



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

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810  
January 3, 2019**

Present were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk, Lisa Rechisky and Daniel Casper; Members; Brian Corrigan and Ellen Keller, Associate Members.

The meeting opened at 6:30 p.m. Oltman gave a procedural overview.

**Petition Number: Z-18-145**

**Premises Affected: 5 Chestnut Lane**

**Petitioner: Andover MCB LLC**

**Relief requested variances from Art. VIII, §§4.1.4.3.a & 4.1.4.3.b to develop a lot for non-residential use that will not meet the minimum setbacks & is within 300' of a residential structure**

**Members Sitting: Oltman, McDonough, Casper, Faulk, Corrigan, Keller**

Request to withdraw without prejudice. McDonough made a motion to allow the withdrawal without prejudice. Rechisky seconded the motion and the Board voted unanimously to allow the withdrawal without prejudice.

**Petition Number: Z-18-135**

**Premises Affected: 290 Lowell Street**

**Petitioner: O'Brien**

**Relief requested: extension of Decision Z-17-105**

**Members Sitting: Oltman, McDonough, Faulk, Casper, Rechisky**

This is a continued deliberation meeting from November 2018. Oltman reminded the Board that due to time constraints, the vote taken at the last meeting is considered the formal vote. No changes of the draft decision were proposed. Faulk made a motion to approve the draft decision. McDonough seconded the motion and the Board voted unanimously to approve the draft decision.

**Petition Number: Z-18-130**

**Premises Affected: 22 River Street**

**Petitioner: Thomas Carroll**

**Relief requested: special Permit under Article VIII, §3.3.5 and/or variance from the requirements of Article VIII, §4.1.2(f) to construct a two-story addition that will not meet the minimum front and side yard depth requirements**

**Members Sitting: Faulk, Keller, Rechisky, McDonough, Corrigan**

Oltman & Casper had recused themselves from this case. This is a continued deliberation meeting since there was not a quorum at the 12/6/18 meeting. Faulk noted that the Board member line-up as drafted has to be changed to reflect the correct members sitting on the case. The vote and members voting needs to be updated. Rechisky made a motion to approve the decision as amended. McDonough seconded the motion & the Board voted (5-0) to approve the decision as amended.

**Petition Number: Z-18-144**  
**Premises Affected: 290 Lowell Street**  
**Petitioner: O'Brien**  
**Relief requested: Modification of Decision Z-17-104**  
**Members Sitting: Oltman, Faulk, Casper, Keller**

This is a continued deliberation. Faulk made a motion to approve the draft decision as written. Casper seconded the motion & the Board voted (4-0) to approve the draft decision as written.

**Petition Number: Z-18-132**  
**Premises Affected: 22 Haggetts Pond Road**  
**Petitioner: ELB Nominee Realty Trust**  
**Relief requested: Variance from Art. VIII, §8.1.6.21 to construct a single family dwelling within the 400' Priority Zone 1 in the WPOD**  
**Members Sitting: Oltman, Casper, Faulk, Keller**

This is a continued deliberation to approve the denial as written (Oltman & Casper voted in favor, Faulk & Keller voted against). Remove Novaria from the vote since he is absent. Casper made a motion to approve the denial as written. Keller seconded the motion & the Board voted (2-2) to approve the denial as written.

**Petition Number: Z-18-137**  
**Premises Affected: 22 Wolcott Ave**  
**Petitioner: Poland**  
**Relief requested: modification of Decision Z-18-71 to construct a non-conforming detached garage larger than approved**  
**Members Sitting: Oltman, Faulk, McDonough (invoked Mullin Rule), Keller**

This is a continued deliberation. Casper left the room since he recused himself from the case. Keller made a motion to approve the decision as drafted. Oltman seconded the motion & the Board voted (4-0) to approve the decision as written.

**Petition Number: Z-18-143**  
**Premises Affected: 319 Lowell Street**  
**Petitioner: Lupoli / Crack'd**  
**Relief requested: special permit under Art. VIII, §5.2 &/or for variances from Art. VIII, §§ 5.2.5.1 & 5.2.11.2 to install an internally illuminated attached sign exceeding the maximum allowed area**  
**Members Sitting: Casper (Acting Chair), Faulk (Acting Clerk), McDonough (invoked Mullin Rule), Keller**

Oltman recused herself from this case. There being no changes, Oltman remained in the room during deliberation. There was not a quorum of participating members and it was not necessary for McDonough to invoke the Mullin Rule. The Board continued the deliberation to 2/7/19. The secretary will check when the filing deadline is to ensure that a written decision is filed in time. Casper made a motion to continue the deliberation to the next meeting. Faulk seconded the motion & the Board voted unanimously to continue deliberation to the next meeting.

**Petition Number: Z-18-146**  
**Premises Affected: 1 Minuteman Road + 161 River Road**  
**Petitioner: One Minuteman LLC**

**Relief requested variance from Art. VIII, §4.1.2 to construct a commercial building that will not meet the minimum side setback & for a special permit under Art. VIII, §3.1.3 to create a banking establishment. Members Sitting: Oltman, Casper, Faulk, McDonough, Rechisky, Keller**

Oltman announced that both McDonough & Rechisky watched the video recording for the last / only hearing of this case and invoked the Mullin Rule by signing the affidavit. McDonough announced that while she uses the services of Smolak & Vaughn for personal legal matters, Attorney Smolak is not her attorney. No one objected to her participation. Oltman designated McDonough as an alternate.

Attorney John Smolak summarized what has occurred since the last meeting: site walk. Also present were Austin Turner, engineer, and Jeff Spagat, for the applicant. There were no questions or comments from the Board or the public. Casper made a motion to close the public hearing. The Board voted unanimously to close the public hearing. The Board then proceeded to deliberate. The Board felt that the site walk was very helpful in confirming that the requisite hardship as created by the presence and location of wetlands on the property dictate that construction is pushed to the edge of the lot. There are no nearby residential structures that will be impacted. The Site Plan Review with the Planning Board will be another layer of review. The proposal will revitalize the area. It is a good fit for the site and is in harmony with the Master Plan and compliments the existing surrounding businesses. Oltman recapped that the requested relief is for a variance for a side setback and the banking establishment use. The standard conditions can be applied here: conformance with the submitted site plan and obtain all other required approvals. Faulk made a motion to grant the requested relief with the standard conditions. Casper seconded the motion & the Board voted (5-0) to grant the requested relief. Casper made a motion to continue deliberation to the next meeting for the purposes of writing a decision. Keller seconded the motion & the Board voted unanimously to continue deliberation to the next meeting. Oltman volunteered to draft the decision.

Faulk left the remainder of the meeting.

**Petition Number: Z-18-154**

**Premises Affected: 67 Walnut Ave**

**Petitioner: SAI Builders, LLC**

**Relief requested: special permit under Art. VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to raze an existing dwelling & to construct a new dwelling on a lot that lacks the minimum required area and frontage**

**Members Sitting: Oltman, Corrigan, Casper, Keller, McDonough**

Attorney Mark Johnson represented the Petitioner. Also present were Anton Miller and Patrick Nysten, both of SAI. Johnson gave an overview of the lot and proposed razing of the existing dwelling in order to construct a new single family dwelling. The proposed house will comply with the minimum setbacks. The lot lacks the minimum required area and frontage. The house has been vacant for approximately one year. The proposed house is architecturally compatible with the neighborhood. Rob Bramhall, architect, designed the proposed house. It will be a 4 bedroom house will approximately 3,353 square feet of living area. This is similar to other houses in the neighborhood. The lot slopes down toward the rear. Mary Fahey, 13 Carmel Road, voiced concern with water run-off due to the slope. She is in favor of a new house, but concerned with the topographical challenges. Mr. Fahey added that the neighborhood already have lots of water issues that are increased with uphill construction. Nysten noted that he met with the Fahey's and will present a site plan to engineering to mitigate their concerns. Johnson reminded the Board that they are not allowed to increase drainage off site, but will actually improve it. Casper confirmed that the bylaw prohibits the increase in run-off. The Faheys explained that they have a French drain and sump pumps, but they are not enough. They just don't want it to worsen. Libby Poland, nearby abutter at 22 Wolcott Ave, voiced concern over the increased size of the proposed house compared to the existing house, and tree removal. Some trees will be removed at the rear and the front setback will be increased. There being no other questions or concerns from the Board or the public,

McDonough made a motion to waive a site view and to close the public hearing. Casper seconded the motion & the Board voted unanimously to waive a site view and close the public hearing. The Board then proceeded to deliberate. The Board discussed the proposal and agreed that it can be done under a special permit for the reconstruction of a non-conforming structure, Section 3.3.5. Casper made a motion to approve a special permit under Section 3.3.5 and to deny the variance from Section 4.1.2 as moot. Rechisky seconded the motion. McDonough suggested that the decision could include language to protect the abutter, a legal reference. Casper requested that Johnson provide a citation on the DEP regulation regarding run-off. The Board voted unanimously (6-0) to approve the special permit and to deny the variance as moot. Rechisky made a motion to continue deliberation for the purpose of drafting a written decision. Casper seconded the motion & the Board voted unanimously (6-0) to continue deliberation. Casper volunteered to draft a written decision.

**Petition Number: Z-18-135**

**Premises Affected: 290 Lowell Street**

**Petitioner: O'Brien Homes**

**Vote to Approve: Preservation Restriction for Dimensional Special Permit for Historic Preservation Z-18-144**

**Members Sitting: Oltman, Casper, Keller, McDonough, Corrigan, Rechisky**

Attorney Mark Johnson represented the Petitioner's request to continue the vote to the next meeting. There has been no update from Massachusetts Historic Commission yet. Changes were requested in November 2018, MHC received them and now they are awaiting MHC's response. Rechisky made a motion to continue the vote to the February meeting. Corrigan seconded the motion and the Board voted unanimously to continue the vote to the February meeting.

#### Discussion Items

McKee & Libby Poland, 67 Wolcott Ave, asked the Board for advice regarding a project. Oltman & Casper informed them that they cannot take testimony outside of a public hearing and that they need to notify the public. The Board suggested that the Inspector of Buildings may advise them.

#### Approval of Minutes

Minutes of 10/4/18 – Corrigan made a motion to approve the minutes of 10/4/18 as drafted. Casper seconded the motion & the Board voted unanimously (6-0) to approve the minutes as amended.

Minutes of 11/1/18 – Rechisky noted that the attendees for the case on 22 River Street need to be changed by deleting Novaria's name. Corrigan made a motion to approve the minutes of 11/1/18 as amended. Rechisky seconded the motion & the Board voted unanimously (6-0) to approve the minutes as amended

There being no other business of the Board, Casper made a motion to adjourn the meeting. Corrigan seconded the motion and the Board voted unanimously to adjourn the meeting at 7:20 pm.

Respectfully submitted,  
Barbara Burke, Zoning Administrative Secretary