

BILLERICA BOARD of APPEALS
Minutes for the
August 17, 2022 Meeting
6:00 PM
Town Hall, Room 210
365 Boston Road, Billerica, MA

ATTENDANCE: Members Robert Accomando (Chairman), Michael Pendleton (Vice-Chairman), Eric Anable (Secretary), Richard Colantuoni, Anupam Wali. Alternate Member Ralph McKenna attended via speaker phone. Recording secretary Liz Ells, ZBA.

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

II. 6:02 PM – Board of Appeals Reorganization:

MOTION: Member Colantuoni nominated Robert Accomando for Chairman, seconded by Member Wali. All in favor. Carried unanimously.

MOTION: Member Wali nominated Michael Pendleton for Vice-Chairman, seconded by Member Accomando. All in favor. Carried unanimously.

MOTION: Member Colantuoni nominated Eric Anable for Secretary, seconded by Member Accomando. All in favor. Carried unanimously.

III 6:05 PM - Mateusz Bryzkowski – Variance Request to reduce side setback for construction of deck and pool in a Village Residence Zone located at 8 Oakwood Avenue (Case #22-39)

The applicant presented his plot plan and explained he is seeking relief from the side setback to construct a 7'x27' deck and the above ground pool is existing. He is asking to reduce the side setback from 15' to 12.68' from the deck to the property line and the Board granted a 10' minimum from the center side of the pool to the property line.

There were no abutters present at this hearing.

The submitted Certified Plot Plan of Land prepared by Spindle City Surveying and Consulting, LLC., dated April 13, 2022, shall be filed as part of this decision.

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

MOTION: TO grant the Variance requested. Moved by Member Wali, seconded by Vice-Chairman Pendleton. All in Favor. **Petition Granted.**

IV. 6:09 PM - Laura Riley – Variance Request to reduce front and side setbacks to construct an addition and portico in a Village Residence Zone located at 347 Andover Road (Case #22-40)

The applicant explained that she is seeking relief from the side and front setback in order to construct an addition to the home as well as a front door portico with 2 steps. She is requesting the side setback be reduced from 15' to 14' and the front setback reduced from 35' to 32'8". The Board granted a 13.6' minimum for the side setback and 32' for the front setback.

The submitted Plot Plan of Land prepared by Chess Engineering, dated May 17, 2022, shall be filed as part of this decision.

There were no abutters present at this hearing.

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

MOTION: TO grant the Variance requested. Moved by Member Wali, seconded by Vice-Chairman Pendleton. All in favor. **Petition Granted.**

V. 6:14 PM - Kimberly Scroxton – Variance Request to reduce the side setback for existing pool in a Village Residence Zone located at 7 Garnet Rd. (Case #22-42)

The applicant explained that she is seeking relief from the side setback for an existing in-ground pool that is 40+ years old and was in place when she purchased the home. There have been no complaints to date that the pool is so close to the property line. She has sold the home and the new owner is currently holding money in escrow until a variance is granted to reflect the 1' distance to the property line. The Board stated that due to the age of the pool, it is grandfathered and a 1' minimum to the property line will be the dimension.

The submitted Mortgage Inspection Plan of Land prepared by Deslauriers & Associates, Inc., dated January 8, 2014, shall be filed as part of this decision.

There were no abutters present at this hearing.

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-Chairman Pendleton, seconded by Member Colantuoni. All in favor. **Petition Granted.**

VI. 6:20 PM - Left Eden Restaurant Corp. – Special Permit Request to utilize the property as a restaurant in an Industrial Zone located at 15 Middlesex Turnpike (Case #22-44)

Attorney Jill Elmstrom Mann presented the petition for Maggie's Farm and explained to the Board that they would like to reopen this restaurant based on the close proximity to several businesses. This property historically has been a site used for restaurants and affords adequate parking spaces and a landscaped area with no negative impact to traffic. She stated the restaurant occupancy will not be increased and they will offer outdoor dining as well. The restaurant seats 210 inside and seats 30 outside. They received approval from the Select Board on July 18, 2022 for a full liquor license, common victualler license and a full entertainment license. They are currently waiting on their ABCC approval before the Select Board can issue their licenses. She stated that Maggie's Farm is a family-oriented restaurant which will have a pool table off the game room which will feature arcades and games for children. It is anticipated that they will be open for business sometime this fall. There were no abutters present at this hearing.

The Certified Plot Plan of Land prepared by B&R Survey, Inc., dated August 19, 2019 shall be filed as part of this decision.

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

MOTION: TO grant the Special Permit requested. Moved by Member Colantuoni, seconded by Member Wali. **Petition Granted.**

VII. 6:30 PM – Azar Realty, LLC by James Dangora, Sr., Esq. - Special Permit Request to utilize premises for existing business use of automotive repair and sales in a General Business Zone located at 741 Boston Road (Case #22-38)

Attorney Dangora, Sr., presented the petition on behalf of his client, Azar Realty, LLC., for Platinum Sales of Billerica, LLC. He explained that this location has been historically utilized for a used car sales business and the client is requesting the transfer of ownership to continue the business use. He

further stated that the client will be applying for a Class 2 License from the Select Board pending the granting of this Special Permit.

There were no abutters present at this hearing.

The Certified Plot Plan of Land prepared by Dresser, Williams & Way, Inc., dated June 7, 2017 shall be filed as part of this decision.

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

MOTION: TO grant the Special Permit requested. Moved by Member Colantuoni, seconded by Member Wali. **Petition Granted.**

VIII. 6:34 PM - Paul Dunton by James Dangora, Jr., Esq. - Variance Request to reduce the front and side setbacks to construct new single-family home in a Village Residence Zone located at 16 Austin Road (Case #22-41)

Attorney Dangora, Jr. presented the petition on behalf of his client, Paul Dunton, who is seeking to reduce the front and side setbacks in order to construct a new single family home on a 33,000 sq. foot lot. Specifically, he is requesting to be permitted a front yard setback of 25' and a side yard setback of 5'. Attorney Dangora stated that a portion of Austin Road is not an accepted road yet the surrounding roads are accepted. He confirmed that both the Police and Fire Departments have access to the property for emergency vehicles. The applicant is working with the Conservation and Board of Health Departments regarding wetlands and flood plain.

The submitted Certified Plot Plan of Land prepared by Dresser, Williams & Way, Inc., dated May 20, 2022, shall be filed as part of this decision.

There were no abutters present at this hearing.

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

MOTION: TO grant the Variance Requested. Moved by Member Colantuoni, seconded by Vice-Chairman Pendleton. **Petition Granted.**

IX. 6:40 PM – Timothy Morgan and Cheri Johnson, by James Dangora, Jr., Esq. – Extension Request for previously granted Variance in a Neighborhood Residential Zone located at 56 Rogers Street (Case #21-41) **(WITHDRAWN - NO ACTION TAKEN)**.

X. 6:41 PM - JSES Associates, LLC., by Stephen Nelson, Esq. - Extension Request for previously granted Variance in an Industrial Zone located at 9 Sterling Road (Case # 21-46)

Attorney Dangora, Jr. represented Attorney Nelson for this extension request and explained that the applicant also owns a piece of property on Rangeway Road and is currently exploring permitting options for that property. He is looking to move his chipping operation to a more private site and wouldn't need to install a 14' fence if he uses the property on Rangeway Road. He is asking to extend his variance to explore options for his business.

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

MOTION: TO grant the 6-month extension. The new expiration date is January 15, 2023. Moved by Member Colantuoni, seconded by Vice Chairman Pendleton. All in Favor. Motion carried.

XI. 6:45 PM - Robert Maher by John J. McKenna, Esq. – Variance Request to divide the premises into two lots in a Rural Residence Zone located at 206 Andover Road (Case #22-31)

Attorney McKenna presented the petition on behalf of his client, Robert Maher, who is seeking to divide his property into two (2) lots in order for his son and family to construct a single family home. Attorney McKenna provided a revised plot plan and noted the reduced building envelope and the lot sizes have been changed. The existing house lot line has been decreased to 25,690 +/- sq. ft. (from 35,188 +/- sq. ft.) and the proposed new lot has been increased to 44,297 +/- sq. ft. (from 34,799 +/- sq. ft.). Attorney McKenna stated that the father and son also work together in the two (2) garages that are currently on the property of the original existing plot plan. If granted, these two (2) garages would now become part of the proposed newly created lot. It was discussed that the pool that is currently on the original existing plot plan is old and will be removed and replaced with a smaller pool that will be 20' from the newly created lot line.

The submitted Certified Plot Plan of Land prepared by Dresser, Williams & Way, Inc., dated March 8, 2022, shall be filed as part of this decision.

MOTION: TO close the public hearing. Moved by Member Wali, seconded by Vice-Chairman Pendleton. All in Favor. Motion carried.

MOTION: TO grant the Variance requested. Moved by Member Wali, seconded by Member Colantuoni. The Board voted 4-1 to grant the variance requested. Voting in opposition was Alternate Member McKenna. **Petition granted.**

XII. 7:04 PM - Dean Jenkins by John J. McKenna, Esq. – Variance Request for lot area, frontage and boundary line change to construct a single-family home in a Neighborhood Business Zone located at Mt Pleasant Street (Case #22-35)

Attorney McKenna presented the variance and explained that there would be no access from Mt. Pleasant Street as there is no easement on the property. There is an easement through Lot A of Hickory Lane. The Board expressed concerns regarding the frontage of the property as well as access for emergency vehicles and a combined driveway. The lot is 40,000 sq. ft but does not have frontage. It was suggested that placing the house “kitty-corner” for visibility reasons might be a possibility.

Attorney McKenna requested a continuance of this hearing to September 14, 2022, pending revised plans.

There were no abutters present at the hearing.

MOTION: TO continue the hearing per the applicant’s request, to September 14, 2022, pending submission of a revised plot plan. Moved by Chairman Accomando, seconded by Vice-Chairman Pendleton. All in Favor. Motion carried.

XIII. 7:25 PM - Robert Taylor – Variance Request to reduce side setback to construct a garage in a Rural Residence Zone located at 14 Cynthia Road (Case #22-27)

The applicant was not present for his continued hearing, however, he did submit a revised plot plan reflecting the dimensions of the proposed garage (24’x 24’) and distance from the property line. He is seeking relief from the side setback to reduce it from 15’ to 10.5’. The Board conditioned that there will be a 10’ minimum side setback.

The submitted Certified Plot Plan of Land prepared by McDonald Land Surveying, Inc., dated June 24, 2022, shall be filed as part of 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 Member Colantuoni, seconded by Member Wali. All in favor. **Petition granted.**

XIV. 8:43 PM - Fang Liao – Variance Request to increase lot coverage to construct a garage in a Village Residence Zone located at 33 Beech Street (Case #22-37)

The applicant, Fang Liao and her husband Jeff Cook, submitted a revised plot plan reflecting a scaled down plan with a one car garage with storage above. Mr. Cook explained that the one car garage they currently have is unusable as well as the basement and are in need of additional storage space. The property is grandfathered for setbacks but the proposed garage exceeds the percentage allowed for lot coverage. During the hearing, Mr. Cook stated that he and his wife live on the first floor and have renters occupying the in-law apartment upstairs. Mark LaLumiere, Permitting Services Director, addressed this issue with the applicant's who failed to answer a direct question when asked if they are indeed renting out the in-law apartment. They stated that they rent rooms upstairs. Mark LaLumiere deemed this home to be an illegal 2 family as Ms. Liao failed to register the in-law by July 31st every year and have it notarized. Chairman Accomando informed the applicants that due to the illegal status of the home, the Board cannot issue a Variance for a property that is deemed illegal. Several abutters were in attendance and expressed their concerns.

Stephen Guisti, 29 Beech St., is a direct abutter who is opposed to this variance for several reasons. Specifically, it is an illegal 2 family home in a single-family residential area. He is concerned that if they build this garage with "storage space" above it, that it will be turned into another illegal apartment. He is also concerned with the 2nd story and his view. Lack of privacy and lawn maintenance are other concerns.

James Campbell, 19 Lakeview Dr., Marie Managhan, 34 Beech St., and Ramsahoye Khemraj, 74 Marshall St., all reiterated similar concerns. Mr. Khemraj, however, stated that there has been heavy police activity in the last few years and is concerned for his family's safety.

The submitted Certified Plot Plan of Land prepared by McDonald Land Surveying, Inc., dated June 24, 2022, shall be filed as part of this decision.

MOTION: TO close the public hearing. Moved by Member Wali seconded by Vice-Chairman Pendleton. All in Favor. Motion carried.

MOTION: TO DENY the Variance requested. Moved by Vice-Chairman Pendleton, seconded by Member Wali. The Board voted 0-5 to **DENY** the variance requested. **Petition denied.**

Administrative Matters:

1. Approve the Minutes of the June 15, 2022 Board of Appeals Meeting

MOTION: TO approve the minutes of the June 15, 2022 Board of Appeals Meeting as presented. Moved by Member Wali, seconded by Vice-Chairman Pendleton. All in favor. Minutes accepted.

9:16 PM - ADJOURN

MOTION: TO adjourn. Moved by Member Wali, seconded by Vice-Chairman Pendleton. All in Favor. Motion Carried.

Respectfully submitted,

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

Eric Anable
Secretary