



FOR THE  
CITY OF WALTHAM  
ZONING BOARD OF APPEALS

GENERAL HEARING

March 27, 2018

7:00 P.M.

at

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

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

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Waltham Zoning Board of Appeals/3-27-18/2

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Case No. 2017-34  
Case No. 2018-03  
Case No. 2018-05

Case No. 2016-45  
Proposed finding of facts  
Proposed decision

Case No. 2018-03  
Proposed finding of facts  
Proposed decision

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P R O C E E D I N G S

BARBARA RANDO, CHAIR: Good evening.  
The Zoning Board of Appeals for Tuesday, March 27,  
2018 is called to order at 7:00 p.m.

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

CASE 2016-45: It is Covier, is it  
pronounced Covier or Cove?

ATTORNEY PROYER: Covier.

BARBARA RANDO, CHAIR: 225 Waverly  
Oaks Road.

The members sitting on that case will  
be Mr. Sergi, Mr. Hickernell, Miss Gelineau, Miss  
Hankins and the Chair.

CASE 2017-34: Waltham-Farm House  
Realty Trust 54, Aft 29 Emerson Road and the members  
sitting on that case are Mr. Sergi, Mr. Hickernell,  
Miss Gelineau, Miss Hankins and the Chair.

CASE 2018-03: Ursino, 458-475 Moody  
Street and Chestnut Park. The members sitting on  
that case are Mr. Scolanti will be joining us. Mr.  
Sergi, Miss Gelineau, Miss Hankins and the Chair.

CASE 2018-05: ViewPoint Sign and  
Awning, 153 Second Ave. and the members on that case

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are Mr. Sergi, Mr. Hickerneil, Miss Gelineau, Miss Hankins and the Chair.

The first matter is the Minutes of March 20<sup>th</sup>. Do I have a motion to accept the Minutes?

JOHN SERGI: So moved Madam Chair.

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

MISS HANKINS: Second.

BARBARA RANDO, CHAIR: Seconded by Miss Hankins.

All in favor?

JOHN SERGI: Aye.

BARBARA RANDO, CHAIR: Opposed?

The ayes have it and the Minutes have been approved.

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**CASE 2016-45: Covier, 225 Waverly Oaks Road.**

BARBARA RANDO, CHAIR: Would the Clerk, would, could we have Mr. Proyer, Attorney Proyer come to the microphone. This case has already been decided on and I believe you have a letter for us.

ATTORNEY PROYER: Yes Madam Chair, Chair Members of the Board. My name is Phil Proyer for the Applicant tonight. Good to see you all again. Um I'm here as um the announcement was made seeking an extension for six months of a variance that was granted about a year ago and it's set to expire on April 6<sup>th</sup> of this year.

And essentially, we have several of the permits of, that we, that the project requires. They're all in place but the City Council we ran out of time on that. We were in queue, we had our public hearing.

Um there was an election for the interim. We were waiting for departmental comments and um it just got to the point where we, we weren't going to make it in time. We withdrew that and we're gonna refile. We're asking for a little bit of extra time from this Board to give us an opportunity to get back for the City Council for that permit.

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BARBARA RANDO, CHAIR: -- when?

ATTORNEY PROYER: This relates to um a reconstruction of an existing gas station and convenient store um Waverly Oaks Road at the corner of Lynden Street. Acro -- a diagonally across from Camilla Warren Field and across -- across Beaver Street from the Legion Hall.

BARBARA RANDO, CHAIR: All right.

ATTORNEY PROYER: That's really the, the sad story.

SARAH HANKINS: What was the, what was it that are waiting for on the City Council. I'm sorry I messed up.

ATTORNEY PROYER: It's a special permit for the convenient store use.

SARAH HANKINS: Okay.

ATTORNEY PROYER: So, we have ah Conservation Commission approval. We're across the street from a wetland and we have that Order of Conditions in place. Order of Serving and Planning needed to confirm the curb cuts. We also were before the Traffic Commission but the last one was the City Counselor. I don't, as you know you can't apply to the Council until you have all of your other permits in place and we filed, and we thought we had made it

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through in time to hit the deadlines, but we, we just ran out of time.

JOHN SERGI: The Coun, Counselor I seen that you started construction there. Are you -- you, the -- the place has been closed now for months and and there has been --

ATTORNEY PROYER: Yeah I know it's --

JOHN SERGI: -- a fence around it and it kind of - you just stopped.

ATTORNEY PROYER: We, we, we didn't start construction. We just stopped operation um because it wasn't working optimally in any case so whether we get our final permits or not we have to do something to the station to make it work a little better. Within the existing permits we have or are fortunate enough to get all the permits we need for this project we'll go forward that.

JOHN SERGI: How much longer is it going to take? What is the timetable do you think?

ATTORNEY PROYER: I -- I can't predict honestly. I mean we're, we're hoping three, four months but the Council has a Committee process and departmental review so, but optimistically within the -- within the six months that we're asking for here.

JOHN SERGI: Oh I see okay. Geez it's

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a shame you closed it down so early. You know it's just --

ATTORNEY PROYER: I know it was just a business decision that um that they decided to make.

So, I, I --

JOHN SERGI: Thank you.

SARAH HANKINS: Just, just for my edification was there already a convenience store there so I -- I'm just wondering. I just want a little clarity here I don't know exactly --

ATTORNEY PROYER: Yes. There was a, there was a small convenient store there, and a car wash an outmoded building. So, the, the project is, and pumps arranged in a certain configuration that really don't function very well. Not that efficient, not that safe for customers and traffic. So the idea was to redesign the entire site. So get rid of the car wash, a brand new building and a new configuration of the, the fuel pumps along the front of the building. Yeah.

BARBARA RANDO, CHAIR: Any other questions?

When does your hundred days run out?

ATTORNEY PROYER: Ah this was filed on March 15<sup>th</sup>.

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BARBARA RANDO: March 15<sup>th</sup>?

ATTORNEY PROYER: Yeah. But I believe under an extension under Section 10 of the Zoning Act you have to file before the permit expires which is before the April date. But that the Board has to grant the extension in order for it to be effective within thirty days. I --

BARBARA RANDO, CHAIR: Are you discussing, or are, would you like October? Is that what you're getting at? Would that would be the six months?

ATTORNEY PROYER: Yes.

BARBARA RANDO, CHAIR: So you want October?

ATTORNEY PROYER: So then the new expiration date of the variance, if the Board grants the extension would be October 6<sup>th</sup>?

BARBARA RANDO, CHAIR: October 5<sup>th</sup>?

ATTORNEY PROYER: Sixth. I think it -

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BARBARA RANDO, CHAIR: 6<sup>th</sup>?

ATTORNEY PROYER: Yup.

BARBARA RANDO, CHAIR: All right. Do I have a motion to allow Case 2016-45 to continue to October 6<sup>th</sup>?

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JOHN SERGI: So moved Madam Chair.

SARAH HANKINS: Again just a clarity a, probably from Board here. Sorry. Is, is this case gonna come before us in six months again or it's that if they get everything we're, we're done right?

BARBARA RANDO, CHAIR: Hopefully --

SARAH HANKINS: Okay.

BARBARA RANDO, CHAIR: -- you have

SARAH HANKINS: Yeah all right.

ATTORNEY PROYER: Yeah. If not, if, it, if we don't get the permits we need, the ones that are missing and we don't appear before you again in six months or before six months the variance will lapse and we'll have no rights. If we want to do the project as it exists we have to come back --

BARBARA RANDO, CHAIR: Come back.

ATTORNEY PROYER: for a brand new filing.

SARAH HANKINS: Okay.

BARBARA RANDO, CHAIR: All right I have a motion by Mr. Sergi. Do I have a second?

GLENN GELINEAU: I'll second it.

BARBARA RANDO, CHAIR: Second by Miss Gelineau.

BARBARA RANDOK, CHAIR: How do you

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vote Mr. Sergi?

JOHN SERGI: Yes.

BARBARA RANDO, CHAIR: Mr. Hickernell?

MARK HICKERNELL: Yes.

BARBARA RANDO, CHAIR: Miss Gelineau?

GLENN GELINEAU: Yes.

BARBARA RANDO, CHAIR: Miss Hankins.

MISS HANKINS: Yes.

BARBARA RANDO, CHAIR: And the Chair

votes yes.

So October 6, 2018.

ATTORNEY PROYER: Very good. Thank  
you all.

BARBARA RANDO, CHAIR: Thank you.

ATTORNEY PROYER: Good evening.

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BARBARA RANDO, CHAIR: Should someone  
read it. Someone write the notes.

JOHN SERGI: Hm, Hm, Hm, Hm.

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BARBARA RANDO, CHAIR: It's Waltham-Farm House.

MARK HICKERNELL: Okay.

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**Case No. 2017-34 Waltham-Farm House Realty Trust.**

BARBARA RANDO, CHAIR: Would the Clerk please read the Petitioning Case 2017-34. Waltham Farm-House Realty Trust.

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

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BARBARA RANDO, CHAIR: All right. I got word this afternoon that the Petitioner had an emergency or the Petitioner's representative had an emergency and could not be with us this evening. So he asked that we continue the case, um, if possible.

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So therefore, I am ready for a motion on continuing Case 2017-34. Waltham Farm-House to April 24<sup>th</sup> if the Board is available.

April 24, 2018. We have another case that -- that day -- that night.

Mr. Sergi you available?

JOHN SERGI: Yes I am Madam Chair.

BARBARA RANDO, CHAIR: Mr. Hickernell?

MARK HICKERNELL: Yes.

BARBARA RANDO, CHAIR: Miss Gelineau.

GLENN GELINEAU: Yes.

BARBARA RANDO, CHAIR: Miss Hankins.

SARAH HANKINS: Yes.

BARBARA RANDO, CHAIR: And the Chair will be available also.

JOHN SERGI: I make a Motion that we continue this Case until April 24, 2018.

BARBARA RANDO, CHAIR: Motion by Mr. Sergi.

Second?

GLENN GELINEAU: I second it.

BARBARA RANDO, CHAIR: Second by Miss Gelineau.

BARBARA RANDO, CHAIR: How do you vote

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Mr. Sergi?

JOHN SERGI: Yes.

BARBARA RANDO, CHAIR: Mr. Hickernell?

MARK HICKERNELL: Yes.

BARBARA RANDO, CHAIR: Miss Gelineau?

GLENN GELINEAU: Yes.

BARBARA RANDO, CHAIR: Miss Hankins?

SARAH HANKINS: Yes.

BARBARA RANDO, CHAIR: And the Chair votes yes. So Case 2017 is continued to April 24, 2018.

Do we have to extend the hundred days from that one?

MARK HICKERNELL: No that's already pushed out to May 7<sup>th</sup>. That's two weeks --

BARBARA RANDO, CHAIR: Right.

MARK HICKERNELL: That ought to be enough.

BARBARA RANDO, CHAIR: Right. Fine.

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BARBARA RANDO, CHAIR: -- to invite  
Annmarie.

GLENN GELINEAU: What?

BARBARA RANDO, CHAIR: It's to take  
notes. See Annmarie that's what -

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GLENN GELINEAU: I think

it's one.

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**Case 2018-03: Ursino, 458-475 Moody Street and  
Chestnut Park.**

BARBARA RANDO, CHAIR: Case 2018-03:  
Ursino, 458-475 Moody Street and Chestnut Park. And  
for this Case Mr. Squillante is going to join us and  
Mr. Hickernell's going to a few minutes off.

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BARBARA RANDO, CHAIR: John you were the Clerk on that one.

JOHN SERGI: Okay.

BARBARA RANDO, CHAIR: Would you mind reading it?

JOHN SERGI: Yeah I'll read it. I have it here.

BARBARA RANDO, CHAIR: That's fine. Just move this stuff out of the way.

Put your name tag up.

JOHN SERGI: Here.

BARBARA RANDO, CHAIR: Would the Clerk please read the Petitioning Case 2018-03. Ursino on Moody Street.

JOHN SERGI: (The Clerk reads the above-mentioned petition into the record. See Attached).

BARBARA RANDO, CHAIR: Thank you.

May we hear from the Petitioner or the Petitioner's representative please.

ATTORNEY BRET FRANCIS: Good evening Madam Chair, Members of the Board. My name is Bret Francis, Scafidi Juliano with offices on Hammer Street.

I am tonight on behalf Ursino Moody

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Street Realty Trust who's with us here tonight. Ah they are the owner of property located at - as - as stated 458-470 Moody Street as well 95 Chestnut Street.

Um I'm also here tonight with co-counsel Philip McCourt who has had more cases and can probably speak to the - to the statute of Chapter 41, Section 81(1) um and answer any questions that the Board may have ah more specifically.

So just to recap we were here three weeks ago and um at that meeting I think we were asked to kind of um beef up the - what was unique about the lot as well as the hardship involved. So we've gone ahead and done that. Um - I did email these memorandums to Miss Doucette, I believe, last Friday but I'm not positive.

Um so you've had it and I've also dropped off hard copies today.

Um but in this case what - what - what is unique about this lot is again the - the -- the two buildings themselves. One the shape, (2) the location and the fact that they're both situated on a relatively small lot over on the business seat ah district over on Moody Street. A scenario that would never be allowed today. You could never go to the

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Planning Board and say "I'd like to put these two buildings on this lot today". So you know, in - in Johnson v. The Board of Appeals of Wareham, in that case the Petitioner's sought and received a variance to convert a forty year old frame church into office suites. Since this structure could only reasonably be used for the church the court found that this structure was unique. In upholding the grant to the variance the court concluded that in the circumstances, conditions, especially affecting the locus in the old church building, created a hardship not affable to the zoning district generally. And in that case there was nothing unique about the lot. The lot was a rectangular lot, it was on Route 6. So in that sense it had a little bit of uniqueness. But relatively rectangular in shape and it was the -- the -- in that case, that it was actually a church, a structure that could be used for no other purpose in that situation as a church.

Well the same situation we have here. Um as such the court found that circumstances relating to the structure sufficient for granting of a variance. And again that is the case.

The existing conditions (i.e., a mixed use building and a residential building at the locus

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could not get approved today as previously stated, leaving the owner of the lot with un -- unresolvable nonconforming issues.

Further the location and the shape of the two structures are unique and not found in the neighborhood. The two parcels are the result of the lawful subdivision of the locus as allowed by statute so long as the two b - as long - so long as the lot contained two buildings that pre-exist the City of Waltham's adoption of the Subdivision Control Act.

Ah Chapter 41, Section 81(1) intends and clearly authorizes the subdivision and the intent is to allow older buildings contained on a lot to be sold individually when the lot requirements cannot be met.

Um clearly these conditions, two buildings with separate uses, place and located so closely on the lot. If you also look at the map you can see the shape of these buildings and again those are - ah - as well unique.

Um the results in the - ah, you know - again the shape of the lot results from the utilization of the -- of the General Law and it presents unique features again generally not found in the neighborhood.

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With regard to the hardship, a literal enforcement of the provisions of the Ordinance would create a substantial hardship financial or otherwise because to do so Petitioner ah would prevent Petitioner from making the most efficient use of the property. The Petitioner is seeking the variances only to confirm the nonconforming existing ah the pre-existing nonconformities already existing at the property and those created by the permissible division of the -- of the land. The subdivision was necessary for the sale of Parcel 1(b) containing the four unit multi-family structure.

Petitioner found when they tried to market the property that it would be easier to sell and that they had difficulty with, ah if the property and the buildings were separated into two lots. They learned that there were few buyers for both a commercial and commercial mixed use and a residential building on the same lot. Further without the relief conveying, mortgaging, insuring the properties becomes nearly impossible. Therefore, so to strictly enforce the provisions of the Ordinance against Petitioner would clearly cause a substantial hardship.

One last thing that I wanted to um

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mention because a Board member stated a concern that were the variance in this case granted that the new owner of either lot could file an application with the Zoning Board -- the Zoning Board and piggyback on the hardship and the variances that were granted. That is not the case. In Pailis v. Zoning of Tisbury, Petitioner divided the tract of land under the same provision afforded one Section 81(1) and specifically um that -- that two buildings that created this Subdivision Act subsequent to the subdivision of the tract by the Planning Board. Petitioner sought and received variances from the Zoning Board of Appeals as sought here. In Pailis, the Zoning Board found that there will be no change in the appearance or use of the buildings on the properties and their relation to adjoin properties and therefore that this - that the desirable -- re -- relief may be granted without a -- without either a substantial detriment to the public good or substantial derogation from the intent or purpose of the by-law. The variances were recorded and the property was sold thereafter. Thereafter, what the purchaser of the lot then sought to enlarge one of the existing structures. The purchaser filed an application for a variance which was subsequently

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denied. Purchaser appealed and the SJC confirmed the Zoning Board's decision denying the variance stating that it would a - anomalous to a variance by its nature sparingly granted, functioned as a launching pad for the expansion of a nonconforming use. As a result it should be noted that any change to either lot, in this case, subsequent to this matter would require further approval by the Zoning Board of Appeals. The relief only makes the lots legal for the purposes of conveying, mortgaging and insuring the properties and creates no other rights with respect to the properties.

So um that's really what I wanted to present to the Board. Um again, I do have Attorney Phil McCourt here who could probably speak a little bit more to Chapter 41 and 81(1) and his experiences with those type of cases.

PHILIP McCOURT: Good evening. Ah Philip McCourt, Attorney at 15 Church Street in Waltham.

That's me. Bret Francis did a great job. He's covered all of the um bases on here. But this - this particular provision is ah -- is ah kind of a -- is very unique. So that it allows you to - to in a very rare circumstance to split up the lots

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in two. My now over fifty years of practicing it's really happened here although it did right across the street some years ago. Um one on School Street where we had to do it and there was no frontage on the lots and there were two, they happened to be both ah -- ah residential ah properties.

The failure, if you will in this, in this provision of the statute is that it doesn't, if you will, absolve you from the need of some variances ah should they be created in almost all of these - in splitting these ah buildings apart in these unique circumstances you end up with some variances necessary.

Now I think we all agree that a Board doesn't have to grant a variance but in this particular case we'd implore them to do that so that the ah, ah properties could be mortgaged separately, financed separately and, and I think one of them they hope to sell.

The hardships run with the land with it, once you put any sort of a ah, ah a new unique line through which the Planning Board had an obligation to ah create and we had to record because that's one of the requirements before we come here. Um it did create some interior variances. The

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nonconformities on the outside are the same as they always were. It doesn't change anything that could ah, could happen on these properties. And it's rare up and down Moody Street that this would ever occur on any other situation. But years ago you could build properties without necessarily having frontage and you could build buildings with few ah requirements one behind another. And then this -- this setting here they, they basically directly almost joined as you can see and there is little or no room between them.

But nothing is going to change ah in relation to the use of the properties we can't expand on and we definitely can't um, um ask for additional variance. Well I guess we could ask but I mean there would be no obligation. I remember there was a lady who use to come here constantly back in the ah, ah 60's and 70's and she was always interested if a Board granted a -- a variance that, that ah on certain merits and, and eh circumstances that they would be obligated to regrant something in -- in another circumstance but that isn't case at all. Each case is unique. This is a particularly unique case um because of this and ah it um, it -- it's something that the ah the State law permits and

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doesn't ah, -- it seemed to - add the fact that no variances should be necessary. I guess if we were redrafting the law you would say yes you can do this but ah, ah whatever the resulting um properties are that they would ah at least be um saleable and -- and financeable. That's not the case here and that's why these people really, um, have a need to have these variances if you could ah grant it. So I would be happy to answer any more questions. I don't think I added particularly much beyond what ah, ah Bret had done - and ah I re read and saw the brief and the cases I think are basically in the favor of --of at least ah extending this accommodation for um not - this property and I can ah assure you ah that they would be few, if any, other the properties that would remain like that. Because you have to meet a qualification of having been constructed on one lot, one, two, three buildings prior to the adoption of the Subdivision Control Law. So it's -- it's just gives an owner the opportunity in which to ah deal with the properties on a separate basis. Have trouble with financing, insuring, everything that arises out of the -- them being ah together.

So we would ask that you consider granting it and I'd be happy to, either myself or

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Bret Francis would be happy to answer any further questions you might have. I'm sure you've all been by and seen the property.

BARBARA RANDO, CHAIR: Is that it?

ATTORNEY PHILIP McCOURT: It is, eh, eh, eh.

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

JOHN SERGI: Ah no Madam Chair I don't.

BARBARA RANDO, CHAIR: Mr. Squillante do you have any?

MICHAEL SQUILLANTE: I do. Let's see I'll try to not to mumble.

So first I - I -- I just to make a statement that, because I don't think there is anything case law or variances that even suggests that a petitioner has the right to make the most efficient use of a property.

He does have the right to make use of the property.

So anyway that said I did have a couple of questions because I, my understanding of 81(1) is exactly this. It's for the purpose of doing this. And if you hadn't, if you hadn't lots that

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comply with zoning you would need Section 81(1). So logically at least in my mind I understand what this is and I -- I think it's correct. Although I'm not a lawyer.

Um the question I had is -- is there any case law that supports this where someone was denied and it went to court? Is there something that, is there any decisions on this Section?

ATTORNEY PHILIP McCOURT: I think that that Bret Francis recited one.

MICHAEL SQUILLANTE: Well that --

ATTORNEY PHILIP McCOURT: he'll --

MICHAEL SQUILLANTE: well that --

ATTORNEY PHILIP McCOURT: he'll retell

--

MICHAEL SQUILLANTE: -- well that -- that was -- that was one with a fellow is denied. Right if I understand it?

ATTORNEY BRET FRANCIS: Denied after the fact.

First he got the, er, he got the -- the split by the Planning Board, went and got his variances by the Zoning Board, got them.

MICHAEL SQUILLANTE: Right.

MICHAEL SQUILLANTE: Then sold the

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property. The new owner came in trying to get a new variance.

MICHAEL SQUILLANTI: Right. So Palis didn't go to court on this issue. The person who bought the property.

ATTORNEY BRET FRANCIS: Correct. They -- they -- they got the variances from the Zoning Board so there was no need to go, there was no appeal. He -- he got the -- got the relief that he was seeking from both the Planning Board and --

MICHAEL SQUILLANTE: -- So I'm asking you is there any case where they -- they didn't get the --

ATTORNEY BRET FRANCIS: What, no, not that I can find. In fact, the hard part is, is you know we're using the last sentence of Chapter 41, 81(1) -- inception. So it was very tough to find cases that dealt with the exception of 81(1). Most of them dealt with, if you have the frontage and so on and so forth. So I haven't been able to find cases exactly on point but the closet one was the Pailis case where they got the relief from the Planning Board, got the relief from the Zoning Board and then the new owner came in and tried to get a variance.

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BARBARA RANDO, CHAIR: That's kind --

MICHAEL SQUILLANTE: Okay.

BARBARA RANDO, CHAIR: -- of a different issue though.

ATTORNEY BRET FRANCIS: What's that?

GLENN GELINEAU: That's two different issues.

ATTORNEY BRET FRANCIS: That' what - yeah --

GLENN GELINEAU: That's all he's asking.

ATTORNEY BRET FRANCIS: -- that's what I am answering.

BARBARA RANDO, CHAIR: --

GLENN GELINEAU: I'm sorry. I'm sorry.

MICHAEL SQUILLANTE: What were the variance that req, requested by Pailis? Do you know?

ATTORNEY BRET FRANCIS: Dimensional. I don't, off the top of my head, I, I could look at the case but um dimensional variances.

MICHAEL SQUILLANTE: Ah it wouldn't be in the Pailis case right? The Pailis case was -- what I don't understand is there one case or two, I guess?

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ATTORNEY BRET FRANCIS: Just the one.

MICHAEL SQUILLANTE: And that one case has to do with not being allowed to increase the use.

ATTORNEY BRET FRANCIS: The new owner not being able to --

MICHAEL SQUILLANTE: I thought -- who is the new owner? I thought the old owner was Pailis.

ATTORNEY BRET FRANCIS: -- just refer to, I believe, his purchaser. The owner, the original owner was Pailis.

MICHAEL SQUILLANTE: So there was a case of him vs. Tisbury or something.

ATTORNEY BRET FRANCIS: That was the case I cited.

MICHAEL SQUILLANTE: But that was before he sold the property or after?

ATTORNEY BRET FRANCIS: After he sold the property.

MICHAEL SQUILLANTE: Then why was he on the case?

ATTORNEY BRET FRANCIS: Then mh he must be the, again, he must be the purchaser.

MICHAEL SQUILLANTE: All right -

ATTORNEY BRET FRANCIS: -- confusing

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the names.

MICHAEL SQUILLANTE: All right.

ATTORNEY BRET FRANCIS: You must --

MICHAEL SQUILLANTE: --

ATTORNEY BRET FRANCIS: -- the purchaser.

MICHAEL SQUILLANTE: -- it confused me.

ATTORNEY BRET FRANCIS: Yeah.

MICHAEL SQUILLANTE: Let me see - anything else.

So I guess on the hardship issue, again my disclaimer that I am not an attorney, I think I do believe that having this property with two buildings on it, th - virtually it makes it certainly impossible if not impractical to sell in any reasonable way.

ATTORNEY BRET FRANCIS: That's what I've been told by the client.

MICHAEL SQUILLANTE: Umm it would constitute a hardship.

ATTORNEY BRET FRANCIS: I believe it would.

MICHAEL SQUILLANTE: I -- I believe that and I believe this is intent of the Ordinance.

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BRET FRANCIS: Thank you.

MICHAEL SQUILLANTE: And I don't think I have any other questions. I'm the - the -- the section.

BARBARA RANDO, CHAIR: That's it?

Miss Gelineau.

GLENN GELINEAU: Um I apologize I brought information home with me last time to review it and I forgot to bring it and you may have already put this in from what I recall.

Can you read sentence to me, that exception.

ATTORNEY BRET FRANCIS: Okay. Conveyances or other instruments adding to, taking away from or changing the sh, sizes, shape of the lots in such a manner as to lot leave any lots so affected without frontage.

Actually ah that's one, three. All right.

Ah or changing the size or shape of lots in such a manner as to not leave any lots so affected without frontage above set forth or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which

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land lies and the separate lots on each one of the such buildings remain standing shall not constitute a subdivision.

So it's the exception to Chapter 41, 81, I believe (p).

ATTORNEY PHILIP McCOURT: Right.  
Right.

ATTORNEY BRET FRANCIS: Where you need to have a set, you know, the full size lot as well as, fo, in the, mm, ah terms of square footage as well as the frontage. This excepts you from that so they're calling it a subdivision. A&R approval not required subdivision. This is something different. It only applies when you have the situation two buildings that pre-exist, ahh, the -- the acceptance - adoption of the Subdivision Control Act in the City of Waltham.

And one of the concerns I believe in Palis also was well couldn't anyone just go ahead and use their garage as one of the buildings.

And again that's where the Board would come in and have that discretion to say well that's not a building. Umm that it's not something that pre-dates zoning. I mean the -- to -- to qualify for this is very, very unique and very rare. And there's

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not too many situations in the City of Waltham that -  
- that fall under this category. But I do have the  
statute if you'd like to -

GLENNA GELINEAU: But even if you  
qualify, you still need to come and get variances.  
You just, you can go and get an A&R Plan, that you're  
entitled to that. But you are not entitled to the  
variances you're asking for unless the Board grants  
you the variances.

ATTORNEY BRET FRANCIS: That's correct.

BARBARA RANDO, CHAIR: So the  
exception just says you're entitled to subdivide your  
lot any way you see fit.

ATTORNEY BRET FRANCIS: Not any way  
you see fit according to the terms of the statute.  
You can subdivide the lot. Correct.

GLENNA GELINEAU: Well I mean, when I  
say any way you see fit, there's only certain way to  
do it.

ATTORNEY PHILIP McCOURT: Well let's,  
I think -

GLENNA GELINEAU: But that doesn't,  
this, this exception does not say you're entitled to

ATTORNEY PHILIP McCOURT: No that's

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correct.

ATTORNEY BRET FRANCIS: That's correct.

ATTORNEY PHILIP McCOURT: That's a fallacy. I -- I believe the, of the -- of the law.

It also wouldn't let you, let's say if they were crowded to one side, you know different picture, different scenario - so you left out a large area which could be built on in the, in the rear. I mean just to, that isn't what the intent of the law is. It's to take a parcel in which there's no ability to get a approval not required plan signed which requires frontage and a certain amount of square footage. So that's why it is so unique. Ah the requirement.

So, and -- and Bret I think he made a good point. For instance, if someone came in and had a garage and attempted to do it, both of them having been built, ahm, ahm prior to the ah Subdivision Control Law and tried to do that and then say well now I'm going to use the garage lot, if you will, as a um, you know as a new lot under this exception. I would say the Board would be ah very much ah, um justified in not saying -- saying -- it. You know that isn't the intent of it. In this particular case

you have two buildings that are crowded on and you just -- splitting --

GLENN GELINEAU: No.

ATTORNEY PHILIP McCOURT: -- them in the middle. It's somewhat like the one across the street on School Street.

GLENN GELINEAU: Yeah somewhat. But again they still had to come and ask -

ATTORNEY PHILIP McCOURT: They had a -

GLENN GELINEAU: -- whosever -

ATTORNEY PHILIP McCOURT: to get variances also.

GLENN GELINEAU: -- there.

ATTORNEY PHILIP McCOURT: Yes.

GLENN GELINEAU: -- and they were both residential lots and they, it -- it you know.

PHILIP McCOURT: Right. They may, this has a, another unique feature. One is commercial and one's basically --

GLENN GELINEAU: Right.

PHILIP McCOURT: -- residential.

GLENN GELINEAU: And I'm not so sure that being able to sell it creates a hardship. I don't, I don't quite see it that.

PHILIP McCOURT: Well I think being

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able to, um, financially, no matter who owned this property in order to be able to finance it to get proper insurance because they don't like to have that combination um on, on -

GLENN GELINEAU: So it's not insured now?

ATTORNEY PHILIP McCOURT: -- the lot. Of course it is.

GLENN GELINEAU: Yeah -

ATTORNEY PHILIP McCOURT: Right. But very --

GLENN GELINEAU: So someone will insure it.

PHILIP McCOURT: -- at a, at a great premium because it's, it's like two types of buildings on a lot. Of course it's insured.

GLENN GELINEAU: Yes. It can be insured.

ATTORNEY BRET FRANCIS: But at substantial -

ATTORNEY PHILIP McCOURT: -- right.

And I suppose you might find a bank who who, who would finance the whole thing.

BARBARA RANDO, CHAIR: Yeah.

ATTORNEY PHILIP McCOURT: But it's

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extremely difficult. Um so um, um that's why they put in the exception to allow this sort of things specifically. And it's, but, it clearly intended for properties ah like this that are, if you will, ah, -- dense on a lot that does give you much lather to ah, ah, to do anything ah with the with without -

GLENN GELINEAU: Can you think of any

--

ATTORNEY PHILIP McCOURT: -- splitting it.

GLENN GELINEAU: -- other one other than School Street ever that you've done?

ATTORNEY PHILIP McCOURT: I can't. I've seen --

GLENN GELINEAU: -- in Waltham?

ATTORNEY PHILIP McCOURT: -- I can't, I can't ah ah --

GLENN GELINEAU: -- I want

ATTORNEY PHILIP McCOURT: Yeah. Do we have one?

ATTORNEY BRET FRANCIS: This one on Pine Street. I have a Plan from the Bibbos showing exactly in the rear lot in this situation also does not have frontage. It was divided and that Plan was recorded.

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Again it's -- it's -- it doesn't happen often and these situations don't come up often but they are unique and they do pre -- present unique situations and circumstances, the lots.

The property further back from Pine Street does not have any frontage. It does have a right of way just as this case.

There's a couple other ones but these also, where there was some frontage, so ah the -- the Bibbos -- this one and then one on Robin Street. The one on Robin Street - is a very, a very unique situation.

I mean this, again you say self-created, but that's exactly what this is and it's an odd shaped lot that prese - you have a rectangular lot here, a square lot being divided into two, almost rat tail lots.

SARAH HANKINS: And they had, they required zoning board --

ATTORNEY BRET FRANCIS: They did. Every one of them requires - if they need it. I mean obviously if the lot's big enough and the buildings are in the middle then, then there's no -

GLENN GELINEAU: So these were all created by an A&R Plan and then came up for Zoning

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Board approval?

ATTORNEY BRET FRANCIS: They were all created through the same provision, the waiver and the exception -

GLENN GELINEAU: All right.

ATTORNEY BRET FRANCIS: -- provision of 81(1).

ATTORNEY PHILIP McCOURT: It's not -- it's not a -

GLENN GELINEAU: When was this --

ATTORNEY BRET FRANCIS: It's an exception.

GLENN GELINEAU: Yeah, exactly, exactly.

ATTORNEY BRET FRANCIS: Extinguished -

GLENN GELINEAU: That's my point. You can go get an --

ATTORNEY BRET FRANCIS: You can't get an A&R Plan. They would have done it. They tried but there was -- have - they sat with other attorneys.

GLENN GELINEAU: They got an A&R Plan.

ATTORNEY BRET FRANCIS: No, this is not, this is a division of a tract land to be - that's exactly what the statute says is it does not



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define it as a subdivision within the -- -- from a subdivision.

GLENN GELINEAU: You didn't tell us last time that that was an A&R Plan.

ATTORNEY BRET FRANCIS: Again, I mean they didn't have any discretion so they approved it and has been referred to as an A&R Plan but if you look at the definition -

GLENN GELINEAU: But you didn't refer to it over and over again as an A&R Plan?

ATTORNEY BRET FRANCIS: It, it serves as one. It's the same situation but it's not. It's not. It's a division of a tract land and I've been careful actually to use that language.

GLENN GELINEAU: Last time too?

ATTORNEY BRET FRANCIS: I believe so, yeah. That's what it is in my, if you look at my memorandum.

GLENN GELINEAU: Okay.

ATTORNEY BRET FRANCIS: It does not have A&R --

GLENN GELINEAU: I'm done. I'm done.

BARBARA RANDO, CHAIR: Miss Hankins. Do you have any questions?

SARAH HANKINS: I just, I have one

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question. Um I, I do appreciate the more, I feel like there is a more information as far as a little bit of backup for um some of the claims you were making about the hardships and stuff so I appreciate that.

ATTORNEY BRET FRANCIS: Thank you.

SARAH HANKINS: Um I didn't feel like at the first meeting there was much to work with - um. On it, just, just a little clarity. I felt like when the -- the Petitioner, when the gentleman was up speaking he said that he wanted to divide these as, he's got the commercial, which you know has got to be doing pretty because that doesn't - it does pretty well right.

And the residential for -- sort of um, like as personal and business benefit that like you know it's easier to manage the commercial and kind of get rid of the residential. But the brief really makes it, implies that um the reason is, is that it's you know, it would be difficult to, to sell as the commercial and the residential but --

ATTORNEY BRET McCOURT: Well after consultation I, I thought it was better to focus the hardship to the property and as a result of the location and the shape and sizes of these two

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buildings and the uses rather than the personal hardship of having to manage and deal with -

SARAH HANKINS: Okay.

ATTORNEY BRET FRANCIS: -- rental property instead of.

So ah, although I still firmly believe that that would serve as a hardship um I think it's better to make it less personal and focus more on the property and the lots themselves.

SARAH HANKINS: I have no more questions.

BARBARA RANDO, CHAIR: That's it?

Well as I stated last time, I think he created his own hardship. I don't see a hardship there. Both of those lots are making money, they're - both of - the four apartments in each one.

ATTORNEY BRET FRANCIS: What was the question --?

BARBARA RANDO, CHAIR: I'm sorry?

ATTORNEY BRET FRANCIS: I didn't hear the question.

BARBARA RANDO, CHAIR: There are four apartments in --

ATTORNEY BRET FRANCIS: Yes.

BARBARA RANDO, CHAIR: -- each

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building and they're -- they're -

ATTORNEY BRET FRANCIS: In the one -

BARBARA RANDO, CHAIR: A four and three or a four and four?

ATTORNEY BRET FRANCIS: This is commercial and --

BARBARA RANDO, CHAIR: No, no I'm talking about the two houses.

ATTORNEY BRET FRANCIS: There's only one house.

BARBARA RANDO, CHAIR: But we're only talking about the -- the one house right now.

ATTORNEY BRET FRANCIS: Four units in that house.

BARBARA RANDO, CHAIR: Right. There's four units.

ATTORNEY BRET FRANCIS: Correct.

BARBARA RANDO, CHAIR: So you're asking for re-yard, coverage, number of units, frontage, parking in a very, very busy area of town.

ATTORNEY BRET FRANCIS: Well again, the, the lot coverage in that area is 90 --

BARBARA RANDO, CHAIR: Ninety.

ATTORNEY BRET FRANCIS: -- percent.

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BARBARA RANDO, CHAIR: And he's 91.

ATTORNEY BRET FRANCIS: He's 91.

BARBARA RANDO, CHAIR: That's right.

ATTORNEY BRET FRANCIS: I mean, you know, we could have probably cut off a portion of - these are actually - these are sheds and other parts of the building that could have been lopped off to -- to get that ninety percent. Um but um again, when you're seeking four other variances, and this was for one percent I thought it better just to leave as is and then seek that variance.

So I mean again and it's minimal. Just as stated last time, there would be no change to the property tomorrow, twenty days after the appeal.

BARBARA RHONDO, CHAIR: Hmm, hmm.

ATTORNEY BRET FRANCIS: There will be no change. The -- the property will continue on as is. I understand that it's a self-created, but it is not self-created in the sense that -- that usually arises in these variance cases. Again, those are situations where someone created the lot on their own. Usually by deed and done twenty years, thirty years ago.

Here the Petitioner utilized the statute of the Commonwealth of Massachusetts to do

exactly what that statute intends to do which is to divide the lot.

If you look at each one of the cases that I was able to give you just now, you will see that all of them created a shape that was not the same or as rectangular or square as it had been before the division.

By its nature you're going to have a self-created, odd shaped lot. But that's what intended by the statute. Um and again, any new petitioner would not be able to come in here and say the shape of the lot, the shape of the lot I'm entitled to a variance. Ah you'd have the full discretion to deny that, that applicant.

BARBARA RANDO, CHAIR: Well the shape lot is only one of the other criteria.

ATTORNEY BRET FRANCIS: You need, you need -

BARBARA RANDO, CHAIR: Hardship.

ATTORNEY BRET FRANCIS: -- existing and then hardship --

BARBARA RANDO, CHAIR: Also, --

ATTORNEY BRET FRANCIS: -- and then --

BARBARA RANDO, CHAIR: -- I think that besides you've created the hardship, I think that

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you've lost your nonconforming use when you did subdivide it. Now it's noncomplying.

ATTORNEY BRET FRANCIS: I would think

BARBARA RANDO, CHAIR: I think you've changed --

ATTORNEY BRET FRANCIS: -- authority -

BARBARA RANDO, CHAIR: the nature of it.

ATTORNEY BRET FRANCIS: -- definitely change the nature of it. We have two lots now.

BARBARA RANDO, CHAIR: Ah huh.

ATTORNEY BRET FRANCIS: But I think 40(a), Section 6 still protects the buildings, still protects the lots.

BARBARA RANDO, CHAIR: I don't think so.

ATTORNEY BRET FRANCIS: -- conformities. Ah the Building Department couldn't come out, file a notice of violation. Nothing, again nothing, changes ah by the allowance of these grants.

BARBARA RANDO, CHAIR: All right do you have anything else to add?

GLENNA GELINEAU: Can I ask -

BARBARA RANDO, CHAIR: Yes, go right

ahead.

GLENN GELINEAU: Your legal notice says to confirm the nonconformance of the locus after the approval of an A&R Plan.

ATTORNEY BRET FRANCIS: Again, that used -

GLENN GELINEAU: -- by the Board of

ATTORNEY BRET FRANCIS: -- the Board -

GLENN GELINEAU: -- Surveying of --

ATTORNEY BRET FRANCIS: It's not. But that's what the Planning Board called it. That's what they've referred to as. I did the same but it's not. If you will read the statute it's a division of tract of land to be not confused with the subdivision an A&R Plan where you have frontage and you have the correct lot size. To have, to get an A&R Plan --

GLENN GELINEAU: You see my confusion though?

ATTORNEY BRET FRANCIS: I understand your confusion. But again, the explanation is this is -- the -- the terms was used interchangeably by the Planning Board and I continue that interchangeable use.

Strictly speaking it is not an A&R Plan. It is a division of a tract of land pursuant



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to the waiver of Section 81(1).

I apologize for any confusion. I don't know how to make it any more clearer than that.

BARBARA RANDO, CHAIR: All right.

ATTORNEY PHILIP McCOURT: Do you feel the ad is faulty?

BARBARA RANDO, CHAIR: I'm sorry.

ATTORNEY PHILIP McCOURT: Do you think the ad is faulty? I, I mean I didn't hear that raised before.

Let me see the Petition for a minute.

BARBARA RANDO, CHAIR: I didn't hear what he said.

GLENN GELINEAU: He said do we feel the ad is faulty.

SARAH HANKINS: I think this is more confusing.

GLENN GELINEAU: I apologize. If the term division of tract of land was used at the last meeting, it went, I did not register that. I repeatedly heard approval not required though.

ATTORNEY PHILIP McCOURT: Could I, can I just speak -

GLENN GELINEAU: Yeah.

Did you hear it? I mean I could be

wrong.

ATTORNEY PHILIP McCOURT: I'm sorry to  
be - take this -

BARBARA RANDO, CHAIR: -- can. John  
we closed the public room, didn't we?

ATTORNEY PHILIP McCOURT: -- the  
application -

ATTORNEY PHILIP McCOURT: I'm sorry.

GLENN GELINEAU: It's okay.

ATTORNEY PHILIP McCOURT: -- from it.  
Because it's not in here.

ATTORNEY BRET FRANCIS: I think it was  
an exhibit in the original application. The original  
filing.

SARAH HANKINS: Were you looking for  
the legal notice?

ATTORNEY PHILIP McCOURT: No -

ATTORNEY BRET FRANCIS: No.

ATTORNEY PHILIP McCOURT: -- he just  
gave me that. I was looking for um for instance this  
form that you fill out. It says for approval not  
required. Well it doesn't require a you know -

ATTORNEY BRET FRANCIS: -- the nature  
- to endorse the plan under the Subdivision Control  
Law not required.

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ATTORNEY PHILIP McCOURT: Yeah.

ATTORNEY BRET FRANCIS: So -

ATTORNEY PHILIP McCOURT: You see this. So here's the Decision.

ATTORNEY BRET FRANCIS: Even the application to the Planning Board comes under for approval not required plan. But that's just - it's an 81(1). Where's the provisions --

ATTORNEY PHILIP McCOURT: Sure, sure -

ATTORNEY BRET FRANCIS: The box would be checked off. It might be the forms that are used are out-of-date. I can't say but -

ATTORNEY PHILIP McCOURT: Well I'm not sure they're out-of-date but it is such a unique situation that they use existing forms to check off. But it's not the traditional way in our Plan. It is a Plan though that -

ATTORNEY BRET FRANCIS: The application to the Zoning Board --

ATTORNEY PHILIP McCOURT: -- it requires approval.

ATTORNEY BRET FRANCIS: -- language.

GLENNA GELINEAU: Well this doesn't say either. This says to endorse the plan approval under the Subdivision Control Law not required.

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ATTORNEY BRET FRANCIS: Approval not required.

GLENNA GELINEAU: Yeah. So -

BARBARA RANDO, CHAIR: Are there any other questions from Board Members?

JOHN SERGI: No not at this time Madam Chair.

MICHAEL SQUILLANTE: Nothing else.

BARBARA RANDO, CHAIR: All right you may continue with your Proposed Finding of Facts.

ATTORNEY BRET FRANCIS: I will.

JOHN SERGI: Um Council is this the same Finding of Facts that we were received tonight.

ATTORNEY BRET FRANCIS: It is.

JOHN SERGI: And no changes.

MICHAEL SQUILLANTE: No changes.

JOHN SERGI: Okay. Madam Chair I make a motion that we waive the reading of the Finding of Fact.

BARBARA RANDO, CHAIR: Motion by Mr. Sergi that we waive the reading of the Finding of Facts.

Do I have a second?

MICHAEL SQUILLANTE: Second.

BARBARA RANDO, CHAIR: Second by Mr.

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Squillante.

All in favor.

JOHN SERGI: Aye.

MICHAEL SQUILLANTE: Aye.

BARBARA RANDO, CHAIR: Opposed?

The ayes have it.

You may continue with your Proposed  
Decision.

JOHN SERGI: In a similar fashion  
Madam Chair. I propose that we waive the reading of  
the Decision since it is on file.

BARBARA RANDO, CHAIR: Motion by Mr.  
Sergi.

MICHAEL SQUILLANTE: Second.

BARBARA RANDO, CHAIR: Second by Mr.  
Squillante.

All in favor.

JOHN SERGI: Aye.

BARBARA RANDO, CHAIR: Opposed?

The ayes have it.

I think we closed the public hearing.

ATTORNEY BRET FRANCIS: No, I  
understand that.

BARBARA RANDO, CHAIR: How do you vote  
on the Proposed Finding of Facts?

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Mr. Sergi?

GLENN GELINEAU: I think he's -

JOHN SERGI: Um you want make - we'll make the motion? Make the motion that the Proposed Finding of Fact be adopted by the Board.

BARBARA RANDO, CHAIR: Motion by Mr. Sergi.

Do I have a second?

MICHAEL SQUILLANTE: Second.

BARBARA RANDO, CHAIR: Second by Mr. Squillante.

How do you vote on the Proposed Finding of Facts Mr. Squillante?

MICHAEL SQUILLANTE: Yes.

BARBARA RANDO, CHAIR: Mr. Sergi?

JOHN SERGI: Yes.

BARBARA RANDO, CHAIR: Miss Gelineau.

GLENN GELINEAU: Ah yes.

BARBARA RANDO, CHAIR: Miss Hankins?

SARAH HANKINS: Yes.

BARBARA RANDO, CHAIR: And the Chair votes no.

Do I have a motion on the Decision?

JOHN SERGI: I make a motion that the Proposed Decision be adopted by the Board.

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BARBARA RANDO, CHAIR: Motion by Mr.  
Sergi.

Second?

MICHAEL SQUILLANTE: Second.

BARBARA RANDO, CHAIR: Second by Mr.  
Squillante.

How do you vote Mr. Squillante?

MICHAEL SQUILLANTE: Yes.

BARBARA RANDO, CHAIR: Mr. Sergi.

JOHN SERGI: Yes.

BARBARA RANDO, CHAIR: Miss Gelineau?

GLENN GELINEAU: Yes.

BARBARA RANDO, CHAIR: Miss Hankins?

SARH HANKINS: Yes.

BARBARA RANDO, CHAIR: And the Chair  
votes no.

The case is granted.

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SARAH HANKINS: Good luck.

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BARBARA RANDO, CHAIR: Ha ha -- if anyone could. If anyone could.

JOHN SERGI: --

BARBARA RANDO, CHAIR: I know. I know.

All right thank you for coming.

Do you want to take your stuff?

GLENNA GELINEAU: Yeah.

JOHN SERGI: So did you guys didn't need to on this -

BARBARA RANDO, CHAIR: No.

GLENNA GELINEAU: No.

BARBARA RANDO, CHAIR: It was cancelled.

MICHAEL SQUILLANTE: That's what I assumed.

BARBARA RANDO, CHAIR: He - she shut the City down. The Mayor.

SARAH HANKINS: So I just --

BARBARA RANDO, CHAIR: Okay.

You guys tired? {Speaking to Audience}

AUDIENCE: --

BARBARA RANDO, CHAIR: -- of waiting?

AUDIENCE:

JOHN SERGI: -- Glenna was your vote



yes on the Finding of Facts?

GLENN GELINEAU: What?

JOHN SERGI: Was your vote yes on the Finding of Facts of this matter?

BARBARA RANDO, CHAIR: Yes.

JOHN SERGI: Okay.

GLENN GELINEAU: It's not this one right? What is it?

SARAH HENKINS: Yeah that's right.

GENTLEMAN FROM AUDIENCE:

BARBARA RANDO, CHAIR: Good.

BARBARA RANDO, CHAIR: Oh my goodness you must be hungry.

GENTLEMAN FROM AUDIENCE: No --

GLENN GELINEAU: It's what?

Oh what did I do with it. I don't know what I did with it. I did have it. I don't know what did I do with it? Oh here it is.

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Waltham Zoning Board of Appeals/3-27-18/58

**Case No. 2018-05: ViewPoint Sign and Awning; Genzyme  
-- Sanofi, Owner.**

BARBARA RANDO, CHAIR: Will the Clerk read the Petitioning Case 2018-05. ViewPoint Sign and Awning.

MARK HICKERNELL: Case No. 2018-05. (The Clerk reads the above-mentioned petition into the record. See Attached.)

BARBARA RANDO, CHAIR: Thank you.

May we hear from the Petitioner or the Petitioner's representative. Please give your name and address for the record.

KEITH DuBOIS: Hi. Good evening I am Keith DuBois with ViewPoint Sign and Awning. We are in um Northboro, Mass.

BARBARA RANDO, CHAIR: What did you say your name was?

KEITH DuBOIS: Keith DuBois.

BARBARA RANDO, CHAIR: Pete?

KEITH DuBOIS: Keith.

BARBARA RANDO: And the last name. How do you spell it?

KEITH DuBOIS: DuBois.

BARBARA RANDO, CHAIR: Thank you.

KEITH DuBOIS: Your welcome. We are

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the manufacturer and sign company, a vendor for Sanofi.

Approximately a year ago Sanofi, a global corporation, reached out to our firm to do some identity change on several signs throughout several different locations in Massachusetts including a couple in Framingham, Northboro, Boston and Waltham.

At that time the folks at Sanofi were seeking to remove this nonconforming sign because it's very low visibility from 153 Second Street. And as you read it is, it is on their property but it's adjacent to the lot or it's technically supposed to be located.

In order to improve this identity and their signage and visibility on 153 Second Street, Sanofi is asking for permission to remove the existing sign and um have us manufacture and install a much better sign and locate it further towards the -- um their entry. But it would still be located on the Parcel C. Um and that's the request that has -- the hardship is basically visibility in relation to their facility.

BARBARA RANDO, CHAIR: And you're saying people can't see the sign as it is now?

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KEITH DuBOIS: Ah it's very hard to see it single-sided, set back as it is in - behind shrubs. To put a new sign in that location would almost serve no purpose.

BARBARA RANDO, CHAIR: And explain the sign. Would it be lighted?

KEITH DuBOIS: Um the sign is non-lighted. I have a picture of the sign. It's a modern style sign. It's all aluminum construction. It has dimensional graphics and um it's an architectural style sign.

BARBARA RANDO, CHAIR: Could you pass it over so we could look at it.

KEITH DuBOIS: It would be double-sided -

BARBARA RANDO, CHAIR: -- have one here.

GLENN GELINEAU: We have it. We have it.

KEITH DuBOIS: Double-sided and mounted perpendicular to the street so that way both - in both directions --

BARBARA RANDO, CHAIR: And this can -- is going to conform to the size requirements?

KEITH DuBOIS: The size, the set-back,

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everything that the Building Inspector is, is um looking for. It does conform.

BARBARA RANDO, CHAIR: Oh it does -

KEITH DuBOIS: The only question is where they want to locate it. And that's where we're running into the nonconforming issue. Even though it is Sanofi's property.

BARBARA RANDO, CHAIR: Is there anything on that lot now? Lot 2?

KEITH DuBOIS: I don't believe so. No it's empty right?

MIKE McKEENEY: Well see no it's all vegetation.

BARBARA RANDO, CHAIR: What's going there?

MIKE McKEENEY: Nothing.

BARBARA RANDO, CHAIR: What is your name? When you speak you have to give your name. If you could come up to the microphone.

MIKE McKEENEY: Madam Chair my name is Mike McKeeney

BARBARA RANDO, CHAIR: Mike McFeeney.

MIKE McKEENEY: Mike McKeeney with Sanofi Genzyme.

BARBARA RANDO, CHAIR: Thank you.

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MIKE MCKEENEY: Um Parcel C - um Parcel C which is the front parcel is all - it's just landscapes and then there is vegetation and wetlands between Parcel C and Parcel A. So there is no visible way um to see the facility from the street.

-- if you look - do we have a picture of the existing sign? There might be one in the - may I approach?

BARBARA RANDO, CHAIR: Please do.

MIKE MCKENNEY: The existing sign which I believe almost 80 feet from the street into the vegetation which is growing around it. So we're rebranding the facility from Genzyme to Sanofi and we would like make the facility um more visible from the street by installing a conforming sign.

BARBARA RANDO, CHAIR: --

MIKE MCKENNEY: -- property.

BARBARA RANDO, CHAIR: Let me see.

MIKE MCKEENEY: There was a few other signs that um there's one other sign right here on the roadway decided sign. So, talking with the Building Inspector um he asked that - so that I don't come back to the Zoning Board for that sign that we um change that sign so its address only.

BARBARA RANDO, CHAIR: Speak into the

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microphone.

MIKE MCKENNEY: So that that sign is address only with no Sanofi ah graphics on it and we, the Building Inspector and I agreed to that and that has been changed. So, the only way that you would know that Sanofi is on that site is through this -- this sign here that we plan on installing on Parcel C.

BARBARA RANDO, CHAIR: All right its going right there?

MIKE MCKENNEY: Yes Ma'am. So, it would be twelve feet and six feet.

BARBARA RANDO, CHAIR: This way or this way.

KEITH DuBOIS: So it will be 6 feet by 12 feet.

BARBARA RANDO, CHAIR: Perpendicular. Ok.

GLENNA GELINEAU: That one? Is it that one?

MIKE MCKEENEY: That one is parallel to the street --

GLENNA GELINEAU: Yes.

MIKE MCKENNEY: single side parallel.

GLENNA GELINEAU: Yeah.

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KEITH DuBOIS: So, that makes it even harder to - for people --

GLENN GELINEAU: John.

MIKE McKEENEY: You have to --- you have to be right in front of it to see it. Whereas, if you're coming up the road you can see it from a distance when it is perpendicular and double-sided.

KEITH DuBOIS: So, it's not going to be illuminated so we're running any power, it's just going to be um -- what is it, eye visibility graphics.

MIKE McKEENEY: Yeah it's a high reflective -

KEITH DuBOIS: Reflective. So there's not -

MIKE McKEENEY: When the light shines on it - it reflects. Like a highway sign.

BARBARA RANDO, CHAIR: Miss Hankins do you have any questions at this time?

SARAH HANKINS: No questions at this time.

BARBARA RANDO, CHAIR: Miss Gelineau anything else?

GLENN GELINEAU: No.

BARBARA RANDO, CHAIR: Mr. Hickernell?

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GLENN GELINEAU: No questions.

BARBARA RANDO, CHAIR: Mr. Sergi?

JOHN SERGI: No questions Madam Chair.

BARBARA RANDO, CHAIR: All right.

Did you have Findings of Facts or Decision? Did you submit them to the ah law department?

KEITH DUBOIS: I don't believe so.

BARBARA RANDO, CHAIR: We're supposed to have Finding of Facts --

KEITH DUBOIS: I don't know. I may.

BARBARA RANDO, CHAIR: -- and a Decision. We have something on that - on the computer.

KEITH DUBOIS: We may have. We did go to the Zoning Board and we --

BARBARA RANDO, CHAIR: What you sent in, could I see it because I remember it --

KEITH DUBOIS: Yes absolutely.

BARBARA RANDO, CHAIR: -- because I remember reading something because I knew it was the conforming sign. Wait a minute I -- it might have just been -

KEITH DUBOIS: I don't - I don't particularly do this at my company. I'm just

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representing the -

We did go to the um Zoning Board of Appeals and we did get an address.

I did not, no. This here?

BARBARA RANDO, CHAIR: This is usually what for us what a Finding of Fact looks like.

Is that yours? That you're reading. Is that what I just gave him?

KEITH DUBOIS: Yes. No this is what gave me. So this is --.

BARBARA RANDO, CHAIR: Oh could I see it?

KEITH DuBOIS: Yes.

BARBARA RANDO, CHAIR: It might be a surprise.

MIKE MCKENNEY: I remember Turner Street when we -

KEITH DUBOIS: Yeah that would be -- The day I went to visit the Building Inspector --

BARBARA RANDO, CHAIR: Mmm hmmm

KEITH DUBOIS: -- he told me to go up and see if there was anything and I believe that's what we got --

BARBARA RANDO, CHAIR: All right.

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Yup, this is it.

Wait a minute, where did I sign it?  
This is an old case.

GLENN GELINEAU: That's an old case.

BARBARA RANDO, CHAIR: This is an old case. But I need this done on this new case. The date on this is '09. So it must have been the old signage that you put up.

KEITH DuBOIS. No that's for a different - that's for a different site.

BARBARA RANDO, CHAIR: This whole thing is for a different site?

KEITH DuBOIS: Yes.

BARBARA RANDO, CHAIR: Oh. I needed that for this site.

KEITH DuBOIS: Um

BARBARA RANDO, CHAIR: What is the wish of the Board to continue the case so they um have the Finding of Facts and Decision as they did for that last case?

MARK HICKERNELL: Yeah I mean I think the Petition is in order but we do need a proposed decision and finding of fact.

JOHN SERGI: Now let's continue the case Madam Chair.

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BARBARA RANDO, CHAIR: I'm sorry?

JOHN SERGI: Let's continue the case.

BARBARA RANDO, CHAIR: All right.

KEITH DuBOIS: Madam Chair what do we  
need --?

GLENNA GELINEAU: Just what --

KEITH DuBOIS: Finding of Facts.

BARBRA RANDO, CHAIR: Just - he could  
almost copy that one because that one was very good.

GLENNA GELINEAU: Yes.

BARBRA RANDO, CHAIR: That's your own  
original one if you can doctor it up to apply to this  
case. Answer the questions that we need to know.

KEITH DuBOIS: And that's needed at  
the public hearing? It can't be submitted.

BARBARA RANDO, CHAIR: We gonna - we  
have to read it and vote on it.

GLENNA GELINEAU: -- vote on it.

KEITH DuBOIS: All right.

BARBARA GELINEAU, CHAIR: All right  
how about May 8<sup>th</sup>?

MIKE McKEENEY: Um -- any sooner than  
that?

BARBARA RANDO, CHAIR: Yeah. That's  
kind of a long time.

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GLENN GELINEAU: Probably gonna take 5 minutes.

JOHN SERGI: Probably going to take five minutes once we have that, something like that. That's really --

BARBARA RANDO, CHAIR: Um not next week and the week after. The 24<sup>th</sup> the same night that we have - we are doing the gas - no -

GLENN GELINEAU: They're only going to take a minute though.

BARBARA RANDO, CHAIR: All right, five minutes. How is the 24<sup>th</sup> for you and I'll check with the Board - on this.

MIKE MCKEENEY: That's fine.

KEITH DuBOIS: Um May or April?

GLENN GELINEAU: April.

BARBARA RANDO, CHAIR: April. April 24<sup>th</sup>.

Did you say yes sir?

KEITH DuBOIS: Yes Ma'am

BARBARA RANDO, CHAIR: Mr. Sergi -

JOHN SERGI: I'm okay with that.

BARBARA RANDO, CHAIR: -- the 24<sup>th</sup>? Well we're going to be anyway. Haha okay.

MARK HICKERNELL: --

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SARAH HANKINS: Nothing's come up on  
my calendar for -

BARBARA RANDO, CHAIR: Lucky you.

All right. We will continue Case  
2018-

MIKE McKEENEY: Can I have a copy of  
this?

BARBARA RANDO, CHAIR: -- -05 to

MIKE McKENNEY: -- on a different site

GLENN GELINEAU: Yeah --. Did you  
just have

BARBARA RANDO, CHAIR: -- April 25<sup>th</sup>.

GLENN GELINEAU: -- a Finding of Fact  
or do you have a Decision too?

BARBARA RANDO, CHAIR: Do I have a  
motion to -

MIKE MCSWEENEY: -- Turner Street --

KEITH DUBOIS: -- on a different site

GLENN GELINEAU: Yeah.

BARBARA RANDO, CHAIR: continue Case  
2018-

GLENN GELINEAU: I think your Turner  
Street had a Finding of Facts and -

KEITH DUBOIS: -- just put it all back

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in

GLENN GELINEAU: You just follow that  
format by -

BARBARA RANDO, CHAIR: You can explain  
it to -

MARK HICKERNELL: If - if you have  
questions about the format and not - we can't give  
you advice as to content but the format and -

KEITH DUBOIS: Yeah.

MARK HICKERNELL: -- and the bottom --  
you know?

KEITH DUBOIS: Finding of Facts and  
Decision. Okay.

JOHN SERGI: Make a motion that we um  
continue Case 2018-05 until April 24<sup>th</sup>.

BARBARA RANDO, CHAIR: Motion by Mr.  
Sergi.

Do I have a second?

GLENN GELINEAU: Sec - second.

BARBARA RANDO, CHAIR: Second by Miss  
Gelineau.

BARBARA RANDO, CHAIR: How do you vote  
Mr. Sergi?

JOHN SERGI: Yes.

BARBARA RANDO, CHAIR: Mr. Hickernell?

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MARK HICKERNELL: Yes.

BARBARA RANDO, CHAIR: Miss Gelineau?

GLENN GELINDEAU: Yes.

BARBARA RANDO, CHAIR: Miss Hankins?

SARAH HANKINS: Yes.

BARBARA RANDO, CHAIR: And the Chair votes yes. So we will see you on the 24<sup>th</sup> of April.

KEITH DUBOIS: 24<sup>th</sup>

BARBARA RANDO, CHAIR: With a Decision and Find of Fact.

MARK HICKERNELL: If, if you can submit it um ahead of time ah in -- in hopefully an electronic format at the law department that would be helpful as well.

KEITH DUBOIS: Okay.

BARBARA RANDO, CHAIR: And there is no one here in opposition, no one seeking information, no one - three people in favor.

KEITH DUBOIS: Thank you.

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

JOHN SERGI: Motion to adjourn Madam Chair.

BARBARA RANDO, CHAIR: Motion to adjourn by Mr. Sergi.

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BARBARA RANDO, CHAIR: Second?

MARK HICKERNELL: Second.

BARBARA RANDO, CHAIR: Second by Mr.  
Hickernell.

All in favor?

JOHN SERGI: Aye.

MARK HICKERNELL: Aye.

BARBARA RANDO, CHAIR: Opposed?

The ayes have it.

We are adjourned at 8:15. Is that 8:15

or --

GLENN GELINEAU: Yup.

BARBARA RANDO, CHAIR: -- 8:15. Thank  
you very much.

(Whereupon the hearing was adjourned  
at 8:15 p.m.)

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*Barbara Rando, Chair*  
*5/15/18*

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C E R T I F I C A T E

I, Kathryn A. Leahy, 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.

*Kathryn A. Leahy*

Kathryn A. Leahy

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