

Lowell Zoning Board of Appeals Minutes

May 13, 2019 6:30 P.M.
City Council Chambers, City Hall
City of Lowell, 375 Merrimack Street, Lowell, MA

Note: These minutes are not completed verbatim. For further detail, contact the Division of Development Services, 375 Merrimack Street, Lowell, MA or refer to video recordings available online at www.LTC.org.

Members Present: Chairman Perrin, Member V. Pech, Member S. Callahan, Member D. McCarthy, and Member M. Briere

Members Absent: Associate Member P. Jamina

Others Present: Patrick Burns, Associate Planner

The following represents the actions taken by the Zoning Board of Appeals at the 5/13/2019 meeting.

Chairman Perrin called the meeting to order at 6:30pm

I. New Business

ZB-2019-18

Petition Type: **Special Permit & Variance**

Applicant: **Sophea Long and Chirineath Leng**

Re Property Located at: **376 Wilder Street 01851**

Applicable Zoning Bylaws: **Section 4.5 and 6.1**

Petition: **The applicant is seeking Special Permit and Variance approval for a property at 376 Wilder Street located in the Traditional Neighborhood Multi Family (TMF) zoning district. The applicant proposes to convert an existing dimensionally nonconforming single family dwelling into a two-family home. The applicant seeks a Special Permit under Section 4.5 Nonconforming Uses and Structures and a parking Variance under Section 6.1.4 any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf of the project: Joseph Boyle 54 Lura St representing property owners of 376 Wilder St.

This is a single family home to convert into a 2 family home. Just north of Westford St. in between Westford and Princeton Blvd. seeking special permit to convert into a two family home. There is a parking issue seeking variance relief as well. What we have here is a property that can be converted into a 2 family easily with low visual impact. This property may have been once a 2 family or built as a single family but built to be easily converted to a 2 family. The only construction needed is a doorway and landing outside. The parking issue, we currently have 4 off street spaces which is what is required for a 2 family. The zoning doesn't allow stacked parking. However this is a single straight driveway. We are requesting for the variance to be approved without this lot providing the parking. There is ample parking on Wilder and Princeton Blvd. We are not proposing stacked spaces to be used here, but with the number of spaces and lack of demand, the driveway is long enough for opportunity for cars to be pulled up to fit more cars if needed.

This special permit allows a sketched plan rather than surveyed plan, the zoning waives this requirement for single and 2 family nonconforming dwellings.

Speaking in favor: Vesna Nuon 10 Gibson Rd. I support this petition. For the single family to be converted to a 2 family. The property owner purchased the property not too long ago. There is a tenant upstairs without a car. I have been there on site.

I have to go but id like to speak on behalf of the 33 Webber St petition as well. My nephew enclosed porch. I would like to speak in support of this project as well.

Speaking against: None

Discussion:

V. Pech : I think this petition make sense. The whole corridor has multi-family properties.

M. Brire: I also support the petition. I like that it is owner occupied, and I like that there are no visual changes needed for the conversion. I also don't expect parking issues.

Member McCarthy: The parking is not shown on the site plan?

J. Boyle: No, I apologize sir. The driveway is 60' feet of pavement plus a garage. The driveway suffices 3 spaces.

D. McCarthy: I'd like to see a revised site plan showing three cars that meet the length necessary for zoning. I think it's good to try to do the stacked parking I'd rather see the green space maintained.

J. Boyle: I don't think it would be good to pave more green space. There is enough pavement.

D. McCarthy: What's happening on the third floor?

J. Boyle: Storage, it is not finished. It is not livable space and is not part of the second story unit.

D. McCarthy: So the second unit won't be more than 3 bedrooms?

J. Boyle: Yes

S. Callahan: My concern on the second floor unit is that there is not a common living area. It gives me a little pause and I would not want this to become a rooming house.

J. Boyle: One of the bedrooms would be a living area, although technically a legal bedroom.

S. Callahan: Maybe we could have a condition that there be living area shown on a plan.

J. Boyle: sure we can do that.

J. Boyle: Our application is not a variance for stacked parking. Our request is for a variance for providing parking for the second unit. We want to avoid having to pave more on the property.

G. Perrin: Is the garage going to remain in place?

J. Boyle: Yes. Right now, it's just for storage.

G. Perrin: Did you state the property is going to be owner occupied?

J. Boyle: Yes, that is the intention.

G. Perrin: we have 2 conditions: provide a revised parking plan and identify in the narrative that one of the

bedrooms will be a living area.

D. McCarthy: I am surprised you are requesting a parking variance when the new unit is a 3 bedroom?

J. Boyle: well now it will be a two bedroom. Right now, the owner will be using the driveway to park off street. Our request is to reduce the parking requirement from 4 spaces to 2 spaces.

D. McCarthy: You will be parking with one car in front of the house with the placard and then another car would be parking in front of another property?

J. Boyle: I think cars will be parked on Princeton Blvd where there is availability.

J. Boyle: If the board feels more comfortable granting stacked parked that would be okay too.

D. McCarthy: it's just that your property is only 50 ft. wide.

J. Boyle: On Princeton Blvd, there is very low parking demand per resident because it is a nursing home. I take your point about parking in front of someone else's house but that's why parking on Princeton Blvd is necessary here.

D. McCarthy: I like the idea of accomplishing your parking at your property. I'm not quite as thrilled about a car parking in front of another property.

J. Boyle: The parking demand of a nursing home vs. a residence is very different. Most of the parking used by the nursing home is from staff.

S. Callahan: I understand what your client is trying to accomplish but I am a little concerned too. I don't like the stacked parking either; I am rethinking the whole thing now.

J. Boyle: Are you suggesting the Board authorize a stacked parking configuration?

D. McCarthy: I would suggest if you wanted to entertain it is allowing stacked parking for three spaces and a reduction of offstreet to three spaces for a two family dwelling.

J. Boyle: So it would be a variance from the parking table and a variance from the stacked parking configuration.

G. Perrin: You could also utilize using the garage. What Mr. McCarthy has brought forward is changing your variance as far as parking goes. I know it wasn't your intent to discuss stacked parking. I think that is the most viable. I am looking at the alternative solution that Mr. McCarthy has brought forward. Maybe the Board has other comments.

V. Pech: You have the three spaces for stacked and then utilizing the garage you wouldn't need a variance the parking requirement.

S. Callahan: I agree with Dennis' remarks.

M. Briere: I am not concerned about parking in this area at all.

J. Boyle: The actual parking demand is one space for this property. There are no other parking demands anticipated. I understand you cannot base your decision on the current ownership and tenant situation but I wanted to provide you with that.

G. Perrin: We have 2 conditions:

1. The applicant shall provide a revision of the parking plan that shows the stacked parking.
2. The applicant shall submit revised plans and a new narrative identifying the living area of the second floor.

J. Boyle: I can provide a plan showing 4 off street spaces.

G. Perrin: That's fine then.

Motion: S. Callahan made a motion to approve the Special Permit 4.5 to convert the nonconforming single family dwelling to a 2 family dwelling with the previously mentioned conditions. The motion was seconded by Member Pech with unanimous approval by the Board.

J. Boyle: The variance is no longer under a 6.1.4 parking variance.

Staff: Yes, the parking variance would be under 6.1.11 #5.

Motion: S. Callahan made a motion to approve the Variance under Section 6.1.11 #5 for stacked parking with the previously mentioned conditions. Member Pech seconded the motion with unanimous approval by the Board, (5-0).

ZB-2019-19

Petition Type: **Variance**

Applicant: **Fion Chan**

Re Property Located at: **33 Webber Street 01851**

Applicable Zoning Bylaws: **Section 5.1**

Petition: **The applicant is seeking Variance approval at 33-35 Webber Street located in the Traditional Neighborhood Single Family (TSF) zoning district. The applicant began enclosing the existing two-story front porch and seeks relief for front yard setback to fully enclose it under Section 5.1 Table of Dimensional Requirements and any other relief required of the City of Lowell Zoning Ordinance.**

Speaking on behalf of the project:

Rithisey Kong, 458 Westford St. I am here to speak on behalf of my brother who is the owner of 33 Webber St. He wanted to enclose the porch for storage.

Staff: The Building Department noticed that work had started without a building permit. The inspector issued a stop work order. The property owner violated the front yard setback requirement by enclosing the porch because it was converted to become part of the dwelling. It no longer met the 15 foot setback requirement.

Speaking in favor: None

Speaking against: None

Discussion: Member Briere: Did the homeowner do the work himself?

Yes

M. Briere: He is going to get the necessary building permits and make sure the footings are adequate to hold the enclosure?

Yes.

M. Briere: Well I guess an inspection will prove that. I think a porch looks a lot better than additional storage space, but it's your house. Good luck.

Member McCarthy: I can see your confusion because many second story porches are enclosed on the street. There appears to be a mixed bag of open and closed porches. The bay window isn't being included in the setback on the plan.

Staff: A bay window is considered a projection. That would require a variance under the front yard setback requirement.

Member D. McCarthy: The bay window looks like 18" or maybe more so it looks like it's actually a setback of 7', not 8.4'. I just want to make sure we are including the bay window if we were to approve this. The bay window isn't changing?

No. The bay window is already there. I believe it's about 15" from the house; it's not a big bay window.

D. McCarthy: So we are granting a variance for the projection as well. I wish we had a more accurate picture of what you're doing. I am glad you have windows and didn't just do blank walls. I feel like the design is lacking. I'd like to see you work with DPD on exterior elevations that are compatible with architecture of the house. The bay window and the trim will flow with the rest of the house. Aesthetics are important I just want to make sure the addition makes sense.

D. McCarthy: I am worried that we don't have clarity that you work with DPD to finish elevations so that the design makes sense with rest of house.

S. Callahan: I don't really have any other question or concerns. I appreciate that you are here to address the situation.

V. Pech: I agree with my colleagues. I think this variance can be granted. You started the work without knowing the rules and regs. You need to go through with DPD and the Building Dept. They are very helpful and please submit new elevations and site plan work with city and DPD.

G. Perrin: I echo comments of Member McCarthy. My original concern was to continue this to understand the elevations and façade. I will say the inspecting services are doing exactly what is required of them. It not only provides the Board but also residents of what is required to meet code. This is unfamiliar territory for most citizens. I would be looking for the same as D. McCarthy.

Make proper changes to the site plan and showing materials.

G. Perrin: any comments or conditions? Do you understand what they are looking for? You will need to submit better elevations.

S. Callahan: Work with DPD to submit the building exterior elevations are consistent with remainder of the building.

S. Callahan motioned and D. McCarthy seconded the motion to GRANT the Variance under Section 5.1 for front yard setback and projection with the following condition:

1. The applicant shall file a Building Permit application showing elevations with building materials so that the enclosure is consistent with existing façade of the house.

The motion passed unanimously by the Board, (5-0).

ZB-2019-20

Petition Type: **Special Permit**

Applicant: **Bi Qiong Yang**

Re Property Located at: **635 Rogers Street 01852**

Applicable Zoning Bylaws: **Section 12.4(k)**

Petition: **The applicant is seeking a Special Permit to operate a massage parlor at 635 Rogers Street, Unit 11. The unit is located in the Regional Retail (RR) zoning district and requires a special permit under Article XII: Table of Uses, Section 12.4(k) and any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf of the project: I'm Mark Lowe, this is my fiancée, Bi Qiong Yang. Because of the language I am helping with this. Basically, in a nut shell, Bi qiong purchased an existing studio from another woman that was permitted and approved and so on so forth. She learned that she needed additional permitting. She got in a situation where she engaged in a lease and is applying for this use permit. She is not changing anything and no construction is needed. I travel quite a bit and she can work less when I'm around and work more when I'm not.

Speaking in favor: None

Speaking against: None

Member McCarthy: You are looking for us to grant SP to operate a massage parlor at this address? The hours are between 9 am – 9 pm?

M. Love: Yes

D. McCarthy: Is that 7 days a week?

Yes that would vary with her work schedule but typically yes

D. McCarthy: How many employees besides your fiancée?

Just her.

Member McCarthy: Okay terrific I just wanted to make sure that is clear.

M. Love: It is sort of the whole economical way of doing things without incurring a large expense, but she may have already done that.

D. McCarthy: Have you operated a massage parlor in the past?

No, she has not.

D. McCarthy: Good luck.

S. Callahan: I have a question about one of the requirements under 7.4.1 is that a massage parlor must be affiliated and physically located at the same site of several other professions. I noted in the narrative that there are other businesses in that building like a hair salon. Does she share or have any affiliation with those businesses on the premises?

M. Love: I don't know of any specific affiliation.

S. Callahan: That's where the question is going to lie. It may be a legal question. Is there a criteria of what affiliated means in regards to 7.4.1.

Staff: Not sure in the past that we've required a designated or written affiliation.

S. Callahan: I don't want this to be a hang up, but it's in the code and it's required. Do we have to get the Law Department as far as what affiliated would mean? I will listen to my fellow board members on this. My suggestion would be to continue this to get an opinion and for the applicant to look over the ordinance and see what she could do to fulfill the requirement.

V. Pech: I always think it's a good thing when someone wants to open a business in Lowell. I think what Member Callahan had brought up is a valid concern. I am going to defer to this comments. Mr. Callahan is also an attorney. Maybe we should get clarification on this. I think if you can meet the requirement of a license professional or fitness connection part, it would be fine for me.

M. Briere: I think further clarification is needed as well. The memo states the two previous occupancy permits that were issued may have been done erroneously. So with that in mind, I'm not comfortable moving forward with this. The massage parlor is permitted in the district where you'd like to house it. There may be an error on our part but they may need to be resolved before we assist you.

G. Perrin This has been a new process for you. Certainly, there is a financial reason to get moving with the business. I am aware of a massage parlor where I don't see an affiliation to a business on Lawrence Street, it's in a plaza with a travel agency and a diner. So I too am confused with the affiliation requirement. I heed the knowledge of Mr. Callahan and his concerns. Clearly we value everyone's opinion and want to see independent business. I'd like to make a recommendation to the Board. Continuances are not something I am in favor of. I'd like to hear from the Law Dept and also from DPD and the previous issuance of permits. We could move forward this evening and these issues may be resolved with DPD and then have an administrative review. I have the concerns too but I don't think they should outweigh or deter your ability to move forward and recoup finances. Can we move forward on this?

Staff: You could move forward, a potential resolution is the applicant's willingness to provide an affiliated service like a salon mentioned in the section, that could be a potential resolution.

G. Perrin: I'd like to go through the Board once more.

M. Pech: I think you made some great comments and options. We can go the route of voting with all the things that have said and work out the issue with DPD. I also like the option of offering a hair or nail salon service. I am in favor of moving forward tonight and would like to see an administrative review.

M. Briere: I wouldn't object to anything from this Board.

D. McCarthy: Perhaps we would get an affiliation. We do need to honor that it is a requirement of Section 7.4.1. I like the idea of moving forward as well. Is the administrative review going to be 6 months?

G. Perrin: To my knowledge, there is no minimum time frame on an administrative review. I would suggest a shorter one than 6 months maybe to 30 days or 60 days.

D. McCarthy: After occupancy?

G. Perrin: Yes

S. Callahan: I agree with your proposed possible solution to this with an administrative review. Think we'd have to tailor the condition very closely. Without compliance of the affiliation you really can't be operating the business. Maybe you could do a couple things yourself. You noted there are other salons in the building.

M. Love: At one point she was potentially thinking about having tanning beds.

S. Callahan: That would work as well. I would agree we can take a vote today I would suggest an admin. Review after 90 days of occupancy.

G. Perrin: I appreciate each of the Board Member's thoughts. You are registered with the secretary of state?

M. Love: Yes

G. Perrin: For conditions, we are looking for a ruling or decision from the Law Dept. on what the affiliation would mean. And then you will have to work with DPD and make tht inclusive into your petition, whether it be tanning or salon or spa. That would satisfy 7.4.1. DPD will look into what the previous permits were issued or not so that once this does move forward after the admin review, you will be able to run your business.

Staff: An occupancy permit was issued but requiring a Special Permit for a massage parlor may have been overlooked.

G. Perrin: That can be part of the record during the admin. Review. I am comfortable with the 90 day review.

M. Love: So to be clear, she can open up and engage in business and then have the review in 90 days to make sure the conditions are in place.

G. Perrin: DPD will walk you through the process.

Staff: the answer may be that the business will have to have an affiliation within the unit which would requires its own separate health and building permits in Development Services.

G. Perrin: Yes DPD will help you. We are always proponents of businesses in the city.

V. Pech: How do you go about getting clients? What is the marketing?

M. Love: We'll google and list it on the internet and also word of mouth.

S. Callahan: Just to clarify the conditions:

1. The applicant shall work with DPD on receiving the requirements of affiliation under Section 7.4.1
2. The applicant shall take all required actions to comply with the affiliation of Section 7.4.1.
3. There will be an administrative review 90 days after occupancy.

M. Love: So she can engage in business tomorrow or the next day?

S. Callahan: You will have to speak to DPD on clarification of affiliation. Once you get that, she'll have to meet those requirements and then you should be all set.

M. Love: So can I start in a week or so?

Staff: Our office will have to file a Decision with the Clerk's office and there is a 20 day appeal period from then.

G. Perrin: If you were looking at a calendar, it would be about 30-40 days.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to GRANT the Special Permit under Section 12.4k to operate a massage parlor with the following conditions:

1. The applicant shall work with DPD on receiving the requirements of affiliation under Section 7.4.1
2. The applicant shall take all required actions to comply with the affiliation of Section 7.4.1.
3. There will be an administrative review with the Zoning Board 90 days after occupancy.

The motion passed unanimously by the Board, (5-0).

ZB-2019-21

Petition Type: **Variance**

Applicant: **Peter Eliopoulos**

Re Property Located at: **94 Havilah Street 01852**

Applicable Zoning Bylaws: **Section 5.1**

Petition: **The applicant is seeking Variance approval to construct a 125 sq. ft. addition to an existing single-family home at 94 Havilah Street. The home is in the Suburban Neighborhood Single Family (SSF) zoning district and requires Variance approval under Section 5.1 for minimum side yard setback and for any other relief required under the Lowell Zoning Ordinance.**

Speaking on behalf of the project: My name is Matt Hamor of LandPlex Engineering and Surveying at 10 George Street in Lowell. Here on behalf of the property owner for a variance. We're seeking a variance to the side yard setback under Section 5.1. The property owner wants to put a 10 ft. by 5 ft. addition to the side of the house. His family has lived in the house since 1950. The addition is 125 sq. ft. It is a single-family dwelling. His hardship is that he doesn't have enough available land because of the reduced size of the lot. Additionally, the addition is extending off the right-hand side of the house. As you are facing the house from Havilah Street, the addition will be 10.5 ft. away from the lot line. The way that the side setback requirement is 10 sum 25 so he will be outside the 10' setback but because of sum needed, he is only 10.3 on side and 10.5 on the other and need a variance for the sum. He is short by 4.2 feet but does meet the minimum 10 ft on each side. On the side of the addition that is most affected would be 100 Havila St. There is a letter from the property owner who would be Mr. Schneider. HE is in favor of the petition. Also, the property owner is meticulous about maintaining the property. He brought in a petition of 16 names of people in support of his project. He just doing a one-story addition. We feel as though it will not be detriment to the neighborhood. It is not going to be derogating the intent of the zoning ordinance by granting the variance.

G. Perrin: Thank you for your well preparedness and bringing to the Board's attention the names of support for the petition. Everyone has made extremely positive comments about the family.

Speaking in favor: None

Speaking against: None

Discussion:

S. Callahan: thank you for presentation very well put together as always. The relief sought is minimal. Don't think this will a detriment to the neighborhood.

V. Pech: I agree with my colleagues. Minimal relief is required, I think this will improve this property and the neighborhood as a whole.

M. Briere: to further enhance this great property is a great benefit to the entire neighborhood.

D. McCarthy: I think what you are doing is showing some restraint. You are not asking for a lot. This is what a variance should be for. Your average on that side, could easily be called a sum of 25. I definitely think that's a workable solution. It looks like a great addition to the home and I am glad you are doing it.

G. Perrin: I agree with my colleagues. I appreciate you asking what you need and not what you don't need. I think that's representative of you and your concern for the neighbors and I do appreciate that.

Motion:

S. Callahan motioned and M. Briere seconded the motion to GRANT the Variance under Section 5.1 for side yard setback. The motion passed unanimously by the Board, (5-0).

II. Other Business

Minutes for Approval

None

IV. Adjournment

D. McCarthy motioned and S. Callahan seconded the motion to adjourn at 8:00pm. The motion passed unanimously, (5-0).

Per Order of the City of Lowell Zoning Board of Appeals – Gary Perrin, Chairman
New Business to Be Advertised by April 28, 2019 and May 5, 2019