarris:** No. I've never got a complaint in all the years that I have been there. I think that says something. There's a lot of traffic on Calvary Street; a lot of parking issues from NStar and all the other companies but I don't get complaints.

**Mrs. Rando:** Are there any other questions?

**Mr. Rudnick:** Mr. Forte, so this property is right next door to a property there. I guess everybody in the world would agree it's a truck terminal. NStar property has truck loading docks; trucks moving in and off site in order to transfer equipment and do all the things that we clearly are seeing performed as a truck terminal. Do you know if the NSTAR site has a special permit from the city council to be a truck terminal?

**Mr. Forte:** I don't exactly know that. I did ask about that to (audience chuckled). Excuse me? Madam Chair, could I have the floor?

**Mrs. Rando:** No interruptions, please.

**Mr. Forte:** So at one point I did inquire with the former building inspector who was doing my job now if there were any special permits and what I was told it was a pre-existing, nonconforming use. It's been there for a number of years. I have not looked into it. I have not received a complaint about it. Additionally there may be some rights under the Federal Communications Act that would allow them to operate under certain conditions. I would be more than happy to investigate that if I'm given the directive. If it's brought to my attention formally, I would be more than happy to investigate it.

**Ms Gelineau:** Mr. Forte, I just remembered from years and years ago that this Request for Zoning Enforcement had to be signed. It could not be anonymous. Can you explore an anonymous request for a Zoning Enforcement. I thought it had to be signed. I didn't think it could be anonymous, I could be wrong.

**Mr. Forte:** So in a case where neighbors are having some kind of bickering. To eliminate any kind of retaliation between neighbors, or - - -

**Ms. Gelineau:** No, I get that you are not disclosing names but I thought you had to have a legally signed form to investigate. It had to be signed by a person.

**Mr. Forte:** I can have an email. An email is a form of a complaint. A formal email which is a public record. This simplifies it but it's not a statutory requirement.

**Ms. Gelineau:** It's not a statutory requirement that the person be identified. But you never got that. You did not get anything from a neighbor, from a constituent. You personally did not get anything from anyone directly from anybody complaining about this man on Calvary Street.

**Mr. Forte:** No.

**Ms. Gelineau:** Nothing.

**Mr. Forte:** No. But in the ordinance, what it says and it was brought to my attention. When complaint is brought to my attention, I am required to investigate. That's in the ordinance.

**Ms. Gelineau:** But I thought it had to be disclosed. It had to be in writing. Okay, so you get an email from a constituent, that's one thing. So, but I thought it had to be made

known to you who was making that. At least that was always the jurisdiction of the building department twenty years ago.

**Mr. Forte:** So to confirm the validity of a complaint I first have to make sure there is a factual complaint, that there is somebody actually making the complaint.

**Ms. Gelineau:** You don't have one here.

**Mr. Forte:** Yes, I do. Councillor Logan. It doesn't have to be from a constituent or a neighbor when its brought to my attention. I myself can come to attention of the zoning violation and enforce.

**Ms. Gelineau:** Well, I understand that.

**Mr. Forte:** And we try not to because we don't have the resources to drive down a street and say everybody is in violation. When it is brought to our attention we investigate by whatever means that is.

Let me give you an example of an anonymous complaint that I will answer. If somebody says there's an illegal apartment in a basement, in a house, that's a life safety issue. I will investigate. I will take that seriously. So in that case I may investigate an anonymous complaint. This is not an anonymous complaint.

**Ms. Gelineau:** Where did it come from?

**Mr. Forte:** Councilor Logan.

**Ms. Gelineau:** And who did he hear it from. He doesn't live on Calvary Street. He's not an abutter.

**Mr. Forte: I don't think it's a requirement under the law. You can drive in here from Wellesley and find a zoning violation.**

**Ms. Gelineau: Okay. Can we agree that standard practice has always been that you cannot investigate it unless this is signed by a neighbor or a —**

**Mr. Forte: No. That's not true.**

**Ms. Gelineau: Can we agree before you were here, I can tell you that was always standard practice.**

**Mr. Forte: That's still standard. So your question is what?**

**Ms. Gelineau: You didn't get one.**

**Mr. Forte: I didn't need one.**

**Ms. Gelineau: I know. I agree. I agree. Okay, okay. Thank you.**

**Mr. Hickernell: With respect to the petitioner's counsel argument with respect to the (or's) and the definition of truck storage, do you have any comment on that.**

**Mr. Forte: No, because honestly this board has upheld notices of violation with the same parameters. You know when there's a violation of this sort, I methodically enforce uniformly on every property. This board has upheld at least two notices of violation that I can recall where enclosing a heavy truck within a fence and I will name specifically 73 Pond Street that that does not substantially rid a heavy truck storage violation. That does not cure the violation.**



**Mr. Hickernell:** So in order to not need a special permit by your reading of the ordinance, it needs to be inside a building, right? It can't be out in the open. It can't be under, I don't know, a car board or a truck board. It can't be just inside a fence. It has to be in a building. Is that fair to say?

**Mr. Forte:** I would not cite it as a violation if it was stored indoors overnight. I would not see that as a violation.

**Mr. Hickernell:** And when you visited, my understanding is that there were some vehicles indoors and some were not.

**Mr. Forte:** I think there was a front end loader. I'm pretty sure. There were three heavy dump trucks outside at the time of the inspection. I don't know how many trucks exist on the locus at night because I don't drive around at night. So there were three at the time of the inspection. But by Affidavit I believe he has claimed that he has five.

**Mr. Hickernell:** If they were indoors that would not be in violation.

**Mr. Forte:** If it was in the proper zone and it was out of that one hundred and fifty feet, whatever —

**Mr. Hickernell:** No, no, no, I am not saying within the hundred and fifty feet. I'm just saying and forget about the terminal too.

**Mr. Forte:** Let me just reiterate. You wouldn't be able to have a heavy truck storage inside in a residential zone. So first it has to be in a proper zone.

**Mr. Hickernell:** Well that's not what I'm asking. So 3.628 one of the points you cited in your notice of violation. (Mr. Hickernell read that section.) So it doesn't mention inside a building. So inside a building would not fall under the purview of 3.628.

**Mr. Forte:** I would not consider a heavy truck in a proper zone and not a residential zone a heavy truck stored indoors, I would not consider a heavy truck and heavy contracting equipment storage a violation.

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

**Ms. Hankins:** So the issue obviously with some of these issues besides things like the car wash were brought up in 06 and obviously to a certain degree were litigated back with that building inspector and I would assume resolved since they had some correspondence back and forth and there wasn't any sort of follow up action by the building inspector. Do you have a different process if you receive a complaint that has already been litigated under the previous building inspector. Don't you put people in an uncomfortable position that they have to worry about the next building inspector is going to interpret things differently and they are right back to it. I can understand that if someone calls with a fresh violation that was ever been at that property, etc., but since a lot of these issues have already been discussed in 06, shouldn't you just go with what the interpretation of that inspector was in 06 and not be subject to them basically having to fight a new battle with a new prosecutor so to speak.

**Mr. Forte:** So there was nothing litigated in 2006. There was an enforcement action.

So in 06 John Millian and Patrick Powell both inspected the property. At the time it was determined that the biggest violation was open storage. The fence may have substantially screened it, but by reports from both John Millian and Patrick Powell, the

issues were not resolved. That's what I was told. Now, there was no supporting documentation that says this violation was resolved. That's not the biggest issue. The biggest issue was that there were no heavy trucks and heavy contracting equipment on the site at the time of the inspection. I provided you with photographic evidence in 2006 that there were no heavy dump trucks or any substantially large equipment with the exception of probably a skid steer or front end loader. Those really are incidental to the business. I don't think that they were a big issue at the time.

The problem is that the business expanded over that time. It was an auto repair business that installed snow plows. That's what it was and there was not a violation back then for the business and the operation of a business to be what it was. What happened over a period of time, obviously the business became successful and Mr. Sarris branched into maybe a bigger portion of trucking and heavy equipment or whatever might be whether it's plowing for the city or whatever it might have been and, unfortunately, you cannot exist in that zone with that type of impact legally without a special permit. That's the basis of the whole case.

Ms. Hankins: Back in 06, he did have and if you look at the list of equipment that he had it's actually pretty significant.

(Ms. Hankins read the list of equipment.) So I'm not really convinced that in 06 there was

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Mr. Forte: There was no evidence of those vehicles there during the inspection.

Ms. Hankins. They were off like they are during the day. Doesn't that make sense?

Mr. Forte: I don't know. I didn't do the inspection. It was reported by the inspectors at the time who still work for the building department that there were no substantial heavy trucking over there or heavy contracting and truck terminals.

**Mrs. Rando:** You're saying that Mr. Powell was satisfied with what he saw at that time?

**Mr. Forte:** No, I am not saying that. I'm saying that the issues were unresolved. Whatever that notice of violation said for whatever reason the building department never followed up. The fence went up, the complaint went away and as what happens to a lot of our cases because we are inundated with cases that we don't have time to go back and enforce. It's not up to the building department for a person to comply. It's up to the person who has the notice of violation to comply.

**Mrs. Rando:** Mr. Sarris did write a letter to them saying that he did comply. Why didn't he then go to see it?

**Mr. Forte:** I don't have any written evidence that the violations were resolved nor does it justify the fact that there are five heavy tri-axle dump trucks or ten wheel dump trucks. They were not there at the time and that's where the problem lies.

**Ms. Gelineau:** At the time of the inspection.

**Mr. Forte:** By testimony of John Millian and Patrick Powell, on more than one occasion they did say that they did not see any heavy trucks over there.

**Ms. Hankins:** You only work, I am assuming nine to five, right, or eight to four thirty.

So these were all during that eight to four thirty. I mean if you went to my house between eight to four thirty every day, I wouldn't have a car there. So would you say I owned a car?

**Mr. Forte:** Or you could be parking on an untreated lot in the front lot. So there's a bare spot then and there's no car so guess what? There's a violation.

**Mr. Hickernell:** So you have provided us with photographs to support your citation of violations. There's a date and time stamp on each one of those photographs that you provided. Does that reflect the actual time of the inspection?

**Mr. Forte:** It maybe off by one hour, but yes the date is accurate.

**Mr. Rudnick:** Do you know what a heavy truck weighs. Is it ten thousand?

**Mr. Forte:** I can get you the definition if you like. I believe its over ninety-nine hundred pounds.

**Mrs. Rando:** Any more questions of the building inspector?

**Ms. Hankins:** Oh, I do have one question. Would you have the documentation back in 06 who made that complaint?

**Mr. Forte:** I may.

**Ms. Hankins:** It would be great to know.

**Mr. Forte:** I believe the complaint came from Councilor Logan then too.

**Mrs. Rando:** Mr. Connors, do you have something to say?

**Mr. Connors:** Yes, I just want a quick rebuttal.

**I want to remind the board that this is a commercial zone. Its a commercial enterprise. And then also I did attach to the Exhibit D in the initial file that 2005 letter signed by John Millian: A site visit was made on April 21st in 2005 in the presence of storage of container boxes about heavy trucks and equipment and then specifically articulated heavy storage of heavy trucks and equipment. They said that in 2005. I don't think they can have it both ways. I mean they said it in 2005, and Mr. Milian signed the document. So I think that that issue came up in 05 and our position was it was resolved.**

**Mr. Hickernell: You say at least in your supplemental brief that Chapter 40, Section 7, which obviously has been revised probably a year and a half ago but that doesn't apply though.**

**Mr. Connors: I threw that in just in case I missed something. No it doesn't apply.**

**Mr. Rudnick: Can we hear from Mr. Sarris?**

**Mr. Sarris came forward.**

**Mr. Rudnick: Mr. Sarris, you listed a whole bunch of trucks that you owned in 2005 and 2006. Where did you store these trucks?**

**Mr. Sarris: In my lot. I did work for John Millian. I installed a plow on his truck. He picked it up after work. He knew that I had the trucks. They all know. I have been working for the city for a long time. It's not a secret that I owned the trucks. They are parked in my lot and I still work for the building department too.**

**Mr. Hickernell: Just so the record is complete be clear when you say you parked them in your lot. You mean at 238 Calvary?**

**Mr. Sarris: My trucks are parked at 238 Calvary Street.**

**Mr. Rudnick: Specifically in 2005 you owned an F350, an F650, and an F 750, a Peter-built dump truck and another F 350 but they are all heavy trucks.**

**Mr. Sarris: I have a backhoe also.**

**Mr. Rudnick: So he doesn't know that you stored those on this site in 2005?**

**Mr. Sarris: Yes.**

**Mr. Rudnick: Do you have another place to store trucks?**

**Mr. Sarris: No.**

**Mr. Rudnick: Thank you very much.**

**Ms. Hankins: You also had excise tax.**

**Mr. Sarris: I tried to get them but they couldn't go back that far. I tried to get my excise tax bills and they had a hard time finding them.**

**Ms. Hankins: Would it be your testimony that the Mr. Rudnick the equipment that he listed off that you paid excise tax that it was represented as garaging in that location. So in other words the building department could have simply looked at that information and determined how many trucks there were.**

**Mr. Sarris: Basically, yes.**

**Ms. Hankins: Thank you.**

**Mrs. Rando: Is there anyone in the audience that is in favor of this petition that would like to speak or raise your hand to be counted?**

**(Twenty-seven people raised their hand in favor.)**

**Mrs. Rando: Is there anyone in opposition? Seeing none. Is there anyone seeking information? Seeing none. Is there anyone that would like to come to the podium and speak.**

**Dianna Vanaria, 55 Ivy Lane, Waltham. (Mrs. Vanaris handed out some emails written between the building inspector and Counselor Logan.**

**Mrs. Vanaria: Tonight I will speak again as I have before but hopefully my words will be even louder than the last time I spoke here.**

**A ward counselor is elected by the people as a public servant to represent the citizens of his jurisdiction. With this job comes the responsibility of handling situations with not only professionalism but with integrity. It was never for that representative's own advantage but for the prosperity of the community.**

**On last Wednesday, June 13th, we received an anonymous package to our office. A city employee who saw one of my husband's facebook posts regarding continuing harassment to Waltham family businesses by Ward 9 Councilor Robert Logan and Building Department Bill Forte. This city employee whom I give great credit to furnished us with email correspondence between Logan and Forte that pertain to our current case.**



Copies of these emails are available upon your request but will also be posted on tonight's social media,

Thank you once again for allowing me the opportunity to speak with you. I am only sad that the fact that Robert Logan couldn't be here tonight even though he creates all this havoc. Obviously he had maybe something better to do.

Mrs. Rando: Now the building inspector, I know, has to follow through if he sees something wrong. So he's doing his job. Councillor Logan, I am sure that is the job of the city councillor to take care of his ward.

All right, would anyone else like to come up and speak?

John Sergi: I know you all as a member of the ZBA, but tonight I rise as a non member of the ZBA but as a banker for George and Judy Sarris for the last fifteen years. So I am speaking in my capacity as Sr. Vice President for Brookline Bank tonight. Nothing to do with the zoning board of appeals.

I have known the two very closely for the last fifteen years. I can speak to their character. They have very strong character. They are honest individuals and if you need a character reference you're going to go to the local bank. So I am here to speak on behalf of their character. They have very strong character. I've banked with them for fifteen years and during that fifteen years banking regulations have changed as zoning compliance regulations have changed. I can say that they've adhered to every banking compliance regulation that there is that we ask them to comply with.

I also can speak to the fact that I have financed a number of their trucks during the time period of discussion tonight. I have to say it's That's all I have to say.

**Ms. Hankins:** Do you recall maybe off the top of your head when you are doing the paperwork on his trucks it was to be housed on Calvary Street?

**Mr. Sergi:** Oh, yes. He doesn't own any other property.

**Ms. Gelineau:** And as far back as 2005, did you go back that far?

**Mr. Sergi:** Yes.

**Ms. Gelineau:** Then you do remember him purchasing those trucks way back then.

**Mr. Sergi:** He's always had heavy construction. I call it construction but he's not a contractor.

**Mrs. Rando:** Thank you. Anyone else? Seeing none. Attorney Connors are you ready to continue?

**Mr. Connors:** My rebuttal is complete. I have nothing more to add. I think the first two issues are, I'm asking the board find that to rule that there are no violations as stated by the building inspector.

I have prepared Proposed Findings of Fact and Proposed Decision for the board's consideration. They are the same ones I submitted back in April.

**Mrs. Rando:** Would the board want him to read his Proposed Findings of Fact?

**Mr. Hickernell:** You just got the decision from Attorney Learned before the meeting started. Did you want any opportunity to review it or rebut it or do you want to continue it tonight?

**Mr. Connors:** No, I will continue tonight. I've read it. I think that she's correct. It's a statutory construction. I have offered why it's statutory construction. Again I would say that's the decision of a judge in the Superior Court case. It's not an appellate decision. And so I have offered an appellate decision which takes precedent over that decision. I haven't read it but I would say it's not dispositive of the issue and the written decision of the Supreme Judicial Court.

**Mrs. Rando:** Do you want him to read the proposed findings of fact?

**On motion of Mr. Hickernell, seconded by Mr. Rudnick, the board voted to waive the reading of the Proposed Findings of Fact.**

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

**Mrs. Rando:** On the reading of the Proposed Decision?

**On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Decision.**

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

**The board made some changes on both the Findings of Fact and Proposed Decision as follows:**

**On the Proposed Findings of Facts the board amended it as followsPage Three adj: The tent has been removed..**

**Add: no. 12: "The Petitioner has substantially resolved items 3 through 7 in the Notice of Violation."**

**The Proposed Decision was amended as follows:**

**Page 1 - Proposed Decision**

**Strike third line starting with The Zoning Board all the way down to the third line ending with screening therein at all times.**

**Page 2 - Strike first paragraph and add at end "The evidence presented does not support a finding of a violation of Section 3.628.**

**Strike the third and fourth paragraphs before the Granting of the decision etc.**

**Mrs. Rando: I am ready for a motion on the Proposed Findings of Fact as amended.**

**On motion of Ms. Gelineau, seconded by Mr. Hickernell, the board voted to adopt the Proposed Findings of Fact 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: On the Proposed Decision, as amended?**

**On motion of Ms. Gelineau, seconded by Ms. Hankins, the board voted that the Decision as amended be the decision of the board.**

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

**Mr. Sarris:** I just want to say thank you. I don't know if the Board of Appeals knows what a financial expense it is to come to the board of Appeals and I didn't know who my councilor was. I don't know who my councilor is where I live. I was in my twenties when I started my business. But any complaint that comes through, I think we found it should be written and this councilor should not be able to go around town and just randomly make complaints and getting the building department involved unless he has a legitimate complaint. He should have something in writing.

**Mrs. Rando:** Im sure he felt he did.

**Mr. Sarris:** Thank you.

**At 8:40 P.M., the the Chair called for a five minute recess.**

**The board reconvened at 8:45 P.M.**

**Mrs. Rando:** Will the clerk please read the petition in Case No. 2018-16?

**The clerk then read the Petition of Jean Goodwin in an application for variance - height. The Petitioner seeks a variance to construct a garage in excess of 15 feet. Location and Zoning District: 41 Ellison Park, Residence A-4 Zoning District.**

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

**Andrew Zucker, 41 Ellison Park, Waltham: Currently we have a one and half car garage. It's sort of an older two car garage. It has no foundation underneath it. It's pretty much falling down. We are in need of more storage as well and when I looked at what options we have for storage there's a potential that we could raise the roof and go up by right etc., but it's exceptionally costly and it only addresses one of the concerns that we have. And those two concerns are, that street is almost impossible when there are cars parked on either side as you go out and sometimes I have to go around the other way to park. We are trying to get more cars off the street and allow for the storage at the property that we need.**

**The zoning bylaws allow for a fifteen foot tall garage, no more, which is nearly impossible to construct a two car garage that doesn't exceed fifteen feet just by virtue of the roof pitch and the height that you can have a garage door that has room for the trash etc. So we are looking for an exception to that to build a garage and have operable doors and a reasonable height on the first floor and some storage in the eaves.**

**Mrs. Rando: Any questions?**

**Mr. Rando:** Are there any other homes that have a garage as tall as this?

**Mr. Zucker:** Two doors down.

**Mrs. Rando:** Have you spoken to any of your neighbors?

**Mr. Zucker:** Yes, we have. The neighbors not directly across the street but across the street to the right were initially concerned with the morning light in the winter when the trees are down and we spoke with them and showed them the plans and they were all for it as was the neighbor immediately to our left when you are looking at the house . I spoke with them a few times. He would be here except there was another meeting tonight. They would have been here in favor. His next door neighbor I also spoke with a few times and he's all for it. I haven't spoken to anybody else in the neighborhood.

**Mr. Rudnick:** So the storage you are talking about is personal storage?

**Mr. Zucker:** Yes.

**Mr. Rudnick:** Any business storage?

**Mr. Zucker:** No.

**Ms. Gelineau: Two cars?**

**Mr. Zucker: Two cars.**

**Mr. Rudnick: And your setbacks of your garage, you're just maintaining the setbacks of the other garage?**

**Mr. Zucker: I think we may be one or two feet closer to the property line but we are not asking for a variance for the setbacks. We are still staying within the allowable setbacks for a detached garage. I think we have five feet now, so I think we are allowed three. So we are going to have to move it three and a half feet.**

**Mr. Rudnick: You presented these plans to the building department who said you could build this if you got a variance?**

**Mr. Zucker: Yes. This is the only concern that they had. And I went a few times and showed him the plans as I was developing them and asked him what I needed to do. I had first to present the plans to them so they could reject it to you.**

**Mr. Rudnick: Well I disagree with you that you can't build a good garage in fifteen feet. You certainly can, but the storage seems to be a hardship that you have.**



**Mr. Zucker:** Yes.

**Mrs. Rando:** Do you have a cellar in the house?

**Mr. Zucker:** There is. It's small because the footprint of the house is actually small and it's mostly mechanicals, laundry.

**Mr. Rudnick:** Is there a foundation under the garage?

**Mr. Zucker:** Under the existing? Yes. It's a concrete slab but it was, I'm assuming, it was placed on timbers, six by six or whatever they may have been. But they are rotten, so if you are looking at the garage its sort of already twisting. We don't like to keep anything of value there. My thoughts are whether its this year or maybe three years from now I assume that it will eventually succumb to the winter.

**Mr. Rudnick:** You're not going to mind when we make a condition that you can't make a living space on the top of this garage without starting the process all over again?

**Ms. Goodwin** shook her head, no.

**Mrs. Rando:** Any questions?

**Did we receive the Proposed Findings and Decision?**

**Mr. Hickernell: We did. It was emailed on June 12th.**

**Mrs. Rando: Has everyone read them?**

**The board nodded that they read them.**

**Mrs. Rando: Any questions on it?**

**Are we ready to waive the reading or do you want them read?**

**On motion of Mr. Hickernell, seconded by Mr. Rudnick, the board voted to waive the reading of the Proposed Findings of Fact.**

**Mrs. Rando: The Proposed Decision?**

**On motion of Mr. Hickernell, seconded by Mr. Rudnick, the board voted to waive the reading of the Proposed Decision.**

**Mrs. Rando: All right, I am ready for a motion.**

**Mr. Hickernell: I think Mr. Rudnick has proposed a condition in the decision.**

**Mr. Rudnick: Condition No. 3: No residential use or occupancy of the storage area to be constructed above the garage shall be permitted on the basis of this decision.**

**Mr. Hickernell added a number 11 to the Proposed Findings of Fact>**

**Mr. Hickernell: There's paragraph one through six and then the number starts again with one through four. I would renumber the second one through four to be seven through ten and I would add an 11: There are in the immediate vicinity several garages taller than that proposed here.**

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

**There was no one in the audience that was in favor, in opposition or seeking information.**

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

**On motion of Mr. Gelineau, seconded by Rudnick that the decision, as amended, be the decision of the board.**

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

**On motion of Mr. Hickernell, seconded by Rudnick, the board voted to adopt the Proposed Findings of Fact as amended.**

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

**On motion of Ms. Gelineau, seconded by Mr. Hickernell, the board voted to adjourn at 9:05 P.M.**

*Barbara Rando, chair*