

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**December 11, 2018**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, December 11, 2018, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham.**

**In attendance were Acting Chair, John Sergi, and members Mark Hickernell, Glenna Gelineau and Sarah Hankins.**

**Mr. Sergi: Our Acting Chair, Michael Cotton, apparently is not here yet. He hasn't arrived. So we'll go into recess for at least five minutes and then if he is not here we'll give you the option to go forward with four members if you would like. That means that you need to get the four votes in the affirmative to win the case.**

**At 7:10 P.M., on motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to take a five minute recess.**

**The board reconvened at 7:15 P.M.**

**Mr. Sergi as Acting Chair: I just want to get one piece of business out of the way before the hearings. Can I have a motion from the board to accept the December 4, 2018, minutes?**

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

**the minutes of December 4, 2018.**

**Mr. Sergi: As far as the cases tonight, we have two cases in front of us: 2018-37, Petitioner Anna Haluch, Owner of Colonial Shopping Center. Nature of Appeal, Application for a Sign Variance and Case No. 2018-38, Petitioner 343 Winter Bldg. LLC, Owner: % Hobbs Brook Management LLC.**

**What I'd like you to know, if you would like to go forward, we only have four member sitting. So you can move forward with four. You can elect to continue the case if you'd like, so I'll leave it up to each petitioner as to what you would like to do.**

**The petitioner in Case No. 2018-37, stated they would like to go forward with four members.**

**Mr. Sergi: Would the clerk please read the petition in Case No. 2018-37?**

**The clerk then read the Petition of Anna Haluch, Owner: Colonial Shopping Center, Inc., in an application for sign variances and to amend a prior variance. Location and Zoning District: 85 River Street; Industrial Zoning District.**

**Mr. Sergi: May we hear from the Petitioner or the Petitioner's representative, please.**

**Anna Haluch, 65 Belmont Street, MA, forward.**

**Ms. Haluch: So, we are looking to update two of the signs. Sign No. 1 was the**

original sign that they had that said Colonial Shopping Center. We are looking to replace that sign and add tenant spaces and we are going to be replacing that pole. It's just not as structurally sound. So we will be adding a new light box to it. We want to make sure that it is structured and then Sign #2 is the sign that they had the variance for in Case 1983-48. We are going to be updating that splitting the tenants for that one and then we are going to be keeping the 96 square feet for the tenant area and then we are going to have the 85 River Street Colonial Shopping Center as an address.

The reason that we are asking to update this, one, it is going to make it easier for drivers passing by. Right now one of the signs just says the address and the other one has all of the tenants. It's kind of hard to see when you pass by especially if you are looking for a place in there and then also, it's just updating it, just more modern. The signs that are on there, I believe it's the Shaw Center across the street. It's just updating it and making it look nicer,

Mr. Sergi: Did you prepare a findings of fact and proposed decision? Typically the board expects the petitioners to be prepared with a brief and proposed findings of facts that lists all the facts. Did you look at the application package on line as to what the requirements were for your proposal for the sign variance?

Ms. Haluch: I'm not sure which fact, like the by law?

Mr. Sergi: No. You need to read the application for variances. We ask that each petitioner prepare a findings of facts and a proposed decision. How does the board feel about that?

**Ms. Gelineau: Are you with the sign company?**

**Ms. Haluch: Yes.**

**Ms. Gelineau: On behalf of Colonial Shopping Center?**

**Ms. Haluch: Yes.**

**Mr. Sergi: Does everybody feel comfortable going forward without the proposed findings of fact and proposed decision?**

**Mr. Hickernell: We are just ratifying the prior decision anyway or re-ratifying it. Are the poles going to remain in the same place?**

**Ms. Haluch: Yes.**

**Mr. Sergi: Typically the proposed findings of fact outlines the facts in the case where you give what you are trying to do and mention the signs indicating if they are larger or not larger, illuminated or non-illuminated.**

**Ms. Haluch: I can definitely answer those questions.**

**Mr. Sergi: It has to be done in writing and then there's a proposed decision. So in the proposed decision, you write up a decision as to what you want the board to decide as far as your request.**

**The clerk is looking at the prior to see if there is a way of amending that.**

**It might be best if you go back and sit down with the legal department with Pam Doucette, and she will explain to you what you need and she may have some prior sign variance decisions and findings of fact that she can refer you to maybe prepare your case.**

**We can continue the case and allow you some time to go and prepare these documents and then re-present the case. It shouldn't take you long to do it.**

**Mr. Sergi: How does the board feel? I'm looking for some feedback.**

**Mr. Hickernell: Nothing is changing except for the grounds for the variance that was granted by this board in 1983. We would just need to substitute these plans and the sign designs. But the reasons for the variance haven't changed at all.**

**Ms. Hankins: I don't think it makes a substantive difference, but I do feel like even if it's just a week for her to have like a decision for us to vote on. I'm just not sure what we would be voting on. I guess my question, Mr. Hickernell, I guess I'd be more comfortable if the petitioner sat down with Pam Doucette and they could probably put something together real quickly. I don't want to put a big burden on them but I kind of feel there's nothing, at least for myself, I don't feel there is anything to vote on. It's just my opinion.**

**Gary Marchese, Esquire (A tenant at the Colonial Shopping Mall) came forward and stated they could draw something up.**

**Mr. Sergi: You know typically what you need.**

**We can continue this to January 15th. Do I have a motion?**

**On motion of Ms. Hankins, seconded by Mr. Hickernell, the board voted to continue this case to January 15, 2019.**

**Mr. Sergi: Would the clerk please read the petition in Case No. 2018-38, 343 Winter Bldg. LLC?**

**The clerk then read the Petition of 343 Winter Bldg. LLC, Owner: % Hobbs Brook Management LLC in an appeal from the decision of the building inspector under M.G.L. c. 40 A s3, para. 9 and Modification of Board of Appeals Case No. 00-8. The locus is a large (240,723+/-square feet, 5.53 +/- acres) parcel of land located on the northerly side of Winter Street in the Limited Commercial Zoning District. The locus has an existing three story office building, two story maintenance garage and associated surface parking thereon. The Petitioner proposes to construct, use and maintain three new solar panel structures over portions of the existing surface parking lots in front of the building to provide solar power to the building, along with a new connector driveway to the abutting property at 81 Wyman Street as well as a walkway connecting the two properties, all of which will result in reconfiguration of the existing parking. Location and Zoning District: 343 Winter Street is located in a Limited Commercial Zoning District.**

**Mr. Sergi: May we hear form the Petitioner or the Petitioner's representative, please?**

**Robert E. Connors, Jr., Esquire, Law Offices of Connors and Connors, 6 Lexington Street, Waltham, came forward.**

**Mr. Connors: I represent the petitioners tonight.**

**(Mr. Connors read his brief into the record and went over the plan with the board.)**

**Mr. Hickernell: What did he cite for saying it's not allowed?**

**Mr. Connors: What he said is there's nothing in the zoning ordinance that says solar panel. He agrees. He said I agree that solar panels can go any place, but there's nothing in the zoning ordinance.**

**So the zoning ordinance says that Section 3.31A, that says, unless a use is specifically allowed. It specifically stated that can't exist. So solar panels don't exist in the Waltham Zoning Ordinance.**

**Mr. Hickernell: I'm not sure they are a use.**

**Mr. Connors: I'm not sure that they are a use either. And that's why in here I get into putting it in as an accessory building because it's accessory to this building (referring to the plan). So it's an accessory use. So I guess it's a use in that manner and that it provides electricity for this building. So, just to go on on that, he just sat back and said, well, I think they should be able to go any place but I'm just interpreting the ordinance as I see it and I can't make any other determination. So I'll just leave that up to the Board of Appeals.**

So 81 Wyman Street, if you go to 81 Wyman Street, we have solar panels there. We have solar panels throughout all the buildings in Hobbs Brook. They are on the garages, 81 Wyman Street has them in the back yard sheltering the cars. The City of Waltham has them on the MacArthur School and the City of Waltham has them on the Public Works Department. Bentley College has them on the new hockey rink that's down on Beaver Street.

If we weren't in this front yard district, this never would have come up. Because we are cutting into this front yard district this 150 feet, that's what brings us in and brings us into his jurisdiction. So he said, well I can't waive it because you're in the front yard within 150 feet. Go to the Board of Appeals. So, I said, okay fine, here we are. We're in front of the Board of Appeals. So we are taking an appeal from the building inspector on that. And we are also asking for the modifications that I asked for before because the old plan doesn't show the solar panels, doesn't show the driveway, doesn't show the walkway.

Mr. Hickernell: I don't want to beat a dead horse, but if it's a prohibited use under the code, it's prohibited in all those other places you just mentioned too.

Mr. Connors: What happens is that every other time that it's been interpreted, they've sat back and they've said, what has happened over in Newton, they just had a case over in Newton that came down and it's on the Newton Wellesley Hospital. They want to put solar panels on top of the garage over there. So the neighbor came up and said, oh the solar panels are hanging off the garage and extending out beyond it. So the board of appeals said, nope, that's fine and dandy. Solar panels, the state law says it's allowed. This is a state law above the local. You have to get all your power from 40A and part of 40A just like the Dover Amendment is an example. It said the Dover Amendment on the petition but this is really the solar amendment. The solar amendment says that you can reasonably



regulate them but they are allowed in every city and every municipality.

So over in Newton, the neighbors took the Board of Appeals off to court and they went off to court and they went up to the land court and Judge Shire said at the Land Cost, said, no, that's wrong. This state law, sorry I thought I had the case in here.

Mr. Hickernell: That's all right. I agree that the state law overrides it. I just don't know if the building inspector is serious about this being a permitted use, he's got a lot of work to do.

Mr. Connors: Well he has to go back and he has to tell the City of Waltham to take it down and every body else. So he has a lot of work to do.

So we are stuck into that thing. We stepped into because we violated a setback and he understand setbacks. He said you're in the setback here. These other ones as opposed to the MacArthur School might not be in the setback. Sean Keefe from my office, he has solar panels on his house.

So at the land court, what Judge Shire said, the city ordinance is the same as Waltham 3318 and judge shire overruled it. She said, no, that doesn't apply. The state law controls here. The use is allowed.

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

Mr. Connors: So that's my presentation.

**Mr. Sergi:** Counsel can you go over the walkway again? How does that tie in?

**Mr. Connors:** All Hobbs Brook is tied together. So they have recently bought the Thermo Fisher building up there. So they are doing it all over right now.

(Mr. Connors went over the plan with the board showing where the walkway is.)

So rather than having the people from this building go around here, go up Winter Street, past all the hotels and everything and then turn on to Wyman Street, this way here you would be able to come through here and down and come out at the lights at Wyman Street. So it would take them out of all that traffic at Totten Pond Road, Winter Street type of thing.

**Mr. Connors:** So that's my presentation in chief.

**Mr. Sergi:** Are there any questions from board members?

**Mr. Hickernell:** I don't think it has to be an accessory anything to be approved under state law, It doesn't matter if you're using the electricity or somebody else or saving it. I guess you had to come here because you're modifying the old case. I don't see any other reason for you to be here.

**Ms. Hankins:** Have you talked to anyone from the Traffic Department regarding they are in coordination with the city. I live up in that area. The traffic is horrible. It's awful to get home from the highway. I can see the intent of what you are doing because I'm very familiar with that area but I'm just curious if you talked to anybody on the Police Department or something.

**Mr. Connors:** This is Keven Casey, Vice President of Hobbs Brook.

**Mr. Casey:** Yes. Actually we have met with the Traffic Department and the Traffic Commission and he suggested that we try to divert the traffic from this building to the signalized access which exists from the 175 drive. We are requesting increased green time on that light from the Mass DOT. We have been told that we have to wait until we occupy that building because of studies which we have ready to go. The consensus is from two traffic engineers, VHB and the one hired by the solar systems. They were also concerned about this is that in organizing the traffic from the signalized access will actually improve the condition that exist there today negating the need for folks to come down the hill from the existing driveway and they are exactly the same cars that they want to get onto 95 north, will now be able to come down and will be able to increase the green time on that light to let them across rather than have them queuing all the way back up. That was the consensus.

**Mr. Sergi:** Just curiosity, you referenced a couple of times that cars would be parking underneath the solar panels. How is that? I'm trying to imagine.

**Mr. Connors** went over the parking plan with the board showing parking underneath the solar panels.

**Mr. Sergi:** So hearing no further questions, is there anyone here in favor of this petition?

(Four people raised their hand in favor.)

**Mr. Sergi:** Is there any against?

**(No one appeared in opposition)**

**Mr. Sergi: Any here just seeking information?**

**(No one appeared seeking information.)**

**Mr. Sergi: Seeing none, I will close that part of the hearing. You've had the findings of fact on file with the decision. Have you changed them or is it the same?**

**Mr. Connors: We haven't changed them at all.**

**On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file for public inspection in the Law Department.**

**Mr. Sergi: As far as the Decision?**

**On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Decision since it has been on file for public inspection in the Law Department.**

**May I have a motion now on the Proposed Findings of Fact?**

**On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to adopt the Proposed Findings of Fact as the Board's Findings of Fact.**

**Roll call: Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mr. Sergi, yes.**

**Mr. Sergi: May I have a motion on the decision?**

**On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to adopt the Proposed Decision as the Board's Decision in this case.**

**Roll call: Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mr. Sergi, yes.**

**Mr. Sergi: It's unanimous. Congratulations.**

**Mr. Connors: I just want to take a minute and just thank the board. I've been coming here, as Carol knows. Carol was down here one night with me and I had to leave because my son Michael was being born. I've been down here well over forty years. One year in the eighties, I had over forty cases in front of this board.**

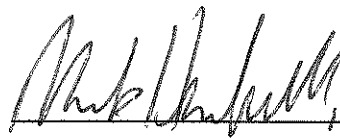
**So thank you to this board and all the other boards that I've been in front of.**

**Mr. Hickernell: Thank you for your professional presentations.**

**The board members wished Mr. Connors good luck in his retirement!**

**Mr. Sergi: One more motion is in order.**

**On motion of Mr. Hickernell, seconded by Ms. Gelineau, the board voted to adjourn at 8:05 P.M.**

  
Phil Hickernell, Clerk  
17 DEC 2018