



BILLERICA PLANNING BOARD

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2023 SEP 12 A 9:03

TOWN OF BILLERICA

Blake Robertson, *Chair*

Edward Giroux, *Vice Chair*
Christopher Tribou
Kelley Sardina

Marlies Henderson, *Secretary*
Michael Parker
Evens Cimea

**Planning Board Meeting
Minutes**

**April 10, 2023 @ 7:00 P.M.
Hybrid**

Videod by BATV

Can be Viewed: <https://billerica.cablecast.tv/CablecastPublicSite/?channel=3>

Members	Present
Marlies Henderson, Chair	X
Michael Parker, Vice-Chair	X
Chris Tribou	X
Blake Robertson	X
Edward Giroux	X
Kelley Sardina	X
Evens Cimea	X

Staff

Erika Oliver Jerram-Director of Planning & Community Development
Katherine Malgieri-Senior Planner
Kerri Rufo-Head Clerk

Marlies Henderson introduced the newest Planning Board member, Evens Cimea. She thanked the board for her time as Chair.

Open Mic

J.B. raised his hand, but the board could not hear him. No other comments.

Kelley Sardina asked the chair if she could speak. "I want the board to be aware, "This past week we had a Selectman who has been on the board for over 10 years contact at least one board member in

an effort to influence the committee as we vote to reconstruct our offices. It is highly inappropriate for a Selectboard member to try to control this board in any way shape or form. The voters elected us to the work of the Planning Board and not sitting Selectman.”

Reorganization 3:58

Vote for Chair

Marlies Henderson nominated Michael Parker. Michael Parker seconded the nomination.
Kelley Sardina nominated Blake Roberston. Blake Robertson seconded the nomination.
Ed Giroux nominated Chris Tribou. Chris Tribou seconded the nomination.

Michael Parker for Chair. Vote: Ed-No, Chris-Yes, Mike-Yes, Blake-No, Kelley-No, Evens-No, Marlies-Yes 3-4

Blake Robertson for Chair. Vote: Ed-No, Chris-No, Mike-Yes, Evens-Yes, Blake-Yes, Kelley-Yes, , Marlies-No 4-3 **Blake Robertson is Chair**

Vote For Vice Chair

Marlies Henderson nominated Ed Giroux. Chris Tribou seconded the nomination.
Kelley Sardina nominated Mike Parker. Blake Robertson seconded the nomination.

Ed Giroux for Vice Chair: Ed-Yes, Chris-Yes, Mike Parker-Yes, Marlies-Yes, Blake-No, Kelley-No, Evens-No 4-3 **Ed Giroux is Vice Chair**

Vote for Secretary

Mike parker nominated Marlies Henderson for Secretary. Ed Giroux seconded the nomination.
Unanimous vote. Marlies Henderson is the Secretary.

Kelley Sardina asked to be recused from participating in discussion of Article #42 due to familiarity.

Cont. 298 Concord Road SPSP 10:23

Michael Parker made a motion to continue the public hearing to May 8, 2023 (applicant’s request).
Seconded by Ed Giroux. 6 in Favor, 1 (Evens Cinea) abstained.

Public Hearing-B2-206 Andover Road 11:27

Attorney-John McKenna

Ed Giroux made a motion for the B2-206 Andover Road, seconded by Chris Tribou. All in favor.

John McKenna spoke on behalf of his client who is seeking to divide his property into two (2) lots for his son to construct a single-family home. Attorney McKenna sent a revised plan later that day and it was presented to the board on the screen. They are seeking approval from the board because there is a variance for frontage.

No public comments

Questions and Comments from the board:

Chris Tribou asked about the shed and how trees were removed. Attorney McKenna said that it is between the neighbors in a separate matter. The neighbor has filed in land court. Attorney McKenna said the shed was put there temporarily so they could get into the lot.

Erika Oliver Jerram informed the board that attorney McKenna sent over a new revised lot plan. The only change is that the shed is shown in a different location. The plan on the screen is the one that is to be approved.

Michael Parker confirmed that the plan shown on the screen is what they are approving. Erika Oliver Jerram confirmed. Michael Parker said that he will be asking for a condition to install 2 trees on each lot. Attorney McKenna doesn't agree that the board can condition an approval on that. Michael Parker stated that at a previous meeting is what the board asked for before. The owner of the property, Robert Mahar, is ok with 2 (two) trees on each lot. Kelley Sardina asked the property owner, Robert Mahar if there was another garage other than the three-bay garage. Robert Mahar said there is not. Kelley Sardina asked if the board could put in a condition that they cannot sell the property. Attorney McKenna explained that it is not a condition that the board can do. Blake Robertson is supportive of B2's when it comes to family. No other questions from the board.

Motions

Marlies Henderson made a motion to close the public hearing. Seconded by Ed Giroux. All in favor

Marlies Henderson made a motion to approve the B2-206 Andover Road with the condition of 2 (two) trees per lot. Seconded by Ed Giroux. All in favor.

Blake Robertson stated that one of the improvements that the board has made is getting the mylar signed the night of the meeting so folks can move on. Attorney McKenna agrees that changing that procedure makes it easier to get things done timely.

Public Hearing-Petitioners Warrant Article #42-164 Concord Road 32:50

Attorney for applicant: Stephen Lentine

Property Owner: Brian Goguen

Thomas Fitzpatrick-Nephew of Brian Goguen

Ed Giroux made a motion to open the public hearing. Seconded by Marlies Henderson. All in favor

Attorney Lentine introduced the property owner Brian Goguen and his son. The applicant is looking for a recommendation from the Planning Board to support the Petitioners Warrant Article to amend the Zoning By-Laws and the Zoning map by re-zoning from Neighborhood Residence Zone to Neighborhood Business Zone, for the property of 164 Concord Road. His Nephew Thomas Fitzpatrick works as a CPA and has been working with his uncle, Brian Goguen for the past several years. They went before the BOS the other night and the BOS defers to the PB recommendation.

Public Comments: 44:25

Jim Donovan-408 Middlesex TRP and I have lived here since 1954. I have seen a lot of change and I am against this rezoning article. I work for the Town of Billerica at the Water Treatment Plant, and I came home today at 3:10pm and Concord Road was backed up to the lights, headed towards the center. I was backed up behind me heading towards Bedford. MTP had a steady stream of traffic from the lights to the top of the hill. Brian's business creates no problem for the neighborhood but what happens when he sells the property. If it is business zoned, it was brought up at the BOS meeting when the question was asked, what could go in there? A bank, a funeral home, and a retail establishment. Could you imagine a bank trying to conduct business. Can you imagine making a left turn out of either of those two driveways at 3:10pm when there is a line of traffic. If you want to talk about a nightmare, that is it. The way Brian's business is right now, it creates no problems but if you put something else there like a bank, funeral home or something else, you will have a lot of accidents. I have lived there all my life and I have seen people killed at that intersection over and over the years. I have nothing against Brian's business, he is a good neighbor and a great friend. When and if he decides to sell the property if you rezone it, you are opening up a mess, a real mess. The way his business is conducted today he causes no traffic. That is not the case with a bank or a funeral home and those were all mentioned at the BOS meeting, and they were questioned what kind of uses could come if he decides to sell the land once it is rezoned. It is too bad that he and his nephew couldn't come to some type of agreement to continue the use of the property under the existing zoning and special permit. That would be good for everybody. I have lived there all my life and the traffic there is unbelievable. I urge you to sit out there and watch the traffic from 3-7pm. Today, people don't stop for you to make a left-hand turn. A lot of Federal Street are empty. I got a call today from a guy over on Technology Park drive, he told me he had low water pressure. I said, "did you check with your neighbors, and he said that those are all empty buildings." Can you imagine what it is going to be like when those buildings come back to full use. Federal St., Technology Dr., those are all empty. When those come back, they use to have 2 police officers directing traffic. They no longer do that because the buildings are empty. The land isn't going to stay vacant forever.

Jacqueline Phippen- 410 Middlesex Turnpike-I am curious to know if Mr. Goguen would like to have it become Business zone before he sells it or after he sells it. The other question I have is how far and how is going to change after this. I went to the library to speak to the professional representative from "Meet a Planner" and we had a good conversation, but I left thinking that and remembering one of them said to me "It would be a nice little community corner, there might be a little retail, mom and pop grocery store, could be a bank" and I am thinking oh my gosh, we don't need all that. One step leads to another, and I get very concerned. We think that it is fine for Mr. Goguen to have what he has now. To make that business zone and then to increase every single time we come here we have to talk about it again, it doesn't seem feasible.

Attorney Lentine followed up that Brian wants to downsize and if the zoning does not go through, he would have to sell the property and go elsewhere. I heard the two concerns about a bank and retail. The lot is too small, this is the best opportunity to keep this structure the way it is and use it as offices. I understand the concerns of the neighbors but the best use for this property is for offices. One of the reasons we went Neighborhood Business is that it is the most restrictive Commercial district here in Town.

Harold Phippen-410 Middlesex Turnpike and Jimmy Donovan is my neighbor, and you just met my wife. I have nothing against Attorney Lentine or Mr. Goguen. My concern is that if this parcel gets done. We have a new neighbor across the street, nothing to complain about. He has built up his yard and it looks nice. He is an insulation contractor, and I can see that amount of work that he has put into that property to locate 2 or 3 of his trucks and he has a couple of sheds out back which I am assuming he has construction materials and his support there. What is going to stop him from coming before the board after you approve it, then when town meeting approves it. He says how about me, you did it for Mr. Goguen, what is wrong with me, I am just a small business. Where are we going to draw the line if you approve that, you are going to have to approve him because you approved this one. Is it going to creep down the Turnpike like the plague. We love this Town, we supported this town, I work for this town, I fought fires for this town, and I risk my life for the people of this town. I don't want a blue ribbon or a medal. It is a fact of life, and we raised our family here. When we moved in, we knew Concord Road and Cabot is there and that was ok because the Turnpike was quiet. Now it is getting busier and busier. If you do approve of this it is just going to creep down like a plague all the way past Nuttings lake, right down to Burlington. You already have businesses down by the lake. I would like to see you folks retain the residential patina of this area. I have no problem with Mr. Goguen, he runs a good business and has been a good neighbor. The fact is, if the property gets rezoned, what then? I don't want to see Middlesex Turnpike turn into downtown Boston.

John Guarente-404 Middlesex Turnpike-I am here with my wife Christine and my son Anthony. I found out about this quite late in the game. I am Brian's largest abutter. Brian came over to me about a week before I got officially notified. I said to myself, and I thought about this lot. I have been there 28 years and it has become a very congested area and it will be worse with the parking lot across the street. When Brian moved in and he wanted to put his business there, I thought is this good for the neighborhood, is this good for the town and then I said no, this is good. When he went to the ZBA, I appeared on his behalf for him to get his permit and he has done very well with it. It is nothing personal against he, he has been a very good neighbor. I said to myself, I don't know anything about this zoning, and I went online and printed out the zoning law, which is enormous, and I tried to start and read it 3 or 4 times. I finally picked out a page which I thought represented what the issue was with neighborhood zoning to commercial or business zone. So, I went town to the Town hall and went the Planning Board. They were very kind, and I came up with some interesting things. The thing that interested me was if this was to change from a neighborhood, which this house could be a residential property. If we change the zoning on this there is a whole narrative of what it could be. I am not concerned about what happens to Brian, I am concerned about what happens if Brian sells this property if the zoning is changed. I don't see that this is good for the residents, the community or the neighborhood.

Jacqueline Phippen- 410 Middlesex Turnpike-Still looking for the answer to her question earlier. Will it be sold before it becomes business or after.

Attorney Lentine-If it gets rezoned and he can continue the business without having to live there the odds that Brian retaining as a tenant, as an owner he stays on the property. If it doesn't go through, then his hands are somewhat tied. We are asking everyone to have some faith in Brian.

John Guarente-404 Middlesex Turnpike- Brian came to me and told me he had a buyer. In order for the buyer to purchase the property he had to get a zoning change.

Brian Goguen-Property Owner-164 Concord Road-It would be much better off as a personal office than a residence. My business does not cause a lot of traffic. I am the one who has to live with the traffic and hear it every day and night.

Comments from the Board 1:14

Michael Parker stated that a zoning change lasts for years. He feels that it could be an issue because of the by right uses. The neighbors will be the ones who will have to live with it now and in the future. He feels like it is spot zoning.

Chris Tribou finds that people think in the worst possible terms and that is not the case. He calls it incremental changes that happen overtime. He thinks that it would stay as what it is now, an office space area.

Marlies Henderson feels that on the fly spot zoning is not a good idea. "We are working to recodify the zoning bylaw, after which we may entertain zoning policy changes; We're in the middle of establishing a healthy process for zoning. Spot zoning is contrary to what we're trying to achieve.

Ed Giroux doesn't think that a bank/retail would fit on that property because of parking that is required. To get a waiver for parking would be very difficult. Mr. Giroux Asked the Director what type of business could go there.

Erika Oliver Jerram answered that if it doesn't pass the new owner would have to take their chances with the Special Permit process. I don't agree with the process since we are trying to establish a process and we want our zoning cleaned up first. We would like to make the map more consistent with our Master Plan and our goals. I am just thinking out loud: This should be a more planful process, better vetted, and not just a petitioner article.

Michael Parker asked about the existing square footage of the house. Mr. Goguen stated that the house is 3200 sq ft and the office is 800 sq ft. Michael Parker feels that it is defunking the use that he currently owns. You will have to provide more parking if you rezone your lot.

Blake Robertson stated the abutters have spoken loudly and he appreciates the comments. He questions what is the best thing for Billerica, what is the right thing to do within confines of the ruleset that we are operating under.

Motion to Close

Mike Parker made a motion to close the public hearing. Seconded by Marlies Henderson. All in favor.

Motion to recommend Warrant Article #42

Ed Giroux made a motion to recommend Warrant Article #42 to the Town Meeting. Seconded by Chris Tribou.

Tribou-Aye, Parker-No, Cimea-No, Henderson-No, Giroux-No, Robertson-No
Not recommended

Talbot Mill Dam Removal-Oars Presentation 1:37

Alison Field-Juma-OARS, Project Manager
Eric Hutchins-NOAA Restoration Center
Jill Griffiths, PE/Gomez and Sullivan Engineer
Bob Martin-CRT Development Realty, Dam Owner
Ben Gahagan-Mass Div. of Marine Fisheries
Joe Gould-Ma. Div. of Ecological Restoration
Bob Martin-Owner of Talbot Mill Dam
Presentation attached.

OARS gave their presentation on the potential removal of the Talbot Mill Dam. Some of the project goals would be Decommission aging infrastructure, eliminate ongoing maintenance & repair obligations/liability, reduce flood hazards & improve climate resilience, restore passage for migratory fish and improve water quality, aquatic habitat, & riverine processes.

Bob Martin spoke on the reasons he would like the dam removed. 1.It does not serve any useful purpose as it did in the 1900's 2. He doesn't want his legacy to have the dam ownership and associated liability and cost of being a dam owner. 3. I live in Florida in the winter, the Cape in the summer. 4.He likes the idea to be associated with providing the opportunity of having migratory fish populating the Atlantic as far south as Chesapeake Bay.

Comments & questions from board-1:58-2:32

Kelley Sardina expressed concern that it would cause flooding downstream. Chris Tribou thinks that it will be a beneficial environmental impact. He would like interpretive signage to educate the residents if the dam does get removed. Jill Griffiths offered many ideas, possibly using pieces of the dam on display. Mike Parker feels that there is good information and reason for concerns for the removal. His concern is the water supply in Billeterica. Mr. Parker feels it is unfortunate that Mr. Martin is stuck with the dam. Marlies Henderson heard many environmental reasons to take the dam down. Her concern is that it is in the Historic District. She asked about having a footbridge with a recreational trail to memorialize Summit Pond. Ed Giroux asked what the purpose of the presentation was to the Planning Board was if they are not voting or recommending. He feels for the error of the dam for the owner but feels that it is his owners' problem, not the residents. He said that he has not heard or seen the Peer Review and he was on the BOS back in 2016. He has concerns about water rates going up. Feels that they need to proceed with extreme caution. Asked why this has not gone before the HDC. Blake Robertson asked about the migratory fish and the last sighting of the fish in this area that they are trying to get back. Blake asked if there was any money being paid to the dam owner for the dam removal. They responded that the only thing that the dam owner asked for was a reference of his family's business at Pace. The owner Bob martin stated that the only money that has been recorded has been for what he has paid out to the engineering services over the past 25 years.

Staff Update 2:33

Erika Oliver Jerram went through the warrant articles that she feels relate to planning. Articles#32, #33, #34, #35, #37. #38. She wanted to answer any questions that the board had.

The board lightly touched upon each article to get a better understanding for Spring Town Meeting. Kelley Sardina had numerous questions about the recodification, feels that it is being rushed and that the residents are not involved. Erika Oliver Jerram reassured Kelley Sardina that there will be no policy changes in the recodification process. Some board members feel that the Planning and community Development should be done by them and not use a consultant. Erika Oliver Jerram explained that the recodification would take so much time and that other projected projects would not get done. Blake Robertson stated that Erika Oliver Jerram said that his comments would not be addressed in the recodification. Erika Oliver Jerram said that some of the comments were beyond the scope of work of what Judy Barrett does. Blake stated that Judy was already 80% done when they came to the Planning Board Committee for feedback and that was unsettling for him. Erika Oliver Jerram explained what Recodification means in the Planning world. Marlies Henderson read the warrant article out to the board. Kelley Sardina was still questioning the timeline of Barret Planning. Michael Parker stated that he knows exactly what is going on. He explained the Selectboard and Town Manager fund the Town, the planning board does not fund the allocation of money. It starts at the top, not here. Michael Parker said that we must believe in our staff. Chris Tribou said that it would be nice to have a discussion on the conflicts of recodification. Ed Giroux thinks that it is money well spent. He is looking forward to the report and asked that they send it to the board so the board can review it.

Erika said that they will be bringing Denise McClure back about the Subdivision Rules & Regs. Ask a Planner is an opportunity to have residents come and meet us to ask questions. They will continue doing this at different locations as the library, COA, PHR.

Katherine and Erika went to a conference in Philadelphia. She went over a couple of sessions that they attended.

Market Basket submitted their application for the expansion of 700 Boston Road, and they will be before us in May.

Minutes 3:06

March 8, 2023

Marlies Henderson made a motion to approve the minutes of March 8, 2023, seconded by Ed Giroux. All in favor

March 13, 2023

Marlies Henderson made a motion to approve the minutes of March 13, 2023, seconded by Ed Giroux. All in favor

Adjournment

Blake Robertson asked for a motion to adjourn. Marlies Henderson moved the request. All in favor