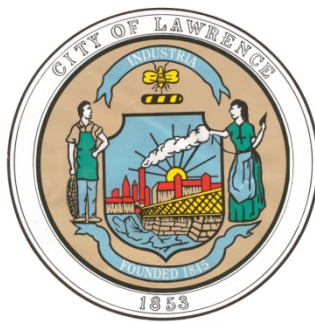


ZONING BOARD OF APPEALS



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Administrative Assistant

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Land Use Planner

Daniel A. McCarthy

ZONING BOARD OF APPEALS

5-27-2021

Minutes to the Meeting/Hearing

Due to the COVID-19 Outbreak and the policy changes made by Governor Baker and Mayor Rivera, this meeting of the Zoning Board of Appeals was done remotely.

Roll Call:

Richard Rivera, Vice Chair-Present

Frank Campos-Present

Roberto Fernandez-Present

Beatrice Taveras- Present

Jose Rosario- Present

Also Present:

Daniel McCarthy, Land Use Planner

Michael Armano, Acting Inspectional Services Director

David Palumbo, Acting Building Commissioner-Present

Captain Patrick Delaney, Fire Prevention

Pedro Soto, Planning Director

Jorge Martinez- Minute Taker

With a unanimous motion of 4-0, the members of the Zoning Board of Appeals voted to open the public meeting.

CONTINUED CASES

540 Essex Street

Prime Real Estate Investments

Mr. McCarthy indicated that the attorney responsible for the project would like to continue the matter until the next meeting.

Upon a motion made by Mr. Fernandez and seconded by Ms. Taveras, the members of the board voted unanimously to continue the matter until the next meeting.

32 Alder Street

Luis Javier

Mr. McCarthy indicated that the engineer responsible for the matter would like to continue the matter until the next meeting.

Upon a motion made by Mr. Fernandez and seconded by Ms. Taveras, the members of the board voted unanimously to continue the matter until the next meeting.

486 Andover Street

Elias Kanj

Present to address the members of the board were Frank Giles and Elias Kanj.

Mr. Giles stated that since the last Zoning Board of Appeals (ZBA) meeting, a wraparound meeting with the city was performed and there were some issues discussed and some possible solutions were proposed as well. He then stated that there is a nice amount of greenspace in the proposal at hand. He then stated that greenspace closer to the building was added to satisfy some of Mr. Armano's concerns from the last

meeting. He then stated that the greenspace being closer to the building is a much better idea and it also allows the greenspace farther away from the area to be maintained, which is also a good sized area. He then stated that the project has the necessary parking and that the parking was reduced quite a bit in order to create space for the green area. He then stated that 21% of the lot is dedicated to greenspace and a playground/common area is 1,500 square feet. He stated that this will be a play area and gathering area for the residents and children.

Mr. McCarthy then stated that the city's biggest concern in regards to the proposal is the density of the units. He then stated that he believes that all of the apartments average a little over 700 square feet for the two-bedroom apartments. He then stated that the plans being shown are the most up to date ones and that the units are all a bit more uniform than they were in past plans. He then stated that the city does not favor the proposal but it is also not against it. He then stated that he believes that the matter should be left up to the board's discretion.

Mr. Giles then stated that Mr. McCarthy's comments are justified and that he and his client have done quite a bit of work and reduced the number of overall units. He then stated that he believes that five or six units would be allowed by-right and that he and Mr. Kanj have decided to abandon the third floor which will cause a significant reduction in the density of the building. He then stated that the reductions to the proposal that the city has suggested have been significant as well and that the improvements serve to create a better living environment within the building.

Mr. Rivera then stated that there are not any stamped architectural plans associated with the proposal.

Mr. McCarthy stated that these plans are stamped.

Mr. Rivera then stated that the reason he asks for the stamped architectural plans is because he wants to ensure that what is being proposed is what is being built.

Mr. McCarthy then stated that the board should be aware that the person who stamped the plans is not necessarily the person who made the plans.

Captain Delaney then stated that the fire department has no concerns regarding this proposal.

Mr. Palumbo then stated that the plans that were submitted were legal plans.

With no further discussion,

The members of the board voted and the results are as follows:

Roberto Fernandez- Yes
Jose Rosario- Yes
Beatrice Taveras- Yes
Richard Rivera, Chair- Yes

The applicant's petition was passed with a vote of 4-0.

37 Atkinson Street
Shirley Mejia

Present to address the members of the board were Shirley Mejia and Jose R. Flores.

Ms. Mejia stated that she has a two family home on Atkinson Street in an R-3 neighborhood and that she was before the board in order to secure a variance to turn a third floor attic into an apartment.

Mr. Rivera then asked what the hardship was that was associated with the property. Ms. Mejia stated that the hardship is the fact that expanding upon the footprint of the building would take land away that could serve as greenspace. She then stated that the most logical approach would be to build in the attic rather than expand.

Mr. Martinez then stated that on the application, Ms. Mejia listed section 29-15 when the section that she should have listed for the parking variance under section 29-18. He then stated that according to the application, 37 Atkinson Street is in an R-2 district. He then stated that if this was the case, some sort of relief needed to be granted by the city in order to have a three unit building in an R-2 district.

Mr. McCarthy then stated that the property is in an R-3 district, not an R-2. He then stated that perhaps that was a typo. He then stated the main purpose for the petition is for the dimensional variance, not the parking variance. He then stated that a dimensional variance is also required.

Mr. Rivera then stated that it appears that some work has already been done to the roof. Mr. McCarthy stated that the applicant once had another contractor who was handling the proposal who did not pull the appropriate permits and ended up abandoning the project before it was completed. He then stated that it is a tough situation to be in and the board has permitted denser cases than this one. He stated that it is a nice neighborhood and the city does not have a position, but he believes that the applicant is in a tough position.

Mr. Rivera then asked if the work that the previous contractor performed was permitted by the ZBA or not. Mr. McCarthy stated that it was not voted on by any municipal board.

Mr. Rivera then asked if there were architectural plans associated with the proposal. He stated that there is a lot of work done. Ms. Mejia stated that there is an architectural plan as well as a site plan associated with the proposal.

Mr. Rivera then stated that the plans that were being shown were created by someone who is not an architect.

Mr. Martinez then indicated that the only thing that was stamped was the site plan.

Mr. McCarthy then stated that the plans that were submitted by the previous project which was just approved were done by a gentleman who is also not an architect and those plans were stamped by an environmental engineer. He then stated that the plans in question were drawn by a professional. He then stated that he does not understand what is wrong with that. He then stated that the architectural plans can be made into a condition, but that they are not required in order to be heard by the board.

Mr. Rivera then stated that the reason why he asks for architectural plans is because he wants to ensure that nothing changes from the ZBA meeting to the permitting process. Mr. McCarthy then stated that at a past meeting, the board was not given any plans for a controversial project that was ultimately approved.

Ms. Mejia then stated that she did contact the person who made the plans and it was agreed that the plans would ultimately end up being stamped by an architect.

Mr. Martinez then asked if submitting a stamped architectural plan as a condition would satisfy his concerns. He then stated that he would and that in the future it would be his preference to have a stamped architectural plan. Mr. Martinez then stated that he could make it known that going forward, it will be a general practice to start submitting stamped architectural plans.

Captain Delaney then asked where the stairways that would serve as two means of egress were. Mr. Flores and Ms. Mejia both indicated that they are interior.

Captain Delaney then asked if the building would be required to be sprinkled. Mr. Palumbo stated that the fire department can make it into a condition. He then stated that he sees no building permits on this property and that he can see those violations. He then stated that there was a building permit application in February, but it was never approved.

Mr. Flores then stated that this was probably done prior to applying for the building permit.

Ms. Mejia stated that she did submit an application although it has not been accepted yet. She then stated that the structure was already there before the permit was applied for.

Mr. Palumbo then asked if the home was that way before it was purchased. Ms. Mejia and Mr. Flores stated that it was not. Mr. Palumbo then stated that going forward the city just wants to make sure that the building is safe and even hear back from the fire department to see what they would like to see happen with the sprinklers.

Ms. Mejia then stated that he believes that there is a fire protection plan that was created by a professional. Captain Delaney asked if this plan included a sprinkler system. Ms. Mejia stated that she believes that it does. Mr. Rivera then stated that he would like that made into a condition.

Mr. McCarthy then stated that the matter also has to go before the Planning Board in order to secure a Special Permit.

Mr. Rivera asked if both sides of the roof were going to be lifted. Ms. Mejia stated that only one side would be lifted. Mr. Rivera pointed out that on the plans there is a line drawn that makes it appear that both sides of the roof will be lifted. Ms. Mejia indicated that these lines were merely lines drawn on the plans with a pen. Mr. Rivera then stated that he asked exactly due to reasons like this.

Mr. Flores then asked if a sprinkler system was required even if you are doing less than 40% on the project. Mr. McCarthy then stated that going from two units to three units would change the use of the

structure thus making sprinklers necessary. Captain Delaney then stated that he thought that there were already sprinkler plans. Mr. Flores then stated that the sprinkler plans might be in there. He then stated that he thought that it was not required.

Mr. McCarthy then stated that he believed that when there is an existing three-family and it gets renovated, contractors need to do more than 40%. He then stated that when the number of units gets increased, the standard for sprinklers increases as well.

Captain Delaney then stated that if the proposal includes two means of egress and sprinklers the fire department would not object to it.

Captain Delaney then stated that it appears that one egress is off of the third floor. Ms. Mejia then went over the egresses from all of the units and confirmed Captain Delaney's statement. Mr. Flores then stated that the stairs would connect to the interior staircase that runs throughout the course of the building.

Mr. Rivera then stated that there is only one interior egress. He then asked Mr. Palumbo if the building department is ok with the egress on the exterior of the building. Mr. Palumbo then stated that he would suggest that the fire department and building department perform a walkthrough of the building in order to address some of the issues. Captain Delaney agreed and suggested continuing the matter in order to facilitate the site walk.

Mr. Flores and Ms. Mejia indicated that they would like to continue the matter until the next meeting.

Upon a motion made by Mr. Fernandez and seconded by Ms. Taveras, the members of the board voted unanimously to continue the matter until the next meeting.

***13 Wells and 354-358 Park Street
Nunez LLC***

Present to address the members of the board was Frank Giles.

Mr. Giles stated that the project has been before the Conservation Commission as well as being approved by the Zoning Board in the past. He then stated that the building has since been improved and the once two separate buildings have been merged. He stated that this design is much more practical.

He then stated that the building has also been approved by the Planning Board already. He then stated that at first, the owners did not think that they would have to go before the ZBA, but since that time it was discovered that it would. He then stated that the variance being requested is to cover a side setback that is not in compliance with the city ordinance.

Mr. McCarthy then stated that the biggest obstacle with the design of the building is the fact that it is near the Spicket River resource area. He then stated that even though it is eight feet above the river, it is within the 100-year floodplain. He stated that the initial plan was to build two buildings on the high spots of the lot and after the project was approved many developers said that it may be best to elevate the building and have a flow-through basement.

He stated that a new design was created with a garage under the building. He then stated that the building is located in an I-2 industrial district and the lot was once an industrial laundry site. He then stated that the property is a real eye-sore and has lots of problems. He then stated that industrial sites have a 25-foot side setback requirement as well as a 30-foot front setback requirement. He then stated that the building does not abide by a setback requirement hence the reason for the setback.

He then stated that the project does have sufficient parking and although a parking variance is listed on the application, there is enough parking for the project. He then stated that the project is on two parcels and that 13 Wells Street is the larger parcel that goes all throughout and there is a small parcel on Park Street. He stated that when the two lots are merged, the building will have a Park Street address. He then stated that the main entrance is going to be on Park Street and not Wells Street because Wells Street is mainly residential. He then stated that the fire department can use Wells Street as a secondary means of egress.

With no further discussion,

The members of the board voted and the results are as follows:

Beatrice Taveras- Yes
Roberto Fernandez- Yes
Jose Rosario- Yes
Richard Rivera, Chair- Yes

The applicant's petition was passed with a vote of 4-0.

***2, 6-8, 10 Sanborn Street
Daher Companies***

Present to address the members of the board were Frank Giles and Ken Daher.

Mr. Giles indicated that there were three lots and on one lot there is currently an existing two-family home. He then presented a site plan to the members of the board.

He then stated that these lots were originally laid out with parking in the driveway that led into garages in the rear. He then stated that the buildings were intended to be built on, but at some point they were independent and owned by other people. He then stated that now that the lots are under common ownership, his client is proposing at the corner of Everett Street and Kingston Street a two-family home on the left side of the existing two family which will be a little under 5,000 square feet. He then stated that the middle lot where the existing two-family home is placed has a little under 5,000 square feet as well. He then stated that the parking on both of these units will be independent.

Mr. Giles then stated that the building on the right side of the site plan will be a single-family home so as not to add more density to the neighborhood. He then stated that the single-family home is modest and will be roughly 26 feet by 26 feet. He then stated that it will be 2.5 stories and that there are architectural drawings included as well. He then stated that the hardship associated with the proposal can be the fact that the property is positioned by three streets. Mr. Giles then presented an image of a modest two-family home and stated that the home that Mr. Daher is proposing looks like the one being displayed.

Mr. Daher then stated that he has been developing throughout the city for 40 years. He then stated that the homes that he has proposed have essentially all been one and two family homes that have been purchased by people who live in the city. He then stated that he believes that these properties are an asset to the city and will provide residents with the opportunity to own their homes rather than rent them. He then stated that the lots are preexisting and that at one point the properties had existing addresses. He then stated that he made concessions in the design, especially when he decided to reduce to a single-family home. He then stated that he looks forward towards working with the board and hopes that the project can progress further in the permitting process.

Mr. McCarthy then stated that Mr. Giles had already mentioned the hardship which is the design and location of the lot. He then stated that he believes that this is one of the problems. Mr. Giles then stated that the city has done a lot of work on Kingston Street and Everett Street. He then stated that some of the proposed lot served as parking for the other homes. He then stated that Mr. Daher may not be able to get a curb cut that leads to the interior island of the lot. He then stated that the city may not allow him to do a curb cut on that area. He then stated that he believes that the driveway is not feasible at all. He then stated that the city recognizes the need for quality housing and that this is a really nice neighborhood. He then stated that if approved, the city would prefer a single-family home rather than the two-family home that is being proposed. He then stated that the city is neither in favor or against the proposal and it would be best to leave the matter up to the board's discretion.

Mr. Rivera then asked if the proposed curb cuts would get approved. Mr. McCarthy stated that they would not because of the angle.

Mr. Rivera then asked if the city would suggest any conditions on the matter. Mr. McCarthy stated that the city maintains no position on the matter.

Present to address the members of the board was Claudia Beck of 31 Emmett Street. She stated that she lives right behind 6-8 Sanborn. Ms. Beck gave a brief history of the several lots involved in the project. She then stated that the existing driveway is not used because it is extremely narrow. She then stated that the bump out that was added is dangerous because it leads to a very heavily trafficked area. She then traced the ownership history back to the 1960's. She then stated that the addition of these homes would rid the area of beautiful greenspace which children use to play. She then stated that if accepted, the stairs for the duplex would be four feet away from the property line. She then stated that it will invade on her privacy and there would be no space for activities due to the fact that the area is so densely packed. She then stated that perhaps it may be best to come up with a solution that involves less units. She then stated that there are discrepancies in the number of floors on the proposed duplex.

Mr. Daher then stated that it may be best to sit down and discuss the matter with the abutters and wait until the next meeting to request a decision. Ms. Beck agreed.

Upon a motion made by Mr. Fernandez and seconded by Mr. Rosario, the members of the board voted unanimously to continue the matter until the next meeting.

41-43 Chelmsford Street

Daniel Lauture

Present to address the members of the board was Daniel Lauture, the owner of the property.

Mr. Rivera asked what the hardship with the property was. Mr. Lauture stated that he is before the board in order to secure a variance for a subdivision of two legal non-conforming existing homes located on Chelmsford Street. He then stated that the hardship associated with the proposal is that technically the subdivision could be done by state law, but it would create a new non conformity which would make the property non-investable.

Mr. McCarthy then stated that he received several calls from concerned citizens who were under the impression that new homes were going to be built on the site, which is not true. He then stated that according to the Subdivision Law the city is required to allow the subdivision because the two homes both existed before the 1950's. He then stated that it creates new boundaries and inconsistencies which the variances will make legal. He then stated that some, if not all banks will not invest in these kinds of properties unless the variances are secured first. He then stated that these types of properties are owner occupied and this is more preferable in the eyes of the city. He then stated that he believes that the subdivision should be allowed. He then stated that the applicant would need to divide and separate the utilities which go to each home for accessibility reasons.

The following condition was presented to the applicant:

1. Easements be created to facilitate the use of driveways for each of the properties.

Mr. Fernandez then stated that he would also like to make the division of utilities into a condition as well.

The following condition was presented to the applicant:

2. Applicant must divide the utilities that lead to the properties.

Mr. McCarthy then stated that the applicant has invested a large amount of money in these properties and that he thinks that it would be good for the neighborhood. He then stated that he believes that there is no reason that any other conditions should be imposed.

With no further discussion,

The members of the board voted and the results are as follows:

Beatrice Taveras- Yes with the two conditions
Roberto Fernandez- Yes with the two conditions
Jose Rosario- Yes with the two conditions
Richard Rivera, Chair- Yes with the two conditions

The applicants petition was passed with a vote of 4-0.

100 Hancock Street
Esmirna Encarnacion

Present to address the members of the board was Esmirna Encarnacion.

Ms. Encarnacion stated that she is trying to turn her single-family home into a two-family home.

Mr. McCarthy stated that the matter is straightforward, he added that the applicant needs a variance under section 29-15 of the zoning ordinance. He then stated that the lot is undersized and that the appearance of the house is not going to change physically from the street other than the fact that it will go from having one door to two doors. He stated that the addition would be in the back and the biggest concern in regards to the addition is the parking.

He then stated that a seven-foot driveway is being shown which is extremely tight. He then stated that he believes that the jump from a single-family to a two-family will be a big impact on the neighborhood and that he admires the fact that the applicant will live in one unit and her mother will live in the other. He then stated that the main concern is in regards to accessibility.

Mr. Rivera asked how the applicant currently parks their cars. He then asked the applicant whether or not they would need a curb cut in order to access the parking lot. Ms. Encarnacion stated that she would. Mr. McCarthy then stated that the curb cut would ultimately end up taking the applicant's own cars off of the street.

Ms. Taveras then asked what the design of the home will be. Mr. McCarthy stated that it will be a typical up and down duplex and that there should be nothing in the basement. Ms. Encarnacion stated that there would be nothing in the basement.

Conversation ensued in regards to the number of doors on the building and the legitimacy of an easement for the driveway that leads to the parking lot.

Mr. Palumbo stated that the project will have to go before the Planning Board as well.

Captain Delaney then asked what the setback would be to the building located to the right. Mr. McCarthy stated that it would only be a couple of feet. He then stated that the homes in the area are very tight. He then asked if the applicant would meet the minimum setback requirements. Mr. McCarthy stated that the project would not meet the minimum setback requirements. He then stated that there is a condition that allows someone to follow a non-conforming lot line with a building as long as new non-conformities are not created. He then stated that the setbacks should be 12 feet within the R-2 neighborhood. He stated that historically, there is not 12 feet especially within Hancock Street. He then stated that the property is within a floodplain and someone cannot build on the floodplain hence the reason why the homes are all right on the street. He then stated that the non-conformity is going to be extended another 10 feet into the back of the property.

Mr. McCarthy and Captain Delaney came to a conclusion that the setback is within 10 feet. Captain Delaney then stated that it would be appropriate for the fire department to impose sprinklers as a condition. Captain Delaney then stated that the extension of the building into the setback should warrant sprinkling the building in order to make it safe.

Mr. McCarthy then asked how the situation with the driveway would work.

Captain Delaney then stated that it may be best to continue the matter until the next meeting in order to allow the fire department and inspection services department to inspect the property. He then stated that sprinklers save lives so installing a sprinkler would make the lot and the entire neighborhood a lot safer.

Mr. Rivera then stated that this can be made into a condition.

Ms. Encarnacion then asked if she would have to wait until the next month in order for her case to be heard. She was told she would have if granted the continuance.

Ms. Encarnacion then asked if she would be able to build a three-family home due to the fact that she has to install a sprinkler system. She was told the board would most likely deny a proposal for a three-family.

Conversation ensued in regards to the parking both on the lot and within the neighborhood.

Ms. Encarnacion then stated that she could work out some sort of arrangement with her neighbor so she can access the parking lot. Mr. Rivera stated that ultimately, this arrangement would not solve anything due to the fact that if the neighboring home were to change hands, the arrangement would be void. He stated that it is simply not feasible.

Ms. Encarnacion then asked if she could do a three-family home to offset the cost of improving the parking.

Conversation ensued in regards to the parking and feasibility of adding a curb cut as well as adding a third unit.

Mr. Fernandez then stated that the parking requirements are not based on a personal requirement, but rather a requirement that is tied with the land and the home itself. He then stated that he would advise the applicant to continue the matter until the following meeting.

Mr. McCarthy then stated that the backyard is within the floodplain and it also has very little frontage. He then stated that allowing a two-family home is a bit of a reach, but allowing a three-family house would be out of the question. He then stated that if the neighbors would agree to it, the applicant can secure an easement to make it official. He then stated that a driveway has to be eight feet wide in order to satisfy the city requirements and there needs to be two foot buffers on each side.

Upon a motion made by Mr. Fernandez and seconded by Ms. Taveras, the members of the board voted unanimously to continue the matter.

486 Andover Street was assigned to Mr. Rivera
13 Wells Street was assigned to Mr. Flores
41-43 Chelmsford Street was assigned to Mr. Fernandez

Upon a motion made by Mr. Fernandez and seconded by Ms. Taveras, the members of the board voted unanimously to adjourn the public meeting.