

Lowell Zoning Board of Appeals Minutes

May 28, 2020 6:30 P.M.

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: Member Pech, Member Callahan, Member Briere, Member McCarthy

Members Absent: Chairman Perrin

Others Present: Fran Cigliano, Associate Planner

The following represents the actions taken by the Zoning Board of Appeals at the 5/28/2020 meeting. This meeting took place virtually via conference call during the Massachusetts State of Emergency due to the COVID-19 pandemic.

Vice Chairman Pech called the meeting to order at 6:30pm.

I. Continued Business

ZB-2020-20

Petition Type: **Special Permit**

Applicant: **Harrison Bonner**

Re Property Located at: **464 Central Street 01852**

Applicable Zoning Bylaws: **Section 4.5**

Petition: **Harrison Bonner has applied to the Zoning Board of Appeals for Special Permit approval to convert an existing five (5) unit residential building into a six (6) unit residential building. The property is located in the Traditional Neighborhood Mixed-Use (TMU) zoning district. 464 Central Street requires Special Permit approval under Section 4.5 to alter an existing non-conforming structure, and for any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf:

Harrison Bonner, the Applicant

Speaking in favor:

H. Bonner: I will go straight to the parking concern. Main concern from first meeting. Anything else that I'm missing, feel free to ask. Parking spaces designated for individual units. As you saw, relatively tight driveway as you pull down right side of the driveway. Have space for six parking spaces, one for each unit. Tried a few arrangements, facing back of property, angled, mix, and this we felt was the best for turnaround space that made the most sense. Tenants pull straight down the driveway, six 90-degree parking spaces. Space for pulling out of parking space for turnaround space if you want to pull forward out of parking area. We were hoping for at least five but I was glad we were able to show six. Someone had mentioned a really good idea of asking surrounding business owners or other landlords for extra parking spaces for lease. Due to local businesses being closed, we weren't able to contact businesses, but hope to later on. Scouting of local area, submitted another document that shows where our building is on google maps and in neighborhood. I understand the neighborhood is tough to park in but Central Street

being a busier road, I felt like there were a couple spots that will make parking a little bit easier. All currently paved. Wouldn't be adding pavement, would be adding parking marks.

Speaking in favor:

None

Speaking in opposition:

None

Discussion:

M. Briere: Number of compliant parking spaces before the petition?

H. Bonner: Not sure off the top of my head. Five family, previously a six family. Changing back to six without changing the footprint of the building itself.

M. Briere: Number of spaces prior was how many?

H. Bonner: I would say it was unofficial because there were no marked lines. We would be adding marked spaces.

M. Briere: Number of compliant parking spaces now would be how many?

H. Bonner: Six.

M. Briere: We had determined at the last meeting that even though those spots weren't official or compliant – how many cars were parking back there?

H. Bonner: At most five back there with different employees and tradesman on-site. It's under construction. Under my ownership, never been fully occupied so can't speak to that.

D. McCarthy: The site plan recognizes six spaces that are 8 x 18.5 feet, but the turning area is tight, 16 feet, not a full parking space in length. Is there a plan for the chain link fence?

H. Bonner: I was under the assumption that it was right on the property line. The surveyors marked the end of the parking space, three feet from prop line, so for that chain link fence, it would modified if there are no room for clearance. But we could need to amend this.

D. McCarthy: I would like to see you work with DPD to create a revised plan to correctly identify a location for the chain link fence and have the area beyond the fence remain pervious if that is currently the condition. Second question, location for recycling and trash bins. I don't see anything indicated on the plan right now. Not sure how that is handled today.

H. Bonner: Currently stored to left of bulkhead. Around back left corner of building.

D. McCarthy: Private service that empties those for a six family?

H. Bonner: Currently one tenant. They continue to take out their trash as normal. Not aware of any private service.

D. McCarthy: Believe you are responsible for private service. Would you still do individual barrels or smaller rolling dumpsters that get rolled out? I'd like to see you work with DPD to identify the best area. Another condition – how is snow being removed in the winter with such a shortage of parking and a very tight drive aisle? I'm not sure where snow storage would be on the site.

H. Bonner: A little space in the back corner. We would remove off-site if there's more snow.

D. McCarthy: Northeast corner of the site?

H. Bonner: Yes.

D. McCarthy: See that as a condition. Indicate snow storage removal and confirm that its adequate. Often in the past, we have required that you remove snow instead of store. I'm not sure if the snow storage is adequate. You do have on-street parking on your side of the street for one space.

H. Bonner: Yes, currently a dumpster. If that's removed, there's two parking spaces in front of the building and parking on the other side of the street.

D McCarthy: I think dimensionally, you will only get one space. But that being said, we still have that going for this building. Clearly from a layout standpoint, it was used as a six family, I think this is as good as it gets to resolve parking issues. Create condition for snow storage and fence and trash receptacles. I like it as a project. I like that the building was clearly a six family and was only modified recently.

S. Callahan: Thank you for the revisions. Tight squeeze there. Have been having a lot of projects in that area but parking is a big hold up. I appreciate you going back and providing plans showing parking spaces and efforts to obtain alternative parking. Tough right now in conditions everyone is in. Encourage to continue to do that. Work with other businesses to lease parking, that would be great. I agree with Dennis' conditions. The only thing to add, comparing parking issue, get a gauge with how things are working. Suggest an administrative review. 8 months. Only have one tenant?

H. Bonner: Moving out in a couple of months.

S. Callahan: 8 month review, that would be better to see how parking is playing out. Its more for the Board to keep track on how it will affect area. Only other suggestion. I think it's a great project and thanks for providing more clarity with parking.

V. Pech: I agree with my colleagues. Thanks for the updating the plans and parking layout. I think it eases my concerns as well. I would like to see you continue to look for shared parking, off-site parking to alleviate traffic and parking concerns. I'm in favor of the conditions Mr. McCarthy laid out. Overall I do think this meets the merit for a Special Permit.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to APPROVE the Special Permit under Section 4.5 with the following conditions:

1) The applicant shall work with DPD regarding the location of the chain link fence and shall identify areas

that will remain pervious near the chain link fence on an updated site plan.

2) The applicant shall work with DPD to develop a location for trash removal and a snow removal plan and shall submit updated site plans that show locations of trash receptables and snow storage areas.

3) The project shall be subject to an eight (8) month administrative review period.

The motion passed unanimously, (4-0).

II. New Business

ZB-2020-25

Petition Type: **Variances**

Applicant: **ACC Realty, LLC**

Re Property Located at: **128 Manchester Street 01852**

Applicable Zoning Bylaws: **Section 5.1; Section 6.1.10**

Petition: **ACC Realty, LLC is seeking Variance approval to construct a single-family home on the vacant lot at 128 Manchester Street. The lot is in the Traditional Two-Family (TTF) zoning district and building a home requires Variance approval under Section 5.1 for minimum lot size, minimum lot area per dwelling unit, minimum frontage, and minimum front yard setbacks; under Section 6.1.10 for maximum curb cut; and for any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf:

George Theodorou, Applicant's Attorney

G. Theodorou: Vacant, overgrown lot. Unsightly. Propose to build single family home with required parking. Comments were very favorable. Development of single family home fits in with neighborhood. Given current zoning, when you look at adjacent lot sizes, this does fit in with size of lots in neighborhood, as well as frontage. Variances will allow the property to be in harmony with the neighborhood. Mistake in architectural plans labeled one of the rooms as a third bedroom. Should be labeled as a study. The building code permits a room to be labeled and categorized as a study by removing closet. We are in compliance with building code, permits for good layout of this property. Have been able to work around and keep trees on property. Infiltration trenches to deal with runoff on the property. The improvement by putting a single-family home here would vastly improve the neighborhood.

Speaking in favor:

None

Speaking in opposition:

None

Discussion:

D. McCarthy: Will the paper street remain?

G. Theodorou: Paper street not something we will be using for our lot, or something we could use. However, we would have rights if we petitioned the city with adjacent property owner and the City Council to abandon the paper street. It would mean the city would abandon their right to the paper street. They could relinquish rights to us. We don't know who has superior title to that. From a legal standpoint, we never advise anybody to build on it or make any use for frontage or square footage. We could conceivably go to City to abandon it, don't know if current or future owners would do that but its within their right.

D. McCarthy: Half of paper street could be part of this lot down the road and that helps with the ratio disparity and frontage.

G. Theodorou: That's true, could ask to abandon. Each party has rights to the middle of the street.

D. McCarthy: That helps with the undersizing. Setbacks?

M. Hamor: Floating around a few proposals for a dwelling. Came to conclusion that requesting a variance with 5 foot setbacks would be more conducive for a house to accommodate what we wanted to do on the property. Building is more narrow, relatively small footprint. Respecting requirement for two parking spaces, and area where vehicle can navigate in and out of parking spaces. That's where we came up with the five foot setbacks.

D. McCarthy: Seems like it is compatible with existing structures on the street. Even though it doesn't meet zoning, it is similar to adjacent properties. Additional paved surface for backing in area, seems to me just creating more impervious material instead of what people would use it for. Is that a must-have or could we improve the green area?

M. Hamor: I have a habit of putting that in many of my plans. Used to be encouraged years ago. Could remove that. Would maybe broaden walkway to paved area but could certainly remove that.

D. McCarthy: Modest size of house, two parking spaces, and reducing impervious would make it similar to the existing neighborhood or even better. Glad we're seeing some landscaping, shade trees. Glad you clarified number of bedrooms.

M. Briere: No questions.

S. Callahan: Thanks for providing clarification on bedrooms. That was my main question. Submit new plans just to show we are clear on that. One question – with regards to driveway that borders 136 Manchester Street, putting border or trees there to make sure it stays pervious?

G. Theodorou: Something we can do and do it tastefully. I think we could go ahead and do that.

S. Callahan: Add as a condition - new site plans that demonstrate trees or other landscaping between property line adjacent to driveway next to 136 Manchester Street. Will fit in with the rest of the neighborhood. Good job demonstrating that other properties are well below zoning requirements. Something in your favor.

V. Pech: To me, the Variances make sense. The empty lot was an eyesore. The single family home would fit in with the character of the neighborhood. I do see merit to this petition.

Motion:

S. Callahan motioned and M. Briere seconded the motion to APPROVE the Variances under Section 5.1 with the following conditions:

1) The applicant shall submit an updated site plan that includes landscaping and trees adjacent to the

driveway along the right property line.

2) The applicant shall submit an updated site plan that eliminates the driveway spur adjacent to the front porch.

3) The applicant shall submit update renderings that convert the third bedroom into a study.

The motion passed unanimously, (4-0).

ZB-2020-26

Petition Type: **Variance**

Applicant: **Peter Marlowe c/o Louis Gagnon**

Re Property Located at: **776 Lakeview Ave 01850**

Applicable Zoning Bylaws: **Section 5.1**

Petition: **Peter Marlowe has applied for Special Permit, Site Plan Review, and Variance approval on behalf of Louis Gagnon at 776 Lakeview Ave. The applicant is seeking to convert the second and third floors of AG Hardware store into ten (10) residences. The property is in the Neighborhood Business (NB) zoning district. The proposal requires Special Permit approval per Section 12.1(e) and Site Plan Review approval per Section 11.4 from the Planning Board to create more than three (3) dwelling units, Variance approval from the Zoning Board per Section 5.1 to exceed the maximum FAR, and for any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf:

Peter Marlowe, Applicant's Representative

P. Marlowe: Represent Louis Gagnon. Reached out on 6 unit project formerly known as the Alamo. Also working with Anthony Nganga, architect. Summarized history of AG Hardware business. AG Hardware is now the only independent hardware store in the city. Go-to store for many locals. Store has been steadily decreasing need for inventory. 2020 has arrived and with all these changes, would like to create ten units upstairs, has come full circle as they were formerly apartments. Have 47 parking spaces and ample space for snow removal. Parking is more than efficient.

Speaking in favor:

None

Speaking in opposition:

None

Discussion:

M. Briere: Direct you to comments from the City. #12: I would be interested in your comments with respect to construct a crosswalk on property to proposed parking area.

P. Marlowe: Can work with Engineering department and Pat Flaherty to create what they are looking for in that area.

M. Briere: Absolutely no objection?

P. Marlowe: None.

D. McCarthy: I have a lot of questions. I do want to say that the projects you provided to the city as an

architect and construction team have been amazing. I can only see this project being one more opportunity to showcase talents. I look forward to this going forward. There are an awful lot of comments. To weed through them in this meeting would be a lot of time and effort. Seems like there is a missing piece here. Maybe civil engineer could address them but he's not here. I really feel that the comments do need to be addressed. I don't know how to move forward without a continuance because of the extensive nature of the comments that seem to be relevant, though I'm sure they could be resolved. To do that, in my mind, in a manner that would honor my job as a member of the Zoning Board.

P. Marlowe: I sent you the civil plan with some added comments. He owns so much land, he owns land to the left, this is all continuous parcels, so much snow removal, more parking than what's necessary, can be reconfigured easily to create 43 spaces and to make them sizable. One of the other things – stormwater, because we are not adding to building, we aren't putting any foundation work. I was hoping we could work with her and Pat Flaherty to make conditions.

D. McCarthy: I agree, not saying you can't do that. As I read through these comments, the lacking information on site plan that was submitted. Not providing us with a tool to resolve. I personally feel uncomfortable going forward with a vote tonight. Civil engineer to resolve on an updated plan. I think they can be, but its substantial, unfortunately.

P. Marlowe: I'll have to meet with the civil engineer and pat Flaherty.

D. McCarthy: Need to have a site plan that supports city bylaws and requirements in my opinion. I see this as a continuance.

S. Callahan: I like what's going to be accomplished but I'm kind of curious, when I look at the plans – why are we going with ten units? I'm presuming the plans you sent us with the floor plans, same on second and third floor?

P. Marlowe: Yes, will be identical.

S. Callahan: I get wary when I see small units. What about if people have things to store. Limited closet space. My question is – why not bigger units with more storage. Where is the storage going to be for people that have stuff that need additional space for storage?

P. Marlowe: Louis has clientele he rents to. He rents one-bedrooms to older clientele. I had closets taken out. Louis sells cabinets for a living. Putting built-ins in them. That's why there's no physical closet space. Furniture units.

Anthony Nganga (Architect): The building next door. All one bedrooms. He feels very strongly that that's the market he is able to accommodate and that's the customers he knows very well. The columns will affect how rooms will be configured. Floor plans look like each unit is very unique.

S. Callahan: One column outside door of the unit? Walking right into the column?

A. Nganga: It is schematic. The first time we went into the building, a lot of stuff in upper floors. I can't locate them fully accurately, different floor levels to deal with.

S. Callahan: I ultimately think it's going to be a good project. Think about reducing units. If it can't be done

it can't be done. Seeing three units with less than 600 sq. ft. What about laundry for the tenants? Nothing inside units themselves? No laundry room?

P. Marlowe: We have to supply laundry facilities for the unit. Basic schematic. Once we get into it with structural, things are going to move around a little bit.

S. Callahan: Have to do more work answering questions from the city, there were a lot of them. See if it's possible to reduce or restructure units so that there's more space.

V. Pech: Thank you for the narrative. Has been important in the community for decades. Trying to stay afloat and repurpose, it's a great hybrid residential-business model. Speaking for myself, do feel that every project you do comes out amazingly and is done well. With that being said, there are some major concerns and conditions/comments that aren't addressed with the information we have. I do like the idea of continuing this to get all the information.

P. Marlowe: Will work with city engineer to make changes they are looking for.

V. Pech: Make sure all the information is there. How far along do you want to go?

P. Marlowe: June 8.

D. McCarthy: Could we see water conservation measures, solar array? Knowing how much flat roof this project has to offer. Could showcase some sustainability elements. Green roof.

P. Marlowe: Let me address with Anthony and we will see what we can do.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to continue the petition to the June 8, 2020 ZBA meeting. The motion passed unanimously, (4-0).

III. Other Business

Minor Modification Request: 9-15 Pearl Street 01852

In 2015, Julio Rodriguez received Special Permit approval to convert an existing auto repair establishment into a six (6) unit residential structure at 9-15 Pearl Street located in the Downtown Mixed Use (DMU) zoning district. The applicant is now seeking to modify condition of approval #7, "No parking shall be allowed on site," by including a 15 minute parking space next to the building for the residents' use.

Speaking on behalf:

Julio Rodriguez, the Applicant

J. Rodriguez: Intention to use existing driveway that was used before as a repair shop as green space for the tenants to enjoy. There's been a few incidents where construction workers have been close to having accidents. I have already rented two of the units to elderly ladies. Want to make sure they have a safe space to unload groceries and can be safely get picked up without being hit by a car. Has been previously been used as a parking space before. Will still include green space area in the back instead of using existing area. Still using 120 sq. ft. of green space and including privacy hedge in the back to add landscaping.

Speaking in favor:

None

Speaking in opposition:

None

Discussion:

S. Callahan: Asked about site plan date. 15 minute parking space?

J. Rodriguez: Temporary parking space for loading/unloading.

S. Callahan: Will be putting up signage?

J. Rodriguez: Yes.

S. Callahan: Seems to be a minor modification, I would support it.

D. McCarthy: I saw this as a derogation to original plan where we are not gaining pervious area in this very dense paved zone of the city for water infiltration. Looking at site plan that is saying that it is one space, but there's dimension indicating a whole 35 feet that could be for two cars. Not gaining water infiltration space we were hoping for in approval. One parking space would be 9 by 18. Not 35 by 12. Next thought, possible that the pavement could be made of pervious material such as pervious pavement, something that could be in tune with original approval.

J. Rodriguez: We have drainage system to take care of water coming from the roof.

D. McCarthy: I understand but as you know in that area, there's very little greenspace. We are really relying on current systems that are overextended. By introducing green space, you are helping area get better. That's why I'm asking for paved surfaces to be limited to strictly what you are asking for which is a parking space. To the nature of 9 x 18 feet. Possible that paved surface could be pervious.

J. Rodriguez: Intent that they can go in front to allow access through that front area if the car is parked all the way in the front.

D. McCarthy: Site plan does not have dimensions. Does call out paved entrance. Is it possible to do something closer to what was approved, which was to expand pervious space?

J. Rodriguez: Yes, we could do that. I believe we have 10-12 feet of green space right now.

D. McCarthy: Not indicated on the plan. 9 x 18 is fine. Walkway behind stairs, 4 feet wide, to have access to have access to area with trash and sprinkler, that's fine. Want to see space for water infiltration in packed zone.

J. Rodriguez: Okay.

D. McCarthy: Work with DPD to find maximum available space for landscaped, pervious area with a

parking space.

M. Briere: I agree with conditions proposed by DM.

V. Pech: I agree with DM. Indicate 9 x 18 parking space on a plan and identify landscaping/pervious areas. Are you okay with those conditions?

J. Rodriguez: Yes.

S. Callahan: I'm wondering, can we make a minor modification with conditions?

D. McCarthy: Technically you are right. If the applicant doesn't correctly identify what the modification is, we should continue.

V. Pech: We need concrete plans with updates in front of us.

Motion:

S. Callahan motioned and M. Briere seconded the motion to continue the minor modification to the June 8, 2020 ZBA meeting.

Variance Extension Request: 256 Trotting Park Road 01854

The applicant received Variance approval on 7/9/2018 to construct a new single-family home at 256 Trotting Park Road. The parcel is located in the Suburban Neighborhood Single-Family (SSF) zoning district and requires a variance for minimum frontage and for any other relief required. The applicant received an extension on July 22, 2019 and is now seeking another extension.

Speaking on behalf:

Lenny DeSousa, applicant

L. DeSousa: Recently went through divorce. Lawyer and myself have another court date to resolve the issue, that's why I need a little bit more time.

Speaking in favor:

None

Speaking in opposition:

None

Discussion:

D. McCarthy: Extend condolences for hardship on matter. I think that an additional extension should be granted with caveat that this is the last extension granted since we already granted one previously. We have made exceptions in the past and where we have a hardship I believe this should go forward.

S. Callahan: I sympathize with you but I disagree with Board Member McCarthy. But I don't think we can extend it. You got the variance in 2018, based upon 256 Trotting Park and 260 Trotting Park. You've transferred the property. In my opinion, that changes the ball game with regard to this extension to the

point where you might have to reapply. The property was transferred after the variance was granted.

L. DeSousa: Court date to resolve the land issue has been pushed out. Matt Hamor from Landplex did all the engineering and I was hoping to build a house there to be closer to my kids.

S. Callahan: I don't think we can do this. I think the Variance is probably null now because when it was previously granted. Because courts are closed until at least July 1, and I don't know how quickly you will get in front of the court. I will consider a small extension. Very small, with the caveat that you come in front of us again. I think ultimately you will have to start all over again because the land is different now than when it was previously granted.

M. Briere: I don't have any comments. I'm not opposed to granting if its legal to do so. If its legal I'm in favor.

S. Callahan: That's what my question is, whether its legal. Because of availability of courts, I would be comfortable with small extension. May need to readdress at next extension time because I don't think we would need to grant any more after that. I would be comfortable extending the Variance to September. Don't know if I can go any farther out than that.

V. Pech: I completely understand the concerns of Mr. DeSousa, and with pandemic it makes things even more difficult. Want to circle back to concern about legality of this and if we are okay to legally approve this. I don't know if this is something we can continue, when the legal and court issues have been resolved. I'm in favor of continuing this until we get more information regarding the legal status of the property. Those are my thoughts. What is the wish of the Board?

S. Callahan: I would agree about continuing, but since courts are closed at July at the earliest, there is going to be a backlog. Don't know status of this particular case, how long it is going to be. Maybe we will have a better understanding. The Variance itself is going to lapse. If we are able to grant a further continuance I don't want him to lose that right, want to give him flexibility since the courts are closed. There's going to be backlogs. With the hardship of courts being closed, trying to settle land dispute, I would feel comfortable granting extension, but only until September.

D. McCarthy: Would it make sense to get legal counsel from the City to weigh in on this? It's presented to us to grant. Whether its legal or not I don't know.

S. Callahan: Could ask legal department.

M. Briere: Is your question the legality of whether we can grant or legal title to the property?

S. Callahan: Initial variance was granted when land was merged with 260 Trotting Park Road. Findings clearly specify that. Now we are extending the initial variance, but that was done with the understanding that the land was included in the variance. Don't the owners have a right to come in and tell us how it affects them? We did get a correspondence from an attorney who states that she represents Mrs. DeSousa stating the situation with 260 Trotting Park Road. My hesitancy is, is the situation changed now if it was granted previously with 260 Trotting Park Road as part of the land, variance was extended, now we are looking to extend, since the situation changed, does that mean Mr. DeSousa would have to refile?

My apprehension now that the situation of the land has now changed.

M. Briere: This may sound like a simple question: what's the problem with us granting the extension, and then the legal department strikes down our decision. If there's some question with title, fine we will be overruled. What would be the harm in us granting the extension?

V. Pech: I completely understand SC's concerns from a legal standpoint. I am not opposed to granting personally. If there is some legal issue we can address when we get there. For me, if we were to extend, this would be the last extension given the hardship and legal issues.

S. Callahan: I'll do a six month extension, no longer than that. Giving benefit of the doubt to Mr. DeSousa. That's as far as I'll go. Whatever legal issues you have pending, try to ramp up but I don't think I can go any further than six months. I'm hesitant to think we have legal right to do this anyways but I'll do six months.

D. McCarthy: Have legal department advise us to whether this is legal decision or not. Does seem like we are on new territory here and it's an odd place to be.

V. Pech: Have Ms. Cigliano reach out to the legal department.

S. Callahan: I would strongly, strongly suggest to have your counsel get done whatever you need to get done. From a legal perspective we may not have ability to do this, but if we do, it's been a long time and something needs to be done.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to APPROVE the Variance extension for 256 Trotting Park Road for six months, until January 9, 2021. The motion passed unanimously, (4-0).

Minutes for Approval:

May 11, 2020

S. Callahan motioned and M. Briere seconded the motion to approve the minutes from the May 11, 2020 ZBA meeting. The motion passed unanimously, (4-0).

V. Adjournment

S. Callahan motioned and D. McCarthy seconded the motion to adjourn the meeting. The motion passed unanimously, (4-0). The time was 8:45PM.

New Business to Be Advertised by May 14, 2020 and May 21, 2020