



**MINUTES OF THE ZONING BOARD OF APPEALS
ANDOVER, MASSACHUSETTS
Virtual Meeting Broadcast by:
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April 15, 2021**

Participating remotely via WebEx were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk and Ellen Keller, Members; Michael Novaria, David Guerette and Ralph Arabian, Associate Members; Barbara Burke, Zoning Administrative Secretary.

The meeting opened at 6:33 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.

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: Faulk, Guerette, Keller, Novaria

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. Novaria seconded the motion & the Board voted by roll call: Faulk – yes, Keller – yes, Novaria – yes, Guerette - 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

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

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, Guerette

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, Keller – yes, Guerette – yes, Oltman - yes.

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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 (in place of Lopez)

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. Novaria seconded the motion & the Board voted by roll call: McDonough – yes, Faulk – yes, Keller – yes, Novaria – yes, Oltman - yes.

Petition Number: Z-20-194 & Z-21-36

Premises Affected: 32 Park Street

Petitioner: Montalto

Relief requested: Party Aggrieved for review of the Inspector of Building's determination &/or for a special permit under Art, VIII, §5.2.5.1 for the continued use of an internally illuminated sign –and- variances from Art. VIII, §5.2.5.1, 5.2.5.4, 5.2.5.5 for the continued use of an internally illuminated & backlit by other than white light attached sign.

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

Attorneys Nicholas DiMauro & Mark Burke represented the petitioner, Lillian Montalto, who also participated virtually by WebEx. Attorney DiMauro stated that petitioner withdraws her application for a special permit under Art. VIII, §5.2.5.1 for the continued use of an internally illuminated sign. DiMauro noted that the request as Party Aggrieved is for the steady, externally attached sign, with opaque letters illuminated by stationary light. He directed the Board to the report submitted by their expert Mr. Friedman, who believes that there is no violation. In the alternative, the request for variances is based on a hardship related to the shape of the lot with the building being setback 110' from the public way. The existing sign is not a detriment to the public, emits less light than flood lights with only 9.7' lamberts where less than 100' lamberts is allowed under the bylaw. The current sign does not derogate from the bylaw and was built per Section 5.1.5.3.3.b of a size, color and material in character with the building. Attorney DiMauro addressed the public safety concern in that the existing sign is visible after dusk & enhances the area. He feels that a variance is appropriate & urged the Board to take a site view, noting that the illumination has not been turned on once the violation notice was sent. The Board discussed the type of illumination, the location of the LED lamps, the operating hours and whether or not there are any other tenants in the building. DiMauro explained that the LED lamps are behind the stainless steel letters adding that the letters are not illuminated. The operating hours are 8 am – 10 pm and only the real estate company occupies the building. Keller inquired about the free-standing sign at the street & whether it is controlled by Ms. Montalto. Montalto stated that the free-standing sign is wrapped with her name & charitable events that she sponsored. She controls that sign. The original site plan approved a planter in the location of the free-standing sign, but it was changed to a sign due to parking safety. The Board discussed whether Montalto had pursued putting her company name on the free-standing sign. She has not. Oltman read into the record a message from E Frahllich in the WebEx chat that the official hours are 8 am – 6 pm M-F and 9 am – 5 pm Saturday. The Board considered the violation notice that states that only steady, external illumination directed at the sign is allowed. The inspector stated in his letter that since the illumination is behind the sign it is not directed directly at the sign. The Board questioned whether or not the illumination would remain to be purple if the sign is approved. It will remain purple per DiMauro. Suzanne Korschun, representing the Design Review Board (DRB) summarized a memo from the DRB urging the Board to reject the variance because the sign is backlit by colored light and does not conform to the bylaw adopted at Town Meeting on September 12, 2020. She argued that the historic, walkable small town character is compromised with such a sign. Further, the existing sign does not conform to what DRB approved, nor was the banner on the free-standing sign. Guerette asked what was approved. Korschun explained that the approved sign was to have white up lighting on cornices. Montalto pointed out that her building is not in a historic district & there are many internally

illuminated signs downtown. Faulk noted that the equal protection argument would apply if the Board treated the current applicant differently than others. But they haven't & therefore it has no direct bearing on this case. Keller added that the decision is based on the bylaw, not aesthetics. Guerette reminded the applicant that other non-conforming signs aren't part of this case. DiMauro argued that the variance & equal protection applies to this and the town. The Board asked for the hardship, which DiMauro stated as being that the sign aids customers in finding the building and parking lot at night. The Board discussed the type and color of illumination asking if the sign can be externally illuminated without ribbon lighting from the front with white light to obtain the same effect. DiMauro was unsure. Novaria pointed out that the DRB application shows an external spot light. DiMauro informed the Board that it is still on the building. The Board asked if the sign can comply with the DRB reviewed sign, if the DRB application showed ribbon lights and how the sign changed from the DRB application to the current sign. DiMauro stated that the original sign had ribbon lights, which weren't approved, but were changed to spot lights. Korschun informed the Board that the ribbon lights were not approved. Montalto asked for the Inspector's opinion of the sign. Chris Clemente, Inspector of Buildings, stated that the application was submitted without ribbon lighting and the permit was issued. Subsequently, complaints were received. He noted that it is difficult to tell from the street upon his inspections and then the violation notice was sent. It is his interpretation that backlit lighting does not comply. Any changes to signs need to be brought into compliance, unless it is only a change in the façade of a sign. Montalto urged the Board to view the sign arguing that it is not backlit, but illuminated around the edges. Clemente explained that he only investigates complaints received alleging violations. The Board discussed that some signs may be pre-existing, non-conforming and a complaint driven investigation of alleged violations is not selective enforcement. The Board can only reviews signs for which an application is filed for review. Oltman read letters of support from multiple downtown businesses. McDonough noted that the technology has changed and there are perhaps more varieties of illumination, acknowledging the Town Meeting vote regarding backlighting. Korschun reiterated that the bylaw allows steady, external & stationary light sources. Arabian questioned why the engineer's report on page 12 was not stamped. DiMauro will ask the expert. Clemente noted that electronic stamps are more the norm now without signatures. The Board discussed a nighttime site view and agreed to view the sign on 4/22/21 at 8 pm. Keller made a motion to continue the hearing to 5/6/21. Arabian seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Keller – yes, Oltman – yes, Novaria – yes, Guerette – yes, Arabian – yes.

Petition Number: Z-21-37

Premises Affected: 161 Andover Street

Petitioner: Town of Andover

Relief requested: variances from Art. VIII, §4.2.2 to install a transformer that won't meet the minimum front or side yard depth requirements

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

Janet Nicosia, Town of Andover Director of Facilities, gave an overview of the new fire station project explaining that they need to test the systems in the building before it is complete. Therefore, they are installing the transformer. The proposed location is on the right side of the new station, adjacent to 157 Andover St, which the Town hopes to buy. However, the property is in probate. Therefore, the side setback will be non-conforming at 3.4' until and when the Town purchases it. The front setback will be non-conforming as well. Inspector of Buildings Chris Clemente informed the Board that the average front setback will change once the house at #157 Andover Street is demolished. The proposed front setback is 28', where 35' is required. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and to close the hearing. Faulk seconded the motion and the Board voted by roll call to waive the site view & close the hearing: McDonough – yes, Faulk – yes, Novaria – yes, Guerette – yes, Arabian – yes, Oltman - yes. The Board then proceeded to deliberate. In deliberation the Board felt that the requested relief can be granted by variance. McDonough made a motion to approve the variance from Section 4.2.2 with the appropriate conditions. Guerette seconded the motion and the Board voted by roll call to grant the variance with conditions:

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McDonough – yes, Faulk – yes, Guerette – yes, Arabian – yes, Oltman – yes, Novaria – yes. Faulk volunteered to draft the decision.

Petition Number: Z-21-38

Premises Affected: 107 Main Street

Petitioner: Channel Realty

Relief requested: special permits under Art. VIII, §§7.6.2 & 3.1.3.F.10, variances from Art. VIII, §§ 3.1.3.C.15, 3.1.3.F.3, 3.1.3.F.5. & 10.0 &/or a modification of Decision #798 to convert a medical home office & apt to a limited business office & apt that won't meet the Table of Use Regulations or Definitions
Members Sitting: Oltman, McDonough, Faulk, Novaria, Keller

Attorney Robert Lavoie represented Paul Kneeland of Channel Building Company, present. Also participating was JoAnn Kalogianis Spaneas, the seller's agent. Lavoie gave an overview of the property's history, which has been used as Andover Podiatry since 2006. The owners of that business also occupied the residential unit above the business. Mr. Kneeland, a resident of Florida, wishes to relocate some of his Massachusetts-based business operations to this location and create a dwelling unit to be used by himself when he is in town. The proposed business use will be 'back office' type administrative, engineering and architectural services. It is not a retail business office. There would be up to 5 employees on the 1st floor that would be strictly business use. The 2nd and 3rd floors would be residential and business use. The subject property has been on the market for sale for 10 months. There are no proposed exterior changes to the property and no customers would be on site. Lavoie noted that the property is directly adjacent to the General Business district. The hardship that affects this land / structure and not generally affecting the district is that it is a unique situation in that the property is already in mixed use open 6 days a week. Lavoie argued that the zoning bylaw is limited in the possible uses of this building. No such buyers have presented themselves. Nancy Earley & Brian Wright, direct abutters at 1 Locke St., informed the Board that the two properties were formerly one lot and are still enmeshed because they are very close to each other. Ms. Earley stated that her front porch is the only outdoor living space that they have. A change of use at 107 Main Street will intensify the use of the property. The Board discussed the off-street parking requirements for the commercial use and whether the residential unit would be leased out. There is adequate off-street parking for employees/resident and the residential unit will not be leased. Lavoie stated that Mr. Kneeland is agreeable to a condition that he not lease the unit. Preservation Commission review will be obtained as required. Also discussed was the square footage of commercial vs the residential use.

Approximately 58% of the house will be in commercial use. JoAnn Kalogianis, seller's listing agent, commented that despite a hot real estate market, this house has not yet sold despite some interest. She added that Mr. Kneeland is a local developer invested in the community. The existing detached garage in the rear corner of the lot. It does not provide any buffer to the immediate residential abutter. Oltman suggested that installation of a buffer can be a condition of approval. Inspector of Buildings suggested that a condition of approval can prohibit the transfer of the variance upon sale. Keller noted that similar to the Andover Animal Hospital, the ZBA required owner occupation, but that Mr. Kneeland is a part time resident. Oltman reviewed potential conditions: 5 employees maximum + Mr. Kneeland, open M-F 8-6, Sat 8-4, no short term leasing, Preservation Commission review, and restricting the use variance so that it is not transferable upon sale, it must be owner-occupied, and the business must not be open to customers or the general public. The Board discussed the proposed restriction on the transfer would be on the sale of the property, not the business and whether or not the business owns the property. Lavoie stated for the record that Mr. Kneeland is the owner and the business would use the property. Novaria asked for the name of the buyer(s) in the P&S. Ms. Kalogianis stated that both Mr. Kneeland and Channel are listed as the buyers. The Board further discussed that if any new uses were proposed, the ZBA would have to approve them, as well as if the business and real estate owner became the one in the same. Lavoie clarified that the owner would be an LLC with a lease agreement between the LLC and the company (an owner/operator affiliate). Lavoie agreed to draft a condition regarding owner occupancy at Chair Oltman's request. The Board noted that they decline to condition screening as a condition of approval. Ms. Kalogianis informed the Board that the property is not registered as historic. Lavoie assured the Board the Kneeland will comply with all applicable regulations. There being no other comments or questions from the

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Board or the public, McDonough made a motion to waive a site view and to close the public hearing. Keller seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Keller – yes, Novaria – yes, Guerette –yes, Arabian – yes, Oltman – yes. The Board then proceeded to deliberate. In deliberation the Board’s general sentiment that the proposed use is appropriate for this property. There will be no signage and is similar in intensity to the existing use. The Board recognized that there may even be a decrease in traffic generated by the new use. There being no other questions or comments, McDonough made a motion to approve the special permits under section 3.1.3.F.10 and to approve the variance from section 3.1.3.C.15 and to rescind Decision # 798 with the conditions that the maximum employees shall not exceed 5; that Mr. Kneeland will be the sole residential occupant and that no customers will be on site; the hours of operation will be M-F 8-6 and Saturday 8-4; review by Preservation Commission will be obtained as required; that the variance and special permit can’t be transferred upon sale and to continue deliberation to draft a decision. Faulk seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Keller – yes, Novaria – yes, Guerette – yes, Arabian – yes, Oltman – yes. Oltman volunteered to draft the decision.

MINUTES:

2/4/21: Faulk made a motion to accept the minutes as drafted. Keller seconded the motion & the Board voted by roll call to accept the minutes as drafted: McDonough – yes, Faulk – yes, Keller – yes; Novaria – yes, Guerette – yes, Oltman – yes.

3/4/21: Oltman informed the Board that she had emailed some minor changes to the Administrative Secretary which are incorporated into the draft minutes presented to the Board. There being no other changes, McDonough made a motion to accept the minutes as revised earlier. Keller seconded the motion & the Board voted by roll call to accept the minutes as amended: McDonough – yes, Faulk – yes, Keller – yes; Novaria – yes, Guerette – yes, Oltman – yes.

Discussion Item:

Oltman gave the Board an update on the pending appeal regarding 24 Central Street. The Parties have come to an agreement and it will be remanded to the ZBA. The mediation agreement that will be provided by Town Counsel must be considered.

There being no other business, McDonough made a motion to adjourn the meeting. Keller seconded the motion and the Board voted unanimously to adjourn the meeting at 9:45 p.m.

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary