

**Zoning Board of Appeals
City Council Chambers
Woburn City Hall
Wednesday, June 15, 2022 – 6:00 p.m.**

Present: Chair Margaret M. Pinkham, Member John Ryan, Member Daniel Parrish, Member Edward Robertson, Member Richard Clancy, and Alternate Member Mark Cavicchi

- 1. Almiro Pereira do Vale Filho and Michelle Nogueira do Vale, 159 Mishawum Road, Woburn MA, 01801, Petitioners and Landowners, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, for an addition to a pre-existing, non-conforming single-family home at 159 Mishawum Road, Woburn, MA:** Representing the petitioner was Michelle Nogueira do Vale, 159 Mishawum Road, Woburn MA. Ms. do Vale said some modifications were made to the plan. Chair Pinkham said a plot plan dated June 13, 2022, has been circulated to the board. She said it looks like the addition was relocated on the revised plan from 0.6 feet away from the property line. She asked how far the proposed addition is from the lot line now. She said the fence is 3.4 feet from the property line. She said there appears to be a reference the addition will be 4 feet from the lot line. Ms. do Vale said she has pictures of the old fence and the new fence she would like to submit. She said she thought they owned a portion of the paper street that is labeled on the plot plan as Clifton Street. Member Ryan asked if the applicants will move the fence if the special permit is approved. Ms. do Vale said they will move the fence. Member Ryan asked if they will move the patio. Ms. do Vale said they will. She said installing the patio cost them a lot of money. Member Robertson asked if Clifton Street is being used. Ms. do Vale said the area is wooded. She said there is nothing there. She said they are the ones who maintain it. She said there is a neighbor in the audience who would like to speak on her behalf. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Thomas Markiewicz, 142 Mishawum Road, said he has lived in his current residence since he was 13 years old, before some of the current houses in the neighborhood were built. He said what Ms. do Vale has done with the property is incredible. He said the do Vales fenced in the yard and have put a lot of money into the property. He said the patio area looks very, very nice. He said the applicants will have to remove some of the improvements they have made and losing that much money constitutes a hardship. He said they ought to be proud of themselves. He said they have been dealing with a difficult situation with the paper street, which he said they were not aware wasn't their property. Chair Pinkham said the pictures show a wooden fence and a plastic fence and asked if one replaced the other. Ms. do Vale said the wooden fence was removed and replaced with plastic. She said the location of the fence stayed the same. Member Robertson asked if there will be adequate access to the back yard. He said the plot plan shows a pool and asked if it is above-ground or in-ground. Ms. do Vale said the pool is in-ground. Member Robertson asked if emergency personnel will be able to access the back yard. Ms. do Vale said there is a door on the other side of the pool. Member Robertson said the door looks like it is about 4 feet wide. Ms. do Vale said she does not know how wide the door is. Chair Pinkham asked where the gate is. Ms. do Vale said there are gates to the left and the right of the pool. Mr. Markiewicz said there are two

gates. He said there are two ways to get in. Chair Pinkham said she can't see the gate in the photos because there is a van blocking the driveway. Ms. do Vale said there is a main gate and a gate on the other side of the pool. She held up the corresponding photograph. Member Ryan asked if the applicant may have a potential adverse possession claim with the patio, since the fence is about 20 feet over the property line. Chair Pinkham said a claim of adverse possession can be made after a period of 20 years. She said adverse possession can't be established on city property. She said the paper street is listed as a private way. She said someone must own that property. Member Robertson said he is concerned about how emergency personnel can access the backyard. He asked how wide the gates are. Mr. Markiewicz said the gates are about 5.5 feet wide. He said the gates are wide enough for a wheelchair. Member Robertson asked if the gates are wide enough to accommodate a stretcher. He said that is what he is concerned about. Mr. Markiewicz said the gates are wide enough to accommodate any piece of emergency apparatus. Member Robertson said he is not trying to be difficult. He said he wants to make sure there is adequate emergency access. Ms. do Vale said there are three ways to access the pool area, with the third being through the house. Member Ryan said Member Robertson raises a good point. He asked if a site visit would help. He said it is unclear what the layout will be, especially since the fence is going to be moved. Chair Pinkham said most gates are 36 inches or 48 inches wide, but she acknowledged she is not an expert on fences. Member Robertson asked what is going to become of the driveway. Chair Pinkham said it looks like the proposed addition is going to fill the driveway. Ms. do Vale said they have a garage. She said they have plenty of parking. Chair Pinkham asked if the board wants to conduct a site visit. Motion made by Member Ryan and seconded by Member Parrish to conduct a site visit. Chair Pinkham said the board needs to pick a date and time. After brief discussion, the board decided to conduct a site visit at 5 p.m. on Monday, July 11. Motion made by Member Parrish and seconded by Member Robertson to continue the hearing until the board's meeting in July; approved, 5-0.

2. **Marcio Silva, 18 Green Street, Woburn, MA, 01801, Petitioner and Landowner, seeking a Variance from Section 5.3.4 of the 1985 Woburn Zoning Ordinances, as amended, for a fence higher than 3 feet within the 25-foot front yard setback at 18 Green Street, Woburn, MA:** Representing the petitioner was Attorney Mark Salvati, 10 Cedar Street, Woburn, MA. Attorney Salvati said Traffic Safety Officer Sgt. Charles Stokes of the Woburn Police Dept. looked at the fence and rendered an opinion via email that was also sent to Chair Pinkham. Chair Pinkham read Sgt. Stokes' email as follows: "Per Mark's request, I took a look at the new fence set up. The fence being set back has helped with the line-of-sight and seems to be a reasonable solution." Attorney Salvati said he hopes the TSO's email will persuade the board to issue the variance. Member Robertson said he does not think the TSO's report is specific enough. He asked to what the "reasonable solution" refers. Attorney Salvati said the TSO is referring to line-of-sight issues. Member Robertson asked if the applicant's position is the TSO is indicating there will be no line-of-sight issues with the fence. Attorney Salvati said that is the way he reads it. Chair 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 Ryan and Member Clancy to grant the variance; fails, 3-2, with Chair Pinkham and Member Robertson opposed.

- 3. Marshall White, 73R Pleasant St., Woburn MA, 01801, Petitioner, and John Sheehy, 25 Hiawatha Road, Woburn, MA, Landowner, seeking a Variance from Section 5.3.2 of the 1985 Woburn Zoning Ordinances, as amended, for a fence higher than 3 feet within the 25-foot front yard setback at 25 Hiawatha Road, Woburn, MA:** Representing the petitioner were Marshall White, 73R Pleasant Street, Woburn, MA; and Colleen Sheehy, 25 Hiawatha Road, Woburn, MA. Mr. White said he has a rendering of what the fence will look like, as well as a photo of a similar fence at a home on the opposite side of Crawford Drive. Member Robertson asked if the lot is a corner lot and if both front setbacks are located on Hiawatha Road. Mr. White said one of the front setbacks is located on Hiawatha Road and the other is on Crawford Drive. Member Robertson asked if Hiawatha Road is a big circle. Mr. White said Hiawatha Road splits and dead ends in either direction. Member Ryan asked how close the fence will be to propane tanks on the property. Mr. White said the fence will be 1.5-2 feet from the propane tanks. Member Clancy said he went by the locus several times. He said the proposed 6-foot fence is close to the sidewalk. He said he would like to see the fence a little bit further off the property line. He said the neighborhood is closely settled. He said if the applicant can find a place a little bit further off the property line he would be more comfortable supporting the variance. Member Parrish said there is a dotted line on the drawing and asked what that line represents. Mr. White said he has no idea what that line denotes. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Chair Pinkham said she does not see a measurement that denotes the distance from the lot line to the fence. Mr. White said the plan does not show the distance from the sidewalk but it is intended to be 2 feet. He said his client would be happy to push the fence back to accommodate the wishes of the board. Chair Pinkham said she does not think the applicant has met the legal standard for a variance. She said she understands the applicant wants to keep people from cutting through her yard but she is not going to be voting in favor. Member Robertson asked if the applicant would agree to move the fence back. Mr. White said they could move the fence back 8 feet and keep a strip of land between the fence and the street. Member Parrish asked if the applicant would be willing to plant vegetation between the fence and the lot line. Ms. Sheehy said they are doing that now. Motion made by Member Clancy and seconded by Member Ryan to grant the variance with a condition that the fence be located 10 feet from the property line. Member Parrish said he would also like to add a condition that there will be vegetation between the fence and the property line. Motion seconded by Member Robertson. Chair Pinkham asked if the board wants to specify what type of vegetation. Member Parrish said he would be fine with something that cancels out the impact of a 6-foot fence; perhaps evergreens or arborvitaes. Mr. White suggested the applicant could plant cypress trees. Vote to grant the variance with the following conditions: 1.) The fence shall be at least 10 feet from the property line; and 2.) There shall be a cypress trees between the fence and the property line; approved, 4-1, with Chair Pinkham opposed.
- 4. Frederick Gonsalves, 119 Winn Street, Woburn, MA 01801, appealing the decision of the Building Commissioner to deny a building permit pursuant to Section 3.3.4 of the 1985 Woburn Zoning Ordinance based on the lapse of a variance and seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinance, as amended, for**

reduction in the minimum lot size from 12,000-square feet to 10,000-square-feet in R-2 zoning district at 0 Village Street, Woburn, MA: Chair Pinkham said she is recusing herself and left the City Council Chamber. Member Robertson became Chair pro tem. Representing the petitioner was Attorney Mark Salvati, 10 Cedar Street, Woburn, MA. Chair pro tem Robertson asked if the applicant is seeking a variance as well as an appeal of the Building Commissioner's denial of a building permit. Attorney Salvati said this is correct. He suggested the board consider the request for a variance first because if it is approved, then the other matter is moot. Chair pro tem Robertson asked what the sense of the board is. Member Parrish said he is comfortable with talking about the variance request first. Attorney Salvati said his client is seeking a variance for a reduction in the minimum lot size from 12,000-square-feet to 10,000-square feet to construct a single-family home at 0 Village Street. He said a variance was granted in 2000 that allowed for a third lot in addition to the two lots that are existing. Chair pro tem Robertson asked if the applicant has submitted a final plan. Attorney Salvati said he submitted the original plan from 2000 when the variance was granted. He said Mr. Gonsalves has a home on Lot 2 at 119 Winn St. where he lives. He said the Building Commissioner denied a building permit because the original variance had lapsed. He said he is asking the board to grant the same form of relief so his client can build on a 10,000-square-foot lot. He said the hardship is that without the variance, his client's lot is unbuildable. He said Mr. Gonsalves intends to build a home and live there. He said his client thought he had a valid existing variance. He said Mr. Gonsalves has been intending to build a home on the lot for 22 years. Member Ryan asked if Lot 2 contains the home in which Mr. Gonsalves currently lives. Attorney Salvati said that is correct. Member Ryan asked what is located on Lot 1. Attorney Salvati said there is another home that has been there for quite some time. He said the dwelling on Lot 1 is occupied. He said Lot 3 is vacant. Member Clancy asked if the applicant is aware Alternate Member Cavicchi is a voting member due to the recusal of Chair Pinkham. Attorney Salvati said the applicant is aware. Chair pro tem Robertson asked what the hardship is. Attorney Salvati said Mr. Gonsalves has been of the belief for 22 years that Lot 3 is buildable, and now it has been rendered unbuildable. Chairman pro tem Robertson said that claim of hardship does not seem to fit the statute. He said 99 out of 100 times the board is asked to affirm a vote by a prior Board of Appeals, it will do so. He said the problem in this instance is that 22 years have gone by. Attorney Salvati said his client has been paying taxes on the lot as if it is buildable. He said he does understand the board's difficulty with the hardship he is claiming, however. Chair pro tem Robertson asked if anyone in the audience wished to address the board in regard to the petition. Jeffrey Dillon, Ward 3 Councilor, said he has heard from various neighbors about concerns with drainage and flooding in that area. He said the question the board has to take into consideration is whether the parcel will be substantially more detrimental with a structure built on it. He said the Chair always asks if a variance qualifies for a hardship under the state statute, and he said he does not think the petition qualifies. Chair pro tem Robertson said he does not think the condition that the applicant is citing qualifies for a hardship. Deborah Finn, 1 Village Street, said her concern is drainage and the storm water situation. She said there are two new duplexes and four double-wide driveways in the area and when it rains a river runs through her yard. She said the situation has been getting worse and worse. Chair pro tem Robertson asked if the drainage problems arose after construction. Ms. Finn said the situation got

worse after the woods were cleared. She said there is a hill and when it rains, the water drains onto her property. She said Cummings Avenue pitches high and low. She said a couple of years ago there was a storm with about 10 inches of rain that resulted in water coming up through her basement floor. She said she would like something done about the water. She said she met with Mayor Galvin because of her concerns. She said she feels like it's going to get worse and worse. Member Parrish asked Ms. Finn about her property's proximity to the Middlesex Canal. Ms. Finn said her property almost sits on the Middlesex Canal. Attorney Salvati said the conditions of which Ms. Finn is speaking have nothing to do with his client. He said his client hasn't really touched the vacant lot. He said the trouble is with the two new duplexes. He said his client has been before the Planning Board and he thinks the problems in the area will be taken care of. He said his client's lot does not have frontage on Village Street. He said his client filed an ANR 2.5 years ago and it was withdrawn due to the uncertainty of the variance issue. He said he received a letter from the City Solicitor indicating the variance had lapsed. He said if the ZBA approves the variance he will have to re-file a definitive subdivision plan with the Planning Board. Chair pro tem Robertson said he is aware the applicant can't address drainage in the context of an ANR. Attorney Salvati said that is correct. Mr. Gonsalves said he owns 30,000-square-feet of land. He said he has never seen runoff on Village Street become an issue on the side of the street he intends to build his new house. Ms. Finn said water does not run on Mr. Gonsalves' side of the street. She said the water runs on her side of the street. Attorney Salvati said Planning Board approval would be a condition of building the house. Chairman pro tem Robertson said the Planning Board has nothing to do with granting the variance or the appeal. Member Parrish asked if Attorney Salvati is saying the Planning Board will sort out the drainage issues. Attorney Salvati said the Planning Board will have jurisdiction over drainage. Member Parrish asked if the new home will meet the setback requirements. Attorney Salvati said it will. Member Parrish said he would vote in favor of the variance as long as the board includes a condition that the Planning Board has to approve it as well. Member Clancy said water is a concern. He acknowledged Mr. Gonsalves had an understanding he had a lot that was approved for another house. Member Ryan asked if Planning Board approval involves a drainage plan. Attorney Salvati said it does. Chair pro tem Robertson asked if the board can make something contingent upon approval by another board. Attorney Salvati said the ZBA can make approval of the variance contingent upon filing with another board. Alternate Member Cavicchi asked if Mr. Gonsalves currently lives at 119 Winn Street, and if he will move if the new house is built. Attorney Salvati said Mr. Gonsalves intends to sell 119 Winn Street and live at 0 Village Street. Alternate Member Cavicchi asked how the Planning Board comes into play. Attorney Salvati said Mr. Gonsalves will have to file a definitive plan that requires approval by the Planning Board. He said the Planning Board wants to see Village Street widened a little bit, and drainage calculations. Alternate Member Cavicchi asked what the difference is in elevation between Lot 2 and Lot 3. Attorney Salvati said Lot 3 is below Lots 1 and 2 for sure. Member Ryan asked if the Planning Board will require the applicant to lengthen Village Street. Attorney Salvati said Village Street has to be lengthened by about 20 feet to get to 100 feet of pavement. Chair pro tem Robertson asked if there will be a cul-de-sac. Attorney Salvati said they will be asking the Planning Board for a waiver. Chair pro tem Robertson said the law requires a cul-de-sac and there is no guarantee the Planning Board will issue a waiver. He

said he will vote against granting the variance. Member Parrish said he will be happy to vote in favor. Motion made by Member Parrish and seconded by Member Clancy that the variance be granted with the condition that the Planning Board will have to approve a definitive subdivision plan; approved, 4-1, with Chair pro tem Robertson opposed.

- 5. Karen E. Mills, 71 Eastern Avenue, Woburn, MA, 01801, Petitioner and Landowner, seeking a Variance from Section 5.1.2(a) of the 1985 Woburn Zoning Ordinances, as amended, to convert a single-family home to a 2-family home at 71 Eastern Avenue, Woburn, MA:** Representing the petitioner were Karen E. Mills, 71 Eastern Avenue, and Ed McDonough, 28 Buckman Street, who said he is Ms. Mills' brother. Ms. Mills said her hardship is she lives by herself at home and has since her husband passed away. She said it is becoming increasingly hard to afford to stay in her home. She said she needs a 20-foot side setback and only has 19 feet. Chair Pinkham said a 20-foot side setback is required. She said it appears Ms. Mills complies with the rear setback though there is no dimension on the plot plan. Chair Pinkham asked when the home was built. Ms. Mills said she does not know. Member Robertson asked Ms. Mills if she consulted with anyone from the Building Dept. Ms. Mills said she spoke with an engineer. Member Robertson asked Ms. Mills if she spoke with anyone about a requirement for a variance. Ms. Mills said she did not. Member Robertson said that would have been helpful. Chair Pinkham said in order to grant a variance the board needs to make a finding that there is some condition related to the property itself that constitutes a hardship. Ms. Mills said she put on an addition in 1994. Chair Pinkham asked on what side of the house the addition was built. Ms. Mills said the addition was built in the back. Chair Pinkham said the city's Assessors Database indicates the house was built in 1890. Member Ryan asked if the house qualifies as a pre-existing, non-conforming use. Chair Pinkham said the applicant is asking to convert the use to a 2-family. Mr. McDonough said he has been dealing with the Building Dept. on his sister's behalf and he can answer any questions the board may have. He said there will be no change to the footprint of the building. He said there is going to be a door between the two units and they are adding a new kitchen. Member Robertson asked if the lot meets the frontage requirement. Chair Pinkham said 80 feet of frontage is required and this lot has 94 feet. She said the dwelling complies with everything but the side setback. Member Robertson asked if a special permit is required. Chair Pinkham said she does not believe a special permit can apply to a change of use. She said she recalls a similar instance on Myrtle Street and the city reached out to the City Solicitor for an opinion. Member Robertson said he would be comfortable with the petition as either a special permit or a variance. Member Parrish said he thinks he can find the City Solicitor's memo on the Myrtle Street petition. He said the memo addresses a change in use at 19 Myrtle Street in 2013, with a requirement for a variance, as long as the structure was built before 1985 and there are no changes to the footprint. Chair Pinkham said there is similarly no proposed change to the footprint at 71 Eastern Avenue. She said that seems to imply the board does have jurisdiction to consider a variance. Member Ryan said his concern is the creation of a new non-conformity with the side setback. Chair Pinkham said that is a good question. Member Ryan asked if a new non-conformity is being created even though the applicant is not changing the footprint. Chair Pinkham said the property is in an R-2 zoning district, so the use is conforming. Motion made by Member Robertson and seconded by Member Parrish to grant the variance; approved, 5-0.

6. **Stephen Ng and Mimi Chiu, 87 Bedford Road, Woburn, MA, 01801, Petitioners and Landowners, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, for an addition at 87 Bedford Road, Woburn, MA:**

Representing the petitioner were Stephen Ng and Mimi Chiu, 87 Bedford Road, Woburn, MA. Chair Pinkham said it appears the petitioners want to put an addition where a deck is currently located. Ms. Chiu said they want to expand the deck by a couple of feet. She said they will comply with the setbacks, including the setback on Bedford Terrace, which she said does not have any traffic. Chair Pinkham said the plot plan identifies Bedford Terrace as a private way. Ms. Chiu said the city plows the street. She said she was told her home is a pre-existing, non-conforming structure because it was built in 1953. Chair Pinkham said she looks at this like it is a corner lot. She said she does not know if it makes a difference whether Bedford Terrace is a private way or a public way. She said if it is a corner lot, the applicants have frontage on two streets, and they have two front yards. She said the applicants don't have 100 feet of frontage on Bedford Road, but she does not think that matters. She said the board does have jurisdiction to grant a special permit. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Chair Pinkham said the house appears to be a single-story Ranch. She asked if the applicants intend to keep their gazebo. Ms. Chiu said the gazebo is movable. Motion made by Member Parrish and seconded by Member Clancy to grant the special permit; approved, 5-0.

7. **Katherine Meuse, 8 Fisher Terrace, Woburn, MA, 01801, Petitioner and Landowner, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, for a reduction in the front yard setback from 25 feet to 14.9 feet to build a farmer's porch at 8 Fisher Terrace, Woburn, MA:**

Representing the petitioner were Katherine Meuse, 8 Fisher Terrace, and John Beaver, Project Manager, Remodel or Renew Home Improvement, 3 Hyatt Street, Worcester, MA. Chair Pinkham said the plot plan seems to show the house is 21.5 feet from the front lot line on one side and 20.9 feet from the other side. She said it appears to her the applicant is eligible for special permit relief, rather than a variance. She said she generally does not vote for a variance unless the statutory standard for hardship has been met. She said there is a much more lenient standard for a special permit. She said the proposed change does not create a new non-conformity. Chair Pinkham asked if the applicant has a set of building plans. Mr. Beaver said he has drawn a plan on a piece of graph paper. Chair Pinkham said the plan on the piece of graph paper is not 3-dimensional. Member Robertson asked if the board requires a plan to be submitted with an application. He said the applicant will have to provide building plans to the Building Dept. upon application for a building permit. He said requiring building plans seems to be beyond the board's jurisdiction. Chair Pinkham said it appears the applicant wants to add a deck with a roof. Mr. Beaver said his client wants to add a farmer's porch. He said his client has not been required to submit building plans. Chair Pinkham said if the applicant wants the board to vote for a special permit, she will have to come back with a plan. Member Parrish asked Mr. Beaver if he can see the hand drawn plan. Member Robertson said the board deals with dimensional requirements. He said as long as the plan shows dimensional requirements, he does not see how it is fair to the applicant to provide building plans. He said detailed building plans can get very expensive. Chair Pinkham asked the applicant if

she wants to submit the hand drawn plan. Member Parrish said if there is a discrepancy with the Building Dept., the applicant may have to return to the board. Member Clancy said he drove by several times and the proposed farmer's porch would seem to mitigate the slope of the front portion of the property. Ms. Meuse said she has heard from several neighbors who approve of what she is trying to do because it will make her property safer for Trick or Treating and the like. Chair Pinkham said there appears to be no one left in the audience but if anyone wishes to address the board in regard to the petition, he or she may do so. There were no respondents. Motion made by Member Ryan and seconded by Member Clancy to change the application from a variance to a special permit; approved, 5-0. Motion made by Member Robertson and seconded by Member Parrish to grant the special permit; approved, 5-0.

8. Approval of minutes from meeting of May 18, 2022: Chair Pinkham said she made a series of edits she will give to the clerk. Member Ryan said he has also found a few typographical errors. He said the word "can" on page 4 should be "cannot." He said the word "near" on page 7 should be "over." Motion made by Member Robertson and seconded by Member Parrish to approve the minutes as amended by the chair; approved, 5-0.

9. Any other matter that may be legally before the Board: Chair Pinkham said the board will hold its next regular meeting on Wednesday, July 20, 2022, at 6 p.m.

10. Motion made by Member Parrish and seconded by Member Ryan to adjourn; all in favor, 5-0. Chair Pinkham adjourned the meeting at 8:03 p.m.

ATTEST:

Gordon Vincent
Clerk of the Zoning Board of Appeals