

**Zoning Board of Appeals
City Council Chambers
Woburn City Hall
Wednesday, June 21, 2023 – 6:00 p.m.**

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

- 1. Mill Street Development LLC, 43 Rear, 53, 57, 59 & 61 Mill Street, Woburn, MA, request for determination of insubstantial change (continued from meeting of May 24, 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; and Chris Sparages, P.E., Williams & Sparages LLC, 189 North Main Street, Suite 101, Middleton, MA. Chair Pinkham asked if the applicant would agree to table the matter until after the board adjudicates the residential petitions on the agenda. Attorney Schomer said his client would agree to the chair’s request. Motion made by Member Parrish and seconded by Member Ryan to table the matter; approved, 5-0.

- 2. James Jason Kennedy, 16 Lillian St., 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 structure at 16 Lillian St., Woburn, MA:** Chair Pinkham said there has been some email communication about the height of the existing structure and the basement. She said she had a conversation with the Building Commissioner about the height limit of 2.5 stories that was very helpful. She said the clerk has circulated a previous legal opinion from the City Solicitor with regard to a similar petition at 6 Lord Terrace. She said she was trying to determine if the applicant needs a variance for a structure that exceeds 2.5 stories. She said the City Solicitor reviewed the code and table of uses and determined there are two references to height restrictions, either 2.5 stories or 35 feet. Mr. Kennedy said he owns a 100-year-old house with only 1.5 bathrooms. He said the primary goal is to create a new bathroom. Chair Pinkham said the addition looks like an au pair suite is going to be added in the attic. She asked what the plan is. Mr. Kennedy said there will be no bedroom in the attic. He said there will be a bathroom, a storage area and entertainment space. He said there is no way to build another living unit with a kitchen sink in the attic. Chair Pinkham asked where the washer and dryer are located. Mr. Kennedy said the washer and dryer are located on the second floor. She said they want to move them to the attic to get more space. He said the email from the chairman also asked some questions about the basement space. Chair Pinkham asked what the height of the basement. Mr. Kennedy said the basement is 7’ 9.5” high. Chair Pinkham said the definition of a story is that it exceeds 6’ 6” from the finished grade. Mr. Kennedy said there is no way the basement could be inhabitable. He said the beams are at eye level. Chair Pinkham asked what year the house was built. Mr. Kennedy said the house was built in 1920. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. There were no respondents. Member Parrish said the second floor plan indicates “existing

demo” and asked if there are any proposed changes to the second floor. Mr. Kennedy said they have talked about opening a closet, but other than that there are no plans to expand the second floor. Member Parrish asked if a new handrail to the second floor or the attic is being installed. Mr. Kennedy said there will be a new handrail to the attic, for safety reasons. Alternate Member Cavicchi said asked if there is no work on the second floor. He said page A1 of the building plans has a proposed second floor plan. Mr. Kennedy said the second floor is basically staying as is, except they are opting to open more of a doorway. Chair Pinkham asked if the second floor plan labeled “loft” reflects those changes. Mr. Kennedy answered affirmatively and said the area labeled “loft” will be used more for office space. Chair Pinkham said the Google map shows an entry to the basement from the driveway side. She asked if there are stairs. Mr. Kennedy said there are two stairs to the basement. Chair Pinkham said she is trying to figure out if the basement is a story if you have to step down to enter it. She said this leads her to believe the basement does not exceed 6’ 6” from the finished grade. Motion made by Member Parrish and seconded by Member Ryan to grant the special permit with the board’s standard conditions that prevent the house from being converted into a 2-family dwelling; approved, 5-0.

- 3. Paul and Dawn Dionne, 40 Arlington Road, 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 structure at 40 Arlington Road, Woburn, MA:** Mr. Dionne said he and his wife plan to tear down a garage that was built in 1907. He said the garage is about 6 inches from the lot line. He said the new garage will be 21.5 feet off the street and attached to the house. He said it will be a single-story garage. He said there will be no living space in the garage and it will serve as an entry way into the house. Chair Pinkham said there is sufficient frontage on Dows Lane but the setback on Dows Lane does not comply. She asked if anyone in the audience wished to address the board in regard to the petition. Yadira Pollard-Ramos, 27 Dows Lane, said the garage is a little less than 100 feet from her home. She said she is concerned about noise during construction because she works from home. Chair Pinkham said she thinks there is an ordinance that prohibits construction before 7 a.m. or after 7 p.m. Ms. Pollard-Ramos said she is more concerned about the amount of noise. Chair Pinkham said the applicants would be in their rights as long as they don’t violate the noise ordinance. She said the ZBA does not regulate noise. She said if there are any issues, Ms. Pollard-Ramos can reach out to the Building Commissioner. Member Robertson asked Mr. Dionne how long he expects construction to last. Mr. Dionne said construction should take a couple of months. Member Robertson said he expects most of the noise will be associated with the demolition. Mr. Dionne said he expects demolition will last a couple of days. He said the work to construct the framing will be sporadic. Motion made by Commissioner Ryan and seconded by Commissioner Parrish to grant the special permit; approved, 5-0.
- 4. Patricia Akrivoulis, 3 Pierce St., 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 structure at 3 Pierce St., Woburn, MA:** Representing the applicant were Patricia Akrivoulis and Athanasios

Chalkiadakis, both of 3 Pierce St. Chair Pinkham said the board has received a communication from the Building Commissioner, who raised an issue about ground coverage. She said it also appears the proposed addition is going to create a new non-conformity with the rear lot line. She said the proposed addition is going to be 21.4 feet from the rear lot line and the requirement is 30 feet. She said she thinks the applicant will need a special permit and two variances. She said there are different legal standards for variances and special permits. She said the lot is non-conforming, as is the structure. She said the structure violates the 25-foot setback and a 12-foot side setback on the northerly lot line. She said the current dwelling complies with the rear yard setback and the other side setback, but proposed addition would reduce the side setback to 3 feet. She said the new non-conformity may also require a variance. She said in order to approve a variance the board will have to make a finding of a hardship. She asked if there are any circumstances on the applicant's lot that could be considered evidence of a hardship. Ms. Akrivoulis said the lot is small and prevents them from meeting the setback requirements. She said she cannot say soil conditions or topography constitute a hardship. Chair Pinkham thanked Ms. Akrivoulis for her honesty and said her reaction is she does not think Ms. Akrivoulis has established a hardship. She said she does not think her property is a candidate for variances. She said the addition is only three feet from the lot line and she thinks that is a little too close. She said if there is an emergency at some point in time it could be problematic for firefighters to access her house. She said if the applicant ends up seeking a variance, she will not vote in favor and she will need four other votes. She said maybe the applicant wants to wait until Member Clancy is back. Member Robertson said the lot is small. He said the applicant knew that when she acquired the property. He said she may want to consult with legal counsel, in his opinion. Ms. Akrivoulis said they are very happy with the property, and she acknowledges the non-conformities. Mr. Chalkiadakis said they are also planning to remove a shed. He said there will be no living space in the addition. He said he understands the lot is small. Member Ryan asked if a fence on the property is owned by applicant. Mr. Chalkiadakis said it was there when the property was purchased. Member Ryan asked if the shed is being removed. Ms. Akrivoulis answered affirmatively. Member Ryan asked if the removal of the shed is reflected in the ground coverage ratio. Ms. Akrivoulis said it is not. Member Ryan asked if the applicant knows the ground coverage ration without the shed. Ms. Akrivoulis said she does not. Member Parrish said if the applicant wants only a 1-car garage, that will reduce the size by 12 feet off the side. Ms. Akrivoulis said they would still need to be 30 feet from the rear setback. Member Parrish said it could be easier to bring in the addition on the northerly side. Ms. Akrivoulis said they are trying to do their best. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the petition. Thomas Miller, 2 Pierce St., said he has lived in his home for more than 30 years. He said the applicant and Mr. Chalkiadakis are great people. He said their proposed garage is not going to negatively impact the neighborhood. He said everyone in proximity has a small lot. He said all the houses in the neighborhood have been built up in the last 20 years. He said he estimates the shed is about 120-square-feet. Chair Pinkham asked Ms. Akrivoulis if she wants the board to take a vote or go back to the drawing board, which would require the board to vote on a continuance. Ms. Akrivoulis said she would like to ask for a continuance. Chair Pinkham said the board's next meeting will be on July 19. Motion

made by Member Parrish and seconded by Member Ryan to continue the hearing until the board's meeting on July 19, 2023; approved, 5-0.

5. Ramnath Chaudhary, 53B Campbell St., 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 structure at 53

Campbell St., Woburn, MA: Chair Pinkham said she is recusing herself because she is an abutter. She said Member Robertson will serve as chair pro tem. Chair Pinkham left the City Council Chamber. Mr. Chaudhury said he has a tiered attic that he would like to convert into two bedrooms. He said there will be no change to the foundation. Member Parrish asked if Mr. Chaudhury will be using the same roof or if he is going higher. Mr. Chaudhury said the roof will stay the same height. Chair pro tem Robertson asked if everything is being done inside. Member Cavicchi said it appears the applicant is going to remove the roof and will expand the attic area. Member Ryan said page A5 of the building plans illustrates what the applicant is trying to do. Chair pro tem Robertson asked if anyone in the audience wished to address the board in regard to the petition. James Murray, 55 Campbell Street, said Mr. Chaudhury wants to expand his house so his two daughters can come and live with him. He said he is in favor of the board granting the special permit. He said Mr. Chaudhury is a good guy. Member Ryan asked if the dwelling will remain a 2-family. Mr. Chaudhury answered affirmatively. Motion made by Member Ryan and seconded by Member Parrish to grant the special permit; approved, 5-0.

6. Mill Street Development LLC, 43 Rear, 53, 57, 59 & 61 Mill Street, request for determination of insubstantial change (continued from meeting of May 24, 2023):

Motion made by Member Parrish and seconded by Member Ryan to take the matter from the table; approved, 5-0. Attorney Schomer said the developer has provided a construction project plan to the board. He said the construction management plan incorporates suggestions and comments from the public and the board last month. He said a document with proposed conditions has been circulated, as well. Chair Pinkham said she has not had time to review everything the developer has submitted. She said she has spoken to relevant municipal department heads and the state fire marshal's office. She said she had anticipated the developer would have submitted an analysis and calculations that support the developer's claim that 5,000-8,000 cubic yards of ledge will be removed over the span of 4-6 weeks. She said the Woburn Fire Dept. did not have a good experience with the proposed blasting contractor during construction at The Vale. She said the fire department can have a detail on-site during blasting. She said no permits will be issued to any contractor that owes money to the city. Attorney Schomer said the developer intends to use Maine Drilling & Blasting to perform the blasting. He said Maine Drilling & Blasting has a good reputation. He said he can tell the board Maine Drilling & Blasting has recommended the removal of 8,000 cubic yards of ledge over 3-4 weeks. Mr. Weinig said 18 test pits were dug and they have very accurate calculations. Chair Pinkham said there is an estimate of 1-3 blasts per day and asked if that is accurate for a site next to a highway. Mr. Weinig said the estimate probably is accurate. He said there will not necessarily be blasting every day. He said there is a period of execution. He said there may be days the developer will not be allowed to blast. Chair Pinkham asked if the developer has a draft contract with the blasting contractor. Mr. Weinig said they are

still in the negotiation stage. He said the developer has only ever used Maine Drilling & Blasting. Chair Pinkham asked if McPhail Associates will be the geotech contractor. Mr. Weinig said that won't change. Chair Pinkham asked if there is any recommendation about the number of seismographs. Mr. Weinig said the estimate is three or four, but he noted he is not an expert. He said he will go with what the contractor recommends. Alternate Member Cavicchi asked if the developer intends to use any of the existing rock as fill. Mr. Weinig said there will be no rock crushing on-site. He said there will be no gravel processing. He said any post-blast material will be brought off-site. Chair Pinkham said she thinks it makes sense to go over the construction management plan. Member Parrish said he received the draft yesterday and he has not had time to review it. Chair Pinkham referenced the hours of operation on page 2 and said the Building Commissioner is unaware of any permits issued for work on Sundays. Mr. Weinig said work on Sundays will only occur in an emergency. Chair Pinkham said the developer previously indicated it is willing to agree that blasting will not occur before 8 a.m. Attorney Schomer said that is in the proposed decision. Chair Pinkham referred to page 4 and of the construction management plan and said the Building Commissioner wants to make sure the perimeter fencing will not impact sight lines on the street. Attorney Schomer said the perimeter fencing will have no impact. Chair Pinkham asked if the perimeter fencing will be chain link. Attorney Schomer answered affirmatively. Mr. Weinig said he does not think there is any situation on Mill Street where the chain link fence will obstruct anyone's view. He said if such a situation arises, they would refrain from putting up fabric. Mr. Sparages said he thinks the closest residence is 45 Mill St. He said the driveway is on the opposite side and there should be no interference with sight distance. Chair Pinkham asked if there is going to be a staging area where the trucks and equipment are going to be kept. Mr. Weinig said the developer will be putting down a coat of asphalt very early on and that will serve as the staging and parking areas. Mr. Sparages said the staging area will change as the project progresses but everything will be kept on-site. Chair Pinkham said the city has had experience with construction vehicles queuing on streets, and then the parking lot of a public park. She said the board wants to make sure there is communication about how the trucks will get onto the site and not be hanging out anywhere else. She said the City Engineer has confirmed Salem Street is city and not a state road. She said the fire marshal expects Salem Street will be closed intermittently. She said she is feeling like there ought to be a specific condition that precludes the Woburn Police Dept. and the Woburn Fire Dept. from chasing contractors to pay for details. Mr. Weinig said for the first few days of blasting the Building Commissioner and the Fire Chief will be on-site. He said if Mill Street needs to be closed down, they will do that. Chair Pinkham said the board and the developer have agreed to use Mill Street as the haul route. She asked if that will be also used by other vehicles. Mr. Weinig said that is the developer's assumption. Chair Pinkham said page 5 indicates the developer will communicate with the Mill Street neighbors about the start of construction and updates and asked how this will be accomplished. Mr. Weinig said communicating with the residents of the apartments will be pretty easy. He said they have contact information for any resident within the pre-construction survey area. He said they can send notices to the single-family residences. Chair Pinkham asked how the developer plans to notify any resident that does not have or does not wish to furnish and email address. Mr. Weinig said the developer is flexible. Chair Pinkham said she thinks

notifying the residents by mail would put the burden on the developer. Mr. Weinig said the developer would be happy to notify residents by any means the board thinks is appropriate. Member Ryan suggested the developer could put a QR code on signs that will direct neighbors to the developer's website. Mr. Weinig said the developer can certainly do that. Chair Pinkham referenced page 6 and said the Building Commissioner wanted her to share with the developer the regulations that govern dumpsters. She said the board does not want dumpsters being emptied at 5:30 a.m. Mr. Weinig said the developer will certainly comply with any regulations in regard to dumpsters. Chair Pinkham said the construction entrance will need to be built in a way that it can accommodate fire trucks. Mr. Weinig said emergency access plans have been submitted to the Building Commissioner and the fire department. Chair Pinkham referenced page 7 and said she wants to make sure the truck routing plan will apply to all vehicles. She asked where the tenants of the Mill Street apartment buildings will park during construction. Mr. Sparages said the parking field will be re-striped to provide a 24-foot wide aisle, to comply with the city's requests. He said it is an appropriate approach for a fire truck and the haul trucks. He said the striping will have to happen before construction starts. Chair Pinkham asked if residents will be able to park in the construction access road. Mr. Sparages said there will be an ability to park within the striped area. Chair Pinkham asked if the other parking areas are going to remain as is or will there be accommodations for construction. Mr. Sparages said passenger vehicles can still park in designated spaces and there will be a 24-foot wide aisle. Chair Pinkham asked if there is a parking plan. Mr. Sparages said he does not have a parking plan with him tonight. Alternate Member Cavicchi asked if there will be stop signs for trucks or speed bumps for trucks leaving the site. Mr. Weinig said they would typically have a stop sign. He said equally important is the riprap and the tire washing. He said between those two measures he is not terribly concerned. Chair Pinkham asked if it is common to have signs that read trucks shall not exceed 10 mph. Alternate Member Cavicchi agreed there should be some type of signage. Chair Pinkham said she is thinking about safety for pedestrians. Mr. Weinig said there is a sidewalk on the west side of Mill Street, which is on the opposite side of the street from the construction site. He said most pedestrians will walk on the sidewalk. Chair Pinkham said she is more concerned with the parking lot. Mr. Weinig said the developer has an established speed limit. He said he does not think trucks are going to fly through there. He said the construction vehicles will only be present during construction hours. He said they can put up 10 mph speed limit signs. He said they can also add stop signs where appropriate. He said another option is escorted vehicles, with an employee literally walking next to the vehicle. He said he does not think that will be necessary here, but they will do what is required. Chair Pinkham asked about a reference to "wetting agents" on page 8. Mr. Weinig said that refers to water to keep the dust down. Chair Pinkham asked if the developer will wash construction vehicles on a set schedule. Mr. Weinig said the developer is required to keep dust levels down by the state building code. He said he suspects Woburn has a similar ordinance. Chair Pinkham asked about trucks dragging dust and dirt onto the street. She asked if street sweeping is also in the state code. Mr. Weinig said the riprap will generally prevent dirt from being spread to the street. He said they are taking the extra step of truck washing. He said they will do street sweeping if required. Chair Pinkham said if there is a problem, the Board of Health and the Building Commissioner will get phone calls. She said she would like to get some

guidance from the Building Commissioner and the Board of Health. Attorney Schomer said proposed condition #39 requires the developer to perform street sweeping each weekday. Mr. Weinig asked if the condition that references street sweeping could read “if necessary.” He said it seems kind of silly to have a street sweeper there every day. Chair Pinkham said she has no comments about snow removal. She said she has spoken to Board of Health agent John Fralick about rodent control. She said Mr. Fralick said there will be bait boxes put out as a preventative measure but if he starts to get phone calls he will come to the site and ask the developer to put out more. She said page 9 references noise and odor control. She said Commissioner Quinn does not want to have any vehicles idling. She asked the developer to explain the difference between white noise a beeping back up alarms. Mr. Weinig said white noise sounds like more of a hiss. He said white noise meets OSHA requirements but is not nearly as obnoxious as the beeping noise. Alternate Member Cavicchi said the white noise method works. Mr. Weinig said not all vehicles have the white noise function yet. Chair Pinkham asked if emergency contact information is going to be on the signage. Mr. Weinig said contact information will be on the sign. He said there will be a standard sign that includes a phone number and the website information. He said the sign will be predominantly displayed on the front of the construction site. Chair Pinkham said she wants to address a comment made by a resident at the meeting in May about the stability of two large trees on the apartment building site. She said if the trees are not healthy, there might be a concern. She said Councilor Darlene Mercer-Bruen also asked for the removal of any dead trees behind 16 Salem Avenue so they don’t damage a fence if they fall. Mr. Weinig said the developer will eventually be replacing a long section of stockade fence. He said pruning and tree removal were done within the last three weeks. He said his guess is the dead trees have already been removed. Member Robertson asked if the developer feels Councilor Mercer-Bruen concerns have been addressed in the construction plan. Chair Pinkham said Councilor Mercer-Bruen is unable to attend tonight’s meeting but Councilor Jeffrey Dillon is appearing in her stead and intends to read something into the record on her behalf. Chair Pinkham said the only concern from Councilor Mercer-Bruen that the developer has not addressed is posting additional bond of \$500,000 to cover damage from any blasting issues. Attorney Schomer said the developer is required to provide a \$1 million bond by statute. He said any addition requirement would add a layer of complication. He said if there is a separate bond, there could be overlapping claims that could lead to a dispute. He said the developer’s position is there is adequate coverage. Mr. Weinig said the procedure for making claims does not change. He said one of the developer’s attorneys recommended against it. He said the \$500,000 is less than what is required by law. He said a \$500,000 bond won’t be an issue for a project this size. Chair Pinkham asked if that means the short answer is no. Mr. Weinig said the short answer is the developer would prefer not to. Chair Pinkham asked what the coverage is required to obtain a building permit. Attorney Schomer said \$1 million coverage is required. He said every subcontractor will be required to carry no less than \$5 million in liability coverage. He said the developer’s requirements for liability carry over to Maine Drilling & Blasting. Chair Pinkham said she asked about the timing of the project and said she recalls the developer said sometime in the summer. Mr. Weinig said they won’t be able to do much this summer. He said they are probably looking at the fall of 2023. Chair Pinkham asked if the developer will have a permit from MassDOT for blasting by then. Mr. Weinig said

obtaining a permit from MassDOT is apparently not that big a deal. Chair Pinkham asked if anyone in the audience wished to address the board in regard to the matter. Jeffrey Dillon, Ward 3 Councilor, said he is speaking on behalf of Councilor Mercer-Bruen, who sent an email to him, the clerk, and the chair. He said many of the items on Councilor Mercer-Bruen's list have already been addressed. 1.) Expand the radius of the current state guideline for video tape surveillance inside/outside homes pre and post blasting from 250 feet to 500 feet; 2.) Additional \$500K bond for potential blasting issues be posted by petitioner. He said the board and the developer just addressed this item. He said this would be another layer of protection for the residents and the city; 3.) Additional rodent control for neighbors provided by petitioner; 4.) Detailed blasting plans highlighting the amount of rock to be removed, # of truck trips per day and length of time to complete be provided; 5.) Notification to Mill Street apartment residents be sent by the petitioner regarding truck traffic and construction along with mitigation (lower rent during construction) be provided by petitioner. He said this has not been discussed tonight; 6.) Trucking of rock off site restricted from using Mill Terrace, Washington Terrace, Salem Ave, George Ave, Robert Ave, Schneider Court, Mill Terrace, Mill Street; 7.) Trucking route to be provided in writing by petitioner; 8.) Hours of operation for blasting not to start before 7 a.m. and on no holidays recognized by City of Woburn. He said the petitioner has agreed not to start blasting until 8 a.m.; 9.) Dust control mitigation and pressure washing services for homes impacted in the immediate area be provided by petitioner; 10.) Removal of dead trees by petitioner behind 16 Salem Ave prior to blasting. He said this has not been done. He said the residents were told the tree removal company was instructed by the developer not to remove the dead trees; 11.) A detailed process be put in place for neighbors/building department to report and address concerns as it relates to blasting/construction in a timely manner. Member Robertson said the last paragraph indicates the previous owners have not been responsive to the concerns that have been brought up by neighbors in the past. Councilor Dillon said the fence has been in disrepair since about 2020 but has been fixed since this request for determination of insubstantial change has been filed. He said there have been issues with the dumpster. He said the developer's response has been better since this proceeding started. Chair Pinkham asked if the issue with the dumpster is its location. Councilor Dillon answered affirmatively. Member Robertson asked the developer's representative if he is aware of these concerns. Mr. Weinig he is not sure what the issue is with the location of the dumpster. He said he is not familiar enough with the layout of the property to answer any questions. He said he does not know if the trees behind 16 Salem Avenue are on the developer's property. He said he can only speculate. He said the developer will do whatever is required. He asked if someone could clarify what the dumpster issue is. Anthony Scott Oddo, 6 Salem Avenue, said the developer planed trees on the apartment complex property but put a fence on the other side of the trees. He said in 2000 the developer said it was going to replace the fence, which was reported in the Daily Times Chronicle. He said the fence was never replaced and the developer did not respond to inquiries about the fence. He said there was work done to the fence but only the broken sections were fixed. He said in 2021 they eventually replaced the fence but broke it five months later. He said on Thursday they finally replaced the fence, but without notification. He said there are two dumpsters that abut the fence at 4-6 Salem Avenue that cause trash to blow into his yard. He said there are rats. He said things finally got better

but he would prefer not to have a dumpster by the fence. Chair Pinkham asked if Mr. Oddo is suggesting an alternate location for the dumpster. Mr. Oddo said he would like to show the chair where he would like to see the dumpster by pointing it out on a photograph. He said he was told the blasting survey area would be expanded to 500 feet. He said his understanding is there was an agreement that there would be no blasting when the previous property owner was in control of the property. He said the new owners should honor that request. He asked if the new owners did not do their due diligence. He said asking for permission to perform blasting now seems disingenuous. He said he would like for the board to require a public hearing. He said it seems like it is not clear what is substantial and what is insubstantial. He said he seems like a public hearing would be a good use of time. Member Robertson asked when the condition prohibiting blasting was attached to the comprehensive permit. Attorney Schomer the condition was added after the Woburn Heights comprehensive permit was approved. Chair Pinkham said the prohibition on blasting is permit of the original comprehensive permit. She said this is what the applicant is trying to change. Kathleen Carcione, 16 Salem Avenue, said she has learned there was a stockade fence erected. She said she saw two trees being pruned. She asked the tree workers if they could prune two branches that overhang onto her property and one of the employees said they cannot do that without permission from their boss. She said the tree workers were from Nick's Landscaping in Arlington. She said she called but has not heard back. She said she just wanted to clarify this matter. Attorney Schomer said he thinks the developer has done a good job. He said he thinks the proposed conditions will satisfy the concerns that have been expressed. He said he thinks Hamilton's reputation speaks for itself. He said he believes the proposed change is a minor modification and the developer has requested a finding to that effect. Member Ryan said there is a relevant memo from the City Solicitor. Chair Pinkham said the big question is whether there is guidance in case law for blasting. She said she did not find any case law that dealt with blasting as an insubstantial change, as the City Solicitor suggested. She said the big case on blasting is 1042 Main Street. She said the City Solicitor's view is blasting is regulated at the state level and if the city doesn't regulate it, how can it be a substantial change. Member Robertson asked if the board votes that the change is substantial, could the developer appeal to the Housing Appeals Committee. Attorney Schomer said the developer could appeal such a decision. He said if the board determines the changes are substantial, then it would trigger a public hearing. He said the proceedings over the past few months have been consistent with a public hearing, with the exception of notice to abutters. Member Ryan said the board cannot really defend blasting as a substantial change as the statute defines it. He said if the board determines the change is insubstantial, it can impose conditions. He said he thinks the board is better off holding onto that purview rather than having the developer appeal to the HAC and the board losing that power. Member Robertson said he has no expertise in construction. He said he wants to ask the chair if she thinks the proposed conditions adequately protect the city with respect to the blasting issue. He asked if the board should hire an expert to review the proposal and make recommendations. He said this issue of substantial versus insubstantial is legal mumbo jumbo. He said this isn't going to result in any substantial affordable housing. Chair Pinkham said her sense is Member Ryan is correct. She said one of the components of a finding of a substantial change is a public hearing, and the City Solicitor has opined the public has had input during the board's deliberations. She

said she can say with complete confidence the conditions the developer has agreed to will exceed what the HAC would uphold upon appeal. She said though no one on the board is an expert in blasting, the board has gone through the most outrageous experience of blasting in the commonwealth. She said the reality is the city does not regulate blasting. She said the city needs to rely on the state. She said the developer is going to have to put together a plan that satisfies the state and MassDOT. She said this is going to be the safest blast ever because of the proximity to I-93. Member Robertson asked if the board hired an expert for 1042 Main Street. Chair Pinkham answered affirmatively. Member Robertson asked how the maximum size the blast is determined. Chair Pinkham said that is all regulated by the state. She said the city has no ability to regulate that. She said her sense is the board has already conducted a public hearing. She said the board is far along with the conditions. She said she would like the Building Commissioner to read and review the construction management plan. Member Parrish asked what the next steps are. He asked if the board should continue the matter until its next meeting. Chair Pinkham said it may make sense to vote on whether the change is insubstantial or substantial and then continue the matter to review the proposed conditions. Motion made by Member Ryan and seconded by Member Parrish to grant the developer's request for a determination of insubstantial change; approved, 5-0. Chair Pinkham asked the developer for a continuance until the board's July meeting to review the conditions. She said this will give the board members an opportunity to redline the document and make sure everything that has been discussed is on paper. She said there was discussion about mitigation for residents of the apartment building and power washing, and she does not know if those items are referenced in the conditions. Attorney Schomer said power washing is in there, but beyond that he is not sure. Chair Pinkham said there was discussion about lowering rent for people who live in the apartment building. Mr. Weinig said that can be handled on a case-by-case basis but the property owner does not plan on lowering rent across the board because an apartment building is being built across the street. Chair Pinkham said she would like to give the city's relevant department heads an opportunity to review and discuss the draft conditions. She said she hopes the property owner would continue to attempt to be a good neighbor and honor the requests from the neighbors with regard to the dumpster and the trees. She said that will reflect well on the applicant. She asked Attorney Schomer to send a letter to the clerk extending the time line for the board to act on the conditions until the July 19 meeting. Motion made by Member Robertson and seconded by Member Parrish to continue the matter until the board's meeting on July 19, 2023; approved, 5-0.

7. **Discussion of ZBA application requirements:** Chair Pinkham suggested tabling the matter until next month, due to the previous hearing running long. Motion made by Member Parrish and seconded by Member Ryan to table the matter until the board's meeting on July 19, 2023; approved, 5-0.
8. **Approval of minutes from meeting of May 24, 2023:** Chair Pinkham said she has a correction on page 2 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 Ryan to approve the minutes as amended; all in favor, 5-0.

9. Motion made by Member Parrish and seconded by Member Ryan to adjourn;
approved, 5-0. Chair Pinkham adjourned the meeting at 9:01 p.m.

ATTEST:

Gordon Vincent

Clerk of the Zoning Board of Appeals
