



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

**Select Board Conference Room, 3rd Floor, Town Offices, 36 Bartlet Street, Andover
January 6, 2022**

Participating were: Elizabeth Oltman, Chair; Kathy Faulk, Acting Clerk; Ellen Keller, Member; David Guerette, Michael Novaria, Ralph Arabian, & Daniel Lopez, Associate Members.

The meeting opened at 6:30 p.m. Chair Oltman gave an overview of the meeting procedure.

Petition Number: Z-21-159

Premises Affected: 39 Morton Street

Petitioner: Finegold

Relief requested: Special Permit under Art. VIII, §3.3.5 &/or for Variances from Art. VIII, §3.3.4 &/or §4.1.2 to construct a covered porch that won't meet the minimum side yard depth requirement.

Members Sitting: Oltman, Faulk, Keller, Novaria, Arabian, Lopez

Petitioners' representative requested to continue the public hearing without discussion to the 2/3/22 meeting. Keller made a motion to continue the public hearing without discussion to 2/3/22. Lopez seconded the motion & the Board voted unanimously to continue the public hearing to 2/3/22.

Petition Number: Z-21-156

Premises Affected: 13 Avon Street

Petitioner: Brown

Relief requested: Special Permit under Art. VIII, §3.3.5 &/or for a Variance from Art. VIII, §4.1.2 to construct an addition that won't meet the minimum side yard depth requirement

Members Sitting: Oltman, Faulk, Keller, Novaria, Lopez, Arabian

This is a continued public hearing. The Board received a request to withdraw the application without prejudice. Arabian made a motion to allow the withdrawal without prejudice. Lopez seconded the motion and the Board voted unanimously to allow the withdrawal without prejudice.

Petition Number: Z-21-157

Premises Affected: 10 Gould Road

Petitioner: Szymanski

Relief requested: Special Permit under Art. VIII, §3.1.3.F.4 to create a Family Dwelling Unit & for a Variance from Art. VIII, §4.1.2 to construct an addition that won't meet the minimum side yard depth requirement

Members Sitting: Oltman, Faulk, Keller, Novaria, Lopez

This is a continued deliberation meeting. Due to McDonough & Rechisky's absences, the members voting on the case changed to reflect that Novaria & Lopez sat in their place. There being no other changes to the draft decision, Novaria made a motion to approve it as amended. Keller seconded the motion and the Board voted unanimously to approve the draft decision as amended.

Petition Number: Z-21-153

Premises Affected: 1323 South Street

Petitioner: Forever Endeavor

Relief requested: Party Aggrieved for review of a decision made by the Inspector of Buildings &/or for a Special Permit under Art. VIII, §3.1.3.C.23 to conduct a Contractor's Yard

Members Sitting: Oltman, Faulk, Keller, Novaria, Lopez

This is a continued public hearing. Oltman noted that the site visit occurred on 12/11/21 and that the Board received Attorney Caruso's statement. Attorney Caruso represented Matt & Amanda Strong, who were present for the continued hearing. Caruso itemized the zoning bylaw criteria for a special permit emphasizing that a contractor's yard & industrial uses are allowed, effectively negating residential use in an industrial district. There is no water or sewer on this site, thereby preventing residential use. There is no sale of anything from the site and only 12 vehicles / 24 hours drive to/from the site. The petitioners & their Counsel met with Tewksbury officials, who submitted a list of proposed conditions if the Board approves the special permit. Caruso informed the Board that the Tewksbury Conservation Commission contacted the Andover Conservation Commission and agreed that a 50' silt sock will be installed at the back of the site. Caruso outlined further changes / improvements on site: reduction in noise, no storm water run-off, planting of 130 trees along the lot line, no more illegal dumping since the Strongs purchased the lot, as well as a benefit to the 6 Tewksbury businesses. The Strongs assumed that the land was able to be used for contractor's yard and note that South Street serves other businesses that create traffic. Caruso informed the Board that his clients agree to the 9 conditions suggested by Tewksbury town officials. The Board inquired whether the storage area containing car parts has been cleaned out. Matt Strong stated that the cleanout is underway. The Board discussed whether Tewksbury has a noise bylaw (no one knew) and the earliest hour that the site is accessed (6:30 a.m.). Member Faulk shared her observation from the site visit of a wide area between the storage and residences that appear to have been recently cleared and graded. Faulk asked why, how and when the site was denied access to utilities via Tewksbury. Caruso informed the Board of a prior proposal for residential development that was denied utility access by Tewksbury. There is electrical service on site. There are no hazardous materials stored on site. There being no other questions or comments from the Board, Chair Oltman opened the hearing to public comment. She requested brief, non-repetitive comments. Bob Lambert, 1281 South St., argued that it is not an industrial area, but rather residential, and that junk vehicles are prohibited under the bylaw. Lambert argued that there are no industrial uses within ½ mile of the site and that Section 5.3.2 requires landscaping to screen from abutters, as well as to shield light sources. Further, Lambert noted that the changes made to the site would increase water in the basements and increase potential hazards if approved. Bernie Hume, 60 Field Stone Circle, a direct abutter, complained that the light from vehicles is unacceptable. Miranda Hume, 60 Field Stone Circle, commented that continual truck traffic will increase run-off and that a barrier should be erected. Dina Castilia, 51 Field Stone Circle, voiced concern with water run-off, asking why the Planning Board did not review it before the trees were removed and the site regraded. Chair Oltman informed the public that the applicants should have come to the ZBA first, but all the ZBA can do now is to work from where things are now. Inspector of Buildings Chris Clemente explained that typically, an application should have been filed, then an Inter Departmental Review would have been conducted and after the ZBA reviews it, Planning Board will conduct a Stormwater Management Review and Conservation Commission will review it if required. The Board discussed with the Inspector whether or not the applicants can continue to operate through the Planning Board process, if the ZBA approves it. Clemente was unsure. Oltman pointed out that if the applicants had come in before, they would have to wait the appeal period and the Planning Board process. Caruso reiterated that the land is industrial and he trees were removed in order to use it industrially. This site came to a head when the 130 trees were brought in to replace those that were removed. Caruso argued that water run-off would increase with development of the site and that the use of the land has improved. The ZBA is a first step and if the special permit is violated, the applicants can be brought back to the ZBA or the special permit can be revoked. Lambert asked if a special permit upon transfer of ownership. Faulk stated that it is as it runs with the land. Katie Sheeding, 1300 South St., commented that the noise and traffic have increased. There being no other questions

or comments, Keller made a motion to close the public hearing. Lopez seconded the motion and the Board voted unanimously to close the public hearing. The Board then proceeded to deliberate. Chair Oltman noted that if the application had been presented prior to the changes on site, it would be different. She reminded the Board that they are to consider the use alone, which is allowed by special permit. Faulk commented that the site visit was helpful & that some issues can't be solved by the Board. She is bothered that the land has been clear-cut without permission or permits. If the Board had had the chance to review it prior, they would have focused on aesthetics and stormwater. But the property has been rendered substantially less attractive with the visual and auditory impact worsened. She does not feel that the landscaping provisions of the bylaw have been met. Faulk suggested that if approved, conditions for landscaping and a time limit on the special permit are reasonable (i.e. 2-3 yrs.), that a buffer zone between the residential and industrial lots should be created. Finally, she noted that with no utility connections to the site, the only uses are those that don't require utilities. Oltman reminded the Board that Section 9.4.6 of the bylaw allows time limits. Keller has reviewed the Tewksbury Zoning Bylaw and appreciates the need for the use as it benefits many local businesses. She recognized that mistakes were made, but ignorance of the rules is not an excuse for mistakes. Keller added that the Industrial A (IA) district requires a special permit pointing out that the IA zones in Andover are surrounded by residential uses and mitigation is called for to protect the residential uses. Furthermore, the concrete blocks placed on the site do not meet the minimum setbacks. Keller concluded that sadly, the lot was clear-cut and as it is now, it does not meet the bylaw. Therefore, she would have a hard time voting in favor of it. Oltman reminded the Board that the setbacks are: 40' side, 50' front and 40' rear. Keller added that a 200' setback from residences is required. Novaria commented that the owners have the right to use the lot, but further review is needed. He added that the impact to abutters is significant and the abutters did not have the opportunity to share their input prior to the changes. Lopez voiced concern over the statement that there is no run-off noting that site conditions worsened with the clear cutting of the lot. He feels that even with restrictions, he does not feel that [the owners] will follow them. Lopez noted that Krochmal Farm traffic does not affect these residents and that too much was done without permission. The Board considered the '50 year problem' created by removing trees and reviewed the definition of a contractor's yard (mostly parking and storage of earth materials). Novaria suggested that restrictions can be put in leases. Arabian agreed with the other Board members voicing uncertainty over how he feels about it. Oltman pointed out to the Board that if the special permit is denied, the lot has to be cleaned up, left open and no Planning or Conservation review would occur. The Board discussed whether stormwater management review would still be required and whether the concrete structures are considered accessory and therefore only require a 5' setback. The general sentiment of the Board was not in favor of granting a special permit. Oltman emphasized that the plan presented does not show the future plan for the lot. There being no other questions or discussion, Faulk made a motion to uphold the decision made by the Inspector of Buildings and to deny the special permit under Art. VIII, Section 3.1.3.C.23. Keller seconded the motion and the Board voted by roll call: Lopez – yes, Novaria – yes, Faulk – yes, Keller – yes, Oltman – yes. Oltman volunteered to draft the decision.

Petition Number: Z-21-155

Premises Affected: 29 Andover Street

Petitioner: Keefe

Relief requested: Variance from Art. VIII, §4.1.2 to construct an addition that won't meet the minimum rear yard depth requirement

Members Sitting: Oltman, Faulk, Keller, Novaria, Lopez

This is a continued public hearing. Leah Keefe presented herself & her husband. Oltman noted for the record that the Board received a detailed plan as well as the information requested by the Board. Mrs. Keefe pointed out that the plan denotes that the storage shed is a pool house. It is not a pool house. She explained that they included topography to show why the proposed addition is on the left side of the house and reviewed the water issues caused by the house being at the low point in the neighborhood. Oltman reminded the Board that the lot is in the SRB district and the proposed setback is 19.2'. There being no other questions or comments from the Board or the public, Keller made a motion to waive a site view & to close the hearing. Lopez seconded the

motion and the Board voted unanimously to waive the site view & to close the public hearing. The Board proceeded to deliberate. The Board agreed that there is a clear case of topography & shape of lot hardship. Keller made a motion to approve a variance from 4.1.2 with the condition that the addition shall be constructed in substantial conformity with the 2nd plan. Lopez seconded the motion and the Board voted unanimously to approve the variance with conditions. Keller volunteered to draft the decision.

Petition Number: Z-21-160

Premises Affected: 80 Andover Street

Petitioner: Cellco d/b/a Verizon

Relief requested: Special Permit under Art. VIII, §§6.1 &/or 9.4 to install roof mounted wireless communication facilities with radio equipment on-grade

Members Sitting: Oltman, Faulk, Keller, Novaria, Guerette

Carl Gehring represented Verizon & reviewed their application to install roof mounted wireless communication facilities with radio equipment on grade. He noted that the proposed installation fills a significant gap in the area. Verizon has a leasehold interest to install their equipment, which complies with the Federal requirements regarding impact on health by RF. He noted that this is a low power installation that will be unobtrusive serving the social, economic and infrastructure needs. It will be an unoccupied site thereby generating no traffic. There is no power to the facility, therefore no utilities are needed and will not have an impact on the natural environment. They have filed with and will appear before the Conservation Commission on 1/18/22 for the underground utilities. There will not be a generator as there is battery backup power for 4-8 hours. It will be located inside the equipment cabinet. Oltman reviewed the standard conditions for roof-mounted facilities. Faulk pointed out that Section 6.1.2.L (proximity to nearest residential structure) has not been provided. Gehring noted that the requirement is for a setback of 3 times the height of the tower. The antennas are approximately 42-46' from the ground and 108' from the nearest lot line. Gehring reminded the Board that they can allow a lesser setback. There were no questions or comments from the public. Oltman reviewed the standard conditions noting the plan of record is dated 11/1/21 depicting a maximum of 12 antennas. Keller questioned plan A-4 depicting 9 antennas. Gehring stated that the correct number is 12. Gehring requested a waiver for the bond surety for removal of the installation. Inspector of Buildings Chris Clemente stated that it would be fine. Guerette made a motion to waive a site view and to close the public hearing. Lopez seconded the motion and the Board voted unanimously. In deliberation, the Board agreed that collocation is ideal to providing wireless communication service in coverage gaps such as exists at 80 Andover St. Keller made a motion to grant the special permit with the usual conditions as were read by Chair Oltman. Guerette seconded the motion and the Board voted unanimously to grant the special permits with conditions. Novaria will draft the decision.

Petition Number: Z-21-173

Premises Affected: 17 Messinia Drive

Petitioner: Finnegan

Relief requested: Variance from Art. VIII, §4.2.4 to install an in ground swimming pool that won't meet the minimum side yard depth requirement

Members Sitting: Oltman, Faulk, Keller, Lopez, Arabian

Mike Finnegan represented himself and his wife. They wish to replace the existing pool that was constructed in 1986. The existing pool is a 19'x38' oval. The proposed pool will be an 18'x36' rectangular. The Board discussed the slightly smaller pool on the setback. The existing right side setback to the pool is 11'. The proposed side setback is 13'. The Finnegans spoke with their neighbors and none had any concerns. There being no comments or questions from the public, Keller made a motion to waive a site view and to close the public hearing. Lopez seconded the motion and the Board voted unanimously to waive the site view and close the hearing. The Board proceeded to deliberate. In deliberation the Board agreed that the new, replacement pool would be an improvement. Keller made a motion to grant the variance from 4.2.4 with the conditions that it be

installed in substantial conformance with the plans submitted. Arabian seconded the motion and the Board voted unanimously to grant the variance with conditions. Lopez volunteered to draft the decision.

Petition Number: Z-21-175

Premises Affected: 9 Berkeley Lane

Petitioner: Shea

Relief requested: Variance from Art. VIII, §4.2.4 to install a pool house that won't meet the minimum side yard depth requirement

Members Sitting: Oltman, Faulk, Keller, Lopez, Arabian

Joe Shea represented himself and his wife in their request to construct a pool house that won't meet the minimum side yard depth requirement. The proposed setback is 15' where 30' is required in the SRC zoning district. Mr. Shea explained that the lot is wooded behind the pool and contains wetlands that have been delineated. The proposed pool house will be 52' away from the wetland border. Due to the shape of the lot (rectangular), there are few options to located the pool house due to the wetlands. Mr. Shea argued that the pool house will not be a detriment to the neighborhood or public good. He submitted letters of support from 7 & 11 Berkeley Lane and 6 Ellsworth Dr. The Board inquired why the pool house is not proposed to be in line with the house at 15.9'. The Board asked Inspector of Buildings Chris Clemente for clarification regarding footnote c in the Table of Dimensional Requirements of the Bylaw. Clemente explained that it has been interpreted that recreational structures must meet the side setback for the zoning district. The Board asked for plans of the proposed pool house. There are not yet. Chair Oltman stated that as long as it is 16'x20' and no closer than 15.4' to the side lot line, it should be ok. There being no comments or questions from the public, Novaria made a motion to waive the site view and to close the public hearing. Keller seconded the motion and the Board voted unanimously to waive the site view and close the hearing. In deliberation, the Board agreed that the petitioners fully considered the options. Keller made a motion to grant the variance from 4.2.4 with the conditions that the pool house must be constructed in substantial conformance with the plan and sketch. Lopez seconded the motion and the Board voted unanimously to grant the variance with conditions.

Petition Number: Z-21-176 + Z-21-177

Premises Affected: 30 Lincoln Circle West + 1 Lillian Terrace

Petitioners: The Elinor J. Bromberg Irrevocable Trust + Arthur & Kimberly Kudla

Relief requested: Variance from Art. VIII, §4.1.2 &/or a Special Permit under Art. VIII, §3.3.5 to increase the lot area & allow an existing pool to be 7.28' from the side lot line –and- Variance from Art. VIII, §4.1.2 &/or a Special Permit under Art. VIII, §3.3.5 to decrease the lot area

Members Sitting: Oltman, Faulk, Keller, Guerette, Novaria

Attorney Mark Johnson represented The Elinor J. Bromberg Irrevocable Trust. Attorney Raymond Ewer represented Arthur & Kimberly Kudla. Johnson summarized 18 months of litigation at the beginning of which it was discovered that the Bromberg's pool was partially on the Kudla's lot. The Brombergs purchased in 1980s & installed the pool in 1983. The current application is a resolution agreed upon by the parties to transfer 337 square feet of lot area to the Brombergs. The side setback for the pool would be 7.28'. Attorney Ewer agreed adding that nothing is changing on the ground. He noted that the Kudlas purchased their home in 2011 and that the plan included in Exhibit A is the plan that the parties have agreed on. The Board asked for clarification on the new lot line and the area to be conveyed. Novaria asked if the fence can be replaced in the future. It can be. Oltman pointed out that both lots are non-conforming, therefore the request for a special permit and a variance for the pool setback. There was no one present from the public to speak on the petition. The Board having no more questions, Keller made a motion to waive a site view & to close the public hearing. Arabian seconded the motion and the Board voted unanimously to waive the site view & close the hearing. In deliberation, Faulk made a motion to grant a variance for a non-conforming pool setback. Guerette seconded the motion & the Board agreed that a variance can be granted for Z-21-176 for a non-conforming pool setback. Novaria made a motion to grant a special permit can be approved for Z-21-177 to convey 335 square feet of lot area and to deny

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the variance as moot. Guerette seconded the motion and the Board voted unanimously to approve the special permit and deny the variance as moot for Z-21-177. Faulk volunteered to draft the combined decision.

Petition Number: Z-21-178

Premises Affected: 17 Lincoln Street

Petitioners: Bardetti

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

Members Sitting: Oltman, Faulk, Keller, Guerette, Novaria

Liz Bardetti represented herself. She reviewed her proposed front porch addition emphasizing that her lot is in the SRB zone, just on the border of the SRA zone. The date of construction for her house is uncertain. It may be 1907 or 1922. The existing front setback is 31.5'. The proposed front setback is 23.5'. Ms. Bardetti explained that the front setback is similar to other houses in the neighborhood. There being no one present from the public and no further questions from the Board, Novaria made a motion to waive a site view & to close the public hearing. Keller seconded the motion and the Board voted unanimously to waive a site view & close the hearing. In deliberation, the Board agreed that due to the increase in an existing non-conforming front setback and the similarity to other houses in the neighborhood, a special permit would be appropriate. Novaria made a motion to approve the special permit with the conditions that the porch shall be constructed in substantial conformance with the plans submitted, to deny the variance as moot and to have Preservation Commission review the proposal. Guerette seconded the motion and the Board voted unanimously to grant the special permit with conditions and to deny the variance as moot. Guerette volunteered to draft the decision.

There being no other business, Keller made a motion to adjourn the meeting. Guerette seconded the motion and the Board voted unanimously to adjourn the meeting at 9:00 p.m.

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary