

CITY OF WALTHAM
ZONING BOARD OF APPEALS

August 26, 2014

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, August 26, 2014, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando and members Glenna Gelineau, Gordon LaSane, John Sergi and Michael Squillante.

The Chair called the meeting to order at 7 P.M.

Mrs. Rando: Tonight we have two new cases before us, Case No. 2014-16, Mark Bott, 87 Hibiscus Avenue, for an application for a variance to build a three season porch and Case 2014-17, RTN Federal Credit Union, 600 Main Street and that is an application for a variance.

The first action this evening is for a motion to accept the minutes of August 19th.

On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to accept the minutes of August 19, 2014.

Mrs. Rando: Will the clerk please read the petition in Case No. 2014-16?

Acting Clerk John Sergi read the Petition of Mark R. Bott, Trustee; George and Maureen Bott Family Trust in an application for variances - rear yard setback and lot coverage. Petitioner proposes to construct use and maintain an addition to the rear of his

residence at 87 Hibiscus Avenue to contain a three season porch. Location and Zoning District: 87 Hibiscus Avenue, Residence A-4 Zoning District.

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

Joseph M. Connors, Jr., 404 Main Street, Waltham, the petitioner's representative, came forward.

(Mr. Connors posted a plan of the locus on the board and presented a copy of his brief with exhibits to the members of the board. He then read his brief into the record and went over exhibits and photos with the board.)

Mrs. Rando: I must say that I made a site view this afternoon. It's an adorable house, well kept. I didn't walk in the back yard but I did see the shed and the fence.

Are there any questions?

Mr. Squillante: You raised two points for the hardship. That was that the previous variance created a hardship and then you stated that the structure itself was a unique feature that caused the hardship. So I was going to ask if there's case law on either of those, you pointed one case on the structure. Is there anything in case law that says a variance, a past variance can be the basis of a hardship?

Mr. Connors: I can't site one, no. But I think that the result was that we have a structure that has now been approved for this lot, so maybe I mis-spoke. But I would say that - - -

Mr. Squillante: You didn't say that it was in the case law. You just suggested that was the cause. So, I'm not saying you mis-spoke. I was just clarifying. And in Johnson and the Board of Appeals in Wareham, what are the circumstances?

Mr. Connors: That was a church.

Mr. Squillante: And what was the issue?

Mr. Connors: They wanted to convert the church to either residential apartments or office buildings. And so those type of uses were not permitted in that zoning district. So the board said that the hardship is that you have an existing historic building that should be used for something and it can no longer be used as a church because the membership has gone away. So they said that we have an existing structure. The hardship is that no longer does a church want to occupy the property, so they need to come up with an alternative use there. And destroying the church, just didn't make any sense.

Mr. Squillante: I look at it, because it seems a little off point, but at least it's a good — Would you send that to me by any chance?

Mr. Connors: Sure.

Mr. Squillante: When cases get quoted, I like to have a copy of it for the next time. I mean I look at the lot and the lot just looks like a unique lot to me. It's an odd shape. It's smaller front to back than any other lot in the area, so I think the lot itself is basis for a hardship. That's my opinion.

Mr. Connors: There's a lot of unique lots up there.

Mr. Squillante: Yes, but I think most of the unique ones are fairly large.

Mr. Sergi: Madam Chair, may I suggest an amendment maybe to the Proposed Decision that we add in an addition to the irregular shape of the lot. So in, let's say, the Proposed Decision, fourth paragraph, first line, "The structure and the locus presents a unique circumstance in addition to the irregular shape of the lot." I think that makes more sense.

That should go in the Proposed Decision.

Mr. Connors: I can certainly add it to the Proposed Findings of Fact as well.

Mrs. Rando: And I believe the petitioner stated that she would not use it as a heated room. So it would be your porch, correct? That should be added to "Screened in Porch".

Connors: I will add a condition (j) that it can't be converted.

Mrs. Rando: So it stays a three season porch.

Mr. LaSane: So it's going to be painted wood to match the house?

Mr. Connors: Yes. It will be white trim, plus she will mirror the same color of the main house. I can put in there (k) The three season porch will conform to the color of the house.

Mrs. Rando: Are there any other questions? Hearing none, is there anyone in the audience that is in opposition to this petition?

Seeing none, is there anyone seeking information? Seeing none, is there anyone in favor?

(Four people raised that hands in favor.)

All right. You may continue with your Proposed Findings of Fact as amended.

Mr. Sergi: Madam Chair, may I make a motion that we waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department.

Mr. Squillante seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.

Mrs. Rando: You may continue with your Proposed Decision as amended.

Mr. Sergi: Madam Chair, in a similar fashion, I propose that we waive the reading of the Proposed Decision since its been on file and we have had a chance to read it.

Mr. Squillante seconded the motion and the board voted to waive the reading of the Proposed Decision

Mrs. Rando: I am ready to entertain a motion.

On motion of Mr. Sergi, that the Proposed amended Findings of Fact be adopted as the board's Findings of Fact.

Mr. Squillante seconded the motion and the roll being called: Mr. Sergi, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Squillante, yes and Mrs. Rando, yes.

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

Mr. Sergi: I will make a motion that the Proposed Decision, as amended, be adopted as the board's decision.

Mr. Squillante seconded the motion and the roll being called: **Mr. Sergi, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Squillante, yes and Mrs. Rando, yes.**

Mrs. Rando: The case is granted. Good luck.

Mrs. Rando: Will the clerk please read the Petition in Case No. 2014-17.

The clerk then read the Petition of RTN Federal Credit Union in an application for sign variances. RTN Federal Credit Union intends to remove existing signs and to construct, use and maintain new signs onto its office building at 600 Main Street, Waltham, MA. Location and Zoning District: 600 Main Street, Waltham, MA; Business C Zoning District.

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

Joseph M. Connors, Jr., 404 Main Street, Waltham came forward and presented each member with a copy of his brief, plans, color renderings and exhibits. **Mr. Connors** posted a plan on the board showing the locus of the property and referred to several copies of plans and colored renderings that were submitted to the board.

Mr. Connors: I think the colored renderings of the signs are very helpful for the board to kind of understand what we are proposing.

Mr. Connors: As stated in the legal notice, we are at 600 Main Street in Waltham. We are situated in a Business C Zoning District. The current occupants and the only

occupants in this building is the RTN Federal Credit Union and RTN purchased the building in June of 1986.

(Mr. Connors then went on to read his brief into the record.)

Mr. LaSane: If I can interrupt for one second, so to be sure that sign is part of their corporate identity. It fits with that.

Mr. Connors: Yes.

Mr. LaSane: So if I were to take their letterhead, the logo on that letterhead would look like that sign.

Mr. Connors: Yes.

Mr. LaSane: Okay. Except obviously for the size but the spacing between letters and all that is in proportion. This is a refresh to the corporate identity to the public identifying the building itself.

Mr. Connors: Yes. In addition to the historical perspective too. (Mr. Connors went on to read his brief into the record.)

Mrs. Rando: Attorney Connors, all I can say is it's over signage, in my opinion. I understand they want to use their new logo. But I can't understand why they feel they need that many signs when they have a building at an intersection that has lights that people can stop and read the signs, see the logo. Besides that, I find your hardship very weak, if any. I don't see anything different in that locus than any other in that area. I know that the new sign ordinance or amendment was made to limit projected signs only for small businesses that probably are shaded or hid by some trees or signs or whatever. They are right out in

the open. Everyone sees it, everyone knows it. I really, in my opinion, I think you have too many signs.

Mr. Connors: May I just address the hardship?

Mrs. Rando: You also have frontage on two major streets, so people can see it when they stop.

Mr. Connors: Right, but if you're heading west on Main Street, you're not going to see the Elm Street sign.

Mrs. Rando: So you see the Main Street sign.

Mr. Connors: Right. So, therefore, we need a sign on Main Street. But I do think the hardship is that when this building was constructed in 1902, there was residential apartments on the second and third floor. So there were residents there. You'll see from the pictures, there's Clarkson Furniture. You will see from the street cards, there was restaurants there. So there was multi tenant buildings for retail on the first floor and multi residential tenants on the second and third floor. So now, that's all gone away and we have one use of it. So, I mean, if we had ten tenants in that building, commercial users, they would all be entitled to one primary sign and have ten primary signs. But because we are the only occupant, we are entitled to one primary sign. So I think that's definitely a hardship.

Mrs. Rando: Right.

Mr. Connors: Now, it may not be to the degree that we propose, but I think that we have a large building there and we are the sole user. Three floors with frontage on both streets, so we need signs that's going to reflect the size of the building so we can advertise it

and we are no longer a multi tenant building and we don't have residences there anymore. What's changed is the fact that when that was constructed it was for multiple tenants and that's no longer the case but the sign ordinance reflects multiple tenants in a building and here we have one.

Mrs. Rando: I won't even discuss Councillor Logan's letter until the board is able to ask all their questions and we find out who in the audience is in favor or opposition or seeking information, but that is something that we are going to have to dig into also.

Mrs. Rando: Mr. Sergi, do you have any questions at this time?

Mr. Sergi: No, but I agree with Madam Chair. I think the hardship argument here is weak and there seems to be an inordinate amount of signs in my view.

Mrs. Rando: Mr. LaSane?

Mr. LaSane: I take a little bit different view. I think the hardship to me would be their inability to get the new corporate logo up there and corporate consistency in terms of the signage on the building. I think they should be allowed a chance to do the corporate messaging. And so from where I see it, that spins a little bit of hardship message to me.

Mrs. Rando: Hardship in my opinion is if a business is not able to make good use of that business and they have been for many years. So, where is the hardship?

Mr. Connors: Well, I mean, I think that they have been but that was based on the history of Raytheon Employee's Credit Union being around since 1945 where Raytheon was a major player down on Seyon Street. We had I don't know how many people who worked down there. So you had a home grown clientele. So that's no longer the case. They are no longer down there. They have a corporate headquarters up on Winter Street. I'm

sure they only come down here. So the manufacturing facilities are limited in the City of Waltham, so credit unions themselves have changed over the years. The use to serve kind of a niche group. In this case it was the Raytheon employees and that's simply no longer the case. They're expanding their membership base so in order for them to continue to do that and be thriving, they are one of the largest in the state and fifty thousand members, well, I think the population of the City of Waltham is roughly around sixty thousand. I don't think nine out of ten people in the City of Waltham are members of the RTN Credit Union. I just don't think that's the case. They have been able to put their message out there to other communities, so that's all they are trying to do here. To continue to have a presence, to collect members in the community that are not Raytheon employees and that dynamic is gone. Raytheon is no longer the manufacturing entity that it was years ago in the City of Waltham.

Mrs. Rando: I will find it very interesting to hear Mr. Squillante's opinion on hardship because I learned my opinion from him many years ago. So that will be very interesting.

Ms. Gelineau, do you have any questions at this time?

Ms. Gelineau: Again, not really questions but comments. I, too, don't find much of an argument with the hardship and I agree with your (turning to Mrs. Rando) hardships are kind of weak. I would agree that not only do they have a hardship if they are on Main Street and Elm but they're an island. So, you're coming from the south or the east, you still, you could have just a blind slate. Where you are so non-isolated and you're surrounded by parking, that it sort of does beg that you should have signage on those two fronts too. So you could be coming all four ways, not just down Main, or down Elm.

The other thing, I just want to comment that I feel, I've had an office on Main Street in a few different places for the past thirty years and I think what the Raytheon Credit

Union has done with this building has been outstanding. The way that they restored it and protected it and took care of it for the city, which they worked on for years and years to put a beautiful product on Main Street. I've always thought, I mean nothing to do with this petition, but that has always been on my mind that while they really took pains to preserve that brick to preserve the structure, you know just as a citizen, I've always appreciated that. I also personally really like the mural effect. I love that idea that they are committing to keeping some historic influence and some, just a piece of history, and I think that sort of clouds the signage proposal because as you said they are not part of it but it looks like its way more signage than it is to me. And the other thing I just wanted to say, and we had this issue last week, the sign code should be and I've said this several nights before, should be more spacial in ratio issue. If you put there what would be in ratio with what's allowed, it would look ridiculous. It looks better to have a sign that's spacially relative to the building than it does to have something innocuous that no one can read. So, again, I think its a beautiful building. I think they did a really nice job to preserve the integrity and I don't really have a problem with the hardship.

Mr. LaSane: You only have one perpendicular sign.

Mr. Joseph Connors, Vice President, Marketing, Credit Union: As contrasted to somebody driving up Elm Street looking for an ATM they probably would be past our entrance to our parking lot before they slam on the brakes before reaching the building. It will increase visibility when approaching the intersection of Main and Elm Streets.

Mr. LaSane: I asked that because the councilor's main objection is to project itself. So when I come up Elm Street, I can't see the side of the building. What I can see is the back of the building because that's above eye sight while you are in the car. In my mind, this signage that you have in the back of the building would be sufficient in my mind. I just don't see the need for that perpendicular sign.

At this point Mr. Connors showed plans of the size of the signs to the board.

Mrs. Rando: How many feet bigger than 18 feet is that? It's more than three times.

Mr. Connors: Its really not a secondary sign. I mean it's another primary sign on the side of the building because we have a huge wall facing the City of Waltham, there's an entry parking lot in front of it so there's no building right there that's going to create a barrier.

Ms. Gelineau: You only have one primary sign.

Mr. Connors: We only have one and that's on Elm Street. It's either Elm Street or Main Street, we had to pick one so we picked Elm Street. Because people coming down Main Street going east will see it. People coming up Elm Street will see it. So that's the one that probably gets the most visibility. But I do think that the size of the building lends itself to a larger sign than 18 square feet for a secondary sign. So that's just addressing the east side of the building. I realize that there are several secondary signs on the south side but, again, we are trying to create some uniformity in the signage that we are proposing.

Mrs. Rando: Mr. Squillante, do you have some questions at this time?

Mr. Squillante: On the parking lot side of the building, how many of these things are signs?

Mr. Connors went over the signs with Mr. Squillante.

Mr. Squillante: I wasn't sure if these banner signs were signs.

Mr. Connors: Yes, they are. I identified those as 5 and 6.

Mr. Squillante: So the total number of signs including the ones that are by right and the total area that you quoted here is all the signs including by right signs.

Mr. Connors: Yes.

Mr. Squillante: So, I'll ask you the same question. Do you have any case law that suggests that the fact that a building is large is the basis for a variance?

Mr. Connors: No.

Mr. Squillante: And the concept that because you have no building next to you, therefore, you need to have an extra sign. Not having a building next to you is a great opportunity. If there were a building beside you we wouldn't be here talking about the sign. People would still do business there. Again, I think I have to agree with the hardship questions is kind of weak. Corner lots are kind of interesting. Should there be a primary sign on both sides of a corner lot, probably. It's not what the ordinance says. Would that constitute a hardship, again it's a tremendous benefit. But that I might be able to be persuaded, but because you are on two major streets, that might justify two primary signs. The sides that would normally have a building blocking the entire view of the building but not having those buildings, calling that a hardship, that's hard for me.

Mr. Connors: Well I'm not calling it a hardship, just saying they have a great opportunity to show a big sign. People coming down the road who have the opportunity to view it the small building won't be in its way but the sign has to be big enough so they can see it. If it's 18 square feet, it's simply just not going to be visible.

Mr. Squillante: Do you really think it takes four signs on that side of the building? Certainly the people in the parking lot won't have any trouble finding the building.

Mr. Connors: What's by right is just the little logo at the door. That's it. That's the only by right sign we can have. So if we take everything off and leave that there there's nothing but a green logo.

Mr. Squillante: The point of the sign ordinance is so that people don't go crazy with signs. If you didn't have a sign ordinance, every square foot of a building would be covered with signs. Because if you didn't do it your competitor would. It starts to look like South Korea. So we are trying not to do that in Waltham which is a good thing. I think we have a fairly generous sign ordinance. Lexington allows projecting signs but they don't allow the illuminated signs. So I guess the hardship is weak, especially with no cases suggesting that there's any legislative or jurisdiction in the history of this type of a situation being considered a hardship, is really my concern. RTN has been a great neighbor so I wouldn't want to have anybody else in that building. I apologize but I don't agree on hardship.

Mrs. Rando: Is there anyone in the audience that is in opposition? Seeing none, is there anyone seeking information? Seeing none, is there anyone in favor? (Two people raised there hands in favor.)

All right, we have a letter from Councilor Robert Logan that needs to be read into the record.

The clerk then read a letter dated August 24, 2014 from Councilor Robert G. Logan in opposition.

Mrs. Rando: Where do we begin? Do you want to take issue by issue? Do you want to start with the hardship? That's where Councilor Logan started?

Mr. Connors: The ZBA office sent me a copy of the email, I thought that was it. I actually did not get that letter. I got a copy of the email from Robert Logan but not a copy of the letter.

Mrs. Rando: So you didn't see this letter.

Ms. Gelineau: So you are hearing it for the first time?

Mr. Connors: I did not see the letter. Starting with the hardship, again I'm going to go back to the structure. Chapter 40A Section 10 provides a hardship comes from a unique circumstance which relates to soil conditions, shape, topography of the structure. The structure here is a hardship. It was constructed in 1902 for multiple retail tenants on the first floor and multiple residential tenants on the second and third floors. And then we have one tenant that is using the entire building. We have a building that is approximately 27,000 square feet in area and so we have a massive building that was originally constructed for multiple tenants and we have one user now. We have one user which is permitted to have one primary sign despite the fact that he has zero setback on Main Street and Elm Street, I believe that's a hardship. The structure is a legitimate hardship under the ordinance under Chapter 40A Section 10. So I'm only going from memory as to what he contemplated the hardship.

Mrs. Rando: Do you want to take time to digest this letter from Councilor Logan and come back. It's quite a letter with a lot of facts that need explaining and defending on your part.

Mr. Connors: I think that would be helpful to me because like I say, all I got was the email. I would like that opportunity because I think he clearly has issues with the proposal. But I do think RTN Credit Union has been in this community of Waltham since 1945. I

don't think they have any intention of going anywhere. I think they that want to stay here at 600 Main Street.

I am not prepared to go respond to every point in that letter tonight so I would like perhaps some time to go through the letter, number one; and review with the building inspector, number two and go over the proposal with regard to that.

Mrs. Rando: How about September 23rd? Do I have a motion to continue Case 2014-17 RTN Credit Union until September 23rd?

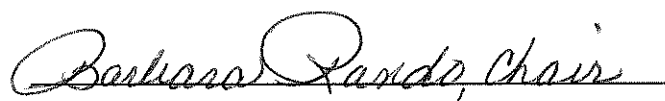
On motion of Mr. Sergi, seconded by Mr. LaSane, the board voted to Continue Case No. 2014-17 to September 23, 2104. The roll being Called: Mr. Sergi, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Squillante, yes and Mrs. Rando, yes.

Mrs. Rando: Now, lets extend the time to act to October 21, 2014 for a decision.

On motion of Mr. LaSane, seconded by Mr. Sergi, the board voted to extend the time to act on this case to October 21, 2014. The roll being Called: Mr. Sergi, yes; Mr. LaSane, yes; Ms. Gelineau, yes; Mr. Squillante, yes and Mrs. Rando, yes.

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Ms. Gelineau the board voted to adjourn at 9 P.M.

Handwritten signature of Barbara Rando, Chair.