

**Zoning Board of Appeals
Woburn City Hall
City Council Chambers
August 15, 2018 – 6 p.m.**

Present: Chairman Margaret M. Pinkham, Member Daniel Parrish, Member Edward S. Robertson, Member John J. Ryan III, Member John D. Ray

Meeting was convened by Chairman Pinkham at 6:05 p.m.

NAI Entertainment Holdings LLC, 846 University Drive, Norwood, MA, 02062, Petitioner and Landowner, seeking a Variance from Section 13.9.2.6 the provisions of the 1985 Woburn Zoning Ordinance, as amended, for a free-standing sign with an area in excess of 100-square-feet and a height greater than 30 feet, at 25 Middlesex Canal Park Drive, Woburn, MA. Chairman Pinkham said a letter dated August 2, 2018, requesting for leave of withdrawal without prejudice was received on behalf of the petitioner from Wendy Regan, Permit/Compliance Associate, Mandeville Sign, 676 George Washington Highway, Lincoln, RI. Chairman Pinkham asked if there was anyone in the audience who wished to address the board about the petition. There were no respondents. Motion made by Member Robertson and seconded by Member Parrish to grant leave of withdrawal without prejudice; approved, 5-0.

George E. McDonald, 17 Maywood Terrace, Woburn, MA 01801, petitioner, and George E. McDonald, Trustee, Gem Realty Trust, 17R Maywood Terrace, Woburn, MA, 01801, landowner, appealing the decision of the Building Inspector to issue a cease-and-desist order at 17R Maywood Terrace, Woburn, MA: Appearing on behalf of the petitioner was Attorney Michael Reilly, 623 Main Street, Woburn, MA. Attorney Reilly said his client is not disputing the Building Inspector's report but he would like to have it nullified on the basis his client was not notified until Monday that there was a meeting of the City Council's Special Permits Committee meeting on Tuesday during which the appellant's alleged zoning violations were discussed (scrivener's note: The Special Permits Committee meeting was held on Monday, May 21). Attorney Reilly said a special permit was issued in 1981 for a two-family dwelling, and that during an inspection six months prior to the May meeting, the Building Inspector found the property was in compliance with the special permit. He said client is an elderly man in failing health. He said he was hired to represent Mr. McDonald the day of the Special Permits Committee meeting. He said Mr. McDonald met with the Building Inspector and the resulting cease-and-desist order was issued in June. Attorney Reilly said his client did not get any advance notice of the Special Permits Committee meeting and he believes 48 hours of notice is required. He is asking the board to nullify the cease-and-desist order based on the lack of notice. Chairman Pinkham asked Attorney Reilly if he attended the Special Permits Committee meeting on May 21. Attorney Reilly said he was retained four hours before the meeting. He said his client wasn't notified until 24 hours before the meeting. Chairman Pinkham asked when the meeting agenda was posted. Attorney Reilly said the meeting was posted on May 9 at City Hall and his client was never notified. (Scrivener's note: The meeting was posted at 3:28 p.m. on Thursday, May 17, and there was a telephone call placed to the appellant that day. A copy of the agenda was also sent to the appellant at his Maywood Terrace address.) Chairman Pinkham said it would have

been helpful if the appellant had included a copy of the Special Permits Committee agenda with the appeal. Attorney Reilly said he is asking the board to nullify the cease-and-desist order under MGL Ch. 30A. Chairman Pinkham asked Attorney Reilly if he has a copy of that statute. She asked Attorney Reilly if he is entirely basing his appeal on a lack of notice. Attorney Reilly said he is asking for the order to be nullified because of a lack of notice. Member Robertson asked if Mr. McDonald's appeal is based only on procedural reasons. He said he would assume if the order is vacated the zoning enforcement officer would just re-file. He asked if Attorney Reilly has had any discussion with the zoning enforcement officer in regard the number of units. Attorney Reilly said he is not here to debate the number of units. Member Robertson said if the board vacated the cease-and-desist order, the building enforcement officer would just re-file the order. Attorney Reilly said he was retained four hours before the meeting, and his client wasn't notified until 12 hours before the meeting. Chairman Pinkham said MGL Ch. 30A pertains to executive session, and she assumes the public hearing was not in executive session. She said the statute Attorney Reilly is trying to employ applies only to state and municipal employees who must be given 48 hours of notice of a hearing in executive session. She said she does not see anything at all that applies to Mr. McDonald's appeal. Attorney Reilly said he disagrees. He said he does not know if the Special Permits Committee had an executive session before the May 21 meeting. Chairman Pinkham said if Attorney Reilly was allowed to attend the meeting, it wasn't in executive session. Chairman Pinkham asked if anyone in the audience wished to address the board about the appeal. Brian Gingras, Building Inspector, City of Woburn, 10 Common Street, Woburn, MA, told the board he inspected the property on May 30 after the property owner consented to an inspection. Chairman Pinkham asked what is allowed under the terms of the special permit. Inspector Gingras said a 2-family dwelling is allowed. He said when he inspected in October he determined there was a split-level design and each unit had two kitchens, but he determined it was being used as a 2-family. He said he inspected the premises on October based on chronic complaints from an abutter at 19 Maywood Terrace. Member Robertson asked if there was any change from October to May. Inspector Gingras said there appeared to be four tenants in May. He said he did not address the allegation there were four units with the appellant because in his experience on-site inspections can become confrontational. He said he went back to his office and wrote a report based on the statements made by the appellant and his observations. Member Robertson asked Attorney Reilly if he wants to dispute the substance of Inspector Gingras' report. Attorney Reilly said from what he understands the property was in compliance in October and his client claims there are only three people living there. He said he client allowed the inspection in May under the threat of a court order by the Special Permits Committee. Member Robertson said the appellant consented to the inspection. Attorney Reilly reiterated the inspection as allowed under the threat of a court order. Member Robertson said he believes there is been only one administrative court order issued for an inspection in more than 30 years. Chairman Pinkham asked if there were doors on the units in October and if they were locked. Inspector Gingras said there were locks but they were not locked. Member Robertson asked if there has been compliance with the cease-and-desist order. Inspector Gingras said the property owner appealed the order. Member Robertson asked if an appeal to the Board of Appeals stays a cease-and-desist order. Chairman Pinkham said the appellant does not comply with the order at his own risk. Member Ray said he has a hard time seeing how the lack of notice of a meeting and the issuance of the cease-and-desist order are connected. Brian McDonald, 19

Maywood Terrace, said the issue of non-compliance with the special permit has been going on since 2006. He said there is documentation the property is supposed to be a 2-family and there are four apartments plus another apartment in a detached garage. Mr. McDonald said the appellant has never attended one of the Special Permits Committee meetings to discuss the issue of non-compliance with the special permit. Member Robertson asked if Mr. McDonald is related to the appellant. Mr. McDonald said the appellant is his uncle. Darlene Mercer-Bruen, Ward 5 Alderman, Woburn City Council, 22 Richard Circle, Woburn, MA, told the board she is frustrated with the situation and it has been going on for at least nine years. She said the fact that Mr. McDonald is the appellant's relative has no bearing on the situation. She said Mr. McDonald is not the only abutter from whom she has gotten complaints and said this property is being rented out as an apartment building. She said she has obtained a copy of the minutes from the Special Permits Committee meeting from May 21. She said she is not sure why the appeal is in front of the Board of Appeals. She said the appellant has never attended a meeting and he has employed at least three other attorneys before hiring Attorney Reilly. She said she thinks the minutes of the May 21 meeting speak for themselves. She said the neighborhood needs some relief from the zoning violation. Member Ryan asked why the situation has gone on for so long. Alderman Mercer-Bruen said she not really sure. She said if there is a violation, it needs to stop. She said the neighborhood is a 2-family neighborhood and the situation at 17 Maywood Terrace does not belong there. Michael Concannon, Alderman at-large, 1 Rose Farm Lane, Woburn, MA, said about three years ago he was approached by Brian McDonald to try to get the situation in his neighborhood resolved. He said the property evolved from a 2-family over the years and that is what brought it to the attention of the Special Permits Committee. He said there have been several meetings for which the property owner has not been available. He said the argument that the appellant was not notified of the May 21 meeting of the Special Permits Committee is weak. He said there was notice. He said the Special Permits Committee did review the allegations and asked the Building Dept. to inspect the premises because there may have been as many as five apartments there. He said the committee was shown pictures of mailboxes and there have been ads on Craigslist. He said Special Permits Committee Chairman Richard Gately asked Attorney Reilly at the May 21 meeting whether his client would consent to an inspection, and the result of the inspection was the issuance of the cease-and-desist order. He said he believes all the proper notice was given and there is clearly a zoning violation. He asked the board to dismiss the property owner's appeal. Attorney Reilly said MGL Ch. 40, Section 7, requires even more notice. Member Robertson asked Attorney Reilly if he is claiming there was improper notice for the Board of Appeals hearing. Attorney Reilly said he claim of lack of notice is in reference to the Special Permits Committee meeting. He said the Special Permits Committee meeting was illegal and therefore the cease-and-desist order should be nullified. Chairman Pinkham said the appellant has not established anything about a lack of notice. Motion made by Member Robertson and seconded by Member Parrish to deny the appeal of the cease-and-desist order; approved, 5-0. Chairman Pinkham urged Attorney Reilly to urge his client to come into compliance with the special permit.

McDonald's Corp., c/o William Squires Esq., 28 State St., Boston MA 02109, petitioner and landowner, seeking to amend a variance granted on December 19, 2017, under Section

11.6.10(b)(1) of the 1985 Woburn Zoning Ordinance, as amended, to modify the site plan at 187 Cambridge Road, Woburn, MA: Appearing on behalf of the petitioner was Attorney William J. Squires III, Hinckley Allen, 28 State Street, Boston, MA. Attorney Squires said the documents submitted to the board reflect an updated plan that was drawn after the City Council requested a 15-foot right-of-way along Cambridge Road and Lexington Street. He said McDonald's agreed to grant the easement and as a result was required to reconfigure the building. He said the stacking and configuration of the drive-through lane is the same as it was when the board approved a variance in December. Attorney Squires said the City Council granted four special permits in July and McDonald's is planning to tear down the existing building and construct a new one. He said McDonald's is asking to amend the variance to reflect the updated plan. Chairman Pinkham asked if there have been any arrangements made between McDonald's and the city for the pumping station at Four Corners. Attorney Squires said an easement agreement was made 10 years ago. He said there is also a 15-foot easement along Russell Street that works much better for his client. Chairman Pinkham said the easement works much better for the city, too. Member Robertson asked what the specific revisions to the site plan are. Attorney Squires said the building is set back about 15 feet and rotated about 30 degrees from the previous plan. He said the crosswalks have been changed, and his client has agreed to replace a curb at the intersection of the site driveway and Lexington Street. He said there will be more green space between Lexington Street and the front of the building. He said there have been minor changes to the signage on the building. Chairman Pinkham asked if anyone in the audience wished to address the board about the petition. There were no respondents. Motion made by Member Parrish and seconded by Member Ryan to grant the variance based on the amended plan; approved, 5-0.

Kevin M. Keane and Karen M. Keane, 14 Freedom Road, Woburn, MA 01801, petitioners and landowners, for a Variance from Section 6.1 of the Woburn Zoning Ordinance, as amended, for a reduction in the front yard setback requirement of 25 feet to 21.1 feet to install a porch at 14 Freedom Road, Woburn, MA: Appearing were Kevin M. Keane and Karen M. Keane, 14 Freedom Road, Woburn, MA. Chairman Pinkham said she wishes to recuse herself and asked Member Robertson to assume the chair. Acting Chairman Robertson asked for a motion to allow Chairman Pinkham to recuse herself. Motion made by Member Parrish and seconded by Member Ray to allow Chairman Pinkham to recuse herself from the petition at 14 Freedom Road; approved, 4-0. Chairman Pinkham exited City Council Chambers. Ms. Keane said she broke her hip last year and would like to install a porch to make it easier to access her home. She said her property is all ledge and this is the best spot for a porch. In response to a question from Member Ray, Mr. Keane said there will be a 5-foot landing. Acting Chairman Robertson asked if anyone in the audience wished to speak in favor of the petition. There were no respondents. Acting Chairman Robertson asked if anyone in the audience wished to speak in opposition to the petition. There were no respondents. Motion made by Member Parrish and seconded by Member Ryan to grant the variance based on the topography of the lot; approved, 4-0.

James C. Richardson, 26 Houghton St., Woburn, MA 01801, petitioner and landowner, seeking a special permit from the provisions of Section 7.3 of the Woburn Zoning

Ordinance, as amended, to allow for the construction of an addition at 26 Houghton St., Woburn, MA: Chairman Pinkham returned to City Council Chambers and assumed the chair. Appearing was James C. Richardson, 26 Houghton Street, Woburn, MA, Chairman Pinkham asked when the house was built. Mr. Richardson said the house was built in 1962. He said he has a copy of the original building permit if the board wishes to see it. Chairman Pinkham said there appears to be a 7-foot side setback which was present at the time the home was built. She said the lot is undersized and lacks the required frontage. She said it appears Mr. Richardson has a pre-existing, non-conforming structure. Member Ray asked if the proposed deck will be covered. Mr. Richardson said the deck will be open. Member Ray asked how high off the ground the deck will be. Mr. Richardson said the deck will be between 4-5 feet off the ground. Mr. Richardson said there are no homes on either side of his house and his house is set back 90 feet from the street. Chairman Pinkham asked if there was anyone in the audience who wished to address the board about the petition. Mark Swymer, 59 Leonard Street, Woburn, MA, said he is the contractor who will be doing the work and he is here to support Mr. Richardson's bid for a special permit. Motion made by Member Ray and seconded by Member Ryan to grant the special permit; approved, 5-0.

Frederick H. Perrault and Sheila M. Perrault, 41 Red Gate Road, Tyngsboro, MA 01879, petitioners and landowners, seeking a Variance from the provisions of Section 6.1 of the Woburn Zoning Ordinance, as amended, to allow for the construction of a single-family dwelling on an 11,786-square-foot lot at 135 Montvale Road, Woburn, MA: Appearing was Frederick Perrault, 41 Red Gate Road, Tyngsboro, MA. Mr. Perrault said the lot he owns at 135 Montvale Road is non-conforming because it is about 214-square-feet short of the 12,000-square-foot minimum lot size requirement. Chairman Pinkham said she is confused about why Mr. Perrault is seeking a variance. She said the house was built in 1928. Mr. Perrault said he applied for a variance on the advice of the Building Dept., because his home is 12.5 feet from the street. Chairman Pinkham said she believes Mr. Perrault should be seeking a special permit. Motion made by Member Ray and seconded by Member Parrish to allow Mr. Perrault to change his request for a variance to a special permit; approved, 5-0. Chairman Pinkham asked if anyone in the audience wished to address the board about the petition. There were no respondents. Member Ray asked Mr. Perrault what the height of the house is. Mr. Perrault replied the height of the house is 29.8 feet. Mr. Ray said it appears the house is well below the maximum height of 35 feet allowed under the zoning ordinance. Chairman Pinkham said the board has the prerogative to add a condition restricting the height of the building. Member Robertson asked if the Building Commissioner would enforce the 35-foot height restriction when the petitioner applies for a building permit. Mr. Perrault said the Building Commissioner has looked over the plan. Motion made by Member Ray and seconded by Member Ryan to grant the special permit with a provision the height of the house does not exceed 35 feet; approved, 5-0.

Michael H. Hennessy and Christine Hennessy, 1 Chapel Way, Woburn, MA 01801, petitioners and landowners, seeking a Variance from the provisions of Section 6.1 of the Woburn Zoning Ordinance, as amended, to allow for the reduction of a side setback to construct a pergola at 1 Chapel Way, Woburn, MA: Appearing was Michael Hennessy, 1

Chapel Way, Woburn, MA. Mr. Hennessy said he bought his house in 1984, and in 1985 he installed a pool and a gazebo. He said since that time he and his family members have had issues with skin cancer and other types of cancer, so he decided he wanted to have a pergola instead of the gazebo. He said the pergola sits entirely on his deck and that it has been up for about two weeks. He said he was issued a cease-and-desist order because the pergola is too close to the street. Chairman Pinkham asked if Mr. Hennessy has any pictures of the pergola. Mr. Hennessy said he has four pictures, which he gave to the board to view. Mr. Hennessy said he has received no complaints from his neighbors about the pergola and he does not see any of his neighbors in the audience tonight. Chairman Pinkham said Mr. Hennessy is on a corner lot and thus has two front yards that require front setbacks. She said the pergola was constructed within the front setback and thus a variance is required. Mr. Hennessy said the pergola sits on an existing deck. Chairman Pinkham said there has to be a hardship in order for the board to grant a variance and she read the state statute regarding variances. She asked Mr. Hennessy what he would cite as a hardship. Mr. Hennessy replied the pergola does not create any inconvenience nor does it impede anyone from exiting Gately Drive. He said the nearest point from the pergola to the curb is 12 feet. Member Ryan said from looking at the pictures there appears to be a steep grade along Gately Drive. Mr. Hennessy said the deck area is flat. Chairman Pinkham asked if anyone in the audience wished to address the board about the petition. There were no respondents. Member Ray asked if the height of the shrubs along the fence line is approximately 4 feet. Mr. Hennessy said that is correct. Motion made by Member Ray and seconded by Member Parrish to grant the variance; approved, 4-1, with Chairman Pinkham opposed.

Victor Callinby, 7 Cushing Drive, Wilmington MA, 01887, petitioner, and Patrick M. Piasecki and Sara B. Candeias, 40 Dale Street, Woburn, MA 01801, landowners, seeking a Variance from the provisions of Section 6.1 of the Woburn Zoning Ordinance, as amended, to allow for the reduction of a side setback to construct an addition at 40 Dale Street, Woburn, MA: Appearing for the petitioner were Patrick M. Piasecki and Sara B. Candeias, 40 Dale Street, Woburn, MA. Mr. Piasecki said he hopes to build an addition to his home, which was constructed in 1920. He offered letters in support of the petition from neighbors. He said many of his neighbors are in attendance to support the petition. Chairman Pinkham said her first thought when she looked at the plan was that there are two lots. Mr. Piasecki said the back yard is a separate parcel. Ms. Candeias said she and Mr. Piasecki tried to consolidate the two lots, but they still pay two separate tax bills. She said the property was sold with an additional parcel that comes with the lot. Chairman Pinkham said she has never seen a lot shaped like this. She said she can see it would present a logistical challenge if the petitioners want to build an addition. Chairman Pinkham asked if anyone in the audience wished to address the board about the petition. There were no respondents to the podium, but five people in the audience raised their hands when they were asked if they are in support of the petition. Motion made by Member Ray to grant the variance based on the shape of the lot, which he said it a textbook case for a hardship. Motion seconded by Member Parrish; approved, 5-0.

Claire M. Conlan, 5 Carson Road. Woburn, MA 01801, petitioner and landowner, seeking a Special Permit from the provisions of Section 7.3 of the 1985 Woburn Zoning Ordinance,

as amended, for a second-story addition at 5 Carson Road, Woburn, MA: Appearing was Claire M. Conlan, 5 Carson Road, Woburn, MA. Ms. Conlan said she needs a special permit because a portion of the first floor is non-conforming. Chairman Pinkham asked Ms. Conlan if her house was built in 1957. Ms. Conlan said that is correct. Chairman Pinkham asked what the non-conformity is. Ms. Conlan said the right front portion of the house is non-conforming to the setback. She said the second story will sit on top of the first floor and thus be non-conforming as well. She said if you look at the floor plan, you'll see the non-conformity. Chairman Pinkham said she was looking at the wrong part of the house on the plan. She said it looks like the house is going to be used as a 2-family. Ms. Conlan said it will remain a 1-family. Chairman Pinkham said in previous cases like this, conditions have been imposed to prevent homes from being used as 2-family dwellings. She said she does not want to find out in 25 years that the home is being used as a 2-family. Member Ray said the rear setback complies with the zoning ordinance. Ms. Conlan replied it is her understanding the front part of the home on the right side is the only non-conformity. Chairman Pinkham said her concern is the creation of a new non-conformity. Member Parrish said the home is going straight up. Chairman Pinkham said it looks like the plan provides for a new basement. Ms. Conlan replied she refurbished the house five years ago and added a garage and the basement. Chairman Pinkham asked if anyone in the audience wished to address the board about the petition. There were no respondents. Motion made by Member Ryan and seconded by Member Parrish to grant the special permit; approved, 5-0.

Approval of minutes from the Board's meeting on July 18, 2018: Chairman Pinkham suggested two changes to the draft version of the minutes. Both changes are on page 6, under the minutes for the NAI Entertainment petition. Chairman Pinkham suggested elimination of the word "he" in the 14th line and changing the word "he" to "the" in the 31st line. Motion made by member Parrish and seconded by Member Ray to approve the minutes of the July 18, 2108 meeting, as amended, 5-0.

Motion made by Member Parrish and seconded by Member Ray to adjourn; approved, 5-0. Chairman Pinkham adjourned the meeting at 7:43 p.m.