

# TOWN OF BILLERICA

Zoning Board of Appeal  
365 Boston Road  
Billerica, Massachusetts 01862  
Telephone: 978-671-0964

Minutes pertaining to the Board of Appeal Meeting held on Wednesday, July 15, 2020 via Remote Participation on Zoom.

Prior to opening any hearings, Richard Colantuoni asked for a re-organization of the board.

Robert Accomando nominated Richard Colantuoni as Chairman. Second by Michael Parker. All in favor. Motion granted.

Richard Colantuoni nominated Anupam Wali as Vice-Chairman. Second by Robert Accomando. All in favor. Motion granted.

Richard Colantuoni nominated Robert Accomando as Secretary. Second by Anupam Wali. All in favor. Motion granted.

Members Present: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker, Ralph McKenna and Michael Pendleton.

Vice-Chairman, Richard Colantuoni, opened the Board of Appeal meeting at 6:00 PM. Chairman Colantuoni read the notice of each petition prior to its hearing.

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## **Hearing #1: Andrew & Demetra Papas**

Locus: 18 Todd Lane (Plate 50 Parcel 82)

Members sitting on this hearing: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker and Ralph McKenna.

Andrew & Demetra Papas appeared before the Board of Appeals requesting a special permit pursuant to Section 5.C.2 of the Zoning By-Law to convert space above an existing garage into an in-law apartment located at 18 Todd Lane, shown on the Assessor's Map as Plate 50 Parcel 82 located in a Neighborhood Residence.

Andrew Papas explained there is an existing attached garage with unfinished living space above that they would like to convert into an in-law apartment that has just finished nursing school and

immediately started working due to the COVID-19 pandemic. The space above the garage has been roughed out; there is a working bathroom and a rough kitchen and living space. The area is less than 600 square feet.

Richard Colantuoni asked if they understood a maximum of two related persons are allowed to live there.

Andrew said yes, just their daughter will live there.

Anupam Wali stated he has no question.

Robert Accomando stated he drove by and it's a good use of space.

Mike Parker stated he also drove by and thinks it's a good use of space too.

Ralph McKenna asked the dimensions.

Andrew answered 28 foot width and 26 feet deep with a 3 foot stairway on the left.

There were no hands raised.

Robert Accomando made a motion to close the hearing, second by Anupam Wali. All in favor. Motion granted.

Anupam Wali made a motion to grant the petitioner a special permit pursuant to the legal ad, plan submitted and testimony given, second by Robert Accomando. All in favor. Motion granted.

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**Hearing #2: Gary & Christine Wedge**  
**By James T. Dangora, Sr., Esq.**

Locus: 31 Baker Street (Plate 95 Parcel 69-1)

Members sitting on this hearing: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker and Ralph McKenna.

Attorney James T. Dangora, Sr., on behalf of Gary & Christine Wedge, appeared before the Board of Appeals requesting a variance pursuant to Section 7.L (Dimensional Regulations) of the Zoning By-Law to divide the land into two lots located at 31 Baker Street, shown on the Assessor's Map as Plate 95 Parcel 69-1 located in a Village Residence.

Attorney Dangora, Sr. explained the petitioners are looking to split their lot which is located in the Nutting Lake section of Billerica. They would like to divide their lot into two lots – one with 10,375 square feet and the other with 6,412 square feet. The lots will be divided along the original lot line. These lots were not in common ownership until recently when the assessors

combined the two lots for tax purposes. When the Wedges bought the parcel, there was actually a cottage on the small lot. There are already two separate hookups for water and sewer for each lot. Both lots on the assessors map provided are 8,000 square feet.

Richard Colantuoni asked so basically what you want to do is go back to the previous lot lines?

Attorney Dangora, Sr. answered that's correct. This goes back to 1916.

Richard Colantuoni stated he has some restrictions – first, the street is so narrow.

Anupam Wali stated he understands they are trying to re-establish the old existence of the lot there. Most of the houses in the area are similar in size, mostly ranging for 7000 to 10,000 square feet.

Robert Accomando stated he wanted to hear from abutters. It's a small street.

Michael Parker stated he drove by and has a few questions. The first question was in regards to the 39.5 foot measurement off the foundation. This is when the new lot line will be. The second was that it looks like the houses will be pretty close to each other. Maybe the new house should go to the left side of the lot. Is there a measurement on this plan that shows where the house is going to go?

Attorney Dangora, Sr. stated all he can say is the new house will comply with all the setbacks stated in the bylaws. They will probably put it somewhere in the center of the lot.

Michael Parker stated I see a letter here from the Conservation Commission – can you explain where the 50 foot buffer is on the property?

Attorney Dangora, Sr. stated he has not seen the letter but if they have to go in front of the Conservation Commission, they will.

Ralph McKenna asked what the hardship here is.

Attorney Dangora, Sr. stated the hardship is they have two valid lots; it's a denial of the beneficial use of their parcel of land. There was a house there before. The town contemplated there would always be two lots there because when they put water/sewer in, they put in separate stubs for each lot.

Ralph McKenna stated the hardship must pertain to soil conditions, topography, or lot shape.

Attorney Dangora, Sr. stated they are simply establishing what was previously there.

Jackie Chaffins of 36 Baker Street, across the street, stated she has no problem with what they're looking to do. She wanted to jump on in support of them.

Joe Green of 29 Baker Street, to the right, has no problem. If a house were to be built, how big could it be?

Attorney Dangora, Sr. stated they don't have any house plans yet but it will comply with all the Zoning By-Law setback requirements. They haven't reached the point that a house has been designed yet.

Sang Kang of 35 Baker Street, to the left, stated they had no problems with this.

Anupam Wali stated they are simply establishing the existence of the two lots here. That's the only thing I think we have to decide on whether or not we want them to split into two lots.

Robert Accomando stated he has no questions.

Michael Parker stated he had no questions, either. He read a question submitted through the question and answers section of Zoom – from Joe Green, how large can the dwelling on this lot be?

Attorney Dangora, Sr. stated it will comply with zoning,

Ralph McKenna stated he's sympathetic of the fact that it was once in split ownership but now it's common. He still doesn't see the hardship based on the law.

Robert Accomando made a motion to close the hearing, second by Anupam Wali. All in favor. Motion granted.

Anupam Wali made a motion to grant the petitioner a variance pursuant to the legal ad, plan submitted and testimony given, second by Robert Accomando. Voting in favor were Anupam Wali and Robert Accomando. Voting to deny were Michael Parker, Ralph McKenna and Richard Colantuoni. Motion denied 2-3.

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**Hearing #3: Derek Allgaier, Trustee of DH Realty Trust  
By John J. McKenna, Esq.**

Locus: Avondale Avenue  
(Plate 59 Parcel 17)

Members sitting on this hearing: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker and Ralph McKenna.

Attorney John J. McKenna, on behalf of Derek Allgaier, Trustee of DH Realty Trust, appeared before the Board of Appeals requesting a variance pursuant to Section 7 and Section 7.K of the

Zoning By-Law to divide the existing parcel into two parcels located at Avondale Avenue, shown on the Assessor's Map as Plate 59 Parcel 17 in a Village Residence Zone.

Attorney McKenna explained the petitioners are actually appealing to Section 7.L, not Section 7.K. They are looking to split a lot that is currently in the shape of a large rectangle. A portion of the land was taken by the town for the expansion of River Street. There are only three houses on this block. The frontage would be both on Brentwood Place and Avondale Avenue. Therefore, a variance for lot area and frontage are needed. The granting of said variances would result in the two lots being similar to other lots in the neighborhood. The hardship is the size of the lot – other houses in the area are situated on similar size lots. If no variances are granted, the petitioner could build a huge house. However, he wants to match the neighborhood.

Richard Colantuoni asked what guarantee can we have to not get a monster house on each of these lots.

Attorney McKenna stated they have the word of the applicant. The applicant is planning on building two small colonials. There are currently no drawings but they could get some. They're thinking a 36 x 38 colonial with a 16 x 26 family room and a garage underneath.

Michael Parker stated he drives by this location a lot and noticed it was cleared so he figured something was going on there. So the splitting of the lots does fit with the blocks but the size of the houses would also be a 2 story home?

Attorney McKenna answered yes. They all look to be capes in that area. Also the town is lacking affordable housing. You want single family homes that will fit in with the neighborhood.

Robert Accomando stated in regards to the height of the building, it can't be more than 35 feet high.

Attorney McKenna said correct. The area there is actually kind of low.

Ralph McKenna asked how long the applicant has owned the property.

Attorney McKenna answered not very long. The topography also creates a hardship. There are lots of boulders here.

Anupam Wali stated he has no questions.

Renee & Michael Iantosca from 4 Tanglewood Avenue are looking at the plot plan provided on the screen. They live in a cape and would like to see more capes, in a perfect world. According to the plot plan, she abuts lots 13-16. There is a fence and on the other side are trees. Does the builder intend to move the trees?

Attorney McKenna stated they could leave it there as long as they know it is on the Allgaier's property. They will agree to work with you. It's hard for him to answer.

Renee stated it can't be moved so it either leave it or take it down.

Attorney McKenna stated they can leave the fence as long as it is understood the other side of the fence is the petitioner's property, not theirs.

Melissa Lovequist of 6 Avondale Ave questioned where the driveways would be because when you turn onto Avondale Ave, there is a telephone pole.

Attorney McKenna stated the driveway on that corner lot will be towards Brentwood Place.

Melissa asked so towards where it is now? Attorney McKenna stated yes, as far away from River Street as possible.

Melissa asked about the house closer to Brentwood Avenue. Attorney McKenna answered they would be coming onto Avondale.

Melissa stated their preference would be to approve the split with two nice looking new houses similar to theirs.

Robert Accomando made a motion to close the hearing, second by Anupam Wali. All in favor. Motion granted.

Anupam Wali made a motion to grant the petitioner a variance pursuant to the legal ad, plan submitted and testimony given, second by Robert Accomando. Voting to grant were Michael Parker, Robert Accomando, Anupam Wali and Richard Colantuoni, Voting to deny was Ralph McKenna. Motion granted 4-1.

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#### **Hearing #4: Kimberly & Dane Bertrand**

Locus: 4 Green Street (Plate 82 Parcel 108)

Members sitting on this hearing: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker and Ralph McKenna.

Kimberly and Dane Bertrand appeared before the Board of Appeals requesting a special permit pursuant to Section 5.C.3 of the Zoning By-Law to construct an in-law apartment located at 4 Green Street, shown on the Assessor's Map as Plate 82 Parcel 108 located in a Rural Residence Zone.

Kimberly Dane explained she would like to construct an in-law apartment for herself. The in-law apartment will share the wall that connects the family room to the addition. There will be access from both the main house and the outside. The total in-law apartment will be less than 800 square feet.

There were no questions from the board members. The only comment was a clear sketch be submitted of the floor plans. Kimberly agreed.

There were no hands raised.

Anupam Wali made a motion to close the hearing, second by Robert Accomando. All in favor. Motion granted.

Michael Parker made a motion to grant the petitioner a special permit pursuant to the legal ad, plan submitted and testimony given, second by Robert Accomando. All in favor. Motion granted.

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**Hearing #5: Chris & Kathleen Diamont**

Locus: 12 Avila Road (Plate 59 Parcel 62)

Members sitting on this hearing: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker and Michael Pendleton.

Christopher and Kathleen Diamont appeared before the Board of Appeals requesting a special permit pursuant to Section 5.C.1.(2)(c) of the Zoning By-Law to convert existing living space into an in-law apartment located at 12 Avila Road, shown on the Assessor's Map as Plate 59 Parcel 62 located in a Village Residence Zone.

Christopher Diamont explained they are looking to convert the lower level of the house into an in-law apartment. It will be a total of 438 square feet.

Anupam Wali and Robert Accomando both had no questions.

Michael Parker stated there are two means of egress (the garage and upstairs). It looks good; it's a good use of space.

Michael Pendleton stated he has no problem; it meets all requirements.

There were no hands raised.

Robert Accomando made a motion to close the hearing, second by Anupam Wali. All in favor. Motion granted.

Anupam Wali made a motion to grant the petitioner a special permit pursuant to the legal ad, plan submitted and testimony given, second by Michael Pendleton. All in favor. Motion granted.

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**Hearing #6 & 7: John & Linda Gallagher**

Locus: 2 Castlewood Drive (Plate 54 Parcel 125)

Members sitting on this hearing: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker and Michael Pendleton.

John and Linda Gallagher appeared before the Board of Appeals requesting a variance pursuant to Section 7.L of the Zoning By-Law to reduce the side yard setback to construct an in-law apartment located at 2 Castlewood Drive shown on the Assessor's Map as Plate 54 Parcel 125 located in a Rural Residence Zone.

John and Linda Gallagher also appeared before the Board of Appeals requesting a special permit pursuant to Section 5.C.3 of the Zoning By-Law to construct an in-law apartment located at 2 Castlewood Drive shown on the Assessor's Map as Plate 54 Parcel 125 located in a Rural Residence Zone.

John and Linda explained they are looking for a reduction in setbacks and for a special permit for an in-law apartment.

Richard Colantuoni asked who the easement belongs to. John said there is a letter from the town manager, that there is no longer a need for that easement Richard said you should get it removed off your deed so you don't have any problems down the road. John answered they've tried so the solution was Mr. Curran write them a letter.

Richard Colantuoni said so the variance is 32.2 feet from the lot line but the foundation will almost be 35 feet. John said that is correct. Richard asked what the square footage of the in-law apartment is. John answered 795 square feet.

Robert Accomando stated he had two questions; one was already answered (the easement). The plan he's looking at now shows two floors.

John stated the in-law will be on the first floor. The second floor will be a family room.

Anupam Wali stated he can see hardship on this one.

Michael Parker stated he wants a clarification; confirmation it should be a front setback not a side setback. John answered yes. Michael Parker asked and there is an exit out and exit into home? John answered yes.

Michael Pendleton stated no questions from him; it looks pretty straight forward.

There were no hands raised.

Robert Accomando made a motion to close the variance hearing, second by Anupam Wali. All in favor. Motion granted.



Michael Parker made a motion to grant the petitioner a variance pursuant to the legal ad, plan submitted and testimony given, second by Anupam Wali. All in favor. Motion granted.

Anupam Wali made a motion to close the special permit hearing, second by Michael Pendleton. All in favor. Motion granted.

Robert Accomando made a motion to grant the petitioner a special permit pursuant to the legal ad, plan submitted and testimony given, second by Anupam Wali. All in favor. Motion granted.

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**Hearing #8: Daniel & Diane Turcotte**

Locus: 37 Glad Valley Drive (Plate 69 Parcel 119)

Members sitting on this hearing: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker and Michael Pendleton.

Daniel and Diane Turcotte appeared before the Board of Appeals requesting a special permit pursuant to Section 5.C.2 of the Zoning By-Law to construct an in-law apartment located at 37 Glad Valley Drive shown on the Assessor's Map as Plate 69 Parcel 119 located in a Neighborhood Residence Zone.

Daniel explained they are looking to convert the existing basement in a split entry into an in-law apartment. They're currently in the process of building it; it's actually almost done. With COVID-19, they couldn't wait. They plumbing and electrical has been done by licensed officials.

Robert Accomando confirmed it would be 582 square feet? Daniel answered yes.

Michael Parker and Michael Pendleton stated he had no questions.

Lee Cappucci of 41 Glad Valley lives next door; she and her husband have no problem. They have been there since the 70's.

Robert Accomando made a motion to close the hearing, second by Michael Parker. All in favor. Motion granted.

Anupam Wali made a motion to grant the petitioner a special permit pursuant to the legal ad, plan submitted and testimony given, second by Michael Parker. All in favor. Motion granted.

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**Hearing #9: Paula Riggi  
By John J. McKenna, Esq.**

Locus: 21 McHugh Avenue (Plate 91 Parcel 95)

Members sitting on this hearing: Richard A. Colantuoni, Chairman; Anupam S. Wali, Vice-Chairman, Robert Accomando, Secretary, Michael Parker and Ralph McKenna.

Attorney John J. McKenna, on behalf of Paula Riggi, appeared before the Board of Appeals requesting a variance pursuant to Section 7 and Section 7.K of the Zoning By-Law to divide the existing parcel into two parcels located at 21 McHugh Avenue, shown on the Assessor's Map as Plate 91 Parcel 95 in a Village Residence Zone.

Attorney McKenna explained the section the petitioner is appealing to is Section 7.L, not Section 7.K. The petitioner would like to divide the property where the current residence will remain. They will create a new lot of 7,700 square feet. The shape of the property creates a hardship. The variances needed are for lot area and frontage. This will provide housing. The property is underused and the owners cannot maintain it. The existing house is split entry and the new house will be built similar to the neighborhood. The hardship pertains to lot shape; it's very long.

Michael Parker stated he drove by it today and noticed the side area is sloped to the abutter on Ridgeway Avenue (maybe #18?). Michael asked what they were going to do with the trees.

Attorney McKenna stated water flow should not be an issue.

Michael Parker asked where the driveway will enter.

Attorney McKenna stated it depends on the house that is built.

Michael Parker asked if 18 Ridgeway was notified. Attorney McKenna stated yes they were.

Ralph McKenna stated he still hasn't seen compliance with the statutory requirement that binds us. That area requires 30,000 square feet. It doesn't have frontage requirement. In his opinion, they don't have the right to grant the request.

Robert Accomando stated that since there's 100 feet of frontage of Ridgeway, the house would face that way?

Attorney McKenna stated it depends what happens with the trees in the back, it might be best to face it on the narrow side.

Anupam Wali said it might be better on Ridgeway Avenue.

Attorney McKenna stated topography will have to be taken into consideration.

Kevin Ault of 7 McHugh Ave (directly across) stated his biggest concern is storm drainage in the area. They experience water in the basements in the area and in the front yards. The drainage system is inadequate. Drainage is a big issue. The wooded area is a natural drainage. You're going to be cutting into this hill. The other comment is the attorney said the lots in the area are similar but his is 14,000 square feet.

Attorney McKenna stated the zoning bylaws don't allow an increase in drainage. The first thing they do with new houses is a deep hole test to determine where the basement water levels are. Board of Health would be concerned with this and deal with that.

Kevin Ault asked Michael Parker if he noticed a lot of sand on the street. Michael answered yes I did; you're at the bottom of two hills.

Attorney McKenna stated 21 McHugh has never had water in their basement. Michael Parker responded probably because they live on a hill.

Kevin asked what the builder would do to protect his land. Attorney McKenna stated he couldn't say; they could only do work on the property they create.

Kevin stated he would like to conclude that there are existing drainage issues in the area.

Chris Towski of 23 McHugh Avenue stated he is swayed both ways. He shares the last comment that came from Kevin. He bought a house he didn't build; he thinks when they built the house, that's what created the current problem. Ridgeway is one way in and one way out so there are issues with the freeze up, it's going to be right there and cause a problem.

Attorney McKenna asked when who built what house.

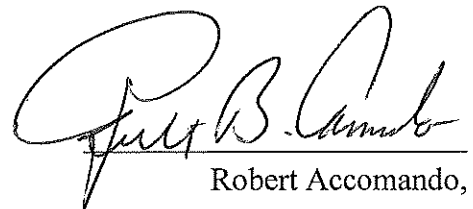
Chris answered they moved in 1997, the house that Kevin is in was built after. Since that house was built is when they drainage problem started in the area. The problem developed after the property was built.

Kevin stated just for the record, my parcel of land is completely flat. It drains from Ridgeway and down from McHugh.

Anupam Wali made a motion to close the hearing, second by Robert Accomando. All in favor. Motion granted.

Anupam Wali made a motion to grant the petitioner a variance pursuant to the legal ad, plan submitted and testimony given, second by Robert Accomando. Vote 1-4. Voting to grant was Robert Accomando. Voting to deny was Michael Parker, Ralph McKenna, Anupam Wali and Richard Colantuoni. Motion denied 1-4.

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Robert Accomando,  
Secretary

