

**Zoning Board of Appeals
City Council Chambers
Woburn City Hall
Wednesday, July 20, 2022 – 6:00 p.m.**

Present: Chair Margaret M. Pinkham, Member John Ryan, Member Daniel Parrish (participating remotely), Member Edward Robertson, and Member Richard Clancy. Absent: 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. Chair Pinkham said the board conducted a site visit on July 11. Said she the board received revised plans from the petitioner indicating the proposed addition is 4 feet from the property line. She said the required setback distance is 12 feet. She said she believes the applicant needs a variance because a new non-conformity is also being created. Member Parrish said he agrees the petition should be for a variance. Member Robertson asked what the applicant is citing for a hardship. Chair Pinkham said does not believe the board has discussed a hardship. She said most of the discussion has been about encroachment on the paper street. Member Robertson asked if the petitioner knows the difference between a variance and a special permit. Ms. do Vale said she does not. Member Robertson said the difference is significant. Chair Pinkham said if a new non-conformity is created, the board needs to use the variance standard, which she said is very high. She said the board has to make a finding that there is something related to the soil conditions, topography or shape of the lot that creates a hardship. She asked Ms. do Vale what she can cite for a hardship. Ms. do Vale said people usually throw trash onto the paper street. She said they are the ones who keep it clean. Chair Pinkham said the board needs to find a hardship. She asked if any members of the board who attended the site visit have any input. Member Clancy said the shape of the lot and the positioning of the structure may constitute a hardship. He said the property is shaped like a rhombus and the house is straight. Chair Pinkham said she was surprised at the shape of the lot, as well. She said looking at it in person, it appears to be a parallelogram. Member Clancy agreed the shape of the lot looks different on paper. He said the angle of the lot creates a potential hardship compared to the way the house is juxtaposed onto the lot. Member Robertson asked if the addition has already been built. Ms. do Vale said it has not. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Member Robertson asked what the required side setback is. Chair Pinkham said the required side setback is 12 feet. Member Robertson asked what the setback is now. Chair Pinkham said the setback is 18 feet. Member Parrish said he tends to agree with Member Clancy's statement about the odd juxtaposition of the house on the lot. Member Robertson asked if the patio is going to be removed. Chair Pinkham said she does not believe the patio is going to be removed. She said the board's jurisdiction is confined to within the lot. She said the board does not have jurisdiction over Clifton Street. Member Robertson asked if

there is an encroachment. Chair Pinkham said she does not know if the appellant can claim adverse possession. She said she has noticed something that the board has not yet discussed. She said the existing house does not comply with the front setback, which she said is 24.83 feet from the front lot line. She said the setback does not comply with the 25-foot front yard setback requirement. She said the applicant is exacerbating the non-conformity, which she said would require a special permit. Member Ryan asked about the patio surrounding the pool. He asked what the distance is from the left rear corner to the lot line and whether that is subject to the setback requirements. Chair Pinkham said she does not think so. Member Ryan said it looks like the distance is about four feet. Chair Pinkham said the patio is a flat surface that does not get counted. She said this petition is a little more complex than the average petition. Motion made by Member Clancy to grant a special permit and a variance. Chair Pinkham asked what the hardship is. Member Clancy said the shape of the lot and the juxtaposition of the house create a hardship. Member Ryan said he agrees the Member Clancy's citation of a hardship, especially after being there and seeing how odd the house is positioned on the lot. Motion seconded by Member Parrish; Roll call: Member Clancy – aye; Member Parrish – aye; Member Robertson - aye; Member Ryan - aye; Chair Pinkham - nay; approved, 4-1.

2. **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 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. Motion made by Member Clancy and seconded by Member Ryan to grant the petitioner's request for leave of withdrawal without prejudice; Roll call: Member Clancy – aye; Member Parrish - aye; Member Ryan – aye; Chair pro tem Robertson – aye; Chair Pinkham – abstained; approved, 4-0, with an abstention from Chair Pinkham.
3. **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:** Representing the petitioner were Zoey Shvorin, 46 Fletcher Road, and Paul Mochi, Vision Design & Construction, 14 Western Ave., Wakefield, MA. Chairman Pinkham said the board has received an updated plan. She said the petitioner is seeking to build an addition to an existing 2-family home in an R-1 zoning district. She said she believes the petitioner has applied for a special permit. She said the applicant has supplied the board with building plans. She said she has a question about the plot plan. She said the new plot makes the addition look like a deck. Mr. Mochi said the dwelling is an existing 2-family, with a set of stairs in front to a common entry way. He said Ms. Shvorin wants to demolish a portion of the first and second floors and build an addition. He said the proposed deck is at the rear of the front unit. Chair Pinkham said the revised plans seem to show the deck overlapping an area that is labeled as being the existing 1-story area. Member Parrish asked if the deck has a roof that overhangs. Chair Pinkham said the overhang is shown on the second floor. She said she is looking at the intersection of the first and second floors. She said she is looking at sheet A104 of the building plans, which she said shows a single-story. She asked if that is going to stay a single story. Ms.

Shvorin said they are going to stay next to each other. Chair Pinkham asked if there is any way to gain access. Ms. Shvorin said there is no access space. Mr. Mochi referred to the rear deck on page A102 of the building plans. He said the deck is 6-feet by 13 feet, 11 inches, with a jog of 8-10 inches in the left corner. He said that is not shown on the surveyor's plan. He said it should be shown. Chair Pinkham said the board makes rulings on the basis of plans that are submitted by the petitioner. She said if the plans and the actual construction differ, the petitioner will have to come back to the board. She said it may not matter. Member Robertson asked how long the home has been used as a 2-family. Mr. Mochi said records indicate the home was constructed in 1948 and has been used as a 2-family since 1985. Member Robertson asked if it is a non-conforming or unlawful 2-family. He asked if there is a 10-year statute of limitations on the potential unlawful use. Ms. Shvorin said the home was built in 1948. Member Robertson asked if Ms. Shvorin has a copy of the building permit. Ms. Shvorin said she does not. Member Robertson said if there is a 10-year statute of limitations, it would make an unlawful use a lawful use. Chair Pinkham read the statute as it pertains to unlawful and lawful uses. Member Robertson said that is a very complicated section. He said the board cannot make a judgment because there is no building permit. Mr. Mochi said he did the structural drawings. Member Robertson asked if Mr. Mochi did any research. Mr. Mochi said the Building Inspector did not have any information about the original building permit. Chair Pinkham asked if the building permit indicates there is a 2-family home in an R-1 district. Ms. Shvorin said she thought she had to establish the 2-family use existed prior to 1985. Chair Pinkham said the city has an ordinance that indicates anything that was in violation in 1985 is legal now, but she does not know if that references the structure or the use. Member Robertson asked if there is any documentation about the use being lawful or unlawful. He asked if the petitioner would require relief if the original building permit indicated the use was a 2-family. Ms. Shvorin said Building Commissioner Quinn wanted her to come to the board because the use is a non-conforming 2-family. Chair Pinkham said that makes sense. Member Robertson asked what the non-conformity is. Ms. Shvorin said the non-conformity is the house is a 2-family in an R-1 zone. Chair Pinkham said the proposed addition would comply with the zoning requirements if the home were a single-family, but it is a 2-family. She said the dimensional requirements are different under Section 6.1 for an R-1 district. She said there are three different sets of dimensions depending upon the use. She said Ms. Shvorin's home may qualify as an "other permitted use" in an R-1 district, which requires a 25-foot side yard setback. She said the proposed addition would encroach on the side setback and create a new non-conformity, but it complies with all other setbacks. She said the addition would create a new non-conformity. She said the board would have to grant a variance. Member Ryan asked if the board can apply R-1 zoning requirements even though it's a 2-family. He said the applicant is seeking a special permit. He said he assumes Building Commissioner Quinn determined that was the appropriate relief. He said he is wondering if the R-2 guidelines were used and the setback would be 20 feet. Member Ryan asked if the front structure was originally by itself and the rear structure was added later. Ms. Shvorin said the back was built first and the front was added later. Member Ryan said a 2-family conversion from a single-family back in the day would make the 20-foot setback appropriate. Member Robertson asked if Fletcher Road is off Forest Park Road. Ms. Shvorin said Fletcher Road is off Alfred Street. Chair Pinkham

asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Member Robertson asked how this use is legal. Ms. Shvorin said when she bought the house, there was research done to see if it is a legal 2-family. She said she would have found out when she bought it or re-financed it. She said she thinks it is listed everywhere as a 2-family. Member Robertson said if the petitioner had a building permit from 1948, he could get around the fact the house is in an R-1 zoning district. Ms. Shvorin said the house is listed as a 2-family on MLS. Member Robertson asked if a lawyer did a title search when Ms. Shvorin bought the house. Ms. Shvorin said the 2-family status was never an issue. Chair Pinkham said the petitioner needs to provide proof the non-conforming use was legally established. She said she thinks this issue was previously addressed with another petition in 2013. She said she has a vague memory of discussing it with the City Solicitor, and that the ordinance may violate state law, but she does not have a clear memory. Member Clancy asked if it would be worth seeking an opinion from the City Solicitor. Chair Pinkham said she thinks that would be helpful. She said it would be helpful if the applicant could find the original building permit. Member Parrish agreed the board may benefit from a legal opinion. Member Robertson said it may be easier to get the original building permit. He said the applicant may have done a title search when she bought the property. He said that would be an easier solution. Member Ryan said if the board is seeking a legal opinion, it may want some clarification about whether the board is going to use the specifications for a 2-family conversion of a single-family dwelling. Chair Pinkham said the request for a legal opinion is 2-fold: Whether the board will apply R-1 setbacks or R-2 setbacks, and whether the use is legal or legally non-conforming. Mr. Mochi said the applicant will try to locate a building permit that indicates the 2-family use is legally non-conforming. Chair Pinkham said if the applicant can find documentation that it is a 2-family structure, then that would make it a legal non-conforming use in an R-1 zone. She said she does not know if the petitioner would need relief. She said the other issue is whether the board applies R-1 or R-2 dimensions on a 2-family dwelling. Ms. Shvorin said she is pretty sure the house was not built as a 2-family. Chair Pinkham said if the standards are for the R-1 district, then the concern is going to be whether the applicant needs a variance. She said the board is going to ask the City Solicitor for guidance. Member Robertson said there is a question about whether the dwelling is being used lawfully. Chair Pinkham said she does not think the board needs to do that for a variance. Member Robertson said if the use is unlawful, they can't use it. Chair Pinkham said if the use is unlawful, she does not think it could have gotten this far. Chair Pinkham said there are two areas of inquiry that will be submitted to the City Solicitor. Motion made by Member Ryan and seconded by Member Clancy to request from the City Solicitor regarding: 1.) Is the current use as a two family in the R-1 zone legal or legally non-conforming? 2.) Because it appears this structure was a single family that later became a 2-family, should the Board apply the R-2 district requirements for conversion from single to two family?; Roll call: Member Clancy – aye; Member Parrish - aye; Member Ryan – aye; Member Robertson – aye; Chair Pinkham – aye; approved, 5-0. Member Parrish asked if the applicant will need a variance for the front setback. Chair Pinkham said she spoke to Building Commissioner Quinn and because that section is not enclosed it does not count toward the distance that encroaches on the setback. She said she thinks it falls within the exemption. Motion made by Member Clancy and seconded by Member Ryan to continue the hearing until the board's meeting

on Wednesday, August 17, 2022; Roll call: Member Clancy – aye; Member Parrish - aye; Member Ryan – aye; Member Robertson – aye; Chair Pinkham – aye; approved, 5-0.

- 4. David Mikel, Site Enhancement Services, 6001 Nimitz Parkway, South Bend, IN, 46628, Petitioner, and Madison Woburn Holdings LLC, 667 Boylston St. Boston, MA 02116, Landowner, seeking Variances from Section 13.10.1.2 and Section 13.10.2.2 of the 1985 Woburn Zoning Ordinances, as amended, to allow secondary wall signage at Olive Garden, 369 Washington St., Woburn, MA:** Chair Pinkham said the board has received a request for a continuance from the petitioner. Motion made by Member Ryan and seconded by Member Parrish to continue the hearing until the board’s meeting on August 17, 2022. Roll call: Member Clancy – aye; Member Parrish – aye; Member Robertson - aye; Member Ryan - aye; Chair Pinkham - aye; approved, 5-0.
- 5. Approval of minutes from meeting of June 15, 2022:** Chair Pinkham said she made a series of edits she will give to the clerk. Motion made by Member Robertson and seconded by Member Parrish to approve the minutes as amended by the chair; Roll call: Member Clancy – aye; Member Parrish – aye; Member Robertson - aye; Member Ryan - aye; Chair Pinkham – aye; approved, 5-0.
- 6. Any other matter that may be legally before the Board:** None
- 7. Motion made by Member Parrish and seconded by Member Ryan to adjourn -** Roll call: Member Clancy – aye; Member Parrish – aye; Member Robertson - aye; Member Ryan - aye; Chair Pinkham - nay; approved, 5-0. Chair Pinkham adjourned the meeting at 7:12 p.m.

ATTEST:

Gordon Vincent
Clerk of the Zoning Board of Appeals