

TRANSCRIPT OF PUBLIC RECORD
ZONING BOARD OF APPEALS MEETING
JANUARY 31ST, 2007

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 7:10 P.M.

MEMBERS IN ATTENDANCE:

Mr. Matthew D'Agostino, Chairman
Ms. Laura Walta, Vice Chairman
Mr. Richard Lacroix, Member
Mr. Silvio P. Uliano, Sr., Member

MEMBERS ABSENT:

Mr. Jesse Ramirez, Board Clerk
Mr. Peter Giordano

OTHERS IN ATTENDANCE:

Ms. Gwen Martone, Public Recorder

STATEMENT BY THE CHAIRMAN:

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

ROLL CALL:

Laura Walta called the roll with four (5) members present at this time.

ELECTION OF OFFICERS:

MOTION: *Matthew D'Agostino moved to nominate Jesse Ramirez, in absentia for Board Clerk*
Richard Lacroix seconded the nomination.

VOTE: 4-0-0 UNANIMOUSLY APPROVED

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

VOTE: 4-0-0 UNANIMOUSLY APPROVED

MOTION: *Laura Walta moved to nominate Matthew D'Agostino for Chairman*

Richard Lacroix seconded the nomination.

VOTE: 4-0-0 UNANIMOUSLY APPROVED

ACCEPTANCE OF MINUTES: September 27th and October 25th, 2006

The Chairman entertained a motion to approve the transcripts of meeting minutes.

MOTION: *Richard Lacroix moved to approve transcript of recorded meeting minutes.*

Laura Walta seconded this motion.

VOTE: 4-0-0 UNANIMOUSLY APPROVED

REQUEST TO WITHDRAW PETITION ON THE AGENDA:

#2007-06 *Barbara & Archille Angelone, 182 Merrimack Street, Methuen, MA 01844*
Catherine Drouin & Thaddeus Salach, 186 Merrimack Street, Methuen, MA 01844

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to move the lot lines between Parcel 1 and Parcel 2, leaving Lot 2 without the required frontage; and to subdivide Parcel 1 into 2 lots (Lot 1 and Lot 3) leaving Lot 1 without the required frontage and to clarify front setbacks on existing garage and dwellings on Lot s 2 and 3 in a Residential D (RD) District at # 182 and # 186 Merrimack Street.

Attorney Arthur Broadhurst, One Elm Square, Andover, MA 01810, appeared before the Board on this petition. He indicated that he would like to withdraw the petition based on the fact that the ownership of 182 Merrimack Street has been transferred and that the Angelones no longer own the property. He further indicated that the new owners might re-file at a later date.

ROLL CALL:

Mr. Richard Lacroix – yes for the withdrawal

Mr. Silvio P. Uliano, Sr. – yes for the withdrawal

Ms. Laura Walta – yes for the withdrawal

Mr. Matthew D'Agostino – yes for the withdrawal

VOTE: 4-0-0 UNANIMOUSLY APPROVED

At this time Attorney Broadhurst also asked to continue the following petition:

#2007-04 *Donald R. & Patricia A. Leslie, 49 Hillcrest Avenue, 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 two lots leaving both lots without the required area and frontage; Lot 41 without the required side setback and to clarify setbacks on existing sheds in a Residential D (RD) District at # 49 Hillcrest Avenue.

MOTION: *Richard Lacroix moved to allow the continuance
Matthew D'Agostino seconded the motion*

VOTE: 4-0-0 UNANIMOUSLY APPROVED

At this time Chairman D'Agostino explained to the petitioners that because there is only a four-member Board this evening that an affirmative vote would require the unanimous vote of the Board. He further explained that each petitioner would be afforded the opportunity to go forward this evening or to request a continuance to the February 28th, 2007 Public Hearing.

REQUEST TO RECONSIDER A DENIED PETITION:

#2005 – 80 Frank & Anna Grande, 1 Appaloosa Drive, Methuen, MA 01844

Variance requested under Section VI-D of the City of Methuen Zoning Ordinance to construct a single-family dwelling without the required frontage and minimum lot width in a Residential B (RB) District on the parcel of land known as AM 3-18, Block 165A, Parcels 83,84,87 & 88 Winstead Street.

Attorney Anthony Copani, 265 Broadway, Methuen, MA 01844, appeared before the Board on this petition. According to Attorney Copani the petitioners were denied a variance to construct a dwelling on this parcel on November 30th, 2005. He further indicated that then Grandes were not represented by Counsel at that time and he believes that their representative did not clearly stated the basis of the petition for this Boards consideration.

The lot in question is located in an RB District and is unique in that it is fronted by three roadways. According to Attorney Copani, the lot contains 124 feet of frontage on Lowell Street and also includes 75 ft. of frontage on Winstead Avenue as well as frontage on Chester Street, an unimproved way. He indicated that this is a repetitive petition and that the petitioner must show a specific and material change in the condition upon which the previous unfavorable action was based. He further stated that it is his opinion that when a parcel of land abuts a paper street, and it's not registered but recorded land, that there is a derelict statute which means that the owner of that parcel literally owns to the middle of that paper street. In this particular case the Grandes can now make an argument that they actually have 95 ft. of frontage as opposed to 75 ft. of frontage.

Attorney Copani informed the Board the he had previously spoken with Community Development and that they expressed no interest in developing any of the unimproved ways in the area. He also indicated that the Grandes had gone before Conservation and had received an Order of Conditions.

The Chairman entertained a motion to reconsider the denied petition.

MOTION: *Richard Lacroix moved for reconsideration
Laura Walta seconded this motion.*

VOTE: 4-0-0 UNANIMOUSLY APPROVED

REQUEST FOR RECONSIDERATION OF A GRANTED PETITION:

Correspondence was received from George Hughes, Jeffco, Inc, P.O. Box 802, Andover, MA 01810 relative to the following petition:

#2005 – 79 Glendora McIlwain, 3 Glenway Avenue, Methuen, MA 01844

Variance requested under Section VI-D of the City of Methuen Zoning Ordinance to construct a single-family dwelling with zero frontage in a Residential B (RB) District on the parcel of land known as AM 11-05 BLK 78-B PARCEL 5 Garden Avenue, Methuen, MA 01844.

Mr. Hughes will be developing the property and is requesting to eliminate the condition that the dwelling is to include a residential sprinkler system.

At this time it appears that Mr. Hughes has left the building. Chairman D'Agostino advised the Board that they would defer this matter to the end of the meeting.

NEW BUSINESS:

#2007-01 Raymond & Barbara Collins, 223 Howe Street, Methuen, MA 01844

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to construct a two-stall garage without the required front yard setback in a Residential A (RA) District at # 223 Howe Street.

Attorney Arthur Broadhurst, One Elm Square, Andover, MA 01810, appeared before the Board on this petition. He indicated that the petitioners are requesting a variance to construct a two-stall garage that will not have the required front/side setback from an undevelopable paper street. Chairman D'Agostino questioned if the garage would be within the existing hot-topped area. The petitioner indicated that it would be approximately 2 feet beyond the pavement.

Chairman D'Agostino opened public participation with no one speaking in favor of or in opposition to this petition. Having no further discussion, Chairman D'Agostino closed public participation and Attorney Broadhurst returned to the podium.

Richard Lacroix expressed concern with the shed in the rear of the property that was encroaching on the abutting parcel and questioned if there was an easement. Attorney Broadhurst indicated that the petitioner would be willing to correct the problem.

MOTION: *Matthew D'Agostino moved that he shed shown at the rear of the parcel is to be moved so as not to encroach on the abutting property.*

Richard Lacroix seconded the motion

VOTE: *4-0-0 UNANIMOUSLY APPROVED*

ROLL CALL:

Mr. Silvio P. Uliano, Sr. – yes, per plan with condition

Mr. Richard Lacroix – yes, per plan with condition

Ms. Laura Walta – yes, per plan with condition

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

VOTE: 4-0-0 UNANIMOUSLY APPROVED

#2007-02 Eric Jansen, 82 Charles Street - # 6, Boston, MA 02110

Special Permit requested under Section V-D of the Comprehensive Zoning Ordinance of the City of Methuen for a one time conversion of a single-family dwelling to a two-family dwelling in a Residential G (RG) District at # 80 Hampshire Street.

The petitioner appeared before the Board on this petition. He indicated that he came to Methuen four years ago starting to work at insurance agency in the City. He further indicated that he has recently purchased the agency had has committed to a long-term lease to stay in Methuen.

He indicated that this house was a symmetrical mirror image of itself. It was originally built with two front doors and actually has two staircases running through the middle of the house from the basement to the third floor. There are also two separate heating systems in the house. According to the field card on the property the house is a single-family with two kitchens. Mr. Jansen indicated that the previous owners removed the second kitchen and used the dwelling as a single family. Discussion continued relative to the floor plans of each of the units.

Chairman D'Agostino opened public participation with Mr. Kenneth Hyde, Kenneth Construction, 236 Pleasant Street, Methuen speaking in favor of this petition. Mr. Hyde indicated that he has known Mr. Jansen for the past five years and considers him a conscientious and particular individual and knows that he will do a wonderful job with this property and felt that it was important for him to get some support this evening.

Mary D'Agata, 75 Hampshire Street came to the podium with several questions that she would like to have clarified. She questioned if there would be any changes to the exterior of the building to which Mr. Jansen indicated that there would not be. Additionally she questioned if the petitioner had any plans to subdivide the parcel and if the second unit would be a rental unit as opposed to being sold as a condominium. The petitioner indicated that he had no plans to subdivide and that the unit would be a rental unit.

Kathy Basa, 76-78 Hampshire Street questioned if the petitioner was going to have someone clean the sidewalks when it snows. She indicated that her father is 78 years old and that this is a busy street and would not want him to have to walk in the street. Chairman D'Agostino stated that he believed that it was the homeowner's responsibility to remove the snow from in front of their home.

Having no further discussion, Chairman D'Agostino closed public participation and the petitioner returned to the podium.

Chairman D'Agostino questioned if the barn was part of the property and if the tenants would be using it for parking. Mr. Jansen indicated that it did belong to him but that he felt it was not structurally sound to allow it to be used for parking.

ROLL CALL:

Mr. Silvio P. Uliano, Sr. – yes, per plan
Mr. Richard Lacroix – yes, per plan
Ms. Laura Walta – yes, per plan
Mr. Matthew D’Agostino – yes, per plan

VOTE: 4-0-0 UNANIMOUSLY APPROVED

#2007-03 Fichera Realty Trust c/o Josephine Letourneau, 7 Ridgewood Circle, Lawrence, MA 01843

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to subdivide a parcel of land into two lots leaving both lots without the required area and frontage in a Residential D (RD) District at AM 11-09, Block 78E, Parcel 41 Palermo Street.

Mr. William MacLeod of Andover Consultants, 1 East River Place, Methuen, MA 01844, appeared before the Board on this petition. At this time he stated that he would exercise the option and request to continue to the February 28th, 2007, public hearing.

MOTION: Richard Lacroix moved to allow the continuance
Matthew D’Agostino seconded the motion

VOTE: 4-0-0 UNANIMOUSLY APPROVED

#2007-05 Orazio Pappalardo, 11 Greenlawn Avenue, 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 two lots leaving Lot A without the required area and to clarify existing frontage; and Lot B without the required frontage and rear setback in a Residential D (RD) District at # 11 Greenlawn Avenue.

Attorney Anthony Copani, 265 Broadway, Methuen, MA 01844, appeared before the Board on this petition. At this time he stated that he would exercise the option and request to continue to the February 28th, 2007, public hearing. He indicated that he has spoken to some of the abutters who told them that they were not notified and that their names were not on the certified list. He indicated that he would like to verify the certified list with the Assessor’s Office prior to going forward. Additionally he indicated that he would like to amend the plan and questioned how that should be accomplished. Discussion continued and the Board indicated that they would prefer the lot in question to remain at 10,000 sq. ft.

MOTION: Laura Walta moved to allow the continuance
Richard seconded the motion

DISCUSSION: Mr. Lacroix expressed concerns with the letter submitted by the Chairman of the Community Development Board. Atty. Copani indicated that he had not seen the letter and Mr. Lacroix proceeded to read the letter into the record. Atty. Copani indicated that it was his intention to advise his client to appear before the Community Development Board if and when this petition

was granted. Discussion continued with the Board and Atty. Copani each expressing their interpretation of the letter. Attorney Copani indicated that he would go forward with the submitted plan and that he would consult with the Assessor and Community Development prior to being heard at the February hearing.

VOTE: 4-0-0 UNANIMOUSLY APPROVED

#2007-07 Lebanese Community Housing for the Elderly, INC., 222 Pelham Street, Methuen, MA

Request to amend a previously granted and amended Comprehensive Permit that requires a variance under Section VI-B (13); of the Comprehensive Zoning Ordinance of the City of Methuen to construct an addition to the community center that will be too close to the wetlands in a Residential B (RB) District at #222 Pelham Street.

Attorney Armand Hyatt, 8 Jackson Court, Lawrence, MA 01840 along with Mr. Dennis Hamel of Cammett Engineering appeared before the Board on this petition. According to Atty. Hyatt his client is seeking an amendment to the previously granted Comprehensive Permit for an expansion of the community room, office and maintenance areas. He further indicated that they have attached evidence of their financing from Mass Housing and are appearing as a non-profit applicant who is eligible under M.G.L. Chapter 40B.

Atty. Hyatt began the presentation by informing the Board that there is a pad that had been used for the dumpster that was actually closer to the wetlands that is going to be removed. Chairman D'Agostino questioned where the dumpster would be relocated. Dennis Hamel of Cammett engineering responded that there are currently 2 dumpsters on the site and that the one next to community building would be relocated next to the other dumpster.

Chairman D'Agostino questioned the intended uses of the addition. Ms. Linda Ulisse, Property Manager responded that the expansion would include several uses. She indicated that they have outgrown their maintenance area, that she shares an office with the Resident Service Coordinator having no privacy and that the community space is overcrowded. Additionally she stated that they have just constructed another building on the site and it is their intention to be able to have joint social functions for the residents.

Chairman D'Agostino opened public participation with no public participation in favor of this petition. Speaking in opposition was Ruth Ann McGowan, 32 Lexington Avenue. According to Ms. McGowan her property abuts the back end of the Lebanese Community. She indicated that she is aware of their need for additional space but that she has several concerns. She claimed that the recently constructed additional residential units have already changed the neighborhood. It is her opinion that it has changed the flow of water causing water to accumulate in her driveway and that a lot of the wildlife that use to be there is now gone. Additionally she is concerned about the dumpster be relocated from the community building to the other location which she claims is pretty much in her back yard. She claims that when she looks out her window, sits on her patio, and when the wind is blowing in just the right direction, "There is their dumpster!" Additionally she said that the dumpster attracts skunks to the area and she is afraid that an additional dumpster will only exacerbate the problem. She said that this is not a very pleasant situation, especially in the summer months and feels that this is not the appropriate solution to their problems and is opposed to this petition.

Having no further discussion, Chairman D'Agostino closed public participation and Atty. Hyatt returned to the podium. He indicated that they are amenable to trying to lessen the problems associated with the dumpster and would accept a condition that would relate to an installation that would accommodate improving on what exists. Mr. Hamel indicated that when they went before conservation, it was determined that the beavers in that area

have caused additional flooding problems in the area. Additionally he indicated that they would not be destroying any trees or disturbing any wildlife areas.

Richard Lacroix questioned if there was an enclosure around the dumpster and how often it was emptied. Ms. Ulisse responded that there was an enclosure and that it was emptied once a week. Chairman D'Agostino indicated that the abutter was concerned with placing another dumpster in this locations and asked if there was another location for it. Ms. Ulisse indicated that the dumpster location was approved by Conservation and that relocation could be an issue and that there really was no other spot. She suggested that if they put two dumpsters at that location that they could improve the enclosure. Chairman D'Agostino suggested one larger dumpster in lieu of two dumpsters.

MOTION: *Matthew D'Agostino moved to add the condition that when relocated; the two (2) smaller dumpsters are to be replaced by one (1) large dumpster and the existing screening is to be shored up and improved to protect the aesthetics of the abutting property.*

Laura Walta seconded the motion

VOTE: 4-0-0 UNANIMOUSLY APPROVED

Laura Walta read the following correspondence into the record of the meeting:

- 1) Letter dated 1/30/2007, from Joseph T. Giarrusso, Jr., Conservation Officer
- 2) Letter dated 1/30/2007 from Barbara Willis and Ruth Ann McGowan, 32 Lexington Avenue

A copy of each of these documents can be found attached to rear of these Minutes on file in the Office of the City Clerk, 41 Pleasant Street, Methuen, MA 01844

ROLL CALL:

Mr. Silvio P. Uliano, Sr. – yes, per plan with condition

Mr. Richard Lacroix – yes, per plan with condition

Ms. Laura Walta – yes, per plan with condition

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

VOTE: 4-0-0 UNANIMOUSLY APPROVED

#2007-08 Methuen Venture Limited Partnership, P.O. 590249, Newton Centre, MA 02459

Special permit requested under Section V-D of the Comprehensive Zoning Ordinance of the City of Methuen for a restaurant in a Business Highway (BH) District at # 40 Jackson Street, Methuen, MA 01844.

Attorney Steve Badour, 59 Jackson Street, Lawrence, MA 01840 appeared before the Board on this petition. According to Atty. Badour the petitioner is trying to put into place a Subway restaurant at this location. He indicated that granting this would request would not create any undue traffic, that there is plenty of parking and there is no cause of access to the neighbors and would not be detrimental harm to the neighbors or to the character of the neighborhood. He further stated that the franchisee, Mr. Stephen Giordano is here the evening to answer any questions that the Board may have.

Chairman D'Agostino questioned what the seating capacity was. Atty. Badour responded that approximately twenty (20) seats would be available inside, consisting of small tables and chairs.

Chairman D'Agostino opened public participation with no one speaking in favor of or in opposition to this petition. Having no further discussion, Chairman D'Agostino closed public participation and Attorney Badour returned to the podium.

Laura Walta read a letter dated January 25th, 2007, from Stephen DeFeo, Chairman of the Community Development Board into the record. A copy of this document can be found attached to rear of these Minutes on file in the Office of the City Clerk, 41 Pleasant Street, Methuen, MA 01844.

Mr. DeFeo expressed concerns with sufficient parking, hours of operation, possible increased traffic congestions and any proposed changes to the parking lot. Atty. Badour addressed these concerns stating that there is plenty of parking provided. He indicated that peak hours of operation would be between 11:00 AM and 2:00 PM and that there is ongoing discussion with the owners of the plaza to look at ways of revamping that whole parking situation in terms of egress and ingress to the location. Chairman D'Agostino made reference to when the ice cream stand reopens that he was not anticipating any problems because the peak hours of operation for both businesses would be opposite.

ROLL CALL:

Mr. Silvio P. Uliano, Sr. – yes, per plan

Mr. Richard Lacroix – yes, per plan

Ms. Laura Walta – yes, per plan

Mr. Matthew D'Agostino – yes, per plan

VOTE: 4-0-0 UNANIMOUSLY APPROVED

#2007-09 Target Corp., C/O Attorney Vincent C. Manzi, 59 Jackson Street, Lawrence, MA 01840

Special permit requested under Section V-D of the Comprehensive Zoning Ordinance of the City of Methuen for a restaurant in a Business Highway (BH) District at # 67 Pleasant Valley Street, Methuen, MA 01844.

Attorney Vincent Manzi, 59 Jackson Street, Lawrence, MA 01840 appeared before the Board on this petition. According the Atty. Manzi the petitioner is requesting to include a restaurant at their new facility under construction. He indicated that they are here tonight because of an oversight that occurred several months ago. They were before the Community Development Board previously having received approval for the project but did not recognize at that time that the Food Court was going to have 45 seats and considered to be a restaurant.

He described the food court as being located to the left of the front entrance into Target. He explained that Target would be franchising the names of Starbucks and Pizza Hut but that all of the employees will be Target employees. He explained that most of the food preparation would involve heating of food in microwave ovens. Additionally he indicated that they have met with the Board of Health and that the restaurant design meets all of their codes. Additionally, Atty. Manzi indicated that there would be no outside advertising. Chairman D'Agostino inquired if this would be a destination that people would specifically come to. Atty. Manzi assured him that it would not be.

Chairman D'Agostino opened public participation with no one speaking in favor of or in opposition to this petition. Having no further discussion, Chairman D'Agostino closed public participation and Attorney Manzi returned to the podium.

Laura Walta read a letter dated January 25th, 2007, from Stephen DeFeo, Chairman of the Community Development Board into the record. A copy of this document can be found attached to rear of these Minutes on file in the Office of the City Clerk, 41 Pleasant Street, Methuen, MA 01844.

In summary, Atty. Manzi indicated that the food court was included when they went before Community Development that they just didn't realize that they needed the Special permit. He further indicated that he would make sure that he spoke with Chairman DeFeo to inform him that nothing has changed from their original plan.

ROLL CALL:

Mr. Silvio P. Uliano, Sr. – yes, per plan
Mr. Richard Lacroix – yes, per plan
Ms. Laura Walta – yes, per plan
Mr. Matthew D'Agostino – yes, per plan

VOTE: 4-0-0 UNANIMOUSLY APPROVED

BOARD BUSINESS:

Chairman D'Agostino indicated that they received two letters relative to the re-zoning on Broadway. He stated that they were not relevant to Board business but asked that they be entered into the record.

At this time it was determined that Mr. George Hughes of Jeffco, Inc. had left the building after his attorney requested petition # 2007-06 be withdrawn. It was determined that Mr. Hughes probably assumed that his attorney would also request a continuance of this matter.

MOTION: *Matthew D'Agostino moved to continue the request from Jeffco, Inc.*
Laura Walta seconded the motion

VOTE: 4-0-0 UNANIMOUSLY APPROVED

ADJOURNMENT:

MOTION: *Laura Walta moved to approve an 8:45 PM adjournment.*
Matthew D'Agostino seconded this motion.

VOTE: 4-0-0 UNANIMOUSLY APPROVED

Respectfully submitted,

Gwen Martone, Public Recorder
Methuen, MA 01844