



FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

March 20, 2018

7:00 P.M.

at

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

Barbara Rando, Chair
Mark Hickernell, Clerk
Sarah Hankins
Edward McCarthy
John Sergi

Arlington Reporting Corporation
(339) 674-9100

Waltham Zoning Board of Appeals/3-20-18/2

I N D E X

<u>CASE</u>	<u>PAGE</u>
2018-02	5
2017-18	68

A T T A C H M E N T S

Legal Notices: Case No. 2018-02
Case No. 2017-18

Case No. 2018-02
Proposed finding of facts
Proposed decision as amended

Case No. 2017-18
Legal opinion of Attorney Bret Francis
Proposed finding of facts
Proposed decision

Arlington Reporting Corporation
(339) 674-9100

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

2 BARBARA RANDO, CHAIR: At this time,
3 I'm going to ask for a five-minute recess because one
4 of the members has not arrived yet, probably because
5 of parking. So, I'd like a motion for a five-minute
6 recess.

7 JOHN SERGI: So moved, Madam Chair.

8 BARBARA RANDO, CHAIR: Second?

9 EDWARD MCCARTHY: Second.

10 BARBARA RANDO, CHAIR: All in favor?

11 ALL BOARD MEMBERS: Aye.

12 BARBARA RANDO, CHAIR: Opposed?

13 (No Board members opposed.)

14 BARBARA RANDO, CHAIR: The ayes have
15 it. Five-minute recess.

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

18 BARBARA RANDO, CHAIR: Good evening.

19 The Zoning Board of Appeals for Tuesday, March 20,
20 2018 is called to order at 7:10 p.m.

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

23 Case 2018-18, Laing on 71 Edgewater
24 Drive, that's a continued case.

Waltham Zoning Board of Appeals/3-20-18/4

1 And the new case is Case 2018-02,
2 Mighty Squirrel, LLC, 411 Waverley Oaks Road.

3 The members sitting this evening are
4 Mr. Sergi, Mr. Hickernell, Ms. Hankins, and Mr.
5 McCarthy, and I am Ms. Rando, the Chair.

6 The first action -- I'm not sure I
7 have any minutes to approve, so we will skip that.

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

1 **Case Number 2018-02: Mighty Squirrel, LLC**

2

3 BARBARA RANDO, CHAIR: I will ask the
4 Clerk to read the petition in Case 2018-02, Mighty
5 Squirrel.

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

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

12 ATTORNEY JOSEPH CONNORS: Good
13 evening, Madam Chair and members of the Board. My
14 name is Joseph M. Connors. I'm an attorney
15 representing the Petitioner, Mighty Squirrel, LLC.
16 Here with me tonight is actually the co-petitioner,
17 the DBCl, Inc, here with me tonight is Henry Manice
18 and Naveen Pawar. They are the principals of the
19 Mighty Squirrel, LLC. Also, Mr. Duffy -- where's Mr.
20 Duffy? Mr. Duffy from the Duffy Brothers who is the
21 entity that owns the --

22 MR. HICKERNELL: Your box is cutting
23 the microphone.

24 ATTORNEY JOSEPH CONNORS: Oh, you

1 can't hear it?

2 MR. HICKERNELL: No.

3 ATTORNEY JOSEPH CONNORS: Oh, I'm
4 sorry. It's a big box and it's full of your
5 preprinted briefs. So, I'm going to pass these out.
6 They can also be used as paperweights. It's a little
7 lengthy, but I would say a lot of it is kind of
8 background information on the Mighty Squirrel,
9 background information on breweries in the state of
10 Massachusetts. Also, we go through the process of
11 brewing beer, broken down step-by-step. And there's,
12 you know, background on the company as well as a
13 breakdown of one of the instruments that we propose
14 to insert. So, it's a little lengthy, but don't let
15 that scare you. There's a lot of pictures in here.

16 JOHN SERGI: This is what we had on
17 file already, right?

18 ATTORNEY JOSEPH CONNORS: Yes. Right.

19 JOHN SERGI: You didn't add anything?

20 ATTORNEY JOSEPH CONNORS: I didn't add
21 anything, no. It was enough. But there is a lot of
22 pictures.

23 So, as the legal notice stated, the
24 property is at 411 Waverley Oaks Road. 411 Waverley

1 Oaks Road is Route 60 essentially. If you were to
2 head down Main Street, take a left on Route 60, and
3 head towards Belmont, you'd pass the Duffy property
4 up on the far right, about a mile up on the right.

5 This is kind of a rendering of what it
6 would look like at the end of the process. If you're
7 familiar with the property, if you've been by it
8 recently, you'll see that a lot of the façade work
9 has already started. You know, so you'll see that
10 this glass façade has already been constructed to
11 some degree. And that's been done by the landowner
12 and co-petitioner, DBC1, the Duffy Brothers. So,
13 they were of the opinion that the building was in
14 need of kind of a modernization anyway. So they are
15 constructing that.

16 The Mighty Squirrel will be situated
17 on the corner, actually the north end of 411 -- the
18 one building on the locus. It will be on the north
19 end of that building at 411 Waverley Oaks Road. So
20 they will face north and west. They will basically
21 capture one, two, three, four, five of these windows
22 here. So, down here, although it's the same façade,
23 it's a different tenant. It's a robotics software
24 company. It's non-locus to this particular

1 application.

2 So, the Mighty Squirrel is proposing
3 to occupy about 22,000 square feet here. Now, only
4 15,000 of it is on the first floor. There's another
5 7,750 square feet in the basement, which you can't
6 even see here. So, it's on the other side of the
7 building.

8 So, I also have a revised floor plan
9 that's just really just kind of perfected a little
10 bit. It's not too different than what was already
11 submitted with the initial application. We can roll
12 that out if you'd like. But this is the internal
13 floor plan. So, there's two plans there, one for the
14 first floor and one for the second floor.

15 So, what brings us here tonight though
16 is that, as I said, the Mighty Squirrel is seeking to
17 open a brewery at the location at 411 Waverley Oaks
18 Road. And, part of the brewery also would be a
19 tavern. In the industry, they call it a tap room.

20 411 Waverley Oaks Road is in a
21 commercial zoning district. The locus parcel is 7.28
22 acres. There's one large multitenant building
23 situated on the lot today. It was constructed in
24 1973.

1 So, in order for the Petitioner, the
2 Mighty Squirrel, LLC, to be able to construct a
3 brewery and to expand the parking area, they need
4 certain zoning relief. So, that's what brings us
5 here today.

6 I've asked for three determinations
7 from the Zoning Board of Appeals:

8 Number one, under 3.252, that's the
9 definition of general manufacturing in the zoning
10 book, it articulates certain uses that are deemed to
11 be general manufacturing. But it also states "or any
12 other use being similar by the Zoning Board of
13 Appeals." So, one, we're looking for a determination
14 by the Zoning Board that the brewing and bottling of
15 beer is a similar use to other general manufacturing
16 uses stated in the zoning ordinance. And, therefore,
17 if the Board was to deem that similar to other uses
18 stated in the book, then it's a by right use in a
19 commercial zone. So, that's the question number one:
20 Is the brewing of beer a similar general
21 manufacturing use?

22 You may recall we've actually asked
23 this question before. A couple of years ago we had
24 an applicant who came before the Board in 2016. And

1 he proposed a brewery on Pond Street. So, the Board
2 has already asked and answered the question. And
3 they deemed that on Pond Street the brewing of beer
4 was a similar general manufacturing process as
5 articulated in the zoning ordinance. And so that was
6 permitted. So, there is precedent to that. So,
7 that's the first form of relief we're seeking.

8 Number two, we're looking for a
9 special permit to alter a nonconforming parking area.
10 So, under the statute and the ordinance, we're
11 entitled to seek a special permit to alter a
12 nonconforming use or a building, structure, or, in
13 this case, a parking area under 3.7222, provided that
14 it's not substantially more detrimental than the
15 nonconforming use that's there today. We're
16 proposing to add parking spaces, so we would -- our
17 argument is certainly that it's beneficial to the
18 site, not detrimental.

19 And the reason we need to add parking
20 spaces is because in addition to the brewery, they
21 will have what they call a tap room, I'll call a
22 tavern. The industry term is tap room. But, under
23 the zoning code for the City of Waltham, a tavern or
24 a similar use licensed to sell alcoholic beverages is

1 a by right use of the commercial zoning district.
2 So, we're proposing that. And that will be
3 constructed in here as part of the brewery. And
4 that's a by right use, as I stated.

5 I'll show you right here. These are
6 the outdoor patio. So, in that they're outdoor
7 patios, they bring seasonal seats. And so under the
8 current code, seasonal seats require parking spaces.
9 So, we need to add it's actually 13 parking spaces.
10 We're adding 14. But, based on the number of seats
11 we propose outdoors, we need to add one for every six
12 seats, one parking space for every six seats. So,
13 we're proposing to alter the nonconforming parking
14 area to add parking spaces to the locus. So, we're
15 seeking a special permit to do that.

16 And the third thing is we were here on
17 this same parcel --

18 MARK HICKERNELL: Could I just
19 interrupt for a second?

20 ATTORNEY JOSEPH CONNORS: Sure.

21 MARK HICKERNELL: The outdoor seating
22 would be like at the Copper House Tavern, that kind
23 of thing, if you're familiar with that?

24 ATTORNEY JOSEPH CONNORS: Just kind of

Waltham Zoning Board of Appeals/3-20-18/12

1 -- a little -- I haven't been up there. I've been up
2 inside. I haven't been outdoors up there.

3 MARK HICKERNELL: But, basically, just
4 outdoor seating --

5 ATTORNEY JOSEPH CONNORS: Just outdoor
6 seating.

7 MARK HICKERNELL: -- during good
8 weather?

9 ATTORNEY JOSEPH CONNORS: Yeah,

10 MARK HICKERNELL: Okay.

11 ATTORNEY JOSEPH CONNORS: You know, so
12 they're showing it on here. So, we've actually
13 called out -- there's some benches there, several
14 tables. You can see them in green. And that would
15 be roped off so the only way to get in there is
16 through the interior, not through the exterior, you
17 know. But it's really just a seasonal seat to kind
18 of add an outdoor --

19 BARBARA RANDO, CHAIR: Is it like City
20 Streets has?

21 ATTORNEY JOSEPH CONNORS: Similar.

22 BARBARA RANDO, CHAIR: City Streets
23 has outside.

24 ATTORNEY JOSEPH CONNORS: They have

1 that, too, yeah.

2 BARBARA RANDO, CHAIR: And they're at
3 the other end of the --

4 ATTORNEY JOSEPH CONNORS: Yeah. So
5 they have a -- I mean they have kind of a -- it is a
6 patio, but it's almost built up on the edge. This
7 would be just, you know, right at ground level, but
8 very similar to that, same idea. That's what we did.
9 And that's what I was just about to get to. In that
10 case, I came before the Board and I asked for
11 permission to add parking spaces to accommodate the
12 outdoor seating for City Streets. In that case, we
13 added parking spaces. And I'll show you. That was
14 down the other end of the property. Here's your
15 abutters' plan. So, City Streets is down here. We
16 kind of added some parking spaces, and throughout
17 here we added some compact spaces. So, our proposal
18 is all down here. So, the parking area that we will
19 be essentially altering is at the north end of the
20 lot and the north end of the building, and it's shown
21 right here. So, this is the area that we'll alter,
22 and this is the area of City Streets. So, we're kind
23 of leaving that alone because we already did it.

24 So, we're asking that third form of

1 relief to amend the case that was approved two years
2 ago. So, this plan would then control the parking
3 area for City Streets and, therefore, the Mighty
4 Squirrel, if approved.

5 So, those are the three forms of
6 relief we're seeking. On page five in my brief, I
7 set out the jurisdiction of the Board. The first one
8 is Section 3.252 authorizes the Board of appeals to
9 determine whether any use not listed under the
10 definition of general manufacturing in 3.252 is
11 similar in character to the uses listed therein.

12 Chapter 40A, Section 6 authorizes the
13 Board of Appeals to grant special permits to alter a
14 nonconforming use or structure, provided that the
15 alteration shall not be substantially more
16 detrimental than the existing nonconforming use to
17 the neighborhood.

18 I also cited the case *Huntington v.*
19 *the Board of Appeals*, where they allowed for an
20 amendment to a prior case. And that case states
21 that, you know, boards of appeals are entitled and
22 authorized to impose conditions on any approval. And
23 that's what the Board regularly does. And so we're
24 asking to amend that prior condition just to delete

1 the reference to the parking areas in the City
2 Streets case and to substitute the parking area shown
3 on our plans here tonight.

4 So, the Mighty Squirrel is a limited
5 liability company. It's a Delaware limited liability
6 company, but it's really the principals operate down
7 at 747 -- what's that street?

8 HENRY MANICE: Atlantic.

9 ATTORNEY JOSEPH CONNORS: Atlantic
10 Ave. So, these two gentlemen, Henry and Naveen, they
11 started the company in 2013. In 2015, they started
12 distributing beer that they produced here in the
13 state of Massachusetts. In 2017, they introduced
14 their beer to the state of Rhode Island.

15 So, right now, they have a contract
16 with Ipswich -- is it the Ipswich Brewery?

17 HENRY MANICE: Yes.

18 ATTORNEY JOSEPH CONNORS: So, their
19 beer is brewed under a contract with the Ipswich
20 Brewery. So, they license them. They brew it for
21 them. And then these guys distribute it. So, they
22 would obviously like to bring their entire facility -
23 - well, they don't have a facility. So, they'd like
24 to stop contract brewing and move to the City of

1 Waltham and brew all of their beer here.

2 So, as I said, they started in 2013.
3 They started distributing in 2015. They're currently
4 selling their beer in about 400 bars, restaurants,
5 and liquor stores throughout Massachusetts and the
6 state of Rhode Island. So, they really look forward
7 to building a brewery and a brand, the Mighty
8 Squirrel, in the City of Waltham.

9 Now, tab number one, if you turn to,
10 is the story of the Mighty Squirrel. It gives a
11 breakdown of, you know, how they started, who are the
12 principals of the company, and there's a lot of
13 pretty pictures. So, if you'd rather look at the
14 pictures than listen to me, you can do that.

15 These are the beers and the cans that
16 they presently produce: Mighty Squirrel IPA, the
17 Mocha Stout, the Kiwi White, and the Cloud Candy.
18 Which one is the number one seller?

19 HENRY MANICE: The Cloud Candy.

20 ATTORNEY JOSEPH CONNORS: The Cloud
21 Candy. All right.

22 So, I don't know if you've seen them,
23 but they are out there. I mean if you go into local
24 restaurants in the City of Waltham, you'll find them.

1 They have them at Tempo, John Brewer's, and other
2 restaurants throughout the City. And so they're
3 looking to add the Mighty Squirrel logo to the City
4 of Waltham.

5 So, tab one kind of takes you through
6 the story of the Mighty Squirrel, but it's just the
7 beginning story. And now they're in a position where
8 they're ready to kind of start brewing their own on-
9 site. And so this is their dream to kind of do that
10 here in the City of Waltham.

11 So, going to question number one,
12 general manufacturing is defined under 3.252 as the
13 use of land or buildings for baking plants, bottling
14 works -- which is certainly what we will be doing,
15 bottling or canning the beer -- paper box
16 manufacturing, cold storage plants, commercial
17 greenhouses, electrical laboratories, ice
18 manufacturing and ice cream manufacturing, laundries,
19 milk bottling and processing, the distribution of
20 milk and milk products, stone cutting, monument
21 works, food packaging and processing, manufacture and
22 assembly of consumer products, wholesale storage and
23 warehouse facilities, etc. So, it is our contention
24 that then, therefore, the manufacture of beer is

1 similar to those uses that I just read.

2 The Mighty Squirrel presently is
3 brewing about a thousand barrels of beer a year.
4 They hope to get up to 2,000, and maybe more.

5 But, on page eight of my brief, eight
6 to nine, on tab two in the book, I take you through
7 the narrative of the brewing process. It just kinds
8 of takes you through how we brew beer. Henry has
9 broken it down to ten steps. I know other brewers
10 may, you know, summarize it differently. But, he's
11 got milling; mashing conversion; lautering; boiling;
12 wort separation and cooling; fermentation;
13 maturation, filtration; carbonation; cellaring;
14 number nine, packaging; and, number ten, storage.

15 So, the pretty picture here at page
16 two just kind of shows you the process along the way.
17 And then, after that, it's just kind of a breakdown
18 of the timetable and the actual process involved in
19 each step along the way.

20 I mean I could go through that, but I
21 think that clearly what they're doing is
22 manufacturing. They're taking raw materials of hops,
23 barley, wheat, grain, water, and yeast, and combining
24 it, putting it through a process, and then the end

1 result is beer, which is a consumer product, like ice
2 cream, like milk, and then they bottle it and they
3 store it.

4 So, we believe that just based on the
5 definition of general manufacturing is combining raw
6 materials, and the brewing process that we set out,
7 we've clearly established that, you know, the brewing
8 of beer is a similar process to other general
9 manufacturing uses stated in the Waltham Zoning
10 ordinance. And, as I said earlier, this Board has
11 deemed that the brewing of beer is a similar and like
12 use as other general manufacturing uses in the Case
13 2016-20, Pitsaladis Brewing Company, down on Pond
14 Street.

15 So, I set you through that process. I
16 mean I can go through that word-by-word, but I think
17 it's fairly clear that brewing of beer is a
18 manufacturing process. It combines raw materials and
19 takes it through to an end product from beginning to
20 end. And, actually, the timeline is -- what is it,
21 about two weeks, three?

22 HENRY MANICE: Three

23 ATTORNEY JOSEPH CONNORS: Three weeks
24 from beginning to end, from the beginning process to

1 a final product of beer, which is then canned,
2 bottled, and either sold on site or shipped off to
3 the distributor or restaurant.

4 And one of the places that they will
5 sell it is proposed to be the tavern. So, this is
6 the floor plan of the first floor. And in the blue
7 is kind of the sitting area and the brown is all the
8 production area. Actually, that's not exactly true.
9 You know, it's a little bit mixed. There's some
10 bathrooms over here, too. But this is pretty much
11 most of the production will be going on right here in
12 the brown area and the seating around it. The green
13 areas are the outdoor patios, which are seasonal
14 only.

15 The basement is basically there's
16 storage tanks where the product will be stored either
17 cooling or waiting to be sold and picked up by a
18 distributor. And it will be shipped and received
19 right out the back door here. So, there's a cold
20 room, a storage room, a locker room for employees.
21 So, the basement is kind of a warehousing of the
22 finished product, the cooling of the finished
23 product, and the storing of it.

24 So, the tavern itself is, as I said,

1 it's a permitted by right use in the commercial
2 zoning district. And the brewers of beer, they get a
3 farmers' brewers license from either the -- from the
4 state and the federal government. And that's what
5 they will have to do to brew their beer here.

6 With that comes, under Mass. General
7 Laws, they're entitled to what's called a pouring
8 permit. So, under a farmers' brewers permit, if you
9 brew beer on site, then you're entitled to a pouring
10 permit from the state and I think the local licensing
11 authority, too. But that kind of flows from that.

12 BARBARA RANDO, CHAIR: So, you mean a
13 liquor license also is needed?

14 ATTORNEY JOSEPH CONNORS: Excuse me?

15 BARBARA RANDO, CHAIR: A liquor
16 license is also needed?

17 ATTORNEY JOSEPH CONNORS: Not a liquor
18 license, a pouring permit. So, it's different than
19 what we commonly think about in a liquor license.
20 So, it's not something that needs to be purchased out
21 on the street. It's something that flows from the
22 farmers' brewers license. So, that's a -- he needs
23 to apply for it and get it, but it's a pouring permit
24 and not a liquor license. But that allows him to

1 sell only the product that they brew on site. They
2 can't sell Michelob Lite or anything. They can only
3 sell Mighty Squirrel beer, which is all they would
4 want to do anyways.

5 JOHN SERGI: And there's no
6 limitations on those? I mean there's not a certain
7 number of --

8 ATTORNEY JOSEPH CONNORS: No.

9 JOHN SERGI: Okay.

10 ATTORNEY JOSEPH CONNORS: You know,
11 and I did speak with the Waltham License Commission
12 just to, you know, kind of make sure. And there are
13 advisories from the ABCC on what a pouring permit is.
14 And there's actually -- the Mass. General Laws were
15 amended in 2016 to kind of create that niche. So,
16 it's separate and distinct from what we commonly
17 consider a liquor license.

18 On page ten of my brief, I just,
19 again, go back to the definition of manufacturing and
20 state that the end product here is a brew based on
21 the combination of raw materials, and we believe it
22 is a general manufacturing process like others
23 listed.

24 One of the concerns raised in the

1 case, in the Pitsaladis Brewing case in 2016, was
2 odors and emissions that may be generated from the
3 brewing of beer. The Building Inspector is concerned
4 about that, too. The brewers of the beer don't
5 really believe that it's a significant problem, but
6 it has been raised by the Building Inspector. It was
7 raised in the case that the Board approved in 2016.

8 So, at tab three, there's a letter
9 from Bill Herlicka -- is Bill here? Bill's right
10 here. Bill wrote the letter. And, basically, Bill
11 is in the American beer equipment industry. And so
12 what he has is a -- it's called a condensate stack,
13 which is designed to collect the vapor that comes
14 from the brewing of the beer, collect it and reduce
15 it to mist, or actually put mist in it and reduce it
16 to a liquid form and then kind of capture it. So,
17 we've put that in here, and that is designed to
18 collect any odors. And I gather that is a condition
19 that if the Board was to approve it, then that would
20 be a requirement that we employ these condensate
21 stacks to collect all odors that may be generated.
22 They're shown on the plan right here as a condensate
23 stack venting equipment to mitigate odor and
24 emissions. So, that would be done for any of the

1 brewing processes that we use. And that's carried
2 out at tab four.

3 MARK HICKERNELL: So, I have a
4 question.

5 ATTORNEY JOSEPH CONNORS: Yeah.

6 MARK HICKERNELL: Did the Building
7 Inspector cite any particular differences between
8 this petition and the one in Case 2016-08 with
9 respect to the definition of general manufacturing?

10 ATTORNEY JOSEPH CONNORS: No.

11 MARK HICKERNELL: Okay.

12 ATTORNEY JOSEPH CONNORS: I mean I
13 said to him, "The brewing of beer is the brewing of
14 beer. Haven't we already answered that question?"

15 He said, "Well, it's a different
16 neighborhood." So, that was the difference that he
17 said; it's a different neighborhood. Although, I
18 would say that no matter what neighborhood you brew
19 beer in, you're still brewing a beer. But he asked
20 me to come here.

21 SARAH HANKINS: Is the process the
22 same pretty much as the 2016 case?

23 ATTORNEY JOSEPH CONNORS: Yeah. Yeah.
24 I mean that was a little bit smaller, but it was

1 still the process of brewing beer is the process of
2 brewing beer. He's going to brew beer, bottle it on
3 site, and ship it off site, you know. So the brewing
4 of beer is the same. The same kind of raw materials
5 come together in the same process. That ten-step
6 process is the same. And really, I think that's a
7 good question. But all he could say was, "Well, it's
8 a different neighborhood."

9 MARK HICKERNELL: I think in that case
10 the petitioner hadn't been planning to serve anything
11 there.

12 ATTORNEY JOSEPH CONNORS: No.

13 MARK HICKERNELL: But that's permitted
14 by right in this district as opposed to that last
15 one, or at least as opposed to his petition.

16 ATTORNEY JOSEPH CONNORS: Yeah, I
17 think in that one he just -- he didn't want to do
18 that. It was kind of a -- that particular site
19 didn't really lend itself to -- I forget the name of
20 the property, but it's more of a real industrial
21 district where you couldn't have people coming in off
22 the street, where this one, that's --

23 So, you know, I think that the
24 precedent has been set. It is a different

1 neighborhood, but the question remains the same. The
2 brewing of beer is the brewing of beer.

3 So then I also have -- I'm sorry --
4 tab four kind of shows you many other breweries that
5 are popping up in the Boston area and north shore.
6 So, you know, these are brewers and breweries, craft
7 breweries. They're popping up everywhere. Not to
8 say it's a basis of a justification, but I think this
9 is a unique opportunity for the City of Waltham to
10 have their own brewery. You know, they have the Lord
11 Hobo in Woburn. They have the Jack's Abby in
12 Framingham. And the Mighty Squirrel's home base
13 would be in the City of Waltham. So, we believe it
14 would be a great opportunity for the City as well as
15 the Mighty Squirrel.

16 So, I'm going to then move on to the
17 next question about the special permit to alter the
18 nonconforming site. And, again, I'd refer back to
19 the City Streets case where we established the
20 precedent that the site is a nonconforming site and
21 it meets the criteria for we're entitled to ask for
22 the special permit.

23 In that case, as in this case, the
24 building was constructed on the locus in 1973. It

1 was originally constructed and permitted for light
2 manufacturing and commercial uses.

3 I've attached at tab number five the
4 street card for the locus. It really just calls your
5 attention to the original permit in 1973. I can show
6 you a copy of the building permit that was issued in
7 1973 to build the building there, and then the
8 certificate of use of occupancy, which is stated to
9 the Duffy Brothers. And, actually, if you just go
10 back to the building permit at tab five for
11 commercial, it's covered under light manufacturing.

12 So, the building was constructed in
13 1973. It exceeds the permissible FAR under the code
14 today. It's about a .66, where a .4 is permitted in
15 the zoning district. And the parking area itself, we
16 have many mixed uses here, but under the mixed-use,
17 kind of the parking credit analysis, I believe about
18 598 parking spaces are required. We have less than
19 that. Currently, we have 458. So, one, I would say
20 the building is nonconforming at the FAR. The
21 parking area is nonconforming as to the required
22 parking spaces under today's standards. So, it's a
23 nonconforming aspect of the property.

24 We're proposing to alter it by adding

1 parking spaces so that we can meet the demand for the
2 outdoor patio seats. So, we're contending that the
3 alteration is an improvement to the site and not a
4 detriment.

5 The site, if you're familiar with it,
6 has mixed uses. And that entitles us to kind of the
7 parking credit analysis. But a lot of the -- not a
8 lot -- but several of the uses are during the day.
9 They have retail, office spaces that are going to
10 have a greater demand during the day, where the
11 restaurants and the tavern would have a greater
12 demand during the night. So, we're adding spaces to
13 the site where we don't have sufficient amount. But
14 even with the current demands, you know, the parking
15 area is really full. We're replacing what was an
16 office area. So, it was the Guild, the Protestant
17 Guild. And they had offices here. But if you just
18 kind of compare office use to the manufacturing use,
19 we're going from a demand of about ten parking spaces
20 to 45 spaces. So, an office space would demand about
21 45 parking spaces, and manufacturing is based on --
22 so the interior manufacturing use is based on peak
23 employment. And that could be either ten or 20
24 employees. I think they'll start ten full-time and

1 ten-part time. So, that really would be more like
2 15, but call it peak at 20, and you're only going to
3 need ten parking spaces. So, it's our position that
4 we're reducing the parking demand during the day, but
5 adding parking spaces. And then at the time when we
6 would need more parking spaces, one, we've added
7 them; but, two, that would be in the evening when
8 some of the day uses are gone from the site.

9 So, it's our contention that we're
10 improving the site. We're adding compact spaces.
11 We're adding five standard spaces. We're adding four
12 handicap spaces over here, and that's right adjacent
13 to the front door. So, we believe that, you know,
14 that's a benefit to this particular site and not a
15 substantial detriment to the neighborhood.

16 And, lastly, I'm seeking to amend that
17 City Streets case so that the prior plan that was
18 approved for 458 parking spaces can now be amended to
19 472 parking spaces. Twenty-four percent, or 114,
20 will be compact spaces, which 25 percent is
21 permitted. So, we're still just about there. But, I
22 don't think I'll be back, but we're just about at the
23 maximum permitted for compact car spaces.

24 So, that is a quick summary of our

1 case, Madam Chair. As I said, I have several tabs
2 that the Board can refer to. And I'm ready for any
3 questions you may have as to the proposal.

4 Actually, before I kind of wrap it up,
5 the site, the area that the brewery will have,
6 there's going to be 7,770 square feet in the
7 basement. On the first floor, it's 15,000 square
8 feet of which 5,700 is dedicated to the brewery, 42
9 approximately to the tap room, and then they do have
10 another 5,000-square-foot area that is proposed --
11 you know, they kind of had to take that with the
12 lease. Kind of that came with it. They're hoping to
13 put a sub-tenant in there. Or, I mean if they can't
14 do that, maybe some day they can, you know, expand.
15 But, for right now, 5,000 square feet on that first
16 floor area is for a proposed sub-tenant that would
17 just basically sub-lease that space and kind of
18 supplement the rental income for the Petitioners.

19 So, that's about it, Madam Chair. I'm
20 available for questions/concerns of the Board. I
21 know there's many people here, too, if the Board
22 wants to hear from anyone.

23 BARBARA RANDO, CHAIR: Tell me what
24 the hours of operation will be.

1 ATTORNEY JOSEPH CONNORS: The hours of
2 operation for the brewery would be probably 7:00 a.m.
3 to 12 midnight.

4 BARBARA RANDO, CHAIR: Seven a.m.?

5 ATTORNEY JOSEPH CONNORS: Yeah, but
6 that's just to operate the brewery. So, the tavern
7 would be based on whatever the --

8 BARBARA RANDO, CHAIR: To 10:00 p.m.,
9 did you say?

10 ATTORNEY JOSEPH CONNORS: Whatever is
11 -- they're not going to be selling beer at 7:00 a.m.
12 So, that's going to be regulated by the License
13 Commission, whatever is permissible under either the
14 License Commission or the General Ordinances for the
15 City of Waltham. So, I mean probably more like
16 noontime to start selling beer.

17 BARBARA RANDO, CHAIR: If you go into
18 a bar, the bartender is responsible for how many
19 drinks a person has or if they get intoxicated. Is
20 there any responsibility for these people if they see
21 people that have indulged?

22 ATTORNEY JOSEPH CONNORS: Oh,
23 absolutely. So, they're going to be issued a
24 farmers' brewers permit, which is a state and federal

Waltham Zoning Board of Appeals/3-20-18/32

1 license. And they'll also get a pouring permit from
2 the ABCC in the City of Waltham. So, with that, the
3 City of Waltham has regulations. The License
4 Commission has regulations. The ABCC does as well.
5 So, they're not going to -- just because it's not a
6 restaurant or a bar, it's a tavern, and they're going
7 to have that liability like anyone else will. And,
8 also, they'll be regulated by the License Commission
9 and the state ABCC.

10 BARBARA RANDO, CHAIR: So, are you
11 saying that they will be responsible --

12 ATTORNEY JOSEPH CONNORS: Yeah.

13 BARBARA RANDO, CHAIR: -- if someone
14 leaves that's intoxicated?

15 ATTORNEY JOSEPH CONNORS: Absolutely.

16 BARBARA RANDO, CHAIR: Just like a
17 bar?

18 ATTORNEY JOSEPH CONNORS: Yeah.

19 BARBARA RANDO, CHAIR: Okay.

20 ATTORNEY JOSEPH CONNORS: I mean they
21 can't somehow deflect negligence because they have a
22 different type of use. They're still a use that is
23 dispensing alcohol for a fee.

24 BARBARA RANDO, CHAIR: Right. Right.

1 And what about big trucks coming? How big are the
2 trucks that bring the supplies and how often do they
3 come for input and output?

4 ATTORNEY JOSEPH CONNORS: So, on the
5 backside of the building is the shipping and
6 receiving. So, number one, they won't kind of be in
7 that front parking area where we're proposing to
8 have, you know, patrons of the facility park. So, it
9 would be down behind it. And I'm not sure if you had
10 an opportunity to go down there, but this is kind of
11 at a recessed level right here.

12 SARAH HANKINS: But it looked like
13 some sort of loading dock up in here.

14 ATTORNEY JOSEPH CONNORS: Yeah, I
15 think there is. I think you're right.

16 SARAH HANKINS: Yeah.

17 ATTORNEY JOSEPH CONNORS: There's
18 another one upfront, right?

19 SARAH HANKINS: Yeah.

20 HENRY MANICE: I can answer the
21 question.

22 BARBARA RANDO, CHAIR: Give your name
23 and address for the record please.

24 HENRY MANICE: Henry Manice, 77 Exeter

Waltham Zoning Board of Appeals/3-20-18/34

1 Street, Boston, MA.

2 STENOGRAPHER: How do you spell that
3 last name?

4 HENRY MANICE: M-a-n-i-c-e. Thanks
5 for having us tonight.

6 So, in terms of trucks, most of the
7 trucks, the big ones, will be picking up beer
8 downstairs. We do have a loading dock upstairs, as
9 you mentioned. And we will have some deliveries
10 there. But the bulk of the deliveries will be
11 downstairs because that's where we're going to be
12 storing all of the -- all of the beer in our coolers.
13 But, occasionally --

14 BARBARA RANDO, CHAIR: How many
15 deliveries a week?

16 HENRY MANICE: So, we will be
17 receiving raw materials on most likely a weekly
18 basis, probably once or twice a week. But then we'll
19 have distributor trucks picking up the finished
20 product. It could be -- I mean starting out, it
21 could be once a week and it could scale up from
22 there. It could be, you know, every day of the week.
23 But that will be taking place downstairs.

24 So, the loading dock upstairs is very

1 useful because we can have -- it's a bigger loading
2 dock, so some of our empty cans can come in upstairs.

3 BARBARA RANDO, CHAIR: What time do
4 they usually deliver and pick up?

5 HENRY MANICE: During the day,
6 anywhere from 8:00 a.m. to most likely 4:00 or 5:00
7 p.m. So, Mino is actually the head of our
8 distributorship. He lives in Waltham, Atlantic
9 Beverage. So, he'll be picking up all the beer,
10 hopefully a lot of it.

11 MINO SOGHOMONIAN: For sure.

12 BARBARA RANDO, CHAIR: Yeah, but it
13 won't be peak time?

14 MINO SOGHOMONIAN: It could vary.
15 But, traditionally, what we tend to do is leave
16 earlier on in the morning so that we can be back
17 prior to traffic time, especially coming in and out
18 of the Waltham area.

19 STENOGRAPHER: Can you identify
20 yourself for the record, please?

21 MINO SOGHOMONIAN: Sure. The last
22 name is Soghomonian. You've got that, right?

23 (Laughter.)

24 STENOGRAPHER: I have a problem with

1 everything but the last letter.

2 MINO SOGHOMONIAN: S as in Sam-o-g as
3 in Gary-h as in Harry-o-m as in man-o -- sorry -- n-
4 i-a-n, 180 Warren Street.

5 And I've known these folks for a
6 little over -- close to four years now. And I can
7 tell you that I wouldn't have taken time out of my
8 busy schedule -- well, I mean everybody's busy. But,
9 you know, I just got back from Ireland yesterday and
10 I'm back out tomorrow. So, I'm even missing my kids
11 and putting them to sleep tonight and seeing them
12 tonight because I firmly believe that what they're
13 going to bring to the City is only going to expand
14 our visibility as one of the up-and-coming innovative
15 cities in all of Massachusetts.

16 So, their business plan, as you see
17 it, if you really digress into it, you'll be really
18 impressed with knowing that they're going to handle
19 all aspects of business in the utmost professional
20 manner. And it will ultimately only bring additional
21 jobs, revenue, and visibility to our City.

22 BARBARA RANDO, CHAIR: Okay. Thank
23 you.

24 One other question. Can people bring

1 food in there?

2 HENRY MANICE: Yes, people can bring
3 food. And we'll have -- so, we'll have warm pretzels
4 on site. But, we're not going to have a kitchen, and
5 we're not selling a full menu. But we'll probably
6 have warm pretzels and other small items, and then
7 we'll also have food vendors that can come. We'll
8 partner with different restaurants and establishments
9 and they'll bring --

10 MARK HICKERNELL: Food trucks.

11 HENRY MANICE: Food trucks. So,
12 that's very typical for tap rooms. You know, most
13 breweries do not have their own kitchen and sell
14 their own food. They partner with restaurants and
15 other food vendors.

16 BARBARA RANDO, CHAIR: Any other
17 questions of this young man while he's up there?

18 JOHN SERGI: The seasonal seating,
19 counselor, it's the same amount almost as you
20 presented on the prior case on City Streets, about
21 the same number of seating, 75 or --

22 ATTORNEY JOSEPH CONNORS: No, it's a
23 little more.

24 JOHN SERGI: It's a little more?

Waltham Zoning Board of Appeals/3-20-18/38

1 ATTORNEY JOSEPH CONNORS: Yeah. I
2 think it was -- I'm thinking 32 or 40.

3 JOHN SERGI: Okay.

4 ATTORNEY JOSEPH CONNORS: So, we're
5 having more. But then there's two areas --

6 HENRY MANICE: I believe City Streets
7 was 40 maybe, and then -- so a total of 78 seats
8 between two patios. I think about 25 on the smaller
9 one and about 50 on the big one.

10 ATTORNEY JOSEPH CONNORS: And the
11 reason for the two is I guess one would be for
12 private parties and the other one would be for just
13 the general public, so to kind of breaking it apart.

14 JOHN SERGI: Okay.

15 ATTORNEY JOSEPH CONNORS: But, yeah,
16 it's a little bit more.

17 JOHN SERGI: That's all the questions
18 I have, Madam Chair.

19 BARBARA RANDO, CHAIR: If you didn't
20 have the outside seating, would you have sufficient
21 amount of parking?

22 ATTORNEY JOSEPH CONNORS: Yes.

23 BARBARA RANDO, CHAIR: You would.

24 ATTORNEY JOSEPH CONNORS: Yeah, I mean

1 I state that in the brief under the Section 5.9.
2 Basically, in a mixed commercial building, you can
3 change uses in and out. The building's been there
4 since 1973. So, business use to a business use,
5 there's no parking requirement that's triggered. So,
6 the only -- what triggers the parking requirement is
7 the fact that we put things outside because that
8 wasn't there before, whereas the interior has been
9 there since 1973.

10 BARBARA RANDO, CHAIR: And the 5,000
11 square feet that you have that you hope to be able to
12 rent out --

13 ATTORNEY JOSEPH CONNORS: Right.

14 BARBARA RANDO, CHAIR: -- how do we
15 know how many parking spaces they're going to need?
16 We don't know who's going to rent it.

17 ATTORNEY JOSEPH CONNORS: But, again,
18 I mean the same theory applies. So, under 5.9, it
19 was formerly an office use. And so now we have a
20 mixed-use building. So, we can sub out one business
21 use for another business use without a requirement to
22 satisfy any parking requirement. It doesn't change.
23 The parking is going to be accepted as what is there
24 in the field. So, I mean that -- just think about

Waltham Zoning Board of Appeals/3-20-18/40

1 it. Any time we change tenants up and down Main
2 Street and Moody Street, if every time a new tenant
3 went in we had to reevaluate the parking, then no one
4 would be able to rent a storefront on Main and Moody
5 Street. So, business-to-business change of use
6 doesn't trigger a new parking requirement.

7 BARBARA RANDO, CHAIR: Mr. Sergi, do
8 you have any other questions?

9 JOHN SERGI: Not at this point, Madam
10 Chair.

11 BARBARA RANDO, CHAIR: Mr. Hickernell?

12 MARK HICKERNELL: How far is the site
13 from public transportation?

14 ATTORNEY JOSEPH CONNORS: Mr. Duffy?

15 BOB DUFFY: Yeah, it's --

16 ATTORNEY JOSEPH CONNORS: Why don't
17 you come on up?

18 BARBARA RANDO, CHAIR: Please give
19 your name and address for the record, please.

20 BOB DUFFY: Bob Duffy, D-u-f-f-y. The
21 business address is 465 Waverley Oaks Road.

22 So, there's a bus that runs right on
23 Waverley Oaks Road. And so I think that's the 554
24 bus, which will either take you to Waverley Square or

1 will take you to downtown Waltham.

2 Also, if you Google Earth the T stop
3 at Waverley Square, the commuter rail, that says
4 that's a 15-minute walk. If it's nice in the summer,
5 you cut through the park and it's 10 minutes. So,
6 there is adequate public transportation.

7 MARK HICKERNELL: Is there anywhere to
8 lock a bicycle in Waverley Oaks?

9 BOB DUFFY: Yeah. In fact, it's
10 funny, the next-door neighbor, the robotics company,
11 I think they're all going to be riding their bikes.
12 So, we do have bicycles. We're instituting that more
13 in the office building and in different places in the
14 park. So, we're trying to encourage that.

15 We're also, in the future, trying to
16 encourage making the park more walkable. So, it's
17 been 45 years since we had a renovation. So, we're,
18 in a general way, trying to upgrade the park and do
19 things like make it more walkable and encourage
20 people for bikes. And, in fact, we've already talked
21 to the mayor about the bike path, which runs behind
22 our properties, which will eventually take people in
23 the office park to Alewife, or, if they had a reason
24 to, then go to Berlin off of 495 because that's going

Waltham Zoning Board of Appeals/3-20-18/42

1 to be a major bike route for the Commonwealth of
2 Massachusetts.

3 MARK HICKERNELL: Okay. That's all I
4 have. Thank you.

5 BARBARA RANDO, CHAIR: Ms. Hankins,
6 any questions? Mr. McCarthy?

7 EDWARD MCCARTHY: Your five-year plan,
8 what is it? Do you have expansion planned at this
9 site?

10 ATTORNEY JOSEPH CONNORS: Yeah, I
11 think their plan is to stay here. And so that kind
12 of gives them a buffer in case they need it. But
13 that's going to be their headquarters and where they
14 intend to stay.

15 EDWARD MCCARTHY: Larger than the
16 additional space that you're not using?

17 ATTORNEY JOSEPH CONNORS: No. No.

18 HENRY MANICE: No, so we have a lot of
19 room to grow in this space between the upstairs and
20 the downstairs.

21 EDWARD MCCARTHY: Yeah.

22 HENRY MANICE: We can keep adding
23 tanks over time as needed. And so our number one
24 goal is to get to know the Waltham community really

Waltham Zoning Board of Appeals/3-20-18/43

1 well and go deep in Waltham and the surrounding
2 communities. But we'll also be growing our
3 distribution business across Massachusetts, Rhode
4 Island, and we'll be adding states from there. So,
5 as we add -- the big volume doesn't come from the tap
6 room. The volume comes from the distribution side of
7 the business. And so over time we'll scale that up
8 and, you know, our goal would be to hire as many
9 people as possible from Waltham.

10 EDWARD MCCARTHY: What's the shutdown
11 time on the distribution at night? Are you going in
12 and out of there at 10:00 at night?

13 MINO SOGHOMONIAN: Oh, no, absolutely
14 not. The business hours would be the time for
15 pickup.

16 EDWARD MCCARTHY: How about deliveries
17 of the product to you?

18 HENRY MANICE: Deliveries, it will be
19 during normal business hours, 8:00 till 5:00 or to
20 6:00.

21 EDWARD MCCARTHY: Okay. You don't get
22 any deliveries, no one showing up at 10:00 at night
23 or whatever?

24 HENRY MANICE: No, no, no, no.

1 EDWARD MCCARTHY: Why -- I don't
2 understand -- now the front outdoor section you have,
3 you have plenty of space on the inside to put
4 additional seats. And that's a side that faces a lot
5 of the residents across the street. Why not put more
6 seats on the inside rather than the outside?

7 HENRY MANICE: So, our plan is to have
8 quite a few seats inside. But, you know, it's very
9 common with tap rooms to have these patios and give
10 people the flexibility to enjoy the outdoors as much
11 as possible. We're not going to be having loud noise
12 on the patios late at night, and we'll definitely
13 follow the local ordinances for that. And so I mean
14 definitely we don't want to be disturbing the
15 neighbors.

16 EDWARD MCCARTHY: Why not expand that
17 side one rather than the front?

18 HENRY MANICE: This one?

19 EDWARD MCCARTHY: Yeah.

20 HENRY MANICE: So, the gas hookups are
21 actually here. So, we can't go further than this
22 point right here. And then so what we're going to do
23 is actually both of the patios will be open to the
24 public in general. And then this -- so the tap room

1 is a horseshoe here. And we can mark off half of
2 that horseshoe and have special events. So, if, you
3 know, companies want to get their employees together,
4 or actually on a weekly basis we're going to open it
5 up to nonprofits to be able to come in and host their
6 events for free, you know, they can gate off this
7 patio and have that for themselves so that we're not
8 disturbing the regular customers that are coming into
9 this part of the tap room and using this main patio
10 over here.

11 EDWARD MCCARTHY: Okay. I just don't
12 -- it's the double patio that just perplexes me. I
13 just -- why wouldn't one side just be enough, you
14 know? I just --

15 HENRY MANICE: So, I mean it's a
16 fairly large brewery and tap room. So, we're
17 basically building to be prepared for that and give
18 people -- so we're not packing each patio with a lot
19 of seats. We're going to have, you know, couches,
20 and chairs, and a fire pit over here to allow people
21 to -- we're not trying to jam hundreds of people on
22 the patio. So, it's more about just having freedom
23 to enjoy the outdoors.

24 EDWARD MCCARTHY: During the summer

1 months you'll be open till 12:00 serving on the
2 patio?

3 HENRY MANICE: Yes. However, we'll be
4 abiding by the local, you know, town ordinances in
5 terms of when we have to control the noise level
6 outside, the same way City Streets does with their
7 patio. And I believe City Streets is open until at
8 least midnight, maybe 1:00 a.m.

9 ATTORNEY JOSEPH CONNORS: The City of
10 Waltham and the ABCC has regulations for outdoor
11 patios that serve alcohol. So there's already
12 regulations that regulate that. I don't think it's
13 past 10:00. I don't think they can go past 10:00
14 anyways based on the regulations. But, certainly,
15 the Waltham License Commission can regulate that.
16 That is under their purview.

17 But, yeah, I had it somewhere, Mr.
18 McCarthy. I can't put my hand on it. But there are
19 specific regulations that the agency issues every
20 year that says these are your regulations for the
21 outdoor patio use. And, you know, it's designed to
22 make sure that we don't create nuisances to the
23 community. And I think they do restrict the time to
24 10:00.

Waltham Zoning Board of Appeals/3-20-18/47

1 EDWARD MCCARTHY: I'd feel more
2 comfortable if there was just one outdoor patio on
3 the side and if it's space that you're not using -- I
4 don't know -- that's just my feelings.

5 ATTORNEY JOSEPH CONNORS: I mean it
6 will be enclosed as well. So, Henry, can you just
7 describe the enclosure that the patio sits in?

8 HENRY MANICE: Sure. Yes. So, we'll
9 have a nice clean gate going around here as well as
10 some shrubbery along the sides to make it look nice.
11 But this part of the tap room is the narrowest for
12 us. And so we feel that it will bring -- it will
13 greatly enhance the experience of our customers
14 during the day and the early hours of the evening.
15 And it's definitely not meant to disturb neighbors
16 after I guess it's ten?

17 ATTORNEY JOSEPH CONNORS: I think it's
18 10:00, yeah.

19 HENRY MANICE: Ten o'clock.

20 NAVEEN PAWAR: Can I speak, please?

21 BARBARA RANDO, CHAIR: Yes, give your
22 name please.

23 NAVEEN PAWAR: Yeah, my name is Naveen
24 Pawar.

1 STENOGRAPHER: Can you spell that for
2 us?

3 NAVEEN PAWAR: It's a simple name.
4 (Laughter.)

5 NAVEEN PAWAR: Naveen is N-a-v-e-e-n.
6 Last name is Pawar, P-a-w-a-r. And this name is more
7 like John Smith back home in India.

8 (Laughter.)

9 NAVEEN PAWAR: And my address is 85
10 George Street, Mansfield, MA.

11 And, actually, to answer your question
12 of the patio out here, the one thing which is very
13 visible right now is that most breweries -- breweries
14 are much different from a bar or a pub. Actually,
15 you can see that there are much more families going
16 to the breweries with their kids actually. And if
17 you see this part of our vision which we were sharing
18 before is that we want to have -- this is the whole
19 u-shaped bar area or tavern area. And we want this
20 part to be available for events. The two events
21 which we'll be having most often is birthday parties
22 for kids, or if you think about also for the
23 nonprofits. If they want to have some events, we
24 will provide a spot for them.

1 And then this area, so if you're
2 giving them this part out here, then this patio in
3 the daytime is going to be more useful -- it's going
4 to be used by these people who will be having this
5 group of -- who is getting together -- is going to be
6 used by them.

7 Now, we don't want to have so much of
8 a mix-up of planning two different groups of general
9 audience mixing up with them. If somebody wants to
10 have a private party, a birthday party, or if they
11 want to have an event for a nonprofit, they should
12 have their own privacy. And they can have the
13 privacy of indoors and outdoors both from their
14 perspective and also from the kids that are coming
15 there are not for drinking beer, obviously, but to be
16 there for the event and they can use this patio for
17 that particular event or whatever is happening there.

18 EDWARD MCCARTHY: Yeah, that's all,
19 Madam Chair.

20 BARBARA RANDO, CHAIR: I think Mr.
21 McCarthy is afraid of the noise with the children and
22 people. You don't have music, do you, or any
23 entertainment?

24 NAVEEN PAWAR: Music, if we do have

1 any music events, it's going to be all indoors. And,
2 of course, it's going to be whatever the hours which
3 are being mentioned by the City ordinance.

4 ATTORNEY JOSEPH CONNORS: And that
5 would require a license for entertainment inside, but
6 nothing outside.

7 BARBARA RANDO, CHAIR: And it will be
8 lighted?

9 HENRY MANICE: Yes. Does that address
10 your concerns at all or --

11 EDWARD MCCARTHY: I hear what you're
12 saying.

13 ATTORNEY JOSEPH CONNORS: I mean we
14 can certainly put up a barrier there if you're -- I
15 mean, like I say, their intent is not to disturb the
16 neighbors. So, if we need to put something there to
17 kind of -- some vegetation or something else to kind
18 of create a buffer --

19 JIM MESTHENE: I'm a neighbor. And
20 I'll wait till you're done, but I do have something
21 to say.

22 BARBARA RANDO, CHAIR: Then I'm going
23 to allow you all to have something to say.

24 JIM MESTHENE: I'm sorry to interrupt.

Waltham Zoning Board of Appeals/3-20-18/51

1 ATTORNEY JOSEPH CONNORS: That's okay.
2 So, you know, we would be amenable to something to
3 create a -- in addition to what you see here, maybe
4 some arborvitaes or something of sufficient height to
5 maybe create a visual buffer that would muffle any
6 noise that would be generated. But there will be no
7 music out there.

8 BARBARA RANDO, CHAIR: What's very
9 nice today is they have curtains, very sheer
10 curtains, with the lights on them that can kind of
11 filter out some of the noise. We're just concerned
12 about the neighbors.

13 ATTORNEY JOSEPH CONNORS: Yeah, and
14 certainly we don't want to disturb any --

15 BARBARA RANDO, CHAIR: Or maybe plant
16 it with some type of greenery, Mr. McCarthy?

17 EDWARD MCCARTHY: You lose eight
18 parking spaces by putting that in.

19 ATTORNEY JOSEPH CONNORS: No, we don't
20 lose any. There's no parking spaces there. Right?

21 HENRY MANICE: Any of the park -- so
22 it may cover some parking space that used to --

23 EDWARD MCCARTHY: Yeah, there's
24 parking spaces there. That's on this plan anyway.

Waltham Zoning Board of Appeals/3-20-18/52

1 HENRY MANICE: So that's why we were
2 adding the other spots to make up for that difference
3 in the two patios.

4 ATTORNEY JOSEPH CONNORS: Yeah, so the
5 patio is right here. So, we've eliminated the
6 parking spaces that were a part of the patio. And
7 now that would just be a drive by over there, so we
8 wouldn't lose any parking spaces.

9 EDWARD MCCARTHY: Yeah, I'm just
10 saying you would gain -- if you didn't put that patio
11 in, you'd have eight more.

12 ATTORNEY JOSEPH CONNORS: Yeah.

13 EDWARD MCCARTHY: That's all, Madam
14 Chair.

15 ATTORNEY JOSEPH CONNORS: Okay. Thank
16 you.

17 MARK HICKERNELL: Would you like to --

18 JIM MESTHENE: I'd love to have
19 something to say if that's okay with everybody.

20 BARBARA RANDO, CHAIR: I'm going to
21 let you speak in a moment.

22 Any other questions from Board
23 members?

24 (No response.)

Waltham Zoning Board of Appeals/3-20-18/53

1 BARBARA RANDO, CHAIR: All right. Is
2 there anyone in the audience that is in opposition to
3 this that would like to say something? In
4 opposition, does not want it?

5 (No response.)

6 BARBARA RANDO, CHAIR: Is there anyone
7 seeking information?

8 (No response.)

9 BARBARA RANDO, CHAIR: Is there anyone
10 in favor?

11 EDWARD MCCARTHY: Put down 49 so you
12 don't get in trouble.

13 SARAH HANKINS: Yeah, exactly.

14 BARBARA RANDO, CHAIR: Let's say 49
15 plus or minus, or 50 plus or minus, and the baby.

16 (Laughter.)

17 EDWARD MCCARTHY: Forty-eight-and-a-
18 half.

19 BARBARA RANDO, CHAIR: All right.
20 Anyone in favor that would like to speak? Come up to
21 the microphone. Give your name and address for the
22 record, please. Excuse me. I'm just asking if
23 you're saying the same thing, you don't have to come
24 up. But if there's something original --

Waltham Zoning Board of Appeals/3-20-18/54

1 JIM MESTHENE: Okay. Well, I think
2 it's original because I live across the street from
3 City Streets.

4 BARBARA RANDO, CHAIR: Yeah.

5 JIM MESTHENE: My name is Jim
6 Mesthene. I live at 360 Waverley Oaks Roads.

7 BARBARA RANDO, CHAIR: Please spell
8 your last name.

9 JIM MESTHENE: M-e-s-t-h-e-n-e.
10 Anyone can pronounce it.

11 (Laughter.)

12 JIM MESTHENE: Let's see.
13 Coincidentally, I lived in Waltham just as this
14 industrial park was built. And it was an industrial
15 park. There was nothing but tractor-trailers going
16 in and out. And behind it was a tank farm. Now, I
17 moved in in 1993 across the street from where Yolanda
18 used to be and directly across the street from City
19 Streets.

20 Okay. It's not a tank farm anymore.
21 It's a beautiful place. The Duffy Brothers have done
22 a wonderful job reclaiming the property. Nothing
23 that has happened at City Streets bothers me. I live
24 about -- I don't know -- 100 yards from City Streets.

1 Every once and a while, I'd say twice since they've
2 been open, it got a little loud and I called them up.
3 And, immediately it got quiet. These people are not
4 a nuisance in my neighborhood. They've created a
5 wonderful -- a better neighborhood. That wonderful
6 terrace instead of a -- I don't live across the
7 street from an industrial park. I live across the
8 street from a place with three restaurants and
9 several retail shops. And I'm looking forward to
10 having more restaurants over there.

11 I'm very much in favor of this. I'm
12 very -- and the idea of the tractor-trailers coming
13 in and out is just silly. They came in and out since
14 1974. I've been living across the street from them
15 since -- for 25 years. That's just a silly idea.

16 What I would like to emphasize, and it
17 probably isn't the right Board to mention it in front
18 of, but if you don't drive, you can't get to any one
19 of these restaurants. You cannot get to the liquor
20 store. You can't get to any one of these
21 restaurants. There are no crosswalks. There are no
22 sidewalks on that side of the street. So, to me,
23 that's an access problem. And, I don't know. I
24 mentioned it to my city councilor, but I don't know

1 what it takes to get crosswalks put in so people who
2 don't drive cars could possibly go to these places.

3 But, that's the main reason I came
4 here to talk to you. I'm very much in favor of
5 having this place, but could you please make it so I
6 don't get hit crossing the street when I go?

7 SARAH HANKINS: Sir, I just want to
8 comment that you may want to reach out to the Traffic
9 Commission on that.

10 JIM MESTHENE: I spoke to Councilor
11 McMenimen. I've tried. But, apparently, this thing
12 moves at a glacial pace. I just thought perhaps if I
13 mentioned it here, maybe one of you could mention
14 something to somebody. But it's a problem for me.
15 Please, please have a better restaurant, more
16 restaurants, more things within walking distance
17 because I don't drive anywhere. So, please let this
18 thing open. But, do me a favor. Put in a couple of
19 crosswalks.

20 BARBARA RANDO, CHAIR: That's very
21 interesting.

22 JIM MESTHENE: All right. I'm all
23 done. Thanks. Thank you for your time. That's all
24 I've got to say.

Waltham Zoning Board of Appeals/3-20-18/57

1 BARBARA RANDO, CHAIR: Is there anyone
2 else?

3 JIM MESTHENE: I hope you guys do
4 well.

5 MINO SOGHOMONIAN: One other thing,
6 too, in regards to the ambience.

7 BARBARA RANDO, CHAIR: Come up to the
8 microphone though, please.

9 MINO SOGHOMONIAN: Sure.

10 BARBARA RANDO, CHAIR: Because people
11 at home are interested.

12 MINO SOGHOMONIAN: Sure. In regards
13 to the ambience with the two separate patio spaces, I
14 think that will bring a lot more of an inviting
15 nature to other businesses that are looking to come
16 into that park. I commend you and your family for
17 spending all this money on, you know, bringing up
18 that area. It's absolutely gorgeous. I had the
19 opportunity to go there, what, about three weeks ago.
20 And it's something to be proud of I think.
21 Hopefully, other parts of the City can follow suit
22 with the investments and, you know, inviting more and
23 more families to spend time outdoors and, you know, I
24 think it's great. I'm excited to see this blossom

1 into other parts of the City.

2 BARBARA RANDO, CHAIR: Thank you very
3 much.

4 MINO SOGHOMONIAN: Yeah.

5 BARBARA RANDO, CHAIR: Anyone else?

6 JEFFREY STANTON: Hi, Jeffrey Stanton,
7 78 Charles River Road.

8 I'm a board member on the Waltham
9 Chamber of Commerce, and we are here in full support
10 of this petition. I'm also on several nonprofit
11 boards. And these gentlemen, who I don't know, have
12 already been very supportive of that, and we look
13 forward to continuing that in the future.

14 Thank you.

15 BARBARA RANDO, CHAIR: Thank you.
16 Next? Anyone else?

17 (No response.)

18 BARBARA RANDO, CHAIR: Hearing none,
19 you can continue with your proposed finding of facts
20 if there's been no changes from what we received.

21 JOHN SERGI: If it's the same finding
22 of facts, counselor, I propose that we waive the
23 reading of the finding of facts.

24 MARK HICKERNELL: Second.

Waltham Zoning Board of Appeals/3-20-18/59

1 ATTORNEY JOSEPH CONNORS: Yes, it's
2 the same.

3 MARK HICKERNELL: I'll second that
4 motion.

5 BARBARA RANDO, CHAIR: All right.
6 Motion by Mr. Sergi. Seconded by Mr. Hickernell to
7 waive the reading of the finding of facts.

8 How do you vote, Mr. Sergi?

9 JOHN SERGI: Yes.

10 BARBARA RANDO, CHAIR: Mr. Hickernell?

11 MARK HICKERNELL: Yes.

12 BARBARA RANDO, CHAIR: Ms. Hankins?

13 SARAH HANKINS: Yes.

14 BARBARA RANDO, CHAIR: Mr. McCarthy?

15 EDWARD MCCARTHY: Yes.

16 BARBARA RANDO, CHAIR: And the Chair
17 votes yes.

18 Do I have a motion on the proposed
19 decision?

20 JOHN SERGI: In a similar fashion,
21 Madam Chair, I propose we waive the reading of the
22 decision since it's been on file and we've had a
23 chance to read it.

24 BARBARA RANDO, CHAIR: Motion by Mr.

Waltham Zoning Board of Appeals/3-20-18/60

1 Sergi. Do I have A second?
2 MARK HICKERNELL: Second.
3 BARBARA RANDO, CHAIR: Second by Mr.
4 Hickernell.
5 How do you vote, Mr. Sergi?
6 JOHN SERGI: Yes.
7 BARBARA RANDO, CHAIR: Mr. Hickernell?
8 MARK HICKERNELL: Yes.
9 BARBARA RANDO, CHAIR: Ms. Hankins?
10 SARAH HANKINS: Yes.
11 BARBARA RANDO, CHAIR: Mr. McCarthy?
12 EDWARD MCCARTHY: Yes.
13 BARBARA RANDO, CHAIR: And the Chair
14 votes yes.
15 All right. I am ready for a motion
16 for the proposed findings of facts, so if there are
17 any changes.
18 MARK HICKERNELL: I make a motion that
19 the proposed findings of fact be adopted by the Board
20 as the Board's findings of fact.
21 BARBARA RANDO, CHAIR: Motion by Mr.
22 Hickernell.
23 JOHN SERGI: I'll second that.
24 BARBARA RANDO, CHAIR: Second by Mr.

Waltham Zoning Board of Appeals/3-20-18/61

1 Sergi.

2 How do you vote, Mr. Sergi?

3 JOHN SERGI: Yes.

4 BARBARA RANDO, CHAIR: Mr. Hickernell?

5 MARK HICKERNELL: Yes.

6 BARBARA RANDO, CHAIR: Ms. Hankins?

7 SARAH HANKINS: Yes.

8 BARBARA RANDO, CHAIR: Mr. McCarthy?

9 EDWARD MCCARTHY: Yes.

10 BARBARA RANDO, CHAIR: And the Chair
11 votes yes.

12 Do I have a motion on the decision.
13 And I think that we should add on the decision that
14 item that you mentioned to help the smell.

15 ATTORNEY JOSEPH CONNORS: It's already
16 in there, Madam Chair.

17 BARBARA RANDO, CHAIR: I'm sorry?

18 ATTORNEY JOSEPH CONNORS: It's already
19 in there as condition number three.

20 BARBARA RANDO, CHAIR: Oh, okay.

21 ATTORNEY JOSEPH CONNORS: "The
22 Petitioner shall also construct, use, and maintain a
23 condensate stack as noted in the upper-level floor
24 plan above and as shown on the drawings prepared by

Waltham Zoning Board of Appeals/3-20-18/62

1 American Beer Equipment listed as follows," and then
2 I call them out.

3 BARBARA RANDO, CHAIR: Great.

4 JOHN SERGI: Counselor, does it make
5 sense to make a statement as to the sidewalks or
6 making it more pedestrian-friendly for the
7 neighborhood?

8 ATTORNEY JOSEPH CONNORS: In here? In
9 the proposed decision? The Petitioners shall attempt
10 to make the site more pedestrian and bike friendly?

11 JOHN SERGI: That's fine. That's
12 fine.

13 ATTORNEY JOSEPH CONNORS: And, Mr.
14 Duffy, where is that bike path planned to cross
15 Waverley Oaks Road when it's constructed? Do you
16 know?

17 BOB DUFFY: Yes, you can access it
18 from Beaver Street or through the park.

19 ATTORNEY JOSEPH CONNORS: Okay.

20 BOB DUFFY: So, it's actually -- our
21 property on 117 Beaver Street takes some of the bike
22 trail. So, what the discussion with the mayor was
23 people would ride their bikes in between, and then we
24 would allow them to access our property to take it

Waltham Zoning Board of Appeals/3-20-18/63

1 from the end of 117 Beaver to the Belmont line.

2 BARBARA RANDO, CHAIR: But they never
3 required you to put in any crossings on --

4 BOB DUFFY: No, I think part of the
5 bike plan was to access it from either Beaver Street
6 --

7 BARBARA RANDO, CHAIR: No, no. I'm
8 talking about when you built --

9 BOB DUFFY: No, no. But we have
10 plans, Beals and Thomas. And part of our plans to
11 make it more walkable, some of those sidewalks show
12 up on Mighty Squirrel. And, in fact, the robotic
13 company who is moving in in April, we're building
14 their sidewalk right now in front of the robotic
15 company. And if this is successful, then we'll build
16 sidewalks in front of the Mighty Squirrel, and
17 eventually start hooking up to the office park and
18 just keep on bringing it to make this as pedestrian
19 friendly as possible.

20 BARBARA RANDO, CHAIR: Would you be
21 willing as owner of the property to see if you could
22 get the City's Traffic Commission to put crossing
23 marks on the street?

24 BOB DUFFY: Yeah.

Waltham Zoning Board of Appeals/3-20-18/64

1 ATTORNEY JOSEPH CONNORS: Sure. We'll
2 try.

3 BOB DUFFY: I think it only helps
4 everybody.

5 BARBARA RANDO, CHAIR: Right.

6 MARK HICKERNELL: So, would you be
7 comfortable with condition number four, the
8 Petitioner shall endeavor to make the locus more
9 accessible to pedestrians and bicyclists?

10 ATTORNEY JOSEPH CONNORS: Yes, that's
11 fine. More accessible to pedestrians and bicyclists,
12 yes.

13 MARK HICKERNELL: Okay.

14 BARBARA RANDO, CHAIR: Okay

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

18 BARBARA RANDO, CHAIR: Motion by Mr.
19 Sergi.

20 MARK HICKERNELL: I'll second that.

21 BARBARA RANDO, CHAIR: Second by Mr.
22 Hickernell on the decision.

23 How do you vote, Mr. Sergi?

24 JOHN SERGI: Yes.

Waltham Zoning Board of Appeals/3-20-18/65

1 BARBARA RANDO, CHAIR: Mr. Hickernell?
2 MARK HICKERNELL: Yes.
3 BARBARA RANDO, CHAIR: Ms. Hankins?
4 SARAH HANKINS: Yes.
5 BARBARA RANDO, CHAIR: Mr. McCarthy?
6 EDWARD MCCARTHY: On the motion,
7 Madam, just a question with regards to the -- are
8 there sidewalks in front of the Mount Auburn
9 Hospital, do you know? I mean I'm just trying to
10 picture putting a crossing walk there to nothing, you
11 know, because there's no sidewalks on that side of
12 the street.
13 BOB DUFFY: Yes, because that
14 gentleman is definitely over there across from City
15 Streets.
16 EDWARD MCCARTHY: Yeah. Yeah.
17 BOB DUFFY: I don't know. I think
18 when we built Mount Auburn, I don't think there are.
19 EDWARD MCCARTHY: Yeah. Where would
20 you run the crosswalk to, you know?
21 BOB DUFFY: Right. Well, we would run
22 it on the Mount Auburn side.
23 BARBARA RANDO, CHAIR: Right.
24 ATTORNEY JOSEPH CONNORS: Yeah,

Waltham Zoning Board of Appeals/3-20-18/66

1 because if you put it at the driveway --

2 EDWARD MCCARTHY: Yeah.

3 ATTORNEY JOSEPH CONNORS: -- people
4 are going to get killed.

5 EDWARD MCCARTHY: Yeah.

6 ATTORNEY JOSEPH CONNORS: Because you
7 can't see.

8 EDWARD MCCARTHY: Yeah, yeah.

9 ATTORNEY JOSEPH CONNORS: So, it would
10 have to be -- but they do have control over the Mount
11 Auburn side because that's their building.

12 EDWARD MCCARTHY: Yeah.

13 ATTORNEY JOSEPH CONNORS: So they
14 could put it there and then maybe dovetail with the
15 sidewalk on the other side.

16 BOB DUFFY: Right.

17 ATTORNEY JOSEPH CONNORS: But we'll
18 certainly --

19 BOB DUFFY: And the whole Fernald
20 thing might develop into something, too, right,
21 because I think that's on par to -- sorry, I'll sit
22 down.

23 (Laughter.)

24 BARBARA RANDO, CHAIR: How do you

Waltham Zoning Board of Appeals/3-20-18/67

1 vote, Mr. McCarthy?

2 EDWARD MCCARTHY: Yes, Madam Chair.

3 MARK HICKERNELL: How long do you want
4 to stay here tonight?

5 (Laughter.)

6 BARBARA RANDO, CHAIR: Then it is
7 granted. Good luck, guys.

8 EDWARD MCCARTHY: You didn't vote,
9 Barbara.

10 BARBARA RANDO, CHAIR: Oh, the Chair
11 votes yes, of course.

12 (Applause.)

13 BARBARA RANDO, CHAIR: We'll take a
14 five-minute recess.

15 MARK HICKERNELL: Motion for a five-
16 minute recess.

17 BARBARA RANDO, CHAIR: 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 //

24 //

1 **Case Number 2017-18: Richard and Leueen Laing**

2

3 BARBARA RANDO, CHAIR: Good evening.
4 Sorry for the wait. And I appreciate you offering to
5 go upstairs. It was appreciated.

6 Would the Clerk please read the
7 petition in Case 2017-18, Laing, 71 Angleside (sic)
8 Road?

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

12 BARBARA RANDO, CHAIR: Thank you. May
13 we hear from the Petitioner or the Petitioner's
14 representative? Give your name and address for the
15 record.

16 RICHARD LAING: My name is Richard
17 Laing. My address is 71 Edgewater Drive.

18 Mrs. Rando, members of the Zoning
19 Board of Appeal, thank you for listening to our
20 presentation.

21 BARBARA RANDO, CHAIR: Could I say one
22 thing before you start? This is new information
23 tonight?

24 RICHARD LAING: Yes.

Waltham Zoning Board of Appeals/3-20-18/69

1 BARBARA RANDO, CHAIR: Is there
2 anything new in your proposed finding of fact and
3 your proposed decision? Because we were supposed to
4 receive this two weeks before you come before us.
5 And unless there's any changes, we can go forward.

6 RICHARD LAING: There are changes.
7 You asked us to prepare a legal opinion.

8 BARBARA RANDO, CHAIR: Right. No,
9 that's fine.

10 RICHARD LAING: And we are presenting
11 that legal opinion to you.

12 BARBARA RANDO, CHAIR: That's fine.
13 You can present that. And that's the only thing
14 that's different?

15 RICHARD LAING: Yes.

16 BARBARA RANDO, CHAIR: Go right ahead.

17 RICHARD LAING: And the explanation.

18 BARBARA RANDO, CHAIR: Yeah. Mm hum.
19 I understand.

20 RICHARD LAING: This is our fifth
21 appearance before the Board. We first presented on
22 June 6th, 2017. At that meeting, we presented our
23 special permit application, our petition, and letters
24 of support from our neighbors, our justification for

1 a variance of the five-year residency requirement,
2 and our appeal of our notice of violation. During
3 the meeting, a number of our neighbors spoke in
4 support of our application. At the end of the
5 meeting, we were asked to submit affidavits to
6 confirm that the basement apartment had been occupied
7 for more than ten years. This would have fulfilled
8 the requirements of Chapter 40A, Section 7 for the
9 structure to be defined as a nonconforming structure.

10 At the second meeting on June the 20th,
11 we presented notarized affidavits that clearly
12 demonstrated that the basement apartment had been
13 occupied for more than ten years. Despite this
14 evidence being presented, the Board did not discuss
15 the affidavits and decide whether we met the
16 requirements to be declared a nonconforming
17 structure.

18 Additional support for our application
19 was expressed by other neighbors and our City
20 Councilor at the time. Concerns were expressed as to
21 whether having an external and internal exit
22 fulfilled the requirements of Section 3.616 and
23 whether the Board had the authority to grant a
24 variance on the five-year residence requirement. We

1 were asked to seek external legal counsel and to
2 present written legal opinions on these two points of
3 concern.

4 Our next meeting was scheduled for
5 September 26th, 2017, but this had to be postponed as
6 two Board members were not available. The meeting
7 was postponed to November 28th, 2017. However,
8 immediately before that meeting, the Chair informed
9 us that she had requested a legal opinion from the
10 Waltham City attorney on issues related to our case.
11 She showed that opinion to us. We objected to the
12 document being provided to us at the last moment, and
13 it was agreed to postpone our hearing to March 13th.
14 Due to last week's storm, the hearing was postponed
15 until tonight.

16 I would now like to address the events
17 that occurred prior to and at the beginning and end
18 of last November 28th, 2017 meeting related to our
19 application.

20 When we arrived at the meeting at
21 6:30, we were told by Bret Francis, the lawyer who
22 had prepared the legal opinion for us, that a new
23 legal opinion of the case had just been received. He
24 advised us that we should seek a continuance so that

1 we could review the opinion prior to it being
2 discussed. We agreed to the suggestion and spoke to
3 the Chair who agreed that our case would be
4 continued.

5 When the meeting began, we thought
6 that our case would be continued. So, we were
7 surprised when the Chair attempted to have the
8 opinion from the Waltham solicitor read into the
9 record. We were pleased to be able to prevent this
10 reading into the record from happening. We then left
11 the meeting though Bret Francis remained to present
12 another case.

13 At the end of the meeting, the process
14 for the Chair requesting a legal opinion was
15 discussed. And this was all on the video. This
16 discussion has raised a number of queries about the
17 legal opinion and what the process was that led to
18 this opinion being prepared.

19 The Chair claimed in the discussion at
20 the end of the meeting that she had the right to ask
21 for an opinion and that the rules had been changed
22 about four years ago giving the authority to ask for
23 an opinion. However, this rule change was never
24 incorporated into the Rules and Regulations that

1 became effective from March 1st, 2017 -- 2007. I
2 approached the Zoning Department for the latest
3 rules, and I was told that these were the latest
4 rules and there had been no changes. The rules,
5 Section 2.01, clearly define the power and duties of
6 the Chair and does not include seeking legal advice
7 between meetings. The rule in Article V states, "The
8 Board only acts officially through deliberation and
9 vote by the Board." So, we are questioning whether
10 the Chair has the authority to request the legal
11 opinion on her own. If she did not have that
12 authority, then the advice submitted would be
13 invalid.

14 The second issue that we wish to raise
15 are the timing and details of how and when the
16 questions were asked in the meeting on November 28th.
17 The Chair stated that the legal advice had been
18 requested "months before, after the meeting." And I
19 quote from what was said on the video. We assume
20 that this comment refers to the meeting on June the
21 20th, 2007 (sic) when we were requested to obtain a
22 legal opinion from our own attorney, which we have
23 done. Nothing was said by the Board at that time
24 about seeking an opinion from the City of Waltham

1 city attorney.

2 We had our next meeting on September
3 26th, which was deferred because two members were
4 absent. At that time, there was no mention of any
5 legal opinion being sought by the Board or the Chair.

6 We now come to the date that the Law
7 Department reported receiving the request, which was
8 November 21, 2017. This request is just one week
9 before the scheduled November 28th meeting, not months
10 before as the Chair had previously stated. These
11 differences, again, cast doubt on the process. The
12 lack of citations, references, or case statements in
13 the legal opinion provided by the City Solicitor
14 reflects the short time taken to prepare the
15 statement.

16 We now come to the two questions that
17 that legal opinion addresses. The first question
18 relates to whether strict compliance with Section
19 3.616 of the zoning ordinance is required. This
20 question was the same one we asked our attorney to
21 address, which he has done with substantial
22 documentation, references, case law, and precedent
23 cases decided by the ZBA. The opinion of the
24 Assistant City Solicitor only provided her opinion

1 without any references or citations.

2 The second question is confusing. The
3 question asks whether a person "may tack on a prior
4 owner's length of use of property to be eligible to
5 comply with Section 3.616 for a special permit."
6 This is not something we have ever claimed. At the
7 first meeting on June 6th, the question was raised
8 whether we complied with Massachusetts State Laws
9 Chapter 40A, Section 7 as amended on November 20,
10 2016 to be declared a nonconforming structure that
11 had been occupied for more than 10 years. We were
12 requested to provide affidavits to document this
13 fact, which we presented to the Board at the meeting.
14 The Board appears to have accepted these affidavits
15 but never ruled as to whether we should be approved
16 under the nonconforming statute. So, the second
17 question to the City Solicitor as asked was not valid
18 or relevant to the present proceedings.

19 We also want to take issue with the
20 comments made by the Chair at the end of the November
21 28th meeting, which we observed on the video, which
22 suggested that we as petitioners have no right to be
23 informed about the request for the legal opinion.
24 This is clearly unfair. The details of the questions

1 to be asked are clearly of interest to us and we
2 should have been so informed.

3 So, it is our position that this legal
4 advice provided by the City Solicitor should not be
5 considered and should not be read into the record.
6 We have the following requests:

7 That the Chair provides written
8 evidence that she has the right to ask for a legal
9 opinion from the City Solicitor outside of a Board
10 meeting. If such a rule change has occurred, why is
11 it not included in the rules and regulations for the
12 Waltham Zoning Board of Appeal?

13 All request for legal advice by the
14 Board should occur in open session in front of the
15 petitioners.

16 That the legal opinion requested by
17 the Board to us on June 20th should be the opinion
18 that is considered in this meeting and that the Board
19 should only consider that opinion in making a
20 decision about our request for a special permit.

21 To go on, as we were instructed by the
22 Board on June 20th, we have sought counsel from Mr.
23 Bret Francis whom we first met at the meeting on June
24 6th when he was presenting to the Board on another

1 matter. He is well known to the Board. Mr. Francis
2 has prepared a legal opinion on these two aspects of
3 our case relating to the special permit and variance.
4 I would like to read his opinion into the record.

5 So, we go to item two in your folder,
6 the legal opinion. So, the legal opinion is
7 addressed to Ms. Barbara Rando, the Chair of the
8 Zoning Board of Appeals.

9 Dear Mrs. Rando, members of the Board:

10 Please be advised that this law office
11 has been retained by petitioners Richard and Leueen
12 Laing to provide certain legal opinions in connection
13 with certain matters pending before the Zoning Board
14 of Appeals in Case No. 2017-18. In furtherance
15 thereof, and as requested by the Board, I provide the
16 following legal opinions.

17 The first issue: Article III, Section
18 3.616, Special Permit for Accessory Dwelling Units.
19 According to the Appeals Court of Massachusetts in
20 *SCIT v. Planning Board of Braintree*, special permit
21 procedures have long been used to bring flexibility
22 to the fairly rigid use classifications of zoning
23 schemes by providing for specific uses which are
24 deemed necessary or desirable but which are not

1 allowed as of right because of their potential for
2 incompatibility with the characteristics of the
3 district. And uses most commonly subjected to
4 special permit requirements are those regarded as
5 troublesome and uses often considered desirable which
6 would be incompatible in a particular district unless
7 conditioned in a manner which makes them suitable to
8 a given location.

9 The special permit regulates them idle
10 tier of uses between those so offensive that they are
11 prohibited and those so innocuous that they are
12 allowed as of right. This is from *Bobrowski*.
13 Special permits are issued to authorize specifically
14 itemized uses after weighing the benefits or
15 detriments of a proposal. In general, the court has
16 emphasized that the criteria for the issue of a
17 special permit "are less stringent than involved in
18 the application for a variance."

19 The Board requested an opinion as to
20 whether the Board could grant the special permit
21 where not all the requirements of the bylaw are not
22 met. A special permit granting authority has the
23 full range of discretion in assessing an
24 application." And that's a quotation from *Bobrowski*,

1 Massachusetts Land Use and Planning Law.

2 Further, the granting authority has
3 the full range of discretion in shaping its decision.
4 The bylaw must "provide adequate standards for the
5 guidance of the board in deciding whether to grant or
6 to without special permits...The standards need not
7 be of such a detailed nature that they eliminate
8 entirely the element of discretion from the board's
9 decision." This is the case here. The five-year
10 requirement purports to remove the discretion to
11 decide the special permit from the Board.
12 Petitioners have met each of the other requirements
13 of the bylaw and have stated their intention to
14 remain in the property for the remainder of their
15 lives. As a further safeguard, the grant of the
16 special permit is not transferrable so that if the
17 Petitioners were to move, the buyer would gain no
18 benefit from the grant of this special permit.

19 With regard to -- with respect to the
20 power of the Board's discretion, it should be noted
21 that the Board may even deny a special permit where
22 all the bylaw's criteria are met and the permit might
23 have been lawfully issued. (*Humble Oil v. Board of*
24 *Appeals of Amherst*, 1971.) "Indeed, the board has

1 the discretionary power in acting thereon. The Board
2 must act fairly and reasonably on the evidence
3 presented to it, keeping in mind the objects and
4 purposes of the enabling act and the bylaw." This is
5 from *MacGibbon*. The proposed use is in harmony with
6 the objectives and purposes of the bylaw. As a
7 result, the Board retains the full authority to grant
8 the Petitioners' application for an accessory
9 dwelling unit under these circumstances.

10 In addition to the foregoing, it
11 should be noted that the five-year requirement is
12 constitutionally invalid. When an amendment (to the
13 bylaw) is not in furtherance of "any of the purpose
14 of the zoning power granted to municipalities in the
15 enabling act by which its validity must be tested,
16 the amendment is invalid." This is from *Cross v.*
17 *Planning Board of Chelmsford* in 1962. In *Cross*, the
18 amendment passed by the town established lot sizes
19 and frontages within a district based upon the
20 proximity to presently accepted streets and nothing
21 else. It's the court's statement, "We perceive no
22 rational connection, and the town has suggested none,
23 between the onerous restrictions imposed by the
24 amendment and the purposes for which zoning is

1 authorized." The court concluded, "The requirement
2 of a difference in the size of the lots bears no
3 substantial relation to the general aims of zoning.
4 Its effect is discriminatory. The amendment deprives
5 the plaintiff and the community of a normal use of
6 their property without accomplishing in any
7 reasonable degree one of the legitimate purposes for
8 which zoning is authorized."

9 That is exactly the case here. The
10 five-year requirement contained in Article III, 3.616
11 advances no objective or purpose contained in Article
12 I of 1.3 of the City of Waltham Zoning Bylaws.
13 Further, any conceivable objective or purpose
14 supporting the five-year requirement is nullified and
15 quashed by 3.616(1) where it provides that the
16 special permit, if granted, shall clearly state that
17 it is not transferable to a purchaser of the lot.
18 Consequently, any concern of a quick turnover of the
19 property is negated. As a result, all the five-year
20 requirement accomplishes is a discriminatory effect
21 for those who have owned their property for less than
22 five years.

23 Lastly, Petitioners requested that in
24 connection with the question of the special permit

1 that I provide an opinion as to whether the access to
2 the accessory dwelling unit is adequate under the
3 circumstances. Here, there are two separate and
4 distinct means of ingress and egress, namely one
5 directly from the unit to the outside of the
6 building, and the second through the primary
7 residence and out. It is my opinion that access to
8 the unit is adequate.

9 Pursuant to the requirements of
10 3.616(d) for an accessory dwelling unit, Petitioner
11 must show that adequate provision has been made for
12 access to such dwelling unit, separate from the
13 access of the principal residence. As an initial
14 matter, the intent of the provision is to ensure
15 access to the dwelling unit without having to enter
16 the principal residence. It does not envision two
17 separate exterior means of access to the accessory
18 unit. This is more apparent when considering that
19 the provision does not provide for exterior changes
20 to the building, that is, i.e., adding an additional
21 means of ingress or egress. It would be unreasonable
22 to expect a single-family dwelling to have four
23 external means of egress. Such a reading defeats the
24 purpose of the provision. Moreover, the building

1 department at its site visit confirmed to Petitioners
2 that access was adequate.

3 Finally, this Board has found one
4 exterior and one interior means of access adequate in
5 the past, as Mr. Sergi pointed out at our meeting on
6 June the 20th. In Petition of Margaret Burns, Case
7 No. 03-22, this Board approved a special permit for
8 an accessory dwelling unit where the units utilized a
9 shared front door and, in addition, there was a rear
10 staircase leading to the second floor which will
11 provide access to only the second floor and,
12 therefore, the fourth requirement. In a more recent
13 case of Robert and Linda Hanley, this Board approved
14 a special permit for an accessory dwelling unit where
15 adequate provision has been made for access to such a
16 dwelling unit, separate from the access of the
17 principal residence. That is the case here, one
18 direct means of ingress and one through the principal
19 residence.

20 Second, variance from requirements of
21 Article III. Although unusual because the special
22 permit granting authority has full discretion to
23 decide the granting of the special permit without a
24 variance, there's no provision that prevents the

1 granting of a variance of the requirements for the
2 grant of a special permit. Rather, there is a law
3 that supports the grant of this type of a variance.
4 "A variance should be distinguished from a special
5 permit used pursuant to Mass. General Laws Chapter
6 40A, Section 9. The variance is used to authorize an
7 otherwise prohibited use or to loosen dimensional
8 requirements otherwise applicable to a structure."
9 This is from *Bobrowski* again. A use variance "is one
10 which permits a use of land other than those
11 prescribed by the zoning regulations."

12 In order to use a use variance, a
13 petitioner must demonstrate that all of the statutory
14 prerequisites have been satisfied. Massachusetts
15 General Laws 40A, Section 10 states in pertinent part
16 that "the permit granting authority shall have the
17 power...to grant upon appeal...a variance from the
18 terms of the applicable zoning ordinance or bylaw
19 where such permit granting authority specifically
20 finds that owing to circumstances relating to the
21 soil conditions, shape, or topography of such land or
22 structures and especially affecting such land or
23 structures but not affecting generally the zoning
24 district in which it is located, a literal

1 enforcement of the provisions of the ordinance or
2 bylaw would involve substantial hardship, financial
3 or otherwise, to the petitioner...and that the
4 desired relief may be granted without substantial
5 detriment to the public good and without nullifying
6 or substantially derogating from the intent or
7 purpose of such ordinance."

8 Here it is the conditions affecting
9 the structure, but not affecting generally the zoning
10 district in which it is located. The locus was
11 purchased more than four years ago with an accessory
12 dwelling unit existing. Circumstances relating to
13 the structure are sufficient for the granting of a
14 variance.

15 At the previous two hearings,
16 Petitioners made the required showing of hardship,
17 their reliance on the use of the accessory dwelling
18 unit as part of their retirement, and that the
19 desired relief be granted without substantially
20 derogating from the intent or purpose of the bylaw.
21 The Petitioners have presented their intent to remain
22 there for the remainder of their lives, exactly in
23 line with the intent and purpose of the bylaw.

24 Moreover, it should be noted that this

1 relief could also be obtained as a dimensional
2 variation -- variance -- for a duration of time. In
3 terms of physics and mathematics, Merriam-Webster
4 defines a dimension as "any of the fundamental units,
5 as of mass, length, or time, on which a derived unit
6 is based." Therefore, the specific provision of
7 3.616 requiring five years' ownership could be
8 granted via a dimensional variance so long as the
9 statutory requirements are met.

10 Therefore, as stated above, this Board
11 has the authority to grant the variance for the five-
12 year ownership requirement.

13 Third point, relief under General Laws
14 Section 40A -- Chapter 40A, Section 7. Finally, it
15 is my legal opinion that the two notarized affidavits
16 provided by the Petitioners evidence that the
17 accessory dwelling unit existed and has been used as
18 such for a period of more than ten years. In
19 addition, there is no requirement that the accessory
20 unit had been used as such for ten consecutive years,
21 only that the dwelling unit has not been abandoned,
22 demolished, or removed. The affidavits provide clear
23 evidence that the accessory dwelling unit has been in
24 place since at least 1981 and that cabinets, sink,

1 and bathroom have not been removed during this
2 period.

3 Mrs. Kimberly Aulenback states that
4 "it was clear that the bottom level/basement level
5 had been used previously for long-term accommodation.

6 Kitchen cabinets had been installed on the walls of
7 the basement. There was a large sink in the corner.

8 There's a bull bathroom." Mr. Richard Whitehead's
9 affidavit sets forth that structures have been used
10 all those years, has never been torn down or removed.
11 The affidavits provide the adequate evidence that the
12 accessory dwelling unit has been in place since at
13 least 1981, and cabinets, sink, and bathroom have not
14 been removed during that period. As such, under
15 Chapter 40A, Section 7, it applies and acts as a bar
16 to any request for removal of the unit.

17 In conclusion, Petitioners have
18 preserved their rights through their application
19 seeking relief from the building department's notice
20 of violation dated May 3, 2017 by requesting a
21 special permit for the accessory dwelling unit, in
22 the alternative, a variance from the terms of the
23 special permit, if necessary, for the accessory
24 dwelling unit, and a further alternative in the form

1 of an appeal from the May 3rd notice of violation.
2 Although relief could be granted under either form of
3 relief, it is my legal opinion that the permit
4 granting authority has full discretion to grant the
5 Petitioner's request for a special permit.

6 So, to continue with my previous, we
7 request that you grant our special permit application
8 based on the totality of our application. Please
9 consider the legal opinions including that the Board
10 has great discretion in making its decisions, the
11 expressions of support from our neighbors and our
12 councilor, and the affidavits we have provided
13 showing long-term use for over ten years.

14 We were impressed by the statement
15 quoted by our lawyer that "A special permit granting
16 authority has the full range of discretion in
17 assessing an application," and that the Appeal Court
18 of Massachusetts has emphasized that the criteria for
19 granting a special permit "are less stringent than
20 involved in the application for a variance."

21 We hope that the Board will use your
22 full range of discretion to grant us our special
23 permit. We believe that you have the authority to
24 grant the permit on its merits. But, if need be, we

1 request that you grant the variance from the five-
2 year residence requirement to issue the special
3 permit.

4 We and our tenants would face severe
5 hardship if you reject our application. They will
6 struggle to find affordable housing in Waltham. We
7 will face a difficult retirement without this
8 supplementary income.

9 Finally, we'd like to point out to the
10 Board that Governor Baker has submitted a bill to the
11 senate and house of representatives named an Act to
12 promote Housing Choice that specifically mentions
13 removing barriers to the granting of special permits
14 for accessory dwelling units. This is part of an
15 initiative to realize a state goal of creating
16 135,000 new housing units by 2025. Granting us a
17 special permit is clearly good public policy.

18 Thank you.

19 BARBARA RANDO, CHAIR: Thank you.

20 I do have one comment to say. The
21 Chair of the Zoning Board has the right to call the
22 Law Department whenever she has a question if I am
23 asking for a written legal opinion. Then, due to
24 full transparency -- now, we like to give everyone

1 full transparency -- it is said at the meeting that I
2 would like to request a special permit and then the
3 Board will vote on it, I do have, on my own, the
4 right to call and ask an opinion. Usually, it will
5 be I won't name a certain case. It would just be can
6 someone do this, or should they do it, or is there a
7 better way of doing it. That's first of all.

8 Second of all, when I asked for the
9 opinion, it was probably your third meeting. I was
10 trying to look up when the third meeting was. I
11 don't think I received the opinion until the day of
12 the meeting in November. And that's when it was
13 going to be read into the meeting. Is that correct?

14 RICHARD LAING: My concern on that is
15 --

16 BARBARA RANDO, CHAIR: "November 28th,
17 the Chair stated that the legal advice had been asked
18 for at the meeting in November." I think that that's
19 when I got, to the best of my memory, is when I
20 received it. We received it that day.

21 RICHARD LAING: Madam Chair, I
22 understand that's what you said.

23 BARBARA RANDO, CHAIR: Mm hum.

24 RICHARD LAING: But what the City

Waltham Zoning Board of Appeals/3-20-18/91

1 Solicitor Patricia Azadi says in her letter is, "I
2 write in response to your written request of November
3 21, 2017." That was a week before our November 28th
4 meeting.

5 BARBARA RANDO, CHAIR: Right. And
6 that was because there was a question brought up on
7 one of the members calling the Law Department and
8 asking a question and getting an answer and did he
9 have a right to do that. I was wondering if he did
10 have a right to do that. And I was told, yes, anyone
11 can call up and ask an attorney a hypothetical
12 question. And that's exactly what that member did.
13 But I don't remember it being in November that I did
14 that. I'd have to look up the meeting that that
15 question came up on.

16 MARK HICKERNELL: May I say something,
17 Madam Chair?

18 BARBARA RANDO, CHAIR: Yes.

19 MARK HICKERNELL: I mean I think as
20 far as this case goes, what would be useful to me as
21 a member of this Board is if you address your
22 arguments to the substance of the legal issues and
23 not the process of requesting a legal opinion or not.
24 That's already been done. What we have before us are

Waltham Zoning Board of Appeals/3-20-18/92

1 the merits of this case.

2 RICHARD LAING: Thank you. The case
3 that I'm making to you is that you would discuss the
4 case on the basis of the legal opinion that we have
5 provided to you as was requested of us.

6 BARBARA RANDO, CHAIR: All right. Mr.
7 Sergi, do you have any -- stay there because we might
8 have questions for you.

9 Mr. Sergi, do you have any questions
10 at this time?

11 JOHN SERGI: No, I don't, Madam Chair.

12 BARBARA RANDO, CHAIR: Mr. Hickernell,
13 do you have any questions at this time?

14 MARK HICKERNELL: No questions.
15 There's some things in the opinion by Attorney
16 Francis that I find interesting, but I don't -- he's
17 not here to ask any questions, so I don't have any
18 questions at this very moment.

19 BARBARA RANDO, CHAIR: Ms. Hankins, do
20 you have any questions at this time?

21 SARAH HANKINS: I have no questions.

22 BARBARA RANDO, CHAIR: Mr. McCarthy?

23 EDWARD MCCARTHY: I don't have any
24 questions. I just have a comment with regards to

1 that second access to your unit goes through your
2 dwelling unit. According to our bylaws, it is not --
3 you need a separate access from the principal
4 residence. You can't go through the principal
5 residence, and it does. It's a safety concern that I
6 can't overlook. That's my issue. I can't overlook
7 that. I'm sorry.

8 RICHARD LAING: Thank you very much,
9 Mr. McCarthy. The quotes, the regulation says,
10 "adequate provision has been made for access to such
11 dwelling unit separate from the access of the
12 principal residence." We have done that. We have an
13 external entrance that allows separate entrance into
14 it. For safety purposes, we have a second, an
15 internal exit, similar to the one that you approved
16 both in 2003 and in 2016 in which case the second
17 exit went through the main part of the house. As Mr.
18 Sergi mentioned at the meeting on June 20th, it went
19 through the kitchen.

20 EDWARD MCCARTHY: I didn't -- I wasn't
21 on those cases.

22 BARBARA RANDO, CHAIR: Mr. McCarthy --

23 EDWARD MCCARTHY: And, on top of that,
24 let me just say, we've had many cases before us in

1 the past where we've denied petitioners the right to
2 have that second unit because they didn't have that
3 second egress. And it primarily was because the fire
4 department wants two egresses to every unit outside.
5 You've got to get out. Because if one is blocked, if
6 the fire is in front of one, and that door is somehow
7 locked, you have an argument with somebody, the door
8 gets locked, or you don't want them getting into your
9 house because you're on vacation, who knows, whatever
10 reason, they'd be stuck down there. I'm not going to
11 have that on my mind that someone is going to die
12 because I let go that unit without access outside,
13 direct access outside. Two accesses they have to
14 have in every unit in the City. It's supposed to be
15 that way. I would not condone that in any situation.
16 That's been my concern about this whole case all the
17 way through.

18 BARBARA RANDO, CHAIR: And, Mr. Laing,
19 your quote in the *Hanley* case --

20 RICHARD LAING: Yes.

21 BARBARA RANDO, CHAIR: The *Hanley*
22 case, she made -- she wanted to add onto her house,
23 like an in-law apartment. She has a front door, a
24 back door, and she thought she would put a door going

1 into the kitchen so that her grandchildren could come
2 in and visit her and back and forth. But she had two
3 means of egress, not one. Her second one wasn't
4 through the kitchen. So, if you looked it up or if
5 Attorney Francis looked it up, you're completely
6 wrong.

7 RICHARD LAING: We're quoting what you
8 put in your finding of facts. That was your finding
9 of fact.

10 BARBARA RANDO, CHAIR: I'd have to see
11 the finding of facts. But, I know for a fact that
12 she had a front door and a back door and one going
13 through the kitchen for her grandchildren. She
14 wanted her own little home for one thing.

15 RICHARD LAING: And you approved it.

16 BARBARA RANDO, CHAIR: Yes. Yes, we
17 did. She had two means of egress.

18 Also, I believe that we cannot give a
19 variance on the five years. I'm sorry. I think that
20 you give a variance on shape, topography, soil
21 conditions, but not time. So, I believe very
22 strongly on that. And, if you had remembered, Mr.
23 McCarthy had spoken with an attorney, and I verified
24 it with my opinion, but I had known that Mr. McCarthy

1 was correct. I didn't base my opinion on the
2 attorney's opinion, but I wanted to read it into the
3 record.

4 I think that I agree that you don't
5 have two accesses. I think it's dangerous having
6 just one and going upstairs. You're not allowed to
7 change the outside of your apartment to make another
8 door. You put the stove in. You made it a two-
9 family. I don't see how it could pass.

10 RICHARD LAING: Madam Chair, there's
11 nothing in the regulations which stipulates that
12 putting a stove makes it a two-family. The
13 regulations do not specify either or not whether
14 having a stove makes it not an accessory dwelling
15 unit. It says here a dwelling unit is clearly
16 described and does not describe or does not mention
17 whether or not there is a stove as far as it goes.

18 In terms of the previous case, Mr.
19 McCarthy was on the Board that approved that case in
20 2003. You signed the approval.

21 EDWARD MCCARTHY: Really?

22 RICHARD LAING: Yes.

23 EDWARD MCCARTHY: Interesting.

24 RICHARD LAING: It's a long time ago.

Waltham Zoning Board of Appeals/3-20-18/97

1 There's only been four cases of --

2 EDWARD MCCARTHY: There's been plenty
3 of -- I would say that for that one, and then there
4 were several more that weren't approved that didn't
5 have that second egress. Okay? So, there would be --
6 - well, I don't recall that case in particular. Was
7 it that case, Barbara? Is that what you were talking
8 about?

9 BARBARA RANDO, CHAIR: No, that's
10 Hanley.

11 RICHARD LAING: It was -- no, no.
12 That was --

13 BARBARA RANDO, CHAIR: Hanley was
14 about a year ago.

15 RICHARD LAING: Yes, exactly. And
16 this was a long time ago.

17 BARBARA RANDO, CHAIR: I can't
18 remember the 2003 one.

19 EDWARD MCCARTHY: I don't remember it
20 either.

21 BARBARA RANDO, CHAIR: I don't.

22 SARAH HANKINS: I just want to say, I
23 now own my own home, but before that I had rented.
24 And I didn't rent in one apartment that had two exits

1 out to -- directly onto the street. It was always a
2 situation where, you know, if you were lucky you had
3 one that goes directly out onto the street or a
4 patio. My first apartment was, you know, it just
5 steps right down, and then an entrance out to a
6 hallway. So, I don't really see the difference here.
7 Having seen the house and seeing the back exit where,
8 obviously, clearly, if there was a fire you could
9 exit out the back, but, additionally, that it is set
10 up so that -- and we've discussed as far as the lot
11 goes -- that that stairway functions the same way as
12 most apartments would enter into a hallway. And the
13 Petitioners seemed very accommodating to the fact of
14 keeping that as, you know, open, not having a lock on
15 it. And I sort of take them at their word that if we
16 think it's a safety issue, they're not going to go on
17 vacation and lock the door on them.

18 The other thing is I think that
19 Attorney Francis makes a compelling argument. And I
20 don't see anything that would not allow us to rule on
21 this. We have, you know, the authority -- the
22 authority presented to us is very clear and this is
23 well within our authority. So, I'm very confused as
24 to some of the other comments that it isn't. So,

1 that's how I feel on it.

2 BARBARA RANDO, CHAIR: Also, Mr.
3 Laing, the ten years, that doesn't count for you
4 because the use goes with the owner not with the
5 structure, not with the home. So, you would have had
6 to live there.

7 RICHARD LAING: Can we distinguish
8 between the Waltham 3.616 regulation, which is the
9 five-year rule --

10 BARBARA RANDO, CHAIR: Mm hum.

11 RICHARD LAING: And the Mass.
12 Department State 40A, Section 7, which does not
13 stipulate a single owner. The regulation is very
14 clear that if -- and I can quote it for you. The
15 regulation clearly states that if the structure has
16 been utilized for a period of ten years. It doesn't
17 say with a single owner. That is very clear under
18 the regulations for Massachusetts Section (sic) 40A,
19 Section 7. It did not refer -- the ten years did not
20 refer to the Waltham regulations 3.616.

21 BARBARA RANDO, CHAIR: Well, it says
22 here it has to be registered land. It has to be
23 filed with the registry district in which the land is
24 located with a period of ten years from the date the

1 structures were erected. The structures must be
2 deemed for zoning purposes. Now, your home was made
3 -- built in what year?

4 RICHARD LAING: 1977.

5 BARBARA RANDO, CHAIR: And I'm sure it
6 conformed to all of the building requirements at the
7 time.

8 RICHARD LAING: I would expect so.

9 BARBARA RANDO, CHAIR: Right. Well, I
10 don't know. You're subject to Section 6. And our
11 local ordinance says five years, two exits.

12 RICHARD LAING: It says five years,
13 adequate provision has been made for access to such
14 dwelling unit separate from the access of the
15 principal residence. That's what your regulations
16 say. You are interpreting it as two external exits,
17 but that is not a widely held interpretation, not by
18 the building --

19 BARBARA RANDO, CHAIR: It always has
20 been. It always has been in our books, two egresses,
21 outside egresses. I don't remember the 2003 case. I
22 don't know if I was in it or not. But I would not
23 vote on an apartment I don't think if it had just one
24 egress.

1 RICHARD LAING: And even despite the
2 comments and the support from the Building Department
3 that they believe it fulfills the adequate exits?

4 BARBARA RANDO, CHAIR: No. No. We're
5 ahead of the building inspector. We're higher than
6 him. And, no, I don't. Your grandchildren could
7 come to visit you and someone just close that door
8 and just playing, and those people are caught down
9 there in a fire. I couldn't live with that. Now, if
10 you can figure out some other way of making an --

11 RICHARD LAING: But there's so many
12 houses with basements where children can go down.
13 People have games rooms in their basements and they
14 would have a single external exit.

15 BARBARA RANDO, CHAIR: Right. And
16 they're responsible if anything happens. But it's
17 their home. It's not a two-family. They didn't turn
18 it into a two-family, and you're turning yours into a
19 two-family.

20 RICHARD LAING: We're turning it into
21 an accessory dwelling unit. The regulations for a
22 two-family are quite distinct. They have the
23 limitation of the numbers of people. And, as such, I
24 believe that we have made a strong case that the

1 permit should be granted.

2 BARBARA RANDO, CHAIR: Well, not with
3 me you haven't. I'm sorry.

4 RICHARD LAING: So, can I be explicit?
5 If we came back in five years, in February 15, 2019,
6 we would have fulfilled the five-year requirement.

7 BARBARA RANDO, CHAIR: Mm hum.

8 RICHARD LAING: What I'm hearing from
9 you is that even at that point, you would still
10 reject the application.

11 BARBARA RANDO, CHAIR: I don't know.
12 I can't say what I'd do then. I think that you would
13 still be required to have the two egresses. Maybe by
14 that time you'd figure out some way of maybe a
15 staircase upstairs and a hallway out. I mean it's
16 not my way --

17 RICHARD LAING: But we have a stairway
18 and a hallway out.

19 BARBARA RANDO, CHAIR: No, a private
20 door out of something. But the way it stands now, I
21 wouldn't --

22 EDWARD MCCARTHY: I mean if you had a
23 hallway there, okay, that you had walls, that you --
24 you know, the door was never locked, or it only could

1 be locked from downstairs, and you could go outside,
2 okay. You could do that. You know what I'm saying ?
3 If you could make that -- extend that so that you go
4 outside. You have a door going into your unit. They
5 have a door going into their unit. And then you both
6 use the door to go outside, like an apartment
7 building or whatever. If you could make that
8 arrangement, that would be okay with me. But, you
9 know what I'm saying?

10 RICHARD LAING: I know what you're
11 saying.

12 EDWARD MCCARTHY: But you have -- I
13 think you have a sunroom on one side. Like my house,
14 I couldn't do it. My living room is there. And my
15 stairs come up right into a hallway. But I'd have to
16 block off my dining room, block off my living room.
17 You know, it wouldn't make any sense to do it.

18 RICHARD LAING: But what you're
19 suggesting is that the only way we would be permitted
20 is if we have a second external entrance to a common
21 hallway?

22 EDWARD MCCARTHY: If you had a common
23 hallway, yes, then you'd both use that one door, that
24 would be acceptable to me, you know, if you could

1 make that arrangement. I don't know how you could do
2 that, or if you could. I can't do it in my house. I
3 know that. And that's why they have these
4 regulations in single-family areas so stringent
5 because they're single-family areas. People pay big
6 dollars to live in single-family areas compared to
7 multiple-family areas. And if you -- if we were
8 lackadaisical in allowing folks to just be throwing
9 apartments in single-family areas, it would disrupt
10 the value of the homes, everything like that,
11 throughout the City. It wouldn't be a good -- it
12 wouldn't be a good thing. I mean there's a lot of
13 folks that come down from your area right now that
14 have said they want to put a unit in their basement
15 as well. What about the people who pay the extra
16 dollars to move into the single-family neighborhood
17 in your area and now they're dealing with two-family
18 houses? You know, it's not fair to them. They pay
19 the extra taxes. They pay whatever it is -- the
20 single-family neighborhoods are different than the
21 multiple-family neighborhoods. They're different --
22 a different lifestyle. I mean look at the beautiful
23 -- the way you do your garden and take care of
24 everything in your house is gorgeous. You don't go

1 down to the multiple-family areas in Waltham and
2 really see that happening at all, you know.

3 I don't know. The fire department is
4 really the guys that really run the show in terms of
5 this, you know.

6 RICHARD LAING: If we received an
7 opinion from the fire department that they would
8 consider our accessory dwelling unit meets the exit
9 requirements --

10 EDWARD MCCARTHY: I think that if you
11 got the city council to be specific on this and
12 change that in the Zoning Board, in the Zoning Code,
13 that's what you'd have to do because they wrote this
14 with the recommendation of the chief of the fire
15 department. That's how they wrote it.

16 JOHN SERGI: Madam Chair, may I say a
17 word?

18 BARBARA RANDO, CHAIR: Sure. Go right
19 ahead.

20 JOHN SERGI: I mean I'm looking at the
21 merits of this case, and that's what I'm looking at,
22 the merits of this case. I'm not comparing it to any
23 other cases. I'm not comparing it to any other
24 rules. I think that there is sufficient evidence

1 here to grant this approval. We do have the
2 jurisdiction to do it. And I think the egress issue
3 is an interpretation issue. And I believe there is
4 other situations in the City that have the same
5 situation. So, I think it's wrong to penalize this
6 couple just on that -- just on that issue.

7 So, I believe that they presented a
8 merit-based case here, based in fact, well
9 opinionated, based on case studies and case law. So,
10 I'm okay with it. That's all I have to say.

11 BARBARA RANDO, CHAIR: Any other
12 questions? Any other comments?

13 MARK HICKERNELL: Is the public
14 hearing still open?

15 BARBARA RANDO, CHAIR: Mm hum. I'm
16 just waiting to see if any Board member has any other
17 questions.

18 (No response.)

19 BARBARA RANDO, CHAIR: Seeing none.
20 Is there anyone -- is there anyone in opposition to
21 this that would like to speak? Would you come up,
22 please?

23 KEN BASQUE: I have some -- good
24 evening, Madam Chairman.

1 BARBARA RANDO, CHAIR: Good evening.

2 KEN BASQUE: And Board members. My
3 name is Ken Basque, and I live at 65 Edgewater Drive.

4 STENOGRAPHER: Spell your last name.

5 BARBARA RANDO, CHAIR: Would you spell
6 your last name, please?

7 KEN BASQUE: I'm sorry. B-a-s-q-u-e.

8 And I live at 65 Edgewater Drive, next door to 71.

9 I have some prepared things, but I
10 would like to just make a couple of mentions.

11 My recollection of the meeting and
12 talking of seeking legal opinion -- I've been to all
13 of these meetings -- was that the Board said they
14 were going to seek legal opinion, and they suggested
15 to the Laings that they might also suggest seek legal
16 opinion. And it was clearly in my mind that it was
17 going to be a parallel research.

18 The other thing is, Ms. Hankins, your
19 apartment, apartment buildings have a completely
20 different building code from single-family dwellings.

21 SARAH HANKINS: I understand. My
22 point was to address some of the other Board members'
23 concerns about safety. Although you are absolutely
24 correct that there are different requirements for

1 different structures throughout the City, I was
2 specifically talking about the safety element of
3 that.

4 KEN BASQUE: And the safety element is
5 a different document for one- and two-family
6 separated houses than it is for apartment complexes.
7 The one- and two-families use the international
8 residence code and the apartments use the
9 international building code. I just wanted to
10 explain why there was a difference and why two
11 egresses --

12 SARAH HANKINS: Okay. Again, I
13 understand there was a difference.

14 KEN BASQUE: Okay.

15 SARAH HANKINS: My point was to
16 address some of the other Board members' concerns
17 that two external means of egresses are what would be
18 considered safe for, I'll quote another Board member,
19 "for every unit, living unit in the City." And
20 that's just -- that is not how I feel about things.
21 So, that's all.

22 KEN BASQUE: Okay. I'm a retired
23 engineer. There are some engineering stereotypes
24 that seem to fit me. One is that this public

1 speaking stuff is as far out of my comfort zone as I
2 can imagine. But the other one is that I tend to
3 expect the world to make sense, and when it doesn't I
4 go dig and try to find out why it doesn't.

5 At the first meeting on June 6th, a
6 motion was made at the end to continue to another
7 meeting. And the reason for the motion was
8 explained, but the stated purpose of the continuation
9 didn't make sense to me. We were to come back in the
10 next Zoning Board meeting after finding out how many
11 people had been living in the four-bedroom house at
12 71 Edgewater and if it had been longer than ten
13 years. The regulation Chapter 40A, Section 7, was
14 referred to and had just been brought up by actually
15 Mr. Connors who was here earlier in the case before
16 that. Section 7 talks about nonconforming structures
17 could exist if it exists unchallenged for ten years.
18 What didn't make sense to me was how could the
19 single-family home at 71 Edgewater Drive, while
20 completely conforming to single-family zones, at the
21 same time be a nonconforming accessory dwelling unit
22 in which to count against Chapter 7. So, it didn't
23 make sense to me so I went looking about to try to
24 find information on what it says about Chapter 7 and

1 nonconforming accessory dwelling units. And what
2 caught my attention was that the section repeatedly
3 refers to only the physical structural changes and
4 not to uses at all.

5 BARBARA RANDO, CHAIR: That's right.

6 KEN BASQUE: And when I went back and
7 viewed the June 6th meeting, Mr. Connors made the same
8 point in the discussion. He said that the
9 distinction here is that Section 7 talks about
10 structures or alterations of structures not uses.

11 So, I went looking. And if you look
12 on the Mass.gov site, you'll find a document that
13 refers to -- and I thought I had sent a link to the
14 Board -- a document that refers to nonconforming
15 structures and uses. And what it is is it's a
16 detailed explanation of each of the parts of that
17 law. And for a lot of the explanations, they give a
18 law case that goes with it. And I'd like to just
19 read just the summaries. I won't read the entire law
20 cases. But this is what the document itself, the
21 nonconforming structural uses. "In contrast to the
22 six-year statute of limitation, which explicitly
23 covers both structural violations and use violations,
24 the ten-year period of zoning violations covers only

1 structural violations. The omission of protection
2 for use violations not sanctioned by the permit is
3 plain on the face of the statute." That's what the
4 summary said.

5 The law, or the court case that they
6 referred to, the summary of that ruling was, "The
7 ten-year limitation period prescribed in General Law
8 Chapter 40, Section 7 is applicable only to
9 nonconforming structures and did not protect an
10 owner's non-permissive two-family use of a house
11 located in a single-family zoning district, nor was
12 the six-year limitation period set forth in that
13 statute applicable with the building permits under
14 which the owner made structural changes did not
15 contemplate a change from single-family to two-
16 family." In this case, we don't even have any
17 building permits.

18 And so the point is, all of this
19 discussion about how long has this been used in order
20 to declare that this has been a legally nonconforming
21 use, there is no such thing as a legally
22 nonconforming use. It is explicitly omitted from the
23 law.

24 And, so adding an apartment to a

1 single-family home is a significant change in the
2 state of occupancy of the building. I would have
3 expected another occupancy permit inspection to be
4 part of the two-house -- to be a standard part of the
5 process. And when I looked into it, it turns out
6 that it is. It's a natural follow through of the
7 building permit that allowed you to create the second
8 dwelling. Since there was no building permit, there
9 was no occupancy inspection. But there should have
10 been. And we know that 71 Edgewater would not have
11 passed that inspection if it had happened because of
12 the multiple code violations that the building
13 inspector reported in his violation report. He found
14 the kitchen and bathroom were installed and never
15 inspected. And in my 40 years of home ownership and
16 multiple home projects, I've never found a licensed
17 tradesperson that was willing to work without an
18 inspection or without a permit or inspection. So,
19 it's kind of worrisome to wonder what this person was
20 doing and why he didn't want his work inspected.

21 And the building inspector also
22 determined that there was inadequate egress --
23 agreeing with the discussion -- from the dwelling
24 unit. The bedroom, in addition to the two

1 departures, or two exits, the bedroom didn't have an
2 emergency escape and rescue opening, a window.
3 There's a minimum size that those windows and
4 bedrooms have to be. And the small casement windows
5 in the cellar don't qualify as an emergency exit so
6 that not only can you not get out, but the firemen
7 cannot get in with their equipment on.

8 And he also determined that there was
9 only one direct exit from the dwelling unit. Section
10 R 311.2 of the residential code, which is what does
11 apply to independent buildings, as amended for
12 Massachusetts states, "A primary and secondary egress
13 door shall be provided for each dwelling unit and
14 shall be as remote as possible from each other." So,
15 it's part of the law. And the way that I understand
16 that the coding works is there's an international
17 code that everybody adopts and then amends and adds
18 changes to it. That's why this was -- this is
19 different from the international. This is
20 Massachusetts specific. And then cities and towns
21 can do their own amending.

22 And, to go with the uninspected
23 wiring, and the insufficient egress in case of a
24 fire, the building inspector also found that there

1 was inadequate smoke and carbon monoxide detectors
2 because the last time it was inspected it was a
3 finished basement and now it's a dwelling unit. The
4 requirements are different and they had never been
5 upgraded because they were never told because there
6 was never an occupancy inspection.

7 So, this is the way it should work.
8 The things the building inspector found after four
9 years were things that should have been found when
10 they first got in there because they were all safety
11 issues. So, how do you manage to hire a contractor
12 and do major renovations on your home, to add an
13 apartment in a single-family neighborhood, and the
14 topic of building permits and zoning never comes up?
15 Saying you just moved to Waltham doesn't explain it
16 because municipal regulations and building permits
17 are not a Waltham thing. They're not a Massachusetts
18 thing. They're not even a U.S. thing. They're
19 everywhere. You just have -- and it's so easy to
20 check on what's required. You just have to care
21 enough to go look.

22 Mr. Laing said that at no time did
23 they know that they needed a permit to have an
24 apartment in a single-family neighborhood. That's

1 kind of surprising, but it's also not completely
2 true. In September of 2016, they put up their second
3 mailbox, which is what started all of this. The
4 people who were just walking by in the neighborhood
5 saw it, realized it wasn't right, and talked to us
6 about it asking what was going on. We looked into it
7 and the result was that the building inspector came
8 and told them, "You need a permit." They sent a
9 letter to all the neighbors saying, "We need a
10 permit. We're going to go get one from the Zoning
11 Board." Then two months go by, four months, six
12 months, eight months, and we're getting concerned.
13 We think that we missed the notification of the
14 meeting. So, we called the building department to
15 find out what had happened. And the result was the
16 building inspector came out a second time, and this
17 time he issued the notice of violation, which
18 contained fines that would be invoked if the ignored
19 the notice like they did the first previous one.

20 So, the question is did their behavior
21 change from when they claim they didn't know they
22 needed a permit to when the building inspector
23 explained to them that they needed a permit? And in
24 eight months, until he came and issued fines, they

1 had no intention of getting a permit. By not looking
2 into what was required, they could ignore it and
3 claim for every permit that they didn't know they
4 needed it.

5 So now we're here a year-and-a-half
6 after they were told the apartment is illegal, due
7 mostly to the eight months' delay in applying for the
8 permit and requesting two postponements in June and
9 November, and they're what, four years into their
10 landlord status. So, although at least according to
11 the building inspector it was a pretty house that has
12 an apartment, so just doing stuff and not asking and
13 not learning what's required appears to have paid off
14 well for them.

15 And by ignoring all permits and other
16 requirements, they come before you, they talk about
17 the hardship. And the only reason they can claim
18 hardship is because they've ignored every single
19 permit requirement that they had. And so instead of
20 coming here, after waiting, and asking for permission
21 to do something, they're here while they're asking
22 permission to continue to do something that they've
23 been doing all along. And so what they get to do is
24 they get to say something to you that nobody who

1 followed any of those rules gets to say. They get to
2 say if you don't give us this permit, you're taking
3 something away from us. And nobody else gets to say
4 that unless you ignore all the permits.

5 So, I know the Section 3.616(e)
6 requirements say that no alteration to the exterior
7 of the dwelling shall be made. But for the purposes
8 of qualifying for a dwelling permit, does that mean
9 the physical skin of the dwelling itself or does that
10 mean everything exterior to the dwelling? And I'm
11 asking because the changes they made to add their --
12 expand their driveway and to add that parking, add
13 the garage, were essential to their meeting the
14 accessory dwelling permit requirements. These were
15 added oversized to their needs because, as Mr. Laing
16 mentioned, they were an investment. It allows them
17 to rent out both the storage space and the parking to
18 their tenants.

19 Mr. Laing referred to the building
20 permit plans for the expanded parking as evidence
21 that the parking requirement for the accessory
22 dwelling permit was now met. So, the question is was
23 that allowed because he did it before he asked for
24 the permit?

1 So, so far I've been talking about
2 whether 75 Edgewater qualifies as an accessory
3 dwelling unit or, for that matter, even meets basic
4 building codes. But putting that aside for a moment
5 brings us to the question of whether it's the right
6 thing to do for the neighborhood. There was a fair
7 amount of discussion about this at the June 6th
8 meeting. But, since then, the focus seems to have
9 shifted to whether it qualifies.

10 In the June 6th meeting, the Board
11 asked Mr. Laing, "What if everyone in this section
12 felt they needed to rent a basement?"

13 The reply from Mr. Laing was, "Now
14 that everyone knows that it exists, that I've done
15 this, I would expect everyone to come and apply for
16 the permit," which, in a nutshell, is our concern,
17 that if this permit is allowed, it will serve as a
18 precedent and result in a proliferation of two-family
19 dwellings in the area. The risk is unusually high
20 for the peninsula because of its proximity to
21 Brandeis.

22 At one point in the June 6th meeting,
23 Mr. McCarthy commented the value for the other houses
24 who thought they were buying into a single-family

1 neighborhood would go down if the other people
2 started putting in apartments in such a gorgeous
3 neighborhood. And you repeated yourself tonight
4 about that. This makes all kinds of sense to me.

5 He also commented, "The single-family
6 is the best zoning the City offers." How can
7 anything that moves you away from the best zoning the
8 City offers not adversely affect the neighborhood? I
9 seems straightforward. A house in a neighborhood
10 with apartments is not going to have the same appeal
11 as a house in a neighborhood of single-family houses.
12 The effect must have also been obvious to the Laings
13 because when the comment was made, Mr. Laing was
14 prepared and pulled out an article entitled, *Studying*
15 *the Benefits of Accessory Dwelling Units*. Mr. Laing
16 read part of a paragraph in the article and then
17 stopped and waited for the next question as if the
18 issue of harm to the neighborhood had been answered.

19 I don't know if Mr. Laing provided you
20 with a copy of the article. I went and found the
21 article. And I can provide you a copy if you'd like.
22 But this is what Mr. Laing read from the article:
23 "Because accessory dwelling units tend to be
24 relatively small and their amenities modest, they

1 provide more affordable housing options at less than
2 one-third the cost of comparable units in multifamily
3 buildings. Oftentimes, these units are the only
4 rental housing available in older predominantly
5 single-family neighborhoods, making it possible for
6 people of all walks of life to live in the area.
7 Yet, they also significantly improve the value of the
8 property, in essence constituting an asset-building
9 strategy for homeowners."

10 If you didn't get or haven't read the
11 article, let me provide some context. What they're
12 doing is they're studying a suburb of San Francisco.
13 The area has no rental properties. And they're
14 trying -- the benefit they're talking about is that
15 they can cram more people in to justify a transit
16 station. And that's the benefit that they're looking
17 for.

18 We have no lack of rental properties.
19 When you get to the Charles River at the end of
20 Edgewater, as far as you can see you can see
21 apartment buildings or graduate housing. And you can
22 go to South Street and beyond and still see it.

23 The main point though of his reading
24 this though was the last sentence, which he stressed

1 when he read it, "Yet, they also significantly
2 improve the value of the property, in essence
3 constituting an asset-building strategy for the
4 homeowners." The question is which property goes up
5 in value? Did he want you to think that these
6 accessory dwelling units were raising the value of
7 all the properties in the area? Who benefits from
8 the asset-building strategy that they're talking
9 about? The people that own the assets, the
10 homeowners with the accessory dwelling, the landlords
11 of the apartment, the person who can see income-
12 generating property in a single-family neighborhood.
13 The rest of the neighborhood is left to deal with no
14 longer being a true single-family neighborhood. The
15 logical result, as Mr. McCarthy suggested, is that if
16 the accessory dwelling unit property goes up, the
17 value of the rest of the neighborhood goes down. Mr.
18 Laing's article quote was not a response to that.
19 There is nothing about this that benefits the
20 neighborhood as a whole.

21 When asked by the Board why the Laings
22 said that having an apartment would be a plus for the
23 neighborhood, the answer was, "We thought it would be
24 useful to have some young people around to help us."

1 And I can see where that's a plus for them. But they
2 generalized a single episode where a former neighbor,
3 David, helped -- I'm sorry, a former tenant, David,
4 helped a neighbor. And that seems kind of a stretch.
5 I say that because David was just a good guy. He
6 would have helped anybody even if he wasn't a tenant.
7 With that one exception, all of the detailed benefits
8 from tenants go to the Laings. And it seems a pretty
9 one-sided deal in exchange for the risk to the
10 neighborhood. And that one exception is a drop in
11 the bucket compared to how much the neighborhood
12 helps each other. If there's one thing Angleside
13 Peninsula does not lack it's helpful neighbors.
14 There are already plenty of able-bodied neighbors
15 running, walking, biking around. Not everyone is
16 old. And not all of us who qualify as senior
17 citizens feel elderly. Most everyone is willing to
18 lend a hand, offer without being asked, just upon
19 seeing the need. It's an amazing group of people.

20 I think there's been some
21 misunderstanding about where an accessory dwelling
22 unit is needed. Correct me if I'm wrong, but it
23 seems that the essential difference between a house
24 with people living in it and an apartment or

1 accessory dwelling unit is the presence of a second
2 kitchen. So, if you want to allow your friend to
3 come and live with you and share expenses, if you
4 want your friend and his family to come live with you
5 and share expenses, if your mother-in-law needs to
6 come live with you because of her age, if you want
7 your son and his family to come live with you and
8 share expenses, go ahead. You won't need an
9 accessory dwelling unit as long as you can share a
10 kitchen. And if you're getting older and having a
11 live-in companion would allow you to stay out of a
12 nursing home -- I believe it's called aging in place
13 -- an accessory dwelling unit is not necessarily
14 required. One of the first areas of care that is
15 most often needed by the elderly is meal preparation
16 and making sure they're eating right. It's one of
17 the big reasons that Meals on Wheels exists. Is it
18 really important that the healthcare companion cook
19 your meals in one kitchen and then cook their own
20 meals in a completely separate kitchen? This is the
21 core of the issue. If you can see the sense in
22 having the healthcare companion cook all the meals in
23 the one kitchen, then you don't need an accessory
24 dwelling permit to age in place.

1 Last page. I read that over 47
2 percent of Waltham's population are renters. And
3 there's nothing wrong with that. But it illustrates
4 that the City has an abundance of rental units. What
5 it doesn't have a lot of are quiet, open streets with
6 little traffic and wonderful views of nature and
7 abundant wildlife. The people we bought our house
8 from moved to a house on a lake in upstate Maine.
9 They told us they see more wildlife -- they saw more
10 wildlife on Angleside than they do in Maine. I would
11 bet that our little peninsula gets nearly as much
12 daily foot traffic from Waltham residents enjoying
13 the neighborhood as some of the official parks and
14 recreation areas.

15 The point I'm trying to make is that
16 places like this are very uncommon and are important
17 to have in a city and should be protected. The
18 intention of the zoning should be observed except for
19 exceptional circumstances. At some point, a line
20 should be drawn to protect areas even from potential
21 harm when it's being put at risk solely for the
22 profit of an individual or a special interest.

23 I think Angleside Peninsula is more
24 than worthy of your protection. So, I respectfully

1 ask that you keep the whole peninsula the single-
2 family neighborhood it is.

3 BARBARA RANDO, CHAIR: Thank you very
4 much.

5 Any questions?

6 (No response.)

7 BARBARA RANDO, CHAIR: No, hearing
8 none. Thank you.

9 Anyone in opposition that would like
10 to speak and say something new? Not everyone say the
11 same thing, but go ahead.

12 PEGGY MACINTOSH: Thank you.

13 BARBARA RANDO, CHAIR: Come up to the
14 microphone please because people at home would like
15 to hear what's being said.

16 PEGGY MACINTOSH: I came to hear a
17 discussion of an accessory apartment in a single-
18 family home. I believe that Mr. Basque has turned
19 the conversation --

20 EDWARD MCCARTHY: Name and address?
21 Excuse me, name and address?

22 PEGGY MACINTOSH: My name is Peggy
23 Macintosh. I live at 2 Riverside Drive across the
24 street from the Laings and across the street from the

1 Basques.

2 I believe that Mr. Basque has turned
3 the conversation away from the application for an
4 accessory dwelling unit in a single-family house and
5 keeps pointing in the direction of what Mr. McCarthy
6 is also scared of, which is two-family houses on our
7 peninsula. That isn't the issue that I came to hear
8 discussed. And I'm very upset of the turning, by Mr.
9 Basque, of the attention onto the dangers of two-
10 family housing.

11 For me, there are two big agendas.
12 One relates to Governor Baker's call for more
13 affordable housing, and the second does relate to
14 aging in place, which is made much easier if you can
15 have a caretaker living in a basement apartment.

16 Thank you.

17 BARBARA RANDO, CHAIR: Anyone else?

18 WILLIAM LEWIS: Speaking in favor now?

19 BARBARA RANDO, CHAIR: In favor.

20 Anyone in favor or seeking information?

21 WILLIAM LEWIS: My name is William
22 Lewis. I live at 12 Riverside Drive with the
23 Macintoshes.

24 BARBARA RANDO, CHAIR: Did you get

1 that name?

2 STENOGRAPHER: William Lewis?

3 WILLIAM LEWIS: That's correct. Just
4 briefly, I don't feel that our neighborhood is
5 threatened by having a quiet couple living in an
6 apartment in the basement of Richard and Leueen's
7 house, an apartment that has been there for over 20
8 years unofficially. And I note with all of our
9 safety concerns that there are easily over a hundred
10 apartments that would be nonconforming or special
11 permits that no one ever brings up or talks about in
12 the City. And no one's like checking those out.
13 They're here asking permission. You have the
14 discretion to grant it. The safety concerns I think
15 have been addressed by members of the Board already.
16 And I would encourage you to use that discretion to
17 recognize a simple one-time thing for these folks
18 that would not adversely affect our neighborhood at
19 all.

20 Thank you.

21 BARBARA RANDO, CHAIR: Before this
22 family moved in, there was no stove down there. It
23 wasn't a two-family.

24 WILLIAM LEWIS: I'm not talking about

1 the stove. I'm talking about people living there.

2 BARBARA RANDO, CHAIR: So, actually --

3 WILLIAM LEWIS: People have lived
4 there for over 20 years in that basement.

5 BARBARA RANDO, CHAIR: But that does
6 not -- that doesn't influence this case. That's what
7 we're saying.

8 WILLIAM LEWIS: Tenants. Tenants
9 living down there.

10 BARBARA RANDO, CHAIR: According to
11 the ordinance, it doesn't apply because we can't give
12 any --

13 WILLIAM LEWIS: Well, you speak of
14 technicalities. It's been gone on with a lot of
15 technicalities and a lot of talk. And the bottom
16 line to me is you folks have discretion to exercise,
17 a strong case has been made why you should exercise
18 it, and I encourage you to do that.

19 BARBARA RANDO, CHAIR: I don't think
20 we have the right. That's' the problem. Thank you.

21 Name and address for the record,
22 please.

23 KENNETH MACINTOSH: My name is Kenneth
24 Macintosh, 2 Riverside Drive, Waltham.

1 I want to make one point which is that
2 dimension was one of the things that you said you
3 could get variances for. And one of the dimensions,
4 as Einstein told us, is time. And so shortening the
5 time from five years to four years and three months
6 or whatever it is seems to me to be a relatively
7 minor, along the same lines as a foot or two feet
8 from a boundary line or something like that. And,
9 Mr. Einstein would agree with me that that's another
10 dimension that I think is within the purview of this
11 Board to grant in this particular instance as long as
12 people feel that the other aspects of this -- I know
13 that Mr. McCarthy does not feel that way -- but as
14 long as others feel that the provisions have been
15 met.

16 I share with my wife the feeling that
17 aging in place is very desirable. And having
18 somebody there who can help, a nurse who maybe works
19 at the hospital or one of the clinics here and lives
20 in one's basement and can take care of one during the
21 nighttime hours. And it's not Meals on Wheels. It's
22 having somebody with -- who can help you in the house
23 living in the basement I think would be a great
24 addition to our house and also would answer some of

1 the governor's concerns about affordable housing.

2 Thank you.

3 BARBARA RANDO, CHAIR: Thank you.

4 Anyone else?

5 MARGARETTA FULTON: I'm Margaretta
6 Fulton. I own the house at 44 Riverside Drive where
7 I've lived since 1962. I raised my three children
8 there some years ago.

9 I consider the Laings very good
10 neighbors. They're responsible, they're thoughtful,
11 neighborly. And, neighborhood for us is a serious
12 matter as it is a contained and close neighborhood I
13 think. I, therefore, am strongly in support of their
14 plans for their house. It seems to me that it
15 answers their long-term needs. And it certainly is
16 not a disadvantage to our neighborhood.

17 I could conceive of this granting
18 neighborhood -- granting apartment, which is the way
19 they're using it -- as in some way by future owners
20 turned into a different kind of a commercial sort of
21 thing. But it seems to me that the future owner of
22 this house would have to come back to the Board and
23 would -- you would object to a commercial use in such
24 a small and lovely neighborhood.

1 So, I am in support of their --
2 strongly in support of their application.

3 BARBARA RANDO, CHAIR: Thank you.
4 Anyone else?

5 SUSAN BURSTEIN: Susan Burstein, 36
6 Riverside Drive.

7 STENOGRAPHER: Spell your last name,
8 please.

9 SUSAN BURSTEIN: B-u-r-s-t-e-i-n.

10 STENOGRAPHER: Thank you.

11 SUSAN BURSTEIN: Resident on and off
12 since 1964, back there permanently now.

13 I won't repeat a number of the things
14 that I've said to you previously in terms of the
15 character of the neighborhood except to say that in
16 the years that I, and Peg, and Clair have lived
17 there, we have seen many changes. I would point out
18 that it is an idyllic place, a place that many people
19 in Waltham don't even know exists and would dearly
20 love to live. We've just had yet another property
21 turn over at record speed and pretty much at a record
22 price. But this is also a Residence A-3
23 neighborhood. This is not luxury Waltham by zoning
24 standards. And, frankly, I have seen this Board, not

1 necessarily in its person today, but I have seen this
2 Board do more harm by approving variances for small
3 lots, some of which still exist in Angleside, than
4 this kind of special permit would ever do.

5 So, I want you to think very carefully
6 when you're talking about changing the character of
7 the neighborhood. As many people have said, there
8 have been people living in this house for many years.
9 There are people who think possibly this is something
10 they would want to do for their future. I will tell
11 you candidly, this is something that I thought
12 seriously about until it was too late for me to have
13 an accessory apartment for my mother. Did I think it
14 was important that she have her own kitchen separate
15 from ours? Absolutely, despite the fact that we
16 could share and would likely share most of the time.
17 I think that when you have someone to live with you,
18 to help as you're aging in place, it's for their
19 dignity that they be able to have their own kitchen
20 and be able to cook their own type of food on their
21 own schedule.

22 So, I don't think that this is outside
23 your purview. And I certainly don't think that this
24 is going to do the terrible harm to the neighborhood

1 that you propose -- that some have proposed this
2 might do.

3 But I'm -- be realistic here. I think
4 what we're looking at is a few members of the Board
5 who don't think that safety is adequately met. I,
6 frankly, disagree with the interpretation of the
7 ordinance. The ordinance does not say two. The
8 ordinance says adequate. There are ways to make this
9 even more adequate. Clearly, kitchen issue aside,
10 these could be roommates. I'd love to have you as
11 roommates. You're great people to have as roommates.
12 They can't be more than two. They can't have a
13 child. I mean the rules, if they stick to the rules,
14 could be more. But, in fact, this apartment has been
15 used by more than two in the past. And, again, as
16 I've said at other meetings, we have had and could
17 still have at any time any one of the houses in the
18 neighborhood occupied by a houseful of students by
19 right.

20 This is controlled. This is
21 controlled in large part by you. It has to be
22 renewed. It doesn't go with the property. You have
23 evidence, ample evidence, of the support of the
24 community that you are trying to protect. So, I

1 would respectfully argue that the safety need has
2 been met, albeit I don't think that a few of you are
3 convinced. And I do believe you have the right and
4 would hope that you would be able to grant this.

5 BARBARA RANDO, CHAIR: Go right ahead.

6 DAVID BRODY: David Brody, 91
7 Edgewater Drive, two houses removed.

8 My wife and I signed the letter for
9 Richard and Leueen. They're good neighbors. And we
10 support them getting what they are asking for here
11 today.

12 My concern is that what they're asking
13 for today, and which I hope that they will get, not
14 being a precedent because, at least I for one, and
15 maybe I'll be accused of being -- well, I, for one,
16 think that it is not a neighborhood in which I would
17 like to see a lot of accessory units. It's a small
18 community, narrow streets. And I would oppose
19 accessory units for commercial rent, the standard
20 landlord/tenant arrangement. I don't think that's
21 what the community is. I don't think that's what the
22 community should become. That's not going to be the
23 case, I don't think, with Richard and Leueen.
24 They're good neighbors. We know them. But I am

1 concerned. And I support and ask that you provide
2 them with their request. But I ask that you would
3 not consider that to be precedent so that there's a
4 stream of people in the neighborhood either now
5 living there or in the future coming in to say, "We
6 want an accessory unit," and it turns out that it
7 changes the neighborhood because there could be a
8 significant number of accessory units put out for
9 rent as multiple-family.

10 So, again, we support them. We ask
11 that you give it to them, but not use this as
12 precedent in the future.

13 MARGARETTA FULTON: Could I just add
14 one thing in support of what --

15 STENOGRAPHER: Could you restate your
16 name, please?

17 MARGARETTA FULTON: Margaretta Fulton.
18 And I'm sorry. I'm just responding to something
19 David just said.

20 The truth is that many of the houses
21 in our neighborhood are quite large and there's only
22 one person living in them, one person across the
23 street, one person here, one person there in big
24 houses. There is a serious concern, which David

1 expressed, that this would become a pattern, that big
2 houses would then shoot off little apartments. And
3 that would be a great disadvantage for our
4 neighborhood.

5 COUNCILOR KRISTINE MACKIN: Hi.
6 Kristine Mackin, 12 Wheelock Terrace, Councilor for
7 Ward 7.

8 STENOGRAPHER: Last name?

9 COUNCILOR KRISTINE MACKIN: Mackin, M-
10 a-c-k-i-n.

11 For my own knowledge, how many members
12 of this Board have to vote in favor for the permit to
13 be approved?

14 BARBARA RANDO, CHAIR: Four.

15 COUNCILOR KRISTINE MACKIN: Four.
16 Thank you. And then for a different unit, that if
17 they came in and had the five-year owner occupancy
18 and two distinct fire exits, would that still be
19 under the discretion of the Board or are there any
20 cases where accessory dwelling permits are granted by
21 right?

22 BARBARA RANDO, CHAIR: Yes.

23 SARAH HANKINS: No, they all require a
24 special permit.

1 BARBARA RANDO, CHAIR: Oh, a special -
2 - oh, I'm sorry, special permit.

3 COUNCILOR KRISTINE MACKIN: They're
4 all special permits. Okay. Thank you.

5 BARBARA RANDO, CHAIR: I'm sorry.

6 COUNCILOR KRISTINE MACKIN: No, that's
7 fine. I just wanted to --

8 MARK HICKERNELL: Actually, to be
9 clear, to grant the variance that's part of the
10 application would take four votes. It's also appeal
11 of a notice of violation. I think that's a majority.

12 BARBARA RANDO, CHAIR: That's a
13 variance, right.

14 MARK HICKERNELL: No, to grant a
15 variance is four.

16 BARBARA RANDO, CHAIR: Oh, yes.

17 MARK HICKERNELL: Appeal to grant,
18 without the variance, or setting aside the variance,
19 I think it's a majority for an appeal of a decision.

20 COUNCILOR KRISTINE MACKIN: Sorry.
21 Four is a majority?

22 MARK HICKERNELL: Four for a variance.

23 COUNCILOR KRISTINE MACKIN: Four for a
24 variance.

1 BARBARA RANDO, CHAIR: Four.
2 Variance.
3 COUNCILOR KRISTINE MACKIN: Oh, and
4 then three --
5 MARK HICKERNELL: Three.
6 JOHN SERGI: For an appeal.
7 MARK HICKERNELL: For an appeal --
8 COUNCILOR KRISTINE MACKIN: For an
9 appeal.
10 MARK HICKERNELL: -- of the decision.
11 SARAH HANKINS: So, it's a bit of a
12 rare situation --
13 COUNCILOR KRISTINE MACKIN: Sure.
14 SARAH HANKINS: -- where, you know,
15 they're coming in and fighting something and kind of
16 presenting a couple of different ways where we could
17 respond by either granting the variance or the
18 special permit or by overturning the decision of the
19 building inspector. And so it's a different vote
20 requirement on different ones.
21 COUNCILOR KRISTINE MACKIN: Okay.
22 SARAH HANKINS: So, you know, it will
23 be something we have to tackle.
24 COUNCILOR KRISTINE MACKIN: That's

1 informative. Thank you. All right.

2 STENOGRAPHER: And your first name
3 again?

4 COUNCILOR KRISTINE MACKIN: Kristine,
5 K-r-i-s-t-i-n-e.

6 I think I understand better, so I
7 appreciate the clarification.

8 RICHARD LAING: Just for my
9 information, for a special permit, is it three, a
10 majority, or a supermajority?

11 BARBARA RANDO, CHAIR: Well, can we
12 finish with the other people first and then you'll
13 have a chance?

14 Anyone else that would like to speak
15 in favor?

16 JORGE VAZQUEZ: Hi. My name is Jorge
17 Vazquez, V-a-z-q-u-e-z. I am living with the Laings.

18 I just want to point to this. The
19 thing is that we have been living with them before
20 there was another couple. So, they were our friends
21 and they said, "We are going back to Guatemala. So,
22 we are leaving. And why don't you come here and join
23 the apartment?" And we said, "Okay. That's good."
24 They had a very good relationship with the Laings,

1 and now we do have a great relationship also because
2 they are very nice people.

3 And what I would say is I would
4 recommend to have this permission. Why? Because
5 what I'm noticing here in the audience is that most
6 of the people that are living there is people with --
7 I wouldn't like to say old people, but I don't know
8 how to say it in English. A lot of people is getting
9 -- getting elder.

10 SARAH HANKINS: We use the term
11 mature.

12 (Laughter.)

13 JORGE VAZQUEZ: That's better.

14 EDWARD MCCARTHY: Very experienced.

15 JORGE VAZQUEZ: So, I have noticed
16 the concerns that they have trying to do things by
17 themselves. And something that I have noticed with
18 my wife is we have had -- they are not issues, but we
19 have noticed, for example, the other day Leueen left
20 the car, the door was open. And the car was turned
21 on the whole day. So, I really have noticed the need
22 that they have for someone to live with them, to take
23 care with them.

24 So, I would suggest don't try to give

1 these permissions because for me, in the state that
2 I'm renting the place, because we are planning to go
3 back to Mexico sooner, maybe one year. But the thing
4 is that I do believe that they need a permission for
5 themselves. So, this is the only thing that I would
6 like to add. And it's a benefit that they can get,
7 not only the Laings, maybe some other persons that
8 live there and they are worried, they have a concern
9 because sooner or later they will need someone to
10 help them and take care of them. So, that's the only
11 thing that I would like to add.

12 Thank you.

13 BARBARA RANDO, CHAIR: Thank you.
14 Anyone else?

15 (No response.)

16 BARBARA RANDO, CHAIR: Hearing none,
17 any Board members have any questions? Any remarks?

18 EDWARD MCCARTHY: Take the count.

19 BARBARA RANDO, CHAIR: Hm?

20 EDWARD MCCARTHY: Take the count.

21 BARBARA RANDO, CHAIR: Of how many in
22 favor? How many in favor?

23 RICHARD LAING: May I just clarify?

24 BARBARA RANDO, CHAIR: Sure.

Waltham Zoning Board of Appeals/3-20-18/142

1 RICHARD LAING: The question that was
2 raised by our Councilor, what is the vote requirement
3 for a special permit? Is it a supermajority or is it
4 a simple majority?

5 BARBARA RANDO, CHAIR: Four.

6 LEUEEN LAING: Are you taking a vote
7 of people who are in favor? Are you taking a vote of
8 people who are in favor first?

9 RICHARD LAING: Are you taking a vote
10 of the Board members?

11 BARBARA RANDO, CHAIR: Yes, I was.

12 LEUEEN LAING: Yes.

13 BARBARA RANDO, CHAIR: And he
14 interrupted.

15 RICHARD LAING: I'm sorry.

16 BARBARA RANDO, CHAIR: That's okay.
17 How many people in favor? One, two, three, four,
18 five, six, seven, eight, nine, ten, 11, and one with
19 reservations, and one opposed, correct? All right.

20 Do you wish to continue with your
21 proposed finding of fact, which we have not read
22 since we didn't receive them.

23 RICHARD LAING: Sorry.

24 BARBARA RANDO, CHAIR: Does the Board

1 want to take a break and read the findings of facts
2 and the decision? What is the feeling of the Board?

3 MARK HICKERNELL: Yeah, I think that
4 makes sense. I make a motion for a brief recess to
5 review the proposed findings of facts and the
6 proposed decision.

7 JOHN SERGI: Seconded.

8 BARBARA RANDO, CHAIR: Ten-minute
9 motion (sic) to adjourn for ten minutes. Second by
10 Mr. Sergi.

11 EDWARD MCCARTHY: He can just read to
12 the Board the finding of facts like we used to do.

13 SARAH HANKINS: I know. Yeah, that's
14 what I was just thinking. Isn't that the point?

15 JOHN SERGI: Put it in the record.

16 BARBARA RANDO, CHAIR: Read it out
17 loud?

18 JOHN SERGI: Yeah.

19 BARBARA RANDO, CHAIR: Do you want to
20 read it into the record or do you want a five-minute
21 recess? Do you want to read it in the record or do
22 you want the recess?

23 MARK HICKERNELL: It's easier for me
24 to understand it if I'm reading it to myself.

1 BARBARA RANDO, CHAIR: Ten-minute
2 recess.

3 (Whereupon, a brief recess was taken
4 off the record.)

5 RICHARD LAING: Madam Chair, we've
6 discussed the situation. And with the way that the
7 Board is set up and with the requirement for the
8 special permit, we feel that with regret we should
9 withdraw our application.

10 LEUEEN LAING: Without prejudice.

11 BARBARA RANDO, CHAIR: Without
12 prejudice.

13 MARK HICKERNELL: Well, the problem
14 with withdrawing without prejudice is you're under
15 notice -- we're in recess right now for one thing.
16 So, can we discuss this when we come out of recess?

17 LEUEEN LAING: Yes, please.

18 (Proceedings resumed at 10:06 p.m.)

19 BARBARA RANDO, CHAIR: All right. We
20 are back in session.

21 Mr. Laing, you had the podium.

22 RICHARD LAING: With great regret,
23 based on the discussion, and the questions, and the
24 opinions that have been expressed, I feel that we

1 should withdraw without prejudice our application at
2 this time.

3 BARBARA RANDO, CHAIR: All right.

4 MARK HICKERNELL: Your application for
5 a variance? Your application for a special permit?
6 Both of those?

7 RICHARD LAING: I think so. What you
8 told me was that both the special permit and the
9 variance require a vote of --

10 LEUEEN LAING: Four.

11 RICHARD LAING: -- four, a
12 supermajority. If that's the case --

13 MARK HICKERNELL: Correct. So, you
14 have brought three items to the attention of this
15 Board. One is a request for the variance. One is a
16 request for a special permit for the accessory
17 dwelling unit. And one is an appeal of the notice of
18 violation of the building inspector. The first two
19 of those things require a vote of four.

20 RICHARD LAING: Thank you.

21 MARK HICKERNELL: The appeal, my
22 understanding of the notice of violation, requires a
23 simple majority.

24 LEUEEN LAING: That's the violation.

1 RICHARD LAING: So then we should
2 withdraw -- thank you for your advice on this matter.

3 MARK HICKERNELL: I'm telling you what
4 the votes are. I'm not giving you any advice.

5 LEUEEN LAING: So the violation is
6 another vote.

7 RICHARD LAING: So we will withdraw
8 our application for a variance and our application
9 for the special permit.

10 MARK HICKERNELL: I make a motion that the request to
11 withdraw the application for a variance and the
12 special permit be granted without prejudice to
13 refiling it.

14 JOHN SERGI: Second.

15 BARBARA RANDO, CHAIR: Okay. Motion
16 by Mr. Hickernell, second by Mr. Sergi to withdraw
17 without prejudice.

18 All right. How do you vote, Mr.
19 Sergi?

20 JOHN SERGI: Yes.

21 BARBARA RANDO, CHAIR: Mr.
22 Hickernell?

23 MARK HICKERNELL: Yes.

24 BARBARA RANDO, CHAIR: Ms. Hankins?

Waltham Zoning Board of Appeals/3-20-18/147

1 SARAH HANKINS: Yes.

2 BARBARA RANDO, CHAIR: Mr. McCarthy?

3 EDWARD MCCARTHY: Yes.

4 BARBARA RANDO, CHAIR: And the Chair
5 votes yes.

6 MARK HICKERNELL: I have to say, I
7 have no idea what a vote now without a special permit
8 would do to the notice of violation.

9 BARBARA RANDO, CHAIR: It's true.
10 It's true.

11 MARK HICKERNELL: For all I know, the
12 building inspector would come back there tomorrow and
13 issue another one.

14 BARBARA RANDO, CHAIR: Right. Right.

15 MARK HICKERNELL: I have no idea what
16 would happen.

17 BARBARA RANDO, CHAIR: I'm sure he
18 will.

19 MARK HICKERNELL: This is an unusual
20 situation.

21 RICHARD LAING: Then we'll withdraw
22 for the application for the --

23 LEUEEN LAING: No. No.

24 RICHARD LAING: Why?

Waltham Zoning Board of Appeals/3-20-18/148

1 LEUEEN LAING: Because, otherwise,
2 we're still stuck with the violation. If they said
3 it's okay, we're not going to have that problem,
4 stick with it.

5 BARBARA RANDO, CHAIR: I don't think
6 you understood what Mr. Hickernell just said.

7 LEUEEN LAING: What is he saying?

8 BARBARA RANDO, CHAIR: We're not sure
9 if the building inspector would just issue another
10 one.

11 LEUEEN LAING: Well, let's let him
12 issue another one if he wants to because I don't
13 think he will. I don't think he thinks we've done
14 anything wrong. Let's just see --

15 MARK HICKERNELL: Well, whether or not
16 he does, I have no idea. And you're still going to
17 be left in a situation where you're going to need a
18 special permit eventually. So, I don't know what
19 happens. To be very honest, I have no idea what
20 happens with this.

21 BARBARA RANDO, CHAIR: I'm almost sure
22 you're going to have to apply for a special permit.

23 RICHARD LAING: Oh, I'm sure we are.

24 BARBARA RANDO, CHAIR: I think -- I'm

1 not going to tell you what to do.

2 SARAH HANKINS: I just don't -- a
3 point of information. I guess the situation now is
4 would we be in a situation where we could vote
5 potentially on the notice of violation?

6 MARK HICKERNELL: The Petitioners
7 brought three things, two of which are now withdrawn.
8 One of them was an appeal of the notice of violation.
9 That's still before us.

10 SARAH HANKINS: So, I mean could I
11 like make a motion to overturn the building
12 inspector's --

13 MARK HICKERNELL: I don't see -- I
14 think you could. The motion would be in order.

15 SARAH HANKINS: I'd like to make that
16 motion if that's allowed and in order.

17 JOHN SERGI: Say it again, Sarah.

18 SARAH HANKINS: I'd like to, if
19 possible, make a motion to overturn the order of the
20 building inspector.

21 JOHN SERGI: I agree. I second it.

22 BARBARA RANDO, CHAIR: I don't know
23 for sure if we can do that. I mean I think there are
24 too many issues there. I think you're going to need

1 a --

2 SARAH HANKINS: My understanding is
3 that we can overturn any decision of the building
4 inspector. I thought we were pretty clearly in the
5 right there to do that.

6 EDWARD MCCARTHY: You're saying that
7 the violations that he found is okay? Is that what
8 you're saying?

9 SARAH HANKINS: I was putting forth a
10 motion to overturn the decision.

11 EDWARD MCCARTHY: Well, if you're
12 doing that then you're saying his -- what he said was
13 a violation, what they were in violation of, is okay.

14 SARAH HANKINS: Correct. That's what
15 my motion is.

16 BARBARA RANDO, CHAIR: He still needs
17 -- he still needs a variance on the five years.

18 MARK HICKERNELL: To have a -- well,
19 and a special permit. The variance is connected to
20 the special permit, which they're also not requesting
21 at this point, is my understanding.

22 BARBARA RANDO, CHAIR: Well, I'll go
23 along with the Board if you want to see what happens
24 with the building inspector. But I think you're

1 going to be back seeking a special permit.

2 RICHARD LAING: Yes, I'm sure we will
3 after five years.

4 BARBARA RANDO, CHAIR: Okay.

5 MARK HICKERNELL: So there's a motion
6 made and seconded.

7 BARBARA RANDO, CHAIR: Motion to
8 overturn the building inspector's decision. And the
9 motion was made by -- my pen just ran out of ink --
10 by, thank you, Ms. Hankins. And who seconded it?

11 JOHN SERGI: I did.

12 BARBARA RANDO, CHAIR: You did?

13 JOHN SERGI: Yes.

14 BARBARA RANDO, CHAIR: Mr. Sergi.
15 Okay.

16 STENOGRAPHER: Everybody has to speak
17 up. I know we're getting tired, but it's like I'm
18 not picking you up. So, everybody speak up a little
19 bit. Thank you.

20 BARBARA RANDO, CHAIR: Did you hear
21 what I said or do you want me to repeat it again?

22 STENOGRAPHER: You might be good.

23 BARBARA RANDO, CHAIR: Might be good?

24 STENOGRAPHER: You'll be all right.

Waltham Zoning Board of Appeals/3-20-18/152

1 BARBARA RANDO, CHAIR: All right. How
2 do you vote, Mr. Sergi?

3 JOHN SERGI: Yes.

4 BARBARA RANDO, CHAIR: To overturn the
5 decision of the building inspector?

6 JOHN SERGI: Yes.

7 BARBARA RANDO, CHAIR: Mr. Hickernell?

8 MARK HICKERNELL: Yes.

9 BARBARA RANDO, CHAIR: Ms. Hankins?

10 SARAH HANKINS: Yes.

11 BARBARA RANDO, CHAIR: Mr. McCarthy?

12 EDWARD MCCARTHY: On the motion, Madam
13 Chair, one of the items on the building inspector's
14 decision was they need a special permit, correct?

15 BARBARA RANDO, CHAIR: Do we have that
16 permit in the folder?

17 MARK HICKERNELL: This is the notice
18 of violation.

19 BARBARA RANDO, CHAIR: Can I see it?
20 it. Do you have this? Do you want that?

21 JOHN SERGI: I don't have that.

22 MARK HICKERNELL: It's in the yellow
23 folder. I don't think any of us have it except me
24 because I have the yellow folder.

1 BARBARA RANDO, CHAIR: Well, I vote
2 no.

3 EDWARD MCCARTHY: It's an illegal
4 basement apartment is what they're saying. I vote no
5 as well.

6 BARBARA RANDO, CHAIR: Okay. So three
7 votes does overturn it, doesn't it, I believe,
8 correct, Mr. Hickernell?

9 MARK HICKERNELL: That's my
10 understanding.

11 BARBARA RANDO, CHAIR: That's my
12 opinion.

13 EDWARD MCCARTHY: We'll find out. To
14 be continued.

15 MARK HICKERNELL: Yeah, you can bet on
16 that.

17 EDWARD MCCARTHY: To be continued.

18 BARBARA RANDO, CHAIR: All right. I
19 believe it has been overturned.

20 LEUEEN LAING: Thank you very much,
21 everybody.

22 SARAH HANKINS: Good luck.

23 JOHN SERGI: Motion to adjourn, Madam
24 Chair.

Waltham Zoning Board of Appeals/3-20-18/154

1 ALL: second.
2 BARBARA RANDO, CHAIR: All in favor?
3 ALL BOARD MEMBERS: Aye.
4 BARBARA RANDO, CHAIR: Opposed?
5 (No Board members opposed.)
6 BARBARA RANDO, CHAIR: The ayes have
7 it. Adjourned at 10:15.
8 (Whereupon, the hearing was adjourned
9 at 10:15 p.m.)
10 //
11 //
12 //
13 //
14 //
15 //
16 //
17 //
18 // *Barbara Rando, chair*
19 // *5/15/18*
20 //
21 //
22 //
23 //
24 //

Waltham Zoning Board of Appeals/3-20-18/155

C E R T I F I C A T E

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

Judith Luciano

Judith Luciano

Arlington Reporting Corporation
(339) 674-9100

