

MINUTES
ZONING BOARD OF APPEALS
May 25, 2023 at 6:00 PM
at 15 Summer St- City Hall

Members Present: Dennis Ackerman, Seth Turner, Craig Faria, Wayne Berube, and George Moniz

Meeting opens at 6:04 PM

George made motion to accept April 27th minutes, seconded by Seth All in favor.

Chairman Ackerman explains the ZBA process. They hear presentation from petitioner, hear opposition and in favor and then go back to petitioner to answer any questions. They do not go back and forth.

Other Business: Discussion on filing fees

Chairman Ackerman stated he has personally met with the City Planner Kevin Scanlon and City Solicitor Atty. Matt Costa and he thanked them for their help and input. He said with heavy heart that the current administrative tried to put a stop to this. He stated the arrogance of the CFO who threatened him if the fees were lower or reduced he would go the Council and take the authority away from the ZBA. Chairman Ackerman met with the former Chief of Staff Ed Correira about this and he feels good about the numbers he was suggesting. Chairman Ackerman stated the Board answers to the Citizens of Taunton not the administration. In reviewing the fees over the past years he found out that Taunton is the highest around. We are charging the Citizens of Taunton to build up the budget. He met with the City Planner and City Solicitor and his numbers are lower that what was recommended. He is trying to balance it. The City Planner gave 4 examples and if we went along with his philosophy then we would be charging fees to balance the budget. The City Planner's info went back 3 years showing the fees bought it. AT this time Chairman Ackerman went over what he was proposing and asks the Board to review it and next meeting we can vote. He stated his numbers were based on the numerous towns he researched which included Fall River, Lowell, Attleboro, New Bedford, Brockton. He stated his proposal might be reduced by \$2,000 in fees which is .00000 71% of the city budget. That's how much effect it will have on the budget.

Case # 3724 **Cabral** **73 Fremont Street**
For: a Variance from Section 440-602 & Section 440 attachment # 3 of the Zoning Ordinance for the division of a lot into two lots. Lot 1 having 30,063 sq. ft. (instead of 60,000 sq. ft.) Lot 2 having 30,039 sq. ft. (instead of 60,000 sq. ft.) with 20 feet of lot width & frontage (instead of 150' of frontage & 100' of lot width)

For the Petitioner: John DeSousa, NorthCounty Group, 4 Court St., Taunton, Ma.

In favor: petition signed by 13 abutters in favor

Opposed: petition signed by 16 abutters opposed
Raymond Harvey, 75 Edwards Ave., Taunton, Ma.
Atty. Tad Pietnik, representing abutters
Gil Garnett, 65 Edwards Ave., Taunton, Ma.
Paul Hermenau, 60 Edwards Ave. Taunton, Ma.

Chairman Ackerman read dept comments from City Planner, Fire, Engineer, BOH, and Water dept. John DeSousa representing the petitioner was invited into the enclosure. He states the property is in the Rural Residential District but the Suburban Residential District runs next to it. The property has 200 feet of frontage on Fremont Street and they have 20 feet of access from Edwards Avenue. They are proposing to divide the property into 2 lots. Lot 1 will have 30,063 s.f. lot area with frontage on Fremont Street and Lot 2 will be a Form J with 20 feet of frontage on Edwards Avenue with 30,000 s.f. lot area. John states most lots do not meet the RRD requirements. The access for lot 2 will be from Edwards Avenue with a driveway about 12- 14 feet wide. They are proposing a single family house with water and sewer from Fremont via an easement. The hardship is the configuration of the lot and shape of the lot. They have spoke to the Fire Dept. and as long as they have the typical driveway going in there will be sufficient access. Chairman Ackerman asked if approved they put condition they have to have water & sewer ? John answers yes they can do that either through an easement from Fremont Street or from Edwards Avenue. He submitted petition in favor signed by 13 abutters. Public Input: Raymond Harvey, 75 Edwards Ave, submitted petition signed by 16 abutters opposed. He stated they are created the undesirable change in the neighborhood. They are creating 2 non-conforming lots. There is currently a fire hydrant, telephone and manhole in the area they want to put driveway. The lot size and frontage is not a hardship because they are creating it. He asks the Board to deny the proposal. Atty. Tad Pietnik representing abutters opposed. He stated under Section 40A there are 3 requirements that must be met for a variance to be granted. They do not have all 3 of them. There is nothing unique about this lot, the literal enforcement of the zoning, and relief may be granted if not more detriment that what is there. All 3 of these are not met and under the zoning ordinance the variance should not be granted. He says the board is re-writing the zoning law. Chairman Ackerman asked Atty. Pietnik if he's indicated the board is re-writing the zoning law? Chairman Ackerman stated that only 1 out of the 3 has to be met. n the 28 years he has been on the Board of granting variance only 1 out of the 3 has to be met per 40A . Gil Garnett, 65 Edwards Ave. stated the applicant should have done his due diligence before buying the property. The proposed 20 feet of frontage is unsafe and uncalled for. Paul Hermeneau, 60 Edwards Ave. opposed. He stated there are too many variances and he is worried about traffic and the environmental impact and removal of trees. Chairman Ackerman asked John if you only needed 1 out of the 3 under chapter 40A and John answers he has been doing this for 36 years and you only need 1 out of 3 under 40A. He stated there are no wetlands on the property. He stated the fire dept. will review the driveway location and water & sewer will be reviewed by engineer. Chairman Ackerman stated he rode by location and there is already traffic on the street and he says the City Engineer has to approve there will be no

additional water runoff. He stated petitioner will be required to move pole and fire hydrant. John stated the drainage manhole is no on petitioner's property. George asked if they will be clear cutting the trees? John stated they will clear trees for a normal house and yard. He stated they will retain as many trees as possible. George heard a rumor they were going to put a duplex and John answers no a single family home. Chairman Ackerman stated that is the only thing allowed in this district.

Motion made and seconded to Grant with the following conditions:

1. Restricted to single family house.
2. Lot 2 must be serviced by City Water & Sewer
3. Install a 6 foot fence on lot 2 along the northeast side of driveway for a distance of 120 feet.

Vote: Turner, Ackerman, Berube, Moniz, Faria, ...Yes

Petition granted

Case # 3725

Nogueira

So. Walker St. (89-88)

For: a Variance from Section 440 attachment # 3 of the Zoning Ordinance for the existing lot to have 129.16' of frontage (instead of 150') in a Rural Residential District

For the Petitioner: Brad Fitzgerald, SFG Associates, 28 Main St., Lakeville, Ma.
Lucas Nogueira, 447 Broadway, Taunton, Ma.

In favor: petition signed by 4 abutters in favor
David Marsden, 196 South Walker St., Taunton, Ma.

Opposed: Crystal O'Leary, 198 ½ South Walker St., Taunton, Ma.

Brad stated the petitioner purchased he lot and it has been in existence for 80 years. It has always been in the configuration its in now. The hardship is the width of the lot as it doesn't have the required frontage. It's flat and then dips down a little as you go toward the back of the lot. He stated the old assessor's map shows in from 1943 as being taxed as a separate lot. In 1943 it has 129.16 of frontage and the zoning changed later. They have sufficient lot area and dry area. He points out every other lot on either reside of this lot is smaller and below the 150 feet frontage. They will be proposing a single family house with water and sewer. They will not impact the traffic with only one house. Chairman Ackerman read dept comments from City Planner, Fire, Engineer, BOH, and Water dept. A petition signed by 4 abutters was submitted. Chairman Ackerman went out there and asked about the slope? Brad answers yes there drops at around 80 feet back so they will putting house more to the road but will meet the setbacks. George asked who will live there his parents? Mr. Nogueira answers yes his parents will live there. George stated it's only shy a little frontage. Public Input: Crystal O'Leary, 198 ½ South Walker St. stated she was here in 2014 speaking against this. It was denied by the board the man who owned it was a civil engineer and the lot was not buildable. He passed away in the mid 80s and son had had petitioned the Board for a variance in 2014. Mrs.

O'Leary stated her mom lives at 191 So. Walker St. and she is 77 years old and continues to live there. They take care of her. She and her husband decided to split the lot and build a house to be close to her family. The Board granted them a variance because they had a hardship. All the 4 houses down the road have been owned by family for the past 30 years. The property is zoned Rural Residential. Her point is all the houses have been in the family and this is an established neighborhood. Her husband also grew up in this neighborhood with all his family. Her father-in-law is 84 years old. Her husband purchased 200 So. Walker St. and married her in 2002 and they had some equity and they split the lot into two and built a house in back. They live with their 5 children. She has not heard of any hardship? In 2014 the hardship was to sell the lot and use proceeds for mother's needs. Mrs. O'Leary stated nothing has changed. She stated her house is non-conforming and there is conservation land in back, the former Mt. Hope Dairy. The Three Mile River is in back. There are many vacant properties in the city the petitioner can build on. She stated he purchased the property for \$60,000 knowing that it was not a buildable lot. She pointed out the petitioner is a realtor and he's taking a chance on getting a variance. He initially went to neighbors to see how they felt about it. Chairman Ackerman stated the topography and the slope is the hardship. In 2014 they didn't say anything about the topography or slope. He states there is a lot of different things than last time. Mrs. O'Leary stated the petitioner is a realtor but didn't disclose it, it's being disingenuous. She stated at some point the zoning rules need to be followed. She asks who buys a piece of land without a variance. It's a big gamble or he seems fairly certain he will get a variance. She stated this property is on the busiest corner of the street. George stated the lot is 10,000 bigger than the rest of the lots in the area. Public input: David Marsden, 196 So. Walker St. complimented Crystal's presentation. He was opposed in 2014. He has kept the property clean for many years and his property is a non-conforming lot. He is the most impacted. He saw Mr. Smith (former owner) and he had visited him once. He had 10 cords of wood along on his property and he received a letter from his attorney to remove the wood. That is the only communication he had with him. He had a visit from him again asking him to not visit his mother. He has seen Lucas Nogueira 3 times since he bought the property. He had a positive experience with him and made no promises. David stated he would prefer to go in person to speak at the hearing. He purchased the lot taking a chance he will get a variance. His parents live in Brazil and he wants to build a house for them. David commends him for his selfless move. He knew the former family. He loves nature and loves trees. He wanted to buy 20 feet but that never happened. He took care of Mrs. Smith. He lives right across the street from Nichols Mills and he didn't even know it was going in. He lives right next door which makes him the most affected. He says there are condos in back of New England Farms and Irving Gas. He stated a 40B project will be too much not one house. He is 100% in favor. Brad stated this lot has always been a separate lot. The hardship is the narrowness, slope and it's not conducive to a subdivision. Wayne stated the slope and topography was not brought up in 2014.

Wayne made motion to grant with the following conditions, seconded by George.

1. Restricted to single family dwelling only.

2. If municipal water & sewer is not available the dwelling would need to be able to construct an on-site septic system, with appropriate setback requirements and buffers in accordance with Title 5 regulations, and private well. All dwellings must comply with the Minimum Standards of Fitness for Human Habitation, State Sanitary Code, Chapter II.

Vote: Turner, Ackerman, Berube, Moniz, Faria, ...Yes

Cont'd Case # 3701 Soares 49 Weir St.(66-566) and Prop. I.D 66-567)
For: A Variance from Section 440-704 & and Section 440 attachment # 3 of the Zoning Ordinance to allow a mixed use building with an 18 unit group residence on the 2nd & 3rd floors (instead of the 10 units max allowed) in conjunction with a restaurant and pawn shop on first floor, and the use of municipal parking lot for parking (instead of providing 18 spaces on site)

Letter from Atty. Brianna Correia requesting to withdraw without prejudice. She also requested the Board to possibly refund the filing fee since there was no public hearing. They are proceeding and going to the Municipal Council for approval. She was asking for a 50% refund but the Board can vote on what's they feel comfortable with. Chairman Ackerman suggested refunding up to 40% which is in his proposed fee schedule. The total fee paid was \$450.00.

George made motion to refund 40% (which is \$180) of the fee paid for 49 Weir St. seconded by Craig. All in favor.

Case # 3723 Snow-Phillips 75 Dighton Ave
For: for a Variance from Section 440-704 A of the Zoning Ordinance to allow a vehicle (school bus) in excess of 7,000 lbs. to be parked in a Suburban Residential District.

For the Petitioner: Melissa Snow-Phillips, 75 Dighton Ave., Taunton, Ma.

In favor: Robert Carroll, 106 Dighton Ave. Taunton, Ma.

Opposed: None

Ms. Snow-Phillips states she has been a bus driver for 17years,15 years for Taunton and for the past 7 years she has parked her school bus on her property. She has recently took a different job with Rehoboth and she has never had problem. She was unaware that you could not park it there. She states it's easier for her to have bus at her house, she doesn't need to get up earlier and drive to get bus. Chairman Ackerman read dept comments from City Planner, Fire, Engineer, BOH, and Water dept. Chairman Ackerman stated he drives around the City and she is not the only one who park a bus at her home. He would rather have her bus at home then have her have to get up earlier to drive to somewhere then do her bus route. Wayne asks if it's kept there all the time? Ms. Snow-Phillips answers she drives for Rehoboth and it's parked there after labor day to April vacation then goes and comes back to end of June. George asked if this complaint was made from the guy who had a ramp truck and was denied. She answers yes he is going

around filing complaints. Public Input: Robert Carroll, 106 Dighton Ave, stated he's in favor. She had wide driveway and she parks it there.

Motion made and seconded to Grant as Presented:

Vote: Turner, Ackerman, Berube, Moniz, Faria, ...Yes

Case # 3726

Thomas

417 Winthrop St.

A Variance from Section 440 attachment # 3 and a Special Permit from Section 440 Attachment #1 of the Zoning Ordinance to allow a residential use in a Highway Business District and the proposed 40' x 28' single family house having a 2 foot side setback (instead of 25')

For the Petitioner: Brad Fitzgerald, SFG Associates, 28 Main St., Lakeville, Ma.
Bruce Thomas, 48 Church Green, Taunton, Ma.

In favor: None

Opposed: Dane Rogers, representing West Congregational Church, 155 North Walker Taunton, Ma.

Crystal O'Leary, 198 ½ South Walker St., Taunton, Ma.

Brad states this was the old flower shop just after the church on Winthrop St. He stated 3 years ago the Board gave approval for an office building but that was never exercised. Brad states with the decline of business he no longer needs his office so the new proposal is for a same size house. He submitted updated plan showing a 5 foot sideline setback instead of 2 feet. The hardship is the location of the utilities, TMLP encroachment and the size of the lot. They need a special permit to put residential in the Highway Business District. Chairman Ackerman read dept comments from City Planner, Fire, Engineer, BOH, and Water dept. Chairman Ackerman asked if it's the exact same footprint? Brad answers yes a 40' x 28' house with 3 bedrooms. Brad stated this proposal will be less pervious area that an office use. He stated the petitioner has family member from Lebanon who he will gift this to and reside. George asked if there are 2 floors? It was answered yes. Public Input: Dane Rogers, representing West Congregational Church directly next door. He stated the house will be too close to property line. He is concerned with the service from the street to church. They will have no problem putting house in same location as existing building. He asked if they contact the historic district and this house is very old, it was a school. He stated all water runoff will affect the church property. Chairman Ackerman explained how the City Engineer during the building permit process has to make sure no more water will go there. Chairman Ackerman asked him which would he prefer, an office or a house? Dane answers he would like to see the house in the same location as existing building. Crystal O'Leary, 198 ½ So. Walker St. stated this site is her former flower business. She stated the while she was there she had to constantly deal with the TMLP because of easement. In the 10 years while she was here there was never a water meter. She stated it was a funky setup. She too suggests contacting the historic district as this was a former school and firehouse.

She stated the church had 10 year lease for \$1. Chairman Ackerman asked which would she prefer a house or an office? She doesn't want to see the building come down. Margo Craven, Attleboro, she stated she is concerned with the snow being pushed over to the church property. She stated there doesn't need to be any more cars, trucks. She is against the whole thing. Chairman Ackerman asked her which she would prefer, an office or house? She answered a single family house. Brad stated he staked the property and talked to the TMLP and created new easement. The existing building is 2 feet away from property line and they are moving it over to have 5 feet side setback. Bruce stated the church pushes their snow onto his property. Bruce stated they are trying to stay away from easement.

Motion made and seconded to Grant with the following conditions:

**Contact the historic district commission.
Single family only.**

**Vote: Turner, Ackerman ,Berube, Moniz, Faria, ...Yes
Petition granted**

Case # 3727 Grilla, LLC 224 Broadway
For: A Variance from Section 440 -503 of the Zoning Ordinance to an expansion/alteration of a pre-existing building for a proposed 330 s.f. enclosed dining area with a 23 s.f. vestibule in conjunction with the existing commercial restaurant.

For the Petitioner: Atty. Brianna Correira, 123 Broadway, Taunton, Ma.

In favor: Tad Pietnik, 9 Pierce Ave., Taunton, Ma.
Opposed: None

Atty. Correira stated this request is for more dining space at the pre-existing non-conforming building. The owner, Grilla Greek Restaurant is proposing to add a small enclosed dining area with a 23 sq. ft. vestibule. The proposal will not any more detrimental that what exists. The neighbors patronize the establishment. The seating capacity is dictated by the number of parking spaces. They have 13 parking spaces so they can have 26 seats. Chairman Ackerman read dept. comments from City Planner, Fire, Engineer, BOH, and Water dept. George asked if they are expanding? Atty. Correira stated they are adding a 330 sq. ft. addition and he asked if they have a drive-thru and she answers yes but not sure if they will be using it. George suggest angle parking y might get more. Tad Pietnik, 9 Pierce Ave. states he in favor. There has been a number of losses of restaurants namely Bella Roma, Colonial Donut shop and he's here to support this proposal.

Motion made and seconded to Grant as Presented:

**Vote: Turner, Ackerman, Berube, Moniz, Faria,Yes
Petition granted**

Case # 3728 Boston Capital Dev. Partnership, LLC 68 Church Green (68-424 & 66-426)

For: a Variance from Section 440-602, 440 attachment #3, and 440-1001 of the Zoning Ordinance to allow 30 residential units on a pre-existing lot having 0 feet of frontage & lot width (instead of 100 ft .each) with a 13 ft. rear setback for three buildings (instead of 20 ft.), a minimum of 0.4 ft. rear landscape buffer for three sides (instead of 15 ft.), having 10 ft.in distance between building C & D and 15 ft. distance between building A & D (instead of 48 ft. for each) on premises at **68 Church Green, (a.k a. parcels 66-424 and 66-426) Taunton, Ma.**

For the Petitioner: Atty. Brianna Correira, 123 Broadway, Taunton, Ma.
Rich Mazocchi, Managing Director, Boston Capital Dev. LLC
11 Beacon St., Ste. 325, Boston, Ma
Clifford Boehmer, AIA Principal, Davis Square Architects, Inc.
240A Elm St.,
Somerville, Ma.
Brian Geaudreau, Project Manager Associate, Hancock Associates,
315 Elm St.,
Marlborough, Ma.

In favor: Dave Welans, 36 Prospect St., Taunton, Ma.
Atty. William Manganiello, representing Laurel McGregor, 60 Church Green,
Taunton, Ma.
Dr. William Hanna, President Old Colony Historical Museum, 66 Church
Green, Taunton, Ma.

Opposed: None

Atty. Coreira, Rich Mazocchi, Clifford Boehmer, Brian Geaudreau were invited into the enclosure. Atty. Correira states this proposal needs ZBA, P.B. and Council approval. The property is vacant and there are homeless people hanging around. The building was used in 1984 as a medical building with 10 – 12 doctors and the access is via an easement by the Old Colony Museum The property is unique in that it has jiggered edges and they are asking for variance for rear landscaping buffer requirement. She points out there is a small area that has .4 for the rear landscaped. They are proposing a 6 foot vinyl fence all around the perimeter. They held a neighborhood meeting in March and received feedback from neighborhood. The distance between building C & D is 10 feet, and Building D & A is 15 feet apart due to the shape of the lot. They will meet lot area, dry area, density, height and parking requirements. They are proposing a 30 units consisting of 4 two-story buildings with 63 parking spaces with 3 handicapped parking spaces. The units will be offered to first time homeowners. The previous proposal in 2018 was for 40 units in a 3 story building. This proposal is shorter buildings and less units. They are

providing privacy and they have kept the neighbors involved during the process. Atty. Correia states her client, Rich Mazocchi, Boston Capital has been in the business for 27 years with building over 2,000 units consisting of multi-families. This proposal will offer affordable units for first time homeowner's and municipal workers, (sewer, fire, teachers) The units will have 2 bedrooms, 1,000 sq. ft. with 1 ½ baths. They will be following the Massachusetts Housing Program offering affordable homes. The affordable rate will be around \$195,000 and the regular rate will be \$255,000 and there will be a preference to Taunton Municipal employees. They will have a professional management company on site for maintenance. If someone sells their unit there are restrictions and annual percentages they will be required to pay. There will be 2 parking spaces per unit. Chairman Ackerman read letters from the City Planner, Fire, Water, B.O.H., and Conservation Commission. Chairman Ackerman disclosed he was involved with the former Chief of Staff and me with the applicant and as soon as he found out they would need to go to ZBA he disfranchised himself with the project. He stated when he received the packets it was the first time he saw plans. Cliff Boehmer, architect explains the buildings. The units will be townhouse styles with 2 stories, and the 2 bedrooms will be on 2nd floor. All electric is close to downtown and this project is a small scale and neighbors has been involved and they may provide some green space Brian Geaudreau stated they reduced the aisles and have provide 9' x 18' parking spaces with a 22 wide drive aisle. They have provided fire access after taking the fire departments larges template and running audocad so all bumpers and wheels can easily access around in safe manner. George asked if they will have a homeowner's association ? He stated that will keep people in there and he likes the project. Craig answers yes there will be a homeowner's association and they will set up budget and the initial fees but then it will be turned over to the owners. They will most likely hire a management company Chairman Ackerman said we can put condition it's for first time homeowner and Rich stated they will follow the Massachusetts Housing Commonwealth Builders Program guidelines. Public Input: David Welans, 36 Prospect St. stated it's a good project and it much more in keeping with what's around it. His concern is water runoff and how they will manage that? He stated Prospect Street has a 2 -3 foot drop and it doesn't take much to flood. He asks that a detailed and efficient plan be put into place. He thinks this is a huge improvement to what was going to be put in. Atty. William Manganiello, 311 Somerset Ave. representing Laurel McGregor, 60 Church Green. He spoke to the applicant and his client would like a 6 foot solid vinyl fence as mitigation. Atty. Manganiello stated that was her only concern. It was stated they were going to put fencing around the whole property. Dr. William Hanna, President Old Colony Museum, 68 Duffy Dr. stated he has been following the project and it has been a positive experience. Atty. Correia stated they are proposing dark skylighting and fencing around the perimeter. Wayne asked are they proposing a white vinyl fence? It was suggested a different color, they do not want white. It was suggested grey or tan.

George made motion to grant as presented, seconded by Wayne.

1. Compliance with Massachusetts Housing Commonwealth Builders Program guidelines as presented.
2. Install a 6 foot vinyl fence around the entire perimeter as presented at hearing (white fence not preferred)

Vote: Turner, Ackerman, Berube, Moniz, Faria, ...Yes
Petition granted

Meeting adjourned at 9:21 PM