



## ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2018-05 - Remand  
Petition of Timmy Ho & Kristin Jacques  
42 River Ridge

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 12, 2018, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Timmy Ho & Kristen Jacques requesting to withdraw a previously filed request for a Special Permit for the property at 42 River Ridge.

On June 5, 2018, a Motion to Remand to the Zoning Board of Appeals was allowed by the Trial Court of Massachusetts, Norfolk County Superior Court, Docket Number: 1882CV00407.

On June 19, 2018, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was David Himmelberger, Esq., representing Timmy Ho and Kristin Jacques, who are two of the defendants in an appeal that was brought subsequent to this Board's decision, ZBA 2018-05, in which his clients sought and received a special permit to construct an addition on a nonconforming lot. He said that thereafter that decision was appealed by the direct abutters, Benjamin and Myriam Spiegel. He said that during the pendency of the appeal, Mr. Ho and Ms. Jacques advised Mr. Himmelberger that they no longer wished to proceed with the case as they had concluded that they would rather move than remain where they were. He said that accordingly he filed an assented to motion for remand at the Norfolk Superior Court for the express purpose of moving to withdraw this matter. He said that Mr. Ho and Ms. Jacques now seek permission to withdraw the previously presented request for a special permit without prejudice. He said that his clients are both doctors and could not be present at the hearing tonight. They asked Mr. Himmelberger to convey on their behalf their thanks to the rest of their neighbors on River Ridge for their love and kindness throughout the permitting process; their thanks to the Zoning Board for their time and consideration of their application for a special permit; and their apologies to the Zoning Board that they became involved in such behavior unbecoming of Wellesley families. He said that it is regrettable that this matter came to where it did but his clients have decided that they would prefer to move and therefore respectfully request that the Board grant leave to withdraw this request for a special permit without prejudice.

A Board member stated for the record that he is a resident of River Ridge. He said that he did not sit at the initial hearing for this case. He said that he feels that he can fairly and impartially adjudicate his opinion and determination on the appropriateness of this request.

The Chairman asked if there was anyone present at the public hearing who wished to speak on behalf of the Spiegels. Mr. Himmelberger said that he was in contact with their Attorney, Brian Almeida, who

advised via email that neither he or his clients would be appearing at tonight's hearing. The Chairman said that Mr. Almeida filed an affidavit attesting to the fact that he served the complaint to all of the members of the Zoning Board. He said that he was never served with it. He said that it was filed in the Superior Court under the pains and penalties of perjury, in accordance with Rule 11 of the Massachusetts Rules of Civil Procedure. He said that he was also offended by some of the allegations that were made in the complaint concerning one of the members of this Board, which he believes are completely unfounded and lack any merit.

There was no one present at the public hearing who wished to speak to the petition.

#### Statement of Facts

On March 15, 2018, the Zoning Board granted a special permit and made a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On March 30, 2018, a copy of Notice of Action, and plaintiff's Complaint, with respect to Benjamin Spiegel and Myriam Spiegel v. Richard Seegel, J. Randolph Becker, David G. Sheffield, Robert W. Levy, Walter B. Adams, Derek B. Redgate, as they are members of the Town of Wellesley Zoning Board of Appeals, and Timothy "Timmy" Ho and Kristin Jacques, were filed in the Town of Wellesley Town Clerk's Office, and thereafter forwarded to the Zoning Board of Appeals Office.

On June 5, 2018, a Motion to Remand to the Zoning Board of Appeals was allowed by the Trial Court of Massachusetts, Norfolk County Superior Court, Docket Number: 1882CV00407.

#### Decision

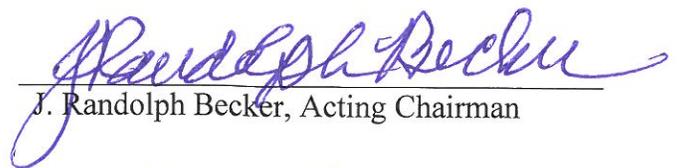
This Authority has made a careful study of the materials submitted and the information presented at the hearing.

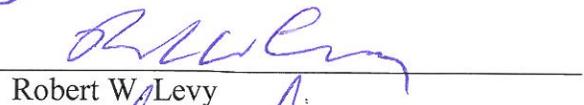
The Board voted unanimously to allow the Petitioner to withdraw the request for a special permit without prejudice.

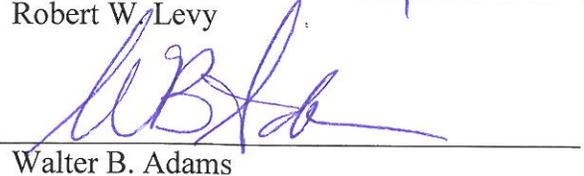
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APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

  
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J. Randolph Becker, Acting Chairman

  
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Robert W. Levy

  
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Walter B. Adams

cc: Planning Board  
Inspector of Buildings  
lrm