

**Zoning Board of Appeals  
City Council Chambers  
Woburn City Hall  
Wednesday, October 19, 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. 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:** Representing the applicant was Attorney Mark Salvati, 57 Arlington Road, Woburn, MA. Attorney Salvati said he has a drawing indicating how many square feet on each end of the porch will be in the setbacks. He said there is about 30-square-feet of deck in the setback on one side and 70-square-feet of deck in the setback on the other side. He said the portions of the deck in the setback are shown as two triangles on the plot plan. He said he thinks this is a *di minimis* request. He said the hardship is the shape of the lot. He said the two lot lines closest to the house are considered rear lot lines. Chair Pinkham asked how long the structure has been there. Mr. Leo said the deck has been there for about a year. Attorney Salvati said the contractor made a mistake. He said the contractor was under the impression the deck could go halfway to the lot line. He said the deck is in violation of the zoning ordinance. Chair Pinkham asked if the Building Dept. issued a cease-and-desist order. Attorney Salvati said the Building Dept. did not issue a cease-and-desist order but it is withholding the final occupancy permit. He said there was a building permit issued for the addition and the deck, and the deck does not comply with the zoning ordinance. Chair Pinkham said the applicant is now before the board seeking forgiveness. She said there are no measurements of the footprint of the building. She said she went to the city's assessors data base and noticed an image on the plot plan that does not match the image on the data base. She said the house appears to be 52 feet long and asked if the deck is 52 feet long. Attorney Salvati answered affirmatively. Chair Pinkham said a 52-foot deck is massive. She said her first question is why the applicant wouldn't build a smaller deck. She said the applicant built a 52-foot by 10-foot deck without any authority from the city. Member Robertson asked if the plan filed with the original application shows a conforming deck. Attorney Salvati answered affirmatively. Mr. Leo said the original contractor built the non-conforming deck. He said he is about to be in a lawsuit with the original contractor. Member Robertson said he does not want to know about the lawsuit. Mr. Leo said there were a few things the contractor thought he could change that he could not change. Member Robertson asked who filed for the building permit. Mr. Leo said the contractor filed for the building permit. Mr. Leo said he added a garage that required the approval of a variance. Member Robertson said he tends to agree with the chair about the size of the deck. Attorney Salvati said about 100-square-feet of deck would have to be removed in order to comply with the zoning ordinance. He said that is not a lot. He said the rear lot lines should be side lot lines. Member Robertson said it is what it is. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Jeffrey Dillon, 63 Sheridan Street, Ward 3 Councilor, said this

property is located in Ward 3. He said it is a beautiful property. He said mistakes happen. He said there does not appear to be any malicious intent. Member Robertson said this issue with rear lot lines comes up from time-to-time and asked Councilor Dillon if there has been any discussion by the City Council about changing the zoning ordinance. Councilor Dillon said he thinks each case has to be considered individually. He said in this instance it looks like things got messed up with the contractor. He said he would be glad to meet with Member Robertson about ways to streamline the ordinance. Member Robertson said this problem has occurred several times and nobody ever does anything about it. He said Councilor Dillon is in a position to do something. Councilor Dillon said he will take that under advisement. He said to him the deck fits in well with the neighborhood. He said there are no neighbors here to complain about it. Member Ryan asked if the petitioner is saying the original contractor built the deck without approval from the homeowner. Mr. Leo said the original contractor walked off the project. He said he hired a new contractor who was under the impression he could make a deck bigger. He said the contractor was under the impression there was no issue. Member Parrish said he would be in favor of granting the variances. He said the rear lot lines are really like side lot lines. He said he would be in favor of writing into the decision that the variance is for the deck only. Chair Pinkham asked if that means the deck is not to be enclosed. Member Robertson asked if that question could be posed to the applicant's legal counsel. Attorney Salvati said his client would be comfortable with a condition that the deck will remain a deck and will not be enclosed. Member Robertson asked if the applicant is indicating the hardship is the shape of the lot. Attorney Salvati said it seems unfair to determine one of the lot lines is a rear lot line. He said the lot line is a side lot line for the petitioner's next-door neighbor. Chair Pinkham said she is not sure she agrees with that statement it is unfair the petitioner has two rear lot lines. Attorney Salvati said no one should have two rear lot lines. He said he wants to emphasize the illegal portion of the deck is only 100-square-feet. Member Robertson said it looks to him like a rear lot line. Chair Pinkham said she is not buying the argument the other lot line should be treated as a side lot line. Member Ryan said he would echo Member Parrish's comment. He said the lot is oddly shaped. He said he has always had a hard time with these instances where the ordinance defines two rear lot lines. He said he would consider them side lot lines. He said he is, however, becoming increasingly frustrated with the number of times these things are built and the petitioner comes before the board seeking forgiveness rather than permission. Member Clancy said he is in favor of granting the variance because of the shape of the lot. Attorney Salvati asked if the board could take separate votes on each variance request. Chair Pinkham said she does not have a problem with that. She said she would vote in favor of approving a variance for the western lot line but not the eastern lot line, which she does not consider a side yard lot line. Motion made by Member Parrish and seconded by Member Clancy to grant a variance from 30 feet to 18.9 feet on the westerly lot line for a deck only, based on the shape of the lot; approved, 5-0. Motion made by Member Parrish and seconded by Member Clancy to grant a variance from 30 feet to 24.6 feet on the easterly lot line for a deck only; failed 3-2, with chair Pinkham and Member Robertson opposed.

**2. Marshall White/White Builders, 73 Pleasant St., Woburn, MA, Petitioner, and Cristina Casey, 5 Harvard St., Woburn, MA, Landowner, seeking a Variance from**

**Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, to allow for a reduction in a side yard setback from 12 feet to 10.1 feet to construct a 2-car garage at 5 Harvard St., Woburn, MA:** Chair Pinkham said the board has received an email from the DPW Superintendent. She asked if the applicant has reached out to the City Engineer and the Water Superintendent to determine if there are utilities in the easement. Mr. White said that is still a mystery. Chair Pinkham asked if the applicant cannot identify whether there are utilities in the easement. Mr. White said the city's Engineering Dept. and Eversource have no record of utilities in the easement. He said the Water Dept. is still searching records. He said no one seems to know. Member Robertson asked if there was a title search done. Mr. White said the easement does not show up in the most recent quit claim deed. He said the easement shows up in the 1992 deed but he can't find anything prior to that. Member Robertson asked what the plot plan describes. Mr. White said there is a utility easement on the plot plan. Chair Pinkham said if the applicant reduces the width of the garage by two feet it will comply with the setback requirements. She asked what the hardship is. Mr. White said the shape of the lot creates a hardship. Chair Pinkham said the shape of the lot has nothing to do with the garage. Mr. White said there is a just a small corner of the proposed garage that is within the setback. Chair Pinkham said a 1-car garage would comply with the setback requirement. Mr. White said the property owner has two cars. Chair Pinkham said she has more than two cars and no garage. Mr. White said the lot is oddly shaped and the amount of garage in the setback is 4.5 square feet. Chair Pinkham said if it's only 4.5 square feet then it's not going to be a big deal to reduce the size of the garage. She asked if there is any parking on the other side of the house right now. Mr. White said he is not aware of any parking on the other side of the house. He said the driveway is where the proposed garage is going to be. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Jacquelyn Miller, 3 Harvard Street, said the first time she heard about the garage is when she read about it in the Daily Times. She said she is a little surprised she hadn't heard about it before. She said she is really not in favor of having a garage right on the property line. She said the garage is going to hover over her yard. She said she has no idea what the garage is going to look like or how tall it is going to be. Chair Pinkham asked Ms. Miller if she has a copy of the plan. Ms. Miller said she has a copy of the Building Dept. plan. She said one of the things she likes about the zoning laws in Woburn is the houses aren't pushed together. She said there is a paper street on the other side of the property that is a dirt road. She said the previous homeowner used to park his boat there. Chair Pinkham said the aerial photo shows a boat parked on the paper street. Ms. Miller said she is not really happy about something on the edge of her property. Chair Pinkham said in fairness the proposed setback is 10.1 feet and the setback requirement is 12 feet. Member Ryan said it seems like the applicant would have to make only a minor alteration for the garage to comply with the setback requirement. Mr. White said he tried to design a garage that would comply with the setback requirements. He said if the lot line was straight, he would be able to comply with the zoning ordinance. He said he made the garage as narrow as possible. He said he can't push it forward or closer to the street. Member Robertson asked if the petitioner is claiming the hardship is the shape of the lot. Chair Pinkham answered affirmatively. Member Robertson asked when the lot was created. Mr. White replied the lot was created in 1992. He said for what it's worth, if it weren't for the easement, he could design a shallower garage that would comply with the

easement. Chair Pinkham said it might be beneficial to find out if there is anything in the easement. She said the applicant may want to do a little more research. She said she is not going to vote for the variance. She said the applicant needs four affirmative votes for the variance to be approved. Member Robertson asked if this lot was created by variance. Mr. White said he does not know. Chair Pinkham said the existing structure is 8 feet from the paper street. She said she thinks there was an addition. Mr. White requested a continuance until the board's next meeting. Motion made by Member Parrish and seconded by Member Ryan to continue the hearing until the board's next meeting on Wednesday, November 16, 2022; approved, 5-0.

- 3. Newport Realty Development LLC, 75 Third Ave., Waltham MA, 02541, Petitioner, and Julie Bradley and Mary Binks, 11 Mishawum Road, Woburn, MA, Landowners, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to raze and replace a two-family home at 11 Mishawum Road, Woburn, MA:** Representing the petitioner was Attorney James Juliano, 42 Pleasant St., Woburn, MA. Chair Pinkham recused herself and asked member Robertson to assume the chair. Chair pro tem Robertson said Chair Pinkham is an abutter and recused herself. Attorney Juliano said there is a discrepancy on the first page of the building plans with the gables. He said they instead created clapboard shingles that mesh better with the area and a false gable above the door. He said the existing structure was built in 1880 and is severely dilapidated. He said the property is located in an R-2 zoning district. He said there are four existing non-conformities – frontage, lot size, front setback and side setback. He said the proposed new 2-family home will alleviate the non-conforming side and front setbacks. He said the side setback will go from four feet to 16.9 feet. He said the applicant is cognizant of the parking situation on Mishawum Road and his client will agree to a condition to create two new parking spaces in the driveway. Member Parrish said he is very happy the applicant has agreed to provide six parking space. He said he is also very happy the design in the front gives the home a Victorian look. Attorney Juliano said two of the parking spaces are not shown on the plan of record but he has drawn them in. He said the driveway will have a t-shape. He said two other spaces will be located in front of the garage door. Motion made by Member Parrish and seconded by Member Ryan to accept the document submitted by Attorney Juliano with the revised parking plan and make it part of the permanent record; approved, 5-0. Chair pro tem asked Attorney Juliano to sign and date the revised plan. Chair pro tem Robertson asked if anyone in the audience wished to address the board in regard to the petition. Andrew Hackett, 15 Mishawum Road, said he would love nothing more than to see the existing structure replaced. He said he came to the meeting tonight because he is very much in favor. Eileen Doherty, 9 Mishawum Road, said she has lived next door for 37 years and she is 100 percent in favor of a new home there. Motion made by Member Parrish and seconded by Member Clancy to grant the special permit. Member Parrish said he would like to amend the motion to incorporate the version of the plot plan that shows six parking spaces. Motion made by Member Parrish and seconded by Member Clancy to amend the motion to include the version of the plot plan that shows six parking spaces; approved, 5-0. Motion to grant the special permit as amended, 5-0.

4. **Approval of minutes from meeting of September 14, 2022:** Chair Pinkham said she has no edits nor corrections to the clerk’s version of the minutes. Motion made by Member Parrish and seconded by Member Ryan to approve the minutes as amended; approved, 5-0.
  
5. **Any other matter that may be legally before the Board:** Chair Pinkham said she had a conversation with the Building Commissioner about a property on Pearl Street for which there was a special permit granted. She said the property owner wanted a small breezeway from what was formerly a garage. She said the property owners dropped the height of the addition. She said Building Commissioner Thomas Quinn reached out to her to determine whether the modification was minor. She said when a modification results in a reduction in size, it seems to her it is minor. She said the ordinance indicates any increase in size greater than 10 percent is a major modification. She said Commissioner Quinn agreed with her that the modification in the Pearl Street instance is minor but he did not want to usurp the board’s authority. Member Parrish said the chair sent an email with legal language indicating the board does have the authority to change the form of relief from a variance to a special permit. Chair Pinkham said that is how she determined it, as well.
  
6. **Motion made by Member Parrish and seconded by Member Ryan to adjourn;** approved, 5-0. Chair Pinkham adjourned the meeting 7:03 p.m.

ATTEST:

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Gordon Vincent  
Clerk of the Zoning Board of Appeals