Zoning Board of Appeals
City Council Chambers
Woburn City Hall
Wednesday, March 16, 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. **Thomas Murphy, 13 Fisher Terrace, Petitioner and 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 13 Fisher Terrace, Woburn, MA**: Member Clancy recused himself. Mr. Murphy said he initially appeared before the board in November and he has not been able to get a vote because one of the board members has recused himself due to a potential conflict of interest. He said he built a 6-foot fence in July and he was unaware of the zoning regulations. He said he had the fence installed as a safety feature for his two sons who are 2-3 years old. He said his intent was to install a swing set, an inflatable pool, and a trampoline in the portion of the yard protected by the fence. He said his yard slopes. He said the fence is nine feet from the street. He said he plans to plant five arborvitaes 5.5 feet from the street. He said the plants will shield the vinyl fence from the street. He said no one will see the fence from the street. Chair Pinkham said in order to grant a variance, the board has to determine there is a hardship. Chair Pinkham read the statute as it pertains to hardships under MGL Section 40A. She said the City Council has enacted an ordinance that limits the height of fences to three feet within the 25-foot front yard setback to protect sight lines. She said she is not going to vote in favor of this request for a variance. She said she does not think the legal standard for a variance has been met. She said she thinks the fence absolutely impedes the sight lines. She said when she went to the site she could not see a car that was parked in Mr. Murphy's driveway. She said she is only one of five people on the board, however. Mr. Murphy said seven of his neighbors spoke in favor of the fence in November. He said he did not put up the fence maliciously. He said he lives in front of a cul-de-sac. He said his driveway is nine feet from the street. Chair Pinkham said there is a very high legal standard for a variance. She said none of the case law for the issuance of a variance supports privacy as a hardship. Mr. Murphy said one of the reasons he wants a 6-foot fence is because drivers speed down his street and turn around in the cul-de-sac. He said there are dogs and coyotes in his yard, and a dog could jump over a 3-foot fence. He said he put the swing set in the only place he could put it. He said putting up the fence was double the cost because it was difficult to hire a contractor during the pandemic. He said it took forever to put up the fence. Member Robertson asked if the chair is referring to the applicant's driveway when she mentioned the sight lines. Chair Pinkham responded she was referring to the sight lines from the driveway. She said she does not think the sight lines are limited to vehicles. She said pedestrians may also be affected. Member Robertson said he thinks the chair is technically correct but he is not sure if the ordinance applies the driveway and not the street. Member Ryan asked how far the fence is from the sidewalk. Mr. Murphy said there is a 3-foot strip of grass from the street to the sidewalk, then the sidewalk, then another 9-foot interval to the fence. He said nothing has

changed. He said he understands people may not like the sight of the fence, which is why he is offering to put in arborvitaes. He said he is willing to plant whatever the board wants. He said the fence is anchored in the ground by cement. He said the fence cost a lot of money and he cannot fathom taking up the fence. Chair Pinkham said she doesn't know if anyone on the board wants Mr. Murphy to take up the entire fence. Mr. Murphy said he can pull the fence back another 7.5 feet. He said that would require digging up five posts to remove two panels. He said the second post is 7.5 feet from the property line and six feet from the street. Member Ryan said that suggestion is along the lines of what he wanted to hear. He said that is what he thought Mr. Murphy was going to come back to the board with. He said if a kid is riding by on a bike, he or she wouldn't be able to see a car coming out of the driveway until it is too late. Mr. Murphy said he would be willing to move back the fence. Member Ryan said he has talked to people in the construction industry and they have told him fences are pretty modular. Member Ryan asked if the number of arborvitaes Mr. Murphy intends to plant is five. Mr. Murphy said he will put in as many arborvitaes as the board wants him to plant. Member Ryan said five arborvitaes won't do much along a 30-foot section of fence. Mr. Murphy said he is willing to do pretty much anything. He said he can move the fence back 7.5 feet and add a mulch bed along with an entire line of arborvitaes. He said the arborvitaes will grow to 15 feet in five years. He said he did not know the ordinance prevented fences higher than 3-feet within the 25-foot front yard setback. Member Ryan asked if the fence was installed by a fence company. Mr. Murphy said a friend installed the fence. Member Robertson asked who pulled the building permit for the fence. Mr. Murphy said the fence was built without a building permit. He said an anonymous letter was sent to the Building Commissioner after the fence was built. Member Robertson asked who installed the fence. Mr. Murphy said the fence was installed by a friend who does work like that on the side. He said he could not get a fence company to come out. Member Robertson asked if Mr. Murphy indicated he is prepared to move the fence back 7.5 feet and why that wasn't represented on a plan. Mr. Murphy said he was initially only going to install arborvitaes, which he said are showed on an amended plan. Member Ryan said the fence panels are usually eight feet wide. Mr. Murphy said the corner panels were cut to fit. Member Parrish said he was hoping the fence would be moved 14 feet back. He said he would be willing to support something like that. Mr. Murphy said if he moved the fence back nine feet, there is another six feet to the street for a total of 15 feet. Member Parrish asked how far the fence is from the property line. Member Ryan asked if the applicant can remove one fence panel so the distance is 11 feet. Mr. Murphy said he can do 11 feet, with arborvitaes. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Kimberley Callahan, 18 Fisher Terrace, said she also lives in the cul-de-sac, across from Mr. Murphy. She said people turn around in the cul-de-sac. She said trucks come down the street and turn around in front of her property. She said there are concerns due to the traffic circle. Chair Pinkham said she is not surprised there are traffic issues due to the proximity of Fisher Terrace to the highway. Member Robertson asked Ms. Callahan if she is in favor of or opposed to the board granting the variance. Ms. Callahan said she is in favor. Mr. Murphy said he will push the fence back 11 feet with arborvitaes. He said his driveway will be visible and at the same time the fence will provide safety for his two little kids. Member Ryan said one of the reasons the board is concerned about the fence is because of the impact on the visibility for the turnaround

traffic. Member Robertson asked if Fisher Terrace is a dead end. Mr. Murphy said Fisher Terrace has a double cul-de-sac. Member Robertson asked if there has been an increase in traffic. Mr. Murphy said there are people who come off the highway and get lost. Member Robertson asked if the construction of the new fire station has increased traffic. Mr. Murphy said he is not sure. Member Parrish said he will be happy to support a plan that shows the fence is 11 feet back from the property line with arborvitaes. Motion made by Member Parrish and seconded by Member Robertson to grant the variance with the condition that the fence will be 11 feet from the property line, with the addition of plantings. Roll call: Member Ryan – yea; Member Parrish – yea; Member Robertson – yea; Alternate Member Cavicchi – yea; Chair Pinkham – nay; approved, 4-1, with Chair Pinkham opposed.

2. **Thomas Murphy, 13 Fisher Terrace, Petitioner and 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 13 Fisher Terrace, Woburn, MA (continued from meeting of February 16, 2022):** Member Clancy recused himself. Motion made by Member Parrish and seconded by Member Robertson to grant the petition leave of withdrawal without prejudice; approved, 5-0.

3. **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 6 feet within the street setback at 18 Green Street, Woburn, MA (continued from meeting of February 16, 2022):** Representing the petitioner was Attorney Mark Salvati, 10 Cedar St., Suite 26, Woburn, MA. Attorney Salvati said he was asked to provide a diagram showing the line of sight. He said he submitted a letter written by and diagram drawn by Mark Sleger of Alan Engineering, 110 Winn St., Woburn, MA, clarifying the sight distances with the proposed fence in place. Attorney Salvati said he thinks the chair said something about getting clarification from the Building Dept. about whether even a 3-foot fence in the triangular portion of the sight distance dimensions. He said if his client was limited to three feet in height, the fence could only be 18 inches due to the elevation of the property. He said the letter from Alan Engineering indicates there is 128 feet of sight line on Green Street from the stop line on Highland Street. He said that is more than what the Planning Board requires. He said if a vehicle pulls all the way into the intersection, the sight line distance on Green Street increases to 250 feet. He said he does not think there is a safety issue. He said he submitted a revised plan to the board. Chair Pinkham asked if the study takes into consideration line of sight for pedestrians. Attorney Salvati said measurements were taken from the center of the intersecting street. Member Ryan asked how high the fence itself is. Attorney Salvati said the fence is approximately four feet high on top of a wall that varies from 18 inches high to two feet high. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Attorney Salvati said his client is seeking a variance for the height of a fence from 3 feet to 6.2 feet. He said the Building Commissioner includes the combined height of the wall and the fence. Chair Pinkham said the memo from Alan Engineering indicates the fence is set back one foot from the top of the 1-2 foot retaining wall. Member Robertson asked if that is an artificial hardship. Attorney Salvati said he does not think

the hardship is artificial. Member Robertson said the hardship is not the result of the grade. Member Parrish said he thinks if there was a 3-foot fence to the corner, that would be fine, but the proposed plan is better because the fence would be eliminated from the corner. Chair Pinkham asked what the date on the plan is. Attorney Salvati said the date of the plan is March 14, 2022. Member Clancy said a car would have to almost pull out into the street to see and removing the fence from the corner is an improvement. He said the corner of Highland and Green streets is bad. Motion made by Member Parrish and seconded by Member Clancy to grant the variance. Member Robertson said he is not going to vote in favor of the variance. Member Parrish said he is fine with the petition but he is willing to withdraw his motion at the petitioner's discretion. Attorney Salvati said he would prefer to withdraw the petition and come back with a new one. Motion made by Member Parrish and seconded by Member Clancy to withdraw the motion to approve the variance; all in favor, 5-0. Attorney Salvati said he is requesting leave to withdraw without prejudice. Motion made by Member Parrish and seconded by Member Ryan to grant leave to withdraw without prejudice; 5-0.

Motion made by Member Robertson and seconded by Member Parrish to take the next two items out of order from the posted agenda; approved, 5-0.

4. **Jason Duquet, 9 Eagle Road, 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 rear yard setback from 30 feet to 10.3 feet for an addition at 9 Eagle Road, Woburn, MA:** Representing the petitioner was Attorney James Juliano, 42 Pleasant St., Woburn, MA. Attorney Juliano said his client filed for a variance pro se, and he was subsequently hired as counsel. He said his client is requesting to change the form of relief to a special permit because the house is on a non-conforming lot. He said Eagle Road was laid out prior to 1970. He said Mr. Duquet's house was built in 1975. He said the home has non-conforming rear setback and frontage. He said the lot is approximately 14,000-square-feet. He said the frontage is 60.23 feet and the rear setback is 18 feet. He said his client wants to build a 23-foot by 23-foot 2-story addition. He said his client is adding about 1,000-square-feet. He said the current size of the home is about 1,600-square-feet. He said the proposed rear setback is 10.3 feet. He said behind the house there is a strip of land that is open space, and there is about 100 feet to the nearest house in the rear. He said the reduction of eight feet to the rear setback is insignificant to the only other person who would care. He said the lot conforms to the zoning ordinance in all other respects. He said the frontage is staying the same. He said the only exacerbation of the non-conformity is a reduction of the rear setback by eight feet. Chair Pinkham said the plans that were submitted do not appear to match the existing structure. She said she does not feel comfortable approving a special permit based on the plans that were submitted. She said it looks like the second-floor addition is four feet above the first floor. She said she does not think a building permit would be issued based on these plans. She said it does not make sense to make these the plans of record. Attorney Juliano said he will see if he can come up with a better set of plans. Member Clancy asked how the second floor is going to be accessed. Attorney Juliano said it looks like there are steps. He said he will arrange something more submittable. He said there are currently three bedrooms in the home. He said the addition will consist of one additional bedroom, an additional bathroom, and a living room. Member Parrish

asked what the zoning district is. Attorney Juliano said the zoning district is R-1 now, and it was R-2 in 1970. Member Ryan asked if this is a single-family home. Attorney Juliano said it is. Member Ryan asked if the applicant will stipulate the home shall remain single-family. Attorney Juliano said the applicant will make a stipulation to that effect. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Attorney Juliano requested a continuance so the applicant can supply the board with additional documentation. Motion made by Member Ryan and seconded by Member Clancy to continue the matter until the board's meeting on April 20, 2022; approved, 5-0.

5. **Brian and Bridget Myers, 22 Hamilton 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 22 Hamilton Road, Woburn, MA:** Ms. Myers said their lot is non-conforming. She said they moved there in 2009. She said this was supposed to be their starter house, but they like the area and they want to make the house more appropriate for their children. She said the style of the home is a simple Cape with technically three bedrooms but the downstairs bedroom is currently used as a playroom. She said their lot is triangular. She said they have a patio in the back. She said they plan to place the addition in the most appropriate location on the lot. She said the addition will consume a portion of the current driveway. She said they are looking to add a deck in the back. Member Clancy asked where the property line is in relation to the driveway. Ms. Myers said the property line is along the fence. Ms. Myers said they are adding another bedroom as well as a portico on the front door. She said the portico will extend four feet from the existing house. She said all houses on the street are roughly the same distance from the road. Chair Pinkham asked what the petitioners' plans are for the basement. Ms. Myers said the basement is unfinished and there have been some issues with water. She said they do not want to finish the basement at this time. Chair Pinkham asked if the existing access is via what is commonly referred to as a dog house. Ms. Myers said there is a walkout. Chair Pinkham said the board typically puts a condition into the decision that a home with an addition will remain a single-family. She said she would be more concerned if the basement was finished. 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 Robertson to grant the special permit based on the plan. Chair Pinkham asked if Member Parrish wants to impose the standard conditions for a special permit. Member Parrish said he does. Motion to grant the special permit with the standard conditions limiting the home to single-family status approved, 5-0.

Motion by Member Parrish and seconded by Member Robertson to return to the regular order of business; approved, 5-0.

6. **Jefferson Woburn Venture LLC, 1420 Spring Hill Road, STE. 420, McLean, VA 22102, relative to an application for Modification of Comprehensive Permit (pursuant to M.G.L. Chapter 40B, Sections 20-23) for purposes of a public hearing pertaining to the property located at 1042 Main Street, Woburn, MA (continued**

from meeting of February 16, 2022): Representing the petitioner were Attorney Paul Haverty, Blatman, Bobrowski, Haverty & Silverstein LLC, 9 Damonmill Sq., Suite 4A4, Concord, MA; Sandi Silk, Jefferson Woburn Venture LLC, 1420 Spring Hill Road, Ste. 420, McLean, VA; Carlton Quinn, Senior Project Manager, Allen & Major Associates, 100 Commerce Way, Woburn, MA; Tim Sullivan, Lead Designer, Mainline Custom Signage Systems, 1 High St., Antrim, N.H.; and Sean Sanger, Landscape Architect, Copley Wolff Design Group, 10 Post Office Square, Boston, MA. Attorney Haverty said plans were revised following a site visit on March 4, 2022. He said he has prepared a draft decision he has submitted to the clerk for distribution to the board. Mr. Quinn said the only major revision was relocating a fence to address a neighbor's concern. Chair Pinkham asked if the plan marked L-100 has an L-shaped marking that signifies an existing hedge. Mr. Sanger said that is correct. Member Ryan asked what the orange line in the plans denotes. Mr. Sanger said the orange line is the property line. Member Ryan said it was pointed out during the site visit that the neighbor to the north has some structures on the applicant's property. Mr. Quinn said there are sheds that encroach on the property line. Attorney Haverty said there have been discussions with the abutter about how to handle the encroachment but there has been no resolution thus far. Member Ryan said it looks like the 6-foot fence on the plan marked L-100 is quite a bit off the property line. Attorney Haverty said that is where the fence is proposed to be located. Chair Pinkham asked if there is a new retaining wall. Mr. Quinn answered affirmatively. Mr. Sanger said there is an existing fieldstone wall and the new wall is slightly in front of that. Mr. Quinn said there was always a wall proposed there, just in a different location. Chair Pinkham asked who built the wall. Mr. Quinn said the wall has not been built yet. Mr. Sanger said the only thing that's different about the landscaping is there will be additional juniper trees planted all the way up the property. He said the juniper trees will max out at about 20 feet tall, with a 4-foot diameter. He said two trees near the driveway were switched to evergreens. Member Clancy said he found the site visit to be very helpful. He said it helped him visualize what is happening. Member Robertson asked what the extent of the encroachment is by the neighbor to the north. Mr. Quinn said the neighbor to the north has a driveway and two sheds that encroach onto the applicant's property. Member Robertson asked how much of the applicant's property is being used by the neighbor. Ms. Silk said the area used by the neighbor is in excess of 3,000-square-feet. Member Robertson asked if that is represented on a plan. Mr. Quinn said there are boundaries shown on the plan. He said the neighbor's driveway is approximately 18 feet by 18 feet and there are two sheds. He said the applicant and the neighbor are trying to work out an agreement. Member Robertson asked how many property owners are affected. Mr. Quinn said there is one property owner affected, Mr. Patel. Member Robertson asked how long ago the encroachment was identified. Attorney Haverty said the encroachment has existed for 20 years. Member Robertson asked why the issue has not been resolved. Attorney Haverty said the applicant reached out to the abutter but did not get a response. He said whatever transpires between the applicant and the neighbor is outside of the board's concern. Member Robertson said he will probably not vote for this unless the issue between the applicant and the neighbor is resolved. Attorney Haverty said the draft decision he submitted to the board includes a couple of conditions on page 3, paragraph 11. Chair Pinkham said the site visit was helpful. She said the condition of the sidewalk is atrocious. She said she can't imagine the construction process hasn't had

a negative impact on the sidewalk. She said the thinks it is appropriate for the applicant to replace the sidewalk. Mr. Quinn said the applicant is widening the road and replacing the sidewalk. Attorney Haverty said those improvements were part of MassDOT's approval. Chair Pinkham said she thinks there ought to be a condition that requires the applicant to maintain the landscaping in perpetuity. She said it wouldn't look too nice if the plants die. She said she has some concerns about a 6-foot fence that is 14 feet back from the property line. She said she saw there is a new driveway at 1036 Main St. that is literally right beside the 6-foot fence. She said she can't imagine a more dangerous area to back out of. She said without the site visit she probably would not have noticed that. Mr. Quinn said there is no curb cut there. Chair Pinkham said it looks like a driveway to her. She said she recently saw a legal case that involved a motorcyclist sustaining injuries because of a fence that blocked sight lines. Member Robertson asked if the applicant has received permission for a curb cut. Mr. Quinn said that is under the jurisdiction of MassDOT. Member Robertson asked how wide the road is. Mr. Quinn said the road is 80 feet wide. Member Robertson asked if there are plans on file with MassDOT. Mr. Quinn said there is a plan to re-do the road with sidewalks and crosswalks, all of which has been approved by MassDOT. Chair Pinkham asked if there will be turning lanes. Mr. Quinn said the road will be widened but there will not be striped lanes. Chair Pinkham asked if someone in the city has a copy of the plans for the roadway. Mr. Quinn said the plans are on file with the Building Dept. Mr. Quinn said there are no lane dividers because those are not popular with the fire department. He said there are two 11-foot lanes on the right side of the road and a 16-foot lane on the left side of the road, but no lines nor arrows. Attorney Haverty said the applicant is providing extra space for the roadway. Member Robertson asked if any land takings were required. Attorney Haverty said there are no land takings required. Member Robertson asked how much length of road is being improved. Mr. Quinn said the entire length of the applicant's frontage is being widened. He said the roadway plan was approved by MassDOT in 2013. He said construction should be completed this summer before school opens in the fall. Member Robertson asked if a local maintenance plan would be typically required. Attorney Haverty said that is something a local permitting authority would include as a condition. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Kaushik Patel, 1046 Main St., said he and his family have lived at their current address since 2000. He said at that time the applicant's property was all open land. He said he has been an extremely good neighbor. He said he grew up in Woburn and was taught to help his neighbors. He said he has been very accommodating. He said he has agreed to remove the sheds on the applicant's property. He said he was told by the applicant that if he undertakes legal proceedings, it would cost him $10,000. He said two days ago he got an email from a representative of the applicant advising him the cost would be $20,000, and that the land is worth $100,000. He said his request is for the board to delay a decision so he can explore his options. He said the neighbors at 1036 Main St. have settled on some kind of dollar amount. He said those neighbors are constantly complaining and he is not. He said he feels like he has been a good neighbor, but that hasn't made a difference. He said he hopes the board will delay a decision so he can consider adverse possession. He said he feels like if he does not pay, the applicant will rip up his driveway. He said one of the sheds has been there for 12 years or so. He said no one said anything to him about encroachment until about four months ago. He said his concern is there is going to be

retribution. He said he has been made to feel that if he does not come up with money quickly he will lose the land. Chair Pinkham said Mr. Patel's issue is beyond the board's jurisdiction. She said if the applicant and Mr. Patel cannot come to an agreement, he has the right to file a lawsuit and seek a declaration that he has a claim for adverse possession. She said this is not something the board can weigh in on. She said the board's objective is to determine whether the proposed changes are rise to the level of substantial modification. She said a private property dispute is not part of the board's purview. She said the board does have jurisdiction over the sight lines from the driveway and the board does want to make sure Mr. Patel has adequate sight lines. She asked if Mr. Patel has any concerns about the 6-foot fence. Mr. Patel said he is not opposed to the fence, but he is asking for the board to delay a decision. He said he understands if that cannot be done. Member Robertson asked if he was advised he is using 3,000-4,000-square-feet of the applicant's property. Mr. Patel said he has been advised of that. Member Robertson asked Mr. Patel who told him the land is worth $100,000. Mr. Patel said Margaret Murphy, the applicant's community liaison, told him the land is worth $100,000. He said Ms. Murphy indicated the applicant is doing him a favor by offering the land for $20,000. Member Robertson asked Ms. Murphy if she told Mr. Patel the land is worth $100,000. Ms. Murphy said she did not tell Mr. Patel that. Member Robertson said he does not understand why this issue has not been resolved. Attorney Haverty said the applicant has known all along that this land is theirs. He said there have been previous efforts to contact Mr. Patel going back 4-5 years. He said a letter was sent to Mr. Patel and there was no response. He said he does not think this matter is what is in front of the board. Member Robertson said he is going to recommend that the board seek a legal opinion about whether this is a substantial change. Chair Pinkham said if Mr. Patel owns that property, the applicant has no right to install the fence. Attorney Haverty reiterated the property dispute is outside of the board's purview. Chair Pinkham asked if the applicant has to establish it owns the property. Attorney Haverty said the applicant has to establish site control. He said the applicant has indeed established that. Chair Pinkham asked if Mr. Patel has reached out to the Housing Appeals Committee about the property dispute. Mr. Patel said he has not contacted the HAC. He said his intent was to work this out. Ms. Silk said the applicant's intent was to do the same thing it is doing on the other side of the property. She said that's why the applicant adjusted the fence. She said the applicant is happy to move the fence back. She said this property rights dispute is beyond the board's purview. Member Robertson said the applicant and Mr. Patel seem to be farther apart on an agreement than they were during the site visit. Chair Pinkham said if the board does not address the property dispute and Mr. Patel goes to court and wins, the applicant would have to come back to the board. Attorney Haverty said the applicant is aware of this. Chair Pinkham said this would be expensive. Attorney Haverty said the applicant hopes to continue negotiations with Mr. Patel. Member Robertson asked if there is any optimism that the property dispute will be resolved. Attorney Haverty said he likes to think so. Member Ryan asked about snow removal. He said he thinks the board has referenced snow removal with conditions as part of previous Ch. 40B projects. He asked if the applicant represented there is enough space along the Main Street section of the property for snow storage. Chair Pinkham said that was Mr. Quinn's answer about snow storage. Member Ryan said that road is a nightmare. He said during the winter, there could be a safety risk. Chair Pinkham said she does not have a sense of how much snow

could be stored in the snow storage area. She said she is trying to think of what the board did about snow storage for a project on Mill Street. She said in other applications there has been a written plan for snow storage. She said she has not thought about how to do that with this project. She asked how much snow is too much and if there is a point that snow will have to be removed. Mr. Quinn said there is no written snow storage plan. He said if there are any issues, the applicant will take the snow off-site. He said the snow must be kept to less then 3.5 feet in the sight triangle. Chair Pinkham asked if there are guardrails on the section of the site driveway going up the hill. Mr. Quinn answered affirmatively. Chair Pinkham asked in which direction the snow will be plowed. Mr. Quinn said there is sufficient snow storage area at the bottom of the hill, but they will try to store snow in an open area. Chair Pinkham asked if the board can talk about the fence along 1036 Main St. She said she is concerned about the 14-foot setback. She said there was some discussion about tapering the fence. She said she may be the only member of the board that is concerned about tapering fence, however. Member Ryan said the site visit made him more at ease about the fence on that side of the property, but he is not opposed to tapering it. Chair Pinkham said her concern is there is a driveway there and she does not think it's safe to have a 6-foot fence next to the driveway of a 168-unit development. Member Robertson asked if the fence can start at 3 feet and then go up. Attorney Haverty said the height of the fence was chosen to protect the neighbor. He said the applicant is not opposed to lowering it. Member Ryan said there is no objection to tapering the fence. Attorney Haverty said the applicant's preference would be to provide the neighbors with that additional benefit. He said the applicant understands there are safety concerns. Mr. Sanger said the applicant is trying to do the fence as a module and work its way up the hill. Attorney Haverty said the fence could be brought in 18 feet. Member Robertson said he is still concern with the issue involving Mr. Patel. He said it is important to him. He said he thinks this is under the board's purview and he does not understand why it has not been resolved. He said he cannot imagine this is a $100,000 or even a $20,000 issue. Chair Pinkham asked if anyone on the board has any more comments about the fence. Member Ryan said he thinks lowering the fence to 3-4 feet is warranted for a certain distance. Member Parrish said he did not see any problem with the fence but he will go along with whatever the board wants. Member Clancy said the concern with tapering the fence is the light from the car headlights going into the house. Attorney Haverty said there is not fence until the 14-foot mark. Member Clancy asked if each fence panel is eight feet. Mr. Quinn said each panel is six feet and said the fence could start at 18 feet. Chair Pinkham said she is fine with that. She said the 6-foot fence could start at the 18-foot mark. She said she still does not think that would rise to the level of a substantial change. Member Parrish said he tends to agree with Member Robertson about asking for a legal opinion about what is going on with the real estate dispute. He said he also does not think any of the proposed changes are substantial. Member Robertson said the proposed decision is 3-4 pages, which he said tends to indicate there is some substantiality. Chair Pinkham said at least two members of the board have asked for a legal opinion from the City Solicitor. Attorney Haverty said in order for the board to ask for a legal opinion, the applicant would have to grant another extension, which it is not inclined to do. He said three affirmative votes are needed from the board to determine whether the proposed changes are insubstantial. Chair Pinkham said the applicant could grant an extension as a matter of courtesy, since two members of

the board have asked for input from the City Solicitor. Attorney Haverty asked for a recess so he can confer with his client. Motion made by Member Parrish and seconded by Member Ryan to recess; approved, 5-0. Chair Pinkham recessed the meeting at 8:35 p.m. Motion made by Member Ryan and seconded by Member Parrish to return to the regular order of business; approved, 5-0. Chair Pinkham reconvened the meeting at 8:53 p.m. Chair Pinkham said before the discussion resumes she would like to recognize Mr. Cavicchi as the board's new alternate member. Attorney Haverty said there was a meeting with Mr. Patel and the applicant has reached an agreement in principle, which will be subject to a written agreement. Mr. Patel said he came to an agreement for a certain amount of money to go ahead. He said he will work with the applicant the best he can. Chair Pinkham said whatever agreement that has been made must be recorded in writing. Mr. Patel said he told the applicant that has to be done. Chair Pinkham said she thinks that addresses the concerns of the two board members who indicated they wanted a legal opinion on the real estate dispute. Member Parrish said his concerns are satisfied. Member Robertson said the scope of the request for legal opinion was broader and his thought was the City Solicitor would review the proposed decision. Chair Pinkham said that is not her understanding. She said her understanding was that the City Solicitor would be asked to opine about a property dispute. Member Robertson said he would like to know if the proposal constitutes a substantial change as a matter of law. He said this petition is very complicated and asked what the harm is in getting a legal opinion. Chair Pinkham said she spoke to the City Solicitor and she indicated she does not think a public hearing is required. Chair Pinkham said she does not want to dissuade Member Robertson from seeking guidance, however. Member Robertson said if the other board members feel comfortable with taking a vote, he will not take it personally. Attorney Haverty said it is important to his client to get this matter resolved tonight. He said his client will object to any request for an extension. He said every time the applicant and his team attend a ZBA meeting, there is a substantial cost. Chair Pinkham asked if there is any further discussion about whether the proposed changes are substantial. Member Ryan and Member Clancy said they do not require further discussion. Motion made by Member Parrish and Member Clancy to approve the proposed changes as insubstantial; Roll call: Member Ryan - yea; Member Clancy – yea; Member Parrish – yea; Member Robertson – nay; Chair Pinkham – yea; approved; 4-1. Chair Pinkham said she appreciates the applicant submitting a draft decision to the board. She said she will review the decision and send it to the City Solicitor.

7. **Approval of minutes from meeting of February 16, 2021:** Chair Pinkham said she has made a handful of edits she will give to the clerk. Member Ryan said he has also made a couple of edits. Motion made by Member Robertson and seconded by Member Ryan to approve the minutes as amended; all in favor, 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; all in favor, 5-0. Chair Pinkham adjourned the meeting at 9:09 p.m.

ATTEST: _____

Gordon Vincent
Clerk of the Zoning Board of Appeals