

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

January 8, 2019

7:00 P.M.

at

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

John Sergi, Acting Chair
Mark Hickernell, Clerk
Sarah Hankins
Edward McCarthy
Michael Squillante

Arlington Reporting Corporation
(339) 674-9100

Waltham Zoning Board of Appeals/1-8-19/2

I N D E X

<u>CASE</u>	<u>PAGE</u>
2018-42	3
2019-43	41

A T T A C H M E N T S

Legal Notices: Case No. 2018-42
Case No. 2018-43

Case No. 2018-42
Brief and attached exhibits

Case No. 2018-43
Brief and attached exhibits
Notice of violation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

P R O C E E D I N G S

Case Number 2018-42: Shirley Lord, Trustee, for D and L Realty Trust.

CHAIRMAN JOHN SERGI: Good evening.
The Zoning Board of Appeals of Waltham is called to order this January 8, Tuesday night at 7:00 p.m.

Tonight, we have two cases: Case Number 2018-42, Petitioner Shirley Lord as Trustee of the D and L Realty Trust; and Case Number 2018-43 for a special permit, and that is for -- help me with the pronunciation -- Oberge Jean-Philippe, I believe.

Tonight, sitting on Case 42, we, unfortunately, will only have four members. We will have Sarah, Ed, Mark, and Mike, as I have a conflict. And I had given notice to the Law Department ahead of time to, you know, see if they could find a replacement for me. But, apparently, that's not the case.

So, if you'd like to come to the podium. I don't know what you want to do.

ATTORNEY RICHARD LECLAIR: I spoke with my clients and I think we'd like to proceed with four members.

Waltham Zoning Board of Appeals/1-8-19/4

1 CHAIRMAN JOHN SERGI: Okay. The
2 Clerk, I guess, can --

3 MARK HICKERNELL: (The Clerk reads the
4 above-mentioned petition into the record. See
5 Attached.)

6 ATTORNEY RICHARD LECLAIR: Good
7 evening. Richard LeClair for the Petitioner Shirley
8 Lord. I do have the pleasure of representing
9 Shirley, who is the trustee of the D and L Realty
10 Trust. She and her brother are also beneficiaries of
11 it. And, as beneficiaries of that trust, they are
12 the owners of the property at 403 Crescent Street in
13 Waltham.

14 This is a three -- two-and-a-half-
15 story building that they inherited from their dad.
16 The locus consists of approximately 10,600 square
17 feet. And located on that property when their dad
18 purchased it in 1967, and located exactly the same
19 way today, is a five-unit apartment building. And
20 additionally, there are two garages.

21 This is the Business B Zoning
22 District, so residential uses are permitted in this
23 zoning district.

24 My clients received -- had an

1 inspection by the Building Inspector. He came out
2 and cited them for various issues. And he challenged
3 that it was a five-family as opposed to a four-
4 family. Multi-families are permitted in this zone.

5 And as you can see in the Building
6 Inspector's letter denying the requested permit for
7 five, he said that it doesn't meet the units-per-acre
8 requirement, which is I think ten units per acre.
9 Now, those requirements came into existence in 1988.
10 This building has been used as a five-family since at
11 least 1967. And some of the exhibits we've provided
12 you tonight on that is the actual purchase and sale
13 agreement that Gennaro D'Agostino signed in 1967. It
14 describes it as a five-unit apartment building,
15 three-car garage, and a two-car garage.

16 The first time that any restrictions
17 came into place, unit-per-acre restrictions in
18 Business B, is in 1974. And, at that time, you
19 needed 6,000 feet for a four-family and then 1,000
20 feet for any additional unit, for a total of seven.
21 So, at least as of 1974, this building legally
22 existed and was being used as a four-family (sic) in
23 compliance with the zoning. Therefore, under 40A,
24 Section 6 --

Waltham Zoning Board of Appeals/1-8-19/6

1 MARK HICKERNELL: Four family?

2 ATTORNEY RICHARD LECLAIR: Five-
3 family. Therefore, under 40A, Section 6, its use as
4 a five is protected.

5 So, I've provided you with some
6 photographs. And, as you can see, the structure from
7 the front, the fifth unit is on that top floor. It's
8 a two-bedroom apartment. You also have a photograph
9 of the back that shows the second means of egress.

10 He had cleared up all of the other
11 violations that the Building Inspector had cited for.
12 There was electrical issue. There was smoke
13 detector, heat detectors. That's all complying. The
14 only issue at this point in time is he did not
15 believe that we had sufficient evidence that it was a
16 five-family. I respectfully disagree. The only
17 evidence that you have is it was a five-family going
18 back until at least 1967. Even the assessor's card,
19 which is an actual physical inspection by a city
20 official, when they went out in 1970, those five
21 units are there. Therefore, the five units legally
22 exists in 1970. And the title restrictions to date
23 don't apply because it's been continually used as a
24 five-family since that time. And that is what this

1 case really boils down to.

2 I have provided you with some
3 affidavits from my client. They were younger, much
4 younger, when their dad bought it. But Gerry worked
5 with his dad cleaning the apartments, renting the
6 apartments. Shirley worked on the leasing. And they
7 both provided affidavits, at all times, "Our dad
8 bought it as a five, he used it as a five. We've
9 never changed it. We didn't request any changes to
10 the formatting of it. There's two units on the first
11 floor, two units on the second floor, and one, the
12 fifth unit, is on the top floor."

13 And for those reasons, we ask that you
14 direct the Building Inspector to issue the occupancy
15 permit for the five-unit building.

16 SARAH HANKINS: He says in the notice
17 of rejection that it's four. What's his basis for
18 that?

19 ATTORNEY RICHARD LECLAIR: So, his
20 basis for that, I, frankly, don't know. But if you
21 go on the website, the building card has a five, and
22 then it's crossed out, and then there's a four
23 written down. I have no idea.

24 He made that determination on his

1 inspection. We challenged it. And we provided him
2 with the --

3 SARAH HANKINS: So, which unit did he
4 sort of --

5 ATTORNEY RICHARD LECLAIR: He didn't
6 delineate a unit.

7 SARAH HANKINS: Okay.

8 ATTORNEY RICHARD LECLAIR: So, we
9 entered into the agreement that we would ask for --
10 he wanted this Board to make the decision. After we
11 resolved all the other issues on the inspection
12 issues, we agreed that we would apply and this Board
13 would determine whether it was a five or a four.

14 If you look at the assessor's card,
15 you look at the purchase and sales agreement, you
16 look at my client's affidavits, you look at the
17 picture of the five meters, the five furnaces, it
18 clearly is a five. And the Building Inspector is
19 incorrect that we -- we don't need to meet the
20 current requirements of units per acre because it
21 existed when all you needed was 7,000 feet for five
22 units. We have 10,000 feet. So, it's grandfathered
23 in under 40A, Section 6.

24 I don't believe -- you know, this is

Waltham Zoning Board of Appeals/1-8-19/9

1 one of the difficulties. The town, you go through
2 most of these building cards, there aren't any
3 occupancy permits. And so it's a challenge for the
4 Building Inspector. I understand that. And he's
5 trying to do his best. But just because it's not an
6 occupancy permit, most -- this building was built in
7 1900. They weren't issuing occupancy permits in the
8 '60s. They weren't even issuing them in the '70s.
9 And so it's a difficult task. But I believe that the
10 conclusive evidence, which includes the assessor's
11 inspection -- I'm not here arguing because you taxed
12 me that way. It has to be that way. The inspector
13 actually goes out and saw five units in 1970. In
14 1970, all you needed was 7,000 feet; we have 10.

15 SARAH HANKINS: Okay. But you said
16 that the -- let me understand correctly -- that the
17 current inspector, Forte, went out and determined
18 that it was four based on his inspection. So, I
19 guess I'm curious what he saw that --

20 ATTORNEY RICHARD LECLAIR: He couldn't
21 have gone out and based it on his inspection. I
22 think he --

23 SARAH HANKINS: Oh, okay. I thought
24 that's what you said. Okay.

Waltham Zoning Board of Appeals/1-8-19/10

1 ATTORNEY RICHARD LECLAIR: No, he
2 based it -- I'm hypothesizing. He's not here tonight
3 arguing in opposition to this any longer. But I
4 believe he based it on something he saw on a card.

5 MARK HICKERNELL: I'm with you on the
6 grandfathering of the units per acre. But I mean why
7 don't we have any plans here to look at this and see
8 that there's five units?

9 ATTORNEY RICHARD LECLAIR: So, because
10 -- I'll tell you why -- because to make -- to get
11 plans done for these units would be \$5,000 or \$6,000.
12 My clients, when they got the cease and desist
13 letter, they had an empty apartment. They didn't
14 lease it. I'd be happy to have you do a walk-through
15 through the property. It's an older building, but
16 it's a neat property. It's there.

17 The zoning code doesn't require you to
18 have building plans to show -- the building plans
19 won't show you that its use as a five --

20 MARK HICKERNELL: Well, it will show
21 us five kitchens and five so forth.

22 ATTORNEY RICHARD LECLAIR: I guess
23 that's correct, but I don't think the Building
24 Inspector doesn't dispute that there's five kitchens

1 there now when he went and inspected it.

2 MARK HICKERNELL: I thought you said
3 he didn't go to inspect it.

4 ATTORNEY RICHARD LECLAIR: What's
5 that?

6 MARK HICKERNELL: I thought you said
7 he didn't base this on an inspection.

8 ATTORNEY RICHARD LECLAIR: Oh, he did
9 go to inspect it, and there is five kitchens there.
10 I'm happy -- if this Board feels they need the plans
11 to do that, we're happy to request for a continuance
12 and get the plans. It is significantly expensive to
13 get that done. It really is.

14 As you can see from the assessor's
15 card, the five -- this use is permitted as of right
16 even now. All we're really talking about is the
17 units per acre. And you have my clients' affidavit,
18 you have the purchase and sales agreement, you have
19 the assessor's inspection in the early '70s that it
20 was five units.

21 MARK HICKERNELL: No, I think all that
22 is good evidence. But I just, you know --

23 ATTORNEY RICHARD LECLAIR: If the
24 Board -- if the feeling of the Board was that they

Waltham Zoning Board of Appeals/1-8-19/12

1 wanted to see plans laying out the units, we would
2 get them. We didn't get them because, one, we had an
3 agreement there was a timeframe to do it. But it is
4 expensive. But if we have to do that, if this Board
5 needs to see that evidence, we'll do it.

6 MARK HICKERNELL: How does the rest of
7 the Board feel on that?

8 SARAH HANKINS: Well, I can't speak
9 for the rest of the Board, but I'd be happy enough
10 with the inspector possibly -- I guess where I'm a
11 little confused is if he thinks that there are --
12 just from reading from him, I'm not sure if he thinks
13 there are four existing or he thinks there should
14 only be four allowed. And if he says, "No, I agree,
15 there are five," you know, I don't need to see the
16 plans necessarily of the apartments. But if he says
17 there are five apartments, I just don't think there
18 should be four, then, you know, that's good enough
19 for me. I guess without seeing it, I'm not sure if
20 there's an issue with, you know, that maybe one of
21 the apartments isn't a good legal apartment or
22 something. And that's not from anything you said.
23 It's just he doesn't provide much information.
24 There's not much you could do, I don't think, on

1 that.

2 ATTORNEY RICHARD LECLAIR: I
3 understand. And I don't -- for him, I'm basing this
4 partly on the fact that he's not here tonight. The
5 issue was, was that legally commenced. Did we
6 legally commence using it as a five? Because of the
7 current requirements, he didn't think it was possible
8 that we did. I have provided you evidence that the
9 requirements back in 1974 were only 7,000 square feet
10 for five units, which we did meet. I don't think the
11 Building Inspector is going to dispute that there are
12 five units there. That is why he told us -- you
13 know, that's what this case is all about. He told us
14 to stop using one of them because he didn't think we
15 had the units per acre.

16 His whole point is it has to be
17 lawfully be done, and he said he doesn't meet the
18 units per acre. It does meet the units per acre.
19 That really is -- but if, as I said, the Board feels
20 they need the plans, I'm just trying to save my
21 client the \$6,000 cost of doing that. But, clearly,
22 that's why we're here is because he said, you know,
23 "You're using it as a five and you should only be
24 using it as a four." We wouldn't be here if we

1 weren't using it as a five.

2 MARK HICKERNELL: I mean one of his
3 bullet points is the lack of requirements.

4 ATTORNEY RICHARD LECLAIR: And let me
5 say -- and let me address that. As I said, if you
6 want the plans, we'll get them.

7 We're not making any changes to it.
8 That's another reason we didn't get the plans. These
9 are configured the way they were when it was
10 purchased, and we're not making any changes to it. I
11 didn't think it would be necessary to have plans.
12 This is really a finite issue. And I didn't think
13 the plans were crucial. If this Board feels they
14 need them, we'll do it. We're happy to do it for you
15 as well.

16 MARK HICKERNELL: Mike, Ed, what do
17 you think? Plans? View?

18 EDWARD MCCARTHY: Well, the thing that
19 bothers me about it is if he had an issue with any
20 one of the units, why didn't he write it down in his
21 letter that one of the units was not acceptable?
22 That's what bothers me.

23 ATTORNEY RICHARD LECLAIR: So, when we
24 were cited, we were cited for smoke detectors, which

Waltham Zoning Board of Appeals/1-8-19/15

1 were fixed. He cited some electrical issues, which
2 were fixed. He made us get a permit for the fire
3 escape, which you'll see in one of those pictures.
4 Those were the other items. This was precipitated by
5 other -- the activity that was going on in the garage
6 that was ceased. And, as part of that, he didn't see
7 that we had proof of it, using it in prior years,
8 prior to the unit-per-acre requirement.

9 MARK HICKERNELL: Yeah. So,
10 everything's up to code now?

11 ATTORNEY RICHARD LECLAIR: We have a
12 permit for the fire escape out the back. It has a --
13 the inside stairs are straight up to it. It's an
14 apartment.

15 MARK HICKERNELL: Mike?

16 MICHAEL SQUILLANTE: So, I guess I'm
17 not sure what we would learn by having plans that we
18 don't already know. So, I'm not sure I see a need
19 for the plans. I didn't quite understand why he
20 asked for the plans, unless he's trying to put it
21 under current zoning rules.

22 I guess there's a question of the
23 documentation of the five apartments. So, this is
24 Exhibit D, is that what we're talking about?

Waltham Zoning Board of Appeals/1-8-19/16

1 ATTORNEY RICHARD LECLAIR: So, if you
2 look at Exhibit --

3 MICHAEL SQUILLANTE: Did you attach
4 those attachments --

5 ATTORNEY RICHARD LECLAIR: I think the
6 best evidence is Exhibit B. I actually have the
7 original purchase and sales agreement.

8 MICHAEL SQUILLANTE: Well, but I want
9 a City document. I want evidence that the City knew
10 it was five apartments.

11 ATTORNEY RICHARD LECLAIR: The City
12 document, sure.

13 MICHAEL SQUILLANTE: And I'm not
14 doubting it's always been five apartments. The
15 question is whether the City knew it was five.

16 ATTORNEY RICHARD LECLAIR: If you look
17 -- I included the assessors' card from 1970. And if
18 you look at the page that looks like this, see it
19 right there? It's five-family.

20 MICHAEL SQUILLANTE: It says five
21 apartments. What's the document in front of it?
22 That's a different document. That says --

23 ATTORNEY RICHARD LECLAIR: I think
24 these cards were at the Zoning Board are stapled --

1 at the Assessors, they're stapled together.

2 MICHAEL SQUILLANTE: Because this
3 seems to indicate calculations for land use were
4 based on three apartments, if I'm -- I'm trying to
5 interpret this piece of paper.

6 ATTORNEY RICHARD LECLAIR: I know this
7 is the actual inspection card by the inspector that
8 went out.

9 MICHAEL SQUILLANTE: And it was taxed
10 as five apartments?

11 ATTORNEY RICHARD LECLAIR: Yes.

12 MICHAEL SQUILLANTE: The tax bill says
13 five apartments?

14 ATTORNEY RICHARD LECLAIR: It's been
15 taxed as five apartments.

16 MICHAEL SQUILLANTE: Does the tax bill
17 show that?

18 ATTORNEY RICHARD LECLAIR: Well, the
19 tax bills wouldn't show it, but the assessors' cards
20 would show it, the current ones. I didn't include
21 the current ones because I was really looking at that
22 it was five units back in 1970 when you only needed
23 7,000 square feet.

24 MICHAEL SQUILLANTE: I don't know. It

Waltham Zoning Board of Appeals/1-8-19/18

1 seems to me the assessors saw five apartments and
2 taxed it based on five apartments. That's good
3 enough for me. Maybe not all that rigor, but --

4 ATTORNEY RICHARD LECLAIR: You also
5 have my clients' affidavits, I mean who signed under
6 the pains and penalties of perjury, who have personal
7 knowledge of this.

8 MICHAEL SQUILLANTE: It's not a
9 question of whether there were five apartments. It's
10 a question of whether the City knew there were five
11 apartments. That's to my mind.

12 ATTORNEY RICHARD LECLAIR: Legally --
13 I understand your concern. Legally, if I can prove
14 that five apartments existed prior to the -- back in
15 1970, prior to '74 when you only needed 7,000 feet,
16 that's, for me, the issue.

17 SARAH HANKINS: But it's not. I mean
18 he does bring up the issue that for the five units,
19 you know, he seems to have a concern that the five
20 units aren't necessarily legally -- he says it right
21 here, "Prove that five units exist legally in
22 compliance with zoning and building code
23 requirements." I mean to Mr. Hickernell's point, I
24 do think that we need some sort of substantiation

1 that those five units are all, you know, but not for
2 this acreage issue, that the Building Inspector would
3 have no -- if it's just the acreage issue, fine. I
4 don't think that's like -- that's a big issue. But
5 that's not necessarily -- I'm reading what he says,
6 so --

7 ATTORNEY RICHARD LECLAIR: I
8 understand the concern. And I wish the Building
9 Inspector was here to answer that question for you,
10 what his concern was. If this Board thinks it would
11 be aided by the building plans, I will get the
12 building plans. I'm happy to have a view. If you do
13 the view, you will see that there are five old
14 apartments there. And these buildings haven't been
15 reconfigured since the '60s.

16 EDWARD MCCARTHY: I mean you could
17 make that a condition on the approval, indicting that
18 you need to get all five units approved from a
19 construction standpoint that they're up to code,
20 except for that issue with regards to the land.

21 ATTORNEY RICHARD LECLAIR: And that
22 would be an acceptable result for me as well. I
23 think the issue that he was -- pardon the expression
24 -- was punting to this Board, was the units per acre.

Waltham Zoning Board of Appeals/1-8-19/20

1 And if the concern is you want -- there has to be a
2 reinspection on that they meet current codes or are
3 properly grandfathered, I'm happy to take that as
4 well because --

5 SARAH HANKINS: My concern is just I
6 don't have anything from the Building Inspector.
7 It's not like he sent us a memo. Sometimes he sends
8 a memo to the Board of, you know, hey, this is fine
9 except for this, and, you know, we have a little
10 guidance. So, I'm just -- he's not here. I don't
11 want to speak for him. Respectfully, you can't speak
12 for him. So, I just am going off of what -- I don't
13 want to overturn this without making sure I have
14 addressed all of his concerns.

15 MARK HICKERNELL: Ms. Hankins, do you
16 have a copy of his notice of rejection because I
17 think I might have the only copy? So I'll pass it
18 down to you.

19 ATTORNEY RICHARD LECLAIR: No, it's
20 attached.

21 MARK HICKERNELL: Is it? Which one?
22 It was hard to find.

23 SARAH HANKINS: It's in the packet
24 somewhere.

Waltham Zoning Board of Appeals/1-8-19/21

1 MARK HICKERNELL: Is it? Okay.

2 EDWARD MCCARTHY: Exhibit F.

3 MARK HICKERNELL: F. I looked for it
4 two or three times.

5 ATTORNEY RICHARD LECLAIR: So, I'm
6 happy to proceed either way. I would take an
7 approval that's subject to the Building Commissioner
8 inspecting them for health and safety overturning the
9 decision. I'm happy to take that. If this Board
10 feels it needs the plans, we'd rather not spend the
11 \$6,000, but --

12 SARAH HANKINS: Well, maybe the issue,
13 too, is health and safety, but he also mentioned
14 zoning, which makes me think that maybe he would like
15 plans because if there are other zoning issues that
16 have to be cured by this Board as well.

17 ATTORNEY RICHARD LECLAIR: Well, the
18 building was built in 1900. Right? So, the
19 building, the structure, predates zoning. Its only
20 issue is the use --

21 SARAH HANKINS: Okay.

22 ATTORNEY RICHARD LECLAIR: -- which is
23 what he puts -- if you look at his rejection letter,
24 you know, other than the plan issue, he said, "You

1 haven't proved to me that it was used -- it doesn't
2 meet the units per acre, and you haven't proven to me
3 with evidence that it was used as a five-family, you
4 know, before the unit-per-acre requirement." That
5 unit-per-acre requirement didn't come into effect
6 until 1988. The earliest one was in '74, which is
7 the six and one for seven. And so that is that.

8 I will say this much. He cited this
9 building for health and safety violations, which we
10 cured. I think -- that's why I'm confident and would
11 welcome Mr. McCarthy's suggestion is because we've
12 met those requirements on the health and safety.
13 This issue is, for him, have you proved that it was -
14 - the use of five was lawfully existed -- lawfully
15 existed when it began. And I think I presented
16 evidence that it did.

17 MARK HICKERNELL: Should we open it up
18 to the audience?

19 EDWARD MCCARTHY: Sure.

20 MARK HICKERNELL: Do you want to do
21 that, Mr. McCarthy, as Chair Emeritus?

22 EDWARD MCCARTHY: Oh, I understand. I
23 didn't know that.

24 MARK HICKERNELL: Why not?

Waltham Zoning Board of Appeals/1-8-19/23

1 EDWARD MCCARTHY: Is there anybody in
2 the audience here that would like to speak in favor
3 of this particular petition?

4 JOSIE BABCOCK: Yes.

5 EDWARD MCCARTHY: Okay. Could you say
6 your name and address?

7 JOSIE BABCOCK: My name is Josie
8 Babcock.

9 MARK HICKERNELL: Oh, could you come to
10 the podium, please?

11 EDWARD MCCARTHY: Please come to the
12 podium. Thank you.

13 JOSIE BABCOCK: Yes. My name is Josie
14 Babcock. I live next door to that home of Gerry
15 D'Agostino and Shirley Lord.

16 I oppose anything that he pretends or
17 tends to do. He has, you know, done things illegally
18 for a long time. And I think that the Building
19 Department was on board with the citings. And I just
20 don't see that he is in favor of doing things the
21 right way. So, I only see him trying to put some
22 capital gains in his pocket. I mean the structure of
23 the property, I mean I've asked them just to fix the
24 fence because his tenants always hit it -- never done

1 it -- the blocks.

2 You know, he's done destruction to my
3 property, my family. And we've never said anything.
4 We let it go for years on end. And just over the
5 past two years, you know, I just had to speak up
6 because he didn't care to take care of things the
7 right way. Instead, I asked him to take care of one
8 thing, and they went about taking down my fence
9 without my permission, my laundry line, you know, a
10 lot of things, did work cracking my foundation to my
11 own property so he can achieve doing things to his
12 own property without a permit. So, these are the
13 kind of things that are going on next door to me.

14 You know, I feel sad. I didn't want
15 to say anything, but I think it's the right thing to
16 do. So, and the Building Inspector was in touch with
17 me as well as other people back in the '80s. He
18 tried to build some kind of garage. This is before
19 my time. I think it was -- I wasn't even living
20 there. But there were other neighbors that were
21 upset that called the Building Inspector and had him
22 take it down because, again, he tried to build
23 something without people's permission or a permit
24 with the City.

Waltham Zoning Board of Appeals/1-8-19/25

1 MARK HICKERNELL: How long have you
2 lived there?

3 JOSIE BABCOCK: I've owned the home
4 since the early '70s. My family has owned it.

5 MARK HICKERNELL: And what's your
6 sense of how many separate apartments, if you
7 noticed, how many separate apartments have been at
8 this location?

9 JOSIE BABCOCK: I really -- you know,
10 I would say three, four. You know, I think he always
11 had just an office and that's it. I don't really pay
12 attention to what was going on over there. I just
13 know is, you know, the way it's kind of upkept and
14 the things I've asked, communicated with his son and
15 him. You know, it just hasn't been very well. And
16 not that I wanted to come down here and, you know,
17 say anything, but it just hasn't been positive. And
18 his tenants, you know, they just, you know, you can't
19 argue with them because they just are tenants and
20 they go about living their way. And the fence that I
21 have, you know, keeps getting damaged. A lot of
22 things are getting damaged. And I feel like this is
23 just the stem of what's going to happen because I
24 need to move forward taking care of my own property.

Waltham Zoning Board of Appeals/1-8-19/26

1 And, you know, if he has these people and he can't
2 manage the ones he has, I can't even imagine another
3 one or another family what's going to happen.

4 EDWARD MCCARTHY: Anybody else in
5 favor? I'm sorry.

6 Thank you for that information. Have
7 you got any specifics for what you're saying he did
8 wrong, whatever?

9 JOSIE BABCOCK: Mm hum.

10 EDWARD MCCARTHY: What's that, as far
11 as --

12 JOSIE BABCOCK: Just talking to the
13 Building Inspector, videos. You know, just pictures,
14 videotapes, conversations. I don't know what days,
15 times you'd like to talk about, but things are
16 recorded. I have cameras around the house. Just
17 communicating with him has been unpleasant. Talking
18 with the Building Inspectors, you know, I just -- the
19 neighbors don't want to fight, you know. They just
20 want to go about minding their business and living
21 their life, you know. But when you have somebody who
22 doesn't live in their house, they just rent, and it's
23 different. They don't take the same kind of pride,
24 you know.

1 EDWARD MCCARTHY: And what type of
2 issues are outstanding right now as far as you're
3 concerned?

4 JOSIE BABCOCK: Well, they broke up
5 the garage, which I think it was part of the process
6 of getting fixed. But, when they did that, they did
7 it without a permit. And when they came in with
8 their heavy equipment, they broke it up. And,
9 meanwhile, their garage to my house is probably about
10 four to five feet away. And what they used was, you
11 know, this big backhoe, whatever heavy artillery
12 machine that they broke up. It shook my whole
13 basement. It shook everything. So, and then they,
14 you know, they took that out, again, without any
15 notice, any permit.

16 And the other thing is, the main thing
17 that I was concerned is we have a major gas leak out
18 front. And them shaking made the gas leak out front
19 even worse. Now, is it National Grid that's out
20 there, Eversource, one of the two. They're out there
21 marking the street because all the neighbors now, the
22 gas is leaking. It has been leaking for a while, but
23 I think that didn't help it at all.

24 So, you know, when people go around

1 doing things illegal, it affects the environment.
2 So, now that I live there, we all smell gas, morning,
3 night.

4 EDWARD MCCARTHY: Well, I'm just
5 concerned that -- is there anything possible to make
6 this thing right with you?

7 GERRY D'AGOSTINO: I want to talk.

8 ATTORNEY RICHARD LECLAIR: You're not
9 going to speak.

10 EDWARD MCCARTHY: Is there anything
11 that could possibly make this right with you?

12 JOSIE BABCOCK: I don't know. I, you
13 know -- many things could have been right just in a
14 simple communicating conversation, just, you know --

15 EDWARD MCCARTHY: Okay. Well, any
16 other questions from the Board? Okay. Thank you.

17 MARK HICKERNELL: Anybody else?

18 EDWARD MCCARTHY: Is there anybody
19 else that wants to speak in favor? Anybody in favor?

20 (No response.)

21 EDWARD MCCARTHY: Anybody opposed?

22 (No response.)

23 ATTORNEY RICHARD LECLAIR: Could I
24 perhaps address a couple of those issues?

Waltham Zoning Board of Appeals/1-8-19/29

1 EDWARD MCCARTHY: Retort, sure.

2 ATTORNEY RICHARD LECLAIR: So, there
3 are no outstanding violations. As I said, we were
4 cited. We cleaned up the violations that existed.
5 There is, as you have heard, some tension with that
6 neighbor. But the issue that I'm here for tonight is
7 simply did they commence using this as a five-family
8 prior to -- at a time when they had sufficient land
9 area. I've provided irrefutable evidence that the
10 zoning requirements in '74, only 7,000 square feet
11 for five units. I have presented my clients'
12 affidavits that their dad had always used it as five
13 units. The purchase and sales agreement when they
14 bought the house says it's five units, three-car
15 garage, two-car garage. Your own City's assessors'
16 inspection in '70 says it's a five-family, three-car
17 garage, two-car garage. That is the issue. There
18 clearly is some acrimony. My clients have brought --
19 there are no outstanding violations with the Building
20 Inspector. And those have been resolved. And we had
21 -- this was the last issue, whether or not we had
22 sufficient evidence of the five units.

23 Something this Board does need to
24 think about is there aren't occupancy permits for

Waltham Zoning Board of Appeals/1-8-19/30

1 most of the properties. And these properties have
2 been, you know, are buildings that were built at the
3 turn of -- two centuries ago. And you have -- they
4 predate zoning. They're in Business B. There is no
5 limits on the units. But there is no occupancy
6 permit.

7 SARAH HANKINS: But didn't this come
8 up likely because there were some issues and maybe
9 some -- I mean I don't know.

10 ATTORNEY RICHARD LECLAIR: Yeah,
11 clearly.

12 SARAH HANKINS: There were some issues
13 and some complaints.

14 ATTORNEY RICHARD LECLAIR: That
15 neighbor complained about the commercial use, the
16 items that she expressed, which --

17 SARAH HANKINS: Well, obviously, there
18 is some validity because you've had to do some work
19 within the -- you know, it's not like they came and
20 said, "Everything is great." You actually have had
21 to do some stuff. Outside of this acreage thing,
22 there were some health and safety issues, correct?

23 ATTORNEY RICHARD LECLAIR: Correct.

24 SARAH HANKINS: So, I mean I think

1 it's at least fair to say that maybe you should think
2 about different ways to do things going forward if --

3 ATTORNEY RICHARD LECLAIR: Well, I
4 assure you, we are.

5 SARAH HANKINS: You know, it's not
6 just the bad relationship with the neighbors if
7 there's actually, you know, some issues that need to
8 be then resolved through the Building Inspector.
9 They shouldn't have -- people shouldn't have to
10 complain to the Building Inspector for you to like,
11 you know, be the proper landlord.

12 ATTORNEY RICHARD LECLAIR: Correct.
13 And just to give you a sense of, you know, the things
14 that we resolved, you know, it was getting the fire
15 escape affidavit, which is attached, to getting, you
16 know, upgrading the carbon monoxide, hard wiring
17 them. Yeah, I mean should these things -- my clients
18 have stayed on top of these code requirements and
19 brought them up quicker? Absolutely. And I'm sure
20 they will in the future because this has become a
21 contest, and they've had to hire an attorney, and
22 they've had to do it. But the fact that they had to
23 have that happen doesn't mean they lose their rights
24 to have the five-family there. And we also paid a

1 small fine for those violations.

2 SARAH HANKINS: No, it would just be
3 nice to not have to see you guys again multiple
4 times. It's just --

5 ATTORNEY RICHARD LECLAIR: I agree
6 with you. And, you know, I'm sure the lesson has
7 been learned.

8 SARAH HANKINS: Yeah, hopefully. I
9 hope so.

10 EDWARD MCCARTHY: Mr. LeClair, did you
11 attempt to get any of the neighbors to sign a
12 petition approving this?

13 ATTORNEY RICHARD LECLAIR: I didn't.
14 And the reason I didn't, from my perspective, it is
15 purely a legal issue. And that's -- I'm not -- it's
16 purely a legal issue. And I have the evidence to
17 establish that legal issue. And I didn't want to
18 involve -- like I have one neighbor who is angry.
19 And she's not angry about this issue. She's angry
20 about other things that my client did that were
21 wrong. But I don't think my client caused the gas
22 leak in the street. They had words, which -- and she
23 had complaints. Some of them were legitimate. Some
24 of them weren't. Some of them we yielded on and

1 didn't fight them on the use of the property.
2 There's commercial elements that you could use there
3 that we gave in on, as I recommended to my client to
4 do that to try to keep the peace to make the property
5 a little nicer. But I didn't do that. And the
6 reason I didn't is because, to me, the issue was a
7 clear-cut legal issue that turns on two facts. Was
8 it used as a five? Do we have evidence it was used
9 as a five? Yes, we do. We have Shirley Lord's
10 affidavit. We have her brother's affidavit. We have
11 the purchase and sales agreement. We have the
12 inspection.

13 I think if you did a walk-through, you
14 would see that this is a five-unit apartment building
15 and it hasn't changed. There haven't been upgrades
16 or modifications to it. You get that sense walking
17 through it. And I'm happy to provide you that
18 opportunity.

19 EDWARD MCCARTHY: Well, we have two
20 issues hanging with regards to the plans and the
21 other one with regards to having a condition for the
22 --

23 ATTORNEY RICHARD LECLAIR: And I'm
24 happy to do that. I think that's a great solution,

1 to be frank with you. And maybe if the Building
2 Inspector says, "Hey, you need plans for health and
3 safety," but I would -- he doesn't have any
4 outstanding citations on us, so I assume I'm going to
5 get these.

6 EDWARD MCCARTHY: Well, anything else
7 from the Board?

8 (No response.)

9 EDWARD MCCARTHY: So we'll go forward
10 then. On the proposed finding of facts --

11 MARK HICKERNELL: Are we going to --
12 is there going to be a proposed condition for plans
13 or further ratification from the Building Inspector?

14 SARAH HANKINS: I would feel -- I
15 don't really feel comfortable voting if we don't have
16 something either from the Building Inspector saying,
17 you know, "Yes, there's five," something as simple as
18 that, or, you know, the plans if other Board members
19 think so. But, I certainly don't feel comfortable
20 voting without seeing --

21 MARK HICKERNELL: What about taking a
22 look at it, Ms. Hankins? What about a site view to
23 see if there's -- to confirm that there's five
24 separate units?

1 SARAH HANKINS: Sure. Yeah. I mean
2 anything that, you know, I don't want to necessarily
3 make --

4 MARK HICKERNELL: It's less expensive
5 than plans anyway.

6 SARAH HANKINS: Yeah, I don't want to
7 make the Petitioner have to put out for plans. I get
8 that that's expensive.

9 ATTORNEY RICHARD LECLAIR: I would
10 love to have a walk-through.

11 EDWARD MCCARTHY: The walk-through is
12 fine. But the more -- if you really want to -- if
13 you're concerned about the justification or the
14 verification from the Building Inspector indicating
15 that the five units are in good stead in a letter or
16 something to that effect might be the way to go.

17 ATTORNEY RICHARD LECLAIR: So, the
18 Building Inspector -- I forget what the citation,
19 what the code section is. They issue occupancy --
20 health and safety occupancy permits for five years.
21 And I don't think -- plans aren't required for those,
22 but it addresses the health and safety concerns. I
23 have no problem with that being conditioned.

24 EDWARD MCCARTHY: Or do we postpone,

1 have another meeting on this, and at that meeting
2 have the Building Inspector's letter indicating such?

3 MARK HICKERNELL: Well, if we do a
4 walk-through and invite the Building Inspector, we
5 can ask him in person, you know, what concerns he
6 has. And if he chooses not to attend, we can ask him
7 for a letter.

8 EDWARD MCCARTHY: Okay.

9 MARK HICKERNELL: Would that be all
10 right?

11 EDWARD MCCARTHY: So when do you want
12 to move this out to then? What's available?

13 MARK HICKERNELL: Let's see. A
14 hundred days is March 1st. That's a long ways off.

15 ATTORNEY RICHARD LECLAIR: I'd waive
16 the 100 days if people --

17 MARK HICKERNELL: Yeah. No, we ought
18 to be able to do it sooner than that. You've got the
19 calendar? I guess really the question is how soon
20 can we gather for a view? It has to be at least --
21 it has to be more than three days because we'll
22 notice it.

23 SARAH HANKINS: I'm good whenever.

24 MARK HICKERNELL: Do you want to talk

Waltham Zoning Board of Appeals/1-8-19/37

1 to your client about when would be a good time for us
2 to come through.

3 ATTORNEY RICHARD LECLAIR: We'll do it
4 anytime.

5 MARK HICKERNELL: Well, that's great,
6 but you've got tenants and stuff. I don't want to --

7 ATTORNEY RICHARD LECLAIR: So, how
8 much notice would we have to give to the tenants?

9 GERRY D'AGOSTINO: One day.

10 ATTORNEY RICHARD LECLAIR: One day.

11 MARK HICKERNELL: What works?
12 Saturday?

13 ATTORNEY RICHARD LECLAIR: This
14 Saturday? Next Saturday?

15 MARK HICKERNELL: Saturday at 10?

16 MICHAEL SQUILLANTE: Next Saturday
17 would be good.

18 MARK HICKERNELL: Next Saturday would
19 be good?

20 SARAH HANKINS: The 12th at 10?

21 MARK HICKERNELL: Oh, but that's a
22 holiday weekend. I'm not sure.

23 EDWARD MCCARTHY: Yeah, you don't want
24 to do it on the 12th probably.

Waltham Zoning Board of Appeals/1-8-19/38

1 ATTORNEY RICHARD LECLAIR: Early on
2 Saturday.

3 EDWARD MCCARTHY: On the 12th?

4 MARK HICKERNELL: What would be early?

5 MICHAEL SQUILLANTE: Well, even 10:00
6 is --

7 MARK HICKERNELL: Ten o'clock works.
8 Yeah. Yeah.

9 ATTORNEY RICHARD LECLAIR: Ten o'clock
10 this Saturday? Perfect.

11 MARK HICKERNELL: Is that acceptable?
12 That will work for everybody?

13 EDWARD MCCARTHY: Ten o'clock this
14 Saturday. Okay.

15 SARAH HANKINS: Ten o'clock, you said?

16 MARK HICKERNELL: Ten.

17 SARAH HANKINS: Yeah, any time.
18 Perfect.

19 MARK HICKERNELL: So, all interested
20 parties are welcome at this site view. We'll meet at
21 10:00 in front of the locus. And we will ask through
22 Pam Doucette that the Building Inspector attend if he
23 is able.

24 ATTORNEY RICHARD LECLAIR: Thank you.

Waltham Zoning Board of Appeals/1-8-19/39

1 MARK HICKERNELL: I make a motion to -
2 - oh, we need to find a date to continue.

3 EDWARD MCCARTHY: Continue this, yeah.

4 MARK HICKERNELL: January 29th?
5 There's two cases that day.

6 ATTORNEY RICHARD LECLAIR: Can we go
7 into the second week in February? Are you guys
8 meeting then?

9 MARK HICKERNELL: February 12th?

10 ATTORNEY RICHARD LECLAIR: Perfect.

11 MICHAEL SQUILLANTE: I won't be here
12 the 12th.

13 MARK HICKERNELL: You won't be here?
14 When are you back?

15 MICHAEL SQUILLANTE: I'm coming home
16 the 12th. I'll be here the 13th.

17 ATTORNEY RICHARD LECLAIR: I can do
18 the 29th also.

19 MICHAEL SQUILLANTE: I can do the 19th
20 or --

21 ATTORNEY RICHARD LECLAIR: I can do
22 the 19th as well.

23 MARK HICKERNELL: The 19th, I don't
24 think I can do it is the problem. Yeah, it won't

Waltham Zoning Board of Appeals/1-8-19/40

1 work that week. Anyway, that's President's Day.
2 We're not meeting on the 19th. The 26th?

3 MICHAEL SQUILLANTE: I could do the
4 29th of January if everybody else can.

5 MARK HICKERNELL: We'll be here
6 anyway. Is the 29th okay for you?

7 ATTORNEY RICHARD LECLAIR: Yeah.

8 MARK HICKERNELL: All right. I make a
9 motion that we continue Case 2018-42 to January 29,
10 2019.

11 ATTORNEY RICHARD LECLAIR: Thank you.

12 MARK HICKERNELL: Oh, wait.

13 SARAH HANKINS: Second.

14 MARK HICKERNELL: All in favor?

15 ALL BOARD MEMBERS: Aye.

16 ATTORNEY RICHARD LECLAIR: Thank you
17 very much.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

1 **Case Number 2018-43: Oberge Jean Philippe, 37-39**
2 **Varnum Park**

3 CHAIRMAN JOHN SERGI: Why don't we
4 continue to Case 2018-43, Oberge Jean-Philippe, when
5 the Clerk is ready?

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

9 CHAIRMAN JOHN SERGI: May we hear from
10 the Petitioner's representative please?

11 ATTORNEY SAMUEL REEF: Yes. Good
12 evening. Samuel Reef on behalf of the Petitioner
13 Oberge Jean-Philippe.

14 I'm not sure if the Board had received my brief.

15 CHAIRMAN JOHN SERGI: You can pass it
16 out, too. Thank you.

17 If I may before getting into the legal
18 argument, as noticed in the publication, I just want
19 to give a very brief procedural history of this
20 property.

21 The prior owner to my client Oberge
22 Jean-Philippe had come before this Board back in the
23 year 2000. At that time, there was a nursing home at
24 the property, 37-39 Varnum. They came before this

Waltham Zoning Board of Appeals/1-8-19/42

1 Board on the exact same request for a special permit.
2 This Board back in 2000 granted that permit, and
3 within the decision they had two years to pull the
4 permit. They never did that within the two years.

5 Interestingly enough, three years
6 later, my client purchased the property, three years
7 after the 2000 granting of the permit. When my
8 client purchased the property, he went to the
9 Building Department and asked because they had it in
10 the tax assessors' eyes at that point as a three-
11 family apartment. Then we received the letter dated
12 November 20, 2003 from Ralph Gaudet, the Building
13 Commissioner at that time, and advised him before he
14 purchased it that the property at 37-39 Varnum Park
15 has been inspected by the Building Department and is
16 approved for a three-family use. So, he took that
17 knowledge, with that knowledge, and he purchased the
18 property in 2003 not knowing that the time period had
19 elapsed from the 2000 Zoning Board decision that the
20 two years had elapsed and technically it had reverted
21 back to the nursing home zoning and not a three-
22 family even though he had this letter. So, since
23 2003 when he purchased the property, he was always of
24 the mindset that it was a valid three-family home.

Waltham Zoning Board of Appeals/1-8-19/43

1 So, coming forward to today's
2 purposes, back in the summer, he started trying to do
3 some work. And, by the way, my client works for the
4 City of Waltham so he's always abiding by the rules
5 of pulling permits. And he tried to pull a permit to
6 do some work at the property. And that's when it was
7 discovered, this issue dating back to 2000.

8 So, there was a citation given by the
9 Building Department this past summer. That's been
10 resolved. We've had many meetings with the Building
11 Department. They've been to the property. We've
12 resolved all issues. And, as part of that, they
13 wanted us to come back before this Board to go
14 through the special permit process again.

15 So, turning to the legal argument, as
16 you see in my brief, this is zoned in a Residential
17 A-3 District. And, previously, there was a nursing -
18 - reverting back to the nursing home was the last
19 admitted use of the property. So, the provision of
20 the ordinance which is involved is Article 2.73,
21 which provides a nursing home or rest home licensed
22 by the state between the time period, which are
23 located in this Residential 3 Zoning District, may be
24 converted to a multifamily dwelling by a special

1 permit. So, this Board does have the jurisdiction to
2 grant the change and, in fact, has actually granted
3 this change back in the year 2000.

4 So, the proposed conversion is to
5 convert the nursing home to a three-family apartment
6 building. In my brief, I cite the seven requirements
7 that are involved and met here.

8 The proposed conversion is the first
9 floor would be apartment one. You see that's
10 included in the plan that we provided. The second
11 floor would be apartment two, and the third floor
12 would be apartment three.

13 After I'm done with my presentation,
14 if there's any questions on the plan, we brought with
15 us the architect that drew the plans. So, if you
16 have any specific questions on the plans, we can have
17 the architect step forward to answer any questions
18 the Board may have.

19 The requirements, I already mentioned
20 the first two, the location within the zoning
21 district and whether it is a qualifying district and
22 whether the Board has jurisdiction. Those have all
23 been met.

24 The next requirement limits the number

1 of dwelling units based on the amount of dwelling
2 units that were there previously. When the nursing
3 home was there, there was 32 beds. When you equate
4 that to the number of apartments that would be
5 allowed, they would be allowed to have up to eight
6 families, but we're only requesting three. So, that
7 requirement is met as well.

8 The next requirement is Section 3.722
9 of the ordinance, which specifically addresses where
10 the Petitioner proposes to demolish or reconstruct
11 the building. And that's not happening here. All
12 the work is being done within the framework of the
13 existing property. It's just cosmetics and opening
14 and closing doors because the nursing home, it was an
15 open floor plan. And we're looking to make it a
16 continuous legal zoned three-family. So those are
17 the changes. It's really cosmetic in nature. Some
18 safety changes as well: a fire escape and egress
19 from the back of apartments number two and three.
20 So, those are the only changes that are being made.
21 So, those requirements have also been met.

22 The final requirement meets with
23 whether there's a detrimental effect on the
24 neighborhood. This neighborhood is very small in

1 nature. I would say this requirement has been met
2 because not only is it a detrimental effect, it's
3 actually benefitting a neighborhood. The traffic
4 will be much less from a nursing home to a three-
5 family unit. And the abutting neighborhood is mostly
6 residential and multifamily houses. So, I would say
7 the final requirement has certainly been met.

8 Whereas, this has already been granted
9 by the Board, and but for the actions of a prior
10 owner, we wouldn't even be in front of you. I would
11 state that fairness would certainly come into play
12 here in requesting that this Board reapprove this
13 special permit to give my client a chance to pull the
14 permit, which he certainly would within the two years
15 that's being requested.

16 We would open it if there's any
17 questions legally. Or if there's any questions on
18 the plan which is in front of you, we can bring the
19 architect in front.

20 Thank you.

21 CHAIRMAN JOHN SERGI: How many
22 bedrooms per floor? Just clarify that for me.

23 ATTORNEY SAMUEL REEF: Sure. The
24 first floor -- the first floor I believe four

Waltham Zoning Board of Appeals/1-8-19/47

1 bedrooms, one of which is the master bedroom. The
2 second floor also four bedrooms. And the third floor
3 has one bedroom and a living room.

4 MARK HICKERNELL: Nine total?

5 ATTORNEY SAMUEL REEF: Nine total, I
6 believe.

7 CHAIRMAN JOHN SERGI: Nine total.
8 Okay. And one bathroom per?

9 ATTORNEY SAMUEL REEF: I believe
10 there's two bathrooms on the first floor.

11 CHAIRMAN JOHN SERGI: Yeah.

12 ATTORNEY SAMUEL REEF: Two on the
13 second and one on the third.

14 CHAIRMAN JOHN SERGI: Okay. That's
15 what I thought.

16 And as far as parking availability and
17 access to the property, could you talk a little bit
18 about that?

19 ATTORNEY SAMUEL REEF: That's one of
20 the requirements I failed to mention that's in my
21 brief. The requirements of two spaces per unit are
22 met and there's plenty of pave -- in addition to
23 that, there's plenty of paved area in front and to
24 the side of the unit, which allows for plenty of

Waltham Zoning Board of Appeals/1-8-19/48

1 guest parking as well.

2 CHAIRMAN JOHN SERGI: And access to
3 the property?

4 ATTORNEY SAMUEL REEF: Access to the
5 property comes from two different streets, Varnum and
6 I believe Bacon. Is it Bacon -- I believe also. You
7 can come from either direction.

8 CHAIRMAN JOHN SERGI: From either
9 direction.

10 ATTORNEY SAMUEL REEF: Yeah.

11 CHAIRMAN JOHN SERGI: So you have a
12 dedicated driveway.

13 ATTORNEY SAMUEL REEF: Yeah, from
14 either direction. From Bacon, you come around the
15 bend and you can pull in the side, or from Varnum you
16 come down and you pull right into the front of the
17 house.

18 CHAIRMAN JOHN SERGI: Okay. And what
19 do you think the estimated cost is going to be in
20 renovation?

21 ATTORNEY SAMUEL REEF: That I would
22 ask Brian to answer the cost of --

23 BRIAN LAU: My name is Brian Lau. We
24 did the design for this project for the owner, Mr.

1 Oberge. And to answer your question about the
2 construction cost, for the first floor, second floor,
3 and third floor, the construction cost is kind of
4 minimum. We tried to bring the existing property up
5 to current building code by doing all the hardwire
6 smoke detectors and make sure all the fire-rated
7 walls and fire-rated doors are in place properly.
8 And, all the units, they come with two means of
9 egress. And I'm not quite sure the total
10 construction cost for the three units, but I would
11 say it would be definitely less than \$100,000.

12 But, in the meantime, while we are
13 trying to legalize the three-family units, he was in
14 the process to finish up the basement and also doing
15 the structural reinforcement in the basement. So,
16 from my understanding, the overall structure of the
17 building is safe and sound. And he is hiring a
18 structural engineer to beef up the structure because
19 the house was built at the turn of the century.

20 So, to answer your question properly,
21 I think he probably is spending anywhere like
22 \$100,000, \$150,000 on the construction.

23 CHAIRMAN JOHN SERGI: Okay. Because
24 what I envisioned from your presentation was you said

Waltham Zoning Board of Appeals/1-8-19/50

1 the floors were pretty much open. So, I envisioned
2 him building walls, you know --

3 BRIAN LAU: Oh, no.

4 CHAIRMAN JOHN SERGI: -- adding a lot
5 of wiring and --

6 ATTORNEY SAMUEL REEF: The wiring is
7 all done. I think it was just doors to close off.

8 BRIAN LAU: Oh, yeah, yeah. It was --

9 ATTORNEY SAMUEL REEF: The Building
10 Inspector, when he visited the property, didn't like
11 the layout when it was too open and it looked like
12 more bedrooms than it was. So it was more just
13 adding doors.

14 CHAIRMAN JOHN SERGI: Adding doors.
15 Okay.

16 BRIAN LAU: It was like an open plan
17 layout.

18 CHAIRMAN JOHN SERGI: So the kitchens
19 were always there?

20 BRIAN LAU: Yeah, there are three
21 kitchens there.

22 CHAIRMAN JOHN SERGI: And they were
23 always there?

24 BRIAN LAU: Yeah. Yeah. Yeah.

Waltham Zoning Board of Appeals/1-8-19/51

1 CHAIRMAN JOHN SERGI: And they were
2 the existing nursing home kitchens or these were
3 newly renovated?

4 BRIAN LAU: It was the kitchens, yes,
5 three kitchens.

6 CHAIRMAN JOHN SERGI: They're newly
7 renovated?

8 BRIAN LAU: Three kitchens.

9 CHAIRMAN JOHN SERGI: Okay. Okay.

10 BRIAN LAU: So my goal is to layout
11 the house properly in terms of the fire separation.
12 And each unit, we want to make sure they are properly
13 separated and two means of egress, they are easily
14 accessible by the occupants.

15 CHAIRMAN JOHN SERGI: Okay. Off the
16 top of your head, how much square footage would be in
17 each floor about?

18 BRIAN LAU: I think the square footage
19 are not on the plans, but I'm not --

20 CHAIRMAN JOHN SERGI: I thought you
21 might know that off the top of your head.

22 BRIAN LAU: Yeah, but to make it
23 clear, we are doing our interior remodeling. It has
24 nothing to do with the exterior.

Waltham Zoning Board of Appeals/1-8-19/52

1 CHAIRMAN JOHN SERGI: So the existing
2 square footage will remain in place.

3 BRIAN LAU: The existing square
4 footage, we are not raising the existing square
5 footage.

6 CHAIRMAN JOHN SERGI: Okay.

7 BRIAN LAU: It is the same total will
8 remain.

9 CHAIRMAN JOHN SERGI: Okay. And you
10 said you're bringing everything up to code?

11 BRIAN LAU: Oh, yeah, yeah, yeah.
12 That's the goal. I think this is the best time to
13 bring the house up to code. And we did have the fire
14 department and the engineering department up for the
15 proposed work.

16 CHAIRMAN JOHN SERGI: Okay. Thank
17 you.

18 STENOGRAPHER: Could you spell your
19 name for the record?

20 BRIAN LAU: Brian Lau, L-a-u.

21 STENOGRAPHER: L-a-u. Thank you.

22 SARAH HANKINS: Are the plans similar
23 to -- you may not know this -- to the 2003, the
24 granting of the special permit?

Waltham Zoning Board of Appeals/1-8-19/53

1 ATTORNEY SAMUEL REEF: That was in
2 2000.

3 SARAH HANKINS: Are they doing
4 basically the same thing? Were they --

5 BRIAN LAU: They are basically the
6 same thing. We are doing more improvements to meet
7 the current Building Code.

8 EDWARD MCCARTHY: Basically, are you
9 leaving the same layout as the nursing home had in
10 terms of rooms? You're not doing any additional
11 petitioning in there? Or you're not taking any walls
12 down?

13 BRIAN LAU: No, except we are closing
14 some of the extra doors and make new openings to
15 create a proper egress path.

16 ATTORNEY SAMUEL REEF: The concern of
17 the Board is that the nursing home had 32 beds. So,
18 yeah, the concern that they could add extra bedding.
19 But, part of this is my discussion, because part of
20 the discussions we had with the Building Inspector
21 was the same concern.

22 EDWARD MCCARTHY: Yeah.

23 ATTORNEY SAMUEL REEF: And we made
24 sure that there was no closets and nothing that could

1 possibly allow them to add a bedroom in those extra
2 areas. But there's going to be closed off areas and
3 no closets, which would not allow it to be a bedroom.

4 BRIAN LAU: And, may I say something?
5 The Building Inspector, they emphasize for the house,
6 we will maintain a three-family, no more than three
7 sets of kitchens. That's the key.

8 MARK HICKERNELL: May I inquire?

9 CHAIRMAN JOHN SERGI: Sure.

10 MARK HICKERNELL: So, the Building
11 Inspector didn't say anything other than the need for
12 the special permit in sending you to us, right?
13 There's no other violations or variances needed?

14 ATTORNEY SAMUEL REEF: In sending us
15 to you, that's correct.

16 MARK HICKERNELL: It's just the fact
17 that Section 3.73 requires a special permit from us
18 to convert the nursing home?

19 ATTORNEY SAMUEL REEF: Correct. There
20 was a citation, but not -- it was unrelated.

21 MARK HICKERNELL: It was not in our
22 jurisdiction?

23 ATTORNEY SAMUEL REEF: Correct. And
24 that's been resolved.

1 MARK HICKERNELL: All right. So,
2 where the Zoning Board has already -- I mean,
3 obviously, we get to make a fresh decision. From my
4 point of view, where the Zoning Board has already
5 passed in judgment on this project or on this
6 conversion, I'm loathe to disturb that unless there's
7 been some change in conditions. We may hear from
8 members of the public if there's been a change in
9 conditions.

10 ATTORNEY SAMUEL REEF: Do you have
11 more questions?

12 MARK HICKERNELL: No, I'm not done. I
13 mean I wasn't telling you I'm in favor of this. I'm
14 just saying my analysis. Are there changes in the
15 conditions or to the plans that you're aware of? The
16 old one was a three-family. This is going to be a
17 three-family.

18 ATTORNEY SAMUEL REEF: Correct.

19 MARK HICKERNELL: About the same
20 number of bedrooms. Any changes?

21 ATTORNEY SAMUEL REEF: They're very
22 similar plans. The only changes are to bring it more
23 up to code from the -- it was 18 years ago was the
24 last set of plans.

Waltham Zoning Board of Appeals/1-8-19/56

1 MARK HICKERNELL: All right. That's
2 all I have, Mr. Chair.

3 CHAIRMAN JOHN SERGI: Michael?

4 MICHAEL SQUILLANTE: Which section
5 describes the conversion to units? I'm trying to
6 track it down.

7 ATTORNEY SAMUEL REEF: As far as how
8 many are allowed?

9 MICHAEL SQUILLANTE: Yes.

10 ATTORNEY SAMUEL REEF: It was in --

11 MICHAEL SQUILLANTE: I see. Yeah, he
12 just pointed it out to me. He looked over and saw
13 it. Okay. That's fine.

14 ATTORNEY SAMUEL REEF: It's 3.732.

15 MICHAEL SQUILLANTE: Yeah, yes, 32. I
16 looked above it. I looked below it. I went all
17 around it. These are big apartments, I gather,
18 right? How many square feet? I'm just curious, more
19 than anything else?

20 ATTORNEY SAMUEL REEF: I don't know
21 off the top of my head. It's certainly in the plans,
22 each floor --

23 CHAIRMAN JOHN SERGI: No, it's not in
24 the plans. That's why I asked. The plans are not

Waltham Zoning Board of Appeals/1-8-19/57

1 marked specifically by square foot. That's why I
2 asked. Maybe -- I don't have a ruler to take some
3 measurements. But --

4 MICHAEL SQUILLANTE: Those are my
5 questions. Thank you.

6 MARK HICKERNELL: In the text there,
7 it estimates the square footage.

8 CHAIRMAN JOHN SERGI: Of the unit?

9 MARK HICKERNELL: Yeah.

10 EDWARD MCCARTHY: Yeah, 2,800.

11 CHAIRMAN JOHN SERGI: Oh, 2,800.

12 Okay.

13 MICHAEL SQUILLANTE: It says it would
14 be -- yeah, it says for the first floor.

15 EDWARD MCCARTHY: That's one floor,
16 yeah.

17 ATTORNEY SAMUEL REEF: The first floor
18 is the largest. The second floor is a little less.
19 And the third floor is --

20 CHAIRMAN JOHN SERGI: It's a huge
21 unit.

22 EDWARD MCCARTHY: Yeah, it's 13 rooms.

23 CHAIRMAN JOHN SERGI: That's a good
24 size house.

Waltham Zoning Board of Appeals/1-8-19/58

1 EDWARD MCCARTHY: Yeah. I don't see
2 why -- yeah, 2,000 about on the second floor, and the
3 third is 1,000.

4 CHAIRMAN JOHN SERGI: So, that's why
5 we needed to have full floor -- so this house is --

6 EDWARD MCCARTHY: The first floor is
7 huge.

8 CHAIRMAN JOHN SERGI: Yes, the first
9 floor. The second floor looks about the same.

10 EDWARD MCCARTHY: Two thousand.

11 CHAIRMAN JOHN SERGI: Two thousand?

12 EDWARD MCCARTHY: Nineteen forty-six,
13 2,800, yeah.

14 ATTORNEY SAMUEL REEF: Those are the
15 same existing conditions that went in front of the
16 Board in 2000 as well.

17 EDWARD MCCARTHY: And you say you're
18 going to redo the basement? You're finishing off the
19 basement?

20 ATTORNEY SAMUEL REEF: Well, there was
21 a permit pulled, and that's where the citation came
22 from when they realized they had to come back before
23 you. So, there will be -- once, I hope this Board
24 approves the petition, then there will be another

Waltham Zoning Board of Appeals/1-8-19/59

1 application for another permit for the basement to
2 finish that, yeah.

3 EDWARD MCCARTHY: That's another 2,800
4 square feet, or close to it? Same footprint?

5 BRIAN LAU: The basement will be --
6 will be connected to the first floor. It will be
7 part of the first floor unit because the homeowner,
8 it is homeowner occupied, the first floor unit, and
9 they have a big, big family.

10 ATTORNEY SAMUEL REEF: A very large
11 family. So they're just looking to make that a den
12 and playroom.

13 MARK HICKERNELL: It's got to be one
14 of the only ways to get an apartment this big in
15 Waltham, to buy a nursing home.

16 ATTORNEY SAMUEL REEF: But it is an
17 existing condition.

18 CHAIRMAN JOHN SERGI: Any further
19 questions? Sarah, you look perplexed.

20 SARAH HANKINS: Oh, no, I mean he just
21 said he had a really big family, but they're only
22 putting a couple of bedrooms in it. So, I don't
23 know.

24 CHAIRMAN JOHN SERGI: A couple of

Waltham Zoning Board of Appeals/1-8-19/60

1 bedrooms, yeah.

2 MARK HICKERNELL: And maybe not every
3 kid gets a private bedroom.

4 ATTORNEY SAMUEL REEF: Yeah.

5 CHAIRMAN JOHN SERGI: Ed, are you
6 okay?

7 EDWARD MCCARTHY: Yeah, I'm fine.

8 CHAIRMAN JOHN SERGI: Michael?

9 MICHAEL SQUILLANTE: I'm all set.
10 Thank you.

11 CHAIRMAN JOHN SERGI: Okay. With that
12 said, I'll open it up to the audience to see who is
13 in favor of the petition.

14 EDWARD MCCARTHY: Raise your hands if
15 you're in favor.

16 CHAIRMAN JOHN SERGI: Raise your
17 hands. We'll count. One, two, three, four, five,
18 six, seven, eight, nine. Nine?

19 MARK HICKERNELL: I've got ten.

20 EDWARD MCCARTHY: Ten. Okay. Oh, 11.
21 Okay. We've got 11. All right. For those -- would
22 you like to speak in favor? Would anyone like to
23 speak in favor?

24 (No response.)

Waltham Zoning Board of Appeals/1-8-19/61

1 CHAIRMAN JOHN SERGI: Okay. Seeing
2 none. Anyone here just of interest to the case?
3 Would you like to come up?

4 AUDIENCE: No, I'm just of interest.

5 CHAIRMAN JOHN SERGI: Just of
6 interest. And if there anyone here against this
7 petition tonight?

8 MICHAEL LICATO: I have an issue with
9 the situation --

10 CHAIRMAN JOHN SERGI: Okay. One, two,
11 three.

12 MICHAEL LICATO: -- that I want to say
13 something about.

14 CHAIRMAN JOHN SERGI: Okay. Okay.
15 And if you'd like to come up and speak, but all
16 means.

17 MARK HICKERNELL: I count two.

18 CHAIRMAN JOHN SERGI: No, three.
19 There's three.

20 MARK HICKERNELL: Oh, okay, in a row
21 then. That's why.

22 CHAIRMAN JOHN SERGI: Yeah. Please
23 just identify yourself. Give your name and address.

24 MICHAEL LICATO: My name is Michael

Waltham Zoning Board of Appeals/1-8-19/62

1 Licato. I live at 118 Greenwood Lane. I am a --

2 STENOGRAPHER: Could you spell your
3 last name, Michael?

4 MICHAEL LICATO: -- family member of
5 the Gardner Realty Trust Company that owns the house
6 at 253.

7 STENOGRAPHER: Spell your name,
8 please.

9 MICHAEL LICATO: Licato, L-i-c-a-t-o.
10 My issue is we have a driveway that
11 they constantly use at 253. And if they are granted
12 this, I want them to give up the right of using this
13 driveway because they continuously hit our wall and
14 people walk out to get to their car and they almost
15 hit them because of all the people coming through
16 here. He has no real use of this driveway. He says
17 he does, but I don't believe he does.

18 CHAIRMAN JOHN SERGI: Show it -- can
19 you show it on the map?

20 MICHAEL LICATO: It's on his. You're
21 looking at -- okay, I can. As you're looking at the
22 street, Bacon Street, to your left is 253.

23 CHAIRMAN JOHN SERGI: Okay.

24 MICHAEL LICATO: Now, we own a

Waltham Zoning Board of Appeals/1-8-19/63

1 separate lot with him and the lady next door. And he
2 uses that excuse that because he owns that lot he has
3 a right to use that. But that's Varnum Park that
4 he's going for. So, I want that driveway eliminated
5 for him using it if he gets this permit because
6 there's too much traffic going through there now.
7 And they've hit my wall ten times.

8 CHAIRMAN JOHN SERGI: So, he doesn't
9 have the --

10 MICHAEL LICATO: He says he does. He
11 keeps hitting the wall. And we just spent \$8,000 to
12 pave this place. He doesn't even pick up his plow
13 and plow it, but he drives through it like he owns
14 it. That's all I have to say.

15 CHAIRMAN JOHN SERGI: Okay. Thank
16 you.

17 ATTORNEY SAMUEL REEF: Just for the
18 Board's edification, that property that he's talking
19 about, there's three owners that share one-third.

20 MICHAEL LICATO: Right.

21 ATTORNEY SAMUEL REEF: This gentleman,
22 my client, and another woman. They're each one-third
23 owners in that property.

24 CHAIRMAN JOHN SERGI: In that

Waltham Zoning Board of Appeals/1-8-19/64

1 property?

2 ATTORNEY SAMUEL REEF: Yeah.

3 CHAIRMAN JOHN SERGI: But does this
4 property have an easement to use that driveway?

5 ATTORNEY SAMUEL REEF: Unfortunately,
6 I didn't -- this is the first I'm hearing of it.

7 MICHAEL LICATO: I don't believe it
8 does.

9 ATTORNEY SAMUEL REEF: So, I didn't --

10 MICHAEL LICATO: Just the lot connects
11 to it on the right-hand side if they were going to a
12 house.

13 ATTORNEY SAMUEL REEF: I didn't
14 inspect the title that way for easements, but I do
15 know that they're a third, a third, a third owners.

16 CHAIRMAN JOHN SERGI: You're going to
17 have to address that issue.

18 ATTORNEY SAMUEL REEF: Yeah, I'll have
19 to --

20 MARK HICKERNELL: Wait. Why?

21 MICHAEL LICATO: I want it legally
22 documented if he has the right to use it.

23 MARK HICKERNELL: It's got nothing to
24 do with the petition.

Waltham Zoning Board of Appeals/1-8-19/65

1 CHAIRMAN JOHN SERGI: It has nothing
2 to do with the petition, but I was hoping that they
3 could --

4 ATTORNEY SAMUEL REEF: I'll give my
5 card to this gentleman. I'll have to research the
6 title to see if there is an easement. But we're
7 certainly willing to work with him.

8 EDWARD MCCARTHY: I mean it's
9 certainly a paper street on these plans. I don't
10 know. Varnum Park.

11 ATTORNEY SAMUEL REEF: This is Bacon
12 Street.

13 EDWARD MCCARTHY: I was talking about
14 the entrance to Varnum Park off of Bacon Street.
15 That's what he's talking about.

16 ATTORNEY SAMUEL REEF: Yeah.

17 MICHAEL LICATO: Yeah, but if you look
18 at those plans, Varnum Park, there's a street on the
19 right --

20 EDWARD MCCARTHY: Yeah.

21 MICHAEL LICATO: -- and then there's
22 249 with the lot, and then there's 253.

23 EDWARD MCCARTHY: Right.

24 MICHAEL LICATO: Okay? Mr. Anderson

Waltham Zoning Board of Appeals/1-8-19/66

1 is here. And he lived here as a kid.

2 EDWARD MCCARTHY: So they don't use
3 Varnum Park?

4 MICHAEL LICATO: They use our driveway
5 like they own it more than they use Varnum Park. And
6 the lady's telling me to get out of the way when I'm
7 mowing the lawn, like, "Hey, do you want to move out
8 of my way?" I'm going, "What are you kidding me?
9 We're paying the taxes on this thing." So that's
10 what I want addressed. If he gets this permit, he's
11 got to give the right up to use that side of the
12 driveway. There's too much traffic going through
13 there. There's no need of it. He's got two ways of
14 coming in, off Dale Street and off Varnum Park on the
15 right-hand side. But he likes my driveway because I
16 keep it nice and clean and plow it, and it's not
17 dirt. It's all -- we just spent \$8,000 to have it
18 hot-topped.

19 ATTORNEY SAMUEL REEF: As I mentioned
20 in my presentation, there's two entrances. So the
21 entrance from Bacon, he's talking about. There's
22 also an entrance from Varnum Park.

23 MICHAEL LICATO: Well, there's three
24 entrances because he's using our third entrance.

Waltham Zoning Board of Appeals/1-8-19/67

1 CHAIRMAN JOHN SERGI: So, is there --
2 I'm confused. You're going to have to show me.

3 MARK HICKERNELL: I think this is the
4 way the gentleman is concerned about here, this
5 entrance.

6 CHAIRMAN JOHN SERGI: Okay.

7 MARK HICKERNELL: Then there's this
8 entrance this way.

9 CHAIRMAN JOHN SERGI: Okay. But he's
10 saying there's two entrances. Are these the two
11 entrances?

12 MICHAEL SQUILLANTE: Two on Bacon and
13 one --

14 MARK HICKERNELL: Two on Bacon and one
15 on Varnum?

16 ATTORNEY SAMUEL REEF: I'm only aware
17 of one on Bacon and one on Varnum. There may be a
18 third, but I'm not aware. I'll see if he's got a --

19 EDWARD MCCARTHY: We've got it. It's
20 here. It's right here.

21 CHAIRMAN JOHN SERGI: Where is the
22 third? I don't see the --

23 MICHAEL SQUILLANTE: He's counting
24 Varnum twice, once on Dale Street and one --

Waltham Zoning Board of Appeals/1-8-19/68

1 EDWARD MCCARTHY: That's what you're
2 talking about right there.

3 MICHAEL LICATO: Yes.

4 EDWARD MCCARTHY: That's the driveway
5 you just paved?

6 MICHAEL LICATO: Yeah. But they use
7 it like they own it, telling me to get out of the
8 way. They've got to give their right up if they're
9 going to do that because there's too many cars coming
10 through there.

11 CHAIRMAN JOHN SERGI: So, the two
12 accesses you're talking about is this one and this
13 one, not the paved driveway?

14 EDWARD MCCARTHY: That's the one he
15 wants to close.

16 MICHAEL LICATO: That's right. He's
17 got to give up the right to that driveway.

18 ATTORNEY SAMUEL REEF: That's the one
19 I was not aware of. When I went to the property,
20 I've come both this way and this way. I've never --
21 I didn't know about that one.

22 CHAIRMAN JOHN SERGI: Well, you know,
23 if you could talk with him about that concern, it
24 would be a neighborly thing to do I would think.

Waltham Zoning Board of Appeals/1-8-19/69

1 ATTORNEY SAMUEL REEF: Absolutely.

2 MICHAEL LICATO: Too much traffic
3 going through there. It's like 128 all the time.
4 They use my side.

5 EDWARD MCCARTHY: That's bizarre, huh?

6 CHAIRMAN JOHN SERGI: Yeah, I don't
7 know how it's connected. How's it --

8 EDWARD MCCARTHY: Now, the three of
9 you own the lot equally?

10 ATTORNEY SAMUEL REEF: Yes.

11 MICHAEL LICATO: A third, a third, a
12 third.

13 EDWARD MCCARTHY: But you all pay one-
14 third of the taxes --

15 MICHAEL LICATO: There's actually a
16 tax lien on that lot. Okay? Every time I go down
17 there to pay the taxes, guess who doesn't pay their
18 taxes? Him. And they're charging me interest on the
19 taxes he doesn't pay. Okay? The lady said to me,
20 "There's a lien on this lot. He never pays the tax
21 on the lot."

22 ATTORNEY SAMUEL REEF: That's the
23 first I'm hearing of it. I've been in touch with --
24 we've been overbilled water. We've been dealing with

Waltham Zoning Board of Appeals/1-8-19/70

1 the City on water. That's the first I'm hearing
2 about the taxes.

3 CHAIRMAN JOHN SERGI: But how does
4 that property have access to a private driveway?

5 MICHAEL LICATO: You know how it does?
6 I went and I explained it to him. He's using the
7 excuse that he owns that lot. And because that lot
8 is a side lot, he's using the side lot as a right of
9 way to get to his house, and he doesn't have the
10 right to do it. He lives on Varnum Park. Oh, sorry.
11 He lives on Varnum Park.

12 EDWARD MCCARTHY: You flipped your --

13 MICHAEL LICATO: You don't want my
14 Sicilian temper to kick in.

15 EDWARD MCCARTHY: It hasn't kicked in
16 yet? We'll be in trouble.

17 ATTORNEY SAMUEL REEF: I would say
18 this issue is not before the Board with regard to
19 issuing the permit. But I certainly will address
20 this issue. If we have to get some sort of
21 instrument survey done, then we'll do an instrument
22 survey to find out.

23 CHAIRMAN JOHN SERGI: Well, maybe you
24 can resolve it one way or another.

Waltham Zoning Board of Appeals/1-8-19/71

1 ATTORNEY SAMUEL REEF: We certainly
2 will.

3 CHAIRMAN JOHN SERGI: By instrument
4 survey or putting a fence there so --

5 EDWARD MCCARTHY: Or split it up,
6 whatever.

7 CHAIRMAN JOHN SERGI: Or buy it or
8 whatever. I don't know. But it needs -- it would be
9 good to --

10 ATTORNEY SAMUEL REEF: It absolutely
11 needs to be and it will be addressed.

12 CHAIRMAN JOHN SERGI: Yeah. Okay. Is
13 there anyone else who would like to speak against
14 this petition? Come to the podium and identify
15 yourself?

16 ROBERT ANDERSON: Robert Anderson
17 representing my mother, the owner -- the trustee of
18 Ruth Anderson Realty Trust, 251 Bacon Street, which
19 is a direct abutter to this parcel.

20 I just want to make sure I'm at the
21 right hearing because everything that I heard in the
22 beginning has nothing to do with what the Building
23 Inspector has outlined specifically in his letter.

24 CHAIRMAN JOHN SERGI: Oh, you might be

Waltham Zoning Board of Appeals/1-8-19/72

1 at the -- that was maybe the prior hearing.

2 ROBERT ANDERSON: No, I was at the
3 prior hearing in 2000.

4 CHAIRMAN JOHN SERGI: Okay.

5 ROBERT ANDERSON: You folks don't have
6 this letter from the Building Inspector?

7 MARK HICKERNELL: Can I see the -- can
8 we see the letter you have?

9 ROBERT ANDERSON: I highlighted
10 certain parts of it. I have all the copies. I'm not
11 sure I'm in the right room.

12 MARK HICKERNELL: Oh, this must be the
13 --

14 CHAIRMAN JOHN SERGI: These are the
15 violations.

16 MARK HICKERNELL: I think this was
17 just a letter that was sent to the owner and they
18 must have dealt with it. It never came to us.
19 Because we've got the previous file here.

20 CHAIRMAN JOHN SERGI: Yeah, no we
21 didn't --

22 MARK HICKERNELL: Are you familiar
23 with this?

24 SARAH HANKINS: Isn't this what he --

Waltham Zoning Board of Appeals/1-8-19/73

1 didn't they try to cure a lot of -- have cured a lot
2 of these? I thought they --

3 ATTORNEY SAMUEL REEF: Yes, this was
4 prior to us coming here. And we worked with the
5 Building Inspector over the summer.

6 MARK HICKERNELL: That never came to
7 us.

8 ATTORNEY SAMUEL REEF: Yeah.

9 MARK HICKERNELL: Okay. Can you give
10 that back to the gentleman?

11 ROBERT ANDERSON: It specifically says
12 there are six apartments there currently.

13 MARK HICKERNELL: So, I sense,
14 although it's not in the petition before us, that
15 because this was divided into so many units as part
16 of the nursing home that when the Building Inspector
17 went and take a look at it, he found what looked like
18 at least six apartments. But since it didn't make it
19 to us as part of the Building Inspector's current
20 problems with this, like he said they had to come get
21 a permit for the conversion, they must have dealt
22 with the six apartments prior --

23 ROBERT ANDERSON: No, they haven't.
24 If you read the letter, there's an inspection --

Waltham Zoning Board of Appeals/1-8-19/74

1 MARK HICKERNELL: But that letter is
2 dated 2017. If it was current, it would be part of
3 what's before us now I think. I appreciate your
4 concern because six is pretty different from three
5 apartments. But the Building Inspector --

6 ROBERT ANDERSON: I mean there was a
7 cease and desist ordered on the thing. There never
8 has been a permit pulled. There never has been an
9 inspection or anything that's been done there.

10 I was at the hearing in 2000 where the
11 special permit was granted. And it was granted for
12 three apartments and no more.

13 MARK HICKERNELL: Right.

14 ROBERT ANDERSON: The specific
15 language is in there.

16 MARK HICKERNELL: Yeah.

17 ROBERT ANDERSON: Two years later, no
18 permit was pulled. So, obviously, there were no
19 inspections or anything done.

20 CHAIRMAN JOHN SERGI: He admitted
21 that.

22 ROBERT ANDERSON: Two years later, the
23 prior owner went and got an extension based upon his
24 finding that there were structural issues with the

Waltham Zoning Board of Appeals/1-8-19/75

1 building. Another year went by. Again, never pulled
2 a permit. They never acted on the original special
3 permit that was granted.

4 MARK HICKERNELL: Right. It expired.

5 CHAIRMAN JOHN SERGI: Right. It
6 expired.

7 MARK HICKERNELL: That's why they had
8 to start the process over.

9 ROBERT ANDERSON: So now they're in --
10 now they're in 15 years later, with 15 years' worth
11 of violations. No permit was ever pulled other than
12 for the excavation of the basement. That's the only
13 permit that was pulled was the excavation of the
14 basement.

15 MARK HICKERNELL: Right. They can't
16 pull the permits until they get permission, the
17 special permit from us. They can't --

18 ROBERT ANDERSON: Yeah, but they
19 already went ahead and built it. There's six units
20 in the building per the Town of Waltham, per the
21 Building Inspector.

22 MARK HICKERNELL: But he didn't send
23 that up to us, so that must have been taken care of
24 by now. Again, I appreciate your concern because six

Waltham Zoning Board of Appeals/1-8-19/76

1 apartments would be a lot. But, the Building
2 Inspector didn't send that to us, so he must have
3 determined that there's no longer six after he's
4 given the cease and desist.

5 ROBERT ANDERSON: No, I think it went
6 to court.

7 MARK HICKERNELL: It went to court?

8 ROBERT ANDERSON: Yeah, I believe
9 that's what happened.

10 MARK HICKERNELL: Okay. And why do
11 you say that?

12 ROBERT ANDERSON: Because I think it
13 was sent back and the court issued a ruling that he
14 come back and get the three-family reinstated, and he
15 promised to do that.

16 MARK HICKERNELL: Okay. And that's
17 what they're trying to do now. Right?

18 ROBERT ANDERSON: Right. Six units
19 have already been built.

20 MARK HICKERNELL: Well, they won't be
21 permitted.

22 ROBERT ANDERSON: I guess my point is
23 why should he be rewarded for 15 years of no permits.

24 MARK HICKERNELL: Well, it's not

Waltham Zoning Board of Appeals/1-8-19/77

1 really a reward. They didn't have the right to do
2 anything for those 15 years.

3 ROBERT ANDERSON: No, I know. But if
4 you look at what was proposed today as compared to
5 what was approved in 2000 --

6 MARK HICKERNELL: Yeah, I already did.
7 We've got the plans here. They're very similar.

8 ROBERT ANDERSON: Does it show a
9 basement?

10 MARK HICKERNELL: The basement is not
11 what's before us. It's the three apartments. The
12 basements can be connected to the first floor
13 apartment, so it will be --

14 ROBERT ANDERSON: Which is going to
15 make it almost a 5,000-square-foot apartment?

16 MARK HICKERNELL: There's nothing in
17 the zoning code that says the apartment has to be
18 small. I mean I appreciate the concern that maybe
19 this will turn into more apartments --

20 ROBERT ANDERSON: Well, the original
21 approval was for first floor, second floor, third
22 floor, nothing in the basement.

23 CHAIRMAN JOHN SERGI: Yeah, that's
24 what's before us now. The basement is not before us

Waltham Zoning Board of Appeals/1-8-19/78

1 at all.

2 ROBERT ANDERSON: How come it's in the
3 plan?

4 EDWARD MCCARTHY: It's not in the
5 plan.

6 CHAIRMAN JOHN SERGI: No, it's not in
7 the plan.

8 EDWARD MCCARTHY: The basement is not
9 in the plan.

10 CHAIRMAN JOHN SERGI: No, it's not in
11 the plan.

12 EDWARD MCCARTHY: Just the first,
13 second, and third floor.

14 CHAIRMAN JOHN SERGI: Do you want to
15 elaborate a little bit on your discussion with the
16 Building Inspector, maybe, alleviate his concern?

17 ATTORNEY SAMUEL REEF: Everything that
18 was in that letter was sent by the Building
19 Department. We did deal with the Building Department
20 in curing all that. When the Building Inspector came
21 to the property, because of the way it was laid out
22 originally as the nursing home, it gave the
23 appearance as more than three families. We
24 alleviated that concern with the Building Department

Waltham Zoning Board of Appeals/1-8-19/79

1 by removing kitchens, by removing stoves. We did all
2 that to alleviate the concerns, plus the condition
3 that we come before the Board with the plan that the
4 Building Department has seen and signed off on that
5 would make it only a three-unit apartment. The
6 Building Department reviewed it and signed off on it.

7 SARAH HANKINS: But the plans don't
8 include the basement?

9 ATTORNEY SAMUEL REEF: I thought they
10 did. I thought they did. But we haven't pulled the
11 permit for that, and we can't until -- but I did
12 think that that was part of the plans.

13 ROBERT ANDERSON: He was fined for not
14 having a permit, a thousand dollars. He got caught
15 doing something down there. They're saying he never
16 got caught. But if you see the Building Commissioner
17 and you bring that up, he was just fined a thousand
18 dollars. He pulled one permit, but he didn't pull
19 another one. There's a little more stuff that's
20 going on there that you people don't realize. That's
21 a rooming house right now.

22 EDWARD MCCARTHY: Thank you.

23 CHAIRMAN JOHN SERGI: Thank you.

24 ROBERT ANDERSON: You're welcome.

Waltham Zoning Board of Appeals/1-8-19/80

1 MARK HICKERNELL: Are you aware of any
2 court proceedings, counsel?

3 ATTORNEY SAMUEL REEF: There was a
4 court proceeding. That had to do with the citations
5 because they were working in the basement. They had
6 to stop. We paid a fine for that. And the court
7 proceeding is over.

8 MARK HICKERNELL: Okay. So, the
9 gentleman is correct. There was a court proceeding
10 that dealt with the prior violations.

11 ATTORNEY SAMUEL REEF: Yes, the
12 violation was for the work that was done in the
13 basement.

14 MARK HICKERNELL: Okay.

15 ATTORNEY SAMUEL REEF: And, again, my
16 client, who is an employee of the City of Waltham,
17 thought that it was an existing three-family. He
18 went to pull the permit, and that's when this trouble
19 started.

20 MARK HICKERNELL: Okay.

21 EDWARD MCCARTHY: When did you say he
22 purchased this building? When did he purchase it?

23 ATTORNEY SAMUEL REEF: 2003.

24 EDWARD MCCARTHY: So, he's been using

Waltham Zoning Board of Appeals/1-8-19/81

1 -- he's been living there for 15 years?

2 ATTORNEY SAMUEL REEF: Yes.

3 EDWARD MCCARTHY: What's he been doing
4 with it for 15 years?

5 ROBERT ANDERSON: He's renting six
6 apartments.

7 ATTORNEY SAMUEL REEF: No, he has not
8 built six apartments. He has been living there on
9 the -- his family lives there on the first floor --

10 CHAIRMAN JOHN SERGI: Okay. Let him
11 continue and then I'll give you a chance to rebut.

12 Sir, if you'd like to continue with
13 the --

14 ROBERT ANDERSON: Yeah, I think this
15 will help clear up the easement issue. This is the
16 plan of record that all of the deeds refer to. If
17 you'll notice, there's existing -- this is a recent
18 photo, I'm assuming. They've striped all the parking
19 in front of the building, which is right in the
20 middle of the right of way that this house has, my
21 mother has. And they've striped parking right in
22 front of the building. This and this is where the
23 right of way is, right in front of the building.

24 EDWARD MCCARTHY: So the right of way

Waltham Zoning Board of Appeals/1-8-19/82

1 has been filled up with parking spaces?

2 ROBERT ANDERSON: Correct. The
3 Building Department said it's a civil issue.

4 MARK HICKERNELL: Which one is your
5 mother, 251 or 253?

6 ROBERT ANDERSON: My mom is 251.

7 MARK HICKERNELL: So they've striped
8 in front of 251?

9 ROBERT ANDERSON: No, they striped in
10 front of this whole building here in the right of
11 way.

12 MARK HICKERNELL: Okay. With cars
13 parked there, it's not possible to pull around them
14 on the stripes?

15 ROBERT ANDERSON: Not staying within
16 the designated right of way, no.

17 EDWARD MCCARTHY: So this piece of
18 property here is part of a right of way, or part of a
19 shared lot, or what? Or it is their property?

20 ROBERT ANDERSON: This parcel here is
21 his property.

22 EDWARD MCCARTHY: Okay.

23 ROBERT ANDERSON: Those were with the
24 old nursing home.

Waltham Zoning Board of Appeals/1-8-19/83

1 EDWARD MCCARTHY: That's part of the
2 property. Okay. So he can tar this and park in here
3 no problem.

4 ROBERT ANDERSON: He already has
5 tarred and parked, and is parking. But they chose to
6 line in the right of way and put these cars in the
7 right of way.

8 EDWARD MCCARTHY: So, he can
9 essentially, if he didn't have that, he could -- he'd
10 be all right. The right of way is 16 feet, 20 feet?
11 What is that?

12 ROBERT ANDERSON: It was 18-something
13 when they drew it. There is no written dimension.
14 That's the plan of record. It's the plan that's
15 referred to in all the deeds.

16 EDWARD MCCARTHY: And, essentially,
17 what was that right of way for?

18 ROBERT ANDERSON: Just pass and
19 repass.

20 EDWARD MCCARTHY: But for who?

21 ROBERT ANDERSON: Oh, my grandfather
22 owned this and this.

23 EDWARD MCCARTHY: So, he used that for
24 his two houses?

Waltham Zoning Board of Appeals/1-8-19/84

1 ROBERT ANDERSON: Yeah.

2 EDWARD MCCARTHY: Okay.

3 ROBERT ANDERSON: And this house used
4 it. This was a right of way for all these
5 properties.

6 EDWARD MCCARTHY: Okay.

7 MARK HICKERNELL: This is current?

8 CHAIRMAN JOHN SERGI: I don't know if
9 this is current or not, no.

10 ROBERT ANDERSON: It's the only plan
11 of record. Also, when the house was originally
12 purchased, not by Mr. Oberge, but the gentleman he
13 bought it from, according to the Town field card, it
14 had been converted back to a single-family house from
15 a nursing home.

16 MARK HICKERNELL: Single-family?
17 Well, that's even bigger than the apartments.

18 EDWARD MCCARTHY: And the Building
19 Inspector thought he'd control the number of units by
20 just limiting the kitchens? A kitchen on each floor,
21 is that what he said?

22 ATTORNEY SAMUEL REEF: That was in our
23 initial discussions, and then he wanted to see the
24 plan to make sure that was approved by the Building

Waltham Zoning Board of Appeals/1-8-19/85

1 Department as a three-family, and he did.

2 SARAH HANKINS: When was it made into
3 six units?

4 ATTORNEY SAMUEL REEF: It's been the
5 existing of the unit has been that way since my
6 client purchased the property in 2003.

7 SARAH HANKINS: So, in 2003, when he
8 bought it, it was six units?

9 ATTORNEY SAMUEL REEF: No, it wasn't.
10 It was never six units. But the existing condition,
11 as was given in the plans, is the way it appeared and
12 existed since 2003. But there's never been six
13 units.

14 MARK HICKERNELL: With 32 bedrooms,
15 there were some six kitchens associated with it.

16 CHAIRMAN JOHN SERGI: He mentioned he
17 eliminated --

18 ATTORNEY SAMUEL REEF: There weren't
19 32, but there were six kitchens at the -- yes.

20 MARK HICKERNELL: There weren't 32? I
21 thought 32 is what it said.

22 ATTORNEY SAMUEL REEF: The nursing
23 home, back when it was in operation.

24 MARK HICKERNELL: Yeah, that's what I

Waltham Zoning Board of Appeals/1-8-19/86

1 mean, 32 beds.

2 ATTORNEY SAMUEL REEF: Yeah.

3 EDWARD MCCARTHY: Was it used as a
4 rooming house?

5 ATTORNEY SAMUEL REEF: By my clients?
6 It was never used as a rooming house.

7 SARAH HANKINS: So when he had you --
8 the Building Inspector had you remove kitchens and
9 things like that, how many did you remove?

10 ATTORNEY SAMUEL REEF: And cabinets
11 and kitchens, two.

12 SARAH HANKINS: Two kitchens.

13 ATTORNEY SAMUEL REEF: We removed
14 those. And then once we removed those, then he
15 wanted the plans and for us -- to approve the plans
16 and then have us come before you.

17 CHAIRMAN JOHN SERGI: So, you removed
18 two kitchens from each floor? So, four kitchens you
19 removed?

20 ATTORNEY SAMUEL REEF: No, two total
21 that we removed before we did the plans.

22 EDWARD MCCARTHY: Before you did the
23 plans.

24 MICHAEL SQUILLANTE: So now there's

Waltham Zoning Board of Appeals/1-8-19/87

1 four kitchens there? There's four kitchens
2 presently?

3 ATTORNEY SAMUEL REEF: There's three
4 kitchens right now.

5 CHAIRMAN JOHN SERGI: And do you have
6 the proper building permits now in place to support
7 what you're doing?

8 ATTORNEY SAMUEL REEF: We don't have
9 any permits right now. No work is being done. Our
10 first step was coming before you.

11 CHAIRMAN JOHN SERGI: Oh, so there's
12 no work being done?

13 ATTORNEY SAMUEL REEF: There's no work
14 being done right now.

15 ROBERT ANDERSON: Is there an existing
16 conditions page in that new submittal?

17 MARK HICKERNELL: I beg your pardon?

18 ROBERT ANDERSON: Is there an existing
19 conditions page in that new submittal?

20 MARK HICKERNELL: Existing conditions
21 page. I'm not sure what you're referring to. This
22 is what --

23 ROBERT ANDERSON: A plan that shows
24 what's there today.

Waltham Zoning Board of Appeals/1-8-19/88

1 MARK HICKERNELL: That's not the
2 purpose of this. This is a plan for --

3 ROBERT ANDERSON: No, I know. But in
4 the 2000 submittal, there was an existing conditions
5 and a proposed conditions. I don't see that in the
6 submittal.

7 MARK HICKERNELL: Oh.

8 CHAIRMAN JOHN SERGI: No, we don't
9 have that.

10 MARK HICKERNELL: No, there is not
11 that, but that's not a requirement.

12 ROBERT ANDERSON: But it was in 2000?

13 MARK HICKERNELL: I don't know if it
14 was required or just supplied.

15 CHAIRMAN JOHN SERGI: Okay. Do you
16 have anything else?

17 ROBERT ANDERSON: No, I just I have
18 the building card, the copy of it, that shows that it
19 was converted to a single-family.

20 MARK HICKERNELL: Yeah, that doesn't
21 really matter. As long as it was licensed as a
22 nursing home under that period.

23 ROBERT ANDERSON: No, I understand.
24 Yeah, understood. I think that's all I have.

Waltham Zoning Board of Appeals/1-8-19/89

1 CHAIRMAN JOHN SERGI: Okay. Thank
2 you.

3 Do we finish the dialogue related to
4 his -- there's a right of way apparently that there's
5 some striped parking spaces that are impinging on a
6 right of way.

7 ATTORNEY SAMUEL REEF: That's also the
8 first time I'm hearing of it, just like the other
9 issue. I don't believe it's on his property because
10 it has to do with 249 Bacon, but I'm happy to work
11 with this neighbor as well to do what's necessary.

12 CHAIRMAN JOHN SERGI: That's the
13 second item that's been brought up. Maybe you should
14 do some research and supply the Board with the -- you
15 know, whatever easements exist for parking and right
16 of ways.

17 MARK HICKERNELL: I'm hesitant to make
18 him do that. Really, this is just for a conversion
19 petition. I mean he'd be well advised to work this
20 out with his neighbors for sure. But I mean what's
21 that got to do with the conversion under 3.73?

22 ATTORNEY SAMUEL REEF: I would
23 respectfully agree. But, having said that, I plan on
24 working with the neighbors because, obviously, we

Waltham Zoning Board of Appeals/1-8-19/90

1 want the neighbors to get along.

2 CHAIRMAN JOHN SERGI: I'm thinking it
3 might impact the number of parking spaces that are
4 available. I'm not sure --

5 ATTORNEY SAMUEL REEF: That's sep --
6 I'm sorry to interrupt, Mr. Chairman. That's
7 separate from the parking that's currently available.
8 There's plenty of parking in front of the building
9 and to the side of the building for the three units.

10 EDWARD MCCARTHY: Well, Mr. Anderson's
11 contention was that these cars are currently parked
12 on the right of way. These parking spaces are on the
13 right of way.

14 CHAIRMAN JOHN SERGI: So what I'm
15 worried about is that if you eliminate those, do you
16 have sufficient parking for this? So, I, for one,
17 would like to see that information where it's
18 properly known where the right of ways are, and what
19 easements exist, so that we can determine if there is
20 sufficient parking.

21 ATTORNEY SAMUEL REEF: The architect
22 can testify today that there's enough parking for two
23 spaces per unit, so six spaces. On the photo, right
24 in front, the easements, or right of way, if there's

Waltham Zoning Board of Appeals/1-8-19/91

1 cars parked there and shouldn't be, we'll certainly
2 take care of it. But that has nothing to do with
3 Varnum Park that we're here for today. That has to
4 do with Bacon Street, another property.

5 EDWARD MCCARTHY: Well, Varnum Park
6 needs parking.

7 ATTORNEY SAMUEL REEF: Varnum Park has
8 parking. And I'd be --

9 EDWARD MCCARTHY: I mean your building
10 needs parking. What this is showing is that your
11 parking spaces, currently, are on the right of way,
12 which is illegal parking.

13 ATTORNEY SAMUEL REEF: If they are
14 parking there, it's wrong, and they shouldn't be.
15 But they shouldn't be parking there. There's plenty
16 of parking available.

17 CHAIRMAN JOHN SERGI: That's what I'm
18 trying to address. I'd like to --

19 EDWARD MCCARTHY: See, it's striped.
20 It's striped and it's all set for parking. It's like
21 -- it should not have any parking on it.

22 ATTORNEY SAMUEL REEF: But there's
23 plenty of parking available for Varnum, not including
24 that striped area.

Waltham Zoning Board of Appeals/1-8-19/92

1 EDWARD MCCARTHY: Well, we don't see
2 it. Where is it? Show it to us.

3 ATTORNEY SAMUEL REEF: Can you show
4 where the parking is? I've been there myself. Right
5 in front of Varnum Park, there's plenty of parking.

6 EDWARD MCCARTHY: He's saying these
7 cars park right in this right of way here.

8 BRIAN LAU: Right. Because right here
9 is their parking. They have parking, like two rows
10 of parking spaces.

11 EDWARD MCCARTHY: But you can't park
12 in the right of way. You can't put a legal parking
13 space on a right of way. Right?

14 Now, this shows going right up to the
15 house that right of way. I'm not sure how that lays
16 out with regards to --

17 CHAIRMAN JOHN SERGI: What are you
18 talking --

19 MARK HICKERNELL: Mike pointed out
20 that there's plenty of room.

21 BRIAN LAU: So, basically, this is one
22 big, like a --

23 EDWARD MCCARTHY: Sure. You've got
24 plenty of spaces. It's set up as a parking lot.

Waltham Zoning Board of Appeals/1-8-19/93

1 BRIAN LAU: It's all paved parking,
2 the whole thing. So, this is just a small driveway.
3 The whole thing is parking.

4 EDWARD MCCARTHY: Okay.

5 BRIAN LAU: Yeah. And then my
6 understanding is, the owner told me they have
7 anywhere like 15 to 16 parking spaces.

8 ATTORNEY SAMUEL REEF: All along, not
9 in the right of way, but all in front of Varnum Park,
10 right in here. The Building Inspector came in. He
11 parked right here. I had my car parked right there
12 when we toured. The owner had two cars right there.
13 There's plenty of parking right in front of Varnum
14 Park.

15 MICHAEL SQUILLANTE: What's happening
16 in the basement now? Is it occupied at all?

17 ATTORNEY SAMUEL REEF: No, there is --

18 CHAIRMAN JOHN SERGI: I mean I'll
19 leave it up to the Board. I, for one, would like to
20 see, you know, since it's been brought up as an
21 issue, and it seems like there's parking spaces that
22 are illegally created here apparently --

23 MARK HICKERNELL: Well, that's a bit
24 of a stretch. What do you mean illegally created?

1 There was parking when it was a nursing home.

2 CHAIRMAN JOHN SERGI: Yeah, I guess.
3 But they're parked in the right of way. So, what I'd
4 like to -- what I'd like to determine is -- this is
5 my opinion. Okay? This is how I feel. Okay?

6 MARK HICKERNELL: No, no. That's why
7 we --

8 CHAIRMAN JOHN SERGI: I'd like to see
9 a plan for parking so that it doesn't impinge on any
10 right of ways or any other easements.

11 EDWARD MCCARTHY: Just draw a parking
12 plan up. Keep this in mind. Show us if you have to
13 eliminate any of these spots here, which ones you're
14 going to eliminate, and where you're going to have
15 the other spots put -- placed.

16 SARAH HANKINS: But, respectfully,
17 there's clearly that parking. Even if you eliminate
18 all that, there's clearly enough parking for the --
19 so I don't see where it affects everything. I'm
20 happy to move forward.

21 CHAIRMAN JOHN SERGI: I think what I'd
22 like to see, I'd like to make it part of this so that
23 it's done and it doesn't impinge on anything else. I
24 don't want to see it moved from one area to another

1 area. It shouldn't be a big issue. I mean just
2 outline the parking.

3 SARAH HANKINS: I mean the parking
4 might be an issue. I just don't think it's an issue
5 before us. I think if someone has got an issue,
6 respectfully to the gentleman who has an issue or
7 potentially has an issue, if this was, you know, part
8 and parcel of the special permit, absolutely. But,
9 it really has nothing to do with it. And I think
10 we're --

11 EDWARD MCCARTHY: You're probably
12 right.

13 SARAH HANKINS: -- looking at property
14 that happens to be owned by this gentleman, too, so
15 it's sort of a murky little thing. I'm happy to move
16 forward tonight. But, obviously, if other Board
17 members are concerned, then, you know.

18 CHAIRMAN JOHN SERGI: I think it's a
19 simple item. And I think it would go a long way.

20 ATTORNEY SAMUEL REEF: I'm happy to do
21 that if necessary. I would respectfully say that I
22 don't think it's required, but I'm happy to --

23 EDWARD MCCARTHY: Just a parking
24 layout. That's all.

Waltham Zoning Board of Appeals/1-8-19/96

1 ATTORNEY SAMUEL REEF: If that's what
2 we need.

3 CHAIRMAN JOHN SERGI: Yeah, if there's
4 plenty of parking, just lay it out.

5 EDWARD MCCARTHY: Yeah, a parking
6 layout. That's all.

7 ATTORNEY SAMUEL REEF: May I take one
8 copy because I don't have --

9 MARK HICKERNELL: Yeah, take this one.

10 ATTORNEY SAMUEL REEF: Thank you.

11 CHAIRMAN JOHN SERGI: Okay. Is there
12 anyone else not in favor of this petition who would
13 like to speak? Okay. You would like to --

14 MICHAEL LICATO: I'm just saying, I
15 think he's using the other lot as part of his parking
16 for that house, which really doesn't have anything to
17 do with that house. It's a separate lot. He's got
18 14 parking spaces marked out there.

19 MARK HICKERNELL: But there's nothing
20 that says he can't if it's his lot.

21 MICHAEL LICATO: It isn't his lot.
22 He's on --

23 MARK HICKERNELL: Well, then you need
24 to take that up with a separate action.

Waltham Zoning Board of Appeals/1-8-19/97

1 MICHAEL LICATO: It's a separate piece
2 of property. It has nothing to do with his house.
3 You can't -- he's using that as part of his house.
4 It's a right of way. He's taking the right of way
5 and using it. And a fire truck can't get in there.
6 Okay?

7 STENOGRAPHER: What was your name
8 again?

9 MICHAEL LICATO: My name is Michael
10 Licato, L-i-c-a-t-o.

11 STENOGRAPHER: Thank you.

12 MICHAEL LICATO: You can't get a fire
13 truck in there.

14 CHAIRMAN JOHN SERGI: I understand.
15 I'll tell you, for one, I'm just speaking for myself,
16 I am very confused here.

17 MICHAEL LICATO: It's a very confusing
18 --

19 CHAIRMAN JOHN SERGI: You know, and
20 we're trying to address the issues.

21 MICHAEL LICATO: Yeah, I know that.

22 CHAIRMAN JOHN SERGI: You know, and
23 just you're --

24 MICHAEL LICATO: But you can't put

Waltham Zoning Board of Appeals/1-8-19/98

1 someone else's parking spaces onto yours.

2 CHAIRMAN JOHN SERGI: You've lived
3 this all your life. Okay? We're just seeing this
4 tonight.

5 MICHAEL LICATO: I know.

6 CHAIRMAN JOHN SERGI: And we're trying
7 to do the best we can to make it --

8 MICHAEL LICATO: We're living with
9 this guy, dealing with him. Okay?

10 EDWARD MCCARTHY: Just let me ask you
11 this question.

12 MICHAEL LICATO: Yeah.

13 EDWARD MCCARTHY: You took out two
14 kitchens. Right? You've taken them out already?
15 They're gone?

16 ATTORNEY SAMUEL REEF: Yes.

17 EDWARD MCCARTHY: How long were they
18 in there?

19 ATTORNEY SAMUEL REEF: I can't --
20 Oberge, those cabinets that we removed --

21 OBERGE JEAN-PHILIPPE: Since we've
22 been having the house.

23 ATTORNEY SAMUEL REEF: Since 2003.

24 EDWARD MCCARTHY: You had five

Waltham Zoning Board of Appeals/1-8-19/99

1 kitchens in there since 2003? Did you put them in?

2 OBERGE JEAN-PHILIPPE: No, I don't.

3 EDWARD MCCARTHY: They were there
4 already?

5 OBERGE JEAN-PHILIPPE: They'd been
6 there. They were --

7 EDWARD MCCARTHY: Were they part of
8 the nursing home?

9 OBERGE JEAN-PHILIPPE: Yeah, they were
10 part of the nursing home. Even before I bought the
11 house, I came in, and then they were already there.
12 Then the Building Inspector went over there. The
13 Inspector went in. And that's when he noticed that.
14 But I don't do nothing to fix it. I do have parking,
15 my 14 parking spaces. I can prove I have that right
16 for parking.

17 ATTORNEY SAMUEL REEF: The letter he's
18 referring to I read to the Board, but I never showed
19 it to the Board. In '03, they came out and inspected
20 it and gave him that letter.

21 CHAIRMAN JOHN SERGI: Okay. Are we
22 don't with that part of the -- one more person.

23 RICHARD ANDERSON: Excuse me. Only
24 because of the comment, I want to look at the plan

Waltham Zoning Board of Appeals/1-8-19/100

1 and will be with you shortly, if I may ask that.

2 CHAIRMAN JOHN SERGI: Okay.

3 STENOGRAPHER: Your name, for the
4 record?

5 RICHARD ANDERSON: My name is Richard
6 Anderson.

7 STENOGRAPHER: Thank you.

8 CHAIRMAN JOHN SERGI: We'll give you a
9 few minutes.

10 RICHARD ANDERSON: Yeah, just only
11 because of a comment that was just made.

12 CHAIRMAN JOHN SERGI: Okay. How does
13 the Board feel about a five-minute recess?

14 EDWARD MCCARTHY: No, he's back.

15 CHAIRMAN JOHN SERGI: Oh, you're all
16 set? Okay.

17 ROBERT ANDERSON: This is the existing
18 condition plan that was submitted in 2000 on the
19 original permit. And it shows three kitchens in the
20 house. This is the first floor existing conditions.
21 And this is from the submittal. There's one kitchen
22 there on the first floor, one kitchen on the third
23 floor, and no kitchens on the second floor. So there
24 were only two kitchens.

Waltham Zoning Board of Appeals/1-8-19/101

1 CHAIRMAN JOHN SERGI: This, you're
2 sure, this was the existing plan?

3 ROBERT ANDERSON: This is the existing
4 condition, second floor plan, submitted to the Board
5 in 2000 for the original permit, special permit. So,
6 actually, there were only two kitchens in the house
7 when he bought it.

8 MARK HICKERNELL: So, you're saying
9 the architect is lying when he says they pulled out a
10 couple of kitchens?

11 ROBERT ANDERSON: No, I'm saying that
12 there were only two kitchens to begin with. So, if
13 they pulled out two, there shouldn't be any.

14 EDWARD MCCARTHY: So, someone added
15 three.

16 ROBERT ANDERSON: Yes, they did.

17 ATTORNEY SAMUEL REEF: I can't answer
18 that. But I know what was proposed were just
19 cabinets. So, I'm assuming they -- I have no idea
20 what the previous architect did. Maybe they didn't
21 count what we had pulled out as full kitchens because
22 it was just a cabinet and a sink.

23 EDWARD MCCARTHY: There were no
24 stoves?

Waltham Zoning Board of Appeals/1-8-19/102

1 ATTORNEY SAMUEL REEF: There was no
2 stoves. There was a cabinet and a sink that were
3 pulled out. That was all.

4 ROBERT ANDERSON: This, just as a
5 point of reference, is the existing basement floor
6 plan. As you can see, there were unexcavated areas,
7 crawl space, unexcavated, crawl spaces.

8 MARK HICKERNELL: What does that have
9 to do with a petition to convert it from a nursing
10 home?

11 ROBERT ANDERSON: I don't have a
12 problem with it going back to a three-family.

13 MARK HICKERNELL: Okay.

14 ROBERT ANDERSON: But I want it to go
15 back to the what was originally approved in 2000,
16 with nothing in the basement: first floor, second
17 floor, third floor.

18 CHAIRMAN JOHN SERGI: Well, we're not
19 talking -- we're not --

20 EDWARD MCCARTHY: The basement's
21 another issue right now.

22 ROBERT ANDERSON: Well, I showed you
23 the plan, which shows --

24 EDWARD MCCARTHY: But the plan is not

1 what we're talking about.

2 CHAIRMAN JOHN SERGI: It may be in the
3 plan, but it's not in front of us. We're not
4 granting any --

5 ROBERT ANDERSON: How come it's in one
6 plan and not in the other?

7 EDWARD MCCARTHY: But it's not part of
8 the petition right now, so we're not going for the
9 third floor -- for the basement. They'll have to
10 come back another time for the basement and it will
11 be debated at that point in time.

12 ROBERT ANDERSON: The basement to be
13 what?

14 EDWARD MCCARTHY: Well, it's not an
15 issue right now. That's the point.

16 ROBERT ANDERSON: All right.

17 EDWARD MCCARTHY: All right?

18 CHAIRMAN JOHN SERGI: Okay. Is there
19 anyone else who would like to speak against the
20 petition?

21 (No response.)

22 CHAIRMAN JOHN SERGI: Seeing none,
23 I'll close that part of the petition.

24 We can move forward with the finding

1 of facts. Or, I'll just leave it up to the Board. I
2 mean how do you --

3 EDWARD MCCARTHY: Well, do you want to
4 get a plan, a parking plan, or not?

5 CHAIRMAN JOHN SERGI: Yeah, I'd like
6 to get a parking plan.

7 EDWARD MCCARTHY: So, we'll have to --

8 CHAIRMAN JOHN SERGI: All right.
9 We'll continue the meeting to a future date.

10 ATTORNEY SAMUEL REEF: May I just
11 request that letter from the City from --

12 EDWARD MCCARTHY: Certainly.

13 ATTORNEY SAMUEL REEF: I have my notes
14 on the back of that. I apologize.

15 CHAIRMAN JOHN SERGI: I closed the
16 hearing.

17 MICHAEL LICATO: I just had a question
18 about the driveway. Is he still going to be able to
19 use it once he gets the permit because that's one of
20 the conditions I was asking for?

21 CHAIRMAN JOHN SERGI: Again, I think,
22 you know, Mr. Hickernell indicated it's really not
23 part of the petition. I mean we can bring it up, you
24 know, and we have. I'd like to see it addressed. He

1 indicated he will address it. Isn't that correct?

2 EDWARD MCCARTHY: According to this
3 plan, it's part of the right of way. They can use it
4 under this plan.

5 MICHAEL SQUILLANTE: If I could --
6 excuse me -- could you try to determine if there's an
7 easement on the deed?

8 ATTORNEY SAMUEL REEF: I did not.

9 MICHAEL SQUILLANTE: Could you do
10 that?

11 ATTORNEY SAMUEL REEF: Oh, I will,
12 yes.

13 (Audience speaking. Chairman taps
14 gavel.)

15 CHAIRMAN JOHN SERGI: That's enough.

16 This is solely a request I mean just
17 to squash any question related to the right of way.
18 If it is a true right of way, it should be on the
19 deed. I was wondering if it would be too much
20 trouble to dig out that deed and --

21 ATTORNEY SAMUEL REEF: It's no trouble
22 at all. I already pulled a title to it, so I can
23 just relook at it.

24 CHAIRMAN JOHN SERGI: Okay. And if

Waltham Zoning Board of Appeals/1-8-19/106

1 you could, you know --

2 ATTORNEY SAMUEL REEF: No problem.

3 CHAIRMAN JOHN SERGI: -- make mention
4 of that when you return.

5 ATTORNEY SAMUEL REEF: Absolutely.

6 CHAIRMAN JOHN SERGI: Okay. So that
7 should answer the question one way or another.

8 MICHAEL LICATO: Fair enough.

9 MARK HICKERNELL: How much time do you
10 need to get those plans together?

11 ATTORNEY SAMUEL REEF: How long do we
12 need to put a parking plan?

13 BRIAN LAU: Three weeks.

14 ATTORNEY SAMUEL REEF: That much time?
15 Three weeks.

16 CHAIRMAN JOHN SERGI: Three weeks?

17 MARK HICKERNELL: The 29th we've got
18 three cases.

19 CHAIRMAN JOHN SERGI: Yeah, we can't
20 do that.

21 MARK HICKERNELL: Next would be
22 February 5th. Are you gone?

23 MICHAEL SQUILLANTE: I'm gone for two
24 weeks.

Waltham Zoning Board of Appeals/1-8-19/107

1 CHAIRMAN JOHN SERGI: How about you?
2 Are you here the 26th of February?

3 MICHAEL SQUILLANTE: Yeah, the 26th of
4 February is fine with me.

5 CHAIRMAN JOHN SERGI: The 26th of
6 February?

7 ATTORNEY SAMUEL REEF: Oberge, the 26th
8 of February is good, February 26th?

9 OBERGE JEAN-PHILIPPE: Yeah.

10 ATTORNEY SAMUEL REEF: Yeah, it's
11 fine. Thank you.

12 CHAIRMAN JOHN SERGI: Okay. Can I
13 have a motion to continue the case?

14 SARAH HANKINS: Motion.

15 CHAIRMAN JOHN SERGI: Motion made to
16 continue the case.

17 EDWARD MCCARTHY: Second.

18 CHAIRMAN JOHN SERGI: How do you vote,
19 Mr. Squillante?

20 MICHAEL SQUILLANTE: Yes..

21 CHAIRMAN JOHN SERGI: Mike?

22 MICHAEL SQUILLANTE: Yes.

23 CHAIRMAN JOHN SERGI: Okay.

24 EDWARD MCCARTHY: Yes.

Waltham Zoning Board of Appeals/1-8-19/108

1 CHAIRMAN JOHN SERGI: Mark?

2 MARK HICKERNELL: Why not?

3 CHAIRMAN JOHN SERGI: I'm sorry?

4 MARK HICKERNELL: Why not?

5 CHAIRMAN JOHN SERGI: Oh. Sarah?

6 SARAH HANKINS: Yes.

7 EDWARD MCCARTHY: Yes.

8 CHAIRMAN JOHN SERGI: And the Chair
9 votes yes. So we'll continue until February 26th.

10 ATTORNEY SAMUEL REEF: Thank you, Mr.
11 Chairman. Thank you, Board.

12 Once we're off record, I have a
13 procedural question.

14 CHAIRMAN JOHN SERGI: Sure.

15 SARAH HANKINS: Motion to adjourn.

16 CHAIRMAN JOHN SERGI: No, no, not yet.
17 Not yet. Procedural question.

18 MARK HICKERNELL: Well, he said once
19 we're off the record.

20 CHAIRMAN JOHN SERGI: Oh, off the --

21 SARAH HANKINS: Motion to adjourn.

22 CHAIRMAN JOHN SERGI: Motion to
23 adjourn.

24 MARK HICKERNELL: Second.

Waltham Zoning Board of Appeals/1-8-19/109

1 CHAIRMAN JOHN SERGI: Second.

2 All in favor?

3 ALL BOARD MEMBERS: Aye.

4 CHAIRMAN JOHN SERGI: We are adjourned

5 at 8:40.

6 (Whereupon, the hearing was adjourned

7 at 8:22 p.m.)

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

Barbara Rando
3/5/2019

Waltham Zoning Board of Appeals/1-8-19/110

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

Judith Luciano