

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

March 8, 2016

7:00 P.M.

at

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

Barbara Rando, Chair
Mark Hickernell, Clerk
Glenna Gelineau
Marc Rudnick
John Sergi

Arlington Reporting Corporation
(339) 674-9100

Waltham Zoning Board of Appeals/3-8-16/2

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A T T A C H M E N T S

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

Case No. 2015-21:
Letter from Antonio Nicolazzo
Bibbo Brothers Plan of Land

Case Number 2015-26
Opinion Rebuttal by Attorney Joseph M. Connors
Three Cases Cited by Attorney Connors
Printout of Section 3.7222

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

2 BARBARA RANDO, CHAIR: I make a motion
3 that we take a five-minute recess while we're waiting
4 for one of the members to come. Do I have a second?

5 JOHN SERGI: Second.

6 BARBARA RANDO, CHAIR: Second. All in
7 favor?

8 ALL BOARD MEMBERS: Aye.

9 BARBARA RANDO, CHAIR: Opposed?

10 (No Board Members opposed.)

11 BARBARA RANDO, CHAIR: Five-minute
12 recess.

13 (Brief recess off the record.)

14 BARBARA RANDO, CHAIR: Good evening.
15 The Zoning Board of Appeals for Tuesday, March 8,
16 2016 is called to order at 7:00 p.m.

17 Tonight we have two continued cases:
18 Case 2015-21, Elizabeth Gartz, 67 Ash Street, and
19 that's for a variance. It's a continued case.

20 Case Number 2015-26, Pasquale
21 Torcasio, 41 Williams Street. And that is for a
22 special permit, and it is also a continued case.

23 The members sitting this evening are
24 Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Mr. Rudnick,

1 and I am Barbara Rando.

2 The first action, I don't have any
3 minutes to read in.

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

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

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

9 BARBARA RANDO, CHAIR: Thank you.
10 May we hear from the Petitioner or the
11 Petitioner's representative?

12 ATTORNEY WILLIAM SACK: Good evening.
13 William Sack for the Applicant. We have Robert
14 Bibbo here, also.

15 BARBARA RANDO, CHAIR: I'm sorry?

16 ATTORNEY WILLIAM SACK: Robert Bibbo
17 here, also, the engineer who prepared the plan.

18 BARBARA RANDO, CHAIR: All right. Do
19 you want to -- do you have something to say before
20 you --

21 ATTORNEY WILLIAM SACK: Sure. The
22 property would fit the criteria for an old lot
23 determination if it had 40 feet of frontage rather
24 than the 37-and-a-half feet that it does have, as

1 stated in the letter of Patrick Powell of January 7,
2 which I think the Board has. If the property had an
3 additional two-and-a-half feet of frontage, no relief
4 from this Board would be required at all and the
5 Applicant could construct a new two-family home in a
6 more suitable and safe location on the lot because
7 two-family homes are permitted in a Residence B
8 Zoning District.

9 At the previous two meetings, we
10 discussed that without the zoning relief requested,
11 Applicant could only rebuild on the same footprint
12 that was there before the fire. The fire chief
13 stated -- and we brought this up at the last meeting
14 -- that the setback of the house made it much more
15 difficult to reach to extinguish the fire that took
16 the lives of Applicant's mother and brother.

17 The variance would permit the
18 Applicant to build in a location that is not only
19 safer, but also brings it into full compliance with
20 all of the other dimensional requirements.

21 We have a revised plan that the Board
22 asked for. I'd like to hand it out.

23 BARBARA RANDO, CHAIR: Thank you.

24 GLENNA GELINEAU: Thank you.

1 ATTORNEY WILLIAM SACK: This plan has
2 been approved by the Building Department as having
3 satisfied all applicable zoning ordinances, including
4 parking. If you remember from the last hearing, the
5 issue of parking came up by the Board. But it turns
6 out that the Board was referring to a different
7 section of the ordinance and not the one that's
8 applicable in this case. So, Mr. Bibbo has a letter
9 from the Building Department that they signed off on
10 this plan that it conforms to all requirements of the
11 zoning ordinance, including parking.

12 BARBARA RANDO, CHAIR: Didn't you have
13 tandem parking last time?

14 ATTORNEY WILLIAM SACK: No, we had --
15 you had the same plan with the four spots in the
16 front. And the question was whether we could have
17 those spots in the front, but I didn't have the
18 ordinance to refer to at the time. I think the wrong
19 section had been quoted at that time.

20 BARBARA RANDO, CHAIR: And you have a
21 letter from the Building Inspector saying that --

22 ROBERT BIBBO: Yes, I do, Madam
23 Chairman. Bob Bibbo, licensed professional surveyor
24 with Bibbo Brothers, 10 Hammer Street, Waltham, Mass.

1 As of noontime today, I had a letter
2 received from Mr. Forte regarding these sections of
3 5.0 and so forth for the parking regulations. We do
4 this parking layout all the time for Residence B
5 Zone. It meets Waltham Zoning requirements. I have
6 a letter from him stating that it meets Waltham
7 requirements for all setbacks for parking.

8 BARBARA RANDO, CHAIR: Thank you. Do
9 you have another letter that's the other --

10 ROBERT BIBBO: Do I have a copy?

11 BARBARA RANDO, CHAIR: Yeah, so they
12 can start reading.

13 So these four cars are parked in front
14 of the house, correct? This is the front?

15 ROBERT BIBBO: Yes.

16 BARBARA RANDO, CHAIR: Do you have a
17 rendering of the house that they're going to build?

18 ATTORNEY WILLIAM SACK: I have
19 something similar, Madam Chairman. There the parking
20 is in the back, but this is the parking. Something
21 similar to that.

22 BARBARA RANDO, CHAIR: Oh, to the
23 brick house.

24 ATTORNEY WILLIAM SACK: No, the one on

1 the left.

2 BARBARA RANDO, CHAIR: This one here?
3 That's a single-family, isn't it?

4 JOHN SERGI: Is that a two-family or
5 is that a single-family?

6 BARBARA RANDO, CHAIR: It's a single-
7 family in the middle.

8 ROBERT BIBBO: No, the one in the
9 middle is a two-family, two doors on the porch.

10 BARBARA RANDO, CHAIR: There's two
11 doors on the porch?

12 ATTORNEY WILLIAM SACK: Yeah.

13 JOHN SERGI: Two doors.

14 BARBARA RANDO, CHAIR: Did you see
15 this rendering? This is the middle house.

16 ROBERT BIBBO: Oh, this front-to-back.
17 I'm sorry. This is a front-to-back unit. That's
18 the front. One unit in the front, the other unit in
19 the back. Waltham is only going to allow us that to
20 be done for two-families.

21 BARBARA RANDO, CHAIR: Have we ever
22 received a kind of -- it's kind of going to be like
23 this house on a plan before?

24 MARK HICKERNELL: Yeah.

1 ATTORNEY WILLIAM SACK: This is what
2 the Board asked for, what would it typically look
3 like.

4 BARBARA RANDO, CHAIR: Usually, we ask
5 for the house, usually a floor plan.

6 Did you receive an application?

7 ATTORNEY WILLIAM SACK: We explained
8 that last time.

9 BARBARA RANDO, CHAIR: An application
10 packet that says exactly everything you have to have?

11 ATTORNEY WILLIAM SACK: We were
12 responding to the Board's request for a rendering and
13 --

14 BARBARA RANDO, CHAIR: Did you receive
15 one of these packages though?

16 ATTORNEY WILLIAM SACK: When we
17 applied?

18 BARBARA RANDO, CHAIR: When you
19 applied. You must have. But you didn't follow it.
20 Street numbers, dimension of all lots within a 30-
21 foot radius, topographical features, the locus should
22 be highlighted or designated in situations --

23 ATTORNEY WILLIAM SACK: We went over
24 that with the Zoning -- at the ZBA officer that took

1 our application and she said it was in compliance.
2 We've been here twice before and the Board only asked
3 for what it's going to look like. And we have an
4 idea what it's going to look like in this plan.

5 GLENNA GELINEAU: Well, I don't think
6 they really said it's going to look like, more a
7 plan, not a picture. I think we're looking for more
8 of a house plan, not just what it's going to look
9 like.

10 ATTORNEY WILLIAM SACK: The last time
11 the Board accepted Mr. Bibbo's plan and --

12 GLENNA GELINEAU: No, I'm talking
13 about the house itself. I think we were anticipating
14 a little more of a house plan not just the likeness.

15 BARBARA RANDO, CHAIR: The layout of
16 the house.

17 ATTORNEY WILLIAM SACK: It hasn't been
18 designed yet, but we wanted to give the Board a feel
19 for what it's going to look like.

20 JOHN SERGI: We did mention to you
21 that we wanted a rendering last meeting specifically.

22 ATTORNEY WILLIAM SACK: Yeah, but the
23 Board only said that this rendering would be --

24 JOHN SERGI: I know. I just wanted to

1 clear that up that we did ask for that.

2 ATTORNEY WILLIAM SACK: And I asked
3 for specifically what kind of rendering and you
4 accepted what we had.

5 BARBARA RANDO, CHAIR: A floor plan
6 showing the stairways, the halls, the doors opening
7 into the hallways, exits on each floor, elevation.

8 ATTORNEY WILLIAM SACK: We went
9 through that with the Board and the Board accepted
10 Mr. Bibbo's plan.

11 BARBARA RANDO, CHAIR: Did you have --
12 you received an application, sir. You received the
13 application.

14 MARK HICKERNEILL: We've got the
15 setbacks. I think that was the concern last time.

16 ATTORNEY WILLIAM SACK: Now, the lot -
17 - now the house will conform with all dimensional
18 requirements whereas before it didn't. So the only
19 real issue is the two-and-a-half feet. Is that a
20 hardship? I think the Board found it was last time
21 because of the setback. It made it a very unsafe
22 situation with the house. So, right now she has
23 permission to rebuild on the exact same footprint. I
24 think the Board, in its discussion last time, found

1 that that was not a good solution to rebuild in the
2 back. So, we're just proposing to bring it forward.
3 And since two-families are permitted anyway, that's
4 what the variance is about. It's about two-and-a-
5 half feet to fit the old lot exception. That's all
6 it's about.

7 The old house was 26 feet wide, as you
8 can see from the application from the plan, the house
9 that was razed. This plan shows a narrower house, 24
10 feet wide.

11 We've also tried to satisfy the
12 concerns and requests of our neighbor, Mr. Nicolazzo,
13 71 Ash Street, for privacy, by showing on the revised
14 plan you have today a six-foot fence along the entire
15 sideline, the entire length, with arborvitae. The
16 plan shows arborvitae in one location. Mr. Nicolazzo
17 wanted arborvitae along the entire sideline from the
18 back of the driveway all the way to the back of the
19 lot, and the Applicant will agree to do that.

20 ROBERT BIBBO: I know the lot is short
21 two-and-a-half feet. Prior to 1988, this lot would
22 have conformed to building regulations till they
23 changed that lot from zero frontage to 40 feet
24 frontage. So, prior to 1988, this lot would not have

1 to go in front of the ZBA. It would have met all
2 state statutes. The Board has already issued permits
3 for lots less than, one at 20 feet on Trapelo Road
4 about a month ago, 20-foot frontage in an 80-foot
5 frontage setback -- 70-foot frontage setback.

6 BARBARA RANDO, CHAIR: Mr. Sergi, do
7 you have any other questions at this time?

8 JOHN SERGI: No, I don't.

9 BARBARA RANDO, CHAIR: Mr. Hickernell?

10 MARK HICKERNELL: No questions.

11 BARBARA RANDO, CHAIR: Ms. Gelineau?

12 GLENNA GELINEAU: No.

13 BARBARA RANDO, CHAIR: Mr. Rudnick?

14 MARC RUDNICK: I sort of -- somebody
15 is misreading the ordinance. I hope for your sake
16 it's me. 5.35 says in Residence B and C Districts,
17 parking of motor vehicles is prohibited in that
18 portion of the front yard lying between the building
19 and the street line where five or fewer cars are
20 required.

21 ROBERT BIBBO: Correct. It has a 15-
22 foot setback, Residence B Zone. That's the minimum
23 setback frontage. That's the front yard setback,
24 zero to 15 feet. Anything after 15 feet you can

1 park. As you can see in my plan, I propose that, 15-
2 foot setback. It is approved by Mr. Forte. The
3 Building Commissioner for Waltham agrees with me.
4 He's the Building Officer.

5 MARC RUDNICK: Yeah, I know who he is.
6 I'm a Zoning Board member.

7 ROBERT BIBBO: Yeah. Every plan I --

8 MARC RUDNICK: Excuse me. This
9 doesn't say anything about 15 feet. I just read the
10 ordinance.

11 ROBERT BIBBO: Can you read it again?

12 MARC RUDNICK: I'd be glad to.

13 ROBERT BIBBO: Thank you.

14 MARC RUDNICK: "Notwithstanding any of
15 the foregoing," which mentions the other four terms
16 of parking for five cars or less which you meet the
17 requirements of, "in Residence B and C District," and
18 we are in B, "parking of motor vehicles is prohibited
19 in that portion of the front yard lying between the
20 building and the street line where five or fewer cars
21 are required." So, again, no 15 feet mentioned
22 there, just the entire space between the building and
23 the street line is prohibited for parking under that.

24 Now, I'm glad to have Mr. Forte tell

1 me that I'm misreading that.

2 ROBERT BIBBO: He just wrote you a
3 letter today.

4 MARC RUDNICK: Well, I'm just telling
5 you that I just read you the ordinance.

6 ATTORNEY WILLIAM SACK: It's been
7 interpreted I think as the first five feet from the
8 building forward.

9 MARC RUDNICK: It's been interpreted
10 as the first five feet from the building? That's a
11 separate term of the ordinance. You do meet that
12 requirement for the five-foot snow setback. You have
13 the five feet. I'm not complaining about that. You
14 have it. You meet the requirement.

15 Mr. Forte's comment about 5.35 is the
16 number of spaces is less than five.

17 MARK HICKERNELL: So, Marc, I may be
18 able to help. If you look at Section 2.322, the
19 definition of front yard in the ordinance. It's
20 defined as the required setback extending across the
21 entire width of the lot between the street line and
22 the required setback line. If that's 15 feet, then
23 that's incorporated.

24 ROBERT BIBBO: I have to correct -- I

1 have to agree with Mr. Hickernell. That's how
2 Patrick Powell's been handling it and that's how Mr.
3 Forte's been handling it, what he just said, the
4 setback, the 15 feet, from zero to 15 feet.

5 MARK HICKERNELL: 2.322.

6 MARC RUDNICK: Thank you.

7 ROBERT BIBBO: Just to let you know,
8 Mr. Rudnick, that's the way you've been handling it
9 for the last 15 years.

10 MARC RUDNICK: That's great. I don't
11 really care how we handled things in the past. This
12 is the Zoning Board. I'm just trying to uphold the
13 ordinances. Thank you for --

14 ROBERT BIBBO: You'd agree that that's
15 what it is, correct?

16 MARC RUDNICK: Now that Mr. Hickernell
17 explained that it's not the front yard.

18 ROBERT BIBBO: Thank you.

19 MARC RUDNICK: It's the part of the
20 front yard that's between the setback line and the
21 street line. Thank you.

22 ATTORNEY WILLIAM SACK: We feel we've
23 met the criteria for the variance. And, certainly, a
24 fence with arborvitae is going to be a huge upgrade

1 for our neighbor than what the chain link fence is
2 now that you see on the current. So, we're doing
3 everything to help him with his privacy, a six-foot
4 privacy fence and arborvitae where he wants it.
5 We're trying to be good neighbors. And we think a
6 variance is justified just because of the safety of
7 where the house was before and it really did lead to
8 the death of two people because the fire department
9 could not get back there.

10 MARC RUDNICK: Did you provide us with
11 some evidence of the statements from the fire
12 department?

13 ATTORNEY WILLIAM SACK: Last time we
14 read it into the record, yes, a quote from the --
15 yeah, after the fire. Would you like to hear it
16 again or is that part of the record?

17 MARC RUDNICK: Thank you.

18 BARBARA RANDO, CHAIR: He asked if you
19 wanted to hear it again, Marc?

20 MARC RUDNICK: No, no, I just wanted
21 to make sure it was in the record and not just --

22 JOHN SERGI: Can you explain your
23 hardship again one more time?

24 ATTORNEY WILLIAM SACK: The hardship

1 relates to the -- the hardship really is the -- right
2 now, all that the Applicant can do is rebuild on the
3 same footprint. That's all the Zoning Ordinance
4 allows in Waltham right now, rebuild on the same
5 exact footprint, the same exact location, with the
6 same violations that were there before as the rear
7 yard. We're going to bring this into conformance
8 with all sideline requirements. Remember, the Board
9 asked us the first time we were here, "Do you need
10 any other variances?" And the answer is no. We're
11 compliant with everything else as far as side yard,
12 front yard, rear yard, everything. And it's safer
13 and that's the hardship. It's two-and-a-half feet so
14 that we can bring the property forward to make it
15 safer in a better location.

16 BARBARA RANDO, CHAIR: Well, I still
17 have a problem with the plans, conceptual plans, or
18 plans that aren't showing exactly what it is.

19 ATTORNEY WILLIAM SACK: Well, it's
20 going to be a 24x52 footprint, and it's going to look
21 pretty similar to the house that --

22 BARBARA RANDO, CHAIR: But we don't
23 usually do pretty similar to. It doesn't show
24 staircases. Oh, yes, it does show -- does it show

1 staircases, rooms, how many rooms?

2 ATTORNEY WILLIAM SACK: I don't see
3 how the interior of a structure makes a difference in
4 this type of variance where --

5 JOHN SERGI: What's the height?

6 ATTORNEY WILLIAM SACK: Less than 40
7 feet in Residence B Zoning. It states the height
8 would be -- maximum allowed -- maximum -- it's 40
9 feet. So, it won't exceed 40 feet around the average
10 grade of the lot in relation to 127. Everything is
11 in compliance.

12 BARBARA RANDO, CHAIR: On page two it
13 says, "A floor plan of each floor. A floor plan
14 showing the stairways, halls, doors, openings into
15 hallways, exits of each floor or floors."

16 ATTORNEY WILLIAM SACK: Yeah, we went
17 through that when we submitted the plans. And we
18 spoke about that to the Board in two prior hearings
19 that it's the type of variance that it really doesn't
20 matter what's going on in the house. It's what the
21 exterior is going to look like.

22 BARBARA RANDO, CHAIR: Then why do
23 they have that on page two of the application if it
24 doesn't matter?

1 ATTORNEY WILLIAM SACK: I just don't
2 understand why this is coming out now. We've been
3 here twice before and this is something brand new.

4 BARBARA RANDO, CHAIR: Well, we asked
5 for plans. We asked for plans and a rendering.

6 ATTORNEY WILLIAM SACK: Yeah, but it's
7 in the record that --

8 BARBARA RANDO, CHAIR: And we have a
9 picture and --

10 ATTORNEY WILLIAM SACK: It's in the
11 record that the rendering that we gave was accepted
12 by this Board. I asked in detail at prior hearings
13 what does the Board need. Do they need full
14 architectural plans? And the answer was no. And now
15 we're back here on the third time and it sounds like
16 you want full architectural plans. You know, I go by
17 my word. I expect when I hear something from this
18 body that I can rely on it also. You didn't ask for
19 full architectural plans last time. In fact, you
20 said that they weren't necessary. It's the type of
21 variance that it's -- it's a dimensional variance.
22 It's not -- it's not --

23 BARBARA RANDO, CHAIR: I don't -- I
24 don't remember saying it myself.

1 MARC RUDNICK: I don't remember saying
2 that we wanted full architectural plans. So, I think
3 we said a rendering.

4 GLENN GELINEAU: I thought we asked
5 for a plan.

6 ATTORNEY WILLIAM SACK: Not full
7 architectural plans. I asked that specifically. And
8 the answer was they're not necessary. Mr. Rudnick
9 remembers it. That's how we left it last week. And
10 the Board --

11 BARBARA RANDO, CHAIR: Well, this plan
12 is not sufficient for me.

13 All right. How does the rest of the
14 Board feel? Do they want a continuance?

15 MARK HICKERNELL: No, the plan is
16 sufficient for me. It deals with everything that is
17 in our jurisdiction.

18 JOHN SERGI: No, I have to agree with
19 the Chair. I think we've asked for -- we asked for
20 renderings.

21 ATTORNEY WILLIAM SACK: How does the
22 interior of a house make any determination for this
23 Board? The Board is taking about a side line
24 variance, a two-and-a-half-foot variance.

1 BARBARA RANDO, CHAIR: So, you showed
2 us a picture, that it's going to look something like
3 that.

4 ATTORNEY WILLIAM SACK: But that's
5 what the Board asked for.

6 BARBARA RANDO, CHAIR: That's not
7 sufficient.

8 ATTORNEY WILLIAM SACK: That's what
9 the Board asked for. They wanted --

10 BARBARA RANDO, CHAIR: A picture of
11 the house, of what you're going to build.

12 ATTORNEY WILLIAM SACK: But the plans
13 has not been designed yet on this, what's going to be
14 built.

15 BARBARA RANDO, CHAIR: Well, they have
16 to be.

17 ATTORNEY WILLIAM SACK: They will be.
18 I mean everything has to be up-to-snuff when we apply
19 for the building permit. And there will be full
20 plans. But I don't understand why it's necessary now
21 and the Board has told us in the past two hearings
22 that they don't need full architectural plans and now
23 it's going back on that.

24 BARBARA RANDO, CHAIR: Mr. Sergi feels

1 the plans aren't sufficient.

2 Ms. Gelineau, how do you feel?

3 GLENNA GELINEAU: Well, I don't want
4 to contradict, but I thought we asked for some type
5 of -- maybe we, again, I don't remember exactly, but
6 I know we asked for more than a similar than house
7 picture.

8 ATTORNEY WILLIAM SACK: It's actually
9 -- it's not true because we wouldn't be back here
10 with just the same revised plan if the Board asked
11 for architectural plans. I asked that specifically.

12 BARBARA RANDO, CHAIR: Mr. Rudnick,
13 how do you feel?

14 MARC RUDNICK: I feel that the
15 attorney may not be familiar with the way the Board
16 has done it in the past necessarily, but this is a
17 plan. This is an adequate plan in my view.

18 ATTORNEY WILLIAM SACK: Say what?

19 MARC RUDNICK: This is an adequate
20 plan --

21 ATTORNEY WILLIAM SACK: Adequate.

22 MARC RUDNICK: -- to meet the
23 requirements for a plan. If the Board asked for a
24 rendering, you know, that's a fairly nebulous term.

1 I mean I don't really like seeing a picture of
2 another house taken off of Google as the rendering.
3 But I feel that the Board has enough information to
4 make its decision in order to go forward tonight.

5 BARBARA RANDO, CHAIR: All right.
6 Would anyone like to make a motion to continue or to
7 --

8 MARC RUDNICK: Were we going --

9 GLENNA GELINEAU: To read.

10 MARC RUDNICK: We had some other
11 testimony to --

12 GLENNA GELINEAU: To read it in.

13 BARBARA RANDO, CHAIR: Yes. Is there
14 anyone in the audience that is in favor of this
15 petition? Anyone in favor besides the Petitioner?

16 Anyone seeking information?

17 (No response.)

18 Anyone in opposition? One, two,
19 three, four. Four people in opposition.

20 Would anyone like to speak and say why
21 they're in opposition?

22 ATTORNEY WILLIAM SACK: Can I just ask
23 the Board -- can I ask the Board how architectural
24 plans would help the Board make its --

1 BARBARA RANDO, CHAIR: You can read
2 the application and you can check with the Law
3 Department.

4 ATTORNEY WILLIAM SACK: We did.
5 That's why they accepted our application and the
6 Zoning Officer when we applied. It was an adequate
7 submission. So, I don't know -- in this context, in
8 this kind of variance, I'm just asking how would that
9 help because maybe the Applicant will -- if we come
10 back with full architectural plans next time and we
11 know that that's going to be --

12 BARBARA RANDO, CHAIR: And a rendering
13 of the exact house.

14 ATTORNEY WILLIAM SACK: Sorry?

15 BARBARA RANDO, CHAIR: And a rendering
16 of the exact house.

17 ATTORNEY WILLIAM SACK: That would
18 assist the Board? I don't know how in this context,
19 but if that's what it will take I'll discuss it.
20 But, I don't understand really, and it hasn't been
21 articulated, how that will help.

22 BARBARA RANDO, CHAIR: Sir, I think
23 this is the way the Board is going. We're heading
24 that way to continue.

1 ATTORNEY WILLIAM SACK: Well, I wish
2 that had been stated six weeks ago when we were here
3 with the same plan and this was not discussed at all.

4 BARBARA RANDO, CHAIR: I think you
5 misunderstood what we said because three people here
6 don't remember saying that.

7 ATTORNEY WILLIAM SACK: Does anybody
8 remember asking for architectural plans? That was
9 not discussed.

10 BARBARA RANDO, CHAIR: All right.
11 There are two people that want to speak.

12 Please give your name and address for
13 the record, please.

14 CARLOS MEDIEROS: Yes, Carlos
15 Medieros, 65 Ash Street, Waltham.

16 I've just got a couple of points.
17 Two-family, 40-foot frontage. This home is 37-and-a-
18 half. So, why are we doing this and wasting our
19 time? I've just been in bed for three days. I have
20 to get up to come here tonight, you know. And I
21 really don't look forward to this.

22 Now, my other question, they're still
23 doing a two-family, right? Are they going to do the
24 two-family -- the way they have it now is it starts

1 at 32 feet from the back forward. By doing that,
2 that's going to be right on top of my house. I have
3 two bedrooms upstairs, a living room downstairs and a
4 kitchen. That's 80 percent of my house. So, if
5 there's a fire and it's going to be so close
6 together, I don't think it's a very good idea.

7 And the parking for four cars, now,
8 four cars and it's 36 feet. You know, a parking spot
9 is nine feet. So, you have like nine inches on
10 either side and that's it. What's going to happen
11 with all the snow? Because as of right now there's
12 no place to put the snow over there.

13 NANCY CARUSO: I just want to say one
14 thing while he's doing that. We keep hearing
15 hardship. And it's a hardship if they were going to
16 live there, but I just don't see the hardship where
17 they just -- they don't even know who they're selling
18 it to and who's going to buy it. It's a hardship for
19 us because we're the ones who have to live there.
20 It's a hardship for me looking out the window every
21 day and thinking of a fire. And I can't see putting
22 it right next to a house. Like it's going to be like
23 this. Like I can't even picture how close is it
24 going to be. Like it's just too close. It seems

1 like we're going to walk out of our door and the
2 house is going to be right there. How many feet are
3 going to be in between us? I guess that's my
4 question.

5 And the other question was I guess I
6 would like a fence on our half all the way down, too,
7 because I don't want them using our driveway. And I
8 just see that happening. So, I guess if they're
9 going to put a fence on one side, I guess I want it
10 all the way on our side, too. I guess that would be
11 a condition if you do that.

12 BARBARA RANDO, CHAIR: Could you give
13 your name and address?

14 NANCY CARUSO: It's Nancy Caruso, and
15 I'm at 65 Ash Street. We're husband and wife.

16 CARLOS MEDIEROS: And the other thing
17 here is it's 52 by 40 feet high. As soon as I walk
18 out into my kitchen, all I see is this big building,
19 whatever they call it. My driveway will never see
20 the sun again because it's facing east. So that's
21 going to be blocked. So, in the wintertime, I'm
22 going to have to use a lot of salt and just chip away
23 some of the ice.

24 And one of my other things, too, is I

1 am deaf. When I go to bed at night, there could be a
2 fire, whatever it is, nothing wakes me up because I
3 can't hear. So, I need somebody, you know, that can
4 --

5 NANCY CARUSO: I woke him up actually
6 that night. I remember that night. I mean it was a
7 scary night. I think it's harder for us because
8 we're still here. I mean I know that sounds
9 terrible, but we're living here. So I mean and we're
10 always going to be worried like that's so close,
11 like, you know, what happens the next time. I
12 remember being at the door. I didn't know if we were
13 supposed to run out. And the wind, I just thought
14 our house was going to go, too. And I mean I had all
15 my animals packed. I mean I didn't care about
16 anything but our animals and us. But it was just
17 very scary. And I'm just worried that they're going
18 to be too close. I would feel better with it back.
19 But I mean if you can't -- you know, but I mean I'm
20 just saying those are our thoughts. We have
21 hardship, too, I feel. He has cancer. And this is
22 like really hard on him.

23 CARLOS MEDIEROS: So, the other thing,
24 too, is if they build a house right there, right next

1 to mine, you know, I could be in my deck, grilling
2 hotdogs and hamburgers, and they can actually see
3 what kind of ketchup I'm using. That's how close
4 they are, you know, it's going to be. So, if you
5 really want it, just move the house back. You know,
6 it doesn't have to start off at 32 feet. It can
7 start at 10 or 15.

8 I think that's about it.

9 BARBARA RANDO, CHAIR: Thank you.

10 STENOGRAPHER: What's your name again?

11 NANCY CARUSO: It's Nancy Caruso.

12 BARBARA RANDO, CHAIR: Is there anyone
13 else that would like to speak?

14 STENOGRAPHER: Caruso?

15 NANCY CARUSO: Yeah, Caruso, C-a-r-u-
16 s-o, and Carlos Medieros, M-e-d-i-e-r-o-s.

17 ATTORNEY WILLIAM SACK: We talked
18 about this at the last meeting. They're on top of
19 the next house. So, every house is set back the same
20 distance except ours. So, just make it consistent
21 with every other house on the street. To say that
22 we're going to build on top of them, they're already
23 on top of the next people, and they're on top of the
24 next people. It's not an argument.

1 EMILEE DOHERTY: You have a copy of
2 this, but would it be okay if I read it or would you
3 rather --

4 BARBARA RANDO, CHAIR: Sure. No, go
5 right ahead.

6 EMILEE DOHERTY: I'm Emilee Doherty,
7 and I'm a representative of 71 Ash Street. I'm
8 speaking on behalf of Antonio Nicolazzo.

9 He's been to the last two meetings and
10 he's had a few concerns. So, we live on the second
11 floor of 71 Ash Street where we both spend a lot of
12 our time on the second-level deck. Right now we have
13 a beautiful privacy screen from the nature of the
14 trees that line my property and 67 Ash Street. The
15 concerns are that the trees will not survive due to
16 the excavation of the two-family dwelling. The roots
17 will be damaged resulting in dead or unstable trees.
18 To prevent this, I ask that all the trees that line
19 the property to be removed and replaced with a hedge
20 -- I'm sorry, I don't know how to say the name of the
21 trees.

22 MARC RUDNICK: Arborvitae.

23 EMILEE DOHERTY: Yes, to be planted
24 with a height of seven to eight feet tall, spaced

1 four to five feet from the center of the root ball
2 the entire length of the property.

3 In this plan -- I'm just going to
4 sidetrack -- they show that they wanted to stop the
5 trees right at these cars. And they want to stop the
6 trees there because if the trees are planted there,
7 like we would ask to continue to have our privacy,
8 like our fellow neighbors are stating, they wouldn't
9 be able to get into that car because, again, that is
10 how close the property line is. So, that is why in
11 this new printed out plan that they showed, I believe
12 they want the trees to stop there so that these
13 tenants will have access to those cars.

14 I will continue.

15 After the first meeting, Mr. William
16 Sack and owner Elizabeth Gartz agreed to my request.
17 On a second meeting, they produced very vague plans,
18 not showing the plants in the plans and no details on
19 the house, such as walkways or entryways. So, if
20 they're going to enter on say our side or their side,
21 how close is that going to be? Are the stairs going
22 to come down and basically touch our property line?
23 That wasn't clear on the plan.

24 ATTORNEY WILLIAM SACK: That's shown

1 on the revised plan.

2 EMILEE DOHERTY: Okay. They produced
3 a little more details on the plans presented tonight.

4 After looking this over, it's clear that what I
5 requested is not going to fit. I feel like the house
6 should stay where it is, where it's been for many
7 years, as a single-family home. I do understand that
8 that fire was very tragic and I can't imagine the
9 loss.

10 I literally -- I will sidetrack. I
11 was there that night. It was seriously one of the
12 scariest nights of my life. And our bedroom window
13 was hot. That's how close it is. And if that house
14 was even closer, I mean I think our property, their
15 property, everything will be so close.

16 I will say that the fire did occur on
17 one of the coldest and snowiest winters we had on
18 record. Just so everybody knows, I am a family of a
19 lot of firefighters. It was difficult for them to
20 get that fire out because the first hydrants that
21 they both went to, they were frozen. So, I don't
22 believe that the house being set back was the reason
23 for them not being able to stop the fire going. The
24 first hydrant that was closest to 67 Ash Street was

1 frozen. Mr. Sack keeps stating that the firefighters
2 had a hard time because of the house being set back,
3 and I have a hard time believing that. There are
4 many houses on that same street that are set back.
5 If the zoning is going to change on this property to
6 a two-family residence due to a hardship, I do feel -
7 - I also feel -- that the current owners should be
8 obligated to move in for at least five to ten years
9 and live in the situation and live in the close
10 areas. I just don't see the hardship for it to be --
11 I just don't see the hardship for it to be changed so
12 the property can be sold so more money will be paid
13 and bringing us abutting neighbors to have to live
14 with it for as long as we reside in our current
15 homes.

16 If you do change it to a two-family
17 residence, can it comply with the current setback?
18 With the current proposed plans, it appears that a
19 two-family home would be very close to our current
20 homes, which could be a danger to all abutting
21 neighbors if an unfortunate scenario were to occur.
22 So, yes, if that house was set back -- with this new
23 plan, God forbid something were to happen, God forbid
24 something were to happen to our property, their

1 property is in danger because of how close it is.
2 Being set back, at least it's not abutting our home.

3 I don't see it feasible to park four
4 cars beside each another and still have room for snow
5 or to even get by. So, what if -- so it's a two-
6 family home. Say both families are families of five.
7 They each have three children. Most people that have
8 kids have SUVs, bigger cars. How are you going to
9 open car doors? They're not. They're going to abut
10 onto our property line, abut onto 65 Ash Street's
11 line who doesn't have a fence. So, if they put up a
12 fence, they're going to have even smaller space and
13 there's no way that four cars are going to park if
14 you drive down this driveway. It seems that there
15 won't be enough room to open the door.

16 So, that is all I have to say and
17 speaking on behalf of 67 Ash Street.

18 JOHN SERGI: Thank you.

19 EMILEE DOHERTY: Thank you.

20 BARBARA RANDO, CHAIR: Anyone else?

21 ROBERT BIBBO: May I address the Board
22 again on rebuttal? I would like to just state
23 parking, the 9x18 is Waltham's standards that was
24 done in 1985. All your parking lots are 9x18. So,

1 her statement that the parking is too small, that
2 meets the standard of Waltham's requirement by the
3 City Council back in 1985. So, if she's going to
4 have a problem with those parking there, that means
5 everyone who goes to a parking lot anywhere in
6 Waltham, everyplace, like a Polaroid, has the same
7 problem. And, no, they don't. So, the parking
8 requirements meet the setbacks. Waltham, for five
9 cars minimum, there is no setback. So, pavement
10 right up to the lot line, where I think we've got a
11 foot off the lot line for the pavement. So, they
12 could put a fence there and the doors would still
13 open in that respect.

14 She mentioned the setbacks were too
15 close. The existing house was what, two feet? We
16 have this house as what, 10 and 10 is it?

17 ATTORNEY WILLIAM SACK: It's a
18 narrower house than what was there before. Right.

19 ROBERT BIBBO: Excuse me one second,
20 6.75 east side. That meets the setback for Waltham.
21 Five-foot is the minimum setback for a structure with
22 the old lot status, while we go 6 and 10. So, I
23 would disagree with her opinion of the setback
24 requirements because this meets the setback

1 requirements of Waltham Zoning and the parking.

2 ATTORNEY WILLIAM SACK: So, regarding
3 her comment that she doesn't believe that that was
4 the cause, well, I think the fire department's
5 assessment is more important than her assessment.
6 And we quoted the fire chief. Let me read it again.
7 The fire chief said, "It makes everything ten times
8 harder, the snow, the ice, the house. The location
9 of the house was set back. Accessibility was not..."

10 MARK HICKERNELL: So, both things
11 could be true.

12 ATTORNEY WILLIAM SACK: But it's --
13 right.

14 MARK HICKERNELL: The location of the
15 house and the cold.

16 ATTORNEY WILLIAM SACK: He was
17 specifically quoted as the setback, it was hard to
18 get to.

19 MARK HICKERNELL: It quoted all those
20 things. We get it. The quote things could be true.

21 ATTORNEY WILLIAM SACK: And she also
22 mentioned things that in her prepared statements that
23 contradict the new plan. We're showing arborvitae
24 across the whole thing, a fence across the whole

1 thing, even though she said --

2 EMILEE DOHERTY: I didn't get the
3 current plan.

4 MARK HICKERNELL: So, give her some
5 credit. We know they were working from what was here
6 before. We know you submitted something new. We get
7 it.

8 ATTORNEY WILLIAM SACK: I just want to
9 make sure the Board understands that.

10 MARK HICKERNELL: Oh, we understand
11 it.

12 BARBARA RANDO, CHAIR: Sir, excuse me.
13 I don't remember what the hardship was. What was the
14 hardship that you used?

15 JOHN SERGI: I've always had a problem
16 with the hardship, Madam Chair.

17 BARBARA RANDO, CHAIR: What's the
18 hardship, Attorney Sack?

19 ATTORNEY WILLIAM SACK: Mr. Rudnick
20 himself mentioned the hardship last time. He said
21 you do show a hardship because the house is set back.
22 The only thing we can do right now, again, is to
23 rebuild on the same footprint that was there before,
24 in the same unsafe footprint, in the same footprint

1 that didn't comply with the ordinances of the City of
2 Waltham regarding setback side yards. Now we're
3 going to bring it into full compliance. What else
4 would the Zoning Board like other than to have a
5 house that is in full compliance with all of its
6 dimensional requirements? That's what we're doing.
7 And the fact that it's going from a one-family to a
8 two-family, well, a two-family is permitted in the
9 zone. The whole street is filled with four-families,
10 three-families, two-families, except for two houses
11 on the whole street. So, it's really not about one-
12 family or two-family. It's about two-and-a-half
13 feet. And I think that's the whole issue.

14 BARBARA RANDO, CHAIR: Well, I have a
15 problem.

16 ATTORNEY WILLIAM SACK: Otherwise, the
17 Board is telling us rebuild on the same unsafe place
18 in the back, with the same dimensional
19 irregularities. I can't believe a Zoning Board would
20 want that.

21 GLENNA GELINEAU: But it's unsafe
22 under conditions. I agree with you, it was unsafe
23 then.

24 ATTORNEY WILLIAM SACK: It was also

1 not in compliance. You're asking us to put it back
2 in a place that's not in compliance. We're going to
3 put it in compliance.

4 GLENNA GELINEAU: I understand. But
5 it's unsafe under certain -- I get that. I mean if
6 it were summer, it wouldn't have -- those issues
7 wouldn't have applied.

8 ATTORNEY WILLIAM SACK: But we have a
9 case right on our hands of deaths that happened
10 because of inaccessibility and you want to repeat
11 that. I don't understand that. And the neighbors
12 are happy --

13 GLENNA GELINEAU: No, we don't want to
14 repeat that, sir. That's not fair. We don't want to
15 repeat that.

16 ATTORNEY WILLIAM SACK: No, I didn't
17 say you want to repeat that.

18 GLENNA GELINEAU: Yes, you did. You
19 did.

20 ATTORNEY WILLIAM SACK: But by putting
21 in a situation where --

22 GLENNA GELINEAU: You did say that.

23 ATTORNEY WILLIAM SACK: -- that
24 situation could repeat itself. I misspoke then.

1 We're put in the same situation where the situation
2 could repeat itself where we have the opportunity to
3 make it much more safe.

4 BARBARA RANDO, CHAIR: By building a
5 two-family instead of a one-family.

6 ATTORNEY WILLIAM SACK: Two-families
7 are permitted in the zone.

8 BARBARA RANDO, CHAIR: You don't have
9 frontage.

10 ATTORNEY WILLIAM SACK: Well, that's
11 why we're here for the two-and-a-half feet.

12 BARBARA RANDO, CHAIR: Right. But you
13 don't have a hardship.

14 ATTORNEY WILLIAM SACK: But, we're
15 here -- but, Madam Chairman, we would have to be here
16 anyway if we wanted to do a single-family in a
17 different location.

18 BARBARA RANDO, CHAIR: Right.

19 ATTORNEY WILLIAM SACK: So we would
20 have to be before this body anyway --

21 BARBARA RANDO, CHAIR: Right.

22 ATTORNEY WILLIAM SACK: -- because we
23 want to move the house forward. Even a single-family
24 we would have to be here.

1 BARBARA RANDO, CHAIR: Right.

2 ATTORNEY WILLIAM SACK: So, once we
3 can move it forward, why can't we put on the property
4 what's permitted in the zone? That's what the whole
5 case is about. We will put fences. We will put
6 arborvitae. We will be good neighbors. I think
7 we've justified the hardship.

8 JOHN SERGI: Counsel, I've got two
9 issues in my mind. I don't think you've met the
10 burden of hardship, number one. And I believe that
11 this is more detrimental to the neighborhood than
12 what was there. So, there's two issues there that I
13 don't think you've convinced me.

14 ATTORNEY WILLIAM SACK: We're putting
15 -- there's a chain link fence right there right now.
16 We're putting up a six-foot fence and arborvitae.
17 That's not more detrimental to the neighborhood.
18 That's going to be an upgrade from what they have
19 right now.

20 JOHN SERGI: That's not what I'm
21 hearing.

22 BARBARA RANDO, CHAIR: Sir, you have a
23 few problems. You have a few problems that you have
24 to work out. You have to work out the hardship. You

1 have to get an exact picture of the home you're going
2 to build. And you need better plans.

3 ATTORNEY WILLIAM SACK: We had the
4 hardship worked out last time. Mr. Rudnick mentioned
5 it.

6 BARBARA RANDO, CHAIR: No, no, you
7 didn't. You didn't. Mr. Sergi just said you didn't.

8 MARC RUDNICK: Unless you're willing
9 to quote what I said about the hardship, I'd really
10 rather you stop referring to me as okaying your
11 hardship.

12 ATTORNEY WILLIAM SACK: No, I remember
13 that you specifically --

14 MARC RUDNICK: I hear you remember an
15 awful lot of things that the Board seems not to
16 remember. So, why don't you tell me what I said
17 about your hardship then?

18 ATTORNEY WILLIAM SACK: You said I
19 think you've shown hardship, you've demonstrated
20 hardship, because of the location. That's what your
21 words were.

22 MARC RUDNICK: Is that what my words
23 were?

24 ATTORNEY WILLIAM SACK: Yes, that

1 you've demonstrated hardship because of location.
2 Yes.

3 BARBARA RANDO, CHAIR: All right. At
4 this time --

5 ATTORNEY WILLIAM SACK: The single-
6 family -- if it was a single-family, then is that the
7 issue? We could bring it into compliance and build a
8 single-family, is that the issue?

9 BARBARA RANDO, CHAIR: The issue is
10 hardship, first of all, and your plans. So, work on
11 those. In fact, I would suggest bypassing the
12 Building Inspector and maybe going to the Law
13 Department and getting an application and following
14 the exact application. I don't want to argue with
15 you, sir.

16 I'm going to make a motion at this
17 time that we continue the case so that you can do
18 some work.

19 ATTORNEY WILLIAM SACK: No, because --

20 BARBARA RANDO, CHAIR: Do you want us
21 to go forward tonight and vote on it? Is that what
22 you'd like?

23 ATTORNEY WILLIAM SACK: I'd like to
24 have some understanding of what the Board is asking

1 for because I just mentioned that --

2 BARBARA RANDO, CHAIR: I just told
3 you. All right.

4 ATTORNEY WILLIAM SACK: The plans are
5 dependent on a single-family and a two-family. The
6 plans differ. So, if it's the issue of a two-family
7 versus a one-family, then we'd like to know that
8 because we're hearing conflicting things every time
9 we come here.

10 BARBARA RANDO, CHAIR: You don't have
11 a hardship.

12 All right. I make a motion that we
13 continue Case 2015-21 to March --

14 ATTORNEY WILLIAM SACK: If we don't
15 have a hardship, spending \$10,000 on an architectural
16 plan is not going to --

17 BARBARA RANDO, CHAIR: Sir! Sir!
18 Sir! We're going through making a motion now.

19 I have March 29th or April 12th.

20 JOHN SERGI: I'm okay with either one,
21 Madam Chair.

22 MARK HICKERNELL: I don't understand
23 the purpose of continuing the case. If he doesn't
24 have a hardship, we should vote on it now.

1 BARBARA RANDO, CHAIR: Well, I said we
2 can go further, but he does not have the correct
3 plans. He does not have a picture of the exact
4 house.

5 MARK HICKERNELL: But the plans won't
6 change whether or not he has a hardship. But, I mean
7 --

8 BARBARA RANDO, CHAIR: Well, according
9 to page such-and-such of the application it says so.

10 MARK HICKERNELL: No, Madam Chair.
11 I'm not sure I understand what you're saying. I
12 understand that the application requests certain
13 plans.

14 BARBARA RANDO, CHAIR: Right.

15 MARK HICKERNELL: But those plans are
16 not related to whether or not the Petitioner has
17 demonstrated a hardship.

18 BARBARA RANDO, CHAIR: We've got two
19 different issues here.

20 MARK HICKERNELL: I agree. I agree.
21 But if there's no hardship, sending him back for
22 plans is a waste of everybody's time.

23 MARC RUDNICK: And money.

24 BARBARA RANDO, CHAIR: Well, if he's

1 going to go with a two-family.

2 ATTORNEY WILLIAM SACK: Well, is it a
3 single-family? Because if -- can I confer with my
4 client for a minute?

5 MARK HICKERNELL: I make a motion for
6 a five-minute recess.

7 BARBARA RANDO, CHAIR: Motion for a
8 five-minute recess.

9 Second?

10 JOHN SERGI: Second.

11 BARBARA RANDO, CHAIR: Second. All in
12 favor?

13 ALL BOARD MEMBERS: Aye.

14 BARBARA RANDO, CHAIR: Opposed?

15 (No Board Members opposed.)

16 BARBARA RANDO, CHAIR: Five-minute
17 recess.

18 (Short recess off the record.)

19 BARBARA RANDO, CHAIR: Attorney Sack?

20 ATTORNEY WILLIAM SACK: The Applicant
21 has agreed to return with the plans that the Board
22 has requested and to continue the hearing.

23 BARBARA RANDO, CHAIR: You realize
24 that you still need a hardship?

1 ATTORNEY WILLIAM SACK: I think we've
2 demonstrated a hardship given the location.

3 JOHN SERGI: I think you need to look
4 at the hardship again and the fact that it -- and
5 explain how this is more detrimental to the
6 neighborhood. That's just my opinion.

7 BARBARA RANDO, CHAIR: Okay. I make a
8 motion to continue to March 29th or the 12th. Can you
9 do it by the 29th or do you want April 12th?

10 MARK HICKERNELL: I would prefer April
11 12th anyway.

12 BARBARA RANDO, CHAIR: April 12th? All
13 right. I have a motion to continue Case 2015-21 to
14 April 12th. Did I get a second? Did you second that,
15 John?

16 JOHN SERGI: I'll second that, sure.

17 BARBARA RANDO, CHAIR: How do you
18 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 GLENN GELINEAU: Yes, but I --

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1 BARBARA RANDO, CHAIR: Yes?

2 GLENNA GELINEAU: Yes.

3 BARBARA RANDO, CHAIR: Do you have
4 something to say?

5 GLENNA GELINEAU: (No response.)

6 BARBARA RANDO, CHAIR: Mr. Rudnick?

7 MARC RUDNICK: No.

8 BARBARA RANDO, CHAIR: And the Chair
9 votes yes. All right. We will continue this case.
10 What is the 100 days. Do we have to change it?

11 MARK HICKERNELL: It's May 10th.

12 BARBARA RANDO, CHAIR: All right.
13 We will see you April 12th. Good luck.

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24 **Case Number 2015-26: Pasquale Torcasio, 41 Williams**

1 **Street**

2

3 BARBARA RANDO, CHAIR: Will the Clerk
4 please read the petition in Case 2015-26, Torcasio,
5 41 Williams Street?

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. May
10 we hear from the Petitioner or the Petitioner's
11 representative?

12 ATTORNEY JOSEPH CONNORS: Good
13 evening, Madam Chairman, members of the Board. My
14 name is Joseph M. Connors, Jr. I'm an attorney
15 representing the Petitioner, Pat Torcasio, who is at
16 the hearing in row three. My office is at 404 Main
17 Street in Waltham.

18 As you know, the case was continued
19 and an opinion was requested from the Law Department.
20 I did receive that on Friday afternoon. I did
21 provide and prepare a response to that opinion. I
22 sent it electronically today to Pam at the Law
23 Office.

24 BARBARA RANDO, CHAIR: But she didn't

1 send it to us because she was out.

2 ATTORNEY JOSEPH CONNORS: Yeah, as I
3 discovered.

4 BARBARA RANDO, CHAIR: Yeah.

5 ATTORNEY JOSEPH CONNORS: So, I guess
6 -- I do have a paper copy for everyone.

7 MARK HICKERNELL: Thank you.

8 ATTORNEY JOSEPH CONNORS: So what I've
9 submitted is a written response and a copy of three
10 cases that I've cited in my response. I guess I --
11 Madam Chair, how would you like me to proceed? I
12 know that the Board is just getting that now, which
13 is unfortunate.

14 BARBARA RANDO, CHAIR: Right. I think
15 we need a short period of time to be able to digest
16 this.

17 JOHN SERGI: So, counselor, you
18 drafted this in response to this?

19 ATTORNEY JOSEPH CONNORS: Yes. Yes.

20 JOHN SERGI: Okay.

21 ATTORNEY JOSEPH CONNORS: Yes, so the
22 opinion from the Law Department, March 4th. And I
23 drafted this yesterday and just attempted to submit
24 it today.

1 JOHN SERGI: Okay.

2 ATTORNEY JOSEPH CONNORS: So, March
3 8th. So I put the second date on the final page.

4 (Board members reviewing document.)

5 BARBARA RANDO, CHAIR: You may
6 continue.

7 ATTORNEY JOSEPH CONNORS: Madam Chair,
8 I admit this nonconforming issue is not easily
9 determined. I mean there's a lot of cases that have
10 discussed it over the years and it's sometimes
11 unclear as to how we apply it because we talk about
12 nonconforming use, nonconforming buildings, and
13 nonconforming land. But I would say that in this
14 case we have two nonconformities today.

15 One, we have a use, which is
16 nonconforming, a single-family residential use in a
17 Commercial Zone that's nonconforming.

18 Number two, we have nonconforming lot
19 size because it's 6,900, 6,982, I believe, in a --
20 6,932 in a Commercial Zone that requires 10,000
21 square feet. So, there's two nonconformings that we
22 have.

23 And we're seeking to make an addition
24 onto the existing structure and eliminate the

1 nonconforming use and convert the entire building and
2 the addition itself into a conforming use, a use
3 that's permitted in the Commercial Zoning District,
4 an office for the business and a garage for the
5 business as well.

6 I would say that -- I didn't point it
7 out in my little supplemental brief here, but on page
8 two of the opinion from the Law Department, paragraph
9 two, and it's the second sentence, she states,
10 "However, if there is a nonconforming structure or a
11 nonconforming use on a lot that does not meet the
12 land area requirements then relief may be available
13 via special permit relating to the structure or use."

14 I mean I think we're saying the same
15 thing. She's saying we can get a special permit if
16 we have nonconforming structure or nonconforming
17 land. But she does, prior to that, say there's no
18 such thing as nonconforming commercial land, and I
19 respectfully disagree. The definition of
20 nonconforming inside of the Waltham Zoning Code is,
21 on page two of my supplemental brief, Section 2.331,
22 as "...the use of any building, structure, or land that
23 does not conform to the regulations of the district
24 in which it is located." So, land is stated, "the

1 use of any building, structure, or land." So, the
2 land, or lot, is nonconforming. The structure that
3 sits on it isn't necessarily nonconforming, but it's
4 almost, you know, nonconforming because the lot
5 itself is nonconforming. So, there is, under the
6 Waltham Zoning Code, a nonconforming use which
7 includes land.

8 And I would admit that if there wasn't
9 a structure there, if it was just a vacant parcel of
10 land that was 6,000 square feet, I'm out of luck.
11 But, in this case, we have a structure on it, so with
12 somebody trying to add onto that, make an addition to
13 that.

14 So, on page one, she talks about
15 Section 3.722, and it's 3.7223. I mean we really
16 weren't requesting relief under 3.7223 because I
17 believe, my reading of that, was that's to change it
18 from one nonconforming use to another nonconforming
19 use. And we're attempting to change it to a
20 nonconforming use to a conforming use. So, the use
21 itself will be conforming under the statute.

22 So, I've also pointed out three cases.
23 The first case is *Rockwood v. Snow*, which talks about
24 applying Chapter 40A, Section 6, in this context, in

1 the context of an extension or structural change of a
2 nonconforming structure. And, on the top of page
3 three, the last sentence, it's a quote, it says, "If
4 the first and second sentences are read together,"
5 and they're talking about 40A, Section 6, "the
6 statute permits extensions and changes to
7 nonconforming structures if the extensions or changes
8 themselves comply with the ordinance or by-law, and
9 the structures as extended or changed are found to be
10 not substantially more detrimental to the
11 neighborhood than the pre-existing nonconforming
12 structure or structures." Our proposal is a garage,
13 and I refer to it as a public garage because
14 essentially it is a private garage under the
15 definition of the Zoning Code, which talks about
16 residential use, and a public garage is any other
17 garage. So, the garage is not public per se for the
18 public, it's for him, but it's a commercial garage,
19 hence the difference between the private garage
20 definition.

21 And I point out the *Nichols* case
22 states that whenever a nonconforming structure is
23 altered to provide for a different use from the use
24 prior to the alteration, the ordinance applies even

1 if the new use is a permitted one. But I mean I do
2 think that there is an exception to that. And it
3 says, I'm quoting *Nichols* again, it says, top of page
4 four, "If no alterations are made, a change from a
5 permitted use to another permitted use need not be
6 presented to the board of appeals." So, if it was
7 just a turnkey change of use from one use to another,
8 we could simply do it. And we may need to comply
9 with the Building Inspector for, you know, the design
10 of the entryways and fire safety and things like
11 that, but we could do it. And, despite the opinion
12 of the Law Department that says you can't, I think we
13 can. So, I think what's applicable is 3.7222 and
14 3.22 -- I mean only 3.7222 and Chapter A40 -- Chapter
15 40A, Section 6. If the proposed alteration conforms
16 to the requirements of the ordinance and if the
17 proposed alteration is not substantially more
18 detrimental than what we have there today, then we
19 can have a grant of a special permit.

20 I also point out a case from the Land
21 Court, *DeFelice v. Scigliano*, which again calls into
22 question the decision of the Law Department in which
23 she says, "The language drafted in the Waltham Zoning
24 is intended only to grandfather existing one- and

1 two-family homes on undersized residential zoned
2 lots, not undersized commercially zoned lots." So,
3 she's saying that if I have an undersized commercial
4 lot, I'm out of luck even if I have a structure on
5 it. And I say that's not what 40A, Section 6 says,
6 and that's not what *DeFelice* says. And it's a Land
7 Court case, but I quote it in my brief. But if you
8 turn to page six, I believe, or five, five of the
9 *DeFelice v. Scigliano* case, paragraphs 37 and 38,
10 what's what I cited in my brief. You know, in 37 the
11 court says, well, you know, if we have an undersized
12 lot with a structure on it -- actually, we have a lot
13 with a structure on it, and then we amend the zoning
14 ordinance to require a greater lot area, so now this
15 lot and the structure is technically undersized. If
16 you were to read it that the 40A, Section 6, only
17 applied to structures, then the neighborhood
18 complained that the commercial use and the building
19 on the commercial undersized lot needs to be turned
20 down. And the court says that this just doesn't make
21 any sense. So, the court states, however, "Neither
22 Section 6 nor the bylaw expressly protects an
23 undersized nonresidential lot. However, both do so
24 by necessary implication. Section 6 states that a

1 bylaw 'shall not apply to pre-existing structures.'"
2 And then he goes to the example of, "Suppose a
3 building..."

4 And then in 38 he follows up, "I
5 conclude that if there is a nonconforming structure
6 on an undersized nonresidential lot, Section 6
7 protects the lot co-extensively with the protection
8 given the structure under Section 6. If the
9 structure can be reconstructed, extended, or
10 structurally changed or altered under Section 6 and
11 its attendant case law, then the lot is protected."

12 So, we believe that -- you know, I
13 disagree with the opinion of the Law, but I do think
14 that the commercial undersized lot is grandfathered,
15 is protected under Chapter 40A, Section 6. I think
16 her opinion discards or ignores Section 2.33 of the
17 Zoning Ordinance. It also doesn't take into
18 consideration the cases I've cited.

19 But I do think that -- I mean I know
20 there was discussion do we even need a special
21 permit, you know, if he is subject to conforming to
22 the setback requirements. And I do have to agree
23 that you do. I mean the cases, and the *Nichols* case
24 says, they have -- they didn't even make any -- the

1 only alterations in the *Nichols* case were interior.
2 They didn't even do -- they didn't even change the
3 footprint. But I think they went from a gas station
4 to an office. And so the court said that even though
5 you're going from a gas station, which is a
6 nonconforming use, to an office use which is
7 conforming, you still need a special permit for the
8 Zoning Board of Appeals.

9 So, I think I need one. And, I think
10 that really it's whether or not the alteration
11 conforms to the Zoning Code, and I think it does.
12 So, we pointed out that it meets all the setback
13 requirements under the Zoning District and the
14 requirements for a lot in this Commercial Zoning
15 District. We believe that we're going to take a
16 nonconforming use in a Commercial Zoning District --
17 and, granted, this neighborhood is, you know, there's
18 some residential uses that are mixed in out there.
19 So, it's kind of a -- it's a mixed neighborhood,
20 although it is commercial. So, here Mr. Torcasio
21 bought what he thought was a commercial lot, hoping
22 to use it for his commercial business, and he'd like
23 to use it with a garage so he can keep his materials
24 in -- not his materials, but his equipment in there.

1 So, I respectfully disagree with the
2 opinion of the Law Department and have cited those
3 three cases, which I think clearly sets out that we
4 are entitled to grandfathered protection. So, that's
5 my summary.

6 BARBARA RANDO, CHAIR: Mr. Sergi, do
7 you have any questions of Attorney Connors at this
8 time?

9 JOHN SERGI: No, not at this time.

10 BARBARA RANDO, CHAIR: Mr. Hickernell?

11 MARK HICKERNELL: I think the *DeFelice*
12 case is a good one for you. I have to say in
13 fairness, I haven't had a chance to digest the Law
14 Department's opinion much less sort of line it up
15 with what you provided just by your heroic efforts to
16 get us something tonight.

17 ATTORNEY JOSEPH CONNORS: Yes.

18 MARK HICKERNELL: So, there's -- I
19 mean I just couldn't possibly rule tonight or vote.

20 BARBARA RANDO, CHAIR: Ms. Gelineau?

21 GLENN GELINEAU: No questions.

22 BARBARA RANDO, CHAIR: Mr. Rudnick?

23 MARC RUDNICK: Perhaps you could take
24 a moment to address more correctly -- more in-depth

1 the -- I mean the issue for me, Joe, is the ordinance
2 says "in that use," "alter or enlarge in that use."

3 ATTORNEY JOSEPH CONNORS: Right.

4 MARC RUDNICK: And this -- you know,
5 first of all, I appreciate your research on this well
6 made case. I'm still not convinced that we're doing
7 what the ordinance says, granting relief because you
8 alter or expand in that use. You're altering or
9 expanding the structure. You're clearly doing that.

10 ATTORNEY JOSEPH CONNORS: Right.

11 MARC RUDNICK: But you're not doing it
12 in that use. You're utilizing the expansion to
13 justify the applicability of a special permit to an
14 undersized lot. I think if our ordinance didn't say
15 "in that use," if it just said "the alteration or
16 expansion of the structure would be allowed if the
17 Zoning Board gives you a special permit," and so on.
18 I mean I get your connections about the land and why
19 the land would be treated like the structure. It's
20 similarly protected even when the ordinance talks
21 about the structure. But that's where I'm having a
22 hard time getting on board is that the ordinance
23 clearly says you've got to alter it or change it in
24 that use.

1 ATTORNEY JOSEPH CONNORS: Yeah.

2 MARC RUDNICK: Not even to a better
3 use, if I could say that conforming meant better.

4 ATTORNEY JOSEPH CONNORS: Right. And
5 the Law Department is underlining that use. And I
6 see what you're saying. And I think that that's
7 where what I first said was that when you're talking
8 about nonconforming uses, nonconforming buildings,
9 and nonconforming land, the language is kind of
10 thrown around, you know. And so you'll even find
11 cases where they'll talk about, well, it says
12 nonconforming use; the case that I cited it says
13 nonconforming structures. But we need to, by
14 necessity, apply that to nonconforming land as well.
15 And if you look at the definition of nonconforming
16 uses on the Waltham Code, it says the use of any
17 building, structure, or land. So, I read
18 nonconforming use to be a generalization of a
19 nonconforming, whether it's use, building, or land.
20 And so that's what I would say that that applies to.
21 And I think that if we're creating a conforming use
22 and you're eliminating a nonconforming use, you would
23 think that that would comply with the zoning and be
24 better.

1 But I mean I hear what you're saying,
2 but that's my explanation. And that's the way I read
3 it. And I think a lot of the cases kind of talk
4 about that, you know, because it wasn't perhaps
5 drafted as clearly as it should be, the statute, and
6 it talks about nonconforming use generally. And
7 sometimes it doesn't break it down to the structure,
8 or the land, or the use. Because when it talks about
9 nonconforming use, sometimes they mean the structure
10 or the land.

11 MARC RUDNICK: You know, to be frank,
12 I haven't had a chance to read these fairly complex
13 cases that you're citing. And I'm hoping that they
14 shed light on this specific issue. Since it sounds
15 like the Board is going to look to continue your case
16 anyway to give the members a chance to read it, I
17 would just remind you that anything you could add
18 about that specific aspect of this is going to help
19 me make a decision.

20 ATTORNEY JOSEPH CONNORS: Yes.

21 BARBARA RANDO, CHAIR: Does anyone
22 else have any other questions of Attorney Connors at
23 this time?

24 (No response.)

1 BARBARA RANDO, CHAIR: Is there anyone
2 in the audience that is seeking information?

3 (No response.)

4 BARBARA RANDO, CHAIR: Is there anyone
5 in the audience in favor of the petition? One
6 person.

7 Anyone in opposition? One person.

8 Anyone who would like to stand and be
9 recognized in favor or in opposition?

10 Go right ahead.

11 COUNCILOR ROBERT LOGAN: Thank you.
12 Robert Logan, 109 Taylor Street, Ward 9 Councilor. I
13 represent this area.

14 Just to note a couple of things.
15 First of all, obviously we've got a couple of legal
16 opinions that don't agree. One came from the City
17 Solicitor and one came from the attorney for the
18 Petitioner. For the record, I agree with the City
19 Solicitor. You can make your own decision, but
20 remember who each of those attorneys work for. One
21 of them doesn't work for you.

22 In this area here, this is
23 residential, this is residential, that's residential,
24 that's residential, that's residential, that's

1 residential. So you've got a lot of residential. I
2 believe that is residential. And there are a lot of
3 other residential all around. So, it is mixed. But,
4 really, I would categorize that area as more
5 residential than commercial even though it's a
6 Commercial Zoning District.

7 There are quite a lot of materials
8 that you've received and I got copies of them. And I
9 did take a quick look at the legal opinion that the
10 attorney for the Petitioner presented. And I notice
11 a recurring them in that and these materials, and
12 that is a strong attempt to focus your attention on
13 Chapter 40A, which has some general terms applying to
14 the rights of nonconforming uses. However, it's
15 important to remember that local ordinances can be
16 more specific. We can regulate beyond that.

17 Interesting that the notice mentions
18 Section 3.7222, but it doesn't say what that says.
19 Then you've got the application. The application
20 cites Section 3.722 in two places. It doesn't say
21 what it says. There's a brief from the attorney
22 which mentions, again, in three places, Section
23 3.722. And then it quotes Chapter 40A, Section 6.
24 So, it mentions -- it cites 3.722, but then it gives

1 you language from Chapter 40. Then on the next page,
2 it cites 3.722 again and kind of paraphrases, not
3 quite completely, Section 3.722. Then two pages
4 after that, it says, "The ordinance simply states
5 that a special permit is required for an alteration."
6 It makes that statement. That is quite fact -- as a
7 matter of fact not true. It doesn't simply state
8 that. But, again, it doesn't give the language.

9 Then there's proposed findings of fact
10 in which it's mentioned twice, but, again, it doesn't
11 give you the wording.

12 Then there's the proposed decision
13 that cites it, and it makes the assertion that the
14 proposal meets all of the requirements -- all of the
15 requirements of 3.722. And then it has points one,
16 two, and three.

17 One, it quotes, "The locus is
18 nonconforming under the ..."

19 Two, "The proposed alterations shall
20 meet or exceed the dimensional requirements of the
21 Zoning Ordinance," which isn't a requirement of that
22 section.

23 And, three, "The altered nonconforming
24 lot is not substantially more detrimental." None of

1 that is mentioned in Section 3.722.

2 Then, finally, there's a number of
3 exhibits, one of which is a copy of Section 6 of
4 Chapter 40A, but no copy of Section 3.7222, which all
5 leads me to what is it that they don't want you to
6 see. So, you may have already -- I see you've got a
7 book out. You may have already looked at it.

8 So, what does Section 3.722 say? It
9 says, "The nonconforming use may be altered or
10 enlarged in that use -- in that use -- to an extent
11 not exceeding 10 percent of the ground floor area of
12 the building or area of land use at the time." Now,
13 what does that mean ground floor area of the building
14 or land? The land refers to let's say you had a junk
15 yard, Route 128 Used Auto Parts, and you had a
16 certain -- the land is what's being used. It's not a
17 building. The land. And you wanted to expand that,
18 you would look at how much land is currently being
19 used for the junk yard and you could expand that by
20 10 percent. In this case, we're dealing with a
21 building. So, the building could be -- well, if you
22 believe that the attorney for the Petitioner's
23 arguments that this can be granted at all, which the
24 Law Department disagrees with, but let's assume just

1 for the sake or argument that the attorney for the
2 Petitioner is right and that you could grant this,
3 what could you grant? It says, "Not to exceed 10
4 percent of the building area, the current building
5 area." The existing building is 1,324 square feet.
6 By my math, that means the maximum building addition
7 you could approve would be a 132-square-foot
8 addition. That's 10 percent. The addition being
9 proposed is 2,940 square feet. It's bigger than the
10 -- it's almost -- it's more than double the existing
11 building. The addition itself is more than twice the
12 size of the existing building.

13 The ordinance, they applied for a
14 special permit under Section 3.7222. It clearly
15 limits the expansion to 10 percent. How in the world
16 could you grant that? It's just -- I mean it's a
17 complete non-starter. You know, I don't know what
18 the argument is how you get around 10 percent. It
19 says, "To an extent not exceeding 10 percent, may be
20 altered or enlarged." It couldn't be any plainer.
21 And the reason is clear that the idea of this is to
22 give some minimal relief not to allow someone to
23 triple the size of a building. Clearly, any common
24 sense reading of the Zoning Ordinance is absolutely

1 clear that that would never be the intention is that
2 you could take a nonconforming building on a
3 nonconforming lot and triple the size of it through a
4 special permit.

5 So, you know, I think the language is
6 clear. Again, I agree with the -- would tend to
7 agree with the opinion of the Law Department rather
8 than that. I don't agree that this can be granted at
9 all. But, if it can, all they can get is a 132-
10 square-foot addition. And I'd like to hear the
11 argument how that's any different.

12 Thank you.

13 BARBARA RANDO, CHAIR: Thank you.

14 All right. I think it's the wish of
15 the Board to continue this case as well so we can
16 digest the information that we received. So, do I
17 have a motion for it, a motion to continue the case?

18 JOHN SERGI: I'll make a motion, Madam
19 Chair, to continue the case.

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

22 MARK HICKERNELL: Second.

23 BARBARA RANDO, CHAIR: Second by Mr.
24 Hickernell.

1 How do you vote Mr. Sergi?

2 JOHN SERGI: Yes.

3 BARBARA RANDO, CHAIR: Mr. Hickernell?

4 MARK HICKERNELL: Yes.

5 BARBARA RANDO, CHAIR: Ms. Gelineau?

6 GLENNA GELINEAU: Yes.

7 BARBARA RANDO, CHAIR: Mr. Rudnick?

8 MARC RUDNICK: Yes.

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

11 Do you want to join us on April 6th --
12 April 12th? I was asking you.

13 ATTORNEY JOSEPH CONNORS: April 12th?

14 BARBARA RANDO, CHAIR: Yeah, do you
15 want to join us on that night?

16 ATTORNEY JOSEPH CONNORS: I'm
17 available, yes.

18 BARBARA RANDO, CHAIR: All right. Do
19 we have to extend the 100 days on this case?

20 MARK HICKERNELL: I don't see 100 days
21 on this case for some reason.

22 BARBARA RANDO, CHAIR: I'm sorry?

23 MARK HICKERNELL: I don't see 100 days
24 date.

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1 BARBARA RANDO, CHAIR: No. When did
2 we first hear it, 2/18?

3 All right. We will continue this case
4 to April 12th. Thank you.

5 One more motion is in order.

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

8 BARBARA RANDO, CHAIR: Second?

9 MARC RUDNICK: Second.

10 BARBARA RANDO, CHAIR: All in favor?

11 ALL BOARD MEMBERS: Aye.

12 BARBARA RANDO, CHAIR: Opposed?

13 (No Board Members opposed.)

14 BARBARA RANDO, CHAIR: The ayes have
15 it. We're adjourned at 8:35. Thank you very much.

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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
Barbara Rando, clerk
3/22/16

