



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

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810
February 7, 2019**

Present were: Elizabeth Oltman, Chair; Kathy Faulk, Acting Clerk; Daniel Casper; Member; Denise Bordonaro, Brian Corrigan and Michael Novaria, Associate Members.

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

Petition Number: Z-19-6

Premises Affected: 10 Blueberry Circle

Petitioner: DiMeco

Relief requested: variance from Art. VIII, §4.2.2 to construct a detached garage that will not meet the minimum side yard depth requirement

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

The applicant had submitted a request to withdraw without prejudice. No one appeared at the meeting. Bordonaro made a motion to allow the withdrawal without prejudice. Casper seconded the motion and the Board voted unanimously to allow the withdrawal without prejudice.

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), Keller, Novaria

This is a deliberation for an application filed on 11/13/18. Due to a lack of quorum on 1/3/19, the Board continued the deliberation to 2/7/19. The filing deadline for a written decision is 2/27/19. In deliberation the Board noted that Bordonaro's name should be added and the spelling of Faulk's name needs to be corrected. The dates need to be changed to 2/7-19. Bordonaro made a motion to approve the draft decision as amended. Faulk seconded the motion. The Board voted by roll call to approve the draft decision as amended: Bordonaro (aye), Faulk (aye), Novaria (aye), Casper (aye).

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

This is a deliberation meeting. On page 4, Condition 3, change 'general' to 'substantial'. There being no other discussion, Casper made a motion to approve the draft as amended. Bordonaro seconded the motion & the Board voted (5-0) to approve the draft as amended.

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, McDonough, Rechisky, Casper, Corrigan, Keller

This is a deliberation meeting. Due to the absence of McDonough and the pending arrival of Rechisky, the Board held the deliberation until later in the evening to meet the quorum.

Petition Number: Z-18-135

Premises Affected: 290 Lowell Street

Petitioner: O'Brien

Relief requested: Vote to approve preservation restriction for dimensional special permit for historic preservation

Members Sitting: Oltman, Faulk, Casper, Bordonaro, Corrigan, Novaria

Attorney Mark Johnson represented the petitioner and updated the Board. The Massachusetts Historic Commission (MHC) is a little closer to signing the preservation restriction. They want photos of the house on the site and will then sign it. Johnson requested that the Board continue the vote to March. The Board will keep the request to vote on the agenda for the regular meeting in March.

Petition Number: Z-19-7

Premises Affected: 18 Chester Street

Petitioner: MacLean

Relief requested: special permit under Art. VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to construct additions that will not meet the minimum front & side yard depth requirements

Members Sitting: Oltman, Faulk, Casper, Bordonaro, Corrigan

Alternate: Novaria

Architect Mark Yanowitz represented the applicants' request to reconstruct a front porch, as well as a new rear deck, mudroom and living room expansion, which will not meet the minimum front or side setbacks. Mark & Donna MacLean were also present. Joanna Reck of the Ballardvale Historic District Commission (BHDC) stated that the commission reviewed the project and support it. Petitioners have spoken with abutters. A signed letter of support from several neighbors was submitted. The side yard setback at the front of the house will be closer than the existing house at 11'. Yanowitz noted that Conservation Commission has also approved the project. There being no other questions or comments from the Board or the public, Casper made a motion to waive a site view and to close the public hearing. Corrigan seconded the motion & the Board voted unanimously to waive the site view & close the hearing. The Board then proceeded to deliberate. In deliberation the Board agreed that this project is a classic special permit under section 3.3.5. Casper made a motion to approve a special permit with the usual conditions (substantial conformity with the drawings and plot plan) and to deny the variance as moot. Bordonaro seconded the motion & the Board voted unanimously to approve the special permit with conditions & deny the variance as moot. Bordonaro made a motion to continue the deliberation for the purpose of drafting a written decision. Casper made a motion to continue deliberation to the next regular meeting. Bordonaro seconded the motion & the Board voted unanimously to continue deliberation. Faulk volunteered to draft the decision.

Petition Number: Z-19-8

Premises Affected: 5 Avella Circle

Petitioner: Saindon

Relief requested: special permit under Art. VIII, §3.1.3.F.4 to create a family dwelling unit within the existing detached garage

Members Sitting: Oltman, Faulk, Casper, Bordonaro, Novaria

Attorney Mark Johnson represented the applicants. The Saindons had previously been granted a special permit for the same at a different property, which they did not purchase. The same family member, Mrs. Saindon's mother, Joanne Loisel, will occupy the family dwelling unit. There will be no exterior changes to the garage. Five letters of support were submitted. The Board reminded the Saindons that the same conditions would apply: Joanne Loisel is the sole occupant, the special permit is valid for 5 years and the stove must be removed at the end of use. The Saindons expressed their understanding. There being no other questions or comments, Faulk made a motion to waive a site view & to close the hearing. Casper seconded the motion & the Board voted unanimously to waive a site view & close the hearing. The Board then proceeded to deliberate. Bordonaro made a motion to approve the special permit with the standard conditions. Faulk seconded the motion & the Board voted unanimously to approve the special permit with conditions. Casper then made a motion to continue the deliberation for the purpose of writing a decision. Bordonaro seconded the motion & the Board voted unanimously to continue deliberation to the next regular meeting. Bordonaro volunteered to draft the decision.

Petition Number: Z-19-9

Premises Affected: 69 Maple Ave

Petitioner: Lamontagne

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 will not meet the minimum side yard depth requirement

Members Sitting: Oltman, Casper, Faulk, Corrigan, Novaria

Attorney Mark Johnson represented the applicants who wish to construct an addition that will not meet the minimum side setback. Meghan Lamontagne, owner, was present. The addition will include a garage with living space above. Preservation Commission has reviewed the project and submitted a letter of support dated 1/3/19. Joanna Reck from the Preservation Commission informed the Board that the commission unanimously approved the addition & drawings. The addition will not be any closer to the side lot line than the existing house. Mrs. Lamontagne has spoken with abutters and there were no objections voiced. The Board inquired about the existing barn's use. Its immediate use will be for storage space, but eventually it will be converted to living space. There being no other questions or concerns from the Board or the public, Casper made a motion to waive the site view and close the public hearing. Novaria seconded the motion & the Board voted unanimously to waive a site view & close the hearing. The Board then proceeded to deliberate. The Board agreed that the proposed addition can be constructed under a special permit with the standard conditions that the work is constructed in substantial conformance with the plot plan and drawings. Casper made a motion to approve the special permit under 3.3.5 with the standard conditions and to deny the variance from 4.1.2 as moot. Corrigan seconded the motion and the Board voted unanimously to approve the special permit & deny the variance. Casper made a motion to continue deliberation to the March regular meeting. Corrigan seconded the motion and the Board voted unanimously to continue deliberation to the March meeting. Corrigan volunteered to write the decision.

Petition Number: Z-19-10

Premises Affected: 28 Salem Street

Petitioner: Trustees of Phillips Academy

Relief requested: special permit under Art. VIII, §3.3.5 &/or for variances from Art. VIII, §§4.1.2, 3.1.3.A.4.b, 4.1.2 &/or 7.6.3 to construct a 2-family dwelling on a lot that lacks the minimum frontage

Members Sitting: Oltman, Casper, Bordonaro, Corrigan, Novaria

Faulk recused herself from the hearing and left the room for the duration of the hearing. Novaria disclosed that his wife works for Phillips Academy, he feels that he can be impartial. No one objected to his participation in the hearing. Attorney Robert Lavoie represented the petitioner's request to construct a 2-family dwelling on a lot lacking the minimum frontage. Lavoie noted that the currently vacant lot once had a 6-family dwelling on it. The Academy acquired the property, near the intersection of Salem Street and Highland Road, in 1956. The 6-family dwelling was demolished in 1994. Lavoie argued that the proposed use, faculty housing, falls under Section 3 of Chapter 40A, the Dover Amendment, and is exempt. The Board discussed whether housing falls under educational use and if approved, placing conditions that would limit it to faculty housing. Lavoie suggested that it is a support type facility. The proposed 2-family dwelling meets the minimum setbacks for the SRB zoning district and has 2 driveways, one of which exits at the rear across Phillips Academy land. Rob Bramhall, architect, reviewed the design for the 3-bedroom units, which will be similar in style to the surrounding neighborhood. It was noted that the Academy owns all surrounding land. The Board reviewed the requested relief for multiple dwellings (3.1.3.A.4.b) and parking within 20' of any exterior property line (7.6.3). There being no questions or comments from the public and no more from the Board, Bordonaro made a motion to waive a site view and to close the public hearing. Casper seconded the motion and the Board voted unanimously to waive a site view and close a hearing. The Board then proceeded to deliberate. The general sense of the Board is that the project is appropriate and with conditions, can be approved to restrict occupancy to faculty use only. The Board felt that a hardship exists due to the irregular 'pork chop' shape of the lot. Bordonaro made a motion to approve a variance with the standard conditions that the dwelling shall be constructed in substantial conformance with the plot plan and drawings submitted with the application and that occupancy is restricted to faculty only. Casper seconded the motion and the Board voted unanimously to approve the variance with conditions. Bordonaro made a motion to continue deliberation for the purpose of drafting findings and a decision. Casper seconded the motion & the Board voted to continue deliberation to the next month's meeting. Oltman volunteered to draft the decision.

Faulk returned to the room.

Petition Number: Z-19-11

Premises Affected: 143 Abbot Street

Petitioner: Girls Scouts of Eastern MA

Relief requested: variance from Art. VIII, §3.1.3.C.6 to operate a retail sales establishment

Members Sitting: Oltman, Casper, Bordonaro, Faulk, Corrigan

Mark Connolly, Facilities Director for Eastern Mass., represented the petition. Connolly explained that the Girl Scouts run a trading post at the camp and approximately 95% of sales are to girl scouts and volunteers. The 1,000 sq. ft. store is located in the lower level of an existing building. It is open to the public, however, from 10 am until 6 pm, Tuesday, through Saturday. The shop is not advertised and there are two paid employees. The only time that it is closed, outside of the regular schedule, is at Christmas. Connolly informed the Board that the Waltham and Middleborough service centers also have shops. They are not in residential districts, like the Andover location. Connolly has not spoken with abutters. The shop has been operating for 4 years. The Board expressed concern over issuing a variance for a retail establishment since no hardship has been presented. Alternatives forms of relief were discussed, including operating it as part of a charitable institution since the Girl Scouts are a 501(c)3 organization. Taken into consideration is the limited population that would shop at such a store and whether the retail element is typical of a charitable operation, as well as the fact that the shop

already operates in the residential district and is open to the public now. The Board voiced concern over issuing a variance in this situation noting that sales are insular and limited. Casper compared the shop to gift shops found at some churches. Faulk argued that the Dover use is clear with religious uses. The Board considered if appropriate relief can be granted under the umbrella of a charitable institution or if it falls under educational use and whether the isolated location might be a sufficient hardship. Bordonaro felt that the current application is appropriate. Connolly explained to that part of the Girl Scout mission is education. Casper suggested continuing the hearing to further look into it. The Board struggled with finding a way to establish a hardship since the applicant has not proposed one. Corrigan emphasized that they are limited to by the statute and the proposal is not a classic retail use, but rather a quasi-charitable use. Bordonaro suggested that they seek Town Counsel's advice. Faulk compared this to the technical school meal service case that the Board approved. Oltman will research the options and speak with Town Counsel so that the Board can grant relief in an appropriate manner. Novaria asked for copies of the 501(c)3 charter. Faulk made a motion to continue the hearing to the regular monthly meeting in March. Bordonaro seconded the motion & the Board voted unanimously to continue the hearing to March. Oltman designated Novaria as the alternate.

Petition Number: Z-19-12

Premises Affected: 1 Hartigan Court

Petitioner: Joyner

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 will not meet the minimum side yard depth requirement

Members Sitting: Oltman, Casper, Faulk, Corrigan, Novaria

Architect Joanna Reck represented David & Rebecca Joyner, who were also present. The proposed addition will not meet the minimum side setback in the SRA district. The house is a pre-existing, non-conforming structure on a long, narrow lot with a rear yard that drops. The single story addition will have a master suite, bathroom and closet. The house is not in a historic district. There were some abutters present in support of the proposal. The Board discussed that the lot lacks the minimum required frontage and the proposed addition will increase the non-conformity on the left side setback. Reck pointed out that the lot's frontage is along High Street with a right of way used for access for the abutting neighbor on Hartigan Court. Doug Nason, the immediate abutter at 5 Hartigan Court, spoke in support. Richard Joselyn, abutter at 21 Harding St., spoke in support. There being no other questions or comments from the Board or the public, Casper made a motion to waive a site view and to close the hearing. Faulk seconded the motion & the Board voted unanimously to waive the site view & close the hearing. The Board then proceeded to deliberate. In deliberation discussed was that a variance is appropriate due to the shape of the lot, the topography and the increase in the non-conformity by further encroaching into the setback. Bordonaro argued that a new non-conformity is being created. Faulk made a motion to approve a variance with the standard conditions that the addition shall be constructed in substantial conformance with the plot plan and drawings submitted to the Board and to deny the special permit as moot. Novaria seconded the motion & the Board voted unanimously to approve the variance with conditions and to deny the special permit as moot. Casper made a motion to continue deliberation to the March meeting for the purpose of drafting findings and conditions. Corrigan seconded the motion & the Board voted unanimously to continue deliberation to March. Casper volunteered to write the decision.

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, Casper, Corrigan

Due to the absence of McDonough and Rechisky, the Board was unable to hold the continued deliberation. Casper made a motion to continue deliberation to the regular monthly meeting in March. Corrigan seconded the

February 7, 2019

motion & the sitting members voted unanimously to continue deliberation to the regular monthly meeting in March.

Approval of Minutes

Minutes of 12/6/18 – Bordonaro noted that on page 4 to delete the word ‘lot’ about midway down the page since it is repetitive. Casper made a motion to approve the minutes of 12/6/18 as amended. Bordonaro seconded the motion & the Board voted unanimously to approve the minutes as amended.

Minutes of 1/3/19 - There being no changes to the draft minutes, Casper made a motion to approve the minutes as drafted. Corrigan seconded the motion & the Board voted unanimously to approve the minutes as drafted.

There being no other business of the Board, Casper made a motion to adjourn the meeting. Bordonaro seconded the motion and the Board voted unanimously to adjourn the meeting at 8:02 pm.

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary