

**MEETING OF THE
CITY OF WOBURN
BOARD OF APPEALS
JULY 20, 2016 – 7:00 P.M.
COUNCIL CHAMBER
WOBURN CITY HALL**

Attending: Chair Margaret Pinkham, Member Daniel Parrish, Member John Ray, Member John Ryan, Member Edward Robertson and Alternate Member Sheila McElhiney

Petition of Anchor Realty Trust, 3 Breed Avenue, Woburn, MA 01801, Petitioner and Landowner, seeking the following Variances: 1) from 20 feet to 5 feet for the front setback; 2) from 20 feet to 5 feet for the rear setback; and 3) to allow for parking within the front setback and allow for the construction of a new building at 3 Breed Avenue. (continuation from previous meetings) Representing the petitioner, Mark Salvati, Esquire, 10 Cedar Street, Woburn, MA stated that they have submitted updated plan; that they are requesting setbacks of 10' from 20'. Chair Pinkham's memory was the this has been before the Board for some time; and that she appreciates the updated plan providing for 10' setbacks. Attorney Salvati confirmed that the petition was also to allow parking within the setback. Motion was duly made and seconded that the Petition for VARIANCE be granted for relief: 1) from 20 feet to 10.5 feet for the front setback; 2) from 20 feet to 10 feet for the rear setback; and 3) from 20 feet to 10 feet for the side setback; and 4) to allow for parking within the front setback and allow for the construction of a new building at 3 Breed Avenue conditioned upon the construction conforming in all respects and particulars to Plot Plan entitled "Plot Plan 3 Breed Avenue Woburn, Mass. Scale: 1"=40' July 8, 2016 Prepared by Edward J. Farrell Professional Land Surveyor 110 Winn Street Suite 203 Woburn, MA (781) 933-9012", drawings and specifications submitted to and on file with the Board, and such Plot Plan, drawings and specifications are, by reference, incorporated herein and made part of this VARIANCE. The Vote was all in favor, 5-0.

Petition of Brier Development LLC, 92 Merrimac Street, Woburn, MA 01801, Petitioner and Landowner, seeking a Special Permit to alter and reconstruct a single family dwelling house by razing the existing structure and replacing it with a newly constructed single family dwelling at 114 Eastern Avenue. (Abstained: Ryan and McElhiney) Representing the petitioner, Malcolm Houck, Esquire, 7 Winn Street, Woburn, MA and petitioner, Sean Coakley of Brier Development were present. Chair Pinkham stated that with two members abstaining, they will need a unanimous vote from the four Board members; and asked if they wish to proceed, to which Attorney Houck stated they would.

Attorney Houck stated the he represents Sean Coakley and Brier Development; the he believes the Board is in receipt of the Plot Plan for the existing conditions as well as the proposed; that they are proposing to demolish the dwelling which was built in the 1920s with a concrete block foundation which is crumbling; that it has been a rental property which has dampness and rot

problems; that there has been periodic insurance inspection which has indicated the chimney is in poor condition and not insurable; that this property is at a dead-end street which was known as Eastern Avenue Extension; that Brier Development is a professional company; that Mr. Coakley is also Atlantic Power which is in the business and licensed for 'hazmat'; that as for disturbance during construction, the street may need to be opened for placement of lines; that the petitioner has checked with Mr. Duran of DPW and that the street would need to be resurfaced; that the demolition won't be disruptive; that this would be an 'in fill' house, explaining that you take one house out and put another in; that they are not creating any new non-conformities and the proposed would be less; that page A6 of the plans reflect the height of the deck which would be 4' in height to the average grade; that the existing dwelling is a bungalow-style home of 1 1/2 stories which has two bedrooms now and the proposed will be three; that 1/2-2/3 of the homes in the area are two-story homes, very few being bungalows.

PUBLIC: Carlos Montezuma of 112 Eastern Avenue explained that his driveway is to the left of the property; that he bought in 2010; that he has issues with what is his property (refers to Plot Plan); that he's not sure if it is interfering on his side; that he is concerned with drainage; that his house was built in 1900-1910; that he worries about the drainage; that water comes into the front of his house into the basement; that when they paved the street, it helped a little; that he's worried for the kids in the neighborhood; and that he doesn't want it to effect his house. Attorney Houck noted the Plan of 1890. Mr. Coakley explained that the downspouts will go into a perforated pipe and down to crush stone which is essentially a drywell and should help. Mr. Montezuma confirmed that he has an 8' driveway. Mr. Coakley stated that there are no easements of record, to which Attorney Houck stated that they will work it out with Mr. Montezuma. Attorney Houck further stated that Mr. Montezuma's property is a porkchop lot with a tail onto Eastern Avenue; that the pavement of his driveway slightly encroaches onto the Coakley property which they don't care about as it only looks like inches; that it's a Land Court abstract; that they are not going to convey but could agree to an easement. Mr. Montezuma stated that he just doesn't want more drainage on this property. Mr. Coakley explained the roof runoff; and that Mr. Montezuma's driveway has a flare at the end; and that he will put the stakes back in, to which Mr. Montezuma stated would be helpful. Christine Kelly of 110 Eastern Avenue stated that she is delighted with a new home; that she has the same concerns, namely: drainage; that she is concerned with any blasting; that she understands the property's basement to be dirt with a rock; that she is nervous about trucks and kids; and asked for a contact to call; and she would like to be informed. Mr. Coakley stated that there will be no blasting; that they will build around it (if there's a rock); explained that they have their own equipment; that they will water down and use crushed stone to keep the dirt down; that they will sweep the street every day; and he will give her his cell phone number; that they will start 21 days from approval. Responding to the Board, Attorney Houck stated that the lot coverage is currently 13% and proposed 18%; that there is a maximum of 25%; that they are in an R-2 Zoning; and that it is a single family and they are proposing a single family. There was discussion of an easement which Chair Pinkham added that she would support if it was worked out; and that the Board received an email from an abutter. Referring to the email, Mr. Coakley stated that they had been friends for thirty years; that he will reach out to her and talk about trash and keeping the site clean and safe; that he spoke with Jay Duran (DPW) and that it is possible the sewer can be used but if not good enough, they will grind; that the existing driveway is fine the way it is and plenty wide; and that they will make the easement happen. Mr. Montezuma spoke of plowing his driveway and that

there a big boulder, to which Mr. Coakley stated that they will talk and assess the boulder. Chair Pinkham believes the Special Permit standard has been met, but would like it worked out with the neighbor first. Attorney Houck asked for a vote with a condition to file the easement with the Clerk's office, to which Chair Pinkham stated is a procedural nightmare and would prefer it all worked out first. Motion made and seconded to continue the matter to the Board's next meeting. The Vote was all in favor, 4-0 (Abstained: Ryan and McElhiney).

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Petition of Seaver Properties, 215 Lexington Street, Woburn, MA 01801, Petitioner and Estate of Ralph Saviano c/o Krista A. Wilshusen, Esq., 105 Kenoza Avenue, Haverhill, MA 01830, Landowner, seeks: 1) a Variance for relief from Section 6.1 Table of Dimensional Regulations to allow for an adjustment in the minimum street frontage from 100 feet to 75 feet (existing street frontage) more or less to allow for two (2) Garden Apartments; and 2) in the alternative, appeals the decision of the Building Commissioner dated May 24, 2016 requiring a variance in addition to the Special Permit granted by the Board dated May 12, 2016 pertaining to the premises located at 602 Main Street. (Abstained: Pinkham and McElhiney) Motion was made and seconded to approve Member Robertson as Acting Chair. The Vote was all in favor, 4-0. The petitioner, Scott Seaver of Seaver Properties with his attorney, Derek Rodman, Esquire, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, MA 01801. Attorney Rodman stated that this is a petition for a Variance or in the alternative, a Claim of Appeal; that the Building Commissioner took the position that a Variance is required. Chair Robertson stated that the Board received a communication from the Building Commissioner; that the petitioner got a Special Permit but the Building Commissioner has ruled that it requires a Variance. Attorney Rodman asked for a little 'housekeeping' in that he has submitted a communication to the Board to amend the frontage to reflect "125' a detached 2-family dwelling"; that they have been before the Board; that they had amended its original petition and is requesting for frontage only; that on March 16, 2016, the matter was converted to a Special Permit; that they have amended to two units; and the petitioner applied for the Building Permit with the Special Permit and the Building Commissioner took the position requiring a Variance. Member Parrish reflected that the first time (the matter was before them), it started out as a Variance and the Board voted for a Special Permit. Attorney Rodman stated that they are here asking for a Variance; and that they feel it meets the requirements for a Variance; explaining that this is a long narrow lot that doesn't have sufficient frontage; that it is different and unique; that a hardship is established based on the Building Commissioner's determination that nothing can be done without zoning relief; that it doesn't deviate from the use; that they feel it meets the requirements for Variance; and that the Board already approved the project. Mr. Seaver adds that the Historical Commission has reviewed and resolved; that they have agreed with the Historical Commission and have agreed to work with them; and that the Building Commissioner's issue is strictly frontage. There was a discussion which resulted in that if anything was to be built would require relief.

PUBLIC: Margaret Pinkham of Francis Street expressed confusion in that it was originally requested for garden apartments; that she has a memory that it was to be condominiums; that they are now referring to it as a two-family; asked if it will still be condos (Mr. Seaver confirmed); that based on the Building Commissioner's July 5th communication that it's only

lack of insufficient frontage; that they don't have the frontage; that is not a hardship; and that there is nothing unique in the shape of the lot. Attorney Rodman stated that the Building Commissioner is concerned with 125' of frontage; and that he directed this to be a two-family which is not an appropriate label. Chair Robertson stated that it is not fair to discuss the Building Commissioner without him present. Mr. Seaver stated that he spoke with the Building Commissioner who said to him that if a Variance was granted, there would be no issue. Chair Robertson stated that he feels the Board decided that it was a Special Permit; asked of the hardship and if the existing structure could be rehabilitated. Attorney Rodman stated that the property will remain dilapidated; that because of the insufficient frontage, there is hardship. Mr. Seaver added that the Historical Commission toured the site and came to the conclusion that it could be torn down. Ms. Pinkham cited Feldman vs. Boston; that two-family is different from condominium, namely that a two-family has one owner and two condos would have two owners. Chair Robertson thinks the Board can't get involved in ownership, to which Attorney Rodman stated that he believes there is case law that ownership can't be considered; that the closest use is two-family which is not a defined term; and that this Board voted in favor of the project months ago; and that the Building Commissioner has asked for a Variance. Chair Robertson is not satisfied that they have met the burden for Variance. Member Parrish stated that he would vote for a Variance. Member Ray stated that if there was no building on this property, there'd be a problem as it would be a lot that can't be utilized. Chair Robertson would like to hear from the Building Commissioner. Member Ryan feels it's semantics. Mr. Seaver asked if the Board could work it out with the Building Commissioner, asked that they grant it and set aside. Attorney Rodman stated that it's been quite some time, and that the Board voted in favor of the project; and consequently requests to continue the matter. Motion made and seconded to continue the matter to the Board's next meeting. The Vote was all in favor, 4-0 (Abstained: Pinkham and McElhiney).

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Petition of Cellco Partnership dba Verizon Wireless c/o McLane Middleton, 300 TradeCenter Suite 7000, Woburn, MA 01801, Petitioner and Paul J. DiDonato, Trustee of Powerscourt Realty Trust, 64 Holton Street, Woburn, MA 01801, Landowner, seeking a Claim of Appeal of the Building Commissioner's denial dated 5/3/2016 to allow for the installation of a 'small cell' wireless communication antenna and supporting equipment on top of Utility Pole #20 for the premises located at 64 Holton Street. Chair Pinkham stated that the Board had received a communication from the Petitioner's attorney requesting to withdraw the petition. Motion was made and seconded to grant the request to withdraw. The Vote was all in favor, 5-0.

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Petition of Michael Smith and Nicole Smith, 2 Bradford Road, Woburn, MA 01801 Petitioners and Landowners, seeking a Variance for relief of the front setback requirement of the Woburn Zoning Ordinances from 25' to 0' to allow for the installation of a retaining wall (54") and fence (48") at 2 Bradford Road. The petitioners, Michael and Nicole Smith were present. Ms. Smith explained that they are looking to building a 54" retaining wall with a 48" fence; that their house is positioned and sloped on one side; that the change in elevation is

between 58”-60” just on the left side. Mr. Smith added that the house was built up and slopes on Bradford Road. Ms. Smith stated that they are looking to level off the lot; that the fence will be 12-16” behind the wall; that it’s approximately 50’ from sidewalk to fence on Bradford Road; that it’s on the corner; that it’s set back so there are no visible issues.

PUBLIC: Ron Cromwell, owner of 4 Bradford Road stated that he lives in Arlington but owns 4 Bradford Road; that he’s seen a description of what they want to build; that he takes care of his property and is happy to see them (taking care of theirs); that makes the neighborhood beautiful; and that he is here in support. Responding to the Board, Ms. Smith stated that the fence will look like what’s is in their packets; and that the pickets will be open. Motion was duly made and seconded that the Petition for VARIANCE be granted to allow the Petitioners to install a 54” retaining wall and 48” fence as shown on plans, sketches and drawings as submitted to the Board, conditioned that the subject retaining wall and fence conform in all respects and particulars to said plans drawings and specifications submitted to and on file with the Board and the City Clerk’s office, and which plans, drawings and specifications are, by reference, incorporated herein and made part of this VARIANCE. The Vote was all in favor, 5-0.

Petition of John Tremblay and Theresa Tremblay, P.O. Box 372, Burlington, MA 01803 Petitioners and Landowners, seeking to modify a special permit issued May 19, 2016 to allow revised plans for window and door placement and shed roof over garage doors and front door relative to the construction of a new single-family structure at 10 Lexington Street. Representing the petitioners, Mark Salvati, Esquire, 10 Cedar Street, Woburn, MA stated that they are requesting to amend a Special Permit; that the changes aren’t minimal for the Building Commissioner to approve, namely: 3 windows on the garage; 3 windows in the basement; change a single door to a double French door and add a shed roof over garage doors and front door. Motion was duly made and seconded that the Petition for modification of Special Permit issued May 19, 2016, be granted allowing the Petitioner to construct a new single family dwelling at 10 Lexington Street, conditioned upon: 1) the proposed shall comply with the current zoning requirements as to the height of the structure; and 2) the proposed structure to be built in compliance with drawings, plans and specifications submitted to and on file with the Board and the City Clerk’s office, and such plans, along with drawings and specifications are, by reference, incorporated herein and made part of this AMENDED SPECIAL PERMIT. The Vote was all in favor, 5-0.

Petition of Bret Boczenowski and Stacey Boczenowski, 33 Columbus Road, Woburn, MA 01801 Petitioners and Landowners, seeking a special permit to for an alteration of a pre-existing non-conforming structure pursuant to Section 7.3 of the Zoning Ordinance for the premises located at 33 Columbus Road. Representing the petitioner, Mark Salvati, Esquire, 10 Cedar Street, Woburn, MA stated that this is an interesting case; referring to the Plot Plan, that the client didn’t notice the encroachment; that the subdivision was laid out in 1958; that it is perceived that the house sets back 17’; that in 1960 there was no definition of setback; that our position is that the house wasn’t built 17’; that the rear was a side; that they are asking to go less than that; that today the rear setback would be 30’ but then it was 17’; and that the addition is not

detrimental to the neighborhood. Responding to the Board, Attorney Salvati stated that the Building Commissioner didn't take a position; that the encroachment in the front doesn't affect the addition; reference a previous matter on Floyd Street; that the Building Commissioner said that if a Special Permit was granted, he'd be willing to grant the Building Permit; that they are hoping to rectify the problem in Land Court; and that the addition is for his mother to move in; that it won't be a separate unit; and that it will be in keeping with the neighborhood. Motion was duly made and seconded that the Petition for SPECIAL PERMIT be granted to allow the Petitioner to construct an addition to the existing single family dwelling at 33 Columbus Road conditioned that the proposed addition shall be constructed in compliance with drawings, plans and specifications submitted to and on file with the Board and the City Clerk's office, and such plans, along with drawings and specifications are, by reference, incorporated herein and made part of this SPECIAL PERMIT. The Vote was four in favor, one opposed (Pinkham) (4-1).

Reading of Minutes of Meeting. Motion was made and seconded to approve the minutes of May 25, 2016 meeting as amended. The Vote was all in favor, 5-0.

Motion was made and seconded to approve the minutes of June 15, 2014 (open session relative to potential Executive Session RE: Woburn Development) meeting as amended. The Vote was all in favor, 5-0.

Motion was made and seconded to approve the minutes of June 15, 2016 (regular meeting) as amended. The Vote was all in favor, 5-0.

Motion was made and seconded to approve the minutes of June 15, 2016 (Executive Session RE Woburn Development) as amended. The Vote was all in favor, 5-0.

Motion was made and seconded to approve the minutes of June 22, 2016 meeting as amended. The Vote was all in favor, 5-0.

The next regular meeting of the Board of Appeals will be held on August 17, 2016 at 6:00 pm.

Motion made and 2nd to ADJOURN, all in favor, 5-0.

Meeting adjourned at 8:18 p.m.

Patricia Bergeron-George
Clerk of Committees