

BILLERICA BOARD of APPEALS
Minutes for the
February 19, 2025 Meeting
6:00 PM – Room 210
365 Boston Road, Billerica, MA

ATTENDANCE: Members Eric Anable (Chairman), Robert Accomando (Vice-Chair), Michael Pendleton, Richard Colantuoni (via ZOOM), Anupam Wali. Alternate Member Salvatore Dampolo. Mark LaLumiere, Building Commissioner and Recording Secretary Liz Ells, ZBA.

- I. 6:04 PM** Raj Khemraj by Braima Massaquoi – Variance request to reduce side setback to install a carport in a Neighborhood Residence Zone located at 25 Pratt St. (Case #24-76)

Braima Massaquoi presented his client's petition for a variance to reduce the side setback from 15' to 5.1' to install a 42'x33' carport with a shingle roof. He stated that due to the house placement on the lot, the carport needs side setback relief of approximately 10'.

The Certified Proposed Additions Plan and floor plan prepared by Taj Engineering, LLC., dated October 1, 2024 shall be filed as the Plans of Record for this decision.

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

MOTION: TO grant the variance requested. Moved by Vice Chair Accomando, seconded by Secretary Wali. All in favor. Motion carried. Variance **granted**.

- II. 6:08 PM** – Derek Allgaier by George Medeiros, Esq. – Special Permit to allow for the reconstruction of a single-family home in a Village Residence Zone located at 5 Day St. (Case #25-01)

Attorney Medeiros presented the petition for the special permit to allow the reconstruction of a single-family home. He explained that the once existing house received a special permit in January 2021 to build a 2nd floor to the home. Construction of the 2nd floor was started but the house experienced a catastrophic collapse of the house. As a result, the entire home had to be demolished and brought down to the foundation. The homeowner at this point had depleted funding for this project and discussed selling the property to Howard Allgaier, DH Realty Trust, to take over the project of rebuilding the house. The intent is to obtain a 2nd special permit to continue the project. It was questioned as to why the home collapsed and Attorney Medeiros stated that the foundation that was built in 1920 could not bear the weight of the 2nd floor. The original foundation was a fieldstone foundation and approximately 1.5' from the side property line.

When the house collapsed, the new foundation was made on the existing footprint of the home to comply with the original special permit for the 2nd floor and was issued a foundation building permit. It was questioned why it wasn't pushed further back off Day St. to comply with the current setbacks. It was stated that once the house collapsed and demolished, the foundation should have been made to conform to the minimum setback to the neighborhood which is a 20' front yard setback.

The Certified Plot Plan of Land prepared by Dresser, Williams & Way, LLC., dated February 24, 2023 shall be filed as the Plan of Record for this decision.

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

MOTION: TO grant the variance requested. Moved by Vice Chair Accomando, seconded by Secretary Wali. All in favor. Motion carried. Variance **denied**.

- III. 6:14 PM** – FB Realty Investors, Inc., by Shreya Patel – Special Permit request to operate a fast-food establishment in a General Business Zone located at 480 Boston Rd. (Case #25-03) (Continued to March 19, 2025)

- IV. 6:28 PM** – 29 Bistro - Special Permit request to operate a fast-food establishment in a General Business Zone at 700 Boston Rd. (Case #25-06)

Natthasit Nimitsakulchai presented the petition to reopen an existing fast-food establishment serving a Thai and Vietnamese menu. The space was previously occupied by Kitchen Xpress. There are no structural changes to the interior. The hours of operation are: Monday to Sunday 11:00 am to 9:00 pm.

The submitted interior floor plan shall be filed as the Plan of Record for this decision.

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

MOTION: TO grant the special permit requested. Moved by Secretary Wali, seconded by Member Pendleton. All in favor. Variance **granted**.

- V. 6:34 PM** - BBPA Realty, LLC, by Stephen Lentine, Esq. – Variance request to reduce side setback to construct a proposed 32,280 sf building in an Industrial Zone located at 15 Middlesex Turnpike (Case #25-02)

Attorney Lentine presented the petition requesting a variance for side setback relief to construct an up to 32,280 sq. ft. commercial mixed-use building in an Industrial Zone. The premises historically housed multiple restaurants. The current setback for this zone is 35' and the requested relief is 18'. The site is under new ownership and would like to transform the site into an indoor badminton and pickleball court and a casual restaurant with smaller seating than the existing restaurant. Attorney Lentine acknowledged that if approved by the Zoning Board, his client would still have to go before the Planning Board for a Site Plan Special Permit. The side setback would be on Dawes Drive, a private way. The possibility of having pickleball tournaments is thought to be a boost to the community.

The Certified Plan of Land prepared by Dresser, Williams & Way, Inc., dated January 16, 2025 shall be filed as the Plan of Record for this decision.

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

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

- VI.** Cafua Realty trust LCXII, LLC by James Dangora, Jr., Esq. – Variance request to make the lot, building and use conforming in a General Business Zone located at 796 Boston Rd. (Case #24-57)

It is noted that both the hearings for this property were opened simultaneously as they relate to each other.

Attorney Dangora presented his client's petition to construct a Dunkin Donuts with a drive-through on this lot. It is noted that this is a large property that is dual zoned and sits at the intersection of Boston Rd. and Cook St. It is bordered by Covington Avenue and Beaumont Avenue. The Design Engineer and Traffic Engineer were present and presented their findings to the Board.

There were several abutters to this property present who all expressed their concerns regarding the increased traffic flow, light signals, safety, trash and increased noise levels. They also noted that there are 2 schools in the area and some of the children are "walkers." They opposed the green space stating the property is currently not maintained and is overgrown. The back corners of the property are zoned Rural and Village Residential and they inquired about what would be developed on it. It is noted that at this time, there have been no discussions or decisions to develop the back of the property. Further discussions included Do Not Enter signage on McHugh and Covington Avenues to discourage cut throughs within the neighborhood.

It was explained to the residents that Mass. DOT owns the road and traffic lights, and a full review would be done. The Board requested a peer review on the traffic study for further insight and directed the Planning Department to procure a peer reviewer for the traffic only. It was also noted that a discussion with the Town's Traffic Safety Officer is also warranted.

It was decided that these petitions would be continued to November 20, 2024 for further discussion pending the peer review report and findings. Due to unforeseen circumstances and the peer review study, both petitions were continued to February 19, 2025.

Both hearings were continued pending peer review and reopened simultaneously on Wednesday, February 19, 2025 at 6:55 pm.

Attorney Dangora presented the petitions and stated that the parcel is 39,981 square feet and is zoned as General Business. The proposal is to construct an 1,848 square foot building for a Dunkin Donuts with a drive through which will replace the existing Dunkin Donuts currently located at 729 Boston Rd. The Special Permit request is for the fast-food establishment with a drive-through and the Variance request is for perimeter green strip relief.

The applicant's engineer, Christopher Tymula spoke briefly on the changes and stated that the existing curbing on Cook St. and Boston Rd. didn't have the proper 6' and have noted the curbing needs to be reset to meet that standard. Landscaping plans were also provided and noted that additional trees may also need be added. Currently the plan proposes 8 new trees, 80 new scrubs and more than 90 perennials and grass to beautify the site as well as the 6' stockade fence. He stated that they are working with the DPW regarding their comments of the site. They will also implement the request from the peer reviewer, Kimley-Horn, for post construction monitoring for the traffic. Robert Bollinger stated they are waiting for an update from MassDOT which has jurisdiction over the curb cut on Boston Rd. and requires a permit from them as well as the signal adjustment.

There were multiple abutters present at the meeting and expressed their concerns regarding the increase in traffic flow with 2 schools in the neighborhood. The neighbors believe that the traffic study was done in the summer months and the residents would like it done in September/October/November when school is in session. Attorney Dangora clarified that in fact, the traffic study was conducted in May while school was in session but was dated in July once the information was compiled. His client has incorporated all the changes proposed by the peer reviewer.

It was also stated that the traffic light timing needs to be addressed and corrected and felt the "Do Not Block" signage is useless. They would like the back parking lot removed even though it's 2 different zones; the case was made that it's the same owner. They are tired of seeing the lot used for parking 18 wheelers, landscaping vehicles, buses and broken Jersey barriers.

One neighbor stated the Board should follow the law and what is required for a variance as well as adhere to the Town's By-Laws. The State Law was cited that all 4 criteria must be met to authorize a variance, and the neighborhood does not believe that this project meets the criteria on both levels of government. The neighbors also felt that aside from the increase in traffic flow, the overflow will go through other streets to avoid the congestion and aggressive drivers. There were concerns expressed for pedestrian safety, especially with 2 schools in the area with 3 bus stops and children that are "walkers." They feel it is a dangerous combination. It is noted that there is only a one-sided sidewalk as well on Cook St. Signage and setback requirements were also brought up. People are concerned about future accidents with the traffic flow and congestion. Many neighbors also felt that since the petition has not yet received approval via a Special Permit from MassDOT for the curb cut on Boston Rd., the Board should deny it. They believe the property has the potential to be developed in a more neighborhood friendly way.

The Proposed Site Development Plans prepared by GPI Engineering dated August 15, 2024 shall be filed as the Plans of Record for this decision.

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

MOTION: TO grant the variance requested. Moved by Secretary Wali, seconded by Member Pendleton. All in favor. Motion carried. Variance **denied**.

- VII.** Cafua Realty trust LCXII, LLC by James Dangora, Jr., Esq – Special Permit request to construct a fast-food establishment with a drive through window in a General Business Zone located at 796 Boston Rd. (Case #24-58) other.

Attorney Dangora presented his client's petition to construct a Dunkin Donuts with a drive-through on this lot. It is noted that this is a large property that is dual zoned and sits at the intersection of Boston Rd. and Cook St. It is bordered by Covington Avenue and Beaumont Avenue. The Design Engineer and Traffic Engineer were present and presented their findings to the Board.

There were several abutters to this property present who all expressed their concerns regarding the increased traffic flow, light signals, safety, trash and increased noise levels. They also noted that there are 2 schools in the area and some of the children are "walkers." They opposed the green space stating the property is currently not maintained and is overgrown. The back corners of the property are zoned Rural and Village Residential and they inquired about what would be developed on it. It is noted that at this time, there have been no discussions or decisions to develop the back of the property. Further discussions included Do

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The Proposed Site Development Plans prepared by GPI Engineering dated August 15, 2024 shall be filed as the Plans of Record for this decision.

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

MOTION: TO grant the special permit requested. Moved by Member Pendleton, seconded by Secretary Wali. All in favor. Motion carried. Special permit **denied**.

- VIII.** Reaching Swanson Meadows, Corp. by Stephen Nelson, Esq. – Special Permit Modification Request to expand current restaurant in a Rural Residence/Town House Overlay Zone at 216 ½ Rangeway Rd. (Case #24-41) (Withdrawn without prejudice)

Administrative Matters:

1. Approve the minutes for the January 15, 2025 meeting.

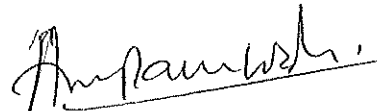
MOTION: TO accept the January 15, 2025 minutes as presented. Moved by Member Pendleton, seconded by Vice Chair Accomando. All in favor. Minutes accepted.

2. ADJOURNMENT

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

8:31 PM - ADJOURNED

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anupam Wali', written over a horizontal line.

Anupam Wali, Secretary