

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

September 27, 2016

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, September 27, 2016, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

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

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

Mrs. Rando: Tonight we have two new cases and one continued case. Case 2016-32, Robert and Linda Hanley, 58 Weir Road, and that's for a Special Permit; Case 2016-33, Paul Morreale, 80 Prospect Street, that's for a variance; Case 2016-20, 79 Pond Street LLC, 73-79 Pond Street and that's for an appeal of the decision of the building inspector.

The first motion this evening is for a motion to accept the minutes of September 20, 2016.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to accept the minutes of September 20, 2016.

Would the clerk please read the petition in Case 2016-32?

The clerk then read the Petition of Robert W. Hanley and Linda M. Hanley. Owner: Robert W. Hanley, Linda M. Hanley, Joseph J. Bergantino, Jr., and Patricia Bergantino in an application for Special Permit - Accessory Dwelling Unit. Location and Zoning District: 58 Weir Road, Residence A-2 Zoning District.

The members sitting on this case: Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Mr. McCarthy and Mrs. Rando.

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

Attorney Nicole Starck, 6 Lexington Street, Waltham along with the Petitioner, Mr. Robert Hanley came forward.

Mrs. Rando: Before you start Attorney Starck, in the application we have stated that we require the brief, the Proposed Findings of Fact and the Proposed Decision two weeks before the meeting. We received it today. We can't hear the case tonight because people here have not even had time to read it and review it.

Ms. Stark: Will the board grant a continuance until next month's meeting?

Mrs. Rando: Is that what you are asking for?

Ms. Stark: If the board will grant it.

Mrs. Rando: Attorney Starck would like a motion to continue her meeting.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to allow Case No. 2016-32 to continue to another date.

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

Mrs. Rando: We will continue Case No. 2016-32 to November 29th.

We will take the Pond Street case now because we have the building inspector and Attorney Sewell here.

Would the clerk please read the Petition in Case 2016-20, 79 Pond Street. LLC.

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

The members sitting on this case are Mr. Squillante, Mr. Hickernell, Ms. Gelineau, Mr. McCarthy, and Mrs. Rando.

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

James Scanlon, Esquire: As you may recall, at the last hearing, the issue was raised as to the misnomer of the party, the wrong name of LLC being cited in the notice of

violation. Since that time, the building inspector has issued a new notice of violation naming the correct owner of the property and the appellant has appealed that notice of violation. That case has been scheduled for October 25th meeting and I would request/ suggest that this matter be moved forward to that date so that they can be heard together.

Bernadette Sewell, Esquire, City of Waltham Law Department: So the original letter when it was sent out was sent to Vincent Mula, c/o Aragona Realty, but it was sent to 79 Pond Street. Mr. Mula is the owner of 79 Pond Street LLC, according to the Secretary of State's records. So the city sent it to the right person. He is the owner. He is the agent of 79 Pond Street LLC. They sent it to the correct address. The only thing is did do was add Aragona Realty which doesn't take away from the fact that it went to the right person and it went to the right place.

So the city believes, that notwithstanding what was sent out a correction and I will get to that in a second. The city believes that the first notice that went out was actually sent correctly. We didn't put too little information in. We just put too much information in, superfluous information in. So that last letter that went out, we believe, is valid and that the board can hear that petition tonight.

With respect to the second letter that went out, I was not here for the first hearing, but when I heard that the board had an issue with it, I said, okay, well let's just sent out another one and fortunately there was an error and an old draft of the first letter was sent out that wasn't what was intended to be sent out and missed out one key part of the letter which was the transfer station being operated at the facility. We certainly don't wish to waive anything to do with that particular point.

So what we are asking now, is that we are happy to withdraw that second letter. But essentially what you have with these two letters is you have the person who owns the property sent to the location itself with all of the things that we have an issue with this

place. So we would rather go forward tonight. Frankly, this has already taken too long, The neighbors have had to put up with this for quite a while now and we would rather move sooner than later because when we get to October 25th the city doesn't want to go forward on that letter because we realized after the fact that the wrong letter had been sent out. So we would rather move forward on the original May 5th letter.

Mrs. Rando: Is there a way that they could join the two things together for the October 25th meeting?

Ms. Sewell: Well they could agree that, in fact, that the first letter that we sent was sent to the right person and was sent to the owner of the property and was sent to the right address and agree to waive that particular part of the petition and then we can go forward this evening.

Mrs. Rando: Does everyone follow Attorney Sewell?

Mr. McCarthy: All of this stuff that you are talking about and the attorney is talking about is certainly not the problem here, really. It's the issues that the building inspector found and getting it fixed.

Ms. Sewell: Right.

Mr. McCarthy: Well, I want to hear what the petitioner has to say with regard to getting the issues fixed. We'll think about that afterwards.

Mrs. Rando: Attorney Scanlon, do you want a rebuttal to Attorney Sewell? Do you want a five minute recess?

Mr. Scanlon: No. Specifically as to the misnomer issue, there are many reasons why a business chooses to organize as a corporation or LLC. There are also many reasons why a primary business owner may choose to organize his business as separate legal entities.

In the current matter, there are at least three different entities involved. One was the owner of the Elm Street facility. One is the owner of the Pond Street facility. And one is a tenant first at Elm Street and later at Pond Street and legitimate reasons for a business owner to have separate entities.

Zoning and building code violations, although non-criminal in nature do carry possible penalties for noncompliance. It is imperative that the proper party be cited in any notice of violation just as it is imperative that the proper party apply for permits to build. The inspector required, as was his right and his, in fact, obligation that the proper party, the owner of the property, 79 Pond Street LLC apply for building permits for the Pond Street campus. That happened. It happened prior to this filing. The owner actually applied under the wrong name. There are copies of that in your file and they had to reapply with the right name. The same standard that the building inspector applied must be applied to the inspector. I've got a case I would point out, Commonwealth vs. Pope and in that case just dealing with the name the party was referred to as the Boston and Worcester Railroad, when the actual name of the company was the Boston and Worcester Railroad Company. The error was fatal and the case was dismissed. That is a more significant misnomer than we have in this case and the suggestion of counsel for the building commissioner that proper notice was given because the same persons involved in all these entities. The notice goes to Aragona Realty LLC. The notice was to Vincent Mula as Manager of Aragona Realty LLC. It was not to Vincent Mula personally. It was not to Vincent Mula as Resident Agent for 79 Pond Street LLC, or any other entity. These would be fatal on an appeal and I believe that it is not unreasonable to request and suggest that the two cases be moved forward to the 25th.

I have no problem if the matter is amended to reflect all the citations on the more recent notice. I'd prefer if the board had the ability to make that amendment rather than having a new citation issued for that one matter and then having to appeal another citation.

Again I would request the matter go forward on the 25th, that the merits be heard on the 25th on either both cases combined or on the second case and I would certainly agree to allow the second case to be amended to include the transfer station. Thank you.

Ms. Sewell: I don't understand what's so magical about October 25th. We are ready and willing to go forward tonight. If, in fact, what the owner is saying or his counsel is saying is that on the 25th they are willing to essentially take the name from the second letter and insert it in the first letter. We don't want that second letter to apply anymore because it was the wrong letter that went out. We want the first letter to apply if, in fact, they are willing to do that on October 25th, why aren't they willing to do it on September 27th? It doesn't make any sense. The city can only conclude that what they are looking for is just to do an extra month's worth of work and an extra month's worth of detriment to the community and we would rather go forward tonight.

Essentially what you have just heard is that, and he makes a point, that there are reasons why people incorporate. However, we are talking about the same person here. We are not talking about corporate liability vs. Vinny Mula's liability. If they want to restrict it so that it's just the corporation and the city can see that it's got nothing to do with Vinny Mula as an individual, we're okay with that. We just want to go forward with this hearing tonight rather than wait until October 25th. And I don't understand why that extra month is going to make a difference. Unless they are going to completely change the way they do business, at that facility and at that location within the next month, there doesn't seem to be any reason at all not to go forward this evening.

Mrs. Rando: I'm sorry, what was that?

Ms. Sewell: Unless they are changing how they are doing business and what they are doing at that facility and at that location within the next month, there doesn't seem to be any reason why we have to wait. They would have to concede because admittedly the city does not want to go forward on something that's going to be reversed on appeal because of a misnomer. So what we are looking for is for 79 Pond Street LLC to acknowledge that they got all of the documentation that they needed to get and that they would be willing to waive a challenge to the city's notice to the right person, so that we can go forward with this. If they are not willing to do that, then what that means is that they just want to continue doing business at this location for another month because when we get over to October, we're going to be in exactly the same position. There's not going to be anything new within the next month.

So I would ask that Counsel agree to put the two letters together in terms of the substance of the first letter and the name of the second letter and treat it as one.

Mrs. Rando: Attorney Scanlon, the second letter was mailed to the correct address?

Attorney Scanlon: Yes.

Mrs. Rando: Which is 79 Pond Street?

Attorney Scanlon: Yes. 79 Pond Street, LLC.

Mrs. Rando: And the letter, if we allow you to continue to October 25th, are you going to go by the first letter or the second letter?

Attorney Scanlon: We are going by the, the first letter. I think if we go forward today we would be going forward on the first letter and I would be asking that the finding

be entered for the appellant because there is a misnomer party. And I'm certainly not going to recommend that we give up those rights.

The second letter, as I said earlier, I have no problem if the case on the second letter is amended to include the termination of the yard waste transfer station.

Mrs. Rando: And that's the only difference?

Attorney Scanlon: As far as I know that's the only difference in the two letters.

I wouldn't object to a motion in the second case that - - -

Mrs. Rando: That you'd go by the first letter.

Attorney Scanlon: Yes.

Are there any questions of Attorney Scanlon or Attorney Sewell?

Mr. Squillante: I understand what you are saying but I don't understand the difference of combining them tonight or at the next meeting.

Attorney Jack Mula, 40 ?Amelia Drive, Waltham. The first letter that went out is a fatal letter because it names the improper party. If we choose to appeal the decision of the board in the event that it is adverse, we risk potentially not having appeal rights for the proper owner of the party bringing the legal case. Just as Ms. Sewell is concerned about an appeal, we are also concerned by acting solely on that first letter that the improper party naming a member of a foreign corporation then you would only have appeal rights for the foreign corporation. That foreign corporation has no property interest in 73-79 Pond Street. So it's a matter of procedure. It's a courtesy to the city to allow these cases to be

combined. If they want to issue a third one, we have no objection but we think, especially with the neighbors, with other people coming here speaking for and against, the sooner we hear it the better but we certainly can't give up potential appellate rights that we have. We wouldn't be very good attorneys doing that.

Mr. Squillante: I seem to remember that you were planning on meeting and working with the neighbors to try to resolve some of these issues before we heard the case. Have you made some progress on that.

Attorney Mula: Unfortunately not. Councillor Waddick and I'll let Bobby speak for himself, informed us it would be better if we didn't meet with the neighbors, seriously.

Attorney Sewell: With all due respect, this is not a negotiation. This is not whether Boston Bark, 79 Pond Street, LLC, whatever you want to call the operation there as to whether they can scarce zoning law. It's not up to the neighbors to determine whether they can live with a zoning violation. It's up to the city to determine whether a zoning violation exists and whether we take appropriate action. As a matter of fact, there was a meeting among neighbors with Councillor Waddick, with myself, with Mayor McCarthy. But counsel for the owners of the property were not invited. We wanted people to be able to speak freely about the issues that they have. So, no, there was not a meeting between the neighbors and counsel for the property owners because, that's, frankly, not appropriate and it didn't take place.

Mrs. Rando: Are there any other questions?

Mr. Squillante: I won't be here on the 25th.

Attorney Sewell: If counsel for the property is willing to waive thirty days and we will issue a third letter so there's absolutely no doubt whatsoever, correct content, correct

person and we go forward on October 25th on that particular letter so that now we don't now have to get a date in December or something along those lines, then the city is prepared to go forward on the 25th on a letter that we can issue tomorrow.

Mr. Squillante: Will that be enough public notice?

Attorney Sewell: I don't think you have to give thirty days, correct me if I am wrong. I don't think you have to give thirty days for a public notice. You don't need that much time that ——

Mr. Mula: If we did, we would waive that so you can process the letter.

Mrs. Rando: Well, it has to be posted again if the date is going to change.

Attorney Mula: To be out before the 25th, it would be out this Thursday.

Mrs. Rando. We have one member that will not be here.

Mr. Hickernell: If we get it posted we can make it.

You can get a different member. It's a different case.

Mrs. Rando: What is the wish of the board.

Mr. McCarthy: I have just one question. Are we here to find out if they have made any progress trying to get anything fixed?

Attorney Mula: Well the board had suggested that we meet with the building inspector. We arranged a meeting with the building inspector who actually attended.

During the introduction to the meeting, Ms. Sewell informed Mr. Forte not to discuss the matter unless we were to admit all the violations. Unfortunately that ended the meeting and there was no further discussion. It was a complete surprise to us - - -

Mr. McCarthy: So you deny all of the allegations about all the infractions or whatever. There's nothing going on.

Attorney Mula: Yes, Sir.

Attorney Sewell: I don't know what meeting Mr. Mula was at but I was not at the meeting which I supposedly actually said those things. Yes, they asked for a meeting with the building inspector. I'm the attorney who represents the building inspector. There were two attorneys. I certainly was not going to let him meet with two attorneys in an adversarial situation without his counsel also being present. I actually sat very quietly. The meeting probably lasted about twenty minutes. They were going through point by point, each of the violations, and at that point at least initially with Attorney Scanlon, at that point Attorney Mula came in and after a while started asking questions of me and I said I am not here to answer any questions. I'm here to listen to what you have to say. You requested the meeting and at that point Attorney Mula said well, I don't see the point of being here and they got up and left. And then I said to them before they left, if you want to correspond further or speak further with the building inspector, please go through me which is entirely appropriate when someone is represented by counsel. And that's exactly what happened.

Attorney Mula: That's not what happened.

Attorney Sewell: Yes it is, Jack.

Attorney Mula: That is complete fabrication. That did not happen at all. First of all you were there. You sat down. You were there and I simply asked you if you would let Mr. Forte speak. He and Jim were speaking. They went back and forth and unfortunately you said, unless your word unless you cede to the allegation, there's nothing to talk about.

Mr. McCarthy: So let's just move it out to the 25th. Get a letter out that is right and on the 25th we'll move on from there.

Mrs. Rando: Does anyone want to make a motion that we continue the case to October 25th.

Mr. McCarthy: So moved, Madam Chair.

Attorney Sewell: I don't want there to be any confusion when it comes to October 25th about what the petitioner's counsel has agreed to here. If we issue a third letter to the correct party with the contents of the first letter tomorrow to them, are we going to hear on October 25th any challenge other than to the merits of the case from the petitioner?

Attorney Mula: We will move forward with what counsel has just said.

Attorney Sewell: If tomorrow the building inspector issues a letter that is with the content that we want to the party that they want that we're not going to hear any challenge on October 25th if we're going forward essentially twenty-eight, twenty-nine days later, instead of thirty days. We're not going to hear a challenge at that time because I don't want to come in here again and waste my time again with challenges such as this. So are they willing to say now that they are willing to go forward on October 25th?

Attorney Scanlon: I would ask that we see the letter first.

Mrs. Rando: It's the first letter, isn't it?

Attorney Sewell: It's going to be the first letter exactly the same except with the correct party. We're not going to change any of the violations . This is exactly what I don't want to hear. I don't want to hear we'll wait until we see the letter and then we get here on October 25th and they say, no, we don't like that letter after all. We don't want to go forward today and then we've got another six, eight weeks. So, none of the violations are going to change from the first letter. If the city is willing to say that we are not going to add any violations or change them in any way, it's just going to be the form acknowledging that this is a letter in accordance with an agreement at the hearing tonight and it's going to the right person and the right address. Are they willing to say that they are willing to go forward on October 25th?

Attorney Scanlon: Yes, we are.

Mrs. Rando: I think we should stick to the 25th and have a new member sitting on this case.

Mr. Squillante: Well, yes, I know, that's fine. But on this specific case, the first letter will presumably not be heard after that date.

Mrs. Rando: We are going to incorporate it into the second case.

Mr. Squillante: It's a whole new letter.

Mrs. Rando: It's the same letter that they sent the first time.

Mr. Squillante: Are you going to issue a new violation?

Mrs. Rando: It's the same violations.

Mr. Squillante: But is it a new action?

Mrs. Rando: Everything is the same.

Mr. Squillante: Is it the same case number?

Mrs. Rando: No. I think it's a new case, 2016-36, I think.

Mr. Squillante: So it's a new case, the specific case number has just sort of died.

Mrs. Rando: We are going to incorporate it into the new case.

Are there any questions from the attorneys that are here, Attorney Sewell or the building inspector or Attorney Mula or Attorney Scanlon?

Attorney Mula: I would like to ask, does the board's wish for us to meet with the building inspector in the presence of counsel? Is that still the wish of the board? We are still willing to meet to try to hammer out these matters. We understand that there were previous cases where they were heard out and speaking to other counsel, we're told that Mr. Forte came to some previous conclusions which may in fact allow for some of the allegations of the violations to be corrected. In addition, I understand that these violations at the time they existed, if in fact, they were violations some of them no longer do exist. It would be appropriate if we were able to condense what is agreeable and disagreeable and still in contention for the board if, in fact, we could have a meeting with Mr. Forte and counsel.

Mrs. Rando: Usually when a petitioner comes and we hear the case and then the building inspector tries to work out things with them. Is that the way that you usually do it?

William Forte, Inspector of Buildings for the city: Our position is not going to change. I have not inspected the property over the past three to four months. So I don't know what is there. If the petitioner is willing to allow me in for another inspection and if they have subsided some of the violations I originally cited, then that's reasonable. But I don't know if that's what Attorney Mula is asking for.

Attorney Mula: That's precisely what we are asking for. In addition we have an argument for a nonconforming and that is something that we hoped to have a discussion on be it with the attorney or with Mr. Forte. However we were given no feedback- - -

Mrs. Rando: I think that would be discussed during the next meeting.

Attorney Mula: We'd ask if that's in fact something that can be discussed either at the meeting, prior to the meeting or right here. It's fine with us.

Mrs. Rando: Are there any questions?

Mr. Hickernell: I think Mr. McCarthy had made a motion to continue this case. The motion is to continue this case and we will issue a new docket number when the new letter goes out and we will deal and we'll deal with the two cases at the same time.

Mrs. Rando: Motion by Mr. McCarthy, do I have a second? Mr. Hickernell seconded the motion.

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

Mrs. Rando: All right. We have a motion to continue to October 25th same place, same time. Thank you very much.

On motion of Mrs. Rando, seconded by Mr. Hickernell, the board voted to take a five minute recess at 7:45 P.M.

The board reconvened at 8 P.M.

Mrs. Rando: Would the clerk please read the petition in Case No. 2016-33, Paul Morreale, 80 Prospect Street?

The clerk then read the Petition of Paul C. Morreale in an application for variance and Special Permit. The Petitioner seeks a five (5%) increase in gross floor area and a height variance for an existing nonconforming structure. Petitioner seeks to construct use and maintain a dormer and stairwell at the property. Location and Zoning District: 80 Prospect Street, (f/k/a 80-82 Prospect Street); Business A Zoning District.

The members sitting on this case are Mr. Squillante, Mr. Hickernell, Mr. Sergi, Mr. McCarthy and Mrs. Rando.

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

Bret Francis, Esquire, Scafidi Juliano, LLP, 10 Hammer Street, Waltham came forward. Mr. Francis submitted a copy of his brief to each member of the board.

Mr. Francis: I am here today on behalf of the petitioner, Paul C. Morreale who is the owner and petitioner for a four family residence located at 80 Prospect Street, Waltham, MA formerly known as 80-82 Prospect Street. Waltham.

(Mr. Francis then read his brief into the record.)

Mr. Francis: I would also like to pass out a letter from one of the neighbors of the property.

I will just add that I think you are all familiar with this property. It's in the state of disrepair that its been in for twenty, thirty plus years. Mr. Morreale is making changes to it. He's going to beautify it and I think this request will go along in accomplishing that. Thank you very much for your time.

Mrs. Rando: Are there any questions?

Mrs. Rando: Are there people living in that house now?

Mr. Francis: No. It's completely gutted.

Mrs. Rando: How long has it been since someone lived there?

Mr. Francis: The previous owner did actually live in that house and he died, I think in 2015. Once he died, it became vacant. I don't know what happened to his estate and property. But he was the only person living at that house prior to my client's purchase.

Mrs. Rando: It's always been a four family?

Mr. Francis: Correct.

Mrs. Rando: Are there any questions

Mr. McCarthy: 3.7222, one of my favorite sections of the zoning ordinance. This board only has the authority to grant an increase of ten percent of the footprint of the building. We've discussed this if not once, to a thousand times and it's been gone to legal and that's all we can do ten percent of the footprint of the building which is only 248 square feet in this particular case. We don't have the authority to go above that. If above that, you're going to have to go to the council.

Mr. Francis: I respectfully disagree, the provisions say - - -

Mr. McCarthy: Our law department, we've gone back and forth with the law department a hundred times.

Mr. Francis: I understand but I am going by the by the language of this by law which says "or the land used".

Mr. McCarthy: That's not what it says.

Mr. Francis: I would respectfully disagree. I believe the board is empowered. This went through the building department signed off on as a petition to this board with the understanding of what we are looking for. I believe you have the power to grant this relief.

Mrs. Rando: Do you have the form on what the building inspector wrote on this?

The reason for the denial that the petitioner seeks is under 3.722.

Mr. McCarthy: That's because it's a special permit for a pre-existing nonconforming use but the whole point of it is, that it's a pre-existing nonconforming use. If it was built today under today's zoning laws he would never be able to build that building.

Mr. Francis: That's correct.

Mr. McCarthy: It's way above and beyond what's currently zoned for. So the zoning laws indicate that we as a board can only increase the footprint by ten percent, not by the land area. We've gone through this a hundred times if we've gone through once and the law department comes back and says the same thing over and over again. It's 10 percent of the footprint.

Mr. Sergi: I'm just reading the ordinance here. It says, "Altered or enlarged in that use not exceeding 10% of the ground floor area of the building or area of land used at the time of passage for this chapter." So, it seems a little different than what you are saying. You're confining it to the first part of that.

Mr. McCarthy: No, I'm not. The interpretation of it can be that you can sort of focus on the last part of it but that's not how it's been interpreted by our law department time and time again. Think about it because it makes sense to say, oh, you can use, now you have a nonconforming use, if it were built today you couldn't build that. You've already got a large, large building on a small lot, no parking, whatever the case may be and we are going to let you increase it by whatever the size of the lot as opposed to the size of the footprint. It makes no sense. And that's what the law department has said time and time again.

Mrs. Rando: It's not clear.

Mr. McCarthy: You're right. It's not clear. I have asked them to re-write it so it is clear.

Mr. Francis: We have to go with what we have and the plain letter of this by law allows this special permit.

Mr. Sergi: I have a different interpretation than Mr. McCarthy. I've been looking at this either/or and that's the way I am interpreting this.

Mr. Francis: That's why we sought relief with this board.

Mr. Hickernell: I agree with Mr. McCarthy that it doesn't make much sense with the way it is written but I agree with Mr. Sergi that the petitioner appears to have the choice of area.

Mr. Squillante: My interpretation I think is the land area used is the land on the property that you actually use for the structure and then the why that would be different from the footprint but that would be my interpretation. They did not write the size of the lot or the area of the lot. It does not say that. What does the term use mean?

Mr. Francis: I think that's up to definition. We maintain that we use the entire lot whether it be for the parking area or the structure itself. The entire lot is being used and that's what the by law allows.

Mr. Squillante: What's the area of the building?

Mr. McCarthy: It's on the site plan. It's 2487 for the building.

Mr. Francis: Again, I would just like to remind you that this is not to add another room or another unit. We are not making any change in use. We are just adding a stairwell in the dormer where it already exists in structure. If this goes to appeal, if someone appeals the decision, it would maybe come down in the court - - -.

Mr. McCarthy: It's happened before. It's never been overturned. The courts have always upheld what our law department has said, it's ten percent of the basically the footprint of the building.

Mrs. Rando: What is the wish of the board?

Mr. McCarthy: Do you want to get an opinion?

Mr. Sergi: I'm okay with hearing it tonight. I don't need an opinion.

Mrs. Rando: Is there anyone in opposition to this? Seeing none, is there anyone in favor? (Two people raised their hands in favor.) Is there anyone seeking information? Seeing none.

Are you ready to go forward tonight Mr. Squillante or do you want an opinion from the law department?

Mr. Squillante: Well, what else is on the property, just paving and building and nothing else?

Mr. Francis: There's some landscaping.

Mr. Squillante: The problem that I have is there does not appear to be anything wrong with what the petitioner is proposing but you can say it does not agree with my

interpretation of the ordinance. So I wouldn't mind getting an opinion of what the word "use" means in this context from the law department.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: I've got my interpretation and I'm sticking with it.

Mrs. Rando: So you are ready to go on.

Mr. Hickernell: Yes.

Mrs. Rando: Mr. Sergi?

Mr. Sergi: I agree with Mark. I have my interpretation. I don't need an opinion from the law department.

Mrs. Rando: Mr. McCarthy?

Mr. McCarthy: I have my opinion too.

Mrs. Rando: So do you want to get an opinion?

Mr. McCarthy: I don't need one. I've done this before.

Mrs. Rando: All right. Are there any questions or should I have him continue with the Proposed Findings of Fact?

Mr. Sergi: Is it the Proposed Findings of Fact that's been on file?

Mr. Francis: Yes.

Mr. Sergi: I will move that we waive the reading of the Findings of Fact since it has been on file in the Law Department and we have had a chance to read it.

Mr. Hickernell seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.

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

Mr. Sergi: In a similar fashion, Madam Chair, I make a motion that we waive the reading of the Proposed Decision since it's been on file.

Mr. Hickernell seconded the motion and the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. Hickernell that the Proposed Findings of Fact be adopted by the board.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Mr. McCarthy, no; Mr. Squillante, no and Mrs. Rando, yes. The vote was 3-2.

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

On motion of Mr. Sergi, seconded by Mr. Hickernell that the decision as proposed becomes the board's decision.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Mr. McCarthy, no; Mr. Squillante, no and Mrs. Rando, yes. The vote was 3-2. The vote did not pass.

Mrs. Rando: I am sorry it didn't pass.

One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to adjourn at 8:40 P.M.


10/25/16