



**MINUTES OF THE ZONING BOARD OF APPEALS  
ANDOVER, MASSACHUSETTS  
Virtual Meeting Broadcast by:  
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June 3, 2021**

Participating remotely via WebEx were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk and Lisa Rechisky, Members; Michael Novaria, David Guerette, Dan Lopez, and Ralph Arabian, Associate Members; Attorney Thomas Urbelis – Town Counsel; Inspector of Buildings Chris Clemente; and 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 the public to submit comments, questions or concerns during the hearings.

**Petition Number: Z-21-49**  
**Premises Affected: 6 Furnari Farm Ln**  
**Petitioner: Kelly**  
**Relief requested: special permit 3.1.3.F.4 to create a Family Dwelling Unit**  
**Members Sitting: Oltman, Faulk, Lopez, Guerette**

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

**Petition Number: Z-21-53**  
**Premises Affected: 300 Minuteman Road**  
**Petitioner: 300 Minuteman Park LLC**  
**Relief requested: variances from Art. VIII, §§5.1.5, 5.1.9 to permit a reduction in the number of parking spaces**  
**Members Sitting: Oltman, Faulk, McDonough, Guerette, Lopez**

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

**Petition Number: Z-21-46**  
**Premises Affected: 1-3 Elm Ct. and 32-34 Elm St.**  
**Petitioner: PSJ Realty, LLC**  
**Relief requested: special permits under Art. VIII, §§3.3.3 &/or 3.3.5, variances from Art. VIII, §§ 3.3.4 &/or 4.1 (Table 2) to subdivide a non-conforming lot into 2 non-conforming lots**  
**Members Sitting: Oltman, Faulk, McDonough, Guerette, Lopez**

This is a continued deliberation. There being no changes to the decision as drafted, Guerette made a motion to approve the decision as written. Faulk seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Guerette – yes, Lopez – 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, Faulk, McDonough, Guerette, Lopez**

This is a continued deliberation to vote on the draft decision to deny the special permit, the variances and to uphold the Building Inspector. There being no changes to the draft decision, Guerette made a motion to approve the decision as written. McDonough seconded the motion and the Board voted by roll call to approve the decision as drafted: McDonough – yes, Faulk – yes, Guerette –yes, Arabian – yes, Oltman – yes.

**Petition Number: Z-21-51**

**Premises Affected: 1 Meadowbrook Drive**

**Petitioner: Blumenstock Girrell**

**Relief requested: Party Aggrieved for review of a decision made by the Inspector of Buildings, &/or for variances from Art. VIII, §3.1 & 3.2 &/or for a special permit under Art. VIII, §10.1 to allow the continued use of a room as an Airbnb unit**

**Members Sitting: Oltman, Faulk, McDonough, Lopez, Arabian**

This is a continued public hearing. Chair Oltman gave an update noting receipt of two letters; one from the applicants' attorney and one from Town Counsel. Attorney Corner noted that he has not seen the letter from Town Counsel and therefore is not prepared to respond to it. Attorney Corner gave an overview of his letter regarding the use of his clients' property and the issues raised by the neighborhood. The issues raised relate to parking, incidents at Airbnb homes and the guests being on the property without the owners, unattended & late at night. Typically, there are 1-2 cars per Airbnb that are usually parked in the driveway. His clients only via Airbnb when they are home, like house guests (except they pay), unlike the Stiller case cited by the Building Inspector and Town Counsel. He pointed out to the Board that there are multiple Airbnb listings in Andover, which the Inspector is apparently unaware of. Attorney Corner reminded the Board that his clients have requested a special permit as well. Town Counsel summarized the letter that he submitted in response that 'a use must be specifically permitted' as in Section 1.4 of the Zoning Bylaw. Section 3.1 states that if not permitted, it is prohibited and it is not allowed as a principle use, therefore it is not an incidental use. Town Counsel noted that Attorney Corner stated in his letter that the use does not fit 'neatly' into the bylaw, thereby saying that it is not identified as an allowed use. Urbelis argued that no case holds that an Airbnb use is an accessory use to a single family dwelling, such as in *Mitel v ZBA of Hull* in which the Land Court upheld the ZBA in that an Airbnb use is not an accessory use of the primary use. Attorney Corner urged the Board to consider the cases cited by Town Counsel. Zoning Administrative Secretary Barbara Burke abutter Sauwai Battles' email of 6/3/21 into the record. Chair Oltman asked what happens with other Airbnb's in town. Town Counsel informed the Board that they do not have to delve into and the Inspector of Buildings does not have to make a determination during this case. This is a question of law that they are seeking. Mrs. Blumenstock-Girrell reiterated that they are 'never not here' when there are Airbnb guests & that the situation cited by neighbors has nothing to do with Airbnb as it was a 21-year-old family friend with his girlfriend. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and close the public hearing. Lopez seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Lopez – yes, Arabian – yes, Oltman – yes. The Board then proceeded to deliberate. McDonough supports the Building Inspector based on what Attorney Urbelis shared with the Board. It is a matter of law and it is different from a long-term rental. Faulk noted her inclination to uphold the Building Inspector's decision. She feels it is a straight question of law; it either is a boarding house (forbidden) or not dealt with at all (forbidden) and since it's not allowed, it's not an accessory use. There is no basis to permit it. Lopez feels it is less clear than we'd

like it to be. He is more open to placing restrictions on it since it will most likely come up more and more. He is inclined to grant a special permit with fairly harsh restrictions since it has been an issue with all of the abutters. His concern is with the frequency & perhaps a minimum length of stay (i.e. 1 week, 1 month) and having an expiration for the special permit (a few years) until such a time that the bylaw may deal with such a use. Associate Member Arabian lost power and emailed his agreement with the Inspector of Buildings. He will rejoin the meeting as soon as he has power. Chair Oltman paused the meeting since without Arabian, they don't have enough members to vote on this tonight. McDonough suggested delaying the vote. Oltman stated that the hearing will be kept open until Arabian rejoins. Rechisky offered to review the video of the prior meeting in order to be able to participate in the rest of the hearing/deliberation. Attorney Corner did not want to waive any of his clients' rights.

**Petition Number: Z-21-66**

**Premises Affected: 5 Alderbrook Rd**

**Petitioner: Presterone**

**Relief requested: Special Permit under Art. VIII, §3.1.3.F.4 to create a Family Dwelling Unit**

**Members Sitting: Oltman, Faulk, McDonough, Rechisky, Novaria**

Owner Jared Presterone represented himself. Also participating remotely was James Bailey, architect, who presented the proposed addition/renovation to include the Family Dwelling Unit for Mr. Presterone's mother, Ruth Royal Jedry). The addition includes a garage and meets all setbacks. Oltman reviewed the standard conditions for Family Dwelling Units (specific to the named occupant, when that occupant no longer resides in the unit, the cook top must be removed, and the special permit is valid for 5 years and may be renewed). The Board had no questions or comments for the applicant, nor did the public. Novaria made a motion to waive a site view & to close the public hearing. Rechisky seconded the motion and the Board voted by roll call: McDonough – yes, Rechisky – yes, Faulk – yes, Novaria – yes, Oltman – yes. The Board then proceeded to deliberate. McDonough made a motion to approve the special permit under Section 3.1.3.F.4 and to continue the deliberation for to draft a decision. Novaria seconded the motion and the Board voted by roll call: McDonough – yes, Rechisky – yes, Faulk – yes, Novaria – yes, Oltman – yes. Rechisky volunteered to draft the decision.

**Petition Number: Z-21-67**

**Premises Affected: 19 Juniper Rd**

**Petitioner: Lenihan**

**Relief requested: Special Permit under Art. VIII, §3.1.3.F.4 to create a Family Dwelling Unit**

**Members Sitting: Oltman, Faulk, McDonough, Rechisky, Lopez**

James Lenihan represented himself and his wife. Associate Member Novaria recused himself and left the hearing. Mr. Lenihan reviewed the proposal, which is to construct additions/alterations to their existing single story single family home to be able to move his mother into their home. The addition includes a second floor for his family. Oltman reiterated the standard conditions for this type of special permit. Mr. Lenihan stated his mother's name, Maureen Lenihan, who will occupy the unit. Faulk asked if the Board needs specific plans in order to approve the request. Oltman noted that they do, however they have approved Family Dwelling Units without plans in the past, especially where the setbacks will be met. Zoning Administrative Barbara Burke read a letter from the abutters at 15 Juniper Road in support of the Family Dwelling Unit. 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 public hearing. Rechisky seconded the motion and the Board voted by roll call: McDonough – yes, Rechisky – yes, Faulk – yes, Lopez – yes, Oltman – yes. The Board then proceeded to deliberate. Oltman noted the standard conditions and that Maureen Lenihan will be the occupant. Rechisky made a motion to approve the special permit under Section 3.1.3.F.4 and to continue the deliberation to draft the decision. McDonough seconded the motion and the Board voted by roll call: McDonough – yes, Rechisky – yes, Faulk – yes, Lopez – yes, Oltman – yes. Rechisky volunteered to draft the decision.

**Petition Number: Z-21-70**

**Premises Affected: 49 Wild Rose Dr**

**Petitioner: Mitchell**

**Relief requested: Special Permit under Art. VIII, §3.1.3.F.4 to create a Family Dwelling Unit**

**Members Sitting: Oltman, Faulk, McDonough, Rechisky, Lopez**

Tracy Mitchell represented herself in her request to create a Family Dwelling Unit for her mother. It will be a one-bedroom apartment, not visible from the street. Her mother is Barbara Keiser. Oltman reiterated the standard conditions. McDonough made a motion to waive a site view and to close the public hearing. Rechisky seconded the motion and the Board voted by roll call: McDonough – yes, Rechisky – yes, Faulk – yes, Guerette – yes, Oltman – yes. The Board then proceeded to deliberate. McDonough made a motion to approve the special permit with the standard conditions and to continue deliberation. Rechisky seconded the motion and the Board voted by roll call: McDonough –yes, Rechisky – yes, Faulk – yes, Guerette – yes, Oltman – yes. Rechisky will draft the decision.

**Petition Number: Z-21-51**

**Premises Affected: 1 Meadowbrook Drive**

**Petitioner: Blumenstock Girrell**

**Relief requested: Party Aggrieved for review of a decision made by the Inspector of Buildings, &/or for variances from Art. VIII, §3.1 & 3.2 &/or for a special permit under Art. VIII, §10.1 to allow the continued use of a room as an Airbnb unit**

**Members Sitting: Oltman, Faulk, McDonough, Lopez, Arabian**

Associate Member Arabian had not yet returned to the meeting. Chair Oltman voiced concern with changing the bylaw by decision and agreed with Town Counsel’s guidance. The correct process is via Town Meeting. This is not an allowed use in the current, albeit somewhat outdated bylaw. McDonough supports the Building Inspector and is not in support of granting a special permit. Faulk commented that the Board does not have the authority to grant a special permit, it’s a forbidden use. Lopez understands the Board’s viewpoint and conceded that maybe denying it is best for now and that the bylaw should be changed by amendments at Town Meeting. Oltman commented that if the bylaw allowed it, it’s not a terrible use. But there are no provisions for it in the bylaw. Faulk made a motion to uphold the Inspector of Buildings and to deny the special permit under Section 10 and the variances from Sections 3.1 and 3.2 an to continue to draft a decision. McDonough seconded the motion and the Board voted by roll call. Oltman reminded the Board that a ‘yes’ vote is for the denial. McDonough – yes, Faulk –yes, Lopez – yes, Oltman – yes. Oltman volunteered to draft the decision.

**Petition Number: Z-21-69**

**Premises Affected: 4 Carmel Road**

**Petitioner: Guerette**

**Relief requested: Special permit under Art. VIII, §3.3.5 &/or 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, McDonough, Lopez, Rechisky**

David & Allison Guerette represented themselves. The proposed addition will be at the rear of the house to expand the kitchen & master bedroom / 2<sup>nd</sup> bathroom. Mrs. Guerette explained that the footprint of the addition encompasses the existing rear deck/porch, but will actually be smaller than that area. Mr. Guerette explained that the lot is narrow and the existing house is non-conforming and reviewed the drawings. The addition is an extension of the existing non-conformity. The house was built in the 1920’s. Oltman and Zoning Administrative Secretary Barbara Burke read into the record two emails of support from abutters. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view & to close the public hearing. Rechisky seconded the motion and the Board voted by roll call: McDonough – yes,

Faulk – yes, Rechisky –yes, Lopez – yes, Oltman – yes. The Board then proceeded to deliberate. Oltman felt that it is clearly a special permit since it is an expansion of an existing non-conformity. McDonough made a motion to approve the special permit in conformance with the plans submitted. Faulk seconded the motion and the Board voted by roll call: McDonough – yes, Faulk –yes, Rechisky – yes, Lopez – yes, Oltman – yes. McDonough will draft the decision.

**Petition Number: Z-21-62**

**Premises Affected: 36 High St**

**Petitioner: Evans**

**Relief requested: Special permit under Art. VIII, §3.3.5 &/or 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, McDonough, Guerette, Rechisky**

Meghan Evans, owner, participated with her project manager, Ken Shapiro. Member Rechisky disclosed that the applicant is her children's pediatrician; however, she feels that she can be impartial. There were no objections to her participation. Ken Shapiro reviewed the proposal to extend the existing attached garage located at the rear of the house by 6' in order to accommodate a 9' wide garage door plus extra space on the side for ease of use. Currently the garage is too small to safely use for parking without risk of damaging her car. There is no driveway on the lot and the existing garage will not be deconstructed, but simply added onto. Guerette made a motion to waive a site view & to close the public hearing. McDonough seconded the motion and the Board voted by roll call: McDonough –yes, Faulk – yes, Rechisky –yes, Guerette – yes, Oltman – yes. The Board then proceeded to deliberate. The Board agreed that a special permit is appropriate due to the age of the house and that the proposed addition will extend the existing non-conformity. McDonough made a motion to approve the special permit under Art. VIII, §3.3.5 with the condition that it is constructed in conformance with the plans submitted, to deny the variance from Art, VIII, §4.1.2 as moot and to continue the deliberation to draft the decision. Rechisky seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Rechisky – yes, Guerette – yes, Oltman – yes. Guerette volunteered to draft the decision.

**Petition Number: Z-21-68**

**Premises Affected: 7 Rattlesnake Hill Rd**

**Petitioner: Balzotti Global Construction**

**Relief requested: special permit under Art. VIII, §3.3.5 to construct a new single family dwelling on a lot that lacks area & frontage & will not meet the minimum front setback.**

**Members Sitting: Oltman, Faulk, McDonough, Rechisky, Novaria**

Attorney Mark Johnson represented Caesar Balzotti, who also participated remotely. Johnson presented slides of the proposal to construct a new singly family house on a lot that lacks the minimum frontage and area. The existing house is in poor condition and is not historic and is extremely close to the front lot line at 3.7'. The proposed house will conform to all setbacks except the front setback with a proposed front setback of 38.96' where 50' is required. Zoning Administrative Secretary Barbara Burke informed the Board that the abutters at #5 Rattlesnake Hill Road called in earlier to voice their support. The Board discussed that the proposed house is larger than the existing, but still in keeping with the neighborhood. 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 public hearing. Faulk seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Rechisky – yes, Novaria – yes, Oltman – yes. The Board then proceeded to deliberate. Guerette noted how close the existing house is to the street, its poor condition and being on a curve in the road. The Board feels that the proposal is appropriate. McDonough made a motion to approve the special permit with the usual conditions under Section 3.3.5 and to continue deliberation to draft the decision. Faulk seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Rechisky –yes, Novaria – yes, Oltman – yes. Faulk volunteered to draft the decision.

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**Petition Number: Z-21-65**

**Premises Affected: 24 Central St**

**Petitioner: Touchdown, LLC**

**Relief requested: modification of Decision Z-18-121**

**Members Sitting: Oltman, Faulk, McDonough, Rechisky, Novaria**

**Also present: Town Counsel Attorney Thomas Urbelis**

Attorney Mark Bobrowski represented the petitioner. Paul Kneeland, of Touchdown LLC, participated remotely. Attorney Curtis Dooling represented the Hellauers, abutters to the subject property. Kurt & Amie Hellauer also participated remotely. Bobrowski reviewed the site that contains a parking lot, which was allowed by variance in 1993 for a period of 3 years. Only Andover Bank Corp. employees were allowed to park there. Now Andover Bank Corp is gone. In 2018, the variance was modified to allow employees of all businesses at 27-61 Main to park there. Access was restricted to key card holders to open the gate. The 2018 variance expires in 2021. The Hellauers filed an appeal with their primary concern being that the use of the parking lot is now of more general use with longer hours of use. In Land Court, a remand was agreed to with Town Counsel. Part of the Settlement Agreement is in the application that has been submitted to the ZBA for consideration this evening. , On May 6, 2021 Chris Alpern, an Associate of Bobrowski, wrote a letter with 10 conditions that they'd like to substitute for the conditions in the 2018 variance. At this time, condition #10 (from the '93 variance but not in the 2018 variance) will be removed from the plan so that it is accurate. The key card (condition #1 from the 2018) will be removed 'by subtraction'. Central Street is a congested area and the aim is to minimize traffic problems. A gate would just add to the congestion. The Hellauers agreed according to Bobrowski. Oltman asked for clarification that the 10 conditions to replace conditions #1 and 2 from the 2018 decision, but they don't want #10 to actually be in there. Bobrowski clarified that it was in the 1993 variance but it was not repeated in the 2018 variance and it is not in the Settlement Agreement. It was accidentally included in the May 6<sup>th</sup> letter written by Alpern. Oltman noted that the Board kept all of the original conditions except modified conditions 1 & 2 and added two new conditions. Paul Kneeland explained that the Settlement Statement states that the new fence shall be 2' inboard of the existing property line. Bobrowski believes that #10 is moot and the key card system goes away but they have no objection to adding condition #18 and date it the date of the filing of the Remand Decision with the Town Clerk. The Board further discussed the landscaping along the parking lot. Bobrowski reiterated that the conditions would be 1-9 as noted on the plan and any prior conditions would be wiped out. Faulk asked about the Settlement Agreement that states that they will request the ZBA to modify condition #2 of the variance by deleting the December 1<sup>st</sup>, 2021 date and adding February 2<sup>nd</sup>, 2024. Bobrowski noted that it is a reflection of how long they have been negotiating on remand. The operative date should be the date of the filing with the Town Clerk. Town Counsel informed the Board that he did not participate in the Settlement discussions because he knew that it would be remanded to the Board. The key element is the agreement between the parties principal in the lawsuit. The Settlement is not signed by anyone representing the Town or the Board and the Board is not bound by that Settlement Agreement. The Board can add more to it, but it is the document that the parties are requesting the Board to adopt. Attorney Curtis Dooling, on behalf of Kurt & Amie Hellauer, explained that Bobrowski mentioned some things that may just be a miscommunication. The gate was never installed as a condition of the 2018 variance, which has been in a state of limbo due to the appeal. The '93 variance is in effect and the parties agreed that the gate never be installed. The bigger issue is Bobrowski's statement that the '93 variance goes away. They disagree. The '93 variance will be modified. Specifically condition 10 regarding the buffer being wiped out. This is not true. The buffer is included, along with the new conditions. Conditions 1-9 are agreed upon. Condition 10 is included in the '93 variance and exists now as discussed with Bobrowski and Kneeland. The parties discussed and agreed upon the fence, lighting and signage. If he is suggesting that the buffer is gone, the underlying variance does not go away. Town Counsel cautioned the Board that this complicates things. It is not up to the Board to try to interpret what the parties agreed to with modified things that have been submitted to you with conditions to be deleted or removed. Urbelis recommended that the Board continue the hearing to the next meeting so the parties can get together to submit a revised application or a document of some sort. Bobrowski agreed to come back

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next month. McDonough made a motion to continue to 7/1/21. Guerette seconded the motion and the Board voted by roll call: McDonough – yes, Faulk – yes, Rechisky – yes, Novaria – yes, Oltman – yes.

Minutes:

4/15/21 – There being no changes to the draft minutes of 4/15/21, McDonough made a motion to approve them as drafted. Novaria seconded the motion and the Board voted by roll call: McDonough – yes, Novaria – yes, Faulk – yes, Guerette – yes, Lopez –yes, Arabian – 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 9:01 p.m.

Respectfully submitted,  
Barbara Burke, Zoning Administrative Secretary