

City of Waltham
Zoning Board of Appeals
August 18, 2026

The Zoning Board of Appeals held a public hearing at 7:00 P.M. on Tuesday, August 18, 2026 in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were John Sergi, Chair, and members Mark Hickernell, Matt Deveau, Glenna Gelineau and Kathleen McMenimen.

Mr. Sergi: Tonight we have four cases.

The first order of business is to approve the minutes of July 28, 2026. May I have a motion to approve the minutes of July 28, 2026 please.

On motion of Mr. Deveau, seconded by Ms. Gelineau, the board voted to approve the minutes of July 28, 2026.

Mr. Sergi: So the minutes of July 28, 2026 have been approved. Thank you.

Okay the first case we are going to hear tonight, we are going to go in order, Case 2026-11, Petitioner/Owner: Arturo & Yolanda Fagundo. If the clerk would be kind enough to read the petition.

The clerk then read the petition in Case #: 2026-11. Petitioner/Owner: Arturo & Yolanda Fagundo. Nature Of Appeal/Petition: Variance and Special Permit. Subject Matter: Petitioners seek to construct, maintain and use an attached garage to the house and a deck around the above-ground swimming pool. Location And Zoning District: 92 Gregory Street; Residence A-3 Zoning District. Provisions Of Zoning Ordinance Involved: § 4.11 – Side and Rear yard setbacks and § 4.222 – Swimming Pools. Specific Relief Sought: Petitioners seek two variances for the proposed garage that will sit 4.1 feet from the side-yard lot line and 11.3 feet from the rear-yard lot line where 15 feet and 30 feet are required, respectively. In addition, the proposed swimming pool deck will sit 4.1 feet from the other side-yard lot line and 3.7 feet from the rear-yard lot line where 10 feet is required for both.

Mr. Sergi: May we Hear from the Petitioner or the Petitioner's representative, please.

Attorney Bret Francis, Law Office, 10 Hammer Street, Waltham, MA. I am here tonight on behalf of the Petitioners, Arturo & Yolanda Fagundo who are here tonight.

Mr. Francis presented each member of the board with a copy of his brief and read it into the record.

Mr. Francis: And they did have a chance to meet with both their right, left, rear and front yard neighbors.

Mr. Francis submitted the list of abutter who are in favor to the board.

Mr. Sergi: That was the question I had Counselor, whether they contacted their abutters. So might I assume that these are all the four abutters surrounding the property.

Mr. Francis; Immediately surrounding though there is one across the street, directly across the street and the one with the different street address is immediately behind.

Mr. Sergi: Okay. But the one across the street really is not going to be impacted right?

Mr. Francis: No. In fact, right now there's parking right across the street from them and that parking will be removed and up into the garage.

Mr. Sergi: The question I have is, how high is the terrace off the ground?

Arturo Fagundo, 92 Gregory Street Waltham: The question was about how high up the terrace was going to be off the ground? There is an existing deck. It's just off the the side yard. I think it's about 5 1/2 - 6 feet off the ground now. So, it will be about the same.

Mr. Sergi: Five and a half off the ground.

Mr. Fagundo: Well, they have to excavate down to get in the garage. So it's going to be where it is right now basically. There is a deck is right off the side yard and that deck is about five and half, six feet off the ground right now.

Mr. Sergi: Oh, I see. So it's not really going any higher.

Mr. Fagundo: No. In fact it has to be limited to that height so that we can not tear down that wall. You want to leave that existing door on the side yard to walk out of the deck on top of the garage, so it will be the same height.

Mr. Sergi: Okay, that answers my question. Thank you.

I'll open it up to the board. Cathy do you have any questions?

Ms. McMenimen: Not at this time.

Mr. Sergi: Glenna?

Ms. Gelineau: No questions.

Mr. Sergi: Matt?

Mr. Deveau: No questions.

Mr. Sergi: Mark?

Mr. Hickernell: Yes. You're asking us to make a finding about the petitioner's current experience of safely maintaining and using the existing above ground pool. Could you fill that in a little bit for us?

Mr. Francis: Again, I'll have the client come up but I can report there have been no incidents, no drowning concerns or anything like that but I'll have Arturo come up.

Arturo Facundo: We just moved into the house a year ago and we closed it that fall and we reopened it this spring. We've been using it all summer long and haven't had any issues and it's been fine.

Mr. Hickernell: Thank you.

Mr. Sergi: I have no further questions. I'll open it up to the audience.

Is there anyone in the audience that's against the petition as presented tonight.

Seeing none.

Anyone seeking information?

Seeing none.

Anyone in favor of the petition? A show of hands would be fine.

(Three people raised their hands in favor.)

With that behind us, Counselor, the Findings of Fact and the Proposed Decision, have you made any changes since you filed this?

Mr. Francis: No those have been on file since the beginning of July and no changes whatsoever.

Mr. Sergi: Okay. If I don't hear any further questions from the board, I will entertain a motion to waive the reading of the Proposed Findings of Fact and the Proposed Decision since they have been on file and we have had a chance to read them.

On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact and the Proposed Decision.

Roll call: Ms. McMenimen, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: So we've waived the reading of both the Proposed Findings of Fact and the Proposed Decision since they have been on file we have had a chance to read them.

With that done, may I have a motion on the Proposed Findings of Fact as presented.

On motion of Ms. Gelineau, seconded by Mr. Deveau, the board voted to adopt the Proposed Findings of Fact as presented as the board's Findings of Fact.

Roll call: Ms. McMenimen, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: Similar fashion, may I have a motion on the Proposed Decision as presented tonight.

On motion of Ms. Gelineau, seconded by Mr. Deveau, the board voted to adopt the Proposed Decision as presented as the board's Decision.

Roll call: Ms. McMenimen, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: Good luck! It's been granted.

Mr. Sergi: The second case we are going to hear tonight is Case No. 2026-22, Petitioner/Owner: Robert A. Kaitz, Trustee of Sam-EJ Realty trust. Would the clerk read the petition please.

The clerk read Case: 2026-22 Petitioner/Owner: Robert A. Kaitz, Trustee of SAM-EJ Realty Trust. Nature Of Appeal/Petition: Variance and Amend Prior Decision. Subject Matter: The Petitioner proposes to construct, use and maintain a Multifamily residence with four (4) residential units at 20 Williams Street. Location And Zoning District: 20 Williams Street; Residence C Zoning District. Provisions Of Zoning Ordinance Involved: § 4.2 and §4.216. Specific Relief Sought:

(1) Variance. § 4.2 provides supplemental dimensional regulations. § 4.216 states that, with the exception of single-family residential buildings, any building used for human occupancy

in any district shall provide a habitable ground floor area of not less than 600 square feet. Here, the proposed ground floor on the four-unit building shall not provide any habitable floor area as the ground floor shall consist of garages. Parking areas are excluded from the definition of gross floor area at § 2.318. The garages shall be designed to provide natural light and mechanical ventilation to meet the habitable requirements of the State Building Code.

(2) Amend Existing Notice of Decision. The Petitioner also proposes to amend so much of the Notice of Decision granted in Case No. 2025-31 so that the approved plans conformed to the plans filed herewith.

Mr. Sergi: May we hear from the Petitioner or the Petitioner's representative, please?

Attorney Joseph M. Connors, 404 Main Street, Waltham came forward and presented each member with a copy of his brief.

I am here representing Robert Kaitz. Mr. Kaitz is here to my left.

Mr. Connors went on to read his brief into the record along with over the plans regarding the petition. He submitted a small section of the law that was enacted by the Governor and he also presented definitions of the State Building Code as it relates to adding the mechanical ventilation and adding the natural light.

Mr. Connors: So that's my presentation, Mr. Chairman and are welcome for any comments or questions that the board might have.

Mr. Sergi: Thank you Counselor. I find that I don't know why you are here bu you know that we've looked at this and we granted the variances prior. I understand that it's kind of confusing but I think that the building inspector could have made that call.

I don't have any issues with it other than you're here and we are listening. So, I'll open it up to other members.

Cathy, do you have any questions?

Ms. McMenimen: I do. Thank you. Attorney Connors, this is a different aspect of zoning than I'm use to dealing with but I have several questions regarding, I took a ride down there today or yesterday and I saw that the petitioner in the lot, am I assuming the lot where it says the locus, that's the lot where that construction equipment is parked?

Mr. Connors: Well, there's two lots there. So he uses two lots contiguously. So he owns two lots.

Ms. McMenimen: So just bear with me because I am going to get to that. Am I right, that cyclone fenced in area is where the construction trucks are, okay. So when I took the ride down and you go down Williams Street, this is sort of a historical question but

either through you or the petitioner, perhaps you can tell me, years ago there was a terrible fire on Williams Street, was this locus involved in that fire?

Mr. Connors: If you look at Exhibit B that says that a two family residence was demolished in 1940, so it doesn't articulate whether it was related to a fire. So, I don't know.

Robert Kaitz, the Petitioner: Yes, it was across the street where there was an open lot originally. They had a house there that burned down. I think it was thirty years ago.

Ms. McMenimen: Is that part of Kingsley Court?

Mr. Kaitz: Yes, right on the corner.

Ms. McMenimen: Thank you. That clarifies that. Let's go back to your lots. So Attorney Connors, if I look at Charles Street, the first two lots coming down Williams, they are owned by other people. Then Mr. Kaitz begins with 10 to 14, he owns that lot and then he owns lot 20 and then looking at this rendering here Lots 24 to 28, they are going to be retained and remain as the owners who are there now?

Mr. Connors: Yes.

Ms. McMenimen: So then if that is the case and looking at the rendering here, if you're going to build those four dwellings, they will be on the lot behind the two people who own the lots on the corner of Felton and Williams. So they will be on Lot 115 Felton.

Mr. Kaitz: Behind 115 Felton.

Ms. McMeniman: Okay, so if that's the case, what's the entrance to this property for the vehicles that will be going into the property? Will it be from - - -

Mr. Kaitz: Williams Street. So there's curb cuts that are existing.

Ms. McMenimen: Well that's for you. I don't have it on mine but that's okay.

Mr. Connors: That's on the second photo.

Ms. McMenimen: So you'll have a curb cut there. That will be the entrance. Will there be any entrances or exits onto Williams Street?

Mr. Kaitz: One entrance will be on Williams Street, in and out.

Mr. Connors: So I think for right now, today, there's a chain link fence there which encloses the thing. So that's going to go away - - -

Ms. McMenimen: And all the construction equipment etc., etc. Now, the next question I have because the benefit to this I see very much so, first of all it's housing, second of all it's provision for auto vehicles that are part of the housing issue that that solves several issues in the city as they exist today but if I was to ask you is the height of these four units within the correct height for the zoning district?

Mr. Connors: Yes they are.

Mr. Kaitz: And it's 1200 feet to a MBTA station.

Mr. Connors: So the dimension for height, the maximum you can have if forty feet and this is going to be 34 1/2 feet.

Ms. McMenimen: Fine. That takes care of that. Then the next question I have is and if you drive around the city, similar units to what I'm looking at and what you described here all over the city, other than cost, what would prohibit or prevent you from having dug under creating garages under and then where the garage currently is going to be built, that would be the first floor. What would prevent you from doing that?

Mr. Kaitz: The water table because it's near the river. When I dig down three and a half feet, I already have water.

Ms. McMenimen: That's it. Thank you.

Mr. Sergi: Glenna, do you have any questions?

Ms. Gelineau: No questions.

Mr. Sergi: Matt?

Mr. Deveau: No questions.

Mr. Sergi: Mark?

Mr. Hickernell: Ya, I've got a couple of questions. Counselor, from what I've seen from the legislature and the Land Use Bar, the consensus seems to be that the new standard under the amended Section 10 is looser than the prior standard for a variance. Do you agree with that characterization?

Mr. Connors: Yes.

Mr. Hickernell: And you cited in your presentation that it was a recent determination of the building inspector that Section 4.216 applied. I agree with the chair that it seems like that call could have been made when the petitioner was first before us but can you fill in the gaps as to how this recent determination came to your attention?

Mr. Connors; I think what happened was, it came to light in another development in another area. I think it was on Church Street. So I think that someone was trying to do something and the building inspector just took a different look at that and then he determined that this Section 4.216 applied. If you look at the corner of Main and Church there's a new development there. That was Phil's old office that just got torn down. So I think it was in the context of that approval that they were adding certain space to the development and then Mr. Bauer took a different look at that and then now he's made a determination that somebody has to satisfy that determination. So now when we were getting signed off for the special permit to go to the city council, he said, well wait a minute, I applied it here, so now I have to apply it consistently here. I mean there's numerous properties where it's - - -

Mr. Deveau: I go into them monthly. There's literally there's a mechanical room in the back of the garage which is uninhabitable.

Mr. Hickernell: I guess I am more interested in the specific procedural posture of how this came back to us. We had already granted it. That hadn't been cited by the building inspector as a violation in the petition and I don't know how many days after we

granted it but I'm curious as to the specifics because I wouldn't like to keep seeing, you know, oh, this occurs to me as the building inspector and then have it suddenly back in front of us.

Mr. Connors: Well, I mean, you know, make that argument but I mean procedurally we were approved but then in the special permitting sign off development prospectus it came to light again and the concern that I have is, I don't want to go to the city council and spend three, four, five or six months getting approval and then go back and apply for a permit and say, you don't satisfy 4.216, and then I'm in a fight.

Mr. Hickernell: I understand why it was prudent to do so, I was just a little bit concerned about the - - -

Mr. Connors: I can't tell you procedurally how we got here other than that's what happened and then I got a call from surveyor that said they're denying applications for similar designs around the city, we've got to make sure that this is not going to be designed when we go back for a building permit. So I went into the building inspector and this is where he sent us.

Mr. Hickernell: Thank you for that answer.

Mr. Sergi: I had the same issue as Mr. Hickernell. I didn't understand you being back here for this.

I'll open it up to the audience. Is there anyone in the audience that's against the petition as presented?

Seeing none.

Is there anyone in the audience seeking information?

Seeing none.

Is there anyone in the audience in favor of the petition as presented?

Seeing three hands. Three in favor. Thank you.

All right, with that portion of the hearing behind us, have you made any changes to the Proposed Findings of Fact or the Proposed Decision since you filed them?

Mr. Connors: I have not. But what I submitted and what you have in front of you is the same thing that I have submitted.

Mr. Sergi: So we've seen it already. These are the ones we've read on file.

Mr. Connors: But I was thinking in my review of the decision today, I added a condition.

Mr. Sergi: So what you've filed, No. 4 is new. And the Findings of Fact has not been changed?

Mr. Connors: They have not been changed.

Mr. Hickernell: So you are requesting an amendment to your Proposed Decision to include Condition No. 4.

Mr. Connors: Yes.

Mr. Sergi: Any questions by board members on that?

(There were no questions from the board.)

Mr. Sergi: Okay with that done, may I have a motion to waive the reading of the Proposed Findings of Fact and the Proposed Decision since they have been on file and he's outlined an amendment to the decision tonight that he wanted to put in.

On motion of Mr. Hickernell, for the reasons stated, seconded by Mr. Deveaux, the board voted to waive the reading of the Proposed Findings of Fact and the Proposed Decision as amended.

So we've waived the reading of the Proposed Findings of Fact and the Proposed Decision as amended since they have been on file. May I have a motion on the Proposed Findings of Fact.

On motion of Ms. Gelineau, seconded by Mr. Deveaux, the board voted that the Proposed Finding of Fact be the Findings of Fact of the board.

Roll call: Ms. McMenimen, yes; Ms. Gelineau, yes; Mr. Deveaux, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

In a similar fashion, may I have a motion to approve the Proposed Decision as presented and amended tonight.

On motion of Ms. Gelineau, seconded by Mr. Deveaux, the board voted the the Proposed Decision as amended become the Decision of the board.

Roll call: Ms. McMenimen, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: It's been granted. Good luck!

Mr. Sergi: The next case tonight is Case Np. 2026-23. Petitioner/Owner: Mario Carbone. Would the clerk please read the petition.

The clerk read the petition in Case: 2026-23 Petitioner/Owner: Mario Carbone. Nature Of Appeal/Petition: Variance. Subject Matter: To allow proposed addition of enclosure and roof over existing loading zone and to confirm existing, pre-authorized site conditions. Location And Zoning District: 110 Felton Street; Commercial Zoning District. Provisions Of Zoning Ordinance Involved: § 4.11 Footnote (7) and §7.2. Specific Relief Sought: To allow a side yard setback the addition of an enclosure and roof over the existing loading zone area. Also, to confirm and recognize all previously allowed exceptions granted by the ZBA for this commercial garage building in case 2008-28.

Mr. Sergi: May we hear from the Petitioner or the Petitioner's representative, please.

Attorney Philip B. McCourt, Jr., Law Office at 272 Bacon Street, Waltham came forward and submitted a copy of his brief to each member of the board and two letters from the immediate abutters who are in favor.

Mr. McCourt then read his brief into the record and went over the plan attached to the brief and a picture of the current landscaping garage and a photo of the addition that is being requested.

Mr. McCourt: Although the rest is basically the same. Their operation. The way that they conduct their business will be the same. So we feel that based on all of that and the letters you will see that I produced, one from Joe Vanaria as the main abutter to this property and Enrico Corsetti are in favor of it and we would hope that the board would consider granting the variance.

Mr. Sergi: Okay, thank you counselor. I have no questions. I'll open it up to the board.

Cathy?

Ms. McMenimen: None.

Mr. Sergi: Glenna?

Ms. Gelineau: No.

Mr. Sergi: Matt?

Mr. Deveau: No questions.

Mr. Sergi: Mark?

Mr. Hickernell: Briefly, counselor as we heard in the last case the legislature passed and the governor signed emergency legislation changing the standard for variances under Section 10 of Chapter 40A. It seems to me that then in your proposed decision we ought to change the term “substantial hardship” where it’s used and replaced with “practical difficulty” and that’s in two places under the third paragraph of your Proposed Decision.

Mr. McCourt: I have no objection to that. You will note that this case was filed prior to that. We filed the case on July 2nd and that law didn’t pass until July 9th.

Mr. Hickernell: But I think we are under the standard now.

Mr. McCourt: So where is that?

Mr. Hickernell: Paragraph three of the Proposed Decision in two places. The first sentence, second line and the last line, second from last sentence.

Mr. McCourt. So we are going to take out the word “substantial”- - -

Mr. Hickernell: Delete “substantial hardship” and replace it with “practical difficulty” in each place.

Mr. McCourt: Oh, I see, yes. Thank you.

Mr. Hickernell: That’s all I have Mr. Chairman.

Mr. Sergi: Thank you Mark.

Mr. McCourt: We are happy to do that and we appreciate that recommendation.

Mr. Sergi: If there’s no further question from the board, I’ll open it up to the audience. Is there anyone in the audience against the petition as presented?

Seeing none. Anyone have interest in questions?

Seeing none. Anyone in favor of the petition as presented? A show of hands is fine.

Mr. Sergi: Three people raised their hand in favor and none against.

Mr. Sergi: And have you counselor made any changes to the Proposed Findings of Fact?

Mr. McCourt: Other than the one just recommended by Mr. Hickernell.

Mr. Sergi: Then I'll entertain a motion to waive the reading of the Proposed Findings of Fact and the Proposed Decision as presented tonight.

On motion of Mr. Hickernell, seconded by Mr. Deveaux, the board voted to waive the reading of the Proposed Findings of Fact and the Proposed Decision as amended as they have been on file and available for public inspection.

Mr. Sergi: So we have waived the reading of the Proposed Findings of Fact and the decision with the amendment as discussed tonight.

So I will entertain a motion on the Proposed Findings of Fact as presented tonight.

On motion of Ms. Gelineau, seconded by Mr. Deveau, the board voted to accept the Proposed Findings of Fact as the Findings of Fact of the board.

Roll call: Ms. McMenimen, yes, Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: In a similar fashion, may I have a motion on the Proposed Decision as amended.

On motion of Ms. Gelineau, seconded by Mr. Deveau, the board voted to accept the Proposed Decision as amended to be the Decision of the Board.

Roll call: Ms. McMenimen, yes, Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: Good luck!

Mr. McCourt: Thank you. The Carbone family thanks you very much.

Mr. Sergi: The next case we are going to hear tonight is Case No. 2026-24, Petitioner/Owner, Tico Inc.

I'll have the clerk read the Petition.

The clerk then read the Petition in Case #: 2026-24. Petitioner/ Owner: Tico, Inc. Nature Of Appeal/Petition: Special Permit. Subject Matter: Petitioners seek to convert from the use of a hockey training facility use to a badminton and pickleball court/center use. Location And Zoning District: 102-A & 102-1 Clematis Avenue; Industrial Zoning District. Provisions Of Zoning Ordinance Involved: §3.7223 – Rights of Nonconforming Structures, Uses, Buildings and Land and Change to a similar use of not less restricted character by special permit. Specific Relief Sought: Seeking a Special Permit to convert from a use as a hockey training facility to a badminton and pickleball court/ center use.

Mr. Sergi: May we hear from the Petitioner or the Petitioner's representative, please.

Attorney Philip B. McCourt, Jr., Law Office at 272 Bacon Street, Waltham came forward.

Mr. McCourt submitted a copy of his brief to each member of the board along with some renderings. Mr. McCourt then read his brief into the record.

Mr. Sergi: I don't have any questions here, so I'll open it up to the board.

Cathy, do you have any questions?

Ms. McMenimen: None.

Mr. Sergi: Glenna?

Ms. Gelineau: No.

Mr. Sergi: Matt?

Mr. Deveau: No questions.

Mr. Sergi: Mark?

Mr. Hickernell: No.

Mr. Sergi: I don't have any questions. So I will open it up to the audience.

Is there anyone in the audience who is against the petition as presented?

Seeing none. Is there anyone seeking information.

Seeing none. Is there anyone in favor of the petition as presented?

Seeing none.

Mr. Sergi: Counselor, in a similar fashion, I am going to ask you again, is the Proposed Findings of Fact that you've filed and that we have read, have you changed it?

Mr. McCourt: No changes. It's what we filed with Pam Doucette in the office.

Mr. Sergi: And the Decision, you haven't changed it.

Mr. McCourt: No.

Mr. Sergi: I will entertain a motion to waive the reading of the Proposed Findings of Fact and the Proposed Decision since they have been on file and we have had a chance to read them.

On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact and the Proposed Decision.

Mr. Sergi: So we've waived the reading of the Proposed Findings of Fact and the Proposed Decision since they have been on file and we've read them.

I'll entertain a motion on the Proposed Findings of Fact as presented.

On motion of Mr. Hickernell, seconded by Mr. Deveau, the board voted that the Proposed Findings of Fact be the Findings of Fact of the board.

Roll call: Ms. McMenimen, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: In a similar fashion, may I have a motion on the Proposed Decision as presented.

On motion of Mr. Hickernell, seconded by Mr. Deveau, the board voted that the Proposed Decision be the Decision of the board.

Roll call: Ms. McMenimen, yes; Ms. Gelineau, yes; Mr. Deveaux, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: It's been granted.

Mr. McCourt: Thank you very much. On behalf of the Antico family they appreciate your help in this.

Mr. Sergi: One more motion is in order.

On motion of Mr. Deveaux, seconded by Ms. Gelineau, the board voted to adjourn at 8:13 P.M.

[Handwritten signature] *Chanc*
8/25/26