

MINUTES
Danvers Board of Appeals

#18-4748

March 12, 2018

Present: Robert Cignetti, Rebecca Kilborn, John Boughner,
Jeffrey Sauer, Kenneth Scholes, Kenneth Jarvinen,
Anthony Podesta

Also Present: Building Inspector, Richard Maloney
Secretary, Marybeth Burak-Condon

LEIGH STACK-CARDELLA (#18-4748) Requesting a special permit to allow garage space for more than three vehicles in accordance with Table 1 of the Danvers Zoning Bylaws at **21 BRIDLE SPUR ROAD**

Rebecca Kilborn read a memo from David Harris, Assistant Building Inspector stating that the application is requesting relief for a garage for more than three vehicles but does not address the driveway crossing property lines. The Chair asked the Building Inspector to comment on this. Richard Maloney said we do not allow driveways to cross other people's property, we have very strict common shared driveway provision in the Special Permit Chapter that is granted by the Planning Board and that is three pages of regulations. This does not meet the requirements for a common shared driveway so, the applicant would need a Special Permit or the driveway would have to be shown on this particular lot, so there are a lot of questions.

John Morin, Morin Cameron Group said when we originally started this project we did have some discussions with the Zoning Department and we thought we had everything squared away and obviously when we received the email today we saw that we didn't. We are planning on asking for a continuance so that we can get that squared away and then we will decide if we will withdraw and re-file or keep this in and file for a special permit for a common driveway, or figure out something else.

John Boughner motioned to allow the applicant to continue to March 26, 2018. Kenneth Scholes seconded. All in favor.

MINUTES
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#18-4747

March 12, 2018

Present: Robert Cignetti, Rebecca Kilborn, John Boughner,
Jeffrey Sauer, Kenneth Scholes, Kenneth Jarvinen,
Anthony Podesta

Also Present: Building Inspector, Richard Maloney
Secretary, Marybeth Burak-Condon

NICOLA AND JOYCE PASCIUTO, TRUSTEE (#18-4747) Requesting a variance to allow the restoration and rehabilitation of the building to create twelve one-bedroom residential units on the upper floors, the permitted commercial use of the first floor will remain in accordance with Table 1 and Table 2 of the Danvers Zoning Bylaws at **44 & 50 MAPLE STREET**

Rebecca Kilborn read a number of letters with concerns for this project, they included one from Steve Bartha, Town Manager, stating the Selectman's concerns with this project. A letter from David Mills, Chairman of the Board of Selectmen, stating his thoughts on granting hardship variances and the overlay district and stating case law. Karen Nelson, Town Planner regarding the parking in that area, Ellen Graham, Chairman Preservation Commission, stating they had met with the owners and discussed the project and the Commission members agreed that the revised plan better reflects the original design of structure. Gardner Trask, Chairman Danvers Affordable Housing Trust, discussing the effects to the community if an affordable housing unit is made available to someone at 70% AMI instead of 80% and included latest income and rental limits for our area.

Attorney McCann said we did present to you this proposed project which included 12 one bedroom units with four stories. She discussed the history of the building. The board at the end of the first meeting asked us to drop the number of units from 12 to 10 and to lower the building height from four stories to three stories and we were able to do that. You also asked us if we could provide input from the Planning Department which was just read. So we presented a revised site plan to show you a revised parking table, we are proposing one parking space per bedroom for the combined properties, the total number of

bedrooms is 18. We have ten bedrooms in the proposal that you are hearing tonight and then there are existing bedrooms at 50 Maple Street with a total of eight bedrooms, so combined that is 18. We provided the elevation drawing which lowers the building to three stories and it still reflects the original drawings of the building eliminating the two units that were located on the fourth floor.

John Boughner said the overall height of the building is identical correct. The architect said it is a little bit lower but for the most part yes. Mr. Boughner said the drawing says 41 feet is that accurate? The architect said yes the building height will stay the same. Mr. Boughner said I want to understand 50 a little bit better and that was done in 2006, and that was a use variance and what was the hardship? Attorney McCann said that was exactly the same and the hardship is the same, it is the same hardship that you heard on 50 Maple Street, the same that you agreed with on the recent variance on Cherry and Page, the same hardship that you heard and granted for 20 Locust Street. We have in this case an existing building with commercial uses on the first, commercial uses zoned for the second floor but we have a building that isn't appropriate and to make a financially viable project we cannot renovate the upper floors to conform to the CI Zoning District. And to get a project that is viable which would be office uses and commercial uses on the second and third floor in the downtown area there is no market for that. The hardship is a two-step hardship as David Mills indicated in his letter, a hardship related to soil condition shape or topography of the land or the structures, and in this case we have a structure built in 1880 it's a two story structure at this point it was larger originally it is not designed to meet the code for commercial use on upper floors. We have to deal with accessibility now and in order to renovate the building to make it code compliant for business accessibility as well as marketability it isn't financially viable because there is no longer a market for that type of use in this area. You recognized that on the corner at 50 Maple Street it would be the same thing we have commercial units on the first floor and we made residential on the upper floors. On the corner of Page and Cherry we requested commercial on the first floor and residential on the upper floors and you asked us to come back with a variance for 100% residential which we did. The Building Inspector said that is incorrect, the corner of Page and Cherry is C1A and the residential is allowed above the

first floor. Attorney McCann said we were asked to come back with a variance to allow residential on the whole. The Building Inspector said on the first floor you are saying that they got a variance for the top two floors and that is incorrect the top two floors are residential by right at 22 Page Street. It was the feedback of the neighbors that asked for residential. Attorney McCann said I disagree with you there. Mr. Maloney said the board doesn't ask for variances the board grants them, just to make it clear the abutters did not want a commercial use on the first floor and they requested that the applicant seek the variance and this board granted residential on the first floor from the feedback of the neighbors. Mr. Boughner said I just want to understand the hardship here. Attorney McCann said also in the application the hardship is related to the existing building that we have and what would have to be done to make this code compliant. Mr. Boughner said because it could not be a commercial use on the upper floors. Attorney McCann said it has not been fully occupied there is no market for it. Mr. Boughner said I appreciate the fact that we got the input from the Planning Board, my other comments were the height of the building, I'm not sure that I was troubled by the amount of floors it was the height and the height has not come down, so I just want to make that clear.

Kenneth Scholes said my question is with the parking spaces are they going to be numbered for each individual unit and deeded easement wise through the deed. Attorney McCann said these are going to be rental units and I expect that they will be assigned, not deeded because they are rentals. Mr. Scholes said my concern is what happens if down the road they decide to sell 50 Maple the parking lot is contiguous with 50 it's all one lot. Attorney McCann said we are not going to have an easement for parking we are changing the lot line.

Rebecca Kilborn said while Mr. Trask is here let's just review the affordable component, so you agreed to one unit at 70%. Attorney McCann said we agreed to one unit at 70% when we had 12 units we were asked to reduce it down to 10 so we would still agree to provide one unit although we lost two, we would like to provide it at 80% which would still use the affordable housing requirement. Ms. Kilborn said I am looking at 70% a person renting a one bedroom unit \$50,700 a year and 80% is \$57,900 so approximately \$7000 in income, I'm just trying to be clear. Attorney McCann said we agreed to 80% over a period of time it may not look like it's a big difference in the rent when you are

looking at it and you start adding it up over a period of years you start talking about a lot of money and a difference between a rent for 70% versus 80%.

Kenneth Jarvinen said I thought there was an issue with leases on existing parking spots maybe from people who leave? Attorney McCann said some of these were shared when the pizza place was across the street, the Pasciutos control these spaces. Mr. Jarvinen said so there are no issues with any of those spaces with the renters? And also the height I thought it was going to come down so why is that? The architect said to keep the look and the pitch, we also have a flat roof for potential outdoor space as well. Attorney McCann said although it did not come down in height we do eliminate these units which increases the mass look.

Robert Cignetti said the elephant in the room is the overlay district. Attorney McCann said in my understanding they have not even begun to hire the consultant to give ideas about this stretch, it is at least a year away. Mr. Cignetti said my initial question was if a proposal had already passed for this district you would be able to do all of this by right? Attorney McCann said I don't know that, one thing that we did with the zone change that was recently done at 20 Locust Street we brought that to you as a use variance and we went to site plan approval, working with the Planning Department and the planning staff and that was seen as a good thing because 20 Locust Street was then the model for what that zoning change could be. The Planning Department in their many meetings with the citizens with the Town, Town Meeting members at the Town Meeting itself used our boards for 20 Locust Street. This is a similar situation here where you have a very viable project which we think is in keeping with what is not only appropriate in this area from a marketing standpoint but what is appropriate in the area given the historic aspects of this property. This property did have residential use back in the 1800's and early 1900's, so again this is and can be a good thing as a model for what this zoning district can bring. Robert Cignetti said so the reason that you are not waiting is because it could take too long? Attorney McCann said yes definitely and certainly it is not certain there have been many zoning changes that have been brought to Town Meeting by the Planning Department that have not passed. Mr. Cignetti said your answer to the hardship was that it is the same as this building and that building and so forth

and so on based on, well maybe we were in error, we did it once therefore we have to do it all the time, we could have made a mistake. Attorney McCann said I think that you look at these cases individually, however this is a similar case and it is something that you have done and the way that this board has reviewed these cases and as I said it does meet the requirements having to do with a the structure on this property and its inability to be financially viable and that is the second part of the hardship, financial or otherwise. Mr. Cignetti said how can you say that it is not financially viable it may not be as financially viable as he wants but he is not losing money? Attorney McCann said the marketability of commercial units on the second and third story in the downtown area is not viable so are we getting out ahead of the zone change and proposing something that works for this site and in keeping with the neighborhood because there were two other portions of the statute, we only focus on the hardship but there are two other sections of the statute that are important but what is being proposed is in keeping with the intent and purpose of the zoning bylaw and will not be detrimental to the overall neighborhood and in keeping with exactly what has happened one door down.

AUDIENCE COMMENTS

Matthew Duggin, Town Meeting Member, said at the last meeting we talked about the parking space size, it was mentioned that the size is currently under what normally would be approved and there was a mention about restrictions on the lease to require the occupant to have a certain size vehicle. Robert Cignetti said we do not deal with parking that will be discussed through planning but to answer your question it is still in play. Mr. Duggin said it does apply here because the requirement is to have a certain number of parking spaces and if you go back there and look at the size of them they are obviously undersized. We know that down the road there will be no one monitoring those or keeping track of who is actually using them. They talked about the overlay, the overlay that was approved in December by Town Meeting that required third floor setbacks so you wouldn't have this boxed sized structure on the street scape. To the financial hardship that seems to be a common theme for some of these projects that justifies the variances to allow these oversized projects to contribute to the congestion and quality of life. The parking spaces are at the rear of the project and the residential units are on the second and third floor, the people who park there during the day are the business owners and

customers so I think there may be a conflict especially in the evenings or weekends.

Attorney McCann said the parking will be subject to the site plan approval process but with regard to any conflict part of the zoning, the parking consultant that the planning board had hired talked about and encouraged shared parking and that is something that we are discussing and that is something that we implemented at 20 Locust Street. There may be an opportunity here to have some daytime commercial parking when residents aren't there. Mr. Cignetti said on your initial presentation this was a good idea because people could work in town and live right there. Attorney McCann said what was just said is that there could be conflict with the parking, there could be other situations and we have according to the towns own parking study sufficient parking in the downtown area to satisfy the needs of the commercial businesses and what we are showing here is satisfying the needs of the residential units.

John Boughner said have you looked at setbacks, if this was part of the overlay district this would be required so has that been looked at? Attorney McCann said it has not because of the size of the existing building when you start stepping it back do you even have enough area to make a viable third story so we did not look at it. What we did look at is having a deck area here which is something that when we met with Karen Nelson and Peg Zolinsky they asked if we could have a deck here which is part of the new zoning proposal. Mr. Boughner said is there a certain amount of feet? Mr. Maloney said when they talked about cutting the roof off last time the fascia met the requirement of 32 feet for the re-zoning down the street but now we are back at 41. Mr. Boughner said when we discussed the 32 that was a different roofline? The architect said it would have been a flat roof at that point. Ms. Kilborn said don't they count to the eaves? Mr. Maloney said the new downtown zoning is very specific so on the main corridor they didn't want it any higher than 32 feet to create the canyon effect.

Bill Bradstreet said I stated at the last meeting that I think this is too busy, too large, just because something was in place a hundred or more years ago that was 100 or more years ago we are talking about today it's too busy, I think parking is a problem.

Gardner Trask said after the last meeting we met again, we wanted to discuss the concerns of the board and the schedule for a modification for our recommendation. Affordable Housing is not low income housing we are compelled by the affordable housing index that is set by the Boston Area Median Income which includes Newton and a lot of high end communities. Certainly as the letter expressed a \$50,000 income is not low income, we often look at 50% or lower affordability when we have some of our projects. The applicant came in good faith and we don't want to change anything about the agreement even at 10 units we are looking at this to be 70%. When they came before us with 12 units that 70% would match exactly the proposed rentals so the rental burden would not be on the owner, we would get one unit on the registry and it would help protect us. There is advantages to coming ahead of the overlay district so even if it were at the market rate, this goes with the granting of the affordable unit and the rents have the opportunity to rise. I am asking the board to ask for 70% in perpetuity and to not exceed the lowest rent that is going to be charged because at 80% the rent could be \$1447, I would not want that to exceed the lowest rents.

Attorney McCann said whether the affordability is 70% or 80% and we are proposing the 80% because we are down two units, that unit would still meet the requirement.

John Boughner said you didn't downsize it and I really don't like the height of it, however my question earlier about 50 Maple Street to me that seems like the same project. It is commercial on the bottom and residential on the top so I don't see this building any different than the building adjoining it. I think I have a good enough handle on the parking and what the applicant's requirement is going forth with the Planning Board. My fear back when I requested this was that we were placing an undue burden on the Planning Board and we were throwing this project over the wall to them but after reading Karen Nelson's letter it sounds like that is something out of left field. The overlay district plan I don't really think applies here either, and for those reasons I would vote favorably for this.

Kenneth Scholes said we received this letter today from David Mills and there is one section that says with respect to hardship "we do not construe the use of the words financial or otherwise in the statute to mean that a deprivation of potential

advantage constitutes a substantial hardship", no other comment, I agree with John on the height but I would vote for it.

Rebecca Kilborn said I have to say something about The Board of Selectmen and I am aware that the Board of Selectmen discussed this case on Tuesday night, I told the Chairman that I was going to comment about it and I feel that I have to. We are appointed by the Board of Selectmen but they don't typically comment on our cases, we are a volunteer board and we try to do our best we try to be fair we try to listen to everybody and it is our decision as a board member what we do here. I think that it is important for the audience to understand the work that we do, we receive these cases in advance of the hearing we review all of the materials, we visit each site we often talk to the property owner, we meet twice a month and we spend a lot of time. I have been on this board for over ten years and Mr. Cignetti has been on this board for 20 years and we are all dedicated and we try to do a good job. I think that it is unfair of the Board of Selectmen to be dictating how we should be voting on a case. I will give credit to Mr. Trask who actually did indicate it is not up to them to dictate how we should vote on a case. And then to receive long letters from the Board of Selectmen with regard to legal decisions that should be coming from the Town Attorney, so I am just going to say I don't think that it is appropriate and I think that we should be able to do our job. That being said I did listen to their concerns, there were three concerns one is the pending overlay district and that they want us to essentially wait and not make decisions on any cases until the pending overlay district is in place which will be at least a year. And that is difficult because these cases are coming in front of us and we have to make decisions and we can't just tell people they can't file anything until the overlay district is in place. The second one is affordable housing and I am willing to go with what was approved and negotiated and if 70% is what everyone feels is reasonable then I appreciate that we are trying to stay within the 10%. The third concern was the parking and I think that we will send that to the Planning Board and I think that it can be resolved. I think that the plan is attractive I am going to say that I looked at the overlay district plan and to see how this would fit in and the design standards are 88 pages long the zoning bylaw is 72 pages long, I mean it is way more than what we have already looked at and it doesn't apply to this district. I would be in favor of this project I appreciate the applicant and the work that they have done.

Jeffrey Sauer said I agree with everything that Becky has said and if they want to remove her from the board they can remove me too. I appreciate the applicant listening to us at the last meeting and accommodating our wishes I still think that the building is too big and there is not enough parking but I will vote favorably for this.

Kenneth Jarvinen said if you go by the letter of law it is not a substantial hardship financial or otherwise. Bob mentioned something we don't know if it is a financial hardship, it seems to be viable now, as a whole I wouldn't vote for this the way it is presented.

Anthony Podesta said looking at the letter from Mr. Mills and reading the case law and I have to say that I am persuaded the statute says "affecting such land or structures but not affecting generally the zoning district in which it is located", every building on this street is commercial all the way up and down, we don't have to have residential units above the first floor in order to make their buildings financially viable, it has to affect your building and your building alone. The second issue is that a variance is not required just because the maximum amount of money can't be squeezed out of the building, going by the letter of the law and understand that we have done in the past similar projects for similar reasons and the Chairman has said we don't know if they are correct or not we take each case as it comes on its own merits and for that reason I would not vote for this.

Robert Cignetti said my bugaboo is the financial hardship what that means is that I am making money but I want to make more money so therefore I have a financial hardship. I'm not losing money but I just want to make more money, I have a problem with that as a hardship and I'm not going to vote for this for that reason.

John Boughner motioned to grant the variance to allow 10 one-bedroom residential units to be constructed on the upper floors of the building at 44 Maple Street, with commercial uses on the first floor, in conjunction with the restoration and rehabilitation at 44 and 50 Maple Street according to plans submitted and dated 3/8/18, the hardship is related to the land and the historic structure located thereon which was constructed in the 1880's; this condition does not affect other [properties or structures] in the same zoning district; a literal

enforcement of the zoning bylaws would involve a substantial hardship to the applicants, financial or otherwise, owing to the age of the structure, the costs associated with bringing the structure into code compliance and the lack of marketability of upper story commercial uses in this neighborhood; granting this variance will not create a substantial detriment to the public good and will not nullify or substantially derogate from the intent or purpose of the zoning bylaws, the following conditions will apply: 1) Applicant will obtain a parking waiver or approved alternative parking plan from the Planning Board 2) the Applicants will provide on-site one affordable unit at the 70% AMI as requested by the Danvers Housing Trust and the affordable unit will be deed restricted. Kenneth Scholes seconded. Robert Cignetti opposed. Vote: 4-1.

*Rebecca Kilborn motioned to adjourn. Kenneth Scholes seconded. All in favor.