



TOWN OF WATERTOWN
Zoning Board of Appeals
Administration Building
149 Main Street
WATERTOWN, MASSACHUSETTS 02472

Melissa M. Santucci Rozzi, Chairperson
David Ferris, Clerk
Christopher H. Heep, Member
John G. Gannon, Member
Kelly Donato, Member
Neeraj Chander, Alternate
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MINUTES

On Wednesday evening, November 30, 2016 at 7:00 p.m. in the Richard E. Mastrangelo Council Chamber on the second floor of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: Melissa Santucci Rozzi, *Chair*; David Ferris, *Clerk*; Kelly Donato, *Member*; John G. Gannon, *Member*; Neeraj Chander *Alternate Member*; Jason D. Cohen, *Alternate Member*. Also Present: Mike Mena, *Zoning Enforcement Officer*, Gideon Schreiber, Sr. Planner; Louise Civetti, *Clerk to the ZBA*. *Absent*: Christopher Heep, *Member*.

Chair Santucci Rozzi opened the meeting at 7:04 p.m., introduced the board members and staff, appointing Alternate Member Chander will be voting as a full member in the absence of Member Heep.

Chair Santucci Rozzi reviewed the agenda explaining that the last case on the agenda, 615 Arsenal Street, she will recuse herself and appoint Member Ferris as the Chair. The voting of officers will be tabled until the next meeting. She then swore in the audience.

Chair Santucci Rozzi asked if all members read the minutes from September and asked for a motion, noting Member Donato would be abstaining due to being absent. Member Ferris motioned to approve the September minutes. Member Gannon seconded. Voted 5-0, approved.

Chair Santucci Rozzi moved the agenda to the Continued Cases, the Pleasant Street matter has been on the agenda for a time and there is an email from Victor Manujan, the attorney for the petitioner asking to withdrawn the petition without prejudice.

Member Gannon motioned to accept the request for withdrawal without prejudice. Member Donato seconded. Voted 5-0, the case has been withdrawn.

Chair Santucci Rozzi announced the second case and asked Member Ferris to read the legal notice:

"Peter King, General Manager, Melkonian Group LLC, c/o Stoneham Ford, 185 Main Street, Stoneham, MA, 02180, herein requests the Zoning Board of Appeals grant a Special Permit Finding in accordance with Watertown Zoning Ordinance, §4.06(a), Alterations to Non-Conforming Structures, Impervious Coverage, Open Space, so as to acquire 2,200 s.f. of abutting land for additional parking/vehicle display area, thereby reducing non-conforming Impervious Coverage from 82.2% to 80.7%, where Maximum allowed is 80% and further to increase Open Space from 17.8% to 19.3%, where Minimum is 20%. The project would result in a minor modification to property at the rear (30 Manley Way) PSCD-3 (Pleasant Street Corridor) Zoning District. ZBA-2016-15"

Charles Houghton, Attorney for the petitioner, introduced Brian McCarthy, RJ O'Connell, PE; Peter King, General Manager for Watertown Ford and John Melkonian, one of the owners of Watertown Ford.

Attorney Houghton explained a bit of history from 1999 when they acquired the property which was an old rail road right-of-way. Their property is half in Waltham and half in Watertown although narrow. It has worked well functionally. They made an agreement with Samuels to purchase a parcel in Waltham for the servicing of vehicles. There are only 50 spaces in Watertown and there is more than that in Waltham. They want to increase by 2200 square feet. There are not cars going in and out of the area – it is storage. He said they end up with less impervious area, percentage-wise. They are adding area so they are closer to becoming conforming. The use is not changing. For 4.06(a), he stated that the use is not more detrimental than the existing as it is the same use. He explained that they have another site where they transport vehicles back to this site and that will be eliminated. This will help reduce traffic in the area. He mentioned the Powers case of storing buses and trucks – they feel they meet the criteria.

Brian McCarthy, Civil Engineer, reviewed the proposed project – it is a purchase of land from the abutting property. He showed a drawing of the Watertown abutting property and then a drawing of the Ford property in Watertown with the strip they are purchasing. The 2,198 s.f. is currently open space that belongs to 30 Manley Way. They are giving four parking spaces back to 30 Manley Way that will become open space for them and maintain their 20% open space requirement (648 s.f.). They are also required to have 158 parking spaces and they will remain having the required parking. He added that the Watertown Ford property is non-conforming to impervious cover at 82.2% (80% max allowed) and open space at 17.8%, where 20% is required. The Watertown Ford property will be larger and will bring them more into conformance at 80.7% impervious and open space will go to 19.3%. There are 50 parking spaces and they are proposing 61 spaces. He said the planning board recommended conditions related to trees on the 30 Manley Way property, stating that they should protect the trees and vegetation and will replace anything that is damaged. He then explained the impervious coverage: the increase in the property will include impervious and open space. The additional land area of 2198 s.f. – 32% of that will remain as open space. When they calculate the new lot area, with the existing and the proposed, the net result is 19.3% open space. The lot size will increase from 29,143 s.f. to 31,341 s.f. – a 7.5% increase in lot size. The open space will increase from 5197 s.f. to 6062 s.f. - that increase is 16.6%, thereby the increase in open space more than the ratio of the lot area. The open space is closer to conforming.

Chair Santucci Rozzi asked about the 2001 special permit which was granted and now the district has changed (from 90% impervious/10% open space to 80/20) and they are no longer conforming...there were no original variances requested.

Member Gannon asked if the sale of the abutting property will have increased non-conformities. Mr. McCarthy explained that that property will remain conforming in all areas. Member Gannon asked they convince him that this will not increase the use. Mr. McCarthy said they will not be bringing vehicles back and forth from the other facility on 383 Pleasant Street. Attorney Houghton said there will be less traffic to the neighborhood, making it less detrimental. They plan to take vehicles from there and to move them to this site. The other site is near Rosedale, a linear site. There are about 70 spaces there. They will lease fewer spaces at the other site. Their original agreement was 7000 s.f. to increase this property. They reduced the amount of land through talking with the town. Member Gannon asked if they will change the amount of spaces the town has on that site (pleasant Street).

Member Ferris asked if the northeast portion of the site is also being modified. Mr. McCarthy explained there is an encroachment onto the other property with pavement – they are removing that pavement. The fence will be remaining in its current space. There will be fencing around the new area. The new spaces will also have curbing to match the existing. Member Ferris agreed with the requirement of the Planning Board to replace any damaged trees and to replace any existing damaged fencing.

Member Donato explained that she is trying to determine if this is more detrimental to the existing site and asked how many daily trips are being made to the 383 Pleasant Street site now and how many trips would be saved by these additional spaces. Attorney Houghton said about 5-6 trips a day and 1 – 2 percent decrease. This is not a substantial number and this is not a detriment. They stayed away from any variances.

Chair Santucci Rozzi commented that although they are increasing the vehicle storage, this site is small; this site is managed well and appropriately run. At the time this was originally approved, the numbers were different and now they have taken the time to balance the needs of the ordinance with their needs. She complimented them on the plans.

There were no comments from the audience. Chair Santucci Rozzi closed the public hearing.

Member Chander asked if the parking spots were standard size. Mr. McCarthy explained that most are 8.5x18, the required size and the others are 9x18 (larger).

Member Ferris stated that he is in favor of this with the tree replacement and fence repair.

Chair Santucci Rozzi recapped the petition, stated the Staff and Planning Board reports recommend approval with tree replacement and repairing/replacing the fencing. She then read through the conditions, some of which are standard and requested conditions 7 & 8 be added regarding the trees and fencing, that the tree be replaced in kind (30 inch circumference replaced with a 30 inch tree).

Member Ferris motioned to approve the request with the conditions. Member Donato seconded. Members Ferris, Donato, Santucci Rozzi and Chander voted in the affirmative.

Chair Santucci Rozzi announced the next case at 174 Edenfield Avenue and asked the Zoning Enforcement Officer to provide a summary of what has taken place. Member Ferris read the legal notice:

“174 Edenfield Avenue, Sheila A. Cusack, 168 Edenfield Avenue, Watertown, MA 02472, herein requests the Zoning Board of Appeals grant an Appeal to the Determination of the Zoning Enforcement Officer in accordance with Watertown Zoning Ordinance, §9.19(a), Right of Appeal, so as to enforce a Home Occupation (§2.35), Construction Company, at subject property, where such use would not meet the requirements of the WZO. T (Two-Family) Zoning District. ZBA-2016-17

Mr. Mena stated that the petition is regarding Zoning Enforcement action at 174 Edenfield Avenue, where he has been working with the appellant and the property owner regarding the construction business being run outside of a by-right home office, which would then require a Special Permit through the Zoning Board. This began June 2015 with a complaint regarding the construction business with employees and materials at the property. He encouraged the home owner to comply with the ordinance. Complaints continued to be received. In November 2015, a letter from the property owner and their attorney stated the property had been brought into compliance. There were continued complaints and he continued to work with the property owner to bring the property into compliance. In September 2016, after further complaints, a fine was issued to the property owner stating that there was continued activity outside of a home office. The appeal to the board was then received – to find that the property owner was out of compliance on specific dates and that the board issue an immediate cease and desist in regards to the business at the home and that the board has the ZEO issue a \$300 fine for each date in the appeal. He states that he has issued compliance orders; cease and desist in regards to any activity outside of a home office use and the one piece is that the fine is \$300 for non-compliance at the property. He asks the board to find if he should fine for more than he has issued.

Chair Santucci Rozzi listed all of the dates that were recorded and asked what type of appeal can be brought against something that is a year old? She then stated that he was called, he went out and took action. She said the appellant then has 30 days to appeal. Mr. Mena said they received new complaints in September, which was within the 30 days. He noted the town’s attorney’s office found that he did find the property in compliance and the appellant could have filed an appeal at that time. His opinion is that after that date, it is the September complaint that is considered here.

Chair Santucci Rozzi stated the only thing the board can consider is the complaint from September. Mr. Mena corrected the date to March of 2016 to now.

Member Gannon asked if the \$300 fine was paid. Mr. Mena said the Zoning Office is not notified by the treasurer's office when a fine is paid.

Sheila Cusack, 168 Edenfield Avenue, said she has submitted a lot of material and did not want to just state what was going on at the Leitner property; therefore, she took photographs and dated them to prove what she was stating. She said the bottom line is there is a construction company working out of the home next door to her – Leitner Construction Company. She hoped that everyone read the timeline and the photographs that she submitted starting with the Zoning Office in June 2015. She purchased her home in 1998 and John Leitner runs a construction business from the house next door in a residential zone. She has construction businesses within her family and she gets the difference between someone getting in their truck and going to work and running a business with guys and trucks going back and forth all day long. He also runs a snow plow business which he attaches the snow plows in the driveway and attaches a big sander on the back of a truck – these go up and down Edenfield Avenue all winter long and they meet at this home all hours of the night. She wanted the board to be clear that Mr. Leitner does not have a permit for a home occupation – just a home office. He has three construction vehicles that come back and forth from 6:30 am – 6:30 pm. There are other trucks that go back and forth and material is switched back and forth and the garage at the home is stored with the material. She said Attorney Ken Leitner asked what her problem was as John Leitner has been running a construction company from that home for 17 years. She said he has not been running a business for that long. Mr. Leitner started his business in 2011 when his dad passed away. The noise started in 2014 and escalated in 2015 and she has been in the Zoning office since June 2015. She said Mr. Mena agreed that there is a construction company being run out of this home but there seems to be a gap in the complaints that she has submitted. She felt she was not being heard at the town hall so created a 3-ring binder of information on Mr. Leitner and delivered it to the president of the town council, Mr. Sideris. She was also in conversation with the town's attorney, Ms. Murray. There were specific dates that Ms. Cusack had recorded and those dates were defended by the attorneys as there was work being done at the home. She counted 14 vehicle trips in a couple of hours and 19 trips in few hours the next day – they were taking material out of the storage facility (the garage) and putting it on those trucks. She said no matter what Mr. Leitner says, the town accepts as the truth. She has photographs with a day-time stamp that are being ignored. She said there are also business deliveries to that home. She submitted more photographs to the board members. There was also staging delivered and left in the driveway. She said she was told by the town's attorney to appeal to the Zoning Board of Appeals if she did not get anywhere. She hired an attorney and was told she was hitting an "old boys network" and would not get anywhere. She was advised to take photos of the contents of the garage and to date everything submitted. She recorded everything from December 2015 to August 2016 and submitted it to the Zoning Office where they finally found Mr. Leitner was fined after 15 months. She is curious if he ever paid the fine and has a receipt from the town for paying it. She wants peace and quiet at her home – the home she owns. She said Mr. Leitner is aggressive because he is angry – he has blocked her driveway from her getting out of her home. She had to call the police.

Chair Santucci Rozzi said there are statutory requirements which are 30 days if she is not satisfied with what Mr. Mena is acting on. Ms. Cusack asked what we have an ordinance for if it is not going to be enforced. She then stated that if she lived on Russell Avenue she wouldn't have been put through this for 15 months. If this had been enforced when she first complained, Mr. Leitner wouldn't be bullying her and she wouldn't be here. She added that he and his sons have mowed down her garden along the sidewalk strip, her trash barrels and recycle bin. She wants the construction company and the storage of materials to stop and she wants the snow plowing business to stop. It does not belong in a residential neighborhood. No one wants to move into a neighborhood where a construction company is being run. She quoted the definition of the Zoning Ordinance and asks that she have her peace and quiet back.

Chair Santucci Rozzi asked the Zoning Enforcement Officer if this request was shared with Ms. Murray (the town's attorney). Mr. Mena did share this with the attorney and Staff made a determination that the statutory time frame from the letter in February was not appealed. Mr. Mena said the most recent complaint was September and those would be legally subject to the appeal. He said Staff did not ignore

the prior complaints and was in contact with the home owner and his attorney. He then spoke on specific complaints including a Watertown vehicle being used by an employee at the site. Member Gannon said the letter was sent by the town's attorney. Mr. Mena clarified that Ms. Cusack could appeal his determination not the attorney.

Attorney Ken Leitner said he had not seen the photos submitted tonight but did see the photos in the book and said the conclusion written by Ms. Cusack doesn't mean it was what was happening. He said his brother has been doing everything the same since 1998. He said Ms. Cusack is not shy and has called the police on several occasions. The police have never cited his brother. They did go to Waltham District Court for harassment which was denied. He said the statement regarding bullying is unfounded. He said when Mr. Mena asked to have material removed, they did. They also agreed to not have any employees at the premises. He added that he received a call to find out if a 'Hispanic' was a legal resident. There are no plows or sanders put on at that property. He does plow his own property. He has three trucks – they do not plow in Watertown. His friends have pick-up trucks and they do come by the house. He will pay the fine tomorrow. They do not trespass on her property. The one employee does not go to their house. They want to be in full compliance with the ordinance. His boys use the trucks when they are home. He complies with the off-street parking. He has never had a "hand-shake" with any one in Community Development and he has lost some (cases/determinations with the Town)... One friend was reprimanded by the Town Manager for having a town vehicle at this site. They did put a for sale sign on the property but they do not want to go through any of this. He has not received any other complaints from neighbors. Ms. Cusack solicited neighbors for support but they did not ask anyone to come tonight. Mr. Mena has not received any other complaints.

John Leitner said he was granted a certain amount of time by Mr. Mena to get all of his equipment off of the property which he did. He moved all the staging to Arlington and he met the timeline. He didn't know he had to pay the fine. He will pay the fine tomorrow and Attorney Leitner will bring the receipt to Mr. Mena.

Member Gannon asked what is at the site now. Atty. Leitner said there are the family car and his truck. Mr. Leitner said there isn't any scaffolding. He added that he has never had material delivered to his site to then bring to a jobsite. He has a contractor yard in Arlington for a short time which holds ladders, scaffolding, and pump staging... none of this is in Watertown except a ladder or two for his personal use.

Member Ferris said he had driven by recently and there was a snow plow blade in the driveway. Mr. Leitner said there they are getting ready for the winter...and no one has been there at 3:30 in the morning except himself to use the restroom and there are no back-up alarms on his trucks. The plowing business is not run out of his house. Attorney Leitner said the accounts are off-site and the plows are off-site. He added there were tools at the site – gas cans, etc., which were on the side of their house closest to Mrs. Cusack. He told his brother to remove all of it along with the items in the driveway. That is when they secured the location in Arlington.

Member Chander asked what type of Construction Company it is. Attorney Leitner said they do general contracting and subcontracting; they only do commercial interiors; they are more a residential. They have saws-alls, saws, in their cases in the garage at the site. The activity at night with trucks being there are just friends. There are no businesses running out of that site.

Member Cohen asked what the 15' high stud wall in the side yard was for. Attorney Leitner said they were building a shed to store all of his pool equipment, lawn mower, etc. Member Cohen said that did not look like a stud wall for a shed – it appeared more as a gesture of spite. He added that he is trying to get to what was actually going on with the driving over the flower garden; the wall that was erected, etc. Attorney Leitner said that no one drives over her property as the Police would be there immediately. He added that she has rocks strewn there and he suggested calling DPW as they could be a tripping hazard but he didn't want to be tattling on her. Member Cohen said he is trying to point out a pattern of spite. Attorney Leitner said he doesn't know if there is an ordinance that you can put flowers there. He said they went to Waltham District Court and now here – they are not trying to disturb her.

Member Donato asked how many vehicle trips are generated from that household as excessive traffic is one of the factors to consider. Attorney Leitner said there are two employees and they do not come to the house (anymore); there are no deliveries to the house. The only trips generated are by the owner going back and forth. Customers do not come to the house. The pick-up truck is his personal use vehicle. His two sons still live there and they drive trucks when they are home from school.

Member Ferris said there was a delivery truck in one of the photos. Mr. Leitner said the truck was parked in front of his house but it was not for his house – there was nothing delivered to him.

Member Ferris said there were nice plantings in front of Mrs. Cusack's – there is evidence of that. There are not just rocks.

Chair Santucci Rozzi said the vehicles that are parked there are just his wife's car and one truck. Attorney Leitner said there is a small Cadillac car, two pick-up trucks and a dump truck – there is another car that is one of the son's cars. There are two cars that theirs. The dump truck is parked off-site; one pick-up truck is taken by the employee.

Ms. Cusack stated that there is a sander that comes to the house and is parked on the strip in front of her house. She said Attorney Murray told her that if Mr. Leitner's sons work for him when they are home, then they are employees and not allowed to come back and forth to the house in pursuit of construction materials. There are three Leitner Construction trucks there every day. She said there is a pattern with 15 months of violations and a lot of photos that are date and time stamped.

Member Cohen stated that the discrepancy is the plow trucks and sanders are there. Ms. Cusack said one is converted to a sander; one has a yellow-commercial plow on it...she said the trucks are at the house and he does not drive all three trucks at the same time. They are at the house and he comes back for each of these trucks.

Holly Vestal, 164 Edenfield Avenue and Jonathan Phelps, 164 Edenfield Avenue said they are neighbors of Sheila Cusack and have also contacted the Police unrelated to the construction company. It has been a contentious couple of years. She submitted photos of the sander on the strip and she snapped a photo. She hadn't realized that there were more people that were needed to speak out about this. She just thought the complaint had been made and it would be taken care of. Their street is narrow and with winter coming, there is no space on the street for the truck to park and plows to get by. They never park on the street – they park in their driveway as there is not enough room on the street. She went to the police to say that she was concerned for Ms. Cusack's safety. The police said they could not do anything. They asked for mediation, they did not get it. They are frustrated. The value of their property; the way their homes are viewed. Their neighbors are frightened to come forward as they want to live in peace and they come from Syria. They want this to be resolved. The plows and the sanders will be there this winter and there are more cars on the street. Mr. Phelps added that on July 8th there were 10 trips in a short period of time and although he cannot vigilantly record the trips, there are many in a short period of time.

Member Ferris asked about the statute of limitations and the fines. Char Santucci Rozzi said there are a lot of dates; a lot of complaints and on each of those occasions there is 30 days to respond and file a complaint. She said based on the dates, they can only weigh in on the most recent complaint. Mr. Mena responded on September 13th and Ms. Cusack then said she wants to go to the board. There was a fine issued and will be paid tomorrow. There has been a lot of back and forth. She wants to make certain their board acts within their jurisdiction. Member Gannon said there is a statutory process and they want to be sure they are in compliance. Which action are they responding to? They do not have jurisdiction over the earlier letters. As of July, they have had a contractor yard to store things and that is a good step. They could say a plow and a sander belong in the storage yard. He is not certain what they are requested to take action on.

Member Chander asked about the sander – it is registered by the business and is used for his personal business. Chair Santucci Rozzi stated that it is a pickup and the sander is attached. Member Gannon

commented that it should not be stored at the home. Member Chander added that there is noise associated when backing up. Chair Santucci Rozzi said they cannot make comments on things that are statutorily expired.

Mr. Mena said that they agree the previous determinations made by 'Staff' have been made without appeal. The binder submitted is evidence to the pattern of activity that continues to occur. The last letter Staff sent was August 20th. The appeal was filed would be reflective of the 30 days after the complaint. Staff is recommending that the board uphold staff's determination as they are making on-going efforts. Relating to the fines, can they retroactively fine on those previous dates - it is a fair question to ask counsel. Chair Santucci Rozzi said there is a lot of case-law regarding appeals and action taken out of jurisdiction.

Mr. Mena added that the plow was discussed with the Director of Community Development and Planning, Steve Magoon and the Town's position is that we live in New England and there are plows that are at the residences.

Member Ferris asked what establishes the fine. Mr. Mena said the state establishes the minimum fine for a Zoning Violation at \$100 and the maximum is \$300 – it is the discretion of staff to which fine. This case was difficult. All of the photos did not represent fines, in staff's opinion.

Member Ferris asked about the timeliness of the fines and added penalties. Mr. Mena said the town does not have an avenue as other fines do, to place a lien on a property. These may not get paid and there is not a mechanism or resources to go after these. Member Gannon asked Mr. Mena to report this to Mr. Magoon as an unpaid fine could limit a permit being issued. He added that a receipt of a fine be provided by the treasurer's office be given as these are fines that are under Zoning authority and the board would like to know what those next steps will be.

Chair Santucci Rozzi said the most recent situation found Mr. Mena found Mr. Leitner at fault and charged him the maximum fine. The fine will be paid tomorrow. If they uphold the ZEO's position and the person is trying to get their act together, the board has nothing further to do.

Member Gannon said this should be the last time they deal with this matter. A message to the homeowner – there should not be trucks with back-up beepers. The storage of a sander is not consistent with a residential use. Nothing associated with the business should be lying around. He wants this to be the last time this comes forward. He trusts the enforcement resources of this town. Common sense should prevail. Chair asked if the ZEO should do periodic checks – it would be helpful to have these.

Ms. Cusack said she is appealing new dates, from August 20th - on. She refers to a letter she wrote on September 6th with a series of dates. She wants the message to be clear from the board to Mr. Leitner that you are not allowed to have a construction company or a snow plowing business out of that residence. She just wants the board to direct that to him.

There was further discussion on the statute of limitations and certain dates. Ms. Cusack said the only thing she wants after 15 months of complaints is to have Mr. Leitner shut the construction company and snow plowing down (from this residence). This is all posturing. Chair Santucci Rozzi replied that if the ZBA told Mr. Leitner to shut the business down, it would mean that they believe there is a business being run out of there. Member Chander added that they do not know what is happening there – they rely on Mr. Mena. Chair Santucci Rozzi said the photos do not confirm this.

Mr. Mena said he believes Mr. Leitner is running a home office and the home office is his business. There are no longer employees coming to this address. He does not believe the photographs depict this. His administrative work is done out of his house. He added that Mr. Leitner was fined \$300 because looking at the fact that there are three trucks there, they are making an assumption that employees are coming to the house. His is operating his business out of his house – what level is in question. He is not disputing Ms. Cusack's view that something is going on. He is not disregarding those dates. He has contacted the Leitner's with strong words told them this has to stop.

Ms. Cusack concluded that the bottom line is she wants zoning conformance at this property. She stopped taking photos as she does not have any more room on her phone. Why would she continue to take photos if the board does not believe them? Chair Santucci Rozzi said documenting the on-going activity every day. Ms. Cusack said she thought she had. Ms. Cusack said it is still on-going.

Member Ferris added that it is clear that there is a history of activity. There is a fine relative to the September activity. They cannot take action on anything else beforehand. He suggests that if there is continual activity, she should document it. If the message is not clear to Mr. Leitner that this should not be going on, then it should be clear after tonight. Document any further activity and hopefully there will be none.

Mr. Mena said the board could vote to have the applicant continue his home office but not the home occupation and a Special Permit will have to be applied for if a home occupation is wanted. The Board could also limit the sander and plow to the construction yard and not the residence.

Further discussion ensued on which action the board could take.

Chair Santucci Rozzi gave direction that if there is going to be a motion this evening, there be one motion with a directive to Mr. Leitner.

Member Chander motioned to continue the case. No second was made. The motion was not withdrawn. Chair Santucci Rozzi stepped down and seconded the motion. The vote was 1 – 4. Therefore, the petition is not continued.

Member Gannon motioned to deny the appeal of the determination – that the ZBA uphold Staff's determination with regard to violations at the residence – to uphold the (most recent) action (resulting in the \$300 fine) taken by the Zoning Enforcement Officer.

Member Ferris seconded the motion for discussion. He asked what the stipulations are for the motion. Chair Santucci Rozzi stated that if the enforcement action is upheld and there is further action wanted, that can be included in the motion. Member Ferris stipulated that the activity needs to be restricted to a home office use and not a home occupation. Member Gannon wanted to add to that. Member Ferris said the sander and plow are there on a regular basis then that warrants a home occupation. Member Gannon added that the ZEO should make periodic visits and the sander should not be stored or should be parked there. Chair Santucci Rozzi said a plow truck driver would drive their regular vehicle to the plow and take the plow home to then get up to plow in the middle of the night as they need a vehicle to get through the snow.

More discussion on how to word the motion...

Chair Santucci Rozzi said an amended motion should be made and be clear and specific that can be enforced.

Member Ferris added that the ZEO provide periodic inspections of...Member Gannon added it needs to be specific like there is no sander vehicle at the property.

Member Gannon withdrew the motion for further discussion on their options. They have to direct the ZEO on the nature of the inspections.

Mr. Mena suggested scheduling time to inspect the garage to be sure there are not any building materials or noise offensive items or sanders or vehicles that are...Member Cohen said one truck at any time and in cases where there is a pending snow storm, one plow with the sander next to it.

Chair Santucci Rozzi read her notes: Uphold the most recent action by the Zoning Enforcement Officer and the \$300 fine stays. The ZBA would like the ZEO to do periodic inspections to determine if Mr. Leitner is following the guidelines in the Zoning Ordinance for a home office and not rising to the

threshold of a home occupancy with the understanding that one truck is parked at any time and an additional truck can be parked in preparation for snow events.

Member Ferris said he is comfortable with the periodic inspections vs. the limits of trucks during seasons.

Member Ferris motioned to deny the appeal for the determination of the ZEO and uphold the action of the ZEO with the added condition of periodic inspections to confirm operation at the site of a home office.

Mr. Mena repeated the motion to show he understood the requirements.

Member Donato seconded the motion.

Voted 5-0. Members Donato, Ferris, Santucci Rozzi, Gannon and Chander voted affirmatively. Alternate Member Cohen not voting; Member Heep absent.

Chair Santucci Rozzi recused herself from the following case and appointed Member Ferris as the Acting Chair.

Acting Chair Ferris appointed Member Donato as the Acting Clerk. Member Donato read the legal notice:

“EDF Watertown LLC c/o Home Depot USA - #2602, Box 105842, Atlanta, GA 30348, herein requests the Zoning Board of Appeals grant an Amendment to Special Permit #ZBA-2013-18, granted in 2013 so as to amend the parking area circulation, location of parking spaces, additional planting areas, dumpster location, etc. RMUD (Regional Mixed Use) Zoning District. ZBA-2016-16”

Acting Chair Ferris asked for the representative to present their case.

John Kerekes, Attorney, Greenberg/Farrow, representing the Home Depot, Northeast Region, reviewed some of the past plans for the lot at 615 Arsenal Street – some that had been approved by the Zoning Board of Appeals and some that were not.

Gideon Schreiber, Senior Planner, Town of Watertown, stated that the Zoning Board of Appeals will vote on this portion of the property (looking at plan C1A). The clouded area is part of the Master Plan for the Arsenal Project, which Home Depot controls. He added that this board will not see the final landscaped plans as they will be a part of the Master Plan. Staff added conditions to suggest working with the Master Plan.

Acting Chair Ferris clarified that the plan they are looking at, C1A, will be the plan the board votes on, excluding the ‘clouded’ area. Mr. Schreiber said the Board would be voting on the clouded area but the Planning Board may change it due to the Master Plan.

Attorney Kerekes stated that the ‘blue’ area is within the clouded area and an existing area this board has approved for the Home Depot. The Master Plan includes this area. He described the ‘load and go’ (load a rented truck) area that is moving from one location to another. He explained that they originally wanted to rent Penske Trucks and that is no longer an option. The parking area being used was 90+ and now it will be 40+. The shed display is being moved and reduced from 6 to 5. The relocated white-pine dumpsters (2) are in the area they are calling the ‘ring road’ and will be fenced and landscaped. The front apron is showing additional areas to display 1539 s.f. and live goods display will be 8820 s.f. The modest 287 s.f. increase in the front apron display is the only increase, the rest is decreased. He then showed photos of another store with how the outdoor ‘live’ display will look. He also showed a truck-turning diagram.

Chair Ferris asked the board to comment or ask questions.

Member Donato asked about the speed bumps on the connecting road to the adjacent property. Attorney Kerekes said the area had become a race-way for a cut-through so they are installing the speed bumps to slow the access.

Member Gannon asked if the display area will be seasonal. He added that the cell tower is not on their plan and he wants to know who is going into the Golf Smith location. Attorney Kerekes said the display area would be seasonal and showed Member Gannon where the cell antennas and water kiosk is located on the plan. He added that he doesn't know if it is available. Mr. Schreiber clarified that space is part of the Master Plan and owned by the entity that owns the project right now. He referred to it as a condo of this site and the only condo on the master plan. They only have inquiries of signage sizes, not content.

Alternate Member Cohen asked about the large triangular site. Mr. Schreiber answered that this is an elevation change and this triangle is part of this plan. They do not know what will be under that area so they are not certain what will be able to be planted there. They request this board to be flexible with this portion of the project for the future Master Plan.

Member Cohen asked about the outdoor display for herbs and finds it to be close to the curbing. Attorney Kerekes said the sidewalk is quite wide and there is an area that is currently mulched. The display does not encroach onto the sidewalk.

Chair Ferris asked how wide the sidewalk is. Attorney Kerekes said the sidewalk is 6' wide. Traffic will be 6" lower. Chair Ferris expressed concern for someone in a wheelchair seeking access to the display and having the ability to turn around on the sidewalk and not be in traffic. Attorney Kerekes stated that the 6' wide sidewalk will be maintained and the display area will be on the mulched area now.

Chair Ferris asked about the March 2016 approval and the differences in this plan. Attorney Kerekes explained that not all of the areas are shown on this plan as this is only showing the changes.

Chair asked about the screening around the dumpster. Attorney Kerekes said the fencing would be 6' high chain link with green slats. There will be 6 arborvitae planted. Mr. Mena stated that the dumpsters were approved with the landscaping as they had originally been installed without permits. The landscaping and fencing should not wait for the Master Plan to be approved before taking action to screen and landscape this area. Attorney Kerekes stated that the spring would be a better time to plant and they will be certain to maintain the area with cleanliness until they get the fence and landscaping installed.

Chair Ferris asked for clarity on the plans between the approval of March 2016 and today. Mr. Schreiber stated it would be a good idea to have a final ancillary plan with all of the approvals on it. Chair Ferris suggested a condition for an updated plan.

Member Gannon frequents the Home Depot and noted the four approved dumpsters are full and overflowing. What will be done to maintain the reduced amount of two dumpsters – more frequent pick-up? Attorney Kerekes said there are others dumping into the four dumpsters and with a lesser amount of two dumpsters, there would be more frequent pickup. He believes that once the fence is up, there will be gate installed. He added that the overflowing dumpsters will be addressed.

Member Gannon said the propane container area was moved. Attorney Kerekes said there is a propane area in the contractor section which is for use in the fork lifts. The public propane use tanks will be at the front of the store. Member Gannon asked if the propane exchange requires a Fire Department storage license. Attorney Kerekes stated that the company that owns the propane storage (Rhino, AmeriGas or whomever) is licensed with the fire department. He said that vendor is responsible for securing the fire department license and location of the storage area. Member Gannon asked them to be certain that the vendor follows-up with the fire department.

Member Cohen asked if the lumber cart storage will be in front of the outdoor display area. Attorney Kerekes said that they will remain and provides a safe area for the person returning the carts. Member

Cohen suggested either for there to be bollards or some other means to secure the carts from getting into the drive aisle. Attorney Kerekes said the bollards create snow plow and other hazards for the drivers. He added that the management will send out employees to gather and corral the carts.

Member Ferris asked about the liner area of herbs and the ability for two carts to pass each other. He is again concerned that they will step into the drive aisle. Attorney Kerekes said the standard size is 6' for two carts to pass (they then go back into the store to pay. Member Ferris asked if they put cones up in the drive area or do any other type of preventative measures to protect anyone that steps off of the sidewalk. He added that there is another area that backs onto a curb. Mr. Schreiber said that they step into the fire lane. Attorney Kerekes said there is 36' of width and there are columns that support the canopy and act as barriers – he added that there isn't a curb there, it is flat.

Member Ferris asked that staff visit this several times during the year to be certain this is safe. Mr. Schreiber said this area has been a display area since it was Ann & Hope. He said the herb area should have a 6' area but at least a 4' (Mr. Ferris said at least 5' for wheelchairs to make certain people are safe). Attorney Kerekes said they have had a discussion regarding this area as there are emergency egress doors there, as well that should not be blocked.

Acting Chair Ferris reviewed the discussion – an updated plan with all of the approved areas shown; a gate at the dumpster enclosure site; bollards at the cart area or effort by staff to maintain the area. He then stated that 2 maybe 3 should be conditions. Member Gannon added that they should have the correct permits from the fire department. They should have a copy of the permit. Mr. Mena stated that when a vendor occupies the area, they should submit verification of the permit. Attorney Kerekes said they will provide that but they wanted the approval here first.

Acting Chair Ferris stated that there is a requirement for a **gate**; an **updated control plan**; **propane permit confirmation** from the fire department.

Member Donato asked if the board would consider a **speed table** at the ring road. Mr. Schreiber said that they could suggest that somewhere along the middle area – it is shown on their 'Power-Point' presentation but not on the plan. The board members agree.

Member Donato reiterated the request of **periodic inspections by the Zoning Enforcement Office** to make certain the display areas are intact and the site is kept up. Mr. Mena said he is not a safety expert and will expect Home Depot to maintain a record of any incidences and he will coordinate with the police department. Member Gannon added that the dumpsters be inspected for overfill.

Member Cohen Motioned to approve the amendment of the Special Permit with the conditions listed. Member Gannon seconded. Alternate Members Cohen and Chander voting as Full Members, and Members Gannon, Ferris and Donato voted in the affirmative. Members Santucci Rozzi and Heep absent.

Member Gannon motioned to adjourn. Member Donato seconded. Voted 5-0. Adjourned at 11:00 p.m.