

FOR THE  
CITY OF WALTHAM  
ZONING BOARD OF APPEALS

GENERAL HEARING

March 21, 2017

7:00 P.M.

at

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

Barbara Rando, Chair  
Mark Hickernell, Clerk  
Sarah Hankins  
Marc Rudnick  
John Sergi

Arlington Reporting Corporation  
(339) 674-9100

Waltham Zoning Board of Appeals/3-21-17/2

**I N D E X**

<u>CASE</u>	<u>PAGE</u>
2017-05	5
2017-04	18

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

Legal Notices: Case No. 2017-05  
Case No. 2017-04

Case No. 2017-05:  
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: Good evening.  
3 The Zoning Board of Appeals for Tuesday, March 21,  
4 2017 is called to order at 7:00 p.m.

5 Tonight we have two new cases: Case  
6 2017-05, Massachusetts General Physicians  
7 Organization, Inc., 40 Second Ave., and that's for a  
8 variance; Case 2017-04, 520 Main Street Realty Trust,  
9 520 Main Street, and that's to amend -- I'm not sure  
10 exactly what they're doing -- but amend a prior  
11 decision.

12 The members sitting tonight are Mr.  
13 Sergi, Mr. Hickernell, Ms. Hankins, and Mr. Rudnick,  
14 and I am Ms. Rando, the Chair.

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ACCEPTANCE OF MINUTES OF  
FEBRUARY 28 and MARCH 7, 2017 MEETINGS

BARBARA RANDO, CHAIR: The first action this evening is for a motion to accept the minutes of February 28, 2017 and March 7, 2017.

JOHN SERGI: So moved, Madam Chair.

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

SARAH HANKINS: Second.

BARBARA RANDO, CHAIR: Second by Ms. Hankins.

All in favor?

ALL BOARD MEMBERS: Aye.

BARBARA RANDO, CHAIR: Opposed?

(No Board Members opposed.)

BARBARA RANDO, CHAIR: The minutes have been approved.

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1       **Case Number 2017-05:       Massachusetts General**  
2       **Physicians Organization, Inc.**

3

4                       BARBARA RANDO, CHAIR: Will the Clerk  
5 please read the petition in Case 2017-05?

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

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

12                     ATTORNEY WILLIAM PROIA: Madam  
13 Chairman, members of the Board, for the record, my  
14 name is Bill Proia for the applicant tonight, with an  
15 office address of 700 District Avenue in Burlington,  
16 Massachusetts.

17                     And, Madam Chair, it's good to see you  
18 back.

19                     BARBARA RANDO, CHAIR: Thank you very  
20 much. Were you here before on this case?

21                     ATTORNEY WILLIAM PROIA: This is the  
22 first.

23                     BARBARA RANDO, CHAIR: Oh, this is the  
24 first.

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1                   ATTORNEY WILLIAM PROIA:    The first  
2 public hearing, yes.

3                   BARBARA RANDO, CHAIR:    I noticed,  
4 Attorney Proia, that we didn't receive any  
5 information until today, your brief and your finding  
6 of facts or anything.

7                   ATTORNEY WILLIAM PROIA:    The only  
8 thing Pam asked me for today was the draft decision.

9                   BARBARA RANDO, CHAIR:    Finding of  
10 facts and a petition.

11                   ATTORNEY WILLIAM PROIA:    I mean our  
12 application was filed, so I'm not sure what would  
13 have --

14                   BARBARA RANDO, CHAIR:    In the booklet,  
15 we request two weeks' advance brief and findings of  
16 facts so that we can look up case law and be prepared  
17 for tonight.

18                   ATTORNEY WILLIAM PROIA:    Yeah, I'm  
19 curious why that wasn't included. I'm sorry about  
20 that.

21                   BARBARA RANDO, CHAIR:    How does the  
22 Board feel? Where it's a ramp, is it something we  
23 want to continue with? Has everyone had a chance to  
24 read the finding of facts, the decision, and the

1 brief?

2 MARK HICKERNELL: I did, Madam Chair.

3 May I inquire?

4 BARBARA RANDO, CHAIR: Yes.

5 MARK HICKERNELL: Counselor?

6 ATTORNEY WILLIAM PROIA: Yes.

7 MARK HICKERNELL: All you're doing is  
8 putting an awning over something that already exists?

9 ATTORNEY WILLIAM PROIA: Correct.

10 MARK HICKERNELL: That's the proposal?

11 ATTORNEY WILLIAM PROIA: Yes. And  
12 just by a quirk of the zoning ordinance, the awning  
13 is also considered a structure. And so, because it  
14 is, it has to meet that ten-foot setback from the  
15 other buildings that it's going between. And it  
16 doesn't, obviously. And we're trying to cover that  
17 ramp between the two buildings, well, the garage and  
18 the office building, medical office building. So,  
19 yes, that's exactly correct. And I can just sort of  
20 point that out if it will make it easier for the  
21 Board.

22 MARK HICKERNELL: Unless somebody else  
23 has a question, I'd like to see that.

24 BARBARA RANDO, CHAIR: All right. Are

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1 you prepared?

2 MARC RUDNICK: I'm ready to go  
3 forward.

4 BARBARA RANDO, CHAIR: And I am, too.  
5 Mr. Sergi?

6 JOHN SERGI: Yeah, I'm okay. Let's go  
7 forward.

8 ATTORNEY WILLIAM PROIA: Very good.  
9 Thank you.

10 BARBARA RANDO, CHAIR: Go ahead.

11 ATTORNEY WILLIAM PROIA: So, yes, just  
12 to quickly step up to the Board, I know the Board has  
13 seen this property a couple of times. There was a  
14 sign variance -- we were here before -- and a couple  
15 of other matters. In fact, you've been instrumental  
16 in making this a success. So, this probably won't be  
17 too unfamiliar to you.

18 This is a plan view. So the parking  
19 structure is here, the garage. And the office  
20 building, you know, the Mass General West building is  
21 there. And, again, there's a ten-foot separation  
22 between the garage and the building because that's  
23 the requirement to keep that ten-foot setback from a  
24 principal building, an accessory building. But in



1 this case, again, because of the definition of  
2 building and structure, the awning, which is supposed  
3 to go, which is proposed to go right here between the  
4 buildings to cover the ramp between them -- and I can  
5 show you an elevation plan -- it wouldn't meet the  
6 ten-foot setback. For obvious reasons, we don't  
7 really want it to because we want it to cover that  
8 gap. So that is the proposed canopy, the proposed  
9 awning. And the setbacks, as Mr. Hickernell wrote,  
10 described, are an inch, and an inch, and then nine  
11 feet, the nine-foot being there and the inch being  
12 from the office building in here, again, to cover the  
13 ramp to provide protection for people passing between  
14 the parking garage and the medical office building.

15 And this will sort of give you -- so  
16 this is a photograph of that area. So, the parking  
17 garage and the office building, and there's the ADA  
18 ramp and the connection, pedestrian connection,  
19 between the two buildings. And, again, the awning  
20 will fit -- again, this is the garage and the office  
21 building. The awning will fit right there between  
22 them to cover that space to allow protection for  
23 people passing between the buildings.

24 BARBARA RANDO, CHAIR: What will the

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1 awning be made of?

2 ATTORNEY WILLIAM PROIA: Aluminum.

3 BARBARA RANDO, CHAIR: Aluminum. And  
4 it will stay that color, like a gray?

5 ATTORNEY WILLIAM PROIA: Is that what  
6 the color will look like?

7 CHUCK FAVAZZO: Yes, a gray or a light  
8 white.

9 STENOGRAPHER: Can you identify  
10 yourself for the record?

11 CHUCK FAVAZZO: Chuck Favazzo, project  
12 manager for Leggat McCall Properties.

13 STENOGRAPHER: Can you spell your last  
14 name?

15 CHUCK FAVAZZO: F as in Frank-a-v as  
16 in Victor-a-z as in Zebra-z-o.

17 STENOGRAPHER: Thank you.

18 BARBARA RANDO, CHAIR: No lettering on  
19 this awning?

20 CHUCK FAVAZZO: No, ma'am.

21 ATTORNEY WILLIAM PROIA: No.

22 BARBARA RANDO, CHAIR: And is it going  
23 to be lighted?

24 CHUCK FAVAZZO: Direct light, ADA

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1 lighting on the ramp floor with nothing on the  
2 outside surfaces.

3 ATTORNEY WILLIAM PROIA: Which is the  
4 existing lighting.

5 CHUCK FAVAZZO: Correct.

6 ATTORNEY WILLIAM PROIA: Yeah.

7 BARBARA RANDO, CHAIR: Mr. Sergi, any  
8 questions?

9 JOHN SERGI: Does it cover the full  
10 ramp, the whole handicap ramp, or is it just a  
11 section?

12 CHUCK FAVAZZO: The full handicap  
13 ramp.

14 ATTORNEY WILLIAM PROIA: The full  
15 handicap ramp.

16 JOHN SERGI: It does cover the full  
17 handicap ramp?

18 ATTORNEY WILLIAM PROIA: Yeah.

19 JOHN SERGI: No other questions, Madam  
20 Chair.

21 BARBARA RANDO, CHAIR: Mr. Hickernell?

22 MARK HICKERNELL: No questions.

23 BARBARA RANDO, CHAIR: Ms. Hankins?

24 SARAH HANKINS: No questions.

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1 BARBARA RANDO, CHAIR: Mr. Rudnick?

2 MARC RUDNICK: You say it's aluminum.  
3 The covering is aluminum, not just the structure?  
4 There's no canvas or other flammable materials?

5 CHUCK FAVAZZO: No.

6 ATTORNEY WILLIAM PROIA: Correct.

7 MARC RUDNICK: And so if you were to  
8 put this on one of your buildings, you would do that  
9 by right. It's only that it's touching both  
10 buildings that you're here. Right? I mean --

11 ATTORNEY WILLIAM PROIA: Well, because  
12 of previous permits or approvals for the garage we  
13 couldn't have done that.

14 MARC RUDNICK: Oh, because you're  
15 already under special permits or variances. Yeah,  
16 okay. No further questions.

17 BARBARA RANDO, CHAIR: All right. Is  
18 there anyone in the audience who is in opposition to  
19 this?

20 (No one in opposition.)

21 BARBARA RANDO, CHAIR: Is there anyone  
22 seeking information? Is there any --

23 MICHAEL FALKOFF: I was curious the  
24 way it was presented whether there were any posts or

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1 structures --

2 BARBARA RANDO, CHAIR: Would you come  
3 up to the microphone so the people could -- at home  
4 could hear you, sir, and give your name and address  
5 for the record?

6 MICHAEL FALKOFF: I'm Mike Falkoff, 42  
7 Appleton Street, Waltham.

8 STENOGRAPHER: Could you spell your  
9 last name?

10 MICHAEL FALKOFF: F-a-l-k-o-f-f.

11 STENOGRAPHER: Thank you.

12 MICHAEL FALKOFF: And I was curious,  
13 the way it was presented, whether the awning has any  
14 vertical posts or supports that actually come  
15 proximate to the buildings or whether it's all  
16 attached above the buildings.

17 BARBARA RANDO, CHAIR: Good question.

18 ATTORNEY WILLIAM PROIA: There are  
19 posts. There are posts.

20 BARBARA RANDO, CHAIR: What was the  
21 answer?

22 ATTORNEY WILLIAM PROIA: There are  
23 posts.

24 BARBARA RANDO, CHAIR: Oh, there are

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1 posts?

2 ATTORNEY WILLIAM PROIA: Yeah, it will  
3 be tied into the existing ramp. Again, it won't be  
4 touching those buildings so there will be that  
5 separation between.

6 BARBARA RANDO, CHAIR: Anyone else in  
7 favor?

8 (No response.)

9 BARBARA RANDO, CHAIR: You guys aren't  
10 in favor?

11 CHUCK FAVAZZO: Absolutely.

12 MARC RUDNICK: Good time to raise your  
13 hand.

14 BARBARA RANDO, CHAIR: One, two,  
15 three, four, five -- five people in favor.

16 All right. You may continue with your  
17 proposed finding of fact.

18 JOHN SERGI: I make a motion that we  
19 waive the reading of the finding of facts since we've  
20 had a chance to --

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

23 MARK HICKERNELL: Second.

24 BARBARA RANDO, CHAIR: Second by Mr.

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1 Hickernell.  
2 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.  
8 And waive the reading of the decision?  
9 JOHN SERGI: I make a motion in a  
10 similar fashion to waive the reading of the decision.  
11 MARK HICKERNELL: Second.  
12 BARBARA RANDO, CHAIR: Motion by Mr.  
13 Sergi. Second by Mr. Hickernell.  
14 All in favor?  
15 ALL BOARD MEMBERS: Aye.  
16 BARBARA RANDO, CHAIR: Opposed?  
17 (No Board members opposed.)  
18 BARBARA RANDO, CHAIR: The ayes have  
19 it.  
20 All right. Do I have a motion on the  
21 proposed finding of facts?  
22 JOHN SERGI: I make a motion that the  
23 proposed finding of facts be adopted by the Board.  
24 BARBARA RANDO, CHAIR: Motion by Mr.

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1 Sergi. Second?

2 MARC RUDNICK: I'll second it.

3 BARBARA RANDO, CHAIR: Pardon me?

4 MARC RUDNICK: Second.

5 BARBARA RANDO, CHAIR: Second by Mr.

6 Hickernell -- I mean Mr. Rudnick.

7 How do you vote on the proposed

8 finding of fact, 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. Rudnick?

15 MARC RUDNICK: Yes.

16 BARBARA RANDO, CHAIR: And the Chair

17 votes yes.

18 Do I have a motion on the decision?

19 JOHN SERGI: I make a motion that the

20 proposed decision becomes the Board's decision.

21 BARBARA RANDO, CHAIR: Motion by Mr.

22 Sergi.

23 MARC RUDNICK: Second.

24 BARBARA RANDO, CHAIR: Second by Mr.



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1 Rudnick.  
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. Rudnick?  
9 MARC RUDNICK: Yes.  
10 BARBARA RANDO, CHAIR: And the Chair  
11 votes yes. The case is granted. Good luck.  
12 ATTORNEY WILLIAM PROIA: Thank you  
13 all.  
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1       **Case Number 2017-04: 520 Main Street Realty Trust.**

2

3                   BARBARA RANDO, CHAIR: Will the Clerk  
4 please read the petition in Case 2017-04?

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

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

11                   ATTORNEY MICHELLE BARATTA: Good  
12 evening, ladies and gentlemen of the Board. My name  
13 is Michelle Baratta, office address 138 Harvard  
14 Avenue, Allston, Massachusetts. I represent the  
15 Petitioner, 520 Main Street Realty Trust.

16                   With me today is the trustee, Marc  
17 Herman. And we have our architect here, David  
18 O'Sullivan, who is prepared to run you through more  
19 specifically the work that is being proposed.

20                   If I may, I'd like to just take you  
21 through why we're here today and what exactly we are  
22 seeking. This actually stems back to September 1964.  
23 The previous owner of the parcel was seeking to build  
24 a mixed-use building on the lot. It's an

1 irregularly-shaped lot. He needed to get a special  
2 permit to do so. It ended up being approved.  
3 Specifically, the plans were approved to have six  
4 commercial units, and eight studio units, and 12 one-  
5 bedroom units. And we do have the plans here today  
6 from the original ruling.

7 The current owner of the property  
8 purchased it in 2015. He is looking to modernize the  
9 building, to create two-story two-bedroom units and  
10 make the studio bedroom -- studio units into one-  
11 bedroom units. In order to do so, we went to the  
12 Building Department. And after lengthy discussions  
13 with the commissioner and with the Law Department  
14 here, it was determined that we need to amend the  
15 original special permit, since that was based on  
16 plans for eight studio units and the 12 one-bedrooms  
17 and to approve the new plans.

18 The footprint of the building will  
19 remain the same. There's no plans to change the  
20 structure of the building, to extend it. All of the  
21 work will be done in the interior. The commercial  
22 units will also remain the same. The parking will  
23 remain the same. They also asked that we affirm that  
24 the parking is still adequate for the amount of

1 units.

2 And I have with me here David  
3 O'Sullivan who can kind of take you through the  
4 actual work that's being done unless you have  
5 questions for me about why we're here first.

6 SARAH HANKINS: I guess if you can  
7 expand on the parking because if you are increasing  
8 it from studio to one-bedroom and so on, I don't see  
9 how it wouldn't entail --

10 ATTORNEY MICHELLE BARATTA: Right.  
11 Currently, there are 28 parking spots for the  
12 building that are not all used. In fact, there's a  
13 section of the parking that is not being utilized at  
14 all. The parking spots are not numbered. If the  
15 Board requires it, we can actually assign the parking  
16 spots. But, at this point, as it is, they're  
17 actually not being used. The building is on a major  
18 bus line and there's public transportation in the  
19 area. So, as it currently stands, the residents are  
20 not utilizing the parking.

21 We do anticipate, obviously, that  
22 there would be a greater use of the parking, which is  
23 why the Petitioner is prepared to assign parking  
24 spots. There is enough to, you know, provide a

1 parking spot per unit and still provide parking for  
2 the commercial units as well, which obviously the use  
3 does not overlap.

4 SARAH HANKINS: So, would you be able  
5 to -- what about for two bedrooms? Would you do two  
6 parking spots or would it be just one-bedroom -- one  
7 parking spot for each?

8 MARC RESNICK: We would have 28  
9 parking spaces for only 20 units. So, 15 of the  
10 units are going to be two-beds, so we would have  
11 enough to cover at least half of those and every  
12 single one on all of those. And we're finding that  
13 we -- parking is not an issue at all. They're open.  
14 We've had to -- there's one area in the rear on the  
15 right-hand side --

16 EMMANUEL NICOLAS: Could you use the  
17 microphone, please? I'm sorry.

18 BARBARA RANDO, CHAIR: Thank you.

19 MARC RESNICK: So, this area here is  
20 currently not utilized at all and no one ever parks  
21 on it. There is still additional parking on this  
22 side. And the dumpster is not cleverly located; it's  
23 just sitting there. And so we could move the  
24 dumpster and put it in, even create two or three more

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1 parking spaces. But we've never had any actual --  
2 you know, we have always had more than enough parking  
3 at this point. So, and we're not increasing the  
4 number of units at all. It's just probably more  
5 heavily occupied. You know, a studio has one person,  
6 and probably a one-bed will have one person in it.  
7 But I'm sure a lot of the two-beds will have two  
8 people in them for sure.

9 BARBARA RANDO, CHAIR: Are you  
10 finished?

11 SARAH HANKINS: Yes.

12 BARBARA RANDO, CHAIR: So how can you  
13 guarantee that those two-bedrooms won't have two  
14 cars? It could be a mother and father in one with a  
15 car, and a child in the other with a car.

16 MARC RESNICK: We would have enough  
17 parking to give at least eight of the units two  
18 spaces per.

19 BARBARA RANDO, CHAIR: And along with  
20 that, what about the real estate office, and the  
21 dental lab, and the two dentists, and the --

22 MARC RESNICK: So, the dentist people  
23 are all one group. They rent all those. And, yes,  
24 there are several other commercial tenants. But what

1 happens, at least now, is that none of the commercial  
2 tenants ever even go past the front section. They  
3 just park along here. And some of the tenants park  
4 in the back, and that's it. And they're all open in  
5 the back. So, like, you know, we have excess parking  
6 during the day, right now 15 spaces.

7 BARBARA RANDO, CHAIR: So what about  
8 their customers, their patients?

9 MARC RESNICK: So them, too, if they  
10 park -- there's free parking out front. But if they  
11 do come in the back --

12 BARBARA RANDO, CHAIR: Have you tried  
13 to park out front there?

14 MARC RESNICK: I have not recently,  
15 not in the wintertime. But there is enough parking.  
16 In other words, there's always ample parking all the  
17 time during the day.

18 BARBARA RANDO, CHAIR: I don't see it  
19 that way at all. I don't see it that way at all. I  
20 see very crowded streets, very crowded Main Street.  
21 I've driven down Cross Street.

22 MARC RESNICK: Nope, it's --

23 BARBARA RANDO, CHAIR: I've gone down  
24 Central Street. I've gone down near the school

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1 there. And the parking is a problem.

2 MARC RESNICK: I didn't mean the  
3 parking on the street. I mean there's actually  
4 leftover spaces all throughout the parking lot all  
5 the time, during the day and in the evening.

6 BARBARA RANDO, CHAIR: How could that  
7 possibly be when you have so many different  
8 businesses there?

9 MARC RESNICK: Well, it's all one  
10 dentistry office, and they don't have a -- I don't  
11 know how to -- I mean I have no ideas how their  
12 customers actually --

13 BARBARA RANDO, CHAIR: I thought there  
14 were two dentists' offices.

15 MARC RESNICK: He owns both offices.  
16 It's all one gentleman. And the dental lab, it's all  
17 one gentleman's space, one tenant.

18 BARBARA RANDO, CHAIR: So, there's one  
19 dentist in the two buildings?

20 MARC RESNICK: He has one business.  
21 He owns all the --

22 BARBARA RANDO, CHAIR: How many  
23 physicians? How many dentists?

24 MARC RESNICK: I'm not sure.



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1 BARBARA RANDO, CHAIR: There's parking  
2 there. What about hygienists? How about assistants?

3 MARC RESNICK: No, there are.  
4 Whatever they're doing now, there's at least 15 empty  
5 spaces during the day, all day long.

6 BARBARA RANDO, CHAIR: Fifteen spaces  
7 during the day doesn't account for --

8 MARC RESNICK: No, all those people  
9 are already there?

10 BARBARA RANDO, CHAIR: -- the  
11 therapist, for the artist.

12 MARC RESNICK: I'm sorry. I'm sorry.  
13 But right now all those people are operating. And if  
14 you go there, there are --

15 BARBARA RANDO, CHAIR: And I don't  
16 think they're all parking in the parking lot.  
17 They're parking on the street.

18 MARC RESNICK: I think they all park  
19 in the back that work there because it's in his lease  
20 that he can park his cars there and his customers can  
21 park there.

22 BARBARA RANDO, CHAIR: I don't think  
23 it's that easy to get in and out of the parking  
24 space, actually. And it's much easier to pull up out

1 front.

2 MARC RESNICK: I'm sorry. I don't  
3 know what the customers are doing, if they're coming  
4 by bus, or on foot, or by car.

5 BARBARA RANDO, CHAIR: Also, I have a  
6 problem with your --

7 ATTORNEY MICHELLE BARATTA: There's a  
8 lot of local customers.

9 BARBARA RANDO, CHAIR: And you can't  
10 guarantee that the tenants that you rent to are going  
11 to not have cars, two cars, maybe three cars per  
12 person, per two-bedroom.

13 ATTORNEY MICHELLE BARATTA: Well, it  
14 would depend on who it's marketed to and how the  
15 units are marketed.

16 BARBARA RANDO, CHAIR: But you can't  
17 guarantee that. You can't say because you have three  
18 cars you can't rent this apartment.

19 MARC RESNICK: Well, I could say I  
20 cannot offer you parking. So, if you had three cars  
21 you can't live there.

22 BARBARA RANDO, CHAIR: But then you're  
23 hurting the neighbors. You're hurting everyone  
24 around there.

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1                   MARC RESNICK: Well, how --

2                   BARBARA RANDO, CHAIR: It's overused.

3                   MARC RESNICK: I'm sorry, but how  
4 would I be hurting the neighbors? If you told me,  
5 don't --

6                   BARBARA RANDO, CHAIR: Because people  
7 would have to park on the street.

8                   MARC RESNICK: No, they wouldn't live  
9 there because couldn't offer you three-car parking.  
10 So, if you have three cars, you would make sure you  
11 found a place to live where they had parking for  
12 three cars. You wouldn't rent a space that had --  
13 why would you rent an apartment that had one-car  
14 parking if you had three cars?

15                   BARBARA RANDO, CHAIR: Because you'd  
16 figure you'd find parking on the street. You also  
17 said that there are a lot of lots, municipal lots.  
18 Where are they?

19                   ATTORNEY MICHELLE BARATTA: They're in  
20 the neighboring streets.

21                   BARBARA RANDO, CHAIR: Where?

22                   ATTORNEY MICHELLE BARATTA: I don't  
23 have the exact addresses.

24                   BARBARA RANDO, CHAIR: How close?

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1                   ATTORNEY MICHELLE BARATTA:     Walking  
2     distance.

3                   BARBARA RANDO,     CHAIR:             Where?  
4     Whereabouts?    Because I can't find any there that  
5     they could walk to.

6                   MARC RESNICK:    I don't know that.

7                   BARBARA RANDO,     CHAIR:             And you had  
8     that in the brief that there's a municipal lot --  
9     lots.

10                  ATTORNEY MICHELLE BARATTA:    Yeah, it's  
11     my understanding from looking at Google Maps that  
12     there are lots.

13                  BARBARA RANDO,     CHAIR:             And I also  
14     have, before I let the other Board members speak, I  
15     have a problem with your hardship.    Your hardship is  
16     so that you can make the building better, more --  
17     modernize it.    And that's a hardship for whom?    It  
18     would be a hardship for you.

19                  ATTORNEY MICHELLE BARATTA:    For the  
20     tenants.    Well, the tenants as well.

21                  BARBARA RANDO,     CHAIR:             Mr. Sergi, do  
22     you have any questions?

23                  JOHN SERGI:        Have you thought about  
24     getting auxiliary parking elsewhere in the city?

1                   MARC RESNICK: I hadn't considered it  
2 at all because we have so much excess parking there,  
3 every single day, 24 hours each day for the entire  
4 two years that I've owned the building, that I had no  
5 real concern that if I built five or six extra, eight  
6 extra bedrooms, that I would get 15 extra cars in  
7 those eight bedrooms. And I own many properties.  
8 And we find that the amount of parking provided is  
9 often the amount of parking that becomes required.  
10 Like, in other words, a person that has three cars  
11 doesn't live in a one-bedroom apartment in Waltham  
12 and have three cars and live on Main Street in a very  
13 public transportation active area. They're just not  
14 there. Those aren't the clientele that we're going  
15 to get.

16                   And one of the reasons that we're  
17 doing this is that this building has 320-square-foot  
18 apartments. You just come in and there's a room.  
19 That's it. And a bathroom. So, they're not very  
20 nice apartments. We're not charging much money.  
21 We're not attracting very nice people. They're not  
22 in good condition. They don't have any fire safety  
23 equipment. We're looking to renovate the entire  
24 building, install sprinkler systems, and make the

1 building very nice. And we'll attract nicer people  
2 who will live in really nice apartments.

3 I've done this other -- I own other  
4 properties in Waltham. This is what I do for a  
5 living for like 35 years. I buy bad buildings. I  
6 fix them up. I spend a lot of money. We're  
7 proposing a budget of like \$1.5 million here to make  
8 this a really nice place. And, you know, it's part  
9 of being able to afford putting in sprinklers and  
10 monitoring equipment for this whole building is to be  
11 able to make it better and enlarge the units. A 320-  
12 square-foot unit, it's just a room. And some of the  
13 rooms have only doors off the back. So you'd have to  
14 walk around the back of the building and come in the  
15 back, and that's it. You just have one door off a  
16 back alley between the two buildings. And so they're  
17 not very attractive. You know, these units here are  
18 studios. And you have to walk up a wooden stairs  
19 around the back of the building. And that's your  
20 whole apartment is just that room. It's just one  
21 room. And this is the other one. It's just this is  
22 a room, this is a room, and this is a room. And the  
23 last four units on both levels are just a single room  
24 with a bathroom. The kitchen, living room, bedroom,

1 it's all just a small, you know, regular-sized room.  
2 So, it's not a very good building. And so we're  
3 really just looking to make improvements.

4 I didn't realize that the parking was  
5 going to be such an issue because from the time we've  
6 owned it, the parking is just not an issue at all.  
7 We don't even have the spaces lined. We don't charge  
8 anyone for any money. There's no -- there's so many  
9 parking, I don't know if people would even pay -- in  
10 the lot. I'm not talking about on the street. So,  
11 we have so much free parking for all of our tenants  
12 now that it just didn't seem -- we weren't adding any  
13 apartments, so we didn't think we'd get that many,  
14 you know, we're not going to get 15 extra cars, at  
15 least I didn't think so.

16 JOHN SERGI: What's your other Waltham  
17 property?

18 MARC RESNICK: I own 730 Moody Street.  
19 I own --

20 JOHN SERGI: 730 Moody Street, is that  
21 on the corner?

22 MARC RESNICK: On the corner of -- it  
23 has a spa and a rug store on the first floor. I  
24 renovated all the apartments. It wasn't up to code.

1 I upgraded everything and corrected the previous  
2 violations of the previous owner. I own 8 dash --  
3 it's six properties on Lexington Terrace, right down  
4 the street from here. I just spent about \$1.8  
5 million renovating the six properties. What else?  
6 Oh, I'm renovating right now. I own 333 Moody  
7 Street. I came to this Board and was approved to add  
8 -- to covert the commercial to six residential  
9 upstairs, and we're currently under construction. In  
10 maybe three to five months we're finishing. I'm also  
11 renovating 580 Moody Street, where I have some, you  
12 know, beat up, old apartments in the old Griff  
13 Furniture. So, I'm renovating that one as well. So,  
14 those are just some of the ones I'm doing in Waltham.

15 JOHN SERGI: Okay. Thank you.

16 MARC RESNICK: So, that's why we like  
17 to buy them and then fix them up and make them really  
18 high-quality properties. And we're more than  
19 prepared to install the sprinkler systems and bring  
20 in all the, you know, water lines, and bring it up so  
21 it will be a really nice place. Thank you.

22 BARBARA RANDO, CHAIR: Mr. Hickernell,  
23 any questions at this time?

24 MARK HICKERNELL: I don't personally



1 see a difference in parking requirements between  
2 studios and one-bedrooms. And I think customers at  
3 this locus can take advantage of the public parking  
4 at Common Street, which is a large lot, or Church  
5 Street, which is a smaller lot, but often has spaces  
6 available. Insofar as the City Council has already  
7 approved much larger developments on Elm Street and  
8 Main Street with reliance on public transportation  
9 for the tenants, I find this a reasonable proposal.

10 I have no questions.

11 BARBARA RANDO, CHAIR: Ms. Hankins?

12 SARAH HANKINS: I have no questions.

13 BARBARA RANDO, CHAIR: Mr. Rudnick?

14 MARC RUDNICK: You didn't seem to  
15 provide copies of your finding of facts or brief. I  
16 read them online, but we don't have them here  
17 tonight.

18 ATTORNEY MICHELLE BARATTA: Oh?

19 MARC RUDNICK: Or do you have them?

20 MARK HICKERNELL: They only have to be  
21 provided online.

22 MARC RUDNICK: Okay. Well, I'm doing  
23 it by memory then.

24 BARBARA RANDO, CHAIR: There's a

1 couple of things he wanted to check.

2 ATTORNEY MICHELLE BARATTA: Yeah, I  
3 have --

4 BARBARA RANDO, CHAIR: Do you have a  
5 copy?

6 ATTORNEY MICHELLE BARATTA: I don't  
7 know if I have one for everyone, but I can --

8 BARBARA RANDO, CHAIR: No.

9 MARC RUDNICK: There's several things  
10 in the brief that confused me. And one, right off  
11 the bat, is that there seems to be a confusion about  
12 whether you're asking for a special permit or a  
13 variance. And you refer to the existing instrument  
14 at different times as a special permit and as a  
15 variance. So, can you clarify that first of all?  
16 What is your existing instrument from the '60s and  
17 what are you asking for now?

18 ATTORNEY MICHELLE BARATTA: We did  
19 have some confusion. It's my understanding we are  
20 asking for an amendment to a special permit. So,  
21 it's a special permit that currently exists and we  
22 are amending it.

23 MARC RUDNICK: So you think that  
24 special permits are amended by other special permit

1 amendments not by variances?

2 ATTORNEY MICHELLE BARATTA: This is  
3 just the language that --

4 MARC RUDNICK: You seem to be asking  
5 for a variance to your special permit.

6 ATTORNEY MICHELLE BARATTA: Okay.  
7 Yeah, I mean this is -- honestly, there was some  
8 confusion with it. I spoke with the Law Department  
9 and that was the language that was provided to me, so  
10 that's how I, you know, worded it. If you believe it  
11 to be a variance, then, you know, we can amend our  
12 language to say variance of a special permit or that  
13 we're seeking a variance. But there was some  
14 confusion as well.

15 MARC RUDNICK: Well, you know, I don't  
16 need to be rude --

17 ATTORNEY MICHELLE BARATTA: Yeah.

18 MARC RUDNICK: -- but it's your job to  
19 tell us what you're looking for --

20 ATTORNEY MICHELLE BARATTA: Right.

21 MARC RUDNICK: -- not for us to tell  
22 you what you're looking for.

23 ATTORNEY MICHELLE BARATTA: Right.

24 MARC RUDNICK: Variances and special

1 permits, you have to meet significantly different  
2 criteria in achieving them. And, again, I can't  
3 remember whether I read it in the decision or just in  
4 your brief, but there's confusion on your part about  
5 which it is. It's referred to differently in  
6 different places. So we're going to have to clean  
7 that up ultimately if this goes forward anyway.

8 Tell me a little about that driveway  
9 that looks like it's the driveway of the house on  
10 Appleton Street that goes into your parking lot and  
11 where the -- yeah, that. I drove into your lot  
12 today. I can't really agree that it's that empty.  
13 There were four empty parking spaces along the  
14 building, although two of those were handicap,  
15 reserved for handicap users. And the area in the way  
16 back on the -- whatever that is -- the east side, had  
17 about four out of what looked like maybe eight or ten  
18 available spaces back there. There was no parking on  
19 the other side that you referred to as potentially  
20 more space.

21 MARC RESNICK: There are lines there  
22 now currently, but worn from about 15 years of not  
23 being striped.

24 MARC RUDNICK: So, you do have to

1 understand here that like you have the magic bus  
2 here. Right? You have a 50-year-old special permit,  
3 which is a use variance that this Board could not  
4 issue you today that doesn't describe in any way the  
5 parking. The underlying parking requirement in this  
6 City is generally two space per unit. It's different  
7 in different zones. But you are providing  
8 multifamily housing in a zone that does not allow  
9 multifamily housing. You have that right by special  
10 permit. So, I think you can understand that the  
11 Board is involved in some gray areas here because  
12 this is outside of the typical situation, for  
13 example, of parking where you are trying to vary from  
14 the specific requirement. We don't even see any  
15 requirements, and we're trying to make some  
16 reasonable ones.

17 I'm also satisfied by the parking, but  
18 I'm just trying to explain to you why the Board is  
19 concerned about this and other things.

20 DAVID O'SULLIVAN: David O'Sullivan,  
21 project architect.

22 Basically, we have one entrance off of  
23 Main Street here that accesses parking. And there's  
24 a 20-foot-wide passage off of Appleton, I believe,

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1 that accesses our parking, and it also accesses the  
2 house on Appleton's garage that has parking in front  
3 of the garage. So, basically, the passage here goes  
4 -- is for access in and out of our parking lot. This  
5 one here is for one-way in, I believe, right, Marc,  
6 one-way in off of Main?

7 MARC RESNICK: I think they go both  
8 ways.

9 MARC RUDNICK: Yeah, I went out that  
10 way today.

11 DAVID O'SULLIVAN: I think it's  
12 labeled as one-way in, but it's used both ways.

13 MARC RUDNICK: All right. Well, I  
14 went both ways. So, that dogleg to Appleton is your  
15 property? Do you have an easement over it? Do you  
16 own it?

17 MICHAEL FALKOFF: No, they own an  
18 easement on a 12-foot-wide part of my driveway.

19 BARBARA RANDO, CHAIR: Sir. Sir,  
20 you'll have a chance -- sir, you'll have a chance to  
21 speak --

22 DAVID O'SULLIVAN: The site engineer's  
23 property line shows that that's the property line.

24 BARBARA RANDO, CHAIR: You'll have a

1 chance to speak.

2                   DAVID O'SULLIVAN: And the passageway  
3 is labeled. I didn't look at the deed to know whose  
4 passageway, but I assume the passageway is actually  
5 for the gentleman on Appleton Street to get to his  
6 garage because the property lines of ours goes out to  
7 Appleton. So, basically, there's parking all the way  
8 along kind of the face of the residential units, and  
9 then this parking lot back here, which, as Mr.  
10 Resnick said, is not really well marked. But this is  
11 kind of the -- where the faded lines are with some  
12 extra pavement space, the back that's unmarked that's  
13 kind of used haphazardly for a dumpster.

14                   MARC RUDNICK: Thank you. Are these  
15 apartments going to require two means of egress for  
16 each apartment, and how are you providing that?

17                   DAVID O'SULLIVAN: So, I can kind of  
18 explain a little bit about what's going in here.  
19 Presently, all the units have access from the front.  
20 They're not sprinkled. So, when this building was  
21 built, they required a second means out of the units.  
22 And there are doors along the back of the units that  
23 now go to a very undersized -- it's about -- it varies  
24 between 20 and 22 inches, sometimes it gets as wide

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1 as 30 inches -- access for people to get out their  
2 back door. It is an egress way. It probably  
3 satisfied back then the code for the width of fire  
4 escapes. So that's what happens on both floors right  
5 now. So --

6 MARC RUDNICK: So that's a breezeway  
7 of sorts?

8 DAVID O'SULLIVAN: This is a covered  
9 walkway on the front towards the parking.

10 MARC RUDNICK: Yeah, that's adequately  
11 wide.

12 MARC RUDNICK: That's adequately wide.  
13 And it's even present day egress. The back egress  
14 really qualifies, as close as I can tell, probably  
15 back in the '60s of what they required for widths of  
16 fire escapes. I think this back that is on the first  
17 floor, and it's also located on the second floor,  
18 which is here -- I'm sorry -- I have the existing and  
19 the proposed on each board so that it's easy to kind  
20 of compare. But, basically, along the back here, on  
21 the second floor you've got it with a staircase down  
22 as well. That's partially covered, like about half  
23 of it. So, the proposal now is with the sprinklers,  
24 with the addition, we're basically -- the extra



1 square footage comes from utilizing unfinished space  
2 in the basement. So, what we're converting the first  
3 floor to is several of the units we're doing  
4 basically a -- what amounts to basically a duplexing  
5 of going down. We're proposing to remove the back  
6 fire escapes. We went over that with the Building  
7 Department. That's fine because we will fully  
8 sprinkle the building and codes require that each  
9 unit have access to two means of egress. So, coming  
10 out the door, they have a choice of the stair towards  
11 the commercial end and the stair down the end, which  
12 meets the code for now when you fully sprinkle a  
13 building.

14 We also in the lower level, when we  
15 reworked that, although it's not technically required  
16 by code, but I put it in there as kind of an extra  
17 safety measure, when you have a townhouse unit you  
18 only are required to have access from one level.  
19 Sixth edition used to require access from every  
20 floor. That went away in the more recent codes just  
21 I think because they thought sprinklers solved that.  
22 But what we did do for the lower levels --

23 MARC RUDNICK: You do need egress-  
24 sized bedroom windows though.

1                   DAVID O'SULLIVAN: Right. So, what we  
2 did on the low -- well, you're not required to do  
3 that with the sprinkler either.

4                   MARC RUDNICK: Oh, I see. Okay.

5                   DAVID O'SULLIVAN: But, what we did is  
6 we did put a common corridor down the length of the  
7 basement that comes out to an egress stair that  
8 exists and comes out here to the egress stair. So,  
9 we basically -- these townhouse units, although  
10 they're in the lower level, they will have access to  
11 a second means of egress out from that level.

12                   We also are proposing when we remove  
13 the fire escape piece on the back to do a window well  
14 to get windows along here. And we will actually be  
15 able to provide egress windows, although it's not  
16 technically required in the building code.

17                   MARC RUDNICK: Thank you.

18                   DAVID O'SULLIVAN: So we've taken  
19 those kind of extra measures to develop the basement  
20 into pleasant spaces for tenants.

21                   MARC RUDNICK: You've been to the  
22 Building Department with this already?

23                   DAVID O'SULLIVAN: We did sit down  
24 with the Building Department and kind of reviewed the

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1 concepts and the codes of what we're doing.

2 ATTORNEY MICHELLE BARATTA: And I've  
3 sat with them as well.

4 MARC RUDNICK: Are you here because  
5 you've been rejected by the Building Department or  
6 because you are pre-emptively aware of your own  
7 special permit requirements?

8 DAVID O'SULLIVAN: We were told  
9 because it was a special permit we needed to come  
10 here.

11 MARC RUDNICK: So they might still  
12 have additional requirements from you on a building  
13 code level.

14 DAVID O'SULLIVAN: Certainly would.  
15 Yeah, certainly would I'm sure.

16 MARC RUDNICK: Thank you.

17 DAVID O'SULLIVAN: They didn't do a  
18 thorough code review. We basically showed them  
19 concept drawings to see that our approach was  
20 something they would accept from a code standpoint.

21 ATTORNEY MICHELLE BARATTA: And I  
22 actually sat down with Bill Forte as well. We went  
23 over the plans again and that's how we came up with  
24 the amendment for the special permit. So, he's aware

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1 that we're here today and what we're trying to do.

2 MARC RUDNICK: Thank you. Did you do  
3 an examination of whether you were going to be  
4 required to do affordable housing under Section 9 of  
5 the ordinances?

6 ATTORNEY MICHELLE BARATTA: I know I  
7 spoke with them about that, and we do not need to.

8 MARC RUDNICK: I'm not sure I agree  
9 with that. Your brief made it clear that you are  
10 seeking a special permit for increased intensity of  
11 use, that you have one existing and you're seeking to  
12 amend that. Under our current zoning ordinances, not  
13 in effect in the 1960s, special permits to increase  
14 the intensity of use for projects where there are  
15 more than eight units require that 10 percent of the  
16 units be made affordable, made affordable to families  
17 at the City's required level, which I believe is 80  
18 percent of median. There are other ways to meet the  
19 requirement besides providing the units. Most of  
20 these special permits are issued by the City Council,  
21 but you are here with just one of those kinds of  
22 special permits and seeking relief from the Zoning  
23 Board for it. So, I'd like to get you to give me a  
24 real answer about whether --

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1 ATTORNEY MICHELLE BARATTA: Yes.

2 MARC RUDNICK: Not your off-the-cuff  
3 opinion, but an opinion supported by case law that  
4 you are not subject to the City's inclusionary zoning  
5 requirements.

6 ATTORNEY MICHELLE BARATTA: Well,  
7 there's no FAR requirements in this district, so it's  
8 actually not an intensity of use issue.

9 MARC RUDNICK: You characterized it as  
10 that in your finding of facts.

11 ATTORNEY MICHELLE BARATTA: I misused  
12 the words when I was doing it, but it's not an -- the  
13 intensity of use is not what we're seeking a variance  
14 for. It's just --

15 MARC RUDNICK: So, again, that will  
16 have to change. I can't say it's okay just because  
17 you say it was intensity of use but now it's not  
18 intensity of use.

19 ATTORNEY MICHELLE BARATTA: Right.

20 MARC RUDNICK: So, you may be right.  
21 I'm not necessarily saying you're wrong. But if the  
22 things you write me are we're asking for intensity of  
23 use, and then your testimony is that you're not, I'm  
24 confused and unable to opine.

1 ATTORNEY MICHELLE BARATTA: Right.

2 MARC RUDNICK: So I'd like to see that  
3 cleared up at some point. Even though there is no  
4 FAR in that district, there's also no multifamily  
5 housing allowed in that district.

6 ATTORNEY MICHELLE BARATTA: Correct.  
7 Yes.

8 MARC RUDNICK: So, it does seem --  
9 again, I'm not a lawyer nor a city councilor, but  
10 it's sure looking to me like that applies, and I'd  
11 like you to show me how it doesn't apply.

12 MARC RESNICK: There might be an  
13 actual intensity of use, but we would not need relief  
14 from intensity of use since there's no FAR. So that  
15 when she said that it is an increase in intensity of  
16 use, in layman's terms it is. But for needing  
17 relief, it would not be.

18 ATTORNEY MICHELLE BARATTA: Right.  
19 Which is why, again, we don't need to go to the City  
20 Council. You know, we did do research. I'm sorry  
21 that I don't have case law to present to you on it.  
22 But the research that we've done and the discussions  
23 that we've had with people involved is that this is  
24 an amendment to the special permit because the

1 special permit was already -- it was granted by the  
2 Zoning Board. We have to come back to the Zoning  
3 Board because you're the only one with the power to  
4 amend your own decision.

5 MARC RUDNICK: Yeah, I agree. We're  
6 in an unusual situation.

7 ATTORNEY MICHELLE BARATTA: Yes.

8 MARC RUDNICK: Section 9 also goes to  
9 some length to discuss the voluntary compliance with  
10 the ordinance. People who violate the FAR  
11 restrictions in business zones that have FAR  
12 restrictions are required to live up to the  
13 ordinance. The City appreciates the voluntary  
14 application of affordable housing by anyone. And  
15 that's laid out in the ordinance. I feel like that  
16 might be a little applicable to your project since  
17 you have this fantastic multifamily housing in a zone  
18 that does not allow multifamily housing. You have a  
19 20-unit building in a zone that allows one- and two-  
20 family units. We are fundamentally in a crisis of  
21 affordable housing in this community. That's why we  
22 have inclusionary zoning. And, you know, I just feel  
23 like this is -- it looks just like the right kind of  
24 project to have some voluntary compliance. So, I

1 just wanted to put that out there.

2 Thank you. No further questions.

3 BARBARA RANDO, CHAIR: All right. Any  
4 other questions from Board members?

5 (No response.)

6 BARBARA RANDO, CHAIR: Is there anyone  
7 in the audience in favor of this petition? One, two  
8 people, three people, four. Four in favor.

9 Is there anyone in opposition?

10 MICHAEL FALKOFF: I believe I'm in  
11 opposition, or at least I'd like an opportunity to  
12 speak.

13 BARBARA RANDO, CHAIR: Sure. Go up to  
14 the podium. Give your name and address and tell us  
15 your story.

16 MICHAEL FALKOFF: My name is Michael  
17 Falkoff. I live at 22 Appleton Street. That 20-foot  
18 lot passage that was alluded to is a 12-foot-wide  
19 easement they have, which is also my driveway. So,  
20 my driveway is subject to a 12-foot-wide easement in  
21 their favor. I doubt that their property goes all  
22 the way out to Appleton Street. Four or five years  
23 ago there was a brouhaha when the fellow next to me  
24 discovered that the property had taken 12 feet off



1 the back of their property line and erected a fence  
2 there. And that was settled somehow in the Land  
3 Court. I don't know how they settled it. They might  
4 have given some property right that extended a foot  
5 wide on his side of the driveway. He doesn't use  
6 that driveway at all. He's got his own within his  
7 own property. But, anyhow, it's a 12-foot-wide  
8 easement they have to Appleton Street. The only  
9 other access is something around 10- or 12-foot wide  
10 on Main Street. So, it's very restricted as far as  
11 traffic access.

12 My understanding about the easement  
13 was that it was formed -- my house is an 1894 house.  
14 It was formed so that the person, which would have  
15 been a single house back then, behind there would  
16 have access from both streets. I don't know what  
17 relationship it had to anything that's been built  
18 subsequently, but I do know that as of 1954 it was  
19 still a 12-foot-wide easement for the benefit of that  
20 parcel on which your building sits. And I'm a little  
21 shocked that this is the first I've heard about this  
22 proposed development that they cavalierly refer to a  
23 20-foot-wide drive, which they assumed I have some  
24 rights to use because it goes to my driveway and my

1 parking space that sticks out another eight feet.  
2 So, just to correct that in terms of landownership,  
3 and title, and existing rights for that easement.

4 I don't know if I have any objections  
5 to it or not, but I think you probably have very  
6 serious concerns about the curb cuts and what sort of  
7 access they would need to support doubling the  
8 occupancy there.

9 And, as a person who has dealt with a  
10 lot of young office interns and folks like that, I'm  
11 pretty much aware that a reason for converting to  
12 two-bedroom apartments is so you can get two young  
13 employed people in there each paying \$1,000 so you  
14 can charge \$2,000 for the apartment instead of \$800.  
15 And so it's really geared to the sort of system  
16 that's increasing the number of cars, increasing the  
17 occupancy, but not in a sort of family-occupancy way.  
18 And I think you should get a much better  
19 understanding of what you're being asked to approve  
20 here. If they mistake a 12-foot easement for a 25-  
21 foot-wide passage, that 20 feet would include my  
22 dining room. There's an old Victorian bay that  
23 angles out. So, you've been given very loose  
24 numbers.

Waltham Zoning Board of Appeals/3-21-17/51

1                   MARK HICKERNELL: So, you say that the  
2 numbers they're presenting are factually incorrect?

3                   MICHAEL FALKOFF: Well, the 20-foot  
4 passage is definitely factually incorrect. It's 14  
5 feet from the brick wall of my neighbor to the  
6 fieldstone foundation of my house at that point.  
7 And, actually, it's about 17 or 18 feet. But it's  
8 definitely not 20 feet. And the deed is definitely -  
9 - my driveway is subject to an easement 12 feet wide  
10 in their favor. It's not that I've got an easement  
11 from your property.

12                   ATTORNEY MICHELLE BARATTA: Well, I  
13 actually have the deed.

14                   MARK HICKERNELL: This all has to go  
15 through the Chair.

16                   ATTORNEY MICHELLE BARATTA: And the  
17 deed does grant this piece.

18                   MICHAEL FALKOFF: It grants an  
19 easement, yeah.

20                   MARK HICKERNELL: They can't talk to  
21 each other. They have to go through --

22                   BARBARA RANDO, CHAIR: Excuse me. You  
23 have to go through the Chair if you're going to ask a  
24 question. He was asking --

Waltham Zoning Board of Appeals/3-21-17/52

1

2                   MICHAEL FALKOFF: Well, she was saying  
3 she has a deed to something. I know what --

4                   ATTORNEY MICHELLE BARATTA: I was just  
5 -- this is our --

6                   BARBARA RANDO, CHAIR: Talk to me, not  
7 to him.

8                   ATTORNEY MICHELLE BARATTA: I would  
9 just dispute that that's his property. It's clearly  
10 marked on the deed that this is 520 Main Street as  
11 it's marked on here on the plot plan.

12                   MICHAEL FALKOFF: Could I see the deed  
13 you have because this thing has a history of usurping  
14 20 feet from the neighbors without ever telling them,  
15 and that had to get resolved in Land Court about  
16 eight years ago. Okay. Well, I'd have to see a copy  
17 of that to see what the heck it's referring to. But  
18 it says it's shown, but not for property as conveyed  
19 by any deed or anything.

20                   BARBARA RANDO, CHAIR: Sir, is parking  
21 allowed on Appleton Street?

22                   MICHAEL FALKOFF: They changed it to  
23 one side.

24                   BARBARA RANDO, CHAIR: Which side?

Waltham Zoning Board of Appeals/3-21-17/53

1 Your side or the other side?

2 MICHAEL FALKOFF: My side.

3 BARBARA RANDO, CHAIR: Do you have a  
4 problem with parking there?

5 MICHAEL FALKOFF: It's always parked  
6 solid.

7 BARBARA RANDO, CHAIR: It is?

8 MICHAEL FALKOFF: Yeah.

9 BARBARA RANDO, CHAIR: Do you know of  
10 any that would be going into the doctors or that  
11 building at all?

12 MICHAEL FALKOFF: No, no. It's people  
13 that live in various rooming houses and apartments on  
14 the street. And the nearest sort of public parking  
15 would be over off of Central on what used to be a  
16 school. That's a pretty big space. Or, at the lot -  
17 -

18 BARBARA RANDO, CHAIR: And that's only  
19 certain times, after school and before school starts?

20 MICHAEL FALKOFF: Well, I think it's  
21 not currently a school. I'm not sure what the  
22 building is used for, if anything. But that's a very  
23 large parking lot in a former school area. And then  
24 there's a little bit of parking at the old folks'

Waltham Zoning Board of Appeals/3-21-17/54

1 home a little bit west, or east.

2 BARBARA RANDO, CHAIR: All right.

3 MICHAEL FALKOFF: But, yeah, there's  
4 not much of anything on the street.

5 BARBARA RANDO, CHAIR: Thank you.

6 MARC RUDNICK: Mr. Falkoff, do you  
7 park your car in your driveway generally?

8 MICHAEL FALKOFF: I generally either  
9 park it in my driveway -- and I've had immense  
10 problems with the snowplows there covering my car  
11 with snow for a month at a time, or knocking off the  
12 taillights, or bashing in the foundation of my house  
13 in a cellar window as they clear snow out of that  
14 fairly large parking lot -- or I park it on the  
15 street. I prefer to park it on the street for  
16 convenience, moving folks in and out and stuff like  
17 that.

18 MARC RUDNICK: There's no dispute here  
19 that the driveway is shared, regardless of whether  
20 it's deeded ownership or easement ownership. Mr.  
21 Falkoff has a right to a part of the driveway.

22 MARC RESNICK: Oh, absolutely.

23 MICHAEL FALKOFF: Oh, I have a deed to  
24 the driveway subject to an easement 12 feet wide in

1 favor of them. But that easement is, as cited in the  
2 deed from whatever -- I think it was like an easement  
3 back when it was for a horse in a single-family house  
4 back there.

5 MARC RUDNICK: And other than the  
6 problems with snow throwing, is there any impact on  
7 you to have them use the 12-foot part of the driveway  
8 as egress from their parking lot?

9 MICHAEL FALKOFF: No, but the --

10 MARC RUDNICK: I'm not belittling the  
11 snow problems. I'm just saying other than --

12 MICHAEL FALKOFF: No. The guy next to  
13 me put up a solid cobblestone wall. And I don't like  
14 it when people ditch their cars on my lawn and stuff  
15 like that. So there are a few nuisance sorts of  
16 things. And, also, it is very narrow. And if I put  
17 up a wall where I have a definite property line with  
18 no easements, then you would have a 12-foot-wide, you  
19 know, concrete-bounded passage going 45 feet past my  
20 garage and into the parking lot.

21 MARC RUDNICK: Thank you.

22 MICHAEL FALKOFF: So it's a touchy  
23 thing in terms of ability for them to freely build,  
24 freely arrange things.

Waltham Zoning Board of Appeals/3-21-17/56

1                   MARC RUDNICK: Thank you.

2                   BARBARA RANDO, CHAIR: Anyone in  
3 opposition? Anyone else? Just give your name and  
4 address.

5                   SUSAN GRUBBS: Susan Grubbs, 25 Cross  
6 Street.

7                   STENOGRAPHER: Could you spell your  
8 last name for the record?

9                   SUSAN GRUBBS: G-r-u-b-b-s. And I  
10 can't say I'm actually opposed, but I live in the  
11 back part of the parking lot where the dumpster is.  
12 Directly out my slider is the dumpster. And I'm  
13 curious if the building is currently full of  
14 occupants at this time?

15                   MARC RESNICK: It's full now.

16                   SUSAN GRUBBS: Okay. Because we talk  
17 about parking. There's a limited amount of spaces in  
18 the back there that probably could be used. The  
19 dumpster is full to overflowing on the day of pickup.

20                   MARC RESNICK: Okay.

21                   SUSAN GRUBBS: You would most  
22 certainly need a second dumpster. We've had rodent  
23 issues in the neighborhood. The cover is never  
24 closed on the dumpster except for when it's first



1 emptied. So, that makes me a bit nervous.

2 Noise level, there's not a lot of  
3 space. It's a small neighborhood. Twenty feet from  
4 like my door to the parking lot. The noise level,  
5 I'm a little bit concerned, fumes, you know, new  
6 vehicles coming.

7 MARC RESNICK: Is there --

8 BARBARA RANDO, CHAIR: Sir, let her  
9 speak.

10 SUSAN GRUBBS: Yeah, I'm right at the  
11 end, right at the end. I look straight out to the  
12 dumpster. So, if you stand by the dumpster and look  
13 left, I'm there.

14 MARC RESNICK: Okay.

15 SUSAN GRUBBS: Now, that also brings  
16 up the trees that are there at the base of the  
17 property at the very end. Dangerous, very dangerous.  
18 I had a huge branch, which whoever does the  
19 maintenance there, lovely man, came on the property,  
20 asked us, cleaned it all up, brought his own bag.  
21 They did a really good job. With maintenance,  
22 they're always cleaning up. It's always clean. But,  
23 again, the dumpster is more than full when it's time  
24 for pickup. I'm concerned. More people, more trash,

1 and the trees. They swing; they sway in the wind.  
2 And I go, they're swinging this way, so that's the  
3 apartment building on that side and the people on  
4 your side. They sway this way, I get nervous because  
5 then that's my house and my neighbor's house. So  
6 they should be addressed as well. I wouldn't want a  
7 whole lot of people out there parking if those trees  
8 are going to be falling down in a strong wind.

9 And I think that's it. Was that --  
10 BARBARA RANDO, CHAIR: I'd like to ask  
11 you --

12 SUSAN GRUBBS: This is my sister. She  
13 lives in my house.

14 BARBARA RANDO, CHAIR: I'd like to ask  
15 you a question. Where you live so close to the  
16 garage, have you seen patients for the dentist or  
17 people going into the realtor's office or the -- I  
18 think there's a therapist and there's an artist.  
19 Have you seen people going in there? Do they park in  
20 the garage or do they park on Cross Street and  
21 wherever they can find a --

22 SUSAN GRUBBS: I honestly don't know.  
23 I work full-time. My sister is in and out. My  
24 handicap brother lives in my home as well. And his

1 bedroom borders that same wall. So, again, the noise  
2 level makes me a little bit nervous. But I have no  
3 idea where people park. I look out there. I  
4 actually took a few pictures. It does not appear  
5 that there's more than say 12 spaces that could be  
6 added, and that's with moving the dumpsters way back,  
7 like up against the fence abutting the other property  
8 at the very back. And I'd be happy.

9 But, yeah, so the parking makes me  
10 nervous. And because we don't have a lot of parking,  
11 we, in my house right now, we only have two vehicles,  
12 one little driveway, park on the street. Snow  
13 emergency, we're over here on Common Street. Get up  
14 in the morning, drive to Common Street, either put  
15 money in the meter or take your car. People are not  
16 going to go park in public parking --

17 BARBARA RANDO, CHAIR: No.

18 SUSAN GRUBBS: -- and then go home and  
19 go to bed, not unless they absolutely have to, again,  
20 if it's a snow emergency. So there really does have  
21 to be designated spaces for the amount of people that  
22 are there because there's just none. There's no --

23 JOANNE RICHARDS: There's no parking  
24 anywhere, our street.

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1                   SUSAN GRUBBS: And now Main Street is  
2 two-hour parking. So we can't even park there on  
3 Saturday. Well, we could for two hours, but --

4                   MARC RESNICK: Now, Cross Street is --

5                   BARBARA RANDO, CHAIR: Sir.

6                   Would you give your name and address  
7 for the record?

8                   JOANNE RICHARDS: Joanne Richards, and  
9 I live at 25 Cross Street with Susan and my brother.

10                  BARBARA RANDO, CHAIR: And you were  
11 going to say something?

12                  JOANNE RICHARDS: Well, I really have  
13 a concern about the trees because that snowstorm last  
14 Tuesday, we were out there shoveling our back deck  
15 for safety issue for our brother who is handicapped.  
16 I was out there. I heard a crack. And I said to  
17 her, "I think one of those tree limbs are coming  
18 down." And so we went in the house. And not half  
19 hour later, the tree limb came down, broke the fence.  
20 Now, this is the second time a tree limb came down  
21 and broke the fence.

22                  SUSAN GRUBBS: It's not our fence.

23                  JOANNE RICHARDS: Right. It's not our  
24 fence. It belongs -- it's on their property. The

1 last time three panels fell down into their parking  
2 lot. I think it was before you owned it. They came  
3 and they just pushed them back up and fixed one post.  
4 So, it was still hanging. A guy in that parking lot  
5 had backed into the post, bent the post further down,  
6 one of them went down.

7 So, the trees that are there now, I'm  
8 afraid if I'm out there, if my grandkids are out  
9 there, in our own backyard, and that tree limb comes  
10 down, something is going to happen. She has tried to  
11 address it before with the previous owner.

12 SUSAN GRUBBS: The previous owner.

13 JOANNE RICHARDS: And they did nothing  
14 about it. And that dumpster, we get rats now because  
15 of the dumpsters. And we're afraid, more people,  
16 another dumpster, it's going to get moved closer to  
17 our house. And we don't want it. We've lived there  
18 -- I've lived there for 47 years and we've never had  
19 rats. We never had these problems. We can't even  
20 park on our own street. I have to park on Central  
21 Street or Heard Street if I come home after 3:00 in  
22 the afternoon because everybody else is parking  
23 there. There's just not enough parking and I'm  
24 afraid it's going to be an overflow now. That's all

Waltham Zoning Board of Appeals/3-21-17/62

1 I have I guess.

2 BARBARA RANDO, CHAIR: Thank you.

3 Do you have questions? Do you want to  
4 ask questions?

5 MARK HICKERNELL: I do.

6 BARBARA RANDO, CHAIR: Go ahead.

7 MARK HICKERNELL: Yes. Thank you for  
8 bringing those concerns. And I will later urge the  
9 Petitioner to address them.

10 But may I just ask, how many parking  
11 spots do you have and how many bedrooms do you have  
12 in your unit?

13 JOANNE RICHARDS: We have one driveway  
14 that fits one vehicle. That's it.

15 MARK HICKERNELL: And how many  
16 bedrooms?

17 JOANNE RICHARDS: Four.

18 SUSAN GRUBBS: Four.

19 MARK HICKERNELL: Okay. Thank you.

20 SUSAN GRUBBS: Single-family house.

21 JOANNE RICHARDS: Yeah.

22 MARK HICKERNELL: Okay. Thank you.

23 BARBARA RANDO, CHAIR: When did you  
24 buy it, the house?

Waltham Zoning Board of Appeals/3-21-17/63

1                   SUSAN GRUBBS: My parents bought it in  
2 1970. And when my father died, I took it over. And  
3 then my brother was there, and then my sister came  
4 after her husband passed.

5                   BARBARA RANDO, CHAIR: Any other  
6 questions, Mr. Hickernell, or Mr. Rudnick? I don't  
7 know why I get you confused.

8                   MARC RUDNICK: We look alike.

9                   BARBARA RANDO, CHAIR: Yeah. Right.  
10 Exactly.

11                   JOANNE RICHARDS: I think he had a  
12 question though. Thank you.

13                   SUSAN GRUBBS: Thank you.

14                   MICHAEL FALKOFF: Well, I had a  
15 question for you, just sort of clarifying. My  
16 impression is that Cross Street is one way so that  
17 even if they did have traffic and they went onto  
18 Cross Street they couldn't get back over to this unit  
19 because they would have to go the wrong way on  
20 Central Street.

21                   SUSAN GRUBBS: Correct.

22                   MICHAEL FALKOFF: So we're really not  
23 talking about flexibility of parking in that area.

24                   SUSAN GRUBBS: Right.

Waltham Zoning Board of Appeals/3-21-17/64

1 MARK HICKERNELL: I'm not quite sure I  
2 follow. Can you explain?

3 MICHAEL FALKOFF: Cross Street is one-  
4 way off of Main.

5 MARK HICKERNELL: I know that.

6 MICHAEL FALKOFF: It hits Central,  
7 which then goes one-way toward --

8 MARK HICKERNELL: I'm familiar with  
9 the neighborhood, yes.

10 MICHAEL FALKOFF: So if people were  
11 trying to get onto Cross Street to park, they  
12 wouldn't know if there is a space because it's very  
13 narrow and usually parked up. And you wouldn't be  
14 able to loop back and get into the other spaces for  
15 this place without going all the way around.

16 MARK HICKERNELL: Which is not an  
17 impossible thing to do.

18 MICHAEL FALKOFF: Which is not  
19 impossible, but it means that parking isn't really  
20 flexible. You can cruise, you know --

21 MARK HICKERNELL: That's a matter of  
22 argument. If you want to put your car somewhere,  
23 you're going to find a place to put it.

24 MICHAEL FALKOFF: Yeah.



Waltham Zoning Board of Appeals/3-21-17/65

1 MARK HICKERNELL: Okay. Thank you.

2 SUSAN GRUBBS: Thank you.

3 JOANNE RICHARDS: Thank you.

4 BARBARA RANDO, CHAIR: Anyone else in  
5 opposition? Anyone seeking information?

6 (No response.)

7 BARBARA RANDO, CHAIR: Seeing none.  
8 All right. What is the wish of the Board?

9 MARC RUDNICK: I wish to ask some more  
10 questions actually.

11 BARBARA RANDO, CHAIR: Go right ahead.

12 MARC RUDNICK: The stated hardship is  
13 that the Petitioner could not convert the  
14 underutilized studio apartments and one-bedroom units  
15 without the amendment. Could you flesh that out a  
16 little bit?

17 ATTORNEY MICHELLE BARATTA: Yes.  
18 Well, we were unable to go to the Building Department  
19 and seek a permit to renovate the interior, to  
20 modernize it, to -- in addition to adding additional  
21 bedrooms, obviously we're seeking to update the fire  
22 and the sprinkler systems. These things come at a  
23 cost. So, obviously, we need to -- and, also, in  
24 addition to modernizing, all these things come at a

1 cost. So, in order to make that all feasible, we  
2 need to add some of these additional bedrooms. But  
3 then, of course, in order to do that, we are unable  
4 to get a building permit to do so.

5 MARC RUDNICK: But if all you wanted  
6 to do was modernize the apartments, new kitchen  
7 cabinets, or appliances, or something, would you be  
8 denied a building permit for that?

9 ATTORNEY MICHELLE BARATTA: No, but it  
10 would be economically infeasible to do so, especially  
11 with the studio units, which just are not, as Mr.  
12 Resnick pointed out, they're just little rooms. And  
13 if we were to do that, you would not be able to  
14 charge rent to accommodate that for someone who is  
15 only getting a studio. People will not want to pay  
16 even for beautiful stainless steel brand new  
17 appliances if it's just a studio unit. But if they  
18 were to have a larger unit, they'd be willing to pay  
19 for that and then we can fully modernize the spaces  
20 and attract families and young couples and people who  
21 can use that space.

22 MARC RUDNICK: I'm not quite getting  
23 the hardship. It sounds like you're not able to  
24 renovate to the lovely standard that you'd like to

1 renovate to or we'd all like to I guess. But --

2 ATTORNEY MICHELLE BARATTA: Well, part  
3 of the hardship also has to do with the shape of the  
4 lot size. We are constrained with the size of the  
5 building that we have, constrained with the options  
6 for the building. It is as very large parcel, but  
7 it's very, as you can see, uniquely shaped. You  
8 can't really do much with the little passageways  
9 there. We're not able to restructure the building in  
10 a way that would allow for larger parking, larger  
11 units. So, the hardship really stems mostly from  
12 we're stuck with the building that we have. We can't  
13 do anything else with it on this kind of a parcel.

14 MARC RUDNICK: Are you making good  
15 economic use of the property now?

16 ATTORNEY MICHELLE BARATTA: Not as --  
17 not really at this point. I think it was good  
18 economic usage for 1964. But in 2017, studios and  
19 tiny one-bedroom units are not good economic use of  
20 the space at all.

21 MARC RUDNICK: You characterize the  
22 studio apartments as underutilized. I think Mr.  
23 Resnick just presented testimony that it's fully  
24 occupied.

1                   ATTORNEY MICHELLE BARATTA: Right. I  
2 didn't mean underutilized in that they were empty. I  
3 mean underutilized in that the space could be better  
4 used as one-bedrooms and these duplexes because  
5 there's empty space in the building. So the studios  
6 could be utilized more fully.

7                   MARC RUDNICK: Do you have some kind  
8 of something that tells me that studio apartments are  
9 not desirable or needed in this community? Because  
10 that seems to be what you're asserting.

11                   MARC RESNICK: Well, what's going on  
12 in this building is --

13                   MARC RUDNICK: Excuse me. In the  
14 additional sentence of your hardship, it asserts that  
15 there's a need for additional residential housing in  
16 the locus area, and the current units are not  
17 designed in a way to attract families.

18                   ATTORNEY MICHELLE BARATTA: Right.

19                   MARC RUDNICK: I guess I'd like you to  
20 show me where it says in the City's housing plan or  
21 in its master plan where family housing is what we  
22 need and we don't need SRO units or -- you know,  
23 that's what you're asserting.

24                   ATTORNEY MICHELLE BARATTA: Right.

Waltham Zoning Board of Appeals/3-21-17/69

1                   MARC RUDNICK:     You're asserting is  
2     there is a need for family units, and the kind of  
3     units you have are underutilized, implying that  
4     they're not needed.     That's not my recognition of  
5     what's needed for housing in this community.     So, if  
6     you can present me with something that underscores  
7     your assertion, I'd appreciate it.

8                   ATTORNEY MICHELLE BARATTA:     Right.

9                   BARBARA RANDO, CHAIR:     Speak into the  
10    microphone.

11                  MARK HICKERNELL:     Do we have a master  
12    plan?

13                  MARC RESNICK:     So, I believe what we  
14    mean is that the building is underutilized.     The  
15    existing structure is locked in by a special permit  
16    with special relief.     So, that's how it all started.  
17    It's on an irregular lot with an irregular shape, so  
18    the building was built out of a hardship.     So, it  
19    just happened to say inside that ruling that there  
20    would be eight studios and 12 one-beds.     Had they not  
21    mentioned that, we could convert the spaces in a  
22    better way.

23                  So, what I do is I usually convert  
24    spaces to better utilize spaces, eliminate hallways,

1 open spaces up, make it for modern times. And so we  
2 have 5,000 or 6,000 square feet of lower-level space  
3 that's inside the building that's completely  
4 unutilized. So, by combining that with the studios,  
5 we make a really poor apartment an excellent  
6 apartment. And that's how -- the building, the  
7 studios are underutilized because they could be two-  
8 bedroom apartments. They could be really nice two-  
9 bedroom apartments. And these ones are really small,  
10 so we're attracting, you know, single people, you  
11 know, that don't have much money. And so we've moved  
12 some -- we have subsidized housing in there. So, we  
13 take vouchers. We probably have three, or four, or  
14 five current subsidized tenants.

15 MARC RUDNICK: Section 8?

16 MARC RESNICK: I'm not positive it's a  
17 Section 8 program, and I think there's more than one  
18 program in there. I get a little mixed up with the -  
19 - SMOC or something? So we have quite a few  
20 subsidized. We've moved a subsidized tenant from one  
21 unit to the other unit. We moved a subsidized tenant  
22 from a unit here, and in there intent to have  
23 longevity, have moved to my building on Hall Street  
24 where we told them they could stay forever because we

1 weren't going to be renovating their apartment.

2           So, the other thing is a lot of these  
3 units are sort of spacious one-beds that are not well  
4 utilized either. And so some of the units,  
5 especially on the top floor, are just being split in  
6 half so that one gigantic bedroom becomes two  
7 bedrooms. And we find that not only -- so, a lot of  
8 times -- it's not really we're not going to get  
9 families here with three children. But we will get  
10 couples. And a lot of times a couple doesn't really  
11 want a one-bedroom apartment. They want a bedroom  
12 and more house. So, by calling them a two-bed, a lot  
13 of times the second room isn't actually a bedroom.  
14 It's their den, it's their home office. And by  
15 making the apartments really nice, you know, we  
16 attract really nice people usually that utilize the  
17 space and have money to pay for high-quality spaces.  
18 And so that's what we're really trying to accomplish.

19           And they wanted us to bring up -- when  
20 I first went to the Building Department, they asked  
21 about the sprinkler system. So, if we can't really  
22 do a good plan, we're sort of going to do a no plan  
23 because I can't just go in there and rip the place  
24 apart and just spend like a million dollars and have

Waltham Zoning Board of Appeals/3-21-17/72

1 a bunch of one-beds and studios. So, we'd rather  
2 spend much more money and then add in the proper fire  
3 safety equipment that most of the buildings now that  
4 we buy get modernized.

5 MARC RUDNICK: So you got the sense  
6 from the Building Department that a moderate rehab of  
7 the building would not cause them to require a  
8 sprinkler system?

9 MARC RESNICK: If you do almost -- I  
10 mean it's pretty minimal. I'm not sure what code  
11 would apply here. Is it 30 percent of the assessed  
12 value of the building?

13 MARC RUDNICK: So, my understanding is  
14 that sprinkler systems are required basically at the  
15 whim of the Building Inspector of the City?

16 DAVID O'SULLIVAN: No. There is code  
17 requirements that if you renovated a certain  
18 percentage of the building, it deals with the level  
19 of renovation based on the building code.

20 MARC RUDNICK: Correct. And my  
21 understanding is that the Building Inspector can  
22 require it on less of a renovation basis. You're  
23 talking about, well, you're absolutely required to do  
24 what --



Waltham Zoning Board of Appeals/3-21-17/73

1                   DAVID O'SULLIVAN:     I'm not really  
2     sure. My experience in the City of Waltham has been  
3     that they've been pretty good on exactly following  
4     the code.

5                   MARC RUDNICK:     I'm talking about the  
6     building inspector of every city and town in  
7     Massachusetts has that authority.

8                   DAVID O'SULLIVAN:     If they deem  
9     something unsafe, they have that authority.

10                  MARC RUDNICK:     Correct.

11                  DAVID O'SULLIVAN:     Right. Yes.

12                  MARC RUDNICK:     Okay. So, but you  
13     haven't gotten the message from the Building  
14     Department that with some moderate rehab at the level  
15     that you're hoping not to be limited to they would  
16     forgive the requirement, or you wouldn't meet a  
17     requirement?

18                  DAVID O'SULLIVAN:     They have indicated  
19     that if we do any amount of renovation, they are  
20     going to hold us to the thresholdable code, yes.

21                  MARC RESNICK:     So, we want to go above  
22     and beyond just minimal and go all out.

23                  MARC RUDNICK:     Yeah, I understand.  
24     And how are you going to be handling the other 19

1 tenants in your building now?

2 MARC RESNICK: Well, for the building  
3 plan, what I really planned is I would build out the  
4 lower level without moving anybody out at all.

5 BARBARA RANDO, CHAIR: You have to go  
6 to the microphone.

7 MARC RESNICK: I'm sorry. So, on the  
8 lower level --

9 MARC RUDNICK: That's the basement  
10 you're talking about?

11 MARC RESNICK: Yeah, the basement  
12 level.

13 MARC RUDNICK: It's currently  
14 unoccupied and will become parts of the duplexes.

15 MARC RESNICK: I would frame it all  
16 out, build it all out, and then start from there. So  
17 then some of the units will be duplexed. Most of the  
18 top floor units are mostly the same. And I basically  
19 put several people in some of the units that know  
20 they're on a short-term. And it was as people have  
21 moved out. You know, we explained to them that, you  
22 know, you can live here, but this building is  
23 hopefully going to be approved and that we're going  
24 to build it out. So, some of them know that they're

1 on, but not all of them. And some of them have been  
2 there for ten or 15 years. We've allowed everyone  
3 that lived in the building to stay in the building.  
4 We didn't raise -- only one person's rent I raised.  
5 She was only paying \$600. And she told me she was a  
6 relative of the previous owner. I'm like, "I'm not  
7 your brother-in-law." But even then she still stayed  
8 even though we raised her rent because we didn't  
9 raise it to market. I don't even know if she pays  
10 \$1,000. And we're renting one-beds there for like  
11 \$1,600.

12 So, the Building Department has  
13 allowed me to do some moderate renovation already.  
14 So, I've upgraded some kitchens within the building.  
15 And I've installed some hardwood floors in units on  
16 the second floors that will not have their layout  
17 truly changed. And there was no duplexes from the  
18 second floor to the first floor. It's just first  
19 floors to lower levels.

20 We're also going to -- there are two  
21 little tiny studios on the second floor, and those  
22 will be combined. So this will become one unit, and  
23 that will become one unit. So, in a way, we lost two  
24 units. And then we're going to subdivide some on the

1 first floor in half again, and then add huge sections  
2 of, you know, the lower level to them. So like the  
3 300-square-foot apartments will become 900-square-  
4 foot apartments. It's a pretty big difference, you  
5 know, certainly for life quality.

6 MARC RUDNICK: So you're adding a  
7 significant amount of square footage to the units by  
8 grabbing this basement space.

9 MARC RESNICK: Yeah.

10 MARC RUDNICK: I didn't quite  
11 understand until then how you were going to do this.  
12 I met somebody who lives in one of your units -- who  
13 lived, years ago.

14 DAVID O'SULLIVAN: So, the building as  
15 it stands now, from my calcs, roughly 20,000, just  
16 over 20,400 square feet of finished living space.  
17 When we are through with it, it would have about  
18 24,460. So that's kind of the difference in the  
19 thing. It's about 4,000 square feet, actually, that  
20 is in the basement that we're trying to utilize.

21 MARC RUDNICK: So you own this  
22 building and you're intending to keep owning this  
23 building and be the landlord in this building?

24 MARC RESNICK: Correct.

Waltham Zoning Board of Appeals/3-21-17/77

1                   MARC RUDNICK: What's your opportunity  
2 for conversion to condominiums here?

3                   MARC RESNICK: Not very good.

4                   MARC RUDNICK: I think nothing, right,  
5 because you're special permit doesn't allow that.

6                   MARC RESNICK: Oh, well then none.

7                   MARC RUDNICK: I mean you can come  
8 back for that some other time.

9                   MARC RESNICK: This building isn't  
10 really designed more like a residential apartment  
11 building. It doesn't have a nice hallway or, you  
12 know, it was -- what it was was, believe it or not,  
13 the previous owner's friend built a hotel in New  
14 Jersey. And he got free floor plans. And he built  
15 his hotel there and called it an apartment building.

16                   MARC RUDNICK: Yes, it looks just like  
17 a motel I stayed in in New Jersey.

18                   MARC RESNICK: So, it's not a very --  
19 you know, it's fine for a motel. You only come for  
20 like one night or two. But, you know, a 300-square-  
21 foot -- it looks like a hotel room. It's not really  
22 an apartment.

23                   MARC RUDNICK: Yeah. Thank you. No  
24 further questions.

Waltham Zoning Board of Appeals/3-21-17/78

1 BARBARA RANDO, CHAIR: One of the  
2 neighbors mentioned that you may need two dumpsters.  
3 Is that true? What is the code there for --

4 MARC RESNICK: Well, I would recommend  
5 not more dumpsters, but more pickups because two  
6 dumpsters are just giving them more room to throw the  
7 stuff. And the faster you take it away. So that may  
8 be part of what's happened is that now that all the  
9 units are occupied. So, when we bought it, they  
10 weren't all occupied. And we cleaned up the ones and  
11 we keep it occupied. And so there are -- you know,  
12 when you asked if they were occupied, I was thinking  
13 if one was under renovation right now because then  
14 there would be one empty. But they're all reoccupied  
15 again. Usually it takes us about 30 days to turn one  
16 over. And we install hardware floors, make them  
17 nicer.

18 BARBARA RANDO, CHAIR: Is there a code  
19 as to dumpsters, how many you have to have per  
20 apartment?

21 MARC RESNICK: I don't think there's a  
22 code for size.

23 MARC RUDNICK: I'm looking at the  
24 plans here. It says it's a two-family district.

Waltham Zoning Board of Appeals/3-21-17/79

1                   DAVID O'SULLIVAN: There's basically  
2 health regulations on maintenance of dumpsters.  
3 There's no code on it. It really matters about what  
4 we find in most buildings is that it's better to have  
5 it emptied more often than it is to add dumpsters  
6 because of just as Mr. Resnick said, the longer it  
7 sits, the worse it is.

8                   BARBARA RANDO, CHAIR: And if you are  
9 to move the dumpster that the neighbor requested, is  
10 that going to interfere with any of your parking  
11 spaces?

12                   MARC RESNICK: Well, we could probably  
13 move the dumpster and create more spaces. What it is  
14 is it's located for ease of pickup. So it literally  
15 just sits right in the back, right there, right in  
16 the middle, like for no reason at all. And like  
17 there's lots of spaces that could be created. And no  
18 one actually uses these ones either.

19                   The one thing I thought of that might  
20 be very good would be to knock out a space or two  
21 here and put the dumpster right there because the  
22 truck probably drives right in and grabs it and comes  
23 back out. And he probably now goes all the way and  
24 comes back out. And then I could, you know, the two

1 spaces I would lose out in the front, I could add  
2 one, two, and then I could probably add one, two -- I  
3 could probably add four spaces and move the dumpster.

4 And if I'm correct, I think it's your  
5 garage area that I'd be behind. So it wouldn't be  
6 too close to anyone's house if we moved it sort of  
7 behind your garage.

8 MICHAEL FALKOFF: Well, the house next  
9 to me just got turned into --

10 BARBARA RANDO, CHAIR: Up to the  
11 microphone, sir.

12 MICHAEL FALKOFF: The house next to me  
13 just past the garage just got renovated into three  
14 units. So there are people living quite close to  
15 that back line. But the rest of this stuff, it's  
16 parking spaces for the apartment building on Central  
17 Avenue. So, the dumpster could be -- well, you know,  
18 Cross Street is here. And they have a raised deck.  
19 So that was their complaint about the dumpster. They  
20 overlook a dumpster that's always open.

21 MARC RESNICK: So, I would think that  
22 we could find a better location that would create  
23 additional parking spaces. And from hearing from the  
24 neighbors, back here isn't very good, and if there's



1 a new place right here. But that's why I think  
2 stashed right there would be a good spot. See, I'm  
3 afraid if I put the dumpster here that they'll use  
4 this way to come in and out. And so I'm trying to  
5 shy away from that because you can tell the truck  
6 driver what to do, but he may not listen.

7 MICHAEL FALKOFF: Well, they do use  
8 that way to go in and out.

9 MARC RESNICK: They're using that way  
10 currently?

11 MICHAEL FALKOFF: They go right past  
12 my breakfast nook. But they only come once a week.

13 MARC RESNICK: I would think that what  
14 we need to do is add a second pickup each week. And  
15 then it wouldn't overflow. And even if we -- you  
16 know, obviously, if it got really busy, we could add  
17 a third pickup. But it's not a big deal to add a  
18 second pickup.

19 And the same to address the trees. I  
20 think we need to get the tree man and just take those  
21 trees down, the ones that they're annoyed by.

22 JOHN SERGI: Maybe address the  
23 rodents, too, while you're at it?

24 MARC RESNICK: Well, for sure. We

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1 have started a -- there was a problem with our  
2 neighbor that was right here that had a large pile of  
3 debris. And I worked with another neighbor and we  
4 contacted the City. And they got on that neighbor a  
5 little bit. And we have a rodent patrol, you know,  
6 company now, you know, doing a regular service as  
7 well.

8 JOHN SERGI: Okay.

9 BARBARA RANDO, CHAIR: Mr. Rudnick  
10 mentioned hardship. And you said in your brief that  
11 hardship not to Petitioner, but to anyone looking to  
12 modernize the unit. Well, to me it seems like the  
13 economic benefit would be to the owner. You would  
14 get the economic benefit by doing it over. You'd be  
15 able to get more rent and -- so what's the hardship?

16 MARC RESNICK: The hardship is really  
17 that we have an irregular lot with a building that  
18 only has a permit. So, in other words, this is not  
19 zoned for this. So, we're stuck with an existing  
20 structure that can't be redone unless we ask you to  
21 do it. So, we've come here to ask that since we're  
22 stuck with this, and it's old, and wasn't well  
23 designed, and on this irregular lot that may have  
24 been the best idea, but it's not a very good idea

1 anymore. And so that we're stuck with this one  
2 building that's poorly designed, and old, and, you  
3 know, no longer up to codes, and modern codes. And  
4 we just think that, you know, that's our real  
5 hardship. We're stuck with a building that can't be  
6 modernized in an economic way without doing something  
7 smarter to it than just, you know, taking it all  
8 empty and redoing the whole building because you're  
9 still going to have these little tiny apartments that  
10 are not really of any real -- or not well used.

11 ATTORNEY MICHELLE BARATTA: And the  
12 point in the brief is that any future owner would  
13 face the same problem. I mean at some point the  
14 building should be made up to code. It's not safe  
15 for the residents there. And anyone who -- well, any  
16 other --

17 BARBARA RANDO, CHAIR: Well, you could  
18 do that without making change. You could -- without  
19 making more bedrooms. You could still update --

20 ATTORNEY MICHELLE BARATTA: Right.  
21 But the cost to an owner to do that is just not  
22 economically feasible.

23 BARBARA RANDO, CHAIR: But that --  
24 he's making money on what he has.

1                   MARC RESNICK: It's the double though.  
2                   In other words, it's not just the cost of putting the  
3                   system in. In other words, I can't -- we won't be  
4                   triggered to put the system in, which we'd like to,  
5                   because we won't do a lot of renovation. Because if  
6                   we're not changing the shapes of the units, you know,  
7                   I'm going to put hardwood floors in them and paint  
8                   them, you know. So, in other words, I won't put a  
9                   sprinkler in, and I won't make the building very  
10                  nice, not because I'm like trying to -- like it's not  
11                  like a penalty or something. It's the economic  
12                  reality of owning this building. You know, I would  
13                  spend a certain amount of money if I was just going  
14                  to fix it up.

15                         But, you know, we have all this land -  
16                         - not land, but space inside the building that's  
17                         underutilized. And that's really our hardship is we  
18                         have a bunch of space that can't be used because of  
19                         the Zoning decision. It says that I can only have  
20                         one-beds and studios.

21                         So, I could probably build the  
22                         basement out. I'm not sure. I may be speaking out  
23                         of turn. And just make it a gigantic studio  
24                         apartment with a duplex. And then I wouldn't need to

1 seek relief that it was a studio.

2 ATTORNEY MICHELLE BARATTA: No,  
3 there's still a limit to how many --

4 MARC RUDNICK: No, because you're  
5 increasing the number of units.

6 ATTORNEY MICHELLE BARATTA: Yeah,  
7 there's a limit to the total amount of units as well.

8 MARC RESNICK: But you know what I'm  
9 saying. It would just be silly to build it wrong.  
10 So, sort of my whole business approach is to rebuild  
11 apartments in a way they'd be more effective, and  
12 efficient, and higher quality, and, you know, and  
13 build in better floor plans. So, like the Griff  
14 Furniture Building and all these buildings that I'm,  
15 you know, acquiring, and the commercial space on the  
16 second floor on Moody Street. It's not a very  
17 attractive use. You're not going to attract good  
18 tenants. So we're putting in brand new apartments,  
19 you know, nice. And the same here. The only way to  
20 really fix this building is to build out the lower  
21 level and make it a really nice building. Otherwise,  
22 we'll make it a better -- in other words, I'm not  
23 going to abandon the building. I'll make it a better  
24 building, but not a very good one.

1                   And some of the units are just poorly  
2     designed. And all I'm going to do is put a wall down  
3     the middle and make it into a two-bed. And it will  
4     be more economically affordable. In other words,  
5     we're getting \$1,600 for a one-bed. We're going to  
6     get \$1,800 or \$2,000 for a two-bed. It's cheaper to  
7     live -- in other words, we're making the apartments  
8     more affordable not less affordable.

9                   BARBARA RANDO, CHAIR:     Any other  
10    questions?

11                   MARK HICKERNELL:    I've got a lot of  
12    things I'd like to see here. I mean my sense from  
13    hearing the Board's comments is that we'd like you to  
14    come back another day. We'd continue the case and  
15    ask you to address a number of issues.

16                   My issues, I've got a list, start with  
17    the Chair's concern about variance, and it's come up  
18    in your brief, is this a special permit or a  
19    variance? So, I just read as much as I could, while  
20    also trying to pay attention to the entire  
21    presentation and comments from the public. So, this  
22    is -- the 1964 file only discusses a variance. I  
23    don't see anything about a special permit here. So,  
24    in my mind, the Board has already granted you a

1 variance. You don't have to re-establish the need  
2 for a variance. You need to establish that you're  
3 entitled to an amendment of your previous variance.  
4 So, I would like you to brief that and what the  
5 standard is, if my reading of this previous file is  
6 correct, and also what the special permit has to do  
7 with this if anything because, again, I don't see it.  
8 They didn't talk about a special permit in 1964.  
9 Maybe that's because it was a use variance then and  
10 it wouldn't be one now. But I'd like that addressed.

11 I'd like really addressed this issue  
12 with 20 feet versus 12 feet on the easement. I mean  
13 that ought to be something that a surveyor can tell  
14 you, and we shouldn't have to argue about people's  
15 perception of how many feet, if it's 12, or 17, or  
16 18, or 20. I mean that can be measured. So I'd like  
17 to know what's going on there before we proceed.

18 Dumpster versus two dumpsters versus  
19 more pickups versus changing the location of the  
20 pickups. If you can change the location of the  
21 dumpsters and add more parking spaces, I'd like to  
22 see that plan because I think, obviously, the sense  
23 of the Board is parking is an issue. So, if you can  
24 add a couple of parking spaces to this project, it

1 obviously becomes a better project from our point of  
2 view.

3 The noise, the fumes, the trees. If  
4 the trees come down, I think you need to address that  
5 and tell us what you're planning to do and that would  
6 be a condition of anything the Board chose to act on.

7 I can't read that. But those are my  
8 main concerns. And I would like to see you return  
9 with a plan and with some legal insight as to  
10 especially changing the existing variance. The Board  
11 granted a variance. And I don't think, again, I  
12 don't think you have to come back and reprove your  
13 hardship every time --

14 ATTORNEY MICHELLE BARATTA: Okay.

15 MARK HICKERNELL: -- like you want to  
16 change something about a case that's been granted,  
17 but you have to do something. And I want you to tell  
18 me what you think that is.

19 BARBARA RANDO, CHAIR: I'd like you to  
20 prove that it's not going to be a detriment to the  
21 neighborhood with the -- I don't think the parking  
22 is, as the Clerk said, is going to be sufficient, so  
23 I'd like more information the parking and to see the  
24 parking plan as he asked.



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1                   JOHN SERGI:    I agree with Mark's  
2                   summary of the case.  I think if you add two more  
3                   parking spaces, I'm okay with the parking as well.  
4                   But I think the issues here that need to be beefed up  
5                   are the hardship.  And I think Mr. Rudnick brings up  
6                   the intensity of use is kind of confusing here.  So I  
7                   think a clarification in that regard would be  
8                   helpful.  And all the other items that Mark brought  
9                   up regarding the dumpster, and the trees that were  
10                  brought up by the concern of the neighbors, you want  
11                  to be a good neighbor.  You want to fix those issues.  
12                  I don't think they're big issues to address, and they  
13                  could be addressed.

14                  MARC RESNICK:  They'll be gone before  
15                  we come back.

16                  JOANNE RICHARDS:  Thank you.

17                  JOHN SERGI:    So, that's my feeling,  
18                  Madam Chair.

19                  BARBARA RANDO, CHAIR:  And maybe he  
20                  should look into the Section 9.

21                  MARK HICKERNELL:  Oh, that's what I  
22                  was writing, yes.  That's what that word is.  So, the  
23                  Section 8 or whatever in terms of any responsibility  
24                  you have in terms of affordable housing.  That should

1 be a part of your sort of reconvened presentation, or  
2 responsibilities and/or things you're doing  
3 voluntarily. I mean I get that this is, to some  
4 extent, already what passes for affordable housing in  
5 Waltham. This is not the high-end, you know, Merc,  
6 whatever things. This is things that regular working  
7 people hopefully can afford. But if you've got a  
8 legal responsibility for that threshold, or if you're  
9 willing to meet it anyway, come back and let us know.

10 MARC RUDNICK: Yeah, take a look at  
11 that. I'm always appreciate of landlords who keep  
12 their rents affordable. But the value of Section 9  
13 is it's perpetual affordability not just --

14 MARK HICKERNELL: Oh, Section 8  
15 housing versus Section 9 of the code, yeah, sorry.

16 MARC RUDNICK: Yeah, I'd like to see a  
17 really clear count of the parking spaces as they  
18 exist and as you might be able to modify.

19 Assuming we get to this point, I'd  
20 probably be looking for a condition that says no more  
21 than two dumpsters. So, let's make sure we can do  
22 that, which will mean a condition that also says  
23 increased number of trips.

24 It seemed to me like you ought to be

1 building some kind of enclosure around the dumpster,  
2 but you can decide whether you like that and if it  
3 enhances your property or not or if for some reason  
4 you can't do that. I'm not hung up on that.

5 It sounded like the fence was in need  
6 of work, so let's address that somewhere as well.

7 And we have the question of clarifying  
8 the easement with Mr. Falkoff.

9 (Discussion off the record to set the  
10 date for continued hearing.)

11 BARBARA RANDO, CHAIR: Continued to  
12 May 9<sup>th</sup>.

13 ATTORNEY MICHELLE BARATTA: May 9<sup>th</sup>?

14 BARBARA RANDO, CHAIR: Yes. All  
15 right. Do I have a motion to continue Case 2017-04  
16 to May 9<sup>th</sup>?

17 JOHN SERGI: So moved, Madam Chair.

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

20 SARAH HANKINS: Second.

21 BARBARA RANDO, CHAIR: By Ms. Hankins.  
22 How do you vote, Mr. Sergi?

23 JOHN SERGI: Yes.

24 BARBARA RANDO, CHAIR: Mr. Hickernell?

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1 MARK HICKERNELL: Yes.  
2 BARBARA RANDO, CHAIR: Ms. Hankins?  
3 SARAH HANKINS: Yes.  
4 BARBARA RANDO, CHAIR: Mr. Rudnick?  
5 MARC RUDNICK: Yes.  
6 BARBARA RANDO, CHAIR: And the Chair  
7 votes yes. So we will continue this to May 9<sup>th</sup>.  
8 ALL: Thank you.  
9 BARBARA RANDO, CHAIR: One more motion  
10 is in order.  
11 JOHN SERGI: Motion to adjourn, Madam  
12 Chair.  
13 BARBARA RANDO, CHAIR: Second?  
14 SARAH HANKINS: Second.  
15 BARBARA RANDO, CHAIR: All in favor?  
16 ALL BOARD MEMBERS: Aye.  
17 BARBARA RANDO, CHAIR: Opposed?  
18 (No Board Members opposed.)  
19 BARBARA RANDO, CHAIR: We are  
20 adjourned at 8:35. Thank you very much.  
21 //  
22 //  
23 //

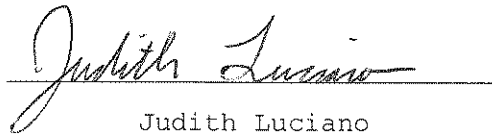
*Barbara Rando, Chair 4/11/17*

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Waltham Zoning Board of Appeals/3-21-17/93

C E R T I F I C A T E

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

  
Judith Luciano

Arlington Reporting Corporation  
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