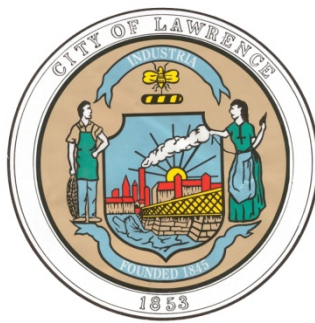


ZONING BOARD OF APPEALS



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Land Use Planner

Daniel A. McCarthy

ZONING BOARD OF APPEALS

January 9th, 2020

Minutes to the Meeting/ Hearing

Roll Call:

Richard Rivera- Present
Frank Campos- Present
Beatrice Taveras- Present
Will Mazola- Present
Roberto Fernandez- Present
Richard P. Consoli- Present

Also Present:

Daniel McCarthy: Land Use Planner
Jorge O. Martinez: Minute Taker
David Palumbo: Acting Building Commissioner
Michael Armano: Acting Inspectional Services Director

Upon a motion made by Mr. Fernandez and seconded by Mr. Mazola, the board unanimously decided to open the public meeting.

CONTINUED ITEMS

***300 Haverhill Street
Brightfields Development, LLC***

It was brought to the board's attention that the applicants would wish to continue the matter.

Upon a motion to continue made by Mr. Fernandez and seconded by Ms. Taveras, the board unanimously decided to continue the matter.

***27 Boehm Street
Johanne Frias***

Present to address the board was Frank Giles. Mr. Giles stated that his client was not present at the meeting due to the fact that he does not speak English well.

Mr. Giles stated that he went before the board the previous month on behalf of his client to propose three new homes on the land located at 27 Boehm Street. He stated that the building located on the far left side of the land as it relates to the plans was removed. He then stated that he did not have enough time to edit the parking layout on the plans. He stated that by changing the way the driveways and parking spaces are oriented, and by removing the home on the far left side of the property the result is a property which is a lot less congested. He stated that the homes that are next to each other will have to share parking.

Mr. Rivera then asked if Mr. Giles had proposed a new site plan. Mr. Giles stated that he did not, but he sent it to Mr. McCarthy as a PDF file. Mr. Rivera then stated that he and the board could not vote on what they could not have.

Mr. McCarthy mentioned that the Lawrence Fire Department (LFD) has a concern with driveways that cross parcels. He stated that the LFD generally does not like going through someone else's land.

Mr. McCarthy then stated that the six unit building that is located on the property is grandfathered in and will remain on the lot when the new construction around the home is done. Mr. McCarthy then stated that he does like the location of the six unit building. He stated that the Inspectional Services Department (ISD) and the Office of Planning and Development (OPD) does not like the common easement that crosses the lots where the two new homes are located. He then stated that he made some revisions on to the plans that would ensure that each home has its own parking and its own driveway while eliminating easements all together. He then stated that the board would not be doing the city a disservice if they were to grant the variance. He stated that the variance that the applicants are seeking is for frontage. He stated that the applicants currently have 50ft of frontage when they need 70ft.

Mr. Rivera then asked what the neighborhood is zoned. Mr. McCarthy stated that it was an R-2 residential zoning district.

Mr. McCarthy then stated that the proposed idea of adding two duplexes is a substantial amount of relief from the city. He also stated that the design that the city is proposing to the applicant is very reasonable.

There was no one present to speak for or against this petition.

The following conditions were proposed to the applicant:

- 1. Condition that the driveways be redesigned so that the owners do not have to cross parcels to access their land.**
- 2. 100 % of the storm water must be held on site**
- 3. Applicant must submit storm water, landscape and architectural plans.**

Mr. Giles then stated that he would like to continue the matter that we he could edit the plans so they conform to the ZBA's standards.

Mr. McCarthy stated that individual ownership is good for the city.

Mr. Giles then stated that he can create plans that ensure that the parking lots will be independent and belong to each property respectively.

Upon a motion to continue made by Mr. Campos and seconded by Mr. Consoli, the board unanimously decided to continue the matter until the next meeting.

*157 Lawrence Street
Luisa Liberata*

Mr. Devers and Mr. Rivera translated the proceedings from English to Spanish for the applicant.

Present to address the board were Marcos Devers, Lunara Devers and Luisa Liberata.

Mr. Devers stated that he and his client were present in order to assess the situation. He stated that he came up with a new approach for the situation. He also stated that a new site plan was submitted that included a substantial addition to the property. He stated that the substantial addition would ensure safety to the customers and efficiency for the applicant and her employees.

He stated that the input of the various city departments was also taken into account and that everything that was needed was addressed. He then stated that the addition would only be to the business on the first floor.

Mr. McCarthy then stated that he would wish to meet with the applicant at some point to discuss the matter. He then stated that if the site plan is correct, then the matter becomes one that is solely dependent on building code. He added that no relief would need to be given by the ZBA. He then suggested that the applicant continue the case and if the case is resolved internally then the applicant would be contacted.

There was no one present to speak for or against this petition.

Upon a motion to continue made by Mr. Campos and seconded by Mr. Mazzola, the board unanimously decided to continue the matter pending the review of the building code.

NEW CASES

***70 Williams Street
Brien Builders***

Present to address the board were Ernie Brien and Frank Giles.

Mr. Brien gave Mr. Giles the floor.

Mr. Giles stated that the property at 70 Williams Street is an existing building that is located off of Marston Street and Prospect Hill. He then stated that the plan for the property was to leave the existing building and create a duplex with a split level entrance, garage, and residential floors. He also stated that according to state law the abutters have rights to the center of an abutting paper street.

Mr. McCarthy then stated that the paper lot that Mr. Giles had mentioned is a wooded area. He then stated that behind the wooded area is a large asphalt lot.

Mr. Giles then stated that with the paper street the lot is approximately 6,000sf and it is 4,800sf without it. He then stated that the property is used, but not deeded.

Mr. Giles then explained the project to the board. He stated that the project is very straightforward. He stated that it would have off-street parking on the side and it would be a slab that is on grade. He added that the area does have an issue with groundwater. He stated that the water does go higher than the groundwater table, and then it goes down. He stated that it cannot be mitigated, but that a study will be done as soon as possible to see the reality of the situation and protect his investment.

Mr. McCarthy then stated that a departmental review had been performed regarding the property. He also stated that the Department of Public Works (DPW) had stated that there was a brook that is in the area that causes the flooding and high water levels. He also stated that DPW had drafted a letter that explained that new developments in the area not recommended. He also added that he understands the concerns of the DPW. He wants to see the applicant's plans. The applicant agreed.

There was no one present to speak for or against this petition.

Upon a motion to continue made by Mr. Campos and seconded by Mr. Fernandez, the board unanimously decided to continue the matter until the next meeting.

***131 Woodland Street
Orlando Mora***

Present to address the board were Lunara and Marcos Devers. They stated that the owner of the home had a serious situation and because of that he could not be there.

Mr. Devers then stated that he and his colleagues are in search of a variance in order to create a curb cut on the lot which is located on the corner of Woodland Street. He also stated that the curb cut would be in the front yard of the property and the distance of the curb cut from the corner of the street would indeed be in compliance.

Mr. McCarthy then stated that the applicant created an illegal curb cut by pouring asphalt on the curb.

Discussion ensued regarding the illegal pouring of the asphalt. Mr. Campos then stated that he believes that the applicant thought that what he did was appropriate.

Mr. Rivera then wanted to know if the wall that was in close proximity to 131 Woodland Street belonged to the property. Mr. McCarthy stated that it did and that it exists as a buffer.

Ms. McCarthy then added that the curb cut was done without the city's approval. He stated that the applicant should have coordinated with the city in order to install a curb cut, but they did not.

It was also mentioned that the owner of one of the abutting properties installed a curb cut and went through the proper channels. He stated that the applicant also went over the buffer of the neighboring property. He then stated that the city opposes the proposal based on principle and fairness. He stated that by giving parking spots to a property that already has sufficient parking you are taking away parking for homes around the neighborhood that actually need it.

There was no one present to speak for or against this petition.

The board voted and the results are as follows:

Roberto Fernandez- Abstain

Will Mazzola- No

Richard Consoli- No

Richard Rivera- No

Beatrice Taveras- No

Frank Campos- No

The applicant's petition was denied.

56 Smith Street

Luisa Polanco

Present to address the board were Marcos and Lunara Devers, the registered design professionals on the project, and Luisa and Juan Polanco, the owners of the home located at 56 Smith Street.

Mr. Devers pointed out a mistake in the language on the agenda for the ZBA meeting on 1-9-2020.

- **It should be noted that Mr. Devers was given a first draft of the agenda, but the agenda that was posted for public viewing and was given to the board members and the public was correct.**

Mr. Devers then stated that the work that was performed at 56 Smith Street was performed, but not as it was approved. He added that he and his daughter and his clients came before the board this time around to be judged by the board.

Mr. McCarthy then showed renderings of the property to the board. It was then mentioned that the original plans were not brought to the board. It was also mentioned that the renderings of the property are not true.

Discussion ensued.

Mr. Devers then stated that the front of the home is higher than the ordinance permits, but the back of the home is in compliance. Mr. Campos then wanted to know the exact heights of the front and the back of the home. Mr. Devers then stated that the front was 38 feet and the back was 34 feet respectively.

Mr. Rivera then added that the home is higher than what is required by ordinance due to the fact that the house is not even close to what was originally accepted by the board.

Mr. McCarthy then stated that the house that is now proposed to the board is too big. He added that the applicant took advantage of the grade of the terrain. He also stated that since 56 Smith Street is located in an R-2 residential zoning district, the relief the applicants will be requesting from the board will pertain to the height of the building. He also stated that a small cottage style home was originally located on the lot. He also stated that the proposed home has a big footprint.

Mr. Mazzola then wanted to know what went wrong with the project. The owners then stated that the deviation from the plans was a mistake. Mr. Campos then wanted to know who gave them the plans. Mr. McCarthy then stated that the project has been a four year process and the applicant has had to hire several builders due to the fact that many builders did not want to participate in the project.

Heather Abreu of 45 Middlebury was present to speak against the petition.

She stated that the home has become “a monster of a house”. She stated that the home is at least a two to a four family home. She added that the home does not meet the criteria, is not feasible, has no parking, and did not follow the plans at all. She disagrees completely with the project and she would like that the home be stripped of a floor to remedy this.

Mr. Rivera then wanted to know if the applicant had a cease and desist order. Mr. Palumbo stated that it did.

Mr. Devers then informed the board that he would like a continuance.

Mr. Campos then stated that he would like to see a floor removed from the property.

Mr. Rivera then stated that what the applicant did is disrespectful. He added that there was a significant difference from the plans that were proposed and the plans that were used when the building was built. He then added that the applicants had no hardships to warrant the original proposal, but the board very kindly still approved the applicant’s original petition.

Mr. Mazzola was very sympathetic.

Ms. Taveras was against the petition.

Mr. McCarthy then stated that the home is not compliant in the number of stories and the number of floors.

Mr. Rivera then stated that the board does not want to be blindsided. He stated that the mistake was between the owner and the builder, not the board. He stated that the plans were not followed and the board would most likely not entertain a continuance or approval. Mr. Mazzola then stated that the mistake was not necessarily on the builder.

Mr. Armano then stated that ISD does have some concerns regarding the project. He stated that it may be possible that the board does not know any other differences of the structure other than the height. He also stated that the fact that there are different plans means that the structures can also be vastly different as well. He also added that the board cannot go by the old plans.

Mr. Rivera then stated that he was not happy with the proposal. He added that the deviation in plans looks like it was done intentionally. He stated that the new plans are “no good”.

Mr. Armano then stated that ISD has no opinion, although they do want clear directions.

Mr. Rivera then stated that he wants the original plans to be the ones that are judged.

It was mentioned that there were two floors of livable space on the original plans. Mr. McCarthy stated that the relief that the applicants would be asking for on the old plans would be for density, subdivision, and the number of units.

Mr. Armano then stated that the building commissioner needs to see which type of relief is needed.

Mr. McCarthy stated that if the applicant were to continue then they would either have to come up with a remedy for their situation or come up with plans that satisfy the board.

Mr. Palumbo then stated that the problem is with the height of the building and the setbacks. He stated that the footprint of the building is essentially the same.

It was mentioned by the board that they are not aware of the damages that the applicants will have to pay.

Discussion ensued regarding whether or not the builder followed the correct set of plans.

Ultimately it was decided by the members of the board that the blame falls on the owners.

Mr. Devers then stated that he was before the board on behalf of his clients who are the homeowners. He stated that he was not on the project from the start. He stated that the engineer

who drew up the plans had once worked for him, but he is now independent. He then stated that he would like to find the middle ground between the demands of the board and the demands of his client. He stated that he knows the family and he would like to help him.

Mr. Rivera wanted to know if the board could get a copy of the original plans. Mr. McCarthy then stated that the plans were not readily accessible; therefore the board could not get a copy.

Discussion ensued.

Mr. Palumbo then stated that the building actually has a smaller footprint, but the height remains to be a problem.

Mr. McCarthy then stated that he could find the original plans.

Mr. Mazzola then asked everyone present if they have any suggestions.

Mr. McCarthy then stated that if a basement is above 50% above grade then it is considered habitable.

Discussion ensued.

Mr. McCarthy then asked the board if they would like to continue. Mr. Devers stated that he would.

With no further discussion,

The board voted and the results are as follows:

Roberto Fernandez- Abstain

Will Mazzola- Yes to continue

Richard Consoli- Yes to continue

Richard Rivera- No to continue

Beatrice Taveras- No to continue

Frank Campos- Yes to continue

The applicant was allowed to continue the matter until the next meeting.

Mr. Rivera then stated that he would like to know what in the project is going to be different.

BOARD BUSINESS

Upon a motion to approve minutes from the month of November and December, the board unanimously decided to approve both sets of meeting minutes.

Upon a motion to continue made by Mr. Campos and seconded by Ms. Taveras, the board unanimously decided to close the public meeting.