



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

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810
May 7, 2015**

The meeting opened at 6:35 p.m.

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

Public Hearings & Deliberations:

Petition Number: Z-15-41

Premises Affected: 89 Main St.

Petitioner: Peter Kekedi

Relief requested: Special Permit under Article VIII, §3.1.3.C.12.b

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

Alternates: Bordonaro, Wilson

Applicant Peter Kekedi, 52 Thornton St., Methuen, MA represented himself in his request for a special permit to operate a fast food establishment that will serve gelato, espresso drinks, desserts, and frozen drinks. Minimal changes will be made to the existing space, previously occupied by Pink Tree Sweets. There will be 16 indoor seats and the property manager for Olde Andover Village will take care of the outdoor seating planned for the courtyard area. The establishment will be open from 10 am – 10 pm. Trash will be emptied daily into the on-site dumpster. The Board waived a site view. There being no other questions from the Board or the public, McDonough made a motion to close the public hearing. Magenheim seconded the motion and the Board voted (7-0) to close the hearing. The Board then deliberated.

Bargnesi made a motion to approve the special permit with the conditions that the hours of operation are to be from 10 a.m. to 10 p.m., that there are 16 inside seats and that the special permit is granted to the tenant / applicant. Magenheim seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Bargnesi 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:

- Floor plans depicting the proposed retail space at 89 Main Street, Andover, MA, showing proposed layout of the restaurant showing 16 dining room seats, counter/workspace, 2 restrooms, displays and access to the communal hallway.

Petition Number: Z-15-42

Premises Affected: 1 Gregory Circle

Petitioner: Tom & Katie Carli

Relief requested: Variance from the requirements of §4.1.2 to construct a side porch that will not meet the side yard setback.

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

Alternates: Bordonaro, Wilson

Associate Member Wilson disclosed that she knows the applicants in a professional capacity but feels that she can act impartially; however she offered to recuse herself if needed. There was no objection to her participation.

Tom Carli represented himself and his wife in their request for a variance from the minimum side yard depth requirement for a proposed porch that would be setback 5.1' where 25' is required. The house was constructed in 2012 on a deep lot near the Shawsheen River. Petitioners attempted a land swap without success. There is a deck and patio at the rear of the house. The proposed location for the porch is screened by a hill and trees. Mr. Carli submitted three letters of support. The Board discussed alternate conforming locations, the fact that the proposed addition is 1/3 of the size of the existing home, the orientation of the proposed location making it very close to the side lot line, as well as the fireplace in the plan which would make it a 3-season room rather than a porch. The Board pointed out that a certified plot plan is required to appear before the ZBA for the Board to determine and vote on the actual plan. Carli voiced willingness to make the addition smaller. The Board discussed the topography (a relatively flat/level lot), the shape of the lot (long/narrow) and the abundance of space behind the house. Carli argued that being a single-income household is a hardship. There are more than two egresses at the main level. The Board requested definite plans and suggested that they may be amendable to approving a variance for an addition at least 15' from the side lot line and 40' from front lot line. There being no other questions or comments, Magenheim made a motion to continue the hearing to 6/4/15 to allow the submittal of a certified plot plan and drawings. McDonough seconded the motion and the Board voted (5-0) to continue to 6/4/15. Oltman & Bordonaro will not be present at the 6/4/15 meeting.

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

- 4 Photographs of the existing house showing front, side & back views and view from 11 Lowell Junction Road.
- 2 Photographs of the existing house taken by ZBA Chair David Brown
- Hand-drawn renderings of front, side and rear of proposed porch.
- Photos of other porches similar to the proposed.
- Certified Plot Plan of 1 Gregory Circle, prepared by Andover Consultants, Inc., dated 6/12/12, with proposed porch location sketched in (not to scale or certified).
- Letters of support from Cordula & Kevin Carlin, 3 Gregory Circle; Peter & Jocelyn Sproul, 11 Lowell Junction Road; and Pras & Dola Ghosh, 2 Gregory Circle.

Petition Number: Z-15-35

Premises Affected: 600 Bulfinch Drive

Petitioner: Andover Place Apts, LLC

Relief requested: Modification of Comprehensive Permit #1924 issued 8/4/87, amended by Settlement Agreement dated 12/17/87 to construct two garages over existing parking spaces.

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

Alternates: Bordonaro, Wilson

Attorney Mark Johnson, Joe Tricarico and Joe Shea of Roseland Property Company were present on behalf of the Applicant. Andover Fire Chief Mike Mansfield was also present. Johnson gave a Powerpoint presentation with an overview of the site and reviewed the history of the affordable restriction having expired. The current owner met with Town staff regarding the garages at which time it was suggested that Merrimack River access exclusively for Town emergency response use could be granted by easement to the Town. They have spoken with Conservation Direct Robert Douglas and will file a Notice of Intent. The proposed garage parking spaces will be rented, while the outdoor spaces will remain undeeded. Chief Mansfield spoke to the Board about the crucial opportunity the Town has to gain the only emergency access in Andover to the Merrimack River. This would significantly decreased emergency response time since responders must now go into Methuen or Lawrence in order to respond to river emergencies in Andover, of which there are approximately 18 per year. No public access will be permitted. The owners have agreed to build the launch if granted the substantial change to the comprehensive permit to construct the garages. The Inspector of Buildings had submitted a letter of support. The Board discussed mitigation and the benefit to the Town of such a change, as well as the owners' desire to compete with newer apartment developments in town, along with the increase in tax revenue for the town. The owners are trying to improve the project to increase the 88% occupancy rate and to make it more economic. The requested modification only decreases the total number of parking spaces required by the comp permit, while gaining exclusive access to the river for emergency response. The existing parking spaces are not all in use and there will not be a detrimental effect by constructing the garages. The Board discussed the quid pro quo and whether or not such an 'exchange' is appropriate. Mr. Tricarico stated that without permission to construct the garages, they would still grant river access, but would not build the launch. The Board discussed the decrease in parking spaces and the fact that the only location to build more parking is in wetlands, as well as the practice of requesting off-site mitigation in such projects. There being no other questions or discussion from the Board or the public, McDonough made a motion to close the public hearing and to deliberate. Bargnesi seconded the motion and the Board voted (5-0) to close and deliberate. The Board proceeded to deliberate.

Brown stated his view that since the premises exists only with the benefit of the Comprehensive Permit, and mitigation should be directly related to the regional need for affordable housing. If conversion of some units to affordable status is not practical, a contribution to the Andover Community Trust could be made instead. The remaining members of the Board disagreed, believing that the proposed public safety access to the Merrimack River was sufficiently in the public interest to warrant allowing the proposed change.

McDonough made a motion to approve the requested change to the comprehensive permit to allow the construction of two garages over existing pavement and parking spaces, decreasing the total number of parking spaces to 340, with the condition that an access easement be granted for Town of Andover Public Safety to access the Merrimack River as noted in the plans. Oltman seconded the motion and the Board voted by roll call:

Bargnesi: yes
McDonough: yes
Brown: no
Magenheim: yes
Oltman: yes

The Board voted (4-1) to approve the substantial change with conditions. Bargnesi 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:

- Copy or original Comprehensive Permit Decision #1924 and Settlement Agreement granted to Riverview Commons Associates.
- Title Survey Plan for Riverview Commons, dated June 3, 1999, annotated Sept. 30, 2014 to show location of proposed garage buildings, designated Sheet "A-G-1".
- Elevation drawings of proposed 18 bay garage building, dated Sept. 30, 2014 and designated Sheet "A-G-2".
- Letter from Richard J. High, President, Corcoran Management Company, to Stephen D. Anderson, dated February 1, 2012, attesting to the surplus of parking spaces at the premises.
- Letter from James M. White, PE to Richard High dated February 16, 2012, regarding zoning conformance for the site.
- Plan entitled "Proposed Access Road, 400, 600, 800 Bulfinch Drive, Andover, MA," prepared by Hancock Associates, dated 2/26/2015 and designated as Sheet "C1."
- Copy of Town of Andover Assessor's Maps 125 & 126.
- Annotated aerial photograph of site.
- Copy of ZBA Decision dated June 14, 2012, denying modifications to Comprehensive Permit Decision #1924.
- Copy of Housing Appeals Committee Decision No. 12-02, dated February 27, 2013, upholding action of the ZBA.
- Copy of ZBA Determination of Substantial Change, filed April 10, 2015
- Copy of Email from Robert Douglas to Mark B. Johnson & Michael Mansfield dated March 10, 2015, re: Boat Ramp.
- Printout of Powerpoint presentation shown to Board on May 7, 2015.

Minutes:

Magenheim made a motion to approve the minutes of: 11/5/09, 12/3/09, 12/21/09, 7/22/10, 7/15/10, 6/3/10, 5/6/10, 4/1/10, 3/4/10, 2/4/10, 1/7/10, 1/5/10, and 12/1/11 with Brown's revisions as submitted by email and as corrected by Magenheim. There being no other revisions or corrections, Oltman seconded the motion to approve the minutes & Brown, Magenheim & Oltman voted to approve the minutes as revised. Bargnesi, Bordonaro, McDonough & Wilson abstained from voting on these minutes.

Minutes of 4/2/15: Bargnesi made a motion to approve the minutes of 4/2/15 as edited by Brown & Magenheim. Oltman seconded the motion & the Board voted unanimously (5-0) to approve the minutes.

There being no other business of the Board, Bargnesi made a motion to adjourn the meeting. Magenheim seconded the motion and the Board voted unanimously to adjourn the meeting at 8:54 p.m.

Respectfully submitted,
Barbara Burke
Administrative Secretary