



City of Waltham
COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

LEGAL NOTICE

DATE FILED: June 10, 2020

THE ZONING BOARD OF APPEALS OF THE CITY OF WALTHAM WILL HOLD A PUBLIC HEARING IN THE GOVERNMENT CENTER, 119 SCHOOL STREET, WALTHAM, MA ON August 4, 2020 AT 7:00 P.M. ON THE FOLLOWING:

Case #: 2020-15. **Co-Petitioner:** Omni Navitas Holdings, LLC. **Co-Petitioner/ Owner:** Gann Academy – The New Jewish High School of Greater Boston, Inc., a Massachusetts Educational Corporation. **Nature of Application/ Petition:** Appeal from Decision of Building Inspector under G.L. c. 40A, § 3, ¶¶ 2 and 9 and Modification of Case No. 01-38 (decided pursuant to G.L. c. 40A, § 3, ¶ 2). **Subject Matter:** Gann Academy – The New Jewish High School of Greater Boston, Inc. (Gann Academy) is a nonprofit educational corporation organized under Chapter 180 of the Massachusetts General Laws. The Locus is a large (+ 865,101 sq. ft., + 19.86 acres) parcel of land known and numbered as 333 Forest Street, which is the campus of Gann Academy. The Petitioners proposes to construct, use, and maintain four ground based solar canopies over portions of the existing surface parking lot, as well as a fifth ground based solar canopy to the east of the existing building. **Location and Zoning District:** 333 Forest Street is located in a Conservation / Recreation Zoning District. **Provisions of Zoning Ordinance Involved:** § 4.11, § 4.12(2), § 4.242, § 5.47, and § 7.2. **Specific Relief Sought:**

THE DOVER AMENDMENT - M.G.L. c. 40A, § 3, ¶¶ 2 and 9:

¶ 2: No zoning ordinance or by-law shall regulate or restrict... nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by... a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

¶ 9: No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety, or welfare.

Height – Solar Canopies:

§ 4.11 of the Zoning Ordinance states that the maximum height allowed in the Conservation-Recreation Zoning District is 20 feet. The proposed solar canopy structures, which are angled towards the sun, will be approximately 13 feet from the existing grade at their lowest point, approximately 21 feet in height from the existing grade at their highest

point, and cannot be decreased in height in order to provide appropriate clearance for emergency vehicles.

The Petitioners contend that the height limitation of the Conservation-Recreation Zoning District as applied to Gann Academy and the proposed solar canopy structures is not reasonable under M.G.L. c. 40A, § 3, ¶¶ 2 and 9, in that such a limitation is not "... necessary to protect the public health, safety or welfare."

Therefore, the Petitioners respectfully requests that the Board of Appeals make a determination and declare that the maximum 20 foot height in the Conservation-Recreation Zoning District is unreasonable as applied to the proposed solar canopy structures, and to set such provision of the Zoning Ordinance aside pursuant to G.L. c. 40A, § 3, ¶¶ 2 and 9.

Stories – Solar Canopies:

§ 4.11 states that the one story is allowed in the Conservation-Recreation Zoning District. § 2.340 provides in pertinent part that "where a building is not divided into stories a "story" shall be considered up to 15 feet in height." Here, the proposed solar canopy structures will be approximately 21 feet in height from the existing grade at their highest point and are thus considered to be two story structures pursuant to the Zoning Ordinance.

The Petitioners contend that the one story limitation as applied to Gann Academy and the proposed solar canopy structures is not reasonable under M.G.L. c. 40A, § 3, ¶¶ 2 and 9, in that such a limitation is not "... necessary to protect the public health, safety or welfare."

Therefore, the Petitioners respectfully requests that the Board of Appeals make a determination and declare that the one story limitation in the Conservation-Recreation Zoning District is unreasonable as applied to the proposed solar canopy structures, and to set such provision of the Zoning Ordinance aside pursuant to G.L. c. 40A, § 3, ¶¶ 2 and 9.

Lot Coverage:

§ 4.11 states that the maximum lot coverage allowed in the Conservation-Recreation Zoning District is 5%. § 4.12(2) states that lot coverage shall include all principal and accessory buildings on a lot. Here the existing lot coverage is 7.3% pursuant to the Decision in ZBA Case No. 01-38 (which was decided pursuant to G.L. c. 40A, § 3, ¶ 2).

The proposed solar canopy structures will lead to the lot coverage increasing to 12.1%.

The Petitioners contend that the lot coverage limitation as applied to Gann Academy and the proposed solar canopy structures is not reasonable under M.G.L. c. 40A, § 3, ¶¶ 2 and 9, in that such a limitation is not "... necessary to protect the public health, safety or welfare."

Therefore, the Petitioners respectfully request that the Board of Appeals make a determination and declare that both the 5% maximum lot coverage in the Conservation-Recreation Zoning District per the Zoning Ordinance and the 7.3% maximum lot coverage per the Decision in ZBA Case No. 01-38 are unreasonable, and to set such provision of the Zoning Ordinance aside pursuant to G.L. c. 40A, § 3, ¶¶ 2 and 9.

Rear Yard Setback – Fifth Solar Canopy:

§ 4.242 states that in the Conservation-Recreation Zoning District, detached accessory structures may be erected in the side or rear yard area and shall be subject to the same front,

side, and rear yard requirements as the principal building. Here the proposed “fifth” solar canopy will be setback approximately 60.9 feet from the rear lot line (which is land owned by Bentley University).

The Petitioners contend this Conservation-Recreation rear yard setback requirement as applied to this “fifth” proposed solar canopy structure is not reasonable under M.G.L. c. 40A, § 3, ¶¶ 2 and 9, in that such a large setback (100 feet) for a solar canopy structure is not “... necessary to protect the public health, safety or welfare.”

Therefore, the Petitioners respectfully request that the Board of Appeals make a determination and declare that the 100 foot rear yard setback requirement in the Conservation-Recreation Zoning District is unreasonable as applied to this “fifth” solar canopy structure, and to set such provision of the Zoning Ordinance aside pursuant to G.L. c. 40A, § 3, ¶¶ 2 and 9.

Compact Parking:

The existing school requires 217 parking spaces pursuant to the Decision in ZBA Case No. 01-38. However, as part of the installation of the four solar canopy structures over portions of the existing parking lot, the Petitioners propose to re-design the parking lot to accommodate the proposed solar canopy structures. In doing so, the Petitioners propose to re-stripe 80 of the 217 parking spaces to compact parking, a total of 36.9% of the total parking on site.

§ 5.47 allows up to 25% of all parking spaces to be designed for compact vehicles. But, the Board of Appeals may allow up to 50% of the parking spaces to be compact by Special Permit.

The Petitioners contend that the 25% limitation on compact parking spaces as applied to Gann Academy and the proposed solar canopy structures over portions of the surface parking lot is not reasonable under M.G.L. c. 40A, § 3, ¶¶ 2 and 9, in that such a limitation is not “... necessary to protect the public health, safety or welfare.”

Therefore, the Petitioners respectfully requests that the Board of Appeals make a determination that the proposed compact parking spaces are necessary to accommodate the proposed solar canopies over portions of the existing parking lot, and declare that the 25% limitation on compact parking spaces is unreasonable, and to set such provision of the Zoning Ordinance aside pursuant to G.L. c. 40A, § 3, ¶¶ 2 and 9.

Modification of Case No. 00-8:

§ 7.2 allows the Zoning Board of Appeals to amend previous Decisions.

Open Space:

§ 4.11 states that the minimum open space in the Conservation-Recreation Zoning District is 10% and here the existing open space is 73% pursuant to the Decision in ZBA Case No. 01-38 (which was decided pursuant to G.L. c. 40A, § 3, ¶ 2). The proposed solar canopies will lead to the open space decreasing to 71.6%, still significantly more than the 10% requirement in the Zoning District.

Parking Configuration:

The construction, use, and maintenance of the proposed solar canopy structures will necessitate the reconfiguration of the existing surface parking lot, which will differ from the Plans approved in Case No. 01-38. Furthermore, the proposed solar canopy structures were not contemplated in ZBA Case No. 01-38 and thus do not appear of the approved Plans in that Case.

Accordingly, the Petitioner seeks to modify the Decision in Case No. 01-38 by substituting the Plans in that Case with the Plans filed in the present Case and making the conditions consistent with the zoning relief outlined above to allow the Petitioner to construct, use, and maintain four ground based solar canopies over portions of the existing surface parking lot, as well as a fifth ground based solar canopy to the east of the existing building, along with the associated reconfiguration and re-striping of the existing parking lot, all as shown on the Plans filed in this Case.

Further information and plans concerning this case may be viewed at the Zoning Board of Appeals' Office, 119 School Street, Waltham, Massachusetts 02451; Hours: Monday - Friday 8:30-4:30. **MEMBERS:** Chair Barbara Rando, Michael Cotton, Mark Hickernell, John Sergi, Glenna Gelineau. **ASSOCIATE MEMBERS:** Edward McCarthy, Oscar LeBlanc, Marc Rudnick, Michael Squillante, Sarah Hankins.

- NOTE: if Stay-at-home order is still in effect at time of hearing the Board may meet remotely through Zoom. Please check city website for updates <https://www.city.waltham.ma.us/>