

Lowell Zoning Board of Appeals Minutes

May 24, 2021 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 McCarthy, Member Procope

Members Absent: Chairman Perrin, Member Briere, Member Njoroge

Others Present: Jess Wilson, Associate Planner; Peter Cutrumbes, Assistant Planner

The following represents the actions taken by the Zoning Board of Appeals at the 5/10/2021 meeting. Due to the COVID-19 pandemic, this meeting occurred using the Zoom videoconferencing platform.

Vice Chairman Pech called the meeting to order at 6:32pm.

Continued Business

None

New Business

ZBA-2021-11

Petition Type: Variance

Applicant: Kaniyalal Patel

Property Located at: 620 School Street, 01851

Applicable Zoning Bylaws: Section 5.1

Petition: Kaniyalal Patel has applied to the Zoning Board of Appeals seeking Variance approval to construct a second-story addition consisting of two (2) residential units above an existing convenience store. The property is located in the Traditional Neighborhood Mixed Use (TMU) zoning district and requires Variance approval under Section 5.1 for the side yard setback and for any other relief required under the Lowell Zoning Ordinance.

On Behalf:

Kaniyalal Patel, Property Owner

K. Patel introduced the project, explaining that he intends to construct a second story addition for two apartment units above the existing ground floor convenient store.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

S. Callahan noted that dimensions were not included on the submitted parking layout.

K. Patel stated that there is ample room to accommodate the necessary conforming parking spaces.

S. Callahan stated that the Board typically likes to see compliant dimensions shown on parking layout plans, and suggested the Board may condition approval upon the resubmittal of a plan showing compliant parking dimensions.

K. Patel shared his screen to show Google Earth imagery of the parking area.

S. Callahan reiterated his concerns and desire for a condition.

D. McCarthy agreed and suggested that the Application be continued to the next meeting so that the Applicant can revise the plans, but feels that overall it would be a good use of the site. D. McCarthy asked DPD staff why this application was included on the agenda and noted that incomplete applications have been an issue in the past.

J. Wilson stated that she did not process the application and could not speak to the requirements.

G. Procope agreed with the comments made by his fellow Board Members, and noted that landscape areas were also missing from the submitted site plan. He stated that green space would be a great addition to the project.

K. Patel agreed to the additional materials requested by the Board and confirmed that he could have them ready in time for the next ZBA meeting on June 14.

Motion:

D. McCarthy motioned and S. Callahan seconded the motion to continue the application to the June 14, 2021 meeting. The motion passed unanimously, (4-0).

ZBA-2021-10

Petition Type: **Special Permit and Variance**

Applicant: **EJ Properties, LLC**

Property Located at: **95 Market Street, 01852**

Applicable Zoning Bylaws: **Article 12 and Section 6.1**

Petition: **EJ Properties, LLC has applied to the Zoning Board of Appeals seeking Special Permit and Variance approval at 95 Market Street. The proposed application seeks to renovate and redevelop the second floor of the existing building into three (3) residential apartments. The subject property is located in the Downtown Mixed-Use (DMU) zoning district. The application requires Special Permit approval per Article 12 for use, and Variance approval per Section 6.1 for relief from the off-street parking requirement, and for any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Anthony Nganga, Architect and John Noto, Property Owner

A. Nganga introduced J. Noto and discussed the proposed project and surrounding context on Market Street. The proposal will maintain the existing ground floor retail use and will add 3 luxury apartment units above, 1 larger unit and 2 smaller units. He described the proposed roof deck and sound mitigation solutions.

Speaking in Favor:

None

Speaking in Opposition:

Nick Petrakos, Owner of 105 Market Street and Proprietor of the Blue Shamrock Club

N. Petrakos expressed serious concerns that the volume of noise from his night club would hinder the quality of life for the future tenants of the proposed units. He stated that he has been in this location for over 25 years and intentionally chose a location with no adjacent residential uses. Based on his experience he feels that no amount of sound proofing would be adequate for the level of noise that his establishment produces at night. He stated that he does not wish to block the project from moving forward, but wants to ensure that his allowed business hours and noise level will not be restricted due to tenant complaints. He expressed that the Covid-19 pandemic has caused serious hardships for him and wants to ensure that this development will not hinder his plans for re-opening.

Discussion:

J. Noto stated that the team is cognizant of sound issues and stated that the noise levels were tested with a sound meter the previous weekend, which did not spike. He discussed some of the different options to buffer the sound.

A. Nganga acknowledged the area's known night life and suggested that tenants would be well-informed of the type of environment they would be moving into. He stated that should any noise issues arise, further testing would be done and soundproofing enhanced.

D. McCarthy expressed support of the project, stating that residential units downtown on Market Street would be a great use of the space, especially given its close proximity to a nearby parking garage. He feels the roof deck is a great amenity, and that the Applicant is capable of coming up with creative solutions to potential sound issues.

D. McCarthy relinquished some of his time to N. Petrakos, who elaborated on his concerns about the volume. D. McCarthy reassured him that the proposed development will not impact his hours of operation or allowed noise levels. He stated that it would be the developer's responsibility to resolve any noise issues, and that N. Petrakos would not be expected to participate in the solution.

G. Procope agreed with D. McCarthy that it would be a great addition to downtown Lowell, and that it would help beautify and re-populate the area. He concurred with the notion that tenants moving into a downtown area will know what to expect in terms of noise levels, and feels that overall the project aligns with the City's goals.

S. Callahan agreed with his fellow Board Members and acknowledged N. Petrakos's long-established business. He asked the Applicant if any neighborhood outreach had been done to try to alleviate these concerns in advance. He suggested that the sound be re-tested after the Blue Shamrock fully re-opens to the public.

J. Noto stated that outreach had not yet been done, but that they would be happy to work with N. Petrakos and other neighbors to do further sound testing.

S. Callahan asked for clarification on the dimensions and location of the proposed roof deck, noting potential safety concerns and railing requirements.

J. Noto described the roof deck at 181 Market Street, which has a railing and is set back from the edge of the building. He noted that there have been no safety issues since it was built in 2004.

A. Nganga stated that the rail would be a minimum of 4 ft. tall, but noted that the design details have not been fully worked out yet. He clarified that they will not be asking the Blue Shamrock to change their hours. He elaborated on the sound testing and mitigation methods and noted that the bedrooms were intentionally placed away from the wall shared with Blue Shamrock.

S. Callahan stated that the issues could be resolved and asked N. Petrakos when he anticipates reopening.

N. Petrakos stated that he intended to reopen at full capacity in mid-June, but that he can turn the music up to its normal value in advance of reopening in order to test the sound level. He expressed skepticism that any sound proofing measures would be adequate to dampen the noise enough.

S. Callahan suggested continuing the application until the next meeting so that the issue could be resolved.

V. Pech expressed support of the project and agreed with the recommendation to continue the Application.

A. Nganga asked what the continuance would achieve, since the proposed use and design will not change but rather be resolved closer to the construction phase.

S. Callahan clarified that the Applicant should meet N. Petrakos on site to complete a sound test and simulation, and noted that they should also test sound inside the former Uncharted space.

J. Noto asked if sound testing was sufficient or if a sound engineering mitigation plan would be required.

S. Callahan deferred to the Applicant and the Abutter to determine the most appropriate mitigation solution among themselves. The two parties exchanged contact information.

Motion:

D. McCarthy motioned and S. Callahan seconded the motion to continue the Application to the June 14, 2021 meeting. The motion passed unanimously, (4-0).

ZBA-2021-9

Petition Type: **Special Permit**

Applicant: **Cellco Partnership**

Property Located at: **47 Father Morissette Boulevard, 01852**

Applicable Zoning Bylaws: **Section 7.6**

Petition: **Cellco Partnership has applied to the Zoning Board of Appeals seeking Special Permit approval to install telecommunication facility on top of the Ayotte Parking Garage. The property is in the Downtown Mixed-Use (DMU) zoning district. The installation requires a Special Permit per Section 7.6 and for any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Tom Hildreth, Attorney Representing Verizon Wireless

Brian Ross, Site Acquisition Agent

T. Hildreth described the project, which involves installing wireless communication antennas flush to the corners of the building and painted to match. He acknowledged the question regarding height that was included in the comment memo from DPD and clarified that the antennas would not be any taller than the building itself. He shared his screen and showed examples of equipment installed in similar locations, and walked through the submitted photos and site analysis. He stated that the project aligns with the City's goal to improve telecommunication services and wireless broadband access.

Speaking in Favor:

None

Speaking in opposition:

None

Discussion:

G. Procope expressed support and stated that he had no questions, given that the Applicant addressed concerns about height. He feels that there is a minimal impact to views and it is a straight-forward proposal.

S. Callahan stated that he had no issues, and noted that this type of application is rare. He acknowledged the successful camouflage of the equipment and the necessity of it as society advances toward 5G.

D. McCarthy commended the Applicant on the thoroughness of the presentation and asked if any parking spaces would be lost due to the bollards located on the 5th floor garage.

T. Hildreth and B. Ross clarified that no spaces would be lost; however, the impacted spaces would be restricted to compact cars only.

D. McCarthy asked that the Plans be revised to reflect that intention as a condition of approval.

V. Pech agreed with his fellow Board Members and stated that he has no questions or concerns. He commended the Applicant on the thoroughness of the application.

Motion:

D. McCarthy motioned and G. Procope seconded the motion to approve with conditions. The motion passed unanimously, (4-0).

1. Applicant to submit revised plans showing the change in parking spaces from standard size to compact.

ZBA-2021-16

Petition Type: Special Permit

Applicant: Acougue do Jao Butcher Shop & Groceries

Property Located at: 1695 Middlesex Street, 01851

Applicable Zoning Bylaws: Section 6.3.2(9-d)

***Petition:* Acougue do Jao Butcher Shop & Groceries has applied to the Zoning Board of Appeals seeking Special Permit approval to install an internally illuminated sign. The property is located in the Regional Retail (RR) zoning district, and requires Special Permit approval from the Zoning Board of Appeals under Section 6.3 and any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

P. Cutrumbes stated that the Applicant missed their deadline for the abutters notice and would like to request a continuance to the June 14, 2021 ZBA meeting.

Speaking in Favor:

Speaking in Opposition:

Discussion:

Motion:

D. McCarthy motioned and G. Procope seconded the motion to continue the application to the June 14, 2021 meeting. The motion passed unanimously, (4-0).

ZBA-2021-12

Petition Type: Special Permit

Applicant: Victory Car Wash, 01852

Property Located at: 14 Perry Street

Applicable Zoning Bylaws: Section 6.3

***Petition:* Victory Car Wash has applied to the Zoning Board of Appeals seeking Special Permit approval to install an internally illuminated sign. The property is located in the Urban Mixed Use (UMU) zoning district, and requires Special Permit approval from the Zoning Board of Appeals under Section 6.3 and for any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Brandon Courier, Barlo Signs, representing Victory Car Wash

B. Courier described the proposed signage for Victory Carwash and made the case that it will aid in wayfinding. He stated that the Applicant wishes to illuminate the sign from dusk to dawn.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

S. Callahan expressed support for the proposed signage and hours of illumination, noting the significant building setback, the trees which provide screening, and the minimal impact to nearby properties.

D. McCarthy also expressed support for the project and commended the Applicant for practicing restraint in minimizing the sign to half of the allowed area. He asked if there is also a street sign on Church Street.

B. Courier said they may do an additional sign there in the future, but that is not finalized. He stated that there used to be a pylon directional sign and clarified that this business was recently purchased by a new company.

D. McCarthy suggested that may be a more affective location for a sign, rather than on the building. Nonetheless he reiterated his support for the proposed sign, stating that residents would not be impacted. He stated that he expects the Board will receive a request for an internally illuminated pylon sign on the street in the near future.

B. Courier clarified that there is an existing sign, but that it is not highly visible from the street.

G. Procope agreed with his fellow Board Members that the proposal makes sense and would only serve to enhance the property. He noted that it is a very busy street and that the sign could help attract new business.

V. Pech agreed that improving visibility makes sense and expressed his support for the project.

Motion:

D. McCarthy motioned and S. Callahan seconded the motion to approve the application. The motion passed unanimously, (4-0).

ZBA-2021-13

Petition Type: **Special Permit**

Applicant: **Sonesta**

Property Located at: **30 Industrial Avenue East, 01852**

Applicable Zoning Bylaws: **Section 6.3**

Petition: **Sonesta has applied to the Zoning Board of Appeals seeking Special Permit approval to install internally illuminated signage at 30 Industrial Ave E. The property is located in the High Rise Commercial (HRC) zoning district and requires Special Permit approval under Section 6.3 and for any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Brandon Courier, Barlo Signs, representing Sonesta

B. Courier described the proposed signage for Sonesta hotel, noting the deep setback from the road and made the case that it will aid in wayfinding. He stated that most visitors are from out of the area and the Hotel operates 24 hours per day and therefor wishes to illuminate the sign from dusk to dawn.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

D. McCarthy confirmed that the requested hours of illumination were to accommodate hotel guests.

B. Courier confirmed that the hotel receives guests at all times of night.

D. McCarthy expressed his support for the proposed signage, noting that the sign is under the 15" projection limit and would aid in wayfinding and safety.

G. Procope also expressed support for the project, stating that there are no major visible hotels in Lowell and that it would be a great addition.

S. Callahan agreed with his fellow Board Members and expressed his support for the project, noting that it is a straightforward rebranding of the former Court Yard Hotel.

V. Pech concurred that it is a straightforward branding/marketing project and understands the need for illumination at night.

Motion:

D. McCarthy motioned and G. Procope seconded the motion to approve the application. The motion passed unanimously, (4-0).

ZBA-2021-14

Petition Type: **Special Permit**

Applicant: **Will Soucy and Don Garcia**

Property Located at: **23 Cabot Street; 616-666 Merrimack Street; 591-639 Market Street, 01854**

Applicable Zoning Bylaws: **Section 12.1(e)**

Petition: **Will Soucy and Don Garcia have applied to the Zoning Board of Appeals seeking Special Permit approval to construct a mixed-use building consisting of thirty-two (32) dwelling units and approximately 35,000 sq. ft. of commercial space, as well as a parking structure at 23 Cabot Street, 616-666 Merrimack Street, and 591-639 Market Street. The properties are located in the Urban Neighborhood Mixed Use (UMU) zoning district and require Site Plan Review approval from the Planning Board pursuant to Section 11.4 and Special Permit approval from the Zoning Board of Appeals pursuant to Section 12.1(e) and for any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

William Martin, Attorney

Brian Geadreau, Hancock Engineering

Russ Tedford, Hancock Engineering

Will Soucy, Project Developer

Steve Joncas, Project Manager

Don Golachi, Koal Architecture, PLLC

Stephen Chung, Koal Architecture, PLLC

W. Martin acknowledged the comments from DPD staff circulated in a previous memo. He described the project proposal and context and explained that the final design is not nailed down; therefore, the relief being sought from the Zoning Board may vary depending on the final design. Relief for density (FAR), loading, and landscaping requirements are required.

B. Geadreau shared the site plan on his screen. He stated that the project team has worked closely with the City's stormwater management team to manage stormwater on site and reduce the volume of output into the City's CSO system. The project team has also met with DPD staff to discuss landscape and streetscape. The project team is working with the City to apply for a MassWorks grant to help beautify the neighborhood and improve nearby intersections. B. Geadreau pointed out that if treated as a single parcel, no Zoning relief would be needed. In order to creatively fund the project; however, the Applicant intends to treat the property as two parcels and therefore needs some zoning relief.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

G. Procope commended the applicant on an in-depth proposal and expressed support for the project, but stated that he would like to see the final landscaping proposal.

S. Callahan asked the applicant to elaborate on the proposed unit layouts.

D. Golachi and S. Chung provided clarification on the proposed unit layouts and sizes. He explained that the submitted plans are a progress set and do not reflect the most recent design iteration.

B. Martin stated that the updated plans were submitted with their application to the planning board.

S. Callahan stated that his concerns were alleviated.

D. McCarthy stated that the lot area is not listed on the Site Plan and asked why the applicant was rushing to get approvals prior to submitting finalized design documentation.

W. Martin explained that the timeline is driven by the upcoming deadline for the MassWorks grant application. Other subsidy programs for affordable owner-occupied residential units as a June 1 deadline.

D. McCarthy requested clarification on the exact relief being requested.

W. Martin stated that the UMU zoning district requires a minimum of 1,000 sq. ft. of land area per dwelling unit. He reiterated that if the site were treated as one parcel, the project would not require any zoning relief. With the lot divided as shown on the submitted plans, the project has about 420 sq. ft. of land area per dwelling unit and an FAR of 3.9-4.1, whereas if the site were treated as one parcel the FAR would be less than 2. W. Martin also acknowledge DPD staff's comment regarding the corner clearance and stated that the building will be on the property line. There is 15 ft., as required, between the edge of the building and the curb; however, part of that distance is in the right-of-way.

D. McCarthy noted that the documentation submitted indicates a proposed FAR of 3.93 and asked if this was accurate.

W. Martin clarified that the final proposed lot line is yet to be determined and could change the lot size by up to 500 sq. ft. W. Martin also answered D. McCarthy's earlier question regarding the permitting timeline, stating that as part of their grant application they need to submit a good faith statement that they are well on their way to getting permits and City approval.

D. McCarthy expressed his overall support toward the project, but stated that he is apprehensive to grant a decision on an open-ended application which has not been solidified. He suggested approving on the condition that the FAR not exceed 4.2 and the land area per dwelling unit be no less than 420 sq. ft.

W. Martin agreed to the conditions and stated that the lot is roughly 13,000 sq. ft. for 32 units.

B. Geadreau calculated that to be 406 sq. ft. as the minimum land area per dwelling unit that could be provided.

D. McCarthy asked how the creative landscaping solutions should be conditioned.

W. Martin suggested conditioning a comprehensive landscape plan for the property and adjacent public ways that meets staff approval. He stated that it is their hope that the site be attractive for tenants as well as the neighborhood.

D. McCarthy asked about loading requirements on the site.

B. Geadreau stated that the loading would take place inside the parking garage, clarifying that the drive aisle of the upper parking deck would serve as the loading area.

D. McCarthy asked if that presented a safety issue.

J. Wilson stated that DPD did not receive and comments from the Lowell Fire Department, but they could follow up with them to double check if they have any concerns.

D. Golachi clarified that the lobby elevator would have access from the parking deck and is designed to accommodate furniture and elaborated that fire access is not intended to drive on top of the parking deck.

B. Geadreau added that LFD would have access from Cabot, Merrimack, and Market Streets.

D. McCarthy stated that he was comfortable with that loading scenario.

S. Chung shared the most recent project renderings on his screen, but reiterated that they are still a process set and not the final design drawings. He identified the street trees and façade materials, and stated the street furniture such as sidewalk seating outside of the corner retail space could be incorporated.

B. Geadreau discussed the scope of the landscape and streetscape elements that are being added to the design.

V. Pech expressed his support for the project, stating that it will be a benefit to Downtown and the City overall, and will contribute housing that is much needed in Lowell and the Commonwealth. He acknowledged the complexity of the project and its many collaborators, and the extent of relief being sought, but overall expressed that he did not have any serious concerns.

D. McCarthy and B. Martin agreed to a final set of conditions.

S. Callahan asked if the parking would be for tenants only and how it would be enforced.

W. Soucy confirmed that commercial tenants would have access to ground floor parking and residential tenants would have access to the upper parking deck, which would be gated.

S. Callahan suggested adding the condition that parking be restricted to tenants only and enforced through the installation of a gate to avoid any potential parking conflicts.

W. Soucy agreed.

Motion:

D. McCarthy motioned and G. Procope seconded the motion to approve with conditions. The motion passed unanimously, (4-0).

1. The Floor-Area-Ratio may not exceed 4.2.
2. A minimum of 406 sq. ft. of land area per dwelling unit must be provided.
3. The Applicant must submit a Comprehensive Neighborhood Improvement Plan including landscaping the meets staff approval.
4. A security gate must be installed to secure the residential parking on the upper deck.

Other Business

Minutes for Approval:

D. McCarthy motioned and S. Callahan seconded the motion to approve the May 10 meeting minutes. The motion passed unanimously, (4-0).

Announcements

None.

Adjournment

D. McCarthy motioned and G. Procope seconded the motion to adjourn the meeting. The motion passed unanimously, (4-0). The time was 9:13PM.