

**Zoning Board of Appeals  
City Council Chambers  
Woburn City Hall  
Wednesday, July 21, 2021 – 6:00 p.m.**

Present: Chairman Margaret M. Pinkham, Member John J. Ryan, Member Daniel Parrish, Member John Ray, Member Edward Robertson, and Alternate Member Richard Clancy

- 1. James Burke, 5 Melo Road, Woburn MA, 01801, Petitioner and Landowner, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, seeking a setback reduction for a side yard variance from 12 feet to 6.6 feet for an addition at 5 Melo Road, Woburn, MA:** Mr. Burke said his attorney has not arrived. Chairman Pinkham said the board can table the matter until Mr. Burke's counsel arrives.
  
- 2. Scott D. and Alyssa L. Cullen, 2 Anna Road, Woburn MA, 01801, Petitioners and Landowners, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, seeking a reduction in the front yard setback from 25 feet to 21.5 feet for an addition at 2 Anna Road, Woburn, MA:** Chairman Pinkham asked the applicants if they are seeking a variance for a proposed porch. Mr. Cullen said he is hoping to add a farmer's porch and is requesting a variance to put the porch 3.5 feet within the front yard setback. Chairman Pinkham asked what form of hardship Mr. Cullen is claiming. Mr. Cullen said the slope of his land and the presence of ledge constitute a hardship. He said he has submitted a petition from 18-20 neighbors who are in support of his application for a variance. Chairman Pinkham asked if an existing retaining wall on the premises is on the property line. Mr. Cullen answered affirmatively. Chairman Pinkham asked if the retaining wall runs along Anna Road. Mr. Cullen answered affirmatively. Chairman Pinkham asked what the change in elevation on the side lot line has to do with the front setback. Mr. Cullen said there is definitely a pitch there. Chairman Pinkham asked where the ledge is on the lot. Mr. Cullen said the ledge is in the front. Chairman Pinkham asked if the ledge will impede the construction of the porch in front of the house. Mr. Cullen said he does not know the technical term but the ledge will not allow him to build the porch in a manner that complies with the zoning ordinance. Member Robertson asked how much of the proposed porch will encroach into the setback. Mr. Cullen said the proposed porch will encroach 3.5 feet into the setback. Member Robertson asked if otherwise the porch would be legal. Mr. Cullen answered affirmatively. Chairman Pinkham asked if Mr. Cullen has considered building a smaller porch that would comply with the setback. Member Robertson said if the porch were 33.5 feet wide, it would comply with the zoning ordinance. Member Ray said he has the same questions. Chairman Pinkham asked if anyone in the audience wished to address the board about the petition. Paul Denaro, 11 Penny Road, said he lives in the same neighborhood as the applicants, who he said have been outstanding neighbors for years. He said he obtained a variance 25 years ago and many other property owners in the neighborhood have followed suit. He said the character of the neighborhood has changed from Ranch-style houses, which he said are being demolished and replaced with larger homes. He said the addition the Cullens are proposing will add to the livability and attractiveness of the neighborhood. He said the area of the neighborhood in which the

Cullens live has the least amount of traffic. Member Ryan said understands the claim of topography and shape of the lot as hardships, especially the way the house is situated. He said the part of the lot between Robinson Road and Anna Road is more critical to him. He said he would support the application for a variance. Motion made by Member Ray and seconded by Member Parrish to grant the variance; approved, 4-1, with Chairman Pinkham opposed.

- 3. James Brothers, 21 Hickory Lane, Tewksbury, MA, 01876, Petitioner, and Todd and Meredith Davis, 105 Pearl Street, Woburn, MA, Landowners, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, for an addition at 105 Pearl Street, Woburn, MA:** Mr. Brothers said the footprint of the house is not being expanded. He said his clients plan to go up one story and require a special permit. Chairman Pinkham said the applicants' lot is undersized and the existing structure does not comply with the setback requirements. She asked if the garage is attached and when it was built. Mr. Brothers said the garage may have been built in the early or mid-1980s. Chairman Pinkham said the setback does not comply with the zoning ordinance. Mr. Brothers said the garage may have been built before the 1980s. He said it has a concrete block foundation. Chairman Pinkham said the city cannot take any action on the setback violation. She asked Mr. Brothers if the intent is to go up over the garage. Mr. Brothers said the height of the existing garage will be increased. He said the garage will be converted into a family room and the second story will be turned into a loft. Chairman Pinkham asked if the height of the breezeway is increasing. Mr. Brothers said it will be going higher by a foot at the most. Chairman Pinkham asked if the addition will stay within the existing foundation. Mr. Brothers said the foundation is not increasing but they will be putting in a new one. Member Parrish asked if the height of the addition will be lower than the existing roof. Mr. Brothers said the height of the addition will be within a foot of the existing structure. He said the roof pitch can be changed. He said it might be six inches higher than the existing roof. Member Parrish asked if Mr. Brothers knows the height. Chairman Pinkham said the board is not going to approve a special permit that will allow for the construction of anything higher than what is allowed under the zoning ordinance. Mr. Brothers said it will be 15-16 feet to the top of the roof. Chairman Pinkham said the board will typically condition any approval on compliance with the zoning ordinance with respect to height. Chairman Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Member Robertson asked Mr. Brothers what his connection to the property owners is. Mr. Brothers said he is the contractor. Member Robertson said there is no description of the petition on the application. He said he has no idea what Mr. Brothers' client is looking for. He asked the plan is to add a second story to the existing structure. Mr. Brothers said the plan is to go higher. Member Ray said his only concern is the height. He said he thinks it is 22 feet. He asked what the board is going to approve. He asked if there will be a condition limiting the height of the structure to what is allowed in the zoning ordinance, or an actual height. Chairman Pinkham said the plan submitted by the applicant shows the garage addition is a foot higher than the existing house. She said what Member Ray wants to know if the petitioner can go up another 10 feet since the zoning ordinance allows a height of 35 feet. She said the board does not want to approve plans without dimensions. Chairman Pinkham said the house is a Cape with a relatively

low ridgeline. She said if the board is inclined to grant the special permit, it will have to determine a way to specify the height. She suggested adding a condition that the garage cannot exceed 25 feet or the applicant will have to come back to the board. Mr. Brothers said the addition will be 25 feet from the ground up. Chairman Pinkham said she would feel badly if the neighbors got something they didn't expect. Mr. Brothers said he is 90 percent confident a 25-foot restriction on height will be okay. Member Robertson said the Building Commissioner will review the plan, and if he can't decipher it, the applicant will have to come back to the board. Mr. Brothers said the Building Commissioner said he wants to see the elevation plans. He said the addition will be no higher than 26.5 feet. Member Ray said he would feel comfortable with a height limit of 25 feet. Member Robertson said the contractor has implied he has already had a conversation with the Building Commissioner. Mr. Brothers said the architect can change the pitch of the roof. Member Parrish said the Building Commissioner has the authority to approve a minor change. Chairman Pinkham said people have come back to the board for minor modifications. Chairman Pinkham asked if the board is comfortable with the imposition of a 26.5-foot height limit. Member Parrish said that is fine with me. Motion made by Member Ray and seconded by Member Parrish to grant the special permit with a height limit on the addition of 26.5 feet; approved, 5-0.

- 4. James Burke, 5 Melo Road, Woburn MA, 01801, Petitioner and Landowner, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, seeking a setback reduction for a side yard variance from 12 feet to 6.6 feet for an addition at 5 Melo Road, Woburn, MA:** Representing the applicant was Attorney Paul J. Haverty, Blatman, Bobrowski & Haverty LLC, 9 Damonmill Square, Suite 4A4, Concord, MA. Attorney Haverty said his client has considered any concerns of the closest neighbor. He said Mr. Burke has revised the plan for the addition so it is 10 feet and two feet from the setback requirement. He said the shape of Mr. Burke's land is unique. He said there is a very small area in which to construct an addition. He said Mr. Burke's application is one of the rare proposals that complies with MGL Section 40A and Section 11.8 of the Woburn Zoning Ordinance. He said there is a hardship relative to the shape of the land and the topography. He said he included a couple of photos along with a memo he sent to the board. He said the photos depict the back yard, which he said is in two tiers. He said moving the proposed addition farther back will impact the rear yard and could result in the leveling of his client's entire back yard. He said Mr. Burke designed the garage with the next-door neighbor in mind. He said the proposed structure is less detrimental to the neighborhood than what was originally proposed. He said the distance between the setback and the setback requirement is two feet, which he said is a very small portion of the structure. He said the nature of the requested variance is very minimal. Chairman Pinkham said it does not appear the proposed addition is going to come close to the stone structure in back of the garage. Mr. Burke said the addition is going to pretty much abut the stone structure. He said going back any further would require excavations. Attorney Haverty said the garage is already set farther back than what is optimal. Member Ray asked if there is a reason why the stone wall is there. Member Robertson said he will accept Attorney Haverty's representation that the shape of the lot and the topography constitute a hardship. He asked if there are any cases that bolster Attorney Haverty's argument. Attorney Haverty said most of the case law is

oppositional toward the granting of variances. He said hardships are supposed to be rarely invoked. Member Robertson said the answer is no case law. Attorney Haverly said most applicants get tripped up trying to establish a hardship. Chairman Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Motion made by Member Parrish and seconded by Member Robertson to grant the variance based on the shape of the lot and the topography; approved, 4-1, with Chairman Pinkham opposed.

- 5. Christin Croke, 3 Hamilton Road, Woburn MA, 01801, Petitioner and Landowner, seeking Variances from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, seeking a reduction in the rear yard setback from 30 feet to 20.6 feet and an increase in the building ground coverage ratio from 25 percent to 26.3 percent for an addition at 3 Hamilton Road, Woburn, MA:** Representing the petitioner were Christin Croke and Jeffrey Croke, 3 Hamilton Road, Woburn, MA. Mr. Croke said he and his wife purchased their home in 2013. He said the home was built in 1928. He said the lot size is 5,998-square-feet. He said the lot size is .0146 of an acre and the average lot size in the neighborhood is .287. He said even with the proposed addition they would still have the smallest house in the neighborhood. He said they are seeking a variance based on the shape of the lot. He said they have researched previous petitions similar to theirs and have noticed instances when a special permit was granted. Chairman Pinkham said the board would have jurisdiction to issue a special permit based on the pre-existing, non-conforming use status of the dwelling. She said the applicants, however, require a variance because their home does not comply with the setback on the right side. She said special permit relief can only apply to the existing house. She said the board needs to determine there is a hardship. She said even when the applicants knock down the garage, they will need a variance for the proposed increase in building ground coverage. She asked what would happen if the applicants reduced the side of the addition to 16 feet by 23 feet. She said that would reduce the size of the proposed addition by 46 square feet and make the building ground coverage ratio 25.1 percent. Mr. Croke replied the goal is to add a second bathroom and an 18-foot by 23-foot addition helps them so that. Member Parrish said the depiction of the stairway on the northerly side of the house makes him think that area might be lower. He asked if the lot is flat. Mr. Croke said the lot is very flat. He said their intent is not to change the stonewall. Member Robertson asked what the applicants are claiming for a hardship. Mr. Croke replied the hardship is the shape of the lot. Member Robertson asked what constitutes the hardship. Mr. Croke said the footprint of the house is not in an ideal location. Chairman Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Ward 3 Alderman Jeffrey Dillon said he humbly requests the board approve the variance. He said the Crokes keep their property well. He said they have been a great addition to the neighborhood. He said anything the board can do to help the applicants would be great. Ms. Croke said they have submitted letters from neighbors who are in support of the variance. Chairman Pinkham said the board has received those. Member Parrish said there is a semi-circle on the plan and asked what it represents. Mr. Croke said the semi-circle represents a tree. Member Robertson said he is not as concerned with the ground coverage issue as he is with the setback. He said based on the testimony of the ward alderman, he will support the variance. Member Parrish said he agrees with Member

Robertson. Motion made by Member Parrish and seconded by Member Robertson to grant the variance; approved, 4-1, with Chairman Pinkham opposed.

- 6. Jonathan S. Lilley, 4 Linden Street, Woburn MA, 01801, Petitioner and Landowner, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, seeking a reduction in the rear yard setback from 30 feet to 23.5 feet to install a deck at 4 Linden Street, Woburn, MA:** Representing the petitioner were Jonathan and Meghan Lilley, 4 Linden Street, Woburn, MA. Mr. Lilley said they are requesting a reduction in the rear setback to install a deck. He said the deck will be 23.5 feet from the rear property line, and 30 feet is required under the zoning ordinance. He said the deck will be about seven feet high. Chairman Pinkham asked the applicants what they are citing as a hardship. Mr. Lilley said the topography creates a hardship. He said the land slopes downward. Chairman Pinkham said she thought Mr. Lilley was going to say his hardship was the shape of the land because there appears to be a notch on the property. Mr. Lilley said he does not know why the notch is there. Member Ryan asked if the applicants considered making the deck less deep and extending it to the existing dwelling. Mr. Lilley said that is a possibility but that would take up more usable lot space. Member Ray asked what the difference in elevation is. Mr. Lilley said it is hard to say. Member Parrish asked if the deck will be open. Mr. Lilley said it will. Chairman Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Ward 3 Alderman Jeffrey Dillon said the Lillleys keep their property well. He said he was contacted by someone who signed the petition in support of the variance and also wanted him to speak in favor. He said the neighborhood will not be adversely affected by the applicant's addition. Motion made by Member Ray and seconded by Member Parrish to grant the variance; approved, 5-0. Member Ryan said upon review of the plans his suggestion to extend the deck to the existing dwelling is not as desirable since it would block one of their windows.
- 7. King of Cool, Inc., 1 Rainin Road, Woburn MA, 01801, Petitioner, and Amisha LLC, 83 Hartwell Ave., Lexington, MA, Landowner, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, for a reduction in a side yard setback from 25 feet to 21.3 feet to install a patio at 1 Rainin Road, Woburn, MA:** Representing the petitioner was Attorney Joseph Tarby, Rubin and Rudman LLC, 600 Unicorn Park, Woburn, MA; and Julian Bolger, Sean Ahern and Patrick Dillon, all of King of Cool, Inc. Attorney Tarby said the corporation that will operate the new restaurant on Rainin Road also operates three other restaurants. He said his clients are requesting a variance for a side yard setback to install a patio enclosure. He said the side setback requirement in an Office Park zoning district is 25 feet. Attorney Tarby offered a series of photos. He said the first photo depicts the location of the patio. He said the second photo shows the building on the left-hand side. He said photos 3-5 are views from the patio area. He said the Building Commissioner considers the patio to be an addition that requires a variance because it will encroach on the side setback by 3.6 feet. He said outdoor dining has been a lifeline of the restaurant industry since the onset of the pandemic. Chairman Pinkham asked the applicant if there are any drawings or depictions of the patio. She said it is hard to visualize what the patio is going to look like. She said she is thrilled, however, that the applicant submitted a color-coded plan.

Attorney Tarby said the area in red encroaches on the setback. He said they feel there are special conditions that warrant approval of the variance. He said the property is located in a flood zone and wetlands less than 100 feet from the Aberjona River. He said the patio cannot be located on the right side of the building. He said there is plenty of space on the left side of the building except for the area that encroaches the setback. Member Ryan said he goes by the premises almost every day. He said the patio would be an improvement to the property, which he said has been an eyesore. He said this type of thing is essential for restaurants in the era of Covid-19. He asked what kind of fence or barrier will separate the patio from the street. Mr. Bolger said there will be a half-wall from front to back. Member Parrish asked if the proposed addition will be along the sidewalk. Mr. Bolger indicated on the plan where the proposed addition will be located. Chairman Pinkham asked if any shrubs will be located in the area marked in red on the color-coded plan. Mr. Bolger answered affirmatively. Chairman Pinkham asked what the patio enclosure will be. Mr. Bolger said the enclosure will be a tin roof with a rubber membrane. Chairman Pinkham asked about the characteristics of the half-wall around the patio. Mr. Bolger said the half-wall will be 36 inches, plus another 6 inches off the ground. He said it will be a new half-wall. Chairman Pinkham asked if the half-wall will be located around the area marked with the red line on the plans. Mr. Bolger said there will be a post and beam half-wall all the way around the area marked with the red line. Member Ryan asked if there will be any windows on the half-wall. Mr. Bolger said there will be windows to give the area an open characteristic. Chairman Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Paul Denaro, 11 Penny Road, said he has known the petitioners for many years. He said he is a former member of the board of Directors of the Massachusetts Restaurant Association. He said a fresh air concept will be very attractive. He said overall the project has merit. He said he did a lot of work with that facility. He said the patio will help bring the restaurant component back to life. Chairman Pinkham said she will vote in favor of the variance. She said the wetlands compels the location of the structure. She said the shape is unique. She said she thinks the application meets the statutory standard for a hardship. Motion made by Member Ryan and seconded by Member Ray to grant the variance; approved, 5-0.

8. **Approval of minutes from meeting of June 16, 2021:** Chairman Pinkham said she has made corrections she has submitted to the clerk. Motion made by Member Ryan and seconded by Member Parrish to approve the minutes as amended; approved, 5-0.
9. **Any other matter that may be legally before the Board:** Chairman Pinkham asked if all members were available for a meeting on August 18 at 6 p.m. There were no objections. Chairman Pinkham said it is unlikely she will be available on September 15 and asked if a meeting date of September 22 works for everybody. Member Parrish said he may be unavailable on September 22. Chairman Pinkham said the board can figure out the September meeting date during the August meeting.
10. **Motion made by Member Robertson and seconded by Member Parrish to adjourn;** all in favor, 5-0. Chairman Pinkham adjourned the meeting at 7:27 p.m.

ATTEST:

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Gordon Vincent  
Clerk of the Zoning Board of Appeals