



City of Waltham

COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

LEGAL NOTICE

DATE FILED: October 1, 2013

THE ZONING BOARD OF APPEALS OF THE CITY OF WALTHAM WILL HOLD A PUBLIC HEARING IN THE GOVERNMENT CENTER, 119 SCHOOL STREET, WALTHAM, MA ON NOVEMBER 19, 2013 AT 7:00 P.M. ON THE FOLLOWING:

Case #: 2013-26. **Petitioner:** Brandeis University, a Massachusetts Educational Corporation. **Nature of Appeal:** Application from Decision of Building Inspector and Appeal from Decision of Building Inspector under G.L. c. 40A §3. **Subject Matter:** Brandeis University is a nonprofit educational corporation organized under Chapter 180 of the Massachusetts General Laws. The locus is part of Brandeis University. The Petitioner proposes to construct, use and maintain a child care facility that will house the Lemberg Children's Center. The Lemberg Children's Center will be relocating from a different building on the Brandeis University Campus into this new child care facility. **Location and Zoning District:** 457 South Street is located in a Residence A-3 Zoning District. **Provisions of Zoning Ordinance Involved:** §3.610, §3.4, §5.1 and §7.31.

Specific Manner in Which Subject Matter Varies From Zoning Ordinance:

1. §3.610 includes "Hospitals, sanatoriums, nursing homes, rest homes, nursery schools, day-care facilities and philanthropic institutions" and states that "...nursery schools, day nurseries, child care ...facilities...shall be permitted when a special permit has been granted by the City Council";
2. The Table of Uses (§3.4) makes no specific reference to "child care facilities", but does allow "Hospitals, sanitariums, nursing homes, philanthropic institutions (Sec. 3.610)" in a Residence A-3 Zoning District only by special permit by the City Council; and
3. §5.1 Does not provide any requirement for the number of parking spaces to be provided for a child care facility.

THE DOVER AMENDMENT, G.L. c. 40A §3

1. Use - § 3.610 and § 3.4:

G.L. c.40A, §3, ¶ 3 (The Dover Amendment) states in pertinent part:

No Zoning Ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structure, or the expansion of existing structures for the primary, accessory or incidental purpose of operating a child care facility.

A “child care facility” is different than a “family day care home and large family day care home” (G.L. c. 40A, §3, ¶ 5), which can be regulated by local ordinance or by-law.

Based on the above, Brandeis University contends that the use proposed as a child care facility, does not need a special permit from the City Council to be able to operate, and can be located by right in the Residence A-3 Zoning District.

2. Parking - § 5.1:

§5.1 does not provide any requirement for the number of parking spaces to be provided for a child care facility.

§7.31 states that any person aggrieved by the refusal of the Building Inspector to issue a permit on the grounds of noncompliance with the Zoning Ordinance may appeal to the Board of Appeals.

G.L. c. 40A, §8 states that any one aggrieved by inability to obtain a permit from the Building Inspector may appeal to the Board of Appeals.

The Building Inspector has determined that the proposed 2 parking spaces are not a reasonable amount of parking spaces for this child care facility.

Brandeis University contends that the above requirements of the Zoning Ordinance, as applied to the proposed use and parking requirements, are not within the reasonable requirements of G.L. c. 40A, §3.

Further information and plans concerning this case may be viewed at the Zoning Board of Appeals’ Office, 119 School Street, Waltham, Massachusetts 02451; Hours: Monday - Friday 8:30-4:30. **MEMBERS:** Chair Barbara Rando, Michael Cotton, Mark Hickernell, John Sergi, Glenna Gelineau. **ASSOCIATE MEMBERS:** Edward McCarthy, Oscar LeBlanc, Marc Rudnick, Michael Squillante, Gordon LaSane.