

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

April 25, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, April 25, 2017, 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.

Mrs. Rando: Tonight we have one new case and two continued cases before us. Case 2016-41 Colbea Enterprise LLC, 65 Main Street for a variance; Case 2017-11, Christopher R. Drew, 1 Larchmont Avenue for variances and Case 2017-07, Brandeis University, 415 South Street and that's for an appeal of the building inspector.

The action I would like to finish first would be a motion to accept the minutes of April 11, 2017.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to approve the minutes of April 11, 2017.

Would the clerk please read the petition in Case 2016-41, Colbea?

The clerk then read the Petition of Colbea Enterprises, LLC c/o Ayoub Engineering

Inc. in an application for dimensional variances. Petitioner proposed the demolition on the existing gas station and convenience store building and construction of a new 3,600+/-s.f. gas station with convenience store and fast-food establishment. New gas pumps and associated canopy to be constructed. Location and Zoning District: 65 Main Street, Business B. Zoning District.

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

William Proia, the Petitioner’s representative from Riemer/Braunstein,700 District Avenue, Burlington, MA came forward.

Mr. Proia: I had hoped hearing to see that the letter was received.

Mrs. Rando: Yes.

Mr. Proia: I just wanted to give you a little bit of update because I have some additional information. I actually have the room reserved for, just as a reminder, when we were continuing, I wanted to thank you all for your patience on that so that we could meet with the neighborhood again and have them take a look at the revised plan and provide some feedback to us. So we actually have been able to get that date. That date is May 25th here. The notices went out to the neighborhood today. I did speak to Councillor McLaughlin as well to let him know what was happening. So they haven't gotten those notices yet but we did let them know that we were going to be asking for a continuance tonight so they would drive down here unnecessarily. So, the idea would be, hopefully this will be the last time we will have to ask the board for your indulgence to continue. We

would have met with the neighborhood by the next time we come back and we have a plan with some support that we can move forward with for the board to consider. So, that's the request this evening is to continue until probably later in June to allow that neighborhood meeting take place May 25th and then be prepared to come to the board at that point and time.

Mrs. Rando: Do I have a motion to allow Case 2016-41 to continue?

On motion of Mr. Sergi, scolded by Ms. Gelineau, the board voted to continue this case to June 20th.

Mrs. Rando: We have to continue the hundred days to act on this case.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to extend the hundred days to act on this case to August 11, 2017.

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

Mrs. Rando: Will the clerk please read the petition in Case No. 2017-11, Christopher R. Drew.

The clerk then read the petition in Case No. 2017-11, Christopher R. Drew in an application for variances - Dimensional to allow the construction and maintenance of a single-family home on a lot eligible for Article IV, Section 4.2181 (dimensional yard requirements) but lacking minimum required lot width at the rear facade of the proposed

dwelling. Also to allow tandem parking for two automobiles. Location and Zoning District: 1 Larchmont Avenue; Residence A-1 Zoning District.

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

Richard F. Dacey, Esquire, 707 Main Street, Waltham came forward.

Mr. Dacey: I have with me tonight Attorney Kevin Dwyer and I have asked him to make the formal presentation tonight. I may be out of service for a while this summer and if the case continues, I would like the continuity. So Mr. Dwyer will make the actual presentation.

I also have the Drews' with me this evening, Erin and her husband, Chris, and soon to be another little Drew, oh, twins. Wonderful! You were wondering about the motive for the bigger house, that might be the answer.

Attorney Drew came forward and read the brief into the record along with going over the plans and diagrams that show the lot and proposed addition.

Mr. Drew: It's really a house that will be consistent with the neighborhood. There were two houses that have been built recently and it certainly will be a high quality, nice addition to the neighborhood.

Mrs. Rando: Have you talked to the neighbors?

Erin Drew: We have spoken to a couple of the neighbor's very tight, we didn't knock on everybody's doors.

Mrs. Rando: What about the people right next door to you?

Mrs. Drew: No. We haven't spoken to anybody.

Mrs. Rando: What about the person behind?

Mrs. Drew: No.

Mrs. Rando: Will you be taking down that, is it like a small barn?

Mrs. Drew: Yes, the small shed. The shed actually goes over both properties. The shed will come down.

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

Mr. Sergi: I was going to ask the same question, Madam Chair. I don't have any other questions.

Mrs. Rando: Mr. Hickernell?

Mr. Hickernell: No questions at this time.

Mrs. Rando: Ms. Gelineau?

Ms. Gelineau: No, not at this time.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: No questions.

Mrs. Rando: Is there anyone in the audience that is in opposition to this petition?

Alysia Parkes, 13 Larchmont Avenue, Waltham: We want to ask for a point of clarification. We are not just talking about a new house or it's an additional house, they are not tearing down the existing hour. Is that right? So you are going to have two houses.

We moved to Waltham close to ten years ago and since we've been to the neighborhood, we've seen a lot of new construction. I have two children who are elementary school age and the schools are very much suffering from the overcrowding. This year, the McArthur, the local school, accepted nearly one hundred and twenty-five new students and there was lengthy discussions about whether we could give up the science classroom to accommodate the new students and other core facilities. And I really have felt that the school has suffered because of that and because for that reason I haven't enrolled by kindergarten student in the local school.

So that's not just our neighborhood. That's town wide. I've seen real resistance to building a new elementary school to try to relieve that. So with all the condo developments going in, all the additions, I know when you look at one in isolation and robe able to have the house that want, and yet I see a real impact on the quality services that the town can give the children.

I've also seen tensions in the neighborhood with neighbors that are pressed too close together. When you have so few inches separating you from the abutter, tensions flair up over every inch and we have seen some tension in the neighborhood.

I see the new houses, I believe they are at 6 and 8 Larchmont Avenue which have been built where there's one dutch colonial they put two large colonials. You know, they didn't put any plans in to where the snow would be removed. So all winter one neighbor didn't shovel and one neighbor shoveled the driveway and put all of the contents on the sidewalk so my kids couldn't walk on the sidewalk. That to me is a real safety issue but for them to actually shovel their driveway up into their lawn it's raised. I understand it's a hardship but it puts me in a bad position for the safety of my family.

So, the noise, it doesn't last forever but we're on ledge. That means dynamite and we have had years of dynamite and it would be nice to have a summer without blasting going on. So it gets to our quality of life.

Small things like water pressure has seen constant drop.

So I like Drew family. I don't have anything against them. I'd like them to be happy but I really would hope that you would take a real deep look into the planning. There's so many places where we didn't have any say about the two houses that went in across the street. It was a legal two lots. So we were never asked us what we thought or whether we had any concerns. The neighbor had solar panels that now I don't get the same sun.

So I just really hope that you could really take a look at what's best for the town and the neighbors and the people who are raising families. Thank you.

Mrs. Rando: Tell me, are you about five or six houses down from the Drews.

Ms. Parkes: I'm the second house down. I don't know if I mentioned it, but pulling out to get out of the neighborhood, you have to take a left on Rosemont. The cars there, because of the way they park on the street, it's a really blind corner, and, again, it's a safety issue for me. So when we talk about another driveway right in there, that's definitely a concern.

Mrs. Rando: Is there anyone else that would like to speak in opposition?

Dorothy Raymon, 22 Rosemont Ave: I live across the street from their property. I agree mostly with the construction. I have lived there twenty years. I can't tell you how many houses are blasted like not even ten feet from my house that I was frightened to death. One, two, three, four, five ,all brand new houses behind me. I mean we are on a little street. Rosemont is small. I mean it goes all the way up but where we are it's small. And I agree, it's a hazard for young children as well as adults because that's the only way in and the only way out. So there's a lot of cars. And in that bend that she's talking about is definitely a safety hazard. I'm okay, but I'm thinking of the children that I see walking home from school and all.

I think it's just going to be too crowded. I think the street is not going to handle it.

Mrs. Rando: Where is the bus stop?

Ms. Raymond: The bus stop is on Trimount. So they all walk up Rosemont at that time and you see them all with their backpacks. Not all parents can come and get them. So,

I'm a grandmother. I moved there, my grandchildren are all grown too, but I don't think I can take construction anymore. I really can't. That drilling, and, oh my God, I can't believe it. I can't believe we have to go through this again. I moved from Brighton to get away from all this, and it's worse. No, it's not worse but it's getting there.

I realize that we are prime property now but you know what they have to suffer this ultimately. We are the people that have been here and I love it here. My husband passed and I am by myself. I have a granddaughter now staying with me but that's just my feelings about my neighborhood which I love my neighborhood.

Mrs. Rando: Thank you very much. Is there anyone else?

Cheri Wentworth: I live at 19 Rosemont Ave. I live next door to Chris and Erin. I understand why they want the two lots and all that, but I am opposed only to the fact because it does put an additional stress on our water supply and on our water drainage. We have an awful lot of water there as it is and with the new construction, I believe that we are going to get more into our basement and if they have to blast, my house is a stone foundation. It has already moved from the two houses that they have built over on the corner of Rosemont and Larchmont and again I understand why they want to sell two lots but I am more concerned for again the children, walking to and from school, the snow removal. It's a very small neighborhood and if you actually saw the lot, honestly I can't see how they would put two houses there. It's very small. It's an incredibly small area and it would be maybe ten feet between those houses and then maybe ten feet between their house and my house. They would be right on the property now.

Their house is probably about twenty-five feet from my house right now but if you

were to tear it down and put two up the first house and the second house would be right on the property line. The only way I can imagine you putting in the size driveway that they are proposing.

Mrs. Rando: Is there anyone else in opposition?

Is there anyone in favor that would like to come up and speak?

(Two people raised their hands in favor.)

Erin Drew: I did have one comment. I know the blasting. So the two houses that went up across the street from us last year were on a hill and they had to blast through like twenty feet of rock to bring it to street level before they could even start construction and it was terrible. And I'm not surprised that you guys got a lot because after the year or two of construction that we had there, I can totally see that that would be a concern. I was home with a newborn and you know every time the horn went off I had to lift the bouncy seat off the floor because the house would shake. So it went on for three months. It was a lot. There was a lot of blasting.

But I just want to say that we are at street level and most of our lot actually goes below the street level. So we don't foresee having to do any blasting. If there is any, it will be very minimal, like we're not in any kind of situation that those houses across the street were. So I just wanted to put that out there as I can totally can understand that. I feel like the neighbors are tired of construction because those two houses took a year to put up so I can see people's concerns about the blasting. So we don't think that will be an issue.

Ms. Hankins: Did you think to maybe have a neighborhood meeting and kind of

gather these concerns so we didn't have to address them at the meeting?

Ms. Drew: We didn't have a neighborhood meeting. We did throw back and forth the idea of going around and talking to the neighbors separately but because the neighborhood is so tight, there's so many houses within a hundred feet or whatever the abutter notices went out, I would like I would have to knock on fifty doors. Seventy notices went out so that's a lot. I have an eighteen month old at home. I could bring her around during the day and knock on doors but at the end of the day we said we should probably either knock on everybody's doors and maybe not knock on anybody's door. A couple of people came over and asked questions and I figured if people were concerned, at least the ones who know us, would ask questions.

Mrs. Rando: Does anyone else have any questions?

Mrs. Raymon: Which kind of houses are these being built?

Ms. Gelineau: It's just one house.

Mrs. Raymond: One house is being built?

Ms. Gelineau: It's a colonial.

Mrs. Raymond: Oh, I misunderstood that.

Ms. Gelineau: It's just one house.

Mrs. Raymon: I didn't see any petition like that at all. That card that came out did

not say that. It said two.

I misunderstood. It's going to be a big house but it can't be any bigger than what we've got already.

So, what's the petition for?

Ms. Gelineau: It's one house.

Mrs. Raymon: They're keeping one house. That's still two houses.

Mr. Hickernell: There's two lots. One of them is empty and one is not empty.

Mrs. Raymond: It's not a lot.

Mr. Hickernell: According to the city it's a lot.

Mrs. Raymond: That's not according to the notes we got. It was a half a lot. I'm just saying that's why we are here.

Mrs. Rando: Is there anyone seeking information? Seeing none. Any questions from board members? There were none.

Mr. Dwyer: I just wanted to point out that the Drews are proposing tandem parking. Two spaces will be completely off street. I know one of the neighbors talked about congestion in the neighborhood and we appreciate that. But these two parking

spaces they are asking for are going to be entirely on their property. They are not going to be on the street. We feel confident that this new house is going to be a nice addition to the neighborhood. It's going to look far better than what's there now. There's going to be new grass towards the street and in the back and there's also room on the property as laid out for snow storage. So I hope that answers some of their concerns.

On the Proposed Findings...

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the law department and the board has had a chance to read them.

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 reading of the 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 and the board has had a chance to read it.

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 Proposed Findings of Fact?

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adopt the

Proposed 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 Proposed Decision.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adopt the Proposed Decision and grant the variances.

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

Mrs. Rando: So it is granted and try to do what you can for the neighbors while you're doing it because they have had to put up an awful lot in that area.

Mr. Dwyer: Understood.

Mrs. Rando: I would like to request a five minute recess so that we can look over the opinion that we received from our attorney.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted for a five minute recess at 7:50 P.M.

The board reconvened at 7:58 P.M.

Mrs. Rando: Would the clerk please read Case No. 2017-07 Brandeis University.

The clerk then read the Petition of Brandeis University, a Massachusetts Educational Corporation in an appeal from the decision of the building inspector under G.L. c.40A. s2. Brandeis University is a nonprofit educational corporation organized under Chapter 180 of the Massachusetts General Laws. The Locus is a large parcel of land known and numbered as 415 South Street, also known as Brandeis University (Upper Campus). The Petitioner proposes to raze a portion of the existing Usen Castle complex and in its place construction, use, and maintain a new residence hall thereon a portion of the Locus. Location and Zoning District: 415 South Street. The Locus is situated in a Residence A3 Zoning District. Provision of Zoning Ordinance Involved: ss4.12 (11) (a), ss4.12 (11)(e), ss5.21, and ss5.2, and ss5.2 et seq.

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

Michael Connors, Esquire, Connors and Connors, 6 Lexington Street, MA, forward.

Mr. Connors: I would like to thank the board for reconvening tonight. Also this matter was first taken up on April 4th. Four out of five members, I'd like to thank for coming out to the site visit on the following Friday, April 9th.

I received tonight when I walked in, thank you very much, a copy of the Law Department opinion. I thought the question was limited to authority of use of the Dover Amendment. When I was told that I submitted to the board, I was told that on April 19th and I was told that Assistant City Solicitor Learned would be handling the matter.

I handed into her one day later copies of cases and I copied the board on this and Pam said that she would have it scanned in. I didn't think there would be a need for more reading on the matter, cases on the same locus, same petitioner, 04, 05, 06, 09 and then across the street in 2013 all granted in the same manner as this was presented under the Dover amendment.

One of the things we brought up at the last hearing was that the building inspector asked for more on this filing. It was on parking where it hadn't been one on previous ones. So I would just like to make note that all those prior petitions have been reviewed by the building inspector, come to this board and voted on without issue

Mrs. Rando: May I interrupt and say that probably your questions were sent to the Law Department at that time for an opinion.

Mr. Connors: Correct and then I just received this opinion tonight.

Mrs. Rando: What I'm saying there wasn't an opinion on the last cases because nobody asked for an opinion. What I'm saying I probably didn't ask for an opinion if I was chair. Whoever was here at that time probably didn't request an opinion from the Law Department.

Mr. Connors: This has come up on numerous cases not limited to this petitioner or locus. This board also heard the Salvation Army case and made the same ruling on a petition drafted in the same way. So, your'e correct. I didn't question at all at the city council for a special permit. Those always go to the law department for review. Here the board typically takes it in. It is looked at by someone in the city and the building inspector and typically would change the petition if they wanted something and that's a product of

how the petition came before you. If we didn't request something, he would say you missed this one. Add it on or whatever may be the case.

So as to the question of the legal notice, I'll point out one matter and I'm not going to get into the substance of it but as far as notice goes, the way that the footnote is broken down in 4.1211 and we went through this to some extent I believe on April 4th. The taller the building gets the greater the setback gets. Now as the clerk read into the record again tonight, we requested for a 450' setback. The footnote on the opinion mentioned a 350', setback so we would include something that is less and the reason that's included is that's for residential dormitories which we are one. But we could have done a shorter residential dormitory, for instance, in 4.12 11c, if we were less than 36 feet in height, we would only need 125' setback. In that case I would agree that that would not be proper notice. But because we would be less than F which says 350 because we are a residential dormitory. So I can't speak to the other matters, so at this point I would request a continuance unless the board agrees with me in that matter and as many times that the city council because they also receive opinions and they feel that they can move forward on it. I

It seemed like the site view went well and was very helpful for people just seeing the location of the pump station along the loop road. I would hope that we could potentially continue so I can file a response to the Law Department opinions.

Mrs. Rando: I think that they mentioned in here that our attorney felt that you should withdraw the petition and file it correctly.

Mr. Connors: Well, then I would just ask them on behalf of Brandeis that since we do have this matter in front of you the process of withdrawing and refileing a different petition takes a substantial amount of time. As Jim Gray who is here tonight from

Brandeis mentioned the last time, they have a time crunch on getting this dorm on line because as students come in they need a place to move in.

Mrs. Rando: But our attorney has said it is not properly before us because you didn't ask for certain things, so do you think that you are going to be able to fight that argument before you come back?

Mr. Connors: I would like to be able to counter the argument. I just received it tonight. As I mentioned, at the city council we would get the opinion beforehand or at least receive it and then have the ability to potentially cite other case law and make some of the arguments. Because the idea of notice, no one who received notice it would have been effective on its face because they would have been coming for a building for a certain height within a setback. We put greater notice in at 450 feet than 350 feet, so you don't have to go all inclusive underneath.

Mr. Hickernell: But that's what the building inspector noted on his rejection of your initial application. He cited subsection 11e knowing it encompassed the setback in ss11f. So I disagree with the opinion we received. I think it's properly published.

Mrs. Rando: Keep in mind that she is representing us.

Mr. Hickernell: She is giving us advice which we can follow or not. If this goes to court she will represent us.

Mrs. Rando: Right and we have the right to say he may continue or he may withdraw.

Mr. Connors: Then if that's the case then as to 3.87 just taking a quick look at this,

the whole purpose of the Dover Amendment is so that local zoning codes don't put a higher standard since that's the very idea of it otherwise local municipalities could say no residential dorms in the city. So she's saying there's a tougher set of hoops to jump through in 3.87 and that's specifically why it was filed under the Dover Amendment and why it has been for years. The local could continue to write it harder but because 40A, the Zoning Enabling Act in 40A, Section 3, Paragraph 2, the Dover Amendment has a different standard, that's what we filed under. Variances are something that are mentioned in 40A, Section 10, and they come with their own set of hoops to jump through.

Mrs. Rando: Now, also, she mentioned parking. That is a use variance that we no longer can hear.

Mr. Connors: I just saw this tonight. I'm not questioning use variances but I am saying - - -

Mr. Hickernell: Aren't they an allowed use in this zone?

Mr. Connors: Parking is an allowed use in this zone.

Mr. Hickernell: Then I don't see how it's a use variance.

Mrs. Rando: But he has requested a parking of where you're going to put those 162 added parking spaces for the forty two——

Mr. Connors: You're required one per residential dorm room. We included all the information on the plans. That was, in fact, what caused us about a month delay putting

together that information that had never been required of the University in these prior cases. So, I mean, that's the whole idea of the Dover Amendment. The city can't, they couldn't tighten that up more to say universities can only build one story and then we have to apply a different argument, say, any time we want something greater than a one story building. So if the board thinks on those matters it's properly in front of you. We are literally building a dorm in the same place where a dorm has been.

Mrs. Rando: I also wanted to say that I did read some of those cases and it seems that most of the cases were decided by the courts, not by the zoning board. The steeple one was by the zoning board, I think, and didn't it encompass a special permit at the same time?

Mr. Connors: That's a finder of fact as it goes up to the court. The board ruled on it and then it went up through the court system.

Mr. Hickernell: Those were ones that are published as court decisions or ones decided by the court. Zoning Board decisions are not published in the same way. So everything you would read would be from the court. I don't understand what the attorney's point is. These are already decided by the courts. I am sure that the Dover Amendment doesn't require us to reject a petition under the Dover Amendment so that a court can sort it out.

Mrs. Rando: No, but I'm just saying that of those cases, it didn't seem that the zoning board was the one that decided. It ended up going to court. I don't think the zoning board gave you relief.

Mr. Hickernell: Well, they would have denied the petition.

Mr. Connors: That's why it went up to the court

Mr. Connors: So I made a plea at the end of the last hearing and it wasn't out of disrespect. It goes to the timing aspect that this is unique to this petitioner. If I was here for a for profit, you know, or a business but here I would be making the same plea and unable to refile. If the board seems to think that the notice, like I said, the notice would be fatal if someone read it and didn't know what was going on. It's clear on its face and we have it for 450 and she's saying it should also include a provision that should says to 350. That's a lesser standard.

Mrs. Rando: I just want to do what's right for Brandeis. We want to dot our i's and cross our t's so that - - -

Mr. Connors: And what I said at the end of the last thing is if Waltham is going to change the way they do these things the new building inspector can see this and the petitioners will know this is how the city wants things filed. But what I'm saying is that hasn't been the case and to change it to this petitioner in this instance due to time would really be a shame.

I have Jim Gray here again. Like I said, they plan ahead for enrollment, people are going to be coming in. And this was filed as many of those other cases that I submitted like I said as well. The Lemberg Children's Center was 2013. But I did reference the Salvation Army case is in the same manner and that was a more recent case. This would be under 2014 and those were just ones that were on my desktop. This hasn't come up so if it wants to be a new standard that's applied, I can see that but I don't think that this board allowing a residential dorm on a campus would cause a problem to anybody. Anyone who knew about it, those people got notices. No one appeared at the hearings opposed to this. It's

inside the loop road at the campus and the arguments were laid out in the brief.

Mrs. Rando: Are there any questions?

Ms. Hankins: I don't have any questions. I just wanted to just comment that on the letter from the attorney which is, like Attorney Connors said, it is posted at 450 feet and she wants him to go back and let people within 350 feet know. It doesn't make any sense. It's less people.

Mrs. Rando: It should be 350'.

Ms. Hankins: But they posted it at 450, so meaning that already includes people within the 350 and additionally another 100 feet. So they are already covered and the building inspector noted that.

On the second point of the parking, I'm confused by what the law department said because they seem to indicate that we can never waive the parking. I was on a case a few months ago on the storage unit on Linden Street we waived the parking, no problem. If you read it like this, then we could never do that. So I think we are totally within our right to rule tonight and I am prepared to do that. They want them to repost for all abutters within 350 feet.

Mrs. Rando: Did you ask for relief for 350 feet?

Ms. Hankins: He asked for relief for 450.

Mr. Connors: What it has to do is not the abutters. The abutter's standard is the

same for everyone. It's always 300 feet. But this says the building for its setback. So that saying the effect of that for the notice would be that we would notice for the height for 350 feet. That's why she said the people didn't know about that but what we did was for 450 greater notice because we were a taller building. That set of footnotes goes down in a line and it talks about buildings or structures, buildings or structures then f says residential dorms. And the reason it pulls that in is I would think that the intent was sometimes this is a sophomore dorm and maybe kids put on their radio a little bit so they wanted a different standard for that because we could be a shorter dorm under 4.12 11c but then it would be fatal in that instance because the standard there would be for only 125 foot setback. We then look down the list and see, oh wait a second, I'm a residential dorm also and thus residential dorms and recreational structures are mentioned there. It's bringing in things that are outside and that's why I am saying in level of noise such as bleachers, concession stands, they're saying, we want to create a buffer from that as well. We argued in the brief for a greater setback than the 350 because of the height of our building. We had 450.

Mrs. Rando: Well, I think its kind of vague they way you did the parking with 10, 572 required, but you've got 1,663. Is that all over the campus?

Mr. Connors: I don't know, but that's as I discussed the way that Waltham calculates height that's the upper campus so that's that side of South Street. That's the entire area and that's how the building inspector wanted it on the petition.

Mrs. Rando: But where's the rest of the parking?

Mr. Connors: There's a net change here of 42 beds. That's it. There's probably going to be required an actual need for fewer cars because these people are going to be

living in dorms as opposed to off campus and driving to campus.

Mrs. Rando: I don't know about that.

Are there any questions from board members?

Mr. Sergi: I don't have any questions, Madam Chair, but I agree with the Counselor. Maybe we let him have a chance to continue the case to address the questions in the correspondence we received tonight from the law department. I'm okay with that.

Mr. Connors: I also have my client here. He can speak more to the specifics as to the timing.

Jim Gray, 31 Elm Street, Newton: I am the Vice President for Campus Operations at Brandeis. If I could just address quickly your concerns about parking. These students in this building are not allowed to bring cars to campus. This is not going to increase the actual number of cars on campus. And for students who want to have cars on campus there's excess supply in a remote lot south of South Street where we can park cars. So it's really not an issue of not enough parking or more parking being required. It is in fact probably likely that we will have slightly less demand for parking spots on campus by housing a slightly higher percentage of our students on campus making it unnecessary for them to bring cars in order to commute to campus. And we think that's in everybody's interest.

It is absolutely true that any more delay in this project is going to put at jeopardy our ability to complete this project by the Fall of 18. If we miss that by any amount of time

at all, we basically are forcing 164 students off campus for another year and into the community which we would view as a big failure for our students and for the community of Waltham. So that is again, also in everyone's interest.

The legal ruling is surprising to us. It appears to create some new standards for filing that we have not been asked to comply with in the past and it may well be, Madam Chair, that it's because nobody has asked for an opinion on those same questions before. But that seems a rather weak reason to expect us now to be the test case for that and put at risk a schedule for this project that will change the financial situation for the University and change the lives of 164 students. And so, I would ask you to please reconsider acting tonight. There seems to be a strong sentiment of opinion from some members that they would like to see us receive the approvals we have asked for tonight and I would just like to ask the group to reconsider that. It is really an important thing to Brandeis. We feel as though we have tried and had a wonderful partnership with the city over the years. We are grateful for the partnership we've had with the city over the years with this board and other municipal boards and we are asking for your help on what is a really, really important problem for us as a University. Thank you.

Mrs. Rando: Attorney Connors, which would you rather ask the board, to continue tonight or continue the case to another night.

Mr. Connors: If the board's willing to move forward with the vote, as I mentioned, time-wise refiling as Jim Gray said that to the individual students, to the community of Waltham, it would be a major setback and here we are at the end of the road. This process we have been putting together and these plans for months. It's a new standard. Like I said, it wasn't just this petitioner that's put this forth. I guess that the point that he made about housing on campus, we would just like to make mention because he's here tonight

and wasn't able to make it to the last meeting, that at the last meeting there was a letter of support read into the record by Ward Councilor Giordano and he specifically cited that the community, not only does Brandeis, they have a lot of buildings up there. They have a tremendous relationship for decades with the community but also in front of the city council and when we are in front of the council we are often asked are you planning to get more beds on campus so here we are trying to put more beds where beds that needed to be sadly taken down and we are looking to fulfill that tonight.

Mr. Sergi: Madam Chair, I'm convinced that the counselor here can probably answer the questions proposed by the city legal department and we could probably reconvene very quickly. I prefer a response since we have this now by him and I think that that would be proper.

Mrs. Rando: Are you making that a motion?

Mr. Sergi: I can make that motion, sure. I will make a motion to continue and can I ask that we maybe add this case with review of his answer quickly to the next possible hearing date.

Mrs. Rando: I have a motion by Mr. Sergi to continue the case to the earliest date.

Mr. Hickernell seconded the motion.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes (but with extreme reluctance. I think we are putting them through hoops that they don't need to be forced

through); Ms. Hankins, no and Mrs. Rando, yes.

Mrs. Rando: We will continue Case 2017-07 to May 2nd. Mr. Giordano would like to speak.

Joe Giordano, Ward 7 City Councillor which covers the Brandeis area: I can remember a couple of years ago at Brandeis, we did a couple of the dorms up there and it made a great impact on the neighborhood because we took quite a few students out of the neighborhoods and got them on campus. And I think this project is going to do the same thing. As they stated 164 students, I'd be thrilled to see them get out of the neighborhoods because we have had our problems with some of the Brandeis housing and Bentley housing in the neighborhoods. So I'm all for having more dorms on the campus and I hope the board will look at it at that way and in favorable of it.

Mrs. Rando: I agree with you but I want to do it the right way.

All right, we'll see you on May 2nd.

Mr. Connors: Thank you very much for reconvening at the earliest possible date.

Mrs. Rando: Are you going to write a brief to the attorney?

Mr. Connors: I'll respond to the board.

On motion of Mr. Sergi, seconded by Mr. Hickernell the board voted to adjourn at
8:30 P.M.

Barbara Pando chair
5/2/2017