

**Minutes Meeting of June 16, 2004** –Mayer, McElroy, Bulldog Realty

Members Present: Stuart Schulman, Jay Prager, Chase Duffy, Robert Cadle, Mark Mulligan

The Chairman convened the Mayer hearing by reading the legal notice.

The applicants want to add addition to the house that they bought last July. The dwelling was built in 1910 and has extremely low ceilings. They wish to have the ceilings in the new addition up to code, necessitating the increase in height, and said that they will keep the ceilings in original structure at least for now.

Of note: the height is 20 feet and will be going up four more in the addition and the lot is 1/3 acre.

Mr. Moulton direct abutter, is fine with the proposal.

The applicant noted that other neighbors have done renovations and are in favor of this project. She said that it is an improvement to neighborhood. She said that there are three existing bedrooms, with one being unusable, and noted that no additional bedrooms will be added. She said that two bedrooms will be combined to one, one will stay the same and a new bedroom will be in the addition.

The Board went over the special permit criteria, noting that the property is serviced by Town sewer and water, no additional bedrooms are being added and that there is a lot of renovation happening in the neighborhood.

The Board moved to grant a special permit to allow the alteration of a non-conforming structure by increasing the height of the structure. The motion was seconded and passed unanimously.

The Chairman convened the McElroy hearing by reading the legal notice.

Atty. Gmeiner, agent for the applicant, submitted a letter dated 6/16/04.

Stan Dillis, Dillis and Mish, noted that his client wanted to initially renovate the structure but found that it needed to be torn down due to its very bad condition. He said that they want to mirror the footprint there. He said that only two variances are needed: lot area and the 150 foot circle requirement. He said that other dwellings in the neighborhood are at least as close if not closer to the lot line.

Mrs. McElroy said that it was last occupied three years ago.

Atty. Gmeiner said the lot configuration has been such since about 1925.

The Chairman noted that he thinks the proposal is good and in keeping with neighborhood.

Atty. Gmeiner said that the dwelling has three-bedroom sewer capacity and suggested conditioning the permit to a three bedroom dwelling.

Thad King thinks that the house has been used in the past two years.

Of note: there is 464 feet of frontage so frontage is not an issue.

Atty. Gmeiner noted the unique shape of the lot, as well as the Water Dept. easement and the huge amount of frontage for a small lot. He said that the lot is 125 feet across and thus there cannot be 150-foot circumference circle, even if the cut out portion of the lot was returned. He said that there is a high water table and old foundation is made of fieldstone and there is a lot of mold and rot. He said that this why a real foundation is required and needs to be moved slightly. He thought that there were two different additions to the original structure because of lack of consistency regarding construction. He said that there will be a detached garage.

Abutters said that wanted an approval so construction can start.

Mrs. Duffy asked about the water easement.

Dennis Kavanaugh said that the town needed easements across his property and the McElroys because it was cheaper for the town to run a loop through two lots for Willowdale rather than run the pipe down end of the road.

Mr. Cadle suggested that this application meets the shape criteria for both variances and noted that it adds to the neighborhood.

The Board moved to grant two variances as requested with that condition that it remain a three bedroom home, the decision be submitted to the registry of deeds and the foundation is within the boundaries as shown within the plan, with a little flexibility regarding the wing to the side of the dwelling.

The motion was seconded and passed unanimously.

The Chairman convened the Bulldog Realty hearings by reading the legal notices.

Alita Manugian and Attorney John Connelly were present as agents for the applicant.

The Chairman noted that the Board does not have a variance application here. He clarified that the applicants do not think one is necessary.

Atty. Connelly, 5445 Salem St, Wakefield, said that he is working on another project with them and felt he had some insight to add to aid in getting the project underway and completed. Atty. Connelly said that he has looked through all decisions, etc. and all of which occurred before the Board. He said that the action of appeal is strictly to retain his clients' rights to take some action. He said that the building was razed before he knew about the project. He asked the Board what relief can be requested and what relief can be granted. He said that he thinks a variance requires a high standard and thus wants the Board to amend the special permit. He said that the Board can amend prior actions and this has been supported by the SJC. He said that the Board can extend a preexisting use and structure, and can grant permits for reconstruction, particularly related to some sort of loss. He stressed that the use not being altered and the change won't affect the original decision. He said that it is the replacement of the original structure and some Boards will accept this. He said that a discussion needs to occur addressing what damage or destruction means, and reconstruction or renovation.

Mrs. Duffy said that she never envisioned what happened on the site.

Discussion ensued regarding a continuation and allowing the Building Inspector to be here.

Atty. Connolly gave a brief history which began with a request for a Special Permit to allow the alteration of a non-conforming structure. He said that there was no condition that the applicant needed to keep a portion of the building but that it was noted in a narrative portion of the decision. He said that other issues were raised with the Planning Board and the Con. Comm. and thus they came back to the ZBA for a variance to allow the building to be closer to the street, but still keeping the original section.

Discussion ensued regarding the validity of how a lot is grandfathered, ie whether a structure matters.

Atty. Connelly said that he will submit his interpretation of how the law reads.

Mrs. Duffy asked about the demolition permit. Mr. Bucknell said that he received a permit to raze the whole building.

Atty. Connolly said that he wants to speak about a special permit and preexisting use. He said that he hopes that the Board will exercise discretion so that applicants can continue their work. He noted that Judge Sands said that reconstruction could be voluntary or not voluntary. He said that the Court has remanded that case back to the ZBA, who felt that the Board does not have that authority. He said that the Judge said that the ZBA does have the authority to make that decision.

The Chairman said that they would be changing procedures and he does not want to start changing procedures and policy.

Atty. Connolly stressed that every case is different. He noted that ZBA decisions are not binding or precedent setting and said that he is asking the Board to consider the situation and to use Judge Sands as guidance (the case is still under appeal). He said that he wants to convince the Board that they have the authority to do what needs to be done.

Michelle Collette, PB, said that even if this was a vacant lot of record the Building Inspector could not grant a building permit for five units. She said that two units are by right and the ZBA could give a special permit for three. She asked how the Board felt about the situation.

The Chairman said that if a variance is required he would need to reconsider.

Discussion ensued regarding use variances, that the Board cannot grant.

The Chairman said that if the special permit is being modified then five units could be okay.

Mrs. Collette noted that the site is very tight, which is why the building needed moving to begin with. She stressed that removal of the building was never part of the mix with the Planning Board and the Con. Comm., even with the many dimensional dilemmas. She said that there is a very expensive subsurface drainage system per Con. Comm. condition because the site is so tight.

Of note: on site there is underground plumbing for storm water management, etc., in place.

The hearing was continued to 6/30/04 at 7 pm.

The meeting adjourned at 9:15 pm.