

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

January 13, 2015

7:00 P.M.

at

Public Meeting Room, First Floor
Arthur Clark Government Center
119 School Street
Waltham, Massachusetts 02451

Barbara Rando, Chair
Mark Hickernell, Clerk
Glenna Gelineau
Gordon LaSane
Edward T. McCarthy, Jr.
John Sergi

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Waltham Zoning Board of Appeals/1-13-15/2

I N D E X

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A T T A C H M E N T S

Legal Notices: Case No. 2014-29
Case No. 2014-31

Case No. 2014-29:
Proposed Findings of Fact and
Proposed Decision, as Amended

1 PROCEEDINGS

2 BARBARA RANDO, CHAIR: Good evening.

3 The Zoning Board of Appeals for Tuesday, January 13,
4 2015 is called to order at 7:00 p.m.

5 Tonight we have one new and one
6 continued case.

7 The continued case is Case 2014-29,
8 Trapelo Road Realty Trust. I believe it's 300 -- is
9 it 300 -- 300 College Farm Road. And the members
10 sitting on that case will be Mr. Sergi, Mr.
11 Hickernell, Ms. Gelineau, and Mr. LaSane. And I am
12 Barbara Rando, Chair.

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1 ACCEPTANCE OF MINUTES OF DECEMBER 16, 2014 MEETING

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 BARBARA RANDO, CHAIR: The first
4 action this evening is for a motion to accept the
5 minutes of December 16th.

6

 JOHN SERGI: So moved, Madam Chair.

7

 BARBARA RANDO, CHAIR: Motion by Mr.
8 Sergi.

9

 Do I have a second?

10

 GLENN GELINEAU: Second.

11

 BARBARA RANDO, CHAIR: Second by Ms.
12 Gelineau.

13

 All in favor?

14

 ALL BOARD MEMBERS: Aye.

15

 BARBARA RANDO, CHAIR: Opposed?

16

 (None opposed.)

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 BARBARA RANDO, CHAIR: The ayes have
18 it. The minutes are approved.

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PUBLIC HEARING

**Case Number 2014-29: Ciro & Mario Zottola, 92-94
Trapelo Road Realty Trust, 300 College Farm Road**

BARBARA RANDO, CHAIR: Would the Clerk please read the petition in Case 2014-29, Trapelo Road Realty Trust, 300 College Farm Road?

MARK HICKERNELL: (The Clerk reads the notice for the above-mentioned Case into the record. See Attached.)

BARBARA RANDO, CHAIR: Thank you.

May we hear from the Petitioner or the Petitioner's representative please?

ATTORNEY PHILIP MCCOURT: Madam Chair, members of the Board, Philip B. McCourt, Jr., representing the Petitioner.

I noticed one thing as both you and Mr. Hickernell read the thing. I, for some reason by mistake, put the wrong number on the case. It's obviously 29 not 28 when I look back at the thing. So, I numbered it 28, but it's 29.

I'm just passing out for you, should this go forward, the only thing I really amended, other than some discussion we'd like to have, is the

1 finding of facts.

2 BARBARA RANDO, CHAIR: Is this the 29
3 you mentioned?

4 ATTORNEY PHILIP MCCOURT: Yeah, I
5 think it is 29.

6 BARBARA RANDO, CHAIR: So you read 29.

7 ATTORNEY PHILIP MCCOURT: Yes, you
8 read 29. I'm the one who has the wrong figure on it.
9 I don't know where I came up with that.

10 So, as you'll recall, we were here a
11 few weeks ago and discussed this case. And then we
12 had a site view. So, the case is purely -- and I'm
13 going to have Mr. Bibbo go over the facts with you
14 because he is very familiar with them since he did
15 all the topography and all the actual zone lines and
16 -- not zone lines, lot lines and easement lines and
17 all that up there in relation to this.

18 So, because of the way under Section
19 2.326 that we determine height in the City, we're
20 asking the Board to allow us to have an agreed upon
21 mean elevation, which would allow us to not only with
22 the current buildings, but with any future building,
23 meet the height variance. So, it really centers
24 around height. No building would be higher than the

1 buildings which we had the opportunity to see on
2 Sunday morning, as cold as it was out there. And, in
3 fact, the other buildings, should they ever go
4 forward, would be smaller. It's currently a three-
5 family house. Any further, you know, even one more
6 unit, would require us to go to the City Council
7 because it would exceed the by right FAR of the
8 property. So, we're really only looking for, if you
9 will, a height variance, an elevation variance, which
10 has occurred because of acquisition of certain lands
11 and other things that have occurred over the years
12 since these buildings were built probably over 10 or
13 more years ago.

14 We had two reasons obviously for the
15 site view. One was to view the property and see the
16 topography and all there and what might be the
17 result. Even in getting the height okayed, we'd
18 probably build a wall, no matter what, whether or not
19 the City Council allowed us to build anymore units.
20 The wall would be not only an amenity of the
21 property, but something that would be conducive to
22 improving the entire back area of that land and other
23 lands in the area.

24 We also had at the first meeting, from

1 the abutter who lives at 296 College Farm Road, there
2 were some issues and discussions about rights and an
3 easement which immediately are between the two
4 properties, and obviously a concern that if something
5 occurred during any kind of potential construction
6 that the wall that she has in, which is quite nice
7 and built a number of years ago before she built her
8 house, which is, as you could all see on Sunday, a
9 very lovely house, you know, that if there was any
10 damage, and we had a discussion with her. And I
11 believe -- and she's here so she can speak for
12 herself or her friend can speak for her -- she would
13 be concerned should there be any damage. So, we'd
14 have adequate insurance and indemnification to it if
15 in constructing any wall that we'd be constructing
16 that it would interfere with her wall.

17 You've done this on several other
18 occasions on these elevations because we have a very
19 unique or one of the few communities that have this
20 sort of a way of determining height. It basically
21 went in, based on commercial properties. If you look
22 at up at Bay Colony and those, they used to let you
23 create the height afterwards. (Topias) Building up
24 on 128 is probably the biggest example of that. So

1 they built the building and then they filled in
2 around it. Well, that could create other problems.
3 So, they, without thinking of what it would do with
4 varying topographies within the City in relation to
5 residential, they made this basically cart blanche
6 height definition. And at least three times here, I
7 personally have it varied by setting a ground
8 elevation from which we can do it. So, the
9 difference is about six, seven feet and that would
10 put the properties way down too low. And the current
11 properties, because of the addition of this
12 additional land, which Mr. Bibbo, Ralph Bibbo, will
13 describe to you, now don't meet the height, although
14 they are existing buildings and have been there.

15 So, I'm going to ask Ralph Bibbo who
16 was there on Sunday to try to explain. He did all
17 the surveying work not only for this property, but
18 even for the abutting property. And he and his
19 family have been associated with this entire area.
20 In fact, they lived in the area for a number of
21 years. And I think he can put it a little more
22 clearly of how this occurred and why we need this
23 arguably technical variance.

24 I'm just reminding everyone that if,

1 in fact, one chooses to grant this variance, not
2 granting one more unit, that would be totally to
3 another Board; it's just merely adjusting this
4 height.

5 So, this is Ralph Bibbo, who I think
6 most of you know.

7 RALPH BIBBO: Thank you, Phil, members
8 of the Board. Ralph Bibbo, Bibbo Brothers and
9 Associates here in Waltham.

10 I'm pretty familiar with the property.
11 I've done a lot of the work in the neighborhood, and
12 specifically on this property for the Zottolas.

13 So, a little bit of history is that
14 the building on the right side here, which is 304,
15 which the Zottola family owned, and then purchased
16 land to the left of that. The actual land line -- it
17 was very confusing. It's hard to see. This line
18 here went through at a sharp angle. So, end result,
19 they didn't own this land behind them, they valley.
20 There's a whole valley behind their property and this
21 property. They don't own it. So, when they bought
22 the adjacent land to work on it, what could fit
23 there, and legally work within zoning, was this
24 building we constructed. And, based on the lot line,

1 and the article which Mr. McCourt mentioned about the
2 height rule, this building conformed to all aspects:
3 front yard setback, lot coverage, completely at that
4 time.

5 Then they had looked at the land even
6 further back. Then they bought the land even behind
7 them. So, they kept on buying the land up. But,
8 again, because of Waltham regulation of a height
9 requirement, when there's a valley or a ravine, you
10 then have to -- mathematically you bring that in for
11 the requirement. So, once they purchased this, this
12 height became nonconforming and didn't comply if we
13 use today's standards even though it was built at the
14 time and met all the regulations.

15 In fact, on the abutting property next
16 door, when they wished to build their house, they
17 owned the valley as well. And, at the time, they
18 wanted to put a house there to fit and I explained
19 about the height requirement. And, the end result
20 was that they had to build a split or come to this
21 Board for a height variance. And the owner at the
22 time said, "Well, we can design a nice split so it
23 would be limited in height to meet the requirements."

24 And if you look at that particular house, it looks

1 short because it met the requirements because they
2 owned the valley as well at that time.

3 So now when we go to add onto this
4 building, the new structures would not exceed the
5 height of the existing structure. In fact, it would
6 be lower by several feet. But because it's attached,
7 it's an addition basically, you still have the
8 building that now technically did not conform to
9 height because they purchased the land behind them.

10 Now, if they went, decided to fill all
11 the land up and change all the topography through the
12 Planning Board saying, "Well, I'm going to build --
13 fill the whole ravine," which there's a process it
14 could be done, then you could change all the height
15 regulations. But, at the time, the way it's worded,
16 when you're applying for a permit, it's based on
17 preconstruction grades, which we're about the only
18 town that does that today. Every other community
19 bases a height requirement based on the perimeter of
20 the structure because it's hard to take into
21 consideration a topography of the land, whether it's
22 in this case here it drops off 20 feet from the
23 front.

24 In the reverse case, which I mentioned

1 at the site visit, there's a house at the end of
2 Princeton Ave., which from the street is 39 feet
3 tall. The requirement is 35. And I had several
4 calls on that. And they said, "Why is it so tall?"
5 I said, "Because it complies because there's a
6 mountain behind the house. And when you do the
7 average grade then that house can be that tall
8 meeting the requirements because it's not based
9 around the house."

10 So, if you have a mountain behind you,
11 you can have the house being 40, 45 feet tall. If
12 you have valley behind you, it goes against you, and
13 you end up having a small house such as the abutting
14 house next door.

15 So, by buying the property and wanting
16 to beautify the property to take care of it, they
17 inadvertently made that nonconforming even though
18 it's preexisting and met all the codes at time of
19 construction.

20 Did I explain it okay? Any questions
21 I can possibly answer?

22 BARBARA RANDO, CHAIR: Not yet I
23 think. Anyone have any questions? Do you? Okay.

24 RALPH BIBBO: Thank you.

1 BARBARA RANDO, CHAIR: Okay.

2 ATTORNEY PHILIP MCCOURT: So, based on
3 that explanation, and the technicality that we're
4 asking for, and the discussion with the abutters next
5 door, which was very important to us at the last
6 meeting. It as difficult to have a one-on-one
7 discussion with them, but at the site we did, and so
8 that if one granted this, we would obviously --
9 obviously any grant here, any future building would
10 have to go the City Council. But that goes without
11 saying. But we would add to our findings of fact,
12 the only changes would be:

13 "The Board of Appeals held a site view
14 at the house at which members of the Board were
15 present and the direct abutter from 296 College Farm
16 Road was there. This site view was not only for an
17 opportunity to view the locus but to resolve
18 questions for the abutter as to an easement between
19 the Petitioner's property and the abutter. The
20 abutter from 296 received the answer and location in
21 relation to the easement. She also recited her
22 concerns," which we can definitely understand, "about
23 construction of a proposed wall behind the
24 Petitioner's land."

1 And they can do the wall as a matter
2 of right if they want to. That doesn't cure the
3 piping because you -- but they can do the wall at any
4 time if they want to.

5 And you're not allowing the wall. It
6 was just that that would be part of their proposed
7 future construction.

8 But, at any rate, behind the land, she
9 was concerned because it abuts her land in relation
10 to the possibility of damage to her wall. And the
11 parties, I believe, have somewhat resolved the issue
12 by the Petitioner agreeing to provide written
13 indemnification and insurance coverage in relation to
14 any potential damage to the abutter's wall, their
15 home, or their property.

16 So, that would be the -- that we'd ask
17 to be added. And, of course, a condition, which
18 would be number three, the first condition would be
19 to -- is we all recognize that any additional
20 construction on this lot is subject to them obtaining
21 a Special Permit from the Waltham City Council. And
22 that isn't just you saying it. I mean that's the
23 law. So, we're putting it in there, but that would
24 be the case whether it was conditioned or not. And

1 then what I just said, that we would provide, at
2 least 10 days prior to commencement of construction
3 of the wall, this insurance coverage and
4 indemnification. And should we get this, we'd work
5 on this right away because obviously no construction
6 can take place particularly until we move through
7 other channels.

8 And the Petitioner would also provide
9 a copy of the stamped plans of the wall. Because
10 this wall is over three feet high, it would require a
11 structural engineer to not only design but approve
12 the wall and then the Building Department to approve
13 that for drainage, structure, and all of that, and to
14 provide them also with a copy of those plans, which
15 will become a public record. We would provide those.

16 So, with that having been said, and
17 emphasizing we're asking for the variance, which is
18 purely limited to setting a ground -- a stated ground
19 elevation, which allows the construction -- approves
20 these buildings, which already are beyond it, as Mr.
21 Bibbo spoke about, but should there be any future
22 buildings, that would resolve that issue.

23 BARBARA RANDO, CHAIR: All we can do
24 tonight is to grant you the height.

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1 ATTORNEY PHILIP MCCOURT: That's all.

2 You're not granting the -- we showed --

3 BARBARA RANDO, CHAIR: Right.

4 ATTORNEY PHILIP MCCOURT: -- it on,
5 and why we may need it, but we could have come in and
6 not disclosed what we were going to do into the
7 future and just asked to cure that building, but we
8 wanted to be very open and upfront particularly. And
9 we suggested to the Ward Councilor that anything we
10 did, we would --

11 BARBARA RANDO, CHAIR: Do you still
12 have to go in front of the City Council --

13 ATTORNEY PHILIP MCCOURT: No matter
14 what. No matter -- we could construct a wall, but
15 you're not approving a wall.

16 BARBARA RANDO, CHAIR: Right.

17 ATTORNEY PHILIP MCCOURT: That is we
18 can construct the wall. We'd have to go to the
19 Building Department.

20 BARBARA RANDO, CHAIR: Right. Right.

21 ATTORNEY PHILIP MCCOURT: But as far
22 as the building goes, we couldn't build half a unit
23 without going.

24 BARBARA RANDO, CHAIR: What about

1 Conservation with the gully or the what you --

2 ATTORNEY PHILIP MCCOURT: We had it
3 examined by John Rockwood from EcoTec from Worcester.
4 And his determination -- I'm sure that the Building
5 Department would want to look at that and everything
6 -- was that there's no wetlands that would --

7 BARBARA RANDO, CHAIR: As of right
8 now.

9 ATTORNEY PHILIP MCCOURT: Yeah.
10 Right.

11 BARBARA RANDO, CHAIR: What if it
12 should fill out, is there a chance, has the water
13 ever raised high enough to go up near her wall or --

14 ATTORNEY PHILIP MCCOURT: I don't know
15 her wall or our wall.

16 Actually, Ed, a neighbor here, is here
17 who also owns properties down in that area. He may
18 be able to answer that. But it's not wetland or free
19 flowing land. And what we're doing would actually
20 take water from going down the hill because it would
21 have to be contained above the wall.

22 BARBARA RANDO, CHAIR: Right. Right.

23 ATTORNEY PHILIP MCCOURT: I don't know
24 if you want to say anything?

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1 BARBARA RANDO, CHAIR: The drainage --
2 well, he'll have -- I'm sorry. I thought you were
3 talking about the neighbors.

4 ATTORNEY PHILIP MCCOURT: No, he is a
5 neighbor. He owns the property abutting on the other
6 side, the multifamily.

7 BARBARA RANDO, CHAIR: I know the
8 drainage has been improved over the years.

9 ATTORNEY PHILIP MCCOURT: Yes.

10 BARBARA RANDO, CHAIR: So you would
11 have to put state-of-the-art improvements in for the
12 drainage.

13 ATTORNEY PHILIP MCCOURT: Absolutely.
14 And that would have to be retained on the lot.

15 BARBARA RANDO, CHAIR: On the lot.

16 ATTORNEY PHILIP MCCOURT: And I don't
17 mean in the hole, but in the wall -- within the wall
18 which would --

19 BARBARA RANDO, CHAIR: And would that
20 help this neighbor next door as far as water?

21 ATTORNEY PHILIP MCCOURT: Well, I
22 don't think water, from her point of view, one way or
23 another would affect her. I mean she has a very
24 substantial well built wall, and that keeps, you

1 know, I think, I'm not saying --

2 BARBARA RANDO, CHAIR: But the base of
3 the wall, if the water keeps hitting it, if it should
4 raise in the spring, that would damage the wall.

5 ATTORNEY PHILIP MCCOURT: Yes, but
6 there's no water like that. I do have a letter.
7 Unfortunately, I only have one copy of it. We sent
8 John Rockwood, a Ph.D. who appears before our
9 Conversation Commission many times, of EcoTec out of
10 Worcester, because if there was wetland we wanted to
11 make sure to -- you know, to build the wall, we would
12 have had to address that. And, in his opinion, that
13 is not the case.

14 BARBARA RANDO, CHAIR: Thank you. May
15 we hear from the neighbor?

16 ATTORNEY PHILIP MCCOURT: Oh, sure.

17 BARBARA RANDO, CHAIR: Name and
18 address for the record please?

19 EDWARD KELJIK: Good evening, members.
20 My name is Edward Keljik. I happen to live on
21 Lincoln Street, just coincidentally. But the reason
22 is because my family owns -- I don't know if it's on
23 here -- yes, it is -- the building which is next to
24 the 304 building, which is 310 College Farm Road; 345

1 Lincoln Street; 339, 337, 335, 333 Lincoln Street,
2 which all abut the same ravine that you're speaking
3 out. Water is never an issue back there. It never
4 built up. It's not wetlands at all. Not being a
5 specialist in it; we've never had an issue with it.

6 And we also own 330 Lincoln Street.
7 This is a property my dad acquired late '60s, early
8 '70s, for 40 years. It's my family's -- that's what
9 we have, it's this property. Nothing means more to
10 me and my family than the well-being of this area of
11 Waltham.

12 BARBARA RANDO, CHAIR: And you've
13 never had a problem?

14 EDWARD KELJIK: More than anywhere in
15 the world, this is --

16 BARBARA RANDO, CHAIR: Of course. Of
17 course.

18 EDWARD KELJIK: This is my gold right
19 here.

20 BARBARA RANDO, CHAIR: Of course. Of
21 course.

22 EDWARD KELJIK: I've known the
23 Zottolas since the mid-'90s when they acquired 304
24 College Farm Road. They've always been wonderful

1 neighbors. They maintain. And we're not talking
2 about someone here who is, you know, from another
3 area, they're coming in trying to make a quick buck
4 and they're going to leave town. They're Waltham
5 people. They invest in Waltham. They live in
6 Waltham. They work in Waltham. So, me personally, I
7 hope you guys can do whatever you can do to make this
8 project move forward.

9 BARBARA RANDO, CHAIR: Thank you very
10 much.

11 EDWARD KELJIK: Thank you.

12 STENOGRAPHER: Could you spell your
13 last name for the record?

14 EDWARD KELJIK: Keljik, K-e-l-j-i-k.

15 STENOGRAPHER: Thank you.

16 EDWARD KELJIK: Thank you.

17 BARBARA RANDO, CHAIR: Any other
18 questions while he's here?

19 (No response.)

20 Attorney McCourt, do you have anyone
21 else?

22 ATTORNEY PHILIP MCCOURT: No. When I
23 provided the -- what I provided you, I did provide to
24 our neighbor.

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1 BARBARA RANDO, CHAIR: Okay.

2 ATTORNEY PHILIP MCCOURT: And we
3 worked with her and her attorneys as to any legal
4 indemnification prior to any construction if this
5 happens to get granted, other than --

6 BARBARA RANDO, CHAIR: And those
7 conditions we'll put on that we had spoken about if
8 it should be granted.

9 ATTORNEY PHILIP MCCOURT: Exactly.
10 Absolutely.

11 BARBARA RANDO, CHAIR: Is there anyone
12 in the audience that is not in favor of this petition
13 -- that is not?

14 (No response.)

15 Is there anyone that is seeking
16 information?

17 (No response.)

18 Is there anyone in favor of this
19 petition? One, two, three, four, five. Five in
20 favor.

21 Does anyone want to ask questions?
22 Yes? Do you want to come to the microphone and give
23 your name and address?

24 MARIO PATRIARCA: Mario Patriarca

1 speaking for Caroline Lucchetti, 296 College Farm
2 Road. We spoke at the last meeting. That hasn't
3 changed.

4 BARBARA RANDO, CHAIR: Your concerns -
5 - why don't you say for the people at home that are
6 listening to the case what your concerns were?

7 MARIO PATRIARCA: The concerns are the
8 building -- process of building that building, that
9 it will damage the house and the wall.

10 BARBARA RANDO, CHAIR: And I think we
11 mentioned that we would make sure that someone came
12 out, a licensed person, company, and looked at your
13 land and your home.

14 MARIO PATRIARCA: Yes. Well, we also
15 asked --

16 BARBARA RANDO, CHAIR: And if there
17 were any problems they would have to be there.

18 MARIO PATRIARCA: And I think what we
19 also asked for is a trust fund be set up that she
20 could draw from, not an insurance policy. She's
21 going to bring this to a lawyer tomorrow. The lawyer
22 will then answer you folks on that.

23 CAROLINE LUCCHETTI: I'll have my
24 lawyer get in touch with Mr. McCourt.

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1 BARBARA RANDO, CHAIR: Well, that
2 would be between you -- your lawyer and that lawyer.

3 MARIO PATRIARCA: Thank you.

4 CAROLINE LUCCHETTI: And I also do
5 have some questions.

6 BARBARA RANDO, CHAIR: Sure.

7 CAROLINE LUCCHETTI: I mean it's not
8 I'm not in favor, you know, of building, but I'd like
9 to know about the easement as it is now, is it going
10 to continue all the way down?

11 ATTORNEY PHILIP MCCOURT: No. No. At
12 the time when -- originally, it continued the entire
13 length of the property, this five-foot easement. And
14 then in discussions with your husband, there was no
15 need to do that. And so it only ends right where
16 your wall begins. So, it's only right here, Mrs.
17 Lucchetti. Right there, I assume. Is it on this
18 one? Well, could you show me that easement? Oh, I'm
19 sorry. It's on this one. I'm sorry.

20 CAROLINE LUCCHETTI: So that will stay
21 as it is?

22 ATTORNEY PHILIP MCCOURT: Yes.

23 CAROLINE LUCCHETTI: It's not going to
24 change at all?

1 ATTORNEY PHILIP MCCOURT: There will
2 be no changes to that. There will be no construction
3 within that. No changes to that, no walls, no
4 construction.

5 MARIO PATRIARCA: Can we ask that the
6 fence that's on her property be moved back to your
7 property? The fence was put up on her property. The
8 five-foot easement, or what it is, is actually her
9 property. But, yet, you guys put up a fence prior to
10 them building.

11 RALPH BIBBO: Well, let me answer
12 that. I mean at the time when --

13 MARIO PATRIARCA: I'm asking the
14 owners of the property a question.

15 RALPH BIBBO: Well, I did speak to her
16 husband about this because I wrote the easement up.

17 MARIO PATRIARCA: Do you have it
18 written down anywhere?

19 RALPH BIBBO: It was recorded. And if
20 it didn't pass, and he didn't buy the property, then
21 how did it get recorded? On the recorded plan, which
22 I think I showed the other day to some of the members
23 of the Board, that the agreement, or the easement,
24 when it was created, was for the benefit of the

1 Zottolas to use that five-foot. And right on the
2 recorded plan, which her husband signed off on,
3 because, again, it got recorded, it says that a fence
4 will be built on that easement line. So this was all
5 approved during part of the P&S agreement or how else
6 could it get recorded? So, there was an agreement.

7 MARIO PATRIARCA: Can you show us that
8 document because --

9 RALPH BIBBO: I can show you the
10 easement. Do we have the easement plan here?

11 ATTORNEY PHILIP MCCOURT: Is this it,
12 Ralph? That might show it.

13 RALPH BIBBO: This is it. This is
14 recorded with the Registry of Deeds. That's right
15 out of the Registry. There is the easement. And you
16 can read the language, which is quoted on the plan.
17 The five-foot lot easement shown on this plan is for
18 the benefit -- which is on Lot A, which is their
19 property --

20 MARIO PATRIARCA: Now, the fence, show
21 me the fence.

22 RALPH BIBBO: It says it right here.
23 It says that and to place a fence along the easement
24 line for Lot B. Put the fence on the easement line

1 for their use. It's spelled out black and white.

2 CAROLINE LUCCHETTI: At the time I do
3 remember that. That went back and forth for quite
4 some time because it was like either I had the
5 easement or they're not going to sell us the land.
6 So, it was one of those things that, you know --

7 RALPH BIBBO: And another thing in
8 that easement is it says for both. It says for -- it
9 says -- it's a five-foot utility and access easement.
10 There is a sewer line in that easement as well. So,
11 it was created for utility purposes as well because
12 when their building got built, they wanted to keep a
13 distance between the buildings that any machine had
14 to get in there that it wasn't going to be too close
15 to either building.

16 CAROLINE LUCCHETTI: Right. Right.

17 RALPH BIBBO: So that's why I put in
18 the utility line on that easement. So that easement
19 was a dual purpose, for a right to pass and repass
20 over Lot B, and for utilities, and that a fence be
21 placed over onto your side so, therefore, their right
22 to pass and repass is always there.

23 BARBARA RANDO, CHAIR: And also at the
24 last meeting they mentioned the stairs being on their

1 land.

2 CAROLINE LUCCHETTI: That was going to
3 be my next --

4 BARBARA RANDO, CHAIR: And that was
5 not on their land. It was on the easement.

6 RALPH BIBBO: It's on the easement.
7 Right. And, again, the easement states the right to
8 pass and repass. They can go over that easement
9 constantly.

10 MARIO PATRIARCA: Wait a minute. Wait
11 a minute. Whoa. Whoa. An easement is owned -- her
12 property is the easement.

13 BARBARA RANDO, CHAIR: Right.

14 ATTORNEY PHILIP MCCOURT: Yes. That's
15 right. Let me just say this much about the facts.

16 MARIO PATRIARCA: I don't understand
17 how you can build on an easement because it's an
18 easement. It's still her property.

19 ATTORNEY PHILIP MCCOURT: It is.

20 CAROLINE LUCCHETTI: What you're
21 saying, you mean the stairs that are there now.
22 Okay. I know that it's not in the ground. It's just
23 stairs. They could be moved. Okay. But it's still
24 on -- I mean an easement is there, but it shouldn't

1 be anything to obstruct the way. You know what I'm
2 saying? That's the way I understand it.

3 ATTORNEY PHILIP MCCOURT: Let me say
4 this, Mrs. Lucchetti, if I could. We asked at the
5 time for a fence along there. And we believe that
6 your husband, again, it is recorded, that it says
7 that. But I spoke to the owners of the land. Right?
8 If it makes you any more comfortable -- and it also
9 separates someone coming out the back of those condos
10 and everything. It keeps them -- but we would be
11 more than amenable to take the fence down.

12 CAROLINE LUCCHETTI: No, no, that will
13 create -- let me tell you. I have a mother. She
14 loves to sit in the back yard. As it is, we don't
15 have any privacy because the stairs are right there.
16 People come in and out. Now, with the new ones going
17 in, it's like completely, you know. And I know
18 you're probably going to build the same type of
19 stairs coming out, and it's going to be like right on
20 top of me. That's what it's going to be like.

21 ATTORNEY PHILIP MCCOURT: We can work
22 with you either to extend the fence or not. I mean
23 these people have owned the property for years. They
24 would be more than happy to help you. And we have no

1 reason to come onto your land beyond the end of the
2 current building.

3 CAROLINE LUCCHETTI: Beyond what's
4 there now.

5 ATTORNEY PHILIP MCCOURT: Right.
6 Exactly. Where that fence ends, that's it. But
7 anything that we can do for you, including taking
8 down the fence, we're more than happy to do it.

9 CAROLINE LUCCHETTI: No, I don't want
10 to take down the fence because then, you know --

11 ATTORNEY PHILIP MCCOURT: Right. I
12 understand.

13 CAROLINE LUCCHETTI: -- it will be
14 worse than it is now, you know.

15 MARIO PATRIARCA: Will you put in
16 writing that we could put a fence on the property --
17 that she could put a fence on the property?

18 ATTORNEY PHILIP MCCOURT: On the
19 remaining part?

20 RALPH BIBBO: On the easement.

21 MARIO PATRIARCA: On the property
22 line. Forget the easement.

23 ATTORNEY PHILIP MCCOURT: No, no, no.

24 MARIO PATRIARCA: The easement belongs

1 to her.

2 CAROLINE LUCCHETTI: Yes, that's
3 right.

4 MARIO PATRIARCA: The land that's
5 dedicated as an easement belongs to her.

6 ATTORNEY PHILIP MCCOURT: Just let me
7 say this --

8 MARIO PATRIARCA: What I'm saying is
9 will you put it in writing that we can put our fence
10 on the property line?

11 ATTORNEY PHILIP MCCOURT: If you want
12 a fence beyond the current easement -- and, remember,
13 we'll take down the fence if you want -- but if you
14 want a fence beyond the current easement, you know,
15 where -- if you want that, which might be something,
16 we'd be more than happy to do it.

17 Bring that plan up, Ralph.

18 You know what I mean? We'd continue
19 it.

20 MARIO PATRIARCA: Sir, in order to
21 clarify, see this blue line right here? That's where
22 the fence is right now.

23 ATTORNEY PHILIP MCCOURT: Correct.

24 MARIO PATRIARCA: We'd like to put the

1 fence where this black line is, which is the property
2 line.

3 ATTORNEY PHILIP MCCOURT: No, we'll
4 take it down, but we're not going to put it along
5 there. We don't want to do that.

6 MARIO PATRIARCA: She will put it
7 there. She will pick up the cost.

8 RALPH BIBBO: Well, that basically
9 defeats the purpose of the easement. And there's a
10 sewer line down that easement line.

11 MARIO PATRIARCA: But it's his sewer
12 line, not hers.

13 RALPH BIBBO: That's the whole reason
14 why that contract was made. I understand that, sir,
15 but this is an agreement that was all done with her
16 husband to buy the land.

17 MARIO PATRIARCA: But you're also
18 trying to build a monstrosity next to her, so give
19 and take.

20 CAROLINE LUCCHETTI: My concern is --

21 BARBARA RANDO, CHAIR: What is your
22 concern?

23 MARIO PATRIARCA: Well, Ralph, that
24 means she would have to come out five feet?

1 RALPH BIBBO: Five feet? Well,
2 basically, you'd have to abandon the easement. Then
3 the easement --

4 ATTORNEY PHILIP MCCOURT: You wouldn't
5 abandon it, you'd --

6 RALPH BIBBO: I'm not going to abandon
7 it, but I'll move the fence where they want to move
8 it. If they want to move it back three feet, we'll
9 move it back three feet.

10 MARIO PATRIARCA: Five feet. It's
11 basically where that black line. It's basically what
12 we're saying is if you need to go on the easement --

13 RALPH BIBBO: All right. But we're
14 still going to have the right to go on the easement.

15 MARIO PATRIARCA: -- you go in, you
16 dig, you put it back the way it was. End of story.

17 CAROLINE LUCCHETTI: Well, my concern
18 about that is, too, in the future, say I'm selling
19 the house, that will be an issue because there's five
20 feet of my land that, you know, it's going to be an
21 issue for whoever is going to buy the property, you
22 know.

23 RALPH BIBBO: Unfortunately, it's got
24 the sewer line on there. It's --

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1 CAROLINE LUCCHETTI: Sewer line where
2 though?
3 RALPH BIBBO: There's a sewer line --
4 CAROLINE LUCCHETTI: Sewer line for
5 the house?
6 RALPH BIBBO: Yes.
7 CAROLINE LUCCHETTI: Which one?
8 RALPH BIBBO: There's a sewer line
9 that comes down that easement.
10 CAROLINE LUCCHETTI: From where?
11 RALPH BIBBO: From the street.
12 CAROLINE LUCCHETTI: From the street?
13 RALPH BIBBO: The street. It comes
14 down between your property and their property, down
15 that easement, and there's a manhole in the ground.
16 And that services the building.
17 CAROLINE LUCCHETTI: So, it's right on
18 my property?
19 RALPH BIBBO: Right. Yeah.
20 MARIO PATRIARCA: And it services
21 whose building?
22 RALPH BIBBO: Their building.
23 MARIO PATRIARCA: Terrific. Terrific.
24 RALPH BIBBO: That's why we have the

1 easement. You can't remove the sewer line.

2 MARIO PATRIARCA: So what?

3 RALPH BIBBO: Well, that's what I'm
4 saying. She just --

5 MARIO PATRIARCA: All we're saying is
6 move the fence. They want to fix the sewer line,
7 they can dig and put it back the way it was.

8 RALPH BIBBO: I'm just answering a
9 question about the easement. The easement can never
10 be abandoned because there's a sewer line in it.

11 BARBARA RANDO, CHAIR: Right. Right.

12 MARIO PATRIARCA: We're not abandoning
13 the easement.

14 ATTORNEY PHILIP MCCOURT: We'll move
15 the fence.

16 BARBARA RANDO, CHAIR: Right.

17 ATTORNEY PHILIP MCCOURT: We'll move
18 the fence back the five feet and we'll continue a
19 fence if you want it along the line.

20 BARBARA RANDO, CHAIR: Okay. All
21 right. Fence moved.

22 ATTORNEY PHILIP MCCOURT: Yeah, fence.

23 STENOGRAPHER: Can I get her name for
24 the record?

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1 ATTORNEY PHILIP MCCOURT: Oh, Mrs.
2 Lucchetti, right, Mrs. Lucchetti?

3 CAROLINE LUCCHETTI: Yes.

4 BARBARA RANDO, CHAIR: Can you spell
5 that?

6 CAROLINE LUCCHETTI: L-u-c-c-h-e-t-t-
7 i.

8 ATTORNEY PHILIP MCCOURT: Yeah, right.
9 She's the owner at 296 College Farm Road.

10 STENOGRAPHER: I didn't catch that
11 spelling.

12 ATTORNEY PHILIP MCCOURT: Oh, you
13 didn't?

14 STENOGRAPHER: No, what's the name?

15 CAROLINE LUCCHETTI: L-u-c-c-h-e-t-t-
16 i.

17 ATTORNEY PHILIP MCCOURT: Thank you
18 very much, Mrs. Lucchetti. She's the actual owner of
19 the property.

20 What's your name, sir?

21 MARIO PATRIARCA: Mario Patriarca.

22 ATTORNEY PHILIP MCCOURT: Oh, Mario
23 Patriarca.

24 MARIO PATRIARCA: I spoke last

1 meeting.

2 ATTORNEY PHILIP MCCOURT: Yes. No, I
3 know. So we would -- we'll move the fence.

4 BARBARA RANDO, CHAIR: Okay. All
5 right. You can continue unless there's any other
6 questions.

7 Mr. Sergi, do you have any questions?

8 JOHN SERGI: Not at this time.

9 BARBARA RANDO, CHAIR: Mr. Hickernell?

10 MARK HICKERNELL: No.

11 BARBARA RANDO, CHAIR: Ms. Gelineau?

12 GLENNA GELINEAU: No.

13 BARBARA RANDO, CHAIR: Mr. LaSane?

14 GORDON LASANE: No.

15 BARBARA RANDO, CHAIR: You may
16 continue with your proposed finding of facts.

17 JOHN SERGI: Well, Madam Chair, may I
18 make a motion that we waive the reading of the
19 proposed finding of facts?

20 BARBARA RANDO, CHAIR: Has everyone
21 read the proposed finding of facts?

22 (Board members answer affirmatively.)

23 BARBARA RANDO, CHAIR: Okay. Motion
24 by Mr. Sergi to waive the reading of the proposed

Waltham Zoning Board of Appeals/1-13-15/39

1 finding of facts. Do I have a second?

2 GORDON LASANE: Second.

3 BARBARA RANDO, CHAIR: Second.

4 GORDON LASANE: Just change the case
5 number on the second page as well -- on the second
6 page.

7 ATTORNEY PHILIP MCCOURT: Yes, of
8 course.

9 BARBARA RANDO, CHAIR: Change number
10 on second page.

11 ATTORNEY PHILIP MCCOURT: And we'll
12 have to add the additional condition.

13 GORDON LASANE: Right. Exactly.

14 ATTORNEY PHILIP MCCOURT: Right.

15 MARIO PATRIARCA: So it's 2914?

16 ATTORNEY PHILIP MCCOURT: Say again?

17 MARIO PATRIARCA: 2914?

18 ATTORNEY PHILIP MCCOURT: No, no.
19 It's 2014 -- the case number is 29 not 28. I put
20 down mistakenly 28. And then I went --

21 BARBARA RANDO, CHAIR: All right. You
22 may continue with your proposed decision.

23 JOHN SERGI: Madam Chair, similarly,
24 I'd like to waive the reading of the proposed

1 decision since it's been on file.

2 BARBARA RANDO, CHAIR: All right. I
3 have a motion by Mr. Sergi to waive the reading of
4 the proposed decision. Do I have a second?

5 GORDON LASANE: Second.

6 BARBARA RANDO, CHAIR: Second by Mr.
7 LaSane.

8 All in favor?

9 ALL BOARD MEMBERS: Aye.

10 BARBARA RANDO, CHAIR: Opposed?

11 (None opposed.)

12 BARBARA RANDO, CHAIR: The ayes have
13 it.

14 And on the finding of facts, all in
15 favor?

16 ALL BOARD MEMBERS: Aye.

17 BARBARA RANDO, CHAIR: Opposed?

18 MARK HICKERNELL: As amended. As
19 amended.

20 BARBARA RANDO, CHAIR: Well, we
21 haven't even gone -- I didn't ask if anyone was in
22 favor.

23 MARK HICKERNELL: Oh, I see.

24 BARBARA RANDO, CHAIR: Opposed?

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1 (None opposed.)

2 BARBARA RANDO, CHAIR: Okay. We'll
3 waive the reading of the proposed decision and the
4 proposed finding of facts.

5 ATTORNEY PHILIP MCCOURT: And then
6 obviously it's up to the Board, but we would
7 obviously propose an additional condition in the
8 decision, number four, that would have us move the
9 current fence to our side, our property line.

10 BARBARA RANDO, CHAIR: And number five
11 would be the -- number five would be if there should
12 be any water damage that they take care of that,
13 which you say there won't be from the creek. That
14 would make --

15 JOHN SERGI: Madam Chair, any damage,
16 right? I think that's --

17 BARBARA RANDO, CHAIR: Well, any
18 damage, yes. And they put that right into their
19 brief. But if you want to make that number six, any
20 damage to their home.

21 JOHN SERGI: Yes, home, property, or
22 wall would be put in, right.

23 BARBARA RANDO, CHAIR: Property or
24 wall -- home, property, or wall.

1 JOHN SERGI: Yeah.

2 BARBARA RANDO, CHAIR: Would be the
3 responsibility of the Petitioner.

4 GORDON LASANE: I'm sorry, Madam,
5 number four, what did you --

6 BARBARA RANDO, CHAIR: They're going
7 to move the fence. Number five is water damage if
8 the creek should ever rise, which it hasn't happened
9 since the '60s one of the neighbors said. And,
10 number six, should there be any damage to your home,
11 property, or your wall.

12 All right. No one else has anything
13 else to add?

14 (No response.)

15 Do I have a motion on the proposed
16 findings of fact as amended?

17 JOHN SERGI: I make a motion that the
18 proposed finding of fact as amended becomes the
19 Board's finding of fact.

20 BARBARA RANDO, CHAIR: Motion by Mr.
21 Sergi.

22 Do I have a second?

23 GLENNA GELINEAU: Second.

24 BARBARA RANDO, CHAIR: Second by Ms.

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1 Gelineau.

2 How do you vote on the proposed
3 findings of fact as amended, Mr. Sergi?

4 JOHN SERGI: Yes.

5 BARBARA RANDO, CHAIR: Mr. Hickernell?

6 MARK HICKERNELL: No.

7 BARBARA RANDO, CHAIR: Ms. Gelineau?

8 GLENNA GELINEAU: Yes.

9 BARBARA RANDO, CHAIR: Mr. LaSane?

10 GORDON LASANE: Yes.

11 BARBARA RANDO, CHAIR: And the Chair
12 votes yes. So, it passed on the finding of facts.

13 Do I have a motion on the decision, as
14 amended?

15 JOHN SERGI: I make a motion that the
16 proposed decision, as amended, becomes the Board's
17 amended decision.

18 BARBARA RANDO, CHAIR: Motion by Mr.
19 Sergi.

20 Do I have a second?

21 GLENNA GELINEAU: I'll second.

22 BARBARA RANDO, CHAIR: Second by Ms.
23 Gelineau.

24 BARBARA RANDO, CHAIR: How do you

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1 vote, Mr. Sergi?

2 JOHN SERGI: Yes.

3 BARBARA RANDO, CHAIR: Mr. Hickernell?

4 MARK HICKERNELL: No.

5 BARBARA RANDO, CHAIR: Ms. Gelineau?

6 GLENNA GELINEAU: Yes.

7 BARBARA RANDO, CHAIR: Mr. McCarthy --

8 I mean LaSane?

9 GORDON LASANE: Yes.

10 BARBARA RANDO, CHAIR: And the Chair

11 votes yes. So, it is granted.

12 You have sufficient parking for all
13 your cars, correct?

14 ATTORNEY PHILIP MCCOURT: Yes. And

15 I'll work with Ms. Lucchetti and her attorney to, you

16 know --

17 BARBARA RANDO, CHAIR: And as long as

18 they understand that it's going to be lower than the

19 house that's there, the addition that's there.

20 ATTORNEY PHILIP MCCOURT: Yes. Yes.

21 Lower.

22 BARBARA RANDO, CHAIR: All right.

23 Thank you.

24 ATTORNEY PHILIP MCCOURT: Thank you

Waltham Zoning Board of Appeals/1-13-15/45

1 very, very much.

2 BARBARA RANDO, CHAIR: Good luck to
3 both of you.

4 ATTORNEY PHILIP MCCOURT: It shows the
5 benefit of a site view no matter how cold it was.

6 BARBARA RANDO, CHAIR: It certainly
7 does.

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1 **Case Number 2014-31: Frank D. Valentino, 141-143**
2 **Calvary Street**

3

4 BARBARA RANDO, CHAIR: The next case
5 is Case 2014-29 -- no, it's Case 2014-31, Valentino,
6 141-143 Calvary Street. And the members sitting on
7 the Calvary Street Valentino Case are Mr. Sergi, Mr.
8 Hickernell, Ms. Gelineau, Mr. McCarthy, and Mr.
9 LaSane, and I am Barbara Rando, Chair.

10 So, the Clerk will read the petition.

11 MARK HICKERNELL: (The Clerk reads the
12 notice for the above-mentioned Case into the record.
13 See Attached.)

14 BARBARA RANDO, CHAIR: Thank you.

15 May we hear from the Petitioner or the
16 Petitioner's representative please?

17 ATTORNEY RICHARD LECLAIR: Richard
18 Leclair for the Petitioner Frank Valentino.

19 I have brought extra copies of -- I
20 filed the request for findings, but I actually made
21 copies, extra copies, for everybody.

22 So, this is a kind of a unique
23 property with a unique history. My client is the
24 owner of 141-143 Calvary Street, which is a little

1 over 7,000 feet. And it's currently improved by a
2 two-family structure. Now, this is in a Residence A4
3 Zoning District which only allows single-family
4 residences, but this structure was built in the
5 1900s, around 1900, and before the enactment of any
6 zoning. So, it's a preexisting nonconforming
7 structure.

8 Also on this locus is a dilapidated
9 garage. Now, this property is on Calvary Street just
10 across the street from some industrial areas. So, I
11 brought some photographs to show you the area across
12 the street and give you a sense of the neighborhood.

13 So, it's a very unique property in the
14 sense that it's Residence A4, which is single-family,
15 and it's directly across the street from industrial
16 uses. Further down the street I think is the old
17 Edison plant, to give you a sense of where it is.
18 And it's kind of an interesting section because I was
19 looking -- counting on the abutter's map. Of the 29
20 lots, residential lots, within a 300-foot circle, 15
21 of those lots don't meet the current requirement for
22 lot size. You know, 15 percent of them are -- 15 of
23 29 are under the 7,000 feet. So, one of the
24 variances we are looking for is a lot size area to

1 reduce this in half.

2 Now, my client proposes to divide the
3 lot in half and to construct a single-family
4 residence on the new lot, leaving the existing
5 structure where it is. I know if you count the
6 number of variances we're requesting, there are a
7 number -- they're large in number, but two of them
8 already exist. The building that exists there now is
9 built very close to the lot lines, which is one of
10 the reasons we think it is a unique situation
11 relating to the topography of it. This is a lot
12 that's a rectangular lot on a street corner and this
13 house was built, you know, in 1900, right up against
14 the street.

15 What we're looking to do is provide a
16 nice buildable lot for a single-family residence on
17 it, behind.

18 This isn't -- my client isn't the
19 first person to have this idea. The owners back in
20 the 1960s also applied for this relief and received
21 it from the Zoning Board. They granted the variances
22 to allow the division of the lot and the construction
23 of a single-family residence on the rear lot. And
24 they did not act on it. They did not complete the

1 project. They did not file the plan. But it was
2 approved. It was approved on May 22nd, 1962 by the
3 then Board which was chaired by Mr. Campisi.

4 I don't believe any of the
5 circumstances have changed from 1962 to now. In
6 fact, they're probably -- it's more compelling now to
7 grant the requested relief because this is the type
8 of housing that would be low- to moderate single-
9 family housing. It would be nice. It would be an
10 improvement to the neighborhood.

11 I'll give you some more pictures of
12 what we're dealing with for a property. I don't know
13 if any of the members had a chance to go by.

14 BARBARA RANDO, CHAIR: I did.

15 ATTORNEY RICHARD LECLAIR: But it is a
16 piece of --

17 GORDON LASANE: The house, would it be
18 for rent or for sale?

19 ATTORNEY RICHARD LECLAIR: For sale.

20 BARBARA RANDO, CHAIR: As a two-
21 family?

22 ATTORNEY RICHARD LECLAIR: No, a
23 single. A single.

24 BARBARA RANDO, CHAIR: A single?

1 ATTORNEY RICHARD LECLAIR: It's a
2 single. We're only looking to put up -- the new
3 house will be -- will comply as to use. The existing
4 house is a two-family that's existed since 1900. The
5 house that we propose to construct would just be a
6 single.

7 BARBARA RANDO, CHAIR: The house that
8 is there now is a two-family?

9 ATTORNEY RICHARD LECLAIR: Yes.

10 BARBARA RANDO, CHAIR: And it's going
11 to be --

12 ATTORNEY RICHARD LECLAIR: Stay
13 exactly where it --

14 BARBARA RANDO, CHAIR: -- rented as a
15 two-family?

16 ATTORNEY RICHARD LECLAIR: No. Well,
17 I shouldn't -- the plan is probably to sell that
18 house as well. But, you know --

19 BARBARA RANDO, CHAIR: Is the plan not
20 to turn them into condominiums as the carpenter told
21 me today?

22 ATTORNEY RICHARD LECLAIR: Let me say
23 this much. Depending on what happens with this
24 property, whether they're leased or sold, I don't

1 feel comfortable standing before you and saying this
2 is exactly what will occur. I mean Mr. Valentino has
3 been before this Board before. You know Mr.
4 Valentino. He has properties that he rents and he
5 has properties that he sells and turns into
6 condominiums. So, for me to stand here, and him to
7 change his mind, or give you some definitive plan, I
8 don't feel comfortable doing it.

9 BARBARA RANDO, CHAIR: I think the
10 carpenters know.

11 ATTORNEY RICHARD LECLAIR: Well --

12 BARBARA RANDO, CHAIR: I mean if
13 they're turning it into two -- into two separate
14 condos --

15 ATTORNEY RICHARD LECLAIR: Well, let
16 me just say this. They're not turning them into two
17 separate things. They're two separate units right
18 now. My only point is Mr. Valentino is in both
19 businesses. I don't want to stand before the Board
20 and commit him you're definitely going to sell these
21 or you're definitely going to rent these. I don't
22 feel comfortable doing that because he is in both
23 businesses. This house behind would definitely be
24 something for sale.

1 GORDON LASANE: How many square feet?

2 ATTORNEY RICHARD LECLAIR: The house
3 that we propose -- I apologize for not having it at
4 my fingertips -- it would be a two-story -- it would
5 be a two-story house and it looks like -- we don't
6 have building plans yet -- but it would be 28x34.

7 GORDON LASANE: And the height would
8 be fitting the character of the other house?

9 ATTORNEY RICHARD LECLAIR: Correct, it
10 would be two stories. People know the height
11 requirement. We're not looking for a height
12 variance.

13 And, actually, if you look at that
14 picture, there is another -- the green house that's
15 built right here is another house that was recently
16 built in this area. You know, somebody invested some
17 money in that single-family residence as well. So I
18 think that, you know, it is an improvement to the
19 City. You know, the difficult issue for us is the
20 hardship. I suggest that the hardship is that you
21 have a property that's very old. You have a
22 dilapidated garage. The nature of this house being
23 so close to the lot line, there's not much you can do
24 with this lot without some relief. And that's why --

1 and it relates to the shape and the location of the
2 house, which gets us there.

3 I think this is an improvement to the
4 neighborhood. It provides housing stock. Due to the
5 nature of the neighborhood and the lot size, this
6 isn't going to be a house that goes for \$600,000 or
7 even \$500,000. It's a house that I think will be
8 probably considered moderate.

9 BARBARA RANDO, CHAIR: Could I see a
10 picture of the front of the house showing the
11 corners? Do you have a picture --

12 ATTORNEY RICHARD LECLAIR: I don't.

13 BARBARA RANDO, CHAIR: -- because I
14 just have a picture of the back of the house. You
15 don't have the front right on Calvary Street?

16 ATTORNEY RICHARD LECLAIR: The reason
17 we gave you -- I don't. But the reason I gave you
18 the back was to give you a sense of what the house --
19 that's the area that will be built on.

20 BARBARA RANDO, CHAIR: Well, it looks
21 very woodsy there.

22 GORDON LASANE: And, Attorney, to your
23 knowledge, the single that got built, it wasn't on
24 the market for a while, was it, a long time?

1 ATTORNEY RICHARD LECLAIR: Do you know
2 how long the sale -- the sale that was built, the
3 green one, how long was it on the market for? Do you
4 remember?

5 FRANK VALENTINO: No.

6 ATTORNEY RICHARD LECLAIR: No. We
7 actually tried to knock on their doors. I think --
8 we believe that one is owner occupied. We tried to
9 knock on their door to get some input and were
10 unable. But we do believe that was owner occupied
11 though.

12 BARBARA RANDO, CHAIR: Attorney
13 Leclair, I'll take one of those, please.

14 ATTORNEY RICHARD LECLAIR: Oh, sure.
15 So, the reason I requested the special permit in
16 addition to the variances, you know, I interpret this
17 differently as this Board I think, but I put it in,
18 Section 40A, Section 6, that, you know, this is
19 nonconforming as a result of the house being so close
20 to the lot line. It's nonconforming existing. I
21 think you also need to make that Section 6 finding
22 that it's not substantially more detrimental to the
23 neighborhood, which is also a similar finding you
24 need to make on the 4 finding on a variance. So,

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1 there's no special -- you know, the special permit
2 doesn't relate to anything other than the fact that
3 we're altering a lot that has a nonconforming
4 structure on it.

5 BARBARA RANDO, CHAIR: Did he buy the
6 house from Fouche?

7 FRANK VALENTINO: Yes.

8 ATTORNEY RICHARD LECLAIR: It was
9 James Fouche who actually I think applied to divide
10 it and was granted relief in the first instance.

11 BARBARA RANDO, CHAIR: The '62 case,
12 that's what we need.

13 ATTORNEY RICHARD LECLAIR: I don't
14 recognize -- I don't know if anybody is alive who was
15 on the Board back then.

16 That is our -- you know, that is the
17 presentation in a nutshell. I think this would be a
18 dramatic improvement to that area. It is a tough --
19 it's a bright line there going from A4 to commercial.
20 This would be one house back from that, you know,
21 that bright line. But I think it actually is an
22 improvement to the people next door. I think it adds
23 a new home and --

24 BARBARA RANDO, CHAIR: The existing

1 house is on Lot 1B?

2 ATTORNEY RICHARD LECLAIR: It would be
3 -- the existing house would continue to be on new Lot
4 1B.

5 BARBARA RANDO, CHAIR: 1B. And that's
6 Flood Street?

7 ATTORNEY RICHARD LECLAIR: That is
8 Flood Street. That's on the corner of Flood and --

9 BARBARA RANDO, CHAIR: Calvary.

10 ATTORNEY RICHARD LECLAIR: Calvary,
11 correct.

12 BARBARA RANDO, CHAIR: Okay. And you
13 have a front yard of 3.24 and you require 25. You
14 have a rear yard of 2.67 and you require 30.
15 Correct?

16 ATTORNEY RICHARD LECLAIR: Correct.

17 BARBARA RANDO, CHAIR: Okay. Don't
18 you also need -- based on your plan, the existing
19 house will have a setback of the corner lot
20 requirement? It's a corner lot, so you have to have
21 the corner lot requirement, which is 30, correct?

22 ATTORNEY RICHARD LECLAIR: No, I don't
23 think so. I don't think so.

24 BARBARA RANDO, CHAIR: Oh, 25, 25,

1 because it's the same as the -- the same as the rear
2 yard. The corner side yard --

3 ATTORNEY RICHARD LECLAIR: That, you
4 know, I don't believe so. I think that -- are you
5 talking about --

6 BARBARA RANDO, CHAIR: You don't
7 believe so what?

8 ATTORNEY RICHARD LECLAIR: I don't
9 believe that because it's a corner. I don't believe
10 --

11 BARBARA RANDO, CHAIR: Oh, you most
12 certainly do.

13 ATTORNEY RICHARD LECLAIR: I don't
14 believe that's a requirement.

15 BARBARA RANDO, CHAIR: We had a case -
16 - we had a case on I think Bacon Street, 300 Bacon
17 Street -- no, it wasn't 300 Bacon Street -- 305 Bacon
18 Street, KHJ Development. I happen to remember it.
19 And they most definitely did have. And it was the
20 use of a single-family house on a newly created lot
21 based on a subdivision of original lot approved by
22 the BOSD, Board of Survey and -- P -- Board of Survey
23 and Planning. The lot will now be corner lot with a
24 rear yard corner lot setback. 4.11 requires a rear

1 yard of 30 feet. Article 4, Section 4.228, requires
2 the corner lot setback to be the same as the front
3 yard setback of 25 feet. So, you need a side yard
4 setback of 25 feet and you don't have it.

5 ATTORNEY RICHARD LECLAIR: Well,
6 actually, I think I only need a front yard setback --
7 if you go to Section 4.229 -- of 13.67 feet. If
8 we're going to match up, we'd match up with the same
9 on that, which would be 13.67.

10 BARBARA RANDO, CHAIR: The corner lot
11 setback should be the same as 25 as the front yard
12 setback.

13 ATTORNEY RICHARD LECLAIR: Just so I
14 can understand, Mrs. Rando, just so I can understand
15 exactly which side -- do you mind if I approach just
16 to show you the --

17 BARBARA RANDO, CHAIR: Mm hum. Mm
18 hum.

19 ATTORNEY RICHARD LECLAIR: Which
20 distance do you think I need 30 because of the corner
21 lot?

22 BARBARA RANDO, CHAIR: I'm not sure. I
23 would leave that up to the Law Department to explain
24 exactly or the Building Inspector. But I do remember

1 that this case that I was talking about, you
2 definitely need a corner lot setback of 25 feet and
3 you do not have it.

4 ATTORNEY RICHARD LECLAIR: Well, when
5 I submitted this to the Building Inspector, there was
6 no mention of a corner lot setback requirement in his
7 approval of stamp -- you know, with the stamp on the
8 past.

9 BARBARA RANDO, CHAIR: Well, we've
10 done it in the past, Attorney Leclair. We've done it
11 in the past.

12 ATTORNEY RICHARD LECLAIR: And that
13 may be the case.

14 BARBARA RANDO, CHAIR: Corner lot
15 setback.

16 ATTORNEY RICHARD LECLAIR: And that
17 may be the case. And I'm happy to look into that.
18 That isn't what my understanding was based on my
19 submittal to the Building Department.

20 BARBARA RANDO, CHAIR: Right. I'm
21 sure it wasn't.

22 ATTORNEY RICHARD LECLAIR: It didn't
23 come back requiring that relief. And if that's a
24 concern that the Board has, I don't want you -- I'd

1 like to address that before you make a ruling because
2 I don't want, if you're right, I'll request it. If
3 you're not right, I'd like the Board to note --

4 BARBARA RANDO, CHAIR: Well, I'm
5 surprised because the Building Inspector did have it
6 on that 2008 case.

7 ATTORNEY RICHARD LECLAIR: He didn't
8 have it on this one. So, if it had been, I would
9 have addressed it with him first. So, I don't know
10 which -- sitting here, you can't tell me which
11 dimension --

12 BARBARA RANDO, CHAIR: I don't want to
13 take that responsibility on.

14 ATTORNEY RICHARD LECLAIR: Okay.

15 BARBARA RANDO, CHAIR: I would rather
16 someone that is much more valued opinion than mine.

17 ATTORNEY RICHARD LECLAIR: Because
18 those two distances, as you know, we're not changing
19 those two distances. The two corner distances are
20 the same ones that exist now. I think we need relief
21 for those distances anyway. You know, the question
22 is -- and I've asked for relief on both those sides
23 because I don't -- whether you treat it as a corner
24 or you don't treat it as a corner, I'm too close.

1 I'm only 4.53 and 3.24. So, I agree with you that in
2 my petition for those two distances, I suggested that
3 the requirements -- I suggested that the requirement
4 was a front of 13.67 and a side of 15. In any event,
5 I don't even make those. So, I am asking for a
6 variance for those two sides. I think the difference
7 would be whether it's a 30-foot requirement or a 15-
8 foot requirement. I do recognize that we do need
9 relief there.

10 MARK HICKERNELL: And the building's
11 not moving.

12 ATTORNEY RICHARD LECLAIR: And the
13 building's not moving, yeah. It's staying exactly
14 where it is, where it's been for 112 years.

15 BARBARA RANDO, CHAIR: What is the --
16 and then when I took a site view today, I did not see
17 a garage.

18 ATTORNEY RICHARD LECLAIR: The shed.

19 BARBARA RANDO, CHAIR: The shed. Has
20 that been taken down?

21 ATTORNEY RICHARD LECLAIR: You haven't
22 taken the shed down? That still exists.

23 FRANK VALENTINO: There are motor
24 vehicles there that probably block the view from

1 coming around, but it's there.

2 BARBARA RANDO, CHAIR: Because I drove
3 right in and right around and out the other building
4 on the left-hand side.

5 ATTORNEY RICHARD LECLAIR: That photo
6 was taken today, right?

7 FRANK VALENTINO: Yesterday.

8 ATTORNEY RICHARD LECLAIR: Yesterday.

9 BARBARA RANDO, CHAIR: And you have a
10 permit and you're already starting to -- you have a
11 valid permit?

12 FRANK VALENTINO: The permit's in the
13 window, yes.

14 BARBARA RANDO, CHAIR: And you are --

15 ATTORNEY RICHARD LECLAIR: That's the
16 garage right there, just to give you a perspective.

17 BARBARA RANDO, CHAIR: Yeah, I saw it
18 in the picture, but I didn't see it today.

19 You are already starting to repair
20 that two-family?

21 FRANK VALENTINO: Yeah, it's 100 years
22 old. It's needed quite a bit of work. So, yes,
23 we've been working on it for over a month.

24 BARBARA RANDO, CHAIR: I spoke to the

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1 carpenters this afternoon. They said that you're
2 turning them into two side-by-side condos.

3 FRANK VALENTINO: Yeah, it was already
4 a side-by-side duplex already. But, yes, as of right
5 now, yes.

6 BARBARA RANDO, CHAIR: And parking
7 will be provided?

8 ATTORNEY RICHARD LECLAIR: Yes, the
9 parking for the existing house is shown on the plan,
10 right there off of Flood Street. And the parking for
11 the other home will be off of Calvary Street, right
12 there.

13 BARBARA RANDO, CHAIR: I can't imagine
14 another home being there. I can't fathom it at all.

15 ATTORNEY RICHARD LECLAIR: Well, as I

16 --

17 BARBARA RANDO, CHAIR: How big is that
18 lot?

19 FRANK VALENTINO: I'm sorry?

20 BARBARA RANDO, CHAIR: The lot that
21 he's going to build on.

22 ATTORNEY RICHARD LECLAIR: Yes?

23 BARBARA RANDO, CHAIR: The new house,
24 that Lot A.

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1 ATTORNEY RICHARD LECLAIR: Lot A1.

2 BARBARA RANDO, CHAIR: A1.

3 ATTORNEY RICHARD LECLAIR: 1A, I'm
4 sorry.

5 BARBARA RANDO, CHAIR: What is the
6 size of that lot?

7 ATTORNEY RICHARD LECLAIR: That lot is
8 4,381 feet.

9 BARBARA RANDO, CHAIR: And what's
10 required?

11 ATTORNEY RICHARD LECLAIR: 7,000.

12 BARBARA RANDO, CHAIR: Seven. And --
13 I know. I'm sorry. Sorry. And the other lot is
14 supposed to be 7,000 and it's 2,000-something?

15 ATTORNEY RICHARD LECLAIR: 2,812.

16 BARBARA RANDO, CHAIR: 2,812.

17 ATTORNEY RICHARD LECLAIR: And we're
18 asking for the -- those are two of the requested
19 variances.

20 BARBARA RANDO, CHAIR: And you have
21 over a percentage of buildings of the lot.

22 ATTORNEY RICHARD LECLAIR: On one we
23 would exceed the lot coverage ratio.

24 BARBARA RANDO, CHAIR: Right. It

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1 would be 47 did I read?

2 ATTORNEY RICHARD LECLAIR: No, 37.

3 BARBARA RANDO, CHAIR: Thirty-seven.

4 ATTORNEY RICHARD LECLAIR: And the
5 requirement is 25. The limit is 25. We're here
6 asking for variances. No doubt about it. That's why
7 we're here.

8 BARBARA RANDO, CHAIR: You certainly
9 are.

10 ATTORNEY RICHARD LECLAIR: And we're
11 asking for variances. We're asking for the same
12 variances that were allowed 50 years ago to do this
13 project. It allows this property to be subdivided.
14 It allows us the maximum use of this property. It
15 allows this property to be improved. It allows this
16 property to be used to provide single-family housing,
17 not single-family housing that costs a million
18 dollars, but single-family housing that is probably
19 attainable by most people. These lots this house is
20 on are no bigger than the lots -- are bigger than the
21 lots that people are building homes on in the
22 Lakeview area. And the people, you know, in that
23 market, that first homebuyer market, are buying and
24 available.

1 So, this isn't Forest Street or this
2 isn't Pigeon Hill. This is a densely populated area
3 across from an industrial park where we propose to
4 build a nice new home on a lot that is bigger than
5 lots that are being built on in this City as of right
6 in other neighborhoods, frankly, in nicer
7 neighborhoods. This is a tougher neighborhood due to
8 the industrial use right nearby.

9 I do think that there's a market for
10 this house. My client thinks there's a market for
11 this house or, you know, he wouldn't be here
12 proposing it.

13 This isn't a situation where there's
14 going to be a home run made. There will be a small
15 profit made. That's what they're in the business of.
16 But it does serve a purpose of improving I think this
17 neighborhood. A rising tide lifts all boats. A
18 newer home amongst older homes will bring up the
19 property values around it. It will provide some nice
20 living space. And, once again, it made sense in the
21 sixties. I think it makes even more sense now when
22 we need more housing not less.

23 BARBARA RANDO, CHAIR: Attorney
24 Leclair, tell me, the rear yard of the new house is

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1 going to be what?

2 ATTORNEY RICHARD LECLAIR: The rear
3 yard of the new house will be --

4 BARBARA RANDO, CHAIR: Twenty-three
5 eight?

6 ATTORNEY LECLAIR: Twenty-three eight.

7 BARBARA RANDO, CHAIR: And it should
8 be 30?

9 ATTORNEY RICHARD LECLAIR: Correct.

10 BARBARA RANDO, CHAIR: A big
11 difference.

12 ATTORNEY RICHARD LECLAIR: That's one
13 of the variances we're requesting, yes.

14 BARBARA RANDO, CHAIR: Front yard?

15 ATTORNEY RICHARD LECLAIR: I'm
16 requesting six variances, two of which apply to the a
17 building too close to --

18 BARBARA RANDO, CHAIR: And now you
19 need the corner lot setback on the new house -- on
20 the -- well --

21 ATTORNEY RICHARD LECLAIR: So, just so
22 we're perfectly clear though, I am requesting -- it's
23 not that we didn't leave that variance off. I mean I
24 recognize that we need a variance for the existing

1 house on that corner. We've requested variances for
2 that. So, when you say you need requested relief for
3 a corner lot, I think the only distinction would be
4 whether or not the setback is 25 or 30, the
5 requirement is 25 or 30. I am requesting the relief.

6 BARBARA RANDO, CHAIR: All right. I
7 know myself I won't be voting until I get the
8 Building Inspector's opinion or the Law Department,
9 their opinion.

10 ATTORNEY RICHARD LECLAIR: I
11 understand that. You know, I understand the concern
12 for consistency.

13 BARBARA RANDO, CHAIR: Mr. Sergi, do
14 you have any questions at this time?

15 JOHN SERGI: Just explain to me which
16 one is a two-family right now. Is the existing house
17 a two-family?

18 ATTORNEY RICHARD LECLAIR: The
19 existing is a two-family.

20 JOHN SERGI: A two-family. And the
21 new house will be a single-family?

22 ATTORNEY RICHARD LECLAIR: Will be a
23 single-family.

24 JOHN SERGI: The proposed house is a

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1 single-family?

2 ATTORNEY RICHARD LECLAIR: The
3 proposed -- the house we propose will be a single-
4 family.

5 JOHN SERGI: Is a single-family.
6 Okay.

7 ATTORNEY RICHARD LECLAIR: Which meets
8 -- which is the zone.

9 JOHN SERGI: All right. Thank you.

10 ATTORNEY RICHARD LECLAIR: Because,
11 you know, this Board can't issue a use variance, and
12 we're not asking for one.

13 BARBARA RANDO, CHAIR: Mr. Hickernell?

14 MARK HICKERNELL: Just that I think
15 there's a typo in the legal notice. Under Section
16 4.11, the limit of lot coverage is 25 percent not 35
17 percent. And that's reflected in the building plan.

18 ATTORNEY RICHARD LECLAIR: Okay.

19 MARK HICKERNELL: Okay. All right.

20 BARBARA RANDO, CHAIR: Any other
21 questions?

22 MARK HICKERNELL: No, if -- I mean if
23 we're going to wait to hear from the Building
24 Inspector and the Law Department, I would just

1 suggest that we hear from the rest of the public
2 before we close the meeting tonight.

3 BARBARA RANDO, CHAIR: Well, I want to
4 incorporate any other questions that the Board may
5 have in my opinion request.

6 Mr. McCarthy?

7 EDWARD MCCARTHY: Can you explain to
8 me the division of the lots, as to why you're giving
9 all the land to the single-family and you've taken it
10 away from the two-family?

11 ATTORNEY RICHARD LECLAIR: Just to
12 make the room for the parking.

13 EDWARD MCCARTHY: Excuse me?

14 ATTORNEY RICHARD LECLAIR: To make the
15 room for the parking I think for the proposed house,
16 you need to put parking over to the right, also to
17 limit the number of variances that will be requested.
18 I mean if we limit it -- right now, we have side yard
19 setback requirements for the proposed house. We meet
20 those. If you would move that house over, you'd be
21 asking for more variances.

22 EDWARD MCCARTHY: You need so much on
23 this anyway, what difference does it make? You know
24 what I'm saying? Why wouldn't you make it more

1 logical, in my mind, to provide additional space to a
2 two-family with parking, whatever you need for that
3 to maintain that two-family home? And, you know,
4 you've got 16 feet over there on that side of the
5 single-family. You're taking away the real walkway
6 of the two-family. I don't know what that was there
7 for. Are you going to have a rear exit to this
8 building, to the two condos you're putting in?

9 ATTORNEY RICHARD LECLAIR: Absolutely.
10 It will have a rear exit on that.

11 EDWARD MCCARTHY: And you've only got
12 2.67 feet for someone to work on the rear of that
13 building at some point in time. It doesn't make sense
14 to me. This is -- this is -- I mean I understand
15 what you're saying. You want less, but you've got so
16 many what difference does it make?

17 ATTORNEY RICHARD LECLAIR: You know,
18 that's a point well taken. And, certainly, that's
19 something that could be adjusted, you know, but it
20 would require -- it would require a different -- the
21 walkway can certainly stay in place and we can grant
22 an easement.

23 EDWARD MCCARTHY: I'd like to see a
24 sketch of how you're laying out that parking for the

1 -- where the parking spaces are for that two-family,
2 how that's laid out there. Where are the cars going
3 to go? Are you stacking the cars in there or what
4 are you doing?

5 ATTORNEY RICHARD LECLAIR: Well, the
6 parking area is -- it's got to be 38 feet deep into
7 the parking lot in that area. I mean I think you
8 could probably stack six cars in that area.

9 EDWARD MCCARTHY: But stacking is not
10 allowed. That's another variance.

11 ATTORNEY RICHARD LECLAIR: I disagree
12 with the stacking.

13 EDWARD MCCARTHY: You know what I'm
14 saying? I'm just saying we're not supposed to allow
15 stacked parking.

16 ATTORNEY RICHARD LECLAIR: We're not
17 stacking them behind a garage. We're stacking them -
18 - it's a parking area. That area right there, I can
19 lay that out for you.

20 EDWARD MCCARTHY: I'd like to see
21 that.

22 ATTORNEY RICHARD LECLAIR: I can lay
23 that out. We can lay that out on a plan.

24 EDWARD MCCARTHY: But, again, I just

1 don't under -- just to limit the variances --

2 ATTORNEY RICHARD LECLAIR: That's a
3 point well taken. And, you know, I'm not the design
4 person. And I can tell you what I presume their
5 intent was. I didn't draw the plan. We would be
6 coming in and asking for an additional variance for
7 that side yard setback. It doesn't change the
8 distance of one house to the other. I agree with
9 you. It just gives the people in the back a little
10 bit more yard area.

11 EDWARD MCCARTHY: I mean this is a
12 lot. I mean we give -- we're supposed to give, you
13 know, minor variances and, you know, this is just
14 like holy moly. It's destroying the whole prospect
15 of -- the whole point of the zoning with all of these
16 requests, you know. But I can see the point. You
17 know, you look across the street. It's all
18 industrial and so on and so forth.

19 ATTORNEY RICHARD LECLAIR: Let me say
20 this much. I don't think it derogates from the point
21 of the zoning, particularly in this neighborhood
22 where you already have more than 50 percent of the
23 lots below the 7,000.

24 EDWARD MCCARTHY: I'd like to see a

1 list of those. You should have --

2 ATTORNEY RICHARD LECLAIR: They're
3 right on the abutter's map, the lot areas. So, if we
4 go up the street, we go up Flood Street, 15, 17, 21,
5 25, they're all below the square footage. We go
6 across the street to that little -- the little house
7 across the street which Constance Campisi Nominee
8 Trust is the owner, that's 3,900 feet. We go back to
9 26 Friend Street, that's 5,500. We go over to Friend
10 Street, there's 50, you know, at 7, 11, at 27.
11 They're all, you know, substandard --

12 EDWARD MCCARTHY: But you're creating
13 a new standard with this subdivision of this lot
14 here. I mean, you know, you're talking about a two-
15 family on a 2,000-square-foot lot, 2,800-square-foot
16 lot for a two-family.

17 ATTORNEY RICHARD LECLAIR: Let me say
18 this much. You know, Mr. McCarthy, that property as
19 it is now, a two-family doesn't meet the zoning. And
20 there are other houses -- other two-family houses in
21 other parts of this town on smaller lots. There's no
22 doubt about that. I think the house that we've
23 proposed to construct on this new lot will actually
24 have more lot area than a lot of other lots in town.

1 It kind of acts as a nice break. But the building,
2 the two-family is what it is. It is a two-family
3 structure on Calvary Street, which is a very busy
4 street. We are providing the off-street parking. It
5 is what it is.

6 I think, you know, the argument I
7 think my client might even make is the building that
8 we propose to build is more along the line of a
9 single-family home that a family might live in. That
10 house on that -- right on Calvary Street, probably
11 not going to be occupied with a family with young
12 children because Calvary Street, unfortunately, is a
13 raceway. It probably isn't going to be attractive to
14 somebody like that. So, by putting that lot line
15 where it is, you're actually kind of adding the more
16 area to a house that I think is more likely to be
17 used by somebody -- by a single-family homeowner who
18 maybe has children. So, I think the land would
19 provide a better benefit, more useful benefit, to
20 those people. You're more likely to get a different
21 type of occupant of that house that's right on
22 Calvary.

23 EDWARD MCCARTHY: That may be all well
24 and good, but the thing that I look at is I look at,

1 like you say, you point out Flood Street. There's a
2 9,500-square-foot lot, an 8,600-square foot lot.
3 There's a 9,100-square-foot lot. Now, are they going
4 to be knocking on our door saying, "Oh, we want to
5 subdivide our lots now just like you did up there on
6 the corner of Calvary Street so we can put another
7 single-family in next to that house?"

8 ATTORNEY RICHARD LECLAIR: Well, just
9 so we could give you some instance, here's one of the
10 -- here's probably a six-unit apartment building
11 that's on one of those larger lots. Here is right
12 behind this property is another -- I think that's
13 probably a six-unit apartment building on one of
14 those larger lots. I mean those are nonconforming,
15 you know, far more nonconforming than even our two.

16 This is a tough neighborhood. And I
17 think what we'd ask you to think about is look at it
18 and see if it's going to be an improvement, an
19 overall improvement, to it of this kind of
20 hodgepodge. There's some money being invested in it.
21 This house, unlike the two, is on a side street. And
22 right now it's -- you know, having that vacant land
23 there, frankly, isn't that attractive. You put a
24 nice new house there, that actually, believe it or

1 not I think -- when I was little, we lived on Gilbert
2 Street, two back from Main Street. Being two back
3 from Main Street, having a house in between makes a
4 difference. It actually acts as a buffer. And this
5 is very dense down there as it is. And I'm here
6 asking for six variances. I can't get around that.
7 But I think it takes a little, you know, a little
8 vision, to see how would this look with a nice new
9 house here. Would it be an improvement or not?

10 GORDON LASANE: Not to get into Mr.
11 Valentino's wallet or anything, but I always ask the
12 question, I think you'll remember my questions
13 before, they were architecturally oriented. What we
14 have here is a representation based on some limited
15 survey, site layout, blah, blah, blah. The question
16 I asked about what type of housing, orientation of
17 the house on the lot, the feel, the overall feel of
18 this. Have you talked to any architects?

19 ATTORNEY RICHARD LECLAIR: We haven't.
20 We know we're coming in here asking for some, you
21 know, extraordinary relief.

22 GORDON LASANE: You know, and in that
23 conversation -- in that conversation with an
24 architect, I bet there will be some suggestions about

1 Mr. McCarthy's observation among others.

2 ATTORNEY RICHARD LECLAIR: If this
3 Board thought that was helpful, we would --

4 GORDON LASANE: No, I'm not -- I'm
5 just -- I'm just --

6 ATTORNEY RICHARD LECLAIR: Yeah, if we
7 thought -- if you thought it was helpful.

8 GORDON LASANE: I prefaced it in
9 saying I didn't want to get in your wallet or
10 anything.

11 ATTORNEY RICHARD LECLAIR: I
12 understand. And I'll be frank with you. The reason
13 we didn't do it is because we understand we're coming
14 in here asking for a lot of relief. I think that we
15 certainly probably could give you an elevation of it
16 and give you a sense of what we're looking at. We
17 certainly can do that.

18 BARBARA RANDO, CHAIR: I agree with
19 Mr. McCarthy. You're asking for an awful lot of
20 relief. And I'll find the parking plan very
21 interesting because I don't see, when I drove through
22 there, that you could park. You have to have four
23 cars for the two condos. And then what --

24 ATTORNEY RICHARD LECLAIR: Two for the

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1 single-family.

2 BARBARA RANDO, CHAIR: Six parking
3 spaces.

4 ATTORNEY RICHARD LECLAIR: Well, I'm
5 not -- the parking for the -- and I think Mr.
6 McCarthy's concern is getting the four on the box
7 that we put there. The two for the residential is --
8 it's there. I mean it's two separate ones. They're
9 not stacked. It's there.

10 BARBARA RANDO, CHAIR: Does he own the
11 building next to it, the apartment house --

12 ATTORNEY RICHARD LECLAIR: No.

13 BARBARA RANDO, CHAIR: -- past it?
14 No?

15 ATTORNEY RICHARD LECLAIR: No.

16 BARBARA RANDO, CHAIR: And there's an
17 opening there. Do they have any easement or anything
18 to go --

19 ATTORNEY RICHARD LECLAIR: Over this
20 lot? No.

21 FRANK VALENTINO: No. And that
22 actually -- my property extends two or three more
23 feet into that driveway actually. So, it's actually
24 both wider and goes way back to the dumpster. That's

1 how far back the parking would go.

2 BARBARA RANDO, CHAIR: Because I'm
3 sure they drive in and around because that's what I
4 did.

5 ATTORNEY RICHARD LECLAIR: And, you
6 know, that's a problem, you know.

7 BARBARA RANDO, CHAIR: All right. Is
8 there anyone in the audience in favor of this
9 petition? In favor? I see two -- one? One. One in
10 favor.

11 Do I have anyone that's in opposition?
12 Do you want to come and give your name and address
13 for the record, please?

14 JOANNE MICKENS: Hi. I'm Joanne
15 Mickens. I live on John Street.

16 STENOGRAPHER: Last name?

17 JOANNE MICKENS: M-i-c-k-e-n-s. And I
18 am trying to get --

19 BARBARA RANDO, CHAIR: Is John Street
20 the one at the end?

21 JOANNE MICKENS: At the end.

22 BARBARA RANDO, CHAIR: That goes along
23 the cemetery?

24 JOANNE MICKENS: Yeah, there's three

1 streets that go up, so it's up here. And I grew up
2 in that neighborhood. So, I kind of take offense
3 that this is a rough neighborhood. It is not. I
4 take offense at, you know, a lot of what was said.
5 This is not Forest Street. To us, this is a
6 beautiful neighborhood, a very kid friendly
7 neighborhood. And I myself am very nervous because I
8 feel like there are elderly people in the
9 neighborhood who have old homes and they're all in
10 the next ten years going to be coming through this.
11 And I'm looking at my neighborhood being changed.
12 And I'm hoping that we're not going to go back to the
13 sixties. That was when those red apartment buildings
14 that he showed were built. He didn't show you the
15 good parts of our neighborhood. He showed you the
16 parts of our neighborhood that we're having problems
17 with because of the density. Okay?

18 I'm appalled that anybody could bring
19 this amount of variance to the Board and not feel
20 like -- do these mean anything, these zoning rules
21 mean anything? I mean I'm not used to coming here,
22 you know. But I can remember as kid my dad fighting
23 those red apartment buildings, fighting some of the
24 other stuff. And we lost even though -- and I speak

1 to neighbors of mine. Most of my neighbors don't
2 know about this. I meant to distribute this, but --

3 BARBARA RANDO, CHAIR: I don't think
4 you're a direct abutter.

5 JOANNE MICKENS: I'm not a direct
6 abutter, but my parents live on Friend Street. And
7 if you were to look at the houses that are on Friend
8 Street that do not comply, the houses aren't butted
9 up against each other with only a few feet. A lot of
10 times -- they were built a long time ago. Some of
11 them are on property lines, but the next house is on
12 the other property line. So there's big spaces
13 between them.

14 BARBARA RANDO, CHAIR: What number on
15 Friend Street do you live?

16 JOANNE MICKENS: 26 -- my parents live
17 on 26.

18 BARBARA RANDO, CHAIR: And they did
19 not receive a notice?

20 JOANNE MICKENS: They received this
21 and that's why I'm here.

22 BARBARA RANDO, CHAIR: Oh, that's
23 right.

24 JOANNE MICKENS: So, I did not receive

1 a notice.

2 BARBARA RANDO, CHAIR: No.

3 JOANNE MICKENS: But I think that
4 because those three hills and John Street were all a
5 very cohesive neighborhood, I think if more people
6 knew about this that they would be upset about it.
7 And it makes me very nervous because I can remember
8 them tearing down the old houses and the trees and
9 putting up some of the monstrosities that they have.

10 And the question I have also is when I
11 was a kid I do not remember that being a two-family.
12 Has that been a two-family from the day it was built
13 or are we rewarded for turning something into a two-
14 family, nobody notices it, and then you can just have
15 it be a two-family from then on?

16 BARBARA RANDO, CHAIR: We will find
17 out. When did it become a two-family, Attorney
18 Leclair?

19 ATTORNEY RICHARD LECLAIR: I believe
20 it was constructed as a two-family. It certainly was
21 a two-family when they -- back in 1962. It states
22 right on --

23 JOANNE MICKENS: I believe that when I
24 was a kid that the Fouches lived there. I thought

1 that they lived there. And that was their family
2 home, that one family lived there. She may remember.
3 So, you know, I'm concerned about that kind of thing
4 going on in this neighborhood. I'm concerned, you
5 know, there are some young people that have moved
6 into the neighborhood and they want a nice family
7 neighborhood. And to us this is a hidden gem in
8 Waltham. We're surrounded by the cemetery on one
9 side and the riverwalk on the other. I think it's
10 abominable that there's so much industry at the
11 bottom of the hill. I don't like it. I think that's
12 a waste of property that's right up against the
13 river. It's a beautiful river. To me that's
14 appalling. And if I had a million bucks I would buy
15 those red apartment buildings and knock them down.

16 So, I'm just appalled at the amount of
17 variance that you need for this, and I don't really
18 feel like I want to live in a high-density
19 neighborhood.

20 BARBARA RANDO, CHAIR: Thank you very
21 much.

22 ATTORNEY RICHARD LECLAIR: Could I
23 just respond to a couple of things real quickly?

24 BARBARA RANDO, CHAIR: Yes.

1 ATTORNEY RICHARD LECLAIR: So, I
2 certainly didn't mean to offend you or anybody in
3 that neighborhood, but, from my perspective, having
4 that industrial across the street is a problem.

5 JOANNE MICKENS: But it spreads up the
6 hill into the neighborhood.

7 ATTORNEY RICHARD LECLAIR: I
8 understand that. But when I think about this, we're
9 right across the street, and I think it's a raceway.
10 And I think that the City, you know, that it is
11 industrial. You know, you go down to the telephone
12 company, it's heavy industrial. I mean it's really
13 industrial. But I think it's kind of important to
14 note that your parents' lot is one of the lots that's
15 substandard. It does not have enough area and if
16 you're looking at that lot on that map, it doesn't
17 meet the side yard setback or the rear yard setback.

18 JOANNE MICKENS: That is very true.
19 But if you look at that lot, it is large. It can fit
20 probably six cars in the driveway, has a huge back
21 yard, but the building was built on the property line
22 because it's over 100 years old. So, it doesn't make
23 the neighborhood look like high-density. It sounds
24 that way, but it isn't.

1 ATTORNEY RICHARD LECLAIR: But just
2 the point I'm making is this house is actually -- my
3 proposed house is going to be further from the lot
4 lines than this. This neighborhood is a neighborhood
5 that most of it doesn't meet the zoning. And a lot
6 of it doesn't meet the zoning for use. So it is
7 unique. It is unique. And it makes this locus
8 unique. And that's why I think the variance requests
9 are appropriate in the law because this neighborhood
10 has had zone changes, you know, over the years, and a
11 lot of it was constructed before there was any
12 zoning.

13 So, I understand Ms. O'Connell's (sic)
14 concern, but I think that it kind of makes the case
15 that these house -- this is a special situation in
16 this neighborhood. I did not mean to offend anybody
17 in the neighborhood. And I actually think this nice
18 new single-family house is going to kind of reaffirm
19 what you're looking to keep in this neighborhood.

20 JOANNE MICKENS: I would rather see
21 them put a nice side yard for the people who are
22 going to live in that home. I'd rather them have it
23 be -- yet another reason why the next person in the
24 neighborhood can build something in their back yard,

1 another house.

2 BARBARA RANDO, CHAIR: Attorney
3 Leclair, she's saying it's not just this house.
4 She's afraid that there are other houses that are
5 going to come in and ask for all this relief.

6 ATTORNEY RICHARD LECLAIR: Well, I
7 don't think -- I think by virtue of the fact that you
8 have 50 percent of the houses don't meet zoning,
9 that's going to happen. That's going to happen.
10 And, frankly, you're going to want to give relief
11 because as times change and people want to invest in
12 their homes and, in a lot of cases improve their
13 homes, you're going to have those requests for relief
14 anyway because so many don't comply.

15 And I think that, you know, time does
16 move forward. And people -- houses don't last
17 forever. They need to be upgraded and improved upon.

18 JOANNE MICKENS: But the two lots
19 you're proposing --

20 BARBARA RANDO, CHAIR: All right. You
21 can discuss it with him afterwards.

22 JOANNE MICKENS: I'm sorry.

23 BARBARA RANDO, CHAIR: We're going to
24 go onto anyone else that is in opposition or seeking

1 information? Mary, are you in opposition or seeking
2 information? Do you want to go to the --

3 MARY EARLY: I've lived there for 42
4 years.

5 BARBARA RANDO, CHAIR: Do you want to
6 go to the microphone so we can hear you?

7 STENOGRAPHER: If you feel more
8 comfortable you can stay there if you want.

9 MARY EARLY: Mary Early, 21 Flood
10 Street. I bought my house when it was a year old.
11 And I've lived there for 42-and-a-half years.

12 My problem is it's a private way, and
13 it's busier than Main Street. We have first I fought
14 the telephone company with 70 trucks going up every
15 morning while the kids were walking to the Whittemore
16 School. Now they have a bus to the Whittemore
17 School.

18 Now they've sold the property and
19 guess who's in there? Veteran's Taxi. They think
20 nothing of going up the street or down the street at
21 90 miles an hour, screech to a stop if they decide to
22 stop at Calvary Street. They come 65 feet the wrong
23 way on Calvary Street to shoot up Flood Street. I
24 stopped them for about six months. They were going

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1 down Calvary Street and through the Catholic
2 cemetery, which is a violation. They still do it.

3 Before we had a bus for the Whittemore
4 kids, I had kids walking up the street with my two
5 little girls going through the cemetery to High
6 Street to Whittemore. I wouldn't do it today. They
7 would get killed.

8 BARBARA RANDO, CHAIR: What's your
9 feeling on this development here?

10 MARY EARLY: I don't think the side
11 yard is big enough for a single-family house. I
12 really don't. And as he said before, Calvary
13 Street's a speedway, and it is a speedway, believe
14 me.

15 BARBARA RANDO, CHAIR: All right.
16 Thank you, Mary Early.

17 Seeing no one else, what is the
18 pleasure of the Board? Are they ready to vote
19 tonight? Does anyone want to make a motion to
20 continue or do you -- I would like to get an opinion,
21 but I will honor if you're ready to vote tonight.

22 JOHN SERGI: I'm okay with that, Madam
23 Chair. I'll support that if you'd like.

24 BARBARA RANDO, CHAIR: All right. Mr.

Waltham Zoning Board of Appeals/1-13-15/90

1 Hickernell?

2 MARK HICKERNELL: Sure.

3 BARBARA RANDO, CHAIR: Mr. McCarthy?

4 EDWARD MCCARTHY: To do what?

5 BARBARA RANDO, CHAIR: To continue the
6 case.

7 EDWARD MCCARTHY: Yeah, continue it.

8 BARBARA RANDO, CHAIR: Mr. LaSane,
9 continue?

10 GORDON LASANE: I want a sketch of
11 that parking.

12 ATTORNEY RICHARD LECLAIR: Certainly.
13 Absolutely. I will get a sketch of the parking and -
14 -

15 GORDON LASANE: And I want some
16 different proposals with regard to the subdivision of
17 the lots.

18 BARBARA RANDO, CHAIR: And a picture,
19 a picture of the front of the house.

20 GORDON LASANE: Of what the house is
21 going to look like.

22 BARBARA RANDO, CHAIR: Yes.

23 GORDON LASANE: Don't spend a lot,
24 just some light architectural.

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1 ATTORNEY RICHARD LECLAIR: All right.
2 We can certainly do those three things.

3 BARBARA RANDO, CHAIR: How is February
4 10th?

5 ATTORNEY RICHARD LECLAIR: Fine.
6 Thank you.

7 BARBARA RANDO, CHAIR: Board members,
8 Mr. Sergi, February 10th?

9 JOHN SERGI: That's fine with me,
10 Madam Chair.

11 BARBARA RANDO, CHAIR: Mr. Hickernell?

12 MARK HICKERNELL: I'm trying to think.
13 I didn't bring my calendar. I think that's all
14 right.

15 BARBARA RANDO, CHAIR: Mr. LaSane?

16 GORDON LASANE: Fine.

17 BARBARA RANDO, CHAIR: All right.

18 JOANNE MICKENS: Would that be at 7:00
19 also?

20 BARBARA RANDO, CHAIR: Yes. Continue
21 case 2014-31 to February 10th. All right. Do I have
22 a motion?

23 JOHN SERGI: So moved, Madam Chair.

24 BARBARA RANDO, CHAIR: Motion by Mr.

Waltham Zoning Board of Appeals/1-13-15/92

1 Sergi. Second?

2 EDWARD MCCARTHY: Second.

3 BARBARA RANDO, CHAIR: By Mr.
4 McCarthy.

5 How do you vote, Mr. Sergi?

6 JOHN SERGI: Yes.

7 BARBARA RANDO, CHAIR: Mr. Hickernell?

8 MARK HICKERNELL: Yes.

9 BARBARA RANDO, CHAIR: Mr. McCarthy?

10 EDWARD MCCARTHY: Yes.

11 BARBARA RANDO, CHAIR: Mr. LaSane?

12 GORDON LASANE: Yes.

13 BARBARA RANDO, CHAIR: And the Chair
14 votes yes.

15 So, maybe it would be a good idea for
16 you to talk to --

17 JOANNE MICKENS: I'm going to talk to
18 some of the neighbors.

19 BARBARA RANDO, CHAIR: -- this
20 neighbor and you speak to other neighbors and we will
21 see you on the 10th.

22 ATTORNEY RICHARD LECLAIR: Madam
23 Chairperson, would you like me to leave the
24 photographs that we --

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1 BARBARA RANDO, CHAIR: Sure.

2 ATTORNEY RICHARD LECLAIR: -- with the
3 Board?

4 BARBARA RANDO, CHAIR: Sure. I'll put
5 it all together. And I would like one of the front
6 of the house.

7 ATTORNEY RICHARD LECLAIR: Absolutely.

8 BARBARA RANDO, CHAIR: On both sides,
9 the front and other one.

10 ATTORNEY RICHARD LECLAIR: Absolutely.

11 BARBARA RANDO, CHAIR: One more motion
12 is in order.

13 JOHN SERGI: Motion to adjourn, Madam
14 Chair.

15 BARBARA RANDO, CHAIR: Motion to
16 adjourn by Mr. Sergi. Do I have a second?

17 EDWARD MCCARTHY: Second.

18 BARBARA RANDO, CHAIR: Second by Mr.
19 McCarthy.

20 All in favor?

21 ALL BOARD MEMBERS: Aye.

22 BARBARA RANDO, CHAIR: Opposed?

23 (No Board Members opposed.)

24 BARBARA RANDO, CHAIR: The ayes have

1 it. We are adjourned at 8:30. Thank you very much
2 for attending.

3 (Whereupon, the public hearing was
4 concluded at 8:30 p.m.)

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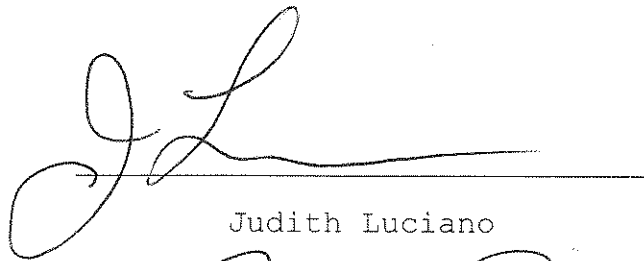
Barbara Pardo, Chair

Arlington Reporting Corporation
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2/2/15

C E R T I F I C A T E

I, Judith Luciano, do hereby certify that the foregoing record is a true and accurate transcription of the proceedings in the above-captioned matter to the best of my skill and ability.

A large, stylized handwritten signature in black ink, consisting of a large 'J' and 'L' followed by a horizontal line.

Judith Luciano

Barbara Randel, chair
2/3/15

