

TRANSCRIPT OF PUBLIC RECORD
ZONING BOARD OF APPEALS MEETING
FEBRUARY 25TH, 2009

This Regular Meeting of the **Zoning Board of Appeals** was held in the Great Hall of Searles Building, City Hall, and was called to order at 7:04 PM.

MEMBERS IN ATTENDANCE:

Mr. Matthew D'Agostino, Chairman
Ms. Laura Walta, Vice Chairman
Mr. Richard Lacroix, Clerk
Mr. Jesse Ramirez, Member
Mr. Vincenzo Pesce, Member

MEMBERS ABSENT:

Mr. Peter Giordano, Alternate Member

OTHERS IN ATTENDANCE:

Ms. Gwen Martone, Public Recorder
Mr. Peter J. McQuillan, City Solicitor

ELECTION OF OFFICERS:

MOTION: *Laura Walta moved to reelect Matthew D'Agostino as Chairman*
Jesse Ramirez seconded the nomination.

VOTE: 5-0-0 UNANIMOUSLY APPROVED

MOTION: *Matthew D'Agostino moved to nominate Laura Walta for Vice Chairman*
Jesse Ramirez seconded the nomination.

VOTE: 5-0-0 UNANIMOUSLY APPROVED

MOTION: *Matthew D'Agostino moved to nominate Richard Lacroix, for Board Clerk*
Laura Walta seconded the nomination.

VOTE: 5-0-0 UNANIMOUSLY APPROVED

EXECUTIVE SESSION:

At this time Chairman D'Agostino indicated that he was going to entertain a motion to enter into Executive Session under the provisions of Chapter 39 § 23B of the Massachusetts General Laws. He explained that the purpose of the Executive Session was to discuss the position and strategy of the Zoning Board of Appeals regarding pending litigation.

MOTION: *Matthew D'Agostino moved to enter into Executive Session*
Laura Walta seconded the motion

ROLL CALL:

Vincenzo Pesce Yes
Jesse Ramirez Yes
Laura Walta Yes
Richard Lacroix Yes
Matthew D'Agostino Yes

VOTE: 5-0-0 UNANIMOUSLY APPROVED

Chairman D'Agostino indicated that the Motion passed and that upon the close of the Executive Session the Zoning Board of Appeals would reconvene in Open Session for the cases that are on the Agenda this evening. At this time he requested that everyone other than the Board Members and the City Solicitor leave the room until the Executive Session is concluded.

MOTION: *Laura Walta moved to end Executive Session at 7:40 P.M. and reconvene Open Session
Richard Lacroix seconded this motion*

ROLL CALL:

Vincenzo Pesce Yes
Jesse Ramirez Yes
Laura Walta Yes
Richard Lacroix Yes
Matthew D'Agostino Yes

VOTE: 5-0-0 UNANIMOUSLY APPROVED

ATTENDANCE:

Board Clerk, Richard Lacroix called the roll with five (5) members present at this meeting.

ROLL CALL:

Board Clerk, Richard Lacroix called the roll of Applicants.

ACCEPTANCE OF MINUTES: December 17th, 2008

MOTION: *Matthew D'Agostino moved to accept the Minutes.
Vincenzo Pesce seconded this motion.*

VOTE: 5-0-0 UNANIMOUSLY APPROVED

OLD BUSINESS:

PETITION CONTINUED FROM NOVEMBER 19TH, 2008

#2008-57 Naji Realty, LLC, 15 Erie Road, Methuen, MA 01844

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to construct an addition that will be too close to the front lot line in a Neighborhood Business (BN) District at # 165 & 169 Merrimack Street, Methuen, MA 01844.

Mr. Jean Abourjeili appeared before the Board on this petition. He indicated that while the Board was in Executive Session he had a chance to speak with his neighbor relative to this petition. At this time he informed the Board that after discussing his plan with the abutters he would like to submit another plan to be heard this evening. He further stated that this new plan eliminated the second floor; which was an issue that concerned his neighbors. Mr. Abourjeili stated that the new plan also showed a fence on either side of the building, which is intended to eliminate pedestrian traffic. He further indicated that at the request of the abutters he has agreed to install posts between the two fences to prohibit cars from parking perpendicular to the building. There will only be parallel parking behind the building, which is allowed on Euclid Avenue. Chairman D'Agostino questioned the dumpster. The petitioner indicated that he had already relocated it to the front of the property and that he had spoken to the operator of the pizza shop who agreed to remove the waste oil from the site. Additionally he indicated that the location of the dumpster is more than likely temporary and that a more aesthetically pleasing location would be found once the addition is completed. Chairman D'Agostino questioned what was located on the roof of the building. Mr. Abourjeili indicated that those represented signs for the businesses at this location. Chairman D'Agostino questioned the number and nature of the businesses to be located at this address. Mr. Abourjeili stated that there were 4 businesses; the pizza shop, the ice cream shop, a vacant storefront and the pub next door. Chairman D'Agostino questioned what would be located in the addition that will connect the 2 buildings. Mr. Abourjeili indicated that if he received approval from the licensing board he would extend the pub into this space, if not it would be used as some kind of retail space.

Chairman D'Agostino opened the meeting to Public Participation with the following speaking in favor or in favor of this petition.

Peter Joyce, 17 Euclid Avenue Methuen, MA 01844

Mr. Joyce indicated that since Mr. Abourjeili has taken over the property approximately 2 years ago that it has looked a lot better. He mentioned that the leaves have been cleaned up and that there has been no beer bottles or cans lying around the property. He said that property used to be really bad with overgrown weeds, cans and bottles and he would like to see the progress continue.

Paul Reitano, 181 Merrimack Street, Methuen, MA 01844

Mr. Reitano indicated that after the preceding discussion he now believes that the petition has been very cooperative in meeting the wishes of the neighborhood. He believes that Mr. Abourjeili really wants to make the property much better and that not adding the second floor has been a big concession on his part. He also stated that it will make a nicer area behind the building once the poles connecting the two fences are in place.

Youssef Issa, 15 Euclid Avenue, Methuen, MA 01844

Mr. Issa indicated that he was in agreement with his neighbors that he would have no objection to a one-story addition. Additionally he believed that with posts spaced 4 feet apart with chain connecting each post between the 2 fences would eliminate the traffic and parking problems that they now have at this location. Mr. Issa questioned what type of business would be allowed besides a retail use if the bar was not expanded. Chairman D'Agostino stated that basically only a retail or office use could be located there without a Special permit from the Zoning Board of Appeals.

Tony Azevedo, 7 Euclid Avenue, Methuen, MA 01844

Mr. Azevedo indicated that as he stated at the previous meeting he was concerned with traffic, both vehicular and pedestrian, on Euclid Avenue. However after meeting with Mr. Abourjeili this evening he is confident that the changes being made will eliminate these problems and that he is in favor of this petition.

There was no one speaking in opposition to this petition. Having no further discussion, Public Participation was closed and the petitioner returned to the podium.

MOTION: *Laura Walta moved include the condition that posts with chains must be placed every 4 feet between the fences at the rear of the building to prohibit perpendicular parking*

Richard Lacroix seconded this motion

VOTE: 5-0-0 UNANIMOUSLY APPROVED

MOTION: *Richard Lacroix moved to accept the new plan eliminating the second floor*
Matthew D'Agostino seconded this motion

VOTE: 5-0-0 UNANIMOUSLY APPROVED

ROLL CALL:

Mr. Richard Lacroix – yes, per plan, with conditions

Mr. Jesse Ramirez – yes, per plan, with conditions

Mr. Vincenzo Pesce – yes, per plan, with conditions

Ms. Laura Walta – yes, per plan, with conditions

Mr. Matthew D'Agostino – yes, per plan, with conditions

VOTE: 5-0-0 UNANIMOUSLY APPROVED

NEW BUSINESS:

MOTION: *Richard Lacroix, at the request of Counsel representing Kara Realty Trust to be last on the agenda, moved to take the Karamourtopoulos petition next out of order*

Matthew D'Agostino second this motion

VOTE: 5-0-0 UNANIMOUSLY APPROVED

#2009 - 02 James W. & Mary J. Karamourtopoulos, 3 Treetop Way, Methuen, MA 01844

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to construct an 18" x 24" addition that will be too close to the side lot line in a Residential D (RD) District at # 3 Treetop Way, Methuen, MA 01844.

The Petitioner appeared before the Board on this application. Mr. Karamourtopoulos indicated that they would like to put a sunroom, as you are facing the house, to the left of the house. He indicated that he had spoken with his abutter and that he had no objection to the addition being closer to his property than is required under zoning. Chairman D'Agostino questioned if the addition would include a garage to which the Petitioner responded that it would be used solely for living space.

Chairman D'Agostino opened the meeting to Public Participation and no one spoke either in favor or in opposition of this application. Having no discussion, Public Participation was closed and the Petitioners returned to the podium.

ROLL CALL:

Mr. Richard Lacroix – yes, per plan

Mr. Jesse Ramirez – yes, per plan

Ms. Patricia Uliano – yes, per plan

Mr. Vincenzo Pesce – yes, per plan

Mr. Matthew D'Agostino – yes, per plan

VOTE: 5-0-0 APPROVED

#2009 – 01 Kara Realty Trust, Ray Nicolosi, 291 R Merrimack Street, Methuen, MA 01844

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to subdivide a parcel of land into 2 lots leaving Lot 1A with over the allowed building coverage and to clarify the side setback on the existing dwelling; and Lot 2A without the required frontage and lot width in a Neighborhood Business (BN) District at # 291R & 295 Merrimack Street, Methuen, MA 01844.

Attorney Anthony Copani, 265 Broadway, Methuen, MA 01844 appeared before the Board on behalf of the Petitioner. According to Atty. Copani the petitioner is seeking relief by way of a variance in order to subdivide a parcel of land into 2 lots. At this time Atty. Copani presented the Board with a handout to assist them with his presentation. A copy of this handout can be found attached to the Minutes on file in the Office of the City Clerk, 41 Pleasant Street, Methuen, MA 01844.

Atty. Copani described the site as having a strip mall in the front portion and a single family home in the rear. He indicated that this property has been in the Nicolosi family for many years. He stated that in approximately 1948 the family constructed the single-family home that is currently known as 291R Merrimack Street. He further indicated that a few years later Mr. Nicolosi's father operated a garage, which he constructed on the front portion of the lot. Over the years, especially in the 1980's and 1990's the parcel was further developed, expanding into the strip mall that exists today resulting in 2 structures on one parcel of land.

Atty. Copani indicated that he has included the subdivision laws in the Board's handout. He summarized the law stating that if you have 2 structures on one lot, and you comply with some minimum requirements, subdivision approval is not required. He explained the this is known as an ANR plan and that it only needs to be stamped by the Community Development Board for the lots to be subdivided. However, that would not cure any potential zoning problems, and technically they have a zoning issue. They are fearful that if one of the buildings were to be destroyed, that they may not be able to rebuild because of zoning issues.

Their request this evening is not to build any new structures but to subdivide the parcel so each structure is on it's own lot. The reasoning behind this request is due to the fact that this is a mixed use, a commercial property on the same lot as a residential dwelling. He explained that this is problematic for a number of reasons, i.e. liability issues, getting insurance and financing purposes. He indicated that the problem is how to treat the parcel, is it residential or commercial, and that it just makes sense to separate the two structures to remove these hurdles. He further stated that if you look at the current tax bills, even the City has opted to treating this as two separate parcels to avoid confusion.

Vice Chairman Walta questioned if the property was being subdivided as shown on the plan in order to provide access to the dwelling in the rear because the sign for the strip mall would now be located on house property. Atty. Copani indicated that the purpose was to provide access to the rear property and that the access to the strip mall is also located on that portion of the land. The sign would remain where it was and if Mr. Nicolosi ever sold one of the properties there would have to be an easement for the sign to be there. Board member Jesse Ramirez questioned "If this is already treated as two lots as you say according to the real estate tax and I see it here. If it's already two lots, what's the problem?" Atty. Copani explained that it raises a legal issue; it is two lots in the eyes of the subdivision control law in accordance to statutes. These two buildings existed on one parcel so it is not technically considered a subdivision. Once again he explained that they could go and get an ANR Plan stamped by the Community Development Board and record it at the registry but the reality is that there would still be a zoning problem.

Chairman D'Agostino opened the meeting to Public Participation and no one spoke either in favor or in opposition of this application. Having no discussion, Public Participation was closed and Attorney Copani returned to the podium.

ROLL CALL:

Mr. Richard Lacroix – yes, per plan
Mr. Jesse Ramirez – no
Mr. Vincenzo Pesce – yes, per plan
Ms. Laura Walta – yes, per plan
Mr. Matthew D'Agostino – yes, per plan

VOTE: 4-1-0 APPROVED

ADJOURNMENT:

MOTION: *Richard Lacroix moved to approve at 8:17 PM adjournment.*
Laura Walta seconded this motion.

VOTE: 5-0-0 UNANIMOUSLY APPROVED

Respectfully submitted,

Gwen Martone, Public Recorder
Methuen, MA 01844