

CITY OF WALTHAM
ZONING BOARD OF APPEALS

July 9, 2013

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, July 9, 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, Gordon LaSane, Marc Rudnick and Michael Squillante.

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

Mrs. Rando: Tonight we have two new cases before us, Case No. 2013-12, George & Melissa Fox, 23 Bancroft Street and Case No. 2013-13, Sign Design Inc., 450 Totten Pond Road.

The first action this evening is for a motion to accept the minutes of June 18th.

On motion of Ms. Gelineau, seconded by Mr. LaSane, the board approved the minutes of June 18, 2013.

Will the clerk please read the Petition in Case 2013-12?

The clerk then read the petition of George and Melissa Fox in an application for a variance. The locus consists of a single parcel of land with an existing single family home thereon at 23 Bancroft Street. The petitioners propose to demolish the existing single family residence and to construct, use and maintain a new single family residence thereon. Location and Zoning District: 23 Bancroft Street, Residence A-3 Zoning District.

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

Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham came forward and introduced Melissa and George Fox and Melissa's mother, Mrs. LeBlanc from Berkley Street which is right around the corner from Bancroft Street.

Mr. Connors: I had prepared a brief for the members of the board. I did submit one electronically.

(Mr. Connors gave each member a copy of his brief. He then read his brief into the record. He also went over the plan of the locus, photos of the property and an artistic rendering of the proposed project.)

I did ask George and Melissa to go around to the neighborhood and most of the neighbors signed the petition supporting this request.

(Mr. Connors submitted a copy of the petition to the Chair.)

Mrs. Rando: I have a couple of questions. First of all on the hardship, I don't see the lot as a hardship, what you put down that it is wide and narrow. I think that if you had mentioned the cost, you mentioned when you were speaking about the garage, it would be an added expense. I wish that was in there.

Mr. Connors: Well I mean, I think that there's no question if they had to build a separate stand alone garage that's going to be an added expense. There's going to be extra additional excavation.

Mrs. Rando: Well, that's the hardship, just the lot the way it is.

Mr. Connors: I can understand your point and that's why I tried to point out, I mean, if you look in this particular neighborhood (referring to the plan) this is really not the only one that

seems to narrow as you go from the front to the back. Most of these other lots are more than 10,000 square feet and the width of the lots doesn't narrow as you move from the front to the back. So I looked over here, I measured from side to side; it's about eighty two feet at the rear of this particular lot. So his goes down to seventy three. So, I'm not going to say that it's the biggest hardship I ever seen, but it is a hardship because the locus does narrow as you go from front to back.

Mrs. Rando: And so it isn't 35.

Mr. Connors: Thirty five does but it starts off a heck of a lot wider than the eighty feet, I believe.

Mrs. Rando: And thirty five has a garage in the back?

Mr. Connors: It has a detached garage in the back. So, if you are driving down the neighborhood, you will see that you either have a detached garage. There are some split levels that are probably 1960 construction. We have some split levels with some garages underneath. But that's just not what they are building today.

Mrs. Rando: I would like to see you add that to your hardship. The cost of the garage because I don't think that you have any hardship as it stands now. That is my opinion. Also, I am very impressed that you have the neighbors on either side and behind that are abutters. That was very, very important to me. You certainly have the whole neighborhood, don't you in favor.

Mr. LaSane: Two pages.

Mrs. Rando: Yes two pages. Very good. Are there any other questions?

Ms. Gelineau: I do agree with you. I do think the hardship all be itself. It's a subtle hardship, but it exists. But I was just curious, if it weren't, you say the differential is sixteen feet by the time you got from the front to the back?

Mr. Connors: I think it's seven. Oh, all the way in the back, yes.

Mrs. Gelineau: So let's say that it did go as a perfect rectangle. Would you need the variance?

Mr. Squillante: I don't think so.

Ms. Gelineau: So I am thoroughly inclined to agree with you that that's a hardship. It looks visually so subtle but in reality it does exist. Visually it is subtle, but it does impact whatever you decide to do.

Mr. Connors: If this lot was created a month earlier, then it might have been subject to the small lot opinion which we would get an eleven side yard on one and five on the other.

Ms. Gelineau: But isn't there some language in the old lot opinion that if a lot narrows that you can reduce that side yard?

Mr. Connors: There is on the small lot opinion but we don't qualify.

Ms. Gelineau: I know. But I'm just saying that it does exist.

Mr. Connors: I think the frontage can be reduced. If it's less than a hundred then you can reduce six inches to your rear yard.

Ms. Gelineau: Just to address this type of situation. Again, visually it's so subtle; but it's a deep lot so it's more than you see on paper.

Mr. Rudnick: You don't meet the side yard restrictions of the center of the house either. So the narrowing of the lot doesn't seem to affect why your house is too wide to meet the side yard restrictions at the front of the house. I do understand the issue about the narrowing of the lot

and I agree that it represents a hardship. Since we do look at that in other cases as due addressable because of the reduction, but let me back up a second. The existing house was the original house when the lot was laid out, that was the house that was built?

Mr. Connors: The house wasn't actually built. It must have stood vacant for ten years.

Mr. Rudnick: So it was an empty lot?

Mr. Connors: Yes.

Mr. Rudnick: So when that house was built, the current zoning requirements were there. So the house was built nonconforming.

Mr. Connors: Correct.

Mr. Rudnick: With no variances or anything at that point, right? They just slipped it by because that house doesn't meet the side yard requirements. On one side it's deficient.

Mr. Connors: Right.

Mr. Rudnick: Not knowing the floor plan of the house, it seems obvious to me that you're creating a five foot bump out on the westerly side of the house without which you meet the requirement which doesn't seem to relate in any way to the need for the garage or the narrowing or any of the other issues there.

You also said in your brief that you could consider a longer narrower house but it wasn't a reasonable alternate. What was unreasonable about the lot being longer, deeper toward the back of the lot and narrower?

Mr. Connors: If its not there, they would have to put the garage in the back so you would have to drive around the back so you would be running the driveway up the side yard to reach

the back.

Mr. Rudnick: It might not be desirable, I agree. Why is it unreasonable? Other people are doing it in the neighborhood. Most of the houses have detached garages in the back yard. I agree it's not desirable. I am just trying to understand why you don't think it's reasonable. You have a house the same size and just be narrower and meet all the requirements and meet the zoning. Give me something. Tell me why you can't do that?

Mr. Connors: I think you could do that. But I think what they are trying to do is they are trying to utilize the front of the home for access and so they don't have to lose ground space, green space instead of creating a driveway that goes to the back of the house. Also they want to utilize above the proposed garage to create a bedroom.

Mr. Rudnick: You seem to be saying it would look nicer to the neighbors to have ---

Mr. Connors: Well that's true too. I mean aesthetically it shows - - -

Mr. Rudnick: The landscaping better than a driveway. That makes sense to me.

Mr. Rudnick: A two car garage?

Mr. Connors: Yes.

Mr. Rudnick: How big is your family?

Mr. Connors: They have three children now.

Mrs. Rando: Is there anyone in the audience that is in favor of this petition?

(Four people raised their hands in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none, is there anyone seeking information? Seeing none, you may continue.

Mr. Connors: I submitted a Proposed Findings of fact electronically.

Mrs. Rando: Would anyone like to make a motion to waive the reading of the Findings of Fact?

(Mr. Connors cited a typo on the last page.)

Mr. Connors: On page 4 of the Findings of Fact, I stated the lot narrows from 80 feet and went to 6.72 feet. It's 67.20.

Mrs. Rando: If everyone has read it, I'll entertain a motion to waive the reading.

On motion of Ms. Gelineau, seconded by Mr. LaSane, the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: You can continue with your Proposed Decision. Do I have a motion to waive the reading?

On motion of Ms. Gelineau, seconded by Mr. LaSane, the board voted to waive the reading of the Proposed Decision.

Mrs. Rando: I would like to see you add something about the cost of the garage in the back that you mentioned it would cost more, into your hardship.

All right. I am ready to hear a motion on the Findings of Fact.

On motion of Ms. Gelineau, seconded by Mr. LaSane, the board voted to accept the

Proposed Findings of fact, as amended, to be the Findings of Fact of the board.

The roll being called: Mr. Squillante, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

Mrs. Rando: On the decision?

Mr. Connors: On page two of the decision, I do state on paragraph four that "A new single family residence which conforms to the required setbacks would require the petitioners to construct deeper into the rear yard and/or alternatively to construct the garage behind the proposed home, (and I could just put a period there or a comma there and add, or alternatively construct a detached garage which is an additional financial hardship.

All right, I am ready to entertain a motion on the Decision as amended.

On motion of Ms. Gelineau, seconded by Mr. Squillante, the board voted to accept the Proposed Decision, as amended, and grant the variance in Case No. 2013-12.

The roll being called: Mr. Squillante, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

Mrs. Rando: Would the clerk please read the petition in Case No. 2013-13?

The clerk then read the petition in Case No, 2013-13, SignDesign, Inc. in an application for Sign Variance. The Petitioners propose to construct a sign approximately 174.4 square feet for the Hilton Garden Inn. Location and Zoning District: 450 Totten Pond Road, Limited Commercial Zoning District.

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

Robert Gotnick, 60 Adams Street, Milton, MA, the Petitioners Representative came

forward. Mr. Gotnick introduced the Petitioner, Scott Clement.

Mr. Gotnick: I represent the owner in this matter. The ownership is based in Atlanta Georgia. They recently purchased the 148 room, six stories, Hilton Garden Inn on Totten Pond Road. After purchasing the property they embarked on a significant renovation capital expenditure to upgrade the property, renovated all the guest rooms, renovated the lobby, the pool and all the common space on the ground floor to meet the current Hilton Worldwide Standards for the property. In addition to the interior renovations and the exterior work that included installing a handicapped ramp, redoing the parking areas, redoing the landscaping, painting the building and replacing some exterior lighting, the Hilton franchise agreement requires them to install an exterior sign on the rooftop. The sign meets the requirements of the Hilton sign guidelines. The original proposal was actually submitted to the city that had a sign that looked like this (referring to a plan that he held up for the board to see) which was the original submittal for the permit which was denied based on the size which facilitated the need to come in front of the board.

Since that design was submitted the sign design was actually changed slightly with the new Hilton Garden name logo which includes this four petaled flower type thing which is part of their new branding initiative. The previous sign design didn't have that on there. In any event, we have shrunk the sign down as much as possible and the hundred square foot allowable size per the zoning doesn't provide a sign that is large enough in the opinion of our sign consultants as well as Hilton to provide the visibility of the sign from the street. The whole purpose of the sign is to basically brand the property. Obviously the hotel business caters to people from outside of the area that are driving to and trying to find their final destinations for the evening and having a sign of a proper size in order to provide that visibility from the street below. This property sits back off of Totten Pond Road, a hundred or a hundred twenty feet. It's a shared driveway with several office buildings in the back. Currently the only sign that is there is a post sign that is out at the driveway on Totten Pond Road and this would provide better illuminated signage and visibility for the property from the intersection of all the exit ramps off of 128 into that area. As you know there are several other hotel properties in the vicinity on both sides of 128 and it can be confusing for travelers to try to find a hotel that they are looking for.

A lot of the hotels look similar and part of the differentiator is the exterior signage. And for that reason, we have submitted a request for a variance to build a sign that we believe would provide the proper visibility. We shrunk it down to the point where we feel it provides the visibility and gets us as close as we can to the requirement of a hundred square feet.

Mrs. Rando: Tell me, are any of the other signs on the hotels in that area, are any of them as large as that?

Mr. Gotnick: I don't have information on private property signs. I mean all I could do is visually drive around like anyone could to see how big they are. It's hard to tell. I mean seventy four square feet. In the way that the signs are actually measured, its' basically boxing out the entire signs. So there's portions of the signs depending on what type of hotel it is and what their branding design looks like in the way the letters are constructed. There's a lot of blank space in that rectangle so the rectangle that gets created around this particular sign is a hundred and seventy four square feet and that's not all letters and branded logo. It's a whole bunch of blank space which is basically sizeable.

Mrs. Rando: And you're going to illuminate it?

Mr. Gotnick: It's interior illumination similar to any ----

Mrs. Rando: And what are the hours?

Mr. Gotnick: Dusk to dawn.

Mrs. Rando: Are there any houses in that area?

Mr. Gotnick: There are not. This property faces Totten Pond Road, Directly across the street is the restaurant, "The Naked Fish", The Home Suites and behind that there are the Holiday Inn properties and just to the left of that is the Courtyard by Marriott.

Mrs. Rando: I am wondering if you could see it from Winter Street.

Ms. Gelineau: There Vegetation. I don't think you could see it

Mr. Gotnick: I don't think you would. I think that the properties on the other side of Totten Pond, you know, the grade goes way up. The Marriott Courtyard is six stories and we are down grading it to that probably a 54 foot grade distance. So I don't know if there would be any visibility there. Even from Totten Pond Road, the whole bottom half of the building is blocked by the office building in the front.

Mr. Squillante: I assume you shrunk it down as much as you could. What was it before the original proposal?

Mr. Gotnick: The original proposal was, I think, 210 which is what we submitted to the building department. That's not what you are looking at there. What we submitted to the building department had the old logo which was basically just the letters. It didn't have that four petal fleur that they came up with as a branding option. So that when we received the rejection knowing that a hundred square feet was kind of the target we worked with the designer to try and figure out how could we get this down either to, well we would have liked to have just met zoning and then pull the permit and install the sign but clearly that wasn't an option. This renovation project ended back in February so we would have liked to have had the sign installed at the conclusion of the project but that obviously didn't happen. It took a while to get in front of the board. So through that process we worked with the designer to shrink down to a point and we said get it as close as you can with a hundred square feet but it still provided us with the ability to benefit from have a sign there. If we went to a hundred, we feel like we'd be having to put the sign up for the franchise agreement but we wouldn't be getting any benefit from it because it would be very difficult to make out what it is.

Mr. LaSane: What would a hundred square foot sign look like?

Mr. Gotnick: It would look just like that but smaller (referring to the plan_.

Mr. LaSane: I assumed 74.4 was to keep it in scale with something.

Mr. Gotnick: Well, like I said, we originally had a much larger sign which was like 210 or something in the old design. Then they said, well we are actually changing the signage requirements to include this logo block. So we went back to our designer and said look 210, we already need a variance anyway, so I suppose you could go to 210 and just ask for relief there, but we thought let's figure how to shrink this down. We were limited obviously by the amount of space that's up there. So the hundred would shrink it down to the point where you just wouldn't get the same visual affect from it when you are coming off the highway. It wouldn't be legible. It's six stories up and it could be ultimately hundreds of feet it is from that intersection when you are pulling off there's a weary travel trying to figure out which one of these places is the Hilton Garden Inn.

Mr. LaSane: Have you stated a hardship in there?

Mr. Gotnick: In the actual application?

Mr. LaSane: Yes.

Mr. Gotnick: It's number six on the Proposed Findings of Fact. "The proposed wall sign is designed larger than 100 square feet for allowance so it would be large enough to be readable for the motoring public on Totten Pond Road." The hardship is that we are required by Hilton to install the sign and if we put a hundred square foot sign up there we're spending twenty to twenty five thousand dollars to put a sign on that no one can read. So the hardship is we are spending the money, we'd like to get some benefit from it.

Mrs. Rando: Were you told that you needed a brief for tonight? That's why Mr. LaSane is asking that. We usually get a brief and it cites the hardship.

Mr. Gotnick: I didn't submit the application. We had the sign installer and the sign

designer who were kind of taking the charge on putting the package together to submit to the city, which they did. I was told they did. I believe this is part of what you received. (Mr. Gotnick submitted a copy to the Chair.)

Mrs. Rando: Yes.

Mr. Gotnick: So this was the brief, I guess, and we also submitted the draft decision.

Mrs. Rando: Usually we continue a case if we don't have a brief. But this is really quite clear what you needed.

Mr. Gotnick: Right. Apologies.

Mr. Rudnick: You know, I think you have a spectacular hardship completely unproven. You have no data on how big a lettering it takes to read from a certain distance away and how much distance we would have to vary so you at least can substantiate the idea that this would be hard to read in an allowable size sign and would present, in my opinion, prove it explanation of your hardship. I guess you haven't been in before the board before but having a ground plan would really substantiate what you are trying to talk to us about. I mean this is nice to have the elevation too, to make the design perspective. I think your sign is way too big not from a variance perspective it's looking at the design in that containing shape of the building, it's way too big. Is one of you the designer?

Mr. Gotnick: These guys are the installers.

Mr. Rudnick: Get yourself a new designer. That design is too big for the shape that you have in there. However I will overlook that since it's only a aesthetic concern. Do you have any data about how far you are from the order and how big the letter is?

Mr. Gotnick: He's got this chart here that I haven't seen before and I apologize. We engaged the designer and the installer to submit the information on the app.

Mrs. Rando: Where is the designer?

Mr. Gotnick: Well the designer is not here. He's from North Dakota or someplace. It wasn't easy to get them here. So from a hundred feet you need to be a minimum letter height of four inches; from 250 feet it would be 10 inches; from 360 feet which is a city block and it would be sixteen inches; from 500 feet you need to be 22 inches; 750 feet – 33 inches and a thousand feet, 43 inches; and quarter of a mile 57 inches.

Mr. Rudnick: 750 feet

Mr. Gotnick: 750 feet.

Mr. Rudnick: And how many inches

Mr. Gotnick: 32 inches.

Mr. Rudnick: And you estimate your distance, you're building is behind a building, right?

Mr. Gotnick: It is.

Mr. Rudnick: I'll see this sign from the street over that building or an angle to that building.

Mr. Gotnick: You will see it when you're coming over the highway, over the bridge as it goes over 128. You'll see it a little bit. It's not the greatest spot for a sign anyways.

Mr. Rudnick: So, from directly in front of your building, I can't see the sign because the other building is in the way, that office building.

Mr. Gotnick: Yes. At that point you have already gone past the building anyway.

Mr. Rudnick: I am trying to help you.

Mr. Gotnick: Yes.

Mr. Rudnick: The distance in front of you going is not so important because we can't see the sign from that. The distance from the bridge is obviously a very important instance because where our lost entire drivers are.

These sizes do seem adequate from those distances approaching in a thousand feet. I would like to say that you cannot illuminate your sign from dusk till dawn. I don't think we allow sign illumination in limited commercial. This is a limited commercial district, right?

Mr. Gotnick: It is a limited commercial.

Mr. Rudnick: So we do not allow signage to be illuminated from midnight to 6 a.m. in that district.

Mr. Gotnick: Okay.

Mr. Rudnick: So if you want that, I'm afraid that you will have to come and ask for another variance.

Mr. Gotnick: We can turn it off. I didn't realize it.

Mr. Rudnick: And somebody will have to learn to turn it off. We will require that that be written in the decision.

Mr. Squillante: There's a sign at the driveway now?

Mr. Gotnick: There is a pylon sign.

Mr. Squillante. What are the hours of illumination? Is it illuminated?

Mr. Gotnick: I believe it is. I don't think it's internally illuminated. I can't say that I have been there at night to be honest with you. It may not be illuminated from the inside. I think there's a light that shines on it, like landscape lighting.

Mr. Squillante: Is it a very dark area?

Mr. Gotnick: I wouldn't say that it is overly dark there but we don't have extreme amounts of lighting in the parking lot for instance.

Mr. Squillante: I'm dealing not well about sign variances. My main concern is residential properties. I don't think that any houses can see the sign. If it's not lit up it doesn't matter.

Mrs. Rando: Do you have the plans with you? What is the date on the plans?

Mr. Gotnick: If you look into revision dates there's an update on March 2013 and an additional update in April 25, 2013 which is part of the process in going through this new design.

Mrs. Rando: Could I see the plan that you got the date off? So the plans that you are submitting are April 25, 2013.

Are there any other questions from board members?

Is there anyone in the audience that is in favor? (One person raised his hand in favor.)

Is there anyone in opposition or seeking information? Seeing none, you can continue with the Proposed Findings of Fact and they were on the computer so if somebody would like to make a motion to waive the reading.

On motion of Ms. Gelineau, seconded by Mr. Squillante, the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: Now, with your decision you are going to add - - -

Mr. Gotnick: Should I add it right now?

Mrs. Rando: Yes.

Mr. Gotnick: So on the second page under Conditions, if we could just add a No. 3: Comply with Section 6.744 of the Zoning Code – illuminated signs shall not be lighted between the hours of midnight and 6 a.m.

Mrs. Rando: And also put the date on the decision, Carol, plans dated April 25, 2013. All right, do I have a motion to waive the reading of the Proposed Decision?

On motion of Ms. Gelineau, seconded by Mr. Squillante, the board voted to waive the reading of the Proposed Decision.

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

On motion of Ms. Gelineau, seconded by Mr. Squillante, the board voted to adopt the Proposed Findings of Fact to be the board's Findings of Fact.

The roll being called: Mr. Squillante, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

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

On motion of Ms. Gelineau, seconded by Mr. Squillante, the board voted to adopt the

Proposed Decision, as amended, and grant the variance in Case No. 2013-13.

The roll being called: Mr. Squillante, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

There being no further business, on motion of Ms. Gelineau, seconded by Mr. LaSane, the board voted to adjourn at 8 P.M.

Barbara Rando 12/13/13