

**Zoning Board of Appeals
City Council Chambers
Woburn City Hall
Wednesday, May 24, 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. 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 (continued from meeting of April 20, 2023):** Chair Pinkham said the applicant has submitted photos since the last meeting. Mr. Wilson said he was asked by the board to clarify the proposed addition and show the setbacks a little more clearly. He said he has submitted an updated plan. He said he has submitted updated architectural plans. Chair Pinkham asked if the existing back porch is going to be removed. Mr. Wilson answered affirmatively. Chair Pinkham asked if the addition is going to comply with the setback requirements. Mr. Wilson answered affirmatively. Chair Pinkham said the elevation on page A-2 shows it will be less than four feet. Mr. Wilson said it will be a little less than 3.5 feet. He said he would consider that part of the cellar. He said that is an awkward area. He said he tried his best to show what is going on there. Chair Pinkham said the third photo in the photo array looks like it was taken from underneath the deck area. She said there appears to be an entry door. She asked if that area is a crawl space or if it connects to the basement. Mr. Wilson said it is part of the foundation. He said he thinks he would consider that to be part of the structure. Chair Pinkham said she still doesn't get it, but she does not need to because it is unnecessary for the purposes of special permit relief the applicant is seeking. 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.

- 2. 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 (continued from meeting of April 20, 2023):** 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. Chair pro tem Robertson said this matter is carried over from the April meeting. He said the applicant is seeking variances at 0 Cambridge Road. Attorney Reilly said he sent an email to the clerk requesting leave of withdrawal without prejudice. He said he met with the Building Commissioner 10-14

days ago. He said he is asking for leave of withdrawal without prejudice to reserve the right to reapply at a later date. Motion made by Member Parrish and seconded by Member Clancy to grant leave of withdrawal without prejudice; approved, 5-0.

3. Mill Street Development LLC, 43 Rear, 53, 57, 59 & 61 Mill Street, request for determination of insubstantial change (continued from meeting of April 20, 2023):

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. Chair Pinkham said she sent a document with a draft list of conditions with redline changes to Attorney Schomer at 5:22 p.m., and she apologizes for that. Attorney Schomer said there is no need to apologize. He said he just saw the documents to which the chair is referring. He said he sent additional documents to the clerk. He said the developers are aware there are neighbors here and they are available to answer any concerns. He said there is a request before the board for a finding of insubstantial change. He said a comprehensive permit was issued to the previous owner. He said one of the conditions involved the means for limited removal of ledge from the site. He said subsequently a geotechnical survey had been done. He said the previous owner was unaware of the extent of the ledge. He said Hamilton Construction is the new property contractor. He said the developer wants to remove between 5,000-8,000 cubic yards of ledge. He said that amount of ledge cannot be removed by the method that was sanctioned by the board. He said that would take years and years. He said blasting would involve a much shorter time frame. He said blasting is overseen by the fire department. He said there are regulations that are strictly enforced. He said pre-blast surveys are required for any property within 250 feet. He said there are specific noise and vibration thresholds. He said everything would be at the cost of the developer. He said the process is very rigorous. He said he has corresponded with the chair. She said the chair has submitted a draft list of conditions, based on the conditions for the project at 1042 Main St. He said there is a truck route for truck traffic. He said there are time of day limitations. He said he is hoping to go through the draft decision tonight. Chair Pinkham asked if the pre-blast surveys are 250 feet from the property line. Attorney Schomer said he thinks that is correct. Mr. Sparages said he thinks the 250-foot distance is from the property line. Attorney Schomer said the requirement to notify anyone within 250 feet is part of state law. He said that is the standard for blasting. Chair Pinkham said the board has not had any discussion about the proposed list of conditions. She said she reached out to Sgt. Stokes of the Woburn Police Dept.'s Traffic Division to seek his input on the proposed haul route. She said Sgt. Stokes went to the site. She said Mill Street previously terminated at Salem Street due to the placement of dumpsters to restrict cut-through traffic. She said the dumpsters have been re-situated and Mill Street once again connects directly to Salem Street. She said trucks could be routed behind the apartment buildings. She said the board would not want trucks on the smaller streets like Salem Avenue. She said there are still dumpsters along Mill Street. She said she cannot tell if some of Mill Street is used for parking for the apartments. Mr. Weinig said the buildings on Mill Street are owned by an entity related to the developer and they would have no objection to the trucks using the route suggested by the chair. Mr. Sparages said he has brought a full-size

set of plans. He said Salem Street used to be in a different location and Route 93 cut it in half. He said Mill Street runs from Washington Street and it ends at the state highway. He said it is not possible to have a haul route that includes Salem Avenue. He said the only way is to pass through private property from the apartments. He said that driveway may look like a road, but it's private. He said luckily for the developer, the driveway is owned by the same entity, so there are no objections to using it as a haul route. Chair Pinkham asked Mr. Sparages to show where the property line is on the plans. Mr. Sparages said Mill Street ends at the highway, but the pavement continues north and comes out at Salem Street. Chair Pinkham said she thinks of that road as Mill Street and a driveway. She asked if Mr. Sparages is representing the part that goes behind the apartment building is part of a driveway and not Mill Street. Mr. Sparages said that is correct. Chair Pinkham said there is ledge depicted on the plan that was submitted to the board in 2017. She said it is common knowledge there was ledge there. She said it is hard to avoid. She said she would like the decision to reflect it will all be gone in 3-4 weeks. She said there is a lot of concern about blasting because of the 1042 Main Street project. She said she understands the scope of the blasting for this project is not as pervasive, and she appreciates the applicant offering to clean the streets and minimize the impact of the blasting. She said she would suggest pre-blast surveys going out 500 feet because 250 feet does not seem like a significant distance. She said there were significant impacts from dust and dirt at 1042 Main Street, which she again admitted involved blasting of a much greater magnitude. Attorney Schomer said his client would agree to pre-blast surveys within 500 feet of the property line. Chair Pinkham asked if there is any accommodation planned for renters at the apartment building during blasting. Mr. Weinig said he has not spoken to the property manager. He said the apartment building is a separate entity but typically there would be some type of accommodation. He said they are not going to do anything to damage the apartment building. Chair Pinkham asked what the accommodations are. Mr. Weinig said reduced rent is typically a consideration. He said he has to be a little bit careful because he does not have the authority to do it. Chair Pinkham asked if car wash certificates will be issued. Mr. Weinig said that type of thing would be standard. Member Parrish said proposed condition #30 indicates there will be a wash down station for trucks and ask if that will be on the private way. Chairman Pinkham said it will. Member Parrish said he likes the idea of creating a 500-foot pre-blast survey area. He said the time frame is 3-4 weeks. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the request for determination of insubstantial change. Ward 5 City Councilor Darlene Mercer-Bruen said the board spent many hours in 2016 and 2017 reviewing the Mill Street comprehensive permit. She said her understanding is that the applicant wants to make a change that involves blasting. She said she understands the applicant is asking for the board to determine the change is insubstantial but to her any reference to blasting as insubstantial is an oxymoron. She said the original petitioner did not do its due diligence as it relates to topography, and now it appears the new owner also did not do due diligence. She asked how the board knows this is being represented properly. She said there is already a pattern of behavior. She said she does not have a level of comfort with this property owner, because they can't seem to manage trash removal or fence repair. She asked if there is an environmental report. She asked if there is any potential for flooding, or any guarantee for homeowners that there will not be flooding problems. She said at the very least there should be a public hearing so the residents in the area can

ask questions about how this development will impact them. She said neighbors should not have to hire a private attorney to figure out if the laws apply to them. She said proposed condition #15 should be expanded. She also suggested the applicant ought to post a security bond to pay for any damages that may be incurred from blasting. She said there ought to be strict controls on hours of operation. Chair Pinkham said she believes the city allows construction to start at 7 a.m. She asked if the councilor is suggesting the board adjust the state regulations. Councilor Mercer-Bruen said at the very earliest it should be 8 a.m. She said condition #28 references trucks idling for no more than five minutes. She said she doesn't understand why trucks would idle. She said she appreciates the specific mention of Salem Street as the travel route. She said there was a meeting about how to resolve cut-through traffic. She said there is no need for trucks to be traveling on the residential section of Washington Street. She said she thinks there ought to be a police detail. She asked if the petitioner provided any detail about how many truck trips there would be. Chair Pinkham said the petitioner has stated there would be 6-12 truck trips per day. She said one of the things that Sgt. Stokes said is Route 93 would have to be closed while blasting is taking place. She said there are state regulations. She said there are likely to be local road closures that are staffed with police. She said Sgt. Stokes expressed confidence the truck drivers would cooperate with police. Councilor Mercer-Bruen said the board does have the ability to add police details as a specific condition. Chair Pinkham said she has added a clause to proposed condition #16 so it reads as follows: "The Applicant shall coordinate its blasting plan with MassDOT due to the proximity of Route 93 and comply with any/all MassDOT notice and permitting requirements, including any relating to closure of local roads and the state highway while blasting is underway. The Applicant will also comply with all requirements of the Woburn Police Department in connection with road closures." She said that might be a condition the board tightens up. She said she assumes the cost of police details would be paid by the developer. Councilor Mercer-Bruen said there is nothing wrong with redundancy. She said any plan involving dust control should include power washing. She said it is a small nuance, but it's important. She said there is no mention of rodent control. She said whenever blasting takes place, there is a problem with rodent control. She said she would recommend an additional condition that references rodent control in the immediate area. Chair Pinkham said she thinks rodent control is addressed as a matter of course with construction. Councilor Mercer-Bruen said she hopes the Building Commissioner and the neighbors will be provided with a contact number for someone on site. She asked what the recourse is if the rules are not followed. She asked what the recourse is if the number of truck trips end up being more than what is being represented. Chair Pinkham said she thinks the neighbors who will be the most impacted are the residents of the apartment building. Councilor Mercer-Bruen said she has notified as many people as she could about the blasting. She said she assumed the applicant notified the people in that apartment building. She said by not having a public hearing people could be left out of the process. She said she guarantees people who live in the apartment building don't know about the blasting. She said this is not an attempt to stop this. She said she wants to ensure everyone who is impacted by this is able to provide input. Member Robertson asked what the notification requirement is if the board determines the change is substantial. Chair Pinkham said notification of a substantial change would be the same as it is for any public hearing. Attorney Schomer said notice would have to be

sent to abutters within 300 feet and there would have to be advertising twice in the newspaper. He said the abutters list would come from the Assessors Dept. and the property owners would be notified. Member Robertson said the tenants would not get notice, and there is a substantial number of tenants. Anthony Scott Oddo, 6 Salem Avenue, said he is concerned about blasting. He said the description of blasting as an insubstantial change is ludicrous. He said when the current owner bought the property, blasting was not required. He said it seems like a very significant change. He said shutting down Route 93 would be a substantial change. He said that would require a public hearing. He asked if any property owner who lives beyond the 250-foot blast radius have any recourse if their foundation is damaged. He said if his foundation is cracked, it would certainly lower his property value. He said there were no rats in the neighborhood until about a year ago. He said it may be because the property is not maintained. He said the property manager is not to be trusted. He said it sounds like the ledge could be removed without blasting. He asked if there is insurance if his foundation is damaged. Member Robinson said there is a whole different set of protocols that pertain specifically to blasting. He asked if the fire department is charged with the regulation of blasting. Chair Pinkham answered affirmatively. Melissa Paziuk, 43 Mill Street, said blasting close to Route 93 may be an issue. She said Route 93 is already congested with traffic and there are accidents. She asked if there are any processes in place for unexpected damage due to blasting. She said it has been really hard to follow the changes to the project. She said it is hard for the residents to know about the changes. She said she wants to make sure her property is protected from damage due to blasting. Richard Jensen, 23 Mill Street, said he is concerned about water runoff. He asked if anyone has looked into the impact on wetlands and wildlife. Chair Pinkham said any wetlands issues were addressed when the board first dealt with the petition. Mr. Jensen asked if the Salem Street bridge will undergo a pre-blast survey. He said he thinks the bridge is more than 250 feet away. He said there are accidents on Route 93 and he does not think it is practical to shut down the highway 3-4 times a week. Chair Pinkham said all she can do is rely on Sgt. Stokes' opinion about traffic. Mr. Jensen said water comes under the highway and flows into a gully on Mill Street where there are crayfish. He said if a large building is put there, the water is going to go elsewhere. He said he has a cinder block foundation. He said many of the homes in the neighborhood were built in the 1940s with fieldstone foundations that are going to crumble. He said when a self-storage building was constructed on Washington Street, the developer had to put money into a trust. He said he is worried about the foundation of his house. Kathleen Carcione, 16 Salem Avenue, said her property abuts the existing development. She said she thinks the public should be informed about blasting. She said she found out about the blasting from Councilor Mercer-Bruen. She said she hopes the board will have a public forum. She said there are two enormous trees in the parking lot of the apartment building that could be easily toppled if there is blasting. She said there could be injuries. She said she thinks the public needs more information. She asked how long blasting will take place. Chair Pinkham said there will be 3-4 weeks of blasting. Ms. Carcione said she thinks the public needs to be told. She said the public has not seen a plan. She said her primary concern is blasting. She said they can deal with traffic. Attorney Schomer said the applicant is not trying to discount anyone's concerns. He said it is unfortunate the Ch. 40B statute uses the word insubstantial without any greater context. He said the applicant will be required

to come up with a construction mitigation plan. He said rodent control is a good idea. Mr. Weinig said the perception of blasting can be very different from what actually occurs. He said there are holes drilled into the rock. He said there are no huge explosions. He said he understands the abutters have concerns. He said they offer a construction management plan as a matter of course. He said they try to do things as safely as they can. He said rodent control is mandated by the local jurisdiction. He said there are methods to deal with rodents. Attorney Schomer said the applicant is proposing a significant presence of underground storm water management. He said that could improve the runoff situation. Chair Pinkham noted that will occur at the end of the project. Mr. Sparages said the Conservation Commission has jurisdiction because of the proximity to wetlands. He said the erosion control line will be inspected regularly within 24 hours of rainfall of at least ½ inch. He said they plan to remove rock, not earth. He said in many ways the removal of ledge is much cleaner than soil removal. He said ledge removal involves less sediment and erosion. He said they do have an order of conditions from the Conservation Commission. Chair Pinkham asked if hay bales and other barriers will be installed before blasting starts. Mr. Sparages said the hay bales are the first items that are installed. Chair Pinkham asked if the order of conditions mitigates off-site drainage. Mr. Sparages answered affirmatively. Chair Pinkham said an upside is rock won't get washed away and the hay bales will be it on site. She asked about the impact of vibrations from blasting. Mr. Ericksen said they did a geotechnical report to determine where the rock was on site. He said blasting is really an exact science. He said the blasting that will be conducted as part of this project is straightforward. He said vibrations are a function of the distance from the blast. He said there are standards established for vibrations. He said those are monitored during blasting. He said there are well established procedures. Chair Pinkham asked if someone from the city will be on-site during blasting. Mr. Ericksen said the city can have someone on-site. Chair Pinkham asked what determines the 250-foot circumference for the pre-blast surveys. Mr. Ericksen said that is a state regulation. Chair Pinkham asked how the 250-foot distance was determined and why it isn't 300 feet or 350 feet. Mr. Ericksen said he expects it is due to the dissipation of the vibrations. Attorney Schomer said the applicant would be agreeable to conducting pre-blast surveys for any structures within 500 feet of the property line. Chair Pinkham said that would be very helpful. She said she would also like assurances from the developer that the blasting will not negatively impact the trees to which one of the abutters referred. Mr. Ericksen said trees are much more durable than structures. Member Robertson asked if the board is going to be provided with a plan that shows access onto Salem Street and the trucking routes. Chair Pinkham said there is a plan that shows a connection to Mill Street. She said the board talked about sight lines that are really challenging. She said it might be helpful to trim back some of the brush along the haul route. Member Robertson asked if the graphic labeled page C-5 shows the route onto Mill Street. Mr. Sparages said the right of way is a driveway through private property with access to Salem Street. Member Robertson asked if the original comprehensive permit references blasting. Chair Pinkham said the original permit prohibits blasting. Member Robertson asked if that is primarily what the applicant wants to change. Attorney Schomer said there is more ledge than anticipated. Member Robertson asked if that in itself indicates there is a substantial change. Attorney Schomer said the Ch. 40B statute does not define substantial and insubstantial in a specific way. He said in his

opinion this proposed change is insubstantial. He said something like changing the units from rentals to ownership would be substantial. Member Robertson asked if this issue has been addressed at the agency level. Attorney Schomer said it has, and there is no specific reference to blasting. Member Robertson said it is very difficult to understand the juxtaposition. He said Chair Pinkham seems to have undertaken an extensive review. Chair Pinkham said the proposed conditions were taken from the comprehensive permit at 1042 Main St. Member Robertson asked if the applicant has submitted a proposed decision. Attorney Schomer said some components were modified to pertain to specific conditions of the Mill Street project. He said references to rock crushing and the sale of aggregate were removed because neither of those operations are proposed on Mill Street. Member Robertson asked what the benefit would be of holding a public hearing when the public has had an opportunity to speak tonight. He said the problem with rodents being exacerbated by blasting was mentioned. He asked what other information might be obtained. Chair Pinkham said it is not rocket science to think that animals might relocate and the board wants to minimize that. Member Robertson asked what information the board would glean from a public hearing that it does not have now. Chair Pinkham said the board is following a regulatory process. She said there is no definition of insubstantial in the statute. Member Ryan asked if the blasting is being proposed to replace another method entirely and if so what percentage. Mr. Erickson said blasting will replace another method which is technique that is designed to remove small quantities of ledge. He said to use the non-blasting method for a job of this size would be ludicrous. He said it would be like cleaning the floor of the Council Chamber with a toothbrush. Member Ryan said the North Woburn project involved huge amounts of rock that had to be blasted. He said he is trying to gauge how the blasting in this project would be different. Mr. Ericksen said it is tough to compare the two projects without background. He said the blasting will be arranged to minimize vibrations. Member Ryan said the board heard the same thing about the North Woburn project. He said he has an office a half-mile away and he heard the charges. He said it is a concern. Mr. Ericksen said the blasts on Mill Street will involve a small rumble for a few seconds. He said the ledge is primary in the northerly portion of the parcel and is within 25-33 percent of the building footprint. Chair Pinkham asked if the area to be blasted in was shown as the highlighted area in the plan,. Mr. Ericksen answered affirmatively. He said the size of the blasting area is 150 feet by 60 feet, approximately. Ward 3 City Councilor Jeffrey Dillon asked if a legal opinion from the City Solicitor about the distinction between substantial and insubstantial might be helpful to the board. Chair Pinkham said he does not know if the City Solicitor would wade into those waters. She said the guidance is set forth in the statute; for instance if the applicant is increasing the number of units by more than 10 percent, then that is a substantial change. Councilor Dillon said he does not know what the criteria is between substantial and insubstantial. Chair Pinkham said she can send that information to Councilor Dillon. Councilor Mercer-Bruen said it would be at the board's discretion to decide if blasting is a substantial change. She said she is trying to figure out how we got here. Chair Pinkham said there was no discussion about blasting during the public hearing. She said her memory was the reference to blasting in the original decision was inserted by one of the department head. She said the ZBA reached out to department heads for comments. Councilor Mercer-Bruen said she does not remember seeing references to water drilling in the meeting minutes. Chair Pinkham said she cannot

remember if the board asked any questions about ledge. Member Robertson asked if Attorney Schomer represented the original applicant for the special permit. Attorney Schomer said his firm represented the original applicant, but it was a different attorney. Mr. Ericksen said no one would undertake a project like this without a blasting component. Member Robertson asked if that is because the alternative method is more expensive. Mr. Ericksen said he has been on the job for 30 years and he has never seen a job of this size accomplished without blasting. Member Robertson asked where the language that prohibited blasting came from. Chair Pinkham said she believes the language came from a department head. Member Robertson asked which department head. He said he can't envision a department head had the wherewithal to come up with that language. Attorney Schomer suggested the language was probably inserted to give the city some security after all the blasting that occurred at 1042 Main St. Chair Pinkham asked if the applicant is willing to post a bond for damage from blasting. Mr. Weinig said he does not think the applicant would have any objection. He said that would have to come from the property owner, and he does not have the authority right now to say yes or no. He said there would have to be some sort of reasonable arrangement. Chair Pinkham asked if the start time of 8 a.m. suggested by Councilor Mercer-Bruen is acceptable. Mr. Weinig said that is acceptable as long as it pertains to blasting only. Mr. Sparages said there will be very few blasts during any given day, and none in the early morning because they take time to set up. Mr. Weinig said the applicant is willing to stipulate there will be no blasting before 8 a.m. as long as it is clear construction can occur during regular hours. Chair Pinkham asked if there will be any road closures. Mr. Weinig said he thinks so. He said he is quite sure there will be closures of Route 93. He said they have not closed local roads, but they will do what the Woburn Police Dept. wants. He said he does not think road local closures will be necessary. Member Robertson asked if the applicant will have to notify MassDOT. Mr. Weinig said they will have to notify any state, local or federal jurisdiction. Chair Pinkham said any information the applicant can share with the board about rodent control would be helpful. Attorney Schomer said the applicant is agreeable to continue to modify the proposed decision. Chair Pinkham said she will circulate language about the distinction between substantial and insubstantial. She said she would confer with the City Solicitor about how the Housing Appeals Committee defines substantial versus insubstantial. She said the board will continue the matter until its next meeting on June 21. She said she would appreciate the submission of any new information sooner than later. Mr. Jensen said there are above ground pools in the neighborhood and what the impact of blasting would be on the pools. He asked why a drone wasn't used to map out the ledge. He asked who will determine whether a public hearing is necessary. Chair Pinkham said the ZBA will make that determination. Mr. Jensen said he would definitely recommend a public hearing. Motion made by Member Robertson and seconded by Member Parrish to continue the matter until the board's meeting on June 21, 2023; approved, 5-0.

4. **Discussion of ZBA application requirements:** Chair Pinkham said Member Parrish has suggested tabling the matter until next month, due to the previous hearing running long. Motion made by Member Parrish and seconded by Member Clancy to table the matter under the board's meeting on June 21, 2023; approved, 5-0.

5. **Approval of minutes from meeting of April 20, 2023:** Chair Pinkham said she has a correction on page 7 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.
6. **Motion made by Member Parrish and seconded by Member Clancy to adjourn;** approved, 5-0. Chair Pinkham adjourned the meeting at 8:25 p.m.

ATTEST:

Gordon Vincent
Clerk of the Zoning Board of Appeals