

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

November 28, 2017

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, November 28, 2017, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham,

Mrs. Rando: Tonight we have two continued cases before us. Case 2017-25, 75 Third Avenue Real Estate Trust, 75 Third Ave., and Case No. 2017-18 Laing, 71 Edgewater Drive.

The members sitting this evening are: Mr. Sergi, well, Mr. Sergi will be joining us shortly; Mr. Hickernell; Ms. Hankins; Mr McCarthy and I am Barbara Rando, Chair.

The first action this evening is for a motion to accept the minutes of November 14, 2017.

On motion of Mr. McCarthy, seconded by Ms. Hankins, the board voted to accept the minutes of November 14, 2018.

Would the clerk please read the petition in Case No. 2017-18?

Mr. Hickernell: Madam Chair, are we going to proceed on this petition with four members?

Mrs. Rando: Yes, because he has agreed to it.

The clerk then read the Petition of Richard and Leueen Laing in an application for variance, application for special permit - accessory dwelling unit, and appeal of notice of violation, dated May 3, 2017, by Inspector of Buildings. The Petitioners seek to appeal under S7.31 the Notice of Violation issued May 3, 2017. Petitioners seek a special permit for the existing basement accessory dwelling unit in the main house. This basement is part of the original structure constructed as a single family dwelling. It is subordinate in size to the principal unit and is separated by two means of access. Location and Zoning District: 71 Edgewater Drive, Angleside; Residence A-3 Zoning District.

May we hear from the petitioner or the petitioner's representative, please?

Mrs. Rando: Mr. Laing, before you present your case or ask questions, we do have an opinion from the Law Department that I would like read into the record.

Mr. Laing: We came to the meeting on September 25th with the legal opinion that you had requested from us. We prepared and came to that meeting with the intention of presenting at that point and time. And if we presented you, you've heard our opinion and maybe you would have gone back and said you wanted that additional opinion. It seems to me, I don't understand how you would request an opinion after the meeting of September 25th for which you had postponed. You had cost us for our legal opinion. We got it.

Mrs. Rando: Mr. Laing, this opinion was presented to the law department earlier. We just happened to get the opinion today.

Mr. Laing: What is the date on that opinion?

Mrs. Rando: Today. I got the opinion about 4:30 this afternoon.

Mr. Laing: We saw it before. We saw November the 9th.

Mrs. Rando: No, no. That was the other one.

Mr. McCarthy: Madam Chair, he's looking for a continuance. We shouldn't be doing any dialogue at this point and time, I don't think.

Mrs. Rando: Well, I think it is fair to the people at home and to the people that are here to- - -

Mr. McCarthy: John is not here and he sat on the case. He's missing.

Mrs. Rando: Are you willing for a continuance this evening?

Mr. Laing: Yes.

Mrs. Rando: What is the board's feeling? Is everyone in favor of a continuance?

Mr. Hickernell: Because Mr. Sergi isn't here and because there is evidently a new opinion that they haven't had a chance to review.

Ms. Hankins: Now that you have this opinion now at the next meeting, in addition to what you put together, then we can sort of go a little bit off of what they said too. So, it might actually work to the benefit, I think.

On motion of Mr. Hickernell, seconded by Mr. McCarthy, that the case be continued to an available date.

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

Mrs. Rando: Did you check the hundred days?

Mr. Hickernell: It's January 16th, so I don't know if we are going to squeeze that in before it or not.

Mr. Laing: That's a serious problem.

Mr. Hickernell: I understand you have a standing commitment to travel abroad. We'll do our best to accommodate that.

Mrs. Rando: What is the date that you are traveling sir?

Mr. Laing: I travel January 15th until I come back on March 5th.

Mrs. Rando: How about March 13th? Do have a motion to continue Case 2017-18 to March 13th?

On motion of Mr. Hickernell, seconded by Mr. McCarthy, the board voted to continue Case 2017-18 until March 13th.

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

Mrs. Rando: Now the hundred days will go to May 10, 2018.

Do I have a motion to continue the hundred days to act on Case No. 2017-18 to May 10, 2018?

On motion of Mr. Hickernell, seconded by Mr. McCarthy, the board voted to extend the hundred days to act on this matter until May 10, 2018.

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

(Mr. Hickernell asked Mr. Bret Francis if he was representing Mr. Laing and Mr. Francis stated he was advising them.)

Mrs. Rando: I am going to ask you for another motion for a ten minute motion. Do I have a second?

Ms. Hankins seconded the motion and the board voted to take a ten minute recess at 7:20 P.M.

At 7:30 P.M. the board reconvened.

The members present on this case are: Mr. Sergi, Mr. Hickernell, Ms. Hankins; Mr. McCarthy and Mrs. Rando.

Mrs. Rando: Will the clerk please read the petition in Case No. 2017-25 75 Third Avenue?

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.

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

Bret Francis, Esquire, Scafidi and Juliano, 10 Hammer Street, Waltham came forward. He presented each member with a copy of his brief.

Mr. Francis: I am here on behalf of 75 Third Avenue Real Estate Trust, Petitioner.

(Mr. Francis then read his brief into the record.)

Mr. Francis: If you have any questions, we are here to answer them on behalf of 75 Third Avenue Real Estate Trust is Charlotte Maynard, also is happy to answer any questions you may have.

The only thing that I will mention quickly is they are actually in the process of redesigning this whole area. So how long this ground sign if it were granted stays in this location is up for grabs. I imagine we have to come back here to position in its new location if and when there's a change in the traffic intersection of this location. If the sign needed to be moved that would be something I think we would come back and seek an amendment.

Charlotte Maynard, I own 75 Third Ave Real Estate Trust.

Mr. Hickernell: Business address or home address?

Ms. Maynard: Creative Development Company 1242 Chestnut Street in Newton Upper Falls. Back in the late nineties or early two thousands, there was a taking of when they built that and we use to have a sign at sort of the same location. It actually got hit by a car prior to the taking and then when we had the taking we didn't put it back. But we had a sign for years at this lower level to indicate how to get into this parking lot.

Mrs. Rando: Mr. Sergi, any questions?

Mr. Sergi: Mr. Francis, show me the sign?

(Mr. Francis went before the map posted on the board.)

Mrs. Rando: The other thing that you just said you mentioned is do they have as many signs two signs or three signs?

Mr. Francis: I don't want to talk out of turn, I don't know.

Ms. Maynard: Yes, they have signs for different reasons. This is sort of a directory for what's at my site and what Boston Properties has along because they own almost everything, it's sort of directories, so they have multiple signs along the outside. They all say different things but they do have multiple signs.

Mrs. Rando: No other questions? Seeing no one here in opposition or seeking information, and one person here in favor, I am ready to introduce you reading your findings of facts.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department.

Mrs. Rando: You may have the reading of the decision now.

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

Mrs. Rando: I am ready to entertain a motion on the Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted to adopt the Proposed Findings of Fact and that they become the board's Findings.

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

Mrs. Rando: This sign, this is the exact replica?

Mr. Francis: That's exactly.

Mrs. Rando: And it will be lighted?

Mr. Francis: It's going to be non-illuminated. There might be something shining on it but we are not seeking to, this is retail, they all close by ten o'clock at night. We are not seeking any extension of the hours of lighting.

Mrs. Rando: Do I have a motion on the Proposed Decision?

On motion of Mr. Sergi, seconded by Mr. McCarthy, the board voted that the Proposed Decision become the board's decision.

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

Mrs. Rando: One more motion is in order.

Mr. Hickernell: Before we adjourn, may I just make an inquiry. So in the last month we have received a couple of opinions from the Law Department that were not

discussed in open session. I think it's more business and it ought to be discussed in open session and I don't know what the practice has been but or whether we can all just shoot off our request for opinions to the law department.

Mrs. Rando: What I believe has happened is the chair has the right to ask for an opinion and other people if they have a question they can call but for a legal opinion it's the chair can ask for an opinion. And according to the rules, about maybe four years ago we signed something into action giving the chair permission to ask for an opinion.

There was considerable discussion by board members regarding the board's practices and policies regarding a legal opinion.

There being no further business, on motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to adjourn at 7:50 P.M.

Barbara Rando, Clerk
12/5/17