

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**October 17, 2017**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, October 17, 2017, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were Acting Chair, John Sergi, and members Glenna Gelineau, Sarah Hankins, Mark Hickernell and Edward McCarthy.**

**Mr. Sergi: The first motion tonight is the acceptance for the minutes of October 3, 2017.**

**On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to approve the minutes of October 3, 2017.**

**Mr. Sergi: The first case we hear tonight is 74 Third Avenue Real Estate Trust, Case 2017-25? Would you like to read the legal notice?**

**The clerk then read the petition of 75 Third Avenue Real Estate Trust for a sign variance. Subject Matter: The construction of a second ground sign. Location and Zoning District: 75 Third Avenue, Commercial Zoning District.**

**Mr. Sergi: May we hear from the Counselor, please?**

**Bret Francis, Esquire, Office of Scafidi and Juliano, 10 Hammer Street, Waltham came forward.**

**Mr. Francis:** I am here tonight on behalf of 75 Third Avenue Real Estate Trust. Per the fact that Chair Rando is out tonight, we will be seeking a continuance. And, again, with discussions with the law department, I think 11/14 would be available if that's satisfactory to the board.

**Mr. Sergi:** Can I have a motion to continue to November 14th?

**On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to continue Case No. 2017-25 to November 14, 2017.**

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

**I think we are also looking forward to the extension of the hundred day limitation as well.**

**Mr. Sergi:** Do I have a motion to extend the hundred days to act on this case?

**On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to extend the time to act on this case to December 12, 2017.**

**Mr. Sergi:** The next case is Case No. 2017-30, Watch City Ironworks LLC. Will the clerk please read the petition?

**The clerk then read the petition of Watch City Ironworks, LLC in an application for three sign variances. The petitioner seeks three sign variances: 1) to allow the ground sign located at the front entrance of the property to remain in its current location three feet from the street line; 2) to increase the size of said ground sign to 50 sq. feet to allow the**

second tenant to have its name added to the sign; 3) install a second ground sign with dimensions of 30" x 72" or 15 sq. feet, one-sided only, (non illuminated) on the property. Location and Zoning District: 303 Bear Hill Road, Commercial Zoning District.

Kevin M. Dwyer, Jr., The Law Office of Kevin M. Dwyer, Jr., 707 Main Street, Waltham came forward.

Mr. Dwyer: Good evening members of the board. I am here on behalf of the Petitioner, Watch City Ironworks LLC. Assisting me with this petition is Attorney Richard F. Dacey who is present here this evening as well as Mr. Richard Livingston who is present. He is the Owner, General manager of Johnstone Supply. Johnstone Supply is a Heating Ventilation and Air Conditioning wholesaler.

Mr. Dwyer: The Petitioner is Watch City Watchworks LLC and if you look at the inside cover of the booklet I passed out, I have a motion to amend the name of the petitioner. I am not asking to change the name of the petitioner but to add a petitioner to be 303 Bear Hill Road LLC. As a reason, I am letting the board know that Watch City Ironworks is the sole member and owner of one hundred percent of 303 Bear Hill Road LLC which is the record title owner to the property in question which is located at 303 Bear Hill Road in Waltham.

303 Bear Hill Road LLC is a legal entity that acquired the property from Taurus CD, 173 Bear Hill Portfolio LP which is a limited liability company by a deed which was recorded at the Middlesex Registry of Deeds. I actually attached a Tab 2 of the booklet that I passed out. So immediately after this deed was recorded, an assignment of ownership interest which I also included in my handout was executed between 303 Bear Hill Road LLC and Watch City Ironworks LLC which transferred ownership of the interest in the property to Watch City Ironworks LLC. So this assignment document is private. It's not

part of the record at the Registry of Deeds but the addition of 303 Bear Hill as the petitioner tonight will allow hopefully a decision of the Zoning Board of Appeals to be recorded and attached with reference to the the deed which is currently on record at the Registry of Deeds which is 303 Bear Hill Road LLC.

Mr. Dwyer read his brief into the record along with going over the exhibits in the back of the brief. He went over the three different variances requested.

Mr. Dwyer: So as Mr. Hickernell stated, we are asking three different variances here. The first relates to a ground sign which is located at the front of the property. You can see it's actually the cover of the booklet that I passed out. That ground sign is currently located at the front entrance of Johnstone Supply and we are asking the board to allow it to remain in its current location which is three feet from the street line. It was recently installed by a sign company and they incorrectly measured the distance. And as you can see, it's been cemented into the ground pretty deeply and would be a burden on the company to have it moved at this point and time.

Now, what happened was the sign company incorrectly measured, I think, straight to the sidewalk. It's actually closer to the street line than it may look from this photo but as you can see from this photo and also by a photo that I attached in Tab 8, the first photo actually, and the sign is not hanging over Bear Hill Road or isn't any way close to Bear Hill Road. It's just that the street line is a little bit closer than the sign company thought it was and our first request is to allow it to stay at its current location which is three feet from the street line. That was measured and documented by the surveyor who my client hired to go up and measure exactly where the sign is located and that is in Tab 5. It's also in the large map that I passed out to all the members and so we are asking for a three foot variance. That's our first request.

The second request is to increase the size of this ground sign to sixty square feet and if you look at Tab 7, you can see sign A. You see the Johnstone Supply Sign and we are asking to add that second floor tenant sign Quantum Pathology. That little sign we would like to have added on top of the existing sign. Quantum is a tenant of the building. They don't have a sign right now and they need one. And so by adding that sign in there we are going to need relief from this board.

The second sign would increase the square feet to sixty square feet which we will need a variance for.

The third request is to install a second ground sign which we propose to be thirty inches by seventy-two inches or fifteen square feet. We are proposing a one sided non illuminated sign on the property to be approximately two hundred feet from the street and twelve feet from the adjacent parcel and the parking lot behind the building and you can see this on, I think its most accurately depicted at Tab 6 which is entitled 303 Bear Hill Road Sign Locations. Tab 6 shows you sign A which is the current existing sign; sign B is in the back of the property. There's nothing back there right now. We are asking for a second ground sign to be installed on the property.

If you look at Tab 8, the second photo I have attached shows the unique character of this property. Mr. Livingston has informed me that they get many, many vehicles driving into that property on a daily basis, customers, returning customers, new people who can't find their entrance. When you drive into the property at 303 Bear Hill Road, as you can see, you have to make a left turn to get all the way into Johnstone Supply entrance. So it's kind of an awkward setup and so that second photo at Tab 8, you can see there's a notation, Location of Proposed Ground Sign, and you see where the arrow is. That's where they want it to go.

The next photo actually is a nice rendering of what it would look like. It's not there right now but this is what it would look like. So this photo is taken really from a perspective of a driver, potential customer, driving up the driveway, trying to find, how do I get into the Johnstone Supply entrance? They need this directional sign to get customers to their door. And the last photo, you can actually see the entrance to Johnstone Supply which is in the back of the property. So that constitutes a second ground sign.

Back to Tab 7, you can see that a proposal is seventy-two inches by thirty inch ground sign which is Sign B and it has the entrance arrow to the left.

And so, as it says in my petition, Section 6.63, the site has to be six feet from the street line. It's three feet. 6.622b, the limit is forty-eight square feet, we are asking it to be six feet. Section 6.63c only one ground sign per lot. We are asking for a second one to be installed there.

Mr. Livingston is available if you have any questions about the business or anything related to what his business is all about or why he needs this relief. It's really just to make sure that his second floor tenant has proper signage and that his customers are allowed to find that back door. It is kind of an awkward set up over there. And so if the board has any questions.

Mr. Sergi: So, the only entrance for that business is in the back?

Mr. Dwyer: That's the only entrance. So, you have to drive up the driveway on 303 Bear Hill Road and then take a left. Without that second ground sign it's difficult for people to figure out where they need to go to get into see Mr. Livingston.

Mr. Sergi: So the front entrance way would be used for the tenant?

**Mr. Livingston:** The tenant is on the second floor. So when you come into the driveway the entrance is immediately to the left of that driveway.

**Mr. Sergi:** So there's no way of entering the building from the front.

**Mr. Livingston:** Correct. There's a door there but its been sealed off.

**Mr. Sergi:** So its been sealed off. I noticed the door. And you don't have any plans to change the structure?

**Mr. Livingston:** It's all sealed and it makes the building look nice.

**Mr. Sergi:** Mr. McCarthy, any questions?

**Mr. McCarthy:** You have one tenant?

**Mr. Livingston:** Correct.

**Mr. McCarthy:** Are you going to get any more tenants?

**Mr. Livingston:** No.

**Mr. McCarthy:** If they leave, you would have somebody else.

**Mr. Livingston:** We can put the name on the top of the sign. We would put the name on that sign.

**Mr. McCarthy:** So you won't be coming back for anymore signage.

**Mr. Sergi:** Mark, do you have any questions?

**Mr. Hickernell:** As an initial matter, I would like to make a motion that we permit the petitioner to amend the name on the petition, as requested.

**Mr. Dwyer:** Yes, please.

**Ms. Gelineau** seconded the motion and the board voted to allow the petitioner to amend the name on the petition.

**Mr. Hickernell:** So the sign was just popped out three feet too close?

**Mr. Dwyer:** Yes. It should have been three feet forward back towards the building than it currently is, exactly.

**Mr. Livingston:** There was a sign in front of this building. It's been there as far back as ten years at exactly the same distance which is part of the reason the sign was measured incorrectly but he didn't know at the time.

**Mr. Hickernell:** I'm having trouble seeing why the sign company doesn't just fix it.

**Mr. Dwyer:** Well one of the things, and if you look at the last document that I put in the packet, it's a Sign Visibility Analysis of 303 Bear Hill Road and Mr. Livingston's property is located at a particular point on Bear Hill Road where if a driver is traveling south on Bear Hill Road, they only see that front sign for about seven-seconds. And a vehicle traveling north on Bear Hill Road, would be able to see the sign for approximately four-seconds. And so, you see the green car that is going down toward the sign, they see it only for about a hundred and forty feet and a car going south sees it for about two hundred and sixty feet. Actually the first photo on Tab 8 actually illustrates it pretty well. They



don't get a lot of air time for lack of a better term for a driver coming up and down that street to let a potential customer know that they are there. So having this sign a little bit closer to the street line actually helps the business because it is a kind of difficult spot to see where it is on Bear Hill Road and I believe that the sign is cemented at this point as well. So we don't think that the requested relief is particularly too much to ask. It's just three feet at this point and time.

Mr. Hickernell: It's not just the drivers coming. It's the sideline being blocked by somebody coming in or out of the driveway. I don't have a problem with the bigger sign. I don't have a problem with the second sign, I'm not sure how to deal with that, the sign that should have been six feet back and it wasn't. Okay, it's concrete, but I don't see a problem with moving the sign.

Mr. Dwyer: Again, this is going to be an additional cost to my client. Having it closer to the street is actually going help the business only because of where it is located on that particular spot on Bear Hill Road.

Mr. Hickernell: I'm all in favor of helping the business. The city council has said it should be six feet back. If you came to us and said the particular circumstances require something because of the shape of the lot or something, I'd be more open to it. But here somebody popped it in the wrong spot and I don't see why your client can't tell them to fix their job. If somebody does it wrong they ought to fix it is, as I see it.

Mr. Dwyer: Understood.

Mr. Sergi: Glenna, any questions?

Ms. Gelineau: No.

**Mr. Sergi:** Sara?

**Ms. Hankins:** Just on that point too, the Sign Visibility Analysis, that is based on it being in its current location. It's on the last page.

**Mr. Sergi:** What page are you on Sara?

**Ms. Hankins:** Actually the last page of the packet.

I guess my question is we don't have anything to compare if there's some sort of dramatic difference between the three foot and the six foot. So I didn't see anything that would justify, as Mr. Hickernell said, also allowing that three feet because at this point I don't think it matters that the sign is already there when we decide, especially since you are sort of asking for some other relief. So, I don't really see anything compelling unless you have something additional. I didn't see anything.

**Mr. Livingston:** Two things. One of the things I would like to address, is the ability to see left from right coming out of the driveway. It is far enough back. I drive there all the time. It doesn't interfere at all. The problem with bringing it back is we have a guardrail on the property because there's a front loading dock area and that guard rail really can't be moved because it's a safety issue. If the sign comes back, you lose the visibility of the bottom of the sign. Now this is another reason the sign is out front. This is the right location because no other location worked. Of course we find out that the lines weren't right, but moving it back would eliminate almost half of the sign's visibility.

**Mr. Hickernell:** Half of the sign visibility how? You don't have a sign visibility now.

**Mr. Livingston:** So if you take a look at the picture that is on this one, Tab 8, second photograph. So if you look here you can see the guard rail and the sign sits just up against

the edge of that driveway now. If it goes backwards then the bottom of the sign is then covered by that guardrail. So people heading south on the road will no longer be able to see the bottom of the sign.

**Mr. Hickernell:** Where's the guardrail?

**Mr. Livingston:** The guard rail starts to go up as it goes back. So it goes to the ground and hits the ground at the front of the building and then starts to rise to about three feet. As it goes back, it's a little higher.

**Mr. Sergi:** So what you are saying is it wasn't a mistake to put it in that location.

**Mr. Livingston:** Well, it turned out it was. In other words because we found out that the guidelines said that it was too close.

**Mr. Sergi:** As far as the guidelines, but as far as he was concerned, he was more concerned with the visibility of the sign?

**Mr. Livingston:** That's what he told us. We thought everything was fine until we were told, in fact, that doesn't work.

**Mr. Sergi:** I understood the other way. I thought it was just a mistake and you could move it but if it was there - -

**Mr. Dwyer:** Well I think he wasn't familiar with the zoning. That's what I meant when I said it was a mistake. I can understand why he put it where he did.

**Mr. Livingston:** He made an educated decision. He thought he met all the guidelines and then of course we found out later that it didn't.

**Ms. Gelineau: So this is the guardrail?**

**(Mr. Livingston went before the board to point out where the guardrail is.)**

**Ms. Hankins: I have a question. The existing Johnstone Supply is not changing at all. It's the same location, the same entrance, etc., right?**

**Mr. Dwyer: The sign in front? Yes.**

**Ms. Hankins: No, I mean the business.**

**Mr. Dwyer: The business is staying, yes.**

**Ms. Hankins: Nothing is changing?**

**Mr. Dwyer: Right.**

**Ms. Hankins: So I guess right now, if you want to add a second sign, what is getting people to that location now? I mean if they are not moving anywhere and - - -**

**Mr. Dwyer: It's causing confusion because they don't know where to park and they don't know how to get in the back. It just causes confusion and is just a burden on Mr. Livingston's customers. They don't know where to go and it's just an easier way to get them to the entrance to the building because as we said earlier, there's no entrance at the front. If you're driving in you don't know where to go in and you don't know where to park. You have to go up and around and the entrance is on the other side.**

**Ms. Hankins:** Is there any way you can put it in the rear for the Johnstone like somehow in the front address on one side instead of needing the second sign or put something on the building.

**Mr. Dwyer:** I think the way we are suggesting it would be the easiest way to do it actually because if some sort of a directional indication was at the front sign, I'm not sure what effect that would have. I don't know if that would actually be effective in directing drivers until they actually get into the property. So I think that second ground sign makes perfect sense with that arrow with the entrance to the left because it's confusing when you drive up there right now, you don't know where his door is.

**Ms. Hankins:** The other question I had was, is where you have the sign kind of going back all the way to the back right of the property and then directing people then to go left and then take another quick left. Do you have any concern because there's parking on either side that people will then as you drive in, its sort of a driveway where they kind of keep thinking it's a driveway, by you putting that sign there.

**Mr. Dwyer:** That Tab 8, that third to the last photo is kind of a visualization of what you would see if you were driving into the property. Without that sign, you just wouldn't know how to get into Johnstone. You would just be driving in. There's nothing there and where do you go and how do you get in? It is an awkward place to have an entrance. And that's why that second ground sign is really necessary for Mr. Livingston.

**Mr. Sergi:** Are there any other questions?

**Mr. Hickernell:** It looks like, looking at Tab 7, the first picture of the actual signs, the double sided sign in front, there's thirty-four inches between the ground and the bottom of that sign. I mean, is there anything that says you can't lift it up another foot if you move it back so it's not blocked by the barrier?

**Mr. Livingston:** Yes, it's possible. But one of the problems is the road actually goes down lower altitude heading north.

**Mr. Hickernell:** I mean, lifting the sign does not require a variance whereas putting it closer to the street does. If we can get you the same result without a variance, I think that's how the city council prefers you do it.

**Mr. Dwyer:** We haven't discussed that.

**Ms. Gelineau:** Sir, it's just you and your tenant on the property, correct?

**Mr. Livingston:** Correct.

**Mr. Sergi:** Any other questions?

**Mr. McCarthy:** I'm looking at the first picture in Section 8. There's your sign and then there's a sign on the back. Is that your sign coming down or is it your next door neighbor?

**Mr. Dwyer:** That sign's been there since we believe the late sixties. It's not a sign right now. It's just a For Lease sign.

**Mr. McCarthy:** So it's on your property?

**Mr. Dwyer:** It's in the photo but it's been taken out.

**Mr. McCarthy:** You have a double driveway?

**Mr. Livingston:** There's a little entrance way to the loading dock.

**Mr. McCarthy:** Is that in use?

**Mr. Livingston:** It's there but we don't use it.

**Mr. McCarthy:** Oh, you don't use it. So essentially that driveway is not being used.

**Mr. Livingston:** We left it open. We could use it in an emergency.

**Mr. McCarthy:** And the sidewalk is not being used to the front door.

**Mr. Livingston:** There is no front door sidewalk.

**Mr. McCarthy:** That sidewalk shows in the print here. So that's gone? So it's still there but it's not used.

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**Mr. Livingston:** Correct.

**Mr. McCarthy:** So essentially you could move the sign over to the grass area where the sidewalk is and now you would eliminate the blockage of the guardrail entirely and you would be able to get back six feet.

**Mr. Livingston:** That's a good thought but the reason we chose this we found that that sign would be confusing with the entrance. When the entrance to the building was originally in the front and it had two lab tenants that made perfect sense. It was kind of like an office park. You had one entrance on the very front and one on the side. When we analyzed the building we realized closing that door that putting a sign there would confuse people as to where to enter the building. By putting the sign by the driveway there's really

only one place to go to the building and that's why we chose the driveway because there was a base there. We would have used it if it made sense.

**Mr. McCarthy:** I'm inclined to go along with Mr. Hickernell with regards to the six feet issue. It's there for a reason the city council put that in. It's for safety and I would expect that you could do something in that area right there and be able to get your six feet and still have visibility. That's what it seems like to me.

**Mr. Livingston:** My only issue with the center, why we deliberately chose the driveway, is that again without actually seeing the building and the traffic around it we found a sign in the front of the building as it's been reconfigured to be confusing to people entering the building because the building has changed.

**Mr. Hickernell:** That makes sense to me, but again, could you lift the sign so it's above the barrier so that so you could still get the same effect saying here's where we want you to enter but also not having the sign blocked.

**Mr. Livingston:** I guess. I don't know. That is a consideration.

**Mr. McCarthy:** What is the barrier used for now?

**Mr. Livingston:** Well again, where there's that little driveway that goes down to the dock, we don't want people falling into it. So there's a guardrail that just separates the two.

**Mr. McCarthy:** But you don't use the driveway. If push came to shove you could eliminate that need for the guardrail.



**Mr. Livingston:** We wouldn't want to because we have a loading dock in the back that uses an elevator to bring freight to the bottom floor. And in the event that the elevator fails, the only way to get freight into the building is through that little front dock.

**Mr. Sergi:** Any other questions?

Hearing no other questions, are you prepared to read the Proposed Findings of Fact.

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

**Mr. Sergi:** Would you like to read the Proposed Decision?

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

May I have a motion on the Proposed Findings of Fact?

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

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

**Mr. Hickernell:** Mr. Chair, I ask that we take the vote on the requested variances individually.

**Mr. Sergi:** So moved.

**Mr. McCarthy seconded the motion and the board voted to take the variances requested individually.**

**Mr. Sergi: So are we all in favor with the variances except for the sign in the front of the building that's three feet from the building?**

**Mr. Hickernell: I am in favor of the second and third variances, yes.**

**Mr. McCarthy: So, I am, as well, in favor of the second and third variance.**

**Mr. Sergi: Mr. McCarthy seconded the request. Sara are you okay with the second and third variance.**

**Ms. Hankins: Yes.**

**Mr. Sergi: Glenna?**

**Ms. Gelineau: I am okay with all three.**

**Mr. Sergi: I'm okay with all three as well. So do I have a motion.**

**On motion of Mr. Hickernell, seconded by Mr. McCarthy that the board voted that the second and third requested variances be granted and that the Proposed Decision for the second and third variances be adopted by the board.**

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

**Mr. Sergi: Do I have a motion on the first variance request?**

On motion of Ms. Gelineau seconded by Mr. Sergi, that the first variance be granted by the board.

Roll call: Mr. McCarthy, no; Mr. Hickernell, no; Ms. Gelineau, yes; Ms. Hankins, no and Mr. Sergi, yes.

The vote was 3-2. Motion was denied.

Mr. Dwyer: So it's not the size. It's the location.

Mr. Sergi: It's the location.

Mr. Sergi: One motion is in order.

On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to adjourn at 7:41 P.M.

*Barbara Bender chair*  
10/24/17