



BOARD OF APPEALS  
**TOWN OF FOXBOROUGH**  
40 SOUTH STREET  
MASSACHUSETTS  
02035

**Foxborough Zoning Board of Appeals Minutes  
January 20, 2022**

Members present: Members Barney Ovrut, and Kim Mellen and Associate Member Kurt Yeghian were present via Zoom, Associate Member Lorraine Brue was present in person

This meeting was held in person with the Zoom video platform also available; it was also being broadcast on Foxboro Cable Access.

Chairman Barney Ovrut opened the meeting at 7:00 p.m.

**7:00 p.m. Scott Martyniak/Carlbrooke Construction seeks a Variance pursuant to the Code of the Town of Foxborough, Chapter 275, Section 4.1 Table 4-1 to allow a front yard setback of 30 feet where 35 feet is required for the construction of a front porch on a new single family dwelling. The property is located at 16 Garrett Spillane Road (Assessor's Map 12 Parcel 49) in the R40 Zoning District and is not located in any restrictive overlay districts.** Mr. Ovrut noted that Associate Member Mr. Yeghian will be voting on this petition in the absence of Member Mr. Brown. Scott Martyniak was present in person and represented himself. He is building a single family home on a lot he owns at 16 Garrett Spillane Road. After he bought the lot a vernal pool was certified on an adjacent lot not owned by Mr. Martyniak. There is a 100 foot buffer zone restriction around vernal pools issued by the Conservation Commission which affects where the home can be built on this lot. Mr. Martyniak also owns an adjacent lot and adjusted the lot lines to be able to move the house away from the vernal pool.

Garrett Spillane Road is a Way in Existence formally known as Camp Road. The construction of Edwards Road cut this part of Camp Road off and it was renamed. Most of the lots on this portion of the road are conforming lots with a few pre-existing non-conforming lots.

Mr. Martyniak has been working with a client to build a single family home on this lot. He has had to modify the plan a few times while working with the Conservation Commission through the vernal pool process. The client wants to have a house with a farmer's porch on the front of the home. If the farmer's porch is constructed it will be within the front yard setback at thirty feet, the front yard setback is thirty five feet. Mr. Martyniak noted a house on the right is thirty seven feet from the road. The location of the house cannot be moved as it will be within the vernal pool buffer.

Mr. Ovrut noted that no building permits have been pulled for this project yet and asked if Mr. Martyniak has any signed agreements with the client. Mr. Martyniak stated that he has a contingent agreement with the client but nothing signed.

Mr. Ovrut asked if there is a significant price difference on having a porch versus no porch. Mr. Martyniak stated that it is only to cost of the construction of the porch itself.

Ms. Mellen noted a mistake in the listing of the lot number as lot 49 on the application and 48A on the plan, Mr. Martyniak stated that 48A is the correct reference.

If the porch is not included the house would meet all setbacks.

Mr. Yeghian asked how long Mr. Martyniak has owned the lot, he stated that he has owned the lot since June 2020 but has been working on this project to create these lots for eighteen years. He also asked how a vernal pool is certified, Mr. Martyniak explained that anyone can file to have a pool certified with Natural Heritage, documentation is needed of species that live in the vernal pool. Massachusetts Department of Environmental Protection has no vernal pool buffers but the town wetland bylaw has the 100 foot buffer that must be adhered too. This pool certification was started by Conservation Agent Jane Pierce.

Mr. Ovrut asked if the house could be moved to the side since there is 17 feet on the side, it could be reduced to 15 feet. Mr. Martyniak stated that this would interfere with the frontage of the adjacent lot.

Mr. Martyniak noted that the roadway was constructed under the Foxboro Subdivision bylaw but the homes are not configured like a subdivision. The homes in the area are all different, there is only one other home with a porch but all the new construction homes have proposed porches.

The Board reviewed the criteria for a Variance - issues with the soil, shape or topography of the lot and literal enforcement that would create a substantial hardship. There must also not be substantial detriment to the public good. Mr. Ovrut noted that this is an odd shaped lot that may have topography issues, there is no detriment to the public good but he questioned if there is a financial hardship.

Mr. Martyniak stated that the value is where the house had to be located, the future homeowner will not be able to disturb the vernal pool buffer zone; the vernal pool reduces the value of the lot.

Ms. Brue asked if the addition of the porch would add value to help gain some of what was lost in the value of the land.

A motion to close the Public Hearing was made by Ms. Mellen and seconded by Mr. Yeghian. Roll Call Vote: Mr. Yeghian – yes, Ms. Mellen – yes, Mr. Ovrut – yes; motion carries 3-0-0.

The Board immediately moved into deliberations. The house can be constructed in the area but is the need for a porch a substantial hardship? Ms. Mellen feels that since the house can be built and Mr. Martyniak stated that there would be no financial loss if the porch is not built it is not a substantial hardship. Mr. Yeghian acknowledged that it was a long and complicated process working with the client but does not want precedent to be set. Ms. Brue questioned the potential loss of the project without a porch since there is not signed agreement with the client. Mr. Martyniak feels the client changing their mind about building the house would be a financial hardship. Mr. Ovrut feels that a substantial hardship would be the house could not be constructed without the Variance. In this case, the house can still be built and it could be sold to someone else if these clients change their mind.

A motion to deny the requested Variance at 16 Garrett Spillane Road was made by Ms. Mellen and seconded by Mr. Yeghian. Roll Call Vote: Mr. Yeghian – yes, Ms. Mellen – yes, Mr. Ovrut – yes; motion carries 3-0-0.

**7:05 p.m. Continued Public Hearing - Media Partners MRV LLC requests a Special Permit pursuant to the Code of the Town of Foxborough, Massachusetts, Chapter 213: Signs, Section 213-3.C.(1)(a) and Section 213-5.A.(1), Table 1: Permitted Signs and 213-6.A.(1) Table 2: Dimensional Requirements Billboards, to allow the conversion of the two sides of an existing static billboard to an electronic billboard. The billboard is located on Washington Street (Assessors Map 004-009) and is located in Sign District 1.** Mr. Ovrut noted that this hearing is for a Special Sign Permit not a Special Permit, Mr. Ovrut also stated that Ms. Brue will be the voting member on this case due to the absence of Mr. Brown. Atty. Frank Spillane was present representing the applicant who was represented by Peter McClary. Atty. Spillane thanked the Board for the repeated continuances while they tried to get examples of exemptions for electronic billboards from the state which they have not been able to get after repeated attempts. They would like to modify their request and are now asking for an electronic conversion on only one side of the two sided billboard. The south side of the billboard would be electronic as the next closest electronic billboard faces north. A special permit would still be required as this billboard is situated less than 1000 feet from the nearest electronic billboard, that billboard is 808 feet away.

This billboard was permitted by the Board in 2019 to Metrovision as a two sided static billboard. In January 2021 ownership was transferred to Media Partners. The billboard has been constructed and is ready for operation. If the conversion is allowed no changes need to be made to the structure, all billboards are currently being constructed to accommodate both electronic and static facings.

In May 2019 Foxboro residents voted to allow electronic billboards on Route 1. Atty. Spillane reviewed how this billboard meets the requirements for billboard signs: this sign is not near any residential areas and will have no impact to neighborhoods. There are two other electronic signs in the area, the aforementioned electronic sign at the McDonald's on North Street and one other further down Route 1 in Walpole. There are also other electronic signs in other towns along Route 1.

The next closest static sign is 787 feet to the south, static signs are allowed every 500 feet.

The use of the lot for parking will continue, but the amount of parking is limited by wetlands on the site. The change of the sign from static to electronic will not create any traffic or safety issues. There will be no change to the illumination of the sign. There would be a benefit to the town of added tax revenue for multiple ads. Foxboro businesses could benefit from additional advertising opportunities. The electronic ads will not feature any animation or video. The billboard cannot be moved due to the wetlands on the site and the required buffers to try to move it further away from the next closest electronic billboard.

The McDonalds sign has an electronic north facing sign and a static south facing sign, they are proposing to have this billboard have a static north facing sign and an electronic south facing sign.

Mr. McClary stated that he tried to get information from the state through a FOI act he filed in November. The Federal Highway Bureau Director of Outdoor Advertising can give an exemption for anything except federal law. He was not able to obtain the information due to Covid, he hopes to eventually receive the information. He has been in this business for thirty years and has signs located in other wetland areas such as harbors but they decided to keep this sign out of the wetlands. He feels that since you cannot see both electronic signs at the same time he would be able to get an exemption from the state. In New Jersey they installed electronic signs to generate income for the towns they are located in, they also provide public service announcements, weather related announcements and amber alerts. Smaller businesses will also be able to afford advertising on these signs.

Ms. Brue asked if there is enough land to move the sign, Mr. McClary stated they could move the sign 200 feet south but it would be located in the wetlands and would have to go before the Conservation Commission.

Ms. Mellen stated that she read the state regulations and they mention an obstruction or geometry of the roadway to qualify for an exemption and she does not see that here.

Mr. McClary stated that if the state denies the exemption it would remain static but he is confident that the state would approve the request.

A motion to close the Public Hearing was made by Ms. Mellen and seconded by Ms. Brue. Roll Call Vote: Ms. Brue – yes, Ms. Mellen – yes, Mr. Ovrut – yes; motion carries 3-0-0.

The Board immediately moved into deliberations. Mr. Ovrut read from the state regulations that speak of a building or other structure between signs or geometry of the roadway. The Sign Bylaw states no electronic signs within 1000 foot radius of another electronic sign, North Street is within 1000 feet. Ms. Brue stated that town departments were consulted when the sign bylaw was developed, the bylaw does not permit two electronic signs within 1000 feet of each other. The Board members are also concerned with precedent.

A motion to deny the requested Special Permit to allow the conversion of one side of an existing static billboard to an electronic billboard on Washington Street (Assessors Map 004-009) was made by Ms. Mellen and seconded by Ms. Brue. Roll Call Vote: Ms. Brue – yes, Ms. Mellen – yes, Mr. Ovrut – yes; motion carries 3-0-0.

### **Sign Bylaw Discussion – To allow Billboard along the 95 and 495 corridors**

The Board met with Atty. Frank Spillane who is representing Arthur Rounds who owns property on East Belcher Road. Also present was Atty. Rob Burr representing American Outdoor Advertising. Mr. Rounds would like to be able to put up an electronic billboard on his property that would be facing Route 95.

After discussion it was decided that the options to allow billboards on Route 95 and 495 is either to revise the bylaw or add an additional sign district.

Billboards could be allowed by Special Sign Permit on lands abutting Routes 95 and 495 in the L1 District. It would need to be determined how far away from an abutting residential unit.

They would like to send an article to the Board of Selectmen for the Town Meeting warrant. The ZBA has been designated by the Board of Selectmen for the Sign Bylaw.

The distance from residential needs to take into account the billboard the town would like to put on the DPW property on Elm Street. It is hoped that the Board of Selectmen would be interested in proceeding with an article for Town Meeting and then placement on DPW property could be explored. The ZBA would have to recommend to the BOS to consider placing an article on TM warrant.

Ms. Brue agrees with sending the proposal to the BOS to see if they would support it, she suggests looking at 300 feet from residential.

Atty. Spillane stated that he will talk to the Town Manager to see if it could be placed on the February 1, 2022 BOS agenda. If the BOS asks for 1000 feet from residential they would pursue a citizen's petition, 1000 feet would not be realistic due to the number of homes in proximity of Route 95. Ms. Brue stated she would be available to attend the February 1<sup>st</sup> BOS meeting, Mr. Ovrut may also be able to attend.

**GENERAL BUSINESS**

Mr. Ovrut informed the Board that there still may be two 40B applications soon, the Morse Street project is still being reviewed by the state and the Housing Authority is beginning the process for the Walnut Street Senior Housing project.

The new Building Commissioner starts on Monday.

There is another issue with a billboard at 124 Washington Street. It has been determined that the billboard is being constructed less than the required 16 feet from the roadway. They may require a modification in order to slide the signs over without moving the pole.

Mr. Ovrut will check with Town Counsel to see if there are any updates to the appeal of 227 Cocasset Street.

A motion to adjourn was made by Ms. Mellen and seconded by Ms. Brue. Roll Call Vote: Ms. Brue – yes, Ms. Mellen – yes, Mr. Yeghian – yes, Mr. Ovrut – yes; motion carries 4-0-0. The meeting was adjourned at 9:05 p.m.

Respectfully Submitted,

Diana Gray

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Signed on behalf of the Board

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Kim Mellen, Clerk