

# Lowell Zoning Board of Appeals Minutes

**February 14, 2022 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](http://www.LTC.org).

**Members Present:** Chairman Perrin, Member Pech, Member Callahan, Member McCarthy, Member Briere, Member Njoroge, Member Procope

**Members Absent:** None

**Others Present:** Francesca Cigliano, Senior Planner; Serena Gonzalez, Assistant Planner

*The following represents the actions taken by the Zoning Board of Appeals at the 2/15/2022 meeting. This meeting was held in the City Council chambers. However, due to the COVID-19 pandemic, attendees had the ability to participate via Zoom as permitted by the Governor's 3/10/2020 emergency order to suspend certain provisions of the Open Meeting Law.*

*Chairman Perrin called the meeting to order at 6:37 PM*

## **I. Continued Business**

## **II. New Business**

### **ZBA-2021-65**

*Petition Type:* **Variance**

*Applicant:* **Vicente Dalmaso**

*Property Located at:* **460 Westford Street 01851**

*Applicable Zoning Bylaws:* **Section 6.3**

*Petition:* **Vicente Dalmaso has applied for Variance approval at 460 Westford Street. The property is located in the Traditional Multi-Family (TMF) zoning district. The application seeks approval for construction of a standalone sign for the church located on the property. This project requires variance approval from the Lowell Zoning Board of Appeals, under Section 6.3, and any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Vicente Dalmaso

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

V. Pech asked for clarification on the request. S. Callahan commented that he has no questions or comments. S. Callahan asked whether the lights would be on at night. V. Pech said they would be kept on until 8pm at the latest. S. Callahan commented they could add the standard illumination condition - 1hr after sunrise to 1 hr after sunset or 1 hr after closing, whichever comes later.

D. McCarthy asked for clarification about lighting. V. Dalmaso confirmed the lights would be ground lights. D. McCarthy said that they could condition approval of the design of the lights with DPD.

M. Briere and R. Njoroge said no comments or objections. R. Njoroge said that he is amenable to condition of approving design of lighting. G. Procope said he has no issues.

Motion:

S. Callahan motioned to approve the variance with the following condition:

1. Work with DPD to finalize the hours of operation and a site lighting plan.

The motion was seconded by D. McCarthy and passed unanimously, (5-0).

**ZBA-2022-1**

*Petition Type:* **Variance**

*Applicant:* **Mon San**

*Property Located at:* **60 Foster Street 01851**

*Applicable Zoning Bylaws:* **Section 5.1**

*Petition:* **Mon San has applied to the Zoning Board of Appeals seeking Variance approval at 60 Foster Street. The applicant proposes to construct an addition to the existing single-family home to include an attached garage and second story living space. The subject property is located in the Traditional Single Family (TSF) zoning district. The application requires Variance approval per Section 5.1 for relief from the front yard setback requirement for garages, and any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Mon San, the applicant

Speaking in Favor:

Vesna Nuon

Speaking in Opposition:

None

Discussion:

D. McCarthy said that the addition fits in well in the neighborhood. It makes sense with the massing. The driveway shown on the site plan does not show the pavement you intend to put for the garage. D. McCarthy thinks they should add proposed paving to the site plan. D. McCarthy said there is also a large 25' x 25' carport/garage structure that is also not shown on the plan. He does not know if that impacts the usable open space calculations. This should be added to the site plan as well, as well as the existing shed. Need a clear picture of the surfaces that describe the intent of the project. Addition is on plot plan, but additional carport and shed are not. Would like to see a complete document to know if other variances are required. Sees this app as incomplete.

V. Pech said that the variance is doable. There are some prerequisites missing but overall he believes the addition aligns with the neighborhood and master plan.

M. Briere said that given the building has the same setbacks as the existing structure he does not believe this would be a detriment to the neighborhood. He looks upon it favorably.

G. Procope said it seems doable but the additional information is needed to be on the record. Fits in the neighborhood. Would vote in favor.

R. Njoroge said he concurs with his fellow board members. There is some missing information. It would be nice if that information was included.

S. Callahan said that he looked over the comments. DPD does not have any concerns and that the relief requested is minimal. Would look on it favorably but need more information within the updated plot plan.

Motion:

S. Callahan motioned and V. Pech seconded the motion to continue the petition to the February 28 ZBA meeting. The motion passed unanimously, (5-0).

**ZBA-2022-2**

*Petition Type:* **Variance**

*Applicant:* **Chem Saret**

*Property Located at:* **16 Calvin Street 01852**

*Applicable Zoning Bylaws:* **Section 5.1**

*Petition:* **Chem Saret has applied to the Zoning Board of Appeals for Variance approval to construct an addition at**

**16 Calvin Street. The property is in the Suburban Single Family (SSF) zoning district and requires Variance approval under Section 5.1 for relief from the minimum side yard setback requirement and for any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Brian Var, Applicant's Representative

Speaking in Favor:

Vesna Nuon, 10 Gibson Rd

V. Nuon said that his friend is looking to build an addition to grow his family. This application and the 60 Foster Street application represent two of the many Cambodian families that are moving from rentals to owning their own homes.

Speaking in Opposition:

None

Discussion:

D. McCarthy said that he did not see the notice posted at the site. The applicant sent around the sign that was posted at the site. B. Var said that it was there this morning. D. McCarthy said that it is not visible there today on his site visit. D. McCarthy said that it should be continued in his opinion.

M. Briere said he thinks overall the requested relief is minimal. Building department does have major concerns. F. Cigliano added that the ZBA should focus on the zoning relief and that the building department will address building code concerns.

R. Njoroge said that he has concerns about the 0' setback from the driveway. The applicant noted that the addition is already partially built and that they had already talked with the Building Commissioner.

V. Pech said that this project is doable. Relief requested is minimal. Clerical prerequisites missing. Overall, relief is minimal.

S. Callahan added that he is overall in favor. The notice, applicant said sign was there and there is evidence. He is willing to vote today.

G. Perrin said that they have a precedent of continuing when public notice is not met. He is proposing that they continue the item to ensure notice is met.

Motion:

S. Callahan motioned to continue to the March 14, 2022 hearing. The motion was seconded by G. Procope and passed unanimously (5-0).

**ZBA-2022-3**

*Petition Type: Variances*

*Applicant: 505 Capital Partners, LLC*

*Property Located at: 38-40 Swift Street 01852*

*Applicable Zoning Bylaws: Section 5.1; Section 6.1.10*

***Petition: 505 Capital Partners, LLC has applied to the Zoning Board of Appeals to subdivide the existing lot at 38-40 Swift Street and construct a new two family dwelling on the new lot. The property is located in the Traditional Neighborhood Two Family (TTF) zoning district and requires variance approval under Section 5.1 for minimum lot area per dwelling unit, minimum frontage, minimum and maximum front yard setbacks, minimum side yard setback, and minimum rear yard setback, under Section 6.1.10 to exceed the maximum allowed curb cut, and for any other relief required under the Lowell Zoning Ordinance.***

On Behalf:

Ken Lania, Applicant's Engineer

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

M. Briere asked for the redesign of the building. Originally the plans were frowned upon by staff. Seems cleaned up significantly. G. Perrin said that based on what he sees, the revisions do make sense. Seems like they accommodated. It seems like it is more in line with the neighborhood.

S. Callahan said that it seems like a decent project. Asked F. Cigliano for her opinion. F. Cigliano said she did not have time to issue revised comments but that she feels that the project is not 100% there yet. K. Lania said that the prospective buyers have been fairly pushy about getting garage in there. Prospective buyers are firm about wanting garage. Top-bottom duplex is nice but did not meet buyer's request. SC does not have any other questions.

V. Pech said that it seems like something that can be done. R. Njoroge said that this looks like a viable project.

D. McCarthy said that these streets have to be developed with care and be preserved. Very happy to see revised plan that paid attention to the sensitivity. It does miss a few things. Make condition that they continue to work with DPD to refine and hone in on sensitivity. He is quite happy to see landscaping but the arborvitaes are close to the street. K. Lania said they would be miniature but would be happy to work with DPD to finalize. Work with DPD to hone in on details, add walkways and landscaping on the plan.

G. Perrin confirmed that they would like to continue.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to continue the petition to the February 28, 2022 ZBA meeting. The motion passed unanimously, (5-0).

**ZBA-2022-4**

*Petition Type:* **Variance**

*Applicant:* **Danny Rivera**

*Property Located at:* **150 Fetherston Ave 01852**

*Applicable Zoning Bylaws:* **Section 5.1**

*Petition:* **Danny Rivera has applied to the Zoning Board of Appeals to demolish an existing single family home and construct a new single family home on a lot that does not meet minimum lot size requirements at 150 Fetherston Ave. The property is in the Suburban Single Family (SSF) zoning district and requires Variance approval under Section 5.1 for relief from the minimum lot size requirement and for any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Joe Mercado, Applicant's Representative

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

V. Pech said he believes the relief may be granted. S. Callahan said he does not have too many concerns. It seems straightforward. R. Njoroge sought clarification from staff regarding the need for the variance. F. Cigliano clarified that it is due to the minimum lot size. G. Procope said that the submission is very nice. D. McCarthy said that the new version will fit in better with the neighborhood.

Motion:

S. Callahan motioned and M. Briere seconded the motion to approve the variance. The motion passed unanimously, (5-0).

### **III. Other Business**

#### Variance Extension: 157 Billerica Street 01852

Due to the expiration of the Massachusetts state of emergency and permit tolling on June 15, 2021, the variance extension for 157 Billerica Street expired on December 15, 2021. This proposed second 6-month extension would extend the variance approval to August 14, 2022 to give the applicant a full year to exercise the variance, which appears to have been the intent of the Board when they mistakenly issued a one-year variance extension for this application on 9/28/2020.

#### Variance Extension: 83 Boulevard Street 01854

Due to the expiration of the Massachusetts state of emergency and permit tolling on June 15, 2021, the variance extension for 83 Boulevard Street expired on December 15, 2021. This proposed second 6-month extension would extend the variance approval to August 14, 2022 to give the applicant a full year to exercise the variance, which appears to have been the intent of the Board when they mistakenly issued a one-year variance extension for this application on 3/8/2021.

#### Variance Extension: 1 E Merrimack Street 01852

Due to the expiration of the Massachusetts state of emergency and permit tolling on June 15, 2021, the variance extension for 1 E Merrimack Street expired on December 15, 2021. This proposed second 6-month extension would extend the variance approval to August 14, 2022 to give the applicant a full year to exercise the variance, which appears to have been the intent of the Board when they mistakenly issued a one-year variance extension for this application on 3/8/2021.

#### Variance Extension: 90 Lupine Road 01850

Due to the expiration of the Massachusetts state of emergency and permit tolling on June 15, 2021, the variance extension expired on December 15, 2021. This proposed second 6-month extension would extend the variance approval to August 14, 2022 to give the applicant a full year to exercise the variance, which appears to have been the intent of the Board when they mistakenly issued a one-year variance extension for this application on 11/8/2021.

#### Discussion:

S. Callahan said that he believes the Board is not authorized to issue a second 6 month extension per MGL. D. McCarthy concurred. F. Cigliano said that if it is the will of the Board, they can vote to request a law opinion for clarification.

S. Callahan motioned to request a law opinion regarding variance extensions. Is the Zoning Board of Appeals only authorized to issue one 6-month extension per Variance? The motion was seconded by V. Pech and passed unanimously, (5-0).

#### **Minutes for Approval:**

1/24/2022

D. McCarthy said that under the application for the extension of Wentworth Ave, in the meeting, Member Callahan asked for a Law Opinion regarding the extension. This should be added to the minutes. S. Callahan had also asked about the appeal for 50 Wentworth Ave. V. Pech also asked that staff add a note stating that the meeting started later than usual due to a school committee subcommittee meeting. F. Cigliano confirmed the edits would be added.

#### **IV. Adjournment**

S. Callahan motioned to adjourn. Unanimously passed (5-0). Time was 7:58PM.

***Per Order of the City of Lowell Zoning Board of Appeals – Gary Perrin, Chairman***

***New business to be advertised by January 30, 2022 and February 6, 2022.***