

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

January 19, 2016

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
Marc Rudnick
John Sergi

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Waltham Zoning Board of Appeals/1-19-16/2

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A T T A C H M E N T S

Legal Notices: Case No. 2015-21
Case No. 2015-26

Case No. 2015-21:
Plan of Land
Rendering
Photographs

Case No. 2015-26:
Brief
Attached Exhibits

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P R O C E E D I N G S

BARBARA RANDO, CHAIR: Good evening.
The Zoning Board of Appeals for Tuesday, January 19,
2016 is called to order at 7:00 p.m.

Tonight we have one continued case and
one new case before us.

The continued case is Case 2015-21,
Elizabeth Gartz, 67 Ash Street, and it's an
application for variances. And that is the continued
case.

Case 2015-26, Pasquale Torcasio, 41
Williams Street, and that is for a special permit.

The members sitting this evening are
Mr. Sergi, Mr. Hickernell, Ms. Gelineau, and Mr.
Rudnick, and I am Barbara Rando.

I don't believe I have minutes to be
approved. I don't see any. If I do, we'll do it at
the end of the evening.

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1 **Case Number 2015-21: Elizabeth Gartz for the Estate**
2 **of Elizabeth L. Miller, 67 Ash Street.**

3

4 BARBARA RANDO, CHAIR: Will the Clerk
5 please read the petition in Case 2015-21.

6 MARK HICKERNELL: (The Clerk reads the
7 above-mentioned petition into the record. See
8 Attached.)

9 BARBARA RANDO, CHAIR: Thank you.

10 May we hear from the Petitioner or the
11 Petitioner's representative please? Please give your
12 name and address for the record, please.

13 ATTORNEY WILLIAM SACK: William Sack,
14 Franklin, Massachusetts.

15 BARBARA RANDO, CHAIR: What street?
16 Did you give an address?

17 ATTORNEY WILLIAM SACK: My address,
18 1000 Franklin Village Drive.

19 BARBARA RANDO, CHAIR: You may
20 continue.

21 ATTORNEY WILLIAM SACK: Thank you.

22 The property is a pre-existing non-
23 conforming lot of 4,500 square feet with 37-and-a-
24 half feet of frontage in a Residence B District.

1 Two-families are permitted as of right in this
2 district.

3 The property was the subject of a
4 tragic fire in February 2015, where applicant's
5 mother and brother lost their lives, and the house
6 has since been razed.

7 The application is not so much a
8 variance for a two-family, but rather a variance to
9 place any new home in an area other than its former
10 location because, currently, the applicant is only
11 permitted to rebuild on the same footprint as the
12 former house, and that location, according to the
13 fire department, was in no small part responsible for
14 their inability to access the property during the
15 fire. And it took extra time, and maybe they could
16 have had lives saved if the property was located in a
17 different location. It was set way back on the lot
18 as you can see from the second sheet that I handed
19 you. The first sheet is the assessor's map. The
20 second sheet is the location before. And that's the
21 only place where we are allowed to rebuild under the
22 current Zoning Ordinance.

23 The second plan is a rendering that
24 the Board had asked for last time at the last hearing

1 of what we're proposing. It might not look exactly
2 like that, but it's a rendering that you had
3 requested of what is possible there in a much better
4 location set forward to the street and a much safer
5 location.

6 Regarding the criteria for the
7 variance, the shape is generally different from other
8 lots in the vicinity of the zoning district. The
9 hardship, without zoning relief the applicant can
10 only rebuild on the same footprint as was there
11 before the fire, which is the first plan set way back
12 on the lot. And that's not a preferred location. It
13 seems unsafe and it was unsafe during the fire where
14 we have articles from the fire department that their
15 inability to access it was partly responsible for the
16 lives lost.

17 There's certainly no detriment to the
18 public good here because the neighborhood has changed
19 over the years. Right now there's only one single-
20 family house on the same side of the street from
21 Moody to Ash, and everything else is multistories now on
22 that street.

23 As mentioned, approval will not
24 derogate from the intent of the ordinance; just the

1 opposite because we think the location is going to be
2 in a better location, much safer for access, a more
3 suitable location than set way back on the lot.

4 Since the last hearing, there was an
5 abutter that was here, Antonio Nicolazzo. I think
6 he's here again tonight. And we had a lot of
7 correspondence, emails. He had requested that
8 certain trees on the left side of the lot be taken
9 down because he felt that any construction, no matter
10 what we put there, would kill the trees. And he also
11 wanted some screening of arborvitae. And the
12 applicant has agreed to all of what he's requested.
13 I think he's in support now of that if we agreed to
14 do that, which we do.

15 The reason why we can only rebuild in
16 the same footprint is because of the determination --
17 you can see that from Patrick Powell -- it needs 40
18 feet, and that's the two-and-a-half feet that we're
19 short in order to put anything in a different
20 location other than the current footprint.

21 BARBARA RANDO, CHAIR: Do you have a
22 letter from the fire department stating that?

23 ATTORNEY WILLIAM SACK: Their
24 inability to access it during the fire?

1 BARBARA RANDO, CHAIR: Mm hum.

2 ELIZABETH GARTZ: I don't have a
3 letter from the fire department, but I have the
4 articles from the paper from the fire.

5 ATTORNEY WILLIAM SACK: And quotes
6 from the --

7 ELIZABETH GARTZ: There's quotes from
8 the fire department.

9 BARBARA RANDO, CHAIR: Do you want to
10 read the article so the whole Board can hear it?

11 ATTORNEY WILLIAM SACK: I should read
12 it?

13 BARBARA RANDO, CHAIR: Or we'd have to
14 take time to read it.

15 MARK HICKERNELL: Or the relevant part
16 anyway.

17 ATTORNEY WILLIAM SACK: Okay. "The
18 snow and cold posed a challenge for firefighters. It
19 makes everything 10 times harder - the snow, the ice,
20 the house - the location of the house was set back,
21 wires. Accessibility was not good." That was from
22 the Waltham Fire Chief Paul Ciccone.

23 And, in another article, "Neighbors
24 said firefighters arrived within minutes, but faced

1 daunting conditions. The house was set well back
2 from the street making it harder to reach and the
3 footing was treacherous. Deep snow covered the yard.
4 High winds made it difficult to get ladders to the
5 upper floor windows."

6 BARBARA RANDO, CHAIR: Okay. Thank
7 you.

8 Do you have anything else to add?

9 ATTORNEY WILLIAM SACK: I think we've
10 fulfill the criteria for the variance and would just
11 ask the Board -- I mean I don't know that we have any
12 issues with the neighbors at this point because we
13 agreed to do the proper screening that they asked
14 for.

15 BARBARA RANDO, CHAIR: The house past
16 your lot, is that a two-family?

17 ATTORNEY WILLIAM SACK: The house
18 what?

19 BARBARA RANDO, CHAIR: Going towards
20 Adams Street, is that a two-family?

21 ATTORNEY WILLIAM SACK: I think that's
22 the only single-family on the street. Yeah, it's the
23 only one. There are multis on that side of the
24 street.

1 BARBARA RANDO, CHAIR: Mr. Sergi, any
2 questions at this time?

3 JOHN SERGI: The frontage issue just
4 bothers me a little bit. Mr. Sack, tell me what your
5 opinion is of Patrick Powell's letter of January 7th?

6 ATTORNEY WILLIAM SACK: Well, we
7 comply as an old lot. But the ordinance, to be
8 qualified completely as an old lot under 3.711
9 requires 40 feet in order to put anything other than
10 in the same footprint. So, I had the conversation
11 with him. He said, "You can certainly rebuild where
12 you are, but even if you wanted to put a single-
13 family house in a different location you need relief
14 from this Board because they don't have 40 feet to
15 qualify it completely under the old lot."

16 JOHN SERGI: I don't think this Board
17 has really granted too many variances for frontage.

18 ATTORNEY WILLIAM SACK: It's a
19 dimensional variance. It's not a use variance. Two-
20 families are permitted. Like I said, even if we were
21 going to put a single-family in a different location,
22 which is a more suitable location, we'd need relief.
23 Otherwise, we'd have to put the single-family in the
24 same location as there when they had the fire.

1 JOHN SERGI: I just think it's a
2 little tight. But that's all I have, Madam Chair.

3 BARBARA RANDO, CHAIR: Mr. Hickernell,
4 any questions?

5 MARK HICKERNELL: Yeah, counselor, you
6 said that this was -- this rendering is sort of
7 something that could go there but is not necessarily
8 what you intend to go there?

9 ATTORNEY WILLIAM SACK: Well, it might
10 be. We don't know yet at this time. The Board had
11 asked for us to show four parking spaces and what's
12 possible to comply with all other dimensional
13 requirements, side, front, rear, which is what we
14 did.

15 MARK HICKERNELL: Yeah, so I
16 appreciate you complying with the Board's request in
17 that regard. I guess I thought more we were going to
18 get the actual proposal that was going to go in
19 there. I'm not quite sure what to do with something
20 that you may or may not adhere to.

21 ATTORNEY WILLIAM SACK: Well, we don't
22 know. We don't have a builder yet. We don't have
23 the full building plans yet to tell the Board exactly
24 what's going to -- that will come up later.

1 MARK HICKERNELL: So, how can we
2 possibly incorporate this into any decision if we
3 were to grant the relief?

4 ATTORNEY WILLIAM SACK: Well, the
5 decision would state that you would have to comply
6 with all other dimensional requirements other than
7 the frontage and to reduce that from 40 to 37.5 feet
8 in order to locate any structure anywhere on the lot.
9 But, you certainly could incorporate "comply with all
10 other dimensional requirements." We just -- the
11 Board did ask for a rendering.

12 MARK HICKERNELL: We could do that
13 anyway.

14 ATTORNEY WILLIAM SACK: That was the
15 Board's words the last time, a rendering, not full
16 building plans at this time because --

17 MARK HICKERNELL: No, I understand
18 that. I understand that. Okay. Thank you.

19 BARBARA RANDO, CHAIR: Ms. Gelineau?

20 GLENN GELINEAU: Not at this time?

21 BARBARA RANDO, CHAIR: Mr. Rudnick?

22 MARC RUDNICK: Do these four parking
23 spaces directly in front of the house meet our Zoning
24 Ordinance?

1 ATTORNEY WILLIAM SACK: According to
2 Mr. Bibbo, yes. He produced the plan.

3 MARC RUDNICK: He produced the plan
4 and asserted that those parking spaces meet the
5 ordinance, or he just produced the plan and made no
6 assertions about whether they meet the ordinance? I
7 didn't think they allowed you to park your cars in
8 front of the house like that and use up the front
9 yard for four parking spaces. I'll suspend my
10 questions and look that up.

11 ATTORNEY WILLIAM SACK: Well, we asked
12 him to produce a plan of what was possible and this
13 is what he produced. I don't --

14 MARC RUDNICK: I have total respect
15 for Mr. Bibbo. We all make mistakes though. So,
16 make sure that you're asking for is legal.

17 MARK HICKERNELL: I think it's 5.35
18 that you're looking for.

19 MARC RUDNICK: Which one?

20 MARK HICKERNELL: 5.35.

21 MARC RUDNICK: I'm looking at 5.42,
22 "No paved area, excluding entrances and exits, shall
23 extend within five feet of any lot or street line nor
24 into any front yard; and an area equal to 40 square

1 feet per car space shall be provided on which snow
2 cleared from parking areas may be placed, but said
3 area may be provided in whole or in part by the five
4 feet referred to above or other yard space."

5 BARBARA RANDO, CHAIR: It says here,
6 "Prohibited in the portion of the front yard lying
7 between the building and the street line where five
8 or fewer cars are required."

9 MARC RUDNICK: "Prohibited in the
10 portion of the front yard lying between the building
11 and the street line where five or fewer cars are
12 required."

13 What is our zone here?

14 ATTORNEY WILLIAM SACK: B.

15 BARBARA RANDO, CHAIR: 5.35.

16 MARC RUDNICK: It does seem to violate
17 5.35.

18 BARBARA RANDO, CHAIR: Yeah.

19 MARC RUDNICK: It seems like you need
20 a variance on that.

21 BARBARA RANDO, CHAIR: Yeah.

22 MARC RUDNICK: "Residence B District,
23 parking of motor vehicles is prohibited in that
24 portion of the front yard lying between the building

1 and the street line where five or fewer cars are
2 required." So, I'm sorry we didn't notice that last
3 time, but it seems like you need a variance from
4 that, too.

5 BARBARA RANDO, CHAIR: The last time I
6 think he had tandem parking, didn't he, in the last
7 plan?

8 MARC RUDNICK: Is this submission
9 substantially different from what you submitted last
10 time?

11 ATTORNEY WILLIAM SACK: We didn't have
12 a rendering last time.

13 MARC RUDNICK: You didn't have a
14 rendering?

15 ATTORNEY WILLIAM SACK: No, the Board
16 asked for that last time.

17 BARBARA RANDO, CHAIR: But you stated
18 there would be tandem parking, correct?

19 MARC RUDNICK: So how did I see this
20 before?

21 ATTORNEY WILLIAM SACK: We could do
22 tandem parking.

23 BARBARA RANDO, CHAIR: It was going to
24 be tandem, right.

1 ATTORNEY WILLIAM SACK: I think the
2 intent was to show that we can put a structure here
3 complying with all other dimensional requirements.

4 BARBARA RANDO, CHAIR: It would be two
5 on one side and then tandem parking for the other
6 two, if I remember correctly.

7 ATTORNEY WILLIAM SACK: The plan is
8 not meant to show that this is exactly what's going
9 to be done. And we will definitely be able to comply
10 with the parking requirement with the tandem.

11 MARC RUDNICK: My sense is it doesn't
12 work like that. You know, you're asking us to grant
13 you some cart blanche exemption to the old lots
14 opinion, accept your substandard frontage, and allow
15 you to build to everything in the old lot's opinion,
16 but you don't want to show us exactly what you're
17 building and exactly what you're showing us is
18 something that doesn't conform to the other
19 ordinances that the old lots opinion does not give
20 you any exemption from. If you successfully had an
21 old lot, you still couldn't park your vehicles in
22 front of the house the way you have them lined up.
23 You're using up the entire front yard for asphalt.
24 It pretty clearly says you can't do that either.

1 ATTORNEY WILLIAM SACK: Do other
2 houses on the street have parking in the front?

3 ELIZABETH GARTZ: I think so.

4 MARC RUDNICK: I think you know that
5 what exists on the other properties doesn't impact
6 your zoning requests. And I think you did a really
7 good job of showing us a better hardship, and I
8 accept that hardship about the fire access as an
9 absolutely adequate hardship for this property.

10 BARBARA RANDO, CHAIR: Yes.

11 MARC RUDNICK: But I don't think
12 you're giving us what we're asking for. I mean you
13 want to say, "Don't worry. We'll build something
14 good."

15 ATTORNEY WILLIAM SACK: No, no, no,
16 not at all.

17 MARC RUDNICK: So then you can provide
18 us with some language perhaps that will assure us
19 that what you build will meet the requirements. But,
20 frankly, you can answer the parking question first
21 because you're not going any further without --
22 you're asking us to approve this when you haven't
23 asked for a variance from an ordinance that you are
24 clearly going to not obey. And I don't really see

1 how you get enough parking on -- not even dealing
2 with where you're going to put the snow because you
3 didn't leave snow removal space either.

4 Now, what is this, a two-family house?
5 So you don't actually need four parking spaces. I
6 know it's desirable. What do we require in this
7 zone, one-and-a-quarter parking spaces per unit?

8 BARBARA RANDO, CHAIR: I think it's
9 two.

10 MARC RUDNICK: So, you're asking for
11 something very hard I think, to approve a plan that
12 doesn't meet the requirements.

13 ATTORNEY WILLIAM SACK: No, again,
14 we're not asking you to approve the plan because the
15 Board had just asked for a rendering, can we do a
16 two-family here and comply with the other
17 requirements, and we can.

18 MARC RUDNICK: So, you're saying give
19 you the variance and then you'll come back for
20 another variance for the parking or figure out a way
21 around it.

22 ATTORNEY WILLIAM SACK: Only if we
23 needed it.

24 MARC RUDNICK: If you need it, yeah.

1 ATTORNEY WILLIAM SACK: Again, the
2 variance is really to put anything there, even a
3 single-family, in a location other than where it was
4 before, we still have to be before this body.

5 BARBARA RANDO, CHAIR: For the
6 frontage.

7 ATTORNEY WILLIAM SACK: Yes, because
8 of the frontage.

9 MARC RUDNICK: No question.

10 BARBARA RANDO, CHAIR: Only. Only the
11 frontage.

12 ATTORNEY WILLIAM SACK: Right. And
13 that's really all we're here for is frontage. We
14 maintain, according to my conversations with the
15 surveyor, that we can comply with everything else.
16 And, again, two-family is permitted in this zone.
17 It's not asking for a use variance of any kind. Two-
18 families are permitted and two-families are all over
19 this street. So, we're just asking over the two-and-
20 a-half feet, can we change the location of what was
21 there before and put something else there towards the
22 middle of the lot. It would be more desirable. And,
23 if we can do that, then why shouldn't we be able to
24 do a two-family also.

1 MARC RUDNICK: I certainly agree with
2 you about the use. All right.

3 ATTORNEY WILLIAM SACK: I understand
4 your --

5 MARC RUDNICK: In my view, single-
6 family and two-family on this lot is the same use.

7 ATTORNEY WILLIAM SACK: I understand
8 the issue of parking. I did not know about this, and
9 I relied on the -- I relied on the surveyor who did
10 the plan.

11 MARC RUDNICK: Yeah, I don't mean to
12 call him out as making a mistake.

13 ATTORNEY WILLIAM SACK: No.

14 MARC RUDNICK: And I am willing to
15 accept that this is not the future plan of the
16 parcel.

17 ATTORNEY WILLIAM SACK: Yeah, it might
18 not be exactly, but --

19 MARC RUDNICK: But we would have to
20 craft an approval that specifically said that this
21 plan is not acceptable, first of all, because you
22 presented it to us. You submitted it.

23 ATTORNEY WILLIAM SACK: Well, only
24 because the Zoning Board asked for a rendering last

1 time, and then we tried to comply with your request.

2 MARC RUDNICK: And I don't mean to
3 punish you, but I just don't want to give the
4 Building Department the message that we approved this
5 and then --

6 ATTORNEY WILLIAM SACK: Absolutely.
7 And she doesn't want that plan approved at this
8 point.

9 MARC RUDNICK: Okay.

10 ATTORNEY WILLIAM SACK: Because it
11 might look different, it might be a few feet back or
12 it could be different in other ways. But we're just
13 asking that you approve the two-and-a-half foot,
14 which we consider a de minimis dimensional variance,
15 in order to construct another structure that will
16 comply in all other respects with the dimensional
17 requirements. If you could draft it that way, to
18 comply with all other dimensional requirements and
19 all other requirements of the Zoning Ordinance, then
20 I think the Board is covered and we're allowed to go
21 back and talk about the parking.

22 BARBARA RANDO, CHAIR: Every case that
23 we have heard where we vote on it we say, "The plans
24 accompanying this petition. The plans submitted

1 tonight are the plans that accompany this petition."

2 ATTORNEY WILLIAM SACK: You have a
3 fire, and you have different --

4 MARC RUDNICK: Yeah, I don't think
5 there isn't a way we can work this out. I haven't
6 heard it here yet. I do recognize this is unusually
7 different from the way it works most of the time
8 here. I can live with that. But I really just need
9 to make sure that what we are saying to the rest of
10 the City isn't something beyond what we have the
11 authority to give. And we have no authority to allow
12 you to vary from the parking tonight.

13 ATTORNEY WILLIAM SACK: No, I
14 understand.

15 MARC RUDNICK: So, I think we need to
16 state in an opinion, if one comes out of here, that
17 the parking showed to us on this plan cannot be built
18 on the site. Then that forces you to provide another
19 plan, and you will have to come back to us for a
20 variance unless you figure out a way around the
21 parking violation. And you may be able to. I hope
22 you can because you don't want to come back here
23 again.

24 ATTORNEY WILLIAM SACK: Right. The

1 plan for parking wasn't even part of the application
2 initially. It was just asked for at the last hearing
3 because the Board wanted to see is it possible to do
4 what we want to do.

5 MARC RUDNICK: Yeah, sure. And I
6 don't mean -- I'm sure the Board is not trying to
7 trap you. But, you know, usually we have a plan that
8 shows everything about what you're going to do. So,
9 we walk away with confidence that we have seen and
10 approved a plan that we can approve. We can't
11 approve this plan.

12 ATTORNEY WILLIAM SACK: Right.

13 MARC RUDNICK: We can if you asked for
14 a variance from the parking and we grant it, then,
15 yes. But that just requires another visit here.

16 ATTORNEY WILLIAM SACK: You know, and
17 I'm offering language that would be acceptable. It
18 would comply with all other requirements. And that
19 way if we needed a variance to come back, we'd have
20 to come back.

21 JOHN SERGI: Counsel, what you're
22 hearing is it's not acceptable.

23 BARBARA RANDO, CHAIR: Yeah.

24 JOHN SERGI: Because what we need is a

1 rendering. I specifically asked last time that we
2 have a rendering and to show the parking, and you did
3 that, which doesn't comply. So, you're going to need
4 to show the Board another rendering, as far as I'm
5 concerned, to know. So, I need to feel confident of
6 what you're building here and where you're building
7 it. And you just said you're not, you're not
8 confident. So, I'm perplexed. I don't understand,
9 you know. So, as far as I'm concerned, I can't go
10 forward on this plan.

11 BARBARA RANDO, CHAIR: I think what
12 the Board is trying to tell you is that it would be
13 in your best interest to continue the case, and study
14 it further, and see how you can -- anyone can come
15 before us and say that they need a variance for
16 frontage. Anyone can say that. You have a very
17 unique situation. I think it was a serious situation
18 that occurred. I think that what Mr. Rudnick said,
19 that you do have an accurate hardship from what the
20 fire chief did state, I do think that you should
21 continue the case and do more research and come up
22 with a better plan.

23 ATTORNEY WILLIAM SACK: Even then -- I
24 accept that, but even then we don't want to certainly

1 be held to the exact plan.

2 BARBARA RANDO, CHAIR: You have to be.
3 You're going to be held to the plan that you submit.

4 ATTORNEY WILLIAM SACK: Well, when the
5 builder gets it, it could be --

6 BARBARA RANDO, CHAIR: Well, see the
7 builder first.

8 ATTORNEY WILLIAM SACK: No, but there
9 might be conditions on the ground when they start
10 digging that might require moving it a foot this way,
11 a foot that way. That's why it can't -- it's not a
12 perfect plan. It's just to show that we can comply
13 with all the other dimensional requirements, front,
14 back, side in order to get the frontage.

15 MARC RUDNICK: I don't mean to be
16 rude, but most people come here with all of that.
17 They've spent the money for the plan, for the
18 elevations, for everything that we need to make a
19 decision. You're clearly making an economic decision
20 not to spend money before you have a good sense of
21 whether you're getting the variance. I would do it
22 that way, too, myself, but I don't think I would win
23 here either.

24 ATTORNEY WILLIAM SACK: I don't have a

1 builder. I don't --

2 MARC RUDNICK: I am a builder. This
3 is how I do my work all the time. I mean you get
4 your variance. I mean my clients in my business give
5 me thousands of dollars to produce a plan to go to a
6 zoning board in another town with. And that's their
7 investment, and it's at risk. So, you provided us
8 with the minimum. And, actually, you're trying to
9 say you don't even want to submit this as a bona
10 fide. You know, I understand. Your client doesn't
11 want to spend a lot of money not knowing whether
12 they'll be able to go forward. I sympathize with
13 that. But it leaves us in a difficult position of
14 approving it.

15 ATTORNEY WILLIAM SACK: I can
16 appreciate that, but the ZBA did not ask last time
17 for a full building plan.

18 BARBARA RANDO, CHAIR: But, attorney,
19 you realize that --

20 MARC RUDNICK: Right. We asked for
21 renderings, which you did not provide. This is a
22 plan. It's not a rendering of anything. So, and
23 you're also -- your testimony says you're not
24 necessarily going to build this.

1 BARBARA RANDO, CHAIR: Attorney, you
2 hear the feeling of the Zoning Board.

3 MARC RUDNICK: Let me give you another
4 question. What is the minimum side yard -- I'm
5 sorry.

6 BARBARA RANDO, CHAIR: Either we can
7 deny it or you can continue the case. I'm sorry. Go
8 ahead. No, go ahead.

9 MARC RUDNICK: What's the minimum side
10 yard setback that we require in an old lot?

11 ATTORNEY WILLIAM SACK: Well, it's --

12 MARC RUDNICK: I think it's five feet.

13 ATTORNEY WILLIAM SACK: Well, no, it's
14 a formula. If it's under 40, then you subtract three
15 inches for every foot.

16 MARC RUDNICK: Okay. Are you exactly
17 at that number?

18 ATTORNEY WILLIAM SACK: He's within it
19 on that plan.

20 MARC RUDNICK: Okay. Because if I
21 were approving this, I would also be asking for side
22 yard setbacks that take into account the lack of
23 frontage that you have.

24 ATTORNEY WILLIAM SACK: Oh, yes.

1 MARC RUDNICK: You have two-and-a-half
2 feet too little --

3 ATTORNEY WILLIAM SACK: Right.

4 MARC RUDNICK: -- I want two-and-a-
5 half feet extra side yard so that you're not coming
6 closer than you should be to the other --

7 ATTORNEY WILLIAM SACK: No, we comply
8 with the old lot sidelines.

9 MARC RUDNICK: I need you to comply
10 with the old lot sidelines plus the difference
11 between your frontage and the required frontage. So,
12 I don't -- I don't have the formula in front of me.
13 So, if you would be allowed a five-foot setback for
14 the 40-foot frontage, and you're going to come with a
15 37-and-a-half-foot frontage, I assume that's how you
16 got to your 6.75.

17 ATTORNEY WILLIAM SACK: Well, we were
18 better there than what was there before because what
19 was there before had 5.72 on one side and 5.27 on the
20 other. So, we're doing something better on the
21 sideline --

22 MARC RUDNICK: That's great.

23 ATTORNEY WILLIAM SACK: -- than what
24 was there before. And we can build that as of right

1 right now, just put back what was there. We don't
2 want to do that. It's not -- I don't think it's a
3 good decision.

4 BARBARA RANDO, CHAIR: I thought you
5 said you couldn't do that unless you had a variance.

6 ATTORNEY WILLIAM SACK: No, we could
7 put it in the same footprint.

8 BARBARA RANDO, CHAIR: Oh, okay.

9 ATTORNEY WILLIAM SACK: Exactly what
10 was there before, but that's to no one's advantage,
11 obviously the City's advantage or certainly a
12 resident or a client, my client's advantage, to put
13 it in the same location, in another unsafe location.
14 But what we're proposing is better than what was
15 there before as far as dimensionally.

16 MARC RUDNICK: I agree with that. I
17 agree that it's better.

18 GLENNA GELINEAU: The challenge is
19 that --

20 MARC RUDNICK: But that's not what I'm
21 asking for is better. I mean I appreciate better.
22 I'm just wanting to make sure that your setbacks,
23 that the setbacks that you would be allowed with the
24 40-foot frontage, you give us two-and-a-half more

1 feet of setback than is required.

2 ATTORNEY WILLIAM SACK: So, we
3 shouldn't subtract the three inches for every foot
4 just go by what the --

5 MARC RUDNICK: Well, again, if you
6 want to explain to me the formula that's used to
7 calculate your setback, I'll comment on it.

8 ATTORNEY WILLIAM SACK: Yeah, it's in
9 the bylaw. It's Section 4.2181, 4.2181(a) side
10 yards. That's what the surveyor complied with based
11 on the frontage that we have. It goes by the sum of
12 the width. I've never seen that formula before in
13 any other town, but we comply with it.

14 BARBARA RANDO, CHAIR: Have you sat
15 down with the Building Inspector?

16 ATTORNEY WILLIAM SACK: I've had con -
17 - well, we've had -- we submitted the old lot
18 certification. He wrote that letter. Based on that,
19 I met with him -- I spoke with him rather. I have
20 not met with him to go over a plan.

21 BARBARA RANDO, CHAIR: Maybe you
22 should.

23 ATTORNEY WILLIAM SACK: To go over a -
24 - regarding what exactly?

1 BARBARA RANDO, CHAIR: Well, just the
2 side yard, just the formula, and see if he agrees
3 with you.

4 ATTORNEY WILLIAM SACK: Okay. We can
5 do that. I had great confidence in Bibbo Brothers.
6 They said they are respected in the City here and --

7 MARK HICKERNELL: And they are. They
8 are. I think maybe they weren't asked the question
9 that they're used to being asked.

10 ATTORNEY WILLIAM SACK: He did certify
11 that on his plan regarding side yard.

12 MARC RUDNICK: Yeah, I'm sorry. I am
13 satisfied with the side yard. I read this. I
14 calculated it. You're fine.

15 ATTORNEY WILLIAM SACK: Okay.

16 MARC RUDNICK: You know, again, you
17 know, to tell you the truth, I am ready to make a
18 proposal that the Board accept this with certain
19 conditions. My conditions will certainly be that
20 your plan is inadequate and cannot be accepted by the
21 Board, but that we would grant the variance from the
22 frontage and that you could present a new plan for
23 the property to the Building Inspector. And, if it
24 meets the requirements other than frontage, he is

1 going to give you a building permit. If not, he's
2 going to tell you to come back and get another
3 variance.

4 ATTORNEY WILLIAM SACK: That's all we
5 want. And we're confident we are --

6 MARC RUDNICK: But I'm not sure that
7 the Board is all going to vote for my proposal. But,
8 again, I do think you've met the criteria, in my
9 mind, except you haven't presented us with a legal
10 plan. This plan has violations in it. I know you
11 didn't mean them to be there. You know, and probably
12 Mr. Bibbo wasn't thinking about the parking because
13 you weren't asking him about it. You were asking him
14 to give you a plan that allows you to argue that the
15 frontage should be reduced. I'm convinced of that.

16 ATTORNEY WILLIAM SACK: Just for my
17 own benefit and my client's benefit, if the parking
18 were okay, are you saying that the plan is acceptable
19 or do you still want more detail about the structure
20 that is going to be proposed because that we don't
21 have at this time? Are you okay with --

22 MARC RUDNICK: Well, I think you could
23 do it either way. You could ask for a continuance
24 and come back to us with an adequate building plan

1 and you'd probably be out of here -- I don't want to
2 speak for my colleagues. I don't know how they're
3 going to vote. But I think you would be out of here
4 ready to build. This way, if you do it my way,
5 you're going to be out of here, but you're going to
6 be coming back here unless you can squeeze the
7 parking on in a way that Mr. Powell thinks is
8 legitimate.

9 ATTORNEY WILLIAM SACK: So, what
10 detailed plans are you asking for though exactly?

11 MARC RUDNICK: What you're going to
12 build. What you're going to build, period.

13 BARBARA RANDO, CHAIR: Exactly.

14 MARC RUDNICK: Exactly.

15 MARK HICKERNELL: Well, we don't need
16 the inside layout, but we need to know the --

17 MARC RUDNICK: No, no.

18 BARBARA RANDO, CHAIR: No.

19 MARC RUDNICK: But that are concerned
20 with the dimensional --

21 MARK HICKERNELL: Yeah.

22 MARC RUDNICK: -- the dimensional
23 requirements of developing this site. Okay. So, I
24 think you've shown us a plan that has that about the

1 side yard setbacks of the building, but doesn't about
2 the parking, and parking is a part of what's going to
3 happen here.

4 ATTORNEY WILLIAM SACK: Can the
5 approval be conditional upon coming back with a set
6 of plans that the Board would approve though so then
7 we can go out knowing that we have an approval for
8 it.

9 MARC RUDNICK: Yeah, I think that's a
10 better way to do it.

11 ATTORNEY WILLIAM SACK: Yeah.

12 MARC RUDNICK: But I don't -- you
13 know, I can't tell you to make --

14 ATTORNEY WILLIAM SACK: Because if we
15 know that we can do it because the Board voted on the
16 dimensional variance, then we can go out to builders
17 and architects and then get a real plan and come
18 back.

19 JOHN SERGI: That's backwards.

20 BARBARA RANDO, CHAIR: I don't
21 remember doing it that way.

22 JOHN SERGI: No, I don't feel
23 comfortable.

24 BARBARA RANDO, CHAIR: And I feel very

1 uncomfortable myself doing it.

2 JOHN SERGI: I don't feel comfortable.

3 BARBARA RANDO, CHAIR: I like to see
4 adequate plans.

5 JOHN SERGI: I understand what Mr.
6 Rudnick is trying to do. I don't agree with that
7 philosophy. I'd rather see a plan presented here
8 like it should be, properly, showing the parking the
9 way it --

10 ATTORNEY WILLIAM SACK: The parking we
11 can show, right. But you want to see decks, and
12 exterior, and roof, and all that also, or --

13 MARC RUDNICK: No, no, no, this type
14 of plan is fine. We need it to comply with the
15 zoning.

16 ATTORNEY WILLIAM SACK: Oh, okay. I
17 just want to get it clear because they said that --
18 some said this plan is not adequate; you want to see
19 what's going to be put there really. I thought you
20 meant real building plans of exterior, and siding,
21 and roofing.

22 MARC RUDNICK: No, this type of plan
23 is adequate. We do generally get more. We get
24 elevations of the buildings and a variety of other

1 things. We have no -- I don't think we can require
2 you to provide those. But what you do provide should
3 not show violations of the Zoning Ordinance other
4 than the ones you're asking for relief from. It's a
5 red flag. Draw this with legal parking and make sure
6 that everything we see on this conforms to the Zoning
7 Ordinance other than the one you're asking for a
8 variance from, I think you walk out of here
9 buildable. Obviously, you're going to still have to
10 pass through the Building Department and comply with
11 all of their requirements so we feel protected by
12 that. But, you know, maybe this feels nitpicky to
13 you. I don't know.

14 ATTORNEY WILLIAM SACK: No, no, no.

15 MARC RUDNICK: But I can't approve a
16 plan that has violations.

17 ATTORNEY WILLIAM SACK: I'm a little -
18 - that the parking is a violation, I'm a little
19 embarrassed about it because I didn't know -- I
20 didn't know that it would be a violation.

21 BARBARA RANDO, CHAIR: So, is it your
22 wish to continue?

23 MARC RUDNICK: So, if you'd like to
24 continue and provide us with a better plan than this,

1 but of this type.

2 ATTORNEY WILLIAM SACK: I'm sorry.
3 She's asking -- we need a variance -- I think the
4 Board knows now that we need a variance to put
5 anything in a different location.

6 MARK HICKERNELL: Right.

7 ATTORNEY WILLIAM SACK: So, yes.

8 ELIZABETH GARTZ: So, would I need a
9 plan as well if it was just going to be the single,
10 to come back to move it forward?

11 BARBARA RANDO, CHAIR: Exactly.

12 MARK HICKERNELL: Whichever one you
13 want to build.

14 MARC RUDNICK: Yes, anything but
15 putting something new on the same foundation that
16 exists will need a plan and need a variance of some
17 kind.

18 ELIZABETH GARTZ: Okay. All right.
19 Thank you. I just wanted to be clear on that point.

20 BARBARA RANDO, CHAIR: Is there anyone
21 in the audience that is in opposition to this that
22 would like to come to the microphone? Give your name
23 and address for the record, please?

24 NANCY CARUSO: We're husband and wife.

1 It's Nancy Caruso and Carlos Medeiros.

2 BARBARA RANDO, CHAIR: I'm sorry?

3 NANCY CARUSO: Nancy Caruso and Carlos
4 Medeiros. We're husband and wife. We live next
5 door.

6 And I'm not trying to make problems,
7 but I just -- if the house had been right next to
8 ours, we wouldn't be talking. Our house wouldn't be
9 there. Ours would have went down to. And the reason
10 they couldn't get in, and I'm not trying to be rude,
11 is because there was six feet of snow. They had to
12 use our yard, which was all clear, to get in. That
13 was a big part of it.

14 No, I just feel like it's going to be
15 too close. There's no room.

16 BARBARA RANDO, CHAIR: And no room.

17 CARLOS MEDEIROS: Can I show you these
18 pictures?

19 NANCY CARUSO: And I don't know where
20 the snow would go. You know, if that house was next
21 to ours, we wouldn't be here today.

22 BARBARA RANDO, CHAIR: That's
23 something else.

24 CARLOS MEDEIROS: The back driveway is

1 on my property.

2 BARBARA RANDO, CHAIR: Snow.

3 MARC RUDNICK: Is your home the next
4 door that's the other narrow lot or --

5 CARLOS MEDEIROS: This one on the
6 right.

7 MARC RUDNICK: If I'm looking at their
8 property, you're to the right. Thank you.

9 NANCY CARUSO: We're the single-
10 family. And there's two families across the street.
11 And they're having problems, and they're bigger,
12 where the snow -- that we're putting it across the
13 street. There's big problems. And I don't see how
14 that's going to work. But I mean I think if it was
15 back where it was, I mean I would disagree, I think
16 it would be fine. I just can't see it. It's going
17 to be right on top of our house.

18 CARLOS MEDEIROS: And what happens is
19 if they put the house, that house, right next to --
20 you can see better on that one -- it's going to come
21 within four feet from my house. You know, as soon as
22 I open my kitchen door --

23 MARK HICKERNELL: How far is your
24 house from your property line?

1 CARLOS MEDEIROS: About six feet.

2 BARBARA RANDO, CHAIR: Could you speak
3 into the microphone because the people at home can't
4 hear you?

5 CARLOS MEDEIROS: Yeah, I'm deaf, too,
6 so I know the feeling. It's about six feet.

7 BARBARA RANDO, CHAIR: Sixty feet?

8 MARK HICKERNELL: Six.

9 NANCY CARUSO: Six feet.

10 BARBARA RANDO, CHAIR: Okay, six feet.

11 NANCY CARUSO: It's very, very -- it's
12 a very tight, tight street.

13 MARK HICKERNELL: Sixty feet would
14 center her right on the next lot.

15 BARBARA RANDO, CHAIR: Yeah.

16 NANCY CARUSO: Like we are great
17 neighbors and we would help. But I mean the reason
18 was it was all snow. They couldn't get in there
19 because it was right up against our fence. And if
20 you move it forward, it's going to be right up
21 against our house. If there was a fire, they
22 wouldn't even be able to get in between next time to
23 stop the fire.

24 BARBARA RANDO, CHAIR: So this shed is

1 their shed?

2 NANCY CARUSO: I'm sorry? I don't see
3 the picture.

4 BARBARA RANDO, CHAIR: The shed is
5 their shed?

6 NANCY CARUSO: Yes, that's their shed.

7 CARLOS MEDEIROS: And if you put that
8 there, there's not going to be anywhere to put the
9 snow in the wintertime.

10 MARC RUDNICK: Where do you put your
11 snow?

12 NANCY CARUSO: We have a side wall.
13 We put it there. Then, you know, sometimes like we
14 used to share. Truthfully, sometimes we'd do her
15 yard, and we'd put it on hers, too. But now, you
16 know, now we have to push ours all to one side. But
17 when they're there, there's nowhere for them to put
18 theirs because they're not going to have their
19 anymore. All that is going to be gone. We used to
20 always do her yard. We always put her, you know, we
21 shared it, you know. But she's not going to be
22 there. And that wall is not going to be there. Her
23 things are not going to be there. It's going to be
24 cars now. There's not going to anywhere to put it

1 now. So, ours we put on our wall, like the other
2 side wall.

3 MARC RUDNICK: It's on the other side
4 of your property?

5 NANCY CARUSO: Yes.

6 MARC RUDNICK: I see.

7 NANCY CARUSO: And then we have -- we
8 have three cars, but, actually, he's sick, so we're
9 getting rid of one. So, you know -- but we don't
10 even have room for three. I don't know how he's
11 going to get four there.

12 CARLOS MEDEIROS: And the question I
13 have is is this going to be two-family? Is it going
14 to be owned by the same person, or is it going to be
15 like two condos, two townhouses?

16 NANCY CARUSO: Because when they sell
17 it, we don't know who they're selling it to. And are
18 they going to have to conform to this plan? So,
19 whoever buys it, I want to make sure that -- like
20 you're going to set a plan here. Now, the person
21 that buys it, do they have to follow that plan,
22 whoever buys it?

23 BARBARA RANDO, CHAIR: It will have to
24 be built according to that plan.

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1 NANCY CARUSO: Okay. So, whatever
2 they accept, whoever buys it will have to --

3 MARC RUDNICK: If they prevail here,
4 their variance is filed in the Registry and they have
5 to live up to it.

6 NANCY CARUSO: Okay. That was my big
7 -- okay, so they have to -- okay.

8 MARC RUDNICK: Every buyer after that.

9 NANCY CARUSO: Okay. Okay.

10 BARBARA RANDO, CHAIR: But if they
11 decide to sell it --

12 MARC RUDNICK: But we have no control
13 over the question about condo or tenants, that's not
14 --

15 BARBARA RANDO, CHAIR: Right.

16 MARC RUDNICK: -- this is not the
17 Board for that.

18 NANCY CARUSO: If they're selling the
19 land, then whoever buys it I just want to make sure
20 that whoever buys it has to do that.

21 BARBARA RANDO, CHAIR: Right. We
22 don't know.

23 NANCY CARUSO: Okay.

24 BARBARA RANDO, CHAIR: And I don't

1 think you're living there, right? You're going to
2 sell it?

3 ELIZABETH GARTZ: Yeah.

4 NANCY CARUSO: Sorry, but we live next
5 door. I know. I already told you, we live next
6 door. Sorry. We were worried.

7 BARBARA RANDO, CHAIR: Do you have
8 anything else to add, sir?

9 CARLOS MEDEIROS: Sorry?

10 BARBARA RANDO, CHAIR: Anything else
11 to add?

12 CARLOS MEDEIROS: Well, they're going
13 to block my, you know -- if it comes all the way down
14 to the end, you know, it's just my driveway will
15 never see the sun of day in the wintertime. So, it's
16 going to be, you know, black ice, my driveway,
17 because my -- the kitchen is facing the east. So,
18 the house is going to block the sun, which in the
19 wintertime is going to be a pain.

20 BARBARA RANDO, CHAIR: All right.
21 Thank you.

22 MARK HICKERNELL: Thank you.

23 CARLOS MEDEIROS: All right.

24 BARBARA RANDO, CHAIR: Anyone else in

1 opposition? Please state your name and address?

2 ANTONIO NICOLAZZO: Antonio Nicolazzo,
3 71 Ash Street.

4 So, in our first meeting, my concern
5 was the trees. And, as he mentioned earlier, they
6 agreed to them, to remove them. But how do I know
7 that will actually happen? Is there a landscape
8 plan? Because I asked for a landscape plan and he
9 didn't provide one.

10 BARBARA RANDO, CHAIR: Well, we can
11 put a condition on it --

12 ANTONIO NICOLAZZO: Okay.

13 BARBARA RANDO, CHAIR: -- that they
14 would put it so many feet and whatever you requested.

15 MARC RUDNICK: We would put a
16 condition.

17 BARBARA RANDO, CHAIR: Right.

18 ANTONIO NICOLAZZO: Yeah, okay. So,
19 that will say in writing that whoever does this that
20 --

21 BARBARA RANDO, CHAIR: That they would
22 have to follow.

23 ANTONIO NICOLAZZO: Okay.

24 BARBARA RANDO, CHAIR: Right.

1 ANTONIO NICOLAZZO: Okay. Perfect.

2 Thank you.

3 BARBARA RANDO, CHAIR: Thank you.

4 Anyone else in opposition?

5 (No response.)

6 BARBARA RANDO, CHAIR: Anyone in
7 favor?

8 (No response.)

9 BARBARA RANDO, CHAIR: Seeing none.
10 Anyone seeking information?

11 (No response.)

12 BARBARA RANDO, CHAIR: Seeing none.
13 Attorney, do you wish to continue?

14 ATTORNEY WILLIAM SACK: Yes, I don't
15 think we need a long continuance at this time.

16 BARBARA RANDO, CHAIR: I'm sorry?

17 ATTORNEY WILLIAM SACK: I don't think
18 we need a long continuance at this time for the plan.

19 BARBARA RANDO, CHAIR: February 23rd,
20 how is that?

21 MARC RUDNICK: No.

22 BARBARA RANDO, CHAIR: No?

23 MARC RUDNICK: The next week after
24 that I'm back. I don't know if you want to do it on

1 the --

2 BARBARA RANDO, CHAIR: We have two
3 cases on March 1st. Oh, no, the only case --

4 MARC RUDNICK: That's the 40B week.

5 BARBARA RANDO, CHAIR: Oh, yeah. No.
6 How about March 8th?

7 MARK HICKERNELL: I'm here.

8 BARBARA RANDO, CHAIR: Mr. Sergi?

9 JOHN SERGI: Yes, I'm available.

10 MARC RUDNICK: That's fine.

11 BARBARA RANDO, CHAIR: Ms. Gelineau?

12 GLENNA GELINEAU: Yeah.

13 MARC RUDNICK: I can do it.

14 BARBARA RANDO, CHAIR: You can do the
15 8th?

16 MARC RUDNICK: Yeah, I can.

17 BARBARA RANDO, CHAIR: All right. How
18 is March 8th for you, sir?

19 ATTORNEY WILLIAM SACK: It's fine with
20 me. Is that the shortest --

21 BARBARA RANDO, CHAIR: It is.
22 Unfortunately, it is.

23 MARK HICKERNELL: We need to --

24 BARBARA RANDO, CHAIR: All right. Do

1 I have --

2 MARC RUDNICK: You have nothing before
3 February (sic) 8th?

4 BARBARA RANDO, CHAIR: No, I really
5 don't. The 23rd is vacation. I won't be here the
6 vacation -- I mean -- no, he can't make it. I won't
7 be here and you won't be here.

8 MARK HICKERNELL: We have to extend
9 the 100 days.

10 BARBARA RANDO, CHAIR: What was the
11 date for that?

12 MARK HICKERNELL: February 6th.

13 BARBARA RANDO, CHAIR: Just make it
14 May 2016.

15 BARBARA RANDO, CHAIR: All right.
16 First of all, do I have a motion to continue Case
17 2015-21 to March 8th?

18 JOHN SERGI: So moved, Madam Chair.

19 MARK HICKERNELL: Second.

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

22 How do you vote, Mr. Sergi?

23 JOHN SERGI: yes.

24 BARBARA RANDO, CHAIR: Mr.

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1 Hickernell?

2 MARK HICKERNELL: Yes.

3 BARBARA RANDO, CHAIR: Ms. Gelineau?

4 GLENNA GELINEAU: Yes.

5 BARBARA RANDO, CHAIR: Mr. Rudnick?

6 MARC RUDNICK: Yes.

7 BARBARA RANDO, CHAIR: And the Chair
8 votes yes. So, we are continuing it to March 8th.

9 All right. Hold on one second because
10 I need you to sign something. I need a motion to
11 continue the 100 days from February 6th to May 10th,
12 2016.

13 JOHN SERGI: So moved, Madam Chair.

14 BARBARA RANDO, CHAIR: Motion by Mr.
15 Sergi. Second by Mr. Hickernell.

16 How do you vote, Mr. Sergi?

17 JOHN SERGI: yes.

18 BARBARA RANDO, CHAIR: Mr.

19 Hickernell?

20 MARK HICKERNELL: Yes.

21 BARBARA RANDO, CHAIR: Ms. Gelineau?

22 GLENNA GELINEAU: Yes.

23 BARBARA RANDO, CHAIR: Mr. Rudnick?

24 MARC RUDNICK: Yes.

1 BARBARA RANDO, CHAIR: And the Chair
2 votes yes. So, the 100 days has been extended.

3 I have to -- Mr. Sergi, would you look
4 and see if there's any extension papers in that file?

5 JOHN SERGI: Yes.

6 BARBARA RANDO, CHAIR: It should say
7 "extension of time." I need your signature before
8 you leave.

9 ATTORNEY WILLIAM SACK: The
10 applicant's signature?

11 BARBARA RANDO, CHAIR: Pardon me?

12 ATTORNEY WILLIAM SACK: The
13 applicant's signature?

14 BARBARA RANDO, CHAIR: Yours.

15 JOHN SERGI: How many do you need,
16 Barbara? Two?

17 BARBARA RANDO, CHAIR: Two. Thank
18 you, John.

19 Could you just sign that for me,
20 please? Thank you. And would you, sir, please sign
21 that on both of those? And I'll have Pam fax you a
22 copy. She has your fax number.

23 All right. Thank you. We will see
24 you March 8th. Good luck.

1 **Case Number 2015-26: Pasquale Torcasio, 41 Williams**
2 **Street**

3

4 BARBARA RANDO, CHAIR: Will the Clerk
5 please read the petition 2015-26, Pasquale Torcasio?

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

9 BARBARA RANDO, CHAIR: Thank you.

10 Before you start, Attorney Connors, I
11 received a message from City Councilor Robert Logan,
12 who asked for information on the case and did not
13 receive the information, correct information, that he
14 wanted. He received it today. He did not have
15 enough time to look over and look up different facts
16 that you stated. He feels that as City Councilor and
17 Ward Councilor of this ward that he should -- and,
18 also, that there's a City Council meeting tonight and
19 usually we do not have a Zoning Board meeting on a
20 night when the City Council is meeting. So, because
21 of those two factors, that he did not get the
22 information that he requested two weeks in advance,
23 secondly, that there's a City Council meeting and he
24 did not think it was proper for us to have a Zoning

1 Board meeting, which nine out of ten times we do not
2 have, and as City Councilor, he feels that he should
3 have the right to be able to come here and tell you
4 his concerns and discuss them with you.

5 Excuse me. We're in a public meeting.

6 ATTORNEY JOSEPH CONNORS: I hear your
7 statement. But I mean all I can say is that, you
8 know, the documents that he was looking for were on
9 file with the Board of Zoning Appeals, you know.

10 BARBARA RANDO, CHAIR: Well, also,
11 these are records that anyone has the right to go up
12 and look at. And, if the correct records weren't
13 there, then the public didn't have a chance to look
14 at them either.

15 MARK HICKERNELL: Who said they
16 weren't there?

17 BARBARA RANDO, CHAIR: He received the
18 wrong information. He wasn't given all the facts.
19 Our secretary was out on vacation.

20 ATTORNEY JOSEPH CONNORS: Right. So,
21 I mean I think that the secretary --

22 BARBARA RANDO, CHAIR: So, it's not
23 your fault.

24 ATTORNEY JOSEPH CONNORS: Right.

1 BARBARA RANDO, CHAIR: It was the
2 fault of the person that gave you the wrong --
3 Councilor Logan the wrong information. It was
4 probably our fault for scheduling a meeting on the
5 night when City Council is meeting. And,
6 unfortunately, he did not have the time. I believe
7 you sent him the plans today, but he didn't have a
8 chance to go over them.

9 ATTORNEY JOSEPH CONNORS: Yeah, the
10 ZBA Office sent them over because I talked to them
11 today. But I --

12 BARBARA RANDO, CHAIR: Right. But he
13 didn't have a chance to go through them.

14 ATTORNEY JOSEPH CONNORS: Right. But
15 I mean all I can say, my brief was sent
16 electronically. So, when they copied the file, there
17 was nothing in the file because it was an electronic
18 document. And it wasn't sent along. And the copy of
19 the plan that was sent along was only the abutters'
20 plan and not the actual detail plan that you see in
21 front of you right now.

22 BARBARA RANDO, CHAIR: Well, he did
23 say that it's supposed to be received two weeks
24 beforehand. We didn't actually receive it two weeks

1 beforehand. So, as long as I've been on the Board,
2 we've never deliberately kept a City Councilor from
3 attending a meeting. I don't know what the wishes of
4 the Board are.

5 MARK HICKERNELL: I don't see how
6 we're deliberately keeping him from attending the
7 meeting.

8 BARBARA RANDO, CHAIR: Well, he's at
9 City Council tonight.

10 MARK HICKERNELL: I mean I understand
11 that, but it's --

12 GLENN GELINEAU: We're still not
13 deliberately keeping him from that.

14 MARK HICKERNELL: It happens quite
15 often that city officials and other interested
16 parties can't attend and they submit something in
17 writing.

18 BARBARA RANDO, CHAIR: Well, he didn't
19 even have time to do that because he received the
20 information today, the correct information, and he
21 was working on City Council matters.

22 MARK HICKERNELL: Yeah. No, I
23 understand his concern.

24 BARBARA RANDO, CHAIR: It's a dilemma.

1 It's a dilemma. So --

2 ATTORNEY JOSEPH CONNORS: I mean
3 that's a dilemma for the Board I guess. I mean all I
4 can say is that I'm here and it's up to the Board as
5 to whether or not you want to move forward.

6 GLENNA GELINEAU: It's not fair to the
7 Petitioner. It's not a dilemma for the Petitioner.

8 BARBARA RANDO, CHAIR: Well, he didn't
9 meet the two weeks either.

10 GLENNA GELINEAU: Well, the two weeks
11 is sort of an -- it's not -- I mean that's for
12 convenience.

13 BARBARA RANDO, CHAIR: No, we've done
14 it before. But we haven't had a meeting in -- when
15 the City Councilor has had issues, concerns with it
16 that he would like to debate with you.

17 GLENNA GELINEAU: Does he have that
18 jurisdiction? The City Councilor can't meet with
19 him?

20 BARBARA RANDO, CHAIR: No, no, he's --
21 no, he does not have that jurisdiction. He's just
22 requesting that because he is a City Councilor who
23 has major concerns regarding this petition that he
24 would like to be in attendance and he did not get the

1 information in time for him to write a letter to us.

2 GLENNA GELINEAU: Through no fault of
3 the Petitioner.

4 BARBARA RANDO, CHAIR: No. No. No.
5 No. No fault of the Petitioner.

6 MARC RUDNICK: All of your submissions
7 were before the last few days, Joe?

8 ATTORNEY JOSEPH CONNORS: At the time
9 that he requested it, it was Martha was in the office
10 as, you know, Pam was out. So she didn't know that
11 there was an electronic copy of the document to
12 forward to him because Pam had taken some -- a couple
13 of days off. And, also, like I say, she did scan
14 some of the documents, but she only scanned like the
15 abutters' portion of the plan rather than the detail
16 portion, which, again, he says, "Well, where's the
17 information?" Well, it was in the site detail. So,
18 that was just an error on her part as well.

19 MARC RUDNICK: When did all this
20 transpire? Last week or --

21 ATTORNEY JOSEPH CONNORS: Friday.

22 MARC RUDNICK: Friday.

23 BARBARA RANDO, CHAIR: Yeah, Friday.

24 GLENNA GELINEAU: So, didn't he see on

1 Friday it was the wrong thing?

2 BARBARA RANDO, CHAIR: Yeah, Pam
3 wasn't in.

4 GLENNA GELINEAU: Well, couldn't he
5 have called you and got the right thing on Friday?

6 ATTORNEY JOSEPH CONNORS: Well, no, I
7 didn't hear from him, no.

8 GLENNA GELINEAU: So, he looked at it
9 night. It was the wrong thing. And then he chose to
10 say --

11 ATTORNEY JOSEPH CONNORS: No, I think
12 it was this afternoon. I got an email this
13 afternoon.

14 GLENNA GELINEAU: So, he got it on
15 Friday but looked at it today, this afternoon.

16 ATTORNEY JOSEPH CONNORS: He's never
17 corresponded with me directly. It's all -- I've
18 gotten it from Pam by way of the Chairperson.

19 BARBARA RANDO, CHAIR: He spoke to me
20 a couple of times.

21 GLENNA GELINEAU: Before today?

22 MARC RUDNICK: Today?

23 BARBARA RANDO, CHAIR: He spoke to me
24 last night. He spoke to me this morning. I couldn't

1 find it on my computer last night. I couldn't find
2 the case on my computer last night.

3 So, do we continue the case or what is
4 the wish of the Board? This has never happened
5 before in my tenure.

6 GLENNA GELINEAU: Well, I certainly
7 have no problem with hearing it.

8 MARC RUDNICK: Did Mr. Logan
9 specifically ask you to continue the case?

10 BARBARA RANDO, CHAIR: I'm sorry?

11 MARC RUDNICK: Did he ask you to
12 continue the case?

13 BARBARA RANDO, CHAIR: Yes.

14 MARC RUDNICK: Specifically I mean as
15 opposed to just complaining about how he has not been
16 given adequate time?

17 BARBARA RANDO, CHAIR: "I took a quick
18 look at it when I got home. There are serious issues
19 with the Williams Street petition. I hope this gets
20 rescheduled or continued so that the ward councilor
21 could be in attendance."

22 MARK HICKERNELL: Well, it's a noticed
23 hearing, and the Petitioner is here and has done what
24 the Petitioner needs to do. I'm not saying that we

1 wouldn't necessarily continue the case and keep the
2 public meeting open, but I don't see any reason to
3 continue it without even starting.

4 BARBARA RANDO, CHAIR: And not vote on
5 it tonight you mean?

6 MARK HICKERNELL: I don't know what --
7 I haven't heard from the Petitioner yet. I don't
8 know if we're going to be ready to vote or not.

9 BARBARA RANDO, CHAIR: Well, then
10 you're saying to go ahead?

11 MARK HICKERNELL: That's what I'm --
12 that's my preference.

13 BARBARA RANDO, CHAIR: Okay. Mr.
14 Sergi?

15 JOHN SERGI: I'll go along with the
16 wishes of the Board. I understand Mr. Logan's
17 request. Did he give an indication of what problems
18 he has with this? Did he indicate one problem or
19 articulate one problem, or just a general statement?

20 BARBARA RANDO, CHAIR: I think in one
21 of the phone calls he did mention the 10 percent
22 increase and special permit.

23 JOHN SERGI: So, no issue that would
24 be foreign to us.

1 BARBARA RANDO, CHAIR: I did not have
2 a -- I really did not get into the case because --

3 MARK HICKERNELL: It wouldn't be
4 appropriate.

5 BARBARA RANDO, CHAIR: Yeah.

6 MARK HICKERNELL: Yeah.

7 JOHN SERGI: Okay. I don't have a
8 problem going forward.

9 BARBARA RANDO, CHAIR: Mr. Sergi to
10 hear; Mr. Hickernell to hear; Ms. Gelineau to hear.
11 Mr. Rudnick?

12 MARC RUDNICK: I think the Board
13 members have the opportunity to ask for the case to
14 be continued for Mr. Logan's benefit whether we hear
15 it tonight or not. I mean we could hear this whole
16 thing tonight and somebody can just make a motion
17 that it be continued so we can hear from Mr. Logan at
18 the end. So, frankly, if anybody is concerned with
19 Mr. Logan's request, they can make that request at
20 the end and it will still be continued and at least
21 we won't deny -- I mean the Petitioners, you know,
22 they brought their attorney here tonight. They
23 showed up tonight. I think we should hear it
24 tonight. I'll be very sympathetic to a move to

1 continue it in order to allow Mr. Logan to weigh in
2 next time.

3 BARBARA RANDO, CHAIR: So, you're
4 saying hear the case and then continue it?

5 MARC RUDNICK: But I want to hear it
6 tonight.

7 BARBARA RANDO, CHAIR: So, if I
8 understand Mr. Rudnick, he's ready to hear it and
9 then leave it open to have Mr. --

10 JOHN SERGI: Yeah, I'm okay with that.
11 I'm okay with the wishes of the Board. That's fine
12 with me as well.

13 BARBARA RANDO, CHAIR: -- Councilor
14 Logan come in. Okay. I agree to that. So, we will
15 hear the case and then keep it open and let Councilor
16 Logan come before us.

17 MARK HICKERNELL: Well, someone is
18 going to have to make that motion at the appropriate
19 time.

20 BARBARA RANDO, CHAIR: Mm hum. All
21 right.

22 ATTORNEY JOSEPH CONNORS: Madam Chair,
23 Attorney Joseph M. Connors, Jr. on behalf of the
24 Petitioner Pasquale Torcasio. Mr. Torcasio is with

1 me here tonight in the third row with the red shirt.

2 I have a brief that was electronically
3 filed with the Board, and I also have it printed for
4 you.

5 BARBARA RANDO, CHAIR: Thank you.

6 ATTORNEY JOSEPH CONNORS: And, as the
7 legal notice stated, this property, the subject
8 matter of this petition, is 41 Williams Street. I
9 have a plan. And then on the plan we show two
10 things. The one on the left side is the locus on
11 Williams Street, and that's for the purpose of
12 identifying the abutting properties and setting out
13 who's within 300 feet for public notices. But if you
14 were to come down say Felton Street from Moody
15 Street, and then you took a left on Williams Street,
16 and then the property is on your right. Williams
17 Street pretty much ends here and you have the
18 railroad tracks and then Charles River on the
19 opposite side of that. So, this is just on the north
20 side of the Charles River, south of Felton Street
21 between Felton Street and the railroad tracks and the
22 Charles River.

23 He's the site. We have existing
24 conditions. And, presently, there's a single-family

1 residence existing on the lot. And then our proposal
2 is highlighted in red, which is an addition.

3 So, 41 Williams Street is in a
4 Commercial Zoning District. The Petitioner is
5 Pasquale Torcasio. He purchased the property in
6 2013. The locus consists of 6,932 square feet of
7 land. And so this is, again, here on the existing
8 conditions and the proposed, it's the same. The lot
9 size is 6,932 square feet. As I said, it's in a
10 Commercial Zoning District.

11 Mr. Torcasio intends to construct,
12 use, and maintain an addition of a garage onto the
13 existing building on the locus. He intends to use
14 what is presently a single-family residence, he
15 intends to use that as his business office and then
16 have his equipment and his trucks in the addition,
17 which is a garage. He runs a general contracting,
18 landscaping, and masonry business and he would like
19 to situate his business there in a Commercial Zoning
20 District.

21 The garage, the footprint of the
22 garage, is 4,940 square feet. It also proposes a lot
23 of 1,000 feet for storage of equipment.

24 Lots in a Commercial Zoning District

1 typically are required to have 10,000 square feet of
2 land area. However, this lot was created prior to
3 the existence of zoning in the City of Waltham and is
4 considered a pre-existing nonconforming lot.
5 Pursuant to Section 4.12 of the Zoning Ordinance at
6 footnote seven, "Lots in Commercial District where
7 such lot does not exceed 25,000 feet of total area
8 and has a frontage of less than 100 feet and where it
9 does not abut residential districts, the rear yard
10 lot shall not apply and the side yard shall only
11 apply to one side."

12 In order to construct the addition of
13 a garage onto the existing structure certain zoning
14 relief is required.

15 Section 3.7222 of the Zoning Ordinance
16 and Mass. General Laws Chapter 40A, Section 6, states
17 that uses, structures, and land may be altered when a
18 special permit is granted for such alterations. In
19 this instance, the Petitioner is proposing an
20 addition onto the existing structure. The addition
21 shall meet all the dimensional requirements of the
22 ordinance.

23 I cite the jurisdiction of the Mass.
24 General Laws at Chapter 40A, Section 6. And I've

1 also attached a copy of that particular portion as
2 one of my exhibits. But it does say that pre-
3 existing nonconforming structures or uses may be
4 extended or altered by the special permit granting
5 authority provided there is a finding by the special
6 permit granting authority that such change,
7 extension, or alteration shall not be substantially
8 more detrimental than the existing nonconforming use
9 to the neighborhood.

10 Section 14 of the Chapter 40A empowers
11 the Board of Appeals to hear and decide application
12 for special permits.

13 Section 3.722 of the Zoning Ordinance
14 provides that nonconforming structures, building, and
15 land may be altered when a special permit has been
16 granted by the Board of Appeals for such alteration
17 or enlargement.

18 And so then I, again, focus on the
19 Section 40A, which provides that nonconforming
20 structures or uses may be altered provided that there
21 is a finding by the permit granting authority that
22 such alterations shall not be substantially more
23 detrimental than the existing nonconforming use to
24 the neighborhood.

1 It's really not a use that's
2 nonconforming in this case, although that's the
3 language that's used in the statute. But what we
4 have here is a nonconforming lot. The lot, which was
5 purchased by Mr. Torcasio in 2013, is described in
6 his deed as "the land with the building thereon,
7 situated on Williams Street, Middlesex County,
8 Massachusetts, on the westerly side of Williams
9 Street known and numbered as 41, bounded." And then
10 it has -- it provides a metes and bounds description,
11 which is just a, you know. And I attached a copy of
12 this deed and it says, you know, by Williams Street,
13 80 feet; by westerly; by Lot 21, etc., etc.

14 So, that's how it's set out by a metes
15 and bounds description. So, if I -- in that deed, it
16 also refers to the plan, or a plan. And the plan
17 referenced goes back to 1854. And so I've also
18 attached a copy of that plan at Exhibit C, which is
19 the plan dated at the top right-hand corner. It's
20 the plan of land at Waltham Center belonging to H.W.
21 and W.A. Blaisdell by Mr. Butterfield, C.E., 1854.

22 And so the metes and bounds
23 description contained in the grantor's deed at
24 Exhibit A has been the legal description of the locus

1 property since at least 1877.

2 So, what I did was I went through the
3 title and I went back in the title and we found where
4 the description of this property kind of follows
5 from. And it goes back to at least 1877. And I've
6 attached a copy of the 1877 deed when the -- I think
7 it was the Waltham Savings Bank foreclosed on the
8 property and there was a foreclosure deed to a Mary
9 Follen in 1877. And the description that's in Mr.
10 Torcasio's deed is identical to the one in Mary
11 Follen's deed. And so the description of the lot has
12 remained consistent since the late 1800s.

13 If I look at the description, or the
14 definition of "lot" under the Waltham Zoning Code,
15 under 2.328 of the Zoning Ordinance, it defines a lot
16 as "a parcel of real estate as described in a deed or
17 shown on a plan separate from any other parcel." So,
18 pursuant to the definition of "lot," the parcel at 41
19 Williams Street, as described in the deed at 1877, is
20 a lot. It's been in existence since 1877, pre-
21 existing the creation of zoning in the City of
22 Waltham in 1925.

23 And our lot is undersized, as I said.
24 Lots in a Commercial Zoning District are required

1 today to have 10,000 square feet of land. We have
2 6,932. So, the lot is a pre-existing nonconforming
3 lot. It's legal because it was created prior to the
4 existence of zoning in the City. But, it's
5 undersized.

6 Now, Mr. Torcasio would like to
7 convert the existing building, the single-family,
8 into an office area for his business, which is a
9 permitted use in a Commercial Zoning District. A
10 single-family residence is no longer permitted in
11 this Commercial Zoning District. So, it would
12 eliminate what's nonconforming. And then he would
13 make an addition.

14 Now, the addition meets all the
15 dimensional requirements of the ordinance. As I
16 said, under 4.12, footnote seven, if it's in a
17 Commercial Zoning District and it's less than 25,000
18 square feet, which, again, would encompass a lot of
19 lots that meet the standard of 10,000, even though
20 this one does not, and the total area is less --
21 frontage of less than 100 feet -- we have 80 feet of
22 frontage -- and the lot does not abut a residential
23 district, the rear yard setback requirements shall
24 not apply and the side yard requirements shall apply

1 to only one side.

2 So, our proposed addition shall have a
3 side yard setback of 19 feet on one side, on the say
4 I'll call it the left side, which I believe that's
5 the southerly side of the building, one foot on the
6 opposite side or on the northerly side, where 15 and
7 zero feet is permitted. The rear yard setback shall
8 be 2.75 feet and 7.55 feet where zero is permitted.
9 The front yard setback shall remain unchanged as the
10 addition is being added to the side and rear portion
11 of the lot, although the front yard setback satisfies
12 the ordinance. No setback, lot coverage, or
13 dimensional relief is required under the ordinance
14 for the addition.

15 The nonconforming lot area is the sole
16 nonconforming dimensional issue for the locus.
17 Despite the fact that the proposed use as a business
18 office and garage are both permitted uses in a
19 Commercial Zoning District, and despite the fact that
20 the addition meets or exceeds the dimensional
21 setbacks of the ordinance, a special permit is
22 required under the ordinance and Mass. General Laws
23 to alter the nonconforming lot.

24 And the standard is set out in Chapter

1 40 --

2 MARK HICKERNELL: Sorry for
3 interrupting. You're not really altering the lot at
4 all.

5 ATTORNEY JOSEPH CONNORS: I'm not, no.
6 I'm altering --

7 MARK HICKERNELL: You're altering
8 nothing. You're taking an undersized lot and putting
9 an allowed use on it.

10 ATTORNEY JOSEPH CONNORS: Well, that's
11 certainly an argument, yes. I mean you would see
12 that -- there's actually a provision in the code that
13 says that you can do anything with a pre-existing
14 nonconforming building provided that you don't
15 increase its nonconforming nature. So, that's kind
16 of the debate because what is increasing its
17 nonconforming nature? Obviously, my lot size is my
18 lot size is my lot size. It's never going to change.
19 So, there's an argument to say that I'm not affecting
20 its nonconformity at all. But it was -- I mean
21 you've seen the *Bjorklund* cases and the *Bransford*
22 cases which address residential properties, not
23 commercial properties. But, in that case, they
24 talked about if you were adding some structure to a

1 nonconforming lot, there's an argument that you
2 needed a special permit at the Zoning Board of
3 Appeal. So, but my alteration is simply that I'm
4 adding what's permissible under the dimensional
5 requirements of the Zoning Ordinance, but I'm doing
6 it onto a lot that is nonconforming.

7 But, under Chapter 40A, Section 6, you
8 know, in I think Section 6 they talk about uses and
9 they talk about structures, but they also talk about
10 land. And I'm altering the land, which is
11 nonconforming, not the structure. The structure is
12 not nonconforming and the nonconforming use is going
13 to be eliminated. But, Chapter 40A, Section 6 states
14 that it shall not be substantially more detrimental
15 than the existing use to the neighborhood.

16 So, this neighborhood is a Commercial
17 Zoning District. There's commercial uses across the
18 street. There's commercial uses down the street.
19 There's commercial uses abutting him. And there are
20 some residential uses as well. But, he'll be
21 eliminating so much of the residential use that's on
22 his lot. He'll be taking a driveway -- because right
23 now he has simply existing pavement, which he's been
24 using to keep his equipment there -- and he'll be

1 able to construct a garage and put his equipment
2 inside the garage, you know, to the extent that he
3 can, put as much equipment in there as possible, and
4 then he'll still have, you know, some other driveway
5 space that will store other equipment. And then
6 he'll -- I mean it's not shown on here -- but his
7 intention is to put up a nice fence and screen it and
8 enclose the property.

9 So, it's a Commercial Zoning District.
10 It's a commercial use. He's a businessman. He's
11 going to run his business or store -- run his
12 business office out of there, keep his equipment
13 there. And his work will be offsite, but this is a
14 use that is consistent with other commercial uses in
15 a Commercial Zoning District. It's our contention
16 that the use will be consistent with the commercial
17 nature of the neighborhood. There are many other --
18 there's other uses in the neighborhood. There's a --
19 down the street there's an oil company. What's the
20 name of that?

21 PASQUALE TORCASIO: Genove.

22 ATTORNEY JOSEPH CONNORS: Genove,
23 which is just down the street, two lots down. They
24 store their trucks there, but they do it just on the

1 open lot. So, here he is, he's trying to, you know,
2 enclose it in a garage. But there are other
3 commercial uses and business uses in this Commercial
4 Zoning District. He's going to take existing paved
5 area. He's going to enclose it to allow him to keep
6 his bigger equipment inside, and then enclose it with
7 a screened fence.

8 So, we believe that it's not
9 detrimental to the neighborhood at all. It's
10 consistent with what is going on in the neighborhood
11 already. And, not only that, but he's going to
12 convert it from what's nonconforming to what is
13 conforming because it's a commercial use in a
14 commercial neighborhood.

15 Now, there are some residences down
16 there, but, you know, they're the nonconforming uses.
17 And so he's trying to do what's conforming here.
18 Across the street there are other conforming uses.
19 And there's many other types, similar type of uses in
20 this particular neighborhood where we have
21 contractors who keep their equipment in this
22 Commercial Zoning District.

23 So, it's our contention that it's not
24 a detriment to the neighborhood at all. It's

1 consistent with the nature of the neighborhood. And
2 it will also allow him to enclose the equipment that
3 he does have, that he does presently store in the
4 open air, in an enclosed structure that will make it
5 look more professional and tidy for him and for the
6 neighborhood. So, we believe that this is going to
7 improve this particular lot. It will eliminate
8 nonconforming uses. And, other than that, it's
9 consistent with everything else that's going on there
10 today, but it will allow him to maintain everything
11 inside, contained, safe, and screened from the
12 street.

13 So, it's our contention that it's not
14 substantially more detrimental to the neighborhood
15 than what's there now. The lot size itself is not
16 going to change. It's been like that since 1877 at
17 least. And the lot hasn't really posed a problem.
18 It's just what he's constructing on there. And this
19 is simply a garage. And that's what it will be used
20 as, a commercial garage.

21 So, that's I think our case. Mr.
22 Torcasio did have some renderings of what it would
23 look like. I mean it's a simple garage.

24 And, as I said, he purchased the

1 property in 2013 with the desire to run his business
2 out of there. He thought he was doing the right
3 thing by buying in a Commercial Zoning District to
4 run his commercial business. So, we feel that it is
5 a Commercial Zoning District. There's other
6 commercial uses in this particular neighborhood. And
7 this will be consistent with those.

8 BARBARA RANDO, CHAIR: Did I see three
9 new townhouses built on that street, too, across the
10 street, 40, 40A, 40B?

11 PASQUALE TORCASIO: They're renovated.

12 BARBARA RANDO, CHAIR: Renovated
13 townhouses. Very nice. Almost right across from --

14 ATTORNEY JOSEPH CONNORS: Yeah, I mean
15 I think that there -- like I said, there are some
16 residential properties down there. But, again, it's
17 in a residential -- I mean it's in a Commercial
18 Zoning District. So, he's trying to do what's
19 permitted by right in the Commercial Zoning District.
20 And, you know, you can't have that, you know,
21 residential uses that are there. He's trying to
22 eliminate one to make it conform, to use it for what
23 he thought it was intended for.

24 So, I mean I understand that there are

1 residences down there, but that's why he wants to
2 build a garage so the effect that he's going to have
3 on the residences is going to be minimized because
4 he's going to contain his equipment and materials
5 inside.

6 BARBARA RANDO, CHAIR: I was stuck
7 down there for a good half hour trying to get out of
8 there because the big oil trucks came from down at
9 the end. So now your trucks are parked in one
10 section. There are cars along the street. And then
11 the oil company, Geno --

12 PASQUALE TORCASIO: Genove.

13 BARBARA RANDO, CHAIR: -- Genove, was
14 there. And a couple of their trucks tried to come
15 in. I don't know where they were going to go.

16 PASQUALE TORCASIO: Probably going to
17 go down here.

18 BARBARA RANDO, CHAIR: Yeah, I don't
19 know how they'd fit there, but I was stuck there for
20 half an hour trying to get out of there. But my
21 problem is with 3.7222, "altered or enlarged in that
22 use to an extent not exceeding 10 percent of the
23 ground floor area of the building or area of land
24 used." The area of land that you're going to use,

1 and I haven't done any figures, but it certainly
2 looks a heck of a lot more than 10 percent.

3 ATTORNEY JOSEPH CONNORS: I agree. I
4 agree. And I would say that I mean that -- I believe
5 that -- my contention is that that applies to a
6 nonconforming structure. And so my structure is
7 going to conform. And so the only alteration I'm
8 making is that I'm adding something to a lot that's
9 undersized. But, other than that, it meets every
10 requirement of the dimensions of the Zoning Code.
11 So, the alteration is to the land and not to the
12 structure. The structure itself is conforming. It's
13 not nonconforming. It's the lot that's
14 nonconforming. So, my alteration is only because I'm
15 building on a nonconforming lot.

16 MARC RUDNICK: You're arguing that the
17 structure is conforming.

18 ATTORNEY JOSEPH CONNORS: Yes.

19 MARC RUDNICK: It's the use of the
20 structure that's nonconforming.

21 MARK HICKERNELL: No, it's all
22 conforming.

23 GLENNA GELINEAU: It's all conforming.

24 MARK HICKERNELL: It's just the lot

1 size.

2 ATTORNEY JOSEPH CONNORS: If I
3 eliminate the single-family, then the structure
4 itself --

5 MARC RUDNICK: No, I mean the --

6 BARBARA RANDO, CHAIR: You're not
7 eliminating the single-family. You're turning that
8 into an office, aren't you?

9 ATTORNEY JOSEPH CONNORS: Right.
10 Right. So, I'm not -- I'm converting a nonconforming
11 use into a conforming use. But the structure itself
12 is not nonconforming. It's the lot size that's --

13 MARC RUDNICK: When you say the
14 structure, are you talking about the garage or the
15 house?

16 ATTORNEY JOSEPH CONNORS: I'm talking
17 about the -- either/or. The structure of the house
18 is not nonconforming.

19 MARC RUDNICK: The house?

20 ATTORNEY JOSEPH CONNORS: The
21 structure, the footprint of the house.

22 MARC RUDNICK: So you're agreeing with
23 what I said before. The house, the structure, is
24 conforming.

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1 ATTORNEY JOSEPH CONNORS: Yes.

2 MARC RUDNICK: The use is
3 nonconforming.

4 ATTORNEY JOSEPH CONNORS: Yes.

5 MARC RUDNICK: The garage would be
6 completely conforming --

7 ATTORNEY JOSEPH CONNORS: Yes.

8 MARC RUDNICK: -- in use?

9 ATTORNEY JOSEPH CONNORS: Yes.

10 MARC RUDNICK: And also in structure
11 you say?

12 ATTORNEY JOSEPH CONNORS: Yes.

13 MARC RUDNICK: Thank you.

14 ATTORNEY JOSEPH CONNORS: So, I mean I
15 think this is a unique case where you have, you know,
16 an undersized lot, but everything we're doing,
17 everything conforms to the zoning setback and the
18 uses are all conforming. So, but the Building
19 Inspector was of the opinion that I needed a special
20 permit to do this.

21 BARBARA RANDO, CHAIR: And did he
22 mention 3.7222?

23 ATTORNEY JOSEPH CONNORS: Right. But
24 I mean that's -- it says right there you can alter

1 it.

2 BARBARA RANDO, CHAIR: Why would he
3 mention that if he agreed with your nonconforming
4 argument?

5 ATTORNEY JOSEPH CONNORS: Well, he was
6 simply saying that I need permission under 3.7222 to
7 alter it. He wasn't --

8 BARBARA RANDO, CHAIR: Ten percent.

9 ATTORNEY JOSEPH CONNORS: He wasn't
10 holding me to the 10 percent.

11 BARBARA RANDO, CHAIR: I don't know
12 about that.

13 MARK HICKERNELL: I don't think 3.7222
14 applies at all, frankly. I think you've got a -- as
15 soon as you abandon the residential use and you've
16 got a commercial building, you can build. And the
17 only issue we have is something I'm not positive the
18 code envisioned, which is what are you going to do if
19 it's an undersized commercial lot. This may be the
20 closest thing the Building Inspector could find, but
21 I don't think 3.7222 applies.

22 ATTORNEY JOSEPH CONNORS: Well, I mean
23 it comes out of 40A, Section 6, which talks about
24 nonconforming land, structures, and uses. So, in

1 this case, I only have the nonconforming piece of
2 land.

3 MARK HICKERNELL: Right. But then it
4 doesn't say what -- and then it talks about
5 structures and uses after that. It doesn't talk
6 about what you do with the nonconforming land.

7 ATTORNEY JOSEPH CONNORS: Right. It
8 doesn't. You know, so you kind of have to -- I mean
9 it doesn't make sense to bring it into the first
10 sentence and then to ignore it in the second. I mean
11 I think it was just poor drafting, that they intended
12 to apply it to land as well. But I mean I would say
13 that under the code, it says under 3.72251, "Existing
14 nonconforming structures used for commercial and
15 industrial purposes may be altered or rehabilitated
16 as a matter of right if set alteration or
17 rehabilitation does not exceed the floor area of the
18 existing structure," which I guess would. But the
19 floor area ratio doesn't apply to this lot because
20 it's exempt. But then it goes on to say, "Provided
21 it does not increase its nonconforming nature." So,
22 I think that's the question, you know. Does putting
23 the additional building, even though it's conforming,
24 does that increase its nonconforming nature?" And I

1 would argue that it doesn't because the lot size
2 remains consistent. But the Building Inspector was
3 of the opinion that I needed a special permit.

4 BARBARA RANDO, CHAIR: Is someone
5 living in that house now?

6 ATTORNEY JOSEPH CONNORS: Yes. Yes,
7 one person, a single individual.

8 BARBARA RANDO, CHAIR: Any other
9 questions, Mr. Sergi?

10 JOHN SERGI: Just I mean the lot was
11 created back in 1877. So, you're saying there was no
12 zoning, so this -- what was the zoning in 1877?

13 ATTORNEY JOSEPH CONNORS: They didn't
14 have zoning.

15 JOHN SERGI: They didn't have zoning.

16 ATTORNEY JOSEPH CONNORS: Right.

17 JOHN SERGI: There was no zoning.

18 ATTORNEY JOSEPH CONNORS: It was
19 created in --

20 JOHN SERGI: So, this lot was created
21 with no zoning, no intention in mind at the time
22 whether commercial, residential, or --

23 ATTORNEY JOSEPH CONNORS: Yeah, it
24 didn't apply. So, actually, on one of the exhibits I

1 did give you is -- I think I gave you the street
2 card. The street card is Exhibit D, which, you know,
3 it starts in 1923, but I mean you have to assume that
4 in April 30th, 1923, they gave him a permit to add a
5 sun porch in the front of the dwelling. So, we have
6 to presume that it was created prior to 1923 because
7 he was simply making an addition, you know.

8 JOHN SERGI: Right.

9 ATTORNEY JOSEPH CONNORS: But, at the
10 time, there was no restriction on residences or
11 commercial. There was simply no zoning at all. So,
12 they didn't adopt zoning until at least -- the first
13 adoption of zoning in the City was in 1925.

14 MARC RUDNICK: And in 1925 was this
15 lot made into a commercial lot at that point or --

16 ATTORNEY JOSEPH CONNORS: I don't
17 think so. I didn't look at 1925, but I don't think
18 so. I don't think it was until 1952 when they
19 rezoned this district because, you know, that's when
20 you have kind of they created the zoning district
21 down on Pelham Street where there were already pre-
22 existing residential properties. Because I did, I
23 went down the hall, and I checked. The December 1952
24 plan shows that this is a commercial zone in 1952.

1 JOHN SERGI: Can you show us that?

2 ATTORNEY JOSEPH CONNORS: That's right
3 down the hall.

4 JOHN SERGI: Oh, okay.

5 ATTORNEY JOSEPH CONNORS: But I did --
6 other than that, I --

7 JOHN SERGI: You could make it an
8 exhibit.

9 ATTORNEY JOSEPH CONNORS: Sure. I
10 could get a copy.

11 JOHN SERGI: Yeah, I think you should
12 make it an exhibit.

13 ATTORNEY JOSEPH CONNORS: But I mean
14 so I do think, and I can research prior to 1952,
15 because I'm assuming that it changed in '52 because
16 that's when I found that they changed that
17 neighborhood.

18 MARC RUDNICK: But we don't know what
19 -- it could have been a zone that allowed both
20 residential and commercial uses in the '25 version,
21 changed in the '52, or it could have been residential
22 changed to commercial in the '50s.

23 ATTORNEY JOSEPH CONNORS: Right.
24 Right.

1 JOHN SERGI: So, on this map that you
2 showed us, where's the lot? Can you --

3 ATTORNEY JOSEPH CONNORS: Sure.

4 JOHN SERGI: -- identify the lot for
5 me?

6 ATTORNEY JOSEPH CONNORS: Oh, yeah.
7 So, it's hard to read the Exhibit D because it's kind
8 of old writing. But if you go on Exhibit C, and then
9 it's drawn in, literally. On Williams Street,
10 there's a little line. So, it's Lot 23 and Lot 22.

11 JOHN SERGI: Oh, okay.

12 ATTORNEY JOSEPH CONNORS: So, this
13 portion of -- so it's the back half of 23 and it's
14 the full 22.

15 JOHN SERGI: This is here. This is --

16 ATTORNEY JOSEPH CONNORS: Yeah. So
17 what they did is they took the back half of 23 and
18 the full of 22 and put them together to create the
19 lot.

20 JOHN SERGI: All right. So, your
21 argument is that it's a nonconforming lot, pursuant
22 to the nonconforming lot, and it's under 25,000
23 square feet that it's given these additional
24 exemptions.

1 ATTORNEY JOSEPH CONNORS: Right. And
2 that would apply to any lot that's even conforming.
3 If it's a 10,000-square-foot lot, it has the same
4 exemptions.

5 JOHN SERGI: Right. Right. Okay.

6 ATTORNEY JOSEPH CONNORS: You know,
7 even if it was conforming. So, I mean we said well
8 what can we do on here to conform to zoning. And
9 this is kind of what we came up with. But I mean I
10 think, you know, it's fairly liberal. I admit that.
11 But it does conform to the zoning.

12 JOHN SERGI: That's all I have, Madam
13 Chair.

14 BARBARA RANDO, CHAIR: Mr. Hickernell,
15 any questions?

16 MARK HICKERNELL: Nothing to add to
17 what I said.

18 BARBARA RANDO, CHAIR: Ms. Gelineau?

19 GLENN GELINEAU: No, thank you.

20 BARBARA RANDO, CHAIR: Mr. Rudnick?

21 MARC RUDNICK: So, let's pretend for a
22 minute, Attorney Connors, that there's nothing on
23 this lot. It's an empty lot. And you want to build
24 the footprint plan that you're building. You meet

1 all the requirements except the substandard lot size?

2 ATTORNEY JOSEPH CONNORS: Right.

3 MARC RUDNICK: And you could build
4 this by right?

5 ATTORNEY JOSEPH CONNORS: Right.

6 MARC RUDNICK: As long as somebody
7 said the substandard lot size was okay.

8 ATTORNEY JOSEPH CONNORS: Right.

9 MARC RUDNICK: I guess I'm sort of
10 with Mr. Hickernell on this, that you have been
11 misled to come here for relief under 3.7222. So, the
12 first clause there is "altered or enlarged in that
13 use." These are rights of nonconforming structures,
14 uses, buildings, and land. So, we're calling one of
15 those a nonconforming structure, the land, the
16 building. And you're altering it. So, either we
17 have a lot that's -- whose use is currently
18 nonconforming, it's residential.

19 ATTORNEY JOSEPH CONNORS: Right.

20 MARC RUDNICK: And we want to alter or
21 enlarge it in that use, which we're not doing.

22 ATTORNEY JOSEPH CONNORS: Right.

23 MARC RUDNICK: I mean I understand you
24 want to return to the allowed use here.

1 ATTORNEY JOSEPH CONNORS: Right.

2 MARC RUDNICK: But it doesn't seem
3 like 3.7222 points you in that direction. It's about
4 altering things in the nonconforming use and
5 continuing the nonconforming use.

6 BARBARA RANDO, CHAIR: Are you stating
7 that the house is a nonconforming use?

8 MARK HICKERNELL: Yeah. Yes.

9 ATTORNEY JOSEPH CONNORS: Yeah, I
10 agree with that, yeah.

11 MARK HICKERNELL: I mean if you wanted
12 to make the house bigger, you'd --

13 MARC RUDNICK: Yes, this is a
14 commercial lot. Any house on it is a legally
15 nonconforming -- it could be illegal, but assuming
16 that it's legal in other ways, it's just a
17 nonconforming use.

18 BARBARA RANDO, CHAIR: Nonconforming.

19 MARC RUDNICK: Noncomplying.

20 ATTORNEY JOSEPH CONNORS: Right.

21 MARC RUDNICK: But, as a nonconforming
22 use, 3.7222 gives you the opportunity to alter or
23 enlarge the house in that use, residential. It also
24 gives you the opportunity to to alter -- obviously

1 you can't enlarge the lot, but you can alter the lot,
2 the land, but in that use. I'm just hung up on that
3 3.7222 only refers to changes within the use and not
4 changes of the use, even though I recognize that your
5 change of use would normally be an improvement to the
6 lot. You're going back to the use that's allowed on
7 the lot. So, what I would need from you, Attorney,
8 is a better sense of how in the -- how that use
9 applies in this case.

10 Then the second part of that first
11 clause is about the 10 percent --

12 BARBARA RANDO, CHAIR: Right.

13 MARC RUDNICK: -- which I have to
14 assume -- I mean I'll be very open to your arguments
15 about that -- but I have to assume that the City
16 Council would like the power to issue this special
17 permit, if it's issuable, because they issue the
18 permits over 10 percent of enlargement. We issue the
19 ones 10 percent and below.

20 ATTORNEY JOSEPH CONNORS: Well, that
21 has to do with FAR, which, again, the FAR doesn't
22 apply.

23 MARC RUDNICK: And we're not violating
24 the FAR.

1 ATTORNEY JOSEPH CONNORS: No.

2 MARC RUDNICK: It's not violated now
3 and we're not violating it under the new plan.

4 ATTORNEY JOSEPH CONNORS: No.

5 MARC RUDNICK: Correct?

6 ATTORNEY JOSEPH CONNORS: Correct.

7 MARC RUDNICK: Thank you. Yeah,
8 that's the weaker argument. Talk to me about the in
9 that use if you're ready to. I certainly don't mean
10 to pressure you to answer that now. It's a hard
11 question.

12 ATTORNEY JOSEPH CONNORS: Well, I mean
13 I think you have to -- if you go back to the
14 beginning, Section 7.22, it talks about rights of
15 nonconforming structures, uses, buildings, and lands,
16 you know, any use, structure, building, or land. You
17 know, so I think that it suggests that the alteration
18 may be done to land in those first two sentences and
19 then it kind of gets dropped in this 3.7222. And the
20 Zoning Ordinance has to be lead -- I mean read -- you
21 know, kind of consistently, or not even consistently,
22 but, you know, you have to assume that the intention
23 was to apply that to land as well as the uses part.
24 I'm altering the land. I'm not enlarging the use.

1 So, my alteration has to do with the land, which is
2 prefaced in 3.7222. And so it's my contention that
3 the alteration simply applies to the land and not to
4 the use whatsoever. And so my alteration conforms to
5 the zoning requirements for the ordinance.

6 But, other than that, I really can't
7 do anything here, you know, even though it's a by
8 right addition. You know, it meets all the
9 dimensional requirements of the ordinance, you know.
10 And it's a garage. An accessory use, an attachment
11 to a building, is permissible in a commercial zone.

12 MARK HICKERNELL: What does
13 nonconforming land even mean? I know what a
14 nonconforming building is and a nonconforming use is,
15 but I don't know what nonconforming land is.

16 ATTORNEY JOSEPH CONNORS: I would say
17 that it's land like this, that is -- if the lot area
18 requirement is 10,000 square feet, and I only have
19 69, then it's nonconforming land even though it was
20 created at a time when it was legal. So, when they
21 created it in 1877, it was legal to create lots that
22 were 6,900 square feet, but it's no longer legal.
23 You know, so they couldn't come out and say, "You
24 have to remove that house because the lot's

1 undersized." You'd say, "Well, yeah, it's undersized
2 on the lot, but the lot is legal because it was
3 created in 1877."

4 MARK HICKERNELL: I mean I appreciate
5 the desire to put some meaning to the caption of the
6 section and to the use of the word land in the first
7 sentence, but the rest of the entire section doesn't
8 apply at all to land. It doesn't say a thing. It's
9 silent on land.

10 ATTORNEY JOSEPH CONNORS: It is. I
11 agree with you. But I mean how can they bring it
12 into the first part of it and then not address it in
13 the second because it's talking about rights and
14 nonconforming buildings, use, and land?

15 MARK HICKERNELL: I see that.

16 ATTORNEY JOSEPH CONNORS: Right.

17 MARK HICKERNELL: But, as you
18 suggested, I think it's poor draftsmanship. I'm
19 certainly more comfortable with the silence than with
20 trying to figure out what they would have wanted us
21 to do with nonconforming land without any explicit
22 guidance, if this is nonconforming land.

23 ATTORNEY JOSEPH CONNORS: I mean under
24 3.71, it says that, you know, continuance of existing

1 buildings, no building, structure, or any land shall
2 be used except in conformity with the provisions of
3 this chapter. And, again, I would say under that
4 section my addition is conforming to the requirements
5 of the ordinance. So, it's the land is
6 nonconforming, but the proposed addition meets all
7 the dimensions, setback requirements. I mean that
8 would say that I'm allowed to do it as a matter of
9 right, but that's just not the opinion that the
10 Building Inspector has adopted.

11 MARK HICKERNELL: So, let's look. The
12 heading for Section 3.72 is simply Nonconforming
13 Buildings, Structures, and Uses. It doesn't actually
14 mention land until we get further in.

15 ATTORNEY JOSEPH CONNORS: Right.

16 MARK HICKERNELL: Do we know if that
17 was edited out at some point in living memory?

18 ATTORNEY JOSEPH CONNORS: No.

19 MARK HICKERNELL: So, I don't think
20 nonconforming land is really a term.

21 BARBARA RANDO, CHAIR: 3.722, "altered
22 or enlarged in that use to an extent not exceeding 10
23 percent of the ground floor area of the building or
24 area of land used at the time of the passage."

1 MARK HICKERNELL: Right. In that use.

2 BARBARA RANDO, CHAIR: And then it
3 goes on to say, "The ability to petition the Board of
4 Appeals for said 10 percent alteration or enlargement
5 shall not be construed to deny any owner of a
6 nonconforming structure," it must be the house, "the
7 additional right to seek a special permit from the
8 City Council to expand the present use to the maximum
9 FAR allowed by special permit."

10 ATTORNEY JOSEPH CONNORS: Which,
11 again, I would say that doesn't really apply because
12 FAR -- there is no FAR.

13 MARK HICKERNELL: And it's not a
14 nonconforming structure. It's a nonconforming use.
15 As soon as you abandon that use, it's conforming.

16 ATTORNEY JOSEPH CONNORS: Right. So
17 the FAR --

18 BARBARA RANDO, CHAIR: It's a
19 nonconforming structure now.

20 MARK HICKERNELL: No, it's a
21 nonconforming use. The structure is fine.

22 ATTORNEY JOSEPH CONNORS: A
23 nonconforming use.

24 BARBARA RANDO, CHAIR: Well, I don't

1 think we have --

2 MARC RUDNICK: There is no FAR because
3 they don't use FAR in this district?

4 ATTORNEY JOSEPH CONNORS: Because the
5 lot is exempt under Section 3.521 because it's so
6 small.

7 JOHN SERGI: I think we're getting
8 confused because we're trying to apply that section.
9 Maybe look at Section 4.1. It kind of clearly tells
10 you that if you have an undersized, you know, lot in
11 a commercial district that you're allowed to do what
12 you want to do, if I'm reading it correctly. Tell me
13 where I'm wrong.

14 ATTORNEY JOSEPH CONNORS: Where are
15 you at?

16 JOHN SERGI: 4.12 subparagraph 7 that
17 you cited, right?

18 ATTORNEY JOSEPH CONNORS: Right.

19 JOHN SERGI: Doesn't that address what
20 you can build in a Commercial District with an
21 undersized lot?

22 ATTORNEY JOSEPH CONNORS: Well, that
23 addresses the setbacks, you know.

24 JOHN SERGI: Correct.

1 ATTORNEY JOSEPH CONNORS: Right.

2 JOHN SERGI: What else would you want?

3 ATTORNEY JOSEPH CONNORS: The problem
4 with the Building Inspector is of the opinion that my
5 lot is undersized and nonconforming, and because I'm
6 making an addition on it I need a special permit.

7 JOHN SERGI: You know, I don't
8 understand how you can have a nonconforming lot
9 either. I'm sorry. I mean I asked that question
10 before I came here tonight.

11 ATTORNEY JOSEPH CONNORS: Well, I've
12 done this -- you know, unfortunately, I've done it
13 several times in the residential context, the
14 neighborhood up by you, what is it, the Golden Crest,
15 across the street. So, that subdivision upon on
16 Trapelo Road, just before you head into Lincoln on
17 the right side, there's approximately 60 lots out
18 there. They were created by a subdivision plan in
19 1952, in July. And, in December of '52, they changed
20 the lot area requirements to 15,000 square feet. The
21 majority of them are under 15,000. So, any time --
22 there's all these single-families that are built up
23 there. Any time you want to do an addition on it,
24 they bring it into the Zoning Board of Appeals

1 because your lot is undersized. And they say, "Well,
2 you know, I conform to all the setbacks." "Yeah, but
3 the lot's undersized."

4 MARK HICKERNELL: And what do they
5 send you to the Zoning Board to get, a permit or a
6 variance?

7 ATTORNEY JOSEPH CONNORS: To get a
8 special permit even though my setbacks were
9 conforming, you know. And I did have an occasion
10 where I appealed the decision of the Building
11 Inspector because I had a client that wanted to add a
12 detached two-car garage. And I said we're not
13 increasing its nonconforming nature because a two-car
14 garage is an improved garage to a single-family. And
15 he disagreed with that, so I had to come here. You
16 know, I mean I think that's kind of a similar
17 scenario where the Building Inspector has made people
18 seek a special permit for the sole reason that their
19 lot was undersized even though the proposed addition
20 would meet any setback requirements.

21 My problem is that, you know, I think
22 that the addition that he's proposing is for a
23 conforming use and for a conforming addition. But if
24 you can't get a permit to do it, then, you know, we

1 have a problem. So, that's what brings us here. I
2 mean the Building Inspector, even though we had this
3 discussion with him, they talked about land, and
4 really 3.7222 talked about land in the beginning and
5 then it kind of gets dropped under 3.722 subsequent
6 to that. But, I would say that we simply have to,
7 you know, it is poor draftsmanship. So, we have to
8 kind of read it consistently so that it makes sense.
9 And so the only thing that makes sense is to apply
10 that to this scenario, which is a nonconforming piece
11 of land.

12 I mean other than that, if you want to
13 render an opinion to the Building Inspector that I'm
14 entitled to it by right, I'd be happy with that, too.

15 JOHN SERGI: That's the tendency I'm
16 headed. I mean that's the direction I'm headed. I
17 don't see how you can apply that section. This
18 clearly spells it out.

19 BARBARA RANDO, CHAIR: Is there anyone
20 in the audience that is in opposition to this?

21 (No response.)

22 BARBARA RANDO, CHAIR: Seeing none.
23 Is there anyone seeking information?

24 (No response.)

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1 BARBARA RANDO, CHAIR: Seeing none.
2 Is there anyone that would like to stand in favor of
3 this petition?

4 ENRICO CORSETTI: Well, I'm in favor
5 of it.

6 BARBARA RANDO, CHAIR: Would you like
7 to go up and give your name and address?

8 ENRICO CORSETTI: I would like to
9 present my --

10 BARBARA RANDO, CHAIR: The people at
11 home can't hear you unless you're at the microphone.

12 ENRICO CORSETTI: I'd like to present
13 my question and then I'll let you hash it out.

14 STENOGRAPHER: Could you identify
15 yourself?

16 ENRICO CORSETTI: Enrico S. Corsetti.
17 So, I --

18 MARK HICKERNELL: Address?

19 ENRICO CORSETTI: Address is -- so I
20 live in West Newton, but I have a piece of property
21 on Felton Street. And it is a commercial area, being
22 a commercial area with the homes that are
23 nonconforming in the area. So, my question is, I've
24 been listening to all this. And I agree with Mr.

1 Sergi about how it is in the nonconforming land
2 because the City would have a serious problem. Yes,
3 the lot is undersized, but in 1877 it was built as a
4 legal lot, legal, no zoning whatsoever. So, then
5 comes zoning and now we have these issues. But we
6 have to go back to when it was created.

7 Okay. So, now, that brings the next
8 question. We have all these undersized lots, which
9 are commercial. What are we going to do; have the
10 City come and buy them all because we can't do
11 anything with them? So, there's another question
12 thrown out there.

13 But I would like to know one thing if
14 you could discuss with the attorney you keep bringing
15 up the question we're going to solve the problem
16 about the nonconforming house. So we're going to
17 make it an office. Now it's conforming. What would
18 happen if the house wasn't there, it was just a
19 vacant piece of land that was nonconforming and built
20 as a legal lot in 1877? Because then I think we
21 would now not have this issue about the house, and it
22 complies to all the FAR because there is no FAR
23 because of the lot size. Now you could build the
24 same footprint that is presented with the garage and

1 the house. So, I'm confused what the dilemma is, as
2 Mr. Sergi pointed out, on 4.1.

3 That's all. I mean, and as you
4 discussed --

5 JOHN SERGI: Is that the question you
6 had? You brought that up?

7 ENRICO CORSETTI: Well, I think you
8 brought up that the house being converted would now
9 be a nonconformity and it would be legal. We're
10 talking the nonconformity out of it. But, as you
11 mentioned, I mean the area dictates this. I know
12 we're looking for housing and affordable housing and
13 whatnot, and I truly believe the three condos that
14 were renovated was a very poor choice on the
15 developer because you have these yards, you have
16 contractors' yards, you have the oil company. And
17 he's trying to market them at \$310,000 apiece or
18 \$320,000. It's just, as from a business point,
19 because I'm also a builder, it was a poor decision to
20 try to put that right in the middle of that mess. I
21 mean it is a construction area. And we take pride --
22 at least we can park all our stuff inside. It's out
23 of sight. And what he's attempting to do, it's out
24 of sight, out of mind, and makes a cleaner area.

1 So, that's my question to the Board
2 and to the attorney to let you guys -- because if the
3 house is holding this up as a dilemma, which it's
4 going to be converted to an office, well, just tear
5 it down and build the same footprint brand new as one
6 building and it complies to all whatever you --
7 whatever zoning and building ordinances that the
8 Building Inspectional Services needs. And it's an
9 improvement to the property because it's -- I mean
10 it's a betterment no matter which way you look at it
11 because nobody in their right mind -- I mean, yes, if
12 someone is living there, yes. But to take 200 grand
13 and invest it in a piece of property to try to bring
14 the house to better the house, you're never going to
15 get your return back on your money. It's just not a
16 good use because when they changed the zoning in 1925
17 or whatever, or '52, when they changed the line on
18 Fenton Street, it just changed that. Contractors
19 went and that's where they make their living. And to
20 think that you're going to put a residential property
21 in there and try to get somebody to pay you \$1,600 or
22 \$1,800 a month, it's not going to happen. So, I mean
23 he's just trying to work out everything.

24 MARC RUDNICK: Thank you.

1 ENRICO CORSETTI: Thank you.

2 MARK HICKERNELL: So, what happens if
3 you knock down the house and put up a different
4 office?

5 ATTORNEY JOSEPH CONNORS: I really
6 wouldn't want to attempt that because I mean I think
7 that I'd have to -- I don't know. I don't know the
8 answer to that question because I wouldn't want to
9 knock it down and go down the hall and ask for a
10 permit and say, "Well, your lot's undersized." Then
11 I'd be into a battle as to whether or not I can even
12 construct a building on it because it's undersized.
13 And I'd have to go back. I'd probably have to appeal
14 the decision there to your Board to say that it's a
15 pre-existing nonconforming lot.

16 BARBARA RANDO, CHAIR: You never
17 discussed that with the Building Inspector?

18 MARC RUDNICK: That was my question,
19 too. Did you have any arguments with Patrick about
20 this?

21 ATTORNEY JOSEPH CONNORS: About if it
22 was a vacant lot?

23 MARC RUDNICK: No, that 3.7222 wasn't
24 correct?

1 ATTORNEY JOSEPH CONNORS: He was of
2 the opinion that I could come here on the 3.7222
3 because he says I'm altering the land. You know, and
4 it's only the land that's altered.

5 BARBARA RANDO, CHAIR: Was this
6 Patrick or --

7 ATTORNEY JOSEPH CONNORS: Both of them.
8 I had a discussion with both of the --

9 BARBARA RANDO, CHAIR: Well, you came
10 before us before, and the house was an issue at that
11 time also.

12 ATTORNEY JOSEPH CONNORS: No, I
13 didn't.

14 MARK HICKERNELL: That was Mr.
15 McCourt.

16 ATTORNEY JOSEPH CONNORS: That was Mr.
17 McCourt.

18 BARBARA RANDO, CHAIR: Sorry. Sorry.

19 MARC RUDNICK: I mean it's hard to be
20 in the Building Inspector's head, you know. The way
21 this looks to me is certainly that they want you
22 under 3.7222 because of the building, because of the
23 house.

24 ATTORNEY JOSEPH CONNORS: Right.

1 MARC RUDNICK: You know, I mean I'm
2 just a dumb carpenter. I'm not a building inspector.
3 I probably would have said you need a variance for
4 lot size and you need a 3.7222 special permit in
5 order to reuse the house because you are altering the
6 house. I'm not sure if it would have complied
7 because then we're back to you're not altering in the
8 use.

9 ATTORNEY JOSEPH CONNORS: Right. I
10 mean I think that Chapter 40A, Section 6 talks about
11 this scenario where I'm altering a nonconforming
12 property.

13 MARK HICKERNELL: So, let's go to
14 that. Which part are you -- I think it's got the
15 same problem that the code has is it sort of talks
16 about land and then sort of drops off on the land
17 thing.

18 ATTORNEY JOSEPH CONNORS: Well, it
19 talks about pre-existing nonconforming structures or
20 uses may be extended and altered.

21 MARK HICKERNELL: Right.

22 ATTORNEY JOSEPH CONNORS: But I mean
23 there are cases that say that, you know, the fact
24 that they -- it applies to any nonconforming nature

1 not just the structures and uses. Otherwise, the
2 intent of the draft just doesn't make sense. So, I
3 would say that it applies to the lot because it is
4 nonconforming. It is a nonconforming lot.

5 And there was a case that I found out
6 of Cambridge where they talked about -- I mean it's a
7 little bit -- it's not exactly on point because it
8 talks about the Cambridge Zoning Ordinance where I
9 think the Building Inspector issued a permit and then
10 the Court or the Zoning Board was of the opinion that
11 they needed a special permit from the Zoning Board of
12 Appeals to convert even from one conforming use to
13 another conforming use.

14 So, I would say my case is different
15 because I'm converting it from a nonconforming use to
16 a conforming use. But, in that case, they found that
17 the Zoning Board of Appeals needed to approve it
18 under 40A, Section 6 in the local Cambridge
19 Ordinance, which is different than our ordinance.
20 But it was just a case that I could give you to kind
21 of -- it's the only thing I could kind of find by
22 analogy that when I'm converting it to a conforming
23 use and a conforming structure as opposed to
24 nonconforming.

1 So, I mean on page three and four I
2 think it says, "When, however, a nonconforming
3 structure is altered to provide for a use different
4 from the use prior to the alteration, the ordinance
5 applies even if the new use is a permitted one." So,
6 I mean they were just saying that the ordinance
7 applies and you needed to get a special permit,
8 although the criteria in Cambridge was different than
9 what we have in Waltham. But I mean if I could get
10 the building permit without the approval of the
11 Zoning Board, then, you know, certainly I would have.
12 But he was of the opinion that I needed it under
13 3.7222. And I mean I recognize what you're saying is
14 it doesn't exactly talk about land, but I think in
15 the preface of 3.7222 it talks about land. And,
16 certainly, the land itself has rights because it's a
17 grandfathered piece of land. And so if he's going to
18 make an addition onto it, which meets all the
19 dimensional requirements of the ordinance, and if the
20 proposed use meets all the use requirements of the
21 ordinance, you know, why shouldn't he be allowed to
22 do it?

23 JOHN SERGI: So, what right are we
24 granting by giving you a special permit? I don't

1 understand.

2 ATTORNEY JOSEPH CONNORS: A special
3 permit to alter a nonconforming piece of land by
4 making an addition that conforms to the -- I don't
5 need any dimensional setback variances. I don't need
6 a variance.

7 JOHN SERGI: But it is not
8 nonconforming land. It is conforming, right?

9 ATTORNEY JOSEPH CONNORS: Well, the
10 addition will meet all the setbacks, conforming to
11 the setback requirements. The special permit is
12 because the lot is only 6,932 and not 10,000 square
13 feet. So that's why I need relief because my lot is
14 not 10,000 square feet. You know, there certainly
15 could be an argument to say that, yeah, if the lot's
16 grandfathered and your addition meets all the setback
17 requirements you don't need any relief. But, like I
18 said, if I could have gotten a permit, I would have
19 gotten one. But they weren't issuing one.

20 BARBARA RANDO, CHAIR: All right. Are
21 we ready to make a motion to keep the public meeting
22 open and allow for further input or information at
23 this time? I'll make that motion because I find it
24 confusing.

1 MARC RUDNICK: I'm just wondering,
2 Madam Chair, if we are going to wind up going to the
3 Law Department to ask for clarification of these
4 poorly written ordinances, I'd rather do that today
5 than wait till the month-and-a-half from now when
6 we've continued it --

7 BARBARA RANDO, CHAIR: Good point.

8 MARC RUDNICK: -- and have to continue
9 it again.

10 BARBARA RANDO, CHAIR: Good point.

11 MARC RUDNICK: So, I'm not necessarily
12 saying we are. But, if we are, I think we owe it to
13 the applicant to do that, you know, more quickly.

14 BARBARA RANDO, CHAIR: I am willing to
15 do that to save time. I'd be willing to make that
16 motion that we ask the Law Department how they think
17 3.7222 affects this petition if at all.

18 JOHN SERGI: If at all, right.

19 BARBARA RANDO, CHAIR: I have that
20 motion on the table. Do I have a second?

21 MARK HICKERNELL: Which is the motion
22 on the table now?

23 MARC RUDNICK: Could you restate that?

24 JOHN SERGI: Yeah, just restate it.

1 BARBARA RANDO, CHAIR: A motion to ask
2 the Law Department for their opinion on 3.7222 and
3 how this affects, if at all affects this case. If
4 you'd like to phrase it differently --

5 MARK HICKERNELL: How it applies to
6 the petition.

7 JOHN SERGI: Yeah, how it applies or
8 not applies.

9 BARBARA RANDO, CHAIR: How does it
10 apply or not apply. All right. How does it apply or
11 not apply to this petition.

12 JOHN SERGI: And can it be viewed as a
13 by right.

14 BARBARA RANDO, CHAIR: And can it be
15 viewed as a by right. Is that what you're ask --
16 want me to --

17 JOHN SERGI: Yeah, I guess, with the
18 non -- well, I don't even know.

19 BARBARA RANDO, CHAIR: Is it by right
20 --

21 MARC RUDNICK: He has a substandard
22 lot for the use that they're requesting.

23 BARBARA RANDO, CHAIR: Yeah.

24 MARC RUDNICK: So, there is no by

1 right. They can go and buy the next lot and make a
2 bigger lot and then go and get a building permit
3 tomorrow because they'll have adequate lot size and
4 they won't need anything under 3.7222.

5 JOHN SERGI: But it's a legally
6 existing lot, right?

7 MARC RUDNICK: You know, this is a
8 difficult argument. It's a legally existing lot from
9 before zoning that has been a residential use
10 continuously as far as we can see back. We can't see
11 back before the building card, but that's already a
12 century ago it's been a residential lot.

13 BARBARA RANDO, CHAIR: Yeah.

14 MARC RUDNICK: So, even though the use
15 that these gentlemen want is allowed and essentially
16 is the preferred use in this district, it still
17 doesn't mean that they're conforming because their
18 lot is too small for that. I mean, you know, if they
19 were coming and asking for a variance on lot size,
20 you know, I don't see why we wouldn't be granting
21 that already. But, unfortunately, they're not coming
22 for that.

23 ATTORNEY JOSEPH CONNORS: Well, I
24 think he asked for that before and it was denied.

1 MARC RUDNICK: Oh, it was denied?
2 Well, I wasn't here.

3 ATTORNEY JOSEPH CONNORS: And the
4 argument was that, you know, an undersized lot is not
5 a basis. It's not a hardship because I think at that
6 point he was going to just knock down the house and
7 start again.

8 MARC RUDNICK: I see.

9 ATTORNEY JOSEPH CONNORS: So, I mean -
10 -

11 BARBARA RANDO, CHAIR: But they said
12 that the house made it the hardship not there because
13 you could have made money with the house.

14 ATTORNEY JOSEPH CONNORS: You know, so
15 we didn't have success there because the argument was
16 that the undersized lot is not a hardship, which is,
17 you know, probably true.

18 MARC RUDNICK: Okay.

19 ATTORNEY JOSEPH CONNORS: So, we have
20 to work with what we have. And if we knock it down,
21 then he's going to have problems.

22 BARBARA RANDO, CHAIR: All right.
23 That motion is on the floor. It will have to be
24 written a little bit clearer, but to get an opinion

1 from the Law Department.

2 MARC RUDNICK: I think the question is
3 is the Board within its right to --

4 JOHN SERGI: Grant a special permit.

5 MARC RUDNICK: -- grant this project
6 based on a special permit under 3.7222.

7 JOHN SERGI: Yeah.

8 MARC RUDNICK: I mean the question to
9 me is, you know, I think there's a lot of sympathy
10 here to try and move this toward a conclusion. But,
11 you know, we don't want this challenged by an abutter
12 either or anybody else who is going to say, "You
13 didn't have the right to grant that..."

14 BARBARA RANDO, CHAIR: Right.

15 MARC RUDNICK: "...specifically because
16 you're not in that use anymore," that use being the
17 nonconforming use.

18 BARBARA RANDO, CHAIR: And I do agree
19 it would be an improvement to the -- I do agree to
20 that.

21 MARC RUDNICK: And I would even expand
22 the question to say if, in fact, the Board does not
23 have the right to use 3.722 to grant this project,
24 how can this -- what relief is available to the

1 Zoning Board in this case because it seems like
2 combining 3.7222 to apply to the building and a
3 variance for the lot size would accomplish that. I
4 mean I would hate to make you leave and ask for both,
5 but if that's what the Law Department said would make
6 it happen, I assume your client would be happy. If
7 the Law Department says, "You cannot issue under
8 3.722," we're done. We can't issue. So, I'd rather
9 I ask the Law Department to give us an alternative as
10 well since you weren't given an alternative by the
11 Building Department. So, that's my friendly
12 amendment to your question, Madam Chair.

13 BARBARA RANDO, CHAIR: All right. So,
14 are you seconding the amendment with the friendly
15 amendment?

16 MARC RUDNICK: Yes.

17 BARBARA RANDO, CHAIR: I mean motion
18 with the friendly amendment added?

19 MARC RUDNICK: Yes.

20 BARBARA RANDO, CHAIR: All right. I
21 have a motion and I have a second.

22 How do you vote Mr. Sergi?

23 JOHN SERGI: I agree with that.

24 BARBARA RANDO, CHAIR: Mr. Hickernell?

1 MARK HICKERNELL: Out of curiosity and
2 the desire to have another voice added to what is a
3 strange question, I'll vote yes.

4 BARBARA RANDO, CHAIR: Ms. Gelineau?

5 GLENN GELINEAU: No.

6 BARBARA RANDO, CHAIR: Mr. Rudnick?

7 MARC RUDNICK: Yes.

8 BARBARA RANDO, CHAIR: And the Chair
9 votes yes. So, we will get an opinion from the Law
10 Department and we will continue this to -- you could
11 come on the 8th with the last case.

12 ATTORNEY JOSEPH CONNORS: That's fine.
13 Are you available March 8th?

14 MARK HICKERNELL: Is that what we just
15 --

16 BARBARA RANDO, CHAIR: That's what I
17 think we decided we --

18 MARC RUDNICK: Ash is on the 8th, yes.

19 BARBARA RANDO, CHAIR: I'm sorry?

20 MARK HICKERNELL: We scheduled Ash,
21 the last one today?

22 BARBARA RANDO, CHAIR: Yes. Yes,
23 2015-21 is on the 8th. All right.

24 I have a motion to continue Case 2015-

1 26 to March 8th.

2 JOHN SERGI: Seconded.

3 BARBARA RANDO, CHAIR: I'm sorry?

4 JOHN SERGI: Seconded.

5 BARBARA RANDO, CHAIR: All right.

6 Mr. Sergi, yes?

7 JOHN SERGI: Yes.

8 BARBARA RANDO, CHAIR: Mr. Hickernell,

9 yes?

10 MR. HICKERNELL: Only because I'm not
11 quite sure how I would vote right now.

12 BARBARA RANDO, CHAIR: How you would
13 what?

14 MR. HICKERNELL: How I would vote
15 right now. I'll vote yes.

16 BARBARA RANDO, CHAIR: Ms. Gelineau?

17 GLENNA GELINEAU: Yes.

18 BARBARA RANDO, CHAIR: And, Mr.

19 Rudnick?

20 MARC RUDNICK: I'm pretty confused
21 here, but I'll say yes.

22 BARBARA RANDO, CHAIR: Yeah. Yeah, I
23 am, too.

24 All right. Thank you very much.

1 We'll see you on March --

2 PASQUALE TORCASIO: Is Mr. Logan going
3 to be available March 8th?

4 BARBARA RANDO, CHAIR: I'm sorry?

5 PASQUALE TORCASIO: Is Mr. Logan going
6 to be available March 8th?

7 JOHN SERGI: It doesn't matter. If
8 he's available, he's available.

9 BARBARA RANDO, CHAIR: We'll have the
10 opinion from the Law Department.

11 ATTORNEY JOSEPH CONNORS: Thank you.

12 MARC RUDNICK: He'll certainly learn
13 that that's the date of the case.

14 BARBARA RANDO, CHAIR: Any information
15 that you receive, make sure that we get it if it was
16 sent to you.

17 JOHN SERGI: Motion to adjourn.

18 MARK HICKERNELL: Second.

19 BARBARA RANDO, CHAIR: All in favor?

20 ALL BOARD MEMBERS: Aye.

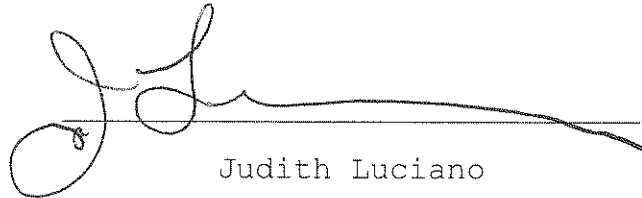
21 BARBARA RANDO, CHAIR: Opposed?

22 (No Board Members opposed.)

23 BARBARA RANDO, CHAIR: We're adjourned
24 at -- I can't see it -- 9:05. Thank you.

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.



Judith Luciano

