

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

June 20, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, June 20, 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 Glenna Gelineau, Mark Hickernell, Sarah Hankins, Edward McCarthy and John Sergi.

Mrs. Rando: Tonight we have two continued cases before us, Case No. 2016-41, Colbea Enterprises, LLC, 65 Main Street and that's for variances; Case No. Case 2017-18, Richard and Leueen Laing, 71 Edgewater Drive and that's for a variance and a special permit.

The first action this evening is for a motion to accept the minutes of June 13, 2017.

On motion of Mr. Sergi, seconded by Ms. Gelineau the board voted to accept the minutes of June 13, 2017.

The members sitting on the following case are: Mr. Sergi, Mr. Hickernell, Ms. Gelineau and Mrs. Rando.

Mrs. Rando: Will the clerk please read the Petition in Case No. 2016-41 Colbea Enterprises, LLC, 65 Main Street?

The clerk then read the Petition of Colbea Enterprises, LLC c/o Ayoub Engineering Inc., in an application for dimensional variances. Petitioner proposed the demolition of the existing gas station and convenience store building and construction of a new 3,600+/-s.f. gas station with convenience store and fast-food establishment. New gas pumps and associated canopy to be constructed. Location and Zoning District: 65 Main Street, Business B. Zoning District.

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

William Proia, the Petitioner's representative from Riemer/Braunstein, 700 District Avenue, Burlington, MA came forward.

Mr. Proia: Mr. Hickernell, I think I owe you an apology. The last time I was here, I thought we were going to have our neighborhood meeting and it was scheduled for the Thursday before Memorial Day and I made a mistake. The neighbors let me know that that wasn't a great time to have that meeting, so we cancelled it and we pushed it out until Thursday night, two nights from now and it will happen that night. So notices have gone out and we have been in touch with the ward councillor and so my latest letter asks that one more time to continue, and at that time we need to go forward or withdraw depending on what happens at the neighborhood meeting.

And I wanted to give a special apology to Mr. Hickernell for putting him through reading that every time I come. I feel very badly about that. If the board would indulge one more time, we would really appreciate it.

Mrs. Rando: Have you sent notices to the neighbors?

Mr. Proia: Yes. We had an email sent and we sent it to Mr. McLaughlin as well. And they knew about tonight. We provided a letter to the neighborhood so we wouldn't drag them out for no reason.

Mrs. Rando: The meeting is going to be held here?

Mr. Proia: It will, upstairs, 7 o'clock Thursday.

Mrs. Rando: Do I have a motion to allow Case 2016-41 to continue?

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to allow Case No. 2016-41 to continue to July 18, 2017.

Roll call: Mr. Hickernell, yes; Mr. Sergi, yes; Ms. Gelineau, Yes and Mrs. Rando, yes. (Mr. Cotton was not in attendance.)

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.

The members sitting on the following case are: Mr. Sergi, Mr. Hickernell, Ms. Hankins, Mr. McCarthy and Mrs. Rando.

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

Mrs. Leueen Laing, 71 Edgewater Drive, Waltham, MA came forward.

Mrs. Laing came forward and presented each member with Supplementary Documents for the Accessory Dwelling Unit and Variance which contained:

- 1. Justification for a Finding that the Basement has been occupied for more than ten years.**
- 2. Affidavit by Richard Whitehead**
- 3. Affidavit by Kimberley Aulenback (Zimmer).**
- 4. Photographs of Kitchen Cabinet installed in Accessory Apartment prior to 2004.**
- 5. Affidavit by Richard and Leueen Laing**
- 6. Proposed Finding of Fact - Special Permit**
- 7. Proposed Finding of Fact - Variance**
- 8. Proposed Decision - Special Permit**
- 9. Proposed Decision - Variance**
- 10. Petition**
- 11. Tenant Support**

Mrs. Laing: Good evening and Madam Chair and Members of the Board of Appeals.

Two weeks ago, we presented our application for a special permit and a variance for an accessory dwelling unit. The meeting was adjourned until tonight and we were requested to provide additional documentation related to the suggestion in one of the

support letters that had been submitted that the basement had been occupied as an accessory dwelling unit for more than ten years.

We are happy to provide that proof in notarized letters and not only do we prove that this apartment has been used for ten years but even twenty years. And, so I have these notarized affidavits.

Mrs. Laing read her supplementary document into the record noted as Number (1). (She also read Affidavits numbered 2, 3 and 4 into the record.)

In addition to the information presented today and two weeks ago, we would like to emphasize that refusal of this variance and the special permit would result in severe hardship to the tenants occupying the basement and for us, the petitioners who depend on the rent to supplement, we depend on it to supplement on our retirement income.

We gave you the history that we come from Zimbabwe and we came with nothing and we came late in life. So, we really need this income.

This young couple sitting here tonight, she got laid off as you will see in her letter and it's through no fault of her own and where was she going to live if you didn't grant this permit. There's not affordable accommodations in Waltham. There really isn't. Where were you going to toss her to is my question. It would have broken my heart to have done that to them, really mean!

We believe, my husband and I/ that we have made a really strong case for the special permit and the variance being granted because: 1, we have very strong community support as evidenced by the petition that I have also included in this file as well as last time showing twenty three members of the community support us. There's maybe twenty five, twenty six but that's not, we didn't sign it, if we signed it that makes it twenty five. So,

honestly we have the support. We also had eight support letters on this issue. The very strong support expressed in the eight letters is from abutters and close neighbors. Plus, I want to say that in the history of renting this basement, no one has ever made a complaint against the residents in the basement and you couldn't get more model tenants than I have tonight. They are perfect.

Next, the affidavits documenting the use of the basement as an accessory dwelling for more than the past ten years which relates to the requirements of Chapter 40A, Section 7.

The testimony given by Susan Burstein and George Vasquez and us at the last meeting surely has made an impact on you. The ongoing support we have received from our neighbors and also look at my support tonight, you know. These supporters have lived in the neighborhood, for some of them, thirty years. They are elderly and they need also help. In the future they may come for help. Now, please, pay attention to what we have tonight.

There is one person who is new to the neighborhood. He comes to move next door to us. He spends a fortune on his house which he doesn't share and he's caused us all this aggregation. For what? For what? To turn the neighborhood against him. Well that's what he's done and we are alarmed and I am hurt because I don't want to live in a country where my neighbor reports me without discussing it with me first.

Now, I've been told not to say this, but I'll tell you it hurt me. You might stab me in the heart before going down to the city and reporting us. We are good people. We do a lot. We run the neighborhood network. We are trying to share our house to make it affordable for young couples. I have shared my house all my life and sometimes never charged rental. Why? Because it's important! We can't let the rich dominate.

My husband doesn't like me being so emotional, but I feel it. I promise you I feel it.

Thank you for your attention tonight.

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

Mr. Sergi: No, not at this time.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: Not so much a question for the petitioners except that in the evidence submitted of the long standing use of part of the property as an accessory dwelling without respect to whether it meets the Section 7 that you are aiming at, I think that one of the concerns that people have expressed about your petition is that it would change the character of the neighborhood were it granted and I think this evidence shows very clearly that it's consistent with the character of the neighborhood as it's suggested for the last twenty or thirty years. So, I think the evidence is important tonight. Thank you for bringing it.

Mrs. Rando: Well, according to me. 3.616, well you say adequate provision has been made for access to such dwelling unit separate from access to the principal residence. That's not true. You have only one exit and then they have to go through your house.

Mrs. Laing: But we have discussed this with the building department. The bedroom and the sitting room are right next to the exit. If there was any alarm they have at least three steps and they are out the exit. That's number one. Number two, we have a very cooperative relationship with our tenants. We don't actually lock the door because we leave it there. They come and go as they want in our house. So there are two exits.

Mr. Hickernell: Would you remove the lock?

Mrs. Laing: Yes, we could remove the lock easily. We don't even use it because we have this great relationship and they will confirm it.

Mrs. Rando: Also, I believe it says, if I can find it that you have to, where did I see it, five years, five years stood out that you have to have lived there for five years and you have lived there three and a half.

Mrs. Laing: Yes. We have spoken to the building department about this. I want to congratulate them. They have been so helpful to us as well as the city helpers in the census board and everywhere that we've been. Now they say, they don't even understand why this five year clause was put in and no one has ever bothered with it. And as we are retirees, this is our retirement home. We have put a lot of money into building a garage, putting in solar, putting in five hundred gallon tanks to water our garden. We've painted everything. There's not one thing wrong with our house and why? Because we feel this as our long term place. You can bury me in that - - - take me out of that house when I'm dead because I love that house, I love that neighborhood. And you will never find more committed people to saying there.

Mrs. Rando: I understand and I also understand that you are extremely well liked and very active in the community and it might be the best thing in the world to have this apartment but we as a board have to go by the ordinance, unfortunately. And if it says five years, not less than five years and you have only been there three and a half then, as you said, please pay attention to what I'm saying. We have to pay attention to the ordinance.

Mr. Hickernell: Well, part of the application is a request from the variance from the five years, Barbara.

Mrs. Rando: Right, I understand that. But also, a bigger problem that you have is that I believe that the renting of the apartment goes with the person not with the lot.

Mrs. Laing: Yes.

Mrs. Rando: Not with the house.

Mrs. Laing: Yes. And that's really great because we have to apply every three years for a new permit. So if our tenants made a terrible noise or caused any adverse behavior, our neighbors could come back to the meeting and say, we don't want you to get the permit. But that has never happened in the thirty years that that place has been rented. And why should it happen now? It's something you're speculating on. It's not something that's ever happened, you see. And the only thing that's changed about the tenants is that they are from Mexico this time. They are not the white Americans that have been living there before.

Mrs. Rando: How do you know they were all white Americans that lived there before?

Mrs. Laing: Because I have been to the census board.

Mr. Laing: Madam Chair, if I may just add to the comment. The issue of being accommodated in that basement is a long term thing. This is not a new thing. As it's been said, if there's a problem it can be taken up when we come back for the renewal of the permit and that would take care of that issue.

Mrs. Laing: Plus the Brandeis people, the police, they patrol that area. They sleep all day in our area when they are not busy. So, actually, we have incredible response. If

anybody steps out of line they just step out of the car because they are asleep across the road.

Ms. Hankins: I have a question. As it is right now, if it was granted, well I just wanted to add a comment that the five year thing, I guess we can't know the intent of why that five year is in there but I would assume it has something to do with some permanency in the neighborhood that we don't have a fly by night type. I feel like the petitioners have well established that they are worthy of that piece of a variance. There's ample evidence that they are very invested in the neighborhood. So I think the five year thing, the spirit of it is absolutely met.

The question I have for you, again, starting back to that point, is that right now you are tied to these tenants. There's all these types of rules on it. You guys said, you obviously came from Zimbabwe and you have the financial situation. If you were denied this, and it will put you in a tough financial situation, couldn't you theoretically rent out to a whole bunch of college students that we have no say over and you could have basically a glorified frat house next to him?

Mrs. Laing: Well, I don't want that. They would ruin it.

Mr. Laing: The question is, could we do it? And the answer is, yes we could.

Mrs. Laing: We could but we wouldn't because we love our home.

Mr. Laing: And we are owner occupied.

Ms. Hankins: I guess what I am getting at is that it seems to me that we open ourselves up to the change in character of the neighborhood by denying this because as Mr. Hickernell said the character of the neighborhood is having an older maybe couple, or a

single person, nice quiet situation, we deny you this we're putting you in a tough financial situation we open ourselves up to having a glorified frat house there. That's all I'm saying.

Mrs. Laing: Plus, we could also go Uber which would be awful. You don't know who's coming in. We don't want that. This whole thing is really hard for me this whole thing. I'm sorry, it's really hard.

Mr. McCarthy: The zoning law, 3.616, specifically states, because it's very, very important that we honor the zoning laws and single family residences are meant for single family homes. If it's only for single families, but in order to get an accessory dwelling you have to conform to the list of items here, every single one. You cannot deter. You cannot decide not to do one or the other.

As far as the five year thing goes, this board only has the right to give variances for size, shape and topography, not time. We don't have the right to give a variance for that.

Number 2: The fact that you have that second access to the unit going through your apartment is not according to what's required in order for you to get an accessory dwelling unit. For those two reasons I cannot be in favor of allowing you to get the special permit. Sorry about that. I cannot waiver from this. These are strict rules that we have for us. It's not saying maybe, you can, you have to comply with each one of these.

Mrs. Laing: Unless it's to the discretion of the committee or the board and that's why we are here. We are asking you to make a judgment on this that shows that we are not going to be a problem.

Mr. McCarthy: Well, the judgment that I have is that second access is a danger, it's a safety hazard. You may not think so but I think so, okay. And the other thing is with regards to the five years, we do not have the right to change that. We don't have the right.

Mrs. Laing: You don't have the discretion?

Mr. McCarthy: That is correct.

Mr. Laing: We didn't realize that. We were under the impression that you had the power to issue that.

Mr. McCarthy: Size, shape and topography. That's what we need variances for. That's it! It's not time.

Mr. Laing: So what you're saying is that if we were to wait for the five year requirement and we were to put in a second expanding lifting window to be a second egress in that basement - - - -

Mr. McCarthy: I don't think you can make adjustments to the outside of the building. I think that's one of the requirements. You can't do that.

Mrs. Laing: The building department is very happy —

Mr. McCarthy: We have to go by what this says in here and they will too.

Mrs. Rando: No alterations to the exterior of the dwelling shall be made.

Mr. McCarthy: No alterations to the exterior of the building and that's because we have to honor the fact the single family zone is the best zone we have in the city. And a lot of folks purchase that type of situation because that's what they want. They don't want to have people renting out, making it into two families. In most areas that's the case.

Mrs. Laing: What about grandfathering?

Mr. McCarthy: The grandfathering is that those folks that those folks that had this second income here, they did illegal apartments. They never went for the permit. They were supposed to go for permits. They never did. It doesn't make it right.

Mr. Laing: My understanding of the reading of Section 40A is that even if people have lived in something that was illegal. if they've lived in it for ten years, and there had been no complaints or no action by the city, then it should be deemed legally nonconforming which would qualify.

Mr. McCarthy: I don't agree with that.

Mrs. Rando: It would have to continue.

Mr. McCarthy: There's a lot that goes into that, but its not that simple.

Mr. Hickernell: I think it is.

Ms. Hankins: It actually is. I think you presented a strong argument towards the ten years. I really don't see anything actually opposed to that, so on that basis I don't have any opposition.

Mrs. Rando: Is there anyone in the audience that would like to speak in favor?

Kenneth McIntosh, 2 Riverside Drive came forward.

Mr. McIntosh: I live right across the way from the Laings. We have lived there for five and a half years. We moved from Newton and I am a Physician on the staff at

Children's Hospital and I have been there for thirty eight years as a member of the Physician's staff.

We are very much in favor of this variance or whatever it can be for the Laing's having permission to have an apartment in their basement because for many reasons.

One, when we moved in the Zimmerman's had this arrangement and it has always been very quiet. The neighborhood as you know is a friendly neighborhood, a quiet neighborhood, a respectful neighborhood. And having people who can support other people, it's also actually an aging neighborhood so I include myself and my wife who wishes to speak, and we also are looking forward to this kind of possibility of having an accessory apartment with somebody who can keep us from going into a nursing home and remaining in the neighborhood and remain part of the neighborhood. So, we would for many reasons not the least of which is that the present occupants of the apartment have been polite, quiet and would continue to be that way for the next how many years. So we are very much in favor.

Peggy McIntosh: I live with Ken McIntosh at 2 Riverside Drive. I also favor the desire of the Laing's to have a special permit and a variance. It is a wonderful neighborhood. I think it will remain a wonderful neighborhood. The Laing's have been excellent neighbors and have a huge amount of support. To my knowledge, it's only the Basque family that does not want this variance to be given. So twenty three people have signed on. The little peninsula where we live has only twenty nine dwellings. So a support rate of twenty three is high. If you add the Laing's names it would be twenty five supporters of this idea.

On grounds that this has been going on for so long in this neighborhood, in that particular apartment, I hope that you will grant the petition that is in front of you. I am a little surprised to hear that the five years can be perhaps adjusted with regard to size,

shape and topography but not with regard to time. I'd really like to see it in writing. But in any case, I do hope that since there have been tenants in that apartment for so many decades that you will say, yes, you may continue your present arrangement. The tenants are model tenants but they provide a very powerful stability to the neighborhood by being there while the Laing's are in South Africa for the winter.

Susan Burstein, 36 Riverside Drive: My family has lived on Riverside Drive since the early sixties. I've taken over the family homestead and as we talked at the last meeting, what Ms. Hankins was getting at that there are many number of ways you can affect the character of the neighborhood. There have been many changes in the years that I have been there. There have been the most expensive tear downs and rebuilds in that neighborhood and that certainly is one way you can change the neighborhood. There have been houses that were rented to college students. It's never really the kind of thing you want to be living next door to and as pointed out that was certainly something that anyone of the residents really could do.

Accessory dwelling units, I tried to do a little research. I talked to all of my friends who have been on the Rules and Ordinances over the years since the ordinances were codified back in the eighties and no one can actually come up with any documentation where the five years may have come from but I think Ms. Hankins really hit the nail on the head that it's an effort to establish the stability in the community of the people who are living there and certainly I've seen that with the Laing's and I hope that they have demonstrated it to you.

The Commonwealth is moving more and more towards innovative ways to try to come up with affordable housing. Tenants that are now living with the Laing's are people who are benefitting from the fact that it is accessible to public transportation. I believe, in fact, he's able to walk to the train and that's very hard to find in affordable housing these days. And it is one other way of allowing people to stay in their house without changing the

character of the neighborhood. It's precisely why the ordinance is written the way that it is. And I do think there is the discretion of the board to be able to grant a variance in that regard.

So I was unaware that these people were even there or that it had been going on. It is that unobtrusive to the community and yet they become part of the fabric of the community. It's a way to have younger people living there, older people living there. It's not the neighborhood I grew up in. It's not the neighborhood full of children. But at the same time I hate to see it become an elitist, you can only afford to live here if you can tear down a nine hundred thousand dollar house and build a million dollar house which in some cases is happening.

So I would repeat the support. There's certainly ample support from the community and I think that that should be the most important thing on everyone's mind. Provisions are there for you to do this in the ordinance. I think it's just accepting that the provisions are met understanding the need for the variance.

Joseph G. Giordano, City Councillor, Ward 7: I met with the petitioners last week and sat with them for about an hour and they showed me around the house and the apartment downstairs. It's just phenomenal what they have done to that house. And it was almost like me sitting with an aunt and uncle was the way they accepted me and I accepted them.

I know this issue with the five year thing. It almost reminds me of, in the city council we have a five year moratorium on digging up streets. But every week, we have somebody coming in that needs a sewer line put in or something and we'll waive that five year term. I'm not saying that you can do it but there might be a possibility there that you might be able to.

The other thing is, I would hate to see this denied and then have them go out and get some Brandeis students to live in there. As you know and I know, Madam Chair, that we have no control over how many live in a house. Whereas with this, they would have to get a permit every three years and we have some control or the city has some control with it. We have houses out there with six and eight Brandeis students in it and it makes no difference. Neighbors complain and there's nothing we can do.

So I would hope that we take all this into consideration. I know it's a tough decision but I think this accessory housing will be a thing of the future and actually I would like to see it happen more often than none because of that control that the city will have with the permitting.

Thank you very much.

Mrs. Rando: I think the problem is Councillor is that living so close to Brandeis students in a house where they have seven, eight or nine and seeing the Uber coming back and forth and those three years is an eternity.

Mr. Sergi: The point there you are making is you are avoiding that situation. Is that what you are trying to say?

Mr. Giordano: Exactly.

Mr. Sergi: That's what I thought.

Mr. Giordano: Exactly. And that we do have some control. I mean they have bars and parties in these houses now and basically unless the neighbor calls the police, we can't do nothing. It's been, you know, the police will go there time and time again during the parties and they are reprimanded and slapped on the hand. But with this situation if there

was a nuisance and it was constant and police have reports, then at the end of the three years, say, sorry, we are not going to renew your permit.

Mr. Sergi: They can have students there, regardless. So, I think it's a better situation.

Mrs. Rando: Anyone else?

Clare Kirley, 26 Riverside Drive: I've lived there all my life and my parents moved into that neighborhood in 1940. Actually they were the first of two neighbors. There were the Morelys and Kirley's established that neighborhood. And so I've seen the neighborhood change and Susan Burstein had said there were families and children. We went through waves for about fifteen or twenty years when we we're getting a new wave of families and children but now it's kind of a retirement community. It's mostly people coming in, tearing down the old homes and building their retirement homes. We've had in the past in that neighborhood where there was one woman, her husband died, her sons died, her daughter had moved away and she was elderly and she wanted to stay in her home. So she would have a Brandeis student live with her and the neighbors knew about it. She let everybody know. And we were all relieved because somebody was living with her. And I think in the future that's going to be the case especially in our neighborhood because it's a retirement community almost now.

And it's nice to see a young couple living there and I think we only have about four children living in that neighborhood that are under ten. So it's a retirement community.

So I am in favor of this. You know when you get good neighbors they are treasure and they are a treasure. I didn't even know they had any tenants because there was no problem. And most neighbors go back and forth by their home, so nobody knew. And I

must mention that their home is so beautiful now. It's an addition to the neighborhood. They spent so much time on the landscaping. It's a beautiful home to go by.

So I am in favor of this. One of the arguments that came up the last time was this might cause an increase in the traffic. In all the years that I have lived there we have had no traffic problems. Actually we have less cars in that neighborhood now than we did years ago. We don't have the children that can drive. It used to be you could have an average of three or four cars in the driveway. Now it's average, half the neighborhood is two cars per family and the other half is one car per family. So that's not a problem. That was brought up at the last meeting but it's not a problem.

So I'm in favor of this. It think won't change the neighborhood. It hasn't yet changed the neighborhood.

William Lewis, 12 Riverside Drive: The neighbors have spoken and I am in favor of this and I just want to add my support to that. It's a request for a variance and that's why they are here for a variance. And I am asking for the discretion of the board to be exercised. We are in support to that.

Mrs. Rando: Is there anyone seeking information?

Seeing none, is there anyone in opposition?

Ken Basque, 65 Edgewater Drive: I just have a couple of comments. As I mentioned there's twenty nine houses and if you have twenty three signatures, most of these are families, I know that the Laing's went door to door to talk to these people so if you have less than half of the people in the peninsula, I'm not sure that we are the only ones that are worried about this.

Mr. Hickernell: How many signatures do you have sir?

Mr. Basque: We decided not to go door to door.

Mr. Hickernell: So, none.

Mr. Basque: We decided not to go door to door because we didn't want to bring conflict to the neighborhood.

Mr. Hickernell: But you have.

Mr. Basque: It's working out terribly. This has become a very personal issue and I have tried hard not to let it be a personal issue but my only point was if less than half the people signed it's hard to draw the conclusion that everybody is in favor of this.

The other point is that I'm just concerned and a lot of people that have signed this are not concerned and the analogy I can think of is a speed limit. If you want to raise the speed limit there may be people who don't care. They don't mind then go ahead. If somebody feels strongly about it raise the speed limit but other people are concerned about the risk. And we are just concerned about the risk.

The other thing I have is a question. At one point at the last meeting you were going to override the vote and just say that this happened because of the Section 6. and is that still what the plan is - - - Or I thought that the point was that if it had been in existence for more than ten years then it was just grandfathered in and there was no vote to be made.

Mrs. Rando: I think Mr. Hickernell - - -

Mr. Hickernell: There's always a vote to be made. The question is whether Section 7 applies.

Ms. Hankins: I have a question on just on the 23, I'm looking at the petition. It's not like 44 Riverside has two people. It's each house is, I can't do the math,

Mr. Basque: One per house.

Ms. Hankins: Yes, so twenty three out of twenty nine.

Mr. Sergi: I was going to mention that as well. It looks like its 23.

Ms. Hankins. Plus, there's a lot of conflict within the houses. It seems like it's almost a consensus.

Mr. Basque: Of people that aren't concerned.

Ms. Hankins: Of people that are in support of it.

Mr. Basque: It just seems like the finished basement is not a very good precedent for an adjacent apartment or that the reply that Mr. Laing gave last week that the kitchen didn't exist before he moved in. So you had a finished basement. The house has four bedrooms saying that people live in there unless the petitioner specified there's a bedroom in the basement isn't conclusive that they were living in the basement.

What kind of concerns me is last week there was a similar case where a person had an apartment for ten years and the lawyer that was standing here had water bills and board of registration and even in addition to all that you still swore in the resident to have

him state under oath that he had been there for ten years. It just seems like the notarized recollection of neighbors isn't quite the same level of documentation.

That's all unless you have some questions.

Mrs. Rando: We still have the problem of not having two exits and if you can make no alteration to the exterior of the dwelling how are you going to rectify that problem?

Mr. Laing: The suggestion that Mr. Hickernell made of removing any locks so that there was no obstruction to that exit to that area.

Mrs. Rando: Do you know why there has to be two egresses?

Mr. Laing: Yes, in case there's a fire in place in front of the door where they get out. They need to be able to come out and have an alternative.

Mrs. Rando: Also Mr. McCarthy brought up us not being able to give a variance.

Mr. Laing: That's news to us. If that's an absolute that would be a hardship - - -

Mr. McCarthy: Well, I had talked to Pat Azadi about it. I was thinking in the final analysis if you create a hall at the top of your stairs that you could essentially have a door to your unit and a door to their unit and the hall would go out to the outside that would do the trick. You wouldn't have to go outside and do any work. You could do that.

If the city council could change this so you don't need the five years anymore. We'd all be in business. They have strict rules that I have to follow. That's my issue.

Mrs. Laing: If we can discern and get it in writing that you are not allowed to give us a variance on the time. Could we have a postponement and get some evidence about that issue that Mr. McCarthy is talking about because we don't have anything in writing and if we can find it in writing that would make us feel that this is a much fairer situation. But right now there's nothing in writing saying that you can't do that and we could ask for an extension to see if that happens.

Mr. Hickernell: Or you could find an attorney.

Mr. McCarthy: As far as I'm concerned that's a legal thing that the city council would take care of. The big thing to me is that access. That's not a safe way to do it and you've got to do it some other way. Anybody who's got a single family home, you've got to have two accesses outside. You can't go into the other unit to get out. You can't do it. You can't do that for any two family or three family in the city. It's a safety issue. And whether you say you're going to lock you're not going to lock it makes no difference. We can't rule on what you are going to say.

Mrs. Laing: If we can get the building department to say that this is an okay situation would you accept that?

Mr. McCarthy: No. If you get the law department to say it.

Ms. Hankins: If the building department says it's safe, you're not going to be accepting of that?

Mr. McCarthy: If you can get the law department to rule that it's okay to do that then fine.

Mr. Sergi: Mr. McCarthy, I just want to remind you, I don't know if you sat on this case but we have ruled on an accessory dwelling unit in the past and in this prior case there was a common exit through the kitchen and it was acceptable to the building department. So I must disagree with that. I don't think we need a legal opinion on that.

Mr. McCarthy: Ive sat on many cases before that the building department turned it down because there wasn't access outside, two accesses.

Mr. Sergi: I'm just bringing up a recent case.

Mrs. Rando: I think what is best is that we continue and maybe the Laing's would like to get some legal appointment from their own attorney or you can go to the building inspector if you like. Mr. McCarthy has his opinion from our law department and you can come back again.

Mr. Hickernell: I will make a motion that we continue the case.

Mr. Sergi seconded the motion.

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

Mrs. Laing: We will need time. I have to look at lawyers and we have to go to the building department.

I am really old now and I am finding the strain of this beyond me. You know I've been at this for a year. Please don't push me into a box. Just give me time to come back.

Mrs. Rando: It's very hard for us to because we like you and we want to do the best thing but if we feel that we can't then we have to do more research.

Mrs. Laing: Don't give us a date. I couldn't do it. It's killing me.

Mrs. Rando: Do you want us to go later into August? How about September 19th?

Mrs. Laing: Give me a lot of time because i - - - Okay, September!

Mr. McCarthy: We can get our law department to give you a written opinion on it. The only other issue would be whether you want to have an attorney of your own look it up. You don't have to do anything.

I've already addressed this with Pat Azadi from our law department. You can talk to Pat if you like about these issues. Believe me, I'd love to say go ahead but - - -

Mrs. Rando: I don't think she will give them any information because she would be representing us.

Mr. Sergi: Hire your own attorney.

Mr. Hickernell: It's really the history of this particular case they are looking for. It's the interpretation of the zoning statute so the history is on file but I think we need a legal opinion on the statute not so much the particulars of this locus.

Mrs. Rando: You can get the minutes of this meeting and the last meeting from the law department if that will help.

Mr. Sergi: I think that Pam in the Law Department can help you.

Mr. Hickernell: We need to extend the hundred days.

Mrs. Rando: Do I have a motion to continue the hundred days.

On motion of Mr. McCarthy, seconded by Mr. Sergi, the board voted to extend the hundred days to act on this case.

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. Hickernell, seconded by Mr. Sergi, the board voted to adjourn at 8:12 P.M.

Barbara Rando, Chair

7/11/2017