



**MINUTES OF THE ZONING BOARD OF APPEALS
ANDOVER, MASSACHUSETTS
Virtual Meeting Broadcast by:
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March 4, 2021**

Participating remotely via Webex were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk, Ellen Keller and Lisa Rechisky, Members; Michael Novaria, David Guerette and Daniel Lopez, Associate Member; Barbara Burke, Zoning Administrative Secretary.

The meeting opened at 6:31 p.m. Chair Oltman gave an overview of the meeting procedure, announced the names of the members participating and provided the call-in number and email address for anyone to submit comments, questions or concerns during the hearings.

Oltman recused herself from Z-20-191 and designated Rechisky as Chair for the case.

Petition Number: Z-20-191

Premises Affected: 34 Park Street

Petitioner: Sal's Park Street Andover, LLC

Relief requested: variances from Art. VIII, §§5.2.4, 5.2.6, 5.2.9 to install a free-standing, externally illuminated directory sign that exceeds the maximum allowed height & area

Members Sitting: Rechisky, McDonough, Faulk, Guerette, Lopez, Novaria

This is a continued public hearing. Attorney Hausler represented the petitioner & informed the Board that based on the Board's discussion at the last meeting, the sign base was decreased from 25.4 sq. ft. to 7.5 sq. ft. and the overall sign area was reduced from 21.3 sq. ft. to 13.5 sq. ft. The sign will be externally illuminated with downward lighting. There being no other questions or comments from the Board or the public, McDonough made a motion to close the public hearing. Keller seconded the motion and the Board voted by roll call to close the hearing: Faulk – yes, Rechisky – yes, Novaria – yes, Lopez – yes, Keller – yes, Guerette – yes. The Board then proceeded to deliberate. The Board discussed the fact that the retail building is setback 100' from the street, thereby creating a hardship according to the applicant. The Board felt that the applicant addressed their concerns by reducing the overall size of the sign. The Board considered conditions of approval, external illumination, hours of illumination and being constructed in substantial conformance with the plans submitted. Novaria noted that at the last meeting, the applicant's attorney stated that the sign is extinguished one hour after closing. Keller made a motion to approve the variance for a free-standing sign that will exceed the maximum size & height with the conditions that it be constructed in conformance with the updated plans, that the illumination shall be extinguished one hour after closing (10 pm closing time) and to continue deliberation in order to draft a written decision. Faulk seconded the motion and the Board voted by roll call: Faulk – yes, Rechisky – yes, Novaria – yes, Lopez – yes, Keller – yes, Guerette – yes. Novaria volunteered to draft the decision.

Petition Number: Z-20-190

Premises Affected: 53 Dascomb Road

Petitioner: Watson

Relief requested: variance from Art. VIII, §4.2.4 to install an in-ground pool that will not meet the minimum front yard depth requirement

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

This is a continued deliberation to discuss the draft decision. There being no changes to the written decision as drafted, Faulk made a motion to approve the decision as drafted. Keller seconded the motion & the Board voted by roll call: Faulk – yes, Rechisky – yes, Keller – yes, Lopez – yes, Oltman – yes.

Petition Number: Z-21-2

Premises Affected: 65 Burnham Road

Petitioner: Ballinger

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

Members Sitting: Oltman, McDonough, Faulk, Keller, Rechisky, Keller

This is a continued deliberation to discuss the draft decision. There being no changes to the written decision as drafted, Faulk made a motion to approve the decision as drafted. Keller seconded the motion & the Board voted by roll call: McDonough – yes, Faulk – yes, Rechisky – yes, Keller – yes, Oltman – yes.

Petition Number: Z-21-6

Premises Affected: 110 Lowell Street

Petitioner: Ham / Elliott

Relief requested: special permit under Art, VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to construct a 2nd story addition that won't meet the minimum front setback requirement

Members Sitting: Oltman, McDonough, Faulk, Keller, Rechisky

This is a continued deliberation to discuss the draft decision. There being no changes to the written decision as drafted, Faulk made a motion to approve the decision as drafted. McDonough seconded the motion & the Board voted by roll call: McDonough – yes, Faulk – yes, Rechisky – yes, Keller – yes, Oltman – yes.

Petition Number: Z-21-9

Premises Affected: 14 Beech Circle

Petitioner: Hogan

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

Members Sitting: Oltman, McDonough, Faulk, Keller, Rechisky

This is a continued deliberation to discuss the draft decision. There being no changes to the written decision as drafted, Keller made a motion to approve the decision as drafted. Faulk seconded the motion & the Board voted by roll call: McDonough – yes, Faulk – yes, Rechisky – yes, Keller – yes, Oltman – yes.

Petition Number: Z-20-163

Premises Affected: 8 Bancroft Road

Petitioner: Yen & Tong

Relief requested: Party Aggrieved for review of the Inspector of Building's determination &/or for a variance from Art. VIII, §3.2 to construct an accessory structure on a lot without a principal structure.

Members Sitting: Oltman, Keller, Faulk, Rechisky

Oltman informed the Board that the purpose of this discussion is to affirm that the correct version of the decision, which was recirculated to the Board prior to this evening's meeting, has been filed with the Town Clerk in order to have the Town Clerk sign off on it for recording at the Registry of Deeds. Keller made a motion to affirm the decision that was filed with the Town Clerk. Faulk seconded the motion and the Board voted by roll call: Rechisky – yes, Faulk – yes, Keller – yes, Oltman – yes

Petition Number: Z-20-194

Premises Affected: 32 Park Street

Petitioner: Montalto

Relief requested: Party Aggrieved for review of the Inspector of Building's determination &/or for a variance from Art Party Aggrieved for review of a decision made by the Inspector of Buildings &/or for a special permit under Art, VIII, §5.2.5.1 for the continued use of an internally illuminated sign

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

The Board received a request to continue the hearing without opening it to the next month's meeting. McDonough made a motion to continue the hearing without opening it to the next month's meeting. Novaria seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Keller – yes, Novaria – yes, Guerette – yes, Lopez – yes, Oltman –yes.

Petition Number: Z-21-17

Premises Affected: 48 Juliette Street

Petitioner: Dessin

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 front setback requirement.

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

Basenal Dessin, owner, represented himself in his request for a variance & /or a special permit to construct a 2-story addition for his growing family. He explained that they have 3 bedrooms and 4 kids. The addition will increase the number of bedrooms, the size of the kitchen, laundry and overall living space. The existing house has a non-conforming setback and the addition will not be any closer to the front setback than the existing. He has spoken with the neighbors who expressed being in favor. The house is not registered as historic. The existing 1-car garage at the rear of the lot will remain. The Board agreed that a site view is not necessary. There being no other questions or comments from the Board nor the public, Keller made a motion to waive a site view & to close the public hearing. Faulk seconded the motion & the Board voted by roll call: Oltman – yes, Faulk –yes, Novaria – yes, McDonough – yes, Keller – yes, Lopez – yes. The Board then proceeded to deliberate. In deliberation the Board agreed that a special permit is appropriate. Guerette pointed out that the addition will be closer to the front lot line by 1/10'. The Board agreed that this did not change anything discussed in the public hearing. Keller made a motion to approve a special permit under Section 3.3.5 with the standard conditions & to deny the variance from Section 4.1.2 as moot and to continue deliberation until the next meeting for the purpose of drafting a written decision. McDonough seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Keller – yes, Novaria – yes, Oltman – yes, Guerette – yes, Lopez – yes. Keller volunteered to draft the decision.

Petition Number: Z-21-20

Premises Affected: 43 River Road

Petitioner: Koopman

Relief requested: variances from Art. VIII, §4.1.2 & 4.2.2 to construct an accessory structure that won't meet the minimum side setback requirement.

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

Attorney Mark Johnson represented the petitioner. Also present were Billy Clark of Koopman Lumber and Andy Pojasek, project engineer. Attorney Johnson explained that the lot is split by two zoning districts and abutted by the Vocational High School. The proposed accessory structure will be constructed along the lot line with the school at a 34' side setback where 40' is required. It is similar to an existing accessory structure in the same area of the lot. Johnson informed the Board that Koopman Lumber has spoken with the Vocational High School Superintendent, John Lavoie. The school has no issue with the proposal. There being no other questions

or comments from the Board or the public, McDonough made a motion to waive a site view & close the public hearing. Faulk seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Keller – yes, Guerette – yes, Oltman – yes. The Board then proceeded to deliberate. Faulk made a motion to approve the variances from Section 4.1.2 & 4.2.2 with the condition that the accessory structure must be constructed in substantial conformance with the plot plan and to continue deliberation for the purpose of drafting a decision. Keller seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Keller – yes, Guerette – yes, Oltman – yes, Novaria – yes, Lopez – yes. Oltman volunteered to draft the decision.

Petition Number: Z-21-21

Premises Affected: 134 Elm Street

Petitioner: Fournier

Relief requested: special permit under Art, VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to construct a garage addition that won't meet the minimum rear setback requirement

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

Owner Marc Fournier represented himself. He informed the Board that the house was constructed in approximately 1748 with a garage added approximately between 1946- 1962. He has spoken with the neighbors regarding the proposal to replace the existing attached garage with a 2-bay, 2 story garage in the same style as the house. Preservation Commission will review the proposal on March 9th. The existing attached garage does not meet the rear setback and the new one will be built on the existing foundation, thereby having the same non-conforming rear setback. 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 public hearing. Faulk seconded the motion & the Board voted by roll call: McDonough – yes, Faulk – yes, Keller –yes, Lopez – yes, Oltman – yes, Novaria – yes, Guerette – yes. The Board then proceeded to deliberate. In deliberation the Board agreed that relief can be grant by special permit. Faulk made a motion to approve the special permit with the standard conditions as well as approval by Preservation Commission with adherence to any conditions imposed by that decision, to deny the variance as moot and to continue deliberation for the purpose of drafting a written decision. Keller seconded the motion and the Board voted by roll call: McDonough – yes, Keller – yes, Faulk – yes, Oltman – yes, Novaria – yes, Lopez – yes, Guerette – yes. Faulk volunteered to draft the decision.

Keller left the remainder of the meeting.

Petition Number: Z-21-22

Premises Affected: 42 Bannister Road

Petitioner: Carrington (Flahive)

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

Members Sitting: Oltman, McDonough, Faulk, Novaria, Guerette, Lopez

Ryan McShera, architect with Red Barn Architecture, presented the application for the owner, Amanda Carrington, who was also participating virtually. McShera gave an overview of the proposed additions & alterations that the Carrington's wish to make to their new home, purchased in 2019. The existing house is non-conforming, is located on an irregularly shaped corner lot and the location of the house on the lot does not provide for an alternative garage location. McDonough asked for clarification of the applicant's name as listed (Victoria Flahive). McShera explained that she is an associate of Red Barn Architecture. Oltman noted that the proposed garage, which faces Clark Road rather than Bannister Road, will increase the non-conformity into the front yard setback. Guerette commented that it would not be substantially more detrimental. The Board discussed the existing & proposed rear setbacks (16.6' existing, 21' proposed, 30' required). Oltman read into the record letters of support received from Kevin Keller, 39 Bannister Rd, and Barbara Phillips, 49 Clark Road. Zoning Administrative Secretary Barbara Burke read into the record a letter of concern from the Lemmerman's at 1 Bradley Road. They abutter the Carrington property directly to the rear and voiced concern over the non-

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conforming addition being closer to their back yard, a space which they use extensively. Mrs. Carrington noted that she has never met or spoken with the Lemmerman's. She feels they the addition will not impose on their privacy & they will respect their neighbors' privacy. She added that there are existing trees along their common lot line that create a barrier that prevents them from seeing into the Lemmerman's back yard. The existing shed will remain. Associate Member Novaria confirmed that Google Maps shows a natural tree & brush barrier. Mrs. Carrington added that the privacy from neighbors is one reason they bought the house. McDonough stated that she will drive by the house on her own to take a look. Otherwise, the Board did not feel that a group site view is necessary. Oltman clarified that the addition will not be closer to the rear lot line. There being no other questions or comments from the Board or the public, Faulk made a motion to waive a site view & to close the public hearing. McDonough seconded the motion & the Board voted by roll call to waive the site view & close the hearing: McDonough – yes, Faulk – yes, Novaria – yes, Guerette – yes, Oltman – yes, Lopez – yes. The Board then proceeded to deliberate. The Board discussed whether relief can be granted by special permit or variance. Guerette argued that a new non-conformity is being created by encroaching into the front setback. Oltman commented that it is a pre-existing non-conforming structure. Faulk made a motion to approve a special permit with the standard conditions, to deny the variance as moot and to continue the deliberation for the purpose of drafting a written decision. Novaria seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Novaria – yes, Lopez – yes, Guerette – yes. Guerette volunteered to draft the decision.

MINUTES:

1/7/21: Novaria noted that he sat on the 8 Bancroft Road case. There being no other changes to the draft minutes, Novaria made a motion to accept the minutes of 1/7/21 as amended. Guerette stated that he was not present at the 1/7/21 meeting. Oltman stated that he can still vote to accept the minutes. McDonough seconded the motion & the Board voted by roll call to accept the minutes as amended: McDonough – yes, Faulk – yes, Novaria – yes, Lopez – yes, Guerette – yes, Oltman – yes.

There being no other business, McDonough made a motion to adjourn the meeting. Faulk seconded the motion and the Board voted unanimously to adjourn the meeting at 7:56 p.m.

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary