

Lowell Zoning Board of Appeals Minutes

September 28, 2020 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 Briere, and Member Procope

Members Absent: Chairman Perrin

Others Present: Fran Cigliano, Associate Planner

The following represents the actions taken by the Zoning Board of Appeals at the 9/28/2020 meeting. Due to the COVID-19 pandemic, this meeting occurred using the Zoom videoconferencing platform.

Vice Chairman Pech called the meeting to order at 6:30pm.

I. Continued Business

ZB-2020-32

Petition Type: **Variances**

Applicant: **Kenneth Lania c/o JAF 27, LLC**

Property Located at: **62 Seneca Street, 32 Chippewa Street 01852**

Applicable Zoning Bylaws: **Section 5.1**

Petition: **JAF 27, LLC is seeking variance approval to relocate the lot lines and construct a new single-family home at 33 Chippewa Street (Lot B), a vacant lot that has merged for the purposes of Zoning with the existing single-family home at 62 Seneca Street (Lot A). The properties are in the Traditional Neighborhood Two-Family (TTF) zoning district and the proposal requires Variance approval under Section 5.1 for minimum lot size and minimum lot area per dwelling unit for both lots; minimum lot frontage for Lot B; minimum front yard setback for the existing home in Lot A; and for any other relief required of the Lowell Zoning Ordinance.**

On Behalf:

Ken Lania, Cornerstone Land Consultants

K. Lania: The existing dwelling is going to be kept as is. There's no intention from the current owner to raise the roof of the structure. Both structures would have the required parking. Would be providing additional landscaping for removal of mature trees. Shown on site plan.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

D. McCarthy: Plans look consistent with what I was expecting. Plan of existing property with three bedrooms, has a stairs to an attic with dormer windows. Intent not to put bedrooms up there?

K. Lania: Yes.

D. McCarthy: Response to stormwater comments?

K. Lania: Stormwater should not be an issue. Driveway for Lot B will be draining onto Lot A. Overflow would go to street drainage. Don't see much flow entering into the roadway. Primarily flat.

D. McCarthy: Satisfy stormwater team's requests as a condition. Don't really have a drainage design presented.

K. Lania: Not a problem.

M. Briere: I am in support.

D. Procope: I don't have any questions. As I mentioned, I looked at the property several times. I will be voting for this project.

S. Callahan: Thanks for providing updated renderings. Intention for driveway to go all the way back to lot line?

K. Lania: No, three foot setback should be there. That house will last long past our time on this earth.

Motion:

S. Callahan motioned and M. Briere seconded the motion to APPROVE the Variances under Section 5.1 with the following conditions:

1. The applicant shall satisfy all requests from the City's Stormwater Team; and
2. Large tree(s) in the rear of Lot A shall remain.

The motion passed unanimously, (5-0).

II. **New Business**

ZB-2020-36

Petition Type: **Variances**

Applicant: **Iglesia Pentecostal De Dios Es El Poder, Inc.**

Property Located at: **211 Fletcher Street 01854**

Applicable Zoning Bylaws: **Section 6.1.4**

Petition: **Iglesia Pentecostal De Dios Es El Poder Inc. is seeking Variance approval to legalize the use of an existing building as a church at 211 Fletcher Street. The property is in the Urban Neighborhood Multi-Family (UMF) zoning district and requires Variance approval under Section 6.1.4 for minimum off-street parking and for all other relief required of the Lowell Zoning Ordinance.**

On Behalf:

Pastor Becky Roman, 211 Fletcher Street

B. Roman: We have been renting here for the last four years. We have to get a permit. When I went this year to check about the permit they told us we need a parking variance. Owner of senior center parking lot lets us use their parking all this time. Didn't give us a letter. Right here there used to be a store so the signs say tow area. Try to have the parking there so we can park off-street parking. We are just trying to get the off-street parking so we can stay in the building. We haven't had any problems with the neighbors. Trying to get permission since the tow sign is there, maybe they can change it so we can park there.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

G. Procope: I passed by the property over the weekend and I do see there are limitations. Parking would help you. I think you said you have 40 church members?

B. Roman: Yes. We have a church van so most people come in the church van. Most people live close to the church.

G. Procope: So walking distance. Have you had complaints about parking?

B. Roman: Never. He lets us use it, but he can't give us a letter saying we can use it.

G. Procope: How many days a week do you have service?

B. Roman: Sunday 10:30-12:30, Tuesdays sometimes 7:30-9:00, Thursday and Friday. Only two hours.

G. Procope: Not usually in peak time.

B. Roman: Only Sundays. And usually no cars around.

M. Briere: You indicate that you have a congregation of about 40 members.

B. Roman: Yes, not all adults. Kids and teenagers too.

M. Briere: Each congregant isn't necessarily driving there. 4 days a week? Are you fortunate enough to have attendants all days or just Sunday?

B. Roman: Just Sunday.

M. Briere: How many services use the van transportation you provide?

B. Roman: There's two couples and two elderly individuals.

M. Briere: I have no further questions. I will vote in favor.

D. McCarthy: Surprised you got by for four years. Suggestion to continue to operate the shuttle van if that's acceptable. Want that as a condition. In the past with churches with parking issues, we have done an administrative review to check in to see if there's been any changes that would require us to revisit parking. Suggest we have a second condition for 6 month administrative review. I do like this project. Like that the building is being used this way and that you have participants that enjoy your church and utilize the shuttle. Would like to support with those two conditions.

S. Callahan: I would be in favor. Couple of questions. Any other services, weddings?

B. Roman: Have been limiting because of COVID-19.

S. Callahan: Yes, but when we are out. Wondering about weddings.

B. Roman: Most are private weddings. Just marrying a couple, just them. Nothing big.

S. Callahan: With condition that DM mentioned, I would fully support.

V. Pech: I think this is a good reuse of this building. Parking is a good use of this area. I am in favor of the condition of the shuttle system. Keep that, be mindful of neighbors. I know you mentioned you have parking at the senior center but not formal agreement. Any way to reach out to form a more formal parking agreement to alleviate parking in that neighborhood?

B. Roman: They didn't want to give us a letter because of the liability and if anything happens. We tried with him but he couldn't.

V. Pech: They said they would let you park on Sunday but didn't want anything formal due to liability?

B. Roman: Yes. Don't want to have cars overnight. That's what we've been doing for four years. He can't give me a letter due to the liability.

V. Pech: I agree this hasn't been an issue for four years of the church. I also do like DM's comments for a 6 month review.

Motion:

S. Callahan motioned and G. Procope seconded the motion to APPROVE the Variance per Section 6.1.4 with the following conditions:

1. The church shall continue to operate the bus shuttle for attendees to and from services and activities; and
2. The applicant shall be subject to a 6-month administrative review to be scheduled by DPD.

The motion passed unanimously, (5-0).

ZB-2020-37

Petition Type: Variances

Applicant: John C. Geary c/o Lowell Mission Church, Inc.

Property Located at: 403 Andover Street 01852

Applicable Zoning Bylaws: Section 6.3

Petition: Lowell Mission Church, Inc. is seeking Variance approval to replace a pre-existing, nonconforming freestanding sign with a larger sign. The property is in the Suburban Single (SSF) zoning district. The proposal requires Variance approval under Section 6.3 to alter a pre-existing, nonconforming sign and for any other relief required of the Lowell Zoning Ordinance.

On Behalf:

Stephen Geary, Applicant's Attorney

S. Geary: Church began worshipping in 2007. They have a pre-existing non-conforming sign that runs parallel to Andover Street. Replace with new sign slightly bigger. This church has been there for a very long time. This is a replacement of a worn out sign and other request is to have this facing the opposite way, east-west rather than north-south. We explained to neighbor to her satisfaction. No comments from other departments. Ask that you approve this petition.

Speaking in Favor:

None

Speaking in Opposition:

Jim Hall, 14 Pentucket Avenue

J. Hall: Been there since 1956. I'm against this petition. Would like to read memo. Reads memo into the record. Objects the variance due to the size and location of the sign. Argued that the sign was too big and could distract drivers. Could also potentially obstruct sight lines exiting Pentucket Avenue.

Discussion:

M. Briere: I would like to ask Attorney Geary to address the assertion that sign could cause traffic obstruction. That was my first concern. Why it would be so much larger than the previous one.

S. Geary: I would like to respond to Attorney Hall's comments. Sign is pre-existing non-conforming. Issue regarding intent of zoning I disagree with completely. No negative impact on zoning. Maybe neighbor's subjective opinion doesn't, but does for church. Similar sign at another church on the other end of Andover Street. I also live in that area. I don't see that sign having a problem. Attorney Hall mentions that the sign would be 64 sq. ft. because of both sides. That doesn't make any sense. The sign makes sense to go east to west so that they can read it. There are signs on every major thoroughfare much busier than Andover Street. If that happened there wouldn't be any signs. This is the replacement of the sign. Does meet hardship, no negative impact on zoning, and public good. Soil conditions, different animal for sign approval. Otherwise no signs would get variances. The proposed brick base is blended with the building to look good. Anything but an eyesore. Church has shown that they have been a good neighbor. I do think this petition meets all requirements. If the board has the issue of where it is, I would be happy to consider, but do know that traffic and safety did weigh in on this and had no issues with it.

S. Callahan: I understand Attorney Hall's concern. Sympathize with that. Attorney Geary answered all of my concerns. The one thing I think would like more info on – it looks like the sign is being placed closer to the Pawtucket street intersection. What is the possibility of moving it to the other side? I understand the sign could be an obstruction. If you move to other side of the lawn, that might alleviate that concern.

S. Geary: That's a good point. Looking at the photo, the reason it was going to stay in that area was

because the foundation is already there. If I could ask Mr. Gordon to address whether it could move closer to parking area to alleviate concern.

Kenneth Gordon, 403 Andover Street: Yes it could go on the other side. Sometimes we might push some snow to that part of the entrance but I can adjust that and have the sign facing east west on the other side.

S. Geary: As a condition we would accept that. Mission church will push snow away from that area.

D. McCarthy: Couple of questions. I think what we just talked about moving to the other side of the lawn is a stronger location for the neighborhood. We don't have a site plan submitted that indicates exactly where the sign would be. Is there a plan that indicates the location of the sign?

S. Geary: We asked about that. Prior petition asked for site plan. Consulted with staff and he said photo of existing and proposed was fine. As part of a condition, could submit a site plan showing where that is. Would be happy to do that as a supplement submission.

D. McCarthy: New location, should match or increase the setback from the sidewalk so that we do not encroach on the dimension from the existing sidewalk. 5-8 feet from the sidewalk. Would like to match or exceed setback of new sign from the existing sign.

S. Geary: That is acceptable.

D. McCarthy: Brick piers are 20 inches each. Existing sign is 4 feet. Going from a shape of 88 inches to 96 inches. Even though the brick piers are not indicated as signage, also the height of it, nearly two foot base there. Really asking for increase in height of roughly a foot from what currently exists. Pretty close to what you currently have. Restraint of your request is significant.

S. Geary: Current orientation is more dangerous. Have to turn your head. That's the whole point of signage. This sign makes more sense. Church has a right to advertise. On the current sign, imagine a car riding by there trying to look at it, it's more dangerous than what we propose.

D. McCarthy: I agree. Would want to be turned so it could be easily viewed by people driving. Supporting relocation would solve sight lines of traffic on Pawtucket. I think I can support this. I think the condition of you providing site plan showing dimensions from sidewalk, existing vs. proposed, to know we don't have encroachment, that would be great.

S. Geary: Mr. Gordon and his wife went around asking neighbors. Did attempt a few times to go to the Hall's house. Did get calls from a couple of neighbors. Didn't have anybody come. Didn't think this would be a major issue. Do see Attorney Hall's point. Moving it over makes sense, only makes sense to go east-west. Make sure snow removal doesn't impede area.

G. Procope: It's better to change the location of the sign, because you wouldn't want people to be straining to see what's on it which would present more of a risk. I think it's a good move.

V. Pech: I think for myself, I had similar concerns to the abutters. I think we've come to a common ground. I also agree that the new proposed sign is larger but is done tastefully and is not too obtrusive to the neighborhood. Fair compromise and makes sense. Hopefully it works out for the neighbors and

petitioner himself.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to APPROVE the Variance per Section 6.3 with the following conditions:

1. The applicant shall relocate the sign to the opposite side of the structure, adjacent to the parking area. The new sign's setback from the sidewalk shall meet or exceed the existing setback from the sidewalk; and
2. The applicant shall submit a site plan showing the proposed location of the sign to DPD prior to applying for a building permit.

The motion passed unanimously, (5-0).

ZB-2020-38

Petition Type: Variances

Applicant: Ken Lania c/o Landsmart, LLC

Property Located at: 61-69 Rock Street 01854

Applicable Zoning Bylaws: Section 5.1; Section 6.1.4

Petition: LandSmart, LLC is seeking Variance approval to construct six residential units at 61-69 Rock Street. The property is in the Urban Neighborhood Multi-Family (UMF) zoning district and the use requires Variance approval under Section 5.1 for decks proposed to encroach on the side yard setbacks, under Section 6.1.4 for the off-street parking requirement, and for all other relief required of the Lowell Zoning Ordinance. The applicant has requested a continuance to the October 15, 2020 ZBA meeting.

On Behalf:

Ken Lania, Applicant's Representative

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

D. McCarthy: I went by the site and did not see the sign posted. Not sure if it was removed but it would be a good idea to have it reposted since we have time between the next meeting.

K. Lania: Sign will be re-erected on Wednesday. Abutter notices will also go out on Wednesday.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to continue the petition to the October 15, 2020 ZBA meeting. The motion passed unanimously, (5-0).

ZB-2020-39

Petition Type: Variances

Applicant: Ken Lania c/o Madjack7, LLC

Property Located at: 38 Clifton Street 01852

Applicable Zoning Bylaws: Section 5.1

Petition: Madjack7, LLC is seeking Variance approval to subdivide the existing lot with an existing two-family home and construct a new single-family home on the new lot. The property is in the Traditional Neighborhood Two Family (TTF) zoning district. The proposal requires Variance approval under Section 5.1 for the minimum lot area per dwelling unit, minimum frontage, and for any other relief required of the Lowell Zoning Ordinance. The applicant has requested a continuance to the October 15, 2020 ZBA meeting.

On Behalf:

Ken Lania, Applicant's Representative

K. Lania: Sign will be posted when I return on Wednesday.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

None

Motion:

S. Callahan and M. Briere seconded the motion to continue the petition to the October 15, 2020 meeting. The motion passed unanimously, (5-0).

ZB-2020-40

Petition Type: Variances

Applicant: George Theodorou c/o Coljack Development Corp.

Property Located at: 7-11 Abbott Street 01852

Applicable Zoning Bylaws: Section 5.1; Section 12.1(a)

Petition: Coljack Development Corp. is seeking Variance and Special Permit approval to construct a new single-family home at 7 Abbott St, a lot that has merged with 11 Abbott St for the purposes of zoning. 7 Abbott St is in the Traditional Mixed-Use (TMU) zoning district and 11 Abbott St is in the Traditional Neighborhood Two-Family (TTF) zoning district. Unmerging the lots requires Variances under Section 5.1 for the preexisting, non-conforming single-family home at 11 Abbott St and to construct the new single-family home at 7 Abbott St for lot size, lot area per dwelling unit, minimum frontage, and front yard setbacks; 7 Abbott St also needs relief under Section 5.1 for the rear yard setback and a Special Permit under Section 12.1(a) for the use; and for all other relief required of the Lowell Zoning Ordinance.

On Behalf:

George Theodorou, Applicant's Attorney

G. Theodorou: Takes a number of variances. Calling attention to the comments made by DPD who went through and did a thorough analysis of the neighborhood with respect to thirteen properties. Their analysis show that our proposed request for variances for the existing single family home and a new

home exceeds median lot size of other thirteen properties in the neighborhood. Would not derogate from the zoning bylaws. Would conform and fit into neighborhood. Single family home which in the comments they say the elevations are complying with the guidelines for traditional neighborhoods. Request for stormwater mitigation which has been completed and been approved by the stormwater team. Will add shade trees along the street to replace removed plants.

M. Hamor presented the site plan.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

D. McCarthy: I like the idea of filling this lot. I think it does support the architecture of the street. Size of structure is a bit large for the neighborhood but fits well on the site plan. A few things missing from the site plan. Deck in the back of the structure indicates 10 foot dimension, not 5 foot. I think 5 foot is more appropriate.

M. Hamor: The site plan is correct.

D. McCarthy: Also, rear cellar access. Bulkhead on the plan not indicated. Update site plan to indicate. I think you mentioned there is a third shade tree, but there are already three.

M. Hamor: You may not have the most recent in front of you. Typo showing a tree in middle of a driveway. Mistake. Not just two shade trees. Want to include a third for the project.

D. McCarthy: In front of the existing house?

M. Hamor: Yes or in back of the house. Back rear left.

D. McCarthy: Congested area. I don't think we will get a shade tree in the front. Other area that would make sense is west to proposed driveway. Make condition we get third in backyard. I see a lot of pluses. I think I can support this. A lot of house but probably right house to have here. Condition to correct drawing pieces.

S. Callahan: Add third tree in there. Work with DPD on that.

G. Procope: I was taken aback about how congested the street was. Plot itself looked fine, green space. It seems like it's not a bad plan. Conducive to that neighborhood. I myself was thinking if the driveway would be big enough. I think it will make the neighborhood look a little better. No questions.

M. Briere: I like Attorney Theodorou's recollection of the previous Abbott street petition. I thought this would work. It will work. The requested parcels are more than comparable to others in the neighborhood. As a result, a good project. Will vote in favor.

Motion:

S. Callahan motioned and G. Procope seconded the motion to APPROVE the Special Permit under Section 12.1(a) with the following conditions:

1. The architectural shall be corrected to include a deck that is five (5) feet in depth as shown on the site plan;
2. The applicant shall work with DPD on the location of the third shade tree; and
3. The applicant shall include the location of the bulkhead to the basement on an updated site plan.

The motion passed unanimously, (5-0).

S. Callahan motioned and D. McCarthy seconded the motion to APPROVE the Variances under Section 5.1 with the same conditions. The motion passed unanimously, (5-0).

III. Other Business

Extension Request: 157 Billerica Street 01852

The applicant is seeking a one (1) year extension of the Variance approval issued at the September 9, 2019 ZBA meeting for 157 Billerica Street. The applicant received Variance approval under Section 5.1 to construct three (3) residential townhouse dwellings with associated parking.

On Behalf:

K. Lania: Previously approved. Looking to extend. We have been actively working with National Grid. Discrepancy concerns with easement. We felt we had the easement plan locked down. After approval, have had some back and forth with National Grid. Not agreeing to the location of the easement area. Without their final approval, asking for a request to hold variances once National Grid approval is obtained.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

S. Callahan: I wanted to check in on the status of the conditions.

K. Lania: Wasn't involved with the original application. I will ensure the condition gets cleared up.

M. Hamor: I know those renderings are being formulated by the applicant. Suspect those will be forthcoming to building department in coming weeks.

M. Briere: No questions, no objections.

G. Procope: No questions, no objections.

D. McCarthy: Surprised we don't have more of these variance requests for extensions this year. See no

problem granting extensions given COVID delays. I sympathize with situation and completely support granting the extension.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to grant a one (1) year Variance extension. The motion passed unanimously, (5-0).

Extension Request: 116 & 128 Fletcher Street 01854

The applicant is seeking to extend the Variance approval for the residential redevelopment project. A new owner would like additional time to resolve the parking condition of approval. The applicant received Variance approval at the October 17, 2019 ZBA meeting.

On Behalf:

S. Geary, Applicant's Attorney

S. Geary: It took a lot of work to figure out parking. Asking for one year extension. I think every issue is going to be addressed but need that time. Respectfully ask that you approve that extension.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

D. McCarthy: I am very sympathetic to people requesting extensions due to COVID.

G. Procope: I have no objections to the deterrence to next year.

M. Briere: No questions, no objections.

S. Callahan: Don't have any objections. Status on conditions?

S. Geary: All conditions will be met. Taking a while to work its way through the system.

V. Pech: I don't have any objections, totally understand why needed.

Motion:

S. Callahan motioned and D. McCarthy seconded the motion to grant a one (1) year Variance extension. The motion passed unanimously, (5-0).

Minutes for Approval:

September 14, 2020

S. Callahan motioned and D. McCarthy seconded the motion to approve the minutes from the September 14, 2020 ZBA meeting. The motion passed unanimously, (5-0).

Further Comments from Members

V. Adjournment

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

New Business to Be Advertised by September 13, 2020 and September 20, 2020