

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

March 7, 2017

7:00 P.M.

at

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

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

Arlington Reporting Corporation
(339) 674-9100

Waltham Zoning Board of Appeals/3-7-17/2

I N D E X

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2015-27B	10
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A T T A C H M E N T S

Legal Notices: Case No. 2016-43
Case No. 2015-27B
Case No. 2016-35

Case No. 2016-43:
Letter requesting continuance

Case No.: 2015-27B:
Email from the Building Inspector
Legal notice published in the *Tribune*
Letter requesting a continuance

Case No: 2016-35:
Proposed finding of facts
Proposed decision

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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, March 7,
2017 is called to order at 7:00 p.m.

Tonight we have three continued cases
before us: Case 2016-43, Cellco Partnership d/b/a
Verizon Wireless, 314 South Street. And sitting on
the Verizon case are Mr. Sergi, Mr. Hickernell, Mr.
Squillante, and Mr. Cotton, and the Chair.

Case 2015-27, Sadie M. Cardillo, 105-
107 River Street, and Anthony G. Cardillo, Jr., and
Anthony G. Cardillo, III, 194 Willow Street: Appeal
from the decision of the Building Inspector. And the
members sitting on the Cardillo case are Mr. Sergi,
Mr. Hickernell, Ms. Gelineau, who is in the audience,
and Ms. Hankins, and the Chair.

And then we have Case 2016-35, which
is 67 Ash Street, LLC, 67 Ash Street, and that's for
a variance. The members sitting on the Ash Street
case are Mr. Sergi, Mr. Hickernell, Ms. Gelineau, and
Ms. Hankins, and the Chair.

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1 ACCEPTANCE OF MINUTES OF FEBRUARY 7 AND 14, 2017 MEETINGS

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BARBARA RANDO, CHAIR: The first action this evening is a motion to accept the minutes of February 7 and February 14.

JOHN SERGI: So moved, Madam Chair.

MICHAEL COTTON: Second.

BARBARA RANDO, CHAIR: Motion by Mr. Sergi. Second by Mr. Cotton.

All in favor?

ALL BOARD MEMBERS: Aye.

BARBARA RANDO, CHAIR: Opposed?

(No Board Members opposed.)

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

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1 Case Number 2016-43: Cellco Partnership d/b/a
2 Verizon Wireless.

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4 BARBARA RANDO, CHAIR: Will the Clerk
5 please read the petition in Case 2016-43?

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

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

12 ATTORNEY ELIZABETH THOMPSON: Yes.
13 Good evening. I am here on behalf of Cellco
14 Partnership d/b/a Verizon Wireless. My name is
15 Elizabeth Thompson from Duval & Klasnick LLC.

16 We are requesting a continuance of
17 this matter to the next available date in April as
18 the Petitioner is putting together a supplemental
19 package for the Board in direct response to some
20 issues that were raised at the last public hearing on
21 the matter.

22 I believe on March 3rd my colleague
23 submitted a letter to the Board requesting the same.
24 We're certainly willing to sign any extension of time

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1 request that is necessary for the Board.

2 BARBARA RANDO, CHAIR: Do you want to
3 read the letter into the record?

4 ATTORNEY ELIZABETH THOMPSON: Sure.

5 (Attorney Thompson reads the letter
6 into the record. See attached.)

7 BARBARA RANDO, CHAIR: Any questions
8 from Board Members?

9 JOHN SERGI: No.

10 BARBARA RANDO, CHAIR: Hearing none.
11 No questions.

12 Do you know if, in fact, they have
13 planned any meetings with the neighborhood?

14 ATTORNEY ELIZABETH THOMPSON: I don't
15 know that any have been planned at this time.

16 BARBARA RANDO, CHAIR: You don't?
17 Because I know that there were a few people that were
18 against it. I was wondering if they were reaching
19 out to the neighbors. It might be a good idea.

20 ATTORNEY ELIZABETH THOMPSON: Thank
21 you. Yes. We will certainly take that into
22 consideration.

23 BARBARA RANDO, CHAIR: All right. If
24 there are no questions, I am ready for a motion to

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1 continue Case Number 2016-43.
2 MICHAEL SQUILLANTE: I move we
3 continue.
4 BARBARA RANDO, CHAIR: Motion by Mr.
5 Squillante.
6 MICHAEL COTTON: Second.
7 BARBARA RANDO, CHAIR: Motion by Mr.
8 Cotton -- second by Mr. Cotton.
9 How do you vote, Mr. Sergi?
10 JOHN SERGI: Yes.
11 BARBARA RANDO, CHAIR: Mr. Hickernell?
12 MARK HICKERNELL: Yes.
13 BARBARA RANDO, CHAIR: Mr. Squillante?
14 MICHAEL SQUILLANTE: Yes.
15 BARBARA RANDO, CHAIR: And Mr. --
16 MICHAEL COTTON: Cotton.
17 BARBARA RANDO, CHAIR: -- Cotton?
18 MICHAEL COTTON: Yes.
19 BARBARA RANDO, CHAIR: All right. Do
20 extend the 100 days on Case Number --
21 MARK HICKERNELL: Does the Chair vote
22 yes?
23 BARBARA RANDO, CHAIR: The Chair votes
24 yes.

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1 To extend the 100 days for Case 2016-
2 43, do I have a motion? We'll get a date for that.

3 MICHAEL SQUILLANTE: Do we need a date
4 or we just --

5 BARBARA RANDO, CHAIR: We're going to
6 put a date. It doesn't really matter. She just has
7 to have so many days to file it. This date, the one
8 we're going to see them, is important, too -- is more
9 important.

10 JOHN SERGI: So moved, Madam Chair.

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

13 MICHAEL COTTON: Second.

14 BARBARA RANDO, CHAIR: Second by Mr.
15 Cotton.

16 How do you vote, Mr. Sergi?

17 JOHN SERGI: Yes.

18 BARBARA RANDO, CHAIR: Mr. Hickernell?

19 MARK HICKERNELL: Yes.

20 BARBARA RANDO, CHAIR: Mr. Squillante?

21 MICHAEL SQUILLANTE: Yes.

22 BARBARA RANDO, CHAIR: Mr. Cotton?

23 MICHAEL COTTON: Yes.

24 BARBARA RANDO, CHAIR: And the Chair

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1 votes yes.

2 All right. Let's see when we can do
3 this. How about May 2nd?

4 ATTORNEY ELIZABETH THOMPSON: That
5 would be fine.

6 BARBARA RANDO, CHAIR: Well, I have to
7 check with the Board members.

8 ATTORNEY ELIZABETH THOMPSON: Sure.

9 BARBARA RANDO, CHAIR: May 2nd? May is
10 good? Mr. Cotton?

11 MICHAEL COTTON: Yes.

12 MARK HICKERNELL: It's fine with me.

13 BARBARA RANDO, CHAIR: It's okay?

14 JOHN SERGI: Fine.

15 BARBARA RANDO, CHAIR: All right. And
16 the 100 days? Let's make it July 4th -- July 5th.
17 That's 100 days -- 2017.

18 I need you to sign something before
19 you leave. Would you sign down here? Do you need a
20 pen? And we'll see you on May 2nd.

21 ATTORNEY ELIZABETH THOMPSON: Thanks
22 so much.

23 BARBARA RANDO, CHAIR: You're welcome.

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1 Case Number 2015-27: Sadie M. Cardillo, Trustee of
2 105-107 River Street Irrevocable Trust; Anthony G.
3 Cardillo, Jr. and Anthony G. Cardillo, III, Trustees
4 of AAM Realty Trust; and Anthony G. Cardillo, Jr.

5

6 BARBARA RANDO, CHAIR: Will the Clerk
7 please read the petition in Case 2015-27?

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

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

14 ATTORNEY JOSEPH CONNORS: Good
15 evening, Madam Chair, members of the Board. My name
16 is Joseph M. Connors, Jr. I'm an attorney
17 representing the Petitioners. My office is at 404
18 Main Street here in Waltham.

19 Tonight here with me is Anthony
20 Cardillo representing the Cardillos.

21 I am asking the Chair for a
22 continuance. This case has been going on a while.
23 But several of the matters have -- a few of the
24 matters were voted on by the Board. Several other

1 matters, we have a settlement agreement, in theory,
2 with the Building Inspector. So, we've applied for
3 building permits, which will resolve the issues. But
4 one of the things that remains is that because we are
5 abutting and part of a railroad, former railroad, we
6 need the permission of the MA Department of
7 Transportation before the Building Inspector can
8 issue a permit. So, I have a hearing scheduled with
9 the Massachusetts Department of Transportation
10 scheduled on March 27th. And so once I have that
11 hearing and they give the consent to the City of
12 Waltham, the Building Inspector can then issue
13 permits to us and, hopefully, the case will then
14 resolve itself.

15 So, I do have an email from the
16 Building Commissioner stating that, you know, he has
17 no objection to the continuance request. I'm not
18 sure if the Chair saw that, but I'll give a copy to -
19 - that's from the Building Inspector. It's actually
20 to -- directed to Pam. I am going to give a copy to
21 the Chair.

22 And then I also have a copy of the
23 legal notice that was published in the *Tribune*, which
24 is marking up the hearing, the MassDOT hearing for

1 the purposes of giving consent to the Building
2 Inspector. And once he has consent, then he has the
3 authority to issue a permit for a property that's
4 adjacent to the railroad track.

5 And then I also have the original
6 letter to the Board requesting a continuance.

7 So, hopefully, as soon as we get the
8 consent and then we can issue the permits, and the
9 case will be resolved, and then I can dismiss the
10 appeal and the case will be over.

11 BARBARA RANDO, CHAIR: I thought that
12 was the reason that we continued the case before,
13 because of the MassDOT.

14 ATTORNEY JOSEPH CONNORS: We had
15 applied for permits before and it just took us
16 several months to get in front of the Mass --

17 BARBARA RANDO, CHAIR: So you had to
18 wait to get to MassDOT?

19 ATTORNEY JOSEPH CONNORS: Yeah. It
20 doesn't happen overnight. You just file it and then
21 they follow up with questions. And then you answer
22 their questions, and then they -- and then they, you
23 know, they took some time to respond as well.

24 BARBARA RANDO, CHAIR: I remember you

1 mentioning it the last time.

2 ATTORNEY JOSEPH CONNORS: Yeah. But
3 we do have a hearing, as I say. And then I do
4 believe that that will -- I've been to these hearings
5 before. It's really almost perfunctory. There's not
6 a lot of testimony taken.

7 BARBARA RANDO, CHAIR: Okay. Any
8 questions from Board members?

9 JOHN SERGI: I'm curious. Do they own
10 just one lot back there, counselor, or how many, the
11 abutting?

12 ATTORNEY JOSEPH CONNORS: You remember
13 the lots? There was -- one of the lots was -- they
14 don't own any.

15 JOHN SERGI: Okay.

16 ATTORNEY JOSEPH CONNORS: But it used
17 to be a railroad.

18 JOHN SERGI: All right.

19 ATTORNEY JOSEPH CONNORS: So, even if
20 it used to be, you still have to get permission
21 through the MassDOT.

22 JOHN SERGI: Okay. I didn't think
23 they owned anything.

24 ATTORNEY JOSEPH CONNORS: No, they

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1 don't own anything. But the law still requires, even
2 if it formerly was used as a railroad, you still need
3 to get the permission of the MassDOT.

4 JOHN SERGI: All right.

5 ATTORNEY JOSEPH CONNORS: Yeah.

6 BARBARA RANDO, CHAIR: Any other
7 questions?

8 (No questions from Board members.)

9 BARBARA RANDO, CHAIR: Hearing none.
10 Do I have a motion to allow Cardillo, Case 2015-27,
11 to continue?

12 JOHN SERGI: So moved, Madam Chair.

13 BARBARA RANDO, CHAIR: Motion by Mr.
14 Sergi. Second?

15 GLENNA GELINEAU: I'll second it.

16 BARBARA RANDO, CHAIR: Second by Ms.
17 Gelineau.

18 How do you vote, Mr. Sergi?

19 JOHN SERGI: Yes.

20 BARBARA RANDO, CHAIR: Mr. Hickernell?

21 MARK HICKERNELL: Yes.

22 BARBARA RANDO, CHAIR: Ms. Gelineau?

23 GLENNA GELINEAU: Yes.

24 BARBARA RANDO, CHAIR: Ms. Hankins?

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1 SARAH HANKINS: Yes.
2 BARBARA RANDO, CHAIR: And the Chair
3 votes yes.
4 To extend the 100 days on 2016-43
5 (sic), do I have a motion?
6 SARAH HANKINS: So moved.
7 BARBARA RANDO, CHAIR: Motion by Ms.
8 Hankins. Do I have a second?
9 GLENNA GELINEAU: I'll second it.
10 BARBARA RANDO, CHAIR: Second by Ms.
11 Gelineau.
12 How do you vote, Mr. Sergi?
13 JOHN SERGI: Yes.
14 BARBARA RANDO, CHAIR: Mr. Hickernell?
15 MARK HICKERNELL: Yes.
16 BARBARA RANDO, CHAIR: Ms. Gelineau?
17 GLENNA GELINEAU: Yes.
18 BARBARA RANDO, CHAIR: Ms. Hankins?
19 SARAH HANKINS: Yes.
20 BARBARA RANDO, CHAIR: And the Chair
21 votes yes.
22 Now, let's get a date. How about May
23 9th? Oh, no. No, sorry. The 25th is -- April 25th?
24 ATTORNEY JOSEPH CONNORS: I'd like to

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1 get at least two months just to make sure that I get
2 it all done.

3 BARBARA RANDO, CHAIR: How about May
4 9th?

5 ATTORNEY JOSEPH CONNORS: Okay.
6 That's two months.

7 BARBARA RANDO, CHAIR: The 9th?

8 MARK HICKERNELL: Yeah.

9 JOHN SERGI: Yeah.

10 BARBARA RANDO, CHAIR: Mr. Sergi, May
11 9th?

12 JOHN SERGI: That's fine.

13 BARBARA RANDO, CHAIR: Mr. Hickernell?

14 MARK HICKERNELL: Yes.

15 BARBARA RANDO, CHAIR: Ms. Gelineau?

16 GLENNA GELINEAU: Yes, fine.

17 BARBARA RANDO, CHAIR: Ms. Hankins?

18 SARAH HANKINS: Yeah. Just a quick
19 question for Attorney Connors. If they rule --
20 assuming they rule in sort of how we want in March,
21 is there any sort of period in which the Building
22 Inspector has to wait, I mean like, you know, appeal
23 period or anything like that?

24 ATTORNEY JOSEPH CONNORS: No. No.

1 So, we've already filed with him. So he has the
2 permits and all the applications. So, technically,
3 he has 30 days to make his decision. But he can't
4 without the consent of the Board. So, I think that
5 as soon as March 27th comes and goes, he would have
6 30 days from that date to issue a permit.

7 SARAH HANKINS: Okay.

8 ATTORNEY JOSEPH CONNORS: You know, so
9 that would give me enough time.

10 BARBARA RANDO, CHAIR: Okay. Do you
11 want to have the same date for the -- July 5th? Okay.

12 MARK HICKERNELL: Motion for a two-
13 minute recess.

14 BARBARA RANDO, CHAIR: Second?

15 GLENNA GELINEAU: Yeah.

16 BARBARA RANDO, CHAIR: All in favor?

17 ALL BOARD MEMBERS: Aye.

18 BARBARA RANDO, CHAIR: Opposed?

19 (None opposed.)

20 BARBARA RANDO, CHAIR: Two-minute
21 recess.

22 (Whereupon, a brief recess was taken
23 off the record.)

24 //

1 **Case Number 2016-35: 67 Ash Street, LLC.**

2

3 BARBARA RANDO, CHAIR: Will the Clerk
4 please read the petition in Case 2016-35, Ash Street?

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

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

11 ATTORNEY BRET FRANCIS: Good evening,
12 Madam Chair. Welcome back. Nice to see you.

13 BARBARA RANDO, CHAIR: Thank you.
14 Thank you.

15 ATTORNEY BRET FRANCIS: Members of the
16 Board. My name is Bret Francis with Scafidi Juliano,
17 office at 10 Hammer Street, Waltham. I'm here
18 tonight on behalf of 67 Ash Street, LLC. On their
19 behalf is Eric Blum, happy to answer any questions
20 the Board may have.

21 At the last hearing that we had, we
22 agreed to submit to the Law Department general
23 questions regarding the variance where there's a lack
24 of frontage. And what we received was the law

1 Department's interpretation of this case as well as
2 also pointing out that the Petitioner no longer has
3 the right, which we up until this believed, to build
4 in the old spot. As a result of that letter, I
5 immediately met with the Building Department. There
6 were differing opinions as to whether or not there
7 was still a right to build there. There was the
8 issue of tolling, meaning while that permit was
9 pulled, they sought relief here at the ZBA. And
10 there's an argument to be made that that tolled, the
11 date of which to build, expired.

12 That question has been sent to the Law
13 Department by Mr. Forte. The last he got back to me,
14 which was approximately before the last hearing in
15 February, and he said he still had no answer. I
16 telephoned him today. Didn't get a hold of him. My
17 guess is there's still no answer.

18 So, as we are here tonight, if the
19 petition is not allowed, that is a vacant lot and the
20 Petitioner loses their right to build on that lot.

21 And I would note that that permit expired prior to my
22 client's purchase of the property. And, further,
23 that when doing my due diligence and searching the
24 building card online, there was not a mention of the

1 construction permit. There was a mention of the
2 demolition permit, which was performed. The lot has
3 since been cleared out. On that building card, there
4 was no mention of the construction permit and when it
5 was granted and/or that it expired. So, when we
6 filed this petition, we were always under the
7 impression that as a default, worst case scenario, we
8 didn't get the grant, even though we believe we're
9 entitled to it, that we could always build in the
10 former location. That's no longer the case.

11 SARAH HANKINS: Wouldn't that be an
12 issue though for the -- if you feel like the Building
13 Inspector is ultimately going to decide that, you can
14 come back before the Board and fight that decision.
15 There is no finality there, right, for building back
16 on the footprint?

17 ATTORNEY BRET FRANCIS: As we speak
18 tonight, I mean we're here tonight to get the
19 variance that we believe we're entitled to.

20 SARAH HANKINS: I know. But what I'm
21 talking -- what I'm saying is you're saying that if
22 you don't get that, you're pretty much -- you can't
23 do anything in that spot.

24 ATTORNEY BRET FRANCIS: Well,

1 obviously what we'll do is we'll file for a permit to
2 build in the previous location. And then whatever
3 happens from there, happens from there. But, the
4 understanding from the Law Department down is there's
5 no right to build there unless this petition is
6 granted.

7 SARAH HANKINS: It's not the Law
8 Department's -- I mean that's through the Building
9 Department, right?

10 BARBARA RANDO, CHAIR: It's the Law
11 Department because it's a statute that they can't --
12 it came before us.

13 ATTORNEY BRET FRANCIS: There's an
14 interpretation of the zoning provisions.

15 SARAH HANKINS: So is the Building
16 Department waiting on the Law Department to decide
17 this or are they making their decision?

18 ATTORNEY BRET FRANCIS: I don't think
19 they're going to do anything until it becomes an
20 issue. Again, if this petition is allowed, the issue
21 is moot. If it's not allowed, there will be
22 something that happens. I can't sit here tonight and
23 tell you how the Petitioner intends to proceed,
24 whether it be through an appeal or whether it be

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1 through filing a petition to build in the former
2 spot. That decision hasn't been made. Again, we're
3 here tonight to get a variance for the frontage,
4 which we maintain that we're entitled to.

5 BARBARA RANDO, CHAIR: Bret, did you
6 receive the opinion from Pat Azadi?

7 ATTORNEY BRET FRANCIS: What's the
8 date?

9 JOHN SERGI: Yeah, you must have got
10 it.

11 BARBARA RANDO, CHAIR: Yeah.

12 ATTORNEY BRET FRANCIS: Yes. In fact,
13 actually, that was the reason for a continuance. I
14 received it two hours before that hearing and had no
15 chance to -- again, I met with the Building
16 Department within 48 hours of getting that. I
17 immediately, you know, where do we stand here.

18 BARBARA RANDO, CHAIR: Sure.

19 ATTORNEY BRET FRANCIS: And there was
20 actually a mixed opinion there. But, ultimately, it
21 was decided that the right to build there had expired
22 and then we --

23 BARBARA RANDO, CHAIR: I think you had
24 100 days.

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1 ATTORNEY BRET FRANCIS: Ninety I think
2 it was.
3 BARBARA RANDO, CHAIR: Ninety days to
4 building?
5 ATTORNEY BRET FRANCIS: Or six months.
6 BARBARA RANDO, CHAIR: Ninety days.
7 ATTORNEY BRET FRANCIS: Yeah, it might
8 be 90 days from the time that the construction permit
9 is pulled.
10 BARBARA RANDO, CHAIR: Right. Right.
11 Twelve months from the date of the destruction.
12 ATTORNEY BRET FRANCIS: Correct.
13 BARBARA RANDO, CHAIR: Okay.
14 ATTORNEY BRET FRANCIS: And that had
15 expired.
16 BARBARA RANDO, CHAIR: Well, I looked
17 into the permit. And you did have a permit. And you
18 did let it lapse.
19 ATTORNEY BRET FRANCIS: The previous
20 owner did.
21 BARBARA RANDO, CHAIR: The previous
22 owner. But it did lapse.
23 ATTORNEY BRET FRANCIS: Yeah, that's
24 after the fact.

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1 BARBARA RANDO, CHAIR: Right.

2 ATTORNEY BRET FRANCIS: When we
3 searched it online on the website where you can see
4 the building cards and print them out, it didn't
5 reflect that. It reflected the demo permit, but it
6 had no reflection of a construction permit being
7 pulled. So, we had absolutely no notice of it and
8 that's why when we petitioned here it was of the
9 understanding that if denied we can always build in
10 the previous location. We're being told now -- this
11 is not our position -- we're being told that that's
12 no longer the case.

13 BARBARA RANDO, CHAIR: Right. Right.

14 ATTORNEY BRET FRANCIS: Ultimately
15 what happens --

16 BARBARA RANDO, CHAIR: But you do know
17 that if you have a building permit and it does lapse,
18 it's no longer good. And if you had, or the prior
19 attorney had noticed that, you could always continue
20 the building permit.

21 ATTORNEY BRET FRANCIS: They were
22 denied their application and sought no -- they had no
23 incentive.

24 BARBARA RANDO, CHAIR: Well, that was

1 the attorney's fault for not --

2 ATTORNEY BRET FRANCIS: I can't
3 control --

4 BARBARA RANDO, CHAIR: -- researching
5 it and finding out that once it has lapsed you cannot
6 use it and you can't extend it. But he could have
7 extended it at that time.

8 ATTORNEY BRET FRANCIS: Or the
9 contractor who pulled it.

10 BARBARA RANDO, CHAIR: So now you have
11 no permit and you have a lot of land there that
12 according to this opinion you can't build on because
13 of a statute that you came before us with.

14 ATTORNEY BRET FRANCIS: That's
15 correct. Now, the question is while they were
16 petitioning, I guess the previous attorney, previous
17 potential buyer, not even the owner, potential buyer,
18 petitioned and sought to put in two families. They
19 were immediately denied.

20 BARBARA RANDO, CHAIR: Right.

21 ATTORNEY BRET FRANCIS: Did that --
22 you know, that takes a while. I mean you're not
23 going to pour a foundation while that case is
24 proceeding with the ZBA because if they get the

1 relief that's a two-family house instead of a single-
2 family house. So, there's a good question as to
3 whether or not those -- while the Zoning Board
4 petition was filed, whether or not those permits were
5 tolled. But, again, that's a question for another
6 night. That has no bearing on what we're here
7 tonight for. And I don't intend to muddy up the
8 waters that way. I mean we're seeking --

9 BARBARA RANDO, CHAIR: I do agree that
10 the decision did go into more depth than what I had
11 asked for. I asked if we had a right to extend the
12 frontage, or not to extend it, but to accept the
13 small frontage that he had.

14 ATTORNEY BRET FRANCIS: With caveats.

15 BARBARA RANDO, CHAIR: Because of
16 safety reasons or whatever.

17 ATTORNEY BRET FRANCIS: And she went
18 ahead and applied her interpretation to this case --

19 BARBARA RANDO, CHAIR: Right.

20 ATTORNEY BRET FRANCIS: -- which I
21 will address later on in my speech.

22 BARBARA RANDO, CHAIR: Which if we
23 allow the frontage to go forward, then we'd have any
24 case in here looking for a smaller size frontage than

1 what they're allowed because you don't have the soil
2 conditions, or the topography, or anything that you
3 could use, or hardship that you could use.

4 ATTORNEY BRET FRANCIS: Well, there's
5 two things to that I would say. One, that's not
6 necessarily true because our case presents
7 circumstances that are different from just a lack of
8 frontage. A rectangular lot, flat, nothing unique
9 about the shape, nothing unique about the soil
10 conditions. I maintain that we still have
11 circumstances. There's case law that was handed out
12 at the December --

13 BARBARA RANDO, CHAIR: Safety?

14 ATTORNEY BRET FRANCIS: Well, the
15 first one actually was safety, the church being built
16 next to a heavy route, Route 6, down by the Cape.
17 And a parishioner got hit by a car. The place was
18 not useful for a church. And they allowed it on
19 that. There was no other grounds for it to be
20 granted the variance, and yet it was in that
21 situation.

22 Another case explicitly -- and I do
23 have copies. I didn't intend to pass them out, but
24 I'd be happy to, where following a jury-waived trial,

1 the judge affirmed the Board's decision, concluding
2 that strict enforcement of the zoning ordinance would
3 create an unnecessary safety hazard. And the brewer,
4 the plaintiff, accordingly had demonstrated a
5 hardship sufficient to merit allowance of a variance.
6 We agree.

7 We have a letter from the fire
8 department --

9 BARBARA RANDO, CHAIR: No, no. I
10 agree. I agree that safety, yeah, you do have a
11 hardship with the safety. I agree.

12 ATTORNEY BRET FRANCIS: I do have
13 copies of the fire department's letter --

14 BARBARA RANDO, CHAIR: Right.

15 ATTORNEY BRET FRANCIS: -- where he
16 says, "This proposed location is much preferable to
17 the previous location."

18 With respect to the abutters who are
19 here tonight, you know, they have a fence that's on
20 their property. If this petition is allowed, that
21 fence will be removed off their property, more made
22 on the line, extended the length of the lot at their
23 discretion, at their direction, and some other
24 simple, small landscaping issues that the parties can

1 agree on and it would result in a beautification of
2 both those properties. You know, it's not very often
3 where we can say the neighbors win, the petitioner
4 wins. He gets a more conforming -- let's not forget,
5 by moving this structure to the proposed location, we
6 are as close to conformance as you can get but for
7 the two-and-a-half feet of lack of frontage which can
8 never be dealt with. No one is going to deed over
9 two-and-a-half feet. So, that's never going to
10 change. But, bringing it to this proposed location,
11 we meet the side yards, we meet the rear yards, we
12 get rid of these bulkhead and the landing, both of
13 which will go back if we have to appeal and get the
14 right to put the building in the previous location.
15 Of course they're going to maximize it and put a
16 bulkhead right back in that location, and that
17 bulkhead will not trespass, but encroach on their
18 lawn, their property. So, it's very rare where you
19 can say it's a win-win-win, that the City wins. They
20 actually now won't have those obstructions to get to
21 the rear of the fire, God forbid there's a fire.

22 So, that's what we're looking at. I
23 mean I think this is -- it just makes sense to move
24 it forward.

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1 BARBARA RANDO, CHAIR: I agree with
2 you. And I would like to agree more. But we still
3 don't have the other statutory requirements.

4 ATTORNEY BRET FRANCIS: We don't --
5 the structure, in this case, lack of a structure.
6 But, again, our argument was is that we had the right
7 to put it there and, therefore, that location on the
8 lot is the unique factor. That meets that test.

9 BARBARA RANDO, CHAIR: But that's
10 really a nonconforming building. That wasn't proof
11 that it was a nonconforming building.

12 ATTORNEY BRET FRANCIS: It was a
13 nonconforming building. It's nonconforming as to
14 rear yard, side yard, many different.

15 BARBARA RANDO, CHAIR: It was because
16 of where it was positioned --

17 ATTORNEY BRET FRANCIS: Correct.

18 BARBARA RANDO, CHAIR: -- when it was
19 built.

20 ATTORNEY BRET FRANCIS: Yeah.

21 BARBARA RANDO, CHAIR: But I don't
22 think you have a right to put anything there. I'm
23 not saying that that is a dead issue. I think that
24 if you research it, you could come in with some other

1 statute than what you have here.

2 ATTORNEY BRET FRANCIS: I mean I'd
3 love to come in and spend as much time as possible.

4 BARBARA RANDO, CHAIR: Yeah.

5 ATTORNEY BRET FRANCIS: But we're
6 going on six months.

7 BARBARA RANDO, CHAIR: I know.

8 ATTORNEY BRET FRANCIS: They're
9 incurring costs and there are other costs that at
10 some point have to start being considered. There are
11 real costs to this, my continuance, involvement. I
12 mean I know my client is looking for a vote. I mean
13 we could do more research. We could check the soil
14 conditions. We can check the shape on the lot again.
15 But I think we're running, you know, out as to any
16 new information that's really going to come to light
17 here. I can definitely take a two-minute recess I
18 think and speak to my client, see what he wants to
19 do.

20 BARBARA RANDO, CHAIR: Well, let's
21 hear from other members first.

22 ATTORNEY BRET FRANCIS: Sounds good.

23 BARBARA RANDO, CHAIR: Any Board
24 members have anything to say? Any questions?

Waltham Zoning Board of Appeals/3-7-17/32

1 JOHN SERGI: Well, I sympathize with
2 the Petitioner. I would like to, you know, move
3 forward in your direction, but I don't have a basis,
4 based on what I see here. I don't have a basis to do
5 that.

6 ATTORNEY BRET FRANCIS: Again, if we
7 went through my December 27th memorandum, that sets
8 forth you do have -- you do meet the -- I don't know
9 how else to go through it. We've gone through the
10 statute. Those circumstances in there, the previous
11 location of this house, the safety concerns, they
12 make that case. They fit the requirements. They fit
13 the statute. And, ultimately, if the case were
14 appealed, the judge will decide. The judge, you
15 know, this may be a new case. There may not be a
16 case law exactly on these facts. Maybe this is a
17 case of first impression. The fact of the matter is
18 we don't have any abutters here nipping to appeal it.
19 But, if it were appealed, it goes to a court. It's
20 heard under the rules of law. The court, the judge,
21 will make a decision. And that's, you know, if the
22 Board exceeded its authority, they'll reverse it.
23 But to say at this level that you cannot vote for it,
24 I don't think -- you know, this isn't a rule, a

1 provision that, oh, we're in the wrong. We're
2 supposed to be at the Board of Survey and Appeals.
3 You don't have the authority to listen to it. We're
4 here on variances. You absolutely are authorized to
5 grant it. Whatever happens in the higher court
6 happens. But tonight, sitting here, you have the
7 authority to do that. And because the --

8 JOHN SERGI: Oh, I understand that,
9 counselor.

10 ATTORNEY BRET FRANCIS: You know,
11 because the Law Department interpreted the facts and
12 responded in the light that they did, which, again, I
13 believe exceeded their authority, the decision is
14 ultimately yours.

15 BARBARA RANDO, CHAIR: Mr. Hickernell,
16 do you have any questions?

17 MARK HICKERNELL: I don't have any
18 questions. I found your analysis compelling. I'm
19 prepared to vote to grant the variance.

20 ATTORNEY BRET FRANCIS: Thank you.

21 GLENNA GELINEAU: I agree with Mark.

22 ATTORNEY BRET FRANCIS: Thank you.

23 BARBARA RANDO, CHAIR: Ms. Hankins?

24 SARAH HANKINS: I don't find -- you

1 know, I read the letter from the fire inspector, or
2 I'm sorry, from whomever it was from the fire
3 department. I didn't think it was that compelling.
4 It said, yeah, location, let's say location A is what
5 you want, location B is the old one. Location A is
6 preferable. You know, but he didn't say in there,
7 oh, yeah, we need to have it at this location or
8 we're in a really tough spot. And I think that --

9 ATTORNEY BRET FRANCIS: If I could --

10 SARAH HANKINS: Well, let me just
11 finish. And I think in this situation, given the
12 difficulty when you have to prove a hardship and all
13 the conditions, it should be pretty compelling from
14 them saying this needs to be here for the safety of
15 the neighborhood. And I just don't see that. And,
16 because of that, I would be ruling against it.

17 ATTORNEY BRET FRANCIS: I think there
18 are legal reasons, admissions of liability, other
19 things that don't deal with this case right here.
20 There was a fire there. People died. I don't think
21 it would be wise for them to write anything more than
22 what they did write in there, which is their approval
23 of the new site. And I think their hands are tied as
24 to exactly what they can write, and for obvious

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1 reasons.

2 BARBARA RANDO, CHAIR: Well, they can
3 write what they want. And then we make our own
4 decision on whether we grant it or don't.

5 ATTORNEY BRET FRANCIS: But there may
6 be consequences in other realms of the law that they
7 don't want to put --

8 BARBARA RANDO, CHAIR: And that would
9 be what you would have to come back and prove to us,
10 to me anyway, that there's other --

11 ATTORNEY BRET FRANCIS: Again, I don't
12 know if I'm making my point, but I --

13 SARAH HANKINS: I get exactly what
14 you're saying, that they're limited just --

15 ATTORNEY BRET FRANCIS: They're not
16 going to come out and say what you're looking to say.

17 SARAH HANKINS: Yeah, because and
18 then, you know, two years from now something happens
19 and then somebody goes and sues them. I understand
20 that.

21 BARBARA RANDO, CHAIR: My question was
22 --

23 SARAH HANKINS: But, still, that
24 doesn't change the fact that it doesn't exist. I

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1 understand why they might not be compelled to come
2 with that as strongly for you, but --

3 ATTORNEY BRET FRANCIS: And I believe
4 that the Board members are empowered to use their
5 experience and to use their, you know, reasoning.

6 JOHN SERGI: Counselor, there's no
7 structure on the property anymore. It's a vacant
8 lot. The rights expired.

9 MARK HICKERNELL: That's not before
10 us.

11 JOHN SERGI: I know.

12 ATTORNEY BRET FRANCIS: That's
13 correct.

14 JOHN SERGI: Well, I don't see a
15 valid, you know, way that we can grant the variance
16 because it's not meeting the statutes. Okay? That's
17 my point.

18 ATTORNEY BRET FRANCIS: I think it is.

19 JOHN SERGI: I know. I know. I know
20 what your argument is.

21 ATTORNEY BRET FRANCIS: Again, I'd be
22 happy to pass out the case law.

23 JOHN SERGI: I know what your argument
24 is, and I'd like to vote for it.

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1 ATTORNEY BRET FRANCIS: It says,
2 "Safety is a valid, sufficient reason..."

3 BARBARA RANDO, CHAIR: As long as you
4 have the other prerequisites.

5 ATTORNEY BRET FRANCIS: Not in that
6 case.

7 BARBARA RANDO, CHAIR: Soil condition.

8 ATTORNEY BRET FRANCIS: No, they
9 didn't have them in that case.

10 MARK HICKERNELL: I don't know how it
11 gets much more compelling than somebody actually died
12 in the building in that location.

13 ATTORNEY BRET FRANCIS: And this
14 clearly solves that problem. It makes that problem
15 go away. It gives them access. It puts the fence on
16 the property line. It gets rid of the bulkhead.

17 BARBARA RANDO, CHAIR: I know. I
18 agree. It would be good. If the Building Department
19 was --

20 ATTORNEY BRET FRANCIS: And there's
21 nothing, again, there's no rule that prevents the
22 Board from taking action on this. There isn't. If
23 the court thinks you over-exceeded your authority, so
24 be it. That may be something we appeal. But,

1 tonight, you are authorized and empowered by the
2 statutes to grant this variance. And I don't want
3 that to be misunderstood.

4 Eric is the Petitioner.

5 ERIC BLUM: Yeah, I'm Eric Blum. Hi.
6 Nice to see you all again.

7 I just wanted to -- I think we've been
8 over the actual structure. And I hear what everybody
9 is saying. And I agree with it to an extent. The
10 only thing that I think -- I think when like you take
11 a look at the case law involving the church and the
12 location being the only thing that was what was
13 required to grant the variance in that case, it
14 really is the exact same case in so many ways. And
15 the best way that I can paint that is if you actually
16 look -- you have to imagine that the original
17 structure is the alternative here because,
18 ultimately, that's what this case is saying. It
19 really is set up so that on one side you have a
20 bulkhead that's part of what's going to go into the
21 ground, first and foremost, if it's reconstructed.
22 The bulkhead extends all the way to the property line
23 and then six inches beyond that property line into
24 the abutter's property. The bulkhead is a big, you

1 know, it's a big metal door that's -- in the event of
2 a fire is obviously not something that's possible to
3 traverse. You're not going to do that. It's
4 obstructing the entire way. On the other side,
5 there's eight inches between the side egress' porch,
6 right, with footings at the bottom of that porch, and
7 the chain link fence on that side. So, in the event
8 that people are in the back of the building, their
9 choices are to scale the rear fence, which is roughly
10 as tall as I am, or to take one of those two
11 traversals. And I just don't see -- to me, that's as
12 much of a safety hardship as humanly possible, other
13 than not actually being to code as far as egresses
14 are concerned in general.

15 So, I think, you know, if you're
16 looking for a case law where there's nothing other
17 than a safety concern, we have one. And if you're
18 looking for, you know, if you want to parallel,
19 whether this is a legitimate hardship versus that, I
20 think that it vastly exceeds that. The case to
21 compare is a case where a parishioner was fatally
22 injured, same exact thing, because of the location of
23 the structure. We have a locational issue, safety
24 hardship, fatal injury. You know, I'm by no means a

1 professional on Bret's level or anything else. But,
2 you know, I just -- that's actually the entire
3 premise of why we wanted to move the building in the
4 first place. It has nothing to do -- it really has
5 nothing to do with size. The size was a convenient,
6 you know, secondary effect. But we're trying to get
7 -- we're trying to make a safe building. And I think
8 that we have by far and away a hardship there, if it
9 can be granted to that church, and it clearly can.

10 STENOGRAPHER: Could I get your name
11 and spelling for the record?

12 ERIC BLUM: Yeah. It's Eric with a C,
13 B-l-u-m. Thanks.

14 BARBARA RANDO, CHAIR: I understand
15 that your argument is safety. I understand that it's
16 a big part of the argument. And I agree with it.
17 But I do not feel that safety negates all the other
18 statutory requirements. I believe that.

19 ATTORNEY BRET FRANCIS: If you read
20 the case, it does.

21 BARBARA RANDO, CHAIR: I have read the
22 case.

23 ATTORNEY BRET FRANCIS: It will be
24 appealed on that exact -- you know, that will be the

1 issue. And, again, I believe we've met the standard.
2 I do.

3 BARBARA RANDO, CHAIR: Do you want two
4 minutes to talk to your client?

5 ATTORNEY BRET FRANCIS: Sure.

6 BARBARA RANDO, CHAIR: I make a motion
7 for a two-minute recess.

8 MARK HICKERNELL: Second.

9 BARBARA RANDO, CHAIR: Do I have a
10 second? Mr. Hickernell, second.

11 All in favor?

12 ALL BOARD MEMBERS: Aye.

13 BARBARA RANDO, CHAIR: Opposed?

14 (None opposed.)

15 Whereupon, a brief recess was taken
16 off the record.)

17 BARBARA RANDO, CHAIR: Back in
18 session.

19 ATTORNEY BRET FRANCIS: Unfortunately,
20 we can't -- we cannot -- we decided not to put it
21 off. We need a vote tonight. There's not going to
22 be any new information coming that's going to satisfy
23 -- I mean, again, we've brought it closer to
24 conformity. We kept it -- the last petitioner wanted

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1 a two-family. We kept it modest. We kept it a
2 single-family. I thought doing that and not seeking
3 anything elaborate -- you know, we're only here
4 tonight because the lot can't be changed. It was
5 actually the size of -- it's actually one-and-a-half
6 lots. All the lots at the time were 25 feet across.
7 These two properties bought in and split that one in
8 the middle. So, they actually gained land. This
9 isn't, again, a case where they've given away land.
10 They're here because that's the size of the lot. And
11 their project is modest. It's a single-family, no
12 on-street parking. We've taken care of that. We're
13 seeking no other variances as far as setbacks,
14 height, number of stories, what have you. We're here
15 because it's the right thing to be done with this
16 lot. And we'll take our vote tonight if that's okay.

17 BARBARA RANDO, CHAIR: Is there anyone
18 in the audience in favor of this petition? One
19 person, two people in favor. Sir, are you in favor?

20 AUDIENCE: Yes.

21 BARBARA RANDO, CHAIR: Three. Three
22 people in favor.

23 Anyone in opposition?

24 NANCY CARUSO: Can I just say I'm not

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1 really like in favor. I don't think I have a choice.
2 But I mean I'm not going to lie. I mean I think that
3 if it had been right next to our house, we wouldn't
4 be here. So, the only part I'm having a hard time
5 with is I don't think safety, putting it closer is
6 safer. But that's my own -- you know, I just feel
7 our house would have burned down that day.

8 BARBARA RANDO, CHAIR: Do you want to
9 come up here because the people at home can't hear
10 you? I'm sorry. Give your name and address for the
11 record.

12 NANCY CARUSO: I'm sorry. No, we're
13 together. But it's like -- Nancy Caruso, and it's 65
14 Ash Street. And the other thing. I'm not saying --

15 BARBARA RANDO, CHAIR: Did you get the
16 name?

17 NANCY CARUSO: Huh?

18 BARBARA RANDO, CHAIR: I'm sorry. I
19 asked him if he got the name.

20 NANCY CARUSO: I'm not against it, but
21 I know I don't have a choice kind of. And I talked
22 to him, and I agree. But the only part I have a big
23 problem with is the safety part because if it was
24 right next to ours, we wouldn't be here tonight. It

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1 was a windy day. The circumstances were bad. They
2 couldn't have even gotten between our houses because
3 now they're going to be so close. I mean I feel they
4 had a fair shot. And, you know, our yard was all
5 cleaned out. That's why. They never cleaned around
6 their house. Like the conditions were their fault,
7 not really other things because like, you know, they
8 didn't really clean around their house. They used
9 our yard to get to theirs. But, so if it had been
10 right next to ours, we wouldn't be here. That's my
11 only big thing. And I keep thinking that it's going
12 to be so close that I just worry if there's another
13 fire. I don't know. Even if we have the fire, their
14 house won't make it this time. That's my only thing.

15 BARBARA RANDO, CHAIR: Thank you.

16 CARLOS MEDEIROS: Plus, you know,
17 three stories, if there's a fire on the third floor,
18 they're going to have to use our property, you know,
19 to get the ladders up anyway.

20 BARBARA RANDO, CHAIR: And what is
21 your name?

22 NANCY CARUSO: Carlos Medeiros.
23 Sorry.

24 CARLOS MEDEIROS: That's pretty much

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1 it.

2 NANCY CARUSO: Carlos Medeiros. He's
3 my husband.

4 CARLOS MEDEIROS: I mean I know they
5 have to do something with it. You know, I'm not
6 going to --

7 NANCY CARUSO: And they did say they'd
8 put it back a little. So, no, but I mean I know we
9 don't have --

10 CARLOS MEDEIROS: You know, I'd prefer
11 it to go back a little bit. But, you know, Eric and
12 I talked. And to make a better business deal for
13 him, he said, you know, that the location, you know,
14 is what it was, you know, which will be right in the
15 middle of my house.

16 BARBARA RANDO, CHAIR: All right.
17 Thank you.

18 NANCY CARUSO: But I mean we have to
19 have it done. I'm not trying to --

20 CARLOS MEDEIROS: And the other thing,
21 too, is I want to make sure that, you know, we agreed
22 at least to move the fence. You know, he's paying
23 for it. And we agreed to have my driveway done at
24 the same time they do their driveway. I'm paying for

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1 my driveway. Now, they're doing it as one, but, you
2 know, I'll be paying for him -- I mean for my own
3 driveway. You know, it's not like -- I don't want
4 the neighbors to think, well, he got a driveway for
5 free. That's why they're building there.

6 SARAH HANKINS: Gotcha.

7 BARBARA RANDO, CHAIR: Okay.

8 CARLOS MEDEIROS: Okay?

9 BARBARA RANDO, CHAIR: Thank you, sir.

10 Anyone seeking information?

11 (No response.)

12 BARBARA RANDO, CHAIR: Seeing none.

13 SARAH HANKINS: I just have --
14 Attorney Francis, do you want to make any comment
15 about that because the fire department mentioned
16 that, that there's actually an increased risk to
17 their house?

18 ATTORNEY BRET FRANCIS: Absolutely.
19 Again, we're not seeking a side yard variance. This
20 is a house that is -- actually, you'll see other lots
21 all around -- look at these two across the street --
22 closer. Those are in violation. This one would not
23 be in violation. You can say that could happen. I
24 don't know. I don't know. But I do know he's not

1 seeking any side yard relief. And if it was a matter
2 of negotiating with him and moving it up or down, but
3 otherwise getting the grant of the variance, we'd be
4 happy to do that. We don't need to put it up -- it
5 just makes -- you know, again, every single house is
6 in line with each other except ours and this one,
7 which has no real lot. It's a rat-tail lot. There's
8 no other place to put this one but in the back. So,
9 otherwise, we're the only one in the back.

10 It might have been nice. And maybe
11 they're right. Maybe that's, you know, why they're
12 there today. But the fact is we're seeking no side
13 yard relief. And if you add in another two-and-a-
14 half feet of frontage to this lot, we'd be doing it
15 as of right. That's how close to conformity of the
16 dimensional regulations we are. We're not seeking
17 anything offensive. This is a normal single-family
18 house in a single-family -- well, double-family
19 residence on the south side, and it would be an
20 improvement to the street, I can assure you.

21 BARBARA RANDO, CHAIR: All right. You
22 can continue with your proposed finding of facts.

23 MARK HICKERNELL: Motion that we waive
24 the proposed findings of fact as they've been on file

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1 at the Law Department.

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

4 JOHN SERGI: Second.

5 BARBARA RANDO, CHAIR: By Mr. Sergi.
6 All in favor?

7 ALL BOARD MEMBERS: Aye.

8 BARBARA RANDO, CHAIR: Opposed?

9 (No Board members opposed.)

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

12 The proposed decision?

13 MARK HICKERNELL: I make the same
14 motion with respect to the proposed decision.

15 JOHN SERGI: Second.

16 BARBARA RANDO, CHAIR: Motion by Mr.
17 Hickernell, second by Mr. Sergi. All in favor?

18 ALL BOARD MEMBERS: Aye.

19 BARBARA RANDO, CHAIR: Opposed?

20 (No Board members opposed.)

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

23 All right. Do I have a motion on the
24 proposed finding of fact as amended? No, we haven't

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1 amended it.

2 GLENNA GELINEAU: I'll make a motion
3 that the proposed finding of facts be the finding of
4 facts of the Board.

5 MARK HICKERNELL: I'll second that
6 motion.

7 BARBARA RANDO, CHAIR: Motion by Ms.
8 Gelineau and second by Mr. Hickernell.

9 How do you vote on the proposed
10 finding of facts, Mr. Sergi?

11 JOHN SERGI: Yes.

12 BARBARA RANDO, CHAIR: Mr. Hickernell?

13 MARK HICKERNELL: Yes.

14 BARBARA RANDO, CHAIR: Ms. Gelineau?

15 GLENNA GELINEAU: Yes.

16 BARBARA RANDO, CHAIR: Ms. Hankins?

17 SARAH HANKINS: No.

18 BARBARA RANDO, CHAIR: And the Chair
19 votes no.

20 BARBARA RANDO, CHAIR: Do I have a
21 motion on the decision?

22 GLENNA GELINEAU: I'll make a motion
23 that the proposed decision be the decision of the
24 Board.

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1 BARBARA RANDO, CHAIR: Motion by Ms.
2 Gelineau.
3 MARK HICKERNELL: Second.
4 BARBARA RANDO, CHAIR: Second by Mr.
5 Hickernell.
6 How do you vote on the decision, Mr.
7 Sergi?
8 JOHN SERGI: No.
9 BARBARA RANDO, CHAIR: 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 ATTORNEY BRET FRANCIS: Thank you.
18 BARBARA RANDO, CHAIR: And I vote no
19 due to no building permit and you don't meet the
20 other statutory requirements. So it is not granted.
21 One more motion is in order.
22 JOHN SERGI: Motion to adjourn, Madam
23 Chair.
24 BARBARA RANDO, CHAIR: Motion to

Waltham Zoning Board of Appeals/3-7-17/51

1 adjourn by Mr. Sergi. Second?

2 GLENN GELINEAU: I'll second.

3 BARBARA RANDO, CHAIR: Second by Ms.
4 Gelineau. All in favor?

5 ALL BOARD MEMBERS: Aye.

6 BARBARA RANDO, CHAIR: Opposed?

7 (No Board Members opposed.)

8 BARBARA RANDO, CHAIR: The ayes have
9 it. We are adjourned at 8:00. Thank you very much.

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Barbara Rando

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3/21/17

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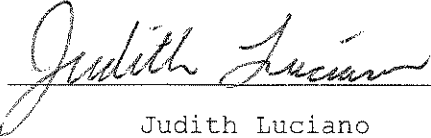
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Waltham Zoning Board of Appeals/3-7-17/52

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

Arlington Reporting Corporation
(339) 674-9100