



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

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

The meeting opened at 6:30 p.m.

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

Petition Number: Z-15-71

Premises Affected: 11 Oak St

Petitioner: Redfern

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

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

Alternates: Rechisky, Faulk, Wilson

Mr. Redfern, represented himself & his wife, Perla, who was also present. He submitted a certified plot plan & power point slides depicting the existing & original house. The house is setback 10' from the sidewalk. They wish to construct a 5' wide by 4' deep portico. The Ballardvale Historic District Commission has reviewed the proposal & has required that the original brackets be restored & included. There are 1-2 steps from the porch. The Board discussed the support columns, brackets, the proposed dormers, the abutting houses, & the character of the neighborhood. There are some other homes on Oak Street with porticos, but not as close to the street. There being no other questions or comments from the Board or the public, Oltman made a motion to waive the site view & to 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 noted that the house pre-dates the bylaw & is therefore eligible for a special permit to construct the portico closer to the street & increase the dormers from 1 to 2. The proposal is consistent with the original house & would not be detrimental to the neighborhood. McDonough made a motion to grant a special permit under 3.3.5 with the conditions that the portico & dormers shall be constructed in substantial conformance with the plot plan & drawings submitted and to deny the variance from 4.1.2 as moot. Magenheim seconded the motion & the Board voted (5-0) to grant the special permit with conditions & to deny the variance as moot. Oltman will write the decision.

Petition Number: Z-15-89

Premises Affected: 13 Carlisle St

Petitioner: Cooper

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

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

Alternates: Rechisky, Faulk, Wilson

Mrs. Alison Cooper represented herself & her husband in their request to replace an existing 4'x6' covered side entry with a 7.5' x 18 ¾' addition to include a mudroom, bathroom & laundry room with stairs going toward the rear. The proposed side setback is 10' and is consistent with the neighborhood. Their house was built circa

1919. They have spoken with abutters. No one voiced opposition. Eric Daum, 15 Carlisle St., was present & spoke in favor. There being no other questions or concerns from the Board or the public, McDonough made a motion to waive a site view & to close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

None of the Board voiced any concern with the proposal, noting that it is in character with the neighborhood. Bargnesi made a motion to grant a special permit under 3.3.5 with the conditions that the addition shall be constructed in conformance with plot plan and drawings and to deny the variance from 4.1.2 as moot. McDonough seconded the motion & the Board voted (5-0) to grant the special permit with conditions & to deny the variance as moot. Magenheim will write the decision.

Petition Number: Z-15-91

Premises Affected: 166 Greenwood Rd

Petitioner: Keefe / Aja

Relief requested: Special Permit under Art. VIII, §3.3.5, & §3.3.7 to raze an existing single family dwelling & reconstruct on a lot that does not meet the minimum area or frontage requirements

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

Alternates: Rechisky, Faulk, Wilson

Attorney Mark Johnson represented the petitioners & submitted photos of the pre-existing, non-conforming house noting that the proposed house will meet the setbacks. Johnson submitted a memo that includes a title history & assessor's records demonstrating that the house was built in 1940. He also submitted a letter of support signed by six abutters. Johnson explained that the existing house is in poor condition. There being no other questions or comments from the Board or the public, Bargnesi made a motion to waive a 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 deliberated.

The Board did not voice any concerns with the proposal & noted that the footprint of the proposed house is smaller than the existing, non-conforming house. Magenheim made a motion to grant a special permit under 3.3.5 to raze the existing single family dwelling & to allow the construction of a new single family dwelling with the conditions that it shall be constructed in substantial conformance with the plot plan & plans submitted and to deny the special permit under 3.3.7 as not applicable. Bargnesi seconded the motion & the Board voted (5-0) to grant the special permit under 3.3.5 with conditions. Brown will write the decision.

Petition Number: Z-15-92

Premises Affected: 77 Main St

Petitioner: Caffe Nero Americas

Relief requested: Special Permits under Art., §§3.1.3.C.12.b & 3.1.3.F.8 to operate a 'fast food' restaurant, a variance from Art. VIII, §5.2.9 to install signs that don't meet the zoning bylaw

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

Alternates: Rechisky, Faulk, Wilson

Attorney Mark Johnson and Jason Souza, area director for Caffe Nero Americas were present. Johnson requested to withdraw without prejudice the requested sign relief under Art. VIII, §5.2.9. Oltman made a motion to allow the withdrawal without prejudice the requested variance from Art. VIII, §5.2.9. Magenheim seconded the motion & the Board voted (5-0) to allow the withdrawal. Johnson then gave an overview of the proposed use (café with 53 indoor seats & 4-6 outdoor seats). DRB has reviewed signage & proposed exterior changes. The lower level will be used for food preparation & restrooms. The outdoor seating will be located on

a 15' long x 4.5' deep patio at the side of the building. Hours of operation are proposed to be 6 am – 10 pm. Johnson noted that the draft decision that he prepared states 10 am, but it should be pm. There will be a slight alteration to the location of the front door location & the installation of open-air windows. Julie Pike, of the Commission on Disability, voiced her hope that the outdoor seating will comply with ADA standards. There being no other questions or comments from the Board or the public, Oltman made a motion to waive a site view & to close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the site view & close the public hearing. The Board then deliberated.

McDonough made a motion to approve the special permits under §§3.1.3.C.12.b & 3.1.3.F.8 with conditions as drafted by Johnson. Magenheim seconded the motion & the Board voted (5-0) to grant the special permits with conditions. McDonough will revise the draft to reflect the proceedings & vote.

Petition Number: Z-15-93

Premises Affected: 78 Pine St

Petitioner: Nowak

Relief requested: special permit under Art. VIII, §3.3.5 to construct a garage extension & front entry that won't meet minimum front or side yard depth requirements

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

Alternates: Rechisky, Faulk, Wilson

Joanne Nowak, 15 Fossen Way, represented herself. She wishes to extend an attached garage and add a 37 sq. ft. vestibule to increase accessibility in her home. The 1953 house is on a corner lot and abuts the AVIS Collins Reservation land. Lucerne Drive was built in 1957. The proposed garage setback will be less than 4' to the side lot line. The existing setback is 13.4'. Susan Spark, of 89 Pine St. across the street, stated that the proposal conforms with & enhances the character of the neighborhood. Julie Pike, 82 Pine St., spoke in favor. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board deliberated.

Brown noted that in 1953 the structure was pre-existing, non-conforming. The Board discussed that while the 4' side setback is small, the abutting AVIS land is protected. Oltman made a motion to make the findings to grant a special permit under Art. VIII, §3.3.5 to construct a garage extension & front entry that won't meet minimum front or side yard depth requirements with the conditions that the work is constructed in substantial conformance with the plot plan & drawings submitted. Magenheim seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Bargnesi will write the decision.

Petition Number: Z-15-79

Premises Affected: 57 River Rd

Petitioner: 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

Alternates: None

This is a continued deliberation. Brown summarized the draft decision, reciting the findings & requirements of Section 9.4 regarding non-conforming uses. The Board had voted at the 8/6/15 meeting to approve special

permits under Art. VIII, Sections 3.1.3.C.8 & 3.3.5 for the continued operation of the food service establishment at the school with the conditions that the special permits are granted to Lindley as long as the Merrimack Valley Food Service non-profit continues in this location and that the program continues to offer employment opportunities to the school's students. McDonough made a motion to adopt the draft findings & conditions. Bargnesi seconded the motion & the Board voted (5-0) to adopt the draft findings & conditions. Faulk will refine the draft & add the list of documents considered.

Minutes:

Oltman made a motion to approve the minutes of 8/6/15 with Brown & Bordonaro's revisions as submitted by email. There being no other revisions or corrections, Faulk seconded the motion to approve the minutes and the Board voted (8-0) (Magenheim abstained) to approve the minutes as revised.

The Board took a 5-minute break.

Petition Number: Z-15-57

Premises Affected: 503 S. Main St.

Petitioner: Primrose

Relief requested: variances §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, Magenheim, McDonough, Bargnesi, Rechisky

Alternates: None

Attorney Adam Costa was present on behalf of Attorney Mark Bobrowski, counsel for the Petitioner. Also present for the petitioner was Engineer Bill MacLeod to review the changes that were made pursuant to the Planning Board Site Plan Review process. Costa submitted a draft approval via e-mail. Brown noted that only he had seen it as it was not distributed to the other Board members. The changes made since the last meeting include: reduction of sign height from 7' to 5.5' (19 sq. ft. area), and a Notice of Intent was submitted to the Conservation Commission with drainage calculations. The conservation Commission's public hearing was opened, the drainage report was sent out for peer review, and an Order of Conditions was issued. Pursuant to the Planning Board meeting and IDR, the 7/28/15 plan incorporates changes discussed during those meetings (dumpster location, infiltration basin, southerly boundary fence, & landscaping/fence on northerly boundary. Vanasse Associates conducted a traffic study, which was reviewed by the Andover Police Public Safety Officer, whose suggestions were incorporated into the revised site plan. The Board discussed the relocation of the driveway, the sign setback, outdoor recess time, & playground locations. Office Charles Edgerly, Andover Police Safety Officer, was present at Chair Brown's request. He summarized his review of the traffic study, noting the biggest issue to be resolving the crash data (on-line v. MA DOT data) and the inclusion of data back to 2013. Officer Edgerly summarized the types of crashes (weather related, rear-enders, animal collisions), the level of service (A) with a 25-30 second wait time to exit, the very low incidence of crashes in the past 5 years, & his concern regarding the 45 MPH zone with two travel lanes. Edgerly had visited the site & found the sight line conditions to exceed the requirements. He has spoken with the Primrose School in Burlington. The Board asked if the traffic is expected to increase with 190 student slots. Edgerly explained that usually these schools operate at 75% capacity and the pick-up/drop-off times are staggered.

Spence Zowaski, 487 S. Main St., asked about recommended traffic signage for school zones. Jessica Cavallaro, 498 S. Main St., asked about the speed limit. Edgerly explained that it is MASS DOT layout & the Town can't change the speed limit or erect signs in the layout. It is possible to erect a yellow diamond sign warning of school zone. The Board discussed with the applicant the pick-up/drop-off schedule (school hours are 6:00 am – 6:30 pm) with some part-time students.

Attorney Victor Manougian, of McLane Law Firm, represented Kinder Care, a nearby business, and Nancy Simili, property owner of the lot where Kinder Care is located. Manougian argued that a variance is not appropriate because a hardship does not exist related to the soil conditions, shape or topography of the land. He argued that the request to construct a facility in excess of the 3,000 sq. ft. allowance would be a detriment to the public good & that the competition is a financial detriment to his clients. The Board discussed the statutory requirements of hardship & exemptions under Ch. 40A, Section 3 specifically relating to reasonable regulations of the bulk / height of educational & religious uses such as childcare. The Board discussed the other centers on South Main Street, both of which required zoning relief, case law regarding reasonable regulations (Primrose v Natick) & Zoning Board leeway under the Dover Amendment. The Board noted that zoning regulations do not regulate or have authority regarding competition.

Eva Pavlic, 497 S. Main St., voiced opposition, citing traffic safety, crime, lack of street lights, loss of trees, increased noise, & proximity of the facility to the lot line abutting her property (52') as too close. MacLeod gave an overview of the site's topography, noting that any trees to be removed would be on site, not on abutting properties. There would be more trees & landscaping planted for buffering of noise/sight. He mentioned that Ms. Pavlic's house is on a knoll above the subject property. The Board discussed enrollment ages & rates, screening, tree height / saving mature trees & on sight lighting.

Doris Kelly, 498 S. Main St., asked about the driveway & on-site circulation voicing concern over cars backing up onto the street. MacLeod explained the on-site traffic flow meeting the industry standard. Nancy Simili submitted a letter of opposition. Jianhua Shen, 502 S. Main St., voiced opposition.

The Board discussed with the applicant consideration of a smaller facility, the necessity of the proposed size & the unique variance request (they were sent to the ZBA by the Inspector of Buildings who cites the Dover statute of reasonable regulations in his memo to the Board). MacLeod offered to submit the Assessor's Data regarding Kinder Care's square footage as a comparison to the Primrose proposal.

Costa reminded the Board that their jurisdiction is in relation to the Dover Amendment's reasonable regulation. Patricia Hubbard, 487 S. Main St., voiced concern regarding overnight lighting.

Brown asked to see the Planning Board's conditions prior to closing the ZBA hearing. He asked the applicant to submit a statement regarding lighting. He asked Manougian to submit relevant case law. Brown asked for a sign proposal more in keeping with the neighborhood. The Board discussed the proposed sign style & size. Costa agreed to submit a revised sign design.

Brown suggested continuing the public hearing to 10/1/15 in order to receive additional information from the attorneys. Brown asked for an extension of time for the Board to act until at least 11/9/15. There being no other questions or comments from the Board or the public, Magenheim made a motion to continue the hearing to 10/1/15. Rechisky seconded the motion & the Board voted (5-0) to continue the hearing to 10/1/15.

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 (6-0) to adjourn the meeting at 10:10 p.m.

Respectfully submitted,
Barbara Burke
Administrative Secretary