

Zoning Board of Appeals – Public Hearing

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Tuesday May 24th, 2022 7:00 p.m.

Members Present: Chair David Lavenburg, Steve Bennett, Ellen Freyman, Suzanne White, Jim Tourtelotte, Marissa Komack, Mike Michon.

Members Absent: Jane Mantolesky, Jerry Plumb.

Applicants Present: Gloria Cangialosi, Paul & Cassandra Cangialosi, Norberto Diaz, Anna Russo, Max Nowak, Kate Bean, Mike Adamsky, Joshua Mueller, Anthony Nowak, Edward Ayers.

The **ZBA Hearing** was called to order at 7:04 p.m. by Chair David Lavenburg, who reminded the public of the protocols for proper conduct at virtual meetings that are being conducted per Chapter 22 of the Acts of 2022, which allows for virtual hearings to continue.

Petition #2022-3 – Variance (Fence) for 68 Hazardville Rd., Paul Cangialosi:

Mr. Cangialosi recently erected a fence unbeknownst to the fact that his corner lot is subject to 40' setbacks on two of the lot's sizes. Pulling the fence back to the allowable location would force the removal of a large maple tree and add to the financial burden of relocating the fence.

There was consensus among board members that the fence contractor should have been aware of the need for a fence permit in this town, with Mr. Bennett raising concerns of an unfair practice on the part of at least one fence contractor that deflects the responsibility of permitting due diligence on the homeowner; Mr. Cangialosi apologized for the impact of his vendor's lack of proper guidance on the installation. While the applicants' reasons for erecting a fence seem reasonable, Chair Lavenburg acknowledged that the current layout runs contrary to the bylaw, with other members pointing to the fact that the financial burden of relocating the fence does not justify the granting of the variance under the current code.

Comments from the public in favor of or against the petition:

- Not open, to be provided at the hearing continuation.

Chair Dave Lavenburg made a motion, and was seconded by Steve Bennett, to continue the hearing to June 16, 2022 to allow the applicant additional time to seek legal counsel and prepare a presentation of those findings. Roll call vote - Mr. Lavenburg: yes; Mr. Bennett: yes; Ms. White: yes; Ms. Freyman: yes; Ms. Komack: yes. All in favor, motion passed 5-0.

Member Ellen Freyman left the hearing at 7:32pm.

Petition #2022-04 – Special Permit (Addition) for 144 Lawnwood Av., Anna Russo:

The applicant and her representative, Loyal Moore Construction, seek to build an 842 s.f. second floor addition to the existing dwelling unit to accommodate three bedrooms and 2 bathrooms. This addition is not expected to increase the total building height beyond 35'. In addition, the applicant is requesting to add a small 5' x 15' front porch that will align with the home's façade – the porch is not depicted in the application.

Comments from the public in favor of or against the petition:

- None

Member Steve Bennett made a motion, and was seconded by Mr. Lavenburg that the board makes the following findings of property non-conformity effective based on Article VI of the Zoning Bylaws: (1) lot size is 8,712 sq. ft. instead of the required 18,750 sq. ft.; (2) on frontage there are 66' instead of the required 125'; (3) front yard setback is approximately 29.6' instead of 40'; (4) on side yard setbacks are 7.1' on the north side yard and between 5.4" and 7.2' on the south side of the home and (5) on rear setbacks there is 70.4' instead of 30'. Roll call vote - Mr.

Bennett: yes; Mr. Lavenburg: yes; Ms. White: yes; Mr. Tourtelotte: yes; Ms. Komack: yes. All in favor, motion passed 5-0.

Mr. Bennett made a second motion, and was seconded by Mr. Lavenburg that the board make a finding based on the foregoing facts that the proposed addition of an 842 s.f. second floor to the existing first floor of the dwelling unit, thereby transforming it into a two-story home, as well as the addition of a porch of the left side of the façade, would further intensify the non-conformities (lot size, frontage, side yards, front yard setback, rear yard) by increasing structure size and by further decreasing the open space within the lot. Roll call vote - Mr. Bennett: yes; Mr. Lavenburg: yes; Ms. White: yes; Mr. Tourtelotte: yes; Ms. Komack: yes. All in favor, motion passed 5-0.

Mr. Bennett made a third and final motion, and was seconded by Mr. Lavenburg, that the board make a finding that the proposed project won't be substantially more detrimental to the existing structure or neighborhood based on the project's scope generally conforming to the neighborhood, the lack of members of the public opposing said petition. Roll call vote - Mr. Bennett: yes; Mr. Lavenburg: yes; Ms. White: yes; Mr. Tourtelotte: yes; Ms. Komack: yes. All in favor, motion passed 5-0.

Meeting Minutes Review:

1. April 5th, 2022 Public Hearing: Dave Lavenburg made a motion, and was seconded by Mr. Bennett, to approve the minutes as presented and subject to further revisions in the future if need be. Roll call vote - Mr. Lavenburg: yes; Mr. Bennett: yes; Ms. White: yes; Mr Michon: yes. Ms. Komack – abstained; Mr. Tourtelotte: abstained. Motion passed 4-0 with two abstentions.

Review and Vote to endorse General Code's eCode reformat of the Town's Zoning By-Laws:

Member Mike Michon previously evaluated each question made by contractor General Code and had submitted his proposed responses to Chair Lavenburg, who agreed with the answers. As a group, the board members proceeded to review the findings and compare them with the votes recently made by the Planning Board on the same questions. Many recommendations pertained to addressing typographical/grammatical error or updating the official names of government agencies and/or municipal roles. Below is a table detailing the board's thought process and unanimous agreement on how to answer each question:

Question	Code Content Location	Motions Made by Members of Planning Board	ZBA Review			
		Language	ZBA – Mike Michon	Adopt PB's answer	Adopt ZBA-MM's answer	3rd Option
242-001	Ch. 242 "Signs, Billboards and Other Advertising Devices"	"To defer decision until after Code publication and recommend to the Select Board that the language described in this question be deleted from the General Bylaws. "	"To defer decision until after Code publication"	Yes	-	-
242-002	Ch. 242, § 242-1 General Provisions	"To defer decision until after Code publication and recommend to the Select Board that the language described in this question be deleted from the General Bylaws. "	"To defer decision until after Code publication"	Yes	-	-
242-003	Ch. 242, § 242-1 General Provisions	"To defer decision until after Code publication and recommend to the Select Board that the language described in this question be deleted from the General Bylaws. "	"To defer decision until after Code publication"	Yes	-	-

315-001	Ch. 315 Zoning	“Revise the adoption date of Zoning Bylaw to indicate May 19, 1988.”	“To defer decision until after Code publication”		Yes	-
315-002	Ch. 315 Zoning, Art. I General Provisions, § 315-3 Severability	“To delete indicated severability sections as covered by §315-3”	“To defer decision until after Code publication”	-	-	Do not revise
315-003	Ch. 315 Zoning, Art. I General Provisions, § 315-4 Definitions	“To defer decision until after Code publication.”	“Do not revise”	Yes	-	-
315-004	Ch. 315 Zoning, Art. I General Provisions, § 315-4 Definitions	“To change the word <i>quality</i> to <i>quantity</i> as indicated.”	Same	-	-	-
315-005	Ch. 315 Zoning, Art. I General Provisions, § 315-4 Definitions	“To accept the corrected reference to the CMR listed in this section.”	Same	-	-	-
315-006	Ch. 315 Zoning, Art. I General Provisions, § 315-4 Definitions	“To defer decision until after Code publication.”	Same	-	-	-
315-007	Ch. 315 Zoning, Art. I General Provisions, § 315-4 Definitions	“To defer decision until after Code publication.”	Same	-	-	-
315-008	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-7 Board of Appeals	“Change <i>Board of Appeals</i> to <i>Zoning Board of Appeals</i> ”	Same	-	-	-
315-009	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-7 Board of Appeals	“To revise reference to MGL c40A, § 12.”	Same	-	-	-
315-010	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-7 Board of Appeals	“Create an Option 3 that indicates that this question is to be referred to Town Counsel.”	“To defer decision until after Code publication”	Yes	-	-
315-011	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-7 Board of Appeals	“To change <i>Inspector of Buildings</i> to <i>Building Commissioner</i> .”	Same	-	-	-
315-012	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-7 Board of Appeals	“To eliminate the conflict with § 315-9B, C and D as explained by General Code and change 10 days to 30 days in § 315-7B.”	“To eliminate the conflict with § 315-9B, C and D as explained by General Code and change 30 days to 10 days in § 315-9B, C and D.”	Yes	-	-
315-013	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-9 Violations and penalties; remedies	“To revise as follows: a fine of \$100”	“To defer decision until after Code publication”	Yes	-	-

315-014	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-9 Violations and penalties; remedies	“To revise as follows: <i>Except as otherwise provided in this bylaw, any violation of the provisions of this bylaw, the conditions of a permit granted under this bylaw, or any decision rendered by the Zoning Board of Appeals or Planning Board under this bylaw shall be liable to a fine of \$100 for each violation. Each day that such violation continues shall be deemed a separate offense.</i> ”	“To defer decision until after Code publication”	Yes	-	-
315-015	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-9 Violations and penalties; remedies	“To defer decision until after Code publication.”	Same	-	-	-
315-016	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-9 Violations and penalties; remedies	“To create a new option that indicates <i>Do not revise or change this code content</i> ”	“Revise to read <i>may be enforced</i> ”	Yes	-	-
315-017	Ch. 315 Zoning, Art. II Administration and Enforcement, § 315-9 Violations and penalties; remedies	“To defer decision until after Code publication.”	Same	-	-	-
315-018	Ch. 315 Zoning, Art. III Zones, § 315-10 Divisions of Zones	“To choose the <i>Do Not Revise</i> option.”	"Revise § 315-10D to read "Business Zone"; delete §§ 315-12, 315-13 and 315-14"	-	-	To defer decision until after Code publication
315-019	Ch. 315 Zoning, Art. III Zones, § 315-11 Zoning Map	“To keep date as January 1991 but add <i>as amended</i> ”	Same	-	-	-
315-020	Ch. 315 Zoning, Art. III Zones, § 315-15 Floodplain Zone	“To update to <i>Select Board</i> ”	Same	-	-	-
315-021	Ch. 315 Zoning, Art. III Zones, § 315-15 Floodplain Zone	“To delete Water and Sewer Commission”	Same	-	-	-
315-022	Ch. 315 Zoning, Art. IV Use Regulations, § 315-26 Moving of earth	“To defer decision until after Code publication.”	Same	-	-	-
315-023	Ch. 315 Zoning, Art. IV Use Regulations, § 315-26 Moving of earth	“To defer decision until after Code publication.”	Same	-	-	-
315-024	Ch. 315 Zoning, Art. IV Use Regulations, § 315-27 Prohibition on marijuana establishments	“To revise outdated regulations references as suggested”	“To defer decision until after Code publication”	Yes	-	-

315-025	Ch. 315 Zoning, Art. V Height and Area Regulations, § 315-36 Reduction of lot area	“To revise grammatical error as suggested”	“To defer decision until after Code publication”	Yes	-	-
315-026	Ch. 315 Zoning, Art. V Height and Area Regulations, § 315-38 Submission of plans	“To delete ‘ordinances’ as suggested”	Same	-	-	-
315-027	Ch. 315 Zoning, Art. VI Special Permits, § 315-38 Special permit procedures	“To create a new option that indicates <i>Do not revise or change this code content</i> ”	"To revise § 315-39B to read "The special permit granting authority shall be the Zoning Board of Appeals or Planning Board."	-	-	To defer decision until after Code publication
315-028	Ch. 315 Zoning, Art. VI Special Permits, § 315-38 Special permit procedures	“To defer decision until after Code publication.”	“Retain § 315-39E and revise per Option 1”	-	Yes	-
315-029	Ch. 315 Zoning, Art. VI Special Permits, § 315-38 Special permit procedures	“To revise first sentence of § 315-39F to read "All special permits and variances shall lapse one year from date of issue unless construction or operation under said permit or variance has commenced."	“To defer decision until after Code publication”	-	Yes	-
315-030	Ch. 315 Zoning, Art. VII Site and Design Review, § 315-45 Procedure	“To choose the <i>Do Not Revise</i> option”	No answer	No action required by ZBA		
315-031	Ch. 315 Zoning, Art. VII Site and Design Review, § 315-45 Procedure	“To revise to read: “The applicant shall submit a fee established by the Planning Board and pay any expenses’...”	No answer	No action required by ZBA		
315-032	Ch. 315 Zoning, Art. VII Site and Design Review, § 315-45 Procedure	“To revise grammatical error as suggested”	No answer	No action required by ZBA		
315-033	Ch. 315 Zoning, Art. VII Site and Design Review, § 315-45 Procedure	“To correct to <i>parties in interest</i> to align with MGL c40A’s definition.”	No answer	No action required by ZBA		
315-034	Ch. 315 Zoning, Art. VII Site and Design Review, § 315-46 Review criteria; design guidelines	“To revise grammatical error as suggested”	No answer	No action required by ZBA		
315-035	Ch. 315 Zoning, Art. VIII Off-street Parking and Loading Standards, § 315-50 General regulations	“To update the reference to the CMR listed in this section to 572 CMR 1.00.”	Same	-	-	-

315-036	Ch. 315 Zoning, Art. VIII Off-street Parking and Loading Standards, § 315-56 Loading and unloading requirements	“To revise as follows: <i>The loading and unloading area shall be designed and constructed to accommodate the largest vehicles likely to service the use of the property, but in no case shall the area be less than 12 feet in width and 25 feet in length, and the area shall be a minimum of 300 square feet and have a minimum of 14 feet of overhead clearance from the roadway grade.</i> ”	“Revise as suggested”	Yes	-	-
315-037	Ch. 315 Zoning, Art. IX Sign Regulations	“To defer decision until after Code publication and refer to Town Counsel.”	Same	-	-	-
315-038	Ch. 315 Zoning, Art. IX Sign Regulations, § 315-66 Administration and enforcement	“To change <i>Building Inspector</i> to <i>Building Commissioner.</i> ”	Same	-	-	-
315-039	Ch. 315 Zoning, Art. IX Sign Regulations, § 315-66 Administration and enforcement	“To delete the word Article 14”	“To defer decision until after Code publication”	-	Yes	-
315-040	Ch. 315 Zoning, Art. IX Sign Regulations, § 315-66 Administration and enforcement	“To choose the <i>Do Not Revise</i> option”	“To defer decision until after Code publication”	-	Yes	-
315-041	Ch. 315 Zoning, Art. IX Sign Regulations, § 315-66 Administration and enforcement	“To update the state agency’s name to <i>Office of Outdoor Advertising in the State Department of Transportation.</i> ”	“To defer decision until after Code publication”	Yes	-	-
315-042	Ch. 315 Zoning, Art. IX Sign Regulations, § 315-66 Administration and enforcement	“To defer decision until after Code publication.”	Same	-	-	-
315-043	Ch. 315 Zoning, Art. X Registered Marijuana Dispensary and Off-Site Medical Marijuana Dispensary, § 315-67 Purposes	“Update grammatical error per Option 2’s proposal to read: It is recognized that medical marijuana treatment centers and off-site medical marijuana dispensaries may have objectionable operational characteristics and should be located in such a way as to ensure the health, safety, and general well-being of the public as well as patients seeking treatment.	Same	-	-	-

315-044	Ch. 315 Zoning, Art. X Registered Marijuana Dispensary and Off-Site Medical Marijuana Dispensary, § 315-67 Purposes	“To, in Article X and in the definition of "registered marijuana dispensary" in § 315-4 change "Department of Public Health," "Department of Health" and "MDPH" to "Cannabis Control Commission”.”	Same	-	-	-
315-045	Ch. 315 Zoning, Art. X Registered Marijuana Dispensary and Off-Site Medical Marijuana Dispensary, § 315-68 Additional requirements and conditions	“To endorse the change of the term <i>city official</i> to <i>Town official</i> .”	Same	-	-	-
315-046	Ch. 315 Zoning, Art. X Registered Marijuana Dispensary and Off-Site Medical Marijuana Dispensary, § 315-69 Application requirements	“To revise to read: <i>in a Site and Design Review</i> ”	Same	-	-	-
315-047	Ch. 315 Zoning, Art. XI Restrictions for Facilities of Natural Gas Utilities, § 315-74 Emissions	“To update state agency’s reference as suggested.”	Same	-	-	-
315-048	Ch. 315 Zoning, Art. XI Restrictions for Facilities of Natural Gas Utilities, § 315-76 Lighting	“To revise grammatical error as suggested”	“To defer decision until after Code publication”	Yes	-	-
315-049	Ch. 315 Zoning, Art. XI Restrictions for Facilities of Natural Gas Utilities, § 315-79 Violations and penalties	“To choose the <i>Do Not Revise</i> option”	“To defer decision until after Code publication”	Yes	-	-
315-050	Ch. 315 Zoning, Art. XII Wireless Communications Facilities, § 315-83 Design guidelines	“To revise as follows: <i>delete “and owners of communications facilities.”</i> ”	Same	-	-	-
315-051	Ch. 315, Zoning, Article XII Wireless Communications Facilities, § 315-84 Application requirements.	To be reviewed on June 1st	Change "which will not be served" to "which will be served."	-	Yes	-
315-052	Ch. 315, Zoning, Article XIII Large-scale Ground-mounted Solar Photovoltaic Installations, § 315-87 Definitions.	To be reviewed on June 1st	Change "local zoning ordinances or bylaws" to "the Zoning Bylaw."	-	Yes	-

315-053	Ch. 315, Zoning, Article XIII Large-scale Ground-mounted Solar Photovoltaic Installations, § 315-88 General Requirements for a large scale solar power generation installations.	To be reviewed on June 1st	“To defer decision until after Code publication”	-	Yes	-
315-054	Ch. 315, Zoning, Article XIII Large-scale Ground-mounted Solar Photovoltaic Installations, § 315-88 General Requirements for a large scale solar power generation installations.	To be reviewed on June 1st	“To defer decision until after Code publication”	-	Yes	-

Statistics:

57 = total number of questions on this table

5 = total number of questions on this table only reviewed by Planning Board, no action required from ZBA.

25 = total number of questions with identical responses between Planning Board and ZBA’s Mike Michon

4 = total number of questions on this table only reviewed by ZBA’s Mike Michon

23 = total number of questions in which Planning Board and ZBA’s Mike Michon differed in their responses

After the review, Chair Lavenburg made a motion, and was seconded by Mr. Bennett, that the board approve the adoption of responses to 25 questions from General Code (white rows in the above chart) where the Planning Board and the ZBA’s responses was identical. Roll call vote - Mr. Bennett: yes; Mr. Lavenburg: yes; Mr. Michon: yes; Mr. Tourtelotte: yes; Ms. Komack: yes. All in favor, motion passed 5-0.

Chair Lavenburg made a second motion, and was seconded by Mr. Bennett, that the board approve the adoption of responses per member Mike Michon’s review to 4 questions from General Code (green rows in the above chart) where a vote from the Planning Board was not recorded. Roll call vote - Mr. Bennett: yes; Mr. Lavenburg: yes; Ms. White: yes; Mr. Tourtelotte: yes; Ms. Komack: yes. All in favor, motion passed 5-0.

Member Marissa Komack left the hearing at 8:20 pm.

Chair Lavenburg made a third and final motion, and was seconded by Mr. Bennett, that the board approve the adoption of responses to 23 questions as indicated on the above chart (orange rows in the above chart) where the Planning Board and Mike Michon’s proposed answers differed. Roll call vote - Mr. Bennett: yes; Mr. Lavenburg: yes; Ms. White: yes; Mr. Tourtelotte: yes; Mr. Michon: yes. All in favor, motion passed 5-0.

The meeting was adjourned at 8:58 pm.

Respectfully submitted,

Bianca Damiano