

**Zoning Board of Appeals
City Council Chambers
Woburn City Hall
Wednesday, November 16, 2022 – 6:00 p.m.**

Present: Chair Margaret Pinkham, Member John Ryan, Member Daniel Parrish, Member Edward Robertson, Member Richard Clancy, and Alternate Member Mark Cavicchi

1. **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 continued from meeting of October 19, 2022):** Mr. White said the discussion last month involved what appears to be a utility easement. He said the issue with the utility easement has been resolved. Chair Pinkham asked how this impacts the application for the variance. Mr. White said there is no longer a need for a variance. He said they can build a sufficient garage with no encroachment on the side yard setback. Chair Pinkham asked Mr. White is he is seeking to withdraw his application for a variance. Mr. White answered affirmatively. Motion made by Member Parrish and seconded by Member Clancy to grant the petitioner leave of withdrawal without prejudice; approved, 5-0.

2. **Sadiq Shaikh, 12 Naples Avenue, Woburn, MA, Petitioner and Landowner, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, for a reduction in the minimum lot size requirement from 12,000-square-feet to 11,218-square feet at 12 Naples Avenue, Woburn, MA:** Representing the petitioner was Attorney Mark Salvati, 57 Arlington Road, Woburn, MA. Attorney Salvati said his client wants to create a new buildable lot. He said Mr. Shaikh lives at 12 Naples Avenue on a lot that is 15,232-square-feet. He said the board may be better off looking at the assessors map rather than the plot plan. He said the plot plan does not show the applicant's land on Virginia Avenue but the assessors map does. He said the assessors map shows the 12 Naples Avenue runs from 10 Naples Avenue to Virginia Avenue. Chair Pinkham said the assessors map has been marked up. She said the plan dated October 27, 2022, does not reflect what 12 Naples Avenue is now. Attorney Salvati said originally a piece of Virginia Avenue went through his client's parcel. He said the original house lot runs from 10 Naples Avenue to Virginia Avenue. He said his client bought approximately 4,600-square-feet of land on the other side of Virginia Avenue, then eliminated the paper street, and now he owns all it. Chair Pinkham asked if the applicant created the second lot. Attorney Salvati said it is all one lot and the applicant wants to create a second lot. Chair Pinkham asked what the hardship is. Attorney Salvati said Mr. Shaikh thought he was getting 5,000-square-feet of land when he really only got 3,500-square-feet. He said Mr. Shaikh has always wanted to subdivide. He said the hardship is the shape of the lot. Chair Pinkham said the applicant does not have a lot that is 12,000-square-feet. She said not having the minimum lot size is not grounds for a variance. Attorney Salvati said his client could buy 700-square-feet from a neighbor. He

said the lot has a little curve in it. Chair Pinkham asked if Attorney Salvati can cite any relevant case law. Attorney Salvati said he cannot. Attorney Salvati said there are two letters in support of the variance. He said Mr. Shaikh will not be seeking any more variances for the house, which he said will comply with the zoning ordinance. He said if the board approves the variance, his client will agree to a condition that the house will be 15 feet from the lot line. Mr. Shaikh said he is a lifelong resident of North Woburn. He said he has raised two children in Woburn. He said he purchased property on North Maple Street and former Woburn City Councilor Michael Raymond is his neighbor. He said he was forced to sell the North Maple Street property because there was construction behind his home there. He said he bought the land on Naples Avenue in 1985. He said both his children attended the Altavesta Elementary School. He said his son is a pharmacist. He said his daughter works for a pharmaceutical company. He said his desire is to give both children a separate house. He said he does not intend to sell the second lot. He said the second lot is short of the minimum lot size by about 700-square-feet, which is why he is requesting a variance. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. William Murphy, 15 Naples Avenue, said he lives right across the street. He said he submitted a letter and a drawing that he marked up. He said his house is setback 17 feet from the pavement. He said if the board approves the variance, it should add a condition that the new house must be at least 15 feet back from the street so the houses will not be on top of each other. Mr. Murphy said Mr. Shaikh has a lot of land. He said there is a very deep slope in the back. He said what Mr. Shaikh wants to do is doable. He said it would be nice if Mr. Shaikh could put in a house as long as the setbacks are maintained. Member Robertson asked Mr. Murphy if he is recommending the house be a certain distance from the street. Mr. Murphy said there is a marker that is 18 feet from the pavement. He said the house should be at least 15 feet from the pavement. Chair Pinkham said the zoning code requires houses to be 25 feet from the property line. She said the Building Commissioner has the ability to review the plans. Mr. Murphy said he does not want a home that is only five feet off the marker. Chair Pinkham said the board is being asked to approve a reduction in the minimum lot size. She said if the board does not grant this request, there will be no house on that lot. She said if the board does grant the variance, the property owner would have to submit plans to the Building Dept. and the Building Dept. will need to determine if there is a need for any further variances. Member Robertson asked Mr. Murphy if he is suggesting the house should be no closer than 20 feet. Mr. Murphy said he would like the house to be no closer than 15 feet, the same as the other houses on that side of the street. Attorney Salvati said his client would agree to that as a condition of the variance. Chair Pinkham said she does not know if the board should be giving any advisory opinions. She said the zoning code requires a 25-foot setback. Member Robertson said he is prepared to vote for the variance to reduce the minimum lot size if the property owner agrees to bind himself to a condition. Attorney Salvati said he thinks the variance could be conditioned on the house being at least 15 feet from the front lot line. Member Robertson said he does not see why that couldn't be a condition. Chair Pinkham said if the board were to grant the variance, which she said she will not be voting for, she does not know why it wouldn't enforce the zoning requirements. She said the board would be ignoring all the relevant case law. She read from a 1989 decision Mitchell vs. Revere. She said case law is replete with precedents that indicate having a lot that is too small is not a justification for a

variance. Member Robertson asked what hardship the applicant is citing. Attorney Salvati said the hardship is the shape of the lot. Member Robertson asked how the shape of the lot affects the lot size. Attorney Salvati said the lot is 712-square-feet short of the minimum lot size. Member Robertson said he can see himself voting in favor of the variance if the other members of the board are prepared to vote. Timothy Bowen, 20 Naples Avenue, said he has no objection to the variance. He said the applicant is a good neighbor. He said if the board votes to grant relief he would like the setbacks to be consistent with the other houses on the street. Member Robertson asked if the board is prepared to vote. He said he views the proposed reduction in the lot size as a *di minimis* change. He asked when the existing house was built. Attorney Salvati said the existing house was built in 1985. He said the applicant purposely built the house where it is with the intent of building a second house. Member Ryan asked what the average setbacks are for the existing houses on the street. Attorney Salvati said the average is between 12-15 feet. He said he thinks the front setback on the new lot will be 15 feet regardless of what the board says. Member Ryan asked if 782-square-feet required to attain the minimum lot size could be purchased from a neighbor. Attorney Salvati said they have tried to negotiate with the neighbor but those attempts have been futile. Member Clancy said his issue is jurisdiction. He said he is not sure the board has the authority to grant a variance for a reduction to the lot size. Attorney Salvati said he believes the board has jurisdiction to do so. Chair Pinkham said there are multiple cases that indicate the board does not have such jurisdiction. Member Robertson said the board has previously granted variances with no legal hardship. Member Ryan said there appears to be a discrepancy about the size of the lot at 12 Naples Avenue. He said the subdivision plan indicates the lot has 12,056-square-feet. Attorney Salvati said the city's Assessors Dept. shows the lot at about 3,000-square-feet less than it actually is. He said they took about 3,000-square-feet and added it to the Virginia Avenue parcel. Member Parrish said he cannot remember if the board has ever been asked to grant a variance for a reduction in lot size. He said he is worried about setting a precedent. He said the chair has cited court cases. He said he would want to see what's being built and if there is a variance needed at that point. Member Parrish asked if the proposed home will be a single-family dwelling. Attorney Salvati said it has to be a single-family home, since 15,000-square-feet are needed for a 2-family lot. Member Ryan said he would like to see how this would proceed if the petitioner tried to purchase more land. Attorney Salvati said most of the lots in the neighborhood are around 10,000-square-feet and the reduced lot size would not be out of character. Motion made by Member Parrish and seconded by Member Robertson to grant the variance based on the shape of the lot. Motion made by Member Robertson to add a condition that any building on the new lot must be at least 15 feet from the established boundary. Member Parrish said he does not want to give that motion a second without further discussion. Chair Pinkham said the neighbors have indicated they do not want a house that is 12 feet from the lot line. Motion to amend the variance to require the house to be at least 15 feet from the lot line seconded by Member Parrish. Vote on the amended motion was 3-2, with Chair Pinkham and Member Clancy opposed. The variance did not achieve the required four votes for passage and was thus denied.

3. Robert and Marybeth Dixon, 14 Maura Drive, Woburn, MA, 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 14 Maura Drive, Woburn, MA: Representing the petitioner was Attorney Mark Salvati, 57 Arlington Road, Woburn, MA. Attorney Salvati said there is a deck in back that is greater than 4 feet. He said the home and the deck were built in the 1950s. He said there is an easement in the rear yard that is 20.1 feet from the existing deck and is thus non-conforming. He said his clients want to remove the deck and build a 2-story addition. He said they are going a tad bit closer. He said there will be approximately 225-square-feet of additional living space. He said there are three letters to the board in favor of the special permit. He said one of the letters is from the abutter to the rear. He submitted the letters to the board. Chair Pinkham said the plot plan shows the proposed addition but does not show the existing deck. Attorney Salvati said there have been a couple of decisions that reference the wrong plans. He said the existing deck is at 21 feet. Chair Pinkham said the deck appears to be L-shaped and goes around the house. Attorney Salvati said the part of the deck on the side of the house will remain and the deck is coming off. Chair Pinkham asked if this will be a 2-story addition. Attorney Salvati answered affirmatively. He said there will be basically a walk-out basement. He said he thinks the floor plan shows the existing house and the proposed addition. 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 rear setback requirement was in 1954. Attorney Salvati said he does not know. Member Robertson said the board has to establish the use is legally non-conforming. Attorney Salvati said he thinks the setback requirement in 1954 was 15 feet. Chair Pinkham said her notes suggest the setback requirement in 1959 was 30 feet, but if there has been no enforcement action within 10 years, it becomes legally non-conforming. Member Robertson said if the use is not legal- non-conforming, the board cannot issue a special permit. Chair Pinkham said the 1934 zoning requirements were 30 feet or 30 percent of the depth of the lot. Member Robertson asked if the deck is considered to be a structure. Attorney Salvati said the deck is a structure if it is over 4 feet high. He said he believes the setback requirement would have been 25 feet if the standard was 30 percent of the depth of the lot. Chair Pinkham said she thinks the petition meets the criteria for a special permit. She said the board ought to add the standard conditions to ensure the addition is not used as a separate dwelling. Motion made by Member Clancy and seconded by Member Ryan to grant the special permit with the standard conditions that prevent the addition from becoming a second dwelling unit; approved, 5-0.

- 4. Alexandra Karasic, 70 Harrison Avenue, Woburn, MA, 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 single-family home at 70 Harrison Avenue, Woburn, MA:** Representing the petitioner was Attorney Mark Salvati, 57 Arlington Road, Woburn, MA. Attorney Salvati said the house was built around 1890. He said the house sits 4.5 feet off Valley Road and 10 feet off Harrison Avenue. He said the proposed addition will be less than 25 feet from Valley Road. He said the proposal looks a little complicated but they are essentially adding two dormers to the back. He said there is a letter to the board from Neal and Janice Carey, 26 Valley Road, in support of the special permit. Attorney Salvati said the Careys live on the Valley Road side of Ms. Karasic's property. He said the McDonoughs live a couple of doors

down and are not opposed. He said the addition will consist of approximately 700-square-feet. He said the applicant is cramped in her current house and would like a little more room. He said most of the other houses in the neighborhood are bigger than the applicant's house. Chair Pinkham asked how many bedrooms are in the existing structure. Attorney Salvati said there are two bedrooms now and that number will be increased to four. He said they are also adding two bathrooms. Chair Pinkham asked if there will be any issues with water and sewer capacity. Attorney Salvati said they have not inquired about water and sewer services, but he knows the water and sewer system on Valley Road is adequate because his niece lives there. Chair Pinkham asked if the addition will be used as an in-law apartment. Attorney Salvati said there is no intent to convert the space into an in-law apartment. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Member Parrish asked if the structure will comply with the height requirements in the zoning ordinance. Attorney Salvati said the house will be under 35 feet high. Member Parrish suggested imposing the standard conditions that would keep the house a single-family dwelling. Chair Pinkham said she agrees absolutely. Motion made by Member Parrish and seconded by Member Clancy to grant the special permit with the standard conditions that require the dwelling to remain a single-family home; approved, 5-0.

5. **Approval of minutes from meeting of October 19, 2022:** Chair Pinkham said she has made corrections to the clerk's version of the minutes and submitted them to him. Motion made by Member Parrish and seconded by Member Ryan to approve the minutes as amended; approved, 5-0.
6. **Any other matter that may be legally before the Board:** Chair Pinkham said she will not be available for a meeting on December 21. She said the board has the option of meeting on December 14. After discussion, the board reached a consensus to meet on Wednesday, December 14.
7. **Motion made by Member Parrish and seconded by Member Ryan to adjourn;** approved, 5-0. Chair Pinkham adjourned the meeting 7:04 p.m.

ATTEST:

Gordon Vincent
Clerk of the Zoning Board of Appeals