

FOR THE  
CITY OF WALTHAM  
ZONING BOARD OF APPEALS

GENERAL HEARING

January 31, 2017

7:00 P.M.

at

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

Michael Cotton, Chair  
Mark Hickernell, Clerk  
Marc Rudnick  
John Sergi  
Michael Squillante

Arlington Reporting Corporation  
(339) 674-9100

Waltham Zoning Board of Appeals/1-31-/2

**I N D E X**

<u>CASE</u>	<u>PAGE</u>
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**A T T A C H M E N T S**

Legal Notices: Case No. 2016-43  
Case No. 2016-45  
Case No. 2016-48

Case No.: 2016-48:  
Brief with exhibits  
Proposed findings of fact, as amended  
Proposed decision, as amended  
Petition of abutters

Arlington Reporting Corporation  
(339) 674-9100

1 P R O C E E D I N G S

2 MICHAEL COTTON, CHAIR: The Zoning  
3 Board of Appeals, come to order please.

4 First of all, we'll say get well quick  
5 to Barbara Rando. She had a little accident and has  
6 been laid up.

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1       **Case Number 2016-43:      Cellco Partnership d/b/a**  
2       **Verizon Wireless; 415 South Street.**

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4                   MICHAEL COTTON, CHAIR:   The first case  
5       we're going to hear is 2016-43 of South Street.

6                   May we hear from the Petitioner or the  
7       Petitioner's representative, please?

8                   MARK HICKERNELL:    Before you start,  
9       I'll just read the public notice for the record.

10                   (The Clerk reads the above-mentioned  
11       petition into the record.   See Attached.)

12                   ATTORNEY DANIEL KLASNICK:   All right.  
13       Good evening, Mr. Chairman, members of the Board. My  
14       name is Daniel Klasnick.    I'm the attorney  
15       representing the Petitioner.

16                   We were notified by Pam that there  
17       would only be four available members, so we are  
18       respectfully requesting a continuance this evening.  
19       And I have a letter that I have prepared, if I could  
20       present that.

21                   MICHAEL COTTON, CHAIR:   Yeah, I don't  
22       have that, but you may submit that.

23                   ATTORNEY   DANIEL   KLASNICK:        So,  
24       basically, if it pleases the Board, we'd like to

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1 discuss a continuance to sometime in March if that's  
2 convenient for the Board.

3 MICHAEL COTTON, CHAIR: When in March?

4 ATTORNEY DANIEL KLASNICK: At the last  
5 meeting, we had signed an agreement for extension for  
6 time. We would need to sign another one if we go  
7 beyond March 1<sup>st</sup>, which is what we're proposing.

8 MICHAEL COTTON, CHAIR: What do we  
9 have open?

10 MARK HICKERNELL: Well, it looks like  
11 we've got one case each on the 7<sup>th</sup> and 14<sup>th</sup>, and  
12 totally open on the 21<sup>st</sup> and 28<sup>th</sup>.

13 MICHAEL COTTON, CHAIR: How about  
14 that, the first one?

15 MARK HICKERNELL: March 7<sup>th</sup>?

16 MICHAEL COTTON, CHAIR: Is March 7<sup>th</sup>  
17 all right?

18 MARC RUDNICK: It's all right with me.

19 ATTORNEY DANIEL KLASNICK: Yes, thank  
20 you.

21 MICHAEL COTTON, CHAIR: Mike?

22 MICHAEL SQUILLANTE: It looks good to  
23 me.

24 MARK HICKERNELL: I make a motion that

Waltham Zoning Board of Appeals/1-31-/6

1 we continue Case 2016-43 to March 7<sup>th</sup>.

2 JOHN SERGI: Second.

3 MICHAEL COTTON, CHAIR: Okay. Motion.

4 Could we have a vote on the motion?

5 MARK HICKERNELL: Sure.

6 JOHN SERGI: Yes.

7 MARC RUDNICK: Yes.

8 MICHAEL SQUILLANTE: Yes.

9 MICHAEL COTTON, CHAIR: Mike, yes?

10 Four yeses.

11 MARK HICKERNELL: All right. We will  
12 need to continue the 100 days out to let's say March  
13 28<sup>th</sup>, or, actually, March 31<sup>st</sup>. Let's do that just to  
14 give ourselves a little wiggle room.

15 ATTORNEY DANIEL KLASNICK: That's  
16 great. Thank you.

17 MARK HICKERNELL: And we've got  
18 something for you to sign here.

19 MICHAEL COTTON, CHAIR: Do you want me  
20 to take that, Mark?

21 MARK HICKERNELL: Yeah.

22 JOHN SERGI: You've seen the  
23 communication from the Legal Department?

24 ATTORNEY DANIEL KLASNICK: I did.

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1 MARK HICKERNELL: Okay. So you'll  
2 have a response to that next time?

3 ATTORNEY DANIEL KLASNICK: Yes.

4 MARK HICKERNELL: Okay. So we've got  
5 two copies for you to sign. We need them both back.  
6 And, we'll get one from Pam on request.

7 ATTORNEY DANIEL KLASNICK: I guess I  
8 sign down here. Thank you.

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1       **Case Number 2016-45:   Colbea Enterprises, LLC c/o**  
2       **Ayoub Engineering Inc.**

3                   MICHAEL COTTON, CHAIR:    The second  
4       case before us tonight is 2016-45, Waverley Oaks  
5       Road.

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

9                   MICHAEL COTTON, CHAIR:    Can we hear  
10      from the Petitioner or the Petitioner's  
11      representative please?

12                  ATTORNEY WILLIAM PROIA: Mr. Chairman,  
13      members of the Board, I am Bill Proia for the  
14      Applicant this evening. And, for similar reasons,  
15      because of the absence of the Chair, we are also  
16      requesting a continuance and open to discussing the  
17      date. I think Pam said all the February hearings  
18      were chock full. So, maybe March 7<sup>th</sup>, if that would  
19      work for the Board?

20                  MICHAEL COTTON, CHAIR:    So you've got  
21      two on the 7<sup>th</sup>. Do the 14<sup>th</sup>?

22                  MARK HICKERNELL:    Yeah, we've already  
23      got two.

24                  MICHAEL COTTON, CHAIR:    Do the 14<sup>th</sup>?



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1       There's only one. Is the 14<sup>th</sup> all right?  
2                    ATTORNEY WILLIAM PROIA: Yeah. Yeah.  
3                    MICHAEL COTTON, CHAIR: The 14<sup>th</sup>, Mike?  
4                    MARC RUDNICK: He's not on it.  
5                    MICHAEL COTTON, CHAIR: Oh, yeah.  
6       Okay.  
7                    MARK HICKERNELL: Oh, it's you.  
8                    JOHN SERGI: Have you finalized the  
9       plans with the neighbors or --  
10                   ATTORNEY WILLIAM PROIA: This is a  
11       different case. 65 Main Street is the one we're  
12       still working on.  
13                   JOHN SERGI: Oh, okay.  
14                   ATTORNEY WILLIAM PROIA: There are two  
15       -- I'm here for two similar redevelopments. At this  
16       point, the one that we're working on closely with the  
17       neighbors is 65 Main Street.  
18                   JOHN SERGI: Okay.  
19                   ATTORNEY WILLIAM PROIA: And I think  
20       that's also on the 14<sup>th</sup>.  
21                   MARK HICKERNELL: We're all good for  
22       the 14<sup>th</sup>?  
23                   JOHN SERGI: Yeah.  
24                   MARK HICKERNELL: I make a motion that

Waltham Zoning Board of Appeals/1-31-/10

1 we continue Case 2016-45 to March 14, 2017.  
2 JOHN SERGI: Second it.  
3 MICHAEL COTTON, CHAIR: Okay.  
4 JOHN SERGI: I vote yes.  
5 MICHAEL COTTON, CHAIR: Yes. Okay.  
6 MARK HICKERNELL: Yes.  
7 MARC RUDNICK: Yes.  
8 MICHAEL SQUILLANTE: Yes.  
9 MARK HICKERNELL: The motion passes.  
10 We need you to sign this as well. And I guess we  
11 need to pass this all the way down Marc Rudnick to  
12 submit the copies and you can get one from Pam.  
13 ATTORNEY WILLIAM PROIA: Sure.  
14 MARK HICKERNELL: Thank you.  
15 ATTORNEY WILLIAM PROIA: Thank you  
16 all.  
17 MARK HICKERNELL: Motion that we  
18 extend the 100 days on that to March 31<sup>st</sup> as well.  
19 JOHN SERGI: Seconded.  
20 MARK HICKERNELL: Yes.  
21 JOHN SERGI: Yes.  
22 MARC RUDNICK: Yes.  
23 MICHAEL SQUILLANTE: Yes.  
24 MICHAEL COTTON, CHAIR: Yes. The

Waltham Zoning Board of Appeals/1-31-/11

1     yees have it.  
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1       **Case Number 2016-48:   Anthony G. Cardillo III and**  
2       **Kathleen M. Cardillo.**

3                   MICHAEL COTTON, CHAIR:   The next case,  
4       moving right along, is Case 2016-48, Midland Drive.

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

8                   MICHAEL COTTON, CHAIR:   Can we hear  
9       from the Petitioner or the Petitioner's  
10      representative please?

11                  ATTORNEY JOSEPH CONNORS:       Good  
12      evening, Mr. Chairman, members of the Zoning Board of  
13      Appeals. My name is Joseph Mr. Connors, Jr. I'm an  
14      attorney. I have an office at 404 Main Street here  
15      in Waltham. I represent the Petitioners who are here  
16      with me tonight, Mr. Anthony Cardillo, here in the  
17      third row, and his wife, Kathleen, or Katie,  
18      Cardillo. This is Cardillo number two, not to be  
19      confused with Cardillo number one for some of the  
20      Board Members that might have heard that case on  
21      River Street.

22                  But this is a proposal for a single-  
23      family residence by Mr. and Mrs. Cardillo. So, I do  
24      have a prepared written brief for the Board.

1 I would say that straight off the bat,  
2 I don't know how this happened, but I got a legal  
3 notice that there was Case Number 47. And then I got  
4 a legal notice that it was Case 48. So, mine is  
5 entitled number 47. I just have to make sure I just  
6 change that to 48 if, in fact, the Board is going to  
7 vote on the case.

8 However, as I said, I represent Mr.  
9 and Mrs. Cardillo. They are owners of a lot, and  
10 it's a vacant parcel, the lot. The City Assessor  
11 refers to it as 65 aft Midland Drive because it is,  
12 today, it's a vacant lot. So, if we were to, just to  
13 orientate the Board, if you head up Trapelo Road  
14 west, go over 128, and go by the commercial office  
15 buildings on your right, and the road dips down a  
16 little bit and then you come up to a subdivision  
17 which begins with Brennan Road on your right, and  
18 then you enter that and then Midland Drive is in that  
19 subdivision.

20 So, this was originally created, the  
21 entire subdivision, or most of the lots there on the  
22 right side, out of the Goldencrest subdivision, which  
23 was created back in 1962, July of '62. So that was  
24 kind of the whole neighborhood. And that's why I say

1 you come off Trapelo Road into Brennan Avenue, and  
2 then Midland goes off of Mountain Road to Midland  
3 Drive. And, actually, say you're on 128, you can see  
4 it if you look up west up 128, you can see houses up  
5 here situated on Midland Drive. And that's the  
6 Goldencrest subdivision, which was originally  
7 approved in July of 1952.

8 So, this particular vacant parcel is  
9 situated in a Residence A-2 Zoning District. The  
10 Petitioners, Anthony and Katie Cardillo, purchased  
11 this particular lot in September 2016, just a few  
12 months ago. And they intend to construct, use, and  
13 maintain a single-family residence thereon.

14 So, the residence would be situated on  
15 the lot right here. And then on the detail plan that  
16 was prepared by Mr. Bibbo, it shows kind of the  
17 footprint of the home that would be constructed.

18 I also submitted a set of drawings --  
19 I'm not sure if the Board has them. But we made a  
20 revision, so I want to submit revised drawings,  
21 architectural renderings, to the Board so they have  
22 those. And the one difference is that the roof was  
23 changed to a hip roof just to eliminate kind of roof  
24 surfaces. So, if you actually skip ahead -- this is

1 the ground -- if you skip ahead to the plan that  
2 shows the front of the property, so it would be an  
3 elevation plan at A6, which shows what the house  
4 would then look like as it sits on Midland Drive.  
5 So, A6, that's kind of the elevation plan.

6 So, lots in a Residence A-2 Zoning  
7 District are required to have 15,000 square feet of  
8 land area, 80 feet of frontage. The setback here  
9 required would be 27.79. The side yards required are  
10 20 feet. The rear yard required is 40 feet. Two-  
11 and-a-half stories are permitted, and a 30-foot  
12 height is permitted.

13 With the proposed single family  
14 residence, we will have 80 feet of frontage, a lot  
15 area of 11,855, I believe, or 66, excuse me, 11,866  
16 square feet, and a front yard setback of 30 feet, a  
17 rear yard setback of 55.6 feet, and side yard  
18 setbacks on the north side would be 25.7 and on the  
19 south side it would be five feet. So, in order to  
20 construct then what is shown in the footprint of this  
21 site plan and what is shown on the architectural  
22 renderings that we have before you, we would need  
23 three variances: a side yard variance for the side  
24 yard on the south side of five feet. Excuse me. The

1 height is limited to 35 feet, so we would need a  
2 variance because the height in this instance for the  
3 average aggregate elevation of the lot would be 49.5  
4 -- the height would be 49.5 from the average  
5 aggregate elevation. And, number three, we're asking  
6 for a variance on stories. Two-and-a-half stories  
7 are permitted, and the Building Inspector was of the  
8 opinion that with a dormer he would consider that a  
9 story. And so, therefore, you would need a variance  
10 for the dormers on the third floor.

11 Now, this particular rendering changes  
12 what was originally proposed. We proposed dormers  
13 initially. And this is a little bit different  
14 because the dormers have been removed. But what  
15 Anthony is proposing is, if we turn the page over to  
16 say A7, is really a hip roof with just a window and a  
17 deck. And the only purpose is we're going to have  
18 that on what, the east, the north, the south?

19 ANTHONY CARDILLO: The east.

20 ATTORNEY JOSEPH CONNORS: In the east.

21 ANTHONY CARDILLO: Yeah.

22 ATTORNEY JOSEPH CONNORS: And so it's  
23 really just kind of to give it a little architectural  
24 characteristics, but they're really, for all intents



1 and purposes, the floor plan would just show the  
2 unfinished attic space, but they've eliminated the  
3 dormers, and rather than the dormers, they're  
4 proposing this on three sides of the building. The  
5 Building Inspector has recently opined, if you're  
6 going to propose a dormer, even in the two-and-a-half  
7 story, he's going to consider that a third floor.  
8 So, we're assuming that that same interpretation  
9 applies here.

10 So, we're looking for three variances  
11 in this case. As you know --

12 MICHAEL COTTON, CHAIR: Excuse me.  
13 Does that come up higher than the two-and-a-half?

14 ATTORNEY JOSEPH CONNORS: The  
15 proposed? Well, this is a two-and-a-half. So, if  
16 you just eliminated the dormers and left it as is, it  
17 would be two-and-a-half.

18 MICHAEL COTTON, CHAIR: Okay.

19 ATTORNEY JOSEPH CONNORS: So, and the  
20 same thing here. So we're proposing this little,  
21 basically, a short little gabled roof with a window  
22 and a little deck, a recessed deck. So, there's a  
23 railing at the edge of the building, but it's set  
24 back a little, and then you have your window. So,

1 it's not even a dormer anymore. They removed the  
2 dormers. The initial plan that you have actually  
3 shows a dormer, but they removed that entirely and  
4 are showing this. But I think that the same  
5 interpretation would be rendered by the Building  
6 Department. If you're proposing to build something  
7 in that half-story, then he's going to consider it a  
8 third story. And this is really the interpretation  
9 of Inspector Forte, which is maybe a little bit  
10 different than his predecessor. But, that's what  
11 he's saying. Now if you're proposing a dormer in  
12 that half-story on the roof, then it's a third story.

13 MICHAEL COTTON, CHAIR: But if it's  
14 not higher than the other two dormers, how can it be  
15 the third floor?

16 ATTORNEY JOSEPH CONNORS: You'd have  
17 to discuss that with the Building Inspector. But the  
18 height is not going to change. So, we could  
19 eliminate dormers altogether and have no need for a  
20 variance for a third floor, because then it would be  
21 rendered a two-and-a-half story building. But I  
22 still need a height variance.

23 The jurisdiction of the Board is  
24 pursuant to Chapter 40, Sections 10 and 14, as you

1 know. The Board is restricted to granting variances  
2 for dimensional variances only, and that's what we  
3 have here. We're proposing three stories as opposed  
4 to two-and-a-half. We're proposing a height of 49.5  
5 as opposed to 35, and a five-foot side yard setback.

6 The proposed use, a single-family  
7 residence with an attached garage, are permitted uses  
8 in the single-family zoning district. So, the Board  
9 has the authority to grant the variances.

10 As a basis for a variance, it must be  
11 shown under the statute, Chapter 40A, Section 10,  
12 that there are unique circumstances which affect the  
13 locus which are related to topography, shape, or the  
14 soil conditions of the lot. So, I called out two  
15 unique circumstances or characteristics that we  
16 believe create a hardship for the Petitioners here.  
17 Number one is topography. So, I had Mr. Bibbo show  
18 the elevation grades on the plan, the site plan, and  
19 they're called out in green. And then it gives out  
20 the elevation. And so what you'll see here is on the  
21 rear of the locus, way back here, you have an  
22 elevation of about 258 square -- not quite feet --  
23 258 feet. That would be above sea level. That's  
24 where that comes from. And, yet, the front corner

1 where it fronts on Midland Drive is about 280 here.  
2 So, there's a difference of about -- a difference of  
3 over 20 feet between the front and the back half of  
4 the locus. Same thing over here as it fronts on the  
5 south side of the lot, the corner; it's 288 feet, and  
6 at the rear portion you see it's about 262. So,  
7 again, there's a disparity of over 20 feet on both  
8 sides. And then you'll also see that it's 26 feet on  
9 one side, I believe, and 22 on the other.

10 And then if you were to go up there,  
11 you'd also see that, you know, and even from -- it's  
12 called out from the plan -- I mean 14 feet from the  
13 rear of the lot, it has an elevation of about 274.  
14 And then, again, walk 14 feet back and it's 258 at  
15 this corner and 262 on that corner. So, all of a  
16 sudden you get to the rear of the lot and it just  
17 drops off.

18 You'll also see that there's grade  
19 changes over here. We have 288, 286, 284, and then  
20 it slopes this way down to 280, 278. So, it slopes  
21 down from the south to the north and from the west to  
22 the east. And it's really specifically very severe  
23 and precipitous as you walk to the rear of the lot  
24 from the front of the lot.

1                   Anthony was able to take some  
2 photographs that will kind of show a little bit of  
3 what the lot looks like, number one, from the street.  
4 And so I should add that the lot next door, right  
5 here, is owned by Anthony Cardillo, Jr., who is in  
6 the audience over here. That's Anthony the III's  
7 dad. So, he lives next door. And I think the lot  
8 has been in the family for quite a while. So he used  
9 it as just a parking area for a while.

10                   But this is the lot right about here.  
11 And the lot line is actually right about here at the  
12 edge of this plow. I'm going to write on that  
13 Anthony. Do you mind?

14                   ANTHONY CARDILLO: No.

15                   ATTORNEY JOSEPH CONNORS: So that will  
16 show you what the lot looks like from Midland Drive  
17 looking east. So that's from west to east.

18                   Here's another photo which shows the  
19 same thing but kind of on the north side of the lot.  
20 So, this is adjacent to the neighbor on the north  
21 side of the lot.

22                   And, again, here's another one with  
23 that same picture. But it actually shows the slope  
24 right in the middle of the lot. So there's grade

1 changes right in the middle of the lot because what  
2 I'm showing, the disturbed dirt is where they just  
3 did some pit testing just for the purposes of  
4 construction. But that is the locus.

5 And then we have here, that's a  
6 picture of the lot and Anthony's father's house in  
7 the background there.

8 And then these are pictures that look  
9 off the back of the lot. And so the red roof there,  
10 you're looking down on homes that are situated behind  
11 him down on Goldencrest.

12 And then here's another one that  
13 really kind of gives you a little bit more idea of  
14 the slope.

15 So, you might think, if you went up  
16 there and took a look at the back fence, the back  
17 fence is -- the fence is really right here. So as  
18 you get to the fence, all of a sudden the lot really  
19 drops off. So, the fence isn't on the lot line. The  
20 fence is on where the grade changes precipitously to  
21 keep people from kind of falling off the back of a  
22 cliff. So, the pictures were taken right here from  
23 where the fence is as opposed to where the lot drops  
24 off.

1                   So, we believe we have, you know,  
2                   severe grade changes as you go around the lot, and  
3                   then it's very severe in the back of the lot, but,  
4                   also, in effect, the average aggregate grade or  
5                   elevation of the lot -- so that's the number that we  
6                   have to take to determine what the height of the  
7                   building may be. So, we're entitled to build 35 feet  
8                   above the average elevation. So, as a result of the  
9                   average of all these disparate numbers, we have an  
10                  average aggregate elevation of -- and it's shown  
11                  right here in green -- 274.5. So, down on this  
12                  little graph here on the plan, on the site plan, so  
13                  our average elevation is 27.5 (sic), which is  
14                  actually below ground for most of the lot except for  
15                  the very rear. And that average is 3.5 feet below  
16                  the elevation of the proposed foundation. And then  
17                  you'll see the front yard is proposed at 285.5 feet.  
18                  Yet, again, that's 11 feet different than the  
19                  average. So, the average puts us underground.

20                  So, we believe that it's a very unique  
21                  topography there, one, to construct on, and, two, to  
22                  use as the starting point with the average aggregate  
23                  elevation. I cite some cases as the basis of  
24                  topography as a unique circumstance for the basis of

1 a variance.

2                   Number two, I state that the shape of  
3 this lot is also unique. And you'll say, well, it  
4 doesn't look that unique; it's just a rectangle. But  
5 that's essentially my point is that the front of the  
6 lot as it fronts on Midland Drive, the perimeter lot  
7 line is 80 feet. The rear is 80.53. But the side  
8 lot lines, we have 152-plus on one side, on the south  
9 side, and about 143 on the north side. So, what you  
10 see is that the lot is much more narrow than it is  
11 wide. And so the lot is a lot deeper. So the house  
12 kind of has to reflect the rectangular shape of it.  
13 And, yet, the point that we will build on, because we  
14 will front the house on Midland Drive, we will face  
15 the house to front on Midland Drive, and that's the  
16 most narrowest perimeter lot line that we have. So,  
17 the size of the house, with the 20-foot two setbacks,  
18 you're down 40 feet. That leaves her a 40-foot house  
19 because we only have 80 feet of frontage. And he's  
20 proposing 25.7 setback on the north side and five on  
21 the south side.

22                   And I'll say one of the reasons we  
23 kind of brought it off that north side lot line is  
24 because the driveway and the garage, which are



1 proposed for underneath -- so, if you see on page A7,  
2 the north side elevation will show you an elevation  
3 plan of where the garage would be situated. And it's  
4 going to be situated on the side of the house. So,  
5 you'd come in the garage from the driveway and then  
6 turn in this way. And so we needed that kind of --  
7 we need that turning radius to get in there.

8 So, you know, the long, narrow lot  
9 shape also defines kind of how we're going to  
10 construct the home. So, we have to build the home  
11 almost deeper than wide because that gives us more  
12 room to work with. If we go deeper into the lot,  
13 then we do wide because, as I say, we're limited by  
14 the 80 feet, 20 and 20 side yard setbacks, so we're  
15 down to about a 40-foot-wide house. And so the house  
16 is proposed to be about 50 feet deep and 40 feet  
17 wide.

18 So, we believe that, you know, the  
19 unique shape of the lot kind of restricts our ability  
20 to build a house, a normal width house, as it fronts  
21 on Midland Drive. Midland Drive is our frontage, and  
22 that's where we'll situate the house. But that is  
23 also the most narrowest lot line that we have to work  
24 with. And the side lot lines are almost twice as

1 long as the front and rear yard lot lines.

2 So, we believe that these two  
3 particular hardships create -- and our unique  
4 circumstances create hardships which will create  
5 problems in the construction of a home. And so,  
6 therefore, we are seeking variances. Because of the  
7 varied elevation grades at the locus, especially in  
8 the rear, any construction in this area would be  
9 problematic because of the grad changes.

10 Also, any runoff that we're going to  
11 create needs to be retained onsite. So, again, we'd  
12 prefer to keep that drainage system toward the front  
13 of the lot and away from the rear of the lot. So, we  
14 want to limit excavation in the back. We want to  
15 keep the drainage to the front of the lot, so we  
16 retain it here and we keep it flowing north rather  
17 than west, rather than east.

18 Also, the elevation changes create a  
19 situation where we're beginning below grade. So, if  
20 you look at the dimensions of the proposed house,  
21 basement, first floor, and the roof, you have nine  
22 feet -- it's nine-foot -- nine-and-a-half feet for  
23 the basement; ten feet for the first floor; and 15-  
24 and-a-half feet for the height of the roof. If you

1 add those up, you get about 35 feet. So, with that  
2 aggregate elevation, we're only permitted to build a  
3 one-story house just because we're where beginning  
4 underground. So, if we start from underground and  
5 add 35 feet, we only have a one-story house. So,  
6 that's a hardship, I believe, just because of that  
7 aggregate elevation, putting aside the fact that, you  
8 know, it's problematic to build on the rear parcel,  
9 or the rear part of the parcel.

10 One thing I also wanted to point out  
11 to the Board is that we're seeking a five-foot  
12 southerly setback. But if you look at the site plan,  
13 you'll see that the foundation is ten feet from the  
14 lot line. So, traditionally, the Building Department  
15 would allow you to construct say an uncovered  
16 bulkhead or an uncovered set of stairs in the setback  
17 without affecting the setback because it didn't have  
18 a roof. So, any kind of -- so this is the south  
19 elevation. So you'll see there's a little set of  
20 stairs here, and then underneath there's just a  
21 bulkhead here. So those are five feet from the south  
22 side lot line, but the actual foundation is ten feet.  
23 But this Building Inspector is of the opinion that  
24 anything out there needs to be, you know, needs to be

1 included in the setback, even if it's uncovered, and  
2 that's a little bit different than what was  
3 traditionally interpreted by the Building Inspector.  
4 So, I mean, I think it sounds more severe than it  
5 actually is. We're ten feet from the side lot line,  
6 and we're only five feet from the bulkhead and five  
7 feet from the set of stairs.

8 So, I think the shape also results in  
9 a hardship as the most narrowest perimeter lot line  
10 is on the front. Excuse me. And the situation of  
11 the rear, one of the other reasons we didn't want to  
12 put the garage behind the house because that would,  
13 again, require excavation of the rear yard where the  
14 elevation changes are more severe. So, if we put it  
15 on the side of the house and away from the rear yard,  
16 then that will hopefully eliminate building and  
17 constructing in the year where we would then have  
18 more paved area and more runoff in the rear. And so,  
19 as a result of that, we're sliding the house a little  
20 bit south so we can make that access through the  
21 driveway.

22 So, the final issue is whether the  
23 granting of the variances will result in a  
24 substantial detriment to the public good or

1 substantially derogate from the intent or the purpose  
2 of the ordinance. I would say that this does not  
3 present a substantial detriment to the public good.

4 This particular lot, as I said, was  
5 created in 1952, and it was actually in July 1952.  
6 So, it's been a single-family residential lot since  
7 July of 1952. It is under what's probably required  
8 for the zoning district. As I said earlier, the  
9 zoning district requires 15,000 square feet. We have  
10 11,866. However, this lot was created in July of  
11 1952. And, in December 1952, the City Council  
12 changed the zoning to require 15,000. So, what  
13 happened was that most of the lots up there became  
14 nonconforming. But, in a provision of the 1952  
15 zoning ordinance, which was provided to me by the  
16 Building Department and is attached as an exhibit for  
17 you tonight, was a provision that provides that an  
18 lot that was shown and created prior to the enactment  
19 of the December of 1952 zoning ordinance is protected  
20 provided that it was signed by a -- endorsed by the  
21 Subdivision Control Board, which this is and was in  
22 December of 1952.

23 So, I did -- I had a colored copy of  
24 that, but I'm not sure if it came out colored or not

1 in the exhibits. But, I gave you a copy of that  
2 1952. So, if you go to that second page where it  
3 talks about lot area and width exemptions it says,  
4 "Lot area and width exemptions in all districts shall  
5 not apply to lots which prior to the adoption of this  
6 ordinance were shown as separate parcels on  
7 subdivision plans approved by the Board of Survey...or  
8 shown on plans or deeds recorded with the Middlesex  
9 Registry of Deeds."

10 So, we believe that the lot itself is,  
11 and always has been since 1952, has been a buildable  
12 lot. And so it's a by-right single-family residence.  
13 So this is not a detriment to the public good because  
14 if you were to go up there now, there's very few  
15 vacant lots up there. I don't know -- are there any  
16 others?

17 ANTHONY CARDILLO: No.

18 ATTORNEY JOSEPH CONNORS: Yeah, so  
19 most of them are built on -- you'll see even just  
20 from the pictures in the neighborhood actually from  
21 here, you'll see that there's pretty much a residence  
22 on all of the lots. So, this is a buildable lot.  
23 It's a by-right buildable lot. Anthony and his wife  
24 are going to be joining the family up there. They

1 have a family compound. His father is next door. He  
2 has two lots across the street. Anthony, he lives on  
3 Grove Street now, but he has three young children  
4 under five years old so they want to construct a  
5 single-family residence out there.

6 So, we feel that it's going to be a  
7 benefit to the neighborhood, benefit to the  
8 Cardillos. But, also, you know, it's a by-right,  
9 single-family, residential lot. The residence that  
10 he's proposing is a -- you know, it's an  
11 aesthetically pleasing residence. He constructed it  
12 for a three-car garage so he could maintain all his  
13 vehicles inside the property.

14 How many bedrooms do you have?

15 ANTHONY CARDILLO: Four.

16 ATTORNEY JOSEPH CONNORS: Four. And  
17 one of the changes that you'll see is that he changed  
18 the original design to eliminate the dormers to go  
19 with the hip roof just because the house is fairly  
20 deep. And then if it was a traditional gabled roof,  
21 it would be all roof. So, that's a way to kind of  
22 limit the roof area.

23 Also, I think it's not reflected on  
24 out site plan, but I think with the hip roof, we're

1 going to reduce the height of the building by one  
2 foot. But, that's a new addition, so I'd just kind  
3 of proceed with the variances I requested. But we  
4 would be reducing the height of the building by one  
5 foot to say 37.5 feet.

6 I also provided a copy of the deed  
7 back in 1952 where the several lots were conveyed  
8 from Mr. Brennan, hence the name Brennan Avenue, to  
9 the developer of the entire neighborhood, Gerald M.  
10 Callahan.

11 And I also attached with my electronic  
12 filing just kind of a site plan that kind of gives  
13 you a little color rendering of those elevation  
14 changes that I discussed in my presentation.

15 I also have -- Anthony and Katie went  
16 around the neighborhood to kind of show the plans.  
17 And they were able to collect some signatures. So,  
18 what we did was" We had reviewed the site map and  
19 checked the plans of Anthony and Kathleen Cardillo  
20 for the single-family residence at 65 aft Midland  
21 Drive. We have no objections to the proposed single-  
22 family residence." I can't say that they got  
23 everyone because some people -- there as a couple of  
24 people reluctant to sign and some people were simply



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1 not home. But, all the direct abutters signed the  
2 document.

3 Anthony, do you have a list of who  
4 didn't sign?

5 ANTHONY CARDILLO: Yes.

6 ATTORNEY JOSEPH CONNORS: So, I mean  
7 if the Board was interested in that, we do have who  
8 was either not available or was unwilling to sign.

9 ANTHONY CARDILLO: It's eight out of  
10 38.

11 ATTORNEY JOSEPH CONNORS: Yeah, eight  
12 out of 38.

13 MARK HICKERNELL: Your father wasn't  
14 willing to sign it.

15 ANTHONY CARDILLO: Oh, he signed it.

16 MARK HICKERNELL: He did? Oh, I  
17 didn't see that. Fifty-three? Oh, there it is, 53.  
18 I got it.

19 ANTHONY CARDILLO: He scribbled a  
20 little.

21 MARK HICKERNELL: Oh, yeah. Yeah. I  
22 thought it was 83. Okay. Good.

23 ATTORNEY JOSEPH CONNORS: His mother  
24 was a little bit, I don't know --

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1 (Laughter.)

2 So, that would be my presentation, Mr.  
3 Chair.

4 MICHAEL COTTON, CHAIR: Any questions  
5 from the Board?

6 JOHN SERGI: I don't have any  
7 questions, no.

8 MARK HICKERNELL: No.

9 MICHAEL COTTON, CHAIR: Michael?

10 MICHAEL SQUILLANTE: I want to discuss  
11 the hardship a little bit. The lot clearly has  
12 interesting topological features. It would  
13 definitely make sense not to build the house in the  
14 middle. I understand the hardship on moving the  
15 house toward one edge rather than the other. And so  
16 if you subtract the stairways you're more or less  
17 you're about ten feet away from the edge, 11 feet?

18 ATTORNEY JOSEPH CONNORS: Ten. I'd  
19 say 10.

20 MICHAEL SQUILLANTE: So, it's not too  
21 bad. I mean --

22 ATTORNEY JOSEPH CONNORS: And the  
23 other thing, I mean we're 55 feet from the rear lot  
24 line. So we could move the house another 15 feet

1 into the rear.

2 MICHAEL SQUILLANTE: Yeah, I can  
3 understand why you wouldn't do that.

4 ATTORNEY JOSEPH CONNORS: Right.

5 MICHAEL SQUILLANTE: To me, it seems  
6 the main purpose of the variance is to allow you to  
7 build something that your neighbors on a flat lot can  
8 build by right.

9 ATTORNEY JOSEPH CONNORS: Right.

10 MICHAEL SQUILLANTE: And you couldn't  
11 do this by right on a flat lot. Even from the front  
12 of the house, if you take the highest point of the  
13 ground, you're 38 feet from the ground.

14 ATTORNEY JOSEPH CONNORS: Correct.  
15 They're about three feet over. You know, so I agree  
16 I mean in a perfect world. But I would say the front  
17 yard is 285.5, so there's 11 feet.

18 MICHAEL SQUILLANTE: If you were to  
19 actually stand on the ground and measure up to the  
20 roof, according to your plans, 38-and-a-half feet.

21 ATTORNEY JOSEPH CONNORS: Right.  
22 That's what it says.

23 MICHAEL SQUILLANTE: So, even from the  
24 highest point of your land, you're asking for more

1 than allowed. So, you're right. You're asking for a  
2 variance. It exceeds what other people could do. I  
3 understand why you can't go by the permitted. But I  
4 don't understand why the tallest point, the shortest  
5 distance from the ground to the roof has to be more  
6 than 35 feet. I don't understand the hardship of it.

7 ATTORNEY JOSEPH CONNORS: Well, as I  
8 said, I mean you're thinking feet, three feet.  
9 Right?

10 MICHAEL SQUILLANTE: Yeah.

11 ATTORNEY JOSEPH CONNORS: But if I  
12 went 35 -- I can only build a single-story residence  
13 --

14 MICHAEL SQUILLANTE: No, I'm talking  
15 about if I'm standing on the ground in front of the  
16 front door --

17 ATTORNEY JOSEPH CONNORS: Right.

18 MICHAEL SQUILLANTE: -- the 38-and-a-  
19 half feet, you're already 15 feet above --

20 ATTORNEY JOSEPH CONNORS: Right. But  
21 it's still -- I mean putting aside the new definition  
22 of what's a story and what isn't --

23 MICHAEL SQUILLANTE: Right.

24 ATTORNEY JOSEPH CONNORS: It's still

1 fundamentally a two-and-a-half story house. You  
2 know, so and I think that one of the problems that  
3 leads to maybe a taller roof, because the roof is 15-  
4 and-a-half feet tall from here to the top, so it  
5 takes us 15-and-a-half feet to get to the point, or  
6 maybe 14-and-a-half now, is because the height of the  
7 house is 40 feet side-to-side but 50 feet deep. So,  
8 it's kind of -- it's a -- I wouldn't call it a narrow  
9 house, but it's more narrow than it is deep. So, the  
10 house goes 50 feet back, so that requires a lot of  
11 roof coverage. So, to get it all covered, we had to  
12 go a little bit higher than maybe traditionally.

13 MICHAEL SQUILLANTE: No, I understand  
14 that.

15 ATTORNEY JOSEPH CONNORS: But the  
16 other thing is once you build a story, you're buying  
17 ten feet. You know, so I can't build a two-story  
18 house.

19 MICHAEL SQUILLANTE: Well, you could  
20 build a two-and-a-half story house.

21 ATTORNEY JOSEPH CONNORS: No, I can't.

22 MICHAEL SQUILLANTE: You wouldn't have  
23 a hip on it.

24 ATTORNEY JOSEPH CONNORS: I don't

1 think of a hip was a two-and-a-half story house.

2 MICHAEL SQUILLANTE: At 35 feet?

3 ATTORNEY JOSEPH CONNORS: No. Yeah, I  
4 couldn't. Because if we went 35 feet, that means  
5 I've got to cut my house off right here and then I  
6 have a peak. I'm going to have a flat roof.

7 MICHAEL SQUILLANTE: Well, what if you  
8 don't have a hip roof?

9 ATTORNEY JOSEPH CONNORS: Well, the  
10 hip makes it lower in a traditional gable. So,  
11 actually, the hip is going to bring it down about  
12 another foot.

13 MICHAEL SQUILLANTE: Normally, a two-  
14 and-a-half story house --

15 ATTORNEY JOSEPH CONNORS: So, I'm two  
16 feet away from the 35 feet, so now I'm 37-and-a-half,  
17 two-and-a-half feet.

18 Come up here. I'm going to have  
19 Anthony address the height issue if you don't mind.  
20 Just state your name.

21 ANTHONY CARDILLO: Hi. Anthony  
22 Cardillo, 203 Grove Street.

23 It was, you're right, it said 38-and-  
24 a-half. And then we lowered it a foot, so now it's

1 37-and-a-half. And, roughly, our surveyor usually  
2 builds in about 12 minutes of wiggle room because as  
3 you're going up, you don't know exactly where you're  
4 going to hit. So, in theory, it's right around  
5 between, you know, if you measured from the ground up  
6 right now, it's right around 36-and-a-half give or  
7 take.

8 We could lower the pitch. My  
9 architect is here. But, what I was told was snow  
10 load comes into effect. So that's why we're trying  
11 to keep it a seven pitch, which is relatively a low  
12 pitch. Most roofs are eight. And, again, like Joe  
13 said, the shape of the house is unique because  
14 usually your street frontage is wider than your depth  
15 and you've got more options with your roofs. You can  
16 lower your roof down because you're not trying to  
17 stand so drastically. With us it's kind of in  
18 reverse. That's why, initially, we were higher with  
19 just a plain gable roof, and Katie and I had cut it  
20 down to a hip and lowered it to a seven pitch. So,  
21 realistically, it's probably about 36-and-a-halfish,  
22 somewhere in there. It's tough to real -- and that's  
23 taking into account right around, you know, if I had  
24 12 inches of foundation showing, roughly. You know,

1 but I mean I could boost the grade up. Code is eight  
2 inches away from the sills. We like to keep it about  
3 12 inches to keep the sills dry and keep away from  
4 rot and stuff like that.

5 MICHAEL SQUILLANTE: Okay. And then  
6 why does the hardship justify three stories instead  
7 of two-and-a-half?

8 ATTORNEY JOSEPH CONNORS: Well, again,  
9 I mean I think we've been building -- we've been  
10 building houses and I've seen houses all around the  
11 City like this. So now it's really the  
12 interpretation of this Building Inspector that says  
13 if you're going to construct a dormer on that half  
14 story, he's going to consider it a third story. So,  
15 I would say that really I think that he's considering  
16 it a third story. We couldn't get him to render an  
17 opinion. Mr. Forte is not in this week, but his  
18 staff, you know, didn't want to render an opinion as  
19 to whether or not they would consider this a story or  
20 not. So, we're proceeding as if he would consider  
21 what we're proposing, the gable and the little deck,  
22 as a story. And so if he does that, then it's  
23 considered a story. But if we just simply eliminated  
24 that, it would be considered a two-and-a-half story.



1 So, the height of the building is not going to change  
2 at all. It's just his interpretation of once you put  
3 something in that roof level, he's considering it a  
4 story. So, I would say that's kind of different than  
5 the way it's been interpreted for many years here in  
6 the City of Waltham. So, you'll see many people in  
7 the neighborhood have constructed two-and-a-half  
8 story houses with a dormer without -- and it has been  
9 considered a two-and-a-half story home.

10 MICHAEL SQUILLANTE: So --

11 ATTORNEY JOSEPH CONNORS: And,  
12 really, I mean the purpose of it is architectural, to  
13 give it something that looks architecturally  
14 aesthetic so it just isn't rooftop.

15 MICHAEL SQUILLANTE: I understand what  
16 you're saying.

17 ATTORNEY JOSEPH CONNORS: So, when  
18 you're looking side-to-side, you'll see it.

19 MICHAEL SQUILLANTE: I understand what  
20 you're saying. So that roof is sort of -- so the  
21 actual floor area, use of floor area not counting  
22 storage, is what on the third floor?

23 ATTORNEY JOSEPH CONNORS: We have that  
24 in there, right, Anthony, right?

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1 ANTHONY CARDILLO: I don't think so,  
2 but it's under 400 square feet.

3 MICHAEL SQUILLANTE: And that's the  
4 whole -- the whole --

5 ATTORNEY JOSEPH CONNORS: We had a  
6 floor plan.

7 ANTHONY CARDILLO: Oh, yeah, the floor  
8 plan is there, but the square footage isn't on it  
9 though.

10 ATTORNEY JOSEPH CONNORS: It doesn't  
11 have the square footage on it.

12 MICHAEL SQUILLANTE: So, I see what  
13 you're saying. Okay. Thank you. I think you've  
14 answered my questions.

15 ATTORNEY JOSEPH CONNORS: Thank you.

16 MICHAEL COTTON, CHAIR: Any more  
17 questions from the Board?

18 MARC RUDNICK: Yeah. I'm trying to  
19 figure out about the stuff about the rectangular lot  
20 being irregular. It looks like every other lot that  
21 surrounds this lot is a long -- I mean you have the  
22 exact frontage required in the district and you have  
23 a long lot.

24 ATTORNEY JOSEPH CONNORS: Right.

1                   MARC RUDNICK: It doesn't seem like a  
2 -- neither seems unusual for the district since every  
3 other house surrounding this one is like that --

4                   ATTORNEY JOSEPH CONNORS: Well, I  
5 would says that --

6                   MARC RUDNICK: -- nor does it seem a  
7 disadvantage. It seems wonderful, just like my own  
8 lot. So, I don't see that. I'd give a stronger case  
9 with the topography of the lot.

10                   Are we having an impact on the  
11 building next door by being five feet away from the  
12 lot line? The building next door, I mean I know it's  
13 family, but the garage is on the side of that.

14                   ATTORNEY JOSEPH CONNORS: Right.

15                   MARC RUDNICK: So the driveway is --  
16 those cars enter and exit aiming at this new house  
17 five feet away from the lot line.

18                   In one of the photos you gave me -- I  
19 didn't pick this up when I was up there today, but a  
20 few of these photos made it look like changes would  
21 be required on the next door lot in order to be able  
22 to drive. This one, Joe. And if this is sort of  
23 where the lot line is and cars are coming, you know,  
24 it looks like all this landscaping and lack of

1 driveway is in the way of -- so I'm really just  
2 asking, have you thought that through and you see  
3 that the other house has adequate turning radius for  
4 its vehicles?

5 ANTHONY CARDILLO: Yeah, we did go  
6 through that. It's not that close. It's roughly  
7 about six feet off -- the lot line is roughly about  
8 six feet off the existing driveway. So, we will end  
9 up making my father's driveway slightly wider, the  
10 opening. But my father has the same -- he's about 25  
11 feet off the lot line right now, 25ish, 26 feet from  
12 his garage to where his lot line is, and I have the  
13 same thing essentially by doing this. So, it's not  
14 going to impact, you know, a future owner or anything  
15 like that getting into the -- getting into the  
16 garages or anything like that.

17 MARC RUDNICK: It's not going to  
18 impact it once you make some minimal changes to the  
19 other lot, correct?

20 ANTHONY CARDILLO: Yeah, we're just  
21 going to move the opening up.

22 MARC RUDNICK: I think we're going to  
23 have to cover that in the order --

24 ATTORNEY JOSEPH CONNORS: Oh, sure.

1 Sure.

2 MARC RUDNICK: -- if this goes forward  
3 that we don't want to be in the situation where  
4 ownership changes suddenly and enough room to  
5 everybody.

6 ATTORNEY JOSEPH CONNORS: Yeah, the  
7 properties will have to stand alone.

8 MARC RUDNICK: Exactly. Yeah, all  
9 right. Thank you.

10 ANTHONY CARDILLO: Thank you.

11 MARC RUDNICK: I wasn't quite  
12 following the rubric about the dormers. You know,  
13 because a 15-foot-height story is a story in Waltham.  
14 The dormers didn't make it a story; the 15 feet made  
15 it a story. That's a full story. It's not a half-  
16 story. It's not a half-story that became a full  
17 story because of the dormers. It's a story because  
18 it's 15 feet tall. Now you've come to us tonight  
19 telling us that it's 14 feet tall, making it slightly  
20 lower than what Waltham considers to be a story.

21 ATTORNEY JOSEPH CONNORS: Fourteen-  
22 and-a-half, yeah.

23 MARC RUDNICK: But you're also  
24 submitting testimony that there's a 12-inch wiggle

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1 room on that, so we could wind up having a full story  
2 there that is a full story whether you threw the  
3 dormers away or not.

4 ATTORNEY JOSEPH CONNORS: Well, I  
5 think the wiggle room is included in the 15-and-a-  
6 half -- the 15-and-a-half.

7 MARC RUDNICK: It's that or less  
8 you're saying?

9 ATTORNEY JOSEPH CONNORS: Yeah.

10 MARC RUDNICK: Fourteen-and-a-half?

11 ATTORNEY JOSEPH CONNORS: Fourteen-  
12 and-a-half or less.

13 MARC RUDNICK: Or less.

14 ATTORNEY JOSEPH CONNORS: Is that  
15 correct, Mr. Architect?

16 AVO ASDOURIAN: Yes.

17 MR. RUDNICK: Thank you. No further  
18 questions.

19 MICHAEL COTTON, CHAIR: No more  
20 questions from the Board?

21 Did you want to add something on  
22 there, Joe?

23 ATTORNEY JOSEPH CONNORS: Well, just  
24 that, you know, the renderings that we did provide

1 with the hip roof are going to result in a home that  
2 is one foot reduced in height. So, we find that for  
3 a height variance it would be rather than 49 -- if  
4 it's 49-and-a-half it would be 48-and-a-half. And I  
5 could address that in the findings or even in the  
6 decision if we get to that point.

7 MICHAEL COTTON, CHAIR: Well, we have  
8 no more questions. We could proceed with the --

9 MICHAEL SQUILLANTE: Can we hear if  
10 anyone has an objection?

11 JOHN SERGI: Do you want to hear from  
12 --

13 MARK HICKERNELL: Is anybody here in  
14 favor?

15 MICHAEL COTTON, CHAIR: Oh, yeah.  
16 Actually, is anybody here in favor of this petition?  
17 Put your hands up. In favor, yes. One, two, three,  
18 four, five. Five.

19 Any people against? One.

20 DAVID KEHS: Can I speak?

21 MICHAEL COTTON, CHAIR: Sure.

22 DAVID KEHS: Hi. My name is David  
23 Kehs, K-e-h-s. And I live at 76 Midland Drive. And  
24 I've lived there since 1984.

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1                   First of all, let me just say it's a  
2 very nice neighborhood, a desirable neighborhood.  
3 I've lived there all that time. And I'm happy to see  
4 that Anthony and Katie want to come back there  
5 because that's where he grew up. And I also want to  
6 thank them from coming by on the weekend to show the  
7 plans and talk to the neighbors about it.

8                   And, for me, I'd say I live in --  
9 which direction are we looking here -- this one. So,  
10 I'm actually not going to be directly affected by  
11 this building because it's not going to cast a shadow  
12 on me or if I look out my window I probably won't see  
13 it. But I do have a few concerns that I thought the  
14 Board should take up.

15                   My issue is what is the future effect  
16 of this variance going to be on the neighborhood if  
17 other properties try to use the same argument that  
18 was presented here, in a particular about the space  
19 hardship, which was discussed here.

20                   Now, as was stated before, there are  
21 no more vacant lots in the neighborhood. But what's  
22 happening, because it is a desirable neighborhood,  
23 some people who are buying the houses are tearing  
24 down and building new ones, which means a new design.



1 And some of them are just like a radical renovation  
2 and some are just complete teardowns. And when they  
3 build new, they always want to build bigger. And as  
4 the bigger houses come along, that changes the  
5 character of the neighborhood. And it could affect  
6 me if some of the ones closer to me get torn down and  
7 get variances and get rebuilt.

8 And so the last thing, this proposed  
9 home will be the biggest in the neighborhood in terms  
10 of built -- in terms of finished square footage. I  
11 think they said it would be around 3,900. And I took  
12 a look at the assessor's database and looked at all  
13 the other houses on Midland Drive, and there's 28 of  
14 them. And there are four that are below a thousand  
15 square feet, 14 that are between 1,000 and 2,000,  
16 nine between 2,000 and 3,000, and one between 3,000  
17 and 4,000. So, and that's which number is it -- 54  
18 Midland Drive, which is 3,435. And that's one of the  
19 recent renovations. So it used to be a smaller house  
20 and it was built up. So, now with 3,900, that will  
21 be the biggest.

22 So, I'm sort of disturbed by this  
23 trend of getting all these really big houses there.  
24 And they can only be built with variances like the

1 ones that are being requested here. And if you look  
2 at the other lots, just as Mr. Rudnick pointed out,  
3 most of them have 80 feet of frontage. And so with a  
4 footprint of 44 feet, you couldn't satisfy the side  
5 yard -- side lot -- side lot variances on any of the  
6 lots except possibly for mine because mine sort of  
7 has 80 feet and then it flares out so I get a little  
8 more frontage. By I don't think that he could build  
9 this by right without a variance anywhere.

10 So, maybe I'm just worrying about  
11 nothing, but I see this as something that other  
12 people are going to use as precedent and say, "Well,  
13 if they got a variance then we can get one over  
14 here," and it will be changing the character of my  
15 neighborhood.

16 So, I'd like you to consider that for  
17 this consideration.

18 Thank you.

19 MICHAEL COTTON, CHAIR: Thank you.

20 Is there anyone here seeking  
21 information?

22 (No response.)

23 MARC RUDNICK: I have another  
24 question. Oh, I'm sorry.. Joe, did you want to

1 address that?

2 ATTORNEY JOSEPH CONNORS: Well, I  
3 would say that, one, every case stands on its own.  
4 And they really do. I mean when I come in here, I  
5 don't come in and cite, "Well, they did it over  
6 there, they did it over there, they did it over  
7 there." Every case is a separate standalone set of  
8 facts, a separate standalone set of circumstances.  
9 And I think that the Board has to make a decision on  
10 a case-by-case basis, and that's what they do.  
11 That's what the Board does. So I don't think that  
12 creates a precedent whatsoever.

13 But I will admit that several of these  
14 lots in this neighborhood do come before the Zoning  
15 Board because the interpretation of the Building  
16 Department has changed over the years. As I said,  
17 this was created in 1952. Now the lot area for the  
18 zoning district as of December of '52 was 15,000  
19 square feet.

20 So, in July of 1952 when they created  
21 this subdivision, everything was under 15,000 square  
22 feet. So almost the entire neighborhood is under  
23 15,000 square feet. So, the Building Inspector was  
24 for a long time of the opinion that because your lot

1 was undersized if you wanted to make an addition you  
2 needed to go to the Zoning Board.

3 So, I've been here with other cases in  
4 the neighborhood, but I think they've changed that  
5 interpretation. But so I think the neighborhood is  
6 problematic in that, you know, a lot of the lots are  
7 undersized. But, still, every case is different and  
8 so one case doesn't create a basis for precedent  
9 because there's no such thing as precedent at the  
10 Zoning Board of Appeals.

11 MICHAEL COTTON, CHAIR: Thank you.

12 ATTORNEY JOSEPH CONNORS: Thank you.

13 MARC RUDNICK: Mr. Chairman, can I ask  
14 the architect to come up to the --

15 MICHAEL COTTON, CHAIR: Sure.

16 MARC RUDNICK: You guys were foolish  
17 enough to have your architect here, so I'm going to  
18 ask him some questions.

19 AVO ASDOURIAN: Good evening, Mr.  
20 Chairman, members of the Board. My name is Avo  
21 Asdourian. I'm a registered architect. I designed  
22 the project.

23 STENOGRAPHER: Could you spell that,  
24 please?

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1                   AVO ASDOURIAN: Avo, A-v-o, Asdourian,  
2                   A-s-d-o-u-r-i-a-n.

3                   MARC RUDNICK:       It's a very nice  
4                   looking house.

5                   AVO ASDOURIAN: Thank you.

6                   MARC RUDNICK:       How wide would this  
7                   house have to be to drive the height of the roof down  
8                   to have a reasonable pitch and be buildable within  
9                   our code where it does not require a variance either  
10                  for height nor a half story on the third floor? The  
11                  house is about 44 feet wide now.

12                  AVO ASDOURIAN:    In order to reduce  
13                  down the height of the roof, we can look at the pitch  
14                  of the roof also. And, as it stands, it's 7 to 12.  
15                  And the reason we keep it at that level -- because we  
16                  can bring it down to 3 to 12 if needed -- but that's  
17                  for Waltham snow load design. That's --

18                  MARC RUDNICK:    No, I understand that.  
19                  I'm asking you how much narrower could you make the  
20                  house? How much narrower would you have to make the  
21                  house in order to maintain a proper pitch on the roof  
22                  but have it meet our zoning code?

23                  AVO ASDOURIAN:    And that would be the  
24                  height of three feet, coming down three feet for the

1 roof height?

2 MARC RUDNICK: Well, let's go for the  
3 max and say that it came down to be a half-story, an  
4 eight-foot story instead of a 15-foot story, so lose  
5 seven in height.

6 AVO ASDOURIAN: Well, in this design,  
7 the priority went to the floors, to the habitable  
8 space.

9 MARC RUDNICK: Yeah, I get that. Not  
10 my priority though. So --

11 AVO ASDOURIAN: So, the roof was kind  
12 of a follow-up to the design. If we're asking to  
13 alter the floor plans just to satisfy the roof  
14 height, that's kind of difficult to describe because  
15 99 percent of the time was given to the design of the  
16 interior needs and the floors. So it's a consequence  
17 of the design that the roof came up to this. And we  
18 tried to look at different types of roofs to cut down  
19 because the middle area we do have a peak, which is  
20 of no use to anybody. We can go with a flat roof  
21 there. But looking at the street architecture, there  
22 are a few hip roofs that are existing on the street.  
23 And if we wanted to change it, it would look  
24 different than the rest of the houses. So, this

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1 design falls in line with most of the architecture on  
2 the street. Even though other things are discussed,  
3 the basic bottom line is to kind of fit it in within  
4 the neighborhood.

5 MARC RUDNICK: By my rough calculation  
6 --

7 AVO ASDOURIAN: I'm sorry?

8 MARC RUDNICK: By my rough  
9 calculation, you'd have to reduce the house to three-  
10 quarters of this width in order to drive the roof  
11 down eight feet and still have a 12/7 pitch roof more  
12 or less. That's just a guess.

13 AVO ASDOURIAN: Mathematically, yes.

14 MARC RUDNICK: Thank you. And you  
15 feel that would destroy the usability of the floor  
16 plan?

17 AVO ASDOURIAN: For the needs of the  
18 client, yes.

19 MARC RUDNICK: Thank you very much.

20 AVO ASDOURIAN: You're welcome. Thank  
21 you.

22 MICHAEL COTTON, CHAIR: Thank you.

23 MARC RUDNICK: No further questions,  
24 Mr. Chair.

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1                   MICHAEL COTTON, CHAIR: Any further  
2 questions from the Board?

3                   Attorney, do you want to proceed with  
4 your findings?

5                   JOHN SERGI: They've been on file,  
6 right? They've been on file?

7                   MICHAEL COTTON, CHAIR: Yes.

8                   JOHN SERGI: Yes, I make a motion that  
9 we waive the reading since the findings were on file.

10                  MARK HICKERNELL: I second the motion.

11                  MICHAEL COTTON, CHAIR: Joe, we're  
12 making a motion that because it's been on file that  
13 we accept your findings --

14                  MARK HICKERNELL: We waive the  
15 reading.

16                  MICHAEL COTTON, CHAIR: That we waive  
17 the reading. And we made a motion and it's been  
18 seconded. How does the Board vote?

19                  MARK HICKERNELL: Yes.

20                  JOHN SERGI: Yes.

21                  MARC RUDNICK: Yes.

22                  MICHAEL SQUILLANTE: Yes.

23                  MICHAEL COTTON, CHAIR: Yes.

24                  JOHN SERGI: In a similar fashion, Mr.



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1 Chair --

2 MICHAEL COTTON, CHAIR: Same with the  
3 decision?

4 JOHN SERGI: -- I'd like to make a  
5 motion that we waive the reading of the decision  
6 since it's been on file and we've had a chance to  
7 read it.

8 MARK HICKERNELL: I'll second that.

9 MICHAEL COTTON, CHAIR: How does the  
10 Board vote?

11 MARK HICKERNELL: Yes.

12 JOHN SERGI: Yes.

13 MARC RUDNICK: Can we have a chance to  
14 add something to that before we vote?

15 MARK HICKERNELL: Oh, yes. Yes. Yes.  
16 It's just to waive the reading.

17 MICHAEL SQUILLANTE: Yes.

18 MICHAEL COTTON, CHAIR: Yes. Okay.  
19 It passed waiving the reading.

20 They want to add something, Joe.

21 JOHN SERGI: Joe, do you want to add  
22 anything as far as the consideration? You changed  
23 the plan. It looks like this new plan is dated  
24 1/28/2017. Do you want to make note of that?

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1                   ATTORNEY JOSEPH CONNORS: Yes. So, I  
2 would say in one of the proposed findings of fact I'd  
3 be seeking a variance of 48-and-a-half feet rather  
4 than 49. And on page three -- four of my findings of  
5 fact, paragraph 1, the structure would be 37-and-a-  
6 half feet above the front yard elevation rather than  
7 38-and-a-half feet, number one.

8                   And then on the proposed decision, the  
9 name of the plan has remained the same. It's just  
10 the date. So, we would change the date of the plan  
11 stated in the site plan --

12                   JOHN SERGI: 1/28.

13                   ATTORNEY JOSEPH CONNORS: Right. So,  
14 it's dated November 1, 2016, revised on January 28,  
15 2017.

16                   MARK HICKERNELL: Is that for both A  
17 and B on the conditions?

18                   ATTORNEY JOSEPH CONNORS: That would  
19 just be for B.

20                   MARK HICKERNELL: B.

21                   ATTORNEY JOSEPH CONNORS: B. So, the  
22 A plan is -- actually, what plan does the Board have  
23 in front of them? I submitted a second plan. What's  
24 the date of that? Is that September 19<sup>th</sup>?

1 MARK HICKERNELL: Yeah.

2 ATTORNEY JOSEPH CONNORS: So, I have a  
3 -- I changed the date to November 23<sup>rd</sup>, and I have a  
4 revised site plan, because the 19<sup>th</sup> plan does not  
5 state in the zoning table that it is three stories  
6 and it says it's two-and-a-half stories. So, I just  
7 -- I revised the plan so the footprint remains the  
8 same. So the only thing that changes is the zoning  
9 summary. So, I have six copies of that for the  
10 Board.

11 JOHN SERGI: So you want to  
12 incorporate this plan?

13 ATTORNEY JOSEPH CONNORS: Yes.

14 MARK HICKERNELL: So that is  
15 incorporated in your proposed decision?

16 ATTORNEY JOSEPH CONNORS: Right. Like  
17 I said, the only thing that changes is the zoning  
18 summary. And those are the only changes I'd propose,  
19 Mr. Chair.

20 MARC RUDNICK: I'd like to see some  
21 language about the effect on that next door lot.

22 ATTORNEY JOSEPH CONNORS: So, we could  
23 add a condition in the proposed decision, condition  
24 number three, that -- do you want to put a time on

1 it?

2 MARC RUDNICK: I just think that the -  
3 - I guess my desire would be that it be done first,  
4 that the changes required to provide an adequate  
5 driveway that meets the standards of the City on the  
6 abutting property be carried out by the Applicant at  
7 his sole expense before the construction of the  
8 project.

9 ATTORNEY JOSEPH CONNORS: Would you  
10 repeat that again?

11 MARC RUDNICK: I did it so well.

12 ATTORNEY JOSEPH CONNORS: Shall make  
13 changes to -- the Petitioner shall --

14 MARC RUDNICK: Shall provide that the  
15 abutting neighbor's driveway be adequately rebuilt  
16 and acceptable to the City of Waltham at the sole  
17 expense of the Petitioner. I don't care if you  
18 charge your father for it -- before the construction  
19 of the project.

20 So, you understand that that's in case  
21 your father decides to move to Florida, and a new  
22 neighbor moves in and doesn't have that.

23 ANTHONY CARDILLO: Oh, yeah. Yeah.

24 ATTORNEY JOSEPH CONNORS: So, I'll put

1 that prior to construction of the proposed single-  
2 family residence, just so we're all in agreement as  
3 to what the construction is. And I'll add that as  
4 condition three.

5 MARK HICKERNELL: Looking at the  
6 proposed decision on page three, the middle of it, it  
7 says the top story of the roof is 15-and-a-half feet.  
8 Do you want to change that to no more than 14-and-a-  
9 half?

10 ATTORNEY JOSEPH CONNORS: Yes. Well,  
11 actually, this is in my -- this is where I am arguing  
12 that despite the -- the by right allows for a two-  
13 and-a-half story house, only a single-family story  
14 residence may be constructed because of the aggregate  
15 elevation.

16 MARK HICKERNELL: Right.

17 ATTORNEY JOSEPH CONNORS: So I think I  
18 was calling out the height of the roof just to say  
19 that the -- from here, 15-and-a-half, nine, nine-and-  
20 a-half, and ten. So, I think the roof is still going  
21 to be 15-and-a-half feet tall, but when you add  
22 everything up together it's only going to be -- it's  
23 not going to be 49-and-a-half, it's going to be 48-  
24 and-a-half. So, the dimensions of the roof from here

1 to there is still 15-and-a-half feet. Is that  
2 correct, Anthony, or is it 14-and-a-half feet?

3 ANTHONY CARDILLO: I'd have to look at  
4 the -- I think it is 14-and-a-half.

5 ATTORNEY JOSEPH CONNORS: Okay. So,  
6 the roof is no more than 14-and-a-half feet. All  
7 right. So, I'd say the basement is nine-and-a-half  
8 feet, a ten-foot first floor, and the top story or  
9 roof is no more than 14-and-a-half feet.

10 MARC RUDNICK: Yeah, the new plan  
11 seems to have made it show 14-foot. There is wiggle  
12 room, but it was --

13 ATTORNEY JOSEPH CONNORS: Okay. Mr.  
14 Hickernell, so on the site plan, it does have the  
15 proposed ridge at 334 feet. So, if you wanted, we  
16 could make a statement that the proposed ridge shall  
17 not exceed 323, if you think we need to amend it,  
18 because that would be consistent with the  
19 architectural plans. I don't make any mention of  
20 that in my findings of fact or decision. That's up  
21 to the Board.

22 MICHAEL COTTON, CHAIR: All set? No  
23 more questions from the Board? Do I have a motion on  
24 the floor to accept the findings of fact and the

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1 decision?  
2 JOHN SERGI: I make a motion that the  
3 finding of facts, as amended, be adopted by the  
4 Board.  
5 MICHAEL COTTON, CHAIR: Do I have a  
6 second?  
7 MARK HICKERNELL: I'll second.  
8 MICHAEL COTTON, CHAIR: Second by Mr.  
9 Hickernell.  
10 How do you vote?  
11 JOHN SERGI: Yes.  
12 MICHAEL COTTON, CHAIR: Mr.  
13 Hickernell?  
14 MARK HICKERNELL: Yes.  
15 MICHAEL COTTON, CHAIR: Marc?  
16 MARC RUDNICK: Yes.  
17 MICHAEL COTTON, CHAIR: Michael?  
18 MICHAEL SQUILLANTE: Yes.  
19 MICHAEL COTTON, CHAIR: The Chair  
20 votes yes.  
21 Congratulations.  
22 JOHN SERGI: I make a motion that we  
23 adopt the decision, as amended, as the Board's  
24 decision.

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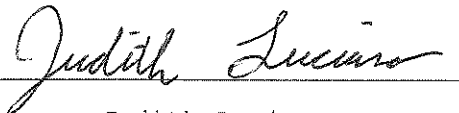
1 MARK HICKERNELL: I'll second that.  
2 MICHAEL COTTON, CHAIR: How do you  
3 vote?  
4 JOHN SERGI: Yes.  
5 MARK HICKERNELL: Yes.  
6 MARC RUDNICK: Yes.  
7 MICHAEL SQUILLANTE: Yes.  
8 MICHAEL COTTON, CHAIR: The Chair  
9 votes yes.  
10 Good luck.  
11 One more vote.  
12 JOHN SERGI: Motion to adjourn.  
13 MARK HICKERNELL: Second.  
14 All in favor?  
15 ALL BOARD MEMBERS: Aye.  
16 MARK HICKERNELL: The meeting is  
17 adjourned at 8:20.  
18 //  
19 //  
20 //  
21 //  
22 // *Mark Hickernell Clerk*  
23 // *14 February 2017*  
24 //



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C E R T I F I C A T E

I, Judith Luciano, do hereby certify that  
the foregoing record is a true and accurate  
transcription of the proceedings in the above-  
captioned matter to the best of my skill and ability.

  
\_\_\_\_\_  
Judith Luciano

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