

**Zoning Board of Appeals
City Council Chambers
Woburn City Hall
Wednesday, April 19, 2023 – 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. Ulta Beauty/Heather Dudko Sousa Signs LLC, 27 Old Meetinghouse Road, Auburn, MA, 01501, Petitioners, and New Creek II LLC, 500 North Broadway, Suite 201, Jericho, NY, 11753, Landowner, seeking a Variance from Section 13.7.2.5 of the 1985 Woburn Zoning Ordinances, as amended, for the installation of awnings larger than what is allowed at 425 Washington St., Woburn, MA (continued from meeting of March 22, 2023):** Representing the petitioner was Jennifer Ronneburger, CEO, Go Permit, 9061 Woodlark Terrace, Boynton Beach, FL. Ms. Ronneburger said she is seeking a variance for the awnings at 425 Washington St. She said this matter has been before the board for the past couple of months. She said she has submitted documents to the board from the engineering company. She said the first document is from Michael Sullaway, Sullaway Engineering, 11545 West Bernardo Court, San Diego, CA, indicating the frame, hardware and anchors used in the engineering will resist wind and snow loading and adhere to the 2015 edition of the International Building Code. She said the second memo from Mr. Sullaway indicates his previous memo references the 2015 edition of the building code because Massachusetts has not yet adopted the 2021 building code. She said there is a third document, an email from Building Commissioner Thomas Quinn indicating what approvals will be required from the Building Dept. should the board issue a variance for the awnings. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Member Ryan said he is satisfied with the most recent documentation that was submitted by the applicant. Motion made by Member Parrish and seconded by Member Ryan to grant the variance. Chair Pinkham asked what form of hardship the board is citing. Member Parrish said the hardships are the shape and topography of the land. Motion approved, 4-1, with Chair Pinkham opposed.
- 2. Timothy Wilson and Alexis Street, 4 Jones Avenue, Woburn, MA, Petitioners and Landowners, seeking a Special Permit from Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, for additions in the front and back of a pre-existing, non-conforming structure at 4 Jones Avenue, Woburn, MA:** Ms. Street said they bought their home in 2019 and have adopted a son. She said she was working in Boston at the time. She said her husband works in Wakefield. She said during the pandemic they discovered a number of structural issues with the 100-year-old dwelling. She said she now works from home. She said they learned their adopted son has two biological siblings and they would like their home to be complaint for placement. She said they also want their home to remain in character with the rest of the neighborhood. Chair Pinkham said the plans are somewhat unique. She said the plot plan is going to be problematic because it does not show the footprint of the actual structure. She said her first question is what are the dimensions of the porch that is being replaced by the addition. She said she

has to go to page 2 of the plans to find the dimensions of the proposed porch. She said it looks like the existing front porch is going to have a second story addition that conforms with the existing footprint, but she cannot find the dimensions. Mr. Wilson said the intent is to use the existing foundation and extend the front porch. He said he can get the dimensions of the existing back porch. Chair Pinkham said the entry door to the basement is shown on the floor plan on the left side of the structure but it is not shown on the plot plan. She said the plot plan needs to indicate the distance from that side lot line. She said she cannot tell if the addition will create a new non-conformity. Mr. Wilson said the existing side of the house is farther out than the basement entry. He said he did not consider that to be a part of the foundation. Chair Pinkham said if it is going to be enclosed, it is going to count. Member Robertson asked what the existing ground coverage versus the proposed ground coverage is. Mr. Wilson said the difference is a little less than 100 square feet. He said the existing square footage is 1,026-square-feet and the proposed square footage is 1,113. Member Robertson asked if the size of the front porch is increasing. Mr. Wilson said there is a slight increase. Member Robertson asked if most of the increase is in the rear of the structure. Mr. Wilson answered affirmatively. Chair Pinkham asked if anyone in the audience wished to address the board about the petition. There were no respondents. Member Robertson asked if Chair Pinkham's line of inquiry about the lack of information on the plans was an effort to determine whether a new non-conformity is being created. Chair Pinkham answered affirmatively. Chair Pinkham said she understands the proposed addition does not extend beyond the rear window, but if the rear deck counts toward the setback distance, then a new non-conformity would be created and the applicant would need a variance. Mr. Wilson asked whether the addition would need to stay within the footprint of the existing deck. Chair Pinkham said she is not sure what deck the applicant is referring to. Mr. Wilson said the deck is depicted by the gray line on the plans. Chair Pinkham said she cannot tell from looking at the plans. Mr. Wilson said he has a picture. Chair Pinkham said the application is incomplete. She said the plans need more detail. She said if the applicants are going to create a new non-conformity, they will need a variance. She said she is not sure the board has enough information to make a determination. She said the lot and the structure are clearly non-conforming. She said her view is it would be helpful to know if the property complies with the existing setbacks, and if the board has a plan that shows the existing conditions and superimposes the relief they are seeking. Mr. Wilson said he understands what the chair is saying. Member Clancy said the lot is very tight. He said the neighborhood is nice. He said he would be hesitant to add to the non-conformity, but otherwise he would be willing to support the applicants adding to their home. Motion made by Member Robertson and seconded by Member Parrish to continue the public hearing until the board's meeting on Wednesday, May 24, 2023; approved, 5-0.

3. **Arlene and Donald Cullen, 10 Day Circle, Woburn, MA, 01801, Petitioners and Landowners, seeking a Variance from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, for a reduction in a front yard setback from 25 feet to 16.3 feet for the installation of a porch at 10 Day Circle, Woburn, MA:** Chair Pinkham said it appears the house is already non-compliant with the front yard setback because of the bump out 20'6" from the lot line. She asked when the house was built. Ms. Cullen

said the house was built in 1953. Chair Pinkham asked if the porch will be enclosed. Mr. Cullen said the porch will have a cover. Chair Pinkham asked what form of hardship the applicants are citing. Ms. Cullen said there is a lot of ledge on their property. She said many lots on Day Circle have ledge. She said it would be difficult to situate the porch in a position where it complies with the zoning ordinance. Chair Pinkham asked where the ledge is on the property. Ms. Cullen said the ledge is in the backyard. Mr. Cullen said the covered porch will make it easier to enter their home. Chair Pinkham asked if there is a retaining wall in the backyard. Mr. Cullen said the backyard slopes and the retaining wall has been there for a long time. Ms. Cullen said her father built the house in 1953 and the retaining wall has been there since at least 1967. Chair Pinkham said she cannot see any outcropping of rock. Member Robertson asked about the bump out. Mr. Cullen said there is a bay window that bumps out about two feet. Chair Pinkham said the applicants' house already violates the front setback, it is an undersized lot, and it lacks the necessary frontage. She said she believes the board has jurisdiction to consider a special permit rather than a variance. Ms. Cullen asked what the distinction is between a variance and a special permit. Chair Pinkham said there is a more lenient standard for a special permit. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the special permit. Charles Viola, Ward 7 Councilor, said he has been to property. He said he supports the applicants' request for a special permit to add a porch. Motion made by Member Ryan and seconded by Member Ryan to change the form of relief from a variance to a special permit; approved, 5-0. Clerk said the applicants have not filed building plans with the petition. Member Robertson asked why the board requires building plans for a special permit and not a variance. Chair Pinkham said the board is required to make a determination that the relief granted under a special permit is not substantially more detrimental to the neighborhood than the existing conditions and building plans document that finding. Member Robertson said he would consider that to be a visual assessment. Chair Pinkham said if someone wants to put a concrete silo on their property, which would be more detrimental. Member Robertson said he has always had a problem with the board requiring building plans. Ms. Cullen said she has a set of building plans at home and she can retrieve them. Motion made by Member Parrish and seconded by Member Ryan to recess the hearing to allow the applicants time to collect buildings plans and return to the meeting; approved, 5-0. Chair Pinkham recessed the meeting at 6:30 p.m. Motion made by Member Parrish and seconded by Member Ryan to return to the regular order of business. Chair Pinkham reconvened the hearing at 7:28 p.m. Mr. Cullen said they have one set of plans that they will furnish to the board. Motion made by Member Clancy to grant the special permit; approved, 5-0.

4. **Carol Woods, Woods Real Estate, 561 Middlesex Turnpike, Billerica, 01821, Petitioner, and Paul Paris, 1 Columbus Road, Woburn, MA, 01801, Landowner, seeking Variances from Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended, for a reduction in the minimum lot size from 12,000-square-feet to 8,258-square-feet and for a reduction in the minimum required frontage from 100 feet to 85.4 feet to build a single-family home at 0 Cambridge Road, Woburn, MA:** Chair Pinkham said she is recusing herself and asked Member Robertson to serve as chair pro tem. Chair Pinkham said Alternate Member Cavicchi will serve as a voting member on this matter. Chair Pinkham exited City Council Chambers. Representing the petitioner

and the applicant was Attorney Michael Reilly, 623 Main Street, Woburn, MA. Attorney Reilly said the original title to the lot was recorded in 1932, and he has a document from the Land Court to that effect. He said in 1975 the lot was conveyed to Paul Paris. He said the ZBA granted a variance in 1981 for reductions in the frontage and lot size requirements. He said he has a 6-page handout that he would like to distribute to the board. He said there is case law from the ZBA in Wellfleet that supports his client's effort to reduce the lot size. He said when this lot was recorded in 1932, it was for the purpose of building a home. He said he has been trying to find out what the zoning requirements were in 1932. He said the City Clerk's office produced a document indicating there was no minimum lot size but the lot for which the variance is being sought is in conformity with the rest of the lots in the neighborhood. He said the sale from Mr. Paris to the petitioner is contingent upon the board granting a variance and approval of a curb cut from MassDOT for the front of the property. Attorney Reilly said page 2 of the handout he gave to the board shows the applicant's lot is roughly the same size and lacks the required frontage as the lot to the north and the two lots to the south on Cambridge Road. He said page 3 of the handout shows a chart with those three lots and 13 other lots in the area that do not have the required frontage or lot size, of both. Chair pro tem Robertson asked how 0 Cambridge Road was determined to be the address. Fabio Santorelli, Woods Real Estate, said the assessors card indicates the address is 0 Cambridge Road. Chair pro tem Robertson asked if the applicant is asking if the previous variance is grandfathered. Attorney Reilly said he does not believe it is a by-right use. Chair pro tem Robertson said the petition asks for a variance. He said he is looking at Section 11.8 of the Woburn Zoning Ordinance, which he said basically parrots Chapter 40A, Section 10 of the Massachusetts General Laws. He said the ZBA can grant a variance based on the soil conditions, topography, or shape of the lot. He said that is the standard based on the applicable ordinance. Attorney Reilly said MGL overrides the ordinance. Chair pro tem Robertson asked how the MGL deviates from the zoning ordinance. Member Parrish said the applicant received a variance from the board in 1981. Attorney Reilly said the 1981 variance was submitted with the application. He said the board granted a variance to Mr. Paris. Member Clancy said the 1981 variance was for a reduction in the lot size from 15,000-square-feet to 8,30-square feet and a reduction in the frontage requirement. Chair pro tem Robertson said that variance has lapsed. Member Parrish asked if the applicant had a discussion with the Building Commissioner. Attorney Reilly said he did his own research. He said the 1981 variance is similar to the current application. He said all the other setbacks requirements are satisfied. He said all the other lot sizes in proximity on Cambridge Road are also non-conforming. Chair pro tem Robertson asked what form of hardship the applicant is citing. Attorney Reilly said the hardship is the shape of the land. Chair pro tem Robertson said he does not think the shape of the land constitutes a hardship. Attorney Reilly said he is basing the hardship on a case in Wellfleet that is similar. Chair pro tem Robertson said the Wellfleet case cites Chapter 40A, Section 6, of the MGL, and variances are under Chapter 40A, Section 10. He asked if the board wanted to seek a legal opinion about whether Section 10 or Section 6 is applicable. Member Parrish said if Section 6 is applicable, the petitioner may not have to be before the board. Attorney Reilly said he was under the impression his client needs a variance. Chair pro tem Robertson asked if anyone in the audience wished to address the board in regard to the petition. Edmund Sullivan, 90 Cambridge Road, said

the petitioner's attorney talked about getting a curb cut and removing a guard rail. He said the petitioner is also going to have to build up the lot because there is a slope. He said he is concerned the lot is two-thirds of the minimum required lot size. He said the plan is to build a 2-story home and he is worried if they have to bring in fill it might upset the water table. Wallace DaSilva, 88 Cambridge Road, said he is new to the neighborhood. He said he is concerned the house is too big for the lot. He said the applicant is going to put in a driveway next to his property. Valerie Caso, 16 Kelly Drive, said when she was considering buying her property 26 years ago, she asked the real estate agent about the possibility of a home being built in the empty lot. She said the side of her house abuts 0 Cambridge Road and there is a considerable slope. She said the real estate agent told her the lot is too small to be developed. She said if they knew the lot was going to be developed they never would have bought their house. She said she is concerned about the water table. Mark Long, also of 16 Kelly Drive, said the reduction of the lot size to two-thirds of what is required is a significant change. He said he is concerned about the ability of water to drain if the proposed house is built. He said the issue is whether water will run off onto his property. He said he is concerned water will end up in his basement. He said the other issue is the setback. He said his house is only 15 feet from the property line. He said the property has been used as farm land, and after 26 years, building a house there will be a big change. He said when the previous variance was approved in 1981, the entire area was farm land and there were no residential neighbors to impact. He said granting a variance today is not appropriate. He said there has been a greenhouse in the property but it is not being used now. He said in the past some of their neighbors have not been able to hook up to the sewer line. Ms. Caso said the home has the potential to impact their property. She said it is unbelievable they are having to worry about this issue 26 years after they bought their home. Member Ryan asked Ms. Caso if she owns the hedgerow depicted in an aerial photo submitted by the applicant's attorney. Ms. Caso answered affirmatively. Mr. Sullivan said there is no driveway from Cambridge Road onto the vacant lot. He said one of his concerns is how trucks are going to access the site to perform prep work. Chair pro tem Robertson said the applicant's attorney talked about how a curb cut off Cambridge Road is required. He said that is a matter that does not concern the board but Mr. Sullivan's concern is noted. He asked if the board wants to inquire with the city solicitor about whether Section 6 or Section 10 is applicable. He said the attorney is implying the variance is grandfathered. Member Parrish said he thinks the board should seek a legal opinion. Attorney Reilly said he met with the Building Commissioner before he submitted anything. He said the Building Commissioner told him to do his homework. He said there is a 30-foot setback behind the house. He said the Building Dept. will determine whether fill is needed. He said the area was all farm land and this is the only parcel that wasn't built on. Chair pro tem Robertson asked if Attorney Reilly is citing Section 10 or Section 6 of MGL Chapter 40A. Attorney Reilly said the land was registered in the Land Court in 1932. He said the parcel has been there for a long time. Member Clancy said he would like to request a legal opinion. Alternate Member Cavicchi said he thinks it might be worthwhile for the petitioner to provide a graphic that shows the topography, with the grades of the surrounding residences. Attorney Reilly said the applicant can provide that. Member Ryan asked if the applicant can also provide a plan that shows where the driveway will be. Attorney Reilly said that can be provided. Member Parrish said he wants to make sure

the City Solicitor is provided with all the documentation she needs to render an opinion. Attorney Reilly said he will make sure the City Solicitor gets what she needs. Motion made by Member Parrish and seconded by Member Ryan to request an opinion from the City Solicitor in regard to whether the applicable section of the state statute is MGL Chapter 40A, Section 10, or MGL Chapter 40A, Section 6; approved, 5-0. Motion to continue the hearing until the board's meeting on Wednesday, May 24, 2023; approved, 5-0.

- 5. Woburn Heights, 1042 Main Street, request for determination of insubstantial change:** Chair Pinkham returned to City Council Chambers and reassumed the chair. Representing Woburn Heights LLC was Attorney Paul Haverty, Blatman, Bobrowski, Haverty & Silverstein LLC, 9 Damonmill Square, Concord, MA. Attorney Haverty said he is not here for a modification to the comprehensive permit but rather to comply with a previously agreed upon condition of the modification of the permit that was approved on April 21, 2022. He said the applicant is providing the board with a rendering of the artwork for the pumping station at the development. He said the artwork was drawn by Sophy Tuttle and is designed to celebrate species that are native to the area, both plant and animal. He said the renderings were shared with the two direct abutters on either side of the development and the resident of 1036 Main St. sent an email to the board in support of the design. Chair Pinkham asked if there has been any other type of communication with the abutters. Attorney Haverty said the only communication with the abutters has been via email. He said the understanding at the time the decision was issued was that the developer would come back to the board and the board would determine whether the artwork is acceptable. He said the developer thinks the design is appropriate. Chair Pinkham said she feels the same way she felt last year – that the board is not qualified to determine whether the design is appropriate, but she thanked Attorney Haverty for sharing the renderings with the board. Member Ryan said he agrees with Attorney Haverty's recollection of events; that the board was to be advised of the artwork but the submission of the artwork does not require the board to consider the change as a modification. Attorney Haverty said all the developer is looking for is confirmation that the artwork is acceptable. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the artwork. There were no respondents. Chair Pinkham said the size of the pump house is much more impactful in real life than it appeared on the plans. Motion made by Member Ryan and seconded by Member Parrish that the proposed artwork for the pump house be approved; 5-0.
- 6. Mill Street Development LLC, 43 Rear, 53, 57, 59 & 61 Mill Street, request for determination of insubstantial change:** Representing Mill Street Development LLC was Attorney Jesse Schomer, Regnante Sterio LLP, 401 Edgewater Place, Wakefield, MA; Steve Weinig, President, Hamilton Construction Management Corp. 39, Brighton Ave. Boston, MA; Chris Erikson, P.E. McPhail Associates LLC, 2269 Massachusetts Avenue, Cambridge, MA; and Chris Sparages, P.E., Williams & Sparages LLC, 189 North Main Street, Suite 101, Middleton, MA. Attorney Schomer said a comprehensive permit for the project was approved in June 2017. He said an extension was approved in 2020, and then the timing of the project was delayed due to the Covid-19 pandemic. He said an order by former Gov. Baker tolled all existing permits for 462 days. He said the

extension has been tolled until September 2024. He said the proposed project has 72 units and is under the auspices of MGL Chapter 40B. He said there is a condition in the board's approval that if there is ledge and blasting will be required, the applicant will have to come back to the board. He said the condition was agreed to before a geological survey was conducted. He said McPhail Associates determined there was more ledge than previously discovered. He said the board has the authority to modify the comprehensive permit, subject to the determination that this is a substantial or insubstantial change. Mr. Erikson said 18-foot test pits were dug and it was determined there is bedrock at a fairly shallow depth. He said there will be 30-foot bedrock cuts that will really require blasting. He said blasting is the most effective method to remove the ledge. He said the applicant will undertake a controlled blasting technique. He said noise and vibrations will be minimized. Chair Pinkham said the literature submitted by the applicant indicates 5,000-8,000 cubic yards of materials will be removed and asked how long it would take. Mr. Erikson estimated removal of materials will take 3-4 weeks. Chair Pinkham asked how much truck traffic will result. Mr. Erikson said a typical truck hauls 25 cubic yards of materials, which would result in a half-dozen to a dozen trips per day. Chair Pinkham asked if there will be any processing or grinding of materials on-site. Mr. Weinig said Hamilton Construction is not the original developer. He said he would be willing to submit there will be no on-site rock crushing operation. He said they will be happy to stipulate they will do only what they need to do. He said Hamilton Construction does not actually own the property but it is the development entity. Chair Pinkham asked if the developer still owns all the buildings. Mr. Weinig answered affirmatively. Chair Pinkham said the property cannot be any closer to the highway right-of-way and asked what level of communication there has been with MassDOT. Mr. Erikson said he imagines they will have to run the plans past MassDOT. He said he is not sure what all the regulations are but he knows a pre-blast survey is required for any entity within 200 feet. He said regardless of the distance to the highway it will be prudent to contact MassDOT. Chair Pinkham said the plan shows a substantial amount of test pits and asked who dug those. Mr. Sparages said the civil engineer dug those test pits for storm water management purposes. Member Parrish asked if the area in yellow on the plan that was submitted by the developer is where the blasting will occur. Mr. Erikson answered affirmatively. Member Parrish said in the past the board has found some proposed changes to be insubstantial, but in doing so the applicant provided hours of construction, proposed routes that show the trucks will take the most direct path to the highway, the frequency of blasting, dust control measures, and other aspects. He said he is not sure the board can approve this change as insubstantial without a list of conditions that includes hours of operation. Mr. Erikson said there will usually be two or three blasts per day. Member Parrish said the most recent project approved under a comprehensive permit took 475,000 cubic yards of material from the site. Mr. Weinig said he understands the board's concerns. He said typically there will be a line of holes drilled to fracture the rock before blasting, and because of the prep work required the actual blasting does not occur early in the morning. He said there will be no blasting on weekends. He said he can stipulate there will be no blasting weekends. He said he is not sure what additional requirements Woburn may have for blasting. Chair Pinkham said no blasting can begin before 7 a.m. in Woburn. Mr. Weinig said union projects begin at 7 p.m. and end between 3-4 p.m., so there will be no blasting first thing in the morning. He said it usually takes a

few hours to set up. He said no explosives will be left overnight to be detonated the next morning. He said he thinks he can assume the board will want as little impact on the neighborhood as possible. Chair Pinkham asked what routes the trucks will take when they exit the site. Mr. Weinig said the trucking routes are part of the construction management plan, which is not available tonight. He said a plan can be put together in 4-6 weeks. Chair Pinkham asked if the applicant is willing to give the board some time to come up with conditions. Attorney Schomer said a construction mitigation plan has to be filed with the DPW superintendent. Chair Pinkham said the board has a lot of experience with blasting and there was an agreement reached in the 1042 Main St. project. She said there is a 20-day time frame and asked if the applicant is willing to extend the time frame to make a decision. Mr. Weinig said he has no objection to that and asked how long the board needs. Chair Pinkham said it is a question of finding the document from the 1042 Main St. project. Attorney Schomer said he can confer with the attorney who represented the previous petitioner. Member Robertson asked when the request for a determination was filed. Attorney Schomer said the ZBA clerk received the request on April 4. He said the 20-day window would end on April 24. Chair Pinkham said the board's next meeting is on May 24. She said she would be happy to put together a list of conditions that the board can review. Motion made by Member Parrish and seconded by Member Ryan to continue the matter until the board's meeting on Wednesday, May 24, 2023; approved, 5-0.

7. **Approval of minutes from meeting of March 22, 2023:** Chair Pinkham said she has corrections on pages 3 and 4 that she will give to the clerk. She asked if any other members of the board have any corrections. There were no respondents. Motion made by Member Parrish and seconded by Member Clancy to approve the minutes as amended; all in favor, 5-0.
8. **Any other matter that may be legally before the Board:** Member Parrish said he saw the summary decision forwarded from the Land Court for the appeal from the property owner at 18 Green Street and asked if there was a way the board can incorporate something like that into the board's application process. Member Parrish said the decision included a checklist with questions about whether the appeal had met certain criteria. Chair Pinkham said Member Parrish has a good idea. Member Robertson said the narratives written by petitioners for special permits are often lacking basic information. Chair Pinkham said asking petitioners to fill out a checklist may be simpler than asking them for a narrative. Member Ryan said he submitted a graphic to the board several months ago that is also designed to make the application process more concise. Chair Pinkham said it may be a good idea to discuss the application process and asked the clerk to put that as an item on the agenda for the board's meeting in May. Chair Pinkham asked Member Ryan to send the graphic to the clerk for distribution to the board.
9. **Motion made by Member Parrish and seconded by Member Clancy to adjourn;** approved, 5-0. Chair Pinkham adjourned the meeting at 8:01 p.m.

ATTEST:

Gordon Vincent
Clerk of the Zoning Board of Appeals