



Town of Canton, Massachusetts

ZONING BOARD OF APPEALS

MEMORIAL HALL

801 WASHINGTON STREET

CANTON, MA 02021

TEL: (781) 575-6589 FAX: (781) 575-6574

Minutes of the meeting of January 12, 2023

PRESENT: Gregory L. Pando, Chairman

Michael Khoury

John R. McCourt

Barbara J. Saint Andre, Alternate

Also Present: Tamra Stock, Recording Secretary

Not Present: Matthew Carlton, Alternate

Chairman Pando opened the meeting at 6:00 pm and reads the agenda.

EM Duggan, Inc./Eleven Peonies, LLC – 136 Will Drive – 1-23-Mod SPA-SP-V

Chairman Pando opens the hearing and reads the petition. Mr. Paul Brodmerkle of Site Design Professionals is here representing EM Duggan for property at 136 Will Drive. Mr. Brodmerkle explains this proposal is for a retaining wall and to add outdoor storage parallel to the side property line. He explains EM Duggan also owns the abutting property at 140 and 142 Will Drive and the wall will be right along the property line. Mr. Brodmerkle states this area is sloped by about 3' and they have to clear the area. The wall will be installed at varying heights between 4' and 8'. He also explains there will be an 18" concrete reveal due to a parking lot abutting right up against this. The abutting property will only see 1.5' of this wall and it will act as a guardrail. Mr. Brodmerkle states they are also seeking a small 214 square foot area for outdoor storage. Chairman Pando asks if they are asking for this to be a Minor Modification or if they plan on going to the Planning Board. Mr. Brodmerkle states he is looking for a Minor Modification. Chairman Pando states who is sitting on this case which is himself, Mr. John McCourt, and Mr. Michael Khoury. Chairman Pando suggests to the other Board members with the amount of additional paving being so small this will not affect the drainage. It also doesn't seem to affect the parking or traffic flow. Mr. McCourt asks with this new retaining wall will there still be an access route around it. *Yes, there is 18' of space for an access route.* Mr. McCourt states he has no issues with this request. Mr. Khoury also has no issues with this request.

Mr. McCourt makes a motion on behalf of EM Duggan, Inc./Eleven Peonies, LLC of 136 Will Drive to consider this a Minor Modification. Mr. Khoury Seconds. **Vote 3-0 Approve.**

Chairman Pando asks if they will be working around the utility poles or have them moved. Mr. Brodmerkle states they are working around them as it is faster. Chairman Pando asks if this is going to be a plain wall. Mr. Brodmerkle states this will be a reinforced concrete wall. Chairman Pando suggests to the Board that they do not need any stone veneer because this is in the middle of an Industrial district. Mr. McCourt confirms the

dimensions of the wall. Chairman Pando suggests a fence being installed on the top of the wall. Mr. Brodmerkle explains that is shown on the pedestrian details of the plans. Mr. Khoury confirms the dimensions of the wall. Mr. Khoury thinks this is a good idea. Chairman Pando asks if anyone in the hall would like to speak on behalf of this petition. Seeing none.

Mr. McCourt makes a motion on behalf of EM Duggan, Inc./Eleven Peonies, LLC of 136 Will Drive to approve a Minor Modification to the existing site plan to construct a retaining wall as per plans by Site Design Professionals of Sharon, Ma dated November 15, 2022 and a Variance from Section 4.3.2 of the Town of Canton Zoning By-Laws for the wall to exceed 7'. Mr. Khoury seconds. **Vote 3-0 Approve.**

Rolling Hills Development, LLC – 980 Turnpike Street

Chairman Pando opens the hearing and explains this is an informal hearing. Attorney Suzanne Matthews is here representing the petitioner to ask for a Minor Modification to extend the existing temporary Special Permit. She also states she has Marina of Marina Studios with her. Attorney Matthews explains Marina Studios has been using this space with the Special Permit that was granted. It was a warehouse turned into a film production studio. The temporary Special Permit was for a year and it is going to expire. The studio has been successful and Marina has just entered into a contract to start a new production at the end of the month and it will not be done by the time the Special Permit expires. Attorney Matthews also mentions that they have filed for a Formal hearing with the Zoning Board of Appeals. Attorney Matthews states they are in the process of gathering letters from businesses for which they have been beneficial to for example they have been working with Blue Hill Regional for construction materials. This has gone without incident. Marina states this started with a Whitney Houston film and a new movie called Thug and now about to start a New Netflix series which will take about 6 months. She states this community has been wonderful. Chairman Pando states he has not heard anything from Town Officials or other businesses in this area. Chairman Pando states he is hesitant to issue another temporary permit for a year because it was supposed to be temporary. Attorney Matthews states this series will take about six months to film. Chairman Pando states it would make sense to issue it for six months then if you have filed formally for the February 9th meeting. Mr. McCourt states this is a great thing for that area of town and has not heard anything bad about it. Mr. Khoury states he is fine with this request. There have been some big movies filmed in Canton so he fully supports it. Chairman Pando asks if there is anyone in the hall that would like to speak on this petition. Seeing none.

Mr. McCourt makes a motion on behalf of Rolling Hills Development, LLC of 980 Turnpike Street to extend an existing Temporary Special Permit for six months from the expiration date of March 10, 2023 of the existing decision. Mr. Khoury seconds. **Vote 3-0 Approve.**

Mr. Khoury dismisses himself for the next hearing and Ms. Barbara J. Saint Andre steps in to hear the next case.

Jonathan & Kemberly Rodrigues – 3096 Washington Street - 38-22-SP-V

Chairman Pando opens the hearing and explains this is a continuation from December 1, 2022. Attorney Suzanne Matthews explains the petitioner had been here on December 1, 2022 representing themselves but they have since hired her to represent them. Attorney Matthews states this is simple and complicated at the same time. She has submitted a memo to the Board and has been by the house. She explains she has done a lot of research on this property and according to the street listings at the Canton Public Library this has been a two-family dwelling since 1939 and the Town of Canton Assessors have it assessed as a two-family. She explains the prior owners have gone back as far as 1987 and on the field card from the Building Department they had done some renovations and it became two condos. They have no idea why but after a period of time they took it out of the Condominium law but continued to use it as a two-family dwelling. Attorney Matthews states the Board does have a letter from the Building Commissioner that at a site visit the home appears to be a single-family dwelling now. Attorney Matthews explains the MLS listing was for a two-family and the mortgage was for funding for a two family when they went to finance and that's when they went and did the right thing to verify with the Building Commissioner. She mentioned the utilities have been maintained as a two-family and now they are here before the Board to get it back to a two-family dwelling. Attorney Matthews explains there were no building permits taken out to make it a single-family dwelling. She shows in her memo on exhibit B the last building permit was in 2019 to replace patio doors. The question now is if there was a two-year lapse. Looking for the board would be to reestablish this as a preexisting non-conforming. Attorney Matthews states there are other options but not the top choices for the petitioner. They bought it with the understanding that it is a two-family. This is now in a SRAA district so they would need a Variance because of the stricter requirements. Attorney Matthews explains this is right across the street from the Blue Hills Ski area. There is no intention to make any exterior changes but to just reestablish the interior the way it was. She mentions there were abutters who were concerned with the value of their property and on the last page of her memo she shows where the abutters are to this property. She states this will not put adverse effect on the neighborhood. She explains there was also an option to make this an accessory apartment but this is already separated out with the utilities and as a 50/50 split for the units. The accessory apartment option would only allow for 30% of the dwelling to be used as the second unit and that would be costly to change everything. Attorney Matthews explains the best resolution for the owners is for the reinstatement of the preexisting non-conforming two-family home with no adverse effect on the neighborhood. Chairman Pando states the Board has been presented with two facts. The Building Commissioner has issued a letter in 2022 that he inspected the property and it is his

opinion that it is now a single-family dwelling. He also states that in September of 2022 is from the Board of Assessors that the last time they had access to the dwelling was in 2009 and at that time it was a two-family. Chairman Pando explains somewhere between 2009 and 2022 it was converted without a permit back to a single family dwelling. Chairman Pando explains the burden of proof is to show that less than two years has passed since it was converted from a two-family to a single family. Chairman Pando and Attorney Matthews discuss the street listings from the Canton Public Library. Attorney Matthews explains there are no facts to hide and just because they took out a doorway doesn't mean it was being used as a single family. Chairman Pando states he would like to see what the other Board members have to say. Ms. Barbara Saint Andre states she can see where at one point it was a two-family but looking at exhibit B that was sent in to the Board there is only one kitchen now so she understands why the Building Commissioner saw it as a single family dwelling. Ms. Saint Andre states she is looking at Section 5.6 of the Town of Canton Zoning By-Laws and it seems like that is what Attorney Matthews is looking for relief from. Attorney Matthews states that is correct but she just wants the Board to know they are open to the multiple options but they feel that would be the best one. Mr. McCourt states he has been there multiple times and in the past the Board has seen similar situations where the use was abandoned. But looking at the resident listings and the Board of Assessors see it as a two-family and then when you look at the heart of the house and it is set up for a two-family with the two heating systems. It has obviously been converted to a single family without a permit but it still has the characteristics as a two-family. Mr. McCourt states he doesn't see a problem to reinstate the pre-existing non-conforming to go back to a two-family. The issue for the homeowner is now it all has to comply with the current States Building Code and it may get very costly. Mr. McCourt states he concurs with Ms. Saint Andre that the Board should grant relief under Section 5.6. Chairman Pando states they will now just have the building code issues. Attorney Matthews explains the Building Commissioner has already spoke with the Petitioners about this.

Mr. Brian Greenwood of 65 Green Street explains he is an abutter and they have looked into the Norfolk County Registry of Deeds and in 1989 the homeowner at the time did file for a condo under MGL 183 and in 1994 they filed for termination of that. At that point in time it was sold as a single-family residence and then sold again in 2003 as a single-family residence then sold again to current owners as a single-family residence. Mr. Greenwood states he is still concerned with the value of his property. He explains they are direct abutters and the reason they don't have a driveway coming into the property on Washington Street is they wouldn't have been able to get a curb cut.

Chairman Pando asks if there is anyone else in the hall that would like to speak on behalf of this petition. Seeing none.

Chairman Pando states he concurs with Ms. Saint Andre and thinks granting relief from Section 5.6 is the simple solution. Mr. McCourt states other than Mr. Walsh visiting the

property in September of 2022 they don't have the ability to know when this was converted. This happens all the time where people don't pull permits. It doesn't make it right but now there is no time stamp on when thing occurred. Mr. McCourt states he cannot see denying this petition. Ms. Saint Andre mentions that although she appreciates the comments from the abutters they have to show substantial detriment to the neighborhood and it doesn't seem like there is. If this dwelling had never been a two-family then she would be more hesitant.

Mr. McCourt makes a motion on behalf of Jonathan & Kemberly Rodrigues of 3096 Washington Street to re-establish a pre-existing non-conforming dwelling as a two-family dwelling. Ms. Saint Andre seconds. **Vote 3-0 Approve.**

Ms. Saint Andre dismisses herself for the remainder of the meeting and Mr. Khoury comes back on to hear the remainder of the hearings.

Vertex Tower Assets, LLC/Canton Fish and Game Association, Inc. – 25 Nasir Ahmad Road - 40-22-SP-V (GP, JM, MK)

Chairman Pando opens the hearing and explains this is a continuation from December 1, 2022. He states he knows there is a lot of interest in this and he reviews the rules of the meeting so everyone in the audience will understand how this meeting will work. Mr. McCourt explains that in the last two days the Board members have received all sorts of information and emails regarding cell towers. A lot of the opposition is based on the health and safety. He did some research of his own and the American Cancer Society doesn't have a stand on the health and safety impact of cell towers and neither does the World Health Organization. Mr. McCourt states he would like to ask the petitioner about some of the fires there have been with these towers. He does states he hasn't heard of any in Massachusetts and he has also looked at some of the current cell towers we already have in town and they do have some that are within 200' of a residential dwelling but it is technically in an Industrial district. Mr. McCourt states he spoke with Mr. Edward Walsh about where all of these towers are located. Mr. McCourt states there is one on Blue Hill Country Club. Chairman Pando states the Board issue a Variance and there are cell towers scattered all within the community. Mr. McCourt states the health risk is an issue to be worried about the easement issues is a civil issue and not a Zoning Board of Appeals issue. Mr. McCourt explains there is a lot of information that he would like to look over and before they get into whether a Variance should be issued or not he would like to consult with Town Counsel. Mr. McCourt mentions that in other communities' abutters were against it they got denied and then it came back to the town after losing the case and the town had to spend a lot of money. Mr. McCourt states normally in a case like this where there are a lot of concerned abutters they would like to see the Petitioner and the abutters work together to come up with a solution. Is there another location this could go in? There is Rite Aid next door which is a vacant building right now so why can't it go in there? Mr.

McCourt explains he doesn't understand the need for this because when he went up there he had plenty of service on his phone. Chairman Pando states there are probably four or five towers in residential areas and they all either had a Variance or a Special Permit. He also explains the technology and needs change. There was a previous decision for this site back in the 90's by a cell phone carrier and it was never acted on but this isn't the first tower on this site that was permitted. Mr. Khoury asks in terms of other cell towers were there Variances given for them. *Yes.* Mr. Khoury states he isn't speaking just as a Board member but also as a lawyer who does zoning work and there needs to be a substantial hardship and he doesn't see it. This would mean the owner wouldn't be able to do anything else with this property. The hardship here is with the wireless companies and trying to find another site. It should also have no detriment to the public good. And if there is a ton of opposition it is safe to say there is detriment but the Board is also faced with the Telecommunications Act. Mr. Khoury states a number of emails and letters of opposition have come in to the Board and he is concerned with this. He would like to know if there is a real danger to the public. Mr. Khoury explains there was a case cited from Federal court from Wayland, Massachusetts and he would like Town Counsel to weigh in on this. He would like to see that the petitioner has explored all other options and this is the only site available. He states he has been living in canton since 1992 and he has never lost a call in that area. He is concerned this is just a money grab. Attorney Parisi explains he has Mr. Tom Johnson who is a Civil Engineer and Mr. Mark Levin who is an independent engineer and they had a presentation planned but it seems like this is going off the rails a bit. He would like to respond to Mr. Khoury's comments first. He explains Mr. Khoury had asked for some of the case law that was cited requesting Variances which was sent over the morning after the last hearing and it is very clear that cell towers meet the hardship of MGL Chapter 40A. He also explains the health concerns are preempted by federal law. They are well below exposure guidelines. He states he does not want to gloss over safety as it is everyone's concern. There are lots of existing towers in canton in close proximity to residential neighborhoods. Right now, the dilemma is everything is allowed in industrial zones but this is not just a mobile problem this is a stationary problem when you are inside a building or a house. The cell companies need to get closer to the residential areas. Your cell phone may work on the road but is it working in houses or buildings. Attorney Parisi explains the Zoning By-Laws have a lot of restrictions and they have to find a willing land owner. This is just a small portion of the property which is not a money grab. Sure, they are making money off of it but it isn't keeping them alive. Attorney Parisi states they have an aerial photo and this is a heavily developed area so it is hard to satisfy this need. He also mentions the Planning Board process has been completed and they have received a positive recommendation. He states the town's consulting engineer gave a positive recommendation. This site has been in play for over 20 years. It doesn't matter if it got approved or denied because that has lapsed and we are back here today for approval. Most calls are made on a cell phone. He explains Vertex has been talking to the Fish and Game land owners since 2019 and tried very diligently so there was no impact on the abutters. They originally wanted it at the top of the hill but considering the abutters they asked for it

to be moved further away which is going to cost more. He states the question came up if they could go in the Rite Aid parking lot. His answer would be the land owner probably wouldn't allow it and part of the problem relocating it is as Verizon and other telecommunications build the gaps become smaller but more pinpointed. Attorney Parisi explains the last meeting he heard a lot of complaints on the process but they didn't object to the actual tower itself. He stopped reading all of the emails that came in and they were not even residents of Canton. He states he has also spoken with the Police and Fire Chiefs and they are in support of this project and the Board is in receipt of those emails. Attorney Parisi states they will be filing with the Conservation Commission tomorrow. There are plenty of use Variances that have been issued through this Board. It is all the same data. He would like to ask the Board to make a decision on this tonight. Attorney Parisi explains when Mr. McCourt brought up access issues but there is no issue and it is not this Board's responsibility but the access has clearly been documented. Mr. McCourt asks if the radio frequencies are monitored. Attorney Parisi states the telecommunication companies are very heavily monitored but these are not high-powered radio facilities. This is designed to cover a small area. This is a two-way communication and they are low powered. Below the FCC limits. The FCC doesn't monitor it but the companies take it very seriously.

Chairman Pando opens it up to Attorney Suzanne Matthews to speak on behalf of the abutters. Attorney Matthews explains in addition to her the abutters have retained an Attorney from New York who is a telecommunications Attorney. He couldn't be here tonight but he has submitted his memo. Attorney Matthews explains the Board has received a lot of information from some advocacy groups who have heard of this petition and the health risks they think it poses. Those things are important but she wants the Board to know that she is well aware there is a narrow argument you can make with that information because they have established the limits and as long as the petitioner is within those limits there is nothing that can be done. She explains the abutters do share that concern but there are more important issues she would like to discuss. Attorney Matthews states she has two submissions into the Board right now and one is for a request under the By-Laws Section 7.5.4 that when a petition like this comes forward the Board has the authority to require an independent engineer be hired at the expense of the petitioner. The town has given you the authority to do this and that is something they are looking for. There was an in-depth memo submitted by Attorney Robert Berg. This memo is based upon the Petitioner not proving the need and what the By-Laws require. She states she would assume the town took the health issues into consideration when the town wrote the By-Laws stating they are not permitted in a residential district. Attorney Matthews states she does not believe they have the access to the property like the petitioner claims. Chairman Pando states that is something this Board is not going to look at because it is a Civil issue. Attorney Matthews disagrees and explains the Board should look at it because according to the performance standards they have to provide proof of access. It is a germane issue the performance standards state it is needed. Chairman Pando asks if the contention is if the Fish and Games has access to their own property. Attorney Matthews

explains there is no official rite of passage except for the Fish and Game to use their property and for that use only. Attorney Matthews goes on to read the memo submitted by Attorney Berg.

Chairman Pando states that was a lot of information and asks if there is anyone in the hall that would like to speak regarding new or different information.

Madiha Rana of 1243 Elm Street Concord, Ma states Canton and Sharon are like a second home to them. They have been coming to this Mosque since 1997 and they have four children so this is of great interest to him and they would like to present the Board regarding the cell phone companies. They are facing personal injury and wrongful death lawsuits relating to the alleged health effects of wireless phones and radio frequency transmitters. He states off of this aside there is a lot of other information and a lot of research done that is talking about frequencies in DNA. His second point is if there is a need for this cell tower. He explains he has an education in Electrical Engineering and he has been working in the IT industry for a while. He has a friend in the telecommunications industry and he looked at the coverage analysis for the 5G coverage. He reviews the packet he submitted to the Board. There are plenty of towers and he reviews the coverage maps for 5G with the different providers. He believes there is ample coverage with no coverage holes. There is no need for a new structure for this and he would ask the Board to hire an independent Engineer to look at this.

Chairman Pando states there has been a lot of compelling information from Attorney Parisi and the abutters. He states he doesn't want to cut anyone off with new information but at this point he thinks the Board has heard enough.

A resident of Waltham, Ma states he is concerned for the health and wellbeing of the residents in the area. He submitted a signed petition from 53 concerned parents that have students in the Sunday School

Chairman Pando states there have been about 15 or 20 applications in the Town of Canton and this is the only location that has had so much opposition. He would like to take a common-sense approach with this. The Board could sit here all night and go back and forth but the Board could approve it and let the neighbors appeal it or deny it and let Vertex appeal it. He would rather not continue this because they would go beyond the decision due date. Attorney Parisi states the Board only has until January 14th for a decision because the application was filed on October 6th. Attorney Parisi states this Board has had very similar applications and he feels like memo from Attorney Berg was offensive and inaccurate statements. He mentions that Attorney Matthews has been very cordial through this whole process but Attorney Berg is not licensed in the State of Massachusetts and it was very offensive. He feels this board has ample information provided by the applicant and has ruled based on the same information in previous cases. Attorney Parisi asks the

Board to make a decision on the use Variance tonight. Attorney Matthews takes issue with Attorney Parisi and his assumption of representation as they are co-counseling and it is also based on her knowledge and experience. Attorney Parisi states he meant no disrespect and apologizes to Attorney Matthews. Chairman Pando states they have a decision deadline of January 14, 2023 so tonight is decision night. Chairman Pando asks if the Petitioner would give the Board an extension for a decision. Attorney Parisi states he will withhold an answer until he knows till when and for what purpose. Mr. Khoury states he appreciates everyone's testimony but he would like town counsel to weigh in and would like to understand if the Board has discretion. He states maybe the Board has granted these before but if the Board shouldn't be then he would like to stop the mistakes that have been made. We owe it to the residents in the area. He thinks maybe some input from the Town of Sharon would help as well. Mr. McCourt states if the petitioner does not want to give an extension and they are subject to making a decision tonight his vote would be no. His question to the petitioner is who benefits from this cell tower and the new maps they were given tonight but an abutter makes him doubt that this is needed. Chairman Pando explains this is not unique or different from the other applications they have had., Chairman Pando explains he would prefer to end this meeting tonight. If the petitioner grants an extension it is only for the purpose of getting Town Counsel to weight in. Mr. Khoury states he would just like to know from Town Counsel what level of discretion the Board has. He really doesn't want to make a mistake. He states he would also like an independent engineer. Chairman Pando explains he doesn't want to do that. There are going to be more towers built. Attorney Matthews argues that the Town gave the Board the authority to get an independent engineer and she would like them to retain an independent expert. Chairman Pando states there is no compelling reason this location is any more hazardous. Attorney Matthews states that isn't her argument her argument is if there is really a gap in coverage. Attorney Parisi states he feels like the Board members did not read his application package. There were reports that have been submitted and there is sufficient information submitted by expert testimony. The law is the law. Attorney Parisi states he would agree to an extension for an opinion from Town Counsel. Chairman Pando asks if they will give 30 days. Attorney Parisi asks why 30 days. Chairman Pando states he would like to close the hearing for public comment and then just take a vote at the next scheduled meeting and the Board needs time for filing the decision. Attorney Parisi asks if Town Counsels opinion will be public. Chairman Pando states he doesn't know the answer. Attorney Matthews states she would not like the meeting closed so that they are able to respond to Town Counsels opinion. Attorney Parisi agrees to an extension for 30 days.

Chairman Pando continues the hearing to January 26, 2023

Mr. McCourt makes a motion to accept the minutes from the meeting of December 15, 2022. Mr. Khoury seconds. **Vote 3-0 Approve**

Chairman Pando reads the continuations at a later date

Chairman Pando states the next meeting is scheduled for January 26, 2023

Mr. McCourt makes a motion to adjourn at 8:40PM. Mr. Khoury seconds. **Vote 3-0**
Approve.

Respectfully submitted,

Gregory L. Pando
Chairman

A handwritten signature in black ink, consisting of several overlapping loops and a final flourish, positioned to the right of the typed name.