

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

February 14, 2017

7:00 P.M.

at

Public Meeting Room, First Floor
Arthur Clark Government Center
119 School Street
Waltham, Massachusetts 02451

Michael Cotton, Chair
Mark Hickernell, Clerk
Glenna Gelineau
Edward McCarthy
John Sergi

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Waltham Zoning Board of Appeals/2-14-2017/2

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A T T A C H M E N T S

Legal Notices: Case No. 2017-01
Case No. 2017-02

Case No.: 2017-01:
Proposed findings of fact
Proposed decision, as amended

Case No.: 2017-02:
Proposed findings of fact, as amended
Proposed decision, as amended

Waltham Zoning Board of Appeals/2-14-2017/3

1 P R O C E E D I N G S

2 MICHAEL COTTON, CHAIR: All right.
3 I'd like to call to order the Waltham Zoning Board,
4 February 14th at -- I can't see, is that 7:05?

5 GLENNA GELINEAU: 7:05.

6 MICHAEL COTTON, CHAIR: 7:05.

7

8

9 ACCEPTANCE OF MINUTES OF JANUARY 24 AND 31, 2017 MEETINGS

10

11 MICHAEL COTTON, CHAIR: I'd like to
12 have a motion to accept the minutes of January 24 and
13 31.

14 EDWARD MCCARTHY: So moved.

15 MICHAEL COTTON, CHAIR: Motion.
16 Second by?

17 JOHN SERGI: Second.

18 MICHAEL COTTON, CHAIR: How do we
19 vote?

20 ALL BOARD MEMBERS: Aye.

21 MICHAEL COTTON, CHAIR: Ayes pass.

22 //

23 //

24 //

1 **Case Number 2017-01: LaCava Family LLC.**

2

3 MICHAEL COTTON, CHAIR: The first case
4 will be Case 2017-01, LaCava Family.

5 MARK HICKERNELL: (The Clerk reads the
6 above-mentioned petition into the record. See
7 Attached.)

8 MICHAEL COTTON, CHAIR: May we hear
9 from the Petitioner or the Petitioner's
10 representative please?

11 ATTORNEY ROBERT CONNORS: Good
12 evening, Mr. Chairman, members of the Board. My name
13 is Robert E. Connors, Jr. I'm the attorney here in
14 Waltham with offices at 6 Lexington Street, with the
15 firm of Connors and Connors. And I am here tonight
16 representing the Petitioner in this matter.

17 The Petitioner and the owner of the
18 property are both the same, the LaCava Family LLC.
19 The locus itself fronts on two streets. It fronts on
20 Totten Pond Road and it fronts on Winter Street. The
21 address at Totten Pond Road is 477 Totten Pond Road,
22 and the address at Winter Street is 380 Winter
23 Street. So, it actually has two different addresses
24 on the two main streets it abuts.

1 There is an existing hotel on the
2 property right now. It contains the Copper House
3 Tavern along with parking for the hotel and the
4 tavern on the locus. The locus is in a Limited
5 Commercial Zoning District.

6 The reason that we're here tonight is
7 that the hotel, for a long, long period of time, has
8 been a Best Western Hotel, TLC, Tender Loving Care.
9 As a matter of fact, just as a little aside, way back
10 when when they were -- when Mr. LaCava was alive and
11 was trying to figure out who he was going to bring in
12 there as a -- to run the hotel -- they came in with
13 him and they sat down. They said, "Well, our think
14 is tender loving care." So, I don't know if any of
15 you remember it, but at the top of the hotel for a
16 long time it said, "TLC." And, Tony used to go
17 around and tell everybody that it really stood for
18 Tony LaCava, not tender loving care.

19 Well, anyways, putting all that aside,
20 the reason that we're here is that Best Western has
21 changed their logo. So, we have to replace two
22 signs. So, we have to keep in good with Best Western
23 because they say, "We're the franchisee and you have
24 to have a Best Western sign there." So, we have to

1 replace the sign on the face of the building, which
2 is up six stories as it's up the top here, and we
3 have to replace the sign at Totten Pond Road, which
4 is when you come in, you take a look up the drive,
5 the drive rises up there. So, that's the two things
6 that we're doing tonight.

7 Because variances were granted on
8 these items before, both of these signs, we're also
9 asking to amend the past variances. The interesting
10 thing, interesting for me having been down here a few
11 times on items, is that we're not asking for
12 something more; we're asking for something less. The
13 sign that we're going to be putting on the face of
14 the building is actually smaller than the sign that
15 is on the face of the building right now. And the
16 sign at the Totten Pond Road entrance is actually
17 smaller than the sign at the Totten Pond Road
18 entrance.

19 The plans are -- you've all received a
20 copy of the plans, which consist of the site plan --
21 and I'm sorry I don't have blowups of them -- but the
22 two signs on the back, which shows this is the new
23 Best Western logo, BW, Best Western Plus, which is on
24 the face of the hotel, and this is the new ground

1 sign that is going to go on the entrance to the hotel
2 on Totten Pond Road.

3 The locus has been in front of this
4 Board of Appeals a few times. As a matter of fact,
5 the locus has existed up there, the hotel existed up
6 there starting with a variance back 50 years ago.
7 And it's been back and forth in front of this Board
8 for a number of variances over the years. I have
9 listed in my brief 11 variances that are actually in
10 use today or partially in use today. There are other
11 variances that were granted on the property that they
12 never used. For example, at one time, Mr. LaCava was
13 going to greatly expand the hotel. He got a variance
14 for that but then, because of the economic times, he
15 never expanded the hotel. That was back in the early
16 1980s.

17 The ones of interest tonight are the
18 Case Number 96-29 that we read off before because
19 this amended an old case back in 1977. Back in 1977,
20 they came to the Board of Appeals and they got
21 permission to put in this Totten Pond Road sign.
22 There was no sign there before that. And then what
23 they did is they came back in '96 and they amended it
24 and changed it, and that's one of the signs that

1 we're seeking to amend.

2 The sign up here was in front of this
3 Board of Appeals in 2010. And the reason that there
4 wasn't a face sign before that is because the signs
5 before that were on the roof of the building going
6 around the building, so they were actually roof
7 signs. And roof signs aren't allowed in Waltham
8 anymore. So, there was a roof sign over here, and
9 there was the roof sign that I mentioned before, the
10 TLC, and there were other signs, and they were all
11 built above the roofline.

12 This sign that we're asking for
13 permission today -- and that's what happened back in
14 2010 -- they actually replaced the existing roof sign
15 that was up there and put the sign -- and I know it's
16 impossible to see, but all this is included in your
17 package -- they put that sign up there, and we're
18 seeking to replace that today, which is the other
19 variance that we're seeking to replace.

20 So, we're doing a couple of different
21 things as to both of them. Number one, because we're
22 here on a new -- because we're here on a new signs,
23 we're asking for a variance for both of these signs.
24 The first variance is for the wall sign, which is up

1 here. We refer to that as the wall sign. And the
2 existing wall sign up there is 57.14 square feet.
3 And we're asking to replace that with a sign that's
4 44.63 square feet. So, we're actually reducing it.

5 The second sign is the ground sign
6 that is out here. And this is a picture of the
7 existing ground sign that's out there. That's a
8 double-faced sign with 120 square feet on each side.

9 And we're asking to reduce it with this sign, which
10 is 70 square feet on both sides.

11 So, it's kind of minor things that
12 we're asking for here, but we're required to be here
13 and ask to amend these prior variances and ask for
14 new variances because these new signs violate the
15 Zoning Ordinance in Section 6.6798.

16 Just to take a step back for a minute
17 just to talk about the sign code in Waltham and where
18 the sign code came from, back in 1978, up until 1978,
19 the sign code in the Zoning Ordinance of the City of
20 Waltham was a page-and-a-half. And the reason it was
21 a page-and-a-half is that nobody really paid
22 particular attention to signs. There were signs on
23 Moody Street and Main Street. But any signs outside
24 of Moody Street and Main Street were at places that

1 everybody knew. It was the Watch Factory. You don't
2 need to worry about a sign for the Watch Factory. It
3 was down at Raytheon. It was up at Polaroid.
4 Everybody knew where these places were. It wasn't
5 like it is today with everything all developed up in
6 these areas.

7 So, in 1978, the Chamber of Commerce
8 in Waltham got together and put together a committee
9 with the City of Waltham City Council on there,
10 members from the community, members from the chamber,
11 and they got a sign expert in there. And as the old
12 saying goes, "A camel is a horse designed by a
13 committee," and that's what happened with the sign
14 code because what they were doing at that time is
15 that all the businessmen who were on the committee
16 and a lot of councilors had businesses in the
17 downtown area of Waltham. So, they weren't concerned
18 with what goes on out on 128 or anything else. There
19 really wasn't that much of 128. I don't know if any
20 of you can remember back. But in the 1960s when this
21 hotel was built, Winter Street was really the
22 frontage street up there. Totten Pond Road had been
23 put in in the mid- to end of the 1960s, mid-1960s I
24 think. So, Totten Pond Road was really a new road

1 that the Cabot, Cabot & Forbes built the building
2 where Boston Properties is doing the Wolverine
3 Building right now. But there was really nothing
4 else out there. Tony LaCava built a George P. Davis
5 Building, office building, across the street, and
6 then he built a little travel agency there. And on
7 Winter Street there used to be a Hertz rental place,
8 but there wasn't very much up in that area. So,
9 people weren't concerned with signs up there.

10 So, all the signs that they designed
11 in this sign code back then were designed with the
12 idea of you're in downtown Waltham. You're either
13 walking along in the street and you look and you see
14 a sign right in front of you, or you're driving your
15 car down and you see a sign and it's with the
16 building. And everybody is very familiar with
17 downtown Waltham. None of the buildings are very
18 big. So they weren't concerned with big signs. As I
19 said before, if it was the Watch Factory, or W.H.
20 Nichols, or it was Standard Thompson, or J.L.
21 Thompson, everybody knew where these buildings were
22 so they weren't concerned about it.

23 So, obviously, the sign code and its
24 restrictions as to size were applied to the Limited

1 Commercial Zoning District. So, in the Limited
2 Commercial Zoning District, you're allowed to have a
3 wall sign that's five feet by 20 feet and an entryway
4 sign that's 32 square feet. You're not allowed to go
5 any larger. Now, just -- and I'll talk about this
6 later on -- but just if you picture the Limited
7 Commercial Zoning District says that you're supposed
8 to have a five-acre lot, your building is supposed to
9 be set back 150 feet from the street just for
10 starters. So, you start to put all of this together
11 -- and 100 feet on each side yard and everything else
12 -- you start to put all this together, the sign code
13 really doesn't apply up in that area, and it
14 shouldn't apply. They should rewrite the sign code
15 at some time, but they haven't. So, that's what
16 brings us here tonight.

17 Jurisdiction: The Mass. General Laws,
18 Chapter 40A, Sections 10 and 14, authorize this Board
19 of Appeals to grant variances as long as they're not
20 for a use that's prohibited. Signs are allowed in
21 the Limited Commercial Zoning District. Also, Mass.
22 General Laws 40A, Section 10, and the case law in
23 Massachusetts allows you to modify prior variances
24 that you have granted as long as there is a public

1 hearing on the modification and notice given, which
2 has been done in this case. So, therefore, we have
3 the proper jurisdiction and the Board is authorized
4 under the Zoning Ordinance, Section 7.2, to grant
5 variances. So, we're here tonight asking for
6 variances.

7 The first thing that we have to talk
8 about in applying for these variances is whether or
9 not we have circumstances that apply to our lot that
10 don't necessarily apply to other lots in the Limited
11 Commercial Zoning District. We believe that we have.
12 And this has also been found in all the other cases
13 that, you know, that we've been in front of the
14 Board. I cited 11 of them before. That the shape
15 and topography of this lot are unique circumstances
16 that pertain to this lot and don't generally pertain
17 to other lots in this area in the Limited Commercial
18 Zoning District.

19 I think one of the things that you
20 have to do when you think of this area, this is a
21 Limited Commercial Zoning District area. And it's
22 really this area, as I talk about it, and I picture
23 it, it's bordered by Winter Street to the north, with
24 the exception of the Marriott Courtyard up there.

1 It's bordered by the skating rink on Totten Pond
2 Road. It's bordered by Prospect Hill Park over here,
3 and Prospect Hill Lane, which is the lane that runs
4 along the Westin Hotel. And it's bordered by 128.
5 So, that's all zoned Limited Commercial, but it
6 really, in my estimation, was never developed as
7 Limited Commercial. Every building up there was
8 developed by either Board of Appeals variance or by
9 special permits from the City Council. To build
10 under Limited Commercial, what you should picture is
11 all of the FM Global properties along Wyman Street
12 with the big lots type of thing, the old Polaroid
13 stuff across the reservoir over there where the
14 developed with big lots, great big setbacks and
15 everything, because that's how that property was
16 meant to be developed.

17 This area up here, you know, once
18 again, if you can envision it, it has everything on
19 top of everything else. The Home Suites is here. It
20 used to be a Holiday. This is our locus right here.
21 There's a gas station right here. The other
22 Marriott, the Marriott is up there. Down here, this
23 is the Tony's old travel agency stuck in there, the
24 George P. Davis Building back here type of thing.

1 And, across the street, Boston Properties is building
2 the Wolverine Building. Another example of that is
3 you can only -- in this district, in a Limited
4 Commercial, you only are supposed to go three
5 stories. Obviously, you know, that's not three
6 stories. Our hotel is six stories. The George P.
7 Davis Building isn't three stories, you know.

8 So, this was an area that was really
9 kind of orphaned and put here, and that's one of the
10 circumstances that I think affects our lot there as
11 far as the shape goes. The shape, as you can see on
12 here, it comes down here like this. It has a lot
13 here for parking. There's a larger lot here with the
14 hotel on it. It actually has this piece of property
15 that goes in here like this is an easement. It
16 doesn't belong to the LaCava Family. This belongs to
17 the Paino Family. Tony LaCava used to be partners
18 with somebody by the name of John Paino. And they
19 had a falling out at one point. And when they had
20 their falling out, they divided up the property. And
21 one of the things that John Paino did, because this
22 over here used to be Holiday Inn, and John Paino used
23 to go there every single morning and have his
24 breakfast. And he wanted to have some leverage on

1 Tony on what Tony was doing, so that when they
2 divided it up he took this easement strip in here.
3 He said, "You can use it for hotel offices forever --
4 for hotel uses forever," but he wanted to keep this
5 strip. So, we actually have another piece of
6 property jutting right into our property, which makes
7 this different than probably any other lot in
8 Waltham. And then we end up with a separate little
9 lot down here, or little triangular space, where our
10 sign is leading in, ground sign leading into our
11 property there.

12 So, when you take a look at this, our
13 lot has its long sides, 408 feet along here. It has
14 short sides, 46 feet down here on the border down
15 here on this westerly border. It has an easement
16 area jutting into it. And it's approximately 450
17 feet wide at its widest point, probably going like
18 this. But, at its narrow point, it's zero feet wide
19 when you get down to the very end down there.

20 In the case of *Paulding v. Bruins*, the
21 Court said, in fact, the map reveals a shape that is
22 so unusual that one would have to conclude that it's
23 different from most lots in the zoning district. We
24 believe it's different than any lot in the zoning

1 district.

2 The second circumstance that affects
3 our lot that makes it -- that I think makes us unique
4 is the topography of our lot. The lot slopes from
5 the north up here in the Winter Street side to the
6 south down at Totten Pond Road. It slopes from the
7 east over here on this side down to the west heading
8 down towards the Shell gas station down on that
9 corner. The Totten Pond Road entry into the site
10 rises dramatically from Totten Pond Road. Totten
11 Pond Road is at an elevation of 199 feet. The
12 entrance to the hotel right here is at an elevation
13 of 223 feet. This represents a rise in grade of over
14 9 percent, and a rise of 24 feet. So, you have a
15 difference. So, you have your sign down here, and
16 then you have your building itself is actually 24
17 feet up above.

18 Just an example of what would happen
19 today if you went to build a road and you went to the
20 Board of Survey and Planning, the Board of Survey and
21 Planning says you can have two types of grades, 5
22 percent and 7 percent. We're at 9 percent here. So,
23 we have a steep grade coming up, which is steeper
24 than, you know, would be allowed if you were to build

1 a street up there.

2 In *Broderick v. Board of Appeals of*
3 *Brookline*, another case here in Massachusetts, the
4 Supreme Judicial Court found an irregularly-shaped
5 parcel with extreme variations in grade to represent
6 circumstances that especially affected that parcel
7 but did not generally affect other parcels in the
8 zoning district. So, we contend that the shape of
9 the locus with its long side and short sides, the
10 easement area running through it, and its large
11 variation in widths, and the topography of the locus
12 which slopes from north to south and from east to
13 west, and rises dramatically from Totten Pond Road to
14 the entry, are all circumstances that especially
15 affect this locus but do not generally affect other
16 properties in the Limited Commercial District.

17 Now, it's nice to be able to sit down
18 and say we have a lot that's different than anybody
19 else, but how does that affect us and what we're here
20 tonight asking for? We believe that these
21 circumstances create a hardship to us if we don't
22 have any relief from this Board under the Zoning
23 Ordinance. The sign code says that a sign, the
24 purpose of a sign, is any announcement used to

1 identify any person, premises, or product. The need
2 for easily recognizable signage is especially
3 stressed as to this present petition because it is
4 important to remember that the variances requested
5 here relate to the identification of the hotel in
6 this highly congested area of Totten Pond Road/Winter
7 Street. The hotel accommodates guests and visitors
8 who come at all hours of the day and night. Some of
9 them are totally new to the area. They've never been
10 here before. Or, if they've been to the area,
11 they're unfamiliar with the area. Without proper
12 signage that is easily visible, this could be a
13 nightmare for guests and visitors to the hotel.

14 In this instance, the need for highly
15 recognizable signage is also of great importance in
16 that Totten Pond Road is one of the most heavily
17 traveled roadways in Waltham. So, you want to be
18 able to quickly identify the hotel or at least have a
19 good idea of the hotel as you're driving along here.
20 And the Totten Pond Road entry to the locus competes
21 with the entry to the gas station, which is 100 feet
22 away, and also the entry to the Wolverine Building,
23 which is almost directly across the street. All of
24 this, this entryway here, is within 300 feet of the

1 Totten Pond Road/Third Avenue/Winter Street/Wyman
2 Street intersection, which is one of the busiest, if
3 not the busiest, intersections in the City of Waltham
4 with thousands of cars passing through it every day.

5 Due to the shape of the locus with its
6 varying widths and the easement area running through
7 it, the hotel has long ago been situated facing west
8 towards 128. The locus lies between Winter Street,
9 the now highly traveled Totten Pond Road, with other
10 buildings to the east and west. The entrances to the
11 hotel have been located to the south of Totten Pond
12 Road, about 225 from the hotel entrance and about 120
13 feet from the hotel entrance on Winter Street.
14 Compounding this is the topography of the locus,
15 where the hotel is located at the end of a 255-foot-
16 long, steep drive with an overall rise of about 9
17 percent and a rise in elevation of 24 feet above
18 Totten Pond Road.

19 The Petitioner contends that it
20 suffers a hardship in this case as a result of the
21 shape and topography of the locus, which
22 circumstances are compounded by the highly traveled
23 Totten Pond Road and the highly congested Totten Pond
24 Road/Third Avenue/Winter Street/Wyman Street

1 intersection. All of this would make it very hard,
2 if not impossible, for infrequent guests or visitors
3 to the hotel to be able to find the hotel if signage
4 was limited to a non-illuminated five-foot by 20-foot
5 wall sign on the face of the hotel, six stories up
6 and 255 feet away from Totten Pond Road and also
7 being 24 feet above Totten Pond Road, and a single-
8 sided, non-illuminated 32-square-foot ground sign at
9 the entrance to Totten Pond Road down here. As
10 stated in *Kirkwood v. Board of Appeals of Rockport*,
11 statutory hardship is usually present when a
12 landowner cannot reasonable make use of his property
13 for the purposes or in the manner allowed by the
14 zoning ordinance.

15 The next issue is if this Board were
16 to grant these variances and allow us to amend the
17 prior variances that were granted in this case,
18 whether there would be any detriment to the public
19 good. The Petitioner contents that the signage as
20 proposed on the face of the hotel and at the Totten
21 Pond entry drive will provide a distinct benefit and
22 not a detriment to the public good. Totten Pond Road
23 is one of the most highly traveled roadways in the
24 City, and the Totten Pond Road/Third Avenue/Winter

1 Street/Wyman Street intersection is one of the most
2 congested. The hotel has guests and visitors coming,
3 once again, at all hours of the day and night. Thus,
4 it is imperative that easily recognizable,
5 informative signage be provided.

6 Also, allowing the Petitioner to
7 provide appropriate signage will not just provide
8 proper identification for the guests coming to the
9 hotel, but it will also prove to be tantamount to the
10 safety for the people traveling up and down Totten
11 Pond Road and through this intersection so that they
12 won't be affected by cars stopping and turning and
13 everything else trying to find out where the hotel is
14 located. So, the public as a whole would be serviced
15 by the granting of this variance. As stated in
16 *Rodenstein v. Board of Appeals of Boston*, the
17 allowance of these variances will provide a distinct
18 benefit to the public good rather than a detriment
19 since it will provide proper identification in a
20 highly congested area.

21 Finally, the question that comes
22 before the Board, the issue before the Board, is if
23 these variances are granted, will it nullify or
24 substantially derogate from the Zoning Ordinance in .

1 the City of Waltham. Number one, it won't nullify it
2 because signs are allowed in the zoning district.

3 Number two, it won't derogate, we
4 believe, because it's a minor derogation. We already
5 have signs up there that are larger than we're asking
6 for tonight. We're asking for smaller signs. So, is
7 it a derogation? Yes. But if the Board were not to
8 grant these tonight, we'd walk away and we'd have
9 large signs up there rather than smaller signs.

10 And, finally, does it affect the
11 intent? The intent of the Limited Commercial Zoning
12 District -- and this goes back to this area -- the
13 intent of the Limited Commercial Zoning District, if
14 you picture the zoning map of the City of Waltham,
15 the Limited Commercial Zoning District runs along
16 Wyman Street, putting aside, this area aside, just
17 for a minute. It runs from this area from the Totten
18 Pond Road intersection down Wyman Street. And all
19 that Hobbs Brook down there, the Hobbs Brook Office
20 Park, the 175-185 -- I can't remember, the French
21 building there, the Thermo Electron building, all of
22 those properties are backed up by residences. So,
23 when the Council put in the Limited Commercial Zoning
24 District, the intent was to protect the residences.

1 The other place where the Limited Commercial Zoning
2 District is is where I call it the Tofias Building,
3 the other side of 128 and Trapelo Road, up behind
4 there. Once again, the intent up there was to
5 protect the residences. And, the final one is across
6 where Bay Colony is, where the Celtics are, and the
7 old Polaroid site, and Astra Zeneca. Once again, the
8 intent was to protect residences.

9 We don't have any residences around
10 us. To the east is the other hotel, the Home Suites,
11 as I mentioned before. To the south, we have Totten
12 Pond Road and we have the Wolverine Building and Ruth
13 Chris -- Valentine's Day night. And, to the west, we
14 have the Shell station. And, to the north, we have
15 Winter Street with a couple of office buildings up
16 here and the Marriott.

17 So, the Petitioner says that they do
18 not believe that they either derogate or nullify the
19 Zoning Ordinance in the City of Waltham.

20 As stated in *Cavanaugh v. DiFlumera*,
21 unless the granting of the variance significantly
22 detracts from the zoning plan for the district, local
23 discretionary grant of the variances must be upheld.
24 Therefore, the Petitioners respectfully grant --

1 excuse me -- respectfully respect that this petition
2 be granted.

3 And, finally, just on the
4 modifications, as I stated before, all that's
5 required to modify a variance, and those two prior
6 variances, sign variances, that we're here tonight
7 on, is that you advertise the public hearing and you
8 hold a public hearing. And the public hearing has
9 been advertised and is now being held.

10 So, that's my case in chief, Mr.
11 Chairman, members of the Board.

12 MICHAEL COTTON, CHAIR: Any questions
13 from the Board members?

14 JOHN SERGI: No.

15 MICHAEL COTTON, CHAIR: In 1979, I put
16 a liquor store up there.

17 ATTORNEY ROBERT CONNORS: No kidding?

18 MICHAEL COTTON, CHAIR: On the right-
19 hand side where the Bertucci's is now.

20 ATTORNEY ROBERT CONNORS: That's
21 right.

22 MICHAEL COTTON, CHAIR: And I put a
23 sign up. Two weeks later, the City took it down. I
24 said, "How am I going to operate?" They said, "Well,

1 you don't have the variances." I couldn't do any
2 setbacks because the reservoir was behind us and the
3 highway was out here. So, they took it down. My men
4 and I put it back up. And then it stayed up for
5 about a month until they took it down again. And I
6 was, "Where's the sign?" "The City took it down." I
7 put it back up again. And that went on for 11 years,
8 up and down, up and -- then Duffy took over and
9 fought it. But I know you need a sign very badly up
10 there because it's so congested, you know. And I
11 can't see anything wrong with this. And you had the
12 signs there before for years. So, that's my comment
13 on the thing.

14 Any questions from the audience?

15 (No audience questions or comments.)

16 MICHAEL COTTON, CHAIR: Okay. I guess
17 you can move forward with your decision.

18 JOHN SERGI: I make a motion that we
19 waive the proposed finding of fact as it's been on
20 file, Mr. Chair.

21 MARK HICKERNELL: I'll second the
22 motion that we waive the reading of the proposed
23 findings of fact.

24 MICHAEL COTTON, CHAIR: On the motion

1 to move forward, how do you vote?

2 JOHN SERGI: Yes.

3 EDWARD MCCARTHY: Yes.

4 GLENNA GELINEAU: Yes.

5 MARK HICKERNELL: Yes.

6 MICHAEL COTTON, CHAIR: Yes. Okay.

7 JOHN SERGI: In a similar fashion, Mr.
8 Chair, I make a motion that we waive the proposed
9 decision since it's been on file.

10 ATTORNEY ROBERT CONNORS: I would just
11 like to, if the Board were going to be doing that, I
12 would just like to make one correction. On page five
13 of the decision, down after the asterisk, on number
14 two it says, "All construction and use of the face
15 sign." I have no idea where that came from. It
16 should be, "All construction and use of the proposed
17 signs."

18 JOHN SERGI: Proposed signs. Okay.

19 ATTORNEY ROBERT CONNORS: These things
20 sneak into my computer every once and a while.

21 MARK HICKERNELL: Second that we waive
22 the reading of the proposed decision.

23 MICHAEL COTTON, CHAIR: We have a
24 motion. How do people vote?

Waltham Zoning Board of Appeals/2-14-2017/28

1 EDWARD MCCARTHY: Aye.

2 GLENNA GELINEAU: Aye.

3 JOHN SERGI: Yes.

4 MARK HICKERNELL: Yes.

5 MICHAEL COTTON, CHAIR: The ayes have
6 it.

7 ATTORNEY ROBERT CONNORS: Thank you,
8 Mr. Chairman, members of the Board.

9 JOHN SERGI: Well, we have to --

10 ATTORNEY ROBERT CONNORS: Oh, I'm
11 sorry.

12 JOHN SERGI: I make a motion that the
13 proposed finding of fact be adopted by the Board.

14 MARK HICKERNELL: Second.

15 MICHAEL COTTON, CHAIR: We have a
16 motion. How do you vote?

17 EDWARD MCCARTHY: Yes.

18 JOHN SERGI: Yes.

19 MARK HICKERNELL: Yes.

20 GLENNA GELINEAU: Yes.

21 MICHAEL COTTON, CHAIR: The ayes have
22 it. Passed.

23 JOHN SERGI: And, in a similar
24 fashion, Mr. Chair, I make a motion that the proposed

Waltham Zoning Board of Appeals/2-14-2017/29

1 decision be adopted by the Board as well.
2 MARK HICKERNELL: As amended.
3 JOHN SERGI: As amended with the one
4 change that was presented.
5 MICHAEL COTTON, CHAIR: Do I have a
6 second on that?
7 MARK HICKERNELL: Second.
8 MICHAEL COTTON, CHAIR: I have a
9 motion and a second on the decision. How do you
10 vote, members?
11 JOHN SERGI: Yes.
12 EDWARD MCCARTHY: Yes.
13 MARK HICKERNELL: Yes.
14 GLENNA GELINEAU: Yes.
15 MICHAEL COTTON, CHAIR: The ayes have
16 it. Passed.
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1 **Case Number 2017-02: Petitioner: Frank Cosco; Owner:**
2 **Albert Costo, Jr.**

3

4 MICHAEL COTTON, CHAIR: Moving
5 forward, now the second case.

6 MARK HICKERNELL: (The Clerk reads the
7 above-mentioned petition into the record. See
8 Attached.)

9 FRANK COSCO: Good evening, Chairman
10 and members. My name is Frank Cosco. I am the
11 Petitioner, the contractor, and also the brother of
12 the homeowners, Albert Cosco and Pam Cosco. We are
13 here asking for you to grant the special permit to
14 allow the second level of the main house and the roof
15 over the existing front stoop.

16 As you can see in the plans, both will
17 be built over the existing footprint of the house and
18 will not encroach on the existing setbacks. As you
19 can see in the pictures we provided, many houses in
20 the neighborhood -- and these houses are all within
21 the 300-foot-radius around 16 Alderwood -- have
22 either added a second level, a front roof over the
23 stairs, or both. By us adding these alterations to
24 the house, it would match other houses in the

1 neighborhood with similar styles and not stick out
2 like a house out of place.

3 Chairman and Board members, I thank
4 you for your time and the opportunity.

5 MICHAEL COTTON, CHAIR: The house
6 directly across the street is what you want to
7 duplicate, isn't it?

8 FRANK COSCO: It's identical, right
9 across the street.

10 MICHAEL COTTON, CHAIR: It's
11 identical, around the corner and around this corner.

12 FRANK COSCO: They're all the same.

13 MICHAEL COTTON, CHAIR: I was there
14 today and I'm going this is exactly what he wants.

15 FRANK COSCO: Exactly. Yeah, I guess
16 it's just going through the steps. That's it.

17 MICHAEL COTTON, CHAIR: Any questions
18 from the Board?

19 JOHN SERGI: No, not at this time. I
20 mean I see that your hardship is the irregular lot.

21 FRANK COSCO: It's on a corner lot and
22 because of the side yard. You know, we have a front
23 yard. The front yard is on Alderwood, and then the
24 side yard is on Shade. So, and then the back yard,

1 the way it's set up, that house, you know. We're
2 going over the main portion of the house only, not
3 the garage or the breezeway. So, because of the odd-
4 sized lot, the setbacks are kind of off a little bit.

5 MICHAEL COTTON, CHAIR: You're not
6 increasing any lot coverage.

7 FRANK COSCO: We're not. We're
8 staying on the same foundation and everything. We're
9 just going straight up, no jut outs or nothing.

10 MICHAEL COTTON, CHAIR: I was there
11 yesterday. People called the police on me. I was
12 walking around your house.

13 FRANK COSCO: And all the houses
14 around that neighborhood all have second levels.

15 MICHAEL COTTON, CHAIR: All the same.

16 FRANK COSCO: All have front --
17 whatever.

18 MICHAEL COTTON, CHAIR: Correct. Any
19 questions from the Board?

20 MARK HICKERNELL: Not a question.
21 Your requested findings aren't divided into findings
22 of fact and decision the way they usually are, but I
23 think we can probably deal with that. Do you agree
24 with that?

1 JOHN SERGI: Yeah, I mean I think it's
2 pretty straightforward. We'd probably have to -- I
3 agree with you, Mark. I think we just have to
4 distinguish between the finding of facts and the
5 decision just to distinguish what the specific
6 decision is in this case.

7 MICHAEL COTTON, CHAIR: Do you need a
8 variance for the coverage of the porch?

9 FRANK COSCO: It's on the same front
10 -- like the steps that are there --

11 MICHAEL COTTON, CHAIR: It's a very
12 small porch. I saw it.

13 FRANK COSCO: The steps that are
14 there are -- we're going to stay right off it.

15 MICHAEL COTTON, CHAIR: Is it four
16 feet by three feet or something?

17 FRANK COSCO: I don't have the exact
18 measurements of it.

19 MICHAEL COTTON, CHAIR: It's very
20 small.

21 FRANK COSCO: But we're going to --
22 yeah, it's not that big at all. We're going to stay
23 -- like the columns will sit on top of the platform
24 and it won't -- it won't stick out beyond the actual

1 stoop. The stairs will be open with the typical
2 handrails.

3 MICHAEL COTTON, CHAIR: Do I have any
4 motions?

5 MARK HICKERNELL: Mr. Chair, I would
6 just suggest that we divide the requested findings
7 into proposed findings of fact and a proposed
8 decision. The proposed findings of fact being the
9 proposed -- requested findings one through 11, and
10 beginning with 11A for a proposed decision that
11 states, "The decision incorporates the findings of
12 fact," and continues with the remainder of the
13 requested findings.

14 MICHAEL COTTON, CHAIR: Okay. Do you
15 know what he's saying? He's just --

16 FRANK COSCO: I build houses. Like
17 the guy before me, he had a huge -- I build houses.
18 That's what I do.

19 JOHN SERGI: I think that's a
20 wonderful suggestion.

21 MICHAEL COTTON, CHAIR: It's nothing
22 serious.

23 FRANK COSCO: I'm sorry?

24 MICHAEL COTTON, CHAIR: It's nothing

1 serious. It's just going to increase their taxes 50
2 percent or something.

3 FRANK COSCO: That's his problem.
4 That's his problem, not mine. He worries about that.

5 MARK HICKERNELL: Do we have any
6 objections from the audience on that?

7 (Laughter.)

8 MICHAEL COTTON, CHAIR: Any questions
9 from any of the Board?

10 JOHN SERGI: No. I'll make a motion
11 that the --

12 MICHAEL COTTON, CHAIR: Is anybody
13 here for the Petitioner? You two are for it? Yeah.
14 So we've got two for it, and no one against.

15 FRANK COSCO: Perfect.

16 MICHAEL COTTON, CHAIR: Anybody
17 seeking information? You are. That's it.

18 Do I have any motions?

19 JOHN SERGI: I make a motion that the
20 proposed finding of fact as amended become the
21 Board's findings of facts.

22 MICHAEL COTTON, CHAIR: Do I have a
23 second on that?

24 EDWARD MCCARTHY: Just on the motion,

1 how are you going to break this down again, Mark?
2 What are you saying?

3 MARK HICKERNELL: I was thinking we'd
4 make the first 11 requested findings the findings of
5 fact, have a new 11A.

6 EDWARD MCCARTHY: He has two 12s
7 there.

8 MARK HICKERNELL: Oh, yeah. Okay, 12
9 and 12A then. Make the second 12, 12A. Add in an
10 11A incorporating the findings into the decision, and
11 just continue all the rest of it the decision.

12 EDWARD MCCARTHY: Just a -- when you -
13 - you went to the Law Office on this?

14 FRANK COSCO: Mm hum.

15 EDWARD MCCARTHY: And asked them how
16 to do these things?

17 FRANK COSCO: Pam was a great help.
18 She was really good to help me, guide me through all
19 that, yeah.

20 EDWARD MCCARTHY: Okay, because this
21 is -- it leaves a lot to be desired in terms of our
22 normal format. Okay? I'll go along with what
23 they're doing here, but, just in case you come by
24 again, there's other things that -- work on this or

1 get someone to help you because, essentially, we work
2 on these. Format is like a legal document, it goes
3 forward. And everybody is required to do certain
4 things in a certain fashion. Again, it's --

5 FRANK COSCO: Like I said, I'm a
6 contractor. Paperwork is not my forte. But I
7 understand exactly.

8 JOHN SERGI: So, as a matter of
9 procedure, I just want to waive the reading of the
10 finding of facts as --

11 MICHAEL COTTON, CHAIR: As amended.

12 JOHN SERGI: As amended.

13 MICHAEL COTTON, CHAIR: Yeah.

14 MARK HICKERNELL: Second.

15 MICHAEL COTTON, CHAIR: Second.

16 EDWARD MCCARTHY: Yes.

17 GLENNA GELINEAU: Yes.

18 MARK HICKERNELL: Yes.

19 JOHN SERGI: Yes. And I also want to
20 waive the decision as amended.

21 MARK HICKERNELL: Waive the reading of
22 the decision.

23 JOHN SERGI: Waive the reading of the
24 decision. I'm a little bit under the weather

1 tonight.

2 MARK HICKERNELL: Second.

3 MICHAEL COTTON, CHAIR: How do you

4 vote?

5 EDWARD MCCARTHY: Yes.

6 GLENNA GELINEAU: Yes.

7 JOHN SERGI: Yes.

8 MARK HICKERNELL: Yes.

9 MICHAEL COTTON, CHAIR: Yes. The ayes

10 have it. Passed.

11 FRANK COSCO: Thank you.

12 JOHN SERGI: Well, we have to --

13 GLENNA GELINEAU: We have to vote on

14 the decision.

15 JOHN SERGI: I want to make a motion

16 that we adopt the findings of facts as amended.

17 MICHAEL COTTON, CHAIR: All right. We

18 have a motion on that.

19 MARK HICKERNELL: I'll second it.

20 MICHAEL COTTON, CHAIR: We have a

21 first and second on the --

22 EDWARD MCCARTHY: Yes.

23 MARK HICKERNELL: Yes.

24 JOHN SERGI: Yes.

1 GLENNA GELINEAU: Yes.
2 MICHAEL COTTON, CHAIR: Yes. Fine.
3 JOHN SERGI: I make a motion that the
4 decision as amended becomes the Board's decision as
5 well.
6 MARK HICKERNELL: Second.
7 MICHAEL COTTON, CHAIR: I have a first
8 and a second on the amended decision. How do you
9 vote?
10 JOHN SERGI: Yes.
11 MARK HICKERNELL: Yes.
12 EDWARD MCCARTHY: Yes.
13 GLENNA GELINEAU: Yes.
14 MICHAEL COTTON, CHAIR: You saved on
15 an attorney.
16 FRANK COSCO: Well, actually, we did
17 get --
18 ALBERT COSCO: We actually have a
19 letter as well.
20 FRANK COSCO: Well, he drew up the
21 memorandum.
22 Chairman, Board members, thank you
23 very much for your time. Happy Valentine's Day,
24 everyone.

Waltham Zoning Board of Appeals/2-14-2017/40

1 MICHAEL COTTON, CHAIR: Good luck.

2 JOHN SERGI: Motion to adjourn.

3 EDWARD MCCARTHY: Second.

4 MICHAEL COTTON, CHAIR: Aye. How do
5 you vote?

6 ALL BOARD MEMBERS: Aye.

7 MICHAEL COTTON, CHAIR: Shut it down.

8 (Whereupon, the meeting was adjourned
9 at 7:46 p.m.)

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C E R T I F I C A T E

I, Judith Luciano, do hereby certify that the foregoing record is a true and accurate transcription of the proceedings in the above-captioned matter to the best of my skill and ability.



Judith Luciano


Barbara Pardo 3/7/17

