



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

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810
August 6, 2015**

The meeting opened at 6:31 p.m.

Present were: David W. Brown, Chair; Carol C. McDonough, Acting Clerk; Kate Bargnesi & Elizabeth Oltman, Members; Denise Bordonaro, Kathy Faulk, Lisa Rechisky, & Tara Wilson, Associate Members.

Requests to Continue without discussion

Petition Number: Z-15-57

Premises Affected: 503 S. Main St

Petitioner: Primrose

Relief requested: Variances from §6.6.2.1.c & 5.2.8.1.b to construct a daycare that exceeds 3,000 sf & a sign that exceeds the maximum allowed area & height

Members sitting: Brown, McDonough, Bargnesi, Rechisky, Wilson

Alternates: none

Petitioners' counsel requested a continuance without discussion to September 3, 2015. The public hearing opened on 6/4/15. McDonough made a motion to continue without discussion to 9/3/15. Bargnesi seconded the motion & the Board voted (5-0) to continue without discussion to 9/3/15.

Petition Number: Z-15-71

Premises Affected: 11 Oak St

Petitioner: Redfern

Relief requested: Variance from §4.1.2 &/or Special Permit under §3.3.5 to construct an enclosed front porch that will not meet the minimum front yard depth requirement

Members sitting: Brown, McDonough, Oltman, Rechisky, Wilson, Faulk, Bordonaro

Alternates: none

Petitioners requested a continuance without opening the public hearing to September 3, 2015. McDonough made a motion to grant the continuance. Bargnesi seconded the motion & the Board voted unanimously to continue to September 3, 2015.

New Public Hearings & Deliberations

Petition Number: Z-15-64

Premises Affected: 4 Arcadia Rd

Petitioner: Pierce

Relief requested: Special Permit under Art. VIII, §3.1.3.F.4 for the continued use of a family dwelling unit originally approved by Decision No. 3894.

Members sitting: Brown, McDonough, Bargnesi, Oltman, Bordonaro (for Magenheim)

Alternates: Rechisky, Faulk, Wilson

Brown disclosed that he had professional involvement in the original design phase of the project approximately ten years ago but feels that he can participate impartially, He has filed a disclosure notice. No one objected to his continued participation. Mr. & Mrs. Pierce represented themselves, explaining that Mr. Pierce's mother, Phyllis Dumart, continues to occupy the unit & that this is the second renewal. He asked whether, if the cooking facility were removed, he would need to renew the special permit again in five years. Brown suggested asking the Inspector of Buildings. There being no other questions or comments from the Board or the public, McDonough made a motion to waive the site view & close the public hearing. Oltman seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

McDonough made a motion to approve the special permit. Brown submitted a draft decision noting that the name, Phyllis Dumart, needs to be inserted. McDonough made a motion to approve the draft decision with the insertion of the occupant's name. Bargnesi seconded the motion & the Board voted (5-0) to grant the special permit & approve the draft decision.

Petition Number: Z-15-78

Premises Affected: 7-9 Shipman Rd

Petitioner: Viscosi

Relief requested: Special Permit under Art. VIII, §3.1.3.F.4 for the continued use of a family dwelling unit originally approved by Decision No. 3900

Members sitting: Brown, McDonough, Bargnesi, Oltman, Wilson (for Magenheim)

Alternates: Rechisky, Faulk, Bordonaro

Valerie Viscosi was present for a third renewal of a special permit for a family dwelling unit occupied by her parents. Brown reviewed the standard conditions of the permits: 5 year renewable term; specific to the owners/occupants; permit non-transferable. There being no other questions or comments from the Board or the public, Bargnesi made a motion to waive the site view & close the public hearing. McDonough seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

Brown submitted a draft approval to the Board suggesting the addition of the condition that the cooking facilities shall be removed once the unit is no longer occupied by Ms. Viscosi's parents. Bargnesi made a motion to approve the special permit with conditions as drafted & amended by Brown. McDonough seconded the motion & the Board voted (5-0) to approve the special permit with conditions.

Petition Number: Z-15-57 & Z-15-76

Premises Affected: 57 River Rd

Petitioner: Rossomando & Lindley

Relief requested: variance from Art. VIII, §3.1.3.C.6 to operate a retail sales establishment, &/or for a special permit under Art. VIII, §3.3.2 &/or §3.1.3.C.8 to allowed the continued operation of a non-conforming food service program by a private contractor &/or to allow such operation as a non-exempt educational use

Members sitting: Brown, McDonough, Bargnesi, Oltman, Faulk (for Magenheim)

Alternates: Bordonaro, Rechisky, Wilson

Attorney Carmel Gilberti represented the Petitioners. She gave an overview of the company's operations which include food preparation for Meals On Wheels for 30 years in New England. Attorney Michael Morris was present on behalf of the Greater Lawrence Technical School, where the meal preparation occurs. Gilberti informed the Board that Attorney Ana Bellos, for Merrimack Valley Elder Services, was unable to attend. Gilberti provided a history of the Meals On Wheels program, which started at the school, but most recently was

taken over by the Merrimack Valley Nutritional Program. Lindley has been awarded the contract and plans to move operations to Southern NH within ten months, by June 30, 2016. The Inspector of Buildings sent them to the ZBA due to the fact that Lindley is a private, for-profit company that wishes to operate its business inside the school, which is allowed to operate in the ID District by virtue of its status as an educational institution. Gilberti argued that the variance is not necessary, but rather a special permit is appropriate to allow the continued operation of a non-conforming food service program by a private contractor, or to allow such operation as a non-exempt educational use. The Board discussed the educational purpose and benefit of having the food preparation business operating within the school, its history and benefit to the community at large, as well as the imminent move to another facility. There will be no changes to the operation, nor will any more traffic be generated as a result of the change in operator. It is not a detriment. Attorney Morris summarized the school's role from the beginning of the program circa 1960, when the school created the Merrimack Valley Nutrition Project. There were 25-30 employees until 7/1/15, when the school stopped administering the program. Due to changes in the Federal and State funding sources, a private vendor was brought in. So as not to interrupt services and employment, the school is allowing Lindley to operate from the school for ten months before relocating. The Board discussed the educational component for the students and meal recipients (seniors) with Morris, who cited the Regis case on educational components. He believes that Section 3.3.2 allows the Board to grant proper relief for this situation. Gilberti note that once the program relocates outside of the school, students will have the option to continue participation as cooperative students off-site. Mark Cerretta, a Lindley Partner, informed the Board that this particular location prepares 1800-1900 meals per day that are delivered to 20 locations, which then plate and deliver the meals to individual recipients. Twice annually, Lindley provides training for staff regarding food safety. The Board discussed whether a special permit might be granted without the Dover use, making it easier for Lindley to stay without an expiration on an approval. Wilson requested that Attorney Gilberti provide a draft opinion. Gilberti agreed to provide it.

Brown then asked for evidence that the interpretation of the Inspector of Buildings is incorrect in order for the Board to overturn his decision and to grant relief as a Party Aggrieved. Gilberti requested to withdraw Z-15-76, Appeal as a Party Aggrieved, without prejudice. Bargnesi made a motion to accept the request to withdraw, McDonough seconded the motion and the Board voted (5-0) to allow the withdrawal without prejudice of Z-15-76. Regarding the requested variance from §3.1.3.C.6 (retail sales establishment) in Z-15-76, Brown then asked Gilberti for the operation's category in the Table of Use Regulations. Gilberti categorizes the use as a commercial kitchen or industrial use, not a restaurant. Morris noted that after speaking with the Inspector, they chose to apply for a special permit. Gilberti requested to withdraw without prejudice the request for a variance from §3.1.3.C.6. Bargnesi made a motion to withdraw the requested variance without prejudice. Faulk seconded the motion and the Board voted (5-0) to allow the withdrawal without prejudice.

The Board then considered Z-15-79: the request for special permits under §3.3.2 for a change in the non-conforming use and/or §3.1.3.C.8 for the continued operation of a non-conforming use by a private contractor and/or to allow such use as a non-exempt educational use. The Board discussed the fact that the use commenced 30 years ago and that the request is for the extension of this use. Gilberti summarized the request, stating that the social, economic good is served, that there are adequate utilities with no changes, except the operator, to the non-exempt educational use and that it will not negatively impact the environment or the neighborhood. Brown noted that the briefs submitted by Gilberti are part of the record. The Board discussed time limitations on an approval and whether or not the school profits from Lindley operating the program. It does not, except for compensation of expenses.

The Board then took a straw vote as to whether members would vote to grant special permits under Art. VIII, §3.3.2 & §3.1.3.C.8 with the appropriate findings under §9.4.2 with conditions and final review of the draft decision to be completed at the Board's meeting on 9/3/15. The sense of the Board was that such a motion

would garner sufficient votes to be approved. McDonough then made a motion to waive a site view and to close the hearing. Bargnesi seconded the motion and the Board voted (5-0) to waive the site view and to close the public hearing. The Board then proceeded to deliberate.

Bargnesi made a motion to approve the special permits under §3.3.2 & §3.1.3.C.8 subject to the draft findings and conditions which shall be reviewed and voted on at the Board's meeting on 9/3/2015. McDonough seconded the motion & the Board voted (5-0) to approve the special permits, subject to a final review of the draft decision and a formal vote at the 9/3/15 meeting.

Petition Number: Z-15-56

Premises Affected: 18 Buttonwood Dr

Petitioner: Berthiaume

Relief requested: variances §4.1.2 &/or §4.2.2 to construct a detached garage that will not meet the minimum front yard depth requirement

Members sitting: Brown, McDonough, Bargnesi, Rechisky (for Oltman), Wilson (for Magenheim)

Alternates: None

John Connolly, representative for the Berthiaume's, stated that no changes have been made to the plan since the hearing opened. He restated that the hardship relates to the configuration of the lot with no side or rear yard lot lines, the presence of ledge on the lot limiting possible locations for the garage expansion and the steep change in elevation from the street. The proposed front setback is 30'. Connolly argued that the number of garage stalls is irrelevant, reminding the Board that the abutters support the proposal. The Board discussed whether the garage is in keeping with the neighborhood character, the minimal encroachment of 12'x15' (4% of the proposed structure), the unique shape of the lot (nearly all front yard area due to long arc as front lot line, moving the garage back further from the front lot line, and how many stories the garage would have (2 due to slope of lot). The Board also contemplated the purpose of maintaining streetscape, the requirement to find that a literal enforcement of the bylaw would create a hardship and whether or not relief could be granted without derogation from the bylaw or detriment to the public good. There being no other questions or comments from the Board or the public, Bargnesi made a motion to waive a site view and to close the public hearing. Rechisky seconded the motion and the Board voted (5-0) to waive the site view and close the hearing. The Board then proceeded to deliberate.

Wilson, Rechisky and Bargnesi voiced their support of the petition, agreeing that hardship relates to topography and lot shape. McDonough and Brown voiced difficulty seeing a statutory hardship in this case, doubting that the proposed garage fits the character of the neighborhood and feeling that it did detract from the intent and purpose of the bylaw. Wilson argued that a hardship exists related to soil conditions, topography and shape of the lot and to grant the variance with conditions. The Board discussed the proposal, the lot and whether or not hardship exists. There did not seem to be a consensus and it was suggested that the petitioner's representative should be given the option to withdraw the application without prejudice. Bargnesi made a motion to reopen the public hearing. Rechisky seconded the motion and the Board voted (5-0) to reopen the public hearing. Connolly declined the offer to withdraw the petition without prejudice and asked the Board to vote tonight.

The Board once again voted unanimously to close the public hearing. Wilson made a motion to find that hardship exists related to topography, soil conditions and lot shape and to grant a variance with conditions. Bargnesi seconded the motion and the Board voted by roll call: Wilson – aye; Rechisky – aye; Bargnesi – aye; McDonough – nay; Brown – nay. The vote being (3-2), and four affirmative votes being required to grant a variance, the variance did not pass. Brown will write the decision.

Minutes:

Oltman made a motion to approve the minutes of 7/2/15 with Brown's revisions as submitted by email. There being no other revisions or corrections, Bordonaro seconded the motion to approve the minutes and the Board voted (7-0) to approve the minutes as revised.

Annual Election of Chair & Clerk:

Brown asked if there was any objection to taking votes without the participation of Magenheim. No one objected.

Chair: McDonough nominated Brown for Chair. Oltman seconded the nomination & the Board voted (8-0) to elect Brown as Chair for 1-year.

Clerk: Bargnesi nominated Magenheim for Clerk. Rechisky seconded the motion & the Board voted (8-0) to elect Magenheim as Clerk for 1-year.

Other Business:

Discussion of the revised Zoning Board of Appeals procedures to be deferred to September in order to allow more time for revisions & redistribution. Oltman has received some revisions from the Board.

There being no other business of the Board, Rechisky made a motion to adjourn the meeting. Bargnesi seconded the motion and the Board voted unanimously (8-0) to adjourn the meeting at 8:53 p.m.

Respectfully submitted,
Barbara Burke
Administrative Secretary