



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

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810  
January 7, 2016**

The meeting opened at 7:00 p.m.

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

Brown gave an overview of the Zoning Board procedure.

**Petition Number: Z-15-149**

**Premises Affected: 89-93 Main Street**

**Petitioner: Revitalive**

**Relief requested: special permit §3.1.3.C.12.b to operate a food establishment characterized as a fast-food restaurant under Art. VIII, §10 and special permit §3.1.3.F.8 for the temporary seasonal placement of tables and chairs**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Wilson (for vacant seat)**

**Alternates: Bordonaro, Faulk**

Attorney Richard Kallman represented the petitioners, Anna Forkan and Kristen Overlock, owners of Revitalive at 50 Water St., Newburyport, MA, who were also present. They wish to operate a second location of their fast-food restaurant in an 1800 sq. ft. unit facing the courtyard in Andover Village Square. They requested to withdraw without prejudice the request for a special permit under Art. VIII, §3.1.3.F.8 for the temporary seasonal placement of tables and chairs. They stated that they will work with the landlord to utilize the group seating in the courtyard area of the building. Magenheim made a motion to allow the withdrawal without prejudice of the special permit requested under Art. VIII, §3.1.3.F.8. McDonough seconded the motion and the Board voted (5-0) to allow the withdrawal without prejudice.

The Board then discussed the proposed restaurant: frequency of deliveries, hours of operation, food service method, trash receptacles, and noise mitigation for upper floor residential tenants. Deliveries will be made daily around 5-6 a.m., and midday if restocking is necessary, by small delivery van. Stock is brought in by way of the back door. The restaurant model is 'grab and go'; there is no table service. The landlord will be responsible for providing and maintaining trash receptacles in the courtyard. An on-site dumpster and recycling container are also maintained by the property management. John Fenton, managing principal, commented that the residential tenants will not be adversely affected. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and to close the public hearing. Wilson seconded the motion and the Board voted (5-0) to waive the site view and close the hearing. The Board then proceeded to deliberate.

Brown submitted a draft approval with conditions. He suggested eliminating condition #6, inserting language regarding the vote to allow the request to withdraw without prejudice the requested special permit for outdoor seating under §3.1.3.F.8 and adjusting the hours of operation for a 10 p.m. closing time. Magenheim noted the lack of a certified plot plan. Wilson made a motion to approve a special permit under Art. VIII, §3.1.3.C.12.b with the appropriate findings and the aforementioned conditions as set forth in the draft approval submitted by

Brown. Magenheim seconded the motion and the Board voted (5-0) to grant the special permit with conditions. Wilson will complete the draft decision.

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

- Floor plan entitled “Equipment and Casework Plan, Revitalive,” prepared by Carroll Design Studio and dated July 28, 2015.
- “Site Plan Showing Location of Premises,” undated.
- Letter dated December 15, 2015, from John Fenton, representing Lincoln Essex OAV, LLC, the owner of Andover Village Square, authorizing Anna Forkan to apply for the requested relief.
- Copies of ZBA Decision Nos. 3338, 3788, Z-14-112, Z-14-128, Z-14-153 and Z-15-41.

**Petition Number: Z-15-152**

**Premises Affected: 21 Topping Rd.**

**Petitioner: Sullivan**

**Relief requested: special permit §3.3.5 and/or variances §4.1.2 and/or §4.2.2 to remove an existing detached garage and construct a new detached garage in the front yard area, neither of which meet setback requirements**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Wilson (for vacant seat)**

**Alternates: Bordonaro, Faulk**

Ryan L. Sullivan, owner, represented himself in his request for a special permit under §3.3.5 and/or for variances under §4.1.2 and/or §4.2.2 to remove and reconstruct a non-conforming detached garage. The existing garage faces Celia Street on his corner lot. It is in poor condition. He submitted a revised plot plan (“Plan B”) depicting the garage 20’ from both Topping Road and Celia Road with the driveway oriented to Topping Road rather than toward Celia Road where the existing garage and driveway are located. He has spoken with the immediate abutter on Celia Street regarding the driveway location and agreed to change it to Topping Road. The existing house was built circa 1922, as was the garage according to the records Mr. Sullivan has seen. Mike Chamberlain, 4 Celia Rd., spoke in favor as long as the driveway exits onto Topping Rd. Sullivan submitted an Assessor’s Map depicting the existing driveway onto Celia Rd., a short, narrow, dead-end street. There being no other questions or comments from the Board or the public, Magenheim made a motion to waive the site view and to close the deliberation. McDonough seconded the motion and the Board voted (5-0) to waive the view and close the hearing. The Board then proceeded to deliberate.

Brown submitted a draft approval to grant a special permit with the finding that the house and the existing detached garage pre-date the zoning bylaw, therefore qualifying as pre-existing, non-conforming structures. The Board agreed that “Plan B” is a better option. Brown suggested adding to the draft approval’s evidence list the revised plot plan and the condition that the existing garage shall be demolished and the area landscaped. Magenheim made a motion to grant the special permit with the findings and conditions as drafted and revised and to deny the variances as moot. Oltman seconded the motion and the Board voted (5-0) to approve the draft decision with the changes noted.

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

- Certified Plot Plan of 21 Topping Road, prepared by Andover Consultants, Inc., and dated 12-8-2015.

- Revised Certified Plot Plan of 21 Topping Road, prepared by Andover Consultants, Inc., and dated 1-4-2016.
- Exterior rendering and floor plan of proposed garage, designated Plan ID chp-22242, printout dated 12/16/2015.
- Photographs of existing garage at 21 Topping Road.

**Petition Number: Z-15-122**

**Premises Affected: 165 Haverhill St.**

**Petitioner: Lawrence General Hospital (LGH)**

**Relief requested: variance §§5.2.8.1.A and b and/or special permit §§5.2.5.1 and 5.5.5.3 to erect more than the allowed number of signs and to internally illuminate said signs**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Faulk (for vacant seat)**

**Alternates: Wilson, Bordonaro**

Brown noted that the legal ad improperly states relief requested for special permits under Art. VIII, §§ 5.2.5.1 and 5.2.5.3 and that the request was misread from the application and should have been advertised as variances. There was no disagreement and no objection to Brown's correction. Jay Kahn, of The Sign Center, represented Lawrence General Hospital. Also present were Rob Denise, facility manager at LGH, and Rick Feldman of Feldman Associates. Mr. Kahn gave an overview of the site: a philanthropic facility located in the SRB zoning district allowed by Zoning Board decision numbers 2618, 3950 and 4060. The most recent decision allowed the medical partner facility use. LGH will operate an outpatient rehabilitation center with physical and speech therapy, as well as primary care from pediatrics to geriatrics. They wish to install an internally illuminated on-site directional sign that will exceed the maximum allowed sign area and maximum number of signs allowed on a lot. The proposed sign will be set back approximately 300' from Haverhill Street and 75' from the nearest side lot line. The proposed directional sign has an area of less than 7 sq. ft. and only the lettering plus Y logo will be illuminated during operational hours (8 a.m. to 6:30 p.m. for LGH) The letters are 1- 1 ½" tall. It is single-sided, not visible from beyond a 25' radius, will not create light pollution, and is in harmony with the public interest and intent of the bylaw. It will facilitate on-site traffic flow. The Board discussed on-site traffic patterns and suggested that a directional arrow for the Y be added to the sign to further clarify where drivers should go. Brown asked for confirmation that the design is as submitted tonight by Kahn for the 25" x 44" sign with the base at 24" above grade on a plan prepared by 'the sign center' dated 11/24/15. Kahn confirmed that is the current design for the proposed sign. Kahn argued that the internal illumination of the letters only is minimal compared to the entire sign being illuminated, which would cast a glare.

Bob Carter, Unit 211, Coachman's Ridge, opposite abutter from the YMCA site, confirmed with the Board that they had submitted a petition in opposition. Brown confirmed receipt of the petition. Carter explained that the signatories had understood that the sign would be larger and would be located at the street rather than further back on the Y's property. David Fligg, also an abutter residing at Coachman's Ridge, confirmed that there was a misunderstanding of the proposal. Both Carter and Fligg stated their support of the current proposal as presented tonight. Rich Feldman and Rob Denise apologized for the lack of communication to abutters. There was a question whether the sign would be lit all night. It will not be lit overnight. There being no other questions or comments from the Board or the public, Magenheim made a motion to waive a site view and to close the public hearing. McDonough seconded the motion and the Board voted (5-0) to waive the site view and close the hearing. The Board then proceeded to deliberate.

The Board feels that the proposed directional sign is appropriate for the use; it will facilitate on-site traffic flow and minimize light pollution. It is not a detriment to the neighborhood since it is far from the street and the

applicant made compromises in order to design an appropriate sign. Brown asked for a sense of the Board in order to draft a decision that would be voted on next month. The Board unanimously voiced favor in granting variances for the proposed sign. McDonough made a motion to continue the deliberation to 2/4/16. Magenheim seconded the motion and the Board voted (5-0) to continue deliberation to 2/4/16 for the purpose of discussing and voting on a final draft of the decision. Faulk will draft the decision.

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

- Request for Continuance letters dated 10/19/15 from Jessica Titus of the sign center and 11/30/15 from Anne-Marie Byrd of the sign center .
- Sign schematic dated 11/24/15, prepared by N. Earle, the sign center.
- Sign schematic dated 11/4/15, prepared by N. Earle, the sign center.
- Petition in opposition from residents of Coachman's Ridge dated 1/4/16.
- Second revised application received 11/16/15.
- Revised application received 10/13/15.

**Petition Number: Z-15-137**

**Premises Affected: near 350 Lowell Street**

**Petitioner: Verizon**

**Relief requested: special permit §6.1 to install CRAN on existing utility poles throughout town within the Town right-of-way**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Bordonaro (for vacant seat)**

**Alternates: Wilson**

Attorney Chris Swiniarski represented Verizon. He noted that on 12/18/15 he submitted a list of the additional locations for the CRAN, text of removal provisions contained in the lease agreement and a sample of other municipalities' treatment of such applications. On 1/5/16, he submitted a draft approval by email which was distributed to the Board by the Administrative Secretary this evening. The Board discussed the table of proposed locations' lack of exact pole numbers and the concern over not notifying the abutters of the other CRAN locations. Swiniarski explained that the exact location of the other installations will be determined by the market demand and that other towns' treatment ranged from an on-line building permit to presentation before their Board of Selectmen. Brown noted that he'd requested Town staff comment, with no response, except for the Inspector of Buildings who was present at the public hearing. Inspector of Buildings Chris Clemente agreed with Chair Brown that relief is required for the proposed CRAN since it fits the bylaw's definition of a wireless communication facility. He added that Building Permits are not usually issued for work on utility poles, but usually the Board of Selectmen conduct hearings for work within the Town right of way. He also spoke with the Electrical Inspector, Paul Kennedy, who informed him that electrical permits are sometimes issued for the meter. McDonough highlighted Town Counsel's submission specifically asking the Board if the applicant will submit to the Board of Selectmen. Swiniarski was uncertain. The Board discussed with Inspector Clemente whether all work within the Town right of way requires Board of Selectmen review. Swiniarski disagreed with Clemente's statement that it does, specifying that only the placement of new things requires Board of Selectmen. It was unclear exactly what requires Board of Selectmen review. The Board suggested that the applicant return with a detailed list of additional locations once they have been determined. Swiniarski agreed. The Board discussed the need for abutter notification for each of the specific pole locations. Brown suggested that the Board put aside the 'blanket' permit for town-wide installation of the proposed CRAN and deal only with the pole located near 350 Lowell Street and for the applicant to return for the other 7 locations so that abutters can be properly notified. The Board confirmed with Swiniarski that the pole number provided for 350 Lowell Street is definite. Verizon will reapply for the specific pole locations so that the

abutters can be notified. The Board also discussed the need for a bond for removal costs of the CRAN in case of abandonment per Art. VIII, Section 6.1.9, and determined that no bond would be necessary. Swiniarski agreed. There being no other questions or comments from the Board or the public, Oltman made a motion to close the public hearing. Magenheim seconded the motion and the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate.

The Board agreed to grant the special permit for the one (1) pole near 350 Lowell Street. The Board took a straw vote to draft an approval with conditions and to continue the deliberation to 2/4/16 for the purpose of discussing and voting on a final draft of the decision. McDonough made a motion, Magenheim seconded the motion and the Board voted (5-0) to draft an approval with conditions and to continue the deliberation to 2/4/16.

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

- Draft decision by Attorney Chris Swiniarski submitted by email on 1/5/16 to secretary
- “Permitting and Regulation of devices attached to utility poles” email exchange between David Brown and Chris Clemente 1/6/15
- Memorandum from Thomas J. Urbelis, Esq., Town Counsel, dated 12/30/15 re: Verizon’s Proposed Town Wide Cloud Radio Access Network
- Supplement to Application from Attorney Swiniarski dated 12/18/15 received 12/28/15
- Memorandum from Thomas J. Urbelis, Esq., Town Counsel, dated 6/27/05 received most recently 12/14/15 re: Applicability of Wireless By-Law to GridCom Telecommunications Facilities

### **Approval of Minutes of 12/3/15:**

Brown noted that he made revisions that were submitted by email. McDonough made a motion to approve the minutes of 12/3/15 as revised by Brown. Magenheim seconded the motion and the Board voted (6-0) to approve the minutes as revised.

### **Discussion Items:**

Proposed Zoning Bylaw revised definition of ‘fast-food’ restaurant- to streamline the process and to make it more business-friendly. Brown asked the Board if they wanted to be listed as a sponsor of the Town Meeting article. The Board does not want to sponsor the proposed bylaw revision.

Family Dwelling Units – Brown informed the Board that Town Counsel stated that an administrative renewal of a special permit cannot be done without a public hearing process. He submitted a draft template with further clarity including language regarding the expiration / renewal of special permits for family dwelling units. The Board agreed to use the draft template.

Revised ZBA Rules & Regulations – the Open Meeting Law (OML) requires a final vote to be taken in an open meeting on draft decisions. The Board discussed the option of a separate deliberation meeting and/or to draft decisions prior to a meeting. The consensus of the Board was that it will be necessary to prepare drafts decisions including appropriate findings and conditions before a final vote is taken at a public meeting, in order to comply with the requirements of OML.

The Board also discussed the requirement or waiver for a certified plot plan and the option to deny an incomplete application or delay the public hearing process in order to obtain all required documents.

Magenheim felt that a Certified Plot Plan is crucial for relief requested that involves structural changes. The Board agreed that applications that request relief from or under §3.1.3, the Table of Use Regulations could be exempted from the requirement for a Certified Plot Plan. Brown will incorporate such language into the draft of the revised rules & regulations

There being no other business of the Board, Magenheim made a motion to adjourn the meeting. Faulk seconded the motion and the Board voted unanimously (7-0) to adjourn the meeting at 9:51 p.m.

Bordonaro informed the Board that she will not be present at the March meeting.

Respectfully submitted,  
Barbara Burke  
Administrative Secretary