

**BILLERICA BOARD of APPEALS**  
**Minutes for the**  
**June 21, 2023 Meeting**  
**6:00 PM – Room 210**  
**365 Boston Road, Billerica, MA**

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

**I. 6:04 PM – PUBLIC COMMENT – No comments.**

**II. 6:04 PM - Monsour Alrishea – Special Permit request to erect a tent in the parking lot in a General Business Zone located at 481 Boston Road (Case #23-24) (*continued to August 9, 2023*)**

**MOTION: TO** continue the public hearing per the applicant’s request. Moved by Member Colantuoni, seconded by Member Wali. All in favor. Motion carried.

**III. 6:10 PM - Nell French – Variance request to reduce side setbacks to construct a deck located in a Village & Rural Residence Zone located at 40 Pequot St. (Case #23-27)**

Nell French presented her project to the Board for side setback relief on an existing deck. She is requesting relief from the 15’ setback to reduce it to 2.9’. The deck is existing and she is looking to extend it further out to the right so it aligns with the side deck/stairs.

The Plot Plan submitted (undated and unsigned) shall be filed as the Plan of Record for this decision.

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

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

**IV. 6:12 PM** - Donna Spurrell – Variance request to reduce front setbacks to construct a farmer’s porch in a Village Residence Zone located at 3 DeMolay Court (Case #23-28)

Mr. Charles Spurrell presented their project to the Board to reduce the front setbacks to construct a farmer’s porch. They are requesting relief from the 35’ front setback to reduce it to 26.6’. He stated the current deck is pulling away from the house and they would like to replace it with a farmer’s porch.

The Plot Plan prepared by Cyprus Design, Inc., dated May 17, 2023 shall be filed as the Plan of Record with this decision.

**MOTION: TO** close the public hearing. Moved by Member Wali, seconded by Vice-Chair Pendleton. 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**.

**V. 6:24 PM** – Charles Van Kirk & Jill Corbett – Variance request to reduce setbacks, lot coverage and area to demolish existing home and construct a new home in a Village Residence Zone located at 2 Crest Rd. (Case #23-29) *(continued to August 9, 2023)*

**MOTION: TO** continue the hearing per the applicant’s request to August 9, 2023 Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in favor. Petition continued to August 9, 2023

**VI. 6:24 PM** – Charles Van Kirk & Jill Corbett – Special Permit request to construct an in-law apartment in a Village Residence Zone located at 2 Crest Rd. (Case #23-30) *(continued to August 9, 2023)*

**MOTION: TO** continue the hearing per the applicant’s request to August 9, 2023. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in favor. Petition continued to August 9, 2023.

**VII. 6:25 PM** - Iliana Mixco – Special Permit request to operate a dog daycare (grooming) service in a General Business Zone located at 884 Boston Road (Case #23-34)

Iliana Mixco presented her project to the Board requesting to occupy the space to conduct a dog grooming business. She submitted a Letter of Intent to the Building Commissioner to which he responded that the Town does not have a dog grooming distinction rather it falls under dog daycare. She stated she will only groom one dog at a time unless it’s a multi-dog family. The Board conditioned it is for dog grooming only and not to exceed 5 dogs maximum and there is no dog daycare or overnight boarding.

**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 with conditions outlined above. Moved by Member Colantuoni, seconded by Member Wali. All in Favor. Special Permit **granted**.

**VIII. 6:35 PM** – 834-836 Boston Road Realty, LLC by James Dangora, Jr., Esq., - Variance request to redevelop the site to construct a restaurant in a General Business Zone located at 834-836 Boston Road (Case #23-26)

It is noted that the Board opened both hearings for this petition as they relate to each other.

Attorney Dangora presented the project to the Board to redevelop the property and construct a fast-food establishment called the Bagel Bar. It will feature take out and a drive-through. The bagels will not be baked on the site. The hours of operation would be Monday to Saturday, 6:00 am to 6:00 pm. and Sunday 7:00 am to 6:00 pm. There will be no indoor seating; a few outdoor seats are allocated.

Sidewalk is the Dept. of Transportation (DOT) jurisdiction but applicant is willing to put sidewalk in without granite curbing. The applicant has addressed the drainage issues and will install an infiltration system and there is a catch basin on the property. A drainage plan with calculations was also submitted.

The property historically has experienced drainage issues. A stormwater management report prepared by Williams & Sparages, LLC was filed with the petition as well as a transportation impact assessment report prepared by Vanasse & Associates, Inc. The traffic consultant presented and discussed their findings for the project. Their assessment and analysis will go through a full Mass. DOT review process as well for future permitting reasons. 1700-1800 peak hour volume during the week. Low instances of motor vehicle crashes. No high crash instances in this area.

John Dionne, 5 Dorset Ave. opposes the project for several reasons: noise, parking, traffic, damage to homeowners property. Feels it's detrimental to the neighborhood residents.

Penka Atanassova, 4 Dorset Ave. opposes the project and questioned the need/purpose of the Bagel Bar. Feels the Newtown Grill patrons are disrespectful of the neighborhood. She feels their privacy and safety is jeopardized.

Joe LaFauci, 4 Catherine Ave. cited trees obstructing the view, snow removal and storage, vinyl fence gets broken by the kids, parking 8' wall – overflow of cars from the Newtown Grill. Believes the plan needs to be tweaked. Cited delivery schedule and dumpster location.

John Carney, 3 Dorset Ave., cited the drive through talk box disturbing the abutter directly behind the Bagel Bar.

Mary Leach, 7 Williams Road, feels that this really needs to go back to the table and discussed further. She also cited traffic and parking issues and perhaps moving further up Boston Road. Encouraged the Board to consider the residents concerns and not vote on this project tonight as she feels there is more work to be done on this property.

Mike Rosa, Selectboard member, spoke representing himself as a private resident, the Bagel Bar would be a considerable improvement. Position where a opportunity exists to clear up the property and improve the area overall.

Mark LaLumiere, Building Commissioner, ask the Board to tie sidewalks to this project to leave it to Mass Highway, they may not get done or done much later. Cited sidewalks were tied into the new firehouse and the Emerald Rose permits. Opportunity to improve the area and tie it in altogether. Parking requires it to be on the same use.

The Board cited the plan does not reflect snow storage and disagreed with the traffic flow pattern and the side street parking spaces. Sidewalks with curbing was also discussed. The Board believes the plan does need more consideration and work.

The project received opposition from several neighbors who cited noise issues, increased traffic, parking issues, deliveries. It was also stated that the patrons of the neighboring restaurant, The Newtown Grill, are not respectful of the neighborhood.

**MOTION: TO** continue the public hearing per the applicant's request to August 9, 2023. Moved by Member Wali seconded by Member Colantuoni. All in favor. Petition continued to August 9, 2023.

**IX. 6:35 PM** - 834-836 Boston Road Realty, LLC by James Dangora, Jr., Esq.- Special Permit request to construct a new restaurant located in a General Business Zone located at 834-836 Boston Road (Case #23-25)

**MOTION: TO** continue the public hearing per the applicant's request to August 9, 2023. Moved by Member Wali seconded by Member Colantuoni. All in favor. Petition continued to August 9, 2023.

**X. 8:05 PM** - 18 Austin Road CBC, LLC by James Dangora, Jr. – Special Permit request to demolish existing home and construct a new home in a Village Residence Zone located at 18 Austin Road (Case #23-31)

Attorney Dangora presented the request for a Special Permit Finding to demolish the existing home and construct a new home. He explained that the existing home was constructed in or about 1935 and the home's front steps encroach onto Taylor Road which is an undeveloped, unaccepted paper street that will never be developed. Due to existing wetlands the Conservation Commission conditioned the new development would have to abide by the 25' No Alteration Zone. If granted, the encroachment onto Taylor Road would be eliminated and the new home would sit further from Taylor Road and respect the wetland boundary. He stated that the existing 8' front yard setback will remain. To improve the property per the submitted plan, the petitioner is requesting a finding that the new dwelling will not increase any non-conformities and will not be substantially more detrimental to the neighborhood than

the existing dwelling. The gravel driveway will remain gravel and will go directly to the new home from Austin Road.

The Plot Plan prepared by Dresser, Williams & Way, Inc., dated April 12, 2023 shall be filed as the Plan of Record with this decision.

**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 Finding requested. Moved by Member Colantuoni, seconded by Member Wali. All in favor. Special Permit Finding **granted**.

**XI. 8:15 PM** - Michael & Colleen Connelly by David Kinsella – Special Permit request to construct an in-law apartment in a Rural Residence Zone located at 6 Sequoia Street (Case #23-22)

David Kinsella presented the petition to construct an in-law apartment. He stated that it is 799' which meets the by-law requirements for an in-law apartment. He was also requested to construct a covered deck which will be common area and connect to the new deck planned on the back of the home.

The Plot Plan prepared by Merrimack Engineering Services, dated April 11, 2023 shall be filed as the Plan of Record with this decision.

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

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

**XII. 8:22 PM** - Pedro Avalos by David Kinsella – Special Permit Request to construct an in-law apartment in a Rural Residence Zone located at 66 Wyman Road (Case #23-23)

David Kinsella presented the petition to construct an in-law apartment. He stated that it is 799' which meets the by-law requirements for an in-law apartment. His client's daughters will reside in the in-law apartment.

The Plot Plan prepared by Hancock Survey Associates, Inc., dated February 23, 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 Member Wali. All in favor. Special Permit **granted**.

**XIII. 8:27 PM** - Rick Beebe by David Kinsella – Special Permit request to construct an in-law apartment in a Rural Residence Zone located at 6 Tracy Circle (Case #23-33)  
*(continued to August 9, 2023)*

**MOTION: TO** continue the public hearing per the applicant's request. Moved by Member Colantuoni, seconded by Vice Chair Pendleton. All in favor. Motion carried to continue the petition to August 9, 2023.

**XIV. 8:28 PM** - Thomas Fitzgerald by John McKenna, Esq. – Variance request to divide the premises into two lots in a Village residence Zone located at 9 Summit Rd. (Case #23-32)

Attorney McKenna presented the variance request to divide the premises into two lots. He explained there is a detached garage with storage space above and his client would like to convert it to living space for his son and children. The applicant, Thomas Fitzgerald, explained to the Board that his son is a widower with 5 children and 3 of them still live with him. They have arranged for their house and lot which is a 38, 750' parcel, to remain in the family. The proposed new lot would be 21, 250' and the existing lot would be reduced to 17,500'. The project has received several support letters from abutters.

The Plot Plan prepared by Dresser, Williams & Way, dated May 12, 2023 shall be filed as the Plan of Record for this decision.

**MOTION: TO** close the public hearing. Moved by Member Wali, 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. Variance **granted**.

**XV. 8:40 PM** - Jingesh & Rita Patel by John McKenna, Esq., - Variance request to divide the premises into two lots in a Rural Residence Zone located at 10 Shawsheen Road (Case #23-03) *(Previously continued from April 19, 2023)*

Attorney McKenna submitted a revised plot plan dated June 14, 2023 which reflects the lot split with a proposed building envelope and the flood plains. He further submitted a Conservation Department as-built plan dated July 21, 2012, depicting the wetland and flood plain boundaries. The petition received opposition from several abutters who stated flooding and drainage issues are a major issue and cause for concern. They stated their frustration with this petition being continued 3 times to date. They stated that they now have basement flooding and more extreme street drainage issues since 10 Shawsheen was

originally built. Attorney McKenna requested one more continuance for this project but decided to request a withdrawal without prejudice.

**MOTION: TO** withdraw the petition without prejudice. Moved by Member Colantuoni, seconded by Member Wali. All in favor to accept withdrawal. Motion carried.

**XVI. 9:03 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)  
*(previously continued from 5/27/2023)*

The Board simultaneously opened both petitions as they relate to each other.

Attorney Lentine submitted a revised seating plan to the Board reflecting a 50 seat restaurant with increased parking. He stated thirteen (13) spaces are available for the commercial use space dedicated to 22 Commune. Further, two (2) employees per shift would be allowed to park in the garage with a passkey. There are four (4) spaces on site under the landlord's control and has agreed to dedicate two (2) of them to the retail space of the building which brings the total up to 17 parking spaces available. They are still three (3) parking spaces short. The hours of operation will stay the same as previously presented (5:00 am to 10:00 pm Mon-Sat). They believe they have made significant changes to the original plan to accommodate the flex space, the neighborhood and the Board's request. They are requesting a variance for the three (3) additional parking spaces.

Bart Hogan, 11 Manning Rd., cited additional traffic lights to be installed along Middlesex Tnpk. and 2 additional years have been added to the turnpike project. Stated 12 sets of traffic lights are planned to be installed to mitigate the increased traffic flow. He believes parking with the increased traffic flows would impose a safety hazard. He expressed concern regarding trucks for services and deliveries with the current street parking. He requested that the Board deny this project for these reasons.

Michael Rosa, Town Select Board member, spoke as a private resident and cited the original application waived the parking determined to the public good based on patrons being residents of the 211 apartment complex. Now its 20% and 80% of the patronage is expected to come from outside the residence. He feels that the project is overdeveloped for this lot. To propose a 50 seat restaurant for space that was originally presented as a coffee shop/muffin shop -a small operation – in and out – was never the intended use of this space. He believes it simply is not feasible with seventeen (17) parking spaces. He believes the applicant is trying to create something that just doesn't fit in this space. It was never intended to be a full scale restaurant. It's oversized and parking is clearly an issue.

Mark LaLumiere opposed the original design of a 100 seat restaurant but acknowledged the reduced seating and reduced staffing needs. The applicant is now three (3) spaces shy of required parking, but stated there are four (4) available street parking spots. They can't claim those spaces as dedicated spaces for the retail space, however, the opposite lot is planned to be leased to a company who employs people who live in The Val and hope to utilize the restaurant space and the applicant possibly utilizing their lot for parking via a lease. The applicant plans to advertise employment opportunities within the complex for employees.

The Board determined that the parking spaces plan is just not adequate for the proposed restaurant use. They referred back to the original presentation of a coffee shop where patrons order, pick-up and leave.

Attorney Lentine has made a good effort to put forth a viable plan for parking, however, it just does not meet the intended use. There will be no bar seating; only restaurant seating.

The Board was not confident with the parking variance and unanimously denied the variance request. There is a concern that at some point, additional seating would be made to accommodate over 50 patrons at a time.

**MOTION: TO** grant the parking variance requested. Moved by Vice Chair Pendleton, based on the parking reduction as advertised, seconded by Member Anable. All members opposed to the grant. Variance **denied**.

**XVII.** 9:03 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) *(previously continued from 5/27/2023)*

The Board simultaneously opened both petitions as they relate to each other.

Attorney Lentine submitted a revised seating plan to the Board reflecting a 50 seat restaurant with increased parking. He stated thirteen (13) spaces are available for the commercial use space dedicated to 22 Commune. Further, two (2) employees per shift would be allowed to park in the garage with a passkey. There are four (4) spaces on site under the landlord's control and has agreed to dedicate two (2) of them to the retail space of the building which brings the total up to 17 parking spaces available. They are still three (3) parking spaces short. The hours of operation will stay the same as previously presented (5:00 am to 10:00 pm Mon-Sat). They believe they have made significant changes to the original plan to accommodate the flex space, the neighborhood and the Board's request. They are requesting a variance for the three (3) additional parking spaces.

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for parking via a lease. The applicant plans to advertise employment opportunities within the complex for employees.

The Board determined that the parking spaces plan is just not adequate for the proposed restaurant use. They referred back to the original presentation of a coffee shop where patrons order, pick-up and leave. Attorney Lentine has made a good effort to put forth a viable plan for parking, however, it just does not meet the intended use. There will be no bar seating; only restaurant seating.

The Board was not confident with the parking variance and unanimously denied the variance request. There is a concern that at some point, additional seating would be made to accommodate over 50 patrons at a time.

After discussions, Attorney Lentine requested to withdraw the petition without prejudice. The Board unanimously voted to accept the withdrawal without prejudice.

**MOTION: TO** withdraw the petition without prejudice requested. Moved by Vice-Chair Pendleton, seconded by Member Anable. All in favor. Petition to withdraw without prejudice accepted..

#### **Administrative Matters:**

1. Approve the Minutes of the May 17, 2023 Board of Appeals Meeting

**MOTION: TO** accept the minutes of the May 17, 2023 Board of Appeals Meeting as presented. Moved by Member Colantuoni, seconded by Vice-Chair Pendleton. All in favor. Minutes accepted.

#### **Board of Appeals Reorganization:**

**MOTION:** Member Colantuoni nominated Michael Pendleton for Chairman, seconded by Member Anable. All in favor. Carried unanimously.

**MOTION:** Chairman Accomando nominated Eric Anable for Vice-Chairman, seconded by Vice-Chair Pendleton. All in favor. Carried unanimously.

**MOTION:** Chairman Accomando nominated Anupam Wali for Secretary, seconded by Member Anable. All in favor. Carried unanimously.

#### **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,



Eric Anable, Secretary