



**MINUTES OF THE ZONING BOARD OF APPEALS
ANDOVER, MASSACHUSETTS**

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810
April 2, 2015**

The meeting opened at 6:32 p.m.

Present were: David W. Brown, Chair; Neil Magenheim, Clerk; Carol C. McDonough, Kate Bargnesi, and Elizabeth Oltman, Members; Denise Bordonaro, Lisa Rechisky and Tara Wilson, Associate Members.

Public Hearings & Deliberations:

Petition Number: Z-15-25

Premises Affected: 1 Highland Ave.

Petitioner: Kindred Homes, Inc.

Relief requested: Special permit 3.3.5 &/or a variance 4.1.2 to raze all structures on a lot with insufficient area & to construct a new single family dwelling.

Members sitting: Brown, Magenheim, McDonough, Bargnesi, Oltman

Alternates: Bordonaro, Rechisky, Wilson

Attorney Kathryn Morin, 68 Main St., Andover, represented David Kindred, principal of Kindred Homes, Inc., who was also present. Morin gave an overview of the proposal. The lot is uniquely configured ('dog leg' configuration) on a private way with an undeveloped paper street creating a corner lot that lacks the minimum required area. The lot is pre-existing, non-conforming being separated in 1951 (conforming at that time) and has not been held in common ownership since then. The bylaw changed has changed since then, however the lot lines have not. The existing house was built in 1906. The paper street is not used for access to any lot. It is unlikely that the paper street would ever be built out. The lot lacks area with only 18,000 sq. ft. (30,000 sq. ft. is required). The existing structures do not conform to the setbacks. The proposed structure will be more conforming; however it will still not conform to the setback requirements. The proposed single family dwelling will have 4 bedrooms, 2½ bathrooms, a 2 car garage, and a basement with potential for future finishing. The rear abutter's dwelling is quite far from the shared lot line. All other setbacks will be further away from the immediate abutter(s). The design will be in character with the neighborhood and would not be a detriment to the public good or nullifying or substantially derogating from the intent or purpose of the bylaw. The proposed structure will improve the neighborhood and will be in harmony with the bylaw since it will be less non-conforming than the existing buildings. In the alternative, hardship exists for a variance due to the shape of the lot and two front yards. A literal enforcement of the bylaw would be a substantial hardship.

The Board discussed the creation of the current lot after the existing structures were built, the encroachment of the existing house onto the abutters' lot, which lot lines are rear and side, ownership of the paper street, how much more lot area would be added if the paper street were dissolved (potentially creating a conforming front setback), the height of the proposed dwelling relative to the abutting homes. David Best, owner of 1 Highland Ave., reiterated the hardship & difficulty in selling it due to the hardship. Brown read the Gupta's letter of support into the record. McDonough made a motion to waive the viewing and close the public hearing.

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Magenheim seconded the motion and the Board voted unanimously to waive the view and close the hearing. The Board then proceeded to deliberate.

Bargnesi voiced her support of approving the application. Brown noted that in 1951 the minimum required lot area was 8,500 sq. ft. and conformed at the time it was created. Therefore it is a pre-existing non-conforming lot and can be done under a special permit. The Board discussed the setbacks and that not all will be met, but that a special permit can be granted if no new non-conformities are created, as in this case. McDonough made a motion to grant the special permit with the appropriate findings that the lot is pre-existing non-conforming and that the new construction will increase the non-conforming nature due to the increased volume of the proposed structure and is not more detrimental to the character of the neighborhood. Oltman seconded the motion and the Board voted 5-0 to grant the special permit with conditions. Bargnesi made a motion to deny the requested variance as moot. Magenheim seconded the motion and the Board voted (5-0) to deny the variance as moot. Oltman will write the decision.

In addition to the written application, the following documents and materials were received by the Board and considered at the public hearing:

- “Board of Appeals Plan,” prepared by Marchionda and Associates, LP, dated 1/21/2015
- Floor plans & elevation drawings, prepared by Kelloway Drafting Service for Kindred Homes, dated 2/11/2015

Petition Number: Z-15-29

Premises Affected: 15 Elysian Dr.

Petitioner: Warner / Johnson

Relief requested: Variance §4.1.2 to construct an attached garage that will not meet the side yard setback

Members sitting: Brown, Magenheim, McDonough, Bargnesi, Oltman

Alternates: Bordonaro, Rechisky, Wilson

Karl Warner represented himself and his wife in their request to construct an attached single-stall garage that will not meet the minimum side yard depth requirement. The proposed setback would be 10.7' where 15' is required. The existing side setback is 23.7'. There is substantial ledge and sloping on the lot effectively reducing the possible locations for additional garage space and creating a unique hardship. The house is also placed askew on the lot creating a unique angle to the lot lines. The proposed garage extension is in character with the neighborhood and will not be a detriment. There is a large stand of trees that create a natural buffer for the immediate abutters. The trees will be kept. Brown noted for the record the receipt of a collective letter of support from 5, 9, 18, and 20 Elysian Drive, and 178 Elm Street. Floyd Greenwood, 13 Elysian Dr., voiced concern over future access for large equipment to rear yard being inhibited with garage extension. He submitted a photo depicting the common side lot line. The Board discussed rear yard access and screening, tree removal in rear yard, and treatment of trees to maintain and prolong their lives. The Warner / Johnson lot is higher up than the Greenwoods' at #13. The driveway will be split but not doubled to minimize pavement. There being no other questions or comments from the Board or the public, McDonough made a motion to waive the view and close the public hearing. Magenheim seconded the motion and the Board voted (5-0) to waive the view and close the hearing. The Board then proceeded to deliberate.

Brown noted the hardship that would be experienced by the petitioners if a literal enforcement of the bylaw was applied to the project. The hardship relates to the shape, topography and soil conditions of the lot and that relief

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can be granted without derogation or detriment. McDonough, Oltman and Magenheim agreed. Oltman added that it is consistent with the character of the neighborhood. Bargnesi made a motion to make the appropriate findings of hardship related to topography and to grant the variance with the conditions that the addition shall be constructed in conformance with the plot plan and drawings and that the vegetative screening is maintained. Magenheim seconded the motion and the Board voted (5-0) to grant the variance with conditions. Brown will write the decision.

In addition to the written application, the following documents and materials were received by the Board and considered at the public hearing:

- Plan Package entitled “ZBA Submission, March 3, 2015” (8 pages) prepared by Benjamin Nutter Architects, LLC, including the following: Certified Plot Plan prepared by John Abagis & Associates, dated February 26, 2015 (Sheet S1.1); Existing & proposed floor plans & elevation drawings (Sheets EC1.0, EC1.1, A1.0, A1.1, A2.1, A2.2).
- 3 Photographs of 15 Elysian Drive.
- 1 Photograph showing existing vegetation along boundary of 15 Elysian Drive & 13 Elysian Drive.
- Letter of support from residents of 5, 9, 18, & 20 Elysian Drive, and 178 Elm Street.

Minutes of 3/5/15:

Submitted for approval with Brown’s revisions as submitted by email. Wilson pointed out that the name ‘Reedy’ should read ‘Reidy’. There being no other revisions or corrections, Rechisky made a motion to approve the revised minutes of 3/5/15 as corrected tonight. Oltman seconded the motion and the Board voted to approve the 3/5/15 minutes as revised. McDonough, Bargnesi & Bordonaro abstained from the vote as they had not been present at the March meeting.

Request for Determination of Substantial Change:

1893 - 600-800 Bulfinch Dr – Andover Place Apts LLC [request for determination of substantial change to modify comprehensive permit #1893 to construct 2 garages] Brown gave an overview of the project and outlined the timeline and process. The Board will hold a public meeting on April 9th at 7 pm (location to be determined) to take a vote on whether the requested modification of the comprehensive permit is substantial.

There being no other business of the Board, McDonough made a motion to adjourn the meeting. Magenheim seconded the motion and the Board voted unanimously to adjourn the meeting at 8 p.m.

Respectfully submitted,
Barbara Burke
Administrative Secretary