

CITY OF WALTHAM
ZONING BOARD OF APPEALS

April 26, 2016

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, April 26, 2016, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando, and members Glenna Gelineau,, Sarah Hankins, Mark Hickernell, and John Sergi.

The Chair called the meeting to order at 7 P.M.

Mrs. Rando: I am going to make a motion for a five minute recess. One of the members is having trouble finding parking. There aren't any parking spaces around. They have twenty cases downstairs in the Liquor Commission.

At 7 P.M., on motion of Mrs. Rando, seconded by Mr. Sergi, the board voted to take a five minute recess.

The board reconvened at 7:08 P.M.

Mrs. Rando: Tonight we have two new cases before us, Case 2016-04, Petition of Anthony J. and Linda M. LaCava, 20 Leslie Road and that's for a variance and Case 2016-05 Northland, The Merc LLC, One Moody Street, Forty-Five Moody Street and 694, 696, 700, 702, 710 and 716 Main Street and that is for sign variances.

The first action this evening is for a motion to accept the minutes of April 5th and April 12th.

On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to accept the minutes of April 5th and April 12th.

Would the clerk please read the petition in Case No 2016-04?

The clerk then read the Petition of Anthony and Linda LaCava in an application for a variance - dimensional variance. The locus consists of a single parcel of land with an existing single family residence situated thereon. The Petitioners propose to demolish the existing single family residence situated thereon. The Petitioners propose to demolish the existing single family residence and to construct, use and maintain a new single family dwelling with attached garage thereto. Location and Zoning District: 20 Leslie Road, Residence A-1 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 came forward.

Mr. Connors: I represent the petitioners, and tonight with me in the second row are the petitioners Linda and Anthony LaCava. Anthony also is known as Bud, his nickname, but the LaCava's are long time Waltham people. They were born and bred right here. Recently, I think in the last few years, Mr. LaCava was taken out of Waltham on work but he came back to the area, presently living in Weston, and purchased this lot here at 20 Leslie Road and they would like to construct a single family home.

I had a prepared a brief that I submitted to the board electronically and I will give you a hard copy.

Mrs. Rando: Are there any changes from the one that you sent us?

Mr. Connors: No.

(Mr. Connors read his brief into the record along with going over the site plan with the board, exhibits contained in the brief, and architectural plans of the proposed property.)

Mr. Connors: The idea of the residence is to construct a single story for Bud and Linda. I know he's retiring, but he would like a single story home and I did say that the basement would have a media room and a one bedroom. But, I think it's on one of the exhibits but also in the architectural renderings. We have most of the living area up on the first floor, the main floor. So they have two proposed bedrooms on that first floor, the master bedroom, the kitchen, an additional bedroom, a family room and the master bath are on that first floor.

So the proposal is to kind of create a one story building and this kind of makes sense to kind of centralize it right in the center of the lot where its most level.

Also, you will see on the rendering, they did propose a deck on the back and at the opposite end of the deck it's a three season porch. I know it's enclosed because it has a roof top so it is included in the setback.

(Mr. Connors went back to reading the remainder of his brief.)

Mr. Connors: Bud took a picture of the house that he lives in today up in Weston so this is where that plan came from. (Mr. Connors submitted a plan to the board.) He lives up in Weston in a home and he basically went to the same architect that designed the house he lives in now. They said we like that home and would like to pick it up and situate it here.

So that's what his house looks like today and in addition to the rendering it's a pretty good idea of what it's going to look like when it's done. So we believe that it's going to be a great looking house and a great addition to this particular neighborhood with really limited affect on the neighbors.

So that's my presentation. Thank you.

Mrs. Rando: I think that you realize that hardship is very, very hard to prove. It's probably the most difficult prerequisite to grant a variance. And we have to think whether this is a self-made hardship. Is it a desirable hardship or is it a true hardship? Is there ledge on this land?

Anthony LaCava, 2 Cutting Lane, Weston, Ma came forward.

Mr. LaCava: When we went to the engineers they told us that there is ledge in the neighborhood but until we actually get up there and begin construction, it's difficult to tell. I am not sure if that answers your question. It's the best that I can answer, I suppose.

Mrs. Rando: So, if there were ledge, that could lean stronger on your hardship because it would be more financially a detriment to you to have to remove the ledge. But if there's no ledge, is there just a way of, you would know more than I would, of digging up the land and being able to put the house - - - -

Mr. Connors: I understand your point but I mean if there was ledge, they are going to have to deal with that. So they haven't actually expended the funds to determine if there's ledge. They have preliminarily spoken with the engineer to determine what type of drainage they are going to do, so they are going to have to do a drainage system which is significant for this property because the city engineer really reinterprets drainage issues

today when they did in 1962. So now they are of the opinion that anyone and everyone has to retain all your runoff on their own site. So that's what he's going to be doing so.

Mrs. Rando: I don't consider that a hardship. Anyone would have to do that. That's not a hardship.

Mr. Connors: That's true, but my point is that this is going to create drainage issues if he is going to be constructing in it, whereas if he leaves it as plain grass, there's going to be a run off there (referring to the plan). The other thing is you talk about hardship. There may be ledge up there. I can't say that there is because we didn't do that examination, but again, there is a true hardship here because we have a lot that's only 125 feet deep and it's a 175 feet wide so what we can build it as I've shown on Exhibit F, we can build a house that big, but the problem is that because if I was to turn this lot around rather than go from side to side and turn it like that, we could build the proposed house 83 feet wide and still have 20 feet of frontage, I mean 20 feet of side yards on each side. Just by turning the lot around, I could satisfy all the setback requirements.

Mrs. Rando: But again, the shape of the lot does not constitute a hardship.

Mr. Connors: Absolutely, Chapter 40A, Section 10 states that shape, topography or soil conditions - - -

Mrs. Rando: That's one of the prerequisites but not the hardship. You have to have all five.

Mr. LaCava: Maybe I can address the ledge question a little differently. So because of the way we are building this house, actually from left to right as you look at the house from the front yard, it's narrower than the house that's there now. So that minimizes the potential of us having to deal with ledge and Bibbo Brothers did warn us that there is ledge

in the neighborhood. So to minimize that like going inside the left to right and the only thing we are doing in the back is going back about five feet more than is there now. So by doing it that way, by putting the house as close to the current footprint as we possibly can, actually less because we are short on left to right, that would minimize the potential of any ledge. If you took advantage of the full width of the lot and went to twenty feet instead of, I think we are 15.40, none of this would go into ledge. I prefer not to do that and the house we are going to build is identical to the house we are living in now and how it works and how it looks, I've showed it to all the neighbors. I think it was fourteen people, fourteen residential abutters on the list. We spoke to about thirteen of them and I spent quite a bit of time with both the neighbors to the immediate right and left and one more over, Mr. Cincotta. I spent a lot of time trying to make sure this works. I don't know if there's ledge. If we went wider, I don't think it would be as appealing for the neighborhood so we could have a hardship.

Mrs. Rando: In all due respect, it's a beautiful house, both of them. I just have to have a better hardship.

Mr. Connors: And I think shape by itself as I cited in the brief is an element of a hardship. That can create a hardship in and of itself, shape. So I've cited Paulding v. Bruins, 18 Mass. App. (1984), Josephs v. Board of Appeals of Brookline so the court confirmed that land area was an irregular shaped parcel which created a statutory condition for the granting of a variance. So shape in and of itself alone could create a hardship and to justify the grant of a variance.

But I'm saying that in addition to that we do have an issue with topography. But to Mr. LaCava's point, if you look at the footprint of the existing home, so it's longer than what he has there today. It's a bigger house (Mr. Connors went over the plan with the board.) So the existing home is longer side to side than what he's proposing and one of the reasons for that proposal is he's trying to create a house so there's maybe more living space

on the ground floor but he's not building it up. It's not as tall. I think it's twenty-nine feet in height approximately which is less than what is there today and certainly meets the minimum setback requirements.

Mr. LaCava did bring up the petition. so Madam Chair I do have a petition that is signed by all of the abutters except a couple.

Madam Chair, could I call a witness from the neighborhood to testify as to the existence whether there is or isn't ledge. Mr. Cincotta is a, he lives right here (referring to the abutters plan) at #4.

Ronnie Cincotta, 4 Leslie Road, Waltham: I bought my lot in 1979 and I started building the lot in 1982 and there are outcroppings of ledge underneath all of that land that is up there. I had hit ledge on my house. On his lot, his lot is surrounded by walls right now and the walls were built because I have been there since 1980 and the walls are built are sitting on ledge. And the way his foundation is now, if he went out to his sidelines, he's going to hit all kinds of ledge. The minute he takes off the locus and the loom that's out there, you can see you can't even get grass to grow because there's outcroppings that are probably a couple of inches underneath the grass. And if he goes towards the low end as the high end when he has twelve feet of pitch from the street to the back of his lot he can get his foundation out and still have four feet of cover to cover his foundations footings. So that's, I think that's the only way the house is going to fit. If he pushes towards the back and towards the front, he'll have plenty of cover on his foundation footing when he puts it in. And now a days with the new drainage that's out there that he has to put in according to City of Waltham Specifications, he's going to hit some ledge in putting in some of that drainage.

Mrs. Rando: Okay, thank you.

Mr. Cincotta: Excuse me, I've been a contractor for over forty years and I understand ledge because I've owned my own blasting business for thirty years.

Ms. Hankins: Attorney Connors, in terms of the shape of the lot, the cases you cite often was on unbuildable without the variance and the lot was significantly different than any, the shape was significantly different than any lot in the area. But I look at that lot and to me it does not look significantly different.

Mr. Connors: If you look at Exhibit A, Exhibit A is the subdivision from 1959 and if you look at all the lots down here on each side of Prospect area, all the lots are deeper than they are wide so that front and rear yard setback is not a consequence to them. I think they were about maybe 134 feet wide to say 115 feet deep or vice versa. So, if you look at all these lots here which are not on the abutters plan, the majority of them are much deeper than they are wide. So I think that they are, this particular lot and if you look at that 1959 plan it almost looks like these two lots are turned on their side. So these lots are significantly different because, number one, they are deeper than they are wide and also I think that on the top half of that, some of them are wider than they are deep but again the difference between the width and the depth of the lot is not as great as it is here whereas my lot is only about seventy percent the width of the lot where as over here it's almost the one-to-one. So I think these lots here, there's no question that they are much deeper than they are wide and these ones a little bit less so, however, none of them are as severely different as they are back here because I think that when they created this original subdivision, they were running up against the land for the Cambridge Reservoir. So rather than go deep for the normal depth of the lot, they satisfied the 20,000 square feet lot requirement by going side to side.

Ms. Hankins: When we are issuing variances, if we can find lots that are similar right in the neighborhood then that sort of runs counter to. I read the cases that you referenced, and that one's counter to me.

Mr. Connors: The cases I cite, I cite for the foundation that an irregular shape parcel is - - -

Ms. Hankins: If this is an irregular shape parcel that's different than saying you know like in Pauling vs. Bruins, it's a pork chop lot. That's very different.

Mr. Connors: I don't have a pork chop lot here. I agree with you. No question about it. All I am trying to say is that those cases represent that if you have a unique shape then that is a basis to satisfy the statutory requirement for a hardship that relates to shape. So my case is not a pork chop lot, absolutely. But there is a uniqueness to the shape of this lot because it's 125 deep but it's 173 feet wide. Okay, so the uniqueness is that because of the front and rear yard setbacks, and my front to back is only 70% of the side to side, I think I had the number in my brief, I mean, the majority of that is unbuildable. I think it was 63% of the lot from front to back is unbuildable because of the front and rear yard setback requirements. Ya, so 64% of the depth of lot is required to meet the front and rear yard setback requirements. We are only 32% of the side yards. So we could build a house within the footprint that I showed in Exhibit F. We could build that but that's a long and narrow house, and maybe that's kind of what they have today. That's why the house today is more narrow than what he has. But we are proposing to build a little bit deep because the impact is going to be less on the neighbor to the rear because it's a wooded parcel and we are going to be able to create a single story living space. And also, I mean, the net effect, again it has to be a substantial detriment to the public good and I would say that in that we are only twenty-six feet there, we are only extending it six feet. So I think the shape, it's not a pork chop lot, I agree with you, but there's a uniqueness to it and that's distinctly different than the other lots in the subdivision. The depth of their lot is much greater than it is side to side so and that's where the zoning ordinance makes the most demand. In the front yard and the rear yard it's the biggest demand and yet that's the shortest part of the length.

So we believe that shape, it's not a pork chop, but it's unique to some degree and to create the basis for a finding that we satisfy the statutory condition but there is a topography issue too. It does slope. So it goes from 274, 276 in the front of the lot and it slopes as we move back. So the best place to situate the house is pretty much where it was situated before in the center of the lot otherwise we're getting into building in slope area where it is the most significant impact financially, practicality and as Mr. Cincotta testified that there may be ledge over here that we haven't even encountered yet. So we are proposing a foundation that's almost going to sit over the foundation as to what was there before.

Ms. Hankins: On the plan you have here it says, proposed one story house, but then on the dimensional requirements, max stories 2.5 required, proposed two. So I was just wondering why there's a discrepancy.

Mr. Connors: So what happens it is a single story 15 feet, but there's no livable space. It's going to be 29 feet but it's architectural so there will be no living space on the second floor.

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

Mr. Sergi: No, I just note that there is a twenty foot wide drain easement here. Is that correct, counsellor? That kind of prevents you from, it kind of narrows down your lot a little bit.

Mr. Connors: And that's another impact. We couldn't build over there if we wanted to and that suggests there's a runoff issue in the neighborhood that this is really just to allow it to run back to the Cambridge Reservoir.

One other thing that I did mention, but I think if you were to go up there and I think I mentioned it in the brief, one of the considerations the board has to make is the impact on the neighborhood and I would say if you go up and down Leslie Road on this side of Leslie Road, you see all the residences that have rear yard setbacks that are less than this. So 58 Leslie Road has a 16.1 rear yard setback 50 has a 31 rear yard setback, 10 Leslie Road has a 27 foot rear yard. So there other properties in and around this property that impact and if you see they have impacts into that 40 rear yard setback.

Ms. Hankins: Did some of them get variances?

Mr. Connors: Some of them did get variances, yes. So I would say the one that didn't get a variance, I think was 10 Leslie Road which it states that it was a pre existing nonconforming and I couldn't figure out how that was but I think the other three properties got variances for a rear yard setback.

Mr. Sergi: I just want to corroborate what I heard about the ledge. I live in the area as well and I know there's a lot of ledge in that area and it forced me to build on one side of my house rather than the other, so I think what Mr. Cincotta said, it makes a lot of sense to me. If you go backwards, you don't have to build so much of a foundation so you don't have a potential ledge issue.

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

Mr. Hickernell: I would find that the evidence of ledge is sufficient to establish a statutory hardship but that we have to amend the Proposed Findings and the decision and I would also find that the shape of the lot is sufficient not because it's a particularly unusual shape, as such, it's a rectangle but because of its orientation to what the ordinance defines as the front of the lot, a perfect square rectangle could be completely unbuildable without a

variance depending on the angle of its reproached frontage. This is a variation on that. So, I would grant a variance on either of those things.

Mrs. Rando: Ms. Gelineau, do you have any questions?

Ms. Gelineau: I would just like to say that I sort of commend their staying within the integrity of the other houses in the neighborhood. I mean they could go up three stories and build a huge trophy house. A lot of the houses up there are ranch style and I think it fits nicely in the neighborhood. Somebody could have gone in and built something crazy and I think it's a nice plan and I think it's a nice addition.

Mr. LaCava: The whole idea of a single family home. We're both sixty years old. I just retired a few months ago. We hope to live there the rest of our life. We're Waltham people, grew up in Waltham and graduated from Waltham High, went to Bentley College, all my kids grew up in Waltham. We want to be here the rest of our life. So we built a single story home that will accommodate us as we get into those years where you don't want to be walking up and down steps. And I agree, it does fit nice into the neighborhood and we're sensitive to that. We get it. We spoke to Mr. Gallitano, the old city auditor from Waltham. We spent a lot of time with him and the people on the other side. They are elderly people and we wanted to make sure that they are comfortable with what we are doing before we even went to the architect. I took a picture of the home that you see here and I brought it around to show it to them and said are you guys okay with this. They were good. So we thought it out. We are not building a McMansion. Someone could on that lot. It could provide you to put a bowling alley type McMansion. You could go technically one hundred and some odd feet wide in that house. It would be ugly if you put that type of house in that neighborhood. Someone could do that without having to go to zoning. We're sensitive to that. I appreciate your consideration.

Mrs. Rando: Ms. Hankins do you have any questions?

Ms. Hankins: No.

Mrs. Rando: Attorney Connors, I like the house and I would like to vote on it. I just want you to prove to me the hardship a little bit stronger than you did. The ledge does help. What Mr. Sergi said helps too. I do want you to know there are five prerequisites in a variance and one is Circumstances Relating to Soil Conditions, etc. But shape of the lot does not constitute a hardship. And we have many cases, we have Tsagronis vs. Board of Appeals of Warcham. We have Fielding vs. the Board of Appeals of Boston, we have Mitchell vs. the Board of Appeals of Revere that say that shape is not, we could have anyone in Waltham that does not have the perfect shape come in and want to put the house they want and say it's the shape of my lot, it doesn't - - -

Mr. Connors: One of the cases I think you referred to is talking about size not shape. I mean I cited cases that talk about shape and again I don't have a pork chop lot but the pork chop lot is the statutory basis that say that I have a uniquely shape lot and therefore I am entitled to a variance. So, those are the cases that I have cited and I understand my facts are different but again the statute says under Chapter 40A, Section 10, and I cited it in my brief that you have to have, I'll just read it back to the board because it's a neither or. It's not all conditions are required but it states under Section 10, "Variances may be granted where such permit granting authorities specifically finds that owing to circumstances relating to soil conditions, shape or topography of such land." Shape, soil conditions or topography. So it doesn't require that I need to show all three but it does say that topography is a basis of a statutory hardship; soil conditions are a basis for a statutory hardship; and so isn't shape.

So, I think shape is an element. It can create a hardship, but over and above that I think we've had testimony and I've shown on the plans that we have a topography issue which is again another statutory condition for a hardship; the testimony from Mr. Cincotta

about the ledge and that's probably one of the reasons why they want to construct it where it is situated. So I think ledge also is an existing condition. So I think there are three conditions, unique circumstances as the statute says. Unique circumstances which is related to this lot which create the basis for a statutory hardship. And I do think that the other cases that I showed you, I actually have copies of them, in 1990 there was a variance granted for 50 Leslie Road and they went back a couple of times to do an addendum on it and so there are instances where this neighborhood based on shape, based on the topography, based on the slope of the lot is where the Zoning Board of Appeals found that that was a basis for the grant of a variance.

Mrs. Rando: Is there anyone in the audience that is in opposition to this petition? Seeing none, is there anyone in favor of this petition that would like to come up the microphone and be counted?

Ronnie Cincotta, 4 Leslie Road, Waltham: At this time I would like, if you people could, grant them the variance because I hate to say when Buddy starts digging he's going to be in for some surprises with the amount of ledge, boulders and everything else that has to come out of the ground because when you look at this lot, he's got a lot of rocks around it right now and he hasn't even put a backhoe or a shovel in to the ground and he's going to have to spend some money just on the site work alone. The plans are a beautiful house and I just live up two houses away from him and I've got a big lot and I've hit a lot of ledge when I did my foundation. I couldn't put in some of the under drain. I had to put it in a different location and then when I put a pool in my house I had ledge putting the pool in the house. Being in the blasting business and it didn't cost me much money, but I think Buddy might have to spend a few dollars. At this time if you could grant it to him and there's just a lot of ledge in the neighborhood. Thank you.

Mrs. Rando: Anyone else that would like to speak in favor? And how many do we have in favor? (Three people were in favor along with Mr. and Mrs. LaCava.)

Is there anyone seeking information?

Bradley Nederhoff, 1 Leslie Road, Waltham: I am not in favor or against but I do have a question which is the house that you are proposing, is it forty feet set back from the street or is it beyond that?

(Mr. Connors went over a plan with Mr. Nederhoff.)

Mr. Nederhoff: I am sure you looked into not tearing it down because it's a pretty nice house. It's probably the first house that's being torn down. And I think it makes sense to go back. (Mr. LaCava had a brief conversation with Mr. Nederhoff.)

Mrs. Rando: You may continue with your Proposed Findings of Fact.

Mrs. Sergi: Madam Chair, I make a motion that we waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department.

Ms. Hankins seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.

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

On motion of Mr. Sergi, seconded by Mr. Hickernell the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.

Mrs. Rando: Now I am ready for a motion on the Proposed Findings of Fact.

Mr. Sergi: May I suggest Counselor that maybe you put a reference to the existence of ledge.

Mr. Connors: What I am proposing, I think I would leave off Paragraph G and propose Paragraph H. It will be K, I'm sorry.

K. The existence of ledge in the neighborhood is also a contributing circumstance for the statutory basis of a hardship.

Mrs. Rando: Mr. Sergi, you also make a remark. I think that should also be included.

Mr. Sergi: The easement. Maybe you should add that as well.

Mr. Connors: L. The existence of a twenty foot drainage easement on the westerly side of the lot limits the build-able area on the westerly sideline the westerly side of the lot .

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

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

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes.

Mrs. Rando: Do I have a motion on the Proposed Decision?

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Decision and make it the board's decision.

Roll call: Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes.

Mrs. Rando: The Chair voted yes because of the outcropping of ledge that you believe that you're not going to be able to move the building enough to conform and also Mr. Sergi's statement. So it is granted.

Mrs. Rando: Would the clerk please read the petition in Case No. 2016-05?

The clerk then read the Petition of Northland - The Merc LLC in an application for sign variances. The locus consists of a large parcel of land containing approximately 4.49 acres of land with buildings located thereon. The Petitioner proposes to construct, use and maintain a number of signs on the property and the building(s) to identify the occupant(s) and to direct visitors to the locus. Location and Zoning District: One Moody Street, 45 Moody Street, and 694, 696, 700, 710 and 716 Main Street (f/k/a One Moody Street, 702 Main Street, 716 Main Street and 55 Moody Street); Business C Zoning District and partially the Riverfront Overlay District.

May we hear from the petitioner or the petitioner's representative, please?

Michael R. Connors, Esquire, Law offices of Connors and Connors, 6 Lexington Street, Waltham came forward.

Mr Connors: I am here tonight on behalf of our client, the petitioner and owner Northland Merc LLC. According to their website Northland Investment Corporation is a privately held vertically integrated real estate investment company. Since 1970 they have been creating unparalleled value in real estate through the acquisition, development, operation and long term ownership of multifamily, commercial, retail, industrial, and mixed-use properties. (Mr. Connors went on to read a synopsis of his brief.)

The petitioner proposes to construct, use and maintain a number of signs on the property in the buildings to identify occupants and to direct visitors to the locus.

Just as, there was a comment as to the notice, the site is currently under construction so there were prior numbers associated with. I included the ANR plan as an exhibit and that shows the old buildings that were there, 55 Moody, One Moody, 716 Main, The Coldwell Banker building, those have obviously come down and they have built new buildings but not until they're open are they assigned addresses. They have addresses but I wanted to make sure that everyone was properly noticed so that's why some of the addresses seem to be repetitive.

The subject of tonight's petition is for a Citizens Bank branch that is situated on the locus.

(Mr. Connors went on to read the Petition portions of his brief.)

Mr. Connors: Madam Chair and members of the board as you are aware I provided the board with a brief two weeks ago and emailing the board and having it delivered to each board member and that the board is very familiar with Article 6 of the Zoning Ordinance pertaining to signs, is it the board's wish that I proceed with the brief or are there specific questions that the board would like to address?

Mrs. Rando: Does anyone have any questions at this time?

Mr. Hickernell: More a comment. When I read the petition on the signs in the brief that you were looking for, it's just a question of the interpretation of the ruling where you are actually going to have one major sign on each facing, so that's good. I know normally the board grants permission to change signs without further permission as long as it is relatively consistent. This is really in the heart of the city. I'm not comfortable granting

that kind of permission in this case, me personally. Other than that I don't have a problem with it.

Mr. Connors: I included the condition, obviously it will be a bank buildout. There are other banks around. I understand that, I just wanted to make mention that it's in there.

Mrs. Rando: Attorney Connors, this brief I'm reading is just bringing us up to whatever the committee decided for the development.

Mr. Connors: Well, its factual in that it is specific to this locus. Now one of the things that I brought up as to the addresses is that this used to be multiple locuses. There used to be the three separate parcels which were combined as to the very unique shape. And when we are talking about shape, MGL, Chapter 40, Section 10, in the language talks specifically about the shape of the lot and then the case on it on shape, Paulding v. Bruins which is still good law. It talks about it as it is, how it affects owing to circumstances relating to the shape, structures, especially affecting such land or structures but not affecting generally the zoning districts in which it is located.

So this is by combining those three lots, Business C, the way that zoning came about in Waltham, there was no zoning until 1925 and then here at obviously one of the busiest corners of the city, which it has been for years, this was where there was Business C and there were smaller lots. So now being that 4 1/2 acres after the ANR plan which was a condition of the Special Permit, this is, if not. the largest or definitely one of the largest lots in the Business C Zoning District. So it's extremely unique as to the zoning district. Now you might say there's 4 1/2 acre lots up along 128, but that's not what the statute nor the case law looks at. It looks at it in the zoning district, so I just wanted to stress that point.

Mrs. Rando: Well the signs, were also for safety too.

Mr. Connors: Right, that's why I included within, as I said unique to the lot, since dad had gone through the special permit process I had handy the traffic study that was a requirement of the city council and I included a couple of pages from that to just show obviously the extreme amount of cars that go down Main Street at the corner of Main and Moody. I included Charles Street along the back side of the parcel as well, 20,000 cars down Main Street, so obviously if this bank were located up near 128 or another part of the city it doesn't really matter if someone pumps the brakes so they can see it from afar. But here where you are approaching, like I said that secondary sign, the size of it, coming easterly on Main Street, is important that they can identify the bank being there on the corner so they can enter the site, otherwise they could try to loop around but they'll find out that Charles Street is a one-way and maybe that's where the safety comes in when someone tries to make a turn too late.

Mrs. Rando: Now before 1979, wasn't that when the new sign variance was constructed?

Mr. Connors: What I've been saying in the brief?

Mrs. Rando: No, no. I'm asking the new sign variance that the council put through, was it 97? It wasn't 79.

Ms. Hankins: No, it was 79.

Mrs. Rando: Was it 79? What could you have done differently before 1979?

Mr. Connors: Well I think what I was getting at before is these locuses weren't combined so maybe at that time they may have provided a different provision. As the clerk read in, we're talking about certain subsections that only apply to Business C. So there

were no lots at 4 1/2 acres. So that's one of the reasons why there's a need for more signage here, what it used to be stand alone buildings and even in my discussions going through as this board's probably well aware, a lot of the signs are by right as Clerk Hickernell pointed out again some of the signs just have coloring and I tried to stress that fact. It will just make a uniformity of design more than anything.

Ms. Hankins: I just wanted to comment on that point, in the brief, just your comments on the sign code. The point you make throughout here is perhaps, that since it was done early in the seventies that you know maybe it's a little outdated, but in fact one of the signs that you have that's allowed by right, the projecting sign, that that wouldn't have been allowed four years ago. That was only 2014. So clearly the sign code has as far as 1978 after that it hasn't been looked at. It's actually been looked at as recently as 2014 because they made that change to the projecting sign that you're actually taking advantage of.

Mr. Connors: Right. It hasn't been looked at as a whole. You will see that most of the section that stayed. I know the city council has many times talked about looking at the whole Zoning Ordinance let alone just Section 6 which deals with signs. That one sign that you were referring to was a product of, as I am sure you are well aware, the Downtown Waltham Partnership and the Chamber pushed that forward. Councillor Logan brought it forward at the council floor but basically the idea was and I think you have seen some of that resurgence and hopefully with the Merc, there will be a little more foot traffic and that's the type of signs you see in other communities that have built out their downtown. So that's a simple sign but its for pedestrians to be able to see.

Mrs. Rando: I thought the projecting signs were only for small businesses. I mean that's why it was passed by the council. Logan came back and said, okay, we'll have it for small businesses that can't be seen.

Mr. Connors: Once again that goes back to, it's in Business C where you have a lot of these small businesses. So, as I was getting to before, even the number of secondary signs, when they looked at it, they would say that in a block building, there's typically three to four store fronts. So you have your front signage and if you're looking at the side of the building, and these were typical buildings that are along Moody Street now. You'd only need the number for the people that are in between. So someone could be at the side of the building and say, oh, well I can't from the angle I am standing at that that restaurant is the third or the fourth one down but I can see because of the secondary signage there. So all of this stuff is a product of what was there much like why the land is zoned the way it is.

Mrs. Rando: Anyone else? Any other questions?

Mr. Sergi: Just a clarification. Again just restate, to me this plan is a little confusing. How many signs are you actually putting on this building? It seems to me to be a lot of signs as well. Is this typical for this section or say for the next section they are probably putting on the same number of signs?

Mr. Connors: It will depend on the user there. I actually have a little supplemental handout that may be helpful for the board. One second I will grab it. This goes toward the computation for the total square footage, but as I was referencing throughout and you can look down, the sign person is out of state and he just happened to mark them EO, but there's twenty, so it goes EO-1 through E-20. As I discussed, quite a few of those and I broke them down and I can state them again, don't have any copy on them. (Mr. Connors submitted this sheet to the board.)

So once again along the top, and this is specific to Business C, it allows three square feet for the sixty two square feet of frontage which is the 186 square feet and I broke down, if those signs without copy weren't counted it would be roughly 50 square feet under what is allowed. So you can see the highlighted ones are existing and permitted. And one of

those signs is actually removing on the side of the building. If you look at the last page of the signage handout, it notes that that sign is being replaced and you can actually see how it fits into the facade and its too small for the space. So that's being replaced. That's the only one that's being replaced. It's up now but it will be switched out with a sign that's consistent with the Main Street side as opposed to the secondary wall sign closest to the library.

Mr. Sergi: I just think that maybe one main sign would have been fine in the front rather than, I think there's three, right?

Mr. Connors: And like I said, its more of a product of the facade. If it had been a flat front you know a lot of times banks, as you well know, they're stand alone structures. You know, here this is being placed into a space, like I said, there might be a restaurant there. Other users would go under the space. The council wanted, there was much discussion with, actually they created a committee at the time the Downtown Design Review Committee that actually looked at it with the Planning Department and they wanted the architectural features. I didn't bring it but I think everyone who's been over there notices that there's quite a bit of detail on the exterior along Main and Moody Street and that's why it's broken up in sections. So if it wasn't, you know, you would just put a big flat sign like you said that would definitely handle it and that green would be counted as one sign so that would limit the amount of variances that would be asked for even if the size was as big as the three which once again, the two on either side of the front don't have any advertising copy on it.

Mr. Sergi: So what you are saying then, you're saying that that's typical for this design of building to have the three separate signs like that?

Mr. Connors: I'm saying an architectural design to break up, you add texture, so it doesn't appear as big. Its also nicer. Its more expensive.

Mr. Sergi: But its typical to have those three signs in each one of those sections?

Mr. Connors: I don't think this is overkill for the location and I think it looks nice on the building and how it was - - - You know Citizens, it's not like a nightclub where they are trying to put neon signs or something.

Mr. Sergi: No I'm just saying from a citizen living here in Waltham and looking at the building, You know, I'd like to make sure, signs have been a big issue with me in the whole city, you know, and I just want it to fit in nice, counsellor, into the neighborhood and I just thought maybe the three signs might have been a little bit of an overkill to me.

Mr. Connors: And this is the signage plan that has been considered as you are well aware, I stated here tonight, the petitioners are actually from the Northland the Merc, LLC not from Citizens so it's for their tenant there. Northland owns the buildings. So this isn't them over stretching. They had guidelines. You know this was within the guidelines and by all means they care about the success of downtown Waltham. They have invested a tremendous amount of time, over a decade, putting this design together and to see it come to fruition. I think everyone is excited.

Mr. Sergi: I love the project. The project is beautiful. I would have personally liked to see like maybe the bank name in the middle and maybe if they had two symbols on each side that represented the bank, it would look a little nicer rather than Citizens Bank, Citizens Bank and Citizens Bank.

Mr. Connors: The ones on either side have no copy on them. They are just green so it would look like just an extended banner type of design but there are breaks in the building there, so you would have to build out a structure away from the building to have that. Obviously if we had had the snow like we had a year ago we might have ice forming

between that and it's just not sound building and there's going to be a lot of foot traffic that's why it makes sense or bike traffic even to have eye level signage as well on the secondary sign. It's a four and a half acre site so people might say I want to get to that restaurant and say, okay heres the bank, or like I said, they go park at the bike rack, come back and they are alerted to the signage.

Mrs. Rando: I had a chance to drive through Concord and Dover this weekend. All their signs are flat. Why do we have to have any projecting signs? It's a small one but why do we have to have it projecting? They're all flat against the building. Very classy.

Mr. Connors: I think that Concord and Dover probably have some nice aspects to offer. Downtown Waltham is a completely different product and as I mentioned, board member Hankins brought up the fact that this is a newer design. It is showing up along Main and Moody, its seen as a positive to the business owners here.

Mrs. Rando: I just don't feel that you need the two projecting signs.

Mr. Connors: As I menentioned, this isn't a stand alone bank building thats set back with landscaping around. Here that signs is for someone who is walking on the sidewalk and isn't at the angle to face the front facade.

Mrs. Rando: You made a statement that Waltham is different. Why can't we have it as beautiful as Concord or Dover is? Why can't we start now?

Mr. Connors: I didn't mean in anyway that it's a lesser. I think a lot of more people who think it's more vibrant. People are rushing to move into the Merc. Just what a great place to be right now. The activity around the train station you see them come off at rush hour. I think Walthan and especially this development bringing the life, the potential that people saw when Cronins Landing went on. Across the river, you know, bring this whole

area to life, its sad, I mean my office has been there, I've been doing this for for fourteen years and I know my father has been doing it for forty five and its turned into like the financial district there. Before this was built there were restaurants that would go out of business. You know, Boston the Financial District it would shut down there would be nobody around. Thats what there was. There were a couple of muggings that went on just because there was no light, there was no foot traffic. This will bring a vibrancy that I am sure is not available in Concord and Dover. And I'm not saying that at 10 o'clock, again, persons living in one of these lofts and may be working late in Cambridge or Boston, or in Waltham itself, maybe they are down at Nova Bio Medical and are walking down the river. when they come back there's a vibrancy you wont find in small bedroom communities as opposed to the unique city that the Watch City is.

Mrs. Rando: Do you have anything else to add?

Mr. Connors: No, not at this time, Madam Chair. I can continue with my brief if that's the wish of the board.

Mrs. Rando: Does anyone have any other questions? Are we ready for Attorney to continue with his brief?

Mr. Hickernell: My request would be in the Proposed Decision to delete Conditions 2c and 2d and make sure that any future tenants come back to us and have their signage approved separately.

Mrs. Rando: And that's on the Decision?

Mr. Hickernell: That would be on the Decision.

Mr. Connors: I would just like to point out to the board, I worked through this process with someone from Citizens and I got an email last Thursday that he had a death in the family. He was from Connecticut anyway and he had to go to Baltimore, so I apologize that he is not here but rather than deferring to someone that the signage applies to, I understand if you could just give me a second to look at the language of the condition to make sure it's something that I can allow.

Mrs. Rando: Go right ahead.

Mr. Connors: I guess I would be fine with, even though it is a typical condition that is allowed by this board. I respect Clerk Hickernell's position. I think as to (d) I wanted it to be clear and this had to do more with the language that appears on the plans. Illuminated signs under the zoning ordinance are typically internally illuminated so when he referred to non-illuminated I just wanted it to be clear that they could be illuminated and they are and it shows on the plan, so I just wanted to point out they have ornate lights behind it, so if that changed out, I don't- - -

Mr. Hickernell: I found the sentence in Condition 2 (d) kind of awkward. Can you read through it, it seems like a few words were dropped or something. I get the first part of it which I think you just explained maybe better that stays in here. Where it says non-illuminated in the site plans, that doesn't mean no illumination and it's not internally lit but what does the rest of this mean? It goes on to may change as allowed.

Mr. Connors: I guess what was considered here and it's been seen in the bank industry is that both conditions you know could comprehend I mean if Citizens gets bought out by Brookline Bank or something along those lines. And then they say we're doing the same use that we have had here. All we want to do is change it to the color blue.

Mr. Hickernell: I'm sorry, maybe I wasn't clear. I'm still talking about 2 (d) here.

Mr. Connors: And there it will also apply to the awnings. So the awnings as I mentioned are going to be that Citizens green. Awnings aren't considered signs. They do appear on a plan that's a condition of the decision, so that's why I included the language.

Mr. Hickernell: Okay, I see. One more second, there's a semicolon after plans.

Mr. Connors: I can add that semicolon. I apologize if it's a little choppy. Like I said I saw the note of the non-illum and I wanted that not to be any confusion. The signs are lit from the lanterns, the ornate lanterns that show on the plans.

Mr. Hickernell: Okay, with that explanation, I think I am more comfortable with 2(d).

Mrs. Rando: Is everyone comfortable with 2 (d)?

Mr. Sergi: I do think you should return if there's any changes made on the signs.

Mr. Hickernell: We can delete c and re-number d as c.

Ms. Hankins: I guess my concern on (d) would just be that if there is a change to the awning it be a solid color with no advertisement on it that would mean, again, I'm not really understanding the sentence.

Mr. Connors: The purpose of these conditions are if a different tenant goes in there and like I said it would be most likely be a bank user.

Mr. Hickernell: Am I correct in thinking that a future tenant trying to add any kind of lettering to the currently solid awnings and it could be a sign, right?

Mr. Connors: They would have to come back so that's why I think there are protections from this board that - - -

Ms. Hankins: I guess I am wondering why the awnings are even mentioned.

Mr. Hickernell: So what would change if you're not going to add a sign? What would change with the awnings?

Mr. Connors: The awnings aren't signs. I can remove that.
It can read: Additionally, it is understood that Signs listed as "non-illum" or "non-illuminated" in the Sign Plans may be externally lit as specifically depicted on the plans.

Mr. Hickernell: Okay, that's sounds good.

Mrs. Rando: What is the wish of the board? Do you want Attorney Connors to continue with his brief?

Mr. Sergi: Not really, Madam Chair. I have had a chance to read it and so I'm okay to not going forward.

Mrs. Rando: I see no one in the audience seeking any information, no one in favor and no one in opposition.

You may continue with your Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact since it's been on file in the Law Department.

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

On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to waive the reading of the Proposed Decision since it's been on file in the Law Department.

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact?

On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to adopt the Proposed Findings of Fact as its own Findings of Fact.

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

Mrs. Rando: Do I have a motion on the Decision as amended?

Mr. Connors: Just on that (c), and I apologize, is there any way that it could be included if it's simply the case that I said if that starts off provided if Citizens Bank changes its corporate name the lettering name symbols words and number, I think the intent is that there wouldn't be a different user in there but if it's themselves and like I said they changed the name to Favorite Citizens Bank for some reason, they received the zoning relief request that its simply a change there. That would still be a limit if it were to change to a different bank or otherwise. Like I said, where I don't have a representative from Citizens here, I just make that extra push and I apologize for that but I would like the board to move forward but I guess I am just making a final plea if its this bank just under a different name that that typical condition would be okay.

Mr. Sergi: Counsellor, I know what you are saying. I don't see that happening very often in the bank industry.

Mr. Connors: Well I remember a large building in the West End, when that went in they wanted to change the name of it Baybank Drive and someone said that might change at some time then it was Fleet Bank then it was Bank of America so in fact it did change just like that but it's the same bank.

Ms. Hankins: My concern is really that the blank sign so to speak stay blank so I don't know if there's anyway we can keep 2 (c) in and word it as such that if you were going to add another name or something like that.

Mrs. Rando: I think that would be too hard to manage. I would like to see (c) stay and I think it's a very important part of town and I'd like some control over the wording.

Mr. Connors: I appreciate that it's just that 2 (a) makes it specific to these plans so if you put lettering on those you would change the plans that are a specific condition of the decision.

Mrs. Rando: Hopefully that won't happen and you would have to come back to us. But that's my opinion. Mr. Sergi has an interest in signs also and Mr. Hickernell mentioned where it's a very prominent part of Waltham. But that's only my desire to see it stay.

Mr. Hickernell: I mean, it's not an unreasonable request but I can't imagine a more important place in the city for us to really keep control. You can see this place from City Hall, you can see it from the Common.

Mr. Connors: I will strike it as a whole and then (d) there would be a period after plans and the rest is removed. Thank you.

Mrs. Rando: Do I have a motion on the Proposed Decision as amended?

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adopt the Proposed Decision as amended as the board's Decision.

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

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 8:55 P.M.

Barbara Rando, Chair
5/2/16