



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

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

The meeting opened at 7:00 p.m.

Present were: David W. Brown, Chair; Neil Magenheim, Clerk; Carol McDonough & Elizabeth Oltman, Members; Denise Bordonaro, Lisa Rechisky, Kathy Faulk, Associate Member.

Brown gave an overview of the Zoning Board procedure.

Petition Number: Z-16-10

Premises Affected: 9 Chapman Ave

Petitioner: Bositis

Relief requested: special permit under Art. VIII, § 3.3.5 &/or variance §4.1.2 to construct additions/alterations that won't meet minimum side or rear setback requirements

Members sitting: Brown, Magenheim, Oltman, Faulk

This is a continued deliberation to vote on the draft decision to approve a special permit with the conditions that the additions & alterations shall be constructed in substantial conformance with the plot plan and plans submitted with the application. There were no further revisions or corrections to the draft, as written by Oltman and revised by Brown. Faulk made a motion to approve the draft decision as revised by Brown. Magenheim seconded the motion & the Board voted (4-0) to approve the draft decision with conditions.

Petition Number: Z-16-9

Premises Affected: 23 Arundel Street

Petitioner: McCumber

Relief requested: variances §§4.1.2 &/or 4.2.2 to remove an existing shed & replace with a larger shed in the front yard that will not meet the minimum required front setback

Members sitting: Brown, Magenheim, Oltman, Faulk

This is a continued deliberation to vote on the draft decision to approve a variance with the conditions that the shed shall be constructed in substantial conformance with the plot plan and plans submitted with the application. In reviewing the conditions, the Zoning Administrative Secretary, Barbara Burke, noted that Condition #5 regarding the issuance of a building permit is invalid since a building permit is only required for structures over 200 sq. ft. and the shed will not meet that threshold. Inspector of Buildings Chris Clemente confirmed the threshold for a building permit. The Board agreed to strike condition #5. The Board revised condition #4 striking the words "... issuance of a building permit for the shed" and replacing them with "...effective date of this decision." There were no further revisions or corrections to the draft. Magenheim made a motion to approve the revised draft decision. Oltman seconded the motion & the Board voted (4-0) to approve the draft decision with conditions.

Petition Number: Z-16-17

Premises Affected: 8 Smithshire Estates

Petitioner: Kachouh & Fournier

Relief requested: variances §4.1.2 &/or special permit under §3.3.5 to construct a one bay garage addition that will not meet the minimum required side setback

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

Alternates: Faulk, Rechisky, Wilson

Deborah Fournier represented herself & her husband in their request to construct a one-bay garage addition onto the existing attached garage. The proposed side setback is 7'. The house was built in 1957 and is the only one with a single stall garage. The direct abutter has no objection, nor do other neighbors. The Board discussed the design, the dimensions of the proposed addition, and its close proximity to the lot line. Ms. Fournier explained the design will maintain the current exterior wall & once the addition is done, a 10' wide opening will be cut into it to attach the two bays. The Board asked if the lot has any unusual characteristics related to shape, topography or soil conditions of their lot that aren't characteristic of the neighborhood that create a hardship. Fournier stated there is a slight slope at the rear of the lot, not near the garages, but the abutters' houses & lots are similar. She noted that their house is atop a knoll. Brown asked the Board if they want to conduct a site visit. Oltman & Magenheim disclosed that they viewed the premises individually prior to the hearing. No other Board Member expressed need to view the property. There being no other questions of comments from the Board or the public, Magenheim made a motion to waive the site view, close the public hearing and to deliberate the matter. McDonough seconded the motion & the Board voted (5-0) to waive the view, close the hearing & deliberate. Magenheim & Brown expressed difficulty in determining a hardship. Brown noted that the garage is wide at 28' & that it could be reduced. Oltman reminded the Board of the structural reasons given to the applicant for not being able to move the existing beam. Bordonaro stated that the reasoning was financial & not structural. The Board discussed potential increase in the setback if the beam was removed & that the garage can still be a functional 2-bay garage. Brown suggested that if Smithshire Estates was approved prior to the house being built, it may be eligible for a special permit as requested as a pre-existing, non-conforming lot & structure. Faulk showed Brown the deed on-line referring to a 1956 plan, after the 1955 zoning bylaw change in dimensional requirements. Brown suggested that a variance could be granted with a condition that the addition can't be any closer to the side lot line than 9.5' and with a finding that there is no evidence present to support a finding that it's a pre-existing, non-conforming structure and to deny the special permit under §3.3.5. The Board took a preliminary vote (5-0) to grant the variance with conditions and to deny the special permit. The Board continued the deliberation to the next regularly scheduled meeting on May 5, 2016 for the purpose of taking a final vote on the draft decision. Oltman will draft the decision.

Petition Number: Z-16-28

Premises Affected: 11 Bartlet St

Petitioner: S & M Subs, LLC

Relief requested: special permit under Art. VIII, §3.1.3.C.12.b for the continued operation of a fast-food restaurant

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

Alternates: Bordonaro, Faulk, Rechisky

Steven Haginicolos, owner of Kings Subs since 1988, was present to obtain a special permit for the continued operation of the establishment. Due to required updates per Board of Health requirements and recent confusion regarding the business' ownership, as well as a prior decision for an abandoned special permit (Z-14-110) issued to a potential buyer, Haginicolos was sent to the ZBA to obtain his own special permit. A special permit had never been issued for the establishment. The Board reviewed the conditions of Z-14-110 asking if the

hours of operation were consistent with current hours. The current hours are 11 am – 9 pm, except on Friday & Saturday it closes at 10 pm. There are still 36 seats. There being no other questions or comments from the Board or the public, Magenheim made a motion to waive a site view, close the public hearing & to deliberate. Oltman seconded the motion & the Board voted (5-0) to waive the view, close the hearing & to deliberate. Brown made a motion to grant the special permit for the continued operation of the restaurant with the same conditions as set forth in Decision Z-14-110 except that the hours of operation may be until 10 pm each night and the name shall be updated to reflect the current owner. Magenheim seconded the motion & the Board took a preliminary vote (5-0) to grant the special permit with conditions. The Board continued the deliberation to the next regularly scheduled meeting on May 5, 2016 for the purpose of taking a final vote on the draft decision. Magenheim will write the decision.

Petition Number: Z-16-29

Premises Affected: 50 Topping Rd

Petitioner: Paquette

Relief requested: special permit under Art. VIII, §3.3.5 &/or for a variance from §4.1.2 to construct a front porch that won't meet the minimum front yard depth requirement

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

Alternates: Bordonaro, Faulk, Rechisky

Bordonaro disclosed that she knows the applicant but feels that she can be impartial. There was no objection to her participation in the hearing. Chris Paquette represented himself & explained that he obtained approval for the porch & a 2-story addition in Decision No. 3257 (filed 12-10-02). The second story was constructed but time & money ran out. The photos submitted depict the house with a set of front stairs, but no portico over them. Magenheim informed the Board that he drove by the property and the photos are inaccurate. There is a portico with columns over the stairs now. Paquette explained that due to water damage, he obtained a building permit to replace the door & repair the damage. The Board discussed the lack of a certified plot plan & how the mortgage inspection plan from 1991 does not depict the proposed porch & setback. Brown suggested continuing the hearing to 5/5/16 in order to receive a certified plot plan. Robert Charland, 52 Topping Rd., & James Peters, 46 Topping Rd., spoke in support of the application. Five other residents raised their hands in support of the Paquettes. Rechisky requested updated photos for the record. The Board continued the hearing to 5/5/16 in order to receive the required certified plot plan & current photos.

Petition Number: Z-16-31

Premises Affected: 89-91 Main St

Petitioner: Perry

Relief requested: special permit under Art. VIII, § 3.1.3.C.12.b for the continued operation of a fast-food restaurant under new ownership

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

Alternates: Bordonaro, Faulk, Rechisky

Matthew J. Perry, 81 Dascomb Rd., Andover, was present with his wife requesting a special permit for the continued operation of the Lantern Brunch restaurant. They propose to renovate & expand the restaurant by approximately 350 sq. ft. for a total of 1100 sq. ft. Perry reviewed the changes they intend to make to the layout noting that the business model of sit-down dining will remain the same. The Board questioned why the Perry's were requesting the special permit for a fast-food restaurant if the primary use is sit-down restaurant. Perry & John Fenton, property manager, stated that they were advised to file with the ZBA. The Board determined that based on the definition of a 'sit-down' restaurant that this use conforms with that definition and not as a 'fast-food' restaurant. Wilson made a motion to waive a site view, close the public hearing & to

deliberate. Oltman seconded the motion & the Board voted (5-0) to waive the view, close the hearing & deliberate. The Board then proceeded to deliberate. Brown made a motion to find that a special permit for fast-food restaurant is moot since the business model conforms to the definition of a sit-down restaurant. The Board took a preliminary vote (5-0) to find the special permit as moot. The Board continued the deliberation to the next regularly scheduled meeting on May 5, 2016 for the purpose of taking a final vote on the draft decision. Brown will write the decision.

Associate Member Rechisky left the remainder of the meeting.

Determination on Request for Modification of Comprehensive Permit #3312

Determination as to whether the Notice of Project Change filed by Salvatore Lupoli on behalf of The Hamilton Company [Comp Permit holder of record] for changes to the Comprehensive Permit Project known as Hamilton Green at 311 Lowell Street, Andover, MA constitutes a substantial change to the Project, pursuant to 760 CMR 56.07(11).

Rick Friberg, engineer at TEC, was present on behalf of the applicant, Sal Lupoli. Friberg reviewed the request to remove the existing, affordable 3-bedroom single family house & to relocate it within the existing buildings at Hamilton Green Apartments noting that the family who occupied the house has already been moved into a 3-bedroom unit. Lupoli has created a proposal to donate a total of \$100,000 over 3 years to Andover Community Trust (ACT) to help create a stand-alone single family dwelling elsewhere in town. They are asking for a determination from the Board whether the modification (in)substantial. The Board asked about the future plan for the land, if the house is demolished. Friberg explained that additional parking and possibly a 2-story amenity building would be created as part of the overall medical buildings on the adjacent parcel. Mr. Lupoli informed the Board of Massachusetts General Hospital's request for more parking as a condition of their occupying part of the existing buildings. Friberg argued that the requested modification is insubstantial since a 3-bedroom rental unit has been designated within the existing buildings at Hamilton Green and money will be donated toward the creation of an additional affordable housing in town. Brown suggested that the change is substantial because it includes a change in the building type and decreases the subsidized housing inventory (SHI) by one unit. Additionally, the property included in the comprehensive permit will be reduced with the loss of the lot, if approved. Attorney Douglas Hausler, for Lupoli, disagreed that the change is substantial emphasizing that the \$100,000 donation would create more than one unit. Faulk asked for clarification on the amount of land to be transferred. 25,000 sq. ft. would transfer & Hamilton Green would have approximately 11.5 acres. Brown explained that the proposed changes need to be clearly presented, including a revised site plan, revised agreements and revised conditions; all to be discussed in a public hearing. Susan Stott, a member of ACT residing at 30 Pasho St., informed the Board that an offer has been made that is acceptable to ACT. Brown made a motion to find that because the proposed modification will change the type of an affordable unit and decrease the net SHI, it is a substantial change. Faulk seconded the motion and the Board voted by roll call. Oltman (nay), Faulk (ay), McDonough (ay), Magenheim (nay), Brown (ay). The vote being 3 in favor of finding that the change is substantial and 2 against, the motion carries since only a simple majority is required under Ch. 40B. Brown asked for the identification of all the changes needed to modify the comprehensive permit for consideration at the May 5, 2016 meeting, including a site plan, pro forma, income restrictions, and any changes to the decision. McDonough suggested asking Attorney Hausler for draft findings. Hausler agreed.

Approval of Minutes of 3/3/16:

Brown noted that he made revisions that were submitted by email. Magenheim made a motion to approve the minutes of 3/3/16 as revised by Brown. Faulk seconded the motion and the Board voted (4-0) to approve the minutes as revised.

Discussion Items:

Brown gave an update on the status of appointments to the vacant seat.

There being no other business of the Board, Oltman made a motion to adjourn the meeting. McDonough seconded the motion and the Board voted unanimously (7-0) to adjourn the meeting at 9:10 p.m.

Respectfully submitted,
Barbara Burke
Administrative Secretary