

MINUTES
Danvers Board of Appeals

#20-4886

November 30, 2020

Present: John Boughner, Robert Cignetti, Rebecca Kilborn,
Jeffrey Sauer, Kenneth Jarvinen, Corinne Doherty.

Also Present: Building Inspector, Richard Maloney
Secretary, Kathleen Archambault

DILIP REALTY LLC (20-4886) Requesting a Use and Dimensional Variance to redevelop the property into a five story multifamily building with 208 residential units and five story accessory parking garage in accordance with Section 6.1 and Table 2 of the Town of Danvers Zoning By Laws at **152 ENDICOTT STREET, C-III**

Jeffrey Sauer read the case mentioned above.

Mr. Sauer then read in a letter submitted by Attorney Nancy McCann on behalf of her client, Trustees of Anna Mscisz Trust. The letter asked for more information from the applicant and a continuance to a future hearing date. A copy of the letter is in the docket.

John Boughner stated that the Board was in receipt of a memo from Land Use & Community Service. The letter states that they have been in contact with the applicant for approximately 18 months working on this proposal.

Attorney Tim Sullivan from Goulston & Storrs addressed the Board. He stated that they were last present at the October 19, 2020 meeting and were asked to provide more information. There were six points of discussion he wanted to address. Planning, signage, affordable units, architecture, traffic study and school impact.

Planning, he wanted to let the board know they have been working with planning for about 18 months. Planning is supportive of the project and the Board has the memo that they have submitted.

Signage, they are still making modifications. Changes will be made and presented at a future meeting.

Affordability, they feel that 10% is the right number for this project. This project would be costly for anyone, creating access and the development of Chalet Court is costly. Dealing with MEPA, Chapter 91, wetlands, etc. Higher than 10% would not cover the costs of this project.

School Impact, the study that they did approximates that 14 to 19 school age children would reside at this location. These children would be throughout all grades, not age specific.

Architecture, Brian O'Conner is present, and he will present the package that they have submitted. He feels that it is aesthetically pleasing and fits in the location. It is an improvement over what currently exists.

Traffic Study, Vanasse & Associates prepared the study that was submitted. The development of Chalet Court will make the intersection work better. Residential use will decrease the traffic at the site. If it was to continue use as Commercial, there would be more traffic. At the last meeting, Attorney McCann was looking for this information along with turning radius for trucks and cars entering the shopping center work. They are working on the design of Chalet Court and the specifics will be submitted at a later date.

John Boughner thanked Attorney Sullivan for the updates. He stated that he was confused by the updated package. Members of the board voiced their concerns about having 12.5% affordability and that the building was too big. He thought those points were made clear. He said that he wasn't happy to see that no changes were made.

Attorney Sullivan confirmed no changes were made to the building or the affordable units.

Brian O'Conner of Cube3 did a quick page by page review of the package submitted. He also said that they were looking to add residential to elevate this area. Proving to go from Commercial- III to Residential-II. This would benefit future use and development. The height of the building would make it special and the garage also serves as noise buffer. Only 55% of the site will be impervious. The amenity courtyard will have a pool and greenspace.

The building is just not a "box", landscaping will be added and they will be using different materials to finish the exterior. It will be familiar and very residential.

Attorney Sullivan then stated that Scott Thornton from Vanasse & Associates would give an overview of the traffic study.

Scott Thornton from Vanasse & Associates addressed the board. He said that in response to the last meeting they did traffic counts on Endicott Street. Morning, evening and a Saturday period were studied. In general, the site would result in less traffic being used for residential as opposed to if the commercial use was still active. There would be 33-42% less traffic than if this location was used commercially. Using the existing access, the existing traffic pattern is a little convoluted. There are a lot of U-turn maneuvers required. Whether it be the driveway at the Market Basket plaza or Mass General Cancer Center or at the subject intersection at Bed, Bath & Beyond driveway. So, whether the access is provided by Chalet Court or through the existing right in, right out driveway all area traffic to this site would have to utilize the intersection of Bed, Bath & Beyond will have to be used and Independence Way with Endicott Street. By comparison, the proposed site access all movements would occur at Chalet Court and simple entering and exiting movements at this driveway. They did an analysis at the intersections; this doesn't show many delays. Many one to two second delays. There are three to six vehicles waiting in que at lights. Redesign and use of medians and striping allows traffic to be directed and exiting movements will be separated with two lanes which doesn't exist now. This would help with the traffic patterns.

Attorney Sullivan stated that concluded their presentation.

Robert Cignetti said that the last time they were before the Board the concerns were the building and garage were too large, he may be able to live with that. However, there is not enough parking spaces. He also had concerns with asking for four signs and having them illuminated all night. He is not happy with the 10% Affordability. The town is not benefitting. A smaller development in town did 12.5%. He thinks it can be done. He also asked if the driveway used to enter and exit would be wider.

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Attorney Sullivan said that they used a 1.58 ratio for parking, and they feel that is an appropriate ration. They are still working on signage and not at the final stages yet.

Robb Hewitt from Fairfield Residential said that around the country the lights are illuminated all night at their properties. They are however looking into the board's concerns.

Scott Thornton answered that the driveway would not be wider, they will have marked lanes.

Mr. Cignetti said the problem is the que. Parking on the sides, parking at McDonald's. How are they going to solve these issues, can they make the exit wider; two left turn lanes possible.

Mr. Thornton said that the raised medians from Chalet Court and the parking lot would have a traffic flow design that will re-direct the traffic flow. They may be able to widen the access/exit. He said they could look into that, as well as look into creating two left turn lanes.

Rebecca Kilborn said that she had gone to Stoneham and visited the Maeve property. She noticed that the parking goes around the entire property. Having the garage on one side of this property would make for a long walk for residents to get to their units and if they were carrying groceries that's a long walk. Are there any loading or unloading areas?

Robb Hewitt, Fairfield Residential, said that the building is compact and oval in design. The garage allows residents to park on the level that they live on, so they just walk down a corridor. He thinks that covered parking is desirable.

Ms. Kilborn continued that she thinks that the proposed building is too high. Maeve is only four stories. This is five stories and the garage is five stories. Parking is tight, there are not enough spaces. The lit signs, if it is lit all night that is near somebody's window or balcony and too many signs. The fourteen Variances are just too many.

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Jeffrey Sauer said that he believes the building is too big and the Affordable needs to be more than 10%.

Kenneth Jarvinen said that he feels the same way as Mr. Sauer, the Affordable needs to be 12.5%.

Corinne Doherty had no questions.

Mr. Boughner then turned questions and comments over to the audience.

Matthew Duggan, TMM, P1, he stated that at the October 19, 2020 meeting the Board members made articulate comments, especially regarding infrastructure, schools and roadways. He mentioned that 208 residential units are not allowed in a commercial zone. The parking issues, the signage and the 208 units is a lot to ask for. He wanted to know what the real number is that they will agree on or walk away if not accepted. Anything below the 12.5% affordable is too low. According to the 2020 census it will most likely show Danvers falls below 10%. The fact that they have been in communication with Land Use & Community Service for 18 months should have been public. The reason no residential is allowed at this site is because it was voted on by Town Members. This is a nice project, but the wrong location.

Mr. Boughner asked if there were 42 apartments per floor.

Mr. Hewitt said yes.

Mr. Boughner then asked Richard Maloney, Building Inspector, if there was anything else in town other than 40B.

Mr. Maloney answered 99 Conifer Hill Drive is there by Variance, not 40B.

Bill Bradstreet, TMM, P1, He made a comparison of this to the "tower" on route 114. Five floors is just too big. He would not be happy about this if he lived any where near this. The buildings are too tall and inappropriate for the town and the area.

Robert Cignetti asked if the land would be owned or leased.

Robb Hewitt said that the land would be owned.

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Rebecca Kilborn asked what the existing square footage of the footprint of the buildings were and what the new square footage footprint would be.

Mr. Hewitt said that the existing is 5,500 sq.ft. for Denny's and 20,000 sq.ft. for the hotel being a total of 25,500 sq. ft. the new square footage footprint would be 45,000 sq.ft.

There were no more questions or comments. Back to the Board.

Robert Cignetti said as it stands, he would vote no. The parking, signs, 10% affordable and too big.

Rebecca Kilborn said she'd be alright with four stories, five is too many. She wants the existing eyesore gone and wants to work with them. There are a lot of variances being asked for and stretches what's allowed.

Jeffrey Sauer said that there are too many stories. He wants to see more than 10 % affordability. He would vote no.

Kenneth Jarvinen said he would like to see two stories and wants 12.5% affordability. He would note no.

Corinne Doherty said that she would vote no. It is too big, there is not enough parking and is concerned with the traffic flow.

John Boughner said that at the top of the discussion he mentioned the size of the buildings and the affordability component. Maybe Town Meeting dos need to be involved. He thinks that it is too big, the affordability needs to be addressed, as well as signage. Asking for fourteen variances is walking a fine line. This Board needs the applicant to concede or possibly withdraw the project.

Attorney Sullivan requested a continuance to the January 11,2021 meeting.

Robert Cignetti motioned the board to grant the continuance to January 11,2021.

Rebecca Kilborn seconded.

All in favor.

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November 30, 2020

Present: John Boughner, Robert Cignetti, Rebecca Kilborn,
Jeffrey Sauer, Kenneth Jarvinen, Corinne Doherty.

Also Present: Building Inspector, Richard Maloney
Secretary, Kathleen Archambault

JOHN A. GARDNER (20-4891) Requesting a Variance to erect right side entry porch 17.1' from sideline in accordance with Section 7, Table 2 and a Finding to expand an existing deck on the structure (existing non-conforming), 13.1' from the side setback in accordance with Section 3.11.1(a & b) of the Danvers Zoning Bylaws at **10 DELAWARE AVENUE, R-III**

Jeffrey Sauer read the case mentioned above.

John Gardner, 10 Delaware Avenue, addressed the board. He explained that he was looking to build a 4' x 4' landing outside of the door of the addition that was approved in July, this would be 17.1' from the sideline. The door is installed, but due to the grade of the property stairs need to be built to access it. There is also an existing non-conforming enclosed porch that he is looking to re-do and match the new deck, he would like to enlarge this deck as well. It would be 13.1' feet from the side setback.

John Boughner asked for clarification, they are looking to change the length of the existing deck and add a side porch/landing with stairs due to grade.

Mr. Gardner said yes.

Corinne Doherty asked if they intended this to be a walkway, but because of the grade, you need a landing with stairs.

Mr. Gardner said yes, there was a miscommunication between he and the builder.

Kenneth Jarvinen asked if the landing would 17.1' from the lot line and the other deck 13.1'. what is the required setback?

Mr. Gardner answered yes, and the existing porch is non-conforming. The required setback is 20'.

Jeffrey Sauer had no questions.

Rebecca Kilborn said that she went to the site and see that they would need stairs for the door that is installed. The existing setback is 21' and you are looking to go to 17.1' and the other size is closer than required as well.

Mr. Gardner said yes that is correct, the existing non-conforming porch they want to add to will make it 1' closer to the lot line.

Robert Cignetti had no questions.

John Boughner had no questions.

Mr. Boughner then turned questions and comments over to the audience.

Susan & Jonathan Dirks, 51 Mohawk Street, they have lived there for 24 years and they directly abut this property. They are trying to be good neighbors. This is the second variance on the project that is already underway. They are opposing this variance because they feel that their property value has already been decreased. Now they are compromising their privacy. To ask for the stairs is not a large project, however the 67' addition is extremely large, and they have now lost the view they previously had to the Putnamville Reservoir.

There were no more questions or comments. Back to the Board.

Corinne Doherty said she voted no on the original Variance it's too big, she is voting no now.

Kenneth Jarvinen said he agrees with Ms. Doherty. There is too much encroachment. He would vote no.

Jeffrey Sauer said he would not vote for this.

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Rebecca Kilborn said she sees the tough position with the side entrance. She would vote no on the new deck size.

Robert Cignetti said he sees the problem with the stairs, but he is a no vote.

John Boughner said he would not vote for this.

Mr. Boughner explained that the applicant did not have the votes to move forward and asked what he would like to do.

Mr. Gardner said he would like to withdraw without prejudice.

Robert Cignetti motioned the board to accept the withdrawal without prejudice.

Rebecca Kilborn seconded.

All in favor.

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Present: John Boughner, Robert Cignetti, Rebecca Kilborn,
Jeffrey Sauer, Kenneth Jarvinen, Corinne Doherty.

Also Present: Building Inspector, Richard Maloney
Secretary, Kathleen Archambault

GROUP 1 REALTY, INC. (20-4892) Requesting a Variance to allow the installation of a small Toyota logo sign on the renovated service building in accordance with Section 37.5.5 of the Danvers Zoning Bylaws at **99 ANDOVER STREET, RTE. 114 CORRIDOR ZONE A**

Jeffrey Sauer read the case mentioned above.

Mr. Sauer then read in a letter from Attorney Nancy McCann asking for a continuance to the December 14,2020 ZBA Meeting.

Robert Cignetti motioned the board to grant the continuance to December 14,2020.

Rebecca Kilborn seconded.

All in favor.

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#20-4893

November 30, 2020

Present: John Boughner, Robert Cignetti, Rebecca Kilborn,
Jeffrey Sauer, Kenneth Jarvinen, Corinne Doherty.

Also Present: Building Inspector, Richard Maloney
Secretary, Kathleen Archambault

JENNIFER PETROCCIONE (20-4893) Requesting a Finding to expand the deck into the backyard, deck will not extend any farther than existing 8.5' in accordance with Section 3.11.1 (a & b) of the Danvers Zoning Bylaws at **117 FOREST STREET, R-II**

Jeffrey Sauer read the case mentioned above.

Jennifer Petroccione, property owner, addressed the board. She explained that the existing deck is falling apart and is in disrepair. She is looking to rebuild the existing deck which is non-conforming. The deck will not extend any farther than the existing 8.5' into the setback.

John Boughner asked for clarification. Would she be tearing down the entire existing deck or adding to it.

Ms. Petroccione said they will be tearing it down and replacing.

Robert Cignetti asked about the stairway to the deck, will they be moving it from existing location? Will the 8.5' set back stay the same?

Ms. Petroccione said they are building two stairways and the setback will remain the same.

Rebecca Kilborn asked if the stairs are pointing toward the neighbor's property line.

Richard Maloney, Building Inspector, said he already explained to her that they couldn't do that. The stairs are being built in the deck line.

Jeffrey Sauer had no questions.

Kenneth Jarvinen had no questions.

Corinne Doherty had no questions.

John Boughner had no questions.

Mr. Boughner then turned questions and comments over to the audience.

There were no questions or comments. Back to the board.

Robert Cignetti said he would vote for this.

Rebecca Kilborn said she would vote for this.

Jeffrey Sauer said he would vote for this.

Kenneth Jarvinen said he would vote for this.

Corinne Doherty said she would vote for this.

John Boughner said he would vote for this.

Robert Cignetti motioned the board to grant the Finding (2 part) in accordance with Section 3.11.1 (a & b) to extend the pre-existing non-conforming deck farther into the backyard, the right side is non-conforming. The proposed deck will maintain the same setback (8.5') per the plans submitted.

1. We find the proposed deck extension as shown on the plans increases the non-conformity.

Rebecca Kilborn seconded.

All in favor.

2. The proposed deck extension as shown on the plans is not substantially more detrimental than what currently exists.

Rebecca Kilborn seconded.

All in favor.

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November 30, 2020

Present: John Boughner, Robert Cignetti, Rebecca Kilborn,
Jeffrey Sauer, Kenneth Jarvinen, Corinne Doherty.

Also Present: Building Inspector, Richard Maloney
Secretary, Kathleen Archambault

PETER AND PATRICIA KORPUSIK (20-4894) Requesting a Finding to allow the razing of an existing non-conforming accessory garage and reconstruction of the garage in the same footprint with no increase in square footage or building height on a non-conforming lot in accordance with Section 3.17 of the Danvers Zoning Bylaws at **59 LINDALL STREET, R-II**

Jeffrey Sauer read the case mentioned above.

Mr. Sauer then read in a letter from Attorney Nancy McCann asking for a continuance to the December 14, 2020 ZBA Meeting.

Robert Cignetti motioned the board to grant the continuance to December 14, 2020.

Rebecca Kilborn seconded.

All in favor.

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#20-4895

November 30, 2020

Present: John Boughner, Robert Cignetti, Rebecca Kilborn,
Jeffrey Sauer, Kenneth Jarvinen, Corinne Doherty.

Also Present: Building Inspector, Richard Maloney
Secretary, Kathleen Archambault

NICHOLAS AND LISA MUSTACCHIO (20-4895) Requesting a Variance to erect a cabana on existing slab. The existing slab is 4.3' on the left side and 1.6' on the rear in accordance with Section 7, Table 2 of the Danvers Zoning Bylaws at **14 BRADSTREET AVENUE, R-II**

Jeffrey Sauer read the case mentioned above.

Nicholas and Lisa Mustacchio addressed the Board. They explained that they were looking to build a cabana on a pre0existing slab. They purchased the house in March and have already made several improvements to the property.

John Boughner asked Richard Maloney, Building Inspector, to explain the situation with the pre-existing slab to the Board members.

Mr. Maloney explained that the Building Department had issues with the previous owner. He had illegally put this slab in. The new owner is looking to use the existing slab to build a cabana for the pool area.

Corinne Doherty said that she likes the cabana plans and the work they have done on the house. She asked if there were and Conservation issues at the site.

Mr. Maloney stated that he does not know how far down the slab goes, they will have to check. Those issues would be addressed moving forward.

Kenneth Jarvinen asked if the cabana would be single story and if it is going to be 36' long.

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Mr. Mustacchio answered that the cabana is single story and would be 36' long.

Mr. Jarvinen then asked what checks and balances would be put in place to ensure this does not become a rental unit.

Mr. Maloney stated that the occupancy permit will say "Pool Cabana". This would never be a legal apartment.

Jeffrey Sauer asked what the required setbacks are.

Mr. Maloney answered 15' side and rear.

Rebecca Kilborn stated that she had visited the property and she has no questions.

Mr. Mustacchio stated that the slab is already equipped with the electrical and plumbing connections.

Robert Cignetti asked if the cabana would have heat.

Mr. Mustacchio answered No. It will have a couple of ceiling fans.

John Boughner said that he also visited the property. He asked Richard Maloney, Building Inspector, if this application is approved, the building permit will be issued only if the foundation is approved.

Mr. Maloney answered yes.

Mr. Boughner then turned questions and comments over to the audience.

Matthew Duggan, TMM, Pl, he asked what the size and the footprint of this structure, including height.

Mr. Boughner answered that the structure is 14' high, 36' x 16' length and width. This is oversized due to the existing slab that is there.

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Mr. Duggan said he would like to address the existing slab. He asked if the existing pad is illegal why aren't they requiring them to remove it. Regarding the rear setback, who owns the property back there, possibly the town. He thinks that Conversation Commission approval is going to be necessary.

Mr. Mustacchio stated the rear of the property is vacant and wetlands.

Mr. Duggan continued that he does not think this variance should be granted, it will run with the property. Residential II zone requires 15' setbacks.

John Boughner then asked the Building Inspector what we knew about the wetlands there.

Richard Maloney said he doesn't know anything about the wetland issues on the property. We could continue the case and get input from the Conservation Commission.

There were no more questions or comments from the audience. Back to the Board.

Corinne Doherty said that she thinks that the Conservation Commission should determine if they can build and if they are in the buffer zone.

Kenneth Jarvinen recommends a letter of approval from the Conservation Commission. He also asked if the neighbors had any issues with this.

Mr. Mustacchio said they do not have any issues.

Jeffrey Sauer said that the issue is being so close to the lot line. If the slab does not go down 4' you can't build. He stated he would like the information on the slab and see Conservation Commission approval.

Rebecca Kilborn said that it is really close to the lot line. However, she visited the site and she doesn't feel it's really infringing on anyone, but if it has to be moved, she would like

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to see it moved further away from the lot line. She also asked how it is determined if the foundation is ok to build on.

Richard Maloney said that they would dig two or three locations around the slab to check the depth and will also have the Conservation Commission take a look.

Robert Cignetti said he wants to know if the foundation is buildable and then wants to hear from Conservation.

John Boughner said that the board is looking for more information.

1. Is the slab buildable, test results.
2. Conservation Commission Approval.

Mr. Mustacchio asked to continue the case to the December 14, 2020.

Rebecca Kilborn motioned the board to continue the case to December 14, 2020.

Robert Cignetti seconded.

All in favor.