



MINUTES OF THE ZONING BOARD OF APPEALS
ANDOVER, MASSACHUSETTS
Select Board Conference Room, 3rd Floor, Town Offices, 36 Bartlet St., Andover
April 6, 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. Also present was Town Counsel Attorney Thomas Urbelis.

The meeting opened at 6:33 p.m. Chair Oltman reviewed the procedural rules.

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

This is a continued deliberation to vote on the decision as drafted. Oltman informed the Board that the petitioner has asked to reopen the public hearing in order to read a letter to the Board. There being no motion to reopen the public hearing, Keller made a motion to approve the decision as drafted. Lopez seconded the motion & the Board voted unanimously to approve the draft decision.

Documents used at the meeting:

- Draft Decision Z-23-2

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, Rechisky

Alternates: Arabian, Novaria, Lopez, Guerette

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

Documents used at the meeting:

- Draft Decision Z-23-4

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

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

Documents used at the meeting:

- Draft Decision Z-23-5

Petition Number: Z-23-7

Premises Affected: 22 Stinson Road

Petitioners: Chae

Relief requested: Special Permit &/or Variance under Section 4.2.2 for the continued existence of a shed in the front yard area

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

Alternates: Novaria, Guerette, Lopez, Arabian

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

Documents used at the meeting:

- Draft Decision Z-23-7

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

Alternate: Novaria

Attorney Mark Johnson represented the petitioners & reviewed the PowerPoint presentation that he submitted to the Board. Since the last hearing they filed with Conservation Commission. Architect Rob Bramhall summarized his meeting with Conservation Commission: wetlands have been re-staked & the main issue is the proximity to the 50' buffer and the precise location of the foundation. The form work will be surveyed prior to pinning the foundation. The Board discussed the total square footage of the structure, which Bramhall estimated at 5200 sq. ft. He stated that it is smaller than the house. Faulk asked for the size of the footprint & the total square footage of the new accessory building. Bramhall stated the house is 5888 sf and the accessory building is 5146 sf. Oltman informed them that the accessory building ground floor area is needed if the Board votes to grant relief. The Board discussed the Town Engineer's comments regarding the easement. Bramhall noted that an overhead electrical wire will 'cross' the easement and the driveway will be gravel. Town Counsel informed the Board that he has not seen any plan to cross the easement. Bramhall suggested that they can go around the easement in order to construct the project. Town Counsel offered to obtain confirmation from DPW that the current proposal is acceptable to DPW. Bramhall will give DPW the updated plan. Oltman informed Attorney Johnson that if the square footage is non-conforming, they will need to file for relief & legal notification will have to be advertised & sent to abutters. Novaria read Section 4.2.3 regarding ground floor area. McDonough made a motion to continue the public hearing to 5/11/23. Lopez seconded the motion and the Board voted unanimously to continue the hearing to 5/11/23.

Documents used at the meeting:

- Request to continue the hearing without discussion to the March 2023 meeting dated 2/2/23
- Request to continue the hearing scheduled for March 2, 2023 without discussion to the April 6, 2023 meeting and granting an extension to act until May 19, 2023 dated 2/27/23
- Resubmittal of PowerPoint presentation originally submitted on 1/5/23

- 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
- Alternate: Novaria

Petition Number: Z-23-23

Premises Affected: 14 Geneva Road

Petitioners: Beth Arnold

Relief Requested: special permit under Art. VIII, §§3.3.5.2 &/or 9.4 to raze & construct a nonconforming single-family dwelling

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

Alternates: Lopez, Novaria, Arabian, & Guerette

Beth Arnold represented herself. She summarized the proposal which includes razing an existing house within Zone 1 of The Watershed Protection Overlay District (WPOD). She noted that there are only 3 houses on Geneva Rd & that the subject property abuts the Town Water Treatment Plant. Residential development is a permitted use. The existing house was constructed prior to 1900. Arnold feels that the proposal serves the public welfare & will not impair the neighborhood. The new house will be built on the same footprint and is serviced by Town sewer. She has filed a Notice of Intent with the Conservation Commission and stated that Chris Cronin, Director of DPW, had no objection. The Board inquired as to the applicant's ownership interest & the zoning district due to a discrepancy between the application and the plot plan. Ms. Arnold has a remainder interest in her father's estate. The lot is in the SRC zoning district. The Board asked for the Building Inspector's written interpretation. The only written correspondence is in emails. An email from November 2022 suggested that she can appeal the inspector's decision since he feels it is a prohibited use. Arnold informed the Board that she chose not to appeal. Faulk explained that since the inspector issued an interpretation, the Board is bound to his interpretation. Town Counsel Thomas Urbelis agreed adding that there is no appeal here. Faulk asked if the written interpretation has passed the appeal period. Lopez suggested that it has not since there was no formal written interpretation issued. Rechisky suggested that the applicant collect more information and come back with a letter from the Inspector so she can appeal it. Urbelis explained that State Law authorize the Building Inspector to interpret the bylaw. If someone disagrees with him, the proper procedure is to appeal the interpretation to the Board. Keller also expressed desire for a formal written interpretation from the Building Inspector. Oltman and the Board agreed that it appears that the discussion was informal. Lopez asked if the proposed garage on the plans submitted is new. It is new. The Board noted that it would be new construction within the WPOD and within a septic easement. Arnold believes the easement is private. Keller pointed out that nonconformities cannot be increased without relief. Arnold offered to forego the new garage and just wants to see if she can do anything at all. Urbelis explained that if a special permit is issued for a building the inspector said violates the zoning bylaw, the Board is in conflict with the inspector. While it sounds as if there has been a determination, a formal written letter is necessary for the Board to consider the request. Urbelis instructed the Board that the cleanest thing is to determine if the Inspector is right or wrong. Oltman suggested to Arnold that the public hearing be continued on Town Counsel's advice in order to obtain a formal written determination and then appeal it. The Board requested construction plans of the proposed house & photos of the interior of the existing house. Her being no other questions or comments from the Board or the public, McDonough made a motion to continue the public hearing to 5/11/23. Lopez seconded the motion and the Board voted unanimously to continue the hearing to 5/11/23.

Documents used at the meeting:

- PowerPoint Presentation (19 slides)
- ZBA – PLOT PLAN dated 3/9/22 prepared by Civil Design Consultants, Inc.

- Existing Conditions Plan dated 11/1/22 prepared by Civil Design Consultants, Inc.
- Wetland Permitting Plan dated 11/1/22 prepared by Civil Design Consultants, Inc.
- Construction Details dated 11/1/22 prepared by Civil Design Consultants, Inc.
- Quitclaim Deed dated 8/21/19
- Durable Power of Attorney prepared by LaFortune and LaFortune dated 8/21/19

Petition Number: Z-23-25

Premises Affected: 3 Germano Rd

Petitioners: Masse

Relief Requested: special permit under Art. VIII, §3.1.3.F.4 to convert an existing detached garage into a Family Dwelling Unit

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

Alternates: Lopez, Novaria, Arabian, & Guerette

Larry Masse, Jr, owner, represented himself to create a Family Dwelling Unit inside the existing detached garage for his parents to live in a single level dwelling. Chair Oltman reviewed the standard conditions for a Family Dwelling Unit (FDU), including the removal of the cooking facility once his parents no longer occupy the FDU and asked for their names. They are Lawrence Sr & Denise Masse. Oltman asked for public comment. There was none. The Board asked for clarification as to the applicant's name; Lawrence Masse II, and the whether the bump out at the rear of the garage will be kept. Masse confirmed that it will be kept. Faulk pointed out that it is not in the drawings submitted to the Board. Masse explained that it because it is not part of the garage's footprint. There will be no structural changes to the garage structure and the existing house has a garage underneath. There being no further questions, Keller made a motion to waive a site view & close the public hearing. Rechisky seconded the motion and the Board voted unanimously to waive a site view & close the hearing. The Board then proceeded to deliberate. In deliberation the Board agreed that a special permit is appropriate with the standard conditions. Keller made a motion to grant the special permit with the standard conditions. McDonough seconded the motion and the Board voted unanimously to grant the special permit with conditions. Keller volunteered to draft the decision.

Documents used at the meeting:

- 3 pages of hand drawn floor plans / layouts, undated
- Plan of Land David Drive, Andover, Mass. dated 6/18/87 prepared by Armand E. Provost, Jr.
- Mortgage Inspection Plan for 3 Germano Way dated 5/18/20 prepared by Northern Associates, Inc.

Petition Number: Z-23-29

Premises Affected: 6 George Street

Petitioners: Johnson

Relief Requested: special permit under Art. VIII, §3.3.5 &/or variance from Art. VIII, §4.1.2 to construct additions & alterations that will not meet the minimum side & rear yard depth requirements

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

Alternates: Lopez, Novaria, Arabian, & Guerette

Joanna Reck, architect for the owners, presented the project along with Peter Johnson, owner. The project includes the addition of a family room to an existing non-conforming house. The non-conformity will increase at the rear of the house. The proposed setback is 25.67' to the rear while the left side setback will not increase. While the addition is not visible from the street, the applicant is agreeable to a condition to have the Preservation Commission review the project since the house is registered historic. They have spoken to the abutters, in particular the one to the rear who will be most impacted. They are in support of the addition along with the abutter to the side. Johnson informed the Board that they have lived there for 20 years, and it is a close neighborhood. 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. Lopez seconded the motion and the Board voted unanimously to waive the view & close the public hearing. In deliberation the Board noted that the house was constructed in 1937, thereby qualifying as pre-existing, non-conforming. Faulk made a motion to approve the special permit with the usual conditions & to have Preservation Commission review it. Keller seconded the motion and the Board voted unanimously to approve the special permit with conditions. Faulk will draft the decision.

Ellen Keller, Member, and Ralph Arabian, Associate Member, left the remainder of the meeting.

Petition Number: Z-23-6 & Z-23-30

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

Alternate: Lopez

Attorney Andrew Tine represented Medico 140 LLC + Commonwealth Detox Inc. Tine gave an overview of the application and public hearings to date requesting to consolidate the two pending applications. He noted that the footprint of the proposed building is slightly smaller with less parking than previously proposed. The proposal is to construct a hospital with overnight stays as permitted in the Office Park zoning district. Tine's letter dated 3/2/23 summarized the 5 sets of bylaws and the changes in the uses. As the bylaw changed, Doctors Park became a nonconforming structure due to these changes, including nonconforming setbacks. The property has not been conforming since 1981, more or less, and a medical clinic required a special permit until 2015. Therefore, there is no historic preference between or over a hospital or medical clinic. In the 1981 bylaw, the 300' setback did not exist or was only applicable to the Industrial Districts. The Board clarified the intent of the most recent application (Z-23-30). Attorney Tine stated that they negotiated a resolution with the abutter to the west regarding parking setbacks. The request for a modification of Z-22-76 is no longer being pursued & therefore withdrawn. Several residents voiced concerns related to honoring the restrictions that were voted in by Town Meeting, specifically prohibiting overnight stays, parking, and the integrity of the traffic report by Bayside Engineering. The abutters urged the Board to conduct a site view and affirmed their opposition to the project. Attorney Thomas Flannagan for South Bay Properties LLC II, owners of 138 Haverhill St, spoke in opposition arguing that the request for reasonable accommodations for residential use is not allowed for anyone in the district and therefore should be disallowed. Further, all parking areas are within the setbacks and razing a building is not a modification. The new building would need a variance, but the hardship is self-created because they divided the property into two lots. Further, the 300' buffer encompasses the entire property. The Board discussed whether a limited stay constitutes residential use. Flannagan noted that the ADA states that disabled persons are entitled to equal opportunity, not a preference; the OP district is not a residential district. The Board considered the difference between a medical clinic with overnight stays versus a hospital with no emergency department. They felt that a broader definition with restrictions is a better option. Tine argued that it is a detox facility, which fits into one or both definitions of a medical clinic or a hospital; it is not a clinic due to the overnight stays, but it is not a hospital due to the absence of an Emergency Department and restricted access with few, if any visitors. The applicant is not requesting approval for it to be a residence. It is a hospital with extended stays. While the Fair Housing Act would consider the detox facility a patient's dwelling during their stay only. Tine added that only TopSail will occupy the new building & have the Planning Board review it again. Town Counsel Thomas Urbelis summarized the status of the 4 pending lawsuits: 2 in Federal Court and 2 in Land Court. There will be a status conference on 4/24/23. Urbelis reminded the Board of the issues before them in the current applications noting that the Board previously found Reasonable Accommodations and are being asked to do so again. As for the request to 'do whatever they want,' Town Counsel recommended denying

that request. The Board discussed with Attorney Tine and the public the possible uses of the existing building occupied by TopSail and reminded the public that any uses allowed in the bylaw can be conducted by right. Dennis Richards of 129 Haverhill Street noted that he would be amenable to a smaller building. The Board discussed any potential conditions if approved: incorporating the Planning Board conditions including any future conditions placed on the property by the Planning Board, no emergency department, restricted visitation, returning to the ZBA for a change of use, returning to the Planning Board regarding lighting, snow removal, parking (to be dealt with by the Planning Board), any conditions from prior zba decisions, if the use changes the owner will have to go back to the Planning Board for a determination, and any others the Board may impose. Novaria made a motion to close the public hearing and to waive a site view. Lopez seconded the motion and the Board voted unanimously to waive the site view & close the hearing. The Board then proceeded to deliberate. In deliberation for Z-23-6 the Board discussed the basis for a hospital & their inclination to grant a special permit for a hospital with added restrictions and agreed that Reasonable Accommodations were appropriate. Regarding the 300' buffer, the older bylaws show that it came into effect after the existing structure was built, thereby making it a pre-existing, non-conforming structure. Therefore, it is eligible for a special permit under Section 4.1.4.3.b. The Board allowed the withdrawal of the request to modify Z-22-76 and agreed to add the prior conditions into both of the current decisions, along with the following additional conditions: no emergency vehicle sirens, no nighttime lights adjacent to residences, all Planning Board conditions are incorporated by reference, no methadone clinic, any patient leaving shall be escorted by Andover Police Department until they leave by car, no signage at the internal entrance, no emergency department.

In deliberating Z-23-30 (Special Permit under Art. VIII, Section 4.1.4.3.a or Reasonable Accommodations for 300' parking setback), the Board discussed how it appears to mimic the 300' setback requirement and whether or not the requested variance should be denied as moot or in the alternative. Oltman pointed out that no hardship argument was presented. As for 'Reasonable Accommodations to construct whatever', the Board was opposed to this request. Rechisky suggested limiting sound by restricting ambulance sirens as well as outdoor sound systems/intercoms, but that fire/emergency alarms are ok. The Board also considered the sound of certain vehicles backing up and felt that restricting deliveries to daytime hours, if it is not already written in the Planning Board's decision, would help mitigate noise. Rechisky also suggested that on-site snow storage should be limited to only snow from the existing lot and not snow brought in from other sites. Faulk made a motion to approve a Special Permit for Z-23-6 to construct a hospital for the purposes of zoning &/or Reasonable Accommodations for a hospital for the purposes of zoning with the discussed conditions; a Special Permit for the 300' buffer under Section 4.1.4.3.b &/or in the alternative Reasonable Accommodations for the 300' buffer; and the withdrawal of the request to modify Decision Z-22-76. Rechisky seconded the motion, and the Board then took a vote by roll call:

Novaria – yes, Rechisky – yes, McDonough – yes, Faulk – yes, Oltman – yes, Lopez (as alternate) – yes. Faulk made a motion for Z-23-30 to approve a special permit &/or Reasonable Accommodations §4.1.4.3.a for the parking setback, to deny the variance as moot but to grant Reasonable Accommodations under Section 4.1.4.3.B and to deny the request for Reasonable Accommodation to construct the project without further relief from the ZBA being required or any matter within its jurisdiction and to carry the prior conditions. McDonough seconded the motion and the Board voted by roll call:

Novaria – yes, Rechisky – yes, McDonough – yes, Faulk – yes, Oltman – yes, Lopez (as alternate) – yes. Oltman volunteered to draft the decision.

Documents used at the meeting:

- Memorandum to the Board from Attorney Tine, dated January 9, 2023
- Suitability Letter dated July 8, 2021 from Bureau of Substance Addiction Services
- Project Summary updated as of January 6, 2023
- Letter to Chris Clemente, Inspector of Buildings, dated January 5, 2023
- Memorandum from Chris Clemente dated March 23, 2022
- Planning Board Decision SP21-04
- Zoning Board Decision Z-22-76

- Zoning Board Decision Z-21-93
- Owner Authorization Letter, dated January 6, 2023
- Two existing aerial photographs
- Variance Plan, prepared by Ranger Engineering Group, Inc., dated June 29, 2022
- Existing Conditions Plan, prepared by Ranger Engineering Group, Inc., dated June 3, 2021
- Traffic Impact and Access Study, prepared by Bayside Engineering, dated January 19, 2022
- Letter to the Board from Attorney Tine, dated March 26, 2023
- Letter to the Board from Attorney Tine dated March 3, 2023
- Email received from Attorney Tine on February 28, 2023 requesting a continuance to April 6, 2023
- Letter from Attorney William H. Sheehan III dated February 16, 2023
- Letter to Attorney Tine from Chris Clemente dated January 17, 2023
- Memorandum to the Board from Town Counsel Attorney Urbelis dated January 13, 2023
- Suitability Letter dated July 8, 2021 from Bureau of Substance Addiction Services
- Project Summary updated as of January 6, 2023
- Owner Authorization Letter, dated March 10, 2023
- Two existing aerial photographs
- Variance Plan, prepared by Ranger Engineering Group, Inc., dated June 29, 2022
- Existing Conditions Plan, prepared by Ranger Engineering Group, Inc., dated June 3, 2021
- Demolition Plan prepared by Ranger Engineering Group, Inc. dated July 9, 2021
- DPH-BSAS suitability letter dated July 8, 2021
- Email from Attorney Tine providing a summary of relief requested, received April 6, 2023
- Letter to the Board from Attorney Tine, dated March 26, 2023
- Andover Zoning Bylaw 1981

Minutes of 3/2/23

There being no changes to the draft minutes for 3/2/23, Novaria made a motion to approve them as drafted. Lopez seconded the motion and the Board voted unanimously to approve the minutes of 3/2/23.

There being no other regular business, McDonough made a motion to adjourn regular the meeting and to enter into Executive Session pursuant to Purpose 7 in the Open Meeting Law to review executive session minutes for the following dates: January 19, 2023; January 5, 2023; October 7, 2021; July 1, 2021 and to not return to open session . Faulk seconded the motion and the Board voted by roll call:

Novaria – yes, Rechisky – yes, McDonough – yes, Faulk – yes, Lopez – yes, Oltman – yes

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary