

CITY OF WALTHAM
ZONING BOARD OF APPEALS

May 7, 2013

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, May 7, 2013 in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA. In attendance were Chair Barbara Rando and members Glenna Gelineau, Mark Hickernell, John Sergi and Gordon LaSane.

The chair called the meeting to order at 7:00 P.M.

Mrs. Rando: Tonight we have one continued case before us; Case No. 2013-04, SPS Main Street LLC, 1265 Main Street, its Polaroid land and it is for a sign variance.

The first action this evening is for a motion to accept the minutes of the meeting of April 9, 2013.

On motion of Mr. Sergi. seconded by Mr. LaSane, the board voted to accept the minutes of April 9, 2013.

Will the clerk please read the Petition in Case 2013-04?

The clerk then read the petition of SPC Main Street LLC in an application for a sign variance. The locus consists of one parcel known herein at 1265 Main Parcel owned by the Petitioner and approximately 96-54 acres. The 1265 Main Parcel is entirely within the Commercial Zoning District and located on the north side of Main Street. The site was previously occupied by Polaroid Corporation, and consisted of eight buildings totaling

approximately 862,000 s.f. and 1,489 parking spaces. Phase 1, which is already permitted, is currently under construction and consists of demolishing 7 of the 8 existing buildings. Under Phase 1, the one remaining building will be renovated as an office use and several new buildings of mixed retail use, totaling 280,000 square feet will be constructed.

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

Philip B. McCourt, Jr., Esquire, 15 Church Street, Waltham, the Petitioner's representative came forward.

Mr. McCourt: I am going to pass out which we actually only got to file late this afternoon because of the input of several people who are helping us work on this and because of final input from some abutters and things that we worked with, but a proposed re-drafted decision which contains some of the items we discussed before. (Mr. McCourt gave each member a Proposed Decision.

Mrs. Rando: I have read the past decision. Can you fill us in to what is added?

Mr. McCourt: Well, I can. There's nothing in the basic principal of the decision which has changed other than we reformatted it in a more traditional style of reciting at least the petition as the cover page, if you will, of the decision and then having the proposed facts which are essentially the same facts that were in before. When I say essentially, it's virtually just a reformatted edition and then further details of what we are asking for, not only what Mr. Hickernell just read but also the differences in which we are asking, that's number 5, and obviously I can read this if you would like.

Then on the Proposed Decision which sets out in bold type the circumstances and provisions of the Zoning Ordinance, rather the law that we have to satisfy and meet in relation to affecting the land and circumstances in relation to the property. A literal enforcement being a hardship. All of these items here were items that were contained within the original decision as submitted. Desirable Relief May be Granted Without Detriment to the Public Good and

obviously the Grant of the Variance Wouldn't Nullify or Substantially Derogate from the intent and purpose of the Zone. We can either redo these or reread them.

However, this is where the substantial, if you, reconfiguration or changes based on what we had felt that the board had looked at and discussed. Obviously everything would be commenced in accordance with the General Laws, 40A, Section 10 and the plans we specifically referenced in here, the main plan which has five sheets; the variance request for signage on the Polaroid Campus that included five sheets. Then we specifically also added a reference which was not previously referenced, the two conceptual sign plans that we made as attachments and set out here, one being titled: "1265 Main Street, Waltham, MA" a Ground Sign Program that conceptually showed the signs of our ground sign program, that plan being dated February 14, 2013 and then the second one of that which was a program showing the wall signs proposed.

Then, come if you will the conditions. In this case we want to have the total of 21,126 square feet of signage in order to be able to put proper signage in appropriate places throughout the premises. And then there would be these exceptions which perhaps last time we didn't read but we could read. (Mr. McCourt read #3 and #4 of the Proposed Decision conditions.)

I would like to ask Rick Vallarelli to speak to you because there was also a specific request and suggestion that we meet with various neighbors which Rick Vallarelli and Jim Lamp did do, and I think that you can see by the attendance this evening it seemed to work out very well and we tried to accommodate the suggestions of those involved

Rick Vallarelli, Project Manager for the project at 1265 Main: After our initial meeting, we reached out the week after to abutting properties and I actually hand delivered some flyers to have a neighborhood meeting at our site office and we did that. I think it was very successful. I think most people just had a lot of questions and we comforted them in what we are doing. And I think that the primary concern handled by us was lowering the light poles. I did bring a copy of the flyer that was handed out to each residence and the people that did attend. (Mr. Vallarelli handed out a flyer to each member.) So, like I said, I think overall we feel very confident that we have addressed all the neighbors concerns.

Mrs. Rando: I made a site view there today and saw that you had already started some of the plantings there and I did meet with some of the neighbors and they seemed very pleased.

Mr. Vallarelli: That's great news.

Mrs. Rando: I spoke to a Linda, do you know Linda?

Mr. Vallarelli: Yes.

Mrs. Rando: And she said that she was pleased that you were putting up a fence and you are going to extend it for them and you are putting up trees and rhododendrons and that you told them that you would do a spring clean up of their yard after everything is done which she was very pleased. I think all the neighbors were pleased.

Mr. Vallarelli: Thank you Madam Chair. We aim to please.

Mrs. Rando: Are there any questions from other board members? Has anyone spoken on the lights? Any neighbors came that night that had a problem with the lighting?

Mr. Vallarelli: No after we went through what the sign program is and the lighting and sort of the foot candles of the area, everybody was very comfortable.

Mrs. Rando: And the lighting is going to be down.

Mr. Vallarelli: Right. Our lights anyway, they are very soft. It's LED lighting and our fixtures are down as opposed to something that glows up. So I think that everybody found it very comforting to know.

Mrs. Rando: So tell me how far a distance would you be able to see those lights from?

Mr. Vallarelli: The closest property line of the foot candles, they are zero. So distance wise, I don't know but I can tell you they don't shine onto anybody's dwelling.

Mrs. Rando: Are there any other questions?

(There were none.)

Mrs. Rando: Attorney McCourt, on Page 3, letter (c), you said that 46 ground signs were proposed. Where here on this petition is the 46? I thought I saw 30, but maybe I'm mistaken.

Mr. McCourt: I think the 30 are the secondary signs, that is, you can have a sign on each side of the building. So the 46 are the actual wall signs, I mean the ground signs. And then the 30 are secondary signs on the building.

Mrs. Rando: And do you have 46 ground signs in this petition?

Mr. McCourt: I believe that we do. So it's the number of square feet but we are happy to limit it to 46 and I think the decision says that. But it was asked for under the variance from the certain provision which is, oh there it is, on the second page of the decision but also on the second to last item.

Mrs. Rando: Oh, I see it. Thank you very much. All right, does anyone want to take time to read through the Proposed Findings of Fact?

Mr. LaSane: Is this proposed Findings of Fact the same one that came over electronically today?

Mr. McCourt: It is.

Mr. LaSane: I read it.

Mrs. Rando: Anyone else need time?

Mr. Sergi: I'm okay with it Madam Chair.

Mr. Hickernell: I read it.

Ms. Gelineau: I read it.

Mrs. Rando: Do I have a motion?

Mr. Sergi: I make a motion that we waive the reading for the Proposed Findings of Fact.

Ms. Gelineau seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: All right, and the decision?

Mr. Sergi: Similarly, Madam Chair, I make a motion that we waive the reading of the Proposed Decision. Mr. LaSane seconded the motion.

Mr. Hickernell: I do have some issues with the Proposed Decision. I don't mind waiving the reading of it. The board voted to waive the reading of the Proposed Decision.

Mrs. Rando: Mr. Hickernell, you have the floor.

Mr. Hickernell: Mr. McCourt, If you recall last time I had a problem with Condition #3 which exempts you from coming back before us if you changed anything on the lot. That hasn't changed and I still have a problem with that. (Mr. Hickernell read Condition #3.) That would be quite extraordinary to grant variances and then exempt you from coming before us to talk about what changed

Mr. McCourt: Remember, we are not talking about changing the sign variances. That is say we have to move the buildings on the lot. First of all, let me say, Phase 1 by MEPA waive or approval can only comprise of 280,000 square feet. But whether that building goes over to where that chair is or we move it a little bit this way or that, that's what we are attempting to eliminate us from coming back for because the sign variances themselves have little or nothing to do with actually the positioning of the buildings. They are going to be in the general location as shown. So we just didn't, you know, if for some reason we moved the building twenty feet, I'm just taking that out of the air, we didn't want to have to come back because it isn't totally finalized or permitted on the ground. For instance, currently we are in front of the Board of Appeals for two special permits, one for Starbucks and one for a bank that would be up there with a drive through. So as part of that process and in some discussion in relation to the parking lot and configuration of the drive through and everything there have been some suggestions made there and we have already moved a building 27 feet so they didn't conflict in coming out around. So that's all we are trying to avoid to come back on items such as that. We are not looking to get beyond Phase 1. We are not looking to get beyond the 280,000 sq. ft. that have been approved.

Mr. Hickernell: Yes, but I don't think that this is what it says and I don't think that that in any case is supportable whether these variances are granted or not, I mean, presumably granted but granted on the basis of the plans you submit. I mean, obviously I don't really care if you move the building 20 feet over but this has altered the structures, the parking. I mean there's no limitation on that.

Mr. McCourt: That's just the way of explaining when you say alter the building. We have to be within the building code. But if we needed to add a different portion here or move the building that's all that's intended to comply. I mean we would be happy to have other language; we just would not want to come back and be asking each time we did it. For instance if we knew where every sign and every building was to be placed you know and could wait out maybe a year or beyond that to do that before we could put up any signage, you know, we'd do that. But in this particular case we are really only asking for the signs in the certain amount of square footage based on the deficiencies unintended within the sign code because it didn't envision this sort of

presentation and the fact that we only have 912 feet of frontage on Main Street which is under the building department's consideration our frontage, and therefore the amount of square footage of signs is premised on six times that figure, where if it was out along 128 we would still need some variances, but as far as the gross square footage we probably wouldn't need it but it's a restricted highway and we can't use that as our frontage.

Mr. Hickernell: I think that somebody who owns a single family house has to come back before us every time something changes in their petition and I am not sure why it would be different for a large development. I am sympathetic to wanting to get forward with this project. I would be open to language that covers that, but this gives you carte blanche that nobody else has in the city but I couldn't possibly support that.

Mr. McCourt: Well most variances they are site specific and that's why we eliminated and only put it to the signs, right? But they are adding a certain amount so that there's a side yard variance or a height variance or something like that. And this case here is purely for signage that goes on buildings that have to conform to the Rules and Regulations of the zoning ordinance. So it's not intended to fix the building. It's not site plan approval in that setting. It's only for the signs themselves and that's why it was done in this manner as it had been done by a previous petitioner who's going to build a considerable more amount of buildings up at, um ----

Mr. Sergi: Can I make a suggestion that maybe once the definitive plans are known for the building that you just come back for a final quick review here to show that there is no impact on the sign variances that were granted. Maybe that might be the way to do it? That shouldn't take long.

Mr. McCourt: We could agree I think to that.

Mr. Vallarelli: You know, if I may, the challenge here is you know you have a decent amount of square footage and you don't have tenants signed yet in some instances and they have certain requirements, and we don't know the mixes yet and we don't know the buildings because of that. The challenge is how do you deal with that? We thought we had dealt with this by

eliminating just the Phase 1, but if somebody comes in and they want a little bump out so we have to take out a parking space then that means we would have to come back here but it would be often. I wouldn't know how to deal with it and that is the challenge. That's why we limited it to just the 280,000 square feet to deal with that.

Mr. Hickernell: There's got to be a way to incorporate that intention into this decision and maybe you did and I just don't not quite understand it properly but the signage obviously has got a lot of leeway under this decision as it's written to change the size and location of all the different signs but if you alter the buildings, and this is not your plan, but this is going to be in our decision on file until somebody changes it. To alter the structures, this could work in twenty years very different or it could work in five years if somebody else goes forward with the project, I have no idea, to a very thing than what we approved and the signage is based on what we are approving here and what we see. I mean if you thought that we are going to be able to tie in these signs to something concrete here and if you can just change all the buildings without coming back to see us, granted it's a big lot, you can do other stuff by right but its tied to the variance still. I just don't see how we are going to keep the oversight that the zoning board's got to have over potential changes down the road with this decision with this language.

Mr. McCourt: The signs, or at least the square footage of signs and the amount of ground signs and secondary signs, we couldn't change. The square footage, you know Market Basket is going there so they have a certain square footage. We know that Jake and Joe's is going to go there and Bonefish is supposed to go there. So they all have little different quirks of types of signage. But if they change a sign or something as Rick just said, you might have to alter it.

Mr. LaSane: Let me throw a concept out. If we were to grant this, within the grant of this, you would then based on the tenancy and the configuration dictate to tenants what would be allowable. Right? I think some language like that would go to narrow the gap. Your tenants are being held to what's being granted by the ZBA and nothing more could be done for potential tenants if they came and demanded some more square footage of signs.

Jim Lamp, a member of the LLC and also Civil Engineer: I fully understand what you

are saying I'm kind of struggling with how to try to address it and I'm trying to think. I think you're right (pointing to Mr. LaSane). If we have a tenant that comes in and they say by this we are only allowed 400 square feet to pick a number but we want 500. We'd say, well, we can try. We can come back before the ZBA and see if we can adjust it.

Mr. LaSane: Or you can say no.

Mr. Lamp: Or we have to say no. But I'm wondering, and ultimately this comes down to code enforcement. Correct? When all this is done somebody is going to have to look at this and say, you know are there 21,126 square feet or more? So, maybe what we could do is get this to code enforcement, make sure that when we do our architecture and our building permit that the signage is on there and we show the building department that we have met the requirements of this variance and that could be the check. Because at some point we are all going to look at it. I'm not going to even know if there is twenty one hundred, one hundred twenty six square feet on all these buildings 280,000 square feet so there's got to be a check somewhere. I am just wondering if there's a way that we could tie it to building permits and code enforcements because somebody is going to have to look at it and we could have it on the architectural plans if this is the square footage, this is how it meets the variance on each application as we come in. I think what Phil was saying is that we have these ground signs that we are trying show people how to way find around it and if something happens and we need to move it 400 feet somewhere else because we think that that's a better location, I'm not sure if the board really wants to spend the time and look at the relocation of a way finding map on the site as long as they know there's three of them as a part of this application. But I'm thinking that maybe the right way to do it is to have the building department be the code enforcement and then we would on each plan, you know, when we submit the Market Basket Plans for approval by the building department to get a building permit, we say here's the square footage. Here's the chart. This is what they are allowed. This is what we are proposing and they could be the ones to say, yup, you're good or say. No, you've got to go back to ZBA, or adjust your plans, please. That's a little long winded. But, you know, I fully understand it. I mean it's a lot of signage and it's a big variance to give but it's one of those ones that I know there would be the instance where we would be coming back for every shift of the building or jig or jog that we have to change. You know, that's my

suggestion. Then what we could do, maybe if we want, we could send into the board that same signage calc as each building goes just so you would have a record as we go forward. Does that make sense?

Mr. Hickernell: "The petitioner shall supply the board with dated wall signage packages as each tenant building permit is approved."

Mr. Lamp: That's the way it's going to happen, right, Rick? We are going to agree to a certain signage. We are going to have to check it to make sure it agrees to this but then it's going to go to the code enforcement and building department for approval and issuance of a building permit.

Mr. Hickernell: I have two suggestions for additional conditions.

The first one which we just discussed:

5. The Petitioner shall supply the board with updated wall signage packages as each building permit is approved with a summary of how it complies with this decision.

And a further one just to make absolutely clear that this is just for the first Phase development:

6. Nothing herein shall be construed to relieve the petitioner of its duty to comply with the zoning ordinance except as expressly set forth herein.

Mr. Lamp: Basically the issuance of this doesn't give us the right to violate any other zoning code.

Mrs. Rando: Any other questions or changes? Hearing none, I am ready for a motion.


Mr. Sergi: I will make a motion that the Proposed Findings of Fact become the board's

Findings of Fact. Ms. Gelineau seconded the motion and the roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mrs. Rando: Do I have a motion on the decision as amended?

Mr. Sergi: Madam Chair, I will make a motion that the Proposed Decision, as amended, becomes the Board's decision. Mr. LaSane seconded the motion and the roll being called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

There being no further business, on motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adjourn at 7:40 P.M.


Barbara Rando, Chair
May 14, 2013