

**MELROSE PLANNING BOARD
MEETING MINUTES
Regular Meeting
Monday, May 20, 2013
7:45 PM
Mayor's Conference Room, 2nd Floor, City Hall, 562 Main Street**

PRESENT: Carla Morelli, Anne DeSouza-Ward, Ed Cassidy, Paul King, Robert Mercado, Sharon Petrillo, John Sadowski, and Jack Welch

ABSENT: Michael Cassavoy

Denise Gaffey, Director and City Planner, and Adam Duchesneau, Assistant Planning Director, were present.

The meeting was called to order at 7:52 PM by Ms. Morelli.

MINUTES

Regular Meeting and Public Hearing, April 22, 2013

Mr. Mercado MADE a MOTION to accept the minutes of April 22, 2013. Mr. Welch SECONDED the MOTION. All members voted in favor. None were opposed and Ms. Petrillo was absent from the vote.

Zoning Subcommittee Meeting, March 14, 2013

Ms. DeSouza-Ward MADE a MOTION to accept the minutes of March 14, 2013. Mr. Cassidy SECONDED the MOTION. All members voted in favor. None were opposed and Ms. Petrillo was absent from the vote.

Zoning Subcommittee Meeting, March 25, 2013

Ms. DeSouza-Ward MADE a MOTION to accept the minutes of March 25, 2013. Mr. Mercado SECONDED the MOTION. All members voted in favor. None were opposed and Ms. Petrillo was absent from the vote.

Design Review Subcommittee Meeting, March 25, 2013

Mr. Cassidy MADE a MOTION to accept the minutes of March 25, 2013. Ms. DeSouza-Ward SECONDED the MOTION. All members voted in favor. None were opposed and Mr. Mercado abstained from the vote.

BOARD OF APPEALS

Case # 13-009, 90 Richardson Road, Eric Sousa

The Applicant, Eric Sousa, was in attendance to discuss the proposed project with the Planning Board. Mr. Sousa indicated that the proposed project involved the construction of an L-shaped dormer on the third level of an existing single-family dwelling with a gambrel style roof. The new dormer would allow for the expansion of the existing bedroom on the third floor and the addition of a new bathroom to accommodate an expanding family. Mr. Sousa indicated that the proposed location of the dormer was selected because the other side of the roof is where the chimney is located and also due to the location of the only existing full bathroom on the second floor. Mr. Cassidy confirmed that no other changes would be made to the existing structure and Mr. Sousa indicated that was correct.

Mr. Sadowski then questioned why the Building Commissioner had only listed the side yard setback as the zoning relief needed when the project also appeared to need zoning relief for the creation of a full third story. He went on to point out that this is already quite a large structure and the addition of this

dormer would clearly make the dwelling a three story building. Ms. Gaffey noted that the Planning Board could address this point their recommendation letter to the Board of Appeals. Ms. DeSouza-Ward confirmed that only 2½ stories were permitted in this zoning district and Ms. Gaffey indicated that this was correct. Mr. Sadowski stated that by virtue of the proposed right side elevation, the structure would clearly be three full stories. He went on to indicate that the gambrel style roof helps to break up the presence of the third story at the front of the dwelling, but the proposed dormer will really emphasize the verticality of the structure.

Mr. Sadowski then noted that the proposed two foot overhang would seem to worsen the already nonconforming setback condition. He then inquired how close the neighboring house was on the side of the property where the proposed dormer would be located. Mr. Sousa indicated that the neighbor's house was approximately 20 feet away from this side of the subject house separated by a driveway, a wall, and a small garden. Mr. Sadowski pointed out that the existing footprint of the subject building was only 3.6 feet away from the neighboring property line. He went on to ask how this side of the structure would be maintained if the neighbor on that side of the property decided to put a fence up along that particular property line. The angle of the ladder that could be erected on the Applicant's property would be extremely steep. Mr. Cassidy pointed out that this is the existing situation at the property already. Mr. Sousa confirmed this and went on to indicate that the existing eaves on the structure are already two feet and the dormer would simply extend upward through the foundation wall.

Mr. Sadowski then asked if there were other structures in this neighborhood that were already, or appeared to be, three stories in height. Mr. Cassidy indicated that there were many large houses in this area of the city. Mr. Mercado reiterated that the issue here is more about the ability to maintain the side of the structure where the zoning relief is being sought. This would be a difficult task without going onto the neighbor's property. Mr. Cassidy confirmed with the Applicant that the project would not increase the footprint of the building and Mr. Sousa indicated that was correct. Mr. Sousa also pointed out that most of the construction would be occurring at the rear of the property. Ms. DeSouza-Ward felt that in this particular case, the Planning Board should point out in their recommendation letter to the Board of Appeals that the proposed project would be creating a full third floor. However, she went on to indicate that she was in favor of issuing a standard letter to the Board of Appeals since the proposed project would be maintaining the existing side yard setback.

Ms. Morelli asked the Applicant if the third floor was currently occupied at this time and Mr. Sousa indicated that this was the case. Ms. Morelli then pointed out that the Planning Board should be careful with the wording of their recommendation letter because this project is expanding an existing third floor for more living space. Mr. Cassidy recommended that the Applicant go back to the Building Commissioner and confirm with him that the zoning relief that the Applicant is seeking is actually what is needed. Mr. Welch indicated that the dwelling across the street from him was allowed to add a bathroom to the third floor without zoning relief since there was already existing living space on that level of the structure. Ms. DeSouza-Ward also stated that she felt the Applicant should confirm the zoning relief they need with the Building Commissioner before going before the Board of Appeals. Mr. Sadowski agreed and stated that the Applicant should be sure they are asking for all of the required Variances from the Board of Appeals. He went on to indicate that this particular type of case is a real dilemma for him. Mr. Sadowski indicated that dormers of this style and this manner can become a real slippery slope with regard to the zoning for an area. He pointed out that the rear of the structure is very tall but the front of the dwelling makes it appear as if it is a 2½ story building.

Ms. Morelli pointed out that the Zoning Subcommittee had been looking at a proposed zoning change that dealt with these exact types of projects. She indicated that the subcommittee had a lot of discussion regarding what percentage of the roof line a dormer or dormers should be permitted to occupy. That was

the subcommittee's dilemma she stated. What was the appropriate percentage of roof line that an Applicant should be allowed to use for a dormer? Mr. Mercado indicated that he was not sure if the Applicant should go back to the Building Commissioner to confirm the necessary zoning relief. He went on to indicate that he would not question the Commissioner's denial letter. Ms. Morelli responded by saying that she would absolutely go back to the Building Commissioner because it is important for the Applicant to clearly understand the zoning relief they need to construct the project. Mr. Sadowski stated that the Planning Board's recommendation letter to the Board of Appeals should indicate that it appears the project requires a second Variance for the creation of third floor living space. Mr. Sadowski then asked the Applicant if they had talked to their neighbors about the project and Mr. Sousa indicated that he had spoken to them.

Mr. Sadowski then MADE a MOTION to send a standard letter to the Board of Appeals which would also include the Planning Board's concern that the project appeared to need a second Variance for the creation of a full third story for living space. The recommendation letter should also indicate that the Planning Board felt the proposed project was similar in size, scale, and context to the other structures in the surrounding neighborhood. Ms. DeSouza-Ward SECONDED the MOTION. All members voted in favor. None were opposed.

Document: ZBA Application Case # 13-009

Case # 13-010, 59 Russet Lane, Michael and Amy Caton

The Applicants, Michael and Amy Caton, were in attendance to discuss their proposed project with the Planning Board. Mr. Caton stated that they are proposing substantial changes to the existing single-family ranch style home which includes a remodeling of the main living floor and altering the roof line by raising it considerably. As with the previous application, this proposal also requires a Variance to establish third floor living space. Mr. Caton also indicated that this is mainly due to the fact that the basement level of the dwelling is a walkout which technically makes this floor level the first story of the structure. The main living area would be on the second floor and the third floor would contain the sleeping quarters.

Mr. Sadowski asked, with regard to the overall height of the proposed structure, if the Applicants were proposing to change the grade around the building. Mr. Caton indicated that they would not be altering the grade. Mr. Sadowski then confirmed that the overall height of the proposed structure was going to be 32 feet and indicated he felt that the project was similar in scale with the previous case of 90 Richardson Road. Mr. Caton indicated that there is also a side yard setback issue that they are also seeking zoning relief for. Ms. Caton then stated that there is an in ground pool on the next door neighbor's property where they are seeking the side yard setback Variance. Mr. Caton indicated that the requested setback Variance should not create any maintenance issues on that side of the dwelling as this is the existing situation at the property. He went on to state that the existing screened-in porch at the rear of the building will be retained and a new deck will be built over it. Mr. Sadowski pointed out that the zoning ordinance allows for decks of a certain height to violate setbacks but this particular proposal seems like it would exceed the height provisions of this regulation. Mr. Sadowski continued on to point out that because the Building Commissioner is considering the basement level to be a full story, he is recognizing this project as needing a Variance for the proposed top floor.

Mr. Mercado asked the Applicants where they were currently residing and if the house at 59 Russet Lane was currently occupied. Ms. Caton indicated that they were currently living at 52 Batchelder Street and the Russet Lane dwelling was currently vacant. Mr. Caton stated that they would be completing the entire renovation at Russet Lane before moving into it from the Batchelder Street residence. Mr. Cassidy asked what they were proposing in the way of siding for the renovation. Mr. Caton stated that the building currently has shake shingles and they would be replaced with a clapboard siding. He went on to indicate

that the home had been quite neglected before they purchased it and the entire property needs a good amount of work. Mr. Mercado then asked what was the proposed pitch for the new roof. Mr. Caton stated that the current roof is an 8 pitch and they would like to make the new roof a 12 pitch to give them more head room on the third level. Mr. Mercado then asked if the existing height of the chimney would be an issue with the roof of the structure being raised. Mr. Caton responded by saying that they will need to extend the height of the chimney to accommodate for the raised roof. Ms. DeSouza-Ward confirmed that the existing side yard setback would remain the same and Mr. Caton indicated that was correct.

Mr. Sadowski asked if there would be a small overhang for the roof. Mr. Caton indicated that there would be, but that there is also currently a small overhang on the existing roof. Mr. Sadowski stated that he knew there was an exception for chimneys in the ordinance with regard to building height, but he thought that the new proposed overhang might create some type of new setback issue. Ms. DeSouza-Ward stated that she did not think the overhang would be an issue and Ms. Gaffey confirmed that the zoning ordinance allows for roof overhangs to be two feet without a setback violation occurring. Ms. DeSouza-Ward then pointed out that the rear yard setback, which may potentially be an issue, was not mentioned in the letter from the Building Commissioner. Mr. Sadowski stated that the proposal calls for extending the existing rear deck beyond where it currently is and this is not being shown in any of the plan views in the drawings. He continued on to say that this particular element would also likely need a Variance from the Board of Appeals. Mr. Sadowski informed the Applicants that they would want to clarify with the Building Commissioner and the Board of Appeals all of the items they are seeking relief from.

Mr. Mercado noted that it appeared the proposed project would create a roof line that is still lower than the adjacent structures in the area, which was a good thing. Mr. Caton then stated that they have spoken to most of the abutting neighbors and they are simply happy that the property will now be maintained. He went on to point out that another house on the street was recently converted from a ranch style to a colonial style without the need for a Variance and the same was true of another dwelling nearby which was converted from a ranch to a gambrel roof style.

Mr. Sadowski stated that he felt that a standard letter should be issued to the Board of Appeals. Mr. Cassidy indicated that he felt the project had been designed very well and the building will still retain a two story appearance with an under garage from the street. He went on to state that although the rear elevation will be very tall, it does not appear that it will be that visible to the neighbors. Mr. Caton stated that the rear elevation would be visible by some of the neighbors but should not be very prominent. Ms. DeSouza-Ward stated that she felt the recommendation letter should include something about there possibly being a need for a rear yard setback Variance in addition to the two Variances that were already being requested. She went on to indicate that she did not feel the side yard setback was a substantial issue because the structure was simply going upward but not getting any closer to the neighbor's property. Ms. DeSouza-Ward also pointed out that the size of the proposed rear dormer would not be allowed under the newly proposed zoning amendments that were being discussed by the Zoning Subcommittee. She concluded her statement by saying that she did not have a strong objection to the project and felt that a recommendation letter similar to the one for 90 Richardson Road should be issued to the Board of Appeals. Mr. Sadowski followed these comments by saying that he is not objecting to this application either and felt that a standard letter that points out the possible additional need for a rear yard setback Variance should be issued to the Board of Appeals. Ms. DeSouza-Ward agreed with this and also thought the recommendation letter should indicate that the project appears to be consistent with the size and scale of the surrounding neighborhood. Mr. Sadowski also stated that he felt the recommendation letter should note that the proposed extension of the rear porch is not shown in the plan view drawings for the project, but is displayed in the proposed right side elevation.

Ms. DeSouza-Ward then MADE a MOTION to send a standard letter to the Board of Appeals which would also include the Planning Board's concern that the project appeared to need a third Variance from the rear yard setback requirement for the proposed extension of the rear porch. The recommendation letter should also indicate that the Planning Board felt the proposed project was similar in size, scale, and context to the other structures in the surrounding neighborhood. Mr. Welch SECONDED the MOTION. All members voted in favor. None were opposed.

Document: ZBA Application Case # 13-010

ZONING SUBCOMMITTEE REPORT

Proposed alterations to Section 235-5 modifying the definitions of "Basement", "Story", and "Story, Half"

Mr. Sadowski began the discussion by stating how the two previous Board of Appeals cases that were discussed earlier in the meeting were very interesting. One was proposing a small change and the other a much more substantial one. He indicated how it appeared that one could easily be swayed towards favoring a much more substantial project if the architecture of the proposed project was done well. Ms. Morelli pointed out this is true but also the surrounding neighborhood will have a huge impact on whether or not a particular architectural style will fit well within a particular area. Mr. Sadowski posed a general question to the Planning Board that if a proposed zoning change gives Applicants more flexibility to go further with an as-of-right renovation, then would it be considered a bigger leap or a bigger ask from the Board of Appeals if they sought Variance relief from the zoning ordinance? Ms. DeSouza-Ward indicated that she did not think that this would be the case because the proposed change would be the zoning. It would be the baseline. There are structures now where people cannot finish an existing half story under the current zoning ordinance she indicated, and the Zoning Subcommittee is attempting to change this. Mr. Welch asked for clarification on the difference between a basement and a cellar. Ms. Gaffey then read and explained the two definitions for clarification to the entire Board.

Mr. Sadowski then confirmed with the members of the Zoning Subcommittee that the proposed changes to the definitions of "Basement" and "Story" were simply for clarification purposes, which was the case. Ms. DeSouza-Ward noted that the definition of "Story, Half" brought about an extensive discussion amongst the Zoning Subcommittee members. She explained that what the subcommittee had settled on was that gable, hipped, and shed roof styles would be considered half story floor levels while gambrel and mansard roof styles would be considered full story floor levels. Mr. Duchesneau then walked the Planning Board through a series of aerial images which displayed many different types, styles, and sizes of dormers, all of which would be permitted under the proposed zoning amendment. Mr. Duchesneau also presented images of current structures in Melrose which the Building Commissioner had submitted to Planning Staff. The Building Commissioner was concerned that these particular types of construction projects would be allowed as-of-right under the proposed zoning amendment and that allowing dormers to be constructed over 50% of the roof line to which they were attached was too large a percentage.

After a review of the aerial images, Mr. King acknowledged that something needed to be done to control how close a dormer could be located towards the edge of a roof line. He felt that addressing this topic would help to reduce the concerns of the Building Commissioner that dormers that were 50% the length of a roof line would make a structure appear as if it were a full three stories in height. Ms. Morelli indicated that she felt that dormers should not be permitted to be within two feet of the edge of a roof. Mr. Cassidy suggested language which stated that dormers would be permitted up to 50% of the roof line to which they are attached but shall be setback as appropriate to preserve or emphasize the original building elevations. Mr. King supported Ms. Morelli's suggestion of a two foot setback for dormers from each roof line. He felt this would allow an Applicant to use the existing foundation walls of a structure to support a

dormer and then potentially build a roof line edge outward two feet. This would help to give the dormer the appearance that it was subordinate to the overall roof line.

Ms. Morelli pointed out that the further the dormer comes in from the edge of the foundation wall, the more living space an Applicant will lose on the inside of the structure. Ms. Petrillo suggested that the Board reverse the wording of the language they were trying to achieve and instead limit an Applicant's ability to elongate a roof edge. After much discussion, the Planning Board settled on language which read "Dormers shall be setback at least two (2) feet from the gable ends of a sloping roof and the roof overhang shall be maintained throughout existing structures or established below the dormer in the case of new structures." This sentence was to be added to the end of the proposed definition of "Story, Half". Ms. Gaffey indicated that Planning Staff would begin a zoning amendment initiative if the Planning Board were to approve this proposed language before them. Mr. Cassidy pointed out that dormers were originally constructed on buildings to provide natural light into existing spaces to create habitable living areas, but now dormers are being constructed to create a higher story building. He went on to indicate that in the case of Melrose, dormers may also be used to help keep the city a fairly dense community where property owners continue to invest in and enhance their properties. Ms. Morelli noted that there are definitely two sides, good and bad, to the issue of adding dormers onto the top floor of a structure.

Proposed alterations to Sections 235-58. Notice of violation and order and 235-59. Violations and penalties

Ms. Gaffey began the conversation by pointing out to the Planning Board that the proposed amendments to sections 235-58 and 235-59 were primarily housekeeping in nature. The proposed changes remove the Mayor from the definition and insert the Building Commissioner as the entity that has the ability to enforce zoning violations. The proposed amendments also clarified the ability of the Building Commissioner to issue fines of \$100 per violation per day until the violation is remedied. Mr. King pointed out that the Building Commissioner will usually issue a notice of violation first before issuing any fines. This gives the violator a chance to come into compliance with the regulation and if the violator does not, then the proposed changes would give the Building Commissioner the ability to issue fines until compliance is achieved. Ms. Petrillo inquired if there had been clarification on whether the wording should be "violation and order" or "violation and/or order". Ms. Gaffey indicated that after discussing it with the Building Commissioner and the City Solicitor, it should be worded as "violation and/or order". Ms. Morelli then inquired if the language should also be changed in the title of section 235-58. Ms. Gaffey indicated that Planning Staff had talked about this and they thought it was appropriate to simply leave the title of the section as is.

Mr. Welch noted that the proposed new wording in section 235-58.A seemed to be a bit harsh as the new language included the word "repair". His concern was that if someone was simply repairing a portion of their home and they did not know they needed a building permit, they would be issued a fine. Ms. Petrillo pointed out that they would only be issued a fine if they were in violation of a regulation and then also did not come into compliance by getting a permit or remedying the situation. Ms. DeSouza-Ward agreed and reiterated that these violations and fines are only issued if someone is found to be in violation of the zoning ordinance or other regulations. Mr. Mercado thought that Applicants who went out and constructed a project without a permit should simply be issued a fine. Ms. DeSouza-Ward felt that the proposed wording was appropriate because violators should be given time to bring a violation into compliance before a fine is issued. Ms. Petrillo raised the question if the word "shall" should be removed from the proposed language of the first sentence of section 235-59. She felt that this wording may compel the Building Commissioner to issue fines instead of working with violators to remedy the situation. Mr. King stated that he felt the word "shall" should remain in the section and thought that it helped to give the section some more forcefulness. After some discussion the Planning Board felt that leaving in the word "shall" would not create any issues.

Proposed alterations to Section 235-17 regulating Medical Marijuana Treatment Centers for the purpose of adopting a temporary moratorium

Ms. Gaffey explained that this particular amendment would place a temporary moratorium on all Medical Marijuana Treatment Center uses in the city until June of 2014. The City's Health Director thought that a temporary moratorium on the use was a good idea to allow Melrose to see how other communities decide to handle this particular use and to determine what are the most effective regulations. Ms. Gaffey also noted that the proposed language was based on the same wording from the Town of Burlington's moratorium that was approved by the Attorney General's Office earlier this year. Mr. Mercado confirmed that the moratorium would be until June of 2014 and asked Ms. Gaffey if she thought the city could have an even longer moratorium. Ms. Gaffey indicated that a longer moratorium would likely not pass the reasonableness test in the state land courts. Ms. Gaffey then stated that if the Planning Board saw fit, they could bundle together all three of the proposed zoning amendments into the same motion for a vote to move forward and seek their approval.

After the Planning Board had discussed all three of the proposed zoning amendments, Mr. Cassidy MADE a MOTION to have Planning Staff move forward with the next steps to seek approval of all three proposed amendments to the Melrose Zoning Ordinance from the Board of Aldermen. Mr. Mercado SECONDED the MOTION. All members voted in favor. None were opposed.

Documents: - Proposed amendments to Section 235-5
 - Proposed amendments to Sections 235-58 and 235-59
 - Proposed amendments to Section 235-17

OTHER

Mr. Cassidy brought to the Planning Board's attention the structure at the corner of Main Street and Winthrop Street which is owned by the Melrose Cooperative Bank. He pointed out that a while ago the bank wanted to tear the building down to expand their parking but the city strongly encouraged them to not do this. The bank instead did wonderful job in restoring the building which has become a great community resource with an available public meeting room. Mr. Cassidy indicated that he would like to send a letter from the entire Planning Board to the Melrose Cooperative Bank commending them on a job well done restoring the building. He proposed that he would draft a letter and have it ready for the next Planning Board meeting where the Board could review it. Ms. Morelli indicated a preference to have the letter prepared for the distribution of the Planning Board materials by Planning Staff before the meeting.

Ms. Gaffey noted that the June 24th Planning Board meeting could be a fairly substantial one with potentially a few new Site Plan Review cases plus the 160 Green Street case which had been continued from a previous meeting. Mr. Sadowski then asked about the situation regarding Woodland Road and Ms. Gaffey provided a status update on this project. She indicated that the State had determined that a more in depth environmental review of the project was not needed, but that some groups would be challenging this determination. Ms. Gaffey also briefly explained some elements of the proposed project which included reducing Woodland Road to one lane each way with turning lanes and the signalization of some intersections. There was also some discussion about why the project was being undertaken by the Department of Conservation and Recreation when it seemed like a project that would simply address traffic flow.

Meeting adjourned at 9:45 PM.