

**MELROSE BOARD OF APPEALS
MEETING MINUTES
Public Hearing
Wednesday, July 10, 2019
7:45 p.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 18 026: The appeal of 80 Laurel Street, LLC
78 & 80 Laurel Street** (continued from 2/13, 3/13 & 6/12)

As advertised, case 18-026, was 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 at the February 13, 2019 meeting and after discussion continued the case to March 13, 2019. On March 13, 2019 the Board continued the case to June 12, 2019. Due to a lack of a quorum at that meeting, the Board continued the case to the July 10, 2019 hearing.

The Chair swore in the applicants and those choosing to speak at the hearing. Attorney Patrick McAvoy and Greg Antonelli, Owner, appeared to represent the case. One person appeared to speak in support of the application, three people appeared with questions and comments and two people submitted letters to voice complaints.

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 conditionally approve the amendment to the variances.

Documents: ZBA Application 18-026
Memos from Denise Gaffey, Director OPCD & City Planner, dated March 6, 2019 & July 3, 2019
Response to the March 6, 2019 Memo from Attorney Patrick McAvoy submitted June 11, 2019

**CASE 19 017: The appeal of Michael Fahy
492 Lebanon Street**

As advertised, case 19-017, was for Variances from Sections 235-18, -19 & -44.G of the Zoning Ordinance for rear yard setback to construct a deck and stairs at 492 Lebanon Street, Melrose, MA, owned by Majella Fahy, on a nonconforming lot of land containing 6,534 sf and shown on Assessor's Map D8 0 121.

The Board of Appeals opened the case. The Chair swore in the applicants and those choosing to speak at the hearing. Michael and Majela Fahy, Applicants and Owners, appeared to explain the proposal. No one appeared to speak in support of or in opposition to the 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 19-017

**CASE 19 018: The appeal of Joshua & Ngoc Anh Goldstein
26 Prospect Street**

As advertised, case 19-018, was for Variances from Sections 235-24.A & -24.B of the Zoning Ordinance for front and side yard setback for an accessory structure in order to construct a retaining wall near the property lines at 26 Prospect St, Melrose, MA, on a lot of land containing 19,944 sf and shown on Assessor's Map A8 0 32.

The Board of Appeals opened the case. The Chair swore in the applicants and those choosing to speak at the hearing. Owners, Joshua and Ngoc Anh Goldstein, appeared to explain the proposal. They said that they need to install a retaining wall on the property, which would complete their redevelopment of the site for their single-family house. Retaining walls are in the definition of structure and therefore the accessory building dimensions apply to them. If the retaining wall was a conforming 4 feet from the property line, there would be a 20 foot back out distance for the cars parked in the garage. They preferred to have 24 feet, especially when it snows, to have a safer swing out of the garage. They would not know the exact distance that the wall would be from the property line until they are excavating. Any extra space that they could have to back out would be beneficial. The wall will be 6 inches to 12 feet tall, tapering off to 8 feet. That includes a 12 to 15 inch height for a fall guard. On top of that will be a 36 inch cedar fence with English lattice. There will be no over digging on the neighbors' properties. The footings will be about

three feet from the outside face of the retaining wall but they will be spread footings so the distance will vary. There will be a drywell at the end of the driveway.

A Board member asked why they did not propose a segmented wall. Mr. Goldstein said that for frost protection and insurance he would prefer a concrete wall. A member also asked about the width and depth of the garages. The first bay is nine feet wide and the second and third bays are ten feet wide. The garage depth is 24 feet.

There was discussion about the details of the plan including where the 24 foot backout will be and the height of the wall at certain locations. The plans did not clearly show these details.

Three people appeared to speak in opposition to the application. Michael Fix and Alicia Fix of 14 Prospect Street live next door to the property and voiced their concerns. Mr. Fix said that the application should specify the requested setback and not be open-ended. The application should say that the footing will be within 4 feet of the property line and not the wall. The plans submitted are not sufficient to show what will be constructed. Saying that there will be a 24 foot swing is misleading because only 22 feet is on the plan. He thought that parts of the wall will be 10 feet tall looming over their property but tonight he learned that the wall will be 12 feet with a fence on top on it for a run of 20 feet. They would like for the neighbors to be able to build the wall but would like to have the details of where it will be and have a veneer on the wall or other treatment to beautify it in some way. The wall will be brutalist architecture. The safety issue is one that they created by building the house too close to the property line. They are concerned about remediation of their property with the machines that will be brought in to construct the wall. They have proposed an agreement to the neighbors which they did not accept. It included a license to go on their property with impacts and damages, putting a veneer on the wall, ensuring that the footing was entirely on the subject property, and requiring the City Inspector to inspect the location of the footings with the property flags present. Mrs. Fix said that they have felt that they have been fighting and defending their property rights and have not been given an opportunity to give input because no zoning permits were needed until now. They have been overly neighborly. They do not understand how they will not over build the wall on their property. They will have an expense to not have the wall devalue their property. They have done a lot of work to tie into the grades with the property to the right of the house which the Applicant's family members own. Every other wall on the property is finished and this one that faces their property will be unfinished.

Melodie Manolopoulos of 131 Conant Road does not understand how they will not overbuild on the neighboring property. She is worried about the rainwater runoff impact. Her husband is a civil engineer and he said that from framing it was evident that the swing for a three car garage was not sufficient.

Ms. Mercado read the Planning Board letter and noted that a memo from DPW was in the file. She also explained that the Zoning Board is not an enforcing authority to provide the abutters with an understanding of the process. The Building Commissioner makes the determination that the construction complies with the zoning laws. The Board only sees cases that require relief from zoning.

A board member asked why the Applicants would not veneer the wall. Mr. Goldstein said that the abutters wanted to redo their backyard and he does not want to have to pay for it. The timing and communication is not working out with the neighbor. He will eventually veneer the wall when the timing is right.

A board member asked for an explanation of the hardship. The lot is unique but the house was built recently. Mr. Goldstein said that their civil engineer made a mistake by designing a wall that would be along the property line. He did not anticipate the four foot setback. They want to be able to have a safe driveway. Even if they remove the snow in the winter the driveway would not be safe if it was icy.

Board members said that the wall is a complicated structure and the neighbors have issues with it. The Applicants should submit a revised plan with specificity of where the wall and footings will be and if they will need to touch the neighboring property.

Mr. Goldstein asked for a continuance to the next meeting. The Board voted, 5-0, to approve the request to continue the case to August 14, 2019.

Documents: ZBA Application 19-018

OTHER BUSINESS

Review and Approve Updated Comprehensive Permit Rules

The Board discussed the proposed edits to the comprehensive permit rules. A document with the changes indicated was distributed to the members. The Board discussed adding a requirement for a survey for vernal pools and a survey of wildlife and plants including accounting for those species utilizing the area during migratory stopover or transitory habitat. The Board preferred the term 'not economically feasible' over 'uneconomic'. They made two other wording edits to change 'attempt' to 'endeavor' in the sentence about distributing the application to local boards and to remove 'by the landowner' in the sentence about site visits.

Ms. Lillis made a motion to approve the updated comprehensive permit rules as amended. Mr. Bradley seconded the motion. All members present voted in favor. None were opposed.

The next meeting is set for August 14, 2019 in the Aldermanic Chamber.

The meeting adjourned at 11:10 pm.