

MAR 24 2015

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

February 24, 2015

7:00 P.M.

at

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

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

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Waltham Zoning Board of Appeals/2-24-15/2

I N D E X

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A T T A C H M E N T S

Legal Notices: Case No. 2014-31
Case No. 2015-02
Case No. 2015-03

Case No. 2015-02:
Brief
Exhibits A-D
Proposed Findings of Fact
Proposed Decision, as Amended

Case No. 2015-03:
Petition
Memorandum of Law and Statement of Facts in Support
of Petition for Variance

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 24,
4 2015 is called to order at 7:00 p.m.

5 Tonight we have one continued case and
6 two new cases before us: Case 2014-31, Frank D.
7 Valentino, 141-143 Calvary Street; Case 2015-02,
8 Carlo Compagnone -- did I pronounce that properly?

9 ATTORNEY JOSEPH CONNORS: Compagnone.

10 BARBARA RANDO, CHAIR: Compagnone? Oh,
11 good. Carlo Compagnone, 162-164 Brown Street; and
12 Case 2015-03, AM-FM Realty, LLC, 1486 Main Street.

13 The members sitting this evening on
14 the Valentino case are Mr. Sergi, Mr. Hickernell, Mr.
15 McCarthy, and the Chair, Barbara Rando.

16 The members sitting on the other two
17 cases will be Mr. Sergi, Mr. Hickernell, Ms.
18 Gelineau, Mr. McCarthy, and the Chair.

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

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4 BARBARA RANDO, CHAIR: Will the Clerk
5 please read the petition in Case 2014-31, Valentino.

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 hear from the Petitioner or the
11 Petitioner's representative please?

12 ATTORNEY RICHARD LECLAIR: Richard
13 LeClair for the Petitioner Frank Valentino.

14 We're actually going to ask to
15 withdraw the petition without prejudice.

16 After our first public meeting, some
17 questions were raised about whether we could add some
18 land to the other lot and whether we could actually -
19 - the tandem parking issue. And there was another
20 issue about the number of variances requested, which
21 we were waiting for the opinion from the Law
22 Department.

23 I think you're probably right on that.
24 I don't think our engineer had it right. So, I think

1 we need to readvertise it anyway. And we have a
2 modified plan that adds a little more land to the
3 other part and solves the tandem parking issue.

4 So, we'd like to withdraw it and
5 resubmit with a different plan.

6 BARBARA RANDO, CHAIR: All right. The
7 attorney would like to withdraw without prejudice.

8 EDWARD MCCARTHY: So moved.

9 BARBARA RANDO, CHAIR: We have a
10 motion by Mr. McCarthy.

11 Do I have a second?

12 MARK HICKERNELL: Second.

13 BARBARA RANDO, CHAIR: Who did that?

14 MARK HICKERNELL: I did.

15 BARBARA RANDO, CHAIR: Second by Mr.
16 Hickernell.

17 How do you vote, Mr. Sergi?

18 JOHN SERGI: Yes.

19 BARBARA RANDO, CHAIR: Mr. Hickernell?

20 MARK HICKERNELL: Yes.

21 BARBARA RANDO, CHAIR: Mr. McCarthy?

22 EDWARD MCCARTHY: Yes.

23 BARBARA RANDO, CHAIR: And the Chair
24 votes yes.

1 ATTORNEY RICHARD LECLAIR: Thank you
2 very much.

3 BARBARA RANDO, CHAIR: So you have the
4 right to withdraw without prejudice.

5 ATTORNEY RICHARD LECLAIR: Thank you.

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1 **Case Number 2015-02: Carlo Compagnone, Jr. and Carlo**
2 **Compagnone, Sr., 162-164 Brown Street**

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4 BARBARA RANDO, CHAIR: Will the Clerk
5 please read the petition in Case 2015-02, the
6 Petitioner Carlo Compagnone, Jr. and Carlo
7 Compagnone, Sr.

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

11 BARBARA RANDO, CHAIR: Thank you.

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

14 ATTORNEY JOSEPH CONNORS: Good
15 evening. My name is Joseph M. Connors, Jr. I'm an
16 attorney here in Waltham. My office is at 404 Main
17 Street.

18 I have a printed brief with several
19 exhibits attached. I have two. I'm going to pass
20 that out to the Board members.

21 BARBARA RANDO, CHAIR: Thank you.
22 Does it have the Land Court by any chance?

23 ATTORNEY JOSEPH CONNORS: The Land
24 Court opinion?

1 BARBARA RANDO, CHAIR: Decision,
2 opinion.

3 ATTORNEY JOSEPH CONNORS: Yeah, we do.
4 I submitted -- well, let me step up to the podium.

5 This case is a remand petition as was
6 read by Mr. Hickernell. And so it's remanded by the
7 Land Court. And so I did submit a copy of the Land
8 Court decision with the --

9 BARBARA RANDO, CHAIR: I have it, but
10 I --

11 ATTORNEY JOSEPH CONNORS: Okay.

12 BARBARA RANDO, CHAIR: If you have an
13 extra. If not, that's fine.

14 ATTORNEY JOSEPH CONNORS: I do have
15 one. I brought one with me. But I can share that
16 with the Board when we get to that point.

17 BARBARA RANDO, CHAIR: Maybe I put one
18 in my briefcase. Let me check.

19 MARK HICKERNELL: There's one here.

20 BARBARA RANDO, CHAIR: Thank you.

21 ATTORNEY JOSEPH CONNORS: Okay. So,
22 as I said, this is a remand petition. I represent
23 the two petitioners, Carlo Compagnone, Jr. -- Carlo
24 is right here in the third row. He is with his wife

1 Alisha, and Carlo's father, Carlo Compagnone, Sr.
2 His son, Carlo, is representing him here tonight with
3 his wife. So, they are the petitioners and the
4 owners of the property at 162-164 Brown Street.

5 Brown Street is -- I have a copy of
6 the abutter's plan that was submitted with the
7 package. So, the locus is right on the corner of
8 Brown Street and Lowell Street. So, it's right here.
9 Moody Street is up this way. So, it's a little bit
10 east of Moody Street to Lowell Street.

11 The property, as the petition states,
12 is a three-family residence. And the current owners
13 are Carlo, Sr. and Jr. The property is a 6,000-
14 square-foot lot. As far as we can tell, the
15 assessor's records indicate that the property was
16 constructed sometime around the 1900s.

17 It's also I believe clear that it was
18 constructed originally as a two-family residence.
19 So, it is currently used as a three-family and the
20 basis of that is that in 1946 the Zoning Board of
21 Appeals granted the then owners of the locus a use
22 variance to allow three residential units at the
23 locus subject to certain conditions. So, it's the
24 certain conditions that really brings us here

1 tonight.

2 So, the two conditions were, one, that
3 the use variance was granted provided that the third
4 unit on the third floor would be strictly for the use
5 of veterans returning from the war, World War II in
6 1946. And it was the second condition that was added
7 that stated that this could be used for a seven-year
8 period.

9 Two years ago, or approximately maybe
10 three years ago, Mr. Compagnone had a conversation
11 with the Building Department of the City of Waltham.
12 They told him that the property, although Mr.
13 Compagnone had purchased it in 1996 believing it to
14 be a three-family and had used it from 1996 until
15 2012 when he had the conversation with the building
16 inspector and he's actually continued to use it
17 pending these cases, but in 2012 he had a
18 conversation with the building inspector. And he
19 stated that the use variance had expired after seven
20 years and, therefore, he needed to come to the Zoning
21 Board of Appeals and seek approval to continue the
22 use. So, he did that. In Case 2013-02, he appeared
23 before the Zoning Board of Appeals and he was seeking
24 to essentially delete the conditions, one for the

1 veterans and two for the seven-year limitation so
2 that he could continue to use it in perpetuity as a
3 three-family residence.

4 The Board denied the petition. And
5 the reason -- one of the reasons given was that the
6 Board was -- the Board stated that they did not --
7 because it was a use variance, they did not have
8 jurisdiction to address the petition.

9 So, Mr. Compagnone appealed that to
10 the Land Court. And so the Land Court then has
11 rendered an opinion and remanded the case back to the
12 Zoning Board of Appeals. But I'll skip ahead to kind
13 of where the Land Court stated that by order of
14 November 10th I'm going to say 2014. If you read the
15 opinion, it actually says 2015, but, clearly, that
16 hasn't come yet. So, it's a typo in the Land Court
17 order.

18 But in Land Court Case Number 13
19 Miscellaneous 477891, the Judge stated that this case
20 is remanded to the City of Waltham Zoning Board of
21 the Appeals so that the Plaintiff, Carlo Compagnone,
22 Jr., may submit to the ZBA a petition in the form of
23 a remand petition requesting from the ZBA the
24 extension of the variance to allow the use of the

1 property owned by Mr. Compagnone at 162-164 Brown
2 Street, Waltham, Middlesex County, Massachusetts, as
3 a three-family residential building (remand
4 petition). So, that's what brings us here tonight.

5 So, we are asking for, through the
6 remand petition, to -- we're asking the Board to
7 delete the two conditions that were attached to the
8 1946 variance that was granted.

9 So, that's kind of a general
10 background. But, on page three of my brief, I tried
11 to set out the facts, and the procedural history, and
12 the Land Court order. So, I'll just take you through
13 kind of historically how we got to 1946 and then how
14 we got to 2012 and then 2014 Land Court order.

15 So, as I said, the assessor's records
16 indicate that the property was built in approximately
17 1900. I've attached a copy of Exhibit A, which is
18 the assessor's records, that will show the property
19 constructed around 1900.

20 I've attached as Exhibit B a street
21 card for the locus. And so the street card for the
22 locus, the first entry is on April 13th, 1928, "add
23 two pantries and a porch to the house." So, and
24 there's no notation as to the original construction

1 because that must have predated zoning of 1925. The
2 assessor stated that it was created in 1900. So,
3 prior to zoning the property was created, but I think
4 we can infer from the 1928 entry he was adding two
5 pantries, there was two residential units. So, I
6 believe in 1928, or 1925, or 1900 when it was
7 originally created, it was a two-family unit.

8 And then you'll see on the street car
9 an entry in 1946 by Mildred E. Burke, appeal to
10 convert third floor into an apartment granted by the
11 Board of Appeals for seven years. So, on page three
12 of my brief, I state that, "On June 29, 1946, the
13 Zoning Board of Appeals granted a variance to Mildred
14 E. Burke upon her request to permit 'the converting
15 of the third floor of her residence at 164 Brown
16 Street to an apartment for use of a war veteran.'"
17 And I'll quote the vote to the Board. The Board
18 voted to approve as follows, "that the appeal of
19 Mildred E. Burke be granted for a period of seven
20 years...this housing facility is to be used for housing
21 returned veterans. The Board recommends that fire
22 extinguishers be installed throughout the new
23 apartment. In the opinion of the Board, the granting
24 of the appeal with the restrictions will, one, assist

1 in alleviating the critical housing shortage now
2 existing in Waltham." And so in Exhibit C I've
3 attached a copy of that vote and the decision of the
4 Zoning Board of Appeals in 1946.

5 So, it wasn't until -- and I can't
6 explain why, but I mean I think at some point I said
7 that it's been used since 1946 as a three-family.
8 But I stand corrected because the street card states
9 that in 1949 a building permit to remodel the third
10 floor into an apartment was granted. So, it appears
11 that legally it wasn't converted to a third floor
12 apartment till 1949. And, since that time, it's been
13 used as a three residential building.

14 As I said, Mr. Compagnone purchased it
15 in 1996 with his father. He's maintained the
16 property as a three-family since then. He's
17 continued the property as a three-family residence
18 since then.

19 In addition to the exhibits that I've
20 talked about, A, B, and C, in the way back of the
21 brief I've attached pictures, which really just kind
22 of give you an indication of the layout of the
23 property, pictures of the kitchen, the living room,
24 bathroom, bedroom, and then utilities. So, Mr.

1 Compagnone has, you know, created separate utilities
2 for all the units, three sets of utilities. He has
3 for sets of electrical systems, one for each unit and
4 one for public lighting for the common hallways.

5 Also, I submitted, originally with the
6 original brief, the original application, a copy of
7 the plan that was -- the architect, Al Costa, went up
8 there and measured it out, the layout of property.

9 You come in up here. And we have a --
10 you come in here, you come into the living room.
11 There's a single bedroom, a dining room, an office
12 space, storage space, and a full bath here. So, it's
13 a small living unit with say one, two, three, four
14 rooms and a kitchen and a bath.

15 And so as I stated, Case 2013-02,
16 hearings were conducted by the Zoning Board of
17 Appeals on March 5, 2013 and April 9, 2013. The
18 Board voted to deny Compagnone's application to allow
19 continuous use of the third unit on the property.

20 The Board found, among other things,
21 that it "no longer has the authority to grant use
22 variances."

23 An appeal was filed. And the Land
24 Court has now ordered this remand petition. And I

1 did submit a copy of the Land Court order, but I'm
2 quoting it right here on the bottom of page four
3 where the Land Court found, "The ZBA's reasons for
4 its denial are based on a belief that it did not have
5 the authority to reinstate and continue the 1946
6 variance. As discussed below, because this belief is
7 mistaken, its reasons do not have any legal
8 authority."

9 And the Land Court went on, at the top
10 of page five, the second paragraph, the Land Court
11 further found that "General Laws Chapter 40A, Section
12 10, explicitly provides that use variances granted
13 prior to January of 1976, but limited in time, may be
14 extended on the same terms and conditions that were
15 in effect for such variance upon said effective date.

16 The provision of Section 10 does not require the
17 variance holder to apply for an extension of the pre-
18 1976 variance before its time limit is up."

19 And so the Court went on to state that
20 as a result of this finding, they ordered the remand
21 petition. And then they give instructions to the
22 Zoning Board. And the last paragraph on paragraph
23 five, beginning with "Upon remand," and the Court
24 states, "the ZBA shall consider whether the 1946

1 variance should be extended on the same terms and
2 conditions. In so doing, the ZBA shall be guided by
3 the following considerations. First, under Section
4 10, the ZBA may extend the 1946 variance, Mass.
5 General Law 40A, Section 10, meaning that it is not
6 required to do so. Second, although Section 10
7 speaks of extending pre-1976 variances on the same
8 terms and conditions, i.e., the condition of the 1946
9 variance that the third housing unit be used for
10 housing returned veterans, is unenforceable, and
11 shall no longer be a part of any renewed or extended
12 variance. Third, notwithstanding Section 10's
13 direction that the variance may be extended on the
14 same terms and conditions, the ZBA has the inherent
15 authority and indeed the obligation, to modify the
16 conditions of the 1946 variance if it finds that the
17 circumstances affecting the property have changed
18 since the variance was granted."

19 So, moving onto page six, I mean the
20 Court also cites a couple of cases, *Wendy's Old*
21 *Fashioned Hamburgers* and I think it was *Zamperini v.*
22 I think it was the *Town of Plymouth*. But in both
23 those case, I sent an electronic copy to the Zoning
24 Board of Appeals Office. They both talk about where

1 there was an initial grant and then the circumstances
2 that led to the conditions had changed.

3 So, in the *Wendy's* case, it was a
4 *Wendy's* up in Billerica where they were only to use
5 Boston Post Road, or I think it was Boston Road, and
6 they couldn't use the side street. But then the
7 state came in and re-widened the road from one lane
8 to -- actually, from it was one lane going each way
9 to two lanes going each way. And then they did a
10 reconfiguration. So, *Wendy's* went back to the Board
11 and said now people have to come across almost two or
12 three lanes of traffic. So, it's more dangerous to,
13 you know, use Boston Post Road rather than the side
14 street. So, the Board found that the conditions had
15 changed. The redesigning of Boston Road resulted in
16 a change of circumstances. So, therefore, they found
17 that removing the condition which prohibited them
18 from using the side street was no longer applicable.
19 So, that's what those two cases talk about,
20 circumstances that are -- conditions that were put on
21 prior approvals which over time have changed.

22 And so I set out in my brief, and we
23 believe, that the circumstances that related to the
24 time limitations of the '46 condition have changed.

1 Noting that the Court has, on its own action, found
2 that the veterans only preference is unenforceable,
3 that only leaves one condition and that would be the
4 seven-year condition. But what we've done is I've
5 attached D-1 and D-2 exhibits.

6 Exhibit D-1 lists 10 properties where
7 the Zoning Board of Appeals in the 1946 era granted
8 use variances to add addition residential units to
9 two-families for the housing of veterans for seven
10 years.

11 Exhibit D-2 is another 22 properties
12 where, you know, the use variance was granted for
13 these 22 properties, the purpose of was to provide an
14 additional residential housing unit for a veteran.
15 And these properties, the seven-year restriction
16 wasn't provided there. But there's no question that
17 in 1946 and the post-1946 era, for a period of time
18 that the Zoning Board of Appeals, in an effort to, as
19 I state in all the cases if you read them, all the
20 cases state all variances were granted in 1946 to
21 assist in alleviating the critical housing shortage
22 in Waltham. But then they limited, you know, the
23 first 10 I show you in Exhibit D-1, for seven years.
24 So, obviously, there was a contemplation that the

1 housing shortage would be over after seven years,
2 that the veterans -- the war was over, the veterans
3 would come back, and then they would be able to house
4 the veterans and then, you know, that crisis would no
5 longer be there because the war was over.

6 You know, but that reaction was based
7 on the G.I. Bill. And then there was -- I think
8 there was a state statute that allowed that as well.
9 And then the Zoning Board of Appeals, in all of their
10 decisions, state that. I mean that's the purpose of
11 the use variances and the seven-year limitation.

12 What I tried to do in pages eight
13 through the rest of the brief is just kind of
14 highlight what's going on in the City of Waltham now.
15 We believe that the circumstances that led to say a
16 seven-year window to use the third unit have changed.
17 And the changes are continuing today. There's a need
18 for reasonable affordable housing in the City of
19 Waltham. I've cited the City's Master Plan. It was
20 Mayor McCarthy back in 2005. And I know that's, you
21 know, 10 years ago, but I don't think that a
22 subsequent or another Master Plan has not been filed.
23 So, I think the goals of that are still true to some
24 degree.

1 But, you know, one of the statements
2 of the Master Plan was, "We need to prevent
3 additional large overdevelopment projects such as The
4 Ridge on Lexington Street and Longview Place at the
5 sale of the former Waltham Hospital." A listed goal
6 in the Master Plan is "housing, renovate existing
7 house stock and continue City programs assisting home
8 rehabilitation."

9 The Waltham Housing Department has
10 issued various reports. And I'd just go online and I
11 find a couple of reports dated April 1, 2014. And so
12 the overall goal -- in this report, they say, "The
13 overall goal of Waltham's Consolidated Plan is to
14 develop Waltham as a sustainable urban community by
15 providing decent housing and a sustainable living
16 environment with opportunities for economic
17 advancement principally for low and moderate income
18 persons."

19 On page nine I cite that particular
20 report, "This, combined with continued immigration,
21 has produced a wide range of income groups in
22 Waltham, with more than 40 percent of all households
23 earning low or moderate incomes. Lower-income
24 residents are concentrated in South Waltham, where

1 the older housing stock is more affordable. As a
2 result, Waltham's Target Area continues to be focused
3 on the southern part of the City along with the
4 Charles River, encompassing most of the south side
5 neighborhood and the downtown Moody Street area."

6 So, we're finding evidence that, you
7 know, the City finds that, you know, this part of the
8 City, the south side down here off of Brown Street,
9 is an older housing stock, but it is more affordable
10 to many of the residents in the City of Waltham. So,
11 you know, his rent runs at about \$1,200 a month for
12 that third-floor unit.

13 Many housing developments have come up
14 in the City in the last few years. You know, we have
15 One Moody Street. We have 36 River Street. If you
16 go online and look up, you know, the web page for 36
17 River Street, the lowest priced unit I could find was
18 a one-bedroom for \$1,647 a month, but it's advertised
19 as 200 units, luxury units, with amenities. Most of
20 them are over \$2,000 a month and rising. One Moody
21 Street is going to add 267 luxury units to the City.
22 Again, these are rentals, but, you know, they're
23 marketed as luxury rentals.

24 Granted, we only have one unit, but we

1 feel that it's an existing piece of housing stock in
2 an area of the City which has, you know, been
3 utilized for multi-families, two-families, three-
4 families, for the last 65 years. And this is going
5 to allow that continued enabling of another
6 reasonably priced unit.

7 So, it's our position that, you know,
8 the conditions of the City of Waltham continue to
9 show that there's a need for affordable housing
10 stock, and that's reflected in the Master Plan. It's
11 reflected in the reports written by the Waltham
12 Housing Department. And this will serve that need.
13 And that is, you know, kind of in contrast to the
14 luxury units that are being developed, which is great
15 for the City of Waltham, you know, great for the
16 taxpayers of the City of Waltham, but it's not for
17 all of the residents of the City of Waltham. And
18 where we have 40 percent of the citizens are moderate
19 to low income, this is going to be a moderately
20 priced apartment that will be available for rent to
21 someone in the City.

22 Carlo told me that the last couple
23 that was there, they were there approximately 10
24 years and they just moved out recently because -- it

1 was initially two young women, and then one of them
2 was married. And now, you know, she's moved out as a
3 young couple with her husband to start a family
4 somewhere else. But it was simply an affordable unit
5 to them as a young couple in the City of Waltham.

6 I've also attached a copy of a report
7 or an article from the *Boston Globe*. It's dated
8 2013. But, again, I don't think anything has
9 changed. The rents in the greater Boston area are
10 going up, and that's continuing to affect residents
11 of the City of Waltham. So, rather than have them
12 vacate the City to go out further west to find an
13 affordable unit, we have one right here on Brown
14 Street.

15 The structure itself, I also cite the
16 structure. I mean right here, I've shown on the plan
17 that, you know, in 1949 it was created as a
18 standalone unit, separate from the second floor,
19 second from the third floor. So, if he was to have
20 to, you know, vacate this unit as a separate unit,
21 the only thing that makes sense is to combine it with
22 the second floor. So, he would have to, you know,
23 create, do some architectural and engineering review
24 as to how to convert the separate unit into a

1 combined second and third floor unit. That would
2 probably result in a unit which is going to have four
3 to five bedrooms, which is really not practical for a
4 property down there. Four and five bedrooms are
5 really -- they're not that desirable. The rent would
6 be much higher. It may often lead to the leasing to
7 non-related peoples, perhaps students sharing a
8 larger apartment. So, we believe that the structure
9 as set today is effective for a single standalone
10 unit, and it would be a financial and practical
11 hardship to convert it to a combined second floor,
12 and also that the result would not necessarily be
13 another desirable apartment, but it would be too much
14 of an apartment and may lead to issues of non-related
15 people's living together or overcrowding the space.

16 On page 11, I talk about the benefits
17 to the public good. And under Chapter 40A, it talks
18 about the benefit to the public good. It can't be a
19 substantial detriment to the public good. We feel
20 that in that this property has been utilized as a
21 three-family residence, the third floor has been
22 utilized as the third unit since 1949, there will be
23 no impact whatsoever. There's only a benefit to
24 allow it to be continued to be used and used as a

1 third floor residence.

2 All of the parking that is required
3 under the zoning ordinance is provided on site.
4 There's two parking spaces to the left front of the
5 building. There's like four to five spaces on the
6 lower street side of the building. So there's two
7 parking spaces for each unit and probably more. So,
8 there will be no impact whatsoever on the
9 neighborhood because no structure -- no exterior
10 structural work is going to be done, no interior
11 structural work is going to be done. It's going to
12 remain as is. And the parking facilities are there
13 to serve not only the needs of the tenants, but also
14 complies with the City's zoning requirement.

15 What I also looked at was I just
16 thought it was interesting -- I mean this property is
17 in a Residence B Zoning District -- I probably should
18 have said that from the beginning -- which only
19 permits two-family units, hence the use variance in
20 1946. But, if you just go through the street -- and
21 I actually attached it as an exhibit, as Exhibit F,
22 but I also just kind of took a marker and wrote it on
23 the plan here.

24 So, here's the property on the corner.

1 Across the street is a two-family. You have a six-
2 family, a six-family, a three-family, a five-family,
3 a four-family. Okay. Here's a two next door.
4 There's a four, a one, a six, two. There's a two and
5 a two, kind of a rat tail lot, another two, and then
6 behind him is three-families.

7 Exhibit F, I tried to carry that out
8 as well. We tried to break it down to within the
9 abutter's area we have three-families, four-families,
10 five, and six. So, there's many properties in the
11 neighborhood that, you know, exceeded the two-family
12 limitation. So, again, the impact on the
13 neighborhood is -- there will not be any detrimental
14 effect on the neighborhood because it's consistent
15 with everything else that is utilized in the
16 neighborhood. There's more multi-families on that
17 stretch of the neighborhood than there is two-
18 families.

19 I have a couple of copies of the
20 *Wendy's* case and the *Zamperini* case if any of the
21 Board members would like to take a look at it. But,
22 I did submit that electronically with my original
23 filing.

24 So, really just to sum up, we feel

1 that the circumstances have changed. And the Land
2 Court has ordered that if the Board finds that the
3 circumstances have changed which resulted in the time
4 limitation, then -- and I'll go back to the quotation
5 just so I get it right. Yeah, on the top of page six
6 of my brief, "As directed by the Land Court, the
7 Board is directed to determine whether to modify..the
8 1946 variance if it finds that circumstances
9 affecting the property have changed since the
10 variance was granted." We believe that they
11 certainly have. And this property would continue to
12 serve a need for housing in the City of Waltham,
13 especially in this part of the City, and we would
14 respectfully ask that the Board approve the variance
15 by -- the variance has already been approved, but
16 really just you're approving it by deleting so much
17 of the condition that limits the variance to seven
18 years, so which effectively would allow it to be
19 extended and continued in perpetuity.

20 Thank you, Madam Chair.

21 BARBARA RANDO, CHAIR: Attorney
22 Connors, on page D-1, Exhibit D-1 and D-2 --

23 ATTORNEY JOSEPH CONNORS: Right.

24 BARBARA RANDO, CHAIR: -- you have a

1 list of addresses.

2 ATTORNEY JOSEPH CONNORS: Right.

3 BARBARA RANDO, CHAIR: These are
4 addresses that have been granted a seven-year --

5 ATTORNEY JOSEPH CONNORS: Right.

6 BARBARA RANDO, CHAIR: All of these,
7 on both pages?

8 ATTORNEY JOSEPH CONNORS: Yeah. So,
9 D-1 were properties that were the restriction for
10 veterans only was applied and the seven-year
11 limitation was applied.

12 BARBARA RANDO, CHAIR: The seven
13 years.

14 ATTORNEY JOSEPH CONNORS: On page D-
15 2, it was simply veterans only. There was no seven-
16 year restriction.

17 BARBARA RANDO, CHAIR: Okay. On D-1,
18 have these addresses come before us? Have we voted
19 on any of these?

20 ATTORNEY JOSEPH CONNORS: 536
21 Lexington Street has, yes.

22 MARK HICKERNELL: I believe one of the
23 others has as well.

24 ATTORNEY JOSEPH CONNORS: And,

1 actually, there's -- I'll pull it out. There was
2 another case down on Brown Street. Let me go get my
3 file. The petitioner in that case was the same of
4 Silva and Attorney Sullivan represented them because
5 I did have an opportunity to take a look at that
6 case. So, in the Silva decision, which was on say
7 case number 5, it was for 202-204 Brown Street. So,
8 on February 28, 2006, Mr. and Mrs. Silva came before
9 the Board and asked the Board to amend the variance
10 issued by the Board in 1946 by deleting the following
11 conditions: one, that the third floor be rented only
12 to veterans; and, two, and that the term of the
13 variance be limited to seven years. So, that was
14 approved by the Board in 2006. Voting yes on the
15 petition was the Chair, Mr. Morris, Mr. Hickernell,
16 Mr. Sergi, Mr. McCarthy. I have my copy of that but
17 I can just pass that down.

18 So, I think that was, you know,
19 analogous to the fact of what we have here where, in
20 fact, the Board did take up the matter and did find
21 that they had the authority to delete those
22 conditions and they did do so.

23 BARBARA RANDO, CHAIR: Because I can
24 name three cases where we voted against it because of

1 the use variance. Three cases that we weren't
2 allowed to touch it. In fact, I believe in one of
3 the cases we got an opinion from the Law Department
4 saying it was definitely a use variance and that we
5 had no right to --

6 MARK HICKERNELL: But the Land Court
7 has decided that's not true.

8 BARBARA RANDO, CHAIR: The Land Court
9 said it comes back to us and we can decide. It
10 doesn't mean that we have to --

11 MARK HICKERNELL: But not on the basis
12 that it's a use variance.

13 BARBARA RANDO, CHAIR: -- we don't
14 have to agree with the Judge's decision.

15 ATTORNEY JOSEPH CONNORS: Well, I
16 think you do to some extent. The Judge says that if
17 you find that circumstances have changed for the
18 imposition of the seven-year condition, then you have
19 to approve the variance. So, it's not --

20 BARBARA RANDO, CHAIR: And how has it
21 changed for the seven years? I mean they've gotten
22 more than seven years out of the apartment.

23 ATTORNEY JOSEPH CONNORS: No, but my
24 point is that the seven years were imposed originally

1 as a reaction to an emergency housing crisis for
2 veterans.

3 BARBARA RANDO, CHAIR: Correct.
4 Correct.

5 ATTORNEY JOSEPH CONNORS: That's come
6 and gone.

7 BARBARA RANDO, CHAIR: Mm hum.

8 ATTORNEY JOSEPH CONNORS: However,
9 there still is a need for this type of housing stock
10 in the City of Waltham. And so I've represented, you
11 know, reports that are published by the City of
12 Waltham, their Planning Department, that goes through
13 and takes a look at the City and sees what type of,
14 you know, what the income levels of the residents of
15 the City are. You know, there's 60,000 people in the
16 City. They're saying 40 percent of them have
17 household incomes that are moderate or low.

18 BARBARA RANDO, CHAIR: Oh, I'm not
19 saying that there is not a need.

20 ATTORNEY JOSEPH CONNORS: Right.

21 BARBARA RANDO, CHAIR: I'm just
22 wondering if we still -- I still consider it a use
23 variance.

24 ATTORNEY JOSEPH CONNORS: Well, I mean

1 it is a use variance. And the Board states -- not
2 the Board -- the Land Court states under Section 10
3 that the Board has the authority to change the time
4 limitation. So, on page five of my brief, I'm citing
5 the opinion of the Land Court.

6 BARBARA RANDO, CHAIR: Mm hum. All
7 right.

8 ATTORNEY JOSEPH CONNORS: And he
9 states, first, under Section 10, the ZBA may extend
10 the '46 variance. I'm going to pull out Section 10
11 so you can read that.

12 BARBARA RANDO, CHAIR: I think we have
13 to be very careful on this case because I know three
14 that we voted against and to vote yes on some and no
15 on others is not consistent.

16 ATTORNEY JOSEPH CONNORS: Well, I mean
17 I think it --

18 BARBARA RANDO, CHAIR: There's no
19 black or white -- I mean no gray. You have to be
20 black or white.

21 ATTORNEY JOSEPH CONNORS: Well, I
22 think in 2006 you did approve it.

23 BARBARA RANDO, CHAIR: I understand.

24 ATTORNEY JOSEPH CONNORS: So, now

1 let's say that I'll speculate and say that you
2 probably received an opinion from the Law Department
3 in some subsequent case where they said you couldn't
4 do it. Well, now this has gone to the Land Court,
5 and the Land Court said that's not correct. The Land
6 Court says that --

7 BARBARA RANDO, CHAIR: This Judge's
8 finding, his opinion is that it is --

9 ATTORNEY JOSEPH CONNORS: Well, I mean
10 he's -- not only -- he's the Judge. He is the Judge.
11 And he's ordered the Board to take another look at it
12 and says you do have the authority.

13 BARBARA RANDO, CHAIR: Take another
14 look at it.

15 ATTORNEY JOSEPH CONNORS: Says you do
16 have the authority to approve it.

17 MARK HICKERNELL: Mr. Connors, did the
18 City appeal this decision of the Land Court?

19 ATTORNEY JOSEPH CONNORS: No.

20 MARK HICKERNELL: So, this is the
21 decision?

22 ATTORNEY JOSEPH CONNORS: This is the
23 decision. You know, and I think that if you look at
24 Section 10, it talks about the permit granting

1 authority may impose conditions, safeguards, and
2 limitations, both at time of time and use. So that's
3 what the Land Court looked at. He didn't look at the
4 variance. He said the statute provides some time
5 limitations. And then he said in the text of the
6 same Section 10, "Variances properly granted prior to
7 January 1, 1976 but limited in time may be extended
8 on the same terms and conditions that were in effect
9 for such variance upon said effective date." So, the
10 Court said the statute says you can do it. And the
11 Court has ordered you to do it. Now, he hasn't said
12 that you have to do it, but he said what you need to
13 look at have the circumstances changed which resulted
14 in the seven-year limitation.

15 And I would say that in 1946 they
16 contemplated a short-term housing crisis. I'm
17 representing to the Board that the housing crisis
18 continues in the City of Waltham, especially for
19 these types of units. We have luxury developments
20 throughout the City, which is great. But it's not
21 going to serve say 40 percent of the residents of the
22 City. So, this will allow someone a reasonably
23 priced \$1,200 a month apartment.

24 So, I can see where you say, well,

1 gee, I'm not sure about the precedent, but we haven't
2 had an opinion from the Land Court until November of
3 2014 that says that you have the authority to change
4 the conditions on a use variance. So, I don't think
5 you'd be setting any bad precedent because now the
6 Court has ruled. Now the Court has --

7 EDWARD MCCARTHY: It's not that --
8 it's not a use variance that was granted before a
9 certain date.

10 ATTORNEY JOSEPH CONNORS: Right.
11 Right. You can't grant another one.

12 GLENNA GELINEAU: Right. Exactly.

13 ATTORNEY JOSEPH CONNORS: You could
14 only maybe amend one as to a time limit that was
15 granted prior to '76.

16 EDWARD MCCARTHY: Madam Chair, Madam
17 Chair, my concern specifically about this particular
18 issue is how does it comply with the current building
19 codes. And the condition we put on that one was that
20 subject to it being inspected by the Building
21 Department and making sure that the owner complies
22 with all their requests.

23 ATTORNEY JOSEPH CONNORS: And I put
24 that in my first condition of my proposed decision.

1 EDWARD MCCARTHY: Okay. Okay. Now,
2 may I, Madam Chair? How is your parking there? It's
3 stacked parking on one side of the building?

4 ATTORNEY JOSEPH CONNORS: He has two
5 on Brown Street.

6 EDWARD MCCARTHY: I see that.

7 ATTORNEY JOSEPH CONNORS: Okay. So
8 that's going to serve two parking spaces for one
9 unit.

10 EDWARD MCCARTHY: Is the whole lot all
11 tar?

12 ATTORNEY JOSEPH CONNORS: Yeah.

13 CARLO COMPAGNONE, JR.: No, no.
14 There's grass.

15 EDWARD MCCARTHY: There's grass on the
16 left-hand side? I mean I don't have a picture on
17 that.

18 CARLO COMPAGNONE, JR.: The whole
19 corner is grass.

20 MARK HICKERNEILL: Yeah. No, my kids
21 used to meet their friends there to walk to school.
22 There's lots of grass and a tree.

23 CARLO COMPAGNONE, JR.: There's a big
24 tree over here.

1 ATTORNEY JOSEPH CONNORS: So there's
2 grass in the front of the house.

3 EDWARD MCCARTHY: Okay.

4 ATTORNEY JOSEPH CONNORS: And then
5 there's just parking on like say the left-hand --
6 left side of the house.

7 EDWARD MCCARTHY: Where do you put
8 your snow?

9 CARLO COMPAGNONE, JR.: Right up on
10 the grass.

11 ATTORNEY JOSEPH CONNORS: Actually,
12 Mr. McCarthy, if you look here, it actually shows you
13 the pavement actually. So, there's parking here.
14 There's also parking here. It doesn't show you the
15 pavement, but I think this is a grassed area here.
16 So, there's parking there and there is parking here
17 as well. So, we can have one unit park over here,
18 the other two over there, and they won't block each
19 other in.

20 How many spaces can you fit off of
21 Lowell Street?

22 CARLO COMPAGNONE, JR.: Lowell is
23 five, and two on Brown. So there's seven.

24 EDWARD MCCARTHY: How is your egress

1 to the building? How do you get up there, the third
2 floor? How do you get up there?

3 ATTORNEY JOSEPH CONNORS: How do you
4 get up to the third floor?

5 CARLO COMPAGNONE, JR.: From the
6 front. You enter -- there's two doors on the front
7 of the house.

8 EDWARD MCCARTHY: Yeah.

9 CARLO COMPAGNONE, JR.: The door on
10 the left goes right up directly to apartment one.

11 EDWARD MCCARTHY: Uh huh.

12 CARLO COMPAGNONE, JR.: The door on
13 the right goes up the stairs --

14 EDWARD MCCARTHY: Yeah.

15 CARLO COMPAGNONE, JR.: -- to
16 apartment two, apartment three.

17 EDWARD MCCARTHY: Okay. And what
18 about the extra exit for the third floor?

19 CARLO COMPAGNONE, JR.: That's out the
20 back.

21 ATTORNEY JOSEPH CONNORS: It's out the
22 back here.

23 EDWARD MCCARTHY: Have you got a fire
24 escape there or something?

1 CARLO COMPAGNONE, JR.: It's a
2 legitimate set of stairs right up and right down.
3 There's no fire escape.

4 EDWARD MCCARTHY: Yeah, I looked at
5 that. I just couldn't tell so much where the door
6 was.

7 That's all I have, Madam Chair.

8 ATTORNEY JOSEPH CONNORS: I will say,
9 Mr. McCarthy, in the pictures that I did submit to
10 you, there was a condition in the '46 permit that you
11 had to have a fire extinguisher at every --

12 EDWARD MCCARTHY: Well, sometimes I
13 know that they were essentially how do you get those
14 apartments up there, they sort of like wink wink.

15 ATTORNEY JOSEPH CONNORS: Yeah. Yeah.

16 EDWARD MCCARTHY: Build, build, wink,
17 wink. Yeah.

18 ATTORNEY JOSEPH CONNORS: We've got it
19 in there.

20 CARLO COMPAGNONE, JR.: The Building
21 Inspector has seen it.

22 ATTORNEY JOSEPH CONNORS: Yeah, the
23 Building Inspector has seen the unit. And I put it
24 in there as a condition.

1 BARBARA RANDO, CHAIR: You're going to
2 want his name and address for the record because he
3 did say something.

4 STENOGRAPHER: I have his name.

5 BARBARA RANDO, CHAIR: And are you
6 living there?

7 CARLO COMPAGNONE, JR.: No.

8 BARBARA RANDO, CHAIR: What is your
9 address?

10 CARLO COMPAGNONE, JR.: I live in
11 Millis, Massachusetts.

12 BARBARA RANDO, CHAIR: Do you want a
13 street? Do you want the street?

14 STENOGRAPHER: Yes.

15 CARLO COMPAGNONE, JR.: 16 Rolling
16 Meadow Drive.

17 STENOGRAPHER: Rolling Mill?

18 MARK HICKERNELL: Meadow, Rolling
19 Meadow.

20 CARLO COMPAGNONE, JR.: Meadow.

21 STENOGRAPHER: Millis.

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

24 JOHN SERGI: Yes, I do. I have a few.

1 Counsel, the square footage of the
2 third unit, what is the square footage, the livable
3 space up on the third floor? Six hundred square
4 feet? It's a small unit, right?

5 CARLO COMPAGNONE, JR.: Yeah, I would
6 say 600, 650, in that area.

7 JOHN SERGI: Okay. And your rent is
8 \$1,200?

9 CARLO COMPAGNONE, JR.: Correct.

10 JOHN SERGI: Okay. That's about \$23 a
11 square foot, which isn't that cheap. But, you know,
12 I just want to point that out.

13 The other thing, I'd just challenge
14 your view of demand in the City as far as housing. I
15 think that there's been a tremendous need and demand
16 to satisfy the housing that's currently being built.
17 So, I think the demographics may be changing somewhat
18 even from 2006 to today. I'm just pointing it out.
19 I think that people are building these units because
20 there's a demand for them.

21 ATTORNEY JOSEPH CONNORS: Right.

22 JOHN SERGI: And I think that they're
23 renting out relatively quickly. So, I'd just
24 challenge your argument a little bit from that

1 standpoint.

2 EDWARD MCCARTHY: I wouldn't hang my
3 hat on that, yeah. Yeah.

4 ATTORNEY JOSEPH CONNORS: Well, I mean
5 I think that looking at the City of Waltham housing,
6 the Planning Board, I mean they've written those
7 reports. I've looked at them. And that's where I've
8 drawn a lot of that from. But I think the one thing
9 you can say is that I think there's many older units,
10 multi-families, on the south side of Waltham, which
11 have been used as rentals for many years. And this
12 is serving that need. So, it's a different need than
13 One Moody Street and it's a different need than 36
14 River Street.

15 JOHN SERGI: I agree. I just -- I
16 think it may be a dwindling need. It's not really an
17 increasing need. But, you know, I understand what
18 you're saying.

19 That's all, Madam Chair. That's all I
20 have.

21 BARBARA RANDO, CHAIR: Mr. Hickernell,
22 have you got anything to say at this time?

23 MARK HICKERNELL: No questions.

24 BARBARA RANDO, CHAIR: Ms. Gelineau?

1 GLENNA GELINEAU: No.

2 BARBARA RANDO, CHAIR: Mr. McCarthy?

3 EDWARD MCCARTHY: No.

4 BARBARA RANDO, CHAIR: Do you have
5 anything else to add before I open it up to public?

6 ATTORNEY JOSEPH CONNORS: No, Madam
7 Chair.

8 BARBARA RANDO, CHAIR: Is there anyone
9 in the audience that is in favor of this petition?
10 Two people.

11 Is there anyone seeking information?

12 (No response.)

13 Is there anyone in opposition?

14 Seeing none.

15 All right. You may continue with your
16 proposed finding of fact.

17 JOHN SERGI: Madam Chair, I make a
18 motion that we waive the finding of facts since it's
19 been on file and we've had a chance to read it.

20 BARBARA RANDO, CHAIR: We have a
21 motion by Mr. Sergi to waive the reading of the
22 finding of fact. Do I have a second?

23 GLENNA GELINEAU: I'll second.

24 BARBARA RANDO, CHAIR: Second by Ms.

1 Gelineau.

2 All in favor?

3 ALL BOARD MEMBERS: Aye.

4 BARBARA RANDO, CHAIR: Opposed.

5 (None opposed.)

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

8 You may continue with your proposed
9 decision.

10 JOHN SERGI: In a similar fashion,
11 Madam Chair, I propose that we waive the reading of
12 the decision since it's been on file. We've had
13 ample time to read it.

14 BARBARA RANDO, CHAIR: Motion by Mr.
15 Sergi to waive the reading of the decision. Do I
16 have a second?

17 GLENNA GELINEAU: I'll second.

18 BARBARA RANDO, CHAIR: Second by Ms.
19 Gelineau.

20 All in favor?

21 ALL BOARD MEMBERS: Aye.

22 BARBARA RANDO, CHAIR: Opposed?

23 (None opposed.)

24 BARBARA RANDO, CHAIR: The ayes have

1 it.

2 All right. I am ready to entertain a
3 motion on the proposed finding of fact as amended.
4 Did you add something to the --

5 EDWARD MCCARTHY: No, it's already in
6 there. So --

7 BARBARA RANDO, CHAIR: Already in
8 there?

9 GLENN GELINEAU: Yeah.

10 BARBARA RANDO, CHAIR: And did you
11 also want to add the part about the veteran. It said
12 here that --

13 ATTORNEY JOSEPH CONNORS: Right. I
14 did add that to my --

15 BARBARA RANDO, CHAIR: Oh, you did
16 already. Okay. It says here, number three, "For
17 each advertised vacancy in the building, statement
18 encouraging veterans to apply shall be..."

19 ATTORNEY JOSEPH CONNORS: Yeah, we can
20 copy that right on there. Thank you. So, I'll amend
21 the condition, or the proposed decision.

22 BARBARA RANDO, CHAIR: The proposed
23 decision, right.

24 So, do I have a motion on the proposed

1 finding of facts?

2 GLENNA GELINEAU: I'll make a motion
3 that the proposed finding of facts are the finding of
4 facts of the Board.

5 BARBARA RANDO, CHAIR: I have a motion
6 by Ms. Gelineau. Do I have a second?

7 MARK HICKERNELL: Second.

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

10 How do you vote, Mr. Sergi?

11 JOHN SERGI: Yes.

12 BARBARA RANDO, CHAIR: Mr. Hickernell?

13 MARK HICKERNELL: Yes.

14 BARBARA RANDO, CHAIR: Ms. Gelineau?

15 GLENNA GELINEAU: Yes.

16 BARBARA RANDO, CHAIR: Mr. McCarthy?

17 EDWARD MCCARTHY: Yes.

18 BARBARA RANDO, CHAIR: And the Chair
19 votes no.

20 Do I have a motion on the decision as
21 amended?

22 GLENNA GELINEAU: I make a motion that
23 the decision as amended be the decision of the Board.

24 BARBARA RANDO, CHAIR: Motion by Ms.

1 Gelineau. Second by?
2 MARK HICKERNELL: Second.
3 BARBARA RANDO, CHAIR: Mr. Hickernell.
4 How do you vote, 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. McCarthy?
11 EDWARD MCCARTHY: Yes.
12 BARBARA RANDO, CHAIR: And the Chair
13 votes no. It is granted.
14 ATTORNEY JOSEPH CONNORS: Thank you,
15 Madam Chair and members of the Board.
16 BARBARA RANDO, CHAIR: Good luck.
17 Thank you.
18 //
19 //
20 //
21 //
22 //
23 //
24 //

1 **Case Number 2015-03: AM-FM Realty, LLC**

2

3 BARBARA RANDO, CHAIR: Will the Clerk
4 please read the petition in Case 2015-03.

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

8 BARBARA RANDO, CHAIR: Thank you.

9 May we hear from the Petitioner or the
10 Petitioner's representative? And would you give your
11 name and address for the record, please?

12 ATTORNEY EDWARD QUINLAN: I will.
13 Thank you very much.

14 Madam Chairman, members of the Board
15 of Appeal, my name is Edward Quinlan. I'm an
16 attorney. I have offices in Norwood, Massachusetts.

17 With me this evening is Mr. Paul
18 Finger, an engineer, well known to the Board, I
19 believe; and, also, Mr. Dan Mazzola, who is the owner
20 of D-Boy Services and also AM-FM Realty, which is
21 located at 1474 Main Street in Waltham.

22 The petition, with the cooperation of
23 TSA properties, is essentially to provide absolutely
24 necessary signage for the newly relocated business

1 that Mr. Mazzola has transferred from a prior
2 location in Brighton, Massachusetts, to the site of
3 the former Bergeron Machine Shop located at 1474 Main
4 Street. I'm told, and Mr. Finger has confirmed to
5 me, that in prior history the Bergeron Machine Shop
6 did have a sign out at the junction of the common
7 drive or the right of way that it shares for access
8 to its property on Main Street. But, over the years,
9 that apparently deteriorated and was removed.

10 The land in question that is owned by
11 1474 Main Street is a landlocked parcel. It has a
12 right of access and egress along the right of way
13 that runs from Main Street and up approximately 150
14 to 160 feet to a slight plateau, if you will, where
15 the building is located. And there's a change in
16 elevation of anywhere from 15 to 20 feet, the low
17 point being at Main Street and climbing up a hill to
18 arrive at the building.

19 Mr. Mazzola purchased the property in
20 2014. It had been vacant for a number of years after
21 the Bergeron Machine Shop operation ceased. He has
22 essentially completely renovated the building for the
23 purposes of operating a Maytag service center. It is
24 an appliance showroom, repair facility, where they

1 maintain parts. They have, as I say, a showroom for
2 high-quality merchandise in there. They also have a
3 number of service vehicles because one of the
4 keystone operations of this business is its ability
5 to,service appliances as needed after the sale.

6 The particular issue that we are now
7 facing is, as the Court read, the variance that we
8 seek in order to place two signs on a single parcel
9 at 1486 Main Street, and also to seek a variance
10 because that second sign that we seek to put on that
11 lot would be advertising the business of 1474 Main
12 Street, which is not technically an occupier of the
13 lot at 1486 Main Street.

14 We have a written sign license
15 agreement in place with Mr. Alan, the owner of TSA
16 properties at 1486 Main Street, who has been very
17 cooperative and very helpful in trying to get some --
18 we had to work with him to bring in some new gas
19 lines up to the property to provide heating and
20 cooling. And he has been very cooperative in terms
21 of what we are seeking here.

22 Mr. Finger can perhaps illustrate a
23 little more with the use of the plan to demonstrate
24 to the Board exactly what it is and where we're

1 situated.

2 PAUL FINGER: Paul Finger. We have
3 offices here in Waltham on Spring Street. I'm
4 representing the Petitioner.

5 Let me just turn this upside down.
6 So, Main Street is at the bottom of the sheet. And,
7 basically, the property is the property in the back
8 through here. The property line basically is this
9 parcel here. So there's no frontage on Main Street.
10 As was indicated, it's a landlocked parcel.

11 1486, so this is 1474. 1486 controls
12 this property. It comes up and around. And so,
13 therefore, the access into it goes through the 1486
14 property. There's a gate here that allows the back
15 entrance into 1486. And then you have the main
16 entrance here.

17 If you're passing by there, there's
18 two stone walls through here and a little pillar.
19 This used to be, before it was TSA, which is European
20 Auto Repair, it used to be MacDowell's yard there
21 where he actually had his landscape equipment.

22 So, as you know, this is all well --
23 very nicely landscaped all the way through here. And
24 so the purpose of what we're asking for is to place a

1 ground sign right at that corner of the property. It
2 fits the appropriate setbacks. It's a total of six
3 feet off of the front yard and 12 feet off of the
4 side yard. It's actually a little bit more than that
5 in order to comply with it. And the reason why
6 there's two ground signs is that the second ground
7 sign identifies 1486. This is their main entrance.
8 So, they have a ground sign identifying their
9 entrance into their property over here.

10 And that's basically the plan as you
11 see it. We gave you a little rendering of what the
12 sign would look like. In fact, this is an
13 enlargement so you can see. This would be Main
14 Street up through here. This is the corner. This is
15 where the sign is located. And this is the
16 elevation.

17 The sign meets all the requirements of
18 the zoning ordinance as far as size, a double-faced
19 sign, setbacks, etc.

20 BARBARA RANDO, CHAIR: Could you turn
21 it upside down again and show me exactly where the
22 Bergeron sign was?

23 PAUL FINGER: Actually, this won't
24 show you. I have another -- actually, the Bergeron

1 sign is here and I'll show you it. Because this was
2 an updated survey, it was removed. But I have the
3 original survey when the Bergeron Machine Shop was
4 there. And it actually -- I'm sorry. I only have
5 the one copy of this.

6 BARBARA RANDO, CHAIR: I'll pass it
7 around.

8 PAUL FINGER: But if you take a look
9 at the corner, it says "sign." It looks like there's
10 two posts there. So, it was a standing sign, again,
11 a ground sign. That one's a lot closer to Main
12 Street. It didn't -- you know, I don't know when
13 exactly it was constructed. You see the --

14 BARBARA RANDO, CHAIR: Are you saying
15 right here?

16 PAUL FINGER: That's -- you see the
17 word "sign?"

18 BARBARA RANDO, CHAIR: Mm hum.

19 PAUL FINGER: Yeah, that's it. That
20 was the original Bergeron sign.

21 BARBARA RANDO, CHAIR: And your sign
22 on this map is where?

23 PAUL FINGER: The sign is back here,
24 further back. That one is, if you take a look at it,

1 it's almost right on the property line so it doesn't
2 meet the appropriate setbacks. Again, I don't know
3 when it was erected, whether it predated some of the
4 sign regulations. I can actually highlight that.

5 BARBARA RANDO, CHAIR: What is the
6 difference besides the sign -- the size of the sign
7 and the size of the Bergeron sign?

8 PAUL FINGER: The size of the Bergeron
9 sign was smaller and it was also held up on two posts
10 on either side. I don't have the exact -- I don't
11 have any images of it. We're going back probably the
12 better part of 10 years or plus before, you know, I
13 had that. So, I didn't maintain any of the
14 photographs from that point.

15 BARBARA RANDO, CHAIR: Was it
16 illuminated? Probably not.

17 PAUL FINGER: I think it was ground
18 illuminated, in other words, shining up. But, you
19 know, it wasn't -- it was a different -- it was a
20 different type of sign because, obviously, it was a
21 machine shop, you know, and he had different
22 requirements. And it was smaller and it wasn't -- I
23 mean it's not as contemporary as this one is right
24 now, but it did identify Bergeron Machine Shop, 1474,

1 and rear.

2 BARBARA RANDO, CHAIR: A very subtle
3 sign.

4 PAUL FINGER: Right.

5 ATTORNEY EDWARD QUINLAN: An important
6 component of the operation of the Maytag Service
7 Center that the family runs, the Mazzola family runs,
8 is indeed the need to properly identify the property
9 for its retail customers to come in and be able to
10 visit the showroom and get design assistance and
11 service or service assistance, but also for the
12 purchases of appliances and refrigerators and things
13 like that.

14 I've attached some photographs that
15 were taken just recently to the memorandum of law
16 that we submitted as illustrative of what currently
17 exists out there. I have a difficulty, quite
18 frankly, in trying to identify this new building, or
19 newly reconstructed building, as a retail
20 establishment. As you can see, the first view on
21 Exhibit 1 is looking from the westerly point of view.
22 We're on Main Street looking from west to east. The
23 driveway is just shown there between the telephone
24 pole and the two pine trees. But, without more,

1 there's nothing to identify that the business is up
2 at the top of the driveway.

3 The second, Exhibit Number 2, is from
4 across the street. Again, you're looking northerly
5 towards where the access road and the access right of
6 way leads up to the property.

7 The Exhibit Number 3 is from the -- a
8 perspective from the top of the driveway where the
9 building is actually located, down the right of way
10 to Main Street. And you can see it's approximately
11 140, 150 feet down. And, Mr. Finger confirmed to me
12 that the elevation change is about 15 to 18 feet or
13 something difference between the roadway and where
14 the building is actually located.

15 Exhibit 4 is a depiction of some other
16 signs that are located in the general vicinity,
17 advertising a couple of other businesses, which I
18 believe are in front of one of the other parcels.

19 And the final photograph, again, shows
20 the driveway as you see it to try to look up. And,
21 again, a driveway without an appropriate sign
22 identifying this as an ongoing business is
23 problematic and troublesome, particularly for drivers
24 who may be seeking to visit the retail facility,

1 etc., trying to locate this business. It's going to
2 cause people to stop on Main Street and try and
3 search around to locate where it is.

4 We suggest that the proposed sign is
5 consistent with other signs in the area and will
6 assist, quite frankly, in alleviating highway
7 congestion, roadway congestion, and the possibility
8 of accidents where people are trying to identify this
9 newly engaged business. And we suggest,
10 respectfully, that it will -- because of the shape
11 and topography of the lot, particularly for 1474 Main
12 Street, without -- you know, strict enforcement of
13 the zoning ordinance would prevent it from having a
14 sign down proximate to the roadway, and the
15 alternative would be to come in and seek something
16 much larger and higher because you'd already be 15
17 feet above the roadway and your sign ordinance would
18 have a bottom of another 15 feet where the bottom of
19 the sign would be, etc. So, I think that would be
20 totally inconsistent with the purposes of a sign
21 ordinance, which would be to regulate and not
22 necessarily have, you know, a large billboard type of
23 sign.

24 What the Mazzolas are seeking and the

1 applicant is seeking here is relief from those two
2 limited provisions that will, with the cooperation of
3 the abutting property owner, allow them to erect a
4 sign that will identify the business, alleviate the
5 problems with traffic access and congestion, allow
6 him or them to make maximum use of the property as a
7 retail facility and a valuable asset, quite frankly,
8 to the commercial economy of Waltham as it continues
9 to grow and attract businesses, and that it will, I
10 respectfully suggest, be consistent with previous
11 decisions of this Board. I looked up several of them
12 in particular where the Board has recognized
13 hardships relating to the topography, particularly
14 where grade changes and distances from travel ways
15 require some variance from the setback requirements
16 and the strict application of the zoning ordinance.

17 So, on that basis, we would
18 respectfully request that the Board grant the
19 variance sought to allow them to erect the sign in
20 that location and proceed.

21 BARBARA RANDO, CHAIR: You mentioned
22 in your brief, and you mentioned it again just now,
23 billboards.

24 ATTORNEY EDWARD QUINLAN: Yes.

1 BARBARA RANDO, CHAIR: What's the
2 difference between this or a billboard except that
3 yours is smaller?

4 ATTORNEY EDWARD QUINLAN: This is a
5 small sign that is --

6 BARBARA RANDO, CHAIR: Small
7 billboard.

8 ATTORNEY EDWARD QUINLAN: -- that is
9 consistent. It is fully consistent with the sign
10 regulations for the Town of -- the City of Waltham
11 unlike a large, you know, 40- or 50-foot billboard
12 that we all associate with outdoor advertise and is
13 otherwise regulated. This is an identifying sign and
14 it's long been recognized that businesses need to
15 have proper identification of their location and
16 their business activities to survive and thrive and
17 contribute to the day-to-day activities and the
18 general overall economy.

19 BARBARA RANDO, CHAIR: Well, the two
20 cases that you happen to mention in your brief have
21 to do with the Dover Amendment and they don't have
22 any credence with this case. I wonder why you put
23 those two cases in there.

24 ATTORNEY EDWARD QUINLAN: Which ones

1 are you referring to, Madam Chair?

2 BARBARA RANDO, CHAIR: I'm referring
3 to *Rogers v. Town of Norfolk* and *Campbell v. City*
4 *Council of Lynn*.

5 ATTORNEY EDWARD QUINLAN: *Rogers*, in
6 particular, was not so much illustrative of the
7 compliance with the Dover Amendment, but pointed out
8 in the language of the decision in there that in fact
9 the unreasonable application in that circumstance
10 would do little to promote the avowed purpose of the
11 zoning restriction or the zoning requirement in
12 place. And, in fact, the -- you know, they were
13 saying that the application of a footprint would
14 impede the use of the premises while not
15 substantially advancing the valid goal of the Norfolk
16 zoning ordinance.

17 What I'm suggesting to you is the same
18 analogous proposition, that restricting, you know,
19 the limitation of only one sign on one lot doesn't
20 really in these circumstances, because of the
21 topography and the layout of 1474 does not reasonably
22 and substantially advance the zoning goals of the
23 City of Waltham. So, that's the purpose of having
24 that particular case in there.

1 BARBARA RANDO, CHAIR: That was a
2 childcare facility though.

3 ATTORNEY EDWARD QUINLAN: Pardon me?

4 BARBARA RANDO, CHAIR: That was a
5 childcare facility.

6 ATTORNEY EDWARD QUINLAN: That was a
7 childcare facility.

8 BARBARA RANDO, CHAIR: Right.

9 ATTORNEY EDWARD QUINLAN: But the
10 whole question, again, the language that the court
11 used was a questioning of a measuring guideline, if
12 you will, to look to see whether or not the
13 restriction or the application of the zoning
14 ordinance would advance the goal of the zoning
15 regulation.

16 BARBARA RANDO, CHAIR: We have a
17 letter that could be read into the record.

18 On the other case, *Rogers v. Town of*
19 *Norfolk*, that was the one you just mentioned.

20 ATTORNEY EDWARD QUINLAN: Yes.

21 BARBARA RANDO, CHAIR: *Campbell v.*
22 *City Council of Lynn*, that also had to do with the
23 Dover Amendment, dealing with a group home?

24 ATTORNEY EDWARD QUINLAN: Yes, it did.

1 Again, the whole purpose --

2 BARBARA RANDO, CHAIR: Considered an
3 educational use.

4 ATTORNEY EDWARD QUINLAN: Right. But,
5 again, the whole purpose is consistent with, you
6 know, the desired goals and purposes of the zoning
7 regulation.

8 This Board, as I say, in the decision,
9 a Zoning Board of Appeals decision that I cite in
10 paragraph 20, is a petition of Hines.

11 BARBARA RANDO, CHAIR: River Street,
12 yes.

13 ATTORNEY EDWARD QUINLAN: Yes.
14 Granted relief of a similar nature.

15 BARBARA RANDO, CHAIR: Right.

16 ATTORNEY EDWARD QUINLAN: Okay.

17 BARBARA RANDO, CHAIR: Right. For
18 safety reasons.

19 ATTORNEY EDWARD QUINLAN: Yes.

20 BARBARA RANDO, CHAIR: Right. And how
21 long was Mr. Bergeron in operation there?

22 PAUL FINGER: I honestly don't
23 remember.

24 BARBARA RANDO, CHAIR: Many, many

1 years.

2 PAUL FINGER: Many, many years.

3 BARBARA RANDO, CHAIR: Many. Twenty
4 maybe.

5 ATTORNEY EDWARD QUINLAN: I have to
6 say, you know, I just looked for some history --

7 BARBARA RANDO, CHAIR: I wonder how
8 many accidents happened during those 20 years without
9 a sign this size or that color. I wonder.

10 ATTORNEY EDWARD QUINLAN: Well, again,
11 you've got a different type of business, Madam
12 Chairman. You've got a business -- the Bergeron
13 business was a machine shop operation that would not
14 have walk-in type customers on a regular basis.

15 BARBARA RANDO, CHAIR: But they have
16 customers that drive by and have to find the opening
17 to get in there.

18 ATTORNEY EDWARD QUINLAN: That's true,
19 but they would be more in the nature of salesmen or
20 people placing orders. And I know this only because
21 of my familiarity with -- I have a close friend who
22 worked at that shop years and years ago. Whereas
23 this particular location was -- it is to attract a
24 retail customer, people coming into the showroom, as

1 opposed to, you know, the industrial type customer.

2 BARBARA RANDO, CHAIR: I have a couple
3 of letters that we're going to read into the record.
4 But, before we do that, is there anyone in the
5 audience that is in favor of this petition?

6 Seeing one.

7 Is there anyone in opposition or
8 anyone seeking information? Yes? Do you want to
9 come up and ask your question now or --

10 RICHARD PAZZANO: Whatever you --

11 BARBARA RANDO, CHAIR: Come on up to
12 the microphone. Give your name and address and you
13 can give your questions.

14 RICHARD PAZZANO: Madam Chairman,
15 members of the Board, my name is Richard Pazzano. I
16 am a resident at 1481 Main Street. I have been a
17 resident of 1481 Main Street for approximately 39-
18 and-a-half years. I've owned the property for that
19 length of time.

20 I have never in all my times seen a
21 sign for the machine shop that was there. It's been
22 there. There was a small sign on the building itself
23 and that was the only way that it was ever recognized
24 for me. There wasn't even a street number that I

1 remember out in the front.

2 Everybody deserves to run a business,
3 and everybody deserves to have a certain amount of
4 advertisement for their business. The pictures that
5 you have from what I understand -- I looked over your
6 shoulder to see -- are pictures of the area. And one
7 particular sign that's been there for the time that
8 I've been there, the face has changed on it a couple
9 of times, and that's the one for Corris Line Video,
10 the one that was pictured in the gentleman's
11 prospectus.

12 The other signs that are in the area
13 from the foreign car repair shop, Keane Fire & Safety
14 down the street, the building to the left of this
15 gentleman's property, they're very low-key signs.
16 They're not illuminated signs. They fit the
17 property. Okay? The foreign car dealership -- and I
18 think this gentleman represented the foreign car
19 dealership when they were going for their dealer's
20 license -- they have done a tremendous job. They do
21 a great job. They have a nice place. They keep it
22 clean. They don't over-illuminate the place in the
23 evening.

24 Right now, this particular piece of

1 property that we're talking about has a sign on it
2 that's illuminated at night. It's a white sign with
3 red lettering. All right? During the daytime, it's
4 lit; during the nighttime it's lit. There's an
5 "Open" sign that's in front of it. That's fine.
6 That's his business area. A small sign out in the
7 street, I have no objection to it. But don't make it
8 look like Moody Street on Main Street. And that was
9 something I brought up to the auto dealer when he
10 went to the Council for his permit for his dealer's
11 license, "Are you going to have an illuminated sign
12 stating used cars?" "No, sir, I am not." All right?
13 And that was a big thing.

14 At that particular time, there was
15 another neighbor that was there, and the other two
16 I'm not positive. I have not been able to get in
17 touch with them. I don't know if they're away or
18 whatever.

19 Again, I feel that every business
20 should have some way of showing their business, but
21 not as an illuminated sign, not something that's
22 going to stick out and look out of place in a
23 residential area across the street. Across the
24 street from that is residential. We have the

1 Archstone apartments. They're opening. Their signs
2 on their property fit with the property. All right?
3 The building that's I call it 1010, the big tall
4 building between, their building sign is on their
5 building. It fits. The only one that doesn't fit
6 the area and I can't do nothing about it, it's been
7 there for centuries, is Corris Lines. You know, so
8 that's where I particularly stand on it.

9 And, in reference to the pictures,
10 okay, I happened to be in my driveway when the young
11 lady was taking the pictures. Am I correct it was a
12 young lady that was taking the pictures?

13 ATTORNEY EDWARD QUINLAN: Mrs.
14 Mazzola.

15 RICHARD PAZZANO: Whatever, okay.

16 ATTORNEY EDWARD QUINLAN: And she'll
17 be very happy to be referred to as a young lady.

18 RICHARD PAZZANO: Well, she was a
19 young lady. Anyway, I was watching her taking the
20 pictures and so on. I didn't see the pictures. But
21 if you look down the driveway, all right, from the
22 top of his elevation down the driveway across Main
23 Street, you'll see a huge pile of snow, okay, which
24 was placed there by their plowing. All right? Yes,

1 Archstone plows their pile up as well, but they
2 remove their pile when they're asked to. This makes
3 a traffic problem for myself, for my next door
4 neighbor, and for the neighbors down the street that
5 are Waltham residents. We can't see to get out of
6 our driveway. All right?

7 So, I mean be a good neighbor. And
8 maybe I shouldn't say this at this meeting, but be a
9 good neighbor and get along with the people. Don't
10 block accesses and so on. All right? Make it an
11 area where we can all enjoy. Don't make it look like
12 Moody Street.

13 Thank you. Does anybody have any
14 questions?

15 BARBARA RANDO, CHAIR: Here are some
16 pictures if you'd like to look at them.

17 STENOGRAPHER: Can you spell your last
18 name for the record, please?

19 RICHARD PAZZANO: P-a-double z-a-n-o.

20 BARBARA RANDO, CHAIR: Mr. Hickernell,
21 would you read the letters into the record?

22 MARK HICKERNELL: (The Clerk reads
23 three letters from Richard G. Logan, Ward 9
24 Councilman, into the record.)

1 BARBARA RANDO, CHAIR: Do you have any

2 --

3 ATTORNEY EDWARD QUINLAN: I do.

4 Again, I hope I tried to explain to the Board, the
5 citation of those cases was not to draw a parallel
6 between the Dover Amendment aspects of it, but to
7 illustrate as the court did there that one of the
8 criteria that the Board can and may use in making a
9 review of the requested relief is whether the
10 application of the var -- or the ordinance in
11 question substantially advances the interests of the
12 municipality and its zoning regulations.

13 I respectfully disagree with the
14 Councilor, and I wish I had had an opportunity to
15 discuss it with him, that this is a billboard. This
16 is specific to allow a landlocked use property to
17 have reasonable means of identifying itself to the
18 public where it may conduct its business and have its
19 customers be able to identify the access means to its
20 property for the purposes of conducting a reasonable
21 trade and commerce. It is not designed to advertise
22 other things. It is not designed to be a rotating
23 sign that we all see in some vicinities there that
24 changes with the day. This is going to be a sort of

1 one and done, if you will, sign. Its purpose is to
2 finally put the last link together, and Mr. Mazzola
3 can confirm that this has been a long and arduous
4 process of renovating the property that had been
5 discontinued in its use as a machine shop into a
6 viable commercial undertaking. And this property is
7 located strictly within a commercial district.

8 I do understand and respect the member
9 of the public, the fact that his property is adjacent
10 to it, nearby. But this is strictly within a
11 commercial district. And, commercial -- reasonable
12 commercial undertakings I think personally are
13 something that should be supported and encouraged
14 because it contributes to the vitality of a city.

15 BARBARA RANDO, CHAIR: Mr. Pazzano,
16 can you see the sign that is on the building from
17 your house up on the street?

18 RICHARD PAZZANO: I'm sorry?

19 BARBARA RANDO, CHAIR: Can you see the
20 sign that is on the building from your house on
21 the street?

22 RICHARD PAZZANO: Absolutely.
23 Absolutely. Every night, all day, any night you can
24 see the sign. The sign -- the sign is probably like

1 so, like so. It's a white background with a large
2 red D, and I think the smaller letters with Boy is on
3 the bottom or in the middle, with an "Open" sign.

4 I, when plowing snow this winter,
5 1:00, 2:00 in the morning it's on.

6 DAN MAZZOLA: No, it isn't. It's on a
7 timer. It goes on at dusk and it goes off at 11:00.

8 RICHARD PAZZANO: Well, you better
9 check your timer, pal.

10 Anyway, it's -- I understand the
11 gentleman needs a sign, but let's make it non-
12 illuminated. All right? I don't believe he's open
13 in the evening. All right? Make it something that
14 will fit the neighborhood. The auto parts, the auto
15 repair shop did a great job. Keane Fire and Safety
16 did a nice job. They've done a real nice job. I
17 have no control and I don't know how long Corris Line
18 Video has been there. The Corris Line Video sign has
19 changed many, many times. Now it says Zoot Cleaners
20 on it and others. All right?

21 ATTORNEY EDWARD QUINLAN: To correct
22 the record, I believe the facility is open at least
23 one night a week. Is it Thursdays?

24 DAN MAZZOLA: Till seven.

1 ATTORNEY EDWARD QUINLAN: Till seven,
2 at least. And, again, they do have customers who
3 come in, as many customers do, seeking to purchase
4 things. Many people are busy and they work; they
5 can't get out there during the day. So, you know,
6 the evening hours are designed as an accommodation
7 for those desiring to purchase.

8 RICHARD PAZZANO: I think one of the
9 things that --

10 BARBARA RANDO, CHAIR: Come closer to
11 the microphone so that the stenographer can pick you
12 up.

13 RICHARD PAZZANO: How many people here
14 on this Board look for signs when they go places?
15 What do we have today? GPS. I'll leave it at that.

16 Thank you.

17 BARBARA RANDO, CHAIR: All right. Are
18 there any questions from Board members? Mr. Sergi,
19 do you have any questions of the attorney?

20 JOHN SERGI: Yes. Councilor, did you
21 discuss the sign with any of the neighbors in the
22 area?

23 ATTORNEY EDWARD QUINLAN: No, I have
24 to say that I did not.

1 JOHN SERGI: Okay.

2 ATTORNEY EDWARD QUINLAN: This was
3 something that has been developed, and it might very
4 well be something that, you know, if we could seek
5 perhaps a recess or a continuation in an effort to --
6 because I'm sure Mr. Mazzola was not aware of the
7 fact of your existence or the problem, if it was a
8 problem, relating to snow. It is not something that
9 they want to be anything other than a good neighbor.
10 So, you know, we can certainly, and would be more
11 than willing, to, you know, request that we continue
12 the hearing to provide an opportunity to perhaps
13 confer with the neighbors and advise them of our
14 plans and expectations as well as to try to address
15 some of their concerns.

16 I do know that based on my own
17 personal observations sitting in an automobile down
18 there on Main Street, I can't see up to the top to
19 identify the building. Only because I know it's
20 there do I find it there.

21 JOHN SERGI: I think it might make a
22 little sense to do that, but the other thing is, in
23 the neighborhood, you want to preserve the
24 neighborhood. And I understand the sign, you know,

1 it's a retail sign. You want people to notice it.
2 You want it fluorescent. You want it lit. You want
3 people to know you're there. But, also, you have a
4 concern with the neighborhood as well. You know, you
5 want it to fit with the neighborhood. And if you
6 look at the sign, I don't really think it really does
7 fit in the neighborhood with the colors and the size.
8 And maybe you take a look at the other signs.

9 ATTORNEY EDWARD QUINLAN: Well, the
10 colors I think are our color. And correct me, Dan,
11 if I'm wrong, but it's always been associated with
12 that particular business.

13 JOHN SERGI: No, I understand that.

14 ATTORNEY EDWARD QUINLAN: Yeah.

15 JOHN SERGI: The retail aspect I said
16 I understood that.

17 ATTORNEY EDWARD QUINLAN: Right.

18 JOHN SERGI: But I'm saying that maybe
19 seeing that it is facing a residential neighborhood,
20 maybe there is a valid concern there that maybe --

21 ATTORNEY EDWARD QUINLAN: Well, as I
22 say, I think that perhaps if the Board would be
23 agreeable to a brief continuance, we could take the
24 opportunity to try to confer with some of the

1 neighbors and some of the others and resume -- report
2 back, if you will.

3 JOHN SERGI: And maybe the other thing
4 is I don't see really a development of the argument
5 here with the billboard. And, you know, I also
6 thought it might be a billboard, you know, although I
7 was happy to see the size of the sign.

8 ATTORNEY EDWARD QUINLAN: Yeah, we
9 specifically sized the sign to make sure it was in
10 full conformity with the requirements of a ground
11 sign under the zoning -- under the building code.

12 PAUL FINGER: This has been reviewed
13 by the City's Zoning Enforcement Officer. It was
14 specifically designed and categorized as a ground
15 sign. It is not a billboard.

16 JOHN SERGI: Maybe you should have a
17 little bit of that argument in your --

18 ATTORNEY EDWARD QUINLAN: Okay.

19 PAUL FINGER: And I certainly have, in
20 fact, an email from Patrick Powell that, you know, as
21 we were looking at it, and somehow in reference to
22 the substitution of one versus the other, as a ground
23 sign. So, it is definitely not a billboard. It's
24 not classified as a billboard. And it is typical of

1 what is allowable by the zoning ordinance in the
2 language as to size, setback, information, and
3 everything else like that.

4 JOHN SERGI: Okay.

5 PAUL FINGER: So I think that there's
6 some, you know, maybe some perceptions that need to
7 be cleared up.

8 JOHN SERGI: Okay. That's all I have,
9 Madam Chair.

10 BARBARA RANDO, CHAIR: Did Mr. Powell
11 ever mention billboard to you --

12 PAUL FINGER: No. No, again, we --

13 BARBARA RANDO, CHAIR: -- the two
14 signs?

15 PAUL FINGER: No, we went ahead and
16 went right through the --

17 BARBARA RANDO, CHAIR: Discussed the
18 two signs?

19 PAUL FINGER: That's right. And, in
20 fact, the height of the sign, the size of the sign,
21 the double face on the sign, all those things are
22 consistent with basically the ordinance.

23 BARBARA RANDO, CHAIR: I would suggest
24 you get the Building Inspector's opinion on that

1 also.

2 PAUL FINGER: Yeah, we can certainly
3 do that.

4 BARBARA RANDO, CHAIR: Mr. Hickernell,
5 do you have any questions at this time?

6 MARK HICKERNELL: No questions. I do
7 not.

8 BARBARA RANDO, CHAIR: Hesitant.
9 Hesitant.

10 MARK HICKERNELL: No, not hesitant.
11 You only asked if I had questions. No.

12 ATTORNEY EDWARD QUINLAN: Is there any
13 further information that we could supply that might
14 be of assistance to you?

15 MARK HICKERNELL: Do you have any
16 pictures of actual billboards you could compare this
17 to because I don't think this is a billboard. I've
18 seen billboards.

19 ATTORNEY EDWARD QUINLAN: I've seen
20 billboards, I mean the Outdoor Advertising Board.

21 MARK HICKERNELL: I said it in jest.
22 I find it's not a billboard.

23 ATTORNEY EDWARD QUINLAN: Thank you.

24 BARBARA RANDO, CHAIR: Ms. Gelineau?

1 GLENNA GELINEAU: I'm just curious, is
2 that -- is your sign in a -- it's in franchise
3 conformity? Like does it have to be -- do you have
4 to -- are you a franchise? Do you have to have that
5 particular sign, that --

6 DAN MAZZOLA: You mean the name?

7 GLENNA GELINEAU: Yeah, are you a
8 franchise or no?

9 DAN MAZZOLA: No, no.

10 GLENNA GELINEAU: Okay. So that's
11 just your choice.

12 DAN MAZZOLA: Well, the larger
13 franchise brand stores, their colors are red and
14 white also.

15 GLENNA GELINEAU: Do they make you
16 conform? Does your sign have to conform?

17 DAN MAZZOLA: No, no.

18 GLENNA GELINEAU: So that's what you
19 chose.

20 DAN MAZZOLA: No.

21 GLENNA GELINEAU: Oh, okay. All
22 right.

23 ATTORNEY EDWARD QUINLAN: But it has
24 been something that I've been working with Mr.

1 Mazzola for the past 30 years where he's developed
2 the brand and the business over those years. And
3 those predominant colors have always been what they
4 displayed associated with his business.

5 DAN MAZZOLA: It's always been white
6 and red. I mean I can tone it down. I can maybe
7 make it blue and white.

8 GLENN GELINEAU: No, I was just more
9 curious. I didn't know if it was mandatory to your
10 business. That's all.

11 ATTORNEY EDWARD QUINLAN: Yeah, it's
12 not a franchise type requirement. Maytag doesn't
13 require it.

14 GLENN GELINEAU: Okay.

15 ATTORNEY EDWARD QUINLAN: But he is a
16 Maytag service.

17 DAN MAZZOLA: Maytag center.

18 STENOGRAPHER: Could we just have your
19 name for the record?

20 DAN MAZZOLA: Dan Mazzola.

21 STENOGRAPHER: Dan?

22 DAN MAZZOLA: Yes.

23 STENOGRAPHER: Thank you.

24 BARBARA RANDO, CHAIR: Mr. McCarthy,

1 any questions at this time?

2 EDWARD MCCARTHY: No.

3 BARBARA RANDO, CHAIR: Thank you. All
4 right. So, is it your desire to continue it to
5 discuss the signage with the neighbors?

6 ATTORNEY EDWARD QUINLAN: Yes, it is,
7 Madam Chairman.

8 BARBARA RANDO, CHAIR: All right. I
9 will entertain a motion to allow Case 2015-03 to
10 continue.

11 JOHN SERGI: So moved, Madam Chair.

12 BARBARA RANDO, CHAIR: Motion by Mr.
13 Sergi.

14 Second?

15 EDWARD MCCARTHY: Second.

16 BARBARA RANDO, CHAIR: By Mr.
17 McCarthy.

18 How do you vote, Mr. Sergi?

19 JOHN SERGI: Yes.

20 BARBARA RANDO, CHAIR: Mr.
21 Hickernell?

22 MARK HICKERNELL: Yes.

23 BARBARA RANDO, CHAIR: Ms. Gelineau?

24 GLENNA GELINEAU: Yes.

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1 BARBARA RANDO, CHAIR: Mr. McCarthy?

2 EDWARD MCCARTHY: Yes.

3 BARBARA RANDO, CHAIR: And the Chair
4 votes yes. I have March 24th or March 31st for Board
5 members.

6 EDWARD MCCARTHY: Either one of those
7 dates would be okay with me.

8 JOHN SERGI: They're both fine with
9 me.

10 BARBARA RANDO, CHAIR: Which would you
11 prefer, the 24th or the 31st?

12 JOHN SERGI: The 31st if we can do it.
13 I would prefer that.

14 BARBARA RANDO, CHAIR: The 31st?

15 JOHN SERGI: Yeah.

16 BARBARA RANDO, CHAIR: How is March
17 31st?

18 ATTORNEY EDWARD QUINLAN: It will do.
19 It will have to do. I'd prefer something sooner, but
20 it will hopefully get us to the point where there may
21 be some chance of actually putting a sign in the
22 ground if it ever thaws.

23 BARBARA RANDO, CHAIR: All right.
24 Case 2015-03 will be continued to March 31st. And you

1 can meet with the neighbors and decide what you're
2 going to do with the sign and the neighbors, and
3 getting a decision from the Building Inspector
4 whether they consider it a billboard or a sign.

5 All right. One more motion is in
6 order.

7 JOHN SERGI: Motion to adjourn, Madam
8 Chair.

9 BARBARA RANDO, CHAIR: Motion to
10 adjourn by Mr. Sergi.

11 Do I have a second?

12 EDWARD MCCARTHY: Second.

13 BARBARA RANDO, CHAIR: By Mr.
14 McCarthy.

15 All in favor?

16 ALL BOARD MEMBERS: Aye.

17 BARBARA RANDO, CHAIR: Opposed?

18 (No Board Members opposed.)

19 BARBARA RANDO, CHAIR: The ayes have
20 it. We are adjourned at 8:40. Thank you.

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

23 //

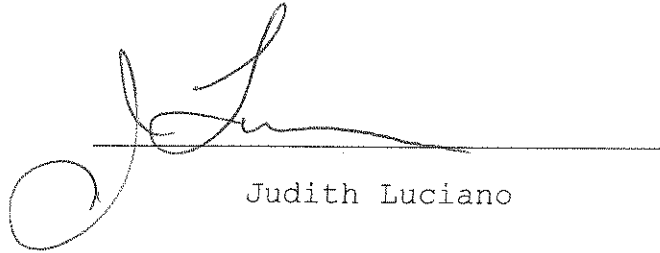
Barbara Rando, Chair

24 //

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

