

**Zoning Board of Appeals  
Woburn City Hall  
City Council Chambers  
September 19, 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 6:00 p.m.

**David and Kara DeBaun, 76 Kilby Street, Woburn, MA 01801, petitioners and landowners, seeking a Variance from the provisions of Section 5.3.2 of the 1985 Woburn Zoning Ordinance, as amended, to construct a 4-foot fence at 76 Kilby Street, Woburn, MA:**

Chairman Pinkham said she is an owner of an abutting property and recused herself. Member Robertson assumed the chair. Representing the petitioner was David DeBaun, 76 Kilby Street, Woburn, MA. Mr. DeBaun said he and his wife moved to Kilby Street in 2016. He said they have a toddler and would like to erect a 4-foot fence to enclose their yard. He said his wife gave birth to a baby girl four days ago, and they would like to build the fence to keep their son in the yard because his wife will have a harder time looking after him with the baby. He said he and his wife are seeking to build a 4-foot fence because their son will be able to climb over a 3-foot fence. Mr. DeBaun referred to the photographs he submitted along with his application. Mr. DeBaun said “Exhibit A” is an aerial map that shows his lot, which he said is considered a corner lot because it abuts Village Street, which Mr. DeBaun noted is a paper street. Mr. DeBaun said “Exhibit B” indicates there are four abutters to his property. “Exhibit C” is a photo of the view from the intersection of Kilby and Village streets. Mr. DeBaun said Village Street is mostly used as a driveway for residents. “Exhibit D” is a view of the DeBauns’ property, primarily showing their back yard. “Exhibit E” is photo of the property showing the proposed location of the fence, which Mr. DeBaun said will be 9 feet from the paved road. “Exhibit F” shows the proposed location of a 4-foot baluster fence that he said will not affect visibility. “Exhibit H” is a letter signed by Mr. DeBaun’s abutters who do not have objections to the installation of a fence, and stipulates the fence will not affect visibility. Member Parrish asked about the design of the baluster fence. Mr. DeBaun replied the posts are prisms so you can see through them. Member Ray asked if Mr. DeBaun was concerned with damage from plowed snow. Mr. DeBaun replied the fence will be set back 9 feet from the pavement. Chairman pro tem Robertson asked if anyone in the audience wished to address the board about the petition. Gerald Surette, 78 Kilby Street, said he is in favor of the petition and he has no opposition at all to the installation of a fence. Chairman pro tem Robertson asked if anyone else was in favor of the petition. There were no respondents. Chairman pro tem Robertson asked if anyone wished to speak in opposition to the petition. There were no respondents. Chairman pro tem Robertson said the public hearing is closed. Motion made by Member Ray and seconded by Member Parrish to grant the variance based on the plans that were submitted to the board; approved, 4-0, with an abstention by Chairman Pinkham.

**Eric Yee and Amy Yee, 12 Old Farm Road, petitioners and landowners, seeking a Variance from the provisions of Section 6.1 of the 1985 Woburn Zoning Ordinance, as amended, for**

**the reduction of a side yard setback to 1 foot for the installation of a shed at 12 Old Farm Road, Woburn, MA:**

Chairman Pinkham returned to the chamber and assumed the chair. Appearing were Eric Yee and Amy Yee, 12 Old Farm Road, Woburn, MA. Mr. Yee said he would like to install a shed to store stuff from his garage, including a snow blower. He said he and his wife recently had their first child and they would like to make room in the house by moving some items out of the basement. Chairman Pinkham said the Yees are requesting relief because their proposed shed is within the 12-foot side setback. She said the rear setback for sheds is lesser than it is for other structures. Mrs. Yee said their lot is pie-shaped and they are looking at putting the shed in the side yard by the driveway. 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 Robertson to grant the variance, based on the odd shape of the lot; approved, 4-1, with Chairman Pinkham opposed.

**Michael Galluzzo and Allison Galluzzo, 7 Mill Street, Woburn, MA 01801, petitioners and landowners, seeking a Special Permit from the provisions of Section 7.3 of the 1985**

**Woburn Zoning Ordinance, as amended, to construct an addition and a farmer's porch at 7 Mill Street, Woburn, MA:** Appearing were Michael Galluzzo and Allison Galluzzo, 7 Mill Street, Woburn, MA. Mr. Galluzzo said he and his wife are looking to add two bedrooms and a farmer's porch and replace the steps because they are decaying. Chairman Pinkham asked the Galluzzos if their house was built in 1950. Mr. Galluzzo said that date is correct. Chairman Pinkham said she the application for a special permit is appropriate because the structure does not comply with the side yard setback, which she said is the only non-conformity. She said the plot plan does not show the dimensions of the porch; only the second story addition. Mr. Galluzzo said the plans he submitted show the dimensions of the farmer's porch. He said the porch will be exactly where the existing stairs are. Chairman Pinkham said there is no measurement on the plot plan of the existing stairs. Mr. Galluzzo said it will be 8 feet out from the structure. Chairman Pinkham asked if the first story was part of the original house. Mr. Galluzzo said it was. Chairman Pinkham said she thinks extending the front of the house will also be permissible under a special permit. Chairman Pinkham said the plans appear to show the porch is 6 feet deep. Mrs. Galluzzo said the 8-foot distance also includes the stairs. Chairman Pinkham asked the board, if it wishes to proceed with the approval of the special permit, what would be an appropriate way to reflect the actual distances on the plot plan, and whether the Building Dept. will be able to determine what was approved. Member Ray suggested the Building Dept. will be able to determine what the board approves by examining the plot plan and the plan together. 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 front setback will end up being 9'2" or 9'8". Chairman Pinkham said it appears the porch roof is going to be 6 feet when it overhangs the first story. Member Ray said the roof of the porch overhangs the same distance and adds about a foot. Chairman Pinkham said she does not want to put the 6-foot measurement into the decision because the board might not want to be that specific. Motion made by Member Robertson and seconded by Member Parrish to grant the special permit; approved, 5-0.

**James V. Lentine, 176 School Street, Woburn, MA 01801, petitioner and landowner, seeking a Variance from the provisions of Section 6.1 of the 1985 Woburn Zoning Ordinance, as amended, for the reduction of a side yard setback to 16 feet, more or less, for a 1-story addition at 176 School Street, Woburn, MA:** Chairman Pinkham said a communication was received from petitioner's counsel, Joseph R. Tarby III, Murtha Cullina, 600 Unicorn Park Drive, Suite 7, Woburn, MA, indicating he has a schedule conflict and requested the hearing be continued until the board's meeting in October. Chairman Pinkham asked if anyone in the audience wished to address the board about the petition. John Graney, 174 School Street, Woburn, MA, said he is concerned about encroachment upon his property. He said he does not know what the plans are and he has not seen anything. Member Robertson asked if the abutters were notified of the request for a continuance. Clerk of the board said the letter from Attorney Tarby requesting the continuance was received on Tuesday, a day before the meeting. Chairman Pinkham said it looks like the project was approved and a building permit was issued, but what was constructed varied from what was approved. She said it looks like the addition was built on the side of the house. She told Mr. Graney he can attend the hearing in October, or if he cannot attend the hearing in October, he can send any comments or questions to the clerk. Motion made by Member Ray and seconded by Member Parrish to grant the continuance until the board's meeting in October. Member Robertson asked Chairman Pinkham if her review of the petition indicates the project has already been done. Chairman Pinkham replied there was a permit taken out, and it appears there was a change in how the door was constructed. Member Robertson asked Mr. Graney if he noticed any alterations to his neighbor's home. Mr. Graney said he has not noticed. He said if the addition is on the back side of the house, it is not going to bother him. Chairman Pinkham suggested a meeting date of October 17. Motion to continue the hearing to October 17 approved; 5-0. Chairman Pinkham told Mr. Graney the board will meet next on October 17. Chairman Pinkham asked if the start time should be 6 p.m. or 7 p.m. Member Ray suggested the board could continue to start its meetings at 6 p.m. until it becomes a problem.

**Dennis W. Friel, 7 Newbridge Avenue, Woburn, MA 01801, petitioner and landowner, seeking a Variance from the provisions of Section 6.1 of the 1985 Woburn Zoning Ordinance, as amended, for the reduction of the frontage requirement to 85 feet to subdivide a lot at 7 Newbridge Avenue, Woburn, MA:** Appearing for the petitioner was Attorney Thomas Lawton, 4 Bennett Street, Woburn, MA. Attorney Lawton said Mr. Friel, Mr. Friel's son Jeff and Jeff's wife Lauren are in the audience. Attorney Lawton said Mr. Friel is seeking a variance for the purposes of a subdivision. He said the frontage is 185 feet and if the variance is granted the new lot will have 85 feet of frontage. He said the property is located directly across the street from St. Anthony Church, in an older, established neighborhood. He said many of the surrounding properties are lawful non-conforming structures and lots. He said a similar variance was granted in 1991 but it was never acted upon and it expired. He said his client is returning to the board some 28 years later to seek the same relief. He said the proposed new structure will comply with the setback requirements. He said the existing house has a minor lawful non-conformity on the entry way of 15 inches, but that the structure was built long before Woburn had a zoning ordinance. Chairman Pinkham asked what the hardship is. Attorney Lawton said the property cannot be used for anything but residential. He said Mr. Friel would like for his son to move next door. He said Mr. Friel's grandson has a form of autism and he

would like to be involved in helping to raise the child. He said the shape of the lot does not allow his client to attain the necessary frontage, nor is he able to acquire any abutting land. Chairman Pinkham asked what the hardship is in relation to the shape of the land, the topography, or the type of soil. Attorney Lawton said the shape of the land is such that his client can't get frontage anywhere else. Chairman Pinkham said a hardship needs to meet a statutory standard. Attorney Lawton said there is no derogation from any of the neighbors, and no one showed up to the meeting to complain. He said Mr. Friel's neighbors are in unison in their support of the petition. He said his client cannot find any more frontage. Chairman Pinkham said the mere inability to have enough frontage does not satisfy the statutory requirement. Attorney Lawton said that the shape of the lot will not allow for adequate frontage is in itself a hardship. Chairman Pinkham said the City Council has determined that in order to be buildable, a lot has to have at least 100 feet of frontage. She cited cases in North Reading and on Cape Cod. She said it looks like whoever purchased the property in the 1920s could have subdivided the lot until the frontage requirement was adopted in the 1970s. Attorney Lawton said there are mitigating factors, and there is no other plausible use for the land. Chairman Pinkham said the land is being used as it is intended. She said the property owners do not have enough frontage for a second buildable lot. Attorney Lawton said this is the only parcel left in the area of its kind. Chairman Pinkham said there is another lot on Tidd Avenue that is even bigger. Member Ray said there is no house #9 on the street. He said at some point it was expected there would be a house on lot #9. Chairman Pinkham said the property owner could have acted upon a subdivision until the 1970s or in 1991 when the original variance was granted. Member Ray said it appears there was an accommodation made for a #9 house. Dennis Friel, 7 Newbridge Avenue, said the original variance was given to a previous owner in 1987 or 1988. He said he acquired the property in 1989 and did not want to build on the second lot at that time, and the variance lapsed. He said all his neighbors have told him they are fine with the subdivision. Member Robertson said, apropos to Member Ray's comments, that the Building Commissioner assigns street numbers, not the property owners. He said he thinks the board has voted in the past for variances where the strict legislative standard has not been met, and that this has been a problem. He said, however, there were some very reputable people on the board. Attorney Lawton said there are economic hardships for his client. He said how the neighborhood views the petition should be a relevant factor. He said when no one objects to a petition, it should be looked at in a favorable light. Chairman Pinkham responded that if 10 neighbors showed up, should the board necessarily deny the petition, or should it still be held to the legal standard? Attorney Lawton said Chairman Pinkham is moving from black and white to gray. Chairman Pinkham said there may be several members of the board who agree with Attorney Lawton's position, but as an attorney herself, she cannot support the petition for a variance if it does not meet the statutory requirement. Member Parrish said he defers to a previous board's ruling 100 percent of the time. Member Ryan said the previous variance does carry some weight with him, as does the fact no one is here to oppose the petition. He said the shape of the lot could be considered a hardship. Member Robertson said the lot isn't necessarily oddly-shaped. Member Ray said if the lot is subdivided, it will meet every other requirement for a conforming lot. Motion made by Member Robertson and seconded by Member Parrish to grant the variance; approved, 4-1, with Chairman Pinkham opposed.

**Approval of minutes from the Board's meeting on August 15, 2018:** Chairman Pinkham suggested the following corrections: One page 1, change the word "he" to "his." On Page 2, change the word "appealed" to "appeared." On Page 3, change the word "attend" to "attended." On Page 5, change the word "use" to "structure." On Page 7, change the sentence that starts in the 9<sup>th</sup> line to read: "Chairman Pinkham said in previous cases like this, conditions have been imposed to prevent homes from being used as 2-family dwellings." On Page 7, change the word "is" to "said." Motion made by Member Ray and seconded by Member Parrish to approve the minutes of the August 15, 2108 meeting, as amended, 5-0.

**Motion made by Member Ray and seconded by Member Parrish to adjourn;** approved, 5-0. Chairman Pinkham adjourned the meeting at 6:58 p.m.