

**BILLERICA BOARD of APPEALS**  
**Minutes for the**  
**January 4, 2023 Meeting**  
**6:00 PM – Room 210**  
**365 Boston Road, Billerica, MA**

**ATTENDANCE:** Members Robert Accomando (Chairman), Michael Pendleton (Vice-Chairman), Eric Anable (Secretary), Richard Colantuoni and Anupam Wali. Alternate Member Ralph McKenna was also present via ZOOM, as was the Building Commissioner, Mark LaLumiere. Recording secretary Liz Ells, ZBA.

**I. 6:00 PM – PUBLIC COMMENT** – No public comments.

**II. 6:02 PM** - Charles Timmins - Variance request to reduce the rear setback to replace existing shed with a larger one in a Village Residence Zone located at 307 Andover Road (Case #22-71)

Charles Timmins explained his variance request to replace the existing shed with a larger one and reduce the side and rear setbacks. The existing shed has been there for 20+ years and is 12'x1'8" in size. He would like to increase it to an 18'x24'. He estimated the existing shed is approximately 8' to 10' from the rear property line. He is seeking to reduce the side and rear setbacks to 8' on each side. As the plan was not clean enough, the recording secretary was directed by the Board to reflect the 8' side setback on the plan for the record and initial.

The submitted Building Certification Plan of Land prepared by Summit Survey Service, dated August 5, 1985 shall be filed as part of the decision.

**MOTION: TO** close the public hearing. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in favor. Motion carried.

**MOTION: TO** grant the Variance requested. Moved by Vice- Chair Pendleton, seconded by Member Wali.. All in favor. Motion **granted**.

**III 6:05 PM** - John Mercer – Variance request to reduce the front setback to construct addition to home in a Neighborhood Residence Zone located at 7 Marriott Place (Case #22-79)

John Mercer presented his variance request to reduce the front setback to construct an addition to the home. They are constructing a 2-car garage with a family room above. The plan submitted reflects a 32.10' front setback reduction but he requested a 31' front setback to allow for any possible errors. The recording secretary was directed by the Board to note the 31' front setback on the plan and initial.

The submitted Certified Plot Plan prepared by Meisner Brem Corporation dated November 4, 1993 shall be filed as part of this decision

**MOTION: TO** close the public hearing. Moved by Member Colantuoni, seconded by Vice Chair Pendleton. All in favor. Motion carried.

**MOTION: TO** grant the Variance requested. Moved by Vice Chair Pendleton, seconded by Member Colantuoni. All in favor. Motion **granted**.

**IV. 6:12 PM - 295 Boston RE Holdings, Inc., - Special Permit request to change use of existing space and convert to an ice-cream shop in a General Business Zone located at 295 Boston Road (Case #22-80)**

Michael Liu, the applicant and property owner, participated in the meeting via ZOOM. He explained that he is seeking a special permit to open a gourmet ice-cream shop and the ice-cream will be made on the premises. The unit would need to be converted and he stated that the roof will be replaced and repainted on the inside – suitable to operate. There will be no structural changes to the property. There is no plan to conduct business via window service; just take out. There will be trash receptacles both inside and outside the establishment and emptied regularly.

The submitted Proposed Subdivision of Land, signed by James B. Monahan dated December 27, 1980 and the Proposed Floor Plan shall be filed as part of this decision.

**MOTION: TO** close the public hearing. Moved by Vice-Chair Pendleton, seconded by Secretary Anable. All in Favor. Motion carried.

**MOTION: TO** grant the Special Permit requested. Moved by Vice-Chair Pendleton seconded by Secretary Anable. All in favor. Petition **granted**.

**V. 6:24 PM - James and Sharmis Powell – Appeal of Building Inspector’s Determination Decision in a Village Residence Zone located at 30 Bridge Street (Case #22-81)**

James Powell is appealing the decision of the building inspector’s determination regarding the netting/tarps as a structure. He stated the tarps are 25’x12 ‘and disagrees that they are neither a fence or a structure: He explained that they have a 15 yr. old daughter and 2 teenage boys and the backyard has a pool, a gazebo and tv area, as well as a basketball hoop. He stated that his neighbor at 28 Bridge St. installed 2 camera’s in 2022 and they are directed at his pool and yard area and the tarps/netting were installed as to prevent the neighbor from filming them. It also prevents the basketballs from landing in his neighbor’s yard as well as blowing leaves. Mr. Powell further stated that the Police

Department has been made aware of the situation and have stated that there is nothing they can do unless the camera's are filming the inside of the home.

Christopher Guerriero is the Bldg. Inspector who received the complaint and conducted an inspection of the property. It was observed that a net/fence approximately 10-12 feet high was installed and required a special permit/variance from the Zoning Board of Appeals. He found it to be a violation based on the Zoning By-Law definition of a structure. See Definition and Dimensional Regulations stated below:

Section 2. DEFINITIONS:

\* Structure:

A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, or platform bin. Fences over 6' height, sign, flagpole, recreational tramway, mast for radio antenna, or the like are structures. The word "structure" shall be construed, where the context requires, as though followed by the words, "or part or parts thereof."

Section 7. DIMENSIONAL REGULATIONS:

J. Walls, Fences and Retaining Walls:

Walls, fences, barriers, retaining walls and the like over six feet in height shall be considered structures and shall be subject to all applicable dimensional controls in this section of the Zoning By-Law.

Chris stated that it meets the definition of a structure and/or fence in his professional opinion. Mr. Powell stated that the tarps have the ability to be removed as well as moved up and down for safety measures and privacy concerns. He questioned that if they have the ability to open and close them, are they still considered a permanent structure? He also stated that it is a mesh netting and not a tarp. Chris stated that neither the applicant or the neighbor have updated plot plans and noted that there is a paper road between the properties.

The Board does not have jurisdiction as this is a civil matter. They determined to uphold the decision of the Bldg. Inspector that it is a structure and Mr. Powell could request a variance for a fence over 6' but it cannot be on the paper road. The other option would be to work with the Building Department and the parties involved to work towards a resolution. The Building Commissioner agreed that this is a civil matter but offered to work with the applicant for possible options and solutions.

Mr. Powell stated that if the decision appeal is denied, they are open to any suggestions from the Board and the Building Department with regards to zoning and possible resolution of the dispute.

Joseph Silva, 155 Bridle Road, supports the applicant about the privacy issue and stopping the leaves and basketballs. He stated they are nets, not tarps. Doesn't understand why it's being called a structure.

**MOTION: TO** close the public hearing. Moved by Member Wali, seconded by Member Anable. All in Favor. Motion carried.

**MOTION: TO** grant the Appeal requested. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in favor. Building Inspection Determination Decision **upheld**.

**VI. 6:53 PM** - Richard Annese, RLEM Properties, LLC – by James Dangora, Jr., - Variance request to divide the premises into four (4) lots in a Neighborhood Residence Zone located at 616 and 618 Boston Road (Case #22-82)

Attorney Dangora, Jr. presented his client's project and explained that his applicant wishes to split and otherwise reconfigure two large lots to create new two building lots (lots 3 and 4). Lot 3 will contain 33,657 sq. ft. and lot 4 will contain 43,740 sq. ft. Both lots will be accessed by private driveways from frontage along Boston Road. The premises is large and uniquely shaped and the lot split will minimize the hardship related to the maintenance of the large lots. Each lot would be consistent with other lots in the area and the reconfiguration will not be detrimental to the neighborhood. It was stated that the lots are also challenged by the flood plain and wetlands in the back of the property. This property/petition would also have to be presented to the Planning Board and the Conservation Commission.

Joseph and Theresa DiGiuse, 614 Boston Road, are direct abutters and shared their concerns regarding the house sizes and the impact on their property and privacy. Richard Annese addressed their concerns and explained that he did not put building envelopes on the new lots due to having to present before 2 other boards under their respective jurisdictions and restrictions.

**MOTION: TO** close the public hearing. Moved by Vice-Chair Pendleton, seconded by Member Colantuoni. All in favor. Motion Carried.

**MOTION: TO** grant the Variance requested. Moved by Member Wali, seconded by Member Colantuoni. The Board voted 4-1 to deny the variance request with the vote being Chairman Accomando voting in favor and Members Pendleton, Colantuoni, Wali and Anable voting against. Motion **denied**.

**VII. 6:50 PM** - Michael Donnelly and Brian Kelly by John McKenna, Esq. – Variance request to divide the premises into two lots in a Neighborhood Residence Zone located at 373 Boston Road (Case #22-75) (*Continued from December 7, 2022*)

Attorney Dangora, Jr. allowed Attorney McKenna to precede his petition as Attorney McKenna requested to withdraw his client's petition without prejudice after further consideration.

**MOTION: TO** accept the withdrawal without prejudice. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in favor. Motion carried.

**VIII. 7:21 PM** - Robert Godfrey - Special Permit request to operate a dog daycare and training center in a General Business Zone located at 475 Boston Road (Case #22-78)  
*(Continued from December 7, 2022)*

CJ Newcomb addressed the Board with the revised plans and parking and traffic flow patterns. He explained that they met with the Building Commissioner and expressed a better understanding of what the requirements are in order to occupy the building to conduct business. They have been working towards the goal for re-occupancy. They are concerned about increasing their price points based on the By-Law required finding of 15 dogs maximum.

Candace Dryden, a certified dog trainer presented the Board with space requirements for dogs based on the USDA Animal Welfare Act and it was based on 30 dogs. She stated the property allows for the space requirements for 30 dogs.

Mark LaLumiere, the Building Commissioner, expressed life safety standards concerns need to be in place before occupancy and is concerned that it is already open. There have been social media posts regarding the opening of the Dog Daycare. He advised the Board to obtain Town Council review as the 15 dog maximum is a required finding. Mr. LaLumiere felt it was a disservice to the town right out of the gate by requesting double the amount of dogs as what the town voted as a maximum. He stated it would have to be brought to Town Meeting and voted upon to amend the By-Law. It was noted that that process is a very detailed, involved process and retaining an attorney would be beneficial for them to petition to amend the Zoning By-Law. See the Zoning By-Law excerpt below:

#### SECTION 6: GENERAL BUSINESS DISTRICT:

(c) Dog Daycare:

#### REQUIRED FINDINGS:

- The activity is not injurious, noxious, or offensive to the senses of the neighborhood residents, not limited to client traffic and parking effects
- There is a maximum of fifteen (15) dogs at any one time on the premises
- There is a minimum of one thousand (1000) square feet of interior gross floor area
- There is a minimum of one thousand (1000) square feet of exterior space enclosed by an eight (8) foot non-chain link fence with the finished surface facing in and a similar gate for the dogs to exercise
- An attendant is on the premises at all times when there are dogs at the site
- There are no dogs on the site before 7:00 a.m. or after 9:00 p.m.

(d) Dog Training:

REQUIRED FINDINGS

- The activity is not injurious, noxious, or offensive to the senses of the neighborhood residents, not limited to client traffic and parking effects
- There is a maximum of fifteen (15) dogs at any one time on the premises
- There is a minimum of (1000) square feet of interior gross floor area
- An attendant is on the premises at all times when there are dogs at the site
- There is no over-night kenneling of dogs at the site
- There is no over-night in-kennel training
- There are no dogs on the site before 7:00 a.m. or after 9:00 p.m.
- There is no outside on-premise training

**MOTION: TO** close the public hearing. Moved by Member Colantuoni, seconded by Member Wali. All in favor. Motion Carried.

**MOTION: TO** grant the Special Permit requested. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in Favor. Motion **granted**, specific to the Zoning By-Law as outlined above.

**Administrative Matters:**

1. Approve the Minutes of the December 7, 2022 Board of Appeals Meeting

**MOTION: TO** accept the minutes of the December 7, 2022 Board of Appeals Meeting as presented. Moved by Vice-Chair Pendleton, seconded by Member Colantuoni. All in favor. Minutes accepted.

**8:08 PM - ADJOURN**

**MOTION: TO** adjourn. Moved by Vice-Chair Pendleton seconded by Member Colantuoni. All in Favor. Motion Carried. Meeting adjourned.

Respectfully submitted,



Eric Anable, Secretary