

JAN 19 2017

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

January 24, 2017

7:00 P.M.

at

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

Barbara Rando, Chair
Mark Hickernell, Clerk
Glenna Gelineau
Sarah Hankins
John Sergi

Arlington Reporting Corporation
(339) 674-9100

Waltham Zoning Board of Appeals/1-24-17/2

I N D E X

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A T T A C H M E N T S

Legal Notices: Case No. 2016-46
Case No. 2016-47

Case No.: 2016-46:
Memorandum
Proposed findings of fact, as amended
Proposed decision, as amended
Letter in opposition

Case No: 2016-47:
Request to withdraw without prejudice

Arlington Reporting Corporation
(339) 674-9100

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P R O C E E D I N G S

BARBARA RANDO, CHAIR: Good evening.
The Zoning Board of Appeals for Tuesday, January 24,
2017 is called to order at 7:00 p.m.

Tonight we have two new cases: Case
2016-46, Peter -- I had it written down -- Peter -- I
want to pronounce it the correct way -- Tzannos --

PETER TZANNOS: Tzannos.

BARBARA RANDO, CHAIR: -- 642 Moody
Street, and that's for variances; Case 2016-47, R&A
Realty Trust, Ralph Amelia, 86 Maple Street, also
known as 469-489 Moody Street, and that's also for
variances.

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

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1 ACCEPTANCE OF MINUTES OF JANUARY 10, 2017 MEETING

2
3 BARBARA RANDO, CHAIR: The first
4 action this evening is a motion to accept the minutes
5 of January 10, 2017.

6 JOHN SERGI: So moved, Madam Chair.

7 BARBARA RANDO, CHAIR: Motion by Mr.
8 Sergi.

9 Do I have a second?

10 GLENN GELINEAU: Second.

11 BARBARA RANDO, CHAIR: Second by Ms.
12 Gelineau.

13 All in favor?

14 ALL BOARD MEMBERS: Aye.

15 BARBARA RANDO, CHAIR: Opposed?

16 (No Board Members opposed.)

17 BARBARA RANDO, CHAIR: The ayes have
18 it and the minutes are approved.

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1 **Case Number 2016-47: R&A Realty Trust, Ralph Amelia**
2 **as Trustee; 86 Maple Street, aka 469-489 Moody**
3 **Street.**

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5 BARBARA RANDO, CHAIR: Would the Clerk
6 please read the petition in Case 2016-47, Amelia?

7 GLENN GELINEAU: Before we start the
8 meeting, Madam Chair, I just want to disclose that
9 the Petitioner tonight, Peter Tzannos, did work for
10 me several years ago. I don't feel that it's any
11 conflict or there are any problems with my sitting on
12 the case, but I did want to disclose that and say
13 that since he has left my employ I haven't spoken
14 with him or had any transactions or dealings with him
15 of any kind.

16 BARBARA RANDO, CHAIR: All right.

17 GLENN GELINEAU: I just wanted to say
18 that.

19 BARBARA RANDO, CHAIR: Thank you.

20 MARK HICKERNELL: (The Clerk reads the
21 above-mentioned petition into the record. See
22 Attached.)

23 BARBARA RANDO, CHAIR: Thank you.

24 May we hear from the Petitioner or the

Waltham Zoning Board of Appeals/1-24-17/6

1 Petitioner's representative please?

2 ATTORNEY RANEN SCHECHNER: Good
3 evening. I am Ranen Schechner, attorney. I
4 represent R&A Realty Trust and Ralph Amelia as
5 trustee.

6 I sent a letter last week informing
7 the Board of our intention to request, respectfully,
8 leave to withdraw this petition without prejudice.
9 In preparing, after we filed, in preparing, I have
10 come to -- I realized that we need to resubmit to the
11 Building Department and readvertise as we
12 inadvertently left out a portion of the zoning
13 ordinance, which we need to move under for a special
14 permit.

15 So, I apologize for the inconvenience,
16 but we left out the special permit with respect to
17 changing the zoning from commercial to residential,
18 which was inadvertent, but we caught it.

19 BARBARA RANDO, CHAIR: Any questions
20 from Board Members?

21 JOHN SERGI: No.

22 BARBARA RANDO, CHAIR: Hearing none.

23 SARAH HANKINS: I just have a
24 question. Are you talking about a special permit in

Waltham Zoning Board of Appeals/1-24-17/7

1 front of the City Council, changing the zoning?

2 ATTORNEY RANEN SCHECHNER: No, a
3 special permit -- we should be able to change the use
4 to residential, which is really the purpose of it,
5 but we inadvertently left that out. We need to go
6 back to square one.

7 SARAH HANKINS: Okay. All right.
8 Thank you.

9 BARBARA RANDO, CHAIR: Any other
10 questions?

11 All right. Do I have a motion to
12 allow them to withdraw without prejudice?

13 JOHN SERGI: So moved, Madam Chair.

14 BARBARA RANDO, CHAIR: Motion by Mr.
15 Sergi.

16 Do I have a second?

17 GLENNA GELINEAU: Second.

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

20 How do you vote, Mr. Sergi?

21 JOHN SERGI: Yes.

22 BARBARA RANDO, CHAIR: Mr. Hickernell?

23 MARK HICKERNELL: Yes.

24 BARBARA RANDO, CHAIR: Ms. Gelineau?

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1 GLENNA GELINEAU: Yes.

2 BARBARA RANDO, CHAIR: Ms. Hankins?

3 SARAH HANKINS: Yes.

4 BARBARA RANDO, CHAIR: And the Chair
5 votes yes. So, you are withdrawn without prejudice.

6 ATTORNEY RANEN SCHECHNER: Thank you
7 very much. Good evening.

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Waltham Zoning Board of Appeals/1-24-17/9

1 **Case Number 2016-46: Peter Tzannos; 642 Moody**
2 **Street.**

3 BARBARA RANDO, CHAIR: Will the Clerk
4 please read the petition in Case 2016-46, Peter
5 Tzannos?

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

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

12 ATTORNEY BRET FRANCIS: Absolutely.
13 Good evening, Madam Chair, members of the Board. My
14 name is Bret Francis of Scafidi Juliano, 10 Hammer
15 Street, Waltham.

16 I'm here tonight on behalf of the
17 Petitioner Peter Tzannos, who is also here on behalf
18 of the owner, Joy Alamgir, who happens to be the
19 owner of a mixed-use structure located at 642 Moody
20 Street, Waltham.

21 The locus consists of 3,583 square
22 feet. It is situated entirely within the Business A
23 Zoning District. There is currently two residential
24 units, one with two bedrooms and one with one

1 bedroom, on the second floor. The Petitioner
2 essentially is seeking to keep one residential unit
3 on the second floor and move one residential unit to
4 the third floor attic space. The Petitioner proposes
5 no increase in the number of units nor the number of
6 bedrooms.

7 The Petitioner intends to convert,
8 use, and maintain 900-plus/minus square feet of
9 livable space in the form of a raised roof. The roof
10 in this situation, one of the hardships is it's
11 actually significantly shorter than all the abutting
12 properties, and I have those listed on page three.
13 So, he'll have to raise the roof, and install a
14 dormer, stairwell for ingress/egress on the existing
15 third floor. Again, this is not creating a third
16 floor. It is a third floor attic that is
17 insufficiently at height for this project. Again,
18 he's just seeking to put one unit. Right now there's
19 two residential units on the second floor,
20 approximately 450 square feet. And what he'd like to
21 do is put one on the third, and, again, keeping those
22 same bedrooms. The unit on the left happens to have
23 two. The unit on the right has one. The second
24 store -- the second floor unit will continue to have

1 the two bedrooms. The unit on the third floor will
2 only have one bedroom. No increase in bedrooms; no
3 increase in units.

4 Structures in the Business A District
5 are required to have a minimum of a 10-foot side yard
6 and 20-foot rear yard setback. The existing
7 structure currently has a 3.6 side yard setback and a
8 rear yard setback of 5.8 feet.

9 Although the Petitioner will not build
10 outside the footprint of the structure, nor increase
11 any of the nonconformings, construction of the
12 project requires variances for the pre-existing
13 nonconforming side yard and rear yard setbacks.

14 The court of the jurisdiction, Mass.
15 General Laws, Chapter 40A, Sections 9, 10, and 14,
16 provide that this Board has the power to grant
17 variances if they are not a use variance prohibited
18 by the zoning ordinance.

19 Article VII, Section 7.2 of the
20 ordinance authorizes this Board of Appeals to utilize
21 all the powers granted to it by the General Laws and
22 the Ordinances. Therefore, in that this Board has
23 both the authority to grant the variances, the
24 Petitioner respectfully requests that his petition be

1 granted.

2 We're seeking two variances here. The
3 variances sought are dimensional and contained in
4 Article IV, Section 4.11, specifically side yard
5 setback. In accordance with Article IV, Section
6 4.11, the side yard setback shall be 10 feet.
7 Presently, the side yard setback on the north side of
8 the locus is 3.6 feet. The Petitioner proposes no
9 change in the side yard setback.

10 And, two, rear yard setback: In
11 accordance with, again, Article IV, Section 4.11, the
12 minimum rear yard setback shall be 20 feet.
13 Presently, the side yard setback is 5.8 feet. The
14 Petitioner proposes no change to the rear yard
15 setback.

16 In this situation, what's unique, to
17 get the granting of the variance, obviously, there
18 has to be a showing that owing to circumstances
19 related to soil conditions, shape, topography of the
20 land or structures, and especially affecting such,
21 that a literal enforcement of the provisions of the
22 ordinance or bylaw would involve substantial
23 hardship, financial or otherwise, and that the
24 desired relief may be granted without substantial

1 detriment to the public good and without nullifying
2 or substantially derogating from the intent or
3 purpose of the ordinance or bylaw. In this instance,
4 it is the structure that is unique. As previously
5 stated, it's quite short for a third floor.

6 As an initial matter, the structure
7 was built circa 1900, according to the property
8 record card at the Building Department. A true and
9 accurate copy of the card is attached. And I don't -
10 - I attached it in my original filing and not with
11 tonight's package. So, I apologize for that. But
12 with my filing with the Law Department, those
13 exhibits should have been filed, Exhibit 1.

14 The structure is unique in comparison
15 with the abutting neighborhood structures in that a
16 third floor was constructed, but was made impractical
17 due to the roof height of the third floor of the
18 structure. According to Rober Survey -- they
19 actually did the plan for the Petitioner here tonight
20 -- according to him, the surrounding structures have
21 the following sea level heights: the locus is at
22 129.3 feet; 112-114 Brown Street is at 136.5; 118
23 Brown is at 135.3; 117-119 Brown Street is 135.82;
24 662-664 Moody Street is 136.1; 643 Moody Street has a

1 spire that raises it actually to 145.83. Not
2 including that building with the spire, on average,
3 the locus is 6.6 feet shorter than the surrounding
4 structures. And when that spire structure is
5 included, it jumps to 8 feet, 8.61 feet shorter. The
6 shortened height, when combined with the lot size,
7 present conditions that affect this structure and
8 locus, but not the surrounding lots exist. And I'll
9 get to another situation where the size of the lot
10 prevents, you know, being able to do other things
11 with the property other than seeking variances.

12 In addition to being significantly
13 shorter than the abutting structures, the property is
14 dilapidated and was being used illegally. After
15 World War II, the then-owner obtained a building
16 permit to split the second floor and renovate it into
17 two apartments, with each unit containing
18 approximately 450 square feet. A true and accurate
19 copy of the building card is annexed hereto as
20 Exhibit 2. Obviously, again, that was filed with the
21 Law Department.

22 Thereafter, a third residential unit
23 was created in the rear of the first floor commercial
24 space, which Petitioner intends to dispense with and

1 create two appropriately sized residential units, one
2 on the second floor with two bedrooms, one on the
3 third floor with one bedroom. The unique height of
4 the structure, including the division of the two
5 residential units on the second floor, and the
6 economic loss of the third floor, present distinctive
7 features that are generally not found in the
8 neighborhood or the district in which the property is
9 located.

10 Finally, the Petitioner cannot avail
11 himself of the voluntary teardown. One suggestion
12 was to just tear it down, keep it in the footprint to
13 bring it up to your third floor heights as of right.
14 But, to do that, you also have to comply with the
15 other requirements of the chapter, mainly being the
16 parking, which we could never, you know, it's a
17 3,500-plus-or-minus square lot. You can't put the
18 parking on it.

19 And, again, just to be remindful,
20 we're not increasing the number of units. We're not
21 increasing the number of bedrooms. Whether it's --
22 you know, the situation will remain the same once
23 tenants go into the place.

24 The second statutory provision is that

1 a literal enforcement of the provision of the
2 ordinance or bylaw would involve substantial
3 hardship, financial or otherwise, to the Petitioner.
4 Well, just to restate what I just said, you know, he
5 can't voluntarily use the -- he can't avail himself
6 to the voluntary demolition of the property. He
7 wouldn't be able to comply. He would end up putting
8 a house that I can't imagine more than 30 square
9 feet.

10 In addition to the circumstances that
11 especially affect this locus, a literal enforcement
12 of the provisions of the ordinance in regards to the
13 pre-existing nonconforming setbacks of the structure
14 would create a substantial hardship for the
15 Petitioner. Without the variances, the Petitioner
16 cannot raise the roof of the structure and create two
17 economically feasible units, i.e., retail/commercial
18 on the first floor and a residential unit on each the
19 second and the third floor as well as overall
20 rehabilitate the property.

21 To reiterate, the Petitioner is not
22 seeking to increase the number of units, but rather
23 to make the residential units practically feasible
24 for the residential tenants. Therefore, a literal

1 enforcement of the ordinance would involve a
2 substantial hardship to the Petitioner, both
3 financial and otherwise.

4 When a dimensional variance is
5 involved, even a relatively minor hardship can
6 justify a variance. See *Marashlian v. Zoning Board*
7 *of Appeals*. "Statutory hardship is present when a
8 landowner cannot reasonably make use of his property
9 for the purposes or in a manner allowed by this
10 ordinance."

11 That is the nature of the case here.
12 The ordinance allows for structures to be used as a
13 mixed-use with two residential units thereon.
14 However, due to the significantly shorter height of
15 the structure as well as its dilapidated state,
16 conditions affecting this structure, but not
17 affecting generally the zoning district in which it
18 is located, Petitioner satisfies this requirement.

19 Lastly, the final statutory
20 requirement of General Law Chapter 40A, Section 10,
21 requires that the desirable relief be granted without
22 substantial detriment to the public good and without
23 nullifying or substantially derogating from the
24 intent or purposes of the ordinance or bylaw. That

1 criteria does not require zero derogation from the
2 intent or purpose of the ordinance as some derogation
3 from the ordinance's purpose is anticipated with
4 every case.

5 The Court further stated that unless
6 the granting of the variance significantly detracts
7 from the zoning plan for the district, the local
8 discretionary grant of the variance must be upheld.
9 Here, the desired relief does not nullify or
10 substantially derogate from the intent or purpose of
11 the bylaw as Petitioner is seeking the addition of a
12 dormer and stairwell for the existing third floor
13 that will not increase the nonconformity of the
14 structure and, as a matter of law, could not
15 reasonably be found to increase the nonconforming
16 nature of the structure.

17 Again, the Petitioner is not seeking
18 any increase in the number of units nor the number of
19 bedrooms.

20 Conclusion: In sum, the Petitioner
21 proposes to raise the roof and construct a dormer and
22 stairwell on the third floor of the existing
23 structure. The addition shall consist of
24 approximately 900 square feet of the third floor.

1 The Petitioner, Peter Tzannos, thanks
2 you for your attention to this matter, welcomes your
3 suggestions, and looks forward to completing this
4 project in a manner amicable to the City of Waltham.

5 Thank you.

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

8 JOHN SERGI: Tell me, again, is this a
9 two-family, a three-family?

10 ATTORNEY BRET FRANCIS: It's a two
11 residential unit with a commercial unit on the first
12 floor.

13 JOHN SERGI: On the first floor, with
14 no parking. Okay.

15 ATTORNEY BRET FRANCIS: Pre-existing
16 legal nonconforming.

17 JOHN SERGI: Okay.

18 ATTORNEY BRET FRANCIS: That use can
19 continue on.

20 JOHN SERGI: I went by the property,
21 took a site visit. I noticed there was a sign in the
22 front, "Condos Coming." Is that for this project?

23 ATTORNEY BRET FRANCIS: Correct.

24 JOHN SERGI: So your intent is to

1 convert this into three condos, commercial and two
2 residential?

3 PETER TZANNOS: Not anymore. That was
4 the initial intent when the project started.

5 STENOGRAPHER: Could you identify
6 yourself for the record?

7 PETER TZANNOS: Peter Tzannos.

8 Initially, going back a year now when
9 we started to take this project on, there were
10 supposed to be three condos. We were going to resell
11 them. At this point, he's keeping them for a long-
12 term investment. He does have a lot of holdings and
13 he's going to keep this long-term as a rental
14 property. So they're not going to be sold.

15 JOHN SERGI: Okay. So you can take
16 down the sign then?

17 PETER TZANNOS: What's that?

18 JOHN SERGI: The sign can come down?

19 PETER TZANNOS: I'll take it down once
20 we know exactly -- like we're really stuck. We're
21 not sure -- like if he can't finish the project to
22 make it a rental property the way he needs to with
23 that third floor, he wants me to put it on the market
24 and just sell it as is.

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1 JOHN SERGI: Okay.
2 PETER TZANNOS: Thank you.
3 JOHN SERGI: Thank you.
4 BARBARA RANDO, CHAIR: Mr. Hickernell?
5 MARK HICKERNELL: No questions.
6 BARBARA RANDO, CHAIR: Ms. Gelineau?
7 GLENNA GELINEAU: What's on the -- you
8 said it's a store, commercial. What's in it? What
9 store?
10 PETER TZANNOS: It's vacant.
11 ATTORNEY BRET FRANCIS: It's vacant.
12 GLENNA GELINEAU: Oh, it's vacant.
13 Okay.
14 PETER TZANNOS: Yeah.
15 ATTORNEY BRET FRANCIS: I don't know
16 what was in it prior to that.
17 PETER TZANNOS: The previous owner ran
18 his CPA business out of that first floor.
19 ATTORNEY BRET FRANCIS: So more office
20 than retail.
21 PETER TZANNOS: Yeah, it was
22 definitely office. Yeah.
23 MARK HICKERNELL: Before that it was
24 curtains and things like that, right?

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1 ATTORNEY BRET FRANCIS: I'm sorry?

2 MARK HICKERNELL: Before that it was
3 curtains and window treatments I think.

4 PETER TZANNOS: Wow that must have
5 been -- that was a long time ago, yeah. I don't
6 remember how long ago that was.

7 MARK HICKERNELL: I guess I've lived
8 here a long time.

9 PETER TZANNOS: Well, I'm pretty sure
10 this guy had his accounting firm there for he said
11 about 17 years. So, it would have been before that I
12 guess.

13 BARBARA RANDO, CHAIR: Anything else,
14 Ms. Gelineau?

15 GLENNA GELINEAU: No.

16 BARBARA RANDO, CHAIR: Ms. Hankins?

17 SARAH HANKINS: So, the two existing
18 units right now that are residential are being used
19 as residential?

20 ATTORNEY BRET FRANCIS: They're also
21 vacant.

22 SARAH HANKINS: Oh, they're vacant?

23 PETER TZANNOS: The whole place is
24 vacant.

Waltham Zoning Board of Appeals/1-24-17/23

1 SARAH HANKINS: Oh, the whole place?
2 Okay.

3 PETER TZANNOS: It was -- it was --

4 SARAH HANKINS: But it was being used?

5 PETER TZANNOS: Correct. Yeah.

6 ATTORNEY BRET FRANCIS: It's three
7 units, actually.

8 SARAH HANKINS: Okay.

9 ATTORNEY BRET FRANCIS: Two on the
10 second floor.

11 SARAH HANKINS: Yeah.

12 ATTORNEY BRET FRANCIS: And we would
13 create on the third.

14 SARAH HANKINS: So, I guess just with
15 respect to the residential units, so is it a two-
16 bedroom, 450-square foot; one bedroom, 450-square
17 foot. So you're doubling the square footage but
18 keeping the same amount of bedrooms?

19 PETER TZANNOS: Correct, because it
20 was very cramped. I mean it was tiny. So, when you
21 walked up the stairs to the second floor, you had two
22 tiny bedrooms on the left side, and the one-bedroom
23 unit on the right. Both were -- I mean I can't even
24 believe anybody lived there to begin with, but it's

1 just too small. You can't have three bedrooms in
2 such a small place. So, we're just going to -- our
3 plan is to make that third floor, which is -- it was
4 built with the stairs going up. As he explained,
5 we're just doing the roof. But we're going to put
6 one small bedroom unit up on the third floor and
7 continue to have the two bedrooms on the second
8 floor.

9 SARAH HANKINS: So, not increasing the
10 number of bedrooms, not increasing the number of
11 bathrooms or anything?

12 PETER TZANNOS: No, it's going to be
13 one bathroom just like it was for each unit.

14 ATTORNEY BRET FRANCIS: We'd be happy
15 to condition it if that would make the Board more
16 comfortable.

17 SARAH HANKINS: Well, I mean I guess
18 just the only thing I'm getting at is, the only
19 concern I have on this is the parking issue. I mean
20 that's really --

21 ATTORNEY BRET FRANCIS: It doesn't
22 change it.

23 SARAH HANKINS: I know. That's just
24 what I'm trying to get at is to make sure that we're

1 not creating a situation where we're making the
2 parking situation worse there. That's all.

3 PETER TZANNOS: As I mentioned earlier
4 to the attorney, when -- I'm sorry. If it needs to
5 be a condition, that's fine, because that's our
6 intent and we're not going to vary from that. So,
7 we're not changing the amount of people that can
8 possibly live there.

9 ATTORNEY BRET FRANCIS: It's going to
10 be a little bit larger, a little bit nicer.

11 GLENN GELINEAU: Didn't you say there
12 was a residential unit in the back of the first
13 floor, too?

14 PETER TZANNOS: So when we --

15 ATTORNEY BRET FRANCIS: Illegal.

16 PETER TZANNOS: It was an illegal
17 unit. So, he had four mailboxes out there. He had
18 one --

19 GLENN GELINEAU: So what are you
20 going to do with the first floor?

21 PETER TZANNOS: It's just going to
22 stay just office space. We're not changing the use
23 there.

24 SARAH HANKINS: So, ideally, you're

1 going to have one commercial on the first floor; on
2 the second floor, a two-bedroom; and the third floor
3 one bedroom?

4 PETER TZANNOS: Exactly.

5 ATTORNEY BRET FRANCIS: Correct.

6 SARAH HANKINS: Okay. As long as
7 that's, you know, clearly in it so we're not
8 increasing the bedrooms, that's --

9 ATTORNEY BRET FRANCIS: During, you
10 know, we were just discussing with the Building
11 Department these type of cases where you're not going
12 outside the footprint, you're going up. You know,
13 there's got to be some -- different towns deal with
14 these types of projects different ways. And, it's
15 unfortunate that the 10 percent is just 10 percent.
16 It doesn't make coming in for the special permit
17 applicable because 230 square feet doesn't do
18 anything. You know, it's not worth it, especially to
19 raise the roof for 237 square feet.

20 BARBARA RANDO, CHAIR: What is the
21 height of the building now?

22 PETER TZANNOS: Thirty-two --

23 ATTORNEY BRET FRANCIS: The height of
24 the building is 32.5. The height requirement is 36

1 feet. And we'll be going up --

2 BARBARA RANDO, CHAIR: In a Business
3 A, right.

4 ATTORNEY BRET FRANCIS: And it will be
5 going up to 35.5 -- 35.5.

6 BARBARA RANDO, CHAIR: So, by going up
7 to 35, are you not changing the nonconformity of the
8 building?

9 ATTORNEY BRET FRANCIS: Well, you're
10 making the building larger, but we're not changing
11 any of the -- the nonconforming -- because, no, we're
12 not going above what's allowed as of right. By right
13 you get to go up to the --

14 BARBARA RANDO, CHAIR: To the 36.

15 ATTORNEY BRET FRANCIS: -- 36, third
16 floor.

17 BARBARA RANDO, CHAIR: In a Business
18 A.

19 All right. I, also, I have a problem
20 with your hardship.

21 ATTORNEY BRET FRANCIS: Well, it's,
22 you know, again, a lot of these cases are coming up
23 where they're on square lots. And, you know, I know
24 a couple of these were -- Park Place was another

1 square lot. They had to use the structure as the
2 hardship in that one. It got through. And I think
3 that is applicable here. It's not historic,
4 unfortunately. I mean it's been -- there was a
5 permit allowed in the '60s or '70s, after World War
6 II, when he changed it to two units, preventing that
7 historical aspect. But, other than that, I mean,
8 again, I think the Building Department is looking for
9 other ways to do this other than seek variances
10 because we're not asking for --

11 BARBARA RANDO, CHAIR: Why would the
12 Building Department try to help you find another way?

13 ATTORNEY BRET FRANCIS: They did.
14 Otherwise, we would have already -- under the
15 previous case, *Morelli*, where we tried to come in
16 under the land and had many discussions with the
17 Building Department. They agree that it's weird, but
18 this is the only -- because we're not seeking a
19 variance. We're only confirming what there already
20 is. And we're not going to increase those
21 nonconformities. You know, the side yard setback
22 won't grow. So, there's got to be some other rule
23 that allows the Building Department to be able to
24 decide these small matters where case law says they

1 can't be found to increase a nonconforming. A
2 dormer, in and of itself, is not significant enough
3 to, you know, to trigger that derogation from the
4 intent of the bylaws. It's just not.

5 So, I think, you know, as you all are
6 aware, they're in the process of redoing these zoning
7 provisions and rewriting some of them. And I hope
8 that that is -- that this exact topic is something
9 that's brought up because, you know, these are coming
10 up quite a bit and they're being prevented because,
11 you know, they have a house built in 1900; we can't
12 voluntarily take it down because then we'd have to
13 put in parking. And on a 3,500-square-foot lot,
14 where really are you going to put four parking
15 spaces?

16 BARBARA RANDO, CHAIR: I'm sure there
17 were renters in that -- in that building? Maybe not
18 right now, but there were renters.

19 PETER TZANNOS: At some point.

20 BARBARA RANDO, CHAIR: There was a
21 commercial downstairs, as Mr. Hickernell said. So,
22 your argument --

23 ATTORNEY BRET FRANCIS: But, again, I
24 think --

1 BARBARA RANDO, CHAIR: So your
2 argument, sir --

3 ATTORNEY BRET FRANCIS: I think it was
4 designed over a time after World War II where you had
5 an abundance of single men and you needed single
6 residences. Four-hundred and fifty square feet today
7 is just not -- and in that section of Moody Street,
8 it's not practical. It's just not.

9 BARBARA RANDO, CHAIR: First of all, I
10 don't see any difference in the soil conditions and
11 the shape or topography.

12 ATTORNEY BRET FRANCIS: Well, that's
13 why we're relating it to the structure.

14 BARBARA RANDO, CHAIR: I don't see
15 anything different about that. You seem to make it
16 perfect because you say he's coming in and he's going
17 to do it over and whatever. You, on page five, even
18 said that the statutory hardship is usually present
19 when the landowner cannot reasonably make use of the
20 property for the purpose or the manner allowed by
21 zoning. I mean you almost argued your own case.

22 ATTORNEY BRET FRANCIS: But, I would -
23 - I disagree. He can't effectively use this place as
24 --

1 BARBARA RANDO, CHAIR: Of course he
2 can.

3 ATTORNEY BRET FRANCIS: That's why
4 he's going to go ahead and sell it. For what the
5 purchase price and the price -- it's not worth it.

6 BARBARA RANDO, CHAIR: Well, maybe
7 because he can't get the perfect layout and have the
8 third floor apartment.

9 ATTORNEY BRET FRANCIS: It's a
10 hardship. The way it was built, the roof, actually
11 as it comes down, doesn't come down like every other
12 house in the neighborhood where it comes down like
13 this. It's more level. So, he doesn't have the
14 seven feet, which is why he has to raise the roof.
15 It's significantly different from every other
16 property around him.

17 JOHN SERGI: May I see it?

18 ATTORNEY BRET FRANCIS: Yes, please.

19 PETER TZANNOS: There is no one
20 apartment in all of Waltham that's under 450 square
21 feet that's a two bedroom. The way --

22 BARBARA RANDO, CHAIR: Well, you'll
23 have to have one.

24 PETER TZANNOS: The way this place was

1 run before, I don't know what the right word to say,
2 but it was, according to a local police officer that
3 came and spoke to me at the property, made it very
4 clear that he himself had visited this property in
5 the last couple of years several times for a lot of
6 drug use and other things that were going in there --
7 going on in there. The place was totally
8 dilapidated. The type of tenants that were in there
9 were not desirable tenants. You know, I'm not sure
10 what else I can say to --

11 BARBARA RANDO, CHAIR: I think as a
12 landlord you have to be much more careful as to who
13 you rent to.

14 PETER TZANNOS: Well, they weren't my
15 tenants. I mean --

16 BARBARA RANDO, CHAIR: Well, whoever.
17 But there were tenants in there.

18 PETER TZANNOS: Correct, before --

19 BARBARA RANDO, CHAIR: So he was
20 making use of the property.

21 ATTORNEY BRET FRANCIS: Somewhat
22 illegal, because you can't economically make it work
23 with two units. He was -- I don't know if forced is
24 the right word. I don't know what his motivation

1 was. But the fact of the matter is he rented it to
2 three residential units, my guess is to make up that
3 economic difference that we're not even seeking here.
4 We're not seeking any more units. We're not seeking
5 any more bedrooms. We're just reconfiguring it so
6 that the apartment goes up on the third floor, which
7 is what you would normally find in that area. I mean
8 you don't have these wasted attic spaces with two
9 small units that were created for World War II and
10 post-World War II.

11 Now, the units he's making, a young
12 family, two young families, can both move in and live
13 there, have an interest in the property. And I think
14 that's better for the neighborhood.

15 BARBARA RANDO, CHAIR: Just because
16 you can make more money does not make it right.

17 ATTORNEY BRET FRANCIS: No, not that
18 at all. But, again, where the hardship exists, if the
19 house was built when it was originally built the same
20 as every other house in the area, we wouldn't be here
21 tonight. And, again, if you could tear down the
22 property and rebuild it by right, he would do that as
23 well. But he can't. It's just there's too much of a
24 hardship with the lot.

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1 BARBARA RANDO, CHAIR: I'm sorry. I
2 do not see a hardship.

3 ATTORNEY BRET FRANCIS: I understand.

4 BARBARA RANDO, CHAIR: I do not.

5 Any other questions.

6 MARK HICKERNELL: Not a question, but
7 I misspoke earlier. I think the window treatments is
8 across the street.

9 GLENNA GELINEAU: You're right.

10 BARBARA RANDO, CHAIR: Is there anyone
11 in the audience that is in favor of this?

12 Is there anyone in opposition?

13 Is there anyone seeking information?

14 Seeing none, we have one letter that
15 may be read into the record.

16 (The Clerk reads the letter into the
17 record. See attached.)

18 BARBARA RANDO, CHAIR: Thank you.

19 ATTORNEY BRET FRANCIS: If I could
20 respond to that I'd be happy to.

21 First, I would point out there's a --
22 I mean I got this letter today. It's obviously filed
23 today. And I had it emailed to me at approximately
24 4:00. So, I did try to reach out to the Board Member

1 through a third party. He didn't want to talk about
2 it. So, I think the fact that, one, he's not here,
3 you know, shows that the veracity of his arguments
4 aren't as strong if he couldn't bother to be here
5 tonight.

6 And then, number two, what we're doing
7 doesn't affect the parking. If he was to keep it,
8 which I guess he's indicated he'll sell the property
9 otherwise, whoever goes in there still has the right
10 to put in the two-bedroom unit and the one-bedroom
11 unit. It's the same amount of parking whether or
12 not. So, you know, to get a beautification of the
13 property, which I think is in the interest of the
14 entire street, Moody Street in that area, I think,
15 you know, this is an argument that can be -- not be
16 disregarded, but, again, there is no increase in the
17 parking and he isn't here tonight to discuss, and I
18 did try to reach out to him and have a chat.

19 BARBARA RANDO, CHAIR: All right.
20 Thank you.

21 Another thing, on page five, you said,
22 "...in regards to pre-existing nonconforming setbacks
23 of the structure, would create a substantial
24 financial hardship." So, you're saying that any

1 nonconforming structure, if the setback isn't right,
2 that should be a substantial financial hardship?

3 ATTORNEY BRET FRANCIS: In and of
4 itself, no. But in this situation, where you're
5 trying to go up and a side yard that you're not
6 changing, not touching, not doing anything with,
7 which prevents you from putting on a dormer, I would
8 have to say it creates a hardship. It really does.
9 These are items that should be done as of right.
10 And, you know, the variance --

11 BARBARA RANDO, CHAIR: It creates a
12 financial hardship.

13 ATTORNEY BRET FRANCIS: Which are
14 allowed.

15 BARBARA RANDO, CHAIR: And that's
16 really not something that we can consider.

17 ATTORNEY BRET FRANCIS: It is,
18 actually. And there are plenty of case law where
19 economic hardship has sufficed as the --

20 BARBARA RANDO, CHAIR: Not in a case
21 like this. Maybe if he was adding an addition and
22 there was ledge on one side and he wanted to go to
23 the other but he had room on that side.

24 ATTORNEY BRET FRANCIS: That's a

Waltham Zoning Board of Appeals/1-24-17/37

1 definite case.

2 BARBARA RANDO, CHAIR: Well, that
3 would be a hardship.

4 ATTORNEY BRET FRANCIS: That's a much
5 clearer case.

6 BARBARA RANDO, CHAIR: All right. You
7 may continue with your proposed finding of fact.

8 MARK HICKERNELL: I move that we waive
9 the reading of the findings of fact as they -- of the
10 proposed findings of fact as they have been on file
11 in the Law Department.

12 BARBARA RANDO, CHAIR: I have a motion
13 to waive the reading of the proposed findings of
14 facts. Do I have a second?

15 JOHN SERGI: Second.

16 BARBARA RANDO, CHAIR: All in favor?

17 ALL BOARD MEMBERS: Aye.

18 BARBARA RANDO, CHAIR: Opposed?

19 (No Board Members opposed.)

20 BARBARA RANDO, CHAIR: The ayes have
21 it.

22 MARK HICKERNELL: I also move that we
23 waive the reading of the proposed decision for the
24 same reason.

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1 BARBARA RANDO, CHAIR:

2 JOHN SERGI: Second.

3 BARBARA RANDO, CHAIR: Motion by Mr.
4 Hickernell, second by Mr. Sergi.

5 All in favor?

6 ALL BOARD MEMBERS: Aye.

7 BARBARA RANDO, CHAIR: Opposed?

8 (No Board Members opposed.)

9 BARBARA RANDO, CHAIR: The ayes have
10 it.

11 All right. Any other questions from
12 Board Members?

13 SARAH HANKINS: I would just move that
14 we amend the -- I guess it would be the proposed
15 decision to make mention of maintaining the two-
16 bedroom unit and the one-bedroom unit.

17 BARBARA RANDO, CHAIR: That he doesn't
18 increase the bedrooms? Is that what you're saying?

19 SARAH HANKINS: Yes, or the units.

20 BARBARA RANDO, CHAIR: Increase units.

21 JOHN SERGI: Madam Chair, I'd just
22 like to add one more thing, too, regarding the
23 condominium issue, that they will remain rental
24 units.

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1 PETER TZANNOS: Absolutely.

2 BARBARA RANDO, CHAIR: Not condo
3 units, rental units.

4 MARK HICKERNELL: Indefinitely?

5 JOHN SERGI: Yeah, well, I guess they
6 can't have condo anyways because they don't comply
7 with parking requirements for condominiums, correct?

8 ATTORNEY BRET FRANCIS: I haven't
9 looked into the issue.

10 JOHN SERGI: Yeah. Yes, fine. And as
11 far as you say beautification, what do you mean by
12 beautification of the property? What are you
13 specifically going to do to this property?

14 ATTORNEY BRET FRANCIS: Well, he's
15 already done a lot of landscape, a lot of --

16 PETER TZANNOS: Let me -- oh, I'm
17 sorry.

18 ATTORNEY BRET FRANCIS: Yeah. No,
19 please, actually you know more than I know.

20 PETER TZANNOS: The first thing that
21 we did, which we had to do, there was rats there.
22 So, it cost us a lot of money, three different times,
23 getting people out there to take care of the rat
24 problem. That's number one.

1 The inside, you couldn't even stand
2 inside. The smell of what we believe was cat urine
3 and feces everywhere. It was just deplorable. You
4 could not stand in there. So, the whole inside, new
5 floors, new kitchens, new baths, everything.
6 Everything is going to be brand new, nice and clean.

7 JOHN SERGI: You haven't done that
8 yet, but you plan to do it?

9 PETER TZANNOS: No, we're -- no,
10 because we're stuck because we were waiting to figure
11 out what exactly we were going to be able to do.

12 JOHN SERGI: Okay. As far as
13 exterior?

14 PETER TZANNOS: Exterior I mean is in
15 fair condition, you know, other than the roof work.
16 The vinyl siding is in actually pretty good shape.
17 There will be some landscaping done to beautify it a
18 little bit. It's kind of plain right now, and some
19 foundation cracks that we're going to have to fix.

20 JOHN SERGI: Okay. But siding at all?

21 PETER TZANNOS: The siding, unless,
22 you know, the roof goes up, we're going to have to do
23 some siding, correct. But the existing siding, in
24 general, looks like it's in pretty good shape.

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1 JOHN SERGI: It does? Okay.

2 PETER TZANNOS: Well, I mean much
3 better than anything else in that neighborhood. It's
4 definitely -- I don't think anybody would tear it
5 down.

6 JOHN SERGI: Is it vinyl or is it wood
7 clapboard?

8 PETER TZANNOS: It's vinyl.

9 JOHN SERGI: It's vinyl. Right.
10 Yeah.

11 PETER TZANNOS: And, actually, the
12 vinyl, he had that put on I think about eight years
13 ago. So --

14 JOHN SERGI: Thank you.

15 PETER TZANNOS: Thank you.

16 BARBARA RANDO, CHAIR: Any other
17 questions?

18 Hearing none, I'm ready for a motion
19 on the proposed finding of facts.

20 JOHN SERGI: I make a motion that the
21 proposed finding of facts be adopted by the Board.

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

24 SARAH HANKINS: Second.

Waltham Zoning Board of Appeals/1-24-17/42

1 BARBARA RANDO, CHAIR: Second by Ms.
2 Hankins.

3 How do you vote on the proposed
4 findings of facts, Mr. Sergi?

5 JOHN SERGI: Yes.

6 BARBARA RANDO, CHAIR: Mr. Hickernell?

7 MARK HICKERNELL: Yes.

8 BARBARA RANDO, CHAIR: Ms. Gelineau?

9 GLENNA GELINEAU: Yes.

10 BARBARA RANDO, CHAIR: Ms. Hankins?

11 SARAH HANKINS: Yes.

12 BARBARA RANDO, CHAIR: And the Chair
13 votes no.

14 I'm ready for a motion on the decision
15 as amended.

16 JOHN SERGI: I make a motion that the
17 proposed decision as amended becomes the Board's
18 decision.

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

21 SARAH HANKINS: Second.

22 BARBARA RANDO, CHAIR: Second by Ms.
23 Hankins.

24 How do you vote on the decision as

Waltham Zoning Board of Appeals/1-24-17/43

1 amended, Mr. Sergi?
2 JOHN SERGI: Yes.
3 BARBARA RANDO, CHAIR: Mr. Hickernell?
4 MARK HICKERNELL: Yes.
5 BARBARA RANDO, CHAIR: Ms. Gelineau?
6 GLENNA GELINEAU: Yes.
7 BARBARA RANDO, CHAIR: Ms. Hankins?
8 SARAH HANKINS: Yes.
9 BARBARA RANDO, CHAIR: And the Chair
10 votes no.
11 It is granted.
12 ATTORNEY BRET FRANCIS: Thank you very
13 much.
14 BARBARA RANDO, CHAIR: You're welcome.
15 Good luck.
16 The reason why it wasn't granted was,
17 in my opinion, no hardship.
18 MARK HICKERNELL: You mean the reason
19 you voted that way?
20 BARBARA RANDO, CHAIR: Yeah, I'm
21 sorry, the reason I voted.
22 One more motion is in order.
23 JOHN SERGI: Motion to adjourn, Madam
24 Chair.

Waltham Zoning Board of Appeals/1-24-17/44

1 BARBARA RANDO, CHAIR: Motion to
2 adjourn. Second?

3 MARK HICKERNELL: Second.

4 BARBARA RANDO, CHAIR: All in favor?

5 ALL BOARD MEMBERS: Aye.

6 BARBARA RANDO, CHAIR: Opposed?

7 (No Board Members opposed.)

8 BARBARA RANDO, CHAIR: The ayes have
9 it. We are adjourned at 7:40. Thank you very much.

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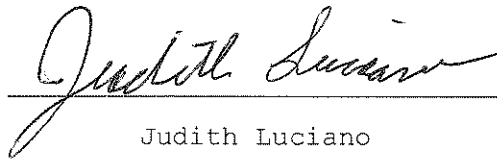
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Mark Hickernell Clerk
14 February 2017

Waltham Zoning Board of Appeals/1-24-17/45

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

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