

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

September 20, 2013

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, September 20, 2016, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

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

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

Mrs. Rando: Tonight we have one continued case and one case that requires a review.

Case 2016-19, Laura and Anthony Rotolo, 113 Graymore Road and that's for a variance; Case 2016-31, 80R Bacon Street Realty Trust, 74-80R Bacon Street and that's for a review.

The first action this evening is for a motion to accept the minutes of the Regular Meeting and the Executive Session held on September 13, 2016.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of the Regular Meeting and the Executive Session held on September 13, 2016.

Mrs. Rando: Would the clerk please read the petition in Case No. 2016-31, 80R Bacon Street Trust.

The clerk then read the petition of 80R Bacon Street Trust, Mary Ellen Dickie and Peter E. Dickie, Trustees in an application for Special Permit - Extension of nonconforming use to allow the property to continue to be used for a chimney cleaning and repair business, for warehousing, assembly and sale of chimney cleaning equipment, and office use on both floors ancillary to the chimney cleaning use. Location and Zoning District: 74 R Bacon Street; Residence C. Zoning District.

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

Richard F. Dacey, Esquire, 707 Main Street, Waltham representing the Petitioners Mary Ellen Dickie and Peter E. Dickie, Trustees of the 80R Realty Trust came forward.

Mr. Dacey: I do have Mary Ellen with me tonight and also her daughter, Lindsey, who works in the business and is sitting next to her. I did submit a memorandum electronically and then reproduced it in the books which are before you this evening.

(Mr. Dacey then went over the information contained in the book which was submitted to the board.)

Mrs. Rando: And that's exactly the way it has been?

Mr. Dacey: Exactly, same number of parking spaces; same location for the dumpster, same screening, Virtually nothing has changed. Same number of employees. Actually you might be interested in this. They have seventeen employees, three office and fourteen service people, Six of them live in Waltham. So six of the fourteen people that actually service the chimneys are residents here. This has been a very stable employment for these people.

Mrs. Rando: So, from reading your notes, the only difference between now and five years ago is that you would like to be relieved of the annual five year coming back before us. Is that true?

Mr. Dacey: Not exactly, I'm expecting, because I've been beaten down so many times on this issue, that you will impose some sort of a time limit on it. I've asked before and the answer has always been no. I'm humbly admitting defeat before we go there. I'm saying you're probably going to impose a time limit on this special permit. I understand. It's not a problem and we will live with it. We'll do a better job of filing it so we don't mess up the next time.

What we did ask for relief for was a particular little section in the last decision that requires us to notify the owners of the surrounding properties annually and what we were finding was that the owners if they had a problem that they would knock on the door and it gets solved. I mean they plow the snow for the owners. They try to accommodate their neighbors. The neighbors were saying, why are you sending me a letter every year? There's nothing going on here. Are you trying to stir up trouble? So the requirement that we would like to be relieved of is the requirement that we send a letter every year asking the neighbors if there's any problems that need to be solved. Comfortable in the knowledge that they have been there for seventeen years and if the neighbors have an issue they'd do the right thing and they would knock on the door and solve it.

Interestingly enough, one of the neighbors came in tonight and said, look I live right next door. I'm on Fiske Street. Do me a favor. Tell the national chimney guy who shows up early to show up within the time frame that he's there. I don't want to listen to him at six thirty in the morning. Fair enough. But that's the relationship that they have with their neighbors. I don't think we need annual letters to the neighbors reminding them.

It's a fair point. The National Chimney needs to be told which they will, that they can't do a delivery before eight o'clock. That's just not in the Special Permit and it also violates the city noise ordinance. We need to educate National Chimney not to send a driver and a truck down here at 6:30 in the morning. So the requirement that we would like to eliminate is that requirement.

Other than that, the decision issued in 2005 can be replicated.

Mrs. Rando: Are there any questions from the board? Hearing none, is there anyone in the audience that is in opposition to this? Seeing none, is there anyone seeking information? Seeing none, is there anyone in favor? (Two people raised their hands in favor.)

Mrs. Rando: All right, you can continue with your Proposed Findings of Fact.

Mr. Sergi: Councillor, has this been changed from what you supplied?

Mr. Dacey: No.

Mr. Sergi: It's been on file with us?

Mr. Dacey: Yes, it has.

Mr. Sergi: Madam Chair, I make a motion that we waive the reading of the Proposed Findings of Fact since it's been on file. Mr. McCarthy seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.

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

Mrs. Rando: On the Proposed Decision, we have to vote on, are we going to require a letter sent to neighbors?

Mr. Hickernell: We just voted to waive the reading. We just have to vote on the reading of the Proposed Decision.

Mr. Sergi: Councillor, same question, this has not been changed?

Mr. Dacey: Except that the requirement of notifying the abutters is deleted from the Proposed Decision.

Mr. Sergi: But that was on file. It's been on file with us?

Mr. Dacey: Yes, this has been on file electronically. But Chair Rando's point that is a change from the 2005 decision. Everything is restated except that one sentence.

Mr. Sergi: Madam Chair, I make a motion that we waive the reading of the Proposed Decision since it has been on file. Mr. McCarthy seconded the motion and the board voted to waive the reading of the Proposed Decision.

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

Mrs. Rando: All right, I am open for a motion on the Proposed Findings of Fact.

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

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

Mrs. Rando: On the decision?

Mr. Dacey: On the decision, I would point out that the requirement that we notify the neighbors is not in this decision. So that is a disclosure. The other change that may be worth talking about is this. Mary Ellen Dickie and her husband Peter have operated this business for seventeen years. And the requirement is that the permit expires with them. And they are indicating that they are considering, it is not imminent but it is something that they certainly would consider in the next five years to make an interfamily transfer of the business, in all probability to their daughter, Lindsey, who is actively working in the business at the present time. The question is, may we have an alteration to the decision that would allow an interfamily transfer without avoiding the special permit. The business may change hands from Mary Ellen and Peter Dickie to their daughter or to someone directly in their family, not outside the family, not change the business just an ownership change. That's what this special condition 3 on Page Five, is intended to do. And we have Mary Ellen here and Lindsey here tonight to answer any questions that you might have with this. This is not something that is planned in the next twenty-four hours but it certainly a succession plan that the family has considered and when they saw the language in the decision it would require another trip back here just to turn the business over to their daughter.

Mrs. Rando: Will this happen within the five years?

Mr. Dacey: It could happen within the five years, yes. I think it might. If it doesn't we'll be back in five years anyway.

Mr. McCarthy: I don't have a problem with it, Madam Chair.

Mr. Sergi: I'm okay with it, Madam Chair.

Mr. Hickernell: I see no reason why we shouldn't allow that.

Ms. Gelineau: It's fine with me.

Mr. Dacey: Okay, then that is the full disclosure. There's nothing else that I need to add.

On motion of Mr. McCarthy, seconded by Mr. Sergi, the board voted that the Proposed Decision be the decision of the board.

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

On motion of Mrs. Rando, seconded by Mr. McCarthy, the board voted to take a two minute recess at 7:27 P.M.

The board reconvened at 7:30 P.M.

Mrs. Rando: Would the clerk please read the petition in Case #2016-10. Laura and Anthony Rotolo, Trustees, 113 Graymore Road.

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

and maintain an addition onto the West side of the residence. Location and Zoning District: 113 Graymore Road, Residence A-2 Zoning District.

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

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

Mr. Connors: I am here tonight with Laura and her mother Josephine. They are both residents of the property.

We were here some time ago and there were some issues raised at the hearing and the building inspector happened to be in the audience and the board asked him to inspect the property which he has done. I think the initial meeting was back in August but he was out there soon or after. The building inspector has been out to the property at least two times after the time I was out there. So he's been out to the property three times. He's made certain requests of the petitioners which they made structural changes and they have also submitted building permit applications to him for certain work that was done on the property so - - -

Mrs. Rando: Did you receive the letter from the building inspector?

Mr. Connors: I did. So noting that the applications have been filed and the work has been done, but he hasn't issued a final building permit nor a C/O , I would respectfully ask the board to allow us to withdraw without prejudice so we can finalize the permits, the C/O's issued and then perhaps come back to the board.

Mrs. Rando: Are there any questions?

Is there anyone in the audience that is in opposition, or in favor or seeking information that has anything new to add?

Patricia Defina, 129 Graymore Road: So I am two houses west of the Rotolo's. I was here once before. I think we met perhaps in July to state that I was witnessed to the fact that they had an illegal apartment in what should be a single family dwelling. As a visiting nurse, I saw a patient there and that was many years ago.

I am fearful that this behavior is going to be ongoing and we would like to maintain our neighborhood as a private residence and not have any more renters. I know that tenant left. I know that I see a man coming out of the basement so I would like to know the disposition of what happened when the building inspector went up and if past behavior was a predictor of future behavior, I think it's a very likely possibility that they are going to try to rent some of that new structure to house people.

Mrs. Rando: I will tell you that the building inspector has been out there and it will be returned to a single family home.

Ms. Defina: Okay, but will it be maintained as a single family home, is my real question?

Mr. McCarthy: Yes.

Mrs. Rando: All right, do I have a motion to allow Case 2016-19 to be allowed to withdraw without prejudice?

On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to allow Case No. 2016-19 to withdraw without prejudice.

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

Mrs. Rando: One more motion is in order.

On motion of Mr. McCarthy seconded by Mr. Sergi, the board voted to adjourn at 7:40 P.M.

Barbara Rando 9/27/16