



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

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810
April 4, 2019**

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

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

Petition Number: Z-19-24

Premises Affected: 161 + 163 Andover Street

Petitioner: Town of Andover

Relief requested: vote on preservation restriction

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

Also present: Thomas Urbelis, Town Counsel

The Board received a request from the Town Manager on April 2, 2019 to continue the hearing to the next regularly scheduled meeting. McDonough made a motion. Faulk seconded the motion & the Board voted unanimously to continue the hearing to the next regularly scheduled meeting.

Petition Number: Z-19-23

Premises Affected: 118 Rattlesnake Hill Road

Petitioner: Maier / Partelano

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 front or rear setbacks

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

This is a continued deliberation meeting to review and vote on the draft decision. There being no changes to the draft decision, Casper made a motion to approve the draft decision with the inclusion of the legal advertising dates. Rechisky seconded the motion & the Board voted unanimously to approve the draft decision.

Petition Number: Z-19-20

Premises Affected: 125 Bailey Road

Petitioner: AJM Construction, LLC

Relief requested: Modification of Decisions Z-18-105 & Z-18-131

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

This is an unopened, continued public hearing. Jim Hanley, engineer with Civil Design Consultants, Inc., represented the petition. The applicant has obtained all approvals from Conservation & Planning which included 2 lot lines changes. The revised plan was submitted to the Board. The minimum lot width was not met with the house as designed. Preservation has reviewed the minor modification and supports it. The only modification requested from the ZBA is the plan reference since the 9/25/18 subdivision plan has been revised and the new plan date is 1/30/19. There was an equal land swap with an abutter in order to align the roadway. Martel informed the Board that no change has been made to Parcel B. There being no other questions or comments from the Board or the public, Casper made a motion to waive a site view & to close the public hearing. Keller

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seconded the motion and the Board voted unanimously to waive the site view & close the public hearing. The Board then proceeded to deliberate. Casper made a motion to approve the requested modification. McDonough seconded the motion and the Board voted unanimously to approve the requested modification. McDonough made a motion to continue deliberation to the next meeting in order to draft the decision. Casper seconded the motion & the Board voted unanimously to continue deliberation. Rechisky volunteered to draft the decision.

Petition Number: Z-19-30

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, McDonough, Casper, Faulk, Rechisky

Mark Connolly, facilities manager for the Girls Scouts of Eastern MA, presented the petition to for the continued operation of an 1100 sq. ft. retail store. The shop sells Girl Scout products, primarily, and has approximately 15 customers per day. Connolly noted that the Girl Scouts are a charitable organization, the articles of organization for which were included in the packet. There is sufficient parking for the store. It is open year-round from Tuesday-Saturday, one night until 6 pm. The only advertising is on their website and brochures. There being no other questions or comments from the Board or the public, Faulk made a motion to waive a site view and to close the public hearing. Rechisky seconded the motion and the Board voted unanimously to waive the site view and to close the public hearing. The Board then proceeded to deliberate The Board discussed the existing use by a charitable organization, the low traffic volume and the retail shop as an accessory use to the camp. There being no further discussion, McDonough made a motion to approve a special permit. Casper seconded the motion & the Board voted unanimously to approve the special permit. McDonough made a motion to continue deliberation to the next regular meeting for the purpose of drafting a decision. Casper seconded the motion & the Board voted unanimously to continue deliberation. Casper volunteered to draft the decision.

Petition Number: Z-19-32

Premises Affected: 11 Regis Road

Petitioner: Booth

Relief requested: special permit under Art. VIII, §3.1.3.F.4 to construct a family dwelling unit addition

Members Sitting: Oltman, Casper, Bordonaro, McDonough, Novaria, Keller

Rechisky recused herself from the hearing since she works with the applicant. She left the room for the duration of the hearing. Keller sat in place of Rechisky. Daniel & Purvi Booth represented themselves requesting a special permit to create a family dwelling unit for Mrs. Booth's mother, Lata Desai. The proposed unit is attached to the house and conforms to the minimum setbacks. The Board informed the Booths that the special permit is valid for 5 years, must be occupied by Lata Desai and the cooktop must be removed when the unit is no longer in use by Mrs. Desai. The special permit must be renewed prior to the expiration of every 5 year period by filing an application with the ZBA. There were no comments or questions from the Board or the public. Novaria made a motion to waive a site view & to close the public hearing. Bordonaro seconded the motion & the Board voted unanimously to waive the site view & close the hearing. The Board then deliberated. McDonough made a motion to approve the special permit with the usual conditions and to continue deliberation to the next regular meeting. Novaria seconded the motion & the Board voted unanimously to approve the special permit and to continue deliberation to the next regular meeting. Keller volunteered to draft a decision.

Petition Number: Z-19-33

Premises Affected: 429 South Main Street

Petitioner: Andover Village Associates

Relief requested: modifications of Decisions 3710 & 3762 to remove or modify certain conditions & for variances from Art. VIII, §3.1.3.C.12.a & 5.1.4.C.12.a to convert retail space to sit-down restaurant, expand hours of operation & to rent space within the existing building.

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

Attorney Mark Johnson represented Tom Walsh, of Andover Village Associates, who was also present. Also present from Johnson & Borenstein's office was Attorney Kathy Hyatt. Mr. Walsh wishes to expand the sit-down restaurant use and eliminate the retail use of the establishment, as well as to rent space within the building to other businesses. Johnson presented the history of the property, formerly a gas station & auto repair shop with an Activity Use Limitation, and the current use, a limited service restaurant and retail shop with a liquor license. The requested modification is to eliminate the retail and expand the use to a sit-down restaurant with table service and to rent parts of the building to other businesses. The request includes elimination of the local ownership restriction. There are currently 42 parking spaces on site. Johnson explained that Mr. Walsh wishes to have the ability to potentially transfer the property to a new owner in the future, for a similar business use that is also community oriented. Johnson reviewed the conditions that they wish to modify, keep or delete (conditions 1, 2, 6, 10, 11, 16, 17 of Decision 3762). The prohibition of a fast food franchise and a drive-thru window are not part of the requested modifications. Johnson does not feel that a variance is necessary to modify the non-conforming use, but a variance for the 53 required parking spaces is needed, where only 42 parking spaces are on site. Walsh will continue to continue as the owner/operator. Additionally, he wants to operate his real estate business, KSA Realty, in the building. He is the sole employee of KSA Realty. The 2400 sq. ft. basement is a production kitchen for baking and catering, which Walsh wishes to bring into compliance. The Board reviewed the proposal for a 90-seat with 53 parking spaces and discussed the parking for customers and employees. Based on the number of parking spaces and employees, the Board calculated 68 seats maximum. Walsh informed the Board that deliveries are made at the rear entry, where employees also park in 6 unofficial spaces. The Board considered that the original Site Plan Approval did not include the 6 employee parking spaces and that if they are in use now, there is a shortage of parking now. Johnson suggested a condition of approval that they have the Inspector of Buildings review the parking. The site plan shows 30 spaces, but Walsh represented that there are 42. Walsh explained that customers park along the fence in unmarked spaces. Johnson will submit an updated parking plan. The Board reviewed the requested changes: table-service restaurant with expanded hours of operation (open until 11 pm). Faulk questioned if the gross square footage is increasing to 3658 sq. ft. Johnson stated that it was wrong on the original plans. The Board considered the existing liquor license & the full service license Walsh will apply for. Several residents spoke in favor of the proposed modifications. Katie Snyder, 432 S. Main St., voiced concern over increased traffic, risk for accidents and noise, as well as trash. Leonard McDonald, 425 S. Main St.; voiced concern over increased noise, especially in the summertime when the establishment will close at 11 pm. Walsh noted that the kitchen closes one hour before closing (10 pm on Fri/Sat) and he can minimize noise by 8:30/9 pm during the week. Walsh assured them that he lives 2 miles away and is TIPS certified to eliminate/prevent unruly behavior. There will not be a bar, it will be food service with liquor. David Brown, 31 Glenwood Rd. and former ZBA Associate Member, gave a brief history of the zoning decisions on the property. Brown agrees with other neighbors that the current business is an asset, but there are issues with parking. David Deloury, 437 S. Main St., one of the former developers & current part-owner of the property, spoke in favor. Mr. & Mrs. Baldwin, 2 Boston Rd., spoke in favor. The Board noted that even if all of the requested relief is granted, the petitioner still needs Board of Selectmen approval of a liquor license and he will need to deal with the trash issues. Johnson submitted 3 letters of support. Oltman suggested keeping the hearing open in order to review the parking plan. Casper suggested that they should go back to the Planning Board for Site Plan Review, unless they decrease the total number of seats so that the existing parking meets the minimum requirement. Faulk suggested making a condition for the hours of operation. There being no other questions or concerns from the Board or the public, McDonough made a motion to continue the public hearing to the next regular meeting. Rechisky seconded the motion & the Board voted unanimously to continue the public hearing to the next month.

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Approval of Minutes

Minutes of 3/7/19 - There being no changes to the draft minutes, Corrigan made a motion to approve the minutes as drafted. Keller seconded the motion & the Board voted unanimously to approve the minutes as drafted.

There being no other business of the Board, Bordonaro made a motion to adjourn the meeting and the Board voted unanimously to adjourn the meeting at 8:52 pm.

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary