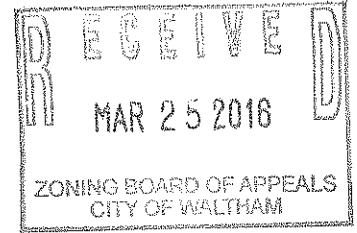


FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS



GENERAL HEARING

March 15, 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
Sarah Hankins
Michael Squillante

Arlington Reporting Corporation
(339) 674-9100

Waltham Zoning Board of Appeals/3-15-16/2

I N D E X

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2016-03	4

A T T A C H M E N T S

Legal Notices: Case No. 2016-03

Case No. 2016-03:
Plan of Land
Proposed Findings of Fact
Proposed Decision

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P R O C E E D I N G S

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

Tonight we have one new case before
us, Case 2016-03, Petitioner Vincent Mula. The owner
is Fortunato and Rosalba Salvucci, number 0 Old
County Road, and that's for a variance.

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

The first action this evening is the
minutes. And I don't believe we have any minutes
yet.

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1 **Case Number 2016-03: Vincent Mula, 0 Old County**
2 **Road.**

3

4 BARBARA RANDO, CHAIR: I am going to
5 ask the Clerk to read the Petition in Case 2016-03,
6 Mula.

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

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

13 ATTORNEY JOHN MULA: Good evening.

14 BARBARA RANDO, CHAIR: Do you have a
15 brief for each one of us?

16 ATTORNEY JOHN MULA: It was filed
17 electronically. They told me I didn't need to give
18 you all one as long as I filed electronically, and
19 you don't have one.

20 BARBARA RANDO, CHAIR: Well, we
21 usually do.

22 ATTORNEY JOHN MULA: Well, my
23 apologies because, no, I do not. I have plans, but I
24 do not have the brief.

Waltham Zoning Board of Appeals/3-15-16/5

1 BARBARA RANDO, CHAIR: Has everyone
2 read the brief?

3 MARK HICKERNELL: Yes.

4 GLENNA GELINEAU: Yes,

5 SARAH HANKINS: I have.

6 BARBARA RANDO, CHAIR: Mr. Squillante?

7 MICHAEL SQUILLANTE: Yes.

8 BARBARA RANDO, CHAIR: All right. You
9 may continue.

10 ATTORNEY JOHN MULA: My apologies.
11 Attorney John Mula representing Vincent Mula. He's
12 under purchase and sale contract to the owners,
13 Fortunato and Rosalba Salvucci, seeking dimensional
14 variances for frontage and width up before the Board
15 of Appeals today. The matter has been filed with
16 City Clerk, Building Department, and the Board of
17 Appeals Office. The matter was legally advertised.
18 And we're here today for the public hearing.

19 The locus is an empty lot, presently
20 known and numbered as 0 Old County Road. It's a
21 77,000-square-foot lot in Waltham, Massachusetts,
22 with parts in Lincoln. It was created under an ANR
23 plan back in May of 1988. There should be in the
24 packets also a copy of the 300-foot plan as well as

1 the dimensional plan. In addition, I have brought
2 copies of the ANR plan if the Board would like to see
3 the ANR plan. The ANR plan is identical to the copy
4 of the plans showing the homes on the 300-foot, but
5 it does not contain any of the buildings thereon.

6 Several existing single-family homes
7 have already been constructed on the lots in the ANR
8 plan. The most recent was 83 Old County Road under a
9 grant of variance by this Board as case 96-30.

10 The Petitioners intend to reside in
11 the home with his family.

12 Currently, lots in Residence A1
13 District are required to have a minimum lot of 20,000
14 square feet, which this lot does; frontage of 100
15 square feet, which is deficient; and the width of
16 100, which is deficient. All of the setbacks, side
17 setbacks, rear setbacks, frontage, maximum heights,
18 and stories and lot coverage all meet zoning
19 requirements for the A1 District.

20 The width is 20 feet and the width is
21 20 feet due to the irregular shape of the lot, which
22 was once known as the rattail lots.

23 In order to construct a single-family
24 home, the Petitioner is seeking a variance as to the

1 width and the frontage.

2 At the risk of boring this Board, I'm
3 sure they've heard this, but in order to get it into
4 the record, Mass. General Laws, Chapter 40A,
5 authorizes the Board to grant the variances as long
6 as the use is not prohibited by the ordinance. It's
7 an A1 District Residence. The Petitioner proposes to
8 construct a home, which would be his residence and
9 his family's

10 In this instance, the single-family
11 home is only going to require the frontage and the
12 width. The Residence A1 District does permit the use
13 in the District.

14 Section 7.2 of the Waltham Ordinance
15 authorizes the Board to utilize all the powers
16 granted it by the General Laws. Therefore, the Board
17 has the authority to grant the dimensional variances.
18 However, the Petitioner has to meet three conditions.
19 Statutory conditions for the variance are:

20 Circumstances relating to the soil
21 condition, shape or topography of the land or
22 structures especially affecting the land but not
23 affecting the zoning district in which it is located.
24 First, they must show, the Petitioner has to show the

1 circumstances relating to the soil, shape, or
2 topography. Well, in this case, as you can from the
3 plans, we have the rattail lot. The lot itself meets
4 the width and meets the frontage but for the fact
5 that there's an easement going over to the road
6 that's actually in Lincoln. And the frontage in this
7 case would be the frontage that would take down to
8 Old County Road, which is the frontage in Waltham.

9 There is two other lots which utilize
10 frontage adjacent to the same frontage of the rattail
11 lots in this subdivision.

12 This topography is what affects it.
13 It's an odd layout. It includes this lengthy access
14 driveway which presents in an irregular shape.

15 Many cases, long-established in
16 Massachusetts, state that an old layout of a lot have
17 been found to warrant a variance. The Petitioner,
18 therefore, meets the first requirement.

19 The enforcement of the provisions of
20 the ordinance would involve substantial hardship to
21 the Petitioner. The Petitioner, naturally, is
22 presenting that he will be unable to purchase the
23 lot. The lot will remain unbuildable in the event
24 that the Board does not grant this variance for width

1 and/or frontage.

2 The financial hardship, the failure to
3 build the lot presents the hardship to the Board.

4 The final issue is this will result in
5 substantial detriment to the public good or nullify
6 and derogate from the intent or the purpose of the
7 ordinance. As I stated earlier, all of the lots in
8 the ANR plan of May 1988 have been built on. Excuse
9 me. There is one that is being used for detention
10 basins for the subdivision, which is not ever going
11 to be built on. But all the rest, other than this
12 lot, you have homes constructed under that ANR plan.

13 So, the Petitioner's construction, we
14 feel, does not represent anything involving a
15 detriment to the public good considering all the
16 homes in the subdivision have been built, especially
17 considering a home that was built utilizing the same
18 variance by the same Board. We feel that the
19 construction of this new single-family residence will
20 add a new and conforming use to the neighborhood,
21 benefitting the neighborhood and the public good.

22 Therefore, the Petitioners, having met
23 all legal requirements for the granting of the
24 variance, respectfully request that this petition be

1 granted.

2 I am available to answer whatever
3 questions you have. In the event I don't have the
4 intelligence to do so, I've enlisted the engineer,
5 Bobby Bibbo, to answer those.

6 Thank you.

7 BARBARA RANDO, CHAIR: Attorney Mula,
8 is the Case 93-30 that you mentioned, was that a
9 rattach lot?

10 ATTORNEY JOHN MULA: Yes, it was.
11 That would be -- actually, the gentleman happens to
12 be here, if we'd like personal testimony. But I will
13 show you, it belongs to Mark Rogers. And, on your
14 plans -- do you all have --

15 BARBARA RANDO, CHAIR: I do.

16 ATTORNEY JOHN MULA: Okay. So you'll
17 see it as Lot Number 5. It should be on there
18 showing Mr. Mark Rogers.

19 BARBARA RANDO, CHAIR: Yeah, I see it.

20 Also, how many of the homes in that
21 1988 plan have rattach lots?

22 ATTORNEY JOHN MULA: I'm going to
23 answer that. We have the first, which is Christian
24 and Paula Reenstierna, number 89. The second would

1 go to subject lot, the locus, owned by Fortunato and
2 Rosalba Salvucci. The third is Craig and Katherine
3 Nicholson at 5 Forrester Road. And the last is 83
4 Old County Road, Mark Rogers. Excuse me. There's
5 also 81 Old County Road, William and Judith Lawler.
6 So, that makes a total of one, two, three, four,
7 five.

8 BARBARA RANDO, CHAIR: I have one
9 other question. Your hardship, again?

10 ATTORNEY JOHN MULA: My client will
11 not purchase the lot, and the lot will be unable to
12 be built on unless the variance is granted. The lot
13 will be of no use or value to anyone, including the
14 owner without the variance granted by the Board.

15 BARBARA RANDO, CHAIR: And do you
16 consider that a hardship?

17 ATTORNEY JOHN MULA: Most certainly.

18 BARBARA RANDO, CHAIR: It's financial.

19 ATTORNEY JOHN MULA: The plan was laid
20 out in May of '88. The ordinance in the City of
21 Waltham in December of '88 allowed lots as long as
22 they have -- such as this, as long as they have 50
23 feet in an A1 District. Thereafter, the intent of
24 that was to prevent any future development of rattail

1 lots. Unfortunately, it did not grandfather the lot
2 unless it was built on prior to the ordinance. In
3 this particular case, the Petitioners, not having the
4 ability to build on the lot at the time, not having
5 the ability to build on the lot since then, have
6 decided to seek the variance at this time.

7 BARBARA RANDO, CHAIR: Mr. Squillante,
8 do you have any questions at this time?

9 MICHAEL SQUILLANTE: I have a few.

10 Two comments on *Paulding*. *Paulding*
11 does indicate that a lot being rendered unbuildable
12 is a hardship. But there's a difference between
13 *Paulding* and this case. In *Paulding*, the rattach lot
14 in question was the only rattach lot. And the issue
15 there was that it was different from other lots in
16 the area. This is very similar to other lots in the
17 area. So, how do you address that issue since it's
18 not quite the same situation as *Paulding*?

19 ATTORNEY JOHN MULA: Well, I don't
20 believe that excludes the fact that it is a lot with
21 an unregular (sic) shape or topography. I don't
22 believe there's anything in that case that would
23 exclude them. Certainly that grants that particular
24 lot a relief. And I'd say that that case could be

1 applied here because we're asking for the same
2 relief.

3 MICHAEL SQUILLANTE: It's the same
4 relief, but what the ordinance says is that the lot
5 is -- it is not similar to other lots in the area.
6 Just let me see if I have the language. The language
7 is something to the effect --

8 ATTORNEY JOHN MULA: Oh, so the
9 distinction being because I've cited the other five -
10 -

11 MICHAEL SQUILLANTE: No.

12 ATTORNEY JOHN MULA: -- meaning there
13 are other lots.

14 MICHAEL SQUILLANTE: No.

15 ATTORNEY JOHN MULA: The only thing I
16 can say here -- go ahead. I don't mean to interrupt
17 you.

18 MICHAEL SQUILLANTE: It has to be
19 something that's -- what's the word I'm looking for?
20 It has a situation that doesn't affect other lots in
21 the area. And I'm sorry I don't have the language in
22 front of me. I was just wondering if you had --

23 ATTORNEY JOHN MULA: Well, no, it
24 doesn't -- there are many lots in the area that don't

1 have the same characteristics as the four other lots.

2 MICHAEL SQUILLANTE: Let me look it
3 up. I should have printed out *Paulding*.

4 ATTORNEY JOHN MULA: Not all the lots
5 in that particular subdivision required the rattail
6 relief, if you will. And, at the time, the ones that
7 were built on required none but for Lot Number 5.
8 So, it is similar to Lot Number 5, granted, but
9 dissimilar to the other lots in that A) they don't
10 have the rattail; or B) they were built on it prior
11 to the ordinance which is requiring this variance.

12 MICHAEL SQUILLANTE: Right. That's
13 exactly -- but I'm trying to figure out the language
14 from the law. But I guess we're going in too deep in
15 this. Sorry. I'm sorry I didn't have it with me. I
16 thought I had printed out that statement, but I
17 didn't.

18 MARK HICKERNELL: I think the language
19 of the ordinance is that it not be generally -- that
20 it be not generally found in the zoning district, not
21 the immediate area.

22 MICHAEL SQUILLANTE: The other cases -
23 - I mean so *Paulding* is close. And, *Josephs*, it was
24 an issue of topography and steepness of the lot and

1 not the shape of the lot, so that's not quite on the
2 mark. And *Wolfman* had to do with soil conditions.
3 So, some of the quoted cases seem a little bit off.

4 ATTORNEY JOHN MULA: We only need to
5 satisfy one, so I'd offer the Board that it's the
6 irregular shape here of the lot. Although, quite
7 frankly, we will be appearing before other boards due
8 to the grade of the lot in order to be granted relief
9 prior to the allowance of any building permit that
10 gets granted for this particular lot, including our
11 Conservation Commission.

12 MICHAEL SQUILLANTE: Oh, in fact, you
13 have the language in your proposed decision:
14 "Circumstances especially affecting this locus which
15 do not generally affect other lots in a Residence A1
16 Zone."

17 ATTORNEY JOHN MULA: So, for the
18 record, I'll amend my answer to say it's the entire
19 Residence A1 Zone versus just the ANR plan.

20 MICHAEL SQUILLANTE: I don't think
21 that is -- but, anyway, I have just a completely odd
22 question. Why do they call it 0 and not 87?

23 ATTORNEY JOHN MULA: I'm unable to
24 answer that question. We're told that if it's

1 granted and if the Building Department grants the
2 building request then Engineering will assign us a
3 number.

4 MICHAEL SQUILLANTE: So, the one thing
5 I do agree with is that -- I agree with most of what
6 you said. And, certainly, I agree that it's unusable
7 without the variance. I'm not sure that I agree that
8 it's unique.

9 That's what I have. Thank you.

10 ATTORNEY JOHN MULA: Thank you.

11 BARBARA RANDO, CHAIR: Mr. Hickernell,
12 any questions at this time?

13 MARK HICKERNELL: Not at this time.

14 BARBARA RANDO, CHAIR: Ms. Gelineau?

15 GLENNA GELINEAU: No.

16 GLENNA GELINEAU: Ms. Hankins?

17 SARAH HANKINS: No.

18 BARBARA RANDO, CHAIR: Is there anyone
19 in the audience that is in favor of this? One, two,
20 three, four, five -- five people.

21 Is there anyone in opposition? One in
22 opposition.

23 Anyone looking for any information?

24 (No response.)

1 BARBARA RANDO, CHAIR: Is there anyone
2 that would like to come to the microphone and speak
3 in opposition or in favor or seeking information?

4 Just give your name and address for
5 the record and either the Board --

6 WILLIAM FRASER: I'm looking for
7 information, the layout and --

8 BARBARA RANDO, CHAIR: If you could
9 come to the microphone so people can hear you.

10 WILLIAM FRASER: Okay.

11 BARBARA RANDO, CHAIR: Give your name
12 and address for the record.

13 WILLIAM FRASER: William E. Fraser,
14 III, 43 Lincoln Woods Road, Waltham, Massachusetts.
15 Looking for his layout of where the home will be
16 positioned and the proposed pool. I have a concern
17 about the pool. And those are my two concerns.

18 BARBARA RANDO, CHAIR: Do you want to
19 answer his concerns?

20 ATTORNEY JOHN MULA: Most certainly.
21 Can he remain here so we can show him?

22 BARBARA RANDO, CHAIR: Sure.

23 ATTORNEY JOHN MULA: Okay. Okay.
24 It's a lot easier.

1 Mr. Bibbo, why don't you take him
2 through where the access lot is, where the lot will
3 be, and the side, rear, frontage, and setbacks.

4 ROBERT BIBBO: It's right here, Mr.
5 Fraser. It's right there. The proposed house is
6 here. The proposed house is 90 feet off the rear lot
7 line, 111 feet from the Town of Lincoln, and 30 feet
8 to the right lot line, and 7 to 10 feet, plus or
9 minus, from this lot line here. So, your house is
10 way up here, Mr. Fraser. And your detached garage is
11 right here, Mr. Fraser.

12 BARBARA RANDO, CHAIR: Does that
13 answer your question, sir?

14 WILLIAM FRASER: I want to take time
15 to review this.

16 BARBARA RANDO, CHAIR: Is there anyone
17 in favor that would like to speak? Give your name
18 and address for the record, please.

19 MARK ROGERS: Mark Rogers, 83 Old
20 County Road, also known as 3 Forrester Road. I'm
21 here in favor of Mr. Mula's petition. I was before
22 the Board, my wife and I, 20 years ago for the exact
23 same thing. We have a home. It's going to be
24 smaller. Actually, his house will be smaller. And

1 my pool area is a little bit larger than what Vinny
2 is proposing. So, we came before you folks 20 years
3 ago for the exact same thing. So, yes, I'm in favor.

4 BARBARA RANDO, CHAIR: Thank you.

5 Anyone else? Hearing none.

6 Any other concerns of the Board?

7 (No response.)

8 BARBARA RANDO, CHAIR: Okay. You may
9 continue with your proposed finding of facts.

10 ATTORNEY JOHN MULA: I'm going to hope
11 those were given to you all, also.

12 BARBARA RANDO, CHAIR: They were.

13 ATTORNEY JOHN MULA: And I apologize
14 again for not including the copies.

15 (Wherein, Attorney Mula reads the
16 proposed finding of facts into the record. See
17 attached.)

18 ATTORNEY JOHN MULA: I have a proposed
19 decision. Those are the proposed findings of fact.

20 BARBARA RANDO, CHAIR: Any questions
21 on that?

22 MARK HICKERNELL: No questions for
23 counsel, but I did want to ask if Mr. Fraser has had
24 an opportunity to review the plans.

1 WILLIAM FRASER: Not at this point.

2 MARK HICKERNELL: How much time do you
3 think you need?

4 WILLIAM FRASER: Ample.

5 MARK HICKERNELL: I would entertain a
6 short recess, but we're probably going to vote on
7 this tonight, if you want to take some time to look
8 at it now.

9 BARBARA RANDO, CHAIR: Would a short
10 recess help you if you speak to them?

11 WILLIAM FRASER: Yeah, I'll talk to
12 Bob.

13 MARK HICKERNELL: All right. I make a
14 motion for a five-minute recess.

15 BARBARA RANDO, CHAIR: I have a motion
16 for a five-minute recess.

17 Do I have a second?

18 SARAH HANKINS: Second.

19 BARBARA RANDO, CHAIR: Second by
20 Sarah.

21 All in favor?

22 ALL BOARD MEMBERS: Aye.

23 BARBARA RANDO, CHAIR: Opposed?

24 (No Board Members opposed.)

1 BARBARA RANDO, CHAIR: Five-minute
2 recess.

3 (Whereupon, a five-minute recess was
4 taken off the record.

5 BARBARA RANDO, CHAIR: We're back in
6 session.

7 Did that little recess help?

8 WILLIAM FRASER: Waltham people work.

9 BARBARA RANDO, CHAIR: Okay. If
10 there's no questions.

11 You read your decision?

12 ATTORNEY JOHN MULA: No, I haven't.

13 BARBARA RANDO, CHAIR: No, you haven't
14 read your decision.

15 All right. Would you read your
16 decision?

17 (Wherein, Attorney Mula read his
18 proposed decision into the record. See attached.)

19 BARBARA RANDO, CHAIR: Would anyone
20 like to add anything to the decision? No? Nothing?

21 All right. I'm ready for a motion on
22 the proposed finding of facts.

23 GLENNA GELINEAU: I'll make a motion
24 that the proposed finding of facts be the finding of

1 facts of the Board.

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

4 MARK HICKERNELL: I'll second it.

5 BARBARA RANDO, CHAIR: Second by Mr.
6 Hickernell.

7 How do you vote, Mr. Squillante?

8 MICHAEL SQUILLANTE: Yes.

9 BARBARA RANDO, CHAIR: Mr. Hickernell?

10 MARK HICKERNELL: Yes.

11 BARBARA RANDO, CHAIR: Ms. Gelineau?

12 GLENNA GELINEAU: Yes.

13 BARBARA RANDO, CHAIR: Ms. Hankins?

14 SARAH HANKINS: Yes.

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

17 Do I have a motion on the decision?

18 GLENNA GELINEAU: I'll make a motion
19 that the proposed decision be the decision of the
20 Board.

21 BARBARA RANDO, CHAIR: Motion by Ms.
22 Gelineau. Do I have a second?

23 MARK HICKERNELL: Second.

24 BARBARA RANDO, CHAIR: Second by Mr.

1 Hickernell.

2 How do you vote on the decision, Mr.
3 Squillante?

4 MICHAEL SQUILLANTE: Yes.

5 BARBARA RANDO, CHAIR: Mr. Hickernell?

6 MARK HICKERNELL: Yes.

7 BARBARA RANDO, CHAIR: Ms. Gelineau?

8 GLENNA GELINEAU: Yes.

9 BARBARA RANDO, CHAIR: Ms. Hankins?

10 SARAH HANKINS: Yes.

11 BARBARA RANDO, CHAIR: And the Chair
12 votes yes. It is granted.

13 Other houses up there have rattach
14 lots. It would be an unbuildable lot. Similar lots
15 have the same problem. And there's one other -- the
16 1988 plan would have allowed it.

17 All right. It is granted.
18 Congratulations.

19 ATTORNEY JOHN MULA: Thank you. On
20 behalf of the Petitioner and the owner, thank you for
21 your consideration. Very much appreciated. Thank
22 you.

23 BARBARA RANDO, CHAIR: Thank you.

24 Mr. Bibbo, could I speak to you for a

1 minute.

2 One more motion. Thank you so much.

3 One more motion is in order.

4 MARK HICKERNELL: Motion to adjourn.

5 BARBARA RANDO, CHAIR: Motion to
6 adjourn.

7 Second?

8 GLENNA GELINEAU: Second.

9 BARBARA RANDO, CHAIR: Second.

10 All in favor?

11 ALL BOARD MEMBERS: Aye.

12 BARBARA RANDO, CHAIR: Opposed?

13 (No Board Members opposed.)

14 BARBARA RANDO, CHAIR: We are
15 adjourned at 7:35. Thank you.

16 (Whereupon, the public hearing was
17 concluded at 7:35 p.m.)

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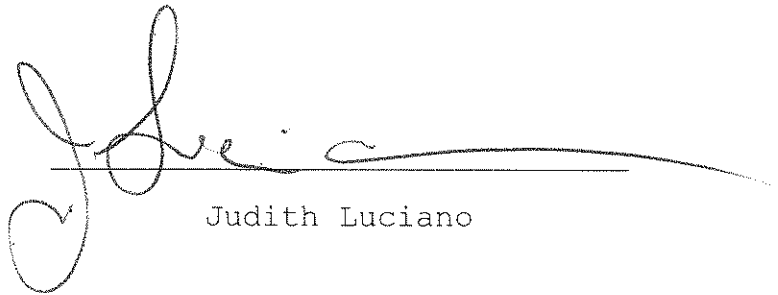
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C E R T I F I C A T E

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.



A handwritten signature in cursive script, appearing to read "Judith Luciano", is written over a horizontal line. The signature is fluid and extends to the right beyond the end of the line.

Judith Luciano

