

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

June 12, 2018

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, June 12, 2018, 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, Marc Rudnick and John Sergi.

Mrs. Rando: Tonight we have two new cases and one continued case: Case 2018-14, Advanced Signing for the Davis Company, 1037 Main Street and that's for a sign variance; Case 2018-15, AnchorLine Partners, LLC, 140 Fourth Avenue and that's for a Variance and modification of Special Permit and then, of course, we have Case 2015-25 Alliance Realty Partners, 341 Second Avenue and that's for a Comprehensive Permit, 40B.

I would like a motion to approve the minutes of May 22, 2018.

On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to approve the minutes of May 22, 2018.

Will the clerk please read the petition in Advanced Signing, Case 2018-14?

The clerk then read the Petition of Advanced Signing for the Davis Companies.
Owner: DIV Waltham Main Street LLC % The Davis Companies sign variance to allow the Davis Companies to install a double-sided monument sign that is 51.66 square feet per side, and to amend the previous sign variance in Case 2014-22. Location and Zoning District:

**1037 Main Street (actual location of sign) 1075 Main Street is address of office park;
Business B Zoning District.**

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

Jason Parillo, 25 Temple Street, MA, forward.

**Mr. Parillo: I am here tonight with Advanced Signing and I also represent the Davis
Companies. There's two relevant previous Zoning Board of Appeals cases that happened
in 2014. The first was to allow a 63 square foot single sided sign and also it being the
second free standing sign. The other was another 2014 case that allowed an eighty square
foot double sided free standing sign. That was also to be the second sign allowed.**

**Since then, the Bank of America sign is now gone. Currently, actually, there are no
signs on the property. This is to be the only free standing sign on the property.**

**So this sign is going to read CITYSIDE and it will have an option for the owner to
put their tenants names in this. That's one of the reasons why the sign is the size it is so
that it allows legibility for these tenant signs because it's a very large building.**

**Like I said, this will be the only sign on the property now. Actually we slightly
altered the location of the sign so that the tree that has grown over the years can be
retained. That tree won't have to go anywhere and we moved the sign to the left so that it's
visible from both sides so that the tree won't affect its visibility. That's basically the gist of
it.**

The sign will be internally lit but the only part that is going to light up are the gold letters, CITYSIDE, and then the white letters of the tenants. So that red is just a painted aluminum. That pretty much wraps it up.

Mrs. Rando: What are the hours of operation?

Mr. Parillo: Whatever the town prefers. I mean, we can definitely shut it off at 11 p.m. or whatever the town wants.

Mrs. Rando: What else is going to be on here?

Mr. Parillo: It's not a hundred percent sealed yet. The bank is still in the building but like I said they are a free standing sign so that will probably be one of them but obviously when we have that information I can submit that to the building department so there's a record of that.

Mrs. Rando: But they will be the same color.

Mr. Parillo: It will be exactly be the same color and it will also be this font.

Mrs. Rando: And this is the only free standing one.

Mr. Parillo: Yes.

Mrs. Rando: Mr. Sergi, any questions?

Mr. Sergi: Are you anticipating more than four tenants? Any more tenants?

Mr. Parillo: Just four. I mean anyone else would just kind of be a sub title. Maybe there will be a sign in the lobby. But this is really just going to be for the main tenants. Otherwise, I think adding too many more, it will just make it kind of cluttered and illegible. This is it for now.

Mr. Rudnick: Is there some kind of hardship here that drives you to this board?

Mr. Parillo: Yes. There's a few things. I talked to the building department. First of all, it's mainly the size because the signs are allowed to be forty-eight square feet, twenty-four square feet per side, forty-eight total.

Mr. Rudnick: I don't argue that. The hardship is our ordinance

Mr. Parillo: No. Absolutely not. The hardship is just due to the fact that it's a large building.

Mr. Rudnick: Why can't you use the sign the size that is there now?

Mr. Parillo: Just because it's a large building and in order to incorporate the tenants on the sign we ask for it to be this size so the tenant's names are legible.

Mr. Rudnick: Is it a ground sign?

Mr. Parillo: Yes. It's a monument. I think there was one there that was 96 inches tall. This is a total of sixty-eight inches off the ground including the base. So it's kind of a monument sign.

Mr. Rudnick: I don't understand why the size of the building relates to the sign. It seems that the size of the sign relates to our ordinance about signs and you want a sign bigger than our ordinance and the answer for why is the building is big?

Mr. Parillo: It's for the legibility of the tenants on the sign.

Mr. Rudnick: So a sign that meets our requirements wouldn't be readable?

Mr. Parillo: If it just said CITYSIDE, I would say yes. As I said, it's a large building. There's people trying to find these tenants and this size we feel is appropriate so that people can see it all. This site has had two signs on the property for years. I mean there's been variances that allowed that. So we have reduced the amount of signage on the property.

Mrs. Rando: So will the sign be across from the light?

Mr. Parillo: There's a site plan in our package and it's very close to where the previous sign was. It's just been moved over a few feet, like I said, so that it stays visible and retains the tree there. So it's right near to the main entrance to the building and to the garage. It's definitely the most appropriate place to put the sign.

Mrs. Rando: I go by there every day and I hardly see the other sign, to tell you the truth.

Mrs. Rando: Is there anyone in the audience in opposition to this? Seeing none. Is there anyone seeking information? Seeing none. Is there anyone in favor. Seeing none. You may continue with your Proposed Findings of Fact.

Mr. Parillo: As far as the variance criteria? We feel that the sign —

Mrs. Rando: You didn't write out a finding of fact?

Mr. Parillo: I did do a brief. I'm familiar with the criteria. I mean the sign is in keeping with the character of the neighborhood because as I said it's a large building.

Mr. Rudnick: The Chair is asking whether you prepared a Findings of Fact for the board. Were you instructed by the law department?

Mr. Parillo: Did we submit one with our package?

Mr. Rudnick: We don't have one.

Mr. Parillo: I guess I wasn't asked to do it then. But I mean, I am familiar with the variance criteria.

Mrs. Rando: We have to have something in print and read it because it goes into the record.

Mr. Rudnick: I would suggest that we continue this case and you can provide us with the documentation. Are you in favor of continuing this?

Mr. Parillo: Absolutely.

Mrs. Rando: Is everyone in favor of continuing the case?

(The board unanimously agreed to continue this case.)

Let's continue this case to June 26th.

Do I have a motion to continue Case 2018-14 to Tuesday, June 26th?

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to continue this case to June 26, 2018.

Will the clerk please read the petition in Case 2018-15, AnchorLine Partners, LLC; 140 Fourth Avenue?

The clerk then read the Petition of AnchorLine Partners, LLC; 140 Fourth Avenue on behalf of NWALP PHOP Property Owner LLC 's request for variances and modification of special permit on the locus. Subject Matter: Petitioner on behalf of the Owner seeks variances and an amendment of an existing Special Permit which would allow for the construction, use and maintenance of a new six story building with parking on the land known and numbered at 140 Fourth Avenue, Waltham. Location and Zoning District: 140 Fourth Avenue, Waltham Commercial 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.

Mr. Connors: I am an attorney representing AnchorLine LLC Properties and NWALP. Tonight here with me, I'm also joined by Robert Brown who is the Architect that designed the building that is proposed for the site and here Paul Finger has assisted in the engineering drawings and Attorney Mula, Co-Attorney. Attorney Mula is out of commission and he can't talk because his arm is in a sling and Andy Maher. He is the principal of AnchorLine.

(Mr. Connors submitted a copy of his brief with Exhibits, Proposed Findings of Fact and Proposed Decision to each member of the board. Mr. Connors read his brief into the record and went over the plan of the locus, a rendition of the proposed building along with exhibits and photos with the board.)

Mr. Connors: I think it's a good project and the relief we are looking for is very simple. It's setbacks and the height of the building which is also a request for a variance as well.

So, that's my presentation Madam Chair. I will be happy to answer any questions you may have. As I said, we have the architect, the engineer and the principal of the development company here.

Mrs. Rando: How many parking spaces is needed?

Mr. Connors: It's one per two employees based on the square footage of the use which is strictly a lab. So the demand is under the ordinance, 572, and we are proposing 616. All of the parking will be on site and on this side of the lot (referring to the plan). There will be 417 parking spaces in the garage underneath and then the other 200 will be across the street.

Mrs. Rando: Do you need remote parking because it's across the street?

Mr. Connors: It's the same lot.

Mrs. Rando: You won't need it?

Mr. Connors: I don't think so. No.

Mrs. Rando: Well, in the 02-36 case, I happened to be on that and I remember that the parking, we granted remote parking so that 100 Fifth Ave., 200 Fifth Ave, 300 Fifth Ave, 230 Third Ave would have parking if needed.

Mr. Connors: Right. And that's exactly right and so they needed remote parking because they were non locus. They were abutters but they were non locus. So they got permission to park on this lot and this lot (referring to the plan) whereas, I mean, I've never seen this before where it runs in the middle of the lot. It's the same lot but it is across a fifty foot wide easement.

I mean, if the building inspector thought we needed remote parking, I think he would have brought it up when he signed off on the plans. We believe that it's on the same lot and therefore it doesn't require any remote parking.

That Special Permit was for 100, 200 and 300 and another building at 230. They were non locus. The proposal was to park here on 140 and just before they did that they tore down the building that situated there so they could then build this two tier parking lot which is situated up there today. If you went up there it's not as high as it looks, it's two tiered so this is a little bit taller than that. And that was needed because it was remote to their locus's. They are a different lot, whereas here we are proposing to build here, park underneath and then park across the easement but not on another lot, on the same lot.

Mrs. Rando: If they felt at that time that you needed the remote parking and you needed the parking for all those companies, why do you figure you won't need it today? How do you know what companies are going to go in and out of those other buildings?

Mr. Connors: You know based on experience of the last fifteen years. It's simply, I think it's seventy-six percent occupancy rate. None of these building have required it. They just haven't required it. So they are not vacant. They have tenants in there yet year

after year there is little to no need to park here. It wasn't to comply with zoning. It was simply to add extra parking spaces to what they already had and they and over the years there simply hasn't been the demand.

Mrs. Rando: I didn't feel that there was anything unique about that shape of land. Every piece of land up there has elevation changes - everyone.

Mr. Connors: Well, I think on this particular one, we have it divided by Fifth Ave so it's kind of a, this area here (referring to the plan) is seven hundred feet away from it and yet its affecting the elevation that we are building over here. So I think, granted there is a hill up here but this particular lot is unique in that, I've never seen a lot like that bisected by a private easement which is for all intents and purposes a public way. That's how, now if you want to go through the cut through to get to Market Basket, that's how you get there up Fifth Ave.

Mrs. Rando: Mr. Sergi, any questions?

Mr. Sergi: No, not at this time.

Mr. Hickernell: What's the property owner's name?

Mr. Connors: That's a good question.

Andy Maher, AnchorLine, 200 Fifth Ave, Waltham came forward.

Mr. Maher: AnchorLine partners our office is at 200 Fifth Ave. AnchorLine Partners is our company NW is Northwood and ALP stands for AnchorLine Partnership. PHOP is Prospect Hill Office Park.

Mr. Rudnick: Counselor, you just made a comment about the remote parking not being to resolve a zoning issue. I guess my concern here is that we're taking away rights granted to other properties even under the same owner like in this case, but in this case you seem to be saying no. Those other properties didn't come for parking relief because they didn't have enough on its own. They just wanted more parking and they asked if they could use this remote lot as more parking. Is my understanding correct?

Mr. Connors: Yes. I looked back and read the 2002 case and I also went back and read the brief that was presented. So I think that three of the lots were non conforming but legal as to parking , there was 100, 200 and 300 and then the fourth one 230 complied under the current code in 2002. So none of them needed relief under the zoning to be legal. It was simply for the purposes of giving them some remote parking in case they needed it and I guess at the time they thought and they tore down a building and they built a two tier parking area. As I say, I have been driving up there for years and there was one or two cars there at all.

Mr. Rudnick: I don't doubt that. But, I mean, I'm given some comfort by the fact that all these buildings are under the same ownership so the owner is not going to come and complain to himself that he stole his parking plan, but I'm wondering what happens in the future when the other buildings were sold. Is it clear, this variance that was given for the remote parking —

Mr. Connors: It was a Special Permit.

Mr. Rudnick: I'd just like to add some language in the conditions that clarifies this, mostly to protect the board that we are not giving away somebody's rights in this case, as you are giving away rights but it sounds like they weren't ones that were legally given, just generously given. They are not rights. They are gifts.

Mr. Connors: Correct. They were not required to make anybody comply with zoning, so, therefore, by taking them away we are not making somebody out of compliance.

Mr. Rudnick: And maybe stating that in the Findings of Fact will be enough.

So I don't know anything about life sciences but I know a lot about buildings. It all seems they can be built ten or fifteen feet narrower and give you back your side yard setback especially on one side of the building.

Give us an idea what's important about this building that it can't be shrunk by the five percent that it looks like it can be shrunk by it and meet all of the setbacks. I don't have to tell you anything about the front yard setback because I like your hardship there. Why can't you make the side yards and the back yard conform?

Mr. Connors: And I think it's all driven by height. From the height you see, we will be proposing five stories of usable life science spaces which were permitted under the code. So even if we took one away we would still have a problem. I'm going to ask Robert Brown who designed the building he felt it was necessary to come forward.

Robert Brown, Perkins and Will, 225 Franklin Street, Boston, MA: The building is really a balance of the parking for the life science floor space area which are about forty thousand square feet. They are very restricted in the amount of chemicals that can be used on the first floor. We were concerned if we were taking additional thirty feet off the side yard, the building is now sixty feet, much narrower. It's just really detrimental to that type of use. And the fifty foot four floors because of the amount of duct work that typically is there and we are also seeing the sort of equate office workers higher base spacing because it actually brings in more light and a much more pleasant environment. So the fifteen foot floor sort of becomes the norm instead of pancake spaces.

Mrs. Rando: what was the requirement in 2002? One car?

Mr. Connors: One vehicle for every 300 gross floor area. No, I think they talk about office space at the time in the 2002 case. So it's the same as it is today.

Mr. Rudnick: Can you describe the height of this building relative to the other buildings around it?

Mr. Connors: That's a good question.

Andy Maher, AnchorLine Partnership: The buildings that we have at 100, 200, 300 Fifth Ave, are all seven story buildings. They also sit at a much higher elevation than this lot. So this building will actually fit quite nicely actually.

Mr. Rudnick: What you are violating here is our requirement about the height has something to do with the setback. I assume we are doing that to make decent looking mast buildings rather than buildings that are being shadowed.

Mr. Connors: Right.

Mr. Rudnick: But here you are building on a street that has gigantic lots. It's oceans of parking lots around the buildings. So your argument, I think, is that this is not the most important characteristic in comparison to the setbacks to the height of the building in this case.

Mr. Connors: Everyone up there is commercial.

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

Paul Pavone, Business Manager for the Laborers International Union of North America Local 560 located right here at 681 Main Street in Waltham. I reside at 33 Amherst Avenue in Waltham and certainly we are here in favor of the petition. We are always in favor of new buildings going up in the city because hopefully that means work for our members who need the work.

Our next question is that we just hope that the developer will do the right thing and hire contractors that meet community standards, wages and benefits. I know in the presentation from the attorney a lot of the good things he's going to do. I didn't hear anything about good paying construction jobs. It would have been nice to hear that so we just hope that the developer will keep that in mind. We need jobs and every time a building goes up, once it'd done, the work is done, that's it. If we don't get those jobs it means we've lost them and we need the work. So we are here to support the project.

Mrs. Rando: Is there anybody else in favor. Do you want to raise your hands?

(Ten people raised their hands in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none. Is there anyone seeking information? Seeing none.

Any other questions from the board?

Mr. Hickernell: Can the petitioner respond to the comments from the Laborer?

Andy Maher: We have had a great working relationship with Mr. Pavone and his group.

Mr. Hickernell: Do you expect the project to meet community standards?

Mr. Maher: Yes.

Mrs. Rando: You may continue with your Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. Hickernell the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department and the board has had a chance to read them.

Roll Call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

Mrs. Rando: On the Proposed Decision?

On motion of Mr. Sergi, seconded by Mr. Hickernell the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department and the board has had a chance to read them.

Roll Call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

Mrs. Rando: On the Proposed Findings of Fact?

Are there any conditions?

Mr. Connors added “r.” to the Proposed Findings as follows: The elimination of remote parking provided in Case No. 02-36, shall not affect any of the other buildings in their compliance with the parking requirements of the Zoning Ordinance.

Mrs. Rando: Why do you feel that's necessary?

Mr. Rudnick: I feel it's necessary because I don't want this board having an owner of one of these other buildings come to us in the future and say you acted on a case for Joe and stole my remote parking. I'm not worried because we have one owner of all the buildings but now a future owner is on notice that they don't have any remote parking.

Mrs. Rando: All right, does everyone agree to that?

The board agreed.

Roll Call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

Mrs. Rando: All right, I am ready for a motion on your Proposed Findings of Fact.

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board voted to adopt the Proposed Findings of Fact, as amended, to be the Board's Findings of Fact.

Roll Call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

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

On motion of Mr. Sergi, seconded by Mr. Rudnick, the board that the Proposed Decision become the Board's decision.

Roll Call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Rudnick, yes and Mrs. Rando, yes.

On motion of Mrs. Rando, seconded by Mr. Hickernell the board voted to take a two minute recess at 8:10 P.M.

When the board reconvenes, they will take up Case No. 2015-25, Alliance Chapter 40B Case which will be recorded by ATM, Inc.

The board reconvened at 8:15 P.M.

Minutes for that case will be separate.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 9:30 P.M.

Barbara Rando chair
6/19/18