

**Zoning Board of Appeals  
City Council Chambers  
Woburn City Hall  
Wednesday, August 17, 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:** Representing the petitioner was Attorney Mark Salvati, 57 Arlington Road, Woburn, MA. Attorney Salvati said he has just jumped into the fray with this petition. He asked if the board has reviewed the letter from the City Solicitor. He said he believes the question that is before the board is whether the dwelling is a legal non-conforming two-family structure. He said he would like to submit additional documentation to the board that indicates the home has been used as a two-family since at least 2007. Chair Pinkham said the board talked about whether a new non-conformity would require a variance. Attorney Salvati said a two-family would be “any other permitted use” that requires a 25-foot side setback. He said he wants to know if the board accepts the two-family status and issues a variance for the side setback, and the rest of the addition complies with the zoning code, would there be a qualification as “any other permitted use.” He said there is a new plot plan and a new set of drawing that show a side setback of 22.3 feet. Member Parrish said his inquiry with the City Solicitor was to determine if the board should be using the dimensions for any other permitted use or the R-1 dimensions. He said he just wanted clarification. Chair Pinkham asked how the Master Deed that was submitted is relevant. Attorney Salvati said the Master Deed is just another piece of evidence. He said if you add up all the evidence, there is enough to establish a two-family use. Chair Pinkham said she read the City Solicitor’s opinion as this is not a legal two-family. She said there have been a lot of strange things with this property over the years. She said someone represented the property is a R-2 zone when it is not. She said that does not bind the city to the two-family use. She said if someone is actively misleading a city official, that does not bind the city. She said the petitioner has the burden of proof that this was legally built, and she has not seen anything that says that. She said everything she’s seen that indicates there is a two-family use is after 2007. She said her view is the board does not have jurisdiction to issue a special permit if the house is not a legal two-family. Attorney Salvati said his client can ask for a variance. He said if the board does not determine the validity of the two-family use, then the applicant needs 12-foot setbacks. Member Robertson asked Attorney Salvati if he has read the last paragraph of the City Solicitor’s memorandum. Member Robertson asked if Attorney Salvati has spoken to the Building Commissioner. Attorney Salvati said he called the Building Commissioner this morning. He said the Building Commissioner has not yet read the City Solicitor’s memo. He said at the very least he is going to ask for a continuance so the Building Commissioner can review the City Solicitor’s memo. Member Robertson said the Building Commissioner’s input would seem to be kind of important. Chairman Pinkham said she does not see any documentation prior to 1985 that

establishes the dwelling as a two-family. She said she spoke to the Building Commissioner when the plot plan and the building plans didn't match. She said she believes the Building Commissioner did think the house is a two-family before the City Solicitor issued her opinion. Member Robertson asked if there is anything in writing to that effect. Chair Pinkham said she did not ask the Building Commissioner for anything in writing. Member Robertson asked the petitioner to describe the proposed alterations. Attorney Salvati said the petitioner is proposing an addition of approximately 1,000-square-feet and a new front porch. Member Robertson asked what the dimensional variations are. He asked if the front setback is compliant. Attorney Salvati said the current house complies with all the required setbacks, even if it is considered a two-family. He said there is a new encroachment of 22 feet to the front yard setback, for which the petitioner is seeking a variance. Member Robertson asked if the petition is seeking a variance for a reduction by three feet to the front yard setback. Attorney Salvati said that is correct. Member Parrish asked if there is a statute of limitations involved. He said there is documentation from 2007 indicating the dwelling is a two-family. He said if there has been no enforcement action since then, wouldn't the structure be conforming anyway. Attorney Salvati said he does not believe there is any doubt. He said the question is when that kicked in. He said the City Solicitor said she needs more information. He said if it is not a legal two-family, then the petitioner would not have to be in front of the board. Member Ryan said that after he reads the City Solicitor's memo, his opinion is it seems there is plenty of evidence to indicate the house is a two-family. He said there has been more than a reasonable effort to locate the original building permit, and apparently it doesn't exist. He said he feels like he has to decide if this is a legal two-family, and he concluded it is. 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 he thinks Member Robertson is inclined to wait for the Building Commissioner to weigh in. Member Robertson asked if Member Ryan has concluded the use is legally pre-existing and non-conforming. Member Ryan said he believes the structure is legally non-conforming. He said he has a really hard time distinguishing between a legal non-conforming structure and a legal non-conforming use. He said he considers it to be legally non-conforming. He said it is a legal two-family. Member Robertson said the setback issue has arisen because of the proposed addition, about which the board is engaged in discussion. He asked Attorney Salvati if the answer about the legal non-conforming status will determine whether the petitioner needs a special permit or a variance. Attorney Salvati said his interpretation is any alteration to a two-family home in an R-1 zone requires a special permit. Member Robertson said he does not necessarily disagree with Attorney Salvati. Attorney Salvati said a variance will also be required because there will be a new non-conforming setback. Member Robertson asked if the use is legal now. Attorney Salvati said he thinks it is, but the City Solicitor may disagree. Member Parrish asked if the City Solicitor mentioned anything about the "any other permitted use" aspect of the petition. Attorney Salvati said the City Solicitor agreed if it is found to be a two-family use, then the encroachment requires a variance. Member Parrish asked if the side setback requirement is 12 feet. Attorney Salvati said the 12-foot setback requirement is for a single-family. Chair Pinkham asked R-1 dimensions are appropriate. Attorney Salvati said R-1 dimensions aren't appropriate for an R-2 zone. Member Clancy said he agreed with Member Ryan. He said he would be in support of

granting whatever relief is necessary. He said there is also a concept of justice. He said this property has been bought and sold as a two-family. He said it seems the petitioner is proposing to improve the house that is there. Attorney Salvati said all the other houses can have 12-foot setbacks, and his client's house is going to be 10 feet greater than that. Chair Pinkham said an alternative is to put in a 12-foot addition instead of a 15-foot addition, and the issue of a variance would disappear. Attorney Salvati said a special permit would still be required. Member Parrish said he agrees with members Clancy and Ryan. Member Ryan said the last page of the City Solicitor's opinion mentions how the current petition would only need a variance. Chair Pinkham said the opinion also mentions that the Building Commissioner would have to agree with the City Solicitor's assessment. Member Ryan said he assumes he would. Motion made by Member Robertson and seconded by Member Parrish to allow the Building Commissioner an opportunity to review the petition; approved, 5-0. Member Robertson said he would be interested in the Building Commissioner's view on it. Attorney Salvati asked Member Robertson if he is in a position to vote on this petition tonight. Member Robertson said he would like to hear from the Building Commissioner. Attorney Salvati asked for a continuance until the board's meeting in September. Motion made by Member Parrish and seconded by Member Clancy to continue the public hearing until the board's meeting on Sept. 14; approved, 5-0. Member Robertson said he would like to know if the Building Commissioner disagrees with the City Solicitor, and if he can detail in writing why he disagrees.

2. **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 asked if the board has received a request from the petitioner for leave of withdrawal without prejudice. Clerk answered affirmatively. Chair Pinkham asked the clerk to read the letter. Clerk read as follows: "Margaret Pinkham, Esquire, Chairperson, Woburn Board of Appeals, 10 Common St., Woburn, MA. 01801 Re: Olive Garden – 369 Washington St. Dear Chairperson Pinkham and Members of the Board: Request is made for leave to withdraw, without prejudice, the petition of David Mikel seeking variances from section 13.10.1.2 & section 13.10.2.2 of the Woburn Zoning Ordinance. Thank you, David Mikel, Zoning Specialist, Site Enhancement Services, 6001 Nimitz Parkway, South Bend, Indiana." Motion made by Member Ryan and seconded by Member Parrish to grant leave of withdrawal without prejudice; approved, 5-0.
3. **Jared Fallon and Kristen Fallon, 214 School St., Petitioners and Landowners, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, for a reduction in a side yard setback from 12 feet to 11.4 feet to construct an addition at 214 School St., Woburn, MA:** Mr. Fallon said he and his wife have applied for a variance for a reduction in a side yard setback of approximately 8 inches, for an addition. Chair Pinkham asked what hardship the applicants are citing. Mr. Fallon said the shape of the lot creates a hardship. He said the plot plan indicates the side lot lines run diagonally. Chair Pinkham asked if the applicants considered putting the addition on the other side of the property, which appears to have two times as much

room. Mr. Fallon replied putting the addition on the other side of the house would require them to take down the garage and move the driveway. Member Parrish asked what the vertical dimensions of the addition are. Mr. Fallon said the addition will be no higher than the existing property. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Lou DiMambro, 210 School St., Ward 6 Councilor, said he is a direct abutter. He said he is in favor of the board granting the variance. He said the proposed addition will be a benefit to the neighborhood and the growing Fallon family. Member Ryan said this petition is similar to the petition the board approved last month at 159 Mishawum Road, in that the shape of the lot is odd and the property lines go at an angle. He said if the side lot lines were straight, the applicant would meet the setback requirements. Motion made by Member Parrish and seconded by Member Ryan to grant the variance; approved, 4-1, with Chair Pinkham opposed.

- 4. Snell Construction, 3H Breed Avenue, Woburn, MA 01801, Petitioner, Kathleen Burke, 49 Marlboro Road, Woburn, MA, 01801, Landowner, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to raze and replace a single-family home at 49 Marlboro Road, Woburn, MA:** Representing the applicant was Attorney Mark Salvati, 57 Arlington Road, Woburn, MA. Attorney Salvati said his client wants to raze the existing single-family home and construct a new single-family home. He said the new house will have an approximately 1,000-square-foot footprint with a total area of about 2,000-square-feet, including the garage. He said the house will meet all the setback requirements. He said the existing home was built in 1953 and the non-conformities are frontage and lot size. Chair Pinkham asked if the new dwelling will have a basement. Attorney Salvati said it will. Chair Pinkham said she does not have a basement plan. Attorney Salvati said he has a foundation plan. Chair Pinkham asked where the bulkhead is denoted on the plans. Attorney Salvati said the bulkhead is shown on page 2 of the foundation plans. He said he would like to submit page 2 of the building plans. Chair Pinkham said she thinks the bulkhead should be shown on the plot plan. Attorney Salvati said he thinks the building plans should be sufficient. Chair Pinkham said the Building Commissioner will notice if there are any discrepancies in the plans. 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; approved, 5-0.
- 5. DG Broker LLC, 8 Indiana Avenue, Woburn, MA 01801, Petitioner and Landowner, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to raze and replace a single-family home at 29 Marlboro Road, Woburn, MA:** Representing the applicant was Attorney Mark Salvati, 57 Arlington Road, Woburn, MA, and Daniel Guilli, 8 Indiana Avenue, Woburn, MA. Attorney Salvati said the petition is fairly straightforward. He said the house at 29 Marlboro Road will be the same as the house the same developer built at 76 Marlboro Road. He said there are two non-conformities to the current house, which he said was built in 1952, prior to the current zoning regulations. He said his client is proposing to raze the existing house and replace it with a new single-family home. He said the new structure will meet all the required setbacks. Chair Pinkham said the plot plan shows a bulkhead but the building plans show a covered entry. She asked which version is correct.

Mr. Guilli said there will be a covered entry. Attorney Salvati said the foundation plan shows a covered stairway. Chair Pinkham said the dimensions don't exactly match. She said the setback for the covered entry appears to be inaccurate because it is more than 30 feet. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Thomas Pratt, 27 Marlboro Road, said he wants to get an idea of how big the house is going to be in comparison to 76 Marlboro Road. Attorney Salvati said the two houses will be the same size. Mr. Pratt asked if any variances are required. Chair Pinkham said the proposed structure will meet all the required setbacks. Ronald Maggio, 12 Kennedy Road, said he lives directly behind 29 Marlboro Road and asked if the back yard will be filled in. Mr. Guilli said the topography will be the same and there should be no additional fill required. Motion made by Member Parrish and seconded by Member Clancy to grant the special permit. Chair Pinkham asked if the board wanted to add any conditions. She said the board may want to attach a condition that the basement cannot be used as a separate dwelling. Motion made by Member Robertson and seconded by Member Clancy to amend the original motion to approve the special permit and include a condition that the basement may not be used as a separate dwelling; approved, 5-0.

6. **Approval of minutes from meeting of July 20, 2022:** Chair Pinkham said she made a series of edits she will give to the clerk. Member Ryan said there are a couple of typographical errors on Page 4; "paying" taxes instead of "playing," and "construction" instead of "constriction." Motion made by Member Ryan and seconded by Member Clancy to approve the minutes as amended; approved, 5-0.
7. **Any other matter that may be legally before the Board:** None
8. **Motion made by Member Parrish and seconded by Member Ryan to adjourn;** approved, 5-0. Chair Pinkham adjourned the meeting at 6:59 p.m.

ATTEST:

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Gordon Vincent  
Clerk of the Zoning Board of Appeals