



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

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810  
June 2, 2016**

The meeting opened at 7:03 p.m.

Present were: David W. Brown, Chair; Carol McDonough, Acting Clerk; Elizabeth Oltman, Member; Tara Wilson and Kathy Faulk, Associate Members. Clerk Magenheim arrived at 7:30 pm during the approval of draft decisions.

Brown gave an overview of the Zoning Board procedure.

**Petition Number: Z-16-53**

**Premises Affected: 3 Walnut Ave**

**Petitioner: DiCesaro**

**Relief requested: special permit under Art. VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to construct a 2-story rear addition on an undersized lot that will not meet minimum side yard setback requirements**

**Members sitting: Brown, McDonough, Oltman, Wilson, Bordonaro**

**Alternate: Faulk**

Judge DiCesaro represented himself & his wife in their request to construct a 2-story rear addition that won't meet the minimum side yard setback. The addition will encroach 1-2' into the setback. They have spoken to the abutters, one of whom is present and none of whom voiced any concern. He submitted a signed letter in support, as well as photos & a 1949 plan depicting the subdivision of the lot, thus creating the currently non-conforming lot. The house was built in 1896. Deborah Day Cummings, 67 High St., spoke in favor of the addition. There being no other questions or concerns from the Board or the public, McDonough made a motion to close the public hearing. Oltman seconded the motion & the Board voted (5-0) to close the hearing. The Board then deliberated. The Board unanimously indicated their favor in granting a special permit & denying the variance as moot. Oltman will draft the decision to be voted on at the 7/7/16 meeting.

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

- Plot Plan for 3 Walnut Avenue, prepared by Merrimack Engineering Services, dated 4/11/16.
- Photographs (2) undated of the front & rear views, 3 Walnut Ave.
- Letter of support signed by 5 abutters, undated
- Letter from Doug & Deborah Cummings, 67 High St., Andover, MA in support, dated 6/2/16
- Preliminary drawings (5 pages) dated 3/20/16 entitled "Plans for DiCesaro Residence"

Approval of Draft Decisions

**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 Art. VIII, §4.1.2 to construct a porch that won't meet the minimum front yard setback**

**Members sitting: Brown, McDonough, Wilson, Rechisky, Faulk**

McDonough made a motion to approve the findings and conditions in Rechisky's draft for approval of a special permit & denial of a variance as moot. Rechisky seconded the motion & the Board voted (5-0) to approve the draft decision.

**Petition Number: Z-16-41**

**Premises Affected: 64 Lucerne Dr**

**Petitioner: Basavarajappa**

**Relief requested: Extension of Decision No. 3920 – special permit for family dwelling unit**

**Members sitting: Brown, McDonough, Wilson, Rechisky, Faulk**

McDonough made a motion to approve the draft decision approving an extension of Decision No. 3920. Rechisky seconded the motion & the Board voted (5-0) to approve the draft decision.

**Petition Number: Z-16-44**

**Premises Affected: 36 Washington Ave**

**Petitioner: Crowley and Woolson**

**Relief requested: Variance §§4.1.2 and 4.2.2 and/or special permit §3.3.5 to construct additions / alterations that won't meet side yard setback requirement and render detached garage non-conforming**

**Members sitting: Brown, McDonough, Wilson, Rechisky, Faulk**

Wilson made a motion to accept the draft decision as written granting the special permit & variances with conditions. Brown suggested adding a 3<sup>rd</sup> condition restricting the reconstruction/replacement of the garage in conformance with the bylaw. Wilson made a motion to accept the draft decision with the amended condition by Brown. Rechisky seconded the motion & the Board voted (5-0) to accept the amended draft decision.

**Petition Number: Z-16-45**

**Premises Affected: 186 Abbot St**

**Petitioner: Verdolino**

**Relief requested: Special permit §3.1.3.F.4 to create a family dwelling unit within the existing single family home**

**Members sitting: Brown, McDonough, Wilson, Rechisky, Faulk**

Faulk made a motion to accept the draft decision to approve the special permit to allow the creation of a family dwelling unit. Rechisky seconded the motion & the Board voted (5-0) to accept the draft as written.

**Petition Number: Z-16-47**

**Premises Affected: 311 & 319 Lowell Street**

**Petitioner: Lupoli**

**Relief requested: modification of Comp Permit No. 3312 to relocate an affordable, 3-bedroom single family dwelling into Unit No. 1221 within the multi-family buildings at 311 Lowell St, Hamilton Green Apts**

**Members sitting: Brown, McDonough, Oltman, Rechisky, Faulk**

Rechisky made a motion to accept the draft findings, conditions and approval of a modification of Comprehensive Permit No. 3312. Oltman seconded the motion and by roll call the Board voted unanimously to accept the draft decision. Roll call: Faulk - ay, Rechisky -ay, Oltman -ay, McDonough -ay, Brown -ay

**Petition Number: Z-16-40**

**Premises Affected: 168 Haverhill St**

**Petitioner: Andover Community Trust (ACT)**

**Relief requested: Comprehensive Permit under Ch. 40B to construct one single family affordable dwelling on a lot that lacks the minimum lot area**

**Members sitting: Brown, McDonough, Oltman, Wilson, Rechisky**

**Alternate: Faulk**

This is a continued public hearing. Denise Johnson, Executive Director of Andover Community Trust (ACT), was present along with Engineer Bill MacLeod & Architect John Pearson. MacLeod reviewed the revisions to the site plan dated 5/31/16 that included wetlands delineation by Norse Environmental & locating the house closer to the street to avoid the new sprinkler requirement. They will maintain a 10' no-disturb zone. MacLeod reminded the Board that they are not subject to the local wetland bylaw, but they are requesting the ZBA to grant a waiver. Pearson reviewed the construction timeline noting that they hope to start in September with the Greater Lawrence Technical School students. Brown confirmed that the utilities will be above ground because that is the only available option. Nuala Boness, 4 Robinswood Way, asked about Chapter 40B. There being no other questions or concerns from the Board or the public, Oltman made a motion to close the public hearing. Rechisky seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate.

Brown informed the Board that he had drafted an approval decision. The site plan reference & page 3 would need to be updated to reflect the most recent revision of the site plan as well as tonight's proceedings. Oltman suggested that condition #16 also be revised to remove reference to underground utilities. Faulk suggested revising reference to wetland delineation on page 2, paragraph 4 "According to an email..." and changing the dates on page 1 to 5/5/16 and 6/2/16. Brown will review the decision for typographical errors & submit it to the Administrative Secretary. Faulk made a motion to approve the draft decision with the aforementioned revisions. By roll call: Wilson - ay, Rechisky -ay, Oltman -ay, McDonough -ay, Brown -ay, the Board voted unanimously to grant the comprehensive permit with conditions.

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

- "Site plan, 168 Haverhill Street, Andover, Mass." Prepared by Andover Consultants, Inc., revised May 31, 2016."
- Undated draft decision by David Brown

**Petition Number: Z-16-46**

**Premises Affected: 119 Chandler Rd**

**Petitioner: Gowdy Family LLC / New Cingular (AT&T)**

**Relief requested: special permit §6.1 and/or variances §§6.1.2.1, 6.1.2.9 to install a wireless communication monopole that will exceed the maximum height and not meet the minimum setback requirement, and for modification of Decision Nos. 2606, 2693, 3772 to allow relocation of wireless communications antennae from existing tower to new monopole**

**Members sitting: Brown, McDonough, Oltman, Rechisky, Faulk**

**Alternate: Wilson**

Brown noted an inaccuracy on the previously posted agenda regarding the removal / replacement of a monopole. The actual request is to construct a new monopole and to keep the existing radio tower.

Attorney Mark Johnson updated the Board on what has been done since the last hearing: provided setbacks to abutting properties on the plan, conducted the balloon test and included the utility right of way on the plan. Brown submitted photos that he took of the balloon test. Robert Adair, PE, spoke about the fall-zone for monopoles and that the design criteria for their construction is the same as for buildings and bridges – they are built to stand, not fail. If a catastrophe occurs, it would fall within itself. Extremely high winds in excess of 100 mph would be necessary to cause failure, at which point surrounding structures would already have failed. The Board inquired about the impact of possible failure on surrounding structures, the electrical lines that cross the lot or the radio tower. The Board also inquired about alternative locations. Adair noted that if winds were at or above 100 mph, the electricity would already have gone out and other structures would already have failed. Brown voiced concern over the proposed fall-zone encompassing the power lines and one of the three sets of guy wires supporting the radio antenna tower. Tyler McAllister, consultant to the applicant, explained that if the antennas were moved to an alternative location, the entire network would be disrupted.

Johnson reminded the Board that a variance has been requested from Section 6.1.2.9 regarding the use of a cherry picker to access the monopole. Inspector of Buildings Chris Clemente informed the Board that OSHA guidelines prohibit access via cherry picker only and that rungs are required to grade in order to access the monopole. The Board discussed this requirement not being in concert with current industry practices, and also which monopole height is needed for Public Safety use. Chief Mansfield of Andover Fire & Rescue read and submitted a speech with PowerPoint slides stating the Fire and Police Departments' support for the new monopole that will benefit Public Safety communication in West Andover. Public Safety antennas would be at the top of the monopole. Johnson noted that the currently proposed top carrier is at 146', but it can be changed to accommodate Public Safety's needs, and confirmed that the height of the proposed tower remains at 150'.

Several residents voiced concern over the safety of the monopole and adverse effects on abutters due to its proximity, RF emissions and decreased property values. They also suggested locating the monopole on town property and questioned the quality of the signal and whether the balloon test was peer-reviewed. McAllister stated that no peer review was conducted and explained the effects of topography and changing technology, as well as the improbability of locating a monopole on town land making this site the most viable option. Linda McNeil, 14 Lucerne Dr., spoke in support of the monopole citing the need for increased Public Safety communication. Inspector of Buildings Chris Clemente stated for the record that the town is not in the business of wireless communications. Keith Saxon, of Wethersfield Dr., Andover, asked whether a noise study has been done and if the Planning Board will review the project since it's in the Watershed Protection Overlay District. Charlie Urban, 249 Lowell St., asked if Public Safety antennas at 150' are sufficient. Chief Mansfield confirmed that 150' is sufficient. The Board discussed their concerns which include: consequences of monopole failure and its location relative to the houses, electrical lines and radio tower. The Board noted that the weight and mass of the radio tower will be decreased with the removal of the wireless equipment, which would increase safety overall. The Board asked the applicant to consider and demonstrate that an alternate location is not available and to obtain a letter from National Grid acknowledging the proposed monopole. AT&T Attorney Pare noted that the prior application for an alternate location met significant Board opposition and that the existing site is preferable to maintain service. McDonough made a motion to continue the hearing to 7/7/16 at 8 pm. Faulk seconded the motion and the Board voted unanimously to continue the hearing to 7/7/16.

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

- PowerPoint slide prints entitled "Gowdy Family, LLC & New Cingular Wireless PCS Wireless Communication Tower 119 Chandler Road" prepared by Attorney Johnson, undated
- All-Points Technology Corporation, P.C., Robert Adair, P.E. curriculum vitae

- Chief Michael Mansfield's presentation in support of the monopole, undated
- Town of Andover, MA Report on Mission Critical Radio Systems: Andover Radio Communications Sites/ West Station, dated December 2014, slide #16
- Gowdy WCF Tower Balloon Test photos taken by Chair Brown dated May 18, 2016 (8 photos on two sheets)

**Petition Number: Z-16-58**

**Premises Affected: 6 Black Horse Lane**

**Petitioner: Homestead Enhancement Trust**

**Relief requested: special permit under Art. VIII, §3.1.3.F.4 to create a Family Dwelling Unit within the existing single family dwelling**

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

**Alternates: Rechisky, Faulk, Wilson**

John Sarkis, of Sarkis Development Company, represented the applicant's request for a special permit to allow the creation of a family dwelling unit within an existing single family dwelling that is still under construction. Sarkis stated that the original plans included a second kitchen and bedroom in the rear portion of the house above the 3-car garage, which is now roughed & unfinished. This is the where the proposed family dwelling unit would be located. It would include 1 ½ bathrooms, 1 bedroom, a living room, a study, and a kitchen. It is access by a stairway and an elevator. It is not directly accessible from the interior of the single family dwelling. The proposed occupant is the owner's mother. Brown noted that the zoning bylaw restrictions for family dwelling units include specifically naming the occupant(s). Inspector of Buildings Chris Clemente asked Mr. Sarkis to confirm that he was not involved in the original permitting. Sarkis confirmed that he was not. Clemente informed the Board that the space above the garage with the second kitchen was discussed during the original permitting phase and it was specifically stated that this would be a single family dwelling only. Brown suggested that the Board continue the public hearing to next month so the owner can identify by name the occupant. It shall not be the realty trust. Brown asked Clemente to summarize his statement for the record. Magenheim made a motion to continue the hearing to 7/7/16. Rechisky seconded the motion & the Board voted (5-0) to continue the hearing to 7/7/16.

**Petition Number: Z-16-59**

**Premises Affected: 233 Lowell Street**

**Petitioner: Andover Animal Hospital**

**Relief requested: modification certain conditions of Decision No. 1723 to allow the continued operation of the animal hospital under different ownership**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Faulk**

**Alternates: Bordonaro, Rechisky, Wilson**

At the start of the hearing Brown noted that he and Associate Members Faulk and Rechisky have been recent customers of Andover Animal Hospital and had filed disclosure notices with the Board of Selectmen. There were no objections to their continued participation in the case.

Attorney Mark Johnson represented the petitioner, Diane Tower, requesting a modification of Decision No. 1723 to remove the condition specifying who may own and operate the business. Johnson gave an overview of the veterinarian business that was originally permitted by Decision No. 321 (dated March 12, 1956) in the Single Residence B Zoning District with certain conditions. Subsequent decisions, specifically Decision No. 1723, included conditions (#9 & 10) that certain members of the Lindsey Family own and operate the business, as well as reside on the property. Currently, Mr. Lindsay's daughter, Diane Tower, operates the business,

although she is not a veterinarian or named in Decision No. 1723. Her mother resides on the property part-time and her father is in assisted living. Ms. Tower lives on an adjacent lot. Due to her father's waning health, Ms. Tower seeks modification of the decision in order for her to continue the business management and service to the customers without interruption. Johnson submitted proposed language to modify the conditions. The Board discussed majority ownership and the intent of the prior conditions to maintain an owner-occupied business or home occupation in a residential district. Several residents spoke in favor of the modifications and voiced concern that if it were not owner-occupied that the business could negatively impact the future of the neighborhood. Johnson stated that his client is not opposed to a majority ownership and that he would look at alternative language for the conditions to reflect a majority ownership and owner-occupied business. McDonough made a motion to continue the hearing to 7/7/16. Magenheim seconded the motion and the Board voted (5-0) to continue the hearing to 7/7/16.

**Petition Number: Z-16-48**

**Premises Affected: 319 Lowell St**

**Petitioner: Lupoli**

**Relief requested: variances §§4.1.2, 5.3.4 & 5.1.5.2.b to construct a 2-story building & parking structure that will not meet minimum building, parking & landscape buffer setback requirements and for special permits §§3.1.3.C.12.a & 3.1.3.C.15 to allow use of the building as a sit-down restaurant and business, professional or administrative offices**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Rechisky**

**Alternates: Faulk, Bordonaro**

Rick Friberg, Project Engineer at TEC, was present along with Sal Lupoli, petitioner, and his attorney, Doug Hausler. Friberg gave an overview of the proposed 2-story building, outdoor seating and parking structure that would not meet the minimum setback requirements. The lot is in the Limited Service District and has an extremely small buildable area if all setbacks were met. The proposed setback for the parking deck ranges from 15' to 4' at the closest. The special permit request is for the sit-down restaurant and office use. Friberg contended that the hardship relates to the shape and size of the lot. He explained that Massachusetts General Hospital (MGH) would be occupying Tower II of the approved portion of the overall site. It is MGH's requirements for additional parking that generated the current application. They desire 4 parking spaces per 1,000 sq. ft., whereas only 159 spaces are required for both Towers I and II. There are currently 159 spaces, but per MGH's requirements, 267 parking spaces would be needed. The current proposal is for 267 spaces. Parking would not be dedicated for MGH. The Board discussed deliveries to the end-cap building, landscape buffers, topographical issues (sloping lot), and whether or not the monument sign needs relief (no).

Regina Kelly, of Bateson Dr., and Heather Lawton, 243 Lowell St., voiced concern about increased traffic issues with an increase in customers, as well as an increase in the impervious surface. Inspector of Buildings Chris Clemente asked for the number of treatment rooms in Tower II. Friberg stated that there are 26. Lawton suggested the need for a corridor study before more traffic is added to the intersection and concern that the project is in the Watershed Protection Overlay District. Friberg noted that the traffic counts / levels of service were conducted prior to the installation of the traffic light. Several other residents voiced concern over further development along Lowell Street, stating that there is no hardship. John Pearson, of Andover Community Trust, spoke in favor. Keith Saxon, of Wethersfield Dr., asked about environmental impacts, storm water mitigation and grease traps for restaurants. Selectman Paul Salafia voiced his support for MGH coming to town noting that it would benefit the town as a whole. The Board discussed a post-occupancy study. Friberg informed the Board that as part of the Major Non-Residential Site Plan Review process, the Planning Board will look at traffic and drainage, among other concerns raised. Brown asked for the hardship argument and whether

Town staff was concerned with the number of variances requested. The Board discussed continuing the public hearing. Magenheim made a motion to continue the public hearing to 7/7/16. Rechisky seconded the motion and the Board voted (5-0) to continue the hearing to 7/7/16. Wilson stated that she will not be present at the 7/7/16 meeting.

**Approval of Minutes:**

Brown suggested that due to the late hour, the approval of minutes could be deferred to the Board's meeting on 7/7/16.

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 10:53 p.m.

Respectfully submitted,  
Barbara Burke  
Administrative Secretary