

Town of Millbury Board of Appeals

Paul Nigosian, Chairman
Ken Perro, Vice Chairman
Robert Simmarano, Clerk
Harold Proodian
Daniel Mezynski
Anna Lewandowski, Alternate member



MUNICIPAL OFFICE BUILDING
127 ELM STREET
MILLBURY, MA 01527

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TOWN CLERK
2018 AUG 30 PM 3:52
MILLBURY, MASS.

Meeting Minutes Wednesday, July 25, 2018 7:00 pm

Board Members Present: Paul Nigosian (Chairman), Robert Simmarano (Clerk), Daniel Mezynski, Harold Proodian, Anna Lewandowski (Alternate).

7:00 PM: Official Call to Order

7:05 PM: Steven and Lori Christy for the property located at 20 Woodridge Road are seeking a special permit to obtain a Kennel / Hobby License. Steven and Lori Christy postponed their former hearing that was scheduled on Wednesday June 27th at 7:05pm in their postponement conversation with Paul Nigosian they were informed that the next hearing will be scheduled for Wednesday July 25th at 7:05pm. The Agenda for Wednesday, July 25th, 2018 that included the Christy's hearing was posted on the town billboard neither Steven or Lori Christy appeared for the hearing. Paul Nigosian called the Christy's during the hearing and as it appears the Christy's were not aware that the hearing was rescheduled for that evening and that they were unable to attend. Paul Nigosian informed them that their next and last scheduled hearing is set for Wednesday August 29th at 7:05pm failure to appear will result in reapplying for an application including fees. Paul Nigosian then entertained a motion to reschedule the Christy's hearing; Harold Proodian made a motion to postpone the hearing for Steven & Lori Christy until Wednesday, August 29th, 2018 at 7:05pm, second by Robert Simmarano, carried unanimously 5 – 0.

7:10 PM: Meeting Minutes from May 30th, 2018; Paul Nigosian entertained a motion to approve the meeting minutes; Harold Proodian made a motion to approve the meeting minutes from Wednesday May 30th second by Daniel Mezynski the vote was carried 4 – 1, (Anna Lewandowski was opposed).

7:15 PM: 5 Minute Recess

7:35 PM: Chris Windle for the property located at 34 Grafton Street. Byron Andrews of Andrews Survey is representing Chris Windle. Byron Andrews explained that Mr. Windle is seeking a variance for frontage and area for a lot he intends to build a commercial building, the lot has 125 feet of frontage and the area approximately 25,000sf the zone is Industrial I it requires a minimum of frontage of 150 feet and the minimum area of 80,000sf the lot was created prior to the current zoning in the mid sixties so it's a pre-existing non-conforming lot, Mr. Windle may add to the lot from another lot that is adjacent to the property which has more than enough area and could reduce the non-conforming however that part of the project is still under consideration for right now they just want to be considering the existing parcel as is with 125 feet of frontage and 25,000sf of area. They are looking for an area variance of 55,000sf it would probably be slightly more than that because there has been a highway taking that reduced the area of 1,000sf so they would be looking for a relief of 56,000sf. The reason Mr. Windle does not want to combine the two lots they feel it would compromise the existing parking and entrance to the existing business in the back. The proposed building will have a foot print of 5,000sf with two levels, five businesses on the second level and 1 business on the first.

Linda Donovan of 49 Davis Road spoke on behalf of her and her mother Shirley Moore of 27 Grafton Street that is directly across the street from 34 Grafton Street, they both are in opposition in the granting of frontage and dimensional shortage that is being requested, the area is primarily a residential area consisting of homes and some at home businesses but when you drive up the street it consists mostly of private homes. Mr. Windle's current commercial building is out of view from the residents if Mr. Windle is allowed to build this commercial building right at the street view it will be a derogation to the area and not an additional feature. In addition her mother has

had problems with snow removal from Mr. Windle's current property. The head lights leaving from the current business on the property in the evening and early morning hours shine directly into her mother's windows, with this new building will also include a parking lot for a two story structure she doesn't think it's going to look like a house or match anything to the current area with snow removal and traffic being an additional concern.

Andrew Peoples of 36 Grafton Street, which is right next door to the proposed property, has the same concerns particularly about the traffic and the speed of the traffic it's usually much more than the posted speed limit and that there is quite a few commercial vehicles parking on the road which is primarily residential, adding another larger building is only going to make the situation worse.

Chris Windle explained that the architectural look of the building is not going to be the traditional steel building that it's going to be a professional building similar to a residential home with a clapboard finish, stick built with a pitched roof not the stucco type you might see at the mall with professional office space up stairs (five offices) and one business on the bottom but he is not sure what business will be residing they are still in negotiations. Chris also pointed out that the proposed lot on this side of the street is zoned industrial and across the street is zoned residential.

Paul Stringham explained that the parking will all be in the back of the building and that the building itself is going to be a down grade build so when you're looking at the building from the street you'll just be seeing the second floor you won't see the first floor that will only be seen from the back parking lot.

After further discussion, questions and answers Paul Nigosian entertained a motion to close the public hearing, Harold Proodian made the motion the close the public hearing, Daniel Mezynski second the motion voted unanimously 5 – 0.

After further discussion between the board members Paul Nigosian entertained a motion to grant the variances; Harold Proodian made the motion to grant the Variance to Chris Windle for the property located on 34 Grafton Street, Millbury as shown on Map# 54, Lot# 110 as recorded in Book# 21934, Page# 366 with the Worcester District Registry of Deeds within the Industrial I zone of the Millbury Zoning Bylaws. The required 150 feet of frontage is waived to allow for the 125 feet of frontage, a relief of 25 feet. (2) To grant the variance to waive the land area of 80,000sf to a land area of 25,750sf +/-, a relief of 54,250sf +/-, Robert Simmarano second the motion the board voted 2 – 3 (Paul Nigosian, Daniel Mezynski and Harold Proodian were not in favor), Variances were DENIED.

8:10 PM: David Perkins for the property located at 11 Benton Street is seeking to subdivide the property at 11 Benton Street and construct a new home, there is currently an existing house on the lot what they would like to do is divide the lot and create a non-conforming lot for the second new house, if they go the route of an ANR non-conforming lot they need 85 feet of relief for frontage. Robert Murphy of Robert G. Murphy & Associates, Inc. Environmental Consultants is representing David Perkins. Mr. Murphy explained to the board the reasons for the request for the variance and the reason for hardship. Mr. Murphy's explanation for hardship; They initially looked at the lot following subdivision requirements with a compound road, the road requirements take up 10,000sf of the property and what they would end up with is a large road instead of a driveway with the house pushed back away from the road down towards the wetlands, the hardship is that in order to meet the upland requirement they would need to develop a lot without a road. Paul explained to Mr. Murphy that you already have a house lot with one house on it any hardship that you have is being created, you don't have a house lot that you can't be build a house on, you have a house lot that has a house on it you're trying to create a non-conforming lot which is a self created hardship. David Perkins tried to explain to the board that going with the compound road plan is going to be an eyesore, (landing strip) vs. the driveway plan the property will meet all the other set-back requirements all they would need is the relief for frontage. Mr. Murphy explained another possible hardship, if they were to go with the plans with the compound road and building the house in the back of the lot they wouldn't be able to meet the DEP requirement for the distance between the house and the wetlands, the house would be 40 feet of the wetlands and the DEP requires 50 feet, with the proposed plan of driveway vs. compound road they are meeting the requirements with 150 feet from the wetlands. Paul Nigosian again explained that it's not the board's authority to grant a variance under a self created hardship. For the record Robert Simmarano and Paul Nigosian read a letter from Laurie Connors in regards to the proposed plan, (please see attached). Chris Ryll of 5 Mason Road spoke positive input on behalf of the proposed property. David Perkins explained that going with the compound road plan would cost \$50,000 to \$100,000 just to pave the road driving up the cost of the house and a negative impact on the neighborhood. Paul Nigosian then entertained to close the public hearing; Harold Proodian made the motion to close the public hearing, Daniel Mezynski second the motion all members were in favor 5 – 0. Anna Lewandowski

and Harold Proodian spoke positive input in regards to the proposed plan and that it would help the neighborhood, Robert Simmarano agreed. The plan carrying the access road/ compound road would make the house unaffordable for that area. Paul Nigosian entertained a motion to grant a variance, Harold Proodian made the motion to grant the Variance to Davis W. Perkins for the property at 11 Benton Street, Millbury as shown on Map# 15, Lot# 75, recorded in Book# 58122, Page# 106 with the Worcester Registry of Deeds within the Suburban IV section 23.34 district of the Millbury Zoning Laws. The said property is to be divided into two (2) lots with the second lot having 65 feet of frontage. The required frontage of 150 feet is waived with a relief of 85 feet. 2. Section 32.10, conformity of lots; is waived also section 13.22 relating to a hardship. Anna Lewandowski second the motion; the motion was carried 3 – 2 (Harold Proodian, Anna Lewandowski and Robert Simmarano were in favor, Paul Nigosian and Daniel Mezynski were opposed). The Variance for frontage was DENIED.

8:50 PM: Ucef and Mary Charmchi for the property located at 8 Bayberry Lane are seeking to appeal due to the determination based on the denial specifically found in finding #4 & #5 in accordance with Section 13.023 appeal conventional variance back in 2012, previously it was two lots and now the property stands as one lot the Charmchi's want to subdivide the lot and create two lots one being a non-conforming lot. To clarify Paul Stringham explained to the board that the land was subdivided by one of the previous owners prior to the adoption of the water protection district, due to the subdivision it was an ANR approval that is on record with the planning board. After the adoption of the aquifer water protection district a lot required to be 80,000sf with specific frontage. During that time the lot was under an ANR Freeze, Massachusetts general laws chapter 48 provided granted relief for protection calling it a zoning freeze, there were a minimum of ANR plans that were approved for 3 years, a person could have gone in there and built on that house without any zoning relief but they didn't do anything. The bylaw kicked in but no activity took place, once outside the freeze the courts had ruled, the State Supreme Court case log had sited that that the two lots have legally been merged from that stand point and they have to be considered one separate lot. The previous building inspector ruled and noted back in 2012 that the lots were joined but the BOA took the application and granted the variance, unfortunately because of time lag they never acted on it with a building permit. When the original owner of the property filed bankruptcy the court ruled on the bankruptcy, recorded the dates and sold the land to Ucef the purchase did not identify the lot as E on the map so it doesn't exist, the deed and some of the paper work has the original designation called lot E, the building inspector doesn't dispute this, when they purchased the land and became owners all the wording says "another parcel" it does not say map and page numbers and it does not say lot E. The building inspector stands in conjunction with the zoning board that no lot shall be created unless it's in conformance with the bylaws, that's how the building inspector's position is with his final decision he leaves it up to the board to make their final decision. Patrick B. with H.S. & T. Group, Inc. Civil Engineers and Land Surveyors are representing the Charmchi's he was unaware that the lots had been combined and will need to seek legal council and do further research to see if the lots are actually combined, therefore he requested a continuance. Paul Nigosian entertained a motion to continue the public hearing for August 29th a time will be determined at a later date, Harold Proodian made the motion to continue the public hearing until August 29th, Daniel Mezynski second the motion carried unanimously 5 – 0.

9:30 PM: Adjournment: With no new business Paul Nigosian entertained a motion to adjourn the meeting; Harold Proodian made the motion, Robert Simmarano second the motion; carried unanimously 5 - 0.

Respectfully submitted by Nancy Young and submitted to Town Clerk.



TOWN OF MILLBURY

DEPARTMENT OF PLANNING & DEVELOPMENT

MUNICIPAL OFFICE BUILDING • 127 ELM STREET • MILLBURY, MA 01527-2632 • TEL. 508/865-4754 • FAX 508/865-0857

July 23, 2018

Paul Nigosian, Chairman
Board of Appeals
Municipal Office Building
127 Elm Street
Millbury, MA 01527

Dear Mr. Nigosian,

The Planning Board received and discussed Mr. Perkins' application for a frontage variance with regards to a new lot that he wishes to create through the subdivision of 11 Benton Street, a property consisting of a single family home, 220 feet of frontage and 50,010 square feet of area. As you know, the minimum dimensional requirements for the Suburban IV District are 150 feet of frontage and 20,000 square feet of area. Mr. Perkins' proposed subdivision would create one conforming lot (Lot 1) consisting of 155 feet of frontage and 20,002 square feet of area and one nonconforming lot (Lot 2) consisting of 65 feet of frontage and 30,008 square feet of area. The division/creation of lots with insufficient frontage is a two-step approval process- approval of a frontage variance from the Board of Appeals and approval of a definitive subdivision with waivers from the Planning Board.

In my opinion, Mr. Perkins' proposal constitutes a self-created hardship as he wishes to subdivide an existing conforming lot (one that meets the minimum lot frontage and lot area requirements for the district) into two lots, one of which is nonconforming (Lot 2) and requires a frontage variance of 85 feet. Please refer to the attached excerpt from Mark Bobrowski's well-regarded Handbook of Massachusetts Land Use and Planning Law. According to Bobrowski, the courts are consistently hostile to relief through the variance procedure where the alleged hardship by the petitioner has been self-created.

As you know, criteria for granting a variance is predicated upon finding that land or structures suffer from a hardship owing to soil conditions, shape, topography, or circumstances relating to structures, but not generally affecting the zoning district in which it is located, and "desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or

Handbook of Massachusetts Land Use and Planning Law

Mark Bobrowski

1. Overview of Massachusetts Land Use Regulation 1
2. Zoning: Authority and Constitutionality 35
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4. Exemptions and Immunity 151
5. Vested Rights 185
6. Nonconforming Uses and Structures 223
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14. Introduction to Subdivision Control 565
15. Procedural Requirements in Subdivision Control Decisions 587
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19. Nonzoning Land Use Control 717

stances relating to the soil conditions, shape or topography of such . . . structures" peculiarly affect that structure, a variance may be authorized. However, it is difficult to imagine a circumstance regarding the soil conditions or topography of a *structure*. For this reason, *Kairis* may offer a better interpretation of this rather ambiguous clause in §10.

§8.3.1.5 Other Conditions

Case law has flushed out a host of conditions that are simply irrelevant when posed as grounds for a variance. For example, dumping on the premises,²⁸ proximity to other non-conforming lots or structures,²⁹ adjacency to a business district,³⁰ location of trees on the lot,³¹ the presence of a large septic system on site,³² and benefits to the tax base of the municipality³³ are not proper considerations.

Moreover, some favorable decisions based on the old Zoning Enabling Act have no current relevance. For example, the presence of high tension wires,³⁴ effect of two neighboring easements,³⁵ or close proximity to a highly commercialized area,³⁶ all cited in support of pre-1975 variances, are no longer factors. The different result stems from the current statute,

²⁸ *Dion v. Board of Appeals of Waltham*, 344 Mass. 547, 551 (1962).

²⁹ *Shafer v. Zoning Bd. of Appeals of Scituate*, 24 Mass. App. Ct. 966, 967 (1987); *Raia v. Board of Appeals of North Reading*, 4 Mass. App. Ct. 318 (1976).

³⁰ *Coolidge v. Zoning Bd. of Appeals of Framingham*, 343 Mass. 742 (1962).

³¹ *Martin v. Board of Appeals of Yarmouth*, 20 Mass. App. Ct. 972 (1985).

³² *Kirkwood v. Board of Appeals of Rockport*, 17 Mass. App. Ct. 423 (1984).

³³ *Bruzzese v. Board of Appeals of Hingham*, 343 Mass. 421 (1962).

³⁴ *Dion*, 344 Mass. at 551.

³⁵ *Id.*

³⁶ *Boyajian v. Board of Appeal of Wellesley*, 6 Mass. App. Ct. 283, 287 (1978). The decision utilized the old Zoning Enabling Act, not the modern provision.

which limits variances to lots burdened by unusual soil conditions, shape, or topography, or to unique structures.

§8.3.2 Hardship

Mass. Gen. L. ch. 40A, §10 requires a variance petitioner to demonstrate that "a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise." The hardship must relate to the premises for which the variance is sought.³⁷

A nexus must exist between a "circumstance" set forth in the statute³⁸ and the hardship claimed by the petitioner. In *Guiragossian v. Board of Appeals of Watertown*,³⁹ the court reviewed a petition for a use variance for a lot of allegedly unique shape. In rejecting this claim, the court termed the relationship between the statutory circumstances and hardship to be "sympiotic."

[T]he hardship alleged must arise from the shape of the locus or one of the other factors specifically referred to in §10. An applicant for a variance must show that the land's shape, alone or in combination with other features of the land, prohibits development consistent with the ordinance. When the applicant makes such a showing, hardship can be found to exist.⁴⁰

The cases that turn on the issue of hardship are notable for describing what does *not* amount to a statutory showing. For example, it is well-settled that personal hardship, however heartrending, is not a proper factor for consideration.⁴¹ Nor is

³⁷ *Hurley v. Kolligian*, 333 Mass. 170, 173 (1955).

³⁸ See §8.3.1.

³⁹ 21 Mass. App. Ct. 111 (1985).

⁴⁰ *Id.* at 118.

⁴¹ See *Winn v. Board of Appeals of Saugus*, 358 Mass. 804 (1970) (personal health); *Abbott v. Appleton Nursing Home*, 355 Mass. 217, 221 (1969) (expansion necessary to comply with state-mandated nursing home regulations); *Aronson v. Board of Appeals of Stoneham*, 349 Mass. 590 (1965) (child

personal financial hardship because of lost profits, prior expenditures, or resale value.⁴² The proximity of the land or structure to nonconforming uses or the boundary of a particular district is not statutory hardship.⁴³ Losses caused by government action or regulation do not usually qualify as hardship.⁴⁴ Other decisions illustrate unique, failed hardship claims.⁴⁵

with multiple handicaps); *Russell v. Zoning Bd. of Appeals of Brookline*, 349 Mass. 532 (1965) (low-income petitioners). See also *Cass v. Board of Appeal of Fall River*, 2 Mass. App. Ct. (1974) (shortage of affordable housing does not excuse variance granted to Fall River Housing Authority).

⁴²See, e.g., *Planning Bd. of Barnstable v. Board of Appeals of Barnstable*, 358 Mass. 824 (1971) (personal financial hardship); *Wolfson v. Sun Oil Co.*, 357 Mass. 87, 90 (1970) (competitive disadvantage); *Smith v. Zoning Bd. of Appeals of Scituate*, 347 Mass. 755 (1964) (minor costs of relocating structure); *Dion v. Board of Appeals of Waltham*, 344 Mass. 547, 552 (1962) (loss of profit on resale); *Bruzzese v. Board of Appeals of Hingham*, 343 Mass. 421, 423-424 (1962) (prior expenditures); *Shacka v. Board of Appeals of Chelmsford*, 341 Mass. 593 (1961) (former business site taken by eminent domain and new location, in residence district, cannot meet statutory prerequisites); *Kirkwood v. Board of Appeals of Rockport*, 17 Mass. App. Ct. 423 (1984) (costs to improve land); *Simone v. Board of Appeals of Haverhill*, 6 Mass. App. Ct. 601, 603 (1978) (decrease in market value); *Raia v. Board of Appeals of North Reading*, 4 Mass. App. Ct. 318 (1976) (prior expenditures); *City Council of Waltham v. Vinciullo*, 364 Mass. 624, 631 (1974) (diminished profits); *DelGaudio v. Board of Appeals of Medford*, 1 Mass. App. Ct. 850 (1973) (claimed economic infeasibility).

⁴³See, e.g., *McLaughlin v. Rockland Zoning Bd. of Appeals*, 351 Mass. 678, 683 (1966) (loss of nonconforming status is not hardship); *Bruzzese v. Board of Appeals of Hingham*, 343 Mass. 421 (1962); *Guiragossian v. Board of Appeals of Watertown*, 21 Mass. App. Ct. 111 (1985) (contiguity with residence district); *Raia v. Board of Appeals of North Reading*, 4 Mass. App. Ct. 318 (1976). But see *Dion v. Board of Appeals of Waltham*, 344 Mass. 547, 552 (1962) (proximity of a lot to industrial plants was found to constitute a hardship). Note however, that *Dion* precedes the 1975 Zoning Act.

⁴⁴See, e.g., *Kirkwood v. Board of Appeals of Rockport*, 17 Mass. App. Ct. 423, 431 (1984) ("The fact that a governmental regulation may deprive an owner of the most beneficial use of his property does not create a hardship. . . ."). See also *Abbott v. Appleton Nursing Home*, 355 Mass. 217, 221 (1969) (expansion necessary to comply with state-mandated nursing home regulations); *Shacka v. Board of Appeals of Chelmsford*, 341 Mass. 593 (1961) (former business site taken by eminent domain and new location, in residence district, cannot meet statutory prerequisites).

⁴⁵See, e.g., *Dion v. Board of Appeals of Waltham*, 344 Mass. 547, 552

Several cases provide examples of hardship caused by a statutory "circumstance." In *Josephs v. Board of Appeals of Brookline*,⁴⁶ the slope and shape of the lot resulted in a finding that the town's requirement for loading docks would constitute a hardship.⁴⁷ In *Wolfman v. Board of Appeals of Brookline*,⁴⁸ the petitioner demonstrated that soil conditions peculiar to the lot, and the shape and grade of the lot, would cause premium costs of \$250,000 to \$500,000. "These expenses are not personal to the developers but would be experienced by anyone attempting to make a reasonable and permitted use of the locus."⁴⁹ Finally, in *Paulding v. Bruins*,⁵⁰ the court held that hardship existed where a peculiarly shaped lot, suitable only for a residence, was unbuildable without a variance.⁵¹

Self-created Hardship. Where the hardship alleged by the petitioner has been "self-created," the court has been consistently hostile to relief through the variance procedure. Typically, this situation arises when the owner of a large tract of land conveys to another a portion thereof that does not meet the minimum bulk requirements of the then-existing zoning requirements, with the result that the new owner cannot build without relief

(1962) (dumping on the premises by predecessor); *Shafer v. Zoning Bd. of Appeals of Scituate*, 24 Mass. App. Ct. 966 (1987) (desire of town to maximize taxes cannot justify variance).

⁴⁶362 Mass. 290, 293 (1972).

⁴⁷If the required loading bay was built, the judge found that it would be necessary

"either to depress the level of the roadway in relation to the record grade or to maintain record grade and extend the height of the bay into the story above." The first alternative would create an excessively steep access ramp from the bay to the street and presents hazards to persons using the ramp. The second alternative would interfere with the use of the space within the building and would result in an economic loss. On these findings, the judge was warranted in concluding [that hardship existed.]

Id. at 293.

⁴⁸15 Mass. App. Ct. 112 (1983).

⁴⁹*Id.* at 116.

⁵⁰18 Mass. App. Ct. 707 (1984).

⁵¹*Id.* at 711-712.

from the zoning regulations.⁵² Similarly, the illegal or erroneous placement of a structure should not be subsequently legitimized through the issuance of a variance.⁵³

§8.3.3 Substantial Detriment and Derogation

Mass. Gen. L. ch. 40A. §10 establishes that variances must be predicated upon a finding that "desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law."

*Cavanaugh v. DiFlumera*⁵⁴ illustrates the interplay between these two prerequisites. A variance petition to build a grocery store in a residential district was favorably reviewed by the board of appeals of Agawam. On appeal by an abutter, the lower court annulled the variance on the sole ground that it derogated from the intent and purpose of the zoning by-law. The court reached this result despite finding that the grocery store would not cause substantial detriment to the public good.

In reversing the lower court the appeals court held that "these findings [on detriment] apply with equal force to the substantial derogation question."⁵⁵ Furthermore,

⁵² See *Gordon v. Zoning Bd. of Appeals of Lee*, 22 Mass. App. Ct. 343, 350 (1986); *Arrigo v. Planning Board of Franklin*, 12 Mass. App. Ct. 802 (1981); *Raia v. Board of Appeals of North Reading*, 4 Mass. App. Ct. 318 (1976). See also *Karet v. Zoning Bd. of Appeals of Worcester*, 27 Mass. App. Ct. 439, 440 (1989) ("It is . . . clear that a lot cannot qualify for a variance if the circumstance creating the hardship is itself the result of a transfer that violates in some respects applicable zoning requirements for buildable lots."); *DiCiccio v. Berwick*, 27 Mass. App. Ct. 312 (1989); *Shafer v. Zoning Bd. of Appeals of Scituate*, 24 Mass. App. Ct. 966, 967 (1987).

⁵³ *Martin v. Board of Appeals of Yarmouth*, 20 Mass. App. Ct. 972 (1985).

⁵⁴ 9 Mass. App. Ct. 396 (1980).

⁵⁵ *Id.* at 400.

the deviation must be *substantial*,⁵⁶ and . . . unless the use significantly detracts from the zoning plan for the district, the local discretionary grant of the variance (all the other statutory elements having been satisfied) must be upheld. The requirement of substantial derogation recognizes that the "effect of a variance is to give the landowner a license or permit to use his property in a manner otherwise violative of the zoning ordinance." 3 Rathkopf, *Zoning & Planning* §38.06, at 38-63 (4th ed. 1979). . . . Because of this, some derogation from the by-law's purpose is anticipated by every variance.⁵⁷

In deciding whether a particular use will have a detrimental effect on an area, the future effect of the proposed use is an appropriate factor for the granting authority to consider,⁵⁸ as well as other projects approved or denied in the vicinity of the proposal.⁵⁹

The prerequisites involving substantial detriment and sub-

⁵⁶ In *Cary v. Board of Appeals of Worcester*, 340 Mass. 748, 752 (1960) (*citing* *Pendergast v. Board of Appeals of Barnstable*, 331 Mass. 555, 557 (1954)), the court defined the term "substantial" in the context of the pre-1975 Zoning Enabling Act's variance provision. The court held that it "is a comparative word . . . [that] local conditions are of importance." "The effect of a variance on the intent or purpose of the ordinance must be determined by appraising the effect on the entire neighborhood affected." *Id.* at 753.

⁵⁷ *Cavanaugh*, 9 Mass. App. Ct. at 400. See also *Pendergast v. Board of Appeals of Barnstable*, 331 Mass. 555, 557 (1954).

⁵⁸ See *Humble Oil v. Board of Appeals of Amherst*, 360 Mass. 604, 606 (1971); *Gulf Oil Corp. v. Board of Appeals of Framingham*, 355 Mass. 275, 278 (1969). Cf. *MacGibbon v. Board of Appeals of Duxbury*, 347 Mass. 690, 692 (1964) (denial of an application for fill was based, in part, upon the effects of expected residential development to follow); *Mahoney v. Board of Appeals of Winchester*, 344 Mass. 598, 601 (1962) ("Long range considerations alone . . . cannot reasonably lead to complete denial of [a] permit . . . which can have no substantial effect upon the public welfare at the present time.").

⁵⁹ See *Colangelo v. Board of Appeals of Lexington*, 407 Mass. 242, 245-246 (1990). The board denied an "exemption" because of the traffic impacts of the proposed commercial development. Subsequently, the board approved other applications with vehicle trips five times greater than those of the denied project. The court ordered permits to issue. See also *Zaltman v. Board of Appeals of Stoneham*, 357 Mass. 482 (1970).



TOWN OF MILLBURY

ATTENDEE SIGN-IN SHEET

BOA HEARINGS WEDNESDAY, July 25th, 2018

7:05 Steven & Lori Christy for 20 Woodridge Rd., Millbury, Ma

7:35 Chris Windle for 34 Grafton St., Millbury, Ma

7:50 David W. Perkins for 11 Benton St., Millbury, Ma

8:20 Ucef & Mary Charmchi for 8 Bayberry Lane, Millbury, Ma

PLEASE PRINT NAME

YOUR ADDRESS

ADDRESS OF HEARING

Paul Stringham	BD	
Christopher Ryll	5 Mason Rd.	11 Benton St.
Linda Donovan	49 Davis Rd	34 Grafton St
Shirley Moore	27 Grafton St	34 Grafton St
Andrew Peoples	36 Grafton St	34 Grafton St
Flaine Loehmann	65 Auburn Rd	8 Bayberry Ln
Jonathan Beaudoin	55 Auburn Rd	8 Bayberry Ln
Karen Beaudoin	A. Roads	Millbury
Ucef Charmchi		8 Bayberry Lane, Millbury
Petrucci Bank	11ST Group	Bayberry Lane
Mary Charmchi	8 Bayberry Ln.	Bayberry Lane
Hanni Granger	15 Bayberry Lane	8 Bayberry Lane
Philip Nyberg	21 Bayberry Lane	8 Bayberry Ln
Mary Catherine Piorkowski	4 Bayberry Ln	8 Bayberry Ln

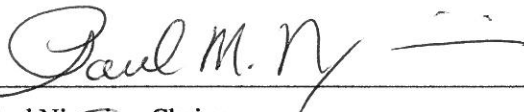
**Town of Millbury
Board of Appeals**

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MUNICIPAL OFFICE BUILDING
127 ELM STREET
MILLBURY, MA 01527

**Board of Appeals Approval Signatures
Meeting Minutes from Wednesday, July 25th, 2018**



Paul Nigosian, Chairman

Kenneth Perro, Vice Chairman

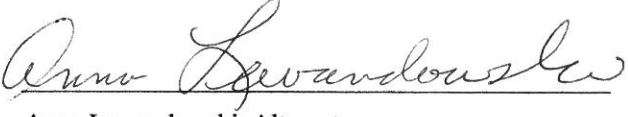


Daniel Mezynski

Harold Proodian



Robert Simmarano, Clerk



Anna Lewandowski, Alternate