

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

February 28, 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
Sarah Hankins
John Sergi

Arlington Reporting Corporation
(339) 674-9100

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

I N D E X

<u>CASE</u>	<u>PAGE</u>
2016-39	4
2017-03	11

A T T A C H M E N T S

Legal Notices: Case No. 2016-39
Case No. 2017-03

Case No.: 2016-39:
Proposed findings of fact
Proposed decision, as amended

Case No.: 2017-03:
Proposed findings of fact
Proposed decision, as amended

1 P R O C E E D I N G S
2 MICHAEL COTTON, CHAIR: Good evening.
3 Welcome to the Waltham Zoning Board of Appeal,
4 February 28, 2017.
5 We have two cases before us tonight.
6 The first one is Case Number 2016-39, Divine Signs,
7 Inc. The second one is 2017-03.
8 Let's proceed with the first one.
9 There's only four members. As we just told you,
10 Barbara is out sick.
11 //
12 //
13 //
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //

1 **Case Number 2016-39: Divine Signs, Inc.**

2

3 SCOTT SULESKI: I don't know if you
4 guys already got this in the email. Paul said that
5 the last time you asked him to reword stuff.

6 STENOGRAPHER: Could we have your name
7 for the record?

8 SCOTT SULESKI: Oh, my name is Scott
9 Suleski.

10 STENOGRAPHER: Can you spell that?

11 SCOTT SULESKI: S-u-l-e-s-k-i.

12 STENOGRAPHER: Thank you.

13 MICHAEL COTTON, CHAIR: Thank you.

14 MARK HICKERNELL: So, this has already
15 been -- what changes were made to what was submitted
16 before?

17 SCOTT SULESKI: There was some wording
18 I guess that you had asked him to change.

19 MARK HICKERNELL: Okay. And did you
20 submit this just to us or is it already on file?

21 SCOTT SULESKI: It got sent in, yes.

22 MARK HICKERNELL: Okay.

23 SCOTT SULESKI: And then I guess
24 basically, you know, like we're asking for a permit

1 for signs that somebody else put up that never got
2 permitted.

3 MARK HICKERNELL: Oh, so this is for
4 the Extra Storage?

5 SCOTT SULESKI: Extra Space Storage.

6 MARK HICKERNELL: Extra Space Storage.
7 And are the signs in accordance with what was
8 submitted earlier?

9 SCOTT SULESKI: Yes.

10 MARK HICKERNELL: And I think we had
11 some changes that were proposed earlier. I seem to
12 recall some.

13 JOHN SERGI: Yeah, he had agreed to
14 drop one of the signs, I believe. Do you recall
15 that? Or were you here when we asked that?

16 SCOTT SULESKI: I wasn't here the
17 first -- I was here like the last meeting when you
18 didn't have a quorum so we didn't do anything.

19 JOHN SERGI: I think there was one
20 sign that you agreed to drop. I'd have to -- we
21 thought there was too -- a lot of signs on one side.
22 I'd have to revisit this. It's been such a --

23 MICHAEL COTTON, CHAIR: I think he
24 agreed to that, didn't he, John?

1 MARK HICKERNELL: Yeah, they agreed to
2 drop it. We just have to make sure it's in the
3 decision.

4 JOHN SERGI: They agreed to drop it.
5 I just want to make sure that it's there, you know.

6 MARK HICKERNELL: So, which one got
7 dropped is the question.

8 JOHN SERGI: Let me see.

9 SCOTT SULESKI: It says, "Omitting
10 sign #2 on drawing."

11 MARK HICKERNELL: Yeah.

12 SCOTT SULESKI: That's the one.

13 JOHN SERGI: Okay. Yeah.

14 SCOTT SULESKI: That's on that short
15 paper that I gave you where it says "(2) Petitioner
16 seeks the following..."

17 MICHAEL COTTON, CHAIR: Oh, on the
18 finding of facts?

19 JOHN SERGI: Oh, omitting sign #2.
20 Okay. Yeah.

21 MICHAEL COTTON, CHAIR: I guess
22 everything's in there.

23 JOHN SERGI: Yeah, it's in there.

24 MICHAEL COTTON, CHAIR: Seeing we have

1 a -- oh, I'm sorry. Are you all done?

2 MARK HICKERNELL: Yeah.

3 MICHAEL COTTON, CHAIR: Seeing we have
4 no changes, and they're already in there,
5 incorporated, do we have a motion from the Board?

6 MARK HICKERNELL: I make a motion that
7 we just amend the proposed decision as follows. Put
8 in an introductory paragraph saying that the decision
9 incorporates the findings of fact, and then ending
10 the proposed decision, stating that the variance had
11 been granted subject to the following conditions:
12 that the permits be pulled and work begun within one
13 year and completed within two, in accordance with the
14 plans submitted as modified by the decision.

15 JOHN SERGI: That's fine, Mark. Yeah,
16 that's what I was worried about. You just cleaned it
17 up.

18 MICHAEL COTTON, CHAIR: We have a
19 motion on that. Do we have a second?

20 JOHN SERGI: Second.

21 MICHAEL COTTON, CHAIR: How does the
22 Board feel?

23 JOHN SERGI: Fine.

24 MARK HICKERNELL: Aye.

Waltham Zoning Board of Appeals/2-28-2017/8

1 GLENNA GELINEAU: Aye.

2 MICHAEL COTTON, CHAIR: Aye.

3 MARK HICKERNELL: I make a further
4 motion that we waive the reading of the proposed
5 findings of fact as they've been on file.

6 JOHN SERGI: Second.

7 MICHAEL COTTON, CHAIR: I have a first
8 and second nomination. How does the Board feel?

9 JOHN SERGI: Yes.

10 GLENNA GELINEAU: Yes.

11 MARK HICKERNELL: Yes.

12 MICHAEL COTTON, CHAIR: Yes.

13 MARK HICKERNELL: I make a further
14 motion that we waive the reading of the proposed
15 decision, as amended.

16 JOHN SERGI: Second.

17 MICHAEL COTTON, CHAIR: A motion, and
18 seconded. How does the Board feel?

19 JOHN SERGI: Yes.

20 GLENNA GELINEAU: Yes.

21 MARK HICKERNELL: Aye.

22 MICHAEL COTTON, CHAIR: It is passed.

23 MARK HICKERNELL: I would make a
24 motion that we accept the proposed findings of fact

Waltham Zoning Board of Appeals/2-28-2017/9

1 as submitted as the Board's finding of fact.
2 JOHN SERGI: Seconded.
3 MICHAEL COTTON, CHAIR: Motion is made
4 and seconded. How does the Board feel? Yes? No?
5 JOHN SERGI: Yes.
6 GLENNA GELINEAU: Yes.
7 MARK HICKERNELL: Yes.
8 MICHAEL COTTON, CHAIR: Wonderful.
9 MARK HICKERNELL: I make a motion that
10 we accept the proposed decision, as amended, as the
11 Board's decision.
12 JOHN SERGI: Second.
13 MICHAEL COTTON, CHAIR: Two motions.
14 It was accepted. How does the Board feel?
15 JOHN SERGI: Yes.
16 MARK HICKERNELL: Yes.
17 GLENNA GELINEAU: Yes.
18 MICHAEL COTTON, CHAIR: The ayes have
19 it. Passed.
20 SCOTT SULESKI: Do you guys send a
21 letter to the Building Department or how does that --
22 MARK HICKERNELL: I don't know if they
23 send a letter. I mean it just goes on file.
24 SCOTT SULESKI: It just goes on file.

Waltham Zoning Board of Appeals/2-28-2017/10

1 So, I'll just call the Building Department? All
2 right. Thanks very much.

3 JOHN SERGI: Thank you.

4 MICHAEL COTTON, CHAIR: Thank you.

5 //
6 //
7 //
8 //
9 //
10 //
11 //
12 //
13 //
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //

1 **Case Number 2017-03: Reginald and Rana Hebert**

2
3 MARK HICKERNELL: (The Clerk reads the
4 above-mentioned petition into the record. See
5 Attached.)

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

9 ATTORNEY KENNETH LEITNER: Mr.
10 Chairman, Board members, my name is Ken Leitner on
11 behalf of the Petitioners Reginald and Rana Hebert.
12 They are the owners of 40 Copeland Street in Waltham
13 where they have been at some time. They're raising
14 their family there.

15 I was remiss. The brief and the
16 findings of fact or the decision were emailed to the
17 Secretary this morning. I have also provided you
18 with another copy, and I apologize for that. But I
19 will go over, if I may, the application itself.

20 It's an A3 zone. The lot is 10,000
21 square feet. The house was built in 1953 under
22 permit number 424. We're here because of a month in
23 not filing a plan. As of May 1953, if this were - if
24 it were filed a month earlier, we would have been

1 subject to the small lot exemption. They missed by a
2 month. Otherwise, we wouldn't have to have been
3 here.

4 As far as the petition is concerned,
5 it's a single-family, one-story. All the dimensional
6 regulations will be met except for the side yard
7 setback on the southeasterly, which is the left-hand
8 side of the property.

9 There is a three-family -- there is a
10 three-season porch in the rear. The addition is not
11 going over that. It's just going over the main
12 house. And they'll be provided a master bedroom, a
13 master bath, two bedrooms and a common bath on the
14 second story.

15 As far as the relief is concerned,
16 under 3.7225, through the exception for a single-
17 family and two-families, it's we're not increasing
18 the nonconforming of the lot, and we're just adding a
19 second story. We're going up on the same plan.
20 We're maintaining the existing setbacks on the
21 property.

22 As far as 4.11, the variance, I think
23 we meet the criteria. All the other boundaries of
24 the property are conforming and the addition will be

1 conforming. No FAR, lot coverage, open space ratios
2 that violate it.

3 The house was built in 1953. It
4 hasn't changed since then. So, the left-hand side,
5 the southeasterly setback, is a legal conforming
6 setback. But the time has changed it so it's a pre-
7 existing setback from 11.7 feet to 15 feet. This
8 gives a uniqueness to this structure and how it was
9 sited on the lot at that time and now the relief that
10 we're seeking.

11 Also, it would be a substantial
12 hardship if we had to jog the addition back, you
13 know, three feet, four feet off the side, not only
14 for aesthetics, which you don't consider, but it
15 would look fairly funny. But you'd have to then
16 brace the whole side of that addition through the
17 first floor down to the basement to make sure it
18 could carry the weight because we're building over
19 the existing building envelope in order to carry the
20 weight of the new addition.

21 By definition, I think it's not more
22 detrimental. If you look at 3.7225, we're not
23 increasing the nonconformity. And I think really per
24 se it wouldn't be more detrimental. And I think that

1 3.7225 shows -- we're relying on that to show it's
2 not more detrimental. It shows we're not derogating
3 from the zoning ordinance in requesting this relief.

4 So, we do believe that we meet the
5 criteria for the variance, the variances, under
6 3.7225, 4.11. We brought the petition forward in
7 accordance with the Building Department's review as
8 all petitions are. And they did suggest that we
9 handle this as two variances as opposed to a special
10 permit and a variance under the 3.7225 and the 4.11.

11 So, that's what they're seeking to do.
12 They would like to stay in the neighborhood. They
13 have deep roots. And it gives them an opportunity to
14 do so.

15 MICHAEL COTTON, CHAIR: Any questions
16 from the Board?

17 JOHN SERGI: Counselor, are you
18 actually seeking two variances or is it one for the
19 side yard?

20 ATTORNEY KENNETH LEITNER: It's for
21 the side yard. But under 3.7225, not increasing the
22 nonconformity, the Building Department said to handle
23 that as a variance. I noticed that portion of the
24 statute -- that portion of the ordinance is written

1 really as a special permit, but they asked that we
2 file it that way.

3 JOHN SERGI: Okay.

4 ATTORNEY KENNETH LEITNER: So, I, on
5 the findings, I just -- I drew the analysis for the
6 special permit, so you have it. But, you know, for
7 the relief, I do set them out as two variances.

8 JOHN SERGI: Okay. And have the
9 Petitioners talked to surrounding neighbors?

10 ATTORNEY KENNETH LEITNER: No one
11 objects. And they see it happening in the
12 neighborhood. They've spoken to their friends in the
13 neighborhood and --

14 JOHN SERGI: So they've spoken to all
15 the neighbors?

16 ATTORNEY KENNETH LEITNER: They've
17 spoken with neighbors, yes.

18 JOHN SERGI: Okay. That's all I have.

19 MARK HICKERNELL: Is this request for
20 -- these requests for variances related to an
21 increase in the size of the family?

22 ATTORNEY KENNETH LEITNER: No, for
23 the maturity of the family.

24 MARK HICKERNELL: For the maturity of

1 the family.

2 ATTORNEY KENNETH LEITNER: Yeah, the
3 kids are approaching teenage years. Bigger space,
4 their own bedrooms. And the mom may be staying
5 downstairs with them.

6 MARK HICKERNELL: Okay. We've taken
7 that into account in previous cases.

8 ATTORNEY KENNETH LEITNER: Excuse me?

9 MARK HICKERNELL: We've taken that
10 into account in previous cases.

11 ATTORNEY KENNETH LEITNER: Yeah.

12 MARK HICKERNELL: That's all I have.

13 MICHAEL COTTON, CHAIR: Anything?

14 GLENNA GELINEAU: No questions.

15 MICHAEL COTTON, CHAIR: No questions?

16 Sarah?

17 SARAH HANKINS: No questions.

18 MICHAEL COTTON, CHAIR: I just have
19 one question. There's no more lot coverage? There's
20 no increase at all?

21 ATTORNEY KENNETH LEITNER: No.

22 MICHAEL COTTON, CHAIR: Okay. Do we
23 have anybody here in opposition?

24 (No one in opposition.)

1 MICHAEL COTTON, CHAIR: No. People
2 for it? How many have we got there? Six?

3 JOHN SERGI: A showing of hands.

4 MICHAEL COTTON, CHAIR: Six. They've
5 got six.

6 JOHN SERGI: We've got a showing of
7 hands of six.

8 MICHAEL COTTON, CHAIR: Six for, none
9 against.

10 Is anybody seeking information?

11 (No one is seeking information.)

12 MICHAEL COTTON, CHAIR: No? Okay.
13 Motion?

14 JOHN SERGI: Well, it's a unique
15 circumstance, Mr. Chair. We didn't get this until
16 tonight, but I've had a chance to review the finding
17 of facts and the decision.

18 MICHAEL COTTON, CHAIR: I got mine
19 this morning.

20 JOHN SERGI: So, if everybody has,
21 I'll make a motion to waive the reading of the
22 finding of facts.

23 MARK HICKERNELL: I'd like to second
24 that. But, first, I would just ask leave to poll the

Waltham Zoning Board of Appeals/2-28-2017/18

1 audience as to if anybody has not had a chance to
2 read the proposed decision and findings of facts and
3 wishes a chance to do so or wants to hear them read
4 out loud.

5 (No response.)

6 MARK HICKERNELL: Hearing none, I
7 second the motion.

8 MICHAEL COTTON, CHAIR: Okay. How
9 does the Board feel?

10 MARK HICKERNELL: Yes.

11 JOHN SERGI: Yes.

12 GLENNA GELINEAU: Yes.

13 SARAH HANKINS: Yes.

14 JOHN SERGI: In a similar fashion, Mr.
15 Chair, I'd propose that we waive the reading of the
16 proposed decision since we've had a chance to read it
17 and no one in the audience has objected.

18 MARK HICKERNELL: Second.

19 MICHAEL COTTON, CHAIR: How does the
20 Board feel?

21 SARAH HANKINS: Yes.

22 GLENNA GELINEAU: Yes.

23 JOHN SERGI: Yes.

24 MARK HICKERNELL: Yes.

Waltham Zoning Board of Appeals/2-28-2017/19

1 MICHAEL COTTON, CHAIR: The ayes have
2 it.

3 MARK HICKERNELL: Mr. Chair, if you'll
4 entertain a motion, I'd move that the Board accept
5 the proposed findings of fact as its own.

6 JOHN SERGI: I'll second.

7 MICHAEL COTTON, CHAIR: I've got a
8 second. How does the Board feel? Yea? Nay?

9 SARAH HANKINS: Yes.

10 MARK HICKERNELL: Yes.

11 JOHN SERGI: Yes.

12 GLENN GELINEAU: Yes.

13 MICHAEL COTTON, CHAIR: Yes. Yes.
14 Yes. Okay.

15 MARK HICKERNELL: Finally, Mr. Chair,
16 I'd like to make a motion that we accept the proposed
17 decision as the Board's decision with the following
18 amendment: that the work be commenced and permits
19 pulled within one year, and completed within two
20 years.

21 JOHN SERGI: I'll second that.

22 MICHAEL COTTON, CHAIR: And do you
23 agree?

24 ATTORNEY KENNETH LEITNER: Yes.

Waltham Zoning Board of Appeals/2-28-2017/20

1 MICHAEL COTTON, CHAIR: You're going
2 to start tomorrow.

3 How does the Board feel?

4 JOHN SERGI: Aye.

5 MARK HICKERNELL: Yes.

6 SARAH HANKINS: Yes.

7 GLENN GELINEAU: Yes.

8 MICHAEL COTTON, CHAIR: Yes.

9 MARK HICKERNELL: The petition is
10 granted.

11 ATTORNEY KENNETH LEITNER: Thank you.

12 JOHN SERGI: Good luck.

13 MARK HICKERNELL: I make a motion that
14 we adjourn.

15 JOHN SERGI: Motion to adjourn, Mr.
16 Chair.

17 MARK HICKERNELL: I'll second that.

18 MICHAEL COTTON, CHAIR: Okay. The
19 Board is adjourned.

20 ALL BOARD MEMBERS: Aye.

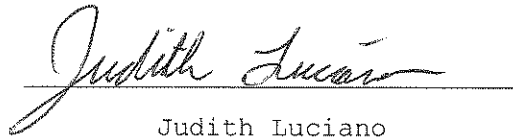
21 (Whereupon, the meeting was adjourned
22 at 7:20 p.m.)

23 // *Barbara Rand* 3/21/17
24 //

Waltham Zoning Board of Appeals/2-28-2017/21

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

Arlington Reporting Corporation
(339) 674-9100

