



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

**Select Board Conference Room Town Offices, 3rd floor, 36 Bartlet St., Andover
February 2, 2023**

Participating were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk, Lisa Rechisky and Ellen Keller, Members; Michael Novaria, David Guerette and Daniel Lopez, Associate Members.

The meeting opened at 6:30 p.m. Chair Oltman reviewed the procedural rules.

Petition Number: Z-23-4

Premises Affected: 6 Carisbrooke St

Petitioners: Jolly

Relief requested: Special Permit under Art. VIII, §3.3.5 &/or a Variance from Art. VIII, §4.1.2 to construct an addition within the minimum side yard depth requirement

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

The Board received a request to continue the public hearing without opening it to the March meeting. Keller made a motion to continue the public hearing without opening to the March meeting. McDonough seconded the motion and the Board voted unanimously to continue the public hearing to March without opening.

Petition Number: Z-23-5

Premises Affected: 8 Fox Hill Rd

Petitioners: Hartshorn & Moran

Relief requested: Special Permit under Art. VIII, §3.3.5 &/or a Variance from Art. VIII, §4.1.2 to construct an additions & alterations within the minimum front & side yard depth requirements

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

The Board received a request to continue the public hearing without opening it to the March meeting. Faulk made a motion to continue the public hearing without opening to the March meeting. McDonough seconded the motion and the Board voted unanimously to continue the public hearing to March without opening.

Petition Number: Z-22-130

Premises Affected: 57 Harold Parker Road

Petitioners: Previte

Relief requested: Party Aggrieved for review of a decision made by the Building Inspector

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

This is a continued deliberation to vote on the decision as drafted. There being no changes to the decision as drafted, Lopez made a motion to approve the decision as drafted. Keller seconded the motion and the Board voted unanimously to approve the decision as drafted.

(Member Rechisky arrived at 6:34 p.m.)

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Petition Number: Z-22-134

Premises Affected: 8 Fraser Drive

Petitioners: Day

Relief requested: Variance from Art. VIII, §4.2.4 to construct a recreational building in the front yard area

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

The Board received a request to continue the public hearing without discussion to the March meeting. Guerette made a motion to continue the public hearing without discussion to the March meeting. McDonough seconded the motion and the Board voted unanimously to continue the public hearing to March without opening.

Petition Number: Z-23-1 & Z-23-3

Premises Affected: 1 Lillian Terrace & 30 Lincoln Circle West

Petitioners: Kudla (Z-23-1) & Elinor J Bromberg Irrevocable Trust (Z-23-3)

Relief Requested: Extension of Decision Z-21-177 & Z-21-176

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

Alternates: Lopez, Guerette, Novaria

Attorney Mark Johnson represented the Trust. Attorney Raymond Ewer represented the Kudlas. Johnson & Ewer informed the Board that the reason for the request is due to a delay in the release of the Kudla's service lender. Their lender has not signed off on the discharge yet. Oltman affirmed that the Board previously granted variances for both properties and that a single 6-month extension can be granted from the date of expiration of the variance (2/8/22). There being no further questions or comments from the Board or the public, Keller made a motion to waive the site view & to close the public hearing. Guerette seconded the motion and the Board voted unanimously to waive the site view and close the hearing. The Board then deliberated. Keller made a motion to approve the 6-month extension. Guerette seconded the motion and the Board voted unanimously to grant the 6-month extension. Oltman volunteered to draft the decision.

Petition Number: Z-23-2

Premises Affected: 47 Rattlesnake Hill Road

Petitioners: Kudla Rieder

Relief Requested: variance from §6.10.3.2 to install solar panels within the minimum side yard depth requirement

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

Alternates: Lopez, Guerette, Novaria

Ron Rieder, owner, presented his proposal to install 2 ground mounted south-facing solar panel arrays in his back yard, specifically in the rear right (northwest) corner of the lot. Keller inquired as to whether the arrays qualify as small, medium or large-scale array. Oltman explained that a small-scale array is defined in the bylaw as 1750 square feet or less of solar panel area. Rieder stated that the area of the proposed installation is 700 square feet. The height of the panels, according to Mr. Rieder is no more than 10'. The panels are 24'x14' installed at a 34-40 degree angle. The Board discussed the plot plan and the lack of a precise setback. The Board agreed that a certified plot plan is needed with precise setbacks. Oltman asked for the variance related to soil conditions, shape or topography. Rieder explained that possibly 2 trees will be removed and that if not allowed to be installed in the proposed location, he'd have to move the solar arrays toward the center of the lot. Guerette asked him to clarify if the proposed location is due to sunlight (the closer to the side, the more sunlight the arrays will capture). Rieder confirmed that it is. When asked if the arrays could be installed closer to the house, Rieder pointed out that there is a wall in the way & that the proposed location preserves the yard. He said that they are not going to be roof-mounted due to east-west facing roofs. The Board considered the hardship argument & whether an alternative, more conforming location exists on the lot. Rieder pointed out that there is a stone wall at the rear of the house that extends back and is 5-6' at its tallest. Additionally, they have established

gardens in the way. The Board inquired what type of landscaping is being proposed to buffer the solar arrays. Rider noted that the proposed location is a wooded area and encouraged the Board to conduct a site view. Keller commented that ‘inconvenience’ is not a hardship. Rieder argued that if he installs the solar arrays in a conforming location, they will render the yard useless. The Board suggested that land at the rear of the lot might be a viable location and voiced concern over the proposed setback’s proximity to the side lot line. Rechisky asked for a hardship related to shape, soil or topography. Rieder reiterated that there aren’t many locations on his lot that he could install them without disrupting the yard space & placing them directly in view of the windows thereby affecting resale value. Guerette asked if the yard slopes up to the rear thereby exposing more sunlight. Rieder confirmed that it does. Guerette suggested that this is a topographical hardship adding that the solar arrays will be tucked in the woods. Lopez requested a letter from the solar company justifying the location. Novaria commented that convenience is not enough. Rieder argued that the 30’ side setback would ruin the back yard. Keller asked for confirmation if both proposed solar arrays are within the 30’ minimum side yard setback. They are both within the 30’ side setback & the other back corner has too many trees according to Rieder. Chair Oltman requested an updated plot plan. Steven Gaudette, 229 North Ave, Haverhill, MA spoke on behalf of his parents, John & Jacki Gaudette, who are direct abutters at 45 Rattlesnake Hill Rd. While they support solar & renewable energy, they suggest that an alternate location, like the roof or the front yard, is better. Mr. Rieder’s convenience will negatively impact the abutting lots’ value & their back yard. They are not in support of the visual intrusion. Rieder argued that the proposed location is the least conspicuous. The Board requested additional information from the applicant: an updated plot plan to show an accurate location of the proposed solar arrays, the landscape buffer plan, something in writing from the solar company regarding how much they can move the 2nd array or put some on the roof. Rieder informed the Board that the roof has a lot of metal work precluding roof mounted solar panels. Oltman announced that the Board will conduct a site visit on 2/14/23 at 9 am. Keller made a motion to continue the public hearing to 2/14/23 at 9 am for a site visit and to the March 2nd meeting. Rechisky seconded the motion and the Board voted unanimously to continue to 2/14/23 at 9 am for a site visit & to the 3/2/23 meeting.

Member Keller recused herself from the rest of the meeting and left the meeting.

Petition Number: Z-23-6

Premises Affected: 140 Haverhill Street

Petitioners: Medico 140 LLC

Relief Requested: Modification of Decision Z-22-76 regarding parking circulation under § 5.1.5.2.d; special permits under Art. VIII, § § 3.1.3, 3.3 &/or 4.1.4.3.b; &/or Reasonable Accommodation from Art. VIII, § § 3.1.3 and 4.1.4.3.b to construct & operate a hospital

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

Alternates: Lopez & Guerette

Attorney Andrew Tine represented the applicant. In his overview, he noted that this is the same project with no changes from the prior presentation except it is currently proposed as a hospital, which is not defined in the zoning bylaw. Hospitals include overnight care & the parking requirements are much less due to the lower volume or turnover of patients. This is due to the fact that hospitals have more long-term stays, including overnight & a detox facility has fewer patients with cars. Attorney Tine explained that the focus of the requested relief is the 39,000 sq. ft. 64-bed facility to be built on a parcel of land that has been subdivided from the original lot. The relief requested currently does not include parking. 87 parking spaces will be provided. The building footprint has been reduced and the special permit request was deemed appropriate as stated in the prior decision. Tine explained that the difference in this application is the change in name under zoning because a detox facility is not defined in the bylaw. He argued that this proposal has less impact than a traditional hospital due to not having an emergency department or ambulances coming/going. In the alternative / in addition to the requested relief, they are requesting reasonable accommodation under Federal Law. Tine pointed out that a hospital can be constructed, just that this hospital is for very specific types of diseases and that Federal Law allows the ZBA to grant relief for this type of facility. A Suitability Letter is included in the project. Tine argued

that no additional burden would be placed on the Town with the construction of a hospital. As for the second special permit request from the 300' setback requirement to the nearest residential building, Tine indicated that the nearest residential building is within the 300'. Further, Tine informed the Board that the prior decision can't be modified due to pending litigation. The Board discussed limiting the use so no emergency room could be created in the future, if approved, as well as limiting the number of beds to 64. Attorney Tine reminded the Board that they can reasonably accommodate the use with conditions in the form of a hospital with conditions. He emphasized that it is not a walk-in clinic. The Board asked for clarity on the difference between a medical center and a hospital, and if any special licensing is required for a hospital. Tine noted that the treatment facility will be licensed by BSAS for the detox facility. But for purposes of zoning, it's a hospital, which is not relevant to BSAS. They will impose their requirements on the construction & the facility. Faulk asked Tine to confirm his statement that only for zoning purposes the facility is being called a hospital. Tine confirmed. Faulk pointed out that Section 4.1.4.3.b & the special permit under Section 3.3 were granted last time as a variance, but it wasn't advertised this time as a variance request. A request to reaffirm it was submitted with the current application, but it was not advertised. Tine clarified that they are requesting a special permit instead of a variance. Faulk asked for the pre-existing, non-conforming argument under Section 3.3. Tine argued that it conformed with the bylaw at the time of construction in that it was constructed prior to the 300' setback requirement or it wouldn't exist without a variance. Faulk also inquired if there are any changes to the program and if there was a new traffic study. There are no changes to the program and no new traffic study has been conducted. There being no other questions from the Board, Chair Olman asked the public to speak. Rich Renzi, 135 Haverhill Street, asked why they are now using the word 'hospital' instead of 'clinic' and what the plan is. Renzi informed the Board that the number of cars parked on site has increased. He urged the Board to require the traffic study to be redone. Renzi gave an overview of the property, which was allowed by vote of the 1972 Town Meeting with restrictions to operate 7:30 a.m. – 9:30 p.m. Monday-Friday. The 'poor' condition of the facility is not known because the Board has not visited the site and yet TopSail has been operating in the facility for 3 years. Renzi pointed out that there is no mention of security in the current proposal and urged the Board to deny the requests. Attorney Bill Sheehan, representing South Bay Properties, LLC (Dr. Mark Abelson) owner of Doctors Park II, asked the Board to consider if this is the right place for this use. Sheehan outlined the issues: special permit from the 300' setback, yard depths in the OP District apply to parking areas, modification of Z-22-76, a special permit for a hospital, reasonable accommodations, and that this is not a prior non-conforming use. The structure is a pre-existing, non-conforming structure due to the 2013 creation of the 300' setback to a residential structure. Sheehan argued that the proposal is not an alteration to a non-conforming structure because they propose to raze the building and the request should be denied based on the bylaw's language. The proposed parking areas are within the minimum required setbacks for new construction. Up until this application, the applicant contended that this is not a hospital. Yet in Massachusetts, hospitals are licensed as a hospital & the prior application was for a medical clinic. Sheehan reminded the Board that the standard for a special permit is that it is not more detrimental to the neighborhood. While the clients are a protected class, no one gets to reside in the OP District. Hospitals are permitted in other locations. This location is unreasonable. Debbie Fullam, 131 Haverhill St., spoke in opposition noting that the original facility was just for day use and if a hospital is allowed it will impact their lives. She argued that it's not the right location as it will create more noise and will leave the abutters unprotected. Ciro Melo, 197 High St, also opposed the project & asked the Board to respect the 1971 Town Meeting decision prohibiting overnight stays. He argued that the ADA does not require overnight stays. Attorney Tine rebutted that this is the perfect location for such a facility & a hospital is an allowed use in this location. He pointed out that it would be discriminatory to deny a facility to treat addiction. He will research whether the parking area is non-conforming and provide a timeline. He requested to continue the public hearing in order to obtain additional information. The Board asked Tine to provide an explanation of what MA considers a detox facility; a medical clinic or a hospital. The Board asked for more information on the 1972 vote. Renzi informed the Board that Decision #1005 is informative and that the 1972 vote was for a daytime medical facility. Renzi added that Doctors Park clients arrived at staggered times, while TopSail come and go at the same time. Renzi & Fullam reiterated that the overnight use is the concern. Melo agreed. The Board discussed how such facilities are normally categorized, what the facility in Wilmington is categorized as and what the courts stated. Attorney Tine noted that Wilmington changed their zoning bylaw to

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prevent it. Guerette pointed out that Wilmington's current zoning bylaw's definition of a hospital includes detox facilities. Colleen Kefferstan, 115 Haverhill St, asked for an unabbreviated comparison of hospital & medical center/clinic. Novaria made a motion to continue the public hearing to the 3/2/23 meeting. Lopez seconded the motion and the Board voted unanimously to continue the hearing to 3/2/23.

Minutes of 1/5/23

There being no changes to the draft minutes for 1/5/23, Guerette made a motion to approve them as drafted. Lopez seconded the motion and the Board voted unanimously to approve the minutes of 1/5/23.

Discussion Item

Chair Oltman announced that the Planning Board will discuss the recodification of the zoning bylaw at their 2/15/23 meeting.

There being no other business, McDonough made a motion to adjourn the meeting. Guerette seconded the motion and the Board voted unanimously to adjourn the meeting at 8:34 p.m.

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary