

**MELROSE BOARD OF APPEALS
MEETING MINUTES
Public Hearing
Wednesday, October 16, 2019
7:45 p.m.
Aldermanic Chamber, Melrose City Hall, 562 Main Street**

Present:

James Bradley
Curtis Dooling, II
Julianna Hanlon, *Associate*
Rita Mercado, *Chair*
David Roache
Bryan Thorp

Absent:

Krista Lillis, *Associate*

Staff Present: Lori Massa

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

CASES BEFORE THE BOARD

**CASE 19 025: The appeal of Jay Dunham of Metro Credit Union
138 Main Street and Sylvan Street**

As advertised, case 19-025, was to amend a Special Permit, Case 90-16, under Section 235-60.E of the Zoning Ordinance to reconfigure the parking lot at 138 Main Street, Melrose, MA, and for a Special Permit under Section 235-17, Parking in Excess of 4 Spaces, to extend the parking lot onto the abutting lot on Sylvan Street for a total of 17 spaces for the existing bank use. The request includes a Variance from Sections 235-41 for Parking Standards; parking will continue to extend into the front yard. The properties are on lots of land containing 10,022 & 3972 sf and shown on Assessor's Map C3 0 8-9 & C3 0 6-7.

Ms. Mercado read a letter from Christopher Tolley, Representative, requesting to continue the case to the November 13, 2019 hearing. The Board voted, 5-0 with Ms. Hanlon voting for Mr. Roache who was not yet present, to grant the request to continue the case to November 13, 2019.

Documents: ZBA Application 19-025
Letter from Christopher Tolley dated September 25, 2019

**CASE 19 024: The appeal of Patricia Matthews and Mark Beckford
1 Ireson Court**

As advertised, case 19-024, was for Variances from Sections 235-18, -19 & -24 of the Zoning Ordinance for rear yards for the existing house and shed due to a lot line adjustment at 1 Ireson Court, Melrose, MA, on a corner lot of land containing 14,070 sf and shown on Assessor's Map G3 0 19.

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 on behalf of the Applicants and the case representative, Attorney Lucas, to present the proposal. One person appeared to speak in opposition to the application because he found that the right of way location is incorrect on the plan.

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, with Ms. Hanlon voting for Mr. Roache who was not yet present, to approve the requested Variances.

Documents: ZBA Application 19-024

CASE 19 026: The appeal of Robert and Sara Mestjian 44 Cochrane Street

As advertised, case 19-026, was for Variances from Sections 235-19 & -19 of the Zoning Ordinance for side yard setback to construct an entryway enclosure on the single-family house at 44 Cochrane Street, Melrose, MA, on a lot of land containing 9,927 sf and shown on Assessor's Map E12 0 93.

The Board of Appeals opened the case. The Chair swore in the applicants and those choosing to speak at the hearing. Applicants/owners Robert and Sara Mestjian 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 with Ms. Hanlon voting for Mr. Bradley who recused himself, to approve the requested Variance.

Documents: ZBA Application 19-026

CASE 19 027: The appeal of Ryan Luks 76 Swains Pond Avenue

As advertised, case 19-027, was for Variances from Sections 235-18 & -19 of the Zoning Ordinance for frontage and lot width due to a lot line adjustment at 76 Swains Pond Ave, Melrose, MA, on a lot of land containing 66,077 sf and shown on Assessor's Map F3 0 41A.

The Board of Appeals opened the case. The Chair swore in the applicants and those choosing to speak at the hearing. Applicant, Mr. Luks appeared to present the application. The property has a single-family house and detached garage on it. An existing swing set, stairway to the second floor of the garage and built-in grill are over the property line and onto the abutting residential neighbor's property at 80 Swains Pond Ave. The proposal is to reduce the frontage/lot width of the property in order to swap land with the abutter to rectify this issue.

When Mr. Luks purchased the property the swing set, built-in grill and stairway were already constructed and a land swap agreement was discussed with the prior owner and the owner of 80 Swains Pond Avenue. Mr. Luks learned of the potential agreement prior to purchasing the land and was under the impression that a variance for the frontage would not be difficult to obtain. The owner of 80 Swains Pond Avenue maintains the land along the road that is owned by Mr. Luks. A lot line adjustment would allow for a land swap so that they could continue to maintain their structures and use of the land without being on their neighbors' property for liability reasons.

Mr. Luks explained how his case met the findings for a variance. He does not have a use for the front of his property since his house is setback from the road. He distributed pictures of the land from the street. He has a unique lot with circumstances that he did not create. It is a hardship that he cannot use his swing set and built-in grill. He also mentioned that there are many properties in the same zone that have less than 100 feet of frontage.

He explained why the Planning Board's recommendation to consider a different plan to move the lot lines that does not involve a change to the lot frontage or the creation of a swap by easement agreement to achieve the goals of the application did not work for him and his neighbor. The neighbor does not want land at the back of the lot because it is rocky and unusable. The easement creates a situation where the sale of the property in the future may be less attractive or one of the parties may not want to continue the easement.

No one appeared to speak in support of or in opposition to the application.

The Chair read the Planning Board's recommendation letter, dated September 27, into the record and noted that there is a memorandum from the Department of Public Works dated October 16, 2019, that is also part of the record.

The Board discussed how the frontage regulation is an important dimension in lot regulation. Also, creating a new nonconforming dimension is something that the Board approves only when there is no other option. The other options of moving the lot line in a different location, buying the land from the neighbor, or creating an easement may not be preferred by the owners but they are viable options and accomplish the goals of the proposal. The lot is large and it is possible to use one of these options or relocate the structures. The built-in grill, swing set and stairs are temporary and the lot line change would be forever and affect the future use and development of the lots. There are other lots that are nonconforming because they were created prior to the zoning regulation but the existence of nonconforming lots is not justification for creating a new nonconformity.

After hearing the Board's discussion, the Applicant requested to withdraw the application without prejudice.

The Board voted, 5-0, to accept the request to withdraw the application without prejudice.

Documents: ZBA Application 19-027
Photos of the front of the property

**CASE 19 028: The appeal of Jeffrey P. Newman
423 Pleasant Street**

As advertised, case 19-028, was for Variances from Sections 235-17 of the Zoning Ordinance to establish the use of a personal and consumer service establishment, Boston Photo Rental, Sections 235-17 & -32.G for the number of parking spaces provided, Section 235-41.O for driveway width, and Section 235-31 to allow for the proposed signage in a residential district and Special Permits under Section 235-38.A for parking on a separate lot and Section 235-41.M for a reduction in the number of parking spaces required for the proposed use at 423 Pleasant Street, Units 1&2, Melrose, MA, owned by Sidell Family Realty, LLC on a lot of land containing 15,065 sf and shown on Assessor's Map B5 0 117.

The Board of Appeals opened the case. The Chair swore in the applicants and those choosing to speak at the hearing. Attorney Judith Clark and Applicant, Jeffrey Newman, appeared to explain the proposal. Four people appeared to speak regarding 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 conditionally approve the requested Variances and Special Permits.

Documents: ZBA Application 19-028

OTHER BUSINESS

Approval of meeting minutes from September 11, 2019

Mr. Thorp made a motion to approve the meeting minutes from September 11, 2019. Mr. Bradley seconded the motion. All members present voted in favor. None were opposed.

The next meeting is set for November 13, 2019 in the Aldermanic Chamber.

The meeting adjourned at 9:45 pm.