

FOR THE  
CITY OF WALTHAM  
ZONING BOARD OF APPEALS

GENERAL HEARING

February 3, 2015

7:00 P.M.

at

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

Barbara Rando, Chair  
Mark Hickernell, Clerk  
Michael Cotton  
Glenna Gelineau  
John Sergi

Arlington Reporting Corporation  
(339) 674-9100

Waltham Zoning Board of Appeals/2-3-15/2

**I N D E X**

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**A T T A C H M E N T S**

Legal Notices: Case No. 2013-14  
Case No. 2014-32  
Case No. 2015-01

Case No. 2014-32:  
Proposed Findings of Fact and  
Proposed Decision, as Amended

Case No. 2015-01:  
Document Plans  
Exhibit A: Street Card  
Exhibit B: Map  
Exhibit C: Rendering of Previous Home  
Exhibit D: Building Department Letter  
Proposed Findings of Fact and  
Proposed Decision, as Amended

1 P R O C E E D I N G S

2 BARBARA RANDO, CHAIR: Good evening.  
3 The Zoning Board of Appeals for Tuesday, February 3<sup>rd</sup>  
4 is called to order at 7:00 p.m.

5 Tonight we have Case 2014-32, 88  
6 Willow Street, for a customary home occupation;  
7 Case 2015-01, that's 45 Charles Street  
8 for variances;

9 and Case 2013-14 for an extension of  
10 time.

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1           ACCEPTANCE OF MINUTES OF JANUARY 13, 2014 MEETING

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          BARBARA RANDO, CHAIR: The first  
4 action this evening is for a motion to accept the  
5 minutes of January 13<sup>th</sup>.

6

          JOHN SERGI: So moved, Madam Chair.

7

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

9

          Do I have a second?

10

          MICHAEL COTTON: Second.

11

          BARBARA RANDO, CHAIR: Second by Mr.  
12 Cotton.

13

          All in favor?

14

          ALL BOARD MEMBERS: Aye.

15

          BARBARA RANDO, CHAIR: Opposed?

16

          (None opposed.)

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

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PUBLIC HEARING

**Case Number 2013-14: 118-120 Willow Street Realty Trust, Yuriy and Inna Babayan, Trustees**

BARBARA RANDO, CHAIR: Would the Clerk please read the petition in Case 2013-14, Yuriy and Inna Babayan? Is that how you pronounce it? Go ahead.

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

BARBARA RANDO, CHAIR: Thank you. May we hear from the Petitioner or the Petitioner's representative please? Is anyone here for 118-120 Willow Street?

MARK HICKERNELL: Madam Chair, since there's a meeting upstairs, I make a motion that we look and see if the Petitioner is upstairs.

BARBARA RANDO, CHAIR: Oh, right. Could be.

MARK HICKERNELL: Could we take a five-minute recess or a two-minute recess? I'll make that motion.

BARBARA RANDO, CHAIR: A motion was

1 made for a five-minute recess to go upstairs to see  
2 if the attorney may be upstairs, or the Petitioner.

3 JOHN SERGI: Second.

4 BARBARA RANDO, CHAIR: Second by Mr.  
5 Sergi.

6 All in favor?

7 ALL BOARD MEMBERS: Aye.

8 BARBARA RANDO, CHAIR: Opposed?

9 (None opposed.)

10 BARBARA RANDO, CHAIR: The ayes have  
11 it. Five-minute recess.

12 (Whereupon, a five-minute recess was taken off the  
13 record.)

14 BARBARA RANDO, CHAIR: Whenever you're  
15 ready. Do you want to get into --

16 ATTORNEY STEVEN PARNAGIAN: No, no,  
17 I'm fine. I'm fine.

18 Good evening. My name is Steven  
19 Parnagian. I am the attorney for the Trustees of  
20 118-120 Willow Street Realty Trust. And I apologize  
21 for my tardiness today, members of the Board. Stuck  
22 in traffic.

23 I'm here before you this evening to  
24 request a further extension of the expiration

1 deadline, which was extended last August to February  
2 22 of this month. Not to bore you, but we were  
3 before the Board last year. Actually, we were before  
4 the Board in, yeah, in August of 2013 where the Board  
5 granted a variance on several matters to allow this  
6 two-story building, which is mixed-use. The top  
7 floor is a residential apartment. The bottom floor  
8 is commercial use. It used to be a convenience  
9 store, I believe, and a liquor store at some point.  
10 And we requested relief with respect to the FAR and  
11 parking and the minimum lot size, which the Board  
12 granted. We were given one year to obtain the  
13 permit, and the special -- the building permit, as  
14 well as the special permit from the Council to allow  
15 for a complete residential use. We filed the  
16 application for the special permit with the Council  
17 and were heard on May 27 of last year.

18 Since that time, the matter was placed  
19 with the Ordinances and Rules Committee. And in July  
20 of last year, there was one objection raised with  
21 respect to the special permit that was filed with the  
22 City Council, and that was by the Public Works  
23 Department because we had requested a curb cut to  
24 allow parking on both sides. That objection was

1 addressed and resolved and they did provide the Board  
2 with a copy of the approval of the plan for the curb  
3 cut, which was approved by Mr. Chiasson.

4 So, that sole objection for the  
5 request for a special permit to allow complete  
6 residential use has been resolved. The problem is --  
7 and I was alerted by the chairman of the Ordinances  
8 and Rules Committee back in May of 2014 that this  
9 special permit would take some time -- there were  
10 several priority matters before us in line with  
11 respect to the Law Department. And he had warned me  
12 that it would take some time.

13 We were before the Committee in  
14 October of last year to provide them an update as to  
15 what went on with Mr. Chiasson. And, at that time,  
16 we were just told, you know, "Thank you for the  
17 update. We'll get back to you." And that's where we  
18 stand at this point. I have been pursuing it with  
19 the Law Department and the Committee, but we're  
20 basically waiting our turn in the line.

21 And with the extension I was granted  
22 by this Board last August -- excuse me -- yeah, last  
23 August that would expire this February 22, so I come  
24 before the Board again to request an additional six-



1 month extension with the hope and anticipation that  
2 it would be the last extension that I request. But  
3 it's really we're at the mercy of the Law Department  
4 and the Committee in getting that through. So that's  
5 why I'm here tonight.

6 BARBARA RANDO, CHAIR: Any questions  
7 from Board members for the attorney?

8 JOHN SERGI: No.

9 BARBARA RANDO, CHAIR: None?

10 MICHAEL COTTON: No, thank you.

11 BARBARA RANDO, CHAIR: Hearing none,  
12 I'm ready to entertain a motion to extend the time  
13 for Case 2013-14 to -- what is it -- August.

14 JOHN SERGI: So moved, Madam Chair.

15 BARBARA RANDO, CHAIR: August 18.

16 JOHN SERGI: So moved, Madam Chair.

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

19 MICHAEL COTTON: I'll second that.

20 BARBARA RANDO, CHAIR: Second by Mr.  
21 Cotton.

22 How do you vote, Mr. Sergi?

23 JOHN SERGI: Yes.

24 BARBARA RANDO, CHAIR: Mr. Hickernell?

1 MARK HICKERNELL: Yes.

2 BARBARA RANDO, CHAIR: Ms. Gelineau?

3 GLENNA GELINEAU: Yes.

4 BARBARA RANDO, CHAIR: Mr. Cotton?

5 MICHAEL COTTON: Yes.

6 BARBARA RANDO, CHAIR: And the Chair

7 votes no.

8 Now, do I have a motion to extend the  
9 100 days on Case 2013-14 to October 1<sup>st</sup>, 2015?

10 JOHN SERGI: So moved, Madam Chair.

11 BARBARA RANDO, CHAIR: Motion by Mr.

12 Sergi.

13 Mr. Hickernell, second?

14 MICHAEL COTTON: Second.

15 BARBARA RANDO, CHAIR: Mr. Cotton.

16 How do you vote, Mr. Sergi?

17 JOHN SERGI: Yes.

18 BARBARA RANDO, CHAIR: Mr. Hickernell?

19 MARK HICKERNELL: Yes.

20 BARBARA RANDO, CHAIR: Ms. Gelineau?

21 GLENNA GELINEAU: Yes.

22 BARBARA RANDO, CHAIR: Mr. Cotton?

23 MICHAEL COTTON: Yes.

24 BARBARA RANDO, CHAIR: All right. You

1 have six months to August 18<sup>th</sup>, 2015.

2 ATTORNEY STEVEN PARNAGIAN: Thank you,  
3 members of the Board. And, again, excuse my  
4 tardiness.

5 BARBARA RANDO, CHAIR: Oh, no, no. No  
6 need.

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1       **Case Number 2014-32: 88 Willow Street, Nila Desai**

2

3                   BARBARA RANDO, CHAIR: Will the Clerk  
4 please read the case on Case 2014-32, Nila Desai, 88  
5 Willow Street, for a customary home occupation?

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                   May we speak with the Petitioner or  
11 the Petitioner's representative please?

12                   Would you give your name and address  
13 for the record?

14                   NILA DESAI: Yes, Nila Desai. The  
15 address is 88 Willow Street, Waltham, 02453.

16                   BARBARA RANDO, CHAIR: All right. You  
17 may start.

18                   NILA DESAI: So my reason is because  
19 of my mom. And before I have two sons, but the  
20 younger son go -- they go to the school. So I go to  
21 my -- I have a Harvard Square location, one salon,  
22 and I go 1:00 and my kids come 2:30, 3:00. So, after  
23 that --

24                   BARBARA RANDO, CHAIR: Is this where

1 you live?

2 NILA DESAI: I live, yeah.

3 BARBARA RANDO, CHAIR: You live here?

4 NILA DESAI: Yeah. And my business is  
5 in Harvard Square. So, before my kids is young at  
6 the time, I go to 1:00 to 7:00 over there because  
7 they take care my mom. But now the reason is 94  
8 years old and I can't leave her. She has blood  
9 pressures and everything checking. And if I go over  
10 there and she calls me and says, "Come home right  
11 away," and if I say I'm coming but she cannot hear.  
12 And, I'm driving and I'm calling. So, I said, no, my  
13 kids both applying to college and one going to the  
14 Maryland. So, I can't do the work outside. I have -  
15 -

16 BARBARA RANDO, CHAIR: So you work  
17 from 1:00 to 7:00?

18 NILA DESAI: One to seven before, my  
19 kids is home at the time. But now my both kids is  
20 not home.

21 BARBARA RANDO, CHAIR: So you're going  
22 to work what --

23 NILA DESAI: Yeah, that's why I'm  
24 preferring to work at home fewer, until 4:00, and

1 then at the salon I can go when I have appointment.  
2 I go to Harvard Square, I come back. If I get hair  
3 appointment, I go over there and I come back.

4 BARBARA RANDO, CHAIR: So you want to  
5 work in your home from what time to four?

6 NILA DESAI: Yeah, both place, but --  
7 yeah, both place but only that moment. If I have a  
8 salon appointment, I can go over there. If there is  
9 no appointment, I can take care of my mom at home.

10 BARBARA RANDO, CHAIR: So are you  
11 saying that you're going to be working at your home  
12 four hours a day?

13 NILA DESAI: Yes. Yes, I have a salon  
14 right now, so --

15 BARBARA RANDO, CHAIR: So, 12:00 to  
16 4:00?

17 JOHN SERGI: I thought she said 9:00  
18 to 1:00.

19 MARK HICKERNELL: Well, let's --

20 NILA DESAI: No, after --

21 BARBARA RANDO, CHAIR: Go right ahead.

22 NILA DESAI: -- after you guys give  
23 the permission, then I cannot go -- I cannot leave my  
24 mom totally. I can stay with my mom and few

1 customers I can do, but mostly I have to take care of  
2 her first.

3 MARK HICKERNELL: So, between what  
4 hours will you have customers at home?

5 JOHN SERGI: Well, she stated here in  
6 the petition 9:00 to 6:00 p.m.

7 MARK HICKERNELL: Right. But is that  
8 correct?

9 NILA DESAI: Yeah, but -- yeah, but my  
10 mom have a pressure appointment, this and that, every  
11 whole week, nurse coming, and the people come and I  
12 have to stay with her because she don't understand  
13 English. So, a few customers I want to do.

14 MARK HICKERNELL: So, you don't expect  
15 it to be a steady stream of customers?

16 NILA DESAI: No, no.

17 MARK HICKERNELL: But between -- you'd  
18 like it between 9:00 and 6:00?

19 NILA DESAI: Exactly, for a few  
20 customers. But I have to take care of mostly for her  
21 trust. So, just a few customers.

22 MARK HICKERNELL: Okay. And one  
23 customer at a time?

24 NILA DESAI: Yes.

1 GLENNA GELINEAU: Are you giving up  
2 your other salon?

3 NILA DESAI: Yeah, I have the salon.

4 GLENNA GELINEAU: You're giving up the  
5 other job, the other --

6 NILA DESAI: Other one I can limit  
7 because I can't go because my mom.

8 GLENNA GELINEAU: So you're not going  
9 to go there anymore, you're just going to do it at  
10 home?

11 NILA DESAI: No, I just -- yeah.

12 GLENNA GELINEAU: Okay.

13 MARK HICKERNELL: And how much parking  
14 is on the property?

15 NILA DESAI: I have a 10-car parking,  
16 but I can take the two for customers and rest of the  
17 home.

18 BARBARA RANDO, CHAIR: Did you say 10?

19 NILA DESAI: Ten car.

20 JOHN SERGI: Yeah, this used to be a  
21 commercial building, right?

22 BARBARA RANDO, CHAIR: It's a big  
23 driveway.

24 NILA DESAI: No, no, no. It resident.



1 JOHN SERGI: It's residential?

2 NILA DESAI: Yeah, but I made the  
3 whole driveway like that, whole.

4 JOHN SERGI: So, it's 10 parking?

5 NILA DESAI: Yeah, back of the house -  
6 - so if I want to put something, snow blower and  
7 anything, I have to have driveway there. So and my  
8 husband passed away in 2006. I bring up my kids  
9 alone. Last time was told to have a hearing, my sons  
10 come for the --

11 GLENNA GELINEAU: Yeah, the height.  
12 Yeah.

13 NILA DESAI: I don't understand that  
14 much in this, so he say, "Mom, I can..."

15 GLENNA GELINEAU: He did a good job,  
16 yeah.

17 NILA DESAI: Yeah.

18 BARBARA RANDO, CHAIR: So you're  
19 saying 10 cars tandem parking?

20 NILA DESAI: Yes. Yes.

21 MARK HICKERNELL: But you wouldn't  
22 need more than one or two of those at any time for  
23 clients?

24 NILA DESAI: Yeah, I made it -- my

1 husband and I at the time we make it because the sand  
2 is all the way at the ground. So, if I put the snow  
3 blower, lawnmower, in the middle, no driveway, then  
4 it's going to be difficult. So make it --

5 GLENNA GELINEAU: Yeah, it's a pretty  
6 good size lot.

7 NILA DESAI: Yeah, behind I have  
8 6,000-square-foot land.

9 BARBARA RANDO, CHAIR: You have what?

10 NILA DESAI: Six-thousand-square-foot  
11 land behind, so --

12 BARBARA RANDO, CHAIR: Tell me, how do  
13 you get your supplies? Do you have a delivery man  
14 bring them?

15 NILA DESAI: No, I have a good beauty  
16 supply because it's not that much customers. So I  
17 only need a few things.

18 BARBARA RANDO, CHAIR: So you go  
19 across the street and get them and come back?

20 NILA DESAI: Yeah. Yeah.

21 BARBARA RANDO, CHAIR: River City?

22 NILA DESAI: Yeah, it's not a huge  
23 supply I mean so --

24 BARBARA RANDO, CHAIR: Is this a two-

1 family house?

2 NILA DESAI: No, single-family.

3 BARBARA RANDO, CHAIR: Single-family.

4 NILA DESAI: Mm hum.

5 BARBARA RANDO, CHAIR: So if there's  
6 any odor it wouldn't bother anyone but your own  
7 family.

8 NILA DESAI: No, just my family, yeah.

9 BARBARA RANDO, CHAIR: All right. I'm  
10 going to, again, ask for a five-minute recess so that  
11 I could read this brief.

12 ALAN BOWERS: Can I speak first?

13 BARBARA RANDO, CHAIR: Are you --

14 ALAN BOWERS: I want to challenge the  
15 petition.

16 BARBARA RANDO, CHAIR: Oh, sure.  
17 Yeah. Then I'll hold off on my motion and I'll let  
18 you speak.

19 First of all, do you have anything  
20 else to say why do you need this, just because --

21 NILA DESAI: Because of my mom.

22 BARBARA RANDO, CHAIR: So that is your  
23 hardship?

24 NILA DESAI: Yes.

1 BARBARA RANDO, CHAIR: That you have  
2 to work at home because of your mother?

3 NILA DESAI: Yeah.

4 BARBARA RANDO, CHAIR: All right.  
5 Thank you.

6 Is there anyone in the audience in  
7 favor of this petition? Seeing three.

8 Is there anyone seeking information?

9 (No response.)

10 Is there anyone in opposition? All  
11 right. Please come up to the microphone. Give your  
12 name and address. One, two, three, four people in  
13 opposition.

14 ALAN BOWERS: My name is Alan Bowers,  
15 and I own the house at 91-93 Willow Street.

16 BARBARA RANDO, CHAIR: Across the  
17 street.

18 ALAN BOWERS: Across the street.

19 So, my family bought this house in  
20 1972. We used to live up in the projects up in  
21 Prospect Hill. So, moving to this neighborhood was a  
22 godsend for us. It was a great neighborhood. It had  
23 a playground, a school, trees, everything. The only  
24 thing that was bad, we had Raytheon on the other

1 side. But we always knew commercial business was  
2 over there, and from Grove Street to Main Street we  
3 had residences. So, bringing a business into the  
4 residences is just counter to what my family has  
5 grown up in this neighborhood and what we really  
6 believe, which is a residence.

7 We have our fourth generation of  
8 family in this house, and I want to see that  
9 generation live in a residential area and not see  
10 commercial.

11 You ask why there's 10 parking spots,  
12 because there's a boarding house going on across the  
13 street. There are so many cars across the street,  
14 sometimes they're in the middle of the street and  
15 they're actually parked on the sidewalk.

16 BARBARA RANDO, CHAIR: How does this  
17 have to do -- what does this --

18 ALAN BOWERS: That house has so many  
19 cars. Every time you turn around there are 10 cars  
20 in that driveway.

21 BARBARA RANDO, CHAIR: From the people  
22 across the street using it?

23 ALAN BOWERS: People in and out.  
24 There's people in and out of that house constantly.

1 Transient people constantly in that house. There are  
2 four or five people sitting out there who smoke all  
3 day long out on the porch. Last year during the  
4 winter, they even moved their cars. The cops had to  
5 come with a tow truck to move the street, their cars,  
6 because they're literally parked on the sidewalk.  
7 So, when they talk about private parking, it's a joke  
8 because they don't even use it now. They already use  
9 the street parking. They already plowed it out right  
10 now so the cars can sit there. It's ridiculous.

11 BARBARA RANDO, CHAIR: So, you're  
12 telling me that there are parked cars there that are  
13 not moved?

14 ALAN BOWERS: Yeah.

15 BARBARA RANDO, CHAIR: And are you  
16 telling me that having tandem parking, they have to  
17 all back out?

18 ALAN BOWERS: There were two -- there  
19 were two U-Haul trucks over there the other day back  
20 and forth. Every time you turn around there's new  
21 people coming in and out of that house. I don't know  
22 who lives there.

23 NILA DESAI: Yeah, I --

24 BARBARA RANDO, CHAIR: You'll have a

1 moment.

2 ALAN BOWERS: I don't know who lives  
3 there anymore. There's literally a dozen people  
4 coming in and out. It could be students. I don't  
5 really care if it's a boarding house, but it looks  
6 like it's a boarding house. And this is supposed to  
7 be a residential area. And now you want to put  
8 another business into it? It's just counter to what  
9 I think should be there. So, I totally oppose it.

10 MICHAEL COTTON: Are you saying  
11 they're coming out of her house?

12 ALAN BOWERS: Yes.

13 MICHAEL COTTON: Her house?

14 ALAN BOWERS: Yes.

15 MICHAEL COTTON: They live in her  
16 house?

17 ALAN BOWERS: You asked why there's 10  
18 parking spots.

19 NILA DESAI: No.

20 BARBARA RANDO, CHAIR: Please.

21 ALAN BOWERS: It's because that's  
22 where all the people are living. That's where all  
23 the people are coming in. That's why there's 10  
24 parking spots. They actually drew lines there so

1 people can park there. Who puts lines in a  
2 residential neighborhood on their driveway? That's  
3 why. And it's ridiculous that this is just even here  
4 that we're discussing this. So, I totally oppose  
5 this. I think it's a ridiculous idea.

6 BARBARA RANDO, CHAIR: Now, answer one  
7 other question for me.

8 ALAN BOWERS: Sure.

9 BARBARA RANDO, CHAIR: When the  
10 traffic -- when the cars are in there and it's tandem  
11 parking, all the cars have to come out to get one out  
12 and then back in again?

13 ALAN BOWERS: Well, no, they have --  
14 they're correct. It's a beautiful house. They  
15 didn't a beautiful job. It's a beautiful house. And  
16 the driveway is a big driveway. So they have, you  
17 know, cars here, and they have enough space to go  
18 that way as well.

19 BARBARA RANDO, CHAIR: Okay.

20 ALAN BOWERS: So it is pretty big.  
21 There's no question. It's a big lot. And they did a  
22 great job on the house. I have no qualms with the  
23 house whatsoever. They did a beautiful job. But,  
24 yet, it's supposed to be a single-family house. This



1 is supposed to be a residential neighborhood. And it  
2 should be respected as a residential neighborhood.  
3 You know, our neighborhoods are getting destroyed.  
4 And, slowly, slowly, these things are happening. And  
5 I think it has to stop quite frankly.

6 BARBARA RANDO, CHAIR: Thank you very  
7 much. I appreciate that.

8 Next? Name and address, please.

9 MICHAEL GANNON: Can we come up  
10 together?

11 BARBARA RANDO, CHAIR: Sure.

12 MICHAEL GANNON: Okay.

13 BARBARA RANDO, CHAIR: Give your name  
14 and address, please.

15 BONNIE PELETIER: Hi, I'm Bonnie  
16 Peletier.

17 MICHAEL GANNON: Michael Gannon, 93  
18 Lafayette Street.

19 BARBARA RANDO, CHAIR: Peletier and  
20 what?

21 MICHAEL GANNON: Michael Gannon.

22 BARBARA RANDO, CHAIR: Dannon?

23 STENOGRAPHER: How do you spell it?

24 MICHAEL GANNON: Gannon, G-a-n-n-o-n.

1 BARBARA RANDO, CHAIR: G-a-n-n-o-n.

2 STENOGRAPHER: How do you spell  
3 Peletier, please?

4 BONNIE PELETIER: P-e-l-e-t-i-e-r.

5 STENOGRAPHER: Thank you.

6 GLENNA GELINEAU: And where do you  
7 live?

8 BONNIE PELETIER: 93 Lafayette Street,  
9 also. Our backyards abut each other.

10 BARBARA RANDO, CHAIR: Your backyards?

11 BONNIE PELETIER: Yes.

12 MICHAEL GANNON: Correct.

13 BARBARA RANDO, CHAIR: All right. You  
14 may continue.

15 BONNIE PELETIER: Okay. So it looks  
16 like the door to the salon is in the back of the  
17 house, plus the parking and the driveway is also in  
18 the back of the house. So, while we don't outright  
19 object to the permit, we instead ask that it be  
20 contingent on the installation of a 100 percent  
21 privacy fence between our backyards. We are  
22 concerned that we will lose the privacy of our  
23 backyard. We object to the use as a limited  
24 cosmetology hairdressing salon unless they build a

1 wooden or composite fence between our properties at  
2 least six-foot tall that allows for complete privacy.  
3 Thus, there can't be any gaps in the fence pieces.

4 We specifically do not want a chain-  
5 link as the insertable slats do not create complete  
6 privacy. Thus, we should not be able to see into  
7 their backyard and vice versa.

8 BARBARA RANDO, CHAIR: All right.

9 GLENNA GELINEAU: What do you see now?

10 BONNIE PELETIER: Their whole  
11 backyard.

12 GLENNA GELINEAU: But what's going on  
13 back there?

14 BONNIE PELETIER: There's --

15 GLENNA GELINEAU: If anything.

16 BONNIE PELETIER: Okay. There are  
17 people coming and going. There are lots of cars back  
18 there. There's been some construction and a lot of  
19 debris in the backyard, mattresses, toilets, other  
20 types of household debris. I mean we just see really  
21 their backyard. That's about it.

22 BARBARA RANDO, CHAIR: Do you think  
23 it's used as a boarding house?

24 BONNIE PELETIER: No idea. We

1 questioned once whether it was a sorority because we  
2 had heard there was one on Willow Street from  
3 Bentley. I have no idea.

4 GLENNA GELINEAU: Is it loud or  
5 disruptive to you?

6 BONNIE PELETIER: No.

7 GLENNA GELINEAU: Okay.

8 BONNIE PELETIER: Thank you.

9 GLENNA GELINEAU: Very good. Thank  
10 you.

11 BARBARA RANDO, CHAIR: All right.  
12 Next? Was there someone else?

13 STAN JONES: My name is Stan Jones.  
14 My address is 192 Lexington Street, number 2,  
15 Waltham.

16 I'd like to speak in support of the  
17 petition. I'd like to thank the members of the Board  
18 for coming in tonight on a cold winter night and to  
19 excuse my appearance given I've had a few too many  
20 donuts since I got into my suit. So, I ask for your  
21 forgiveness there.

22 But with all due respect to the first  
23 gentleman who spoke, I believe he was here at an  
24 earlier petition that we brought before the Board.

1 BARBARA RANDO, CHAIR: Are you related  
2 to this --

3 STAN JONES: I'm a friend of this  
4 person.

5 BARBARA RANDO, CHAIR: A friend.

6 STAN JONES: At the time she purchased  
7 the house, I was involved in the transaction as a  
8 real estate person. And, as I was saying, with all  
9 due respect, I believe he was here. He's praising  
10 the appearance of the house, but about, I don't know,  
11 maybe a year or so ago, you may remember, there was  
12 nothing he liked about the house.

13 ALAN BOWERS: That's not true. I did  
14 not say that.

15 BARBARA RANDO, CHAIR: Sir.

16 STAN JONES: I don't know exactly what  
17 he may have against this petitioner, but it seems  
18 that there's something beyond -- to me anyway -- that  
19 there's something beyond it. This is a good person.  
20 This is a person who works hard, who came to this  
21 country, whose husband passed away soon after they  
22 got to this country, and she raised two children on  
23 her own. They went through the Waltham Public  
24 Schools. They're entering the world now. One is

1 still in college. She did that all on her own, and  
2 that has nothing to do with a yes or no vote tonight  
3 on the petition itself. But this is a woman who took  
4 her mother out of India when she was dying. She was  
5 in a hospital that wasn't treating her, didn't  
6 provide the treatment she needed. She's got the  
7 pictures in her cell phone of the sores on this  
8 woman. This woman wouldn't be here today if it  
9 wasn't for this woman. She went to India, took her  
10 home. And she's got medical problems and she needs  
11 to be close by to her mother to take care of her.

12 When I've been at that house, and I've  
13 been at that house a number of times, there's no more  
14 -- there would be no more than maybe one person who  
15 might come in and say, "Could you help me with my  
16 hair?" or something like that. And that's what she  
17 wants to do.

18 There's a driveway that runs all the  
19 way back, all the way back from the street. I don't  
20 think the Petitioner would have any objection  
21 whatsoever to the request of a fence that was  
22 requested by these folks. That fence has been  
23 deteriorating for years. In fact, that fence has  
24 been there since the house was purchased. And it's a

1 wooden fence. It's falling apart. And it's been  
2 falling apart for years. And it's gotten to the  
3 stage where there's practically no fence left.

4 So, I can certainly understand their  
5 request that there be privacy. But this person  
6 deserves a break. This person has worked hard all  
7 her life and just wants to be near her mother. She's  
8 got blood pressure problems. She can't hear very  
9 well. She's the sweetest person in the world.

10 Say hi to the board. Hello.

11 Anyway, she's the sweetest person in  
12 the world. There's no kind of crazy activity going  
13 on there. And she's one person just trying to  
14 survive and pay her mortgage. And there would not be  
15 more than one person maybe, and then maybe a couple  
16 of hours later maybe another person there. And I'm  
17 just asking, I mean if anyone deserves a break, this  
18 is the person that deserves a break. And I hope you  
19 consider what I've said because it comes from the  
20 heart. And that's all I can ask.

21 Thank you very much.

22 BARBARA RANDO, CHAIR: Thank you.

23 Seeing that we just received this I  
24 believe today -- it's supposed to be received two

1 weeks beforehand. So I'm going to request --

2 ALAN BOWERS: May I say something else  
3 or am I -- can I rebut some things he said?

4 BARBARA RANDO, CHAIR: Sure, before I  
5 close the public hearing. Go right ahead.

6 ALAN BOWERS: So, last year their  
7 petition was because the height was too high when  
8 they built the house, residential.

9 BARBARA RANDO, CHAIR: Right. We're  
10 aware of that.

11 ALAN BOWERS: So my argument was to  
12 stay within zoning. That was all my argument was.  
13 They did a beautiful job. And I have no animosity.  
14 My mother was a waitress. She raised four kids. So  
15 I know what a hard time is. I have an 80-year-old  
16 mother, too. So I know what all that stuff means.  
17 So I'm not trying to make it hard for them. But I'm  
18 trying to keep my neighborhood to be my neighborhood,  
19 to be a residential neighborhood as it was. There's  
20 a park across the street. I see tractor-trailers go  
21 flying down Willow Street. We have so much traffic  
22 as it is. At one point, we've got to give it -- it's  
23 got to stop. There's too much going on in that  
24 house. Again, I have no objection. It's a beautiful



1 house. I love the house. It's nice. What they did  
2 to it was beautiful. And, again, my objection last  
3 year was not because of them; it was just to stay  
4 within the zones, stay within the rules. And the  
5 rules is --

6 GLENNA GELINEAU: Home occupation is  
7 an allowable use.

8 ALAN BOWERS: I understand.

9 GLENNA GELINEAU: I haven't seen  
10 anything outside of the parameters of --

11 ALAN BOWERS: I understand. But we  
12 have commercial over here and now you're bringing  
13 commercial into the residential. Now you've got more  
14 traffic in --

15 GLENNA GELINEAU: But that's not their  
16 fault.

17 ALAN BOWERS: They can't keep traffic  
18 in their own driveway. They're now parking in the  
19 street. So, explain to me why there's 10 cars there  
20 now and they can't do that?

21 GLENNA GELINEAU: Well, I don't know  
22 why there's 10 cars there, but I'm just saying  
23 they're not doing anything -- because there's  
24 commercial influence around them is not their fault.

1 I mean they're allowed to ask for a home occupation.

2 ALAN BOWERS: And I'm allowed to say  
3 that I'm going to object to it.

4 GLENNA GELINEAU: Okay.

5 ALAN BOWERS: It's a residential  
6 neighborhood. But to say to me that I have something  
7 against this family is wrong.

8 MARK HICKERNELL: I think I can speak  
9 for the Board when we say we're not going to take any  
10 of that into account.

11 BARBARA RANDO, CHAIR: No.

12 ALAN BOWERS: Thank you.

13 MARK HICKERNELL: No aspersions will  
14 be taken into the record.

15 BARBARA RANDO, CHAIR: Thank you.

16 NADIA DESAI: Can I just ask you --

17 BARBARA RANDO, CHAIR: All right.

18 NADIA DESAI: Because, you know,  
19 before, my husband's an alcoholic. And every few  
20 days the ambulance, and police, and fire department  
21 come because he fall down. So I am supporting like  
22 that, too. But every week an ambulance comes to my  
23 home. So nobody tell me they know what's going on  
24 with you. And now I'm doing nothing. And they're

1 acting like that.

2 BARBARA RANDO, CHAIR: Okay. Thank  
3 you.

4 MARK HICKERNELL: May I inquire of the  
5 Petitioner?

6 BARBARA RANDO, CHAIR: Yes.

7 MARK HICKERNELL: May I just ask you a  
8 couple of questions? So, you would intend as part of  
9 this to not have any other employees, correct?

10 NADIA DESAI: No.

11 MARK HICKERNELL: Okay. And how do  
12 you feel about the fence that your neighbors have  
13 requested?

14 NADIA DESAI: Yeah, that one I want to  
15 ask you because that fall down at that time he came  
16 to my home and I say we can -- they say I can do  
17 because I have a problem with my alcoholic with my  
18 husband. I was dealing with him at that time. So  
19 they say we can put it -- we can do the good fence so  
20 you can give the half of the money and I can give the  
21 half of the money. Someone came. I don't remember.  
22 So many years ago. But they came to me and talk  
23 about that fence. And I say, "Okay. That's very  
24 nice." So I say, "You can pay the half and I can pay

1 the half. We can do the good one." And then after  
2 they never -- they never came back. So I ask with  
3 them that, too, that fence, fall down, wood one. So,  
4 I said every time fall down, the wood one, we can put  
5 up previous one, but nice one.

6 MARK HICKERNELL: Whose -- was the  
7 fence originally on your lot?

8 NADIA DESAI: No, it's not mine. But  
9 the fall down of the fence, the people came to talk  
10 to me.

11 BARBARA RANDO, CHAIR: It's your  
12 fence? Whose fence is it? Is it your fence? Excuse  
13 me.

14 NADIA DESAI: Yeah, that's their  
15 fence.

16 MICHAEL GANNON: It's our fence,  
17 correct. But do you want me to speak to that?

18 BARBARA RANDO, CHAIR: Sure.

19 MICHAEL GANNON: Basically, we've  
20 owned the home for three years. And I want to say  
21 about two-and-a-half years ago -- I'm assuming it's  
22 the same person -- I approached her and asked if we  
23 can replace these pickets. And then it wasn't too  
24 long after that that a bunch of boys in the yard were

1       throwing baseballs against the fence, which was  
2       breaking the pickets.       There's graffiti on the  
3       pickets.       And we just realized -- I mean there was  
4       nothing we could do about it.       I mean it's their  
5       property but they were ruining all the pickets.       And  
6       between, like I said, between the graffiti and the  
7       ball playing, I've also heard from our next door  
8       neighbor that this has been going on for some time.  
9       Like I said, we can only speak for the three years.  
10      And I realized at that point, if I was to replace  
11      every single picket, it would only happen again.  
12      There was no assurances that this wouldn't happen.

13                        Meanwhile, the fence did deteriorate  
14      and sections have fallen down.       And, like I said, if  
15      we were to put the fence up, I mean if we had the  
16      money to put the fence up, there's no assurances that  
17      the ball playing wouldn't stop or would stop.       And,  
18      like I said, I just didn't want to throw more money  
19      into bad money or whatever that expression is knowing  
20      that this could happen again.

21                        I've been out in our driveway a number  
22      of times and have heard the ball coming -- being  
23      thrown.       It was being pitched against the fence.  
24      This happened a number of times.       And I mean I have

1 no objections to people playing in their own yard,  
2 but if you're going to throw a baseball at the fence  
3 continually, things are going to break. So, that's  
4 basically my point. At that point, I just gave up.  
5 But since then, the fence, at least three sections of  
6 the fence have fallen down on that side of the  
7 property.

8 BARBARA RANDO, CHAIR: Do you have his  
9 name and address?

10 MICHAEL GANNON: There was never an  
11 agree -- she just said that she would pay half.  
12 There was never -- there was never that discussion.  
13 She never offered to pay half. She never -- she  
14 said, "Sure, you can replace the pickets." That was  
15 the end of the conversation. There was no -- there  
16 was no guarantee or no conversation about her paying  
17 me for half the fence.

18 GLENN GELINEAU: That could have been  
19 the last owner.

20 MARK HICKERNELL: It looks like we're  
21 going to take a recess anyway. If there's anything  
22 that the three of you would like to discuss in terms  
23 of the fence, maybe that would be a good chance to do  
24 it.

1 BARBARA RANDO, CHAIR: Do you have  
2 something different than what you said before to add  
3 to it?

4 STAN JONES: Just that -- just that if  
5 you haven't had enough time to consider things that  
6 there's no objection to continuing it to a --

7 BARBARA RANDO, CHAIR: That would be  
8 our decision, but thank you.

9 JOHN SERGI: Just one question. I  
10 just have to ask, I mean your intention here is not  
11 to rent rooms in your house, is it?

12 NADIA DESAI: No.

13 JOHN SERGI: Okay.

14 GLENNA GELINEAU: Where are the cars?  
15 Whose cars are they?

16 NADIA DESAI: No, but I have a  
17 permission from the City to rent the three rooms. I  
18 have the certificate.

19 GLENNA GELINEAU: Right. Yeah, that's  
20 also --

21 JOHN SERGI: Oh, so you do rent three  
22 rooms?

23 NADIA DESAI: Yes.

24 JOHN SERGI: Okay.

1 BARBARA RANDO, CHAIR: But you told me  
2 it was a single-family home.

3 NADIA DESAI: Yes, it's a single-  
4 family home.

5 GLENNA GELINEAU: But she's allowed to  
6 rent the rooms.

7 NADIA DESAI: Yeah, they give me the  
8 certificate to rent the rooms. But they are  
9 sometimes two months, sometimes three months, like  
10 not the fully all months living at home so I don't  
11 want to keep more.

12 BARBARA RANDO, CHAIR: Are they  
13 students?

14 NADIA DESAI: Yeah, they're students  
15 from out of the country, yes.

16 JOHN SERGI: And they have one car  
17 apiece or --

18 NADIA DESAI: Yes. Sometimes no car,  
19 too.

20 JOHN SERGI: So, have you ever had 10  
21 cars in your driveway?

22 NADIA DESAI: No. I have three cars.  
23 My son, the one student, my van, because I have a  
24 salon in Harvard Square so I take all the stores --



1 so I keep the van, and then my own car, so three cars  
2 to my own.

3 JOHN SERGI: Okay. Thank you.

4 BARBARA RANDO, CHAIR: All right. I  
5 made a motion for a five-minute recess.

6 MARK HICKERNELL: Second.

7 BARBARA RANDO, CHAIR: Second by Mr.  
8 Hickernell.

9 All in favor?

10 ALL BOARD MEMBERS: Aye.

11 BARBARA RANDO, CHAIR: Opposed?

12 (None opposed.)

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

15 (Hearing in recess for five minutes)

16 (Proceedings resume at 7:57 p.m.)

17 BARBARA RANDO, CHAIR: All right.  
18 We're back in session. Are there any questions or  
19 additions before we grant or I ask for a motion to  
20 grant this? Does anyone have any questions or any  
21 additions?

22 JOHN SERGI: No.

23 MICHAEL COTTON: No.

24 MARK HICKERNELL: May I inquire of the

1 Petitioner?

2 BARBARA RANDO, CHAIR: You may.

3 MARK HICKERNELL: Have you -- did you  
4 reach any resolution?

5 NADIA DESAI: Yes.

6 MARK HICKERNELL: Can you come to the  
7 microphone and tell us what you've agreed to?

8 NADIA DESAI: Yeah. He said he need  
9 the six-foot tall fence. So I can do that maybe but  
10 I said right now is so snow, so who gonna come and do  
11 anything. So, I give you the writing, whichever you  
12 like, and definitely I can do in the summertime. So,  
13 best I can give the promise.

14 MARK HICKERNELL: Okay. So, within --

15 NADIA DESAI: Because my sons play  
16 baseball maybe he broke down. I don't know.

17 MARK HICKERNELL: -- eight months?

18 NADIA DESAI: It's okay. He's a good  
19 baseball player, too. Now he's not at home. So --

20 MARK HICKERNELL: So, are you saying  
21 that you think you could put up the fence that the  
22 neighbor requested by the summer?

23 NADIA DESAI: Yes.

24 MARK HICKERNELL: And does that

1 reflect your conversation?

2 MICHAEL GANNON: Yes.

3 NADIA DESAI: Yes.

4 MARK HICKERNELL: Okay. So, a fence,  
5 you know, by the end of the summer.

6 BARBARA RANDO, CHAIR: Okay.

7 MARK HICKERNELL: All right. Thank  
8 you.

9 BARBARA RANDO, CHAIR: All right.

10 MARK HICKERNELL: Good fences make  
11 good neighbors.

12 BARBARA RANDO, CHAIR: I'm sorry?

13 MARK HICKERNELL: Good fences make  
14 good neighbors.

15 BARBARA RANDO, CHAIR: Did you just  
16 make that up?

17 MARK HICKERNELL: No.

18 BARBARA RANDO, CHAIR: All right. You  
19 can continue with your proposed finding of fact,  
20 which we --

21 JOHN SERGI: I believe we've been able  
22 to read through them.

23 MICHAEL COTTON: We've already read  
24 them.

1 BARBARA RANDO, CHAIR: Does anyone  
2 have any questions on the finding of facts?

3 JOHN SERGI: No, no. I make a motion  
4 that we waive the reading of the finding of facts,  
5 Madam Chair.

6 BARBARA RANDO, CHAIR: Motion by Mr.  
7 Sergi. Second?

8 MICHAEL COTTON: I'll second that.  
9 I'll second that.

10 BARBARA RANDO, CHAIR: Mr. Cotton.  
11 All in favor?

12 ALL BOARD MEMBERS: Aye.

13 BARBARA RANDO, CHAIR: Opposed?  
14 (None opposed.)

15 BARBARA RANDO, CHAIR: The ayes have  
16 it to waive the reading of the finding of facts.

17 JOHN SERGI: Which incorporates the  
18 decision, obviously.

19 BARBARA RANDO, CHAIR: The decision.  
20 Motion by Mr. Sergi to waive the decision?

21 JOHN SERGI: Yes. Well --

22 BARBARA RANDO, CHAIR: Second?

23 MICHAEL COTTON: Yes.

24 BARBARA RANDO, CHAIR: I'm sorry, MR.

1 Sergi?

2 JOHN SERGI: I guess the finding of  
3 fact incorporates the decision.

4 MICHAEL COTTON: They're  
5 interchangeable.

6 JOHN SERGI: Yeah.

7 MARK HICKERNELL: Discussion of case  
8 law.

9 JOHN SERGI: Yeah, we'll just waive  
10 the discussion related.

11 BARBARA RANDO, CHAIR: All right.  
12 Second by?

13 GLENNA GELINEAU: Madam Chair, I'm  
14 sorry. I think she needs to say that most of her  
15 appointments are scheduled and there will be --

16 MARK HICKERNELL: So, okay, I thought  
17 that meant appointments, too, yes.

18 BARBARA RANDO, CHAIR: We can do that.

19 MARK HICKERNELL: Yeah.

20 JOHN SERGI: Oh, yeah, where it says  
21 "apartments."

22 MARK HICKERNELL: Yeah.

23 JOHN SERGI: Yeah.

24 BARBARA RANDO, CHAIR: Do I have a

1 motion to waive the reading of the decision?

2 JOHN SERGI: Yes, Madam Chair.

3 BARBARA RANDO, CHAIR: You made one to  
4 -- do I have a second?

5 MICHAEL COTTON: I second that.

6 BARBARA RANDO, CHAIR: Mr. Cotton  
7 seconds it.

8 All in favor?

9 ALL BOARD MEMBERS: Aye.

10 BARBARA RANDO, CHAIR: Opposed?

11 (None opposed.)

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

14 All right. Do I have a motion on the  
15 proposed finding of facts?

16 MARK HICKERNELL: I make a motion that  
17 the proposed findings of facts be adopted as the  
18 Board's findings of fact.

19 BARBARA RANDO, CHAIR: Motion by Mr.  
20 Hickernell. Do I have a second?

21 MICHAEL COTTON: I'll second that.

22 BARBARA RANDO, CHAIR: Second by Mr.  
23 Cotton.

24 How do you vote, Mr. Sergi?

1 JOHN SERGI: Yes.

2 BARBARA RANDO, CHAIR: Mr. Hickernell?

3 MARK HICKERNELL: Yes.

4 BARBARA RANDO, CHAIR: Ms. Gelineau?

5 GLENNA GELINEAU: Yes.

6 BARBARA RANDO, CHAIR: Mr. Cotton?

7 MICHAEL COTTON: Yes.

8 BARBARA RANDO, CHAIR: And the Chair  
9 votes yes.

10 All right. On the -- do I have a  
11 motion on the decision?

12 MARK HICKERNELL: Could I suggest some  
13 amendments?

14 BARBARA RANDO, CHAIR: Go right ahead.  
15 I was going to do yours first.

16 MARK HICKERNELL: So, as Ms. Gelineau  
17 pointed out, I think the reference to apartments in  
18 discussion of the case should be appointments.

19 BARBARA RANDO, CHAIR: Underneath the  
20 time.

21 MARK HICKERNELL: Underneath the time,  
22 proposed time of operation.

23 I'd suggest the following conditions:

24 That the proposed hours of operation

1 be the hours of operation under the special permit.

2 BARBARA RANDO, CHAIR: Okay.

3 MARK HICKERNELL: That the Petitioner  
4 be limited to one appointment at a time.

5 That the special permit does not allow  
6 the Petitioner to have any employee.

7 BARBARA RANDO, CHAIR: Okay.

8 MARK HICKERNELL: That the Petitioner  
9 is not -- the special permit does not grant the  
10 Petitioner any right to erect any signage or external  
11 advertising for the business. So there should be no  
12 signs or anything like that.

13 And that the Petitioner -- an  
14 additional condition is that the Petitioner shall  
15 erect a fence no less than six-foot high acceptable  
16 to the neighbors on the rear lot, along that rear lot  
17 line, by the end of August 2015.

18 JOHN SERGI: One more -- just one more  
19 addition I'd like to make to address the concerns of  
20 the neighbor related to parking, that during the  
21 hours of operation that you would abide by the  
22 parking ordinance of the City of Waltham.

23 NADIA DESAI: Yeah, that is --

24 JOHN SERGI: No parking on the



1 sidewalks.

2 NADIA DESAI: No. Yeah. Nobody is  
3 going to park over there.

4 JOHN SERGI: Okay.

5 BARBARA RANDO, CHAIR: I would also  
6 like to see that all the debris in the back yard that  
7 one of the neighbors mentioned is taken out before  
8 you're allowed to have your hairdressing in that  
9 apartment.

10 NADIA DESAI: Yeah, because (speaking  
11 too far from microphone).

12 BARBARA RANDO, CHAIR: The trash came.

13 GLENNA GELINEAU: Oh, right.

14 NADIA DESAI: The Allied, they will  
15 come because it's only one person I can do, but they  
16 have --

17 BARBARA RANDO, CHAIR: Why is the  
18 Allied truck in and out, in and out like someone  
19 mentioned?

20 NADIA DESAI: I don't know. No in and  
21 out. No way.

22 BARBARA RANDO, CHAIR: And, number  
23 nine, I would like to grant it -- have it granted for  
24 one year, and I would like you to come back at the

1 end of the year and see if there are any complaints  
2 from neighbors. And we will continue it if there are  
3 no complaints.

4 And will it be lit, the back door that  
5 is facing their property? Do you have just a regular  
6 light bulb on the door? You're not going to put any  
7 light that will be shining into their property?

8 NADIA DESAI: No.

9 BARBARA RANDO, CHAIR: It's just a  
10 regular --

11 NADIA DESAI: Yeah, it's a sensor  
12 light in the nighttime. So if anybody go over, but  
13 not the light on and off like that. But it's  
14 nighttime, somebody can come, it turns the light.

15 BARBARA RANDO, CHAIR: So it's higher  
16 up on the house?

17 NADIA DESAI: It's the door, the door,  
18 behind the door.

19 BARBARA RANDO, CHAIR: So it just  
20 comes on when they go in and --

21 NADIA DESAI: Yeah, and it's  
22 automatically off in two minutes, something like  
23 that.

24 BARBARA RANDO, CHAIR: And you're

1 agreeing to all of these suggestions --

2 NADIA DESAI: Yes.

3 BARBARA RANDO, CHAIR: -- or  
4 conditions that we put on there?

5 NADIA DESAI: Yes.

6 BARBARA RANDO, CHAIR: Do I have a  
7 motion on the decision as amended?

8 JOHN SERGI: I make a motion that the  
9 decision as amended becomes the Board's decision.

10 BARBARA RANDO, CHAIR: Motion by Mr.  
11 Sergi. Do I have a second?

12 MICHAEL COTTON: I'll second.

13 BARBARA RANDO, CHAIR: Second by Mr.  
14 Cotton.

15 How do you vote on the decision as  
16 amended, Mr. Sergi?

17 JOHN SERGI: Yes.

18 BARBARA RANDO, CHAIR: Mr. Hickernell?

19 MARK HICKERNELL: Yes.

20 BARBARA RANDO, CHAIR: Ms. Gelineau?

21 GLENNA GELINEAU: Yes.

22 BARBARA RANDO, CHAIR: Mr. Cotton?

23 MICHAEL COTTON: Yes.

24 BARBARA RANDO, CHAIR: And the Chair

1 votes yes. So, it is granted.

2 NADIA DESAI: Thank you.

3 MARK HICKERNELL: So we'll see you in  
4 a year.

5 BARBARA RANDO, CHAIR: We will see  
6 you in one year. One year.

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1       **Case Number 2015-01: 45 Charles Street, KM Dover LLC**

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3                   BARBARA RANDO, CHAIR: All right.

4 Will the Clerk please read the Petition in Case 2015-

5 01, KM Dover LLC, owner: Brian Chen and Datong Tang,

6 45 Charles Street in Waltham?

7                   MARK HICKERNELL: (The Clerk reads the

8 notice for the above-mentioned Case into the record.

9 See Attached.)

10                   BARBARA RANDO, CHAIR: Thank you. May

11 we hear from the Petitioner or the Petitioner's

12 representative, please?

13                   ATTORNEY JOSEPH CONNORS: Good

14 evening. My name is Joseph M. Connors, Jr. I'm an

15 attorney here in the City of Waltham. My office is

16 at 404 Main Street. I represent the Petitioner. The

17 Petitioner is KM Dover LLC. Tonight here with me is

18 Matt Zuker, a principal at KM Dover LLC. He works

19 with his partner Ken Chase in the entity that is the

20 petitioning --

21                   BARBARA RANDO, CHAIR: I didn't hear

22 that sentence. I'm sorry.

23                   ATTORNEY JOSEPH CONNORS: They own the

24 entity, the KM Dover LLC. That's a limited liability

1 company organized in the state of Massachusetts.

2 So, I do have a brief that was emailed  
3 to you, but I also have here.

4 BARBARA RANDO, CHAIR: Thank you.

5 ATTORNEY JOSEPH CONNORS: Now, there's  
6 several plans in front of you, so if I could just  
7 kind of go through them so we have an idea.

8 First of all, the locus is 45 Charles  
9 Street here in the City of Waltham, which is, as you  
10 know, just south of Main Street. Here's Main Street.  
11 And so Charles Street runs in a one-way direction and  
12 this is where it intersects with Moody Street. So,  
13 our locus is right here. Essentially it's the last  
14 small lot on the left side before you approach what  
15 is now going to be the new Northland site.

16 So, to the rear of the locus used to  
17 be the old Federal Savings Bank and their back  
18 driveway. And they used to come in here and go to  
19 the ATM machines and go around that way. And then  
20 there'd be a driveway, exit driveway, here. So, now  
21 this actually shows on this abutters plan the  
22 building under construction there, the proposed  
23 building over here just to kind of give you a  
24 reference point.

1                   So, on this abutters plan -- and this  
2 abutters plan is dated January 13, 2015 because the  
3 initial set was -- failed to provide the addresses  
4 and the block -- block and lot number on the plan.  
5 So, we revised that and submitted that to the Zoning  
6 Board Office.

7                   But on this abutters plan, you will  
8 see in red the footprint of the building that was  
9 there up until June 18<sup>th</sup> of 2014 at which time that  
10 building was destroyed by fire.

11                   So, I also have a rendering, a blow up  
12 of that. It gives you a little more detail of the  
13 old building in the footprint as you go around the  
14 property. And that plan was submitted as sheet one  
15 of two. And then on the second plan, with that, it  
16 shows in red what we would like to construct rather  
17 than the footprint of the preexisting building.

18                   So, as I said, the Petitioner is KM  
19 Dover. They have an agreement with the current  
20 owners of the property, Mr. Chen and Mr. Tang. And  
21 so they have a purchase and sale agreement that they  
22 entered into with the present owners. A copy of that  
23 was provided to the Zoning Board of Appeals Office to  
24 establish that we have a right to be here. And that

1 purchase and sale agreement is contingent on our  
2 securing the permits to construct a new three-family  
3 residence.

4 The locus, 45 Charles Street, is in a  
5 Commercial Zoning District. And, as I said, on June  
6 18, 2014, an existing three-family residence situated  
7 on the locus parcel was completely destroyed by fire.  
8 So, in order to construct the proposed three-family  
9 here, we need a few variances. So, I articulated  
10 under number one variances requested, Section 4.11  
11 states that lots in a Commercial Zoning District  
12 shall have a rear yard setback of 25 feet. Here, the  
13 rear yard setback was -- actually, I have it at 2.7  
14 or 2.4. On my zoning summary it says it was 2.7.  
15 So, let's say it was prior 2.7 feet from the rear lot  
16 line. And this Petitioner is proposing to construct,  
17 use, and maintain a residential structure with a rear  
18 yard setback of 5.4. And so the variance request  
19 there is for a variance of 5.4 plus or minus foot  
20 setback.

21 Also under 4.11, it states that  
22 structures in a Commercial Zoning District shall have  
23 a side yard setback of 15 feet. Here, the  
24 preexisting westerly side yard was 2.4 feet on this



1 side. And now the Petitioner proposes a side yard on  
2 the westerly side of 8.6 and on the easterly side of  
3 8.5 side yard setback.

4 The jurisdiction of the Board comes  
5 from Chapter 40A, Sections 10 and 14. The Board is  
6 permitted to grant variances so long as they are not  
7 for a use prohibited under the ordinances.

8 This is a little bit different here,  
9 that ordinarily a residential use is not allowed in a  
10 Commercial Zoning District. But this is here because  
11 it's a preexisting residential use. So, the Building  
12 Department, because it was constructed prior to the  
13 enactment of the zoning -- the Assessor reflects it  
14 was constructed around 1910. I have a copy of the  
15 street card for the property at Exhibit A. It shows  
16 the first permit that the Building Department issued  
17 was in June of 1928. And that was to remodel the  
18 house. So, the house was already there in 1925 when  
19 we enacted zoning.

20 So, this structure has been on the lot  
21 perhaps since 1910, according to the Assessor's  
22 records, but definitely prior to 1925, and so it's a  
23 preexisting nonconforming residential use.

24 Now, the other thing about it is that,

1 as I said, it's been destroyed by fire. So, the  
2 ordinance also allows that nonconforming structures  
3 may be rebuilt or restored in the same use if  
4 destroyed accidentally provided the reconstruction is  
5 started within 12 months of the date of destruction.  
6 So, therefore, we believe that this residential use  
7 is a permitted use, and that is provided that we  
8 start building prior to June 18<sup>th</sup> of 2015.

9 And what I also did was I -- I was  
10 concerned about that. I mean that's what the  
11 ordinance says. But then I also I asked for an  
12 opinion from the Building Inspector. So, at Exhibit  
13 D there's a letter from Patrick Powell dated January  
14 2<sup>nd</sup>. And he states that we are in receipt of your  
15 correspondence dated December 30<sup>th</sup> regarding the  
16 property in caption. This letter is to confirm the  
17 protected use as a legal nonconforming three-family  
18 residential structure located in a commercial zone.  
19 So, Mr. Powell is of the opinion that we are entitled  
20 to reconstruct a residential use there.

21 But, there is another wrinkle to the  
22 reconstruction ordinance. And it states that under  
23 3.722 and continuing on under 3.7224 of the Zoning  
24 Ordinance it says, "Any use, structure, building

1 which constitutes a nonconforming use or structure  
2 may be rebuilt and restored within the same footprint  
3 as before and continued in the same use up to an FAR  
4 which is equal to but not in excess of the FAR of the  
5 prior lawful nonconforming structure, provided the  
6 destruction was accidental, and provided further that  
7 it is rebuilt within 12 months."

8 So, the Building Department is of the  
9 opinion that the only thing we can reconstruct there  
10 is in the exact footprint of what was there last  
11 year. And that has, as I said, a 2.7 rear yard  
12 setback, a 2.1 over here. And I mean it's kind of --  
13 I'm going to draw it in because -- just so you can  
14 see it. But this is the footprint. And so our  
15 proposal is to bring it off the rear lot line. I  
16 mean it's not -- when I say 5.4, it's actually 5.4 to  
17 the rear deck, which is included in the setback. You  
18 know, typically in a single and a two-family, as long  
19 as they don't have a rooftop, decks aren't included  
20 in the setback. But because we have a three-family,  
21 we're not entitled to that exception. So, our deck,  
22 even though it's not covered, is included in the  
23 rooftop. So, we're probably another -- what's that,  
24 an eight-foot deck? Yeah. So, we're about 13 feet

1 from the actual rear lot line for the actual  
2 structure.

3 So, you know, the Building Department  
4 is of the opinion that the only thing we can rebuild  
5 is a three-family in that footprint. And so we're  
6 here because we don't want to build in that  
7 footprint. We want to build a building that's a  
8 little bit different for a couple of reasons. But,  
9 you know, at the end of the day, we think we're  
10 building something that's more conforming to the  
11 requirements of the ordinance than what was there  
12 before.

13 And so I've argued in my brief that  
14 there's two bases for a hardship here. We believe  
15 that because we're entitled to reconstruct in the old  
16 footprint, essentially we're entitled to reconstruct  
17 the old structure. And we feel that that's a unique  
18 circumstance here. This old structure is, you know,  
19 has a very close proximity to the rear lot line.

20 The old structure had two units on the  
21 first floor with one bedroom and a third unit which  
22 covered the entire third floor. So, what we'd like  
23 to do, rather than do that, is to construct three  
24 standalone units: one, two, and three. And that's

1 depicted on your architectural renderings, although  
2 there's a little change to that I want to point out  
3 to you. And so that would allow for a first floor  
4 garage with an underground or one-car garage in each  
5 unit. So, each unit will have off-street parking,  
6 whereas the old structure had a driveway space for  
7 one car. So, this three-unit building will have a  
8 one-car garage for each unit, and then another space  
9 in front of the unit for a second car. So, we'll be  
10 able to provide two parking spaces for each unit,  
11 whereas today there's only one parking space for the  
12 entire building, or there was up until last year.

13 So, we believe that the unique  
14 structure and the footprint that we're entitled to  
15 build in is a unique condition which does not  
16 generally affect other properties in the zoning  
17 district.

18 We also think that the topography of  
19 the locus is a unique condition here. Again, I've  
20 attached and I refer to it as Exhibit C, but I think  
21 in actuality it's Exhibit B, but I have an Exhibit  
22 which shows a couple of things. It shows the old  
23 footprint that we talked about. And it also shows  
24 you the topography. And so these are grade changes.

1 Right at the rear of the lot line it's about a 60-  
2 foot grade; whereas, at the front it comes down to  
3 about 50. So, there's a grade change of  
4 approximately 20 percent from the front to the rear  
5 of the lot. But, if you have an opportunity to go  
6 down there, you'd see that there's a retaining wall  
7 built in the back which was retaining the property  
8 behind it up to the top of that eight- to 10-foot  
9 retaining wall. There's also a retaining wall here,  
10 but that grade has changed, so that may go away.

11 Is that going to stay or is that going  
12 to be removed, the retaining wall on the right side  
13 of the building?

14 MATTHEW ZUKER: We don't know yet.

15 ATTORNEY JOSEPH CONNORS: Okay. But,  
16 we believe that the topography from the front to the  
17 back is a significant change, and then constructing  
18 within 2.7 feet of a retaining wall that's eight to  
19 10 feet high, which is holding back earth from the  
20 back property, you know, is a hardship as well. So,  
21 we feel that it would be a hardship to construct it  
22 that close, 2.7 to here, and 2.1 to there. And, you  
23 know, certainly it could be done, but it's going to  
24 create construction challenges for them, especially

1 when if you looked at the retaining wall, I think  
2 it's essentially a fieldstone retaining wall that was  
3 probably built by Mr. Santalucito, Giuseppe  
4 Santalucito, back in 1925.

5 This property, on the street card, it  
6 was in the Santalucito family up until, you know,  
7 when they sold it in 2010 to the current owners.

8 And, also, in my Exhibit C, I used  
9 Google Earth and you could find a picture of the old  
10 structure. And you probably recognize it if you've  
11 driven up and down Charles Street. It was there  
12 forever, and it had the driveway with the, you know,  
13 I don't know what these are.

14 MATTHEW ZUKER: The grapevine.

15 ATTORNEY JOSEPH CONNORS: The  
16 grapevine. He was probably doing his own grapes and  
17 producing his wine in the back yard. But, you know,  
18 so that's what used to be there.

19 So, with this modern structure, they  
20 will be able to bring it into the center of the lot.  
21 They'll be able to create amenities that weren't  
22 there with the old building. The two units on the  
23 first floor were one-bedroom units, no parking. Now  
24 we're going to have three separate units. They will

1 each have, as I said, a basement, a single-car  
2 parking space. They'll have a first floor.

3 And, actually, let me point out to you  
4 that the architectural renderings that were submitted  
5 we've changed a little bit. And I'll point out the  
6 change in a second. But I just wanted to also point  
7 out on the first floor of each unit, you'll have, you  
8 know, a living room, kitchen, dining room, living  
9 room area, and then the back deck, a half-bath for  
10 each unit. And then you go up to the next floor, and  
11 each unit's got two bedrooms. So, you know, they're  
12 separate and they've got essentially three levels.

13 And the difference between what I've  
14 submitted and what I'm showing you here tonight is  
15 that after we submitted it or in the process of  
16 submitting it, the Building Inspector was concerned  
17 about the curb cuts. So, he felt that we were  
18 entitled to one 20 or two 12 curb cuts. And the way  
19 we had set it up with the garage over on this side,  
20 we would have had to have three curb cuts. So, what  
21 we did is we just moved the garage on this unit from  
22 it used to be here and we just moved it over to  
23 there. So, now these two garages are side-by-side,  
24 so these -- they can share that driveway. So, I



1 think I showed that on the other page. And that's to  
2 prevent a violation of the City Ordinance on how many  
3 driveways you're entitled to. So, we can use an  
4 existing curb cut here and an existing one over  
5 there, and then they'll just kind of use that same  
6 curb cut and then have their separate driveways.

7 BARBARA RANDO, CHAIR: So you're not  
8 looking for any new curb cuts?

9 ATTORNEY JOSEPH CONNORS: No. So that  
10 was to eliminate that concern that the Building  
11 Inspector had. He didn't think, you know, he thought  
12 we needed to go to the Board of Survey or we weren't  
13 entitled to it. So, we simply just changed the  
14 location of the garage, which kind of affected  
15 everything upstairs. We had to move the stairwell as  
16 well on that one unit. But everything else remains  
17 the same.

18 And so we feel that the amenities that  
19 this particular residential structure is going to be  
20 -- well, the amenities that we will have is an  
21 improvement, and we feel, therefore, that, you know,  
22 the variances that we're proposing, two out of the  
23 three are going to be more conforming than what was  
24 there before. The resulting three-family unit will

1 be an improvement to -- it will create greater --  
2 more bedrooms per unit, garage space, off-street  
3 parking, and just, you know, modern amenities as well  
4 as three separate decks out the back.

5 So, I also want to tell you that Matt  
6 did go around to the neighbors. He went around and  
7 knocked on their door. He just wanted to give them  
8 an opportunity to talk about the project. He got a  
9 couple of signatures from some of the neighbors.

10 BARBARA RANDO, CHAIR: Are they direct  
11 abutters?

12 ATTORNEY JOSEPH CONNORS: Yes.

13 BARBARA RANDO, CHAIR: Were they  
14 renters or are they owners?

15 ATTORNEY JOSEPH CONNORS: We have the  
16 owners. We have the owners --

17 BARBARA RANDO, CHAIR: Well, you have  
18 one direct abutter on the left and no one on the  
19 right.

20 ATTORNEY JOSEPH CONNORS: Excuse me?

21 BARBARA RANDO, CHAIR: One direct  
22 abutter on the left and no one on the right.

23 ATTORNEY JOSEPH CONNORS: Correct.  
24 And, actually, we got a signature from Northland.

1 They're on the right, you know. And Verano is across  
2 the street. And some of them are commercial  
3 properties.

4 They did speak with the gentleman  
5 immediately to, if you're looking at the house to the  
6 left. And if you had an opportunity to go by there,  
7 when the fire occurred last year that building was --  
8 was it completely demolished?

9 MATTHEW ZUKER: Yeah.

10 ATTORNEY JOSEPH CONNORS: Yeah, so no  
11 one's living there right now because they have to  
12 reconstruct it and they're doing that now. So,  
13 Matthew told me that they called the owner. They told  
14 her what they were doing and, you know, she was fully  
15 -- she was made aware that they were going to have a  
16 meeting. So, they did, for the abutters that they  
17 were unable to speak to, they presented them with a  
18 letter and asked them to come down to the Taqueira  
19 Mexican Restaurant last night just if they wanted to  
20 meet and just have an informal discussion. I guess  
21 because of the snow the restaurant wasn't open. But  
22 they went anyways and nobody showed up. But, you  
23 know, they did make an attempt to speak to all the  
24 direct abutters and for those that they weren't able

1 to speak with they sent them a letter.

2 MATTHEW ZUKER: We sent out a letter  
3 before that, too. That was the second letter.

4 ATTORNEY JOSEPH CONNORS: Oh, it's the  
5 second letter.

6 MATTHEW ZUKER: At least the second  
7 letter.

8 ATTORNEY JOSEPH CONNORS: Okay. All  
9 right. So, his point is that they had sent out a  
10 letter probably a month ago as well, some time ago.

11 So, we believe that, therefore, this  
12 project is an improvement to the prior structure that  
13 was there. It's going to -- the variances requested  
14 relate to the hardship related to the old footprint.  
15 It relates to the existing topography here. And we  
16 believe that this is going to be a benefit. I mean  
17 still we're going to have a three-family there.  
18 There was a three-family there before. There's going  
19 to be a three-family there when they're done.  
20 However, it will be an improvement, a modern  
21 structure, and it will have off-street parking,  
22 which, you know, we all know in the city, especially  
23 down in that neighborhood, can be a problem. So,  
24 each unit will have two parking spaces, one inside

1 and one outside. So, we believe it's an improvement  
2 to the neighborhood and a benefit to the neighborhood  
3 and the community.

4 GLENNA GELINEAU: Attorney Connors,  
5 under the ordinance, if you rebuild to the footprint  
6 do you have to show parking or is it exempt because  
7 it's pre-existing?

8 ATTORNEY JOSEPH CONNORS: I think we  
9 could just rebuild it.

10 GLENNA GELINEAU: Yeah, I don't think  
11 you have to. Right. Okay.

12 ATTORNEY JOSEPH CONNORS: It doesn't  
13 say anything about parking.

14 GLENNA GELINEAU: No.

15 ATTORNEY JOSEPH CONNORS: It says  
16 you're completely entitled to just rebuild it in the  
17 same footprint.

18 GLENNA GELINEAU: So you don't even  
19 have to.

20 ATTORNEY JOSEPH CONNORS: It's  
21 basically a replication of what was there before with  
22 one parking space.

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

1                   JOHN SERGI: The retaining wall in the  
2 back, how high is that?

3                   MATTHEW ZUKER: Matt Zuker from KM  
4 Dover. Thank you for your time tonight.

5                   STENOGRAPHER: Could you spell your  
6 last name?

7                   MATTHEW ZUKER: Z-u-k-e-r, no C.

8                   On this plan here it shows that wall  
9 goes from over six feet to about eight feet on our  
10 property. And one other thing is the rear setback is  
11 actually 2.4, but the way it was built before was  
12 that foundation was literally at the wall. The wall  
13 wasn't on the property line. The wall was mostly on  
14 our property. So that 2.4 feet was the wall.

15                   So, in talking with our construction  
16 guys, actually building that foundation where it was  
17 is almost impossible. Now, we know with new  
18 construction anything is possible if you're willing  
19 to spend the money. The amount of underpinning and  
20 shoring and additional foundation work made that  
21 almost uneconomical for a three-family.

22                   So, I just wanted to point that out  
23 because the wall wasn't right on the property. It is  
24 our wall on our property.

1                                 JOHN SERGI:  And is that structurally  
2       sound or what are your plans with that wall?  It  
3       needs to be an engineered wall at that height, right?

4                                 MATTHEW ZUKER:  Yes.  We're not quite  
5       -- yeah, sorry.  We're not -- we haven't got that far  
6       yet because we're kind of seeing what the outcome of  
7       here was because if we're able to pull it off it  
8       gives us more options to actually have access to it  
9       and maybe make it a safer wall.  And, if not, we  
10      haven't got -- you know, something will probably have  
11      to get done.  It's holding up.  So usually when  
12      people build things a long time ago they do hold up.  
13      But with the construction going on above, I mean  
14      that's a lot of construction.  I'm not sure what it  
15      entails in terms of the structural requirements with  
16      everything going on there.

17                                JOHN SERGI:  So, you'd have to  
18      engineer it out is my point.

19                                MATTHEW ZUKER:  I would imagine, yeah.  
20      Yeah.

21                                JOHN SERGI:  Okay.  All right.  Thank  
22      you.

23                                BARBARA RANDO, CHAIR:  Mr. Hickernell?

24                                MARK HICKERNELL:  No questions.

1 BARBARA RANDO, CHAIR: Ms. Gelineau?  
2 Mr. Cotton, any questions?

3 MICHAEL COTTON: No.

4 BARBARA RANDO, CHAIR: So that would  
5 be your responsibility to take care of that retaining  
6 wall after the engineer looks at it, whatever --

7 MATTHEW ZUKER: Oh, yeah. Yeah. Get  
8 the Building Department.

9 ATTORNEY JOSEPH CONNORS: I mean if  
10 you've seen it, too, it's an old fieldstone wall,  
11 right? It's very old looking.

12 JOHN SERGI: Yeah, you're going to  
13 need to do something with it.

14 ATTORNEY JOSEPH CONNORS: Right.  
15 Right. You're not going to have a brand new building  
16 with an old wall.

17 Plus, the other thing is I mean both  
18 walls -- this one is to Northland over here and  
19 Northland over there. So, there will be some  
20 discussions with Northland as to what they want to do  
21 with it as well, kind of a joint venture essentially.

22 BARBARA RANDO, CHAIR: Now, does the  
23 Petitioner live there also or is this just rental?

24 MATTHEW ZUKER: This one, we don't



1 live there. We'll be doing it as a project. We  
2 haven't got that far.

3 BARBARA RANDO, CHAIR: Well, you, but  
4 Brian?

5 MATTHEW ZUKER: Well, nobody lives  
6 there. I don't believe --

7 BARBARA RANDO, CHAIR: Yeah, but are  
8 they going to live there? Did they live there?

9 MATTHEW ZUKER: No, and I actually  
10 believe they bought it from -- they were in the  
11 process of doing renovations. Again, and I'm not  
12 sure of the whole history. But I don't believe the  
13 Petitioner, the current owner, ever lived there. It  
14 was destroyed by fire when they were fixing it up.  
15 And it destroyed -- completely destroyed the house  
16 next door. And we did reach out to the abutter who  
17 is still kind of heartbroken over the fire because  
18 she's having issues with the insurance. So, not that  
19 she was against us in terms of our project, but she  
20 was still kind of in shock over the fire. She's --  
21 they had a modular house there, so that has gone up.  
22 And across the street it even burned cars and burned  
23 siding. And so we've seen pictures and it was  
24 obviously a terrible fire. So, I think pulling away

1 from the neighbors, although it isn't a legal thing,  
2 it does benefit everyone to have a further setback  
3 from the neighbors from both a fire safety provision  
4 and just a light and air kind of thought. So, I  
5 think that was our intent of trying to pull things  
6 away from everybody.

7 ATTORNEY JOSEPH CONNORS: Madam Chair,  
8 there's one other point I could say.

9 If you look at Exhibit A, which is the  
10 street card for the property, it also shows you that  
11 the current owner, he bought it in 2012. He replaced  
12 the roof.

13 And then in June of 2013, he pulled a  
14 permit for \$101,000 to do a complete rehab. And, you  
15 know, a year later it burned down. So, you know -- I  
16 don't know if he intended to reside there or not, but  
17 he definitely intended to improve the property and  
18 then it burned to the ground.

19 JOHN SERGI: So is the answer to Madam  
20 Chair's question about rental, is it an investment  
21 property and is it going to be rental?

22 MATTHEW ZUKER: We haven't made that  
23 determination yet. We're going to get to -- with the  
24 market around there and with Northland's development

1 as rentals, it may just be a rental and an  
2 alternative to what they're doing with the proximity  
3 to the train and it creates, you know, kind of  
4 transit for the three-family there. I think our  
5 intent was to keep it, but you never know how it  
6 shakes out at the end.

7 JOHN SERGI: Okay. Thank you.

8 BARBARA RANDO, CHAIR: Do you have any  
9 other proof that it was a three-family besides the  
10 building code -- the building card?

11 ATTORNEY JOSEPH CONNORS: Sure. I  
12 just have the Assessor's records showing that -- this  
13 is a printout of the Assessor's record that says  
14 right here three-family, building style: three-  
15 family.

16 And I also have a copy, when they went  
17 for that permit back in 2013, they submitted a set of  
18 plans for the -- to support their building permit.  
19 So, in 2013, they went in and they submitted these to  
20 the Building Department and those were approved by  
21 the Building Department for the purposes of the  
22 reconstruction. And just basically it shows on the  
23 first floor, it shows you have two separate units, a  
24 kitchen, kitchen, living room, living room, bedroom,

1 bedroom. So, that's the first floor, you know, from  
2 the front to the back.

3 And then the -- what is this, the  
4 second? Yeah, that's the second floor. It goes  
5 existing, proposed; existing, proposed. So, under  
6 the proposed plans that were approved you can see he  
7 was going to try to change it to make it -- one of  
8 these become a unit on the first floor. They never  
9 did it. But have unit one, unit two, and unit three.  
10 So that was what was approved. And then that was the  
11 existing second, and then the existing third.

12 So, I may have misspoke. I thought  
13 the first floor was two units and the second floor  
14 was a third unit, but in either event there were  
15 still only three units.

16 MATTHEW ZUKER: I think the old  
17 configuration was kind of very quirky, so I don't  
18 know how it all actually laid out. But I know that  
19 the new proposed one that was approved had all three,  
20 a small little kitchen and everything on one here;  
21 and then a unit with a kitchen, living, bedroom;  
22 kitchen, bedroom and then your firewalls.

23 ATTORNEY JOSEPH CONNORS: Also, Madam  
24 Chair, I did print out a copy of the *News Tribune*

1 article from the -- actually, there's a copy of the  
2 bill. So, there's the bill. The bill refers to it  
3 as a three-family. That's the tax bill. And, like I  
4 said, I printed out a copy of the --

5 BARBARA RANDO, CHAIR: The tax bill.

6 ATTORNEY JOSEPH CONNORS: I believe I  
7 have a copy of the newspaper article from the  
8 *Tribune*. Let me just find it here.

9 BARBARA RANDO, CHAIR: That's okay. I  
10 don't need that.

11 ATTORNEY JOSEPH CONNORS: Okay.  
12 That's how I got -- kind of that's how I got the  
13 evidence that it was destroyed by the fire on June  
14 18<sup>th</sup> because there's an article as to the Waltham  
15 chief another week to determine the fire cause, four-  
16 alarm fire, just destroying a vacant home at 45-47,  
17 heavily damaged cars. Maybe it doesn't call it a  
18 three-family.

19 BARBARA RANDO, CHAIR: No, that's  
20 okay. I read that.

21 All right. Are there any other  
22 questions at this point?

23 (No questions.)

24 BARBARA RANDO, CHAIR: All right. You

1 may continue with your proposed findings of facts.

2 JOHN SERGI: Madam Chair?

3 BARBARA RANDO, CHAIR: Go right ahead.

4 JOHN SERGI: Since this has been on  
5 file and we've had a chance to read it, I propose we  
6 waive the reading of the finding of fact.

7 GLENN GELINEAU: I'll second that.

8 BARBARA RANDO, CHAIR: Okay. We have  
9 a motion by Mr. Sergi; second by Ms. Gelineau to  
10 waive the reading of the proposed findings of facts.

11 All in favor?

12 ALL BOARD MEMBERS: Aye.

13 BARBARA RANDO, CHAIR: Opposed?

14 (None opposed.)

15 BARBARA RANDO, CHAIR: You may  
16 continue with your proposed decision.

17 JOHN SERGI: In a similar fashion,  
18 Madam Chair, I make a motion that we waive the  
19 reading of the proposed decision since it's been on  
20 file and we had a chance to read that as well.

21 BARBARA RANDO, CHAIR: Mr. Sergi made  
22 a motion to waive the reading of the decision. Do I  
23 have a second?

24 MICHAEL COTTON: Yes.

Waltham Zoning Board of Appeals/2-3-15/79

1 BARBARA RANDO, CHAIR: Second by Mr.  
2 Cotton.

3 All in favor?

4 ALL BOARD MEMBERS: Aye.

5 BARBARA RANDO, CHAIR: Opposed?

6 (None opposed.)

7 BARBARA RANDO, CHAIR: The ayes have  
8 it.

9 Will there be any blasting on this?

10 ATTORNEY JOSEPH CONNORS: Madam Chair,  
11 I just wanted to -- I did amend the decision, and  
12 it's something I scratched in tonight, but the  
13 architectural plans that you have tonight are dated I  
14 believe December 19<sup>th</sup>. And the ones that I've shown  
15 you, and now I'm giving you a copy of, which maybe I  
16 should have done a few minutes ago --

17 BARBARA RANDO, CHAIR: Are dated what?

18 ATTORNEY JOSEPH CONNORS: These are  
19 dated February 3<sup>rd</sup>.

20 BARBARA RANDO, CHAIR: February 3<sup>rd</sup>.

21 ATTORNEY JOSEPH CONNORS: Yeah. So I  
22 have --

23 BARBARA RANDO, CHAIR: What's the  
24 difference between --

1                   ATTORNEY JOSEPH CONNORS:     Just the  
2 garage.

3                   BARBARA RANDO, CHAIR:    The garage?

4                   ATTORNEY JOSEPH CONNORS:   We moved the  
5 garage from this side to that side so we can use one  
6 driveway.   And so what I did was I amended the  
7 proposed decision to reflect the fact that there was  
8 a --

9                   BARBARA RANDO, CHAIR:    So you only  
10 needed one curb --

11                  ATTORNEY JOSEPH CONNORS:  -- revised.  
12 And I kind of just scratched it in there.  But under  
13 A, I referenced the three plans that I submitted  
14 rather than the two because --

15                  BARBARA RANDO, CHAIR:   Thank you.

16                  ATTORNEY JOSEPH CONNORS:  -- there's  
17 actually three site plans.  One was the abutters'  
18 plan.  One was the existing plan.  And one was the  
19 proposed.  And then I referenced the architectural  
20 plans with the new date as of today, which I just  
21 wrote in.  So, that's the only change in the decision  
22 that I have.

23                  BARBARA RANDO, CHAIR:    So this is the  
24 new page.



1                   ATTORNEY JOSEPH CONNORS:    Yeah, just  
2                   the last page of the decision, the conditions page.

3                   JOHN SERGI:       Counsel, would you be  
4                   kind enough to show me on this amended plan the curb  
5                   cuts again?

6                   ATTORNEY JOSEPH CONNORS:    Actually,  
7                   what I'd like to do is I'll show you this because I  
8                   think this will give you a better idea.

9                   JOHN SERGI:       Oh, okay.

10                  ATTORNEY JOSEPH CONNORS:    So, you see  
11                  in red?

12                  JOHN SERGI:       Yeah.

13                  ATTORNEY JOSEPH CONNORS:    So what  
14                  we're doing is we have a curb cut here where you come  
15                  in, which is an existing curb cut.  And this guy can  
16                  go to his garage and he goes to his garage.

17                  JOHN SERGI:       Yeah, okay.

18                  ATTORNEY JOSEPH CONNORS:    One curb cut  
19                  and then one curb cut over here.

20                  JOHN SERGI:       I got you.

21                  ATTORNEY     JOSEPH     CONNORS:        So,  
22                  alternatively, we would have had to have three curb  
23                  cuts.

24                  JOHN SERGI:       Okay.

1                   ATTORNEY JOSEPH CONNORS:     So this  
2 eliminates that.

3                   JOHN SERGI:    I understand.   Okay.

4                   ATTORNEY JOSEPH CONNORS:   We utilized  
5 what's there today.   Right?

6                   JOHN SERGI:    I got it.    Thank you.  
7 One curb cut is larger than the other, right?

8                   ATTORNEY JOSEPH CONNORS:   Yeah.

9                   JOHN SERGI:    Okay.    Thank you.

10                  BARBARA RANDO, CHAIR:     Any other  
11 questions, additions, changes?

12                                   (No response.)

13                  BARBARA RANDO, CHAIR:     Hearing none,  
14 I'm ready for a motion on the proposed finding of  
15 facts, and we said they were amended, or the decision  
16 --

17                  ATTORNEY JOSEPH CONNORS:   No, just the  
18 decision was.

19                  BARBARA RANDO, CHAIR:     Okay.

20                  JOHN SERGI:    I make a motion that the  
21 proposed finding of fact becomes the Board's finding  
22 of fact.

23                  BARBARA RANDO, CHAIR:     Motion on the  
24 proposed finding of fact by Mr. Sergi.

1 Do I have a second?

2 MICHAEL COTTON: I'll second that.

3 BARBARA RANDO, CHAIR: Second by Mr.  
4 Cotton.

5 How do you vote on the proposed  
6 finding of facts, Mr. Sergi?

7 JOHN SERGI: Yes.

8 BARBARA RANDO, CHAIR: Mr. Hickernell?

9 MARK HICKERNELL: Yes.

10 BARBARA RANDO, CHAIR: Ms. Gelineau?

11 GLENNA GELINEAU: Yes.

12 BARBARA RANDO, CHAIR: Mr. Cotton?

13 MICHAEL COTTON: Yes.

14 BARBARA RANDO, CHAIR: I'm sorry?

15 MICHAEL COTTON: Yes.

16 BARBARA RANDO, CHAIR: And the Chair  
17 votes yes.

18 Do I have a motion on the decision, as  
19 amended?

20 JOHN SERGI: I make a motion that the  
21 amended decision becomes the Board's decision.

22 BARBARA RANDO, CHAIR: Motion by Mr.  
23 Sergi. Do I have a second?

24 MICHAEL COTTON: Yes, I'll second it.

1 BARBARA RANDO, CHAIR: Second by Mr.  
2 Cotton.

3 How do you vote on the decision as  
4 amended, Mr. Sergi?

5 JOHN SERGI: Yes.

6 BARBARA RANDO, CHAIR: Mr. Hickernell?

7 MARK HICKERNELL: Yes.

8 BARBARA RANDO, CHAIR: Ms. Gelineau?

9 GLENNA GELINEAU: Yes.

10 BARBARA RANDO, CHAIR: Mr. Cotton?

11 MICHAEL COTTON: Yes.

12 BARBARA RANDO, CHAIR: And the Chair  
13 votes yes. The case is granted.

14 ATTORNEY JOSEPH CONNORS: Thank you.

15 BARBARA RANDO, CHAIR: One more motion  
16 is in order.

17 JOHN SERGI: Motion to adjourn, Madam  
18 Chair.

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

21 GLENNA GELINEAU: Second.

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

24 All in favor?

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1 ALL BOARD MEMBERS: Aye.

2 BARBARA RANDO, CHAIR: Opposed?

3 (No Board Members opposed.)

4 BARBARA RANDO, CHAIR: The ayes have  
5 it. We are adjourned at 7:40 -- is it?

6 MARK HICKERNELL: Eight.

7 BARBARA RANDO, CHAIR: It is 8:40.  
8 Thank you very much.

9 (Whereupon, the public hearing was  
10 concluded at 8:40 p.m.)

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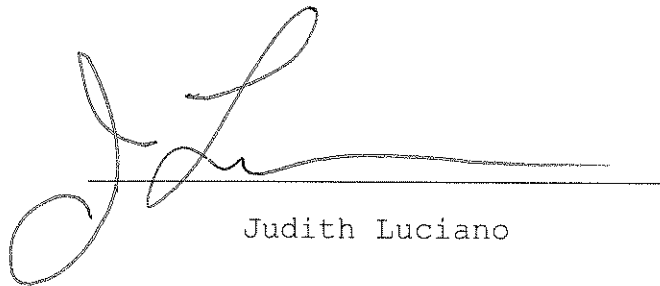
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*Barbara Rando, chair*  
*3/31/15*



C E R T I F I C A T E

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



Judith Luciano

