

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

July 10, 2018

The Zoning Board of Appeals held a public hearing at 7:15 P.M., Tuesday, July 10, 2018, 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, Marc Rudnick and John Sergi.

Mrs. Rando: Tonight we have two new cases before us and one continued case before us. We have Case 2018-18, Michael Rundlett, 161 Villa Street, and that is for variances; Case 2018-20, Mark Resnick, Trustee of 70 Hall Street Realty Trust, 64-70 Hall Street and he is here in an Appeal of the Decision of the Building Inspector; Case 2015-25, Alliance Realty Partners, 341 Second Avenue and that's for a 40B Comprehensive Permit.

The first action this evening is for a motion to accept the minutes of June 25th.

On motion of Ms. Sergi, seconded by Mr. Rudnick, the board voted to approve the minutes of June 25, 2018.

Mrs. Rando: Will the clerk please read the petition in Case 2018-18, Michael Rundlett, 161 Villa Street?

The clerk then read the petition of Michael J. Rundlett in an application for a Variance-Side yard setback. The locus consists of a single parcel of land with an existing single family residence situated thereon. The Petitioner proposes to construct, use and

maintain a farmer's porch onto the front of the existing residence. Location and Zoning District: 161 Villa Street; Residence A-3 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, the Petitioner's representative came forward.

Mr. Connors: I am the attorney for Michael Rundlett. Michael is with me right here. I have a copy of my brief which I will submit.

Mr. Connors went over the plan showing the location of the locus. He then read his brief into the record and went over his exhibits and photos with the board.

Mr. Connors: So we believe that it's a good project. It's not substantially detrimental to the public good and will improve this property. And, therefore, we would respectfully ask that the petition be approved. One other thing, the lot coverage, the maximum lot coverage is 25% and even with the addition it's only 14.8. So we are well below that.

Mrs. Rando: Are there any questions?

Mr. Rudnick: What is this 15 foot passageway?

Mr. Connors: Take a look at the subdivision plan. It's on that as well.

Mr. Rudnick: Thank you. No other questions.

Mrs. Rando: Attorney Connors, doesn't state law state that the frontage alone doesn't qualify for a variance if you don't have the proper frontage?

Mr. Connors: Well, the frontage is not the question. The frontage is pre-existing nonconforming. It was created in 1944 as I can tell. So it's legally pre-existing nonconforming. But because it's only thirty-nine feet, it did qualify for the small lot exception. That's not related to the question as to whether I am entitled to a variance. The question as to whether or not I am entitled to a variance is one: Do I have a unique circumstance which relates to the structure, soil conditions, shape or topography? So frontage doesn't get into it.

Now, if I was going to try and create a new lot, you go and get an ANR plan at the Board of Survey. If I didn't have enough frontage, I couldn't create a lot but this lot already exists. So it's really not the question and I'm not affecting that thirty-nine feet I'm constructing up here (referring to the plan) so I'm affecting the nonconforming nature because I'm not going to be able to create two fifteen foot side yard setbacks but I'm not increasing the nonconforming nature of this building because I'm not going beyond what's already there today.

So, I think we qualify for a unique structure, number one; and number two, topography and it creates a practical hardship to Mr. Rundlett.

Mrs. Rando: Well I think that the topography, if you look at all the other houses up there, they're all up a hill.

Mr. Connors: All lot of them, they are all down by the street. So he's up here (referring to the plan), everybody else is much closer to the street. So he's way back there. But that makes the most practical sense as to where to construct the addition as a farmer's porch.

Mrs. Rando: And your hardship is just that he can't build it any other place?

Mr. Connors: Yes, because where the structure is situated within the existing required setbacks. So it's nonconforming but to construct anything new, it creates a problem due to the structure itself. So it's a single family residence. A farmer's porch is a permissible use addition to a single family.

Mrs Rando: Do you have anything else to add?

Mr. Connors: No.

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

Philip B. McCourt, Jr.: My wife and I live at 205 Villa Street, just up the street from this and the topography is really challenging up in that area. But it would be great to see an improvement any place along that corridor. All the houses suffer from that topographical thing. We are definitely in favor of this. He's a nice neighbor.

Mr. Michael Rundlett: I just want to say that I had my house recently appraised. When people come up there they're like wow, this is a really unique spot and it's real cool because this was a building and they changed it into a house and there's always cool details inside which is so fun. I love living there. That's one thing. And then I've done so much work like my gardens are up. I've got eight flower beds but I have all kinds of stuff going on.

Mrs. Rando: How many steps do you have?

Mr. Rundlett: Thirty-seven steps not including the hill. So the assessor came up and he was out of breath. And your guy (pointing to Mr. Forte) said to me, Patrick, with that brogue of his, he said the place needs a porch. He said it to me but I can't give it to you because you're a foot short on the frontage. You've got to go get a variance.

I'm sitting up there on the hill and I'm thinking we are so far up off the street, it's like all my friends are out of breath coming to my house but once they get there they are really happy and I'm thinking if I put a farmers porch which is six inches high, no railings, so you wouldn't see a porch and the only thing you'll see is this roof. It's not even coming to the end of the house, It's not encroaching on this side or that side and I put these gigantic bushes like everywhere. So it's like we have privacy on both sides and I keep planting. I planted two more hydrangeas the other day. So I don't know what you guys think but I'm thinking it makes so much sense. I think it makes sense. It's a nonconforming lot. I am under a hardship. I can't build anywhere else. I'm not asking for anything lavish. You'll hardly even know it's there but it will add to my quality of life. I won't have to walk into this building that was not a house and walk directly into a hallway and then I have to walk up the staircase. So my friends complain. They say we walk up all these stairs and then we have to go up more stairs because the house is built on a slab. I don't have a foundation. I have field stone foundation and a retaining wall holding the house together. It's really fascinating.

Mr. Rudnick: Have you spoken to your abutting neighbors about this?

Mr. Rundlett: Well next door is renters, and that's an abutter (pointing to a lady in the audience). She is an abutter and she found out yesterday.

Mrs. Rando: Would you come up to the microphone and give your name and address, please.

Bethany Martin, 157 Villa Street: I just noticed the small thing yesterday that was mailed and realized what was happening and so I tried to come in today. I didn't know about it until I saw that and just found out from Mike here. So, I have mixed feelings. I'm not too concerned about what I believe to be three feet shortage on my side so I came here to learn and understand what's happening. So I can't say I'm opposed to it. I can't say we one hundred percent agree with it. Privacy is certainly an issue. So the bushes are up now. There's much more privacy in the summer. In the winter things get less. So, I do have questions about, you mentioned drainage, I don't know if there are drainage implications from this going in or not. So, that would be one concern because we are a little bit down hill from there. I'm not sure one way or the other.

Mr. Rudnick: Drainage will be addressed by the building department.

Mrs. Rando: Anyone else in favor? Seeing none. Anyone else in opposition?
Seeing none. Anyone seeking information?

Seeing none. Attorney Connors, you may continue with your Proposed Findings of Fact.

Mr. Sergi: Mr. Connors, has this been on file?

Mr. Connors: Yes.

Mr. Sergi: Are there any changes tonight to this?

Mr. Connors: I made two changes. And the reason being as I stated, I was going over the Assessors' records that said the structure was constructed in 1890, so I have changed that findings of fact to state that it was constructed in 1924.

So I made changes on Page 2, #5, second line: change 1890 to 1924. Page 3, d. First line, change 1890 to 1924 and I would say according to the Building Department records as opposed to the Assessors' records.

Mr. Sergi: Those are the only two changes?

Mr. Connors: Those are the only two changes, correct.

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

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

Mr. Connors: Like the Proposed Findings of Fact, I did make one change to the Proposed Decision on Page 2, Fourth line: Change 1890 to 1924.

That would be the only change to the decision.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: I am ready to entertain a motion.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to adopt the Proposed Findings of Fact as amended.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted that the Proposed Decision, as amended, becomes the Board's decision.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

Mrs. Rando: Will the clerk please read the petition in Case 2018-20, Mark Resnick, 64-70 Hall Street in an appeal from the decision of the building inspector.

The clerk then read the Petition of Marc Resnick, Trustee, Seventy Hall Street Realty Trust in an appeal from the Decision of Inspector of Buildings. The locus consists of a parcel containing +/- 169 acres of land, with two buildings located on it Petitioner is appealing a Cease and Desist Order from the Inspector of Buildings wherein the Inspector alleges a violation of City of Waltham Zoning Ordinance, Article 7, Section 7.41 & 7.431. Location and Zoning District: 64-70 Hall Street; Residence B Zoning District.

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

Before you start we have one announcement.

Ms. Gelineau: Before the Petitioner begins, I just want to state for the record that Mr. Resnick is my landlord for my office, but I don't feel that I have any conflict or bias in this case.

Michelle M. Baratta, Esquire, The Beantown Companies, Inc. 138 Harvard Avenue Allston, Ma came forward.

Ms. Baratta: I do have copies of my brief. (Ms. Baratta submitted copies of her brief to the board and to the building commissioner.)

A little bit of history. The Petitioner purchased this building in 2015. At the time he purchased it, it was eleven units but it was told to him that it was a legally nonconforming nine unit building. The previous owner as part of the closing for this property supplied the petitioner with a Certificate of Inspection which is in the brief stating that this is a nine unit capacity. It's actually two buildings on one lot. The front building according to the building right now is supposed to be a four family but it's currently a seven family and the back building is supposed to be a two family. It is currently at this time a two family. At the time of purchase it was a four family.

After purchasing the building, my client did speak to fix the rear building and bring it into compliance. You will see in the packet from the building inspector there are some permits whereto the property at 64-66 Hall Street which is the rear building, the two family that at the time was a four family. So all those permits state that they are to convert it back to a two family which is the purpose of those. None of the permits for 68-70 Hall Street were to change the occupancy. The intent was to keep it as a seven family because the petitioners believe that this is now a lawfully nonconforming nine unit set of buildings.

They've based this on several things, almost notably is Mass General Laws, Chapter 40A, section 7, which does state that there is a ten year statute of limitations for the building inspector to bring a civil or criminal claim against a property owner for zoning violations and building violations. It further states that any action that's brought must be recorded which is obviously to prevent a situation like with my client where the properties under agreement and still not aware that there's a zoning violation.

There's nothing recorded for this property that would indicate that it's anything other than a nine unit structure. Furthermore if you look up in your packet there are

assessments from the City of Waltham for tax purposes and you will notice it's a little confusing because they now assess each one separately. And then starting in 2016 I'm not sure why they switched it over but regardless for that fourteen years it's been assessed as more than eight units at the property. The statute is pretty clear that in a situation where the city is aware that there is a zoning violation that in this case because it existed for at least fourteen years they would need to bring a law suit within the ten year period.

So today we are seeking to have the Cease and Desist void as to the number of units at the property.

Mrs. Rando: How many parking spaces do you have?

Mark Resnick, Trustee and Owner of the property. We have six to eight spaces currently parking there now. We have two separate driveways and they park tandem, way down, you know, it's a very long driveway. So I have about six or eight cars in there. And it's sufficient for all the units. The largest unit is a one bed in the front house and in the back house there's two -2 beds. The house is currently occupied and there is sufficient parking. Since it is a one bedroom we don't get that many cars.

Mrs. Rando: How many spaces are you supposed to have?

Ms. Baratta: I believe it's one per bedroom.

Mrs. Rando: I don't think tandem parking is going to work in that section of Waltham and I was not able to park on Hall Street when we had a site view because it's a one way and I had to go around and around to look for a space and I didn't find one and that was in the day time. What's going to happen at night? That is a very, very overpopulated section of the city.

Mr. Resnick: It's just that we are not getting very many cars. Most of the people that can afford to move in those small units, they just don't have cars.

Mrs. Rando: Tandem just doesn't work.

Mr. Resnick: Tandem is only shared by the same unit. In other words, we have six individual spaces. Two of them tandem so we house eight cars. But the two people that live in the apartment that share the tandem space.

Ms. Baratta: The statute does state that the property would be lawfully nonconforming and that would extend to the parking situation. Certainly if we needed to as a condition provide off street parking somewhere for additional units we could certainly make arrangements for that.

Mrs. Rando: Are there any other questions? We'll hear from the building inspector?

William Forte, Inspector of Buildings for the City: I have had a chance to look at Ms. Baratta's Findings of Fact and some of the documents that she had submitted. Basically the Assessors' office does not determine the legal use. Whether you are being taxed on a property or not doesn't give you rights under zoning to have a density which is beyond the density in which the property is allowed or permitted for. So, I would say that that probably doesn't hold water.

I gave you a little bit of a summation here. These are documents that I have on file in the building department. I have two inspectors that are still employed with the department who have basically looked this over and do agree with some of this information that was given. Basically the exhibits are Exhibit A. What we are talking about, from 2003

and 2008, there was efforts to try to abate this violation with two different owners. There was a new owner, I think, in 2004 who was also cited for having an illegal number of units.

But you will see in the record, and I won't take up too much of the board's time, but what you will see in the record is that we have consistently ruled that this is a four dwelling unit in the front building and a two dwelling unit in the rear building. There was a court action in 2007, I believe, there were tickets that were appealed to the district court. According to the record, it appears as though the Magistrate ordered that the building department go back and re-inspect the property. I don't have any evidence to clearly determine whether or not the violation was abated at that time.

Until 2015, I think the property hadn't been inspected by us. That would be a span of about seven years. In 2015, one of my inspectors doing a multifamily inspection erroneously issued a certificate for a nine unit building. He went there. He saw the number of units and determined that that's what the inspection was for and shortly thereafter it was brought to my attention there was a mistake. I immediately contacted the Law Department. The Law Department had provided records to the petitioner and in that determination did say that because a certificate of inspection was issued for nine units does not necessarily give you rights to that.

At that time, Mr. Resnick had a different attorney, a Ms. Devlin. She and him both came in at one point. I believe Mr. Resnick may have come in alone. Ms. Devlin came in on a separate call for records. And it was conveyed to Mr. Resnick at that time that he did indeed have three illegal apartments in that front building and that they had to be remediated. So at that time we had an agreement, a verbal agreement, that we would rather than issue a notice of violation that we would allow him to convert the property back to a four family. We issued a series of permits in there and I will disagree with Ms. Baratta that three of those four permits were issued for straightening out that front building. 68-70 is the front building. 64-66 is the rear building. So there was a certificate of occupancy

issued for that front building for a nonconforming four dwelling building. That's part of your document as well.

And at that time, the top floor was not inspected. So again, another omission by the building department. However, we did not change our finding that it was not anything other than a four dwelling unit building in the front and a two dwelling unit building in the back which Mr. Resnick says he has rights to, nonconforming rights.

Just going over the documents very quickly, you will see that in Exhibit B, that a nine unit certificate of inspection was issued and not certificate of occupancy. It's a different document.

In Exhibit C, you will see that all the permits that were issued to restore that front building to a four unit building and Exhibit D there are images of some of the illegal apartments and the kitchens.

I just want to say that this is not a typical seven unit building as you would see it. These apartments were created without permits. They are dangerous. Basically they are enclosed. They have one means of egress out. Mr. Resnick and I took a site visit and we tried to determine if he could comply with the means of egress requirements under the building code and it's not likely because the means of egress has to be remote. If you look at the way the stairs are laid out, Mr. Resnick had the idea, well from on this side you could be able to just walk over here, but the building code requires that egress components are remote from each other. So that, if you look at any common sense apartment, you will see that there's a front door and a back door. That's not just by happenstance you so you can have two different views. That's so you can get out of the building two separate ways if there's a fire.

The fact that these were created without permits makes them dangerous. We did not have the benefit of an inspection to determine if gas connections were done correctly. If the wiring, I'm sure that there's probably cross wiring in there that's never been inspected.

I will say that Mr. Resnick has a desire and a good reputation to upkeep buildings. He's done several projects with the building department. He's been very diligent in wanting to comply and I would say in any case, his intent here is not ill.

However, this particular property should not be a seven unit building. It never was and it never should be. And even if the board decides to overturn the zoning violation, I think that there are some insurmountable building code issues that may not be able to get resolved which may include sprinkler the entire building because more than four units requires sprinklers under Mass General Law.

Mr. Hickernell: That would be a separate enforcement action.

Mr. Forte: Absolutely. But again, and I just refer back to the zoning violations here that again the density of this building as it stands right now is not what zoning will allow on any given day, even in the days of nonconformity this would not fly.

So I would ask that you uphold the notice of violation and so that we help Mr. Resnick straighten out some of the safety issues over there along with the density issues.

Again, I would say, that we have already issued permits that Mr. Resnick has not complied with fully and those plans are on file with you. Those are the plans we issue permits for almost every single building application says to convert the illegal units back to like two on one side and the wording is very clear and I provided you with a permanent record and I would just ask that you take some time maybe to look over the documents, maybe look at them a little bit more in detail because basically it is the record and it's

certainly not my opinion. This is what the building department has enforced consistently since 2003. So again, we may have dropped the ball, we may have made a mistake but we are certainly not going to change our opinion about this property.

Mr. Hickernell: Have you provided Attorney Baratta a set of the documents.

Mr. Forte: Yes, she has them.

Mr. Hickernell: You included an August 1, 2007 letter to then building inspector, Brian Bower from Mark Favaloro who was representing the previous owner. There was an offer there to reduce the number of units to eight. Do you know if the city or your department ever responded to that?

Mr. Forte: There were no permits issued for that. There was a proposed floor plan that I did not provide in there because it didn't become public record. It was more of just a notation. I can provide you with that, what was proposed at the time but because there was no permit issued for it, I didn't think it was relevant in this.

Mr. Hickernell: I don't need to see that. I was just curious to know clearly the parties were in discussion, that was in 2007, as to remediating what appeared to be a violation. And I'm just trying to figure out how long those discussions went on.

Mr. Forte: I don't. I can ask that question certainly. If you want to continue this, I would be more than happy to.

Mr. Hickernell: That would be great. What do you say to Attorney Baratta's argument that to bring an enforcement action here you needed to have it recorded at the Registry of Deeds?

Mr. Forte: Well I believe that the key word in there is structures. Structures are protected. Uses are not. So that's all I would say is that there is no statute of limitations on use rights. And this is not an issue of density. I think we have been down this road before where it's not a question of dimensional relief, you know, the number of units per acre. It's only by intensity of use which falls under the city council which I don't think that they would even entertain this because it doesn't qualify as that. But that would be my take is that uses are not protected, structures are. So if the structure was cleared out and they were using it as a four family, and if there was removal of kitchens, I mean obviously they could combine the third floor living space to be part of the second floor, living space, that's fine. You can use whatever nonconformity is in there but not more intensely than what is allowed by zoning or what is allowed by a nonconforming, a protected nonconforming use right which again is a four family in the front and a two unit in the back.

Mrs. Rando: Are there any questions?

Mr. Rudnick: Mr. Forte, you did some testimony about the egress difficulties posed in the seven unit building. Is it your opinion that proper egress could be managed if it were a four unit building or is it still a problem?

Mr. Forte: Well, it's not just the means of egress. I don't believe that these units even meet the minimum habitable space for a dwelling unit. Rooms that are kind of converted in and they are separated by locks and they have separate cooking, separate sleeping, separate sanitary and separate living. Those are the four things that define a living unit in a building code. So I think that the problems are more insurmountable than just the means of egress. But that is probably the main thing.

Mr. Rudnick: Do these not meet those other requirements.

Mr. Forte: There would be substantial alterations to the building to be able to allow not only for that. He might even lose one just because it wouldn't meet the building code requirements and when you alter a structure to meet a new configuration, you have to comply with the state building code requirements in most cases. So if you are creating a dwelling unit, now you have to have a minimum seven foot high. Slants can't be more than five feet. There's a whole bunch of dimensional requirements there. If it was just converted back to say a bedroom that was attached to a second floor unit, then that would probably be acceptable. It would eliminate the need for sprinklers, for means of egress and all that other stuff.

So, again, if the board did want to overturn the notice of violation, I would just recommend that the petitioner comes up with an alternate plan that's going to address the building code because I think it's all relevant especially when you are talking about life safety. You know, we recently had a fire in a third floor apartment that was not permitted correctly. The fire wasn't caused by that, but again to was a loss of life and in the legal department we are very serious about enforcing these things. I am very concerned from a life safety point for this building for the number of people that are there. It's not just a matter of parking. Parking is a factor but it's not the driving factor. If you have three people in there that are all running air conditioners and somebody turns on a hair dryer and a circuits is not properly wired, you know, that could cause an electrical fire. The fact that people can't all get out; theres no emergency lighting in the hallways and, again, Mr. Resnick does a great job maintaining his properties and there's no ill will toward him, but in this case, I think that we have too many issues here for this many units.

Mrs. Rando: Are there any other questions?

Ms. Baratta: I'll try and address all the claims that Mr. Forte addressed today. Again, I brought it up before, I know that there is lengthy sections on the enforcement

action but again it's our legal opinion that it needed to be recorded at that time to have any affect on the statute in question.

Also regarding the Certificate of Inspection and the law department opinion, I did review that myself and what the law department specifically states only is that the reference Chapter 258 of National Laws, and that is regarding civil liability on the part of a government entity from decisions that they make. So that doesn't have any affect on what we are talking about today because no one is suing the building department over the certificate of inspection. The certificate of inspection in this case goes toward the other statutes to show that the city was aware of the amount of the units that were in the building. Obviously there were because they went in there and they said there were nine units.

Again I brought it up earlier, even if you read the permits the ones that say converted a four family to a two family and they all referenced 64-66 Hall Street which again is the rear building, the small building which is not in question today 68-70. I know a lot of safety issues were brought up and the petitioner is not trying to avoid any responsibility with safety concerns. He's already working towards installing sprinklers throughout the building. It's my understanding that if they have a modern sprinkling system, then the lack of egress is no longer an issue but he did meet with Mr. Forte, he did meet him at the property to discuss each and every issue with each of the units. Certainly there were conditions put on that the property needed to be compliant with certain other codes to make sure that the building was done properly and that the sprinklers were up to date, that there's no more fire issues. And certainly the safety of the tenants is important and on the other hand, we certainly don't want to be throwing people out on the streets. That's three units of people that would be homeless if we were not able to accommodate them in some way. But again, their safety is also paramount which again is why the petitioner is seeking to install the sprinkler systems and anything else that can be done to make sure that they are safe at this time.

Mrs. Rando: Are there any questions?

Is there anyone in the audience that is in favor of this petition? (Just one.)

Is there anyone in opposition?

Donald DeRosiers, 51 Taylor Street, Unit 1: I live at the corner of Taylor and Hall. And the only thing I want to say is I want to confirm the traffic situation and the parking situation in the area and anything that affects the safety of any of the buildings and the people living there has to be addressed. The density in the area is tight and any type of a fire that was to take hold in there would not only damage that property but other properties around it. We lived not that far from the Cooper Street fire project and we were putting out fires on our front door step. So, that's all I have to say.

Mrs. Rando: Is there anyone else?

Mr. Resnick: So, I'm the petitioner. So I just wanted to say that one of the things I did that sometimes people don't realize is, when you reduce the number of units you increase the number of bedrooms. So every one of those living rooms in that unit that you eliminate will become a bedroom because the units already have legal ones and they already have kitchens. So instead of having a one bedroom apartment with a living room and a bedroom, you're going to have two additional bedrooms. So if I would be required to make it back to four units, I would be adding at least three more bedrooms to the property which will only increase the density, not reducing, and increase the need for more parking and not reduce it. And also, if I take out three kitchens that means three more bedrooms. So I'm actually going to add six extra people. So, if you went lower density, you actually don't want to reduce the number of units because everything just becomes a bedroom. So I just want to also say that I fully intend to put in a sprinkler system. So we are already

working on it. We met at the property and I met the building commissioner and we tried to work out ways to have two means of egress and he showed me how difficult that would be, but the sprinkler system would eliminate the need for two means of egress and so a unit only needs one means of egress and clearly every unit needs the same for one bathroom, one full kitchen, one living room and one bedroom and no studios. They are all one beds. Full one bedroom apartments, separate bedrooms, nice apartments,

The permits that were issued for the front building, none of those permits say we're going to reduce those units and I would respectfully request that you look at the permits specifically the permits in the back that say we are going to reduce the units and specifically the permits in the front of the building specifically say that we are not. They don't say we are not, none of them say that we will. So all these permits were issued and I thought, mistakenly I guess, that everything was all okay that if we fixed up the back building and the front building seemed to be okay, I was quite mistaken but like my attorney explained that whether you want, like if you wish there was more parking or whether you wish they were nice units, the City of Waltham, the building department, is giving up the right to enforce those rules and it says clearly in the statute that we don't have to make alterations to the building. So I don't know we would turn seven units into four units without altering the building and it says we don't have to. The statute clearly states that after ten years we are not obligated and I think this situation specifically told us why because when we bought the property, that would have shown up on a title search and we would have known that this was going to be an issue and there was a stipulation in the closing that the seller provide me an occupancy and he went to the City of Waltham three days before the closing and got occupancy for nine units, and so we thought we reduced it to nine like we were supposed to.

Mrs. Rando: Mr. Forte do you have something to say?

Mr. Forte: I would just say again that we made it very clear, in 2015 to Mr. Resnick that he owned a four family in the front and a two family in the back. Whether that was a misunderstanding or a miscommunication, I think we were pretty clear about it and if you take time look at the permits they do indicate that that there were three different permits to alter the units. They were supposed to be restored and returned back to. Maybe some of the confusion might be the addresses, but the front building has always been referred to as 68-70 Hall Street and the rear has always been determined to be 64-66 Hall Street.

Mrs. Rando: And what about the one egress that you stated?

Mr. Forte: So that could be omitted with a sprinkler system but again there are other issues over there besides that and I think that the minimum dimensional requirements for dwelling units would probably not be able to get resolved by right with a building permit issued by our department. We wouldn't have the authority to issue a building permit for living units because again although they might be preexisting, nonconforming if the board determines that, they still have to meet minimum habitability and life safety requirements which a sprinkler system is going to take care of a portion of that, but again, I don't think two units on that third floor is not safe, in my opinion. But again, I know that we have some disagreement here but these are the facts. These are the factual information that I have in the building department. To the best of my knowledge there is nothing else here that would help to make their side more favorable.

Mrs. Rando: Is there any green area?

Mr. Forte: Most of the properties over there, there isn't a lot of open space Parking is an issue in that entire area and again if the board made the determination that the units were nonconforming they would probably also have to make a determination that the parking is nonconforming. So that's what I see. If there was a means of egress that was

required to be on the outside of the building that might be another consideration in a dimensional variance along with a use variance, again if granted.

But again I wanted to reiterate my opposition to this because I really believe this is too much density for this property.

Mrs. Rando: We can't give a use variance.

Mr. Forte: Corerect.

Mr. Rudnick: Mr. Forte, how many units do we allow in Residence B?

Mr. Forte: I don't have table of uses, but it's so many per acre. So they don't have the acreage over there. There were some zoning changes back in the fifties that would allow a property to be converted from a two to a four but that window is very short. I think and I don't believe that this property would contain the density for that number of units that are there now.

Mr. Rudnick: And to your knowledge there's been no action on the part of the City Council to allow this number of units on this parcel.

Mr. Forte: No, I don't even know that the City Council can grant a special permit. Well, they could but usually a special permit is associated with an increase in the FAR which if there is FAR and it does apply then it would be nonconforming because it's an existing building unless you were going to increase the size of the building and make a full third floor, say. That probably would allow the petitioner to get a special permit from the City Council.

We do not have record of units being created without permits. We only have record of them being cited as a violation and that they have gone through court. You know, again, I can't really speak to what actions that my department did or didn't take, but the records do reflect that there was enforcement action substantially for a period of about five years.

Mr. Hickernell: I will be making a motion to continue the case, first to review the documents you gave but also to give you a chance if there's anything else you can produce from your department showing how long discussions over the violations went after 2007. I would like to know, is this ten year applicable and I'd like a record in which we could make a finding on.

Mr. Forte: And I will check with the law department and get an opinion on that.

Mr. Hickernell: I don't need an opinion from the law department. I just want the facts to put the facts to record.

Mr. Forte: So that attorney's letter that you're talking about where he had proposed eight units

Mr. Hickernell: Right. What was the response to that? How long was the city discussing resolving these issues with them?

Mr. Forte: So the last correspondence between the owner at the time and the building department as well is what I am looking for, right?

Mr. Hickernell: Right and any further correspondence. You don't have to decide which one was the last one, just whatever you have that you haven't already given us.

Mr. Forte: I can ask my inspectors what they can recall and we will dig up whatever we can.

Mr. Rudnick: If it's possible, Mr. Forte, if you could also provide us with a simple timeline of the actions and the discussions that, I mean, we have them all here. It's pretty voluminous. If you could just give a one page, this one happened on this date, this date, this date, discussion went on this long.

Mr. Forte: Okay. And this will be in the past violation?

Mr. Rudnick: So it just shows us the time line. And I can read this from the content but if you show me something that said this is what we did in 05, 07, 15 and 18. Thank you.

Mr. Forte: So if you just look at the document, you will see that Mr. Jennings gave me a summation of the actions that he took from the time that he issued the certificate until the time and he basically researched the records. That's all pretty clear and we will find that with the permit section is, I think, Exhibit C. That's a pretty accurate list. I checked and it looks like it's fairly accurate.

Mr. Rudnick: It's very accurate. Just show me any additional supplement to the time frame.

Ms. Baratta: Is there anything additional you would like me to provide as well for the continuance?

Mr. Hickernell: I believe that your client suggested that the issue of alteration in Section 7 would extend to reconfiguring the inside of the building. I can do that myself but if you want to provide us with anything further, I think it would be helpful.

Mr. Sergi: Do you have any evidence that the work done was within code? I've heard that the work was done and not permitted. Do you have any evidence to dispute that at all? I want to make sure that everything is done properly. We don't want any fires on the scene.

Mr. Rudnick: Could you get us just an image of this parcel. I see pictures that Mr. Forte has supplied.

Ms. Baratta: There's some small ones of the property here.

Mr. Rudnick: Just give us a big size view of the property, please.

Mr. Hickernell: Madam Chair, I make a motion that we continue this case for the purposes of permitting the petitioner and the building inspector to respond to our requests and to review more in depth the documents submitted.

Mrs. Rando: I have a motion to continue this case, do I have a second?

Mr. Sergi seconded the motion and the roll being called:

Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

Mrs. Rando: So Case 2018-20 will be continued to August 21st.

I'd like a motion to have a five minute recess.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to have a five minute recess at 8:40 P.M.

The board reconvened at 8:45 P.M.

Mrs. Rando asked the clerk to read Case No. 2015-25, Alliance Chapter 40B.

The minutes for that case were recorded separately by ATM, Inc., and may be viewed on separate minutes for that case.

After that case was heard, on motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 9:15 P.M.

Barbara Rando, Chair
7/3/18