

Lowell Zoning Board of Appeals Minutes

January 13, 2020 6:30 P.M.

City Council Chambers, City Hall

City of Lowell, 375 Merrimack Street, Lowell, MA

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

Members Absent: Member Briere

Others Present: Francesca Cigliano, Assistant Planner
Christine McCall, Senior Planner

The following represents the actions taken by the Zoning Board of Appeals at the 01/13/2020 meeting.

Vice Chairman Pech called the meeting to order at 6:30pm. Member Briere was absent.

I. Continued Business

II. New Business

ZB-2020-2

Petition Type: **Special Permit**

Applicant: **Hazel Wood Hopkins**

Re Property Located at: **1212 Westford Street 01851**

Applicable Zoning Bylaws: **Section 6.3.4**

Petition: McGovern Ford is seeking Special Permit approval to install an internally illuminated, channel letter sign for the car dealership at 1212 Westford Street. The proposed sign would be 101 sq. ft. and would replace an existing one. The property is in the Regional Retail zoning district and the sign requires Special Permit approval under Section 6.3.4 and for any other relief required under the Lowell Zoning Ordinance.

Speaking on behalf:

Heather Dudko, McGovern Ford

H. Dudko presented the Special Permit application.

Speaking in favor:

None

Speaking in opposition:

None

Discussion:

V. Pech: I see no major changes, I have no concerns. I wish you the best of luck.

D. McCarthy: I didn't see anything listing the illumination source? Is it LED?

H. Dudko: It will be LED.

D. McCarthy: Great. I'm also happy it went down in size.

S. Callahan: What will the hours for the sign be?

Motion:

S. Callahan motioned and **V. Pech** seconded the motion to APPROVE the Special Permit under Section 6.3.4 with the following conditions:

1. The allowable hours of illumination shall be one (1) hour before sunrise to one (1) hour after sunset.
2. To vacate the previous condition from the previous Special Permit granted by the ZBA on 11/14/2001 requiring that future approvals for internally illuminated signage must come before the Zoning Board, so long as the proposed sign is the same size or smaller than the existing sign.

The motion passed unanimously, (4-0).

ZB-2020-3

Petition Type: **Variances**

Applicant: **Jennifer Sargent**

Re Property Located at: **70 Fox Street 01850**

Applicable Zoning Bylaws: **Section 5.1**

Petition: **Jennifer Sargent has applied for Variance approval to build a single-family home on a vacant lot at 70 Fox street. The property is located in the Suburban Single-Family (SSF) zoning district. 70 Fox Street requires Variance approval under Section 5.1 to encroach on the minimum lot size, minimum frontage, and for any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf:

D. Crispin, Civil Engineer, BSC Group

D. Crispin: Work related to retaining wall, front yard calculations related to green space. In the current plan, the paved area is about 45% percent, that means we don't need a variance there. We have a 35 maximum height, this building is less than that. We ask for a front yard setback and lot area.

Speaking in favor:

Joseph Sargent Sr., Applicant's Father

Carol Sargent, Applicant's Mother

Midge Landry, 54 E Sixth Street

J. Sargent: I grew up on that property and it was a wonderful experience, good piece of land. It is my wish to forward this land to my son Joe.

C. Sargent: I saved this land so I could let my son build on it.

M. Landry: I am in favor, they are a good family and I know they will take care of their property and their home. I hope the City will fix E. Sixth Street because it is very beat up.

Speaking in opposition:

John Ferguson, 65 E Sixth Street

J. Ferguson: There are so many unknown variables. I'm seeing for the first time the layout of the house. There is a retaining wall, 9 feet tall, holding up my whole backyard and in-ground pool. To bury it is a temporary solution, in my opinion. There are too many things that have not come to light until right now. I think it is a temporary fix. There's other things, no soil samples, there's so many different variables – what could happen when they build this house. 80 foot pine trees. So again, that will affect the integrity of the wall. I don't know the site lines of this house looking down into my house. I bought the property because when I investigated, it was unbuildable. You can't just make a decision when me, a direct abutter, is just receiving this information. None of this has been addressed. Something about a walk-out cellar. 35 foot max height in a residential area, did you take from all different points? All this stuff not disclosed until five minutes ago. I just want to protect myself. I spoke with them, but nothing is in writing. My main concern is 80 foot pine trees, retaining wall holding up the property, it's been there 40 years, I didn't build it. Its family land, they should be able to explain in complete detail before.

G. Perrin: Retaining wall? You said that has been there for 40 years, since you bought the house?

J. Ferguson: It has been there for 35-40 years. So again that's my main opposition. I also think building something behind this will devalue my house.

G. Perrin: Thank you sir.

Discussion:

D. McCarthy: I just have a couple questions regarding the site plan. Grade where driveway is about 36. It is required for submission to have 2 foot contours. The application is incomplete. The requirement is to have 2 foot contours. I feel that we need a landscape plan, to know what is going on with trees. How to deal with slope on the site. I feel like you should provide us with elevations because we don't have information that's based on anything that is weighted, scientific documentation showing that you have thought this through. I think we should be looking at more information.

D. Crispin: They are applying for a variance for frontage and lot area; this led me to believe construction details were not required at this point. I know the requirements for variances.

D. McCarthy: It requires site plan with two foot contours. We also need elevations that reflect two foot contours. I would like to see how you are dealing with drainage, existing trees.

D. Crispin: I didn't see in the zoning ordinance anything about dealing with trees.

D. McCarthy: It is hard for me to make a decision without this information. Do you have any idea about the finished floor elevations?

D. Crispin: I wasn't aware you needed that tonight.

D. McCarthy: I would like to see a complete application, so we can recognize that you are accurate with building height. No information saying this is what it is going to be. This is a very difficult site from a

grading standpoint, it needs to be addressed. I would like to see us continue this, require documentation, prove out the building you are presenting here tonight. Landscaping plan, how you plan on re-landscaping the site. Also a solution in grading plan as to what you plan to do with retaining wall. Have Board members support me on that. I do like the project, I think that the variance is not a stretch. But, to me, too many unknowns and not a complete package.

S. Callahan: I agree, we need more information. Looking at site plan, the driveway breaks off to the lot line. We are getting new renderings with new plans. That's where staff was getting to with landscaping and open space. We need new site plans that show that the driveway isn't curving off. I don't see how big the curb cut is going to be, I would agree with Dennis' proposal to come back. We need new site plans because we can't go off these ones. We have to base our decisions based on what is before us, without updated site plans and layout of topography it makes it difficult for us. I agree with Dennis.

V. Pech: Thank you, I agree with my colleagues. I see how the application will fit in with the character of the neighborhood, this is a feasible plan for the lot with more key details. I wanted to bring up the integrity of the retaining wall. Did you want to address?

D. Crispin: I don't think there's more to be said, I'm thinking 6 weeks is best. I think 6 weeks make sense to come back.

G. Perrin: Maintain open dialogue and communication. Mr. Ferguson is clearly a longtime neighbor, 6 weeks in my opinion is deep, we can do a 6 week request. My biggest thing is the retaining wall, something to look at collectively, maintains integrity of Mr. Ferguson's property.

Motion: **S. Callahan** motioned and **D. McCarthy** seconded the motion to continue the petition to the February 10, 2020 ZBA meeting. The motion passed unanimously, (4-0).

ZB-2020-4

Petition Type: **Variances**

Applicant: **James Zorbas & Jeffrey Crowley**

Re Property Located at: **19-21 Wamesit Court/22 Abbott Street 01852**

Applicable Zoning Bylaws: **Section 5.1; Section 5.3.2; Section 5.1.10**

Petition: **James Zorbas and Jeffrey Crowley are seeking Variance approval to construct a new single-family home at 22 Abbott Street, a vacant lot that has merged with 19-21 Wamesit Street for the purposes of zoning. 19-21 Wamesit Street is in the Traditional Neighborhood Multi-Family (TMF) zoning district and 22 Abbott Street is in the Traditional Neighborhood Two-Family (TTF) zoning district. Unmerging the lots requires Variances for the preexisting, non-conforming duplex at 19-21 Wamesit Street and for the proposed single-family home at 22 Abbott Street under Section 5.1 for a minimum rear yard setback and under Section 5.3.2 for minimum usable open space per dwelling unit; 22 Abbott Street also requires an additional Variance under Section 5.1.10 for minimum lot width; and for any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf:

John Geary, Attorney for the Applicant

J. Geary: These lots were merged many years ago, we are proposing to separate the lots. In order to do so, we need dimensional relief for both lots. Obviously the new single family home requires significant relief but the Wamesit property also needs relief. It's a reasonable request. Essentially our lot is larger

than most on the street. Again in relation to the street the relief we are seeking is reasonable in my view. By allowing for the construction for a single-family home, we would be getting rid of that black site, adding housing for a new family, adding green space. DPD staff proposed conditions, move the structure on Abbott Street closer to the street. I believe last condition would be to reduce excess impervious surface, would be happy to do that as well, but Wamesit is a busy street, you probably seen side view mirrors, the more cars you can get off the street the better. But if the Board insists upon it we will do it.

G. Perrin: Jared wrote an extensive write up in regards to the site, his ability to lay things out in words to give us an overview.

J. Geary: We exceed most on the street.

G. Perrin: DPD has done a wonderful job writing the memos and narratives, that's why I stressed earlier to utilize DPD. They are always very well-prepared.

Speaking in favor:

None

Speaking in opposition:

David Koch, President of Back Central Neighborhood Association

Maria Silva, 22 Whipple Street

D. Koch: Speak on the parking problem. The parking problem is at a critical max in that neighborhood. The City of Lowell started in Back Central, the City of Lowell started in Back Central. I've lived my whole life in Back Central. These gentlemen have the right to do what they want. But we need parking there. We have asked time and time again to take charge of these neighborhood condos, there are vacant lots that we have been looking at can be used. We want to alleviate problems. Some of these Portuguese people have been living there their whole lives. We are here to make the city a better place. We want to help these gentlemen and people living in this neighborhood. Why can't somebody in the city help to alleviate the parking problem so that the gentlemen can do their business without everyone complaining about the parking issue. We have to ask ourselves are we going to do something? We are looking for help from the people we pay taxes to. Let's make the city a wonderful place. I'm not leaving here until it is.

M. Silva: I agree with the gentleman here speaking. I am not opposed to housing, but there is no parking anywhere. Neighborhood is overly crowded. It would be better to add garden space or parking space there instead of additional housing because there is simply no parking. Our neighbors feel the same way but I am here speaking for them because they don't speak English.

D. Koch: Right across the street from the car company, we have been asking the city for years, there's the solution. Then we don't have a problem anymore.

Discussion:

J. Geary: I agree, parking is difficult, that's why we are providing for off-street parking for both properties.

S. Callahan: I agree, there are parking issues. You are mitigating that with the two parking spots. Only concern I have, perhaps moving the property up?

J. Geary: We are happy to do that, that does align with the rest of the neighborhood. Just would need additional relief.

S. Callahan: I agree with Jared, allows for more space in the back for additional green space. Car condo is something that we don't deal with, we are an appeals board. Makes sense to have lots broken up, relief you are seeking, you do have a hardship. I think relief can be granted for both lots.

V. Pech: I agree with Mr. Callahan, Mr. Geary you seem to be in agreeance with DPD. I do sympathize with the neighbors and Mr. Koch, parking is tough there. With this new build you won't add to parking concerns. Overall this petition has a lot of merit. We always need housing in the city. I wish you the best of luck.

D. McCarthy: The site plan that was submitted doesn't have any landscaping on it. That is critical. The Abbott Street site, pavement is going to be removed and it is going to be landscaped? Assumption?

J. Geary: Right now Abbott is totally pavement. We would be providing driveway. By moving the property forward we would be creating more green space. We would be replacing the back side with what you would typically see with the home.

D. McCarthy: I would like to see a condition that there would be no hardscape. Grass or landscaping. The bonus is we are getting green space. This part of the city needs it. Soften the aesthetic of this area. If we move it forward, the backyard will be over 20 feet deep. Pretty good green space. Roughly 632 square feet of green space.

J. Geary: We are happy to accommodate. The ordinance requires two parking spaces per dwelling units. Any time you can get cars off the street you can.

D. McCarthy: You are asking for so much relief. Anything left over, address neighborhood problems. I think removing that pavement, adding something pervious, drainage, improve the neighborhood, big win. City is getting back green space.

J. Geary: We are happy to do that.

D. McCarthy: Jared did lay out a good argument, green space is a big win. The one that I am worried about a little bit is the comment from fire department. Comment about width of street being only 20 feet wide. We don't meet it. I am worried about adding to the problem.

J. Geary: By providing for new construction, safer structure than any others on the street. There's not too much we can do about that.

C. McCall: The Building Department would likely require additional fire code safety requirements. The truck can fit down a 20-foot street, but it might take out some rear-view windows.

G. Perrin: I want to recognize the citizens who took the time to come to this meeting. I want to thank Mr. Koch for providing our fellow citizens with the issue of parking in Back Central. I will make a note on record that that lot on the corner has become a catch-all. I would strongly suggest that DPD take a look at that property and reach out to the property owner. On the corner of Merrill and Rogers.

C. McCall: Bank owned, we go through cycles of enforcement.

D. McCarthy: Rear of Abbott St. green space, limited hard scape. Drainage plan, landscape plan. Critical to approval.

Motion:

S. Callahan motioned and **V. Pech** seconded the motion to GRANT the Variances for 19-21 Wamesit Court under Section 5.1 for minimum lot size, minimum lot area per dwelling unit, minimum frontage, and the minimum front yard setback with the following conditions:

- 1) The applicant shall submit a landscape plan for review and approval by DPD prior to applying for a building permit.
- 2) The rear of 22 Abbott Street shall remain as green space and hardscape shall be limited to as small of an area as possible.

S. Callahan motioned and **D. McCarthy** seconded the motion to GRANT the Variances for 19-21 Wamesit Court under Section 5.1 for minimum rear yard setback and under Section 5.3.2 for minimum usable open space per dwelling unit with the following conditions:

- 1) The applicant shall submit a landscape plan for review and approval by DPD prior to applying for a building permit.
- 2) The rear of 22 Abbott Street shall remain as green space and hardscape shall be limited to as small of an area as possible.

S. Callahan motioned and **V. Pech** seconded the motion to GRANT the Variances for 22 Abbott Street under Section 5.1.10 for minimum lot width, minimum front yard setback, and minimum driveway setback with the following conditions:

- 1) The applicant shall submit a landscape plan for review and approval by DPD prior to applying for a building permit.
- 2) The rear of 22 Abbott Street shall remain as green space and hardscape shall be limited to as small of an area as possible.

ZB-2020-5

Petition Type: **Variances**

Applicant: **Silvia Jaiman**

Re Property Located at: **18 Morton Street 01852**

Applicable Zoning Bylaws: **Section 5.1**

Petition: **Silvia Jaiman is seeking Variance approval to construct an approximately 296 sq. ft. addition to the existing single-family home at 18 Morton Street. The home is in the Traditional Neighborhood Single-Family (TSF) zoning district and requires a Variance under Section 5.1 to exceed the maximum Floor Area Ration (FAR) and for any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf:

Emilio, General Contractor for the Applicant

E: Looking to construct an addition in the back of house to accommodate bedroom on second floor. Would like to do dormer on the second floor. Currently the FAR is high but this is due to the fact that they are counting the basement. The basement height is 5'6, I don't see how that could be considered usable square footage. Though we exceed the limit, we are staying in the same size ratio as the other houses.

Speaking in favor:

None

Speaking in opposition:

None

Discussion:

V. Pech: Did you have a chance to see comments from the City? Would you be open to a condition to have the basement as no living space? Storage, not livable space.

E: Yes.

V. Pech: I think we can grant it.

D. McCarthy: I want to make a few comments. I am amazed at how much you are getting on this lot. Filling in these small spaces doesn't change the appearance from the street or overall footprint, other than the void its filling in. The impact is manageable.

E: It was clearly a dirt basement, then was filled in with concrete.

D. McCarthy: Maintain as storage or crawl space. I'm impressed at what you want to do here. It's a nice thing to have a citizen do for a property in Lowell. It's good to see.

S. Callahan: I agree with fellow chairman. Restructuring the property as long as basement isn't used for living space. As long as you are in agreement, I am in agreement with granting the variance.

G. Perrin: I agree with my colleagues. You're very well-prepared, that's what we are looking for. Congratulations to what you've taken on. I'm in favor.

D. McCarthy: Application is extremely well-developed and thorough, thank you.

G. Perrin: I appreciate your thoroughness.

Motion:

S. Callahan motioned and **V. Pech** seconded the motion to GRANT the Variance under Section 5.1 with the following conditions:

1. The basement shall not be used as living space.

The motion passed unanimously, (4-0).

ZB-2020-6

Petition Type: **Special Permit**

Applicant: **Tom Jachimczyk**

Re Property Located at: **75 Technology Drive 01851**

Applicable Zoning Bylaws: **Section 6.3.4**

Petition: **Sign Design is seeking Special Permit approval on behalf of Microchip to replace an existing internally illuminated sign with a new internally illuminated sign at 75 Technology Drive. The new sign will be approximately 64 sq. ft. The property is in the Office/Research Park (OP) zoning district. 75 Technology Drive requires Special Permit approval under Section 6.3.4 and for any other relief required of the Lowell Zoning Ordinance.**

Speaking on behalf:

Scott Clement, Sign Design

S. Clement: We want to replace the existing internally illuminated sign with new internally illuminated sign.

Speaking in favor:

None

Speaking in opposition:

None

Discussion:

V. Pech: Pretty straightforward to me, upgrades. I have no real concerns. I assume LED lighting?

S. Clement: Correct.

V. Pech: The hours of illumination consistent with the law, 1 hour before sunrise, 1 hour after sunset. I like the hours we have for most of the businesses for these signs.

S. Callahan: I didn't really have any other questions. If you are in agreement. Normally we have the sunrise/sunset condition.

G. Perrin: Or hour after closing, if it is after sunset.

D. McCarthy: Nice job with the application, nice thorough package. It looks like graphics are a bit improved over what was there before, so that's a nice thing to see. Fit well with hours of operation, and you are in business park. I think it all makes perfect sense.

S. Callahan: Also vacate the condition that they have to come back to the Board for further sign decisions.

Motion:

S. Callahan motioned and **D. McCarthy** seconded the motion to approve the Special Permit under Section 6.3.4 to replace an existing internally illuminated sign with a new internally illuminated sign with

the following conditions:

- 1) The allowable hours of illumination shall be one (1) hour before sunrise to one (1) hour after sunset, or one (1) hour after closing, whichever comes later.
- 2) To vacate the previous condition from the ZBA decision filed on 12/28/2001 requiring that future approvals for internally illuminated signage must come before the Zoning Board, so long as the proposed sign is the same size or smaller than the existing sign.

The motion passed unanimously, (4-0).

III. Other Business

Minor Modification: 462-466 Bridge Street 01850

Property owner is seeking an amendment to the Special Permit and Variance Decisions issued by the Zoning Board of Appeals on 12/8/2009 with an amendment on 7/7/2015 for a total of eleven (11) residential units and one (1) commercial unit. The applicant is seeking an amendment because the property has twelve (12) residential units and one (1) commercial unit and has operated as such since its purchase.

On Behalf:

David Plunkett, Attorney for Applicant

D. Plunkett: There was a fire in 2009. It went back to Board in 2015, both residential and commercial on first floor. 11 units. It's been 12 residential units since they bought it. They have all the permits, fire escape, smoke detectors.

G. Perrin: This goes back to 2015, so I do appreciate the historical narrative. This is a minor modification.

Discussion:

D. McCarthy: I'm trying to understand the history. We should see plans that tell us what you're doing. Size of units, where they are. We are approving something with no plans that says how many square feet per unit. They must exist somewhere. I wish these applications came to us with plans so we could see in a document how it changed. If it grows in units, must mean you subdivided a unit. I wish we saw a document. If it was a mistake, miscounted, hard to believe it was just a mistake.

D. Plunkett: In the narrative we tried to give a description. Floors are identical layouts.

D. McCarthy: Narrative does help, but without a narrative, making sure everything is accounted for, they just doing what they did in 2009 and 2015 again.

C. McCall: I do think it's a mistake. There were 12 inspections in 2009, which suggests it was a mistake. We will write this up to make the legal use very clear so in the future they would have to do a full petition to do additional changes.

S. Callahan: I was getting skeptical following the progression of units over time. My first question was going to be whether your client had done any construction. I feel a little more comfortable now.

V. Pech: I do think this is a minor modification, they are trying to do the right thing. I do understand the concerns of my colleagues. I think this is a good rectification of an error and we can move forward with this number as the units.

G. Perrin: We are appreciative of DPD bringing this to light. Is there further review needed?

C. McCall: We will write something up for clarification so this won't come up in the future.

Motion:

S. Callahan motioned and **V. Pech** seconded the motion to approve the minor modification with the finding of no substantial material change and to amend the previous relief to read twelve (12) residential units. The motion passed unanimously, (4-0).

Annual Election of Officers

Motion:

G. Perrin motioned and **D. McCarthy** seconded the motion to nominate S. Callahan as Clerk of the Lowell ZBA for the year 2020. The motion passed unanimously, (4-0).

G. Perrin motioned and **S. Callahan** seconded the motion to nominate V. Pech as Vice Chairman of the Lowell ZBA for the year 2020. The motion passed unanimously, (4-0).

V. Pech motioned and **S. Callahan** seconded the motion to nominate G. Perrin as the Chairman of the Lowell ZBA for the year 2020. The motion passed unanimously, (4-0).

V.

Minutes for Approval:

December 9, 2019

S. Callahan motioned and **D. McCarthy** seconded the motion to accept the December 9 ZBA meeting minutes. The motion passed unanimously, (4-0).

IV. Adjournment

S. Callahan motioned and **D. McCarthy** seconded the motion to adjourn at 8:31p.m. The motion passed unanimously, (4-0).

New Business to Be Advertised by December 29, 2019 and January 5, 2020