

Lowell Zoning Board of Appeals Minutes

June 14, 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: Chairman Perrin, Member Pech, Member Callahan, Member McCarthy, Member Briere, Member Procope, Member Njoroge

Members Absent: None

Others Present: Dylan Ricker, Assistant Planner

The following represents the actions taken by the Zoning Board of Appeals at the 6/14/2021 meeting. Due to the COVID-19 pandemic, this meeting occurred using the Zoom videoconferencing platform.

Chairman Perrin called the meeting to order at 6:31pm.

Continued 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 one (1) residential unit 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:

Kanaiyalal Patel, Applicant
12 Forest Street
Lowell, MA

K. Patel stated he is seeking to add an apartment above the existing convenient store at the subject property. K. Patel said that at the last meeting the Board requested a landscaping plan, and updated site plan with parking dimensions and drive lanes. K. Patel said the surveyor updated the plans and they have been provided to DPD.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

V. Pech thanked the applicant for submitting the updated plans. V. Pech stated that he feels this is a doable project, and does not have any concerns.

S. Callahan said that the previous plan had 9 parking spaces, but the new plan has only 8 parking spaces. S. Callahan asked why this was changed. K. Patel said that the spaces were reduced because the spaces were enlarged to meet the parking requirements, and the new design of the parking lot. S. Callahan agreed that the new layout makes sense, and asked what the parking requirement is for the site. K. Patel stated that the site exceeds the parking requirement.

S. Callahan asked where the snow will be stored, and asked about the location of the existing trees on the landscaping plan. K. Patel stated that the existing trees are located on the subject property.

S. Callahan asked about the proposed egresses located on each side of the building, and stated that it looks odd. S. Callahan asked if it would be possible to have only one set of stairs rather than two. K. Patel said that there are two sets of stairs to meet fire code requirements.

S. Callahan thanked the applicant for submitting updated plans, and said the new parking layout will be beneficial to the site.

D. McCarthy stated that the drive aisle is now less than 20 feet, and the applicant would need 8 feet of relief for the drive aisle.

D. McCarthy said he would love to see the landscaped area be green space, and supported a condition that the applicant work with DPD to show where snow would be stored, and have the green space be either grass or tree area. D. McCarthy clarified that he would like these both to be added as conditions. K. Patel agreed.

M. Briere stated that his questions have been answered, and he supports the petition.

G. Procope said that the new plans make sense, and the green space should be addressed with DPD. G. Procope expressed his support for the petition.

R. Njoroge stated that the applicant is seeking only minor relief, and agreed with fellow members that the updated plans will suffice.

G. Perrin asked the applicant if they were in agreement with the conditions. K. Patel agreed.

D. McCarthy clarified that the applicant will get input from DPD on the landscaping plan for the final plans.

Motion:

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

- 1) The applicant will work with DPD to finalize a landscaping plan showing where snow will be stored, and showing the green space will include grass or trees.

V. Pech seconded the motion, the motion passed unanimously, (5-0).

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:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

D. Ricker stated that the applicant is not in attendance and is requesting a continuance to the July 26th meeting.

Motion:

S. Callahan motioned, and D. McCarthy seconded the motion to continue the petition to the July 26, 2021 Zoning Board of Appeals meeting. The motion passed unanimously, (5-0).

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:

Anne Ramsey, Applicant's Representative

A. Ramsey stated the applicants is applying to erect an internally illuminated sign at the building in accordance with other signs on the building.

Luciano Netto, Applicant

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

D. McCarthy stated that per the comments he is unsure whether if there is a need for an additional Variance.

D. McCarthy does not have a problem with the Special Permit.

M. Briere said the comments state that all other requirements are met by the sign, and he would take DPD's word and approve the project.

R. Njoroge stated that the application meets the Special Permit requirements, but wants to be sure it meets the dimensional requirements.

V. Pech said the application is straight forward and fits with the existing aesthetic of the building. V. Pech's only concerns are the hours of the business.

G. Procope asked for clarification about the address of the property. The butcher shops address is listed as 1687 Middlesex Street, but the property listed in the application is 1695 Middlesex Street. G. Procope said he has no issues with the project.

G. Perrin asked the owner to provide clarification.

S. Callahan said he has no problems with the sign and likes the design. S. Callahan wanted to confirm the sign was dimensionally compliant.

L. Netto said that the business is open Monday – Saturday from 7am – 9pm, and Sunday from 7am – 4pm. S. Callahan stated that the ZBA typically sets the condition that hours of illumination are set one hour before sunrise to one hour after set or close of business, whichever comes later. L. Netto clarified that the business is moving to 1695 Middlesex and this will be the new address. L. Netto added that he has no issues with this condition, and the size of the sign will not be an incremental increase over the existing sign.

S. Callahan proposed the condition that the applicant work with DPD to ensure the sign meets the size requirements.

Motion:

S. Callahan motioned to approve the Special Permit with the following conditions:

- 1) The hours of illumination are set to one hour before sunrise, and one hour after sunset or close of business, whichever comes later; and
- 2) The applicant will work with DPD to ensure the sign meets size requirements.

G. Procope seconded the motion, and the motion passed unanimously, (5-0).

New Business

ZBA-2021-18

Petition Type: **Special Permit and Variance**

Applicant: **Brian McMahon**

Property Located at: **21 Central Street, 01852**

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

Petition: **Brian McMahon has applied to the Zoning Board of Appeals seeking Special Permit and Variance approval at 21 Central Street to convert the second floor of an existing mixed-use building into one (1) dwelling unit. The second floor is currently vacant, and there are two (2) commercial units on the ground floor which will remain. The subject property is located in the Downtown Mixed-Use (DMU) zoning district. The project requires Special Permit approval per Article 12 for use, Variance approval per Section 6.1 for relief from the off-street parking requirement, and any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

Greg Curtis, Applicant's Representative

144 Merrimack Street

Lowell, MA

G. Curtis stated that the existing building currently has two retail units on the first floor, and upstairs there is one large open area which the applicant is seeking to develop into one residential dwelling unit. The project requires Special Permit approval per Article 12, and a Variance per Section 6.1 for parking. The applicant obtained a letter from the Parking Director stating there is availability of leased parking at the Downs Garage.

Speaking in Favor:

None

Speaking in Opposition:

Todd Beauregard

25 Central Street

Lowell, MA

T. Beauregard stated that he has no opposition to the Special Permit related to the residential conversion, and believes the conversion will enhance the downtown. T. Beauregard stated he is concerned with parking, he owns the neighboring building, including a portion of the alley, and stated that the current tenants are illegally parking in the alley. T. Beauregard stated he has had conversations with tenants and has had to get police involved. T. Beauregard said that access to the alley is being blocked and vehicles are being detailed in the alley, as well as construction workers utilizing the alley. T. Beauregard is concerned about parking and the use of the alley for parking. T. Beauregard expressed additional concerns about where the dumpster will be located during renovations since during previous demolition his alleyway was used. The illegal parking in the alleyway has impacted the ability to conduct business at the property.

Discussion:

M. Briere stated that the project represents a great repurpose of vacant space, and he will vote in favor of the petition.

D. McCarthy agreed that this is a great repurpose of the building, and was surprised that there were no comments from the neighboring restaurant. D. McCarthy said he is unsure if the neighboring restaurant produces enough noise to be a problem. D. McCarthy expressed concern about the lack of feedback, and is concerned about the use of the alley, but is unsure how this impacts the application.

D. McCarthy stated that DPD did not find any adverse effects of the project. D. McCarthy added that parking would still not be allowed in the alley with newly proposed use.

R. Njoroge said that changing this to a residential use would be helpful for the City. R. Njoroge stated he understands the concerns of the abutter but is willing to accept the application, and is unsure of what can be done about the alleyway.

V. Pech said he has concerns about the alleyway, and asked if the applicant had comments regarding this issue.

G. Curtis stated that the alleyway runs from Palmer Street to near the Old Court. G. Curtis stated there is a small fire lane there and the alleyway is not conducive to parking. G. Curtis stated that the applicant needs to speak with the tenants to ensure they are not parking in the alleyway. G. Curtis said there may need to be some concessions made by the abutters, for example using parking spaces during construction. G. Curtis does not have concerns about residents parking in the alley.

V. Pech stated that overall this is a good project.

G. Procope agreed with fellow members, and shared D. McCarthy's concerns about noise from neighboring restaurants similar to abutter comments received related to 95 Market Street. G. Procope added that he believes this is a great project but something should be addressed with the current tenant issues.

S. Callahan agreed with fellow members, and stated that he shared T. Beauregard's concerns. S. Callahan said that the alley is clearly signed and should not be used for parking. S. Callahan stated that there is nothing the ZBA can condition this on for enforcement since the alleyway is already signed, and should not have parking.

G. Curtis agreed and said no cars should be parked there, and the applicant should speak with his tenants.

T. Beauregard stated that the fire lane signs are not city signs, and the City does not own any portion of the alley. T. Beauregard is concerned because there is constantly 3-4 cars parked in the alley and he is concerned that there may be additional cars as a result of the residential unit. T. Beauregard suggested a condition that the applicant be required to rent parking spaces for tenants. G. Curtis said that the tenants would have to lease a parking spot in a City garage at their own expense, and they would not be allowed to park in the alley.

T. Beauregard said people are parked in the alley all day.

G. Perrin stated that the back and forth must stop, and the ZBA is here to discuss the Variance. The current discussion is not relevant to the relief being sought. G. Perrin stated the existence of illegal fire lanes is a major issue that needs to be addressed. S. Callahan suggested that T. Beauregard have cars towed if they are parking on his property.

G. Perrin stated that the Board must stay within its purview and discuss the Variance itself. G. Perrin said he has seen vehicles parked in the alleyway which makes it difficult for T. Beauregard. G. Perrin added that leasing a parking space in a City garage has been acceptable to the ZBA in the past. G. Perrin said that it is not with the ZBA's purview to make decisions on things outside of the ZBA's purview, including noise.

Motion:

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

S. Callahan motioned, and D. McCarthy seconded the motion to approve the Variance. The motion passed unanimously, (5-0).

ZBA-2021-17

Petition Type: Variance

Applicant: Michael Ryan

Property Located at: 70 Havilah Street, 01852

Applicable Zoning Bylaws: Section 5.1

Petition: Michael Ryan has applied to the Zoning Board of Appeals seeking Variance approval to construct an addition at the existing single-family home at 70 Havilah Street. The subject property is located in the Suburban Single-Family (SSF) zoning district. The project requires Variance approval per Section 5.1 for relief from the minimum front yard setback requirement, and relief from the floor area ration (FAR) requirement, and any other relief required under the Lowell Zoning Ordinance.

On Behalf:

Michael Ryan, Applicant
70 Havilah Street
Lowell, MA

M. Ryan stated that the existing house was built in 1920 with three bedrooms, and one full bathroom. M. Ryan said he purchased the home in 2011 when he was single, and he now has a family. M. Ryan stated he likes the neighborhood and wants to add liveable square footage and a bathroom to the property to make the home one he can remain in long term.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

R. Njoroge stated that the relief being sought is minor, the project will benefit the neighborhood as a whole, and does not pose any negatives. R. Njoroge expressed his support for the petition.

G. Procope agreed with R. Njoroge, and stated the application meets the criteria for a Variance. G. Procope said he understands the applicants need for additional space and the project will benefit the neighborhood. G. Procope said he supports the project.

V. Pech said it is great when people grow up in the City then stay and raise their families there. V. Pech added that the relief being sought is minimal and the project lends itself nicely to the neighborhood. V. Pech said if there were any concerns then they would have heard from neighbors.

D. McCarthy said he is happy to see the project and it is only requesting minimal relief. D. McCarthy expressed support for the project and stated he likes the design.

S. Callahan agreed with fellow Board members. S. Callahan asked about the driveway as it is not shown in the plan, and the existing driveway would not lead to the proposed garage. M. Ryan stated that when he first spoke with DPD staff they said that the property can only have one driveway. S. Callahan asked what steps would need to be done to comply with the driveway requirement. D. Ricker stated that the existing driveway would need to be removed to create the new driveway.

S. Callahan asked whether there were existing trees that would block a new driveway in this location. M. Ryan stated the trees S. Callahan is referring to were removed. S. Callahan said that approval should be conditioned on the existing driveway being eliminated and made into green space, and the new driveway made to lead to the proposed garage. Plans should be submitted to DPD.

G. Perrin agreed that the condition makes sense. S. Callahan said that with this condition he is supportive of the project.

M. Briere stated he is supportive of the petition, and the project will enhance the neighborhood.

M. Ryan agreed with the condition.

Motion:

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

- 1) The applicant will remove the existing driveway and replace it with green space, and a new driveway will be constructed to access the garage.

G. Procope seconded the motion, and the motion passed unanimously, (5-0).

ZBA-2021-19

Petition Type: **Special Permit**

Applicant: **Hannaford Food**

Property Located at: **777 Rogers Street, 01852**

Applicable Zoning Bylaws: **Section 6.3**

Petition: **Hannaford Food has applied to the Zoning Board of Appeals seeking Special Permit approval to erect an internally illuminated sign at 777 Rogers Street. The property is located in the Regional Retail (RR) zoning district. The project requires Special Permit approval per Section 6.3, and any other relief under the Lowell Zoning Ordinance.**

On Behalf:

Dave Fenstermacher, Applicant's Engineer

D. Fenstermacher stated the applicant is seeking to install an internally illuminated sign for the Hannaford's To Go Program, the sign will provide direction for customers. D. Fenstermacher said the sign will go above a door which employees enter and exit from, and will increase safety for employees and customers. D. Fenstermacher added that the sign is well within the allowed size, the sign is 5 feet by 5 feet, and is for viewing from the parking lot, not the roadway. D. Fenstermacher said the Hannaford To Go closes at 8:00pm and the light will be out by 8:30pm.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

V. Pech said the application is straight forward and will benefit customers. V. Pech added the sign will help the flow of traffic and he has no objections.

S. Callahan agreed with V. Pech. S. Callahan suggested the condition that the sign not be lit one hour before sunrise, and one hour after sunset, whichever comes later. D. Fenstermacher agreed to the condition.

R. Njoroge said he has no objections and supports the application.

D. McCarthy thanked Hannaford for their restraint in signage as it is well below the allowable size. D. McCarthy added that the sign will be for a good purpose.

G. Procope agreed with fellow members that the application is straight forward and the restraint of the signage is good. G. Procope has no issues with the sign. M. Briere said he has no questions.

Motion:

S. Callahan motioned to approve the Special Permit with the following condition:

- 1) The hours of illumination are set to one hour before sunrise, and one hour after sunset or close of business, whichever comes later; and

D. McCarthy seconded the motion, and the motion passed unanimously, (5-0).

ZBA-2021-16

Petition Type: **Variance**

Applicant: **Jason, and Meghan Sheehan**

Property Located at: **97 Hovey Street, 01852**

Applicable Zoning Bylaws: **Section 5.1**

Petition: **Jason, and Meghan Sheehan have applied to the Zoning Board of Appeals seeking Variance approval to construct a front porch, and second story addition at the existing single-family home at 97 Hovey Street. The subject property is located in the Suburban Single-Family (SSF) zoning district. The project requires Variance approval per Section 5.1 for relief from the minimum front porch setback requirement, and any other relief required under the Lowell Zoning Ordinance.**

On Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Motion:

S. Callahan motioned, and G. Procope seconded the motion to continue the petition to the June 28, 2021 Zoning Board of Appeals meeting. The motion passed unanimously, (5-0).

Other Business

Minutes for Approval:

May 24, 2021 Minutes

S. Callahan stated that the abutter to 95 Market Street had their name spelled incorrectly in the minutes and suggested this be corrected.

S. Callahan motioned, and G. Procope seconded the motion to approve the minutes with the proposed edit. The motion passed unanimously, (5-0).

Announcements

V. Pech asked when the Zoning Board of Appeals meetings will be back in person or hybrid. G. Perrin said that based on a conversation with the Director of Development Services, the City was not ready yet for in person Board meetings. D. Ricker stated that the next meeting will be in person via a hybrid and F. Cigliano will be reaching out with more information.

G. Perrin thanked members of Board, the public, and staff for adjusting to the pandemic so well with virtual meetings and providing a way to continue meetings remotely via a hybrid model which will make it easier for the public to attend meetings.

S. Callahan agreed with G. Perrin and supports the hybrid model. S. Callahan stated that staff will need to ensure there is a method to allow the public to comment remotely, and S. Callahan offered assistance monitoring zoom to identify speakers.

Adjournment

S. Callahan motioned, and D. McCarthy seconded the motion to adjourn. The motion passed unanimously, (5-0). The time was 8:21pm.