

**MELROSE BOARD OF APPEALS
MEETING MINUTES
Public Hearing
Wednesday, May 8, 2019
7:45p.m.
Aldermanic Chamber, Melrose City Hall, 562 Main Street**

Present:

James Bradley
Curtis Dooling, II
Krista Lillis, *Associate*
Rita Mercado, *Chair*
Bryan Thorp

Absent:

David Roache

Staff Present: Lori Massa

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

CASES BEFORE THE BOARD

**CASE 19 008: The appeal of Rebecca Dempster & Matthew Beck
17 Pine Street**

As advertised, case 19-008, was for Variances from Sections 235-18, 235-19, 235-44.D and 235-44.G of the Zoning Ordinance to construct a 21 sf first floor addition onto the single-family house within the nonconforming side yard on the nonconforming lot at 17 Pine Street, Melrose, MA, on a lot of land containing 5,150 sf and shown on Assessor's Map A9 0 90.

The Board of Appeals opened the case. The Chair swore in the applicants and those choosing to speak at the hearing. Owners, Rebecca Dempster and Matthew Beck, 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 Variances.

Documents: ZBA Application 19-008

**CASE 19 007: The appeal of Xunming Chen
86-88 Lake Avenue**

As advertised, case 19-007, was for Variances from Sections 235-18 & 235-19 of the Zoning Ordinance for minimum lot area, front yard, and side yards to convert the two-family structure

into a three-family structure with an exterior alteration for an emergency egress and from Sections 235-41.O for driveway width, 235-41.H for front yard parking, and 235-41.I for backing of vehicles onto the street. The application includes a request for Special Permits under Sections 235-17 to establish the use as a three-family dwelling & if the Board finds that the number of parking spaces is insufficient, Section 235-41.M for a reduction in the number of required parking spaces. The property is 86-88 Lake Avenue, Melrose, MA, owned by Xunming Chen & Weiling Jin, on a lot of land containing 7,036 sf and shown on Assessor's Map C9 0 21.

The Board of Appeals opened the case. The Chair swore in the applicants and those choosing to speak at the hearing. Attorney Judy Clark and Owner, Xunming Chen, appeared to explain the proposal.

Mr. Chen bought the property in 2018. The house was built as a two-family. In 1943 there was an application to convert it to a four-family. The 86 Lake Avenue side of the building has an internal stairway to the third floor. At times over the years the third floor has been used by boarders or as a separate apartment. Mr. Chen removed the stove from the third floor to be able to get a certificate of compliance from the fire department and certificate of occupancy prior to purchasing the property.

They explained that in 2002 the previous owner applied to the ZBA to appeal the denial of a Certificate of Occupancy for a three-family dwelling. The ZBA denied the appeal; however, the hearing for the case was unusual because the applicant's brother, who was part owner, opposed the application.

Attorney Clark said that Mr. Chen is a physicist and landlord of other properties. She distributed positive letters about Mr. Chen from three tenants of three other properties that he owns in Waltham and Burlington.

Attorney Clark went through the special permit findings. She said that the property would add to the rental supply near the Cedar Park commuter rail station and middle and high schools. The proposal would not overload public systems. There are uses other than single- and two-families in the neighborhood so this would not be a grant of special privilege. The Fitch Home is on the street, there is a legalized three-family next door, the library is close-by and there are other multi-family houses in the neighborhood. The property is preexisting nonconforming and the owner did not create the conditions that require relief. The hardship is financial. It is difficult to find a tenant that will pay for an abnormally large apartment.

Board members asked questions about the application and the current state of the property. A member asked if the units are occupied and Mr. Chen said both units are rented. The third floor is used as a part of 86 Lake Avenue. There are seven bedrooms in 86 Lake Avenue and four in 88 Lake Avenue. They discussed how the floor plans were difficult to read. It was not clear if there is a central staircase, how the third floor is accessed and if there could be an internal second means of egress. The plan for the fire escape was also vague even with the rendering of it that Attorney Clark distributed to the members at the hearing. Members questioned if a ladder met the building code as an acceptable form of egress. Then they asked about parking. The parking spaces that are on the site plan currently exist; there are five parking spaces in the back and one

in the front yard. The dimensions of the parking aisles were concerning and they were not shown on the plan. Mr. Chen said that the site plan was to scale. A member mentioned that when changing the use of a property some of the zoning requirements, like the parking dimensions, are taken into consideration even if they are existing conditions.

Nine people appeared to speak in opposition to the proposal: Mirra Naanes of 93 Lake Avenue, Andrew Ferentinos of 89 Lake Avenue who is an architect and holds a degree in urban design from MIT, James Stringer of 92 Lake Avenue, Roger Graf of 32 Lake Avenue, Marie S of 89 Lake Avenue, Cindy Luongo of 76 Lake Avenue, David Goodhue of 13 Tremont Street, Joyce Lamb, Executive Director of the Fitch Home at 75 Lake Avenue, and Cheri MacDonald of 39 Lake Avenue. They voiced the following concerns. If a comment was mentioned more than once the number of times is in parenthesis.

- The front yard parking will remove landscaped area.
- The past applications to make the property a four family do not mean much if they were not approved.
- The increase in density for this property is not for the public good. It is not safe as a three-family.
- The house is over the maximum coverage area and minimum side yard setbacks which are grandfathered as a two-family. There is no reason to support the nonconformities for a three-family.
- The property has been a serious nuisance to the public (2). Neighbors have had to call the police on the tenants and people have been taken out of the house on stretchers (2). Neighbors also call about parking violations.
- The city should not be concerned about the rental income for the property.
- Determining property egress is not possible without floor plans. Building code requirements change when converting from a two- to a three-family.
- The property has not been taken care of and the siding which is falling off. The aesthetics of the property should be improved before adding another unit.
- There is a lot of asphalt on the property. Where does the runoff go? There is a lot of exhaust and chemicals with six cars onsite.
- As a new owner on this street, one abutter said that he knows the cost of purchasing and maintaining a property on the street. He paid almost the same price as 86-88 Lake Avenue for his two-family and is able to make the finances work by living there and collecting rent from the 1-bedroom unit in his house. Both his property and the subject property are nonconforming two-family houses. There is not a financial hardship for 86-88 Lake Avenue.
- The parking layout is tenuous and does not work (3). When there are two SUVs parked in the back there is no space to fit between them. Parking space #3 is unusable. The neighboring property is needed to access the back. Is there a documented shared driveway situation?
- The front yard parking space creates a bottleneck because cars currently hang over the sidewalk and it is difficult for emergency vehicles to pass (2). The fire department's ladder truck comes to the Fitch Home often. It would be difficult for firemen to work around the car in the front yard.
- The front yard parking is a safety issue because it is too close to the house and sidewalk.

- The front yard parking is not in keeping with the character of the neighborhood. It limits the access to the front door of the house. Would the pavement for the front yard parking be changed from the current situation? There are often 2 or 3 cars on the front lawn and they are an eyesore.
- People park on Lake Avenue and go to the public pool on Tremont Street making it hard to back out onto the street. There is not enough parking on Lake Avenue and Tremont Street.
- There is nothing unique about this property.
- The owner should fix it up and turn the units into condominiums.
- The neighbor across the street does not want to look at a fire escape on the side of the building.
- If the Building Inspector did not approve of an external fire escape, would the applicant be allowed to build a bigger enclosed staircase?
- An applicant cannot create their own hardship.
- Visitors cannot park on the street overnight.
- The building has been operating as a rooming house with 5 or more unrelated individuals.
- The house is an eyesore and it is only getting worse (3). Trash barrels are overflowing. There was hope that the new owner would improve the property but he hasn't done anything to it yet (3). The owner purchased the property in November and before today, when there was a work truck there, he has not done any work on the property. He is an absentee landlord.
- Other neighbors on the street maintain their properties.
- A three-family here will depreciate the value of other properties (2)
- 86-88 Lake Avenue has minimal setbacks (2).
- There might be an increase in insurance premiums for the neighbors.
- The density on the street is considerable considering its small size. There is an apartment building, the Fitch Home, two-families and the Tremont Street pool nearby.
- There are many children on the street and many walk down the street to go to school. Children are not used to cars backing out from the front yard of a house.
- Where will the snow be stored with all of the parking?
- The property affects the quality of life for all of the abutters.
- High school students drive quickly down the street.
- The applicant should do a parking study.
- It is difficult to understand the financial hardship when the owner bought the property six months ago. The financial hardship is on the neighbors.
- The illegal use went on for years. If it happens again, would the neighbors just have to put up with it?

The Chair read the Planning Board's recommendation letter, dated April 25, 2019, into the record. The Planning Board found that the building was large enough to house three units; however, the Board did not recommend approval of the proposal as presented. There is a lack of information on the fire escape location and lot coverage dimension, and a lack of support for the proposed parking plan, backing out of vehicles, and parking in the front yard.

The Chair acknowledged that there is a memorandum from the Department of Public Works dated May 8, 2019, that is also part of the record.

Attorney Clark said that she is sympathetic towards the neighbors for having to deal with the problems at the property in the past. She said that it has been difficult for the owner to fix up the property when he does not know if he will have two or three units. He has done work inside of the building. The house will not get smaller and even as a two-family there will be a lot of cars. Mr. Chen's desire is to fix up the property.

The Board asked more questions of the applicant team. A member asked how many parking spaces there are at the three-family property at 80-82 Lake Avenue. A neighbor said that there are six. Mr. Chen said that the parking is what it is. The three-family will be much easier to rent and he will have a bigger applicant pool from which to choose quality tenants. 86 Lake Avenue has 7 bedrooms and 5 bathrooms and could be a party house. A member asked how many people are leasing the units currently. 88 Lake Avenue has four individual tenants with one lease. 86 Lake Avenue is rented to a big family and they occupy all three floors of the unit.

A board member said that the neighbors are raising serious issues. The building would not be changing and the type of tenants may change by having smaller units but it is hard to brake from the past history of the property. The owner should meet with the neighbors to see if he can change their minds after hearing about his plans for the property. The owner should consider his options.

The Board requested that the Applicant present clear plans of the interior to understand where the stairways are located and if an interior stair for a third unit could be constructed. They also requested a fire escape plan and a rendering farther back than the one presented to show context. They requested a parking plan that shows dimensions and materials and what the parking layout would be if they were granted the reduction in parking. Finally, they encouraged the owner to do outreach with the neighbors to address the concerns that they have raised.

The Board voted, 5-0, to approve the applicant's request to continue the case to the June 26, 2019 hearing.

Documents: ZBA Application 19-007

**CASE 19 009: The appeal of Richard Cocci
139 Green Street**

As advertised, case 19-009, was for Variances from Sections 235-18, 235-19 & 235-44.G of the Zoning Ordinance to reduce the footprint of the existing house and construct an approx. 624 sf second floor addition on the single-family dwelling within the nonconforming side and rear yards at 139 Green Street, Melrose, MA, on a lot of land containing 5,885 sf and shown on Assessor's Map D11 0 98.

The Board of Appeals opened the case. The Chair swore in the Applicants and those choosing to speak at the hearing. Applicant, Rick Cocci, appeared to explain the proposal. A representative

from Pegasus Design was also present. 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 Variances.

Documents: ZBA Application 19-009

**CASE 19 010: the appeal of 39 Tappan Street Realty, LLC
40 Vine Street**

As advertised, case 19-010, was for a Variance from Section 235-41.O of the Zoning Ordinance for aisle and driveway width at 40 Vine Street, Melrose, MA, on a lot of land containing 11,215 sf and shown on Assessor's Map C8 0 40. The Variance request is for a proposed redevelopment of the site to construct an 8-unit residential building with 8 parking spaces.

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. Two abutters appeared to speak in opposition to the application and one abutter wrote a letter with concerns.

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 Variances.

Documents: ZBA Application 19-010

OTHER BUSINESS

Approval of meeting minutes from April 10, 2019

Mr. Bradley made a motion to approve the meeting minutes from April 10, 2019. Ms. Lillis seconded the motion. All members present voted in favor. None were opposed.

The next meeting is set for June 12, 2019 in the Aldermanic Chamber.

The meeting adjourned at 10:10 pm.