

BILLERICA BOARD of APPEALS
Minutes for the
May 17, 2023 Meeting
6:00 PM – Room 210
365 Boston Road, Billerica, MA

ATTENDANCE: Members Robert Accomando (Chairman), Michael Pendleton (Vice-Chairman), Richard Colantuoni, Eric Anable and Salvatore Dampolo. Alternate Member Ralph McKenna was present via ZOOM. Recording Secretary Liz Ells, ZBA.

I. 6:01 PM – PUBLIC COMMENT – No comments.

II. 6:03 PM - Patrick Pulliam – Special Permit request to transfer an existing In-Law apartment in a Village Residence Zone located at 3 Jordan Road (Case #23-17)

Mr. Pulliam explained to the Board that he applied for a building permit for an addition with a garage and it was denied as there was an existing in-law apartment in their home that was not permitted by the previous owner. They were unaware at the time that the in-law needed to be permitted and are now requesting a special permit to make it legal. The Board expressed concern that it was built without a building permit. Mark LaLumiere, the Building Commissioner, stated that he would act on behalf of the Board to ensure that it is up to code and meets the town's requirements as it was originally built without a building permit. The Board stated it will grant the permit contingent upon a new set of plans being submitted and the Building Commissioner verifies it's in compliance with the town's requirements.

Barbara Newell of 7 Jordan Road – concerned about the road damage done by the trucks and if necessary repairs will be made and by what department. It was stated to contact the Engineering Department to discuss this issue as it's not within the Zoning Board's jurisdiction. She further expressed concern that the in-law will not be zoned as a multi-family. It was clarified that in-law apartments are only for family and not rentable units.

The Plan of Land prepared by Dresser, Williams & Way, Inc., dated October 25, 2022 shall be filed as the Plan of Record for 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 Special Permit requested pending submission of a new in-law plan depicting dimensions and verified by the Building Commissioner. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in favor. Petition **granted**.

III. 6:13 PM - Paul Vaughan – Variance request to reduce rear setbacks to construct a garage in a Neighborhood Business Zone with Historic Overlay located at 12 Old Elm St. (Case#23-13)

Mr. Vaughan explained to the Board that he would like to construct a 36'x24' garage on his property and is requesting relief of the rear setback. The property also has historic overlay and received permission from the Historic Commission on May 3, 2023 to proceed with his variance request from the Zoning Board as he waits for approval from the Historic Commission. There is a shed and some tents on the property that he plans on removing in order to build this garage. The garage is proposed to be 38' from Wilson Street and he is asking to reduce the rear setback from 15' to 4'. It is a corner lot which has two frontages and two sides and the garage doors will be 38' from the Wilson St. frontage side which is the driveway. The Board asked if it will be fireproofed being so close to the property line and it was stated that the building permit would be reviewed by all Town departments as is the protocol.

The Plot Plan prepared by Dresser, Williams & Way, Inc., dated March 23, 2023 shall be filed as the Plan of Record for this decision.

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

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

IV. 6:17 PM - 22 Commune, Inc., by Stephen Lentine, Esq. – Variance request for restaurant parking in an Industrial Zone located at 164 Lexington Road (Case #23-11)

It is noted that the Chairman opened both hearings simultaneously for 22 Commune, Inc. (164 Lexington Road) as both petitions are related.

Attorney Lentine presented the variance request to reduce the number of parking spaces to 11, 2 of which would be handicapped parking spots, thereby reducing it further to 9 available parking spaces for patrons. The petitioner, Sam Patel, was also in attendance as was Michael Boujoulian, Managing Director of Alliance Residence representing the landlord. A Comprehensive Permit was granted on March 28, 2018 and it allotted 2700 sq. ft. on the ground level for use such as a restaurant/retail space. Eleven (11) parking spaces were dedicated in the Comprehensive Permit for the retail/restaurant use on the site. It was thought that most patrons would be residents from the building and from local businesses in the area, all being an easy walk to the restaurant. It was stated that there are approximately 500 people currently occupying the Val at this time. The applicant is proposing a full service restaurant (breakfast/lunch/dinner) with seating for 100 people with the operation hours being from 5 am to 10 pm 7 days/week. The applicant has applied for a liquor license from the Town, pending approval from the Zoning Board for the Special Permit.

Michael Boujoulian, Managing Director and Regional Partner for Alliance Residence Company, stated he does not represent the petitioner Sam Patel but is there in support of the landlord/developer. He stated that they could see the economic development goals of the Town and thereby incorporated the retail/restaurant space within the Val and support this petition for the restaurant.

Selectman Michael Rosa spoke as a town resident tonight to offer his thoughts on this petition representing only himself. He stated 40A Section 10 statute to grant these variances. Use of flex space in the Comprehensive Permit – specificity on what could occupy that space. Parking is already an issue (support space for apt. community or space for commercial/retail use or fast food establishment.)

When they went before the Select Board in February 2019, they wanted to alter the facility from 1/2/3 bedroom units to include studio units. By doing so, they added 11 more units to this project. Originally, it was 200 units. 22 variances were granted for this project and 7 of them relate to parking. He stated the Zoning Board was very specific in layout reducing the spaces from 2 to 1.5 per unit bringing it to 306 not 301 to accommodate the added units. He stated the Board waived the width and length of the parking spaces which illustrates the parking issue and the congestion in that area. To reduce the parking even further would be a disservice to the property.

He stated that it has been implied that employees would be using Uber or Lyft to commute to work is an unpredictable variable. He believes that this is a bad business plan to rely on the residents to be the only patrons of the proposed restaurant especially if it is successful. He praised Sam as a successful business owner currently operating Turnpike Market which draws customers from surrounding communities. He stated that a full service restaurant is not considered a fast food establishment.

Attorney Lentine clarified that 11 parking spaces were dedicated to the flex space – he stated from the Comprehensive Permit: space for commercial uses without limitation which would allow for other uses of the space.

Michael Boujoulian stated that there is no sharing of parking spaces and residents have very secure access to their garage. The retail parking has been tapped at the full amount and there's no ability for residents to go there as they have their own spaces. Stated they are not restrained on parking.

Michael Boujoulian stated they are not oversubscribed on parking spaces. Residents have secured access to residents garage. Retail parking is tapped out with no ability for residents to park in the retail spaces. He stated there is no loss of parking associated with the number of units.

Mark LaLumiere, Building Commissioner, received some calls regarding parking and conducted a site visit. He stated it was full and no parking was available at the time. He expressed concern about issuing the variance as it will stay with the property (not the use) in perpetuity if another business occupies the space somewhere in the future.

Member Colantuoni. - stated it was classified as a friendly 40B project originally. Originally it was presented as a coffee shop, not a complete full 100 seat restaurant. The plan reflects a door on the retail side with a grab & go counter by the door. Questioned where customers would park? Lentine suggested offering a 6-month trial period and come back to the Board for a review of how things are progressing.

It would need at a minimum 35 plus seats for the restaurant and 10 for employees. There will be 30 outdoor seats and are seasonal (May to September). There is very limited off-street parking and would be enforced by the police department.

Member Colantuoni stated he is in favor of a restaurant but just not in this space. Member Anable was a Board member at the time the Comprehensive Permit was granted and agreed with the coffee shop concept. He agrees with Member Colantuoni that this is not the right spot for this restaurant. Member Pendleton also agreed with the rest of the Board that 11 parking spots is not adequate for the proposed restaurant.

Attorney Lentine requested a continuance to June 21, 2023 to allow them to revisit the parking issue and present something better to the Board.

MOTION: TO continue the hearing per the applicant's request to June 21, 2023 pending revisions to the restaurant and the parking issue. Moved by Member Wali, seconded by Vice-Chair Pendleton. All in favor. Petition continued to June 21, 2023.

V. **6:17 PM** - 22 Commune, Inc., by Stephen Lentine, Esq. – Special Permit request for restaurant in an Industrial Zone located at 164 Lexington Road (Case #23-12)

It is noted that the Chairman opened both hearings simultaneously for 22 Commune, Inc. (164 Lexington Road) as both petitions are related.

Attorney Lentine presented the variance request to reduce the number of parking spaces to 11, 2 of which would be handicapped parking spots, thereby reducing it further to 9 available parking spaces for patrons. The petitioner, Sam Patel, was also in attendance as was Michael Boujoulian, Managing Director of Alliance Residence representing the landlord. A Comprehensive Permit was granted on March 28, 2018 and it allotted for 2700 sq. ft. on the ground level for use such as a restaurant/retail. Eleven (11) parking spaces were dedicated in the Comprehensive Permit for the retail/restaurant use on the site. It was thought that most patrons would be residents from the building and from local businesses in the area, all being an easy walk to the restaurant. It was stated that there are approximately 500 people currently occupying the Val at this time. The applicant is proposing a full service restaurant (breakfast/lunch/dinner) with seating for 100 people with the operation hours being from 5 am to 10 pm 7 days/week. The applicant has applied for a liquor license from the Town, pending approval from the Zoning Board for the Special Permit.

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parking spaces which illustrates the parking issue and the congestion in that area. To reduce the parking even further would be a disservice to the property.

He stated that it has been implied that employees would be using Uber or Lyft to commute to work is an unpredictable variable. He believes that this is a bad business plan to rely on the residents to be the only patrons of the proposed restaurant especially if it is successful. He praised Sam as a successful business owner currently operating Turnpike Market which draws customers from surrounding communities. He stated that a full service restaurant is not considered a fast food establishment.

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It would need at a minimum 35 plus seats for the restaurant and 10 for employees. There will be 30 outdoor seats and are seasonal (May to September). There is very limited off-street parking and would be enforced by the police department.

Member Colantuoni stated he is in favor of a restaurant but just not in this space. Member Anable was a Board member at the time the Comprehensive Permit was granted and agreed with the coffee shop concept. He agrees with Member Colantuoni that this is not the right spot for this restaurant. Member Pendleton also agreed with the rest of the Board that 11 parking spots is not adequate for the proposed restaurant.

Attorney Lentine requested a continuance to June 21, 2023 to allow them to revisit the restaurant plan and parking issue and present improvements to the Board.

MOTION: TO continue the hearing per the applicant's request to June 21, 2023 pending revisions to the restaurant and the parking issue. Moved by Member Wali, seconded by Vice-Chair Pendleton. All in favor. Petition continued to June 21, 2023.

VI. 6:55 PM – Ian & Any Benson by James Dangora, Sr., Esq. – Variance request to reduce setbacks to construct an In-Law apartment in a Village Residence Zone located at 1 Phyllis Drive (Case #23-14)

It is noted that the Chairman opened both hearings simultaneously for 1 Phyllis Drive as both petitions are related.

Attorney Dangora, Sr. presented both petitions on behalf of his clients. The property is a 15,800s q. ft. corner lot and the addition is to the left side of the home due to its interior structure. The bedrooms are on the right side of the home. They are requesting relief from the front and side setbacks in order to construct an in-law apartment. The requested front setback relief is 19.5' and the side setback is 5' from the property line. There is a fence separating the petitioner's property from the neighbor's property closest to the proposed addition. The addition is for the in-law apartment and utilities and storage which will be common areas; there is no garage proposed. The in-law apartment is 797 sq. ft.' which complies with the By-Law requirement of 800 sq. ft or less. The lot is non-conforming.

Edward McCormick, 3 Phyllis Dr., is the direct neighbor and submitted a support letter in favor of the addition and the in-law.

The submitted Plot Plan prepared by Dresser, Williams & Way, Inc., dated March 2, 2023, shall be filed as the Plan of Record for 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 Dampolo. All in Favor. Variance **granted**.

VII. 6:55 PM - Ian & Any Benson by James Dangora, Sr., Esq. – Special Permit request to construct an In-Law apartment in a Village Residence Zone located at 1 Phyllis Drive (Case #23-15)

It is noted that the Chairman opened both hearings simultaneously for 1 Phyllis Drive as both petitions are related.

Attorney Dangora, Sr. presented both petitions on behalf of his clients. The property is a 15,800s q. ft. corner lot and the addition is to the left side of the home due to its interior structure. The bedrooms are on the right side of the home. They are requesting relief from the front and side setbacks in order to construct an in-law apartment. The requested front setback relief is 19.5' and the side setback is 5' from the property line. There is a fence separating the petitioner's property from the neighbor's property

closest to the proposed addition. The addition is for the in-law apartment and utilities and storage which will be common areas; there is no garage proposed. The in-law apartment is 797 sq. ft.' which complies with the By-Law requirement of 800 sq. ft or less. The lot is non-conforming.

Edward McCormick, 3 Phyllis Dr., is the direct neighbor and submitted a support letter in favor of the addition and the in-law.

The submitted Proposed 1st Floor Plan (In-Law) prepared by Jeff Allen, dated March 2, 2023, shall be filed as the Plan of Record for 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 Special Permit requested. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in Favor. Variance **granted**.

VIII. 7:04 PM - Cheryl Freda by Stephen Nelson, Esq. – Variance request to divide the parcel into two lots in a Village Residence Zone located at 27-27A Pinewood Avenue (Case #23-16)

Attorney Nelson presented the petition on behalf of his client, Cheryl Freda and her sister, Dawn Peterson, to divide the premises into two lots. The duplex home was built in the late 1950's and has been family owned and occupied since. The new lot, if approved, would be a 5,000 sq. ft. lot. and would house a modest 3 bedroom home on Maplewood Avenue.

Steve Giordiano, 24 Maplewood Avenue, stated he did not receive notification of this petition; however, notification was certified mailed to an address in Dracut. He was advised to contact the Assessor's office to correct his mailing address. He feels that a new house on that lot would be too close to his as the direct next door neighbor to this lot and an invasion of privacy as this side of his home are bedrooms.

Dawn Patterson expressed concerns that the lot has been empty so long and not used, that it could be developed. She stated that it has become a trash dumping area and would like to see it developed and used verses just paying taxes on land that is not being used.

The Board questioned if it is a grandfathered lot with setbacks at 7.5'. Mark LaLumiere, the Building Commissioner, stated as it is not a separate lot, the property currently is grandfathered. However, if a lot split is granted, the grandfathered clause would not apply to the new lot and current setbacks would apply.

The Plot Plan prepared by Dresser, Williams & Way, Inc., dated December 30, 2022, shall be filed as the Plan of Record for this decision.

MOTION: TO close the public hearing. Moved by Member Colantuoni, seconded by Member Dampolo All in favor. Motion carried.

MOTION: TO grant the Variance requested. Moved by Member Dampolo, seconded by Vice-Chair Pendleton. Variance **denied**. **The vote was 4-1 to deny with Member Dampolo voting in favor.**

7:21 PM – The meeting adjourned for a 5 minute recess and reconvened at 7:26 PM.

IX. 7:26 PM - JSES Associates, LLC by Stephen Nelson, Eq. – Special Permit request to operate a Repair Shop (Contractor’s Yard) in an Industrial Zone located at 10 Republic Road (Case #23-18)

Attorney Nelson presented the petition on behalf of his client JSES Associates, Inc., who are requesting a Special Permit to operate a Repair Shop. The current occupant, Marquis Tree Service, is moving their operation to Rangeway Road and do not need to use this current property. JSES is requesting a special permit to occupy the space for their new tenant, ALTA who will conduct repair services for construction equipment. The property was formally occupied by Schmidt Equipment Co. ALTA is the new proposed tenant and will use this location to repair and maintain construction equipment which it sells and leases out. ALTA will maintain a small office at the site and will store construction equipment at the site. ALTA will further maintain water, oil and gas separators to maintain water quality standards.

The Site Plan prepared by Dresser, Williams & Way, Inc., dated April 6, 2023, shall be filed as the Plan of Record for this decision.

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

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

X. 7:33 PM - Thomas & Joanne Moore by John J. McKenna, Esq., - Variance request to divide the parcel into two lots in a Rural Residence Zone located at 8 Bayberry Road (Case #23-19)

Attorney McKenna presented the petition on behalf of his clients who are requesting to divide their property into two lots which is currently a 20,000 sq. ft. property. It is a corner lot between Bayberry Lane and Broadleaf Street. The new lot will be a single-family home lot on 10,000 sq. ft. of land facing Bayberry Lane. The proposal to subdivide the lot has received support letters as well as audience members who are in favor of the lot split.

John Gioiosa, 15 Bayberry Lane expressed his support for this lot split.

Charlene McCarthy, 52 Gail Ann Drive also expressed her support for this lot split.

The submitted Plot Plan shall be filed as the Plan of Record for this decision. It is noted the plan is not signed or stamped by the preparer.

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

MOTION: TO grant the Variance requested. Moved by Member Colantuoni, seconded by Member Dampolo. All in favor. Variance **granted**.

XI. 7:40 PM - Robert & Nicole Catherwood by John J. McKenna, Esq., - Variance request to reduce the front setback to construct a garage in a Rural Residence Zone located at 48 Little John Drive (Case #23-21)

Attorney McKenna presented the petition on behalf of his clients who are requesting a variance to reduce the front setback to construct a 30'x30' garage to the right side of their home. It is a corner lot with Jones Forest behind them. The setback relief requested is 6' from the 35' requirement. Little John Drive is a paper street where the proposed garage is planned. A variance was originally granted but it was for the left side of the home. The applicant will incur the cost of paving the small part of the paper road to install the garage,

The submitted Plot Plan prepared by Dresser, Williams & Way, Inc., dated November 2, 2022 shall be filed as the Plan of record for this decision.

MOTION: TO close the public hearing. Moved by Member Colantuoni, seconded by Member Dampolo. All in favor. Motion carried.

MOTION: TO grant the Variance requested. Moved by Member Colantuoni, seconded by Member Dampolo. Variance **granted**.

XII. 7:45 PM - Dale & Sandra Crandall by John J. McKenna, Esq., - Variance request to adjust a boundary line in a Neighborhood Residence Zone located at 143 Pollard St. (Case #23-20)

Attorney McKenna presented the petition on behalf of his clients who are requesting a boundary line adjustment. It is noted that this property is a 3+ acre parcel of land with a distance of 700' from the river. Hydraulic soil conditions were found on the newly created lot requiring the proposed house to be moved away from the wetlands - 50' No Alteration Zone (Buffer Zone) - determined by the Billerica Conservation Commission. The Board, in a previous hearing, expressed prior concerns of the street view based on public safety concerns for the existing house that would be behind the newly developed house.

The applicant is proposing to develop a smaller house (24'x 28') to be located outside the 50' Conservation Commission No Alteration Zone (Buffer Zone), which would allow the applicant to move the proposed reduced sized house away from the 50' Buffer Zone without blocking the street view of the

existing house for public safety concerns and reasons. The lot line would be moved to the right and still maintain a lot size of 18,000 sq. ft, with the 50' Buffer Zone intact. It has been determined that it is a buildable lot and as such, is being taxed. The new lot was determined to house a modest sized home and respect the wetland boundary.

Mark LaLumiere, Building Commissioner, stated that the property was granted a variance and is considered a buildable lot and is being taxed as such. He stated he has not received any concerns regarding this new proposal and they can comply with the Conservation By-Law.

Rachel Durocher, 137 Pollard St, expressed concerns over privacy and closeness to the property line with the first proposal. She still stands by her concerns over neighborhood privacy and also submitted a letter to the Board from an abutting neighbor, Barbara Derby, 131 Pollard St., who was unable to attend tonight's hearing. She expressed concern over the rental unit and trucks and SUV's parking situation and relocating the driveway closer to her house and feels it's an invasion of privacy. Parking for all the rental units looking into her house. This is her primary concern; privacy.

The driveway placement is still under consideration pending a granted variance to develop the lot. Attorney McKenna expressed willingness and concern to work with the neighbors to mitigate a solution to their current and past concerns regarding the privacy and neighborhood appeal.

Richard Morrow – 159 Pollard St. – expressed his concerns regarding setbacks on the proposed house development which is not in line with the current dimensional table. He does not believe it is advantageous to the neighborhood. One house in front of the one in the back. Mr. Morrow believes it will deteriorate the neighborhood and goes against all the zoning intent of the zoning by-laws that were put in place.

Mr. Mark Baston, 165 Pollard St., submitted his concerns through email which the Board received and acknowledged. He expressed concerns regarding wetlands, the driveway, privacy and positioning of the house appearing to be part of the same parcel as the existing home and garage behind the new development and setbacks. He stated he is opposed to the boundary line adjustment with the new development of a smaller house.

The submitted Plot Plan prepared by Dresser, Williams & Way, Inc., dated March 1, 2023 shall be filed as the Plan of Record for 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 Variance requested. Moved by Secretary Anable, seconded by Member Dampolo. All in favor. Variance **granted**.

Administrative Matters:

1. Approve the Minutes of the April 19, 2023 Board of Appeals Meeting

MOTION: TO accept the minutes of the April 19, 2023 Board of Appeals Meeting as presented. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in favor. Minutes accepted.

8:31 PM - ADJOURN

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Anable", written in a cursive style.

Eric Anable, Secretary