

FOR THE  
CITY OF WALTHAM  
ZONING BOARD OF APPEALS

GENERAL HEARING

January 30, 2018

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/1-30-18/2

**I N D E X**

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**A T T A C H M E N T S**

Legal Notices: Case No. 2017-34  
Case No. 2017-46

Case No. 2017-46  
Proposed finding of facts  
Proposed decision as amended

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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 30, 2018 is called to order at 7:00 p.m.

Tonight we have one continued case and one new case before us.

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

The first case we have is Case 2017-34, Waltham-Farm Home Realty Trust, Daniel and Christine Wildes, Trustees of 54 Emerson Road, 29 AFT Emerson Road. It's an appeal of notice of violation.

The second case we have tonight is Case 2017-46, Daniel LeBlanc, 62 Boynton Street, and that's for variances.

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1                                   ACCEPTANCE OF MINUTES OF JANUARY 24, 2018

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3                                   BARBARA RANDO, CHAIR:       The first  
4                                   action this evening is a motion to accept the minutes  
5                                   of January 24<sup>th</sup> for Case 2014-29 and Case 2017-45.

6                                   JOHN SERGI:    So moved, Madam Chair.

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

9                                   GLENN GELINEAU:    Second.

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

12                                  All in favor?

13                                  ALL BOARD MEMBERS:    Aye.

14                                  BARBARA RANDO, CHAIR:    Opposed?

15                                  (No Board Members opposed.)

16                                  BARBARA RANDO, CHAIR:    The ayes have  
17                                  it.    The minutes have been approved.

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1       **Case Number 2017-34: Waltham-Farm Home Realty Trust;**  
2       **Daniel and Christine Wildes, Trustees**

3

4                   BARBARA RANDO, CHAIR: Would the Clerk  
5 please read the petition Case 2017-34, 54 Emerson  
6 Road, 29 AFT Emerson Road.

7

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

10

11                   BARBARA RANDO, CHAIR: May we hear  
12 from the Petitioner or the Petitioner's  
representative please?

13

14                   ATTORNEY KEVIN DWYER: Good evening.  
15 Attorney Kevin Dwyer. I'm here from Attorney Richard  
16 LeClair's office on behalf of Daniel and Christine  
17 Wildes. They're the owner of the Waltham-Farm Home  
Realty Trust.

18

19                   I had a walk over the property with  
20 Mr. Forte and also the Waltham Fire Department along  
21 with my client in mid-January. Mr. Forte and I also  
22 had a meeting last week at his office. As a result  
23 of that meeting, which was productive, some of the  
24 issues that were cited in the notice of violation  
were resolved. Some issues are still outstanding. I

1 think Mr. Forte and I have agreed on a path forward  
2 that could potentially resolve all the issues.

3 I asked Mr. Forte if I could continue  
4 this case, perhaps to the end of February, to give my  
5 client some more time to comply with the City's  
6 recommendations. It's my understanding Mr. Forte has  
7 no objection to that continuance. So, I'd ask the  
8 Board to accept that request on my client's behalf.

9 BARBARA RANDO, CHAIR: All right. Any  
10 questions from Board members.

11 SARAH HANKINS: What issues have been  
12 resolved and what remain outstanding?

13 ATTORNEY KEVIN DWYER: There's an  
14 issue of an illegal -- alleged illegal apartment at  
15 the location. After Mr. Forte's inspection of it in  
16 mid-January, he has determined that it is not an  
17 illegal apartment.

18 Some other issues that have to be  
19 resolved with regard to three structures that are on  
20 the property that the City is requesting building  
21 permits for, which my client does not have at this  
22 point, which would require a site plan, which is a  
23 significant amount of work for my client.

24 There's also some issues of some open

1 storage. My client has been storing things outside  
2 of that store for many, many years, and it's a  
3 concern on Mr. Forte's behalf that some limits be  
4 established to where things are stored outside of the  
5 location.

6 So, the illegal apartment, the alleged  
7 illegal apartment, that issue is no longer an issue.  
8 But those other issues with the open storage and  
9 three structures on the property have to be dealt  
10 with. That's where we're at at that point. So,  
11 we've made some progress.

12 BARBARA RANDO, CHAIR: Any other  
13 questions?

14 (No response.)

15 BARBARA RANDO, CHAIR: Mr. Forte did  
16 send a little notice saying that he was in agreement  
17 with you.

18 ATTORNEY KEVIN DWYER: Mm hum.

19 BARBARA RANDO, CHAIR: All right. Do  
20 I have a motion to allow Case 2017-34, Waltham-Farm  
21 Home, to continue?

22 JOHN SERGI: So moved, Madam Chair.

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

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1                   GLENNA GELINEAU: Second.

2                   BARBARA RANDO, CHAIR: Second by Ms.

3 Gelineau.

4                   How do you vote, 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 yes.

14                  Do we have to extend the time on that?

15                  MARK HICKERNELL: No, it's still

16 March.

17                  ATTORNEY KEVIN DWYER: Thank you.

18                  BARBARA RANDO, CHAIR: Let's set a

19 date to come back.

20                  AUDIENCE: Excuse me. Do you take

21 public comments at this time or will it be --

22                  BARBARA RANDO, CHAIR: No, it will be

23 during the meeting.

24                  AUDIENCE: With that case?



1 BARBARA RANDO, CHAIR: Pardon me?

2 AUDIENCE: Do you take comments with  
3 the case that you --

4 BARBARA RANDO, CHAIR: Yes, when he  
5 comes and presents the case.

6 AUDIENCE: But it can't be done today?

7 BARBARA RANDO, CHAIR: You could speak  
8 with him.

9 AUDIENCE: No.

10 BARBARA RANDO, CHAIR: Are you in  
11 favor, or opposition, or seeking information?

12 AUDIENCE: Opposition.

13 BARBARA RANDO, CHAIR: It would be the  
14 night of the case.

15 AUDIENCE: Okay. Thank you.

16 BARBARA RANDO, CHAIR: How is -- do  
17 you think that you would work things out by February  
18 27<sup>th</sup>?

19 ATTORNEY KEVIN DWYER: Sure. We could  
20 take the 27<sup>th</sup> date or perhaps March 6<sup>th</sup>, if there's a  
21 meeting on March 6<sup>th</sup>, just to give us enough time.

22 BARBARA RANDO, CHAIR: How about the  
23 13<sup>th</sup>?

24 ATTORNEY KEVIN DWYER: The 13<sup>th</sup>?

1 BARBARA RANDO, CHAIR: We have two on  
2 the 6<sup>th</sup>.

3 ATTORNEY KEVIN DWYER: The 13<sup>th</sup> would  
4 be --

5 MARK HICKERNELL: I won't be here on  
6 the 6<sup>th</sup> or the 13<sup>th</sup>.

7 BARBARA RANDO, CHAIR: Oh, that's  
8 right. Oh, on the 13<sup>th</sup> you won't be?

9 MARK HICKERNELL: I don't think so. I  
10 know I can't be here on the 6<sup>th</sup> --

11 BARBARA RANDO, CHAIR: You can be on  
12 the 6<sup>th</sup>?

13 MARK HICKERNELL: No.

14 BARBARA RANDO, CHAIR: How about the  
15 20<sup>th</sup>?

16 ATTORNEY KEVIN DWYER: Sure.

17 MARK HICKERNELL: Then we have to  
18 extend the 100 days.

19 BARBARA RANDO, CHAIR: What's that?

20 MARK HICKERNELL: Can we just do the  
21 end of February?

22 BARBARA RANDO, CHAIR: If he's not  
23 going to continue again.

24 ATTORNEY KEVIN DWYER: Right. I'd

1 rather go maybe later than earlier just so we can  
2 resolve everything, if that's okay. The 27<sup>th</sup> would be  
3 even better for us.

4 BARBARA RANDO, CHAIR: How does the  
5 Board feel, the 27<sup>th</sup>, February 27<sup>th</sup> -- March 27<sup>th</sup>?

6 MARK HICKERNELL: We can do March 27<sup>th</sup>.

7 JOHN SERGI: March 27<sup>th</sup> is good.

8 MARK HICKERNELL: We can do March 27<sup>th</sup>.  
9 We just have to extend the 100 days.

10 BARBARA RANDO, CHAIR: We'll have to  
11 change the 100 days.

12 Okay. Do I have a motion to allow  
13 Case 2017 to continue in time to May --

14 JOHN SERGI: March.

15 BARBARA RANDO, CHAIR: This is just to  
16 make a decision not the meeting.

17 JOHN SERGI: Oh, I'm sorry.

18 BARBARA RANDO, CHAIR: May 8, 2018.

19 JOHN SERGI: So moved.

20 MARK HICKERNELL: Second.

21 BARBARA RANDO, CHAIR: Motion by Mr.  
22 Sergi. Second by Mr. Hickernell.

23 Mr. Sergi, how do you vote?

24 JOHN SERGI: Yes.

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1 BARBARA RANDO, CHAIR: Mr. Hickernell?  
2 MARK HICKERNELL: Yes.  
3 BARBARA RANDO, CHAIR: Ms. Gelineau?  
4 GLENNA GELINEAU: Yes.  
5 BARBARA RANDO, CHAIR: Ms. Hankins?  
6 SARAH HANKINS: Yes.  
7 BARBARA RANDO, CHAIR: And the Chair  
8 votes yes. So, we will continue the case to March  
9 27<sup>th</sup>.  
10 We need you to sign something though.  
11 ATTORNEY KEVIN DWYER: Yes. Thank  
12 you.  
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1       **Case Number 2017-46: Daniel LeBlanc**

2

3                       BARBARA RANDO, CHAIR: Will the Clerk  
4 please read the petition in Case 2017-46, 62 Boynton  
5 Street?

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: Chair Rando,  
13 members of the Board, my name is Bret Francis,  
14 Scafidi Juliano, with offices at 10 Hammer Street,  
15 Waltham.

16                      I'm here tonight on behalf of the  
17 owners, Leonard Belliveau and Alma LeBlanc, who are  
18 here tonight, and their -- well, Alma's son, Dan  
19 LeBlanc, Petitioner in this matter.

20                      The locus is numbered and known as 62  
21 Boynton Street and is situated entirely within the  
22 Residence A-4 District and consists of approximately  
23 5,639 square feet, improved with a single-family  
24 residence thereon and garage.

1           The house and the original garage were  
2 constructed circa 1930. In or about August, 1963,  
3 the then-Petitioner/owner sought and obtained a  
4 variance to demolish and construct a new garage.  
5 However, said garage was not constructed in neither  
6 the size nor the location as set forth on the plan  
7 filed. The garage is, therefore, legally pre-  
8 existing and nonconforming.

9           Petitioner Daniel LeBlanc seeks to  
10 confirm the location of the existing garage via  
11 variances, and further to construct a second floor, a  
12 roofed porch, front porch, and a proposed open deck  
13 in the rear.

14           In order to accomplish this, the  
15 Petitioner seeks to amend the site filed -- the site  
16 plan filed in Case 1963-57 and to obtain the required  
17 variances.

18           As far as the jurisdiction, pursuant  
19 to Massachusetts General Laws, 40A, Sections 9, 10,  
20 and 14, provide that this Board has the power to  
21 grant the variances if they are not a use prohibited  
22 in the Zoning Ordinance for the City of Waltham.

23           Article VII, Section 7.2, authorizes  
24 this Board to utilize all the powers granted to it by

1 statute. And, therefore, in that this Board of  
2 Appeals has both the power and authority to amend the  
3 plan and grant the variances, the Petitioner  
4 respectfully requests that its Petition be allowed.

5 So, as stated supra, in or about  
6 August 1963 -- and I attached a copy of the decision  
7 at the back of my memorandum for everyone to have a  
8 look at -- the then Petitioner/owner sought and  
9 obtained a variance to demolish the existing garage  
10 built circa 1930 and to construct a new garage that  
11 would be 20 feet wide, 24 feet deep, and located five  
12 feet from the northerly side line and five feet from  
13 the rear lot line and would be two feet from the  
14 nearest point of the dwelling on said lot.

15 It was not constructed in such a  
16 location. And, as a result of the noncompliance, the  
17 Petitioner requests its plan, filed herewith, showing  
18 the actual location of the garage supersede the 1963  
19 plan. So, we're asking that this plan drafted by the  
20 Bibbos in support of the petition for a variance  
21 substitute and supersede the 1963 plan that showed  
22 the wrong location of the garage.

23 So, Chapter 40A, Section 10 states in  
24 pertinent part that "the permit granting authority

1 shall have the power...to grant upon appeal...a variance  
2 from the applicable zoning ordinances or bylaw where  
3 such permit granting authority specifically finds  
4 that owing to the circumstances relating to the soil  
5 conditions, shape, or topography of such land or  
6 structures, and especially affecting such land or  
7 structures, but not affecting generally the zoning  
8 district in which it is located, that a literal  
9 enforcement of the provisions of the ordinance or  
10 bylaw would involved substantial hardship, financial  
11 or otherwise, to the petitioner... and that [iii] the  
12 desired relief may be granted without substantial  
13 detriment to the public good or without nullifying or  
14 substantially derogating from the intent or purpose  
15 of the bylaw."

16 The variances sought here are all for  
17 dimensional and none for use and contained in Article  
18 IV, Section 4.11.

19 The first being the yard projections:  
20 In accordance with Article IV, Section 4.219, at no  
21 point shall the actual setback of unroofed porches --  
22 that's what we're discussing -- be less than one-half  
23 of the minimum yard setback otherwise required for  
24 the district in which the structure is located.



1     Petitioner proposes a proposed open deck that is  
2     three feet off the side yard setback.

3             Accessory Buildings:     In accordance  
4     with Article Section 4.221, an accessory building  
5     shall be at least five feet from both the side and  
6     rear yard setbacks.     In 1963, the garage was built  
7     4.83 feet from the south side line and .95 feet, not  
8     quite a foot, from the rear yard line.     The  
9     Petitioner here proposes no change to the garage.

10            Maximum Lot Coverage:     In accordance  
11     with Article IV, 4.11, the maximum lot coverage shall  
12     be 25 percent.     And I believe the decision allowed  
13     that to be raised to 30 in this case.     However, as a  
14     result of the enclosure of a back deck, looking at  
15     the plan, this back section was not always roofed.  
16     At some point it became roofed and it, therefore,  
17     became part of the equation for lot coverage and  
18     exceeding what was allowed by .5 percent.     The  
19     Petitioner proposes an enclosed front roofed porch  
20     that will increase the lot coverage 32.5 percent.

21            In this case, in this instance, it is  
22     the structures that are on the lot that are unique  
23     and affecting this locus, but not generally affecting  
24     the zoning district in which it is located.     The

1 house was constructed circa 1930 along with the  
2 garage thereon. Again, as stated above, the then-  
3 petitioner sought and obtained a variance to demolish  
4 and construct a garage in its place by the  
5 dimensions, again, above-mentioned. However, in  
6 fact, the garage was built 20-and-a-half feet by 22-  
7 and-a-half feet and was constructed 4.83 feet from  
8 the side yard and .95 feet from the rear yard line.

9           Upon information and belief, the  
10 garage was not built towards the -- according to the  
11 plan and was shrunk and moved to its location so that  
12 the then-petitioner/owner could enclose the open deck  
13 -- this area of the house in the rear -- and still  
14 maintain that two-foot distance from the garage.

15           We don't know that to be the case, but  
16 we believe that he, rather than mess around with the  
17 house, decided to make the garage smaller and further  
18 back, thereby still complying. He was granted two  
19 feet from the house; it now sits three-and-a-half  
20 feet. So there is no variance request for that  
21 because it was actually built in accordance.

22           As a result of this nonconformity, the  
23 Petitioner in the present case is required to seek a  
24 variance under Article IV, Section 4.221, accessory

1 buildings - minimum side and rear yard setbacks; (ii)  
2 a variance number Article IV, Section 4.219, yard  
3 projection setback; and (iii) Article IV, Section  
4 4.11, maximum lot coverage in a project that would  
5 otherwise be as of right.

6 The structures present characteristics  
7 clearly not being built according to the plan of  
8 1963, which are generally not found in the  
9 neighborhood or the district in which it is located.

10 In addition to those circumstances, a  
11 literal enforcement of the provisions of the  
12 ordinance in regards to the pre-existing  
13 nonconforming structure would create a substantial  
14 financial hardship for the Petitioner.

15 In or about the fall of 2017,  
16 Petitioner sought and obtained a small lot opinion  
17 relative to this property. With the reduced setbacks  
18 that are granted by that small lot opinion, the  
19 project would normally be as of right. In other  
20 words, this second floor addition meets all the side  
21 setbacks, rear setbacks, all of them, because of the  
22 small lot opinion. However, due to the garage  
23 location and then, on top of that, the additional  
24 relief, which is why we're here tonight, the

1     Petitioner is then required to seek these variances  
2     for which there will be no related construction.

3             In addition to the foregoing, the  
4     request for relief related to the open deck, i.e.,  
5     the three-yard (sic) setback, in previous years was  
6     permitted without zoning relief. Again, in this  
7     situation, the side yard setback is 15 feet. So,  
8     according to the Building Department, you can move up  
9     to seven-and-a-half feet from the lot line. Years  
10    previous to this most current building inspector, if  
11    you had a small lot opinion, that was your side yard  
12    setback and, therefore, it could be reduced to two-  
13    and-a-half feet. So, therefore, even though the  
14    Building Department seeks a variance here, again,  
15    five years ago this would have been allowed as of  
16    right because we're three feet from the lot line,  
17    whereas only two-and-a-half was ever required.

18            If you have any questions on that, we  
19    can definitely discuss that.

20            Presently, the zoning provision is  
21    being interpreted regardless of the small lot opinion  
22    obtained, thereby requiring a seven-and-a-half-foot  
23    setback. Therefore, a literal enforcement of the  
24    ordinance would involve a substantial hardship to the

1 Petitioner, both financial and otherwise.

2 It should also be noted that, you  
3 know, a detached garage could go as close as three  
4 feet, again, without any request for a variance. It  
5 would be allowed as of right. If the Petitioner were  
6 to cover this and make it part of the house, he could  
7 do it as of right. But the fact that he wants an  
8 open deck without a roof, and according to the  
9 reading of the bylaw provisions, we're here tonight.

10 MARK HICKERNELL: Didn't we just have  
11 that issue?

12 ATTORNEY BRET FRANCIS: We did, and I  
13 was going to --

14 JOHN SERGI: Yeah, we did. Yeah.

15 ATTORNEY BRET FRANCIS: Yes. In fact,  
16 that attorney on that matter -- I happened to be here  
17 that night as well -- was seeking to overturn the  
18 decision of the building inspector, or, in the  
19 alternative, get a variance for the relief. That  
20 night, he was actually granted the overturning of the  
21 building dispute. He didn't get a variance.

22 In our case, he hasn't made a decision  
23 saying, you know, you built it wrong. So there's  
24 really no decision to appeal, but we're here for a

1 variance under the same exact argument. So, he was  
2 actually overturned on that exact point three weeks  
3 ago on the Lincoln case. And it was Attorney Joe  
4 Connors. I've spoken with him today and let him know  
5 that I'd be bringing his case up. So, that's exactly  
6 what's the situation with that open deck.  
7 Apparently, it's becoming an issue, so you'll  
8 probably -- I wouldn't doubt it if you see more of  
9 these in the near future rather than less.

10 Lastly, the final statutory  
11 requirement of General Law Chapter 40A, Section 10,  
12 requires that the desired relief be granted without  
13 substantial detriment to the public good and without  
14 nullifying or substantially derogating from the  
15 intent or purpose of the bylaw. The criteria does  
16 not require zero derogation from the intent or  
17 purposes of the bylaw as some derogation from the  
18 ordinance purpose is anticipated in every variance.

19 The court further found that unless  
20 the granting of the variance significantly detracts  
21 from the zoning plan for the district, the local  
22 discretionary grant of the variance must be upheld.  
23 Here, the desired relief does not nullify or  
24 substantially derogate from the intent or purpose of

1 the bylaw as the Petitioner is seeking to confirm  
2 what is existing at the property and the setback  
3 relief which in previous years would not require this  
4 relief.

5 In sum, Petitioner seeks the granting  
6 of the above-referenced relief to construct the  
7 proposed second floor, the roofed porch in the front,  
8 the farmer's porch, and the proposed deck in the  
9 rear. The Petitioner, having met all the  
10 requirements for the granting of the requested  
11 variances, respectfully requests that its petition be  
12 granted. And the owners, as well as Petitioner,  
13 Daniel LeBlanc, thank you for your time and attention  
14 to this matter, welcome your suggestions, and look  
15 forward to completing the matter -- the project in a  
16 manner amicable to the City of Waltham.

17 Lastly, I would just note that the  
18 Petitioners did reach out to the neighbors. I don't  
19 have a list. But, if you have any questions as to  
20 who they spoke to and whatnot, they'd be happy to  
21 come up and answer those. Or, actually, Mr.  
22 Belliveau would be happy to come up and answer those.

23 So, that is the end of my presentation  
24 tonight.

1 BARBARA RANDO, CHAIR: Attorney  
2 Francis, could you tell me when Mr. Belliveau bought  
3 the house?

4 ATTORNEY BRET FRANCIS: Last fall,  
5 summer.

6 LEONARD BELLIVEAU: September.

7 ALMA LEBLANC: I should know that  
8 answer.

9 BARBARA RANDO, CHAIR: You should

10 ATTORNEY BRET FRANCIS: '17 though,  
11 right?

12 ALMA LEBLANC: Yeah.

13 LEONARD BELLIVEAU: Yeah, either  
14 September or October.

15 BARBARA RANDO, CHAIR: Of last year.  
16 September or October of 2017?

17 LEONARD BELLIVEAU: 2017, yes. Yeah.

18 BARBARA RANDO, CHAIR: Okay. Do you  
19 have a building card on this?

20 ATTORNEY BRET FRANCIS: I can look. I  
21 do have a decision. That's what I went off of as to  
22 what was granted, the ZBA decision. I have the  
23 unofficial property card. I'm not sure if I have the  
24 building card. I usually do.



1 BARBARA RANDO, CHAIR: So this wasn't  
2 either of your family home?

3 LEONARD BELLIVEAU: No.

4 BARBARA RANDO, CHAIR: No. You just  
5 bought it a year ago?

6 LEONARD BELLIVEAU: Yeah, just a year.

7 BARBARA RANDO, CHAIR: Are you going  
8 to live in it?

9 LEONARD BELLIVEAU: Yes.

10 ATTORNEY BRET FRANCIS: Arm's length  
11 purchase.

12 I don't have the building card per se.

13 I don't --

14 BARBARA RANDO, CHAIR: I don't know  
15 why in your brief you said approximately, it was  
16 built approximately in 1963, but you weren't sure  
17 when. Why, if there was a building card, if they had  
18 a variance?

19 ATTORNEY BRET FRANCIS: Well, the  
20 decision was granted in August of '63. I imagine it  
21 was done before this. But he had a year to do it.  
22 You know, I didn't find out when they pulled the  
23 actual permit. The Building Department may not have  
24 it. What I did have was the decision and the fact

1 that it was built, and not according to the decision  
2 that allowed that garage to be built. So, I couldn't  
3 give you the exact date that it was built, but I  
4 imagine shortly after August 1963 when the decision  
5 was granted and well within a year of the time that  
6 they had to start the project.

7 BARBARA RANDO, CHAIR: So the person  
8 that owned it before they bought it closed in the  
9 back room, too, and built the garage?

10 ATTORNEY BRET FRANCIS: I can't say it  
11 was the owner that they bought it from, but some  
12 previous owner. The owner in 1963, for sure, yes.

13 BARBARA RANDO, CHAIR: But you don't  
14 know if --

15 ATTORNEY BRET FRANCIS: I don't know  
16 if it was their predecessor in interest or otherwise.

17 BARBARA RANDO, CHAIR: All right.

18 ATTORNEY BRET FRANCIS: And I'd hate  
19 to make that accusation without any further.

20 But, if you look at the decision in  
21 '63, there's no mention of enclosing the back porch.  
22 They weren't -- there was no building permit pulled.  
23 When the Bibbos did their due diligence, they, again,  
24 in discussion with them is how we hypothesized what

1 probably happened, which is he wanted to enclose his  
2 back porch, realized that if he built the garage  
3 accordingly, if it wouldn't touch the house, it would  
4 be pretty close.

5 BARBARA RANDO, CHAIR: So was it a  
6 two-car garage that he got the variance for or one  
7 car?

8 ATTORNEY BRET FRANCIS: I don't --  
9 yeah, yeah, two, two-car garage.

10 BARBARA RANDO, CHAIR: We don't know  
11 because we don't have a building card.

12 ATTORNEY BRET FRANCIS: I don't think  
13 the building card would have the accurate  
14 measurements anyway. It would say "garage  
15 permitted." It wouldn't have any information as to  
16 how it was built. And they definitely didn't go back  
17 and look at it after the fact. I can tell you that  
18 because, again, it was allowed to be where it was  
19 constructed.

20 BARBARA RANDO, CHAIR: Well, I see  
21 this case as not a nonconforming, but a non -- not  
22 conforming, not a nonconforming, but a noncomplying  
23 case.

24 ATTORNEY BRET FRANCIS: That's why we

1 also seek the amendment.

2 BARBARA RANDO, CHAIR: So, why don't  
3 you explain to me exactly why you're using this  
4 argument? And I know that you said that --

5 ATTORNEY BRET FRANCIS: Well, because  
6 it's noncompliant -- all right, you're right. They  
7 were noncompliant when they built the garage, not in  
8 accordance with what they were allowed. But the fact  
9 that it's been there for 10 years, it's now permanent  
10 and the Building Department could not ask them to  
11 tear it down. It's protected by the statute of  
12 limitations. But the fact that it's not compliant  
13 with the zoning, that makes it non -- as well as pre-  
14 existing nonconforming.

15 BARBARA RANDO, CHAIR: Has the zoning  
16 changed in that district?

17 ATTORNEY BRET FRANCIS: I don't  
18 believe so.

19 So, I mean, again, this is through no  
20 fault of the purchasers. When they went into the  
21 Building Department that's when they found out, oh,  
22 hey, you have a garage built there that isn't built  
23 according to what was allowed. You need to go to --  
24 this was a shock. So, I mean, again, we did the due

1 diligence to build the second floor. He got his  
2 small lot opinion, which takes care of all of his  
3 other side backs, but the fact that this garage was  
4 built where it was, he's now -- they're now forced to  
5 incur the costs, time, and so on and so forth, to get  
6 it straightened out what they had nothing to do with  
7 getting wrong.

8 BARBARA RANDO, CHAIR: Well, you know  
9 that you have to have the soil conditions which --

10 ATTORNEY BRET FRANCIS: You don't have  
11 soil -- you don't need to have soil conditions.

12 BARBARA RANDO, CHAIR: No, on the face  
13 of the whole thing.

14 ATTORNEY BRET FRANCIS: Oh!

15 BARBARA RANDO, CHAIR: And I don't  
16 think you do. I don't see any difference in that lot  
17 than any other lot on Boynton Street. And I've  
18 walked it many times.

19 ATTORNEY BRET FRANCIS: Sure.

20 BARBARA RANDO, CHAIR: Secondly, I  
21 think your hardship is very weak.

22 ATTORNEY BRET FRANCIS: Well, if I can  
23 expound on that.

24 BARBARA RANDO, CHAIR: He can make use

1 of the house the way it is. He bought the house  
2 knowing that the two-car garage was there. And I'm  
3 sure that he looked into it and found out that  
4 there's a problem here, and then the room in the  
5 back, and he still bought it.

6 ATTORNEY BRET FRANCIS: I wouldn't  
7 make that assumption that they found out that it was  
8 not built in accordance with the plan that it was  
9 allowed in 1963. I would not be surprised if they  
10 didn't know that. You know, that would take extreme  
11 --

12 GLENNA GELINEAU: He must have known  
13 that -- he must have known that it was a variance  
14 case though.

15 ATTORNEY BRET FRANCIS: That they  
16 should have known --

17 GLENNA GELINEAU: Yeah.

18 ATTORNEY BRET FRANCIS: -- if they had  
19 a title exam done.

20 GLENNA GELINEAU: Yeah.

21 ATTORNEY BRET FRANCIS: I didn't  
22 represent them in the purchase. But, again though,  
23 the hardship is, is to get this front porch and to  
24 comply, they would then have to undo what he did.

1 And I think that's a hardship for people who bought  
2 it and had no -- the back porch being roofed had no -  
3 - you wouldn't find that anywhere. You wouldn't find  
4 that in the building card. It was done illegally.  
5 You don't know until something like this happens  
6 where you go to file a permit and all of a sudden all  
7 the deficiencies of that property come flying in your  
8 face and you have to deal with them. And that's what  
9 we're doing tonight.

10 GLENNA GELINEAU: But the variance  
11 case would have been in the title. They would have  
12 had to come back to do anything.

13 ATTORNEY BRET FRANCIS: Not if you --  
14 if they wanted to do something that wasn't allowed as  
15 of right, correct. Building up would have been okay  
16 because of the small lot opinion obtained. If it  
17 weren't -- if they weren't doing the porch and they  
18 weren't doing the open deck, they would still have to  
19 come even though they meet all the side setbacks  
20 because of the garage.

21 BARBARA RANDO, CHAIR: Right.

22 ATTORNEY BRET FRANCIS: And that's a  
23 hardship, having to come here for what otherwise  
24 would be an as of right project.

1           Then again, we did reach out to the  
2 neighbors. All the neighbors were in support of, had  
3 no opposition, and wish the owners and petitioners  
4 luck.

5           BARBARA RANDO, CHAIR: I think it's  
6 something that is desired, but I don't see it as a  
7 hardship. It's desired, but it's not a hardship.

8           ATTORNEY BRET FRANCIS: Well, again,  
9 to have to tear down another portion of the house to  
10 get the portion that you would like, that you would  
11 want, that you wanted in the first place.

12           BARBARA RANDO, CHAIR: Unfortunately,  
13 yeah.

14           ATTORNEY BRET FRANCIS: And, again,  
15 we're talking about a -- we don't even -- even the  
16 front porch meets the setbacks and the front yard  
17 setbacks due to the houses down the street. That's  
18 why you have here this house that shows it's 11.97.  
19 So, they're even meeting the setbacks for the  
20 proposed farmers porch. It's two things that we're  
21 seeking here.

22           BARBARA RANDO, CHAIR: If it was done  
23 -- if everything was done according to the plan,  
24 correct?



1                   ATTORNEY BRET FRANCIS:  If everything  
2 was done according to the plan then we wouldn't be  
3 here.

4                   BARBARA RANDO, CHAIR:  That's right.

5                   ATTORNEY BRET FRANCIS:  Correct.  So,  
6 that's an argument in favor of it.  The problem is,  
7 is we also wouldn't be here on the rear porch if they  
8 weren't all of a sudden being reinterpreted  
9 differently than they've always been for the last 50  
10 years in the Waltham Building Department, for which  
11 you guys, again, overturned his decision.  It's the  
12 exact same situation.  You overturned him.  He was  
13 allowed to build within that side yard setback.  I  
14 think that's what we need to do here.  If it's being  
15 misinterpreted enough times, then I think enough of  
16 your decisions would, hopefully, get it reinterpreted  
17 the correct way that it's always been interpreted  
18 here in Waltham.

19                   BARBARA RANDO, CHAIR:  Well, I just  
20 think that being desirable is not sufficient.  I also  
21 don't see anything different in the land or the soil  
22 conditions or --

23                   ATTORNEY BRET FRANCIS:  Again, I'd  
24 refer to structures as far as the land.

1 BARBARA RANDO, CHAIR: All right,  
2 structures. So why don't you --

3 ATTORNEY BRET FRANCIS: When a  
4 structure is not built according to what it should  
5 have been built, that's a hardship. That's unique.  
6 You don't --

7 BARBARA RANDO, CHAIR: But it's a  
8 hardship that he had to see. All you have to do is  
9 walk near that garage and you can tell that it's too  
10 close to the lot line.

11 ATTORNEY BRET FRANCIS: Again, if it's  
12 pre-existing --

13 BARBARA RANDO, CHAIR: I mean I'm sure  
14 he got some advice before he bought it.

15 ATTORNEY BRET FRANCIS: They can come  
16 up and speak to that. Again, if it's pre-existing  
17 and it's been there more than ten years, it's been  
18 there 50 years, the Building Department can't ask  
19 them to tear it down. It's a pre-existing  
20 nonconforming.

21 BARBARA RANDO, CHAIR: You're also  
22 asking for more space than you're allowed.

23 ATTORNEY BRET FRANCIS: By one  
24 percent, that is correct. I think it's minimal, it's

1 modest, and, again, the front porch is poking to any  
2 setbacks violations. They've done a lot of hard work  
3 to make sure that other than that we comply. This  
4 project complies. The back -- the proposed open deck  
5 in the back complies. The garage does not. Nothing  
6 we can do about that except to ask that you guys  
7 confirm how it was built and where it was located.

8 And then the front porch, again, we  
9 meet all the setbacks. The covering of this front  
10 porch is what increases the maximum lot coverage just  
11 above what currently exists. Again, 30.5 is now the  
12 standard. They were allowed 30, but they went 30.5  
13 and 50 years passed. So, the 30.5 is the lot  
14 coverage. We're seeking one-point-something above  
15 that. And, again, it was modest.

16 GLENNA GELINEAU: 2.1.

17 ATTORNEY BRET FRANCIS: We stay within  
18 the -- huh?

19 GLENNA GELINEAU: 2.1

20 ATTORNEY BRET FRANCIS: 2.1? Stay  
21 within the setbacks. And, you know, to get that  
22 done, if we take off -- if we take off half the  
23 porch, half the roof on the porch, that no longer  
24 requires a variance. But I think, again, that's a

1 hardship to require someone to have half a roof on  
2 their porch because of a mistake that was made 40  
3 years before their ownership.

4 BARBARA RANDO, CHAIR: I don't look at  
5 it that way.

6 Mr. Sergi, do you have any questions?

7 JOHN SERGI: No. But I'd just like to  
8 get on record that you talked with the --

9 LEONARD BELLIVEAU: I did. I met with  
10 both neighbors to our left and right and also the  
11 people in the back of us. And I explained to them  
12 what we wanted to do. And everybody was okay with  
13 it. They said they had no problem.

14 JOHN SERGI: So you met with all the  
15 abutters?

16 LEONARD BELLIVEAU: Yeah, I did.  
17 Yeah.

18 JOHN SERGI: And no issues?

19 LEONARD BELLIVEAU: No issues, no.  
20 No.

21 JOHN SERGI: Okay.

22 LEONARD BELLIVEAU: Yeah.

23 JOHN SERGI: Madam Chair, I see the  
24 hardship, the way I interpret it, I see the hardship

1 as the shape of the lot. I walked the area. This is  
2 a little different --

3 ATTORNEY BRET FRANCIS: It's a little  
4 different.

5 JOHN SERGI: -- from the others. So,  
6 that's the way I look at the hardship.

7 That's all I have to say. Thank you.

8 BARBARA RANDO, CHAIR: The house on  
9 the left is going up for sale. And that's the side  
10 that -- it's going up for sale.

11 ATTORNEY BRET FRANCIS: They won't be  
12 affected by this project.

13 DANIEL LEBLANC: Madam Chair, could I  
14 speak?

15 BARBARA RANDO, CHAIR: Not yet.

16 Mr. Hickernell, do you have any  
17 questions?

18 MARK HICKERNELL: I might buy the  
19 shape of the lot as a hardship, but I don't -- I'm  
20 not right now inclined to give a variance for that  
21 back porch where we've already told the Building  
22 Inspector that we don't agree with that  
23 interpretation. Giving a variance suggests that he's  
24 right but we've found a hardship in this case. I

1 just think it's wrong. I'd rather deny his decision  
2 again on that point.

3 ATTORNEY BRET FRANCIS: That's fine.  
4 I could gladly revise the proposed decision to  
5 reflect that, that that request for relief is  
6 actually an appeal because he does review it, he does  
7 sign off, and he does stamp the plans with the  
8 articles that you need. So, in that sense, I agree  
9 with you. I'd be happy to accept that as the case.

10 MARK HICKERNELL: That's all I have.

11 BARBARA RANDO, CHAIR: Ms. Gelineau:

12 GLENNA GELINEAU: No questions.

13 BARBARA RANDO, CHAIR: Ms. Hankins?

14 SARAH HANKINS: I don't have a  
15 question as much as a comment that I just -- the  
16 argument you seem to be making for the hardship is,  
17 you know, related definitely to, you know, the deck  
18 and its location and all that. But it really doesn't  
19 have anything to do with the lot coverage except  
20 you're just saying it's minimal.

21 ATTORNEY BRET FRANCIS: No, the  
22 covering of this back deck is what results in us  
23 exceeding. If this deck was not covered, we could  
24 cover this well within the maximum lot coverage. So

1 there is a -- again, what was done prior to their  
2 ownership presents a hardship and it's unique. Most  
3 houses are built in accordance with the plan that  
4 they're allowed. This one was not. And then they  
5 did, on top of that, they did further work that was  
6 not allowed. This results in a hardship. They did  
7 not go in there looking for this. And, again, if  
8 this was never covered, this would be as of right.

9 So, you know, I can see what you're  
10 saying, but I think there's a hardship. And I think  
11 the circumstances of this lot are unique to the other  
12 lots by virtue of complete noncompliance with -- I  
13 mean they didn't build the garage the same -- it  
14 wasn't like they built it the exact same size and  
15 then moved it a little bit. They made a different  
16 size garage and put it where it wasn't supposed to  
17 go. And that's how we're here today. That's  
18 essentially why we're here today.

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

22 Anyone seeking information?

23 Anyone in opposition?

24 You were seeking information. Did you

1 want to come to the microphone?

2 DANIEL LEBLANC: Yes, please.

3 BARBARA RANDO, CHAIR: Give your name  
4 and address for the record.

5 DANIEL LEBLANC: Sure. Dan LeBlanc,  
6 36 Juniper Hill, Waltham.

7 I just want to point out, Ms. Rando, I  
8 understand what you're saying that did they not do  
9 their due diligence looking when they bought the  
10 house if it had a variance, went to ZBA or not. We  
11 knew it went to ZBA. But, at the time when they  
12 bought it, they just liked the area. They wanted to  
13 move there. We had no idea what they wanted to do to  
14 the house, whether they wanted to build a second  
15 floor, just live the way it is on the first floor or  
16 not. It was only months later when they decided this  
17 is what we want to do. We want to go up. We want a  
18 front porch. So, we designed it, met with Bret. He  
19 said we have to go to ZBA. That's the only reason  
20 we're here. It's not that we're trying to slide  
21 something through that we didn't know prior to. We  
22 didn't know what they wanted to do, you know, being  
23 their last home together.

24 So, this is -- you know, I don't want



1 you to think didn't we do our homework. Of course we  
2 did. Always being a builder, we did the home -- but  
3 not knowing what they wanted to do, you know, I  
4 couldn't tell them not to buy the house because they  
5 didn't know. They just loved the house. He wanted a  
6 two-car garage. It was what they wanted, the area  
7 they wanted to be in. So they bought it. And it was  
8 only after months of them designing what they wanted  
9 is when we found out we had to come to ZBA.

10 ATTORNEY BRET FRANCIS: I do have the  
11 plans showing, and it's very tough to see -- it's a  
12 very poorly copied plan -- but you'll see that the  
13 house is here and the garage is here. And see how  
14 this little notch -- this right here was an open deck  
15 and that's where they went across that line.

16 BARBARA RANDO, CHAIR: I know. I  
17 know. I understand.

18 ATTORNEY BRET FRANCIS: So, the plan  
19 that was approved did not have that back porch  
20 covered. It was done no building permit, no nothing.  
21 So, I mean I don't know if you guys want --

22 BARBARA RANDO, CHAIR: It seems like  
23 they just did whatever they wanted with the garage  
24 and even with the back room.

1                   ATTORNEY BRET FRANCIS: It seems like  
2 it.

3                   BARBARA RANDO, CHAIR: But the garage  
4 certainly takes up an awful lot of room on that lot.

5                   ATTORNEY BRET FRANCIS: It sure does.

6                   BARBARA RANDO, CHAIR: You walk by and  
7 you see that huge garage and the house. It's just --  
8 it's just massive.

9                   I have a problem with the hardship  
10 still. I think that you can make use of the house  
11 the way it is. I think it's just something that is  
12 wanted but not justified.

13                   ATTORNEY BRET FRANCIS: I would just  
14 say to that, I think 90 percent of them you can live  
15 with the house that you bought. Ninety percent of  
16 the cases that come here, they don't need it.

17                   BARBARA RANDO, CHAIR: But you can  
18 make use of it then.

19                   ATTORNEY BRET FRANCIS: But if we have  
20 though a hardship, something that occurred prior to  
21 ours, it's legitimate for a variance.

22                   BARBARA RANDO, CHAIR: Don't forget  
23 there is a lot of things wrong with that home.  
24 You've got the back room. You've got the garage.

1 ATTORNEY BRET FRANCIS: That's it.

2 BARBARA RANDO, CHAIR: And now you're  
3 going to have a porch.

4 ATTORNEY BRET FRANCIS: Again, the  
5 porch complies. We're not seeking any variances  
6 outside the setback.

7 BARBARA RANDO, CHAIR: It's just  
8 adding to the size.

9 ATTORNEY BRET FRANCIS: And the back  
10 deck five years ago would comply. So, really -- and  
11 the second floor does comply pursuant to this small  
12 lot opinion. So, it's a modest, modest renovation,  
13 and, again, without any public opposition. I think  
14 they've suffered a hardship here.

15 BARBARA RANDO, CHAIR: All right. Any  
16 other questions from Board members?

17 (No response.)

18 BARBARA RANDO, CHAIR: You may  
19 continue with your proposed finding of fact.

20 JOHN SERGI: Have you changed these at  
21 all?

22 ATTORNEY BRET FRANCIS: No, not at  
23 all.

24 JOHN SERGI: So they're the same as on

1 file?

2 ATTORNEY BRET FRANCIS: Correct.

3 JOHN SERGI: I propose we waive the  
4 reading of the findings of fact as they've been on  
5 file, Madam Chair.

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

8 MARK HICKERNELL: Second.

9 BARBARA RANDO, CHAIR: Second by Mr.  
10 Hickernell.

11 All in favor?

12 ALL BOARD MEMBERS: Aye.

13 BARBARA RANDO, CHAIR: Opposed?

14 (No Board members opposed.)

15 BARBARA RANDO, CHAIR: The ayes have  
16 it.

17 You may continue with your proposed  
18 decision.

19 JOHN SERGI: In a similar fashion,  
20 Madam Chair, I propose that we waive the decision  
21 since it's been on file.

22 BARBARA RANDO, CHAIR: Motion by Mr.  
23 Sergi. Second?

24 MARK HICKERNELL: Second.

1 BARBARA RANDO, CHAIR: Second by Mr.  
2 Hickernell.

3 All in favor?

4 ALL BOARD MEMBERS: Aye.

5 BARBARA RANDO, CHAIR: Opposed?

6 (No Board members opposed.)

7 BARBARA RANDO, CHAIR: The ayes have  
8 it.

9 All right. I'm ready to entertain a  
10 motion on a proposed finding of facts.

11 MARK HICKERNELL: Yeah, before there's  
12 a motion on the proposed findings of fact, I'd seek  
13 an amendment to them to delete the variance that I  
14 objected to previously that's listed in paragraph six  
15 of the proposed findings of fact. I believe that's  
16 the yard projections variance, which is the first one  
17 listed under paragraph six.

18 ATTORNEY BRET FRANCIS: Yes.

19 MARK HICKERNELL: And maybe renumber -  
20 - have a new paragraph seven, renumber paragraph  
21 seven and eight as eight and nine. Have a new  
22 paragraph seven stating that the determination of the  
23 Building Inspector that a variance is required for  
24 the unroofed porch in the back is overturned.

1 BARBARA RANDO, CHAIR: Is what?

2 MARK HICKERNELL: Overturned.

3 ATTORNEY BRET FRANCIS: I'll make that  
4 change.

5 BARBARA RANDO, CHAIR: Did you say  
6 there was a number nine, too?

7 MARK HICKERNELL: I just renumbered  
8 seven and eight as eight and nine.

9 BARBARA RANDO, CHAIR: Oh, okay. All  
10 right. Are you finished or --

11 MARK HICKERNELL: That's all for the  
12 proposed findings of fact.

13 BARBARA RANDO, CHAIR: Anyone else  
14 have any changes? Everyone is in agreement with  
15 these? All right. I'm ready to entertain a motion  
16 on the finding of facts.

17 JOHN SERGI: I'll make a motion that  
18 the proposed --

19 BARBARA RANDO, CHAIR: As amended.

20 JOHN SERGI: I'll make a motion that  
21 the proposed finding of fact as amended be adopted by  
22 the Board.

23 BARBARA RANDO, CHAIR: Motion by Mr.  
24 Sergi. Second?

1 MARK HICKERNELL: I'll second it.

2 BARBARA RANDO, CHAIR: Second by Mr.  
3 Hickernell.

4 How do you vote on the proposed  
5 finding of facts --

6 JOHN SERGI: Yes.

7 BARBARA RANDO, CHAIR: -- Mr. Sergi,  
8 I'm sorry.

9 Mr. Hickernell?

10 MARK HICKERNELL: Yes.

11 BARBARA RANDO, CHAIR: Ms. Gelineau?

12 GLENNA GELINEAU: Yes.

13 BARBARA RANDO, CHAIR: Ms. Hankins?

14 SARAH HANKINS: No.

15 BARBARA RANDO, CHAIR: And the Chair  
16 votes no.

17 Do I have a motion on the decision as  
18 -- you amended the decision?

19 MARK HICKERNELL: Let me see. So  
20 there's the variance. Changed the heading to  
21 "variances and appeal?"

22 ATTORNEY BRET FRANCIS: Yeah.

23 MARK HICKERNELL: All right.

24 JOHN SERGI: I also have a suggestion.

1 Where it says number one, the structure on the lot, I  
2 would say that the structure and the lot are unique.

3 BARBARA RANDO, CHAIR: The lot isn't.

4 JOHN SERGI: Well --

5 BARBARA RANDO, CHAIR: The lot is not  
6 unique. It's no different than any other lot there.  
7 Do you want to add lot, too? It's up to you.

8 JOHN SERGI: I see it as different,  
9 Madam Chair.

10 BARBARA RANDO, CHAIR: Okay. All  
11 right.

12 JOHN SERGI: I don't know if I'd go as  
13 far to say it's unique, but it is non --

14 ATTORNEY BRET FRANCIS: Different.

15 JOHN SERGI: Yeah, it is different  
16 from other lots in the neighborhood. So, if you want  
17 to change it to that, that's fine.

18 ATTORNEY BRET FRANCIS: Sure.

19 BARBARA RANDO, CHAIR: Anything else,  
20 Mr. Hickernell?

21 MARK HICKERNELL: Hold on. I'm not  
22 caught up yet.

23 BARBARA RANDO, CHAIR: Does anyone  
24 else have anything that they want to add while Mr.



1 Hickernell is thinking? No?

2 MARK HICKERNELL: I'm writing more  
3 than thinking. Now, where did that other change go,  
4 John?

5 JOHN SERGI: Oh, here, part of  
6 paragraph one. I would say not only the structures  
7 on the lot are unique, but the lot --

8 MARK HICKERNELL: Okay.

9 JOHN SERGI: -- is different from  
10 other lots in the surrounding neighborhood.

11 ATTORNEY BRET FRANCIS: Okay.

12 MARK HICKERNELL: All right. So,  
13 there's the overturning of the Building Inspector's  
14 application of Article 4.219.

15 There's the lot coverage variance.

16 And then there's the confirming of the  
17 location of the current garage, is that right?

18 ATTORNEY BRET FRANCIS: That's  
19 correct.

20 MARK HICKERNELL: Okay. The current  
21 garage is just pursuant to the grandfathering in,  
22 right?

23 ATTORNEY BRET FRANCIS: That's  
24 correct, yeah.

1 MARK HICKERNELL: That's not a --

2 ATTORNEY BRET FRANCIS: Not seeking  
3 any variance.

4 MARK HICKERNELL: That's not a  
5 variance.

6 So, in view of the fact that we've got  
7 three things here and that some appear to be more  
8 controversial than others -- I don't want to speak  
9 for anybody else. But I can see some members  
10 supporting some but not all of these. I'd suggest  
11 that we roll call the three requested reliefs  
12 separately.

13 BARBARA RANDO, CHAIR: All right.

14 MARK HICKERNELL: I mean unless -- is  
15 there any -- maybe I'll just ask. Is there support -  
16 - you're opposed to the granting of the variance  
17 here. Do you have an issue with overturning the  
18 Building Inspector's decision on the interpretation  
19 of 4.219 or confirming the old garage?

20 BARBARA RANDO, CHAIR: No, I'm in  
21 agreement with the Building Inspector.

22 MARK HICKERNELL: With the Building  
23 Inspector?

24 BARBARA RANDO, CHAIR: Yeah.

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1 MARK HICKERNELL: Okay. And how about  
2 confirming the --

3 BARBARA RANDO, CHAIR: Not overturning  
4 him.

5 MARK HICKERNELL: Okay. And how about  
6 confirming the location of the garage?

7 BARBARA RANDO, CHAIR: Well, it's  
8 grandfathered, isn't it?

9 MARK HICKERNELL: Right. But that's  
10 one of the things that he's seeking to --

11 ATTORNEY BRET FRANCIS: We're seeking  
12 to confirm, so going forward it won't be  
13 nonconforming.

14 BARBARA RANDO, CHAIR: Right. Well, I  
15 might say no.

16 MARK HICKERNELL: It will be  
17 conforming per this decision.

18 BARBARA RANDO, CHAIR: Yeah, I'd say  
19 it's not, not nonconforming.

20 MARK HICKERNELL: Okay. Then we don't  
21 need to break this down unless anybody else wants to  
22 break them down.

23 BARBARA RANDO, CHAIR: Anything else?

24 JOHN SERGI: No.

1 MARK HICKERNELL: Okay. I withdraw  
2 the suggestion.

3 BARBARA RANDO, CHAIR: All right. How  
4 do you vote -- oh, do I have a motion on the decision  
5 as amended?

6 JOHN SERGI: I'll make a motion that  
7 the proposed decision as amended becomes the Board's  
8 decision.

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

11 MARK HICKERNELL: I'll second it.

12 BARBARA RANDO, CHAIR: Second by Mr.  
13 Hickernell.

14 How do you vote on the decision as  
15 amended, Mr. Sergi?

16 JOHN SERGI: Yes.

17 BARBARA RANDO, CHAIR: Mr. Hickernell?

18 MARK HICKERNELL: Yes.

19 BARBARA RANDO, CHAIR: Ms. Gelineau?

20 GLENNA GELINEAU: Yes.

21 BARBARA RANDO, CHAIR: Ms. Hankins?

22 SARAH HANKINS: Yes.

23 BARBARA RANDO, CHAIR: And the Chair  
24 votes no. I think it's not non-complying and not

1 nonconforming. I think your hardship is weak, and I  
2 think it's just desirable and not justified, and the  
3 lot is not different.

4 ATTORNEY BRET FRANCIS: Understood.

5 BARBARA RANDO, CHAIR: All right. The  
6 case is granted. Good luck.

7 ATTORNEY BRET FRANCIS: I'll make  
8 those changes and get it over to Ms. Doucette as soon  
9 as possible.

10 BARBARA RANDO, CHAIR: I hope you're  
11 happy there.

12 PETITIONERS: Thank you.

13 ATTORNEY BRET FRANCIS: Thank you.

14

15

16 BARBARA RANDO, CHAIR: One more motion  
17 is in order.

18 JOHN SERGI: Motion to adjourn, Madam  
19 Chair.

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

22 MARK HICKERNELL: Second.

23 BARBARA RANDO, CHAIR: Second by Mr.  
24 Hickernell. All in favor?

1 ALL BOARD MEMBERS: Aye.

2 BARBARA RANDO, CHAIR: Opposed?

3 (No Board members opposed.)

4 BARBARA RANDO, CHAIR: The ayes have  
5 it. We are adjourned at 7:50. Good evening and  
6 thank you.

7 (Whereupon, the hearing was adjourned  
8 at 7:50 p.m.)

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*Barbara Rando Chair*  
*3/6/18*

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

