

Jorge O. Elorza
Mayor

Marc Greenfield
Chair



Zoning Board of Review

RESOLUTION NO. 2022-30

December 15, 2022

IN RE: Application for Dimensional Variances
(Accessory Solar Energy System –Corner Side Yard, Height
Maximum Building Coverage, Maximum Total Impervious Coverage)

PROPERTY: Tax Assessor's Plat 63, Lot 605
265 Manton Avenue and 18-26 Pope Street
C-2 Commercial and R-3 Residential Zoning Districts

APPLICANT/
OWNER: Paul Marks/Manton Development Partners, LLC
PO Box 1046
Brookline, MA 02446

COUNSEL: Seth Handy, Esq.
42 Weybosset Street
Providence, RI 02903

FILED
2022 DEC 15 A 11:13
DEPT. OF CITY CLERK
PROVIDENCE, R.I.

On November 9, 2022, the within matter came before the Zoning Board of Review (the "Board") for a duly noticed public hearing on the request by the Owner and Applicant (together the "Applicant") for dimensional variances for the above-designated Property. The following members of the Board were present throughout the hearing: Chair Greenfield, Mr. Wolf, Ms. Maniotes, Ms. Rodriguez, and Mr. Mitchell. Mr. Scott sat as a non-voting alternate.

WHEREAS, the Applicant sought relief from the following Articles of the Providence Zoning Ordinance of November 24, 2014, as amended (the "Ordinance") for an Accessory Solar Energy System ("ASES"):

- Article 4, Table 4-1 (maximum lot coverage of 45%, and total impervious coverage of 65% in the R-3 zoning district)
- Article 13, Sections 1302.A.6 (maximum height of 20 feet and two stories)

- Article 13, Section 1302.Q.3.a. (freestanding system permitted only in interior side and rear yard)
- Article 1302.Q.3.b. for ASES (maximum height of eight feet for freestanding system in residential zone); and

WHEREAS, prior to the hearing, the members of the Board individually made inspections of the Property and of the surrounding neighborhood; and

WHEREAS, Attorney Seth Handy presented the application and the testimony of architect Miriam Spear, engineer Kurt Stenberg, and the Applicant Mr. Marks; and

WHEREAS, there was no written or oral comment on the matter; and

WHEREAS, the Board previously heard and granted the same request for relief in Zoning Resolution No. 2019-30; however, the grant expired when the project was stalled due to the COVID19 pandemic; and

WHEREAS, the Board received, and the Chair read into the record, the November 9, 2022 recommendation of the Department of Planning and Development (“DPD”) recommending the granting of the dimensional variances.

NOW, THEREFORE, after consideration of the application, the testimony, and all the evidence of record, upon motion by Mr. Mitchell, seconded by Ms. Rodriguez, the Board voted unanimously (5-0) to APPROVE the application for dimensional variances.

**THE BOARD HEREBY MAKES THE FOLLOWING
FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The Property was formerly made up of 4 lots, but was merged into one lot consisting of approximately 30,265 sq. ft. The lot straddles two zoning districts with the area fronting on Manton Ave zoned as C-2 General Commercial, and the rear of the lot along Pope St zoned as R-3 Residential. The C-2 area is improved with a structure with a footprint of 6,990 sq. ft. with a legally permitted use as a church; the R-3 portion is an existing paved parking area with a small garage as an accessory structure.
2. The Applicant intends to raze the accessory structure garage and renovate the principal use structure (church) for mixed uses, including mercantile, office and co-working spaces. The uses are allowed by right. The area occupied by parking in the R-3 zone is considered rear yard and will be used to provide accessory parking for the principal mixed-use structure.
3. The Applicant proposes to install an Accessory Solar Energy System (ASES) consisting of a 25 KW Solar Photovoltaic Array on the south facing roof of the principal use structure, and to construct a solar canopy over the parking areas, consisting of a 175

KW Solar Photovoltaic Array. Both arrays are proposed to provide energy for heating, cooling, and operations of the principal structure.

4. The parking canopy located in the R-3 Zone requires dimensional relief for height, setback and area covered by the system. More specifically:
 - a. Section 1302.Q.3.a. provides that a freestanding ASES is permitted only in the interior side and rear yards. The existing parking area extends into the corner side yard of the lot.
 - b. Section 1302.Q.3.b. provides that solar panels in an R-3 Zone are limited to eight feet in height. In addition, Section 1302A.6. limits the height of any detached accessory structure to 20 feet or two stories. The Applicant seeks to install an ASES of 24 ft. height at the apex, with a pitch of 10%, ending in a height of 8 feet 6 inches at the edge.
 - c. Table 4-1 provides a maximum building coverage of 45% in a residential district. The Applicant proposes building coverage of approximately 71%, requiring relief for an additional 26%.
 - d. Table 4-1 allows a maximum impervious surface coverage of 65% in a residential district. The proposed impervious surface coverage is 80%, requiring relief for an additional 15% for maximum impervious surface coverage.
5. The Board finds that the relief sought is due to the unique characteristics of the subject property, including the size and configuration of the lot, with a main building located on a corner in the C-2 zone, and rear parking lot located in the R-3 zone. In addition, the building maintains a deep corner side setback, limiting the space that can be occupied by the ASES.
6. There was no evidence presented or elicited that the relief sought is due to a physical or economic disability of the Applicants.
7. The hardship is not the result of any prior action of the Applicant, who obtained the Property in its current state and configuration.
8. The relief is not sought primarily from the desire of the Applicant to realize greater financial gain, but to create an ASES that is used solely to offset the needs of the principal structure.
9. The Board further finds that granting the requested dimensional variance will not alter the general character of the surrounding area or impair the intent or purpose of the Ordinance or the Comprehensive Plan. The Board agrees with the report and recommendation of the DPD and notes the objectives of the comprehensive plan with respect to encouraging alternate forms of energy to promote sustainability.

10. The evidence demonstrates that the relief sought is the least relief necessary. The Applicant and witnesses credibly testified that the relief from height requirements is due to the minimum height required at the entry of the structure for emergency vehicles, along with the required pitch of the array driving the overall height. In addition, the increased building coverage is required due to the size of the panels and the need to offset energy usage by spreading the solar panels across the parking lot.
11. For the same reasons set forth in paragraph 10, the Board concludes that the hardship suffered by the Applicants if the dimensional variances are not granted, will amount to more than a mere inconvenience.

WHEREFORE, upon motion by Mr. Mitchell, seconded by Ms. Rodriguez, the Board voted (5-0) to APPROVE the application for dimensional variances related to the proposed construction of an Accessory Solar-Energy System.

By Order of the Zoning Board of Review.


MARC GREENFIELD
CHAIR

NOTICE TO OWNERS/APPLICANTS:

- A. SECTION 1901/1902 OF THE ORDINANCE REQUIRES THAT ANY VARIANCE OR SPECIAL USE PERMIT GRANTED BY THE BOARD SHALL EXPIRE SIX MONTHS AFTER THE DATE OF THE FILING OF THE RESOLUTION IN THE OFFICE OF THE BOARD UNLESS THE APPLICANT SHALL, WITHIN THE SIX MONTHS, OBTAIN A LEGAL, COMPLETE BUILDING PERMIT AND PROCEED WITH CONSTRUCTION; IF NO CONSTRUCTION IS REQUIRED, THE APPLICANT SHALL OBTAIN A LEGAL BUILDING PERMIT FOR THE USE, OR A CERTIFICATE OF OCCUPANCY. DEMOLITION AND FOUNDATION PERMITS ARE NOT BUILDING PERMITS FOR PURPOSES OF THIS REQUIREMENT. NO PERMIT OR CERTIFICATE OF OCCUPANCY WILL ISSUE UNTIL THE OWNER AND/OR ITS REPRESENTATIVE COMPLIES WITH PARAGRAPH B BELOW.
- B. THE ORIGINAL RESOLUTION IS ON FILE IN THE OFFICE OF THE ZONING BOARD OF REVIEW. THE OWNER OR THEIR REPRESENTATIVE MUST OBTAIN THE ORIGINAL RESOLUTION FROM SAID OFFICE, RECORD THE RESOLUTION IN THE CITY'S LAND EVIDENCE RECORDS, AND PROVIDE COPIES OF THE RECORDED RESOLUTION TO BOTH THE OFFICE OF THE ZONING BOARD OF REVIEW AND THE DEPARTMENT OF INSPECTION AND STANDARDS.

MOTION TO APPROVE THE DIMENSIONAL VARIANCES

MADE BY: Mitchell,

SECONDED BY: Rodriguez

MEMBERS VOTING IN FAVOR: Mitchell, Rodriguez, Maniotes, Wolf, Greenfield

MEMBERS VOTING AGAINST: None

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