

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

June 6, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, June 6, 2017, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando, and members Mark Hickernell, Sarah Hankins, Edward McCarthy and John Sergi.

Mrs. Rando: Tonight we have two new cases and one for an extension of time: Case 2017-15, Dennis M. Murphy, 208A River Street and that is for an appeal from the decision of the building inspector; Case 2017-18, Richard and Leueen Laing, 71 Edgewater Drive and that's for a variance and a special permit; an extension of time is Case No. 2014-29, it's 92-94 Trapelo Road Real Estate and the property is 300 College Farm Road.

The first action this evening is for a motion to accept the minutes of May 23, 2017.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to accept the minutes of May 23, 2017.

The first matter this evening is to take the extension letter, if the attorney will come, and it is 92-94 Trapelo Road Realty, Property 300 College Farm Road.

Bret Francis, Esquire, Scafidi Juliano, LLP, 10 Hammer Street Waltham came forward.

Mr. Francis: I am here on behalf of Attorney Philip B. McCourt who was here on behalf of Petitioner, 92-94 Trapelo Road Real Trust. We are here today just for an extension.

As the board knows this matter has gone to the City Council. We recently obtained our special permit from the City Council in April and there are no appeals. It's been recorded. They are now in the process of obtaining a building permit and again we don't foresee any more delays and we expect to have construction this summer or fall.

Mrs. Rando: So this will be the last extension.

Mr. Francis: Yes. I am confident.

Mrs. Rando: Does any member have a questions of Attorney Francis?

Hearing none, do I have a motion to allow Case No. 2014-29 to continue to - - - Do you want to read that letter into the record. Did you read it or did you just say the letter?

Mr. Francis: Just the gist of it. That's what's detailed in the letter.

Mrs. Rando: You want a six month extension?

Mr. Francis: That is correct.

(A letter was submitted to the board dated May 19, 2017 from the Petitioner's Attorney, Philip B. McCourt requesting this extension.)

Mrs. Rando: Do I have a motion to allow Case 2014-29 to continue to January 22, 2018?

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to allow Case 2014-29 to continue to January 22, 2018.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Hankins, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: Will the clerk please read the petition in Case 2017-15, Dennis Murphy?

The clerk then read the Petition of Dennis M. Murphy in an appeal from the decision of Inspector of Buildings and to amend a prior decision of the ZBA. The Inspector of Buildings has denied a building permit application to the petitioner seeking a certificate of occupancy for his residential condominium at 208A River Street. Location and Zoning District: 208A River Street; Residence B. Zoning District.

Mrs. Rando: May we hear from the petitioner or the Petitioner's representative, please?

Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham came forward.

Mr. Connors: I am the attorney representing the Petitioner, Dennis Murphy. Dennis Murphy is right here in the second row.

Mr. Connors submitted a copy of his brief to each member of the board.

Mr. Connors then went over an abutters plan with the board and also submitted photos of the interior of the unit and exterior of the building. He also went over the exhibits in the back of the brief.

He then started to read his record into the record.

Mr. Connors: So, I petitioned the building inspector in March of 2017 and I cited the statute. I said it's been there for more than ten years. The alteration of the basement has been there for more than ten years and , therefore, we deem it to be a pre-existing nonconforming use which is entitled to legal protection.

Ms. Hankins: What was his response to that?

Mr. Connors: He said, no.

Ms. Hankins: Did he expand?

Mr. Connors: Yes, he did. So I attached a copy of that in his denial. So in his denial, Exhibit A, he states three reasons.

The notice stated that it was determined that the use of the building does not conform to zoning standards for the following reasons:

- * Construction of a fifth unit was not authorized by an issued permit.**
- * An existing ZBA variance was granted for four (4) living units.**
- * Relief must be sought through the petition granting authority which is the ZBA.**

So I appealed that denial.

Mr. Hickernell: So he didn't address the Section 7.

Mr. Connors: No. He didn't. So, in my brief and the documents that I provided to the board, I think that clearly we can establish that the property has been in existence for more than ten years and I have appealed seeking an appeal of his denial based on Chapter 40A, Section 7, and alternatively I am asking the board to amend the 1959 decision so much as to rather than allow four units, allow five units.

Mrs. Rando: Attorney Connors, when it was first built, how many units, what was there in 1983?

Mr. Connors: That's a good question. I'm just going to follow along because I did put it in my brief and I will explain what was approved.

(Mr. Connors went back to reading his brief into the record.)

Mr. Hickernell: The statute doesn't require any knowledge constructive or action by the city. It's just ten years.

Mr. Connors: Right. So I found, subsequent to writing the brief, I found some more documentation from the city which I think, raises again, reaffirms the fact in the first stack documents is the 1984 and 85 assessment from the city that calls 208A as a separate residential unit. The second document is a document from Attorney Michael Hargreaves in 1990. He writes a letter to Ralph Gaudet and he says, Ralph Gaudet, we have sixty three units when in fact we have sixty five units but he acknowledges that they have sixty five units at Carolina Court Condominiums whereas only sixty three were permitted by building permit. Ralph Gaudet responds to his letter in the next document, December 10, 1990 where he says well as to the second case 208-210 River Street the subject of a Board of

Appeals Case, you need to go to the Zoning Board of Appeals to seek some relief and he talks about a special permit.

But again, nothing happened. In the next document there's a special investigation by the building department dated May 10, 1993 (Mr. Connors went over that with the board).

So clearly the city was aware that there was an alleged illegal unit. So I think that the unit was created illegally. There's no record that it was approved by the Zoning Board of Appeals and there's no record of a building permit. But Chapter 40A, Section 7 says that if there has been an alteration to a structure and has been in existence for more than ten years, then it's no longer illegal. It actually becomes legal. So, one, they can't make him stop using it and moreover, it's now legal. So he could go down to pull a permit to put in a new kitchen in and to fix the windows and things like that.

That was my request of the building inspector and he said he denied it for the reasons articulated in his letter. So I do agree that the statute doesn't require any notice. It just says if its been in existence for ten years but I think its been in existence to the knowledge of the city since 1983 and most definitely to the knowledge of the building department since 1990 and there were letters back and forth to an attorney that says we have a problem and how do I fix it and they didn't fix it but now Mr. Murphy comes by twelve years later and buys the property and lives it for thirteen years and now the building department says, well, too bad. It's illegal. You can't do anything with it. It won't allow him to pull a permit to fix the window issue which he will gladly do.

So we feel that under the statute, under Chapter 40A, Section 7, this is a new reading of this particular statute and it was amended in November of 2016 which then states, that if it's been in existence for more than ten years it now is legally nonconforming

which is therefor subject to protections of Section 6 and subject to the protections under the zoning ordinance for nonconforming structures.

So, I think there is ample evidence that it has been in existence for more than ten years and certainly with the knowledge of the city, the assessors, the fire department, the building inspector. So I believe that under the statute we are entitled to the protections of Chapter 40A, Section 7 and we are entitled to a finding that it is a preexisting nonconforming use.

I also asked the board to amend so much of the 1959 decision. This is a multifamily building. Four units is defined. Anything more than three is a multifamily so now we have five units. I would ask the board to alternatively even overrule the building inspector or overrule the 1959 decision to allow five units.

Ms. Hankins: Attorney Connors, if we overrule the decision for the Certificate of Occupancy, then what can tell Mr. Murphy to fix the means of egress, then wouldn't he have his certificate, I mean he then would be able to go and pull the permit I suppose for the - - -

Mr. Connors: I think that's an agreeable condition to state. Yes, he needs to fix that and he needs to comply with the safety code for the city and he was ready, willing to do that and then we kind of got stuck.

Mrs. Rando: Mr. Connors, I thought the ten year rule, and correct me If I was wrong, I thought the ten year rule was if someone put a fence up and they thought it was on their land but it wasn't. This is an example. And then they find out that after ten years the guy next door wants you to take it down. They say, no, it's been there for ten years. Then I thought if something was done illegally as with like dirty hands then it was wrong and it's just wrong.

Now this is a very good exception because the City of Waltham has known that it has been there and has done nothing about it. Am I correct in saying that the ten year- - -

Mr. Connors: You're correct. There's a distinction between uses and dimensions. There's a distinction on how you apply the statute of limitation to the use of a dimensional violation.

So if I build my house five feet from the lot line and it's supposed to be ten, that's a dimensional violation. If I build my service station in a single family neighborhood without a permit I have no protection because its an illegal use. So, I say the distinction here is it talks about structures or alterations of structures. So the structure itself was legally permitted. It was altered sometime between 1959 and 1983.

Mrs. Rando: And not by Mr. Murphy.

Mr. Connors: Correct. Before him, it was the addition of this bedroom unit in the basement. So that's an alteration of a structure. So it's not the use because it's already a multifamily They are just adding an extra room. It's just an apartment in the basement. So it's an alteration of a structure and it says, even if you don't have a permit because again, somewhere in page one, it talks about if you pull a permit there's a six year statute of limitations. If you don't pull a permit its a ten.

And so I would say in this case it's an alteration of a structure. We didn't pull a permit but it doesn't require a permit. It says even if it's illegal, if it's been in existence for more than ten years, then it becomes legally nonconforming.

So, I see what you are saying but I'm saying this is a structure. It's an alteration of a structure itself. The structure itself was permitted. It's a multifamily so we didn't put a

gas station in the single family neighborhood. We simply added another unit to a multifamily building which was already permitted.

Mr. Hickernell: And this is not an adverse possession kind of thing.

Mrs. Rando: Mr. McCarthy, do you have any questions?

Mr. McCarthy: No.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: No.

Mrs. Rando: Mr. Sergi?

Mr. Sergi: Yes, just an establishment of facts here. So your client in 2000 went there and purchased a legal condominium unit. He paid a a dollar amount, I assume.

Mr. Connors: The deed is part of the application. What did you pay?

Mr. Murphy: \$130,000.

Mr. Sergi: So they ran a title search. They did the whole nine yards and they determined it was a condo.

Mr. Connors: We put a claim in with the Title Insurance Company and they denied it because they said well, we didn't insure the zone they only insure the title. So if you read the master deed, the master deed says there's five units in this building and it is a legally created master deed but it doesn't say that it was legally created under the zoning.

Mr. Sergi: But you were able to close on it and it was funded.

Mr. Connors: It was funded and it was he got this permit from the fire department. So that's the other thing I mean the fire department gave them a certificate that said it's fine. They went down and inspected it. They weren't inspecting it for all safety issues, they were only inspecting it for the smoke detectors but that was legal.

Mrs. Rando: And it was filed at the Registry of Deeds.

Mr. Murphy: Yes.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: Yes. Attorney Connors, you are probably aware that the chair or the board can administer oaths in this. Can we call your client to the stand?

Mr. Connors: Sure.

Mr. Murphy came forward.

Mr. Hickernell: Mr. Murphy, will you raise your right hand, please. Do you swear to tell the truth, the whole truth and nothing but the truth?

Mr. Murphy: I do.

Mr. Hickernell: How long have you lived in apartment at 208A River Street?

Mr. Murphy: From 2002 until 2015.

Mr. Hickernell: Thank you. No other questions. I don't think we need to give the alternative relief. The statute is clear in Section 7.

Mr. McCarthy: Just one question, Mr. Connors. The only issue with the safety of the building is the window?

Mr. Connors: Yes, as far as I know.

Mr. McCarthy: And that can be changed?

Mr. Connors: I'm not sure if I gave you a copy of this but the building inspector did cite for this to be done to clear that up.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition?

(The petitioner raised his hand in favor.)

Mrs. Rando: Is there anyone in opposition?

Seeing none. Is there anyone seeking information? Seeing none. You may continue with your Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file at the law department.

Mrs. Rando: You may continue with your Proposed Decision.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Decision since it has been on file at the law department.

Mr. Hickernell: I would like to propose an amendment to the Proposed Decision. Delete the last paragraph of the Proposed Decision beginning “alternatively the board grants”. And we need to add a condition as well.

The approval of this decision is subject to the following conditions:

- 1. 208A shall be brought up to code for egress requirements.**

Mrs. Rando: Do I have a motion on the Proposed Findings of Facts?

On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to adopt the Proposed Findings of Fact as the Board’s findings.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Hankins, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: Do I have a motion on the Proposed Decision as amended?

On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to adopt the Proposed Decision, as amended, to be its decision.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Hankins, yes; Mr. McCarthy, yes and Mrs. Rando, yes.

Mrs. Rando: It is granted. Good luck.

Mrs. Rando: Will the clerk please read the Petition in Case No. 2017-18?

The clerk then read the Petition of Richard and Leueen Laing in an application for variance, application for special permit - accessory dwelling unit, and appeal of notice of violation, dated May 3, 2017, by Inspector of Buildings. The Petitioners seek to appeal under S7.31 the Notice of Violation issued May 3, 2017. Petitioners seek a special permit for the existing basement accessory dwelling unit in the main house. This basement is part of the original structure constructed as a single family dwelling. It is subordinate in size to the principal unit and is separated by two means of access. Location and Zoning District: 71 Edgewater Drive, Angleside; Residence A-3 Zoning District.

Mrs. Rando: May we hear from the petitioner or the petitioner's representative, please.

Mr. Richard Laing, 71 Edgewater Drive, Waltham, MA came forward.

Mrs. Rando: Do you have a brief for the members of the Zoning Board.

Mr. Laing: I have already submitted a brief in the application that was provided and I have some additional materials, petitions and letters of support that I will provide for you.

Mrs. Rando: Did they mention to you that you needed a brief?

Mr. Laing: The brief is included in the application.

Mrs. Rando: The brief has a findings of fact and decision.

Mr. Laing: Yes. I have a proposed findings of fact and decision. (Mr. Laing submitted a packet to the board.)

Mr. Laing: Madam Chair and members of the Waltham Zoning Board, thank you for considering our application for a permit for an accessory dwelling at 71 Edgewater Drive and for a variance on the five year requirement for the application.

To give you some background, in 1989 we left Zimbabwe with seven suitcases, two children and no funds because the government refused to allow us to take any foreign exchange with us.

So we started with a promise of a job and we have a lot of sympathy with people who are starting out as they begin.

The United States has been very good to us and in 2014, we were able to buy the house at 71 Edgewater Drive as our retirement property.

The house met our requirements particularly because of the finished basement. At the time and still our son lived in China and we were expecting him to return and we would live in the basement and he would live in the main house. And, unfortunately, that did not happen. The cost of child care dissuaded him and so it will be another two or three years until his children are of school age when we expect them to return.

Having the basement also was an important factor that we might be able to rent the basement and we also had the idea of a long term idea that we would be able to have a nurse live in the basement for our long term care as we got older and if we needed additional care.

Once it was clear that our son was not returning, we then were open to the idea of renting the apartment and were approached by a young couple from Guatemala who moved in and we had them there for two years and they were very good tenants for us and in the neighborhood they helped out on occasion particularly on snow emergencies. When they were about to leave, they told us of a young couple from Mexico that they met at the Waltham Public Library, the english classes, the english discussion groups that were held there and this couple was looking for an affordable accommodation and we met them and we were impressed with them and so we agreed to have them live in the basement.

At no time did we know or understand that we needed a permit for the basement.

Once they were in, we decided to put up a second mailbox and that was the start of our problems.

Mrs. Rando: When was that?

Mr. Laing: It was about September 2016. As a result of us putting up the mailbox, our neighbor went to the town city hall to the building department and queried what was happening and the next thing we knew we had an inspector come to visit us. And when the inspector looked around, he said, no, this is not a two family residence. This is an accessory apartment, accessory dwelling, and for that you need a permit. He was very approachable, very helpful and explained exactly what we needed. He came over the same day and gave us the regulations. We went over the regulations and it was clear that we fulfilled all of the terms of the regulations with the exception of the five year requirement which is the variance that we are requiring.

So I would just like to run quickly through the requirements of Section 3.616 of the accessory dwelling and the dwelling unit is in harmony with the neighborhood as evidenced by the letters of repetition of support and the letters of support from our abutters. The

dwelling unit is accessory to the principal residence which is occupied by my wife and myself and we are the owners.

The dwelling is designed to be occupied by no more than two persons which is stipulated in the regulation. There's adequate access to the dwelling unit with an internal and an external entrance as shown by the photograph provided. The external entrance is at the rear of the property. No alterations of the exterior of the building has been made. There has been no increase in the floor area of the property. The occupancy of the dwelling unit has not been or will not be detrimental or injurious to the property of persons. The lot is zoned as A3 for which accessory dwelling are permitted. There's more than adequate parking with a two car garage and space for two or more cars in the driveway combined with a turning area. These are shown on the attached plans and the photos that are in the submission.

We understand that the permit will only be for three years and that we have to apply in three years time. We also understand that the permit will not be transferrable to a future purchaser. That is not an issue for us as we plan to be long term residents in this property. We understand that a copy of the permit shall be filed with the Registry of Deeds. We have done this previously when we constructed the garage on our property. So we know where to go and how to do it.

Some additional reasons for our application as I'd like you to consider. We travel during the winter period to volunteer in Cape Town. I have helped out in one of the local universities and my wife works on the community development project in one of the high density townships outside Cape Town. It's really reassuring for us to have people living in the house for the winter emergencies. They chase up the contractor who plows the road but look for ice dams and they help out with anything like that.

I sometimes travel and when I am away it's very reassuring for me to have some strong young people in the basement to help provide security for my wife, but also for carrying things or anything else that needs happening.

We charge half the rent that our tenants were paying before which they use to support their families in Mexico. As I said in the long term, we plan to use the accommodation for a nurse who would provide long term nursing care for us as we age rather than moving out into a nursing home or something like that.

This additional dwelling provides us an important additional income source for our retirement. As I mentioned we left Zimbabwe with nothing and so you have to start from scratch building a pension fund. The current grantor contract is for only two persons and requires that there be no problem in behavior to upset our neighbors.

We have received as you see from the petitions and the letters of support with a whole lot of information. Eight letters of support, five from immediate abutters and three from close neighbors. (Mr. Laing quoted from some of the letters received which are attached.)

So I hope we have made the case for the issuance of the permit. The justification for the variance of the five year requirement which is the one thing which we clearly do not have.

This home is a long term retirement investment for us. We hope to die in this house. We are not planning on moving anywhere. This is where we plan to stay. We have built a two and a half car garage with all the drainage expenses insisted on by the Conservation Commission. We have installed solar panels. We have improved the garden and continue to work ourselves in the garden. We are active in the neighborhood. We maintain the address

list for the neighborhood and circulate news for all residents. In addition we open our social events for residents in our neighborhood.

In conclusion, we believe and request that you should issue our permit and grant us the variance.

Thank you.

Mrs. Rando: When you bought the house, did you think there was an apartment in the basement?

Mr. Laing: Yes. It was there.

Mrs. Rando: It's a finished basement. It's a family room. Why did you think it was an apartment?

Mr. Laing: Well a basement. It was carpeted and it had everything that you would expect. It has a bathroom. It has the laundry. It has the toilets, sink and everything.

Mrs. Rando: But that doesn't mean that you can put a kitchen down there like you did and have a stove and make it another family, making it a two family.

Mr. Laing: We made it an accessory apartment which we think we did and we did it more for the convenience of, my son's wife liked to eat Chinese and we really wanted to have the opportunity to cook our own food rather than depend on her cooking. That was the main motivation for installing the kitchen.

Mrs. Rando: Well, I ran into someone today when I was making a site view and they had a letter that you had sent around to the different neighbors telling them your

intentions and it said that it had a full bedroom, a lounge, kitchen. It didn't though when you bought it was completely unfurnished.

Mr. Laing: It had everything there except the kitchen. Oh yes it wasn't furnished. We put in the furniture.

Mrs. Rando: Right. You made it an apartment. And the person said that the people that were living there is a Brandeis student. Is that correct?

Mr. Laing: They were Brandeis students that moved on. We now have the Mexican couple.

Mrs. Rando: And you said in your brief that you have two professional people that have jobs that are living there.

Mr. Laing: Yes.

Mrs. Rando: So this Brandeis student was a professional person?

Mr. Laing: He was a lecturer At the University of Guatemala. He was undertaking a masters in business studies and was also doing some teaching. His wife is a master's student that just completed her dissertation in education.

Mrs. Rando: You also said in your brief that it was going to be a plus for the neighborhood. How do you consider having that illegal apartment is a plus for the neighborhood?

Mr. Laing: We didn't know it was an illegal apartment and we thought it would be useful to have some young people in the neighborhood that would be able to help with emergencies, with things that go on in the area.

Mrs. Rando: What if everyone in that section felt that they needed someone else to rent a basement?

Mr. Laing: Now that we know and everybody knows now that we've done this and we've been around and explained to everybody, I would expect everybody to come and apply for the permit to you and make their case. I hope that we have made a good case to you that granting us this accessory apartment which would allow for us to live in the basement and our son, his wife and their two boys to live upstairs when they return from China. It would be a good outcome for us.

Mrs. Rando: You don't have two egresses though, do you? One goes into the house, so if that door for whatever reason was locked, how would that person get out in case of fire if that other egress is locked.

Mr. Laing: The door is never locked and the door on the outside is very easy to access.

Mrs. Rando: You're suppose to have two doors, are you not, to go outside?

Mr. Laing: We talked to the building department and what the building department inspector said to us is that the internal door and the cellar door would meet their understanding of the requirements for the accessory dwelling. This is the equivalent to the mother-in-law apartment.

Mrs. Rando: I just don't want to open a pandora's box and have other people applying for accessory apartments in a single family neighborhood.

Mr. Laing: But the zoning allows you to give permission for a single family apartment or an accessory dwelling unit. That's what the zoning regulation says.

Mrs. Rando: Mr. Sergi, do you have any questions?

Mr. Sergi: No, not at this time.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: It appears that some of your neighbors have at least presented documentary evidence that it has been used as a dwelling for some decades.

Mr. Laing: That's our impression.

Mr. Hickernell: And do you have any information as to whether those were all single but one family occupying the entire building or separate family in the basement and above. I was trying to get a sense of how it has been used for the last ten plus years.

Mr. Laing: I really can't tell you. Dick White across the way said he has seen people coming and they may have been related to the people in the house. They may have been friends of the people in the house. We just don't know that side of it.

Mr. Hickernell: You have no personal knowledge of it. Perhaps the neighbors do.

Mrs. Rando: Mr. McCarthy?

Mr. McCarthy: You are in a residential area. When you bought the home you knew it was a residential area, single family residential area, correct? We do allow in-law apartments in a single family or a relative there. This to me is more of turning it into a two family than, you can call it an accessory building if you wish. It's more like changing it into a two family because you're not having any family members living down there, correct?

Mr. Laing: Not at the moment.

Mr. McCarthy: Have you ever had any family members living down there?

Mr. Laing: Not for any length of time.

Mr. McCarthy: How long have you rented out that unit?

Mr. Laing: We started in about September 2014 just because it was there and it was available and we thought it was a good thing to do.

Mr. McCarthy: Did you put in a kitchen?

Mr. Laing: Yes we put in a stove.

Mr. McCarthy: Did you get a permit to put that kitchen down there?

Mr. Laing: No, we didn't. We didn't know we had to do it for that.

Mr. McCarthy: What did the building inspector say when he saw that?

Mr. Laing: When we did the garage, we had the electrical inspectors that were traipsing through the basement all the time seeing the box that the electricians were in. They saw that it was there but they weren't there looking at that and they didn't say anything to us at that stage.

Mr. McCarthy: When did you put in the kitchen?

Mr. Laing: We put it in June or July 2014 when we thought my son was coming because we wanted it to be ready for him as he moved in and then we would be in the basement and he would have his stuff upstairs. That was our intention.

Mr. McCarthy: You never pulled a permit for the kitchen.

Mr. Laing: No, we didn't.

Mr. McCarthy: And the building inspector didn't say anything to you about that?

Mr. Laing: He has now. He said that once we have the permit from you they can go ahead and do all the permitting. He said that he didn't think there would be any substantial problem but that he might have to take some panels off to check the wiring or the plumbing that code it is according to code and if it wasn't if it would be possible for us to update it.

Mr. McCarthy: One of things we have to do is protect the zoning codes here. This is in a fine residential area. I would definitely not want to turn it into something other than what it's currently zoned for. It wouldn't be right. It wouldn't be fair to all those people who bought their homes there.

Mr. Laing: But all the people who bought their homes there supported us on this application. They are standing up and saying they support us and theres twenty -three of the residents.

Mr. McCarthy: I can see why. You are a very nice couple. I can see why they support you. I am just saying we have to protect the zoning laws.

Mr. Laing: I understand. But the zoning laws does allow you to approve the accessory apartment.

Mr. Hickernell: Mr. McCarthy, do you think that an accessory dwelling under Section 3.616 requires a relation?

Mr. McCarthy: No, it obviously doesn't. It doesn't say that there, but I'm just saying, you go ahead and put a kitchen in without a permit, you wouldn't have been an accessory dwelling unit if you had pulled a permit and they said no you can't put a kitchen down here for whatever reason.

Mr. Hickernell: Right but that's why the inspector sent him here on 3.616.

Mr. McCarthy: It's kind of like going in the back door.

Mrs. Rando: The contractor didn't inform you when you put the stove in that he needed a permit.

Mr. Laing: He didn't mention that. You know, he was doing lots of other things for us as well. He was redoing the floors and putting in upstairs, we had very narrow doors into the cupboards under the eaves and he put in sliding doors for us.

Mrs. Rando: You have a beautiful home and you are very nice people. And the neighbors, Mr. McCarthy hit on a very good note. You are very nice people, very likable people that the neighbors would want to give you what you want. They want to keep you happy, I'm sure and be nice neighbors. But I wonder if the people at 75 or 62 or 32 or whatever started making apartments if they would just be as happy. I think it's because of who you are that they are in favor of it but I think that their values would go down if all the other people start putting in apartments in such a gorgeous neighborhood.

Mr. Laing: The issues of the values going down, that was something which was mentioned to us and we have researched that and what we found is a report that that's not the case yet these provisions of accessory documents improves the value of the property.

We have a statement, this is from the University of Berkley. It proves accessory dwelling units tend to be relatively small that provide more affordable housing options for at less than one third of the rent of comparable units in multi unit buildings. Often times these units are the only rental housing available in older predominately single family neighborhoods and they are possible for people from all walks of life to live in the area. They also significantly improve the value of the property.

Mrs. Rando: Are there any other questions from board members? Hearing none. Is there anyone in the audience that is in favor of this petition?

(Six people raised their hands in favor.)

Is there anyone in opposition? Would you like to come to the microphone and say why?

Kenneth Basque, 65 Edgewater Drive, we are next door neighbors to the Laing's. I am here to express our concerns about the transition of 71 Edgewater Drive from a single family to a multiple family status for the accessory dwelling permit.

Edgewater Drive if your familiar with it is located in the Angleside Peninsula and its a quiet residential area that kind of sticks out into the Charles River. It only has twenty eight homes in the peninsula. It's just outside the peninsula as you leave the access road there's a couple of very large apartments. There's significant in size graduate student housing. There's the University Office Park, the Roberts commuter train station and just a short way down South Street is Brandeis University. The point being it's an area overflowing with potential tenants.

We are concerned with the precedent that this rental apartment might set. The peninsula is kind of in transition right now. It's had more than twenty five percent turnover rate since 2014 and we are concerned about what kind of a message an apartment at 71 Edgewater would send and what purpose the example could be used for.

We hope that new people moving into the peninsula would be looking for places to raise families or a quiet area for a retirement home and we are concerned about them looking for it as a possible investment area because of the large pool of tenants. We are troubled also about the possibility of increased traffic as well as a chance that the tenants might not be as carefully chosen in the future as they have been in the past.

Angleside is a special place. It's a quiet peninsula and it's enjoyed by those who live and visit there. It's worthwhile to try to preserve this place as it is rather than modify it to meet an individual purpose. Once it changes, it will be difficult if not impossible for it ever to return to its current unique character. Thank you for your time.

Mrs. Rando: Any questions of Mr. Basque?

Ms. Hankins: I just have a question. They have to get a recertification every three years so does that change your opinion. If there was an issue, if we grant this to them and you know a year from now they are have problem tenants, they are in big trouble when it comes to the three years.

Mr. Basque: The biggest thing is the precedent and - - -

Ms. Hankins: But everyone would have to come for a special permit. Everyone would have to individually come and make their case.

Mr. Basque: I didn't know the law. We are just concerned about the example that it would set and even if everybody did come, we would feel that having an accessory dwelling throughout this small neighborhood would drastically change the character of the neighborhood.

Mrs. Rando: There's only one way in and one way out. Correct?

Mr. Basque: That's right, yes.

Mrs. Rando: And you are also afraid, I'm sure, that more cars will - - -

Mr. Basque: Yes, as I mentioned that we are worried about traffic. There are very small children that ride their bikes and play in the streets and lots of people walk because they can use the entire street. So increased traffic would change that.

Mrs. Rando: Are there any other questions?

Mr. Hickernell: Are you going to ask if any people in support want to speak?

Mrs. Rando: Sure. Of course.

**Is there anyone else in opposition? Seeing none. Anyone seeking information?
Seeing none. Anyone who is in favor who would like to speak?**

Mr. Bazquez, 71 Edgewater Drive, Waltham: So I will try to be quick in this speech. I was with my wife, we came from Mexico, this is our third year here in the US. We came because I got a job. We have been working here and we were living in Windsor Village which is here in Waltham. And we were attending the conversation class in the Waltham Library and we met the previous couple that were living with the Laing's. They were from Guatemala and they were leaving because he was ending his master's degree they said we are leaving and we know you are looking for a cheaper place because the rent was increasing in Windsor Village and it was more affordable for us. So we decided to move to that place.

We met the Laing's and as you can see they are very nice people and we have been living together in a certain way that we can help each other very well because as they were saying they have been traveling and we have been taking care of their house especially in the winter. And my wife is doing some volunteer here in the US and I work the whole days. So basically we are not at home in the morning and the afternoon.

We only have one car which is used by my wife because I prefer to use the train. So every day I walk the street and I walk to the train station and I take the train and I go to my job and I come back. So honestly we wouldn't like to cause any trouble to the Laing's couple. They are really nice for us and we help each other. I know that is your decision but I would like not to cause any problems to them. So I don't know if you have any questions.

Mrs. Rando: Does anyone have any questions? (There were none.) Anyone else?

Susan Burstein, 36 Riverside Drive, Waltham came forward:

Ms. Burstein: I'm effectively a 50 year resident of the Angleside neighborhood. This certainly is a precious neighborhood and one that has changed over time. It certainly has evolved in the fifty years that I have been there.

Notwithstanding the comments, unfortunately I don't know my neighbor yet from 65 Edgewater but there have been other changes in the neighborhood too that have changed the character. This neighborhood was the location of the most expensive purchase for knock down and redevelopment. I mean there have been some pretty dramatic changes from the neighborhood that I grew up in where I'm still friends with the kids that I grew up with of sixty years ago.

There aren't that many little kids in the neighborhood. I wish there were. My daughter is in the neighborhood and doesn't have the kinds of good friendships that I have.

I don't see this as an erosion of that. It's an evolution of that. It's a change. It's bringing another texture to the neighborhood that some of the big developments have brought to the neighborhood. It's progress! It's the way things work in the world.

To be honest, I was unaware that when the Laing's came that they had people living there. It was so unobtrusive to me and I drive by their house to get to my house every day and I think it was important what Ms. Hankins pointed out that this is something that is provided in the ordinance. In fact, when I was approached about how I would feel about this petition that they have before you I deferred to read the ordinance myself and and really understand and I think I am very familiar with Waltham ordinances. It makes you think about what the history is. Where did it come from? What was going on when it was passed? I didn't have the time to look into that history. But certainly something was in people's minds when they put in the five year requirement and the three year renewal.

That this be something that was not a two family but was not an increase in that way but was something that was going to be reviewed by you as sensitive to the character of the neighborhood. I would be curious to know where the five years came from. What was in the minds of the makers when they put that in.

But that is the only exception that the Laing's need relief from. And as you see, they are really trying and they are delightful people as well as their tenants and they would need to be back here before you and so I appreciate the concern that if everyone were to do it but I confess that before I was back full time in the house when my mom was still alive, we're looking at something quite similar frankly that she would be on one level and we would be on another level. It would not be an accessory dwelling, We never really thought about that. We were just family but we didn't have a second kitchen. You can see how things like that develop and how they are beneficial to generations both related and non-related in this case and I don't see how this is going to hurt the neighborhood. I really think that it helps. Like I say, the diversity and the richness of the culture people that we have. Yes there's been a lot of turnover but there's also a lot of old-timers that are there and I think we all get along. We are very much a community and I would hate to see this be something that really broke up this precious little family that that neighborhood has been.

I certainly would support it through this round and hopefully that there are no issues and they need to come back for a renewal in three years.

Mrs. Rando: May I ask you a question? You just said you support it for this round for these people. Mr. Basque had a very good point that it's very close to Brandeis University and it allows itself to look for homes like a lot of the large houses in Angleside has for the renting of a room or a basement. Now I'm sure that other people in Waltham have large houses that have rented to Brandeis students and they have more than enough

cars for people that live near Brandeis and I think three years would be an eternity for some people.

Ms. Burstein: I think that that may have been part of what was in the minds of the makers when they put in the five years. You can't just buy it and start renting it to a house full of students.

Mrs. Rando: But that's one. You've got a lot of other houses there.

Ms. Burstein: But they would all have to come for a request for a variance and they would have to do it in year one. These people for three and a half years they've certainly established themselves in my mind in terms of what they are doing is not being disruptive and if they hadn't lived in this house but rather bought it and rented it to a group of students which they could do by right, it would be far more disruptive. I would be more concerned about that kind of thing coming into the neighborhood, frankly, than a family who is living there who wants people who are nice to live with to be living with them. Then someone buying a house, how many bedrooms, there are four in your unit plus. They could be renting to five students and I've been concerned about that frankly when the houses have turned over in the neighborhood but for the fact that they have gotten so pricey, I don't think that people can afford to do that but it certainly happened in other neighborhoods. And that's far more difficult to deal with than this kind of situation. I mean, even if it were two graduate student, as long as it's not disruptive. I see what you are saying, three years could be an eternity but I certainly don't see with the limitation of two people and the owners upstairs that you're not likely to see in a straight out rental of a large house in the neighborhood like that.

Mrs. Rando: Any questions?

Mr. Hickernell: You said you weren't even aware that there was - - -

Ms. Burstein: I wasn't aware that they were renting it. I do know that when his son was living there with at least one child they were sort of living in the house as a couple of units but I really don't know exactly how they had the space split up. This round I had no idea that the people were actually living there.

Mr. Hickernell: What I'm interested in, thank you very much for that answer, I guess I have a question for you, sir.

Mr. Laing came forward.

Mr. Hickernell: So my question is whether you can provide us with evidence that it was already been used as an accessory dwelling for ten years or more. I would ask you, you've got some people who have written some letters on your behalf who weren't able to be here tonight but my interest would be an answer to that question because that then implicates Section 7 of Chapter 40A and I would simply like to hear it first hand from somebody with first hand knowledge if that's the case or not. Do you think if we continued the case you could come back with such a witness another time?

Mr. Laing: The person who wrote the letter lives across the way from us. His wife is in a terminal state. He has nursing care during the day to help. But at night he is completely on his own.

Mr. Hickernell: I understand that he couldn't be here tonight but there's William Lewis at 12 Riverside who suggested that possibly a similar arrangement had been going on for many decades.

Mr. Laing: It's much more likely I could get him to come.

Mr. Hickernell: To me it doesn't matter who it is. It just has to be somebody with first hand knowledge as to whether or not if this arrangement was in existence prior to your purchase and for at least ten years. That would be what I would be wanting to know.

So I guess I'm asking if the board would support a motion to continue this so that he could get that information.

Mrs. Rando: All right. Mr. Hickernell made a motion to continue this case.

Mr. Sergi seconded the motion.

Ms. Hankins: Just on the motion, I guess my only concern is Mr. Hickernell is that I believe that it has to be established if it were the whole through. I don't know, there may have been times that it may not be vouched for every single year.

Mr. Hickernell: It has to be a period of ten years.

Ms. Hankins: But that's what I mean. To find someone to say for a ten year period, absolutely John Smith was there for this and blah, blah, blah. It's a lot to ask.

Mr. Hickernell: I think this is the standard of proof that we usually use. It doesn't require day by day accounting. Your points well taken. It has to be it has to be actual proof that it meets Section 7.

Ms. Hankins: I guess the second question is, are you bringing this up because it's kind of the special permit after the fact?

Mr. Hickernell: I'm bringing it up because I am concerned that the board won't have four votes. I am going to vote in favor of this application but I am concerned that

there aren't three other votes and I think that if they have a right under Section 7 that can be established then the board will have no choice but to grant it. That's to be very clear and explicit what I want to do.

Mrs. Rando asked for a roll call on the motion.

Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Hankins, yes; Mr. McCarthy, yes; and Mrs. Rando. yes.

Mrs. Rando: We will continue Case - - -

Mrs. Laing: Is it possible for one of the members to go to his house in the day time and talk to him because it's impossible for him to come at night but he is a very solid witness because he's been there since 1981. He's been there a long time.

Mrs. Rando: He could put it in writing.

Mr. Hickernell: So, but it would need to be a bit more specific than the letter. It would also helpful if it's done in the form of an Affidavit. The problem with us going to his house is that we are here in a public meeting and we can't take evidence outside of the public meeting. It wouldn't be fair to everybody else who is interested and to the public at large.

Mrs. Laing: Would that be sufficient?

Mr. Hickernell: So, I can't speak for anybody else on the board and I can't even speak for myself until I see what your evidence is that they would enter, either an affidavit or true testimony. But I think either an affidavit or testimony would be helpful to the board.

Mrs. Laing: Yes. Thank you.

Mrs. Rando: I have June 13th or 20th.

We have a motion and it has been seconded that it be continued to June 20th.

Roll Call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Hankins, yes; Mr. McCarthy, yes; and Mrs. Rando. yes.

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 8:30 P.M.

Barbara Rando, chair
6/13/17