

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

November 20, 2018

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, November 20, 2018, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham.

In attendance were Acting Chair, John Sergi, and members Mark Hickernell, Glenna Gelineau, Sarah Hankins and Oscar LeBlanc.

Mr. Sergi: The first piece of business we have tonight, is to accept the minutes of November 13, 2018.

On motion of Ms. Gelineau, seconded by Mr. LeBlanc, the board voted to accept the minutes of November 13, 2018.

Mr. Sergi: Tonight we have three cases. We have Case No.2018-33 Bentley University;, a new case Case 2018-32 which is Donald and Marie Alexis for an addition at their house on Vernon Street and a continued case, Case No. 2017-34.

So I think what we will do tonight is we'll start off with the Bentley University case. Would the clerk please read the petition.

The clerk then read Case No. 2018.-33, Petition of Bentley University for a variance - Dimensional/Setback; Appeal of Inspector of Buildings Determination Applicant proposes to install wireless educational communications equipment to an existing athletic-field light stanchion on the Bentley University campus. Location and Zoning District: 400 Beaver Street; Residence A-3 Zoning District.

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

William J. Proia, Esquire, Riemer Braustein, Burlington office, representing Bentley University: I would like to point out that we did submit a request for a continuance.

Mr. Sergi: I did not see that. Did you submit it today?

Mr. Proia: No, last week.

Mr. Sergi: Okay. I didn't have anything in the paperwork tonight.

Mr. Proia: And the reason why is because there is another petition that's very similar to this. In other words, there was a building application filed and Mr. Forte made the determination that it had to go to the council and didn't recognize that it was an educational use, even though it was limited to the campus.

And so, they are on for a hearing for December 18th and it's one for Brandeis and another one for Bentley to cover other parts of the campus to cover other parts of the campus that this little cell can't count.

So we were making the request for a continuance so that those cases could be heard at the same time because issues are similar. That's what the letter requested.

But, if you want to go forward, I can make the presentation. It's just again, you're going to hear the same case December 18th.

Mr. LeBlanc: I won't be here.

Mr. Sergi: So if we open the case you're in the same boat.

Mr. LeBlanc: You should postpone it. In other words, I'm gone January and February. I'm just filling in. If I sit on this case you will have to go with four people instead of five, so you would be better off.

Mr. Sergi: We'll find a continuance. That probably would be best.

Mr. Proia: Any way the letter requested a continuance until December 18th because that's when the other one is scheduled for now without taking any testimony for the reasons that Mr. LeBlanc stated.

Mr. Sergi: Okay, so you're already on the docket for that night.

Mr. Hickernell: Not with this case.

Ms. Gelineau: No, a similar case.

Mr. Proia: No, not me actually. I didn't do the application for that one. It's just sort of a technicality who filed it but that they are related, completely related.

Mr. Hickernell: Well they are not related in terms of locus. They are just similar issues. It's like two variances.

Mr. Proia: I think there's a case for Brandeis and another case from Bentley and this case for Bentley.

Mr. Sergi: So we'll consolidate this case with the other Bentley case.

Mr. Proia: That's what the letter requested.

Mr. Hickernell: I did hear from Pam Doucette that this was a request. I don't know if everybody got that email or not.

Mr. Sergi: May I have a motion to continue this until December 18th?

On motion of Mr. Gelineau, seconded by Ms. Hankins the board voted to continue Case 2018-33 until December 18th.

Mr. Sergi: The next case we will hear is Case No. 2018-32, Petition of Donald and Marie Alexis.

The clerk then read the Petition of Donald and Marie Alexis, Case No. 2018-32 for two variances to construct an addition located at the back of his nonconforming two family house located at 89 Vernon Street. Property is located in a Residence B Zone, the side yard cannot be less than ten feet and maximum lot coverage is 30%. Plan for an addition calls for a five foot side yard setback and 33% lot coverage. The petitioner alternatively requests a special permit pursuant to GL c 40A, Section 6 and City of Waltham Zoning Ordinance Section 3.722 et. Seq. Location and Zoning District: 89 Vernon Street, Residence B Zoning District.

Mr. Sergi: May we hear from the petitioner or the petitioner's representative.

Kevin Dwyer, Jr., LeClair and LeClair, P.C., 135 Beaver Street Waltham, came forward.

Mr. Dwyer: I am representing the Petitioner Mr. Donald Alexis. He's here this evening along with his wife and his mother.

Mr Dwyer submitted a copy of his brief to each member on the board and then read his brief into the record along with going over the site plan with the board.

Mr. Sergi: Do you have renderings of the construction?

Mr. Dwyer: I do, but I don't have copies. I'd like to pass this around to the board members.

Mr. Sergi: Have you spoken to the neighbors about the addition?

Mr. Dwyer: I have not but my clients have. We have some neighbors here tonight. There's other neighbors on the other side as well. It's my understanding that they are friends of Mr. and Mrs. Alexis and are supportive to this. They don't have any objection to this potential addition which will be a little bit closer than ten feet.

Again, the addition would not affect any of the parking issues. My client's access that back lot to park. They don't park on the street, they park in the back.

Mr. LeBlanc: How do they get into the back lot?

Mr. Dwyer: From the left side of the property if you are looking at the site plan.

So the proposed addition does not affect that driveway or make it any more narrow than it is. I believe some of the neighbors have concerns about the driveway. That's what I am anticipating. But my point to the board at this point is that this addition is not going to make that any more narrow than it already is. It's still going to be a family home. They're

not going to become renters. They are not expecting to intensify the use of that driveway. It's really the addition and just the garage on the first floor.

Mr. Hickernell: It's a two family home? Does the family occupy both?

Donald Alexis, 89 Vernon Street: My mother and my grandmother live on the first floor and myself and my wife and two children live in the second floor.

Mr. Hickernell: I understand. Thank you,

Mr. Sergi: The new construction, will it match the decor of what's there currently?

Mr. Dwyer: Yes.

Mr. Sergi: And it's two stories so it's within the height?

Mr. Dwyer: Correct.

Mr. Sergi: I will open it up for any questions.

Ms. Hankins: Could you touch on the hardship?

Mr. Dwyer: Well, it's a very narrow lot. And if you can look at the site plan, the frontage is less than forty feet. It's 37.49. But the narrowness of this lot does not give them ten feet to put an addition on the side that they want to. The proposed addition wouldn't work if it was closer to the other side, the left side of the site plan. The only place that really makes sense for them to do it is where it's currently proposed to be but as you can see it is less than forty feet frontage and it's an oddly shaped narrow lot which causes a hardship and that's in my memorandum of law.

Mr. Hickernell: So if it was a more regularly shaped lot you wouldn't need the variances.

Mr. Dwyer: That's correct. I think that that is the hardship. It's the shape of the lot.

Mr. LeBlanc: What do they get? Is it two parking spaces under the garage?

Mr. Dwyer: It's two.

Mr. Hickernell. That's what the diagram says. It's a two car garage.

Mr. LeBlanc: How many cars can you park there now?

Mr. Sergi: Do you still have the parking ability of two cars with the garage? So you still have three. You're not losing any spaces.

Ms. Gelineau: It's a three story addition, right? The garage, the first and then an addition to the first floor and an addition to the second floor?

Mr. Dwyer: Correct.

Mr. Sergi: What type of living quarters are there going to be?

Mr. Dwyer: The living room is the proposal above the garage?

Mr. Alexis: It will be the living room and master bedroom and on the top floor will be the two bedroom and a tv room.

Ms. Gelineau: And you are on the second floor.

Mrs. Alexis: It is a split level so there's a main floor on the second floor and then the third floor.

Ms. Gelineau: Oh, you live on the second and third floor.

Mrs. Alexis: Yes.

Ms. Gelineau: So, there's no addition to their apartment. So really the whole addition is for your family.

Mrs. Alexis: Yes.

Mr. Sergi polled the board for questions and they did not have any questions.

**Mr. Sergi: Would anyone like to speak in favor of the petition?
Seeing none, would anyone like to raise their hand in favor of the petition?**

(Three people raised their hands in favor of the petition.)

Do I have any people here tonight to hear any more information? If you would like to come to the podium and identify yourself.

Mr. Smith, 91 Vernon Street? We share the driveway side. I just have a couple of questions for our sake for what the variance would mean. So, first with the five foot setback as they said, you know the plans on the side that's not shared with our side, so with

the granting of it, would it be limited to that or is it a general five foot variance could it possibly come within five feet of our property?

Mr. Sergi: No.

Mr. Hickernell: It's limited to the plans that they submit. That's part of any decision that we issue.

Mr. Smith: And then special permit was mentioned also. We just want to make sure that the variances tonight don't impact anything that might be needed like an access easement decisions that could be needed later on based on the plans.

Mr. Sergi: No, it's not being presented that way so what you hear tonight is the case, no impact on that end.

Mr. Smith: Can we take a look at the site plan? Mr. Dwyer went over the site plan with the two residents at 91 Vernon Street.

Man owner of 91 Vernon as well: Our only concern is we have talked with the neighbors has just been the parking situation in the back. It is tight in our driveway now and while there isn't a lot of use at the moment, we don't know what will happen in the future. It could become a rental property. I know it's not their intention but you know we live there too and it is our family home. I think it works, it's just that it's tight back there. That's our only concern. Otherwise, in terms of the five foot variance on the left side I don't really mind that and the 33 percent were those two specific things.

Mr. Sergi: Do you want to address that?

Mr. Dwyer: As far as the special permit, we wouldn't be requesting the special permit if the two variances were allowed. As you can see, the house as currently constructed is already very close, even closer to five feet to the current lot line. So what this proposed addition is, isn't radically different from what's already over there on this side (referring to the site plan) and understand the issue with the right of way but just isn't really before the board tonight and is something I think the neighbors can discuss at some point if we can come up with a solution. They are not requesting any extra cars or extra parking spaces. We don't anticipate it will be anything other than family and home going forward, so if that's helpful.

Mr Hickernell: What use do you make of this driveway.

Mr. And Mr. went over the plan in front of the board and stated they wanted to preserve their rights about an easement and the rights of access.

Mr. Sergi: Thank you.

Is there anyone here tonight opposed to the petition? Seeing none, I will close that part of the hearing. Would you like to continue with your findings of fact?

On motion of Mr. Hickernell, seconded by Mr. LeBlanc, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file at the law department.

Mr. Sergi: You can go ahead with the Proposed Decision.

On motion of Mr. Hickernell, seconded by Mr. LeBlanc, the board voted to waive the reading of the Proposed Decision since it has been on file at the law department.

Mr. Hickernell: I do have a couple of amendments to it.

Mr. Sergi: May I have a motion on the Proposed Findings of Fact.

On motion of Mr. Hickernell, seconded by Mr. LeBlanc, the board voted that the Proposed Findings be adopted by the board as the Board's Findings of Fact.

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

Mr. Hickernell: Before we take a motion on the Proposed Decision, I have a couple of amendments.

I would add in Paragraph 9, currently reads: The variances will allow the Petitioner, Donald Alexis the maximum use of this property. And say: The variances will allow the Petitioner, Donald Alexis and his growing family reasonable use of his property.

Mr. Dwyer: There's no objection to that.

Paragraph 5 reads the lot is narrow in nature and predates zoning. Add to that a second sentence: The shape of the lot constitutes a legal hardship.

Paragraph 14, add 14 b. "Work shall commence within one year and be completed within two years of the decision."

Mr. Sergi: May I have a motion on the Proposed Decision as amended.

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

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

Mr. Sergi: It is granted. Congratulations.

Mr. Sergi: The next case is Case No 2017-34, 54 Emerson Road/29 AFT Emerson Road.

Would the clerk please read the Petition?

The clerk then read the Petition of Waltham-Farm Home Realty Trust, Daniel and Christine Wildes, Trustees in an appeal of a "Notice of Violation" dated September 19, 2017, issued by the Inspector of Buildings. Location and Zoning District: 54 Emerson Road/29 AFT Emerson Road; Commercial Zoning District.

The following member will be sitting on this case: Mr. Hickernell, Mr. Sergi, Ms. Gelineau and Ms. Hankins.

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

Attorney Kevin Dwyer, 707 Main Street, Waltham, came forward.

Mr. Dwyer: I know that about a week or so ago I mailed to the committee a Proposed Findings of Fact and Decision, The last page of which contemplating putting an issue to the Zoning Board of Appeals about use of this property going forward as there was

still an ongoing dispute between the building department and my clients about use of the property going forward.

However, Mr. Forte and I would like to withdraw that request for the Zoning Board of Appeals to get involved in that decision at all. What I have for committee members this evening is an updated Proposed Findings of Fact and Decision which I deleted that last paragraph of Page 7. I also added some language to Page 6 of our Proposed Findings of Fact and Decision that with regard to open Storage Areas C, the petitioners will provide an access pathway of up to three feet, unobstructed to the rear door of 39 Emerson Road for safety reasons.

Mr. Hickernell: Up to three feet or of at least three feet?

Mr. Dwyer: At least three feet. So area C if you remember is 29 Aft. Emerson Road. What may be helpful is I do have an updated existing conditions plans that were prepared for my clients from DVP Associates.

Mr. Sergi: You understand that there are only four members sitting on this case.

Mr. Dwyer: I do.

So that existing conditions plan has been updated from DVP Associates and contemplates three open Storage areas. As you can see Open Storage Area A which is toward the entry way into the immediate right of the entry way and the loading dock; Open Storage Area B which is a stockpile area and then there's Storage Area C which is across the street, 29 Aft Emerson Road. We've included this in this certified plot plan an open storage boundary line which we've agreed will be painted white, That will just mark the boundary of where the open storage can begin and end.

The addition of the up to three feet of space refers to Open Storage Area C. There is a door at 39 Emerson Road that exits onto 29 Aft. Emerson Road. And so my client knows that that particular door has to be given a way of egress.

What I also have is copies of my Proposed Findings of Fact and Decision. I did receive an email from Mr. Forte this afternoon stating that he had no objection to the Proposed Findings of Fact and Decision as currently constituted as long as I added that language about the access pathway of up to three feet unobstructed to the rear door of 39 Emerson Road.

Mr. Sergi: Counselor, how are you proposing to delineate the storage area of Area C?

Mr. Dwyer: There's an open storage boundary line. It's a dotted line that you can see that runs parallel to Emerson Road that's ten feet from the street line.

Mr. Sergi: Could you just clarify that, is this the dotted line that you are talking about?

Mr. Dwyer: Yes. It will be painted white by my client.

Mr. Sergi: What is it painted on?

Mr. Dwyer: It will be painted on their property which is ten feet from the street line.

Mr. Sergi: Isn't that dirt?

Mr. Dwyer: No, it is not. It's concrete.

Mr. Sergi: So, it will be noticeable?

Mr. Dwyer: It will be noticeable and I think that will provide a boundary line so that, I think the concern when this Notice of Violation was initially filed over a year ago was that there was some loose fire wood that was encroaching onto Emerson Road, potentially causing a safety issue. This boundary line will mark that open storage area and limits the open storage area and across the street you also see the dotted line Open Storage Boundary which is also a dotted line.

Mr. Sergi: Would you want a little fence there?

Mr. Dwyer: The fence presented some issues with site lines for drivers coming down Emerson Road.

Mr. Sergi: Maybe like a foot high, that type of fence.

Mr. Dwyer: No. I think that this would be a better solution and putting some fencing up would limit what my client could do. He does have different things stored over there at different points of the year, for example, right now he has a lot of wood. In the Spring time he's going to have more like fertilizer, soils. So it does change a lot. He does get a lot of shipments in. Some big trucks over there that drop off supplies and so a fence isn't something that Mr. Forte's requiring at this point.

Mr. Sergi: So, Mr. Forte was okay with the line.

Mr. Dwyer: He's okay with the line. He's okay with this plot plan and he's okay with the Proposed Decision as currently constituted.

Mr. Sergi: And he enforces it.

Mr. Dwyer: And this just establishes the boundary so the Open Storage doesn't increase and I think Mr. Forte and we recognize in our Proposed Decision that this has been over there for a long time and it's a huge store and its a home supply store and they do have pre-existing nononformdng open storage rights over there. But that Open Storage right will not be expanded via this open storage boundary line.

So that's the plot plan. I have the Proposed Findings of Fact and Decision.

Mr. Sergi: You'll have to give us a chance to read it. Does the board feel comfortable with reading this tonight and making a decision?

Mr. Hickernell: It's not that many changes from the last time.

Mr. Dwyer: No, the only change is this. I added that fire escape issue which is at the bottom of page 6 and I deleted that last paragraph on page 7 which was potentially the issue before this board.

Mr. Hickernell: Was that about manufacturing?

Mr. Dwyer: Right. That has just been deleted.

Mr. Hickernell: So neither party is looking for a decision on that issue.

Mr. Dwyer: Neither party is looking for a decision on that issue.

Really all of the other issues that were raised in the Notice of Violation have been satisfied to Mr. Forte making several site inspections over at 29 and 54 Emerson Road. All

of those issues that he raises in his Notice of Violation have been resolved as you can see in my Proposed Findings of Fact and Decision. Really the only issue that we had a little disagreement on were some of his language which my clients and I thought was maybe a little too over broad so we've agreed just to delete that just to go forward on the proposed site plan and the Proposed Findings and Decision which is before you tonight.

I would have emailed it to you sooner but we decided to delete that last issue earlier this evening.

Mr. Sergi: We'll take a few minutes to read this. And you did say the building department had a chance to look at this?

Mr. Dwyer: Yes. What i did was after Mr. Forte and I discussed removing that last issue from the Proposed Decision, I did email him another copy so he could look at it. He said he would call me if he had any issues with the draft that's before you. He hasn't called me and I did add that language about leading a path of egress for 39 Emerson Road.

So, I am comfortable presenting this as an agreement between Mr. Forte and my clients at this point.

Mr. Sergi: Are there any questions?

Mr. Hickernell: I've got two edits but other than that. On page 3, paragraph 4, right now it reads: Nothing shall restrict the Inspector of Buildings from determining "that" outdoor storage is performed in a safe manner. I would change that "that" to "whether" the open storage is performed in a safe manner.

Page Six, second to last line, delete "up to" and substitute "at least".

Page Seven, last line after August 17, 2018, add "and Revised November 5, 2018, which plan is hereby incorporated into this decision."

Mr. Sergi: Is there anyone in favor of this Petition? Seeing none, Is there anyone opposed? Seeing none, is there anyone seeking information? Seeing none. So that part of the hearing is closed. So I guess we can move forward with the Proposed Emended Findings of Fact.

Mr. Sergi: Do I have a motion to waive the reading of the Proposed Amended Findings of Fact since we have had a chance to read it.

Mr. Hickernell: And since Counsel has gone over the changes that we had on file, I move that we waive the reading. Ms. Gelineau seconded the motion and the board voted to waive the reading of the Proposed Amended Decision.

Mr. Sergi: And in a similar fashion the decision we have had a chance to read it.

Mr. Hickernell: For the same reasons, I move that we waive the reading of the Proposed Decision. Ms. Gelineau seconded the motion and the board voted to waive the reading of the Proposed Decision.

Mr. Sergi: Why don't we move forward and have a motion on the Amended Findings of Fact.

On motion of Ms. Gelineau, seconded by Mr. Hickernell, the board voted that the Amended Proposed Findings of Fact become the Findings of Fact of the board.

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

Mr. Sergi: Now a motion on the amended Decision.

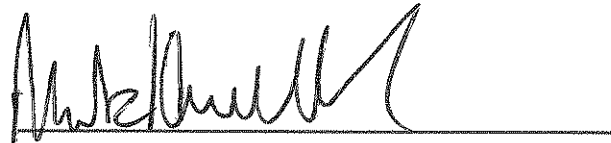
On motion of Ms. Gelineau, seconded by Mr. Hickernell the board voted that the amended decision becomes the decision of the board.

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

Mr. Serge: It is granted.

One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 7:50 P.M.

A handwritten signature in black ink, appearing to be "Mr. Sergi", written over a horizontal line.