



**MINUTES OF THE ZONING BOARD OF APPEALS
ANDOVER, MASSACHUSETTS
Virtual Meeting Broadcast by:
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September 3, 2020**

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

The meeting opened at 6:32 p.m. Chair Oltman gave an overview of the meeting procedure and provided the call-in number and email address for anyone to submit comments, questions or concerns during the hearings.

Petition Number: Z-20-10, Z-20-25, Z-20-83

Premises Affected: 18 William Street

Petitioner: Arzeno

Relief requested: Special Permit under Article VIII, §7.9, Variance from Article VIII, §4.1.2 and/or 7.9.4.3, Article VIII, §4.1.2 and 4.2.2 and Variance from Article VIII, §7.9.4.4

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

This is a continued deliberation to discuss and vote on the draft decision. There being no changes to the decision as drafted, Faulk made a motion to approve the decision as drafted. Casper seconded the motion and the Board voted unanimously by roll call in the following manner: Casper – yes; Faulk – yes; McDonough – yes; Rechisky – yes; Oltman – yes; Keller - yes

Petition Number: Z-20-100

Premises Affected: 9 Nollet Drive

Petitioner: Dykstra

Relief requested: Special Permit under Article VIII, §3.1.3.F.4 for a Family Dwelling Unit

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

Faulk made a motion to approve the decision as written. Casper seconded the motion & the Board voted unanimously by roll call to grant the special permit in the following manner:

Casper – yes Faulk – yes McDonough – yes Rechisky – yes Oltman – yes

Petition Number: Z-20-102

Premises Affected: 1 Archer Lane

Petitioner: Flaherty

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

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

This is a continued deliberation to discuss and vote on the draft decision. There being no changes to the decision as written, Novaria made a motion to approve the decision as written. Faulk seconded the motion and the Board voted unanimously by roll call to approve the variance and deny the special permit in the following manner:

McDonough – yes Faulk – yes Rechisky – yes Novaria – yes Oltman – yes

September 3, 2020

Petition Number: Z-20-103

Premises Affected: 172 Summer Street

Petitioner: Boisture / Hallal

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, McDonough, Rechisky, Faulk, Guerette, Keller

This is a continued deliberation to discuss and vote on the draft decision. Casper made a motion to approve the special permit and to deny the variance as moot. Faulk seconded the motion & the Board voted unanimously by roll call in the following manner: McDonough – yes Faulk – yes Rechisky – yes Casper – yes Oltman – yes.

Petition Number: Z-20-104

Premises Affected: 64 Maple Ave

Petitioner: Sinacore

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

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

This is a continued deliberation to discuss and vote on the draft decision. Casper made a motion to approve the decision as written. McDonough seconded the motion & the Board voted unanimously by roll call in the following manner: McDonough – yes Faulk – yes Rechisky – yes Casper – yes Oltman – yes.

Petition Number: Z-20-107 & Z-20-129

Premises Affected: 34 Linwood Street

Petitioner: Arabian

Relief requested: variance from Art. VIII, §4.2.2 to allow the continued existence of a detached garage that will become non-conforming due to a rear addition –and- variances from Art. VIII, §4.1.2 & 4.2.2 to construct a deck that won't meet the minimum rear yard depth requirement and will render a detached garage non-conforming

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

The application, Ralph Arabian, agreed to have both applications heard simultaneously. Mr. Arabian requested a variance to construct a 14'x18' deck that won't meet the minimum rear setback (proposed 25' rear setback, 30' required). The deck will render the existing detached garage non-conforming. He has spoken to abutters & submitted their letters of support. The lot is small and slopes to the rear. There is no alternative location for the deck. He filed with Conservation Commission. Faulk asked if Arabian spoke with the direct abutters. He did not speak with them. Novaria asked if the Conservation approval is typically submitted. Arabian said he will submit a copy of it to the ZBA. Oltman asked for any public comments. There were none. Casper asked the Inspector of Buildings Chris Clemente if he had any comments. He did not. There being no other questions or comments, McDonough made a motion to waive the site view & to close the public hearing. Casper seconded the motion and the Board voted by roll call in the following manner to waive a site view & close the public hearing: Casper – yes; Faulk – yes; McDonough – yes; Rechisky – yes; Oltman – yes; Guerette – yes; Novaria – yes; Keller – yes.

The Board then proceeded to deliberate. The Board general agreed that a variance for the proposed deck is appropriate. Casper made a motion to approve a variance from Art. VIII, Sections 4.1.2 & 4.2.2 to allow the construction of the deck. McDonough seconded the motion & the Board voted by roll call in the following manner to grant the variances: Casper – yes; Faulk – yes; McDonough – yes; Rechisky – yes; Oltman – yes; Keller – yes; Guerette – yes; Novaria – yes. Casper made a motion to continue deliberation for the purpose of drafting the decision. Faulk seconded the motion and the Board voted by roll call to continue deliberation in the

September 3, 2020

following manner: Casper – yes; Faulk – yes; McDonough – yes; Rechisky – yes; Oltman – yes; Keller – yes; Guerette – yes; Novaria – yes Casper volunteered to draft the decision.

Petition Number: Z-20-114

Premises Affected: 21 Lincoln Street

Petitioner: Cross

Relief requested: §3.1.3.F.4 for a Family Dwelling Unit & for a variance from Art. VIII, §4.1.2 for an addition that won't meet the minimum rear yard depth requirement

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

Michelle Cross represented herself requesting a special permit to create a family dwelling unit for her parents, Will & Doris Ross. Due to an existing conforming detached garage that the addition will be attached to, the rear setback will be 27.7', where 30' is required. Oltman explained that the special permit for the family dwelling unit is valid for 5 years and renewable. Once it is no longer occupied, the stove must be removed. The Board discussed the proposed addition and what percentage of it will contain the family dwelling unit. Ms. Cross explained that the addition will include a garage, family room, bathroom, and the family dwelling unit. The existing house was built in approximately 1898. Petitioners will appear at the 9/8/20 Preservation Commission meeting. Ms. Cross has spoken with the abutters regarding the addition, but not the rear setback. None expressed opposition to her personally. 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. McDonough seconded the motion & the Board voted by roll call in the following manner: Casper – yes, Faulk – yes, McDonough – yes, Rechisky – yes, Oltman – yes, Keller – yes, Guerette – yes, Novaria – yes. The Board then proceeded to deliberate. The Administrative Secretary informed the Board that there was an email from an abutter. McDonough made a motion to reopen the public hearing. Keller seconded the motion & the Board voted by roll call in the following manner to reopen the public hearing: Casper – yes, Faulk – yes, McDonough – yes, Rechisky – yes, Oltman – yes, Keller – yes, Novaria, Guerette – yes. The Administrative Secretary read Alan Chasse's email which voiced concern about drainage. Mrs. Cross agreed to follow all rules regarding construction. Oltman then explained the potential need for a special permit vs. the criteria for a variance related to the rear setback. Casper asked the Inspector of Buildings Chris Clemente if drainage is a typical consideration for building permits. Clemente suggested that if it is a neighborhood concern, it can be considered. Casper suggested discussing a drainage plan next month. Casper made a motion to continue the public hearing to 10/1/20. McDonough seconded the motion & the Board voted by roll call in the following manner: Casper – yes, Faulk – yes, McDonough – yes, Rechisky – yes, Oltman – yes, Keller – yes, Guerette – yes, Novaria – yes.

David Guerette left the remainder of the meeting.

Annual Elections of Chair and Clerk

Casper nominated Oltman for Chair. Oltman accepted the nomination and the Board voted by roll call in the following manner: Casper – yes, Faulk – yes, McDonough – yes, Rechisky – yes, Keller – yes, Novaria – yes, Oltman – yes

Casper nominated McDonough for Clerk. Faulk seconded the motion and McDonough accepted the nomination. The Board voted by roll call in the following manner: Casper – yes, Faulk – yes, McDonough – yes, Rechisky – yes, Keller – yes, Novaria – yes, Oltman – yes.

Daniel Casper left the remainder of the meeting at 7:27 pm.

Petition Number: Z-20-126

Premises Affected: 13 Webster Street

Petitioner: Merrimack Valley Real Estate

Relief requested: a special permit under Art. VIII, §3.3.5 &/or for variances from Art. VIII, §4.1.2 & 4.2.2 to reconstruct a porch & a deck that won't meet the minimum front yard depth requirement and will render a detached garage more non-conforming

Members Sitting: Oltman, McDonough, Faulk, Rechisky, Novaria, Keller (alternate)

Juan Fernandez, of Merrimack Valley Real Estate, presented the request to repair & expand the existing front porch & rear decks. The front porch stairs will be moved, but otherwise be the same size. The rear decks (8'x12' and 6'x11') will be removed and one 36'x12' deck will be constructed. The house was built in 1942. The Board discussed the existing and proposed deck sizes, the existing conditions & that nearly all of the work is within the minimum front setback requirement. Therefore, no work can be done without zoning relief. The lot is deep, with the rear abutter approximately 400' away from the rear decks. The Board agreed that a site view is not necessary. 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. Faulk seconded the motion & the Board voted by roll call in the following manner: Faulk – yes, McDonough – yes, Rechisky – yes, Novaria – yes, Oltman – yes, Keller – yes. The Board then proceeded to deliberate. In deliberation the Board felt that a special permit under Section 3.3.5 is appropriate. Faulk made a motion to approve the special permit and to deny the variance as moot. Rechisky seconded the motion & the Board voted by roll call in the following manner: Faulk – yes, McDonough – yes, Rechisky – yes, Novaria – yes, Oltman – yes, Keller – yes. Novaria then made a motion to continue deliberation for the purpose of drafting a decision. McDonough seconded the motion & the Board voted by roll call in the following manner: Faulk – yes, McDonough – yes, Rechisky – yes, Novaria – yes, Oltman – yes, Keller – yes. McDonough volunteered to draft the decision.

Petition Number: Z-20-134

Premises Affected: 117 Chestnut Street

Petitioner: Castro

Relief requested: special permit under Art. VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to enclose an existing non-conforming portico

Members Sitting: Oltman, McDonough, Faulk, Rechisky, Novaria, Keller (alternate)

Robert Castro represented himself & his wife. They wish to convert a front entryway into an enclosed mudroom. They have Preservation Commission approval & there will be no change in the footprint. The house was built in approximately 1910. The existing portico has a sagging roof. It will be repaired and 5' of the 10'x8' front entryway will be enclosed. 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 & the Board voted unanimously by roll call in the following manner: Faulk – yes, McDonough – yes, Rechisky – yes, Novaria – yes, Oltman – yes, Keller – yes. The Board then proceeded to deliberate. McDonough made a motion to approve the special permit under Section 3.3.5. Keller seconded the motion and the Board voted unanimously by roll call to approve the special permit with conditions:

Faulk – yes McDonough – yes Rechisky – yes Novaria – yes Oltman – yes Keller – yes
Novaria made a motion to continue the deliberation for the purpose of drafting a decision. McDonough seconded the motion & the Board voted by roll call in the following manner: Faulk – yes, McDonough – yes, Rechisky – yes, Novaria – yes, Oltman – yes, Keller – yes. Keller volunteered to draft the decision.

September 3, 2020

Petition Number: Z-20-130

Premises Affected: 38 Wild Rose Drive

Petitioner: Dalphond & Bombaci

Relief requested: special permit under Art. VIII, §3.1.3.F.4 for the continued use of an existing Family Dwelling Unit approved in Decision 3680

Members Sitting: Oltman, McDonough, Faulk, Rechisky, Keller, Novaria, (alternate)

Jonathan Bombaci represented himself & his wife. He informed the Board that his in-laws, Mr. & Mrs. Dalphond, while in relatively good health, have existing medical conditions that continue to deteriorate. Single floor living is ideal for them. There is no intention of creating a 2 family dwelling or a business office from the existing house. They are willing to dismantle whatever is necessary when the unit is no longer needed. Inspector of Buildings Chris Clemente gave the Board an overview of the house's history during which a prior owner had a Family Dwelling Unit but had removed the stove & disconnected the sink at one time which he saw during an inspection. It seems that the most recent owner may have rented the unit out, according to the neighbors. Oltman explained to the applicants that the special permit is restricted to the specified family members and cannot be rented out to others. Mr. Bombaci stated that his in-laws, Karen & Ray Dalphond, will be occupants. The Board discussed the property's history and what, if anything, they can do to enforce the decision. Faulk suggested adding a condition that the unit can't be rented separately or advertised as a 2-family. Several neighbors voiced concern over the Family Dwelling Unit based on its history of being rented to a non-family member by the prior owner. The Board noted the neighborhood's concern & informed them that they rely on the owners' representation of what they will use the unit for, not actions by past owners. 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. Keller seconded the motion and the Board voted by roll call: Faulk – yes, McDonough – yes, Rechisky – yes, Keller – yes, Oltman – yes, Novaria – yes. The Board then proceeded to deliberate. The Board agreed that the request is like any other Family Dwelling Unit request. Keller made a motion to approve the special permit with the standard conditions (1. The occupants shall be Karen & Ray Dalphond, 2. The cook top must be removed once they cease to occupy the unit, 3. The special permit expires in 5 years and may be renewed upon application to the ZBA). Rechisky seconded the motion and the Board voted by roll call: Faulk – yes, McDonough – yes, Rechisky – yes, Keller – yes, Novaria – yes, Oltman – yes. McDonough then made a motion to continue deliberation for the purpose of drafting a decision. Faulk seconded the motion & the Board voted by roll call: Faulk – yes, McDonough – yes, Rechisky – yes, Keller – yes, Oltman – yes, Novaria – yes. Rechisky volunteered to draft the decision.

ACTION ITEM:

Petition Number: Z-19-165

Premises Affected: 3 Gray Road

Petitioner: Urquhart

Relief requested: dimensional special permit for historic preservation under Art. VIII, §7.9 to subdivide a lot with an historic dwelling & construct a new dwelling on the new lot

Members Sitting: Oltman, McDonough, Faulk, Rechisky, Keller, Novaria, (alternate)

Attorney Mark Johnson explained to the Board the slow process with the State Historic Commission and that the Preservation Commission should finalize their review within 7-10 days. They are seeking conditional approval 'subject to any final changes by the Preservation Commission' in the standard form required by the State. Some of the Board expressed hesitation in voting on anything since they had not had the chance to read Attorney Johnson's submission in its entirety. Oltman pointed out that the Preservation Commission will read it line by line, as well as the Select Board. Keller commented that the ZBA had already done its heavy lifting and Oltman noted that the ZBA need only state that it is 'ok to move forward'. Johnson added that the Preservation Commission will have to sign it. Keller made a motion to accept the draft preservation restriction for Z-19-165

September 3, 2020

subject to any minor changes by the Preservation Commission. McDonough seconded the motion and the Board voted by roll call:

Faulk – yes, Keller – yes, McDonough – yes, Novaria – yes, Oltman – yes, Rechisky – abstained.

There being no other business of the Board, Faulk made a motion to adjourn the meeting. McDonough seconded the motion and the Board voted by roll call to adjourn the meeting at 8:31 pm:

Faulk – yes, McDonough – yes, Rechisky – yes, Keller – yes, Novaria – yes, Oltman - yes

Respectfully submitted,

Barbara Burke, Zoning Administrative Secretary