

TRANSCRIPT OF PUBLIC RECORD
ZONING BOARD OF APPEALS MEETING
AUGUST 5TH, 2009

This Regular Meeting of the **Zoning Board of Appeals**, which was postponed from July 29th, 2009, was held in the Great Hall of Searles Building, City Hall, and was called to order at 7:10 PM.

MEMBERS IN ATTENDANCE:

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

MEMBERS ABSENT:

Ms. Laura Walta, Vice Chairman
Mr. Peter Giordano, Alternate Member

OTHERS IN ATTENDANCE:

Ms. Gwen Martone, Zoning Board Secretary

STATEMENT BY THE CHAIRMAN:

Matthew D'Agostino read a statement prior to the opening of this meeting advising appeal rights.

ATTENDENCE:

Board Clerk, Richard Lacroix called the roll with four (4) members present at this meeting.

ROLL CALL:

Board Clerk, Richard Lacroix called the roll of Applicants.

At this time Chairman D'Agostino informed the petitioners that there was only going to be a four-member Board present this evening. He explained that with a four-member Board a unanimous affirmative vote was necessary to grant each request. He further explained that petitioners had the right to continue their petition to the next months meeting in hopes of having a full Board.

ACCEPTANCE OF MINUTES: May 27th, 2009, June 24th, 2009 & July 29th, 2009

MOTION: *Richard Lacroix moved to accept the Minutes*
 Vin Pesce seconded this motion.

VOTE: *4-0-0 UNANIMOUSLY APPROVED*

REQUEST FOR A SIX MONTH EXTENSION:

2008-50 254 Broadway LLC, 435 Wilcott Street, Auburndale, MA 02466

Variance requested under Section VII-D, Paragraph 2(b) of the Comprehensive Zoning Ordinance of the City of Methuen to construct a standing sign that will be too close to a front lot line in a Central Business (CBD) District at # 254 Broadway Methuen, MA 01844.

Chairman D'Agostino read the request from Atty. John Smolak, who was present, into the record.

MOTION: *Richard Lacroix moved to accept the Minutes
Jesse Ramirez seconded this motion.*

VOTE: *4-0-0 UNANIMOUSLY APPROVED*

#2006-47 NEW OWNER: Meadows Development, LLC, 45 Osgood Street, Methuen, MA 01844

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to construct a single-family dwelling without the required area in a Residential D (RD) District at AM 1113, Block 110C, Parcel 82 Armstrong Avenue.

Board Clerk, Richard Lacroix read the request from Atty. Arthur Broadhurst into the Record. Appearing on behalf of the petitioner was Atty. Sal Tabit. Atty. Tabit explained that the current owner of the property did in fact receive a building permit for this letter. He further indicated that the property is now being transferred and that the attorney for the lender providing the financing for the purchaser has raised this issue and that is why they are here this evening asking for the extension.

MOTION: *Richard Lacroix moved to accept the Minutes
Jesse Ramirez seconded this motion.*

VOTE: *4-0-0 UNANIMOUSLY APPROVED*

NEW BUSINESS:

2009 - 14 Russell & Cynthia Mailloux, 2 Laura Lane, Methuen, MA 01844

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to install an above ground pool and shed that will be too close to the rear and side lot lines in a Residential D (RD) District at # 2 Laura Lane, Methuen, MA 01844.

The petitioner appeared before the Board on this petition. Mr. Mailloux indicated that they are requesting to construct a shed and an above ground pool on their property. He indicated that he has analyzed the placement of these structures on the lot and believe that the submitted plan is what works best for them, having the most efficient use of yard space. He further indicated that he is requesting to place the pool as shown so that it is a sufficient distance from the house and his garden, and most importantly out of the shadow of the house. Mr. Mailloux stated that before submitting this application he had spoken with his two immediate abutters who would suffer the most impact with this proposal and that neither of them had any objections.

Chairman D'Agostino questioned if there would be a deck around the pool. The Petitioner responded that he hadn't thought that far in advance but that he would imagine that he would have to build some kind of platform to access the pool. He said that if he did build anything that it would not be very large. Chairman D'Agostino indicated that he would prefer that they keep a deck to ¾ round versus around the whole pool to eliminate future problems.

Board member Jesse Ramirez questioned if there would be a fence around the top of the pool. The petitioner indicated that it was an above ground pool and would have a ladder that they would raise up preventing access to the pool. Chairman D'Agostino stated that this was an acceptable substitute according to statute. Board Member Vin Pesce questioned the diameter of the pool and the location of the deck. The petitioner responded that the pool was 18 feet and that the deck would either be to the back or front side of the pool. Additionally he indicated that there is an underground oil tank in this area that they will eventually be removing so it was their intent to keep the pool far enough away from the house so that it would not interfere with the future tank removal. Mr. Pesce questioned if the size of the shed & pool as well as the installation of the retaining wall were disclosed to the abutters. The petitioner indicated that he spray painted the locations of each structure with orange paint and allowed the abutters to view the locations.

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 petitioner returned to the podium.

Board Clerk, Richard Lacroix read a letter dated 07/20/2009, from Joseph T. Giarrusso, Jr., Conservation Officer, into the record of the meeting. A copy of this letters can be found attached to the rear of the Minutes on file in the Office of the City Clerk, 41 Pleasant Street, Methuen, MA 01844

ROLL CALL:

Mr. Richard Lacroix – yes, per plan

Mr. Jesse Ramirez – yes, per plan

Mr. Vincenzo Pesce – yes, per plan

Mr. Matthew D'Agostino – yes, per plan

VOTE: 4-0-0 APPROVED

#2009 - 15 Jabak Mohamad, TR., Shemlan Realty Trust, 687 Prospect Street, Methuen, MA 01844

Special Permit required under Section V-D of the Comprehensive Zoning Ordinance of the City of Methuen to extend a non-conforming use of a service station for motor vehicle sales in a Highway Business (BH) District at # 687 Prospect Street, Methuen, MA 01844.

The petitioner appeared before the Board on this petition. He indicated that he is seeking approval to sell 6 used cars on the premises.

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 petitioner returned to the podium.

Board member Jesse Ramirez questioned if they are currently selling cars to which the petitioner respond no. Board member Richard Lacroix made note of the location of the vehicles for sale on the property and questioned if all other services would remain intact. The petitioner indicated that everything would remain the same that they are requesting this additional use because of the economy today that it has become harder and harder for gas stations to survive. He further indicated that he had actually owned the closed station across the street that they were forced to close because of the economy.

MOTION: *Matthew D'Agostino moved to require that the same type of signage would be placed on every car and that the number of cars for sale would be limited to 5 cars only.*
Richard Lacroix seconded this motion.

VOTE: 4-0-0 UNANIMOUSLY APPROVED

Board Member Jesse Ramirez expressed concern with setting a precedent for used car sales at other gas stations in the city. Chairman D'Agostino reminded him that each petition is voted individually and are approved or denied based on their own merits. Board member Vin Pesce indicated that where the cars would be for sale looks adequate and questioned how many cars would actually fit there. The petitioner indicated that there was actually room for 12 vehicles. He further indicated that sometimes cars are left there by the owners because they cannot afford the repairs. Having the ability to sell cars on site would give them a venue to deal with that situation but he does not foresee having more that 3 or 4 cars on the premises at one time.

ROLL CALL:

Mr. Richard Lacroix – yes, per plan with conditions
Mr. Jesse Ramirez – no
Mr. Vincenzo Pesce – yes, per plan with conditions
Mr. Matthew D'Agostino – yes, per plan with conditions

VOTE: 3-1-0 DENIED **(Note: This vote was reconsidered after the next petition)**

#2009 - 16 Carriage Funeral Holdings, Inc., 3040 Post Oak Blvd. – Suite 300, Houston, TX 77056

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to construct an addition too close to the side lot line in a Business Highway (BH) District at # 126 Pleasant Valley Street, Methuen, MA 01844.

Mr. Joseph Cataudella of the funeral home appeared before the Board on this petition. He indicated that they are in need of a little more room and are going to expand by adding another chapel where the existing garage is now located. He also indicated that they were going to expand the embalming room and would be also be locating the removal wagon in that same area. He explained that they need five (5) more feet on the west side of the building so that the van will fit in and they would be able to open the doors and have room to work.

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 petitioner returned to the podium.

Mr. Richard Lacroix – yes, per plan
Mr. Jesse Ramirez – yes, per plan
Mr. Vincenzo Pesce – yes, per plan
Mr. Matthew D'Agostino – yes, per plan

VOTE: 4-0-0 APPROVED

At this time Board member Jesse Ramirez indicated that he would like to reopen the vote on the following petition:

#2009 - 15 Jabak Mohamad, TR., Shemlan Realty Trust, 687 Prospect Street, Methuen, MA 01844

Special Permit required under Section V-D of the Comprehensive Zoning Ordinance of the City of Methuen to extend a non-conforming use of a service station for motor vehicle sales in a Highway Business (BH) District at # 687 Prospect Street, Methuen, MA 01844.

Mr. Ramirez indicated that he had overlooked some pertinent information and would like to reconsider and change his vote. Chairman D'Agostino questioned what information was overlooked. Mr. Ramirez responded that the signed off check list with comments from all other departments was missed filed in his packet and that he did not have the opportunity to read it until just now. Specifically, he stated that according to the signoff sheet that the police department did not have a problem with this location, and that knowing this, he now felt comfortable with changing his vote to yes.

Chairman D'Agostino stated that although this is a busy area, the applicant has had no offenses filed against him and that the Board would reconsider the vote.

MOTION: *Matthew D'Agostino moved to open this up for reconsideration.
Richard Lacroix seconded this motion.*

VOTE: *4-0-0 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*
- Mr. Matthew D'Agostino – yes, per plan with conditions*

ADJOURNMENT:

MOTION: *Matthew D'Agostino moved to approve at 7:40 PM adjournment.
Laura Walta seconded this motion.*

VOTE: *5-0-0 UNANIMOUSLY APPROVED*

Respectfully submitted,

Gwen Martone, Zoning Board Secretary
Methuen, MA 01844