

**MELROSE BOARD OF APPEALS
MEETING MINUTES
Public Hearing
Wednesday, February 13, 2019
7:45p.m.
Aldermanic Chamber, Melrose City Hall, 562 Main Street**

Present:

James Bradley
Curtis Dooling, II
Krista Lillis, *Associate*
Rita Mercado, *Chair*
David Roache

Absent:

Bryan Thorp

Staff Present: Lori Massa

The meeting was called to order at 7:50 pm.

CASES BEFORE THE BOARD

**CASE 19 001: The appeal of Cindy Chabot
15 Damon Avenue**

As advertised, case 19-001, was for a Variance from Sections 235-18 & -19 of the Zoning Ordinance to construct a rear addition in the nonconforming side yard on the single-family house at 15 Damon Avenue, Melrose, MA, owned by Martin Fowler on a lot of land containing 5,600 sf and shown on Assessor's Map E12 0 99.

The Board of Appeals opened the case. The Chair swore in the Applicants and those choosing to speak at the hearing. Cindy Chabot, Applicant, appeared to explain the proposal. No one appeared to speak in support of or in opposition to this application.

Information regarding the hearing and the Board's discussion regarding the proposal and findings are documented in the decision for the case.

The Board voted, 5-0, to approve the requested Variance.

Documents: ZBA Application 19-001

**CASE 19 002: The appeal of Charles & Katherine Leung
25 Pebble Road**

As advertised, case 19-002, was for Variances from Sections 235-18 & -19 of the Zoning Ordinance to construct a front porch and rear addition in the nonconforming front and side yards on the single-family house at 25 Pebble Road, Melrose, MA, on a lot of land containing 11,451 sf and shown on Assessor's Map A5 0 18A.

Mr. Bradley recused himself for this case and left the Chambers. The Board of Appeals opened the case. The Chair swore in the Applicants and those choosing to speak at the hearing. Charles and Katherine Leung, Applicants and Owners, appeared to explain the proposal. Two people appeared to speak regarding the proposal.

Information regarding the hearing and the Board's discussion regarding the proposal and findings are documented in the decision for the case.

The Board voted, 4-0, with Ms. Mercado, Mr. Roache, Mr. Dooling and Ms. Lillis voting to approve the requested Variances.

Documents: ZBA Application 19-002

CASE 18 026: The appeal of 80 Laurel Street, LLC 78 & 80 Laurel Street

As advertised, case 18-026, to amend Case 17-011 to allow for revisions to the Board of Appeals approved plans under Section 235-60.e. for the two single-family houses at 78 & 80 Laurel Street, Melrose, MA, on lots of land both containing 8,579 sf and shown on Assessor's Map E7 0 67-1 & E7 0 67.

The Board of Appeals opened the case. The Chair swore in the Applicants and those choosing to speak at the hearing. Attorney Patrick McAvoy appeared to explain the proposal and later Greg Antonelli, Owner, appeared to explain the proposal. Mr. McAvoy reminded the Board that they approved the front and lot width variance because the lot was consistent with the neighborhood. He has had discussions with the City over whether the deviations vary from the Board's decision. From his perspective, the lot width variance should not be conditioned on the appearance of the houses and the Applicant was not aware that the buildings needed to be built exactly as shown on the plans. He questioned whether the Planning Board reviewed the plans that the ZBA approved or if the Planning Board reviewed another set of plans.¹

The Board had the following questions and points of discussion. The Applicants' responses are below:

- The 17-011 decision references the changes in the plans from the denied 17-003 case. The changes help to address the neighbor's initial concerns about the houses being mirror images of each other, the side yard setbacks were narrow and the presence of garages on the front of the houses.

¹ The Planning Board did review the plans that the ZBA approved. The plan set that the Planning Board reviewed and the set that included garages were both presented to the ZBA but during the hearing the applicant withdrew the plan with the garages.

- Mr. Antonelli met with the neighbors and took their feedback into consideration to come up with the second application. The result was that no neighbors opposed the 17-011 case at the hearing.
- From the first to the second hearing the plans were changed to look nice and get the buy-in of the neighbors. The Applicant knew that he needed to get new renderings to get the second application passed. He had to know that he needed to ask the Building Commissioner to ask about changes to the plans.
- The appearance of the buildings and site are what the neighbors care about, not the zoning dimensions.
- Why didn't Mr. Antonelli build what was on the plan?
 - He switched architects after the ZBA approval.
- Were the buildings built to the building permit set?
 - No but Mr. McAvoy was not sure what was submitted when. He just had the information that was in the Building Commissioner's letter. The additional plans were created sometime after the building permit was issued.
 - No one from the City stopped construction.
- The buildings are new construction. There are no existing conditions or hardship that would get in the way of building to the plans.
 - This is a revision request, not a request for a new variance so a hardship finding is not needed.
- The changes from the approved plan to what was built are substantial. The location and symmetry of windows, and massing are material changes that impact the character of the project and the neighborhood. The aesthetics of the buildings and context of the neighborhood are important.
 - Window location should not relate to a lot width variance.
- The spirit and context of the plans are a significant part of the decision. If the project is not built to them, the plans and decision are meaningless.
- There could be changes to the houses in the future but the ability to build on the lot is based on the approved plans.
 - If the decision is held to the plans, there could be no future changes to the houses.
- It is misleading to present plans and renderings of aesthetically pleasing houses and sites and then build something else.
- The Board members questioned why Mr. Antonelli did not appear at the hearing.
 - During the hearing Mr. McAvoy let Mr. Antonelli know that the Board would like to hear from him and he came to the meeting. Mr. McAvoy said that he thought that the case would be an administrative process and that Mr. Antonelli would not be needed.
- Inspectional Services issued the building permit on the approved ZBA plans. Board members expected to hear an explanation of why the changes were made but they are not hearing any reason for the deviations. They need a compelling reason to amend the approval not just that it was built that way.
 - Mr. McAvoy had discussions with the City about if a revision was even necessary. He said there is case law that says that plans need to be explicitly listed as conditions. The items in the Building Commissioner's letter do not relate to lot width.

- The buildings as constructed are more like mirror images of each other, like was proposed in the denied case, 17-003.
 - Board members are bringing up larger issues than what is in the Building Commissioner's letter as items that were not constructed according to the plans.
- Board members felt that the items in the Building Commissioner's letter were a big deal and encompass the concerns raised. Also, the list is not limited or exhaustive.
- In other variance cases the Board requests that applicants revise the plans and bring them back to the Board for small things like the driveway dimension is not indicated. The plans are sacred.
- The Board took the public's opinion, which was not opposed or favorable to case 17-011 into consideration in making a decision on the case.

Four people appeared at the hearing to speak in opposition to the application including Kate Oosterman of 99 Larabee Street and Operator of 93 and 99 Laurel Street and 11 Larabee Street, Keith McArt of 74 Laurel Street, David Fink of 85 Laurel Street, and Megan Carriere of 36 Larabee Street. Robert Oosterman of 93 & 99 Laurel Street and 11 Larabee Street submitted a letter in opposition to the application.

Their comments included the following - if a comment was mentioned more than once the number of times it was mentioned is in parenthesis:

- The approval was for two Victorian style houses that fit into the neighborhood and this is not what was built.
- Approval of the revision would set a precedent that people can get away with building whatever they decide. (2)
- The houses are ugly and do not fit into the neighborhood.
- The four points in the Building Commissioner's letter make the houses not fit in.
- The owner has been a contractor for a long time and it is not right that he made these changes.
- Many neighbors came to the first hearing because they were concerned about the project. For the second application Mr. Antonelli discussed the project a lot with neighbors and they felt that they had a good relationship. Once the construction started that all changed.
- The driveway at 78 Laurel Street is twice as big as it is in the plan and is sloped to the abutter's property which is causing runoff onto his property.
- The abutter asked for the deck at 78 Laurel Street to not be constructed right across from his deck so that the neighbors would not be grilling across from each other. It was built there anyway and Mr. Antonelli just said sorry when the neighbor asked about it.
- The buildings look awkward and the window locations are random. (2)
- The neighborhood put their faith and trust in the plans. They were feeling helpless and are glad that they are able to voice their concerns at a hearing. (2)
- The Planning Board's letter captures the neighborhood's concerns.
- The houses look a little better than the prior dilapidated house.
- There should have just been one house here but that is not the issue.
- This is a bait and switch. They showed rendered plans and the neighbors liked them. They then tried to save money on construction. (3)
- 80 Laurel Street is worse than 78 Laurel Street, which doesn't look too bad.

- They would like to see how they can be improved.
- There is no trust in the developer.
- Architects and builders know that plan changes need approval.
- 80 Laurel Street drastically changed and is a blight on the neighborhood. The low sloped hipped roof makes it look very boxy.
- As an architect, the neighbor looked carefully through the plans and changing them was disrespectful and offensive.
- There was a lack of care in the design of the constructed houses.
- There was no regard or respect for the neighborhood process.

The Chair read the Planning Board's recommendation letter and the DPW's memo regarding the case.

Mr. Antonelli arrived and the Board asked him to explain why the changes had occurred. He stated that when Ed Farrell, the surveyor, staked the foundation he flipped the indent for 78 Laurel Street. Ed Farrell submitted an as built to the City and received a signoff from the City's third party inspector. They also received signoffs from the inspector on the rough framing, electrical, plumbing, blue board, plaster and bathrooms.

Mr. Antonelli said that when the foundation for 80 Laurel Street was poured, they poured it straight across instead of with the recess. He thought that because there was a porch across the front of the building this would be okay. His structural engineer said that the roof is not normally constructed as was shown in the approved plans so they changed it. It is still a hipped roof. The buildings are not within the setbacks or exceeding the height allowed. The City asked for the structural engineer to redo the plans and this added an additional 50,000 dollars to the soft costs of the project. They have not violated the building code.

The Board had the following questions and points of discussion. The Applicants' responses are below:

- Did Mr. Antonelli have the alternative plans when applying for the building permit?
 - The surveyor staked the building differently and they changed the plans accordingly.
- If they did not think that the variance for the lot width was in the context of the approved plans, why did they come back with a different set of plans for the second application?
 - Case law does not support needing to build to the plans.
- Large changes like this never happen when building to a plan set. Having the surveyor flip flop something so drastically is rare.
 - What are the options for moving forward?
- If this was a staking issue, why was Inspectional Services not notified? It does not add up that they would be framing on the new plans the day after the foundation mistake.
 - They did not notice the difference.
- Was 80 Laurel Street staked improperly?
 - The foundation did not follow the stakes. It was poured straight across.
 - It did not seem like a big deal because there was going to be a porch across the front of the house.

- After the first denial the Applicant did a good job getting the buy-in from the neighbors with the approved renderings.
- One member felt that the buildings were not structurally different. The rest felt that the deviations added up and have bigger implications.
 - Mr. Antonelli understood what is in the decision counts. The plans were not approved as a condition. A future buyer would need to look for the approved plans.
 - The project received approvals along the way. They did not just keep building.
 - He is building with high-end products and nothing cheap.
- Did Mr. Antonelli think about approaching the neighbors to discuss the revisions?
 - No. He thought he could make changes and he didn't think that they were substantial.
- The deck location for 78 Laurel Street is a concern as well as the location and width of the driveway. The neighbor accepted the approved plans and didn't complain to the ZBA because he thought that the project would be built to the plan.
 - The driveway is a binder coat for construction vehicles. It will be removed and the driveway will be made of pavers.
- The quantity and symmetry of windows and flatter roof make a big difference. The bump outs would have reduced the blank walls.
- The Board discussed the ability to add windows to the buildings. It seemed that this was possible and there was willingness by the Applicant.
- The reality is that the buildings are built and they need to address items to move forward. What are major changes versus minor concerns?
- The lots are now unique and can be handled differently.
- The average neighbor does not care what the decision says.
- Some applications do not have this level of detail in the plans but this is what the applicant chose to submit to get an approval.
- Could the applicant build a concrete block building with a flat roof? Perhaps if they just submitted a plot plan for approval but the Board would have asked for more plans. They submitted this level of detail to get the approval and it is frustrating that the plans were not followed.
- A subdivision and construction of two new houses is a big project for this City.
- There should be a clear path forward so that the neighborhood does not have to live with two half built houses.
- The Applicant seems reluctant to accept feedback from the Board or neighbors to make changes. The changes should go back to the neighbors because they were involved with the design of the approved plans. It is difficult to approve the revisions that change the character of the houses without the Applicant first meeting with the neighbors to discuss alterations to attempt to resolve their concerns and bring the project closer to what was approved.

Mr. Antonelli said that the switch in the front porch location at 78 Laurel Street makes the porch farther away from the neighbor, which is less detrimental. He can add a window to the building. He may do an ANR to join the lots and connect the buildings, demolish them and build a duplex, or litigate which he thought would be a two year process.

Mr. McAvoy requested that the Board continue the case to the March 13 hearing. The Board voted, 4-1, with Mr. Bradley opposed, to approve the request.

Documents: ZBA Application 18-026

OTHER BUSINESS

Determination regarding Case 18-007, 30 Meadowview Road: In response to an inquiry by the Building Commissioner, the Board discussed and voted 5-0 to determine that the addition of the dormer to the house is de minimis in nature and the decision as written would allow for the construction of it as proposed on the plans. The Chair will write a letter to the Building Commissioner to inform him of the determination and the points of discussion that lead to it.

Documents: Plans for Dormer, SK1-3, dated January 14, 2019, the originally approved decisions and plans, and a Memo from the City Planner to the ZBA dated February 4, 2019

Mr. Dooling made a motion to approve the meeting minutes from January 9, 2019. Mr. Bradley seconded the motion. All members present voted in favor. None were opposed.

The meeting adjourned at 10:40 pm.