

**CITY OF WALTHAM**  
**ZONING BOARD OF APPEALS**

**September 13, 2011**

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, September 13, 2011 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, John Sergi and Gordon LaSane.

The chair called the meeting to order at 7:00 P.M.

Mrs. Rando: Tonight we have two new cases before us: Case No. 2011-15 Home Properties Gardencrest, LLC, 20, 22, 24 and 26 Middlesex Circle, 28 and 32 Middlesex and 34 and 37 Middlesex Circle and 27, 31 and 33 Middlesex Circle. We also have Case 2011-16, Gardencrest Apartments, 14 A Valley View Road also known as 152 Rear Lyman Street.

The first action this evening is a motion to accept the minutes of August 23<sup>rd</sup>.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to accept the minutes of August 23, 2011.

Mrs. Rando: Would the clerk please read the petition in Case No. 2011-15?

The clerk then read the petition in Case No. 2011-15, Home Properties Gardencrest LLC in an application for a Special Permit. The locus consists of a large parcel of land containing approximately 544,290 square feet of land area situated on Middlesex Circle, which is a section

of the Gardencrest apartment complex. There are 11 apartment buildings on the locus along with accessory buildings and uses including maintenance sheds, a swimming pool and a cabana, all of which were built in the 1970's. The Petitioner now proposes to update the cabana by bringing it into ADA compliance along the interior refurbishing, new siding and new roof, to update the swimming pool by realigning and retiling it, and to build a new accessory building which will contain management offices and recreation facilities for its tenants. The management office/recreation building will meet all of the requirements of the Zoning Ordinance including associated parking. Location and Zoning District: 20, 22, 24 & 26 Middlesex Circle, 28, 30 & 32 Middlesex Circle, 34 & 37 Middlesex Circle and 27, 31 & 33 Middlesex Circle. The locus is situated in a Residence C Zoning District.

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

Robert E. Connors, Jr., Law Offices of Connors and Connors, 6 Lexington Street, Waltham, MA came forward representing the petitioners/owner of the property, Home Properties, Gardencrest, LLC.

Mr. Connors: I sent out copies of the brief and exhibits to all of the board members but I don't know if everybody has them tonight. (Mr. Connors passed out copies of his brief and exhibits to some of the members of the board. Mr. Connors then read his brief into the record along with showing an illuminated exhibit of the plan of the property and also the proposed rendition of the new accessory building containing the office/recreation building.

Mrs. Rando: How many parking spaces did you say you need?

Mr. Connors: We need seven, I believe there's eight.

Mrs. Rando: You only need eight parking spaces? Under 5.2 you need one parking space per 300 square feet.

Mr. Connors: Square feet for the office. And then we have the recreation area which is

based on the number of participants.

Mrs. Rando: So for the recreation, don't you need one parking space per two participants?

Mr. Connors: We have that broken down, Madam Chair.

Mrs. Rando: Will this recreational facility be able to be used by residents of Gardencrest and have birthday parties or whatever?

Mr. Connors: Well the intention of this is that this is for Gardencrest residents so it's the intention is not to close it off. It's a gym, Madam Chair, and even though I don't go to gyms very often anymore because I always get sick whenever I go there. These aren't the type of things where you would go moving these machines around. It's almost impossible to move these machines.

Mrs. Rando: So there's no recreational area where people could have some type of function.

Mr. Connors: No, there's no lounge area in fact we showed some of the other places with lounge areas and bars and things. There's nothing like that here. There's no community room.

Mrs. Rando: I would also like to see a survey of the number of people that would like to see something like this at that development. Do you have a survey?

Mr. Connors: No, we don't. If the chair would like it, I know there are some residents of Gardencrest down here tonight.

Mrs. Rando: I would find that helpful.

Paul Finger, Paul Finger Associates, 281 Winter Street, Waltham came forward.

Mr. Finger: If you take a look at the sheet L1.0 there's a complete zoning analysis that we have for here. So what we have done is we analyzed this as far as two different uses. The two separate uses are office use and the office use is one per 300 gross square floor area and that requires a total of seven spaces, but we provided eight spaces in this case and I think that's what Attorney Connors was talking about and in addition to that the parking spaces for the fitness, it requires one space for every two participants and we have also provided, therefore, if there are total of sixteen participants or stations that we have there, assuming that it is maxed out every single piece of apparatus is being used at the exact same time, it requires another eight spaces. So the total requirement is fifteen, we are providing sixteen spaces. Of that there is a requirement for two handicapped spaces of which we are providing two on the site including one that is van accessible which is required by the architectural access board.

Mr. LaSane: Attorney Connors, the fitness area will that be supervised 24/7?

Mr. Connors: Yes, because it's right next to the management office and it will be open when the management office is open. Is that correct?

Mr. LaSane: There will be someone who supervises people who working out in there then?

Property Manager: Not after hours.

Mr. Connors: It's only going to be open during hours when the management is there.

Mr. Connors: Just back in your question before, Madam Chair, I would think that anybody who was going off to like Workout World right now or Gold's Gym right now or something else like that where they are paying the membership fees, it would be a lot easier for them to go here unless they are really a workout type of person. But just to go and get on a treadmill or something or get on an elliptical machine, if they still wanted to do all the massive body building they will still go to Gold's Gym or something like that.

Mrs. Rando: I would also like to know, a couple of years ago, Home Properties was before us for insufficient parking and we gave them the right to use some of the green area for parking. Now you're taking sixteen spaces away from parking as it is. There again, the survey would help me to digest whether losing these sixteen spaces. They do not have enough parking for their residents and - - -

Mr. Connors: We are not touching any of the existing parking, Madam Chair.

Mrs. Rando: I understand that, but you do agree that you have insufficient parking as it stands now.

Mr. Connors: I don't know that. I have been there a couple of times. The resident managers could talk better about that or there are the people, there are residents down here. It depends on the section that you are in. Obviously if you are in the old section, a lot of parking is on the street. In this section it has the large parking areas. In the old section, obviously it was built so that people would park on the street. It was built because people had one car or didn't have a car when it was built in the 1940's. (Mr. Connors went over the parking plan with the board.)

Mr. Sergi: You had made a comment about other common areas improvements.

Mr. Connors: It would just be cleaning up this whole thing. What we would have is all new plantings. If you go down there right now there's no trees down there. This is flat with the pool. (Mr. Connors showed the board a landscaping plan of the trees and shrubs and where they would be located.)

Mr. Sergi: How big would the trees be?

Mr. Finger: The trees, first of all they exceed what's required by the city. They will probably be 2 1/2 inch to 3 inch caliper, if not more, when they are planted. So they will

probably be in the vicinity of about 15 feet if not greater in height.

Mr. Sergi: What type of trees are they?

Mr. Finger: They will be a combination; I think that we have probably some ornamental red maples. There's going to be probably flowering shrubs. You know this is actually as a management center. It wants to actually stand out as far as beautifying the area and fitting in as well so it will be appropriately treated.

Mr. Sergi: And the Cabana improvements, you kind of made it sound like you're not really changing the structure.

Mr. Connors: Not changing the size of it at all, no.

Mr. Sergi: So you're just making siding improvements, roofing.

Mr. Connors: Yes, bringing it up to date. It hasn't been touched since the 1970's.

Mr. Sergi: Does it have heat currently?

Mr. Connors: No, the cabana is only used in the summer when the pool is open. So no it doesn't.

Mr. Sergi: And what's the logic of making the pool smaller?

Mr. Connors: Right now the pool is kidney shaped. So what they are going to do is they are going to square it off. It's easier to do laps or anything else there. When you do something like that you are going to lose a hundred square feet.

Mr. Finger: The recreational pool is not going to be deep. It currently is deep at one end so we are making it shallower.

Mr. Hickernell: Mr. Connors, when the petitioner was before us in 2005-26, the area of the locus goes 202,000 square feet and now its 544,000 square feet.

Mr. Connors: It's always been 544,000 square feet. We went through the entire title on the property. We went over it with the building inspector and broke everything down. What happened is that some mortgage plans were put on at one time and what governs the land is that the deed governs the land. The deed has always been the same deed. The deed that when the Devincent's bought the property in the 1940's, when they transferred it over to Gardencrest in 1968 it was 544,000 square feet. When they transferred it in 1986 over to the Limited Partnership it was 544,000 square ft. When they transferred it to Home Properties in 2002, it was 544,000 sq. ft. So the property has always been the same. I was not here in 2005 representing Home Properties. I was not the attorney on that case.

Mr. Hickernell: And similarly the FAR back then was represented as 0.68 and here you are representing it as .51.

Mr. Connors: Well, they were using a different size lot then. So it had a different FAR. I don't know how they figured that. Obviously if they had changed the size of the lot they would have come up with the square footage of the lot. I don't know what it was but if they had come with a different square footage they would come up with a different FAR.

Mr. Hickernell: Is the locus that's before us in your petition a single lot or is it a separate lot under common ownership?

Mr. Connors: It's a single lot.

Mr. Hickernell: And has that been true all along?

Mr. Connors: It's been true all the way along. As I said there were mortgage plans put on in 1969, 1970, 1970 and 1971 because they built this in four sections. They put on mortgage

plans then and that's the only time they were ever referred to.

Ms. Gelineau: I apologize if this has already been clarified, but I just got confused when you answered the last question, but this management is strictly for the pool?

Mr. Connors: The management office is strictly for the residents of all of Gardencrest.

Ms. Gelineau: Hypothetically I can remember when Mr. DeVincent owned it he had separate apartments was that - - -

Mr. Connors: Flo D'Angio was down there.

Ms. Gelineau: So, that her office was technically located in this ---

Mr. Connors: It's located in another building right now from where they originally had it out towards Summer Street. They moved into another building.

Ms. Gelineau: They are there now?

Mr. Connors: No, because there's nothing here right now. This is what we propose on doing.

Ms. Gelineau: So when you build the building you are going to put the management office in the building along with the fitness center and that's where the people who run the office for people who are renting, or sign leases and they are going to park there and they are going to park in those sixteen parking spaces.

Mr. Connors: Yes.

Ms. Gelineau: So it's not strictly reserved for----



Mr. Connors: No, it's for new tenants. If you were going to come there and you were to be a new tenant, you're parking there too.

Ms. Gelineau: So that parking is going to be used for other things other than if the facility is maxed out, so to speak.

Mr. Connors: Yes.

Ms. Gelineau: And what about employees?

Mr. Connors: They still have where the management office is right now. It's my understanding they are going to use that.

Ms. Gelineau: What did you mean when you said it will only be used open when the pool is open?

Property Manager: It will be open year round.

Ms. Gelineau: So this building year round will sort of be the hub of the complex.

Manager: Yes.

Mrs. Rando: Are there any other questions? Hearing none, is there anyone in the audience in favor of this petition who would like to stand? Anyone who would just like to raise their hand in favor of the petition?

One person raised their hand indicating he was in favor.

Mrs. Rando: Is there anyone seeking information on this petition?

(One person raised their hand seeking information.)

Mrs. Rando: Is there anyone in the audience who is against this petition?

(One person raised their hand.)

Would anybody like to come to the microphone?

Robert Waddick, 129 Church Street, Waltham came forward.

Mr. Waddick: I am the Ward 6 City Councillor. I represent the area of the city in which Gardencrest is located. I am not opposed to this petition for a special permit but I do have some concerns.

My first concern is this is an area that has been prone to flooding in the past especially the buildings that around the pond across from this area. Back in March of 2010, there was significant flooding and several of the residents actually had to be relocated. I know that this building and this complex is a bit removed from that area but it will create additional impervious surface and I assume that a lot of the water drains into that particular area so I don't know if that can be addressed but that is a concern of mine. I wouldn't want to see that flooding situation exacerbated to any extent.

Another concern I have and it was brought to my attention by the President of the Tenant's Association that there's a play structure for children currently in this general area and I don't believe it's included on the plans and I don't know if there is a plan to relocate it but I think that would be of concern to the residents with small children that there would be some type of play structure in addition to the workout facility for the adults.

Another concern I have, and Madam Chairperson you brought it up yourself, is the parking. The parking in this particular area, I don't believe is a problem but the parking in the older part of Gardencrest is and last year we did have some issues with respect to parking on Summer Street and some of the neighboring streets, Pleasant, Harris and Ellison Park. And I

know that Gardencrest has made some effort and come before this board to create some additional parking in that area of the complex and I would hope that they would continue to look at that and explore opportunities to create parking and put some resources towards that so some vehicles can be taken off the street in that area because that is a real need.

And finally, this is obviously an ambitious project and will involve some outlay of capital on their part. I know that everybody is hurting these days and I know that its probably on the minds of a lot of residents that ultimately somebody has to pay for this and I am sure many of them who are struggling to make ends meet hope that this won't result in an increase in their rent as much as this is a beautiful complex and may provide a benefit to many of them, I am sure it may come with some costs and I am sure that that's an issue that's on the minds of some of the residents.

Again, I am not opposed to it but those are some of my concerns. Thank you for giving me the opportunity to speak.

Robin Bordenca, 117 Middlesex Road and I am the current recording secretary for the Tenant's Association. I am not totally opposed to the idea, just that in the beginning talks of this going on, we were assured that we were given certain assurances that it would be a community center and a place, as you had brought up, a place for the residents to meet because the apartments are small. There is no place for us to have a function or a small gathering with our families and that over the years has changed to this.

The other concern that we have is the parking, the amount of money that they want to put into this, it's great, you know, if you want an upbeat place to go. But we have other issues that area going on in Gardencrest that they want to put the money into this place. We've been asking for security issues to be addressed that have not gotten addressed. We have lighting. We have had police come in and give reports back to Home Properties on areas that need to be addressed and have not been addressed. So, you know, the parking is one of the issues that we have. It's tight everywhere and our overflow parking for most residents especially on Summer Street and that end, the older section. The only place they have to go is down on Middlesex Circle and that

is quite a walk especially in bad weather and summer. So we do have concerns. As for you asking if there was a survey taken. No we haven't taken a survey. We just listened to the – we don't have a lot of people that come to our tenant's meetings, and we do meet monthly and it is a concern that the cost factor is that everything does cost us money. The current pool is \$40 per person to belong to the pool. So this is nice and new. Who's going to oversee the equipment? That's going to cost money. How much is it going to cost the residents? More money. So we do have the concerns there that the money we feel could be spent on other issues that have come up that have not been addressed.

Ms. Gelineau: You said that not too many people come to meetings but if you had to make a stab at it, you know a lot of tenants and have a good sense of what's happening down there, just do you feel that a gym is what the people in Gardencrest want? I mean do you think they are going to all flock down there and be working out?

Ms. Bordenca: No. I think a community center, yes. The other thing I just wanted to say, this will be the third office for the Gardencrest Office. We have been in Gardencrest for thirty one years. The original office was on Summer Street, the current office is on Middlesex Circle, across from this area, and now they want to move their office so they are going to have a state of the art office with security when we are lacking security in the rest of the neighborhood.

Mrs. Rando: Attorney Connors, at this point, I myself would not be ready to vote this evening for this petition. I would like a survey done by the people. I would like the issues that that kind lady just brought to our attention addressed. I think it would be good for you to sit down with the residents also. She hit on many important things: the security, the parking, the money and the three offices. So those are things that I think that, my opinion to you would be to continue the case and have a meeting with the residents and get the survey, the number of residents that you have, the number of residents that use the pool and the number of residents that would be interested in using the facility like this or as that lady stated some type of a meeting room.

Mr. Connors: I have no problem with that Madam Chair nor does my client. We would

be more than willing to talk to the tenants about that. I would just ask one thing because maybe I didn't understand my client correctly. We had thought that the board was against this being any type of community facility.

Mrs. Rando: I don't think the members made any such of statement.

Mr. Hickernell: You mean in the previous case?

Mr. Connors: Yes.

Mrs. Rando: We look at each case individually. We don't go back and address that one.

Mr. Connors: We have no problem, Madam Chair. We would also address Councillor Waddick's concerns on the flooding, the play structure up there. It's my understanding they are meeting with the Tenants Association on relocating that right now and the parking. So we would want a little bit of time to do because obviously we have over 600 residences there.

Mrs. Rando: Sure. How is November 15<sup>th</sup>? (The board agreed.)

Mrs. Rando: All right, I would like a motion to continue Case 2011-15 to November 15<sup>th</sup>.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to Continue Case 2011-15 to November 15<sup>th</sup>. The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mr. Connors: And that would be at the request of the petitioners so we don't run into time problems.

On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to take a five minute recess at 8:05 P.M.

At 8:20 the board was back in session.

Mrs. Rando: Would the board please read the petition in Case No. 2011-16?

The clerk then read the petition of Gardencrest Apartments, a limited Partnership in an application for variances to allow the construction of a single family home, within the home building footprint shown on the detail plan, on the existing, legal non-conforming lots known as Lot 14A Valley View Road (also known as 65 Rear Valley View Road) and Lot 17 Lyman Street (also know as 152 Rear Lyman Street) Residence A-3 Zoning District. Said lots to be combined into one single family lot.

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

Attorney Philip B. McCourt, Jr., 15 Church Street, Waltham came forward representing Gardencrest Apartments a Limited Partnership.

Mr. McCourt: Oddly enough it's the original Gardencrest people and Richard DeVincent is their representative who is the son of Arthur DeVincent. He lives over at 15 Banford Way in Waltham. This is the remaining parcels of the Arthur and Raymond DeVincent properties so its still technically in an LLC that was owned by them but obviously its not part of the property that was just moments ago in front of you.

Mrs. Rando: Actually, before you start your brief, we have a couple of questions to ask you and we would like to set up a site view before we continue this case. A lot of the board members have not had the time to read through the case or the findings of fact and the decision due to the time that we received them. So if anyone has a question we can ask you the questions so that you could be prepared and if the audience has-----

Mr. McCourt: Yes. There are two major abutters, well actually three, but there are two that abut the way into the lot that has existed. They purchased this property approximately in

1954; the DeVincent family has always owned it. The access in is off of Valley View Road And that 20 foot wide, front of the lot, which back until at least 1988 was the required frontage in Waltham which was the minimum legal frontage in the Commonwealth of Massachusetts of 20 feet, so the lot existed. So in the 90's when they passed 37.211, they changed the frontage requirements to 40 feet. This is the only access to the lot. Obviously the people on each side are most greatly affected we would be happy to speak with them and perhaps a site view would be better in order so that when we do do this we will have an idea of it.

Mrs. Rando: Right. I also have one question that I would like you to answer. Why is this not considered a rat-tail lot?

Mr. McCourt: It was a rat-tail lot.

Mrs. Rando: It is.

Mr. McCourt: Well it was the old rat-tail lot.

Mrs. Rando: And rat-tail lots are no longer allowed in Waltham are they not?

Mr. McCourt: You now need 40' of frontage.

Mrs. Rando: So it is allowed with 40 feet of frontage?

Mr. McCourt: Yes. Let's say if you have 40 feet or more and it went back and it became 40 feet of where the house was. We have to look at the width as it gets into the lot, so it's 20' for frontage and 20' for the width at the back of this entrance in and then at that point it spreads out. (Mr. McCourt went over the plan with the board.)

Mrs. Rando: So maybe when we can schedule a site view, I would like to see some case law on what constitutes rat-tail lot and why this isn't too.

Mr. Sergi, is there anything that you would like to request?

Mr. Sergi: No, I think a site view is appropriate.

Mrs. Rando: Also, I would like to hear from both abutters on both sides, direct abutters in back and front besides the rest of the abutters.

Let's continue this to November 15<sup>th</sup> too.

Is there anyone in the audience that would like to say something?

Mr. Charles Smerlas, I grew up on Valley View Road. I met with the lawyer today. Unfortunately he couldn't be here but he drafted a letter. (Mr. Smerlas presented the letter to the Chairperson.)

Mrs. Rando: Thank you. We'll have that read into the record.

Mr. Smerlas: He had mention to me that they are abandoning a lot line. I'm guessing but I need to check with my lawyer that this was a rat-tail lot (referring to the plan) and what they are doing is abandoning this lot line to make this whole lot one. But in abandoning the lot line they need to go to the Board of Planning and Surveying, is that correct? I went there yesterday and they haven't done that yet. So, that's one issue. I don't know if I should proceed any further or—

Mrs. Rando: No you can mention your issues.

Mr. Smerlas: They don't have the proper frontage which is one thing. There's a kind of a concern with the driveway in terms of how far pavement can go to a neighbor's lot line. I'm kind of curious on the hardship. I have a plan here and this is from 1955 (went before the board with the plan). This plan was recorded. This plan had nothing, no driveway, no walks, no nothing. So I'm curious, I want to see the evolution of how this went from a plan that doesn't



show a driveway and doesn't show the lot to being an existing lot because to me what they are doing, these lots were here and these are apartment buildings. There wasn't an access road here. I think they are just not conforming with the neighborhood. These houses are well established. My mom's been there for fifty years.

Mr. Hickernell: So that map doesn't show the access road?

Mr. Smerlas: No it does not.

Mr. Hickernell: Do you contend you own the access road?

Mr. Smerlas: No I'm contending it's not even on the plan. I want to see where it evolved.

The hardship is another issue. I kind of have a feeling they created their own hardship. The other thing, is these are pictures of the place (Mr. Smerlas went over the pictures with the board.). We have maintained that land since my parents owned the house in 1960. We've cut the lawn, raked the lawn, picked up all the trees that fell down. So there's a question there of adverse possession but that's a subject for another day. So those are some issues that we have.

My address is 134 Virginia Road and I am speaking on my mother's behalf.

Mrs. Rando: Is there anyone else that would like to speak in favor of? You would like to speak against.

Mr. McCourt: Are we going to do it this evening, or ---

Mrs. Rando: No, I'll leave it open, the public hearing. These are issues that we would like to hear too.

Mr. McCourt: But not in opposition presentation just issues I understand at this point.

Right? I am just suggesting that is the format of the case in the sense it isn't even being open. I just gave you an idea of where it was. We have no problem with issues, but not a presentation.

Mrs. Rando: Would you like to state your issues.

William Hubacheck, Jr., 6 Oakley Lane, Waltham: Just my main issue is the watershed problem that we have been coveting for the past ten years since Lexington Street moved closer to Oakley Lane with development. For the past ten years many of our neighbors down on Oakley Lane have suffered major water damage and even up on Valley View as well and with more building that's going to continue. That's one of the main issues. I'm 34 and I have been living there since I was three, I mean major, major water issues. That's the major thing that I have.

Mrs. Rando: Does anyone else have issues?

Mary Beth Shaughnessy, 21 and 29 Valley View Road: I represent Laura Shaughnessy too. The sewer system under the street overloads and it backs up into the basement and people lose everything. It doesn't happen every year but like every five or six years.

I grew up on the street and I just bought back in here. I grew up on the street and I bought the house at market value a couple of years ago. It's an established neighborhood. Everyone that's been there has been there forever and it's a nice group of people. It would be hard pressed not to see someone have a driveway where they thought was their land. It's a privacy thing. It's a quiet street and people are sleeping and to have a car pass by your window, too bad they don't have an access way to get into this lot.

Mrs. Rando: Attorney McCourt, these are issues that will certainly help us when we make the site view, things to look into.

Mr. McCourt: I'll just draw your attention to a couple of things. I know the plan that Mr. Smerlas showed you is within what I gave to you as you will see later, which you will see a 1973 plan. Understand that the DeVincentis owned and developed these lots and that they actually

created the lot which is perfectly legal at that time, so that is also within with what you have and that was reconfirmed in 1999 by a plan when the family made some inter-family transfers. The water issue on Oakley we certainly will look into that. As far as the sewer goes, one house wouldn't offset a sewer system but in fact in this particular case you will see that there is a city sewer easement here so this house in back here would tie and none of these other houses would tie directly into that. It would not go into the other one,

Mrs. Rando: Do you plan on having a neighborhood meeting?

Mr. McCourt: Yes. I think that's prudent, so we will.

Mrs. Rando: Could we continue this to November 15<sup>th</sup>?

Mr. Smerlas: Doesn't he have to go to the Board of Survey and Planning?

Mr. McCourt: Well, let me address that issue. Obviously, there are two lots all along the way we talk about the combination of the lots in the end if we do this. Should we get this variance, which obviously as you know and I'm sure if they don't they'd need to know, that is in your discretion after weighing all the facts, the proposed decision would require us to combine the lots for a one single family house. We would only do it at the end should we have the frontage requirement but we would have to go in for that.

Mr. Smerlas: What my attorney told me to abandon the lot lines was they need to go to the survey and planning board first before they come here. Also in his letter he tried to call Phil but his voicemail was full so he was never able to reach him. They need to do that first and then they need to come back here.

Mrs. Rando: Would the clerk please read the letter into the record.

The clerk then read a letter dated September 13<sup>th</sup> from Attorney Michael Delaney into the record. (This letter is on file at the City of Waltham Law Department.)

Mrs. Rando: All right, I would like a motion to continue Case 2011-16 to November 15<sup>th</sup>.

On motion of Mr. Sergi, seconded by Mr. LaSane the board voted to Continue Case No. 2011-16 to November 15<sup>th</sup>. The roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Guinea, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mrs. Rando: We will have a site view Sunday October 23<sup>rd</sup> at the site at 3 P.M. We can do a site visit on the other case on an individual basis.

There being no further business, on motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to adjourn at 8:47 P.M.

*Barbara Rando, Chair*