



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

(Space above reserved for **Registry of Deeds**)
(Space below reserved for **Town Clerk**)

Decision Number: Z-24-59

Date Application Filed: November 12, 2024

Applicant: Viking Development
302 Innovation Drive, Suite 130
Franklin, TN 37067

Premises Affected: Land at 140 Haverhill Street
Located in Zoning District OP
Town Assessor's Map 18, Lot 104A
Essex North Registry of Deeds Book 16214, Page 202-226

Owner of Record: Medico140 LLC
355 Middlesex Avenue, Suite 7
Wilmington, MA 01887

Relief Requested: Variance from the requirements of Article VIII, §4.1.2, §4.1.4.3, and 5.1.4 and/or a Special Permit under §3.3.3

Public Notice: Notice published in the Andover Townsman on November 21 and 28, 2024, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws.

Public Hearing(s) held: December 5, 2024

Decision of the Board: Variance from the requirements of Article VIII, §4.1.2, 4.1.4.3 and 5.1.4 GRANTED
Special Permit under Article VIII, §3.3.3 denied as MOOT

Members participating: Oltman, McDonough, Keller, Faulk, Wellikoff

Date of Decision: January 9, 2025

I. FACTS PRESENTED AT THE PUBLIC HEARING

A public hearing was held on Thursday, December 5, 2024, in the Select Board Conference Room, 3rd Floor, Town Offices, 36 Bartlett Street, Andover, MA on the petition of Medico 140 LLC for a variance from the requirements of Article VIII, §4.1.2, §4.1.4.3, and 5.1.4 and/or a Special Permit under §3.3.3 to operate a child care facility within 300 feet of a residential land use and within the side yard setback requirement and with a reduction in the parking requirement. Present were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk, and Ellen Keller, Members; and Michael Wellikoff, Michael Novaria, and David Guerette, Associate Members.

Attorney Andrew Tine represented the applicant. Attorney Tine indicated that the subject property is proposed to be subdivided to provide two new buildings. It is proposed to raze the existing 16,700 SF medical office building and reconstruct a new 19,200 SF medical office building on “Lot 1,” the subject of Z-24-58. The proposed medical building on “Lot 1” was previously approved by the Board in Decision Z-24-38. “Lot 2” would contain a 17,688 SF childcare facility. Ben Osgood, PE, of Ranger Engineering Group, Inc., presented the existing and proposed site plans. Mr. Osgood described Lot 2 as being in conformance with the Zoning Bylaw for size and frontage requirements. The new lot line between the two proposed buildings requires a side yard setback variance, with 10 feet proposed and 50 feet required. The existing building on the property is non-conforming due to its current presence within 300 feet of adjacent residences. Relief is requested from Bylaw Section 4.1.4.3, requiring a 300-foot setback from existing residential dwellings for non-residential structures in an Office Park District. The proposed childcare facility will be located within the required 300-foot buffer. There is only a very small buildable area of the lot that would be outside of the 300-foot buffer. The proposed childcare facility playground will be 132 feet in distance from the closest residential dwelling. The building will be 194 feet from the closest residential dwelling.

The existing parking is proposed to be maintained. The Applicant is requesting relief for the number of parking spaces proposed, with 50 spaces required and 43 spaces provided. The Applicant provided a parking analysis of similar facilities run by Viking Development that indicates that sufficient parking will be provided to support the proposed facility with 35 staff members and 195 students.

The existing driveways and associated easements onto Haverhill Street and High Street are to be maintained. Additional landscape buffering is proposed to be provided along Haverhill Street and High Street. No site lighting will flow off-site.

One neighbor spoke on the application, generally in favor of this proposed plan.

No one else appeared before the Board to speak either for or against the petition. The Board voted unanimously to waive a viewing of the premises and to close the public hearing. The Board then proceeded to deliberate the matter. In deliberation, the sense of the Board was to approve the requested variance. The Board voted unanimously to continue its deliberation to a meeting to be held on January 9, 2025 for the purpose of reviewing and voting on the final decision.

In addition to the written application, the following documents and materials were received by the Board and considered at the public hearing:

- Variance Plan, prepared by Ranger Engineering Group, Inc., dated 10/31/2024
- Revised Variance Plan, prepared by Ranger Engineering Group, Inc., dated 11/15/2024

- Memo to the Board from Attorney Andrew Tine, dated November 1, 2024
- Parking Memo, prepared by Kimley Horn, dated October 24, 2019
- Zoning Board Decisions Z-22-76, Z-21-93, Z-23-6, Z-23-30
- Existing Conditions Plan, prepared by Ranger Engineering Group, Inc., revision dated 8/23/2024

The Board deliberated and voted to approve the following findings and decision at a public meeting held in Select Board Conference Room, 3rd Floor, Town Offices, 36 Bartlett Street, Andover, MA on Thursday, January 9, 2025. Present and eligible to vote on the application were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk and Ellen Keller, Members; and Michael Wellikoff, Associate Member.

II. FINDINGS AND DECISION OF THE BOARD

With respect to variances, Section 9.2.2.2 of the Andover Zoning Bylaw grants the Board of Appeals the power: “[t]o hear and decide appeals or petitions for variances from the terms of this Bylaw, including variances for uses, all as set forth in G.L. c. 40A, s. 10.” G.L. c. 40A, s. 10 provides that the Board may grant a variance:

“...with respect to particular land or structures ... where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

The Board finds that the subject proposal is an improvement over the existing poor-condition, non-conforming building. The site has long been used as a medical office building (built 1975) and the property was zoned Office Park (1968) prior to the requirements of Article VIII, Section 4.1.4.3.b being approved by Town Meeting (2002). The Board finds that the proposed building is less non-confirming than the existing building and will not be derogatory to the adjacent neighborhood or a detriment to the public good. The proposed setback is from a lot line proposed for ownership purposes and does not generally affect the surrounding neighborhood. The proposed parking supply has been shown to be sufficient to support the proposed childcare facility. Accordingly, the Board votes unanimously (5-0) to grant a Variance from the requirements of Article VIII, Sections 4.1.4.3, 4.1.2 and 5.1.4 to allow the construction of a childcare facility, subject to the following conditions:

- The site shall be constructed in general conformity with the Variance Plan, prepared by Ranger Engineering Group, Inc., dated October 31, 2024.
- The subdivision plan must be approved as to form by the Planning Board and filed with the Registry of Deeds prior to a building permit being issued.

The Board notes that all other Zoning Decisions applicable to this site (Z-22-76, Z-21-93, Z-23-6, Z-23-30) are voided with the approval of this decision. The Special Permit under Article VIII, Section 3.3.3 is denied as moot.

Members voting FOR the decision: Oltman, McDonough, Faulk, Keller, Wellikoff

Members voting AGAINST the decision: None

Elizabeth M. Oltman, Chair

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CERTIFICATION

I, Austin P. Simko, Town Clerk of the Town of Andover, Massachusetts do hereby certify that twenty days have elapsed since the above referenced decision of the Board of Appeals, which was filed in the office of the Town Clerk on _____, 2025 and that no appeal has been filed with the Town Clerk.

Austin P. Simko
Town Clerk
Andover, Massachusetts