

**Zoning Board of Appeals
City Council Chambers
Woburn City Hall
Wednesday, September 14, 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. **Zoey Shvorin, 46 Fletcher Road, Woburn, MA 01801, Petitioner and Landowner, 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 use at 46 Fletcher Road, Woburn, MA:** Chair Pinkham asked if Ms. Shvorin is representing herself tonight in lieu of counsel. Ms. Shvorin answered affirmatively. Chair Pinkham asked if Ms. Shvorin has seen the memorandum from the Building Commissioner regarding his concurrence with the City Solicitor that the petitioner would need a variance for the portion of the proposed addition that would violate the proposed setback requirements. Ms. Shvorin said she has seen the memo from the Building Commissioner. Chair Pinkham said her memory is Attorney Salvati requested a continuance to let the Building Commissioner review the memorandum from the City Solicitor. She said to summarize the City Solicitor's memo, she went through a very exhaustive analysis of the 2-family use. She said at the end the City Solicitor indicates the structure itself complies with the dimensional requirements in an R-1 zone and based on that the petitioner would need a variance to expand the side setback. She said the Building Commissioner indicated he agreed with the City Solicitor's conclusion and that the petitioner would only need a variance. Member Ryan said that given all the evidence that's been presented, there is a strong case for a legal 2-family residence. He said the only thing that is missing is a building permit indicating the 2-family use. He said he thinks the board has gone over the evidence enough and he is going to support a variance. Chair Pinkham asked what the hardship is. She said she has no memory of any discussion about a hardship. She said the proposed addition will not comply with a side setback. She said there is a different standard for a variance. She said the board needs to determine there is a hardship based on soil conditions, shape of the lot or topography. She said if there is an outcropping of ledge on the property, that could be a hardship. She said she does not recall that the board has broached the subject of a hardship in this instance. Member Ryan asked if there was anything in the City Solicitor's letter that indicates this situation falls under any other permitted use. Chair Pinkham said she does not think the City Solicitor addressed that. Member Ryan said if there was an any other permitted use component, then the side setback requirement would be 25 feet. Chair Pinkham said the second paragraph of the City Solicitor's memo addresses that issue. She read, as follows: "The Board also asks if the protections of MGL Chapter 40A, Section 7 apply to the pending special permit, and which setback requirements are applicable, those of the R-1 or R-2. The answer to the latter question is the dimensional requirements of the R-1 zoning district will apply." Chair Pinkham said the any other permitted use requirements are the same as they are for a legal 2-family home. She said that is her view. Member Ryan asked what would happen with a 2-family conversion to a single-family home. He said if it were a conversion from a 2-family to a single-family, the side setbacks are 20 feet. Chair Pinkham said that

setback is applicable in the R-2 zone. Member Ryan said he thought the property is in an R-2 zone. Ms. Shvorin said there is a document from 2007 indicating the zone is R-2. Chair Pinkham said whoever prepared that document indicated the zone is R-2, but that is incorrect. She said that document does not bind the city to applying the standards for the R-2 district. She said it is not clear from the building permit that there was a conversion. Member Robertson asked if there is anything on file with the board requesting a variance, and if so what is the specific request. Chair Pinkham said the application is for a special permit. She said the board has discussed whether the proper form of relief is a variance and that is what the City Solicitor addressed. She said the structure complies with all the setbacks, but to do the addition, the City Solicitor indicated the applicant will require a variance, if the Building Commissioner agrees. She said part of what the board is struggling with is that a single-family home requires a 12-foot setback and the proposed addition would therefore require a variance. She said the board did not specifically ask the City Solicitor if this would be covered under any other permitted use. Member Robertson asked what the variance would be for. Chair Pinkham said the variance would be for a reduction to the side setback requirement to 22.3 feet. Member Parrish said the variance is for 2.8 feet. Member Robertson said he would vote in favor of a special permit. He said it seems to him the petitioner would have to file for a variance. He said that would be up to her. Chair Pinkham said the board has frequently changed forms of relief from special permit to variance and vice-versa. Member Robertson said the board sometimes interprets a special permit as a variance. Chair Pinkham said the board has a legal opinion from the City Solicitor that the petitioner needs a variance if the addition violates the side setback. Member Robertson asked if the City Solicitor's opinion that a variance is required because she thinks the requested relief falls under the realm of any other permitted use. Motion made by Member Robertson and seconded by Member Clancy to grant a special permit; approved, 4-1, with Chair Pinkham opposed. Chair Pinkham asked how the board wishes to proceed with respect to the variance. Member Robertson asked if there is a request for a variance before the board. Chair Pinkham said the applicant cannot build the proposed addition without a variance. She said the City Solicitor has opined a variance is required. Member Robertson asked if the board has enough information for the chair to draft a decision for a variance. Chair Pinkham said the board needs to cite a hardship. Member Robertson asked how the variance decision would read. Member Parrish said the applicant is seeking a reduction in a side yard setback from 25 feet to 22.8 feet. Chair Pinkham said it is not clear to her what the dimensions cited in the variance decision would be. She said having granted a special permit she thinks the setback requirement is 25 feet. Member Robertson asked if the applicant needs a variance because the side setback requirement is 25 feet. Chair Pinkham said the City Solicitor and the Building Commissioner have indicated the applicant will only need a variance for violation of a setback requirement. She said if the board finds it is legally constructed, then there should be a finding under any other permitted use. Member Parrish said he asked last month if there is a grandfather clause involved because there has been no enforcement action. He asked if the board issued the special permit on the basis it's a legal 2-family home because there has been no enforcement for at least 10 years. Chair Pinkham said just because there has been no enforcement action, it does not mean the 2-family use is legal. Member Ryan referred the board to the sixth paragraph of the City Solicitor's memo regarding a lawfully pre-

existing, non-conforming use. He said the rest of the sentence is what throws him, particularly the phrase “subject to any zoning amendments.” He said that seems to indicate the use is protected as well. Chair Pinkham said the board has been struggling with is that the zoning ordinance was changed in 1985 and the document that indicates the use is a 2-family is from 2007. Member Ryan said the only thing the board is missing is the actual document indicating it is a 2-family. Member Robertson asked what the chair’s rationale was for voting against the special permit. Chair Pinkham said she did not see any evidence that the dwelling was a legal 2-family prior to 1985. Ms. Shvorin said the original house is a small Ranch. She said an entire second house was built later. She said she does not know how that would have happened without a building permit. Member Robertson asked how the chair responds to Member Parrish’s citation of the 10-year lack of enforcement. He asked what the status of the use is, and if there is any relevant case law. Chair Pinkham said her understanding is just because it can’t be enforced does not make it legal. She said the City Solicitor does not think that regulation applies. Member Ryan said his understanding is the lack of enforcement exemption applies for 10 years to a structure and six years for a use. Motion made by Member Robertson and seconded by Member Parrish to allow Member Robertson to reconsider his vote to grant the special permit; approved, 5-0. Member Robertson said the board is back to square one. Member Ryan asked if the appropriate form of relief is a variance. Member Robertson said he thinks the board needs to re-frame questions to the City Solicitor and the Building Commissioner. Member Ryan said he has all the information he needs based on the City Solicitor’s letter and the Building Commissioner’s letter. He said he is prepared to vote for a variance. Member Clancy said he is also ready to vote. Member Parrish said he is also ready to vote. Member Robertson asked what the variance would be for. Member Ryan said the variance would be to allow for a reduction to the side setback. Member Robertson asked why the applicant needs a variance if the setback requirement is 25 feet. Member Ryan said the board could cite the odd shape of the lot as a hardship. Member Clancy said the property line is kind of slanted and not completely straight. Member Ryan asked why the existing deck is not considered to be within the setback. Chair Pinkham said she believes the deck is not considered to be within the setback because it is less than four feet. Member Ryan asked how high the deck is. Ms. Shvorin said there are five steps leading to the deck. Member Robertson asked if any construction has started yet. Ms. Shvorin said no construction has started. Member Robertson asked why Ms. Shvorin wants to add on to the existing structure. Ms. Shvorin said she has three children and she needs four bedrooms. She said she would like some additional space. Member Robertson asked if the addition will apply to only one unit. Ms. Shvorin said her parents live in the other unit. Member Robertson asked if there will be any changes to the other unit. Ms. Shvorin said there will be no changes to the other unit. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Member Robertson said he is going to vote in favor because the proposed changes are *di minimis*. Motion made by Member Ryan and seconded by Member Clancy to grant the variance; approved, 4-1, with Chair Pinkham opposed.

2. Vincent Leo Jr., 12 Mawn Drive, Woburn, MA, 01801, Petitioner and Landowner, seeking Variances from Section 6.1 of the 1985 Woburn Zoning Ordinances, as

amended, to allow for reductions in rear yard setbacks from 30 feet to 24.6 feet and 18.9 feet to build a deck at 12 Mawn Drive, Woburn, MA (request to continue filed): Chair Pinkham said there has been a request to continue filed by the petitioner's attorney. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Chair Pinkham asked if there are any objections to holding the next meeting on October 19. There were no objections. Member Robertson asked if there are ever any issues with the board continuing a hearing beyond the date it is advertised without any substantial discussion. Chair Pinkham said she has never looked at that issue. Member Robertson said this practice bothers him and he will vote against a continuance. Motion made by Member Parrish and seconded by Member Clancy to continue the hearing until the board's meeting on October 19; approved, 4-1, with Member Robertson opposed.

- 3. Brian D. Johnson, 11 Hamilton Road, Petitioner and Landowner, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to allow for an addition at 11 Hamilton Road, Woburn, MA:** Chair Pinkham said it appears Mr. Johnson is putting in a full second story. Mr. Johnson said the addition is going straight up. Chair Pinkham asked if the existing house is a Cape. Mr. Johnson answered affirmatively. Chair Pinkham asked if anything is going to change with the existing deck. Mr. Johnson said it is a sun porch and nothing is going to happen with it. Chair Pinkham said she does not see anything on the plans that indicates the height of the structure. She said one can't build a house that is 50 feet high in Woburn. She said any decision the board makes has to be based on the plans. Member Clancy said he is also trying to determine the height. 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 Parrish and seconded by Member Clancy to grant the special permit with a condition that the structure must conform to the height dimensions in the Woburn Zoning Ordinance; approved, 5-0.
- 4. Perkens Deriphonse, 20 Hamilton Road, Woburn, MA, 01801, Petitioner and Landowner, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to allow for an addition at 20 Hamilton Road, Woburn, MA:** Chair Pinkham said she reviewed the plans and has a few questions. She asked if the addition will have a separate entry. Mr. Deriphonse answered affirmatively. Chair Pinkham asked if the house has a finished basement. Mr. Deriphonse answered affirmatively. Chair Pinkham asked if access to the sitting room on the second floor addition is only through the addition and if there is another point of entry. Mr. Deriphonse said the sitting room will be only through the addition. Chair Pinkham asked if there is access to the sitting room through a set of stairs. Mr. Deriphonse answered affirmatively. Chair Pinkham said when she looked at the plans for a sitting room and a new bedroom she thought it might be used as an in-law apartment. She asked if that is what it is going to be used for. Mr. Deriphonse answered affirmatively. Chair Pinkham asked what the finished basement is going to be used for. Mr. Deriphonse said the basement is used for storage. Chair Pinkham asked if there is going to be living space in the attic. Mr. Deriphonse said there will be no living space in the attic. Member Parrish said he has a procedural question when the board gets to a vote. Chair Pinkham asked if

anyone in the audience wished to address the board in regard to the petition. There were no respondents. Member Parrish said he is ready to make a motion to approve the special permit with the condition that the home remains a single-family. Chair Pinkham said there is nothing in the zoning code that defines an in-law apartment. She said that has been left up to the Building Commissioner's interpretation. Member Clancy asked if the addition will be a separate apartment. Mr. Deriphonse said he misunderstood. He said it will not be an in-law apartment. He said the addition will be an area where his kids will watch television. Member Parrish said he still wants to add the standard conditions to the special permit that limit the use to a single-family home. Chair Pinkham said when the board has a big addition like this, it puts conditions to make sure the structure is only used as a single-family. She said this has been the board's common practice. Motion made by Member Parrish and seconded by Member Ryan to grant the special permit with the standard conditions that limit the use to a single-family home; approved, 5-0.

- 5. Paul and Dianne Preston, 9 Colonial Village, Unit 10, Arlington, MA, 02474, Petitioners and Landowners, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, to allow for a reduction in the front yard setback from 25 feet to 21.2 feet to build a porch at 10 Howard Court, Woburn, MA:** Chair Pinkham asked when the existing structure was built. Mr. Preston said he believes the house was built in the 1950s. Member Clancy said he has a question about the setbacks and asked if the proper form of relief ought to be a special permit. Chair Pinkham said the existing structure is 17.9 feet from the front lot line. Mr. Preston said there was an addition put in the back of the house. He thinks there was a permit that was issued in 1972. Member Clancy asked if the circle in front of the house was already there. Mr. Preston said he does not know. Member Ryan said it is hard to tell where the driveway ends and the street begins. Chair Pinkham said the house was built in 1958 according to the city's assessors database. She said in 1959 the front setback requirement was 15 feet. She said the front setback was legal when the house was built. She said there is a weird curve along the front lot line. 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 applicant has filed for a variance, but she thinks the proper relief ought to be a special permit, the standard for which she said it a lot more lenient. She said the board has to find the proposed change does not create a new non-conformity and that it is not substantially more detrimental. She said in order to grant a variance, the board needs to determine there is a hardship. She said she also thinks the frontage is non-compliant because it might be a tiny bit less than 100 feet. She asked the applicant if he would prefer to move forward with his application for a variance or change to a special permit. Mr. Preston said he would probably prefer to seek the easier form of relief. Chair Pinkham said in order to grant a special permit the board would have to reference building plans. Mr. Preston said he has building plans. Mr. Preston submitted the building plans to the clerk for inspection by the members of the board. Member Robertson asked Mr. Preston who advised him to file for a variance. Mr. Preston said a building inspector said he needs a variance. Member Robertson said the board may be substituting its judgment for the Building Dept.'s. He said there may be something the Building Dept. knows that the board does not. Member Parrish said he would vote in favor either way. He said it looks like the lot has an odd shape. Member Robertson asked the petitioner if

he occupies this home. Mr. Preston said he and his wife will live there in a couple of months. He said they are renovating the home to make it look nice. Alternate Member Cavicchi asked what the height of the ceilings is. Mr. Preston replied he thinks the ceilings are 7.5 feet high. Alternate Member Cavicchi asked Mr. Preston if he can reach up and touch the ceilings. Mr. Preston answered affirmatively. Alternate Member Cavicchi said the ceilings are probably higher than 7 feet. Chair Pinkham asked if there is a standard height for the columns. Alternate Member Cavicchi asked if the columns are decorative. Mr. Preston answered affirmatively. Member Clancy asked if the applicant is seeking a special permit and if the board has to vote on that request. Motion made by Member Parrish and seconded by Member Clancy to change the form of relief sought by the applicant 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.

6. **Request from Shawn McSheffrey and David Gershaw, 43 Chappie Street, Charlestown, MA, for a minor modification to a special permit issued December 21, 2021, at 14 Hilltop Parkway, Woburn, MA:** Representing the petitioner were Attorney James Juliano, 42 Pleasant Street, Woburn, MA; and Shawn McSheffrey, 43 Chappie Street, Charlestown, MA. Mr. McSheffrey said his attorney has not arrived. Motion made by Member Clancy and seconded Member Parrish to table the matter until Attorney Juliano arrives; approved, 5-0. Chair Pinkham recessed the meeting at 7:18 p.m. Motion made by Member Parrish and seconded by Member Clancy to return to the regular order of business; approved, 5-0. Chair Pinkham resumed the meeting at 7:23 p.m. Chair Pinkham said it appears the applicant is seeking a minor modification to a special permit issued for 14 Hilltop Parkway. Attorney Juliano distributed amended plans and pictures to the board. Attorney Juliano said there has been the addition of a dormer to the rear of the dwelling, in the attic area. He said the dormer is not on the plan that was approved by the ZBA and referenced in the decision sent to the Building Dept. He said the dormer is approximately 16 feet by 6 feet and adds 96-square-feet of space. He said the discrepancy qualifies as a minor modification pursuant to Section 11.12 of the Woburn Zoning Ordinance. He said the dormer is the only change from the approved plans. He said everything else is the same. Member Parrish asked if the dormer is referenced in one of the pictures that was distributed to the board. Attorney Juliano said the picture of the back of the house shows the dormer. Member Robertson asked the clerk if anyone spoke at the public hearing when the special permit was granted. Clerk said he does not recall anyone speaking at the public hearing. Chair Pinkham said she recalls someone who lives in back of the locus was at the public hearing. Mr. McSheffrey said he spoke with a neighbor who has concerns about drainage and trees and alleviated them. Chair Pinkham said she has concerns about the timing of the request for minor modification as the revised building plans were submitted to the board on Monday. She said she does not see anything on the plans that indicates how the attic is accessed. She asked if the attic will be accessed via a separate set of stairs. Attorney Juliano said that is correct. He said there will be a typical catwalk to the third story. Chair Pinkham said one of her pet peeves is plans that don't show the basement or the attic. She said she feels like the board has received more plans over the past three months that do not show the basement or attic. She said it irks her that there has been a change to add living space. She said the board

had no idea there would be this additional living space when it approved the special permit. She said if the board had known there may have been more questions. She said at least the dormer is in the back. She said no one who is an abutter had an opportunity to address the board. She said she still does not see stairs going up to the attic. She said she does not know if drop-down stairs are still a thing. She said shame on her for not asking questions back then. Chair Pinkham said the reason Mr. McSheffrey is here tonight is because the dormer was put in without the board's approval. She said now Mr. McSheffrey is seeking forgiveness. She said a few years ago the board adopted a process for minor modifications that the City Council and the Planning Board had, to account for things that sometimes happen in the field. She said the board approved a minor modification for a project on Main Street where the windows were larger than they were supposed to be, and for a house that was built 13 inches higher than it was supposed to be. She said things like this happen so the board adjusted the process so the board can bless any minor discrepancies without a public hearing. She said if the board indicates the modification is major, it can start the process over with a public hearing and notification. She said the ordinance cites some examples of minor adjustments but another one of her pet peeves is the frequent use of the word "minor" in the language that defines minor modifications. She said examples of major modifications are those that impact the volume of traffic, the nature of the use, and any increase of gross floor area exceeding 10 percent or an increase in the number of dwelling units. She said the only potentially applicable section is any increase in the gross floor area exceeding 10 percent but she can't imagine an increase of 96 square feet is more than 10 percent. Attorney Juliano said the increase in gross floor area is slightly more than 2 percent. Chair Pinkham said she does not see anyone in the audience. Member Robertson said the increase in gross floor area is *di minimis* but the proposed modification might be of interest to the public. He said perhaps more people would have showed up to the hearing in November if the dormer had been on the plans then. Member Parrish asked if the relief that was approved was a special permit or a variance. Attorney Juliano said the board granted a special permit. He said the only non-conformities are frontage and lot area. He said everything else complies with the zoning ordinance. Chair Pinkham said an increase in the gross floor area of 2 percent could be considered an exacerbation of the non-conformity. Member Parrish said the board may want to consider the elevation of Hilltop Parkway and whether the modification is substantially more detrimental to the neighborhood. Chair Pinkham said all that is being asked of the board is whether this modification is minor or major. Member Parrish said there could have been members who voted differently on the petition had they known about the additional 96 square feet. He said he thinks the dormer looks ugly but according to the ordinance the modification is minor. Member Robertson said it seems to him the public ought to be given notice. Member Clancy said he is aware of the legal standard but he thinks approving minor modifications sets a bad precedent. He said the board approves plans with the expectation there will be some degree of discipline. He said he thinks the changes to the structure warrant more discussion before the board approves the minor modification. Chair Pinkham said if the board finds the change is major, the applicant will have to go through the public hearing process. Member Parrish said he is ready to vote for a minor change. Member Ryan said he agrees the change is minor. He said he also understands Member Clancy's opinion about public notice. Chair Pinkham said the board needs to take a vote. Member Parrish

asked if the board adopted something in the rules that allows the chair to determine if a modification is minor or major. Chair Pinkham said she remembers discussing it. Attorney Juliano asked if the board requires a simple majority or a two-thirds majority for approval of a minor modification. Chair Pinkham said a minor modification requires four votes for approval. She said if the board determines the modification is major and has to go through the public hearing process, any approval will also require four votes. Member Parrish asked what would happen if the board fails to reach a consensus. Attorney Juliano said if the board is using the tenets of the ordinance, the standard is whether the modification is not more detrimental compared to the original plan for the special permit. He said the modification does not exceed the 10 percent gross floor area threshold. He said he thinks the standard the board needs to go by is whether the non-conformity is being exacerbated. Member Clancy said his position is if the plan with the dormer was presented to the board in the first place, and there had been no objections from the public, it would have been fine. He said his objection is the board bases its decisions on plans, and the plans should not be adjustable. Member Robertson asked if the addition of the dormer was an oversight. Attorney Juliano said there was a discrepancy that the applicant thought he could work out with the Building Dept. rather than the ZBA, but the Building Commissioner deferred to the board. Member Robertson asked if the applicant intended to add the dormer while he was going through the permitting process. Attorney Juliano said the dormer was added during construction. He said he thinks it was a spur-of-the-moment thing. He said it was a design decision. Member Robertson said his concern is the neighbors have an idea of what is going to be constructed. He said 96 square feet is small, but the dormer is on top of the roof so it stands out. Member Clancy said by definition the modification is minor, but he said it is a concern when plans change. He said there is a potential for abuses. Motion made by Member Ryan and seconded by Member Parrish to grant the minor modification; approved, 4-1, with Member Robertson opposed.

7. **Approval of minutes from meeting of August 17, 2022:** Chair Pinkham said she made a series of edits she will give to the clerk. Member Ryan said he also noticed a couple of typographical errors that he will go over with the clerk after the meeting. Motion made by Member Parrish and seconded by Member Clancy to approve the minutes as amended; approved, 5-0.
8. **Any other matter that may be legally before the Board:** None
9. **Motion made by Member Parrish and seconded by Member Ryan to adjourn;** approved, 5-0. Chair Pinkham adjourned the meeting 7:57 p.m.

ATTEST:

Gordon Vincent
Clerk of the Zoning Board of Appeals

