

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**August 9, 2016**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, August 9, 2016, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were Chair Barbara Rando, and members Glenna Gelineau, Sarah Hankins, Edward McCarthy and John Sergi.**

**Mrs. Rando: Tonight we have two new cases before us, Case 2016-22, Hortencia Morales, 16 Park Place, and that's for a variance; Case 2016-26, Kenneth G. Noiles and Suzanne LaCava, 69 Jennings Road, and that's for a variance also.**

**The first action this evening is for a motion to accept the minutes of August 2, 2016.**

**On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to accept the minutes of August 2, 2016.**

**Mrs. Rando: Will the clerk please read the petition in Case No. 2016-22?**

**The clerk then read the Petition of Hortencia Morales in an application for variance - rear yard and first floor unit. The locus consists of a small parcel of land known and numbered as 16 Park Place. The locus consists of 5,110 square feet of land with an existing building situated thereon. The petitioner intends to construct, use and maintain dormers on the second floor. The petitioner also intends to convert the existing commercial use to three residential units. Location and Zoning District: 16 Park Place; Business C. Zoning District.**

**Mrs. Rando: May we hear from the petitioner or the petitioner's representative, please?**

**Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham came forward and submitted a copy of his brief to each member of the board.**

**Mr. Connors: Tonight I am here with Hortencia Morales and her brother to support her on this.**

**(Mr. Connors read his brief into the record along with going over the plans posted on the board and the exhibits in his brief. He also submitted photos of the property.)**

**Mrs. Rando: Attorney Connors, the other houses on that street on the same side, they have business on the first floor. Correct? One has an exterminating business, it looks like.**

**Mr. Connors: They stayed in the Business B Zone. So I looked up the assessor's records and they kind of have it as a mixed use and boarders so it's a combination of business use and boarders as opposed to residential use. So, it's a boarding house and some type of business.**

**Mrs. Rando: If you put dormers in would you be changing the facade of the building?**

**Mr. Connors: We won't be changing the facade but we definitely will be changing the roof line.**

**Mrs. Rando: You're not changing the historic building.**

**Mr. Connors:** We are to some degree, yes. I understand that point. So we are trying to retain as much of it as possible but also utilize it for residential purposes. That makes practical and economical sense. So there is a little effect on that, I admit that.

**Mrs. Rando:** Also, how many bedrooms did you say? There are three apartments, one in the basement, one on the first floor and one on the second floor and attic.

**Mr. Connors:** Two units would share the first floor and the basement. So one in the front and one in the back. Then on the second floor and the attic would be a third unit by itself. And that would have, total bedrooms you would have: apartment one would have two bedrooms; apartment two would have one bedroom and apartment three would have a master bedroom and three in the attic. So it would have four.

**Mrs. Rando:** And you think six apartment spaces is sufficient for that many bedrooms?

**Mr. Connors:** Yes.

**Mrs. Rando:** And you can see down in that cellar. It looks like its underground with very small windows.

**Mr. Connors:** It is. You know, it would have to conform the the State building code. It's already built out now so its already been built out for commercial purposes anyway. So they would be converting it to a residential use but it's not going to be permitted unless it meets the State building code. These plans were done by Al Costa and he signed them that they should conform to the State building code otherwise they're not going be able to construct that there.

The parking, is I believe, it's one and a quarter space per unit. So, it's more than enough. It meets the code.

Mrs. Rando: Are there any questions from board members?

Mr. McCarthy: The Historical Society, what do they say?

Mr. Connors: I think they are here.

So, I found that it was historic. I went into the historic, the office here. And then I did send an email to Clarence Richardson, the Chairman. I don't think he supports it but he just said that he's not going to sit idly by. So that was kind of the end of the dialogue. The fact is that they can offer an opinion, but they can't prohibit this because we are not demolishing the building. So they can impose a demolition delay if we tear it down which we are not intending to do. We are not seeking a federal or state permit so, therefore, they can't really impact what we do there. So I was willing to have a dialogue with him but he didn't seem to want to do that.

Mrs. Rando: In all do respect, their next meeting is September 1st or something and he will be speaking for just himself and he can't speak for the entire board.

Mr. Connors: Well, I look out at the audience and see members of this board here.

Mrs. Rando: And I certainly will listen to them.

Mr. Connors: I have no objection to that. They will be welcome to do it and I will be glad to enter into a dialogue with them but I sent him an email. I said this is what we are doing. We're coming to the zoning board. We understand it's Greek Revival and he didn't seem to want to have a discussion about it.

**Mrs. Rando:** He can't speak for the entire board.

**Mr. Connors:** Maybe that's true. But we would certainly be happy to engage in any discussion with the Historical Commission because, as I say, the uniqueness of the property, is it's historic architecture and we are trying to retain as much of that as possible and especially retain the building.

**Mrs. Rando:** Are you going to keep the porches on it and are you going to keep the pillars exactly the same way?

**Mr. Connors:** Yes.

**Mr. McCarthy:** How many square feet in the building?

**Mr. Connors:** I don't have that number off the top of my head.

**Mr. McCarthy:** What's the layout of the interior of the building right now?

**Mr. Connors:** It's essentially wide open.

**Mr. McCarthy:** Both first and second floor?

**Mr. Connors:** First, second and attic. There's nothing there. It's a shell.

**Mr. McCarthy:** Do you need the dormers in order to be able to use the attic?

**Mr. Connors:** It's to make it usable. Right now, with the slope, there's very limited ability to live there.

**Mr. McCarthy:** No bathrooms or kitchen in there right now?

**Mr. Connors:** Nothing. So I think originally they were allowed to demo it and then they stopped her after they were permitted to demo it.

**Mr. McCarthy:** Because it was a historical building?

**Mr. Connors:** No. I don't think the Historical Commission, really it's a historical building but they don't have any jurisdiction to kind of dictate what we do here. Not to say that we don't care and we don't want to work with them but I didn't need to go to the Historical Commission because I wasn't tearing the building down. We're retaining it. So they really don't have any official jurisdiction.

**Mr. Sergi:** In the proposed apartments, the egress, the entrance and exits. Talk to me a little bit about those.

**Mr. Connors:** went over the plan showing where the entrance and exits were located.

**Mr. Sergi:** That's within the building code, I would assume.

**Mr. Connors:** And these plans were submitted to the building inspector, and, of course, this isn't a final review. You have to do a final review if a permit is pulled but these are architectural rendered drawings. We didn't want to just kind of do it on a sketch because there is significant building issues here.

**Mr. Sergi:** The second floor?

(Again, Mr. Connors went over the plan to go over the second floor.)

**Mr. McCarthy:** And how much of the roof, is the dormer taking over?

**(Mr. Connors went over the plan to show where the dormer would go.)**

**Mr. McCarthy:** It's going to be on top of your existing roof, right?

**Mr. Connors:** Right.

**Mr. McCarthy:** How much higher is it going to go?

**Mr. Connors went over the plan.**

**Mr. Sergi:** So, you're not really increasing the height from that.

**Mr. McCarthy:** Would you need the dormer if you made it a two family?

**Mr. Connors:** I can't make it a two family because it's not allowed. So the zoning district doesn't allow singles or two families because he went to the building department and said, can we make it a two family? And he said, no. You can make a three, though. So, it's kind of silly but that's what the ordinance says.

**Mr. McCarthy:** It seems preposterous, doesn't it?

**Mr. Connors:** Yes. I mean if you look at it, it looks like a two family. So when you talk about the zoning history, it's very strange that only four lots become a Business B from Residence C and then you have only two from a Business B to a Business C. So the net effect is kind of strange. But we understand the dormers they change the architectural

integrity to some degree but we're just trying to use it for what is permitted and that's all it amounted on in 1992. So, I mean, that's the first time I have ever come across that.

**Mr. McCarthy:** I've never seen that myself. It's bizarre to say the least. And there are a number of issues impacting including historical situation and cost, etc., etc., and I'm not very thrilled about putting bedrooms down in the basement or up in an attic. I don't think it is the safest way to go.

**Mr. Connors:** Well, I think clearly it has to meet the state building code and it needs to conform to the fire code otherwise we're not going to build it and this is signed off by an architect but again it's going to get another review.

**Mr. McCarthy:** It has to because there are no fire escapes up there.

**Mr. Connors:** There's relevance to that. There's space to build a fire escape if it's required under the code.

**Mr. Sergi:** Counsellor, without knowing the square footage of each of the rooms it's tough for me to kind of get a vision of the units.

**Mr. Connors:** The footprint is 1550. So if you take the first floor its 1550, the second floor would be a mirror image of the first floor (Mr. Connors went over the plan).

**Mr. Sergi:** And the third floor?

**Mr. Connors:** It's the same. All that floor space I can utilize, so it's going from the entire length of it but actually we are just losing a little bit in the back. So you are probably talking 1500 for the first floor; 1500 for the second floor and about 1200 for the third. I think the top floor unit is probably the largest one. That's kind of a primary unit



so they'll have a master bath on the second floor and a larger kitchen and a larger dining room area and then you could put a full family up there with four bedrooms.

Mr. Sergi: So the dormers are necessary for the headroom to gain the utilization of that extra 1550 up there. So, you need that for a third unit.

Mr. Connors: Yes.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: Not at this time.

Ms. Hankins: As far as the dormers go, are there other Greek Revival buildings in that area that have these dormers?

Mr. Connors: Not that I know of.

Ms. Hankins: So that would be, because if the hardship you are relying on is the historical value of that historical nature that you're changing that significantly, it certainly takes away the hardship.

Mr. Connors: I understand your point. I'm affecting the design of the structure, but I'm saying what I'm doing is, I'm retaining the front columns. I'm retaining the front pedigree there. So all of this will remain the same. In that picture it's going to remain the same and you see the dormers on the side. But the front of the building will look as it does today. So, yes, there is some effect on it. but we're saying we are still retaining enough of it where it still retains its character.

You know you raise a good point, so I looked up at 6 Park Place. So 6 Park Place is the building two doors down and because that I believe it's listed as a Greek Revival too but when you look at it, it doesn't look like a Greek Revival to me. So the listing of the Mass Historic says that it's a flared 6 Park Place. Flared mansard roof with segmented head windows, shouldered architectural trim and entrance and a nice example of its style an unusual house opposite an island and otherwise surrounded by Greek Revival. But it acknowledges that they changed the Greek Revival style by adding these mansard roofs. So that was a change in the original design of the property. So here is another case where it kind of changed with the times, that's for six Park Place.

**Mr. McCarthy:** Have you thought about going before the council for a zone change. I mean it seemed like a winner. All these arguments just point to a two family. It's really a logical thing to do.

**Mr. Connors:** You know I have thought about it. One, the process takes more time and more expense. Two, anytime I go for a zone change to the city council, the first thing they say is, is this spot zoning?

**Mr. McCarthy:** The answer is yes. But it is a logical one though, isn't it?

**Mr. Connors:** It is, especially because, you know it was spot zoning. That's how they made it a Business C, because they took two houses side by side.

**Mr. McCarthy:** I think they made a mistake when they did it. There's no logic to that, I don't think.

**Mr. Connors:** I think there was. I mean the Bersteins owned this property. They were in the business of book selling. I don't know them but their family owned it in the sixties so I think it maybe had to do with the book business.

But that's usually what we hear at the city council when we are looking for a zone change. Isn't this spot zoning and how do I say it isn't? And so if I go there and they say its spot zoning and the law department says its spot zoning.

**Mrs. Rando:** Attorney Connors, I can't understand why you can't get a three family out of that without putting in the dormers. They are good size apartments. Why can't they be a one bedroom? Why does it have to be four bedrooms up in the attic? It seems like you are trying to squeeze an apartment into every inch of that building. The basement, the attic and you have to change the historical shape of the building which is a shame. Waltham has made a few mistakes taking down historic buildings and changing them and I thought we had learned from that.

**Mr. Connors:** You know, I think that they are trying to make that attic space livable. The other thing, my client can only get dormers on one side, you know because again, the stairwell is on the right side. At least this will allow us to create livable space to this side of the building.

I understand your concern and I understand the point that we are changing the architectural integrity. Right now its almost unusable because of the slope, so we're just trying to pick up some of that. I think that she'd be willing to compromise if they only did one. These plans wouldn't work. They would have to revise them.

**Mrs. Rando:** We're compromising already by allowing you to have an apartment on the first floor and now you're asking us for more and more and more.

**Mr. Connors:** We're trying to make that attic space livable. So I understand it's a tough call but if we just did the one variance without dormers would they be able to utilize that attic space for three bedrooms now? Would they be able to use it for anything? It would be much more limited than it is from what we are proposing?

**Ms. Gelineau:** Is it their intention to live on the second and third floor?

**Ms. Morales:** Yes.

**Ms. Gelineau:** Do you have a big family?

**Ms. Morales:** Four kids.

**Ms. Gelineau:** How old are they?

**Ms. Morales:** One is twenty-three, a thirteen, and a twelve and a month old baby.

**Mrs. Rando:** I'm telling you, five cars, you're going to need more because when your kids get older, they all have cars and you'll have renters downstairs.

All right, do you have anything to add Attorney Connors?

(Mr. Connors submitted a sheet showing the property next door.)

**Mr. Connors:** That's the building next door. It shows the building next door is a Greek Revival but I think it's distinctly different than what we have here. And the property listed at 94 School Street which is a direct abutter is listed on the Mass Historical record also and it's a different style than what we have. It's a distinctly different style building than what we have.

**Mr. McCarthy:** And you said you did pursue tearing it down?

**Mr. Connors:** No. That would require a demolition permit because it's history. That's not going to benefit Ms. Morales. They want to utilize the building that is there. It's 5,100 square feet so it's an undersized lot so if she tears it down, she can't do anything there.

**Mrs. Rando:** Would the historical people like to say something right now before I ask the other people in the audience?

**Mort Isaacson, 76 Lawrence Street, Waltham:** I am here tonight as a private citizen although I am the Vice-Chairman for the Historical Commission and I'm also on the Board of Directors for the Historical Society.

First of all, let me say I'm a little torn on this issue because I praise the new owners in trying to preserve the building. In fact it's quite historical and I think it could become a real gem to the city. And so I would like to give a little bit of background.

The building was probably built around 1850. So I think for once, the city's estimate of age is right. It appears on the 1854 map as Mr. Connors said but it does not appear in the wood cut that was in the newspaper in 1850. In fact, I'll pass this around. Unfortunately I only have one copy of it. This is one of the latest publications from the Historical Society which just happens to be titled "In the Heart of Greek Revival Waltham". So it certainly is a Greek Revival area and I must say that this is put out by the Historical Society but I'm the author of it. And on the cover, there's a collage of Greek revival houses in the area. So I think you can look at it and get a pretty good idea.

Now, what I'm objecting to is the dormers. I certainly think that a residential use for this is perfectly fitting from a historical perspective. I don't understand this two family versus three family. That's not something that the ZBA has any control over. So when I pass this around you can see that 16 Park Place is over here and it's really a unique house in the city. I don't think there's any other house like it in the whole city because all the other Greek Revivals either, if they have an attic that extends out over the porches then that attic is held up by columns going from the ground all the way up to the attic. Whereas in this case it has the two separate porches with their own columns on it. And that appears on no other house in the city. So especially the porches are historic. But the form of the house with that triangular pediment is the typical Greek Revival.

So, I'm kind of torn on this issue because I very much don't want to lose this house from the city and here are owners who, in fact, want to preserve the house. But on the other hand as you can see if you look at that collage there's one other Greek Revival house I know of that has these long dormers and that's the one that's right on the bottom of the collage which is at 115 Lexington Street. And it really does destroy the streamlined lines of the Greek Revival style. Now I'm not sure if there's another arrangement of the dormers that could be made or maybe skylights or maybe some other solution to the issue. But, I would like to see them have a house that they could enjoy living in. But I would hate to see the Greek Revival appearance of the neighborhood be changed significantly.

(Mr. Isaacson went over the plan to go over the locus and it's history.)

So from a historical perspective, the appearance of that neighborhood is really important and that's why I am torn because I praise them in trying to preserve the house only a piece of it, but on the other hand, I worry that the dormers will really somewhat destroy the historical perspective.

Mrs. Rando: It would change it. It certainly would, wouldn't it?

**Mr. Isaacson:** It would. Now whether or not there's some arrangement of the dormers, reducing them or something, I don't know - - -

**Mrs. Rando:** Any dormer would change it.

**Mr. Isaacson:** Any dormer would change it probably.

**Mrs. Rando:** Attorney Connors said that you would have no authority. If you waited until the September 9th or first appointment, would the Historical Society have any say in what is done or can they prevent it or - - -

**Mr. Isaacson:** As far as I know from the Historical Commissions which is the governing body, the board, unless there's a demolition application permit, then we have no authority. Now that being said, I as a citizen or other members of the Historical Society or perhaps the commission would be willing to work with them and try to make things better but I'm not sure what we can do.

**Mr. McCarthy:** Rather than put dormers on, if they raised the peak, would that retain the Greek Revival?

**Mr. Isaacson:** I think, again, if you look at the houses on that collage, they all have pretty much the same pitch of the roof.

**Mr. McCarthy:** So if you maintain that pitch which means they essentially could add another floor basically or the third floor would be higher and you would still have the-  
- -

**Mr. Isaacson:** Oh, oh. well then what happens to the attic? The attic coming out over the porches?

**Mr. McCarthy:** There could be a third porch. If you could do that would that still be Greek? I don't know.

**Mr. Isaacson:** It wouldn't be any Greek Revival house I'm familiar with.

**Mr. McCarthy:** Now, what if the dormers were back twenty feet?

**Mr. Isaacson:** It would reduce their length, is what you are saying.

**Mr. McCarthy:** Right. When you look at the front of the house you still get the overall effect of the - - -

**Mr. Isaacson:** I think the more that you reduce them the further back that you move them the better it is. Again, if you take a look at that view of Park Place, possibly if they were moved back they might not interfere as much.

**Mrs. Rando:** Does anyone else have any questions? Hearing none, is there anyone in the audience that is in favor of this?

**Philip B. McCourt, Esquire, with Law Offices at 15 Church Street** which is diagonally across the street from this house came forward.

**Mr. McCourt:** I have had a lot of experience with this particular house. Our house at 15 Church Street falls under the same category as being listed as a house that was probably built in 1850. It isn't on the actual National Register as such but just a grouping of homes.



I know a lot of history about this. I came in 1967 and kind of was around town. Then in 1980 I moved over to this house and I actually lived there for three years. So I've seen that the street was developed. I remember Kit Burstein owner of the book store there and then some residential, even some roomers, and then in the end the Muslim people who had their mosque there. Frankly, they were nice neighbors but it was kind of busy and everything and then, as you recall, they were happy to move down town which is a little more centralized for what they needed.

I also had an opportunity to view this house on a number of times when it became for sale because the two young men who run the store at the corner, I thought it was a possibility for them to purchase and remodel and live there. They would be right up the street and another party who also happened to be looking at it when the DiGregorio's had it for sale and I went through the property at least two or three times. It is a lot larger inside than one would think including the attic area. And I went through it with Mr. Costa just to give this young man and the other fellow some ideas of the cost of what would happen.

The dormers are almost a necessity in order to do this. Now at the time I talked to Patrick Powell and all that sort of stuff of what to do and none of this historical itself came up. Although, when I was working with Ralph Bibbo several years before there was talk of taking this down and putting a small like office type building. That didn't lend itself plus that would have created a traffic and parking situation because this does not because for these units are only one and a quarter space in relation to parking for residents. And finally, you know the old nursing house in the next corner which only has one or two spaces. It did run into the necessity of a variance and everything but on the next corner of School and Lexington and everything works out. There's a lot of in today's world between bikes and I happen to know this lady's business is down the street on Main Street a little

way. So it would be an ideal place for her. In respect to Mr. Isaacson in relation to that he wants to preserve this residential property and feels that would be the most conducive because I do remember when the prior owner who owns the rest of the corner had it, as I say, he one time wanted to take it down and do that. Now he didn't file any real applications but we worked it out with Bibbo and it just didn't work and there were a couple of lawyers who thought of using it but it didn't have the parking for that.

The other two houses, the Pintabone houses which Ronny Arsenault was once involved with them. I mean those are basically rooming houses. I believe there are rooms on the first floor. There is some office space in which Pintabone runs his operation. And it's a very quiet piece of neighborhood. So it's a nice area.

So I'm sitting here thinking of not a compromise, it's not my position to compromise. I was thinking of what was just said one point, I think one of the board members said. Again I've seen plans, potential plans for that and I have seen this plan. I mean frankly, this is just my opinion now historical, I'm not an architect but I've been through the entire house and it's quite large. Upstairs in the attic while you can walk around a certain distance it really needs to be enlarged. So a dormer of some size was allowed on the school street side. Keep in mind that Church Street is one way coming in and Lexington Street is one way going out so you virtually would not see. I mean it would be there it would be high in the air and it definitely wouldn't go above the peak. I don't think raising the raising the peak, while I think it's a great idea that another new third floor really works but so, (Mr. McCourt went over the plan to go over the locus and the abutting streets.)

So as Mr. Isaacson suggested, and I say suggested, perhaps moving that dormer slightly back so it would be really back towards the back but maybe provide for a room. But as you look down the streets scape, as you walk down Church or that, you really would see the park and I never thought of that from that point of view because I

wasn't into this but if you really are walking down here, right, you wouldn't be as cognizant of whats in there and it would work out. I truly think that it's something that should be done because this house from the front view, size, ability to use it, is definitely an asset to the neighborhood and I think that making it totally residential is the greatest idea and there would be no business there of any kind and with a little compromise in relation to that which maybe Mr. Connors could work out with the Historical Society into the future here, that I would strongly, strongly advocate that this be done. I believe that it could be done sensibly within the house even each apartment for safety, you almost could walk out on School Street.

So, I have worked many many jobs with Mr. Costa and I can assure you he wouldn't design anything that wouldn't work. I do agree that the zoning is unique. It was kind of something that came up and it was really done not even on a petition they just decided they ought to re-change it to Business C. So it was unique in that way but it does require multiple families.

Mrs. Rando: You mentioned that there was a certain distance in the attic that you can walk? How many rooms could you get up there without the new dormer?

Mr. McCourt: I haven't been in there for a long time but I mean they would have to be like two separate rooms for the actual usable dining and that. So say you came up the stairs maybe you could get two bedrooms. But it really wouldn't be conducive. It needs to be, if not on both sides, but certainly one side a dormer. I would suggest the School Street side where you could hardly see it where I would tend to agree if you walk down and look at the Universalist Church, you see the park. (Mr. McCourt went over the location on the plan.) The Pintabone houses are well cared for and it would just tie right in down the street. It is quite nice keeping that porch and the columns there and everything. And again, it's just my opinion. Raising the height of the house I don't think would be conducive.

But I want to tell you as an abutting neighbor that's familiar with the neighborhood and the building, I would strongly recommend that this is a very good petition presentation. I salute all the work that Mr. Connors has done on it. We get to learn all these historical factors and that's my position in favor of this petition.

Ms. Gelineau: By right, let's say somebody applied for a demo permit, they she could put an office on the first floor and have two apartments upstairs. They could even go higher.

Mr. McCourt: Well I don't know about higher. I guess it's sixty-five feet.

Ms. Gelineau: In a Business C zone it could go higher. I mean, they could create a lot more traffic and an office on the first floor with no limitation on parking.

Mr. McCarthy: So your suggestion is to just put the dormer on the School Street side?

Mr. McCourt: Well I'm saying, if you are going to allow a full dormer and there was going to be some compromise, I have no position to be able to say that. I would put it on the School side myself because particularly when I listen to Mr. Isaacson talking of the streets cape coming down. Personally I think it would work well and most people wouldn't even notice it. This is not an obtrusive invasion of the historical character of the house. That's just my opinion.

Mrs. Rando: Is there anyone in the audience besides Attorney McCourt in favor of this? Seeing none, is there anyone in opposition that would like to speak? Seeing none, is there anyone seeking information? (No one came forward.)

Attorney Connors, on Article IV 4.11 states that in a Business C Zoning District, it says you may have one residential use shall be allowed in Business C District on the upper floors, floors two through five. So if we give you permission to do it on the first. What about the basement? It says nothing about basement.

Mr. Connors: I don't think I need zoning relief to put it in the basement.

Mrs. Rando: Is that what it is? It says two through five.

Mr. Connors: I submitted these plans to the building inspector and he reviewed them and obviously reviewed the application and he didn't have any objection to it.

Mrs. Rando: All right. Are there any other questions? Seeing none, you may continued with your proposed findings of fact.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department and the board has had a chance to read them.

Mr. Connors: Madam Chair, I have heard some of the concerns of the board and my client is very interested about building this project, so I would ask for a short recess so we can go back to the architect and one, perhaps get him to highlight the fire escape issues and maybe even with the dormers to see if there is some way to make it work.

Mrs. Rando: And maybe you can get together with the Historical Commission.

Ms. Hankins: As I was going to say if you could meet with the historical because at least from my perspective fire and things like that I trust the proper authorities to make

sure that you are safe, not really my concern but that if the hardship relies on the historic nature, I want to feel confident that the experts which certainly isn't me but Mr. Isaacson and other members of their committee there feel like at least a good faith effort has been made.

**Mr. Connors:** Well, I offered a copy of the plans to Mr. Richardson. If there is a change in plans, I will give him a copy before they appear here.

**Mr. Sergi:** Does it make sense Counsellor to have a conversation with the Ward Councillor about changing the zone or not?

**Mr Connors:** I mean, I can have a conversation with him and I'll see what he says.

**Mr. Sergi:** It may not hurt.

**Mr. Connors:** I will be happy to do that too.

**Mrs. Rando:** The first date that I see here is October 4th.

**Mr. McCarthy:** Madam Chair, just a suggestion. I would like to see a couple of options. Maybe if you back off on the dormer so the sight line from the front you would have to be standing up on top of a palm tree in order to see it. I don't know if you back up twenty feet, fifteen feet. I know the Historical Society talked about viewing it from Main Street and getting the effect of the Waltham Common as it used to be and if you did put the dormer on the School Street side you will still get that view. I'd love the Historical Society too to also contact the Ward Councilor on that so to like inspire them if you could.

**Mrs. Rando:** Do I have a motion to continue Case 2016-22 to October 4th.

**On motion of Mr. McCarthy, seconded by Ms. Hankins the board voted to continue Case 2016-22 to October 4, 2016.**

**Roll call: Mr. McCarthy, yes; Mr. Sergi, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion to continue the hundred days to act on this case to November 18, 2016.**

**On motion of Mr. McCarthy, seconded by Ms. Hankins, the board voted to extend the hundred days to act on this case to November 18, 2016.**

**Roll call: Mr. McCarthy, yes; Mr. Sergi, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**At 8:25 P.M., on motion of Mrs. Rando, seconded by Mr. Sergi, the board voted to take a five minute recess.**

**The board reconvened at 8:30 P.M.**

**Mrs. Rando: Will the clerk please read the Petition in Case No.2016-26?**

**The clerk then read the petition of Kenneth G. Noiles and Suzanne LaCava in an application for a variance. Section 4.11 - front yard setback. Subject Matter: To allow the construction of a farmer's porch at the front of the existing single family home at 69 Jennings Road. Location and Zoning District: 69 Jennings Road; Residence A-4 Zoning District.**

**Mrs. Rando:** May we hear from the petitioner or the petitioner's representative, please?

**Philip B. McCourt, Jr., Esquire, 15 Church Street, Waltham** came forward. (Mr. McCourt submitted a copy of his brief to each member of the board.)

**Mrs. Rando:** Attorney McCourt, while you are doing that, were you here before us on this case?

**Mr. McCourt:** No.

**Mrs. Rando:** Did we ever grant anything to this petition?

**Mr. McCourt:** No.

**Mrs. Rando:** Did I see when I made the site view that there was a permit in the window?

**Mr. McCourt:** Yes.

**Mrs. Rando:** And what was that for?

**Mr. McCourt:** So if you look at the last page of this, you will see that they issued a permit because this is allowed except for this five foot opening from the roof. You can go out three feet.

**Mrs. Rando:** Well isn't there a sufficient frontage anyway?

**Mr. McCourt:** No.



**Mrs. Rando:** Well how did she get the - - -

**Mr. McCourt:** You can build a deck out ten feet but you can't roof except for three. So it's just one of those unique things. So it's only because it has a roof that we need the front yard setback.

(Mr. McCourt went over the plan showing the locus.)

**Mrs. Rando:** So why was the roof started?

**Mr. McCourt:** No, the roof isn't, so when we did it I went to the building inspector and I said, listen, this could take several weeks to get to the board. He said, revise your plan. Just ask for an open porch. But, he said, Phil, when you are doing this the sensible way to do it and I understand this, is that you need to take the supportive beams that go down into the thing. He said, you don't want to start adding to those. You want to tie them up for strength. You just can't put the roof on. And believe it or not we could put a roof, five feet wide just so it makes it usable. If it was three feet wide, we wouldn't even be here.

(Mr. McCourt submitted photos of the house.)

**Mrs. Rando:** Article IV, s4.11, requires a front yard setback of 25'. The farmer's porch will be 20.8, almost 21 feet. So she did need it.

**Mr. McCourt:** No. Because it's roofed, a farmer's porch. But a deck on the front or a deck on the side can go out ten feet.

**Mrs. Rando:** He also said to allow the construction of a farmer's porch but he didn't put anything in about any supports for the roof.

**Mr. McCourt:** He wouldn't have issued a permit. You can see it right in the back, the last one.

**Mr. McCarthy:** Barbara, if we didn't grant the variance they can always cut the post off.

**Mrs. Rando:** Do you have a picture of the house today?

(The petitioner went before the board and showed them a photo from her phone.)

(Mr. McCourt read 4.21 from the zoning ordinance.)

**Mr. McCourt:** The hardship in here is that because of the slight angle of the house and because you can't put the deck out more than the three feet you can't put an adequate farmer's porch which is becoming more and more common which is a reasonable request to have and certainly no detriment to this neighborhood. They are here plus the ones who signed. So that's really the matter of the case.

I put together a brief here which I can read but you've had it and its just the hardship and that sort of thing. So it's the front yard setback, there is this slight curve here (referring to the plan) which makes it not substantial. So it's off. The new front yard setback because of the roof will be four feet shorter than what is required. And I wanted to be sure that you saw that he issued that permit because she would never have put anything up if he hadn't given her a permit to do it. So I request that you consider granting it.

**Mr. Sergi:** Curiously, if they were to use a canvas top, is that considered a roof?

**Mr. McCourt:** It would be a judgement call.

**Mrs. Rando:** I have one question, again, for the hardship. I think that you should take out the location of the house on the lot as a hardship because it really isn't. You can't use the frontage of the lot not qualifying for shape for the hardship.

**Mr. McCourt:** This house was built in 1956.

**Mrs. Rando:** And there are homes up there that do have farmer's porches. It will really look very nice in this neighborhood plus the fact I don't consider that part of it, the hardship.

A correction was made on Page two of the Proposed Findings of Fact. "which dictated the location of the existing house" shall be omitted. This same omission was made on the first page of the Proposed Decision.

**Mrs. Rando:** Is there anyone in this audience that is in opposition? Seeing none, is there anyone seeking information?  
Seeing none, is there anyone in favor?

(Four people raised their hands in favor.)

**Mrs. Rando:** Is there anyone that would like to say something?

**Tom Creonte, 73 Jennings Road, Waltham:** I am a direct abutter to the addition. I am in favor. I also have a farmer's porch and Suzanne and Ken are great neighbors and it just adds to the neighborhood. My dad's brother built that house in 1956. My dad built his in 1956 and they bought that half of the street. So, Suzanne has been there twenty years maybe.

**Ms. LaCava: Thirty years.**

**Mr. Creonte: And the house being as old as it is and with the updates it's great for the neighborhood. So I am in favor and hope that Madam Chair and board members can see this through.**

**Mrs. Rando: All right, you may continue with your proposed findings of facts.**

**On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department and the board has had a chance to review them.**

**You may continue with your Proposed Decision.**

**On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department and the board has had a chance to review them.**

**Mrs. Rando: I am ready to entertain a motion on the Proposed Findings of Fact as amended.**

**On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to adopt the Proposed Findings of fact, as amended.**

**Roll call: Mr. McCarthy, yes; Mr. Sergi, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion on the Decision as amended?**

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted that the Proposed Decision, as amended, become the board's decision.

Roll call: Mr. McCarthy, yes; Mr. Sergi, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

Mrs. Rando: One more motion is in order.

On motion of Mr. McCarthy, seconded by Mr. Sergi, the board voted to adjourn at 8:50 P. M.

*Barbara Rando, Chair*  
8/16/2016